

Red-Lining Free Speech

Castan Centre Director Reflects on the Danish Cartoons Controversy

By Professor Sarah Joseph

Greetings from the Lauterpacht Centre in Cambridge - it is of course wonderful to be here in Europe (notwithstanding the growing panic about bird flu)! The big human rights story over here has been the furore over the Danish cartoons – one of the trickiest free speech issues to arise in recent times – or any times!

What are the rights (and wrongs) in this issue? Publication of the cartoons was clearly provocative and offensive to many Muslims, and was probably designed to be so. The main motivation for publication was apparently to counter perceived Danish self-censorship on the issue, but the offence that would be caused was clearly foreseeable.

Do the cartoons amount to hate speech? Hate speech is speech which has a propensity to incite hatred and discrimination against a particular group, rather than speech which is offensive, even extremely upsetting, to a particular group. Of course, the beleaguered position of Muslims in many countries since the advent of 'the war on terror' must bear on this question: context is almost everything in deciding whether something is or is not hate speech. The Danish authorities found that the cartoons did not amount to hate speech under Danish domestic law.

If the cartoons are not hate speech, should Denmark have banned or punished publication because they posed a threat to public order? Here the question gets trickier. Should speech be banned because of the potential violent reaction of a tiny extremist minority of Muslims? Should a violent reaction thus be 'rewarded', and more peaceful reactions comparatively 'penalised'? Indeed, it must be remembered that the original protests in Denmark were peaceful; the violence came in riots in other countries after the cartoons were sent around the world in a dossier compiled by Danish imams. Should speech be censored due to the possibility of eventual global repercussions?

What of republication of the cartoons, mainly by European but also Arab and other newspapers? Republication informs people of what 'the fuss' is all about - the cartoons remain freely available on the web. Again, context is everything: republication on Wikipedia cannot be compared with the pointlessly provocative depiction of the cartoons on an Italian Minister's T-shirt. On the other hand – no one republishes child porn for 'explanatory' reasons. And continued republication fuelled fresh outrage, generating the spread of protests and unfortunately riots across the world for weeks.

An Iranian newspaper has responded by running a competition for cartoonists to depict and perhaps lampoon the Holocaust. Almost simultaneously, David Irving has been jailed for Holocaust denial in Austria. Holocaust denial has a history of fostering anti-Semitism and for that reason has been termed hate speech in many countries. Further, there is little doubt that the Iranian competition will and is designed to cause offence to Jews. But I cannot easily dismiss the Iranian paper's argument that the Western toleration of

the Danish cartoons is hypocritical when coupled with its intolerance of Holocaust denial; it is arguable that, currently, pictorial associations of Muhammad with terrorism, without signalling that terrorism is confined to the extremist few (and is not peculiar to Islam), are perhaps more likely to generate hatred against Muslims than Holocaust denial is against Jews. On the other hand, Holocaust denial, unlike debate about extremist Islam and terrorism, adds nothing of value to the marketplace of ideas.

Free speech issues also arose with the publication of more Abu Ghraib photographs by SBS television. Publication and consequent revisitation of the Abu Ghraib torture scandal has stirred up more anti-Western feeling in the Middle East and especially Iraq. But, I can say (with greater certainty than with the Danish cartoons) that the photos should have been published. Fresh outrage has perhaps been caused, not by the publication of new photos, but by the failure of the US to come clean with all relevant photos three years ago, especially when it should have been obvious that the photos could not be successfully suppressed forever.

The free speech arguments engaged by the 'Danish cartoons' episode are complex, and are raised rather than answered here. Even if one concludes that the cartoons should have been banned, the violent reactions of a minority are nevertheless disproportionate and unjustified, and in some cases opportunistic. For example, the violent protests against the depiction of Muhammad on the US Supreme Court building, on a marble frieze that has existed since 1935, smack of a desire to vent hatred against 'the West' rather than any principled protest. Of course, peaceful protests against the cartoons or the US Supreme Court frieze are perfectly acceptable, and represent exercises of rights of free assembly. But while one has a right to demonstrate, that does not amount to a right to have policies (or in this case newspapers and buildings) amended to respond to one's protests.

My personal opinion is that publication of most of the cartoons should not have been banned (though the image of Muhammad with a bomb in his turban may have crossed a line), with editors left to choose whether to publish. Nevertheless, it is unfortunate that the cartoons were published, given the tragic consequences. 139 people have died in violent protests against the cartoons across the world, as of 2 March. It is arguable that the Danish newspaper was asking for trouble, and trouble it certainly has with the cartoonists and editorial staff in hiding. But free speech is certainly not about pleasing everybody all of the time, and is often about displeasing most of the people most of the time.

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