**Regulating Hate Speech in a Global Society**

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Robert Zarnetske in

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Christopher Zurn, Ph.D.

**Section 1. Introduction**

Hate speech is prohibited or regulated in much of the world but is protected as free speech in the United States. This paper explores some of the legal and philosophical underpinning of the debate about hate speech both in the United States and around the world. The paper looks at the critique of the American perspective offered by Jeremy Waldron, particularly in light of a recent international incident involving offensive speech published to the Internet by an American filmmaker.

**Section 2. Hate as a particular threat**

During the 106th (1999/2000) and 107th (2001/2002) Congresses, I was a legislative advisor to U.S. Senator Christopher Dodd who was a supporter of the *Hate Crimes Prevention Act.* The *Act,* which finally passed in 2009,provided grants to local governments and enhanced penalties in federal prosecutions for violent crimes when the perpetrators where motivated to commit the crime because of the "actual or perceived religion, gender, sexual orientation, or disability of any person."[[1]](#endnote-1)

I read a lot of victims' statements. I wrote a lot of memos and statements about that legislation. And over the course of three or four years, my thinking about hate and its relationship to society changed.

Like many people, at first it was hard for me get over the idea that Congress was contemplating the punishment of thoughts. Why should one form of malevolence be treated more harshly than others? Why is hate worse than anger, greed or indifference if they all serve as motives for the same bad actions? As a lawyer I had been trained to think that such distinctions should not matter. A criminal's mental state is important only to the extent that it relates to forming the intent to commit the act that constitutes a crime. In our legal tradition, a murder's motive, a rapist's, is supposed to be coldly evaluated with an eye only toward proving that he knew what he was doing and meant to do it. I saw the law as a shield against evil actions, not evil thoughts. When others argued that it was politically correct to side with the victims of hate crimes, I clung to the knowledge that even Dr. King recognized what seemed to me a natural limit on the power of legislators: "the law,” said King, “cannot make a man love me, but it can keep him from lynching me."[[2]](#endnote-2)

Being a Democrat advising a U.S. Senator who supported the bill, I harbored my doubts, but did my job and helped make the case for passage. As I did, I developed my own personal rationale for why the law should take cognizance of hate as a special threat to society. Punishing hate has little to do with individual victims or even the perpetrators. Society is justified, and in fact may be obliged, to protect the body politic from hate because hate is a highly contagious, persistent and injurious social infection. Hate is a chronic social disease that inhibits the formation of essential social bonds between groups of people and in a pluralistic society such a disease can be crippling. While mobs can cause damage in the heat of temporary fear or anger, prejudice-based hatred has the capacity to impair the proper functioning of wide swaths of society through generations, for decades, even centuries. We have seen it. In fact, we have seen it for so long, we fail to recognize it as a curable affliction. Worse, we may actually have misdiagnosed the problem completely and the medicine we have prescribed ourselves may be causing more harm than good.

The conventional wisdom in America is that the antidote to hate is better information. We believe -- almost as an article of faith -- that sunshine is the best disinfectant. Nowhere is this belief more apparent than in the realm of hate speech. This paper will question that assumption.

**Section 3. The harm in hate speech**

For Jeremy Waldron, when talking about hate speech the operative concept is not *dis-ease*, but rather *dis-order.* Waldron makes his central point by asking us to visualize "a society contaminated by posters or publications that deprecate the dignity and basic citizenship of a certain class of people in society."[[3]](#endnote-3) He argues that the society we see when we imagine the clutter of hateful slogans and slurs is the antithesis of the well-ordered society John Rawls asked us to conjure when thinking of a fair and just society.[[4]](#endnote-4)

By drawing our attention to the ugliness of a hate-littered world, Waldron challenges a basic premise of modern constitutional jurisprudence. He asks us to reconsider the assumption that because a well-ordered society must be free, the law must tolerate an almost infinitely wide range of opinions and must permit their publication by almost any means.

