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The Changing Nature of the Freedom of Speech

Cliteur, P.B.; Barkhuysen, T.; Emmerik, M.L. van; Loof, J.P.

Citation

Cliteur, P. B. (2009). The Changing Nature of the Freedom of Speech. In T. Barkhuysen, M. L. van Emmerik, & J. P. Loof (Eds.), *Geschakeld recht. Verder studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. mr. E.A. Alkema* (pp. 97-115). Deventer: Kluwer. Retrieved from <https://hdl.handle.net/1887/13668>

Version: Not Applicable (or Unknown)

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

Cliteur, Paul, "The Changing Nature of the Freedom of Speech", in: T. Barkhuysen, M.L. van Emmerik, & J.P. Loof, red., *Geschakeld recht: verdere studies over Europese grondrechten ter gelegenheid van de 70^{ste} verjaardag van prof. Mr. E.A. Alkema*, Kluwer, Deventer 2009, pp. 97-115.

Paul Cliteur

1 Introduction

Twenty years ago, in 1988, during our sessions at the Van Asbeck Centrum of Human Rights at the University of Leiden a group of young scholars around Prof. dr. Evert Alkema discussed particular articles from the European Convention on Human Rights. At that time article 10, comprising that 'everyone has the right to freedom of expression', was not a highly contested issue. Nevertheless, in that same year a book was about to be published that would change all that: *The Satanic Verses* by Salman Rushdie. From that time onwards freedom of speech became a highly controversial affair. Why? What makes freedom of expression so important? And is it *that* important? Or have we gone too far in criticizing religious ideas and the behaviour of religious leaders considered to be 'holy' by their acolytes? Has freedom of speech deteriorated in ruthlessness and insolent behaviour? Should the right to free expression be exerted with more responsibility?

These are some of the questions I hope to answer in this contribution to a book dedicated to a man whose lifelong commitment to the study of human rights was a source of inspiration to us all.

2 J.S. Mill on liberty

Perhaps it is good to start with a misunderstanding about the advocates of free speech that is widely spread. They do *not* necessarily have to proclaim free speech as something absolute. Almost everyone can imagine circumstances under which it seems justified to impose restraints on free speech. Even John Stuart Mill who in 1859 with his book *On Liberty* presented the most radical vindication of free speech that had ever appeared in the tradition of Western political thought,¹ acknowledged

■ Prof. dr. P.B. Cliteur is Professor of Jurisprudence, University of Leiden.

¹ See on this: Reeves, Richard, *John Stuart Mill: Victorian Firebrand*, Atlantic Books, London 2007, pp. 262-307.

certain limitations on the free expression of ideas and opinions. Nobody has the moral right to shout 'fire' in an overcrowded city-hall if there is no actual fire.²

Freedom of speech is also subjected to all kinds of *legal* limitations. Who works for the secret service is not free to publish material regarding state security, as everyone will understand.

Mill wanted to enquire into the nature of civil or social liberty.³ That is: 'the nature and limits of the power which can be legitimately exercised by society over the individual'.⁴ His answer is this:

'The subject of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is that the sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.'⁵

This brings Mill to the introduction of his 'harm-principle'. 'The only purpose for which power can be rightfully exercised over any member of a civilized community, against its will, is to prevent harm to others.'⁶ That implies that *harm to self* is no legitimate aim to interfere with the freedom of the individual.

Applied to the freedom of expression this means that 'opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act.'⁷ As an example Mill refers to the 'corn-dealers'. Whoever wants to criticize them is allowed to do that, but there is a limitation. One should not invoke *violence* against them. Free speech is limited where there is an incitement of 'molesting others'.⁸ According to Mill free expression could be curbed if there was – what would later be called – a 'clear and present danger' of physical violence.⁹

The example of the corn dealers would now be a bit outdated, but the general problem behind it is certainly not. On the contrary, we may say. Also in the contemporary world we are presented with – alas – many examples of people advocating violence against others. A more contemporary example is the 'fatwa', issued by the

2 See on 'shouting fire' as a limit to free speech: Dershowitz, Alan, *Shouting Fire: Civil Liberties in a turbulent Age*, Little, Brown and Company, Boston/New York/London 2002.

3 Mill, John Stuart, *Three Essays. On Liberty* (1859), *Representative Government* (1861), *The Subjection of Women* (1869), Oxford University Press, Oxford/New York/Toronto/Melbourne 1975, p. 5.

4 Mill, *On Liberty*, p. 7.

5 Mill, *Ibid.*, p. 15.

6 Mill, *Ibid.*, p. 15.

7 Mill, *Ibid.*, p. 69.

8 Mill, *Ibid.*, p. 69.

9 See: Fraleigh, Douglas M., Tuman, Joseph S., *Freedom of Speech: in the Marketplace of Ideas*, St. Martin's Press, New York 1997, p. 106 ff.

Iranian spiritual and political leader Ayatollah Khomeini (1902-1989) against the British author Salman Rushdie (1947-).

3 Ayatollah Khomeini v. Salman Rushdie

On February, 19, 1989 Ayatollah Khomeini watched the evening news on the Iranian television. He saw an angry Muslim crowd in Pakistan, protesting against the publication of a blasphemous book: *The Satanic Verses* by Salman Rushdie. Khomeini was touched – according to sources around the Iranian politician – by this spontaneous religious upsurge. He called for a secretary and decreed the following verdict (*fatwa*)¹⁰ over Rushdie, his publisher and his book:

‘In the name of Him, the Highest. There is only one God, to whom we shall return. I inform all zealous Muslims of the world that the author of the book entitled *The Satanic Verses* – which has been compiled, printed, and published in opposition to Islam, the Prophet, and the Qur’an – and all those involved in its publication who were aware of its content, are sentenced to death. I call on all zealous Muslims to execute them quickly, wherever they may be found, so that no one else will dare to insult the Muslim sanctities. God willing, whoever is killed on this path is a martyr.

