

**The Violence of Secular Critique**  
Understanding 'critique' in the Danish Cartoon Controversy

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by

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## Abstract

### **The Violence of Secular Critique**

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In 2005, Danish newspaper Jyllands-Posten invited cartoonists to “draw Muhammad as they see him” and published the responses which many found to insult, hurt and estrange Denmark’s minority Muslim population. The newspaper (and the public prosecutor) refuted the offence, not by citing freedom of artistic expression of the cartoonists, but as freedom of opinion and freedom of the press, citing a western liberal tradition of questioning and “critiquing” in the public sphere that is needed to counter extremism. In this thesis I examine this idea of critique which legitimises itself against harm and violence, and investigate the implicit violence in critique when it is based on an abstraction of experience and a selective treatment of itself, i.e. when it insists on its symbolic importance but disowns its content. I look at political philosophers Mill and Kant to understand the basis of this selective treatment and how freedom of speech silences its opposers when endowed with self-righteous critique. I purport that since critique is insufficient to incorporate power imbalances in contemporary societies, the practice of critique by itself is neither free nor tolerant and cannot be the sole legitimizing factor in an issue such as the cartoon controversy. While critique is legitimized on the claim that it is abstract and disinterested, I purport that the bravado of critique is a source of violence when it is accompanied by a lack of conviction of its content.

# Contents

<b>Abstract</b> .....	1
<b>1. Introduction</b> .....	4
1.1 Returning Interaction to Critique .....	5
1.2 Overview .....	10
1.3 Structure .....	9
1.4 Terminology.....	11
<b>2. Case Study– Reforming Muhammad with Words and Images</b> .....	12
2.1 The ‘Gap’: between Text and Violence .....	12
2.2 The Freedom of Expression, for itself.....	14
2.3 The Stylesheet of Critique.....	17
<b>3. Secular Critique: A War against Religious Violence</b> .....	21
3.1 The Pencil and the Gun .....	22
3.2 Secularity as the ‘State’ of Critique : Finding Tolerance and Freedom in Truth.....	25
<b>The Violence of Speech, The Violence of Truth: Mill and Kant</b> .....	29
<b>4. Reading Mill- Is Critique Tolerant?</b> .....	31
4.1 Mill, Critique and the Violence of Truth. ....	31
4.2 The Interim Period: Critique as Flesh and Blood.....	34
4.3 Critique, Truth and the Other- The Tyranny of Majority Opinion.....	36
<b>5. Reading Kant- Is Critique freedom?</b> .....	40
5.1 The Heroism of Critique .....	40
5.2 Freedom of Reason or Obedience to Order.....	42
5.3 The Public and the Private .....	43
<b>6. Conclusion</b> .....	47
6.1 The Violence of Abstract Critique .....	47
<b>Works Cited</b> .....	54
APPENDIX 1 Letter by Muslims Ambassadors to the Danish Prime Minister.....	55
APPENDIX 2 Response by the Danish Prime Minister : .....	56
APPENDIX 3 Court Judgement .....	56

# 1. Introduction

That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others – John Stuart Mill 2009, 18. (Originally published 1859)

On 30<sup>th</sup> September 2005, a Danish newspaper Jyllands-Posten published 12 ‘cartoons’ on its culture page under the title “The face of Muhammad”. This, as I will explain in Section II, was part of what the newspaper’s staff described as an “experiment” about self-censorship regarding Islam. Carsten Juste, the editor in chief, happened to be told that it is extremely difficult to find an illustrator for a book on Muhammad’s life because of fear of repercussion from Muslims. Troubled to hear about this self-censorship, the cultural editor Flemming Rose decided to “test” if this was true, sent an invite to the 42 members of the Denmark union of cartoonists, desiring to see if the illustrators would respond. In the mail, he said that he has heard rumours about the fear of drawing Muhammad, and that taking a stand for free speech, he would like the illustrators to “draw Muhammad, as you see him” (Klausen 2009,14). He further promised that Jyllands-Posten “would print all the drawings that were submitted as a demonstration against intimidation and self-censorship (ibid).” Out of the 42 respondents, one of the cartoonists wrote back saying the project was “ridiculous”, one said the project is too vague, one said that he is scared for his life, 27 didn’t reply and 12 cartoonists responded with cartoons which the newspaper published on a single page around an article called “The Face of Muhammad” (ibid, 14-15). On the day of the publication, several imams and other Muslim clerics around Denmark made frantic meetings and in 11 days wrote to Anders Fogh Rasmussen, the Danish Prime Minister, requesting “an urgent meeting” to discuss the “on-going smearing campaign in Danish public circles and media against Islam and Muslims” (See Appendix 1). Rasmussen politely rejected the offer since meeting the ambassadors would be tantamount to compromising freedom of the press (Hansen 2011, 62). By February, four months after the publication, Danish diplomatic missions had been burnt in Kabul, Djakarta, and Tehran, Damascus, Beirut; Danish flags and Rasmussen posters were set ablaze by angry mobs in Pakistan and on the West Bank, and up to 250 people were said to have been killed in riots across the world (Klausen 2009, 107). The experiment had run full circle. Jyllands-Posten had got its results about freedom of expression and Islam, and the results were there for the world to see. Islam and freedom of expression, apparently, did not go together.

## 1.1 Returning Interaction to Critique

The primary trigger for this Thesis is the debate that engulfs international print media in the wake of the publication of 'Muhammad cartoons' in 2005 by Danish newspaper *Jyllands-Posten* (henceforth JP) and which has been revived by the terrible massacre of the staff of French Weekly *Charlie Hebdo* by armed gunmen. This debate, often framed in the context of “freedom of opinion and speech” has further polarised opinions on secularism, and reiterated the notional divide between secular critique and religious extremism. The conflict between these polarized positions extends across and overlaps with many similar issues, be it the French Burqa ban, European immigrant policies or whether religion should be included in the public sphere (See Wolterstorff 1997). My interest in the controversy stems from a specific “gap” in the rhetoric and reception of the cartoons: the gap between what the secular authors intended (or claim to intend) and how a large section of “offended” Muslim and non-Muslim audience perceived the same. The gap is in the fact that what one set of people see as a practice of tolerance and freedom, is seen by others as structural violence.<sup>1</sup>

Since the publication of the cartoons, JP has been faced by several criticisms (though it enjoys a large support base) including that of “demonizing” Muslims, of being “needlessly provocative”, of operating under its right-wing bias, of invoking a clash of culture. Editors Carsten Juste and Flemming Rose, among other cartoonists like Kurt Westergaard have repeatedly refuted the validity of the offence caused, instead citing the danger of censorship and the “Tyranny of Silence” (Rose’s book on the incident). Firstly, an oft quoted argument of freedom of speech was invoked saying words, (and by extension, images) as long as they do not cause direct harm, cannot be censored. The publishers emphasized on the difference between words and deeds first by contrasting the harmlessness of the endeavour of publication against the terribleness of physical violence. But secondly, and importantly, they did not stop at asking protection under freedom of speech, but insisted that the cartoons were published for the cause of freedom of speech in the first place. The controversy was posed as a matter of “freedom of speech” from the onset, since JP published the cartoons to “test” self-censorship on drawing Muhammad. Thus instead of being mere exercise freedom of speech, they became an example of the act of critique, of public reasoning that is required to counter extremism. JP’s defence, Denmark’s government officials’ statements, and the court verdict by the Regional Public Prosecutor, and secular public sentiment alike vouched for

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<sup>1</sup> Johan Galtung articulates the concept of ‘structural violence’ by which he refers to an ingrained system of discrimination which in effect leads to various kinds of physical and non-physical violence. In this case the structural violence refers to the ingrained discrimination and paranoia of Muslims in the West.

the validity of cartoons not as freedom of artistic expression, but as an exercise of public reason, and as the furthering of a post-reformation Western tradition of questioning (See Winkler 2008; Winkler 2015; Appendix 2; Appendix 3). The court verdict remarks that “the article in question concerns a subject of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore, according to the Danish case law f.i. journalists have extended editorial freedom, when it comes to subjects of public interest” (See Appendix 3). Thus, JP received “extended” freedom because it was adding and contributing to “public” reason. Them being influential members of the Press only increased this freedom, since as members of the Press they were contributing to the public realm further.

This idea of the symbolic importance of furthering public reason is at the heart of my interest in the thesis, as this meant that the cartoons were singularly framed as an act of secular critique, as an act promoting a Western tradition of public reason and questioning, which becomes the antidote in countering religious extremism. Here the freedom to express gets endowed with “critique”, thus it is not merely the freedom to say anything but also that the activity is loaded with righteousness and furthering a tradition of questioning with ‘critique’ of power. The source of conflict is placed in the ideal of Freedom of Speech, which is declared to be the distinguishing feature of post-Enlightenment societies and the basic ingredient of tolerance and freedom. Thus, religion is posited as a self-assured phenomenon with a singular truth, while secularity serves the purpose of making religion more “open” by its habit of critique. I use the term “critique” as Wendy Brown describes it, as having multiple similar connotations but as being “the express term for modernity, and everything liberalism is about” (2011, 9). It is used to refer to a “polemical rejection”, or “to signal immanent or deconstructive analytic practices, or, to identify the search for a secreted truth within a tissue of mystifications (ibid). Critique, in short, is endowed with the righteousness of fighting the known, the accepted, the comfortable and the powerful.

The JP publishers deemed the allegation of demonizing Muslims invalid, insisting that their endeavour was an ideological critique not an attack on Muslims as people or a group, since critique is “not about us and them, it’s about ideas” (‘Violence Works’, 2015). The moot danger of this assertion of the righteousness of critique is that the bravado of the act of critique is accompanied by a lack of conviction of its content. Rose has categorically denied not only the allegation that the cartoons demonized Muslims but that the publication had any special concern about Islam and violence. Instead the staff of JP has stuck to the narrative that the reason for inviting the cartoonists to draw Muhammad was merely because there was self-censorship on the issue, and that Rose did

not necessarily agree with the content of all the cartoons.<sup>2</sup> In a BBC interview, Rose accuses the BBC among others, of indirectly increasing the danger of extremism by not publishing JP's cartoons for the sake of freedom of expression, even if they did not support the content. Rose presses his case further to the BBC anchor: "publication is not endorsement", he says (ibid). Rose's statement may have a ring of Voltaire's everfamous "I may not agree with what you have to say, but I will defend to death your right to say it", except that, in this case no one, neither the editors who conceived of the idea of inviting cartoonists to draw Muhammad, nor the cartoonists who responded with caricatures, seem to have anything "to say" or have an opinion that they seek to proclaim or defend. Each of the agent involved in this exercise of public reason is merely responding to the other's call of "standing up to" freedom of speech. The result is a pool of freedom of speech without anyone having had anything to express or stand by except the danger to the freedom. What follows is the underlying assumption that the exercise of critique, since it challenges the acceptable and the powerful itself furthers tolerance and freedom. Critique squirms in an abstraction of words and images which need not have conviction in what it says, or be aware of the context as long as it is furthering the idea of questioning. It is in this multiple abstraction of critique, which is claimed as its unbiased, is its violence.

For example, consider the defence of the cultural editor of JP, denying that the cartoons demonized Muslims as a group. Rose said Kurt Westergaard's cartoon which depicts Muhammad as a bomb is an attack on "a religious doctrine" not on Muslims because violence in the name of Islamic terrorism is a fact. This fact is precisely the reason detractors of the cartoon condemn the cartoon, since Muslims already face stereotypical representations because of the paranoia surrounding Islamic terrorism and such incidents in the name of "critique" further increase the bias. It can be said that many of the cartoons' detractors do not have a fundamental problem with the cartoons or the mocking of religion, instead the problem is that the cartoons reiterate existing power imbalances in society (*See* Ziauddin Sardar 2006). The problem is that freedom of speech with the righteousness of being a critique is being used to further majoritarian voices, and ridicule and silence difference. Thus, the key argument beneath the opposition against JP's assertion of Freedom of Speech, is that their critical free speech is simultaneously silencing Muslims, snatching their voice to speak for they are being caricatured<sup>3</sup> (quite literally) into people who do not deserve to have a

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<sup>2</sup> In the BBC interview Rose says that if all the cartoons were like Kurt Westergaard's cartoon, he might not have published the issue (ibid).

<sup>3</sup> Ziauddin Sardar(2006) compares the cartoons on Muslims to anti-semitic cartoons in Europe in 1920s and 30s.



fair voice in secular democracy, for they are ridden with non-liberal views.<sup>4</sup> The question for the thesis however is not if and which “power imbalances” are a healthy exception to make in our understanding of freedom of speech. Instead, I reiterate that since critique is incapable of addressing these power imbalances and diversity, critique *by itself* is neither tolerant nor free. Instead, the abstraction of critique is the very site of its violence. The act of questioning itself need not add to the practice of questioning the conventional and has a danger of being appropriated by majoritarian voices instead.

## 1.2 Overview

In this thesis, I use JP’s publication of the 2005 cartoons as a case study, to gain insight into the act of critique that is at the heart of the “civilizational clash” between the secular authors and the religious audience. The thesis can be seen in two parts: one of JP’s case where I understand that the legitimacy of the publication was repeatedly invoked by citing a post-reformation western secular “tradition”, that Muslims need to integrate into. The second half of the thesis probes into this invoked secular tradition of questioning. I read J.S Mill’s *On Liberty* and Immanuel Kant’s *What is Enlightenment*. The reason for the detour into philosophical texts is because of several reasons, but primarily to see how the two terms “western” and “tradition” get conflated with the act of critique and “critique” gets framed as clash of civilization. Since debates around Freedom of Speech get framed into a civilizational clash by the invocation of a western secular “tradition” of questioning, it is of value to probe this invoked tradition to understand why critique has reached this dead-end. I purport that the invoked tradition gives us insight into why the debate around critique has become a civilizational clash. With Kant and Mill, I see some fundamental assumptions and biases in “critique” that mirror in contemporary debates. Since the notion of “critique” encapsulates a historical journey, of “having overcome the irrationality of belief”, it needs certain moments of secular heritage to confirm the shift and philosophers and public intellectuals as people of reason are arguably those sites, quoted as both the example and proof of the birth of secularity.

I thus intend to understand the philosophical basis of the virtue of critique in secular society and examine the secular-liberal tradition of critique that the non-secular cannot comprehend. In this examination of critique in some key liberal texts, I seek a notion of interaction between the perpetuator of critique and the object of critique, the *critiquer* and the *critiqued*. I contest that in

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<sup>4</sup> Being a barbaric civilization, or people who are still in their “non-age” is a prime disqualifier for the right to free speech even for J.S Mill (2009, 19)

purporting critique to be an abstract activity which is separate and unaffected by people's personal lives, Western liberal theory overlooks the crucial element of speech, of talking in critique from which it cannot be separated.

Speech can be seen as a present-continuous translation of the private to the public, one of the most effortless of human action, an unmindful extension of the deepest parts of our self, and yet has a reach that goes beyond our private self. I assert that critique cannot exist outside of the interaction of speaking to each other. When people assert that critique is dear to the liberal culture of the West, critique is posited as a purely intellectual exercise of questioning. I look at the *act* of critique as an embodied action undertaken at a point of time with a critiquer and a critiqued. By conflating critique with speech, I firstly aim to foreground critique in a body of lines, words and images, objects of everyday use which are used for things as mundane yet fundamental as describing food. I then see how critique, considered the most developed form of speech, conceives of interaction between the critiquer and the critiqued. Speech is at once personal and public, and I situate it in the idea of critique.

Section 2 examines the cartoon controversy and the notion that the cartoons have to be supported because they were a "critique", an essential feature to dispel the violence of religious authority and truth. Section 3 looks at how post-enlightenment, critique has operated with a dualistic idea of the world, separating mind-body, public-private, reason-emotion, state-religion, and how the violence of the latter is used to prove the tolerance and freedom of the former. In the next two sections, I look at idea of tolerance in Mill to see that diversity is encouraged only to get closer to a vertical truth, and Kant to see that the freedom of speech implies a conformity of the body. In the last section, I talk about the lack of interaction in critique and the danger of an abstract critique which is not invested in experience. A more detailed overview of the structure follows:

### **1.3 Structure**

I make my argument in 5 Sections. The trajectory of my argument will be as follows:

**In section 2**, I present the case study of the publication of the 'Muhammad cartoons' by JP in 2005. I look at Kurt Westergaard's "bomb" cartoon as the metonym of the *gap* in the understanding of critique: as an attack on Islamic ideology by the secular publishers on one hand and as an attack on Muslims as people, by the religious audience on the other. I note that as opposed to various other controversies where people were offended with an artist's expression, the Muhammad cartoon controversy is special because it was published for the very sake of freedom of expression in the

first place. I then set up my question of inquiry: i.e. is critique tolerance by itself, regardless of the context and power dynamics in society?

