

## BETWEEN BLASPHEMY AND CRITIQUE: FREEDOM OF RELIGION AND FREEDOM OF SPEECH

M. CHRISTIAN GREEN

Senior Fellow, Center for the Study of Law and Religion, Emory University

---

### BOOKS REVIEWED

*Freedom from Religion*, 2nd ed. By Amos Guiora. Oxford: Oxford University Press, 2013. Pp 208. \$85.00. ISBN-13: 9780199975907.

*Silenced: How Apostasy and Blasphemy Codes Are Choking Freedom Worldwide*. By Paul Marshall and Nina Shea. Oxford: Oxford University Press, 2011. Pp. 480. \$35.00. ISBN-13: 9780199812288.

*The Future of Blasphemy: Speaking of the Sacred in an Age of Human Rights*. By Austin Dacey. London: Continuum, 2012. Pp. 208. \$19.95. ISBN-13: 9781441183927.

*The Harm in Hate Speech*. By Jeremy Waldron. Cambridge, MA: Harvard University Press, 2012. Pp. 304. \$26.95. ISBN-13: 9780674065895.

*Is Critique Secular?: Blasphemy, Injury, and Free Speech*, 2nd rev. ed. By Talal Asad, Wendy Brown, Judith Butler, and Saba Mahmood. New York: Fordham University Press, 2013. Pp. 176. \$18.00. ISBN-13: 9780823251698.

KEYWORDS: freedom of religion, freedom of expression, hate speech, blasphemy, defamation of religions

On Valentine's Day, 1989, novelist Salman Rushdie was driven into hiding in England by a fatwa issued by the Ayatollah Khomeini in Iran decriing his 1988 novel, *The Satanic Verses*, as "blasphemy against Islam" and demanding Rushdie's execution. Twenty years later, Yale University Press refused to publish cartoon representations of the Prophet Muhammad in political scientist Jytte Klausen's book, *The Cartoons That Shook the World*.<sup>1</sup> That book analyzed the controversy spawned by a Danish newspaper's publication of the cartoons in 2005 and the republication of the cartoons in several European newspapers in 2008, which led to protests by Muslims around the world. In 2010, Terry Jones, a Christian pastor in Florida, announced plans to publicly burn a Qur'an on the anniversary of the September 11, 2001, terrorist attacks on the United States. Under protest, he cancelled his book-burning plans for the 9/11 anniversary, but he made good on his promise six months later in March 2011, in an incident whose online video dissemination around the world is said to have motivated riots in Afghanistan that resulted in the deaths of twelve people. Throughout this period, with the regularity of a drumbeat, the Organization of Islamic Cooperation (OIC) (formerly the Organization of the Islamic Conference), a coalition of majority

---

1 Yale University Press, publisher's statement in Jytte Klausen's *The Cartoons That Shook the World* (New Haven, CT: Yale University Press, 2009).

Muslim nations at the United Nations, introduced resolutions each year—first in the Human Rights Council (HRC) from 1999 forward and then in the General Assembly from 2005 forward—on “combating defamation of religions” at the UN and in wider global discourse.

The last “defamation of religions” resolution was proposed to the Human Rights Council in December 2010, but the HRC declined to take up the resolution in its March 2011 session. The HRC’s pass did not, however, end the defamation debate. On September 11, 2012, a US diplomatic mission in Benghazi, Libya, was attacked, resulting in the death of US Ambassador Christopher Stevens and three other diplomatic workers. The following week brought protests at eight other US diplomatic posts across the Middle East, Asia, and Europe—allegedly in response to *Innocence of Muslims*, a set of film clips distributed online depicting the Prophet Muhammad in a way that was perceived as offensive by Muslims around the world. The writer, producer, and promoter, initially identified as Jewish in some media reports, turned out to be an Egyptian-born, Coptic Christian gas station owner residing in California. Terry Jones, the Qur’an-burning Florida pastor, was said to have assisted in its promotion. In response to the film and before the riots began in Egypt, the US Embassy in Cairo, in an apparent attempt at violence preemption, posted a tweet condemning “religious incitement,” with a link to a longer statement decrying efforts to “hurt the religious feelings of Muslims” and “offend believers of all religions.” The embassy’s Twitter message concluded with the statement: “Respect for religious beliefs is a cornerstone of American democracy. We firmly reject the actions by those who abuse the universal right of free speech to hurt the religious beliefs of others.”<sup>2</sup>

The Benghazi incident was quickly swept up in wider political battles over US policy toward the revolution-engulfed regions of the Middle East and North Africa, and over whether Al Qaeda had been defeated with the death of Osama bin Laden or was involved in the Benghazi incident as part of a reinvigorated terrorist movement in North Africa. Early reports in the Cairo embassy tweets and in televised remarks of then-US Ambassador to the UN Susan Rice that the Benghazi incident may have begun as a spontaneous demonstration by an angry mob upset by the *Innocence of Muslims* film, rather than at the direction of Al Qaeda, drew further controversy.<sup>3</sup> While the precise motivations for the Benghazi attack would continue to be the subject of debate, President Barack Obama did take the opportunity in an address to the UN shortly thereafter to emphasize the United States’ commitment to both freedom of religion and freedom of speech. Explaining why the United States does not join other nations around the world, and especially in Europe, in banning religiously offensive speech, President Obama stated, “We do so because given the power of faith in our lives, and the passion that religious differences can inflame, the strongest weapon against hateful speech is not repression; it is more speech—the voices of tolerance that rally against bigotry and blasphemy, and lift up the values of understanding and mutual respect.”<sup>4</sup>

- 
- 2 The United States’ response to these events was confusing enough to prompt multiple journalistic renderings of the timeline for the tweets and follow-up. See, e.g., “What They Said Before and After the Attack in Libya,” *New York Times*, September 12, 2012, [http://www.nytimes.com/interactive/2012/09/12/us/politics/libya-statements.html?\\_r=0](http://www.nytimes.com/interactive/2012/09/12/us/politics/libya-statements.html?_r=0); “The Events in Benghazi and the U.S. Reaction,” *Washington Post*, September 12, 2012, <http://www.washingtonpost.com/wp-srv/special/world/cairo-libya-attacks-timeline/>; Garance Franke-Ruta, “Here’s a Timeline of the Confusing Statements on Libya and Egypt,” *Atlantic*, September 12, 2012, <http://www.theatlantic.com/politics/archive/2012/09/heres-a-timeline-of-the-confusing-statements-on-libya-and-egypt/262264/>.
  - 3 U.S. Ambassador to the United Nations Susan Rice, interview by Jake Tapper, *This Week*, ABC News, September 16, 2012, <http://abcnews.go.com/Politics/week-transcript-us-ambassador-united-nations-susan-rice/story?id=17240933>.
  - 4 “Obama’s Speech to the United Nations General Assembly—Text,” *New York Times*, September 25, 2012, <http://www.nytimes.com/2012/09/26/world/obamas-speech-to-the-united-nations-general-assembly-text.html>; Helene Cooper,

