

On Blasphemy: *An Analysis*

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ABSTRACT

This contribution deals with two questions: a) what is blasphemy and what is the difference between blasphemy and discrimination?, and b) does the state have responsibilities to protect citizens against blasphemy? Although it cannot do without fundamental critiques society also needs social cohesion. I discuss British and Canadian law in relation to blasphemy. With reference to the distinction between two aspects of human identity - how we are made without our own doing, and how we have come into being because of our own values and beliefs - I indicate the difference between discrimination and attacks on what is holy to a person.

KEYWORDS

blasphemy, critique, dialogue, identity, pluralism, social cohesion

1. INTRODUCTION

The main question with regard to blasphemy is of course: Can we justify the prohibition against blasphemy by the state? To answer this question we need to define the two nouns in this sentence - state and blasphemy - and to analyse and give arguments for prohibiting blasphemy. Of course, we should do that in the present context. The secularisation and pluralisation of West-

ern culture caused by massive immigration and changes in worldview makes it necessary to rethink the existing arrangements in Western states concerning the church-state relationship. The overwhelming Christian majority of former times has given way to a much more varied social composition. The populations of the urban areas are made up of a wide variety of national and cultural backgrounds. The strong and visible presence of Muslims especially has changed the public domain considerably. The cartoons of Mohammed shocked Muslims all over the world because blasphemy is a very serious offence in Islamic countries. In this era of the 'resurgence of religion' and the change in the moral and religious balance in the world, the more or less traditional arrangements concerning secular and religious worldviews have to be rethought. Internal affairs today can have serious international consequences.

The classical definition of blasphemy – offending the gods or God – is a matter of debate, as are arrangements like state churches and established religions, or the strict privatisation of religion. Even the reference to Western universal values could be disputed – and it is surely not convincing for the large and poor populations in many parts of the world. Many immigrants come from countries in which blasphemy is strictly forbidden. Whatever the law states, mocking the Hindu deities in India will cause strong reactions by right-wing Hindus. In Islamic countries blaspheming God, the Qur'an, and the prophet Mohammed is very dangerous.¹

The two main questions this paper asks are:

- 1) What is blasphemy (in the modern context)?
- 2) On what grounds should blasphemy be prohibited (and punished)?

The argument is structured in ten sections as follows:

- In the first part of this article we will deal briefly with the classical and modern background of the prohibition against blasphemy. We will discuss new forms of laws on blasphemy, which place the emphasis on the insult to one's worldview, as they developed after the separation of church and state and the pluralisation of worldviews (sections 1-3).

¹ In Islamic countries people do not understand that Western governments do tolerate offences against the Prophet. There were severe reactions to the Dutch film *Fitna* by the nationalist politician Geert Wilders (MP) in Islamic countries, and only secret diplomacy prevented an escalation as happened also in connection with the Danish cartoons. In fact, the Mobile Police Force surrounded the two main mosques in the old Islamic part of Cairo in order to keep acts of indignation under control (February 17, 2008).

- In the second part of the article we will look at laws on blasphemy in the United Kingdom and Canada, and see what distinctions the law used in the formulation of the prohibition and the reasons given for such prohibition (sections 4-6).
- In the final part we will discuss the need of critique, the nature of blasphemy and the question if blasphemy differs from discrimination. In the last section we will deal with the question why the state should prohibit blasphemy (sections 7-10).

2. BACKGROUND

The background of the European laws against blasphemy lies, of course, in the biblical commandment: ‘Do not misuse my name. I am the Lord your God, and I will punish anyone who misuses my name.’² In ancient Israel, which in its ideal form would have experienced the closest relation between religion and social life conceivable, the citizens were to respect God, both in their own interest as well as in the interest of the people as a whole. Those who insulted the Name of God were to be stoned.³ One occasion on which this law was applied was the death of Jesus around the year 30. Jesus had called Himself the Son of God and/or the Messiah, which was considered a serious case of blasphemy. The Jewish Council sentenced him to death for this offence and convinced the Roman governor to have him executed.⁴

This prohibition against blasphemy has functioned in the background of the law in ‘Christian’ countries as well because the church wanted to prohibit any insult to God. For a long time the Inquisition preserved what was holy to the church and ensured that the viruses of unbelief did not spread freely among the population.⁵ In more enlightened times the severe penalties were changed into imprisonment or fines.

² Exodus 20.7, Contemporary English Version, 1999; note by the translators: ‘misuse my name: Probably includes breaking promises, telling lies after swearing to tell the truth, using the Lord’s name as a curse word or a magic formula, and trying to control the Lord by using his name.’

³ Leviticus 24.16.

⁴ ‘Then the high priest tore his clothing, saying, “He has spoken blasphemy! Why do we need any more witnesses? Behold, now you have heard his blasphemy. What do you think?” They answered, “He is worthy of death!”’ (Matthew 26.65f.). ‘The Jews answered him, “We have a law, and by our law he ought to die, because he made himself the Son of God”’ (John 19.7).