**In section 3,** I look at the framing of clash of civilizations around the value of critique. I first demonstrate the prevalent secular assertion that words and violence are fundamentally opposed to each other. Then, I show the selective use of the division of speech and words of the “harm principle” by contemporary defenders of the cartoon who insist on its importance but maintain that it is incapable of harm. I see how critique and secularity have historically got associated with each other by an assumed virtue of overcoming the stringent truth of religion.

**In Section 4 and 5,** I try to understand the roots of the tradition of critique that is oft quoted in the Enlightenment thinkers. What really do key thinkers mean by critique and what are its conditions. Can they help us to understand the present case better? What is their imagination of the Other in their conception of critique? Secular critique posits itself against violence by two fundamental assertions: 1) by positing itself as tolerant and by 2) positing itself as freedom. It gets its legitimacy from the first while getting its heroism from the latter. In the next two chapters I will attempt to unpack both these concepts. I study Kant and J.S Mill because of their varied but converging influence on the idea of public sphere.

**In Section 4,** I ask is critique tolerant? I look at the groundwork of freedom of speech: John Stuart Mill's treatise *On Liberty*. While explaining Mill's system and assumptions, I focus on a particular aspect that dictates Mill's system: the importance of truth which though is never absolute but yet must be strived for. Moreover, striving for truth has a value which resonates that of absolute truth. I study how the prospect of toleration is dictated by the search for truth and not plurality. One's relationship to the other is only as fellow beings in search for a truth, truth connects us not we to each other.

**In Section 5,** I ask if critique is freedom? I demonstrate that Kant conceptualises a realm of public, where one can question, while conforming to the orders of the state.

**In the last section, 6,** I ask if critique as we know it is possible for cultures other than one's own. Perhaps this is a self-contradictory or non-question for Enlightenment thinkers because the idea of another imperceptible other either doesn't exist. The fact that critique escapes dialogue with the

other, means that its relationship to the other can only be of violence. Thus I invert the secular assertion that disinterest in content dispels violence and instead assert that lack of personal and experiential investment in critique is its most violent feature.

#### **1.4 Terminology**

In *On Liberty*, J.S Mill uses the term “opinion” and “critique” to refer to new ideas that are constantly supposed to revised for the search of truth. In *What is Enlightenment*, Kant uses the term “public reason” to refer to a similar idea. Contemporary invocations of freedom of speech and tend to use these words interchangeably. I use the term “critique” as explained by Wendy Brown (2011, 9).

I refer to freedom of speech and freedom of opinion interchangeably, as used by Mill. He refers to “inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense, liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological” (Mill 2009 , 22-23).

## 2. Case Study– Reforming Muhammad with Words and Images

In this chapter I look at the Danish cartoon controversy involving Jyllands-Posten (henceforth JP) in detail and see how the endeavour was framed into a self-righteous exercise of freedom of speech. In 2.1, I look at the “gap” between how the text was intended and how it was understood. In 2.2, I show how the cartoons were framed into a clash of civilizations by the publishers, purporting freedom of speech against its imagined opponents. In 2.3, I note how the endeavour is purported as a critique, and by virtue of being secular becomes sacred for the “marketplace of ideas”.

### 2.1 The ‘Gap’: between Text and Violence

The Danish cartoon controversy can be studied, and indeed has been studied through many important angles.<sup>5</sup> But I look at the “gap” in how one cartoon was understood, as the metonym of my interest in this subject. The cartoon by Kurt Westergaard became the symbol for the entire controversy, both for protestors and other critics: “An angry prophet”, as Art Spiegelman described it, who has a “bomb inscribed with the Islamic creed merged with his turban” (2006, 48). What makes this cartoon so important is not only the virtue of being the most circulated and referred of all the images, but that there is an essential difference in how the artist Westergaard and JP defended the cartoon, and how many offended Muslims and angry Non-Muslims saw the picture (See Appendix 1). In Lene Hansen’s words, “the question whether this cartoon securitizes ‘Muslims’ through a demonizing strategy of depiction is at the very heart of the cartoon crisis” (Hansen 2011, 63). I contest that the difference in which this message has been interpreted lies at the heart of the violence of critique based on a selective treatment of itself, insisting on the symbolic importance of critique but denying that it critique is capable of any legitimate hurt or harm. This treatment of critique is crucially important in understanding the entire debate, not least because it fits in as a self-fulfilling prophecy about the response to the cartoons, and reinforces mind-body dualism in the form of speech versus violence. Westergaard (and JP) has continually insisted that,

The cartoon is not directed against Islam as a whole, but against the part of it that obviously can inspire violence, terrorism, death and destruction.... [T]he fuel behind the terrorists' action is supplied by interpretations of Islam. I think that conclusion is inescapable. That does not mean that all Muslims are responsible for terror (Quoted in Spiegelman, 48).

On the other hand, this is not how many Muslims and non-Muslims saw the image. They saw it as a reiteration of Muslims as terrorists, a trope they had been continually bombarded with post-9/11,

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<sup>5</sup> See Levey and Modood (2009), *Free Speech and Censorship Around the Globe* (2015)

and which seemed the obvious message considering JP's general anti-immigrant bias (See Sardar 2015).<sup>6</sup> Offended Muslims understood the cartoons in the context of what they saw as an "on-going smearing campaign in Danish public circles and media against Islam and Muslims" (See Appendix 1). Rose refutes the interpretation in an interview:

If you look at even Westergaard's cartoon with a bomb on his turban, it is not targeting Muslims as a group. They [the cartoons] are not like the eternal Jew.... They were not offended as a group, as a minority in society. They were offended because somebody targeted a religious doctrine. I think that is the key difference. Westergaard's cartoon is targeting a religious doctrine not... let me make a parallel example. If a newspaper depicts Jesus with beer in his hand, does that imply that all Christians are drunkard? ...No, and in the same (), what is in the cartoon is not saying anything about all Muslims. It is basically saying that some Muslims are committing violence in the name of their religion, and that is a fact. I mean it's not something we have invented. And it is based on religious doctrine. It is not targeting Muslims as a group, as human beings [...] It's not about us and them. It's about ideas ('Violence Works', 2015).

Within the last few decades, one can think of several attacks on artists that have been involved in the muddle of interpretation, in confusions about what the artist wanted to say and what the offended audience understood it to be. In 1993, Hindu Nationalists vandalized an art exhibition by Indian left-activist organization *Sahmat*, claiming to be offended by a "Ram-Katha" panel, which showed the god Rama and Sita to be siblings (while they are spouses in the popular Valmiki version). Among other defences like the image was from a Jain narrative of the myth, *Sahmat* insisted that calling the work a poster was misleading, because it was a "panel" (*Sahmat* 2009, 29). In 1998, when Indian Muslim painter M.F Hussain was attacked for painting Hindu Goddesses in the nude, the defence was that ancient Indian tradition has a plethora of such images, and thus Hussain was not insulting Hindus. In 1988, Salman Rushdie pleaded that the title of his book *Satanic Verses* did not refer to the Quran but a particular verse in the Quran that had been "taken back" by Allah because it had been sent by Satan in disguise.

This gap, between what the critical author meant and the offended reader understood is a recurrent trope, often reinstating the cliché that the offended reader lacks nuance in literary reading and understanding the subtleties of a text.<sup>7</sup> Where Westergaard's "bomb cartoon" is different is that the gap between what was intended and what was understood by the text (of the image) is extremely narrow and banks on a notion of abstract critique. If the cartoon was about a terrorist, why did it come under the response of "as they saw Muhammad", or why was it still published under the title of "face of Muhammad". A believing Muslim is supposed to be distinct from a person who follows

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<sup>6</sup> Spiegelman (2006) and Klausen (2009) both reiterate JP's image as being anti-immigrant in Danish Politics.

<sup>7</sup> See for example, Balagangadhara (2002).

Islam, or its prophet. The attack was on the latter, not the former. Rose justifies the cartoon by saying that violence in the name of Islam is a fact. This fact is precisely why his critics wouldn't publish the cartoon, because of the reiteration of the stereotype of violent Muslims. What Rose thinks an attack on an ideology of Islam is seen by others as an attack on Muslims, a demonization. The key source of contention is the phrase "in the name of" and not "by" or "because of" Islam. For the Jyllands-Posten staff, it was clear that the cartoon meant "in the name of", while for his critics it wasn't. Hansen addresses this conflicting difference in perception: "The lit turban-bomb, the bushy eyebrows, and the piercing eyes evoke on the one hand a violent, possibly terrorist-suicidal subject; *on the other* this is a disembodied face, devoid of spatial and temporal location with no other subjects present" (emphasis mine- Hansen 2011, 63). Hansen's confusion is that the prophet is shown as violent *but* he could be anyone, anywhere. What if both the features aren't contradictory. What if that JP sees critique on virtue of being disembodied is the prime source of the violence of critique?

## **2.2 The Freedom of Expression, for itself.**

Hansen (2011, 66) notes two central reasons for the cartoons to be securitized: the text that accompanied the cartoons and the genre that the cartoons belonged to. The cartoons by themselves did not belong to any familiar genre of literary or art work. They were given a genre by the manner in which JP published them, it was the genre of freedom of expression against its imagined opposers, framed perfectly by the two texts by Juste and Rose that accompanied the cartoons.

The preliminary results of the Jyllands-Posten "experiment" on self-censorship had been inconclusive. Rose had wondered if the 27 artists had not responded to the mail because they were limited by professional contracts. By this time, they had also received discouraging suggestions from scholars they had consulted, who advised them against publishing it. However, JP decided to publish it as an editorial instead of a news item, hoping that if they came in the culture page, they would be read lightly by its audience. On 30<sup>th</sup> September, twelve cartoons were printed on a page with the headline "The Face of Muhammad.", subtitled 'Freedom of expression' (Rose, 2005). Rose's text sat at the center of page 3 of the cultural section with the 12 cartoons surrounding it. On page 10 of section 1 was *Jyllands-Posten's* main editorial 'The threat from the dark' (Hansen 2011, 65). In his editorial which was published alongside the cartoons, Flemming Rose, as culture and book review editor, argued that "Jyllands-Posten was striking a blow for freedom of speech and against self-censorship motivated by political correctness" (Klausen 2009, 13). In a 700 word editorial that Rose wrote around the cartoons, he said:

Modern, secular society is rejected by some Muslims. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with contemporary democracy and freedom of speech, where one must be ready to put up with insults, mockery and ridicule. It is certainly not always attractive and nice to look at, and it does not mean that religious feelings should be made fun of at any price, but that is of minor importance in the present context. ... we are on our way to a slippery slope where no-one can tell how the self-censorship will end. That is why *Morgenavisen Jyllands-Posten* has invited members of the Danish editorial cartoonists union to draw Muhammad as they see him (quoted in Klausen 2009, 6).

The selection of headline was an obvious reference to the violation of the taboo that Muslims hold against the pictorial representation of Muhammad. The texts by Juste or Rose did not explain the cartoons. Hansen (2011, 65) importantly notes that “These two texts were not explicitly concerned with the cartoons themselves, but rather with what made the newspaper solicit them.” In short, the cartoon editorial was a “democratic electroshock therapy” for the Islamists, as one journalist at JP enthusiastically described (Klausen 2009, 21).

It is important to note that 3 out of the 12 cartoonists did not draw Muhammad, and instead turned the joke back on JP’s “reactionary” tendencies.<sup>8</sup> There are many explanations about why these cartoons gathered the publicity it did. It might be mentioned that the cartoons did not become an international sensation on their own merit. In fact, it took an active committee of Danish Muslims, to first gather support from their European kin, and then travel all the way to Egypt as a delegation, with a 48-page dossier to attempt to convince more powerful Muslim that Islam was in danger in Europe.<sup>9</sup> If European Muslims had not presented a sincere image of clash-of-civilization where Islam is losing the fight, the cartoons might have disappeared from public memory like many other attacks on different communities do. However, without approving of the decision of these few imams, one can gain some insight into why the same association who wrote to the Danish Prime Minister praising “the high human rights standards of Denmark”, resorted to help from outside of Europe. On 12 October 2005, ten ambassadors representing Muslim countries had sent a letter complaining about recent demonization of Muslims in the Danish public sphere (See Appendix 1).<sup>10</sup> The letter did not ask for any religious concessions, it urged the “government to take all those responsible to task under law of the land in the interest of inter-faith harmony, better integration and

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<sup>8</sup> For the complete list of cartoons, see Spiegelman (2006).

<sup>9</sup> The Dossier itself has been the matter of much controversy because it included three cartoons which were not part of the JP’s publication, and which were found to be much more offensive than JP’s original cartoons.

<sup>10</sup> That there is an “on-going smearing campaign in Danish public circles and media against Islam and Muslims. Radio Holger’s remarks for which it was indicted, DF (Danish People’s Party) MP and Mayoral candidate Louise Frevert’s derogatory remarks, Culture Minister Brian Mikkelsen’s statement on war against Muslims and Daily Jyllands-Posten’s cultural page inviting people to draw sketches of Holy Prophet Mohammad (PBUH) are some recent examples”. See Appendix 1.



Denmark's overall relations with the Muslim world". On not receiving a satisfactory response (see Appendix 2 and 3), the delegation flew to Egypt in December.

It is not the extent of the force of the cartoons that is the sole reason for my interest in them. Neither is solely the issue that they have henceforth become a landmark in the discussion about free speech and religious extremism in the world. These cartoons are important because they were published for freedom of expression *itself*. It stands out in comparison to many other landmark instances of freedom of expression around the world: Salman Rushdie in Britain and Iran, M.F Hussain in India, Tasleema Nasreen in Bangladesh, Ayaan Hirsi Ali in the Netherlands. It stands out because it claims freedom of expression not as a right to express something in particular (for example, oppression of women in Islam for Nasreen and Hirsi Ali), but freedom of expression itself. Both the origin and justification of the endeavour is made on the claim that it is an opposition to self-censorship. As a contrast, Tasleema Nasreen has been avowedly vocal about how Islam's tenets help in the furthering for oppression of women, as happened with her life. Even a case such as Salman Rushdie, with its clash of civilization undertone had something to bank upon than the mere slogan of freedom of speech.<sup>11</sup>

Jyllands-Posten's cartoons did not emerge out of a conviction in a content, Rose did not even stand by what would have been an at least honest, if only impolite assertion that the concern was about Islam and violence. The 6 attacking cartoons went from being about Muhammad as the bomb, to Muhammad telling suicide bombers to wait since heaven has run out of virgins. One drew five Pac-men gobbling up Jewish stars and crescents with the lines printed "Prophet, you crazy bloke! Keeping women under yoke". The fifth shows Muhammad with a sword in the middle of two burqa-clad women with only their eyes visible while Muhamamd had his eyes covered, the sixth simply showed Muhammad with devil's horns (Spiegelman 2006, 48-50). All these cartoons did not insist with one problem of Islam, but all 6 of them posited the narrative of a larger cultural clash that Islam brings, all 6 of them showed an element of violence in Islam in some form. It was not freedom of speech against terrorism, or freedom of speech against the burqa, it was freedom of speech against its own imagined opposers: the various faces of Islam. It was freedom of speech against an abstract Islam, which lives in Western popular imagination.

