

**Free speech and religion –
The eternal conflict in the age of selective modernization
Anthony Lester¹
Keynote speech**

It is a great privilege and pleasure to have been invited to strike some keynotes at the beginning of this important conference. The subject-matter is of great importance across Europe and well beyond. The balance to be struck between freedom of expression and freedom of religion, as well as the right to be protected from discrimination and violence, raises difficult legal, ethical and political issues. Free speech faces new threats after September 11th, and there are crucial questions which must be addressed about how to protect religious minorities from persecution, while at the same time upholding freedom of expression. I am so sorry that I will be unable to stay for the rest of the conference to hear the discussions which will take place over the next two days, but I must return to vote this afternoon on the equally controversial subject of doctor-assisted suicide.

Freedom of speech, like equality and freedom of religion, is a fundamental civil and political right. Its protection is at the heart of our liberal democratic society. The right to freedom of expression means the right of everyone to communicate information and ideas without unnecessary state control or interference, and regardless of national frontiers.

International human rights instruments describe freedom of expression in generously broad language but, unlike the First Amendment to the US

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Constitution, they qualify its enjoyment with specific and detailed exceptions. The right to free expression is anchored in the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other regional human rights instruments, as well as in national constitutions and ordinary laws. The exceptions permitted by these instruments can all too easily be interpreted and applied in a way that destroys the very substance of the right itself. It is essential that all exceptions are strictly construed by the courts and other public authorities.

The right to free expression is not absolute; but it includes the right to express ideas and information that offend, shock or disturb the state or the public. So much is well recognised by the European Court of Human Rights, though the case law is inconsistent and in some cases lacking in a principled approach.

Speech that targets religion or a particular belief system for disrespect, as opposed to speech that incites unlawful acts against groups of religious people as such, should be protected, however offensive it may be. That includes evil ideas expressed intemperately or in ways that shock, disturb or offend some sections of society. It includes insulting and offensive criticism of religious beliefs and practices – whether traditional religions or new religions or cults, and in whatever form that criticism is expressed.

Advocacy of religious hatred can properly be punished or suppressed only when it constitutes imminent incitement to unlawful acts of discrimination, hostility or violence. This is in keeping with international standards, which impose obligations on states to prohibit certain forms of religious or racial hatred. For example, Article 20 (2) of the ICCPR provides that;

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) obliges Contracting States to;

“declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin”.

Both the UK and the USA have reservations to these provisions because of concerns to protect free speech. In relation to the ICCPR, the UK reservation states that the UK interprets Article 20 consistently with the rights to freedom of expression and freedom of assembly and association, and reserves the right not to introduce any further legislation. The USA reservation to the ICCPR makes clear that it will not pass legislation restricting the right of free speech and association in the US Constitution. The countries’ reservations to CERD are to similar effect.

Once the basic principles of free speech and freedom of religion are accepted, there are still difficult questions to consider:

- What is the nature of the conduct appropriate for criminal penalties?
- Should it include only threatening words or behaviour or extend to insulting or abusive words or behaviour?

- Is it confined to deliberate conduct or should the mental element cover reckless disregard as to the consequences, or even a mere likelihood that hatred may be stirred up?
- Should there be a close nexus between the conduct and its effect, such as a requirement that violence or the threat of violence should be imminent?
- Should the law draw a distinction between race hate speech and religious hate speech on the basis that the former attacks the common humanity and birthright of the human being whereas the latter attacks practices and beliefs that should be open to strong and even intemperate, abusive and insulting verbal attack and criticism?
- Should the law expressly protect the freedom of expression and avoid the chilling effect on free expression of vagueness in the definition and operation of the law?
- Is it desirable to include a requirement that a prosecution cannot be brought without the consent of the public prosecutor or other competent law officer, as a safeguard of the public interest, or does that create a risk of political manipulations and double standards in the criminal justice system?
- Does such a law work in practice by reducing hatred and violence or is it divisive and counter-productive?

