

About Hang Together

Who We Are

HANG TOGETHER

*"We must indeed all hang together, or most assuredly we shall all
hang separately." – Benjamin Franklin*

THE PRUDENCE OF SILENCE

Posted on May 16, 2015 by Daniel Kelly.



Provoking a homicidal maniac into doing what he does best is a witless thing to do, and we all know it. Unless, apparently, the provocation involves cartoons of Muhammad. Then it is not just rational, but a required expression of your commitment to free speech. [Here is Mark Steyn](#) (whom I admire greatly, except on this point) in a post responding to Pam Geller's Muhammad Cartoon Contest:

I wrote a whole book about it: [Lights Out: Islam, Free Speech And The Twilight Of The West](#) On page 123 I write about Jyllands Posten and the original Motoons:

The twelve cartoonists are now in hiding. According to the chairman of the Danish Liberal Party, a group of Muslim men showed up at a local school looking for the daughter of one of the artists.

When that racket starts, no cartoonist or publisher or editor should have to stand alone. The minute there were multimillion-dollar bounties on those cartoonists' heads, The Times of London and Le Monde and The Washington Post and all the rest should have said, "This Thursday we're all publishing the cartoons. If you want to put bounties on all our heads, you'd better have a great credit line at the Bank of Jihad. If you want to kill us, you'll have to kill us all..."

That's about exactly wrong. Yes, the cartoonist, publisher, and editor should stand alone. Preferably out in the middle of a desert where the fallout from their asininity will be a few dead cactuses rather than the carnage of innocents. When someone plays catch with a bottle of nitroglycerine, you run from him with all possible speed. And if you're especially charitable, you yell at him to stop lest he blow himself to bits. You certainly don't join in the fun.

Steyn condemns all those who would curtail their speech out of regard for the consequences that might follow. He calls them the "But Brigade" – those who say they believe in free speech, "but" that the artists should not have said what they did. These, he says, do not really believe in free speech at all.

Forgive me, Mr. Steyn, for saying so, but this is just patently silly. It confuses the *right* to say something with whether it is *prudent* to say it.

Steyn is a civilized and respectful gentleman and so, perforce, also a member in good standing of the But Brigade. When your wife asks you if a particular outfit makes her look larger than she might wish, you have a right to say "yes." But exercising that right might earn you a frigid night or two. Consequence? "No, honey, you look great." Welcome to the But Brigade.

It is entirely rational to measure what you want to say against the cost. It doesn't mean you don't appreciate free speech, or aren't willing to defend the principle. Self-immolation does not a defense make. It's your resume for the Natural Selection Hall of Fame. And nothing more. Nothing. At all.

Did anything come of Geller's cartoon contest that was so important it was worth having someone shot? Of course not. Insulting Muslims isn't important, it's rude.

We're missing the point of free speech, and its calculus. Free speech isn't important because it allows Geller to provide a forum for insulting others in a cheap publicity stunt. It's important because, without it, someone might not say something that actually has value. Geller isn't the reward of free speech, she's part of the cost. Putting up with her irresponsibility is the price we pay for intelligent and important speech. So let's not get all weepy about the possibility we might run out of people willing to provoke homicidal maniacs into attempting mass murder.

The response to jihadis at home is not Geller's attempt at increasing the body count of innocents (jihadis aren't known for careful aim when hunting insulters of the peaceful religion). It is for the State to fulfill its primary obligation – the use of monopolized force to chase down and exterminate this scourge.

Until the State sees its way clear to acting responsibly, we must react accordingly. We should either curb our speech so we don't cause mayhem, or we take up arms ourselves to hunt down the sociopaths who make us curb our speech.

In the meantime, the absolute worst possible decision is to poke the beehive, and then after being stung expect everyone else to run to the nearest beehive so that they can be stung too. That's not bravery. It's idiocy.

There are some things worth dying for, though not many. In that short catalog of things that are, you won't find "saying stupid things." Saying what's on your mind, and damn the consequences, is only brave and noble if you are saying something that is more important than life itself. Charlie Hebdo wasn't within light years of that. Nor was Geller, nor the chest-thumpers who think everyone should rush to their side when they goad the blood-thirsty monster into taking a drink.

Does this mean that jihadis win because they prevent people from drawing Muhammad cartoons? Yes, but that's not the same thing as surrender. In response to the German bombing campaign the Brits turned off London at night to make themselves more difficult to hit. Were they surrendering? Of course not. It restricted their freedoms, but it was necessary so they could live to fight the next day. There is no tactical or moral obligation to make yourself a bomb target.