In fact, the United States' commitment to freedom of speech, especially in matters of religion, strikes people in other parts of the world as rather absolutist in its fervor. According to recent data compiled by the Pew Forum on Religion and Public Life, fifty-nine of the world's countries (30 percent overall) have laws, rules, or policies forbidding blasphemy, apostasy, or defamation of religion, and forty-four of them enforce these policies actively.<sup>5</sup> The presence of these anti-blasphemy laws and policies correlates with high levels of government religious restrictions and social hostilities based on religion, and both types of impingement on religious freedom have increased in recent years in a quarter of the countries that actively enforce them.<sup>6</sup> The encounter between freedom of religion and freedom of speech in these recent events has raised a number of questions and has been the subject of a number of recent books, studies, and policy papers.<sup>7</sup> Should speech that is critical of or hostile to religion or particular religions be banned if it offends religious feelings? What if the speech rises to the level of incitement to hatred or violence? Absent confirmed correlation of incitement to actual violence and its effects, how can we describe the harm that speech about religion can inflict? Can the boundaries of acceptable speech about religion be defined broadly enough to include legitimate critique of religion, and if so, who determines the parameters of acceptability? Or, as the title question of one recent book put it, "Is critique secular?" — such that there is an inherent and inevitable conflict between freedom of religion and the possibility of its critique?

#### RELIGIOUS SPEECH, RELIGIOUS EXTREMISM, AND NATIONAL SECURITY

In his 2009 book (released in a second edition in 2013), Amos Guiora, a professor of national security law and former military lawyer in the Israel Defense Forces, addresses the limits of free speech in the context of the threat to national security posed by religious extremists and terrorists. Guiora argues that "religious extremists pose a greater contemporary threat to society than secular

---

"Obama Tells UN New Democracies Need Free Speech," *New York Times*, September 25, 2012, [http://www.nytimes.com/2012/09/26/world/obamas-address-to-united-nations.html?\\_r=0](http://www.nytimes.com/2012/09/26/world/obamas-address-to-united-nations.html?_r=0).

- 5 Pew Forum on Religion and Public Life, *Rising Restrictions on Religion* (Washington, DC: Pew Research Center, 2011), 67. Significantly, the Pew Forum's prior report, *Global Restrictions on Religion* (Washington, DC: Pew Research Center, 2009), just two years before, did not deal significantly with the blasphemy issue. The Pew researchers, led by senior researcher Brian J. Grim, found it necessary to devote a section to laws against apostasy, blasphemy, and defamation of religion in the subsequent report because of the increasing importance of these issues.
- 6 *Ibid.*, 68.
- 7 Among the academic articles, see esp. Andrew F. March, "Speech and the Sacred: Does the Defense of Free Speech Rest on a Mistake about Religion?," *Political Theory* 40, no. 3 (June 2012): 319–46; L. Bennett Graham, "Defamation of Religions: The End of Pluralism?," *Emory International Law Review* 23, no. 1 (2009): 69–84; Jeroen Temperman, "Blasphemy, Defamation of Religions and Human Rights Law," *Netherlands Quarterly of Human Rights* 26, no. 4 (December 2008): 517–45; Anver M. Emon, "On the Pope, Cartoons, and Apostates: Shari'a 2006," *Journal of Law and Religion* 22, no. 2 (2006/2007): 303–21. Among the policy reports produced by governmental and nongovernmental organizations, see Article 19, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* (London, Article 19, July 2000); Becket Fund for Religious Liberty, "Issues Brief: 'Combating Defamation of Religions'" (Washington, DC: Becket Fund, June 2, 2008); Freedom House, *Policing Belief: The Impact of Blasphemy Laws on Human Rights* (New York: Freedom House, October 2010); Human Rights First, "Focus Paper on Defamation of Religions" (New York: Human Rights First, March 2010); International Humanist and Ethical Union, "Speaking Freely about Religion: Religious Freedom, Defamation, and Blasphemy" (London, IHEU, 2009); United States Commission on International Religious Freedom, "Policy Focus: The Dangerous Idea of Protecting Religions from 'Defamation': A Threat to Universal Human Rights Standards" (Washington, DC: USCIRF, 2009).

extremists” and that to “protect civil democratic society, religious rights need to be curtailed” (20). Discerning three major components in religion itself—belief, speech, and action—Guiora describes belief as “internal and therefore largely protected” and not in and of itself a threat to the state. Speech and action are more problematic—especially when speech leads to action. Guiora’s primary concern is with the speech of religious leaders, who he sees as having special authority to incite their followers to action. As he puts it:

A member of the clergy, speaking negatively about another faith, does not inherently endanger national security nor does it necessarily endanger believers of other faiths. However, if that same faith leader were to combine his critical comments with a call to action, be it explicit or implicit from the listener’s perspective, then a viable threat to national security potentially exists. . . . The criteria must include analysis both of the relationship between the faith leader and his community and whether his words have been previously acted upon. (24)

Once there is actual hateful or violent conduct, that conduct is limitable by law. Guiora’s definition of religious hate speech here seems tied to traditional notions of religious authority and community that have traditionally received free exercise protection under the First Amendment of the US Constitution—the speech could be woven into what the believer hears in the mosque on Friday, the temple on Saturday, or the church on Sunday.

For Guiora, religious speech can and should be limited in the interest of national security. Rather than accepting the idea that religious speech deserves more protection than other kinds of speech, Guiora suggests that it may deserve less. He argues:

The religious extremist believes in the infallibility of his or her belief system; such a worldview leads the actor to believe in absolutes, reject compromise, and to express indifference—if not opposition—to alternative opinions. Furthermore, the relationship between figures of authority and followers is of enormous importance in the religious context. A religious authority figure is viewed as a representative of God on earth. A follower is more likely to act in accordance with the words of a religious authority figure than with those of nonreligious speakers. Does this not suggest that, in some cases, society and government should view religious speech as inherently *less worthy of protection* than secular political speech precisely because of its extraordinary ability to influence the listener? (36)

At times, Guiora seems overinvested in a monolithic view of religious authority and religious speech as flowing unidirectionally from clergy to followers, rather than in the possibility of alternative sources of authority developing within or being imported into religious communities by radicalized followers or new converts whose motives are more political than religious in nature. (His central example concerns right-wing Jewish rabbis whose words may have inspired or incited Yigal Amir to assassinate Yitzhak Rabin.)