Such questions remain to be answered by law makers and the courts, and by legal scholars and advocates. They are not merely theoretical. The way in which they are answered shapes the extent to which there is legal space to cause offence to the adherents of particular faiths or belief systems. The publication of the Danish caricatures of the Prophet Mohammed and the link made between Islamists and terrorism, and the violent reaction by Muslims across the world, illustrate the importance of defining and applying these areas of the criminal law wisely, in accordance with the relevant legal principles governing free expression

and its limits. The absence of similar uproar when grossly anti-Semitic Der Sturmer-style cartoons are recycled from the Nazi era in some Muslim states indicates how easy it is for double standards to be applied. That was recently shown in my country when a well-known Muslim political leader protested about his right to stigmatise homosexuality as morally evil while at the same time seeking a law to protect Islam against verbal insult and abuse.

Comparative approaches

Many countries give effect to the international obligations by enacting laws forbidding group libel or incitement to racial and religious hatred and, in some cases, Holocaust denial.² There are also blasphemy laws protecting religious beliefs, objects and God against insult or abuse.

There are significant differences between the US and European and other approaches.³ The US approach, derived from First Amendment constitutional principles, maintains that expression should never be punished or censored for its content alone. The classic US position maintains that hate speech should not be punished unless the speech intentionally or knowingly incites to violence or constitutes criminal intimidation or harassment. That is close to the formulation in the American Convention on Human Rights.

The European approach treats incitement to hatred and discrimination as punishable, even where the speech does not threaten public order (a broader concept than violence).⁴

² Austria, Belgium, the Czech Republic, France, Germany, Lithuania, Poland and Slovakia. (See for example Christopher Caldwell, "Historical truth speaks for itself", Financial Times, 18 February 2006).

³ Compare eg., Floyd Abrams, "Hate Speech: The Present Implications of a Historical Dilemma", Villanova Law Review, Vol 37 (1992), 743; and Roger Errera, "Group Libel, Hate Speech and other Fighting Words: Civility and the Uses of Law", in *Law Making, Law Finding and Law Shaping: The Diverse Influences* (edited by Basil S Markesinis) (Oxford 1997) Vol Two, p. 43.

⁴ Recommendation No. R (97) 20 of the Committee of Ministers of the Council of Europe to Member States defines "hate speech" to cover "all forms of expression which spread, incite promote or justify racial

The jurisprudence of the Strasbourg Court is not fully developed but its case law suggests that speech which incites hatred may only be punished by criminal law if the speaker intended to incite violence or hatred and violence or hatred was likely to result.

In *Gündüz v Turkey*⁵, the leader of a sect well-known to the public was invited to take part in a televised debate to present the sect and its nonconformist view, including the notion that democratic values were incompatible with the tenets of Islam. He was convicted of hate speech for having described contemporary secular institutions as “impious, vehemently criticising secularism and democracy and openly campaigning for shari’a”. The Strasbourg Court ruled that the conviction violated Article 10. The comments demonstrated an intransigent attitude towards and profound dissatisfaction with contemporary institutions but could not be construed as a call to violence or as hate speech based on religious intolerance. The Court noted that the statements had been made during a live television debate and that the applicant’s extremist views were well known to the public and were not as shocking as they might otherwise have been.

In relation to artistic expression which may offend religious sensibilities, the Strasbourg Court has given too much latitude to the concepts of obscenity and indecency, even though they are ill-defined and lack legal certainty, thereby

hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities and people of immigrant origin.”

⁵ *Gündüz v Turkey*, App No 3507/97, 04.12.04. See also *Dicle v Turkey*, App No 3485/97, 10.01.05, where the applicant was imprisoned under the same Turkish statute for publishing an article that vilified the conduct of Turkish soldiers in the context of Kurdish unrest in the south-eastern part of the country. The Court held that Article 10 had been breached because the article “did not encourage violence, armed resistance or insurrection, and did not constitute hate speech”. It found it significant that the publication had been seized and not distributed or read, so that it had no chance to have an effect on readers. That is a curious finding given the strong presumption against prior restraints on publication.

chilling freedom of artistic expression. In *Otto Preminger Institut*⁶ a film portraying God, Jesus and Mary in a manner that could have been deeply offensive to Christians was confiscated by the authorities. The Strasbourg Court held that the interference was justified and stressed the duty of those who exercise freedom of expression to avoid comment which does not contribute to public debate and is gratuitously offensive to others. In *Wingrove*,⁷ the Court decided that the refusal of the British Board of Film Classification to grant a licence for the distribution of the video 'Visions of Ecstasy' was a justifiable interference with the right to freedom of expression. 'Visions of Ecstasy' is a video that portrayed an interpretation of the ecstatic visions of St Teresa of Avila, a 16th century Carmelite nun. Its classification certificate was denied on the ground that it was blasphemous. The Court observed that the national authorities were in a better position than international judges to decide what is required nationally to prevent offence to persons of particular religious beliefs.