If we are fighting a war, this isn't how you do it. You plan an attack, gear up, and execute with unrelenting ferocity. You don't walk onto the battlefield and dare the enemy to shoot you. That's not heroic, principled, or smart. It's just dumb. And we need to stop pretending that these calls for solidarity are anything other than the confusion of principle and prudence.

Pace Steyn, you will never sate a jihadist's thirst for blood. The line of credit at the Bank of Jihad may not be unlimited, but it is undoubtedly big enough to take out more people than even Steyn would be comfortable losing. His

prescription will result in nothing but mounds of dead Westerners and legions of ecstatic jihadis. It is wrong, monumentally so, to encourage cannon-fodderism as a defense of free speech. Honestly, have we lost our minds?

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Needed

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11 Thoughts.



Greg Forster

May 17, 2015 at 11:35 am

I share your desire not to celebrate people who are intentionally insulting. But if we aren't willing to extend the protection of the law to people who, in our view, deserve to be killed, where will that end? And how can we extend the protection of the law to them if we don't have some kind of civic solidarity or common identity with them in spite of their foolishness? Do we really want to

say that the foolish and the undeserving ought to be expelled from the community?

And if their crime is that they provoke murderers, what about the fact that rewarding jihadists by expelling from the community those they want expelled incentivizes them to kill again?

Reply



Daniel Kelly

May 17, 2015 at 6:40 pm

We must distinguish, with absolutely clarity, between the right to do something, and the question of whether it is responsible and prudent to do that something.

This isn't about whether the protection of law extends to those who use their right irresponsibly. It does. It **is** about whether one should, as a prudential matter, use that right irresponsibly. And the former has nothing to do with the latter.

The protection of law, so far as it concerns the Free Speech clause, means this: The government may not engage in prior restraint. It is enforced by ensuring no government actor engages in that practice. Period, full stop. That is the protection the law offers – nothing more.

With respect to the **content** of what someone says, I have no more of an obligation of “civic solidarity or common identity” with Geller than I do with a pornographer or the Westboro Baptist freak show. They are all exercising their First Amendment rights, but they really should not do

what they are doing, and given the opportunity I would upbraid them for doing what they do in the most stringent terms.

So let's be clear about this. If a World War II-era Londoner flicked on his light one evening to show the Luftwaffe that he cannot be intimidated into darkness, would I have a duty of "civic solidarity or common identity" to turn my light on the next night to show support for my newly-dead city-mate?

Should I be concerned that if I don't keep my light on at night the Nazis would be encouraged to kill again? No. Nazis didn't kill because of the light. They killed because Londoners were the enemy. The light just helped them aim. The jihadis aren't killing just because someone drew Muhammad, they're killing because everyone who is not a similarly mendacious Muslim is the enemy. Your cartoon just helped them aim.

And yes, if the foolish are doing something that endangers those around them, as Geller proved that she was (remember that a guard got shot), they should remove themselves from community until they learn not to be a walking bottle of nitroglycerin. And if they don't have the grace to remove themselves, we should exercise every ounce of non-governmental societal power to ostracize, shame, remonstrate, castigate, and otherwise push them back into responsibility. Even if the price they pay is choosing not to exercise their right to insult Muslims.

This is about more than just not celebrating irresponsible people. It is about being mature and responsible enough to condemn people for using their rights for ill purposes. If we can't do this, then we really aren't fit for self-governance. We're children in need of a nanny.

Reply



Greg Forster

May 18, 2015 at 7:09 am

I really want to be on both of your side here but I don't know how. The real problem here is the social context in which 99% of those who are condemning people like Gellar and Charlie Hebdo are condemning them for reasons that are not only wrong, but wrong in a way that's worse than Gellar and Charlie Hebdo. I just don't see any practical way to oppose Gellar and Charlie Hebdo without strengthening even worse people.

And I do think I have to object to describing terrorist murders as having been caused by the actions of their victims.



Daniel Kelly

May 18, 2015 at 9:13 am

I understand your reticence to condemn the victims for the acts of terrorist murderers. But we need to make distinctions here, too. If a person is walking down the street doing nothing provocative and is mowed down by a terrorist, all condemnation and moral responsibility rests on the terrorist.

But if the victim was deliberately provoking the terrorist by doing something that has been proven to result in death and destruction . . . well, then, the victim shares in the condemnation and the moral responsibility for the ensuing mayhem.

