Backgrounder

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Why the U.S. Should Oppose "Defamation of Religions" Resolutions at the United Nations

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For the past several years, the United Nations Human Rights Council and General Assembly have adopted resolutions recognizing and promoting the concept of "defamation of religions." Proponents seek to establish an international ban on any speech that would insult, criticize, offend, or disparage any person's religion. Specifically, the Organization of the Islamic Conference has suggested that national legislatures pass laws to ensure protection against "defamation of religions."

Such a ban, however, could not withstand legal scrutiny in the United States. The First Amendment to the U.S. Constitution protects free speech and expression, even when speech is offensive or insulting. Moreover, a religious "speech code" would disrupt the assimilation of religious minorities that has occurred throughout U.S. history and could breed resentment rather than understanding among America's religious communities.

The U.S. government has spoken out strongly against the "defamation of religions" effort at the United Nations. The next U.S. Administration should oppose the further promulgation of "defamation of religions" at the U.N. and must resist any attempt to legitimize the concept within the United States. Given the penchant of some federal judges—including justices on the U.S. Supreme Court—to rely on the decisions and opinions of international courts and organizations, the "defamation of religions" effort at the United Nations must be confronted.

Talking Points

- The United Nations has passed several "defamation of religions" resolutions over the past 10 years seeking to establish an international ban on speech that disparages religion.
- Such a ban would not withstand legal scrutiny under the First Amendment to the U.S. Constitution, which protects free speech and expression even when the speech is offensive or insulting.
- A "speech code" based on religious lines would disrupt the successful assimilation of religious minorities that is a hallmark of U.S. history, and would instead breed resentment rather than understanding among America's many religious communities.
- The U.S. government should resist any attempt to legitimize the "defamation of religions" concept within the United States and should oppose its further promulgation at the United Nations.

This paper, in its entirety, can be found at:
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The "Defamation of Religions" Effort at the U.N.

In 1999, the U.N. Commission on Human Rights adopted a resolution titled "Defamation of Religions" that expressed concern over the "negative stereotyping of religions" and "that Islam is frequently and wrongly associated with human rights violations and with terrorism."[1] In its most recent resolution passed in March 2008, the Human Rights Council (which replaced the Commission on Human Rights in 2006) urged all U.N. member states "to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion" and stated that while "everyone has the right to freedom of expression…the exercise of this right carries with it special duties and responsibilities, and may therefore be subject to certain restrictions…."[2] In short, the resolution maintains that while everyone has a right to free speech, that right does not permit the "defaming" of Islam or any other religious denomination.

The U.N. General Assembly, of which all the nations of the world are members, has passed a "defamation of religions" resolution in each of its last three sessions from 2005 to 2007. The text of these resolutions is similar to that of the resolutions passed by the Commission on Human Rights and the Human Rights Council from 1999 to the present. The votes on the General Assembly resolutions split along the same general lines as the votes on the resolutions adopted by the Commission and the Council—with the Islamic nations and the developing world voting in favor, and Western democracies, including the United States, voting against.

The alleged need for international protection against "defamation of religions" was explained in a recent report submitted to the Human Rights Council by the Secretary General of the Organization of the Islamic Conference (OIC):

> The Muslim Ummah has noticed with utmost concern the continued attacks by a section of marginal groups and individuals in the West on the most sacred symbols of Islam including the Holy Quran and Prophet Muhammad in an offensive and denigrating manner, the most recent being the reprints of the blasphemous cartoons by 17 Danish newspapers on February 13, 2008 and the release of the film Fitna by a Dutch Parliamentarian on March 27, 2008.…
>
> The instances quoted or referred to in this report corroborate that marginal western groups and individuals, motivated by hatred and intolerance against Muslims and Islam remain unabated in acts of provocation and incitement of religious intolerance by misuse or abuse of the right to freedom of expression. The need to address this issue through adoption of an adequate international instrument has been underscored in the Report.[3]