⁵ Cf. the Inquisitor Salamances: ‘the heretic is a most infectious animal: therefore he must be punished before the virus of impiety breaks out and spreads outside,’ in: Perry Schmidt-Leukel, ‘Ist das Christentum notwendig intolerant?’ in: Rainer Forst (ed.), *Toleranz: Philosophische Grundlagen und*

In ancient Greece already Socrates was sentenced to death, also on the charge of unbelief or even atheism. The accusation against him is interesting indeed: ‘That Socrates is a doer of evil, and corrupter of the youth, and he does not believe in the gods of the state, and has other new divinities of his own.’⁶ We see here how the interests of the state – the corruption of its youth – are connected to not adhering to the state religion. His remark about the authority of the state (and its religion) and obedience to the divine is as well known as it is remarkable: ‘Men of Athens, I honour and love you; but I shall obey God rather than you.’ He challenged their authority – in Plato’s description – even more by telling them that they needed a person like him who taught them a lesson now and again:

I am that gadfly which God has given the state and all day long and in all places am always fastening upon you, arousing and persuading and reproaching you. And as you will not easily find another like me, I would advise you to spare me. I dare say that you may feel irritated at being suddenly awakened when you are caught napping; and you may think that if you were to strike me dead, as Anytus advises, which you easily might, then you would sleep on for the remainder of your lives, unless God in his care of you gives you another gadfly.⁷

One question is, indeed, if a charge of blasphemy is not too easy a defence of intellectual and spiritual laziness and state power.

In Islamic law as well, insulting God, the Qur’an, or the Prophet is one of the most serious offences. Although death by stoning for blaspheming God, the Prophet, or the Qur’an has no clear basis in the Qur’an, the death penalty is widely considered to be a general Islamic practice. But this view needs qualification. The Shari’ah penal codes that have been recently introduced into northern Nigerian states do not prescribe the death penalty for blasphemy but prohibit public ‘contempt of any religion in such a manner as to be likely to lead to a breach of the peace’ and stipulate imprisonment of two years maximum or a fine, and the offender ‘shall be liable to caning which may extend to thirty lashes.’⁸ The law also covers contempt of other religions

gesellschaftliche Praxis einer umstrittene Tugend (Frankfurt/New York: Campus Verlag 2000), 177-213 (184); Simancas, *De catholicis institutionibus liber* (Roma 1575), Tit. II, n.17.

⁶ Plato, *Apology*, 24b; 26c; transl. Benjamin Jowett, Internet Classics Archive.

⁷ Plato, *Apology*, 30 d-e.

⁸ See Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*. Vol. V. *The Sharia Penal Code and Criminal Procedure Codes* (Ibadan: Spectrum Books 2007), p. 133. Ostien also gives variations from the main body of the law that are incorporated into the law by some northern Nigerian states. The state of Kano added a subsection to the article quoted in which contempt

but does not prescribe capital punishment. Again, we note that the law is also intended to preserve the peace in society. The relevant text in the Qur'an is as follows: 'Have you been joking about God, and His signs and His messenger? Make no excuses! ... We should pardon one faction of you. We will still punish another faction since they have been such criminals.'⁹ They have to change their habits and honour God.

3. THE MODERN DILEMMA: CRITIQUE AND SOCIAL COHESION

What we see in the cases of Socrates and Jesus is a close connection between the prohibition against blasphemy and the collaboration between state and religious authorities to protect what is holy in itself – God and the gods – from contempt. In the Torah the wish to preserve Israel as a holy nation figures in here. The protection of what is holy also played an important role in the case against Socrates. National unity has been understood to include or even to depend upon a common belief in God (and common values). There is a *hadith* that also remarks that in practical life Muslims follow the religion of their leaders.¹⁰ Group identity has been and is a strong incentive for limits to religious freedom in many places in the world. On the one hand, we see the need for criticising the status quo of a society – sometimes (in the eyes of many people and often also the leaders perhaps) harsh criticism – and on the other the need for social cohesion and solidarity. I think, in relation to blasphemy this is the real dilemma of offensive language, and we will see how contemporary governments wrestle with this.

Laws on blasphemy have been criticised in recent times on the basis of the separation between state and church and the impossibility of the state to judge whether God can be or is offended by sharp criticism or mockery. Instead of talking about an offence against God, the state now talks about offensive language toward what people consider to be holy. The typical difficulties facing lawyers and politicians are: deciding if people are justifiably offended or suffer societal harm as a result of the criticism, if the wording of the criticism or its form – as 'joking' and mockery – is indeed offensive, and

or abuse of the Qur'an or any prophet 'shall on conviction be liable to death.' The explanation adds that blasphemous books, etc. could incite riots. Cf. p. 133, n. 627.

⁹ The Qur'an, Sura 9.64-68; the following sentences mention eternal punishment; oral culture did not excel in understatement – neither does the New Testament.

¹⁰ 'An-nāsu alā dīni mulūkihim' (people follow the religion of their rulers), Ajluni, *kashf al-khafa*, II/311 (thanks to Fatih Okumus).

how the balance between the right to freedom of speech and the golden rule of social cohesion – ‘Don’t do to others what you would not want done to yourself’ – can be preserved. Let us see what the lawyers and politicians have changed in the United Kingdom with its established church and its stress on ‘the fabric of society,’ and Canada with its constitutional guarantee of full ethnic, cultural, and religious expression and life – which obviously demands modesty with respect to criticism.

