The fall and rise of blasphemy law

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EDITED BY PAUL CLITEUR
& TOM HERRENBERG

with a foreword by
Flemming Rose

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Preface

The troublesome state of affairs concerning freedom of expression in a world of religiously motivated terrorism ("theoterrorism") is what prompted us to edit *The Fall and Rise of Blasphemy Law*.

In today's world, we are witnessing two conflicting developments taking place with regard to freedom of expression and religion. On the one hand, we are seeing the continuation of the modernisation project. Influenced by the Enlightenment and critical thinking, laws combatting the defamation of religion (blasphemy laws) are in many parts of the Western world either abolished, or enforced to a far weaker extent in comparison with their historical counterparts. On the other hand, we are seeing a resurgence of religious fundamentalism in extreme forms. The most extreme form is the conviction that the blasphemer, heretic or apostate has to be killed.

This perplexing development gives a whole new dimension to the discussion on freedom of expression. Legal limits on freedom of expression, established by legislators and judges, are now only one part of the picture. Terrorist attacks, which cause fear and, subsequently, self-censorship, have become another part of the picture. The protection of freedom of expression now also depends on the ability of governments successfully to combat theoterrorism.

We thank the contributors to this book. We are also grateful for the two peer reviews that we have received, which have helped us improve this book. We thank the pre-eminent scholars Eric Barendt, Alan Dershowitz, Menachem Mauthner and Bassam Tibi for gracious quotations they allowed us to use as endorsements. And last but not least: we are very happy that Leiden University Press has shown great enthusiasm throughout every stage of this project. It was a privilege to work with such an excellent publisher.

Paul Cliteur and Tom Herrenberg
Leiden University, September 2016

Foreword

Blasphemy: A Victimless Crime or a Crime in Search of a Victim?

Flemming Rose

In the spring of 2015 the Danish centre-left government, with the backing of some opposition parties, decided to keep the country's 150-year-old blasphemy law on the books. It did it in spite of the fact that there had not been a single conviction for blasphemy since 1946, and against the advice of several NGOs and other civil society organisations. A proposal to abolish the blasphemy law had been put forward in 2004 when a group of Muslims wanted to take the Danish Broadcasting Corporation to court for having shown Theo van Gogh's documentary *Submission* in the aftermath of his killing. Why did the government opt for this solution?

Making the government's case, Mette Frederiksen, then the Minister of Justice and current head of the social democratic party, claimed it was a preventive measure to secure public order in the event of blasphemous outbursts. She specifically singled out burning the Bible and the Koran as blasphemous acts that keeping the law would make it possible to punish. "I cannot see how it will strengthen our society or how the public debate would be enriched by legalizing the burning of holy books," she said.

Well, I can think of a lot of speech and other things that to my mind will not benefit or enrich the public space, but does that justify criminalising them?

It is true that book burning provokes the most unpleasant associations and brings to mind terrible episodes in our history, and it is quite rightly seen as an antidote to civilisation. But say your loved ones were killed in a terrorist attack and the terrorists justified their bloody actions with quotations from a holy book, would the burning of such a book not be a quite understandable reaction to express your sense of grief and contempt?

Leaving this point aside, the Danish government was not entirely honest about the state of affairs. Of course, it did not fear violent reactions to copies of the Bible being burned in public. In fact, in 1997 the Danish evening

news, a Danish Broadcasting Corporation programme, showed a Danish artist burning a copy of the Bible while speaking about his coming exhibition at an art gallery in Aarhus, Denmark's second largest city. No death threats followed; there were just a few complaints and a call for the prosecutor to initiate a blasphemy charge. The case was dropped three months later, largely on the basis of the artist's explanation that it was a symbolic act intended to raise public debate about Christianity. In 2006 the Norwegian comedian Otto Jespersen also burned a copy of the Bible in the Christian-dominated town of Aalesund in front of rolling TV cameras. When asked to repeat his stunt with a copy of the Koran, Jespersen refused, saying that he wanted to live longer than another week.

As noted above, in 1997 Danish public broadcasting had no qualms about an artist burning a copy of the Bible on the news. In 2015 the situation was quite different when it came to showing a few cartoons of the prophet Muhammad on a late night news show on the same TV station. I was on the news show *Deadline* after the "Je Suis Charlie" day in France, Sunday, 11 January 2015, following the killing of 12 people at the satirical magazine's offices a few days earlier, to talk about the state of free speech in Europe. The magazine *Charlie Hebdo*'s encounter with the Muslim prophet and his adherents started in February 2006 with the republication of Jyllands-Posten's cartoons of Muhammed, and so for a few seconds the anchorman showed a page containing the 12 original Muhammed cartoons from my book *The Tyranny of Silence*.

It seemed relevant to the topic at hand. Nevertheless, immediately after the show the host received a reprimand from his boss and was later temporarily removed from the show. He was also criticised by some colleagues for putting them in danger, though they did not say as much in public.

So the issue driving the government's motivation to keep the blasphemy law was the holy book of a specific religion and its prophet, not holy books and prophets in general. Interestingly, the Danish government also reasoned its decision to keep the blasphemy law with a reference to possible international reactions to blasphemous speech in Denmark. The result was that religious fanatics in the Muslim world now have the power to trigger blasphemy charges in Denmark in order to demonstrate to the outside world that the government accepts their threats and violence as the most serious argument for upholding the rule of law. To me this sounds like a very paradoxical understanding of the rule of law in one of the most stable and peaceful liberal democracies in the world.

Two of the essays in this enlightening and thought-provoking anthology describe a similar line of reasoning. In November 2004, a couple of weeks after the killing of the Dutch filmmaker and provocateur Theo van Gogh, the Dutch Minister of Justice, Piet Hein Donner, proposed a revival of the blasphemy law. The logic seemed to be that if the Netherlands had had laws criminalising van Gogh's speech about Islam and Muslims then he would still be alive. In short, blame the victim and make concessions to the perpetrators of violence, then everything will be just fine.

This is one approach to the fact that "God is back," as two former editors and writers for *The Economist* put it in a book title a few years ago. It is popular, especially among Western governments and people who are willing to sacrifice freedom on the altar of diversity, to defend their stand with short-term utilitarian arguments. This highly problematic point of view is analysed and dissected in several of the essays. Another approach was proposed by the Norwegian government when, in the aftermath of the attack on *Charlie Hebdo,* it decided to repeal its blasphemy law. In promoting the abolition of the law, two members of parliament said:

> The attack on the French satirical magazine *Charlie Hebdo* in January 2015 was an attack on freedom of the press and freedom of expression. Even though the blasphemy law in and of itself does not legitimise violence, it provides support for the point of view that religious speech and symbols have a right to special protection against other kinds of speech. This embodies an unfortunate message, and it is about time that society stood up for free speech in a clear and unequivocal manner, also when it comes to religious issues.

In fact, several observers have made the point that the severe blasphemy laws in Pakistan serve as an incitement to violence against blasphemers, not as a legal instrument to secure the social peace. In Pakistan, as in several other Muslim-majority countries, blasphemy is a capital offence on a par with a terrorist attack killing hundreds of people. That is part of the reason why there are so many extrajudicial killings of blasphemers in Pakistan. When the government communicates to the public that blasphemy is more or less as evil as killing hundreds of innocent people, it should not come as a surprise that a lot of people are willing to take the law into their own hands. In 2011, Mumtaz Qadri, who worked as a bodyguard for Salman Taseer, the governor of Punjab province, killed the man he was assigned to protect because Taseer had spoken out against the blasphemy laws and defended a Christian woman

who was standing trial on blasphemy charges. Qadri was praised as a hero, even by Pakistani lawyers. He was executed in February 2016.

With this in mind, one may feel tempted to ask: might getting rid of blasphemy laws in the long run pave the way for non-violent reactions to blasphemy?

The Danish and Norwegian reactions to the attacks in Paris and Copenhagen at the beginning of 2015 represent two different approaches to free speech and its limits in a globalised world dominated by digital technology and an increasing diversity of religions and cultures. The debate about free speech and its limits can no longer be confined to homogeneous national spaces. The Danish government's decision to keep the blasphemy law due to threats and violence in countries several thousand kilometres away is a manifestation of this new world. In an important and principled essay about the Terry Jones affair—an American pastor's intention to burn a copy of the Koran and the U.S. government's reaction—Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema make the point that it may have grave, long-term consequences if liberal democracies are willing to compromise fundamental liberties like freedom of speech in order to manage the forces of globalisation. They write: "In an interconnected world, free speech cannot be studied in the isolation of a single legal order. Terrorists and extremists on the other side of the globe force restrictions on the use of free speech by a U.S. citizen, and coerce the U.S. government to intervene."

We need a serious debate about free speech in a globalised world in order to avoid ad hoc, short-term decisions to calm emotions.

I find it logical and natural that the more diverse a society becomes in terms of culture and religion the more diverse the ways in which people express themselves will be. Public confrontations regarding deeply held beliefs are inevitable if society wants to provide equal space for differing world views in a multicultural society. One has to be honest about the fact that diversity is difficult and painful if people are serious about their cultural and religious affiliations. Unfortunately, the majority of European politicians believe that cultural and religious diversity should be accompanied by less diversity when it comes to speech. They are convinced that the only way to safeguard the social peace is to accept new limitations on speech. I suspect that the pressure on free speech in Europe and beyond will grow in the coming years, and in order to understand what is going on we need historical analysis, perspective and deconstruction of the arguments favouring further limitations on speech. The volume at hand provides the reader with valuable insights.

What is blasphemy? Blasphemy is basically about transgression, about crossing the line between the sacred and the profane in ways that are seen as improper in a specific context. Blasphemy has no consistent and objective meaning independent of time and space. Definitions cover a wide range of speech depending on religious content, social norms and power relations.

Austin Dacey has identified three broad concepts in the history of legal regulation of blasphemy in the West. They have been prevalent at different times throughout history.[1] First, there is an ancient concept of blasphemy as a direct verbal affront to the divine; second, a medieval concept of blasphemy arises as a seditious challenge to the sanctity of law, public order or the common good; and, third, there is a modern notion of blasphemy as an offence against the sensibilities, rights or dignity of individual believers.

The last definition is informing current debates about blasphemy and can be difficult to separate from incitement to religious hatred. Recently, this was demonstrated in a court case in Denmark. In 2016, the city court of Elsinore convicted a man of incitement to religious hatred. He had written on his Facebook page: "The ideology of Islam is as despicable and deplorable, oppressive and anti-human as Nazism. The massive immigration of Islamists to Denmark is the most destructive thing that has happened to Danish society in recent memory. Islam wants to abuse democracy in order to destroy democracy."

The court deemed these statements to be insulting and degrading to the adherents of Islam, though to some this was not seen as an attack on individuals or a group of people but as criticism of an ideology. The man was acquitted by an appeals court, but the incident shows that it may be difficult even for professional judges to draw clear lines between blasphemy and incitement to religious hatred. This point was reinforced by another case that was unfolding at the same time, in which Denmark's prosecutor general refused to charge an imam with incitement to hatred. The day before the deadly attacks in Copenhagen in February 2015, in which a film director attending an event centred on blasphemy, art and free speech and a young Jew guarding the synagogue were killed, the imam said:

> Our Prophet had Jewish neighbours in Al Medina. Did he want closer relations, harmony and dialogue in the manner of the UN and those who want to unite truth and lies? Or did he preach that they had to

1 Austin Dacey, *The Future of Blasphemy: Speaking of the Sacred in an Age of Human Rights* (New York: Bloomsbury Academic, 2012).

> commit themselves to Allah? When they broke their promises and did not accept his call, then you know what he did to them. It says in the Sira that he went to war against the Jews. They were driven into an abyss of resignation and corruption that led them from the level of humans to the level of animals.

To make the situation even more confusing, a Danish citizen was charged with incitement to religious hatred after having burned a copy of the Koran in his backyard. He filmed the episode and posted it on Facebook with the words: "Think about your neighbour; it stinks when it burns."

I suspect that the lack of consistency and difficulties in classifying speech crimes are not confined to Denmark. They are part of a general European trend. In a chapter dealing with the history of Dutch blasphemy law, Paul Cliteur and Tom Herrenberg analyse the situation and identify a dilemma confronting Europe's liberal democracies: "What the jihadists of the twenty-first century re-introduced was the implementation of blasphemy laws by extrajudicial execution. Europe is still struggling with how to respond."

According to Cliteur and Herrenberg there are basically two ways in which multicultural democracies can react to this new situation. Either they can, as a sign of "multicultural etiquette," outlaw blasphemy and incitement to religious hatred in order to prevent intercommunal strife, and maybe even terrorist attacks. Cliteur and Herrenberg rightly see this as a futile exercise. Or they can—as the Netherlands and Norway did—revoke provisions that protect religion and religious symbols.

Nevertheless, laws against blasphemy or religious insult are still on the books in several European countries. This is of course an act of discrimination against non-believers. It seems to me that blasphemy needs legal protection as a matter of equality before the law and as a precondition for citizens' right to exercise their freedom of expression and freedom of conscience. At the height of the cartoon crisis, back in 2006, many observers, including people of a liberal persuasion, made the claim that ridiculing Islam's prophet violated Muslims' right to freedom of religion. Blasphemy was seen as giving offence to religious sensibilities, and in a time of "grievance fundamentalism" it had to be identified as a criminal offence. Or they interpreted John Stuart Mill's harm principle as holding that an individual's freedom of speech stops when it is used to hurt other people's feelings. This nonsense was repeated by serious people who should have known better. To me it indicated a frightening lack of understanding of the basic principles of a free society.

A few countries have changed their laws in order to make it clear that they cover both religious and secular sensibilities so that they provide legal recourse to those of secular persuasions as well. That is an improvement, but the danger is that it will trigger further limitations on speech along the lines of "if you respect my taboo, I will respect yours." If it is illegal to mock the Christian faith it should also be illegal to mock secular ideologies like Marxism and liberalism. This has been the case with memory laws. Laws criminalising Holocaust denial have been followed by laws criminalising the denial of the crimes of communism.

The volume at hand makes a convincing case against the West's concessions to religious fundamentalism over the course of almost four decades. They started in 1980 with an almost forgotten documentary about the execution of a young Saudi princess and her lover for adultery. Back then the Saudi government, with the help of Western governments and oil companies, succeeded in convincing a lot of people that broadcasting the documentary would be an affront to Muslims. My own government and the Danish Broadcasting Corporation caved in to the intimidation and cancelled the broadcast of *Death of a Princess*. The arguments and intimidation employed then were very similar to those used during later confrontations: Yes, we have free speech, but speech has to be responsible, and this is irresponsible. Why insult other people's religious feelings? Yes, we have our values, but they have theirs, and it is not up to us to pass any judgement on them. Violence has nothing to do with Islam, and so on and so forth. The arguments were repeated after the fatwa against Salman Rushdie in 1989, after the killing of Theo van Gogh in 2004, during the cartoon crisis in 2006, after the killings at *Charlie Hebdo*, and in Copenhagen in 2015. The list goes on and on.

Paul Cliteur, Laetitia Houben and Michelle Slimmen sum it up this way:

> Instead of upholding and defending the values European governments have enshrined in their human rights treaties and constitutions, they give in to the unreasonable demands of dictatorships. In the long run this attitude may prove suicidal, and democratic governments should perhaps do some soul searching on how to uphold democratic values in the future.

Indeed.

1 General Introduction

Paul Cliteur & Tom Herrenberg

This volume centres around two trends that are currently influencing freedom of expression. The first trend is the fact that many Western countries have become, over a long period of time, less strict about sacrilegious expression—many repealed their blasphemy laws or became less harsh in their punishment of blasphemy. Hence "the fall of blasphemy law." The second trend goes in the opposite direction. Over recent decades, Western societies have witnessed multiple attempts to suppress speech that defames religion. Hence "the rise of blasphemy law." A particularly vicious way of re-energising the suppression of blasphemy came from radical believers seeking to remove blasphemy from the public domain by violent means. Examples include Ayatollah Khomeini calling for the death of British novelist Salman Rushdie in 1989, the murder of Dutch filmmaker and polemicist Theo van Gogh in 2004, and the murders of *Charlie Hebdo* staff members in Paris in 2015.

In all these cases, Islamists took the law into their own hands to deliver harsh worldly punishments for blasphemous speech in the West, or encouraged others to do so (Khomeini). According to Khomeini, Rushdie had written a blasphemous novel for which he and others involved in the publication had to be executed. The reason for the murder of Theo van Gogh was, in the words of his killer Mohammed Bouyeri, that Van Gogh "had offended the Prophet. According to the law he deserved the death penalty, and I have executed it. … Theo van Gogh considered himself a soldier. He fought against Islam. On 2 November 2004, Allah sent a soldier who slit his throat."[1] The two brothers who attacked the offices of *Charlie Hebdo*—the magazine that had featured caricatures of the prophet Muhammad a number of times—wanted to "avenge the prophet."[2]

1 Gerechtshof Den Haag (The Hague Court of Appeal), 23 January 2008.

2 http://www.bbc.com/news/world-europe-30710883.

Besides terrorism, there have been non-violent attempts to suppress free speech. These include the resolutions tabled at the United Nations aimed at banning "defamation of religion," and pressure from Saudi Arabia to censor the airing of the documentary *Death of a Princess* on Western media outlets in the early 1980s.

Whilst this "rise of blasphemy law" is a relatively modern trend in Western societies, so is the "fall of blasphemy law." For many centuries, speaking ill of objects of religious veneration got people into serious trouble, even before the advent of monotheism. One of the best-known trials in history occurred centuries before the birth of Christianity, when Greek philosopher Socrates (c. 470–399 BC) stood trial—which resulted in him being forced to drink hemlock—for questioning the accepted gods of Athens. The charge of "impiety" levelled against Socrates, which "signified shocking and abhorrent ideas about religion"[3] to the Greeks, had been made earlier against Socrates' brother-in-arms, the Greek military commander Alcibiades (c. 450–404 BC). His run-in with the authorities is recounted as follows by the historian Leonard W. Levy:

> In 415 BC, when Athenians were preparing an expeditionary force against Sparta, the city awoke one morning to an appalling discovery: nearly every statue celebrating Hermes, son of Zeus, the king of gods and men, had been desecrated during the night. Impiety on so vast a scale seemed the work of a conspiracy. The event was taken as a bad omen for the expedition and for the survival of Athenian democracy. Informers, responding to offers of rewards, implicated Alcibiades, and further investigation uncovered a second crime of impiety. If the first was comparable to smashing statues of the Madonna in all the religious shrines in a Catholic town during the Middle Ages, the second was comparable to a Black Mass. One night when the spirits had been high and the flagons low, according to informers, Alcibiades had led a blasphemous parody of the sacred Eleusinian Mysteries, which honoured Demeter, the earth goddess. Impersonating the high priest, Alcibiades had revealed and mocked the secret rites.[4]

3 Leonard W. Levy, *Blasphemy: Verbal Offenses Against the Sacred, from Moses to Salman Rushdie* (Chapel Hill & London: The University of North Carolina Press 1993), 31.

4 Ibid., 5.

Alcibiades was sentenced to death in absentia but went to Sparta before the sentence could be delivered.

While crassly insulting religion is still prohibited in Greece 2.500 years later, the penalties are far less severe.[5] Many other Western countries have also softened their approach to combatting blasphemy. Some countries even went all the way and decriminalised blasphemy altogether. Examples include England, which abolished the common law offences of blasphemy and blasphemous libel in 2008, and the Netherlands, which repealed the three provisions prohibiting blasphemy in the Criminal Code in 2014.[6] This is in line with recommendations of the Venice Commission—the Council of Europe's advisory body on constitutional matters—made on the subject of blasphemy laws in 2008: "the offence of blasphemy should be abolished … and should not be reintroduced."[7]

On the global level, human rights protecting freedom of expression also push in the direction of the decriminalisation of blasphemy *simpliciter*. The current United Nations Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (*b*. 1958), stated that "In the human rights framework, respect always relates to human beings … The idea of protecting the honour of religions themselves would clearly be at variance with the human rights approach."[8] A workgroup comprised of international experts brought together by the Office of the United Nations High Commissioner for Human Rights argued that "States that have blasphemy laws should repeal these as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion."[9] Lastly, the Human Rights Committee—the body that monitors implementation of the International Covenant on Civil and Political Rights—holds that "Prohibitions of displays

5 See arts 198 and 199 of the Greek Criminal Code. A recent blasphemy trial took place in 2014, when a Greek man named Filippos Loizos created a page on social networking website Facebook in which he satirised a deceased Orthodox monk. He was sentenced to 10 months in prison. See "Man sentenced to jail in Greece for mocking monk," *Reuters News*, 17 January 2014.

6 See also (partially outdated) *Blasphemy, Insult and Hatred: finding answers in a democratic society* (report) (Luxembourg: Council of Europe Publishing, 2008), 19.

7 Ibid., 32.

8 *Report of the Special Rapporteur on freedom of religion or belief*, 2013, U.N. Doc. A/HRC/25/58, para. 33.

9 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 2012, 5.

of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant …"[10]

INDIRECT BLASPHEMY LAWS

Thus far we have mentioned two trends regarding blasphemy. The first is the decline of blasphemy laws in the West. The second is the de facto revival of bans on blasphemy by radical believers, and political pressure on Western states and international fora to censor blasphemy. Yet there is another way in which the suppression of blasphemy can be revived, namely via an extensive interpretation of laws against "group defamation" or "inciting hatred." Such laws are a common feature of the regulation of public discourse in most advanced democracies—the United States being a notable exception. Laws of this type are different from straightforward blasphemy laws, which are generally speaking directed at protecting religion and religious symbols as such instead of a group of people. Nonetheless, they may, when extensively applied, have the effect of stifling criticism of religion and thus function as "indirect" blasphemy laws.

In 2002, French novelist Michel Houellebecq (*b*. 1956) was prosecuted for stating that Islam is "the most stupid religion" and that the Qur'an is "badly written." Houellebecq was charged with "inciting religious and racial hatred" but acquitted.[11] In the Netherlands a defamation trial took place for the displaying of a poster that read, inter alia, "Stop the tumour called Islam." After the defendant was convicted by both the trial court and the appellate court of "defamation of a group of people on the basis of their religion," the Dutch Supreme Court eventually acquitted him in 2009.[12]

A recent example of these types of cases is that about the German-Egyptian political scientist Hamed Abdel-Samad (*b*. 1972). Abdel-Samad has published a number of works, partly autobiographical, about Islam and Islam-related topics.[13] Some of what he has said and written has led

10 Human Rights Committee, General comment no. 34, U.N. Doc. CCPR/C/GC/34, para. 48.

11 "Calling Islam stupid lands author in court," *The Guardian*, 18 September 2002; "Author Charged for Islam Remark Is Acquitted," *The New York Times*, 23 October 2002.

12 Hoge Raad (The Dutch Supreme Court), 10 March 2009.

13 Abdel-Samad, Hamed, *Der Islamische Faschismus: Eine Analyse* (Munich: Droemer Verlag, 2014); Abdel-Samad, Hamed, *Islamic Fascism* (Amherst, NY: Prometheus Books, 2016); Abdel-Samad, Hamed, *Der Untergang der islamischen Welt: Eine Prognose* (Munich: Droemer Verlag, 2010); Abdel-

to considerable controversy. In 2013 he went into hiding after receiving death threats over a speech he had given in Egypt. In the speech Abdel-Samad had criticised radical Islam and Egypt's Muslim Brotherhood, and accused them of spreading "religious fascism."[14] His book "Mohamed. A settlement"—*Mohamed. Eine Abrechnung*—also sparked controversy. In the book, published in 2015, Abdel-Samad not only writes that Islamism is a "fascist ideology," he also calls the prophet Muhammad a "mass murderer and a sick tyrant."[15] In an interview with German television channel *Das Erste*, Abdel-Samad argued that "Muhammad is not questioned by Muslims, he is mystified and elevated. And I believe that it is time for a settlement."[16] He wanted to "create more commotion," Abdel-Samad explained. "It's time that Muhammad is discussed as a person. Muhammad died 1.400 years ago, but he isn't really buried. He lies in his coffin and rules from his coffin. He holds power over our present world."[17] Abdel-Samad argued that he wanted to normalise criticism of Islam and Muhammad, and he hoped that no author would have to fear for his life for such criticism.[18]

Abdel-Samad faced a legal backlash over the book. A complaint was filed for *Volksverhetzung*, which is prohibited under section 130 of the German Criminal Code, and Abdel-Samad was interrogated by the Berlin public prosecutor.[19] The crime of *Volksverhetzung*—"incitement to hatred"—can be

Samad, Hamed, *Krieg oder Frieden: die Arabische Revolution und die Zukunft des Westens* (Munich: Droemer Verlag, 2011); Abdel-Samad, Hamed, *Mein Abschied vom Himmel: Aus dem Leben eines Muslims in Deutschland* (Munich: Knaur Taschenbuch Verlag, 2009).

14 "German author in hiding after receiving Islamist death threats," *Deutsche Welle*, 11 June 2013.

15 See Michael Wolffsohn, "Der Islamkritiker als Volksverhetzer?," *Die Welt*, 16 March 2016, available at: http://www.welt.de/debatte/kommentare/article153357890/Der-Islamkritiker-als-Volksverhetzer.html.

16 "Der Prophet Mohammed – eine Abrechnung von Hamed Abdel-Samad," available at: http://www.daserste.de/information/wissen-kultur/ttt/sendung/sendung-vom-20092015-120.html.

17 Ibid.

18 Ibid. In 2012, during the violent aftermath of the *Innocence of Muslims* video in which the prophet Muhammad is depicted in a derogatory way, Abdel-Samad said that "Muslims have to learn over time that the Prophet Muhammad does not just belong to them, but he's part of the history of humanity. Not everyone sees the prophet the way a faithful Muslim sees him": see "Violence in the name of Allah," *Deutsche Welle*, 13 September 2012.

19 Michael Wolffsohn, "Der Islamkritiker als Volksverhetzer?," *Die Welt*, 16 March 2016, available at: http://www.welt.de/debatte/kommentare/article153357890/Der-Islamkritiker-als-Volksverhetzer.html; "Anzeige gegen Hamed Abdel-Samad. Islamkritik = Volksverhetzung?," available at: http://hpd.de/artikel/islamkritik-volksverhetzung-12840.

found in the "Offences against public order" chapter of the German Criminal Code. The first subsection of the article reads as follows:

> Whosoever, in a manner capable of disturbing the public peace (1) incites hatred against a national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population or calls for violent or arbitrary measures against them; or (2) assaults the human dignity of others by insulting, maliciously maligning an aforementioned group, segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population, or defaming segments of the population, shall be liable to imprisonment from three months to five years.[20]

In March 2016, German historian Michael Wolffsohn (*b*. 1947) wrote an article in the magazine *Die Zeit* about Abdel-Samad. In his article, Wolffsohn defends Abdel-Samad against the *Volksverhetzung* allegation. Wolffsohn points to article 5 of the German Constitution, which prescribes that everyone has "the right freely to express and disseminate his opinions in speech, writing and picture" and that "arts and sciences, research and teaching shall be free." Will the Berlin prosecutor, of all people, violate the constitution? Wolffsohn asks.

Unsurprisingly, the allegation also frustrated Abdel-Samad. He posted some of his grievances on his Facebook page.

> How is it possible to measure *Volksverhetzung*? If one counts the number of heads that will be cut off because of my book, the number will be zero. Nobody will be expelled nor will anyone lose his job as a result of my book. … In the Islamic world, critics of Islam have to take the death penalty, imprisonment, and lashing into account. In Europe they have to fear radical Islamists. They are unwanted by politicians, or at least 'not helpful.' They are bullied, defamed, and criticised by the left-wing and dialogue professionals. The fact that the German justice system also takes part in these sanctions, is, to me, a scandal![21]

20 See https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

21 Quoted in: Michael Wolffsohn, "Der Islamkritiker als Volksverhetzer?," *Die Welt*, 16 March 2016, available at: http://www.welt.de/debatte/kommentare/article153357890/Der-Islamkritiker-als-Volksverhetzer.html.

We believe cases such as those of Houellebecq and Abdel-Samad are problematic. Our evaluation of powerful historical symbols, whether economic, political or religious in nature, must be uninhibited. The fact that Abdel-Samad, if prosecuted, might be acquitted, as was the case with Houellebecq, does not alter this. Interrogations and prosecutions are, regardless of their outcomes, burdensome and can potentially have serious "chilling effects" on public expression about religion. In a truly inclusive society that values plurality of opinion, the state has to treat those who praise religious symbols the same as those who despise them. Suppression of blasphemy, whether directly via blasphemy laws or indirectly via the application of laws against "group defamation" or "incitement to hatred," erodes that inclusiveness and plurality.

OUTLINE OF THIS VOLUME

With contributions from scholars in a range of disciplines, this volume seeks to offer an examination of topical issues relating to freedom of expression, censorship and blasphemy in contemporary multicultural democracies.

Chapter 2 examines the history of blasphemy in the West from the medieval period. It finds blasphemy significantly overshadowed by the medieval church's focus upon heresy. By the eighteenth century punishments for the crime had been relaxed and the whole offence was suddenly problematised by the ideological consequences of both the American and French revolutions. From here until well into the modern period high-profile court cases attracted the attention of both reformers and the media, leading to a significant questioning of the state's right to, and justification for, legislating on matters that amounted to individual religious conscience. By the end of the third quarter of the twentieth century most blasphemy laws in the west were considered anachronisms that would inevitably pass away very soon. This view was starkly disturbed by demands from non-Christian religions within the West's now plural societies—ones which increasingly had their legal autonomy curbed or removed by much larger legal frameworks. This chapter then argues that this new development systematically introduced a tension within Western social democracies between guaranteeing freedom of speech and protecting vulnerable minorities. From this tension blasphemy law became entwined with new legal thinking around the concept of hate crime and new pieces of legislation emerged which often conflated the two. The chapter concludes by discussing the history of this development alongside

calls for its revoke as offering an unenvisaged incentive and precedent for other nations to reimagine and potentially reconstruct blasphemy laws of their own.

Chapter 3 describes the history of blasphemy under the English common law from its development by the courts in the seventeenth century, through its apparent liberalisation in the nineteenth century to its eventual abolition by Parliament in 2008. However, as Ivan Hare points out, that seemingly linear progress towards greater protection for freedom of expression on religious matters masks a much more complex story: a story in which the breadth and flexibility of the definition of blasphemy were used to bring prosecutions against disfavoured groups and against important works of literature and political philosophy. Hare argues that much of this complexity derives from the failure for 300 years to question the original normative foundation of the law. The chapter concludes with a discussion of whether it is possible to regard the recently enacted offences of stirring up religious hatred as a modern successor to the law of blasphemy.

Chapter 4 discusses the Dutch blasphemy law that was in the Criminal Code from 1932 until 2014. The minister of justice who drafted the blasphemy law was incredibly upset by attacks on the Christian God and Jesus by communists. The law drafted to combat these attacks criminalised "scornful blasphemy in a manner offensive to religious feelings." The first decades of the law's existence saw prosecutions and convictions for blasphemous utterances, yet in the 1960s Dutch novelist Gerard Reve's trial, over two passages in which he described sexual acts between God and a donkey, reduced the law's power. Later "blasphemers," most notably Theo van Gogh, did not have much to fear from the Dutch Prosecution Service, but rather from radical Islam. The chapter also discusses events surrounding Van Gogh's death.

Chapter 5 looks at the pressure exerted by Saudi Arabia to censor the airing of the documentary *Death of a Princess* on Western television in the early 1980s. This documentary was based on the true story of Princess Masha'il Bint Fahd Al Saud, a 19-year-old Saudi Princess who was, together with her lover, publicly executed for adultery. After a description of the film's content, the chapter elaborates on the attitude Western political leaders adopted in dealing with the diplomatically sensitive issue of (not) airing the film.

Chapter 6 deals with what might be considered the *locus classicus* of the modern era of Westerners being threatened by radical believers for blasphemous expression: the publication of Salman Rushdie's novel *The*

Satanic Verses in 1988 and Khomeini's death threat that followed in 1989. This chapter discusses some of the criticism that has been levelled against Salman Rushdie for writing his book.

Chapter 7 discusses the burning of the Quran by American pastor Terry Jones in light of one of the best-known quotations about free speech: "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind" (John Stuart Mill). With Jones, we have such an extremely unpopular opinion that virtually "all mankind minus one" objected to it. The chapter explores the free speech controversies and dilemmas this real-life "mankind minus one" situation gives rise to.

Chapter 8 is about the international dimension of blasphemy, in particular the so-called United Nations "defamation of religion resolutions." The adoption of these resolutions was pushed for by the Organisation of Islamic Cooperation. Contrary to human rights standards, these resolutions were aimed at protecting religion and religious symbols as such. The chapter discusses the background of these resolutions and their relationship to international standards of freedom of expression.

Chapter 9 focuses on a number of social developments concerning multiculturalism and blasphemy in England. The chapter discusses, inter alia, the difference between social responses to blasphemy directed at the Christian religion and those directed at other religions. While responses to the 1979 religious satire comedy film *Life of Brian* were largely supportive of artistic expression, in cases of non-Christian blasphemy freedom of expression was trumped, due to the ideology of "multiculturalism," by the importance of protecting ethnic minority sensibilities. The chapter concludes by arguing that the threat of censorship on the grounds of blasphemy remains imminent in England, not for legal reasons—the English law of blasphemy having been repealed in 2008—but because of academia and popular media engaging in self-censorship, out of either fear of violence or the fear of offending minority sensibilities.

We would like to emphasise that the chapters differ in both content and style. Generally speaking, chapters 2, 3 and 4 present legal and historical analysis of blasphemy laws, while other chapters look at blasphemy and censorship from a cultural or international perspective, or discuss moral and political dilemmas that blasphemous expression can give rise to. We believe that this multi-level approach is a strength rather than a weakness.

Nonetheless, all contributions are concerned with the issues of freedom of expression and blasphemy.

The chapters on the development of blasphemy law in modern times indicate that, contrary to what is commonly assumed, suppression of blasphemy is not in decline but on the rise, albeit not always under the explicit name of "blasphemy law." Common epithets are "incitement to religious hatred," "defamation of religion," and other new concepts that are being used to stifle freedom of speech, especially the freedom to criticise religion. These chapters also try to demonstrate that the contemporary decline (or "fall") of free speech (and concomitant "rise" of blasphemy law) is intimately connected with terrorist attacks on those who exercise their right to free speech. The Rushdie affair, the Danish cartoon controversy and the murders of the *Charlie Hebdo* staff are the best-known examples of this phenomenon, but, as this book makes clear, some other incidents are also an important part of the context of this development.

We are fully aware that some readers might find some chapters in the book (*i*) a little polemical or (*ii*) supportive of a "radical" conception of free speech. Let us comment on both of these interpretations.

First, we have tried not to be polemical in the sense that nowhere do we polemicise against other authors. Instead, we want to present historical material that is largely unknown, and the relevance of which has not been fully grasped. For example, no one could have missed the attack on *Charlie Hebdo*, but the fact that as early as 1980 Western governments were under severe pressure not to broadcast a film about the Saudi royal family is largely forgotten (see chapter 5 on *Death of a Princess*).

Second, these chapters may be interpreted as taking a more "radical" stance on free speech than most authors do. As editors we do not subscribe to this view. We do not advocate a more "radical" conception of free speech, but the maintenance of a conception that was common in the seventies and eighties of the twentieth century (see for example the *Handyside* case of 1976, in which the European Court of Human Rights stated that free speech was also applicable to expression that "offends, shocks and disturbs"). There is nothing "radical" in the idea that a novelist can publish a novel that some religious believers might consider blasphemous, insulting or offensive. What might be considered "radical" is the slow and hardly noticed erosion of these civil liberties in our time.

2 Blasphemy and the Law: The Fall and Rise of a Legal Non Sequitur

David Nash

ORIGINS OF A CONCEPT

Blasphemy as an offence originates most readily and successfully within cultures where the prevailing faith can be described as a religion of the book. Judaism, Christianity and Islam all possess very strong conceptions of blasphemy and the specifics of how their monotheistic worlds conceive the offence. The success of the concept may well rely upon the fact that religions of the book are religions that codify, prescribe, proscribe and enact. In other words, the fundamental basis of their faith rests on a series of laws motivated by a mixture of sacred pronouncement, or the development of custom based upon such pronouncement. Cursing or reviling the Gods was outlawed because it offended both the deity concerned and the social and cultural peace of communities within the ancient world. In many instances this was also linked to a sense of immanent providence whereby the community and its laws were under pressure to act or forms of harm were in danger of being visited upon the community.[1]

The footprint of these laws is easily traceable within such religions of the book, and their impact is well known and reasonably well researched.[2] Thus it is not the function of this chapter to revisit this early development of such laws. Suffice it to say that many aspects of this early conception survived well into the early modern period and in many cases beyond. This chapter is primarily concerned with tracing the development of the laws against blasphemy into modern times—in short, to chart its progressive fall up to

1 Leonard Levy, *Blasphemy and Verbal Offense Against the Sacred: From Moses to Salman Rushdie* (New York: Knopf, 1995), 3–8.

2 See, e.g., Leonard Levy, *Treason Against God: A History of the Offense of Blasphemy* (New York: Schocken Books, 1981), 3–102 traces the origin of the law up to the heyday of medieval heresy.

the end of the twentieth century and then investigate its rapid rise after this date.

The precise history of blasphemy within the world of Christendom in the medieval period can appear opaque because it was, in this period, something of a subordinate concept. Although laws against blasphemy and heresy were both enforcing forms of discipline, it was the latter's focus upon religious orthodoxy which became more important than the former's prescription of mocking God and his powers. Thus through the medieval period the Papal Inquisition and often the secular arm of primitive states were engaged upon the pursuit of heretics and their webs of association and belief. Many historians note their proliferation and their self-sustaining power, which was often based on the growing literacy of certain groups within society.[3] Campaigns against heresy also intensified and grew more serious as perceptions of new heretical groups as more deeply organised and committed began to circulate. This also stood in contrast to the blasphemer, who was almost exclusively conceived of as an isolated individual, and the focus upon organised groups of religious dissidents further downgraded the importance of the blasphemer. Most obvious in Europe were the concerted campaigns against heretical groups such as the Albigensians, Bogomils, Waldensians and Cathars that ranged across regions and borders of western Europe. The Inquisitions that pursued them were largely composed of individuals from the Dominican Order, which stressed the importance of theology as arguably more important than the interpretation and application of the law.[4] Likewise such actions were replicated in England in pursuit of close-knit heretical groups such as the Lollards. All served to push blasphemy as an offence further into the shadows.

Nonetheless we do encounter blasphemy in some accusations and charges laid against individuals in the medieval period. Very often these appear as additional or adjunct charges in amongst a number of other accusations. Thus they were significant only as afterthoughts or as part of what we might describe as a basket of offences that instead place focus upon the general offensiveness of the individual rather than a deep realisation of blasphemy as a pernicious evil. The influence of Aquinas was quite important in

3 Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation* (Oxford: Oxford University Press, 1992), 26–30.

4 Henry Asgar Kelly, "Inquisition and the Prosecution of Heresy: Misconceptions and Abuses," in Henry Asgar Kelly, *Inquisitions and Other Trials in the Medieval West* (Aldershot: Ashgate, 2001), 439–451, 451.

bringing blasphemy further forward into the picture, and his work was instrumental in theorising it as an errant faith-based position that sought to undermine the honour of God.[5] This conception of the honour of God also had a distinctive social use that persuaded municipalities to enact sanctions against blasphemy. The power of religious oaths began to be of increasing importance as commerce developed in the city states of Northern Europe. As such, blasphemy served to cheapen these guarantees of trust and thus undermined their power, currency and validity.[6] These really commenced with the Town Ordinances and Privileges of Vienna of 1221 but were then followed by the laws of Frederick II in 1231.[7]

This growing aspect of state involvement meant that the partnership between church and state that had commenced with heresy was continued into the greater seriousness with which blasphemy was coming to be treated. This became evident in a number of statutes that began to appear in the middle of the thirteenth century. In France, the monarchy's comparatively long involvement in curtailing blasphemy commenced with Louis IX's statute of 1263. This initiative gathered pace with subsequent action against blasphemers in the Low Countries, Spain and parts of Germany.[8] It was almost ubiquitous that the punishments for such crimes were various species of physical mutilation or humiliation and sometimes both. This further served to highlight the individuality of the culprit and the comparative rarity of the offence, alongside an emphasis which placed this miscreant individual outside of society, however briefly.

Another feature of this time which unwittingly brought blasphemy more readily to the attention of the Church and local governing agencies was the late medieval fashion for lay confraternities. These were organised groups in regions and localities who were tasked with scrutinising and overseeing the practices of piety and orthodoxy in their community.[9] The evidence that they

5 Leonard Levy, *Blasphemy and Verbal Offense Against the Sacred: From Moses to Salman Rushdie* (New York: Knopf, 1995), 51–53.

6 Carol Lansing, *Power and Purity: Cathar Heresy in Medieval Italy* (Oxford: Oxford University Press, 1998), 166–167 and John Marshall, *John Locke Toleration and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2006), 231–232.

7 Gerd Schwerhoff, *Zungen wie Schwerter: Blasphemie in alteuropäischen Gesellschafen* (Konstanz, 2005), 300.

8 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 151.

9 Gerd Schwerhoff, *Zungen wie Schwerter: Blasphemie in alteuropäischen Gesellschafen* (Konstanz, 2005), 300.

came back with was potentially shocking and convinced many that bringing orthodoxy deeper into the lives of their local fellow Christians was almost tantamount to a new crusading impulse. The watchword of this impulse and its explicit intention was the restoration and maintenance of discipline. This remained a paramount consideration until well into the eighteenth century, although interpretation of it could be protean in both its conception and interpretation. With a premium on this sense of discipline and conformity, blasphemy was conceived of as a species of indiscipline, and this was arguably enhanced by several of the fissures which sprang out from the Reformation. Many of the instances of indisciplined blasphemy that the Reformation world uncovered, when not outbursts of simple anger and frustration, were frequently associated with either drink or gambling. Individuals whose reason had been impaired by alcohol frequently despoiled religious relics or statues or sought to command the almighty to do their bidding; this simultaneously broke the peace of the community and introduced the concern associated with providential judgement upon the community as a result. Gambling was also a common area where accusation of blasphemy originated, with individuals either commanding the almighty to provide them with luck or cursing him remorselessly for withholding apparently much needed good fortune.[10]

THE REFORMATION AND RELIGIOUS LAW

Leonard Levy has noted in particular that the Reformation was a catalyst for changing perceptions of blasphemy. Luther in particular lighted on blasphemy as a concept and accusation that he could use in his dialogues and disputations with the orthodox Catholic position, which appeared idolatrous. Rejuvenating the conception of this offence was also a method of avoiding the use of the more ideologically problematic term of heresy—an accusation and conception that Catholicism was itself dangerously cognizant of and

10 For instances of blasphemy whilst under the influence of alcohol see Francisca Loetz, *Dealings with God: From Blasphemers in Early Modern Zurich to a Cultural History of Religiousness* (Farnham: Ashgate, 2009); M.R. Baelde, *Studiën over Godsdienstdelicten (The Hague: Martinus Nijhoff, 1935)*, 137; Thomas Brennan, *Public Drinking and Popular Culture in Eighteenth-Century Paris* (Princeton, NJ: Princeton University Press, 1988), 74. For gambling see Javier Villa-Flores, *Dangerous Speech: A Social History of Blasphemy in Colonial Mexico* (University of Arizona Press).

experienced in implementing.[11] Certainly Francisca Loetz and others have also detected a renewed interest in blasphemy in other "reformed" religious societies. What often emerges from this work is that authorities in cities like Geneva and Zurich displayed a fairly stringent attitude to the offence, even if their attitude to punishing those accused and convicted could vary according to individual circumstances, location, and over time.[12]

Meanwhile the Catholic world of the Counter-Reformation, particularly after the Council of Trent, made the individual the growing focus of attention, and this, likewise, went along with a revitalisation of the Church's approach to blasphemy and laws against it.[13] This might be seen as a perhaps logical reaction to the Catholic Church's belief that the sacred was in danger of being profaned precisely at the time when it seemed to require the most veneration. One method of disseminating this view was to reiterate that orthodoxy and correct observance should be ingrained in institutions and family structures.[14] This further associated dissenting and undisciplined behaviour with the errant personalities of individuals.

DISCIPLINE AND PUNISH?

The quest for a disciplinary ethos also crept further up the priorities of authority and governance which showed a renewed interest in curbing blasphemy that, thereafter, preoccupied the increasingly sophisticated early modern state. As the sixteenth century wore on the pace of legislation quickened. France enacted no fewer than fifteen separate statutes in the sixteenth century, with analogous developments also occurring in Spain. It is interesting that Venice constructed its own legal tribunal specifically to hear blasphemy cases.[15] Perhaps this particular innovation recognised this city's foreboding sense of providential menace brought on by a range of factors, including its potential political weakness and location, which left it

11 Leonard Levy, *Blasphemy and Verbal Offense Against the Sacred: From Moses to Salman Rushdie* (New York: Knopf, 1995), 60–61.

12 Francisca Loetz, *Dealings with God: From Blasphemers in Early Modern Zurich to a Cultural History of Religiousness* (Farnham: Ashgate, 2009), especially Parts II and III.

13 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 151.

14 John Bossy *Christianity in the West* (Oxford: Oxford University Press, 1985),155-156.

15 Elizabeth Horodowich, "Civic Identity and the Control of Blasphemy in Sixteenth Century Venice", *Past and Present*, 181 (2003) 3.

vulnerable to everything from plague to potentially disastrous invasion and conquest.

The interest of government, authority and individual courts further draws our attention to a fundamentally important public order dimension which became an adjunct to the Church's search for orthodoxy and disciplined religious observance. The state's interest in providing communal punishments which were shared, either by passive observance of their instigation or their aftermath, became a part of this process. Thus shaming punishments, many involving public penance dressed in specific shame-ridden garments or devices (such as wooden barrels), showed the consequences of indiscipline to the whole community. The often used disfiguring punishments, which maimed the tongue, cheek, ears or lips, provided a constant reminder to the community of the past lapses of its errant individuals.[16]

Both public order concerns and a lingering sense of the providential also saw states enact military and naval ordinances which specifically aimed at preventing blasphemous utterances within such institutions.[17] Again public order and discipline were paramount in creating a functioning institution. Yet the providential dimension was present in the recognition that soldiers and sailors were placed in perilous and unforgiving situations where they conceivably felt themselves to be at the mercy of divine judgement.[18] Looking at this whole movement towards greater cultures of disciplined orthodoxy has led some historians, such as Alain Cabantous, to suggest that this constituted an attack upon a more coherent vibrant culture of plebeian blasphemy. The attitudes of authority were aimed at belittling and minimising the coherence of this culture whilst also obviously seeking to marginalise it.[19]

The English reformation, with its sudden, much closer connection between religious orthodoxy and the state, further enhanced the importance of enforcing forms of discipline.[20] Older heresy laws were strengthened by an Act of 1533 and a subsequent statute in 1547 which sought to protect the sacrament from abuse. A defining moment came towards the end of the

16 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 153–154. See also Richard Van Dulmen, *Theatre of Horror: Crime and Punishment in Early Modern Germany* (trans. Elisabeth Neu, Cambridge, 1990), 155.

17 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 115.

18 Ibid., 115–116.

19 Alain Cabantous, *Blasphemy: Impious Speech in the West form the Seventeenth to the Nineteenth Century* (New York: Columbia University Press, 1998), passim.

20 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 157.

subsequent century for both blasphemy and the state's role as a regulatory authority charged with ensuring conformity and discipline. Whilst the Commonwealth period had seen a systematic extension of religious toleration, it had nonetheless witnessed religious dissidents that had pushed the boundaries too far.[21] The political and ideological ferment of these times meant that decisions about what to do with such people were manifestly less than clear-cut, and individuals like Best and Biddle languished in gaol whilst their potential fates were debated at length in Parliament.[22] The resolution of both these cases did not indicate a clear policy or direction of thought.

This only really came in 1675 with a groundbreaking judgement in the case against James Nayler. The judge, Sir Matthew Hale, pronounced that Nayler's blasphemies should be dealt with relatively harshly because attacks upon religion were attacks upon the law and the state.[23] His famous phrase argued that religion was "part and parcel of the laws of England," and that to attack one of these facets was implicitly to attack the other. Again such ideas also contain a submerged public order dimension. This series of sentiments became enshrined in the English blasphemy statute of 1698 (9 & 10 William c. 32) which made provision for progressive punishments, finally prescribing capital punishment for a third offence.[24]

This law and its provisions were also a manifestation of anxieties about the security of the kingdom and good order alongside a still lingering strand of providentialism. This heady mixture of concerns and feelings had also been evident in the trial and execution of Thomas Aikenhead in Scotland in 1697.[25] Although this statute was not used successfully, it was readily invoked, and its provisions served to threaten both individuals and religious groups whose doctrines (such as those of anti-trinitarian groups) were now perceived to exist in opposition to the Church as it had been established by law. This last aspect was important because the statute gave primacy of place to the established church and its doctrines and, in the mind, arguably made other religious doctrines capable of being regarded as blasphemous.

21 David Nash, *Blasphemy in Britain 1789 to the Present* (Aldershot: Ashgate, 1999), 27–28.

22 Ibid., 28–29.

23 Ibid., 29–30.

24 Courtney Kenny, "The Evolution of the Law of Blasphemy," in *Cambridge Law Journal* 1 (1922) 127 at 132.

25 M.F. Graham, *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment* (Edinburgh: Edinburgh University Press, 2013 edn.).

Although the injustice of this would be cited by some defendants, no successful prosecutions were brought under this statute.[26]

What functioned in its place was the Common Law offence of blasphemous libel. This particular provision eventually had considerable influence, and this can be readily seen in the history of both American and Australian jurisprudence which ensured that the reactions of these societies defined themselves in relation to this legal precedent.[27] What was fundamental to this state of affairs was the capacity for the judge presiding over a particular case to pronounce on the state of the law within any given context. Whilst precedent could be drawn upon within reason, the opportunity to innovate was intrinsic to this system, which often led to the law being disparagingly referred to as "judge-made law." Yet this approach had many devotees who regularly suggested that it enabled each age to assess what was acceptable and what was not before the ultimate jury of public opinion at large. If material offended sensibilities and was likely to provoke outraged breaches of the peace, then either individuals or policing authorities would be able to bring a prosecution. A trial was a further legitimate check and balance that ensured freedom and fairness between rights of free speech and the right to remain unoffended by the actions and expressions of others. Even into the twentieth century the United Kingdom Home Office expressed itself to be manifestly in favour of the law's retention precisely because it offered these regulatory checks and balances.[28] Despite the Common Law of blasphemous libel functioning as an inherited precedent which eventually informed the attitudes of American Federal law, the development of attitudes to blasphemy within the American colonies, and eventually states, was considerably more piecemeal. In their different forms of legislation around blasphemy these different colonies and states represented everything from draconian and strict persecution right through to what appeared to be full religious toleration.[29]

26 This fact was noted when the Act was repealed in 1967.

27 See David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007); for the situation in America see 78–79, 166–168, 173–175 and 179. For Australia see 22–23, 98, 178–179.

28 See the various Home Office Papers in file HO 4524619. An account of their significance is in David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), Ch. 6.

29 See David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 163–167.

By the eighteenth century most blasphemy sentences passed against those convicted were commuted to lesser forms of imprisonment or banishment. This may have occurred as an unprompted relaxation of concerns about discipline, but equally it might be argued that this was a growing recognition that upholding the privilege of a single religious orthodoxy within states was problematic and of diminishing importance. However, what split this view, arguably, wide open was the impact of the American Constitution's construction and the subsequent impact of the French Revolution. In their separate ways both displayed models for how the church-state relationship might be rethought or, instead, actively unravelled.

The American constitution, in pursuit of some contemporary ideals of freedom, shelved the whole conception of an established and even a state church. Instead Christianity would eventually become an official religion, even if the idea of support through state subscription would remain anathema. Thus an area of American law came to be a battleground between local conceptions of morality upheld by local sanctions and the federal legal system's rejection of many such actions as unconstitutional.[30] One legacy of America's innovative disestablishment is that dissolving, breaking or unravelling the link between church and state would hereafter become the preoccupation and enthusiasm of secular-inspired liberalism everywhere.

Quite obviously the French Revolution's destruction of the church and state link was more far reaching. The construction of these two more obviously secular states foregrounded individual rights whilst emphasising that species of religio-state compulsion were intolerable. For many, such freedoms would almost never go far enough, as their various critiques of religion would periodically trouble the courts in many Western countries up to the last quarter of the nineteenth century.[31] However, what this does really highlight is that the blasphemer, during the age of reason, was an ideological dissident with firm views about the place of religion within the universe as either wholly a private concern or, indeed, entirely irrelevant. This was a marked change from the earlier archetype of the blasphemer as merely an indisciplined individual who, for various reasons, had merely lapsed from the orthodox straight and narrow—with the task of the state and church merely to restore them to this correct pathway.

The legacy of blasphemy laws in nineteenth century Europe thus really became exercises in upholding the church-state link, in various degrees of

30 Ibid., 205 and 343.

31 Ibid., 117.

rigidity, as a means of preserving national self-images as god-fearing states rather than maintaining strict religious orthodoxy. Thus one offshoot of this was a religio-national providentialism.[32]

REVOLUTIONS AND UPHEAVALS

This maintenance of morality characterised early nineteenth century society's approach to the control and regulation of blasphemy. Certainly there is evidence of its success in suppressing the virulent Jacobin-inspired ideas of Richard Carlile in England.[33] The 1820s and 1830s witnessed a succession of court cases where ideas associated with free expression were effectively trumped by the necessity of protecting society from the social implications of such freedoms.[34] This situation had its counterpart in the United States in the case against Ruggles, who represented an American expression of similar ideologies and sentiments.[35] As the century wore on, both countries also witnessed cases that produced embarrassment for high-handed authority that could no longer rely upon the wholehearted support of the population at large or even of some of its own government officials.[36] Such authority increasingly found its justification for action critiqued by the rise of social democratic societies founded on forms of liberalism. In

32 See David Nash, "'To Prostitute Morality, Libel Religion, and Undermine Government' Blasphemy and the Strange Persistence of Providence in Britain since the Seventeenth Century," in *Journal of Religious History* 32(4) 439.

33 See Joel Wiener, *Radicalism and Freethought in Nineteenth Century Britain: The Life of Richard Carlile* (Westport, CT: Praeger, 1983); M.J.D. Roberts, "Making Victorian Morals? The Society for the Suppression of Vice and its Critics 1802–1886", *Historical Studies* xxi (1984) 157; and M.J.D. Roberts, 'Blasphemy, Obscenity and the Courts: Contours of Tolerance in Nineteenth Century England', in Paul Hyland and Neil Sammells (eds.), *Writing and Censorship in Britain* (London: Routledge, 1992).

34 Joel Wiener, *Radicalism and Freethought in Nineteenth Century Britain: The Life of Richard Carlile* (Westport, CT: Praeger, 1983), passim.

35 See Theodore Schroeder, *Constitutional Free Speech Defined and Defended in an Unfinished argument in a case of blasphemy* (New York: Free Speech League, 1919, De Capo Press Edn, 1970), 69–71. See also David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 78–79.

36 See the reactions to the trial of Thomas Pooley, where a manifestly insane man's treatment became an indictment of the law and its proceedings in such matters. See Timothy J. Toohey, "Blasphemy in Nineteenth-Century England: The Pooley Case and Its Background", *Victorian Studies* 30, no. 3 (Spring, 1987) 315.

England this is evidenced by the Foote case of 1883–1884 and in America in the case against Moore.[37] Australia would also follow suit in the outcome of the case against Lorando Jones.[38]

The verdict in the Foote case was monumental because it finally unravelled the psychologically important link between religion and the law. The presiding judge, Justice Coleridge, set aside the letter and spirit of the Hale judgement and emphatically stated that religion was no longer "Part and Parcel of the Law of the land."[39] But Coleridge went further, establishing an important species of test of offence that also proved influential. The true test of blasphemy in court was now no longer the *matter* uttered (such logic naturally proceeded from the demise of the "part and parcel" argument) but instead the *manner* uttered.[40] Thus the test came to associate the crime with wounding the feelings of individuals.

When policing authorities were ever involved in discussions of the offence of blasphemy they would often express satisfaction at such an outcome. No longer did they have to run the gamut of defence cases which focussed upon the purchase of material which sometimes embarrassed such policing authorities who could not identify vendors in court or whose members gave woolly and unsatisfactory answers when questioned about their individual responses to the material they had purchased whilst trying to establish grounds for prosecution.[41] Likewise, such authorities were also spared the problems of law enforcement officers tasked with deciding whether material or speech actually contained blasphemous content. Henceforth this decision was taken out of their hands so that they became concerned with issues that they were more readily equipped to deal with. This conception of "manner," once again, had an important public order dimension, so that the material itself now underwent a test of whether it was liable to provoke violence or some other species of breach of the peace.

Paradoxically this preoccupation with breaches of the peace coincided with a shift in the character of those who were indicted and tried for blasphemy.

37 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 175.

38 Ibid., 178–179.

39 Ernest Hartley Coleridge, *Life and Correspondence of John Duke, Lord Coleridge* (London, 1904), 291.

40 David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 155–162.

41 This had been a feature of many early nineteenth century cases. See David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), Ch. 3.

From the middle of the nineteenth century there was a growing tendency for such individuals to be artists and writers rather than revolutionaries and political radicals. This, in itself, may represent some wider philosophical changes in which political sub- and countercultures themselves had become more individualistic and had also acquired some degree of acceptance within late nineteenth century liberal cultures. Thus boundaries had been pulled back, but moral and regulating authorities always saw blasphemy as perhaps a touchstone of how far critics of conventional morality and social arrangements should really be allowed to go.

Thus public order concerns became fused with new ways of thinking about the offensiveness of new types of writing and precisely where these might be consumed. Whether the reading of blasphemous material in a public place, or the encounter with it in a public place, would provoke a reaction became a bona fide test of offensiveness. Policing authorities, rather than being charged with hunting down offensive material (in truth, most were weary of this responsibility now), had public order-style tests that would be discussed in court concerning whether an item or facet of speech was liable to offend or endanger the peace.

EVOLUTION OR MODERNISATION

One dimension of this was the invention of a style of "casual encounter with blasphemy." In other words, the law had shifted from whether the blasphemous material was, under a state-regulated definition, blasphemous, but instead to whether it could be proven to offend—resulting in a possible public order related consequence. Thus blasphemy became an offence in which the casual encounter with such material was the issue to be avoided. One method of policing blasphemy was to persuade its potential perpetrators to police themselves and restrict access as far as possible to those who were unlikely to be offended by material. This perhaps also reflected aspects of post-war individual conceptions of human rights, which were also persuading centralised authority to retreat from actions it might previously have been prepared to take.[42]

Procedures designed to warn consumers of the nature of material were considered a part of modern democratic systems, which themselves urged plurality and choice which could supposedly be ensured by expecting

42 Ibid., 182.

audiences to be self-regulating. This philosophy was adopted for a time in some European countries, notably France and Germany, but was somewhat less successful in Britain. In the latter the arguments which were brought forward in the Gay News Case of 1978 indicated that suggestions that material was intended only for a restricted audience would be trumped by their apparent offensiveness. This was true even if they were seen, perhaps unwittingly, by subsequently shocked individuals—some with an agenda of their own.[43]

Nonetheless the focus upon "manner" as the test of offence in countries accepting English legal precedent and jurisprudence and even beyond did serve to remove the state's role as censor and arbiter of religiously motivated debate. So, for most of the twentieth century the laws of blasphemy were slumbering. Although debates were occasionally held about their apparent anachronism they were generally regarded as insignificant and as a gentle reminder of Christian heritages in the West. As such these laws, during this period, encouraged populations to look firmly back to their past and not forward to any conception of an altered religious future. Indeed, it is relatively noteworthy that few political parties were prepared to consider the repeal of blasphemy laws as in any way important in their own potential legislative programmes. Petitions for their removal would often meet with considerable sympathy, but also with inertia, often in equal measure. Such laws slumbered and apparently did no harm—so what reason could be given for their removal? Especially when other pressing considerations could always be found to occupy the mind of government.

However, by the century's end such laws were, unknowingly, on borrowed time. The slow progress of supranational agencies and their growing quest to enforce religious equality began an argument that saw the concept of religious privilege enshrined in law as untenable. Although this was taken seriously, its logic became dwarfed by the counter-claims of religious groups demanding such equality. This liberal claim for the religious equality of the individual ironically became undermined by other agendas that saw such individual equality as somehow threatening. Liberating and empowering the individual began to be seen solely as a project intended to enhance and extend Western liberalism and its own projects. This was frequently contrasted with the sense of collective revelation that entered the language and arguments emanating from Islamic communities.

43 For an account of the events leading to the Gay News Case see David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), Ch. 8.

The complacency of Western thinking about blasphemy laws was rudely shattered and derailed from a course of gradual liberalisation by the explosion of feelings around Salman Rushdie's *The Satanic Verses*.[44] This event in particular motivated Muslims to connect politics and religion in a dangerous mixture which, when focussed, argued explicitly for the extension of religious protection. Such demands were offered not so readily on the grounds of equality and justice, but in order to seek protection from the religious bias evident still in the legal apparatus of many Western countries. In Britain this was an incident which provoked probably the last defence of the cosy status quo of slumbering anachronism. When a legal challenge was mounted to the partial protection for Christianity enshrined in British law, this was rebuffed by the reassertion of the legitimacy of protection for the state church.[45]

WESTERN STATES RESPOND

One element in the revival of blasphemy that was to a great extent unforeseen was the revival of blasphemy legislation in the West. The pressure produced by the agendas of multiculturalism and of hate crime made the balancing act that Western social democracies had to indulge in still more precarious. Their populations reflected the legacy of a colonial past that in many respects had seen such countries promote cultures of tolerant and enforceable liberalism (as evidenced by the British government's installation and subsequent redrafting of the Indian Criminal Code of 1858).[46] It was scarcely surprising that a thirst for tolerance and equality was now a part of some views expressed, demanding equality before the law.

European countries also found themselves under pressure to finally expunge the inequalities which remaining blasphemy laws represented. As we have seen these were products of very different historical and religious

44 There are various different accounts of the Salman Rushdie case which probably by now deserves its own carefully annotated bibliography. Places to start include Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and its Legacy* (London, Atlantic Books, 2009) and Malise Ruthven, *A Satanic Affair: Salman Rushdie and the Rage of Islam* (London: Chatto and Windus, 1990).

45 *Ex parte* Choudhury 1 All ER 306. See also Marcus Tregilgas-Davey, "Ex Parte Choudhury: An Opportunity Missed", *The Modern Law Review* 54, no. 2 (1991) 294.