Of course, all cartoons had to be different for they were responses to Rose's broad call of freedom of expression and drawing Muhammad as cartoonists saw it. The invitation itself was

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<sup>11</sup> 'Satanic Verses' was based on Rushdie's reimagination of a controversial tale from the Quran and adapting it into a magic-realistic story of two Muslim mens' struggle with temptations and faith in the modern West. The novel ends at one of them returning to his faith and the other committing suicide.

already framed in terms of freedom of expression and its oppression. To date, Rose insists that the knowledge of self-censorship was the main reason that he thought of the invitation, a content-less knowledge of self-censorship itself becomes a reason to organize such an event. According to this account, it did not matter that the people in question were Muslims, often equated with immigrants in a sentence even by Danish Minister of Refugees, Immigration and Integration in his speech of toleration.<sup>12</sup> According to Rose, self-censorship by itself is troubling, regardless of what it is about.

### **2.3 The Stylesheet of Critique**

Hansen and Klausen both note the ambiguous genres of the cartoons. The format of the publication makes it tough for the cartoons to “speak on their own”. According to Hansen, audience does not see illustrations as a “free-standing entity” but “through the expectations that follow a given genre” (Hansen 2001, 65). To Hansen, the Muhammad Cartoons did not resemble either of two common kinds of illustrations in newspapers, one, an illustration as a faithful accomplice to a text or two, as an editorial cartoon which a caption.

Klausen further notes the ambiguity of the genre, “Strictly speaking, the twelve drawings at the center of the conflict are mostly caricatures and not cartoons” (Klausen 2009, 6). A cartoon in contemporary understanding is a story told in one or more than one panels using graphic pictures, either with words or alone. Caricatures on the other hand are “wordless line drawings that use exaggerated physiognomic features to make a statement about the fundamental nature of a person or a thing” to satirize, mock or ridicule (Spiegelman 2006, 45). Yet JP’s chief editor, Carsten Juste, has angrily denied the claim that the paper tried to “caricature” the Prophet and said that commenters who have described it so have misled people about JP’s intention (Klausen 2009, 6).

It can be argued that any text is open to multiple interpretations, a discursivity which only increases with images. However, it is difficult to extend the uncertainty to these specific cartoons. The Muhammad cartoons make a point, and make a unidirectional point. Spiegelman, calling them cartoons and caricature interchangeably, says that the genre has a “predisposition to insult” since it uses “a charged or loaded image” whose “wit lies in the visual concision of using a few deft strokes to make its point” (Spiegelman 2006, 45). When M.F Hussain drew wrath by painting the Hindu goddesses, he was not trying to make a point, there was no one easily identifiable “message” recognizable to people who shared the culture, but the Mohammed cartoons (including the one by

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<sup>12</sup> See Appendix 3, 3 : “Here in Denmark many of our Muslim citizens are hard working and well integrated. In fact the Danish society could hardly function without the contribution of citizens of immigrant and Muslim origin.”

Refn where he mocked JP, did). Therefore, the images cannot be understood as mere pictures, clicked by the eye of a photographer and open to the world to draw meaning from it. They were not supposed to be open to interpretation. Rose and Juste are themselves not open to the argument. They do not understand it as a work of art or expression of creativity. They have continually insisted on a singular method of understanding the Westergaard's bomb cartoon, and the entire endeavour of Jyllands-Posten. It is not a caricature, says Juste; it does not attack Muslims as a group, says Rose, it is not an attack people as humans, says Rose. What is it then? If the endeavour is about Muslims, directed at Muslims for their reformation and is yet "not an attack on Muslims as human beings or as a group". What can it be?

The answer given is that it is a 'critique', an abstract activity that does not hinder the person only the idea, a term which is often used interchangeably with "reason", and which is at the heart of the Enlightenment and the scientific revolution that Europe apparently underwent in the 17<sup>th</sup> Century (*See Shapin 1996*). A reference to the Enlightenment and the epistemic change it caused in the world is easy to find in many modern day proponents of critique, who are quick to dismiss anything different as "old" and what existed "before the Enlightenment".

Before the Enlightenment, the Church perceived verbal attacks on doctrine as physical attacks on the Church. The achievement of the Enlightenment was to separate words and actions. And to me, that is a very important distinction between a civilized and an uncivilized country (Rose, as quoted in Winkler 2014)

This is one of the few examples of the invocation of a western tradition of tolerance and freedom, which is often done by quoting the works of philosophers, natural philosophers (now called scientists) and political philosophers. While 17<sup>th</sup> Century Europe can be retrospectively seen to have stood for and "symbolized" a host of intolerant traditions, including of course, the fact that it was the height of Imperialistic domination for many nations, it is the tradition of questioning authority that becomes crystallised in "Western" memory. This tradition is then continually invoked in situations such as JP to show the greatness of the "Western principles" but with the insistence that the principles are themselves universal and infallible. Drawing Muhammad thus becomes the mere act of "critical debate", a "tradition of putting critical questions to authority"<sup>13</sup>, and comparable to all the stories of struggle by Copernicus, Galileo etc. To be sure, it is not inaccurate of Rose to claim inspiration from the Enlightenment, for fundamental continuities are visible in the respective assumptions. The Enlightenment philosophers in the name and stories of Galileo, Voltaire,

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<sup>13</sup> Terms used in the Danish PM's speech in (Appendix 3, 2-3)

Montesquieu, Kant, Locke, Mill, Spinoza etc, become the example of the enlightenment and it is their oft-quoted writings that the “proof” of the Enlightenment remains.

These philosophers are read and used to forge a tradition where modernity came into being by disproving various axioms that were central to the Church’s authority in Europe, and thus defines itself as a spirit of questioning. Critique in contrast to religion, becomes the pure pursuit of truth without bounds (Shapin 1996, 18). Thus, the *duty* of critique is to continually refute common experience to find a deeper truth in it. By this order, everything that has not been subjected to questioning is “appearance” while “observation” and “reason” are the only reliable ways of knowing the world (ibid). In a later section, I will read Mill and Kant to understand the philosophical basis of this oft-quoted tradition of Enlightenment and see the conditions of critique.

By drawing Muhammad, JP was merely trying to further this tradition of Reformation and Enlightenment (*as Rose himself mentions in Winkler 2014*). Critique, then, the key source of contention in the whole debate, is the basis of secular values, the separation of action and words, and what is not accepted by the Muslims the cartoons are directed at. Critique is the ability to question and be questioned and the ability to hear the truth about oneself to continually know more about yourself. Consider the Danish Prime Minister’s new year speech in 2006 when the cartoon controversy was at its heat:

In Denmark, we have a healthy tradition of putting critical questions to all authorities, be they of a political or religious nature. We use humour. We use satire. Our approach to authorities is actually rather relaxed. And to put it bluntly: it is this unorthodox approach to authorities, it is this urge to question the established order, it is this inclination to subject everything to critical debate that has led to progress in our society. For it is in this process that new horizons open, new discoveries are made, new ideas see the light of day. While old systems and outdated ideas and views fade and disappear. That is why freedom of speech is so vital. And freedom of speech is absolute. It is not negotiable (quoted in Appendix 3).<sup>14</sup>

Critique is posited as an abstract value to reach the truth of things, which does not depend on the content, as long as the form is that of questioning and being questioned. The idea is to reach truth by constantly replacing false truth. The edition that Rose published was not because of his problem with Muslims, he was only publishing critique, going closer to truth. This absolves him from any absolute interest and investment in the content of what was said, or any form of cultural bias. He did not have to approve the portrayal of Muslims moons eating Jewish stars (Sorensen’s sketch) or believe in the idea of Muhammad as a bomb. This is because he has no “interest” in the truth for himself. He was operating through an understanding of public sphere comparable to the model of

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<sup>14</sup> Rassmusen adds that “we are all responsible for administering freedom of speech in such a manner that we do not incite to hatred and do not cause fragmentation of the community that is one of Denmark’s strengths”.

political philosopher Rawls where members, as long as they are not using “comprehensive views” like religion, have dropped their personal interests, which in this case is the simple fact of them being secular and not bound by religion (Wolterstorff 1997, 98-99). Once you have taken the “veil of ignorance”, what Wolterstorff calls a “shared negation”, and use “the light of our common human reason”, they are on the legitimate path to take decisions closer to the truth (ibid).

It is only by this faith in the public sphere, where “the market place of ideas” will help us get closer to truth, that Rose could claim that publishing does not imply a support for the content. “Publishing is not endorsement” Rose said in a BBC interview on 15 January 2015, reproving the BBC to not have stood with Jyllands-Posten in 2005 by not publishing the image. Publishing then is merely, the *bringing forth*, the making visible of valid, secular ideas in the public sphere; merely the propagation of ideas which creates a “marketplace of ideas”<sup>15</sup> from where the critical individual can decide her truth. As I stated in the introduction, Rose’s statement may have a ring of Voltaire’s everfamous “I may not agree with what you have to say, but I will defend to death your right to say it”, except that, it is important to note that in this case, neither the editors who conceived of the idea of inviting cartoonists to draw Muhammad, nor the cartoonists who responded with caricatures, seem to have anything “to say” or have an opinion, each merely responding to the other’s call of “freedom of expression” and furthering the virtue of bringing critique to the public sphere.

Thus JP’s critique becomes worthy by the very act of publication itself, both because it creates an opportunity to find truth, since being a secular truth, it does not contain “interest”, and because it has assumedly been published against oppression. The public sphere banks on a sanctity of visibility on the assumption that a constant struggle for truth will get us closer to it. The danger is that it does this on the claim of being tolerant and liberal, and for the purpose of encountering the violence of religious truth. I will look into this construction in the next section.

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<sup>15</sup> A term used to refer to J.S Mill’s system of liberty of speech.

### 3. Secular Critique: A War against Religious Violence

This chapter explains the framework within which critique becomes a mouthpiece for clash of civilization and reiterates the notional divide between secular critique and religious extremism. The act of critique gets framed as the opposite of violence by a simple linkage: the “modesty of truth”<sup>16</sup>. The idea, a common place in public sphere today is that a strong belief in a truth causes violence.<sup>17</sup> By being devoted to questioning and changing truth, critique becomes opposite to the violence of the singularity of truth of religion. In 3.1, I see how the motif of speech versus violence is constructed, and words are supposed to be free from violence. In 3.2, I note that secular critique assumes validity by its virtue of overthrowing false truths, but that it actually works with a stringent idea of what is valid.

It has to be observed that what is defined as neutral critique is closely aligned to the secular. Critique, the act of questioning to reach the truth, comes from a long tradition in the West starting with the Greeks and visible in the Socratic dialectic in Plato. The suspicion of the senses as a useful method of gaining knowledge goes back to Plato’s fascination with the ideal and suspicion of the material (Counoundouros 2015). However it is only with Enlightenment that critique becomes synonymous with secularity, and makes the dethroning of religion as its essential feature. It is also a feature of enlightenment to posit critique, not only as the true and the Good (like Plato does) but also make it about tolerance and freedom, two modern concepts I explore in section 4 and 5 respectively. In this chapter I see how critique, tied with an idea of a secularity: a reason “independent” of religion, delegitimises hurt and offense as invalid forms of knowledge, framing it as the inability of critique. Thus, while critique is posited as the constant redefining of truth, some ideas are unworthy of being engaged in in the first place.

The relationship between secular critique and religious violence is posited as one of historical evolution: that secularity and critique are not only essentially opposed to religion but emerged in response to the violence of religious truth. This equation puts secularity, critique, and an inclusive struggle for truth on the same side of the spectrum, while it makes religion, its firmness of truth and the subsequent violence as its opposers. Thus the validity of critique has to be maintained both by showing that it is against violence and religion encourages it.

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<sup>16</sup> Bilgrami uses the term in reference to Mill’s “marketplace of ideas” which I discuss in detail in Section 4.

<sup>17</sup> See for example, the recent controversy on PEN, and the honouring of Charlie Hebdo in Adam Gopnik (2015)

### 3.1 The Pencil and the Gun

Aristotle is often quoted to say that man is a *zoon politikon*, i.e. he is essentially defined with the capacity to be politically organised. For Hannah Arendt, this definition of (hu)man can be entirely understood only when Aristotle's second famous definition of man is added : man as a *zoon logon ekhon* or "a living being capable of speech" (Arendt 1998, 27). Speech then, is not just another private human function like eating or sleeping, but has an inherent part in humans' political being. Speech cannot be separated from the person of the human, and yet transcends the interiority of the human, leaping outside the person who speaks, reaching other humans.

Speech, which is often constructed as an "innocuous" (Kant 1991, 55), harmless activity in our secular liberal world and whose innocence is contrasted with the terribleness of violence, was clearly not similarly seen by Greeks, according to Arendt. Aristotle saw speech as fundamentally associated with what we, today, think it is opposed to: action. The Greek idea of a polis operates with a sharp distinction between what is man's own (*idion*) and what is communal (*koinon*) but out of all the activities of humans, Aristotle thought *only* two to be political: action (*praxis*) and speech (*lexis*). That speech and action "belong together" as human capacities, is a conviction that is present since pre-socratic thought.

The stature of Homeric Achilles can be understood only if one sees him as "the doer of great deeds and the speaker of great words." In distinction from modern understanding, such words were not considered to be great because they *expressed* great thoughts; on the contrary .... finding the right words at the right moment, quite apart from the information or communication they may convey, is action. (emphasis mine, Arendt 1998, 25-26)

Speech is action, words are deeds; speaking is *doing* something. Even while Arendt's project is to demonstrate the difference in the political sphere (*polis*) for the Greeks and the modern age (which Arendt considers to be a misjudged translation of the former's values), there is much of use for us in Aristotlian understanding of speech and action, and the fact that they belong together. This is clearly not how the modern public sphere has understood speech. In a later section, I would discuss John Stuart Mill's famous harm principle which judges the permissibility of speech on the basis of whether that speech brings the danger of physical harm or not. This conception of speech, along with several others readily found in key debates, often miss the point that Arendt reminds us, namely that before theorizing about speech's effect on action one should realise that speech *is* action.

Four days after armed men invaded the Charlie Hebdo office and mercilessly shot 10 staffers dead, *The New Republic* interviewed Flemming Rose. This is how the article began:

Flemming Rose, editor of the Danish paper *Jyllands-Posten*, is experiencing a painful *deja vu*. In 2005, he made the decision to publish now-infamous cartoons of Mohammed. His aim was to

highlight the tendency towards self-censorship in European media and to insist, unequivocally, on freedom of expression. In the process, he earned a heaping of death threats (Winkler 2015).

These four sentences, resonating popular responses to the Charlie Hebdo shootout sum up the many levels in which the issue has been framed. These are recurring elements and phrases that produce the narrative aspects to set the theme or the mood of a larger civilizational clash between Europe and Islam, and the danger of the latter. First, calling the Hebdo massacre as a “painful *déjà vu*” for Rose: the ‘natural’ connection made with an incident in 2005 because the offended audience is supposed to be the same (thus the Danish Muslims that filed a petition against Jyllands-Posten—after it published the cartoons are seen the same as the French-speaking men who killed the Charlie Hebdo staff), together in their opposition to freedom of speech.<sup>18</sup> The second motif, is emphasis that the cartoons should not only be protected by free speech, but that the cartoons were published for the cause of free speech in the first place; that the cartoons “stand for” free speech and should only be seen within that paradigm. Free speech becomes a content-less cause, asserting its own self which it refers to as critique. Lastly, the mention of Rose’s innocuous fight for freedom of expression is followed by the treatment he got: death threats. An obvious contrast is there for us to see, Rose was *merely* trying to insist on freedom of expression while his opponents wanted to kill him. This is the narrative of ‘speech versus violence’ that is an equally popular motif. The next two chapters would dwell deeper on the second and third motifs and how it adds to the first: making a uniform picture of a civilizational clash.