Guiora’s understandings of religious authority, community, speech, and conduct are narrowly construed, but his proposal for dealing with them is notably broad. It amounts to a proposal for prior restraint of religious speech, with limits “imposed on free speech *before* someone acts on that speech, predicated on the possibility that someone *may* act,” an approach that he admits is “problematic for, at its core, the proposal recommends restricting speech *earlier* than existing case law and legislation in liberal, civil democracies presently mandate” (56). Guiora recommends intermediary rather than strict scrutiny standards for rights of religious speech and association, arguing that “if places of worship are centers of religious-based incitement, the state must be willing and prepared to limit access as a legitimate means to protect society” (68) and that this “should take place *before* violence occurs” (70).

Instead of strict scrutiny to protect religious rights, Guiora recommends a relationship of religious deference to the state. He argues: “The traditional discussion on the separation of church and state is predicated on the primacy of civil law over religion and religious institutions. Those institutions cannot merely be separate from the state; they must be subservient to the state laws and judiciary” (94). And further: “Precisely because of the threat posed by religious extremism, the state is obligated to both articulate and implement clear boundaries between state and civil society and religious organs with the unequivocal understanding that the former is supreme” (102). Thus, the proper balance, in Guiora’s view, is achieved with religious subservience to state supremacy. This is not a proposal that is likely to sit well with religions, but neither is it a panacea for societies that accept Guiora’s invitation to police and preempt religious extremists in their midst. Guiora observes that societies pay a “price for enabling religious liberty” and for “tolerating religious and cultural extremism” (125–26). Guiora proposes to pay that price forward in the direction of greater religious scrutiny and restriction by the state in the interests of security and order. In this stark calculus, the threat to religious and other civil rights is the cost of doing business.

#### BLASPHEMY CODES AND RELIGIOUS PERSECUTION

Striking a balance in the direction of religious restriction is also the subject of Paul Marshall and Nina Shea’s *Silenced: How Apostasy and Blasphemy Codes Are Choking Religious Freedom Worldwide*. Shea and Marshall are both affiliated with the Center for Religious Freedom at the Hudson Institute, and Shea is a former commissioner on the United States Commission for International Religious Freedom. Their book chronicles the effects of laws against blasphemy and apostasy around the world, with attention given to both Muslim and Western countries, and to international organizations such as the UN. It also includes a foreword and two concluding chapters written by Muslim scholars critiquing blasphemy codes and related laws that have overtaken many parts of the Muslim world. Contra Guiora, Marshall and Shea oppose regulations on religious speech. They identify the fatwa against Rushdie as the beginning of a “new worldwide movement to curb freedoms of religion and speech through the export and enforcement of Muslim blasphemy rules that were already suppressing minorities and dissenters in Muslim-majority countries” (3). This movement would eventually lead to a “proliferation of fatwas and demands to stop purported Western blasphemy and related sins of apostasy, heresy, and ‘insulting Islam’,” serving a “narrower political purpose of shielding from criticism those who claim the right to rule in the name of Islam” (4)—a trend that intensified with the 9/11 terrorist attacks and culminated in the “defamation of religions” debate at the UN.

Marshall and Shea see much of the defamation debate as “focus[ing] naively on questions of trying to curb ‘hate speech,’ and what are more generally thought to be insults, and of how to accommodate such demands within free societies” (5). Faced with the call by the UN’s OIC states to limit freedom of speech in order to protect freedom, Marshall and Shea question “whether such accommodation is desirable or even possible” and argue that “the current imposition of curbs on perceived anti-Islamic speech . . . is incompatible with the freedoms that define democracy and individual human rights” (5). In their analysis, “Blasphemy restrictions coerce religious conformity and forcibly silence criticism of dominant religious ideas, especially when those ideas support, and are supported by, political power. When politics and religion are intertwined, there can be no free political debate if there is no free religious debate” (5). Where Guiora defends separation of religion and the state, with the notable exception of preemptive limits that the state must impose on religious speech, Marshall and Shea argue that political measures to limit speech ultimately threaten religious freedom.

Marshall and Shea identify three main ways that limits on freedom of speech imperil freedom of religion. First, they argue that measures “ostensibly intended to ensure respect for Islam are used to curb the freedom not only of far-flung irreverent cartoonists but also of native scholars, writers, dissidents, religious reformers, human rights activists, converts from Islam, members of post-Islamic religions, and anyone else whose utterances depart from locally dominant variants of Islam” (6). Second, they argue that blasphemy laws “foster a closed religious orthodoxy and punish independent and innovative thinking,” ultimately working to “suppress the very voices that seek to reconcile the Muslim world with modern pluralism” (6). Third, they argue that “terms such as ‘blasphemy’ and ‘insulting Islam’ are invoked without precision,” such that “principles of fairness are undermined, and speech is broadly deterred” (7). Marshall and Shea caution against proposals “to establish an international religious hate-speech standard, relying on undefined terms such as ‘incitement to hostility’ and ‘negative stereotyping’” (11).

The substantive chapters of *Silenced* detail the rise of restrictive laws and the incidents of religious persecution that have resulted from their enforcement across Africa, the Middle East, and South and Southeast Asia. Additional chapters cover restrictions on religious hate speech in Europe, North America, and Australia and the effects that these have had on religious criticism and criticism of religion, particularly Islam. In the end, Marshall and Shea conclude that “Western hate-speech and public order laws serve as proxies for Muslim blasphemy rules,” that “religious hate-speech laws are vaguely defined,” that hate-speech prosecutions have a “broad chilling effect,” and that such laws do not “foster harmony in culturally diverse societies” (328).

#### DEFENDING ETHICAL BLASPHEMY

Austin Dacey, an apparently erstwhile secular humanist philosopher<sup>8</sup> and former UN representative for the International Humanist and Ethical Union, also opposes blasphemy laws, but for different reasons than Marshall and Shea. In *The Future of Blasphemy: Speaking of the Sacred in the Age of Human Rights*, Dacey argues that the antiquated-sounding charge of blasphemy is a “distinctly modern phenomenon” that has been “reframed within the secular idiom of respect for persons,” but that this principle is “too easily appropriated in the service of illiberal and patriarchal notions of identity, propriety, and ‘honor’” (vi). He further argues that “those most vulnerable to the abuse of laws against blasphemy and therefore most vocal in defiance of them are dissidents within the very communities whose ‘feelings’ the laws are purportedly protecting,” and that they “are not just engaging in ‘free speech’ but manifesting religiously heterodox or secular commitments of conscience that are no less worthy than those they affront” (vi).

