

## **Kantor Center Position Papers**

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### **AFTER THE CHARLIE HEBDO ATTACK: THE LINE BETWEEN FREEDOM OF EXPRESSION AND HATE SPEECH**

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#### **Executive Summary**

The terror attack on the satirical magazine Charlie Hebdo in Paris January 7 2015 has sparked a debate on freedom of speech versus freedom of religion. These two basic values of a democratic society may seem to be at odds, but only when failing to make the distinction between attacks on a religion and attacks on people belonging to that religion. Increased clarity in how to define freedom of religion, freedom from religion and hate speech on racial or religious grounds will serve to create a consistent approach in combating intolerance in an increasingly multicultural society.

#### **Introduction**

The attack on the offices of the French satirical publication Charlie Hebdo on Wednesday January 7th 2015 left 12 people dead. On leaving the scene of the crime the gunmen said “we have avenged the Prophet Muhammad, we killed Charlie Hebdo”.<sup>1</sup> The next day a policewoman was killed near a Jewish school and centre. The day after that, the gunman who killed the policewoman, and who was linked to the Charlie Hebdo attackers, took people hostage in a kosher supermarket in Paris. Four French Jews and the attacker died in the

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<sup>1</sup> Adam Sage, ‘Charlie Hebdo attack: ‘We’ve avenged prophet, Charlie is dead’’, *The Australian*, 9 January 2015 <<http://www.theaustralian.com.au/news/world/charlie-hebdo-attack-weve-avenged-prophet-charlie-is-dead/story-fnb64oi6-1227178968201>>.

incident.<sup>2</sup> The terrorist attacks were condemned internationally, including by Muslim leaders.<sup>3</sup>

Around four million people marched in various parts of France in a demonstration against the attacks, the largest demonstration since the liberation of Paris from the Nazis at the end of World War II.<sup>4</sup> Forty-four world leaders attended the march,<sup>5</sup> and the absence of US President Barack Obama and other senior US figures led to a front page headline in *The New York Daily News* saying they had “let the world down”.<sup>6</sup> The slogan “Je Suis Charlie” had already gone viral online,<sup>7</sup> and was strongly present at the march.

All who marched made a statement of defiance against terrorism, but beyond this there were many different values that led people to march. This was not the first terrorist attack on French soil in recent years. In 2012, a series of attacks targeted French soldiers, then a Jewish school in Toulouse, leaving a teacher and three children dead.<sup>8</sup> Those attacks were declared a national tragedy, but didn’t receive anything like the outpouring the Charlie Hebdo attack received.

An esteemed historian of French "national sentiment", Pierre Nora, noted that in response to the Charlie Hebdo attack, “suddenly the collective was awakened in the individual”, people felt they, and the values which identify them, were being targeted.<sup>9</sup> This

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<sup>2</sup> Lucy Williamson, ‘France attacks: Police storm Kosher supermarket’, *BBC*, 9 January 2015 <<http://www.bbc.com/news/world-europe-30753200>>.

<sup>3</sup> Molly Hennessey-Fiske, Ramin Mostaghin, ‘Muslim leaders condemn French massacre, but some on street disagree’, *LA Times*, 10 January 2015 <<http://www.latimes.com/world/middleeast/la-fg-muslim-leaders-condemn-french-massacre-but-some-on-street-disagree-20150110-story.html>>; Carolyn Webb, ‘Charlie Hebdo: Islamic leaders in Australia condemn Paris attacks’, *The Sydney Morning Herald*, January 9, 2015 <<http://www.smh.com.au/national/charlie-hebdo-islamic-leaders-in-australia-condemn-paris-attacks-20150108-12kfq4.html>>; Matthew Coutts, ‘Canadian Muslim leaders condemn attack on France’s Charlie Hebdo’, *Yahoo! News Canada*, 7 January 2015 <<https://ca.news.yahoo.com/blogs/dailybrew/canadian-muslim-leaders-condemn-attack-on-frances-194759746.html>>; ‘Paris Murders are a Greater Insult to Islam: Muslim Council of Britain Statement on Charlie Hebdo Massacre’, Muslim Council of Britain: Press release, 8 January 2015 <<http://www.mcb.org.uk/paris-murders-jan-08-15/>>.

<sup>4</sup> ‘Charlie Hebdo shootings: More than 3 million people, led by world leaders, join historic marches across France’, *ABC News*, 12 January 2015 <<http://www.abc.net.au/news/2015-01-11/charlie-hebdo-world-leaders-historic-march-against-extremism/6011390>>.

