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## **Princes and prophets: democracy and the defamation of power**

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## Summary

This thesis deals with three restrictions on freedom of expression, namely 1) *lèse-majesté* (the insult to the national head of state; the monarch in a monarchy, or the president in a republic), 2) the defamation of foreign heads of state, and 3) blasphemy (insulting religion or religious symbols). The three offenses have in common that they want to protect different types of power from insults. Such prohibitions are still topical. For example, a 2017 comparative study by the *Organization for Security and Co-operation in Europe* shows that more than ten European countries have laws that prohibit insulting foreign heads of state. A 2019 report from the *Overseas Security Advisory Council*, part of the US State Department, lists more than a dozen countries that ban insults against national heads of state. Finally, according to a 2020 report from the *United States Commission on International Religious Freedom*, 84 countries have some form of ban on blasphemy.

The three offenses are rooted in notions of social and political stability and order. *Lèse-majesté* bans are aimed at preserving internal stability and unity, while the ban on insulting foreign heads of state serves external stability ("friendly relations"). Blasphemy has traditionally been linked to undermining state authority, later this offense was associated with disturbing public order.

Over time, these offenses have been 'liberalized' in many countries. Either the scope of the offenses has been shortened (which expressions are punishable?), the severity of the punishment has decreased, or they have been abolished. The latter in particular is relatively recent. *Lèse-majesté* has been abolished in the Netherlands in 2020. A law with the same aim is currently pending in Belgium. France (in 2004), Belgium (in 2005), Germany (in 2018), and the Netherlands (in 2020) have all recently lifted the ban on insulting foreign heads of state.

Countries that have abolished blasphemy in recent years include the Netherlands, Iceland, Norway, Malta, Denmark, Ireland, Canada, New Zealand, and Greece.

Laws that restrict freedom of expression by granting individuals special protection based on their social status are at odds with European and international human rights. The European Court of Human Rights has stated that providing increased protection by means of a special law on insults will not, as a rule, be in keeping with the spirit of the Convention. The Court has found numerous violations of Article 10 of the Convention in cases involving *lèse-majesté* and insulting foreign heads of state. The United Nations Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, is also critical of such laws. The Committee has expressed ‘concern’ about *lèse-majesté* bans and laws against the defamation of heads of state.

With regard to blasphemy bans, the UN Human Rights Committee has determined that they are incompatible with the International Covenant on Civil and Political Rights. The Venice Commission, the committee that advises the Council of Europe on constitutional law issues, stated in 2008 that states should abolish the ban on blasphemy. However, the European Court of Human Rights takes a different line. This Court has upheld multiple convictions of blasphemy in recent decades, and does not find blasphemy prohibitions necessarily incompatible with Article 10 of the Convention.

Lastly, this thesis discussed some of the challenges to free speech posed by the punishment of blasphemers, or the threat thereof, by actors operating outside the law. Blasphemy has an ‘extrajudicial’ dimension. This is a blasphemy development that has been at the forefront of the past three decades. The *Rushdie affair*, the controversy over the Danish cartoons, and the *Charlie Hebdo affair* are examples of this. One event of this informal aspect of blasphemy has been discussed in this thesis, namely that of the profane *Innocence of Muslims* video.