As the representative to the UN for the International Humanist and Ethical Union, Dacey had a front-row seat at the OIC-sponsored “defamation of religions” debates as these were heating up in 2008 and 2009. On the basis of that experience, he adopts the fashionable argument that “all the world’s blasphemers could never do more damage to the reputations of gods, saints, and prophets than has already been done by their devoted followers” (3). The tendency to blame religion for conflict and violence is a standard trope among many secularists, atheists, and agnostics today, but Dacey the ethical humanist gives the defamations debate more sustained analysis than many religious

8 Between Dacey’s various celebrations and critiques of secularism and humanism, his precise beliefs remain difficult to pin down. See Austin Dacey, *The Secular Conscience: Why Belief Belongs in Public Life* (Prometheus Books, 2008); Austin Dacey, “Decomposing Humanism: Why Replace Religion?,” *Religion Dispatches*, October 29, 2009; Peter Steinfels, “Perceiving 2 Fallacies, A Secularist Faults His Fellows,” *New York Times*, May 24, 2008.

freedom defenders, who may have rejected the arguments too quickly. He also provides a balanced comparison of Muslim and Western views of blasphemy, which in Europe has given rise to European Court of Human Rights' decisions recognizing a "right to respect for religious feelings" (8).<sup>9</sup> Dacey provides a detailed taxonomy of what respect for religion *might* mean by identifying four forms of respect: respect as *reverence*, respect as *appraisal*, respect as *honor*, and respect as *recognition* (9). The first three forms of respect are ones that Dacey sees as united in the idea of a "divine lawgiver" in monotheistic religions, but respect as recognition is where his ethical focus—and the focus of human rights traditions—seems to lie. As Dacey puts it, "[F]undamentally we recognize persons as equal authorities—those to whom we are answerable and who are answerable to us. This authority is to be revered as the source of 'human dignity.' The idea of respect for equal standing came as a radical challenge to the idea of respect for honor . . . Where honor had buttressed a hierarchical social structure, respect would found an egalitarian form of moral and political community" (9).

The normative and ethical concept of respect as recognition that Dacey provides is compelling. The reader might expect recognition to be the cornerstone of Dacey's analysis of blasphemy, but it instead becomes part of a critique of liberal human rights regimes that recurs throughout the book but is never fully reconciled. Dacey argues: "The language of defamation, incitement, provocation, denigration, dishonor, offence, insult, and hatred trains attention on the respect of recognition. The machinery of liberal rights is first and foremost a machinery designed for upholding this one form of respect. In the system of liberal rights, reverence is reserved for the very same entity—the dignity of the human person" (11). At this point, readers in the liberal political tradition may feel entitled to the fist-pumping response, "Damn straight!" But the humanist Dacey instead makes the interesting move of chastising the liberal human rights tradition for focusing on the person to the exclusion of the sacred: "The idea of reverence for the moral authority of the sacred, and the evaluation of the claims made on its behalf, are lost in the anxious rush to ensure the recognition of the moral standing of the person" (12). Dacey seems to backtrack on this critique of liberalism and universal human rights a bit later, arguing:

None of this is to deny that the language of universal human rights is the best language in which to discuss state interference in peaceful expressions of sacrilege. While the doctrine of individual rights is not the appropriate frame for the claims of the accusers, it is the appropriate frame for those accused of blasphemy who face coercion of their conscience and expression . . . but the accusers should have no case unless their rights have been violated. To focus on anything but personal rights in the sphere of law would be unjust. To focus on nothing but personal rights in the sphere of culture would be blind. (13)

Dacey here repeats the often-made point in the blasphemy/defamation debates that religious human rights regimes are intended to protect believers, not religions. But his reference to the possibility that religious groups accusing individuals or other religions of blasphemy or defamation have some sort of claim in the "sphere of culture" suggests a possible sympathy for the idea that religions might have legitimate claims of self-protection or protection of the "moral authority of the sacred" as

<sup>9</sup> See *Otto Preminger-Institut v. Austria* Judgment, Eur. H.R. Rep. 19 (1994); *Wingrove v. United Kingdom* Judgment, Eur. H.R. Rep. 19 (1996). In terms of "balancing" Muslim and Christian sensibilities on these issues, it is worth noting that both of these cases involved offenses to Christian groups and that many of the European laws on blasphemy, including the one recently repealed in the United Kingdom, have been directed at preventing offences against Christianity. The Muslim charge of Europeans' hypocrisy on blasphemy does have some basis in fact. And, of course, the United States has also had to deal with cries of blasphemy from its own citizens, as in the public furor over Robert Mapplethorpe's homoerotic photography and Andres Serrano's *Piss Christ* installation.

they know it. In places like this, Dacey the secularist seems, ironically and paradoxically, more on the side of the Muslim accusers of blasphemy than of defenders of religious freedom.

Even with this possible sympathy for the sacredness claims of Muslim blasphemy accusers at venues such as the UN, Dacey ultimately wants to defend a future that “belongs not to personal blasphemy but to ethical blasphemy” (15). Ethical blasphemy, he tells us, is “primarily a matter of moral and civic responsibilities, not of legal rights and obligations” (15).<sup>10</sup> Why the latter cannot be seen plausibly as supporting the former is never really clear in his telling. Dacey again contrasts the mundane, if not profane, world of law with the realm of religion, specifically its ethical dimensions, as “a category and a concern belonging not just to members of traditional religions, but to any person of conscience who would speak of the sacred” (15). On this point, Dacey argues:

The space for ethical blasphemy in culture is best protected by eliminating the crime of personal blasphemy from the law. Western democracies have a moral imperative to end their criminalization of blasphemy and religious hatred not just because it is illegitimate. Within the new international covenant of universal human rights, the legal choices of liberal democracies have consequences for the struggle for fundamental freedoms in illiberal regimes elsewhere. These crimes keep us talking about offence, affront, insult, and intolerance—talking about ourselves. What we should be talking about is where sacredness can be found. (15)

Dacey shares with Marshall and Shea a concern for the potential abuse of blasphemy laws in illiberal regimes. His defense of ethical blasphemy seems, ultimately, to be a call for more positive and constructive debate among religious, humanists, and secularists alike in delineating and defending the sacred.

At times in his wide-ranging philosophical, historical, contemporary analysis of blasphemy, Dacey raises important questions and issues about the kind of conversation we should be having about religious differences and religious pluralism. He asks whether we can recognize a person’s “equal standing while finding his worldview contemptible,” even “while *telling him* we find his worldview contemptible,” and whether the blasphemy debate is really “grappling not with the deference that people owe to their God, but with the deference that they owe each other” (36–37).<sup>11</sup> His chapter “Respect” is worth reading. Therein, Dacey returns to the important question of respect as recognition and how this may require “respect not only of what is common to all members, but what is distinctive and different in them,” and to the ways in which religious beliefs may be experienced as “not just optional beliefs adopted or rejected by an autonomous self which somehow exists independently of all commitments” (45). Echoing the philosopher Charles Taylor’s widely noted observations on the politics of recognition,<sup>12</sup> Dacey points out that where such beliefs are constitutive of identity, respect for a person would “entail recognition of his particular identity, and the rejection or denigration of that identity would represent a failure of respect for him” (46). Even where grounds for full mutual respect are hard to discern, Dacey suggests that there may at least be grounds for appraisal respect and adopting a “presumption that an identity contains something worth caring about, and the acknowledgment that an identity makes a contribution to equal standing” (48).