In addition, anyone who has access to the author of this book, but does not possess the power to execute him, should report him to the people so that he may be punished for his actions. May peace and the mercy of God and His blessings be with you.’¹¹

Beneath the fatwa we find a name and a year. The name is: Ruhollah al-Musavi al-Khomeini. The year is: 1367. What strikes the modern reader is that in the year 1989 such an action by an official religious and political leader was still possible. I say ‘still possible’, because it is reminiscent of similar declarations in the European context long ago. In 1570 pope Pius V issued the Bull *Regnans in excelsis* declaring the English queen Elizabeth illegitimate and her reign ripe for a takeover by Catholic insurgents.¹² This papal Bull is based on the idea of the superiority of Papal to secular authority or of the Church to the State. The theoretical foundation of this approach is to be found in another Bull issued by Boniface VIII: *Unam Sanctam* (1302). *Unam Sanctam* lays down the following principles.

10 See on fatwas: Mozaffari, Mehdi, *Fatwa: Violence & Discourtesy*, Aarhus University Press, Aarhus 1998.

11 Quoted in: Pipes, Daniel, *The Rushdie Affair. The Novel, the Ayatollah, and the West*, Second Edition with a postscript by Koenraad Elst, Transaction Publishers, New Brunswick (USA) and London (UK) 2003, p. 27. For the British context see: Ruthven, Malise, *A Satanic Affair: Salman Rushdie and the Rage of Islam*, Chatto & Windus, London 1990, pp. 1-10.

12 See on this: Petriburg, M., ‘The Excommunication of Queen Elizabeth’, in: *The English Historical Review*, Vol. 7, No. 25 (Jan., 1892), pp. 81-88; Shires, Henry M., ‘The Conflict between Queen Elizabeth and Roman Catholicism’, in: *Church History*, Vol. 16, No. 4 (Dec., 1947), pp. 221-233.

In the power of the Roman Church there are two swords, the temporal and the spiritual. The spiritual is to be wielded *by* the Church, the temporal *for* the Church. The former is in the hand of the priest, the latter is in the hand of kings and soldiers. The temporal power must be subject to the spiritual. So the spiritual power has to institute the secular power and to judge it, if it is not good. 'Therefore', so the historian J.B. Bury (1861-1927) writes in his important work *History of the Papacy in the 19th Century*, 'if the secular power strays from the right way it will be judged by the spiritual power, whence if the highest spiritual power deviates from the right way it will be judged by God alone.'¹³

The implication of this doctrine is clear. It implied that the secular power was entrusted to princes simply as servants of the Church. So when Elizabeth I deviated from the path of Rome, the Pope considered himself to be perfectly justified to incite her subjects to throw off their queen. Much later The British philosopher T.D. Weldon (1896-1958) writes: 'One of the many troubles about Hitler was that he claimed to control Germans outside Germany, in other words he extended the definition of the German Community to cover people of German origin anywhere in the world and acted on this hypothesis.'¹⁴ That is true. But what is equally true is that this pretension is also slumbering within the great religious traditions in various stages of their development. The pope in the 16th century had the same ambitions: he wanted to legislate for the Catholics all over the world, defying the local political leaders.¹⁵

From the perspective of a modern nation-state these pretensions by the pope, Ayatollah Khomeini or any other religious leader, would be considered as a flat violation of national sovereignty.¹⁶ But the Catholic Church operates on a completely different worldview (at least before 1570). The Church operates on the basis of what they see as universal jurisdiction. The result was that for centuries Roman Catholics had been subject to disabilities in England. 'They were not permitted, for instance, to sit in Parliament. In the seventeenth century they were regarded as a fifth column in the service of England's enemies, Spain and France. James II, a

13 Bury, J.B., *History of the Papacy in the 19th Century*, Edited, with a Memoir, McMillan and Co. Limited, London 1930, p. 139.

14 Weldon, T.D., *States and Morals: A Study in Political Conflicts*, John Murray, London 1946, p. 29.

15 See on this: Holbach, Paul Henri Dietrich baron d', *Le Christianisme Dévoilé ou Examen des Principes et des Effets de la Religion Chrétienne*, 1761, in: D'Holbach, *Premieres Œuvres*, Préface et notes Paulette Charbonnel, Éditions Sociales, Paris 1971, pp. 94-138, p. 105 who writes that everywhere where religion (read: Christianity) gets a firm hold over the minds of the people and its rulers there arises the problem of the two powers: civil and religious ('il s'établit dans chaque État deux pouvoirs distincts').

16 See for contemporary perspectives: Murphy, Francis X., 'Vatican Politics: Structure and Function', in: *World Politics*, Vol. 26, No. 4 (Jul., 1974), pp. 542-559 and for Islam: Tibi, Bassam, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam versus Global Jihad*, Routledge, London and New York 2008.

Catholic king, had been deposed. Nor had opinion changed after the Napoleonic Wars. England remained solidly Protestant.¹⁷

Actually, it is a worldview that is remarkably similar to the one that we meet in Khomeini's declaration to kill the British author who violated holy Islamic law by mocking the Prophet. This worldview completely overhauls the modern system of international relations based on the sovereignty of the nation-state as we know it since the Westphalian peace (1648).¹⁸ As a perceptive commentator has remarked about Khomeini's pretence:

'His concept of the Islamic world order basically rejects the validity of the very notion of the territorial state which is the principal subject of the modern law of nations.'¹⁹

These outrageous acts occurred in the year 1367 of the Iranian Era, but, as the examples of Galileo (1633) and the Bulls *Regnans in excelsis* (1570) and *Unam Sanctam* (1302) make clear, they were not uncommon in the history of Christianity in the 14th or 16th century. It looks like we are in a certain sense back in the predicament of the 16th century.

