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John Stuart Mill's "If All Mankind Minus One" Tested in a Modern Blasphemy Case

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Citation

Cliteur, P. B., Herrenberg, T., & Rijpkema, B. R. (2016). John Stuart Mill's "If All Mankind Minus One" Tested in a Modern Blasphemy Case. In *The Fall and Rise of Blasphemy Law* (pp. 157-175). Leiden: Leiden University Press. doi:10.24415/9789087282684

Version: Not Applicable (or Unknown)

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Downloaded from: <https://hdl.handle.net/1887/46524>

Note: To cite this publication please use the final published version (if applicable).

The Fall and Rise

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& TOM HERRENBURG

of

Blasphemy

Law

with a foreword by
Flemming Rose

LEIDEN
UNIVERSITY PRESS

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Cliteur, Paul, and Herrenberg, Tom, and Rijpkema, Bastiaan,
“John Stuart Mill’s ‘If All Mankind Minus One’ Tested in a Modern
Blasphemy Case”, in: *The Fall and Rise of Blasphemy Law*,
Leiden University Press, Leiden 2016, pp. 157-177.

7 John Stuart Mill’s “If All Mankind Minus One” Tested in a Modern Blasphemy Case

Paul Cliteur, Tom Herrenberg & Bastiaan Rijpkema

INTRODUCTION: MILL AND THE TYRANNY OF THE PREVAILING OPINION

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.¹

Thus wrote John Stuart Mill (1806–1873), one of the champions of individual liberty and freedom of speech, in his seminal work *On Liberty* (1859). The latter part of the quotation—one person is not justified in silencing mankind—is a truism: we would call a person who has the ambition to silence mankind a “dictator” or a “tyrant.” But what makes this quotation interesting is the first part: neither does *mankind* have the right to silence the individual—not even when this person’s ideas or opinions are shared by no one else. Mill was worried not only about the restrictions on liberty imposed by a single tyrant, but also by restrictions imposed on individual members of society by the majority. In the first chapter of *On Liberty*, Mill argues that

Protection ... against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony

¹ John Stuart Mill, *On Liberty* (London: Longman Green and Co., 1863 (1859)), 10.

with its ways, and compel all characters to fashion themselves upon the model of its own.²

The intriguing power of Mill's argument begins to manifest itself when we realise that what was sheer speculation in the nineteenth century attains a new dimension in our time. In Mill's time a speaker's audience was relatively local; it would have been difficult to establish what idea or opinion was rejected by the overwhelming majority of the people or by "mankind." We could have speculated about this, but we would have had no means of verifying our speculations. It would have remained a thought experiment. This is no longer the case due to modern technology. Modern technology has also fundamentally changed ease of communication. News and opinions can reach most places in the world not in a week or a day, but in a second. Most of "mankind" is only a keystroke away. This unprecedented interconnectedness on two levels—the ability to receive extraordinary numbers of opinions and the ability to share one's own opinions with virtually the whole world—has consequences for free speech.

In this chapter we will discuss one particularly controversial opinion that indeed gained worldwide attention, namely the burning of the Islamic holy book, the Quran, by the American Pastor Terry Jones.³ Pastor Jones—head of the Florida-based church the Dove World Outreach Center—was in the media spotlight for several months in 2010. His actions gave rise to considerable and uncomfortable dilemmas concerning free speech and religious extremism, dilemmas that make it worthwhile to analyse this affair in more detail. Of all the unpopular, controversial or contested opinions regarding religion that recent decades have produced—such as Rushdie's *The Satanic Verses*,⁴ the mockery of Ayatollah Khomeini by the television

2 Ibid., 3.

3 The discussion of the Terry Jones affair in this chapter is in part a reworked and updated translation of an article that appeared in Dutch as Bastiaan Rijpkema, "Vrijheid van meningsuiting in de val tussen religieus extremisme en utilitarisme", *Nederlands Juristenblad* 44/45 (2012) 3106–3111; parts of that article were also used in Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of the Extrajudicial Restraints on Free Speech", in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven Publishing 2015), 291 at 305–315.

4 See Paul Cliteur, "Van Rushdie tot Jones: over geweld en uitingsvrijheid", in Afshin Ellian, Gelijn Molier and Tom Zwart (eds), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting* (The Hague: Boom Juridische Uitgevers (2011), 67–89 and Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech,"

host and comedian Rudi Carrell,⁵ and the Danish cartoons⁶—Pastor Jones' idea was by far the most unpopular of all. After all, in the case of Rushdie there was at least a considerable part of mankind that liked reading his novel. There was "artistic value" to it. In the case of Carrell, at least a considerable part of Germany's television audience liked what he did. And in the case of the Danish cartoons there were at least some people who liked some of the cartoons. But not with Jones. When, in the summer of 2010, Jones announced that he intended to burn a Quran, there were almost no members of "mankind" who favoured his approach.⁷ So, here we have it: the situation Mill spoke of in 1859. A man using his legal right to free speech in a way that almost *everybody* objected to. Virtually the whole of mankind minus one agrees—and so do we—on *not* burning the Quran, and holy books in general; the question is, however: should this affect his legal right to do so?

