

# **Freedom of Expression: Religiously Offensive Speech in France and the Case of Charlie Hebdo**

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## **Statutory Declaration**

I declare that I have authored this thesis independently, that I have not used other than the declared sources / resources, and that I have explicitly marked all material which has been quoted either literally or by content from the used sources.

## **Abstract**

This thesis seeks to explore the topic of religiously offensive cartoons, taking the attack on Charlie Hebdo in January 2015 as a starting point. After applying the legal framework and different legal philosophical justifications for free speech to the Charlie Hebdo cartoons, the analysis will take a closer look at a similar controversy in Denmark. As in the Danish cartoon controversy, analysing the broader socio-political context can provide a deeper understanding of the root causes of the protests following the attack. Drawing on critical discourse analysis this thesis investigates the question to what extent the public discourse on free speech in France after the attack on Charlie Hebdo and the role of French Muslims in this debate reflect power relations within the French society. Such power relations indeed manifest themselves in this discourse as it was the official side who started the discourse and had the power to chose wording, meaning of concepts, the topoi and to define ingroups and outgroups. Societal inequalities can also be noticed through participation and representation of French Muslims and their interaction to the other groups present in the discourse.

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# Introduction

On 7 January 2015 the satirical newspaper Charlie Hebdo fell victim to an attack when two gunmen stormed into their office, killing 12 people.<sup>1</sup> The newspaper is known to be provocative, offensive and insulting, often sparking outrage, protests and occasionally a lawsuit initiated by Christian, Muslim or other religious faith organisations on the grounds of discrimination and defamation of a group because of their religious belief.<sup>2</sup> Throughout the journal's history the cartoonists and journalists did not spare anyone and ridiculed politicians, sportsmen, socialites, clerics and religious figures alike. What upset Muslim communities around the globe was that Mohammed was not only portrayed, but also ridiculed. This can be put down to the fact that pictorial portrayal of the prophet are considered an offence in most interpretations of Islam, let alone satirical portrayals. The principle that injunctions of one religion, in this case a ban of (satirical) depictions of Mohammad, only apply to believers is in particular relevant for multi-faith societies as is the French. It is also important to point out the strict interpretation of secularity in France (*laïcité*) which refers to an absolute separation of religion and state and is characterised in practice by no religious interference in politics and vice-versa.

Nevertheless, the Charlie Hebdo controversy raised questions on the lack of tolerance on the part of 'ethnic' French people towards the French Muslim minority and the importance of respect for each other within multicultural and multi-faith societies in Europe. The attack on Charlie Hebdo has been widely perceived as an attack on free speech, which is regarded as one of the core Western values. The aim of this thesis is to explore the controversy that followed the attack and to discover root causes, as the controversy itself can merely be seen as a symptom of a wider problem.

In this thesis literature on legal frameworks and legal philosophy will be discussed and applied to religiously offensive cartoons and a similar case in Denmark will be reviewed to see to what extent it can provide more insight into the Charlie Hebdo controversy. It seems logical to first look at the law and the limits prescribed by law in order to determine the legality of religiously offensive cartoons like the Mohammed cartoons published by Charlie Hebdo. As from a legal point of view there seems to be little discussion I will subsequently move on to the philosophical debate around justifications of free speech. Religiously offensive cartoons will be tested using three different perspectives: the argument from truth, the argument from democracy and the argument from autonomy. The analysis will proceed with a closer look at the defamation of religions theory, a theory that seeks to protect religion as such against defamation. This theory, albeit controversial itself, has received much attention in the UN system and can provide a different take on the topic of religiously offensive speech. Then I will take a closer look at a similar controversy that erupted after the publication of Mohammed cartoons by Jyllands-Posten in Denmark in order to see if and to what extent conclusions can be drawn from analysis and interpretations of this controversy. Scholars such as Lagoutte and Holder decided to analyse the broader societal context in which the cartoons were published and compare it to the power relations within the public discourse on free speech in Denmark. I use the term discourse as a "formal discussion of a topic in speech or writing"<sup>3</sup> that takes place in the media. Power in this context has to be

<sup>1</sup>See BBC, "Charlie Hebdo attack: Three days of terror," 14 January 2015, accessed 11 December 2016, <http://www.bbc.com/news/world-europe-30708237>.

<sup>2</sup>See BBC, "French satirical paper Charlie Hebdo attacked in Paris," 2 November 2011, accessed 11 December 2016, <http://www.bbc.com/news/world-europe-15550350>.

<sup>3</sup>See Oxford Living Dictionaries, "discourse", accessed 11 December 2016, <https://en.oxforddictionaries.com/definition/discourse>.

understood as a form of dominance in a public discourse, namely the power to choose topology, the meaning of concepts, definitions, references (*topoi*) or to attribute characteristics to subjects. But these so-called power relations can also be reflected in the participation and representation of certain actors and groups, their interaction and reaction to each other.

The attack on Charlie Hebdo reignited the public debate on free speech in France. This, in combination with the topicality of the research topic, as little research has been undertaken on the public discourse on free speech in France after the attack on Charlie Hebdo and the role French Muslims play in this discourse, leads me to explore the following research question:

*To what extent does the public discourse on free speech in France after the attack on Charlie Hebdo and the role of French Muslims in this debate reflect power relations within the French society?*

# Methodology

In my thesis I use discourse analysis both as a theory as well as a methodological approach. As a theoretical concept discourse analysis, drawing on a social constructivist point of view, asserts that social reality is constructed and preserved through discourse.<sup>4</sup> Discourse itself can be defined as “an interrelated set of texts, and the practices of their production, dissemination, and reception, that brings an object into being”<sup>5</sup>. These discourses manifest themselves in, among others, written texts, speech, art and icons.<sup>6</sup> Social interactions in these discourses result in meanings being created and represented, therefore also referred to as 'representations'. Continuous utterance of the same representations bring about institutionalised practices and people voicing the same representations constitute a 'position'. Both representations and positions can be either prevalent or marginalised in a discourse.<sup>7</sup> This means that if we want to make sense of our social reality we need to study the discourse constructing this reality.

As a method discourse analysis is concerned with deconstructing and decomposing this discourse by analysing the language employed. Studying language in discourse analysis seeks to study more than the grammar as it explores how words and sentences are able to construct and preserve meaning, connection, relation and objectives. Discourse analysis is interested in examining the connection between the constructed social reality and the discourse in order to explore the wider social context in which the discourse is embedded.<sup>8</sup>

There are various types of discourse analysis. Nelson Phillips and Cynthia Hardy suggest a grouping into four different approaches based on the interest of the research in power relations or the way social reality is constructed (Axis 1) and in texts composing the discourse or the broader context the discourse is situated in (Axis 2).<sup>9</sup>

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<sup>4</sup> See Nelson Phillips and Cynthia Hardy, “What Is Discourse Analysis?” in: *Discourse Analysis*, ed. Nelson Phillips and Cynthia Hardy (Thousand Oaks: SAGE Publications, 2002), 2.

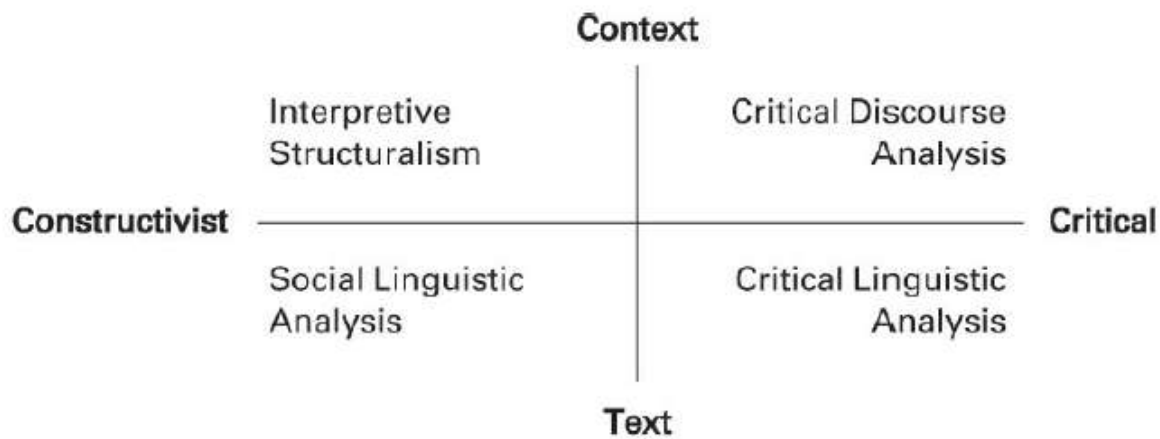
<sup>5</sup> Phillips, What is Discourse Analysis, 3.

<sup>6</sup> See Phillips, What is Discourse Analysis, 3-4.

<sup>7</sup> See Iver B. Neumann, “Discourse Analysis,” in: *Qualitative Methods in International Relations. A Pluralist Guide*, ed. Audi Klotz and Deepa Prakash (New York: Palgrave Macmillan, 2008), 61-62.

<sup>8</sup> See Phillips, What is Discourse Analysis, 5-6; James Paul Gee and Michael Handford, “Introduction,” in: *The Routledge Handbook of Discourse Analysis*, ed. James Paul Gee and Michael Handford (Abingdon, Oxon: Routledge, 2012), 5.

<sup>9</sup> See Nelson Phillips and Cynthia Hardy, “The Variety of Discourse Analysis,” in: *Discourse Analysis*, ed. Nelson Phillips and Cynthia Hardy (Thousand Oaks: SAGE Publications, 2002), 19-20.



**Fig. 1.** Framework for varieties of discourse analysis. Graph from Nelson Phillips and Cynthia Hardy, “The Variety of Discourse Analysis”, in: *Discourse Analysis*, ed. Nelson Phillips and Cynthia Hardy (Thousand Oaks: SAGE Publications, 2002), 21.

In my thesis I am particularly interested in the wider context the discourse on free speech after the attack on Charlie Hebdo is situated in and to what extent this discourse reflects power relations within the French society. Therefore critical discourse analysis (CDA) seems best fit for purpose for two reasons. First CDA oriented research seeks to explore the connection between language and power and how language can demonstrate social hierarchies. Second, CDA is concerned with critically shedding light on the way language is used to create and maintain these social inequalities.<sup>10</sup> By stressing the human nature of such inequalities critical discourse analysts question their necessity and very existence.<sup>11</sup>

In this thesis I will use a 3-step analysis laid out by Senem Aydin-Düzgüt a proponent of the discourse-historical approach, one branch of CDA. The first step constitutes of identifying the main discourse topics, meaning the main themes. The second step explores what she calls “discursive strategies” such as the way subjects are framed, which attributes are ascribed to them, how these qualities are justified and who is the author of these representations. The third and last step involves the employed linguistic means to implement these discursive strategies. Linguistic means can be the usage of “we” and “they”, othering, metaphors, rhetorical figures, positive or negatives attributes, flag and stigma words, topoi (e.g. topos of history, of culture, of threat).<sup>12</sup>

For this discourse analysis 44 article of two main French papers are analysed, representing the centre-left – *Le Monde* – and the centre-right – *Le Figaro*. In addition public statements from Muslim faith organisations, *Union des Organisations Islamique de France* (UOIF), *Conseil Français du Culte Musulman* (CFCM), *Ennour* and *La Maison Islamo-Chrétienne* and the NGO *Mouvement contre le racisme et pour l’amitié entre les peuples* (MRAP) are

<sup>10</sup> See Ruth Wodak, “What CDA is About – A Summary of Its History, Important Concepts and Its Developments”, in: *Methods of Critical Discourse Analysis*, ed. Ruth Wodak and Michael Meyer (London: SAGE Publications, 2001), 3.

<sup>11</sup> See Norman Fairclough, “Critical discourse analysis”, in: *The Routledge Handbook of Discourse Analysis*, ed. James Paul Gee and Michael Handford (Abingdon, Oxon: Routledge, 2012), 10.

<sup>12</sup> See Critical Discourse analysis in analysing EU foreign policy: prospects and challenges, p.358-359.



included as well as two addresses to the nations and two communiqués representing the governmental side of the discourse.

## Legal Framework

### Scope

Freedom of expression as a basic human right was first laid down in the Universal Declaration of Human Rights on 10 December 1948. Article 19 reads:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>13</sup>

The International Covenant on Civil and Political Rights (ICCPR) of 1966 affirms this right (Art 19) as well as the European counterparts, the European Convention on Human Rights (ECHR) (Art 10) and the Charter of Fundamental Rights of the European Union (ChFREU) (Art 11).

The ECHR additionally precludes “[s]tates from requiring the licensing of broadcasting, television or cinema enterprises”<sup>14</sup> and the ChFREU upholds that “freedom and pluralism of the media shall be respected”<sup>15</sup>.

When interpreting the Charter, the European Court of Human Rights (ECtHR) held in the case *Handyside v United Kingdom* that “[f]reedom of expression constitutes one of the essential foundations” in a democratic society and that free speech is “one of the basic conditions for its progress and for the development of every man”<sup>16</sup>. “In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion”, so the Court in *Castells v Spain*.<sup>17</sup> For the Court there is no distinction “between political discussion and

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<sup>13</sup>U.N. General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), accessed 29 October 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>14</sup>Council of Europe, *European Convention on Human Rights, as amended by Protocols Nos. 11 and 14*, as amended by Protocols Nos. 11 and 14, 4 November 1950, accessed 29 October 2016, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>15</sup>European Union, *Charter of Fundamental Rights of the European Union* [2010] O.J. C 364/01.

<sup>16</sup>ECtHR 7 December 1976, Case No. 5493/72, *Handyside v The United Kingdom*, para 49. See also ECtHR 26 April 1979, Case No. 6538/74, *The Sunday Times v The United Kingdom*, para 65; ECtHR 8 July 1986, Case No. 9815/82, *Lingens v Austria*, para 41; ECtHR 26 November 1991, Case No. 13585/88, *Observer and Guardian v The United Kingdom*, para 59; ECtHR 25 June 1992, Case No. 13778/88, *Thorgeir Thorgeirson v Iceland*, para 63; ECtHR 7 February 2012, Case No. 39954/08, *Axel Springer AG v Germany*, para 78.

<sup>17</sup>ECtHR 23 April 1992, Case No. 11798/85, *Castells v Spain*, para 46.

See also ECtHR 18 July 2000, Case No. 26680/95, *Şener v Turkey*, para 40; ECtHR 24 April 2007 (Final 24 July 2007), Case No. 7333/06, *Lombardo and Others v Malta*, para 54; ECtHR 3 April 2012 (Final 03 July 2012), Case No. 43206/07, *Kaperzynski v Poland*, para 64.

discussion of other matters of public concern”<sup>18</sup>. As the Convention does not explicitly state which forms of expression are covered, the Court defines three forms of speech in his case law: political expression<sup>19</sup>, commercial speech<sup>20</sup> and artistic speech<sup>21</sup>.

Further, not only the idea itself but also the way the idea is expressed is covered by the Convention.<sup>22</sup> This means that cartoons are a form of expression covered by the Convention. Protection of freedom of speech does not only refer to speech that is “favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”.<sup>23</sup> As many scholars have pointed out, the fact that cartoons are offensive, cannot per se exclude them from protection under Article 10.<sup>24</sup>

The Court has acknowledged the important function of the media in a democratic system<sup>25</sup> as a “public watchdog”<sup>26</sup>, granting that “journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.”<sup>27</sup> In *Radio France v France* the ECtHR made clear that this journalistic freedom cannot apply to the “dissemination of incorrect information”<sup>28</sup> however a distinction must be made between expressions claimed to be true and those being value judgements.<sup>29</sup>

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<sup>18</sup> *Thorgeir Thorgeirson v Iceland*, para 64.

<sup>19</sup> See *Castells v Spain*, para 42; ECtHR 8 July 1999, Case No. 26682/95, *Sürek v. Turkey* (no. 1), para 61; ECtHR 12 July 2001 (Final 12 October 2001), Case No. 29032/95, *Feldek v Slovakia*, para 74; ECtHR 3 November 2011 (Final 08 March 2012), Case No. 29459/10, *Fratanoló v Hungary*, para 24.

<sup>20</sup> See ECtHR 24 February 1994, Case No. 15450/89, *Casado Coca v Spain*, para 35.

<sup>21</sup> See ECtHR 24 May 1988, Case No. 10737/84, *Müller and Others v Switzerland*, para 27;33.

<sup>22</sup> See ECtHR 23 May 1991, Case No. 11662/85, *Oberschlick v Austria*, para 57; ECtHR 23 September 1994, Case No. 15890/89, *Jersild v Denmark*, para 31.

