

FREE SPEECH, OFFENCE AND RELIGION

Free speech is not a licence to disregard the sensibilities of others, argues **Jeremy Shearmur**

Earlier this year, a Danish newspaper published cartoons which some Muslims believed were insulting to the prophet Mohammed. Protests took place in Muslim countries—some resulting in deaths¹—while a number of newspapers republished the cartoons because of their concern for freedom of speech. The incident raised key issues about how freedom of speech and expression stack up against deep-seated religious (and other) sensibilities, particular problems that arise in societies that are religiously and socially pluralistic—and the further problem of the international character of the media and the internet.

The cartoons

First, a little about the background to the cartoons. Denmark is a small country with, historically, a high degree of social cohesion and a shared religious background. Currently 84% of the population are members of the State-supported Evangelical Lutheran Church. Since the 1980s, there has

been increasing immigration,² notably from non-Western countries, with significant numbers of refugees from Muslim nations such as Iraq, Somalia and Iran. Muslims now constitute the second largest religious group in Denmark.³ Denmark has faced difficulties in getting non-Western immigrants into the labour force.⁴ There is, as might be expected, a high concentration of immigrants in urban locations, despite a policy of refugee dispersal.⁵

In recent times, there have been various local tensions, some of which came to a head in developments that related to the cartoons.⁶ A Danish author claimed that an atmosphere of self-censorship had arisen, one feature of which was that he was unable to obtain an illustrator for a children's

Jeremy Shearmur is a Reader in Philosophy, School of Humanities, Faculty of Arts, Australian National University. His books include *Hayek and After* and *The Political Thought of Karl Popper*. Endnotes are available online at www.policymagazine.com

book that he had written about Mohammed and Islam. An article about this was published in the Copenhagen newspaper *Politiken*, and the cultural editor of *Jyllands-Posten*, a more conservative paper based in Aarhus in Jutland, commissioned a series of cartoons on the theme of the prophet Mohammed, to demonstrate that papers should not be controlled in what they could publish by militant Muslims.⁷

The cartoons were varied in their character, but at least one of them—depicting Mohammed with a bomb in his turban—was highly offensive to Muslims, while the publication of any image of Mohammed is offensive to many Muslims. Some local Muslims took offence, seeing the cartoons as the last straw in respect of hostile attitudes towards Islam that they had experienced. They—and Muslim Ambassadors—complained to the Prime Minister, who responded that the cartoons were legal in Denmark.

The Danish Muslims were unhappy with the reaction in Denmark to their complaints, and peddled the story in the Middle East. They included in their portfolio other offensive material which had been mailed to them. Subsequently, some time after the publication and presumably as a product of local agitation, anti-Danish (and more generally anti-European) riots were provoked. Other newspapers then reprinted the cartoons, actions defended on the grounds of freedom of speech. Some Muslims reacted to this, in turn, as defending an insult to their religion by people in Western countries. Charges were also made of hypocrisy, when it was noted that some European countries in which publication was defended on the grounds of free speech had legislation which made illegal the public questioning of the Holocaust,⁸ a point that was brought home by the jailing of David Irving in Austria in February 2006.

Wider issues: freedom of speech

Peculiarities of the Danish situation aside, wider issues arise here, and ones which are likely to recur on a continuing basis. The problem is particularly acute when there is a conflict between people's religious sensibilities (and other issues that might cause particular outrage in the society in question), and ideas about the freedom of speech and expression.

One case for freedom of speech is fairly straightforward, powerful, but also limited in what it can be used to defend. Certain of John Stuart Mill's arguments in *On Liberty* are still a reference point. For example, he argued from the fallibility of human knowledge to the idea that it was important that anything could be called into question, and also that even if a perspective that was advanced may not be correct, there might be something to be learned from it. Such points are important, but it would seem equally important to appreciate how limited they are. First, they do not, in themselves, provide an argument for the free dissemination of any material in any form.⁹ Second, they would seem to presuppose that there is an effective learning mechanism within the society in question—and that while our knowledge remains tentative, we can at least discover where it was erroneous and improve it. They also assume that there be somewhere where such scholarly exchanges can take place, and where the (tentative) results of such deliberations may be accessible to those who are interested in them.