What can be done about that? And *is* there something that can be done?

4 Francis Fukuyama giving up on the Arabic world

In 1989 Francis Fukuyama (1952-) proclaimed the spread of democracy and human rights, in short, modernization, in his widely read essay *The End of History*.²⁰ But in 2007 he wrote: 'the problem of jihadist terrorism will not be solved bringing modernisation and democracy to the Middle East. Modernisation and democracy are good things in their own rights, but in the Muslim world they are likely to increase, not dampen, the terror problem in the short run'.²¹

The question is an old one, of course. Basically, it is the question whether democratic values, human rights among them, are ripe for export. There have always been sceptics with regard to this question, the most notorious being Samuel Hun-

17 Annan, Noel, *The Dons: Mentors, Eccentrics and Geniuses*, HarperCollins, London 2000 (1999), p. 45.

18 See on this: Philpott, Daniel, 'The Challenge of September 11 to Secularism in International Relations', in: *World Politics*, 55 (October 2002), pp. 66-95; Philpott, Daniel, 'The Religious Roots of Modern International Relations', in: *World Politics*, 52 (January, 2000), pp. 206-245.

19 Ramazani, R.K., *Revolutionary Islam: Challenge and Response in the Middle East*, John Hopkins University Press, Baltimore 1988, p. 24 and 25.

20 Fukuyama, Francis, 'The End of History?', in: *The National Interest*, No. 16, Summer 1989, pp. 3-18, also in: Paul Schumaker, Dwight C. Kiel, Thomas W. Heilke, eds., *Ideological Voices. An Anthology in Modern Political Ideas*, The McGraw-Hill Companies, Inc., New York etc. 1997, pp. 409-417.

21 Fukuyama, Francis, 'A question of identity', in: *Weekend Australian*, February 3, 2007.

tington nowadays.²² But there are many others as well. For instance T.D. Weldon writes: 'To my mind it makes no sense to conclude that all men ought to be democratically governed if experience convinces me (as it does) that large groups of human beings are, for whatever reason, so made that they do not want a constitution of this kind and could not work it if they had it.'²³

Let us consider what the consequences of this idea would be for the matter of free speech. The implications for free speech are clear: being an integral part of liberal democracy and modernization, rejecting modernization and democracy for the Middle East would also imply portraying the dispersion of freedom of speech as an impossible ideal (at least in the short term). And that brings us to a catch 22. The only way to *change* a situation is to have the opportunity to *criticize* a current state of affairs. If that opportunity is frustrated, there is no prospect for change.

It may be possible that we have to subscribe to Fukuyama's and Weldon's pessimistic diagnosis, but we should not take this lightly and be aware of the consequences of this 'give-them-some-time-argument'. Using this argument implies that we do not only condemn a considerable part of the world to a backward position, but – and this is even more serious – we also deny citizens in that part of the world the means to improve their condition, because every improvement in the world starts with criticism and free speech.

There is another element in the quote from Fukuyama that requires our attention. He writes about democracy and modernization *in the Muslim world*. And he suggests that we should not be too optimistic about prospects for a change in that very context. But what does that mean for *our world*?

Does that mean that we have to learn to live with fatwas condemning writers to death in our part of the world? Is that simply the new condition we are living in? If that would be true some parts of the world would not only stifle their own development, but the mores of those parts of the world would drag down the Western world as well. What Fukuyama's remark seems to take not sufficiently into account is that we are living in a globalized world. In former times we could perhaps say that this is a problem 'in the Muslim world' and does not affect our situation. This no longer holds true. The reason is that people like Ayatollah Khomeini *from their world* send some messages *right into our world*.

Another problem is that multicultural societies comprise ethnic and religious minorities who consider the words of a foreign spiritual leader as – to say the least – something that competes with national law in the struggle for their loyalty.²⁴ So

22 Huntington, Samuel P., *The Clash of Civilizations and the Remaking of World Order*, Simon & Schuster, New York 1996.

23 Weldon, T.D., *States and Morals: A Study in Political Values*, John Murray, London 1946, p. 17.

24 See for the situation in The Netherlands: *Van Dawa tot Jihad. De diverse dreigingen van de radicale islam tegen de democratische rechtsorde*, Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2004 (From dawa to jihad – the various threats from radical Islam to the democratic legal order, 30 maart 2005). For the situation in Great Britain: Mirza, Munira, Senthilkumaran, Abi, Ja'far, Zein, *Living Apart Together: British Muslims and the Paradox of Multiculturalism*, Policy Exchange,

withdrawing troops from Afghanistan and Iraq is easy enough, but that does not solve the problems we are discussing here. That religious terrorists do not only demand the withdrawal of troops from what they consider to be Islamic territory but also want to change the democratic order in Western countries, appears from the conviction of three terrorists in Denmark.

On November, 24, 2007 three militant Muslims were sentenced by a Danish court of law on the charge of preparing a terrorist attack.²⁵ Their attack was presented as a protest against (1) the military presence of Denmark in Irak, (2) the publication of the cartoons satirizing the Prophet in the Danish newspaper *Jyllands Posten*.