In addition to the supposed need for an "adequate international instrument" (presumably an international convention or treaty) to prohibit "defamation of religions," the OIC report also calls for the enactment of legislation by national legislative assemblies to prohibit by law the "defamation of religions."[4] In short, it is clear that one goal of the OIC is for national legislatures—including, presumably, the U.S. Congress—to enact legislation

1. Commission on Human Rights Resolution 1999/82, April 30, 1999.
2. Human Rights Council Resolution 7/19, "Combating Defamation of Religions," ¶¶ 9, 12, March 27, 2008, at *http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf* (October 20, 2008). With minor variations to the text, U.N. resolutions condemning the "defamation of religions" have been adopted at each subsequent meeting of the Commission and the U.N. Human Rights Council, as well as the U.N. General Assembly beginning in 2005.
3. Professor Ekmeleddin Ihsanoglu, Secretary General of the Organization of the Islamic Conference, "OIC Observatory Report on Islamophobia," May 31, 2008, at *http://www.oic-un.org/document_report/observatory_report_final.doc* (October 20, 2008). The Organization of the Islamic Conference (*http://www.oic-oci.org/oicnew/index.asp*) is an international organization composed of the world's 57 Muslim nations.
4. OIC Observatory Report on Islamophobia, p. 2.

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prohibiting the criticism of any religion, especially Islam, its prophet, and its practitioners.

The U.S. has been highly critical in its opposition to "defamation of religions" resolutions at both the Human Rights Council and the General Assembly.[5] Protestations by Congress and the executive branch of the U.S. government, however, may not be sufficient to stop the recognition of "defamation of religions" in the U.S. In recent years, certain justices of the U.S. Supreme Court have relied on the judgment of foreign organizations in reaching their decisions. Justice John Paul Stevens, writing for a majority of the Court in *Atkins v. Virginia*, a death penalty case decided in 2002, was apparently swayed by the beliefs of "the world community" regarding the death penalty and aligned himself with that "community" rather than respecting the opinion of a Virginia jury.[6] In writing the majority opinion in *Lawrence v. Texas*, a 2003 case involving homosexual sodomy, Justice Anthony Kennedy cited an opinion of the European Court of Human Rights as well as a law passed by the British Parliament to overturn a ruling made by the Supreme Court fewer than 20 years before.[7] It, therefore, stands to reason that Americans should be wary of the steady adoption of "defamation of religions" resolutions at the U.N. as well as the enforcement of such laws throughout the Islamic world, given the opinions of some Supreme Court justices.

Fortunately, the First Amendment to the U.S. Constitution would prohibit the enactment or enforcement of any legislation prohibiting "defamation of religions" in the U.S. and should militate against recognition of the concept by the Supreme Court, regardless of the proclivities of some of its members noted above.

Incompatible with the U.S. Constitution

The First Amendment provides that "Congress shall make no law…abridging the freedom of speech." The "hallmark" of the First Amendment "is to allow 'free trade in ideas'—even ideas that the overwhelming majority of people might find distasteful or discomforting."[8] Moreover, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[9] With some narrow exceptions, such as obscene materials[10] and libel,[11] offensive speech and expression is protected by the Constitution.[12]

Inoffensive speech and unobjectionable expressive conduct usually require no protection to begin with, since the government has little reason to censor such speech. Criticism of powerful people (such as religious figures or public officials) and institutions (such as organized religion), however, is the very type of speech that requires protection, especially if that criticism is controversial or offensive.