**Pic:**The Martini Tower in Groningen on January 15, 2015.

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<sup>18</sup> Also, this is how the writer of the column, Elizabeth Winkler (2015), defines the situation: “The assault is gradually snaking its way across the continent: Amsterdam 2004, the murder of filmmaker Theo Van Gogh; Madrid 2004, train bombings; London 2005, bus bombing”



Rose has disparaged the idea that Europe has an anti-Muslim bias. Instead, he has stressed how the West has repeatedly acted admirably in such a situation. “Should it not be considered a mark of civilization that in the face of barbaric violence, we respond only with a cartoonist’s pencil?”. The “pencil vs gun” motif was another common motif after the Charlie Hebdo shootout. The immediate responses to the massacre were many cartoons remarking on the absurdity that someone had to be killed because of what he wrote. In Groningen Netherlands, the city church tower was lit to look like a pencil (see image above). The moot point of the pencil vs gun motif can be divided into two parts: 1) that there is a Western tradition of free speech and critique that is now in danger, and 2) that this tradition of critique is inherently opposed to violence. Consider Rose’s statements in another interview:

Before the Enlightenment, the Church perceived verbal attacks on doctrine as physical attacks on the Church. The achievement of the Enlightenment was to separate words and actions. And to me, that is a very important distinction between a civilized and an uncivilized country (quoted in Winkler 2014)

Rose reiterates elsewhere that “There is an erosion of the distinction between words and deeds, and that is very problematic” (Winkler 2015). The essential problem with the issue for Rose, and indeed for many others<sup>19</sup> who speak in defence of freedom of expression is that the distance between words and actions, speech and violence has to be respected and that is indeed the mark of a liberal state.<sup>20</sup> Rose’s statement can be partly affirmed, the western liberal tradition and its manifestation in public spheres today is indeed built on the separation of words and actions (as we will see in Kant and Mill in later sections). However, the question that begets is that does the separation of words and deeds also result in the separation of speech and violence? The separation of words and deeds comes from a long Enlightenment tradition of the separation of mind and body, where truth is a property of the mind, reason, the public sphere and the state while the body, emotion lie outside of it.<sup>21</sup>

It is within this context that we have to scrutinize what has been boisterously called the liberal value of “critique”. Critique, often called the symbol of liberal values, is what bares open the

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<sup>19</sup> See Gosnik (2015): “The crucial distinction is not between those we like and those we don’t but between acts of imagination and acts of violence. The imagination sees and draws and describes many things—pornographic, erotic, satiric, and blasphemous—that are uncomfortable or ugly. But they are not actually happening”

<sup>20</sup> There are many, including Noam Chomsky (2015) who would disagree with the premise to start with. They would disagree that the Western liberal state has fairly operated with speech and that it hasn’t used speech to legitimise state-sponsored violence.

<sup>21</sup> While Rene Descartes (1596) is supposed to be the founding philosopher of modern dualism, many others in the 17<sup>th</sup> Century- Leibniz, Spinoza and Kant, reiterated the difference between mind and body in similar ways. The empiricist John Locke, supposed to be an opposer of the Rationalist tradition, too worked with a clear notion of inward faith and outward behaviour which would regulate personal and public lives differently. See Russell (1967).

difference in how the “two cultures” retaliate. While Islam gives death threats, the culture of Critique merely responds in words (and images). Then, it should be clear for us to see that the former promotes violence while the latter doesn’t. This relationship fits perfectly in divisions that the Enlightenment tradition has made for itself. There is, no scope that something of the mind can be violent, for violence is a property of the body (Mavelli 2012, 1064). They also reject the more pragmatic chance of violent speech, i.e., the cartoons as inciting violent action against Muslims, though interestingly that argument is more readily made for the harm caused by pornography to the status of women (Van Mill 2008, 4). However, my concern is not with the important question if violence can be experienced without being bodily hurt. Instead I ask, what is this notion of critique that takes place in a sphere *beyond* hurt, harm and violence? In the next section I demonstrate that this notion is possible by the assertion, that secular critique in its search for truth, results in tolerance and freedom.

### **3.2 Secularity as the ‘State’ of Critique: Finding Tolerance and Freedom in Truth**

“Is critique secular?” asks Wendy Brown in the introduction to the volume by the same name. Critique comes from ancient Athens as a jurisprudential term: *krisis*. *Krisis* is a complex term about a rupture in the polis secular by a citizen’s violation of the polis. *Krisis* is a complex term about a rupture in the polis by a citizen’s violation of polis law or order and includes the process of “sifting, sorting, judging and repairing” (Brown 2009, 11). The term has come a long way through Latin and into other European languages, and now has become the express term for modernity, and everything liberalism is about. Critique is an extremely familiar term in public discourse and used often as a “polemical rejection”, at other instances “to signal immanent or deconstructive analytic practices, and at still others, to identify the search for a secreted truth within a tissue of mystifications.(ibid, 9)” There is some uniformity in how the term is used when a Liberal Arts student is asked to critique an essay, an NGO’s policy paper critiques the policies of the UN, and a satire cartoon critiques the hypocrisy of a politician’s statement. The uniformity is that in all these usages, critique is a practice of *uncovering*, and that which is often error. There is a certain revelation at critique’s heart, and it unearths secrets by bringing it to visibility, and by extension to the public sphere. Indeed for Marx, critique is basically in the act of making one conscious of their actions, “in enabling the world to clarify its consciousness, in waking it from its dream about itself, in explaining to it the meaning of its own actions in explaining to it the meaning of its own actions” (Marx 1844, 15).

If critique is a process of becoming conscious of one’s errors, then the question is how does this process become inherently tied with the secular. What are the conditions that posit critique as

secularity- a secular activity, and define secularism itself as a *state* of critique in the modern world. Secularism refers to a status quo where the State is separated from religion, and does not use religious reasons to make or implement laws (Casanova 2011, 54). Secularization, in contrast, is the actual or alleged historical pattern where the religious became the secular (ibid). In the words of Brown, “Mill to Marx, Diderot to Kant and Hume, we greet the Enlightenment presumption that the true, the objective, the real, the rational, and even the scientific emerge only with the shedding of religious authority or ‘prejudice’” (Brown 2009, 10-11).

It is more difficult to describe secularity as what it is, than “what happened”. Thus, the fact that it “happened”, its “alleged or actual empirical pattern” as Casanova calls it, remains its defining feature. The idea of the secular as Charles Taylor describes it comes from a dyad of time and place in Latin Christendom where it referred to profane time and contrasted with eternal or sacred time (Taylor 2011, 32). Specific places, times, persons, actions and institutions were seen to belong to a higher or sacred time, and the rest belong to profane time only. The secular here was seen as distinct from the sacred. However from the seventeenth century, Taylor notes, a new possibility arose where the secular was all there was, and instead of seeing secular time as a distinct sphere from sacred time, the leap was made where ‘secular time’ had to be inhabited without any reference to a higher time. The fundamental shift was that the term secular was no longer used to contrast with another temporal dimension, it was “opposed to any claim made in the name of something transcendent of this world and its interests” (Taylor 2011, 32).

This shift of the secular from defining a *distinction* to defining an *opposition* is crucial to understand its relationship to critique. It also helps us to reflect on how what is called a mere separation of religion and state in modern politics, goes far beyond an innocent act of separation. While secularism as state policy claims to merely demarcate the spheres of religion and politics, in effect it does so by truncating the former as a valid method of politics. Secularity becomes a political position which is antagonistic to the claims of religion. Jose Casanova helps us in understanding this shift by a term that we saw Marx use as the very essence of critique itself: consciousness. “Self-sufficient secularity” or a world which does not need religion to guide it, does not become the taken-for-granted position while just taking it as a fact of being, but as a “quasi-natural process of development” (Casanova 2011, 59). Secularity does not become simply an absence of religion or an indifference to religion. “It is a historical condition that requires the perfect tense, ‘a condition of ‘having overcome the irrationality of belief’” (Casanova 2011, 59).

Thus, it is impossible to see secularity without the historical “evolution” that it has come with. It is precisely in this context that the link between critique and secularity appears to be natural.

If critique is the process of unearthing error, secularity, by constantly defining itself by “having overcome” religion, becomes the epitome of critique. Secularity becomes the macrocosm built with the kernels of critique and critique the microcosm of everything secularity is about. In a quasi-Marxian sense but without the complexity of Marx’s position<sup>22</sup>, it assumes that secularity in as much as it comes out of the opposition to religion, is about revealing false consciousness and baring the “immanent”<sup>23</sup>, presumably what remains after the superstructure of religion is “subtracted” from the world. Thus, by such *subtraction theory*, the secular world has come into existence by *shedding away* religion, and critique, importantly, is both the process and the practice that explains this shift (Taylor 2011). While belief is at the start of the spectrum of evolution and reason is at the end, critique becomes both the method to crossover to the state of reason, and the practice that sustains reason. Critique, thus, is intrinsically tied with freedom because it has historically come out of a struggle of the bondage of religion.

At this point, another question can be added to Brown’s statement that we began with: Is critique freedom? What are the factors that make us associate critique with freedom. For example, in debates of “freedom” of speech concerning the Danish cartoons, the secularized Westerner saw the claim of blasphemy as proof of the lack of freedom in the religious bounds of Islam. But this is only so because of a secular stadial consciousness. Talal Asad argues, that the fear of bondage in religion comes from a self-conceived realisation of being free, of “a Western pride in a “self-owning individual presumed free from all forms of coercion, including those potentially entailed in religion, commerce, love, belief, and comportment” (*Brown on Asad* 2009, 15).

However, to bring us back to the struggle between faith and reason, the most compelling aspect is that enlightenment thinkers were avowed believers in the Christian God. For example, the Dutch theologian Dirk Volkertszoon Coornhert and English philosopher Locke, both key thinkers to ask for absolute toleration of all religions in their countries, insist on the separation of church and state on the basis that the temporal realm is insufficient to intervene in God’s matters.<sup>24</sup> Similarly Kant, famous for proclaiming the heroism of reason, builds his system of reason “as if” God exists. Written after his three “Critiques” (of Pure Reason, of Practical reason and of Judgement), in his work *Religion within the Bare Bounds of Reason Alone*, Kant redefines religion, Kant proclaims in the Preface that the person who cannot understand that Kant’s ultimate motive is to affirm

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<sup>22</sup>This is since Marx (1844, 54) does not stop at critiquing religion but the “conditions” that produce religious consciousness.

<sup>23</sup> See Taylor (2011) for an extended discussion of the idea of disenchantment and the immanent.

<sup>24</sup> For Locke, see Balagangadhara and Roover (2008). For Coornhert’s idea of toleration see Gerrit Voogt (1997)

Christianity as the universal religion, is blind (Kant and Palmquist 2009, 12). He conceives of the problem as two concentric circles of different sizes, overlapped over one another, where the outer one is historical religion and the inner one is rational religion. The heart of religion for Kant, is the inner circle and which he believes can be redeemed. The inner circle, the rational religion, constitutes that which compels humans to work towards universal good. The rest of the historical religion, namely symbols, images, rituals are secondary but perhaps important to help the less-capable to assist in understanding religion's pure form (ibid, 12). Kant's critique of religion, was constantly directed to move it away from the historical and to the rational.

Thus the paradox of the criticism of religion in the Enlightenment tradition is that it at once makes religion about an "inner domain of consciousness", about tenets and truths, while at the same time condemning the truth. The contention is that religion seeks to control truth and every fundamental belief in truth invariably leads to violence of truth. Religion is supposed to be intrinsically violent by the virtue of having one truth. Thus, secularity by its spirit of critique, is to offer an alternative to the violence, since it is open to new truths and to plurality. Though the idea of critique by itself has to make no claim to being secular, secularity claims both a monopoly over critique and with it the monopoly of striving for truth. Secularity is the only one striving for truth, while religion sticks to its stringent idea of truth.

Thus, in this paradigm, hurt, emotions, offense, body and religion all fall outside of this sphere of validity, because they are defined by the inability of changing their truth. Secular critique frames anything outside of it as its lack, and thus as inherently violent and unfit to be engaged with in the first place. This is the reason why religion, by virtue of being outside secularity is given a place outside the public sphere. Thus, though the citizen of the secular age is distinct on account of being free, she is bound by an "epistemological restraint" while dealing with political issues, that she should refrain from using religious reasons, and use "independent" reasons instead (Wolterstorff 1997, 96-97). Critique floats in this domain of independent reason which is valid because it is open.<sup>25</sup>

The fundamental respect to secularity has been garnered on the fact that it is open to redefining its truth. Secular critique posits itself against violence by two fundamental assertions: 1) by positing itself as tolerant and by 2) positing itself as freedom. It gets its legitimacy from the first while getting its heroism from the latter. In the next two chapters I will attempt to unpack both these concepts.

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<sup>25</sup> Wolterstorff (1997, 83) shows the absurdity of an "independent" reason and how culpable it is to what is already entitled and accepted in a society.

## The Violence of Speech, The Violence of Truth: Mill and Kant

The last two chapters saw the debate on freedom of speech being purported as a civilizational clash, between enlightened secular societies who have not only overcome the extremism of religious truth, but are continually furthering the tradition by open exercise of freedom of speech. Ironically, these societies also simultaneously insist that words are not action. It is by these supposed virtues that secular critique becomes the symbol of tolerance and freedom both, even in the JP case where each of these motifs was continually invoked, by the publishers and Danish government officials alike. Thus even in the face of there being a power imbalance in the criticizers and the critiqued, the former continues to gain legitimacy because of the established virtue of their act of critique, i.e. JP is venerated only because it was exercising an act of critique, which is sufficient to override all other problems with the act, for critique by itself is tolerant, and contributes to a free society.

In the next two chapters, I attempt to locate this complexity of critique in secularity's most venerated heritage: its philosophers. Since the notion of the secular essentially encapsulates a historical journey, a progress from the religious to the secular, of "having overcome the irrationality of belief", it needs certain moments of secular heritage to confirm the shift from a religious to the secular world. Philosophers and public intellectuals, as people of reason are arguably those sites, as both the example and proof of the birth of secularity. This can be seen in the fact that defence of JP has often been made citing a "tradition of critique" in the West. Thus, freedom of speech can hardly be seen outside of John Stuart's Mill classic proclamation in *On Liberty* which has since become a landmark in the both the treatment and the disputes regarding Freedom of Speech (See Bilgrami 2014, 106-107). Similarly Kant's provocative text *What is Enlightenment* helps us in understanding the righteousness and the bravado of the critique.

Thus, I use two fundamental texts on critique: John Stuart Mill's *On Liberty* (1859) and Immanuel Kant's *What is Enlightenment* (1784), both not only seminal texts from the broad period called the Enlightenment, but equally quoted in the secular public sphere as the very proof of enlightenment. To be sure, Kant and Mill do not only differ by half a century in their timeline, but also in their philosophical inclinations. Kant is considered an idealist while Mill is considered a utilitarian. However in the two texts *What is Enlightenment* and *On Liberty* respectively, we see both respond to the problem of critique with implementable norms. While Kant's text is almost a manifesto, succinct and direct, Mill lets go of his utilitarianism to say that while "I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being" (Mill 2009, 20).

In Mill, who formulates freedom of speech, I note the very notion of critique and how it is supposed to contribute to a tolerant, plural society. In Kant, I note the realm created for public dialogue by protection from the body. Both texts together form the idea of a western subject who is free to critique in a public sphere, while being subjected by rules otherwise. While on one hand, the realm of critique is fundamentally opposed to violence, it grants the realm of violence to the state. This inquiry throws insight into why the act of critique is unintelligible outside the division of public and private that the Enlightenment envisaged. These divisions are by no means universal. Together, the two readings of critique make us realise that critique by itself is neither tolerant, nor free, and cannot be seen outside of its context.

Together from Mill and Kant, I draw two connections for JP's case study of religion and critique:

1) A culture of critique is supposed to promote a more tolerant society because it is open to questioning, and therefore to reconsidering its truth. Thus a culture of critique does not only dispel the "tyranny of silence" (the name of Rose's book (2008), but eschews the violence that an uncompromising belief in truth causes (as, it is argued, is the case with the offended Muslims). However, I read Mill to understand that this supposed "modesty of truth" that is supposed to be at the heart of critique has an inherent flaw which in fact makes people exceedingly "sure" of their truth at any point of time.

2) Critique is constructed as if it happens in a void without body and one's place in society is considered irrelevant to the process of rationality. One can see this in the down-playing of the possible violence and harm of critique by disregarding that speech is an action, especially when distributed through tools of mass communication. Paradoxically thus, while the power and the bravado of critique is recognised, there is averseness to admit that a critique and power can also go together. Critique is considered an abstract activity, which humans can wilfully engage in but be indifferent to at other points of time.

## 4. Reading Mill- Is Critique Tolerant?

### 4.1 Mill, Critique and the Violence of Truth.

To refuse a hearing to an opinion because they are sure that it is false is to assume that their certainty is the same thing as absolute certainty (Mill 2009, 30).