46 This was suggested during discussions around the House of Lords Select Committee on Religious Offences in England and Wales (2003), Ch. 4: Blasphemy: the Options, paras 52 and 53.

circumstances. Anachronism provided civil servants with a kind of comfort that they protected religion without seriously contemplating the use of such laws. But the pressure of the European Union's treaty obligations and the resultant quest to harmonise legal codes created considerable tensions in this area. Not least of these was a dialogue about whether individual states had a right to maintain such laws as a discretionary part of the "margin of appreciation" or simply had to cave in under the pressure from the whole European community to establish a supranational single standard of law. At first sight the decision to resist such changes seems strange, especially since the logic of harmonisation appeared rational and inescapable. Even harder to understand was the reassertion of ideas associated with the "margin of appreciation," as the United Kingdom sought to plead around the Wingrove case in 1996.[47] All these laws associated with blasphemy had fallen into disuse, so how precisely could a reasonable and rational argument be constructed for their retention? However, it might be argued that the quest to remove these laws genuinely exposed a raw nerve in Western societies and their views of themselves. Removal of blasphemy laws—laws which, as we have seen, protected the state-sanctioned version of Christianity, or a wider generic conception of this same belief system—seemed somehow really final as these societies approached the millennium. Removing protection, and by definition privilege, from previously state-protected religion was an admission that such countries were no longer nominally or realistically Christian. Moreover, the multicultural future that awaited them cut an umbilical cord with a Christian and imperial past. Admitting to the necessary depth of this sea change also brought forth concerns about the apparent reality of secularisation which had clearly affected the Christian religion most obviously in every Western country. It was no coincidence that the House of Lords Select Committee on Religious Offences in England and Wales (2003) felt itself duty-bound to open its final report with a declaration that Britain was "still a Christian country."[48]

Sensibilities were sharpened and heightened by a series of high-profile international incidents that indicated religion had once more become central to ideology and identity. The logic of this seemed to suggest that wider protection should be offered to religions that perceived themselves to be

47 See David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), 265–266.

48 House of Lords Select Committee on Religious Offences in England and Wales (2003), Introduction and conclusion.

minorities in Western countries. Generally speaking, the solution proffered for this situation stemmed from the agenda associated with multiculturalism. This removed the sense of privilege from host communities to actively share it around with minorities that had previously been excluded. It offered disaffected minorities a degree of citizenship, solved any remaining concerns lingering around the retention of blasphemy laws in Western countries, and also provided a viable public order solution through equalising treatment and seeking to set a series of boundaries within which intervention was actively required. This really manifested itself in the development of the concept of hate crime.[49] This readily came to see species of interpersonal conflict as motivated by and containing factors which the law came to describe as aggravating. Whilst the language and legal mechanisms for investigating hate crime had been developed, at least in embryo, it was certainly the case that conceptions of incitement to religious hatred came later. This was part of the wider history of hate crime in which categories actually expanded as awareness and agendas of inclusion widened in response to society's demands, expressed through the multicultural ethos.

Thus societies in the West began to think actively about how incitement to religious hatred laws were the magic bullet, one which would provide robust solutions to the targeting of immigrant communities whose religion had become a high-profile signifier of their identity as a result of developments in the contemporary political context. So it was believed, incitement to religious hatred laws could actively replace blasphemy laws. The logic seemed both simple and impeccable. The removal of blasphemy laws and their replacement with incitement to religious hatred would, at a stroke, equalise the status of all religious groups and denominations before the law. These would henceforth all have protection from unprovoked, and even provoked, attacks upon their beliefs and status. The problem was how precisely to define what should be protected. In England the House of Lords Select Committee on Religious Offences discussed the lessons that might be learned from the twentieth century reframing of the Indian Criminal Code. However, this potential solution still contained the remnants of neo-colonial attitudes, and likewise it focussed upon artefacts and buildings and was manifestly less well-suited to a world where the exchange of views and attitudes was now happening in real time on the internet and beyond.

49 This concept was implicit in the deliberations of the House of Lords Select Committee on Religious Offences. See ibid., verbal evidence given 18 July 2002, questions 220–238.

These were scarcely the only objections. Why, many from the secular camp asked, was religion singled out to be protected as a category of identity and belief status whereas other belief systems were excluded? It was also the case that many of the issues that had hampered attempts to extend the blasphemy laws to encompass all religions also resurfaced in the construction of adequate incitement laws. In particular how religion was to be defined, alongside how to regulate and police the content of such a definition, remained a perplexing problem that was never going to be resolved.

In theory most countries would have thought the ideal route forward would have been to repeal what blasphemy laws remained and immediately replace these with incitement to religious hatred laws. This indeed had been one intention behind the questioning of the 2003 House of Lords Select Committee on Religious Offences in England and Wales. This saw the repeal of the laws against blasphemous libel in England as a clear and obvious quid pro quo for installing a replacement Incitement to Religious Hatred Law. Apparently unworkable and anachronistic laws that maintained privilege were to be removed in favour of laws which seemingly reached for equality amongst believers and non-believers. Nonetheless it was significant that the Select Committee's final report stopped short of an unequivocal recommendation.[50] However, in many instances the seemingly simple process of enacting these ideas fell foul of procedural difficulties and political inertia. Certainly in Britain embracing repeal of such laws has never been popular with individual political parties.

In Britain political pressure, mostly from outside Parliament, saw incitement laws appear on the statute book wholly independently of any move to remove the law of blasphemous libel. The Common Law of blasphemous libel was finally repealed as a result of a private member's amendment to the Criminal Justice and Immigration Bill of 2008. This further emphasised that government would actively distance itself at every opportunity from the issue of blasphemy repeal. Religious hatred itself was finally dealt with under the Racial and Religious Hatred Act of 2008, which amended the 1986 Public Order Act to create the offence of stirring up hatred against persons on religious grounds.

Whilst this may have appeared to be the end of conventional blasphemy laws in Western countries (New Zealand and Australia had departed from the logic of English common law sometime earlier) some anomalies remained. Of considerably more interest for our purposes were situations

50 Ibid., conclusion.

where the logic of older legal precedent and requirement collided with the new agendas bequeathed to Western legal systems by the rise of laws seeking to prevent religious hatred.

In Ireland there was just such a collision which produced a further departure from the apparently smooth transition from blasphemy to incitement to religious hatred that caught almost everybody by surprise. In the same year as repeal was enacted in England, the Republic of Ireland chose to revisit its blasphemy laws. Certainly there is evidence that the judiciary and the ruling Fianna Fáil party felt constrained by the situation they both found themselves in. The Irish Constitution of 1937 contains a statutory requirement that there be a clause concerning blasphemy. Whilst Ireland was scarcely a theocratic state, large sections of its constitution did privilege the holding and practising of the Christian religion, and especially the state-recognised religion of Catholicism.

Within the new world of equality and under the pressures of harmonisation with European law, the Irish government felt a pressing imperative to revise the law of blasphemy. Up to this point in Ireland this had more or less followed the evolution of English Common Law precedent, and this had evolved along this same path until incorporation in the Irish Constitution. Indeed, in the few blasphemy cases that emerged before the millennium the tendency had been to cite the same English Common Law precedents that governed the application of the law of blasphemous libel in England.[51]

However, new thinking and a departure from English Common Law precedent was confirmed by the resolution of the Corway case of 1999. In this instance the Supreme Court declared that blasphemy could no longer be interpreted in a "narrow sense" and had thereafter to embrace the logic of modern multicultural and multifaith states.[52] Faced with the twin issues of satisfying the needs of the Constitution and the imperatives for wider religious equality and inclusion, the Irish Justice Minister, Dermot Ahern, brought a bill before Parliament which sought to change the laws against blasphemy in the context of articles 36 and 37 of the 2009 Defamation Act. Rumours suggested that even his own political party was taken aback by this development, and considerable anxiety attended its progress through the Dáil. Owing almost nothing to previous precedents around the construction

51 This is discussed in Law Reform Commission, *Consultation Paper on the Crime of Libel* (Law Reform Commission, 1991) Chapter One—Historical Development of the Crime of Libel. See also Constitution of Ireland, Article 40.6.i (Dublin: Stationery Office), 158.

52 Aodhán Ó Ríordáin, Dáil debates, Thursday, 2 October 2014.

of blasphemy laws, the new provisions were very obviously shaped with combatting "hate crime" as a priority.

The provisions of articles 36 and 37 made the "publishing or uttering" of "blasphemous matter" an offence liable to a fine of 25,000 Euros. Blasphemy was here defined as matter which was "grossly abusive or insulting in relation to matters held sacred by any religion." Likewise, article 36 subsection b required "intention" to cause "outrage." There were also provisions for the seizure of blasphemous material by the police (article 37, section 1 subsections a, b and c, and article 3). Aware that this all looked rather draconian and reminiscent of nineteenth century actions against atheist material in Britain, article 36 proposed a number of defences. Very clearly the public order dimension was uppermost in the presumption that the material in question had to be capable of offending a "reasonable person." Likewise, creative, academic and intellectually motivated people could seek protection under the law through its category of legitimate defences. It became a defence if material could demonstrate "genuine literary, artistic, political, scientific or academic value in the matter to which the offence relates." Realising also that this potentially gave significant advantages to the category of the offended, the law tried to deny this potential status from religions for which "the principal object … is the making of profit," or those which employed "oppressive psychological manipulation" (Article 36, section 4, subsections a and b).

The sheer haste involved in the construction of this law meant that a very significant number of legal hostages to fortune lay in its framing. The blasphemous matter needed to be "grossly" abusive and there seemed no clear definition of when this level of abuse, as opposed to "mild" or "minimal" abuse, had been reached. Likewise, "outrage" again was not clearly defined. The range of possible defences also appeared likely to be problematic. Given the possible defences offered, many convicted of blasphemy in the past would have noted how much this looked like a class discriminatory law akin to those of the nineteenth century. As such it created provisions whereby a skilled and educated debater stood far less chance of prosecution than a less educated individual in a non-academic context. A closer examination also made many wonder quite how the courts would define "… genuine literary, artistic, political, scientific or academic value." Speculating about the legal differences between "genuine" manifestations and "false" manifestations of these could potentially prove spectacularly embarrassing in court—as could defining the concept of a "reasonable person," or "substantial number of adherents" in the context of religious debate.

Beyond this the attempts to define "religion" were clumsy at best, and the attempts to prevent religious "cults" (something again not positively defined) from seeking protection under the law failed to envisage where this might lead. Debates about the propriety and status of mainstream religions in the Irish courts would potentially have been spectacularly embarrassing for all concerned. Speaking in the Irish Senate (Upper House of Government) in February 2012, Senator Ivana Bacik noted that this law had "gone against the EU norm in adopting a new statutory definition of blasphemy based on a definition of offence."

Such misgivings became more widely manifest amongst members of the Fine Gael/Labour coalition government after Senator Bacik's pronouncement. This growing scepticism and willingness to investigate the law's value led to the decision to submit it to the consideration of a Constitutional Convention, which took place outside Dublin in November 2013. The Convention heard a number of speakers and was eventually asked to vote on two questions. The first was asking if the removal of a blasphemy provision from the Irish Constitution was desirable. This elicited a considerable majority in favour of its removal, which gave some heart to the abolitionists' cause. However, it was something of a surprise when a few hours later the Convention was asked whether it still wanted to retain a blasphemy law that would not be considered to be part of the Constitution. When the vote on this latter measure was counted it revealed only a very narrow majority wanting to avoid this law's retention.

Taken together these two votes were revealing about how one Western nation with a still considerable religious tradition wanted to think about the phenomenon of blasphemy and legislate for its existence. The vote against retaining it in the Constitution was a major move towards recognising that the age of confessional states was over and the plural nature of the country's religious life should be acknowledged by the Constitution. However, the much narrower outcome to the vote about retaining blasphemy somewhere perhaps told a different story. It spoke of fears of abolishing such a law and how this might be a final admission of the state religion relinquishing power unnecessarily. After all, as many nations before had discovered, the law here was an almost silent, almost moribund gatekeeper that actively reassured those fearful of religious change. In this instance it genuinely appeared that a blasphemy law, even conceptions of a newly created but flawed one, could provide sources of reassurance and comfort to a population at large. Others may well have seen the retention of such a law as shorthand for offering protection to religious status and identities. Whatever else this did, it also

suggested that governments genuinely needed to take into account this groundswell of opinions before taking anything that appeared to be decisive action. In the written evidence offered to the Convention's website, before it met in session, some interesting trends could be discerned. One submission from the Catholic Church itself argued for repeal of the law, whilst that from a Catholic lay organisation (the Order of the Knights of St. Columbanus) argued for retention.[53] This replicated several earlier historical instances where the laity of a Christian church appeared much more conservative than that same church's hierarchy. Indeed, the former's suspicion of the latter and their conceivably more ambivalent (or alternatively pragmatic) relationship to the faith would be a constant theme in such discussions.

Whether the inconclusive outcome from the Convention's two votes had any influence or not on subsequent events and government opinion is an interesting question. However, the Fine Gael/Labour Coalition government reversed course and eventually decided to postpone action in the matter, even though interest in the issue was reopened by the *Charlie Hebdo* affair in Paris.[54] Whilst recognising that the law was an anomaly and a problem, a failure to act risked making matters considerably worse by declaring that a referendum would not occur in the lifetime of the current government.

So why was the Irish government increasingly persuaded that a referendum (which was always couched as a referendum to remove the law) would eventually be necessary and should be both publicised and timetabled? Chief amongst the misgivings of both politicians and civil servants was a realisation that Ireland's parochial decision in relation to its own Constitution had ignored the wider global context. As opposition opinion reminded the Irish government and its civil servants alike, the country could no longer behave as though it operated in a vacuum. Ireland had unwittingly sailed against the tide in producing a new and viable law which altered the entire legal landscape of the offence in the West. An almost uniform status of legal anachronism was challenged by the impetus of a new law made viable. This was noticed by other countries and would very soon lead to acute embarrassment in Irish government circles as well as pressure from other interest groups seeking repeal.

53 See https://www.constitution.ie/SubmissionDetails.aspx?sid=d21e4103-e542-e311-8571-005056a32ee4 (accessed 6 March 2016).

54 See http://www.irishexaminer.com/ireland/blasphemy-offence-may-be-removed-next-year-306162.html (accessed 5 February 2016).

The impetus behind this was the actions of other countries who had taken note of Ireland's new stance on blasphemy. The Organisation of Islamic Cooperation (OIC) had been gaining more universal acceptance of its desire to extend the concept of defamation since 2009. Such requests had been offered at the Human Rights Council and also at the United Nations General Assembly.[55]

However, the developments in Ireland represented something of a sea change. Pakistan, speaking as the lead voice in the Organisation of Islamic Cooperation (OIC), cited part of the wording of the Irish blasphemy law when proposing a resolution on defamation of religion.[56] This proved beyond reasonable doubt that while moribund blasphemy laws were bad enough, still worse new laws created a dangerous culture of viability for such laws. Thus, criticism of Islamic countries that sought to reinvigorate such laws looked now like the worst kind of hypocritical orientalism. Nonetheless whilst the law in Ireland remains it is a provocation to all involved in the debate and seems to incite opinions in almost every direction.

Thus blasphemy laws have risen to address the needs of societies that sought to protect the sanctity of religious belief whilst also the peace of mind of individuals fearful of the providential consequences of denying God. Although overshadowed by heresy laws, initially blasphemy laws evolved to police and punish indiscipline. By the late eighteenth century they were enacted against religious radicals and political activists who were largely replaced by artists and writers as the twentieth century dawned. Within liberal societies, supposedly in favour of religious toleration, such laws increasingly seemed anachronistic, and many withered away or were repealed. However, their widespread demise was prevented by a new premium placed upon the status of the religiously oppressed. This saw blasphemy as a weapon to re-establish and reconfirm identity for individuals and nation states. The chance and opportunity to do this was readily afforded by Western states adopting hate crime laws and the extension of such laws to cover all religions without due care and attention. This has created an international deadlock that gives such laws a modern credibility that would have seemed almost incredible only fifteen years earlier.

55 Austen Dacey, *The Future of Blasphemy* (London: Continuum, 2012), 2.

56 Clare Daly, Dáil debates, Thursday, 2 October 2014.

3 The English Law of Blasphemy: The "Melancholy, Long, Withdrawing Roar"

Ivan Hare

This chapter is about the history of the English law of blasphemy. The definition of blasphemy has altered over time, but its essence was expression which undermined, insulted or revealed contempt for the Christian God or the formularies of the Church of England.[1] On first encounter, the story appears to be relatively straightforward—and one which advances to the same tune as other major developments in legal, social and intellectual history. As far as the ordinary (as opposed to ecclesiastical) courts are concerned, the common law of blasphemy was born in the seventeenth century of an absolute identification between the doctrine of the established Church of England and the authority of the state. This identification was maintained (almost as an article of faith itself) until the offence was substantially narrowed towards the end of the nineteenth century to permit the questioning of elements of Christianity, so long as it was conducted in a "temperate" manner in which the "decencies of controversy are maintained."[2] Indeed, by the beginning of the twentieth century, the definition of blasphemy appeared to be so etiolated and prosecutions were so rare that many believed it to be a dead

1 Richard H. Helmholz, *The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 636–637 defines blasphemy "technically" as "the attribution to God of a property inconsistent with his divinity." See for Blackstone's definition: William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, 59. The Blasphemy Act 1697 made it an offence for any person educated in, or who had made profession of, the Christian religion to "deny any One of the Persons in the Holy Trinity to be God, or … assert or maintain there are more Gods than One, or … deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority." In this chapter, I only address the law of England and Wales. The laws of Scotland and Northern Ireland are materially different in a number of respects as, of course, is the history of religion in those nations.

2 *Bowman v. Secular Society Ltd* [1917] A.C. 406, 423, per Lord Finlay L.C.

letter. In due course, after it had made incitement to hatred on the grounds of any religious belief a criminal offence, Parliament abolished the crime of blasphemy altogether.

The history of blasphemy therefore appears to conform to our common preconceptions of progress: with secularisation and Enlightenment rationalism leading inexorably to greater freedom and pluralism.[3] The aim of this essay is not just to establish that this account is misleading and unsatisfactory, but also to examine a number of puzzling elements of the English law of blasphemy. These include: the origin and persistence of the identification between Church doctrine and the state beyond the early modern period; the resurrection of blasphemy in the late twentieth century (which threatened much greater restrictions on free speech than had been thought possible during most of the previous hundred years); the depiction of the new offence of incitement to religious hatred as somehow a modern and pluralistic version of blasphemy; and the ultimate abolition of blasphemy, not as a result of principled legislative debate, but by an adventitious side wind. This far from linear progression towards liberalisation explains the titular quotation from Mathew Arnold's *Dover Beach* which the poet applied to the receding "sea of faith."

I shall examine these puzzling aspects of the law of blasphemy by describing chronologically: the emergence of blasphemy as an offence at common law, its apparent immunity to fundamental reform from the seventeenth to the late twentieth centuries, and its eventual abolition at the start of the twenty-first century. Finally, I shall say something about the relationship between blasphemy and incitement to religious hatred.

Before embarking on that account, however, some caveats are necessary. First, the distinction between blasphemy and other forms of religious crime has not always been either clearly stated or universally respected. English law once contained a substantial number of religious offences. Along with blasphemy, Sir William Blackstone, in his *Commentaries on the Laws of England* (published from 1766 onwards), described the crimes of apostasy, heresy, "profane and common swearing and cursing" and, finally, "witchcraft, conjuration, inchantment, or sorcery."[4] Although some maintained the

3 Herbert Butterfield, *The Whig Interpretation of History* (London: G Bell and Sons, 1931).

4 William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, ch 4.

distinction between blasphemy and other offences,[5] there was a tendency in the early cases and writings to treat all questioning or criticism of religious orthodoxy as forms of heresy or atheism.[6]

This leads to the second caveat, which is that prosecutions in the early modern period did not always distinguish blasphemy from the other forms which criminal libel could take as a matter of common law.[7] Those other forms were seditious libel, obscene libel, and defamatory libel. Given the facts of some cases, this is not surprising. For example, Sir Charles Sedley's drunken behaviour on the balcony of a Covent Garden tavern in 1663 sounds as if it could have been designed to fall foul of more than one form of criminal libel. Once he had defecated on the crowd below and removed all of his clothing, Sedley acted "all the postures of lust and buggery that could be imagined, as abusing of the scripture, as it were, from thence preaching a Montebank sermon from that pulpitt." As if that were not sufficient, Sedley then took a glass of wine "and washed his prick in it and then drank it off"; his glass refreshed, he then toasted the King for good measure.[8] Whether the crowd objected most to being defecated upon or preached at is not recorded, but a "riot almost ensued, and some windows were broken—evidence of a breach of the King's Peace."[9] This was an unusual case. However, even in less extreme circumstances, John Spencer has suggested that the decision to charge blasphemous or seditious libel "seems to have depended largely on the taste in vituperative epithet of the man who drafted the indictment or

5 For example, in *Naylor's case* (1656) 5 St. Tr. 825, Lord Commissioner Whitelock stated that "heresy is *Crimen Judicii*, an erroneous opinion; blasphemy is *Crimen Malitae*, a reviling of the name and honour of God."

6 Diarmaid MacCulloch describes the tendency to treat all expressions of religious doubt as atheism as being as common as that of describing all disapproved sexual practices as sodomy (*Reformation: Europe's House Divided 1490-1700* (London: Penguin Books, 2004), 693). See, further, David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007), 48.

7 William Holdsworth, "Defamation in the Sixteenth and Seventeenth Centuries", 40 L.Q.R. (1924) 302, 397; 41 L.Q.R. (1925) 13.

8 *Sir Charles Sydlyes Case* (1662) 1 Keb. 620; 83 E.R. 1146. The reports are decorously short, but Samuel Pepys is, characteristically, less squeamish and the above quotations come from *The Diary of Samuel Pepys* (ed. Robert Latham and William Matthews, London: Bell & Hyman, 1990), vol. IV, 269 (entry for 1 July 1663). *Sedley's case* is discussed in David Lawton, *Blasphemy* (Hemel Hempstead: Harvester Wheatsheaf, 1993), 23–26.

9 Geoffrey Robertson, *Obscenity: An Account of the Censorship Laws and their Enforcement in England and Wales* (London: Weidenfeld and Nicolson, 1979), 21.

information," rather than upon distinctions of substance.[10] Blasphemy and obscenity have remained close companions (if not exactly bedfellows) up to the present day, especially in the field of artistic expression.[11]

Thirdly, an account of the history of blasphemy cannot be entirely divorced from the legal regulation of religion as a whole in English law. Such regulation was broad and extensive: a collection of ecclesiastical statutes from 1847 ran to five volumes, and in its more than two thousand pages covered subjects from "Abbeys," "Abjuration," and "Advowsons" to "Usury," "Witchcraft" and "Writs."[12] Although the criminal penalties for blasphemy

10 John Spencer, "Criminal Libel-A Skeleton in the Cupboard" [1977] Crim. L.R. 383. John Spencer gives the example of *Reg. v. Keach* (1665) 6 St. Tr. 701 in which a book contrary to the teachings of the Church of England was prosecuted as seditious (rather than blasphemous) libel. This confusion between sedition and blasphemy also appears to have been a characteristic of the exercise of ecclesiastical jurisdiction (Richard H. Helmholz, *The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 636).

11 The indictment in *Whitehouse v. Lemon* [1979] A.C. 617 (discussed further below) particularised the offence as "an obscene poem and illustration vilifying Christ and His life and His crucifixion," cited by Viscount Dilhorne at 639. In the Court of Appeal, the inclusion of "obscene" was stated to be a matter of regret by Counsel for the Crown (*R. v. Lemon (Denis)* [1979] Q.B. 10, 15B). Other examples are given in David Nash, "Last Temptation and Visions of Ecstasy: Blasphemy and Film", Ch. 7 of David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007). Outside film, Andre Serrano's 'Piss Christ' and Chris Offili's 'The Holy Virgin Mary' provided further examples from the 1990s.

12 *The Ecclesiastical Statutes at Large extracted from the great body of the statute law, and arranged under separate heads* by James Thomas Law (London: William Penning and Co, 1847). St John A. Robillard's *Religion and the law* (Manchester: Manchester University Press, 1984) devotes only 20 of his 200 pages to blasphemy. Some statutes went so far as to prescribe religious orthodoxy with some precision. For example, the "Act for abolishing of diversitie of opinions in certaine Articles concerning Christian religion" (sometimes referred to as the Act of the Six Articles) asserted the orthodoxy of transubstantiation, clerical celibacy, vows of chastity, private masses and auricular confession (31 Hen. VIII, c. XIV). This Act was described by Eamon Duffy as marking "a decisive turning-point for the progress of radical Protestantism under Henry" in *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005), 424. Later Reformation statutes went much further in distancing the Church of England from that of Rome and were supplemented by a range of non-parliamentary measures, including Convocation's Ten Articles ("the first official doctrinal formulary of the Church of England" (ibid., 392)) and Thomas Cromwell's Injunctions of 1536 (attacking pilgrimages and the cult of images and relics) and 1538. However, my focus is almost entirely on the common law of blasphemy. There is some justification for this as, for example, there was never a prosecution under the Blasphemy

were among the most violent and brutal, many more individuals suffered from the legal disqualifications which for centuries affected the ability of non-adherents of the Church of England to own land, sue in a court of law, bequeath their property on death, or hold many forms of public office.[13] The extent of the reach of the law of blasphemy is further illustrated by the legal treatment of two of the Romantic era's greatest poets: Shelley was denied custody of his children because of his "impiety and irreligion" (which was manifested in his blasphemous writings in *Queen Mab* and elsewhere) and an injunction was refused to restrain publication of an unauthorised copy of Byron's *Cain* because of its blasphemous content.[14] An account of blasphemy cannot therefore give a fully representative picture of the extent to which the doctrine and practices of the Christian Church were for centuries woven into the fabric of English society.[15] Subject to those caveats, I now return to the chronology outlined above.

THE EMERGENCE AND ENDURANCE OF BLASPHEMY AT COMMON LAW

The story of the development of the offence of blasphemy at common law is well known.[16] Originally, jurisdiction over religious offences lay exclusively

Act 1697. For an account of the statutory provisions see Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005), 379–477 and Frederic William Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1911), 506–526.

13 St John A. Robillard, *Religion and the law* (Manchester: Manchester University Press, 1984), contains an Appendix which sets out the principal "moves towards religious toleration in the nineteenth century."

14 *Shelley v. Westbrooke* (1821) Jac. 266; 37 E.R. 850 (the quotation comes from *Warde v. Warde* (1849) 2 Phillips 786, 791) and *Murray v. Benbow* (1822) Jac. 474; 6 Petersdorff Abr 558n (see further Isabella Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford: Hart Publishing, 2010), at 72–3 for a discussion of this and *Don Juan*). A bookseller was successfully prosecuted for selling *Queen Mab* in *R v. Moxon* (1841) 4 St. Tr. NS 693.

15 The outstanding account of pre-Reformation religious practice remains Eamon Duffy in *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005) and (on a smaller scale) *The Voices of Morebath: Reformation and Rebellion in an English Village* (New Haven, CT: Yale University Press, 2003). For the later period see D. MacCulloch, *The Later Reformation in England 1547-1603* (London: MacMillan Education, 1990).

16 David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007), Ch. 2; Leonard Levy, *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie* (Chapel

in the Ecclesiastical Courts[17] and the ordinary courts would refuse to permit actions concerning purely spiritual matters to proceed before them.[18] Atwood's case confirmed that justices of the peace had no jurisdiction over the uttering of scandalous words, such as that "the religion now professed was a new religion…preaching was but prating" [empty or pointless talk].[19] As we have seen, Sedley's case involved conduct in which the profane could properly be said to outweigh the divine (with elements of obscenity, sedition, blasphemy and a threatened breach of the peace). As such, the temporal court of King's Bench felt well able to deal with him. However, it was not until Taylor's case in 1676 that the Court of King's Bench addressed itself to purely religious expression.[20] Taylor's statements included that "Christ is a whoremaster, and religion is a Cheat…I am Christ's younger brother and that Christ is a bastard." Chief Justice Hale justified the jurisdiction of the Court of King's Bench over such matters in the following terms:

> These words, though of ecclesiastical cognisance, yet that religion is a cheat, tends to the dissolution of all government, and therefore punishable here, and so of contumelious reproaches to God, or the

Hill, NC: University of North Carolina Press, 1993), ch. 10; and Hypatia Bradlaugh Bonner, *Penalties Upon Opinion* (London: Watts & Co, 1934), 1–34.

17 Richard H. Helmholz explains that the ecclesiastical jurisdiction survived the passing of statutes on blasphemy (such as 3 Jac 1, c. 21 (1605))—which would normally have the effect that the ordinary courts would take over decision-making—by express provisions preserving the position of the ecclesiastical courts (*The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 276).

18 John Baker, *The Oxford History of the Laws of England, Volume VI: 1483-1558* (Oxford: Oxford University Press, 2003), 791–792. Professor Baker notes that by the 1540s the Court of Common Pleas would countenance some spiritual element in proceedings before it, for example, where an individual was accused of being a heretic. In such cases, the secular element of defamatory libel provided a basis for the common law courts to exercise jurisdiction even though the subject-matter of the libel was religious.

19 (1618) 1 Vent. 293. In *Traske's case* (1618) Hob. 236, the defendant's views "that the Jewish Sabbath ought to be observed, and not ours, and that we ought to abstain from all manner of swines' flesh" were punishable only in the Ecclesiastical Courts, but his criticisms of the King and Bishops tended to sedition and were properly a matter for the Star Chamber: William S. Holdsworth, *History of English Law, Vol. VIII* (London: Methuen, 1903–1926), 406–407. On the history of blasphemy before 1660 see Gerald D. Nokes, *A History of the Crime of Blasphemy* (London: Sweet and Maxwell, 1928), 1–42.

20 (1676) 3 Keb 607; 84 ER 906.

> religion established. An indictment lay for saying the Protestant religion was a fiction for taking away religion, all obligations to government by oaths etc ceaseth, and Christian religion is a part of the law itself, therefore injuries to God are punishable as to the King, or any common person.[21]

Before analysing this reasoning, a number of points should be made about the historical context in which the decision was delivered. Seventeenth century England had seen unprecedented political turmoil in the form of the English Civil War (which led to the execution of King Charles I) and the Interregnum. It was also a period of great controversy about the philosophical basis of government with seminal contributions from Thomas Hobbes, Robert Filmer and John Locke.[22] Hale was familiar with Hobbes' work and wrote his own *Reflections on Hobbes' Dialogue of the Law*.[23] Moreover, England's break with Roman Catholicism had, for the first time, unified secular and religious authority in the King who was not only head of state, but also Defender of the Faith. There were also institutional reasons for the King's Bench to expand its role. The Star Chamber (which had previously prosecuted blasphemy)

21 The other report of *Taylor's case* (1 Vent 293; 86 ER 189) states: "Christianity is parcel of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law". Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), 177 quotes Hale from the Fairhurst Papers in Lambeth Palace Library on the power to suppress religious dissent: "the reasonableness and indeed necessity of this coercion in matter of religion is apparent for the concerns of religion and the civil state are so twisted one with another that confusion and disorder an[d] anarchy in the former must of necessity introduce confusion and dissolution of the latter." See further William Hawkins, *A Treatise of the Pleas of the Crown* (8th edn., (London: S. Sweet, 1824), Bk. 1, 358.

22 John Locke, *The Second Treatise of Civil Government and a Letter Concerning Toleration* (Oxford: Basil Blackwell, 1946) (originally published in 1689); Thomas Hobbes, *Leviathan* (Oxford: Basil Blackwell, 1955) (originally published in 1651); Robert Filmer, *Patriarcha* (Oxford: Basil Blackwell, 1949) (originally published in 1680 (after Hale's death), but much of this work was published in other forms during Hale's lifetime).

23 The *Reflections* were not published until the early nineteenth century. Thomas Hobbes' *A Dialogue between a Philosopher and a Student of the Common Laws of England* (Chicago, Ill.: University of Chicago Press, 1971) (originally published in 1681) contains a chapter 'Of Heresie' which also addresses blasphemy. Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995) includes in Chapter 7 an account of "Restoration: constitutional theory," with an understandable emphasis on the work of Coke and Selden. Cromartie concludes that there was no evidence that Hale read Filmer: ibid., 116 fn 105.

was abolished on the death of Charles I, and the King's Bench inherited its criminal jurisdiction. Moreover, the Ecclesiastical Courts "had suffered under Cromwell a paralysis from which they had not fully recovered."[24] More personally, Hale was a Royalist and a devout Christian.[25]

These circumstances might provide some justification for why Taylor's case was decided as it was in 1676, but they do not explain how it came to provide the philosophical and doctrinal basis for the common law of blasphemy for more than two hundred and fifty years.[26] The influence of Hale's judgment is all the more surprising when its reasoning is examined. In common with most of that age, the reports of the judgment are very short. They do not include any reference to previously decided cases. Some commentators have suggested that Hale may, in fact, have relied on an inaccurate translation in one of the authorities.[27] Whether or not that is so is less important than the quality of the reasoning itself. Hale's reasoning is entirely circular: Taylor is guilty of an offence punishable before the Court of King's Bench not because he has breached any particular law or statute, but because his criticism of religion undermines or subverts the obligation to obey the law in general. This assertion is unjustified as a matter of fact on at least two bases. First, the law of England plainly was not the same as the moral teachings of the established Church.[28] Secondly, there was no

24 Courtney S. Kenny, "The Evolution of the Law of Blasphemy'", 1 *Camb. L. J.* (1922) 127, 129. However, the mere fact that the spiritual courts would not provide a remedy did not require that the secular courts should—as the Court of King's Bench very properly held in declining jurisdiction over the "printing of bawdy stuff" in *R v. Read* (1708) 11 Mod. Rep. 142. The Court soon changed its mind and invented the common law offence of obscene libel in *R v. Curl* (1727) 2 Str. 788; 1 Barn K.B. 29; 93 E.R. 849. A full account is given in Geoffrey Robertson, *Obscenity: An Account of the Censorship Laws and their Enforcement in England and Wales* (London: Weidenfeld and Nicolson, 1979), Ch. 2.

25 Hale presided over the well-known trial of Amy Duny and Rose Cullender for witchcraft in March 1662 at the Assizes in Bury St Edmunds. Both were hanged. Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), 237–239 includes an appendix on "Hale and witchcraft".

26 Leonard Levy describes it as "the most important [case] … that had ever been or ever would be decided in England on the subject" in *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie* (Chapel Hill, NC: University of North Carolina Press, 1993), 220.

27 Courtney S. Kenny, "The Evolution of the Law of Blasphemy'", 1 *Camb. L. J.* (1922), 130–131 accepts the view that the work usually called Finch's *Common Law* (1627) contained a material mistranslation which may have misled Hale.

28 As Lord Cranworth famously pointed out, "none of us have ever seen a man indicted in a Court of Law for not loving his neighbour as himself", quoted by Kenny, in ibid., 130. Lord Atkin in *Donoghue*

evidence to suggest that Taylor's words had any effect in reducing obedience to the law—still less that they tended "to the dissolution of all government."

The real criticism of Hale's reasoning, though, is that it is based on a contradiction. In order to punish Taylor for his statements on matters of religion, Hale was forced to identify a secular basis for the jurisdiction of the ordinary (as opposed to ecclesiastical) courts. However, once he identified that basis as the undermining of the authority of the state and of respect for the law, there was no reason for common law courts to punish blasphemy as a distinct offence because the law of sedition already provided an ample basis for dealing with such conduct. The law of sedition was well-established by this time and might be thought to be a more appropriate basis upon which a secular court could restrain expression which threatened the authority of the state or incited hostility between different members of society.[29]

Despite this fundamental difficulty, Taylor's case and its rationale continued to be cited with approval well into the nineteenth century.[30] It was explicitly adopted by Blackstone.[31] This point should not be overstated: Hale's justification for the common law of blasphemy was, of course,

v. Stevenson [1932] A.C. 562, 580 induced from the mass of single instances in which liability had previously been imposed the classic statement of the tort of negligence in these terms: "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? receives a restricted reply." In the context of the common law right to a fair hearing, Fortescue J. stated in *R. v. Chancellor, Master and Scholars of the University of Cambridge* (1723) 1 Str. 557, 567 that "even God himself did not pass sentence on Adam before he was called upon to make his defence". As Lord Hoffmann pointed out subsequently, this cannot have been to improve the quality of God's subsequent decision given His Omniscience (*Secretary of State for the Home Department v. AF (No 3)* [2010] 2 A.C. 269, [72]).

29 Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (London: MacMillan and Co, 1883), 298–316 traces the history of sedition back to the Plantagenets, but states that it was "highly important and prominent" by the time of the Tudors. See further *Stephen's Digest of the Criminal Law* (9th edn, London: Sweet and Maxwell, 1950), art. 114.

30 Examples of cases in which later courts (including several Chief Justices) relied not just on the authority of *Taylor's case*, but expressly adopted Hale's rationale include *Dominus Rex v. Woolston* (1728) Fitz. 64; 94 E.R. 655 (for suggesting that Christ's miracles should be read allegorically and not literally); *R. v. Williams* (1797) 26 St. Tr. 653 and *R. v. Carlisle (Richard)* (1819) 3 B. & Ald. 161 and *R. v. Carlisle (Mary)* (1821) 1 Str. Tr. N.S. 1033 (for publishing Thomas Paine's *The Age of Reason* (1794)).

31 William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, 59 defined blasphemy as: "denying [the Almighty's] being or providence; or by contumelious reproaches to our saviour Christ. Whither also may be referred all profane scoffing at the Holy Scripture, or exposing it to contempt or ridicule. These are offences at common law

elaborated by later judges. In some cases, a further paternalistic motive of protecting the young or uneducated from attacks on Christianity was relied upon, particularly where the "tone and spirit [of the attack] is that of offence and insult and ridicule, which leaves the judgment really not free to act."[32] However, these refinements did not call into question the fundamental rationale of Taylor's case.

THE APPARENT NARROWING OF BLASPHEMY

In the late nineteenth century, as sober and temperate criticism of religion became a respectable part of public discourse, the law appeared to tolerate the reasoned denial of the truth of Christianity.[33] By the early twentieth century, it appeared that Hale's reasoning was finally displaced as the basis for the law of blasphemy in favour of a rationale based on preserving public order. In 1917, Lord Parker stated that:

punishable by fine and imprisonment, or other infamous corporal punishment: for Christianity is part of the laws of England."

32 *R. v. Carlisle (Mary)* (1821) 1 Str. Tr. N.S. 1056 (the sentencing decision) and *R. v. Heatherington* (1841) 4 St. Tr. NS 563, 591 (the source of the quotation). *Heatherington* also marks a change of focus in examining the tone of the expression, rather than whether it seeks to undermine aspects of doctrine.

33 Such a modification was necessary to avoid exposing to prosecution Charles Darwin and Thomas Huxley (as Roskill L.J. pointed out in *R. v. Lemon (Denis)* [1979] Q.B. 10, 17). In *R. v. Ramsay and Foote* (1883) 15 Cox CC 231, 236, Lord Coleridge C.J. directed the jury in the following terms: "A wilful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and the unwary, is the criterion and test of guilt." This passage was also thought to have established (or affirmed) the requirement that the defendant must have intended to insult or vilify religious subjects. When read in context, this view is not justified as a requirement of intention would have been incompatible with the numerous convictions of booksellers for blasphemous material who might well have been unaware of the precise content of what they or their servants sold (John Spencer, "Blasphemous Libel Resurrected—Gay News and Grim Tidings", Camb. L.J. 38 (1979) 245). The earlier formulations of the law had been most influentially criticised by John Stuart Mill in *On Liberty* (2nd edn, (London: John W. Parker and Son, 1859), 54, which refers to the "stain … of legal persecution: in relation to penalties for expression" and relies on the then recent example of Thomas Pooley, "an unfortunate man, said to be of unexceptional conduct in all relations of life," who was sentenced at Bodmin Assizes in July 1857 to 21 months' imprisonment for blasphemy (although ultimately receiving a free pardon from the Crown).

> To constitute blasphemy at common law there must be such an element of vilification, ridicule or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace.[34]

More importantly for our purposes, Lord Parker appeared (250 years after it was decided) to bury Taylor's case, which he summarised as follows:

> to the effect that Christianity is part of the law of the land, the suggested inference [is] that to attack or deny any of its fundamental doctrines must therefore be unlawful. The inference of course depends on some implied major premise. If the implied major premise be that it is an offence to speak with contumely or even to express disapproval of existing law, it is clearly erroneous. If, on the other hand, the implied major premise is that it is an offence to induce people to disobey the law, the premise may be accepted, but to avoid a non sequitur it would be necessary to modify the minor premise by asserting that it is part of the law of the land that all must believe in the fundamental doctrines of Christianity, and this again is inadmissible. Christianity is clearly not part of the law of the land in the sense that every offence against Christianity is cognizable in the Courts.[35]

Lord Sumner was more succinct:

> My Lords, with all respect for the great names of the lawyers who have used it, the phrase 'Christianity is part of the law of England' is really not law; it is rhetoric…[36]

34 *Bowman v. Secular Society Ltd* [1917] A.C. 406, 446, per Lord Parker. Lord Sumner, in ibid., 466–467, stated that the limits of lawful expression were exceeded where criticism of Christianity or the Church of England tended to "endanger the peace then and there, to deprave public morality generally, to shake the fabric of society, and to be a cause of civil strife." *Bowman* was not a prosecution for blasphemy, but addressed the question of whether a bequest to the Secular Society (whose aim was to promote the philosophy that human conduct should be based upon natural knowledge, and not upon supernatural belief) was valid. The House of Lords held that it was (Lord Finlay L.C., 423; Lord Dunedin, 433; Lord Parker of Waddington, 445–446; and Lord Buckmaster, 470).

35 Ibid., 446.

36 Ibid., 464.

Neither judge pursued these views to their logical conclusion: if the law of blasphemy was henceforth to be based on the secular justification of preserving the public peace, there was no reason for it to exist as a crime distinct from the established common law offences relating to the maintenance of public order.[37] However, the decision in *Bowman* did appear to confirm that the scope of blasphemy had narrowed to an extent more consistent with the exercise of free speech in a modern democracy.[38] Indeed, it led many informed commentators to suggest that the law of blasphemy was moribund.[39] Save for the case of *Gott*,[40] there was no prosecution for blasphemy after *Bowman* until 1977.

RESURRECTION?

However, in that year, the moral campaigner Mary Whitehouse instituted a successful private prosecution for blasphemy against the editor and publishers of *Gay News*.[41] Mrs Whitehouse objected to the publication of the poem, 'The Love that Dares to Speak its Name' by Professor James Kirkup, which was accompanied by a drawing of Christ. The poem was described in court as ascribing to Christ promiscuous homosexual practices with the

37 Anthony T.H. Smith, *The Offences Against Public Order* (London: Sweet and Maxwell, 1987).

38 Lord Sumner also stated in *Bowman v. Secular Society Ltd* [1917] A.C. 406, 466–467: "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault … In the present day reasonable men do not apprehend the dissolution or the downfall of society because religion is publicly assailed by methods not scandalous." He also stated that he would not want to limit the power of a future society to expand the scope of blasphemy again to deal with "future irreligious attacks, designed to undermine fundamental institutions of our society."

39 Lord Denning, *Freedom under the Law* (London: Stevens & Co, 1949), 46. Sir James Fitzjames Stephen had said as much in 1883 in *A History of the Criminal Law of England* (London: MacMillan and Co, 1883), Vol. II, 396, describing the offences against religion as "all but entirely obsolete." Lord Goddard C.J. referred to the "somewhat obsolete offence of blasphemy" in a different context in *R. v. Morris* [1951] 1 K.B. 394, 397.

40 *R. v. Gott* (1922) 16 Cr. App. R. 87. Gott had described Christ as entering Jerusalem "like a circus clown on the back of two donkeys" and the Court of Appeal upheld his conviction for distributing such pamphlets in a manner which might provoke a breach of the peace in "anyone in sympathy with the Christian religion, whether he be a strong Christian, or a lukewarm Christian, or merely a person sympathizing with their ideals": 89–90.

41 *Whitehouse v. Lemon* [1979] A.C. 617.

Apostles and other men during his lifetime and depicting in graphic detail acts of sodomy and fellatio with the body of Christ immediately after his death (perhaps to demonstrate that there is no rest for the virtuous either).[42]

In *Whitehouse v Lemon*, the House of Lords confirmed the continued existence of the offence of blasphemy at common law. However, the main issue in the appeal was whether or not the prosecution had to prove an intention to shock or arouse resentment or whether it was sufficient that the defendant intended to publish material which was in fact blasphemous. The majority held that the latter was all that the law required.[43] Although not in issue in the appeal, two members of the House of Lords expressed the clear view that there was no requirement to demonstrate a tendency to cause a breach of the peace.[44] *Lemon* therefore appears to reverse two of the most important elements of the progress which was thought to have been made in narrowing the definition of blasphemy over the previous century: by requiring an intention to insult or cause offence and by confining it to cases where a breach of the peace was likely. Viscount Dilhorne went further and held that the elements of the offence of publishing a blasphemous libel had not altered since 1792.[45] Finally, *Lemon* affirmed the fundamental shift in the common law: from punishing attempts to undermine elements of Church of England doctrine to protecting the "feelings of the general body of the community."[46] The House of Lords did not explain how this new rationale justified criminal restrictions on free speech, especially where the feelings

42 The phrase "no rest for the wicked" appears to derive from the *Book of Isaiah*, verses 48:22.

43 *Whitehouse v. Lemon* [1979] A.C. 617, Viscount Dilhorne, 645F–656C; Lord Russell of Killowen, 657G–658A; and Lord Scarman, 665F–G. The editor of *Gay News*, Denis Lemon, was originally sentenced to nine months' imprisonment (suspended for 18 months) and fined £500; the publishers were fined £1,000. The Court of Appeal quashed the custodial elements of Lemon's sentence and left the fines in place. The other members of the House held that an intention to shock or cause resentment was required (Lord Diplock, 635H–636B; and Lord Edmund-Davies, 656B–E).

44 Ibid., Lord Edmund-Davies, 656G and Lord Scarman, 662D–E.

45 1792 was the date of Fox's Libel Act which made all questions of fact in a libel case a matter for the jury, rather than the judge.

46 *Whitehouse v. Lemon* [1979] A.C., 662C–D, per Lord Scarman. This is also clear from the majority's approval of the trial judge's direction to the jury which included the following: "Did it shock you when you first read it? … Could you read it aloud to an audience of fellow-Christians without blushing? … Could it hurt, shock, offend or appal anyone who read it?"

of the community which are entitled to protection are confined to those of members of the Church of England.[47]

Lemon marked the final stage in the development of the common law of blasphemy. There are, however, two more cases to deal with in this history. In the first, a Mr Choudhury sought unsuccessfully to bring a private prosecution against Salman Rushdie and the publisher of *The Satanic Verses* for blasphemous libel.[48] In *Choudhury*, the Divisional Court decided that it had no power to extend the common law of blasphemy to other religions.[49] The second is the decision of the Divisional Court which ultimately ended 340 years of blasphemy prosecutions.

ABOLITION

Jerry Springer: The Opera, a stage show which ran in London and elsewhere between 2003 and 2006, was a parody of the television chat show which pioneered a confessional and confrontational format for addressing personal problems. The stage show was produced by Jonathan Thoday, who was one of two named defendants in the prosecution; the other was Mark Thompson, the Director General of the BBC, which broadcast the production in January 2005. In January 2007, the national director of an organisation called Christian Voice (Stephen Green) sought to bring a private prosecution for blasphemous libel in the City of Westminster Magistrates' Court. The BBC received a substantial number of complaints about the broadcast. It appeared that Mr Green objected particularly to Act Two, in which the character of

47 Robert C. Post in *Constitutional Domains: Democracy, Community, Management* (Cambridge, Mass.: Harvard University Press, 1995), 97–100, regards Lord Scarman's judgment and his call for the law to be extended to other religions as "an instrument of pluralism."

48 *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 Q.B. 429. In *R. v. Gathercole* (1838) 2 Lew 237, 254; 168 ER 1140, 1145, Alderson B stated: "A person may, without being liable to prosecution for it, attack Judaism or Mahomedanism, or even any sect of the Christian religion, save the established religion of the country; and the only reason why the latter is in a different situation from the other is, because it is the form established by law, and is therefore part of the constitution of the country." See Jeremy Waldron, "Rushdie and Religion", in *Liberal Rights-Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993) and Colin Munro, "Prophets, Presbyters and Profanity" [1989] *Pub. L.* 369.

49 *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 Q.B., 447B–448E, per Watkins L.J.

Mr Springer descends into hell and there meets various characters from the earlier parts of the play who now represent religious figures. For example, in the course of Act Two, there is an argument between Satan and Christ (who is dressed in a large baby's nappy and accepts that he has coprophiliac tendencies) in which the latter admits to being "a little bit gay" and, holding up his hand, tells Satan to "Talk to the stigmata"; the figure of God is portrayed as inadequate and in need of therapy; and the chorus chants *Jerry Eleison* (a parody of the *Kyrie Eleison,* which features in many Christian services). *Jerry Springer* was unlikely to be everyone's cup of tea, but the question for the District Judge was whether a summons for blasphemy should be issued.

The Judge decided not, and the Divisional Court rejected Mr Green's attempt to overturn that decision by way of judicial review.[50] The Divisional Court upheld the decision that, on the facts, there was no *prima facie* case of blasphemous libel and, as a matter of law, the prosecution was barred by the Theatres Act 1968 and the Broadcasting Act 1990.

The Divisional Court upheld the finding that the play could not be regarded as an attack on Christianity, but was really aimed at the exploitative television chat show. On the facts, this finding was plainly open to the Court.[51] However, it is surprising in the light of *Lemon*, which can only be understood as having shifted the focus of the inquiry from whether the expression undermined Christianity to whether it was offensive. Whatever view one takes of *Jerry Springer*, it cannot be disputed that many Christians would find it deeply upsetting.[52] The Court also relied on the fact that the play had been performed regularly for two years without any evidence that it undermined society or occasioned civil strife or unrest to support the conclusion that there was no *prima facie* case of blasphemous libel.[53] Again, this is an admirable finding as a matter of principle, but it sits very

50 *R. (on the application of Stephen Green) v. The City of Westminster Magistrates Court & Ors* [2007] EWHC 2785 (Admin); [2008] E.M.L.R. 15 (the 'Jerry Springer' case).

51 The Court had regard to the play "as a whole" (ibid., [32] per Hughes L.J.) which is a further departure from many of the earlier cases where the judgments focus on particular phrases of passages.

52 A point the Court concedes, ibid., [32], per Hughes L.J.

53 Ibid., [32]–[33], per Hughes L.J. The Court did refer to the fact that there were demonstrations outside BBC Television Centre on the day before and the day of the broadcast (the latter attended by 500 people). There was some disorder at the first demonstration and at least one arrest.

uncomfortably with the clear decision in *Lemon* that demonstrating a likelihood of unrest was no part of the prosecution's burden.[54]

As to the Theatres Act, s. 2(4) provides (as relevant):

> No person shall be proceeded against in respect of performance of a play or anything said or done in the course of such a performance—
>
> (a) for an offence at common law where it is of the essence of the offence that the performance or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality …

That was held to work for Mr Thoday. Mr Thompson was entitled to the protection of an identical provision in paragraph 6 of Schedule 15 to the Broadcasting Act 1990. There can be no dispute that blasphemy is a common law offence. It is also arguable that, after *Lemon*, the essence of the crime is offensiveness.[55] However, this definition of the gravamen of blasphemy sits ill with the Court requiring an attack on Christianity and relying on the absence of evidence of unrest to deny that a *prima facie* case of blasphemy had been made out. If offensiveness is the essence of blasphemy, surely Mr Green had a *prima facie* case. What is most surprising about *Jerry Springer* is that the Theatre and Broadcasting Acts were found to be applicable to blasphemy at all. When their language, statutory context and legislative

54 The Court in *Jerry Springer* makes the valid point that the issue in *Lemon* was the mental element of the offence and so the House of Lords did not have to address the *actus reus* in great detail. However, several members of the House of Lords were clear that the only consequence of the vilification of religion that the offence requires is that it should "be likely to arouse a sense of outrage" among believers (for example, Lord Diplock in *Whitehouse v. Lemon* [1979] A.C., 632D and 638C, Lord Edmund-Davies, 646H–647B and 654H and Lord Russell, 657A). The Court in *Jerry Springer* also accepts that two of the judges in *Lemon* stated that there was no requirement of an "imminent" breach of the peace. As we have seen above, those judges went further and stated that there was no need to show that the expression tended to lead to a breach of the peace (whether imminent or not). Lord Scarman's reference to safeguarding "the internal tranquillity of the kingdom" goes much further than preventing an imminent breach of the peace as he makes clear by referring to protecting religious beliefs from "scurrility, vilification, ridicule and contempt" (*Whitehouse v. Lemon*, 658B–C). In fact, the Court's requirement that the act "must be such as tends to endanger society as a whole, by endangering the peace, depraving public morality, shaking the fabric of society or tending to cause civil strife" was based on a concession (*Jerry Springer*, [10]).

55 Ibid., [19]–[20], per Hughes L.J.

history are examined, it is clear that these provisions are about obscenity and that neither Act was intended to apply to blasphemy.[56]

The Divisional Court reached what is undoubtedly the correct decision as a matter of principle, but only by failing to follow binding precedent and ignoring orthodox guides to legislative meaning. The ramifications of the decision were also likely to be extensive. If Parliament considers that protection from offensive religious expression is not necessary in relation to broadcasting, it is very difficult to argue that restrictions on the written word will be justified, as the broadcast media are invariably regarded as more intrusive and therefore subject to greater legitimate regulation.[57] *Jerry Springer* appeared therefore to have achieved what commentators had wrongly predicted in the previous century: that the law of blasphemy was a dead letter.

Within just over a month of the decision in *Jerry Springer*, the government proposed to abolish the offences of blasphemy and blasphemous libel after a short period of consultation.[58] On 5 March 2008, Baroness Andrews introduced the relevant clauses to the House of Lords by way of amendment to the Criminal Justice and Immigration Bill.[59] The new clauses came into effect in July 2008, thereby ending 350 years of legal history. I have described elsewhere the numerous unsuccessful attempts to amend, repeal or replace the law of blasphemy: all of which met with failure.[60] The decision in *Jerry Springer* realised what these noble and concerted efforts over more than a century had failed to achieve, and within eight months.

INCITEMENT TO RELIGIOUS HATRED

One of the arguments relied on by those seeking to introduce a law of incitement to religious hatred was the apparent unfairness of confining the

56 Ivan Hare, "Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine", in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009), 298-299.

57 E. Barendt, *Freedom of Speech* (2nd edn, Oxford: Oxford University Press, 2005), 444–449.

58 HC Deb., 9 January 2008, Col. 454.

59 Ibid., cols. 1118–121.

60 Ivan Hare, "Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine", in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009), 296–297.

protection of the law of blasphemy not just to Christianity, but to the Church of England. This difference of treatment was exacerbated by the fact that certain religious groups (notably Jews and Sikhs) were treated in English law as "ethnic groups" and hence protected by the law on incitement to racial hatred, whereas Christians, Muslims or Hindus were not.[61] As early as 1936, the first suggestions were made that incitement to religious hatred should become a criminal offence in its own right. Initiatives re-emerged throughout the late twentieth and early years of the twenty-first century.[62]

The Religious Hatred Act became law in 2006. It defines religious hatred as "hatred against a group of persons defined by reference to religious belief or lack of religious belief."[63] The offence is defined as follows in s. 29B(1):

> A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.

This is narrower than the equivalent offence of incitement to racial hatred (originally introduced in the Race Relations Act 1965): the religious offence is confined to threatening words or behaviour, whereas incitement to racial hatred may be committed using "threatening, abusive or insulting" words or behaviour; further, as is clear from the above definition, incitement to religious hatred requires a specific intent to stir up hatred and has no alternative that hatred is likely to be stirred up (unlike racial hatred). Finally, there is an express limitation clause in s. 29J:

61 *Mandla (Sewa Singh) v. Dowell Lee* [1983] 2 A.C. 548 (Sikhism) and *R. (E) v. Governing Body of JFS* [2009] UKSC 15; [2010] 2 A.C. 728 (Judaism).

62 Ivan Hare, "Crosses, Crescents and Sacred Cows: Criminalising Incitement to Religious Hatred" [2006] *Pub. L.* 521, 522–523. See further Karen Goodall, "Incitement to Religious Hatred: All Talk and No Substance?", 70 *Modern L. Rev.* (2007) 89. Incitement to religious hatred has been prohibited in Northern Ireland since the Public Order (Northern Ireland) Order 1987 (see Brigid Hadfield, "The Prevention of Incitement to Religious Hatred - An Article of Faith?", 35 *N.I.L.Q.* (1984) 231 and Therese Murphy, "Incitement to Hatred: Lessons from Northern Ireland", in Sandra Coliver (ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (London: Article 19, 1992).

63 The Religious Hatred Act has inserted amendments into the Public Order Act 1986. This definition is in s. 17A of the 1986 Act.

> Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practising their religion or belief system.

The new offence is a serious one: the maximum penalty is seven years' imprisonment.

In the absence of any prosecutions in the ten years since it was passed, it is difficult to say much more about the offence in this context. However, it is misleading to regard the new offence as a modern form of blasphemy for a number of reasons. First, it applies equally to beliefs which are secular or even anti-religious (as long as they occupy a position of equivalent importance to the individual and do not conflict with the fundamental rights of others).[64] Secondly, it cannot sensibly be regarded as a secular equivalent of blasphemy as the limitation clause makes clear that the offence provides no protection for the tenets of any sacred belief or the practices of any religion: its focus is entirely on words or behaviour which threaten and are intended to stir up hatred against individuals or groups of individuals. Incitement to religious hatred is therefore more closely related to prohibitions on discrimination than to the old laws of blasphemy.[65] In the field of discrimination law, English courts have set their faces firmly against providing legal protection for the content of a religious belief "in the name only of its religious credentials."[66]

64 *Kokkinakis v. Greece*, 17 E.H.R.R. (1993) 397, [31] acknowledges the importance secular beliefs may have for the individual. The test for the recognition of such beliefs is described in *R. (Williamson) v. Secretary of State for Education and Employment* [2005] 2 A.C. 246, [23] and *Grainger Plc v. Nicholson* [2010] I.C.R. 360; [2010] I.R.L.R. 4.

65 The incitement to hatred laws now cover race, religion and sexual orientation (the latter enacted by the Criminal Justice and Immigration Act 2008 which abolished blasphemy). The Law Commission of England and Wales has recently concluded against further extending the offences to cover the other prohibited grounds of disability and transgender identity in *Hate Crimes: should the current law be extended?* (May 2014), Law Com. no. 348, Cm.8865 (upon which see Ivan Hare, "Free Speech and Incitement to Hatred on Grounds of Disability and Transgender Identity: the Law Commission's Proposals' [2015] *Pub. L.* 385).

66 *McFarlane v. Relate Avon Ltd* [2010] EWCA Civ 880; [2010] I.R.L.R. 872, [25]. *McFarlane* was a refusal of permission to appeal against the decision of the Employment Appeal Tribunal rejecting

For example, in rejecting a claim by a Christian who had been sacked for failing to provide sex counselling services to same-sex couples on grounds of his beliefs, Laws L.J. stated:

> The Judaeo-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of lawmakers as to the objective merits of this or that social policy…But the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled.[67]

Finally, it is a notable feature of the debate that the introduction of the offence of incitement to religious hatred has not quieted calls for a new law of blasphemy which would provide protection for the beliefs of all religious groups.[68]

CONCLUSION

The focus of this chapter has been the history of the English law of blasphemy. Given the volume and complexity of the material, there has not been the opportunity to address directly the difficulties the law presented for the protection of free speech or the elimination of religious discrimination. Nor have I had the space to analyse blasphemy against the background of

his challenge to his dismissal. *McFarlane* was upheld by the European Court of Human Rights in *Eweida v. United Kingdom,* 57 E.H.R.R. (2013) 8.

67 *Mcfarlane*, ibid., [23]. The case was unusual in that a witness statement from Lord Carey of Clifton, the former Archbishop of Canterbury, was submitted to the court by counsel for McFarlane. In the witness statement, Lord Carey requested that cases involving religious discrimination should be heard by an expanded bench of judges who have a "proven sensibility to religious issues" (quoted at *McFarlane*, ibid., [17]). Lord Carey has also intervened in the press, arguing that a *de facto* blasphemy law is operating in Britain as a result of a reluctance on the parts of the press to criticise Islam (*Sunday Times*, 11 January 2015, available at: http://www.thesundaytimes.co.uk/sto/news/uk_news/National/article1505845.ece. (accessed 31 January 2016)).

68 "Muslims Call For Blasphemy Law In UK And UN To Prevent Repeat of Anti-Mohammed YouTube Film" on *The Huffington Post* for 25 September 2012, available at: http://www.huffingtonpost.co.uk/2012/09/25/muslims-blasphemy-law-uk-un-mohammed-youtube_n_1912004.html (accessed 28 January 2016).

the European Convention on Human Rights and Fundamental Freedoms or other international law provisions or to compare it to other legal systems which have had to grapple with many of the same problems. However, it is to be hoped that this account of blasphemy's "long and at times inglorious history in the common law"[69] has revealed something of the difficult relationship between religion and the English state and the sometimes stuttering progress towards making England a freer and more secular polity.

69 Lord Diplock in *Whitehouse v. Lemon* [1979] A.C., 633B.

4 On the Life and Times of the Dutch Blasphemy Law (1932–2014)

Paul Cliteur & Tom Herrenberg

INTRODUCTION

When the Dutch Criminal Code entered into force in 1886 it did not contain a general provision against blasphemy. In 1880, during a debate in Parliament about the Criminal Code, the minister of justice at the time, Mr. Anthony Ewoud Jan Modderman (1838–1885), opined that "God is able to preserve His own rights by Himself; no human laws are required for this purpose."[1] Yet, five decades later things had changed. A legislative proposal of 25 April 1931 entitled "Amendment to the Criminal Code with provisions regarding certain utterances hurtful to religious feelings"[2] sought to add two provisions relating to the defamation of religion to the Criminal Code. Article 147 no. 1 was intended to criminalise "he who verbally, in writing, or in image, publicly expresses himself by scornful blasphemy in a manner offensive to religious feelings." In addition, Article 429bis made it illegal for people to "display, in a place visible from a public road, words or images that, as expressions of scornful blasphemy, are hurtful to religious feelings."[3]

In this chapter we will give an account of this blasphemy law. We will address the law's evolution in chronological order and start by describing the parliamentary debate on the introduction of the law in the 1930s. Subsequently, we will focus on the reception of the blasphemy law in the courts, up to and including the trial of Dutch novelist Gerard Kornelis van

1 Parl. Doc., House of Rep., 1880/81, Debate of 25 October 1880, 102. In Dutch: *Ik meende dat het sedert lang vaststond, dat God zijn regten zelf wel weet te handhaven; daartoe zijn geen menschelijke wetten noodig; daartoe is de strafwetgever niet geroepen*.

2 Parl. Doc., House of Rep., 1930/31, no. 348, 2 (*Aanvulling Wetboek van Strafrecht met voorzieningen betreffende bepaalde voor godsdienstige gevoelens krenkende uitingen*).