Waldron gives us a reason to revisit the conclusions we have reached about the line between individual liberties and social obligations. He returns us to an essential question posed by John Stuart Mill:

What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society? Each will receive its proper share, if each has that which more particularly concerns it. To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society.[[5]](#endnote-5)

Have we struck the wrong balance? Have we underestimated society’s interest in keeping human beings, children, from be steeped in, even crushed by, the language of hatred? Is what we suppose to be a high-mind commitment to free speech really that? Or is it a form of tyranny by a majority that is never truly subjected injurious insults, threats or denigration?

Mill suggests conflicting answers to these questions. On the one hand he recognizes there are limits to individual liberty:

every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another; *or rather certain interests*, which, either by express legal provision or by tacit understanding ought to be considered as rights. . .[[6]](#endnote-6)

On the other hand, he strongly maintains that society has no legitimate power to silence anyone. He asserts“[i]f all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”[[7]](#endnote-7) The “evil of silencing the expression of an opinion” according to Mill is that doing so:

rob[s] the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, [humanity] are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.[[8]](#endnote-8)

Still, Mill should not be read, I think, as asserting that free speech should be free of consequences. While in Mill’s view society has no proper authority to preemptively censure someone for their opinions, nonetheless those opinions once expressed will impact social relations. It is hard to read Mill without surmising that he deeply admired the example of Christian martyrs who were willing to subject themselves to persecution to assert their religious views. It is their opinions, their lofty and admirable, though unpopular, views that Mill has in mind when he denies society’s power to limit the expression of ideas. And while, he is not willing to draw categorical distinctions between virtuous and vicious ideas, still it is clear that for Mill words matter. In fact he tells us:

Before quitting the subject of freedom of opinion, it is fit to take some notice of those who say, that the free expression of all opinions should be permitted, on condition that the manner be temperate, and do not pass the bounds of fair discussion . . . if it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity, than on religion. It is, however, obvious that law and authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candour, or malignity, bigotry or intolerance . . . [[9]](#endnote-9)

Waldron’s image of a world filled with hate speech probes the theory of free speech posited by Mill. Waldron questions whether the chaos of the marketplace of ideas truly conceals a deep and abiding selection mechanism that in the long run ensures the greater good and superior order. He questions the assumption – found in Mill’s express support of liberty of discussion – that good ideas ultimately prevail and that we therefore ought to allow bad ideas to persist for awhile so they can be proven bad "even if the men, women and children who are the targets of these foul and distasteful messages of hate have difficulty in maintaining this lofty perspective."[[10]](#endnote-10)

Unlike Mill, Waldron’s perspective accounts for the fact that there is a difference between a speaker being willing to accept society’s judgment for the opinion he expresses and society judging someone about how whom something has been said. As Waldron notes "[t]he harm that expressions of racial hatred do ... is not harm ... to the white liberals who find the racist invective distasteful."[[11]](#endnote-11) If we think about it, doesn’t it seems a little too easy for white guys in suits and robes to make pronouncements against the regulation of hate speech, when they themselves are not touched by it directly? The liberal retort that everyone is equally free to talk trash is as empty as Anatole France’s famous aphorism: “the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges.”[[12]](#endnote-12) The harm caused by hate and hate speech falls disproportionately on the weak, the poor, the unpopular and the despised. But we profess that is our respect for their personal liberties that keeps us from intervening to stop that harm to their personal dignity. As Waldron observes, it is not at all clear that the Europeans are mistaken when they say that “a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack.”[[13]](#endnote-13)

**Section 4. Less room for swinging our virtual arms**

Zechariah Chafee, the free speech scholar credited with influencing the judicial philosophies of Oliver Wendell Holmes and Louis Brandeis and thus helping to shape modern American First Amendment jurisprudence, once observed "your right to swing your arms ends just where the other man’s nose begins."[[14]](#endnote-14) His formulation was designed to convey the idea that unless you are causing imminent harm to another, there are not or should not be any limitations on your individual liberties. Of course, as society gets more crowded, the potential for causing immanent harm increases and the range for swing our arms is reduced. So it is on the Internet.