<sup>5</sup> Lizzie Dearden, ‘Paris march: Critics say President Barack Obama 'let the world down' by not attending rally’, *The Independent (online)*, 12 January 2015 <<http://www.independent.co.uk/news/world/americas/paris-march-critics-say-president-barack-obama-let-the-world-down-by-not-attending-rally-9972674.html>>

<sup>6</sup> <https://twitter.com/NYDailyNews/status/554444346372927488/photo/1>.

<sup>7</sup> ‘‘Je Suis Charlie’ Message Goes Viral After Paris Attack’, *Associated Press*, January 7 2015 <[http://www.nytimes.com/aponline/2015/01/07/us/ap-eu-paris-attack-i-am-charlie.html?\\_r=0](http://www.nytimes.com/aponline/2015/01/07/us/ap-eu-paris-attack-i-am-charlie.html?_r=0)>

<sup>8</sup> ‘France shooting: Toulouse Jewish school attack kills four’, *BBC News*, 19 March 2012 <<http://www.bbc.com/news/world-us-canada-17426313>>

<sup>9</sup> Scott Sayare, ‘What Je Suis Charlie Has Become’, *The Atlantic*, January 30 2015 <<http://www.theatlantic.com/international/archive/2015/01/je-suis-charlie-france-patriotism/384990/>>

strong identification didn't occur before as the victims, including the soldiers, were all members of minorities within France and the public didn't feel personally targeted in the same way.<sup>10</sup>

The primary value being attacked was *laïcité*, a form of official secularism, which was written into French law in 1905.<sup>11</sup> The concept was intended to ensure a separation between the French State and the Catholic Church. More recently, this idea has morphed into a concept of separation between religion, as a strictly private matter, and public life. This French approach to “harmony” by relegating difference to the private domain, is what led, for example, to the French ban on school girls and government employees wearing Muslim headscarves in public.<sup>12</sup>

Charlie Hebdo was known to be a highly controversial satirical publication that regularly mocked sources of power in society, including religion. This mocking was often extreme. The paper's slogan, “dumb and nasty” (in French “*bête et méchant*”), came from a letter of complaint sent to the team behind Charlie Hebdo in the 1960s.<sup>13</sup> It has since become a common phrase in everyday French. Charlie Hebdo's often distasteful attacks on religion in general, and on Islam in particular, are seen as continuing the tradition of *laïcité*. The threats, and then attack, by those seeking to prevent this mockery of their religion, is therefore seen by many in France as an external attack on core French values.

In France, *laïcité*, and the right to publically attack religion, coexists with values of anti-racism and laws against Holocaust denial. To the French there is no contradiction. The first idea relates to established power structures, which can, and should, be challenged. The second idea relates to the inalienable individual rights of human beings, which can and should be protected. Many outside France missed this distinction and saw “Je suis Charlie” as a call for a more absolutist approach to freedom of speech, one that would protect rather than condemn hate speech, as the current interpretation of the First Amendment does in the United States. For those that missed the distinction, the public response appeared two-faced.<sup>14</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Scott Sayare, ‘The Charlie Hebdo I Know’, *The Atlantic*, 11 January 2015  
<<http://www.theatlantic.com/international/archive/2015/01/charlie-hebdo-secularism-religion-islam/384413/>>.

<sup>12</sup> Ibid.

<sup>13</sup> Elizabeth Hagedorn, ‘Charlie Hebdo And Islam: The History Of Its Satire’, *Newsy*, 7 January 2015  
<<http://www.newsy.com/videos/charlie-hebdo-and-islam-the-history-of-its-satire/>>.

<sup>14</sup> Amanda Vanstone, “Charlie Hebdo: Defence of free speech brings out the two-faced”, *The Age*, 19 January 2015 <<http://www.theage.com.au/comment/charlie-hebdo-defence-of-free-speech-brings-out-the-twofaced-20150118-12spdh.html>>; Sam Adler-Bell, “Might Makes Free Speech”, *US News*, 4 Feb 2015  
<<http://www.usnews.com/opinion/blogs/world-report/2015/02/04/aftermath-of-charlie-hebdo-attack-shows-western-free-speech-hypocrisy>>.