<sup>23</sup> *Handyside v United Kingdom*, para 49. See also *Sunday Times v The United Kingdom*, para 65; *Lingens v Austria*, para 41; *Observer and Guardian v The United Kingdom*, para 59; *Thorgeir Thorgeirson v Iceland* para 63; ECtHR 19 December 1994, Case No. 15153/89, *Vereinigung demokratischer Soldaten Österreichs und Gubi v. Austria*, para 36; ECtHR 29 March 2001 (Final 29 June 2001), Case No. 38432/97, *Thoma v Luxembourg*, para 44; ECtHR 26 September 1995, Case No. 17851/91, *Vogt v Germany*, para 52; ECtHR 11 December 2003 (Final 11 March 2004), Case No. 39084/97, *Yankov v Bulgaria*, para 129; ECtHR 30 March 2004, Case No. 53984/00, *Radio France and Others v France*, para 32.

<sup>24</sup> See Aurel Sari, “The Danish Cartoons Row: Re-Drawing the Limits of the Right to Freedom of Expression?,” *Finnish Yearbook of International Law* 16 (2005): 379; John Cerone, “Inappropriate Renderings: The Danger of Reductionist Resolutions,” *Brooklyn Journal of International Law* 33(2) (2008): 365.

<sup>25</sup> *Lingens v Austria*, para 41; See also *Observer and Guardian v The United Kingdom*, para 59; *Thorgeir Thorgeirson v Iceland* para 63; *Castells v Spain* para 43; *Thoma v Luxembourg* para 44-45; ECtHR 13 November 2003 (Final 13 February 2004), Case No. 39394/98, *Scharsach and News Verlagsgesellschaft mbH v. Austria*, para 30.

<sup>26</sup> *Thorgeir Thorgeirson v Iceland* para 63; See also ECtHR 25 March 1985, Case No. 8734/79, *Barthold v Germany*, para 58; *Observer and Guardian v The United Kingdom*, para 59.

<sup>27</sup> ECtHR 26 April 1995, Case No. 15974/90, *Prager and Oberschlick v. Austria*, para 38. See also *Thoma v Luxembourg*, para 46; ECtHR 16 November 2004 (Final 16 February 2005), Case No. 56767/00, *Selistö v. Finland*, para 48.

<sup>28</sup> *Radio France and Others v France*, para 38.

<sup>29</sup> See *Lingens v Austria*, para 46.

## Limitations

At this point it is important to note that whereas freedom of thought, conscience and religion (inner conviction or forum internum) is an absolute right, freedom of speech (external manifestation or forum externum) is not, since it can be at the expense of the rights of others. Therefore all above mentioned human rights texts provide for limitations, including hate speech, advocacy of discrimination and religious hatred.<sup>30</sup>

Article 10(2) of the Convention states that the right to free speech “carries with it duties and responsibilities” and “may be subject to such formalities, conditions, restrictions or penalties”.<sup>31</sup> These duties and responsibilities apply in particular to public figures such as politicians as their speech has a wider reach.<sup>32</sup> Second, different limits apply depending on whether the speech is directed to the government/a politician or a private individual with the former having “display a greater degree of tolerance”<sup>33</sup> as part of his role as a public figure. Third, political expression and speech of public interest receives the highest protection with little scope for restrictions.<sup>34</sup>

In order to be justified, these restrictions must be “prescribed by law” and “necessary in a democratic society”<sup>35</sup> Article 52(3) of the ChFREU provides that all rights in the ChFREU shall have the same scope and meaning of the rights as in the ECHR.

Some states seek to justify blasphemy laws and laws prohibiting defamation of religion(s) on the grounds that they aim at protecting public order. The Human Rights Committee, however, made it clear in its General Comment on Article 19 of the ICCPR, that the human rights framework seeks to protect individuals, not religions or belief system as these types of laws can be easily abused to discriminate against other religions and their followers and restrict their rights and freedoms.<sup>36</sup> Only “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”<sup>37</sup>, as outlined in Article 20(2) of the ICCPR, can be a justified ground for restrictions.

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<sup>30</sup>See Anne Weber, *Manual on hate speech* (Strasbourg: Council of Europe Publishing, 2009), 1-2, accessed on 30 October 2016,

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Hate\\_Speech\\_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Hate_Speech_EN.pdf).

For a definition of hate speech see Council of Europe. Committee of Ministers. *Appendix to Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech*. Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies.

<sup>31</sup>Council of Europe, European Convention on Human Rights.

<sup>32</sup>See ECtHR 16 July 2009 (Final, 10 December 2009), Case No. 15615/07, *Féret v Belgium*, para 75.

<sup>33</sup>*Lingens v Austria* para 42. See also ECtHR 9 June 1998, Case No. 41/1997/825/1031, *Incal v Turkey*, para 54; *Sürek v Turkey*, para 61; *Lombardo and Others v Malta* para 54.

<sup>34</sup>See *Castells v Spain* para 42; *Sürek v Turkey* para 61; *Feldek v Slovakia* para 74; *Fratanoló v Hungary* para 24.

<sup>35</sup>Council of Europe, European Convention on Human Rights.

<sup>36</sup>See U.N. Human Rights Committee, 102nd session, “*General comment No. 34. Article 19: Freedom of opinion and expression*,” (CCPR/C/GC/34). 12 September 2011. Last accessed 30 October 2016, <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

<sup>37</sup>U.N. Human Rights Office of the High Commissioner, “*International Covenant on Civil and Political Rights*.” 16 December 1966. Last accessed 30 October 2016, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

The ECtHR has taken a similar stance<sup>38</sup>, allowing governments to restrict such speech either under Article 17<sup>39</sup> or the exceptions provided under 10(2).<sup>40</sup> The Court sought to not only protect speech aimed at inciting violence against a private or public person or a group but also at provoking “intimate personal convictions within the sphere of morals or, especially, religion”<sup>41</sup>

However, the ECtHR has also acknowledged in the controversial landmark case of *Otto-Preminger* that freedom of religion, alongside conscience and thought, is “one of the foundations of a ‘democratic society’”<sup>42</sup> and crucial for “the identity of believers and their conception of life”<sup>43</sup>. Therefore an interference can be justified as a mean “to protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons”<sup>44</sup> Even though “[t]hose who choose to exercise the freedom to manifest their religion [...] cannot reasonably expect to be exempt from all criticism”<sup>45</sup>, a restriction can be justified seeing an expression is “gratuitously offensive”, infringes the rights of others and does “not contribute to any form of public debate capable of furthering progress in human affairs”.<sup>46</sup>

This decision was however not supported by all judges. Judges Palm, Pekkanen and Makarczyk stress the narrow interpretation of Article 10(2) and little margin of appreciation as in their view it is detrimental to freedom of speech as well as tolerance if the state is to decide what constitutes human progress. Especially if the interference concerns prior restraint, it runs the risk of protecting the dominant societal groups.<sup>47</sup> The Convention does not in any way “guarantee a right to protection of religious feelings” and “such a right cannot be derived from the right to freedom of religion”. Freedom of religion, they point out, “includes a right to express views critical of the religious opinions of others”.<sup>48</sup>

The case law on religiously offensive speech, so Ian Leigh, suggests that the Court is trying to establish a hierarchy, valuing political speech higher than commercial and artistic expression. Speech, has to serve social progress and artistic contributions are more likely to

<sup>38</sup>ECtHR 6 July 2006 (Final 06 October 2006), Case No. 59405/00, *Erbakan v Turkey*, para 56. See also ECtHR 25 November 1996, Case No. 17419/90, *Wingrove v The United Kingdom*, para 58; *Sürek v Turkey*, para 61; *Féret v Belgium*, para 73; ECtHR 9 February 2012 (Final 09 May 2012), Case No. 1813/07, *Vejdeland v. Sweden*, para 54-55.

<sup>39</sup>Article 17 of the ECHR: Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

(Invoked e.g. in European Commission on Human Rights 16 November 2004, Case No. 23131/03, *Norwood v The United Kingdom*; ECtHR 11 October 1979, Case No. 8348/78 & 8406/78 (joined cases), *Glimmerveen and Hagenbeek v The Netherlands*; ECtHR 20 February 2007, Case No. 35222/04, *Pavel Ivanov v Russia*)

<sup>40</sup>See ECtHR, Hate Speech (Council of Europe Press Unit, June 2016), last accessed 30 October 2016, [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf).

<sup>41</sup>*Wingrove v The United Kingdom*, para 58.

<sup>42</sup>ECtHR 20 September 1994, Case No. 13470/87, *Otto-Preminger-Institut v. Austria*, para 47; *Wingrove v The United Kingdom*, para 52. See also ECtHR 25 May 1993, Case No. 14307/88, *Kokkinakis v. Greece*, para 31.

<sup>43</sup>*Otto-Preminger-Institut v. Austria*, para 47. See also *Kokkinakis v Greece*, para 31.

<sup>44</sup>*Otto-Preminger-Institut v Austria*, para 48.

<sup>45</sup>*Otto Preminger-Institut v Austria* para 47.

<sup>46</sup>*Otto-Preminger-Institut v Austria* para 49. See also *Wingrove v The United Kingdom*, para 52;60; ECtHR 4 December 2003 (Final 14 June 2004), Case No. 35071/97, *Gündüz v. Turkey* para 37; ECtHR 13 September 2005 (Final 13 December 2005), Case No. 42571/98, *İ.A. v. Turkey*, para 24.

<sup>47</sup> *Otto-Preminger-Institut v Austria*, Dissenting Opinion, para 3-4.

<sup>48</sup> *Otto-Preminger-Institut v Austria*, Dissenting Opinion, para 6.

be considered as trivial and not of public interest.<sup>49</sup> “Beliefs of the value of expression as an outworking of personal autonomy barely features in the jurisprudence”<sup>50</sup>, so Leigh.

The Court has also received much criticism for granting such a high protection to religious feelings and failing to give a strong explanation about the link between religious feelings and freedom of religion and how expression can infringe on this freedom. Instead of focusing on how the targeted group perceives the offence, a better approach would be, so Cerone, to look at the impact of the offence on the behaviour of others towards the targeted group.<sup>51</sup> In recent judgements, such as *Giniewski* and *Klein*, the Court seemed to reconsider its previous reasoning.<sup>52</sup>

## Applying the legal doctrine to the Charlie Hebdo controversy

With regard to the cartoons, published by Charlie Hebdo, can they be considered as offensive to the extent that they constitute an act of racism, xenophobia or religious hatred? Charlie Hebdo’s decision to publish the cartoons of *Jyllands-Posten* in 2006 resulted in a lawsuit initiated by the *Union of Islamic Organisations of France* (Union des organisations islamiques de France) and the *Great Mosque of Paris* (Grande Mosquée de Paris). They claimed that the cartoons intended to defame a group of persons on the basis of their religious faith.<sup>53</sup> The Court, however, stressing the importance of the French tradition of religious satire, did not find the cartoons “gratuitously offensive”, but rather a valuable contribution to the public debate on Islamic terrorism.<sup>54</sup> The case law of the ECtHR suggests, that the Court would probably allow France a certain margin of appreciation if a ban of the cartoons was deemed necessary by the French authorities to protect public order, morals and religious feelings of a part of its population. French law, however, is deeply rooted in *laïcité*, a strict separation between church and religion, marked by the absence of blasphemy laws. Whereas the law accords high protection to individuals against defamation and insult, religions and beliefs are not protected from blasphemous speech and can therefore be subject to criticism, offense and ridicule.<sup>55</sup>

In this context, it seems difficult to argue, that French judges would have deviated from their previous reasoning with the latest Charlie Hebdo cartoons.<sup>56</sup>

<sup>49</sup>See Ian Leigh, “Damned if they do, Damned if they don’t: the European Court of Human Rights and the Protection of Religion from Attack,” *Res Publica* 17 (2011): 70-71.

<sup>50</sup> Leigh, Damned if they do, Damned if they don’t: the European Court of Human Rights and the Protection of Religion from Attack, 70.

<sup>51</sup>See Cerone, Inappropriate Renderings: The Danger of Reductionist Resolutions, 372.

<sup>52</sup>ECtHR 31 January 2006 (Final 31 April 2006), Case No. 64016/00, *Giniewski v. France*. ECtHR 31 October 2006 (Final 31 January 2007), Case No. 72208/01, *Klein v Slovakia*.

<sup>53</sup>See Francesco Alicino, “Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives,” *Islam and Christian-Muslim Relations* 27(1) (2016): 60-61.

<sup>54</sup>See Alicino, Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives, 61-62; Tribunal correctionnel de Paris, March 22, 2007.

<sup>55</sup>See Rim-Sarah Alouane, “God, the Pencil, and the Judge: Exploring the Paradoxes Regarding Protection of Freedom of Religion and Expression in France,” *Religion and Human Rights* 11 (2016): 19; Patrick Weil, “Why the French Laïcité is liberal,” *Cardozo Law Review* 30(6) (2009): 2704-2705.

<sup>56</sup>See also Tribunal correctionnel du TGI de Paris (17ième Chambre) 22 October 2002, last accessed 30 October 2016, <http://tempsreel.nouvelobs.com/culture/20021022.OBS1729/islam-houellebecq-relaxe.html>;

Cour d’Appel de Versailles March 18, 1998, *AGRIF c. J-C. Godefroy*, last accessed 20 October 2016, [https://www.legifrance.gouv.fr/affichJuriJudi.do?](https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000006935227&fastReqId=1184023495&fastPos=1;)

[oldAction=rechJuriJudi&idTexte=JURITEXT000006935227&fastReqId=1184023495&fastPos=1;](https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000006935227&fastReqId=1184023495&fastPos=1;)

Thus, from a purely legal point of view the Muhammad cartoons of Charlie Hebdo do not seem all too controversial.

## Justifications for free speech: The Classical Debate

Having considered the limits of the law I will move on to look at offensive speech from a more philosophical angle. How do legal philosophers define the scope of free speech and where do they draw the limits?

The many justifications for free speech can be grouped into two classes: consequentialist and non-consequentialist justifications. Consequentialist justifications such as the argument from truth, the argument from diversity, the argument from democracy, the argument from distrust, the pressure release argument or the slippery slope argument, seek to protect speech in order to reach a desired outcome. Non-consequentialist justifications consider free speech as the end itself, such as the argument from autonomy.<sup>57</sup>

Below I will discuss three justifications, also known as the classical debate, the argument from truth, the argument from democracy and the argument from autonomy.

### The Argument from Truth

The argument from truth as a justification for free speech has its root in 16th century England when Sir Peter Wentworth addressed the House of Commons and made a plea for freedom of speech arguing that “[a]n evil man can do the less harm when it is known” and “a wicked purpose may the easier be prevented when it is known”.<sup>58</sup> In other words, by exposing dangerous ideas to the scrutiny of the public they can be openly debated upon and as a result proven erroneous compared to other ideas. This rests on the assumption that truth can defeat and bury falsehood, which became widely accepted in the 17<sup>th</sup> and 18<sup>th</sup> century. One expression of this conviction is John Milton's famous *Areopagitica*, written in the 17th century. John Milton was influenced by the Leveller claim of free speech and writers like Henry Robinson, propagating religious toleration and William Walwyn, opposing censorship so that the power of truth can unfold itself.<sup>59</sup> John Stuart Mill developed this idea further arguing in favour of a public discourse that is open to all views and opinions in order

and Cassation civ. (2ième Chambre) 8 March 2001, *AGRIF c. J-C. Godefroy*, last accessed 30 October 2016, <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007042949&fastReqId=104063277&fastPos=1>;

Tribunal de Grande Instance de Paris, *AGRIF c. Charlie Hebdo*, June 2, 2009, Cour d' Appel de Paris, April 7, 2010.

<sup>57</sup>See Susan J. Brison, “The Autonomy Defense of Free Speech,” *Ethics* 108(2) (1998): 320-321; Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge: Cambridge University Press, 2015), 13-18.

