



Free Speech and the “Muslim Exception”: Harm, Dignity, and Selective Enforcement

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Abstract:

Classical liberal theory views free speech as a foundational right that promotes truth, progress, and democratic accountability. In practice, however, speech is never free: it is limited by legal prohibitions, property rights, and socio-political hierarchies. This paper examines the incoherence of liberal free speech theory by showing how its justifications are invoked selectively. It first outlines the liberal objectives of free speech and explains why the harm principle allows restrictions on incitement and vilification. It then surveys legal “carve outs” in Western democracies—such as prohibitions on flag desecration, Holocaust denial, and anti LGBT hate speech—to demonstrate that liberal states punish certain forms of expression. Finally, the paper contrasts these prohibitions with the protection afforded to speech that insults Islam, arguing that the ability to offend Muslims is defended as liberty while speech targeting other groups is criminalized. Recognizing these double standards reveals that free speech is contingent on power and political context rather than a neutral universal right.

Keywords: Liberalism, Free Speech, Harm Principle, Double Standards, Islamophobia, Hate Speech.

Introduction:

Liberalism has long defined itself through a commitment to individual freedoms. John Stuart Mill’s “On Liberty (1859)” argues that government should not interfere with self-regarding actions and that truth emerges from free competition in the marketplace of ideas. The

Stanford Encyclopedia of Philosophy summarizes this orthodoxy: unrestricted discussion is considered “the best mechanism available for ascertaining the truth,” and free speech promotes speaker autonomy and democracy (Stanford University, n.d.). Mill nonetheless permits restrictions when speech poses an “imminent threat” to others (Stanford University, n.d.). Contemporary liberal theorists add that free speech underpins self-development and democratic accountability (Stanford University, n.d.).

Despite these high ideals, free speech is never absolute. Modern democracies penalize defamation, harassment, threats, and incitement; private property confers the power to exclude speakers; and laws restrict expression about certain historical events and vulnerable groups. These limitations belie the claim that liberal societies protect speech neutrally. Instead, they reveal that free speech is shaped by power and history. This paper investigates the selective application of free-speech principles, focusing on how hate speech laws protect some communities but not others. It juxtaposes restrictions on anti-LGBT and antisemitic speech with permissive attitudes toward blasphemous depictions of Islam. By tracing these inconsistencies, the paper argues that liberal free-speech discourse functions as a tool of domination rather than a universal right.

Classical liberal theory and the limits of speech

Mill’s harm principle and liberal justifications for restrictions

John Stuart Mill’s “On Liberty (1859)” remains a touchstone of liberal free-speech theory. Mill argued that there should be “the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered.” He defended this liberty on epistemic grounds: open debate allows false ideas to be refuted and truth to prevail. However, Mill did not propose an absolute right to expression. His **harm principle** holds that the only justification for restricting individual liberty is to prevent harm to others. Mill therefore rejected criminal penalties based purely on offense; he stressed that restrictions must aim at preventing concrete harm. Later scholars have argued that non-physical harms (e.g., psychological or reputational damage) should also be considered. Joel Feinberg’s “offense principle” further suggests that serious offenses, although less severe than harm, may justify prohibition when avoidance is difficult and the speech lacks social value. (Wikipedia, n.d.-e)

International law and permissible limitations

Liberal states that signed the ICCPR accept that freedom of expression is not absolute. Article 19(2) recognizes the right to seek, receive, and impart information and ideas; Article 19(3) immediately qualifies it. The Australian Human Rights Commission notes that Article 19(3) permits limitations **only** if they are (1) provided by law and (2) necessary to respect the rights or reputations of others or protect national security, public order, or public health or morals. The Human Rights Committee stresses that restrictions must not jeopardize the right itself and must be proportionate. Laws restricting speech must be precise and accessible so that individuals can regulate their conduct accordingly (Australian Human Rights Commission, n.d.).