By analysing this affair in detail we hope to contribute to the understanding of a complex contemporary social phenomenon: legally protected, yet for some offensive, speech that for some radical believers is reason to resort to violent means. It is also part of a larger research effort to come to grips with what could be seen as a new, subtle form of censorship: emerging extrajudicial (*non-legal*) restraints on free speech, resulting from threats and actual violence against people who use their *legal* free speech rights.

The chapter can be read in two ways: as a *chronological* reconstruction of a thought experiment that becomes reality, and as a *thematic* discussion of the real-life political and moral dilemmas a "mankind minus one" situation confronts us with.

There is also a way in which the chapter explicitly should *not* be read: as a defense of the "morality" or "acceptability" of burning a Quran or any other (sacred) book—this is emphatically *not* such a defense. We, like many

in Afshin Ellian and Geliijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–318 (on Rushdie 296–299).

5 See Paul Cliteur, "The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire," in *Ancilla Iuris* (2013) 15–42.

6 Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech," in Afshin Ellian and Geliijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–318 (on the Danish Cartoons: 302–304).

7 "Florida Church Plans Koran Burning on 9/11 anniversary," *Agence France Presse*, 31 July 2010, see also "Who is Terry Jones? Pastor behind 'Burn a Koran-day,'" *ABC News*, 7 September 2010.

others, think burning a holy book, and books in general, is distasteful and objectionable. Our aim here is to explore the free speech controversies and dilemmas a real-life “mankind minus one” situation gives rise to—and there is no better example than the Terry Jones affair. In the following paragraphs we will first present the background of Terry Jones’s ideas and his plan to burn a Quran.

TERRY JONES AND HIS DOVE WORLD OUTREACH CENTER

The Dove World Outreach Center in Gainesville, Florida, was founded in 1986. Ten years after its founding, Terry Jones and his wife obtained leadership of the church.⁸ Jones’s church has long been known for its vociferous protests. The church thinks Christians should be more assertive in public debates, and this includes “strong protests against sins.” Thus, the church organised several protests against homosexuality and abortion that drew a lot of media attention.⁹ For instance, during a recent mayoral election campaign in Gainesville, the church posted a sign saying “No Homo Mayor” outside its building in a protest against the Democratic mayoral candidate, Craig Lowe.¹⁰ In addition to its protests, the Dove World Outreach Center also operates an online shop that sells a book written by Jones called *Islam Is of the Devil* as well as a number of hats, T-shirts and mugs with the same text.¹¹

In 2009, the church caused some commotion when several church members sent their children to public schools with “Islam is of the Devil” T-shirts. In reaction, the school forbade the children to wear the T-shirts to school, since it could “disrupt the learning process” and “offend or distract” other students.¹²

8 “Profile: Dove World Outreach Centre”, *BBC US & Canada*, 1 April 2011.

9 Michael Tomasky, “Church will burn Koran on 9–11”, *Guardian*, 27 July 2010.

10 “City tries to shake off ‘embarrassment’ of Koran-burning church”, *BBC US & Canada*, 9 September 2010.

11 “Florida Church Plans Koran Burning on 9/11 anniversary”, *Agence France Presse*, 31 July 2010.

12 Michael Tomasky, “Church will burn Koran on 9-11”, *Guardian*, 27 July 2010; Christopher Curry, “Devil shirts send kids home”, *Gainesville.com/The Gainesville Sun*, 26 August 2010.

JULY 2010: NEW REALITIES

The biggest controversy started in July 2010, when Jones used Facebook to announce an “International Burn a Koran Day,” to be held at his church on 11 September 2010, in “honour” of the victims of the terrorist attacks on the World Trade Center in New York, then exactly nine years previously.¹³ Jones’s idea was eccentric, but not entirely new. On 14 January 1989, in the town of Bradford in northern England another book burning was organised: Salman Rushdie’s *The Satanic Verses*. As Kenan Malik (b. 1960) writes in *From Fatwa to Jihad: The Rushdie Affair and its Legacy* (2009), the novel was tied to a stake before being set alight in front of the police station. “It was an act calculated to shock and offend,” Malik writes.¹⁴ And it did more than that. “The burning book became an icon of the rage of Islam.”¹⁵ After Terry Jones had announced his plans, Assistant Pastor Wayne Sapp uploaded a video to YouTube in which the church’s intentions were explained, and—to add weight to the announcement—he included some images of a burning Quran.¹⁶ On 21 July 2010, the *Religious News Service* re-aired the announcement,¹⁷ and in the following days the news spread to, among other countries, England,¹⁸ the Netherlands¹⁹ and France.²⁰ A few days later, on 31 July 2010, the first terrorist threat was made: members of the “Al Falluja jihadist forum” threatened to “spill rivers of your (American) blood.”²¹

13 “Florida Church Plans Koran Burning on 9/11 anniversary”, *Agence France Presse*, 31 July 2010; see also “Who is Terry Jones? Pastor behind ‘Burn a Koran-day’”, *ABC News*, 7 September 2010.

14 Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy* (London: Atlantic Books, 2009), ix.; Dominique Thomas, *Le Londonistan: Le djihad au Coeur de l’Europe* (Éditions Michalon, 2005), 34.