4. UNITED KINGDOM: FROM BLASPHEMY TO HATE CRIME

In the United Kingdom the new Racial and Religious Hatred Act (2008) has replaced the old blasphemy laws. Invited to comment upon the government’s proposal to abolish the blasphemy laws, the archbishops of the Church of England acknowledged that those laws have long ‘been recognized as unsatisfactory and not very workable offences in circumstances in which scurrilous attacks on the Christian religion no longer threaten the fabric of society.’¹¹ The church approves of the aim of the new law, i.e. ‘the preservation of society from civil strife, rather than the protection of the Divine or any particular religious beliefs’.¹² The abolishment of the law on blasphemy is not ‘a secularizing move’, nor is it ‘a general license to attack or insult religious beliefs and believers’. Nevertheless, the archbishops have serious reservations about the abolishment of the law on blasphemy at a time when religious identity has become such an important issue and about the inclusion of religion among ‘quite different matters, themselves of important significance.’¹³ I will return to this question of identity below.

The criterion for finding people guilty is if it can be shown that people clearly intended to spread hatred and induce ‘*a reasonable reaction involving civil strife, damage to the fabric of society or their equivalent*’, as the High

¹¹ Full text of letter sent to Right Honourable Hazel Blears MP, Secretary of State for Communities and Local Government by Rowan Williams (Archbishop of Canterbury) and John Sentamu (Archbishop of York). Cf. <http://www.cofe.anglican.org/news/pr2008.html>.

¹² Although the next part of the sentence quoted here refers to Christian beliefs, ‘and in so far as achieving that end indirectly protects religious beliefs, they are the beliefs of Christians generally, not just those of the Church of England’, I think that the ‘continuing debate about the nature of our society and its values’ lies in the background, and therefore the archbishops stress that the abolishment of blasphemy laws are not be understood as affecting the position of the Christian religion in society.

¹³ For hate crimes, in relation to disability, race, religion or belief, sexual orientation and transgender; cf. Racial and Religious Hatred Act 2006 and the explanation on the website of the Home Office, <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/index.html>.

Court stressed in relation to the prosecution of those accused of insulting religious people.¹⁴ Let us now look at the letter of the law:

A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.¹⁵

The key terms are ‘threatening’, ‘intention’, and ‘stirring up religious hatred’. The legal question, of course, concerns the criteria for deciding between guilt and innocence, and the related philosophical question concerns the nature of reasonable and harmful forms of public criticism, and the balance between social cohesion and criticism of the status quo. The question of reasonable criticism leads to questions of truth, both religious truth (in the widest sense of the term) and the truth about the common good, which the state is obligated to preserve. To learn more from legal distinctions I will refer to one more example of a law against hatred.

5. LIVING IN ACCORDANCE WITH MY CUSTOMS - MULTICULTURALISM

Canadian law grants all inhabitants of Canada as much opportunity as possible – and the right – to live in accordance with their ethnic and religious ideas and customs, and politicians have, predictably, wrestled to expand these constitutional rights in accordance with human rights in general: How is the common good to be combined with human rights *and* the ideas and customs of various ethnic and religious minorities?

In Canadian law blasphemy is viewed as an insult to believers, rather than contempt for any transcendent being, as is clear in this short definition: ‘*Blasphemous Libel: The publication of material that would shock and outrage the feelings of believing Christians.*’¹⁶ The Christian background accounts for the prohibition. The difficult question facing the law is not if the prohibition should be extended to other religious groups but what counts as an offence. Canada respects all ethnic, linguistic, and cultural groups and includes relig-

¹⁴ ‘[T]here must be contemptuous, reviling, scurrilous and/or ludicrous material relating to God, Christ, the Bible or formularies of the Church of England. Second, the publication must be such as tends to endanger society as a whole, by endangering the peace, depraving public morality, shaking the fabric of society or tending to cause civil strife,’ Quoted in the Archbishops’ letter.

¹⁵ *Racial and Religious Hatred Act*, 2006, ch.I, art. 29b (1).

¹⁶ The on-line dictionary of the Superior Courts of the Canadian province British Columbia: JURIST Canada’s browsable dictionary of basic Canadian legal terms; <http://jurist.law.utoronto.ca/dictionary.htm#sectB> (accessed 29 December 2009).

ion in its multicultural policy. Therefore, respect for other opinions is an important virtue and blasphemy a real vice. Canadian law not only prohibits harming groups in these respects but also prescribes positive policies to support groups. The *Canadian constitution* prescribes ‘the preservation and enhancement of the multicultural heritage of Canadians.’ All governments in Canada are duty-bound to stimulate the various groups in the expression of their cultures. Religions, of course, are part of those cultures.¹⁷ The constitution grants people freedom of conscience and freedom of speech. Moreover, the *Multiculturalism Act* states that persons ‘belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language’. This looks generous, but in the 21st century the key question is how to deal with customs, practices, and opinions of one ‘group’ of people felt to be offensive or discriminatory by another.¹⁸

