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IN DEFENCE OF FREEDOM OF SPEECH AND AGAINST THE PUBLICATION OF CERTAIN CARTOONS

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Abstract

This paper explores the concept of freedom of speech, as it relates to religion, focusing on recent European examples of tensions that surface secular mores and Islamic sensibilities, primarily the *Charlie Hebdo* incident. This paper argues that while offence to others does not breech free speech, when considering cartoons of the Prophet Muhammad, we cannot ignore the geopolitical context. Such images may perpetuate stereotypes and be perceived as part of a neo-colonial project to denigrate minorities and the Muslim world. In particular, Islamophobia and the post-colonial context provide a context wherein the Islamic "Other" within Western societies is marginalised and often experiences oppression. Therefore, what appears to be legitimate freedom of speech may actually be a discourse of suppression. The paper also considers possible objections around individual autonomy and the power of religion, and suggests principles when considering the limits of freedom of speech.

Keywords: freedom of speech; Charlie Hebdo; Muhammad Cartoons; Jyllands-Posten; Islam; human rights; post-colonialism.

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Introduction

The *Charlie Hebdo* incident on 7 January 2015 was one of several incidents that have caused tensions and provoked violent responses with regard to Western representations of Islam and the Prophet Muhammad.[1] Some notable examples include the 2007 Danish Cartoons in *Jyllands-Posten*, and the publication of Salman Rushdie's *Satanic Verses* novel in 1988.[2] Reactions from the media and public figures often express the right of freedom of speech, with the "Je sui Charlie" campaign representing a popular groundswell of those who advocate the right of journalists to represent and satirise any religious figure or tradition. However, another trend, while advocating the right to freedom of speech, has suggested that self-censorship - to ensure the safety and security of journalists and the public - should take priority. The notion of self-censorship is not in opposition to the "Je sui Charlie" campaign, but rather, it sees itself as embodying a pragmatic attitude.[3]

I would suggest that both of the above approaches are problematic. But, first, to avoid misrepresentation, let me state that I am an ardent advocate of freedom of speech, believing that authorities – religious, governmental, or otherwise – should not be able to curtail its legal expression. Many of the freedoms and the basis of civil society in much of the globe today depends upon this, and in part owes itself to a legacy of the European Enlightenment. I would stop short, though, of calling freedom of speech an "absolute". For instance, legal and ethical frameworks mean that we cannot, and should not, enter into the territory of libel nor spread misinformation and deceit. Indeed, as the legal practices of different jurisdictions indicate, to curtail "absolute" freedom is necessary for the good management of civil society while even advocates of free speech – except in hyperbole – do not see it as an absolute.[4] I would suggest that most members of Western societies (this paper, given the

[1] Notably this paper does not deal with the question of the Islamic justification for such responses nor regarding it as blasphemy, for a discussion of such issues see Rashada Ali, "Blasphemy, Charlie Hebdo, and the Freedom of Belief and Expression," *Institute for Strategic Dialogue*, (2015) available at http://www.strategicdialogue.org/Freedom_of_Expression_02_15_WEB_FINAL.PDF (last accessed 30 July 2015).

[2] For some more background on the Danish Cartoons incident, see Paul M. Sniderman, Michael Bang Petersen, Rune Slothuus, Rune Stubager, *Paradoxes of Liberal Democracy: Islam, Western Europe, and the Danish Cartoon Crisis* (Princeton, NJ and Woodstock: Princeton University Press, 2014); on the Salman Rushdie incident, see Paul Weller, *A Mirror For Our Times: "The Rushdie Affair" and the Future of Multiculturalism* (London and New York: Bloomsbury, 2009). For a general note on both in relation to this topic see Christoph Baumgartner and Irene van Renswoude, "Censorship, Free Speech, and Religion," in Paul Hedges, ed., *Controversies in Contemporary Religion*, Vol. II. (Santa Barbara, CA: Praeger, 2014), p. 134.

[3] For some examples of journalist commentary representing and debating such viewpoints see: Derek Edyvane, "'Pussies and wimps': why Salman Rushdie plea for free speech rings hollow," *The Conversation* (6 May 2015), available at: https://theconversation.com/pussies-and-wimps-why-salman-rushdie-plea-for-free-speech-rings-hollow-41268 (last accessed 20 July 2015); John Keane, "The European Fear of Islam, from Paris to Dresden," *The Conversation* (16 January 2015), https://theconversation.com/the-european-fear-of-islam-from-paris-to-dresden-36242 (last accessed 30 July 2015); Muhammad Syed and Sarah Haider, "*Charlie Hebdo* and the Erosion of the Liberal Left," *The humanist.com* (14 January 2015), available at: http://thehumanist.com/commentary/charlie-hebdo-and-the-erosion-of-the-liberal-left (last accessed 30 July 2015); Jeffrey Gottfreid and Michael Barthel, "After Charlie Hebdo, Balancing Press Freedom and Respect for Religion," *Pew Research Centre* (28 January 2015), available at: http://www.journalism.org/2015/01/28/after-charlie-hebdo-balancing-press-freedom-and-respect-for-religion/ (last accessed 15 July 2015); Nick Cohen, "Charlie Hebdo: the truths that ought to be self-evident but still aren't," *The Spectator* (7 January 2015), available at: http://blogs.spectator.co.uk/coffeehouse/2015/01/charlie-hebdo-the-truths-that-ought-to-be-self-evident-but-still-arent/ (last accessed 20 May 2015).

