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McCartney, Kirstan (2015) *Drawing a limit on the freedom of expression? Charlie Hebdo, the French context and offensive speech*. [MSc]

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# Drawing a limit on the freedom of expression? *Charlie Hebdo*, the French context and offensive speech.

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September 2015

MATRICULATION No.1004628

TURNITIN ID: 16,129

TURNITIN PERCENTAGE:

WORD COUNT:

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Presented in partial fulfilment for the Degree of  
MSc. Human Rights and International Politics

College of Social Sciences  
University of Glasgow

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Drunken Blogging 2006



Comicdom 2015

*Abstract:*

*This thesis undertakes research on limitations to the right to freedom of expression. It considers possible legal and moral frameworks through which to ground a restriction on the right to freedom of expression based on religious offence. It will develop an argument to ground a moral restraint built from duties arising within tolerance, respect and recognition, and discourse ethics. This argument is then applied to the research's case-study – the Charlie Hebdo attacks and controversy over the publication of allegedly offensive cartoons – in order to determine how the theory may apply in practice. The research and conclusions drawn are important due to the fact that the Charlie Hebdo controversy adds to an increasing list of multicultural conflicts – such as the Rushdie affair, the Danish cartoons affair, and the headscarf affair – between the freedom of expression and limitations grounded in religion belief and offence.*

## Introduction

It is axiomatic in a democratic society that there is freedom of speech and expression. Whilst the right to freedom of expression only came to prominence in Enlightenment philosophy, its origins can be traced to Antiquity with the emergence of early forms of democracy in Ancient Greece (Koltay 2013: p.3). Freedom of expression and democracy are inherently linked as without public discourse there is no democracy and without freedom of expression there is no public discourse (Grimm 2010: p.11).

This idea that public discourse is necessary for democracy is expressed in deliberative democracy theory. Under this theory, the legitimacy of government and decision-making is derived from discursive consensus among free and equal citizens (Elster 1998: p.1). All citizens who will be affected by a decision or norm must have access to the deliberative procedures under which the decision is made or the norm created. Moreover, the legitimacy of these procedures depends upon all participants treating each other as equals by offering them justification for the collective exercise of power (Cohen 1998: p.186). This requires favourable conditions for expression, association and participation (Cohen 1998: p.186). Arguments about the importance of free speech for democratic legitimacy have been advanced by many liberal scholars in defence of an almost unrestricted freedom of expression (Laegaard 2007: p.482).

However, despite the rhetoric on the fundamentality of the right to free expression, common law and political philosophy have long recognised that there can be exceptions. Most liberal democracies have limitations on hate speech (Van Mill 2015), with the rationale involving a complex interplay between the sacrosanctity of free expression and norms of respect constitutive of social solidarity. Legal limitations on the right of free expression have thus been justified through prohibitions against ‘incitement to violence’<sup>1</sup> or against ‘doing harm’. Moreover, there is a body of literature that explores possible moral limitations to expression grounded in the ideals of respect and recognition in discursive practices.

The controversy regarding the publication of cartoons of the prophet Muhammad by a satirical French magazine – *Charlie Hebdo* – that ensued in the aftermath of a terrorist on its offices is demonstrative of the complex issues surrounding the right to freedom of expression and its limitations.

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<sup>1</sup> This is universally prohibited under Article 20(2) of the International Covenant on Civil and Political Rights

On the morning of 7<sup>th</sup> January 2015, two armed men stormed the Paris offices *Charlie Hebdo*, shooting dead eleven people and injuring many others. For the next three days, France experienced one of the worst terrorist attacks the country has ever seen. The attack was incited by revenge for the magazine's publication of provocative cartoons of the prophet Muhammad (BBC News Europe 2015a). The cartoons were viewed as incendiary because depictions of the Prophet are regarded as offensive by a great number of Muslims. Many Muslims argued that the Qu'ran and other Islamic texts warn against idolatry (Graham-Harrison 2015) which includes the creation of an image depicting their deity, the prophet Muhammad.

Over three million people partook in unity marches across France on 11<sup>th</sup> January 2015 in support of the victims of the shooting and the right of *Charlie Hebdo's* staff to use creative expression and depict the Prophet, no matter how offensive (BBC News Europe 2015b). Those in the marching crowds held placards expressing solidarity with the magazine, many penned with the now famous phrase "Je Suis Charlie". Others held pens and pencils (The Telegraph 2015) invoking the idiom that the pen is mightier than the sword. However, after the initial flurry of support for the magazine, some began expressing concern that the magazine crossed a line. Against much backlash, the New York Times decided not to show the cartoons; a decision which was deemed as cowardice and seen as a victory for the terrorists (Woolf 2015). Nevertheless its editor, Dean Banquet, defended his decision citing that he felt obliged to consider the sensibilities of The Times' readers. Although no one sought to defend the actions of the terrorists, it was emphasised that the right to freedom of expression does not entail freedom from criticism or freedom from consequence (Gay 2015). In May of 2015 six prominent authors withdrew or boycotted the PEN Literary Gala in New York which was to award the Freedom of Expression Courage Award to *Charlie Hebdo* (The Guardian 2015). The authors argued that this celebrated the magazine's "cultural intolerance" (BBC News US & Canada 2015). Whereas, the PEN president Andrew Solomon said "[the] defence of people murdered for their exercise of free speech is at the heart of what PEN stands for" (BBC News US & Canada 2015). The debate was polarised over the conflict between the freedom of expression and respect for religious belief.

This thesis will use the 2015 *Charlie Hebdo* shootings and ensuing controversy as a vehicle for re-examining the scope of the right to the freedom of expression and its limits<sup>2</sup>. *Charlie Hebdo* is a useful case-study because the controversy turned on whether the cartoonists had the right to free

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<sup>2</sup> Given the scope of this thesis it is not possible to discuss general arguments for free speech. Instead, this thesis will look at theories about the relationship between offence and free speech. Moreover, for the purpose of this thesis, and its exploration of alternative legal and moral frameworks grounded in offence, it will consider the cartoons of Muhammad as offensive on the basis they contradicted a fundamental belief of Islam and Muslims proclaimed to be offended.



expression or whether they were bound by a restriction, in law or morality, to refrain from exercising their right to freedom of expression. Therefore, this thesis will explore whether the only legitimate limits on the right to freedom of expression are those already prescribed by law.

Due to the fact that the *Charlie Hebdo* controversy happened only at the beginning of the year literature on freedom of speech and its limitations has yet to be applied to this specific case. The analytical undertaking in this thesis of applying legal and political theory on limitations on the right to freedom of expression to the *Charlie Hebdo* case-study, therefore, will contribute to the debate on free speech. It will also feed the wider debate on how restrictions on the right to free expression may be grounded. It will do so by turning traditional arguments about unrestricted speech being essential for democracy on their head and asserting that if profoundly offensive and disrespectful expression results in the exclusion of a group from the public discourse, then theories on deliberative democracy and discourse ethics would justify a restriction of the freedom of expression. Moreover, this theory can be mapped onto other contexts and countries. Whilst this research is focused on the moral obligations of *Charlie Hebdo* in the French context, the theory could be used to examine moral obligations on other actors in other countries, provided there was contextual analysis as set out in the last chapter of this thesis.

This thesis will conclude that *legally* the only legitimate limits to the freedom of speech are those already prescribed by law under legislation against hate or racist speech. However, this paper avers that there is another legitimate limit to that right which is founded in reciprocal *moral* duties contained within the right to freedom of expression. These concern the individual moral responsibility to refrain from publishing profoundly offensive material where the publication would result in the exclusion of members of a society. However, this restriction would be extra-judicial and would, instead, take the form of a moral obligation on society to ensure that such alienation from participation does not occur.

The first chapter of this thesis it will explore legal restrictions on the right to freedom of expression. The second chapter will then consider and develop an argument for moral restrictions on the right. The final chapter will apply the finding of the previous two chapters to the case-study in order to determine whether the only legitimate restrictions to the right to freedom of expression are those already prescribed by law.

## **Chapter I: Legal limits to the freedom of expression**

The research question asked by this thesis is whether the only legitimate<sup>3</sup> limits on the right to freedom of expression are those already prescribed by law. Therefore, it is first necessary to examine the pre-existing limits on the right and to determine whether the publication of the offensive cartoon by *Charlie Hebdo* can be encompassed under these laws. This will reveal that French law could only legitimately restrict publication where the cartoons amounted to racist speech and that the European Court of Human Rights (ECtHR) follows the decision determined by a member state. This chapter will then endeavour to discover whether legal and philosophical theories on harm and offence can provide a basis for an alternative legal framework that would limit the publication of these cartoons. Ultimately, it will conclude that no alternative legal framework can be identified and that no good grounds for changing the law can be found in the arguments on harm and offence.

### **1.1 Pre-existing legal limits**

Legal limitations on the right to freedom of expression are already imposed upon subjects to the law in France. These include not only domestic French laws but also international obligations arising out of the legally binding European Convention on Human Rights (ECHR) and decisions of the ECtHR to which France is a party. An exploration of both the domestic and international levels of law relative to freedom of expression in France is necessary to determine the legal obligation to which *Charlie Hebdo* is bound.

#### **1.1.1 Domestic laws**

The right to freedom of expression in the form of opinion and communication of ideas is codified in French law under articles 10 and 11 of *La Déclaration des droits de l'homme et du citoyen*. However, article 10 demands a balancing of this right with public order and article 11 dictates that persons are responsible for abuse of this freedom (Mbongo 2010: p.223). Legal restrictions on the right to freedom of expression are present in France under laws on hate speech. Hate speech is prosecuted by way of categories set out in the Law on the Freedom of Press of 29 July 1881 (Mbongo 2010: p.227). Article 24 prohibits any person from publicly inciting another to discriminate against, or to hate or to harm, a person or a group on the basis of adherence or non-adherence to,

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<sup>3</sup> Legitimacy is understood as being normative which requires it to meet certain procedural and moral conditions. A restriction on a freedom is usually considered legitimate if it corresponds to a defined legitimate objective, such as protection of the right to life. Moreover legitimacy will often depend on prescriptive norms of justice, fairness and equality. Therefore, this thesis understands a legitimate restriction to be one which based on a legally or morally defensible reason that does not infringe the aforementioned prescriptive norms.

amongst others, a particular religion (Janssen 2009: p.27). Articles 32 and 33 prohibit anyone from publicly defaming or insulting a person on the grounds of their religion (Janssen 2009: p.26).

The aforementioned laws were invoked in a 2006 French case when a coalition of groups sued *Charlie Hebdo* in a French court for republishing the cartoons of the prophet Muhammad from the Danish newspaper *Jyllands-Posten* (Noorlander 2015: p.116). The court ruled that the cartoons did not incite hatred and, therefore, a restriction of their publication was not justified under criminal law (Noorlander 2015: p.17). In its judgment, the court also emphasised the importance of free speech and the need to tolerate viewpoints that are considered offensive (Noorlander 2015: p.117). Moreover, all but one of the cartoons were deemed to be serving their parodic and satirical function, hence contributing to the freedom of expression, and to communication of thoughts and opinions (Mbongo 2010: p.232).

Nevertheless, it was conceded by the courts that the cartoon which showed the Prophet with a bomb in his turban could justify a conviction for religious abuse as it suggested that terrorist violence was inherent to Islam (Mbongo 2010: p.233). However, the court held that the cartoon should not be taken in isolation and that the context of the publication as a whole had to be taken into account (Noorlander 2015: p.117). Therefore, the court determined that the magazine was not propagating hate speech, but was adding to the wider international debate (Noorlander 2015: p.117). This is demonstrative of the broad freedom of expression which is accorded under current French domestic laws.

### **1.1.2. International obligations (the European Convention on Human Rights)**

France is bound by international obligations under the ECHR. The function of the ECtHR is to rule on alleged violations by states of their obligations under the ECHR (Council of Europe 2015). The ECtHR can hold a member state to account for its international obligations where the member state itself is unwilling. Therefore, it is necessary to ascertain whether the French government is violating any obligations under the ECHR when it does not restrict a publication on the basis that it is offensive to religious sensibilities.

The right to freedom of expression is protected under article 10 of the ECHR. The ambit of 'expressions' covered under the right to freedom of expression is vast. It covers primarily freedom of speech but the ECtHR has included in its scope artistic expression "which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas" (Muller and

Other v Switzerland 1988: para 27). The ECtHR has also consistently protected not only expression which is favourably received but that which is intended to “offend, shock or disturb the State or any sector of the population” (Handyside v UK 1979: para 49). Nevertheless, the ECtHR will restrict speech where there is incitement to hatred or racial discrimination (Nathwani 2008: p.491).

