The Blasphemy Laws

Gordon Stein

We all know that the First Amendment to the Constitution of the United States provides for freedom of religion. Suppose, however, that there were laws still on the statute books in a number of states which specifically allowed a person to be prosecuted for expressing his opinion about religious beliefs, especially when that opinion was critical of the religious beliefs of others? Suppose also that those laws had actually been enforced and people convicted and imprisoned for violating them. Most knowledgeable Americans would undoubtedly respond that since such laws would be unconstitutional on their face, they could not exist for long, and that the scenario just mentioned must therefore be fiction.

We would all like to believe that this situation does not exist and that there are no such laws. But these statutes, called blasphemy laws, were on the books of fourteen states as of 1965: Connecticut, Delaware, Iowa, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota and Vermont. As of 1980, several states had repealed their blasphemy laws, but in Connecticut, Maine, Massachusetts, Michigan, New Jersey, Oklahoma and Rhode Island, they remain.

There have been a number of prosecutions and convictions under these laws in the twentieth century. In fact, the last case to receive any press coverage (Maryland v. Irving K. West), occurred in 1970, and its appeal to that state's highest court was responsible for the Maryland law being declared unconstitutional. Since the Maryland ruling was not appealed to the federal court system, the United States Supreme Court has yet to rule upon a blasphemy case.

In addition to the lack of a High Court ruling, there is another problem with blasphemy cases: they are misdemeanors, and so are rarely reported in the legal literature. There may be many more cases than the 250 or so which are traceable in the United States, England, Canada and Australia since 1650. There have also been a number of incidences in France, Italy, Germany and Switzerland (and perhaps elsewhere) which have not been tabulated.

In addition to doubtful constitutionality, the blasphemy laws are also often written in an inexact, confusing and occasionally contradictory way. Perhaps we ought to look at the actual text of some of these laws to see what is being forbidden. The Connecticut statute, for example (under which there have been convictions) reads “Any person who blasphemates against God, either of the persons of the Holy Trinity, the Christian religion or the Holy Scriptures shall be fined not more than one hundred dollars and imprisoned not more than one year and may also be bound to his good behavior” (Conn. Gen'l Statutes, Sec. 53-242). The original text dates back to 1642!

This statute does not explain or define the conditions for being considered blasphemous. However, there are laws of this sort which do make such an attempt. Let’s look at the Oklahoma statute: “Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the Holy Scriptures or the Christian or any other religion” (Oklahoma Revised Statutes, Sec. 21-901). These statutes go on to say that if the words complained of were being used in a serious discussion, then they are not blasphemous. This concern for intent and the protection offered to religions besides Christianity are unusual features of the Oklahoma law.

To give a full range of the types of laws that exist, let’s examine the Vermont law: “A person who publicly denies the being and existence of God, or of the Supreme Being, or contemptuously reproaches His providence and government shall be fined not more than $200” (Formerly Sec. 13-801 of the state statutes, this law was repealed in 1979).

It will be noted that some of these state laws specify (in a general way) what matter shall be considered grounds for blasphemy charges, while others do not. Some include only criticism or denial of God as blasphemy, while others include comments about the Holy Ghost, Jesus or the Bible as prosecutable.

There have been many blasphemy prosecutions in England, but the law there is somewhat different in that the only actual statute concerning blasphemy, passed in the 1600s, was repealed in 1967. No prosecutions had ever been brought under this law, however. All of the more than 150 prosecutions in Britain have been brought under the common law. It is important to understand this distinction, as it relates to American cases. United States common law is based upon British common law.

Common law results from the opinion given by a judge at the end of a trial. Some of these precedents go back several hundred years and continue to affect subsequent decisions in this area of law. When America consisted of British colonies, British statute and common law applied there. When the United States was formed as an independent country, and the Constitution was ratified, the British common law applied at first, while the statute law was up to the individual state legislatures to pass. In those states that eventually passed a
criminal code, there could not be a criminal prosecution for blasphemy unless it was covered under an actual statute. In other words, in states having a criminal code (all fifty states as of 1980), only those acts specifically covered by the code were criminal. If blasphemy wasn’t mentioned, it could not be charged against someone as a criminal offense under the common law. It seems, then, that blasphemy charges under the common law are no longer permitted in the United States. They are still permitted in England, and, in fact, the latest case (the so-called Gay News case of 1977) was tried under the common law. This case will be discussed later.