<sup>10</sup> Judith Butler (see discussion below) shares Dacey’s skepticism about the capacity of law to promote ethical and cultural change.

<sup>11</sup> This remark seems of a kind with Waldron’s bidirectional understanding (see discussion below) of the harm of hate speech to democratic society.

<sup>12</sup> See Charles Taylor, “The Politics of Recognition,” in *Multiculturalism and “The Politics of Recognition”*: An Essay, ed. Amy Gutmann (Princeton: Princeton University Press, 1992).



At times, in his defense of ethical blasphemy over the law's emphasis on personal blasphemy, it seems that Dacey too quickly concedes Tariq Ramadan's observation, which he quotes, that "[t]here are no legal limits to free speech, but there are civic limits" (Ramadan quoted at 58). But again, the question arises of why a liberal system of law and human rights should not be able to bridge this gap in articulating some reasonable limits on speech about religion in the interest of promoting a civic culture of respect and recognition. At times, Dacey seems to suggest some of the parameters that such legislation might entail, as when he speculates that "what crosses the line from protected to unprotected speech is not the defamation of religions but the defamation of the religious" (88). Repeatedly, in his defense of ethical blasphemy, Dacey calls us to an "ethics of the sacred" (123) and asks us to "re-imagine the sacred as a domain of the moral" (130). But while Dacey provides an excellent account of recent blasphemy debates and their connection to an ethics of respect as recognition, he remains prescriptively antinomian, insisting on the unbridgeable gap between law and culture to the end, and we are never sure exactly what the "ethics of the sacred" is or what role the law can or should play in achieving it.

#### TAMPING DOWN THE WOLVES—THE DIGNITARIAN, CIVIC, AND BIDIRECTIONAL HARM OF HATE SPEECH

Legal philosopher Jeremy Waldron is less ambiguous about the ultimate aims of his free speech proposal. He begins *The Harm of Speech* with a hypothetical that seems ripped from recent headlines about the controversial posting of anti-Islamic signs in the New York subways by conservative political groups. Waldron provides a chilling analysis of the message that such speech sends, especially to minority groups, in societies that seem democratic on their surface. To minority groups, Waldron argues, the chilling message is:

Don't be fooled into thinking you are welcome here. The society around you may seem hospitable and non-discriminatory, but the truth is that you are not wanted, and you and your families will be shunned, excluded, beaten, and driven out, whenever we can get away with it. We may have to keep a low profile right now. But don't get too comfortable. Remember what has happened to you and your kind in the past. Be afraid. (2)

The members of the majority in the surrounding community receive a message, too. It is:

We know some of you agree that these people are not wanted here. We know that some of you feel that they are dirty (or dangerous or criminal or terrorist). Know now that you are not alone. Whatever the government says, there are enough of us around to make sure these people are not welcome. There are enough of us around to draw attention to what these people are really like. Talk to your neighbors, talk to your customers. And above all, don't let any more of them in. (2)

In Waldron's analysis, signs, symbols, and speech that convey these messages have a function that is beyond expressive—they are performative, moral speech-acts with at least two intended audiences and a goal of becoming part of the "permanent visible fabric of society" (3).

To those who trumpet the usual "liberal bravado" of the argument, regularly misattributed to Voltaire,<sup>13</sup> which proclaims, "I hate what you say but I will defend to the death your right to say it,"

<sup>13</sup> Waldron discusses this and what Voltaire really said at 226ff.

Waldron emphatically says, “I disagree” (3–4). Waldron describes what is socially and legally at stake in debates over free speech and hate speech as having primarily to do with a “public good of inclusiveness,” in which the “sense of security in the space we all inhabit is a public good, and in a good society it is something that we all contribute to and help sustain in an instinctive and almost unnoticeable way” (4). In this context, Waldron argues that hate speech constitutes an “environmental threat to social peace, a sort of slow-acting poison, accumulating here and there, word by word, so that eventually it becomes harder and less natural for even the good-hearted members of the society to play their part in maintaining this public good” (4). Minority groups whose social existence is not poisoned by hate speech experience “confirmation of their membership,” “basic reputation,” “social standing,” and, ultimately, “dignity” (5). But for minorities who are targeted by such speech, Waldron argues, “Its aim is to compromise the dignity of those at whom it is targeted, both in their own eyes and in the eyes of other members of society. . . . It aims to besmirch the basics of their reputation, by associating ascriptive characteristics like ethnicity, or race, or religion with conduct or attributes that should disqualify someone from being treated as a member of society in good standing” (5). Ultimately, Waldron argues that “hate speech is both a calculated affront to the dignity of vulnerable members of society and a calculated assault on the public good of inclusiveness” (5–6).

From the outset, Waldron concedes the unpopularity of the argument that he is making and the way that it conflicts with widely held perceptions in the United States of the “Voltairean” unassailability of the First Amendment freedoms (6, 12). Readers are invited to “understand that impulse” (12) that has led to laws against “hate speech” in Europe and other advanced democracies and the reflection in these laws of an “international human-rights consensus” and “deeper values of dignity, respect, equality, democracy, and social peace” (14). Waldron distinguishes his concern for dignity from the concern to avoid offense (15). He insists on the “need to go beyond the description of the speech itself as hateful to an understanding of the way that it pollutes the social environment of a community and makes life much more difficult for many of those who live in it” (16). In contrast with the aforementioned ethical, legal, and national security considerations offered by Dacey, Marshall and Shea, and Guiora, respectively, Waldron offers us an *ecological and environmental analysis* of the effects and broader social, political, and legal implications of hateful speech.

Noting that the United States “differs from almost every other advanced democracy in the protection it currently gives to hate speech,” Waldron squarely poses the question: “Should the United States continue as an outlier in this regard?” (29). In surveying European restrictions on hate speech based on race, religion, and other ascriptive factors,<sup>14</sup> Waldron maintains, “It is not clear to me that the Europeans are mistaken when they say that a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack” (30). Indeed, he argues that “the position of minority groups as equal members of a multi-racial, multiethnic, or religiously pluralistic society is not something that anyone can take for granted. It is a recent and fragile achievement in the United States” (31).

Waldron’s concern for the ascriptive status of groups—particularly minority groups—leads him to propose a robust notion of dignity that, far from simply resting with individual groups as a matter of natural law or some other ontological grounding, requires a considerable amount of political, cultural, and legal construction. On this point, he observes:

14 For a compendium of information on these factors, see Venice Commission of the Council of Europe, *Blasphemy, Insult, and Hatred: Finding Answers in a Democratic Society*, Science and Technique of Democracy 47 (Strasbourg: Council of Europe Publishing, March 2010), [http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&produit\\_aliasid=2474lang=EN](http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&produit_aliasid=2474lang=EN).