<sup>58</sup>Simon d'Ewes, “Journal of the House of Commons:1576,” in *The Journals of All the Parliaments During the Reign of Queen Elizabeth* (Shannon, Ire: Irish University Press, 1682), 236-251. *British History Online*, accessed 29 October 2016, <http://www.british-history.ac.uk/no-series/jrnl-parliament-eliz1/pp236-251>.

to better identify the falsehood of an idea. Human beings are not free from error and neither is our judgement but constant collective questioning, analysing, criticising and exploring over generations makes it possible to decrease the amount of erroneous beliefs.<sup>60</sup> In his dissenting opinion in the case *Abrams v United States* Justice Holmes coined the term 'marketplace of ideas' and speaks of a 'free trade in ideas' and 'that the best test of truth is the power of the thought to get itself accepted in the competition of the market'.<sup>61</sup> Like a market of goods we presume that the market of ideas does regulate itself so that the good and sensible ones will convince the most people and will therefore succeed. Proponents of the argument from truth stress that even radical, disrespectful, insulting or anti-social ideas should find access to the common marketplace as they will hopefully be refuted and refused.<sup>62</sup>

However, the very notion of truth has been subject to much criticism. Edwin Baker and Stanley Ingber, for example, question the existence of an objective and discoverable truth.<sup>63</sup> However, one can refute this objection by arguing that the argument from truth is not necessarily concerned with finding the truth but constantly challenging an idea perceived as true, even with erroneous ideas. Second, Baker and Ingber challenge the human capacity to assess different ideas rationally, a presumption essential to the marketplace model.<sup>64</sup> People are influenced by psychological factors such as "subconscious' repressions, phobias, or desires" and "stimulus-response mechanisms and selective attention and retention processes"<sup>65</sup>.

Since the 1990s and especially in the light of the financial crisis in the late 2000s, scholarship, drawing from psychology and behavioural economics, was also considering a possible market failure on the market of ideas.

First, just like on a traditional market there is imperfect competition. Imperfect competition can result from idea producers being unequally funded to disseminate their ideas or from a monopoly where only one party is able to dominate which ideas are being disseminated in public.<sup>66</sup> Alvin Goldman and James Cox conclude in their analysis of the 'Market Maximizes Truth Possession' (MMTP) that in certain domains such as astrology or the occult regulation would prevent an accumulation of false and erroneous ideas. Scientific and academic speech for example is a highly controlled domain. Yet, it is widely accepted as a forum where discoveries and achievements with a great chance of being true are disseminated. Moreover, they argue, there are indeed effective government policies regulating the market

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<sup>59</sup>See Jeffery A. Smith, "Freedom of Expression and the Marketplace of Ideas Concept from Milton to Jefferson," *Journal of Communication Inquiry* 7(1) (1981): 47; 49-51.

<sup>60</sup>See Sarah Sorial, "Free Speech, Autonomy, and the Marketplace of Ideas," *Journal of Value Inquiry* 44 (2010): 170.

<sup>61</sup>Justice Holmes, Dissenting Opinion, *Abrams v. United States* 250 U.S. 616 (1919), 631, accessed 29 October 2016 [https://www.law.cornell.edu/supremecourt/text/250/616#writing-USSC\\_CR\\_0250\\_0616\\_ZO](https://www.law.cornell.edu/supremecourt/text/250/616#writing-USSC_CR_0250_0616_ZO).

<sup>62</sup>See Sorial, Free Speech, Autonomy, and the Marketplace of Ideas, 170-171.

<sup>63</sup>See C. Edwin Baker, "Scope of the First Amendment Freedom of Speech," *UCLA Law Review* 25(5) (1978): 974-975; Stanley Ingber, "The Marketplace of Ideas: A Legitimizing Myth." *Duke Law Journal* 1984(1) (1984): 15.

<sup>64</sup>See Baker, Scope of the First Amendment Freedom of Speech, 975-977; Ingber, The Marketplace of Ideas: A Legitimizing Myth, 34-36

<sup>65</sup>See Baker, Scope of the First Amendment Freedom of Speech, 977.

<sup>66</sup>See Gregory Brazeal, "How Much Does a Belief Cost?: Revisiting the Marketplace of Ideas," *Southern California Interdisciplinary Law Journal* 21(1) (2011): 8-9; 30-31.

such as laws requiring producers of food and drugs to correctly label their products to protect consumers.<sup>67</sup>

Another market failure is imperfect information. This occurs when idea consumers do not have sufficient background knowledge about the ideas available on the market and therefore face difficulties in determining the level of quality of an idea. Just like credit-rating agencies on a traditional market, the parties often rating ideas such as the media, professors, specialists, family or friends are prone to failure. Another failure concerns transaction costs as ideas that are easier to grasp will end up with more followers than ideas that are more complex.<sup>68</sup>

## The Argument from Democracy

Alexander Meiklejohn is one of the most prominent advocates of the argument from democracy, postulating that the justification of free speech stems from three responsibilities of the electorate. First, knowledge of the policy issues at stake, second, an opinion regarding these policies and third, suggestions on how to make these policies better and more effective. Therefore, free speech must be guaranteed as it constitutes a prerequisite for people to inform themselves to make sensible and well-informed decisions.<sup>69</sup>

Post stresses that an argument based on the value of democracy must include more than informed democratic decision-making. A government can only be regarded as legitimate if its citizens also have the chance to engage in the public discourse and thus influence decision-making processes. Speech that is necessary for a properly functioning public discourse receives protection under the principle of free speech. In his opinion free speech doctrine should rest on the assumption that all ideas, whether good or bad, true or false are equal as is the political status of the citizens. Democracy only applies to the relationship of governments and its citizens, meaning that speech that takes place outside the public discourse is not necessarily protected and governments are allowed to differentiate between true and false or misleading ideas, for example product labelling.<sup>70</sup> Weinstein draws on Post's notion of public discourse and its importance for democratic legitimacy and self-governance but unlike Post he focuses more on the content rather than the context when assessing the level of protection of speech.<sup>71</sup> Both, however, argue that even speech that can potentially harm people such as racist and anti-Semitic speech or advocacy of illegal activities, should not be restricted if it happens as part of the public discourse.<sup>72</sup>

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<sup>67</sup>See Alvin I. Goldman, "Speech, Truth, and the Free Market for Ideas," *Legal Theory* 2(1) (1996): 12-14.

<sup>68</sup>See Brazeal, How Much Does a Belief Cost?: Revisiting the Marketplace of Ideas, 32-33; 35.

<sup>69</sup>See Alexander Meiklejohn, "The First Amendment is an Absolute," *The Supreme Court Review* 1961 (1961): 255-257.

<sup>70</sup>See Robert Post, "Participatory Democracy and Free Speech," *Virginia Law Review* 97(3) (2011): 482-485.

<sup>71</sup>See James Weinstein, "Participatory Democracy as the Central Value of American Free Speech Doctrine," *Virginia Law Review* 97(3) (2011): 493-494.

<sup>72</sup>See Weinstein, Participatory Democracy as the Central Value of American Free Speech Doctrine, 499-500; 512-513.



Whereas it is justifiable for Eric Barendt to restrict incitement to criminal activity, he stresses that this should not be the case for extreme political speech such as advocacy for terrorism. The public may have an interest in hearing about the views, arguments and motives of terrorists in order to grasp and find ways to deal with the issue. Secondly, criminalising terrorist propaganda does not eradicate the problem itself. It merely pushes the issue out of the public discourse and into the private sphere. It is questionable, he argues, when a government seeks to prohibit speech it does not agree with.<sup>73</sup>

Eugene Volokh points out that free speech should not be limited to the protection of a “public discourse” as, unlike the truth rationale, it only indirectly links scientific, religious, moral or historical speech to democracy and in this regard fails to acknowledge the importance of such types of speech. Universities, think-tanks and an informed citizenry, not governments, should be responsible to assess these types of ideas and their validity through scientific inquiry, because any governmental influence through financing, employment and education undermines an objective search for truth and impacts on the public discourse.<sup>74</sup>

The argument from democracy is therefore prone to rule out the protection of non-political speech, or speech that does not form part of the public discourse. The argument from autonomy, as outlined in the next chapter, includes a much wider range of types of speech.

## The Argument from Autonomy

The concept of autonomy, as a non-consequentialist or deontological approach, is based on the ability or the right of a person to govern his or her actions.<sup>75</sup> According to Scanlon an autonomous person “must see himself as sovereign in deciding what to believe and in weighing competing reasons for action”.<sup>76</sup> Therefore one “cannot accept without independent consideration the judgement of others as to what he should believe or what he should do.”<sup>77</sup>

There are different concepts of autonomy at play. Christian Rostbøll distinguishes between a Millian autonomy and a Kantian autonomy. Proponents of the former see autonomy as a character ideal encouraging people to critically reflect on themselves which can lead to people exercising their right to free speech in an arrogant and disrespectful way. A Kantian understanding of autonomy considers autonomy as a quality inherent in every human being and respecting this autonomy is a prerequisite to accept each other as humans and therefore as equals. Arrogant behaviour would lead to denying each other’s equality, meaning that disrespectful speech is not as easily justified.<sup>78</sup>

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<sup>73</sup>See Eric Barendt, “Threats to Freedom of Speech in the United Kingdom,” *University of New South Wales Law Journal* 28(3) (2005): 895-898.

<sup>74</sup>See Eugene Volokh, “In Defense of the Marketplace of Ideas/Search for Truth as a Theory of Free Speech Protection,” *Virginia Law Review* 97(3) (2011): 595-599.

<sup>75</sup>See Brison, *The Autonomy Defense of Free Speech*, 323

<sup>76</sup>Thomas Scanlon, “A Theory of Freedom of Expression,” *Philosophy & Public Affairs* 1(2) (1972): 215.

<sup>77</sup>Scanlon, *A Theory of Freedom of Expression*, 216.

<sup>78</sup>See Christian F. Rostbøll, “Autonomy, Respect, and Arrogance in the Danish Cartoon Controversy,” *Political Theory* 37(5) (2009): 624; 629-630; 633-634.

Basing free speech on a Millian understanding of autonomy also leads to people being exposed to inaccurate and deceptive speech and this, Susan Brison argues, can present a danger to a person's autonomy.<sup>79</sup> In a later publication Scanlon revised the absoluteness of his earlier theory of freedom of expression accepting that it failed to allow, for example, for a ban on misleading advertising.<sup>80</sup> Brison also criticises Scanlon insofar as his theory does not allow for restricting advocacy of discrimination and violence towards social, ethnic or religious groups.<sup>81</sup> For Scanlon the argument from autonomy is more vested in banning any governmental interference regarding the exercise of free speech than recognising the right of individuals to autonomy.<sup>82</sup> She however points out the inconsistency of this approach as it does not oblige the government to respect the autonomy of its citizens but still values an autonomous human being.<sup>83</sup> Scanlon later acknowledges that a constraint on governmental interference is solely based on the importance of autonomy.<sup>84</sup>

Like the argument from truth, the argument from autonomy is also heavily reliant on the presumption of a rationally acting human being exposing this argument to similar criticism. In this regard, Sarah Sorial questions the justification of scholars such as Scanlon and Thomas Nagel<sup>85</sup> to object the restriction of pornographic speech or advocacy of violence such as terrorist propaganda. Terrorist propaganda as well as pornography do not use rational means but rather try to convey their message by appealing to a more subconscious level and triggering emotions such as prejudice, hatred or anger against a particular group.<sup>86</sup>

The very act of persuasion, according to Marcel Kinsbourne, is both cognitive and emotional in nature and depends on a phenomenon he calls entrainment. By entrainment he understands the human capacity to imitate others and accept their views without rational reasoning. This applies in particular to group behaviour seeing that groups often have rituals performed together in unison such as hymns, marching songs, prayers and goose-steps.<sup>87</sup> Further, Susan Hurley stresses the connection between media violence and aggressive behaviour. Hence, the fact that violent behaviour is often taken up unconsciously instead of through autonomous deliberative processes coupled with the influence of the media over public opinion questions a justification of violent speech with the argument of audience autonomy.<sup>88</sup>

These new insights in the act of imitation force scholars now to reconsider the presumption of rationality liberal theory draws on.

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<sup>79</sup>See Brison, *The Autonomy Defense of Free Speech*, 328.

<sup>80</sup>See Thomas Scanlon, "Freedom of Expression and Categories of Expression," *University of Pittsburgh Law Review* 40 (1979): 530-532.

<sup>81</sup>See Brison, *The Autonomy Defense of Free Speech*, 329.

<sup>82</sup>See Scanlon, *A Theory of Freedom of Expression*, 221.

<sup>83</sup>See Brison, *The Autonomy Defense of Free Speech*, 329-330.

<sup>84</sup>See Scanlon, *Freedom of Expression and Categories of Expression*, 533-534.

<sup>85</sup>See Thomas Nagel, "Personal Rights and Public Space," *Philosophy & Public Affairs* 24(2) (1995): 83-107.

<sup>86</sup>See Sorial, *Free Speech, Autonomy, and the Marketplace of Ideas*, 177-178.

<sup>87</sup>See Marcel Kinsbourne, "Imitation as Entrainment: Brain Mechanisms and Social Consequences," in *Perspectives on Imitation. From Neuroscience to Social Science*, ed. Susan Hurley and Nick Chater, (Cambridge, MA: The MIT Press, 2005), 170-171.

<sup>88</sup>See Susan Hurley, "Imitation, Media Violence, and Freedom of Speech." *Philosophical Studies* 117 (2004): 166-167; 177-178; 186-187; 194-195; 204-205.

There are also scholars, such as Kabasakal Badamchi, using more than one justification for the protection of free speech to make up for the other argument's shortcomings, arguing that autonomy and democratic participation are complementary. As mentioned above, the autonomy argument is too broad and seeks to protect all speech irrespective of the possible harm being done such as hate speech and violent pornography. Combining autonomy with political participation as grounds for free speech protection helps granting a stronger protection for political speech without flatly refusing to protect other types. It nevertheless provides for a justification to regulate speech such as deceptive advertising, hate speech, violent pornography, private libel and non-democratic speech.<sup>89</sup>

## Applying the arguments from the classical debate to the Charlie Hebdo controversy

Applying the classical debate on free speech justifications on the Charlie Hebdo cartoons, it seems difficult to argue in favour of their prohibition. Firstly, we need to discuss the question whether the publication of cartoons can be justified as they contribute to the search for truth or the best idea. It is difficult to maintain that the cartoons are a form of speech, for which regulation aims to prevent the spread of misinformation. Instead they took part in the public debate on questions evolving around living together in a multicultural society and on how to deal with different values and norms by questioning such norms and values. They deal with important questions such as how to treat norms and values of others or how to deal with disrespectfulness. Even if they transgressed boundaries, crossing limits can help finding and determining exactly these limits. Forbidding the publication of such cartoons would mean making a value judgement and claiming that the ideas behind the cartoons were erroneous. As an idea they have to withstand the competition on the market of ideas and if they turn out to be false or if another idea is considered better, they won't emerge as victorious. Only when every individual has the opportunity to perform at full potential, can the best ideas be found for society as a whole.

Secondly, the argument from democracy postulates that every idea, if part of the public discourse, should be treated as equal, just like citizens, so that citizens can make well-informed decisions. A government can only be deemed legitimate when everybody is able to take part in the public discourse. Charlie Hebdo can be considered as a political newspaper, part of the French left, thus we can claim that its socio-critical content is of public interest and contributes to the public debate. As argued above the cartoons in question can be said to contribute to debates on limits of free speech, difficulties in multicultural societies, or the role of religion in a society. These are debates which are of vital importance for the public as their outcomes can have wide implication on all individuals.

Even if Charlie Hebdo's cartoons can be seen as racist, Weinstein, Post and Barendt argue that even racist and extreme political speech should be allowed as a ban would simply push this kind of speech into the underground. The public has an interest to hear about the motives, arguments and ideas of the proponents of such speech in order to better understand it.

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<sup>89</sup>See Devrim Kabasakal Badamchi, "Justifications of freedom of speech: Towards a double-grounded non-consequentialist approach," *Philosophy and Social Criticism* 41(9) (2015): 920-923.

Third, even if we assume the cartoons do not benefit human progress or democracy, it can be questioned if a ban would infringe on the cartoonist's right to express themselves and therefore on their autonomy to govern themselves and make their own decisions.

The argument from autonomy seeks to protect all speech, also potentially harmful speech.

The violent reaction of those who were allegedly offended, and felt targeted is indeed worrisome, however restricting speech because of fear of violent reactions, also called Heckler's veto, is problematic as there will always be someone disagreeing with an utterance. Especially in a pluralistic society this might lead to a decrease in the scope of free speech. The question is also whether the reaction can be directly linked to the cartoons or whether it was a symptom of a different problem.

We can indeed use a Kantian perception of autonomy which encourages a respectful behaviour towards each other, emphasising equity of all people. At this point however, one might question if we still treat each other as equal if we apply considerations towards one group's sensitivities but not to another one's. Looking at the classical debate the cartoons do not seem very controversial as they can be justified with each of the three justifications.

Therefore, let us consider the theory of defamation of religion, which links free speech more concretely to freedom of religion, discrimination on grounds of religion and the protection of religious feelings.