Public speech is not what it used to be. Even the hypothetical and imagined worlds of legal theorists and philosophers pale in comparison to the reality of instantaneous global communication we face each morning when we turn on our smartphones.[[15]](#endnote-15)

Once we could rely on community standards from discrete geographic areas to help us discern and avoid offensive communications. When technology enabled mass communication (print in 18th and 19th centuries, then, film, radio, and television in the 20th), the production of such communications was initially complicated and normally required the involvement of a professional editorial class that could, and did, provide guidance to preserve the expectation of readers, listeners and viewers.

Today, thanks to those smartphones and the World-Wide Web, in the blink of an eye, anybody can publish anything to everybody everywhere with almost no limitations and no intermediaries. The potential for cultural misunderstandings and conflict is greater than it has ever been in all of human history. Worse, the opportunity for those who want to deliberately breed hate and discontent is also greater than it has ever been.

A recent world-wide controversy about a video posted to YouTube demonstrates the point. The video was a preview[[16]](#endnote-16) of a movie called *The Innocence of Muslims.*[[17]](#endnote-17) The video portrayed the prophet Muhammad as a pedophile bi-sexual deviant and political thug. Muslims took offense and engaged in violent demonstrations in Pakistan, Egypt, Liberia[[18]](#endnote-18) and elsewhere. The White House asked Google, the owner of YouTube, to restrict access to the video clip; Google obliged, blocking transmission "in Egypt, Libya, India, Indonesia and Afghanistan — keeping it from easy viewing in countries where more than a quarter of the world’s 1.6 billion Muslims live."[[19]](#endnote-19)

*The Innocence of Muslims,* was intended as hate speech. The film was designed to portray Islam and the Prophet in an extremely negative light for the purpose of discrediting the Muslim belief system and promoting distain for the Muslim religion. The film's producer[[20]](#endnote-20) and its publicist are both Egyptian-born American Coptic Christians with histories of expressing contempt for Islam.[[21]](#endnote-21) The film-makers actively promoted the film trailer in conjunction with "International Judge Muhammad Day," a day of observance declared by Terry Jones, an American pastor who is best known for burning the Koran in a 2010 incident that also sparked violence in Muslim communities around the world.[[22]](#endnote-22)

**Section 5. Competing hate speech rules for a crowded planet**

The legal and political responses to *The Innocence of Muslims* revealed some of the deep cultural schisms humanity has to negotiate in a world where mass communication is as easy as hitting an enter key. Official reactions varied greatly. Eight Americans involved in the making of the *Innocence of Muslims* were sentenced to death *in absentia* by an Egyptian court for blasphemy.[[23]](#endnote-23) Courts in Russia[[24]](#endnote-24) Turkey and Brazil[[25]](#endnote-25) banned the video from being shown in those countries. German Chancellor Angela Merkel publicly considered banning the showing of the film when a neo-Nazi group announced that it wanted to show the film in a theater in Berlin. Merkel said she thought a ban could be justified on public safety grounds, but also noted time that German law makes it a crime, punishable by up to three years in prison, to insult "religious or ideological views in a manner likely to disturb the public order."[[26]](#endnote-26) And while British officials did not ban the video, they did declare that the film's makers were unwelcome and would be denied entry into the UK should they ever seek to visit.[[27]](#endnote-27)

Meanwhile, civil liberties advocates in the United States and elsewhere criticized Google and the federal government for overstepping the bounds of decency in a free society -- not for allowing deeply-offensive religious insults to be hurled across the internet, but rather for trying to stop them from being more widely disseminated. Jillian York, the director of the Electronic Frontier Foundation's International Freedom of Expression program argued that Google (and the U.S. government, which urged Google to take action) had stepped onto a slippery slope toward preemptive censorship. She expressed the concerns of many, including many American Muslims,[[28]](#endnote-28) when she noted that Google had chosen to impose its own moral judgments and to supplant broader community standards that favor free expression of even bad ideas. Further, she said, restricting access only for some audiences while allowing it for others "reeks of paternalism."[[29]](#endnote-29)

Waldron points out that even among Western societies the American perspective on free speech is a minority view. Most Western nations are less tolerant of ideas of dubious merit when those ideas are also clearly injurious to the dignity of some members of society. Waldron notes that Canada, Denmark, Germany, New Zealand and the United Kingdom all have models of hate speech regulation that prohibit threats, insults and denigration of distinct groups.[[30]](#endnote-30)

By contrast, in the U.S. only words that pose an *imminent* threat of violence or physical harm are, normally considered out of bounds -- at least legally.

