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Book Review: Blasphemy and Freedom of Expression

Cedric D'Hondt

In February 2020, Belgium got caught in a controversy that had been in the making for over a year. The controversy's cause was the 2019 procession of the Carnival of Aalst, which featured a float with two puppets of Jewish men. Both puppets were stereotypically adorned with hooked noses, ringlets and a *shtreimel*. Furthermore, they were standing in front of a safe amidst bags of money. Critics considered the float the epitome of anti-Semitism.

Ultimately, UNESCO withdrew the event's status as a 'Masterpiece of the Oral and Intangible Heritage of Humanity' in December 2019. Others, including the mayor of Aalst, persistently justified the display as mere mockery. Citizens defied the denunciation of their festival—the alleged 'heyday of freedom of expression'—in the 2020 parade: the contested float made a reappearance and revelers dressed up like ants with *shtreimels* and ringlets. Again, the carnival sparked a debate on free speech and the protection of religious minorities.

A similar debate lies at the heart of *Blasphemy and the Freedom of Expression: Comparative, Theoretical and Historical Reflections After the Charlie Hebdo Massacre*. The editors of this collection are Jeroen Temperman, a professor of international law and religion at Erasmus University Rotterdam, and András Koltay, a professor of law at the National University of Public Service and the Pázmány Péter Catholic University in Budapest. In addition to both editors, thirty leading experts have made significant contributions, which has resulted in a lengthy yet captivating twenty-seven chapters.

The starting point of the book is not a Belgian carnival. Instead, Part I deals with the gruesome attack on the Charlie Hebdo offices of 7 January 2015 and its societal aftermath. From there onwards, the book firstly gives an extensive theoretical outline of blasphemy, the right to blaspheme, and the differences between blasphemy, defamation of religion and hate speech. Consequently, the book elaborates on the international legal framework, with attention for the work of the United Nations Special Rapporteur on Freedom of Religion and Belief and key documents like the Rabat Plan of Action. The book also critically analyses the case law of the European Court of Human Rights (ECtHR). The book similarly scrutinizes active anti-blasphemy laws in national legal systems, as well as national anti-blasphemy laws that have fallen into desuetude or that have been abrogated. The book concludes with reflections on the future of blasphemy laws.

One should note that the book focuses on occidental states. The sole exception is Pakistan, which receives cursory attention in the sixth chapter. This focus on western states unearths one of the book's most important tenets: Unlike the widespread use of the slogan '*Je Suis Charlie*' might suggest, 'the West' is not a liberal bastion of freedom of expression. In fact, several states such as Poland, Italy and Germany uphold blasphemy restrictions. Other states, like Australia, Ireland and Denmark, equally maintain anti-blasphemy statutes, although these laws have not been enforced in decades. These double standards become starker on the international stage, where western states promote a liberal agenda *vis-à-vis* the rest of the world, most notably the Organisation of Islamic Cooperation.

Neville Cox explains this opposition between the West and predominantly Islamic states. She remarks that while anti-blasphemy regulations remain controversial, other types of speech-restricting laws are less debated in European states. An important example of such laws are legal prohibitions to deny the Holocaust. In the author's view, such laws do not serve to defend individual sensitivities, but the public morality of the society as a whole. Moreover, laws against Holocaust denial are not based on religion, but on a human-rights ideology. Hence, Neville Cox discerns a related reason behind restrictions on the freedom of speech in the West and blasphemy bans in other states. Both are after all shaped in accordance with public moralities. Western states simply enforce a secular-based, liberalistic morality that has lost its reverence for the sacred. Indeed, western debates on the ban of male circumcision, ritual slaughter and the *hijab* could be a manifestation of this uneasy relationship with religious morals.

Though interesting as the approach of a 'clash of public moralities' may be, the book does not refrain from going beyond this apparent conflict. Robert Khan cautions not to look at blasphemy bans 'through a clash-of-civilisations prism', whilst poignantly pointing out that there are several forms of blasphemy, and that European colonialism exported the notion of 'blasphemy bans' to other parts of the world. The book also confirms the growing concern in the West about preserving peace in a diversifying society. For instance, public order was the reason behind Denmark's decision to maintain its anti-blasphemy law, while the UK and Norway have replaced their blasphemy bans with anti-incitement regulations. A similar concern might have encouraged the ECtHR to uphold its viewpoint in a recent judgement.

