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JUST BECAUSE ONE MAY, DOESN'T NECESSARILY MEAN ONE SHOULD

One unexpected yet valuable byproduct of last week's massacre in Paris is the emerging debate over the propriety of publishing -- or republishing -- images and cartoons which are guaranteed to inflame the passions of Muslims the world over. This debate, which in essence pits freedom of speech and the press against discretion and self-censorship, carries with it an ethical dimension rarely found in public discourse. Many have applauded the editors and publisher of *Charlie Hebdo* for running a cartoon depiction of a weeping Prophet Muhammad



David Lester, "Free Speech Fight, 1912"

on the cover of their first post-massacre edition, which had a run of 3 million copies (as opposed to the usual 30-50,000). They who applaud view the publisher's decision as an act of both courage and defiance -- as well as a blow for freedom of expression.

Then too there are many who have voiced the opinion that the cartoon is needlessly provocative -- spitting in the eye of hundreds of millions of Muslims who take great offense at any depiction or physical representation of their holy prophet. Dean Baquet, executive editor of the *New York Times*, said in a statement explaining

his paper's decision not to republish the cartoon: "We do not normally publish images or other material deliberately intended to offend religious sensibilities." Pope Francis, while on a flight between Sri Lanka and the Philippines, told

reporters that people who "provoke" or "offend" others should not be surprised that such acts are avenged.

Of a certainty, both sides defend their disparate points of view with cogent, intelligent arguments. Freedom of expression is one of the great hallmarks of a free society. Then too, consciously provoking a huge slice of humanity may ultimately constitute a gross abuse of the very freedom we seek to celebrate. As with any debate dealing with issues of ethics and propriety, objective truth is illusive; absolute right or wrong is rarely, if ever, etched in Sinaitic stone. What the current debate comes down to, it seems to me, can be summed up as follows: *Just because one may, doesn't necessarily mean one should*. In other words, just because one has the freedom to publish a depiction of a weeping Muhammad, doesn't mean it is the best or the smartest thing to do.

Freedom of speech and expression, as embodied in the United States Constitution's 1st Amendment is not absolute; there *are* limitations. Most of us are aware of Mr. Justice Holmes' metaphor about "shouting fire in a crowded theater." To do so -- presuming that there is *not* in reality a fire at the time of the shouting -- would create a clear and present danger. Then too, there are laws against slander and libel, which are notoriously difficult to prosecute. For the most part, however, freedom of speech here in the States is close to being an article of faith.

More than a quarter century ago, the Supreme Court of the United States, in a 5-4 ruling held in [Texas v. Johnson](#) that burning or otherwise desecrating the American flag was to be considered "symbolic speech," and thus fully protected. Now, this is not to say that burning, spitting or stomping on an American flag is the smartest thing in the world to do -- even if it is protected as "symbolic speech." To do so could easily put the desecrator(s) in a perilous situation. Would they be legally covered? Yes. Would this stop the whooping they may receive at the hands of people who find their act disgusting? No.

Then too freedom of speech also gives one the constitutionally guaranteed right to make incredibly stupid statements in public. Take Texas Rep. Louie Gohmert. Just the other day, the half-witted gargoye from Tyler actually called on American leaders to emulate Egypt's military dictator, Abdel Fattah el-Sisi: *"I hope one day that our top leaders in this country will have the courage of president el-Sisi in Egypt and they will reflect, as general el-Sisi has, the will of the people of their country."* One wonders if Gohmert is aware of Sisi's track record of having orchestrated a *coup d'état* and presiding over the killing of more than a thousand dissidents. Maybe yes, and maybe no. In any event, the 1st Amendment fully guarantees people like Gohmert the right to make asinine statements for the entire world to hear.

It also brings us back to our thesis statement: *Just because one may, doesn't necessarily mean one should.*

One thing that many of who applaud the editors of *Charlie Hebdo* forget, is that "Freedom of Speech and Expression" is quite different in France -- or England, Israel, Germany, India, Japan or most every other country on the planet -- than it is in America.

Two examples:

Israel -- which has no constitution -- protects speech. Nonetheless, in 2011 the *Knesset* made it a civil offense to "call for a boycott of Israel." According to the law anyone calling for a boycott can be sued and forced to pay compensation, regardless of actual damages. At the discretion of a government minister, they may also be prevented from bidding on government contracts.

In France, freedom of speech and expression are embodied in the *Declaration the Rights of Man and of the Citizen*. The [French Press Law of 1881](#), guarantees freedom of the press, subject to several exceptions. France prohibits speech which incites hatred, discrimination, slander and racial insults. As of 1990, any racist, anti-Semitic or xenophobic activities, including Holocaust denial are also prohibited under penalty of punishment. One should also note that France does have a long and venerable history of supporting satire. And yet, days after the *Charlie Hebdo* killings, French authorities arrested the virulently anti-Semitic comedian Dieudonné M'bala M'bala for a Facebook post -- one that appears to sympathize with the *Charlie Hebdo* attackers.

One people's or culture's "satire" or "free speech" can easily be taken as a blasphemous insult by another. And that is precisely what depictions of Muhammad as run in *Charlie Hebdo* or the Danish *Jyllands-Posten*, or a novel such as Salman Rushdie's *Satanic Verses* were to millions upon millions of Muslims the world over. One response to the outrage within the Muslim world is simply *"That's your problem, not ours! If you don't like it, lump it! Quit being so damned sensitive, you homicidal maniacs!"*

Here in America, we have, for the most part, exercised a fair degree of maturity and self-restraint when it comes to offending other people's religious sensitivities. Although there is nothing wrong with using *Jesus Christ!* or *Oh my God!* as expletives, most don't. Just watch television; there, the expression is generally *Gee Whiz!* or *Oh my goodness!* (*I have a friend who is wont to proclaim "Oh my godfathers!"*) Supposedly, the Tampa Bay "Devil Rays" dropped the first part of their name because it was offensive to many Christians. (Ironically, once they did so, they had their first winning season in more than a decade.) And,

generally speaking, anti-Semitic, anti-gay or racist comments -- though constitutionally protected -- are met with swift condemnation and disapproval.

As one who has long been a card-carrying member of the ACLU and engages in two highly seditious activities -- writing and lecturing -- I support those who, exercising discretion and self-censorship, have decided *not* to republish the *Charlie Hebdo* cartoon. And while it is true that homicidal maniacs don't need reasons to justify their brutality, there are times when discretion trumps permission. This is one of those times.

Which gets us back to where we started:

Just because one may, doesn't necessarily mean one should.

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