As regards Holocaust denial and historical "revisionism", in *Garaudy*⁸, the applicant was found guilty by the Paris Court of Appeal of disputing the existence of crimes against humanity, public defamation of the Jewish community, and incitement to discrimination and racial hatred by publishing his book *The Founding Myths of Modern Israel*. The Strasbourg Court considered that his convictions could constitute an interference with his right to freedom of expression. However, given the overall revisionist tone of the work, the Court had serious doubts as to whether his writing could qualify for protection under Article 10 because it had a clear racist objective. The Court did not consider it necessary to decide this issue because it found that the reasons given by the French courts were relevant and sufficient. More recently, the European Court of Human Rights found a violation of Article 10 where the applicant was convicted

⁶ *Otto Preminger Institut v Austria* (1994) 19 EHRR 34.

⁷ *Wingrove v United Kingdom* (1997) No. 17419/90, 24 EHHR 1.

⁸ *Garaudy v France* No. 65831/01 Admissibility decision of 07.07.03 ECtHR.

of criminal defamation for criticising the Pope and suggesting possible links of a particular doctrine of the Catholic Church with the origins of the Holocaust.⁹

Holocaust denial crimes may still be justifiable in countries where the Nazis carried out the elimination of six million Jews, but it is essential that they are handled with sensitivity and a sense of proportion if they are to avoid encouraging the very evils which they were designed to resist¹⁰. It is also essential to avoid enacting measures which require public recognition of an inaccurate or distorted version of historical events, as happened for example when the French legislature passed a law praising the achievements of French colonisation overseas and adding that such an evaluation should be reflected in the school curriculum and programmes of research.

Recent UK experience – Racial and Religious Hatred Act 2006

These complex and sensitive issues have been at the forefront of recent political debate in the UK. The Westminster Parliament recently approved a controversial new law prohibiting incitement to religious hatred. The Racial and Religious Hatred Act 2006 creates new offences of using threatening words or behaviour, or displaying written material which is threatening, if the defendant intends thereby to stir up religious hatred.¹¹ As a result of amendments which I drafted in the House of Lords and which were approved by a majority of only one in the Commons, the Act strikes a sound balance between the interests of free speech and the need to protect religious groups from hatred and persecution.

⁹ *Giniewski v France*, Application No. 64016/00, Judgment 31 January 2006.

¹⁰ On 21 February 2006, the revisionist historian David Irving was convicted and sentenced to three years imprisonment by an Austrian Court for denying the existence of gas chambers in two speeches given sixteen years previously. The sentence would seem to be wholly disproportionate to Irving's criminal misconduct.

¹¹ The Act also covers the publication and distribution of written material, the public performance of plays, distributing, showing or playing a recording, broadcasting, and possession of inflammatory material.

In its original form, the Bill would have given the same criminal law protection against the stirring up of religious hatred as is already given to racial hatred in our public order legislation.¹² This would have been done simply by extending the existing race hate speech offences to cover religious hate speech offences. The Government had promised this extension to British Muslim leaders during the last election, in order to secure Muslim support, and had tried unsuccessfully to introduce the measures in several previous Bills.¹³ (Initially the proposals were part of a package of “emergency” anti-terrorist measures following September 11th.) The Home Secretary even wrote to mosques across Britain directly blaming the opposition parties for blocking the legislation, and urging Muslims to vote Labour. Government Ministers also threatened to use the Parliament Act to push the Bill through, if opposition in the House of Lords continued. (The Parliament Act restricts the powers of the House of Lords to delay and block legislation which was part of the government’s “Manifesto” commitments when it was elected.)

As introduced, the Bill suffered from the twin vices of vagueness and overbreadth and threatened to chill freedom of expression, including the freedom to mount robust and intemperate verbal attacks on religious beliefs and practices. It also threatened to be divisive as between different groups – religious, ethnic and political. In its original form, the definition of the mental element was the same as for racial incitement (ie not only intention or subjective recklessness but an objective likelihood that religious hatred would be stirred up, with the burden on the defendant to disprove a criminal intent). The main safeguards relied on by the Government were the Attorney General’s discretion to refuse to authorise prosecution and Home Office guidance seeking to explain that free expression would not be harmed.