This points to the need for freedom of scholarly activity (with appropriate institutions for the publication and dissemination of material), and, more generally, for the need for a public sphere, in which there can be open deliberation of issues of public policy, and the opportunity of learning from such exchanges.¹⁰ For this to work, it would require both that people understand that the freedom to advance a case is not to be identified with the substance of that case being correct, and also that the voicing of criticism in such a setting is not to be identified with, say, disloyalty to the institutions within which one works or the people for whom one works. All this might require a greater maturity and sophistication than, say, is currently the case when views about controversial issues are raised today in the media.

Such ideas about freedom of speech are modest in their scope but historically they have been resisted by those who believe that they have the truth, or that the questioning of some things is socially dangerous. 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 these views is unacceptable.¹¹ But Mill's arguments are here telling, while the simple fact of religious scepticism and pluralism means that such ideas about what is acceptable must be contested. The *Qur'an*, while

according respect to Jesus as a prophet, specifically denies that he was actually crucified; Jews, to remain religious Jews, must contest the Christian account of the status of Christ; while Christians—insofar as they subscribe to anything like the traditional teachings of Christianity—will hold both Jews and Muslims to be in error.

The Jewish community developed material to explain why, from a Jewish perspective, the case for Christianity was not compelling. It is interesting, however, that much of it was confined, in its circulation, just to the Jewish community. Isaac Ben Abraham of Troki's *Faith Strengthened*—a powerful compendium of criticisms of Christianity, dating from the fifteenth century—when eventually translated into English in 1851, was inscribed 'printed but not published', and it was also toned down.¹² The issue of the freedom to contest religious claims, however, came to a head later in the nineteenth century, in a trial of G. W. Foote the editor of *The Freethinker*, who was jailed in England for blasphemy. In the course of that trial, Lord Coleridge pronounced:¹³

I lay it down as law, that, if the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel.

Beyond decorous discussion

Lord Coleridge's point should, I suggest, be taken as definitive with regard to the civilised questioning of the fundamentals of religion—and, indeed, other socially controversial issues.¹⁴ However, it obviously leaves open what should occur if the decencies of controversy are not observed, or in cases that are expressive but not discursive. If we put expletives to one side, two categories are particularly worth considering.¹⁵

The first relates to the ridicule of religious belief by those who are hostile to it. An example here is again G. W. Foote who, in *The Freethinker*, published a series of hostile cartoons on Christian and religious themes. They included a literal and unflattering illustration of the passage from Exodus:¹⁶ 'And it shall come to pass... that I will put thee in a cleft of the rock, ...and I will take away my hand and thou shalt see my back parts'. Why, one might wonder, could someone wish to publish such a thing? One reason is that those who are members, say, of a secular minority in an aggressively religious society may feel that they are oppressed by it,

and that they wish to turn to such expressions by way of relief. It is, here, worth noting that Foote was living in a society in which not only was blasphemy against the law, but which had experienced the Evangelical Revival, with its somewhat heavy-handed attempts to re-moralise and Christianise social mores. In such a setting, one can well feel some sympathy for those like Foote wishing to express their feelings about their oppressors.

Foote himself offered an additional argument. He drew attention to the fact that the cartoon appeared in a journal that was obviously, and aggressively, anti-religious. If someone chose to continue reading such a publication, they could hardly then claim to be surprised if they came across the kind of lampooning of religious views to which objection was being taken.¹⁷ One might develop this view, in terms of saying that there is a case for allowing minority groups to do what they wish, provided that it is clearly indicated what they are doing, so that it takes on a less than fully public status. It would, say, be akin to activities that take place addressed only to members of a private club, or to a website the access to which contains strong warnings or is only open to members.

More generally, because of the history of religion in societies like ours, I think that religious people can well expect to encounter a degree of public criticism that is robust and mildly sacrilegious. If religious activity had itself simply been a private activity, then such treatment might seem unduly aggressive. But given that religious people have, historically, tended to try to impose their social views on others and have, thus, intruded forcefully into the public realm, they can well expect that their views may sometimes be treated disrespectfully.