In practice, liberal democracies implement such limitations through hate-speech statutes, defamation laws, bans on incitement, and other criminal offenses. For example, many European states outlaw Holocaust denial and sanction insults based on origin, religion, or race. The European Court of Human Rights has held that tolerance and respect for equal dignity justify sanctions against incitement to hatred (Pidd, 2012).

Liberal inconsistencies

While liberal theory recognizes limits to free speech, these limits are applied unevenly. Some liberal states protect blasphemy and disparagement of Islam as free speech, yet criminalize Holocaust denial or defamation of other groups. (Wikipedia, n.d.-e). Mill himself warned that public opinion could become an “odious tyranny”; he was aware that dominant groups can use speech to reinforce power. Contemporary critiques note that so-called “free speech absolutists,” including many right-wing populists, use libertarian rhetoric to decry censorship while suppressing dissent. Silvio Weisbord’s analysis of populism observes that far-right movements embrace an absolutist notion of free speech “without communicative or social guardrails” and sideline liberal concerns about balancing speech rights with other human rights (Georgetown Journal of International Affairs, 2025).

Free Speech’s Liberal Objectives—and Why Hate Speech Fails the Harm Test

Liberal objectives: truth, progress, accountability

Liberal theorists justify protecting speech on three interrelated grounds:

1. **Truth-seeking.** Mill contends that open contestation is the best method for correcting error. The “marketplace of ideas” allows falsehoods to be rebutted and ensures that received truths remain vibrant. Even mistaken or offensive opinions may lead to a clearer apprehension of truth (Stanford University, n.d.).
2. **Human development and social progress.** Later liberals argue that expression is central to autonomy: individuals develop their capacities by articulating and defending their views. Protecting speech fosters personal growth and collective progress by encouraging diverse perspectives and creative experimentation (Stanford University, n.d.).
3. **Democratic accountability.** Robust speech is essential for self-government. Citizens must be able to criticize officials, expose wrongdoing, and advocate for reforms. U.S. jurisprudence crystallizes this principle in *New York Times Co. v. Sullivan* (1964), which describes debate on public issues as “uninhibited, robust, and wide-open,” even when it includes harsh attacks on government (Stanford University, n.d.).

On its terms, liberalism protects speech because it surfaces truth, cultivates persons, and promotes accountability. These objectives, however, do not entail absolutism. Mill’s harm principle allows restrictions when speech creates an imminent risk of wrongful harm (Stanford University, n.d.-a), and modern free-speech jurisprudence balances expression against other values such as dignity and equality.

Why hate speech is not “free speech” on liberal grounds.

Mill’s harm principle draws a line between robust debate and incitement. He famously argued that printing an article accusing corn dealers of starving the poor should be tolerated, but shouting the same message to an angry mob outside a corn dealer’s house crosses into punishable incitement (Stanford University, n.d.). The issue is not mere offense but imminent danger. Liberal theorists, therefore, recognize that advocacy of violence or systematic vilification undermines the very conditions that make dialogue possible.

Building on Mill, scholars such as Jeremy Waldron maintain that some speech attacks the civic dignity of targeted groups by portraying them as unworthy of equal membership in society. Such hate speech injures the conditions of public reason by silencing marginalized voices and fostering discrimination. From this perspective, regulating incitement to hatred protects, rather than betrays, liberal aims (Stanford University, n.d.). International human rights law embodies this view: Article 20(2) of the International Covenant on Civil and Political Rights obliges

states to prohibit “[a]ny advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence” (Shifman, 2006). Under liberalism, then, speech that predictably produces imminent violence or systematically degrades equal civic standing may be restricted without abandoning free-speech principles.

Illustrative Carve-Outs: Flag Desecration, Holocaust Denial, and Anti-LGBT Hate-Speech Restrictions

Although liberals celebrate expansive expression, many democracies codify content-based limits where speech is deemed a legally cognizable harm. These prohibitions reveal that “free speech” is not absolute.