The response to the Charlie Hebdo attack has raised the need to better define and articulate what we mean by freedom of expression. A number of fundamental misconceptions and blind spots in the discussion on freedom of speech and its limitations have been exposed, and require clarification or refutation. A number of excellent points and analogies have also been made, and should be shared.

This position paper argues for improved clarity in three areas: the intent and therefore coverage of laws against vilification related to an individual's identity; the rationale for legal prohibitions on Holocaust denial which go well beyond merely preventing offence; and difference between criticism of Islam as a religion, which should be protected, and hate-speech targeting Muslims, which should be prohibited.

### **The Role of Anti-Vilification Laws**

Hate speech, at least in the form of racism, is prohibited by national laws in most countries. Vilification of minorities has been said to “diminish their dignity, sense of self-worth and belonging to the community”, which in turn “reduces their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of society as equals”.<sup>15</sup> Put another way, vilification of minorities damaged the “public good of an inclusive society”.<sup>16</sup> At the individual level it also removes victims’ “assurance that there will be no need to face hostility, violence, discrimination, or exclusion by others” as they go about their daily lives.<sup>17</sup> For many, their religion is as much a part of their identity as their race. For some, race and religious are intertwined; Jews and Sikhs have been recognised in law as ethno-religious groups. Indigenous peoples in various countries may also have aspects of both race and religion in their identity.

Religious vilification is often colloquially described as racism. This may in part arise from the overlap in areas such as antisemitism, where overt religious vilification, such as blood libel, is legally classified as racism. It also arises from the transposition of messages of classic racism towards religious minorities. Anti-Muslim religious vilification, for example, has been shown to use classic messages of racism such as dehumanisation.<sup>18</sup> In response to the colloquial use of the word racism against such hate, those vilifying Muslims have actively promoted messages seeking to differentiate their brand of bigotry and prejudice from the

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<sup>15</sup> *Racial and Religious Tolerance Act 2001* (Vic), Preamble para 3.

<sup>16</sup> Andre Oboler, “Legal Doctrines Applied to Online Hate Speech”, Num 87, *Computers and the Law*, July 2014, 10.

<sup>17</sup> Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012) 2—3.

<sup>18</sup> Andre Oboler, “Islamophobia on the Internet: The Growth of Online Hate Targeting Muslims”, *Online Hate Prevention Institute*, 10 December 2013, <<http://ohpi.org.au/islamophobia-on-the-internet-the-growth-of-online-hate-targeting-muslims/>>.

concept of racism.<sup>19</sup> One reason for this differentiation is that by law, racial and religious vilification may be treated as entirely different problems resulting in different levels of protection.

Laws against racial vilification are often based on the *International Convention on the Elimination of All Forms of Racial Discrimination*.<sup>20</sup> This treaty, now supported by 177 state parties, was one of the first human rights treaties of the United Nations.<sup>21</sup> Article 2 calls on state parties to condemn and take steps to eliminate such discrimination. Article 4 condemns propaganda and racist organisations; it calls for laws against the dissemination of racist ideas, incitement to racial discrimination, and against incitement to or carrying out of acts of racially motivated violence.

The position of International Law, however, does extend beyond racism. The *International Covenant on Civil and Political Rights* states in Article 20(2) that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”<sup>22</sup> In calling for a legal prohibition not only against calls for violence, but also against the promotion of hostility toward a group or discrimination against a group, the Covenant aims to create an environment where people’s identity does not define their relationship with society.

Where laws against racism do not extend to religion, some groups in society may not receive the protection of the law against vilification. Muslim communities, for example, may be very well defined as communities, but may not have legal protection against vilification of their community, or against people on the basis of them being a member of that community. Some jurisdictions have been closing these gaps either through the courts or through additional legislation.

In the United Kingdom protection against religious vilification was first added with the introduction of the *Racial and Religious Hatred Act 2006*. The creation of legal protections against religious hatred in the UK was complex and controversial.<sup>23</sup> Change in the House of Lords saw the offense related to religious hatred altered in a manner that made it far narrower than that of offenses related to racial hatred.<sup>24</sup> While content which is “threatening, abusive or insulting” is prohibited when its use is intended to stir up racial hatred or is likely

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<sup>19</sup> Ibid.

<sup>20</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>21</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=iv-2&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&lang=en)

<sup>22</sup> CHAPTER IV Human Rights, United Nations Treaty Collection.

[https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en#EndDec](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en#EndDec).