# The Theory of Defamation of Religion

In the cartoon controversy in France it can be noticed that there was friction between different groups in the French society: one group defending a wide interpretation of free speech and the other demanding protection of their religious feelings. Societies are in constant change and contradictions that create conflicts stimulate these change and development processes. These changes are then ideally reflected in changes of the law. In order to further explore the topic of religiously offensive cartoons it is therefore necessary to look closer at this friction. The theory of defamation explains this friction by postulating that there are two freedoms that overlap and therefore compete with each other: freedom of speech and freedom of religion. This chapter seeks to study this theory as well as its criticism in more detail to see if it can provide valuable insights into the root causes of the French cartoon controversy.

As every monotheistic world religion claims exclusivity, blasphemy is considered a severe offence in all religious doctrines. Many states have codified blasphemy provisions which can aim to safeguard the dominant religious belief against speech and publications intended to provoke, shock or hurt the feelings of the believers but also to protect public order.

There is one big difference between states with Islam and Christianity being the predominant religion. In Islamic law there is no clear cut distinction between blasphemy and apostasy but the two crimes rather go hand in hand with substantial overlap. In statutory law of predominantly Christian states, merely having doubts about certain facts and issues of a religious doctrine or denying the existence of god usually does not amount to blasphemy. The blasphemy provisions in Christian states differ inasmuch as that some states have generic blasphemy prohibitions whereas others have provisions prohibiting blasphemous libel of only one specific religion. This concerns mainly states where one Christian denomination has been enshrined as the state religion.<sup>90</sup> Several EU member states include blasphemy laws, among them are Austria, Germany, Denmark, Finland, Greece, Italy, Ireland and Poland.

The Scandinavian countries' Penal Codes, for example, have generic provisions, as do Austria and Germany. The Greek provision in the constitution is non-discriminatory in nature, however discriminatory in the Greek Penal Code and in reality protecting the Greek Orthodox Church.<sup>91</sup> The situation is similar in Poland. Even with article 196 of Poland's Penal Code being generic, the powerful role the Catholic Church plays in Polish society and politics cannot be disregarded.<sup>92</sup> Ireland used to be an example of a country with discriminatory blasphemy provisions, however in 2009 it changed to a generic one including all religions.<sup>93</sup>

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<sup>90</sup> Jeroen Temperman, "Blasphemy, Defamation of Religions and Human Rights Law," *Netherlands Quarterly of Human Rights* 26(4) (2008): 518-519; 522.

<sup>91</sup> See Temperman, Blasphemy, Defamation of Religions and Human Rights Law, 521.

<sup>92</sup> Jo-Anne Prud'homme, *Policing Belief: The Impact of Blasphemy Laws on Human Rights* (Freedom House, October 2010), 90-91, accessed 29 October 2016, [https://freedomhouse.org/sites/default/files/Policing\\_Belief\\_Full.pdf](https://freedomhouse.org/sites/default/files/Policing_Belief_Full.pdf).

<sup>93</sup> See Reporters without Borders, "EU countries urged to repeal blasphemy laws," last modified 20 January 2016, accessed 29 October 2016, <https://rsf.org/en/news/eu-countries-urged-repeal-blasphemy-laws>.

There are repeatedly discussions on repealing all sorts of blasphemy provisions. In 2008 the United Kingdom abandoned its blasphemy laws as part of the Criminal Justice and Immigration Act 2008. It was considered inconsistent with the non-discrimination principle because it only referred to the Church of England.<sup>94</sup> These discussions gained momentum after the attack on Charlie Hebdo. In 2012 the Netherlands repealed its blasphemy provision<sup>95</sup> and Malta followed in 2016.<sup>96</sup> Iceland too abolished the offence of blasphemy provisions six months after the attack on Charlie Hebdo, a bill backed by most of the Icelandic religious leaders. France has repealed its blasphemy laws as early as 1789, except for the region of Alsace-Moselle, where it has been reintroduced when part of the German empire from 1871-1918.<sup>97</sup>

Many Christian countries have invoked blasphemy provisions less in the last decades but in many Islamic countries they are very much in use and defaming the Qur'an, the prophet or other sacred personages can result in (life) imprisonment or the death penalty.<sup>98</sup>

Blasphemy laws however protect public order interests and therefore merely criminalise blasphemous behaviour that is at the same time disorderly conduct.<sup>99</sup> The defamation of religion theory on the other side pursues the aim of criminalising defamation of religion and hence protecting religion as such. Being a permanent observer at the United Nations in New York, the Organisation of Islamic Cooperation (OIC) (formerly Organization of the Islamic Conference) plays a major role in advocating and shaping the 'counter-defamation discourse' at an international level. The organisation has been influential in drafting and passing various UN resolutions in the Commission on Human Rights (UNCHR), which became the Human Rights Council (UNHRC), and later in the UN General Assembly, aimed at protecting religions against defamation. Acknowledging the right to freedom of expression, the resolutions are concerned with increasing religious intolerance and discrimination and link defamation of religion to discrimination of the individual based on religion suggesting that

<sup>94</sup> See Temperman, *Blasphemy, Defamation of Religions and Human Rights Law*, 520; The Guardian, "Criminal Justice and Immigration Act," 19 January 2009, last accessed 29 October 2016, <https://www.theguardian.com/commentisfree/libertycentral/2009/jan/13/criminal-justice-immigration-act>.

<sup>95</sup> See BBC, "Dutch approve move to scrap blasphemy law," 29 November 2012, last accessed 29 October 2016, <http://www.bbc.com/news/world-europe-20530428>.

<sup>96</sup> See Times of Malta, "Repealing blasphemy law a victory for freedom of speech, says Humanist Association," 14 July 2016, last accessed 29 October 2016, <http://www.timesofmalta.com/articles/view/20160714/local/repealing-blasphemy-law-a-victory-for-freedom-of-speech-says-humanist.618859>.

<sup>97</sup> See Reporters without Borders, *EU countries urged to repeal blasphemy laws*.

Article 166 criminalises "insulting public statements that blaspheme God" or "commits an insulting and offensive act in a church or other place used for religious assemblies" with imprisonment of up to three years. See Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society*, (Strasbourg: Council of Europe Publishing, 2010), 168, last accessed 29 October 2016, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e).

<sup>98</sup> See Jeroen Temperman, "Blasphemy, Defamation of Religions and Human Rights Law," *Netherlands Quarterly of Human Rights* 26(4) (2008): 518-519; 522.

<sup>99</sup> See Article 188 of the Austrian Penal Code (Strafgesetzbuch): Wer öffentlich eine Person oder eine Sache, die den Gegenstand der Verehrung einer im Inland bestehenden Kirche oder Religionsgesellschaft bildet, oder eine Glaubenslehre, einen gesetzlich zulässigen Brauch oder eine gesetzlich zulässige Einrichtung einer solchen Kirche oder Religionsgesellschaft unter Umständen herabwürdigt oder verspottet, unter denen sein Verhalten geeignet ist, berechtigtes Ärgernis zu erregen, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

defamation of religion should form part of the reasons free speech can be restricted.<sup>100</sup> The first resolution, sponsored by Pakistan in 1999 reasoned that increasing intolerance and discrimination of Islam and the fact that “Islam is frequently and wrongly associated with human rights violations and with terrorism” makes it necessary to combat this issue and to “encourage understanding, tolerance and respect in matters relating to freedom of religion or belief”<sup>101</sup> Until its dissolution, the Commission has passed a new version of this resolution each year, stressing basically the same issues.<sup>102</sup> In the aftermath of the 9/11 attacks the atmosphere was favourable to pass a resolution in the UNCHR using a more powerful language to condemn defamation of religion and to require a more substantial contribution to promote tolerance respect and religious diversity.<sup>103</sup> The necessity to protect religions, and Islam in particular, was backed by reports of the Special Rapporteur articulating “fears about a rise of Islamophobia among public opinion in the West” and concerns about the way Islam and Muslim people have been portrayed by politicians and the media.<sup>104</sup>

With Islam being referred to more often than in previous resolutions it suggests a strong preference for the protection of Islam over other religions and beliefs.<sup>105</sup> The Danish cartoon controversy in 2005 gave another major impetus to the development of creating a right to have one’s religious feelings protected. The conclusion drawn from the Danish cartoon controversy was that there seems to be a clash between two rights, namely the freedom of expression and an allegedly right to have one’s religious feelings protected.<sup>106</sup>

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<sup>100</sup>See Rebecca J. Dobras, “Is the United Nations Endorsing Human Rights Violations?: An Analysis of the United Nations’ Combating Defamation of Religions Resolutions and Pakistan’s Blasphemy Laws,” *Georgia Journal of International and Comparative Law* 37(2) (2009): 341-343.

<sup>101</sup>U.N. Commission on Human Rights, 62nd Meeting. “Resolution 1999/82 [Defamation of religions]” (E/CN.4/RES/1999/82). 30 April 1999.

<sup>102</sup>See U.N. Commission on Human Rights, 67th Meeting. “Resolution 2000/84 [Defamation of religions]” (E/CN.4/RES/2000/84). 26 April 2000; U.N. Commission on Human Rights, 61st Meeting. “Resolution 2001/4 [Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity]” (E/CN.4/RES/2001/4). 18 April 2001; U.N. Commission on Human Rights, 39th Meeting. “Resolution 2002/9 [Combating defamation of religion]” (E/CN.4/RES/2002/9). 15 April 2002; U.N. Commission on Human Rights, 47th Meeting. “Resolution 2003/4 [Combating defamation of religions]” (E/CN.4/RES/2003/4). 14 April 2003; U.N. Commission on Human Rights, 45th Meeting. “Resolution 2004/6 [Combating Defamation of Religions]” (E/CN.4/RES/2004/6). 13 April 2004; U.N. Commission on Human Rights, 44th Meeting. “Resolution 2005/3 [Combating defamation of religions]” (E/CN.4/RES/2005/3). 12 April 2005.

<sup>103</sup>See Allison G. Belnap, “Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights,” *Brigham Young University Law Review* 2010 (2010): 656-657; Maxim Grinberg, “Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society,” *Sri Lanka Journal of International Law* 18(197) (2006): 201. See also UNCHR, Resolution 2002/9.

<sup>104</sup>U.N. Economic and Social Council, “Civil and Political Rights, Including Religious Intolerance Report submitted by Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief, in accordance with Commission on Human Rights resolution 2002/40” (E/CN.4/2003/66). 15 January 2003, accessed 24 June 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/103/06/PDF/G0310306.pdf?OpenElement>, 18, para 94.

<sup>105</sup>See Belnap, Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights, 657.

<sup>106</sup>See Joshua Foster, “Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religion Provisions,” *Journal of Catholic Legal Studies* 48:19 (2009): 22-24.

In the highly tense atmosphere the debate eventually found its way into the UN General Assembly, resulting in a resolution titled “Combating Defamation of Religion”.<sup>107</sup> Similar resolutions were passed in 2006, 2007, 2008, 2009 and 2010.<sup>108</sup>

Since 2011 a turn in the discourse on defamation of religions can be noticed in the UNHRC as the debate has moved away from protecting religions against defamation but instead centred on strengthening the protection of individuals against discrimination violence based on religion.<sup>109</sup> This change can likewise be observed in the General Assembly.<sup>110</sup>

## Criticism

The Defamation of Religions Theory has been subject to a considerable amount of criticism coming from both Human Rights NGOs and academics.

In a submission to the UN High Commissioner for Human Rights in 2007, the International Humanist and Ethical Union (IHEU) questions the alleged aim of the resolutions, namely protecting the freedom of religion, as human rights seek to protect individuals, not religions.<sup>111</sup> This argument is also supported by Jeroen Temperman who argues that the alleged clash between freedom of religion and freedom of expression does not exist. The

right to freedom of religion does not include a right to have one’s religious feelings protected

<sup>107</sup>See L. Bennett Graham, “Defamation of Religions: The End of Pluralism,” *Emory International Law Review* 23 (2009): 71; U.N. General Assembly, 64th Meeting. “Resolution 60/150 [Combating defamation of religions]” (A/RES/60/150). 16 December 2005.

<sup>108</sup>See U.N. General Assembly, 81st Meeting. “Resolution 61/164 [Combating defamation of religions]” (A/RES/61/164). 19 December 2006; U.N. General Assembly, 76th Meeting. “Resolution 62/154 [Combating defamation of religions]” (A/RES/62/154). 18 December 2007; U.N. General Assembly, 70th Meeting. “Resolution 63/171 [Combating defamation of religions]” (A/RES/63/171). 18 December 2008; U.N. General Assembly, 65th Meeting. “Resolution 64/156 [Combating defamation of religions]” (A/RES/64/156). 18 December 2009; U.N. Human Rights Council, 42nd Meeting. “Resolution 13/16 [Combating defamation of religions]” (A/HRC/RES/13/16). 25 March 2010.

<sup>109</sup>See U.N. Human Rights Council, 46th Meeting. “Resolution 16/18 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/16/18). 24 March 2011; U.N. Human Rights Council, 55th Meeting. “Resolution 19/25 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/19/25). 23 March 2012; U.N. Human Rights Council, 50th Meeting. “Resolution 22/31 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/22/31). 22 March 2013; U.N. Human Rights Council, 56th Meeting. “Resolution 25/34 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/25/34). 28 March 2014; U.N. Human Rights Council, 58th Meeting. “Resolution 28/29 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/28/29). 27 March 2015; U.N. Human Rights Council, 64th Meeting. “Resolution 31/26 [Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief]” (A/HRC/RES/31/26). 24 March 2016.

<sup>110</sup>See U.N. General Assembly, 89th Meeting. “Resolution 66/167 [Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief]” (A/RES/66/167). 19 December 2011; U.N. General Assembly, 60th Meeting. “Resolution 67/178 [Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief]” (A/RES/67/178). 20 December 2012.

<sup>111</sup>See International Humanist and Ethical Union, “‘Combating Defamation of Religion’ unnecessary, flawed and morally wrong,” accessed July 20, 2016. <http://iheu.org/iheu-combating-defamation-religion-unnecessary-flawed-and-morally-wrong/>.



because criticism, parody, mockery, libel or insult do not hinder a person to hold on to his or her belief.<sup>112</sup> Maxim Grindberg stresses that being able to criticise religions is crucial in a democratic society as it is a matter of public concern to be kept up to date about different ideas and opinions on religions and social norms. Especially a public debate on the alleged link between terrorism and Islam is of crucial importance as to avoid Islam from being misused for the purpose of radicalisation.<sup>113</sup>

Another major point of criticism is the portrayal of all varieties of criticism of religion and in particular of Islam as hate speech and 'Islamophobia' as it authorises governments to adhere to traditions contradictory to human rights such as stoning women accused of infidelity. The absence of a commonly accepted definition and interpretation of the term 'defamation' gives countries the power to define acts of defamation, which can lead to abuse such as discriminating against religious minorities and silencing dissent.<sup>114</sup>

Pakistan is often mentioned as an example of a country (ab)using blasphemy provisions as a mean to limit the rights of religious minorities.<sup>115</sup> Freedom of speech is provided for by Article 19 of the Pakistani constitution, however this freedom shall be "subject to any reasonable restrictions imposed by law in the interest of the glory of Islam"<sup>116</sup> Rebecca Dobra stresses that even though Pakistan portrays the 'Defamation of Religions' resolutions as a mean to advocate religious tolerance and understanding, in reality, its own blasphemy laws have quite the opposite effect. Lack of judicial independence and proper examination of cases allows for accusations stemming from personal animosities or jealousy, economic or professional competition. This endangers especially minorities, such as the Ahmadi, but also journalists, lawyers and at times more liberal Muslims. Second, many lawyers and judges are reluctant to accept cases and breaches of the blasphemy provisions are often non-bailable resulting in lengthy trials.<sup>117</sup> Temperman observes similar practices in Iran, mainly targeting the Bahd'is, and to silence political dissent such as the women's rights movement.<sup>118</sup>

It is important to keep in mind that incitement to violence, racism and xenophobia is a much more narrow concept than defamation of religion and defined and codified in international as well as national legislation. Only in some cases can a blasphemous expression, e.g. 'advocacy of religious hatred' be considered as part of the category 'defamation of religions'. Mere criticism or negative stereotyping of religions does not rise to the level of religious hatred as laid down in Article 19 and 20 ICCPR. In the UN context it seems however that no distinction between the two is being made.<sup>119</sup>

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<sup>112</sup>See Temperman, *Blasphemy, Defamation of Religions and Human Rights Law*, 527.

<sup>113</sup>See Grinberg, *Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society*, 215-216; 219.

<sup>114</sup>See IHEU, *Combating Defamation of Religion' unnecessary, flawed and morally wrong*.

<sup>115</sup>See IHEU, *Combating Defamation of Religion' unnecessary, flawed and morally wrong*.