15 Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy* (London: Atlantic Books, 2009), p. ix.; Paul Weller, *A Mirror for our Times: “The Rushdie Affair” and the Future of Multiculturalism* (London/New York: Continuum, 2009), 2.

16 ‘How Koran burning story grew from obscurity’, *BBC*, 10 September 2010.

17 Ibid.

18 “Church will burn Koran on 9-11”, *Guardian*, 27 July 2010.

19 “Kerk roept op tot Koranverbranding”, *Reformatorsch Dagblad*, 28 July 2010.

20 “Une église de Floride propose de bruler le Coran le 11 septembre”, *Agence France Presse*, 31 July 2010.

21 “Florida Church Plans Koran Burning on 9/11 anniversary”, *Agence France Presse*, 31 July 2010.

So, when the leader of a small church of about fifty members²² in the fairly small town of Gainesville²³ announces that he intends to burn a Quran, this announcement apparently reaches the Netherlands—in this case, the small Christian “Reformed Daily” (*Reformatorisch Dagblad*)—within the same month.²⁴ Modern means of communication make the world community more closely knit. We live in a “Global Village,” as Marshall McLuhan (1911–1980) said in 1962.²⁵ In times of ongoing terrorist threats, however, our stay in the “Global Village” is becoming increasingly less pleasant than the idea of a “village” might suggest. The reality of our time is that what happens in one country is most likely to have effects in other countries.²⁶ Contemporary terrorism is transnational by its nature and recognises no international boundaries.²⁷ In his 2006 inaugural lecture at the University of Leiden, the Netherlands, legal philosopher Afshin Ellian (b. 1966) underlined the significance of this development, specifically in relation to religious extremism:

Young Muslims predominantly radicalise on Internet fora. Globalisation, media technology and high-speed communications have changed our world permanently. The hallmark of this established globality is, according to Peter Sloterdijk, a state of forced neighbourhood with innumerable accidentally coexisting persons, where terrorism, as the romance of pure attack, is a disinhibition of the dense world. Maybe Sloterdijk is right in his

- 22 Estimations vary. According to the local newspaper the *Gainesville Sun*, the church has 50 members, see: “Petraeus: Dove World’s Quran burning may have global impact”, *Gainesville Sun*, 7 September 2010, available at: <http://www.gainesville.com/article/20100907/ARTICLES/100909663>.
- 23 Gainesville has approximately 128,460 inhabitants (2014), see: <http://www.census.gov/quickfacts/table/PST045215/1225175,00>.
- 24 “Kerk roept op tot Koranverbranding”, *Reformatorisch Dagblad*, 28 July 2010, available at: http://www.refdag.nl/kerkplein/kerknieuws/kerk_vs_roept_op_tot_koranverbranding_1_493456.
- 25 See M. McLuhan, *The Gutenberg Galaxy: the making of typographic man* (Toronto: The University of Toronto Press, 1962), inter alia, 21 and 31. Globalisation as such, of course, began much earlier. See, e.g., J.M. Roberts, *The Penguin History of Europe* (London: Penguin Books, 1996), 340–341.
- 26 See Paul Cliteur, *Het Monotheïstisch Dilemma* (Amsterdam: De Arbeiderspers, 2010), 78 and also Peter Singer, *One World: The Ethics of Globalization* (New Haven, CT/London: Yale University Press 2004), 7.
- 27 See also Paul Cliteur and Machteld Zee, “Staat, religie en terreur: niets nieuws,” in Claudia Bouteligier and Afshin Ellian (eds), *Fundamentele verhalen: over recht, literatuur en film* (The Hague: Boom Juridische Uitgevers, 2014), 56–57.

assertion that telecommunication is the practical consummation of the Enlightenment: a deliberating open world with all its attendant consequences. Half-truths, uncontrolled facts and selective interpretations are everyday practice on the Internet. People express their abhorrence of Abu Ghraib without reporting the number of American soldiers who were prosecuted and convicted of assault. They rile each other up and encourage hatred of dissenters, the democratic order and its institutions. The Internet is a thriving bazaar of hate-trade.²⁸

The “deliberating open world”—the “consummation of the Enlightenment”—is not without consequences. It affects, for instance, counterterrorism: intelligence services are pushed online to try to hinder the recruitment of extremists that happens there.²⁹ The Terry Jones affair shows another consequence of this interconnected world: free speech and its limits can no longer be studied in the isolation of a single legal order.

SEPTEMBER 2010: WHEN IS A “REQUEST” NO LONGER A REQUEST?

In September 2010, just before the planned burning, the media attention started to gather momentum. The responses to Jones’s plans intensified accordingly. After protests broke out in Indonesia³⁰ and Afghanistan,³¹ government officials from Pakistan,³² Egypt³³ and Iraq,³⁴ among others, also condemned the proposed burning.³⁵ Iran blamed Israel.³⁶

28 Afshin Ellian, ‘Sociale cohesie en islamitisch terrorisme (Social cohesion and Islamic terrorism)’ (Leiden: Inaugural lecture Leiden University, 2006), 20 (translation by the authors), full text, available at: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/12992/Oratie%20Ellian.pdf?sequence=1>.

