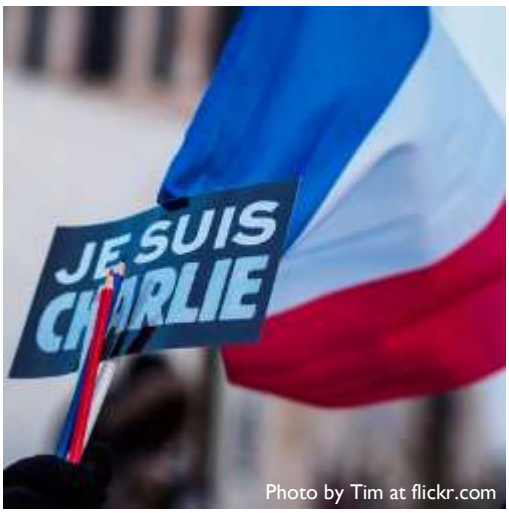
Provocative mockery

Patrick Riordan SJ

78% of the British Muslims questioned in a ComRes poll for the BBC said that they felt deeply offended by the publication of images of the Prophet Mohammed. The debates that have raged since the attacks on the *Charlie Hebdo* offices about the provocative cartoons published by that magazine are nothing new, says Patrick Riordan SJ. In fact, they have their roots in Paris itself, and in the writings of St Thomas Aquinas.

The recent debates occasioned by the murderous assault on the staff of *Charlie Hebdo* have their precedents in thirteenth century Paris. Even then, the question was being debated as to what extent the civil law ought to curb the output of artists who mocked the religious and royal authorities. King Louis IX, the only French king to have been canonised as a saint, understood his royal authority in theological terms, considering it his duty to enforce the moral and religious teachings of scripture and the Church. He applied the law as an instrument of moral education.[1] Laws promulgated by him in 1254 prohibited cursing, swearing, blasphemy, games of chance and gambling, and they attempted to abolish various vices including usury and prostitution. They also attempted to suppress the mockery of royal and religious persons and institutions. At the time of this legislation, Thomas Aquinas was at the University of Paris, living in the Dominican Priory of St. Jacques, of which Louis IX was a benefactor.



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Some years later, when Aquinas was in Paris again and was writing on the question of whether the civil law should prohibit all the vices, he probably thought back to his student days. The questions he addressed were not hypothetical, but were rooted in the experience of those earlier years when he had actually seen a civil power that regarded it as its duty to stamp out bad behaviour. The King's motivation had been good and his ambition had been praiseworthy: after all, who could object to the desire of a good ruler that all his or her subjects would be morally faultless? Another saint could, and did. Aquinas objected to the use of civil law to effect the moral perfection of the King's subjects. On his understanding of the role of law – and of civil authority in making law – its function is oriented to the common good of public order, and not to the moral perfection of people.

There is a contrast between their reasoning: where Louis appeals to Christian theological reason, Aquinas argues from natural reason, generating standards which should apply to all rulers, whether Christian or not. Two questions posed by Aquinas highlight this contrast. Both draw on his account of morality, which relies on an understanding of the virtues, such as justice, temperance, charity and mercy. Immoral actions, then, are not virtuous, but vicious, i.e. an expression of vice. He asks first whether human law should forbid all morally wrong actions. His answer is short and precise:

> Human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore, human laws do not forbid all vices from which the virtuous abstain but only the more grievous vices from which it is possible for the majority to abstain and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained; thus human law prohibits murder, theft, and suchlike.[2]

In other words, the lawmaker's concern is with the preservation of society and its good order. He mentions only two examples for the kind of behaviour which threatens public order and makes social life impossible – murder, which violates the good of life; and theft,

which violates the good of property – but suggests there are others. What might be the other candidates for prohibition? Liberals have struggled to keep the list as short as possible, identifying the upholding of the procedures of law as essential for the doing of justice, so that perjury and contempt of court must be sanctioned. It is fascinating to see Aquinas anticipating this concern to limit the scope of action of civil authorities in relation to the behaviour of citizens.

Aquinas's emphasis on the social function of human-made law, as distinct from a potential moral perfectionist purpose, is evident in his discussion of the parallel question: whether human law should command acts of all the virtues. His answer is that:

> Law is ordained to the common good. Wherefore, there is no virtue whose acts cannot be prescribed by the law. Nevertheless, human law does not prescribe concerning all the acts of every virtue but only in regard to those that are ordained to the common good – either immediately, as when certain things are done directly for the common good, or mediately, as when a lawgiver prescribes certain things pertaining to good training whereby the citizens are disciplined in the upholding of the common good of justice and peace.[3]

No dimension of human behaviour is ruled out, since anything can have an impact on the goods of social order. And so it is conceivable that the civil lawmaker would attempt to regulate this or that behaviour to the extent that it is significant for public order. Aquinas sees two kinds of situation, one in which the impact on public order is indirect, as for instance in the regulation of educational standards by which the authorities attempt to ensure that all are sufficiently equipped to exercise their responsibilities as citizens. In the other case the impact is immediate. An obvious example is the requirement in some democracies that all citizens exercise their duty to vote, or that all take their turn in doing jury service. It is the common good of public order which explains why this or another action of any virtue is made obligatory by the law. In our context, all have moral obligations to share from their abundance with those who are poor, but this moral duty is not enforced in the civil law. Or at least, the share of taxation which goes towards supporting the health, welfare and education systems – goods which can also be appreciated in terms of public order – does not exhaust the moral obligations of the wealthy to share their wealth.