Americans expect members of minority groups to develop a tick skin. As a Canadian civil liberties lawyer recently observed "Canadians do not have a cast-iron stomach for offensive speech. We don't subscribe to a marketplace of ideas. Americans as a whole are more tough-minded and more prepared for verbal combat."[[31]](#endnote-31)

**Section 6. What more might Rawls say?**

Waldron tells us he does not want to get into a technical discussion of Rawls, but merely wants to borrow the Rawlsian model of a well-ordered society.[[32]](#endnote-32) This is unfortunate, I think, because Rawls offers much more in support of Waldron’s position than Waldron explores.

What Waldron does tell us is that Rawls does not deal directly with the issue of hate speech and –

the closest he gets is in a discussion of seditious libel, where he insists—in line with American free speech orthodoxy—that a well-ordered society will be one in which anything and everything may be published, even things which tend to question the basic principles of a given society. Subversive advocacy, he says, must be permitted.

I am not sure whether Rawls thinks this should extend even to advocacy against the fundamentals of justice—for example, to attempts to advocate publicly for the exclusion or subordination of a given group, or their disenfranchisement, segregation, enslavement, concentration, deportation or whatever. He does not discuss this, i.e., he does not consider the status of speech or publication that in its content and tone runs counter to the assurances that citizens are supposed to have of one another’s commitment to equality.[[33]](#endnote-33)

One of the reasons Waldron may have chosen to avoid a technical application of Rawls’s moral philosophy is that Rawls fairly clearly identified freedom of thought and discussion as basic liberties. But “dignity” is not as clearly called out as an equal basic liberty. So when Rawls says that trade-offs can only occur as between equal basic liberties, it is not clear that he would consider dignity and freedom of discussion equal. Rawls further complicates this threshold question by telling us –

“[a] list of basic liberties can be drawn up in two ways. One is historical: we survey various democratic regimes and assemble a list of right and liberties that seem basic and are securely protected in what seem to be historically the more successful regimes. A second way of drawing up a list of basic rights and liberties is analytical: we consider what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons[[34]](#endnote-34) (one of which is the capacity for a sense of justices and the other is a capacity for a conception of the good). [[35]](#endnote-35)

Avoiding the intricacies of Rawls, we can nonetheless borrow his most powerful tool for evaluating moral questions. The “veil of ignorance,” like the blindfold over eyes of the Roman goddess *Justitia*, keeps the arbiters of moral questions from presuming too much. Rawls has us imagine that rational representatives from all walks of life are asked to decide what is fair without knowing their place in society or the advantages they may or may not have over others.[[36]](#endnote-36)

Rawls’s model of the original position offers a stark alternative to Mill’s absolutist perspective on civil liberties. Where Mill seems to want humanity to walk in the saddles of noble martyrs, Rawls’s representatives would be stuck contemplating life in the shoes of society’s most miserable, most demoralized, members. Rawls’s representatives would have to evaluate both the value of free speech and the loss of dignity that comes from being subjected to systemic hate.

From behind the veil Rawls’s representatives would only allow free speech to prevail over dignity only if the disparate impacts of hate would *benefit* the least advantaged in society. Not knowing what position he or she would occupy when the veil was lifted, each representative would choose a moral structure designed to be safe for the worst-off in society.

The question for the representatives in Rawls’s original position would be this: “if, when this veil is lifted, I find that I am the member of society subjected to the worst, most vicious hate speech, if I am the one who is reviled above all others, would I trade some of my own free speech to reduce the intensity of the assaults?” If the answer is yes, then we know that a fair society is not one that values unfettered free speech above essential dignity. Or in Rawls speak, each rational representative would apply the maximin rule, seeking to maximize their own liberty, while at the same time minimizing their exposure to potentially injurious inequalities.