The other category relates to the playful or aesthetic use of religious imagery—as, say, in Salman Rushdie's *Satanic Verses*, where he was not attacking Islam, but playing around with Muslim themes for literary effect. Here, the issues are difficult. On the one side, there are things which are hurtful and will give real offence. It seems, for example, quite outrageous to play around in an offensive manner with the most deep-seated content of people's religious beliefs, merely for fun or for aesthetic effect. On the other, there are some real problems here; especially relating to what gets protected.

First, it is clear that the use, say, of imagery and terms drawn from Christianity, for example from the *Book of Common Prayer*, or the *King James Bible*, have

served to enhance our modes of expression and culture. These things—and allusions to them, including their playful use—clearly have a significant role in the constitution of our culture more generally, and one which it is by no means clear should be controlled by the sensibilities of the religious.

Second, if whatever people declare to be offensive is to receive protection, this is an open invitation to expansive claims. If, say, the clergy are asked: is it deeply offensive to be disrespectful about the clergy, they are likely to declare that it is; and some of them may even be sincere! A further difficulty is that if we allowed such claims, there is the problem of which claims we should admit. It would seem absurd, say, to be tyrannised over by claims made by small and obscure groups that their sensitivities may be outraged by what are, *prima facie*, very ordinary claims, images and ideas.

It is not here the perspective of the committed believer that we should be after, but something akin to the common law notion of the ‘reasonable person’. What does this amount to, in practical terms? My suggestion is that, while the polite contestation of religious claims should receive absolute protection, the kinds of things that reasonable people who are not themselves believers would judge to be offensive should be subject to moral but not necessarily legal limitations with regard to aesthetic and playful use, if they are offered for fully public display.

One might, here, relate this to the public meaning of the objects in question (upon which, after all, playful or aesthetic use would be parasitic). It would also require that, as Australia becomes an increasingly pluralistic society, people operating in a public setting should be expected to educate themselves as to what those who form sizable groups within their society would find highly offensive. This would mean, say, that members of tiny minority groups, or small and new religious sects, would not enjoy such protection. This might seem unfair; but there is a sense in which what requires protection is not the subjective sensibilities of other people, but what can be reasonably recognised within such a society to be highly offensive. If such ideas were accepted, it would suggest that it was important for new minority groups, or those who believe they had received unfair treatment, to pay attention to putting over to the wider society the character of their concerns, and the public reasonableness of the case for their concern for such things receiving protection. It would also, however, be important that others were willing to listen to them.

Clearly, any such protection is not unconditional. Its attaining of such a status would give it a *prima facie* protection—against which, a case could be made that in particular circumstances there are good grounds for disregarding this status. Just what, however, should be the *character* of the protection? I would suggest that we distinguish, here, between moral and legal protection. Legal protection would only be accorded to something, when there is good reason to suppose that its publication would reasonably lead to a breach of the peace. We are, here, in the same kind of territory as racial vilification, ‘fighting words’ in the US sense, and the committing of an offensive nuisance. The key idea here is that it is dealing with phenomena to which a third party would judge that it was not unreasonable that someone was led to retaliate. To this one might add protection of the deep sensibilities of the vulnerable. By

Legal protection would only be accorded to something, when there is good reason to suppose that its publication would reasonably lead to a breach of the peace.

contrast with this—and as one does not wish the courts and prisons to be filled with idiots, mavericks and oddballs—most cases would simply be those where the offender would be morally condemned, and in which there would be general recognition that a plea of ‘free speech’ or ‘free expression’ would not be an acceptable moral defence of the action. If a reasonable sense of what fell into this category were developed, it would, presumably, mean that offensive material would not be given a mainstream public airing, because editors, those running art galleries, and so on, would have a good feeling for how things stood.

Back to the Danish cartoons

Let us look back, briefly, to the case of the Danish cartoons, with these ideas before us.