3 Parl. Doc., House of Rep., 1930/31, no. 348, 2. Article 147 no. 1 was placed within the section "Crimes against public order" of the Dutch Criminal Code.

het Reve (1923–2006) in the 1960s. The outcome of Van het Reve's trial—concerning charges over a number of blasphemous writings—reduced the legal prohibition against blasphemy to a more or less hollow phrase in the Criminal Code. However, as we hope to illustrate next, blasphemy did not vanish from the Dutch scene. But the post-Van het Reve generation of Dutch freethinkers and "blasphemers" had to reckon with a more redoubtable adversary than the puritanical Christianity that had introduced blasphemy legislation in the Netherlands. Post-Van het Reve authors like Theodor Holman, Theo van Gogh, and others had to face the informal interpretation of holy law by jihadists. The murder of Theo van Gogh—particularly since it was revenge for a short film critical of the position of women in Islam that Van Gogh had co-created—by a home-grown Islamic extremist in November 2004 came as a great shock to secularised Dutch society. The murder could be seen as the resurgence of blasphemy law in a new guise. In the last part of the chapter we will briefly discuss the law that ultimately removed the blasphemy provisions from the Dutch Criminal Code.

THE PROPOSAL OF THE DUTCH BLASPHEMY LAW

> O, he is a great pleasure, that good god! He is an exceptionally useful thing! He leads the way in the march to war, he lends his lustre to the smear campaign against the Soviet Union, he is the patron of every christian and unchristian exploiter, he symbolizes the stultification of the masses … God means imperial warfare, Christ means starvation and exploitation of the working masses, the "Holy Spirit" means bloody suppression of the colonial peoples, the Holy Virgin Mother means stultifying the people in order to preserve all these blessings. For the working people, there is no Christmas. For them there is the song of the French revolution—A la lanterne!
>
> *Christ on the dunghill!*
> *The Holy Virgin in the stable!*
> *The Holy Fathers to the Devil!*
> *Long live the voice of the canon!*
>
> The canon of the proletarian revolution!

These sentences are taken from an article entitled "Away with Christmas!" (*Weg met het Kerstfeest!*) that appeared in the Dutch communist daily *De Tribune* on 24 December 1930. This newspaper article was one example of blasphemous material Minister of Justice Jan Donner (1891–1981) "grudgingly" gave in the short explanatory note accompanying his proposal for the introduction of the blasphemy law.[4] Donner, a Reformed Christian and eminent jurist who later in his career became president of the Dutch Supreme Court, cited two more examples that inspired him to draft the blasphemy law, both taken from the same communist newspaper—in Mr. Donner's words "a Dutch daily of anti-religious orientation."[5] The first example was a "repulsive" cartoon entitled "Plans for intervention are crafted in heaven and carried out on earth" (*Interventie-plannen worden in de hemel gesmeed, en op aarde uitgevoerd*) that appeared on 19 January 1931. The cartoon depicts a naked God in heaven wearing a hat with the words "God himself" written on it. God is depicted as saying: "I have discovered a new poison gas with which we can destroy Soviet-Russia entirely, my son." A gas-masked Jesus is seen hanging on a crucifix, holding a large tank of "Pacifism" in his hands. Referring to the tank, Jesus says: "Before we start, let us first spread this powder across the earth." The cartoon also pictures Petrus—also wearing a gas mask—holding a sign that reads: "This year, God can only be contacted for war affairs." The other example Mr. Donner briefly mentioned in his explanatory note was a cartoon that appeared on 4 April 1931, the day before Easter. This cartoon accompanied an article entitled "Away with Easter!" (*Weg met het Paasch-feest!*). It pictures God blowing air at the sails of a heavily armed sailing boat on its way to the Soviet Union. The sailing boat is manned by people in top hats, suggesting that they belong to the upper class of society, who are also blowing air at the sails.[6]

4 Parl. Doc., House of Rep., 1930/31, no. 348, 3, 1 (footnote 1). Donner only cited the sentence "Christ on the dunghill!" in his note. He did not want to cite the other "far graver" blasphemous content from the newspaper article.

5 Ibid.

6 The so-called *Centrale Vereeniging voor Openbare Leeszalen*, a government body responsible for the supervision of subsidised public libraries and public reading rooms, objected to the placement of editions of *De Tribune* at public libraries and reading rooms on the ground of "moral harmfulness." Subsequently, the communist daily was banned from those places. In defending this decision, the Dutch minister of Education, Arts, and Sciences, Jan Terpstra (1888–1952), pointed out that "an honest, reasonable defence of atheism or communism" would not be banned from the public reading rooms, yet the problem with *De Tribune* was the "disgusting manner" in which this daily had

In a rare insight Donner gave into his inner self, he revealed that the opinions expressed in *De Tribune* had deeply offended him and that it was "a question of conscience" whether he could make use of his powers as a minister to act against this "vomit from hell."[7] And indeed, he came to the conclusion that the state had a role to fulfil here.[8]

Expressions like those cartoons in *De Tribune*, in which "a scorning, abusive, or reviling manner is chosen,"[9] were the target of the projected law. The proposal relied heavily on the distinction between substance and manner: "Contesting Theism as such, no matter how fiercely, is not at issue; as long as, in terms of manner, a certain line is not crossed, the law remains idle," Mr. Donner argued.[10] Although the minister was willing to "admit to a certain degree" that abusive remarks about the divine were rare in Dutch society, they were nonetheless intolerable.[11] The Netherlands was a predominantly Christian nation at the time[12] and in "a State in which God is acknowledged in multiple ways," public expressions "that directly scorn God … cannot be tolerated." According to Mr. Donner, "The public sphere

"repeatedly scorned and offended the religious feelings of a large number of our people." See Parl. Doc. House of Rep., Debate of 12 June 1931, 2754–2755.

7 Parl. Doc., House of Rep., Debate of 31 May 1932, 2634.

8 Ibid.

9 Parl. Doc., House of Rep., 1930/31, no. 348, 3, 1.

10 Ibid. "Every form of expression that does not scorn or abuse God" was outside the scope of his legislative proposal. The same was the case for "thoughtless utterances" and "cursing." Obviously, Donner was of the opinion that the boundaries had been crossed in the articles and cartoons that had appeared in *De Tribune*. See Parl. Doc., House of Rep., 1930/31, no. 348, 3, 2. Donner's separation of substance and manner echoes the famous distinction made by Lord Coleridge, to whom Donner refers in his discussion of comparative law. In *Regina v. Ramsay and Foote* (1883) it was decided "that the mere denial of the truths of Christianity does not amount to blasphemy; but a wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or artful sophistry calculated to mislead the ignorant and unwary, is the criterion and test of guilt; and supposing that the decencies of controversy were observed, even the fundamentals of religion might be attacked." Donner cites this decision in Parl. Doc., Senate, 1931/1932, no. 34, Eindverslag der Commissie van Rapporteurs, 6 October 1932, 4. The English blasphemy law is discussed in chapter 3 of this volume.

11 Parl. Doc., House of Rep., 1930/31, no. 348, 3, 1.

12 In 1930, roughly 80–90 per cent of the people were affiliated with a branch of Christianity. See Ronald van der Bie, "Kerkelijkheid en kerkelijke diversiteit, 1889–2008," in: Centraal Bureau voor de Statistiek [central bureau of statistics], *Religie aan het begin van de 21ste eeuw* (report), 14.

must be kept pure from such forms of expression."[13] Not criminalising scornful blasphemy would limit freedom in Donner's view:

> Freedom of religion in the broad sense is a fruit of our historical development that we should be proud of. But in order to protect this freedom of thought as one of our highest national goods, action in this field is required. No good can continue to exist, whose abuse goes unpunished. When freedom of thought leads to debauchery, it will be, in the interest of freedom itself, forcefully opposed.[14]

The minister felt that somebody who "scornfully contests another's religion, arrogates that person's religious beliefs" and thus "utters his hurtful opinion in the other person's sphere."[15]

PARLIAMENTARY RECEPTION

Despite the brevity of the legislative proposal and its accompanying explanatory note—together they comprised no more than two pages—it provoked a lively parliamentary reaction. A committee composed of members of the House of Representatives—the lower house of Parliament (*Tweede Kamer*)—issued a preliminary report roughly two and a half months after the law was proposed. This inventory of the parliamentarians' attitudes revealed a number of objections to the criminalisation of scornful blasphemy.

One objection was an empirical one. Not all representatives were convinced—as claimed by Mr. Donner—of the systematic nature of the "anti-religious propaganda," nor was there consensus about the ability of society to counter the contested utterances without having to resort to the criminal law.[16]

A second type of objection raised the argument of equality. To outlaw "scornful blasphemy" was problematic because, it was argued, blaspheming the tenets of other religious groups might not be much more than vindicating one's own religious principles.[17] It was suggested that the non-religious

13 Parl. Doc., House of Rep., 1930/31, no. 348, 3, 2.

14 Ibid.

15 Ibid. See also Parl. Doc. House of Rep., 1931/32, no. 34, 1, 4.

16 Parl. Doc., House of Rep., 1930/31, no. 348, 4, 3.

17 Ibid., 3, 4.

were often the target of abusive speech. The issue was raised whether the frequent defamation of socialist principles or saying that "non-belief is a plague" should be punishable.[18] Several members of Parliament adduced that it was a sign of "unbearable self-conceit"—after all, the proposer of the law was a Christian—to protect by law only the feelings of Christian believers while non-religious people could be freely exposed to grave vilification. These representatives were of the opinion that the blasphemy law contradicted the neutrality of the state and that all varieties of thought should be equally entitled to legal protection. Instead of legal suppression, these members viewed moral education as the appropriate response to the scorning of beliefs.[19]

The legal technicalities of the proposal gave ground for a third objection. "Because of a wide diversity of opinions" that existed in the Netherlands on what exactly did and did not constitute "blasphemy," members of Parliament feared too much judicial subjectivity.[20] The law would either be inapplicable to concrete cases at all, or it would lead to inconvenient trials. The publicity surrounding those trials would only broadcast the blasphemous utterance, which would add insult to injury.[21] Moreover, there was a great consensus between both proponents and opponents about the bill's ambiguity. The bill did not clearly identify the subject the blasphemy law sought to protect. Was it *God*? Or was it the religious feelings of *people*? And what about mocking Jesus? The explanatory note mentioned that "in a State in which God is acknowledged in multiple ways," public expressions "that directly scorn God … cannot be tolerated," which seemed to imply the protection of God's image and reputation. Yet the minister also spoke of "the severe insult to the feelings of the vast majority of our people" that had been done by utterances such as the blasphemous cartoons that had inspired him to draft the bill. It was this ambiguity that raised much uncertainty about the aim and scope of the blasphemy law.[22] Some also argued that it was impossible to blaspheme God, because the notion of "God," whether spiritual or personal, was metaphysical and existed outside worldly society. Others argued that it would be impossible to establish an objective standard for "blasphemy"

18 Ibid., 3.

19 Ibid.

20 Ibid., 3, 5.

21 Ibid., 3.

22 Ibid., 4.

and feared that scientific opinions could also be affected by the law.[23] The minister's argument that the blasphemer "utters his hurtful opinion in the believer's sphere" was met with criticism from some members of Parliament; they considered it to be "highly artificial."[24]

Notwithstanding these objections, there were also strong voices in favour of the proposal. This appraisal was largely due to the connection between God, state power and morality. For example, it was proclaimed that

> In a State in which God is acknowledged, in which God is recognized also as the ultimate foundation of the Power of Government, … acts that this law seeks to punish violate public order, which Government has a duty to preserve. Public Blasphemy, insofar as it taunts or scorns God, breaches the moral order that, regarding our attitude towards the Highest Sovereign, ought to be maintained in a Christian nation. Prohibiting scornful blasphemy thus relates to the protection of the State's foundations, but also extends to preserving the moral order in a Christian society, to keeping debauchery within reasonable bounds, to halting the worst degeneration, to countering the deepest decline.[25]

DONNER'S RESPONSE AND FURTHER PARLIAMENTARY DEBATE

At the end of 1931 Donner replied to Parliament's observations in his "Answering Note" (*Memorie van Antwoord*). He affirmed that, in his view, blasphemous utterances were indeed so systemically present in nature in Dutch society that a law against them was justified.[26] As for the argument of equality, Donner "firmly denied" that his law was discriminatory in that it favoured religion over non-belief. He made clear that his legislative proposal

23 Ibid., 5.

24 Ibid., 8.

25 Ibid., 6. Other representatives regarded "the relation between Government and God, who is the source of its Power and the necessary foundation of law and moral order … as the legal basis for the proposal. This legal basis anchors in nature and reason, which oblige the State to protect and secure religion with the force of law … This duty could justify in certain instances the State taking action against Blasphemy. In doing so, the State does not offer legal protection to God, but it fulfils a natural duty and enforces the foundation of its moral order." See Parl. Doc., House of Rep., 1930/31, no. 348, 4, 6.

26 Parl. Doc., House of Rep., 1931/32, no. 34, 1, 1.

sought not to combat statements offensive to religious feelings *in general* but only those that were uttered in a manner that "scorn the Person of God."[27] Therefore, questions about the defamation of socialist principles or of non-belief were irrelevant to Donner, since the bill did not seek to punish those who argued that "religion is the opium of the people" or statements of a similar nature.[28] The very specific utterances Mr. Donner had in mind simply could not be compared with other types of expression: the utterances his law sought to ban were of a "unique character."[29] Donner also addressed the perceived "ambiguity" of his proposal. While "unable to hide his disappointment about this perception," he stated that, as a matter of "factual phenomenon," the blasphemous utterances were "scornful of God," but that the legal basis of the proposal lay in "the insult to religious feelings."[30] As for the worries expressed by some parliamentarians that scientific views about God and religion could be affected by the blasphemy law, Mr. Donner made clear that not every statement dishonouring God fell within the scope of his law. Only those uttered in a "scorning manner" would be prohibited, and, as "scientific opinions and accounts of honest convictions never take such form," the fear that scientific opinions could be punishable was deemed unrealistic.[31] Moreover, he argued that defamation of "the Person of Christ" was covered by his blasphemy law, since "the Person of Christ is one of the Persons of the Holy Trinity."[32]

The proposal for the blasphemy law was discussed over the next year in multiple sessions in both the House of Representatives and the upper house of Parliament, the Senate (*Eerste Kamer*). As could be expected from the earlier responses, the bill received both praise and criticism. Mr. Visscher

27 Ibid., 3.

28 Ibid., 1.

29 Ibid. See also: Parl. Doc., Senate, 1931/1932, no. 34, Eindverslag der Commissie van Rapporteurs, 6 October 1932, 2.

30 Parl. Doc., House of Rep., 1931/32, no. 34, 1, 2, 3. Donner also made this explicit in: Parl. Doc., House of Rep., Debate of 31 May 1932, 2630 (*Het ontwerp beoogt niet strafbaar te stellen de godslastering als zoodanig, maar de krenking van godsdienstige gevoelens door de smalende godslastering; het treft een bepaalden vorm van krenking van godsdienstige gevoelens. De zakelijke omschrijving daarvan is de smalende godslastering, maar de krenking van godsdienstige gevoelens is de rechtsgrond van de strafbepaling.*).

31 Parl. Doc., House of Rep., 1931/32, no. 34, 1, 3.

32 Ibid., 4. A scorning image of the Mother of God, "although it would undoubtedly hurt religious feelings," was not conceived to be covered by the proposal.

(1864–1947) argued in favour: "When Theism speaks so loud in our social conscience that it resounds in our laws in many ways, when thousands of people, however they may differ in philosophy of life, are moved by His Name, in whom we live and act, … then blaspheming that Name must be punishable."[33] Others disagreed for a variety of reasons. The elusive nature of "religion" and "God" were reasons for Mr. Eerdmans (1868–1948) to oppose the blasphemy law. "The conception of God is different for a theist, for a deist, or for a pantheist," he argued.[34] "Religion is a personal conviction. One only ever accepts one's own religion as true. After all, if one did not recognise the truth of one's own religion or favoured a different religion, one would either wish to practise no religion at all or adopt that other religion. This means that the religious expression of one person is liable to constitute offence to another's religious feeling."[35] This view was endorsed by Mr. Eerdmans' colleague, Henri Marchant (1869–1956), who was also against the proposal: "The orthodox has a different understanding of God from the non-orthodox. The Jew has a different understanding of God from the Christian. The conception of God is different for Catholics and Protestants."[36] Furthermore, it was claimed that the blasphemy law would turn out to be counterproductive,[37] that it was incomprehensible—"Is it desirable that our Criminal Code would allow God to be blasphemed, yet prohibit Him from being scornfully blasphemed—that it would create many problems of interpretation—"What are 'religious feelings'? … Don't we already have enough vague concepts like 'compunctions,' 'conscientious objections,' and 'grave conscientious objections'?"[38]—and that it would be difficult to explain why some anti-religious speech would be illegal while other types would not be covered by the blasphemy law—for example, defaming Mother God or the mass.[39] It was even argued that the proposal should never have reached

33 Parl. Doc., House of Rep., Debate of 26 May 1932, 2592.

34 Ibid., 2585.

35 Ibid.

36 Parl. Doc., House of Rep., Debate of 27 May 1932, 2608.

37 Parl. Doc., House of Rep., Debate of 26 May 1932, 2584, 2585. See also Parl. Doc., House of Rep., Debate of 27 May 1932, 2606. This was also underlined by the communist representative Mr. Wijnkoop, who argued that "the consequence of this law will be that we will become better known by the working classes." See Parl. Doc., House of Rep., Debate of 26 May 1932, 2603.

38 Ibid., 2586.

39 Ibid., 2589.

Parliament, since it created "a maze of theological imaginations" that could not be satisfactorily discussed during parliamentary proceedings.[40]

As one might expect, fierce opposition also came from the Dutch Communist Party. Mr. Wijnkoop (1876–1941), who frequently cited Lenin in his speeches, saw the blasphemy law primarily as a tool used by capitalists to blur the vision of the masses and to "knock down the communist movement."[41] The true reason why this law was proposed, according to Wijnkoop, was "to combat the communist daily *De Tribune*, the instrument of international communism that represents its ideas."[42] "We fight against all those obscurities, against superstition, and against enslavement to the Supreme Being to use the masses and to suppress the workers and peasants; that is what needs to be eliminated. This is the reality. We do it because it is more sacred to us than all the other sanctities discussed by these gentlemen here."[43]

Perhaps somewhat surprising, the orthodox Reformed Protestant Party—*Staatkundig Gereformeerde Partij* (SGP)—also objected to the blasphemy law. The problem for this party was that the scope of the proposed law was *too narrow*, since it sought to criminalise only *scornful* blasphemy instead of blasphemy as such.[44] "The Lord must be honoured and idolatry must be fought against," according to Mr. Zandt (1880–1961).[45] The blasphemy law as it was proposed was, in his eyes, "a toleration of the idolatry of Rome."[46]

Eventually, the proposed blasphemy law was adopted by both Houses of Parliament. The House of Representatives adopted the bill by a small majority—49 votes to 44[47]—while the Senate did so with 28 members voting for and 18 against it.[48] The blasphemy law entered into force on 1 December

40 Ibid., 2584.

41 Ibid., 2597.

42 Ibid.

43 Ibid., 2600.

44 Parl. Doc., House of Rep., Debate of 27 May 1932, 2619. Also in: Parl. Doc. House of Rep., Debate of 1 June 1932, 2653.

45 Parl. Doc., House of Rep., Debate of 31 May 1932, 2646.

46 Ibid.

47 Parl. Doc., House of Rep., Debate of 1 June 1932, 2654. The House of Representatives had 100 seats at the time (currently 150 seats).

48 Parl. Doc., Senate, Debate of 3 November 1932, 49. The Senate had 50 seats at the time (currently 75 seats).

1932. Mr. Donner described the adoption of his bill as "one of the greatest satisfactions" of his time as a minister of justice.[49]

THE FIRST TRIALS BASED ON THE BLASPHEMY LAW

The first trial under the blasphemy law took place on 30 May 1933.[50] On that day, Mr. Hillenaar and Mr. Van den Heuvel, two members of the *Sociaal–Democratische Arbeiderspartij* political party stood trial before the Almelo District Court. They were accused of being involved in the distribution of about 1,500 copies of a manifesto that, according to the public prosecutor, fell within the scope of Article 147 no. 1 of the Criminal Code.[51] The manifesto called God, among other things, "an ineffective object of propaganda"—*een ondoelmatig propaganda–object*. The prosecutor requested that the court fine the accused the sum of 20 guilders.[52] However, the court's judgement of 13 June 1933 was in favour of the accused. The court acquitted Mr. Hillenaar because it could not be proven that he had distributed or had arranged for the distribution—*verspreiden of doen verspreiden*—of the manifestos. While there was sufficient evidence that the other defendant, Mr. Van den Heuvel, had distributed the manifestos, he was "discharged"—*ontslagen van rechtsvervolging*[53]—and was not sentenced. According to the court, the blasphemy law did not apply to the *mere spreading* of opinions. After all, article 147 no. 1 criminalised him who "*expresses* himself by scornful blasphemy in a manner offensive to religious feelings." The court reasoned

49 See Parl. Doc., House of Rep., Debate of 31 May 1932, 2634.

50 "Smalende godslastering. Eerste vervolging volgens art. 147 W.v.S.," in *De Telegraaf*, 20 May 1933, 3; "Eerste overtreding van het godslasteringswetje," in *Algemeen Handelsblad*, 31 May 1933, 6; "Eerste vervolging op grond van het Godslasteringswetje," in *Het Volk*, 31 May 1933, 2.

51 "Eerste vervolging op grond van het Godslasteringswetje. S.DA.P.–bestuurders uit Lonneker staan terecht," in *Het Volk*, 31 May 1933, 2; "Eerste overtreding van het godslasteringswetje," in *Algemeen Handelsblad*, 31 May 1933, 6.

52 "Eerste vervolging op grond van het Godslasteringswetje. S.DA.P.–bestuurders uit Lonneker staan terecht," in *Het Volk*, 31 May 1933, 2.

53 See for an explanation of this legal term and how it differs from "acquittal" in Dutch criminal law: Peter J.P. Tak, *The Dutch Criminal Justice System* (Nijmegen: Wolf Legal Publishers, 2008), 102–103 ("The accused is to be acquitted when the essential facts charged are not proven by the evidence presented. A discharge of the accused takes place when the facts charged are proven, but do not constitute a criminal offence, or when the offender is not liable due to a justification or exculpation defence.").

that "where someone is not the author of a written work, it is necessary for that person to identify himself with the content of the work in some way, for example by signature" in order to fall within the scope of Article 147 no. 1.[54] The court did not address whether or not the statements in the manifesto constituted "scornful blasphemy."[55]

On 15 June 1933, two days after the Almelo District Court's decision, the Rotterdam District Court decided a case in which the prosecutor had requested the court to sentence the defendant to one month in prison.[56] In this case a 34-year-old sailor had to appear in court for peddling a brochure entitled "The Netherlands, God, and Orange"—*Nederland, God en Oranje*. The accused was caught on 3 December 1932, only two days after the blasphemy law had become effective.[57] The writer of the brochure—freethinker and public atheist Anton Levien Constandse (1899–1985)—could not be held accountable since the brochure had been written before the blasphemy law had entered into force.[58] As Mr. Constandse[59] recalled in an article he wrote in 1979, he had written the brochure "with remarkable anger and vicious aggression."[60] The passage that was the focus of the trial read:

> And how is God doing? At least 20 per cent of the Dutch people are no longer affiliated with a church, and 10 per cent at most attend church

54 "Smalende godslastering," in *Algemeen Handelsblad*, 14 June 1933, 4. (*Indien men niet zelf de auteur van het geschrift is, toch zeker noodig is dat op eenige wijze, bijv. door onderteekening blijkt, dat men zich met den inhoud van het geschrift vereenigt* …).

55 "Beschuldigd van smalende godslastering. Vrijspraak en ontslag van rechtsvervolging," in *De Telegraaf*, 14 June 1933, 4.

56 "Godslastering," in: *De Telegraaf*, 16 June 1933, 6; "Een brochure met godslasterlijke inhoud. Tweede geval voor de rechtbank, thans te Rotterdam behandeld," in *De Telegraaf*, 2 June 1933, 6; "Tweede Godslasteringsproces," in *Het Volk*, 1 June, 3.

57 "Godslastering. Nog geen veroordeling," in *Leeuwarder Courant*, 16 June 1933; "Een brochure met godslasterlijke inhoud. Tweede geval voor de rechtbank, thans te Rotterdam behandeld," in *De Telegraaf*, 2 June 1933, 6.

58 "Een brochure met godslasterlijke inhoud. Tweede geval voor de rechtbank, thans te Rotterdam behandeld," in *De Telegraaf*, 2 June 1933, 6.

59 Anton Constandse was one of the most important atheist authors in Dutch history. See on his work: "Constandse, Anton Lieven," in Paul Cliteur and Dirk Verhofstadt, *Het Atheïstisch Woordenboek* (Antwerp: Houtekiet, (2015), 77–78. His most important works are A.L. Constandse, *Grondslagen van het atheïsme* (Rotterdam: N.H. Luguis & Zonen, 1926) and *De zelfvernieting van het protestantisme* (Rotterdam: N.H. Luigies & Zonen, 1926).

60 Anton Constandse, "Een geval van godslastering," in *De Gids*. 142 (1979) 402.

> regularly. That is why they have decided to support the apparently weakened Old Lord by punishing anybody who speaks "scornfully" of him! Our Christian ministers are so convinced of God's impotence (despite the millions in subsidies!) that they rushed to his aid, hoping that the old Dutch God will, both civilly and militarily, be able to exert himself again! His religious enterprise, however, is failing hopelessly.[61]

Despite the prosecutor's request for a relatively harsh sentence, the sailor was discharged on the same grounds as in the first trial, namely that he had not expressed any blasphemous opinion; he had only distributed the brochure.[62]

On 16 August 1934 a new provision of the criminal law entered into force: Article 147a.[63] In short, this provision made it illegal to distribute or publicly display blasphemous material.[64]

A conviction for blasphemy did take place on 15 June 1934, when a "radical socialist" was fined 30 Dutch guilders. The socialist had during a public appearance made statements about religion that were largely "beyond the reach of" Article 147 no 1. due to his "tactful choice of words"[65]—largely, but not completely, since he also stated that "A God that created the tubercle bacillus is not a God, but a criminal."[66] On 20 September 1934, a member of the National Socialist Movement was convicted in Rotterdam for displaying one of the cartoons that had inspired the Minister of Justice to draft the blasphemy law—the one about God saying he had discovered a new poison gas.[67] The accused, who was a devout Christian, had put the image, accompanied by a caption that read "Such a thing is allowed in Holland!"—*Zooiets mag in Holland!*—behind a window because he had wanted to show how "God and His Son are abused nowadays in politics."[68] The judge convicted on the basis of Article 429bis of the Criminal Code and, taking the

61 Ibid.; Robert Baelde, *Studiën over Godsdienstdelicten* (The Hague: Martinus Nijhoff, 1935), 228–229, also partially in "Godslastering. Nog geen veroordeling," in *Leeuwarder Courant*, 16 June 1933.

62 Robert Baelde, *Studiën over Godsdienstdelicten* (The Hague: Martinus Nijhoff, 1935), 229.

63 See http://wetten.overheid.nl/BWBR0001854/TweedeBoek/TitelV/Artikel147a/geldigheidsdatum_21-01-2016/informatie.

64 *Staatsblad* 1934, no. 405 (Bulletin of Acts and Decrees).

65 Robert Baelde, *Studiën over Godsdienstdelicten* (The Hague: Martinus Nijhoff, 1935), 232.

66 Ibid., 234.

67 "Godslasterende afbeelding voor het raam," in *Het Vaderland*, 21 September 1934, 2; "Godslastering. N.S.B.-er veroordeeld," in *De Tijd*, 21 September 1934.

68 Ibid.

good intentions of the accused into consideration, fined him 5 guilders.[69] On 23 June 1963 a columnist for the magazine *Propria Cures* was convicted and fined for writing, amongst other things, that Jesus was a "demagogue" and an "amateur ombudsman."[70]

However, the trial that turned out to be the major turning point in the history of the Dutch blasphemy law was the case against Dutch novelist Gerard Kornelis van het Reve (1923–2006), who later in his life became known as Gerard Reve.

SEX, GOD, AND A DONKEY: THE TRIAL OF GERARD KORNELIS VAN HET REVE

In 1966 Van het Reve was brought before the court of Amsterdam for breach of Article 147 no. 1 of the Dutch Criminal Code. Van het Reve, in the Netherlands generally considered to be one of the greatest Dutch novelists of the post-Second World War era,[71] faced charges over two pieces of writing that the public prosecutor considered to be scornful blasphemy.

The first piece was a letter Van het Reve had written to his bank, which was published in the Dutch magazine "Dialogue"—*Dialoog*—in 1965.[72] This letter, entitled "Letter to my Bank"—*Brief aan mijn Bank*—was in essence a request to his bank to transfer 400 Dutch guilders to him. In the letter, sent from the Spanish town of Algeciras, Van het Reve gave an account of some of his daily experiences in Spain, accompanied by a mixture of poetry, imagination and references to Jesus. In a part where Van het Reve wrote about his love for animals, the letter contained a passage that read:

> If God again surrenders himself in Living Dust, he shall return as a donkey, at most capable of formulating a few syllables, under-appreciated, maligned and beaten, but I shall understand Him and immediately go to bed with Him, but I shall tie bandages around His

69 Ibid.

70 Amsterdam District Court, judgment of 23 June 1965, ECLI:NL:RBAMS:1965:AB5727 (in Dutch).

71 The other two are Willem Frederik Hermans (1921–1995) and Harry Mulisch (1927–2010). Together they are typically referred to as *De Grote Drie* ("The Big Three") of Dutch post-Second World War literature.

72 See Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 16.

> tiny hooves, so that I won't get too scratched if He flounders when he comes.[73]

This letter prompted a priest and a reformed minister to write a joint letter to the magazine in which they complained about this passage. Although they praised Van het Reve's work in general, they found it incomprehensible that the editors of *Dialoog* had published the "blasphemous and repulsive" passage.[74] In response, Van het Reve explained that what he had written was simply *his* imagination of God:

> Everyone is entitled to their own conception of God, and, if they are so inclined, to the freedom to share it. I, for example, imagine our Saviour the way *I* see and experience Him ... Many people wish to imagine Him with his hair way too long, parted in the middle and drenched in brilliantine, garbed in a white dress with an embroidered collar, and preferably without genitals, or, at least, without sexual activity ... Yet, for me the Son of God had quite well-proportioned genitals, which he decisively refused to let rust away; I imagine Him as being bisexual, although with a predominant homosexual tendency, slightly neurotic, but without hatred towards any creature, because God is the Love that cannot exclude any creature from Himself. This is *my* image of God's Son. I do not want to force it upon anyone, but I am also unwilling to have another, no matter whom, take it away from me.[75]

Van het Reve also disparaged the accusation of "blasphemy." Pondering about the Second Coming, Van het Reve admitted that the "chances of Him appearing as a Donkey, not to mention also wanting to have sex with me, are, of course, very small, but anything is possible with God. It seems blasphemous to me to exclude a priori any way in which God may incarnate and how he would behave."[76] He subsequently wrote that

73 The entire passage was longer, yet the public prosecutor considered only this part to fall within the definition of "scornful blasphemy."

74 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 24-25.

75 Ibid., 27.

76 Ibid., 26.

> The word "blasphemy," as used by many Christians in this country, has about the same meaning as, for example, the word "provocation" has to communists. Just as communists employ the word "provocation" for every political action or expression that goes against their system of terror, so do self-described Christians utilise the word "blasphemy" for every conception of God that does not suit their system of terror or the one-way street of their so-called Christian tolerance.[77]

Van het Reve's initial article in *Dialoog*—the letter to his bank—together with his subsequent response to the priest and the reformed minister inspired representative Van Dis (1893–1973) to ask the government whether it intended to instigate criminal proceedings against Van het Reve. Van Dis considered Van het Reve's remarks to be "of a blasphemous, immoral, and even satanic nature, and thus extremely offensive to the religious feelings of many of our people."[78]

The second piece of writing that got Van het Reve in trouble was a letter entitled "Letter from The House named The Grass"—*Brief uit Het Huis, genaamd Het Gras*—that appeared in his novel "Nearer to You"—*Nader tot U*—in 1966. In this particular passage, Van het Reve fantasised about kissing and having sex with God, who would appear to him as a "one-year-old mouse grey donkey."[79]

Van het Reve was prosecuted, and he stood trial before the district court of Amsterdam on 20 October 1966.[80] It was a highly anticipated, lengthy court day: theologians, writers and journalists watched Van het Reve explain his work,[81] and four expert witnesses were heard during the day—a reformed professor specialising in Christian ethics, a professor of the exegesis of the

77 Ibid., 26-27.

78 Parl. Doc., House of Rep., Question of 22 February 1966.

79 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 33.

80 Van het Reve wanted the trial as well, since he wanted to clear himself of the accusations of blasphemy. See: Jan Jacobus Abspoel, *Studenten, moordenaars en ander volk. Kritische kanttekeningen van een officier van justitie* (Ede: L.J. Veen, 1979), 83; Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 16, 34; "Merkwaardige rechtszitting over „godslastering". f. 100,- boete geëist tegen Van het Reve," in *De Waarheid*, 21 October 1966, 3.

81 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 31.

New Testament, a professor of literary studies, and a psychiatrist. During the trial Van het Reve defended his work largely along the lines of his response in the magazine *Dialoog*. When the judge asked him about his ideas, Van het Reve said that when he imagined God's incarnation, he did so "in the shape of the most loveable creature that I know. That creature doesn't need to be a human being. It could be a lamb, but donkeys are even more endearing to me." Every human being desires an intimate relationship with the deity, Reve claimed. And he added that for him this relationship had a sexual component to it.[82] Asked if he found the described acts perverse, Van het Reve said that there are "many opinions about what is perverse and what is not; suppose the animal appreciated the act, would it be immoral in that case?"[83] Van het Reve also explained that for him sexuality is as holy as religion. The two are "indissolubly linked to each other. A sexless God is unthinkable for me. That would be blasphemy to me."[84]

The public prosecutor, Mr. Jan Jacobus Abspoel (1935–1987), did not hide his lack of enthusiasm for the blasphemy law under which he prosecuted Van het Reve. During the trial he revealed that as a secondary school student he had protested against the blasphemy law, and he called the law "hideous." But he also said that as a public prosecutor he had to enforce the law as it was—and that, in his opinion, it had been broken by Van het Reve.[85] This being the case, he requested the court to fine Van het Reve 100 Dutch guilders.

The Amsterdam District Court delivered its verdict on 3 November 1966. It turned out to be a decision that satisfied neither the prosecutor nor Van het Reve. The court discharged Van het Reve because, although it considered the passages to be blasphemous, they were not "scornful" (*smalend*). The court was not convinced that the passages were of a purely jeering nature, which the court considered necessary to convict Van het Reve of breach of Article 147 no. 1 of the Criminal Code.[86]

82 Ibid., 34.

83 Ibid., 35.

84 Ibid., 36.

85 Ibid., 85. In his memoires Mr. Abspoel wrote that he had had always regarded the blasphemy law as a political instrument from the 1930s. See Jan Jacobus Abspoel, *Studenten, moordenaars en ander volk. Kritische kanttekeningen van een officier van justitie* (Ede: L.J. Veen, 1979), 81.

86 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 93.

Both Van het Reve and the public prosecutor appealed the decision, the first because he wanted an acquittal, the second because he was after a conviction. Van het Reve had ditched his trial lawyer and defended himself during his appeal.[87] The appeal was not about new facts, but only about the existing facts' legal qualification.[88] In a brief decision, the Court of Appeal proclaimed that it could not be proven that Van het Reve's passages were scornfully blasphemous and acquitted him.[89] The court reasoned that it "was not demonstrated that the defendant had intended to revile or scorn God, or in any way to express contempt for God."[90]

Finally, the Dutch Supreme Court declared the complaint against the appellate court's judgment inadmissible, thereby making Van het Reve's acquittal final. In its judgment the Supreme Court referred to a notable feature of the parliamentary debate of 31 May 1932. During this debate, Minister of Justice Donner had said that "the term 'scornful' clearly entails a subjective element, namely the intention of the scorner to bring down the, posited as existent, highest Supreme Being"—*de bedoeling van den smalende het als reëel gestelde Opperwezen neer te halen*.[91] The Supreme Court concluded from this that "the term 'scornful' does not solely describe a certain manner of expression that is hurtful to religious feelings." When applied to Van het Reve's case, the court was of the opinion that in order to violate the blasphemy law it was insufficient for an author to express himself in such a manner that others were bound to be hurt in their religious feelings.[92]

87 On 29 September 1967 Van het Reve wrote in a personal letter to his publisher—Geert van Oorschot— that he was terribly upset with his lawyer, calling him "incompetent." He was also angry at Van Oorschot for not—partly—paying his legal fees, which amounted to the rather large sum of 4.685 Dutch guilders. See Gerard Reve and Geert van Oorschot, *Briefwisseling 1951-1987* (Amsterdam: G.A. van Oorschot, 2005), letter no. 388.

88 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 114.

89 Ibid., 153–154.

90 Ibid., 154.

91 Parl. Doc., House of Rep., Debate of 31 May 1932, 2632.

92 Jan Fekkes, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve* (Amsterdam, De Arbeiderspers, 1968), 173. Curiously enough, no party in the discussion advanced the notion that the blasphemer's motivation is irrelevant, because blasphemy is simply a *human right*. The implication of a universal right to freedom of speech and freedom of religion is that this right is not only there for the believer to proclaim his respect for the supreme being, but also for the communist, atheist, freethinker to air his disrespect. Authors like Lucretius, Holbach, Paine, LaMettrie, Marx, Russell, Hitchens, Dawkins and others have made it their mission to warn people

THE AFTERMATH OF VAN HET REVE'S TRIAL

After Van het Reve's trial the blasphemy law became basically obsolete or a "dead letter."[93] The effect of this decision was that it more or less rendered the blasphemy law empty in its totality. Not only was the Public Prosecution Service reluctant to engage in any kind of action, the public at large felt that blasphemy was everyone's own business and not a matter for the government or the law. One man's orthodox belief is another man's blasphemy.[94] So the only feasible attitude in a pluralistic society is *tolerance*. That means the acceptance that people may differ on religious matters.[95] The public was satisfied that the blasphemy law had not led to a conviction of one of the country's most popular authors. Van het Reve even became somewhat of a cult hero.

During the trial, his great talent for irony, pastiche and tricking his audience came to the fore. He presented himself as a Catholic, but was he really? Was he serious about what he said about his conception of God? Nobody could tell; and perhaps not even Van het Reve himself could be positively sure about what his stance was. His great competitor and critic among the modern novelists, Harry Mulisch (1927–2010), wrote an interesting essay about this. He spoke of the "irony of irony."[96]

about the deleterious effects of religions belief—see the quotations from "Away with Christmas!" at the beginning of this chapter. One may disagree with this, but it would be unfair to give religious believers the right to ventilate their ideas while denying this to others or expecting those others, infidels, to hide their motives. Their motive is, indeed, to facilitate the creation of a world without religious belief, or the transformation of religious beliefs into what John Stuart Mill called "the religion of Humanity": see John Stuart Mill, *Three Essays on Religion* (Amherst, NY: Prometheus Books, 1998 (1874)).

93 See B.A.M. van Stokkom, H.J.B. Sackers and J.-P. Wils, *Godslastering, discriminerende uitingen wegens godsdienst en haatuitingen* (The Hague: Boom Juridische uitgevers, 2007), 106–109.

94 This point of view is well defended by Jeremy Waldron, "Rushdie and Religion," first published under the title "Too important for Tact," in *The Times Literary Supplement,* 10 March 1989, 248 and 260, and reprinted in Jeremy Waldron, *Liberal Rights: Collected Papers 1981-1991* (Cambridge/New York: Cambridge University Press, 1993, 134–143.

95 See on the history and the concept of tolerance Henri Pena-Ruiz, "Tolérance," in Henri Pena-Ruiz, *Dictionnaire amoureux de la laïcité* (Paris: Plon, 2014), 853–861.

96 Harry Mulisch, *Het ironische van de ironie: Over het geval G.K. van het Reve* (Antwerp: Manteau, 1976), 60. This was not criticism directed at Reve's blasphemous views, but because of supposed racist convictions. Reve was a provocateur *pur sang* and he also entered the stage with—among

Anyhow, Van het Reve had proved to be untouchable. Perhaps the most likely comparison with a contemporary author would be the French novelist Michel Houellebecq (*b*. 1956). Houellebecq, one of the most provocative contemporary French authors,[97] wrote a hilarious novel, *Soumission*, that some commentators dubbed as "racist" or "islamophobic," but irony makes the author impervious to criticism.[98] Houellebecq's protagonist claims, for example, that there are some good sides to the submission to radical Islam as well. Gradually he becomes convinced of the great prospects for men in a polygamous culture, a well-paid position at the Sorbonne—financed by Saudi capital—and other accoutrements. This is all very much in the tradition of Van het Reve's irony as well.

Other Dutch authors followed in the footsteps of Van het Reve, and they developed a highly critical stance towards traditional Christianity. His own brother, Karel van het Reve (1921–1999), was a case in point. Although a professor at the University of Leiden, he wrote essays that were at times provocative and deliberately jarring, according to some. One of these essays was called "The incredible wickedness of the Supreme Being" (1985).[99] This was an essay in the style of Thomas Paine.[100] In *The Age of Reason* (1794) Paine commented on the God of the Old Testament and he made clear that this God was a supreme bully. There were many reactions to Van het Reve's essay, and some people complained about the offensive tone of his diatribe. Some of those reactions were published, and this gave Van het Reve the opportunity for further comments, as always with great humour and manifest writing skills. None of this gave rise to a prosecution. As we indicated, the

others—national-socialist symbols (the swastika) together with a sickle and a hammer to provoke his audience.

97 See for his ideas in general Michel Houellebecq and Bernard-Henri Lévy, *Ennemis Publics* (Grasset: Flammarion, 2008), translated into English as *Public Enemies* (London: Atlantic Books, 2011).

98 Michel Houellebecq, *Soumission* (Paris: Flammarion, 2015). Houellebecq was also prosecuted on the basis of earlier comments, elucidating certain passages from his novel *Plateforme*. He was acquitted of all charges though: Sophie Masson, "The Strange Trial of Michel Houellebecq," in *The Social Contract*, 14/2, Winter 2003/2004.

99 Karel van het Reve, "De ongelooflijke slechtheid van het opperwezen", in *NRC Handelsblad*, 20 July 1985, also in Karel van het Reve, *De ongelooflijke slechtheid van het opperwezen* (Amsterdam: Van Oorschot, 1987), 7–20.

100 Thomas Paine, *The Age of Reason* (1794), in Thomas Paine, *Collected Writings* (New York: The Library of America, 1995), 665–885; James H. Smylie, "Clerical Perspectives on Deism: Paine's The Age of Reason in Virginia," in *Eighteenth-Century Studies*, 6/2 (Winter, 1972–1973), 203–220.

times were generally tolerant towards not only religious dissension, but also criticism of religion, even criticism with an offensive quality.[101]

IN THE FOOTSTEPS OF VAN HET REVE: A NEW GENERATION OF POLEMICISTS

A great admirer of both Gerard Reve and his brother Karel van het Reve is the Dutch novelist and journalist Theodor Holman (*b*. 1953), who is also important in the history of Dutch blasphemy. Holman continued the atheist and secularist approach of Karel van het Reve, combined with—sometimes—Gerard's irony. On 2 July 1994, Holman wrote in the daily *Het Parool* that he still believed that all religions deserved to be severely criticised. And he added: "I still believe that every 'Christian dog' (*christenhond*) is a criminal, that praying is something childish, and that the church is a masquerade." Holman was prosecuted on the basis of Article 137c of the Dutch Criminal Code—the provision that prohibits "group defamation." Seventy-five readers of *Het Parool* had declared themselves to have been (or felt) "insulted" by Holman's comments.

Asked what the backdrop of his negative comments on Christianity and Christians was, Holman declared: "Taken into consideration the way the Pope refuses to accept the use of contraceptives in the struggle against AIDS, I can also call the Pope a Christian dog." Holman was acquitted in first instance and also in appeal proceedings.

Later his interest shifted to a new religion on European soil: Islam. In a column of 27 May 2008, he mocked the Amsterdam police force's plan to give every policeman a Quran. Holman also criticised former Amsterdam mayor (2001–2010) Job Cohen who, despite his Jewish background, was a firm defender of multiculturalism and somewhat uncritical towards the spread of radical Islam in his city. Cohen was often mocked in the Netherlands because of his declared intention to go and "have tea" with Islamists. Holman and the mayor were often at loggerheads. But this plan to give every police officer the holy book of Islam as some sort of gesture of goodwill was, of course, also an ideal opportunity for satire. In a caustic commentary, completely in the style of Houellebecq, Holman lets one of the servicemen say to the police

101 See for a portrait of the Netherlands in the 1960s James C. Kennedy, *Nieuw Babylon in aanbouw: Nederland in de jaren zestig* (Amsterdam/Meppel: Tweede druk, Boom, 1997 (1995)); Harry Mulisch, *Bericht aan de rattenkoning* (Amsterdam: De Bezige Bij, 1966).

chief: "In this Quran there are many beautiful punishments, for instance for infidels. Can't we adopt these punishments? That would be much better for this country." In Holman's spoof another serviceman had bought the holy book for his wife "So that she may learn her position within the family."[102]

By that time the most tragic event in Dutch history in the clash between secular religious criticism and radical religious terrorism had already taken place: the murder of the filmmaker Theo van Gogh by a homegrown jihadist. What 9/11 was for the Americans and the execution of the cartoonists of *Charlie Hebdo* for the French, the murder of Theo van Gogh was for the Dutch.

THE MURDER OF THEO VAN GOGH[103]

Theo van Gogh (1957–2004) was born in The Hague, the Netherlands, but in the years before his death he lived in the capital, Amsterdam, where he was also killed, on the street, in broad daylight. He was a close friend of Theodor Holman's, and he was perhaps the most outspoken representative of the secularist, heterodox, freedom-loving culture for which Amsterdam was famous. He was the son of Johan van Gogh (*b*. 1922), who had worked for the Dutch Intelligence Agency. Theo's uncle (1920–1945), also called Theo, was executed as a resistance fighter by the Nazis during the occupation of the Netherlands in the Second World War. His great-grandfather, also called Theo, was the famous art dealer (1857–1891) and younger brother of the world-renowned artist Vincent van Gogh (1853–1891).

Theo van Gogh's life was full of personal quarrels and vehement intellectual clashes with people he deemed to be too politically correct. In the last years of his life he was very impressed by the ideas and work of two other notorious Dutch opinion makers: Pim Fortuyn (1948–2002) and Ayaan Hirsi Ali (*b*. 1969). Fortuyn was a Dutch politician who was murdered by a left-wing

102 Theodor Holman, "Cadeautje," in Theodor Holman, *Holman liegt: de mooiste, hardste, liefste, helderste, gemeenste, slechtste, ontroerendste leugens bijeen* (Amsterdam: Nieuw Amsterdam, 2014).

103 Parts of this section and parts of the section entitled "Voltairian Tolerance" have appeared in Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech," in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–318.

activist, Volkert van der Graaf (*b*. 1969).[104] Van der Graaf deemed Fortuyn to be a "danger" that had to be stopped, that is eliminated. One of Fortuyn's political issues was criticising Islam for its anti-Enlightenment stances, in particular with regard to homosexuality—Fortuyn was gay himself. His most controversial statements were about the "backward nature" of Islamic culture—in Dutch: *achterlijke cultuur*.[105]

Hirsi Ali is a Somali-born writer who, after becoming an atheist, criticised her former religion, Islam, for its anti-feminist proclivities.[106] On this issue she made a film together with Van Gogh, which, on 29 August 2004, was shown on Dutch television. The title of the film—"Submission"—refers to the literal translation of the word "Islam," but also to the submissive attitude the believers exemplify with regard to the central ideas of their belief, which makes progress difficult, if not impossible.

There is a third meaning to "Submission" though, and this became very important in the work of Theo van Gogh. He severely criticised all public intellectuals and politicians who refused to call a spade a spade when it came to radical Islam. The leftist multiculturalist intelligentsia adopted such a strong non-judgmentalist attitude towards radical Islam that their attitude could not be described as anything other than "submissive."[107]

104 See on Fortuyn: S.W. Couwenberg, *Opstand der burgers: De Fortuyn-revolte en het demasqué van de oude politiek* (Damon: Budel, 2004); Ron Eyerman, *The Cultural Sociology of Political Assassination: From MLK and RFK to Fortuyn and van Gogh* (London: Palgrave Macmillan, 2011); René Marres, *Vermoord en verbannen: de aanvallen op Pim Fortuyn en Ayaan Hirsi Ali en hun verdediging van westerse waarden* (Soesterberg: Aspekt, 2006); Bert Snel, *Pim 1: De politieke biografie van Pim Fortuyn als socioloog en als politicus 1990-2002* (Amsterdam: Uitgeverij Van Praag, 2012); Bert Snel, *Pim 2: Pim Fortuyn en zijn partijen, Leefbaar Nederland* (Prof. Dr. W.P.S. Fortuyn Stichting 2013).

105 Frank Poorthuis, and Hans Wansink, "De islam is een achterlijke cultuur," Interview with Pim Fortuyn, in *De Volkskrant*, 9 February 2002.

106 See Ayaan Hirsi Ali, *Infidel: My Life* (London: The Free Press, 2007); Ayaan Hirsi Ali, *Nomad: From Islam to America, A Personal Journey through the Clash of Civilizations* (London: The Free Press, 2010). In her most recent book her focus is less on atheism and secularism as on the need for a reform of Islam: Ayaan Hirsi Ali, *Heretic: Why Islam Needs a Reformation Now* (New York: Harper Collins, 2015).

107 This is the theme of Bruce Bawer, *While Europe Slept: How Radical Islam Is Destroying the West From Within* (New York/Aukland: Doubleday, 2006); Bruce Bawer, *Surrender: Appeasing Islam, Sacrificing Freedom* (New York: Doubleday, 2009).

VOLTAIRIAN TOLERANCE

In *The Friends of Voltaire* (1902) Evelyn Beatrice Hall (1868–1956), writing under the pseudonym S.G. Tallentyre, introduced one of the most often quoted phrases encapsulating the ideal of tolerance: "I disapprove of what you say, but I will defend to the death your right to say it."[108] The words are not to be found verbatim in Voltaire's collected works, but they are certainly in line with the general tenor of his thinking. We may call this "Voltairian tolerance." The essence of this concept of tolerance is that tolerance means condoning what people say or write, even though you disagree with them.

Van Gogh, Hirsi Ali and Fortuyn were vocal advocates of this "Voltairian tolerance." In the case of Pim Fortuyn that meant that, although he himself was a practising homosexual, he would not deny the right of orthodox Muslims to reject his sexual preference. Orthodox religious believers had the right to say "homosexuals are sick," but he himself would reserve the right to say "Islam is a backward religion."

Now this is basically what "Voltairian tolerance" is all about. You can disagree, but you should not aim to silence your discussion partner.[109] Only on the basis of such an attitude is there hope for consensus in the long run.

This conception of tolerance differs completely from the conception that may be dubbed "multiculturalist tolerance."[110] Multiculturalist tolerance means that in a multicultural society all parties must try not to offend each other by saying something that might hurt others. In that situation orthodox imams must be exhorted not to say anything unfriendly about infidels, homosexuals and women; and freethinking homosexuals must constrain themselves in their attitude towards Islam and orthodox Christians who

108 S.G. Tallentyre (pseudonym of Evelyn Beatrice Hall), *The Friends of Voltaire* (London: Smith, Elder & Co., 1906), 199.

109 See Pim Fortuyn, "Tegen de islamisering van onze cultuur. Nederlandse identiteit als fundament", in *De grote Pim Fortuyn omnibus* (Speakers Academy, Van Gennep, 2001), 197–283. Here he expounded his views, inviting Muslims to criticise his views.

110 An unexpected advocate of multiculturalist tolerance is the legal philosopher Jeremy Waldron: see Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, Mass./London: Harvard University Press, 2012). This is unexpected, because Waldron was also one of the most impressive protagonists of Voltairian tolerance in his earlier development: see Jeremy Waldron, "Rushdie and Religion," first published under the title "Too important for Tact," in *The Times Literary Supplement*, 10 March 1989, 248 and 260, and reprinted in Jeremy Waldron, *Liberal Rights: Collected Papers 1981-1991* (Cambridge/New York: Cambridge University Press, 1993, 134–143.

reject their sexual leanings. The ideal of Voltairian tolerance is lively and sometimes rough debate, the ideal of multiculturalist tolerance is polite silence.

The two conceptions of tolerance have significant consequences for the law. From the perspective of Voltairian tolerance the aim is to maximise an individual's right to freedom of speech. From the perspective of multiculturalist tolerance, special incitement to hatred laws are advocated, if not laws protecting people from blasphemy.

Van Gogh, Fortuyn and Hirsi Ali made criticism of Islam an important part of their polemics, especially after the terrorist attacks of 11 September 2001. Van Gogh's last film—entitled "06/05", for the day on which Fortuyn was killed—was dedicated to the life and murder of Pim Fortuyn. In 2003, a year before his death, Van Gogh wrote a book entitled *Allah weet het beter*—"Allah knows best."[111]

As we said, in circles of artists and writers Van Gogh was exceptional, because he did not subscribe to the fashionable left-wing views of many of his colleagues. But he was also hated for this, not only by jihadists, but also by the left-wing multiculturalist establishment.

The irony is that, for many people, his death, and especially the way this came about, actually proved what he had not been able to convey during his lifetime, namely that radical Islam was a mortal danger to the social cohesion of Dutch society—and, frankly, to all democratic and liberal societies.[112]

On 2 November 2004, Van Gogh was murdered by the homegrown jihadist Mohammed Bouyeri (*b.* 1978). Van Gogh was cycling to work in the morning. The killer shot the filmmaker eight times with a handgun and subsequently tried to decapitate him with a knife. He also stabbed two knives into his victim's chest, one with a note in which he spelled out his extremist message to the world, in particular to Western democracies, to Jews and to Ayaan Hirsi Ali. Hirsi Ali proved to be untouchable for the killer, but Van Gogh was a soft target.

111 Gogh, Theo van, *Allah weet het beter,* Xtra Producties, Amsterdam 2003.

112 See for an analysis of the tension between radical and Islam and liberal democracy Caroline Cox and John Marks, *The West, Islam and Islamism: Is ideological Islam compatible with liberal democracy?* (London: Civitas, Institute for the Study of Civil Society, 2003); Bassam Tibi, *Islamism and Islam* (New Haven, CT/London: Yale University Press, 2012); Bassam Tibi, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam versus Global Jihad* (London/New York: Routledge, 2008).

There were two reasons why Van Gogh was so easy to kill. The first reason was that he had no police protection, like Hirsi Ali had—Van Gogh once joked that he hoped Al Qaeda would "respect the working hours of the Amsterdam police."[113] The second reason was that he himself believed that he was not a target for terrorist attacks in the same way Hirsi Ali was, because she was a Muslim—or rather an apostate Muslim[114]—and he was a Dutch writer with no ties to Islam. So in his case there was no "apostasy." According to his understanding of the Islamist ideology, there would be no reason to harm him, let alone kill him. He was after all "the village idiot." But this proved to be a fatal mistake made not only by Van Gogh himself, but also by the Amsterdam police and Dutch authorities in general. That you do not have to be a Muslim to be killed by a jihadist had also been proven by the murder of Rushdie's Japanese translator Hitoshi Igarashi (1947–1991) on 12 July 1991 and by the attack on Italian translator Ettore Capriolo (1926–2013) on 3 July 1991. Rushdie's Norwegian publisher William Nygaard (*b*. 1941) was wounded by gun shots on 11 October 1993. So, in these cases, it was not the identity of the victim that counted;[115] Khomeini's fatwa was what was important.[116]

Anyhow, the murder of Van Gogh took most people by surprise. The politically correct elite that Van Gogh had so vehemently criticised in particular felt embarrassed, although not many people changed their attitudes openly. For Dutch society though, the murder proved a watershed moment. The anti-Islam party of Dutch parliamentarian Geert Wilders achieved huge electoral successes and is at this moment in time—spring 2016—the biggest party in the opinion polls, with support from between

113 See "Ditjes & Datjes," available at: http://www.degezonderoker.nl/metro_42.htm; "Moord is slimmer dan paar bommen; als hij in debat had kunnen gaan, zou hij nog leven," in *Het Parool*, 9 July 2005.

114 Generally considered to be a dangerous position: see Ibn Warraq (ed.), *Leaving Islam: Apostates Speak Out* (Amherst, NY: Prometheus Books, 2003); Simon Cottee, *The Apostates: When Muslims Leave Islam* (London: Hurst, 2015).

115 See Ramine Kamrane, *La Fatwa contre Rushdie: une interprétation stratégique* (Paris: Éditions Kimé, 1997), 30 who, commenting on the targets mentioned, writes "they were no Muslims." Only Rushdie was. Or rather *he was considered* to be one.

116 See for the text Daniel Pipes, *The Rushdie Affair: The Novel, the Ayatollah, and the West* (2nd edn, with a postscript by Koenraad Elst, New Brunswick/New York: Transaction Publishers, 2003), 27.

22 and 27 per cent of voters.[117] It is difficult to imagine that this would have taken place without the murder of Van Gogh, which proved to inaugurate a tremendous change of attitude in the country towards mass immigration, and especially the immigration of people with an Islamic background.

The murderer of Van Gogh was apprehended shortly after the murder, and he was convicted on 26 July 2005 and given a life sentence without the possibility of parole. This severe sentence was a result of the fact that the murderer showed no remorse at all. On the contrary, he used the public trial to explain the jihadist ideology in a manner that must have been a confronting experience for many people who had denied the danger.

After the murder a confusing and heated debate on the "causes" of this tragedy erupted, exposing a deep rift in Dutch society. On the one hand there were the multicultural and politically correct Dutch elites who pointed to Van Gogh's brutal and outrageous criticism of religion and vulnerable minorities in Dutch society. On the other hand, there were the people who pointed to the nature of jihadist ideology. The two groups could not agree on the causes of the new religious terrorism that seemed to be taking hold.

THE ISLAMIST'S PROFESSION OF FAITH

What made a great impression on Dutch society was the radical profession of faith during Bouyeri's trial. What Bouyeri said both before and during his trial was highly relevant for a proper understanding of the Islamist's worldview. As indicated, there was the "Open letter" to Hirsi Ali he left on Van Gogh's corpse.[118] This letter contained specific threats to Hirsi Ali, but also complaints about the Muslim community, which, according to the Dutch jihadist, forsook its primary duty.[119] During his trial Bouyeri said: "You may send me all your psychologists, psychiatrists and experts, but I will tell you, you will never understand this. You can't. If I am released and get the chance to do again what I did on 2 November, wallahi, I would do

117 "Wilders predicts a 'revolt' if PVV is not in next coalition," available at: www.dutchnews.nl, 3 February 2016.

118 B., Mohammed, "Open brief aan Hirshi Ali," in Ermute Klein (trans.), *Jihad. Strijders en strijdsters voor Allah* (Amsterdam: Uitgeverij Byblos, 2005), 27–33; "Open Brief aan Hirshi Ali door Mohammed B.", Parl. Doc, House of Rep., 29 854 (attachment), 2.

119 Ibid., 27–33. See for an analysis of this letter Hans Jansen, "De brief van Mohammed B., bevestigd aan het lijk van Theo van Gogh," in *Tijdschrift voor Geschiedenis*, 118, nr. 3 (2005) 483–491.

exactly the same."[120] The murderer had expected a martyr's death. Found on his body was a suicide note that read: "So these are my last words, riddled with bullets, baptised in blood, as I had hoped."[121]

What can we make of this? As Ron Eyerman writes in *The Assasination of Theo van Gogh* (2008), the killing appears to be staged as a ritual assassination.[122] But one may also call it a "social performance."[123] Eyerman continues:

> Three intended victims were identified in Mohammed B.'s letters on the Internet: Ayaan Hirsi Ali; Ahmed Aboutaleb, an Amsterdam politician born in Morocco, with an opposite view on Muslim assimilation; and Geert Wilders, a Dutch politician following in the footsteps of Pim Fortuyn.[124]

That the murder of Van Gogh was meant to send a signal not only to Van Gogh and Hirsi Ali but also to the Dutch citizenry in general appears from the short conversation that developed after the murderer had killed his victim. As Ian Buruma (*b*. 1951) writes in his account of the events, Mohammed Bouyeri made no serious attempt to escape after having killed his victim. While he was reloading his gun, a woman passing by said "You can't do that!" Bouyeri answered "Yes, I can. And now you people know what you can expect in the future."[125] The ideology of Bouyeri is basically the same as that

120 In Dutch: *U mag al uw psychologen, psychiaters en deskundigen op me af sturen, maar ik zeg u, u zult dit nooit begrijpen. Dat kunt u niet. Als ik vrij kom, en ik had de mogelijkheid om nog een keer te doen wat ik op 2 november deed, wallahi, ik zou precies hetzelfde hebben gedaan*. Our translation, cited in Jaco Alberts and Steven Derix, "Strafproces eindigt in wezenloze harmonie: proces Mohammed B. Verdachte wil levenslang," in *NRC Handelsblad*, 13 July 2005. See the verdict in Rechtbank Amsterdam, 26 juli 2005 (Moord op Theo van Gogh). This was the case in which Mohammed Bouyeri stood trial for his murder of Theo van Gogh. Later he would also stand trial as a suspected member of the *Hofstadgroep*, a network of Dutch jihadists. The citations about the three reasons why Van Gogh deserved death are derived from the *Hofstadgroep* trial.

121 Ron Eyerman, *The Assasination of Theo van Gogh: from Social Drama to Cultural Trauma* (Durham, NC/London: Duke University Press, 2008), 6.

122 Ibid., 7.

123 Ibid.

124 Ibid., 8.

125 Ian Buruma, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (New York: Penguin, 2006), 2; Jutta Chorus and Ahmet Olgun, *In Godsnaam: Het jaar van Theo van Gogh* (Antwerp/Amsterdam: Uitgeverij Contact, 2005), 14.

of Amedy Coulibaly (1982–2015), who synchronised his attacks on a French supermarket with the gunmen in the *Charlie Hebdo* massacre, Saïd Kouachi (1980–2015) and Chérif Kouachi (1982–2015).[126] And Bouyeri was willing to explain this not only with impressive calmness to a witness at the scene, but also during a trial before a Dutch court on 23 January 2008.[127] This was four years after Van Gogh's murder. Here the murderer gave some new insight into his motives. He declared the following:

> The reason for the murder of Van Gogh is that he had offended the Prophet. According to the law he deserved the death penalty, and I have executed it. … Theo van Gogh considered himself a soldier. He fought against Islam. On 2 November 2004, Allah sent a soldier who slit his throat … This is Jihad in the most literal sense. Van Gogh saw himself as a soldier and he needed to be put down. Van Gogh knew exactly what he was doing. He was in the arena.[128]

126 Coulibaly, who killed four people and a Parisian policewoman in the Parisian kosher grocery store, pledged allegiance to the Islamic State in a video published online two days after his death: see Julian Borger, "Paris gunman Amedy Coulibaly declared allegiance to Isis," in *The Guardian*, 12 January 2015. In the video he also pledges allegiance to the leader of ISIS, Abu Bakr al-Baghdadi. The Kouachis declared themselves to be followers of al-Qaida in the Arabian Peninsula. See on the *Charlie Hebdo* massacre Willy Laes, *Een jaar na Charlie Hebdo: een pamflet* Antwerp: Houtekiet, 2015).

