

ON THE RIGHT TO GIVE OFFENCE

Freedom of speech should cede nothing to religious sensibilities, argues **Steve Edwards**

The resurgent clash between freedom of speech and religious sensibilities took a violent turn earlier this year. The Danish newspaper *Jyllands-Posten* published cartoons depicting the Islamic prophet Mohammad in a negative light—thereby grievously offending millions of Muslims around the world, to the point of some committing acts of murderous violence against innocent third parties. In the Winter edition of *Policy* Dr Jeremy Shearmur, in his article ‘Free Speech, Offence and Religion’, argued that ‘free speech is not a licence to disregard the sensibilities of others’, and that in certain circumstances these sensibilities ought to be protected by law.

Shearmur suggests that the timeless pro-free speech argument of John Stuart Mill—to wit, the need for unfettered contestability of ideas due to

the fact of the ‘fallibility of human knowledge’ gives rise to the imperative of freedom of speech—is constrained by the need to develop an effective and mature forum for the dissemination of conflicting notions; that is to say, debate must be civil and mutually respectful in order to function properly. Shearmur states, ‘(all) this might require a greater maturity and sophistication than...is currently the case when views about controversial issues are raised today in the media’.¹

Of course, not all people are content to accept the ‘fallibility of human knowledge’ as self-evident. Indeed, those who believe in an ‘absolute truth’, revealed by God, are unlikely to be so accommodating of any pestiferous notions of freedom of speech—as Shearmur notes, ‘(it) was part of Christian doctrine, and is still often part of the common understanding of Islam, that the simple questioning of the correctness of (their faith) is unacceptable’.² However, it is one thing to question or attack a religious doctrine, and quite another to ‘play around in an offensive manner with the most deep-seated content of people’s religious

Steve Edwards wrote for the Autumn 2005 edition of *Policy* on the subject of religious vilification laws.

beliefs',³ for example by desecrating their religious icons in public.⁴

Advocating a dichotomy between prospective 'legal' and 'moral' limitations on public discourse, Shearmur suggests that 'polite contestation of religious claims should receive absolute protection' while frivolous, even insulting, forms of expression ought to be subjected to 'moral but not necessarily legal limitations'.⁵ Where there is good reason to believe that a serious breach of the peace would follow from publication of offensive material, Shearmur suggests there are grounds for legal restrictions.⁶ A 'reasonable person' test, as per the common law, could be used to decide what category the speech fell into, and thus whether it is deserving of protection. Due to the sheer scale of the offence caused by the Danish cartoons, Shearmur concludes that 'there was a case for a legal ban on the most offensive of the cartoons in Denmark, and ... a moral argument against their publication even where it is legal'.

Let us leave aside the potential 'moral' constraints on certain expressions and focus on the more contentious 'legal' ones—is there a liberal case for banning highly 'blasphemous' material on account of the severe offence and social disruption it might cause? If we adopt the 'non-aggression' axiom of classical liberalism—to wit, *that no-one may initiate force or the threat of force against anyone else*—we could, almost at a stroke, resolve our legal 'quandary' by allowing anyone to voluntarily associate with anyone else on their own property, or on others by consent. That is to say, *Jyllands-Posten* is a voluntarily distributed private newspaper which no-one is forced to purchase against their will; the cartoons did not contain any threats to initiate force or to break the law; ipso facto, there was simply no case for state censorship (which would by necessity constitute aggression) against *Jyllands-Posten*. There was, however, a case for sanctions against those who threatened the editorial staff of *Jyllands-Posten*.

The problem is that Shearmur provides us with no consistent principle from which to approach such matters of public controversy other than the 'reasonable person' standard. Here, we have stated from the outset that whatever might pass for public opinion at a given time should essentially and in itself draw the boundaries of free expression. Noting Shearmur's own conclusion in favour of banning

some cartoons, there is clearly no guarantee that a state arbiter *won't* cede to the most unreasonable and extreme demands of religious groups, expressed with adequate fervour and implied threats, especially as we have declared in advance that their 'sensibilities', however irrational, are somehow worth regarding. Thus, by abandoning a consistent first principles approach to freedom of expression in favour of some kind of dialectic between reasonable (us) and unreasonable (them) people, we may well find ourselves conceding tactical defeat *ad nauseam*, to the point where those who do accept the 'fallibility of human knowledge' must chafe under the de-facto rule of those who don't.