I use Mill's *On Liberty* to unpack the sanctity of critique in the secular liberal sphere. In chapter C, we saw the justification of the idea of critique on the basis of its tolerance and the promotion of diversity of opinions. However, I argue that Mill's notion of critique is not to promote diversity and is bound by a rigid notion of truth. Mill's model makes one susceptible to having an extremely self-congratulatory attitude about being open to critique while being rigid about truth at any "usual" point of time. This helps us in locating the "outrage" of the secular understanding at seeing its principles put to question in the case of the wearing of burqas by women in France, and at the offence expressed by Danish Muslims. Thus while secular principles are revered because they supposedly allow toleration, the principles themselves are "uncompromisable".

*On Liberty* is supposed to have set the groundwork of free speech in the modern world. Mill, who is often quoted as the "greatest defender of free speech" (Van Mill 2012, 2), is often a key reference to assert that no compromise on free speech should be entertained in a liberal democracy. Akeel Bilgrami notes that there are a multitude of cases in the US Supreme courts and Lower courts which appeal to Mill's structure of argument and cite it like a "mantra". (Bilgrami 2014, 106-107<sup>26</sup>). In many debates including that of academic freedom, the tendency is to appeal to the "*same* broad arguments, metaphors and intuitions to present the justification" which stem from Mill's formulation of freedom of speech (Bilgrami 2014, 105). It is therefore worthwhile that we take some time to understand the basis of Mill's system.

If all mankind minus one were of one 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..... the peculiar evil of silencing the expression of an opinion is that it is robbing 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, they 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 (Mill 2009, 29).

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<sup>26</sup> For instance in *Keyishan vs. Board of Regents of the State University of New York* (1967), the language of the Supreme Court explicitly cited the phrase "marketplace of ideas" and talks of the "robust exchange of ideas which discovers truth out of a multitude of tongues", See Bilgrami (2014, 106).



At a cursory level, Mill is making the case for the presence of the diversity of views, what is often referred to as the “marketplace of ideas”. Thus, a society needs freedom of speech and opinion because we do not know what truth is. This should arguably result in a tolerant society where dissent is not criminalized and open to question. Mill’s insistence on the existence of a diversity of views is because of two key premises: 1) we now know that we have been wrong in the past 2) thus, we might be proven wrong in the future. The conclusion, therefore is to accept contradictory views (Bilgrami 2014, 136-37). Indeed, Mill calls the censoring of opinion “evil”, because it robs the human race of a prospective truth. Thus, the reason that we should allow views that oppose us is because if we don’t, we lose the chance of a truth. Imagine, Mill makes us think, if Newton was not allowed to express his ideas, the world would have been deprived of truth. Therefore, it is for our own interest in truth and the good of progressive mankind as a whole over the years (what Mill describes as his utilitarianism), that we should accept the presence of dissenting views.

However, the permission of all ideas has another side to it. There is another purpose to an opposite view being allowed: it makes us increase our faith in our truth. “If even the Newtonian philosophy were not permitted to be questioned, mankind could not *feel as complete assurance* of its truth as they now do” (emphasis mine- Mill 2009, 36-37). Thus, if we allow all voices to be heard, we shall have the satisfaction of having heard alternate voices and once we hear them and discard them after having judged it for ourselves, we have the increased comfort of our truth being more accurate. Thus the idea is that every opinion has to be put through the test of critique, every idea if it needs to have any respect should be first put out for being critiqued and once it passes the test of critique, it will be fortified. Thus, even though the basic assumption of Mill’s model is that we can never be sure of truth, the person who has put his ideas up for criticism has somehow a greater stake in truth ‘Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and to expound to himself, and upon occasion to others, the fallacy of what was fallacious (ibid, 35). Thus, there is a sense of greatness that comes with critique, it makes faith stronger. It is not only an option but “the duty of governments, and of individuals, to form the truest opinions they can; to form them carefully, and never impose them upon others unless they are quite sure of being right” (ibid, 33).

The bravado of the culture of critique, comes from the consequence that it makes us questionable. This is also what Elizabeth Winkler meant by saying that Muslims have to understand that in a democracy everything must be open to criticism. And concurrently Mill asserts that his model of free speech makes us constantly questionable, making us remember that our ideas can be changed, thus holding close the idea that we cannot possess truth for eternity.

However, what is ignored is that this model makes us believe that at any point in time, we have the best truth we can get. Indeed Mill stresses that once we are “quite sure” of our opinions, nothing should stop us from imposing it with all our conviction; indeed it will be cowardly of us to not do so (ibid, 33). Thus, while this model of Mill is mostly read in the liberal world to show that critique makes the world a place open to questions, that we allow criticism because we are open to reviewing our presumptions, what is ignored is that at any “usual” point of time of being in this model, one is only supposed to be sure of the truth they hold. Thus truth can be replaced or retained, but it goes and comes as a whole, there is no internal doubt about the truth. It also treats truth as a possession, it is almost as if you have truth or you don’t, you “exchange” truth, or you retain truth. Indeed, one who has put things to critique, “has a right to think his judgment better than that of any person, or any multitude, who have not gone through a similar process” (ibid, 36).

Indeed, even if the model is about modesty of truth, the effect it has had is of the building of superiority of the person who undertakes it. One can reformulate the spirit of critique in these two perturbing tenets: 1) that we should always be modest about truth because we can never grasp the full truth 2) those who have done this are closer to the truth. Now to come back to Bilgrami’s analysis of Mill’s model, which he calls steeped in an epistemological fallacy, there are two premises for the conclusion of freedom of speech<sup>27</sup>

Premise 1: Many of our past opinions, which we had held with great convictions have turned out to be false.

Premise 2: So some of our current opinions that we hold with great conviction may also turn out to be false.

Conclusion: Therefore, let us tolerate dissenting opinions just in case our current opinions are wrong and these dissenting opinions are right (Bilgrami 2014, 106-107).<sup>28</sup>

As mentioned earlier, Bilgrami has noted an “unsettling tension” between the two premises. The modesty of toleration is being made on the basis that the past convictions have been wrong. But, this knowledge of falsehood, says Bilgrami, comes from a conviction of the truth of the present (ibid). We could not have declared the falsehood of past knowledge without being completely sure

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<sup>27</sup> Bilgrami’s understanding of Mill has been used by me for the paper for *Invention of Secular* in January 2015.

<sup>28</sup>This case for toleration is a recurrent one in liberal thought and can be seen in John Locke as well see Roover 2008. It comes from a modesty of knowledge. “But the modesty is not absolute” as Bilgrami says. It does not let go of the notion of truth.

of the truth of today, or at least of some truth in part. Herein lies the problem with the second premise and the conclusion Mill expects us to follow. Once we have shown the falsehood of our past conviction, it is unlikely that we do not hold on to the present truth with conviction. Secularism itself is an apt example, the idea that it has come into existence by overthrowing religion continues to grant truth to it, which makes the prospect of toleration on the grounds of its possible fallibility difficult. Ideally secular truths, since they helped us overthrow obviously false premises, should make us continually hold in question the truth and certainty of any kind of concept. However, secularism is caught within institutions and the “modesty of truth” is not how most of the secular world treats concepts such as “freedom of expression” and “religion being a private affair”.<sup>29</sup> These concepts now stand us uncompromisable maxims of secularism, so much so that Mill’s premise of 1) since some ideas have been false 2) we should remember that the idea we hold at the present can also be false- does not seem to work.

#### **4.2 The Interim Period: Critique as Flesh and Blood**

Thus, while Mill’s critique gives the illusion of being open to new truths at a macro level and in an abstract sense spread across time, at an experiential level of everyday, a person is either holding to his old truth or new truth. Suppose on 2 December 2015 I believe that homosexuality is a human choice (Belief 1) and since I have talked to many of my friends about it, I think that my argument is a fairly sound argument and thus I hold on to its truth. But suppose on 4 December 2015, there is an insightful article in the newspaper which argues that homosexuality is ordained by genes (Belief 2). Now, an interaction between B1 and B2 has to take place. Mill does not give us an experiential account of the change but I will try to envisage it. Thus, when B2 comes to purview, I shall first realise that B2 is a threat to my held position of B1, because I know (presumably from a previous exercise of critique) that “homosexuality is ordained by genes” and “homosexuality is a human choice” are two opposite views which a person cannot hold at the same time.

The presence of B2 threatens my B1, and I attempt to find the whole of the subject to decide if homosexuality is a choice or not.<sup>30</sup> At some point, which should ideally be soon, since interim period is not where truth resides, I should be able to decide if B2 is truth or not. If I do, then I will lose B1 and start believing in B2 instead. If I don’t, then my belief in B1 will be strengthened by

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<sup>29</sup> On institutionalization of secularism, see Wolterstorff (1997), Bhargava (2010).

<sup>30</sup> “Because he has felt that the only way in which a human being can make some approach to knowing the whole of a subject is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind” Mill (2009, 35).

say 1 X (critique). The interim period of reformulating one's position on truth is mandatory in Mill's model and yet it has not been given much importance by him. If one considers the interim period which has been glossed over by Mill as simply the sorting and sifting through opinions, is where the 'action' of the critique actually takes place and which resists from critique being a purely intellectual and abstract activity. The interim period shows that critique comes out of the hands and mouths of people, and that it involves speech and interaction between people. It is the interim period of sorting and sifting through opinions where Galileo declared that the sun does not revolve around the earth, it is the interim period where Luther writes on the church door and it also in the interim period when Hitler convinces thousands of people that Jews deserve to be killed. The interim period shows that critique, questioning ideas and reaching truths involves flesh and blood (or often the injury to it), and involves real people, and changes to real life situations. Mill does not pay attention to the reality of how a new truth will be taken, and implemented by people. Jyllands-Posten, in its attempt to reform Muslims also tried to wish away the process by which this reformation is actually supposed to take place, and people will acquire new truths.

For Mill, people are supposed to hold their truths with conviction till the moment a valid critique comes their way, and at that point, they should be able to detach from that truth and move on. This makes us continually do away with false truths and make us tolerant. The problem as it appears to me in the proposition, is that if Mill were sure of the truth, the implication would be that we do not need tolerance. His model of tolerance, holds only as long as we hold on to the modesty of our findings, or to the possibility of the falsehood of our findings. Thus if there was the case that people were to be sure of the truth, we needn't be tolerant of dissenting views. It has to be granted to Mill, that an arrogance of being sure of truth lies outside the ambit of Mill's theory. However, even if the theory does not include this situation in the notional sense, the paradoxical gap in the two premises and the conclusion makes it possible.

Truth, at any point remains central to this project, at no point is toleration willing to give up a fixed idea of truth, or be in modesty about the truth they hold till an epistemic critique, life changing, or "path-breaking research" as contemporary scientific innovations are called, comes their way. In this sense, there is ample room for a person to say that her truth has not been vilified by the opposite argument, or claim that the opposition is not valid, while at the same time strengthening their belief in their own truth. As described in the last chapter, certain kind of arguments are accepted, where religious arguments are excluded by virtue of being religious in the first place. The rigidity of liberal secularism can be seen in the light of this dead-end. Secular critique gains legitimacy by the basic reason of overcoming the violence of unchanging religious

truth. However, in Mill's model we saw that the abundance of competing truths does not overcome the violence of uncompromising truth, and instead leads to an arrogance of critique.

Liberty is defined as a top-down phenomenon and not much reference is being made to what is to be said across individuals. The assumption is that all individuals in society are related to each other by the importance they have a common truth. Thus the only thing two individuals can have an issue about is contestation regarding truth. Mill's suggestion then is to arrange a society where people both get to voice their own personal truth and persuade others towards their truth. Thus it is the idea of truth that is of utmost importance to society. On one hand, Mill places an extreme subjectivity in the quest of truth-making it a personal quest and unchallengeable in the extent that any person is allowed to hold and express her truth, however "foolish, perverse, or wrong" it might be, while on the other hand, truth remains a universal value, its reality itself unfettered by the proof of plurality of opinions.

### **4.3 Critique, Truth and the Other- The Tyranny of Majority Opinion**

In this section, I see the effect of this arrogance of critique, and the violence of truth reflected in the Danish cartoon controversy. In the last section I show that though the legitimacy of critique in the secular public sphere is derived from the claim of being open to truths, which it contrasts with the stubborn exclusive truth of religion (and religious violence), critique is not only selective about what arguments it considers valid to constitute truth, but by definition is rigid on an universal idea of truth. Critique does not promote tolerance of diversity of truth, only tolerance of different valid ways to reach a truth which would be universal. Difference and plurality is not the reason that Mill allows minority opinion. The minority opinion is not to be a constant source of challenge to the majority opinion, but instead, offer an alternative position which can become the majority opinion if it is judged as truth by people. Thus, dissent itself is temporary for Mill, and a constant state of plurality of opinions is not a goal. We need many opinions so that we can choose the right one, but at any point of time we must have one and one right opinion.

In this section I see the manifestation of the violence of truth and critique by Jyllands-Posten as an influential newspaper which furthered the polarisation of Muslim minorities in Denmark, and the larger Euro-American public sphere. I look at JP as a newspaper, as mass media, its uncertain position in three important terms in Mill's model : 1) "authority", 2) "will of the people" or liberty against authority and 3) "tyranny of the majority" I will explain the three concepts briefly before moving on to examine if within Mill's model of freedom of speech, Jyllands-Posten deserves moral support. At the onset of his essay, Mill says that freedom of opinion is important because

Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development and, if possible, prevent the formation of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own (Mill 2009, 10).

Freedom of opinion, therefore, not only becomes an important means of reaching better truth, it is also a form of protection against the “tyranny of the majority opinion”. Freedom of opinion buffers the humungous power difference between authority and “the will of the people”. Mill insists that “recent progress in human affairs”, by which he means democracy as a form of state-rule post-Enlightenment has led people into a false sense of security where they identify the rulers of the nation with the nation and in effect with the people, assuring that “their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. There was no fear of its tyrannizing over itself” (Mill 2009, 7). Mill seeks to minimize the danger of this naïve equation where the opinion of the people is assumed to be the same as the opinion of the leaders of the nation, the people in authority. He insists that the “people” who exercise the power are not always the same people with those over whom it is exercised”, and the “will of the people” practically means the will of the majority (ibid, 9).

It is to demolish this false sense of security where individual opinion is influenced by dominant opinion “penetrating much more deeply into the details of life, and enslaving the soul itself” (ibid, 10), that Mill finds Freedom of opinion so crucial. If freedom of speech and opinion is about liberty versus authority, and the protection of individual opinion against the danger of “tyranny of the majority”, it is complicit that the media has been seen as the former and not the latter. It can be asked where does the Press, the act of publishing fit into the equation between 1)liberty against authority and 2)tyranny of the majority. JP is assumed to be fighting a battle for liberty against authority, while it can very well be called a basis to further the “tyranny of majority”. What makes it the first and not the second? By what virtue has the media become associated with individual struggle against authority and not the propagandist for authority.

The relationship of individual opinion to the Press can very well be substituted with what Mill thought the danger of individual opinion to governments. One can try to substitute the rulers with media. The power of the Press becomes seen as the people’s “own power, concentrated and in a form convenient for exercise”, and thus it “need not have any restriction of power on itself” (ibid, 7). What is the specific set of virtues that allow the Press to assume the righteousness of the first set of people (will of the people, fight against authority) while having the power of the latter (tyranny of the majority, influencer of opinion). It belongs in Mill’s rushed conflation of freedom of opinion,

expression and publishing and his faith that the real truth will objectively stand out. His belief in the emergence of a universal truth makes him deny the danger that opinion and publishing can be appropriated by authority.