127 This was a ruling about the question whether a group of jihadists, the so-called *Hofstadgroep*, could be tried and sentenced collectively for participating in a criminal organisation. This was not the case, according to the court. By that time Bouyeri had already been imprisoned for the murder of Van Gogh. See on the *Hofstadgroep* Emerson Vermaat, *De Hofdstadgroep: Portret van een radicaal-islamitisch netwerk* (Soesterberg: Aspekt, 2005); Emerson Vermaat, *Nederlandse Jihad: het proces tegen de Hofstadgroep* (Soesterberg: Aspekt, 2006).

128 Gerechsthof Den Haag (The Hague Court of Appeal), 23 januari 2008. In Dutch: *Het motief van de moord op Van Gogh was gelegen in het feit dat hij de profeet had beledigd. Volgens de wet verdiende hij de doodstraf en die heb ik voltrokken … . Theo van Gogh zag zichzelf als een soldaat. Hij streed tegen de Islam. Op 2 november 2004 heeft Allah een soldaat gestuurd die hem de strot heeft doorgesneden. Allah heeft het woord van Kufr op die dag vernederd. Op die dag heeft Allah het woord van de waarheid gevestigd. De Kafir is afgeslacht. Dit is Jihad in de meest letterlijke zin … . Van Gogh zag zichzelf als soldaat en hij moest afgemaakt worden. Van Gogh wist precies wat hij deed. Hij bevond zich in de arena*. See on the murder of Van Gogh: Cliteur, Paul, "Godslastering en zelfcensuur na de moord op Theo van Gogh," in: *Nederlands Juristenblad*, Afl. 2004/45, 17 December 2004, pp. 2328–2335; Cliteur, Paul, "Cast Your Discomfort Aside: In matters of life and death, debate is the only thing that counts," in: *The Times Higher Education Supplement*, 28 January 2005; Cliteur, Paul, "State and

This is an insightful passage that teaches us something about the mindset of a violent religious extremist that has some added value to what is to be found in the declarations of other jihadists. Dutch society and also Dutch scholarship in Middle Eastern Studies was totally overwhelmed by this seemingly new phenomenon. Martin Kramer in his groundbreaking *Ivory Towers on Sand: the Failure of Middle Eastern Studies in America* (2001) had made clear how American scholarship had failed completely to predict the events of 9/11.[129] The same could be said of Dutch Islamic studies. Only a few of the professionals had foreseen the radicalisation of Islam by the jihadists, among them the scholars Hans Jansen (1942–2015)[130] and Jan Brugman (1923–2004).[131] Yet, most scholars in the field were perhaps deluded by Edward Said's criticism of orientalism,[132] totally unaware of what was going on in the world. The study of *radicalised religion* was considered inappropriate, if not a betrayal of the profession. But let us not respect these scholarly taboos and try to understand what the Islamists are trying to tell us. What did Bouyeri say?

religion against the backdrop of religious radicalism," in: *International Journal of Constitutional Law,* vol. 10, no. 1, 2012, pp. 127–152; Jansen, Hans, "De brief van Mohammed B., bevestigd aan het lijk van Theo van Gogh," in: *Tijdschrift voor Geschiedenis,* 118, nr. 3 (2005), pp. 483–491; Nesser, Petter, "The Slaying of the Dutch Filmmaker – Religiously motivated violence or Islamist terrorism in the name of global jihad?," Norwegian Defence Research Establishment, Kjeller, Norway 2005; Eyerman, Ron, *The Assasination of Theo van Gogh: from Social Drama to Cultural Trauma,* Duke University Press, Durham and London 2008; Eyerman, Ron, *The Cultural Sociology of Political Assasination: From MLK and RFK to Fortuyn and van Gogh,* Palgrave, Macmillan 2011.

129 Middle Eastern expert James Bill stated in 1996 that "All is not well in the field of Middle East political studies in the United States. A review of the history of Middle East scholarship suggests we have learned disturbingly little after 50 years of heavy exertion." Another prominent American political scientist, Jerrold Green, argued in 1998 that Middle Eastern Studies "is a field in some trouble". Both are quoted in Martin Kramer, *Ivory Towers on Sand: the Failure of Middle Eastern Studies in America* (Washington, DC: The Washington Institute for Near East Policy, 2001), 1.

130 Johannes J.G. Jansen, *The Dual Nature of Islamic Fundamentalism* (Ithaca, NY: Cornell University Press, 1997; Johannes J.G. Jansen, *The Neglected Duty: The Creed of Sadat's Assasins and Islamic Resurgence in the Middle East* (London: MacMillan Publishing Company, 1986).

131 J. Brugman, *Het raadsel van de multicultuur. Essays over islam en integratie* (Amsterdam: Meulenhoff, 1998).

132 Said was criticised by Hans Jansen, "Edward Said. De luchtfietser van het Midden-Oosten," in *Trouw*, 11 October 2003; Ibn Warraq, *Defending the West: A Critique of Edward Said's Orientalism* (Amherst, NY: Prometheus Books, 2007).

First, that Van Gogh had "offended the Prophet" and "fought against Islam." Second, that on the basis of this indictment he "deserved the death penalty." Third, that he, Bouyeri, had simply executed this lawful punishment. Fourth, that part of the justification for this punishment was based on the will of God. It was, in fact, Allah himself who had sent "a soldier to cut his throat." Fifth, that the theological doctrine behind- and justification for this act lay in the concept of "jihad."

The assassin seems to present the whole conflict as a fair fight between opposing parties. He speaks of "soldiers" who were "in the arena." He also claims to speak for his victim, who "knew what he was doing."

Ayaan Hirsi Ali, Van Gogh's co-creator of the film "Submission" which deals with the position of women in Islamic culture, was also "in the arena" and marched in the "ranks of the soldiers of evil," Bouyeri stated. He added:

> She has offended the Prophet. She is an apostate and she has joined the enemy. Three reasons, each in and of themselves sufficient to qualify her for the death penalty. … From the moment she went into politics and declared her oath in Parliament, she became an apostate. … I left the "Open letter to Hirshi Ali" on the corpse of Theo van Gogh to make a clear statement. … That statement is: it is war, and if you enter the arena you know what will happen.[133]

THE THEOTERRORIST'S ARGUMENT ANALYSED

Here the argument is similar to, but also slightly different from what has been said about Van Gogh. There is the common indictment of offending the Prophet and its fateful consequences. But then Hirsi Ali's case differs from that of Van Gogh. The following fundamental difference exists.

133 In Dutch: *Ze heeft de profeet beledigd, ze is afvallig en ze heeft zich aangesloten bij de vijand. Drie redenen, die ieder op zich voldoende zijn om haar voor de doodstraf in aanmerking te doen komen … Vanaf het moment dat zij de politiek in ging en haar eed voor het parlement aflegde, is ze afvallig geworden … Ik heb de 'Open brief aan Hirshi Ali' op het lichaam van Theo van Gogh achtergelaten om een duidelijk statement te maken … Het statement is: het is oorlog en als je je in de arena bevindt, weet je wat er gebeurt*. Gerechtshof Den Haag, 23 January 2008 (*Hofstadgroep*). See also Paul Berman, *The Flight of the Intellectuals* (New York: Melville House, 2010), 246; Zachary Shore, *Breeding Bin Ladens: America, Islam, and the Future of Europe* (Baltimore, Mld.:The Johns Hopkins University Press, 2006), 3.

First, Hirsi Ali is an apostate. An apostate is someone who has relinquished his or her religious belief.[134] Under modern constitutional law, and on the basis of post-Second World War human rights documents, changing or even relinquishing your religious belief is an elementary human right.[135] But whoever is familiar with the stories of, for example, the Hebrew Bible, as told in the books of Deuteronomy, Judges, Numbers, and 1 and 2 Kings, will immediately recognise that the theme of apostasy is central to the whole narrative. The "fateful national consequences of disloyalty to Yahweh" is a highly pervasive theme.[136] The book of Kings describes the kings of Israel or Judah "as either good or bad, depending on how they reigned."[137] We have to understand that "good" in this context means loyal to Yahweh. "Bad" means disloyal to Yahweh.

Bouyeri killed Van Gogh because the latter wrote things about the prophet he, Bouyeri, did not like. All critical commentary on the prophet of Islam is to a jihadist an "attack on Islam" to which the true Muslim must respond with violence. This came into heavy conflict with the Dutch freethinking culture of the 1960s which had ended—or at least thought it had ended—all taboos.

134 Paul Marshall and Nina Shea, *Silenced: How Apostasy and Blasphemy Codes care Choking Freedom Worldwide* (Oxford: Oxford University Press, 2011); Patrick Sookhdeo, *Freedom to Believe: Challenging Islam's Apostasy Law* (Three Rivers, Mich.: Isaac Publishing, 2009); Samuel M. Zwemer, *The Law of Apostasy in Islam: Answering the question why there are so few Moslem converts, and giving examples of their moral courage and martyrdom*) London/Edinburgh/New York: Marshall Brothers, 1924); Haim H. Cohn, "The Law of Religious Dissidents: A Comparative Historical Survey," in *Israel Law Review* 34 (2000) 39–100.

135 Matt Cherry and Roy Brown, *Speaking Freely about Religion: Religious Freedom, Defamation and Blasphemy,* International Humanist and Ethical Union Policy Paper (London: International Humanist and Ethical Union, 2009), 9; Mirjam van Schaik and Jasper Doomen, "De toekomst van godslastering," in *Nederlands Juristenblad*, Afl. 30, 12 September 2014, 2110–2116; Tom Herrenberg, "Denouncing Divinity: Blasphemy, Human Rights, and the Struggle of Political Leaders to defend Freedom of Speech in the Case of *Innocence of Muslims*," in *Ancilla Iuris* 1 (2015) 1-19.

136 Gordon D. Fee and Douglas Stuart, *How to Read the Bible Book by Book: A Guided Tour*, Mich.: Zondervan, 2002), 91; Michael Coogan (ed.), *The New Oxford Annotated Bible* (Augmented third edn, with the Apocryphal /Deuterocanonical Books, Oxford: Oxford University Press, 2007), 488. See also Moshe Halbertal and Avishai Margalit, *Idolatry* (trans. Naomi Goldblum, Cambridge, Mass./London: Harvard University Press, 1992).

137 David Pawson, *Unlocking the Bible: A unique overview of the whole Bible* (London: Collins, 2007 (2003)), 292.

During the 1960s the Netherlands evolved from a rather religious and traditional country into a very liberal and secularised one.[138] A liberalised, anarchistic, iconoclastic frame of mind that we associate with bohemians, artists or the "radical chic" had arisen. As we have seen, authors like Gerard van het Reve fantasised about having sex with God, who would manifest himself in the form of a donkey. His brother Karel van het Reve (1921–1999) mocked religious believers in essays that were deemed "blasphemous" by many traditional and religious compatriots.[139] Youngsters under the name of *provo's*—"provocateurs"—entered into conflicts with the police.[140] Authority was pushed off its pedestal.

One of the most important public discussions of that time centred around war criminal Adolf Eichmann (1906–1962), a major organiser of the Holocaust, whose trial took place in 1962. The Eichmann trial was commented on by major political philosophers and public intellectuals like Hannah Arendt (1906–1975). According to Arendt, Eichmann exemplified the "Banality of Evil."[141] Eichmann was not the monster that most people thought he was, but an ordinary individual, very much inclined to follow orders.

Psychologist Stanley Milgram (1933–1984) tried to prove Arendt's thesis with psychological experiments that corroborated the view that, under the right circumstances, people feel obliged to follow orders, even if it means

138 See on the cultural development of the Netherlands in the 1960s James C. Kennedy, *Nieuw Babylon in aanbouw: Nederland in de jaren zestig* (Amsterdam/Meppel: Tweede druk, Boom, 1997 (1995)); James Kennedy, "The Moral State: How Much do the Americans and the Dutch Differ?," in Hans Krabbendam and Hans-Martien ten Napel (eds), *Regulating Morality: A Comparison of the Role of the State in Mastering the Mores in the Netherlands and the United States* (Antwerp/Apeldoorn: Maklu/E.M. Meijers Instituut, 2000), 9–23. General accounts of the culture of the Sixties are Arthur Marwick, *The Sixties: Cultural Revolution in Britain, France, Italy, and the United States, c. 1958-c. 1974* (Oxford/New York: Oxford University Press, 1998); Jenny Diski, *The Sixties* (London: Profile Books, 2009). For a general history of the Netherlands see E.H. Kossmann, *The Low Countries: 1780–1940* (Oxford: Oxford University Press, 1978).

139 Karel van het Reve, "De ongelooflijke slechtheid van het opperwezen," in *NRC Handelsblad*, 20 July 1985, also included in: Karel van het Reve, *De ongelooflijke slechtheid van het opperwezen* (Amsterdam: Van Oorschot, 1987), 7–20.

140 See on this movement Harry Mulisch's account in: Harry Mulisch, *Bericht aan de rattenkoning* (Amsterdam: De Bezige Bij, 1966).

141 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (revised and enlarged edn, Harmondsworth: Penguin Books, 1992 (1963)).

committing the most horrendous crimes.[142] So basically Eichmann was a "bureaucrat." This had important consequences for the Weberian model of bureaucracy, as one might expect.[143] Authority, following orders, became hugely unpopular with a new generation of youngsters. Dutch novelist Harry Mulisch (1927–2010),[144] who was also present in Jerusalem during the Eichmann trial to comment on the court proceedings for the Dutch magazine *Elsevier*, published his views on the matter in his book *De zaak 40/61* (1962).[145] Mulisch, whose views were similar to those of Arendt—though he claimed to have developed them earlier and independently of Arendt—summarised the new attitude towards politics and culture in his exclamation that, in his youth, the only thing he had ever seen was collaboration, reasonableness, moderation and hypochondria.[146] In 1972 he indicated that he abhorred fathers, teachers, policemen and people like that, people who wanted to forbid things, take things from you, did not want to listen, thought they knew best but in reality were dumb and servile and unjust.[147] Mulisch castigated the generation of "fathers" who had fought the Germans in the Second World

142 Stanley Milgram, "The Perils of Obedience," in *Harper's Magazine,* 1974, under the title: "An Experiment in Autonomy" also in: Louis P. Pojman (ed.), *The Moral Life: An Introductory Reader in Ethics and Literature* (New York/ Oxford: Oxford University Press, 2000), 625–640; Paul Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism* (Chichester: Wiley-Blackwell, 2010), 206–208.

143 Meaning, roughly, that civil servants work under the supervision of politicians and have to follow orders. See Max Weber, *The Profession and Vocation of Politics,* in Max Weber, *Political Writings* (ed. Peter Lassman and Ronald Speirs, Cambridge: Cambridge University Press, 1994), 309–370.

144 Harry Mulisch is a famous Dutch novelist. His *The Assault* (1982) was a worldwide bestseller and has been translated into more than thirty languages. In 1986 it was made into a film that won an Oscar for best non-English film. Another novel by Mulisch, The *Discovery of Heaven* (1992), was favourably reviewed by *The New Yorker's* John Updike (25 November 1996), who compared the Dutch author with Homer, James Joyce, Umberto Eco and Thomas Mann.

145 Harry Mulisch, *De zaak 40/61: Een reportage* (Amsterdam: Uitgeverij De Bezige Bij, 1979 (1962)). Although he had a weak spot for authoritarian left-wing regimes like that of Fidel Castro. He wrote an opera lauding Castro together with the musician Peter Schat. When Schat later changed his opinion on Cuba, Mulish considered his former friend a "traitor": see Dick Verkijk, *Harry Mulisch: "Fel anti-nazi" – vanaf wanneer?* (Soesterberg: Uitgeverij Aspekt, 2006), 31. Mulisch's book on Eichmann has been translated into English: Harry Mulisch, *Criminal Case 40/61: The Trial of Adolf Eichmann* (trans. Robert Naborn, Foreword Debórah Dwork, Philadelphia, Penn.: University of Pennsylvania Press, 2005).

146 Harry Mulisch, *De toekomst van gisteren* (Amsterdam: De bezige Bij, 1972), 39.

147 Ibid., 37.

War as not only bourgeois but "fascist" themselves.[148] So iconoclasm seemed to be the rule rather than the exception in the 1960s.

Theo van Gogh was, in a certain sense, the offspring of that frame of mind.[149] But now that the Dutch were liberated from all kinds of restraints in the field of religious criticism, a new wave of immigrants brought a certain amount of traditional puritanism into the country. And, in its radical Islamist incarnation, even a *violent* form of puritanism. Theo van Gogh's murderer was an example of that new mentality.

THE END OF THE DUTCH BLASPHEMY LAW

Obviously, the murder of Van Gogh confused and shocked Dutch society. "The attack on Theo van Gogh strikes at the heart of our national identity… [freedom of expression] was more or less our national pride, our World Trade Center, taken down by a terrorist," representative Jozias van Aartsen (*b*. 1947) observed during parliamentary debate shortly after the attack.[150] A broad political and social discussion ensued after Van Gogh's death.[151] What had motivated the killer? Had Dutch intelligence and the security services not seen this coming? Within this broader context the inert state of the Dutch blasphemy law gained renewed attention. Minister of Justice Piet Hein Donner (*b*. 1948)—the grandson of the minister of justice who had proposed the blasphemy law in the 1930s—expressed the intention to apply the blasphemy law more strictly.[152] The Prime Minister, Jan Peter Balkenende (*b*. 1956), advocated moderation in the public debate. "Everyone

148 Harry Mulisch, *De toekomst van gisteren* (Amsterdam: De bezige Bij, 1972).

149 An account of Theo van Gogh's personality and views can be found in a character sketch by his friend Theodor Holman: Theodor Holman, *Theo is dood*, Met een voorwoord van Gijs van de Westelaken (Amsterdam: Mets en Schilt, 2006). Another friend of Van Gogh, Max Pam, presents an interesting view on the controversial filmmaker in Max Pam, *Het bijenspook: over dier, mens en god* (Amsterdam: Prometheus, 2009). Dutch novelist Leon de Winter presented a fictionalised account of the events around Van Gogh's death in Leon de Winter, *VSV of Daden van onbaatzuchtigheid* (Amsterdam: De Bezige Bij, 2012).

150 Parl. Doc., House of Rep., 11 November 2004, no. 29854, 1282 (*Debat over de moord op de heer Th. van Gogh*).

151 See on this debate Paul Cliteur, "Godslastering en zelfcensuur na de moord op Theo van Gogh," in *Nederlands Juristenblad* 2004, no. 45, 2328–2335.

152 "Kabinet verdeeld over godslastering; Verdonk en Donner botsen over aanpak," in *NRC Handelsblad*, 15 November 2004, 1; "Ministers oneens over vervolgen godslastering," in *de Volkskrant*,

may choose his own words, but it is a good thing if we also take into account the 'recipient' of these words … Let us realise that our words can wound," Balkenende said.[153]

Yet at the same time, voices that favoured the abolition of the blasphemy law were raised. While a parliamentary motion that pressed the cabinet to "reconsider" the blasphemy provisions was rejected a few weeks after Van Gogh's murder, a bill that called for the repeal of the blasphemy provisions was proposed in 2009[154] and eventually entered into force in 2014. The representatives who drafted the proposal underlined the importance of diversity of opinion. The proposal relied heavily on the "marketplace of ideas" argument: "The collision of arguments and opinions deepens debate on important topics, such as philosophical issues and the formation of society."[155] Second, the argument of equality was raised: "Provisions that grant special protection to (specific) believers do not fit with the idea of equal treatment."[156] Third, the representatives adduced that public and political debate provided enough opportunity to rebut abusive and insulting utterances.[157] All parties in the House of Representatives favoured the proposal except the Christian parties.[158] For example, Mr. Van der Staaij (*b*. 1968) of the orthodox Reformed Protestant Party saw the repeal of the blasphemy law as a "great loss" and "the conscious release of a moral anchor point."[159] Although he agreed that the provisions were "dead" in strict legal terms, Van der Staaij argued that they still had their contemporary value: "Freedom is a great good, but don't use it to unnecessarily and intentionally hurt people in their deepest and dearest convictions."[160] Following its adoption by the House of Representatives in April 2013, the Senate accepted

15 November 2004, 2. Donner later retracted his statements. See "Godslastering niet harder aangepakt; Donner neemt aankondiging terug," in *NRC Handelsblad*, 16 November 2004, 1.

153 "Kabinet verdeeld over godslastering," in *Trouw*, 15 November 2004, 1.

154 Parl. Doc., House of Rep., 2009/10, no. 32203, 2 (*Voorstel van Wet van de leden Van der Ham, De Wit en Teeven tot wijziging van het Wetboek van Strafrecht in verband met het laten vervallen van het verbod op godslastering*).

155 Parl. Doc., House of Rep., 2009/10, no. 32203, 3, 1.

156 Ibid.

157 Ibid., 2.

158 See Parl. Doc., House of Rep., 16 April 2013 (*Stemmingen initiatiefvoorstel verbod op godslastering*).

159 Parl. Doc., House of Rep., Debate of 20 March 2013, 37.

160 Ibid.

the proposal by 49 votes to 21 in December 2013.[161] The Dutch blasphemy law—Articles 147, 147a, and 429bis of the Criminal Code—was effectively repealed on 1 March 2014.[162]

CONCLUSION

In this chapter we have discussed the blasphemy law that was part of the Dutch Criminal Code from 1932 to 2014. This law initially consisted of two provisions. Article 147 no. 1 prohibited the expression of scornful blasphemy in a manner offensive to religious feelings, while Article 429bis prohibited the display, in a place visible from a public road, of words or images that, as expressions of scornful blasphemy, were hurtful to religious feelings. In 1934, Article 147a, which made it illegal to *distribute* blasphemous material, was added to the Criminal Code. The blasphemy law was a response to harsh criticism directed at and mockery of the Christian religion, primarily from on the part of communists. Although prosecutions and convictions did take place on the basis of this law—especially in the early years of its existence—it is fair to say that the blasphemy law never really took root in Dutch legal culture. This probably had as much to do with the technicalities of it—in order to leave enough "breathing space" for statements on religion, the law was only intended to cover a narrow set of blasphemous utterances, namely those that were "scornful" and expressed in "a manner offensive to religious feelings," legal terms that proved to be not without complications—as with a cultural attitude that tended to be sceptical of governmental interference in the area of religious opinion. This culminated in the most famous trial based on the blasphemy law, namely the trial of novelist Gerard Kornelis van het Reve in the 1960s—a decade in which "rebellion" against all types of authority was fashionable and in which the Dutch shifted from a society structured along religious lines towards a more secular society. The trial, in which Van het Reve was eventually acquitted of charges that he had committed "scornful blasphemy" by describing sex acts between himself and God in the form of a donkey, weakened the blasphemy provisions to

161 Parl. Doc., Senate, 3 December 2013 (*Stemmingen in verband met het Voorstel van wet van de leden Schouw en De Wit tot wijziging van het Wetboek van Strafrecht in verband met het laten vervallen van het verbod op godslastering*).

162 *Staatsblad*, 2014, no. 39 (*Wet van 23 januari 2014 tot wijziging van het Wetboek van Strafrecht in verband met het laten vervallen van het verbod op godslastering*) (Bulletin of Acts and Decrees).

such an extent that they were largely considered to be a hollow phrase in the Criminal Code.

In the decades that followed, instances of blasphemy did not really gain much attention in Dutch society at large until polemicist Theo van Gogh was murdered by a jihadist in 2004. Van Gogh, a "child" of the liberal mindset of the 1960s, was the victim of a puritanical ideology at odds with that liberal notion of free thought. Van Gogh's murder was an extreme example of the values of liberal modernity colliding with those of religious puritanism in its Islamist form.

Roger Scruton (*b*. 1944) wrote in 2009: "Everything that happens in Holland is now closely watched by other European leaders, anxious to know where Europe itself is going."[163] But in a sense Scruton was too optimistic. What most European *leaders* did, in contrast to the European populations,[164] was cultivate the art of the ostrich. The ideology behind the murder of Theo van Gogh in 2004 was no different from the ideology of the murderers of the French journalists in 2015. So what you had to know to prevent the 2015 killings at the *Charlie Hebdo* office could have been known for at least eleven years, namely that violent Islamists have declared war on secular freedoms, in particular the freedom freely to criticise religion and its historical symbols. This makes the subject of blasphemy highly topical for our time. The blasphemy ban introduced by Dutch Minister of Justice Donner in the 1930s resurfaced in the first decennium of the twenty-first century. But with a significant difference: the implementation of blasphemy law by puritanical Christians did not challenge state sovereignty, the rule of law and the rejection of vigilante justice. What the jihadists of the twenty-first century re-introduced was the implementation of blasphemy laws by extrajudicial execution. Europe is still struggling with the question of how to respond.

With regard to the question of blasphemy laws, there are two general ways in which liberal multicultural nations can react to this new phenomenon. A state can have a welcoming attitude towards the legal suppression of

163 Roger Scruton, "Free Speech in Europe," in *The American Spectator* (May 2009) 41. See also Zachary Shore, *Breeding Bin Ladens: America, Islam, and the Future of Europe* (Baltimore, Mld.:The Johns Hopkins University Press, 2006), 3: "The Dutch case symbolized the social tensions mounting across Europe between a burgeoning young, religious Muslim population, on the one hand, and a fearful, secular, ethnic European populace, on the other."

164 See the analyses of Malika Sorel-Sutter, *Décomposition française: comment en est-on arrivé là?* Paris: Fayard, 2015) and Dominique Reynié, *Les nouveaux populismes* (revised and expanded edn, Paris: Librairie Arthème Fayard/Pluriel, 2013 (2011)).

blasphemy, perhaps as a sign of "multicultural etiquette," perhaps as a—futile?—attempt to prevent intercommunal strife, or perhaps—even more futile?—as a tool to prevent terrorist attacks. Such suppression of blasphemy can be done by enacting straightforward laws that target blasphemous utterances or via an extensive interpretation of laws against "incitement to hatred on religious grounds" and "defamation of a group of people on the basis of their religion." Although seemingly innocuous, the last type of legislation can potentially develop into a resurgence of blasphemy laws. Second, a state can move in the opposite direction and revoke provisions that protect religion and religious symbols as such. The Dutch decided to do so by repealing their crippled blasphemy law in 2014.

5 Death of a Princess

Paul Cliteur, Laetitia Houben & Michelle Slimmen[*]

INTRODUCTION

On 7 January 2015, during a meeting of the editors of the French satirical magazine *Charlie Hebdo*, two theoterrorists, Saïd and Chérif Kouachi, broke into the *Charlie Hebdo* office and killed those who were present: Charb, Cabu, Wolinski, Tignous, Honoré, Esla Cayat, Mustapha Qurrad, Bernard Maris, Michel Renaud, Frédéric Bousseau, Frack Brinsolaro and Ahmed Merabet.[1] The assault on *Charlie Hebdo* ignited a worldwide discussion on the meaning and significance of free speech, and in particular on the question of whether this principle is adequately protected in European nation states.

On 11 January four million protesters raised their voices against the atrocities that had befallen Paris. Forty-three heads of state were present during the demonstration (which is, as Bernard-Henri Lévy astutely remarked, one quarter of the United Nations).[2]

The attack on *Charlie Hebdo* was not the first of its kind. The French terrorist assault resembles the murder of the Dutch filmmaker Theo van Gogh in 2004,[3] but it also resembles the terrorist intimidation of the Danish

* For preliminary research on this matter we are greatly indebted to Maurits Helmich, Henk Suèr and Prof. Mr. E.C.M. Jurgens.

1 Jacques Attali et al., *Nous sommes Charlie: 60 Écrivains unis pour la liberté d'expression* (Paris: Les Livre de Poche, 2015), 9.

2 Bernard-Henri Lévy, "Ce qui restera du janvier", in ibid., 91–96.

3 Paul Cliteur, "Godslastering en zelfcensuur na de moord op Theo van Gogh", in *Nederlands Juristenblad* 45 (2004), 17 December 2004, 2328-2335.

cartoonist Kurt Westergaard[4] and the British author Salman Rushdie.[5] It seems that conservative Islamist regimes and movements have great difficulty with free speech, especially when it comes to religious satire. Islamist terrorist movements do not agree with John Milton's famous words: "let truth and falsehood grapple."[6] They prefer to cut the grappling short by terminating the discussion with a Kalashnikov.

In this chapter we want to go back in time and reflect on one of the earliest manifestations of this conflict between religious fundamentalism and free speech, namely the airing of the film *Death of a Princess* (1980), a dramatised documentary about the execution of a Saudi princess who was accused of adultery. This was one of the first large-scale attempts to stifle freedom of speech in European nation states on the ground that the contents of the film would be offensive to religious believers. But the "religious factor" is not all that interests us in this chapter; we will also study the way in which theocratic dictatorships try to exert pressure on liberal democracies. In the case of *Death of a Princess* these were not the terrorist techniques that would become common in later years (namely, intimidating writers with violence), but strategies such as threatening to institute economic boycotts and other measures. Nevertheless, the similarities between the pressure exerted in *Death of a Princess* and later events like the Cartoon Affair, the Rushdie Affair[7] and the assault on *Charlie Hebdo* are sufficiently striking to justify a comparison.

The controversy around the *Death of a Princess* film raises many questions. Do the examples cited show a common pattern? Is it likely that we will see more of these confrontations in our time? And if so, how should liberal democracies react to this challenge? Are they up to this confrontation? Or is it

4 Kurt Westergaard, and John Lykkegaard, *Kurt Westergaard: The Man behind the Mohammed Cartoon* (Tilsit: Mine Erindringer, 2012).

5 Salman Rushdie, *Joseph Anton: A Memoir* (London: Jonathan Cape, 2012); Brian Winston, *The Rushdie Fatwa and After* (Palgrave Macmillan, 2014).

6 "Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?". See John Milton, *Areopagitica* (1644), in: John Milton, *Complete Poems and Major Prose* (ed. with notes and introduction by Merritt Y. Hughes, Indianapolis: Hackett Publishing Company, 2003 (1957)), 746.

7 Paul Cliteur, "Van Rushdie tot Jones: over geweld en uitingsvrijheid", in Afshin Ellian, Gelijn Molier and Tom Zwart (eds), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting* (The Hague: Boom Juridische Uitgevers, 2011), 67-89.

more likely that, in a new world with open borders and unprecedented digital opportunities to take messages all over the globe, freedom of expression has to be recalibrated? Is there perhaps something to say for whittling down free speech out of respect for cultural differences?

Western democracies seem deeply divided on this issue.[8] On the one hand there are those who proclaim that a lack of solidarity with the cartoonists of *Charlie Hebdo* is a sort of "Munich of the mind" (*Munich de la pensée*) that will only lead us deeper into the quagmire.[9] On the other hand there are those who think that compromise in this matter is the only thing that can help us in this new predicament.[10]

In Western liberal democracies the idea is often heard that the Saudi monarchy will change its ways in the foreseeable future. Is that really what we should expect? Or is it more likely that the increasing interdependence of nation states will cause Saudi Arabian standards to become more common in Europe and in the rest of the Western world than was the case in previous decades?

We will also address the moral legitimacy of the sort of criticism the film seems to attract. Is it fair to criticise the Saudi government for its handling of this cultural conflict? Should we not see the matter more "in context"?[11]

In this chapter we will highlight the particulars of this largely forgotten story of the Saudi princess and assess the relevance of that event for the contemporary debate about the threat that terrorism poses to the culture of freedom, and in particular to one of its most remarkable manifestations: the principle of freedom of expression.

8 See, e.g., Kevin Barrett (ed.), *We are not Charlie Hebdo! Free thinkers question the French 9/11*, (Lone Rock: Sifting and Winnowing Books, 2015), comprising a series of articles all critical about the French attitude towards civil liberties and religious criticism. For a splendid defence of *Charlie Hebdo* see Caroline Fourest, *Eloge du blasphème* (Paris: Bernard Grasset, 2015); Philippe Val, *Malaise dans l'inculture* (Paris: Bernard Grasset, 2015).

9 Philippe Claudel, "Je suis Charlie mais un peu tard", in Jacques Attali et al., *Nous sommes Charlie: 60 Écrivains unis pour la liberté d'expression* (Paris: Les Livre de Poche, 2015), 32–35.

10 This is, e.g., the position of the Dutch–American journalist Ian Buruma: see Ian Buruma, "Charlie and Theo", in *Project Syndicate: the World's Opinion Page*, 15 January 2015.

11 This was one of the most trenchant critiques by the famous literary scholar Edward Said: see Edward W. Said, *Covering Islam: How the Media and the Experts determine how we see the Rest of the World* (London: Vintage, 1997).

WHAT THE FILM WAS ABOUT

Death of a Princess is a documentary based on the true story of Princess Masha'il Bint Fahd Al Saud (1958–1977), a 19-year-old Saudi Princess who was, together with her lover, publicly executed for adultery, which was (and is) a capital offence in Saudi Arabia. She was the granddaughter of Prince Mohammed bin Abdulaziz (1910–1988), an elder brother of the Saudi king Khalid bin Abdulaziz Al Saud (1913–1982). She was executed, together with her boyfriend, at the instigation of her own grandfather. Since it is unclear whether there was a fair trial (by Saudi standards),[12] her death may also be construed as an "honour killing," one that took place in the most prestigious of circles.

The film is based on interviews by Antony Thomas (*b*. 1940). Initially, Thomas wanted to make a documentary, but he soon realised that this was impossible due to the fact that most interviewees required to remain anonymous. So he decided to make a fictionalised version, or rather a "film on the film" he had wanted to make. The characters in the film are played by actors, not by the real people who provided input and information for the original film.

Thomas himself is played by the actor Paul Freeman (*b*. 1943), who in the film goes under the name of Christopher Ryder. Another important character in the film is Elsa Gruber (played by Judy Parfitt), whose character is based on Rosemarie Buschow, a German teacher who worked for the royal family and who wrote a book about her experiences.[13]

Not only do the characters in the film remain anonymous, but the name of the princess, whose death is the focus of the whole drama, is also not mentioned. There is only one photograph of the princess, allegedly taken a day before her execution. Little is known about her. She has been more or less filtered out of history, like Stalin did with Trotsky.

What interests us here is primarily the discussion that ignited when the film was launched, or rather the lack of a serious moral analysis of what had

12 Thomas White and Gladys Ganley, "The 'Death of a Princess' Controversy", Program on Information Resources Policy (Cambridge, Mass.: Center for Information Research, Harvard University, 1983), 9. In Saudi Arabia, someone can be convicted of adultery after accusations from four different witnesses or when he/she confesses four times. See Jeffrey K. Walker, "The Rights of the Accused in Saudi Criminal Procedure", in *Loyola of Los Angeles International and Comparative Law Journal* 15 (1992–1993) 863, at 876–877.

13 Rosemarie Buschow, *The Prince & I* (London: Futura Publications Limited, 1979).

happened: the execution of a young couple for no other reason than that they loved each other. The film was aired in England on 9 January 1980; in the Netherlands on 16 April 1980; in the United States on 12 June 1980; and in Israel on 12 June 1980. When the film was aired in England, much discussion arose immediately.[14] The same pattern occurred in the United States. Major Anglo-American oil company Mobil Oil tried to exert pressure in order to oppose further distribution "in the light of what is in the best interest of the United States,"[15] and the Secretary of State seemed to voice concern about whether PBS (Public Broadcasting Service, an American non-commercial broadcaster) was to broadcast the film. It seems that commercial interests are more important than criticising practices that are opposed to fundamental values.

A PREVIEW OF CONTEMPORARY DEBATES

Many of the debates on the role of religious fundamentalism, so familiar to us since 9/11 2001, the murder of Theo van Gogh on 2 November 2004 and the attack on *Charlie Hebdo* on 7 January 2015, are foreshadowed in *Death of a Princess*. The film provides an excellent introduction to the discussion on this topic. In the film, Samira says about the Saudi ruling class: "These people pervert Islam. They use Islam. They scare people to death with their barbarous, illegal punishments." We quote this passage because this is basically what we also hear from President Obama and former Prime Minister David Cameron nowadays in similar discussions. Those statements are based on the presumption that religion, in its most basic nature, is good. And if there is something bad seemingly connected with religion, this is apparently *not* religious.[16] Based on this concept of religion, Samira can say about Saudi Arabia: "This isn't a Muslim country."

14 See on this Aart Brouwer and Margreet Fogteloo, "Het imago van Nederland geschaad?", in *De Groene Amsterdammer*, 24 March 2010.

15 See Mobil's advertisement in the *New York Times*: "A new fairy tale", in *New York Times*, 8 May 1980, A35. In the advertisement Mobil expresses the "hope that the management of the Public Broadcasting Service will review its decision to run this film."

16 See for a more elaborate explanation of this view Paul Cliteur, "Is Humanism Too Optimistic? An Analysis of Religion as *R*eligion", in Andrew Copson and A.C. Grayling (eds), *The Wiley Blackwell Handbook of Humanism* (Chichester: Wiley Blackwell, 2015), 374–403.

In other words, the execution of the princess has nothing to do with Islam, according to Samira. But she goes further. She also asserts that the people who killed the princess are "no Muslims," at least that seems to be implied in Samira's statement that Saudi Arabia is not a Muslim country.

In the film we also see how Antony Thomas is first introduced to the story. There was a British guest worker who was hired to perform some construction work.[17] He was brought in because the Saudis are so tremendously rich that hardly anyone has to work there. The construction worker, "Steven Jackson," was informed that there was an execution pending. So he mixed with the locals and followed the stream. Subsequently, he witnessed the execution of someone who later turned out to be the princess and comments: "It's funny, isn't it, straight out of church and off to see a bloke get chopped." Jackson also gives some sober cultural relativist commentary. In their eyes, he explains, what the Saudi princess has done is just as serious as murder. "It's against their laws, you know. They're dead set in their ways."

CENTURIES BEHIND

Ryder gets a similar comment from Elsa Gruber (the character based on the "real" nanny Buschow),[18] who says: "Why do you keep picking on those people? Their only crime is that they are living centuries behind us. They have different things, and we have different things."

17 This is still common practice, as appears in a recent row about this topic. The Dutch politician Geert Wilders criticised Saudi Arabia for its human rights record. Subsequently the Dutch government glossed over the situation and called upon Wilders to remain calm, once again because of economic interests. Someone teaching "international relations" at the King Fahd University in Dhahran in Saudi Arabia, Tiest Sondaal, criticised the politician because of his critical statements on the Saudi Kingdom: see Tiest Sondaal, "Wilders zet mijn werkvisum in Saoedi-Arabië op het spel", in *De Volkskrant*, 20 May 2014. Sondaal knows that Saudi Arabia is not a democracy "in our eyes," but he does mention efforts made to reform the country. He also speaks of "a dialogue" that is being held on this topic. Due to the criticism of Saudi Arabia he could possibly lose his "work visa," Sondaal complains, and this could be awkward for an exporting country like the Netherlands. Minister Timmermans and Deputy Prime Minister Asscher firmly rejected Wilders's criticism of Saudi Arabia (see "Kabinet hekelt anti-islamactie", NOS, 19 December 2013). So even without the cabinet taking any position on the matter, Saudi Arabia threatened to boycott Dutch companies. ("Saoedische boycot van Nederlandse bedrijven valt mee", ANP, 25 July 2014).

18 See on her Emily Hahn, "A Nanny in Arabia", in the *New York Times*, 8 February 1981.

What makes this argument intriguing is the curious combination of cultural relativism and universalism.[19] On the one hand, Gruber rejects Ryder's moralistic comment on the execution of the Princess and her lover. On the other hand, she makes the observation that Saudi Arabia is "behind us." That last judgement presupposes a standard, a yardstick to measure progress. In other words, Gruber cannot be a *consistent* relativist. The dominant tenor, though, seems to be relativistic: "When in Rome, do as the Romans do."

According to the cultural relativist, there are no universal values, such as the United Nations proclaimed to have found and enshrined in the Universal Declaration of Human Rights (1948).[20] Who are *we* to criticise *their* values? The only valid yardstick we can use to judge values is a measure derived from the culture itself, never an external yardstick.[21]After all, Saudi Arabia promised to guarantee human rights and fundamental freedoms as a United Nations member.[22] It is clear that it based those promises on different standards and values from Western countries. If you want to criticise beheading as a punishment for blasphemy, you do not refer to the amendment to the American constitution that prohibits "cruel and unusual punishment," but you consult the Quran and see if you find anything there about "mercy" and "justice."[23] This approach was already perfectly internalised by the mother of Israeli-American journalist Steven Sotloff (1983–2014). Sotloff was beheaded by IS around 2 September 2014 in the Syrian desert. On 27 August 2014, Sotloff's mother issued a video message begging the

19 Universalism is the view "that moral rules apply to *everyone*, regardless of time and space." See Dan Greenberg, and Thomas H. Tobiason, "The New Legal Puritanism of Catharine MacKinnon", in *Ohio State Law Journal*, 54 (1993) 1275, at 1421.

20 Michael Freeman, "Universality, Diversity and Difference: Culture and Human Rights", in Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity, 2003), 101–131; P.R. Baehr, "Hoe universeel zijn mensenrechten", in *Civis Mundi*, Universaliteit van mensenrechten, 32 (1993) 47.

21 Martin Gardner, "Beyond Cultural Relativism", in Martin Gardner, *The Night is Large*. Collected Essays 1938–1995 (London: Penguin Books, 1996), 149–161.

22 Mary Carter Duncan, "Playing by their Rules: the Death Penalty and Foreigners in Saudi Arabia", in *Georgia Journal of International & Comparative Law* 27 (1998–1999) 231, at 240.

23 As Brian Whitaker writes: "For the vast majority of Muslims worldwide – not only extremists or conservatives, but also those who consider themselves moderate or progressive – determining whether a particular practice is acceptable hinges on deciding whether or not it is legitimately 'islamic'": see Brian Whitaker, "Mutual Friends: Secularism and Islam", in *The Guardian*, 14 April 2009.

"caliph" to spare her son. The mother refers to the Islamic tradition and to the Quran. Apparently she realises that appealing to common decency will not impress the new ruler. Now this is what may be called "cultural relativist discourse." In this discourse it is often expected that Western countries are tolerant towards non-Western traditions. What is not expected is reciprocity. In the case of *Death of a Princess*, instead of disapproving and rejecting the execution of the princess in accordance with Saudi law, the discussion that ignited in Western countries was about whether or not the film should be screened, all for the sake of economic relations. Instead of proclaiming that Saudi Arabia should respect several universal rights (freedom of speech, but also the right to life), Western governments detracted from their own principles and fundamental human rights. They did so in the first place by neglecting to uphold the right to freedom of speech and in the second place by not condemning what had happened to the princess, which ought to be considered a violation of human rights.

Gruber does the same. But her cultural relativist discourse is contradictorily followed by her statement that "they are centuries behind," using exactly the kind of external yardstick mentioned above. Does this explain why we do not expect mutual tolerance from non-Western traditions? How could you possibly expect a culture to be tolerant towards other cultures when the first is considered to be "centuries behind"?

TOUGH LAWS HAVE THEIR ADVANTAGES

Although the film was presented in the Arab world as insultingly negative about Arab culture, there are many characters in the film who defend Arab culture instead. That is the case with Ms. Quataajy, a lady who runs a beauty parlour. She combines some traditionalistic ideas with modernist convictions. She also thinks the princess had brought it all on herself. Should she not have known what would befall her?

This is an argument we have heard time and again about Rushdie, Westergaard, the Parisian cartoonists, Lars Vilks and many others who incurred the wrath of the Islamic theoterrorists.[24] We also heard it after

24 As Roald Dahl said about Rushdie: "He knew exactly what he was doing and cannot plead otherwise." Quoted in Ibn Warraq, *Virgins? What Virgins? And Other Essays* (Amherst, NY: Prometheus Books, 2010), 32.

the killing of Theo van Gogh. He knew what he was doing, did he not?[25] Note that there is a distinction between those cases and the death of the Saudi princess. She knew the penalty that was imposed for adultery, so she indeed literally knew what would befall her, whereas the acts of Rushdie, Westergaard and Vilks are completely legal in their countries of residence. However, the fact that the princess knew the consequences of her deed does not justify the inhumanly severe penalty that she and her lover suffered for the simple fact of loving each other.

This blaming the victim vision is, in fact, similar to the argument Mobil Oil used in trying to persuade the American Public Broadcasting Service to cancel the airing of *Death of a Princess*: "We all know that in the U.S., our Constitution guarantees a free and unfettered press. However, implicit in that guarantee is the obligation on the part of the press to be responsible."[26]

Responsible, yes. But what is "irresponsible" about highlighting the cruel death of a young woman who did nothing but choose to live her own life? Is it not a moral imperative for all of us, including Mobil Oil, to voice protest against the atrocious acts that are portrayed in *Death of a Princess?* There is, of course, the commercial liberty to trade with countries that are not democracies, countries that do not subscribe to exactly the same principles as Western liberal nation-states. But that does not mean that Mobil Oil does not have any "responsibility" to call a spade a spade when it comes to gross violations of human rights and the infringement of the principles for which countless generations of political philosophers[27] and social activists have fought.[28]

25 See for an analysis of this Theodor Holman, *Theo is dood* (foreword by Gijs van de Westelaken, Amsterdam: Mets en Schilt, 2006); Max Pam, *Het bijenspook: over dier, mens en god* (Amsterdam: Prometheus, 2009). Exponents of the claim that Van Gogh had brought the violence on himself (comparable to the insinuations by Brandpunt on Vilks) are Geert Mak in his *Gedoemd tot kwetsbaarheid* (Amsterdam/Antwerp: Uitgeverij Atlas, 2005) and Ian Buruma in *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (New York: Penguin, 2006).

26 Mobil's advertisement in the *New York Times*: "A new fairy tale", in *New York Times*, 8 May 1980, A35.

27 Spinoza, Locke, Voltaire, Diderot, Mill, Clifford, Russell and others.

28 Such as the feminist scholar Susan Moller Okin (1946–2003): see Susan Moller Okin, "Feminism and Multiculturalism: Some Tensions", in *Ethics,* July 1998 (108), 661; Susan Moller Okin, *Is Multiculturalism Bad for Women*?, ed. Joshua Cohen, Matthew Howard and Martha Nussbaum, Princeton, NJ: Princeton University Press, 1999); Susan Moller Okin, *Women in Western Political Thought* (introduction by Debra Satz, Princeton, NJ/Oxford: Princeton University Press, 1979).

One of the mysteries of this topic is that not only the representatives of corporations but also journalists are pestering actual or potential victims of theoterrorist violence with the question whether they did not bring all this on themselves.

A case in point was an episode of the Dutch TV programme *Brandpunt* ("focal point") about the Swedish artist Lars Vilks, broadcast on 10 March 2015. The title that was chosen for the episode was *Een bewegend doelwit* ("a moving target").[29] But sometimes the network adopts a different title for it: *De verantwoordelijkheid van Lars Vilks* ("The responsibility of Lars Vilks"). Both the Dutch programme's titles give us some information about its content.

The "moving target" refers to the fact that the Swedish artist Lars Vilks, ever since he was chosen as a target by Al Qaida in 2007, has to constantly "be on the move." As the artist explains in the documentary, a "moving target" is difficult to hit, so from a security perspective moving around is very effective. From a human perspective, though, this implies that he has hardly any life left. He cannot use his studio, for instance. This is an enormous nuisance for the artist.

The second title refers to the opinion not of the artist himself but of the interviewer, Frenk van der Linden. It speaks of the "responsibility" of the artist. The idea is—and Van der Linden had the nerve to ask this openly—whether the artist was not personally responsible for this predicament. He asked if it was worth it, apparently referring to the precarious situation the artist found himself in.

Another insinuating but totally vacuous question by the interviewer was whether Vilks's cartoons "had made the world safer." The implication was, apparently, that art had to make the world safer.

Vilks answered all the questions diligently and without losing his temper. Nevertheless, the end of the "interview" was hugely embarrassing. Vilks left in his car for an unknown destination with people from the security service, and Van der Linden went back to his own country, the Netherlands, after having asked his questions of a man marked for death by theoterrorists, desperately trying to uphold the artistic freedom to create the kind of art he wants to create, even if that displeases theoterrorist murderers. Would Van der Linden also have dared to ask the victims in the Parisian Jewish

29 Available at: http://www.npo.nl/brandpunt/10-03-2015/KN_1667660/WO_KRO_809058 (accessed at 24 August 2016).

supermarket whether "being Jewish" was not a "provocation" for the terrorists?[30]

But let us return to *Death of a Princess*. Ms. Quataajy combines her comment with some nationalistic remarks about Saudi Arabia. "We are strict here, not like your country, where burglars can come into your home and kill you and rob you and get the lightest punishment, where you can't walk in the street for fear of rape. We're safe here."

It is an interesting point. It may be a fallacy, but it is still interesting. Ms. Quataajy wants us to believe that if you act ruthlessly against burglars and rapists this will have a positive effect on the crime rate. And she makes it seem as if accepting execution for adultery is a necessity for an adequate policy to discourage burglary and rape. But, we may reply, the execution of the princess was about *love* and had nothing to do with burglary or rape. The "sins" of the princess were only that she loved another man and planned to decide what to do with her life. The film does not criticise Saudi Arabia in general, or the penal sanctions on burglary and rape in relation to Western standards. What the film comments on is:

- Cruel and unusual punishment
- Punishing a person for something that may be considered a basic human right (namely free choice of your partner)
- Forced marriage
- The rights of women in general

One of the most astonishing features of the whole discussion about the film is that hardly anyone addressed the issues mentioned above. It may be strange, if not unbelievable, to say this, but the discussion *about* the film did not reflect the issues addressed *in the film*. When Sheik Mohammed Al Zamel (as he was called in the film) was asked to express his view on the execution, he answered: "That's our law. We don't turn a blind eye to certain excesses of our royal family, as others do, but we are nevertheless human. Can you imagine the prince's distress? Not only the death of his favourite granddaughter, but the vilest publicity."

Many claims are made in this short commentary. First he offers the argument that this is their law. As a point of factual comment, this cannot be

30 Amedy Coulibaly (1982–2015) was the hostage-taker and gunman in the Porte Vincennes hostage crisis in the Jewish supermarket in which he killed four hostages. He was a close friend of Saïd and Chérif Kouachi, the gunmen in the *Charlie Hebdo* shooting. He synchronised his attacks with the Kouachi brothers.

denied. But laws can be evil laws, can they not? The sheik further elaborates on this with the contention that they do not turn a blind eye to their royal family's excesses. Apparently, the message he tries to get across is that even the royal family can be criticised, which is certainly not true (at least not in the sense that one can do this unpunished). And instead of debunking the harmful honour code of the patriarchal Saudi society, he solicits some sort of pity we are supposed to feel for *the prince*. It is not the princess, who was beheaded, who deserves our concern, but the prince whose pride was hurt. Or the royal family because of the "vilest publicity" they were subjected to.

There even seems to be a hint of equal protection before the law in the quotation, because he seems to insinuate that even princesses are punished if they violate the law (like ordinary humans). Apparently even in Saudi Arabia they have a rule of law and not of men.[31] The truth is that the Al-Saud family is so powerful that it decides whether to apply or disregard the law.[32]

THERE IS NO LINK WITH ISLAM

One of the most precarious questions is, of course: "What does this have to do with Islam?" Is the execution of the princess and her lover somehow mandated by Islam?[33]

This is the central question scholars, politicians and believers themselves have been struggling with from the moment radical manifestations of religion presented themselves on the world scene.

31 One tends to forget that the "rule of law" has importance only when the "law" has a moral quality. See on this Lon L. Fuller, *The Morality of Law* (revised edn, New Haven, CT/London: Yale University Press, 1978 (1964)). So it is dubious whether the execution of the princess can ever be based on "law" in the sense Fuller delineates that concept.

32 An extremely critical view of Saudi Arabia is Laurent Murawiec, *Princes of Darkness: The Saudi Assault on the West* (trans. George Holoch from the French, Lanham: Rowman & Littlefield Publishers, 2005). Less critical (but with much information) is Karen Elliott House, *On Saudi Arabia: Its People, Past, Religion, Fault Lines – and Future* (New York: Vintage Books, Random House, 2013).

33 A more general debate on religion and violence is Rudyard Griffiths (ed.), *Hitchens vs. Blair: Be it resolved Religion is a Force for Good in the World*, The Munk Debate on Religion, 26 November 2010 (Toronto: Anansi, 2011). Whether Islam is a religion of peace or not is discussed in John Donvan (moderator), "Islam is a religion of peace", A debate between Zeba Khan and Maajid Nawaz against Ayaan Hirsi Ali and Douglas Murray, in *Intelligence Squared U.S.*, 6 October, 2010.

But at the same time, it is one of the great taboos, and not many scholars dare to discuss this topic freely, at least not with the contention that indeed *there is* a connection between religion and violence. There are two basic stances we can take here.

Stance I: theoterrorism has nothing to do with Islam as a religion. Stance II: it has everything to do with Islam.[34]

When we compare *Death of a Princess* with other recent controversial films about Islamic tenets, like *Submission* (2004),[35] *An interview with Mohammed* (2008),[36] *Fitna* (2008),[37] and *Innocence of Muslims* (2012),[38] there is a remarkable difference in the sense that nowhere in *Death of a Princess* is Islam somehow held responsible for the execution. It is mainly Arab culture, or Arab culture as interpreted by those in power, that is held responsible.

34 This is what Islam scholar Robert Spencer has argued for in Robert Spencer, *The Politically Incorrect Guide to Islam and the Crusades* (Washington, DC: Regnery Publishing, Inc., 2005). See for a similar point of view Anne-Marie Delcambre, *L'Islam des Interdits* (Paris: Desclée de Brouwer, 2003); Anne-Marie Delcambre, *L'Islam* (Paris: La Découverte, 2004); Anne-Marie Delcambre, *La Schizophrénie de l'Islam* (Paris: Desclée de Brouwer, 2006); Anne-Marie Delcambre, *Mahomet: La parole d'Allah* (Paris: Éditions Gallimard, 2009).

35 A film by Theo van Gogh († 2004) and Ayaan Hirsi Ali. In almost all accounts of the death of Van Gogh, this film is identified as the reason Mohammed Bouyeri decided to kill him. The murderer himself has always denied this. See on the film Ayaan Hirsi Ali, *Submission.* "Zomergasten" programme of 29 August 2004; Betsy Udink (Amsterdam: Uitgeverij Augustus, 2004).

36 Ehsan Jami is the author of *Het recht om ex-moslim te zijn* (Amsterdam: Ten Have, 2007), but he also made a film: "An Interview With Muhammed," posted on the internet on 9 December 2008. The Ministry of Foreign Affairs issued a declaration on this film: "Verklaring van de Nederlandse regering inzake de film van Jami", Ministerie van Buitenlandse Zaken, 9 December 2008, www.minbuza.nl.

37 Film by Geert Wilders from 2008. Many people argued prior to the screening of the film that this had to be prohibited by the government. See Theo Koelé, "Kabinet moet Fitna verbieden", in *De Volkskrant*, 26 March 2008. European heads of state took up positions on the film without having seen it: Petra de Koning, "Eu-landen wijzen 'fitna' af", in *NRC Handelsblad*, 29 March 2008. The term "fitna" means disorder: see Gilles Kepel, *Fitna: Guerre au coeur de l'islam* (Paris: Gallimard, 2004).

38 This is only a fragment of a film posted on the internet. It caused great turmoil and was, allegedly, the cause of the death of the American ambassador in Libya, Chris Stevens. See Tom Herrenberg, "Politici, de vrijheid van meningsuiting en Innocence of Muslims", in *Nederlands Juristenblad*, 24 September 2013, 2255–2259. See also Tom Herrenberg, "Denouncing Divinity: Blasphemy, Human Rights, and the Struggle of Political Leaders to defend Freedom of Speech in the Case of Innocence of Muslims", in *Ancilla Iuris* (2015), 1-19.

There is a figure in the film, Samira, who even says: "This isn't a Muslim country. These people pervert Islam. They use Islam. They scare people to death with their barbarous illegal punishments. That is not the way with Islam. A woman is nobody's property in Islam. There is no veil in Islam."

That brings us to the question, of course, what is Islam? How do you establish what belongs to a religion and what does not? Do we have to look in the Quran to find the prescribed punishment for adultery? Do we have to listen to the ulema and how they interpret these verses? Do we have to look at the stories about the Prophet? Or do we have to consult sharia law?[39]

The most central question, perhaps, is: "Is there room for interpretation?"[40] Is it perhaps—partly or wholly—"up to us" what we want to see as the essence of Islam? Can you say, if you do not like a certain practice, "This has nothing to do with Islam"?[41]

This is what Samira does in the film. She is quite insistent on this. She says: "The way they applied the law in that girl's case has nothing to do with Islam." If you take this comment seriously it may be possible to say that the Saudi government is *not* an Islamic government. And this is, indeed, the conclusion Samira draws. She says: "This autocratic regime has nothing to do with Islamic thought, feeling or ideology. Islam is democratic. There are no kings in Islam. The Quran says that the leaders must be elected by the people and that the people have the right to criticise them." Samira speaks of a movement that ought to bring Saudi society back to Islam. She speculates that the murdered princess could be part of a movement because many believe she was caught on purpose. She fled disguised as a man instead of

39 Nuh Ha Mim Keller, *Reliance of the Traveller* (rev. edn, The Classic Manual of Islamic Sacred Law 'Umdat al-Salik by Ahmad ibn Naqib al-Misri (d. 769–1368) in Arabic with Facing English Text, Commentary, and Appendices (ed. and trans. Nuh Ha Mim Keller, Beltsville, Mld.: Amana Publications, 1994 (1991)). See on sharia also Bassam Tibi, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam versus Global Jihad* (London/New York: Routledge, 2008).

40 According to some authors there is much leeway for interpretation. See, e.g., Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, Mass./London: Harvard University Press, 2008); Irshad Manji, *The Trouble with Islam: A Muslim's Call for Reform in Her Faith* (New York: St. Martin's Press, 2003).

41 See on this A.C. Grayling, *Against all Gods: Six Polemics on Religion and an Essay on Kindness* (London: Oberon Books, 2007); A.C. Grayling, *To Set Prometheus Free: Essays on Religion, Reason and Humanity* (London: Oberon Masters, 2009); A.C. Grayling, *The God Argument: The Case against Religion and for Humanism* (London: Bloomsbury, 2013).

wearing a fully covering veil, which would have made her unrecognisable, so that she probably would have been able to escape successfully.

This statement (namely that certain deplorable practices, such as terrorist attacks, have nothing to do with Islam) has often been made by Western governments. Terrorism and extremism have nothing to do with Islam, according to Obama or Cameron.[42] It is a puzzling contention. Would it not come closer to the truth to say that it does not have *everything* to do with Islam but that at the same time it is also difficult to maintain that Islamism (as a politico-religious ideology)[43] has *nothing* to do with Islam (as a religion)?[44] It cannot be denied, in any case, that certain practices are based on Islamic writings, so it certainly has *something* to do with Islam. What kind of Islam, is perhaps more difficult to determine. The fact that it concerns an interpretation of Islam that is denied by a large number of other Muslims should be clear, just as that it is only a small number that have hijacked the religion.[45] But it remains a troubling factor that certain passages from the Quran are cited time and again. And not texts that advocate human rights, but the so-called sword verses.[46] Nevertheless, after the attack on *Charlie Hebdo*, Muslims worldwide expressed their disapproval.[47] This assault might not be due to Islam, but to a fundamentalist view of Islam. In the case of *Death of a Princess*, the execution was based on a violation of the Saudi government's interpretation of Islamic law, based on the Quran and the traditions of the Prophet.

42 "Het zijn geen moslims, maar monsters. Britse premier zegt dat IS moet worden vernietigd, Arabische landen willen VS helpen bombarderen," in *De Volkskrant* 15 September 2014.

43 See for the distinction between Islam and Islamism: Bassam Tibi, *Islamism and Islam* (New Haven, CT/London: Yale University Press, 2012); Bassam Tibi, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam versus Global Jihad* (London/New York: Routledge, 2008).

44 There is a recent criticism of Islam that holds that it is not a "religion" but should be considered a political ideology. See for this Geert Wilders, "Defending the West from Cultural Relativism and Jihad", Annual Lecture of the Magna Carta Foundation in Rome, 25 March 2011, in *American Thinker,* 26 March 2011; Geert Wilders, *Marked for Death: Islam's War Against the West and Me* (Washington, DC: Regnery Publishing, Inc., 2012).

45 Paul Cliteur, "Vrijheid van Expressie na Charlie", in *Nederlands Juristenblad*, afl. 5, 6 February 2015.

46 This point is well made by Bahis Sedq, *The Quran Speaks* (Indianapolis, Ind.: Dog Ear Publishing, 2013); Sam Harris, *The End of Faith: Religion, Terror, and the Future of Reason* (London: The Free Press, 2005 (2004)); Graeme Wood, "What is the Islamic State?", in *The Atlantic*, March 2015, 79-94; Graeme Wood, "What ISIS Really Wants: The Response", in *The Atlantic*, 24 February 2015.

47 "Muslims Around The World Condemn Charlie Hebdo Attack", in *The Huffington Post, 7 January* 2015.

In 2005, twenty-five years after the first broadcast, the maker of the film, Antony Thomas, looked back. His idea was that the film was still topical. *Small wonder*, one might say; he was the maker. But he indicated that others also subscribed to this point of view. Ali Al-Samed, a Saudi activist, indicated that the position of women had not significantly changed since 1980, when the film was first aired. Then, women were veiled, as they are now. Then, women lived segregated from men, as they do now. Then, women were not allowed to drive cars; they are still not allowed to do so now. Then, women did not have the right to vote; and they cannot vote now. Then, women did not have a free choice in marriage; and they do not have it now. Then, people were beheaded for blasphemy, adultery, apostasy and similar penal offences, as they are now.[48] Beheadings are noted and discussed today in Western media, but this is not because they are new, but because now it is also Americans and British that are beheaded.[49] But what is the difference between beheading a princess in 1980 and doing the same with James Foley in 2014?

The bases on which these atrocities take place (the basis in worldview, ideology, legal code) are more similar than they may seem. In all these cases it is about blasphemy, apostasy, adultery, insubordination. In a political order where state and religion are intricately interwoven, every criticism of the political leadership is at the same time a form of blasphemy, with all the consequences connected to that status.[50] Our case of the Saudi princess is also a form of blasphemy because adultery is against Islamic law. Committing it is thus a criticism of the political leadership.

The most recent case of Saudi suppression of free speech is the incarceration of the Saudi blogger Raif Badawi (*b.* 1984).[51] In a series of blogs

48 See on this Michiel Hegener, *Vrijheid van godsdienst* (Amsterdam/Antwerp: Uitgeverij Contact, 2005); M. Hegener, "Vrijheid van godsdienst: afschaffen of beschermen?", in H.M.A.E. van Ooijen, L.F. van Egmond, Q.A.M. Eijkman, F. Olujic, O.P.G. Vos. (eds)., *Godsdienstvrijheid: afschaffen of beschermen?* (Leiden: Stichting NJCM-Boekerij, Nr. 46, 2008), 109–119.