<sup>116</sup>The Constitution of Pakistan. Accessed July 20, 2016.  
<http://www.pakistani.org/pakistan/constitution/part2.ch1.html>.

<sup>117</sup>See Dobra, *Is the United Nations Endorsing Human Rights Violations?: An Analysis of the United Nations' Combating Defamation of Religions Resolutions and Pakistan's Blasphemy Laws*, 345-357

<sup>118</sup>See Temperman, *Blasphemy, Defamation of Religions and Human Rights Law*, 524.

<sup>119</sup> See Belnap, *Defamations of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights*, 650-651; Foster, *Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religions Provisions*, 51-52; Dobra, *Is the United Nations Endorsing Human Rights Violations? An Analysis of the United Nations' Combating Defamation of Religions Resolutions and Pakistan's Blasphemy Laws*, 343.

The abuse of blasphemy provisions in practice is one of the reasons many scholars argue that there is no need for such laws, as incitement to violence is a well-established legal doctrine providing sufficient legal framework to prosecute hate speech and advocacy of religious hatred. This approach allows for a more objective examination of the speech than defamation of religion which requires a more moral judgement.<sup>120</sup>

## Applying the Theory of Defamation of Religion to the Charlie Hebdo controversy

On the one side it can be argued that the controversy could have been avoided were there either anti-defamation or anti-blasphemy laws in France. Such laws might have indeed had the effect to promote tolerance, mutual understanding and respect for each other in a multicultural and multi-religious society as it is the case in France.

However, as the critics of the defamation of religion theory have pointed out, human rights seek to protect the individual from defamation, not religion and religious figures such as Muhammad. Defamation of religion laws would not have protected the Muslim minority in France, but rather Islam as such. Second, seeing the French tradition of secularism, defamation laws force a “religiously neutral” government to make a moral decision on what constitutes an act of defamation and what does not.

What about blasphemy laws? Could they have prevented the attack and the following controversy and protected public order? Even though blasphemy laws seek to prevent societal unrest, they too tend to rather infringe than protect the rights of individuals, namely minorities. They often criminalise more than incitement to religious hatred and violence provisions and hence curb individuals' rights. At this point, I side with Temperman, and argue that cartoons, even if they provoke or offend a religious group, do not per se infringe on a person's right to belief what he or she deems to be right. The publication did not inhibit French Muslims from exercising their right to freedom of religion.

The question now is whether the controversy that arose following the publication of the cartoons is an expression of a deeper rooted feeling of inequality and injustice in the French society. I will take a closer look at a similar controversy in Denmark to see if any conclusions can be drawn and applied to the French case.

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<sup>120</sup>See Temperman, Jeroen. “Freedom of Expression and Religious Sensitivities in Pluralist Societies: Facing the Challenge of Extreme Speech.” *Brigham Young Law Review* 2011(3) (2011): 730-731; 743.  
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# The Danish Cartoon Controversy

After several incidents such as the struggles of Danish writer Kare Bluitgen to find illustrators for his children's book about Muhammad, the cultural editor of Jyllands-Posten, Flemming Rose, decided start a contest, asking cartoonists to depict the prophet how they see him.<sup>121</sup> On 30 September 2005, the Danish newspaper Jyllands-Posten published twelve cartoons as part of an editorial called The Face of Muhammad. The text was about freedom of expression and self-censorship stemming from fear of violent reactions from Muslims.<sup>122</sup>

Rose Flemming claims that the cartoons were not intended to "demonize or stereotype Muslims" but rather to affirm that Muslims are "part of our society, not strangers". "The cartoons are including, rather than excluding, Muslims". Calling to respect religious prohibitions is according to him not a matter of "respect" but "submission", something "incompatible with a secular democracy".<sup>123</sup>

Reactions included death threats for the cartoonists, demonstrations, riots and burning embassies causing over 100 deaths worldwide. Portraying Muhammad is generally considered as blasphemy among Muslims and the dimensions of the reactions illustrate how deeply rooted this conviction is.<sup>124</sup>

The controversy has been understood as yet another illustration of the unavoidable conflict between liberal democracy and multiculturalism. In order to defend the democratic values, such as free speech, it was considered important that no apology from the cartoonists was offered.<sup>125</sup> "[F]reedom of speech is the most valuable right of liberty. We must defend it to the very last"<sup>126</sup>, proclaims the Danish Prime Minister Anders Fogh Rasmussen. In a speech in Berlin in February 2006 writer and activist Ayaan Hirsi Ali defended what she called the "right to offend", claiming that it was "their duty as journalists to solicit and publish drawings of the prophet Muhammad" to protect liberty, democracy and our open society. She agrees with Rasmussen's decision to turn down an invitation for a meeting with ambassadors from Islamic countries as in her opinion they are clearly abusing their diplomatic role to push through their own agenda.<sup>127</sup> Paul Belien from the Brussels Journal (which re-published all the cartoons from Jyllands-Posten) even compared self-censorship of politicians and intellectuals to "appeasement".<sup>128</sup>

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<sup>121</sup>See Foster, Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religion Provisions, 27-28; Rose Flemming, "Why I Published Those Cartoons," *The Washington Post*, February 19, 2006. Accessed July 20, 2016. <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR2006021702499.html>.

<sup>122</sup>See Stéphanie Lagoutte, "The Cartoon Controversy in Context: Analyzing the Decision not to Prosecute under Danish Law," *Brooklyn Journal of International Law* 33(2) (2008): 381-382.

<sup>123</sup>Flemming, Why I Published Those Cartoons, *The Washington Post*.

<sup>124</sup>See Foster, Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religion Provisions, 26; 28

<sup>125</sup>See Cindy Holder, "Debating the Danish Cartoons: Civil Rights or Civil Power?," *University of New Brunswick Law Journal* 55 (2006): 180-181.

<sup>126</sup>Buch-Andersen, Thomas. "Denmark row: The power of cartoons." *BBC News*, October 3, 2006. Accessed July 20, 2016. <http://news.bbc.co.uk/2/hi/europe/5392786.stm>.

<sup>127</sup>Ayaan Hirsi Ali, "The Right to Offend," (speech, Berlin, February 9, 2006), NRC Archief, [http://vorige.nrc.nl//opinie/article1654061.ece/The\\_Right\\_to\\_Offend](http://vorige.nrc.nl//opinie/article1654061.ece/The_Right_to_Offend).

<sup>128</sup>See Belien, Paul. "European Appeasement Reinforces Muslim Extremism." *The Brussels Journal*, January 24, 2006. Accessed July 20, 2016. <http://www.brusselsjournal.com/node/704>.

Cindy Holder however stresses that the cartoonists were never expected to apologise for making use of their right to speak out but rather for what they expressed. This means that they cannot be seen as defenders of free speech but rather as defenders of a particular view of Muhammad and Islam. Thus, it was about the power to speak about a group in whatever way they pleased and the power to exclude them and their views from the discourse by making the discourse on how Danes see Islam and Muhammad.<sup>129</sup>

Along similar lines Stéphanie Lagoutte concludes that the public discourse centred more about the defence of an absolute concept of free speech being a core value of the Danish society and culture which led to the fact that the cartoons themselves were not seen as particularly contentious. A negative and at times hostile portrayal of Muslims and Islam in Danish media, discrimination or tougher laws for non-Danes was neglected.<sup>130</sup>

Geoffrey Levey and Tariq Modood suggest that the cartoons represent a form of racism by singling out Muslims as their target group and that it is possible to 'racialise' a religious group, as has happened with the Jews or Bosnian Muslims.<sup>131</sup> Randall Hansen refutes this claim, arguing that the cartoons alone cannot reveal racist intentions of the illustrators or a hostile environment towards Muslims in Denmark. Neither do the cartoons represent hate speech but rather hatred of religion and in a secular and liberal democracy religion has to be subject to ridicule and scorn.<sup>132</sup>

The problem with using an understanding of autonomy as an ideal personality trait to defend almost absolute free speech in the Danish controversy led to, so Christian Rostbøll, an arrogant attitude towards Muslims under the assumption that they did not have an autonomous relationship with their religion. Rather than giving an incentive to critically reflect upon themselves and their beliefs, it was used to show the difference between "fully enlightened" Westerners and Muslims when being confronted with disrespectful and offensive speech. He concludes that a Kantian concept of autonomy in addition to the Millian would have been better suited to overcome the alleged conflict of autonomy with respect for diversity.<sup>133</sup>

Gina Gustavsson points out that what Rose seeks to protect is not autonomy and autonomous self-reflection but in fact authentic self-expression, or "romantic liberalism". Rose places great importance on free speech as a mean for personal development through expressing our own story, beliefs, convictions and perceptions, no matter how disrespectful or provocative. Only then can we truly understand and create our own character and personality. In this way, the cartoons were not primarily directed at Muslims to enlighten them or show their lack of distance with religion but rather at those who engage in any sort of censorship, be it out of fear or of respect.<sup>134</sup>

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<sup>129</sup>See Holder, *Debating the Danish Cartoons: Civil Rights or Civil Power?*, 182-184.

<sup>130</sup>See Lagoutte, *The Cartoon Controversy in Context: Analyzing the Decision not to Prosecute under Danish Law*, 399-402.

<sup>131</sup>See Geoffrey Brahm Levey and Tariq Modood, "The Muhammad cartoons and multicultural democracies," *Ethnicities* 9(3): 441-443.

<sup>132</sup>See Randall Hansen, "The Danish Cartoon Controversy: A Defence of Liberal Freedom," *International Migration* 44(5) (2006): 11-12.

<sup>133</sup>See Rostbøll, *Autonomy, Respect, and Arrogance in the Danish Cartoon Controversy*, 624; 629-630; 638.

<sup>134</sup>See Gina Gustavsson, "Romantic Liberalism: An Alternative Perspective on Liberal Disrespect in the Muhammad Cartoons Controversy," *Political Studies* 62(1) (2014): 57-61.

Paul Sturges highlights that one must differentiate between communication directed at the political, economic and social elite and communication coming from those in power. Articles in newspaper or magazines are certainly an expression of the journalist's own belief and perception but it is important to take into account editorial policies and the influence of investors and close ties with governments, lending those holding the power a way of communication. This makes it subject to a different level of responsibility as outlined in Article 29 of the Universal Declaration.<sup>135</sup> Jyllands-Posten has the highest run in Denmark and is known to have a close relationship with Anders Fogh Rasmussen, the Danish Prime Minister at that time, who was governing the country in a coalition with the far-right Danish People's party.<sup>136</sup> As discussed earlier, the Prime Minister and the cartoonists seemed to defend a similar standpoint in this controversy suggesting that the cartoons itself were more than simply a call for freedom of expression and against self-censorship. Therefore it is crucial to look at the broader context within which the cartoons were published in order to detect to what extent there were power relations involved.

The Danish legal system provides two articles in connection with the controversy: a hate-speech provision (§266b) and a blasphemy provision (§140) of the Danish Criminal Code.<sup>137</sup> By deciding not to bring the case before the Danish courts under one of the provision, the prosecution followed established case law from the last decades. But Lagoutte draws the attention to a similar case in 1938 when the prosecution invoked §140 in order to shield the Jewish minority from Danish Nazis at a time when anti-Semitism was rampant. This suggests that the decision not to prosecute can also be seen as a political rather than purely legal decision.<sup>138</sup>

The Danish cartoon controversy highlights the importance of the broader context in which the cartoons were published. The discourse on free speech shows the marginalisation of a minority and their (partial) exclusion from the discourse on a matter of crucial importance for them: the image of Islam and Muslims and, in a larger sense, the role of religion within the society. This clearly demonstrates the power relations within the Danish society and in particular the power of the majority to express whatever view about a minority. The question that arises is whether the public discourse on free speech in France and the role of French Muslims in this debate can reveal their socio-political situation in France.

The next chapter will analyse the public discourse on free speech in France after the attack on Charlie Hebdo in January 2015.

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<sup>135</sup>See Paul Sturges, "Limits to Freedom of Expression? Considerations arising from the Danish cartoons affair," *IFLA Journal* 32(3) (2006): 185-186.

<sup>136</sup>See Hansen, *The Danish Cartoon Controversy: A Defence of Liberal Freedom*, 8.

<sup>137</sup>See Lagoutte, *The Cartoon Controversy in Context: Analyzing the Decision not to Prosecute under Danish Law*, 387-389

<sup>138</sup>See Lagoutte, *The Cartoon Controversy in Context: Analyzing the Decision not to Prosecute under Danish Law*, 379-380; 389-390; 395-396.

# Discourse Analysis

As outlined in the chapter on methodology, this chapter will analyse the public discourse in France and the role of French Muslims in this discourse using the 3-step approach of Senem Aydın-Düzgit.

## The discourse topics

The general discourse about 'free speech' deals with the role, importance and meaning of free speech in a democratic society, the limits of free speech and its interaction with other rights (mainly religious freedom). These overlying issues can be found in both discourse topics. The discourse on free speech can be grouped into two different topics: the attack, the journal Charlie Hebdo.

The first topic around the 'attack' centres around questions such as: Who committed the attack? Who was/were the victim(s)? What was the reason of the attack? What does the attack mean for France, the West and its values? What effect, which consequences will the attack have? What are the responses to the attack? To what extent is there a link between religion and the attack and religion and violent extremism in the broader sense?

The second discourse topic around 'Charlie Hebdo' discusses the following: What does Charlie stand for? What are Charlie's values? What is its history? What does it mean to 'be Charlie'? Is Charlie obsessed with Islam and Muhammad? What is the perceived role of the cartoonists? What are the public reactions to Charlie's covers? What role does political satire play in France? What is the relationship between freedom of religion and freedom of speech? Is religion a threat to free speech?

## The discourse 'attack'

### The subjects

The first discourse topic on the 'attack' has three main subjects: 'attack', 'attackers' and 'victim(s)', with the victims further subdivided into France and cartoonists. Charlie can in the broader sense also be seen as a subject, seeing that the cartoonists also represented Charlie's editorial policy. As Charlie is the main subject in the second discourse I will not discuss it as a subject but rather argue that the references made regarding the cartoonists indirectly also refer back to Charlie itself.

The attack is being linguistically referred to as 'attentat(s)', 'attaque', 'meurtres', 'tuerie(s)', 'terreur', 'violence', 'terrorisme', 'assassinat', 'agression', 'prises d'otages', 'épreuve', 'tragédie', 'infamie' and 'meurtres de civils'. Describing the attack as 'meurtre', 'assassinat' and 'agression' already comprises a moral judgement, as the person who committed this

attack is considered as a criminal. 'Violence', 'terreur', 'tragédie' are other examples of stressing the negative nature of the attack. The negative framing of the attack becomes even more evident as every participant strongly condemns the subject<sup>139</sup> and expresses negative emotions such as being 'horrified' and 'devastated'<sup>140</sup> as for example the NGO Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP). The negative attribution of qualities continues as participants describe the attack as 'ignoble' 'barbaric', 'appalling' 'despicable' criminal 'cowardly' 'the most shocking' and 'godless'.<sup>141</sup>

The attack is argued to be an important turning point, giving it great historic significance.<sup>142</sup>

The same applies to the attackers, who are indirectly already being judged as criminals and outsiders by the negative references to the act they are perpetrators of. In the texts they are referred to as 'extremists' 'fanatic or intolerant spirits' 'fanatics' 'assassins' 'killers' 'mad men' and 'black sheep'<sup>143</sup>. La Maison Islamo-Chrétienne describes them as despicable men and argues that they were the ones committing blasphemy, not Charlie.<sup>144</sup> They are 'authors of this infamy' 'not enlightened', 'fanatics', 'cowardly', 'Islamist' and 'dangerous'.<sup>145</sup> Interesting is the choice of words when talking about the death of the attackers during the police operations. 'Neutralising the terrorists, the ones who have killed'<sup>146</sup>, reads an official government statement. Both sides have killed but using a stronger expression for the attackers' actions, shows that their death is perceived as something necessary and that the government seeks to justify their deaths.

The third main subject are the victims of the attack, in particular the cartoonists and France. They are referred to as 'victims' but also as 'innocent'<sup>147</sup>. The reference innocent already suggests a positive portrayal of this group of people.

Especially the killed cartoonists receive special recognition, being described as 'courageous' 'extremely talented', characterised by insolent behaviour and as 'free thinkers'.<sup>148</sup> From the official channels they are built up into heroes who died for their convictions and became martyrs of free speech.<sup>149</sup> Religious organisations as well as NGOs seem to refrain from celebrating them as heroes, and instead draw attention to other, equally important, values of the République, such as tolerance, respect but also the fight against racism, Islamophobia and confusing Muslims with the attackers.