The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people, but, being almost of as much importance as the liberty of thought itself and resting in great part on the same reasons, is practically inseparable from it. (Mill 2009, 23)

Thought, opinion and its expression cannot be separated for Mill. This hasty conflation of opinion and publishing, shows the selective understanding of the influence of words, the action of words, and the “harm” that it can cause. This means that harm is solely the domain of the body, and words cannot have an effect on bodies. It is to be noted that JP got “extended access” in the cartoon controversy on the basis of “editorial freedom” and because the matter was of public interest.<sup>31</sup> One can see why Mill’s model falls outside the ambit of contemporary problems such as the Muhammad cartoon controversy, or even to judge humour, anything which is not directly involved with a claim to truth but instead about other aspects of human lived life which have more prominent role than truth: comfort, acceptance, isolation, insult. Further, Mill’s ambit is the individual’s relationship to state, the majority in an abstract sense, and not to each other. Freedom and authority might be the key concepts that govern the interaction of the state and individual, but it is not a useful concept to decide interaction between people. Over-reliance on “neutral” seeming concepts like freedom, critique and truth can mask other sources of power and tyranny existing in an interaction. Further, since Mill is concerned with tyranny of majority and social pressure of the majority, it becomes difficult to argue that JP’s is the minority opinion and not Muslims who are treated with the definition of being of immigrant origin. Mill’s model of freedom of speech, remains inadequate to understand the problem between people who want to remain different from each other, and in JP’s incident, for the interaction between cultures.

Thus in this chapter, I attempted to understand freedom of speech in J.S Mill’s landmark text *On Liberty* to gain insight into the dead-end of critique in the case study of JP’s Muhammad cartoons. An extensive look into Mill’s model shows that freedom of speech is based on a singular

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<sup>31</sup> See (Appendix 3, 2): “In his decision the Regional Public Prosecutor states that he attaches importance to the fact that the article in question concerns a subject of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore, according to the Danish case law f.i. journalists have extended editorial freedom, when it comes to subjects of public interest. For these reasons the Regional Public Prosecutor finds no basis for concluding that the content of the article constitutes an offence under section 140 or section 266b of the Criminal Code.”

notion of truth, and is rigid in its understanding of keeping, exchanging and replacing truth. Thus freedom of speech need not necessarily promote tolerance. Further, a look into Mill's concepts of "authority", "liberty" and "tyranny of majority" complicates JP issue because it brings to notice that the newspaper instead of being an agent of liberty, can also be seen as a propagator of tyranny of majority. Thus, Mill's model is incapable of taking into account the danger of appropriation of critique by the media.



## 5. Reading Kant- Is Critique freedom?

In Section 2, I explained how the secular public sphere subjugates opinions which do not adhere to its own rationale, by framing it as a battle between secular critique and religious violence. The two ways in which religion is deemed violent is by positing secular critique as tolerant, and as freedom. In the last chapter I showed that critique is not tolerant and is instead based on a stringent idea of vertical truth. However it is not enough to show that secular critique posits itself as freedom, it is also necessary to challenge this assumption. Is secularity really about freedom? Does the separation of words and acts make us a society of free individuals. Is Freedom of Speech really about freedom? In this chapter I read Kant's clarion call for freedom: *What is Enlightenment* to demonstrate the dualism in critique: that the liberty promoted by critique and public reason is a specific kind of liberty which comes after the separation of body and mind, and in effect is a conformity of the body. I read Luca Mavelli and Judith Butler to assert that freedom of expression is inadequate if it does not question power. In Kant's division of public and private lives, we can find sight into the JP conflict where critique is seen as an attack on mere ideas by some, while other continually see it as an attack, and demonization of people. Reading Kant shows that the division of words and acts, and ideas and people, is ingrained in a division between public and private lives, which is by no means a universal or infallible division.

### 5.1 The Heroism of Critique

For enlightenment of this kind, all that is needed is freedom. And the freedom in question is the most innocuous form of all--freedom to make public use of one's reason in all matters (Kant 1991, 55).

“Enlightenment is man's emergence from his self-incurred immaturity”: Immanuel Kant's essay *What is Enlightenment* is often considered as the condensed symbol of enlightenment values. In the first paragraph itself, Kant boisterously says “*Sapere aude!*” Have courage to use your own understanding!” and words become the proof of the revolutionary moment where humans started being free and autonomous. Kant is fundamental to our study of critique in the context of Muhammad cartoons because of his historical influence on Western political philosophy but also

his usage as icon of the Enlightenment, as the proof and the symbol of “thinking freely”. In merely 5 pages, Kant sets out ideas that would dominate the political philosophy of Western modernity.<sup>32</sup>

Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another. This immaturity is self-incurred if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: *Sapere aude!* Have courage to use your own understanding! (Kant 1991, 54).

These five pages become the microcosm of the ‘Enlightenment’ that the West apparently underwent and what modernity is about. In that sense, it sets the tradition of critique that the West holds so close and which is supposed to be in danger with restriction to freedom of expression. However, a close reading of the text makes one wonder how revolutionary the text, and the tradition of critique is. A strange schism appears –on one hand- the heroic slogan of ‘have courage to think on your own’, the rebellious feel of the statement and a dominant view of how enlightenment as seen by the “West” today, and on the other hand, in the courage of what Kant’s citizens are actually doing in relation to authority: conforming to its unjust rules. I argue that this realm of free public reason works in tandem to promote conformity to the state. Thus the text can be seen at two levels: one, how the text has been read and its value to western liberal tradition as a symbol of liberty (the boisterous tone can be traced to Kant’s tone of rebellion in the first paragraph), second what exactly Kant is arguing for. Since Kant’s text is essentially a call for man to “be free” and overcome “cowardice”, we shall see what exactly this freedom is composed of.

In Kant we see the birth of the tradition where liberty which comes from questioning alone. Thus while Kant’s objective is that humans “in freeing themselves from immaturity and in continuing boldly on their way” (ibid, 54), the method to achieve this freedom is to “make public use of one's reason in all matters” (ibid, 55). This moment is to be paid heed to because it conflates freedom with the ability to reason. Thus instead of all those things freedom could mean- (for instance in some famous traditions: for Buddha-freedom was to get rid of suffering and anger, for Gandhi- it was to get rid of our desire, for Marx it was a state where humans did not feel alienated from their produce), Kant makes freedom equal to being able to reason in the public domain..Thus that the essence of freedom is about being able to use reason freely (and not about various other things that freedom could mean) is a specific assumption that Kant works with. Mill can be seen to draw from this tradition of “public reasoning”, so can Flemming Rose in his insistence on the sanctity of speech: of there being a free public realm where one can openly reason and offer other

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<sup>32</sup> On the influence of Kant, see Rauscher (2012).

opinions. One can see the idea being reflected to ordinary public opinion when people shopping in Mumbai, India are asked about their opinion on freedom of speech and they say it means that “one should be able to say whatever they feel like” and “it is a buffet of opinions” (See Mumbai...2015).

## 5.2 Freedom of Reason or Obedience to Order

In this section, I briefly trace “obeyance” in Kant to show that the tradition of Enlightenment or critique is not about absolute freedom from authority as it is purported to be. This is important to establish that the mere exercise of critique does not contribute to a free society. To start with, the individual’s freedom to express themselves, would have very well been the same as what Kant meant by freedom of public reasoning, but for the obvious word “public” that follows at the mention of free reasoning. What is this word public that Kant employs every time he speaks about being free? Kant makes a crucial distinction between public and private reason and it must be noted that he allows restrictions on private use of free reason. Consider these two quotes:

The public use of man's reason must always be free, and it alone can bring about enlightenment among men; the private use of reason may quite often be very narrowly restricted, however, without undue hindrance to the progress of enlightenment (ibid, 55).

But by the public use of one's own reason I mean that use which anyone may make of it as a man of learning addressing the entire reading public. What I term the private use of reason is that which a person may make of it in a particular civil post or office with which he is entrusted (ibid, 55).

Kant talks of freedom, but freedom here is not to be confused with freedom from the state. Kant is not inciting people for a revolution for he finds change to be successful only when it is gradual. The distinction between private and public, and the restriction in private reasoning is also for a similar purpose. Even though the first paragraph so exuberantly proclaims this to be a call for man’s freedom, there is a strange push and pull of obedience in Kant’s model of being critical. He has firm faith that ‘Enlightenment’ of all men will take place, “if only they are *allowed* freedom, (emphasis mine-ibid, 58). He never really lets go of this process of seeking allowance and letting the powerful realise that this is needed, perhaps because of a fear of violence that can ensue if man just tries to seize his freedom at once and by going against everything that holds it. Kant holds that “some affairs which affect the interests of the commonwealth, we require a certain mechanism whereby some members of the commonwealth must behave purely passively, so that they may, by an artificial common agreement, be employed by the government for public ends (or at least deterred from vitiating them). It is, of course, impermissible to argue in such cases; obedience is imperative” (ibid, 56).

As noted earlier, my interest in this exploration of “obeyance” in Kant is to understand that the limits of freedom critique. One can interpret these restrictions to say that Kant advocated a responsible freedom, and thus claim the “responsibility” of people about things they say. However, this argument follows the idea of consequentiality, extremely close to what is already sanctioned as restrictions in the name of “public order”.<sup>33</sup> Instead of stopping to say that Kant advocated responsibility on the consequences of free public reason, I ask to whom is this responsibility directed? As far as Kant’s model is concerned, the only responsibility, and caution to be exercised is what we now understand as the sake of public order, for the stability of the state. This is the only place a notion of *affect*, of what we might like to call respect or sensibility can be noted, and Kant reserves in for public order.

Humans, though being incited to use reason does not have to use it indiscriminately and at all times. Kant permits some restrictions on freedom insisting that though some restrictions hinder enlightenment, there are some which instead actually “promote” it (Kant 1991, 55). There is a clear division on where the line of freedom ends: at the end of public realm.

### **5.3 The Public and the Private**

We can take a moment to clarify the difference between Kant’s usage of “public” and “private” as opposed to what we use in contemporary public discourse today. Though we often use the division of public and private to make the distinction between the government and private life, for Kant, a civil officer working in the government is doing a private and not a public task. The freedom of public reason is only as a scholar addressing the real public (i.e. the world at large). It can be seen as parallel to the sphere of critique of Mill, where a person holds a certain opinion as truth, and continually revisits it to reformulate or reaffirm her truth. It basically is the realm untouched by people’s social position.

Kant’s conception of the appropriate sphere to use reason is compelling. We have to wake up to reason yes, but not too drastically and not without conditions. Whilst in a system to which one is accountable, the person should not disobey or question its premises. It is only when the person talks as a scholar can they critique and abuse the system. Reason is free and without restrictions in the public, the public being the state as a scholar. It is notable that scholar-hood is the state of public, implying the universality of reason. Reason is not curtailed by individual, regionalized and local

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<sup>33</sup> An example of secular exceptions made in the name of “public order” can be found in Mahmood (2009, 84-85), where she talks about the ban on movies in Austria and UK for hurting Christian sentiments.

accountability of man, is universally applicable and therefore it alone is public. The scholar's audience is the 'entire literate world', for the scholar's voice can be understood by everyone, if only they try hard enough. However, when on one hand reason's reach is universal and does not have a limit, on the other, Kant applies limits on the application of reason, for not all application of reason at all times is conducive.

Thus, a soldier need not and must not disobey his superior's order and use reason against the voice of authority for it will lead to malfunction of the system (ibid, 56). The system (administered by the government or the monarch) though is primarily interested in its own continuation, also cares for interests of the community, which Kant calls 'public ends' (denoting the fact that government takes seriously the scholar's criticism and tries reaching towards it) Thus while the government gives freedom to the scholar to formulate public betterment, there needs to be a certain unanimity -artificial though it might be- for the mechanism to sustain. Few people thus have to become 'passive members' so as to let the government mechanism sustain. However, the passivity of the members is a state of time and the same people can actively question and critique so long as they speak as scholars. The public and scholarly use of reason that Kant envisages is like a parallel life that all enlightened beings are to lead in tandem with their private lives of accountability. Kant has a larger goal in sight which makes him think of this compliance as transient, though prolonged, since it is hoped that with greater freedom, reason will slowly but eventually percolate into "private" and "official" lives and the monarch realises that freedom is not harmful to the state (ibid, 59).

It is remarkable that Kant bestows it upon the monarch and the government to 'realise' (ibid) that public freedom would create profitable citizens and constructive criticism instead of causing harm, will lead to formulation of better laws. It is after this realisation has taken place in the state, that reason can enter the "private" and people will not need to be restricted by their official post. A citizen thus has to be given and let freedom for them to be free and able to be rational. They cannot *seize* freedom on his own. They have to be given enough freedom first to be even able to be rational publicly.

What Kant also does here is relegate different spheres, of time and place, to thinking and obeying. There are situations when man must think and others when he shouldn't. At the same time, there are conditions when he must obey and times when to do so will be cowardice. Thus though Kant urges men to break the shackles of past tradition and think for themselves, he reiterates that this should not make them disobey the institutions they are obliged to. This is till at least the monarch or government realises the worth of reason and lets it enter office. Though Kant stresses

the need for each man to get up on his self, he also shows the necessity of support from the outside and state for the same. Thus, while the human's immaturity is self-imposed and he does have the capability to change the way many things are (and it this capable man that Kant is inciting to rise), she has to wait for the monarch to get enlightened to use reason in the private. Meanwhile what they must do is strive and 'think for themselves' in their scholarly life.

This paints a complex picture of what the essence of enlightenment was, as opposed to what it is often romanticised as.<sup>34</sup> In fact, the freedom of speech that comes with enlightenment is at once a bondage of the body towards the state's interests, framed within the notion of public order. What do we understand of critique in this? Kant's ingenuity is not indeed in making a case for reason but making a case for how reason will not be harmful for the state since its members will have neatly divided their lives into public and private. Thus, while it will be "very harmful if an officer receiving an order from his superiors were to quibble openly, while on duty, about the appropriateness or usefulness of the order in question. He must simply obey" (ibid, 56). However, at the same time "he cannot reasonably be banned from making observations as a man of learning on the errors in the military service, and from submitting these to his public for judgment" (ibid). Thus when Kant talks about a world where everything is open to critique, it is not universally applicable in every moment of one's life. There are specific moments which are not susceptible to critique for that will lead to the crumbling of the state. And this for Kant is not hypocrisy in any sense. "And there is nothing in this which need trouble the conscience." Because what a clergyman teaches in a church, he does as part of his "duties", as an active servant of the church, and he is not doing it out of his own discretion but because he is "employed to expound in a prescribed manner and in someone else's name" (ibid). Kant ends up advocating a society where people would follow their duties on a general basis without questioning it. Thus, as long as you have a domain of words to argue, the state can be comfortable with the assurance of your material subjection.

It is also difficult to imagine human reactions like insult and hurt in Kant's paradigm. For Kant, the individual has to rise above her body to reach the domain of intellect. In Mavelli's words, goes to emphasize that the Kantian approach of personhood rests on

a process of transcendence of the body which is instrumental for an understanding of critique, emancipation, and resistance as part of the search for universal structures to oppose to the fluctuation of our empirical, embodied condition." This account leaves us with an understanding of the body either as a source of potentially morally corrupting dispositions

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<sup>34</sup> Jonathan's Israel work (2006) is interesting in this regard, where he finds that people who are supposed to have been at the helm of the Enlightenment (Hume, Locke, Voltaire) are not really all that modern in their ideas. Refusing to give up on the subtraction theory, Israel, then traces the roots of Enlightenment to Spinoza.

or as the target of external forces of domination – in both cases as a burden rather than a resource for a politics of resistance (Mavelli 2012, 1063-64).

Kant's suspicion of the senses, together with Mill's "harm principle" give us insight into the dead-end of the critique today. The idea that there is a public domain of free ideas which does not affect personal lives, or bodies of people limits the scope to feel insulted at an attack in the name of critique. This also means that an idea of 'interaction' exists only in the realm of ideas, and only for truth. The emotions of people do not interact, ideas do. The tradition of critique can be simultaneously seen as a tradition of conformation of the body to a higher universal good, which is based on the ideal of a just state.

Judith Butler censures the self-righteousness of Freedom of Expression by liberal states like the Netherlands on the grounds that critique is only accepted as it is within the boundaries of the state (Butler 2009, 130). Butler calls the state's decision to frame Homosexual rights as liberty as an artificial artefact, because the state itself remains patriarchal. The choice of liberties like freedom of expression, homosexuality, marijuana tolerance in the Netherlands, are specific strategies to build a discourse of liberty and freedom. However, as Butler notes, this liberty is only illusionary because it does not include the most basic liberty—the liberty to oppose the state. Butler notes that freedom of expression is a freedom if it indeed is able to critique the foundation of the state and talk back liberty to real authority. Till that freedom is a part of freedoms, liberties remain a tokenism which makes state a self-sustaining mechanism, based on the demonisation of other contradictory forces : religion, immigrants, which the state uses to its own advantage to demonstrate its own inevitability and indispensability (ibid, 131-33). Thus, Freedom of expression instead of being a key tenet of democratic reform is being used to reinforce the same ideas prevalent in the majority. The only difference, and the major danger is that majoritarianism is not being carried out in the name of nation (as is the case with Hindu nationalists in India), but liberty itself.