In terms of whether the ECtHR will restrict the right to freedom of expression on the basis of religious offence, the result is not sanguine. Firstly, whilst the right to freedom of religion is protected under article 9 of the ECHR, there is no concomitant right to be protected from having one’s religious views offended (Cram 2010: p.320). Moreover, there is a discernable trend in the Strasbourg court’s jurisprudence<sup>4</sup> that it will not interfere with a national authority’s determination of when to restrict freedom of expression on the grounds of offence to religious sensibilities (Cram 2010: p.315). The doctrine of the margin of appreciation recognises the diverse cultural and practical difference between member states and, therefore, is used by the ECtHR to allow the national authorities’ determination some discretion in determining the situation (Reed & Murdoch 2011: p.285). The argument is that national authorities with their local knowledge are best placed to make decisions regarding the demarcation of the line between permitted and excessive expression (Cram 2010: p.317). Whilst in most cases on restrictions of the freedom of expression on the grounds of religious offence the ECtHR has upheld a restriction, the basis was founded in the determination by the domestic legal system. Therefore, since the French government has decided that the expression and publication of the cartoons are permitted, it is unlikely that the ECtHR would find otherwise.

This overview of the pre-existing domestic and international limits on the right to freedom of expression has revealed that the publication of offensive cartoons by *Charlie Hebdo* would not fall within their ambit. A legitimate legal restraint on the freedom of expression vis-à-vis the cartoons in this case would have to come from the French government and only on the basis that they were racist. An examination of whether the cartoons can be deemed racist is beyond the scope of this thesis. For the purpose of this thesis, it will assumed that they are not, thus it is necessary to look elsewhere to ground a legal restriction on the right to freedom of expression.

## **1.2 An alternative framework to ground a restriction on the right to freedom of expression**

The following two sections will examine the Harm Principle and the Offence Principle respectively. Both the Harm and Offence Principle are designed to mediate conflicts which have arisen between interests in the freedom of expression and in the well-being of different members of

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<sup>4</sup> The most famous cases being *Otto-Preminger Institute v Austria*, *Wingrove v United Kingdom*, and *Murphy v Ireland*

society (Simester & Von Hirsch 2002: pp.272-273). Therefore, they will be pertinent to the objectives of the present thesis as harmful or offensive expressions have a lower threshold than racist expression and may thus offer reasons for grounding a legal restriction.

### **1.2.1 The Harm Principle**

In *On Liberty*, John Stuart Mill presents one of the most renowned liberal defences of the right to free speech. He asserts that no society can be deemed free in which the liberties of thought and expression are not, on the whole, respected (Mill 1993: p.81). This is due to the fact that he grounds freedom in the liberal value of autonomy which cannot be attained where individuals are compelled to “live as seems good to the rest” and not in accordance with their own pursuit of the good (Mill 1993: p.181). Moreover, he holds the liberty of expression of any opinion, however unpopular, in great esteem for he contends that it is a pre-requisite for human flourishing (Jacobson 2000: p.278). Thus, Mill’s chapter “Of the Liberty of Thought and Discussion” defends the right to free speech as enabling the discovery of truth and the development of individuality; both are necessary elements for human flourishing (Soutphommasane 2006: p.35).

Therefore, Mill holds an unrestrictive view of the right to free speech, especially regarding the articulation of unpopular or offensive belief. He famously contended that public opinion and the government have no justification in silencing a contrary opinion even where “all mankind minus one, were of one opinion, and only one person were of the contrary opinion” (Mill 1993: p.85). This is because the silencing of opinion robs the human race of possible truth or better knowledge which is expounded by hearing every opinion on a subject (Mill 1993: p.88). Moreover, where a government suppresses speech or determines what is considered worthy speech then it undermines the autonomous capacity of individuals to reach their own decision as to what constitutes the good life.

Nevertheless, Mill’s principle objective in *On Liberty* is not to provide a defence of free speech but to demarcate where society may legitimately interfere with another person’s liberty, in particular free speech (Britton 1969: p.120). Mill expects that by positing this delineation he will protect individual liberty against arbitrary interference by social authorities (Turner 2014: p.301). Consequently, Mill provides that the only legitimate circumstances where an individual’s liberty may be curtailed or where “power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others” (Mill 1993: p.78); this is the canonical formulation of Mill’s Harm Principle.

In his introduction to *On Liberty*, Mill distinguishes between the absolute inward liberty of consciousness and the liberty of expressing and publishing opinions which, he asserts “[seems] to fall under a different principle since it belongs to that part of the conduct of an individual which *concerns other people*” (Mill 1993: p.81 – emphasis added). Therefore, Mill’s application of his Harm Principle to the right to free speech provides that government interference with the right can only legitimately occur when the speech is likely to result in the direct infliction of harm upon others (Soutphommasane 2006: p.36). To elucidate upon this abstract formulation Mill gives the example of an opinion directed at corn dealers stating that they are starvers of the poor. He proposes that whilst no interference with the opinion is just where it is circulated through the press, it may incur punishment when delivered by a mob outside a corn-dealer’s house. This has led many commentators to interpret the Harm Principle restrictively as applying only to the imminent threat of physical harm (Turner 2014: p.300). *Prima facie*, it appears as though under the Harm Principle in its classic Millian formulation there is no justification for restriction of the opinions expressed in the *Charlie Hebdo* cartoons because they were circulated through the press and did not result in direct physical harm. On the contrary, it would seem as though the opinions expressed by Muslims that publication of cartoons depicting their Prophet are wrong should be restricted as they caused the killing, and thus physical harm, of the staff of *Charlie Hebdo*.

The reason why the Harm Principle does not appear to offer grounds for further legal restriction is because the harms envisaged by the publication of cartoons of the prophet Muhammad do not meet Mill’s criteria for harm as direct and imminent. Rather, it appears more intuitive in the present discussion to talk about the negative experience suffered by individuals caused by of the satirical depictions of the Prophet in terms of ‘offence’. In this context, it is worth exploring the theory advanced by Joel Feinberg, which explicitly considers the nature of offensive conduct and permissive legal restrictions founded on that basis.

### **1.2.2 The Offence Principle**

In Feinberg’s ambitious four-volume work on *The Moral Limits of the Criminal Law* he attempts to define acts the state may rightly make criminal. After looking at ‘harm’ in the first volume, the second – *Offence to Others* – begins with the postulation that the Harm Principle, however mediated, will not legitimise interference with the liberty of persons for the sole purpose of preventing unpleasant states, or ‘offence’, in others (Feinberg 1985: p.1). Therefore, this volume endeavours to discover whether, and when, the law is justified in using its coercive measures to protect people from mere offence by virtue of a new legitimising principle. This is the ‘Offence

Principle' formulated as follows: "it is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense [...] to persons other than the actor, and that it is probably a necessary means to that end" (Feinberg 1985: p.1). This thereby implies that offensive conduct is the state's business.

On this account, 'offence' is considered in the normative sense, which means it must be an offended state of mind produced by the objectively wrongful (right-violating) conduct of others (Feinberg 1985: p.2). Thus, it is not enough that a person subjectively feels wrong; it is necessary that there be a wrong. This is important in the context of *Charlie Hebdo*, as if the fact that a person felt subjectively offended by the content of a cartoon were sufficient for there to be a legal restriction, then there would unquestionably be a legal obligation to refrain from publishing it. However, following that logic, any expression that someone felt wronged by would justify a legal obligation to refrain from such expression and the right to freedom of expression would collapse into a right not to be offended.

Feinberg's seminal argument for legal prohibitions on the basis of offence attempts to tie offensive conduct to the law of nuisance (Feinberg 1985: p.6). Its legal framework includes a form of legal balancing act, which, when modified, Feinberg puts at the centre of his theory for deciding when the legal scales tilt in favour of the restriction of conduct. On one side of the equation is the impact of the offensive conduct on the audience; this is then balanced against the importance of the offending conduct (Simester & Von Hirsch 2002: p.271). The former consideration involves examining the seriousness of the affront to see how extensively and intensely it was felt (Simester & Von Hirsch 2002: p.271). Feinberg warns that this should be approached with caution in light of the existence of bigoted prejudices and the fact that people take offence at many useful social activities (Feinberg 1985: p.25). Thus, as a safeguard against unwarranted interference, he imposes the standard of 'reasonable avoidability' (Feinberg 1985: p.26). The latter consideration – the importance of the conduct – is examined from both the actor's perspective and the broader societal impact of the conduct (Simester & Von Hirsch 2002: p.271). The more central the conduct is to the actor's way of life, and the more he lacks 'alternative opportunities', the less likely the conduct will be restricted. Moreover, the greater the social utility and public value of the conduct, the stronger the claim for permitting the offensive behaviour (Feinberg 1985: p.38). Therefore, Feinberg follows Mill in deeming freedom of expression to have its own social value (Von Hirsch 1986: p.707): "no degree of offensiveness in the [substance of the] expressed opinion itself is sufficient to override the case for free expression" (Feinberg 1985: p.44).

This thesis now considers the application of the Offence Principle and its mediating maxims to the deliberation of whether the offensive conduct by *Charlie Hebdo* publishing of cartoons depicting the Prophet can be legitimately restricted. To help elucidate this question it is useful to consider Feinberg's "Story 29" where the reader should think of themselves as a loyal and pious Catholic passenger on a bus who, due its being crowded, is unable to move or get off (Thomson 1986: p.385). In Story 29, another passenger gets on the bus carrying a banner with a large and abusive caricature of the Pope and an anti-Catholic slogan (Feinberg 1985: p.13). This situation is analogous to that experienced by devout Muslims riding the Paris metro who may be exposed to someone reading an edition of *Charlie Hebdo* with a caricature of the prophet Muhammad on the front cover. Feinberg recognises that such affronts are more than mere nuisances and states they should be considered as 'profound offences' (Feinberg 1985: p.51). Therefore, in Chapter 9, Feinberg wishes to ascertain whether profound offence can be criminalised (Feinberg 1985: p.51). For this, he considered the case of the Nazis in Skokie, Illinois. A small group of Nazis planned to march through a 60% Jewish community in Skokie without giving speeches, but dressed in authentic uniform, wearing swastikas and carrying taunting signs (Feinberg 1985: p.86). The march was a deliberate affront to the sensibilities of the Jews in Skokie, including some 5,000 to 7,000 death camp survivors. In this particular case Feinberg asserts that there was no case for legal interference as the affronts could be easily avoided (Feinberg 1985: p.88). However, he did acknowledge that symbols such as the swastika and the KKK's robes have the primary function of affronting, insulting and threatening (Feinberg 1985: p.95). Therefore, because of this, and the fact that symbols are not socially useful, they are not as well protected by free expression. Conversely, a satirical depiction of the prophet Muhammad intended use is to engage in political advocacy and debate. As such, even in this case of profound offence, the "offending parties' rights to free expression [is] more fundamental than the right of others to be free of offended states" (Feinberg 1985: p.94).

Therefore, whilst ostensibly it appears that Feinberg's theory might be more encompassing of permissible legal restrictions against offence experienced by the depiction of the prophet Muhammad, due to the value he places on expression of the political advocacy type, his Offence Principle would likewise preclude legitimate legal restrictions placed on the publication of *Charlie Hebdo*'s satirical cartoons. This is clear when the balancing test is applied to the *Charlie Hebdo* context. On the one side the impact of the offensive conduct was significant as the affront seriously contravened a profoundly held belief and the intensity by which this was felt motivated certain individuals to murder. However, on the other hand, not only were the cartoons reasonably



avoidable, but they were also conducive to public debates on the freedom of expression and the extent to which religious belief should be accommodated. Thus the case for free expression prevails, and recalling that the harm principle does not apply since only non-physical harm was caused to the belief-holders by the publication of the cartoons, this leaves no legal framework in which to ground a restriction.

### **1.3 Chapter conclusion**

This thesis does not seek to challenge the conclusion that a legal restriction on the publication of the *Charlie Hebdo* cartoons would be illegitimate. To allow the state the power to restrict the freedom of expression on the basis of something as subjective and indeterminable as religious offence would be to give it a dangerous amount of authority over regulation of the public debate. Nevertheless, it is understandable for the offended parties to be dissatisfied with the conclusion reached in *Skokie* and *Charlie Hebdo* that since no physical harm was done to them, and since the speech had a political goal, then the offensive expression should be freely permitted. Thus, there have been attempts to modify the Harm and Offence Principles to include harms to other values, such as the dignity of individual (Amdur 1985: p.1958) and social cohesion (Simester & Von Hirsch 2002: p.289). Mill himself admits that “the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest” (Mill 1993: p.143). Under this interpretation ‘harm’ is extended to include social harms and the interests of other members of society. However, Mill explicitly rejects that punishment for violating social harm be sanctioned by the law and asserts that this can only justly be dispensed by public opinion (Mill 1993: p.143). This thesis will now therefore examine other forms of harm that result from offensive expression which may give rise to non-judicial restrictions.