5. Press Release, "United States Government Response to the United Nations Office of the High Commissioner for Human Rights concerning Combating Defamation of Religions," U.S. Mission to the United Nations in Geneva, July 11, 2008, at *http://geneva.usmission.gov/Press2008/July/0715DefamationReligions.html* (November 4, 2008); Condoleezza Rice, Secretary of State, "Remarks on Release of 2008 International Religious Freedom Report," September 19, 2008, at *http://www.state.gov/secretary/rm/2008/09/110022.htm* (November 4, 2008); and John V. Hanford III, Ambassador at Large for International Religious Freedom, September 19, 2008, at *http://www.state.gov/g/drl/rls/rm/2008/110027.htm* (November 4, 2008).
6. *Atkins v. Virginia*, 536 U.S. 304, 316-317 n.21 (2002).
7. *Lawrence v. Texas*, 539 U.S. 558 (2003).
8. *Virginia v. Black et al.*, 538 U.S. 343, 358 (2003), quoting, *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). This paper does not address whether the enforcement of a "defamation of religions" law would violate the Establishment and Free Exercise Clauses of the First Amendment.
9. *Texas v. Johnson*, 491 U.S. 397, 414 (1989).
10. *Roth v. United States*, 354 U.S. 476 (1957); *Miller v. California*, 413 U.S. 15 (1973) (The Court established criteria which must be met in order for allegedly obscene publications to be subject to government regulation).
11. *Beauharnais v. Illinois*, 343 U.S. 250 (1952); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

Blasphemy, sacrilegious statements, and any other speech or expression that insults or denigrates organized religion is, for better or worse, protected by the First Amendment.

Joseph Burstyn, Inc. v. Wilson. In 1950, the State of New York censored an Italian film by denying its distributor a license for commercial exhibition. The film in question, titled *The Miracle*, told the fictional story of a deranged young woman who, while tending a herd of goats, misunderstood a passing stranger to be Saint Joseph. "Saint Joseph" then plied the girl with wine and impregnated her.[13]

The Motion Picture Division of New York State's department of education initially granted a license that allowed the viewing of the film, but after a public outcry the New York City Commissioner of Licenses declared the film "officially and personally blasphemous" and ordered that the license be withdrawn. The New York State Board of Regents ultimately decided that the license should be withdrawn since in its opinion the film was "sacrilegious" pursuant to a New York statute that allowed exhibition licenses to be withheld if a movie is deemed to be "obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime…"[14] The Board of Regents ordered the Commissioner of Education to rescind the exhibition license for *The Miracle*, which he did.

The case was appealed all the way to the U.S. Supreme Court, which ruled against the Board of Regents and the Commissioner, holding that "under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is 'sacrilegious'" and that "such a previous restraint is a form of infringement upon freedom of expression to be especially condemned."[15]

In so holding, the Court highlighted the dangers inherent to censoring expressive speech based on allegations that it ridicules a religious denomination:

> In seeking to apply the broad and all-inclusive definition of "sacrilegious" given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. …
>
> [F]rom the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. *It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine*, whether they appear in publications, speeches, or motion pictures.[16] (Emphasis added.)

The "defamation of religions" concept, if instituted as U.S. law, would clearly run afoul of the Court's holding in the *Joseph Burstyn, Inc.* case. Any attempt by the federal government (or any state government) to censor speech or expressive conduct under such circumstances would place the government in the untenable position of suppressing "real or imagined attacks" on Islam, Christianity, Judaism, or any other religious faith currently practiced in the U.S.

Criticism of Religion Is Not Incitement to Violence. The proponents of a "defamation of reli-

12. Although not the subject of this paper, it should be noted that the "defamation of religions" concept is antithetical to existing international human rights instruments, such as Articles 18 and 19 of the Universal Declaration of Human Rights and Articles 18 and 19 of the International Covenant on Civil and Political Rights. See, for example, "Combating Defamation of Religions," Becket Fund for Religious Liberty *Issues Brief*, June 2, 2008, at *http://www.becketfund.org/files/a9e5b.pdf* (October 20, 2008), and "Combating Defamation of Religions," European Centre for Law and Justice, June 2008, at *http://www.eclj.org/PDF/080626_ECLJ_submission_to_OHCHR_on_Combating_Defamation_of_Religions_June2008.pdf* (October 20,2008).
13. *Joseph Burstyn, Inc. v. Wilson, Commissioner of Education of New York, et al.*, 343 U.S. 495, 507 (1952) (Reed, J., concurring).
14. *Ibid.* at 497–499, citing McKinney's N.Y. Laws, 1947, Education Law, 129.
15. *Ibid.* at 503, 506 (1952), citing *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931).
16. *Ibid.* at 504–505.

