

Opinion: Free speech is fine until someone doesn't like it

By Jonathan Turley, Washington Post

Free speech is dying in the Western world. While most people still enjoy considerable freedom of expression, this right, once a near-absolute, has become less defined and less dependable for those espousing controversial social, political or religious views. The decline of free speech has come not from any single blow but rather from thousands of paper cuts of well-intentioned exceptions designed to maintain social harmony.

In the face of the violence that frequently results from anti-religious expression, some world leaders seem to be losing their patience with free speech. After a video called "Innocence of Muslims" appeared on YouTube and sparked violent protests in several Muslim nations last month, U.N. Secretary General Ban Ki-moon warned that "when some people use this freedom of expression to provoke or humiliate some others' values and beliefs, then this cannot be protected."

It appears that the one thing modern society can no longer tolerate is intolerance. As Australian Prime Minister Julia Gillard put it in her recent speech before the United Nations, "Our tolerance must never extend to tolerating religious hatred."

A willingness to confine free speech in the name of social pluralism can be seen at various levels of authority and government. In February, for instance, Pennsylvania Judge Mark Martin heard a case in which a Muslim man was charged with attacking an atheist marching in a Halloween parade as a "zombie Muhammed." Martin castigated not the defendant but the victim, Ernie Perce, lecturing him that "our forefathers

intended to use the First Amendment so we can speak with our mind, not to piss off other people and cultures – which is what you did.”

Of course, free speech is often precisely about pissing off other people – challenging social taboos or political values.

This was evident in recent days when courts in Washington and New York ruled that transit authorities could not prevent or delay the posting of a controversial ad that says: “In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat jihad.”

When U.S. District Judge Rosemary Collyer said the government could not bar the ad simply because it could upset some Metro riders, the ruling prompted calls for new limits on such speech. And in New York, the Metropolitan Transportation Authority responded by unanimously passing a new regulation banning any message that it considers likely to “incite” others or cause some “other immediate breach of the peace.”

Such efforts focus not on the right to speak but on the possible reaction to speech – a fundamental change in the treatment of free speech in the West. The much-misconstrued statement of Justice Oliver Wendell Holmes that free speech does not give you the right to shout fire in a crowded theater is now being used to curtail speech that might provoke a violence-prone minority. Our entire society is being treated as a crowded theater, and talking about whole subjects is now akin to shouting “fire!”

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