49 Some change in that process occurred after the murder of Lee Rigby in London. See Tony Blair, "The ideology behind Lee Rigby's murder is profound and dangerous. We must take on this extremism", in *Mail on Sunday,* 2 June 2013.

50 This is documented in Paul Marshall and Nina Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide* (Oxford: Oxford University Press, 2011).

51 "Lash and jail for Saudi web activist Raef Badawi", in *BBC News Middle East*, 30 July 2013.

he criticised theocracy and lack of freedom of thought in his home country, while advocating freethought, liberalism and secularism. After 2012 he was incarcerated by the regime and sentenced to 1,000 public whippings. On 9 January 2015, he received the first fifty of these lashes, but at the moment of writing a worldwide campaign is being conducted to effect his release. A selection of his blogs has been translated into German.[52]

ATTEMPTS TO BAN "DEATH OF A PRINCESS" IN THE UNITED KINGDOM AND THE UNITED STATES

Now let us go back to the film, and more specifically the way it was received in Western countries. One might expect those countries to protect fundamental rights and confront Saudi Arabia with the violations of human rights addressed in the film. But did this happen?

On 9 April 1980, *Death of a Princess* was shown in Great Britain by ATV (Associated Television).[53] Only two days later, on 11 April, the Saudi Embassy in London released a statement declaring the film an attack on the religion of Islam and on the way of life of Saudi Arabia.[54] During the weeks following the broadcasting of the film, Saudi Arabia continuously put pressure on the British government.[55] Although initially no steps were undertaken to smooth over the tensions between the two countries, Lord Carrington, the foreign secretary, eventually apologised publicly for the "deeply offensive" film and said he "wished it had never been shown."[56]

In the United States there seemed to be little commotion about the screening of the film at first. The Public Broadcasting Service stated on

52 Badawi, Raif, *1000 Peitschenhiebe weil ich sage, was ich denke*, Aus dem Arabischen von Sandra Hetzl, (Berlin: Ullstein, 2015).

53 R.D. Hershey Jr., "Film about Executed Princess Upsets British-Saudi Relations", in *New York Times*, 11 April 1980.

54 "'Death of a Princess', Drama-Documentary on Saudi Execution Which Provoked an International Incident, to Air on Public Television's 'World' May 12", Press Release, Public Broadcasting Service, 11 April 1980.

55 "Regret Voiced for Saudi Film," Facts on File World News Digest, 30 May 1980, 407 A3; "Concorde: Fast and Beautiful – But Costing a Bundle," in *The Christian Science Monitor*, 21 May 1980, 5.

56 "Regret Voiced for Saudi Film," Facts on File World News Digest, 30 May 1980, 407 A3.

11 April that the film would be shown in the United States.[57] However, four days before the film was about to be broadcast, Mobil Oil Company protested against it. On 8 May 1980, it placed an advertisement in the *New York Times*, questioning Thomas's artistic integrity. The advertisement suggested that freedom of speech was being abused for fiction presented as reality. As part of an oil producing partnership, Mobil Oil had a substantial interest in preserving a good relationship with Saudi Arabia.[58] But Mobil Oil was also important to PBS for another reason: it was a financier of other kinds of programming. On 9 May the American Secretary of State sent a letter to the PBS president Lawrence Gosman, expressing his concerns about the possible consequences of the screening of the film.[59] He emphasised that the government was not trying to exercise any type of censorship, but was simply expressing its concerns about the situation. He stressed the government's trust in the organisation to make an appropriate decision on whether to broadcast the film or not. He also included a letter he had received from the Kingdom of Saudi Arabia in which it opposed the film's broadcast. One could ask if this is not an implicit form of censorship, due to the fact that the Secretary of State acknowledged the objections of the Saudis and subsequently stressed PBS's responsibility to make an appropriate decision. Ultimately PBS decided to broadcast the film, in spite of the letter and public protests.[60] However, not all stations resisted the pressure, and expressions of concern were also heard. A substantial number of PBS stations delayed or cancelled the broadcast.

In the Netherlands there was also a commotion about the film. In 1980, at the moment the film was launched, the Netherlands were governed by the first Van Agt Cabinet (from 19 December 1977 to 11 September 1981). Dries van Agt was the Prime Minister, and Hans Wiegel, who was also Minister of Internal Affairs, was the Deputy Prime Minister. Two other important players were Neelie Smit-Kroes, Secretary of State for Transport, Public Works and Water Management and Til Gardeniers-Berendsen, Minister for

57 "'Death of a Princess', Drama-Documentary on Saudi Execution Which Provoked an International Incident, to Air on Public Television's 'World' May 12", Press Release, Public Broadcasting Service, 11 April 1980.

58 C. Gerald Fraser, "Mobil Asks PBS to Reconsider Showing Film About Saudi Princess", in *New York Times*, 9 May 1980, A 10.

59 "Text of Letters on Disputed Film", in *New York Times*, 9 May 1980, A 10.

60 William A. Henry III., "Apologies PBS Style," in *The New Republic*, 24 May 1980, 6.

Culture, Recreation and Social Work (Cultuur, Recreatie en Maatschappelijk Werk).

Bert van den Braak, from the Parliamentary Documentation Centre of Leiden University, writes that Minister Gardeniers and Deputy Prime Minister Wiegel stressed the negative consequences, both political and economic, connected to the airing of the film, and therefore advised against broadcasting it. There was also some pressure from the private sector.

The Dutch Broadcasting Foundation (NOS) did not succumb to this pressure, as we will see in the following paragraphs, and the film was aired on 16 April 1980. State Secretary Kroes tried to explain the attitude of the Dutch approach in Riyadh.[61]

THE DUTCH CONTROVERSY

Did Ministers Wiegel and Gardeniers indeed try to stop the film from being broadcast while it was their moral duty not to interfere? According to Reinier de Winter, Erik Jurgens, the chairman of the NOS, did not yield to the pressure exerted by the Dutch cabinet.[62]

The Dutch Christian newspaper *Reformatorisch Dagblad* quoted State Secretary Kroes, sharing her own view of what had happened. According to her own testimony she was not a proponent of censuring the film, but at the same time she did not present herself as a hell-raising defender of human rights either. She said: "It was a happy coincidence that I happened to be in Saudi Arabia, because that made it possible for me to do some damage control."[63] Although she does not spell out what "damage" she has in mind, it is clear from the context that it is only commercial interests she is thinking of. By "damage," she does not mean the damage that occurs when leading politicians fail to uphold the principles upon which the post-war international legal and political order is built. Nor does she use "damage" to

61 See also Reinier de Winter, "Globalisering: de 'margin of appreciation' in spiegelbeeld? Vrijheid van meningsuiting versus vrijheid van godsdienst in de Deense cartoonaffaire", in T. Barkhuysen, M.L. van Emmerik and J.P. Loof (eds), *Geschakeld recht: verdere studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. Mr. E.A. Alkema* (Deventer: Kluwer, 2009), 551–565.

62 Ibid., 563.

63 "Smit-Kroes zet zichzelf pluim op hoed", in *Reformatorisch Dagblad*, 24 April 1980: "Het is voor Nederland bijzonder gelukkig geweest, dat ik toevallig in Saoedi-Arabië zat, want daardoor kon ik de schade ter plaatse zoveel mogelijk beperken".

refer to the impression that arises when leading politicians do not address the moral quandary of ignoring the execution of a young woman for no other reason than her love for someone of her age. The problem is that if you do think these principles are important, the intervention by the State Secretary for Traffic and Water Management did not "control" anything. On the contrary, her interventions must have reinforced the impression that European politicians in a liberal nation-state do not believe in their own professed principles. In her rendering of the situation, the State Secretary insinuates that the Dutch people should be very grateful that she was in the right place at the right time to cool the situation. But would it not have been better if State Secretary Kroes had, from the first moment, made it crystal clear that the Dutch government would under no circumstances be willing to negotiate on the principle of freedom of the press and would never consider government censorship?

The Secretary of State also stressed that she had not acted on her own behalf in Saudi Arabia. She had had contact with Deputy Prime Minister Wiegel. "I even once contacted him at his mother-in-law's house."[64] According to Kroes, the Saudis were particularly annoyed because the "religious feelings of the royal house were offended."

This is a somewhat strange commentary that does not address the problem the whole controversy was about: the *death of a young woman, brutally murdered because she did not comply with the wishes of the patriarchic class around her.* It was not the atrocious execution, but the feelings of the royal family, their "religious feelings" in particular, that were apparently the subject of the conversation between the State Secretary and the Saudi government. The fact that the Saudi royal family wanted to frame this event as something that had to do with honour and religious feelings is quite understandable, but what is more difficult to understand is that the Dutch State Secretary did not address the issue of killing a young woman for an "offence" that, under normal circumstances, cannot be characterised as anything other than the exertion of an elementary human right. In her report of the talks she had with the Saudis she never mentions even coming close to addressing this issue. She only said to the Saudis that she could not forbid the airing of the film. When Kroes arrived in the Netherlands, she was unpleasantly struck by

64 "Die heb ik zelfs eenmaal thuis bij zijn schoonmoeder gebeld".

the fact that the media reported that she had frustrated freedom of speech. This was not the case, Kroes said.[65]

According to her own view of the situation, Kroes had (1) limited the damage; and (2) not said or done anything that violated free speech. If that had been the case, it would have been no small accomplishment. But is it likely?

The airing of the film was also briefly discussed in the Senate, but much later (4 June 1980) and, more relevantly, a discussion ensued about the improper pressure that had allegedly been exerted by the Dutch Government to prevent the Dutch Broadcasting Foundation from screening the film.[66] Those who took the governmental point of view stressed that the government had done nothing more than notify the NOS about the possible consequences broadcasting the film could have.

A similar occurrence several years later is interesting in this context. On 23 February 1987, then Acting Minister of Foreign Affairs Hans van den Broek (*b.* 1936), made a phone call to the NOS that was aired on live TV. Van den Broek called the Dutch anchorman Paul Witteman (*b.* 1946) just before a controversial item about the religious leader of Iran at the time, Ayatollah Khomeini, was to be broadcast. The clip, a spoof about Khomeini, was originally created in Germany (and had been broadcast on German television eight days earlier) by show master and comedian Rudi Carrell (1934–2006), and there it had caused a lot of commotion.[67] In his own words, the Dutch minister had "imposed nothing" during his call, but had simply indicated the possible consequences of the airing of the segment. He left the decision on whether or not to broadcast it to the journalist (or the broadcast corporation).[68] In both cases (*Death of a Princess* and the showing of this Khomeini spoof) the government, as well as the minister involved, neglected to acknowledge the influence they had by pronouncing such things in their capacity as ministers. When the government proclaimed its

65 "En dan kom je terug en dan wekt men hier de indruk, dat je met de vrijheid van meningsuiting de vloer aanveegt. Dat is niet gebeurd".

66 Parl. Doc., Senate., 4 June 1980, 875.

67 See on this Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech", in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven, International Publishing, 2015), 291–318; Paul Cliteur, "The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire", in *Ancilla Iuris* 15 (2013) 15–41, full text available at: http://www.anci.ch/paul_cliteur.

68 Parl. Doc., House of Rep. 1986/1987, 19 700, ch. V, nr. 79, 1–3.

opinions on the broadcasting of *Death of a Princess* (that is, not to broadcast it), pointing out the possible dangers and threats the film might provoke, it no longer seemed like a mere notification; it looked more like a pressing request, which could be interpreted as a form of censorship. It is rather hypocritical or, to put it more mildly, naïve to pretend that when a member of the government makes a live phone call to a television station, this can be seen as merely a contribution to an ongoing discussion in the same way that ordinary citizens participate in a public debate.

In 1980, the Cabinet Van Agt I, and subsequently Minister Van den Broek in 1987, did set some dangerous precedents for affairs that would arise later. It is a somewhat disquieting idea that dictatorships like Saudi Arabia and Iran managed to ride the moral high ground while leading Dutch politicians grovelled in the dirt and failed to address the human rights issues that were so evident in these cases.

QUESTIONS BY MP ROETHOF

Although there was no official debate in the Lower Chamber of Parliament on *Death of a Princess*, the Labour MP Hein Roethof (1921–1996) formulated some questions, trying to assess whether the government had tried to influence the broadcast corporation in its decision to air the film or cancel it.[69]

Is it true, Roethof wanted to know, that on 12 April 1980, when she was in Saudi Arabia, the State Secretary for Transport and Water Management (*Staatssecretaris van Verkeer en Waterstaat*) had tried to take steps to cancel the documentary?[70] The government did not deny that it had tried to seek a cancellation of the film, but "only on the basis of conviction." Members of the Cabinet had also been in contact with Erik Jurgens, the chair of the NOS, but only to discuss the possible consequences of the film's broadcast. It was clear to the government that the final decision to air or cancel the film was up to the broadcasting corporation and not the government. But it was the responsibility of the government to inform the broadcasting corporation of

69 H. Roethof, "Vragen van het lid Roethof over uitzending van een film door de NOS over Saoedi-Arabië", Ingezonden 14 April 1980, in Parl. Doc., House of Rep. 1979/1980, Attachment.

70 Ibid., 1917.

the possible consequences for Dutch/Saudi relations and the impact on the Dutch economy, the government argued.[71]

Roethof also commented: "If the Saudi government has legitimate complaints about the film, complaints that I do not have any information about, I would like to know them."

This was a smart move, of course, because for a government in a democracy it is somewhat embarrassing to have to concede that the members of the Cabinet seriously considered frustrating the airing of a film on a violation of human rights as atrocious as the execution of the princess and her lover. No decent government will do this gladly. What they tried to do instead (and this was also the course of action the American Secretary of State chose, as we saw in the preceding paragraphs) is *insinuate* that cancelling the film might not be such a bad idea, while at the same time emphasising that the final decision on this delicate matter was the "responsibility" of the broadcasting corporation. And of course they hoped for a minimum of publicity, to avoid a moral outcry from the public. This strategy, though, did not work.

Roethof also formulated some ideas about what was and was not legitimate in cases such as the one then under scrutiny. He said that the role of the government could indeed be to provide factual information to the NOS, but that if the government were to try to exert force or pressure, it would be on the wrong track.[72]

It is an interesting suggestion. We may question, though, whether a government can ever perform the task of presenting information about foreign pressure, but in the capacity of a neutral bystander. Is that realistic? If the government were to share knowledge of foreign sources of pressure (as the Minister of Foreign Affairs did explicitly in 1987 and the members of Cabinet Van Agt I did more implicitly), it would be natural for the broadcasting corporation to become suspicious (as would every other private actor) about the vital question of whether it could rely on the support of its national government in times of crisis. This is essential, especially when there is also a security risk involved (as there was in the Iranian case, as the minister suggested in his conversation with the journalist).

So both 1980 (*Death of a Princess*) and 1987 (the Rudi Carrell Affair) set some dangerous precedents of giving in to undue influence on the part of dubious governments.

71 Ibid.

72 Roethof quoted in: *Algemeen Dagblad*, 14 April 1980.

An unusually straightforward condemnation of the Saudi attempt to stifle free speech came from another socialist: André Kloos (1922–1989). Kloos was the chairman of the VARA (a socialist broadcasting corporation) who said that we, the Dutch, should ask for more understanding from the Saudis for "the system we all defend." He also pointed out what the long-term consequences would be if the Dutch complied with the Saudis' demands. Would the consequence not be that we could only make films about countries with which we had no commercial ties?[73]

WHAT TO DO WITH FREEDOM OF SPEECH IN A MULTICULTURAL INFORMATION SOCIETY?

Commercial interests played an important part in the Dutch discussion, not least because this is a classic issue in the division between left and right. We should not forget that the Cabinet Van Agt I was a right-wing government and the socialists were in opposition. So this was a discussion not only about moral matters, but about party politics as well. Also, the left could afford to be on the "immaterial side" of the discussion, while the right had to defend business interests. At least that is what they thought they had to do. Nevertheless, this is always a difficult matter to be honest about.

Two MPs from the liberal party VVD, De Korte and Blaauw, who supported the government in its lack of enthusiasm for airing *Death of a Princess* on Dutch television, tried to explain their motives in the Dutch daily newspaper *Trouw*.[74] It was a prejudice against their party, Blaauw complained, that liberals were always motivated by commercial considerations. This was not the case. What had motivated him, said Blaauw, was the idea that the film might be seen as offensive to the feelings of Muslims. He had gathered from the reactions to the film in England that this was indeed the case. Blaauw also claimed to have had long conversations with representatives of Muslim groups in the Netherlands.

This did not make much of an impression on the journalists from *Trouw*. De Korte and Blaauw were mocked in *Trouw* because, so the journalists contended, this was the *first time* the VVD seemed to be receptive to

73 Kloos quoted in *Trouw*, 17 April 1980.

74 "NOS wil film toch uitzenden", in *Trouw*, 16 April 1980; Theo Koelé, "Dood van een handelsreiziger", in *Trouw*, 15 April 1980.

complaints from ethnic and religious minorities. Were they absolutely sure that it was not the oil that explained their interest in the film?

Whatever may be the answer to that last question one thing is clear, namely the matter that the liberal MPs Blaauw and De Korte introduced to the discussion would play a huge role in all the great discussions that, in 1980, were still ahead of us. In all the later discussions (the Rushdie Affair,[75] the Cartoon Affair,[76] the Rudi Carrell Affair,[77] *Charlie Hebdo* Affair,[78] *etc.*), time and again it was argued that freedom of speech is fine, but that we have to protect vulnerable minorities from offensive views that are common in Western societies.[79]

Should not freedom of speech be recalibrated in a world dominated by a continuous flow of information, ideas and opinions? In a world where cultural differences perhaps cannot be bridged, is there something to be said for more respect for these differences, which would consequently require further limitations on the right to freedom of speech?

Characteristic of our modern societies is a continuous digitalisation and the development of a visual world in which words and images are universally distributed in a fraction of a second. If people always agreed with one another, there would be no legal codes or conflicts. Obviously, this is not the case. People *have* different opinions, and all these opinions and ideas unceasingly clash and, in the worst case, clash with the use of violence as a consequence. On the one hand, there may be something to say for taking a step back. Perhaps one should take the feelings of others into account more and be more careful when expressing criticism. On the other hand, it is the expression of criticism that keeps a democracy alive.

Critical reflection is essential for a democracy. It is therefore troubling that this, although recognised in the founding documents of Europe and the case law of the European Court of Human Rights, is forgotten by European

75 Paul Cliteur, "Van Rushdie tot Jones: over geweld en uitingsvrijheid", in Afshin Ellian, Gelijn Molier and Tom Zwart (eds), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting* (The Hague: Boom Juridische Uitgevers, 2011), 67-89.

76 Oring, Elliott, "The Muhammad cartoon affair", in *Humor*, 21–1 (2008) 21–26.

77 Paul Cliteur, "The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire", in *Ancilla Iuris* 15 (2013) 15–41, full text available at: http://www.anci.ch/paul_cliteur.

78 Charb, *Lettre aux escrocs de l'islamophobie qui font le jeu des racistes* (Paris: Les Échappés, 2015).

79 This is a central topic in Charb, *Lettre aux escrocs de l'islamophobie qui font le jeu des racistes* (Paris: Les Échappés, 2015). See also chapter 9 in this volume, on free speech and multiculturalism.

governments in the cases analysed in this chapter. Living in a democracy means living with the pain you suffer from other people's opinions.[80] There will always be someone who feels offended by, or disagrees with, other opinions. Therefore, limiting freedom of speech on this ground is pointless. On the contrary, it might even be better to reinforce this freedom. It is important to realise that when a government questions the broadcasting of a film and stresses the possible extraterritorial consequences (without even paying attention to the content of the film), it is exposed as being susceptible to foreign threats (in this case from Saudi Arabia, but it could also be from North Korea, or any other country, as is inherent in the criticism of André Kloos, quoted above). Instead of upholding and defending the values European governments have enshrined in their human rights treaties and constitutions, they give in to the unreasonable demands of dictatorships. In the long run this attitude may prove suicidal, and democratic governments should perhaps do some soul searching on how to uphold democratic values in the future. Despite all the uncertainties in this world we may say that, although *Death of a Princess* may have been one of the first instances of a certain type of moral and political conflict, it was certainly not the last. And governments may have much to gain from carefully studying these conflicts, in both a historical and a transnational perspective.

80 "Vrijheid is er ook voor Wilders," in *De Volkskrant*, 31 January 2015.

6 Rushdie's Critics

Paul Cliteur & Tom Herrenberg

INTRODUCTION

On 14 February 1989, the Supreme Leader of Iran, Ayatollah Khomeini (1902–1989), issued a declaration that called for the death of British novelist Salman Rushdie (*b*. 1947). It reads as follows:

> I inform all zealous Muslims of the world that the author of the book entitled *The Satanic Verses*—which has been compiled, printed, and published in opposition to Islam, the Prophet, and the Koran—and all those involved in the publication who were aware of its contents are sentenced to death.
>
> I call upon all zealous Muslims to execute them quickly, wherever they may be found, so that no one else will dare to insult the Muslim sanctities. God willing, whoever is killed on this path is a martyr.
>
> In addition, anyone who has access to the author of this book but does not possess the power to execute him should report him to the people so that he may be punished for his actions.[1]

The aim of this chapter is to analyse some of the criticism that has been levelled against Salman Rushdie for having published his novel *The Satanic Verses* (1988). Since Khomeini's "fatwa," clashes between free speech and religious extremism have not dwindled, but have instead grown in significance. It is not only novels that have proved to give rise to controversy, but also cartoons and video clips. The latest of these controversies, the massacre of the *Charlie*

1 Quoted in Daniel Pipes, "Two Decades of the Rushdie Rules: How an edict that once outraged the world became the new normal," in *Commentary Magazine*, October 2010, 31.

Hebdo cartoonists in Paris on 7 January 2015 underscores a deep division between a culture of civil liberties and theocratic extremism. Although Rushdie received considerable support from many sides,[2] he also faced strong criticism for writing his novel. Indeed, Rushdie was targeted not only by terrorists who wanted to punish him for his blasphemous novel, but also by public intellectuals who considered his stance too provocative, if not downright insulting, to the religious views of many people. In this chapter we will discuss positions taken by some of Rushdie's critics and look at their significance in the light of the killings of the *Charlie Hebdo* journalists and cartoonists.

WAYLAY HIM IN A DARK STREET

An early reaction to the Rushdie affair came from the famous historian Hugh Trevor-Roper (1914–2003), who stated:

> I wonder how Salman Rushdie is faring these days under the benevolent protection of British law and British police, about whom he has been so rude. Not too comfortably I hope… I would not shed a tear if some British Muslims, deploring his manners, should waylay him in a dark street and seek to improve them. If that should cause him thereafter to control his pen, society would benefit and literature would not suffer.[3]

Perhaps this is—apart from Khomeini's fatwa itself—one of the most extreme reactions to the publication of the novel. What makes this reaction interesting is that Trevor-Roper so openly shows understanding for the threat of physical violence—if not advocating it—against the writer of the controversial novel. The reaction was also stunning since it came from an academic who, due to the nature of his own profession, can only work under conditions of academic freedom—conditions that are more or less naturally opposed to "controlling the pen."

2 See, e.g., "Writers rally to Rushdie as publishers rethink," in *The Guardian*, 16 February 1989; "Writers Defend Rushdie," in the *New York Times*, 21 February 1989.

3 Quoted in: Salman Rushdie, *Joseph Anton: A Memoir* (London: Jonathan Cape, 2012), 260; Paul Weller, *A Mirror for our Times: "The Rushdie Affair" and the Future of Multiculturalism* (London/New York: Continuum, 2009), 21.

Furthermore, Trevor-Roper is a *historian*. He is the author of an extensive oeuvre, including books such as *The Last Days of Hitler* (1947),[4] *The Invention of Scotland* (1994),[5] *History and the Enlightenment* (2010),[6] and many other works. He certainly must have been aware of the history of censorship, intimidation and violence against writers and scholars in the past.[7]

The vehemence of Trevor-Roper's reaction was perhaps partly because he felt Rushdie *had to have known in advance* what type of reaction his novel would unleash. Trevor-Roper argued that Rushdie was "well versed in Islamic ideas" and that he "knew what he was doing and could foresee the consequences."[8] This point was also made by former United States President Jimmy Carter (*b*. 1924). Carter referred to something that came up time and again in the discussion on Rushdie's book, namely that as a Muslim, former Muslim, or at least someone cognizant of the mores in the Muslim world, Rushdie should have known better. Carter wrote: "The author, a well-versed analyst of Moslem beliefs, must have anticipated a horrified reaction throughout the Islamic world."[9]

Just like Trevor-Roper, Carter also took Rushdie to task for knowing what he, Rushdie, was doing. This was also explicitly voiced by Rushdie's fellow writer Roald Dahl (1916–1990). "[Rushdie] must have been totally aware of the deep and violent feelings his book would stir up among devout Muslims. In other words, he knew exactly what he was doing and cannot plead otherwise," Dahl argued.[10] To this accusation Rushdie once humorously responded by saying that "It would be really strange … to spend five years writing a novel and not know what you are doing."[11]

4 Hugh Trevor-Roper, *The Last Days of Hitler* (London: Pan, 2012 (1947)).

5 Hugh Trevor-Roper, *The Invention of Scotland: Myth and History* (New Haven, CT: Yale University Press, 1994).

6 Hugh Trevor-Roper, *History and the Enlightenment* (New Haven, CT: Yale University Press, 2010).

7 See, e.g., Hugh Trevor-Roper, *The Crisis of the Seventeenth Century: Religion, the Reformation & Social Change* (Indianapolis, Ind.: Liberty Fund, 1967).

8 Paul Weller, *A Mirror for our Times: "The Rushdie Affair" and the Future of Multiculturalism* (London/New York: Continuum, 2009), 21.

9 Jimmy Carter, "Rushdie's book is an insult," in the *New York Times*, 5 March 1989, also in Lisa Appignanesi and Sara Maitland (eds), *The Rushdie File* (Syracuse, NY: Syracuse University Press, 1990), 236–237.

10 Quoted in: Ibn Warraq, *Why the West is Best: A Muslim Apostate's Defense of Liberal Democracy* (London: Encounter Books, 2010), 32.

11 During an interview with Christopher Hitchens at The Fifth Annual Arthur Miller Freedom to Write Lecture (2010).

What clearly appeared from Carter's reaction was that criticising religion was not very welcome. This opinion was shared by many, but not always for explicitly religious reasons. Sometimes there was also an element of resignation in the commentary of some participants. Religious criticism is not wise, because we cannot control the turmoil that follows it. In an interview on the Rushdie affair in May 1989, Novelist John le Carré (*b*. 1931) commented in the same vein when—while stating that it was "outrageous that … Salman Rushdie had been condemned to death by the Iranian Government"—he said: "I don't think it is given to any of us to be impertinent to great religions with impunity."[12]

This reference to "impunity" seems to be an allusion to what was made much more explicit by Trevor-Roper: you cannot complain when violence is exerted against you as a result of your criticism of religion. So the word "impunity" has a sinister undertone.

Another point was made by another famous detractor of Rushdie, the art critic John Berger (*b*. 1926). Berger's point was that it would simply not be possible to control the violence. In *The Guardian* he wrote in February 1989:

> I suspect Salman Rushdie, if he is not caught in a chain of events of which he has completely lost control, might by now be ready to consider asking his world publishers to stop producing more or new editions of *The Satanic Verses*. Not because of the threat to his own life, but because of the threat to the lives of those who are innocent of either writing or reading the book. This achieved, Islamic leaders and statesmen across the world might well be ready to condemn the practice of the Ayatollah issuing terrorist death warrants. Otherwise a unique twentieth century Holy War, with its terrifying righteousness on both sides, may be on the point of breaking out sporadically but repeatedly—in airports, shopping streets, suburbs, city centers, wherever the unprotected live.[13]

Berger introduces the notion of "innocence" with regard to not only writing, but also *reading* a book. It seems he is suggesting that when you read a book

12 "Russians Warm to le Carré," in the *New York Times*, 22 May 1989.

13 Quoted in William J. Weatherby, *Salman Rushdie: Sentenced to Death* (New York: Carrol & Graf, 1990), 168.

that theoterrorists object to[14] you run the risk of forfeiting your "innocence." Berger sought the solution to the turmoil over the novel in halting the production and distribution of *The Satanic Verses*. Roald Dahl, too, was of the opinion that, given the outrage over the book, the best thing to do was to halt its distribution: "If the lives of the author and the senior editor in New York are at stake, then it is better to give in on a moral question when you are dealing with fanatics. If I were Rushdie, then for the sake of everybody threatened I would agree to throw the bloody thing away. It would save lives."[15] Here, Dahl and Berger shared common ground with Iran's parliament speaker at the time, Hashemi Rafsanjani (*b*. 1934), who "said the solution to the strangest and rarest crisis in history is to issue a strict order to seize all copies in the entire world and burn them."[16]

BRITISH POLITICIANS RESPOND

On 15 February 1989, Britain's foreign secretary, Sir Geoffrey Howe (1926–2015), gave a rather tame reaction to the death sentence, telling the BBC that Khomeini's declaration was something of "very grave concern" and that the British government was "looking into the background of it very carefully."[17] He also argued that Iran's actions illustrated "the extreme difficulty of establishing the right kind of relationship with a manifestly revolutionary regime with ideas that are very much its own."[18] A day later Howe's attitude was more forthright, and he declared that "Nobody has the right to incite people to violence on British soil or against British citizens. Ayatollah Khomeini's statement is totally unacceptable."[19] On the same day the British government put out a statement that read: "The British Government's view is that it would not be possible to establish a normal relationship with Iran while the Iranian Government failed to respect fully international standards

14 The word "theoterrorists" is used here for those who exert violence on the basis of a conception of God's wishes. Needless to say, whether they give the right interpretation to God's wishes is irrelevant from a social science perspective.

15 "Pulp book to save lives, says Dahl," in *The Times*, 17 February 1989.

16 "Iranian Says All Copies Must Be Burned," in *The Associated Press*, 10 March 1989.

17 "Iranians Protest over Banned Book," in the *New York Times*, 16 February 1989.

18 Ibid.

19 "Britain Protests Khomeini's 'Death Sentence' Against Author Rushdie," in *Schenectady Gazette*, 17 February 1989.

of behaviour."[20] In late February Prime Minister Margaret Thatcher (1925–2013) stated that freedom of speech "is subject only to the laws of this land … and will remain subject to the rule of law. It is absolutely fundamental to everything in which we believe and cannot be interfered with by any outside force.'"[21]

Both Howe's second statement and Thatcher's comment seem to address the central issue, namely the fact that Khomeini has appropriated the right to exercise control over an individual not belonging to his jurisdiction. This point was aptly made by novelist Anthony Burgess (1917–1993). Burgess, commenting on the fatwa, argued:

> The Ayatollah Khomeini is probably within his self-elected rights in calling for the assassination of Salman Rushdie, or anyone else for that matter, on his own holy ground. To order outraged sons of the prophet to kill him and the directors of Penguin Books on British soil is tantamount to a *jihad*. It is a declaration of war on citizens of a free country and as such it is a political act. It has to be countered by an equally forthright, if less murderous, declaration of defiance.[22]

Burgess' reaction proved prescient because, amid all the confusion, he highlights the really relevant issues here: assassination, national sovereignty, jihad and the need to resist. Burgess also rightly stresses that there is a conflict of visions. Khomeini is indeed right *within* his own religious paradigm. It is also remarkable that Burgess does not shy away from calling this "jihad," meaning a "declaration of war" on citizens of another country. Burgess further stresses the element of territoriality ("British soil").

While the British government unequivocally condemned Khomeini's threat in the first days and weeks after 14 February 1989, attention shifted to the content of *The Satanic Verses* when Sir Geoffrey Howe gave an interview to the BBC in early March. In this interview—which was "relayed by the Persian service … in Iran"[23]—Howe was quite critical of the book, saying that:

20 "Britain puts ties with Iran on hold," in the *New York Times*, 17 February 1989.

21 "Iran Tells Britain to Condemn Book," in *Washington Post*, 1 March 1989.

22 "The sins of a holy terror. Once it would do intellectual battle but Islam now prefers to draw blood," in *The Globe and Mail*, 17 February 1989.

23 "Terrorists add Hurd, Howe to book death list," in *The Times*, 3 March 1989.

> [There is] a huge distance between ourselves and the book. The British government, the British people, do not have any affection for the book. The book is extremely critical, rude about us. It compares Britain with Hitler's Germany. We do not like that any more than the people of the Muslim faith like the attacks on their faith contained in the book. So we are not sponsoring the book. What we are sponsoring is the right of people to speak freely, to publish freely.[24]

The Times noted that Howe's remark about the "huge distance between ourselves and the book" was "apparently aimed at appeasing Muslim outrage and making the first tentative move towards a settlement with Iran."[25] The paper opined that the comments of Howe—who was also put on the death list of a pro-Iranian terrorist group—went "some way towards fulfilling an Iranian demand earlier this week for Britain not to adopt improper gestures towards the Islamic world."[26] At the same time, Margaret Thatcher had seemingly also developed an understanding of the offence the book had caused. Relating to her own religious beliefs, she said that "We've known in our own religion people doing things which are deeply offensive to some of us, deeply offensive, and we felt it very much. And that is what has happened in Islam. I think that these great religions are strong enough and deep enough to withstand these kind of events."[27]

These comments were much to Rushdie's dismay. As reported by the *Washington Post*, Rushdie felt that "the government is beginning to play both sides in the middle in its efforts to defend the rights of free expression and avoid a threatened break in formal diplomatic relations with Iran."[28] Rushdie "feared the Government was weakening in its support for him as part of an attempt to resolve the UK-Iran crisis."[29]

Howe was also criticised in the newspapers. *The Guardian* wrote in a commentary on Howe's interview:

> It was presumably someone else at the Foreign Office who went through *The Satanic Verses*, picking out the naughty bits which led Sir Geoffrey

24 Ibid.

25 Ibid.

26 Ibid.

27 "Rushdie fears backdown by Government," in *The Times*, 4 March 1989.

28 "Statement Worries Rushdie," in *Washington Post*, 4 March 1989.

29 "Rushdie fears backdown by Government," in *The Times*, 4 March 1989.

> Howe to conclude on Thursday that the book was "extremely rude" about Britain. The result was not a great succes, either as an exercise in literary criticism or as a covert signal to the moderates in Iran.
> …
> Aren't we supposed to be against governments saying that they disapprove of books—let alone making up other people's minds for them? It was also a somewhat philistine judgment. Not only was the book "rude" but, said Sir Geoffrey, it "compares Britain with Hitler's Germany." It does nothing of the kind. It does portray, as our reviewer Angela Carter wrote before the great row began, "the mean streets of a marvellously evoked eighties London."[30]

The newspaper concluded by stating that Rushdie "seems to have broken his silence … to express concern about Sir Geoffrey's statement; and, regrettably, one can see why."[31]

In the *Financial Times*, Ian Davidson wrote a commentary on Howe's interview. Davidson touched on a number of interesting points:

> Mealy-mouthed expressions of distaste for *The Satanic Verses* merely served to make the Government look obsequious and cringing. When Sir Geoffrey Howe said on the radio: "We understand that the book itself has been found deeply offensive by people of the Moslem faith," he was making an observation which was entirely otiose. He made matters much worse when he went on to say: "The British Government, the British people, don't have any affection for the book, which is extremely critical, rude about us. It compares Britain with Hitler's Germany. We don't like that any more than people of the Moslem faith like the attacks on their faith contained in the book."
>
> The implications of these words are unmistakable and alarming: in the hope of avoiding a break in diplomatic relations, the British Government was fully prepared to adopt the posture of an equally injured party, even if it meant endorsing (in modifed terms) the Ayatollah's attack on *The Satanic Verses*. If Mr Rushdie felt he was in

30 "Rude, as in rudimentary," in *The Guardian*, 4 March 1989.

31 Ibid.

> danger of being dumped by the British Government, he may have had good reason. [32]

Davidson also made some interesting points about the expertise and competence of the government to comment on matters of literary interpretation.

> Whether Sir Geoffrey or Mrs. Thatcher thinks *The Satanic Verses* is a nice book or a nasty book, whether they believe it is offensive to Moslems, or whether they consider it unfair to the British people, are entirely irrelevant questions. In any case, they are wholly unqualified, in their capacity as elected politicians, to have a useful opinion on any of these subordinate issues.[33]

Davidson also spelled out what were to him the relevant questions in this case: "Under the Iranian gun, the only questions which are immediately relevant are whether Mr. Rushdie was legally entitled under British law to write and publish his book, and whether Ayatollah Khomeini is entitled to incite the murder of Mr. Rushdie."[34]

Davidson did something only few people commenting on the Rushdie affair did. He first asked us: what are the *relevant* questions in this controversy?

You can, of course, comment on *everything*: on whether you liked the book, on whether Rushdie could have foreseen the consequences, on whether you like religious criticism in general, or on whether you have an understanding for offended feelings of religious believers. But what Davidson drew our attention to was the *relevance* of those questions. What should, for instance, a politician or "the state" ask when judging the situation? And Davidson claims only two questions are relevant: was Rushdie legally entitled to write the book, and was Khomeini entitled to incite murder?

These two questions are, indeed, the relevant questions for a politician to ask. But, as we saw, not all politicians focused on those questions—some took on the role of literary critic and commented on the matter as if they were ordinary citizens. Not to their credit, because what the state has to do is protect its citizens against the internal and external enemies of the

32 "Why British Diplomacy Cuts A Poor Figure In Iran's Holy War: It is Britain which should have severed diplomatic relations rather than attempt conciliation," in *Financial Times*, 9 March 1989.

33 Ibid.

34 Ibid.

peace. And in the light of *that* question, Davidson's two perspectives should be guiding.

OTHER EUROPEAN POLITICAL LEADERS

Other European government representatives backed the British in the struggle with religious terrorism. One of the first diplomatic responses came from the Netherlands. Shortly after Khomeini threatened Rushdie, the Dutch Minister of Foreign Affairs, Hans van den Broek (*b*. 1936), cancelled a trip to Teheran. He gave the reason for his decision by saying about the death threat that "This is totally unacceptable, a call for international terrorism."[35] German Chancellor Helmut Kohl (*b*. 1930) "called on the 'entire civilised world' to take action against Iran's threat to kill Rushdie."[36] President Mitterrand (1916–1996) of France said: "All dogmatism which through violence undermines freedom of thought and the right to free expression is, in my view, absolute evil. The moral and spiritual progress of humanity is linked to the recoil of all fanaticisms."[37] Mitterrand was certainly right on this. The freedom to criticise freely is a fundamental institution of liberal democracies. That freedom is not absolute though, and there are good reasons to accept limits to the freedom of speech, for example in case of incitement to violence. Khomeini's fatwa itself, for instance, can never find protection under a liberal principle of freedom of speech.[38] The problem is, though, that accepting limits to freedom of speech does not imply that we can leave this task of establishing the nature of these limits to world religions, clerical leaders and religious zealots.

French Prime Minister Michel Rocard (*b*. 1930) stated that "any demonstrations urging violence against Rushdie would result in criminal

35 "Britain puts ties with Iran on hold," in the *New York Times*, 16 February 1989.

36 "Bonn and Paris back stand against Iran," in the *Guardian*, 23 February 1989.

37 Ibid.

38 That incitement to physical violence should be accepted as a limit to free speech was also proclaimed—although not literally—by John Stuart Mill in his important essay *On Liberty* (1859). See also David M. Rabban, "Clear and Present Danger Test," in Kermit L. Hall (ed.), *The Oxford Companion to The Supreme Court of the United States* (New York/Oxford: Oxford University Press, 2005), 183–184. And in general see Mick Hume, *Trigger Warning: Is the Fear of Being Offensive Killing Free Speech?* (London: Willam Collins, 2015).

charges."[39] The mayor of Paris, Jacques Chirac (*b*. 1932), commented along the same lines:

> I am not confusing Muslims with fanatics, but I cannot imagine that in Paris we will accept desperadoes who call for murder. If they are French they need to be pursued; if they are foreigners, they should be expelled. Foreigners, once they are on our soil, must respect our laws, and we cannot tolerate calls for murder in the capital of human rights.[40]

A week after Khomeini's edict, the Ministers of Foreign Affairs of the 12 member states of the European Community issued a statement that condemned "this incitement to murder as an unacceptable violation of the most elementary principles and obligations that govern relations among sovereign states." The ministers also expressed "their continuing interest in developing normal constructive relations with the Islamic Republic of Iran" but added that "if Iran shares this desire, it has to declare its respect for international obligations and renounce the use or threatened use of violence."[41]

OTHER RELIGIOUS LEADERS

As might be expected, Iran was also seeking allies both in the West and among Muslim nations for its stance in the Rushdie affair. One of its allies in the struggle against the blaspheming Rushdie, it hoped, was the Pope. The Iranian embassy in Vatican City demanded that the Pope join actions against Rushdie. A senior Vatican official commented on this request, saying that he doubted whether the Holy Father would take any action. As the spokesman said: "After all, he is not a defender of the Moslem faith. In fact this move by the Iranian diplomats is rather out of place."[42] The Vatican spokesman further explained: "It's their problem, not ours, we have enough of our own,

39 "Bomb Kills One, Wounds Seven in Kashmir Protest," in *The Associated Press*, 27 February 1989.

40 Quoted in Lisa Appignanesi and Sara Maitland (eds), *The Rushdie File* (Syracuse, NY: Syracuse University Press, 1990), 133.

41 "Text of European Statement," in the *New York Times*, 21 February 1989.

42 Quoted in Lisa Appignanesi and Sara Maitland (eds), *The Rushdie File* (Syracuse, NY: Syracuse University Press, 1990), 81.

especially with all the books and films which cast doubts on Jesus Christ himself. We have never asked for Moslem help in curbing their sale."[43]

Apparently, the Vatican spokesman did not consider this an opportunity to make clear where the Vatican stood in matters of freedom of conscience and freedom of speech. He was only concerned with the fact that the Iranians had sought the wrong partner for their protest. Should we conclude from this that if Muslims had been more helpful in protesting against criticism of Jesus Christ, the Church would have joined the actions of the Iranians against Rushdie?

More understanding for the Iranian point of view came from Anglican Church. The Archbishop of Canterbury, Dr. Robert Runcie (1921–2000), called for a strengthening of the law against blasphemy to cover religions other than Christianity. About the offended Muslims Runcie said: "I understand their feelings and I firmly believe that offence to the religious belief of the followers of Islam or any other faith is quite as wrong as offence to the religious beliefs of Christians."[44]

Rabbi Avraham Ravitz (1934–2009), the leader of the Orthodox Degel Hatorah Party, said that Salman Rushdie needed to be condemned.[45] The Chief Rabbi of the United Hebrew Congregations of the Commonwealth, Immanuel Jakobovits (1921–1999), was critical as well and called for legislation that would prohibit "the publication of anything likely to inflame, through obscene defamation, the feelings or beliefs of any section of society."[46]

Now we have to be careful, of course, not to equate the reactions of religious leaders with the reactions of the religion they represent as such or, even less so, with individual believers' opinions. Nonetheless, it seems fair to say that an unequivocal defence of Rushdie and his right to freedom of expression was rare for religious leaders. A case in point was what Cardinal Albert Decourtray (1923–1994), Archbishop of Lyons, said on the matter. He was the president of the French bishops' conference. Decourtray issued a declaration that contained two important points. First, that he had not read Rushdie's novel. Second, that he was offended by the book. "Once again the faith of believers is insulted," the bishop declared.[47] He continued: "Yesterday

43 Ibid.

44 Quoted in ibid., 101.

45 Ibid., 109.

46 "British Now Lie Low With Rushdie," in the *New York Times*, 9 March 1989.

47 "Priest: 'Satanic Verses' not like 'Last Temptation,'" in *The Bulletin*, 26 February 1989.

it was the Christians who were offended by a film which disfigured the face of Christ. Today it is the Muslims by this book about the Prophet."[48]

TRYING TO UNDERSTAND RUSHDIE'S CRITICS

Those religious leaders who condemned Rushdie and proposed legislation that would outlaw blasphemous material seemed to declare that strong criticism or satire of religious symbols should be off limits. They espoused more or less the same idea as the aforementioned author John le Carré, who stated "I don't think it is given to any of us to be impertinent to great religions with impunity." But, we can ask ourselves, what does "impertinent" mean in this context? Is all criticism of a great religion by definition impertinent? Or does Le Carré want to distinguish between modest and legitimate criticism on the one hand and impertinent criticism on the other? And where should one draw the demarcation line? Was Nietzsche (1844–1900) "impertinent" when he declared God dead?[49] And what about Freud (1856–1939) when he wrote about religious belief as an illusion?[50] Was Spinoza (1632–1677) impertinent in equating God with nature?[51] In short: would John le Carré extend his criticism to the whole literature of criticism of religion as it has been developed by Voltaire, Holbach, Kant, Freud, Hegel, Spinoza, Meslier, Paine and countless others? But why not give critics of religion some more credit? It seems reasonable to argue that contemporary public atheists such as Richard Dawkins[52] (*b.* 1941) and Christopher Hitchens[53] (1949–2011), but also those who complained about Rushdie's satire, such as Hugh Trevor-Roper

48 Ibid.

49 In Friedrich Nietzsche, *Die fröhliche Wissenschaft,* in: *Sämtliche Werke,* 1882, Band 3, Kritische Studienausgabe herausgegeben von Giorgio Colli und Mazzino Montinari, Deutscher Taschenbuch Verlag (Munich: De Gruyter, 1999), 343–653.

50 Sigmund Freud, *Die Zukunft einer Illusion,* 1927, in Sigmund Freud, *Studienausgabe,* Band IX, Fragen der Gesellschaft, Ursprünge der Religion (S. Fischer Verlag), 135–191.

51 Thereby giving a decisive impetus to the Enlightenment, according to the British historian Jonathan Israel in, inter alia, Jonathan I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750* (Oxford/New York: Oxford University Press, 2001) and Jonathan Israel, "Enlightenment! Which Enlightenment?", in *Journal of the History of Ideas* 67/3 (July 2006) 523.

52 Richard Dawkins, *The God Delusion* (Paperback edn, London: Black Swan, Transworld Publishers, 2006).

53 Christopher Hitchens, G*od is Not Great: How Religion Poisons Everything* (New York/Boston, Mass.: Twelve, 2007).

and John Berger, can write what they write because religious critics helped pave the way. And would it not be unwise to let this cultural heritage erode? To let it slip through our fingers because we mistakenly assume that freedoms once won are our birthright forever? The paradox seems to be that there is a tendency to be hurt and offended over the writings of a contemporary critic, for instance Richard Dawkins, who regards religious belief as delusional,[54] while Freud's (1856–1939) characterisation of religious belief as an "illusion" does not elicit any comments.[55] At least not any more. This is somewhat strange. The diatribes against Christianity or religious belief in general by Nietzsche (1844–1900) or Holbach (1723–1789) are considered to be part of the European tradition of liberty, our cultural heritage, while the less confronting criticisms of Christopher Hitchens, Richard Dawkins and Michel Onfray (*b*. 1959)[56] are regarded as "outrageous," "unnecessarily provocative," "deliberately offensive," or in words of that kind. Historical iconoclasts are lauded, their contemporary equivalents are despised. As Jeremy Treglown (*b*. 1946), literary historian and editor of *The Times Literary Supplement* in the 1980s, wrote shortly after the Rushdie controversy erupted: "Milton's pamphlets and Dryden's and Pope's satires, which caused deep and violent feeling in those they attacked, should obviously have been toned down. Many readers have been made uncomfortable by the moral insights of Jane Austen and Dickens—clear cases for sensitive editing. Wouldn't we be easier in our minds if there were no books at all?"[57] We see that same phenomenon with religious satire. Voltaire and Jonathan Swift are not criticised for their "tone," so why do this with Rushdie?[58]

Rushdie's critics also leave us with many questions about the interpretation of their views. Le Carré, for instance: what does he mean by "great religions"? Should we take his words to mean that he is not opposed to criticising *smaller*

54 Richard Dawkins, *The God Delusion* (Paperback edn, London: Black Swan, Transworld Publishers, 2006).

55 Sigmund Freud, *Die Zukunft einer Illusion*, 1927, in Sigmund Freud, *Studienausgabe*, Band IX, Fragen der Gesellschaft, Ursprünge der Religion (S. Fischer Verlag), 135–191.

56 Michel Onfray, *Traité d'athéologie: Physique de la métaphysique* (Paris: Grasset, 2005).

57 "Second Thoughts and Gritted Teeth on 'The Satanic Verses,'" in *The Associated Press*, 5 March 1989.

58 Although this, we admit, is not entirely true, because Voltaire's *Le Fanatisme ou Mahomet Le Prophète*, Tragédie (Postface by Jérôme Vérain, Paris: Éditions Mille et une Nuits, 2006 (1753)) also proved to be controversial. See on this Philippe Val, *Malaise dans l'inculture* (Paris: Bernard Grasset, 2015); Philippe Val, *Reviens Voltaire, Ils sont devenus fous* (Paris: Bernard Grasset, 2008).

religions or sects, but that he is against criticising the *larger* religions?[59] If so, what is the reason for the "big is beautiful" approach? And where should one draw the line? Should we also consider it impertinent to comment unfavourably on Joseph Smith (1805–1844), the founder of Mormonism,[60] and Ron L. Hubbard (1911–1986), the founder of the Church of Scientology? Or are Mormonism and Scientology not "big enough" to attain the status of exemption from criticism which Le Carré demands for the "great religions"? And is the size of a religion, the number of its adherents, a *good criterion* for placing a religion beyond criticism?

One may have serious doubts about that. It would imply that Christianity could be the object of serious criticism in its infancy, but once it had gained the status it later acquired it was exempt from criticism. Why not the reverse? Why not say that a religion *in its infancy* should be handled gently but once it acquires a certain official status, the status of a state religion for instance, it should be criticised rigorously, because "power tends to corrupt, and absolute power corrupts absolutely," as Lord Acton (1834–1902) wrote?[61] Or was Le Carré talking about a religion's quality? But if so, how do we distinguish between the religions of great quality and those of lesser quality?

These are important questions, and by posing them we did not even comment on the exact meaning of Le Carré's words "with impunity." Le Carré said that we could not (or should not?) be "impertinent to great religions with impunity." What does that word "impunity" mean? "Impunity" is often used in a criminal context and associated with unjustifiably getting away with something serious. Is Le Carré also alluding to punitive measures against the novelist, as Trevor-Roper did more openly when he said he would not shed a tear if aggressors were to waylay Rushdie in a dark street? Unfortunately, we

59 See on sects and alternative religions Stephen J. Hunt, *Alternative Religions: A Sociological Introduction* (Aldershot: Ashgate, 2003), 33–61; Stephen J. Stein, *Alternative American Religions*) Oxford: Oxford University Press, 2000).

60 See on this Amos N. Guiora, "Protecting the Unprotected: Religious Extremism and Child Endangerment," in *Journal of Law & Family Studies* 12 (2010) 391–407.

61 "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority, still more when you superadd the tendency or the certainty of corruption by authority. There is no worse heresy than that the office sanctifies the holder of it.", Quoted in Lord Acton (John Emerich Edward Dalberg-Acton), "Letter to Bishop Creighton" (5 April 1887), in J.N. Figgis and R.V. Laurence (eds), *Historical Essays and Studies* (London: Macmillan 1907), 504.

do not know for sure,[62] and the matter is important, because what happened in the Rushdie affair was that a cleric called for vigilante justice. That is a serious affair. The merits and demerits of blasphemy laws can of course be debated,[63] and to condemn Rushdie is one thing, but what Trevor-Roper, and perhaps Le Carré, advocated went further. Trevor-Roper at least implicitly approved of physical violence against Rushdie in order to "improve him."

JOHN LE CARRÉ REVISITED AND BOOK BURNING

In William J. Weatherby's (1930–1992) *Salman Rushdie: Sentenced to Death* (1990) Le Carré is quoted elaborating on his earlier comments on the Rushdie affair, saying, just as Berger had done, that Rushdie should have withdrawn his book "until a calmer time has come."[64] Apparently, Le Carré saw the Rushdie controversy as something that was exceptional, and that if things were not stirred up something of a normal situation ("a calmer time") would return. Now, writing twenty-five years later, we know that a calmer time has not come. And the central question is, of course, what can bring this about? Is the "calmer time" likely to return as a result of giving in to the theoterrorist demands, or will this, in fact, only draw us further into the quagmire?

Perhaps one may formulate it thus: do the Islamist ideas Khomeini conveyed not demand the removal of *all material* with a similar content to Rushdie's book from the world? Legend has it that this was the position of the third Caliph, Uthman (*c.* 580–656), who ordered the destruction of the Library at Alexandria on the grounds that either the books agreed with the Quran, in which case they were redundant, or they disagreed with it, in which case they were worthless or evil. As John Grant writes: "In an act that has rightly been vilified throughout the centuries since, the Library's

62 Although Le Carré wrote a personal letter to Rushdie's biographer Wheatherby explaining his stance towards *The Satanic Verses*. This is, however, not a retraction of his former dismissal of Rushdie's book, nor does it make Le Carré's views any clearer: see William J. Weatherby, *Salman Rushdie: Sentenced to Death* (New York: Carrol & Graf, 1990), in particular 170–171.

63 See, e.g., Richard Webster, *A Brief History of Blasphemy: Liberalism, Censorship and The Satanic Verses* (Oxford: The Orwell Press, 1990). Webster criticises Rushdie and tries to foster understanding for blasphemy laws.

64 William J. Weatherby, *Salman Rushdie: Sentenced to Death* (New York: Carrol & Graf, 1990), 171.

books were used as fuel to heat Alexandria's public baths. There were so many books that the burning took six months."[65]

Grant may be right that this act has been vilified throughout the centuries, but it is not completely inconsistent with the worldview it aims to support. If you *really* believe that all that there is to say about morals, science, life and human destiny is included *in one single book*, why read all the others?

When St. Paul entered Ephesus "a number of those who practised magic collected their books and burned them publicly" (Acts 19:19). The French painter Eustache Le Sueur (1616–1655) made a magnificent painting about this early book burning: *La Prédication de saint Paul à Ephèse* (1649). We see the majestic figure of St. Paul presiding over a meeting, engaged in the noble art of burning blasphemous, heterodox, dissident or, from a certain perspective, "unnecessary" books.[66]

If we relate this to Rushdie's book, we may ask ourselves whether it is not somewhat naïve to presume that condoning the censorship of *one* book will not lead to the censorship of *other* books—that Western intellectuals condemning Rushdie, or showing an understanding for physical violence after offence was taken, are complicit in the radical narrative that seeks to censor all types of material deemed "blasphemous"? John le Carré and John Berger perhaps thought that the fundamentalist mindset affected only Rushdie's book and *not theirs*. But is that not too sanguine? And would Berger, Trevor-Roper, Dahl and Le Carré also be prepared to compromise if *their own books* were at stake?[67] Would they be prepared to remove their own writings from the list of books to be published in the Western world if "horrified reactions" were to be the result of their products in other parts of the world?[68] And should we give in only when books displease Iranian piety

65 John Grant, *Corrupted Science: Fraud, Ideology and Science* (AAPPL Artists' and Photographers' Press, 2007), 177.

66 See on this Frederick H. Cramer, "Bookburning and Censorship in Ancient Rome: A Chapter from the History of Ideas of Speech", in *Journal of the History of Ideas* 6/2 (April, 1945) 157; Matthew Fishburn, *Burning Books* (Palgrave MacMillan, 2008).

67 Orhan Pamuk wrote that the attack on the freedom of one writer concerns all writers: see Orhan Pamuk, "Pour Rushdie," in Anouar Abdallah et al., *Pour Rushdie: Cent intellectuels arabes et musulmans pour la liberté d'expression* (Paris: La Decouverte, Carréfour des littératures, Colibri, 1993), 244–245.

68 Roald Dahl conceded that he would, when he said that "If I were Rushdie, then for the sake of everybody threatened I would agree to throw the bloody thing away. It would save lives." See "Pulp book to save lives, says Dahl," in *The Times*, 17 February 1989. Le Carré stated: "I am mystified that

or should we also give in to possible demands of other Islamists and dictators of a more secular type? If we show understanding for the Supreme Leader of the Islamic Revolution in Iran vowing to retaliate over a book he does not like, should we not show the same understanding for objections by the Supreme Leader of the Democratic People's Republic of Korea, or the House of Saud, over publications they despise?

Perhaps one would reject these musings as "speculative" and "not to the point." But are they? If secular dictators or non-Islamist religious leaders see that threats of violence are a good device to stop the publication of critical books, then why should they not copycat Khomeini's strategy?[69]

WITHDRAW THE BOOK UNTIL A CALMER TIME HAS COME

What many of Rushdie's early commentators have in common is that they presumed the controversy over *The Satanic Verses* was exceptional and probably unique—not a precedent but an incident. This is even the case in Weller's book (2009), which speaks about the Rushdie affair as something that has to do with the author Salman Rushdie. It was *his* personal liberty that was at stake, Weller tells us in the introduction to his monograph. Today we know that after the *Charlie Hebdo* attacks (2015), the riots over the *Innocence of Muslims* video[70] (2012) and the Danish cartoons (2005/2006), the "calmer time" Le Carré hoped for has not come. And that requires us to assess how we want to counter the violence that terrorists have in store for us if we wish to continue exercising our civil liberties.

he hasn't said: 'It's all a mess. My book has been wildly misunderstood, but as long as human lives are being wasted on account of it, I propose to withdraw it.' I have to say that would be my position." See Rachel Donadio, "Fighting Words on Sir Salman," in the *New York Times (online)*, July 15, 2007; William J. Weatherby, *Salman Rushdie: Sentenced to Death* (New York: Carrol & Graf, 1990), 170.

69 Which actually was the case with the satire comedy *The Interview*, which was about North Korea's leader Kim Jong-un. In December 2014, North Korea promised 9/11-type attacks in American cinemas if *The Interview* were scheduled. In this conflict President Obama was unyielding: "We cannot have a society in which some dictator someplace can start imposing censorship here in the United States" (Remarks by the President in Year-End Press Conference, 19 December 2014). See also Bastiaan Rijpkema, *Weerbare democratie: de grenzen van democratische tolerantie* (Leiden: Dissertatie Leiden, 2015), 251.

70 See Tom Herrenberg, "Denouncing Divinity: Blasphemy, Human Rights, and the Struggle of Political Leaders to defend Freedom of Speech in the Case of *Innocence of Muslims*," in *Ancilla Iuris* (2015) 1-19.

In an interview broadcast on 14 February 1989, the same day the fatwa was issued, Rushdie was asked: "What you've written has been called insulting to Islam and a provocation to all Muslims. Did you take delight in provocation?" Rushdie did not comment on the word "delight," but he picked up the word "provocation" and answered:

> It depends what you mean by provocation. Any writer wishes to provoke the imagination. You want to make people think about what you're writing. One of the reasons for writing, I believe, is to increase the sum of what it's possible to think, to say "Let's look at it a different way." If it works, then people are provoked, and maybe they don't like it.[71]

But this idea (and ideal) of "provocation" was not shared among all prominent novelists of his generation. Few commentators seemed to understand or even suspect that this might not be about one specific author of one specific book, but about a whole way of living. Since Khomeini's edict calling for Rushdie's death was a symptom of a phenomenon—religious extremism targeting free speech in the West—quite unfamiliar to post-Second World War Europe, we should make note of the fact that we have something those commentators did not, namely the luxury of hindsight. And in hindsight we can argue that the Rushdie controversy proved to be at least as much about national sovereignty and a culture of freedom as it has developed in some parts of the world[72] (and not others), as it was about one particular and controversial book.

CONCLUSION: CENSORSHIP BY TERRORISM PROVED HERE TO STAY

An early response to the controversy over *The Satanic Verses* from Rushdie's publisher Viking Penguin addressed the core of the problem Khomeini's declaration created. This response by a spokesman of Viking Penguin was as follows:

71 See Lisa Appignanesi and Sara Maitland (eds), *The Rushdie File* (Syracuse, NY: Syracuse University Press, 1990), 23.

72 In Europe, according to Henri Mendras, *L'Europe des Européens: Sociologie de l'Europe occidentale* (Paris: Gallimard, 1997), 52.

> It is inconceivable to most of us in the West that a writer, and a distinguished writer at that, should not be able to express his ideas, and that publishers should not be permitted to publish them, booksellers not permitted to sell them, and that readers should be excluded from the marketplace of ideas. If the present tendency continues, the Ayatollah will have prevailed. This is not censorship with respect to the First Amendment, this is censorship by terrorism and intimidation.[73]

Indeed, the Rushdie affair can be regarded as the *locus classicus* of a social phenomenon new to modern Western societies: severe *extrajudicial* punishment for utterances deemed "unacceptable" to the most radical elements of a religion, as interpreted by the most radical leaders of that religion. As such, the controversy over *The Satanic Verses* was, in a way, compared to what happened at the *Charlie Hebdo* office, a haunting preview of things to come.

We started this chapter with Hugh Trevor-Roper's remark that he would not shed a tear if some British Muslims waylaid Salman Rushdie in a dark street to seek to improve his manners. The famous British historian hoped that after this, Rushdie would "control his pen" and he thought that "society would benefit" from this and literature "would not suffer." Fast-forward to today's state of affairs; it is impossible to say whether Trevor-Roper, had he still been alive, would have justified the murder of the French cartoonists in 2015 in the same fashion. This is clearly something of much greater impact than having a writer beaten up in a dark street. One may argue that Rushdie "controlled his pen" in the sense that he never again wrote a book like *The Satanic Verses*. But others took over the torch of liberty—and some paid a heavy price for it. When four million people demonstrated in the streets of Paris after the *Charlie Hebdo* attacks, and more than forty heads of state joined the procession in favour of free speech and the necessity of defying the religious militants, this was a sign of hope. Yet, notwithstanding this sign of support for the liberty to write and speak, the last twenty-five years have also proven that "censorship by terrorism and intimidation" has become more familiar to Western societies than one might have thought in the 1980s—and remains a problem that is as hard to solve now as it was then.

73 "Rushdie's Publisher Assails 'Censorship by Terrorism,'" in the *New York Times*, 19 February 1989.