Allow me to take stock of our new situation with reference to two hypothetical social groups, A and B. Group A is rather scientific and sceptical, curious and uncertain—at once interested in discovering 'truths' through rational inquiry, while remaining open to the possibility that existing knowledge can be falsified. Group B subscribes, with a famous ardour and certainty, to a bundle of unproven and unfalsifiable beliefs—a religion—and thus necessarily rejects the very premise of the 'fallibility of human knowledge'. Clearly, as B already has The Truth, it shall be somewhat lukewarm on allowing any 'conflicting notions' to exist at all. Thus, legally-speaking, all demands that A take any notice of B's sensibilities wherever something might grievously offend some pillar or derivative symbol of The Truth, imply both a justification for deploying force against A merely to placate the feelings of B and the subversion of Mill's scientific case for free expression by allowing piecemeal incursions on behalf of 'infallible' dogma. That is, so long as B can bring enough rancour and enmity down on A for showing disrespect to some aspect of B's unproven and unfalsifiable beliefs, the state may side with B against A.

In addition to this legal capitulation, our willingness to indulge B's remarkable behaviour thus far has serious *moral* ramifications. Incredibly, due to the philosophical nature of B's beliefs as unfalsifiable dogma, we have also necessarily admitted that B can be *morally* justified in heaping massive opprobrium on A, *without being asked or even being able to explain precisely why*. That is to say, B may mercilessly assault the character of A without bothering to provide a credible, logical, reason—I'm

afraid 'because God says so' is no such reason. In short, by allowing *any* superstition to have a role in determining the theoretical legal limits of 'free speech' we are inadvertently crafting a doctrine for unscientific, irrational bullies.

Allow us to unpack further some of the unavoidable implications of this line of argument. Commenting on the most 'offensive' of the cartoons, Shearmur suggests that such a 'gratuitous insult to the Prophet' Mohammad could be grounds for legal sanctions.⁷ As mentioned before, he also proffers that 'polite contestation of religious claims' should be protected speech. What then, shall we make of any polite contestation of a religious claim that, by necessity, leads the interlocutor to make a seemingly 'gratuitous insult to the (alleged) Prophet'?

A Muslim is somebody who believes that a man called Mohammad (who lived around the turn of the 6th-7th Century AD) was the last in a long line of prophets in the Near East, and who passed on certain revelations and instructions directly from God Himself. By logic, a non-Muslim is somebody who does *not* accept that Mohammad was any such prophet, and thereby rejects his teachings as not having come from God. Let us reflect further on the epistemology of a non-Muslim—if, contrary to Mohammad's claims (assuming he has been represented correctly), we do *not* believe that he was any such prophet from God, what do we truly think of the man?

The answer must be one of three possibilities: either Mohammad was a liar, or he was deluded (that is to say, he was deeply mistaken), or he was mad.⁸ These are the only possible conclusions of the *intellectually honest non-Muslim*. Let us ponder one of the three possibilities—that Mohammad was a liar. Would it be unreasonable then to posit that a man willing to deceive many thousands of people, perhaps out of hunger for power or self-aggrandisement, could be labelled as 'evil'? If so, on what basis do we object to an extremely negative portrayal (either graphic or prose) of such an 'evildoer'? Whether or not such a portrayal may appear 'gratuitous' or provoke widespread anger, it would nonetheless be a justifiable expression of dissent. Therefore, to place legal sanctions on any such piece of literature is to necessarily outlaw opposition to, and disagreement with, Islam to a logical denouement; this suggests

we are *implicitly* calling for the abolition of the *right to proclaim oneself a non-Muslim in clear and in certain terms*. That is, one may still be a nominal 'non-Muslim' free of harassment, but one cannot explain and defend one's position in any significant detail without committing the now-proscribed act of blasphemy. In short, we have apparently repealed centuries of intellectual progress in the hopeless pursuit of 'social harmony'.

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We now observe the pitfalls of trying to adjust a scientific forum for free expression to any sensibilities arising from unfalsifiable dogma—as many religious claims are absolute and 'unimpeachable' by nature, it is not clear whether 'believers' *are* significantly more tolerant of a serious intellectual challenge from outside the 'faith', however polite, than they are of cheap abuse. Indeed, there is some evidence that the more fervent of believers may have some trouble distinguishing between the two.