Flag desecration

In the United States, burning the national flag is protected symbolic speech under the First Amendment (*Texas v. Johnson*, 1989; *United States v. Eichman*, 1990). By contrast, Germany amended its Criminal Code in 2020 to criminalize the desecration of European Union or foreign flags. The amendment makes publicly desecrating the EU flag or hymn—by burning, damaging, or defacing it—punishable by up to three years’ imprisonment or a fine. It also extends protection to foreign state symbols and eliminates previous requirements that the government approve prosecutions. The explanatory memorandum justified the law as necessary to safeguard the EU’s importance to Germany and to protect diplomatic relations. The legislation was triggered in part by an incident in December 2017 when protesters burned an Israeli flag. (Library of Congress, 2020)

Holocaust denial

Several European countries criminalize Holocaust denial to protect the dignity of victims and prevent the resurgence of antisemitism. France’s 1990 Gayssot Act makes it illegal to question the existence of crimes against humanity as defined by the Nuremberg Charter. Violators face one month to one year of imprisonment or a fine. The United Nations Human Rights Committee upheld the act as a necessary means to combat antisemitism (Wikipedia, n.d.-a). Austria’s Prohibition Law goes further: in 2005, British writer David Irving was arrested under a 1989 warrant for denying the Holocaust; he pleaded guilty to “trivializing, grossly playing down, and denying the Holocaust” and was sentenced to three years in prison (Wikipedia, n.d.-b). These cases illustrate that European states treat Holocaust denial as a criminal offense, prioritizing the dignity of victims and historical memory over the abstract right to free expression.

Anti-LGBT hate-speech restrictions

Liberal democracies also restrict speech that vilifies sexual minorities. In *Lilliendahl v. Iceland* (2020), the European Court of Human Rights upheld a conviction under Article 233(a) of Iceland’s Penal Code against Carl Jóhann Lilliendahl for online comments calling homosexuals “filthy” and equating them with sexual predators. The applicant was fined 100,000 Icelandic krónur (about €800); the court held that his comments were serious, prejudicial, and promoted intolerance, and that penalizing him did not violate Article 10 because the law aimed to protect historically discriminated groups. In *Vejdeland and Others v. Sweden* (2012), applicants who distributed leaflets in a school linking homosexuality with pedophilia were convicted; the Court ruled there was no violation because the leaflets constituted a serious attack on homosexuals, not a contribution to public debate (Columbia University Global Freedom of Expression, n.d.).

Outside Europe, courts have reached similar conclusions. In *Saskatchewan (Human Rights Commission) v. Whatcott* (2013), the Supreme Court of Canada held that two anti-gay flyers

portraying homosexuals as a menace and advocating discrimination constituted hate speech. While the Court struck down part of the law criminalizing mere ridicule, it reinstated William Whatcott's conviction for the vilifying flyers (Reuters, 2013). In the United Kingdom, Part 3 of the Public Order Act 1986 prohibits expressions intended to stir up racial hatred and carries a maximum sentence of seven years' imprisonment. Part 3A, added in 2008, extends similar offenses to incitement on religious or sexual-orientation grounds; the relevant act must be threatening (not merely abusive or insulting). (Wikipedia, n.d.-c). These regimes demonstrate that liberal democracies penalize vilification and incitement against sexual minorities.

Selective Restrictions in Practice

Restrictions on expression in many liberal democracies illustrate that certain religious or national symbols are legally protected, while comparable protections are denied to others. For example, Article 433-5-1 of the French Criminal Code criminalizes grave insults to the national anthem or the tricolor flag (French Criminal Code, n.d.). Political cartoonist Maurice Sinet, a longtime contributor to *Charlie Hebdo*, was dismissed in 2009 after producing a cartoon deemed antisemitic for mocking the relationship between former French President Nicolas Sarkozy's son and a wealthy Jewish woman (BBC News, 2009).

Similarly, a French court banned a Jesus-themed clothing advertisement that parodied Da Vinci's Last Supper, calling it "a gratuitous and aggressive act of intrusion on people's innermost beliefs" (BBC News, 2005). Yet, the same jurisdictions have defended publications caricaturing the Prophet Muhammad (S.A.W.) as legitimate exercises of free speech. In 2005, the Danish newspaper *Jyllands-Posten* published cartoons of the Prophet Muhammad (S.A.W.) but reportedly declined to publish images mocking Jesus, citing fear of backlash (The Guardian, 2006). These cases underscore a selective application of the principle, where laws and social norms restrict expression in some contexts but not others.