The first point is repeatedly emphasized by people who want to create some understanding for the terrorist cause, but we should also take cognizance of the second point: the intended terrorist attack had to be a retaliation on the publication of some cartoons in a newspaper. That newspaper was not in the hands of the government, but in the hands of private actors. That implies that in a liberal democracy it is very difficult for the government to negotiate with potential terrorists. In a dictatorship government can promise everything because everything is in the power of the government. A democratic government cannot 'give away' what is not theirs. And what is especially non-negotiable in a democracy, is the set of limits the government has acknowledged to its own ambit. This set of limits is the declaration of civil rights and freedoms enshrined in the national constitution or treaties that are binding on the territory of the national state (i.e. constitutionalism). Civil rights and freedoms limit the power of the state. So the last thing that a democratic government can do, is give away those freedoms to the people who want them (i.e. the terrorists). And exactly that is what some contemporary religious terrorists demand. John Stuart Mill wrote: '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.'²⁶ The situation we are familiar with nowadays is that a few religious fanatics try to silence mankind and they are remarkably successful in that undertaking. In that sense the Danish Cartoon-affair is more relevant than the more or less random attacks by terrorists on the public transport system in London or in Madrid or on symbols of capitalism like the Twin Towers. In the Danish Cartoon-affair and in the murder of Theo van Gogh the terrorist attack is directed at a principle that is held dearly in democracies and that distinguish democracies from dictatorships: the principle to free criticism, even when this annoys the defenders of the status quo. What we see happening now in contemporary democracies, viz.

London 2007; Selbourne, David, *The Losing Battle with Islam*, Prometheus Books, Amherst, New York 2005; Gove, Michael, *Celsius 7/7*, Weidenfeld & Nicolson, London 2006; McRoy, Anthony, *From Rushdie to 7/7: The Radicalisation of Islam in Britain*, The Social Affairs Unit, London 2006.

25 'Deense moslims cel in na beramen aanslag', in: *NRC Handelsblad*, 24/25 november 2007.

26 Mill, John Stuart, *On Liberty*, 1859, With the Subjection of Women and Chapters on Socialism, edited by Stefan Collini, Cambridge University Press, Cambridge 1989, p. 20.

more limitations on free speech to protect the sensibilities of radical religious groups,²⁷ is *de facto* a concession to religious terrorism. It looks like we are in a downward development: the limits of free speech are not drawn by the state or the national community, but by religious groups, prepared to use violence to substantiate their claims. And in this aim the terrorists are fairly successful.²⁸

5 Have we gone too far with freedom of speech?

So far I have argued for the importance of free speech. Now it is time for some critical self-reflection. The reason is that nowadays freedom of speech seems much less popular than it used to be in the 1988's – the year I took as a point of reference at the beginning of my article. Critics of freedom of speech usually advance four types of criticism on those favouring free expression.

A common reaction to every plea about the importance of free speech is this: 'Why be so crude? Why be so divisive? Why offend people in their most sacred beliefs?' Or someone will say: 'Oh, listen, do not misunderstand me, I am in favour of free speech, but'. And subsequently he will tell you that freedom of speech is accompanied with 'responsibilities'. Asked what those 'responsibilities' are people are usually less eager to tell you. But, if pressed, they will say that you should not 'insult' people.²⁹ When asked if this means that we are not going to publish cartoons, plays, novels and even opera's that some people proclaim to be insulting, the adherent of the new speech codes usually reacts with evasion and the contention that this is not what he means. But what *does* he mean exactly?

There also seems an enormous proliferation of what I would like to call compassion with people who claim to have been offended in their deepest religious beliefs.

How to explain this? Have people become weaker and more vulnerable in their deepest beliefs? Do they feel more insecure? Did they grow less tolerant towards other people than in former times? Remarkable is also the spectacular growth of a new discourse regarding religion and free speech that seems innocuous or even fruitful, referring to concepts as 'respect' and 'dialogue', but that turns out to be suppressive of free speech and what I am inclined to call *real* dialogue. Those pious demands for 'dialogue' are usually voiced to silence unpopular ideas.

27 See on this process: Appignanesi, Lisa, ed., *Free Expression is No Offence*, Penguin Books, London 2005.

28 See: Dershowitz, Alan, *Why Terrorism Works: Understanding the Threat, responding to the Challenge*, Yale University Press, New Haven and London 2002 and Cliteur, Paul, 'Waarom terrorisme werkt', in: E.R. Muller, U. Rosenthal, R. de Wijk, red., *Studies over terrorism en terrorismebestrijding*, Kluwer, Deventer 2008, pp. 307-347.

29 See on this: Neu, Jerome, *Sticks and Stones: the Philosophy of Insults*, Oxford University Press, Oxford 2008.

Another criticism (a *second* point) that is launched against advocates of free speech is that they would take an 'absolute' stance on freedom of speech. For them free speech knows no boundaries.³⁰

I do not think this criticism is justified. We have indicated that John Stuart Mill and other protagonists of free speech usually acknowledge limits to the free flow of ideas in the form of the 'clear and present danger'-test. If there is a danger that certain expressions would imply the risk of physical harm we should acknowledge a limit to the freedom of speech. An absolute right to free speech is defended by nobody.³¹

There are people, though, who go far in defending free speech. One of those people was Supreme Court Justice Hugo Black (1886-1971). Black wrote: 'My view is, without deviation, without exception, without any ifs, buts, or whereases, that freedom of speech means that government shall not do anything to people, or, in the words of the Magna Charta, move against people, either for the views they have or the views they express or the words they speak or write.'³² Black did not believe that there was a 'halfway ground for protecting freedom of speech and press'.³³ He called the principle of free speech 'the lifeblood' of every representative democracy. But Black's position was not representative for the general position. Many people favour a more limited conception of free speech and they will qualify a proscription like the one issued by Filips II with regard to William of Orange³⁴ or the fatwa of Khomeini with regard to Rushdie or any other incitement to physical harm as not protected by the principle of free speech.

