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We Need to Talk About Islam

The Wilders trial shows the threat religious hate-speech laws pose to free speech.

BY NINA SHEA AND PAUL MARSHALL

Dutch parliamentarian Geert Wilders was threatened with criminal punishment for hate speech from the moment his anti-Koran film *Fitna* hit the internet in March 2008. Last month, a Dutch judicial oversight body ordered that he be tried anew after finding that judges in the first round of court proceedings appeared to be biased. Even if Mr. Wilders is ultimately acquitted, as his prosecutors themselves urge, he will have already been punished by years of costly and tiring legal wrangling.

But the greatest threat posed by this case is not to a lone Dutch firebrand, but to Europeans at large, whose fundamental freedoms of speech and religion are being steadily undermined. Those trying to repress these individual rights in the name of sensitivity are gaining ground with each case that upholds the state's power to regulate the content of speech on Islam. Since Mr. Wilders' defense does not challenge the legitimacy of hate-speech laws per se, but instead points to the specific facts of his case, even his acquittal would not alter this encroachment on core Western rights.

Religious hate-speech is not clearly defined in the Netherlands or elsewhere in Europe. Council of Europe standards emphasize the subjectivity of the offense, stating that, with respect to religion, "there is no right to offend," that "gratuitously offensive" speech is not protected, and that there exists a new "right of citizens not to be insulted in their religious feelings." In an attempt to carve out protections for political speech and social commentary, the Council distinguishes between speech that insults Muslims, which it forbids, and that which insults Islam or would be considered blasphemous, which it permits.

Mr. Wilders argues that his film and his other criticisms entail only the latter. As his case drags on, with prosecutors and judges in open disagreement over whether he was within the bounds of acceptable speech, the confusion created by this legal dichotomy becomes apparent. Though the European Court of Human Rights, which Dutch courts follow, tries to distinguish between commentary on socially relevant religious issues and that on "intimate personal convictions," believers often view one as the necessary extension of the other. Hence, as Council advisers themselves have admitted, the boundaries "are easily blurred."

In fact, this legal test between the religious and the personal is untenable. In contrast to other hate-speech categories—such as racism and Holocaust denial—even a tendentious or hyperbolic treatment of religion and society is often linked to real debate over beliefs and values. Since religions have practices and doctrines as well as adherents, efforts to restrict criticism of religious groups involves a perilous effort to disentangle practice from practitioner, and social commentary from insult.

The Wilders case isn't the only example of how porous is the distinction between blasphemy and hate speech. Due to a similar feature in Danish law, Danish prosecutors declined to press charges over the 2005 *Jylland-Posten* cartoons of Mohammed that triggered global Muslim riots. They concluded that most of the cartoons "depict a religious figure," not

"Muslims in general," and those that did depict Muslims were not "scornful or degrading." Philippe Val, editor of the French satirical journal Charlie-Hebdo, was tried in Paris for reprinting the cartoons, but acquitted since he had, in his words, "targeted ideas, not men." By contrast, in 2009, Helsinki City Council member Jussi Halla-aho was convicted in Finland for blog entries disparaging marriage practices of Islam's prophet, which he attributed to Muslims more generally.

In 2003, then-Dutch Parliamentarian Ayaan Hirsi Ali was subject to a criminal investigation for hate speech for her statements linking Mohammed to abuses against women in Muslim communities. While no criminal charges were ever brought in that case, her legal troubles were not over. In 2005, she was forced to stand trial in a civil action for hate speech after announcing plans for a film on the treatment of homosexuals in Islam, a prospect the complainant—Holland's main Muslim lobbying group—found to both cause "a great deal of pain" and be "blasphemous." The court reprimanded the MP for having "sought the borders of the acceptable," but ruled that her words did not warrant prohibition. Though she prevailed, the defense cost her 8,000 Euros. Around the same period, Ms. Hirsi Ali was forced to go into hiding due to death threats by Muslim extremists and was nearly stripped of her citizenship by the Dutch government, which seemed impatient with her outspoken critique of Islam.

Former actress and animal rights activist Brigitte Bardot has been convicted and fined in five separate French cases for intemperate comments about Muslims, many focusing on animal cruelty in halal slaughter practices. In Austria, Elisabeth Sabaditsch Wolff is currently on trial for her lecture before an anti-immigration political party criticizing Muslim practices she observed abroad. For her, Geert Wilders, Brigitte Bardot, and others, their unease about Muslim immigration reflects their negative views of Islam itself.

Speech now deemed suspect includes subjects that are commonly and openly aired when not involving Islam: women's subordination, violence, child marriages, criminalization of homosexuality and animal cruelty. While not all such cases resulted in convictions, all contribute to a broad and chilling effect on speech. Because there is little predictability in the prosecution and adjudication of such cases, hinging as they do on subjective feelings, nobody knows what can be said with impunity. The flawed premise that religious views can easily be compartmentalized into personal or social realms itself violates the teaching of most religions.

One result of this legal confusion is that many Europeans, including many Muslims, will think it wisest to keep silent on all matters Islamic. The late Professor Nasr Abu-Zayd, who, under similar laws, was driven out of Egypt to the Netherlands for his liberal interpretation of Islam, wrote that such charges "confine the world's Muslim population to a bleak, colorless prison of socio-cultural and political conformity." There will be terrible consequences for us all if Europe continues to head down this slippery slope.

Nina Shea is a Senior Fellow and Director of Hudson Institute's Center for Religious Freedom.

Paul Marshall is a Senior Fellow with Hudson Institute's Center for Religious Freedom.