Several states have revised their criminal codes recently. That was when a number of them dropped the blasphemy law from the state code. Massachusetts revised its code in 1977-78. In December 1977, their State Senate voted to reverse its position of several months earlier and retain the state’s blasphemy law. The reversal was accomplished by means of heavy lobbying by Rita Warren, a housewife who heads the American Christian Civil Liberty Union, a group dedicated to returning compulsory prayer to the public schools.

In general, the opposition that exists to having laws against blasphemy is largely due to the fact that these laws punish people for having a different opinion about aspects of religion from that of the orthodox population. More precisely, those laws punish people for expressing their minority opinion. What reasons have been given for having such laws?

The first and perhaps the least impressive reason was to protect God from being offended by blasphemous statements. For example, English blasphemy indictments usually concluded with the phrase “... to the great displeasure of Almighty God.” It is never mentioned how it was ascertained that God was displeased. Besides, if God were displeased, he could probably handle the matter himself.

Another reason which has been given for blasphemy laws, one pertaining especially to England, with its established Church of England, has been that Christianity is a part of the law of the land. That meant, I suppose, that it was somehow protected from public criticism. This piece of legal poppycock was first promulgated by Justice Hale in 1676. Although he relied upon a mistranslation of a ruling by the French judge Prisot, made in 1453, Hale’s ruling was followed for several hundred years without challenge. The absurdity of this position is that, if it were true, then any attempt to criticize the income tax, divorce, marriage, or the Electoral College, to give some Anglo-American examples, would be illegal because these have all been lawfully instituted. In fact, if Christianity were really the law of the land in England, then it should be a crime not to observe Christianity. We would then expect there to be fines for not going to church on Sunday and for not being baptized or confirmed. The fact that there are no such punishable offenses shows that Christianity is not really a part of the law.

A third reason which has been used as a justification for blasphemy laws is that such laws were necessary to protect the young and/or the ignorant from hearing public criticism of their religion. As these innocents could not yet use their reason to see through the criticism, they might be led astray, to the eternal damnation of their souls. Of course, this reason-
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At issue was a poem by James Kirkup, entitled "The Love that Dares to Speak Its Name." It was published in June of 1976 by The Gay News, a newspaper primarily for homosexuals. The poem described a Roman soldier having homosexual relations with the dying body of Jesus at his crucifixion. In November of 1976, Mary Whitehouse, a private citizen who heads a vigilante group against obscenity in the media, announced that she would start a private prosecution for blasphemous libel. The prosecution was brought against the newspaper and its editor, Denis Lemon.

The trial was held in July 1977, and was quite complicated from a legal standpoint. As the statute against blasphemy had been repealed in 1967, the charges were brought under the common law. After much discussion, it was decided that this was possible, and the trial ended in a conviction. The Gay News was fined £1000 plus costs, and Denis Lemon received a £500 fine and a nine-month jail term, suspended for eighteen months. Appeals all the way up to the House of Lords were to no avail: the conviction was upheld.

If we looked at other statements or writings which have been prosecuted, we would see that some accepted doctrines of today, such as Quakerism and Unitarianism, have been successfully prosecuted for blasphemy in the past. Actually, a member of any group could be prosecuted, since the laws are not specific. No one is really "free" in our society until he or she is able to openly express an opinion on any subject, assuming that it is done tactfully and with an honest intent. Groups such as the Moral Majority are probably not above using the laws of this type to silence those who disagree with them.