**Section 7. Can we harmonize global expectations?**

Rawls’s conception of society was limited to the nation state, but others have applied his theory to the global community.[[37]](#endnote-37) If society has become or is in the process of becoming truly global, then the greatest adjustment that would have be made to Rawls is that each rational representative in his hypothetical original position would be required to consider a broader range of possible outcomes when the veil of ignorance is lifted. First world representatives would have to consider the possibility that they might find themselves living not in one of the wealthiest, but one of the poor places on earth.

It seems likely that Rawls’s philosophy reconstituted for a global community would end up looking more like Martha Nussbaum’s framework,[[38]](#endnote-38) complete with an express expectation that every human being should have the capability to experience the full range of human emotions without undue distortion caused by fear or anxiety. Waldron would not have to tiptoe around Nussbaum’s ideas. He would still have to balance competing interests – both freedom of expression and freedom from fear and anxiety are highly valued in Nussbaum’s cosmology. But Nussbaum leaves no doubt that psychological well-being is a fundamental human right. Ironically, while breaking from Rawls’s notion that liberal values are fixed and immutable, Nussbaum nonetheless takes us back to a set of moral values articulated by U.S. political leaders more than a half century ago.

The preamble to the United National Universal Declaration of Human Rights provides that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” It continues “[t]he advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.” Students of American history will hear the echoes of the Declaration of Independence and Franklin Roosevelt’s Four Freedoms speech. At the end of World War II the United States helped set the moral foundation for the modern world.

University of Oregon professor of law Ibrahim Gassama has recently argued that America is missing an important opportunity to continue to lead the world by example. The U.S. could change the dynamic in Internet hate speech disputes by opening its courts to hear complaints. He notes that it is not in anyone’s interest to allow hate speech and violence to persist. Instead, Gassama, suggests, the U.S. should be working to ensure that anyone aggrieved by hate speech should have access to a courtroom. If “there's a legal case to be made for objecting -- bringing a lawsuit." [[39]](#endnote-39) Suing the makers of *The Innocence of Muslims* would be preferable to violent protest and murder, but the courtroom doors must be opened.[[40]](#endnote-40)

If the United States cannot or will not open its courts to foreigners who have been injured by hate speech originating here, then we will likely see more instances of Americans being subjected to foreign jurisdiction. Further, if we become a haven for hate mongers, we run the risk of losing our moral standing in the world.

It does not help matters that U.S. firms, like Google, have been established as the de facto police of Internet decency. It may be that Americans can reasonably argue that their First Amendment right to free speech is a global right owing to every human being. But if that is the argument we are going to make, had better figure out how make it fast because when Google starts getting hauled into foreign courts, the U.S. Constitution is not going to protect it or its officers.

**Section 8. A Legislative Strategy: Private Attorneys General**

Waldron maintains that society is justified in addressing the harm of hate speech by imposing criminal sanctions against the perpetrators of hate.[[41]](#endnote-41) His position is consistent with the idea that the injury is truly societal in character. However, I believe civil liability might prove to be a more effective way to balance the competing interests.

In fact, I think the justification for pursuing civil instead of criminal sanctions is to be found in the third of Waldron’s 2009 Holmes lectures. In that lecture, Waldron explores the issue of governmental legitimacy as it relates to the law-making process. He quotes Ronald Dworkin:

Fair democracy requires… that each citizen have not just a vote but a voice:

a majority decision is not fair unless everyone has had a fair opportunity to

express his or her attitudes or opinions or fears or tastes or presuppositions

or prejudices or ideals, not just in the hope of influencing others (though that

hope is crucially important), but also just to confirm his or her standing as a

responsible agent in, rather than a passive victim of, collective action.[[42]](#endnote-42)

The government’s role in addressing the issue hate crimes should be calibrated to remedy the wrong without undermining people legitimate expectations about being free form government censorship. If the government declares "you cannot say that," than the government has become a usurper of the community’s power to judge the value of an idea . On the other hand, if the government simple asserts "if you say that and it is not true and a group of people is injured, then our courts are open to hear the complaint of injury from any member of the group," the government has become a usurper, but rather has simply provided a forum within which a dispute can be resolved. Providing a forum is a limited action that can more easily reconciled with the expectation that the government will not take sides – particularly in fields where there is no a clear, well-established and shared principle to be advanced or preserved. While there may be a need for an indifferent judge, still that doesn’t mean that the government must also be the prosecutor of every case.