We're all in a bunch about this because we've adopted this odd notion that if I have a right to do something, I bear no moral responsibility for the way in which I exercise that right. My dearly departed Londoner puts this in the required context. Does the Nazi bear moral responsibility for killing the defiant light-shiner? Yes, clearly. Does the light-shiner bear moral responsibility for his own death, as well as those of his neighbors, because he refused to turn off his light? Absolutely, without question.

Further, the survivors would properly condemn him for stupidly exercising his right to turn on his light. And further to that, they would have been acting responsibility and within their rights had they expelled him from community upon learning that he planned to leave his light on at night. In fact, there is a strong argument that the community would have had an affirmative duty to do so.

Reply



Peter Epps

May 18, 2015 at 11:21 am

If asked, "Should I do this?" or "Do you plan to attend this?" my answer is "No. It seems pointless and foolish."

If asked, "Should this action be protected from violent reprisal?" my answer is "Yes. Obviously."

If asked, "Should anyone facilitate or promote this?" then I begin to be more ambivalent. I don't see much reason for anyone to use discretionary authority in favor of this sort of behavior, but it doesn't rise to the level of sheer nihilism or explicit incitement to violence that I think **obliges**

everyone to use discretionary authority to restrict and suppress the behavior. Which means that I also think it would be a just result if someone using such authority in the matter were compelled, by a First Amendment lawsuit, to change course.

I feel strongly the “no heckler’s veto” impulse that animates First Amendment absolutism. **Threatening violent reprisal should not mean “winning” an argument in our society.** At the same time, blatant and otherwise pointless provocations are not wholly dissimilar in character to such threats (see under “sheer nihilism”). The question that bedevils us is whether a particular act is really “nothing but” provocation, much like the question of whether something is “pornography” or has “redeeming social value” (to use the quaint phrase).

**** One possible interpretation of your argument troubles me, as well: **if we really do think of violent reprisal as a deterministic force—such that taking an action which will provoke “them” is “causing” the violence—then are we not denying the humanity of the violent and their answerability to our laws?** Is this not simply to admit that we have lapsed from civil society into a State of War, to put it in Lockean terms?

I think that as long as we believe there are particular criminals actually answerable for violent acts against free people, we **as a civil society** have to strike harder against their violence and their threats of reprisal than against even the foolish acts of law-abiding citizens.

Having said which, there is no need to cheer for fools, or to pretend approval of them. I certainly stand with you in the “pox on both their houses” feeling. Nonetheless, right now, I’m a bit more persuaded by the

“big difference between shooting of your own mouth and chopping off someone else’s head” argument. Especially in a phase of our culture where politically expedient assaults on the First Amendment are regrettably commonplace.

(and if tomorrow there were a Crusade against the execrable Westboro Baptist, I would happily take on the role of Peter the Hermit.)

Reply



Daniel Kelly

May 18, 2015 at 1:30 pm

Thanks Peter, good thoughts.

I don’t think my position denies the humanity of the violent, or their answerability to our laws. It just means there are two people who are so answerable. And if we give a pass to the second person, we are denying her moral agency, which would be just as bad as denying the terrorist’s moral agency.

If you yell “fire” in a crowded theater, you aren’t the one who actually crushes the other theater-goers. But you **are** morally culpable for causing the resulting deaths. Why? Because you’re responsible for the foreseeable consequences of your actions. You don’t get a pass just because your action consisted of speech.

A terrorist attack was a foreseeable consequence of Geller’s little stunt. And she knew it, which is why she hired guards. She is as morally culpable for the guard’s injury as the one who yells “fire.”

Love the reference to Peter the Hermit, by the way.

Dan.



Peter Epps

May 18, 2015 at 3:54 pm

If I were to conclude that the two most immediate consequences of your argument are (a) security guards should reject such jobs, and (b) promoters of such events should incur a fraction of the civil liability that violent offenders incur (wrongful death & other damages), would it be at all fair? Or are we strictly separating moral taint & social opprobrium from any civil or criminal liability?

If my conclusions are fair, I wonder what I should do about (b). First of all, we don't actually have a very useful proportional-liability system in American law, as far as I know. Then, what fraction is appropriate? And, on the dictum "justice must be seen to be done," how do we assign that fraction in the manner least likely to (a) unduly burden any free expression that could foreseeably provoke a violent reprisal or (b) appear to relax the severity of punishment for threatening or carrying out such violent reprisals?