The right to affirmative action of the Canadian governments on national, provincial, and local levels opens the door for the acknowledgement of the importance of religion for some groups – not only for the original inhabitants but also for immigrants – and for affirmative action.¹⁹ This multicultur-

¹⁷ Canadian Constitution Act (1867) 1982. Part I. Canadian Charter of Rights and Freedoms. Art. 2. Fundamental Freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association. Art. 15: Equality Rights: (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. [Affirmative action programs](#):

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Art. 27: [Multicultural heritage](#): This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

¹⁸ In Ontario a request to institute *shari’ah* courts for the mediation of family disputes was not granted straightforwardly because of complaints about the position of women in *shari’ah* law. In an intriguing extension of the law, the Ontario government found a compromise that granted possibilities for Muslims to be mediators, while preserving gender equality. Cf. my “Church” and State Relations in the Public Square: French Laicism and Canadian Multiculturalism,’ in: *Studies in Interreligious Dialogue* 16 (2006): 190-210.

¹⁹ Canadian Multiculturalism Act (1985, Current to 2 December 2009), Art. 3: ‘(1) It is hereby declared to be the policy of the Government of Canada to (a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage; ... (g) promote the understanding and creativity that arise from the interaction between individuals and communities of different origins; (h) foster the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expressions of those cultures.’ Cf. also Art. 5.

alism has to be balanced by strategies to stimulate social cohesion. People are not to harm others through the expression of their culture and opinions. In that respect another law, Canada's *Criminal Code*, states the rules for *blasphemy* and defines 'defamatory libel' as follows: Art. 298:

(1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

It is clear that it is not necessary for the author to have intended to harm another but only that what he writes will *likely* have the effect, directly or somewhat indirectly, by word or otherwise.²⁰ All such publications are 'an indictable offence' regardless of whether they are true or not true, but if the author knows that the libel is false, the sentence of imprisonment has a maximum of five instead of two years (art. 300-01). However, Canadians live in a democracy, and democracy depends on endeavours in the interest of the common good – and therefore criticism of positions that hinder valuable developments. In a democracy the public needs such information as well. Therefore criticism is possible, even if someone is thereby exposed. Damaging a person's reputation through a publication can happen simply as a matter of course, and therefore the Criminal Code contains many rules for protecting the media or people who criticise certain circumstances from the charge of defamatory libel, as in art. 309: (Public benefit):

No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter that, on reasonable grounds, he believes is true, and that is relevant to any subject of public interest, the public discussion of which is for the public benefit.

Since Canadian Law is careful to promote peaceful coexistence among its citizens and their right to live in accordance with their traditions, it has to preserve reciprocal respect and harmony as well. The Criminal Code declares seeding hatred to be a serious offence, i.e. 'Hate propaganda,' art. 319:

(1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to

²⁰ Criminal Code, DEFAMATORY LIBEL (art. 297-316). Art. 298 (2) describes the means: 'A defamatory libel may be expressed directly or by insinuation or irony (a) in words legibly marked on any substance; or (b) by any object signifying a defamatory libel otherwise than by words.'

a breach of the peace is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years...²¹

This offence carries the same punishment when someone does it wilfully (b) but also states that it is not an offence (3b) to communicate truths in good faith. So in Canada I can try to convince a Muslim that Mohammed was a gifted person but not a prophet, or an atheist that he is blind not to see things that are not quantifiable but evident to those who can, or a Buddhist that he is attached to emptiness, or a member of the native peoples that the powers they believe in do not exist, or a Christian that Jesus' moral teaching is not much help in this world – if and only if I provide reasons. And I would probably have to show that I was an agnostic pluralist and was not trying 'to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward ... identifiable group[s] in Canada.'

Of course, the phrases of the law that refer to the communication of 'truths,' 'in good faith,' and 'in public interest' are food for philosophers, and not least the idea that judges or juries are in a position to 'judge' us. Who can decide if our arguments are reasonable? Perhaps our arguments are reasonable in one ethnic and religious group but not in another. Nevertheless, Canadian policy and law aim at a society in which people respect others and grant them the opportunity to live according to their own traditions. The boundary is when it becomes a matter of seeding hatred, contempt, and, I would say, undermining the dignity of people, damaging their interests, and destroying social cohesion – unless, of course, the criticism is well intended and can be understood as reasonable and (possibly?) true.

6. PHILOSOPHICAL POINTS BEHIND THESE CASES

On the basis of these two cases I will stress three elements that, on the one hand, make or should make the application of the law more complex and, on the other, make it more true to life. First, Canadian law does not distinguish between a religion and individuals who "have" religious beliefs and practices. In a recent Dutch court case against the popular politician Geert Wilders, the court distinguished between Islam as an entity and Muslims.²²

²¹ The maximum penalty of two years' imprisonment proves that blasphemy/spreading hatred is a very serious crime. The maximum penalty in the *shari'ah* laws in Northern Nigeria for blasphemy is also two years (with the exception of Kano State) – with the possibility of caning. Cf. nt 8.