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<sup>139</sup> Examples: 'condamne de la manière la plus ferme', UOIF #3; 'avec la plus grande détermination', CFCM #3.

<sup>140</sup> 'horrifié', MRAP #6; 'bouleversé', MRAP #6.

<sup>141</sup> 'ignoble', MRAP #6; 'barbare', Ennour #1; 'effroyable', UOIF #3; 'abjectes', UOIF #3; 'criminelle', UOIF #4; 'lâche', Statement #2; 'le plus choquantes', Le Monde #11; 'vide de Dieu', Le Figaro #3.

<sup>142</sup> 'Plus que jamais, rien ne sera plus comme avant', CFCM #4.

<sup>143</sup> 'extrémistes', Le Monde #11, Shwaki Allam, quote of mufti of Egypt; 'esprits intolérants ou fanatiques', Le Monde #3; 'fanatiques', MRAP #4; 'assassins', Le Figaro #1; 'tueurs', Le Figaro #1; 'fous', Le Figaro #3, quote of Benali; 'brebis galeuses', Le Figaro #3, quote of Benali.

<sup>144</sup> 'hommes assez lâches', La Maison Islamo-Chrétienne #1; 'On fait injure à Dieu en donnant la mort au Nom de Celui en qui nous reconnaissons la source de vie.', La Maison Islamo-Chrétienne #1.

<sup>145</sup> 'auteurs de cette infamie', Statement #2; 'illuminés', Statement #1; 'fanatiques', Statement #1; 'lâche assassins', Le Figaro #1; 'tueurs islamistes', Le Figaro #1; 'dangereux', Le Figaro #3, quote of Benali.

<sup>146</sup> 'neutraliser les terroristes, ceux qui avaient assassiné', Statement #1.

<sup>147</sup> 'victimes', UOIF #5; 'innocentes', UOIF #3.

<sup>148</sup> 'chroniqueurs courageux', Statement #2; 'dessinateurs de grand talents', Statement #2; 'marqué par leur insolence', Statement #2; 'libres penseurs de la société', Le Figaro #2.

<sup>149</sup> 'morts pour l'idée qu'ils se faisaient de la France, c'est-à-dire la liberté d'expression, l'idéal de justice et de paix', Statement #2.

France, linguistically referred to as 'la France' or 'la République', can be seen as another victim of the attack as Hollande appropriately stated: France has been attacked.<sup>150</sup> The attack is an attack on free speech and France at the same time as free speech is a core value of the French republic<sup>151</sup> and the country is seen as a role model, actively promoting free speech in the world.<sup>152</sup> Many positive traits and features are attributed to the Republic such as being a place of culture, of democracy, a place embracing pluralism and stimulating the creation of new ideas, a hub so to say.<sup>153</sup> France's 'heroes' are the cartoonists, a subject very positively portrayed, emphasising that France is a country that produces great people. They are already seen as part of France's cultural heritage, also from a Muslim point of view.<sup>154</sup> However some are voicing concerns about this identification of France and French people with such a controversial journal, a journal most French have not even read before the attack.<sup>155</sup> This, critics argue, might endanger the country's diversity, something France supposedly stands for.<sup>156</sup> In this context, Muslim representatives point out existing problems in France such as Islamophobia, racism and discrimination. 'France is an Islamophobic society' quotes Le Monde a French Muslim and deliberately chooses to end one of its articles with this quote.<sup>157</sup>

In light of the threat, the impending danger, the upcoming 'war', the strong points of France are uttered. France is united and this national unity is seen as the best weapon France possesses to emerge victorious in this struggle.<sup>158</sup> There is no doubt that France is going to emerge victorious, after all throughout her history it always did.<sup>159</sup>

It is in memory of the victims<sup>160</sup> and in support of their families that several organisations call on the French people to participate in the march.<sup>161</sup> However participation in the march is also seen as a way to distance themselves from the attack and the attackers and to confirm their position as part of the ingroup. Participating in the march means showing national cohesion<sup>162</sup> but also attachment to the French state and French values such as liberty and fraternity.<sup>163</sup> Some NGOs, for example MRAP criticise the presence of certain politicians at the march, notably Benjamin Netanyahu, Avigdor Lieberman calling it an insult to the killed journalists who were always fighting all sorts of fascism<sup>164</sup> and a sad comedy of France's interior politics.<sup>165</sup>

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<sup>150</sup> See Statement #1 and Statement #2.

<sup>151</sup> 'La République, c'est la liberté d'expression.', Statement #2.

<sup>152</sup> 'La France porte la liberté d'expression partout', Government #2.

<sup>153</sup> 'La République, c'est la culture, c'est la création, c'est le pluralisme, c'est la démocratie', Statement #2.

<sup>154</sup> 'Cabu, c'est notre jeunesse, c'est notre patrimoine', Le Monde #14.

<sup>155</sup> 'devenir supportrice d'un journal qu'elle n'avait jamais lu, Le Figaro #6.

<sup>156</sup> 'la "diversité" est apparue bien absente', Le Figaro #6.

<sup>157</sup> 'La France est une société islamophobe', Le Monde #14.

<sup>158</sup> 'Notre meilleure arme, c'est notre unité', Statement #2.

<sup>159</sup> 'La France a toujours vaincu ses ennemis', Statement #2.

<sup>160</sup> 'à la mémoire des victimes', UOIF #5; 'hommage aux victimes', MRAP #1.

<sup>161</sup> 'en soutien à leurs familles', UOIF #5; 'rejoindre massivement la manifestation', CFCM #2.

<sup>162</sup> 'pour l'unité et la cohésion nationale', UOIF #5.

<sup>163</sup> 'pour appeler haut et fort à la vie, à la liberté, à la fraternité', UOIF #5, 'affirmer leur désir de vivre ensemble en paix dans le respect des valeurs de la République', CFCM #2, 'en défense de nos libertés', MRAP #1.

<sup>164</sup> 'insulte aux journalistes de Charlie qui ont toujours combattu tous les fascismes qu'ils soient nationalistes ou religieux', MRAP #3.

<sup>165</sup> 'triste comédie de la politique interne', MRAP #1.



## Creation of an ingroup and outgroup

Through references and attribution of qualities to people and groups an ingroup and an outgroup is being created. The ingroup is very positively portrayed, whereas the outgroup is depicted in a rather negative way. The ingroup comprises the victims (France, Charlie Hebdo, the cartoonists) and everybody who identifies with the values these subjects stand for. The outgroup consists of the attackers and groups, organisations and individuals identifying with their ideologies and justifying their actions.

Flag and stigma words help to reinforce the positive or negative image of these two groups as the reader is automatically associating the negative connotation of the stigma word with the outgroup on the one side and the positive connotation of the flag word with the ingroup on the other side. Flag words are 'liberty' ('liberté'), solidarity ('solidarité'), 'fundamental values' ('valeurs fondamentales'), 'democracy' ('démocratie'), 'republic' ('république'), 'unity' ('unité'), 'fraternity' ('fraternité'), 'life' ('vie'), 'peace' ('paix'), 'dignity' ('dignité'), 'living-together' ('vivre-ensemble'), 'respect' ('respect'), 'justice' ('justice'), '(peaceful) coexistence' ('convivialité'), 'humanity' ('humanité'), 'reason' ('raison'), 'courage' ('courage') and 'suffering' ('souffrance').

I deliberately put 'suffering' in the pot of the flag words as it is an expression made by La Maison Islamo-Chrétienne and in Christianity, notably in Catholicism, 'suffering' has a rather positive meaning as an unavoidable feature of human life. Men suffers on earth in exchange for eternal paradise after death.

Stigma words are 'barbarity' ('barbarie'), 'violence' ('violence'), 'hatred' ('haine'), 'fundamentalism' ('intégrisme', 'fondamentalisme'), 'fanaticism' ('fanatisme'), 'antisemitism' ('antisémitisme'), 'terrorism' ('terrorisme'), 'jihadism' ('jihadisme'), 'obscurantism' ('obscurantisme'), 'radicalisation' ('radicalisation'), 'intolerance' (intolérance), 'hostility' ('hostilité'), 'radical islamism' ('islamisme radical') and 'blasphemy' ('blasphemy')

'Blasphemy', although used by the attackers (and the designated outgroup) themselves as an accusation against the West and in this case Charlie Hebdo, is in the analysed discourse rather used by French Muslims to label the attackers as part of the outgroup. They understand killing innocent people as a form of blasphemy, as God is the source of all life, and killing this life is interpreted as an act against God.

Some participants are actively seeking to distance themselves from this group. This applies in particular to the representatives of Muslim organisations, which implies that they are not naturally seen as part of the ingroup. The attack is only the 'fruit of a minority'<sup>166</sup> and 'terrorism and crime do not have a religion'<sup>167</sup> explains the *Union des organisations islamiques de France* (UOIF), adding that the great majority of French Muslims reject the attack and violence as a whole.<sup>168</sup> The use of the attribute 'dignified' ('digne') emphasises the positive nature of the great majority to create an even greater distance between them and the attackers/outgroup. The attack has been committed against 'our democracy'<sup>169</sup> they argue, stressing that the attack was also directed against themselves and making the outgroup a common enemy. The frequent use of the 'we' form when talking about France,

<sup>166</sup> 'fruit que d'une minorité, UOIF #1.

<sup>167</sup> 'Le terrorisme et le crime n'ont pas de religion', UOIF #8.

<sup>168</sup> 'ressentent [l'offense] de façon digne', 'rejetent la violence', UOIF #1.

<sup>169</sup> 'contre notre démocratie', UOIF #3.

the attack and French values<sup>170</sup> and also victims being described as ‘compatriots’<sup>171</sup> signals the wish of the French Muslim population to be seen as part of the ingroup. ‘Don’t touch my country’<sup>172</sup> becomes a slogan supported by them. They point out to the symbolic fact that during the attack on Charlie Hebdo, two Muslims died together with their non-Muslim compatriots.<sup>173</sup> Multiple French values such as ‘liberty’, ‘fraternity’ ‘democracy’ are invoked to show attachment to these values and confirm their role within the French society. At times this attachment is openly addressed.<sup>174</sup> Muslim representatives call on their population to be active and speak out against terrorism.<sup>175</sup> It is an ‘usurpation of religion’<sup>176</sup> they say and that French Muslims will continue to fight against the confusion of terrorism and Islam.<sup>177</sup> NGOs also contribute in establishing French Muslims as part of the ingroup by refusing all mentions of an ‘enemy from within’<sup>178</sup> and the government who make it clear that for them the attackers have nothing to do with the religion of Islam.<sup>179</sup> Another strategy is using pairs to highlight the difference between the two groups. ‘Intolerant or fanatic spirits’<sup>180</sup> on the one side and ‘free, open and tolerant spirits’<sup>181</sup> on the other, ‘extremists of drawing’<sup>182</sup> against ‘religious extremists’<sup>183</sup>. Some NGOs such as MRAP also consider certain politicians as outsiders and part of the outgroup such as Benjamin Netanyahu, Naftali Bennet, Petro Poroshenko or Avigdor Lieberman, whose presence at the march they strongly condemn. They are portrayed in a very negative way as enemies of free speech and criminals who committed crimes against humanity<sup>184</sup>, something also the attackers are accused of.<sup>185</sup>

## Topoi of culture, history and threat

This discourse is concerned about reinforcing national identities by using the topoi of culture, history, threat and war. Characteristic for this narrative of a threat or a war is the frequent use of the “we” form. The French government takes the first step by introducing a threat, a common enemy one has to beat, a narrative that is being picked up by most participants. First of all France as a country sees itself attacked<sup>186</sup>, but also their values and the things they stand for, such as free speech.<sup>187</sup> Many references to the defence of free

<sup>170</sup> 3x ‘notre pays’ in UOIF #6; ‘notre cohésion nationale’, UOIF #6; ‘notre histoire nationale’, CFCM #4; ‘notre 11-Septembre’, Le Monde #14, quote of Amar Lasfar.

<sup>171</sup> 2 x ‘compatriots’ in CFCM #2.

<sup>172</sup> ‘Touche pas à mon pays’, Le Monde #14.

<sup>173</sup> ‘le sang musulman soit versé en même temps que le sang de la Nation’, Le Figaro #10.

<sup>174</sup> ‘attachement sans faille à la liberté d’expression et leur défense’, UOIF #7.

<sup>175</sup> See for example CFCM #3.

<sup>176</sup> ‘il s’agit d’usurpation de notre religion’, Le Monde #14.

<sup>177</sup> ‘Les musulmans de France luttent contre l’amalgame entre terrorisme et islam’, Le Monde #14.

<sup>178</sup> ‘refuser avec force [...] toutes mentions intolérables de “l’ennemie de l’intérieur”’, MRAP #5.

<sup>179</sup> ‘n’ont rien à voir avec la religion musulmane’, Statement #1.

<sup>180</sup> ‘esprits intolérants ou fanatiques’, Le Monde #3.

<sup>181</sup> ‘esprits libres, ouverts et tolérants’, Le Monde #3.

<sup>182</sup> ‘extrémistes du dessin’, Le Figaro #4

<sup>183</sup> ‘extrémistes de la religion’, Le Figaro #4.

<sup>184</sup> ‘Votre place n’est pas dans la Marche citoyenne de Paris mais devant les tribunaux internationaux’, MRAP #3.

<sup>185</sup> ‘le meurtre de civils est un crime contre l’humanité’, Le Monde #11, quote of Grand Mufti

<sup>186</sup> ‘La France a été attaquée’, Statement #1; ‘La France toute entière qui a été agressée’, Statement #2.

speech<sup>188</sup>, of fundamental values, of human rights<sup>189</sup>, of ideas<sup>190</sup> and the call to be vigilant<sup>191</sup> indicate that there is a serious threat. The dead journalists were allegedly fighting for free speech<sup>192</sup> and participating in the march to honour the victims also means standing up for values such as free speech and defending them.<sup>193</sup>

The common enemy is made quite clear: terrorism, fundamentalism<sup>194</sup>, radical Islamism<sup>195</sup>, radicalisation<sup>196</sup>, fanaticism, obscurantism and extremism<sup>197</sup>. The attackers of Charlie Hebdo are representatives of this overarching enemy.

The narrative is active, calling for action by using active verbs. 'France acts'<sup>198</sup> is repeated twice in one single text to stress a France who reacts to events. Also citizens are addressed directly by stressing that it is necessary to combat, to fight, to tackle, to address the enemy, referred to by its different forms of appearance.<sup>199</sup> War like language is used to encourage the people to take up arms<sup>200</sup> and to not let themselves be intimidated.<sup>201</sup> France has always been able to beat its enemies is being argued through the official channel<sup>202</sup> and liberty will always be stronger than barbarism<sup>203</sup>. Descriptions of the two groups confronting each other also reminds of a war-like situation: a 'front line'.<sup>204</sup>

The analysed Muslim organisations however seemed to be reluctant to adopt the same vehement narrative on this war. Although they clearly positioned themselves on the French side, calling the attack an attack on free speech, on democracy, on liberty and that these values should be defended<sup>205</sup>, they refrain from using active words such as combating or fighting when talking about terrorism, fundamentalism, radical Islamism. They prefer to reject it<sup>206</sup> and fight the attackers themselves, rather than the general 'enemy'.<sup>207</sup> One comparison is made in an article by Shawki Allam in Le Monde to the fight against terrorism in Egypt,

<sup>187</sup> 'S'attaquer à la liberté de la presse et aux journalistes qui la font vivre, c'est s'attaquer à la démocratie, aux valeurs fondamentales de la République', MRAP #6; 'attaque contre la démocratie et la liberté de press', CFCM #3.

<sup>188</sup> 'défendre la liberté d'expression', Statement #2, Le Monde #21 and Le Figaro #6; 'défense de la liberté d'expression', Le Figaro #5 and Le Figaro #22; 'protéger la liberté d'expression', Le Figaro #11.

<sup>189</sup> 'la défense des droits de l'homme', MRAP #2.

<sup>190</sup> 'nous défendons nos idées', Government #2.

<sup>191</sup> 'nous devons être vigilantes', Statement #1.

<sup>192</sup> 'milite pour la liberté d'expression, Le Monde #20.

<sup>193</sup> 'en défense de nos libertés', MRAP #1.

<sup>194</sup> 'lutter contre le terrorisme et le fondamentalisme', Statement #2.

<sup>195</sup> 'nous combattons le djihadisme-terrorisme et l'islamisme radical', Government #2.

<sup>196</sup> 'lutte contre la radicalisation', CFCM #1.

<sup>197</sup> 'contre le fanatisme et l'obscurantisme', Le Monde #3 ; 'combattre l'extrémisme', Le Figaro #15.

<sup>198</sup> 'La France a fait face', Statement #1.