A civil as opposed to criminal defamation scheme also has the advantage of being efficient. By authorizing any member of an injured group to bring suite, the scheme would incentivize private parties to promote a general public interest in eliminating hate speech. This sort of “private attorneys general” approach has worked in state and federal civil rights and consumer protection statutes.

A civil defamation scheme could be structured in any number of ways. The simplest would be to clarify the elements of a civil claim for group defamation and leave the parties to their own devices. A second possibility would be to allow a prevailing plaintiff to collect punitive damages. A third legislative strategy would be to mirror the Civil Rights Attorney's Fees Award Act of 1976,[[43]](#endnote-43) which allows a prevailing party to collect attorney’s fees and litigation costs.

All of this, of course, isn’t to say that the government shouldn’t be strictly enforcing its criminal statutes, including hate crime provisions.

**Conclusion**

Jeremy Waldron has taken a step toward a radical idea. He has asked us to consider the possibility that the right to say whatever the hell we want may not be as important a right as we have long thought. Waldron does not ask us to completely abandon the familiar territory of free speech, but he asks us to consider whether the rights of those injured by hate speech should be regarded more highly than the rights of those who speak the unspeakable. He challenges the deeply held belief that while sticks and stone may break our bones, names will never hurt us. He suggests that a society cannot be well-order if people are preaching hatred. He reminds us that a healthy society is governed and driven by a sense of justice.

Waldron would have us enlist the power of government to punish haters. He points to the liberal democracies of Europe as evidence that such power can be wielded wisely.

I am not convinced that government needs to be the arbiter of disputes between private parties throwing only hostile words, but I am convinced society has a legitimate interest in making sure hostile words do not become hostile deeds. I am also convinced that it is just to allow aggrieved parties to air their complaints in a forum where they can be dispassionately evaluated.

Since hate speech can now be transmitted around the world with stroke of a key, it is reasonable to expect the United States to reconciling it policies with the reasonable expectations of people beyond our borders. The rest of the world has come to a different conclusion about the appropriate balance between free speech and freedom from abuse. If we are to be members of a global society, we have an obligation to consider the interests of the people we encounter in that society. If we are not proactive and do not devise an appropriate means of resolving disputes between our citizens and citizens of other nations, U.S. citizens will likely be held to account in ways we cannot control.

Developing a clear body of law authorizing civil law suits for group defamation would be an important step toward resolving domestic issues hate crime issues and would, I believe, help close the gap between American law and the law of the rest of the world.   
A civil remedy is compatible with the traditional American view of free speech and the First Amendment to our federal Constitution. Americans hold with John Stuart Mill that freedom of speech is essential to the functioning of an open society. However, to say that people will be held responsible to each other, and not the government, for the damage they cause is no more a restraint on speech than allowing an injured man to sue is restraint on his assailant’s right to swing an arm.

We need not make government agents thought police to develop an appropriate check against hate speech. Opening an avenue to civil litigation in cases injuries can be shown preserves very speaker’s right to speak while at the same time holding them accountable for the harm they cause.  
  
A group defamation statute of this type is also consistent with existing civil litigation models that are designed to enlist private parties to advance important social goals. By empowering those with the most at stake to pursue litigation, we can avoid government intervention and still promote the interests of justice. Similar models have been successfully used to address civil rights, consumer fraud, individual defamation, deceptive trade practices and commercial speech generally.