<sup>23</sup> Neil Addison, *Religious Discrimination and Hatred Law* (Routledge, 2007) 139.

<sup>24</sup> Ibid 140.

to stir up racial hatred,<sup>25</sup> in the case of religious hatred only threatening content used with the intent of stirring up religious hatred is an offence.<sup>26</sup>

In France, the idea of extending anti-vilification laws to cover religious groups runs into conflict with an extremist view of laïcité. This view sees the principle of laïcité not as a separation between religion and state, but as state endorsed secularism. Gérard Biard, Charlie Hebdo's editor-in-chief, said in 2012 that Charlie Hebdo was "an atheist paper, a secularist paper".<sup>27</sup> Following the attack he said that, "Laïcité is not just some abstract idea. It is a moral value, and I believe today, one must recognise that laïcité is perhaps the prime moral value of our Republic. Because without it, Liberté, Égalité, and Fraternité isn't possible".<sup>28</sup> Gérard Biard's 2012 statement that, "You're not supposed to use religion for your sense of identity, in any case not in a secular state",<sup>29</sup> highlights the problem with this view of laïcité. It is an imposition on the individual identity and freedom of other members of society. As French sociologist and political scientist, Vincent Geisser, explained, "Charlie Hebdo is only looking to impose its secular purity by treating everyone else as fanatics".<sup>30</sup>

Charlie Hebdo's satirising of Islam in the name of their view of laïcité is therefore a part of a very real attack not only on religion as an institution, but also on people's right to religious freedom. Understood in this way, laïcité stands in direct contradiction to the idea of freedom of religion expressed in the *Universal Declaration of Human Rights*. Article 18 of the Declaration states that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".<sup>31</sup>

Satire works when it is "punching upwards" against the powerful, but becomes no more than bullying when it is target against minorities.<sup>32</sup> Charlie Hebdo's determination to caricature the Prophet Mohammed in a "dumb and nasty" manner can be seen in the abstract as "punching up" against the power of religious orthodoxy, but also as "punching down"

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<sup>25</sup> Public Order Act 1986 (UK) S 18.

<sup>26</sup> Public Order Act 1986 (UK) S 29B.

<sup>27</sup> Scott Sayare, 'The Charlie Hebdo I Know', *The Atlantic*, 11 January 2015  
<<http://www.theatlantic.com/international/archive/2015/01/charlie-hebdo-secularism-religion-islam/384413/>>.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid

<sup>30</sup> Ibid.

<sup>31</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/RES/217A (III) (10 December 1948) <<http://www.un.org/en/documents/udhr/>>.

<sup>32</sup> 'Landover Baptist Church and the limits of satire', *Online Hate Prevention Institute*, 3 June 2014  
<<http://ohpi.org.au/landover-baptist-church-and-the-limits-of-satire/>>.

against a largely marginalised Muslim minority in France. It quite intentionally sends the message that those of Muslim faith must give up their religion in order to belong to French society. Is an imposed religion of atheism any better than an imposed religion of Catholicism? Scott Sayare has summarised the situation well in *The Atlantic* writing that, “From a perch of privilege, the former outsiders, who still relished the fight, turned their attention to what they perceived as threats to the values they’d helped instate—attacking the weak, in the end, as they had once attacked the powerful”.<sup>33</sup>

The principle of laïcité, as expressed by Charlie Hebdo’s editor, is not compatible with a human rights approach that respects individual freedoms, including freedom of religion. The incompatibility should be more obvious; the fact that it is not, points to a shortcoming in our approach to anti-vilification principles. For too long we have focused on racism to the exclusion of protections against other forms of vilification, be that religious vilification or vilification based on other identity defining factors, such as gender or sexuality. We need a consistent approach, and the simplest approach is to take all the progress made against racism discrimination, and simply extend it to these other aspects of a person’s self identity.

### **Why Laws against Holocaust Denial Are the Wrong Comparison**

The victims of the Charlie Hebdo attack were murdered because terrorists decided that the publication of cartoons was an action worthy of death. In response, some called for further publication of the pictures of Mohammed and newspapers found themselves under pressure to republish Charlie Hebdo’s cartoons, or explain why they refused to do so. Others argued it was insulting to Muslims to print such cartoons, and urged against publication. Many of the arguments against publication drew analogies between the offensiveness to Muslims of publishing cartoons of Mohammed, and the offence that would be caused to Jews in publishing cartoons about the Holocaust. There is a long history to this argument, but it fundamentally misunderstands the problem with Holocaust denial, and the reason why Holocaust denial material is banned in a number of countries.