<sup>199</sup> 'Toute croyance, dès lors qu'elle exprime le fanatisme, l'intolérance, doit être combattue.', Le Monde #2.

<sup>200</sup> 'l'unité [...] est notre meilleure arme', Statement #1.

<sup>201</sup> 'Nous sommes un peuple libre, qui ne cède à aucune pression, qui n'a pas peur', Statement #1.

<sup>202</sup> 'La France a toujours vaincu ses ennemis', Statement #2.

<sup>203</sup> 'Liberté sera toujours plus forte que la barbarie', Statement #2.

<sup>204</sup> 'La ligne de front ne passe pas entre les croyants et les incroyants. [...]: elle passe entre les esprits libres, ouverts et tolérants, qu'ils aient ou non une religion, et les esprits intolérants ou fanatiques, quel que soit le Dieu dont ils se réclament et quand bien même ils seraient athées.', Le Monde #3.

<sup>205</sup> 'attachement sans faille à la liberté d'expression et leur défense', UOIF #7.

<sup>206</sup> 'rejeter la violence et le terrorisme', UOIF #6.

<sup>207</sup> 'combattre ces criminels et ces actes extrêmes', Le Figaro #3, quote of Benali.

pointing out that the Muslim community experiences the same struggle and has the same enemy.<sup>208</sup>

They however seem to create their own topos of fear, namely rising Islamophobia<sup>209</sup> and increasing violence against Muslims<sup>210</sup>. In most texts they refer to attacks against Muslims and Muslim places of worship and culture as an effect of the attack on Charlie Hebdo. Just as they condemn the latter, they condemn these anti-Muslim acts vehemently using similar wording to refer to these incidents as well as attribute qualities to them.<sup>211</sup> For these issues they use more active language, stressing that Islamophobia should be 'firmly combatted'<sup>212</sup> and radicalisation fought against.<sup>213</sup> Confusion between terrorism and Islam is an often occurring problem that needs to be touched<sup>214</sup> and CFCM announces in their statements concrete actions to tackle radicalisation of Muslims in order to set an example and portray themselves as proactive before calling on politicians to (re)act to anti-Muslim behaviour and stigma in France.

The topos of culture and of history is another way of reinforcing the national identity by referring to common values and ideas as being united is key in times of a threat, of 'war'. This topos is especially invoked by the official side through references to the culture of democracy of the republic<sup>215</sup>, values fought for during its history (liberty, fraternity, equality), France's national history<sup>216</sup> and cultural heritage. However there appears to be a hierarchy regarding the three well known French values. Liberty and fraternity are frequently invoked by all participants, while equality merely gets recognition. This indirectly paints a picture of France as a country with unequal opportunities, with an unequal society. The famous writer Voltaire and his work is unquestionably seen as cultural heritage in the 'country of Voltaire'<sup>217</sup> where the Voltarian spirit is as present as ever<sup>218</sup>. Interestingly Heinrich Heine, by referring to one of his famous quotes<sup>219</sup>, seems to be part of this cultural heritage, suggesting that the ingroup might be bigger than just France and encompasses the whole of West Europe, or even the Western world. But also the cartoonists and indirectly Charlie Hebdo seem to have become part of France's national heritage. Again, Muslim organisations tend to use this topos less frequently and less vehemently.

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<sup>208</sup> 'lutte contre terrorisme en Egypte', Le Monde #11.

<sup>209</sup> 'montée de l'islamophobia', UOIF #2, CFCM #1; 'climat d'islamophobia', CFCM #4.

<sup>210</sup> 'craint une escalation de la violence envers les musulmans', UOIF #2.

<sup>211</sup> 'actes ignobles et criminels', UOIF #2; 'inacceptable', UOIF #2; 'terrorisme', UOIF #8.

<sup>212</sup> 'combattues fermement', UOIF #8.

<sup>213</sup> 'lutte contre la radicalisation', CFCM #1.

<sup>214</sup> 'Les musulmans de France luttent contre l'amalgame entre terrorisme et l'islam', Le Monde #14.

<sup>215</sup> 'valeurs fondamentales de la République', MRAP #4.

<sup>216</sup> 'notre histoire nationale', CFCM #4.

<sup>217</sup> 'pays de Voltaire', Le Figaro #8.

<sup>218</sup> 'esprit voltarien', Le Figaro #22.

<sup>219</sup> 'Là où on brûle les livres, on brûle les hommes', MRAP #6.

# The discourse 'Charlie Hebdo'

## The subjects

The discourse on the journal Charlie Hebdo itself is closely linked to the discourse on the attack. There are however some crucial differences. First, Charlie is not victimised, but rather an active agent fighting for free speech. Second the discourse is not timely limited to the attack but encompasses the time between the attack and now. Four subjects can be identified: the journal Charlie Hebdo itself, the slogan "Je suis Charlie", political satire and the covers of Charlie after the attack. Even though the cartoonists can be seen as a fifth subject, they will not be discussed in this discourse for two reasons: first, compared to the other subjects, they receive much less attention, and second, the discourse on the attack already treats them in a very extensive manner, deviating little from the few references made in this discourse.

The first subject 'Charlie Hebdo' is also referred to as 'esprit Charlie Hebdo', 'esprit Charlie', 'journal' and 'hebdomadaire'. Overall, neutral references.

Features attributed to the newspaper are both positive and negative in nature, suggesting that the public opinion in France is divided regarding its opinion on the newspaper. First it is described as a satirical ('satirique') and humoristic ('humoristique') newspaper. It embodies, according to Jack Lang, director of the *Institut du monde arabe* (IMA), among others, 'humour', 'finesse' and 'tenderness'<sup>220</sup>.

The journal is being accredited for its fight against racism, political as well as religious obscurantism, for being 'anti-militarist' and 'anti-colonialist' during the Algerian war.<sup>221</sup> Fighting racism, Islamophobia, stigmatisation is also something the newspaper itself stresses on various occasions, leading to the "Freedom of Expression Courage award" by the PEN American Center as a 'compensation for their courage'.<sup>222</sup>

The fact that some of its cartoons sparked widespread outcry is being relativized as the job of a satirical newspaper is seen to provoke<sup>223</sup> and one cannot expect a satirical newspaper to respect manners, says philosopher André Comte-Sponville in an interview.<sup>224</sup> Politicians seem to agree with this perception as Fleur Pellerin is being quoted in an official statement saying that 'Charlie, that is insolence set up by virtue and bad taste as a principle of elegance'.<sup>225</sup> 'It is their job to be provocative', says Benoist Apparu.<sup>226</sup> Charlie is against all kinds of symbols, which includes football heroes but also religious figures such as Muhammad, so Biard.<sup>227</sup> A sociological study, published in *Le Monde*, analysing Charlie's

<sup>220</sup> 'Charlie Hebdo incarne la rue, l'humour, la drôlerie, la tendresse.', *Le Monde* #17.

<sup>221</sup> 'antimilitariste et anticolonialiste', *Le Monde* #21.

<sup>222</sup> 'reçoivent une récompense pour leur courage', *Le Monde* #8.

<sup>223</sup> See Statement #1.

<sup>224</sup> 'On ne va pas demander à un journal satirique et humoristique de respecter les bonnes manières!', *Le Monde* #3.

<sup>225</sup> 'Charlie, c'est l'insolence érigé en vertu et le mauvais goût en principe d'élégance', *Government* #1.

<sup>226</sup> 'C'est l'ADN de Charlie de provoquer', *Le Figaro* #18.

<sup>227</sup> 'Mahomet est un symbole. À Charlie, nous sommes contre les icônes, de la même manière que nous sommes contre le foot!', *Le Monde* #13.

covers seems to prove them right: 'No, Charlie Hebdo is not obsessed with Islam', it concludes.<sup>228</sup>

The attack draws attention to the previously unknown journal, both in France and abroad, making Charlie a national but also worldwide symbol for free speech.<sup>229</sup> All of a sudden Charlie and its message is omnipresent, so Michel Fize, sociologist and consultant.<sup>230</sup>

From abroad Charlie seemed to be something that connects the French people, a topic everybody seemed to have an opinion about. "Charlie crossed the Atlantic"<sup>231</sup>, writes *Le Monde*, hinting that Charlie did not only gain popularity, but also initiated a debate in North America on free speech and its limits and on whether or not to reprint Charlie's cartoons.<sup>232</sup> The effect of this development was that Charlie seemed to stand for France and the French society.<sup>233</sup>

At the same time Charlie has never been, so *Dominique Wolton*, a journal loved by everyone in France. Its content was always known as something that divides the French opinion.<sup>234</sup> Throughout its history, the journal faced accusations such as being racist, 'anti-Arab', 'anti-Maghreb', 'anticlerical', having bad taste and a lack of respect and abusing free speech.<sup>235</sup> The blogger *Joseph Juncker* attacks Charlie for demanding free speech for itself without contributing to the public debate in a constructive manner.<sup>236</sup> The question that remains here is however, to what extent the right to exercise free speech is and should be linked with the content itself. Does every utterance have to be useful for society and a contribution to the search for truth?

This division among public opinion becomes especially apparent when PEN announces that their decision to award Charlie with the "Freedom of Expression Courage award". Several writers published an open letter on the website *The Intercept* voicing their disagreement with the decision to present the prize to a journal, whose content is offensive and stirs up Islamophobia, anti-Arab and anti-Maghreb feelings, already present in the Western world.<sup>237</sup> The response, coming from Charlie itself as well as other prominent supporters of the journal, talks about a misunderstanding<sup>238</sup> because most writers and other public figures abroad have not heard about the journal before the attack and have done little research to

<sup>228</sup> 'Non, Charlie Hebdo n'est pas obsédé par l'islam', *Le Monde* #15.

<sup>229</sup> 'un symbole mondial de la liberté d'expression', *Le Monde* #11.

<sup>230</sup> 'On le voit chaque matin sur les réseaux sociaux. On le voit dans une certaine presse, qui se flatte de tout dire, à n'importe qui, tout le temps', *Le Monde* #2.

<sup>231</sup> 'Charlie a traversé l'Atlantique', *Le Monde* #6.

<sup>232</sup> See *Le Monde* #6.

<sup>233</sup> 'une vision de la société française', *Le Monde* #6.

<sup>234</sup> 'Charlie n'a jamais été un journal très apprécié, il a toujours divisé, ce n'était pas un journal très populaire.' *Le Figaro* #22; see also 'Charlie divise', *Le Monde* #1.

<sup>235</sup> 'anti-arabe', *Le Monde* #8; 'anti-Maghreb', *Le Monde* #8; 'anticléricale', *Le Figaro* #4; 'mauvais goût', *Le Figaro* #11; 'manque de respect', *Le Figaro* #11; 'abus de la liberté d'expression', *Le Figaro* #11.

<sup>236</sup> 'revendiquer la liberté d'expression pour elle-même sans volonté de réaliser quoi que ce soit de constructif', *Le Figaro* #14.

<sup>237</sup> [un journal qui/a journal that] 'valorise un contenu offensant: un contenu qui attise les sentiments anti-Islam, anti-Maghreb, anti-arabe qui sont déjà courants dans le monde occidental', *Le Monde* #8.

<sup>238</sup> 'Je crois qu'il y a un petit malentendu', *Le Monde* #13, *Gérard Biard*, Charlie Hebdo; 'Ces polémiques sont le fruit de la méconnaissance de la véritable nature de ce journal...il est important de la comprendre pour ne pas tuer une seconde fois ceux qui sont décédés le 7 janvier', *Le Monde* #8, quote of *Dominique Sopo*, *SOS Racisme*.

learn about its history and values since, so Alan Mabanckou, writer and professor of literature at UCLA.<sup>239</sup> Biard makes the bold claim that Charlie has never published racist cartoons, in fact, Charlie, so Biard, has always been anti-racist.<sup>240</sup> Also Suzanne Nossel, director of PEN American Center justifies the decision of her organisation by arguing that not the content has been praised but the courage of the writers despite various death threats.<sup>241</sup> As Charlie is since the attack well known abroad, negative traits of Charlie are reflected on France as a whole. Studying the phenomenon of Charlie compares to studying France.<sup>242</sup>

The next subject, the slogan is either referred to as “le slogan” or “Je suis Charlie”. Right after the attacks the slogan seemed to (almost) unanimously mean for French people positive attributes such as ‘solidarity’ defence of free speech and democracy, ‘rejection of the ‘Other’’, ‘refusal of a scapegoat’ ‘refusal of mix-up and hate’ and ‘refusal of a “Patriotic Act” contrary to the values of the republic’.<sup>243</sup> People all over the world were using the slogan to identify with the newspaper, to express solidarity, to take action and show that they are united in their response to the attack.<sup>244</sup> ‘Let’s stay Charlie’, let’s not forget what Charlie stands for, let’s continue to fight for these values reminds MRAP the French people.<sup>245</sup> However public opinion appears to have shifted, notably after controversial covers of Charlie and in particular the cover one year after the attack. More and more writers, academics, artists and even politicians voiced their concerns with the unconditional defence of free speech the slogan seemed to imply. The danger, according to many, was that France was identifying itself with a journal controversial since its inception and that Charlie and France emerged as one and the same<sup>246</sup>. ‘Since when is an offensive cartoon a sign of respect and democratic life’, asks philosopher Thibaud Collin.<sup>247</sup> And Manuel Valls is being quoted as saying that “Je suis Charlie” is not the only message France has for the world. He indirectly implies that France also stands for values such as respect, tolerance, peace, dialogue, justice etc.<sup>248</sup> These words were echoed by Alain Juppé<sup>249</sup> and Isabelle Balkany.<sup>250</sup> So on the one side the criticism regarding the use of the slogan is directed at Charlie itself, at their behaviour and actions after the attack (mainly covers) but also on the people and

<sup>239</sup> ‘Beaucoup d’écrivains signataires ont découvert Charlie Hebdo au moment des attentats. Certains n’ont pas vraiment cherché à savoir ce qu’il y avait derrière’, Le Monde #8.

<sup>240</sup> ‘Nous n’avons jamais publié de dessins racistes...historiquement, nous somme un journal anti-raciste, c’est dans notre ADN.’, Le Monde #13.

<sup>241</sup> ‘La rédaction de Charlie Hebdo est récompensée pour son courage, par pour la qualité de ses dessins’, Le Monde #8.

<sup>242</sup> ‘Au fond, ce n’est pas Charlie qui n’obtient pas toujours le bénéfice du doute sur son caractère antiraciste, c’est la France elle-même. A l’étranger, examiner Charlie revient à examiner la France’, Le Monde #1.

<sup>243</sup> ‘solidarité’, MRAP #5; ‘rejet de l’Autre’, MRAP #5; ‘refuser de boucs-émissaires’, MRAP #4; ‘refuser l’amalgame et la haine’, MRAP #5; ‘refuser un “Patriot Act” contraire aux valeurs de la République’, MRAP #5.

<sup>244</sup> ‘Certes, l’émotion est pour beaucoup dans l’adoption d’un tel slogan: le besoin de faire un geste, de prendre position, de sortir de la passivité à laquelle nous réduit la violence des attentats’, Le Figaro #1.

<sup>245</sup> ‘Restons Charlie’, MRAP #5.

<sup>246</sup> ‘Charlie, c’est la France’, ‘la France, c’est Charlie’, Le Figaro #1; ‘représenter le peuple français comme s’identifiant au journal satirique’, Le Figaro #1.

<sup>247</sup> ‘Depuis quand, en effet, un “dessin-insulte” est-il un signe de respect et de vie commune démocratique?’, Le Figaro #1.

<sup>248</sup> ‘Il ne faut pas réduire la France à un seul message. “Je suis Charlie” n’est pas le seul message de la France au monde’, Government #2.

<sup>249</sup> ‘Quand j’ouvre Charlie Hebdo, je ne suis pas toujours Charlie.’, Le Figaro #18.