Let us consider the Organization of the Islamic Conference (OIC), a body that represents the governments of 57 (primarily Islamic) countries around the world. In the wake of the Danish cartoons controversy, the Islamic Conference of Foreign Ministers (an OIC body) met on June 19–21, and re-affirmed their determination to push for 'legally-binding' United Nations resolutions, amongst else, 'to prevent defamation of religions and prophets' and 'to render all acts whatsoever defaming Islam as "offensive acts" and subject to punishment'.⁹ This came in addition to an OIC diktat issued last February, which stated bluntly, 'defamation of religions and prophets is inconsistent with the right to freedom of expression'.¹⁰ If these words have any meaning, we must realise that the OIC is not only rather miffed when non-Muslims express themselves with irreverence towards Mohammad, it is also broadly intolerant of those who question the correctness of their faith ('defaming Islam'). In short, the international

Muslim diplomatic body is demanding nothing less than worldwide anti-blasphemy laws to be enshrined under ‘international law’; that is, with coercive application across the entire planet.

Closer to home, the President of the Australian Federation of Islamic Councils, Dr Ameer Ali, echoed these sentiments in a press release issued on February 6. Referring directly to any possibility that the offending cartoons could be published in Australia, Ali called on ‘Governments [to] enact legislation to stop this kind of irresponsible and outrageous behaviour in our society’.¹¹ In addition, Ali flatly asserted that ‘no one [has] the right to offend anyone in the media’, an astonishing statement that could easily lend support to the prohibition of practically *anything*, so long as somebody, somewhere, claims to be ‘offended’.

Once again we see the failure of our dialectical approach to free expression. So long as the ‘contestability of ideas’ is open to *any* compromise with the sensibilities of religious believers, it shall almost invariably be the case that our ‘reasonable person’ test will be held to ransom by religious stonewalling—the sheer weight of numbers, and the intensity of their resolve, can too easily dictate the terms of arbitration. If serious threats to the social peace are enough to force massive concessions on the part of liberals, to the point of endorsing blasphemy laws, precisely how will *any* forum for the contestation of ideas withstand calls for the prohibition of vigorous religious criticism and inquiry?

In conclusion, the consequences of failing to defend freedom of expression via the consistent, principled, grounds of the ‘non-aggression axiom’ are serious and potentially lasting. It is illogical to allow a forum premised on the ‘infallibility of human knowledge’ to cede any ground to the emotional whims of those who reject the concept out of hand. To ‘compromise’ freedom of expression by erecting statutory guard-posts around a bundle of unproven and unfalsifiable assertions is to assault the very foundations of science, logic and rationality. Instead

of allowing the veiled, and not-so-veiled, threats of irrational zealots to guide our notions of justice, we should resolve to protect all individuals from aggression and threats of aggression, emphasise the rights of freedom of association and conscience as they arise from the axiom of ‘non-aggression’, and redouble our commitment to a free, open and enlightened society.

Endnotes

- ¹ Jeremy Shearmur, ‘Free Speech, Offence and Religion’, *Policy* 22:2 (Winter 2006), p 22
- ² As above
- ³ As above, p 23
- ⁴ The Danish Cartoons controversy has a milder Christian precedent in the *Piss Christ* affair. In 1997, the National Gallery of Victoria displayed a graphic depiction of a crucifix submerged in urine, causing massive offence to millions of Christians. Cardinal George Pell (then Archbishop) applied for a legal injunction to stop the exhibition.
- ⁵ Shearmur, ‘Free Speech, Offence and Religion’, p 24.
- ⁶ As above, p 25.
- ⁷ As above.
- ⁸ The same is also true of non-Christians vis-à-vis Jesus Christ. If Christ’s claims are represented accurately by the Gospels, intellectually honest non-Christians can justifiably ponder whether He was a liar, deluded, or mad.
- ⁹ Resolution No 26/33-P, adopted by the 33rd session of the Islamic Conference of Foreign Ministers, Baku, Republic of Azerbaijan, 19–21 June 2006.
- ¹⁰ ‘OIC Wants Religious Tolerance Bedrock of UN Rights Body’, *Islam Online*, 14 February 2006 (accessed 18 July 2006), <http://www.islamonline.net/English/News/2006-02/14/article07.shtml>
- ¹¹ ‘Australian Muslims Appeal to Media to Respect their Religion’, Australian Federation of Islamic Councils press release, 6 February 2006 (accessed 18 July 2006), <http://www.afic.com.au/Amn.htm>.