²² *Trouw*, 16 October 2010, 3. The two main grounds for the state attorney not to plead guilty are: (i) a sharp distinction between the religion and persons (critique on religion must be possible; feelings

One of Wilders' milder expressions was 'There is too much Islam in the Netherlands.'²³ Obviously in his view, he is warning the public that the common good is at stake because Islam is a political ideology (and not a religion) that intends to rule the world. He does not object to Muslims as human beings but hopes that they will be converted to something else. So in the interest of those who presently are Muslims and in the interest of the common good, he rejects Islam clearly and distinctly. The question here is not if such language qualifies as hate language that is forbidden by law or perhaps as a truth to which we rudely have to wake people up eventually. Rather, the question is that of the validity of the distinction between the rejection of Islam as 100 % evil and the adherents of this false ideology. Is there a fine line between saying 'There is too much Islam in the Netherlands' and 'There are too many Muslims in the Netherlands'? We should look at the Canadian definition of blasphemous libel as: *The publication of material that would shock and outrage the feelings of believing Christians*, already quoted above. The question is if one can respect people while greatly insulting their beliefs by suggesting that they either abandon their faith or leave the country. This legal distinction rests on a philosophical distinction between persons and their worldview. If this distinction is valid, the expression 'We have to fight Muslims' would be hate language, but to say 'Islam is a perverted tradition' would not be blasphemy (although it 'would shock and outrage the feelings of believing' Muslims). However, that such a distinction between a worldview tradition and the believers/adherents is possible is not a neutral but a philosophical position that needs to be argued. I think it is impossible to argue for such a position without a thorough knowledge of religious studies.

The second philosophical point in Canadian law is that it does not make a sharp distinction between religion and culture. It is obvious that the native people of North America would reject any distinction between their religious beliefs and practices on the one hand and their culture on the other. Neither would orthodox Jews, Muslims, or Christians. If we define a *worldview tradition* – secular or religious – as an internalised configuration of insights into life, values, and long-lasting moods, and *culture* as a configuration of ways of life, we then have to acknowledge a broad overlap of worldview and culture. They cannot be distinguished sharply. Because culture and religion influence each other, all religious traditions differ, depending on their cultural con-

of believers are not relevant); (2) the context of the critique has to be taken into consideration: the political and public debate.

²³ NRC Handelsblad, 24 February 2007, cf. 16 October 2010.

texts.²⁴ The sharp distinction between culture and religion is difficult to defend. I think that cultural and religious studies show that worldviews and cultures are interwoven. Therefore, we cannot say: ‘I respect your culture, but I reject your religious values.’

The third point follows from the two above. It is the distinction between a sharp critique and mockery of religious beliefs and a mockery of the person. Because ‘Islam’ stands for the values of Muslims, the expression ‘There is too much Islam in the Netherlands’ implies that there are too many Muslims in the Netherlands, and this implies that people cannot be accepted with their deepest beliefs and values – which is discriminatory. On this point we can understand the hesitation by the two archbishops of the Church of England concerning ‘the abolishment of the law on blasphemy at a time when religious identity has become such an important issue and about the inclusion of religion among “quite different matters, themselves of important significance”’ – as already stated. Worldwide religious identities are becoming stronger and in this sense in some parts of the world religious bodies are becoming more important as religio-cultural entities. I will discuss this point of identity below and try to clarify the difference between racism and discrimination on the one hand and blasphemy on the other.

7. CRITIQUE OF SOCIETAL WRONGS

We have seen that reasonable and well-intended criticisms are allowed (and necessary: we do need gadflies), even if they are felt to be offensive or damaging to the interests of the people criticised. An example could be the protests against fur coats even if the propaganda has sometimes been offensive to those who wore them – fur coats have virtually disappeared from sidewalks. An example of a debatable expression of criticism is to accuse medical specialists who perform abortions under certain circumstances of being murderers. Even though extremist Christians have murdered some medical specialists for that reason, right-wing Christians and even some politicians in the USA continue to engage in such criticism. This is an example of religiously motivated hate language that is considered to be in the interest of unborn children and society at large. Some instances of opposition to whal-

²⁴ Cf. my ‘Religious Hermeneutics, Culture and Narratives’, in: *Studies in Interreligious Dialogue* 4 (1994), 189-213, and *A Spectrum of Worldviews. An Introduction to Philosophy of Religion in a Pluralistic World* (Amsterdam/New York: Rodopi 2006), esp. p. 229-301.

ing and the mistreatment of animals in the meat industry are other examples of contemporary hate language motivated by a worldview.

