

The Lively Experiment: Why Religious Freedom Requires the Right to Offend

Charles C. Haynes
Senior Scholar
First Amendment Center

KEYNOTE ADDRESS
BLASPHEMY, FREE SPEECH AND JOURNALISTIC ETHICS CONFERENCE
MARCH 24, 2007

BOSTON COLLEGE
CHESTNUT HILL, MASSACHUSETTS

Thank you. I am very grateful to the Boisi Center, Eastern Nazarene College and all of the other sponsors for holding this timely and important discussion. And I very much look forward to learning a great deal from the outstanding religious leaders and journalists gathered here today.

If the controversy surrounding the publication of cartoons mocking the Prophet Muhammad has taught us anything, it has underscored the need for more conversations like this one.

The long-simmering tensions and anxieties – in both Europe and the United States – about the impact of robust free expression on religious values can no longer be ignored. It is simply not enough for one side to proclaim “free speech” or “free press” and for the other to cry “blasphemy” or “hate speech.” We must listen to one another – and find, where possible, a way to negotiate our deep differences while simultaneously upholding a shared commitment to fundamental rights of free expression and religious liberty.

At the heart of this discussion, I would argue, is a simple, but profound question:

To what extent, if any, does freedom of expression – specifically free speech and a free press – include the right to offend deeply-held religious convictions?

For some religious and political leaders in Europe and the United States, the answer is clear: When free expression crosses the line and becomes highly offensive to religion (as in the case of the Danish cartoons), the state can and should intervene.

This understanding of free expression and its limits is, of course, backed by a long tradition in Europe of state establishment of religion. Even though such establishments are mostly a shadow of their former strength, blasphemy laws and other protections for religion (favored religion) persist. Of course, where secularism is established – in France, for example – controls on free expression are meant to serve the interests of the state – which include controls on religion.

Denmark itself, ground zero for the cartoon conflict, has a blasphemy statute that calls for a fine and up to four months in prison for demeaning a “recognized religious community.” A few years ago, one Mogens Glistrup was imprisoned for 20 days for comparing Turks to rabbits. (Note that the publishers of the cartoons escaped prosecution under the same law.)

Although such laws are rarely enforced, the Danish cartoon controversy reignited an old debate about their necessity – and their impact on freedom of expression.

Instead of eliminating blasphemy laws, some European nations have revised them – or expanded their application – in order to account for religious pluralism. Thus the old concern about blasphemy against the state religion has been replaced by a new concern about hate speech against religions.

You may recall that before her death last year, Italian journalist Oriana Fallaci faced trial for her outspoken views about Islam. She was charged with violating Italy’s “outrage to religion” law as well as with inciting inter-religious hatred.

Meanwhile in the United Kingdom, the new “incitement to religious hatred” law would also appear to place new limits on free expression. Although it is supposed to be narrowly drawn (thanks to the insistence of the House of Lords no less) to only cover expression that sparks hate and violence, it remains to be seen how and when the government will determine when strong speech against a religious group becomes hateful.

As Prince Charles put it a few years ago, the monarch has historically been called the “defender of the faith” – but now, he said, the title should be “the defender of faiths.” (Just how comforting this is to religious communities in Great Britain is unclear.)

Many of my European friends who are people of faith echo Charles when they argue that religious freedom itself depends on state protection of religion from hate speech that targets religious symbols and beliefs.

But for believers in Europe (or in America) who may be tempted to embrace new blasphemy laws in hate speech guise, be warned: What may serve to protect sacred symbols and beliefs from satire or attack today can be used to limit religious speech tomorrow.

Remember Pastor Ake Green? A few years ago, he was convicted in Sweden of “hate speech” for preaching a sermon against homosexuality. Although Green was ultimately acquitted by the Swedish Supreme Court in 2005 (after he explained that he was attacking the practice, not the persons), his trial should give pause to religious leaders who push for more state power to control “offensive speech.”

Europe, of course, has a long history of invoking state power to limit free expression in the name of protecting people from offensive ideas and speech. To cite the most widespread contemporary example, Germany, France and eight other European nations have laws that make denying the Holocaust punishable by prison and fines. Last

Turning now to the United States, we pride ourselves on not being European when it comes to matters of free expression. Much to the consternation (but sometimes grudging admiration) of many Europeans, we are heirs to what King Charles II famously described as a “lively experiment” when he chartered Rhode Island in 1663.