[4] See Eric Barendt, *Freedom of Speech,* 2nd edn (Oxford: Oxford University Press, 2005), and Baumgartner and Renswoude, "Censorship, Free Speech," pp. 132-133.

context of the incidents, considers a perspective as primarily from Western Europe although we will also discuss the U.S. while speaking more broadly about the "Western world"[5]) understand that certain things are not acceptable, whether this be mocking the Holocaust/ Shoah, which would demean the suffering and death of millions, or making rape jokes, which may cause offence and mental anguish to those who have suffered this crime or even perpetuate a culture of male domination and exploitation. There are, though, differences on what is and is not allowed, for instance, while Holocaust denial is permitted in the U.S., it is not allowed in Canada or the U.K.[6] Likewise, hate speech and inciting violence are not acceptable;[7] this is not to say, however, that the borders between hate speech and other forms of speech are obvious or widely agreed upon. Indeed, psychological studies show that our perceptions of what is acceptable depend both on political inclinations as well as gender.[8] The borders around such things also change with evolving sensibilities, so that for example, the sexist humour of the 1970s is no longer considered acceptable.[9] Nevertheless, we probably share some roughly agreed bounds – or certainly legal rulings proscribe the bounds within which we function – and in relation to which we all limit our own speech with regard to what is acceptable. Most people would accept that legislative structures are needed.[10] All of this gives credibility to the claim made by Stanley Fish that "abstract concepts like free speech do not have any 'natural' content," such that "'Free Speech' is just the name we give to verbal behaviour that serves the substantive agendas we wish to advance."[11] While I would not go as far as Fish, we need to realise that we have no natural or simple way to delimit the speech which we allow and that which we do not.[12]

What about the right to offend? It has often been argued that people do not have a right to not be offended.[13] Certainly, here, I would agree. If "militant atheists" such as Richard Dawkins and Christopher Hitchens want to state that religion is the source of the world's problems and the greatest evil to face humanity, then I defend their right to say this, against any religious sensibilities which are

[5] I discuss some of the problematics of this terminology below, but for a brief note on what may be meant by the West, see Paul Hedges and Anna Halafoff, "Editorial Introduction," *Studies in Interreligious Dialogue*, Multifaith Societies Special Edition, 25.1 (2015).

[6] Daniel M. Downs, and Cowan, Gloria, "Predicting the Importance of Freedom of Speech and the Perceived Harm of Hate Speech," *Journal of Applied Psychology* 42.6 (2012), p. 1355.

[7] On the European Context see Roger Kiska and Paul Coleman, "Freedom of speech and 'hate speech': Unravelling the jurisprudence of the European Court of Human Rights," *International Journal of Religious Freedom* 5.1 (2012), pp. 129-142. On the USA, see Barendt, *Freedom of Speech*, pp. 50-51.

[8] Downs and Cowan, "Predicting the Importance of Freedom of Speech." As Fish puts it in this latter case: "Despite the apparent absoluteness of the First Amendment, there are a number of ways of getting around it, known to every student of the law," Stanley Fish, *There's No Such Thing as Free Speech and its a Good Thing, too* (Oxford: OUP, 1994), p. 103.

[9] My thanks to an anonymous reviewer for raising this example.

[10] As Baumgartner and Renswoude put it "different modes of censorship have been demanded or applied", "Censorship, Free Speech," p. 134.

[11] Fish, *There's No Such Thing*, p. 102.

[12] See, for instance, Kiska and Coleman, "Freedom of speech and 'hate speech,'" pp. 132-133 where they discuss the problems of determining what "hate speech" is. See also Robert Post, "The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and *Hustler v. Falwell*," *Harvard Law Review* 103.3 (1990), p. 683.

[13] Kiska and Coleman, "Freedom of speech and 'hate speech,'" pp. 131-132.

offended.[14] I think such claims are naïve and inaccurate, but people have the right to be wrong. However, the right to offend is not absolute, and I would return to my examples of the Holocaust and rape jokes – where does this overlap with offence? Anyone who knowingly makes rape jokes in front of a victim of that crime with an intention to maliciously taunt or upset them would, I suggest, have crossed the bounds of what is acceptable. As I have noted above, though, legal jurisdictions vary and my own opinion in this carries no weight beyond that of any other citizen. This is an area requiring full public debate, for as has been noted: "a freedom which is restricted to what Judges think to be responsible or in the public interest is no freedom."[15]

Freedom of Speech and the Post-Colonial Context

Returning to our focus, then, what do we make of examples like the *Charlie Hebdo* cover(s), and the *Jyllens-Post* cartoons? In terms of freedom of speech, I have no hesitation in saying that those who did so had the *right* to publish these. In terms of the right to mock and offend, I again believe that no boundary was crossed in terms of what was done here if considered in abstract. This perception, though, may not reflect legal jurisdiction, and as has been noted, many Western citizens have vastly inflated ideas of quite how much freedom of speech exists.[16] However, we do not live in the abstract, we live in the contextual hard reality of the early 21st century. In this respect, I believe that an argument can be made, fully in accord with the freedom of speech and without giving in to fear as a basis to avoid such repercussions, to say that these should not have been published. My case here has links with that of Fish in his discussion of Benno Schmidt that we do not inhabit a realm of purely cognitive concepts where we imagine "the fiction of a world of weightless verbal exchange." Instead, "words do work in the world."[17]

It is a truism that the last few hundred years have been the period of European, and then American, colonialism.[18] From the Spanish and Portuguese to the British, Dutch, French, and Germans, and latterly the U.S, what we term Western nations have been the predominant global colonial powers. We live today in a period that we may term post-colonial when, on the whole, direct rule of foreign countries has disappeared.[19] However, this does not mean that the colonial project, nor its consequences have ended. Post-colonial scholars and activists point to the on-going effects of past colonisation, which include the poverty left in countries that had been used as production sources for

[14] See for instance Richard Dawkins, *The God Delusion* (New York: Bantam Books, 2006), and Christopher Hitchens, *God is Not Great: How Religion Poisons Everything*, rev. edn (New York: Hatchette Books, 2009). For a discussion of responses and assessment see, for instance, Ian Markham and Christine Faulstich, "The New Atheists," in Paul Hedges, ed., *Controversies in Contemporary Religion*, vol. II (Santa Barbara, CA: Praeger, 2014), pp. 101-121.

[15] Per Hoffman LJ, *R v. Central Independent Television* [1994] Fam. 192, 532-3.

[16] Cas Mudde, "What Freedom of Speech," *Opendemocracy.net* (2015), available at: https://www.opendemocracy.net/can-europe-make-it/cas-mudde/what-freedom-of-speech-of-foxes-chickens-and-jesuischarlie (last accessed 20 July 2015).

[17] Fish, *There's No Such Thing*, p. 109.

[18] See, for instance, James R Lehning, *European Colonialism since 1700,* (Cambridge: Cambridge University Press, 2013).