First, consider the decision to commission and to publish the offensive cartoons. If, in a particular society, there are inter-communal tensions, and a concern that people are reacting in inappropriate ways if they find material offensive, there seems to me hardly a more stupid reaction than to publish material that anyone should realise Muslims will find offensive. To offer uncritical support to this in the name of freedom of speech, is, to say the least, unhelpful. At the same time,

those who stirred up the situation also seem culpable, not least because in the end, property was destroyed and people were hurt and killed.

Given that in Denmark there were social tensions, and concerns about self-censorship, what surely was called for was public discussion as to what deserves what degree of protection—and what is an appropriate response to material considered offensive. As Muslims are now estimated to constitute 5% of the population of Denmark,¹⁸ their key sensibilities should be common knowledge on the part of a newspaper editor. The editor of *Jyllands-Posten* should have known full well that the publication of a cartoon which linked Mohammed himself to terrorism would be horribly offensive. At the same time, if some Muslims in Denmark had threatened people for forms of criticism of Islam which were not in themselves grossly offensive, this also was problematic. On the face of it, what would seem needed in such circumstances is an exploration in a public forum of the whole range of these issues, such that people can come to conclusions as to what is and is not reasonable. Indeed, when the protest was made to the Danish Prime Minister, it might have been sensible to initiate a public discussion about such matters, with an exploration of the different aspects of the issue including the sharing both of information of what is grossly offensive to Muslims, and also of the Danish tradition of free and disrespectful criticism, and the distinction between what is legally allowed and what it is morally acceptable to do.

If one considers these matters in an Australian context, the same issues are obviously worth discussing with the Muslim community. One might also compare, here, the public exhibition of ‘Piss Christ’ (a work of art consisting of a photograph of a plastic crucifix, complete with Jesus, in the artist’s urine¹⁹) in the National Gallery of Victoria in 1997. Any reasonable person would surely have understood that Catholics (and indeed all Christians) could—and quite reasonably—have found this highly offensive. (And, here, it is the public meaning of the work of art that counts, not the artist’s private intention.) Indeed, one could surely have anticipated that its exhibition in a *public* art gallery could well be expected to give rise to a breach of the peace and, accordingly, for there to have been a case for legal restrictions upon its public exhibition.²⁰ A private art gallery, or exhibition in a sectioned-off part of a public gallery with appropriate warnings about the character of the material, would be a different matter.

Finally, what of the international reaction to the Danish cartoons? In what I have written above, I have stressed attitudes within a particular society. These, indeed, seem to me of primary importance. We clearly have a duty to pay *some* attention to the sensibilities of people removed from us; but it is not clear, say, that the attitudes towards cows in India should reasonably serve to constrain attitudes or cultural practices in Australia. However, some of the Danish cartoons seemed to amount to little more than a gratuitous insult to the Prophet, and as this is a topic of the very highest sensitivity to Muslims, my argument here suggests that there was a case for a legal ban on the most offensive of the cartoons in Denmark, and that there is a moral argument against their publication even where it is legal. At the same time, there was a failure on the part of some of the critics to understand the wish in many European countries, understandable in view of their own earlier history, not to allow for the re-introduction of religious control over what may be expressed in public. In addition, the stirring up of ill-focused hatred—as a result of which people were killed—is surely itself a worse offence than was the production of the cartoons.

Indeed, perhaps the best comment on the international aspect of this issue was conveyed by one of the *Jyllands-Posten* cartoons. It depicted two stereotyped old-style Muslim warriors, inflamed by the cartoons, being calmed down by another man. The caption said, roughly: ‘Relax, friends: at the end of the day it’s just a drawing by some infidel from the middle of nowhere’. This—rightly—seems

...the stirring up of ill-focused hatred—as a result of which people were killed—is surely itself a worse offence than was the production of the cartoons.

to me to suggest that we should not get worked up about material that comes from outside of our own society, the context of which we may not properly understand.

The author would like to thank Elizabeth Coleman and Andrew Norton for comments on an earlier version of this article, and Jason Briant for discussion.