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knowledge about a Friend Behind the Universe; he also denies that we have knowledge about divine or cosmic purpose. The argument in its essential form is simple and, I believe, decisive. Purposes can only be correctly assigned to sentient beings; and since man does not have knowledge that God or other sentient beings govern the universe, he cannot on a cognitive level maintain that the universe has any purpose.

The belief in beneficent Providence also has harmful dimensions. It is harmful because it often encourages the confusion of illusion with true belief and therefore, at least inadvertently, promotes gullibility; because many of those who have become accustomed to the warmth of this illusion suffer far more from the blasts of life's adversities than do those who have hardened themselves from the first; and because, when this belief is developed along theistic lines, it more often than not encourages the neglect of worldly welfare. For history abundantly shows us that belief in beneficent Providence is typically coupled with an adoration of perfect happiness in a world to come, with an oftentimes almost perverse admiration for suffering in this world, and therefore with a proportionate general neglect of the welfare of human beings. Yet with all this said we should not forget the many positive contributions theistic religions have made. They have mothered some of the earliest forms of altruism. Nor should we forget the many acts of religious charity that in moments of darkness have helped improve human conditions, not only by encouraging acts of good-Samaritanism but by establishing foundling homes, hospitals, and other philanthropic institutions. But even if we neglect, or decide to take issue with, these claims, the facts also indicate that many, like Lady Katharine, are given insight about the meaning of life, about the chief end of human living, when they believe God makes a disclosure about His own nature and purpose and gently embraces them in His absolute love. In short, it appears to be true that belief in God has had and still has the power to give comfort and consolation to millions of devout believers. Largely because of this, two important claims cannot be easily, if at all, dismissed. They are: (1) that in addition to other basic human needs, there is a need for psychological security, which includes the need to believe in God, or at least believe that the cosmos is guided by a loving purpose; and (2) that this need is often successfully met if a man genuinely recognizes that his goal for living is in, and given to him by, God.

Since these are empirical claims, the humanist cannot dismiss them out of hand without also placing respect for truth and, in its similarity, a case not only that man has a general need to believe but also that belief in God (or some essentially similar belief) produces at least as great a proportion of good over evil as does any available known alternative, to arrogantly crusade against religious beliefs — without distinguishing between beneficent and nonbeneficent varieties — may very well diminish important elements of human welfare.

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rule, for that would destroy the frontier, and only on the frontier is a man free to become what he might be.

We now understand why Jimmy Carter lost the election. Jimmy Carter and the elitist-left represented a view that is in direct opposition to the American ideal, the frontier ideal, the ideal of the natural aristocracy.

Jimmy Carter supported certain causes dear to the heart of the elitist left. He supported preferential treatment for certain interests based upon race, ethnicity, and sex. These policies were opposed, as polls indicated, not only by the majority of Americans but by majorities of some of the very groups they were designed to benefit. The frontier ideal of proving oneself through one's actions and not trading on origin was simply ignored by Carter but not by the voters. When left-wing Democrats supported policies that jeopardized access to jobs and education on the grounds that Americans of a certain race, sex, or ethnic origin had to pay reparations for supposed misdeeds of their fathers, those Americans, many of whom had traditionally voted Democratic, realized that the party had betrayed them. The Left, acting as a moral elite, was using the courts and the bureaucracy to close off vital opportunities through quotas, minority contracts, and busing.

Jimmy Carter looked inward not outward. He reacted and did not act. With his continual focus on the downtrodden, on injustice, he ignored the truth that brotherhood is only fostered by joint struggle outward. A contracting America is a dead America. Americans recognized his betrayal of our very being, the source of our genius and our generosity. Men and women here still want very much to make more out of their lives, to rule themselves, to explore what they can be, to move outwards and not to be treated like naughty children. And yet a further lesson lies here. In the reasons for the defeat of Jimmy Carter and the elitist-left there is also a message for the flip side of this presidential campaign — the Moral Majority.

Note: We regret to report that since the last issue of Free Inquiry, the seven Praxis humanist philosophers at the University of Belgrade have been dismissed without compensation from their teaching positions by the Yugoslavian government — Ed.