¹² Part III of the Public Order Act 1986 (UK).

¹³ Anti-Terrorism, Crime and Security Bill 2001-02; Religious Offences Bill 2001-02; Serious Organised Crime and Police Bill.

This was profoundly unsatisfactory: it is for Parliament, and not a member of the Government, to decide where the balance should be struck between freedom of expression and unlawful conduct. The Attorney General's highly political decision would be a source of mischief and resentment among extremists and mischief-makers. No doubt a wise Attorney-General would only authorise a prosecution very rarely. Between 1993 and 2005 there were no prosecutions for incitement to religious hatred in Northern Ireland, where it is unlawful. But the Attorney-General's decision to refuse consent would be used by extremists as evidence of the discriminatory operation of the law, and would leave embittered those whose expectations were not fulfilled.

By a substantial majority, the Lords amended the Bill in Committee in a number of ways. First, by creating a separate code for the religious hate offences; second, by confining the offences to the use of threatening words and behaviour, as distinct from threatening, insulting or abusive words or behaviour; third, by requiring proof of an intention to stir up religious hatred; and fourth, by including a broad declaratory provision to protect freedom of expression.

The free expression provision is a unique addition to UK criminal law and was supported by a broad coalition, including English PEN and other writers' groups. It reads:¹⁴

“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of

¹⁴ Section 29J in Schedule 1 to the Racial and Religious Hatred Act 2006.

its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

These amendments were opposed by the Muslim Council of Britain and its supporters for giving less legal protection against religious hate speech than against racial hate speech. But they were passed by the House of Commons and are now part of UK law. (Arguably there should be a similar free speech protection in the Public Order Act in relation to racial hatred offences, which are much more loosely drawn.)

A fundamental flaw in the Government’s approach had been to treat race and religion as comparable. It is justifiable to punish the deliberate incitement of hatred against groups of people because of their ethnicity or their sexuality, because they involve attacks on their common humanity – their inheritance and birthright that are fixed and immutable. It is another thing to criminalise similar attacks on religious beliefs or practices, where freedom of speech is more fundamentally engaged.

It is also important to make the distinction between protection of religious *beliefs and practices*, and protection of religious *believers* (or non-believers). The law should afford necessary protection to the latter against deliberate intimidation, threats, violence and discrimination, but should not enshrine protection of the former. In many cases, existing public order offences are sufficient – and in fact the UK already had religiously aggravated crimes on the statute books.

Blasphemy

Much to our discredit, the UK retains the archaic common law offence of blasphemous libel, which protects the Christian religion and the Church of England. That offence threatens free speech and gives offence to adherents of

other faiths because of the lack of equal protection of the law. The offence of blasphemy should be repealed, as recommended by the Law Commission twenty-five years ago.¹⁵

The history of blasphemy prosecutions in this country demonstrates the danger of laws limiting freedom of expression about religion. The leading English case on the common law crime of blasphemous libel was decided by the Law Lords in 1979, in the *Gay News* case. By a majority of three to two, and without the benefit of the framework of the Human Rights Act 1998 or full argument on the free speech issues, the Law Lords breathed new life into what had been regarded as an anachronistic and arbitrary relic of Tudor and Stuart times. For the previous 50 years the offence had disappeared from the criminal calendar and was regarded as having become obsolete.

Mrs Mary Whitehouse brought a private prosecution against the editor and publishers of *Gay News* alleging that they had, “unlawfully and wickedly published ... a blasphemous libel concerning the Christian religion namely an obscene poem and illustration vilifying Christ in His Life and in His crucifixion.” The *Gay News* defendants were tried at the Old Bailey and convicted. The editor was sentenced to nine months imprisonment, suspended for 18 months, and fined £500, and the publishers were fined £1,000. The Court of Appeal dismissed their appeal, as did the House of Lords¹⁶. The poem by James Kirkup was

¹⁵ The Law Commission Working Paper no. 79 1981.