First, let’s look at the debate over whether to republish the cartoons. Richard Minter argued in *Forbes* that, “real safety lies in collective, unified action... If every newspaper and news web site reprinted the cartoons, the jihadists would see that their actions are futile and

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<sup>33</sup> Scott Sayare, “The Charlie Hebdo I Know”, *The Atlantic*, 11 January 2015  
<<http://www.theatlantic.com/international/archive/2015/01/charlie-hebdo-secularism-religion-islam/384413/>>.

only fuel the spread of the images they abhor.”<sup>34</sup> In the *Guardian* Nick Cohen decried the unwillingness to print the cartoons as self censorship out of fear, “They would at least have acknowledged censorship if they had announced that they were frightened of attacks on their staff” he argued.<sup>35</sup>

Other editors opposed the printing of the cartoons on principle, Martin Baron, Executive Editor of the *Washington Post*, said the *Washington Post* would avoid printing material “that is pointedly, deliberately, or needlessly offensive to members of religious groups”.<sup>36</sup> Santiago Lyon, a vice president of the Associated Press said they didn’t think it was “useful” to “publish hate speech or spectacles that offend, provoke or intimidate, or anything that desecrates religious symbols or angers people along religious or ethnic lines”.<sup>37</sup> Some who would not republish the cartoons still strongly supported the right of Charlie Hebdo to publish them. In an editorial, the *Guardian* explained that, “defending the right of someone to say whatever they like does not oblige you to repeat their words”.<sup>38</sup>

What’s clear from the debate is that there is a principle of freedom of the press, but within that freedom, for reasons of good taste and the sensibilities of readers, some content which legally could be published, would not be published by the mainstream media. Whether as an argument for laws against cartoons of Mohammed, or for the exercise of editorial judgement to not publish such cartoons, the comparison with cartoons of the Holocaust was repeatedly made in online discussions. The argument is that cartoons of Mohammed should be banned or rejected from publication because they are insulting to Islam, just as cartoons about the Holocaust would be insulting to Jews. This argument, however, misunderstands the reason that countries like France have criminal offences for Holocaust denial and for glorification of Nazism.

The origins of the comparison go back to the Danish cartoon incident in 2006, the first global incident involving cartoons of the Prophet Mohammed. At the time *Hamshahri*, one of the top five Iranian newspapers by circulation, ran what it called the “International Holocaust

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<sup>34</sup> Richard Minitzer, “No, We Are Not All Charlie Hebdo”, *Forbes*, 9 January, 2015 <<http://www.forbes.com/sites/richardminitzer/2015/01/09/no-we-are-not-all-charlie-hebdo/>>.

<sup>35</sup> Nick Cohen, “Paris attacks: unless we overcome fear, self-censorship will spread”, *The Guardian: Comment is Free*, 11 January 2015 <<http://www.theguardian.com/commentisfree/2015/jan/11/paris-attacks-we-must-overcome-fear-or-self-censorship-will-spread>>.

<sup>36</sup> Paul Farhi “News organizations wrestle with whether to publish Charlie Hebdo cartoons after attack”, *The Washington Post*, 7 January, 2015 <[http://www.washingtonpost.com/lifestyle/style/news-organizations-wrestle-with-whether-to-publish-charlie-hebdo-cartoons-after-attack/2015/01/07/841e9c8c-96bc-11e4-8005-1924ede3e54a\\_story.html](http://www.washingtonpost.com/lifestyle/style/news-organizations-wrestle-with-whether-to-publish-charlie-hebdo-cartoons-after-attack/2015/01/07/841e9c8c-96bc-11e4-8005-1924ede3e54a_story.html)>.

<sup>37</sup> Ibid.

<sup>38</sup> “The Guardian view on Charlie Hebdo: show solidarity, but in your own voice”, *The Guardian*, 9 January 2015 <<http://www.theguardian.com/commentisfree/2015/jan/08/guardian-view-charlie-hebdo-show-solidarity-own-voice>>.