29 Ibid., 24–25.

30 “Protest rallies against ‘Burn a Quran day’ continue,” *Asia-Pacific News Agencies*, 5 September 2010.

31 “Qu’ran burning: Protester ‘shot dead’ as NATO troops open fire on demonstrators,” *Guardian*, 10 September 2010.

32 “Worldwide outrage at planned Quran burning,” *Al Arabiya*, 9 September 2010.

33 Ibid.

34 Ibid.

35 For an overview of countries that condemned the burning see <http://www.csmonitor.com/World/Global-Issues/2010/0909/11-countries-speaking-out-against-Koran-burning-in-Florida>.

36 According to Iranian Foreign Minister Manouchehr Mottaki the burning was “orchestrated by the Zionist regime after being defeated in its efforts against Muslims and the Islamic world”: see

In the meantime David Petraeus (b. 1952), at that time the International Security Assistance Force (ISAF) commander in Afghanistan, also condemned the proposed burning and warned of possible consequences: "It could endanger troops and it could endanger the overall effort. It is precisely the kind of action the Taliban uses and could cause significant problems. Not just here, but everywhere in the world we are engaged with the Islamic community."³⁷

Following Petraeus, the burning was condemned by a diverse parade of celebrities and government officials, from actress Angelina Jolie (b. 1975)³⁸ and the Veterans of Foreign Wars of the United States,³⁹ to the U.S. embassy in Kabul,⁴⁰ the lieutenant general of the UN training mission in Afghanistan, William Caldwell (b. 1954),⁴¹ Secretary of State Hillary Clinton (b. 1947)⁴² and NATO Secretary General Rasmussen (b. 1953).⁴³

Amid all the commotion, on 7 September a White House spokesman declared that the White House subscribed to Petraeus's warning.⁴⁴ Then things accelerated. Two days after the White House statement, U.S. President Obama (b. 1961) appeared on "Good Morning America," where he explicitly called on Jones to refrain from the Quran burning. The President said the following:

What he's proposing to do is completely contrary to our values as Americans; that this country has been built on the notions of religious freedom and religious tolerance. And as a very practical matter, as commander-in-chief of the armed forces of the United States, I just want him to understand that this stunt that he is talking about pulling could greatly endanger our young men and women in uniform who are

"Worldwide outrage at planned Quran burning", *Al Arabiya*, 9 September 2010.

37 "In quotes: Koran-burning threat", *BBC US & Canada*, 10 September 2010.

38 "Angelina Jolie condemns planned Quran burning by Florida church", *CBS News*, 9 September 2010.

39 "Major US veterans group condemns planned Koran burning", *Agence France Presse*, 7 September 2010.

40 "Petraeus: Koran burning plan will endanger US troops", *BBC South Asia*, 7 September 2010.

41 "U.S. Afghanistan commanders condemn Koran-burning plan", *Reuters*, 6 September 2010.

42 "Clinton condemns Quran-burning plan", *CNN U.S.*, 8 September 2010.

43 "Pressure mounts in U.S. against Koran-burning plan", *Reuters*, 7 September 2010.

44 "Quran burning plan a 'concern': White House", *CBC News*, 8 September 2010.

in Iraq, who are in Afghanistan. We're already seeing protests against Americans just by the mere threat that he is making.⁴⁵

When asked what he was worried about, Obama replied: "Well, look, this is a recruitment bonanza for al-Qaida."⁴⁶

That same day Jones declared—despite the pressure from the White House—that he was still determined to burn a Quran on 11 September.⁴⁷ A few hours after Obama's appearance on "Good Morning America," Jones received a direct phone call from U.S. Secretary of Defense Robert Gates (*b.* 1943). During a brief conversation, Gates pointed to the potential dangers to American forces and urged Jones to cancel his plans.⁴⁸ After a period of uncertainty it was reported that Jones had decided *not* to burn a Quran on 11 September.

So, quite extraordinarily, Jones seemed to give in at the very last moment, but the commotion that preceded it is more interesting: several government officials, including President Obama, indirectly called on Jones not to proceed with his plans, until finally even the U.S. Secretary of Defense personally urged Jones to cancel the burning.

Was the reason that Obama did not call Jones himself that somehow he felt this was not something an American president is supposed to do? General Petraeus's advice to Jones was widely seen as sensible. Or should it be explained as an admission of failure: what is the purpose of bringing freedom to Iraq and Afghanistan while simultaneously suppressing freedom at home?

Acknowledging that there are no easy answers to these questions, should it not be admitted that they are the right questions to pose? Were these not the problems and dilemmas that should have been addressed?

The fact that this discussion did not take place may be seen as a trifle—and some will undoubtedly experience it as such. But was it really? Is this not one of the most fundamental discussions we can engage in in political philosophy? A discussion about what the proper functions of the state are and whether the state, indeed, *acts* as a state should?

45 For a transcript of the interview see "Opinion Roundup: Burning the Quran", *National Public Radio*, 9 September 2010.

46 *Ibid.*

47 "Florida Pastor Determined to Carry Out Quran Burning", *AOL News*, 8 September 2010.

48 "Obama's Pentagon Chief calls Florida Pastor", *USA Today*, 10 September 2010.