[D]ignity, in the sense in which I am using it, is not just a philosophical conception of immeasurable worth . . . It is a matter of status—one's status as a member of society in good standing—and it generates demands for recognition and for treatment that accords with that status. Philosophically, we may say that dignity is inherent in the human person—and so it is. But as a social and legal status, it has to be established, upheld, maintained, and vindicated by society and the law, and this . . . is something in which we are all required to play a part. At the very least, we are required in our public dealings with one another to refrain from acting in a way that is calculated to undermine the dignity of other people. This is the obligation that is being enforced when we enact and administer laws against group libel. (60)

This basic sense of dignity need not entail the sort of affirmative group recognition that a full recognition theory of dignity or human rights might counsel. Waldron writes:

Whether we want to go further and uphold the affirmative dignity of the group (as a group) would be quite another matter, and that is not the concern of hate speech legislation. Affirmatively, what hate speech legislation stands for is the dignity of equal citizenship (for all members of all groups), and it does what it can to put a stop to group defamation (of the members of a particular group) [when this] threatens to undermine that status for a whole class of citizens. (61)

But, even as Waldron demurs on the question of affirmative group recognition, such recognition is not absent from his understanding of what dignity might mean, if not demand. He argues:

A person's dignity is not just a fact about that individual. It is a matter of status, and as such it is in large part normative: it is something about a person that commands respect from others and from the state. Moreover, one holds a certain status not just when one happens to have a given set of entitlements, but when the recognition of those rights or entitlements is basic to how one is in fact dealt with. The element of *assurance* that one will be dealt with on this basis is an intrinsic part of what dignity requires. So it is with the fundamentals of social reputation. (85)

Waldron's is a highly social, political, and relational notion of dignity.

It is this relational and recognitive notion of dignity that gives rise to perhaps the most distinctive feature of Waldron's argument about hate speech—*it is as much about the haters as the hated*. In fact, it is about the whole of society. As Waldron puts it, in a set of observations worth quoting at some length:

Hate speech doesn't just seek to undermine the public good of implicit assurance. It also seeks to establish a *rival public good* as the wolves call to one another across the peace of a decent society. The publication of hate speech, the appearance of these symbols and scrawls in places for all to see, is a way of providing the focal point for the proliferation and coordination of the attitudes that these actions express, a public manifestation of hatred by some people to indicate to others that they are not alone in their racism or bigotry. . . . Accordingly, hate speech laws aim not only to protect the public good of dignity-based assurance, but also to block the construction of this rival public good that the racists and Islamophobes are seeking to construct among themselves.

It is sometimes objected that such laws simply drive hate underground. But in a way, that is the whole point: we want to convey the sense that the bigots are isolated, embittered individuals, rather than permit them to contact and coordinate with one another in the enterprise of undermining the assurance that is provided in the name of society's most fundamental principles. (94–95)

To interject a personal observation based on my prerogative as reviewer, I would note that as a feminist, I have most often rejected such arguments as a basis for banning pornography, arguably

the most prevalent form of hate speech against women. I have often found forensic value in being able to see there exactly what evil may lie in the hearts of men—and bleed their wallets dry, if the traffic and revenue of today’s internet purveyors of porn is any indication. And to take another example, which recently reached the highest levels of the US judiciary, the pronouncements and bizarre venue choice—funerals of fallen soldiers—of the homophobic Westboro Baptist “Church” for their “God Hates Fags” rants may not have been so effective as Waldron’s theory suggests. Their uniquely offensive message probably generated more converts to the cause of recognizing the equal rights of gays and lesbians than the Human Rights Campaign and Lambda Legal could have generated if they had paid for it themselves in the form of a costly advertising blitz!

The jarring oddness of the Westboro mingling of public protest with the private burial rituals of grief-stricken families draws attention to another dimension of hate speech—its publicity. Waldron’s argument for the connection between dignity, recognition, and public goods seems unassailable. As he puts it squarely, in yet another eminently quotable passage:

We must not be misled into regarding hate speech and group defamation as essentially private acts with which governments are perversely trying to interfere in the spirit of mind control. Hate speech and group defamation are actions performed in public, with a public orientation, aimed at undermining public goods. We may or may not be opposed to their regulation; but we need at least to recognize them for what they are. (100)

It is the highly public nature of most hate speech—in time, manner, and place—that also takes his proposal outside the realm of response to mere “offense to feelings.” As much as that concern has taken hold in European human rights courts and legislation, Waldron maintains, “I do not believe that it should be the aims of these laws to prevent people from being offended. Protecting people’s feelings against offense is not an appropriate objective for the law” (106). Waldron wishes to provide a “dignitarian” rationale for such legislation. As he describes it, “The distinction is in large part between objective or social aspects of a person’s standing in society, on the one hand, and subjective aspects of feeling, including hurt, shock, and anger, on the other. A person’s dignity or reputation has to do with how things are with respect to them in society, not with how things feel to them” (106). Again, the crucial dynamics of relationships and recognition rear their heads. In that context, much in the way that pornography has forensic value, hurt feelings may have heuristic and revelatory value when it comes to dignity. For as Waldron argues, “Protecting people from assaults on their dignity indirectly protects . . . them from a social reality—a radical denigration of status and an undermining of assurance—which, as it happens, naturally impacts upon their feelings” (108). In other words, it is sometimes better to know one’s enemies.

Waldron makes the interesting move of locating the obligatory historical chapter at the very end of his book in a discussion of toleration and calumny through the perspectives of Locke, Voltaire, and other Enlightenment *philosophes*. The chapter is worth reading and takes up the topic of religious hate speech directly, as does the earlier chapter on dignity and offense discussed above. But in the interest of making space here for the inclusion of one further title on the relation of freedom of religion to freedom of expression, I wish to jump directly to a point that Waldron makes in discussing the Danish cartoon response and the “defamation of religions” resolutions at the UN that have been focal points of so much of the recent literature in this area. In that connection, Waldron observes, “It is pretty clear that these resolutions have been motivated more by a desire to protect Islam from criticism (in the way that blasphemy laws used to protect Christianity) than by a desire to prevent the denigration of Muslims and their exclusion from social life” (124). I disagree.