Cartoon Competition”.<sup>39</sup> The paper, which is owned by the local government of Tehran, argued it wanted to test if the West would apply the same principles of freedom of speech, which were invoked in defence of the Danish cartoons of Mohammed, when it came to cartoons about the Holocaust.<sup>40</sup> Masoud Shojai, one of the conference organisers, explained, “You see they allow the Prophet to be insulted. But when we talk about the Holocaust, they consider it so holy that they punish people for questioning it”.<sup>41</sup>

The flawed logic, regarding the Holocaust as religiously sacred, can be seen in the response out of Israel to the Iranian ‘International Holocaust Cartoon Competition’. Amitai Sandy, an Israeli Jew, created the “Israeli antisemitic cartoons contest”.<sup>42</sup> Sandy explained the competition saying that, “the contest for the best anti-Semitic cartoon was a demonstration of strength and self confidence”.<sup>43</sup>



Another problem with this comparison was expressed in a cartoon by J.J. McCullough, a Canadian cartoonist, showing a cuddly smiling image of Mohammed being drawn by a Dane, while next to him a Muslim says “do you have any idea how offensive that is”, as the Muslim draws an extremely antisemitic image labelled “The Jew”.<sup>44</sup> McCullough’s cartoon highlights the lack of context in the demand for a ban on cartoons of Mohammed.

When it comes to the Holocaust, for example, tasteful cartoons do exist and are celebrated, such as the Pulitzer Prize winning graphic novel *Maus* by Art Spiegelman. To suggest a certain topic may not be drawn in any way is to ask for a far broader restriction than would be necessary or meaningful.

<sup>39</sup> Scott Benjamin “Holocaust Cartoon Contest In Iran”, *CBS*, 7 February 2006

<<http://www.cbsnews.com/news/holocaust-cartoon-contest-in-iran/>>.

<sup>40</sup> Ibid.

<sup>41</sup> “Iran displays Holocaust cartoons”, *BBC*, 15 August 2006

<[http://news.bbc.co.uk/2/hi/middle\\_east/4795709.stm](http://news.bbc.co.uk/2/hi/middle_east/4795709.stm)>.

<sup>42</sup> Terry Gross “Stealing Thunder from Satirists in the Mideast”, *NPR*, 16 February 2006

<<http://www.npr.org/templates/story/story.php?storyId=5219479>>.

<sup>43</sup> Henryk M. Broder “Jewish Caricature Contest: Kosher Anti-Semites”, *Spiegel*, 21 April 2006

<<http://www.spiegel.de/international/jewish-caricature-contest-kosher-anti-semities-a-412390.html>>.

<sup>44</sup> Filibuster Cartoons at the Internet Archive

<<https://web.archive.org/web/20070409044928/http://www.filibustercartoons.com/archive.php?id=20060204>>.

The problem with the analogy is broader than the framing of the restriction. While Mohammed is a figure of religious belief, the Holocaust is a well documented fact, and tragedy, of recent history. Not only families, but entire communities were wiped out. The Holocaust is the event from which the very concepts of genocide, and of crimes against humanity, were created. To mock the Holocaust goes beyond insulting Jews, making fun of the dead, or calling survivors liars. These may be the reasons we object to Holocaust denial, but they are not the reason why France and other countries ban Holocaust denial.

The reason Holocaust denial is banned is the same reason glorification of Nazism is banned. They are banned out of a desire to prevent a re-emergence of fascism. As Professor Michael J. Bazylar explains, “the aim of these laws is to prevent the resurrection of Nazism in Europe by stamping [it] out at the earliest opportunity – or to use the phrase ‘to nip it in the bud’ – any public re-emergence of Nazi views, whether through speech, symbols, or public association.”<sup>45</sup> The Holocaust is not a “belief”, and mocking the Holocaust is not “blasphemy”, instead, it is a denial of historical fact and a form of incitement with very real and dangerous implications. The purpose of Holocaust denial is to rehabilitate the forces and ideology that led to the events of the Holocaust.

### **The Line between Criticism of Islam and Vilification of Muslims**

The purpose of laws against vilification is to protect the human dignity of individuals. Vilification laws protect human rights and freedoms, not ideas, ideologies, or power structures. On this basis, criticism of a religious belief must be permitted, but interference with an individual’s right to hold a belief, or to practice their religion, can be prohibited. The distinction can be seen by considering its application to cartoons of Mohammed in more detail.