gions" law maintain that such a measure is necessary in order to avoid incitement to violence and discrimination.[17] The 2008 "Combating defamation of religions" resolution passed by the U.N. Human Rights Council states that the Council "deplores the use of printed, audio-visual and electronic media, including the Internet, and of any other means to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any religion."[18] In other words, criticizing, insulting, or spoofing Islam or any other religion in a newspaper, on television, in a movie, or on the Internet should be outlawed.

The First Amendment to the Constitution, however, protects controversial and offensive speech and expression regarding religion even when there is some likelihood that it could incite violence.

In the 1940 case *Cantwell v. State of Connecticut*, the Supreme Court addressed a situation in which religiously provocative speech allegedly incited a breach of the peace.[19] Newton Cantwell, a Jehovah's Witness, had been going door to door in a heavily Catholic neighborhood in New Haven, Connecticut, selling books, handing out pamphlets, and playing records with religious content on a portable record player. He approached two Catholic men on the street and asked them to listen to one of his records, which attacked the Catholic Church and its doctrine. The two men "were incensed by the contents of the record and were tempted to strike Cantwell unless he went away."[20]

Cantwell was arrested, charged, and convicted of inciting a breach of the peace. The case eventually reached the Supreme Court, which overturned the convictions. The Court stated that under other circumstances Cantwell may have been guilty of a crime if his actions presented a "clear and present danger of riot, disorder…or other immediate threat to public safety, peace, or order." Cantwell's actions, however provocative, did not rise to that level regardless of the fact that the record he played "singles out the Roman Catholic Church for strictures couched in terms which naturally would offend not only persons of that persuasion, but all others who respect the honestly held religious faith of their fellows."[21]

The Court recognized that debate over competing religious doctrines is inevitable in American society, and criminal charges are not warranted each time a particular denomination is maligned:

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.[22]

In other words, free speech and expression, even if patently false and even when taken to the limits of what polite society allows, must be given

17. Indeed, Article 20 of the International Covenant on Civil and Political Rights—to which the U.S. is a party—states that "Any advocacy of…religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." At the time of ratification of that Covenant, however, the U.S. entered the following reservation: "That article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States." International Covenant on Civil and Political Rights, "Declarations and Reservations," at *http://www2.ohchr.org/english/bodies/ratification/docs/DeclarationsReservationsICCPR.pdf* (October 20, 2008).
18. Human Rights Council Resolution 7/19, "Combating Defamation of Religions," March 27, 2008.
19. *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940).
20. *Ibid.* at 302–303.
21. *Ibid.* at 308–309.
22. *Ibid.* at 310.

precedence over any hurt feelings or insult that may result.

That is not to say that any and all incendiary speech is protected by the Constitution at all times. The First Amendment protects provocative and insulting speech, but not when the speaker threatens someone else with immediate violence, or attempts to induce others to imminently commit an illegal act.[23] A strict line, however, can and must be drawn between constitutionally protected free speech criticizing or insulting a particular religious denomination, and unprotected speech where the speaker plainly intends to incite immediate violence or discrimination. It is precisely that very clear line that the proponents of "defamation of religions" blur intentionally.

Those proponents seek to ban all criticism of religion regardless of context or setting. According to the OIC, insulting Mohammad or Islam is in and of itself an incitement to violence and discrimination and therefore must be banned as "Islamophobic." Any speech, book, film, or other form of expression that depicts Islam, Mohammed, or Muslims in an unflattering light constitutes "defamation."