6 People are not being insulted for their religion

So those vindicating free speech are not motivated by the wish to offend people, nor do they take an absolute stance on free speech. A *third* misunderstanding that has to be cleared away is perhaps the most important. So I will use most of my space to this specific point. A complaint often voiced about those favouring free speech is that they have the ambition to insult other people *on account of what they believe*.

This misunderstanding is voiced by the politician and scholar Michael Ignatieff (1947-). Ignatieff writes: 'Since millions of people identify themselves by their

30 See on why this is not true: Jacoby, Susan, 'A First Amendment Junkie', in: *The New York Times*, 1978, also in: Barnet, Sylvan, & Bedau, Hugo, *Current Issues and Enduring Questions. Methodes and Models of Argument*, Bedford Books of St. Martin's Press, Boston 1990, pp. 8-13.

31 See: Lewis, Anthony, *Make No Law, The Sullivan Case and the First Amendment*, Vintage Books, A Division of Random House, Inc., New York 1992.

32 Black, Hugo LaFayette, *A Constitutional Faith*, Alfred Knopf, New York 1969, p. 45.

33 Black, *A Constitutional Faith*, p. 47.

34 Jardine, Lisa, *The Awful End of Prince William the Silent. The First Assassination of a Head of State with a Handgun*, HarperCollins, London 2005.

religious faith, it is as wrong to insult a person for their religion, as it is to insult them for their race.’³⁵

Those kind of commentaries are rampant nowadays. This is what the Right Honourable Jack Straw (1946-), Secretary of State for Justice, commented in a reaction to the Danish cartoons: ‘There is freedom of speech, we all respect that, but there is not any obligation to insult or be gratuitously inflammatory.’ He continued with: ‘I believe that the republication of these cartoons has been unnecessary, it has been insensitive, it has been disrespectful and it has been wrong.’³⁶

What can be wrong with such seemingly innocuous remarks as made by Ignatieff and Jack Straw? Let us focus on what Ignatieff writes. I have no problem, of course, with what he says literally, but what he is insinuating. Presupposed to his remark is that there *are* people who insult other people *for their religion*. But who would do such a silly and malicious thing? Do those people exist at all? Can Ignatieff provide us with names of those nasty characters? Was for instance Voltaire ‘insulting’ people for their religion? Or Friedrich Nietzsche? Are those the thinkers he has in mind? Probably not. When Voltaire signed his letters with ‘Écrasez l’Infâme’ he was surely not motivated by the ambition to insult the Catholic Church.³⁷ He was convinced that the Catholic Church had certain ideas that were pernicious and he thought the Church and its leaders should be held responsible for those ideas and be criticized. Also Nietzsche had no ambition to ‘insult’ people when he made his ‘mad man’ proclaim the ‘Death of God’, although this was undoubtedly a passage in the *Gay Science* that worried many of his contemporaries.³⁸ Nor was it the ambition of Galileo to ‘insult’ his fellow Catholics ‘for their religion’.

And what about the new critics of religion? Had Salman Rushdie no other ambition than to insult people for their religion? Or Taslima Nasreen with regard to Muslims and Gurpreet Kaur Bhatti with Sikhs? That would be a grotesque contention.

Now, certainly, there must be *some* people who have as their sole ambition to insult other people because of their religion, because otherwise that remark by Ignatieff would be pointless. Would Richard Dawkins qualify? Or Christopher Hitchens? Or perhaps Theo van Gogh, because if his murderer was prepared to sit a live-long term in prison his victim must have said something terribly wrong, must he not?

35 Ignatieff, Michael, ‘Respect and the Rules of the Road’, in: Lisa Appignanesi, ed., *Free Expression is No Offence*, Penguin Books, London 2005, pp. 127-136, p. 129.

36 Quoted in: Phillips, Melanie, *Londonistan*. How Britain is Creating a Terror State Within, Gibson Square, London 2006, p. 17.

37 See on this: Herrick, Jim, ‘Voltaire: “Écrasez l’Infâme”’, in: Jim Herrick, *Against the Faith*. Essays on Deists, Skeptics and Atheists, Prometheus Books, Amherst, New York 1985, pp. 56-71.

38 Nietzsche, Friedrich, *Die fröhliche Wissenschaft*, in: *Sämtliche Werke*, 1882, Band 3, Kritische Studienausgabe herausgegeben von Giorgio Colli und Mazzino Montinari, Deutscher Taschenbuch Verlag, De Gruyter, München 1999, pp. 343-653.

I do not think so. What Richard Dawkins (1941-) wants, is to free people from an 'illusion'. His book, *The God Delusion*,³⁹ is in the tradition of Sigmund Freud (1856-1939) who also considered religion to be an illusion in *Die Zukunft einer Illusion* (1927).⁴⁰ And when Christopher Hitchens (1949-) claims to know that *god is not great* he is motivated by the same wish to free his fellow-men of some dangerous ideas.⁴¹

The most difficult case I have to make is perhaps that of Theo van Gogh (1957-2004). That has to do with the fact that Theo van Gogh was indeed very proficient in insulting people, apparently for no other reason than the pleasure of insulting.⁴² Yet I do not think that even Van Gogh would qualify for the role that someone like Ignatieff might have in store for him. Not even Van Gogh was insulting people *for no other reason than that those people had a religion*. The only problem is that in the last phase of his brutally interrupted life he was on the track of what he considered to be a very serious threat for the future of Europe: the growth of a fundamentalist variety of a world religion.⁴³ He was very sincere in this and he saw some things that other people neglected or deliberately chose not to see (including the Dutch government which underestimated the danger that proved to be fatal to Van Gogh himself). As A.C. Grayling notes: the debate about religion has become an acerbic one 'and worse: some contributors to it have their say with bombs.'⁴⁴