The Koran itself does not contain a prohibition on images of Mohammed being shown.<sup>46</sup> While images of Mohammed are not present in the Arab Islamic context, they do exist in the Iranian, Turkish and central Asian contexts.<sup>47</sup> A prohibition on images of Mohammed is said to exist in a hadith, a record of conversations by Mohammed and his closest companions.<sup>48</sup> Hadiths are, however, open to multiple interpretations and the one on images of Mohammed gives “an ambiguous picture at best” according to Christiane Gruber,

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<sup>45</sup> Michael J. Bazylar, “Holocaust Denial Laws and Other Legislation Criminalizing Promotion of Nazism”, <<http://www.yadvashem.org/yv/en/holocaust/insights/pdf/bazylar.pdf>>.

<sup>46</sup> Daniel Burke “Why Islam forbids images of Mohammed”, *CNN*, 9 January 2015 <<http://edition.cnn.com/2015/01/07/living/islam-prophet-images/>>.

<sup>47</sup> *Ibid.*

<sup>48</sup> Christian Gruber “Koran Does Not Forbid Images of the Prophet”, *Newsweek*, 9 January 2015 <<http://www.newsweek.com/koran-does-not-forbid-images-prophet-298298>>.

an associate professor at the University of Michigan and an expert in paintings of the Prophet Mohammed.<sup>49</sup> Islam itself, therefore, cannot be said to definitely prohibit all depictions of Mohammed.

From an Islamic belief perspective, content insulting Mohammed or other prophets and their relatives is more clearly prohibited in the Koran, however, there is also a prohibition on violent retaliation against those who make such insults.<sup>50</sup> Nevertheless, one can argue that there is a low threshold, in Islamic belief, for what would be in Islamic terms, an offensive cartoon of Mohammed. This level of offense may be very different to what the average person might consider unacceptably offensive. It is, however, possible that some images of Mohammed are so offensive that they cross the standards of decency in society. Some of the Charlie Hebdo cartoons may well have done this, as indicated by the comments of newspaper editors discussed above. These cartoons, however, may offend us for reasons unrelated to the question of whether they insult Islam or Muslims, just as a ban on Holocaust denial can exist for a reason unrelated to the contents offensiveness to Jews.

Under principles of human rights, clearly a cartoon should not be considered hate speech merely because it depicts Mohammed. Such an approach would be too much of an imposition on freedom of expression. Equally concerning, however, is the idea that any cartoon which depicts Mohammed is not hate speech. We have seen the danger of such oversimplifications in relation to Facebook's approach to the Holocaust, where Facebook's refusal to recognise Holocaust denial as a form of hate speech led Facebook to reject any complaints involving the image of Hitler. This overly simplistic approach focused on defending symbolism led to Facebook to reject reports of content that involved cyber-bullying, substance abuse, and RIP trolling, simply because the image of Hitler was invoked.<sup>51</sup> We clearly don't want cartoons of Mohammed to be used to give other content a free pass.

I suggest there are two questions to answer in deciding whether a particular cartoon of Mohammed is actually vilification of Muslims. The first question is whether the cartoon is being used symbolically to represent Muslims in general? The second question is whether the

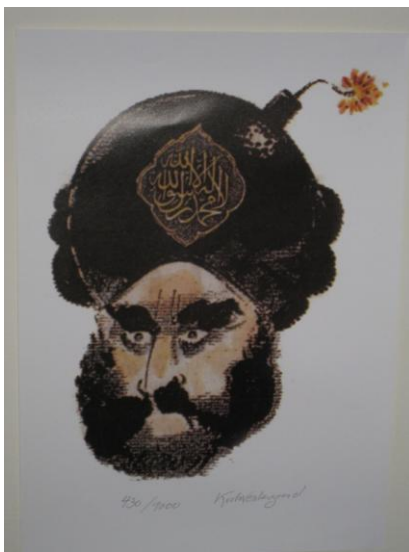
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<sup>49</sup> Daniel Burke "Why Islam forbids images of Mohammed", *CNN*, 9 January 2015  
<<http://edition.cnn.com/2015/01/07/living/islam-prophet-images/>>.

<sup>50</sup> Sarah Harvard "That Radical Cleric in USA Today Is Absolutely Wrong About Islam and Blasphemy", *Slate*, 8 January 2015  
<[http://www.slate.com/blogs/the\\_slate/2015/01/08/charlie\\_hebdo\\_and\\_islam\\_what\\_that\\_radical\\_cleric\\_in\\_usa\\_today\\_gets\\_wrong.html](http://www.slate.com/blogs/the_slate/2015/01/08/charlie_hebdo_and_islam_what_that_radical_cleric_in_usa_today_gets_wrong.html)>.

