

## BLASPHEMY AND FREEDOM OF EXPRESSION

The tension between blasphemy laws and the freedom of expression in modern times is a key area of debate within legal academia and beyond. With contributions by leading scholars, this volume compares blasphemy laws within a number of Western liberal democracies and debates the legitimacy of these laws in the twenty-first century. Including comprehensive and up-to-date comparative country studies, this book considers the formulation of blasphemy bans, relevant jurisprudential interpretations, the effect on society, and the ensuing convictions and penalties where applicable. It provides a useful historical analysis by discussing the legal-political rationales behind the recent abolition of blasphemy laws in some Western states. Contributors also consider the challenges to the tenability of blasphemy laws in a selection of well-balanced theoretical chapters. This book is essential reading for scholars working within the fields of human rights law, philosophy and sociology of religion and comparative politics.

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# BLASPHEMY AND FREEDOM OF EXPRESSION

Comparative, Theoretical and Historical  
Reflections after the *Charlie Hebdo* Massacre

Edited by

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## FOREWORD

The legitimate scope of blasphemy and religious hatred laws is now one of the most hotly debated areas of free speech law. Among the questions liberal democracies must ask in this context is whether harsh criticism of religious beliefs and practices is fully covered by their understanding of freedom of expression and indeed, for many countries, their constitutional guarantee of the freedom. Secondly, insofar as such criticism is covered by a freedom-of-expression clause, how far might it be right to restrict its dissemination on grounds of public order or to protect the feelings of those religious believers who may be appalled that their faith is ridiculed by it? Perhaps there are other sound reasons for proscribing extreme religious hate speech; such speech might, as Jeremy Waldron argues in *The Harm in Hate Speech* (Harvard University Press, 2012), actually constitute harm by denying that believers are full members of civil society.

Recent events in France have brought this controversy to the forefront of public debate. The murder of the *Charlie Hebdo* journalists in January 2015 after the magazine had published cartoons of the Prophet Muhammad naturally provoked a wide public debate whether it had been right to publish them and whether European newspapers and magazines should republish them in order to tell their readers what the controversy was about. Sadly, this was far from the first episode in which religious publications had brought about anger, violence and the loss of life. In 1989, the publication of *The Satanic Verses* led to Ayatollah Khomeini's infamous fatwa against Salman Rushdie, to the burning of copies of the book and to riots and assassinations in many countries. (But an attempt to prosecute publishers of the book in England under the common law of blasphemy failed, because that law penalised intemperate criticism only of the doctrines of the Church of England and did not protect the feelings of Muslims or of members of other religious communities.) The publication of the Danish cartoons of the Prophet in 2005 was followed by worldwide riots and well over 200 deaths; however, a number of newspapers and magazines in Europe did republish them in sympathy with the



editor of the Danish newspaper. But there was no attempt to prosecute any of these media outlets. Indeed, as some of the essays in this collection show, even though blasphemy and comparable laws remained on the statute books of many European countries at the end of the twentieth century, they were rarely enforced. There was therefore a tension between official reluctance to use blasphemy laws against extreme speech hostile to religious belief and the violent reaction of some members of religious communities, particularly Muslims.

But it would be wrong to conclude that blasphemy law is now dead, killed off, as it were, by the forces of secularism and liberal tolerance. The essays in this book indicate that some jurisdictions do still enforce blasphemy laws, particularly when they are framed in terms of the proscription of the expression of religious hatred. In the United Kingdom, the common-law blasphemy offences have been abolished, but prosecutions have been brought for the new statutory offence of incitement to religious hatred, which was introduced in 2006. A distinction can be drawn between the broad toleration of harsh criticism of religious belief on the one hand and penalising the expression of hatred directed at members of religious communities on the other. Timothy Garton Ash draws this distinction in the sixth Principle outlined and explained in his recent book on global free speech principles: 'We respect the believer but not necessarily the content of the belief' (*Free Speech*, Yale University Press, 2016, subtitle of Chapter 6 and the name of his sixth free speech principle).

It is far from clear, however, whether drawing this distinction resolves all the difficulties posed by the rival claims of liberal secularists and of those religious believers – particularly, but not only, Muslims – who demand respect for those beliefs which are central to their sense of identity and self-esteem. Should, say, a non-violent demonstration outside a cathedral on a Sunday morning, with protestors mocking the Pope or fundamental Catholic doctrine, be understood as an exercise of free expression on matters of public religious discourse or instead as showing hatred for devout Catholics attending Mass? The Muhammad cartoons not only infringe the proscription in Islam of any representation of the Prophet but also perhaps show disrespect for devout Muslims for whom this ban is as important as the colour of their skin may be to any member of a racial group. The distinction between an extreme attack on a religious belief and hate speech targeted against its adherents may be a distinction without a real difference. Essays in this collection explore this crucial question of principle.

There is also, of course, the problem of defining what constitutes a religious group for the purpose of a blasphemy or religious hatred offence. In 2013, the UK Supreme Court ruled that a Scientology church was a place of religious worship for the purpose of conducting wedding ceremonies, so Scientologists, and presumably members of other cults, are protected by the law penalising incitement to hatred of any group 'defined by reference to religious belief or lack of religious belief' (UK Racial and Religious Hatred Act 2006, amending the Public Order Act 1986, section 17). But how can one justify the protection of Scientologists, Jehovah's Witnesses or Humanists against hate speech but in contrast not animal rights demonstrators or Greenpeace activists against a comparable vicious attack? It seems difficult to justify special protection for members of *religious* communities against hate speech when in a liberal society which values freedom of speech, members of political parties and pressure groups are rightly expected to tolerate such verbal attacks. Political speech lies at the core of the public discourse, which must be fully protected if freedom of speech is to mean anything at all, and it seems difficult to see any good reason for distinguishing speech about religious beliefs and practices. If politicians can legitimately be subject to ridicule and satire, so too should religious leaders expect robust treatment in magazines and other media.

Of course, against these arguments of free speech principle it can be contended that religion is special and that the sensitivities of believers must be respected. That is certainly the Muslim argument and the reason why Islamic countries have pressed for the introduction at the United Nations of resolutions against the defamation of religion. The argument is that respect for freedom of religion requires outlawing hostile criticism of religious belief and observance. But it is impossible to reconcile this case with freedom of speech, and it is hardly surprising that European countries have opposed the resolutions drafted by Pakistan and other Islamic countries. As the essays in this book show, legal and constitutional argument highlights the wide, perhaps unbridgeable, differences between Western, largely secular countries and theocratic states in the Muslim world. We can hope that these differences may one day be resolved, but present global tensions suggest it would be facile to have high expectations of their speedy resolution.

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