## **Chapter II: Moral obligations regarding the right to freedom of expression**

Although the previous chapter has revealed that the only justifiable legal and state-coerced limits to the freedom of expression are those already found in law, it has not ruled out the possibility that there may be moral obligations which – when developed – will impose restrictions on the right. Therefore, it is worth examining whether there is a non-justiciable moral reason to ground an obligation on individuals to restrain themselves from exercising their freedom of expression in light of the fact the expression would cause profound offence.

This chapter will introduce the debate on multiculturalism to demonstrate that there are different moral and political theories concerning liberalism's role in accommodating often illiberal minority-group practices and beliefs. It will then examine how the concepts of toleration, respect and recognition help incorporate the accommodation of illiberal practice within a liberal framework. The theories will, furthermore, delineate moral obligations on multicultural societies to act in certain ways in order to be more inclusive of these minority cultures and their concomitant practices and beliefs. The chapter will conclude by establishing a moral framework for the legitimate restriction of free expression.

### **2.1 The 'problem' posed by multiculturalism**

The debate that arose posterior to the *Charlie Hebdo* attacks, which was centred on the interplay between the right to freedom of expression and the desire of religious persons' not to be deeply offended, is paradigmatic of the types of conflicts that arise in multicultural societies. This multicultural conflict adds to an ever-increasing list which includes the Danish cartoons affair, the Rushdie affair and the French head-scarf affair. Each conflict is characterised by the fact they revolve around clashes between different societal groups on account of their cultural difference (Lægaard 2007b: p.147).

Whilst by no means a new concept, multiculturalism occurs when borders are opened and once homogenous societies are confronted with different groups and cultures. In the late 20<sup>th</sup> century philosophical debates arose regarding the place of multiculturalism in liberalism as its insistence on individualism was said to be incapable of dealing with group loyalties and their cultural claims (Kukathas 1992: p.106). Some philosophers adhere to a sort of intransigent liberalism which denies that multiculturalism provides cause to modify of traditional liberal values. Thus, Brian Barry argues that the liberal value of equal treatment and neutrality are sufficient for ensuring justice:

“[f]rom a liberal egalitarian standpoint, what matter are equal opportunities. If uniform rules create identical choice sets, then opportunities are equal” (Barry 2001: p.32). If opportunities are equal then religious and cultural minorities have to bear the burden of their beliefs because it is their affiliations that affect the choices they make within the set of opportunities available (Song 2015). However, many others believe that the integrity of cultural or ethnic minorities demands a modification of liberalism in order to protect, tolerate or accommodate cultural practices. Whilst some have ultimately concluded that this objective requires an abandonment of liberalism, various philosophers have sought to grant minority cultures group-rights within a liberal framework in which they are given external protection against assimilation.

France is no stranger to the multicultural phenomenon and, with colonial roots in northern Africa, the influx of migrants often brought with them Islamic traditions and beliefs. Thus, in this case, the Islamic belief of not depicting the Prophet clashes with the liberal value of freedom of expression. Traditional liberalism would insist that all groups in French society are treated equally and, since depicting Jesus Christ is permitted, Muslims must have to suffer the “‘rough and tumble’ of democratic politics in the name of liberty” (Levey & Modood 2009: p.437). Conversely, liberal multiculturalists have asked whether “people should be safeguarded from conduct which they find offensive because of their religious belief” (Jones 1994: p.27) and whether society should be sufficiently flexible to accommodate such beliefs. This has led many philosophers to attempt to find legal grounding to protect ethnic minority group interests, but given the problems encountered in the first section of this thesis, this endeavour will be pursued no further here. Instead, the thesis will examine extra-legal means and theories in an attempt to uncover a moral obligation upon society to accommodate an incompatible cultural belief by refraining from offending it.

## **2.2 Tolerance**

The value of toleration “lies at the heart of the good society in a world of diversity” (Kukathas 2003: p.120). In a multicultural society, important differences between groups will be such that one group will respond to the practices of another with disapproval, dislike or morally condemnation (Mendus 1989: p.8). Liberal multiculturalism asserts that since agents must be able to live in accordance with the life they choose, disapproved practices must be tolerated. This thesis will therefore examine toleration as a means of reconciling the minority illiberal belief that opposes depictions of the Prophet with the dominant liberal belief in the right to free expression.

Toleration is an elusive concept (Heyd 1996: p.3) but Andrew Cohen deconstructs it to reveal eight individual component parts. He avers that an act of toleration is “an agent’s intentional and

principled refraining from interfering with an opposed other (or their behavior, etc.) in situations of diversity, where the agent believes she has the power to interfere” (Cohen 2004: p.69). In this way, agency, intent, principle, non-interference, opposition, otherness, diversity and power are synthesised as the eight parts. Three of these eight elements – power, non-interference and principle – require some further elucidation.

First, power implies that tolerators are in a position of power which would allow them to “suppress, disrupt, or censure the offending speech or behaviour” (Cohen 2004: p.93) but, in being tolerant, they refrain from doing so. This notion of power designates the tolerators and the tolerated (Lægaard 2009: p.320). The purpose of this section is to discover whether the cartoonists were bound by duties of toleration, which necessitated tolerating the – to Western eyes – illiberal prohibition against depictions of Muhammad. Since it makes more sense to talk of majorities tolerating minorities (Modood 2013: p.58), this requires re-examining power to include social hierarchies and exclusion within them (Lægaard 2009 p.321). Following this interpretation, the publication of the cartoons that may be seen as the intolerant act where it express a view of Muslims that upholds social exclusions. The elusiveness of the concept of toleration does therefore permit this important and different interpretation. It is this latter understanding of toleration that this thesis will follow in the rest of the discussion.

The second element relevant for the argument to be made here is the principle of non-interference. Simply put, non-interference requires that the tolerator take no action to prevent the behaviour in question (Cohen 2004: p.85). Consequently, toleration is said to give rise to negative duties and, thus, classical toleration has been described as a *laissez-faire* virtue (Herman 1996: p.61). In the case of *Charlie Hebdo*, in tolerating the Islamic belief that prohibits the depiction of Muhammad, the general public should refrain from coercively attempting to change this belief. However, the object of this thesis is to explore possible obligations that go beyond merely permitting the holding of a belief. For if this were the case, then *Charlie Hebdo* would only have a moral obligation to allow Muslims to believe that depicting the Prophet is wrong, but no obligation themselves to refrain from doing so. If there is a legitimate limitation on the right to freedom of expression in the form of a moral obligation to self-censor, then this would entail a strong toleration by individuals to support the Muslim belief against the depiction of the prophet Muhammad. Therefore, it is necessary to examine the plausibility of strong toleration.

Joseph Raz defends strong toleration (Deveaux 1998: p.418). Raz justifies his strong toleration by appeal to the value of cultural identity and membership (Deveaux 1998: p.415). He

does so by connecting cultural membership to the fostering of autonomy (Raz 1988: p.375). Raz's strong toleration affirms the importance of cultural identity, offers reasons for valuing diversity and transcends the minimal protection in weak toleration (Deveaux 1988: p.420). However, its emphasis on autonomy is too narrow for it implies that belief and practices which do not foster autonomy may not be worthy of toleration. If this thesis wishes to seek an inclusive conception of toleration, it must ensure that toleration is not simply valued for being instrumental to autonomy.

Following on from the above, Cohen argues that toleration requires 'principled restraint' whereby an agent's non-interference is based on the belief that it is the morally right thing to do (Cohen 2004: p.81). Cohen avers that the principled reason why toleration is good is premised on the value of respect for others or on the intrinsic value of toleration (Cohen 2004: p.81). Chandras Kukathas provides one of the most persuasive arguments for the value of toleration being intrinsic. Kukathas takes issue with previous autonomy-based conception of toleration as being too narrow and only commanding toleration where the minority practice already abides by pre-established values (Kukathas 2003: p.125). Instead, Kukathas starts from the premise that liberalism is committed to reason and that reason's existence depends on the public realm for free discussion and criticism (Kukathas 2003: p.127). Kukathas subsequently argues that due to the nature of diversity there is no common standpoint and, therefore, relations between communities involve disputes in the realm of public reason (Kukathas 2003: p.128). These disputes will include discussions regarding the nature of the good life. However, for toleration and reason to prevail no-one must try to compel or manipulate the other to live differently (Kukathas 2003: p.130). Moreover, if upholding reason requires toleration to protect discussion in the public realm then this implies that toleration must also protect the freedom of conscience (Kukathas 2003: p.131). Consequently, Kukathas' account argues strongly against curtailment of the freedom of expression and hence poses a problem for the aim of this thesis. Furthermore, Kukathas' theory of toleration is inherently negative regarding duties. This is due to the fact that Kukathas believes that the idea of toleration means that the liberal state should be "culture-blind" and characterised by a politics of indifference (Kukathas 2003: p.152).

However, weak toleration in the form that Kukathas endorses does not succeed in securing adequate respect for cultural minorities (Deveaux 1998: p.416). This is because according to Kukathas' there would be no affirmative duty on the dominant society to recognise that depictions of the prophet Muhammad are offensive to the beliefs of a particular community, or that this recognition could entail a duty to refrain from causing such offence. If the staff of *Charlie Hebdo* are to be bound by moral duties not to depict the Prophet then it must be because there is a recognition

that this is a deeply held religious belief, which is somehow different from depicting other offensive content, and that this recognition commands respect (Gutmann 1994: p.8). By advocating a politics of indifference Kukathas simply cannot fully meet cultural claims for recognition nor deliver the respect necessary for intercultural dialogue and cooperation. To understand why, it is necessary to examine the value of respect in accordance with the need for recognition.

### **2.3 Recognition and respect**

In lieu of liberal concerns for toleration and neutrality, some multicultural philosophers contend that recognition is the proper response to cultural diversity. If so, then recognition might help answer whether good reasons exist to restrict freedom of expression in cases where it mocks the profoundly held beliefs of individuals. For recognition to be a restricting ground, it could only limit the freedom of expression where mockery results in harms of misrecognition.

This thesis avers that a democratic society needs to abide by a politics of recognition in order to ensure adequate respect and justice for minorities. This is because the tenets of recognition command that different ways of life are acknowledged as valuable and, as such, should be respected. Moreover, withholding recognition can be a form of oppression (Taylor 1995: p.232). This is pertinent to the *Charlie Hebdo* controversy that the complaint made against publication of the cartoons depicting the prophet Muhammad was that they failed to recognise the importance of the Islamic belief or acknowledge the non-physical harms done. If this were the case then a moral obligation may be grounded in the harm of misrecognition.

Charles Taylor asserts that, due to the social nature of human beings, a person's identity is shaped by recognition or misrecognition of others (1995: p.225). Therefore, people can suffer real damage if others in society mirror back a demeaning picture of them (Taylor 1995: p.225). Axel Honneth identifies three modes of recognition – care, respect and esteem – each with a corresponding misrecognition which threatens an individual's self-confidence, self-respect and sense that their way of life is valuable (Thompson 2012: p.217). Recognition as esteem entails that an individual's chosen ways of life are acknowledged as being valuable by other members in society (Thompson 2012: p.225). Misrecognition occurs where one's identity is ridiculed and ways of life are denigrated (Thompson 2012: p.225). Misrecognition can therefore be a form of status harm social groups may be stigmatised through speech and its members made to feel excluded or as second class citizens (Thompson 2012: p.228).

Recognition is also tied to a politics of difference as it commands that the unique identity of individuals and groups be recognised as distinct (Taylor 1995: p.234). If this distinctness is glossed over, there is a potential collapse into assimilation into a dominant identity (Taylor 1995: p.234). However, if this difference is recognised it forms the basis for differential treatment (Taylor 1995: p.234). A politics of difference helps explain why a liberal society should take into consideration the distinctively Islam belief that forbids the depiction of the Prophet. The belief is recognised as constitutive of a Muslim's identity and as distinct from other religions where depiction of their Prophet is not seen as idolatry. Thus an act of recognition can be a positive affirmation of factual differences which may be a cause of inequalities (Lægaard 2007b: p.152). This also entails that the belief is respected. This is because recognition as respect is experience where citizens recognise each other as rational authors of the law (Thompson 2012: p.225). When a person is recognised as a rational agent then they command dignity and respect (Taylor 1995: p.235). Moreover, where people cease to be regarded, or cease to regard themselves, as citizens able to play an active part in the life of their political community then they experience misrecognition (Thompson 2012: p.225).

Respect for the person is a constitutive part of many moral theories and can be largely attributed to the influence of Immanuel Kant. One formulation of the categorical imperative is the formula for humanity which states "so act that you use humanity, whether in your own person or in the person of any other, always at the time as an end, never merely as a means" (Kant 1998: p.38). The esteem which Kant places on the rational capacities of humans led him to conclude that human beings are ends in themselves who are entitled to absolute dignity. Therefore, respect, recognised as "the acknowledgment in attitude and conduct of the dignity of persons as ends" (Dillon 2015), must be owed to all human beings. Regarding *Charlie Hebdo*, most of those critical of the cartoons were offended not because of the socio-religious critique being advanced, but because their beliefs were being criticised in a disrespectful way.