We should also seriously ask ourselves what was the status of freedom of speech *after* Obama and other high-level politicians—even in a direct phone call—had made their appeals to Jones? It seems fair to say that the mob-like terrorist threats resulted in a great deal of equivocation from many of the American political and media elites on the issue of free speech. Has trying to find different ways to discourage Jones from exercising his First Amendment rights made Americans safer? Is it likely that religious extremists are satisfied with the President's efforts? So satisfied that they will now leave Americans and their free speech rights alone? Or is it likely that those extremists will threaten Americans again the next time something they do not like is to be published—a book, or a film, or a musical, or a cartoon? Those are the questions “mankind minus one” confronts us with.

Not all American politicians took the same stance as Obama. New York City Mayor Michael Bloomberg (*b.* 1942) did not join the others in asking Jones to cancel his plans; he defended Jones's constitutional right to burn the Quran: “The First Amendment protects everybody, and you can't say that we're going to apply the First Amendment to only those cases where we are in agreement.”⁴⁹ Indeed, the First Amendment protection of free speech would be meaningless if it applied only to speech the government or the majority of the population approved of—the modern American tradition of free speech is “Millian” in the sense that it protects those who hold conventional opinions (“all mankind”) as much as it protects eccentrics (“all mankind minus one”). In the words of Justice Holmes (1841–1935):

If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.⁵⁰

In the Terry Jones affair, it seems that not the U.S. president but the New York mayor was the “Millian” or “Holmesian”: defending shocking and uncomfortable but legally protected speech. Interestingly enough, more recently we *did* see a quite strident “Millian” Obama. In 2014, Sony Pictures released a big Hollywood film called *The Interview*, a satirical film about North Korea. Towards the end of the film the current leader's head is blown

49 “Bloomberg Defends Florida Pastor's Right to Hold Quran Burning Rally”, *CBS News*, 8 September 2010.

50 *United States v. Schwimmer*, 279 U.S. 644 (1929).

up—in graphic special effects.⁵¹ Defending free speech after severe threats against Sony Pictures and movie theatres, Obama said the following:

We cannot have a society in which some dictator someplace can start imposing censorship here in the United States. Because if somebody is able to intimidate folks out of releasing a satirical movie, imagine what they start doing when they see a documentary that they don't like, or news reports that they don't like. Or even worse, imagine if producers and distributors and others start engaging in self-censorship because they don't want to offend the sensibilities of somebody whose sensibilities probably need to be offended. So that's not who we are. That's not what America is about.⁵²

This is a very different Obama—only compare this statement to the one he made in the Terry Jones affair.

Opinions, instructions, and requests of *government officials* are most likely to impact on free speech. Using your freedom of speech after a telephone call from the U.S. Secretary of Defense is not exactly the same as doing so without having received such a call. This presents us with a serious political philosophical dilemma that deserves thorough discussion. Should government officials—in function—give unsolicited and proactive “advice” to citizens on the use of their free speech? In the end, such government interventions could very well legitimise and strengthen the *extrajudicial* restraints terrorists and extremists try to impose on free speech. In other words, protecting free speech forces us to make up our minds, choosing between the intervening Obama in the Terry Jones affair, and the *Millian* Obama we saw during the controversy over *The Interview*.

APRIL 2011: THE MORAL RESPONSIBILITY FOR SPEECH ACTS

After Jones had announced that he would not burn a Quran on 11 September, things remained quiet for a long time. Worth mentioning, however, are the

⁵¹ “Sony cancels *The Interview* release amid threats”, *BBC*, 18 December 2014.

⁵² “Remarks by the President in Year-End Press Conference”, *The White House, Office of the Press Secretary*, 19 December 2014, available at: <https://www.whitehouse.gov/the-press-office/2014/12/19/remarks-president-year-end-press-conference>.

\$180,000 bill Jones received for police deployment during the controversy⁵³ and the fact that he was forbidden to enter the United Kingdom.⁵⁴ However, in early 2011, Jones announced on the church's website that on 20 March 2011 an "International Judge the Koran Day" would be held.⁵⁵ This time the event actually did take place, and at the end of the trial the Quran was found "guilty" and sentenced to death which, for a book, turned out to be burning.⁵⁶

The burning produced a new storm of protest. There were protests throughout Afghanistan, and in Pakistan extremists placed a \$2.4 million bounty on Jones's head.⁵⁷ Hezbollah declared that it held the U.S. government responsible for the burning, and Iran spoke of "crimes that contribute to the American hegemonic conspiracy."⁵⁸ A low point was reached on 1 April 2011, when multiple United Nations staff members were killed in the Afghan city Mazar-e-Sharif when "demonstrators poured out of mosques in the city in the early afternoon, shortly after Friday prayers where worshippers had been angered by reports that a Florida pastor had burned a copy of the Quran."⁵⁹

Although the responses to the violent murders varied, and some firmly rejected attributing responsibility for the murders to Jones,⁶⁰ there were also other opinions. The British newspaper *The Guardian* set up an opinion poll shortly after the killings in Afghanistan, in which it asked its readers to respond to the following question:

Is the Florida pastor who burnt the Quran morally responsible for the deaths of UN staff in protests in Afghanistan?