7 John Stuart Mill's "If All Mankind Minus One" Tested in a Modern Blasphemy Case

Paul Cliteur, Tom Herrenberg & Bastiaan Rijpkema

INTRODUCTION: MILL AND THE TYRANNY OF THE PREVAILING OPINION

> If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.[1]

Thus wrote John Stuart Mill (1806–1873), one of the champions of individual liberty and freedom of speech, in his seminal work *On Liberty* (1859). The latter part of the quotation—one *person* is not justified in silencing mankind—is a truism: we would call a person who has the ambition to silence mankind a "dictator" or a "tyrant." But what makes this quotation interesting is the first part: neither does *mankind* have the right to silence the individual—not even when this person's ideas or opinions are shared by no one else. Mill was worried not only about the restrictions on liberty imposed by a single tyrant, but also by restrictions imposed on individual members of society by the *majority*. In the first chapter of *On Liberty*, Mill argues that

> Protection … against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony

1 John Stuart Mill, *On Liberty* (London: Longman Green and Co., 1865 (1859)), 10.

with its ways, and compel all characters to fashion themselves upon the model of its own.[2]

The intriguing power of Mill's argument begins to manifest itself when we realise that what was sheer speculation in the nineteenth century attains a new dimension in our time. In Mill's time a speaker's audience was relatively local; it would have been difficult to establish what idea or opinion was rejected by the overwhelming majority of the people or by "mankind." We could have speculated about this, but we would have had no means of verifying our speculations. It would have remained a thought experiment. This is no longer the case due to modern technology. Modern technology has also fundamentally changed ease of communication. News and opinions can reach most places in the world not in a week or a day, but in a second. Most of "mankind" is only a keystroke away. This unprecedented interconnectedness on two levels—the ability to receive extraordinary numbers of opinions and the ability to share one's own opinions with virtually the whole world—has consequences for free speech.

In this chapter we will discuss one particularly controversial opinion that indeed gained worldwide attention, namely the burning of the Islamic holy book, the Quran, by the American Pastor Terry Jones.[3] Pastor Jones—head of the Florida-based church the Dove World Outreach Center—was in the media spotlight for several months in 2010. His actions gave rise to considerable and uncomfortable dilemmas concerning free speech and religious extremism, dilemmas that make it worthwhile to analyse this affair in more detail. Of all the unpopular, controversial or contested opinions regarding religion that recent decades have produced—such as Rushdie's *The Satanic Verses*,[4] the mockery of Ayatollah Khomeini by the television

2 Ibid., 3.

3 The discussion of the Terry Jones affair in this chapter is in part a reworked and updated translation of an article that appeared in Dutch as Bastiaan Rijpkema, "Vrijheid van meningsuiting in de val tussen religieus extremisme en utilitarisme", *Nederlands Juristenblad* 44/45 (2012) 3106–3111; parts of that article were also used in Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of the Extrajudicial Restraints on Free Speech", in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven Publishing 2015), 291 at 305-315.

4 See Paul Cliteur, "Van Rushdie tot Jones: over geweld en uitingsvrijheid", in Afshin Ellian, Gelijn Molier and Tom Zwart (eds), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting* (The Hague: Boom Juridische Uitgevers (2011), 67–89 and Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech,"

host and comedian Rudi Carrell,[5] and the Danish cartoons[6]—Pastor Jones' idea was by far the most unpopular of all. After all, in the case of Rushdie there was at least a considerable part of mankind that liked reading his novel. There was "artistic value" to it. In the case of Carrell, at least a considerable part of Germany's television audience liked what he did. And in the case of the Danish cartoons there were at least some people who liked some of the cartoons. But not with Jones. When, in the summer of 2010, Jones announced that he intended to burn a Quran, there were almost no members of "mankind" who favoured his approach.[7] So, here we have it: the situation Mill spoke of in 1859. A man using his legal right to free speech in a way that almost *everybody* objected to. Virtually the whole of mankind minus one agrees—and so do we—on *not* burning the Quran, and holy books in general; the question is, however: should this affect his legal right to do so?

By analysing this affair in detail we hope to contribute to the understanding of a complex contemporary social phenomenon: legally protected, yet for some offensive, speech that for some radical believers is reason to resort to violent means. It is also part of a larger research effort to come to grips with what could be seen as a new, subtle form of censorship: emerging extrajudicial (*non-legal*) restraints on free speech, resulting from threats and actual violence against people who use their *legal* free speech rights.

The chapter can be read in two ways: as a *chronological* reconstruction of a thought experiment that becomes reality, and as a *thematic* discussion of the real-life political and moral dilemmas a "mankind minus one" situation confronts us with.

There is also a way in which the chapter explicitly should *not* be read: as a defense of the "morality" or "acceptability" of burning a Quran or any other (sacred) book—this is emphatically *not* such a defense. We, like many

in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291-318 (on Rushdie 296-299).

5 See Paul Cliteur, "The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire," in *Ancilla Iuris* (2013) 15-42.

6 Paul Cliteur, Tom Herrenberg and Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech," in Afshin Ellian and Gelijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–318 (on the Danish Cartoons: 302–304).

7 "Florida Church Plans Koran Burning on 9/11 anniversary", *Agence France Presse*, 31 July 2010, see also "Who is Terry Jones? Pastor behind 'Burn a Koran-day," *ABC News*, 7 September 2010.

others, think burning a holy book, and books in general, is distasteful and objectionable. Our aim here is to explore the free speech controversies and dilemmas a real-life "mankind minus one" situation gives rise to—and there is no better example than the Terry Jones affair. In the following paragraphs we will first present the background of Terry Jones's ideas and his plan to burn a Quran.

TERRY JONES AND HIS DOVE WORLD OUTREACH CENTER

The Dove World Outreach Center in Gainesville, Florida, was founded in 1986. Ten years after its founding, Terry Jones and his wife obtained leadership of the church.[8] Jones's church has long been known for its vociferous protests. The church thinks Christians should be more assertive in public debates, and this includes "strong protests against sins." Thus, the church organised several protests against homosexuality and abortion that drew a lot of media attention.[9] For instance, during a recent mayoral election campaign in Gainesville, the church posted a sign saying "No Homo Mayor" outside its building in a protest against the Democratic mayoral candidate, Craig Lowe.[10] In addition to its protests, the Dove World Outreach Center also operates an online shop that sells a book written by Jones called *Islam Is of the Devil* as well as a number of hats, T-shirts and mugs with the same text.[11]

In 2009, the church caused some commotion when several church members sent their children to public schools with "Islam is of the Devil" T-shirts. In reaction, the school forbade the children to wear the T-shirts to school, since it could "disrupt the learning process" and "offend or distract" other students.[12]

8 "Profile: Dove World Outreach Centre", *BBC US & Canada*, 1 April 2011.

9 Michael Tomasky, "Church will burn Koran on 9–11", *Guardian*, 27 July 2010.

10 "City tries to shake off 'embarrassment' of Koran-burning church", *BBC US & Canada*, 9 September 2010.

11 "Florida Church Plans Koran Burning on 9/11 anniversary", *Agence France Presse*, 31 July 2010.

12 Michael Tomasky, "Church will burn Koran on 9-11", *Guardian*, 27 July 2010; Christopher Curry, "Devil shirts send kids home", *Gainesville.com/The Gainesville Sun*, 26 August 2010.

JULY 2010: NEW REALITIES

The biggest controversy started in July 2010, when Jones used Facebook to announce an "International Burn a Koran Day," to be held at his church on 11 September 2010, in "honour" of the victims of the terrorist attacks on the World Trade Center in New York, then exactly nine years previously.[13] Jones's idea was eccentric, but not entirely new. On 14 January 1989, in the town of Bradford in northern England another book burning was organised: Salman Rushdie's *The Satanic Verses*. As Kenan Malik (*b*. 1960) writes in *From Fatwa to Jihad: The Rushdie Affair and its Legacy* (2009), the novel was tied to a stake before being set alight in front of the police station. "It was an act calculated to shock and offend," Malik writes.[14] And it did more than that. "The burning book became an icon of the rage of Islam."[15] After Terry Jones had announced his plans, Assistant Pastor Wayne Sapp uploaded a video to YouTube in which the church's intentions were explained, and—to add weight to the announcement—he included some images of a burning Quran.[16] On 21 July 2010, the *Religious News Service* re-aired the announcement,[17] and in the following days the news spread to, among other countries, England,[18] the Netherlands[19] and France.[20] A few days later, on 31 July 2010, the first terrorist threat was made: members of the "Al Falluja jihadist forum" threatened to "spill rivers of your (American) blood."[21]

13 "Florida Church Plans Koran Burning on 9/11 anniversary", *Agence France Presse*, 31 July 2010; see also "Who is Terry Jones? Pastor behind 'Burn a Koran-day", *ABC News*, 7 September 2010.

14 Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy* (London: Atlantic Books, 2009), ix.; Dominique Thomas, *Le Londonistan: Le djihad au Coeur de l'Europe* (Éditions Michalon, 2005), 34.

15 Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy* (London: Atlantic Books, 2009), p. ix.; Paul Weller, *A Mirror for our Times: "The Rushdie Affair" and the Future of Multiculturalism* (London/New York: Continuum, 2009), 2.

16 'How Koran burning story grew from obscurity', *BBC*, 10 September 2010.

17 Ibid.

18 "Church will burn Koran on 9-11", *Guardian*, 27 July 2010.

19 "Kerk roept op tot Koranverbranding", *Reformatorisch Dagblad*, 28 July 2010.

20 "Une église de Floride propose de bruler le Coran le 11 septembre", *Agence France Presse*, 31 July 2010.

21 "Florida Church Plans Koran Burning on 9/11 anniversary", *Agence France Presse*, 31 July 2010.

So, when the leader of a small church of about fifty members[22] in the fairly small town of Gainesville[23] announces that he intends to burn a Quran, this announcement apparently reaches the Netherlands—in this case, the small Christian "Reformed Daily" (*Reformatorisch Dagblad*)—within the same month.[24] Modern means of communication make the world community more closely knit. We live in a "Global Village," as Marshall McLuhan (1911–1980) said in 1962.[25] In times of ongoing terrorist threats, however, our stay in the "Global Village" is becoming increasingly less pleasant than the idea of a "village" might suggest. The reality of our time is that what happens in one country is most likely to have effects in other countries.[26] Contemporary terrorism *is* transnational by its nature and recognises no international boundaries.[27] In his 2006 inaugural lecture at the University of Leiden, the Netherlands, legal philosopher Afshin Ellian (*b.* 1966) underlined the significance of this development, specifically in relation to religious extremism:

> Young Muslims predominantly radicalise on Internet fora. Globalisation, media technology and high-speed communications have changed our world permanently. The hallmark of this established globality is, according to Peter Sloterdijk, a state of forced neighbourhood with innumerable accidentally coexisting persons, where terrorism, as the romance of pure attack, is a disinhibition of the dense world. Maybe Sloterdijk is right in his

22 Estimations vary. According to the local newspaper the *Gainesville Sun*, the church has 50 members, see: "Petraeus: Dove World's Quran burning may have global impact", *Gainesville Sun*, 7 September 2010, available at: http://www.gainesville.com/article/20100907/ARTICLES/100909663.

23 Gainesville has approximately 128,460 inhabitants (2014), see: http://www.census.gov/quickfacts/table/PST045215/1225175,00.

24 "Kerk roept op tot Koranverbranding", *Reformatorisch Dagblad*, 28 July 2010, available at: http://www.refdag.nl/kerkplein/kerknieuws/kerk_vs_roept_op_tot_koranverbranding_1_493456.

25 See M. McLuhan, *The Gutenberg Galaxy: the making of typographic man* (Toronto: The University of Toronto Press, 1962), inter alia, 21 and 31. Globalisation as such, of course, began much earlier. See, e.g., J.M. Roberts, *The Penguin History of Europe* (London: Penguin Books, 1996), 340–341.

26 See Paul Cliteur, *Het Monotheïstisch Dilemma* (Amsterdam: De Arbeiderspers, 2010), 78 and also Peter Singer, *One World: The Ethics of Globalization* (New Haven, CT/London: Yale University Press 2004), 7.

27 See also Paul Cliteur and Machteld Zee, "Staat, religie en terreur: niets nieuws," in Claudia Bouteligier and Afshin Ellian (eds), *Fundamentele verhalen: over recht, literatuur en film* (The Hague: Boom Juridische Uitgevers, 2014), 56-57.

> assertion that telecommunication is the practical consummation of the Enlightenment: a deliberating open world with all its attendant consequences. Half-truths, uncontrolled facts and selective interpretations are everyday practice on the Internet. People express their abhorrence of Abu Ghraib without reporting the number of American soldiers who were prosecuted and convicted of assault. They rile each other up and encourage hatred of dissenters, the democratic order and its institutions. The Internet is a thriving bazaar of hate-trade.[28]

The "deliberating open world"—the "consummation of the Enlightenment"—is not without consequences. It affects, for instance, counterterrorism: intelligence services are pushed online to try to hinder the recruitment of extremists that happens there.[29] The Terry Jones affair shows another consequence of this interconnected world: free speech and its limits can no longer be studied in the isolation of a single legal order.

September 2010: when is a "request" no longer a request?

In September 2010, just before the planned burning, the media attention started to gather momentum. The responses to Jones's plans intensified accordingly. After protests broke out in Indonesia[30] and Afghanistan,[31] government officials from Pakistan,[32] Egypt [33] and Iraq,[34] among others, also condemned the proposed burning.[35] Iran blamed Israel.[36]

28 Afshin Ellian, 'Sociale cohesie en islamitisch terrorisme (Social cohesion and Islamic terrorism)' (Leiden: Inaugural lecture Leiden University, 2006), 20 (translation by the authors), full text, available at: https://openaccess.leidenuniv.nl/bitstream/handle/1887/12992/Oratie%20Ellian.pdf?sequence=1.

29 Ibid., 24–25.

30 "Protest rallies against 'Burn a Quran day' continue," *Asia-Pacific News Agencies*, 5 September 2010.

31 "Qu'ran burning: Protester 'shot dead' as NATO troops open fire on demonstrators", *Guardian*, 10 September 2010.

32 "Worldwide outrage at planned Quran burning", *Al Arabiya*, 9 September 2010.

33 Ibid.

34 Ibid.

35 For an overview of countries that condemned the burning see http://www.csmonitor.com/World/Global-Issues/2010/0909/11-countries-speaking-out-against-Koran-burning-in-Florida.

36 According to Iranian Foreign Minister Manouchehr Mottaki the burning was "orchestrated by the Zionist regime after being defeated in its efforts against Muslims and the Islamic world": see

In the meantime David Petraeus (*b*. 1952), at that time the International Security Assistance Force (ISAF) commander in Afghanistan, also condemned the proposed burning and warned of possible consequences: "It could endanger troops and it could endanger the overall effort. It is precisely the kind of action the Taliban uses and could cause significant problems. Not just here, but everywhere in the world we are engaged with the Islamic community."[37]

Following Petraeus, the burning was condemned by a diverse parade of celebrities and government officials, from actress Angelina Jolie (*b*. 1975)[38] and the Veterans of Foreign Wars of the United States,[39] to the U.S. embassy in Kabul,[40] the lieutenant general of the UN training mission in Afghanistan, William Caldwell (*b*. 1954),[41] Secretary of State Hillary Clinton (*b*. 1947)[42] and NATO Secretary General Rasmussen (*b*. 1953).[43]

Amid all the commotion, on 7 September a White House spokesman declared that the White House subscribed to Petraeus's warning.[44] Then things accelerated. Two days after the White House statement, U.S. President Obama (*b*. 1961) appeared on "Good Morning America," where he explicitly called on Jones to refrain from the Quran burning. The President said the following:

> What he's proposing to do is completely contrary to our values as Americans; that this country has been built on the notions of religious freedom and religious tolerance. And as a very practical matter, as commander-in-chief of the armed forces of the United States, I just want him to understand that this stunt that he is talking about pulling could greatly endanger our young men and women in uniform who are

"Worldwide outrage at planned Quran burning", *Al Arabiya*, 9 September 2010.

37 "In quotes: Koran-burning threat", *BBC US & Canada*, 10 September 2010.

38 "Angelina Jolie condemns planned Quran burning by Florida church", *CBS News*, 9 September 2010.

39 "Major US veterans group condemns planned Koran burning", *Agence France Presse*, 7 September 2010.

40 "Petraeus: Koran burning plan will endanger US troops", *BBC South Asia*, 7 September 2010.

41 "U.S. Afghanistan commanders condemn Koran-burning plan", *Reuters*, 6 September 2010.

42 "Clinton condemns Quran-burning plan", *CNN U.S.*, 8 September 2010.

43 "Pressure mounts in U.S. against Koran-burning plan", *Reuters*, 7 September 2010.

44 "Quran burning plan a 'concern': White House", *CBC News*, 8 September 2010.

in Iraq, who are in Afghanistan. We're already seeing protests against Americans just by the mere threat that he is making.[45]

When asked what he was worried about, Obama replied: "Well, look, this is a recruitment bonanza for al-Qaida."[46]

That same day Jones declared—despite the pressure from the White House—that he was still determined to burn a Quran on 11 September.[47] A few hours after Obama's appearance on "Good Morning America," Jones received a direct phone call from U.S. Secretary of Defense Robert Gates (*b.* 1943). During a brief conversation, Gates pointed to the potential dangers to American forces and urged Jones to cancel his plans.[48] After a period of uncertainty it was reported that Jones had decided *not* to burn a Quran on 11 September.

So, quite extraordinarily, Jones seemed to give in at the very last moment, but the commotion that preceded it is more interesting: several government officials, including President Obama, indirectly called on Jones not to proceed with his plans, until finally even the U.S. Secretary of Defense personally urged Jones to cancel the burning.

Was the reason that Obama did not call Jones himself that somehow he felt this was not something an American president is supposed to do? General Petraeus's advice to Jones was widely seen as sensible. Or should it be explained as an admission of failure: what is the purpose of bringing freedom to Iraq and Afghanistan while simultaneously suppressing freedom at home?

Acknowledging that there are no easy answers to these questions, should it not be admitted that they are the right questions to pose? Were these not the problems and dilemmas that should have been addressed?

The fact that this discussion did not take place may be seen as a trifle—and some will undoubtedly experience it as such. But was it really? Is this not one of the most fundamental discussions we can engage in in political philosophy? A discussion about what the proper functions of the state are and whether the state, indeed, *acts* as a state should?

45 For a transcript of the interview see "Opinion Roundup: Burning the Quran", *National Public Radio*, 9 September 2010.

46 Ibid.

47 "Florida Pastor Determined to Carry Out Quran Burning", *AOL News*, 8 September 2010.

48 "Obama's Pentagon Chief calls Florida Pastor", *USA Today*, 10 September 2010.

We should also seriously ask ourselves what was the status of freedom of speech *after* Obama and other high-level politicians—even in a direct phone call—had made their appeals to Jones? It seems fair to say that the mob-like terrorist threats resulted in a great deal of equivocation from many of the American political and media elites on the issue of free speech. Has trying to find different ways to discourage Jones from exercising his First Amendment rights made Americans safer? Is it likely that religious extremists are satisfied with the President's efforts? So satisfied that they will now leave Americans and their free speech rights alone? Or is it likely that those extremists will threaten Americans again the next time something they do not like is to be published—a book, or a film, or a musical, or a cartoon? Those are the questions "mankind minus one" confronts us with.

Not all American politicians took the same stance as Obama. New York City Mayor Michael Bloomberg (*b*. 1942) did not join the others in asking Jones to cancels his plans; he defended Jones's *constitutional* right to burn the Quran: "The First Amendment protects everybody, and you can't say that we're going to apply the First Amendment to only those cases where we are in agreement."[49] Indeed, the First Amendment protection of free speech would be meaningless if it applied only to speech the government or the majority of the population approved of—the modern American tradition of free speech is "Millian" in the sense that it protects those who hold conventional opinions ("all mankind") as much as it protects eccentrics ("all mankind minus one"). In the words of Justice Holmes (1841–1935):

> If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.[50]

In the Terry Jones affair, it seems that not the U.S. president but the New York mayor was the "Millian" or "Holmesian": defending shocking and uncomfortable but legally protected speech. Interestingly enough, more recently we *did* see a quite strident "Millian" Obama. In 2014, Sony Pictures released a big Hollywood film called *The Interview*, a satirical film about North Korea. Towards the end of the film the current leader's head is blown

49 "Bloomberg Defends Florida Pastor's Right to Hold Quran Burning Rally", *CBS News*, 8 September 2010.

50 *United States v. Schwimmer*, 279 U.S. 644 (1929).

up—in graphic special effects.[51] Defending free speech after severe threats against Sony Pictures and movie theatres, Obama said the following:

> We cannot have a society in which some dictator someplace can start imposing censorship here in the United States. Because if somebody is able to intimidate folks out of releasing a satirical movie, imagine what they start doing when they see a documentary that they don't like, or news reports that they don't like. Or even worse, imagine if producers and distributors and others start engaging in self-censorship because they don't want to offend the sensibilities of somebody whose sensibilities probably need to be offended. So that's not who we are. That's not what America is about.[52]

This is a very different Obama—only compare this statement to the one he made in the Terry Jones affair.

Opinions, instructions, and requests of *government officials* are most likely to impact on free speech. Using your freedom of speech after a telephone call from the U.S. Secretary of Defense is not exactly the same as doing so without having received such a call. This presents us with a serious political philosophical dilemma that deserves thorough discussion. Should government officials—in function—give unsolicited and proactive "advice" to citizens on the use of their free speech? In the end, such government interventions could very well legitimise and strengthen the *extrajudicial* restraints terrorists and extremists try to impose on free speech. In other words, protecting free speech forces us to make up our minds, choosing between the intervening Obama in the Terry Jones affair, and the *Millian* Obama we saw during the controversy over *The Interview*.

April 2011: The Moral Responsibility for Speech Acts

After Jones had announced that he would not burn a Quran on 11 September, things remained quiet for a long time. Worth mentioning, however, are the

51 "Sony cancels The Interview release amid threats", *BBC*, 18 December 2014.

52 "Remarks by the President in Year-End Press Conference", *The White House, Office of the Press Secretary*, 19 December 2014, available at: https://www.whitehouse.gov/the-press-office/2014/12/19/remarks-president-year-end-press-conference.

$180,000 bill Jones received for police deployment during the controversy[53] and the fact that he was forbidden to enter the United Kingdom.[54] However, in early 2011, Jones announced on the church's website that on 20 March 2011 an "International Judge the Koran Day" would be held.[55] This time the event actually did take place, and at the end of the trial the Quran was found "guilty" and sentenced to death which, for a book, turned out to be burning.[56]

The burning produced a new storm of protest. There were protests throughout Afghanistan, and in Pakistan extremists placed a $2.4 million bounty on Jones's head.[57] Hezbollah declared that it held the U.S. government responsible for the burning, and Iran spoke of "crimes that contribute to the American hegemonic conspiracy."[58] A low point was reached on 1 April 2011, when multiple United Nations staff members were killed in the Afghan city Mazar-e-Sharif when "demonstrators poured out of mosques in the city in the early afternoon, shortly after Friday prayers where worshippers had been angered by reports that a Florida pastor had burned a copy of the Quran."[59]

Although the responses to the violent murders varied, and some firmly rejected attributing responsibility for the murders to Jones,[60] there were also other opinions. The British newspaper *The Guardian* set up an opinion poll shortly after the killings in Afghanistan, in which it asked its readers to respond to the following question:

> Is the Florida pastor who burnt the Quran morally responsible for the deaths of UN staff in protests in Afghanistan?

53 "Pastor who threatened to burn Korans told to pay police bill", *Telegraph*, 20 September 2010.

54 "Pastor Terry Jones banned from UK after 9/11 Quran burning threat", *Guardian*, 20 January 2010.

55 "Florida pastor Terry Jones's Koran burning has far-reaching effects", *Washington Post*, 2 April 2011.

56 Ibid.

57 "This Week", *ABC News*, 27 March 2011, transcript available at: http://abcnews.go.com/ThisWeek/week-transcript-gen-jim-jones-ret/story?id=13285705#.UHPzFXbgAVc, and "Florida pastor Terry Jones's Koran burning has far-reaching effects", *Washington Post*, 2 April 2011.

58 "Hezbollah blames U.S. for Florida Quran burning", *The Star*, 23 March 2011.

59 See "UN staff killed in Afghanistan amid protests over Qur'an burning", *Guardian*, 1 April 2011.

60 See, e.g., Brendan O'Neill, "Pastor Terry Jones is no more to blame for the Afghan violence than Martin Scorsese was for the shooting of Ronald Reagan", *Guardian*, 1 April 2011.

The readers could choose from two options:
"Yes, it is a provocative blasphemy against others' beliefs,"
or:
"No, it should be considered a legitimate free speech act."

The results: 45 per cent of the readers held Jones morally accountable for the deaths of the UN workers in Afghanistan.[61]

The "reasons" that *The Guardian* attached to the options "Yes" and "No" might sound somewhat peculiar. If you choose the option "Yes, morally responsible," it is because the burning is a "provocative blasphemy against others' beliefs." So, one might wonder, are we to accept that—apparently—the murder of innocents is an "understandable" response to provocative statements? If people are *that* "insulting"—*hence* the "provocative blasphemy"—you cannot expect them to refrain from violence. From an ethical perspective we believe we can be brief on this: even *if* you are prepared to consider the burning of a, for some, sacred book to be a "crime,"[62] this could never constitute a (moral) justification for murder. Any ethical theory should satisfy such a basic requirement of proportionality.

However, we can speculate whether those who do see Jones as morally responsible could substantiate their position in a more sophisticated way than the "standard answer" *The Guardian* opinion poll suggests. The ethical theory of utilitarianism offers such a possibility.

Utilitarianism assesses the moral worth of an act entirely on the basis of its *consequences*.[63] Therefore a judgment on how the burning of a Quran compares to murder—which has little validity—is not needed here. A utilitarian uses the "principle of the greatest happiness (or utility) for the greatest number."[64] Acts are thus good when they promote the general

61 For the results, see: http://www.guardian.co.uk/commentisfree/cifamerica/poll/2011/apr/01/christianity-islam.

62 This is what the "Yes" response suggests, given the wording "provocative blasphemy."

63 See in general: Rachels, Stuart, *The Elements of Moral Philosophy,* New York: McGraw-Hill, 2007, pp. 89–91, 100–116; Kenny, Anthony, *A New History of Western Philosophy (Vol. IV): Philosophy in the Modern World*, Oxford: Oxford University Press 2008, 220–228.

64 John Stuart Mill explains this principle in his "Utilitarianism", see Mill, John Stuart, *On Liberty and Utilitarianism,* London: David Campbell Publishers 1992, see: Rachels, Stuart, *The Elements of Moral Philosophy,* New York: McGraw-Hill, 2007, 89 and 100–101; Kenny, Anthony, *A New History of Western Philosophy (Vol. IV): Philosophy in the Modern World*, Oxford: Oxford University Press 2008, 226.

happiness and bad when they reduce the general happiness.[65] In our case a utilitarian argument could look like this: the benefits of burning the book must be weighed against the benefits of not burning the book. On the basis of a utilitarian calculation, the utilitarian would likely conclude that the utility of *not* burning the book will be higher than the possible benefits of Jones actually burning the book (no riots and numerous deaths versus the comparatively lesser utility of drawing temporary attention to the Islam-criticism of a small American congregation). Therefore it follows that burning the Quran is not *morally* justified.

Problematic in such a utilitarian argument is that the moral agent (in this case, Jones) is held to be responsible for all—deliberate or non-deliberate—consequences of his actions. This makes the person himself disappear in one large utilitarian calculation, making him lose his personal integrity, or, in other words, the relationship between his actions and his goals is broken. Philosopher Bernard Williams (1929–2003) convincingly formulates this criticism in his article "A Critique of Utilitarianism."[66] Williams gives two examples to illustrate this defect. We will discuss his most striking example at some length. This example is known as the story of Jim and Pedro.[67]

THE STORY OF JIM AND PEDRO

On a botanical expedition in South America, Jim, by chance, finds himself in the central square of a small town. Against a wall in the square twenty Indians are tied up, held at gunpoint by armed men. Pedro, the leader of the armed men, explains that he is about to execute this randomly selected group of Indians in retaliation for earlier held protests against the government, so that potential future protesters will remember the benefits of "not protesting." But since Jim is a "special guest" from another country who has met them by chance, Pedro is happy to award Jim a privilege: Jim is allowed to kill one of the Indians. If Jim does so, Pedro will let the other Indians go, to add "extra

65 This was already formulated by Jeremy Bentham; it should also be noted that, for a utilitarian, everyone's happiness weighs equally, see: Rachels, Stuart, *The Elements of Moral Philosophy*, New York: McGraw-Hill, 2007, 90 and 100.

66 See Williams, Bernard, "A Critique of Utilitarianism", in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge: Cambridge University Press, 1973, 77–150.

67 Ibid., 98–99.

luster to the special occasion." If Jim refuses, there is, of course, no special occasion, so Pedro will still have to kill *all the Indians*.

For a moment, Jim considers if he can seize one of the guns and keep the would-be murderers at gunpoint, but it is quite clear that—given the situation—this is impossible. The Indians understand this too and beg Jim to do what Pedro asks. What should Jim do?

For a utilitarian, the answer is clear: Jim should kill one Indian, thereby "saving" the other Indians.[68] The morally right action in this case, on the basis of a utilitarian calculation (one dead Indian or twenty dead Indians), should therefore be: killing one Indian. And, as a consequence, not killing one Indian would make him responsible for the killing of twenty Indians—after all, he was in a position to prevent those deaths. Just as Jones is considered to be responsible for the actions of *protesters* in Mazar-e-Sharif, Jim is held responsible for the consequences someone else (in this case, Pedro) attaches to his actions.

This is a point of vital importance: in utilitarianism *intentions* play no role, so persons can (also) be held accountable for consequences, *unsolicited and unwanted*, others connect to their actions. In doing so, utilitarianism contradicts our most fundamental intuitions about responsibility and justice, namely: people are only responsible for their *own* actions. Otherwise people lose their personal integrity: if "everyone is responsible for everything," it is no longer important what people themselves wanted. However distasteful the burning of a "sacred book" might be—again, we agree it is very distasteful—the consequences that protesters on the other side of the world attach to this burning can never be morally attributed to Jones. Moreover, to do so would also disregard the "moral agency" of the murderers.

CONCLUSION: GOVERNMENTS AND THE LURE OF UTILITARIANISM

The Terry Jones affair is a striking example of a new reality when it comes to constitutional freedoms: in an interconnected world, free speech cannot be studied in the isolation of a single legal order. Terrorists and extremists on the other side of the globe force restrictions on the use of free speech by a U.S. citizen, and coerce the U.S. government to intervene. Extremists even

68 See ibid., 99.

tie grave, violent consequences (terrorist attacks, murder) to speech that is legally protected in a different legal order, almost 12,000 kilometers away.[69]

This new reality gives rise to serious moral dilemmas and political quandaries. The moral question was addressed above: utilitarianism seems to suggest (we believe: unconvincingly) that a person bears moral responsibility for the unwanted and unsolicited consequences others tie to their speech acts. To conclude our discussion, let us now return to the *political* dimension of our new reality, zooming in on Obama's response to the Terry Jones affair one last time. When it comes to explaining *government* reactions to extremists' demands regarding constitutional freedoms, the theory of utilitarianism again seems illuminating.

Changing our perspective to that of government officials means asking a different question: should we not limit certain freedoms, such as the freedom of expression, a bit, so that less provocation occurs and the terrorist threat also decreases? A utilitarian answer could be: "Yes, why not? In the end, what does curtailing the freedom of those few authors and publicists really matter?"

The utilitarian government official could reason as follows: Certain expressions of authors, publicists, and other public figures are perceived to be provocative. Although these provocative expressions fall within the *legal* limits to freedom of speech, they nonetheless motivate some extremists to engage in terrorism—recall Obama: "a recruitment bonanza for al-Qaida." The suffering terrorism causes is enormous: social disruption, fear, and, above all, the loss of human lives. What to do? A utilitarian, guided by the happiness principle, would suggest limiting freedom of speech. After all, what is—on the whole—the importance of those few authors and publicists we thereby restrict in their freedom?

Of course we should note that there *are* more philosophically sophisticated forms of utilitarianism. One could think of "rule-utilitarianism," for instance, which is more long-term orientated and looks for the consequences of *rules*, instead of single acts.[70] Yet it is the "act-utilitarianism," or, to put it a bit

69 According to the "Distance Calculator," when flying, see http://www.distancecalculator.net/.

70 For "rule" utilitarianism this may be different. "Rule" utilitarianism looks for *rules* (instead of acts) that tend to promote the greatest happiness for the greatest number. A "rule" utilitarian could say that—despite possible negative short-term effects—one should stick to the *rule*, because in the long term this guarantees more happiness. See, for instance, Smart, J.J.C., "An outline of a system of utilitarian ethics", p. 9–10, in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge: Cambridge University Press, 1973.

more impolitely, a kind of "layman's utilitarianism," that has a particularly strong appeal for government officials. We might even speak of a "utilitarian lure," based on a vaguely articulated notion of utilitarianism. That specific utilitarian lure comes in two variants, a "soft" and a more drastic one.

An example of the "soft" variant can be seen in the telephone conversation between the U.S. secretary of defense and Terry Jones. The gist of this "soft" variant goes something like this: "Very well, legal intervention—that is, changing the laws—is perhaps not feasible, or we might consider it to be too drastic, but instead of legal interference, why can we not just *ask* a person not to do or say something; just make a 'request' and point out their *own* responsibility in the matter?" This could establish *de facto* or extrajudicial limits on free speech.

The second variant is perhaps more worrying than the "soft" version. Based on a utilitarian consideration one can also come to the conclusion that it might be wise to sharpen the *legal* limits to freedom of expression, so that certain expressions are not possible at all—period. Or at least: not without persecution. An attempt at such a "utilitarian concession" to terrorists seemed to occur after the terrorist assassination of writer and filmmaker Theo van Gogh in the Netherlands. On 2 November 2004, Van Gogh was murdered, and in that same month the then minister of justice, Piet Hein Donner (*b*. 1948), made a plea to bring life to the derelict criminal offense of blasphemy.[71] In the end, Donner, after some controversy had arisen, seemed to revoke his words, or at least restate them, and it never became exactly clear what he meant by "reviving" blasphemy laws.[72] However, this, to put it mildly, unfortunate "timing,"—after van Gogh's murder—did raise the suggestion that maybe we should indeed try to take some of the wind out of the terrorists' sails by *legally* pandering to them.

Both utilitarian responses are questionable. By way of *internal* criticism (so, *within* utilitarianism), one could first ask whether the government officials' utilitarian calculation is, in fact, correct. Are they not far too quick in assuming that you can mollify terrorists with concessions? On the contrary, would terrorists not be empowered by these concessions ("they *are*

71 Louis Cornelisse, "Minister wil rust in de tent brengen", *Trouw*, 16 November 2004. See also chapter 4 in this volume on the Dutch blasphemy law.

72 "Godslastering niet harder aangepakt (gerectificeerd)', *NRC Handelsblad*, 16 November 2004, 2004.

giving in; you see, it works"), so that terrorism will only increase?[73] If so, the utilitarian calculation seems to yield very different results.

Moreover, one could call into question the consequentialist focus of utilitarianism. Is the supposed certainty about consequences, on a more abstract level, not highly unrealistic? Our reality is made up of a particularly complex set of causes and effects. Utilitarianism seems to function very well in thought experiments or situations that approach complete certainty, but it appears to be far less usable in complex issues, such as contemporary international terrorism.[74]

A more fundamental problem with utilitarian reasoning is that it places the cards in the hands of those who threaten to use violence—thereby taking the constitutional right to free speech hostage. The crux of this problem was well put by Ronald Dworkin (1931–2013):

> When we compromise on freedom because we think our immediate goals more important, we are likely to find that the power to exploit the compromise is not in our own hands after all, but in those of fanatical priests armed with fatwas and fanatical moralists with their own brand of hate.[75]

The main argument against "layman's utilitarianism" therefore lies elsewhere. It lies in the core values that we are not to change if we want to preserve our free and democratic societies. When these freedoms are lost, there is not that much left to defend in the first place. The fact that utilitarianism passes this over seems to make it unsuitable as a useful advisor in the struggle against terrorism.

73 Robert Pape suggests that terrorists indeed seem to "learn" from concessions. In an empirical study of 188 suicide attacks between 1980 and 2001, he formulates it as follows: "This pattern of making concessions to suicide terrorist organizations over the past two decades has probably encouraged terrorist groups to pursue even more ambitious suicide campaigns." And, further on: "Advocates of concessions should also recognize that, even if they are successful in undermining the terrorist leaders' base of support, almost any concession at all will tend to encourage the terrorist leaders further about their own coercive effectiveness." See Pape, Robert, "The Strategic Logic of Suicide Terrorism," *American Political Science Review* 2003, vol. 97 nr. 3, 343–361, see here: 344 and 356.

74 Rachels is more optimistic on our ability to judge consequences, see Rachels, Stuart, *The Elements of Moral Philosophy,* New York: McGraw-Hill, 2007, 125.

75 Dworkin, Ronald "A New Map of Censorship", *Index on Censorship*, 2006, vol. 35 no. 1, 132–133.

The lure of utilitarianism for governments is strong; it holds the promise of short-term victories—exactly what those in office need. We believe, however, that both the "soft" (for instance: Obama in the Terry Jones affair) and the more "rigorous" (such as reviving a defunct blasphemy law) utilitarian options are unwise, practically and principally. Governments should defend fundamental principles such as free speech and not water them down when deemed inconvenient. It is not convenient speech that needs protection.[76] The litmus test for such a stance is the way we deal with the most unpopular, appalling, or shocking of expressions—Mill's "mankind minus one." What Terry Jones was planning to do, and eventually did, had it all: it was unpopular, appalling, *and* shocking; Mill's thought experiment brought to life. The Terry Jones affair starkly shows the dire predicament for governments in *real-life* "mankind minus one" situations—in such cases it is not easy to resist the siren call of "layman's utilitarianism."

76 See also Kustaw Bessems, "De vrijheid om weerzin te wekken", pp. 19–28, in: Ellian, Afshin & Molier, Gelijn, eds., *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting*, The Hague: Boom Juridische Uitgevers 2011.

8 Religious Freedom and Blasphemy Law in a Global Context: The Concept of Religious Defamation

Mirjam van Schaik

INTRODUCTION

Religious liberty is a general concept used by politicians and academics. As a right, freedom of religion or belief is incorporated in the constitutions of many Western states. It is also a classical human right, and has been adopted in international conventions. In general, universal human rights have been discussed and agreed upon by the international community, accepted as an international norm, and defined as fundamental and authoritative.

This chapter, about the freedom of religion and belief (freedom of religion) and its *universal status*, addresses matters of great contemporary concern. There are various places in the world where strict measures to restrict this fundamental right have been taken. A special status is granted to a particular religion, apostasy is outlawed under the criminal code, as is blasphemy for causing offence to religious feelings.

Freedom of religion has continuously been interpreted in various ways. Additionally, polemics have become an incentive for the establishment of this right, but not always in a positive way. Several of the interpretations and applications in recent decades have demonstrated an inclination towards derogating from its very status as a fundamental human right by implicitly or explicitly subverting its non-distinctive application, content and universality as allocated in the International Covenant on Civil and Political Rights (ICCPR).

To substantiate this claim I will address a severe abuse in the field of freedom of religion. I will discuss examples where religious freedom is amalgamated with political strategies or policies of protecting the reputation

of religions against defamation. I have defined this as a *political derogation*, which results in severe consequences for the normative framework of this right. To demonstrate this, I will analyse resolutions and international documents drafted by the Organisation of Islamic Cooperation (OIC), which has for almost twenty years tabled resolutions on the issues of "combating defamation of religions" and "combatting religious intolerance" in the Commission on Human Rights, in its successor the Human Rights Council, and in the General Assembly. Their founding documents will also be examined. I will furthermore discuss some reports of the United Nations Special Rapporteurs. These reports reveal information about the various violations of religious freedom perpetrated or condoned by member states of the OIC. In addition, some views within academia will be addressed.

For normative references I will rely on article 18 ICCPR, which states that everyone has the right to freedom of thought, conscience and religion. And although not binding, article 18 of the United Nations Universal Declaration of Human Rights (UNUDHR) is also relevant, for it has influenced many constitutions globally, and has functioned as a foundation for several national and international legal documents.

THE ORGANISATION OF ISLAMIC COOPERATION

The OIC, formerly known as the Organisation of the Islamic Conference (1974–2011), was founded after the so-called 'criminal arson of the Al-Aqsa Mosque in occupied Jerusalem' on 21 August, 1969. This occurrence was followed by a conference of 24 Islamic heads of state in September in 1969 in Rabat—as well as various Islamic Conferences of Foreign Ministers—to found an Islamic organisation that would represent the Islamic people. The OIC was subsequently formally established in May 1971, and adopted its charter in 1972. It is based in Jeddah, Saudi Arabia, and claims to represent the universal Ummah, a community of more than 1.5 billion Muslims. The OIC considers itself to be "the collective voice of the Muslim world", and takes it upon itself "to safeguard and protect their interests ... in the spirit of promoting international peace and harmony among various people of the world".[1]

1 Website of the OIC, available at: http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en. It is important to note that this chapter does not examine to what extent the OIC is legally authorised to speak on behalf of all Muslims, or even Islam.

After the United Nations (UN), the OIC is currently the largest intergovernmental organisation, with 57 members. Except for the Palestinian authority, all states are members of the UN. The supreme body of the OIC is the Islamic Summit, consisting of kings and heads of state. It assembles every three years to discuss and set out policy, offer advice on all issues for the realisation of the objectives of the OIC and additional important issues for the member states and the Ummah in general. There is also the Council of Foreign Ministers, which gathers every year and is responsible for the implementation of the general policy. Furthermore, there is an executive body, known as the General Secretariat. Over the years the OIC has created subsidiary committees to coordinate and realise their actions in various areas, including political, economic, cultural, social, scientific, financial, sports, technological, educational, media, social, humanitarian and religious.[2] In 2011 the OIC created an advisory body, the Independent Permanent Human Rights Commission (IPHRC), which has the legal authority to oversee human rights in OIC member states. Since June 2013 the OIC has had an official representative office for the European Union (EU) in Brussels, Belgium, inter alia to contribute to the dialogue between the two parties.[3]

The OIC has a unique position, being a religious intergovernmental organisation with permanent observer status at the UN.[4] This entails that the OIC has free access to most of the UN meetings, a standing invitation to participate as an observer in the sessions of the General Assembly and maintains a permanent office at the UN headquarters in New York. With this permanent observer status the OIC has a dominant role, or at least a prominent one, when the human rights agenda is addressed.

DISPUTING UNIVERSALITY

For several decennia the OIC has disputed the universality of the Universal Declaration and its subsequent human rights framework. In 1981 the Islamic Republic of Iran was one of the first states that opposed its universality

2 Ibid.

3 "President Barroso meets the Secretary General of the Organisation of Islamic Cooperation (OIC), Mr Ekmeleddin İhsanoğlu," 25 June 2013, available at: http://europa.eu/rapid/press-release_MEMO-13-609_en.htm (accessed 26 April 2015).

4 There are no other religious intergovernmental organisations with this status. However, as a non-member state, the Holy See, has the status of permanent observer.

during a meeting of the General Assembly (UNGA).[5] The representative stated that Iran appreciated "the true meaning of human rights through an understanding of the genuinely emancipating teachings of Islam and through their implementation."[6] He stated that "all rules regarding human rights must be founded exclusively on principles of divine ethics, and justice must be defined in terms of eternal moral principles."[7]

This indicates the core of the OIC's view: human rights are not founded on *universal secular principles* but on *divine ethics*. This led to the drafting of several Islamic human rights documents, such as the Universal Islamic Declaration of Human Rights[8] and the Arab Charter on Human Rights.[9] However, these documents did not have the same impact or prevalence as the Cairo Declaration on Human Rights in Islam (CDHRI), adopted in 1990. This agreement was drafted during the Cairo Islamic Conference of Foreign Ministers of the OIC.[10] The preamble to the CDHRI declares that the OIC is

> [b]elieving that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person

5 David. G. Littman, "Universal Human Rights and "Human Rights in Islam," *Midstream*, February/March 1999, 5–6.

6 See A/C.3/37/SR. 56, paras 50–51.

7 Iran voted in favour of the UNUDHR, but changed its stance after its revolution in 1979. What is interesting to note is that Saudi Arabia was one of the few states that abstained from voting for the UNHRD. The reason for this was, inter alia, article 18 of the Declaration, which also states that everyone has the right to change his religion or belief.

8 In accordance with the Muslim World League, this document was drafted by the Islamic Council, and ratified in 1981 and presented to UNESCO.

9 The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004.

10 Res. 49/19-P. The Cairo Declaration on Human Rights in Islam. The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, 31 July–5 August 1990.

is individually responsible - and the Ummah collectively responsible - for their safeguard.[11]

With the Cairo Declaration the OIC laid down distinctive Islamic principles that conflicted with UN human rights law, thereby not only restricting fundamental human rights, but subjecting all to superseding Islamic norms. The CDHRI is—in pursuance of the Iranian statement—generally seen as a reaction to the UNUDHR, resulting in the *supremacy of religious law* over universal human rights; derogating from their universal status.[12] As a result, instead of the UNUDHR, the CDHRI would from now on function as a guiding document in the application of human rights for the OIC members.

The Cairo Declaration declares that in the member states of the OIC all human rights must be addressed from an Islamic perspective, and, according to articles 24 and 25, all rights and freedoms are subject to Islamic law (Sharia). No right to freedom of religion is included, since article 10 forbids the practice of- or conversion to any religion other than Islam. The Declaration states that "Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism." There is a so-called freedom of expression, but it is restricted by Islamic law, and infringement will result in severe punishment in accordance with Sharia: see articles 19 and 22 CDHRI.

The Ten-Year Programme of Action: A New Focus on Human Rights?

In 2005, during the Mecca Islamic Summit Conference, the OIC prepared a ten-year action programme for "the Muslim Ummah to achieve its renaissance, and in order to take practical steps towards strengthening the bonds of Islamic solidarity, achieve unity of ranks, and project the true

11 Preamble, Res. 49/19-P. The Cairo Declaration on Human Rights in Islam.

12 See for more Raj Bhala, *Understanding Islamic Law* (LexisNexis Mattew Bender & Company, 2011), ch. 46, in particular paras 46.05–46.06; David.G. Littman, "Universal Human Rights and "Human Rights in Islam," *Midstream*, February/March 1999; Audrey Guichon, "Some Arguments on the Universality of Human Rights in Islam", in Javaid Rehman and Susan C. Brean (eds), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Leiden/Boston, Mass.: Martinus Nijhoff Publishers, 2007), 185–186.

image and noble values of Islam and its civilisational approaches."[13] This programme was intended to help the OIC to review "the most prominent challenges facing the Muslim world."[14]

Several scholars described the adoption of this action programme as a positive change of course in the OIC's human rights policy, inter alia by the desire expressed in it to establish an independent body to promote human rights, the Independent Permanent Human Rights Commission (IPHRC). As associate professor of international relations at the University of Washington Tacoma, Turan Kayaoglu, points out: "With the adoption of a ten-year 'program of action' in 2005, human rights gained greater prominence on the OIC agenda."[15] Also according to Kayaoglu, "[T]he IPHRC signals a newfound commitment to human rights issues within the OIC. It represents a shift away from the organisation's past cynicism on human rights."[16] Kayaoglu, however, seems to overlook the fact that according to section VIII paragraph 2 of the action programme, the establishment of the IPHRC had to be in accordance with the principles of the Cairo Declaration. One must ask to what extent there is a positive change in human rights policy, since the Cairo Declaration does not even recognise the fundamental human right of freedom of religion or belief, and certain other freedoms merely when they are in accordance with Islamic law. The term 'human rights' in the title of the commission does therefore seem to be rather misleading.

The analysis made by Saied Reza Ameli, Professor of Communications at the University of Tehran, is even more flawed, as he uses incorrect arguments to argue that there is a shift towards UN human rights discourse within OIC policy and that "… the Ten-Year Programme of Action puts more emphasis on human rights …".[17] He claims that the founding OIC documents are more focussed on an Islamic perspective on human rights, as opposed to a

13 OIC/3EX-SUM/05/PA/FINAL, programme of action to meet the challenges facing the Muslim Ummah in the 21st century. Third extraordinary session of the Islamic summit conference, Mecca, Saudi- Arabia, 7–8 December 2005, available at: http://www.oic-oci.org/oicv2/upload/pages/typoa/en/poa_en_rev1.pdf.

14 Ibid.

15 Turan Kayaoglu, "A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation's evolving Human Rights Framework," *Brookings Doha Center,* 6 January 2013, 12.

16 Ibid., 13.

17 Saied Reza Ameli, "The Organisation of Islamic Conference: accountability and civil society," in Jan Aart Scholte (ed.), *Building Global Democracy?: Civil Society and Accountable Global Governance* (Cambridge: Cambridge University Press, 2011), 152.

universal one, than the ten-year action programme is.[18] One can agree that in the founding charter from 1972 human rights were indeed addressed from an Islamic perspective, however explicit references were made to the concept of *fundamental human rights* that are *universal*. In the Ten-Year Programme of Action which currently applies, there are references in paragraph VIII to human rights, *but thus only* when they comply with Islamic law. In addition, not a single reference is made in the action programme to either the UN Charter or other UN documents. To further substantiate his claim, Reza Ameli refers to the drafting of other international Islam-oriented documents during the following years, such as the Islamic Charter for Human Rights and the Universal Islamic Declaration of Human Rights.

This argument is unconvincing for three reasons. First of all, it is true that these documents were strongly inspired by Islam, but that does not mean that the current one, the action programme, is not. Secondly, the mentioned documents were not drafted by the OIC but by other Islamic institutions. And, thirdly, they did not have as much influence within the Islamic world as the Cairo Declaration did in 1990. The Declaration is still of great significance, especially for the OIC's Ten-Year Programme of Action on the topic of human rights, which is extended to the year 2025 according to their website.

THE 2008 CHARTER

In addition to the Ten-Year Programme of Action, the OIC implemented its current charter three years later. It was adopted by the Eleventh Islamic Summit in March 2008, and aims to affirm the unity and solidarity among its members, to preserve Islamic values, to revitalise Islam's role in the world, to enhance and strengthen the bond of unity and solidarity among Muslims, and to contribute to international peace and security.[19]

The charter gives the impression that regarding its stance on universal human rights it is an improvement, since it no longer refers to the Cairo Declaration and its notion of sharia law, as was the case in the Ten-Year Programme of Action. In the objectives and principles of the new charter it is

18 Ibid., 152–153.

19 Eleventh Islamic Summit held in Dakar on 13–14 March 2008, website of OIC under 'About OIC', available at: http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en (accessed 26 April 2015).

furthermore included that the OIC members are determined "to adhere … [to their] commitment to the principles of the United Nations Charter, the present Charter and International Law", and "to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States."

At first glance this appears to be progress. However, the same paragraph states that these commitments need to be in accordance with the constitutional and legal systems of the particular member state. In general, the OIC member states have a strong state religion, where Islam is constitutionally entrenched. Some are even theocracies and suppress all religious diversity. This creates *religious legitimacy* for the OIC members to escape their UN human rights obligations, even though most of them are signatories to the international human rights treaties and are legally bound by them.

Also relevant is the fact that the preamble to the previous charter, the one from 1972, explicitly stated that the OIC "reaffirm[s] their commitment to the United Nations Charter and fundamental Human Rights, the purposes and principles of which provide the basis for fruitful cooperation among all people." This explicit reference to the term fundamental is nowhere to be found in the current charter or in the action programme. If this gap is read in conjunction with the passage that commitments to the aforementioned ideals need to be in accordance with the legal systems of the member states, it is no surprise that there is a lack of reference to universal human rights, since it would conflict with their national norms.[20]

In addition it is relevant to mention that article 1 of the new charter contains a paragraph that states the OIC's objective "to protect and defend the true image of Islam", and "to combat defamation of Islam."[21] With this addition the OIC members formally enshrined these concepts in their charter, and created the legitimacy for the course they have been sailing over the years, a course which has dominated the Human Rights Council and General Assembly since 1999.[22] However, before this grasp is discussed, the interesting question that needs to be answered, the question that is often neglected when this topic is discussed within academia is: why did the OIC

20 See for more Ann Elizabeth Mayer, "The OIC's Human Rights Policies in the UN. A Problem of Coherence", Matters of Concern. Human Rights Research papers, The Danish Institute for Human Rights, 2015, 10–11.

21 It was also added in the 2005 Ten-Year Programme of Action.

22 There was never any reference to the concepts in their founding document from 1972.

in 1999 introduce the concept of defamation of Islam in the UNHRC? Or, in other words, what were the reasons for the OIC to start this UN policy? The next paragraphs will further elucidate this point.

THE OIC'S MOTIVATIONS

To get a clear understanding of what caused, or, better said, contributed to this launch, it is relevant that the background and motives of the OIC and its member states are considered. To provide this context it is necessary to take a look at OIC declarations, resolutions and policy documents. Overall, at least three developments can be distinguished that have contributed to the cause. In line with the view of Lorenz Langer, a lecturer at the University of Zurich, in the first place it is all about upholding the appearance of Islam, that is, the image of Islam in general. Secondly, the reprimands several of the individual member states of the OIC received in various UN forums, which led to aggravation within the OIC countries.[23] And in addition to Langer's view, the third development involves the consequences of the fatwa that Ayatollah Ruhollah Khomeini issued against Salman Rushdie for writing *The Satanic Verses*. The next section will further elucidate these points.

The first development, the defence of the image of Islam, made its first appearance at the third Islamic Summit Conference in Mecca in 1981. During this Summit the members of the OIC agreed to "develop ... mass-media and information institutions, guided in this effort by the precepts and teachings of Islam, in order to ensure that these media and institutions will have an effective role in reforming society, in a manner that helps in the establishment of an international information order characterized by justice, impartiality and morality, so that our nation may be able to show to the world its true qualities, and refute the systematic media campaigns aimed at isolating, misleading, slandering and defaming our nation."[24] In this quotation some aspects need to be emphasised. In the first place, the term 'nation' has to be understood as Islam in general. In addition, it is not solely about the image of Islam for Muslims, or within the OIC countries, but

23 Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 165–169. Lorenz Langer is a lecturer at the University of Zurich.

24 Mecca Declaration, Third Islamic Summit Conference OIC (Palestine and Al Quds Session), Mecca, 25–28 January, 1981, Final Communiqué, para. 6.

more specifically about the perception of Islam by non-Muslims worldwide. It concerns what and why information about Islam is made public and how it is done.

During the following years the OIC pursued the same course, until Salman Rushdie's *The Satanic Verses* was published. In 1989 Rushdie's work was "strongly condemned" by the OIC, and he was regarded as an apostate and his work a blasphemous publication.[25] The OIC called for action, and issued "a Declaration on Joint Islamic Action to combat blasphemy against Islam in which it expressed the resolve of all Islamic States to coordinate their efforts, based on Sharia, to effectively combat blasphemy against Islam and abuse of Islamic personalities."[26] They furthermore declared that "all Islamic countries should make more effective efforts to ensure respect for Islam and its noble values. ... [B]lasphemy could not be justified on the basis of freedom of thought or expression. ... It appealed to all members of the international community to ban the book and take necessary measures to protect the religious beliefs of others."[27] It was a clear message, with strong demands. It was no longer merely about creating institutions to "inform people about Islam", but it was time to "take action", that is, set norms to protect their religion.

In this regard, the Dakar Islamic Summit, held two years later in 1991, is important. The OIC stated in the resulting Dakar Declaration that it was determined to "counter individually and collectively, any campaign of vilification and denigration waged against Islam and its sacred values as well as the desecration of the Islamic places of worship."[28] And it stated it would "inform the whole world of the essence of Islamic civilization, culture and thought so as to provide the best possible reflection of the true image of Islam and to participate in the enrichment of universal civilisation."[29] So again there is a clear emphasis on the provision of information and on concrete actions—individually as a state, and the OIC as a collective—for the defence of the image of Islam. However, this time the OIC went a step further. It drafted a resolution entitled "On adopting *a unified stand on the*

25 Eighteenth Islamic Conference of Foreign Ministers (Sessions of Islamic fraternity and solidarity), Final Communiquè, 13–16 March 1989, para. 46.

26 Ibid.

27 Ibid.

28 Dakar Declaration, Sixth Islamic Summit Conference, Dakar, Senegal, 9–11 December, 1991, under III Cooperation in the social, cultural and information fields, iv–v.

29 Ibid.

attack of Islamic sanctities and values [emphasis mine]" and in it requested the Secretary-General "to take the necessary measures for the drafting of an *international convention* [emphasis mine] to ensure respect for sanctities and values, and to submit a progress report thereon to the next Islamic Conference of Foreign Ministers,"[30] with the result that in the conference of foreign ministers in 1993 they recalled the adoption of "a unified stand" and focused on the adoption of "a joint stand on the debasing of Islamic Sanctities and Values."[31] They appealed to the Secretary-General "to prepare and submit [at] the next International Conference of Foreign Ministers a study on the conclusion of an *international legal instrument* [emphasis mine]."[32] In addition to the intention to create an international legal instrument the OIC continued to express its resentment at "the persistence of some quarters in publishing further editions and new issues of the book 'Satanic Verses' and publicising its author in many places, particularly in Europe."[33]

Over the years, the development of the OIC's objectives, from wanting to positively inform about Islam to the appeal for an international legal instrument to protect their religion, was thus inter alia influenced by Rushdie's work. It is remarkable to see what a novel can lead to.

In subsequent years several resolutions with similar actions followed. During the 1994 summit, the members extensively discussed the "image of Islam outside the Islamic World", and they were determined to "project the correct image of Islam", because the Western states continued to discredited it.[34] At the Islamic Summit in 1997 in Teheran, the OIC expressed that it wanted a "Group of Experts on the Image of Islam" to prepare a policy that would contribute to their eventual project.[35]

In relation to what has been argued about the influence of Rushdie's novel, more can be said about the OIC's actions after its publication, which constitutes a second development that contributed to the launch of the

30 Ibid., Res. NO. 3/6-C(IS), "On adopting a Unified Stand on the Attack on Islamic Sanctities and Values".

31 Conference of the Foreign Ministers, Karachi, Islamic Republic of Pakistan, 25–29 April, 1993, Res. no. 17/21-C "A Unified Stand on the Belittling of Islamic Sanctities and Values".

32 Ibid.

33 Ibid.

34 Seventh Islamic Summit Conference, Casablanca, Morocco, 13–15 December, 1994, final communiquè, para. 22. E/CN.4/1997/71, para. 27, section 3.

35 Eighth Islamic Summit Conference Tehran, Islamic republic of Iran, 9–11 December, 1997, final communiquè, paras 16, 110 and 112.

defamation of religion resolution in 1999 in the UN. The call for action by the OIC in 1989 was not entirely unexpected, for it was in the same period that Khomeini, the religious leader of Iran, one of the prominent states of the OIC, had issued a fatwa on Rushdie for writing and publishing the aforementioned book. Although the OIC members did not actually comment on the fatwa, they did consider Rushdie to be an apostate, condemned his blasphemous actions, and called for action.[36] However, they, like Khomeini, never had the legal authority to combat blasphemous crimes internationally. In contrast though to Khomeini, the OIC did have a seat at the UN table, and could therefore initiate and politically influence a debate on this topic. The report in which Rushdie was pronounced an apostate was also presented to the UN and circulated in the General Assembly.[37] This was the first time the OIC had condemned blasphemy within UN contours, a stance that they, as the next paragraph will describe, developed and expanded in the next ten years.

The third development that contributed to the start of the defamation resolutions in 1999 consists in the reprimands of the individual OIC member states in various UN forums.[38] In particular the reports of the UN special rapporteurs on Religious Intolerance and its successor Freedom of Religion or Belief were critical. For instance, in 1994 the annual report of the Special Rapporteur of Religious Intolerance, Abdelfattah Amor, addressed occurrences and state actions in several member states of the OIC that were inconsistent with the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The report mentioned that in Saudi Arabia "the legal system … allows flogging, amputation and beheading for the punishment of, inter alia, comments on religion" and it described several other cases where people arrested on charges of blasphemy faced possible execution.[39] Saudi Arabia's response was

36 Although not relevant for this chapter, a lot can be said about what it actually meant to declare Rushdie to be an apostate. See for more on this topic Paul B. Cliteur, Professor of Jurisprudence at Leiden University, who has extensively published on this topic: see, e.g.,*The Secular Outlook: In Defense of Moral and Political Secularism* (Chichester: Wiley-Blackwell, 2010), Paul B. Cliteur, Tom Herrenberg and Bastiaan R. Rijpkema, "The New Censorship," in Afshin Ellian and G. Moliet (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–319.

37 A/44/235/20600, 20 April 1989.

38 Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 165–169.

39 E/CN.4/1994/79, paras 31–33.

fierce: according to it the report was filled with "false interpretations of the Islamic religion and Islamic practices." They also stated that the rapporteur was not qualified "to assess the Islamic religion" and that "his summation based on 'allegations' is deplorable." Saudi Arabia even questioned whether this "disturbing disinformation on Islam and the Islamic people" was "a sort of a new 'crusade' which is so familiar in international politicking under the banner of the 'white men's burden?'".[40] They made it clear that they had had enough of this conduct. In the same report Amor mentioned that Sudan was also seriously infringing the right to freedom of religion. Cases are described in which several people were arrested and detained for practising a religion that was not Islam. Sudan's reaction was equivalent to that of Saudi Arabia; the allegations were "false" and "absurd".[41] The country visit to Pakistan in 1996 also led to a very critical report, one in which the discriminatory legislation regarding religious minorities and the blasphemy laws with their severe penalties were especially criticised.[42]

In the following years, different OIC members were criticised for discriminatory regulations concerning freedom of religion and belief, for instance Iran, Egypt, United Arab Emirates, Brunei and the Maldives.[43] These reprimands continued to pile up, causing resentment against the UN by the OIC members, which eventually contributed to the IOC taking the matter into its own hands: the international introduction of combatting defamation of religions.

THE INTRODUCTION OF DEFAMATION OF RELIGION IN THE UN

The OIC presented the concept of religious defamation to the UN on 20 April 1999, when Pakistan, on behalf of the OIC, introduced the draft resolution "Defamation of Islam" under agenda item Racism, racial discrimination, xenophobia and all forms of discrimination in the Commission on Human Rights (UNCHR).[44] In the resolution the focus is on negative stereotyping

40 Ibid.

41 E/CN.4/1994/79, paras 75–77.

42 E/CN.4/1996/95/Add.1. In the annual report of 1995 the Special Rapporteur already addressed several cases concerning these issues regarding Pakistan see E/CN.4/1995/91.

43 This list is not exhaustive. E/CN.4/1997/91, paras 10–16, 19, E/CN.4/1999/58, paras 31–33, 50–52, 66–68, 73–74, 85, 96.

44 E/CN.4/1999/L.40, 20 April 1999.

and intolerance towards Islam, and states are urged to "take all necessary measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion and belief."[45] The delegate from Pakistan declared that the reason for the introduction of this draft was that "in the past few years, there had been new manifestations of intolerance and misunderstanding, not to say hatred, of Islam and Muslims in various parts of the world.'[46] Also, "[t]here was a tendency in some countries and in the international media to portray Islam as a religion hostile to human rights, threatening to the Western world and associated with terrorism and violence, whereas, with the Quran, Islam had given the world its first human rights charter. No other religion received such constant negative media coverage."[47] The motivation as portrayed by the OIC for the defamation resolution was clear: it was to protect Islam.