This point was made clear in a June 2008 letter from the OIC to the U.N. High Commissioner for Human Rights wherein the OIC listed several incidents that it deemed to be defamatory to Islam, among them:

- The publication in Denmark of "defamatory" and "blasphemous" cartoons depicting Islam's prophet Mohammed,
- The release of the short film *Fitna*, which "denigrat[ed] the Holy Qur'an" and was "a major Islamophobic incident that shocked and dismayed all Muslims and the international community," and
- "[T]he unfortunate and unwarranted remarks of Pope Benedict XVI at a University in Germany on September 20, 2006."[24]

Yet none of those incidents—had they taken place in America—would be actionable under U.S. law because there was no threat that the respective audiences would be immediately incited to commit acts of violence or discrimination. The cartoons of Mohammed published in the Danish *Jyllands-Posten* newspaper in September 2005 were distributed through normal channels (by home delivery and on the newsstand), and therefore not in a manner that would incite imminent violence or discrimination against Muslims or Islam. Dutch parliamentarian Geert Wilder's short film *Fitna*—which intersperses passages from the Quran with images of terrorist attacks—was posted on a Web site and, therefore, could be viewed by anyone in the world with Internet access. Pope Benedict's 2006 speech—wherein he criticized the Muslim practice of forced conversion to Islam—was delivered to 1,500 students and faculty at Regensburg University in Germany.[25]

The act of distributing a newspaper to the public—however incendiary the content of the newspaper's articles—does not constitute an incitement to violence, much less a "clear and present danger" of causing a riot or disorder. Nor does posting a short film on a Web site constitute an "immediate threat to public safety, peace, or order." A speech delivered to an assembled audience—if it is clearly evident that the speaker intends to incite the audience to

23. *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (States may not forbid incendiary speech "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); *Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942) (States may restrict so-called "fighting words" which "by their very utterance inflict injury or tend to incite an immediate breach of the peace."); *Virginia v. Black, et al.*, 538 U.S. 343 (2003) (Court upheld statute banning cross burning where there is a specific intent to intimidate).

24. Charge d'affaires ad interim of the Permanent Mission of the Organization of the Islamic Conference to the United Nations Office at Geneva, letter to the United Nations High Commissioner for Human Rights, June 26, 2008, General Assembly document A/HRC/9/G/2, July 24, 2008.

25. Pope Benedict criticized the practice of forced religious conversion, quoting 14th-century Byzantine emperor Manuel II Paleologus who stated, "Show me just what Muhammad brought that was new, and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached." Ian Fisher, "Some Muslim Leaders Want Pope to Apologize," *The New York Times*, September 16, 2006, at *http://www.nytimes.com/2006/09/16/world/europe/16pope.html?fta=y* (October 20, 2008).

committing an immediate act of violence—may be actionable under U.S. law, but no reasonable person could conclude that the Pope's speech fell within those parameters.

Religious Balkanization

In addition to being unconstitutional, a neutral application of a "defamation of religions" law in the U.S. would be extremely difficult, if not impossible, due to America's religious pluralism. Although the overwhelming majority of Americans identify themselves as Christians, the U.S. is home to millions of Jews, Muslims, Hindus, and members of many other denominations. The difficulty of enforcing a religious speech code on a heterogeneous citizenry was hinted by Justice Reed in his concurring opinion in the *Joseph Burstyn, Inc.* case:

> In the Rome of the late emperors, the England of James I, or the Geneva of Calvin, and today in Roman Catholic Spain, Mohammedan Saudi Arabia, or any other country with a monolithic religion, the category of things sacred might have clearly definable limits. But in America the multiplicity of the ideas of "sacredness" held with equal but conflicting fervor by the great number of religious groups makes the term "sacrilegious" too indefinite to satisfy constitutional demands based on reason and fairness.[26]

That is not to say that the enactment of a "defamation of religions" law would be acceptable if the U.S. had a mostly homogeneous population.