53 "Pastor who threatened to burn Korans told to pay police bill", *Telegraph*, 20 September 2010.

54 "Pastor Terry Jones banned from UK after 9/11 Quran burning threat", *Guardian*, 20 January 2010.

55 "Florida pastor Terry Jones's Koran burning has far-reaching effects", *Washington Post*, 2 April 2011.

56 *Ibid.*

57 "This Week", *ABC News*, 27 March 2011, transcript available at: <http://abcnews.go.com/ThisWeek/week-transcript-gen-jim-jones-ret/story?id=13285705#.UHPzFXbgAVc>, and "Florida pastor Terry Jones's Koran burning has far-reaching effects", *Washington Post*, 2 April 2011.

58 "Hezbollah blames U.S. for Florida Quran burning", *The Star*, 23 March 2011.

59 See "UN staff killed in Afghanistan amid protests over Qur'an burning", *Guardian*, 1 April 2011.

60 See, e.g., Brendan O'Neill, "Pastor Terry Jones is no more to blame for the Afghan violence than Martin Scorsese was for the shooting of Ronald Reagan", *Guardian*, 1 April 2011.

The readers could choose from two options:
“Yes, it is a provocative blasphemy against others’ beliefs,”
or:
“No, it should be considered a legitimate free speech act.”

The results: 45 per cent of the readers held Jones morally accountable for the deaths of the UN workers in Afghanistan.⁶¹

The “reasons” that *The Guardian* attached to the options “Yes” and “No” might sound somewhat peculiar. If you choose the option “Yes, morally responsible,” it is because the burning is a “provocative blasphemy against others’ beliefs.” So, one might wonder, are we to accept that—apparently—the murder of innocents is an “understandable” response to provocative statements? If people are *that* “insulting”—hence the “provocative blasphemy”—you cannot expect them to refrain from violence. From an ethical perspective we believe we can be brief on this: even if you are prepared to consider the burning of a, for some, sacred book to be a “crime,”⁶² this could never constitute a (moral) justification for murder. Any ethical theory should satisfy such a basic requirement of proportionality.

However, we can speculate whether those who do see Jones as morally responsible could substantiate their position in a more sophisticated way than the “standard answer” *The Guardian* opinion poll suggests. The ethical theory of utilitarianism offers such a possibility.

Utilitarianism assesses the moral worth of an act entirely on the basis of its *consequences*.⁶³ Therefore a judgment on how the burning of a Quran compares to murder—which has little validity—is not needed here. A utilitarian uses the “principle of the greatest happiness (or utility) for the greatest number.”⁶⁴ Acts are thus good when they promote the general

61 For the results, see: <http://www.guardian.co.uk/commentisfree/cifamerica/poll/2011/apr/01/christianity-islam>.

62 This is what the “Yes” response suggests, given the wording “provocative blasphemy.”

63 See in general: Rachels, Stuart, *The Elements of Moral Philosophy*, New York: McGraw-Hill, 2007, pp. 89–91, 100–116; Kenny, Anthony, *A New History of Western Philosophy (Vol. iv): Philosophy in the Modern World*, Oxford: Oxford University Press 2008, 220–228.

64 John Stuart Mill explains this principle in his “Utilitarianism”, see Mill, John Stuart, *On Liberty and Utilitarianism*, London: David Campbell Publishers 1992, see: Rachels, Stuart, *The Elements of Moral Philosophy*, New York: McGraw-Hill, 2007, 89 and 100–101; Kenny, Anthony, *A New History of Western Philosophy (Vol. iv): Philosophy in the Modern World*, Oxford: Oxford University Press 2008, 226.

happiness and bad when they reduce the general happiness.⁶⁵ In our case a utilitarian argument could look like this: the benefits of burning the book must be weighed against the benefits of not burning the book. On the basis of a utilitarian calculation, the utilitarian would likely conclude that the utility of *not* burning the book will be higher than the possible benefits of Jones actually burning the book (no riots and numerous deaths versus the comparatively lesser utility of drawing temporary attention to the Islam-criticism of a small American congregation). Therefore it follows that burning the Quran is not *morally* justified.

Problematic in such a utilitarian argument is that the moral agent (in this case, Jones) is held to be responsible for all—deliberate or non-deliberate—consequences of his actions. This makes the person himself disappear in one large utilitarian calculation, making him lose his personal integrity, or, in other words, the relationship between his actions and his goals is broken. Philosopher Bernard Williams (1929–2003) convincingly formulates this criticism in his article “A Critique of Utilitarianism.”⁶⁶ Williams gives two examples to illustrate this defect. We will discuss his most striking example at some length. This example is known as the story of Jim and Pedro.⁶⁷

THE STORY OF JIM AND PEDRO

On a botanical expedition in South America, Jim, by chance, finds himself in the central square of a small town. Against a wall in the square twenty Indians are tied up, held at gunpoint by armed men. Pedro, the leader of the armed men, explains that he is about to execute this randomly selected group of Indians in retaliation for earlier held protests against the government, so that potential future protesters will remember the benefits of “not protesting.” But since Jim is a “special guest” from another country who has met them by chance, Pedro is happy to award Jim a privilege: Jim is allowed to kill one of the Indians. If Jim does so, Pedro will let the other Indians go, to add “extra

65 This was already formulated by Jeremy Bentham; it should also be noted that, for a utilitarian, everyone’s happiness weighs equally, see: Rachels, Stuart, *The Elements of Moral Philosophy*, New York: McGraw-Hill, 2007, 90 and 100.