Selective Interpretations of Free Speech in Modern Discourse

Modern public debates show how "free speech" is often selectively interpreted to suit ideological or personal agendas. Elon Musk's stated approach—"By 'free speech,' I simply mean that which matches the law... I am against censorship that goes far beyond the law"—narrows the concept to whatever national legislation happens to permit, ignoring the richer liberal objectives of truth-seeking, human development, and democratic accountability (Musk, 2022). This legalistic view can allow harmful but technically lawful speech to flourish while dismissing the corrosive effects such speech can have on civic dignity and productive discourse.

Critics argue that Musk's definition overlooks the social responsibilities attached to expression. As Vaidhyanathan (2022) points out, trolling can be an "expression that crushes expression," crowding out respectful deliberation and making it harder for marginalized groups to participate equally in public conversations. Respecting the dignity and humanity of others—for example, by ensuring that trans people can engage in dialogue without being reduced to their "choices" or identities—enhances diversity, improves public discourse, and better fulfills liberalism's stated aims.

This illustrates that debates over free speech are not only about the presence or absence of legal restrictions; they are also about the deeper purposes speech is meant to serve and the harm it can cause when used irresponsibly.

Selective Free Speech: Insulting Islam and Suppressing Muslims

The preceding examples show that liberal societies restrict speech that targets Jews or LGBT people. Yet many of the same jurisdictions protect or celebrate speech that insults Islam. This asymmetry underscores how free speech operates through double standards.

Protection of blasphemous cartoons of the Prophet Muhammad S.A.W

In France, the satirical magazine Charlie Hebdo published caricatures of the Prophet Muhammad (S.A.W.) in 2006 and 2012, sparking protests from Muslim organizations. The Grand Mosque of Paris and the Union of French Islamic Organizations filed a hate-speech complaint, arguing that the cartoons linked Muslims with terrorism. In March 2007, a Paris court acquitted editor Philippe Val. The court reasoned that two of the cartoons targeted Muslim terrorists rather than Islam itself, and that the third cartoon, depicting Prophet Muhammad (S.A.W.) with a bomb in his turban, should be understood in the context of the magazine's critique of religious fundamentalism (Wikipedia, n.d.-d). French political leaders, including future presidents Nicolas Sarkozy and François Hollande, expressed support for freedom of expression and defended the publication of (Wikipedia, n.d.-d). By contrast, peaceful demonstrations against the cartoons were sometimes banned, creating the impression that blasphemy is protected while protest is restricted (Voice of America, 2012).

The United Kingdom's hate-speech law similarly distinguishes between incitement and insult: Section 29J of the Public Order Act states that nothing in Part 3A shall prohibit or restrict "discussion, criticism, or expressions of antipathy, dislike, ridicule, insult, or abuse of particular religions or the beliefs or practices of their adherents" (Wikipedia, n.d.-c). Thus, while the Act criminalizes threatening behavior intended to stir up religious hatred (Wikipedia, n.d.-c), it explicitly protects insulting or ridiculing religions. Speech that targets religion is afforded a higher degree of protection than speech that targets racial or sexual-orientation groups.

Burning of the Holy Quran and the Double Standards of the West

Western media display clear double standards when covering anti-Muslim and antisemitic speech. Analyst News points out that mainstream newspapers swiftly remove cartoons deemed antisemitic and issue apologies, yet Islamophobic content is often protected or celebrated under the guise of free expression. The article notes that social media platforms failed to act on 89 % of Islamophobic posts reported to them. When a Danish-Swedish far-right politician burned the Qur'an, Sweden's Supreme Administrative Court overturned a ban on subsequent Qur'an-burning protests, deeming them protected speech. At the same time, French satirical magazine Charlie Hebdo fired a cartoonist over allegations of antisemitism and yet republished content vilifying the Prophet with impunity. Analyst News concludes that blatant anti-Muslim hate is tolerated as free expression, whereas antisemitism is recognized as a violation outside the protection of free speech. This differential treatment is echoed by studies showing that about 80 % of American news articles mentioning Muslims or Islam portray them negatively, compared with 49 % for Jews, 52 % for Hindus, and 45 % for Catholics (Analyst News, n.d.).