[19] See Lehning, *European Colonialism*, pp. 251ff.

empires and then left with no viable economy, the fault lines and wars left by maps drawn up – often almost at random – where countries do not follow natural boundaries, the dictatorships left in control in many places. Indeed, in contemporary geopolitics the term neo-colonialism well exemplifies the fact that direct colonial control is not the only form of power over the other.[20] Through financial and political pressure, or continuing intellectual and cultural hegemony, and where necessary military threat or force, the once dominant European and American powers still control or manipulate much of the globe to their own advantage, or certainly very often leave that impression.[21] What has this got to do with freedom of speech? If politics and personal right to speech are not connected, it may be maintained. However, I would argue that such a supposition would be wrong.

Into our post-colonial global world, those parts we may term as Muslim-majority, have often been on the receiving end of centuries of colonial domination, and still bear the marks of it.[22] Many of the current wars in parts of the Middle East to say nothing of elsewhere, for instance, in Syria and Iraq, have origins in part at least in the somewhat arbitrary borders and maps left behind by past colonial masters.[23] Indeed, the history of the past few hundred years is one where many in Muslim countries have felt downtrodden and belittled by what may broadly be termed 'the West'. Into this context of military, political, and financial colonialism, we must also add cultural imperialism: the European and American colonial project often demeaned and belittled the cultures, traditions, and societies it met around the globe. In this context, the contemporary representation of the Prophet Muhammad by Western satirists and cartoonists feeds into a narrative of cultural oppression and can be conceived as a continuation of the colonial project. A demeaning and stereotyping of Islam and Muslims in the name of maintaining Western global hegemony, shows no respect for others.[24]

I do not wish to claim that the *Charlie Hebdo* cartoonists, nor those of *Jyllends-Post* or many other satirists, are colonialist in their ideology or personal attitudes or politics. I do not know enough about them personally, indeed many political satirists are no doubt knowledgeable and sophisticated enough to realise that colonialism has shaped and distorted the world, and are fully committed to countering such ideologies. This, however, is not important. To make an analogy: just as an otherwise perfectly

[20] See, for instance, George Klay Kieh, "Neo-Colonialism: American Foreign Policy and the First Liberian Civil War," *The Journal of Pan African Studies* 5.1 (2012), pp. 166-167.

[21] See Kieh, "Neo-Colonialism" and Lehning, *European Colonialism*. For a specific example of continued intellectual hegemony see Jonathan Murphy and Jingqi Zhu, "Neo-colonialism in the academy? Anglo-American domination in management journals," *Organization* 19.6 (2012), pp. 915-927.

[22] This would of course be true for many other religious communities globally, such as Buddhists, Hindus, and Daoists, etc. in many countries. However, our focus here is on Islam.

[23] See, for example, Tarek Osman, "Why border lines drawn with a ruler in WW1 still rock the Middle East," *BBC News* (14 December 2013), available at: http://www.bbc.com/news/world-middle-east-25299553 (accessed 28 July 2015).

[24] This is argued by, for instance, Tariq Modood, "Obstacles to Multicultural Integration," *International Migration* 44.5 (2006), pp. 51-62. It should also be mentioned that such a process of "Westernisation" was never simply one-sided or forced. Many non-Western nations wished to "modernise" and adopt what they saw as Western models of government. This is, though, all involved in complex cultural flows so that, for instance, the model of the civil service that many nations colonised by the British adopted was one the British had themselves learnt and adapted from China (see J. J. Clarke, *Oriental Enlightenment: The Encounter between Asian and Western Thought* (London and New York: Routledge, 1997) for an excellent exposition of such issues). My focus here, though, is the widespread perception (itself a "reality" in the world which creates the situation people react to) of Western hegemony and sense of domination and imposition.

nice human being (even if one we may suggest has a rather old-fashioned world view) who would never rape anyone, may make rape jokes that cause anguish and help perpetuate a misogynistic culture. Therefore, I would argue representations of colonial caricatures of Muhammad are liable to feed into an attitude of oppression and condemnation of Islam and Muslims. Certainly, I am not arguing that the two are directly comparable, and as with any analogy there are many areas where the two parts clearly do not match up – these are so numerable that I will not expound. Nevertheless, I do think that this analogy helps clarify the situation. We exist in a context where representations by those seen as being part of the "West" feed into a discourse where it is understandable for many of those in what we have termed "the Muslim world" may interpret it as an on-going colonial attack upon their culture and values, and as crossing the borders of offence and decency that limit free speech.

In abstract terms, the cartoons are defensible as acts of free speech, however, we exist only in political and social contexts. Free speech is not an absolute, and the right to offend is not an absolute. As such, I do not believe it contradictory to defend the cartoons as potentially permissible, but illegitimate in our current climate. Certainly, I am not alone in suggesting that these cartoons went beyond the limits of what is allowed.[25]

[25] See Baumgartner and Renswoude, "Censorship, Free Speech," pp. 137-138. The comments of, and reaction to, Pope Francis are also notable in this regard, see as an example Elizabeth Dias, "Pope Francis Speaks Out on *Charlie Hebdo*: 'One Cannot Make Fun of Faith,'" *Time* (15 January 2015), available at: http://time.com/3668875/pope-francis-charlie-hebdo/ (accessed 28 July 2015). We discuss Pope Francis' comments further below.

Addressing Potential Criticisms

I realise that I might face many potential arguments which I will address. First, am I confusing geopolitical realities and the activities of governments and societies with individual freedoms and restrictions? It is certainly true that private citizens today are not directly responsible for colonialism in any form, they may even be advocates against it. Nevertheless, we live within a cultural context where none of us can be said to be entirely innocent, and where we need to exist and live with regard to a wider socio-cultural matrix. Having praised aspects of the European Enlightenment, I must add one unfortunate consequence has been an unbridled and distorted emphasis on the individual as personal arbiter and free agent.[26] We are, so our mythology tells us, responsible for just our own beliefs, answerable only to ourselves, and deciders of our ideology and actions. The self becomes the central focus for reasoning, determining, and deliberating, standing against the world which may wish to control it. Meanwhile, true autonomy and self-fulfilment resides in individualism and self-determination. Such a myth has, however, been decidedly undermined by contemporary philosophy, feminist theory, and surely, a little bit of common sense.[27] Where does the idea - in which the illusion of a free-self, the autonomous I, makes its own free choices and decisions - come from? The answer is very simple: society. We cannot gain an awareness of any idea unless it is passed to us by our social upbringing. Any sense of pure personal choice and freedom is simply erroneous. We are, in large part, created by our context, which includes peer groups, access to knowledge, and the gatekeepers to that knowledge who interpret and mediate it to us before we digest and cogitate. Thus, we are shaped by our family, friends, society, and the media. Advocates for personal autonomy, often tend to overlook the simple fact that pure autonomy is impossible, and that first and foremost we are social beings. This is not, of course, to say that we must follow the social norms and ideas of our society, and indeed it is the very virtue of free speech which allows us to challenge and debate these norms and our conditioning. But, no matter how hard we try, we are never free from that conditioning. Moreover, as social beings we always live in community, and therefore are answerable to that wider community, which constitute the virtues that make us human(e).[28] Just as we should recognise that hate speech and intolerance are not virtues we would generally applaud, so we need to live in relation to the wider society. This first critique, then, against my argument that free individual agents are not responsible for colonialism or neo-colonialism, does not undermine the concept that they must work and act in relation to contemporary geopolitical and social factors. The cartoons may perpetuate a culture and attitude of cultural colonialism and play into the perception both that this is acceptable, and, more importantly, the perception (among many groups and areas) that this continuing colonialism is occurring. Therefore, we need to recognise the way that our words, pictures, and ideas, are understood and perceived by others. Additionally, one rationale given for free speech often comes