Finally, it might be nice, from an American's perspective, to be able to say that the fault lines in with regard to speech sensibilities lie somewhere between the Western-developed countries and the less-developed societies of the Far- and Middle East. Unfortunately, that's just not the case. With regard to free speech, the U.S. is an outlier and while that may inspire a bit of patriotic pride, in a world where Americans are outnumbered nearly 7 to 1, it also poses a challenge. If we're going to convince the world that we're right any they're wrong we're going to have a damn good argument.

***End Notes***

1. *H.R.1082 -- Hate Crimes Prevention Act of 1999*, available online at <http://thomas.loc.gov/cgi-bin/query/z?c106:h.r.1082:>, (last accessed on Dec 18, 2012). [↑](#endnote-ref-1)
2. *Some memorable moments, milestones and a Miró: 50 years ago at the HLS Forum*, Harvard Law Bulletin, <http://www.law.harvard.edu/news/bulletin/2012/fall/briefs.php>, (last accessed on Dec 18, 2012). [↑](#endnote-ref-2)
3. Jeremy Waldron, *The Harm In Hate Speech*, p. 65, (Harvard University Press, 2012). [↑](#endnote-ref-3)
4. *Id.* at 65-6. [↑](#endnote-ref-4)
5. John Stuart Mill, *On Liberty,* Chapter IV, Of the Limits to the Authority of Society over the Individual, available online at <http://www.bartleby.com/25/2/4.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-5)
6. John Stuart Mill, *On Liberty,* Chapter IV, Of the Limits to the Authority of Society over the Individual, available online at <http://www.bartleby.com/25/2/4.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-6)
7. John Stuart Mill, *On Liberty,* Chapter II, On the Liberty of Thought and Discussion, available online at <http://www.bartleby.com/25/2/4.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-7)
8. John Stuart Mill, *On Liberty,* Chapter II, On the Liberty of Thought and Discussion, available online at <http://www.bartleby.com/25/2/4.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-8)
9. John Stuart Mill, *On Liberty,* Chapter II, On the Liberty of Thought and Discussion, available online at <http://www.bartleby.com/25/2/4.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-9)
10. Waldron*, The Harm in Hate Speech*, at 67. [↑](#endnote-ref-10)
11. Jeremy Waldron, *2009 Holmes Lectures, Lecture 1: Why Call Hate Speech Group Libel*?, p.1, Oct 5, 2009, available online at <http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__news__media/documents/documents/ecm_pro_063312.pdf> (last accessed on Dec 18, 2012). [↑](#endnote-ref-11)
12. Anatole France, The Red Lily (Le Lys rouge), Chapter 7, 1894 available online at <http://www.gutenberg.org/files/3922/3922-h/3922-h.htm> (last accessed on Dec 18, 2012). [↑](#endnote-ref-12)
13. Jeremy Waldron, *2009 Holmes Lectures, Lecture 1: Why Call Hate Speech Group Libel*?, p.21, Oct 5, 2009, available online at <http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__news__media/documents/documents/ecm_pro_063312.pdf> (last accessed on Dec 18, 2012). [↑](#endnote-ref-13)
14. Zechariah Chafee, "Freedom of Speech in Wartime", 32 Harvard Law Review 932, 957 (1919). [↑](#endnote-ref-14)
15. Actually, given the standardization of cell-phone network time-keeping and the ubiquity of apps for tracking our business and social obligations and it seems that our smartphones are in the habit of waking us. According to a survey conducted by the Travelodge UK motel chain, 71% of United Kingdom adults claim alarm clocks are obsolete. Thirty-six percent of Brits now use their cellphones instead of a bedside alarm clock. *PRESS RELEASE: The Faithful Alarm Clock Has Gone to Bed Forever,* May 13, 2008, <http://www.travelodge.co.uk/press_releases/press_release.php?id=304>. (last accessed on Dec 18, 2012). There's no reason to believe the phenomena is limited to Britain and Northern Ireland. It seems our phones now turn us on. [↑](#endnote-ref-15)