Peter Jones has examined the idea of respect and its relationship with religious belief in the context of the Danish prophet Muhammad cartoons. Jones states that the wrongness of the cartoonists' act lay in disrespecting Muslims due to the calculated, and seemingly direct, insult of their belief (Jones 2011: p.88). However, Jones is wary about the constricting implication that respect for belief puts on individual conduct and asserts that respect for belief should only be given parsimonious weight (Jones 2011: p.87). Construed as such, respect for beliefs should not preclude a person from criticising or attacking another's belief (Jones 2011: p.88).

This thesis agrees with the conclusion that respect should not preclude criticism of belief. So, on the above understanding, it does not look hopeful that duties of respect can establish an

obligation to restrict the freedom of expression. However, Carla Bagnoli and Monique Deveaux's dialogical view of respect and recognition may offer some promise. They interpret respect as putting constraints on how persons act, deliberate and relate to others (Bagnoli 2007: p.113), since respect is the experience of mutual and social recognition of others as autonomous beings with intelligible reasons for their beliefs and actions (Bagnoli 2007: p.116). Therefore, in order to meet the claims of respect and recognition there is an obligation to engage dialogically with the content and context of the belief and practices of different cultures in order to reach an understanding. In juxtaposition, tolerance, especially a negative and weak one, does not require any reflexivity of one's own view or critical and respectful engagement with the normative substance of other cultures (Deveaux 1998: p.422). Therefore, dialogical engagement might advocate against certain form of expression due to duties of respect and recognition of human dignity. This idea will be further examined below.

## **2.4 Discourse ethics and democratic legitimacy**

This thesis will now examine discourse ethics – a theory centred on the value of dialogical engagement, communication and participation in the public realm and the duties arising therein. Furthermore, owing to the emphasis on individual participation in discourse ethics, it is naturally tied to theory of democratic legitimacy, i.e. a democratic model that relies on the active and mediated self-rule by all citizens (Cram 2010: p.328).

This thesis will draw on the influences of these different theories to constructs own theory which imposes a moral obligation to refrain from forms of expression that lead to the exclusion of groups from the public discourse. This will require an account of how public discourse should be structured. The theory will also attempt to delineate how this moral obligation can be enforced and what plausible sanctions would be imposed where parties do not engage with the procedures outlined. *Charlie Hebdo* has previously defended publication of the cartoons of the prophet Muhammad on the grounds that it is using its freedom of expression "to comment (on) the news in a satirical way" (Silva 2015). Given that its purported objective publishing these cartoons appears to be dialogical engagement, it is necessary to consider how it should look and whether moral obligations exist.

### **2.4.1 Discourse ethics**

The previous discussion on Kukathas already introduced multiple imperative elements to the theory of discourse ethics: the role of reason, the setting of the public realm and the importance of regulating intercultural disputes. Kukathas recognises a problem faced by intercultural dialogue; if there is no common standpoint from which to begin the deliberations then how can there be moral



engagement between cultures (Kukathas 2003: p.131). Consequently, he stipulates that there must be some *modus vivendi*; there must be basic norms for governing social relations (Kukathas 2003: p.132). The postulation of standards that regulate intercommunal conduct is interesting. However, this thesis wants more from a theory of public discourse than Kukathas is prepared to offer due to his commitment to a politics of indifference regarding different cultures. What this thesis seeks is a theory of ethics which recognises and respects different forms of life and guards the life-contexts within which people have been socialised (Habermas 1994: p.113)

Karl-Otto Apel and Jürgen Habermas co-developed the theory of discourse ethics in order to address the problem of toleration in multicultural liberal democracies (Apel 1997: p.199). Apel's discourse ethics posits an affirmative, or strong, toleration which is grounded in the realm of practical reason and the thesis that all participants in a moral community have co-responsibility for the discovery of a solution to the problem of mediating between different value claims (Apel 1997: p.199). Habermas accepts the need for recognition of persons as members in an ethical community integrated around different conceptions of the good (Habermas 1994: p.133), thereby also acceding to the value of respect, as previously discussed.

Habermas' aim was to establish a theory of ethics that would take ethnocultural traditions seriously whilst preventing the total abrogation of liberal values (Malik 2010: p.113). His greatest influence was Kant and his emphasis on argument and reason as creating the conditions for secular consensus. This is because a morality through dialogue will yield a consensus which all actors can accept as they recognise the grounds on which it is based (Eriksen & Weigård 2003: p.66). Therefore, Habermas' theory is a reformulation of Kantian deontological ethics in terms of communicative structures. His discourse ethics is formalist as, in contrast to Aristotelean ethics, the theory does not attempt to specify the content of moral truth, but determines instead which principles and procedures must be followed to arrive at morally tenable results (Eriksen & Weigård 2003: p.67). Accordingly, the ethical position is located in the procedures of discourse. It is also linked to Kantian tradition due to its universalistic character.

Kant's requirement for universalisability of the categorical imperative dictates that norms are only valid if they can be made universal (Kant 1998: p.31). In discourse ethics this translates to the requirement that "*all* affected [by the norm] can accept the consequences and the side effects its general observation can be anticipated to have for the satisfaction of *everyone's* interests" (Habermas 1990: p.65 – emphasis added). Through discourse and argumentation it will be revealed whether the norm in question will damage some actor's interests more than others, or if it expresses a genuinely common and impartial interest (Eriksen & Weigård 2003: p.69). Accordingly, Habermas'

principle of discourse ethics states that “[o]nly those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse” (Habermas 1990: p.93). Therefore, it is a presumption of discourse ethics that no one should be excluded. There are then two further principles which must be observed in the procedures of reaching rational consensus. The first is symmetry which implies universal moral respect and the recognition of each individual as an actor capable of speech and participation in the moral conversation (Malik 2010: p.112). The second is reciprocity whereby there is equal opportunity to make feelings known and to initiate communication (Rasmussen 1990: p.64). Thus for *Charlie Hebdo* the public discourse in question was the views expressed on Muslim inherent in the very drawing of the cartoons. Discourse ethics demands moral obligations on the parties to ensure that everyone had access to the debate and were able to help each other understand why the content and context of their beliefs was important. It also commands that dialogical engagement is conducted with respect; thus drawing a cartoon that it known to be deeply offensive is not respectful but neither is shooting dead those who have drawn it.

#### **2.4.2 Democratic legitimacy**

The formal principles of discourse ethics offer guidance for models of deliberative democracy (Malik 2010: p.111). Deliberative democracy “is achieved when those who are subject to law believe that they are also potential authors of law” (Post 2011: p.482). This is likewise suggestive of Kant and his third formulation of the categorical imperative whereby rational beings must act as “a member giving universal laws for a merely possible kingdom of ends” (Kant 1998: p.46). It also implies adherence with a structural framework for discussion that is endorsed by all those who seek to participate in public discourse. This is because it is through the ability to participate in discussion that citizens can influence government (Cram 2010: p.328), and through consensus reached in public discourse that governments can be held accountable (Post 2011: p.482). The source of legitimacy in such a model of democracy is the deliberative procedure (Cohen 2015: p.4). It has been shown above that discourse ethics requires that deliberative procedures are undertaken in accordance with the values of universal moral respect and egalitarian reciprocity. Therefore, if a government were to exclude the speech of some people then it would be undermining their status as participants in a discursive community and would not be treating them with equal respect. Consequently, the political sphere would suffer from a loss of democratic legitimacy (Cram 2010: p.328). This matters for the present discussion because the controversies that occurred over the years regarding cartoons published by *Charlie Hebdo* took place in the public sphere. Therefore, for these discussions

to have been conducted democratically and ethically they had to be inclusive and adhere to the legitimacy procedures as outlined above.

The argument that free speech is necessary for democratic legitimacy has been advanced by many liberal scholars in defence of almost unrestricted free speech (Lægaard 2007: p.482). However, this thesis turns that argument on its head and asserts that if profoundly offensive and disrespectful expression results in the exclusion of a group from the public discourse, then democratic legitimacy theory could justify a restriction on free speech. However, this restriction would be extra-judicial and, instead, would take the form of a moral obligation on society to ensure that such an alienation from participation does not happen.

## **2.5 Defining exclusion**

Much of the theory discussed thus far rests on the premise that where a person or group suffers social exclusion from the expression of another there is a moral duty to refrain from exercising the right to expression. Therefore, it is necessary to understand what 'exclusion' is taken to mean.

Iris Marion Young's analysis of oppression identifies two pertinent causes of oppression, and since oppression often leads to exclusion, they should be explored. One aspect is marginalisation (Young 1990: p.9). Young recognises that this form of oppression is most common amongst racial groups and, in Europe, that it is especially conspicuous amongst North Africans (Young 1990: p.53). This is notable in the French context because a sizeable proportion of France's Muslim population originates from this region (Laurence & Vaisse 2007: table 1-6). Young avers that marginalisation is perhaps the most dangerous form of oppression, as whole categories of persons are excluded or expelled from useful participation in social life (Young 1990: p.53). There is also a possible argument that Muslims in France experience cultural imperialism. This is where the dominant narrative of a society renders the particular perspective of one group as invisible, at the same time as stereotyping the group and marking it out as the Other (Young 1990: p.59). Those living under cultural imperialism find themselves "defined from the outside, positioned, placed, by a network of dominant meanings they experience as arising from elsewhere" (Young 1990: p.59).

In accordance with Young, this thesis understands exclusion as the "deprivation of cultural, practical and institutional conditions for exercising capacities in a context of recognition and interaction" (Young 1990: p.55). This can occur where an individual's culture is disrespected, stereotyped or rendered invisible. Furthermore, the UN definition of 'overall poverty' ties the

concepts of social discrimination and exclusion to the “lack of participation in decision-making and in civil, social and cultural life” (UN 1995: Ch2, para 19).

## **2.6 Towards a moral theory: obligations and restraints concerning the freedom of expression**

This thesis will now develop a theory of ethics that poses restrictions on the right to freedom of expression by taking in account strong toleration, respect and recognition for cultures, and the principles of democratic ethics.

The previous sections offered an examination of different mechanisms in philosophies of multiculturalism for reconciling illiberal minority practices with liberalism. This was important because the prohibition against depiction of the prophet Muhammad is arguably illiberal since it demands the restriction of the right to freedom of expression. Thus, for such a restriction to exist in a liberal democracy it must be reconcilable with a liberal framework. The analysis of the concept of toleration revealed that the illiberal belief should be tolerated as harm is done to minority beliefs where a person uses their power to interfere with a belief by not permitting the holding of it, or to uphold exclusions. Moreover, it was shown that strong toleration includes an affirmative duty to recognise, respect and engage with the belief. Furthermore, strong toleration towards minority beliefs was held as necessary because if a belief is not engaged with then it is not recognised as worthy of consideration and the validity of the belief rejected *a priori*. Even where a belief is engaged, such as through speech in the public sphere, harms may arise when the engagement is not respectful. It was argued that non-recognition, or misrecognition, produce harms which hurts the belief-holder’s perception, self-confidence, and ability to participate in public discourse. When this is a belief held by many individuals, such as an entire religion, then this ability to participate affects an entire group of agents. Therefore, this may cause a problem for a country’s democratic legitimacy as offensive expression can give rise to harms of misrecognition which exclude a minority group from the public discourse. Exclusion was defined by accordance with Young’s political, social and economic understanding of it. Since these harms of exclusion are not physical they do not merit legal restriction, as shown in chapter one. However, since the harms are social and psychological, they may merit a moral restriction. This thesis proposes moral obligations grounded in discourse ethics to ensure positive toleration, respect, and recognition at all stages of the public discourse, thus ensuring that harms do not occur and moral obligations are kept.

On the view drawn from Habermas and Apel, this is achieved through a well structure social sphere that is characterised by open communication structures which permit and promote discussion (Habermas 1994: p.128). These communication structures should be undertaken in the form of public discourse or ‘deliberative procedures’. The legitimacy of the deliberative procedures

will depend on the way in which they are conducted; namely, they must be conducted in accordance with universal moral respect and egalitarian access. Where engagement is disrespectful then it violates the universalisability criteria of discourse ethics. No norm which permits disrespect would be agreed upon by all affected participants in a practical discourse as everyone's identity would be vulnerable to the harm and exclusion caused by it. Accordingly, the deliberative procedures should also not exclude groups. Exclusion can occur where individuals believe that the dominant society has ridiculed a life-context, or certain important beliefs therein. In these cases, for the individual to invoke the belief in public discourse would be useless since it has already been invalidated. Moreover, public discourse which permits ridicule and profound offence might be viewed as legitimising attacks on beliefs that are constitutive of a group's identity, which in turn may be damaging for individual members' self-worth (Lægaard 2007a: p.491). Ridicule and marginalisation show a lack of respect and produce a restricted access of the belief-holders to the communicative space.