## 6. Conclusion

In the last two sections on Mill and Kant, I attempted to unpack two primary concepts that critique is associated with, tolerance and freedom. I argue that Mill's model of absolute freedom of thought and opinion, is used to show the tolerance of the secular tradition of critique as opposed to the violence of religious truth. However, the claim to an openness of truth has implicit problems because though Mill's model promotes multiplicity of opinion, it is based on a stringent notion of universal truth. Thus, toleration is possible only when all members of society strive towards the same goal of truth with the same parameters of what constitutes valid reason, albeit with different methods. Further, the indulgence in the practice of critique promotes an arrogance of truth which is antagonistic to the modesty of truth that it claims. In Kant, we saw a selective usage of freedom, which is based on a dualistic idea of body and mind. Together these two influential models show the inability of western liberal political theory to interact meaningfully and respectfully with difference. While Kant reserves "respect" only for public order, critique or "public reason" is assumed as an abstract activity that does not correspond to either the critique or the critiqued.

In this concluding chapter I raise the issue of abstraction of critique and propose a fundamental aspect of valid critique: experience. I look at the importance of sharedness of culture and assert that critique is violent when it is blind to power relations. The attempt is not to dispel the validity of critique entirely but to insist on the contextuality in which critique operates and the importance of shared-ness of symbols. Censorship is not the solution, but critique cannot be self-righteous merely by the virtue of being spoken.

### 6.1 The Violence of Abstract Critique

In my introduction I said that my concern is with understanding critique as an embodied action at a particular point of time which needs words or images sketched by hands and mouths of humans. With Mill and Kant I demonstrated how critique frames relationships between individuals on the basis of universal truth and not on the basis of their differences, and that is to be achieved by separating our bodies from our minds. The violence of critique, is most apparent when it deals with difference, as happens with how the Muslim veil or their identification is treated in the secular public sphere (and with their portrayals in JP and Charlie Hebdo both, among others). The only way in which such differences can be understood within the idea of secular critique is by treating it outside of critique, or excessive to it. The idea of critique in the secular liberal framework exceeds



the *interaction* with the imperceptible other. An idea of interaction with difference escapes Enlightenment thinkers because the idea of another imperceptible other either doesn't exist (all people are equal individuals and all laws are universal-Kant in (Rorty and Schmidt 2012), or has had privatized their otherness) or it is not fit enough to be engaged with, and thus defined solely in terms of negation and lack. Thus, the only way of dealing with difference, is to "other" it. The other becomes an entity with which there can be no dialogue, for every dialogue with them is a compromise on secular principles. In Mill's words "Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion" (Mill 2009, 20). Thus, right after Mill states the absoluteness of freedom of opinion, he hastens to add that,

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to humans who are not in their "nonage" like many cultures are. For the same reason we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. The early difficulties in the way of spontaneous progress are so great that there is seldom any choice of means for overcoming them; and a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually effecting that end (Mill 2009, 19)

Mill's avowed denigration of non-Western cultures might not be shared by the many people who quote him to show the liberal tradition of freedom of speech and opinion, but it cannot be denied that many assumptions of "other"ing the "backward" cultures, and attempts to reform them exist, even in Carsten Juste's editorial where he expressed the hope that Islam might get reformed by his efforts at publishing the cartoons (*in* Klausen 2009, 13). The violence of secular critique is not acknowledged. Violence here is treated as a rites of passage to secularity, something that Muslims have to put up to become better people at the end of it. Thus the idea of otherness is implicit in the critique. Jyllands-Posten already othered the Muslims when it sought to critique Islam. The endeavour was not framed within critique of shared symbols, but as a clash of civilization, where Muslims were addressed as already outside of the critique. The lack of internality, and sharedness in critique made it a clash of civilization, and to some eyes a clear message to the Muslims that they cannot be accepted unless they accept Danish society for what it is. Freedom of speech thus is capable of silencing people by caricaturing them as unworthy of liberty in the first place.<sup>35</sup>

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<sup>35</sup> Thus one has to be within this system to critique, one has to argue within secularity to show its flaws, but anyone who rejects the liberal system of critique without offering a reason in the latter's terms is the *other*. The idea of offering a valid reason, as I showed earlier, is itself trapped in a vicious cycle of secularity because only that is valid which can be expressed in terms which are "independent" of religion, or "independent of comprehensive doctrine" for Rawls. However, while these secular assumptions like the spheres of body and mind are different are not seen as comprehensive doctrines, but as reasonable ideas.

The purpose of this thesis is not to dispel the idea or validity of critique entirely, but to realise the violence that critique is capable of, especially when it operates with a self-righteous bravado and a selective dualism between words and violence. Here, the act of supporting or not supporting absolute freedom of speech is seen as a “political act”, as Salman Rushdie who called writers who refused to honour Charlie Hebdo as “fellow travellers” of extremism (*in* Flood and York 2015). While not supporting free speech becomes an act, free speech itself is supposed to squirm in an abstraction of words and images; as pure expression and “pure courage”, it has to be seen without its effects, or what spectrum of politics it encourages. The Muhammad cartoons were not an act, it was an expression, it was about ideas, and ideas don’t do anything all of a sudden.

Three examples on satire, can shed some light on the importance of sharedness in critique. The first comes from Simon Cretchley on humour. Cretchley (2011, 66) compares jokes to small anthropological essays. Jokes make us see ourselves from an alien’s point of view, defamiliarizing the familiar, demythologizing the exotic and inverting the world of common sense. The task of satire, like jokes is to make the ordinary extraordinary by drawing attention to hidden assumptions in our lifeworld. However, for this very reason, humour, satire and critique is difficult to export to things which do not have a shared world. Without a shared world, critique becomes a violence. The Slovenian philosopher Slavoj Žižek gives us a reverse example. He talks of the bane of political correctness insisting on the need for “sharing small obscenities” among different cultures for “real contact” to happen (Slavoj Žižek 2015).<sup>36</sup> However, Žižek’s examples of these friendly humorous obscenities towards other cultures involve personal contact between two or more people, not an abstract attack from a high moralistic point of critique or truth (much less disseminated from a medium of mass communication). Thus neither political correctness, nor humour itself is the moot problem in JP’s issue.

The second example comes from the Ancient Greek philosopher Horace whom Catherine Schlegel reads to understand the relationship between a satirical poet and his audience. A satirist’s speaks “to his own community” but his aim is to blame his audience, to verbally assail them (2005, 5). The “satirist pushes himself apart from that community with his criticism. His reproachful speech separates the satirist from his audience” for statement of blame implicitly means that the speaker is free of the blame (*ibid*). The result of this separation is that the satirist draws attention to himself, his “personal authority for delivering praise”

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<sup>36</sup> He gives an example of telling two “black” men in the U.S, who had come to take autographs on his book, that he can’t really recognise the two men from each other because the Negroes like the Chinese all looked alike. Žižek says that the two men laughed with him and instantly became friends with him.

What authority inheres in the satirist that justifies his hearers' attention? Why does the satirist have an audience at all? What is there in the satirist's speech to persuade his audience to listen? The listener looks to the source of the speech, the speaker of blame, to justify his attention to such speech; and the result is that the satirist himself is as much the object of attention as his speech (ibid, 6)

These two examples are important to think of both the commonality of lifeworld that one needs to share for a constructive critique, and the fact the speaker of critique cannot eschew from her responsibility. Critique should emerge from a locale, and not through abstract universal principles.

The problem as we see it with the discourse of liberty and tolerance, prevalent in the support of freedom of expression as that of the JP controversy, is that freedom of opinion has been appropriated by majoritarianism, in this case Danish nationalism and an idea of a Western civilization. The concern is not with freedom of individual opinion, which gives an individual the right to voice out what she feels about a religion, a culture, whatsoever it might be. The problem is where freedom of opinion is appropriated by freedom of press, and the moment where critique becomes abstract rather than experiential. When critique becomes abstract, it becomes violent, for it judges the other from an understanding of universal ideas of truth without recognising its bias, and the only way difference can be understood in this model is as invalid.

What makes support for Jyllands-Postens different from supporting Rushdie, Nasreen, Hussain, Hirsi Ali, is not merely that the latter set is speaking up to power in its locale, but also that JP's critique comes out of an abstraction without any investment in the critique. JP banks on an idea of the public sphere where publishing is not endorsement, only an act undertaken to develop a marketplace of ideas from where truth can be chosen or rejected. One might say that there is no implicit problem in doing this. The crucial problem lies in the righteous that critique, and the act of publishing is loaded with, especially when it is asserted without an investment in what is being said. Thus while it frames the project, and its role as Press, as a subjugated voice of the majority while it can very well be seen as the majoritarian opinion. Jyllands-Posten fault-line is that it conflates the two ends of Mill's model to its advantage: it takes advantage of the liberty of individual "freedom of opinion" while consciously contributing to the "tyranny of the majority". Critique has value and virtue only as long as these two terms are kept apart.

Mill's model of critique, and his faith in a public sphere, some of whose crucial ideas resonate in the models of Kant, Habermas, Gopnik and Rose alike is that it falls short of accounting for the danger of the appropriation of the public sphere by majoritarianism, nationalism, or if we consider Islamic state's success at online "recruitment", by terrorism. The notion of critique is liberal western theory, because it is incapable of addressing the complexities of power imbalances

in the post-colonial world, cannot gain absolute legitimacy at the expense of other contextual factors. The need is to overcome an idea of abstract truth, and a disinterested public sphere, because critique by itself is neither tolerant nor free.

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## APPENDIX 1

*Box 1. Official letter sent October 12, 2005, to Prime Minister Anders Fogh Rasmussen from ten ambassadors representing Muslim and Arab countries and the Palestinian representative in Copenhagen.*

His Excellency Mr. Anders Fogh Rasmussen, Prime Minister, Kingdom of Denmark

Excellency,

The undersigned ambassadors, Cd'a.i. and Head of Palestinian Delegation accredited to Denmark take this opportunity to draw your attention to an urgent matter.

This pertains to on-going smearing campaign in Danish public circles and media against Islam and Muslims. Radio Holger's remarks for which it was indicted, DF (Danish People's Party) MP and Mayoral candidate Louise Frevert's derogatory remarks, Culture Minister Brian Mikkelsen's statement on war against Muslims and Daily Jyllands-Posten's cultural page inviting people to draw sketches of Holy Prophet Mohammad (PBUH) are some recent examples.

We strongly feel that casting aspersions on Islam as a religion and publishing demeaning caricatures of Holy Prophet Muhammad (PBUH) goes against the spirit of Danish values of tolerance and civil society. This is on the whole a very discriminatory tendency and does not bode well with the high human rights standards of Denmark. We may underline that it can also cause reactions in Muslim countries and among Muslim communities in Europe. In your speech at the opening of Danish Parliament, Your Excellency rightly underlined that terrorists should not be allowed to abuse Islam for their crimes. In the same token, Danish press and public representatives should not be allowed to abuse Islam in the name of democracy, freedom of expression and human rights, the values that we share.

We deplore these statements and publications and urge Your Excellency's government to take all those responsible to task under law of the land in the interest of inter-faith harmony, better integration and Denmark's overall relations with Muslim world. We rest assured that you will take all steps necessary.

Given the sensitive nature of the matter, we request an urgent meeting at your convenience. An early response would be greatly appreciated.

Please accept, Excellency, best wishes and assurances of our highest consideration.

Fugen Ok Ambassador of Turkey, Mohammad Ibrahim Al-



## APPENDIX 2: Response by the Danish Prime Minister



THE PRIME MINISTER

Copenhagen, 21 OKT. 2005

List of recipients attached

Your Excellencies

Thank you very much for your letter of 12 October 2005.

The Danish society is based on respect for the freedom of expression, on religious tolerance and on equal standards for all religions. The freedom of expression is the very foundation of the Danish democracy. The freedom of expression has a wide scope and the Danish government has no means of influencing the press. However, Danish legislation prohibits acts or expressions of a blasphemous or discriminatory nature. The offended party may bring such acts or expressions to court, and it is for the courts to decide in individual cases.

I share your view that dialogue between cultures and religions needs to be based on mutual respect and understanding. There is indeed room for increasing mutual understanding between different cultures and religions.

In this regard, I have [View image on Twitter](#) in the initiative to enter into a dialogue with representatives from the Muslim communities in Denmark.

Furthermore, I would like to see the dialogue between Denmark and the Muslim world strengthened. Indeed, one of the principal objectives of the initiative "Partnership for Progress and Reform", launched by the Danish Government in 2003, is to stimulate the dialogue between Denmark, the EU and countries in North Africa and the Middle East. The initiative explicitly aims to engage a broad spectrum of Danish institutions and organisations in partnerships with their sister organisations in the Arab world and Iran. The Partnership will in this way nurture institutional and personal friendships among our societies and increase mutual understanding of the values on which we base our societies.

Yours sincerely,

Anders Fogh Rasmussen

## APPENDIX 3

Det Udenrigspolitiske Nævn 2005-06  
Bilag 41  
Offentligt

Copenhagen 23 January 2006  
1 annex

**Response by the Danish Government to letter of 24 November 2005 from UN Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, and UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, regarding cartoons representing the Prophet Mohammed published in a newspaper**

1. The Danish Government can confirm that 12 cartoons representing the Prophet Mohammed were published in the Danish newspaper Jyllandsposten on 30 September 2005.  
A number of cases concerning threats against the cartoonists made in Denmark are currently being investigated. One person has been indicted due to the fact that on 30 September 2005 he told a receptionist at Jyllandsposten that he had the names and addresses of all the cartoonists and that within 14 days the first one would die. The case will come before the court on 4 April 2006. In addition, the police is investigating four cases concerning e-mail and telephone threats in relation to the article in Jyllandsposten. The offender has not yet been identified. Among other reactions following the publication, a reward was reported to have been offered by a private organisation in Islamabad, Pakistan for killing the cartoonists.
2. The publication of the drawings caused a number of private associations to file a report with the police claiming that Jyllandsposten had committed an offence under section 140 and 266b of the Danish Criminal Code.

The report was filed on 27 October 2005, and on 6 January 2006 the Regional Public Prosecutor in Viborg referring to section 749, subsection 2 of the Administration of Justice Act decided to discontinue the investigation. According to section 749, subsection 2, it may be decided to discontinue an investigation, if there is not a reasonable suspicion that a criminal offence indictable by the state has been committed.

According to section 140 of the Criminal Code any person, who, in public, ridicules or insults the dogmas of worship of any lawfully existing religious community in Denmark shall be liable to imprisonment for any term not exceeding four months or, in mitigating circumstances, to a fine. Section 266b of the Criminal Code criminalizes the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of e.g. their religion.

In his decision the Regional Public Prosecutor states that the term "other information"

in section 266b includes cartoons, just as cartoons must be considered covered by section 140 considering that the object of the criminalisation is the insult and not the form, which the insult takes.

In his decision the Regional Public Prosecutor also states, that when assessing what constitutes an offence under section 140 and section 266b the right to freedom of speech must be taken into consideration and that the right to freedom of speech must be exercised with the necessary respect for other human rights, including the right to protection against discrimination, insult and degradation.

Based on an overall assessment of the article in Jyllandsposten, including the twelve cartoons, the Regional Public Prosecutor does not find that there is a reasonable suspicion that a criminal offence indictable by the state has been committed. In his decision the Regional Public Prosecutor states that he attaches importance to the fact that the article in question concerns a subject of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore, according to the Danish case law f.i. journalists have extended editorial freedom, when it comes to subjects of public interest. For these reasons the Regional Public Prosecutor finds no basis for concluding that the content of the article constitutes an offence under section 140 or section 266b of the Criminal Code.