[26] See Kieron O'Hara, *The Enlightenment* (Oxford: Oneworld, 2010), pp. 3-6, 198-199.

[27] See, for examples of the literature: Bryan Turner, *The Body and Society*, 3rd edn (London: Sage, 2008); Alison Jagger and S Bordo, *Gender/Body/ Knowledge: Feminist Reconstructions of Being and Knowing* (New Brunswick: Rutgers University Press, 1989); David West, *Reason and Sexuality in Western Thought* (Cambridge: Polity, 2005).

[28] For a useful discussion of this in a cross-cultural context see Robert Cummings Neville, *Ritual and Deference: Extending Chinese Philosophy in a Comparative Context* (New York: SUNY Press, 2008), pp. 23-25, 101-105.

from a defence of individual autonomy and free expression,[29] However, as Fish argued in his classic work, the liberal conception of the autonomous self is problematic,[30] as noted above.

Second, do I agree that satire is there to attack the powerful, and mock the oppressors, and that with well over one and a half billion adherents, Islam cannot be said to be an oppressed ideology? I do not disagree here in principle; religion and religious leaders and power structures should not be off limits for free speech. For one thing, it is necessary to "speak truth to power" and so as one source of authority they also need to be challenged. Besides, limiting such free speech could lead to both internal oppression (where leaders may not be challenged by minority views) and abuse of heresy and blasphemy laws to protect authoritarian points of view.[31] Certainly, in many ways as Islam is manifested around the world it is, and will remain, a strong source of power and authority, and also of oppression and with many inequities committed in its name (even if these often violate what may be seen as many fundamental principles of Islam itself). Here, though, I would like to raise another issue. Put simply: what means do we use to criticise others? Cartoons depicting the Prophet Muhammad as a suicide bomber or terrorist, I would argue, portray a stereotype of Muslims as suicide bombers and terrorists. It could imply that Islam itself is inherently violent and supports terrorism, and that Muhammad's teachings are the source of such an ideology. In terms of free speech, people are free to argue in such a manner. However, not only does it seem inaccurate (there is no doubt that Islamic tradition and teachings condone war in certain circumstances, however, the historical tradition and most contemporary Muslims give no credence to the idea that Islam leads to or advocates terrorism and the slaughter of civilians[32]), but it also represents a harmful stereotype. If the cartoons had portrayed a Jew in classical anti-Semitic terms - big-nosed, greedy, etc. - it would be deemed offensive and in many jurisdictions as criminal.[33] Something similar occurs with this kind of representation of Muslims, "This is because these caricatures are basically reflections of present-day attitudes and perceptions of Arabs and Muslims in general, and they tap into other prejudices and anxieties such as immigration, etc."[34] Do such images address the power and failings of Islamic leaders? Are they an effective or appropriate means of critiquing an elite? As far as I am aware, many of the cartoons have been produced in part to elicit a reaction, provoke controversy, or simply to

[29] See Barendt, *Freedom of Speech*, pp. 13-18, and Baumgartner and Renswoude, "Censorship, Free Speech," pp. 131-132.

[30] Fish, *There's No Such Thing*, pp. 102-119.

[31] It would go beyond the limits of this paper to discuss this at length, but for instance, if religious or accepted authorities could not be challenged we would still, perhaps, accept a Ptolemaic world view if the Aristotelian and Biblical authority had not been challenged by supporters of the heliocentric hypothesis.

[32] See, for instance, John Esposito, *Unholy War: Terror in the Name of Islam* (Oxford: Oxford University Press, 2002), or for a discussion of some of the contemporary context, David Waines, *An Introduction to Islam*, 2nd edn (Cambridge: Cambridge University Press, 2003), pp. 263-297.

[33] See specially "Myriam Francois-Cerrah: The magazine drifts into racist caricatures," in Myriam Francois-Cerrah, Timothy Garton Ash, Nabila Ramdani, Padraig Reidy, Joseph Harker, and Jonathan Jones, "Did Charlie Hebdo's cover get it right? Our writers' verdict," *The Guardian* (13 January 2015), available at: http://www.theguardian.com/commentisfree/2015/jan/13/charlie-hebdo-cover-right-image-prophet-muhammad-right (last accessed 28 July 2015). For a range of reaction, see also Baumgartner and Renswoude, "Censorship, Free Speech," p. 138, and p. 149 n. 42.

[34] My wording of this sentence is taken from one of my reviewers as a suggested clarification on this point.

offend.[35] In relation to my previous point, in as far these play into a social condition where they will be seen as part of a continuing colonial project, and in as far as they portray stereotypical images of those seen as 'not us', they fall outside the bounds of free speech. People should not, I believe, have the right to spread harmful stereotypes of Jews, homosexuals, native Americans, and other groups. Here we meet another traditional argument for free speech, associated with John Stewart Mill that it concerns the pursuit of truth. Only in having all ideas aired and debated in the public space is this possible.[36] As Fish and others have argued this is erroneous, and actually there is no evidence that it has this effect. Rather, harmful ideas and erroneous evidence are given space to spread, and as Fish puts it to "pollute" the public discourse.[37]

Certainly, I would argue that we are not seeing a critique of the powerful, but a stereotyping of one community. This has to be put within the context of where the pictures are from. While in a global context Islam may be a powerful religious body, in the context of France or many other parts of the Western world it exists as a minority, the religion of what is often an oppressed and subjugated minority.[38] Many Muslims belong to social and ethnic groups that are socially disadvantaged by lack of education, opportunity, and other factors.[39] That the perpetrators of the Charlie Hebdo attacks were home-grown terrorists, residents of the slums and part of the oppressed underclass of French society should make us pause to think: was this a religious crime, or a social one? For Algerian Muslims living in France, the cartoons would have been another example of the on-going denigration of their culture, ethnicity, religion, and values that is part of their everyday experience. The right to mock the powerful does not equate to the right to demean and stereotype the lower echelons of society.