66 See Williams, Bernard, “A Critique of Utilitarianism”, in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge: Cambridge University Press, 1973, 77–150.

67 *Ibid.*, 98–99.

luster to the special occasion.” If Jim refuses, there is, of course, no special occasion, so Pedro will still have to kill *all the Indians*.

For a moment, Jim considers if he can seize one of the guns and keep the would-be murderers at gunpoint, but it is quite clear that—given the situation—this is impossible. The Indians understand this too and beg Jim to do what Pedro asks. What should Jim do?

For a utilitarian, the answer is clear: Jim should kill one Indian, thereby “saving” the other Indians.⁶⁸ The morally right action in this case, on the basis of a utilitarian calculation (one dead Indian or twenty dead Indians), should therefore be: killing one Indian. And, as a consequence, not killing one Indian would make him responsible for the killing of twenty Indians—after all, he was in a position to prevent those deaths. Just as Jones is considered to be responsible for the actions of *protesters* in Mazar-e-Sharif, Jim is held responsible for the consequences someone else (in this case, Pedro) attaches to his actions.

This is a point of vital importance: in utilitarianism *intentions* play no role, so persons can (also) be held accountable for consequences, *unsolicited and unwanted*, others connect to their actions. In doing so, utilitarianism contradicts our most fundamental intuitions about responsibility and justice, namely: people are only responsible for their *own* actions. Otherwise people lose their personal integrity: if “everyone is responsible for everything,” it is no longer important what people themselves wanted. However distasteful the burning of a “sacred book” might be—again, we agree it is very distasteful—the consequences that protesters on the other side of the world attach to this burning can never be morally attributed to Jones. Moreover, to do so would also disregard the “moral agency” of the murderers.

CONCLUSION: GOVERNMENTS AND THE LURE OF UTILITARIANISM

The Terry Jones affair is a striking example of a new reality when it comes to constitutional freedoms: in an interconnected world, free speech cannot be studied in the isolation of a single legal order. Terrorists and extremists on the other side of the globe force restrictions on the use of free speech by a U.S. citizen, and coerce the U.S. government to intervene. Extremists even

68 See *ibid.*, 99.

tie grave, violent consequences (terrorist attacks, murder) to speech that is legally protected in a different legal order, almost 12,000 kilometers away.⁶⁹

This new reality gives rise to serious moral dilemmas and political quandaries. The moral question was addressed above: utilitarianism seems to suggest (we believe: unconvincingly) that a person bears moral responsibility for the unwanted and unsolicited consequences others tie to their speech acts. To conclude our discussion, let us now return to the *political* dimension of our new reality, zooming in on Obama's response to the Terry Jones affair one last time. When it comes to explaining *government* reactions to extremists' demands regarding constitutional freedoms, the theory of utilitarianism again seems illuminating.

Changing our perspective to that of government officials means asking a different question: should we not limit certain freedoms, such as the freedom of expression, a bit, so that less provocation occurs and the terrorist threat also decreases? A utilitarian answer could be: "Yes, why not? In the end, what does curtailing the freedom of those few authors and publicists really matter?"

The utilitarian government official could reason as follows: Certain expressions of authors, publicists, and other public figures are perceived to be provocative. Although these provocative expressions fall within the *legal* limits to freedom of speech, they nonetheless motivate some extremists to engage in terrorism—recall Obama: "a recruitment bonanza for al-Qaida." The suffering terrorism causes is enormous: social disruption, fear, and, above all, the loss of human lives. What to do? A utilitarian, guided by the happiness principle, would suggest limiting freedom of speech. After all, what is—on the whole—the importance of those few authors and publicists we thereby restrict in their freedom?

Of course we should note that there *are* more philosophically sophisticated forms of utilitarianism. One could think of "rule-utilitarianism," for instance, which is more long-term orientated and looks for the consequences of *rules*, instead of single acts.⁷⁰ Yet it is the "act-utilitarianism," or, to put it a bit

69 According to the "Distance Calculator," when flying, see <http://www.distancecalculator.net/>.

70 For "rule" utilitarianism this may be different. "Rule" utilitarianism looks for *rules* (instead of acts) that tend to promote the greatest happiness for the greatest number. A "rule" utilitarian could say that—despite possible negative short-term effects—one should stick to the *rule*, because in the long term this guarantees more happiness. See, for instance, Smart, J.J.C., "An outline of a system of utilitarian ethics", p. 9–10, in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge: Cambridge University Press, 1973.

more impolitely, a kind of “layman’s utilitarianism,” that has a particularly strong appeal for government officials. We might even speak of a “utilitarian lure,” based on a vaguely articulated notion of utilitarianism. That specific utilitarian lure comes in two variants, a “soft” and a more drastic one.