¹⁶ Viscount Dilhorne, Lord Russell of Killowen and Lord Scarman (Lord Diplock and Lord Edmund-Davies dissenting) *Reg. v Lemon* [1979] AC 617 (HL). On 7 May 1982, the European Commission of Human Rights declared an application made by the editor and publisher of *Gay News* to be inadmissible: *Gay News Ltd and Another v United Kingdom*, Application No. 8710/79, 5 EHRR 123. In spite of the Court’s repeated reference to the demands of “pluralism, tolerance and broadmindedness” in a democratic society, this is an area in which the Strasbourg jurisprudence lacks those qualities. For example, in *Otto Preminger Institut v Austria* (1994) 19 EHRR 14, the Court held that the seizure and banning of a film which was potentially offensive to Christians was justified as pursuing the legitimate aim of protecting the religious rights of others. In *Wingrove v United Kingdom* (1996) 24 EHRR 1, the Court found that the refusal by the British Board of Film Classification was a justifiable interference with freedom of expression

entitled “The Love That Dares not Speak Its Name”. It was accompanied by a drawing illustrating its subject matter. It purported to describe in explicit detail homosexual acts with the body of Christ immediately after his death and to ascribe to him during his lifetime promiscuous homosexual practices with the apostles and other men. Each of the judges who decided the case expressed his profound disgust at the poem’s offensive and obscene content¹⁷.

The appellants’ counsel in the *Gay News* case did not argue that blasphemous libel as a crime was unenforceable. With hindsight that is regrettable, because the Irish Supreme Court recently decided¹⁸ that the same common law offence should not be recognized in Irish law because of its lack of sufficient legal certainty. Nor did they contend that the offence was incompatible with the

with the legitimate aim of protecting the rights of Christians: see further, Nash, *Blasphemy in Modern Britain* (Ashgate 1999) 265-73.

¹⁷ The text has been published by Annoy.com: see <http://annoy.com/history/doc.html?documentID=100045> without threat of prosecution. The Crown Prosecution Service decided not to charge the Lesbian and Gay Christian Movement for committing the same offence as in the *Gay News* case, after receiving a complaint by religious conservatives over a hypertext link to the poem on the Movement’s website. In 1995 a priest and university student created a website for the Lesbian and Gay Christian Movement (LPCM). For about six months the website contained a hyperlink to another site which contained the offending poem. The police received complaints from three individuals, including from the evangelical pressure group ‘Reform’. The student and the general secretary of LPCM were twice interviewed by police under suspicion of having ‘aided and abetted the distribution of a known blasphemy’. The threat of prosecution was lifted 18 months later.

¹⁸ *Corway v Independent Newspapers (Ireland) Limited* [2000] 1 IRLM 426. In 1995, in the wake of the divorce referendum, the *Sunday Independent* carried an article by Dr Conor Cruise O’Brien on the implications of the referendum. Associated with the article was a cartoon that depicted on the right a plump and comic caricature of a priest. The priest was holding a host in his right hand and a chalice in his left hand. He appeared to be offering the host to three prominent Irish politicians, but they appeared to be turning away and waving goodbye. At the top of the cartoon were printed the words “Hello progress – bye bye Father” followed by a question mark. The words were meant to be a play upon a phrase used during the election campaign by some of the campaigners against divorce, that is to say, “Hello divorce – bye bye daddy.” The prosecution was brought in the name of John Corway, a carpenter living in Dublin. He complained that he and others had “suffered offence and outrage by reason of the insult, ridicule and contempt shown towards the sacrament of the Eucharist as a result of the publication”. The Supreme Court noted that the Irish Constitution is secular, and guarantees the right to freedom of conscience, freedom of religion and freedom of expression. It found it difficult to see how the mere act of publication of blasphemous matter without proof of any attempt to blaspheme would be reconciled with a Constitution guaranteed freedom of conscience and the free profession and practice of religion. It commented that, if the Church of England had been disestablished and if England had introduced a similar Constitution it is highly probable that the debate in the *Lemon* case would have taken “a very different course.” It decided that it was “impossible to say of what offence of ‘blasphemy’ consists. In the absence of legislation and in the present uncertain state of the law the Court could not see its way to authorising the institution of a criminal prosecution for blasphemy”. Leave to prosecute was therefore refused.