16. *Innocence of Muslims movie trailer*, <http://m.youtube.com/#/watch?v=mjoa3QazVy8&desktop_uri=%2Fwatch%3Fv%3Dmjoa3QazVy8> (last accessed on Dec 18, 2012). [↑](#endnote-ref-16)
17. The full-length film can be found at <http://m.youtube.com/watch?feature=related&v=6ySE-yYeelE> (last accessed on Dec 18, 2012). [↑](#endnote-ref-17)
18. The extent of the protests and whether the video and subsequent protests were related to an attack that resulted in the murder of the U.S. Ambassador to Libya has been the subject of debate, for our purposes here it is sufficient to note that the video was not well received by many Muslims. [↑](#endnote-ref-18)
19. Craig Timberg, *Google’s restricting of anti-Muslim video shows role of Web firms as free-speech arbiters*, <http://articles.washingtonpost.com/2012-09-14/business/35494603_1_free-speech-anti-muslim-video-search-algorithm> (last accessed on Dec 18, 2012). [↑](#endnote-ref-19)
20. The maker of the film, Mark Basseley Youssef, a.k.a. Nakoula Basseley Nakoula, is a naturalize United States citizen born in Egypt. *See* Michael Isikoff, *Man behind anti-Islam film reportedly is Egyptian-born ex-con*, NBC News, Sep 13, 2012, <http://worldnews.nbcnews.com/_news/2012/09/13/13842406-man-behind-anti-islam-film-reportedly-is-egyptian-born-ex-con> (last accessed on Dec 18, 2012). [↑](#endnote-ref-20)
21. *See* Pamela Constable, *Egyptian Christian activist in Virginia promoted video that sparked furor*, Washington Post, Sep 13, 2012, <http://articles.washingtonpost.com/2012-09-13/local/35494926_1_anti-muslim-video-coptic-christian-morris-sadek> (last accessed on Dec 18, 2012). *See also* Billy Hallowell, This is the Man Who Reportedly Translated & Sent the Anti-Muhammad Film to Egyptian Journalists, The Blaze, Sep 14, 2012, <http://www.theblaze.com/stories/this-is-the-man-who-reportedly-translated-sent-the-anti-muhammad-film-to-egyptian-journalists/> (the article contains a link to a video of Morris Sadek, an attorney who served as the film's publicist and translator, standing on a busy sidewalk yelling "Islam is Evil"). [↑](#endnote-ref-21)
22. *The 'Innocence of Muslims' Riots (Nakoula Basseley Nakoula),* New York Times, Nov 26, 2012, <http://topics.nytimes.com/top/reference/timestopics/subjects/i/innocence_of_muslims_riots/index.html> (last accessed on Dec 18, 2012). [↑](#endnote-ref-22)
23. Sarah El Deed, *Egypt court sentences 8 to death over prophet film*, Associated Press, Nov 28, 2012, available at <http://www.google.com/hostednews/ap/article/ALeqM5gMzWdRJfXai5r2qFA_p0ca1jRD3Q?docId=65ef5fb853054f0caa56ca36f963feba> (last accessed on Dec 18, 2012). [↑](#endnote-ref-23)
24. Doug Stanglin*, Moscow court bans 'Innocence of Muslims' video, USA Today, Oct 1,* 2012, <http://www.usatoday.com/story/ondeadline/2012/10/01/moscow-court-muslim-video-innocence-of-muslims/1606161/> (last accessed on Dec 18, 2012). [↑](#endnote-ref-24)
25. Gianluca Mezzofiore, *Innocence of Muslims: Brazil and Turkey Ban Anti-Islam Film*

    *YouTube owner Google penalised for refusing to pull trailer of Islamophobic film that triggered worldwide protests,* International Business Times,Sep 26, 2012,

    <http://www.ibtimes.co.uk/articles/388310/20120926/innocence-muslims-brazil-turkey-ban-anti-islam.htm> (last accessed on Dec 18, 2012). [↑](#endnote-ref-25)
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29. *Ari Melber,Why YouTube Is Wrong to Censor the Anti-Islam Video, The Nation, Sep 14, 2012,* <http://www.thenation.com/blog/169952/why-youtube-wrong-censor-anti-islam-video> (last accessed on Dec 18, 2012). [↑](#endnote-ref-29)
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