These examples show the ‘mechanics’ of the process. A culture has to be stable *and* flexible; it has to cherish its heritage, adapt to new circumstances, *and* improve its material base and moral standards. In order to exist and act effectively, cultures need patterns of acting, repertoires of saying and practices²⁵ because people cannot be constantly engaged in discussion and not doing anything. We need stable and accepted patterns, which implies that we become used to shortcomings. People who feel those shortcomings or injustices will have to argue their case and expose society’s wrongs. However, to overcome the real wrongs in the fabric of society that are thought to be ‘normal’, some people have to be sharp, to demonstrate, and to attract attention. The history of Western civilisation is full of examples: the lack of freedom of religion (opposition against the Inquisition), oligarchy (French and Russian Revolutions), slavery (Civil War), inequality (equality of citizens, women’s rights, racial equality) – to mention only the examples from the political domain. I do not think we deny that crucial steps in the process of further civilisation – as seen by those of us who applaud the dignity of all human beings, the care for animals and respect for nature as a whole with its vitality and mysteries – were attained by those who had to make some noise to wake other people up. Did the state help those protestors? When they were tried, they were sentenced according to the laws they wanted changed. Judges can make decisions regarding factual truths but not concerning the truth of worldviews. The interests of one group often endanger the interests of others. In the above-mentioned examples, the people who revolted intended the best for ‘the fabric of society’, and simply wanted justice to be done. There is not only One Theory of the Best Interests of Society. The nature of the Common Good is debatable, and each idea of the common good is part of a worldview. Laws in turn are guided by worldviews. Basic insights into the common good of society belong to the most basic ideas that humans have about life and existence. We can express this by saying that people consider them ‘holy’. Blasphemy is a rude criticism of what is holy to certain people.

²⁵ Cf. André F. Droogers, ‘Changing Culture and The Missiological Mission’, in: *Fullness of Life for All: Challenges for Mission in Early 21st Century*, Inus Daneel et al. (eds.), (Amsterdam/New York: Rodopi 2003), 64-68 (59-72).

8. OFFENDING MY IDENTITY

However, this rude criticism is not just hate language. For that reason I can agree with the reservation of the English archbishops concerning the inclusion of offences against religion in a longer list – however serious other forms of discrimination may be. Discrimination on the basis of ethnicity, gender, or sexual orientation does not ‘accept me and my kind as we are’, whether we like it or not. Blasphemy, however does not affect my ‘self’ – it affects my ‘I.’²⁶ Here we can see the distinction between ourselves as we are, i.e. ‘products’ ‘made by’ a wide spectrum of causes – genetics, climate, upbringing, ethnicity, culture, friends, education, work, and so on – and the values, norms and ideals with which we identify. Of course, we now have to distinguish between different sorts of values because not all ideals and values are constitutive for our identity in the same way. If I say about a big car, ‘I don’t like it; you’re just showing off’, I am not criticising the owner as a person but ‘only’ his preference for showy objects that are unnecessarily pollutive, conspicuous, and expensive. Discrimination is the rejection of persons as they are ‘made.’ To say ‘I do not trust white people’ is offensive, leads to discrimination and disrupts the fabric of society. But it does not reject persons with respect to their ideals, with respect to what they want to be within the possibilities they have, given their ‘givenness’. Insulting ‘blacks’ is racist hate language that damages people’s interests; its sting is not first that it damages their interests but that it does not take them seriously as the persons they are. ‘They’(!) are rejected with respect to their ‘self.’ Of course, such discrimination damages their interests as well as it does the fabric of a democratic society because of the rejection of the principle of the dignity of all members of that society.

There is a fine line between not accepting what another is – black, brown, yellow, or white – and not accepting the values that people respect and how they want to become a certain kind of person. Insulting a specific, consciously Muslim Arab for being an Arab is not the same as insulting the same Arab Muslim for being Muslim. The former is an offence against what he and his family are; but the latter is an offence against what he thinks he should be personally and hopes to become. The former may damage his given identity; the latter attacks the values, norms, and ideals in his *identity con-*

²⁶ Here I use the distinction in anthropology parallel to a distinction made by Paul Ricoeur, *One-self as Another*, trans. Kathleen Blamey (Chicago, IL: University of Chicago Press 1992), 115-25, p. 132, and Vincent Brümmer, ‘Gelijken op een beeld’, in: *Zoeken naar het mensbeeld*, Gerard J.P. Rijntjes (ed.), (Utrecht: Het Spectrum 2000), 217-34 (22of.).

struction. If I say (a) that Martin Luther King was ‘just another black man,’ that is a different kind of offence from that of saying (b) that he died for nothing because his ideals were utterly mistaken. We can argue that (a) entails (b) because the acceptance of a racist position entails the rejection of racial equality, and therefore the anti-racist movement as well. For that reason, the law on non-discrimination is basic for a society that takes the equal worth of all people seriously. However, the question is if the prohibitions of discrimination on the basis of race, ethnicity, religion, and sexual orientation cover blasphemy in its modern form – not as an offence against God but as one against the high ideals of persons, their ‘holy’.

If somebody says – more sharply than Karl Marx did²⁷ – ‘Your ideas about God and the world are abject; religion is the worst thing history has produced,’ the offence strikes not at my views but at basic insights that guide my conscious life and sensitivities. It tries to nullify who I am as a person, who I want to be and become. The insights that are basic to my conscious and responsible life are rejected, and not simply debated and criticised. This affects me in my identification with certain values and ideals. I cannot help being black or brown, but I am responsible for what I try to make of my life (inevitably influencing the lives of others by what I have and have not done). It differs from criticising one’s choice of a car, and is more like a rude criticism of my wife or of the goals I want to achieve – it comes closer to the heart of who I am, my ‘I.’ My identity is partly fixed, partly forced upon me (I had to choose...), partly chosen (... and I choose...), and partly determined by my own values and ideals that I hold – let us say – holy. These ideas are essential for the integration of experiences that we have and help us to prioritise all obligations that we feel, and choose among the possibilities for action. They are basic to the repertoires of how we live.²⁸

Although these elements of our identity are interwoven with one another, we can distinguish between the rejection of the person as a whole on grounds for which the person is not responsible and rejection on the basis of

²⁷ Cf. Marx on religion as ‘die imaginären Blumen an der Kette,’ ‘Zur Kritik der Hegelschen Rechtsphilosophie. Einleitung,’ in: Karl Marx/ Friedrich Engels, *Werke*, Band 1, (Berlin (DDR), Karl Dietz Verlag 1976), 378-391 (379).