Moreover, due to America's religious diversity, the enactment of such a law would inevitably devolve into a legal morass of competing religious grievances. It would be virtually impossible to develop a uniform, national standard for what does and does not constitute "defamation" of a certain religious denomination.

Similar to Supreme Court jurisprudence regarding obscenity, the determination of criminal prosecutions for "defamation of religions" would likely hinge on what the accepted "community standards" are in any particular locale.[27] Practically, this means that judges and juries in local and state jurisdictions across America would be empowered to determine whether a certain affront to Islam, Christianity, or any other religion is criminally actionable "defamation" or constitutionally protected free speech. A movie critical of Islam shown in Dearborn, Michigan, which has a large Muslim population, may be deemed by a local jury to "defame religion" while the same film may pass community muster in Boise, Idaho. A novel highly critical of the Church of Jesus Christ of Latter-Day Saints may be banned in Salt Lake City while becoming a bestseller in Boston.

These geographical discrepancies in religious demographics would result in a patchwork of jurisdictions across the U.S. legal landscape that are "Christian-friendly," "Muslim-friendly," "Mormon-friendly," or completely religion-free. This type of religious Balkanization is the polar opposite of the healthy assimilation of various religious minorities that has occurred in America for hundreds of years. It will not lead to better relations between people of different faiths, and may well serve to breed resentment among them.

"Defamatory" Art and Entertainment

Allowing a civil cause of action for "defamation of religions" would undoubtedly have a deleterious effect on American social and cultural life. Controversial works of "art" such as the highly objectionable photograph of a crucifix immersed in a glass of urine would most certainly be challenged in court.[28] The Mohammed cartoons published in Denmark—none of which was reprinted in a major U.S. newspaper in a shameful episode of self-censorship—would have resulted in lawsuits against the small U.S. papers that did print them.

A likely target for those prone to filing lawsuits for "defamation of religions" would be the entertainment and publishing industries. Many movies and books with religious subject matter generate great

26. 343 U.S. 495, 528 (Reed, J., concurring).

27. See *Miller v. California*, 413 U.S. 15 (1973).

28. "Piss Christ" (1989) by American photographer Andres Serrano.

public controversy in the U.S., and if there were a legal mechanism available to halt their exhibition, publication, or distribution, it is likely that some "aggrieved" party will make use of it. The distribution and exhibition of books and films deemed religiously controversial may be challenged in courtrooms across the nation:

- Christian litigants may seek to ban films like Martin Scorsese's *The Last Temptation of Christ* (1988) and *The DaVinci Code* (2006), both of which depict accounts of the life of Jesus that are not found in the Gospels.[29] The books on which those two films were based could also be banned as "defamatory" to Christianity.
- Muslim litigants may attempt to ban books such as Salman Rushdie's *The Satanic Verses* (1988), which is considered blasphemous by some Muslims and led Iran's Ayatollah Khomeini to issue a death *fatwa* against Rushdie. Films that could easily be banned include Dutch filmmaker Theo van Gogh's *Submission* (2004)—for which Van Gogh was brutally murdered by a Dutch–Moroccan Muslim in Amsterdam that same year—which ties Quranic verses to the mistreatment of Muslim women, as well as the aforementioned *Fitna* (2004).
- John Krakauer's 2003 book *Under the Banner of Heaven*—which tells the true story of a brutal murder and depicts fundamentalist as well as mainstream Mormons in a poor light—could compel American adherents to the Church of Jesus Christ of Latter-Day Saints to sue to ban the book.[30]
- Some Jews might attempt to censor Mel Gibson's allegedly anti-Semitic film *The Passion of the Christ* (2004) for its portrayal of Jews regarding the arrest, trial, and crucifixion of Jesus.[31]

For every major and minor religious denomination living in the U.S., there are books and films that portray their particular beliefs in an unflattering light. Imagine if a legal cause of action for "defamation of religions" existed in multi-religious cities, such as Detroit, Miami, and New York City—aggrieved members of each and every religious denomination that live in those cities could sue to ban films and books that they happen to find objectionable. As a result, only those movies and books free of any content even remotely critical of any religion would be safe from censorship in those large, diverse metropolises.