Perhaps you'll consider, as a foil to your other examples, a priest who regularly carries the Eucharist to sick parishioners, but who has been threatened by a madman who's been set off by fringe involvement with local Satanist agitators. If the priest asks an off-duty cop to look in on him at visiting time, and the priest is attacked, and the off-duty cop shoots the attacker and damages a neighbor's car, what liability should each share?

Reply



Daniel Kelly

May 19, 2015 at 8:57 am

I am of the opinion that law follows culture, so the first step is to figure out our cultural responsibility, and then address whether a legal response is needed afterwards.

Although I used the security guard to illustrate the foreseeable consequences of Geller's publicity campaign, there are other principles applicable to him in particular, specifically the doctrine of assumed risk. That is to say, he has no complaint against Geller because he agreed to undertake the assignment, presumably knowing what he was signing up for. His complaint is solely against the terrorist.

But everyone else in the vicinity of Geller's stunt may – and should – look at her askance. Well, more than askance. They should look at her as the irresponsible, dangerous powder keg that she is. Unlike the security guard, they did not choose to assume the risk of being killed by a terrorist responding to Geller's dog whistle.

So the first step is to understand that all people are morally responsible for the foreseeable consequences of their actions, even when that action is speech. In terms of this moral responsibility, there is simply nothing special, magical, or otherwise exculpatory about speech. If the foreseeable consequence of one's speech is the death of one's neighbor, that person should be condemned by society just as much as if the neighbor died

because the person dropped one of the bottles of nitroglycerin he was juggling.

As for legal liability, I think there are sufficient tools available to address this type of situation. Juries apportion fault between joint tortfeasors as a matter of course. Normally, the liability is joint and several, meaning the injured person can collect the entire amount of damages from any of the defendants, without regard to the party's percentage of responsibility. The onus is then on the defendants to apportion payment of the damages amongst themselves according to the proportion of fault assigned by the jury. This seems a decent way of proceeding, but we could modify this so a defendant is not responsible to the injured person for more than the percentage of fault he bears.

You might already guess from what I wrote above that I don't think we need be concerned that holding people responsible for the foreseeable consequences of their actions will unduly burden a person's exercise of free speech. So long as the jury exercises its duties appropriately, then by definition any resulting burden won't be undue. And that's because a person's responsibility not to harm one's neighbor is the same whether the person is using speech to incite a riot, or juggling a bottle of nitroglycerin. There is no "free speech" discount.

As for the priest, here's how that would shake out. The formula for responsibility is, roughly, the likelihood of a consequence multiplied by the expected severity of the consequence. The operative question, therefore, is whether a reasonable person would believe the madman would make good on his threats, and whether the nature of the "make good" would be violent.

So let's say a reasonable person would understand that the priest's actions will more than likely set the madman off, but that the circumstances suggest the consequences would be nothing more than loud and insulting hectoring. The priest would bear no responsibility for damage to the neighbor's car because violence was not foreseeable.

Now let's take it up a notch. Let's say a reasonable person would understand there would be a consequence, and that the consequence would be violent – hence the need for a visit by one of the Town's finest. The priest would be responsible for damage to the neighbor's car because the reasonably foreseeable consequence of his actions was violence. Just as speech doesn't get a pass when it causes injury, neither does a religious motivation for one's actions.

Bottom line is this – the right to free speech and exercise of religion are not shields to fend off responsibility for violating someone's rights.

Incidentally, this illustrates an error commonly being made by those responding to the gay marriage/baker/florist/photographer kerfuffle by asserting their “religious rights.” If gays really do have the right to be served by anyone they should choose, then that right must be respected, regardless of your religious beliefs. The correct response to those lawsuits is not to say my religion allows me to violate your rights. It is to assert that no one has the right to compel you to serve someone you do not wish to serve.

For the same reason, Geller may not claim “free speech” as a shield to escape responsibility for the harm she causes. Nor may the priest.

Reply



Peter Epps

May 19, 2015 at 9:37 am

I commend your consistency, and appreciate your spelling it out.

Precisely because I can't find a limit, here, that doesn't mean violent reprisals win—and that bold martyrs, dissidents, prophets, and apostles are just as wrong as agitators and agents provocateur—I would need to judge cases on different grounds than these.

Which means that, despite agreeing on the broad strokes of this case (being offensive precisely to provoke credible threats of reprisal is foolish at best, and likely immoral), I think we disagree on what the “larger significance” may be here.

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