²⁸ For a broader analysis of the ego/non-ego, see my ‘Über das Verhältnis von Relationalität und Subjektivität,’ in: *Das Subjekt als Prinzip der Relationalität im Kontext der Religionshermeneutik*, ed. Gerhard Oberhammer and Marcus Schmücker, [Beiträge zur Kultur- und Geistesgeschichte Asiens] (Vienna: Verlag der Österreichischen Akademie der Wissenschaften 2010/11), 33-55.

insights and ideals that are freely accepted and formative for a person's identity.²⁹

From this follow some comments on the distinctions in the laws that I discussed briefly above. Let me repeat the text of the English Law: 'A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred,'³⁰ and the Canadian formulation (298):

(1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

From the perspective of the theory/philosophy of religion the real point of blasphemy is not hatred but humiliation through a crude and total rejection of what someone holds holy. If hatred is a 'strong aversion or detestation coupled with ill will,'³¹ blasphemy does not require ill will and may even spring from a deep concern about beliefs that somebody thinks are truly mistaken and will bode ill for a large group of persons. Somebody wants to shock and perhaps expose people for the sake of the higher good. The point of blasphemy is not hatred but a rejection of the ideals with which persons identify and for which they strive or live completely. Blasphemy implies a total rejection of the other's view of what is good and holy, and thus attacks others at their heart of who they are.

9. THE DANISH CARTOONS

But let us discuss one of the most typical examples of blasphemy in recent years, the Danish cartoons that depicted the prophet Mohammed – 'the Messenger of God, blessed be His name' – with a bomb on his head. The suggestion was rather clear: Muslim suicide bombers are followers of Mohammed; there is something in Islam that stimulates violence. The message thus was: be careful in following Mohammed, and it would be better not to follow him at all. And do not trust (all) Muslims. Many understood it as a far-

²⁹ Of course, I presuppose many nuances in the qualification 'freely'; see, e.g., my 'Can We be Sure about Contingent Religious Insights?' in: *Religions Challenged to Contingency*, Dirk-Martin Grube and Peter Jonkers (eds.), (Leiden/Boston: Brill 2008), 205-20. Behind the term 'accepted' lie broad discussions on if and how the will plays a role in the formation of insights.

³⁰ *Racial and Religious Hatred Act*, 2006, ch.I, art. 29b (1).

³¹ *Webster's New Collegiate Dictionary* (Springfield, MA.: Merriam 1958), s.v.

reaching criticism: Islam is dangerous, and its prophet is deadly. Islamic masses in the poorer parts of the world were furious and Muslim leaders indignant. What the cartoonist and the Western press did not realise or even know is the extent to which Mohammed is a personal example of piety that people try to follow in their lives. God guided his life. God revealed through many aspects of Mohammed's life how He wants people to live. He was not sinless, but each time he or his followers and friends acted wrongly, God revealed to him what was wrong and how they should act. Those people were rightly guided, directly from above.³² In central respects of their lives Muslims want to be like Mohammed. Therefore, qua identification for Muslims, Mohammed is 'how I want to be' and not 'how I am a product of many factors.' The cartoons had to do with the ideals of life that Muslims have. With respect to politicians suffering from 'Islamophobia' we can formulate it more strongly: they want to get rid of all Islamic ideals. This does not mean: 'I am wrong in how I have been made', but: 'They say that the things that I hold holy and live for make me a criminal.' The latter is not discrimination – ascribing a lower status to me – but a rejection of my life project as a whole, including my ideas of the common good. Perhaps the UK Racial and Religious Hatred Act rightly found a common denominator for the rejection of selves (whom I am as I have become) and I's (with which transcendent values I identify) in hatred, but there is indeed an important difference between both categories. I cannot change my colour, my ethnicity, my sexual orientation – important as they are, of course, for my 'self' – but within the space of what I cannot change, I could change or have changed my ideals and all values for which I have lived. However, I would therefore have to admit that all that was holy to me is mistaken and my 'project' did not make sense. Therefore, blasphemy is a serious attack on someone's integrity. It crosses the borderline between serious and open critical dialogue and simple rejection of what some think – whether or not it is based upon hatred or leads to hatred. That blasphemy can lead to hatred and discrimination is clear, but that is a prudential argument that does not bear on the special point of blasphemy.

³² Fatih Okumus, 'The Prophet as Example', in: *Studies in Interreligious Dialogue*, 18 (2008): 82-95.