Incitement, hate speech, and the ICCPR

The Express Tribune highlights that international human rights law already provides tools to address hate speech. Article 19 of the ICCPR recognizes freedom of expression, but Article 19(3) requires that the exercise of this right carry "special duties and responsibilities," allowing restrictions to protect national security, public order, and public morals. Article 20(2) obliges states to prohibit advocacy of religious hatred that constitutes incitement to discrimination, hostility, or violence. Despite these provisions, Western countries often fail to

distinguish free speech from hate speech and do not fully implement agreed roadmaps to end the denigration of Islam (Express Tribune, 2023).

Discriminatory bans in sport

If free speech protects the right to offend, then liberal societies should also defend the right to wear religious attire. Yet several European countries have banned the hijab or niqab in public spaces or sports. In 2024, Amnesty International criticized France for banning French women athletes who wear headscarves from competing at the 2024 Paris Olympics. Amnesty described the ban as a breach of international human rights law and evidence of the discriminatory hypocrisy of French authorities. The organization's report documents how hijab bans have a devastating impact on Muslim women and girls at all levels of sport. Anna Błuś, Amnesty's Women's Rights Researcher, argues that banning hijabs at the Olympic Games undermines claims that Paris 2024 will be the first gender-equal Olympics and exposes the racist discrimination underlying access to sport in France. Amnesty notes that France's bans contravene international human rights treaties and even conflict with the rules of sporting bodies such as FIFA and FIBA. Despite calls from a coalition of organizations, the International Olympic Committee (IOC) declined to intervene, claiming that freedom of religion is interpreted differently by different states. Meanwhile, France is the only European country to enshrine bans on religious headwear in sports law. These restrictions deprive Muslim women of the ability to participate fully in sports and harm their mental and physical health (Business & Human Rights Resource Centre, 2024).

Voices from Muslim women in sport

The Bridge Initiative's podcast "Five Questions on Hijab Bans in Global Sports" offers firsthand perspectives. Sports journalist Shireen Ahmed notes that national Olympic committees are supposed to admit athletes without discrimination based on religion or political affiliation, which would include wearing a hijab. She describes how different sports and countries vary in their policies and highlights that international federations such as FIFA initially banned hijabs but later reversed the decision. Ahmed calls France's ban on its Muslim basketball players "an unbelievable spectacle of hypocrisy and discrimination," emphasizing that male-dominated federations make rules about women's attire without connection to the affected community. This critique underlines how liberal societies invoke secularism and women's liberation to police Muslim women's bodies while ignoring the patriarchal structures of sports governance (Bridge Initiative, n.d.).

Double standard and its consequences

The contrast between these legal regimes is stark. Anti-LGBT speech that portrays homosexuals as inferior or criminal is penalized with fines and imprisonment (Columbia University Global Freedom of Expression, n.d.) (Reuters, 2013), whereas insulting depictions of Islam are defended as satire and protected by courts. (Wikipedia, n.d.-d). Holocaust denial is criminalized in France and Austria. (Wikipedia, n.d.-a), (Wikipedia, n.d.-b), but caricaturing the Prophet is celebrated as a triumph of secularism, and the burning of the Holy Quran is justified as freedom of expression. The United Kingdom's hate-speech statute explicitly safeguards ridicule of religious beliefs even as it criminalizes threatening speech against sexual minorities (Wikipedia, n.d.-c).

These disparities reveal that free speech is selective: it protects speech that targets marginalized religious communities while punishing speech that targets historically protected groups. Such asymmetry fuels perceptions of anti-Muslim bias and undermines the legitimacy of hate-speech regulations. From a liberal perspective, the inconsistency suggests that the harm principle is applied unevenly—incitement against Muslims is tolerated, while similar speech about other

groups is penalized. The result is that free speech becomes a weapon wielded by the powerful rather than a neutral principle.

