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HATE SPEECH AND THE FREEDOM TO LIVE

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Drawing the legal line at insult or hurt feelings could do more harm than good at maintaining religious and social tolerance

In December 2016, Dutch courts found far-right politician Geert Wilders guilty of inciting discrimination for a 2014 post-election speech that was deemed “demeaning and thereby insulting” towards the Moroccan population.

The Freedom (PVV) party leader had appeared on television asking supporters whether they wanted fewer or more Moroccans in the Netherlands, to which the answer was, “Fewer!” A smiling Wilders answered: “We’re going to organise that.”

Such utterance would have little to no legal ramifications in the United States, where newly inaugurated President Donald Trump made similar remarks about Mexicans in the United States and more during the election campaign:

- Many Mexicans in the America are criminals and rapists;
- Mexico should pay for a wall separating the two countries;
- Illegal immigrants should be deported;
- Arab Americans cheered on the 9/11 attacks, despite a lack of evidence.

Why the different treatment for what appears to be the same thing?

“There is a major difference in the treatment of hate speech between the Americans, who are really exceptional, and the rest of the liberal democratic world – Canada, Australia, Western

Europe,” explains **Cherian George**, Associate Professor at Hong Kong Baptist University. “International human rights documents say that governments should intervene not just when there is violence but also when there is incitement to discrimination.”

Taking offence to freedoms of speech and religion

George was speaking at the recent SMU Wee Kim Wee Lunchtime Talk, “*Combating Hate Campaigns: Law and its Limits*” where he explained how America was unique in drawing the line at incitement to violence but allows incitement to hostility, as President Trump had repeatedly done. Minority communities in America have expressed fears of increased discrimination and even violence in the wake of Trump’s victory, although reported actual physical attacks are few and far between.

Instead of setting such a high threshold for legal recourse, why not draw the line at insult or offence, which much of the world outside of the liberal democracies have? Would that not keep a lid on rabble rousers such as Wilders and French far-right leader Marine Le Pen, and thereby manage tensions between different communities?

“Many people would think this is like choosing a setting on a thermostat,” says George, drawing the analogy. “Rather than setting the a/c to kick in when we’re about to suffer from heatstroke, let’s set it such that it kicks in when we get uncomfortably warm. That sounds intuitively sensible.

“But incitement and offence are not two different marks on the thermostat; they are qualitatively different. What makes them different is that incitement focuses on measurable harm that can be objectively assessed by courts, such as discrimination and libel.

“Offence is highly substantive, it’s in the eye of the beholder. More importantly, it’s asymmetrical – offence can be taken even when no offence is intended. So how do you rationally police this? It’s a problem.”

Besides the obvious impingement on freedom of speech, George points out implications for freedom of religion if offence laws were put in place. “Insult laws, offence laws, blasphemy, les majeste etc. are bad idea because they are counter-productive in trying to achieving racial or religious tolerance,” he asserts.

George highlighted the case of Jakarta Governor Basuki Tjahaja Purnama, aka Ahok, an ethnic Chinese Christian in the world’s largest Muslim country. Ahok is accused of blasphemy by insulting the Quran although he had made no calls for discrimination or hostility, never mind violence, Islamic hardliners have called for his imprisonment.

The governor may not have used hate speech, but those behind the push to oust him are practicing what George calls ‘hate spin’. He explains: “If you think of hate speech as the giving of offence, this other limb of it is the taking of offence. It is the manufacture of righteous indignation for a political purpose.”

“Manufactured offence is something that happens everywhere. It is most dangerous where those campaigns are reinforced by laws that give legal credibility to their campaigns. Hate spin agents are therefore not just able to beat their chests or do a street demonstration against a film or something else, they can also point at the law that prohibits the offence and demands the government takes action.”

He concludes: “I am sure the Jokowi government wishes to tell the people: ‘Look, calm down. This is no big deal. This is an innocent statement.’ But it is difficult for them to say that when their own laws state that there is a plausible case that Ahok was indulging in blasphemy. It has backfired badly on Indonesian democracy.”

Free from offence? Or free to worship?

Ahok's case illustrates the use of manufactured outrage by the religious right to marginalise minority groups. In the Indonesian capital Jakarta, Christians from nearby Bogor City hold fortnightly open-air morning services outside the Presidential palace to make a point about the closure of their church by the mayor in 2010. The church has since remained closed despite federal orders to re-open it.

Meanwhile in the U.S., the Christian Right in America hold similar views towards the Islamic religion e.g. [Bryan Fischer calling Islam the "Ebola virus of culture"](#). Relations with the Muslim minority were thrust onto the national stage in 2010 when members of the Christian Right in Murfreesboro, Tennessee protested the approval of the construction of a mosque. After attacks on the mosque and long-drawn court battles, the Islamic Center of Murfreesboro opened in August 2012 and saw off the final legal challenge for its closure in 2014.

"Indonesia is the country with laws against offence, while in the U.S., they won't protect you from getting your feelings hurt," George points out. "There is practically nothing Muslims can do to legally punish the Islamophobic groups for the lies that they expound. It could be done in Indonesia.

"The irony is this: Although the U.S. gives less protection to minorities from offence arising from free speech that Indonesia does, guess which project is now standing? The Muslims built their mosque in Murfreesboro but the Javanese Christians still don't have a church."

George concludes: "My guess is, if you ask realistic minorities which they would prefer: Have your feelings protected but stopped from practicing your religion? Or for the state to not give a damn about what is said about you but it will absolutely protect your right to build your place of worship and your right to dress whichever way you like?

"I think most minorities will choose the latter."