Analysis of the “defamation of religions” resolutions from 1999 to 2010 shows an increasingly lengthy list of complaints from the OIC nations that seem quite dignitarian in nature by Waldron’s definition, as they include not only the dissemination of offensive portrayals of Islam in the media, anti-terrorism laws that involve religious (and, arguably, racial<sup>15</sup>) profiling, restrictions on headscarves and more occlusive hijabs and burqas said to impede Muslim women’s access to education and other public activities, but also other offenses that would seem to impinge on the dignity of Muslims both individually and, particularly, as a group. The concerns about caricatures and stereotypes in these issues give rise to a further caricature of Muslims becoming apoplectic about apostasy, besotted by blasphemy, and confounded by critiques of their faith. It is that set of concerns that inspires the essays of Talal Asad, Saba Mahmood, and Judith Butler around the question, *Is Critique Secular?*

#### RELIGIOUS CHOICE, SECULAR SEDUCTIONS, RACIALIZED RELIGION, AND THE CAPACITY OF LAW

In a number of respects, the arguments in *Is Critique Secular?*, a book intended as an analysis, or perhaps better a critique, of the Danish cartoons crisis, shares the same bidirectional quality as Waldron’s proposal on hate speech, focusing on both Muslim and Western perspectives on the issue. In introducing the volume, political scientist Wendy Brown notes the book’s intent to “explore the way a particular conception of secularism is central to the identity of the West (liberal, democratic, tolerant, critical), juxtaposed against its imagined other, which in this historical moment has become consubstantial with Islam” and how this opposition is both “dependent upon and generative of a monolithic and parodic account of Islam,” even as it “prevents Western secular societies from certain kinds of self-reflection and self-knowledge” (iii). In particular, the volume’s contributors seek to interrogate and destabilize the binary system in which “societies that are understood to be stuck in a culture of unreason and belief, fealty, orthodoxy, and religious authority” are perceived to be in conflict with secular societies, whose “normative dimensions of secularism converge with the claim of Western civilizational superiority, mutually generating and fortifying each other” (ix). Brown proclaims the contributors’ allegiance to “recent scholars who have argued that secularism does not merely organize the place of religion in nation-states and communities but also *stipulates* what religion is and ought to be, assigning its proper content and generating religious and secular practices and self-understandings accordingly”; further, Brown affirms their understanding of secularization as a “process of disseminating the ethos, ethics, cosmology, and quotidian practices of hegemonic religious traditions across secular societies, not simply sequestering religion” (ix). Accordingly, Brown notes, “We proceed, then, from the view that secularization reproduces and disseminates even as it transforms culturally and historically specific religious content, and that it generates particular religiously inflected (albeit disavowed) modalities of law, ethics, subjects, and consciousness” (x).

What is religious freedom in this secular context? Brown argues that it is bound up with the “liberal ideal of free will” and “individual autonomy,” as well as with the “modern judgment that religion, to be squared with freedom and enlightenment, must be freely chosen by a rational and deliberate agent, culled from a variety of equally valid options” (xi). In other words, religious

15 See the discussion below of Mahmood’s argument about the racialization of religion in these debates. See also Joan Wallach Scott, “Racism,” chap. 2 in *The Politics of the Veil* (Princeton, NJ: Princeton University Press, 2007).

freedom in secular modernity—or, perhaps better, in *postsecular postmodernity*—is heavily linked to what the philosopher Charles Taylor has recently described as the new “optionality” of religion in secular society. In other words, religion in modernity is seen not as the inherited tradition of family, nation, and culture, but as a matter of individual choice. If religion is a matter of choice, does that give it a lesser, greater, or qualitatively different claim as a human right to religious freedom? And if religion is a matter of choice, is it more or less susceptible to blasphemy or offense? These are the compelling questions at the intersection of freedom of religion and freedom of expression today.

How do the contributors to *Is Critique Secular?* respond to these questions and to the provocative one in their book’s title? Brown argues that the dominant, largely Protestant Reformation-inspired concept of religion is one in which “embodied forms are assigned secondary status, while beliefs are made primary” (xi). This critique of the secular model of religion in modern liberal democracies has become standard in the contemporary academic field of religious studies in the West—inspiring all sort of turns to the body, food, religion, and related matters. “Such a conception of religion,” Brown argues, “is naturalized in secular societies to such an extent that its presuppositions and requirements go unnoticed until they collide with other competing conceptions of religion, which are then often dismissed as backward, fundamentalist, insincere, or simply traditional” (xi). As Brown further notes, “These issues take on pressing significance in light of recent public discussions in Europe and America that charge Muslims with being insufficiently secular, hence comporting poorly with Euro-Atlantic standards of citizenship” (xi). In those debates, Brown observes, “The popular view was that Muslims who could not tolerate offensive speech, including visual representations, expressed a larger limitation, namely, an uncritical attitude toward Islamic strictures and doctrinal presuppositions and the inability to bear criticism of their own beliefs” (xi).

As Brown puts it, the task of the volume is “to examine the conditions under which these apparently incommensurable frameworks of intelligibility can be thought together” (xiii). Taking up the claims of religious freedom violation in connection with the Danish cartoons and the French burqa ban, Brown argues that “the notion that the interiority of belief can be disjoined from its public expression conditions both the secular denunciation of outrage against the cartoons of Muhammed and the secular argument that bans on the veil are not violations of religious freedom” (xiv). Even so, Brown continues, getting to the crux of the difference between Western Christianity and Islam:

[S]uch an understanding of the relations between religion and signs contrasts with another way of relating to sacred icons. Many orthodox Muslims understand the relationship between the revered object and the reverential subject as a form of cohabitation and relationality, one in which outward or phenomenal signs do not simply signify prior subjective meaning but rather performatively constitute the conditions of reception and subjectivity. Such a conceptual relationship is not novel to Islam but permeates other religions as well. (xiv)

This more embodied and performative understanding of religion, Brown argues, is not fully accommodated in a secular context that casually throws open the doors to all varieties of religious experience. Brown argues:

It would be easy to regard this move as sufficient, since it pluralizes secularism, dislodging the Western monopoly over the meaning and substance of the secular, showing “other ways” of inhabiting it—one Protestant, another Islamic, perhaps others still, all arranged on a platter of world religions, each offering its own unique interpretation of secularism. Such a strategy fails to adequately appreciate, however, the prescriptive and normative thrust of secularism and ignores how secularity is not simply a culturally specific value but a political episteme that structures modern societies in modular and similar ways. (xiv-xv)

Against this version of an all too blindly just secularism, Brown declares that the book's intent is to ask a different set of questions from the Danish cartoon and other recent incidents, including, "What if 'offense' does not quite capture what was at stake for many Muslims? What if we need to enter into another form of reason or understanding to grasp what was at stake?" (xv). Indeed, she observes:

[T]he task is not merely to show that critique belongs exclusively to a modern European secular narrative, or to once again bring in "the other" to decenter or provincialize that narrative. In the case of the Danish cartoons, for instance, we have to consider those modes of embodied reasoning that link the subject to the image, that is, where the image constitutes a living connection between the subject and the divine. The embodied form of relationality directly challenges the distinction between belief and representation presupposed by the secular legal discourse invoked to adjudicate the dispute between cartoonists and pious Muslims. If the debate on the status of the cartoon continues to happen exclusively within that legal framework, then the result can only ratify that framework and the foreclosures (and absorptions) it entails. . . . Can the incident and the injury even be names or known within that discursive horizon? Do we not need first to know how best to understand what has happened before we enter into adjudicating it? (xvi-xvii)

The essays of Asad, Mahmood, and Butler help to expand readers' understanding of the discursive horizon where freedoms of religion and speech collide in the form of critique.