10. CRITIQUE WITHIN THE BOUNDARIES OF COHESION

Until now we have not answered the question why the state should be involved in prohibiting blasphemy. Why should the state worry about our integrity, our happiness, and how we deal with our neighbour? Or, conversely, why should the state prevent people from being criticised? Why should we be limited in how we criticise others? Have the people who opposed slavery, apartheid and other ideologies not been silenced – and rightly so – because other parties felt themselves attacked in their integrity?

The task of the state in relation to discrimination is rather clear. Non-discrimination is a principle of all Western states and human rights codes. Hate language is not straightforwardly discrimination but easily leads to it and therefore implies a real change or damage. Therefore, it is prohibited – as we have seen in the Canadian and UK laws. Other human rights are the freedoms of religion, conscience, and assembly. Hateful criticisms of the beliefs of specific persons or groups of persons could adversely affect their freedoms (or other interests) considerably; they could lead to the prohibition of headscarves, the building of mosques and minarets, evangelisation and *dawa*, or even care of orphans and poor people in Christian, Muslim or whatever institutions. Therefore, the state is obligated to protect people as much as it is able – given the freedoms of speech, expression and press – and prevent criticism that is offensive, hurts people unnecessarily, and possibly damages their material interests as well as their possibilities for living out their religious ideals in society. With the Canadian law we could add: unless the criticism is not welcome but nevertheless true. Of course, we should also add: as far as the court can judge about worldview insights and ideals.

The question was if blasphemy has a special place. So far I have argued that sharp criticisms of our cherished values and aims of life affect us especially because our lives are or should be guided by those values. Therefore, criticism is personal in a way that criticisms of ethnicity, gender and sexual orientation are not because I can change – or could have changed – my insights into life. But other characteristics I cannot change. This difference has consequences on the societal level as well. In society we have to live and work together and trust that our interests are taken seriously, whether we are poor or rich, ill or healthy, whether we can help ourselves or not. Therefore, society is dependent on the good will of the population or at least of a good percentage of it, i.e. for social cohesion. Because we depend on one another and have to work together, we have to find sets of common values and shared practices, and trust one another enough to feel at least some solidarity.

Therefore, the state has an interest in the commonalities that citizens accept. Mutual agreements are not natural but arise through societal processes. However, because of the freedoms of religion, worldview, and conscience, the state cannot interfere in the different worldviews – be they secular or religious – and therefore the state depends on the values that it cannot itself force on its citizens.³³ The state can stimulate the transmission of its constitutional values but has to be careful not to choose implicitly between the various ideas of the Good Life and the Common Good that are present in society. On the other hand, because no socio-economic or political system is perfect, and the circumstances change constantly, it is also in everyone's interest that wrong or outdated institutions and worldviews should be cracked open and developed further. One could think here of the old stories of Athens and Jerusalem, the end of slavery and witch hunts.

In my view, the state has a responsibility to stimulate a proper exchange between people with different opinions. The state does have some responsibilities here: (1) to preserve the freedom of religion/worldview and conscience, (2) to further social cohesion in the widest sense of the word and therefore organise the exchange of ideas about life and the common good, (3) not to suppress but stimulate open debate and serious criticism from the different perspectives that people have.

If we accept the responsibility of the government in relation to worldview pluralism and the inevitable conflict of opinions, the government has to respect serious disagreements but try to make them fruitful. Blasphemy is counter-productive. From this follows another reason why people who feel the need to criticise the opinions of others will not engage in blasphemy. If they want to convince others of the need to rethink their beliefs – secular or religious – especially to improve society, their criticisms have to be communicated successfully. In this respect sharp criticism can fulfil the criterion that they are in the interest of society. It sometimes happens that people have to try to wake others up in order to move on, break the status quo, and adapt to new circumstances and challenges. Some people will feel that they have to make a great deal of noise. However, if the lines of communication are blocked, the dialogue stops, and those who are offended will strengthen their own identity in opposition to the criticism. Therefore I think we have to respect three insights:

³³ Ernst-Wolfgang Böckenförde, 'Die Entstehung des Staates als Vorgang der Säkularisation', in: Idem, *Staat, Gesellschaft, Freiheit* (Frankfurt a.M.: Suhrkamp 1967), 42-64 (60).

- People do have contradictory views of the ‘common good’ and strive hard to win debates and change society. In the end the state has to make compromises;
- Social cohesion entails the idea of criticism and the competition of ideas; otherwise it ends up as a totalitarian system;
- ‘Criticism in the interest of the public’ requires that the communication be successful; otherwise it is not in the interest of society.

Where there is no social cohesion, there is no justice and harmony, and after a while no well-being either. Therefore, blasphemy as bitter ridicule or denigration of what is holy for others is an offence against somebody’s integrity. When it involves groups of people it can be dangerous for ‘the fabric of society’. Criticism should be much more precise and not offend what is *really* ultimate and holy to people. I am afraid that in the old Athens and Jerusalem the leaders misunderstood what was really at stake. Therefore, the state should prohibit blasphemy but not be quick to punish. Social cohesion is helped not by punishment but by a state policy that stimulates the exchange of views and proper knowledge about worldview traditions and cultures. People who are offended in their innermost identity because their deep beliefs are ridiculed or made suspect may be able to hold the other party accountable in court.