The moral framework that has been developed therefore posits a tripartite set of moral duties on a society when it considers how to accommodate an illiberal belief: the belief must be engaged with, the engagement should be respectful, however, if it isn't respectful then the engagement must safeguard against exclusion. This is achieved by abiding by the three principles of discourse ethics – inclusion, symmetry and reciprocity – which provide the basis for a moral obligation to refrain from offensive expression which will uphold exclusion.

Participants in deliberative practice must be motivated to engage respectfully and obey obligation by the threat of sanctions. Where the minority community refuses to engage in the public discourse then it is relatively easy for the dominant society to simply exclude their views on issues and proceed in accordance with its desires and interests. However, where the dominant society violates the norms, there is little that can be done to compel it to undertake these moral obligations that are outwith legal measures, which have already been ruled out. Therefore, the moral theoretical framework provided here relies on the voluntary following of the obligation simply because it is what morality commands.

The media has an important role in public discourse. Where it is used wrongly, the media has the ability to normalise prejudices and stereotypes, casting these as ordinary 'truths' (Malik 2010: p.106). Because of this potential misrecognition, the media must also be held to the principles of discourse ethics that command that dialogue is used to reach rational consensus through symmetry and reciprocity. *Charlie Hebdo* is a form a media and is not beyond the reaches of the obligations under discourse ethics.

*Charlie Hebdo* is not guilty of non-recognition because they did engage with the Islamic belief against depicting the Prophet. Norms of dialogue do not preclude that opinions and beliefs can be criticised and challenged. Therefore, the fact that *Charlie Hebdo's* engagement was critical is morally permissible. However, they were morally obliged to engage in respectful dialogue and ensure that the political integration of Muslims was not jeopardised. Therefore, drawing a cartoon which is known to be offensive may demonstrate a violation of this obligation if it is found that *Charlie Hebdo's* engagement was exclusionary. The magazine could have ensured respectful engagement by publishing a written article criticising the Islamic religion.

The framework above which provides a moral obligation to refrain from offensive expression that will lead to exclusion will be applied to the case-study in the next chapter. This will be done so as to ascertain whether *Charlie Hebdo's* engagement with the Islamic belief through the depiction of the prophet Muhammad was exclusionary and precluded rational debate, and whether a moral obligation to refrain from the offensive expression existed.

### **Chapter III: Application of the theory to the case-study of France and the 2015 controversy surrounding the publication by *Charlie Hebdo* of purportedly offensive cartoons.**

This chapter will apply the theoretical framework outlined in Chapter II to the case-study in order to determine whether *Charlie Hebdo* had a moral duty to refrain from publishing cartoons of the prophet Muhammad. This will established whether there was a legitimate ground to refrain expression which goes beyond those already prescribed by law. There is no need to consider legal limits since Chapter I has already determined that there is no good reason to extend the current legal limitation on the right to freedom of expression.

It was established in the previous chapter that *Charlie Hebdo* satisfied the first of three conditions required when faced with an illiberal belief – it engaged with it. Its engagement was in the form of public discourse as the cartoons had the political objective of a satirical commentary on the belief prohibiting depictions of the prophet Muhammad, therefore, it needed to satisfy the other two conditions derived from discourse ethics. The second condition – that of respectful engagement – was most likely not satisfied. However, that is only morally problematic if the disrespect caused harms of misrecognition such as social exclusion and inability to participate in political life. It is implausible that the publication of a couple of cartoons by a magazine whose circulation was relatively small could have caused the national exclusion of Muslims, therefore, the question under deliberation in this chapter is whether *Charlie Hebdo* upheld or reinforced existing exclusions.

Moreover, *Charlie Hebdo* were disrespectful about other institutions and religions as caricature was their chosen medium for mockery and social commentary. This thesis thus needs to ask and answer the question of whether there is anything substantially different, given the French context, between disrespecting Islamic beliefs to those of other religions, such that drawing the Prophet reinforces social exclusion whereas depicting priests as paedophiles does not<sup>5</sup>.

To explain why a particular group is oppressed in specific ways, an empirical investigation must trace history and the current structure of social relations (Young 1990: p.65). The aims of the following sections are therefore threefold; first they will explore aspects of French history which could have the potential to lead to the social exclusion of Muslims; second they will examine whether Muslims have been excluded from the public discourse; and lastly whether the offensive expression in *Charlie Hebdo* reinforced that exclusion. If the discursive practices of *Charlie Hebdo* are

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<sup>5</sup> The aforementioned priest cartoon is included in the examples of other offensive cartoons published by *Charlie Hebdo* which can be seen on the following website: <http://www.ibtimes.com/charlie-hebdos-most-controversial-covers-french-satirical-magazine-was-equal-1776078>

found to have reinforced exclusion by not abiding by the normative duties found in deliberative procedures then this would justify a moral restriction on the right to freedom of expression.

### 3.1 Being a Muslim in modern France

In the definition of exclusion discussed in the previous Chapter, both Young and the UN emphasise the all-encompassing nature over social exclusion across the socio-economic and political spectrum. This section provides a short overview of some of the ways in which Muslims are currently disadvantaged in France. Due to the fact that the majority of Muslims in France are first or second generation immigrants (Laurence & Vaisse 2007: figure 1-1), it is sometimes difficult to differentiate between whether they are disadvantaged because of their religion or because of their migrant status. However, a comparison to the socio-economic status of Muslims in contrast with adherents to other religions reveals that it more likely the former than the latter.

Muslims, and other immigrants, are caught in a somewhat vicious circle of disadvantage. During WWII, France brought people over from its colonies as temporary labour workers (Bowen 2006: p.66). However, they ended up staying on with their families and the French state housed them in large projects built in poor suburbs or in industrial enclaves known as *banlieues* (Bowen 2006: p.66). These neighbourhoods are marked by “poverty, welfare dependence, black markets, [and] broken families” (Laurence & Vaisse 2007: p.36). Moreover, the conditions are not conducive to educational achievement and thus the percentage of children to immigrants who received university degrees and school diploma is substantially lower to children of French parents (Laurence & Vaisse 2007: p.39). This has a commensurate result on the gap in professional status and income. Muslims are twice as likely to the rest of the population to be found in the ‘worker’ category, i.e. unskilled manual jobs (Laurence & Vaisse 2007: figure 1-4). A 2013 study by INSEE, the French national statistical agency, revealed that the unemployment rate is around 80% higher in immigrant groups than it is in non-immigrant groups (INSEE 2015). Another set of research has highlighted economic disparities between Christian households and Muslim households in the job market including lower income and lower probability to get a job interview call back (Adida *et al.* 2010). Furthermore, a documentary made by the BBC after the 2015 *Charlie Hebdo* attacks interviewed one Muslim woman who had changed her name to get more job offers (Aziz 2015).

Muslims are also under-represented across the board. Accordingly, state subsidies amount to 6.8 billion euros for Catholic schools, 225 million euros for Jewish ones, and only 1.25 million euros for Muslim ones due to the fact that only one in ten Muslim schools have an agreement with the state for subsidies (Fassin 2015: p.5). Moreover, because municipalities frequently refuse



construction permits for mosques only 90 exist in France in comparison to the 45,000 Catholic and 3,000 Protestant churches, and 280 synagogues (Fassin 2015: p.6). Furthermore, Muslims suffers from the same lack of representation in politics as only one out of 577 members in the *Assemblée nationale* is of Muslim background (Euro-Islam 2015). Thus, Muslim prayer spaces and parliamentary representation amount to 0.001% of the overall total despite making up 10% of the population.

These examples provided lend themselves to the notion that there is a perception amongst many Muslims in France that they are both economically and socially disadvantaged and under-represented. This section has shown how conditions of poverty affect an individual ability to participate in democratic life (Lister 2002: p.39) and how Muslims suffer from this phenomenon in France.

### **3.2 The French historical context**

This section takes inspiration from the French philosopher, Michel Foucault, and will provide the historical foreground that has created, and perpetuated, the strained and ambivalent relationship between France and Islam. This translates to French society's apathetic behaviour towards the accommodation of Muslim value-claims such as the prohibition against depicting the prophet Muhammad, and contributes to our understanding of acceptance of exclusionary practices within French society.

#### **3.2.1 Enlightenment period**

A key period for explaining modern French thinking is the era of Enlightenment philosophy and its assumptions about the importance of secular rationalism and free expression (Laborde 2006: p.351). Epitomic to the goals of the French Enlightenment was the establishment of a society based on reason rather than faith and Catholic doctrines. Therefore, literature at the time emphasised religious tolerance, individual liberty and secularism. These principles are derived and reflected in the Enlightenment philosophy of French philosophers such as Voltaire, Jean Jacque Rousseau and Baron de Montesquieu.

Voltaire dedicates his *Treatise on Tolerance* to describing the history of harms which have arisen out of religious intolerance. He advocates a negative and impartial toleration whereby no one fraction of society is bestowed privileges and persons are allowed to live unmolested (Voltaire 2000: p.25). Furthermore, perhaps his most famous legacy is his conviction that freedom of speech is sacrosanct and cannot be violated. This is captured in a misattributed Voltairean maxim: "I do not agree with what you have to say, but I'll defend to the death your right to say it" (Kinne 1943: p. 534).

Rousseau's contribution to Enlightenment philosophy was to conceive a system of direct democracy he called social contract theory; this stipulates that a state is legitimate only if it is guided by the general will of its members (Bertram 2012). The values of liberty and equality are central to Rousseau's theory and concerns with democracy. Hence, freedom of expression as a central tenet of liberty is also highly esteemed in Rousseauian philosophy. Furthermore, the doctrine of *laïcité* – a specifically French form of secularism – partly lies in the Rousseauian heritage within French thought (Daly 2012: p.4) Further groundings *laïcité* are found in Montesquieu's *The Spirit of Laws* which discusses a dichotomous separation between laws concerning the public order and legislating in the private sphere, such the realm of religious belief. For Montesquieu liberty requires that only the public order should be legislated and laws should not therefore concern offences against God (Bok 2014).

Many of these ideals were invoked in the aftermath of the 2015 *Charlie Hebdo* shootings as politicians and journalists defended the controversial prophet Muhammad cartoons by appealing to the freedom of press and expression (Penketh & Branigan 2015). The ability to mock religion was deemed inviolable no matter how offensive the cartoons. In an interview given by the magazine's editor-in-chief Gérard Biard, he stated that "every time we draw a cartoon of the prophet we defend the freedom of religion, we declare that God must not be a political or public figure, he must be a private figure" (Linshi 2015), thereby also invoking Enlightenment philosophy on the role of religion in the public space.

### **3.2.2 *Laïcité* and immigration**

In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries the Enlightenment project was transformed into one which is exemplified in the neologism, and constitutional principle, '*laïcité*'. Many commentators refuse to translate the French into English, stating that 'secularism' does not do the concept justice (Weill 2006: p.59; Bowen 2007: p.2). *Laïcité* embodies the French republican commitment to consigning religious, cultural and ethnic difference to the private sphere, to depriving the church of its public status (Bowen 2007: p.12), and to creating a formal equality of rights which rejects a politics of difference in both law and political discourse (Daly 2012: p.1). Thus, *laïcité* opposes all differentialism and affirmative-action based policies (Statham 2005: p.435). The clearest legal expression of the concept is in the 1905 law which brought to an end the debate on the place of religion in post-revolutionary France (Weill 2006: p.62), and stipulates that "[the Republic] neither recognises, nor remunerates, nor subsidises any religion" (Daly 2012: p.2). Adherence to this by French society is, however, ostensibly problematic for this thesis and its emphasis on the necessity of a politics of difference and recognition.

Islam has recently frequently been cast as a threat to republicanism and *laïcité*. However, the historic role that colonialism and French immigration policy have played in this construction is often ignored. France was a large colonial power in the 20<sup>th</sup> century with substantial influence in the Maghreb region of Northern Africa (Miera & Pala 2009: pp.386-387). The French colonial powers found themselves supporting Islam in order to ensure a strong and sovereign presence in the Islamic world and sought to make France “a great Muslim power” (Bowen 2007: pp.35-36). One result of this legacy is that up to an estimated 70% of the Muslim immigrants in have come from the previous colonies of Algeria, Morocco and Tunisia (Bowen 2007: p.51). However, relationships between ex-colonial subjects create ingrained power inequalities especially where there were attempts to ‘civilise’ those colonised.