Another objection is that not only can religion be criticised, but that it should be. Religion, it may be maintained, is not comparable to race, sexuality, colour, ethnicity, gender, or whatever other markers we care to mention and so should and cannot share any rights or protections on these grounds. That these are now generally seen as areas protected by free speech, certainly within Europe is well

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[35] On the tradition of provocation and *Charlie Hebdo*, see, for instance, The Week, "Charlie Hebdo: Why was the Satirical Magazine Attacked?", *The Week* (7 January 2015), available at: http://www.theweek.co.uk/europe/charlie-hebdo/62003/charlie-hebdo-why-was-the-satirical-magazine-attacked (last accessed 26 July 2015). The culture editor of *Jyllands-Posten*, by contrast, stated he was trying to get beyond a self-censorship he saw as incompatible with freedom of speech within a democratic context, see Flemming Rose, "Why I Published Those Cartoons," *Washington Post* 19 February 2006, available at: www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR2006021702499.html (last accessed 20 January 2015).

[36] See Barendt, *Freedom of Speech*, pp. 9-13, and Baumgartner and Renswoude, "Censorship, Free Speech," pp. 129-130.

[37] Stanley Fish, cited in "'There is no such thing as free speech': an interview with Stanley Fish," with Peter Lowe and Annemarie Jonson, available at: http://www.australianhumanitiesreview.org/archive/Issue-February-1998/fish.html (last accessed 14 May 2015); the notion of pollution is in a quote attributed to Pat Buchanan: "If you can pollute the physical environment, you can pollute the cultural and mental environment."

[38] Calling upon John Stuart Mill, Sarah Song makes the useful point that majority opinion may seem coercive to those in a minority even if it is not applied this way, see Sarah Song "The Liberal Tightrope: Bretschneider on Free Speech," *Brooklyn Law Review* 79.3 (2014), pp. 1047-1058

[39] See Claire L. Adida, David D. Laitin, and Marie-Anne Valfort, "Identifying barriers to Muslim integration in France," *Proceedings of the National Academy of Sciences of the United States of America* 107.52, (2010) available at: http://www.pnas.org/content/107/52/22384.full.pdf (last accessed 28 July 2015).

established.[40] One rationale is that all of these are innate while religion, similar to political ideology, is not. Instead, religion is a lifestyle choice or option. Even more strongly it may be argued, in accord with the so-called New Atheist critics, that religion is inherently prejudiced, archaic, destructive, and harmful.[41] Therefore, destroying and attacking it is good in and of itself. Indeed, advocates of some forms of secularism may suggest we should be intolerant of religion. Here we see a fault line in Western thinking on the matter. On the one hand, religion is an inherent bad, a natural violator of human rights, and so must be abolished; on the other side, the instruments of international human rights maintain that the right to religion and belief is a fundamental human right.[42] Now, once again, I fully defend the right of those who wish to argue that we ought to limit other people's rights, as an act of free speech, and who further wish to argue that religion is not a human right and that we should seek for its abolition. On the other, I fully support the right to free speech of those who argue it is a human right and so should be protected as such, and that therefore attacks on it are a violation of fundamental rights. This need to be debated: we can never only let one point of view be maintained, and contradictory standpoints must be in the public sphere and debate. Clearly our principles allow us to suggest that two entirely contradictory points of view have a right to be aired. What I would oppose, though, are government or religious powers that wish to restrict people's rights to religious freedoms, and equally those who deny people's rights to have no religion. Also, in as far as any anti-religious (or anti-atheist) argument spreads hatred, justification for violence, or prejudice I think we see the limits of free speech. Obviously, we see an incompatibility of world views here between two camps, the strongly and polemically atheist secular contingent and those who see religion as a human right. Such debate could relate to a third defence of free speech which is the nature of participatory democracy.[43] However, while this can be seen as legitimate in terms of there being multiple points of view that can be debated, it does not override the limits of free speech. Related to this would be the issue that while the European tradition of free speech arose internally, and so criticism of Western Christianity arose within the West, this may not travel well. This relates to a number of points I have made, about the perception of Western power and criticism against Islam which is placed within a colonial or postcolonial/ neo-colonial context. In this sense, such criticism may hinder internal Muslim attempts to deal with these questions, wherein any such discussion can be seen as pandering to Western or secular sensibilities. If criticism of Islam arises therefore, it will be helpful if it arises from within that tradition. Of course, this is not to say that we should never compare cultures, nor note differences and disagreements. Rather, we need a sensitivity to the way that this is done. In as far as such criticism can be seen as coming from a position of neo-colonial domination, or as hostile it can cause a defensive reaction which actually makes the conversation harder.[44]

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[40] See Kiska and Coleman, "Freedom of speech and 'hate speech.'"

[41] See the references in note 12.

[42] Freedom of Religion and Belief is enshrined in the main charters such as The Universal Declaration on Human Rights, and the European Convention on Human Rights.

[43] See Barendt, *Freedom of Speech*, pp. 18-21, and Baumgartner and Renswoude, "Censorship, Free Speech," pp. 130-131. Notably Barendt (pp. 21-23) notes a fourth argument for free speech beyond the three mentioned here, which is suspicion of government, however, it is not relevant to this discussion and so is not mentioned.