In *E.S. v. Austria*, the Strasbourg Court endorsed the decision of an Austrian judge to restrict the freedom of speech.¹ The domestic court acted within its margin of appreciation by considering that statements about the Prophet Mohammed went 'beyond the permissible limits of an objective debate.'² Although this verdict was issued after the publication of *Blasphemy and the Freedom of Speech*, it remains illustrative for the observations of Tom Lewis and Jeroen Temperman. Both authors explain that the ECtHR has shown willingness to protect specific forms of speech, provided that it contributes to a public debate. However, when expressions are 'gratuitously offensive', the Court accepts a far wider margin of appreciation in which Member States can restrict the freedom of expression. Although both Lewis and Temperman have carefully deconstructed the artificial reasoning of the ECtHR, *E.S. v. Austria* confirms the authors' message:

when it comes to determining the protection of religious minorities, little guidance is to be expected from the ECtHR.

In addition to scrutinising ECtHR case law, Temperman makes another point that remains somewhat underdeveloped in other parts of the book. Through the Pussy Riot Case, in which three persons received harsh penalties under the Russian anti-blasphemy law for singing an anti-Putin song in a church, the author illustrates the connection between blasphemy bans and politics. Although less explicitly, other contributors equally hint at a political use of blasphemy bans. Ian Cram, for instance, warns that anti-blasphemy laws pose a threat to democracy, for they can become assimilationist tools in the identity politics of a Christian majority. Additionally, Tuomas Äystö explains the political significance of anti-blasphemy statutes for the Finnish establishment: whereas initially blasphemy bans served to contain the anti-religious propaganda of the Bolsheviks on the far left, they now form a shield against hate speech of the far right.

Another point of criticism is also related to a lack of attention to the politics behind blasphemy bans. In their respective parts, Effie Fokas and Tarlach McGonagle convincingly conclude that the anti-blasphemy laws of Greece and Ireland have become untenable. Yet, their historical backgrounds appear as being incomplete. Fokas, for instance, states that the Greek Criminal Law of 1834 included the crime of blasphemy, even though it was based on the Bavarian Code, the first European criminal code without offences against God. While Fokas does not offer a rationale for this divergence, an explanation can be found in an historical feature shared by Greece and Ireland. Both states have been part of an empire with a different prevailing religion. Hence, the Greek and Irish blasphemy bans could be seen as a reaction to centuries of Muslim and Anglican domination. Whilst usually the historical background enriches the book, it is unfortunate that both authors seemingly want to jump to conclusions without offering an adequate historical context.

Nonetheless, *Blasphemy and Freedom of Expression* is a balanced book that offers refreshing insights in the complexities of freedom of speech and blasphemy. Reading it is particularly worth the time of academics and professionals in the field of free speech and freedom of religion or belief, and human rights professionals and students in general. It also is a recommendable read for those who profess an unlimited freedom of speech and those who believe in firm legal restrictions to defend (religious) sensitivities. The book aptly concludes with a ‘non-juriscentric’ approach to offensive or hateful speech concerning religion, which highlights the message of authors like Peter Cumper and András Koltay: we should not rely on the law to provide answers regarding the boundaries of freedom of expression. Educational efforts, political courage and a fair representation of minorities would foster a far greater respect and tolerance. It is a consideration for each other’s sensitivities - not a repressive law - that can solve controversies like the one of Aalst.

About the Author

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¹ Berry, Stephanie (2019) 'Book Review: Jeroen Temperman and András Koltay (eds.), *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre*' (Cambridge University Press, 2017, xix + 750pp)' *Human Rights Law Review* (19), 387-391.

² European Court of Human Rights, 25 October 2018, *E.S. v. Austria*, no.38450/12, <https://hudoc.echr.coe.int>