A possible complaint against the decision can be lodged with the office of the Director of Public Prosecutions.

3. The Government is focusing strongly on ensuring a society with mutual respect and shared democratic values. The Danish democracy is by its very nature inclusive to all cultures and religions.

The Danish Prime Minister Anders Fogh Rasmussen touched upon religious tolerance in his New Year's address of 1 January 2006:

*“During the past year, we have witnessed a heated debate about freedom of speech, and limits to freedom of speech. There are some who find that the tone of the debate has become too shrill and unpleasant. I wish to state this very clearly: I condemn any expression, action or indication that attempts to demonise groups of people on the basis of their religion or ethnic background. It is the sort of thing that does not belong in a society that is based on respect for the individual human being. We have a long history of extensive freedom of speech in Denmark. We are to speak freely and present our views to each other in a straightforward manner. However, it must be done in mutual respect and understanding. And in a civilised tone of voice. And fortunately, the tone of the Danish debate is in general both civilized and fair. There have been a few examples of unacceptably offensive expressions. And as a matter of fact, they have come from more than one party to the debate. We must strongly repudiate those expressions. However, the few instances of offensive behaviour must not be allowed to overshadow the fact that the debate and the general situation in Denmark is much more quiet and peaceful than in many other countries.*”

*In Denmark, we have a healthy tradition of putting critical questions to all authorities, be they of a political or religious nature. We use humour. We use satire. Our approach to authorities is actually rather relaxed. And to put it bluntly: it is this unorthodox approach to authorities, it is this urge to question the established order, it is this inclination to subject everything to critical debate that has led to progress in our society. For it is in this process that new horizons open, new discoveries are made, new ideas see the light of day. While old systems and outdated ideas and views fade and disappear.*

*That is why freedom of speech is so vital. And freedom of speech is absolute. It is not negotiable. However, we are all responsible for administering freedom of speech in such a manner that we do not incite to hatred and do not cause fragmentation of the community that is one of Denmark's strengths. Danish society is very strong in the sense that usually we are rather good at achieving results through dialogue. And the reason is that in general we treat others with consideration and we have confidence in each other, confidence in the institutions of society, confidence in a set of principles that are fundamental to our society. We have based our society on respect for the individual person's life and freedom, freedom of speech, equality between men and women, a distinction between politics and religion. Our point of departure is that as human beings we are free, independent, equal and responsible. We must safeguard these principles. For they are some of the ties that produce cohesion. That is why we find it easy to*

*cooperate, easy to perform common tasks, and that is why we also find it easier to address new challenges. Let us stand united to protect a society that allows us freedom to differ. And a society in which there is a strong sense of community based on fundamental values. A Denmark that has not only strong competitive power, but also a strong sense of cohesion."*

In an Op Ed on 4 January 2006 in a Danish national newspaper, the Danish Minister of Foreign Affairs Per Stig Møller warned against disrespect among religions. He stated *inter alia* that:

*"The objective is not to blame through intolerance all Muslims for supporting al-Qaeda, but ...to contribute to the development and reform that the Muslim world is actually engaged in." Without "mutual tolerance ...there can be no true dialogue or real cooperation."*

At a conference with Danish Muslims, cultural and political personalities, journalists etc. on 7 September 2005 the Danish Minister of Refugee, Immigration and Integration Affairs Rikke Hvilshøj stated that:

*"Polarization and conflicts based on false arguments and false divisions must be stopped. Therefore, dialogue across cultures and religions in order to find common ground seems more necessary in today's globalized world than ever before. (...) Muslims, Christians, Jews and Atheists are all free to practice their beliefs. And as long as they respect the rights and freedoms of others, they earn the right to receive the same respect in return. (...) The fabric of our society is the freedom we all have as well as the responsibility we all have to one another. (...) We have all seen and heard about radical and antidemocratic movements, who want to destroy all this. We all know that these movements do not represent Islam or any other important religion. (...) Here in Denmark many of our Muslim citizens are hard working and well integrated. In fact the Danish society could hardly function without the contribution of citizens of immigrant and Muslim origin. (...) We [i.e. the Danish Government] are in continuous dialogue with Muslim representatives about our common challenge of protecting democracy – and hence also protecting the place of Islam, Christianity and other convictions in our society. (...) We will repeat again and again, that democracy is there to give freedom to all of us – also to have the religion of our choice and to dress the way we want."*

## **Dialogue with the Islamic community**

Working to ensure that religious leaders become co-players rather than opponents vis á vis society is one of many roads the Government pursues to achieve mutual respect and understanding.

The Danish Prime Minister has held dialogue meetings with representatives of minorities in the Danish society on two occasions; the latter in September 2005 was held solely with representatives from the Muslim communities in Denmark.

The Minister of Refugee, Immigration and Integration Affairs has also had meetings with imams of the Islamic society in Denmark in April and September 2005.

The dialogue meetings are characterized by the Government's respect towards Muslims in Denmark as well as its wish for stronger community participation, active citizenship, freedom and equality, better opportunities for the young and prevention of radicalization.

## **The national Council for Ethnic Minorities and the Local Integration Councils**

The Government is engaged in continuous dialogue with ethnic minorities through the national Council for Ethnic Minorities and the Local Integration Councils.

The Council for Ethnic Minorities was established in 1999 by a comprehensive integration law, The Integration Act, aiming to promote the participation of new citizens in all areas of society. The Council advises the Minister of Refugee, Immigrant and Integration affairs on issues of importance to immigrants and refugees. The Council furthermore comments on new initiatives and has the right to comment on general issues relating to ethnic minorities but can not deal with individual cases, complaints or the like.

The Council consists of 14 members who are elected among representatives from the local integration councils in the municipalities. The Ministry of Refugee, Immigration and Integration Affairs provides secretarial assistance to the Council for Ethnic Minorities.

The Council meets with the Minister of Refugee, Immigrant and Integration affairs every three months to discuss current problems, new initiatives and legislation. In addition to these meetings, the Minister of Refugee, Immigrant and Integration affairs can ask the Council to comment on specific issues and action plans whenever necessary. The Council is also taking part in various working groups that has been set up by the Government to deal with problems of importance to immigrants and refugees.

The local integration councils consist partly of members representing local associations of ethnic minorities, so as to ensure that the interests of immigrants and refugees are taken care of at the local as well as at the national level. The local integration councils advise the local authorities on issues related to the local integration policies and assist

the politicians and the local authorities to ensure an effective and coherent effort to integrate ethnic minorities in local society.

The majority of the local integration councils either have a formal right to be heard in matters concerning the local integration policies or are consulted by the local authorities on such issues. The local integration councils therefore have a rather close dialogue with the local politicians and authorities.

### **Action Plan to Promote Equal Treatment and Diversity and Combat Racism**

At the World Conference against Racism in South Africa in 2001, the international community affirmed the need for resolute action to combat all forms of racism, racial discrimination, racial hatred and related intolerance. The World Conference was concluded by the adoption of a declaration and programme of action to combat racism. The programme of action urges states to establish national policies and action plans to fight racism.

In November 2003, the Government issued its Action Plan to promote Equal treatment and Diversity and combat Racism. The Action Plan is appended to the enclosed sixteenth and seventeenth periodic report of Denmark to the UN Committee on Racial Discrimination.

#### *Research on educational barriers*

One serious problem today is the excessively high drop-out rate among young immigrants and descendants who fail to complete courses of education. Therefore The Danish Think Tank on Integration - an expert committee set up by the Danish Government - has, as part of the implementation of the Action Plan, conducted a survey to investigate reasons for the non-completion of studies among ethnic minority youth – and whether the dropout rate might be due to discrimination or intolerance at educational facilities. One of the conclusions is that lack of Danish language skills among ethnic minority youths forms part of the problem.

The government has furthermore initiated a survey into the transition from Danish language teaching for foreigners to the rest of the educational system to give persons with an ethnic minority background easier access to education.

#### *Diversity and tolerance through dialogue and debate*

Freedom to differ can only thrive if there is a broad support in society for common fundamental democratic values of freedom, equality, responsibility, duty and active participation.

People can meet in open democratic dialogue in a variety of ways: by active political participation, in the public sphere, in local neighbourhoods, at work and through cultural activities and participation in voluntary organisations of different kinds.

Several of the initiatives in the Action Plan are aimed at dialogue and debate in civic society to promote equal treatment and diversity and combat racism through improving perceptions of and communication between citizens regardless of ethnicity and at building mutual understanding. Dialogue encourages acceptance of differences and counteracts the development of a divided society.

### *Tolerance*

To further the process towards support in society for common values, the Action Plan includes an initiative to launch a process aimed at stimulating dialogue about democracy, citizenship and diversity. It is important that this process is not only going on between central-level politicians, civil servants and experts, but takes place at all levels of society, including in local communities.

As part of the initiative, the Government in cooperation with national youth organisations seeks to develop ethnic minority organisations' work with themes of democracy, citizenship etc. The ethnic minority organisations are furthermore increasingly included in the general cooperation between voluntary organisations in Denmark. An important aim is to involve more people of ethnic origin in voluntary organisations.

### *Public debate*

The Action Plan furthermore contains an initiative to support smaller local - often cultural – events on advantages of, and potential barriers to, a tolerant society with room for diversity.

These events – which are often organised at schools, in local associations, at theatres, in residential areas - bring people together, help eliminate prejudice and create mutual understanding of similarities and differences.

### *Active participation in political life*

Another initiative is directed towards the participation of ethnic minorities in political activities. Political participation strengthens the community as well as tolerance and respect for other people. As part of the initiative, Local Integration Councils and educational institutions have held local meetings and seminars on democracy, elections and political participation.

### *Sharing responsibility for a nuanced debate*

A further aim of the Action Plan is to facilitate a nuanced debate. In this respect the government believes in highlighting good examples, including in the media, of integration and diversity where respect for other people and equal citizenship comes first.

One example is the campaign “All Young People are Needed”, which is aimed at helping ethnic minority youth break the patterns of negative stigma and eliminate the differences of levels of education and employment existing between ethnic minority youth and the general population. One of the aims is to get young people with ethnic minority background to choose from a wider range of educational possibilities than what has traditionally been the case, promote the completion of studies or vocational training among ethnic minority youths.

As part of the campaign, role models – who are themselves youths with ethnic minority background that have chosen occupations not traditionally chosen by immigrants and their descendants - visit schools in selected regions in Denmark, thereby motivating and helping young people to choose and complete a relevant education.

The Government will furthermore launch a campaign on diversity and equal treatment and against racism to create awareness of the principles of equality and diversity.

### **International conventions on the protection against discrimination**

Denmark has ratified several international conventions, which prohibit certain forms of discrimination, including discrimination on the grounds of religion.

These include the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and ILO convention no. 111 on discrimination in regards of employment and occupation.

Denmark attaches utmost importance to compliance with its international commitments and no law is passed and no policy adopted without due consideration to Denmark’s international obligations.

### **Legal safeguards against discrimination**

The Government has continuously sought to strengthen legal safeguards against discrimination.



Thus, in May 2003 the Danish Parliament adopted the Act on Equal Ethnic Treatment. The Act aims to ensure a high level of protection against racial discrimination and to implement into Danish law the non-employment aspects of the EU Racial Equality Directive.

The Act includes a prohibition of discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social advantages, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations, whose members carry out a particular profession. The Act also includes a prohibition of harassment on the grounds of race and ethnic origin.

Furthermore, the Act includes a prohibition of victimisation, thus protecting individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

The Act includes provisions on shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies that when there is a prima facie case of discrimination, the burden of proof in court cases shifts back to the respondent when evidence of such discrimination is brought.

The Act also implies that victims of discrimination are entitled to compensation for non-pecuniary damage in case of breach of the prohibition of racial discrimination. The Act implies that any breach of the prohibition of discrimination should normally trigger compensation for non-pecuniary damages.

Finally, by the Act the Danish Institute for Human Rights was given the power to handle individual complaints on discrimination on the grounds of race and ethnic origin outside the labour market, cf. below.

In the following year, by Act No. 253 of 7 April 2004 amending the Act on Prohibition of Discrimination on the Labour Market, by which the employment aspects of the Directive was implemented, the authority of the Institute was further extended to embrace individual complaints concerning discrimination in the labour market.

The prohibition against discrimination in the labour market is not limited to discrimination on the grounds of race or ethnic origin but also prohibits discrimination on the grounds of colour of skin, religion or faith, political observation, sexual preference, age, disability, national or social origin. Complaints of discrimination on any of the grounds prohibited by the act, including discrimination on the grounds of ethnic origin, race, religion or faith, can be lodged through unions or at the courts.

The prohibition of discrimination in the labour market covers the whole period of employment, including hiring, dismissal, transfer, pay, conditions of work and further training.

## **Specialised bodies and other institutions**

The Danish Government has established the Danish Centre for International Studies and Human Rights, cf. Act No. 411 of 6 June 2002, as a successor to the former Danish Centre for Human Rights established in 1987.

The Centre, which started its work on 1 January 2003, includes an Institute for International Studies and an Institute for Human Rights.

The Institute for Human Rights is established and works in accordance with the UN Paris Principles adopted by the UN General Assembly on 20 December 1993. It is vested with competences to promote human rights as recognized by the international community at any given time, including the Universal Declaration of Human Rights, United Nations conventions and conventions of the Council of Europe on human rights and the fundamental freedoms recognised in the Danish Constitution.

The mandate of the Institute covers a wide range of activities, including research, counselling of the Parliament and the Government on human rights obligations, education on human rights, promotion of equal treatment regardless of race or ethnic origin, provision of information and documentation on human rights, support to non-governmental organisations (NGO's) in collecting documentation on human rights, coordination among NGO's, Nordic and international cooperation within the field of human rights and contribution to the implementation of human rights in Denmark as well as internationally.

The Institute monitors whether the Government observes its human rights obligations pursuant to the Constitution and international treaties, including the freedom of religion and belief.

In spring 2003, the Institute for Human Rights set up the Committee on Equal Treatment (Ligebehandlingsudvalget), which is composed of persons having knowledge and experience within the fields of ethnicity, disability, gender, religion and faith and sexual inclination. The Committee aims to formulate a national strategy for equal treatment. In 2004, the Committee's work concentrated on illustrating activities to further equal treatment and to combat discrimination. A report on equal treatment – about status and future perspectives – is intended to be the basis for further work on and for equal treatment.

Specific powers have been assigned to the Institute for Human Rights and specific funding has been allocated to the Institute for the protection of ethnic minorities. Thus, with the establishment of the Danish Centre for International Studies and Human Rights the Institute for Human Rights was established as the Danish body for the promotion of equal treatment as required by Article 13 in the EU-directive on Racial Equality (2000/43/EU). The Institute has in accordance with the requirements of

Article 13 in the Directive been given the power to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination, cf. Act no. 374 of 28 May 2003.

The Danish Parliament has subsequently decided to further expand the powers of the Institute for Human Rights within the field of ethnic equality by granting the Institute the power to handle individual complaints on racial discrimination both on and outside the labour market, cf. Act no. 253 of 7 April 2004. The EU Racial Equality Directive does not require the establishment of an administrative complaints body, and the Danish Parliament has, thus, moved beyond what was required by the Directive.

The Institute may review complaints and express its opinion as to whether the prohibition of discrimination and the prohibition of victimisation have been violated.

The Institute may furthermore recommend that complainants be granted free legal aid in accordance with the Danish Administration of Justice Act. There are no fees for bringing a case before the Institute.

A victim of discrimination may freely decide whether he or she wants to bring the case directly before the courts or to complain to the Institute for Human Rights. However, the main rationale behind the establishment of a complaints body is to provide victims of discrimination with a flexible, inexpensive and swift alternative to the ordinary courts. On the basis of a decision from the Institute, the victim of discrimination may decide whether or not to bring the case before the courts.

The Institute has been allocated 6.0 mill. DKR on a yearly basis (approx. 0.8 mill. Euros) to perform the above mentioned tasks.

For further information reference is made to Denmark's sixteenth and seventeenth periodic report concerning the International Convention on the Elimination of all forms of Racial Discrimination submitted in pursuance of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination to the Committee on the Elimination of Racial Discrimination in June 2005 (annex).