[44] I have argued a similar point elsewhere, see Paul Hedges, *Controversies in Interreligious Dialogue and the Theology of Religions* (London: SCM Press, 2010), pp. 254-70, where I suggest that criticism of other cultural norms need to be balanced by understanding and mutual regard, as well as seeing what criticisms they may

A fourth critique, and one which admittedly rests upon a strong basis, is that some of the terms in which I have couched for this argument are not useful, and indeed may be entirely misleading. In particular, this would include the "West" and the "Muslim world." I hope, though, that the careful reader would have noticed my employment of these terms – where I described what is perceived as "the West" or "the Muslim world." Certainly, I would agree that neither exists in any real or absolute sense, both are empty signifiers that often obfuscate rather than enlighten. In brief, terms like "the East" or "the West," like "Asia" and "Europe" are not, when used with any ideological intent, markers of anything pertaining to the world. On the contrary, they are simply arbitrary cultural constructs giving reality through essentialising and homogenising perceptions. Each one hides a vast wealth of differences, and even contradictions. If we speak of "Western colonialism" for instance, we have to recall that the effects and motivations of each country, in different time zones, and historical regions were quite different and distinct. Indeed, how do we classify "Western" control over other "Western" countries – should we speak of Spain's occupation of the Netherlands as a project of "Western/ European colonialism" for instance? Likewise, throughout history, nations and cultures have learnt from each other, and colonialism has had the inverse effect of causing new challenges and disruptions to the home system.[45] We simply do not have clear and isolated units we can speak of as "East" or "West." Likewise, the "Muslim-majority world" tends to conjure up images of the Middle East and Arab culture for many Europeans and Americans. However, if we look at Muslim majority countries and places where Islam dominates, we find that Indonesia has the largest Muslim population of any country, while the greatest density of Muslims lies within the Indian subcontinent. This includes the very different "Muslim worlds" of Pakistan and India, and even Sri Lanka where Muslims may find themselves as an, arguably, repressed minority.[46] However, my reference in this argument has to be the perceptions of these areas, and so many Muslim majority countries (which provides a better, although not entirely adequate way to speak) will see "the West" in fairly monolithic terms, which does not do it justice, just as many Europeans and Americans have their own images of "the Muslim-majority world."[47] In as far as the cartoons feed into stereotypical images of Muslims being Middle Eastern Arabic terrorists or even simply seeing representative Muslims as being Arabic in cultural or ethnic terms, it is not helpful nor accurate but pander to popular ignorance and misperception. As I noted, being wrong should not limit one's right to free speech, however, peddling offensive or demeaning stereotypes may be seen to transcend the boundaries of what is allowed. Recognising the inadequacy of these terms we may even still use some of them with reservations,

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have of one's own system. See also, Silvie Bovarnick, "Universal human rights and non-Western normative systems: a comparative analysis of violence against women in Mexico and Pakistan," *Review of International Studies* 33 (2007), pp. 59-74. This issue is picked up further in the discussion below.

[45] For a good study of the interaction between, in this instance, Europe and Asia, see Clarke, *Oriental Enlightenment*.

[46] On some notes on the diversity of the Muslim world and some different contexts of where Islam meets others today, see Jørgen S. Nielsen, ed., *The Christian-Muslim Frontier: Chaos, Clash or Dialogue?* (London: I. B. Tauris, 1998), see also the discussion in Paul Hedges, "The Contemporary Context of Muslim-Christian Encounter," in Paul Hedges, ed., *Contemporary Muslim-Christian Encounters: Developments, Diversity, and Dialogue* (London and New York: Bloomsbury, 2015), pp. 17-31.

[47] For an example, see PBS, "Common Western Perceptions about Islam and the Middle East," *PBS* (2002), available at: http://www.pbs.org/wgbh/globalconnections/mideast/questions/types/ (last accessed 28 July 2015).

and so I use with due care 'the West' (recognising that it is not monolithic, but referring to certain mainstream discourses and concepts in what is broadly North-Western Europe and the U.S.), and "the Muslim-majority world" (to refer to a very diverse swathe of countries from Africa to Asia).

Contexts: Islamophobia, Hypocrisy, Cultural Difference, and Violence

While there may be other criticisms of my argument, I believe the four issues dealt with above will encapsulate the majority of reservations. I would like to briefly deal with four further issues, which are somewhat of a side-line to my primary argument but provide important modifications, supports, or sub-agendas to it. These are: the rise and support of Islamophobia; the West's hypocrisy; deep-seated cultural differences and norms; and, violence as a solution.

The term "Islamophobia" entered the lexicon back in 1997 following a report by the British Runnymede Trust on public perceptions of Islam.[48] While there is considerable resistance to it in some quarters, the amount of research showing that fear and distrust of Islam and Muslims is almost endemic in the West justifies its employment.[49] Its relevance here is that Islamophobia feeds on and generates stereotypes, and as I have argued the Charlie Hebdo cartoons simply perpetuate many of these. As such, they may contribute to a growing Islamophobia. Undeniably, most media reporting plays into this. Whenever an attack happens we often hear the words "Islamic terrorist", "Islamism", "radical Islam" and so on. The constant conflation of Islam in association with violence, terror, etc. feeds an impression of the association of the two. When Anders Brevik committed mass slaughter in Norway some years back, the media did not, however, report him as a "Christian terrorist" despite his very avowed and public rationales including a defence of Christianity. Numerous other examples could be cited, but we live in a world where according to the reporting: terrorism committed by Muslims is "Islamic terrorism"; terrorism committed by Christians is not "Christian terrorism".[50] Islamophobia and the drivers behind it are strong, powerful, and almost second nature. In this context, free speech should not support such an approach. Rather, we should seek to counter it – if the journalists of Charlie Hebdo and other progressive liberal media outlets really wished to challenge the status quo, this would be a good place to work from. There is certainly a line of argumentation from areas like critical race theorists who suggest more government control is needed, which is not something I am delving into, but is part of the debate.[51]

[48] The Commission on British Muslims and Islamophobia, *Islamophobia: A Challenge for Us All* (London: Runnymede Trust, 1997).

[49] For a discussion on its employment today see Ray Gaston, "Christian Responses to Islamophobia: A Practical Theological Reflection," in Paul Hedges, ed., *Contemporary Muslim-Christian Encounters: Developments, Diversity, and Dialogue*. London and New York: Bloomsbury (2015), pp. 136-137.

[50] The classic study of media coverage of Islam is Edward Said, *Covering Islam: How the Media and the Experts Determine how we see the Rest of the World* (London: Vintage, 1997), see also Malise Ruthven, "Islam in the Media," in H. Donnan, ed., *Interpreting Islam* (London: Sage, 2002), pp. 51-76.