Aquinas's discussion does not explicitly mention the saintly King Louis IX, but he does refer to one of the forms of immoral behaviour which the King had tried to outlaw. This example is very close to the issue of provocative cartoons. King Louis considered the troubadours, the wandering minstrels, as threats to social order, because of the ribald and subversive nature of their ballads and plays, which were often directed against authority in all its forms. Louis attempted to outlaw them, and to prohibit attendance at their entertainments. He was not alone in this: the pope had done likewise in his dominions, as had the Emperor Frederick II in Naples. But Aquinas – who, along with his fellow Dominicans in Paris, had been a target of a mocking ballad and had experienced also the effects of attempts to enforce the law against balladeers – was prepared to see the positive contribution that such performers make to social life. In discussing play as an activity undertaken for the sake of its own pleasure, Aquinas acknowledges a positive function for fun and games, including the entertainment provided by minstrels, and he recognises this as legitimate occupation.[4] Hence, for Aquinas, a society without wandering entertainers, or their functional equivalent, would be a society defective in respect of achievement of its common good. The common good requires, and hence the natural law requires, the making of jokes and the staging and enjoyment of entertainments. His focus is on the shared enjoyment of important goods rather than on the potential or actual misuse of human capacities.

In the turmoil of debate following the dreadful murders in Paris, and the consideration of the appropriate function of law, a number of reflections are appropriate.

First of all, in the stance taken by Thomas Aquinas we see that it is a gross simplification to assume that all those who are religiously committed must endorse the demand that the civil law should prevent blasphemy or insult directed against religion. It is ironic that the Dominican priest upholds the human and social values at stake in the debate, while the civil authority with which he disagrees appeals to religious and theological arguments. Yes, the authority in question was a holy man, later canonised by the Church, but from Aquinas's point of view he misunderstood the function of law and of the civil authority he was called upon to exercise.

A second point worthy of note is that the thirteenth century debate does not use the language of rights.[5] Instead the focus is on goods and the contrast between different kinds of good, and the corresponding duties or responsibilities in relation to them. On the one hand, there is the good which is the moral fulfilment or flourishing of persons. This might also include their sanctity, and it will be elaborated in terms of the different virtues which a good person will exemplify. The virtues will be of many kinds, including the natural and the theological virtues. On the other hand, there is the good of public order, and the maintenance of a society in which it is possible for people to have the conditions necessary for them to pursue their more ultimate goods. As noted above, the good of social order will require the protection of more specific goods, such as human life and property. But as is also noted above, the good of social order will also require that spaces are secured in which the shared enjoyment of the human goods of pleasure and entertainment can take place. Corresponding to these different kinds of goods are sets of duties. Aquinas leaves no one in doubt about a person's duty to do what is right, seen from the perspective of his or her fulfilment or holiness. But in his discussion of the texts above he is making the point that it is not the obligation of the civil lawmaker to look primarily to the moral fulfilment of citizens: his or her obligation is towards the good of public order; and it will always be a matter of prudential judgment as to what, in any particular situation, will damage or benefit public order. So it is not unreasonable that the laws on libel or on hate speech, for example, are different in the USA and the UK.

Thirdly, the predominance of rights language in our current debates brings with it several disadvantages. This is a topic which requires a longer reflection but a few points can be noted here. First, since rights can be spoken of on both levels, reliance on the language of rights confuses the distinction between the moral and the legal. One may have a legal right to something, but it does not follow that one has a moral right to it. One has a right in the sense of liberty (freedom from a legally imposed duty) to commit adultery – the state will not stop you. But of course it does not follow that there is a moral liberty to commit adultery. Second, the conclusionary and assertoric nature of rights language blocks discussion. The associated impression is that asserted rights are absolute and may not be constrained in any circumstances. It is hardly possible to explore and discuss the meaning and content of the asserted rights. A relevant discussion would be the distinction between the freedom of speech and freedom of expression. Do the reasons presented in favour of free speech, for instance as a prerequisite for rational discourse, equally ground the freedom of expression, which may have nothing rational about the forms of expression protected? The third disadvantage which might be noted here is related to the second one. A consequence of the reliance on rights to express our moral and political visions is that this language is limited in its capacity to address social and communal matters. The presuppositions of individualism are too strong. Accordingly, it becomes difficult to address questions of public order when the claims of competing interests are expressed in terms of rights. The concern for the common goods of social order has no language of its own with which to make a case in favour of securing the public good, if only the rights of conflicted parties may be spoken of.

Comparing the issues faced by thirteenth century Paris and twenty-first century Paris, it is startling to see the similarities, but also to note the differences. Perhaps we can wonder if we would do better in addressing our current issues if we would learn from Aquinas how to formulate the issues themselves. He could help us to achieve clarity in the distinction between the moral and the legal, and he could help us find the appropriate terms in which to consider the real goods of social order, which are the responsibility of all citizens, since all in a democracy are charged with care for the common good.

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[1] For the information presented here I am relying on a fascinating article by Alasdair MacIntyre, 'Natural law as subversive: the case of Aquinas', *Journal of Medieval and Early Modern Studies*, 26.1 (1996) 61-83. I discuss this and other studies of the medieval context in my book *A Grammar of the Common Good* (London: Continuum, 2008) in chapter Six: 'Medieval Perspectives'.

[2] Aquinas, *Summa theologiae*. (London: Blackfriars, 1963) 2a2ae q96 a2.

[3] Ibid. q96 a3.

[4] Ibid. 2a2ae q168.

[5] For a more extensive treatment of the language of the good see my recent book *Global Ethics and Global Common Goods* (London: Bloomsbury, 2015).