Convention and common law right to free speech. Instead it was argued that blasphemy should not be regarded as an offence of strict liability, and that modern criminal jurisprudence required proof of a specific criminal intent to commit blasphemy. The only question in the appeal therefore was whether the mental element is satisfied by proof only of an intention to publish material which in the opinion of the jury is likely to shock and arouse resentment among believing Christians or whether the prosecution must go further and prove that the accused, in publishing the material, in fact intended to produce that effect upon believers. Astonishingly, a majority of the Law Lords ruled that the offence is one of strict liability and that guilt does not depend on the accused having an intention to blaspheme.

The previous trial for blasphemy had taken place 50 years before, in *Gott's* case¹⁹. John William Gott was indicted for having published a blasphemous libel by selling to the public two pamphlets entitled "*Rib Ticklers, or Questions for Parsons*" and "*God and Gott*" satirising the biblical story of the entry of Jesus into Jerusalem (Matthew 21:2-7), which is based on a literal interpretation of the prophecy that the King of Zion would come "riding upon an ass, and upon a colt the foal of an ass" (Zechariah 9:9). One man in the crowd said: "You ought to be ashamed of yourself"; one woman said, "Disgusting, disgusting!" Nothing further occurred. Gott was convicted and sentenced to nine months' imprisonment with hard labour, even though he was suffering from an incurable disease.

I believe that, if a suitable case were now to come before the courts, the UK Law Lords would overrule previous case law upholding the offence of blasphemy,²⁰ and would find persuasive the Irish Supreme Court's decision holding that blasphemous libel is so lacking in legal certainty that it is no longer an

¹⁹ *Rex v Gott*, 16 Cr.App.R.87.

²⁰ *Whitehouse v Gay News Ltd and Lemon* [1979] AC 617.

enforceable criminal offence.²¹ They would also be likely to decide that the offence sweeps too broadly in interfering with free speech, and that it is discriminatory in protecting only Christianity.²²

No blasphemy case has been prosecuted in England and Wales since the passage of the Human Rights Act 1998,²³ but recent events have shown that the idea of the offence is alive and well. When the BBC announced that it would screen the stage show “*Jerry Springer The Opera*”, which contains ridicule of Christians, an organization called *Christian Voice* promised to bring a private prosecution against the BBC for blasphemy. Threats were made to key BBC employees whose addresses were posted on the *Christian Voice* website, and security guards had to be deployed.

Threats to free expression were also made following the staging of the play *Bezhti* (Dishonour) by Gurpreet Kaur Bhatti, which depicted scenes of child abuse and rape in a Sikh temple. A rioting crowd of Sikhs created public disorder, caused criminal damage and stormed the Birmingham Repertory stage, claiming that the play was sacrilegious and an insult to their religion, forcing the play to be closed by the management and Gurpreet Bhatti to go into hiding. No Government Minister condemned what had happened and no prosecutions were brought. Instead, a Home Office Minister reportedly said that the free speech of the Sikh protesters as “as important as the speech of the artist.”

One has only to look to Pakistan to see the dangers of retaining blasphemy offences, and of creating new religious hatred laws. Blasphemy laws were originally enacted in Macaulay’s Indian Penal Code under British rule, ostensibly

²¹ *Corway v Independent Newspapers (Ireland) Limited* [2000] IRLM 426.

²² In *R v Chief Metropolitan Magistrate, ex p Choudhury* [1991] QB 429, the court held that the blasphemy law did not extend to protect the Muslim faith, and that it was a question solely for Parliament whether the law of blasphemy was to be altered.

²³ The last two successful prosecutions were brought in 1922 and 1976 respectively.

to diffuse tension between Hindu and Muslim communities. Since then blasphemy laws have proliferated in what is now Pakistan, becoming increasingly draconian, and with the harshest possible penalties attached, including the death penalty. These laws are frequently “enforced” by mob rule, and there are countless instances of crowds taking the law into their own hands and persecuting alleged blasphemers, often on the flimsiest evidence. Violence against and threats to lawyers, judges, and the accused are common, and the police are often complicit in persecuting alleged blasphemers, who are predominantly from the Ahmadi, Hindu and Christian communities.²⁴ The admirable work of the UN Special Rapporteur on Religion, Asma Jahangir, herself a Pakistani, shows that while religious hatred laws are easy to enact, once in place they are very difficult to displace.