To some great extent, that pride is justified. After all, we have a First Amendment and they don't. As we saw during the Danish cartoon controversy, the American arrangement often serves us well. Few American newspapers published the cartoons – restrained not by fear or intimidation – at least not from what I have gathered by talking with editors – but rather because of judgment calls based on long-standing policies about what is and isn't appropriate in such cases.

When a few papers made a different judgment about what coverage of the story required – and published the cartoons – the reaction said a great deal about how much our culture is shaped by a commitment to free expression: Leading Muslim American organizations criticized the newspapers, but simultaneously expressed support for the values of a free press and freedom of speech. Moreover, no protest in America turned violent.

Although the rhetoric of our culture-wars sometimes makes our public square a hostile place, we tend to forget how well we have managed for more than 200 years to negotiate our deep religious and ideological differences mostly without going for the jugular.

Unlike many European nations, where free expression is sometimes viewed as potential threat to religion, the United States, on its best days, is a place where free expression is not only a friend to religion, but the necessary condition for full religious freedom.

In fact, free expression and religious freedom in America were joined at the hip at birth – and remain inseparable today.

To understand how this happened, let's look for a moment at that “lively experiment” in Rhode Island where it all began more than 370 years ago.

It should be remembered that Roger Williams, the colony's founder, was not banished from this town for failing to be a Puritan – he was banished

“It is the will and command of God that since the coming of His Son, the Lord Jesus, a permission of the most paganish, Jewish, Turkish, or antichristian consciences and worships, be granted to all men in all nations and countries; and they are only to be fought against with that

This concern about “offensive speech” comes from both ends of the political and religious spectrum:

On the right, many religious traditionalists such as Bill Donahue of the Catholic League for Religious and Civil Rights are fed up – and deeply offended – by the treatment of their religious faith in the culture (think South Park) and in the media (think Oliphant’s cartoons about the sex

As tempting as it might be these days to use the engine of government to protect religion from offense, religious groups must keep in mind that the very power that protects them today will be used against them tomorrow. What is blasphemy to one is religious conviction to another. We don't want the government to decide which is true.

As Roger Williams understood well, religious liberty requires the right to offend. Without it, no religious group – except perhaps for those in the vast majority at any given time and place – is safe from censorship or persecution.

That does not mean, of course, that we should sit back and do nothing to address concerns about speech that deeply offends people of faith. If speech codes or other government regulations are not the answer, what is? What must we do to sustain – and even expand – this lively experiment in freedom while simultaneously taking seriously our civic responsibility to encourage a civil and respectful public square?

Since the people on our two panels are better qualified to answer that question, I will limit myself to two modest suggestions in the interest of starting the conversation:

First, Americans need to be educated about religion.

As Stephen Prothero points out in his new book on religious literacy, for all of our religiosity, Americans know precious little about religion – including their own.

Does this matter? Since I have spent much of the past two decades trying to convince public schools to take religion seriously, I obviously think it does.

If we hope to live with our deepest differences in what is now the most religiously diverse place on the planet, then we must know more about one another. Religious literacy matters because religion matters – and religious freedom matters. Religious convictions aren't just something people used to have a long time ago. Religion plays a central role – for better and for worse – in shaping events in our nation and in every region of the world. As we have learned in recent years, what we don't know about religion can hurt us.

No graduate from an American high school or college is prepared to meet the challenges of the 21st century without some knowledge of the world's major religions.

Apart from more mention of religion in history standards and textbooks, the overall public-school curriculum still mostly ignores religion. The conventional wisdom of public school educators appears to be that students can learn everything they need to know about all subjects without learning anything about religion (other than brief, often inadequate, discussions in history and literature).

But surely this is wrongheaded. Yes, the curriculum must be neutral concerning religion under the First Amendment. But it is hardly "neutral" (and certainly unfair) to leave religion out and thus implicitly convey the sense that religion is irrelevant in the search for truth.

but it has. Now that we are here, I trust that we discover new ways to engage one another with civility and respect. Most religious Americans want a press that is free – but they also want a press that is fair. Most journalists want the same thing.

The key is to reach a shared understanding – to the extent it can be reached – of what we mean by freedom and fairness under the First Amendment. This is a dialogue we must have. After all, the future vitality of free expression in America depends in no small measure on public support for a free press.