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

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The Fall and Rise

EDITED BY PAUL CLITEUR
& TOM HERRENBURG

of

Blasphemy

Law

with a foreword by
Flemming Rose

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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 menselijke 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!

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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 Leesalen*, 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 time¹² 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.

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13 Parl. Do

14 Ibid.

15 Ibid. Se

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17 Ibid., 3.

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.

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23 Ibid., 5.

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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.

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33 Parl.

34 Ibid.

35 Ibid.

36 Parl.

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38 Ibid

39 Ibid

(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 44⁴⁷—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).

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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.D.A.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.D.A.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 Lieven 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. Constandse⁵⁹ 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 zelfvernietiging van het protestantisme* (Rotterdam: N.H. Luigies & Zonen, 1926).
- 60 Anton Constandse, “Een geval van godslastering,” in *De Gids*, 142 (1979) 402.

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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/TitelIV/Artike147a/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”—*Dialogo*—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, underappreciated, 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.

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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 *Dialog* 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 *Dialog*—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 *Dialogo*. 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 memoirs Mr. Abspoel wrote that he 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

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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 religious 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.

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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 GOGH¹⁰³

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 Geliijn Molier (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–318.

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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/Auckland: Doubleday, 2006); Bruce Bawer, *Surrender: Appeasing Islam, Sacrificing Freedom* (New York: Doubleday, 2009).

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 “Voltairean 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 “Voltairean 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 “Voltairean 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 Voltairean 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.

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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 Muslim¹¹⁴—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.

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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 Assassination 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 Assassination 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.

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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 Hofstadgroep: Portret van een radicaal-islamitisch netwerk* (Soesterberg: Aspekt, 2005); Emerson Vermaat, *Nederlandse Jihad: het proces tegen de Hofstadgroep* (Soesterberg: Aspekt, 2006).

¹²⁸ *Gerechthof 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 Assassination of Theo van Gogh: from Social Drama to Cultural Trauma*, Duke University Press, Durham and London 2008; Eyerman, Ron, *The Cultural Sociology of Political Assassination: 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 Assassins and Islamic Resurgence in the Middle East* (London: MacMillan Publishing Company, 1986).

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

132 Said was criticised by Hans Jansen, "Edward Said. De luchtfiets 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).

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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 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, Md.: 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 are 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*, Afk. 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.

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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, Mulisch 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.

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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 2009¹⁵⁴ 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, Md.: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)).

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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.

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