<sup>250</sup> ‘Je ne suis plus Charlie’. Le Figaro #18.

organisations using it. They are accused of appropriating Charlie, Charlie's history and their alleged fight for free speech. Author Michèle Tribalat gives the example of the press and argues that the press can only declare themselves as Charlie if they reprint all of the cartoons that got the journalists of Charlie killed.<sup>251</sup>

The third subject are offensive cartoons and political satire. They are referred to as 'satire politique' ('political satire'), 'dessin(s)' ('drawing(s)'), 'caricature' ('caricature') and 'humour noir' ('black humour'). This humour is being attributed the feature of 'a murder weapon'<sup>252</sup> a weapon that if it can withstand bullets, can withstand time and oblivion.<sup>253</sup> Political satire is perceived as an essential component of free speech and human liberties. It is a 'right to offend'<sup>254</sup> and there is such a freedom as 'freedom of the cartoon'<sup>255</sup> It is part of French political discourse, speech that is worth the most protection as some scholars argue (see chapter on classical models) as it has a 'political dimension'.<sup>256</sup> Many in France see it as their duty to explain to the rest of the world the importance of satire, of black humour and scathing criticism in France.<sup>257</sup> The wording 'culture of political satire' stresses the importance of political satire in the French political discourse. It is seen as a French tradition to mock religion as such, religious figures and god.<sup>258</sup> However there are also voices concerned with the unconditional rights and freedoms associated with political satire. 'Political satire or unnecessary insult?', asks researcher and consultant Joelle Fiss.<sup>259</sup> Her words are echoed by various others who stress the importance of limits of political satire, and indirectly free speech. Historian and writer François Huguenin is admonishing not to hide behind an alleged 'right to humour', but to make sure that nobody feels deeply hurt by someone and that everybody feels respected, both being a precondition for dialogue.<sup>260</sup> Author Michèle Tribalat agrees with MRAP regarding the racist nature of the Muhammad cartoon with a turban shaped as a bomb, reprinted by Charlie Hebdo. She refers to their comparison of the attack as an inhuman attack on free speech and calls this cartoon a human attack on free speech.<sup>261</sup>

The fourth and last subject of this discourse are two covers, the first right after and the second one year after the attack. They are linguistically referred to as 'la une' ('front page'), 'la caricature' ('the caricature'), 'le numéro spécial' ('special edition'), 'le numéro' ('the issue'), 'la couverture' ('the cover'), 'la publication' ('the publication') and 'le journal' ('the journal'). All the authors refer to either the first or the second cover except for one text, presenting the outcome of a study of all Charlie Hebdo covers which researched the question if or if not Charlie is obsessed with Islam. From the perspective of two sociologists, Jean-François

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<sup>251</sup> See Le Figaro #11.

<sup>252</sup> 'une arme assassine', Le Monde #7.

<sup>253</sup> 'Une arme assassine: l'humour noir, qui, s'il résiste aux balles, résiste au temps et à l'oubli', Le Monde #7.

<sup>254</sup> 'une liberté d'offenser', Le Figaro #9.

<sup>255</sup> 'la liberté de caricature', Le Figaro #21.

<sup>256</sup> 'Un dessin, ce n'est pas fait que pour rigoler. Cela a aussi une dimension politique, cela permet d'appréhender la spécificité d'une époque', Le Monde #20, quote of Riss.

<sup>257</sup> 'Il faut expliquer la culture de satire politique en France', Le Monde #1.

<sup>258</sup> See Le Figaro #8.

<sup>259</sup> 'satire politique ou de l'insulte gratuite?', Le Monde #1.

<sup>260</sup> 'Ne nous cachons pas derrière le droit à l'humour. On ne peut pas rire sans blesser...Il doit faire son analyse critique. Pour cela, il doit dialoguer, mais pour dialoguer il est nécessaire qu'il se sente respecté.', Le Figaro #6.

<sup>261</sup> 'l'assaut inhumain à la liberté d'expression', Le Figaro #11; 'un assaut humain à la liberté d'expression', Le Figaro #11.



Mignot and Céline Goffette, the covers are 'irreverent left', 'undeniably anti-racist' and 'uncompromising regarding religious obscurantism'<sup>262</sup>. The reactions in the studied texts to the two covers differ significantly. While the first one is received mainly positively with worries coming mainly from Muslim representatives, the second cover arouses harsh criticism and few voices of open support.

Cover #1, so Dominique Wolton, semiologist and media expert, is characteristic of Charlie Hebdo. It is a statement defending the Voltarian spirit, calling to put an end to the power of religion that can dictate politics, supporting a laïque educational system, demanding free speech and refusing censorship.<sup>263</sup> It is an expression of Charlie staying true to its values, in particular the right to satirical cartoons.<sup>264</sup> It is a 'message of peace'<sup>265</sup> due to the choice of green colour, representing nature, fertility, hope and being a symbol of arab identity.<sup>266</sup> Moreover it is wink addressed at all three monotheistic religions<sup>267</sup>, as forgiveness is a common value to all of them. However, the cover is also attributed with negative qualities. It is an 'unnecessary provocation', so the Egyptian Muslim authority, it divides Muslims and puts them in an uncomfortable position.<sup>268</sup> Especially Muslim representatives voiced their lack of understanding of the cartoon and the reason Charlie Hebdo decided to publish it. 'One can express himself differently, regrets Ahmet Ogras, one of the vice-presidents of CFCM.<sup>269</sup> 'The cover adds fuel to the flames', responds Abdallah Zekri, high official in CFCM.<sup>270</sup>

Cover #2 is applauded by historian and specialist in comic strips Didier Pasamonik for its clarity, for being an expression of freedom of thought and for its anti-clerical nature.<sup>271</sup> However, more voices can now be heard criticising Charlie Hebdo's choice. The cartoon is an 'evasive answer' to the questions raised in the public debate<sup>272</sup>, it is the 'cherry on the cake' and a '(unnecessary) provocation', so blogger Joseph Juncker.<sup>273</sup> 'Unnecessary' is deliberately put in brackets by the author, hinting at the unnecessary nature of the provocation. The cover is the expression of the 'unnecessary and dangerous polemic of Mr. Riss' [Anm.: Riss is the director of Charlie Hebdo], so sociologist and consultant Michel Fize.<sup>274</sup> The cover is declared as not funny by politician Alan Juppé<sup>275</sup>, hinting that Charlie Hebdo is losing its support from the official side. Also the Vatican expresses criticism regarding the choice of Charlie Hebdo and deplores the paradox of a world obsessed with

<sup>262</sup> 'irrévérencieux de gauche', Le Monde #15; 'indéniablement antiraciste', Le Monde #15; 'intransigeant face à tous les obscurantismes religieux', Le Monde #15.

<sup>263</sup> 'Le message délivré est propre à Charlie Hebdo. Empreint de conviction et de l'esprit voltairien défendu lors des récentes manifestations ce dimanche, qui dit halte à la religion, qui dicte sa loi dans le contexte politique, qui soutient l'école laïque, qui revendique la liberté d'expression et qui dit non à la censure.', Le Figaro #22.

<sup>264</sup> 'montrer l'attachement et la fidélité aux valeurs qui ont fait Charlie Hebdo, notamment le droit à la caricature des prophètes', Le Figaro #22.

<sup>265</sup> 'message de paix', Le Figaro #22.

<sup>266</sup> See Le Figaro #22.

<sup>267</sup> 'clin d'oeil fait aux trois religions monothéistes', Le Figaro #22.

<sup>268</sup> 'provocation injustifiée', Le Figaro #13; 'divise les musulmans', Le Figaro #13 ; 'met les musulmans dans une position inconfortable', Le Figaro #13.

<sup>269</sup> 'On pouvait s'exprimer différemment', Le Monde #18.

<sup>270</sup> 'Ça va mettre de l'huile sur le feu.', Le Figaro #13.

<sup>271</sup> 'clarté', Le Figaro #4; 's'agit avant tout de la liberté de conscience', Le Figaro #4; 'caricature anticléricale', Le Figaro #4.

<sup>272</sup> 'la couverture qui noie le poisson', Le Figaro #14.

<sup>273</sup> 'cerise sur le gâteau', Le Figaro #14; 'provocation (inutile)', Le Figaro #14.

<sup>274</sup> 'polémique inutile et dangereuse de M Riss', Le Monde #2.

<sup>275</sup> 'Elle ne me fait pas rire.', Le Figaro #18.

political correctness but disrespectful towards god, religion and believers.<sup>276</sup> The cartoons hurt the believers of all religions, so the Vatican, quoting symbolically the Muslim organisation CFCM.<sup>277</sup>

## Creation of an ingroup and outgroup

Also in this discourse there is an ingroup and an outgroup. Especially in the beginning of the discourse in the wake of the attack the two groups were quite clearly defined. Everybody who openly expressed their support for Charlie and identified himself/herself with Charlie can be considered as part of the ingroup. This attachment is proclaimed through the slogan “Je suis Charlie”. Everybody who could not identify himself/herself as “Charlie” was not accepted as part of the group and was labelled as ‘suspicious’, as the rapper Disiz puts it.<sup>278</sup> The same critic has been articulated by various other agents in the discourse<sup>279</sup>. This clear distinction between the two groups becomes more and more blurry and explanations are being brought forward why certain people do not necessarily feel 100% Charlie. It is being stressed by, for instance, Nicolas Cadène, general rapporteur of the Observatoire de laïcité, that this does not automatically mean that they sympathise with the attackers.<sup>280</sup> Being openly offensive serves as a way to divide the French into the ones that feel indifferent towards the provocation and those who feel hurt and humiliated, so historian and writer François Huguenin.<sup>281</sup> Interesting to note is the reaction of Muslim organisations to the two covers of Charlie. They do express their discontent and their opinion on ridiculing the sacred, however, they are cautious not to lose their membership in the ingroup. Their representatives carefully point out their differences, while at the same time concede Charlie its existence, refrain from condemning the newspaper or criticising it harshly and stress the difference between themselves and the attackers, for example though the way they chose to express their disagreement with Charlie.<sup>282</sup> The Catholic Church in comparison appears to be less cautious in her wording. It is interesting to note that they do quote the Muslim organisation

<sup>276</sup> ‘Dans le choix de Charlie Hebdo, il y a le triste paradoxe d’un monde de plus en plus attentif au politiquement correct au point de frôler le ridicule, mais qui ne veut ni reconnaître ni respecter la foi en Dieu de tout croyant, quelle que soit sa religion’, Le Figaro #16.

<sup>277</sup> ‘blesse tous les croyants des diverses religions’, Le Figaro #16.

<sup>278</sup> ‘On a utilisé la tragédie de Charlie pour faire une ligne de démarcation entre les Français...C’est devenu une loi! Si t’est pas Charlie, t’est suspect, mais qu’est-ce que ça veut dire?’. Le Figaro #7.

<sup>279</sup> ‘...ceux qui avaient osé de dire “Je ne suis pas Charlie” parce que les caricatures de l’hebdomadaire leur semblaient irrespectueuses de la religion musulmane étaient stigmatisés comme symboles de prétendus “territoires perdus de la République”, Le Monde #22 ; ‘Dans les débats, il y avait ce fossé entre “eux”- les non-musulmans, Charlie Hebdo -, et “nous”, les musulmans”. Le Monde #22, quote of Isabelle Bailleul, professor in a high school in Havre.

<sup>280</sup> ‘Dire ‘je ne suis pas Charlie’ ne veut pas nécessairement dire que l’on approuve les terroristes. En vérité ces collégiens n’ont pas compris pourquoi ils devaient soutenir des caricatures dont ils avaient le sentiment qu’elles pouvaient participer de la discrimination dont ils eux-mêmes victimes en tant que jeunes issus des banlieues ou de confession musulmane.’, Le Figaro #20.

<sup>281</sup> ‘Les non-respect des croyances est une manière de dresser les uns contre les autres, les rieurs et les indifférents contre les humiliés.’, Le Figaro #6.

<sup>282</sup> ‘Ça va mettre de l’huile sur le feu. Je ne veux pas être désobligeant avec ces journalistes mais ils continuent la provocation’, Le Figaro #13, quote of Abdallah Zekri; ‘Notre différend avec Charlie Hebdo portait sur le devin et le sacré, qui ne doivent pas être caricaturés. Mais le moyen que nous avons utilisé (en 2011, ndr) était celui de la voie juridique’, Le Figaro #13, quote of Amar Lasfar; ‘Je ne condamne pas, [mais] je ne la comprends pas’, Le Monde #18, quote of Ahmet Ogras.

CFCM in their daily, suggesting that the two religions who are supposedly at war, are in fact on the same side.<sup>283</sup>

## Topos of threat

The predominant topos is also the topos of war, of fight and of a threat. It shows many parallels to the topos in the previous discourse. Charlie, being the main protagonist in this fight, battles against racism and defends human rights<sup>284</sup> among which the right to political satire<sup>285</sup>. Their strongest weapon is their black humour, which proved to withstand bullets<sup>286</sup>. 'The pen is stronger than the sword', so the official words from the government<sup>287</sup>. Charlie's enemies, all part of the outgroup, are the terrorists, the extremists, those who attacked them and created the threat. In their cartoons they ridicule and satirise their enemies, depicting them as stupid, mean, yet dangerous<sup>288</sup>. Their fight is however not for everyone a heroic battle, with some calling it a 'crusade', a historic battle that receives much criticism in the present time<sup>289</sup>.

Military speech is also applied to the differentiation between the ingroup and the outgroup and the claim about some sort of conspiracy of some discourse participant. The incident has been used, so Disiz to 'draw a demarcation line amongst the French', to divide them so to say.<sup>290</sup> François Huguenin agrees and maintains that disrespectful behaviour towards religion is a way to set the ones that laugh against those that feel humiliated<sup>291</sup>.

It becomes clear that even though in the wake of the attack the French people seemed to be united and express in unison their support for Charlie Hebdo, the attack also deeply divided French society regarding the way people felt about the newspaper itself. Most critics of Charlie tended to be cautious with their criticism, expressing some degree of support for and identification with Charlie Hebdo, giving the impression that it was publicly not acceptable to voice harsh criticism.

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<sup>283</sup> See Le Figaro #16.

<sup>284</sup> 'la lutte contre le racisme', MRAP #2; 'la défense des droits de l'homme', MRAP #2.

<sup>285</sup> 'défendre la liberté de caricature attaquée par les terroristes', Le Figaro #21.

<sup>286</sup> 'Une arme assassine: l'humour noir, qui, s'il résiste aux balles, résiste au temps et à l'oubli', Le Monde #7.

<sup>287</sup> 'La plume est plus puissante que l'épée', Government #1.

<sup>288</sup> 'Qu'il sont bêtes et méchants, dangereux aussi, ceux qu'ils croquent!', Le Monde #7.

<sup>289</sup> 'repartir en croisade contre ce qu'il [Anm. Riss] nomme les "fanatiques" [...] et les "cul-bénis"...? Le Monde #2.

<sup>290</sup> 'On a utilisé la tragédie de Charlie pour faire une ligne de démarcation entre les Français... , Le Figaro #7.

<sup>291</sup> 'Les non-respect des croyances est une manière de dresser les unes contre les autres, les rieurs et les indifférents contre les humiliés.', Le Figaro #6.

# Concluding Remarks

The classical debate is exhaustive in offering explanation for the controversy evolving the publication of the cartoons by Charlie Hebdo as the arguments from truth, democracy and autonomy can offer justifications why the ideas represented as cartoons are worth of protection. First, competition on the marketplace will prove or refute their validity, rendering governmental control unnecessary. Second, the cartoons are more than a mere expression of art, they are political statements and receive therefore protection as forming part of the public discourse. Last, the cartoonists had a right to express their views in public as governmental interference would infringe on their autonomy. The ECtHR might have granted France a margin of appreciation if France had decided that the cartoons were a hindrance to public order. Yet, French legal tradition is however deeply rooted in secularism with the Court stressing the importance of religious satire in the case concerning the republishing of the Danish cartoons.

As in the Danish cartoon controversy, analysing the broader socio-political context provides a deeper understanding of the root causes of the protests following the attack. The discourse on free speech after the attack clearly reveals the hierarchy within French society. It was the official side producing the discourse by choosing the wording, the meaning of terms, the topoi (namely the topos of threat) and creating an ingroup and an outgroup. The attack is presented as an attack on one of France's core values, free speech and hence on the nation itself, creating a threat. References to the topoi of culture and history create a sense of belonging to the ingroup portrayed as the more advanced and victorious group as opposed to the barbaric 'Other'. As CDL postulates, also the analysed discourse is ideological in nature. This is taken up by most participants in the analysed discourse demonstrating the pressure from above and the unequal power relations. Through this not only the dominant positions but also the present social structure and the power relations are being naturalised. The choice of terms, meaning or topoi is only questioned by few agents in the discourse, mainly by French intellectuals, showing that they feel more powerful to stand up and challenge the mainstream opinion.

This thesis can only offer a first glimpse into the complex and wide ranging discourse on free speech taking place after the attack on Charlie Hebdo and a more intensive research would be beneficial to shed more light on the societal relations displayed in this discourse.

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**Fig. 1.** Framework for varieties of discourse analysis. Graph from Nelson Phillips and Cynthia Hardy, "The Variety of Discourse Analysis", in: *Discourse Analysis*, ed. Nelson Phillips and Cynthia Hardy (Thousand Oaks: SAGE Publications, 2002), 21.

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