So the search for the culprit talked about everywhere, the man or women (many of them women) deliberately insulting other people for the sake of their belief, is one of the most elusive figures. This culprit is in high demand. There is a great urge in the Western world to look for the pesky demon who has no other wish than insulting others for the sake of their religion. Once this figure can be identified we could get rid of a troubling problem: the problem of religious terrorists in our midst. If we can identify the people who for no other reason than personal gratification senselessly insult other people and by doing this elicit violent behaviour of the true believers, the solution of the problem would be simple. We address those who cause offence by their cartoons, columns, films and other means of expression and tell them that their behaviour is irresponsible. We tell them that it endangers the social cohesion in society. It is pointless. They should restrain themselves in their seemingly

39 Dawkins, Richard, *The God Delusion*, Bantam Press, London / Johannesburg 2006.

40 Freud, Sigmund, *Die Zukunft einer Illusion*, 1927, in: Sigmund Freud, *Studienausgabe*, Band IX, Fragen der Gesellschaft, Ursprünge der Religion, S.Fischer Verlag, pp. 135-191.

41 Hitchens, Christopher, *god is not Great*. How Religion Poisons Everything, Twelve, New York, Boston 2007.

42 See for a selection of those 'insults': Gogh, Theo van, *Allah weet het beter*, Xtra Producties, Amsterdam 2003.

43 Van Gogh detected the same process as: Bawer, Bruce, *While Europe Slept*. How Radical Islam Is Destroying the West From Within, Doubleday, New York, Auckland 2006 and in a certain sense: Tibi, Bassam, *Der neue Totalitarismus*. Heiliger Krieg und westliche Sicherheit, Primus Verlag, Darmstadt 2004.

44 Grayling, *Against all Gods*, p. 9.

innocuous but in reality extremely dangerous hobby of insulting serious believers and social peace is secured.

If it were all that simple we do not have to make difficult calculations about the significance of free speech in relation to the spiritual harm done with respect to the believers. And because we are likely to deceive ourselves that it is really that simple we are ready to invent the culprit even if he does not exist, as Voltaire was prepared to do with God.⁴⁵

I think this whole approach is mistaken. All of the cases that were a cause for the complaints of religious minorities *were not meant as an insult*. The writer Gurpreet Kaur Bhatti, who had to hide after her play was cancelled and was threatened to death by indignant Sikhs, said about the incident: 'I certainly did not write *Behzti* to offend.'⁴⁶ The same applies to the controversial *The Satanic Verses* by Salman Rushdie. What the writer aimed at was *writing a novel*. And in this novel there are things being said that some people might consider offensive. Sixteen years after the publication Rushdie himself tried to set the matter strait and wrote: 'Must it really still be explained, sixteen and a half years after the publication of this novel, that the prophet in the books is not called Muhammed, the religion is not called Islam, the city in which the action occurs is not called Mecca, that the whole sequence takes place inside the dreams of a man who is losing his mind, and that this is what we call fiction?'⁴⁷ The problem seems to be that many people, and certainly not only Muslims, from the *extravagant reactions* to the novel concluded that the *motives* of the writer must have been extravagant. And they tell him: 'You should have foreseen these reactions.' People seem to think: 'These reactions are so extreme; the writer himself must have extreme ideas.' Where smoke is, there is fire. Rushdie's colleague-writer Roald Dahl (1916-1990) was one of those commentators. Not long after the publication of *The Satanic Verses* he wrote about Rushdie: 'Clearly he has profound knowledge of the Muslim religion and its people, and he must have been totally aware of the deep and violent feelings his book would stir up among devout Muslims. In other words he knew exactly what he was doing and he cannot plead otherwise. This kind of sensationalism does indeed get an indifferent book on the top of the best-sellerlist (...) but to my mind it is a cheap way of doing this.'⁴⁸

This reaction seems to me rock bottom of what we can come to in the history of protest against religious terrorism. Rushdie himself is made responsible for the

45 See: *Oeuvres complètes de Voltaire*, ed. Louis Moland, Garnier, Paris 1877-1885, tome 10, pp. 402-405.

46 Bhatti, Gurpreet Kaur, 'A Letter', in: Lisa Appignanesi, ed., *Free Expression is No Offence*, Penguin Books, London 2005, pp. 27-32, p. 28.

47 Rushdie, Salman, 'Coming After Us', in: Lisa Appignanesi, ed., *Free Expression is No Offence*, Penguin Books, London 2005, pp. 21-29, p. 25.

48 *The Times*, 28 February 1989. See also: Pipes, Daniel, *The Rushdie Affair. The Novel, the Ayatollah, and the West*, Second Edition with a postscript by Koenraad Elst, Transaction Publishers, New Brunswick (USA) and London (UK) 2003, p. 70.

atrocious acts perpetrated against his person. In 1993, after having lived for four years under a death-sentence, Rushdie gave an insight what oppressed him most. Everywhere the Rushdie-case was seen as a case on freedom of speech and terrorism. But in England one chose to see it as the case of a man who wanted to be saved of the trouble he had brought himself into. 'To know this is to carry a wound that does not heal. It takes away my strength. I do not know if anyone cares that it does, but it does'.⁴⁹ On the contested passages in *The Satanic Verses* Malise Ruthven writes that 'by a preposterous form of retribution, Rushdie has been given a life sentence for writing them'.⁵⁰

So far the first remark we have to make on Rushdie and Bhatti and other writers who have been indicted to be insulting or divisive. They have not had the aim to insult or to offend. Being insulted or being offended is to a considerable extent in the eye of the beholder.