<sup>51</sup> Andre Oboler, "The Hitler Shield: Mocking the Dead at Facebook", *Jerusalem Post Blogs*, 24 October 2012  
<<http://ohpi.org.au/the-hitler-shield-mocking-the-dead-at-facebook/>>.

representation of Muslims in general is being used for vilification. Does the cartoon represent some negative trope or stereotype of Muslims? To give a comparison, there is a particular antisemitic meme of a Jew which is used persistently by neo-Nazis to represent Jews.<sup>52</sup> That cartoon directly invokes negative tropes and is by its nature an antisemitic portrayal of Jews. Even if this were not the case, a cartoon would be antisemitic if it was used to promote an antisemitic narrative. A cartoon where Jews were represented as a standard stick figure would be antisemitic if the content promoted the idea of the blood libel, that is, that Jews ritually murder Christian children.<sup>53</sup> Returning to the question of a cartoon of Mohammed, if the message of the cartoon is that all Muslims are terrorists, for example, the cartoon can safely be regarded as hate speech.



One such cartoon is the picture of Mohammed with a bomb in his turban. The original version of this image was drawn by Kurt Westergaard and was considered the most “controversial” of the original Danish Cartoons of Mohammed. Westergaard has rejected the common interpretation of his cartoon. He said that, “There are interpretations, which are not correct. It is a common perception among Muslims that [the cartoon] goes against Islam as a whole. It does not. It refers to those with a specific fundamentalist trait, which of course is not shared by all”.<sup>54</sup> Westergaard’s mistake was to use of the image of Mohammed, seen as a representative of all Muslims, in a context in which he was speaking about a far narrower group. He explained that he has used the symbolism of the bomb in the turban in other contexts to depict terrorists, and only ran into controversy once Mohammed was added to the context.<sup>55</sup>

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<sup>52</sup> Andre Oboler, “The Antisemitic Meme of the Jew”, *Online Hate Prevention Institute*, 6 February 2014, <<http://ohpi.org.au/the-antisemitic-meme-of-the-jew/>>.

<sup>53</sup> Of course we then run into other problems such as Facebook’s refusal to remove blood libel content, for example, despite blocking access to the page “Jewish Ritual Murder” (ID # 322140667835235) for Australian users on October 10<sup>th</sup> 2013, Facebook has repeatedly refused to close the page and it remains accessible to other users. See Andre Oboler, “The Antisemitic Meme of the Jew”, *Online Hate Prevention Institute*, 6 February 2014, <<http://ohpi.org.au/the-antisemitic-meme-of-the-jew/>>.

<sup>54</sup> Jannik Brinch, “Bombens Ophavsmand”, *Jyllands-Posten Indland*, 26 February 2006, <<http://jyllands-posten.dk/indland/ECE3831814/bombens-ophavsmand/>>.

<sup>55</sup> Ibid.

Without the twin factors of being representative of Muslims in general, and of promoting a negative stereotype, a cartoon of Mohammed may insult Islam, without vilifying Muslims. There may be many reasons people object to certain cartoons, but the grounds of vilification, which should exist, is both narrow and specific. A failure to recognise religious vilification, and to provide legal protection against it, can allow segments of society to come under attack without providing them a legal recourse. In an extreme case this may lead some individuals down a path of self indoctrination and ultimately to violent extremism. In other cases it will simply lead to affected individuals engaging less in society. This will still harm both the individual, and the public good of an inclusive society. While we must allow criticism of religion, we must also draw a line against religious vilification, be it of entire communities, or vilification of individuals on the basis of their faith.

## **Conclusion**

The French tradition of *laïcité*, strictly applied, limits religion to the private sphere. It aims to ensure social harmony, but can negatively impact on the right to freedom of religion. A better approach is to inclusively celebrate diversity, both of cultural groups and of religious groups. We need to treat attacks on minorities in society as attacks on the fundamental values of our society as a whole.

There are many reasons why certain content may be prohibited. The fact content offends a particular group may not be enough of a reason to prohibit it. This is not the reason Holocaust denial is prohibited in certain countries. One reason why content may be prohibited is that it vilifies a minority in society. Cartoons of Mohammed may in some circumstances do this, but only when the cartoon is used to represent Muslims in general, and when that general representation is then used to promote a negative stereotype.

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