An example of the “soft” variant can be seen in the telephone conversation between the U.S. secretary of defense and Terry Jones. The gist of this “soft” variant goes something like this: “Very well, legal intervention—that is, changing the laws—is perhaps not feasible, or we might consider it to be too drastic, but instead of legal interference, why can we not just ask a person not to do or say something; just make a ‘request’ and point out their own responsibility in the matter?” This could establish *de facto* or extrajudicial limits on free speech.

The second variant is perhaps more worrying than the “soft” version. Based on a utilitarian consideration one can also come to the conclusion that it might be wise to sharpen the *legal* limits to freedom of expression, so that certain expressions are not possible at all—period. Or at least: not without persecution. An attempt at such a “utilitarian concession” to terrorists seemed to occur after the terrorist assassination of writer and filmmaker Theo van Gogh in the Netherlands. On 2 November 2004, Van Gogh was murdered, and in that same month the then minister of justice, Piet Hein Donner (b. 1948), made a plea to bring life to the derelict criminal offense of blasphemy.⁷¹ In the end, Donner, after some controversy had arisen, seemed to revoke his words, or at least restate them, and it never became exactly clear what he meant by “reviving” blasphemy laws.⁷² However, this, to put it mildly, unfortunate “timing,”—after van Gogh’s murder—did raise the suggestion that maybe we should indeed try to take some of the wind out of the terrorists’ sails by *legally* pandering to them.

Both utilitarian responses are questionable. By way of *internal* criticism (so, *within* utilitarianism), one could first ask whether the government officials’ utilitarian calculation is, in fact, correct. Are they not far too quick in assuming that you can mollify terrorists with concessions? On the contrary, would terrorists not be empowered by these concessions (“they are

71 Louis Cornelisse, “Minister wil rust in de tent brengen”, *Trouw*, 16 November 2004. See also chapter 4 in this volume on the Dutch blasphemy law.

72 “Godslastering niet harder aangepakt (gerectificeerd)”, *NRC Handelsblad*, 16 November 2004, 2004.

giving in; you see, it works”), so that terrorism will only increase?⁷³ If so, the utilitarian calculation seems to yield very different results.

Moreover, one could call into question the consequentialist focus of utilitarianism. Is the supposed certainty about consequences, on a more abstract level, not highly unrealistic? Our reality is made up of a particularly complex set of causes and effects. Utilitarianism seems to function very well in thought experiments or situations that approach complete certainty, but it appears to be far less usable in complex issues, such as contemporary international terrorism.⁷⁴

A more fundamental problem with utilitarian reasoning is that it places the cards in the hands of those who threaten to use violence—thereby taking the constitutional right to free speech hostage. The crux of this problem was well put by Ronald Dworkin (1931–2013):

When we compromise on freedom because we think our immediate goals more important, we are likely to find that the power to exploit the compromise is not in our own hands after all, but in those of fanatical priests armed with fatwas and fanatical moralists with their own brand of hate.⁷⁵

The main argument against “layman’s utilitarianism” therefore lies elsewhere. It lies in the core values that we are not to change if we want to preserve our free and democratic societies. When these freedoms are lost, there is not that much left to defend in the first place. The fact that utilitarianism passes this over seems to make it unsuitable as a useful advisor in the struggle against terrorism.

73 Robert Pape suggests that terrorists indeed seem to “learn” from concessions. In an empirical study of 188 suicide attacks between 1980 and 2001, he formulates it as follows: “This pattern of making concessions to suicide terrorist organizations over the past two decades has probably encouraged terrorist groups to pursue even more ambitious suicide campaigns.” And, further on: “Advocates of concessions should also recognize that, even if they are successful in undermining the terrorist leaders’ base of support, almost any concession at all will tend to encourage the terrorist leaders further about their own coercive effectiveness.” See Pape, Robert, “The Strategic Logic of Suicide Terrorism,” *American Political Science Review* 2003, vol. 97 nr. 3, 343–361, see here: 344 and 356.

74 Rachels is more optimistic on our ability to judge consequences, see Rachels, Stuart, *The Elements of Moral Philosophy*, New York: McGraw-Hill, 2007, 125.

75 Dworkin, Ronald “A New Map of Censorship”, *Index on Censorship*, 2006, vol. 35 no. 1, 132–133.

The lure of utilitarianism for governments is strong; it holds the promise of short-term victories—exactly what those in office need. We believe, however, that both the “soft” (for instance: Obama in the Terry Jones affair) and the more “rigorous” (such as reviving a defunct blasphemy law) utilitarian options are unwise, practically and principally. Governments should defend fundamental principles such as free speech and not water them down when deemed inconvenient. It is not convenient speech that needs protection.⁷⁶ The litmus test for such a stance is the way we deal with the most unpopular, appalling, or shocking of expressions—Mill’s “mankind minus one.” What Terry Jones was planning to do, and eventually did, had it all: it was unpopular, appalling, *and* shocking; Mill’s thought experiment brought to life. The Terry Jones affair starkly shows the dire predicament for governments in *real-life* “mankind minus one” situations—in such cases it is not easy to resist the siren call of “layman’s utilitarianism.”

76 See also Kustaw Bessems, “De vrijheid om weerzin te wekken”, pp. 19–28, in: Ellian, Afshin & Molier, Gelijk, eds., *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting*, The Hague: Boom Juridische Uitgevers 2011.