What should we conclude from this? My conclusion is that we should carefully distinguish between two dimensions of the concept of an 'insult' or 'insulting': (1) an objectified dimension, (2) the motive.

The (first) objectified dimension refers to the feelings of the person offended. He (or she) has the feeling to have been insulted. The second dimension refers to the attitude of the person who made the remark deemed to be insulting. He had the *deliberate aim* to be insulting. What appears to be common practice nowadays, is that from the first dimension (an experienced insult) the second dimension is simply deduced (the intention of insulting). Someone *feels* offended, so there was someone *deliberately aiming* to give offence. Implicitly it is also supposed that there must be a kind of proportionality. If the person offended claims to be *very hurt* then the offender must have been *very deliberate* and *very malicious* in voicing his senseless criticism.

Unwillingly, Ignatieff contributes to this common mistake.

7 Motivated by the urge to provoke

That brings me to a *fourth* and last point of criticism to freedom of speech that is voiced by critics. This last point is a variant on the third one, but it has a slightly different dimension and therefore I want to treat this separately. It is that advocates of free speech are not sincere critics but are motivated by the sole aim to provoke. They may not be motivated by the sole aim to *insult* other people, so the critic of freedom of speech supposes, but they voice their criticism in such a way that they know (or can suppose) that there will be tumultuous reactions.

49 Rushdie, Salman, 'A 4-year Death Sentence', in: *The New York Times*, February 7, 1993.

50 Ruthven, Malise, *A Satanic Affair: Salman Rushdie and the Rage of Islam*, Chatto & Windus, London 1990, p. 28.

Those who follow this line of approach may claim that religious criticism is not the problem; it is the *way in which* this criticism is voiced. This is an old controversy.⁵¹ Take the Danish cartoonists who made pictures of Mohammed. The cartoonists or the newspaper that published the cartoons had surely expected that tumult would arise, is it not? A possible claim that the row was unexpected and unintended would not be very credible. Was not provocation here the exact *aim* of the publication?

This indictment is voiced by many people, even people who should know better, as the Dutch princess Mabel of Oranje (1968-). In an interview she confided that she considered it inappropriate to publish cartoons simply 'to pay the muslims a lesson'. She continues with the statement that 'the intention is very important' and 'deliberately publishing something simply to insult, hurt and humiliate' is wrong.⁵²

That publishing something with the sole aim to insult, hurt and humiliate a person or group is right, of course, but distorting the facts when you *can* and *should* know better is no less serious. And isn't this what the Princess is doing when insinuating that the Danish cartoons were published with the sole aim to insult? Why does the princess think that the publications had the aim to insult?

Of course, the case of the Danish cartoonists is different from that of Rushdie and Kaur Bhatti. Nevertheless there are important similarities as well. Taking the chance that people will be provoked does not necessarily make the publication of something morally rejectionable.

8 Flemming Rose on why he published the cartoons

Perhaps nobody has been more maligned in the recent history of free speech as the Danish journalist Flemming Rose (1958-), best known for commissioning the drawings of Mohammed in the *Jyllands-Posten*. In an article in *The Washington Post* he disclosed his motives for publishing those cartoons.⁵³ From that article it appears that Rose is no 'free speech-junkie'. He makes clear that he surely would not publish everything. He would not publish pornographic images or graphic details of dead bodies. Also swear words rarely make it into their pages, he contends: 'So we are not fundamentalists in our support for freedom of expression'.

Why then did he publish the cartoons?

He commissioned the cartoons 'in response to several incidents of self-censorship in Europe caused by widening fears and feelings of intimidation in dealing with issues related to Islam'. The idea wasn't to provoke gratuitously, Rose writes. And

51 Bradlaugh Bonner, *Hypatia, Penalties Upon Opinion: Some Records for the Laws of Heresy and Blasphemy*, Third Edition, revised and enlarged by F.W. Read, Watts & Co., London 1934, p. 138.

52 Albrecht, Yoei, and Broertjes, Pieter, 'Ik kan niet tegen onrecht. Het veelkoppige monster van de onvrije democratie', in: *De Volkskrant*, 10 maart 2007.

53 Rose, Flemming, 'Why I Published Those Cartoons', in: *Washingtonpost.com*, Sunday, February 19, 2006.

he certainly had not intended to trigger violent demonstrations throughout the Muslim world. 'Our goal was simply to push back self-imposed limits on expression that seemed to be closing in tighter.'

The whole affair started when a Danish writer of children's books had trouble finding an illustrator for a book about the life of Mohammed. Nobody wanted to accept the job for fear of consequences. When finally someone was found who accepted the commission this was on the precondition of anonymity. Not only cartoonists in relation to sensitive issues were hard to find, it appeared also difficult to find translators for books related to Islam. Those translators did not want their names on the cover of the book.

This implied that there was an unequal treatment of religions, Rose contends. The cartoonists treated Islam the same way they treat Christianity, Buddhism, Hinduism and other religions. The message of the cartoons on Mohammed was the complete opposite of what the critics contended: 'By treating Muslims in Denmark as equals they made a point: We are integrating you into the Danish tradition of satire because you are part of our society, not strangers. The cartoons are including, rather than excluding, Muslims.'

From Rose's article it also appears that he does not have an exceptionally negative image of Islam. The cartoon that has drawn the harshest criticism (the one depicting the prophet with a bomb in his turban) can also be read as: 'Some individuals have taken the religion of Islam hostage by committing terrorist acts in the name of the prophet. They are the ones who have given the religion a bad name.'

