



Opinion by
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The Globalisation of Free Speech: A Race to the Top or the Bottom?

The meeting of world leaders at the United Nations in September 2012 confirmed major faultlines over free speech. In the wake of the outrage prompted by *The Innocence of Muslims*, member States of the Organisation of Islamic Conference (“OIC”) are demanding the adoption of global blasphemy laws. Other States, particularly Western liberal democracies, argue that such a move would undermine the human right to freedom of expression.

Religious Hate speech

International human rights standards already demand the prohibition of hate speech. And certainly, anti-Islamic speech, or indeed speech which targets the advocates of any religion, can sometimes constitute hate speech. However, I do not believe that the film was hate speech. It was not likely to incite violence *against* the group targeted in the film, that is Muslims. Rather, it was more likely to provoke violence by a minority of Muslims against others, including other Muslims and non-Muslims. That is, the foreseeable violence was by a small radical component of the victimised group, rather than by people against that group. To my mind, that is not hate speech.

Are Blasphemy Laws Allowed under International Human Rights Law?

International human rights law tolerates blasphemy laws as a legitimate limit on free speech. For example, in *Wingrove v UK*, the European Court of Human Rights upheld the banning of a pornographic video on blasphemy grounds.

Of course, there are limits to how blasphemy laws can be enforced. The censorship of a video is one thing. The misuse of blasphemy laws by religious fundamentalists, most notoriously in Pakistan, to harass religious minorities and moderate Muslims, coupled with the possibility of a death penalty for conviction, clearly goes too far.

Global Blasphemy Laws

I disagree with the *Wingrove* decision, as it seemed to indicate that the right to freedom of expression could be limited by a purported “right” not to be offended on religious grounds. The right to frankly discuss the many problems that arise with regard to many religions is essential, so blasphemy laws can constitute a grave affront to free speech.

A demand for prohibitions on blasphemy goes much further than demands for prohibitions on hate speech. Bans on hate speech prevent the incitement of hatred against particular groups on racial or religious grounds. Blasphemy laws protect religions rather than people. Blasphemy laws may prevent the mocking or even perhaps the questioning of religion. Some of the most important speech in world history has challenged religious dogma (one only has to think of Galileo’s travails).

A global blasphemy standard would presumably extend beyond Islam, as it couldn’t justifiably protect only one religion. It would not only target the execrable *The Innocence of Muslims* or the rantings of Pastor Terry Jones. We would be deprived of many worthy works: imagine a world without *The Life of Brian*.

Globalisation of Speech

Modern communications, particularly the internet, mean that the manifestations of free speech in one country can spread around the world and cause reactions, sometimes deadly, in other countries.

A famous phrase for justifying the limits on free speech arises from the US Supreme Court on the US’s First Amendment in *Schenck v US* in 1919: one is not allowed to yell “fire” in a crowded theatre lest one cause a riot (unless of course there is a fire). Perhaps it may be argued that these days one shouldn’t be allowed to yell “fire” in a crowded planet. Maybe States should take into account the dangers of speech causing riots within but also beyond their own territory.

However, routine censorship in such circumstances would drive a race to the bottom for free speech. The internet has generally been thought of as an emancipating force for global free speech. It would be ironic and very disturbing if its advent drives a push for the compulsory adoption of lower standards of free speech in order to respect regional sensitivities.

More likely is that the internet will move beyond its global phase into a regional phase, where States reassert control over local internet content. Technological advancements now allow major platforms like Twitter and YouTube to selectively censor in different markets. Famously, China blocks numerous sites outside of its “great firewall”. Recently, Iran blocked access to Google in possible preparation for the launch of a national intranet which may be largely cut off from the world wide web, its promised “halal internet”.

Reverse cultural relativism

The current UN debate will likely lead to a renewal of the OIC’s push for the recognition of “defamation of religion” as a human rights issue. Non-binding resolutions in support of “defamation of religion” as a human rights concept were routinely passed by the UN Human Rights Council and its predecessor until 2011, when it was withdrawn, presumably because the shrinking majority in favour of the resolution was about to turn into a minority. The universal disgust over the content of *The Innocence of Muslims* may reinvigorate the resolution, and restore a majority in favour.

This battle over free speech introduces a new twist to debates over “cultural relativism” within the international human rights system. Cultural relativist arguments have traditionally arisen when non-Western countries attempt to resist the recognition of co-called “Western” human rights standards, for example those regarding women’s rights, same sex rights, political freedoms, or the death penalty. (The last example demonstrates that it is in fact simplistic to view human rights as Western concepts given the US is one of the most prolific remaining users of the death penalty).

In arguing for compulsory global blasphemy laws, the OIC is appropriating the language of human rights in an attempt to impose its blasphemy standards on other countries. And the West could find itself in a cultural minority resisting this development within the UN by defending freedom of expression. The battle over free speech poses a major challenge to the integrity of the international human rights system, and to claims of its underlying universality.