The representative of Germany responded on behalf of the states of the European Union, and underlined that "the European Union was attached to the principles of tolerance and freedom of conscience, thought and religion for all," but was of the opinion that the general structure of the proposal was not in balance, since it mentioned only the negative stereotyping of Islam. Germany therefore introduced amendments to broaden the scope of negative stereotyping to all religions and change the title of the resolution to "Defamation of Religions".[48] These changes were submitted "to deal equally with all religions".[49] The Pakistani representative was not pleased with the proposed amendments, and stated that "the problem faced by Islam was of a very special nature and its manifestations took many forms. Some people did not hesitate, for example, to refer to an 'Islamic bomb', but no one would ever think of making such an association with another religion. Islam was being portrayed as a threat to the international system, with many negative images, which incited people to hatred of Muslims. That phenomenon endangered world stability and was contrary to the principle of the universality of human rights."[50] He continued by stating that "[t]he amendments submitted by

45 Ibid.

46 E/CN.4/1999/SR.61, para. 1.

47 Ibid.

48 E/CN.4/1999/L.90.

49 Ibid.

50 E/CN.4/1999/SR.61, para. 7.

Germany were designed to remove most of the specific references to Islam contained in the draft resolution, but that would defeat the purpose of the text, which was to bring a problem relating specifically to that religion to the attention of the international community."[51] Thus the OIC requested that the amendments be withdrawn and that the commission accept sub-amendments in which there was a specific focus on Islam again.[52] Germany, however, declined and asked the EU members to hold to their positions.[53] The Pakistani representative asked for further negotiations so the "two parties"—already explicitly dividing East (OIC) and West (Europe) within the international community—could attempt to find common ground.[54]

The next day the two parties reached consensus and drafted a resolution with a general title that included all religions. It resulted in the adoption of Resolution 1999/82, "*Defamation of religions*".[55] The resolution inter alia urges:

> all States, within their national legal framework, in conformity with international human rights instruments to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief.[56]

In the Resolution no definition is given of religious defamation. Only the title contains a reference to the concept.

The Pakistani representative stated that "the OIC countries had shown considerable flexibility by agreeing to adopt a nonexclusive approach to the issue."[57] And they "looked forward to cooperating with all countries in

51 Ibid., para. 8.

52 E/CN.4/1999/L.104.

53 E/CN.4/1999/SR.61, para. 9.

54 Ibid., para.11.

55 E/CN.4/1999/L.40/Rev.1. There was also one amendment made orally. However, the content of this amendment is not relevant for this analysis.

56 60th meeting, 28 April 1999, Res. 1999/82. E/CN.4/1999/82. Commission on Human Rights Report on the Fifty-fifth session (22 March–30 April 1999), 280–281. E/1999/23, E/CN.4/1999/167.

57 E/CN.4/1999/L.40/Rev.1 and E/CN.4/1999/SR.62, paras 1–2.

promoting a better understanding of Islam …"[58] The German representative stated that although "an agreement [was] reached [it] should not … hide the fact that a high degree of uncertainty remained as to the expediency of the Commission's continuing to deal with the issue in that way and in that context. … While joining the consensus on the draft, [they] wished to make it clear that they did not attach any legal meaning to the term 'defamation' as used in the title."[59]

From the German remark it is clear that the EU member states realised that the adoption of the religious defamation resolution would have consequences for the normative contours of the human rights framework. Instead of dismissing the OIC's whole line of reasoning, they assumed an *accommodating stance*, in particular by merely remarking that the general structure of the resolution was imbalanced, and that it had to be broadened so that all religions would be dealt with equally. It gave the OIC room to manoeuvre and introduce the concept of religious defamation in the UN. Unfortunately, they did not foresee what kind of impact their accommodating attitude would have in the next decade.

FROM CONSENSUS TO MAJORITY VOTE

In the following year, Pakistan, again on behalf of the OIC, introduced a resolution with a similar title and content. After a few amendments it was adopted by consensus in the UNCHR.[60] What is relevant to mention is that the representative of Portugal, on behalf of the EU, emphasised that the subject of defamation of religion should not be discussed in the UNCHR as it would divert attention from its duty to promote freedom of all religions and beliefs. They were worried that the draft could be interpreted as being focused on one specific religion,[61] which was in fact the case.

In 2001 Pakistan stepped up its efforts and introduced the resolution "Combating defamation of religions as a means to promote human rights,

58 Ibid.

59 E/CN.4/1999/SR.62, para. 9 and E/CN.4/1999/L.40/Rev.1.

60 See amendments: E/CN.4/2000/L.6, E/CN.4/2000/L.18, 7th meeting 26 April 2000, Res. 2000/84. Defamation of religions. Commission on Human Rights Report on the fifty-sixth Session (20 March–28 April), 336–338. E/2000/23, E/CN.4/2000/167.

61 E/CN.4/2000/SR.67, paras 72–77.

social harmony and religious and cultural diversity".[62] This time the EU took a different stance. On behalf of the EU the representative from Belgium stated that the

> … l'Union européenne appuie le dialogue entre les civilisations, mais considère que l'on ne saurait confondre religion et civilisation. En outre, la liberté d'expression est la condition sine qua non d'un dialogue réel entre les civilisations. La liberté d'expression et la liberté de religion sont la manifestation fondamentale de la tolérance au sein des sociétés. Tous ces arguments ont été exposés lors des consultations sur le projet de résolution mais ils n'ont pas été pris en compte par les auteurs. C'est pourquoi, les États membres de l'Union européenne ont demandé qu'il soit procédé au vote sur ce projet de résolution. Quant à eux, ils voteront contre ce texte.[63]

By emphasising the freedoms of expression and religion, stating that they are a fundamental manifestation of tolerance in society, and stressing that the freedom of expression is the condition sine qua non of civil dialogue, the EU member states tried to persuade the OIC. They argued that it was incorrect that the focus was on the protection of religions rather than on the human rights of the individual adherents to these religions.[64] In addition, they announced that they would ask for a vote, with notice that they would vote against,[65] but to no avail. The members of the OIC did not take any of the EU's arguments into account. The draft resolution was taken to a vote and was adopted by 28 votes in favour to 15 against, with 9 abstentions.[66]

62 E/CN.4/2001/L.7/Rev.1.

63 E/CN.4/2001/L.7/Rev.1, E/CN.4/2001/SR.61, 4 December 2001 paras 6, 3. "The European Union supports the dialogue between civilisations, but considers that religion and civilisation cannot be confused. Furthermore, freedom of expression is the sine qua non of a real dialogue among civilisations. Freedom of expression and freedom of religion are fundamental manifestations of tolerance within societies. All these arguments were exposed during consultations on the draft resolution, but they were not taken into account by the authors. Therefore, the Member States of the European Union asked for a vote on this draft resolution. As for them, they will vote against it." [my translation]

64 Ibid., paras 11, 3.

65 Ibid.

66 Commission on Human Rights Report on the fifty-seventh Session (19 March–27 April 2001), 47–49, 372. E/2001/23, E/CN.4/2001/167. Germany, Belgium, Canada, Spain, The United States, France, Italy, Japan, Latvia, Norway, Poland, Portugal, Czech Republic, Romania, United Kingdom

With the E/2001/4 resolution the UNCHR "encourages States, within their respective constitutional systems, to provide adequate protection against all human rights violations resulting from defamation of religions and to take all possible measures to promote tolerance and respect for all religions."[67]

This course of events would repeat itself in the subsequent years (2002–2005).[68] Resolutions with similar and more extensive content and effect were adopted by a majority vote, largely consisting of OIC member states. For example, in the next year a resolution with the same encouragement as cited above was adopted, but the words "and their value system" were added to the last sentence.[69] Only a few words but, as previously described, of great significance.

THE EXPANSION TO THE GENERAL ASSEMBLY

In the aftermath of the Danish cartoon crisis in 2005, the concept of religious defamation expanded to another, larger UN platform. The Yemeni delegate, on behalf of the OIC, introduced the draft resolution "Combatting defamation of religions" in the UNGA.[70] The Egyptian representative argued that the "the draft resolution was not directed against any one country ... Its sole purpose was to emphasize the importance of respect for the religions and beliefs of others, which were an integral part of the vision and way of

of Great Britain and Northern Ireland voted against. "Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity": 28 votes in favour, 15 against, and 9 abstentions. Res. E/2001/4.

67 E/CN.4/Res. E/2001/4.

68 In 2002 Res. 2002/9, E/CN.4/Res/2002/9 (15 April 2002), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2002/L.9, E/CN.4/2002/SR.39, paras 28–42, pp. 6–8, "Combating defamation of religion": 30 votes in favour, 15 against, and 8 abstentions. In 2003 Res 2003/4, E/CN.4/Res/2003/4 (14 April 2003), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2003/L.16, E/CN.4/2003/SR.47, paras 95–109, "Combating defamation of religions": 32 votes in favour, 14 against, and 7 abstentions. In 2004 Res 2004/6, E/CN.4/Res./2004/6 (8 April 2004), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2004/L.5, E/CN.4/2004/SR.45, paras 73–84, "Combating defamation of religions": 29 votes in favour, 16 against, and 7 abstentions. In 2005 Res. 2005/3, E/CN.4/Res/2005/3 (12 April 2005), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2005/L.12, E/CN.4/2005/SR.44, paras 2–17, "Combating defamation of religions": 31 votes in favour, 16 against, 5 abstentions.

69 E/CN.4/Res./2002/9.

70 A/C.3/60/L.29.

life of many peoples."[71] The member states of the EU made it clear that they would not be on board, for similar reasons as the ones they had given in previous years in the UNCHR.[72] But to no avail: religious defamation became a fact in the international community when draft resolution A/C.3/60/L.29 was adopted with 88 votes in favour, 52 against, and 23 abstentions.[73] The UNGA inter alia

> urges States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance.[74]

In the following years the OIC continued to achieve its agenda in various UN fora, and after the disbandment of the UNCHR in 2006, the OIC passed resolutions regarding religious defamation in its successor, the United Nations Human Rights Council (UNHRC).[75] That same year the UNHRC asked Asma Jahangir, Special Rapporteur on freedom of religion or belief, and Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to draft a report on the subject of defamation of religion, in particular its implications for article 20, paragraph 2, of the ICCPR. The reason for this was the "… deep concern over the increasing trend of defamation of religions and incitement to religious hatred and its recent manifestation."[76]

71 A/C.3/60/SR.45, para. 36, 5.

72 A/C.3/60/SR.45, para. 37, 5.

73 A/RES/60/150 (20 January 2006), A/60/509/Add.2 (Part II). For statements in explanation of the vote see A/C.3/60/SR.45, paras 34–45.

74 A/RES/60/150.

75 The UNHRC was created by the UNGA on 15 March 2006 after it adopted resolution A/RES/60/251. In 2006, A/RES/60/150 (20 January 2006), A/HRC/DEC/1/107 (30 June 2006); in 2007, A/RES/61/164 (21 February 2007), A/HRC/RES/4/9 (30 March 2007); in 2008 A/RES/62/154 (6 March 2008), A/HRC/RES/7/19 (27 March 2008); in 2009 A/RES/63/171 (24 March 2009), A/HRC/RES/10/22 (26 March 2009); in 2010: A/RES/64/156 (8 March 2010), A/HRC/RES/13/16 (15 April 2010), A/RES/65/224 (11 April 2011).

76 A/HRC/2/3 (20 September 2006). This was the Implementation of A/RES/60/251.

The report's conclusions were clear. It affirmed, among other things, that "the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule."[77] It furthermore concluded that, "[i]n maintaining a pluralist, diverse and tolerant society, Member States should avoid stubbornly clinging to free speech in defiance of the sensitivities existing in a society with absolute disregard for religious feelings, nor suffocating criticism of a religion by making it punishable by law …"[78]

Given the actions that would follow, it can be safely said that the UNHRC ignored the conclusions of the report.[79] In subsequent years it would usually refer to previous reports, where other rapporteurs had been more supportive of the religious defamation concept.[80]

THE POLITICAL DEROGATION

The concept of defamation of religion took up a highly visible position within the UN. The number of references to the concept increased considerably, and, in contrast to its former preambular position, it became part of the substantive paragraphs of the resolutions.[81] In addition, the operative sections of the resolution were expanding.

In its observatory report on islamophobia in 2009 the OIC felt that it had enough authority to state that the

> OIC's position with regard to the important issue of defamation of religions has not only been used to create ripples in the Western mind

77 Ibid., paras 60, 10.

78 Ibid., paras 66, 15.

79 In contrast to Jahangir, Diène was much more supportive of the concept in previous years, especially right after the publication of the Danish cartoons in the Jillands-Posten. See for more Langer, Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 233–235.

80 For example, to Abdelfattah Amor's reports. He was Jahangir's predecessor and, with some comments, he approved the concept. The OIC also referred to Diène's previous reports. See for more Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 233–236.

81 Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011) 353–354.

> and media but also confused with the existing normative framework on the freedom of expression. It needs to be appreciated that this position has over the past decade repeatedly been observed to command support by a majority of the UN member states – a support that transcended the confines of the OIC Member States. The succession of UNGA and UNHRC resolutions on the defamation of religions makes it a standalone concept with international legitimacy.[82]

With this remark, the OIC seems to claim that there is some sort of *opinio juris*. Its stance is that the succession of majority resolutions created a basis for an international norm for criminalising religious defamation. To evaluate whether or not this stance is legitimate one must ask to what extent 'succession' can be seen as a foundation for legally recognising an international punitive standard? This can be concisely answered: within international legal theory succession is not a justification for adopting an international (criminal) standard.

Central in the resolutions is, among other things, "… the enactment or strengthening of domestic frameworks and legislation to prevent the defamation of religions",[83] "stressing … the need to effectively combat defamation of all religions …"[84] and the notion that "… the right to freedom of expression … may be subject to limitations as provided by law and necessary for … respect for religions and beliefs".[85] It is remarkable that in none of the resolutions is a definition of religious defamation given, for it is not in line with the legal definitions of defamation, slander and libel.

From an examination of the resolutions, it can be deduced that they include the call for states to take strict measures to legitimately restrict the freedom of expression. It is not only a call for censorship, but also to develop legislation that criminalises blasphemy or take other actions that

82 OIC-CS-2ndOBS-REP-FINAL-10 May 2009, 4. See also Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011), 353–354. See for a detailed overview Appendix 1: Reports Generated By UN Resolutions Related to Defamation of Religions, by Reporting Mandate, in Robert C. Blitt, "The Bottom up Journey of 'Defamation of Religion' from Muslim States to the United Nations: A Case Study of the Migration of Anti-Constitutional Ideas," *Studies in Law, Politics, and Society* 56 (2011). Much can also be said about the concept of Islamophobia.

83 A/RES/64/156.

84 A/HRC/RES/10/22.

85 A/RES/61/164.

have a threatening or discriminatory effect on critics and dissenters. Most importantly, it is seen as an *international call to criminalise blasphemy*.[86]

It must also be questioned whether the concept of defamation of religion is sustainable at all. After all, is not every religion by its nature the defamation of other religions? The representative of Pakistan has to understand that when he states that Muhammad is the Seal of the Prophets, he is defaming the faith of the Bahai, for they recognise later prophets. And when Christ is seen as the son of God, this is blasphemous from a Jewish perspective.[87]

In addition, the emphasis in the defamation resolutions is on the *protection of religions*. While it is clear that this is to protect one religion, Islam, it is not clear whom this protection benefits in practice. Is it the state religion, the religious ruler, or perhaps the majority of the believers? Apart from that, the protection of the rights of religious minorities is central to the mandate on freedom of religion. And the idea of protecting religions is evidently at odds with the freedom of religion, and with the human rights acquis in general, in which the individual and his freedoms are protected.[88]

Accordingly, it seems safe to conclude that religious defamation is an *ambiguous concept*. It is vague and has a scope wide enough to encompass different kinds of chilling effects on the freedoms of religion and expression. With the defamation resolutions, the OIC amalgamates freedom of religion with political policies and diminishes its original intent and scope. And by implicitly undermining its content, and explicitly undermining its non-distinctive application, the OIC *politically derogates* from its very status as a fundamental, universal human right, leading to severe consequences for its normative framework.

RESOLUTION 16/18 COMBATTING RELIGIOUS INTOLERANCE

In 2009 there was a noticeable change in support for the religious defamation concept. A joint petition was presented and signed by more than 200 civil organisations, including monotheistic, humanist and atheist organisations,

86 See for more Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35 (2013) 41–42; L. Bennett Graham, "Defamation of Religions. The End of Pluralism?," *Emory International Law Review* 23 (2009) 69; Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011).

87 Paul Cliteur, "Taylor and Dummett on the Rushdie Affair," *Journal of Religion & Society* 18 (2016) 15.

88 Ibid.

urging member states of the UNHRC to reject the 2009 defamation resolution.[89] In addition, the combined abstentions and votes against the defamation resolutions reached a higher number than the votes in favour.[90] The same occurred in the UNGA, and there was an even further decline in support in 2010.[91]

In 2011 there was what was considered to be a turnround, or even a breakthrough. The OIC introduced into the UNHRC resolution 16/18 on "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief".[92] The resolution was adopted with consensus on 24 March 2011, and has since then functioned as a guiding document for discussion within the UN.[93]

In the general comments and explanations before the vote the United States stated that it was "pleased" that consensus had been reached, and hoped that it "become[s] a blueprint for constructive, meaningful actions that the international community will take to promote respect for religious differences."[94] The Algerian representative stated that

> le consensus atteint autour du projet de résolution L.38 sur la lutte contre l'intolérance et la haine basées sur l'affiliation religieuse,

89 Human Rights Council Resolution "Combating Defamation of Religion", The International Humanist and Ethical Union, 26 March 2009, available at: http://iheu.org/human-rights-council-resolution-combating-defamation-religion (accessed 9 June 2015).

90 A/HRC/RES/10/22.

91 In 2009 A/RES/64/156 Combatting defamation of religions, A/64/439/Add.2 (Part II), 9–11, there were 81 votes in favour, 55 votes against, and 43 abstentions. In 2010 A/RES/65/224, A/65/456/Add.2 (Part II), 73–74, A/C.3/65/L.46/Rev.1, there were 76 in favour, 64 against, and 42 abstentions.

92 A/HRC/RES/16/18 (24 March 2011). It is salient that a few months before the resolution was adopted in the UNHRC, a resolution regarding combatting defamation of religions was adopted in the UNGA. A/RES/65/224 (21 December 2010).

93 Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35 (2013), 41–43. In the following years resolution 16/18 was reaffirmed in the UNHRC: on 23 March 2012 resolution 19/25, A/HRC/RES/19/25, on 22 March 2013 resolution, 22/31, A/HRC/RES/22/31, on 28 March 2014 resolution 25/34, A/HRC/RES/25/34, on 27 March 2015 resolution 28/29, A/HRC/28/RES/29. And in the UNGA: on 19 December, 2011 resolution 66/167, A/RES/66/167, on 20 December 2012, resolution 67/178, A/RES/67/178, on 18 December 2013 resolution 68/169, A/RES/68/169, on 18 December 2014 resolution 69/174, A/RES/69/174.

94 46th Meeting, HRC Extranet, Sixteenth Session, Draft resolutions, decisions & President's statements, A/HRC/16/L.38.

> constitue une avancée significative. C'est vraiment pour ma délégation la traduction contemporaine du "I have a dream" de Martin Luther King. Merci a tous pour avoir jeté des ponts plutôt que d'avoir jeté l'éponge.[95]

For Algeria, a member of the OIC, it was certainly more than a blueprint, considering that she compared it to a watershed moment in American civil rights history, Martin Luther King's historic speech on 28 August 1963. A rather exaggerated and slightly inappropriate comparison. Nonetheless, it can be safely concluded that both the OIC and the Western states stated that they were decisive in focusing on combatting religious intolerance.

What stands out when resolution 16/18 is analysed is that there is no longer an explicit reference to the concept of defamation of religion. It refers to persons, so it seems that the aim is to protect the individual rather than religions, which is more in line with the human rights acquis. However, there is still an implicit emphasis on one religion in particular, as a speech of Ekmeleddin İhsanoğlu, the Secretary-General of the OIC, is explicitely addressed in the resolution.[96] It is furthermore relevant that other and even more concepts are included in the resolution, which have more or less the same ambiguity as defamation of religions, for example "derogatory stereotyping", "negative profiling", and "stigmatisation".[97] In general, these vague concepts lack both definition and criteria, and risk being subject to various interpretation.

95 48th Meeting, Final general remarks on 16th session UNHRC, HRC Extranet, Sixteenth Session, Oral statements, 25 March 2011. "The consensus around draft resolution L.38 on the fight against intolerance and hatred based on religious affiliation, is a significant step. It is for my delegation really the contemporary translation of the 'I have a dream of Martin Luther King'. Thank you all for having built bridges instead of throwing in the towel" [my translation].

96 The resolution codified eight points of action that İhsanoğlu addressed in his speech during this meeting. For example, "Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence." "Adopting measures to criminalize incitement to imminent violence based on religion or belief." "Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building."

97 A/HRC/RES/16/18.

THE REACTIONS AFTER RESOLUTION 16/18

The reactions to the new course from academics and human rights groups were diverse. For example, Evelyn Aswad, Professor of Law at the University of Oklahoma College of Law, was optimistic and wrote that "the 16/18 approach to combating religious intolerance, including offensive speech, reflects the appropriate, effective, and wide-ranging toolbox available to governments in reacting to such speech without resorting to broad bans on speech."[98] Ted Stahnke, from the organisation Human Rights First, was also positive. He stated that it was a "decisive break from the polarizing focus in the past on defamation of religions" and stated that "the U.N.'s new approach reflects what is needed to combat the intolerance we continue to see around the world ..."[99]

The reaction of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, who is also Professor of Human Rights at the University of Erlangen-Nuremberg, was moderately positive. He wrote that "whether the UNHRC resolution 16/18 in the long run marks a turning point in the international debate remains to be seen. For the time being, it creates opportunities to address, in a more open inter-group atmosphere important political issues, such as stereotypes, prejudices, and concomitant manifestations of extreme hatred. This certainly is a positive development."[100] Brett Scharffs, Professor of Law and Associate Director of the International Centre for Law and Rreligion at Brigham Young University, took a similar stance. He found it hard to predict an outcome, but stated that "the idea seems to have currency".[101] Although few in number, there were sceptical reactions, for example from Robert Blitt, associate Professor of Law at the University of Tennessee. He argued that "the new compromise approach

98 M. Aswad Evelyn, "To Ban or Not to Ban Blasphemous Videos", *Georgetown Journal of International Law* 44 (2013) 1325–1326.

99 "U.N. General Assembly Abandons Dangerous "Defamation of Religion" Concept" press release, 19 December 2011, available at: http://www.humanrightsfirst.org/press-release/un-general-assembly-abandons-dangerous-%E2%80%9Cdefamation-religion%E2%80%9D-concept.

100 Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35 (2013), 43.

101 Brett Scharffs, "International Law and the Defamation of Religion Conundrum," *The Review of Faith & International Affairs* 11/1 (2013) 69.
Ibid.

risks being exploited".[102] Jonathan Turley, professor of law at The George Washington University Law School, was also very sceptical. Although he misquoted paragraphs from the resolution in his article, he stated that "… the latest resolution does not repeat the defamation language, the purpose remains unchanged and the dangers for free speech are obvious."[103]

THE AFTERMATH DISCUSSIONS: THE ISTANBUL PROCESS

To facilitate the implementation of Resolution 16/18, the Istanbul Process, a series of high-level meetings, was called into being in July 2011. The first meeting was hosted by the OIC, and co-chaired by its Secretary-General and former US secretary of state, Hillary Clinton. More than twenty representatives from different states were there.[104] In their joint statement the representatives

> … called upon all relevant stakeholders throughout the world to take seriously the call for action set forth in Resolution 16/18 … Participants, resolved to go beyond mere rhetoric, and to reaffirm their commitment to freedom of religion or belief and freedom of expression by urging States to take effective measures, as set forth in Resolution 16/18, consistent with their obligations under international human rights law …[105]

102 Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011), 347.

103 Johnatan Turley, "Criminalizing Intolerance: Obama Administration Moves Forward On United Nations Resolution Targeting Anti-Religious Speech," 13 December 2011, available at: http://jonathanturley.org/2011/12/13/criminalizing-intolerance-obama-administration-moves-forward-on-united-nations-resolution-targeting-anti-religious-speech/.

104 The Secretary of State of the United States, the secretary-general of the OIC, the EU high representative for foreign affairs, and foreign ministers and officials from Australia, Belgium, Canada, Denmark, Egypt, France, Germany, Italy, Japan, Jordan, Lebanon, Morocco, Pakistan, Poland, Romania, Senegal, Sudan, Turkey, United Kingdom, the Vatican (Holy See), UN OHCHR, Arab League, African Union were present.

105 Joint Statement on Combating Intolerance, Discrimination, and Violence Based on Religion or Belief, 15 July 2011, available at: http://www.oicun.org/oicus/oicusprojects/20110719041927244.html (accessed 12 June 2015. Clinton, representing the Western states, furthermore stated that "this resolution marks a step forward in creating a safe global environment for practicing and expressing one's beliefs." In "Remarks at the Organization of the Islamic Conference (OIC) High-Level Meeting

From their statement it appears that they were making efforts to realise the objectives as set in the 16/18 resolution.

This meeting was followed by a meeting behind closed doors in Washington in December 2011, again co-chaired with the OIC. There were representatives from 26 states and several international organisations. This time Clinton had a more prominent role and said that "religious freedom and freedom of expression are among our highest values"[106] and "together [with the OIC] we have begun to overcome the false divide that pits religious sensitivities against freedom of expression …"[107]

The following session in London, hosted by the United Kingdom and Canada, was in December 2012, and topics similar to those talked about during the previous meetings were discussed. The next conference, organised solely by the OIC and held in Geneva in June 2013, provided the opportunity to discuss parts of their initial stance.[108] Besides the annual topics, like the importance of an intercultural dialogue and speaking out against intolerance, the criminalisation of hate speech was put on the agenda. It led to familiar heated debates on the line between freedom of expression and hate speech.[109]

on Combating Religious Intolerance," available at: http://www.state.gov/secretary/20092013clinton/rm/2011/07/168636.htm (accessed 12 June 2015.); K. Eckstrom, "Clinton Applauds U.N.'s Religious Freedom Resolution," *The Huffington Post*, 25 March 2011.

106 Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18: 32, December 2011, available at: http://www.universal-rights.org/wp-content/uploads/2015/02/1st-Meeting-Conference-Report.pdf

107 Ibid.

108 "OIC to hold the next event of the 'Istanbul Process' on combating intolerance in Geneva," 20 February 2013, available at: http://www.oic-oci.org/oicv2/topic/?t_id=7758&ref=3157&lan=en&x_key=istanbul process. "OIC Secretary General traveling today to Geneva for meeting on combating religious intolerance," 18 June 2013, available at: http://www.oic-oci.org/oicv2/topic/?t_id=8187&ref=3305&lan=en&x_key=istanbul process.

109 In his opening statement, İhsanoğlu, said that "… An open and constructive debate of ideas is indeed useful. It must be upheld as a matter of freedom of opinion and expression. It, however, transforms into a case of incitement to discrimination, hostility or violence when the freedom is abused to denigrate symbols and personalities sacred to one or the other religion. It needs to be understood as a matter of identity. It needs to be acknowledged that people in some parts of the world tend to identify themselves more with a particular religion than elsewhere. It is, therefore, essential to draw a line between free speech and hate speech …" in "Statement by His Excellency the Secretary General at the 3rd Istanbul Process Meeting on the follow-up of Implementation of HRC Resolution 16/18," 20 June 2010, available at: http://www.oic-oci.org/oicv2/topic/?t_id=8196&ref=3308&lan=en&x_key=istanbul process.

The dividing lines between the West and the OIC reappeared and cracks in the new alliance resulted.[110] The same occurred during the fourth meeting in Doha in March 2014,[111] and during its recently held fifth session in Jeddah, Saudi Arabia, in June 2015.[112]

Accordingly, after a few years the efforts to, in Clinton's words "overcome the false divide", were no longer the primary focus for the OIC within UN contours.[113]

A DIFFERENT STANCE OR A NEW STRATEGY?

It is important to note that there was a difference between how the OIC originally handled and implemented the newly set course with regard to resolution 16/18 in UN contours, for example with the Istanbul Processes, and how they treated it inside their own organisations. This follows from contradictory statements from OIC officials and OIC documents. For example, the Islamic Educational, Scientific, and Cultural Organisation, which was established by the OIC, announced only a year after the adoption of resolution 16/18 that the International Federation of Journalists "should respect Islamic religious symbols and halt desecration of them. In this regard, it underlined that defaming Islamic religious symbols provokes the feelings

110 See for more Turan Kayaoglu and Marie Juul Petersen, "Will Istanbul Process Relieve the Tension Between the Muslim World and the West?," *The Washington Review of Turkish & Eurasian Affairs*, October 2013.

111 Report for Doha Meeting for Advancing Religious Freedom Through Interfaith Collaboration. Istanbul Process 16/18 for Combating Intolerance and Discrimination based on Religion or Belief, 24–25 March 2014, available at: http://www.universal-rights.org/wp-content/uploads/2015/02/Doha-Meeting-final.pdf. See for more by Marc Limon, Nazila Ghanea and Hilary Power, "The Policy Report, Combatting Global Religious Intolerance. The implementation of Human Rights Council".

112 See for the official statements https://www.fidh.org/IMG/pdf/fidh_written_submission_-_5th_session_of_the_istanbul_process-2.pdf; Hilary Power and Marie Juul Petersen, Informal Report Of the 5th meeting of the Istanbull Process. "From Resolution to Realisation – how to promote effective implementation of Human Rights Council resolution 16/18", Jeddah, 3–4 June 2015, available at: http://www.humanrights.dk/files/media/researchpublications/downloads/urg-dihr-report-on-the-5th-meeting-of-the-istanbul-process-jeddah-20152.pdf.

113 Chile will host the 2016 Istanbul meeting. This will be the first time that a meeting has not been organised by one of the OIC or the Western states. It will be interesting to see what the outcomes of the discussions will be.

of Muslims, and goes against the international media law and media ethics and the UN Resolution 65/224 on combating defamation of religions ..."[114]

What is even more disconcerting is that only a few months after the adoption of resolution 16/18, the OIC's Council of Foreign Minsters adopted a new resolution on the topic of combatting defamation of religions. In it the OIC decided "to continue to support the resolution en bloc in favor of the resolution at the Human Rights Council."[115] The OIC furthermore said in it that it was "exploring [an] alternative approach ..."[116] and that its members "continue to explore options with regard to broadening support for the resolution on defamation of religions ..."[117] It "decide[d] to remain seized of the matter as a top priority item on the agenda of all OIC Summits and Council of Foreign Ministers."[118]

These statements not only demonstrate that the OIC members derived other content or means of implementation of the 16/18 resolution than was assumed, but it indicates more: it was not the turnround the West thought it would be. The Western states were under the impression that they had left the notion of religious defamation behind, and had thus corrected the error they had made in 1999. So one may wonder, why did the OIC initiate this *ostensible change of direction*? After all, it was Pakistan, at the initiative of the OIC, that introduced the draft resolution. What was the reason for this change of direction?

When placed in context it looks like a mere change of tactics, that is, a *strategic move*. There are some arguments for this assumption. First of all, the OIC became aware that its continual rhetoric of arguments, in which it stated that the Western states violated the freedom of expression by failing to

114 ISESCO calls upon IFJ to activate UN Resolution on combating defamation of religions, 21 September 2012. via: http://www.isesco.org.ma/index.php?option=com_k2&view=item&id=7626:isesco-calls-upon-ifj-to-activate-un-resolution-on-combating-defamation-of-religions&lang=en Resolution 65/224, combatting defamation of religions. A/RES/65/224.

115 Res. 35/38 OIC (28-30 June 2011), On Combating Defamation of Religions, Res35/38-POL, in OIC/CFM-38/2011/POL/FINAL, 79–82.

116 Ibid.

117 Ibid.

118 Ibid. See for more Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011), 361–365; Javaid Rehman and Stephanie E. Berry, "Is 'defamation of religions' passé? The United Nations, Organisation of Islamic Cooperation, and Islamic State Practices. Lessons from Pakistan," *The George Washington International Law Review* 44 (2012) 451.

ban insults to religion, or criminalise defamation of religion, was no longer working. Or, as İhsanoğlu said: "We could not convince them" and "[t]he European countries don't vote with us, the United States doesn't vote with us."[119] Secondly, the OIC was aware that there was a decline in support, and more states abstained from voting, in contrast to the position of the West, which remained firm. And the last argument, which is perhaps the most interesting one, is that it realised that the hijacking of different UN fora was only *damaging its own reputation* of being the world's representative of the Umma, and, a fortiori, it would no longer be taken seriously by the Western states as an equal debating partner when discussing human rights in the future.

These considerations probably made the OIC rethink its strategy and shift to a different approach, namely to *combatting religious intolerance*. Subsequently, the OIC shifted its primary focus in the 16/18 resolution to the freedom of religion, instead of expression, and by changing the semantics it reopened the debate and broadened its scope. The OIC is using the freedom of religion as the basis for its battle against, inter alia, the newly introduced ambiguous concepts of negative profiling, derogatory stereotyping and stigmatisation of persons based on religion (with an implicit focus on Islam). However, this shift and semantic adjustment have not changed the OIC's original stance. It still has the same objectives, only now it is trying to realise them from a different, more disguised angle. Accordingly, by using this approach, the OIC can continue to politically derogate from the universality, status and content of the right to religious freedom, which will have consequences for the normative framework.

Of course it is possible that attributing this level of strategic planning to the OIC is giving it too much credit. Nonetheless, the fact remains that it explicitly continues to strive for an international norm on criminalising defamation of religion within OIC contours, and implicitly within the different UN forums.

119 "National Secular Society, Islamic bloc abandons plans for global blasphemy law at UN," 16 October 2012, available at: http://www.secularism.org.uk/news/2012/10/islamic-bloc-abandons-plans-for-global-blasphemy-law-at-un (accessed 11 June 2015); Tom Henghan, "West's free speech stand bars blasphemy ban: OIC," Reuters, 15 October 2012.

CONCLUSION

In this chapter about the freedom of religion and its universal status, I have addressed an issue of great contemporary concern: the political derogation of the freedom of religion perpetrated by the OIC, resulting in severe consequences for the normative framework.

I have discussed examples of the OIC amalgamating the right to freedom of religion with political strategies and policies of protecting the reputation of religions against defamation. To demonstrate this, I have analysed its various resolutions and founding documents, and discussed some reports of the UN Special Rapporteurs. These reports revealed information about the numerous violations of the freedom of religion perpetrated or condoned by member states of the OIC.

Close analyses have demonstrated that since its establishment the OIC's actions have consisted of incoherent and even self-contradictory statements and documents on human rights law. There is a continuous back-and-forth movement between so-called recognition and endorsement of human rights in general, and the supremacy of Islamic law over universal human rights. While the OIC has given the impression that international law and human rights have over the years obtained a more prominent place on the agenda, closer analysis revealed otherwise. By referring to the Cairo Declaration in its Ten-Year Programme of Action and the lack of reference to UN fundamental human rights in its later 2008 charter, the OIC continues to approach human rights from an Islamic perspective.

From 1999 to 2011 the OIC had a firm grasp on the UNHRC and the UNGA with the adoption of the defamation of religion resolutions. In these resolutions it gave different interpretations of the right to freedom of religion, undermined its non-distinctive application, and argued clamorously against its universality. It considered the freedom of expression also to be subject to limitations. With the shift in 2011 to combatting religious intolerance, the OIC made it appear as if it had turned the tide with the adoption of this new compromise resolution. However, there are indications that it was more a strategic move than an actual reconsideration of its stance. At this time, the OIC is still defending this stance within UN contours.

And despite the fact that the resolutions are non-binding, and the OIC cannot enforce any legal actions with them, they do express the political will of the member states of the UN, and are therefore of significant influence, an influence that is unfortunately dominated by an organisation that continues to derogate from the universal human right of freedom of religion.

9 Blasphemy, Multiculturalism and Free Speech in Modern Britain

Rumy Hasan[*]

BLASPHEMY BEFORE MULTICULTURALISM: "LIFE OF BRIAN" AND "THE MESSAGE" IN THE 1970S

In 1949, in the optimistic environment of post-war reconstruction and a peaceful future, a senior law lord, Lord Denning, succinctly gave the reason for the law on blasphemy, and why it was no longer relevant:

> The reason for the law [on blasphemy] was because it was thought that a denial of Christianity was liable to shake the fabric of society, which was itself founded upon Christian religion. There is no such danger to society now and the offence of blasphemy is a dead letter.[1]

In this chapter we explore whether Denning was correct or not, and proceed to argue that the issue has taken a turn which could not have been foreseen by judges and politicians some 70 years ago, as the ethnic and religious make-up of Britain has undergone enormous change, which would have a profound effect on views regarding blasphemy.

In retrospect, the attempts by some Christians to suppress the showing of Monty Python's *Life of Brian* in the late 1970s was a key marker in the fall of the blasphemy law in England and Wales, a law that was eventually repealed in 2008. Critics of the film argued that it was blasphemous as the main character, Brian, was apparently based on Jesus Christ. Accordingly, it was a breach of the law on blasphemy and so the film should be banned

* My thanks to Paul Cliteur and Tom Herrenberg for several helpful comments and corrections, including alerting me to the protests in London in 1938 by Muslims against H.G. Wells and to the *Handyside* case.

1 Cited in R. Webster, *A Brief History of Blasphemy* (Southwold: The Orwell Press, 1990), 24.

from being shown in cinemas and other public venues. In Britain, just as in other Western countries, the *raison d'être* of the law on blasphemy was to protect Christianity for reasons set out by Lord Denning. At least since the Enlightenment, a concerted effort had been made to push religion out of state institutions, and to a considerable extent this succeeded as religion largely became a private affair. Though the United Kingdom has never had an avowedly secular constitution in the manner of France, the role of religion has nevertheless declined sharply since the Second World War.

So even though Christianity—and the organised church—became a shadow of its former self, it was still shielded by the law, meaning that while one could renounce the faith, one could not lampoon, ridicule or satirise it. This contradictory position in an increasingly secular society inevitably gave rise to tensions, tensions which began to rise in the 1960s when Britain became a more prosperous society, so that there were many other channels to invest time and money in. Concomitant with rising living standards were attitudinal changes—in particular non-conformity, so that a challenge to orthodoxy and the establishment took hold among large swathes of the population, helped by the burgeoning mass media, especially television. Politicians, the monarchy, religion, the clergy, the military—pillars of the establishment—were subject to challenge and satire.

In this new libertarian climate, there was an unwritten understanding between religious leaders and civil society that a "low level" form of satire of Christianity was permissible and would not be curtailed through recourse to the blasphemy law. If, however, there was egregious or "high level" disrespect for Christianity and its prophet, then the threshold of tolerance would be breached and the wrath of the churches, backed by the law, would fall upon the perpetrators, or, more precisely, the blasphemers.

Monty Python's *Life of Brian* was a significant case of the threshold being breached. But, as Richard Webster, author of *A Brief History of Blasphemy* points out, it was rather a mild instance of blasphemy.[2] Indeed, after some cuts were made at the behest of the British Board of Film Classification (BBFC) the film received a certificate for general release. In other words, the film authority with de facto censorial powers did not deem it to have breached the law of blasphemy and so, on 8 November 1979, it was duly released in the UK. Despite this clearance, the film encountered resistance. Worried by its causing offence to Christians, many town and city councils banned local cinemas from screening it. It was also banned in other countries—in Ireland

2 Ibid., 27.

for 8 years and for one year in Norway.[3] The BBC and ITV resorted to self-censorship by refusing to show it.

Nevertheless, despite these bans, *Life of Brian* was distributed widely, and became the fourth highest grossing film of that year in the UK[4]—by this success the reactionary blasphemy law was robustly challenged. Though protests and pickets against the film by Christian groups took place in many venues where it was screened, the important point to note is that all forms of opposition to the film *were entirely peaceful*. While some Christians—perhaps the majority—would be offended by *Life of Brian*, there was no serious invocation of a right *not to be offended*.

This is not to say that the blasphemy law was a dead letter at the time. In 1977, two years before the controversy surrounding *Life of Brian*, a blasphemy case was filed against the magazine *Gay News* and proved the first successful prosecution on such grounds in England since 1922. The magazine's offence stemmed from its publication of a poem that portrayed Jesus Christ as the object of homosexual love. In *Monty Python: The Case Against*, Robert Hewison summarises the presiding judge's judgment:

> In earlier centuries, it was regarded as blasphemous simply to deny the existence of God, but this restriction on free thinking was gradually relaxed, provided that the denial was made in a decent and sober manner. "But what was still regarded as blasphemy…and is still regarded today…was an element of irreverence, scurrility, profanity, vilification or licentious abuse coupled with the Christian religion, or any sacred person, or any sacred object."[5]

An appeal was launched by the magazine, but the House of Lords upheld the guilty verdict. In his judgment, Lord Scarman argued that there is a case for the law on blasphemy to be extended "to protect the religious beliefs and feelings of non-Christians. The offence belongs in a group of criminal offences designed to safeguard the internal tranquillity of the kingdom… [There] is a duty on all of us to refrain from insulting or outraging the religious feelings of others."[6] Indeed, precisely these arguments were to

3 Channel 4, *The Secret Life of Brian*, 1 January 2007.

4 R. Sellers, "Welase Bwian", *The Guardian*, 28 March 2003, available at: http://www.theguardian.com/culture/2003/mar/28/artsfeatures1.

5 Cited in R. Hewson, *Monty Python: The Case Against* (London: Methuen, 1990 [1981]), 61.

6 Ibid., 66.

be made by ethnic minorities with respect to their religions in decades to come. *Prima facie*, this is logical: on the grounds of fairness and equality, if Christianity is protected by the law then so should other religions, especially considering that many non-Christians had settled in Britain. This presaged the reasoning of defenders of multiculturalism and multifaithism. Be that as it may, had parliament adhered to Scarman's recommendation, it would have been a severe blow to freedom of expression and a fillip to religious censors.

The case and guilty verdict attracted much opposition, especially from the arts world, and demands began to be made for the law on blasphemy to be repealed. This seemed to have helped to create a rather more favourable political climate for *Life of Brian* and perhaps contributed to the film being passed by the BBFC without major changes and to the Pythons not being sued.

Three years before *Life of Brian*, in 1976, the film *The Message* was released. This chronicled the life and times of Islam's prophet, Mohammed, and his followers. Even at a time when the Muslim population in the West was a small fraction of what it is today, there were hints concerning reactions to this film which foretold what would become the norm decades later. It was produced and directed by the Syrian-American Moustapha Al Akkad, who consulted Islamic clerics so as to demonstrate that he was being true to the faith. Accordingly, the film complied with orthodox Islamic views that the face of Mohammed should not be shown on screen, nor his voice heard. But while he received approval from Al Azhar University in Cairo, the film was opposed by the World Muslim League in Mecca. The film's original title was *Mohammed, Messenger of God* but, days before the film's opening in London, threatening telephone calls to the cinema forced Akkad to change the title to *The Message*, as it was thought by some Muslims that the prophet was portrayed in the film.[7]

Forty years ago, the relatively small Muslim population in Britain was not politically active in regard to Islam. Thus, notwithstanding the fact that the film was not widely distributed, there were no further protests or pickets against *The Message*, and filmgoers managed to see it like any other film. But problems encountered in the USA were on a different scale altogether, as Meena Jang of the *Hollywood Reporter* explains:

> In 1977, a group of twelve radical Hanafi Muslim terrorists orchestrated a raid in Washington D.C., taking over three separate buildings – the

7 "Muhamad film title changed after threats", *The Times*, 27 July 1976, 4.

B'nai B'rith National Headquarters, National Islamic Center and D.C. City Hall. They held roughly 150 people hostage over a two-day period from March 9-11. The uprising was planned in part as retaliation against the release of Filmco International Productions' film *Mohammad, Messenger of God* (later retitled *The Message: The Story of Islam*). [The] leader Hamaas Abdul Khaalis, publicly denounced the film and called for it to be destroyed, claiming it to be sacrilegious and "a fairytale about Mohammad". All claims were made under the false impression that Quinn played the role of Mohammad himself, which went against Muslim belief that any kind of representation of the Prophet should be condemned … [T]he Khaalis-led dissident group staged an uprising at three locations in Washington, killing 24-year-old WHUR radio reporter Maurice Williams and D.C. police officer Mack Cantrell (who died in the hospital days later after being shot on the scene) and injuring eleven hostages. The raid lasted for 39 hours with the terrorist group demanding that *Mohammad* be removed from theaters across the country, in addition to the government handing over a group of men responsible for the deaths of leader Hamaas Abdul Khaalis' relatives. The movie's distributor, Irwin Yablans Co., complied with the threats by cancelling *Mohammad*'s release. Akkad, convinced that the Black Muslims were unaware that the film had been made in abidance with their religious laws, even went as far as to offer "to destroy the film's negative if the gunmen viewed the film and objected to it," as reported by *The Hollywood Reporter* at the time.

Though only temporarily, the film was ultimately pulled from nine theaters in New York and Los Angeles in the wake of the attack for the safety of over 100 hostages, with no response from the Muslim group regarding Akkad's offer. The weekend following the two-day siege, the director made the decision to bring *Mohammad, Messenger of God* back to theaters, disregarding the Hanafi Muslims' previous demands. The $18 million budget film sold over 100 advance tickets from March 9-11 and grossed $53,605 in its premiere weekend in four major theaters in New York and Los Angeles (though a few theaters stood by their decision to not screen the film at all).

"Our plans to release *Mohammad* have not changed," Akkad told *THR* in 1977 upon choosing to resume the film's postponed run. "We cannot run our lives and businesses according to the wishes of terrorists." He

> further emphasized: "I am sure the terrorists never saw the picture they were protesting. The sensitive spot was the title and Anthony Quinn's role. They were very misinformed on what the picture is all about."[8]

These Black Muslim terrorists were an early incarnation of jihadist behaviour that would become so prevalent in the twenty-first century. What is revealing is the nature of their outrage, on the grounds of blasphemy: that a film caused offence by its title and the belief that the prophet was portrayed by an actor. The contrast between the protests concerning *Life of Brian* and *The Message* were astonishingly stark.

But we can aver that a hostile, violent response on the part of Muslims in the West to their religion or prophet being blasphemed against has been the norm. This is attested by a little known event that took place in London as far back as 1938, as reported upon by *The Manchester Guardian*:

> Mr H. G. Wells's "Short History of the World" was ceremoniously committed to the flames by a party of Indian Mohammedans today in the East End [of London] ... It is expected that about a thousand of them will go to the India Office next Thursday [The march duly took place on 18 August 1938][9], and there is a further proposal that they should also go to Mr Wells's house. The complaint is that in his text Mr Wells says of Mohammed: "He seems to have been a man compounded of…considerable vanity, greed, cunning, and self-deception, and quite sincere religious passion" The book also says that the Koran is certainly unworthy of its alleged divine authority.[10]

8 M. Jang, '"The Interview" isn't the first film pulled because of terror threats', *Hollywood Reporter*, 20 December 2014, available at: http://www.hollywoodreporter.com/news/interview-isnt-first-film-pulled-759701.

9 *Science and Society Picture Library*, 'Muslims marching through London', Image no. 10432407, available at: http://www.scienceandsociety.co.uk/results.asp?image=10432407.

10 "Mr Wells and Mohammed", *Manchester Guardian*, 13 August 1938, ProQuest Historical Newspapers, *The Guardian Observer*, 10.

During the 1980s, as immigrants from the former colonies largely became accepted as legitimate British citizens, there was an increasing sense that multiculturalism had taken root in Britain. The culmination of this thinking was the publication of The Parekh Report in 2000, whose foundational recommendation was that the government formally declare the United Kingdom to be a "multicultural society."[11] This was not, however, an epithet that was universally shared, and myriad events and facts regarding the demands made under this rubric would generate great concern. Here we discuss such concerns regarding the tension between blasphemy and freedom of expression in a supposedly multicultural society.

It was not a film but a book that was published some ten years after *Life of Brian* came out that, in Britain, saw a decisive shift in the manner of protest against a work that offended religious, specifically Muslim, sensibilities. The book in question was Salman Rushdie's *The Satanic Verses,* and events surrounding it would prove to be of world historic significance.[12] Soon after it was published in September 1988, threats against Rushdie and the publishers, Penguin Press, were made. By the beginning of 1989, Muslims in Bradford expressed such outrage that they organised a public burning of the book, like their co-religionists had done in 1938. In his autobiography, *Joseph Anton,* Rushdie quotes Heinrich Heine: "Where they burn books they will in the end burn people too."[13]

The protests went global and included attacks against bookshops—two in London were firebombed—publishers, and translators. Muslims who took offence, together with their supporters and sympathisers, wanted the book to be pulled on the grounds of blasphemy. Rushdie strongly disagreed with this and argued the need to explore religion as a form of political repression and as international terrorism—furthermore, that one should follow in the footsteps of the French Enlightenment thinkers who advocated blasphemy as a weapon, refusing to accept the power of the church to set limiting points on thought, and that religion is in fact the enemy of the intellect.[14]

11 B. Parekh (Chair), *The Future of Multi-Ethnic Britain (The Parekh Report)*, Report of the Commission on the Future of Multi-Ethnic Britain, The Runnymede Trust (London: Profile Books, 2000), 313.

12 See also ch. 6 of this volume.

13 S. Rushdie, *Joseph Anton: A Memoir* (London: Jonathan Cape, 2012), 129.

14 Ibid., 177.

14 February 1989 was the date of the infamous *fatwa* by the Iranian leader Ayatollah Khomeini, calling for the death of Rushdie and his publishers, which turbo-charged the protests. Though Khomeini was a Shia, the sectarian rivalry with Sunnis was largely forgotten as very few in the Islamic world and among Muslims in the West challenged his order for the assassination of a writer from another country. In Britain, there was a clarion call for the extension of the law on blasphemy to include Islam—and many politicians and other public figures buckled under the pressure of Muslim outrage that was backed up by violence and threats of violence, so agreed with this curtailment of freedom of expression. As a life-long man of the left and supporter of the Labour Party, Rushdie felt betrayed by Labour parliamentarians joining the ranks of these Muslims—and poignantly notes that "the true conservatives of Britain are now in the Labour Party, while the radicals are all in blue."[15] Rushdie wrote a letter to the left wing black Labour MP Bernie Grant to highlight the regressive stance that he and other leading lights of the left had taken:

> Dear Bernie Grant MP,
>
> "Burning books" you said in the House of Commons exactly one day after the fatwa, "is not a big issue for blacks." The objection to such practices, you claimed, were proof that "the whites wanted to impose their values on the world." I recall that many black leaders—Dr Martin Luther King, for example—were murdered for their ideas. To call forth the murder of a man for his ideas would therefore appear to the bewildered outsider to be a thing which a black Member of Parliament might find horrifying. Yet you do not object. You represent, sir, the unacceptable face of multiculturalism, its deformation into an ideology of cultural relativism. Cultural relativism is the death of ethical thought, supporting the right of tyrannical priests to tyrannise, of despotic parents to mutilate their daughters, of bigoted individuals to hate homosexuals, and Jews, because it is part of their "culture" to do so.[16]

Rushdie is prescient in attacking Grant on the basis of his support for multiculturalism and, *ipso facto,* abandonment of universal principles.

15 Ibid., 131.

16 Ibid., 187.

As large numbers of immigrants settled in Britain after the Second World War—overwhelmingly ethnic minorities from the former colonies—there was a gradual conflation of race/ethnicity with culture and religion. Just as it became unacceptable to espouse openly racist views, so this also became the case with respect to the culture and religion of the new settlers; in other words, culture and religion became subsumed within the discourse of race and ethnicity. The corollary to this was, in line with legislation that outlawed racist practices, as under the Race Relations Acts, so must legislation also outlaw insults and offence to the cultural and religious beliefs and practices of ethnic minorities. Respect for and recognition of the culture and religion of ethnic minorities is central to the multicultural doctrine;[17] causing offence therefore causes misrecognition and is unambiguously tantamount to inflicting harm. It was this reasoning that was adopted and internalised by so many in regard to *The Satanic Verses*, and it was the slippery road to the extension of blasphemy laws. Paul Cliteur provides an incisive analysis of the failings of two leading, avowedly liberal philosophers in this regard: Charles Taylor and Michael Dummett.[18]

In the clash between freedom of expression and ethnic minority sensibilities, the former tended to give way to the latter. Whereas the response of "progressives" in the 1970s was to support Monty Python's right to artistic expression, sending the message that it decisively trumped Christian sensibilities, for perhaps the majority within this grouping precisely the reverse was the case with regard to Rushdie and Muslims.

Even prior to the *Satanic Verses* affair, in accordance with the multicultural principle of not causing offence and misrecognition, there was little by way of satire or criticism of ethnic minorities. But the affair indubitably proceeded to have an extremely chilling effect on freedom of expression when it concerned Islam and Muslims. Whilst television programmes such as Channel 4's *Spitting Image* continued mercilessly to lampoon the Pope and Archbishop of Canterbury, in stark contrast, even the merest hint of satirising Islam became a taboo after the fatwa. In fairness, given the violent, menacing opposition that would inevitably follow those brave (some might say, foolish) enough to lampoon or criticise Islam and Muslims, it was hardly surprising that no one raised their head above the parapet. Hence, in regard to Islam, Britain had acquired, through extra-parliamentary and extra-judicial means, a de facto blasphemy law as self-censorship became

17 See R. Hasan, *Multiculturalism: Some Inconvenient Truths* (London: Politicos, 2010), ch. 1.

18 P. Cliteur, 'Taylor and Dummett on the Rushdie Affair', *Journal of Religion and Society* 18 (2016) 1-25.

the default position in the media, the arts and academia. This has largely remained the case until the present day—*The Guardian*, for example, in January 2016 decided to curb comments on certain pieces as was elaborated upon by the website Islam Surveyed:

> Certain subjects—race, immigration and Islam in particular—attract an unacceptable level of toxic commentary, believes Mary Hamilton, our executive editor, audience. "The overwhelming majority of these comments tend towards racism, abuse of vulnerable subjects, author abuse and trolling, and the resulting conversations below the line bring very little value but cause consternation and concern among both our readers and our journalists," she said last week. As a result, it had been decided that comments would not be opened on pieces on those three topics unless the moderators knew they had the capacity to support the conversation and that they believed a positive debate was possible.[19]

These are nothing short of feeble excuses for blatant suppression of free speech—ironic given that the *Guardian* describes its comment section as "Comment is Free"; indeed, their censorial stance could be based on the grounds of the offence of blasphemy.

Contrasting responses to two "blasphemous" plays: "Behzti" and "Jerry Springer: The Opera"

It was not only Muslims who stamped out any slight to their religion. In December 2004, sections of the British Sikh community resorted to precisely the same means as Muslims had become accustomed to doing. The focus of Sikh rage was a play, *Behzti* ("dishonour" in Punjabi) written by a British Sikh playwright by the name of Gurpreet Kaur Bhatti and set in a gurdwara (Sikh temple). On the opening night of the performance, on 18 December, hundreds of Sikh protestors attacked the Birmingham Repertory Theatre and "800 people were evacuated, security guards were attacked, a foyer door was destroyed, windows were broken in a restaurant and demonstrators entered back stage and smashed equipment." Mohan Singh, a local Sikh community

19 Islam Surveyed, 'Reader's don't matter – at *The Guardian*', February 2016., available at: https://islamsurveyed.files.wordpress.com/2016/02/readersdontmatter-attheguardian.pdf.

leader, pithily provided the rationale for this mayhem: "When they're doing a play about a Sikh priest raping somebody inside a gurdwara, would any religion take it?"[20] In other words, Mr Singh was suggesting that the violent conduct of the protestors was entirely justified and, moreover, would be the sort of action adherents to other religions under similar circumstances would also resort to.

The Roman Catholic Archbishop of Birmingham, the Most Reverend Vincent Nichols, offered support to the Sikh community at large on the basis of a classic reason for the law on blasphemy: "Such a deliberate, even if fictional, violation of the sacred place of the Sikh religion demeans the sacred places of every religion."[21] The theatre's management stated that short of "blatant censorship" and cancelling the production, it could not have done more to appease the Sikh community.[22] But, after discussions with members of the Sikh community—who demanded that the play not be set in a gurdwara—and the Commission for Racial Equality, the theatre management, fearful of more mob violence, pulled the play after 3 nights, and Bhatti went into hiding after receiving death threats.

This was nothing short of censorship by acts of violence on the grounds of blasphemy, and it outraged many of the leading lights of the British arts community, some 700 of whom wrote an open letter stating that:

> It is a legitimate function of art to provoke debate and sometimes to express controversial ideas…Those who use violent means to silence it must be vigorously opposed and challenged. We all have the right to protest peacefully if a work of art offends us. We do not have the right to use violence and intimidation to prevent that work of art from being seen by others. To verbally and physically threaten a writer, audience members, performers and theatre staff is unacceptable. To attempt to censor a play because some incidents in it would thereby be rendered less offensive to some people if they were set elsewhere

20 BBC News, 'Theatre stormed in Sikh protest', 19 December 2004, available at: http://news.bbc.co.uk/1/hi/england/west_midlands/4107437.stm.

21 Ibid.

22 BBC News, "Theatre attacks Sikh play protest", 19 December 2004, available at: http://news.bbc.co.uk/1/hi/england/west_midlands/4109315.stm.

is unacceptable. To stop the production of a work of art by means of force and continued threats of force is unacceptable.[23]

Sikhs in Britain had demonstrated the same intolerance of any slight to their faith as Muslims, and the unmistakeable reality was that the offence of blasphemy became a de facto crime against the religions of ethnic minorities, enforced by threats and acts of violence. This was a sobering reality whose effect was to act as a disincentive to any aspiring writer or artist who dared to satirise the culture and religion of ethnic minorities. Interestingly, many of those who had attacked Rushdie over *The Satanic Verses* kept quiet, but this may not have been because of principle. Whereas Rushdie's novel had a global impact, with the head of another state issuing a licence to kill, the *Behzti* affair was much more local in scope and of much shorter duration. There are relatively few Sikhs compared to the number of Muslims and no Sikh leader or priest issued a fatwa from India calling for the murder of Bhatti, and nor were there large protests anywhere else.

In the month after *Behzti* was pulled, another play aroused great controversy: *Jerry Springer: The Opera*, a satire on the American talk host's long-running programme. It was broadcast by the BBC in January 2005 and elicited a record number of complaints—55,000—and the evangelical group Christian Voice led protests against the screening outside 9 BBC offices. The Christian Institute attempted to bring a private prosecution, but this was rejected by the Magistrates' Court, a decision upheld by the High Court of Justice. During the play's tour around the UK, there were regular protests outside theatres at which it was performed, including the singing of hymns and handing out of leaflets.[24]

Many Christians thought the play was blasphemous. Christian Voice attempted to prosecute the BBC's Director General on the ground that the show was "an offensive, spiteful, systematic mockery and wilful denigration of Christian belief" and argued that the show "clearly crossed the blasphemy threshold." This was unsuccessful, as two High Court judges ruled that the programme could not be considered as blasphemous "in context." "As a whole [it] was not and could not reasonably be regarded as aimed at, or an

23 Cited in T. Branigan, "Stars sign letter in support of playwright in hiding", *Guardian,* 23 December 2004, available at: http://www.theguardian.com/uk/2004/dec/23/arts.religion.

24 BBC News, 'Springer tour faces new protests', 26 January 2006, available at: http://news.bbc.co.uk/1/hi/entertainment/4640588.stm.

attack on Christianity or what Christians held sacred," the judges said in their ruling.[25]

Two important conclusions can be drawn. First, all the protests against *Jerry Springer: The Opera* were entirely peaceful—there were no recorded instances of threats or acts of violence against those involved with the play. The playwrights, Richard Thomas and Stewart Lee, did not receive death threats and go into hiding; no theatre was smashed up by violent demonstrators determined to stop it from being performed. Second, neither the BBC nor any theatre designated to show the play bowed to the protestors: all took the principled stance that freedom of expression trumps that of offence taken by groups of people believing their religions to have been blasphemed against by fictional works of art. By so doing, attempts at censorship failed and freedom of expression was assured. The contrast with protests against *Behzti* was striking and profound. It is, however, revealing that *Behzti* was never commissioned by the BBC or any other broadcaster for either television or radio—clearly a double standard was at play. Such a double standard was best explained by former Director General of the BBC, Mark Thompson, when he argued: "Without question, 'I complain in the strongest possible terms', is different from, 'I complain in the strongest possible terms and I am loading my AK47 as I write.'"[26]

The compelling conclusion is the profoundly contrasting approaches to perceived blasphemy by Muslims and Sikhs on the one hand, and by Christians on the other. The former have been intolerant, fanatical and violent, the latter peaceful, tolerant and educative in approach. What explains this? The roots of this sharp distinction, we can argue, lie in the pre-Enlightenment societies from which ethnic minority immigrants hail, contrasted with a society which is at its core a product of the Enlightenment, one in which religion has largely been confined to the private sphere. From this understanding, the manner of protests by Muslims and Sikhs in Britain is entirely in keeping with how it is conducted in Pakistan, India and Bangladesh.

25 C. Tryhorn, 'Springer opera not blasphemous, court rules', *The Guardian*, 5 December 2007, available at: http://www.theguardian.com/media/2007/dec/05/independentproductioncompanies.bbc.

26 "Mark Thompson: BBC director general admits Christianity gets tougher treatment', 27 February 2012, available at: http://www.telegraph.co.uk/culture/tvandradio/bbc/9107689/Mark-Thompson-BBC-director-general-admits-Christianity-gets-tougher-treatment.html.

Importantly, however, in the multicultural discourse, migrants were not asked to conform to the norms and mores of their host society, but rather, the indigenous white society was required to show tolerance and respect for their (the migrants') cultures and religions. Hence, exceptions to such norms and mores became the new norm—otherwise this would be demonstrable disrespect and misrecognition and necessarily a grievous harm to their very being; akin to racism, which had long been outlawed.

There was the recognition that for ethnic minorities, religion and religious identity was of far greater significance than for the largely and increasingly irreligious white British society, hence the view that tolerance by the latter to the former necessitated refraining from criticising or satirising their culture and religion and attendant beliefs and practices. This resulted in tolerance on the part of the white host society for ethnic minority immigrants and intolerance on the part of ethnic minorities for anything that slighted their identity. This blatant breach of universalism was to be a crucial factor in the increasing alienation of indigenous whites to the intolerant views of settlers, as evidenced in *The Satanic Verses* and *Behzti* affairs.

LAW ON INCITEMENT OF RELIGIOUS HATRED AND THE REPEAL OF THE LAW ON BLASPHEMY

During the 1990s, pressure had been mounting on the government to tackle the demands from ethnic minorities to protect their religions from satire and ridicule. After 9/11, the Labour government was concerned about a possible backlash against Muslims; contemporaneously, Muslim groups began campaigning to extend the blasphemy law to cover Islam in order to curb perceived "Islamophobia." Proponents of this demand used the outcome of a case against the leader of the far right British National Party, Nick Griffin, to intensify their efforts. Griffin had been arrested in 2004 for describing Islam as a "wicked, vicious faith," but was cleared of inciting racial hatred on the defence of freedom of expression and for the fact that Islam is not a race or ethnicity. Following the acquittal, former Chancellor Gordon Brown stated

> I think any preaching of religious or racial hatred will offend mainstream opinion in this country and I think we've got to do whatever we can

> to root it out from whatever quarter it comes. And if that means we've got to look at the laws again I think we will have to do so.[27]

Such new legislation would be politically expedient to Labour given that it invariably receives the bulk of the Muslim vote.[28] Indeed, Labour has come to rely on a de facto "Muslim bloc vote" to win these constituencies.