France’s republican heritage and its conception of citizenship has impacted its immigration policy (Favell 2001: p.44) with republican values emphasising citizenship as being one of political unity and cohesiveness, and stressing the universal and homogenous nature of French nationhood (Favell 2001: p.40). Moreover, the appearance in the 1980s of Jean-Marie Le Pen and his political party, *Le Front Nationale*, amplified fears about immigration and the challenges that the extension of social rights to ethnic minorities might pose to sectarianism, the nature of French citizenship and authentic French national culture (Favell 2001: p.53). Accordingly, France’s postulated immigration policy has been one of integration whereby, in order to be a member of the political community French values, culture and language must be subsumed by the immigrant. Consequently, this policy has long been considered to be, in fact, one of assimilation (Miera & Pala 2009: p.385) designed to “make Frenchmen out of foreigners” (Statham et al. 2005: p.433). This could be considered a form of cultural imperialism.

The combination of a secular republicanism that excludes ethnic and religious difference from the social sphere under the doctrine of *laïcité*, conjoined with an immigration policy that emphasises integration, has meant that Muslims have few policy instruments through which to have their beliefs publically recognised and accommodated (Statham 2005: p.433). Moreover Gilbert and Tompkins (1996: p.2) argue that post-colonialism requires the creation of intellectual spaces for subaltern individuals to speak for themselves, for the discourse to unpack power relations and for engagement with colonialism’s social hierarchies. However, because *laïcité* is about rejection of all cultural and religious affiliation this has not occurred and attempts to talk about difference are quashed. Thus *laïcité* is explicitly about exclusion, albeit a political exclusion, but one which has the potential to spill over from the institutional to the social (Daly 2012: p.5).

### 3.3 The headscarf affair considered as a previous example of exclusion

Radical conceptions of secularism have perceived Islam as a threat to the French notion of *laïcité*, as shown by the development of the headscarf affair (Miera & Pala 2009: p.386). The headscarf had become symbolic of a resistance to the secularist objective to integrate Muslims into French society and culture (Assad 2006: p.94). In 1989 this caused a rupture in French society with “*l’affaire du foulard*” [the headscarf affair], when three Muslim schoolgirls refused to take off their headscarves at their public school (Favell 2001: p.153).

In 1989, the approach to the controversy was one of “top-down state action to prohibit certain minority practices” (Modood 2013: p.174), and although the affair initially seemed resolved, the tensions it created kept emerging (Favell 2001: p.174). In 1994 it blew up again in another school and in 2003, after the issue would not go away, President Chirac appointed a national Commission – the Stasi Commission – to consider the issue (Modood 2013: p.174). The Commission recommended, *inter alia*, a ban on the wearing of conspicuous religious symbols in state schools, and a law to this effect was passed in February 2004 (Modood 2013: p.174). A few years later in April 2011, the full face-veil that reveals only the eyes – *niqab* or *burqa* – was banned in public places (Modood 2013: p.174).

An exploration of the role of education in multicultural liberalism and whether the headscarf diminishes the autonomy of young Muslims girls is far beyond the scope and focus of this thesis. However, it has examined the controversy for the fact that during the extensive consultation process no-one once thought to ask the girls why they chose to wear the headscarf (Jennings 2000: p.593). In fact, only one veiled woman was spoken to and neither member of the Commission could remember her name (Bowen 2007: p.114). Moreover, a politics of indifference and its commitment to neutrality under *laïcité* become problematic in considering the ban on ostentatious religious symbols (Modood 2013: p.180). Whilst it applied indiscriminately to all religions, the most ostentatious symbols were Islamic ones with the result that Muslims felt unjustly discriminated against and excluded from public places. A neutral and difference-blind approach is therefore inadequate where equality and inclusion are the goals (Modood 2013: p.77). Moreover, the problematic consequences of radical conceptions of secularism became apparent as all claims based on religious understandings were belittled as unworthy of consideration in the public sphere and debate. This has a profound effect on the resultant political discourse, as was evident in the headscarf consultation process where the rapporteurs, assuming veiled women were manipulated and alienated, declared *a priori* that it “would not be sensitive to their arguments” (Laborde 2006: p.362). Those who were going to be the most directly affected by the decision of the Commission

were thus excluded from participation in the deliberative process because their argument relied on religious premises. This resulted in little dialogical engagement with those who held beliefs about religious attire. Moreover, the one woman who was dialogically engaged experienced a harm of misrecognition in the form of disrespect as, due to her position as a believer, her cognitive capabilities and arguments were invalidated, deemed as irrational and non-autonomous, and thus precluded from the rational debate. This denied her, and the ignored others, the recognition required to be full and participating members in social interaction thereby upholding their social exclusion.

### **3.4 A moral restriction on *Charlie Hebdo's* freedom of expression**

Thus far this chapter has examined French political history in order to expose the problematic nature of some of its values and commitments. Analysis of the headscarf affair demonstrated how important values, such as secularism, can become exclusionary when differences are ignored and groups are precluded from participating in public discourse. Investigation into the socio-economic situation of Muslims revealed that they experienced widespread disadvantages. The next step is to discern whether the practices and discourse of *Charlie Hebdo* reinforced the social exclusion of Muslims

As previously mentioned in this chapter, *Charlie Hebdo* and its supporters have frequently justified the publication of potentially offensive cartoons such as those depicting the Prophet by reference to Enlightenment values. In 2006, when it made the decision to republish the Danish *Jyllands-Posten* cartoons, it did so in the name of enlightened freedom of expression and secularism (Miera & Pala 2009: p.392). Furthermore, in the aftermath of the 2015 Gérard Biard, its editor-in-chief, attack called its most recent cartoon depicting the prophet Muhammad “a symbol; it’s the symbol of freedom of speech, of freedom of religion, of democracy and secularism” (NBC News 2015). The staff of *Charlie Hebdo* sees itself not as reinforcing marginalisation but as upholding the aims of satirical cartoons – criticising and checking the exercise of power (Keane 2008: p.846). Thus, in referencing this Biard said “we don’t mock or attack people. We mock or attack institutions. Representatives. Powers. And, again, political powers.” (Dean 2015). Moreover, the magazine was unashamedly committed to *laïcité* and opposed to the positive accommodation of ethnic and cultural difference in the public sphere: “we will finally cease, out of posturing, electoral calculus, or cowardice, to legitimate or even tolerate communitarianism and cultural relativism” (Sayare 2015).

However, some of *Charlie Hebdo's* practices and discourse had exclusionary consequences. The political and satirical expression contained in cartoons is a form of public discourse and,

therefore, it must adhere to the principles of discourse ethics. *Charlie Hebdo's* strict adherence to *laïcité* meant that they did not satisfy the condition of recognition of the differences. Furthermore, *Charlie Hebdo* did not satisfy the principle of reciprocity – egalitarian access – in their deliberative procedures. Both failures will be clarified below.

There were two harms of misrecognition that arose from *Charlie Hebdo's* commitment to *laïcité*. The first occurred due to the fact that the doctrine forecloses any positive accommodation of religion identity. Therefore, the magazine was able to dismiss the fundamentality of the belief against the depiction of the prophet Muhammad by drawing him. However, this says publically that the belief was not worthy of validation or respect. Moreover, belief-holders were harmed by the fact that a constitutive part of their religious identity was subjected to ridicule, with potential consequential harm that the belief-holders' self-respect and self-confidence to participate in future public discourse was diminished. However, since *Charlie Hebdo* project themselves as an 'equal opportunity offenders' (Greenwald 2015) and thus claimed to indiscriminately attack and ridicule all religions, other religions have the potential to be subjected to these same harms. Moreover, other religious beliefs and affiliations are also precluded from consideration in the republican state under the doctrine of *laïcité*. Nevertheless, this thesis asserts that *Charlie Hebdo's* neutral and difference-blind approach suffers the same short-falls as the ban on ostentatious religious symbols in that it does not affect everyone equally. Due to the backdrop of exclusion and differences set out in this chapter, the ridicule of a profound Islamic belief is not equal in consequences to the mockery of other institutions. Satire wounds both the powerful and the weak but it does so with different effects (Long 2015). Therefore, depicting Catholic priests as paedophiles<sup>6</sup>, while offensive, is not the same as drawing the prophet Muhammad lamenting over being 'loved by idiots'. This is because the inequalities of power in the relationship between Islam and the French state are much larger than the one between Catholicism and the state due to the legacy of colonialism. Thus, what merely annoys and offends one party may deepen the other's systematic oppression (Long 2015). This would explain why cartoons which are offensive to the fundamental belief of Muslims may legitimately be restricted whereas ones which Catholics find offensive cannot be.

However, *Charlie Hebdo* has also published cartoons which Jews have found offensive that may be considered problematic due to historic anti-Semitism in France. Nevertheless, whilst the magazine continues to publish cartoons which contain offensive caricaturing of Jews, such as the crooked nose<sup>7</sup>, it acknowledged that some degree of respect must be afforded and there is a limit to

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<sup>6</sup> See the following website for some of its other offensive cartoons: <http://www.ibtimes.com/charlie-hebdos-most-controversial-covers-french-satirical-magazine-was-equal-1776078>

<sup>7</sup> See the cartoon entitled "The Untouchables" from website above.

offense when, in 2008, it fired its cartoonist, Siné, for a written piece which was considered anti-Semitic (Fassin 2015: p.4).

The second way in which *Charlie Hebdo* failed in its obligations under discourse ethics was by not ensuring reciprocity in their deliberative procedures. There was no opportunity for Muslims to engage with or make their views known about the cartoons of the prophet Muhammad prior to their publication. Thus there was no access to participation in the discourse. Moreover, when Muslims did advance criticism against the cartoons in the aftermath of the shootings these views were invalidated as being undemocratic and they were excluded from the rational debate.

The most dangerous discourse of the *Charlie Hebdo* controversy was the mobilisation around the phrase “Je Suis Charlie”. The phrase became part of the dominant discourse about the limitlessness of free speech and expressed an identification, or alignment, with the staff of *Charlie Hebdo* who were devoted to “an unstinting indictment of religion, made martyrs more specifically for their mockery of Islam and their strident promotion of *laïcité*” (Sayare 2015). It became a rallying cry for a new national identity that all those who believed in democratic values were expected to affirm. However, from many Muslim perspectives to declare oneself “Charlie” is to affirm a national identity of exclusion (Sayare 2015). Therefore, what was dangerous and troubling about this phrase was that all those who did not align themselves with the dominant discourse, who were “not *Charlie*”, were cast as anti-democratic and attempts were made to exclude them from participation in the debate.

Those critical of the dominant discourse experienced punishment in the form of school suspension, police interrogation and court summons (Fassin 2015: p.4). Several students refused to participate in a mandatory moment of silence for the victims of *Charlie Hebdo* or expressed a critical voice in the discussions led by teachers (Fassin 2015: p.4). This happened mostly in schools located in the *banlieues*. The national teachers union published a press release stating that “those who made unacceptable remarks [...] have excluded themselves from the Republic” (Fassin 2015: p.4). An 8-year-old was interrogated for two hours at a police station for allegedly refusing to respect the mandatory minute of silence, and around 800 other incident were reported to the Ministry of Education, some of which resulting in suspension or expulsion (Marlière 2015). This demonstrates a clear social exclusion of people for going against the dominant discourse.

Many individuals have also been handed over to the judicial system for the crime of ‘vindication of terrorism’ under the Cazeneuve Law passed on 13 November 2014 (Fassin 2015). These events have led many to question the double-standard protection of freedom of expression in

France. It appeared as though expression was safeguarded and expected to be tolerated where it corresponded with discourse favoured by French republicanism and liberalism. However, where speech expressed an alternative perspective it was not afforded such a wide ambit of protection. Individuals who criticised the dominant discourse peacefully and through debate were nonetheless subordinated as their arguments were doubted, ignored as illegitimate or condemned as anti-democratic. Therefore, by not being permitted to engage in this alternative discourse Muslim voices and beliefs were silenced, accommodation of their deeply held religious belief was promptly rejected, and they were excluded as participants from the democratic dialogue. This is resonant of the girls in the headscarf affair and how their freedom of expression and manifestation of religion was unquestioningly overridden for being outwith the dominant discourse.

*Charlie Hebdo* and its supporters justify their work through freedom of speech and expression but, contradictorily, they do not allow for an extension of those freedoms to people who criticise the magazine. So whilst *Charlie Hebdo* fulfilled its obligation to engage with the illiberal belief against expressions depicting the prophet Muhammad, they failed to do so respectfully: it was not dialogical engagement, it was a one-sided attack on a belief without an opportunity of reply. Moreover, this reproduces exclusion as it delineates some forms of expression as suitable for protection – those which correspond to the dominant discourse – whilst excluding other forms – those that are critical of the dominant discourse.