Even though it would secure equality before the law and remove a legitimate source of grievance among British Muslims and others, successive Governments have refused to do abolish the offence of blasphemy. The current Government does not regard the offence of blasphemy as dead. In its view,

"If material or conduct is gratuitously offensive to Christians, and is prosecuted as such, a finding of blasphemy may be the appropriate response by a court to ensure that the rights of others under Article 9 are protected".²⁵

Such an official statement can only encourage religious groups to mount bigoted campaigns against writers and artists who challenge their beliefs and practices. The retention of the blasphemy law encourages followers of other faiths to seek a blasphemy law to protect their faith against gross insult. (The Religious Hatred

²⁴ See AGHS Legal Aid Cell, *From Protection to Exploitation (The Laws against Blasphemy in Pakistan)*.

²⁵ 669 HL Official Report, Written Answer 226 of 24 February 2005 by Baroness Scotland of Asthal; and 670 HL Official Report, Written Answer 40 by Baroness Ashton of Upholland of 3 March 2005.

Act was understood by some religious groups as a new blasphemy law for other faiths, and was mischievously presented by the Government as such to the Muslim community. It was cause for concern that Sir Iqbal Sacranie OBE, the controversial leader of the Muslim Council of Britain, believed that the new offences would enable Salman Rushdie to be prosecuted for publishing his novel, *The Satanic Verses*.)

Danish cartoons

I would like to make a few comments about the Danish cartoons. I see that there is a panel session devoted to this topic, and detailed papers in the conference materials, so I will keep my comments brief.

However distasteful and inappropriate the cartoons, in my view they did not constitute threatening written material, and would not have been caught by the new British Religious Hatred Act, had it been in force and had the cartoons been published in the UK. It is worth remembering, as I have said, that there are many viciously anti-Semitic and anti-Israeli cartoons and caricatures which appear on a frequent basis in the press throughout the Middle East – this is not a problem unique to the Muslim community. In assessing the cartoons, it is important to keep in mind some basic principles:

- In a democracy there is no right not to be insulted or offended.
- Ridicule cannot be repackaged in a less offensive form without expressing something very different from what was intended.
- If minorities wish to be protected from discrimination by law, they must be willing to tolerate whatever insults or ridicule people who oppose such legislation wish to express – because we live in democratic societies.

Religion (all religions) must observe the principles of democracy, not the other way around.

- The danger of enacting new blasphemy laws can be seen in the countries around the world which have brought criminal sanctions against newspaper editors (Jordan, Yemen and Algeria) and where newspapers have been banned following publication of the cartoons (Yemen, Algeria and Malaysia).

In my view the British and American press have been right, on balance, not to republish the Danish cartoons, because reprinting would have meant more people killed and more property destroyed. I do not mean to suggest that the press should practice self-censorship: the decision of newspaper editors in Britain and America not to publish the cartoons should not be wrongly taken as an endorsement of the widely held opinion that freedom of speech should be sacrificed to multiculturalism. Rather, it was a matter of their individual discretion, and in any case the ready availability of the cartoons on the internet. I am sure that you have all looked at them, as I have.

Conclusion

Religion and belief are concepts that defy precise legal definition: they concern matters of faith and philosophy and are strongly influenced by history and politics, and by tradition and culture. The line separating religious beliefs from political beliefs is also blurred, not least because religion is so often used and misused for political purposes. The distinction between stirring up hatred of someone because of his religious beliefs and expressing hatred of those beliefs in the abstract is, as the writer Jill Paton Walsh points out, a subtle one; “one that will certainly be lost on some of the religious leaders among us and will be easily blurred in the heat of conflict. I am afraid it will become very dangerous to write

about religion, or even to raise one's voice against cultural practices that are associated with a particular religious allegiance".²⁶

We would do well to keep in mind the comments of Soli Sorabjee SC, until recently the distinguished Attorney General of India, who wrote that: "experience shows that criminal laws prohibiting hate speech and expression will encourage intolerance, divisiveness and unreasonable interference with freedom of expression. Fundamentalist Christians, religious Muslims and devout Hindus would then seek to invoke the criminal machinery against each other's religion, tenets or practices. That is what is increasingly happening today in India. We need not more repressive laws but more free speech to combat bigotry and to promote tolerance." We should heed that advice.

²⁶ Jill Paton Walsh, published on website of Index on Censorship, 14.03.2005.