[51] The classic text cited in this regard is M. Matsuda, C. R. Lawrence III, R. Delgado, and K. W. Crenshaw, "Introduction," in M. Matsuda, C. R. Lawrence III, R. Delgado, and K. W. Crenshaw, eds, *Words that wound: Critical race theory, assaultive speech, and the First Ammendment* (Boulder, CO: Westview, 1993), pp. 1-17.

Our second point is the perception (reality?) of the West's hypocrisy. Thousands of civilians die in Syria, Nigeria, Afghanistan and it barely deserves a report, a few people die in the cities of Western countries and there is a public outcry and mass political support.[52] Now, I do not wish to diminish the pain or suffering of the families of those who died, but we should see why many around the world will see double standards operating. Are Western lives worth more than Muslim lives? Moreover, recent Western foreign policy can appear aimed at securing Western interests rather than resolving the wrongs of the world. The wars in Kuwait and Iraq could be perceived to be about oil security and the invasion of Afghanistan about U.S. homeland security. Conversely, the West is slow to respond to other regimes of terror around the world.[53] Whether such perceptions of Western hypocrisy are accurate or not, the narrative arguing for this is quite tenable. In this scenario, the Western world, or so it seems to many Muslims, starts circulating images of a beloved prophet as a terrorist and the cause of the world's problems. Is it any surprise if people get angry?

Next is the huge cultural difference we see in today's world: a divide where neither side seems ready to compromise or admit the legitimacy of the other's position. On the one hand, Western advocates of free speech, human rights, and individualism speak about individual autonomy and the absolute right to say anything.[54] On the other hand, we see people coming from a world where representing Muhammad is something you just do not do – while some parts of the Muslim world have had a tradition of painting their prophet, much of that world does not. It is, for them, a matter of respect and decency. Suddenly, then, they are faced not just with pictures but ones which portray him not just as a criminal, but also pornographically. Moreover, it is a world which values the collective over the individual, and rejoices in what may broadly be termed "traditional values."[55] As if predicting a dystopian future, the phrase "Clash of Civilizations" has been coined. However, we do not need to envisage this meeting as a "clash."[56] Hard-line advocates on both sides are escalating propaganda and rhetoric towards confrontation, but I would suggest that what is needed is pragmatism and a bit of *realpolitik*. The ideology of the West and that of the rest of the world (not just the Muslim-majority

[52] See for instance, Pooja Podugu, "From Charlie Hebdo to Chapel Hill," *Harvard Political Review* (27 February 2015), available at: http://harvardpolitics.com/world/portrayals-violence-abroad-dehumanization-home/ (last accessed 28 July 2015), or Maeve Shearlaw, "Why Did the World Ignore Boko Haram's Baga Attacks?" *The Guardian* (12 January 2015), available at: http://www.theguardian.com/world/2015/jan/12/-sp-boko-haram-attacks-nigeria-baga-ignored-media (last accessed 28 July 2015).

[53] For a brief discussion around this, see, for instance, Ivan Eland, "Why is the United States So Hypocritical in Foreign Policy?", *Huffington Post* (5 November 2014), available at: http://www.huffingtonpost.com/ivan-eland/why-is-the-united-states-_b_4935333.html (last accessed 28 July 2015).

[54] For discussion around different aspects of this, see Mudde, "What Freedom of Speech?", Downs and Cowan, "Predicting the Importance of Freedom of Speech," and Barendt, *Freedom of Speech*.

[55] I paint with broad brushstrokes here, and certainly recognise the variety across the Muslim-majority world. On some of the issues relating to the Muslim-majority world relating to modernity and the West, see Clinton Bennett, *Muslims and Modernity: An introduction to the issues and debates* (London and New York: Continuum, 2005). While not strictly related to the Muslim-majority world, although it was debated in places like Malaysia and Indonesia, the so-called "Asian Values" debate of the 1990s is pertinent as it also contrasted Asian collective values, with Western individualism, for a discussion see Karen Engle, "Culture and Human Rights: The Asian Values Debate in Context," *The New York University Journal of International Law and Politics* 291 (2000), pp. 291-333.

[56] The phrase is, of course, that of Samuel Huntingdon, although various sources dispute the applicability of concept of the clash, see, e.g. Hedges, "The Contemporary Context," p. 22, and especially Gabrielle Marranci, "Multiculturalism, Islam, and the Clash of Civilizations Theory: Rethinking Islamophobia," *Culture and Religion* 5.1, pp. 105-117.

world) do not always align in simple ways, and short of any nearby cataclysm, is has to be accepted that very different world views will perpetuate for a long time to come. Shouting the other down or bombing them is not going to solve the problem. Therefore, we need ways of living alongside the other for human harmony to flourish – oddly, a value that almost all would ascribe to. Diatribe and sharp rhetoric will often simply get in the way of a reasoned dialogue that may allow the other to recognise its values. It is not the place here to argue about how to resolve such civilisational or cultural confrontations, but we may take two relevant examples. If the West wants other parts of the world to recognise human rights, it cannot portray them as "alien" and hostile ideologies it wants to impose, but as something that accords with the fundamental tenets of the other.[57] Meanwhile, the West's focus on absolute individualism as well as being a false premise (as argued above) may also be socially destructive, and so instead of an ideological condemnation of more communitarian societies, a cross-cultural dialogue about learning from the values of the other may be a useful discussion point. We must accommodate different world views within our globe, and if we think aspects of another's world view need changing, we must do what we can with compassion and all due awareness that they may well feel the same way about us. If anyone thinks that their own cultural perspective represents the "Truth" and is the only way to see the world, they would be very narrow-minded. Certainly, we need to realise that this is not simply about the West having a different agenda. There are competing attitudes, and a number of discussions have considered the competing claims between free speech values and values of equality. Furthermore, the desire to prohibit what is generally termed "hate speech" has been described as heading for a "collision course."[58]

Finally, the elephant in the room: violence. I do not believe that disagreeing with another's world view, however offensive, is a justification for violence. I think many in the Western and Muslim world would agree; however, many others in both worlds would not. Violence is part and parcel of human nature and countless wars, family feuds, or even quarrels in the street, testify that many people see their fists, swords, guns, bombs, or missiles as the answer.[59] That said, Islam as a religious belief or ideology clearly is not the problem – many Muslims believe it to be a religion of peace and even a justification for pacifism (as with pretty much every religion).[60] Islam as a political ideology or institution, however, can justify violence, as can the notion of the nation state, any political ideology, any religion, or even a local football team. Pope Francis' intervention, equating violent responses to religious provocation to someone who insults his mother should expect a punch, has been welcomed

[57] A good discussion can be found in Silvie Bovarnick, "Universal human rights and non-Western normative systems."