What the United States Should Do

Recognizing a new legal cause of action that bans insults or criticism of religion will provide no benefit to the people of the United States. While state and local law enforcement should not hesitate to condemn religious discrimination and prosecute acts of incitement to violence, the federal government should tread extremely lightly where disputes over religious doctrine are concerned. The U.S. does not need a national speech code that would restrict the First Amendment rights of Americans, no matter how offensive that speech may be to any particular religious denomination.

On an international level, the U.S. must remain wary of continuing efforts by U.N. member states to gain wider acceptance of the "defamation of religions" concept. Its proponents will continue to push the "defamation of religions" agenda at the U.N. Human Rights Council, the U.N. General Assembly, and at other international forums such as the April 2009 Durban Review Conference. Issues relating to religious intolerance—which is what the "defamation of religions" concept seeks to address—should be considered under the relevant mechanisms that already exist at the U.N.

29. See Aljean Harmetz, "7,500 Picket Universal Over Movie About Jesus," *The New York Times*, August 12, 1988, at *http://query.nytimes.com/gst/fullpage.html?res=940DE5D8153AF931A2575BC0A96E948260* (October 20, 2008).
30. See "Church Response to Jon Krakauer's *Under the Banner of Heaven*," The Church of Jesus Christ of Latter-Day Saints, June 27, 2003, at *http://newsroom.lds.org/ldsnewsroom/eng/commentary/church-response-to-jon-krakauer-s-under-the-banner-of-heaven* (October 20, 2008).
31. See Frank Rich, "Mel Gibson Forgives Us For His Sins," *The New York Times*, March 7, 2004, at *http://query.nytimes.com/gst/fullpage.html?res=9A03E6D7143FF934A35750C0A9629C8B63&scp=4&sq=passion%20of%20the%20christ%20frank%20rich&st=cse* (October 20, 2008).

The U.S. should therefore:

- **Oppose any effort to codify "defamation of religions" into U.S. law.** Any attempt to establish a criminal or civil "defamation of religions" law in the United States at the federal, state, or local level must be strongly opposed. Attempts to introduce such legislation may be incremental—notably, in May 2005, when a group of U.S. Congressmen sponsored a resolution in the House of Representatives calling for the Quran to be treated with dignity and respect.[32] Such piecemeal legislation must be closely guarded against.
- **Resist the spread of "defamation of religions" within the U.N. system.** The Bush Administration has been consistent in its opposition to "defamation of religions" resolutions at both the Human Rights Council and the General Assembly. The proponents of the "defamation of religions" concept, specifically the nations of the Organization of the Islamic Conference, will persist in introducing such resolutions at both U.N. forums in the following years. The next Administration must continue to oppose these resolutions and attempt to persuade U.S. allies who have voted in favor of past resolutions (or have abstained from voting) to change their votes to "no."

Conclusion

The idea that religious tolerance should be promoted and protected is inexorably intertwined with the founding of the United States and is deeply rooted in American custom. For that reason, American society has successfully assimilated a multitude of religious and cultural traditions over the past several centuries, while nurturing a constitutional framework that allows American citizens to express their thoughts and ideas without unreasonable constraints.

The U.S. Constitution and Supreme Court jurisprudence protect religious liberty while promoting tolerance and free speech. The introduction of "defamation of religions" laws would upset the delicate—and successful—balance that has been achieved between the free exercise of religion and free speech, both of which are protected under the First Amendment. Government intrusion into these areas is unwarranted in the absence of a compelling purpose. Protecting the hurt feelings of aggrieved members of particular religious denominations is not one such purpose.

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32. H. Res. 288, introduced by Congressman John Conyers, Jr. (D–MI), on May 19, 2005.