*Charlie Hebdo* had a moral obligation to refrain from publishing the initial cartoons which provoked the unjustified violent reaction. This is because the publication reinforced social exclusion as it weakened the conditions for the exercise of cognitive capacities by invalidating the significance of a belief held by a sizeable section of the French population. A constitutive part of Muslim identity was disrespected and stereotyped in publication of the cartoons which shapes their ability to participate in decision-making and political life. There were no attempts at dialogical engagement between *Charlie Hebdo* and Muslims. The principle of discourse ethics – that all affects by decision-making progress are involved in it – was not satisfied. The norms of deliberative procedures – respect and reciprocity – were also not satisfied. The result of these failures was the social exclusion of Muslim and therefore *Charlie Hebdo*, in this case, had a moral obligation to refrain from publishing the offensive material.

Furthermore, the front cover of the January 14 edition of *Charlie Hebdo*, the first since the previous week's attack, depicted another picture of the Prophet. The moral obligation which *Charlie Hebdo* had when deciding to publish this form of expression dictates that they have to consider



whether the expression was going to exclude people from the public discourse. Their previous cartoons, and the extremist attacks, had been conducive to the construction of a narrative in which Islam was a threat to French values. Muslims, however, could not express opinion contrary to the dominant discourse for fear of being cast as anti-France, anti-liberty and anti-democratic. A danger exists that if the dominant discourse is the only one permitted then this can become undemocratic. Without the option of alternative discourse to participate in debate and help reach consensus, a country's democratic legitimacy can be undermined. Therefore, under discourse ethics and deliberative democracy theory there was categorically a moral obligation on *Charlie Hebdo* in this latter instance not restrict its freedom of expression.

### **3.5 Chapter conclusion**

This chapter has shown how restrictions on the right to freedom of expression exist where the expression reinforces social exclusion. However, the restriction was moral in nature due to the fact that it arose from non-physical harms and obligations under discourse ethics. In this specific case there were further legitimate limitations on the right to freedom of expression than those already prescribed by law.

## Conclusion

Freedom of expression was been described by Lord Halisham “as the primary right without which one cannot have a proper functioning democracy”. The right to freedom of expression is indispensable to democracy as it creates the conditions for popular participation. Nevertheless, the right is not absolute and liberal democracies, such as France, have recognised the need to impose limitations on it to avoid harm to members of society. However, the interplay between the inalienable right to freedom of expression and the desire to prevent harm to societal actors is not without controversy. Thus divergent views exist regarding what should be considered as harm and what is the appropriate response to the infliction of harm. On one end of the spectrum, only in restricted cases can there be a legal limitation on the basis of harm and only where harm is considered as direct, immanent and physical. At the other end, harm is defined as social and psychological and, where the infliction of it results in the consequence of diminished self-respect and self-confidence, a justification for a limitation on this ground is provided.

This thesis sought to uncover whether the only legitimate restrictions to the right to freedom of expression were already prescribed by law. In liberal democracies where existing laws limit the right on the basis of hate speech, racial speech or incitement to violence then these encompass all the permissible legal restrictions. This is because this thesis agrees that legal restriction to rights, such as the freedom of expression, can only be justified where the exercise of the right would result in the physical harm of other members of society. However, this thesis believes that there is a legitimate restriction to the right to freedom of expression which has not been prescribed by law because it is grounded in a moral obligation.

The moral obligation asserts that where an agent’s exercise of their right to freedom of expression results in the social exclusion of another member of society, then the agent must refrain from that expression. This obligation was derived from discourse ethics and Habermas’ contention that “in the absence of the uniting bond of a civic solidarity [...] citizens do not perceive themselves as free and equal participants in the shared practices of democratic opinion and will formation wherein they owe one another reasons for their political statements and attitudes. This reciprocity of expectations among citizens is what distinguishes a community integrated by constitutional values from a community segmented along the dividing lines of competing world views” (Habermas 2006: p.13). The theory in this thesis posits a moral obligation on both tolerators and tolerated. Whilst the focus of the thesis has been on the duties of the tolerators (*Charlie Hebdo*) – because the obligation to restrict freedom of expression in this case fell on the tolerators – it is nonetheless important to acknowledge that those tolerated (French Muslims) also have moral duties. As such, shooting dead

people who have reinforced a group's social exclusion is not a respectful means of engagement in the public discourse.

The research that was undertaken was contextual to France and thus many of the findings are specific to it and, in particular, to *Charlie Hebdo's* cartoonists. The research highlighted a trajectory of exclusion which started in the 18<sup>th</sup> century and culminated with discourse and practices of the French society in the aftermath of the *Charlie Hebdo* shootings. It revealed that the French constitutional principle of *laïcité* has left few resources for Muslims to combat forms of social exclusion rooted in cultural and religious difference (Statham 2005: p.433). However, until France is prepared to accommodate political space for Muslims and discussion of religious belief, the duties posited in this thesis' moral framework will not be able to be realised. Therefore, one of the limitations of this thesis is that the ability of the moral framework to be subsumed by French society is potentially problematic when one of France's constitutional doctrines – *laïcité* – explicitly rejects the theory of recognition which is essential to this thesis' theory. This is worsened by the fact that the alternative framework is one already accepted by France and its Enlightenment commitments as it emphasises the importance of free expression over the protection of religious belief.

Nonetheless, there are existing elements in the principles and philosophies of the French state which lend themselves to aiding the acceptance of this thesis' moral framework. If France is going to wield itself to Rousseauian contractualist philosophy then it has to ensure that all persons have equal access to public arguments which, moreover, implies an obligation to adhere to principles of discourse ethics. Furthermore, France national moto of "*Liberté, égalité, fraternité*" [liberty, equality and fraternity] is also useful for strengthening the thesis' argument. The concept of *égalité* is either able to strengthen *liberté* or *fraternité*. Liberty sanctions unfettered speech and equality is currently understood to imply that no matter the race or religion of an individual, they are obliged to "endure the 'rough and tumble' of democratic politics in the name of liberty" (Levy & Modood 2009: p.429). However, fraternity prioritises inclusion of and respect for others. Therefore, where equality is used to support fraternity, it may encourage disparate treatment out of consideration for other social circumstances and goods (Levy & Modood 2009: p.429).

The implications of this thesis' theory are vast. It has the potential to be mapped onto other countries and contexts where deliberations exist about the appropriate restrictions to the exercise of the right to freedom of expression that results in profound offence. All that would be required would be an exploration of whether the expression in question created, upheld or reinforced exclusion. Therefore, there is potential for future research.

This thesis acknowledges that the findings in it are controversial and will not be accepted by all. This is because restrictions to the right to freedom of expression are almost always viewed with scepticism and fear about the potential for abuse. However, there have been contemporary developments which recognise that some expression should not be tolerated. Thus, there is no contemporary tolerance for racist cartoons and hence only time will tell whether future generations will view cartoons that are religiously offensive in a similar vein.

# Bibliography

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- Adida, C. L., et al., (2010), "Identifying barriers to Muslim integration in France. Proceedings of the National Academy of Sciences", *PNAS* Vol. 107(52), pp.22384-22390
- Amdur, R., (1985), "Review: Harm, Offense, and the Limits of Liberty", *Harvard Law Review*, Vol. 98(8), pp. 1946-1959
- Apel, K.O., (1997), "Plurality of the good? The problem of affirmative tolerance in a multicultural society from an ethical point of view", *Ratio Juris*, Vol.10(2), pp.199-212.
- Asad, T., (2006), "French Secularism and the " Islamic Veil Affair""", *Hedgehog Review*, Vols.8(1-2), pp.93-106
- Aziz, S (presenter), Moralioglu, S., Oram, S., Radford, M (producers), Bagnall, S (executive producer), (2015), "A Nation Divided: The Charlie Hebdo Aftermath", (documentary), (UK: British Broadcasting Corporation (BBC))
- Bagnoli, C., (2007), "Respect and membership in the moral community", *Ethical Theory and Moral Practice*, Vol.10(2), pp.113-128
- Barry, B., (2001), *Culture and Equality: An Egalitarian Critique of Multiculturalism*, (Cambridge : Polity Press)
- BBC News Europe, (2015a), "Charlie Hebdo attack: Three days of terror", *BBC News Online*, 14 January, available at: <http://www.bbc.co.uk/news/world-europe-30708237> [accessed on the 5<sup>th</sup> May 2015]
- BBC News Europe, (2015b), "Paris attacks: Millions rally for unity in France", *BBC News Online*, 11 January, <http://www.bbc.co.uk/news/world-europe-30765824> [accessed on the 5<sup>th</sup> May 2015]
- BBC News US & Canada, (2015), "Charlie Hebdo receives disputed PEN award in New York", *BBC News Online*, 6 May, available at: <http://www.bbc.co.uk/news/world-us-canada-32601549> [accessed the 5<sup>th</sup> May 2015]
- Bertram, C., (2012), "Jean Jacques Rousseau", *The Stanford Encyclopedia of Philosophy* , available at: <http://plato.stanford.edu/archives/win2012/entries/rousseau/> [accessed on 3<sup>rd</sup> August 2015]
- Bok, H., (2014), "Baron de Montesquieu, Charles-Louis de Secondat", *The Stanford Encyclopedia of Philosophy* , available at: <http://plato.stanford.edu/archives/sum2014/entries/montesquieu/> [accessed on 3<sup>rd</sup> August 2015]
- Bowen, J. R., (2007), "Why the French don't like headscarves: Islam, the state, and public space", *European Review*, Vol.15(3), pp.397-400
- Britton, K., (1969), *John Stuart Mill : [life and philosophy]*, (New York : Dover Publications)

- Cohen, A., (2004), "What Toleration Is", *Ethics*, Vol.115(1), pp.68-95.
- Cohen, J., (2015), "Deliberation and Democratic Legitimacy", pp.1-13, available at: <http://philosophyfaculty.ucsd.edu/faculty/rarneson/JCOHENDELIBERATIVE%20DEM.pdf> [accessed on 12<sup>th</sup> July 2015]
- Cohen, J., (1998), "Democracy and Legitimacy", in Elster, J., (1998), *Deliberative democracy*, (Cambridge: Cambridge University Press)
- Comictim, (2015), "Comics, Freedom Of Speech, And Censorship", *Comictim.com*, available at: <http://www.comictim-con.gr/en/panels/comics-freedom-of-speech-and-censorship/> [accessed 4 May 2015]
- Cram, I., (2010), "The Danish Cartoons, Offensive Expression, and Democratic Legitimacy", in Hare, I., & Weinstein, J., (Eds.), *Extreme speech and democracy*, (Oxford University Press: Oxford)
- Council of Europe, (2015), "The Court in Brief", publication by the European Court of Human Rights, available at: [http://www.echr.coe.int/Documents/Court\\_in\\_brief\\_ENG.pdf](http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf) [accessed 5th July 2015]
- Daly, E., (2012), "The Ambiguous Reach of Constitutional Secularism in Republican France: Revisiting the Idea of Laïcité and Political Liberalism as Alternatives", *Oxford Journal of Legal Studies*, pp.1-26
- Deveaux, M., (1998), "Toleration and Respect", *Public Affairs Quarterly*, Vol. 12(4), pp. 407-427.
- Dean, M., (2015), "Charlie Hebdo editors: 'We are not naive'", *The Guardian Online*, 5 May, available at: <http://www.theguardian.com/media/2015/may/05/charlie-hebdo-editors-we-are-not-naive> [accessed 18 August 2015]
- Dillon, R.S., (2015), "Respect", *The Stanford Encyclopedia of Philosophy*, available at <http://plato.stanford.edu/archives/fall2015/entries/respect/> [accessed 5<sup>th</sup> July 2015]
- Drunken Blogging, (2006), "Drawing The Line On Free Speech", *Drunken Blogging*, 6 March, available at: <http://drunkenblogging.blogspot.co.uk/2006/03/drawing-line-on-free-speech.html> [accessed 4 May 2015]
- Elster, J., (1998), *Deliberative democracy*, (Cambridge: Cambridge University Press)
- Eriksen, E.O., & Weigård, J., (2003), *Understanding Habermas : communicative action and deliberative democracy*, (London : Continuum)
- Euro-Islam, 2015, "Muslims in European Politics", *Euro-Islam.info*, available at: [http://www.euro-islam.info/key-issues/political-representation/#footnote\\_18\\_8852](http://www.euro-islam.info/key-issues/political-representation/#footnote_18_8852) [accessed 10 August 2015]
- Fassin, D., (2015), "In the name of the Republic: Untimely meditations on the aftermath of the Charlie Hebdo attack", *Anthropology Today*, Vol.31(2), pp.3-7
- Favell, A., (2001), *Philosophies of integration : immigration and the idea of citizenship in France and Britain*, 2<sup>nd</sup> edn., (Basingstoke, Hampshire : Palgrave)

Feinberg, J., (1985), *The Moral Limits of the Criminal Law. Vol.2, Offense to Others*, (Oxford : Oxford University Press)

Gay, R., (2015), "If *je ne suis pas Charlie*, am I a bad person? Nuance gets lost in groupthink", *The Guardian Online*, 12 January, available at:

<http://www.theguardian.com/commentisfree/2015/jan/12/je-ne-suis-pas-charlie-nuance-groupthink> [accessed the 5<sup>th</sup> May 2015]

Gilbert, H., & Tompkins, J., (1996), *Post-colonial drama: theory, practice, politics*, (London : Routledge)

Graham-Harrison, E., (2015), "Drawing the prophet: Islam's hidden history of Muhammad images", *The Guardian Online*, 10 January, available at:

<http://www.theguardian.com/world/2015/jan/10/drawing-prophet-islam-muhammad-images> [accessed 21 August 2015]

Greenwald, G., (2015), "In Solidarity With a Free Press: Some More Blasphemous Cartoons", *The Intercept*, 9 January, available at: <https://theintercept.com/2015/01/09/solidarity-charlie-hebdo-cartoons/> [accessed 12 August 2015]

Grimm, D., (2010), "Freedom of Speech in a Globalized World", in Hare, I., & Weinstein, J., (Eds.), *Extreme speech and democracy*, (Oxford University Press: Oxford)

Gutmann, A., (1994), "Introduction", in Taylor, C., *Multiculturalism: Examining the Politics of Recognition*, ed. Gutmann, A., (Princeton, N.J. : Princeton University Press)

Habermas, J., (2006), "Religion in the Public Sphere", *European journal of philosophy*, Vol.14(1), pp.1-25

Habermas, J., (1994), "Struggles for Recognition in the Democratic Constitutional State", in Taylor, C., *Multiculturalism: Examining the Politics of Recognition*, ed. Gutmann, A., (Princeton, N.J. : Princeton University Press)

Habermas, J., (1990), "Discourse ethics: Notes on a program of philosophical justification", *Moral consciousness and communicative action*, pp.43-115.