The options for the Labour government were either to extend the law on blasphemy to cover other religions or to introduce amendments to existing legislation that would act as de facto blasphemy provisions. However, given the decades long pressure to rescind the blasphemy law, the former remedy was felt to be politically unfeasible in the context of the sharply declining role of religion in mainstream society. Accordingly, in its 2005 general election manifesto, the Labour Party promised to introduce a Bill designed to outlaw "incitement to religious hatred":

> It remains our firm intention to give people of all faiths the same protection against incitement to hatred on the basis of their religion. We will legislate to outlaw it and will continue the dialogue we started with faith groups from all backgrounds about how best to balance protection, tolerance and free speech.[29]

The reference to "people of all faiths" is a clear statement of Labour's view that Britain is not only a multicultural society but has been transformed into a "multifaith" society. Accordingly, the role of religion was given—without serious consideration, let alone debate—a decisive importance in the makeup of national identity. Furthermore, euphemistic language is used: dialogue with faith groups and taking account of "protection" and "tolerance" (of religious beliefs) necessarily implies curbing freedom of speech. This is what came to pass after Labour won the 2005 election and drafted the promised Bill, which was duly passed by Parliament. The result was the Racial and Religious Hatred Act 2006 which came into force on 1 October 2007. It

27 BBC News, 'BNP leader cleared of race hate', 10 November 2006, available at: http://news.bbc.co.uk/1/hi/england/bradford/6135060.stm.

28 Voting data on the basis of religion is not collated but this is an accurate statement given that Labour has, for decades, won elections in constituencies with a high percentage of Bangladeshis and Pakistanis, who are overwhelmingly Muslim.

29 Labour Party Manifesto, *Britain Forward Not Back*, 2005, available at: http://ucrel.lancs.ac.uk/wmatrix/tutorial/labour%20manifesto%202005.pdf, 111–112.

creates an offence in England and Wales of inciting hatred against a person on the grounds of their religion.

The Act defines religious hatred as "hatred against a group of persons defined by reference to religious belief or lack of religious belief." "[A]cts intended to stir up religious hatred" include "use of words or behaviour or display of written material." The key section of the Act is 29B (1): "A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he *intends* thereby to stir up religious hatred" [italics added by RH]. The insertion of "intends" arose because of protests against the Bill, especially by some of the leading figures in the arts community, who argued that the law would severely curtail freedom of expression. Defenders of the legislation countered this by asserting that this would not be the case, given that the threshold at which religious offence became incitement would be high. They also pointed to section 29J, which provides protection for freedom of expression:

> Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

To a significant extent, sections 29B (1) and 29J are in conflict. Certainly, "ridicule, insult, and abuse" of a religion has long been deemed by advocates of blasphemy legislation to be tantamount to hatred—and indeed ethnic minorities, with a history of displaying intolerance to any slight to their religions will view it as such. To my mind, legislators were aware of this fact but nevertheless pushed ahead with the Bill as the fulfilment of a manifesto commitment and the appeasement, above all, of the Muslim community. The Act is, in fact, the extension of "race" to include "religion," which explains why it is termed the Racial and Religious Hatred Act—a product of the mindset that had become embedded under multiculturalism.

Contrary to what critics of the Act might have expected, there have been few instances of recourse to this Act since it came into force, and when it has been invoked claims under it have not been successful. A well known case is that of the Christian hoteliers. A devout Christian couple, Ben and Sharon Vogelenzang, were charged with insulting a Muslim guest because

of her religion. The victim, Mrs Tazi, "claimed the couple became enraged when she wore a *hijab* on her last day and accused Mr Vogelenzang, 53, of asking her if she was a murderer and a terrorist. She also told the court Mr Vogelenzang called the Prophet Muhammad a murderer and a warlord and likened him to Saddam Hussein and Hitler." Though the couple denied this version of events, "Mr Vogelenzang admitted that his wife may have referred to the *hijab* as a form of bondage." Although the Crown Prosecution Service (CPS) was satisfied there had been sufficient evidence for a successful prosecution, the judge dismissed the case on the grounds that the evidence against the hoteliers was "inconsistent."[30]

The case did, however, send the signal that the CPS was willing to invoke the Racial and Religious Hatred Act, and so despite its failure to achieve a conviction, a cautionary approach is likely to have been taken in society at large, not least in the arts and political communities.

A similar case to that of the hoteliers arose in Northern Ireland (where the Act does not apply), but with a much clearer outcome. An evangelical preacher, James McConnell, was charged with calling Islam "satanic" and "heathen" and a "doctrine spawned in hell" in a sermon he gave in August 2015. But the case failed as "the judge hearing the case, said it was 'not the task of the criminal law to censor offensive utterances…The courts need to be very careful not to criticise speech which, however contemptible, is no more than offensive…Accordingly, I find Pastor McConnell not guilty of both charges.' The right to freedom of expression 'includes the right to say things or express opinions that offend, shock or disturb the state or any section of the population,' he said."[31]

The interesting point about the McConnell case is that the judge's defence of freedom of expression stems directly from Resolution 1510 passed in 2006 by the Parliamentary Assembly of the Council of Europe (PACE), whose article 1 stipulates:[32]

30 BBC News, 'Christian hoteliers cleared in Muslim woman abuse row', 9 December 2009, available at: http://news.bbc.co.uk/1/hi/england/merseyside/8404212.stm.

31 H. Sherwood, 'Pastor who said Islam was "doctrine spawned in hell" is cleared by court', 5 January 2016, available at: http://www.theguardian.com/world/2016/jan/05/pastor-who-said-islam-was-doctrine-spawned-in-hell-is-cleared-by-court.

32 This resolution was, itself, derived from the *Handyside* case. See European Court of Human Rights, *Handyside v. The United Kingdom*, 7 December 1976.

> The Parliamentary Assembly of the Council of Europe reaffirms that there cannot be a democratic society without the fundamental right to freedom of expression. The progress of society and the development of every individual depend on the possibility of receiving and imparting information and ideas. This freedom is not only applicable to expressions that are favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of the population, in accordance with Article 10 of the European Convention on Human Rights.[33]

A further point of note regarding this case is whether the claim would have reached the threshold of the Racial and Religious Hatred Act; if so, then the Act is in obvious breach of the above resolution. A surprising aspect of the case is that an imam from London, Muhammad Al Hussaini, defended the verdict, arguing that the judiciary should not criminalise speech, "however distressing it might be," unless it provokes violence, and that it is now "time for reflection on the kind of language that would be appropriate for ministers of religion like myself - Muslim, Jewish and Christian ministers."[34] This is a very rare instance of a Muslim leader who, rather than calling for the protection of Islam against blasphemy and invoking the multiculturalist defence of misrecognition and harm, instead defends freedom of expression. But his stance is not likely to be welcomed by imams at large, or other Muslim leaders in Britain. An example of this is the Muslim Action Forum (MAF) which is attempting to bring about a new blasphemy law, as was made clear in a press release on 8 February 2015:

> Muslim Action Forum (MAF) has devised a legal strategy to prevent the continuous insulting and derogatory publications depicting and abusing the personality of our Holy Prophet Muhammad peace be upon Him. This strategy and campaign will have taken its first historical step by presenting a petition supported by over 100 000 signatures of Muslims promoting the concept of Global Civility and

33 Parliamentary Assembly of the Council of Europe [PACE] (2006) 'Resolution 1510: Freedom of expression and respect for religious beliefs', available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17457&lang=en.

34 BBC News, 'Pastor James McConnell: Imam welcomes court ruling', 6 January 2016, available at: http://www.bbc.co.uk/news/uk-northern-ireland-35241555.

> condemning the continuous publication of these insulting cartoons in France and other parts of the world.
>
> MAF intends to launch a series of legal challenges in the English Court system to establish that such depictions of our Holy Prophet peace be upon Him is the worst kind of 'Hate Crime' that can be perpetrated on the 3 million Muslims in the UK and 1.7 billion Muslims worldwide. We shall support this strategy through amendment of some existing legislation and the presentation of a Private Members Bill that promotes this idea of Global Civility.[35]

The defence of "global civility" adds to the lexicon of reasons for curbing freedom of expression in a multifaith society in which the minimum requirement is not to give offence to adherents to religions.

In 2008, MPs voted to support the abolition of the law on blasphemy in an amendment to the Criminal Justice and Immigration Bill. Maria Eagle, the junior justice minister, made the reasons clear in the debate: "These offences have now largely fallen into disuse and therefore run the risk of bringing the law into disrepute. Given that these laws protect only the tenets of the Christian Churches, they would appear to be plainly discriminatory."[36] Recognising this to be true, the Churches did not voice opposition, so the bill passed without any rancour—now making all religions equal before the law and confining the offence of blasphemy to the history books.

Also, in Northern Ireland, a play satirising the Bible by The Reduced Shakespeare Company entitled *The Bible: The Complete Word of God (Abridged)* was banned by a council because it was deemed to be blasphemous. But after a campaign against the ban by other councillors, local artists, comedians, writers and Amnesty International, the council, rather than seeking recourse to legal action, reversed its decision.[37]

35 Muslim Action Forum, Press Release, 8 February 2015, available at: http://www.muslimactionforum.com/Press_Release_8thFeb.pdf.

36 M. Beckford, "Blasphemy laws are lifted'" *The Telegraph,* 10 May 2008, available at: http://www.telegraph.co.uk/news/1942668/Blasphemy-laws-are-lifted.html.

37 H. McDonald, 'The Bible – the show goes on in Belfast', *The Guardian,* 29 January 2014, available at: http://www.theguardian.com/uk-news/2014/jan/29/the-bible-reduced-shakespeare-company-belfast.

UNIVERSITIES, "SAFE SPACES," AND CENSORSHIP

In recent years in Britain, universities have adopted the principle of "safe spaces" on campuses, an idea and practice taken from American universities where it was applied initially to protect lesbian, gay, bisexual and transgender (LGBT) students from harassment and violence—and then applied to all students. In Britain, safe spaces are designed to provide a safe, protective campus environment to vulnerable students in particular, in the main, ethnic-religious minorities and LGBT students. It is policed by the students' unions and entails "no-platforming" of speakers who are deemed a threat to such supposedly vulnerable students. The origins of the no-platform policy lie in preventing known fascists from speaking on campus; but the bans have spread to various other categories of speakers, and this has aroused increasing disquiet and controversy. A recent case is that of the well-known academic and feminist Germaine Greer, who was prevented from speaking at Cardiff University in the autumn of 2015 on the grounds that she is hostile to transsexuals.[38]

In regard to religion, students' unions, led by the National Union of Students, operate a policy of preventing what they consider to be offensive and disturbing—in effect, blasphemous—to the religions of ethnic minority students. As in the wider society, this particularly applies to Islam. Three examples illustrate the policy at work. The first occurred in October 2013, at the LSE Freshers' Fair, at which the Students' Union, supported by a representative of LSE's legal and compliance team and its head of security, forced two members of the LSE Atheist, Secularist and Humanist Society to remove their "Jesus and Mo" T-shirts (which depict, in cartoon form, Jesus Christ and the prophet Mohammed) on the ground that this created "an offensive atmosphere" and could constitute "harassment" of Muslim (but not Christian) students.[39] This reasoning implied that such "harassment" was deemed to be "Islamophobic" but, interestingly, not "Christophobic." After vigorous campaigning and threat of legal action, the Director of the

38 A. Andrew, "Is free speech in British universities under threat?", *Observer*, 24 January 2016, available at: http://www.theguardian.com/world/2016/jan/24/safe-spaces-universities-no-platform-free-speech-rhodes.

39 T. Mendelsohn, 'Sanctimonious little prigs': Richard Dawkins wades into row as LSE atheist society 'banned from wearing satirical Jesus and Prophet Mohamed T-shirts', *The Independent*, 7 October 2013, available at: http://www.independent.co.uk/student/news/sanctimonious-little-prigs-richard-dawkins-wades-into-row-as-lse-atheist-society-banned-from-wearing-8864618.html.

LSE, who had supported the action by the Students' Union, apologised to the two students; but the Students' Union refused to do so.[40]

The second example concerns the attempts to silence the ex-Muslim campaigner Maryam Namazie from speaking at Warwick University in September 2015. The Students' Union initially barred her from speaking at an event organised by the Warwick Atheist Secularist and Humanist Society due to fears that her speech would "incite hatred" against Muslim students. The Union's reasons for censorship were the familiar ones found in the safe space, multiculturalist discourse: "after researching both [Ms Namazie] and her organisation, a number of flags have been raised. We have a duty of care to conduct a risk assessment for each speaker who wishes to come to campus." According to the Union, the articles written by Ms Namazie showed that she was "highly inflammatory" and "could incite hatred on campus."[41] But, after public pressure, Warwick's Students' Union rescinded the ban and allowed Namazie to speak and, unlike the LSE's Students' Union, offered a full apology for its censorial action, basing it on a procedural breakdown.[42]

The third example again concerns Maryam Namazie. She was invited to speak at Goldsmiths College, London, in December 2015, by the college's Atheist Secular and Humanist Society (ASH). Whilst giving her talk on Islam and apostasy, members of the Goldsmiths Islamic Society (ISoc) who attended the event resorted to heckling, abuse and interruptions. As Namazie explains: "After my talk began, ISOC 'brothers' started coming into the room, repeatedly banging the door, falling on the floor, heckling me, playing on their phones, shouting out, and creating a climate of intimidation in order to try and prevent me from speaking."

ISoc claimed that they had asked Goldsmiths ASH Society not to invite Namazie on the grounds that she was "a notorious Islamophobe" and that "the university should be a safe space for all our students. Islamophobic

40 National Secular Society, "NSS welcomes LSE apology over Jesus & Mo debacle', 19 December 2013, available at: http://www.secularism.org.uk/news/2013/12/victory-for-free-expression-as-lse-issue-public-apology-over-jesus-and-mo-controversy.

41 S. Sandhu, "Maryam Namazie: Secular activist barred from speaking at a student union event due to fears her speech would "incite hatred" against Muslim students', *Independent*, 25 September 2015, available at: http://www.independent.co.uk/news/uk/home-news/maryam-namazie-secular-activist-barred-from-speaking-at-warwick-university-over-fears-of-inciting-10517296.html-0.

42 S. Gilbert, 'Ex-Muslim speaker's Warwick University ban overturned following public pressure', *Coventry Telegraph*, 27 September 2015, available at: http://www.coventrytelegraph.net/news/coventry-news/ex-muslim-speakers-warwick-university-10145068.

views like those propagated by Namazie create a climate of hatred and bigotry towards Muslim students."[43]

What is curious and somewhat disturbing about the Goldsmiths case is that the college's Feminist and LGBQT Societies, rather than supporting Namazie—a defender of women's and gay rights—condemned her and expressed solidarity with the misogynistic and homophobic Islamic Society. The former issued the following statement: "Goldsmiths Feminist Society stands in solidarity with Goldsmiths Islamic Society. We support them in condemning the actions of the Atheist, Secularist and Humanist Society and agree that hosting known Islamophobes at our university creates a climate of hatred."[44] This astonishing position by two self-styled "progressive" societies is likely to be typical of that obtaining in British universities in general. Hence, under the umbrella of "safe spaces," Islamic Societies are aggressively demanding censorship of speakers who are critical of Islam, and are being assisted in this regressive stance by societies who should be championing freedom of expression and freedom from oppression. It is indubitably the case that the hold of multicultural thinking has fully permeated the ranks of institutions that should be at the forefront of critical thinking and debate. Joana Williams forcefully argues that this conformist approach is contrary to the aims of evaluating existing knowledge, and of proposing new knowledge, and so is harmful to learning.[45]

The unholy alliance between Islamists, students' unions, and feminist and gay rights groups to suppress free speech in universities is, in effect, similar to the effort by the 57-nation Organisation of Islamic Countries (OIC) to pass a non-binding resolution at the UN against the defamation of religion.[46] The

43 A. Ali, 'Muslim students from Goldsmiths University's Islamic Society 'heckle and aggressively interrupt' Maryam Namazie talk', *The Independent*, 4 December 2015, available at: http://www.independent.co.uk/student/news/muslim-students-from-goldsmiths-university-s-islamic-society-heckle-and-aggressively-interrupt-a6760306.html.

44 A. Andrew, "Is free speech in British universities under threat?", *Observer,* 24 January 2016, available at: http://www.theguardian.com/world/2016/jan/24/safe-spaces-universities-no-platform-free-speech-rhodes.

45 See J. Williams, *Academic Freedom in an Age of Conformity: Confronting the Fear of Knowledge* (Houndmills, Basingstoke: Palgrave Macmillan, 2016).

46 See for a discussion R. Hasan, 'Muslim identity, psychic detachment, and universal rights', in A. Carling A (ed.), *The Social Equality of Religion or Belief: A New View of Religion's Place in Society* (Houndmills, Basingstoke: Palgrave Macmillan, 2016), 137-149.

OIC opposes two articles (18 and 19) of the Universal Declaration of Human Rights which directly conflict with Sharia law in all its variants:

> Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance;
>
> Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[47]

A further point worth highlighting is that in contrast to Amnesty International's principled opposition to the banning of the play *The Bible: The Complete Word of God (Abridged)*, Amnesty has never publicly offered support to those satirising or critiquing Islam as in the above three instances, nor has it provided an explanation for this double standard. One surmises that this is because of its multicultural sensitivities whereby offence caused to ethnic minorities always trumps offence caused to the majority white population.

THE MEDIA AND SELECTIVE SELF-CENSORSHIP

The situation is little better in the media, where there is a long history of selective self-censorship. The most graphic example of this was the refusal by any mainstream media outlet to publish or show the Danish cartoons when the controversy exploded in 2005. Similarly, most did not show the front page of the special issue of *Charlie Hebdo* after the murderous attacks on its staff and offices in Paris in January 2015 (with a sorrowful Mohammad holding a banner "Je Suis Charie"). The same applies to the *Jesus and Mo* cartoons: whilst "Jesus" is happily shown, "Mo" is not. Muslims argue that Islam does not permit any representation of the prophet Mohammad, an injunction with which much of the media meekly complies so as not to cause offence. To paraphrase Samuel Johnson, "taking offence is now the first

47 Universal Declaration of Human Rights (1948), available at: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

refuge of the censor"—but the offence taken by some, especially Muslims and ethnic minority adherents to other religions, is clearly given more serious consideration than offence taken by white Christians.

CONCLUDING REMARKS

Despite the law on blasphemy being repealed, and actions under the Racial and Religious Hatred Act having largely failed, the threat of censorship on the grounds of blasphemy remains. Where such censorship does take place, as in the examples above, it is only through campaigning in combination with publicity that banning orders are reversed. This is indicative of the fact that the authorities and other important organisations concerned—that is, national and local governments, as well as the mainstream media and university bodies—have not taken a principled stand in defence of freedom of expression. Rather, the reflex position is to censor works that are thought to blaspheme the religions of ethnic minorities. In this, they not only fail robustly to comply with the PACE Resolution 1510 cited above, but they dismiss timeless principles set out long ago by Voltaire and John Stuart Mill. In a famous remark attributed to him by his biographer, Evelyn Beatrice Hall, Voltaire set the true test for freedom of expression: "I disapprove of what you say, but I will defend to the death your right to say it." In *On Liberty* Mill firmly rebukes opponents of "free discussion" and lays down a clear principle that free societies should adopt:

> Strange it is that men should admit the argument for free discussion, but object to their being 'pushed to an extreme'; not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility, when they acknowledge that there should be free discussion on all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it so *certain*, that is, because *they are certain* that it is certain.[48]

Given the present reality, it is not unduly surprising to find that at the end of 2013, writer and Python Michael Palin lamented on BBC Radio 4: "religion

48 J.S. Mill, *On Liberty and Other Essays* (Oxford: Oxford University Press, 2008 (1859)), 29.

is more difficult to talk about. I don't think we could do *Life of Brian* any more. A parody of Islam would be even harder."[49] In other words, to all intents and purposes, the offence of blasphemy still exists. To return to the situation of four decades ago, that is, before society adopted the suffocating strictures of multiculturalism, will require courage and determination on the part of the artistic community, with support from politicians—and the mainstream media and the academy will need to join in this supremely important endeavour.

49 A. Glennie, 'You can't parody Islam, says Palin: Monty Python star believes religious sensitivities have increased so much it would be impossible to make Life of Brian today', *The Daily Mail*, 30 December 2013, available at: http://www.dailymail.co.uk/news/article-2530920/You-parody-Islam-says-Palin-Monty-Python-star-believes-religious-sensitivities-increased-impossible-make-Life-Brian-today.html#ixzz42L0V41fU.

Bibliography

Abdel-Samad, Hamed, *Der Untergang der islamischen Welt: Eine Prognose*, Droemer Verlag, Munich 2010.

Abdel-Samad, Hamed, *Krieg oder Frieden: die Arabische Revolution und die Zukunft des Westens*, Droemer Verlag, Munich 2011.

Abdel-Samad, Hamed, *Der Islamische Faschismus: Eine Analyse*, Droemer Verlag, Munich 2014.

Abdel-Samad, Hamed, *Islamic Fascism*, Prometheus Books, Amherst New York 2016.

Abspoel, Jan Jacobus, *Studenten, moordenaars en ander volk. Kritische kanttekeningen van een officier van justitie*, L.J. Veen, Ede 1979.

Acton, Lord (John Emerich Edward Dalberg-Acton), "Letter to Bishop Creighton" (5 April 1887), in J.N. Figgis and R.V. Laurence (eds.), *Historical Essays and Studies*, Macmillan, London 1907.

Alexander, Isabella, *Copyright Law and the Public Interest in the Nineteenth Century*, Hart Publishing, Oxford 2010.

Ameli, Saied Reza, "The Organisation of Islamic Conference: accountability and civil society," in Jan Aart Scholte (ed.), *Building Global Democracy?: Civil Society and Accountable Global Governance*, Cambridge University Press, Cambridge 2011.

An-Na'im, Abdullahi, *Islam and the Secular State: Negotiating the Future of Shari'a*, Harvard University Press, Cambridge Mass./London 2008.

Appignanesi, Lisa & Maitland, Sara (eds.), *The Rushdie File*, Syracuse University Press, Syracuse New York 1990.

Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil*, revised and enlarged edn., Penguin Books, Harmondsworth 1992.

Attali, Jacques, et al., *Nous sommes Charlie: 60 Écrivains unis pour la liberté d'expression*, Les Livre de Poche, Paris 2015.

B., Mohammed, "Open brief aan Hirshi Ali," in Ermute Klein (trans.), *Jihad. Strijders en strijdsters voor Allah*, Uitgeverij Byblos, Amsterdam 2005.

Badawi, Raif, *1000 Peitschenhiebe weil ich sage, was ich denke*, aus dem Arabischen von Sandra Hetzl, Ullstein, Berlin 2015.
Baelde, M.R., *Studiën over Godsdienstdelicten*, Martinus Nijhoff, The Hague 1935.
Baehr, P.R., "Hoe universeel zijn mensenrechten", in *Civis Mundi*, Universaliteit van mensenrechten, 32 (1993).
Baker, John, *The Oxford History of the Laws of England, Volume VI: 1483-1558*, Oxford University Press, Oxford 2003.
Barendt, E., *Freedom of Speech*, 2nd edn., Oxford University Press, Oxford 2005.
Barrett, Kevin (ed.), *We are not Charlie Hebdo! Free thinkers question the French 9/11*, Sifting and Winnowing Books, Lone Rock 2015.
Bawer, Bruce, *While Europe Slept: How Radical Islam Is Destroying the West from Within*, Doubleday, New York/Aukland 2006.
Bawer, Bruce, *Surrender: Appeasing Islam, Sacrificing Freedom*, Doubleday, New York 2009.
Berman, Paul, *The Flight of the Intellectuals*, Melville House, New York 2010.
Bessems, Kustaw, "De vrijheid om weerzin te wekken", in Afshin Ellian & Gelijn Molier (eds.), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting*, Boom Juridische Uitgevers, The Hague 2011.
Bhala, Raj, *Understanding Islamic Law*, LexisNexis Mattew Bender & Company, 2011.
Bie, Ronald van der, "Kerkelijkheid en kerkelijke diversiteit, 1889–2008," in Centraal Bureau voor de Statistiek, *Religie aan het begin van de 21ste eeuw* (report), 2009.
Bielefeldt, Heiner, "Misperceptions of Freedom of Religion or Belief," in *Human Rights Quarterly* 35 (2013).
Blackstone, William, *Commentaries on the Laws of England*, 8th edn., Clarendon Press, Oxford 1778.
Blasphemy, Insult and Hatred: finding answers in a democratic society (report), Council of Europe Publishing, Luxembourg 2008.
Blitt, Robert C., "The Bottom up Journey of 'Defamation of Religion' from Muslim States to the United Nations: A Case Study of the Migration of Anti-Constitutional Ideas," *Studies in Law, Politics, and Society* 56 (2011).
Blitt, Robert C., "Defamation of Religion: Rumors of its Death Are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011).
Bossy, John, *Christianity in the West*, Oxford University Press, Oxford 1985.
Bradlaugh Bonner, Hypatia, *Penalties Upon Opinion*, Watts & Co, London 1934.

Brennan, Thomas, *Public Drinking and Popular Culture in Eighteenth-Century Paris*, Princeton University Press, Princeton New York 1988.
Brouwer, Aart & Fogteloo, Margreet, "Het imago van Nederland geschaad?", in *De Groene Amsterdammer*, 24 March 2010.
Brugman, J., *Het raadsel van de multicultuur. Essays over islam en integratie*, Meulenhoff, Amsterdam 1998.
Buruma, Ian, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance*, Penguin, New York 2006.
Buruma, Ian, "Charlie and Theo", in *Project Syndicate: The World's Opinion Page*, 15 January 2015.
Buschow, Rosemarie, *The Prince & I*, Futura Publications Limited, London 1979.
Butterfield, Herbert *The Whig Interpretation of History*, G Bell and Sons, London 1931.
Cabantous, Alain, *Blasphemy: Impious Speech in the West form the Seventeenth to the Nineteenth Century*, Columbia University Press, New York 1998.
Charb, *Lettre aux escrocs de l'islamophobie qui font le jeu des racistes*, Les Échappés, Paris 2015.
Cherry, Matt, & Brown, Roy, *Speaking Freely about Religion: Religious Freedom, Defamation and Blasphemy*, International Humanist and Ethical Union Policy Paper, International Humanist and Ethical Union, London 2009.
Chorus, Jutta, & Olgun, Ahmet, *In Godsnaam: Het jaar van Theo van Gogh*, Uitgeverij Contact, Antwerp/Amsterdam 2005.
Claudel, Philippe, "Je suis Charlie mais un peu tard", in Jacques Attali et al., *Nous sommes Charlie: 60 Écrivains unis pour la liberté d'expression*, Les Livre de Poche, Paris 2015.
Cliteur, Paul, "Godslastering en zelfcensuur na de moord op Theo van Gogh," in *Nederlands Juristenblad*, Afl. 2004/45, 17 December 2004.
Cliteur, Paul, "Cast Your Discomfort Aside: In matters of life and death, debate is the only thing that counts," in *The Times Higher Education Supplement*, 28 January 2005.
Cliteur, Paul, *Het Monotheïstisch Dilemma*, De Arbeiderspers, Amsterdam 2010.
Cliteur, Paul, *The Secular Outlook: In Defense of Moral and Political Secularism*, Wiley-Blackwell, Chichester 2010.
Cliteur, Paul, "Van Rushdie tot Jones: over geweld en uitingsvrijheid", in Afshin Ellian, Gelijn Molier and Tom Zwart (eds.), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting*, Boom Juridische Uitgevers, The Hague 2011.

Cliteur, Paul, "State and religion against the backdrop of religious radicalism," in *International Journal of Constitutional Law*, vol. 10, no. 1, 2012.
Cliteur, Paul, "The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire", in *Ancilla Iuris* 15 (2013).
Cliteur, Paul, "Is Humanism Too Optimistic? An Analysis of Religion as Religion", in Andrew Copson and A.C. Grayling (eds.), *The Wiley Blackwell Handbook of Humanism*, Wiley Blackwell, Chichester 2015.
Cliteur, Paul, "Vrijheid van Expressie na Charlie", in *Nederlands Juristenblad*, afl. 5, 6 February 2015.
Cliteur, Paul, "Taylor and Dummett on the Rushdie Affair," *Journal of Religion & Society* 18 (2016).
Cliteur, Paul, & Herrenberg, Tom & Rijpkema, Bastiaan, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech", in Afshin Ellian and Gelijn Molier (eds.), *Freedom of Speech under Attack*, Eleven, International Publishing, The Hague 2015.
Cliteur, Paul, & Verhofstadt, Dirk, *Het Atheïstisch Woordenboek*, Houtekiet, Antwerp 2015
Cliteur, Paul & Zee, Machteld, "Staat, religie en terreur: niets nieuws," in Claudia Bouteligier and Afshin Ellian (eds.), *Fundamentele verhalen: over recht, literatuur en film*, Boom Juridische Uitgevers, The Hague 2014.
Coogan, Michael (ed.), *The New Oxford Annotated Bible*, augmented third edn., with the Apocryphal /Deuterocanonical Books, Oxford University Press, Oxford 2007.
Cohn, Haim H., "The Law of Religious Dissidents: A Comparative Historical Survey," in *Israel Law Review* 34, 2000.
Coleridge, Ernest Hartley, *Life and Correspondence of John Duke, Lord Coleridge*, London 1904.
Constandse, A.L., *Grondslagen van het atheïsme*, N.H. Luguis & Zonen, Rotterdam 1926.
Constandse, A.L., *De zelfvernieting van het protestantisme*, N.H. Luigies & Zonen, Rotterdam 1926.
Constandse, A.L., "Een geval van godslastering," in *De Gids* 142, 1979.
Cottee, Simon, *The Apostates: When Muslims Leave Islam*, Hurst, London 2015.
Couwenberg, S.W., *Opstand der burgers: De Fortuyn-revolte en het demasqué van de oude politiek*, Damon, Budel 2004.
Cox, Caroline & Marks, John, *The West, Islam and Islamism: Is ideological Islam compatible with liberal democracy?*, Civitas, Institute for the Study of Civil Society, London 2003.

Cramer, Frederick H., "Bookburning and Censorship in Ancient Rome: A Chapter from the History of Ideas of Speech", in *Journal of the History of Ideas* 6/2, April, 1945.
Cromartie, Alan, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy*, Cambridge University Press, Cambridge 1995.
Dacey, Austen, *The Future of Blasphemy*, Continuum, London 2012.
Dawkins, Richard, *The God Delusion*, paperback edn., Black Swan, Transworld Publishers, London 2006.
Delcambre, Anne-Marie, *L'Islam des Interdits*, Desclée de Brouwer, Paris 2003.
Delcambre, Anne-Marie, *L'Islam*, La Découverte, Paris 2004.
Delcambre, Anne-Marie, *La Schizophréniede l'Islam*, Desclée de Brouwer, Paris 2006.
Delcambre, Anne-Marie, *Mahomet: La parole d'Allah*, Éditions Gallimard, Paris 2009.
Denning, Lord (Alfred Thompson), *Freedom under the* Law, Stevens & Co, London 1949.
Diski, Jenny, *The Sixties*, Profile Books, London 2009.
Duffy, Eamon, *The Voices of Morebath: Reformation and Rebellion in an English Village*, Yale University Press, New Haven Connecticut 2003.
Duffy, Eamon, *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580*, 2nd edn., Yale University Press, New Haven Connecticut 2005.
Dulmen, Richard van, *Theatre of Horror: Crime and Punishment in Early Modern Germany*, trans. Elisabeth Neu, Polity Press, Cambridge 1990.
Duncan, Mary Carter, "Playing by their Rules: The Death Penalty and Foreigners in Saudi Arabia", in *Georgia Journal of International & Comparative Law* 27 (1998–1999).
Dworkin, Ronald "A New Map of Censorship", in *Index on Censorship*, vol. 35 no. 1., 2006.
Evelyn, M. Aswad, "To Ban or Not to Ban Blasphemous Videos", *Georgetown Journal of International Law* 44 (2013).
Eyerman, Ron, *The Assassination of Theo van Gogh: from Social Drama to Cultural Trauma*, Duke University Press, Durham NC/London 2008.
Eyerman, Ron, *The Cultural Sociology of Political Assassination: From MLK and RFK to Fortuyn and van Gogh*, Palgrave Macmillan, London 2011.
Fee, Gordon D., & Stuart, Douglas, *How to Read the Bible Book by Book: A Guided Tour*, Zondervan, Michigan 2002.

Fekkes, Jan, *De God van je tante. Ofwel het Ezel-proces van Gerard Kornelis van het Reve*, De Arbeiderspers, Amsterdam 1968.
Filmer, Robert, *Patriarcha*, Basil Blackwell, Oxford 1949.
Fishburn, Matthew, *Burning Books*, Palgrave MacMillan, 2008.
Fortuyn, Pim, "Tegen de islamisering van onze cultuur. Nederlandse identiteit als fundament", in *De grote Pim Fortuyn omnibus*, Speakers Academy, Van Gennep, Amsterdam 2001.
Fourest, Caroline, *Eloge du blaspheme*, Bernard Grasset, Paris 2015.
Freeman, Michael, "Universality, Diversity and Difference: Culture and Human Rights", in Michael Freeman, *Human Rights: An Interdisciplinary Approach*, Polity, Cambridge 2003.
Freud, Sigmund, *Die Zukunft einer Illusion*, 1927, in Sigmund Freud, *Studienausgabe*, Band IX, Fragen der Gesellschaft, Ursprünge der Religion, S. Fischer Verlag.
Fuller, Lon L., *The Morality of Law*, revised edn., Yale University Press, New Haven Connecticut/London 1978 (1964).
Gardner, Martin, "Beyond Cultural Relativism", in Martin Gardner, *The Night is Large*. Collected Essays 1938–1995, Penguin Books, London 1996.
Gogh, Theo van, *Allah weet het beter*, Xtra Producties, Amsterdam 2003.
Goodall, Karen, "Incitement to Religious Hatred: All Talk and No Substance?", in 70 *Modern L. Rev.*, 2007.
Graham, L. Bennett, "Defamation of Religions. The End of Pluralism?," *Emory International Law Review* 23 (2009).
Graham, M.F., *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment*, Edinburgh University Press, Edinburgh 2013.
Grant, John, *Corrupted Science: Fraud, Ideology and Science*, AAPPL Artists' and Photographers' Press, 2007.
Grayling, A.C., *Against all Gods: Six Polemics on Religion and an Essay on Kindness*, Oberon Books, London 2007.
Grayling, A.C., *To Set Prometheus Free: Essays on Religion, Reason and Humanity*, Oberon Masters, London 2009.
Grayling, A.C., *The God Argument: The Case against Religion and for Humanism*, Bloomsbury, London 2013.
Greenberg, Dan, & Tobiason, Thomas H., "The New Legal Puritanism of Catharine MacKinnon", in *Ohio State Law Journal*, 54 (1993).
Griffiths Rudyard (ed.), *Hitchens vs. Blair: Be it resolved Religion is a Force for Good in the World*, The Munk Debate on Religion, 26 November 2010, Anansi, Toronto 2011.

Audrey Guichon, "Some Arguments on the Universality of Human Rights in Islam", in Javaid Rehman and Susan C. Brean (eds.), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices*, Martinus Nijhoff Publishers, Leiden/Boston Mass 2007.

Guiora, Amos N., "Protecting the Unprotected: Religious Extremism and Child Endangerment," in *Journal of Law & Family Studies* 12 (2010).

Hadfield, Brigid, "The Prevention of Incitement to Religious Hatred - An Article of Faith?", in 35 *N.I.L.Q.*, 1984.

Halbertal, Moshe, & Margalit, Avishai, *Idolatry*, trans. Naomi Goldblum, Harvard University Press, Cambridge Mass./London 1992.

Hare, Ivan, "Crosses, Crescents and Sacred Cows: Criminalising Incitement to Religious Hatred", in *Pub. L.*, 2006.

Hare, Ivan, "Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine", in Ivan Hare and James Weinstein, *Extreme Speech and Democracy*, Oxford University Press, Oxford 2009.

Hare, Ivan, "Free Speech and Incitement to Hatred on Grounds of Disability and Transgender Identity the Law Commission's Proposals', in *Pub. L.* No. 3, July 2015.

Harris, Sam, *The End of Faith: Religion, Terror, and the Future of* Reason, The Free Press, London 2005 (2004).

Hasan, R., *Multiculturalism: Some Inconvenient Truths*, Politicos, London 2010.

Hasan, R., 'Muslim identity, psychic detachment, and universal rights', in A. Carling (ed.), *The Social Equality of Religion or Belief: A New View of Religion's Place in Society*, Palgrave Macmillan, Basingstoke 2016.

Hawkins, William, *A Treatise of the Pleas of the Crown*, 8th edn., S. Sweet, London 1824.

Hegener, Michiel, *Vrijheid van godsdienst*, Uitgeverij Contact, Amsterdam/Antwerp 2005.

Hegener, Michiel, "Vrijheid van godsdienst: afschaffen of beschermen?", in H.M.A.E. van Ooijen, L.F. van Egmond, Q.A.M. Eijkman, F. Olujic, O.P.G. Vos. (eds.)., *Godsdienstvrijheid: afschaffen of beschermen?*, Stichting NJCM-Boekerij, Nr. 46, Leiden 2008.

Helmholz, Richard H., *The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*, Oxford University Press, Oxford 2004.

Henry III., William A., "Apologies PBS Style," in *The New Republic*, 24 May 1980.

Herrenberg, Tom, "Politici, de vrijheid van meningsuiting en Innocence of Muslims", in *Nederlands Juristenblad*, 24 September 2013.
Herrenberg, Tom, "Denouncing Divinity: Blasphemy, Human Rights, and the Struggle of Political Leaders to defend Freedom of Speech in the Case of *Innocence of Muslims*," in *Ancilla Iuris* 1 2015.
Hewson, R., *Monty Python: The Case Against*, Methuen, London 1990 (1981).
Hirsi Ali, Ayaan, *Infidel: My Life*, The Free Press, London 2007.
Hirsi Ali, Ayaan, *Nomad: From Islam to America, A Personal Journey through the Clash of Civilizations*, The Free Press, London 2010.
Hirsi Ali, Ayaan, *Heretic: Why Islam Needs a Reformation Now*, Harper Collins, New York 2015.
Hitchens, Christopher, *God is Not Great: How Religion Poisons Everything*, Twelve, New York/Boston Mass 2007.
Hobbes, Thomas, *Leviathan*, Basil Blackwell, Oxford 1955.
Hobbes, Thomas, *A Dialogue between a Philosopher and a Student of the Common Laws of England*, University of Chicago Press, Chicago Illinois 1971.
Holdsworth, William S., *History of English Law, Vol. VIII*, Methuen, London 1903–1926.
Holdsworth, William S., "Defamation in the Sixteenth and Seventeenth Centuries", 40 L.Q.R. 1924; 41 L.Q.R. 1925.
Holman, Theodor, *Theo is dood*, met een voorwoord van Gijs van de Westelaken, Mets en Schilt, Amsterdam 2006.
Holman, Theodor, "Cadeautje," in Theodor Holman, *Holman liegt: de mooiste, hardste, liefste, helderste, gemeenste, slechtste, ontroerendste leugens bijeen*, Nieuw Amsterdam, Amsterdam 2014.
Horodowich, Elizabeth, "Civic Identity and the Control of Blasphemy in Sixteenth Century Venice", *Past and Present*, 181 (2003).
Houellebecq, Michel, *Soumission*, Flammarion, Paris 2015.
Houellebecq, Michel, & Lévy, Bernard-Henri, *Ennemis Publics*, Flammarion, Grasset 2008.
House, Karen Elliott, *On Saudi Arabia: Its People, Past, Religion, Fault Lines – and Future*, Vintage Books, Random House, New York 2013.
Hunt, Stephen J., *Alternative Religions: A Sociological Introduction*, Ashgate, Aldershot 2003.
Mick Hume, *Trigger Warning: Is the Fear of Being Offensive Killing Free Speech?*, William Collins, London 2015.
Ibn Warraq (ed.), *Leaving Islam: Apostates Speak Out*, Prometheus Books, Amherst New York 2003.

Ibn Warraq, *Defending the West: A Critique of Edward Said's Orientalism*, Prometheus Books, Amherst New York 2007.
Ibn Warraq, *Virgins? What Virgins? And Other Essays*, Prometheus Books, Amherst New York 2010.
Ibn Warraq, *Why the West is Best: A Muslim Apostate's Defense of Liberal Democracy*, Encounter Books, London 2010.
Israel, Jonathan I., *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750*, Oxford University Press, Oxford/New York 2001.
Israel, Jonathan I., "Enlightenment! Which Enlightenment?", in *Journal of the History of Ideas* 67/3 (July 2006).
Jami, Ehsan, *Het recht om ex-moslim te zijn*, Ten Have, Amsterdam 2007.
Jansen, Hans, "De brief van Mohammed B., bevestigd aan het lijk van Theo van Gogh," in *Tijdschrift voor Geschiedenis*, nr. 3, 2005.
Jansen, Johannes J.G., *The Neglected Duty: The Creed of Sadat's Assassins and Islamic Resurgence in the Middle East*, MacMillan Publishing Company, London 1986.
Jansen, Johannes J.G., *The Dual Nature of Islamic Fundamentalism*, Cornell University Press, Ithaca New York 1997.
Kamrane, Ramine, *La Fatwa contre Rushdie: une interprétation stratégique*, Éditions Kimé, Paris 1997.
Kayaoglu, Turan & Petersen, Marie Juul, "Will Istanbul Process Relieve the Tension Between the Muslim World and the West?," *The Washington Review of Turkish & Eurasian Affairs*, October 2013.
Keller, Nuh Ha Mim, *Reliance of the Traveller*, rev. edn., The Classic Manual of Islamic Sacred Law 'Umdat al-Salik by Ahmad ibn Naqib al-Misri in Arabic with Facing English Text, Commentary, and Appendices, ed. and trans. Nuh Ha Mim Keller, Amana Publications, Beltsville Maryland 1994 (1991).
Kelly, Henry Asgar, "Inquisition and the Prosecution of Heresy: Misconceptions and Abuses," in Henry Asgar Kelly, *Inquisitions and Other Trials in the Medieval West*, Ashgate, Aldershot 2001.
Kennedy, James C., *Nieuw Babylon in aanbouw: Nederland in de jaren zestig*, 2de druk, Boom, Amsterdam/Meppel 1997.
Kennedy, James C., "The Moral State: How Much do the Americans and the Dutch Differ?," in Hans Krabbendam and Hans-Martien ten Napel (eds.), *Regulating Morality: A Comparison of the Role of the State in Mastering the Mores in the Netherlands and the United States*, Maklu/E.M. Meijers Instituut, Antwerp/Apeldoorn 2000.

Kenny, Anthony, *A New History of Western Philosophy (Vol. IV): Philosophy in the Modern World*, Oxford University Press, Oxford 2008.
Kenny, Courtney, "The Evolution of the Law of Blasphemy," in *Cambridge Law Journal* 1, 1922.
Kepel, Gilles, *Fitna: Guerre au coeur de* l'islam, Gallimard, Paris 2004.
Kossmann, E.H., *The Low Countries: 1780–1940*, Oxford University Press, Oxford 1978.
Kramer, Martin, *Ivory Towers on Sand: The Failure of Middle Eastern Studies in America*, The Washington Institute for Near East Policy, Washington DC 2001.
Laes, Willy, *Een jaar na Charlie Hebdo: een pamflet*, Houtekiet, Antwerp 2015.
Lambert, Malcolm, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, Oxford University Press, Oxford 1992.
Langer, Lorenz, *Religious Offence and Human Rights, The implications of Defamation of Religions*, Cambridge University Press, Cambridge 2014.
Lansing, Carol, *Power and Purity: Cathar Heresy in Medieval Italy*, Oxford University Press, Oxford 1998.
Law Commission, *Hate Crimes: should the current law be extended?*, Law Com. no. 348, May 2014.
Law, James Thomas, *The Ecclesiastical Statutes at Large extracted from the great body of the statute law, and arranged under separate heads*, William Penning and Co, London 1847.
Lévy, Bernard-Henri, "Ce qui restera du janvier", in Jacques Attali et al., *Nous sommes Charlie: 60 Écrivains unis pour la liberté* d'expression, Les Livre de Poche, Paris 2015.
Levy, Leonard, *Treason Against God: A History of the Offense of Blasphemy*, Schocken Books, New York 1981.
Levy, Leonard *Blasphemy and Verbal Offense Against the Sacred: From Moses to Salman Rushdie*, Knopf, New York 1995.
Littman, David. G., "Universal Human Rights and "Human Rights in Islam"," *Midstream*, February/March 1999.
Locke, John, *The Second Treatise of Civil Government and a Letter Concerning Toleration*, Basil Blackwell, Oxford 1946.
Loetz, Francisca, *Dealings with God: From Blasphemers in Early Modern Zurich to a Cultural History of Religiousness*, Ashgate, Farnham 2009.
MacCulloch, Diarmaid, *Reformation: Europe's House Divided 1490-1700*, Penguin Books, London 2004.
Maitland, Frederic William, *The Constitutional History of England*, Cambridge University Press, Cambridge 1911.

Mak, Geert, *Gedoemd tot kwetsbaarheid*, Uitgeverij Atlas, Amsterdam/Antwerp 2005.
Malik, Kenan, *From Fatwa to Jihad: The Rushdie Affair and its Legacy*, Atlantic Books, London 2009.
Manji, Irshad, *The Trouble with Islam: A Muslim's Call for Reform in Her Faith*, St. Martin's Press, New York 2003.
Marres, René, *Vermoord en verbannen: de aanvallen op Pim Fortuyn en Ayaan Hirsi Ali en hun verdediging van westerse waarden*, Aspekt, Soesterberg 2006.
Marshall, John, *John Locke Toleration and Early Enlightenment Culture*, Cambridge University Press, Cambridge 2006.
Marshall, Paul, & Nina Shea, *Silenced: How Apostasy and Blasphemy Codes Are Choking Freedom Worldwide*, Oxford University Press, Oxford 2011.
Marwick, Arthur, *The Sixties: Cultural Revolution in Britain, France, Italy, and the United States, c. 1958-c. 1974*, Oxford University Press, Oxford/New York 1998.
Masson, Sophie, "The Strange Trial of Michel Houellebecq," in *The Social Contract*, 14/2, Winter 2003/2004.
Mayer, Ann Elizabeth, "The OIC's Human Rights Policies in the UN. A Problem of Coherence", Matters of Concern. Human Rights Research papers, The Danish Institute for Human Rights, 2015.
McLuhan, M., *The Gutenberg Galaxy: the making of typographic man*, The University of Toronto Press, Toronto 1962.
Mendras, Henri, *L'Europe des Européens: Sociologie de l'Europe occidentale*, Gallimard, Paris 1997.
Mill, John Stuart, *On Liberty*, 2nd edn., John W. Parker and Son, London 1859.
Mill, John Stuart, *Three Essays on Religion*, Prometheus Books, Amherst New York 1998 (1874).
Milgram, Stanley, "The Perils of Obedience," in *Harper's Magazine*, 1974.
Milgram, Stanley, "An Experiment in Autonomy" in Louis P. Pojman (ed.), *The Moral Life: An Introductory Reader in Ethics and Literature*, Oxford University Press, New York/Oxford 2000.
Milton, John, *Complete Poems and Major Prose*, ed. with notes and introduction by Merritt Y. Hughes, Hackett Publishing Company, Indianapolis 2003 (1957).
Mulisch, Harry, *De zaak 40/61: Een reportage*, Uitgeverij De Bezige Bij, Amsterdam 1979 (1962).
Mulisch, Harry, *Bericht aan de rattenkoning*, De Bezige Bij, Amsterdam 1966.

Mulisch, Harry, *De toekomst van gisteren*, De Bezige Bij, Amsterdam 1972.
Mulisch, Harry, *Het ironische van de ironie: Over het geval G.K. van het Reve*, Manteau, Antwerp 1976.
Mulisch, Harry, *Criminal Case 40/61: The Trial of Adolf Eichmann*, trans. Robert Naborn, Foreword Debórah Dwork, University of Pennsylvania Press, Philadelphia Pennsylvania 2005.
Munro, Colin, "Prophets, Presbyters and Profanity", *Pub. L.* 369, 1989.
Murawiec, Laurent, *Princes of Darkness: The Saudi Assault on the West*, trans. George Holoch from the French, Rowman & Littlefield Publishers, Lanham 2005.
Murphy, Therese, "Incitement to Hatred: Lessons from Northern Ireland", in Sandra Coliver (ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination*, Article 19, London 1992.
Nash, David, *Blasphemy in Britain 1789 to the Present*, Ashgate, Aldershot 1999.
Nash, David, *Blasphemy in the Christian World: A History*, Oxford University Press, Oxford 2007.
Nash, David, "'To Prostitute Morality, Libel Religion, and Undermine Government' Blasphemy and the Strange Persistence of Providence in Britain since the Seventeenth Century," in *Journal of Religious History* 32(4), 2008.
Nesser, Petter, "The Slaying of the Dutch Filmmaker – Religiously motivated violence or Islamist terrorism in the name of global jihad?", Norwegian Defence Research Establishment, Kjeller Norway 2005.
Nietzsche, Friedrich, *Die fröhliche Wissenschaft*, in *Sämtliche Werke*, 1882, Band 3, Kritische Studienausgabe herausgegeben von Giorgio Colli und Mazzino Montinari, Deutscher Taschenbuch Verlag, De Gruyter, Munich 1999.
Nokes, Gerald D., *A History of the Crime of Blasphemy*, Sweet and Maxwell, London 1928.
Okin, Susan Moller, *Women in Western Political Thought*, introduction by Debra Satz, Princeton University Press, Princeton NJ/Oxford 1979.
Okin, Susan Moller, "Feminism and Multiculturalism: Some Tensions", in *Ethics*, July 1998.
Okin, Susan Moller, *Is Multiculturalism Bad for Women*?, in Joshua Cohen, Matthew Howard and Martha Nussbaum (eds.), Princeton University Press, Princeton New Jersey 1999.
Onfray, Michel, *Traité d'athéologie: Physique de la métaphysique*, Grasset, Paris 2005.

Oring, Elliott, "The Muhammad cartoon affair", in *Humor*, 21–1 (2008).
Paine, Thomas, *The Age of Reason* (1794), in Thomas Paine, *Collected Writings*, The Library of America, New York 1995.
Pam, Max, *Het bijenspook: over dier, mens en god*, Prometheus, Amsterdam 2009.
Pamuk, Orhan, "Pour Rushdie," in Anouar Abdallah et al., *Pour Rushdie: Cent intellectuels arabes et musulmans pour la liberté d'expression*, La Decouverte, Carréfour des littératures, Colibri, Paris 1993.
Pape, Robert, "The Strategic Logic of Suicide Terrorism," in *American Political Science Review* 2003, vol. 97 nr. 3.
Parekh, B. (Chair), *The Future of Multi-Ethnic Britain (The Parekh Report)*, Report of the Commission on the Future of Multi-Ethnic Britain, The Runnymede Trust, Profile Books, London 2000.
Pawson, David, *Unlocking the Bible: A unique overview of the whole Bible*, Collins, London 2007.
Pena-Ruiz, Henri, "Tolérance," in Henri Pena-Ruiz, *Dictionnaire amoureux de la laïcité*, Plon, Paris 2014.
Pepys, Samuel, *The Diary of Samuel Pepys*, ed. Robert Latham and William Matthews, Bell & Hyman, London 1990.
Pipes, Daniel, *The Rushdie Affair: The Novel, the Ayatollah, and the West*, 2nd edn., Transaction Publishers, Brunswick/New York 2003.
Pipes, Daniel, "Two Decades of the Rushdie Rules: How an edict that once outraged the world became the new normal," in *Commentary Magazine*, October 2010.
Post, Robert C., *Constitutional Domains: Democracy, Community, Management*, Harvard University Press, Cambridge Massachusetts 1995.
Rabban, David M., "Clear and Present Danger Test," in Kermit L. Hall (ed.), *The Oxford Companion to The Supreme Court of the United States*, Oxford University Press, New York/Oxford 2005.
Rachels, Stuart, *The Elements of Moral Philosophy*, McGraw-Hill, New York 2007.
Rehman, Javaid & Berry, Stephanie E., "Is 'defamation of religions' passé? The United Nations, Organisation of Islamic Cooperation, and Islamic State Practices. Lessons from Pakistan," *The George Washington International Law Review* 44 (2012).
Reve, Karel van het, *De ongelooflijke slechtheid van het opperwezen*, Van Oorschot, Amsterdam 1987.
Reynié, Dominique, *Les nouveaux populismes*, revised and expanded edn., Librairie Arthème Fayard/Pluriel, Paris 2013 (2011).

Rijpkema, Bastiaan, "Vrijheid van meningsuiting in de val tussen religieus extremisme en utilitarisme", *Nederlands Juristenblad* 44/45 (2012).
Rijpkema, Bastiaan, *Weerbare democratie: de grenzen van democratische tolerantie*, Leiden Dissertatie, Leiden 2015.
Roberts, J.M., *The Penguin History of Europe*, Penguin Books, London 1996.
Roberts, M.J.D., "Making Victorian Morals? The Society for the Suppression of Vice and its Critics 1802–1886", *Historical Studies* xxi, 1984.
Roberts, M.J.D., 'Blasphemy, Obscenity and the Courts: Contours of Tolerance in Nineteenth Century England', in Paul Hyland and Neil Sammells (eds.), *Writing and Censorship in Britain*, Routledge, London 1992.
Robertson, Geoffrey, *Obscenity: An Account of the Censorship Laws and their Enforcement in England and Wales*, Weidenfeld and Nicolson, London 1979.
Robillard, St John A., *Religion and the law*, Manchester University Press, Manchester 1984.
Rushdie, Salman, *Joseph Anton: A Memoir*, Jonathan Cape, London 2012.
Ruthven, Malise, *A Satanic Affair: Salman Rushdie and the Rage of Islam*, Chatto and Windus, London 1990.
Said, Edward W., *Covering Islam: How the Media and the Experts determine how we see the Rest of the World*, Vintage, London 1997.
Schaik, Mirjam van, & Doomen, Jasper, "De toekomst van godslastering," in *Nederlands Juristenblad*, Afl . 30, 12 September 2014.
Scharffs, Brett, "International Law and the Defamation of Religion Conundrum," *The Review of Faith & International Affairs* 11/1 (2013).
Schroeder, Theodore, *Constitutional Free Speech Defined and Defended in an Unfinished argument in a case of blasphemy*, Free Speech League, New York 1919, De Capo Press edn. 1970.
Schwerhoff, Gerd, *Zungen wie Schwerter: Blasphemie in alteuropäischen Gesellschafen*, Konstanz 2005.
Scruton, Roger, "Free Speech in Europe," in *The American Spectator*, 41, May 2009.
Sedq, Bahis, *The Quran Speaks*, Dog Ear Publishing, Indianapolis 2013.
Shore, Zachary, *Breeding Bin Ladens: America, Islam, and the Future of Europe*, The Johns Hopkins University Press, Baltimore Maryland 2006.
Smart, J.J.C., "An outline of a system of utilitarian ethics", in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge University Press, Cambridge 1973.

Smith, Anthony T.H., *The Offences Against Public* Order, Sweet and Maxwell, London 1987.
Smylie, James H., "Clerical Perspectives on Deism: Paine's The Age of Reason in Virginia," in *Eighteenth-Century Studies*, 6/2, Winter, 1972–1973.
Snel, Bert, *Pim 1: De politieke biografie van Pim Fortuyn als socioloog en als politicus 1990-2002*, Uitgeverij Van Praag, Amsterdam 2012.
Snel, Bert, *Pim 2: Pim Fortuyn en zijn partijen, Leefbaar Nederland*, Prof. Dr. W.P.S. Fortuyn Stichting, 2013.
Sookhdeo, Patrick, *Freedom to Believe: Challenging Islam's Apostasy Law*, Isaac Publishing, Three Rivers Michigan 2009.
Sorel-Sutter, Malika, *Décomposition française: comment en est-on arrivé là?*, Fayard, Paris 2015.
Spencer, John, "Criminal Libel-A Skeleton in the Cupboard" in *Crim. L.R.* 1977.
Spencer, John, "Blasphemous Libel Resurrected—Gay News and Grim Tidings", in *Camb. L.J.* 38, 1979.
Spencer, Robert *The Politically Incorrect Guide to Islam and the Crusades*, Regnery Publishing, Inc., Washington DC 2005.
Stein, Stephen J., *Alternative American Religions*, Oxford University Press, Oxford 2000.
Stephen, Sir James Fitzjames, *A History of the Criminal Law of England*, MacMillan and Co, London 1883.
Stephen, Sir James Fitzjames, *Digest of the Criminal Law*, 9th edn., Sweet and Maxwell, London 1950.
Stokkom, B.A.M. van, & Sackers, H.J.B., & Wils, J.-P., *Godslastering, discriminerende uitingen wegens godsdienst en haatuitingen*, Boom Juridische uitgevers, The Hague 2007.
Tak, Peter J.P., *The Dutch Criminal Justice* System, Wolf Legal Publishers, Nijmegen 2008.
Tallentyre, S.G. (pseudoniem of Evelyn Beatrice Hall), *The Friends of Voltaire*, Smith, Elder & Co., London 1906.
Thomas, Dominique, *Le Londonistan: Le djihad au Coeur de l'Europe*, Éditions Michalon, 2005.
Tibi, Bassam, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam versus Global Jihad*, Routledge, London/New York 2008.
Tibi, Bassam, *Islamism and Islam*, Yale University Press, New Haven CT/ London 2012.
Toohey, Timothy J., "Blasphemy in Nineteenth-Century England: The Pooley Case and Its Background", in *Victorian Studies* 30, no. 3, 1987.

Tregilgas-Davey, Marcus, "Ex Parte Choudhury: An Opportunity Missed", *The Modern Law Review* 54, no. 2, 1991.
Trevor-Roper, Hugh, *The Last Days of Hitler*, Pan, London 2012 (1947).
Trevor-Roper, Hugh, *The Invention of Scotland: Myth and* History, Yale University Press, New Haven, Connecticut 1994.
Trevor-Roper, Hugh, *History and the Enlightenment*, Yale University Press, New Haven Connecticut 2010.
Trevor-Roper, Hugh, *The Crisis of the Seventeenth Century: Religion, the Reformation & Social Change*, Liberty Fund, Indianapolis 1967.
Val, Philippe, *Reviens Voltaire, Ils sont devenus fous*, Bernard Grasset, Paris 2008.
Val, Philippe, *Malaise dans l'inculture*, Bernard Grasset, Paris 2015.
Verkijk, Dick, *Harry Mulisch: "Fel anti-nazi" – vanaf wanneer?*, Aspekt, Soesterberg 2006.
Vermaat, Emerson, *De Hofdstadgroep: Portret van een radicaalislamitisch network*, Aspekt, Soesterberg 2005.
Vermaat, Emerson, *Nederlandse Jihad: het proces tegen de Hofstadgroep*, Aspekt, Soesterberg 2006.
Villa-Flores, Javier, *Dangerous Speech: A Social History of Blasphemy in Colonial Mexico*, University of Arizona Press, Tucson 2006.
Voltaire, *Le Fanatisme ou Mahomet Le Prophète. Tragédie*, postface by Jérôme Vérain, Éditions Mille et une Nuits, Paris 2006 (1753).
Waldron, Jeremy, "Rushdie and Religion", in *Liberal Rights-Collected Papers 1981–1991*, Cambridge University Press, Cambridge Massachusetts 1993.
Waldron, Jeremy, *The Harm in Hate Speech*, Harvard University Press, Cambridge Mass./London 2012.
Walker, Jeffrey K., "The Rights of the Accused in Saudi Criminal Procedure", in *Loyola of Los Angeles International and Comparative Law Journal* 15 (1992–1993).
Weatherby, William J., *Salman Rushdie: Sentenced to Death*, Carrol & Graf, New York 1990.
Weber, Max, *The Profession and Vocation of Politics*, in Max Weber, *Political Writings*, ed. Peter Lassman and Ronald Speirs, Cambridge University Press, Cambridge 1994.
Webster, Richard, *A Brief History of Blasphemy: Liberalism, Censorship and The Satanic Verses*, The Orwell Press, Oxford 1990.
Weller, Paul, *A Mirror for our Times: "The Rushdie Affair" and the Future of Multiculturalism*, Continuum, London/New York 2009.

Westergaard, Kurt, & Lykkegaard, John, *Kurt Westergaard: The Man behind the Mohammed Cartoon*, Mine Erindringer, Tilsit 2012.
White, Thomas & Ganley, Gladys, "The 'Death of a Princess' Controversy", Program on Information Resources Policy, Center for Information Research, Harvard University, Cambridge Massachusetts 1983.
Wiener, Joel, *Radicalism and Freethought in Nineteenth Century Britain: The Life of Richard Carlile*, Praeger, Westport, Connecticut 1983.
Wilders, Geert, "Defending the West from Cultural Relativism and Jihad", Annual Lecture of the Magna Carta Foundation in Rome, 25 March 2011, in *American Thinker*, 26 March 2011.
Wilders, Geert, *Marked for Death: Islam's War Against the West and Me*, Regnery Publishing, Inc., Washington DC 2012.
Williams, Bernard, "A Critique of Utilitarianism", in Smart, J.J.C. & Williams, B. (eds.), *Utilitarianism: for and against*, Cambridge University Press, Cambridge 1973.
Williams, J., *Academic Freedom in an Age of Conformity: Confronting the Fear of Knowledge*, Palgrave Macmillan, Basingstoke 2016.
Winston, Brian, *The Rushdie Fatwa and After*, Palgrave Macmillan, 2014.
Winter, Leon de, *VSV of Daden van onbaatzuchtigheid*, De Bezige Bij, Amsterdam 2012.
Winter, Reinier de, "Globalisering: de 'margin of appreciation' in spiegelbeeld? Vrijheid van meningsuiting versus vrijheid van godsdienst in de Deense cartoonaffaire", in T. Barkhuysen, M.L. van Emmerik and J.P. Loof (eds.), *Geschakeld recht: verdere studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. Mr. E.A. Alkema*, Kluwer, Deventer 2009.
Wood, Graeme, "What ISIS Really Wants: The Response", in *The Atlantic*, 24 February 2015.
Wood, Graeme, "What is the Islamic State?", in *The Atlantic*, March 2015.
Zwemer, Samuel M., *The Law of Apostasy in Islam: Answering the question why there are so few Moslem converts, and giving examples of their moral courage and martyrdom*, Marshall Brothers, London/Edinburgh/New York 1924.

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