Rose also makes an interesting point about the notion of respect in relation with the public sphere. When he visits a mosque, Rose tells us, he shows his respect by taking off his shoes. He follows the customs, just as he does in a church, a synagogue or any other holy place. 'But if a believer demands that I, as a nonbeliever, observe his taboos in the public domain, he is not asking my respect, but my submission. And that is incompatible with a secular democracy.'

This is an important point that brings us to the heart of the matter. Rose also discloses something about his motives that is rarely revealed in the popular comments on the cartoon-affair. His attitude towards free speech was deeply influenced by his work as a correspondent in totalitarian countries. He is a former correspondent in the Soviet Union and he is aware of the popular trick of totalitarian governments. They label every critique or call for debate as an 'insult' and punish the offenders. That is what happened to Andrei Sakharov, Vladimir Bukowsky, Alexander Solzhenitsyn, Natan Sharansky and Boris Pasternak. The lesson from the Cold-War is: 'If you give in to totalitarian impulses once, new demands follow. The West prevailed in the Cold War because we stood by our fundamental values and did not appease totalitarian tyrants.'

In the case of the publication of the cartoons in *Jyllands Posten* the editor of the newspaper and all those involved in the publication wanted to make a point about free speech. They considered it to be outrageous that it appeared to be impossible to make cartoons on holy figures from the Islamic tradition. That kind of self censure

was pernicious and should ignite protest. The makers of the cartoons and those who solicited those did not aim at giving offence, but the fact that people might feel insulted was considered to be of less importance than making an important point about free speech.

That element of balancing two evils against each other (1. the chance that people may get hurt, 2. the chance that free speech will erode) is characteristic of the new situation we are living in. This situation is not very dissimilar from the considerations that great scientists entertained when pondering over the question whether they should publish their ideas in full cognizance this would cause massive upheaval.

A similar balancing we find in the tradition of science where free inquiry often clashed with religious orthodoxy, sometimes with dramatic consequences for the innovators of new scientific ideas.⁵⁴

9 The truth has to be discovered: but how if not by free discussion?

Let me close with some remarks about the importance of free speech that have so far only been hinted on. What is the explanation for the fact that people can so often clash on this matter? Presupposed to the worldview of the advocates of suppression is, so it seems to me, that we already *know* what is true. Truth is manifested to us in divine revelation. We *already know* that man does not descend from the apes, because God told us so. We *already know* that Mohammed's character and behaviour are immaculate, because we have been informed in the hadith and the Koran. There simply is no need for further research. *We already know* – this is the motto of all the censors, inquisitors, and other people eager to kill the free flow of ideas and intellectual debate. The only thing that counts is the dispersion of a message from which the content is clear and unassailable, because it has been 'revealed' to us and the suppression or elimination of all obstacles (in the heyday of suppression including 'persons') that stand in the way of the truth that has already been found.

Intimately connected with this worldview is a conception of free speech. Free speech means the freedom to disperse views that are 'true'. Freedom to disperse false views can never be brought under the banner of 'real' free speech. What the advocates of false ideas refer to as 'free speech' is really a perversion of that principle.

Richard Robinson comments on Pope Leo XIII's encyclical letter of 20 June 1888 in which the pope declared that the public authorities ought diligently to repress the publication of 'lying opinions'.

Robinson indicates there are two good reasons for free speech. First, freedom is a great good and any suppression of freedom is consequently an evil. Second,

54 See the classical study by: White, A.D., *A History of the Warfare of Science with Theology in Christendom*, Twee delen, Dover Publications, New York 1960 (1896).

toleration⁵⁵ of free speech is far more likely to produce a general spread of true opinion than is the suppression of it.

Both reasons are relevant here, but the second needs more emphasis perhaps because this is likely to be overlooked. That has to do with the fact that many people (and the pope among them) think that if speech is left free, false views will generally be more easily adopted than right ones. The pope said: 'If unbridled licence of speech and writing be granted to all, nothing will remain sacred and inviolate; even the highest and truest mandates of nature, justly held to be the common and noblest heritage of the human race, will not be spared.'⁵⁶ Robinson does not agree. He says: 'When moral rules are not allowed to be criticized, bad ones creep in, and good ones are held in a stupid and immoral way'.⁵⁷

The advocate of the free flow of ideas departs from a different basis as the true believer. According to those favouring free speech what is true must be established in a painful process of discovery.⁵⁸ Inhibiting this process will make it impossible that we find out what the nature of reality is. So what the orthodox people do who frustrate the process of free development of religion and science is begging the question. We do not know what is true. What is true has to be found out. And therefore we need to canvass all the options that are available to us, all the theories that are proposed – even if those theories seem *prima facie* absurd, insulting or offending. We still have to test them (i.e. publish them, discuss them) in order to corroborate what counts as the truth.

55 Toleration in the classical sense, not in the sense of giving no offence to religious feelings. What Robinson advocates is toleration in the sense used by Leslie Stephen. See: Stephen, Leslie, 'Poisonous Opinions', in: Leslie Stephen, *An Agnostic's Apology and Other Essays*, Smith, Elder & Co., London 1893 (repub. 1969), pp. 242-338, p. 288: 'Toleration implies that each man must have a right to say what he pleases.'

56 Pope Leo XIII, quoted in: Robinson, Richard, *An Atheist's Values*, The Clarendon Press, Oxford 1964, p. 205.

57 Robinson, *Ibid.*, p. 206.

58 This is especially emphasized by a contemporary advocate of free expression and free inquiry: Karl Popper. See: Popper, Karl R., 'Science: conjecture and refutations', A lecture given at Peterhouse, Cambridge, in Summer 1953, in: *Conjectures and refutations*, Harper Torchbooks, Harper & Row, New York Hagerstown San Francisco London 1968 (1962).