Handyside v UK, (1979), *European Court of Human Rights, Application No.5493/72*

Herman, B., (1996), "Pluralism and the Community of Moral Judgment" in Heyd, D., *Toleration: An Elusive Virtue*, (Princeton, NJ : Princeton University Press)

Heyd, D., (1996), "Introduction", in Heyd, D., *Toleration: An Elusive Virtue*, (Princeton, NJ : Princeton University Press)

INSEE (Institut national de la statistique et des études économiques), (2015), "Nombre de chômeurs et taux de chômage des immigrés et des non-immigrés selon le sexe et l'âge en 2013", available at: [http://www.insee.fr/fr/themes/tableau.asp?reg\\_id=0&ref\\_id=NATnon03346](http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATnon03346) [accessed 05 August 2015]

- Jacobson, D., (2000), "Mill on Liberty, Speech, and the Free Society", *Philosophy & Public Affairs*, Vol.29(3), pp. 276-309
- Janssen, E., (2009), "Limits to expression on religion in France", *Agama & Religiusitas di Eropa, Journal of European Studies*, Vol.5(1), pp.22-45
- Jennings, J., (2000), "Citizenship, republicanism and multiculturalism in contemporary France", *British Journal of Political Science*, Vol.30(4), pp.575-598
- Jones, P., (2011), "Religious Belief and Freedom of Expression: Is Offensiveness Really the Issue?", *Res Publica*, Vol.17(1), pp.75-90.
- Jones, P., (1994), "Bearing the Consequences of Belief", *Journal of Political Philosophy*, Vol.2(1), pp.24-43.
- Kant, I., (1998), *Groundwork of the Metaphysics of Morals*, (Cambridge University Press : Cambridge)
- Kinne, B., (1943), "Voltaire Never Said It!", *Modern Language Notes*, Vol.58( 7), pp. 534-535 – self explanatory
- Koltay, A., (2013), *Freedom of speech : the unreachable mirage*, (Budapest : Complex)
- Kukathas, C., (2003), *The Liberal Archipelago*, (Oxford : Oxford University Press)
- Kukathas, C., (1992), "Are there any cultural rights?", *Political theory* Vol.20(1), pp.105-139.
- Laborde, C., (2006), "Female Autonomy, Education and the *Hijab*", *Critical Review of International Social and Political Philosophy* Vol.9(3), pp.351–377
- Lægaard, S., (2009), "Normative interpretations of diversity: The Muhammad cartoons controversy and the importance of context", *Ethnicities*, Vol. 9(3), pp.314-333.
- Lægaard, S., (2007a), "The cartoon controversy: Offence, identity, oppression?", *Political Studies*, Vol.55(3), pp.481-498.
- Lægaard, S., (2007b), "The cartoon controversy as a case of multicultural recognition", *Contemporary Politics*, Vol.13(2), pp.147-164
- Laurence, J., & Vaisse, J., (2007), *Integrating Islam: Political and religious challenges in contemporary France*, (Brookings Institution Press)
- Levey, G. B., & Modood, T, (2009), "The Muhammad cartoons and multicultural democracies", *Ethnicities*, Vol.9(3), pp.427-447
- Linshi, J., (2015), "Watch Charlie Hebdo's Editor Explain Why the Publication Attacks Religion", *Time Magazine Online*, 18 January, available at: <http://time.com/3672950/charlie-hebdo-gerard-biard-interview/> [accessed 10 August 2015]
- Long, S., (2015), "Why I Am Not Charlie", *A Paper Bird*, (blog), available at: <http://paper-bird.net/2015/01/09/why-i-am-not-charlie/> [accessed 16 August 2015]



- Malik, M., (2010), "Extreme Speech and Liberalism", in Hare, I., & Weinstein, J., (Eds.), *Extreme speech and democracy*, (Oxford University Press: Oxford)
- Mbongo, P., (2010), "Hate Speech, Extreme Speech, and Collective Defamation in French Law", in Hare, I., & Weinstein, J., (Eds.), *Extreme speech and democracy*, (Oxford University Press: Oxford)
- Mendus, S., (1989), *Toleration and the Limits of Liberalism*, (Macmillan: London)
- Miera, F., & Pala, V. S., (2009), "The construction of Islam as a public issue in western European countries through the prism of the Muhammad cartoons controversy: A comparison between France and Germany", *Ethnicities*, Vol.9(3), pp.383-408
- Mill, J.S., (1993), *On Liberty*, in Williams, G (ed.), *Utilitarianism ; On liberty ; Considerations on representative government*, (London : J.M. Dent)
- Montesquieu, C., (1914), *The Spirit of Laws*, trans. by Nugent, T., (London : G. Bell)
- Modood, T., (2013), *Multiculturalism: a civic idea*, 2<sup>nd</sup> edn., (Cambridge : Polity Press)
- Muller and Other v Switzerland, (1988), *European Court of Human Rights, Application No.10737/8*
- Nathwani, N., (2008), "Religious cartoons and human rights - a critical legal analysis of the case law of the European Court of Human Rights on the protection of religious feelings and its implications in the Danish affair concerning cartoons of the Prophet Muhammad", *European Human Rights Law Review*, Vol.4, pp.488-507
- NBC News, (2015), "Charlie Hebdo Interview: Editor Gerard Biard | Meet The Press", (video interview), available at: <https://www.youtube.com/watch?v=snYXcK03DS8> [accessed 18 August 2015]
- Noorlander, P., (2015), "In Fear of Cartoons", *European Human Rights Law Review*, Vol.2, pp.115-122
- Parekh, B., (2006), *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, 2<sup>nd</sup> edn., (Cambridge, MA: Harvard University Press)
- Penketh, A., & Branigan, T., (2015), "Media condemn Charlie Hebdo attacks as assault on freedom of expression", *The Guardian Online*, 8 January, available at: <http://www.theguardian.com/world/2015/jan/08/media-charlie-hebdo-attack-freedom-of-expression> [accessed 10 August 2015]
- Post, R., (2011), "Participatory Democracy and Free Speech", *Virginia Law Review*, Vol.97(3), pp. 477-489
- Rasmussen, D.M., (1990), *Reading Habermas*, (Oxford : Basil Blackwell)
- Raz, J., (1988), *Morality of Freedom*, (Oxford : Oxford University Press)

Reed, L., & Murdoch, J. L., (2011), *Human rights law in Scotland*, 3<sup>rd</sup> edn., (Haywards Heath : Bloomsbury Professional)

Sayare, S., (2015), "What *Je Suis Charlie* Has Become", *The Atlantic Online*, 30 January, available at: <http://www.theatlantic.com/international/archive/2015/01/je-suis-charlie-france-patriotism/384990/> [accessed 18 August 2015]

Simester, A. P., & Von Hirsch, A., (2002), "Rethinking the offense principle", *Legal theory*, Vol.8(3), pp.269-295.

Silva, C., (2015), "Charlie Hebdo Attack: The Prophet Muhammad Cartoons That May Have Caused Paris Magazine Massacre [PHOTOS]", *International Business Times Online*, 7<sup>th</sup> January, available at: <http://www.ibtimes.com/charlie-hebdo-attack-prophet-muhammad-cartoons-may-have-caused-paris-magazine-1775898> [accessed on 25 August 2015]

Statham, P., et al., (2005), "Resilient or adaptable Islam? Multiculturalism, religion and migrants' claims-making for group demands in Britain, the Netherlands and France", *Ethnicities*, Vol.5(4), pp.427-459

Song, S., (2014), "Multiculturalism", *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.), available at: <http://plato.stanford.edu/archives/spr2014/entries/multiculturalism/> [accessed on 12<sup>th</sup> July 2015]

Soutphommasane, T., (2006), "Liberalism, Harm, and the Limits of Free Speech", *Australian Quarterly*, Vol. 78(5), pp. 33-37

Taylor, C., (1995), *Philosophical arguments*, (USA : Harvard University Press)

The Guardian, (2015), "Peter Carey among writers to protest PEN honour for Charlie Hebdo", *The Guardian Online*, 27 April, available at: <http://www.theguardian.com/books/2015/apr/27/peter-carey-among-writers-to-protest-pen-honour-for-charlie-hebdo> [accessed on the 5<sup>th</sup> of May 2015]

The Telegraph, (2015), "Paris shootings: Crowds join 'Unity' march for Charlie Hebdo attacks, in pictures", *The Telegraph Online*, available at: <http://www.telegraph.co.uk/news/picturegalleries/worldnews/11338185/Paris-shootings-Crowds-join-Unity-march-for-Charlie-Hebdo-attacks-in-pictures.html?frame=3161217> [accessed on the 5<sup>th</sup> of May 2015]

Thompson, S., (2012), "Freedom of expression and hatred of religion", *Ethnicities*, Vol.12(2), pp.215–232

Thomson, J.J., (1986), "Feinberg on Harm, Offense, and the Criminal Law: A Review Essay", *Philosophy & Public Affairs*, Vol. 15(4), pp. 381-395

Turner, P.N., (2014), "'Harm' and Mill's Harm Principle", *Ethics*, Vol.124(2), pp. 299-326

UN (United Nations), (1995), *The Copenhagen Declaration and Programme of Action of the World Summit for Social Development*, 6-12 March 1995, (New York, United Nations)

Voltaire, (2000), *Treatise on Tolerance [and other writings]*, translated by Masters, B., translated and edited by Harvey, S., (Cambridge : Cambridge University Press)

Van Mill, D., (2015), "Freedom of Speech", *The Stanford Encyclopedia of Philosophy*, available at: <http://plato.stanford.edu/archives/spr2015/entries/freedom-speech/> [accessed 21 August 2015]

Von Hirsch, A., (1986), "Injury and exasperation: An examination of harm to others and offense to others", *Michigan Law Review*, Vol. 84(4), pp. 700-714

Weill, N., (2006), "What's in a Scarf?: The Debate on Laïcité in France", *French Politics, Culture & Society*, Vol. 24(1), pp. 59-73

Woolf, N., (2015), "New York Times editor in fiery Facebook attack on critic of Charlie Hebdo stance", *The Guardian Online*, 9 January, available at: <http://www.theguardian.com/world/2015/jan/09/new-york-times-editor-cartoons-charlie-hebdo-facebook-dean-baguet> [accessed on the 5<sup>th</sup> of May 2015]

Young, I.M., (1990), *Justice and the Politics of Difference*, (Princeton, N.J. : Princeton University Press)

### Acknowledgments:

I would like to thank my supervisor, Dr. Craig Smith, for allowing me the flexibility I needed, and going above and beyond what was expected of him. I would not have been able to develop this argument without his challenging questions and critiques. I would also like to thank my family for their financial support and moral motivation through a mentally taxing year, in particular I would like to thank Aidan McCartney for proof-reading my dissertation, and Ruth Springham for her emotional support. Moreover, I wish to show my appreciation for all my friends who stood by me, in particular Tessa Mae Harris and Nicholas Stewart for keeping me sane and fun. Lastly, I want to thank my academic family Emma Thomson, Jennifer Russi and Kitty Bocskor, without their friendship this year would have been an even greater struggle – thank you for keeping my brain sharp and for all your words of encouragement.