Discussion

Power, property, and the myth of neutrality

The preceding analysis underscores that free speech is embedded in relations of power. As economist Blair Fix observes, property rights allow owners to exclude others and thus restrict speech. Corporations that control media platforms can censor dissenting voices while amplifying content aligned with their interests (Snyder, 2022). Liberal societies proclaim equal freedom of expression, yet those with property and socio-economic power enjoy far greater capacity to speak than others. The ability to insult Islam without consequence reflects this imbalance: it is easier to offend a marginalized religion than to challenge dominant historical narratives or sexual-orientation rights.

Implications for Muslims

For Muslims, the selective application of free-speech principles has tangible consequences. Blasphemous cartoons portray Muslims as terrorists and perpetuate stereotypes (Wikipedia, n.d.-d). Hijab bans restrict their ability to express their faith and participate in public life (Crescent International, n.d.). The message conveyed is that the majority may ridicule minority beliefs while minorities must conceal their identities. Such double standards undermine the liberal promise of equal citizenship and contribute to social exclusion.

Towards a consistent approach

If liberal societies wish to uphold the values of truth, progress, and accountability, they must apply their principles consistently. A more coherent free-speech regime would recognize that vilifying any group—whether Jewish, Muslim, gay, or otherwise—can inflict harm and may be restricted under the harm principle. Conversely, it would protect peaceful expression by marginalized communities, including religious dress, protest, and criticism of state policies. Applying the harm principle evenly would mitigate perceptions of bias and strengthen the legitimacy of hate-speech laws.

Conclusion and Recommendations

Liberalism champions free speech as a universal right, yet this paper has shown that free speech is neither free nor universal. Liberal theory justifies expression because it advances truth, human development, and democracy, but it also permits restrictions on incitement and hate. In practice, liberal democracies criminalize desecration of flags, Holocaust denial, and anti-LGBT vilification, demonstrating that speech is routinely limited. At the same time, these societies protect or celebrate speech that insults Islam, revealing a double standard. The disparity exposes how free speech is conditioned by power, property, and cultural bias. Recognizing the myth of liberal free speech does not entail rejecting the value of open dialogue; rather, it calls for a more equitable application of the harm principle. Only by applying free-speech protections and restrictions consistently—regardless of the target—can liberal societies aspire to uphold their professed ideals.

To move toward a more equitable discourse, liberal democracies should:

1. **Apply existing human-rights standards consistently.** Article 19(3) and Article 20(2) of the ICCPR provide a framework for balancing freedom of expression with protection against incitement. Western states should criminalize advocacy of religious hatred and

apply prohibitions to Islamophobia as they do to antisemitism and other forms of hate speech (Express Tribune, 2023).

2. **Uphold the right to religious expression.** Secularism should not justify policing women's bodies. Sports federations and governments should respect the rights of Muslim women to wear hijabs, in line with international human rights obligations (Business & Human Rights Resource Centre, 2024). The IOC should ensure host countries do not enact discriminatory bans.
3. **Address media bias and platform accountability.** News organizations must avoid framing Muslims primarily through security lenses. Social-media platforms should enforce policies against Islamophobic hate and respond to reports with equal seriousness as for antisemitism (Analyst News, n.d.).
4. **Protect whistle-blowers and dissenting voices.** Liberal democracies must end prosecutions that chill investigative journalism and instead foster a diverse media environment that includes critical perspectives (Express Tribune, 2023).
5. **Resist populist manipulation of free speech.** Citizens and policymakers should recognize how free-speech rhetoric can be used to justify both hate speech and censorship. Building a speech culture grounded in respect for human dignity and equality, rather than one that privileges the powerful, is essential.

Free speech remains a vital ideal, but it must be grounded in justice. Only by acknowledging and rectifying the double standards and biases embedded in liberal free-speech practices can societies protect both expression and the dignity of all their citizens.

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