[58] For a good overview, see Corey Brettschneider, "Democratic Persuasion and Freedom of Speech: A Response to Four Critics and Two Allies," *Brooklyn Law Review* 79.3 (2014), pp. 1059-1089. The phrase "collision course" is quoted from Catherine MacKinnon, *Only Words* (1993), pp. 71-73, in Brettschneider, "Democratic Persuasion," p. 1060.

[59] Essentially this case is argued in Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009).

[60] That all religions contain both the potential for peace and violence (what he terms "petrol" and "water" aspects) is discussed in Perry Schmidt-Leukel, "Interreligious Relations: from Conflict to Transformation," in Douglas Pratt, ed., *Interreligious Engagement and Theological Reflection: Ecumenical Explorations*, Berner Interreligiöse Ökumenische Studien vol. I (Bern: Stämpfli AG, 2014), pp. 6-19.

and condemned in separate quarters.[61] However, it is clear that pushing the wrong buttons will provoke a violent response in many people. This, of course, is not a reason to do nothing, and cases of political resistance around the world – from the recent protests of Buddhist monks in Myanmar to the civil rights movement against segregation in America – show the value in standing up against injustice that will provoke violence from those in power.[62] However, we need to ask: if we provoke others, are we doing so in the cause of justice or for some other reason?

Conclusion

What does it mean when we defend free speech? This is the simple question that I have grappled with here. Is it an absolute? And if so, is it an absolute right that we have, and is this different from a right to say absolutely anything? I would suggest that it may be the former, but not the latter.[63] An unbridled sense of absolute individual autonomy and rights may have fostered a lack of connection to our fellow human beings, society, and the wider world. In particular, we need to realise that those of us in the West, often as privileged, educated, white males occupy and inhabit the world in a very different way from not only others within the West but also those around the world. Indeed, as I have noted, psychological studies have indicated that males are more likely to stress a right to freedom of speech, while females give more weight to the problems of hate speech.[64] We may not be the creators of colonial injustice or oppression, we may even resist and detest the ongoing neo-colonial project, but we live in a world where it exists. Freedom of expression and freedom of speech always and only exist within this nexus of rights and duties, self and others. As has been pointed out in a legal context: "freedom only to speak inoffensively is not worth having,"[65] but we need to realise the boundaries of offence in relation to those we may wish to speak about. This is when we reach a position of "value conflict" where we consider the value of freedom of speech but also the suffering of those receiving hate speech.[66] Absolutes and the desire to implement them is often the preserve of committed ideologues who seldom believe in freedom for others. Our world is far too ambiguous and complex for absolutes to be given free reign. The idea that freedom of speech is an absolute as Fish

[61] See Dias, "Pope Francis Speaks Out," and for an extended commentary, Deborah Ball, "Pope Francis Sees Limits to Freedom of Speech: On the Way to the Philippines, Pope Also Calls Killing in Name of Religion an 'Aberration,'" *The Wall Street Journal* (15 January 2015), available at: http://www.wsj.com/articles/pope-francis-sees-limits-to-freedom-of-speech-1421325757 (last accessed 28 July 2015).

[62] Many news resources exist on the Buddhist context in Myanmar, but as a general discussion of a key figure see BBC, "Profile: Aung San Suu Kyi," *BBC News* (10 November 2014), available at: http://www.bbc.com/news/world-asia-pacific-11685977 (last accessed 28 July 2015).

[63] Here I would concur with the words noted by one of my anonymous peer reviewers who noted with respect to this: "Note that speech itself is a rule-governed exercise and thus is laden with rules and norms from the outset. There is no such thing as unregulated speech- that would be nonsense and unintelligible. There are rules to speech and language-use, and those rules are enabling- they allow communication to take place." It is certainly true that all language has rules, so the right to say "absolutely anything" would not imply gibberish, but to make claims that might be in the area of hate speech, racism, xenophobia, and so forth, that are found unacceptable. These may well follow the rules of language, and so they are enabled to say it in that sense. Nevertheless, regulations of societies speech make dictate that certain things which are enabled through the structure and intelligible are not acceptable.

[64] Downs and Cowan, "Predicting the Importance of Freedom of Speech."

[65] Per Sedley LJ, *Redmond-Bate v. Director of Public Prosecutions*, Judgment 23 July 1999 (2000) H.R.L.R. 249. 20.

[66] Downs and Cowan, "Predicting the Importance of Free Speech," p. 1355.

argued is an illusion, and in every legal jurisdiction, the rights to free speech are always tempered by limits as soon as that speech becomes embodied in ways that are found unacceptable.

In the light of these discussions, I would like to suggest a number of considerations when assessing freedom of speech. First, we need to bear in mind that it is not an absolute, despite much hyperbole and self-congratulation to the contrary, but always has limits. Indeed, the limits of what is acceptable, tolerated, or even prosecutable has changed quite dramatically within the last few decades especially in a European context.[67] We therefore must be aware of its contingent nature. Second, our attitudes will typically vary depending on factors such as political inclination and gender. As such, we are not simply dealing with cultural norms, but those of specific interests and perspectives which may be personal. Third, what may be theoretically or abstractly permissible may not be so in the real world where words have an effect. We must always be cognisant of the context. Fourth, especially when dealing with others, the last point needs to be considered in a post-colonial context, where centuries of Western hegemony has affected perceptions. Fifth, we need to consider the basis we are seeking to claim a right to free speech. As noted, there are various rationales that may be applicable in specific cases. Last, we need to pay attention to the specific legal jurisdiction under consideration, because certain things are acceptable in some places and not in others – this may not reflect an ideal situation but is still a factor.

[67] Kiska and Coleman, "Freedom of speech and 'hate speech,'" for instance discuss a number of cases of bishops and others in Europe facing legal proceedings for comments on homosexuality which accord with church teachings, and which would have been considered quite normative decades ago.

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