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Bring Back Blasphemy Laws?

by James Bowman

Eric Posner in *Slate* argues that "the U.S. overvalues free speech" and makes a persuasive historical survey of how this freedom, once much hedged about, came to be regarded as absolute, first by the left and then by the right, only in the last half century or so.

Despite its 18th-century constitutional provenance, the First Amendment did not play a significant role in U.S. law until the second half of the 20th century. The First Amendment did not protect anarchists, socialists, Communists, pacifists, and various other dissenters when the U.S. government cracked down on them, as it regularly did during times of war and stress. The First Amendment earned its sacred status only in the 1960s, and then only among liberals and the left, who cheered when the courts ruled that government could not suppress the speech of dissenters, critics, scandalous artistic types, and even pornographers.

Later, the left started to think that maybe "hate speech" could be exempted from First Amendment protection, while conservatives and libertarians stuck up for the right to offend. But if, for most of our history, people took it for granted that First Amendment freedoms could be curtailed over matters of national security maybe, the thinking seems to be, we could agree to see insulting the Prophet as something beyond the pale — as a matter, in fact, of national security.

Professor Posner stops short of endorsing a law of criminal blasphemy, nor does he give any indication as to whether, if there were such a law, it would cover blasphemy against Christianity or other religions as well. Perhaps banning such dispensable works of art as Andres Serrano's "Piss Christ" — now, incredibly, making the cultural rounds once again after steeping for a quarter-century — or Chris Ofili's dung-bedaubed Virgin would be an acceptable price to pay to get the right on board with the effort to prevent further offense to Muslims and, hence, further violence directed at the U.S. In principle, it seems to me unobjectionable to pass a law requiring people to show a little respect to the holy things of other people's religions, since not doing so has no conceivable purpose beyond the offense to others itself. Britain had a law of criminal blasphemy for centuries during which that country was regarded as a beacon of freedom for the enlightened world. But there are a couple of problems.

One is that, as Robert Shibley argues in *The Daily Caller*, it would represent a capitulation to blackmail.

If we give those who are willing to be violent the censorship they demand, we only encourage more violence over other issues and create incentives for other groups to become equally violent in order to have their own demands met. If you want more of a certain behavior, rewarding it is the best encouragement. In crafting his apologia for international censorship, it seems Professor Posner has forgotten this basic principle.

The other problem is that there is no consensus as to what constitutes a holy thing — or a religion. The precedent such a restriction on speech would set for the politically correct to carry even further than they already have their project for re-sacralizing the world along political lines hardly bears thinking on. There are already enough sacred cows of the race, class, sex and sexual orientation families that are protected by all but unbreakable social sanctions; it would be a shame to add to these protections the force and majesty of the law. It is regrettably not that difficult to imagine a time when it might be illegal to say that colonialism is not responsible for Africa's developmental problems or that putting gay or female soldiers in the front lines could be detrimental to America's military effectiveness and security. No, I'm afraid we're stuck with our First Amendment absolutism.

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