Talal Asad provides, in his essay, an "attempt to think about the place of blasphemy—a religious concept—in secular liberal society" and as a "crystallization of some moral and political problems in liberal Europe" (15). In that context, blasphemy operates as a site for the construction of "civilizational identity" between the West and Islam, with "each championing opposing values: democracy, secularism, liberty, and reason on one side, and on the other the many opposites—tyranny, religion, authority, and violence" (15). In that competition, "blasphemy is said to be an archaic religious constraint, and free speech is a principle essential to modern freedom" (21). In the modern context, restrictions on apostasy, blasphemy, and conversion bump up against the "growing sense that the sacred conception of the self-owning human, the foundation of freedoms in modern society, is under threat" (23).

As a challenge to—and critique of—this completely free, self-owning liberal subject, Asad introduces the concept of *seduction*, which he describes as a "concept central to Islamic traditional thought about free speech" (24). As Asad observes, "In liberal society seduction is not merely permitted, it is positively valued as a sign of individual freedom. Every adult may dispose of his or her body, affections, and speech at will, so long as no harm is done to the property of others" (25). In other words, the liberal subject is constituted and understood by complete freedom in a wide range of human activities, including religion and speech. On the other hand, Asad maintains, "To seduce is to incite someone to open up his or her innermost self to images, sounds, and words offered by the seducer and to lead the seduced—complicitly or unwittingly—to an end first conceived by the former" (26).

Asad's concept of seduction points out the way that seduction, while being a realm of unhindered autonomy and freedom for the seducer, implies potentially coercive heteronomy by outside forces for the one who is seduced. The ability of speech and other means of seduction to compromise the object of seduction in this way violates a number of Islamic strictures. Specifically, Asad observes, "The uninvited intrusion into domestic space, the breaching of 'private' domains, is disallowed in Islamic law, although conformity in 'public' behavior may be much stricter. Thus, the limits of freedom are differently articulated in relation to spaces that may roughly be described as 'private' and 'public,' and different kinds of discourse are socially available to distance what

is repugnant, whether, transcendent or worldly” (31). In his further explanation of the public/private distinction around speech in Islam, Asad notes, “The right to think whatever one wishes does not, however, include the right to express one’s religious or moral beliefs publicly with the intention of converting people to a false commitment. Such a limitation may seem strange to modern liberals . . . for whom the ability to speak publicly about one’s beliefs is necessary to freedom. It is, after all, one aspect of ‘the freedom of religion’ that is guaranteed by a secular liberal democracy” (34). But perhaps not so strange—the Islamic concern for protecting the distinction between public and private also sounds, interestingly, like the tort of “intrusion upon seclusion” that was deployed by the state of Maryland against the Westboro Baptist Church.

Central to the Islamic concern for the protection of privacy, however, is another, very public concern. Asad observes, “Muslim theologians and jurists assumed that seduction in all its forms was necessarily dangerous not only for the individual (because it indicated a loss of self-control) but for the social order too (it could lead to violence and civil discord” (38). Here, Asad begins to approach some of the national security concerns of Guiora and the civil democracy concerns of Waldron. In that connection, and with specific reference to Europe’s immigrant communities, Asad observes:

The recent European discourse on blasphemy as applied to the behavior of Muslim immigrants in Europe serves, paradoxically, at once to confirm and to deny difference. Angry Muslim responses to the publication of the Danish cartoons are seen by secularists as attempting to reintroduce a category that was once a means of oppression in Europe, while they see themselves critiquing, in the name of freedom, the power to suppress human freedom. . . . It reinforces, in other words, the ideological status of European Muslims as not yet fully human because they are not yet morally autonomous and politically disciplined. (49–50)

In Asad’s view, this modern blasphemy problem is a “European invention” and reflective of a “concern about limits” and the establishment of a “particular moral order in the world” that can make “democracy safe within its own bounded spaces” (50). In the end, Asad concludes—in a way that brings him close to Dacey’s view—that it is the West’s rejection of the theological language of blasphemy that leaves it ill-equipped to address the real sites and incidents of ethical blasphemy today.

Saba Mahmood identifies secularism as a key force affecting speech through the “rearticulation of religion in a manner that is commensurate with modern sensibilities and modes of government” (59). Within but against this secular framework, Mahmood seeks to argue that “to abide by the description that the Danish cartoon controversy exemplified a clash between the principles of blasphemy and freedom of speech is to accept a set of prior judgments about what kind of injury or offense the cartoons caused and how such an injury might be addressed in a liberal democratic society” (60–61). She finds fault with both opponents and defenders of the cartoons’ publication, arguing, “Despite polemical differences, both positions remain rooted in an identity politics (Western versus Islamic) that privileges the state and the law as the ultimate adjudicator of religious differences” (61). In her assessment, liberal and progressive proponents of both freedom of religion and freedom of speech experienced, perhaps, the deepest consternation over the issue. As Mahmood observes, “While some of them could see the lurking racism behind the cartoons, it was the *religious* dimension of the Muslim protest that remained troubling. Thus, even when there was recognition that Muslim religious sensibilities were not properly accommodated in Europe, there was nonetheless an *inability* to understand the sense of injury expressed by so many Muslims” (62). The result was a sense “that it was a clash between secular liberal values and an irascible religiosity that was at stake”—that it involved “a contrast between ‘their’ strongly held religious beliefs and ‘our’ anemic liberal morality” (63). Against this binary, Mahmood writes:



I want to argue that framing the issue in this manner must be rethought both for its blindness to the strong moral claims enfolded within the principle of free speech (and its concomitant *indifference* to blasphemy) as well as to the normative model of religion that encodes. To understand the affront the cartoons caused within the terms of racism alone, or for that matter in terms of Western irreligiosity, is to circumscribe our vocabulary to the limited conceptions of blasphemy and freedom of speech—the two poles that dominated the debate. (63–64)

More pointedly, in another quoteworthy passage, Mahmood maintains:

I will suggest that this rather impoverished understanding of images, icons, and signs not only naturalizes a certain concept of a *religious* subject ensconced in a world of encoded meanings but also fails to attend to the affective and embodied practices through which a subject comes to relate to a particular sign—a relation founded not only on a representation but also on what I will call attachment and cohabitation. It is striking that the largely silent but peaceful and emphatic rejection among millions of Muslims around the world was so easily assimilated to the language of identity politics, religious fanaticism, and cultural/civilizational difference. Little attention has been paid to how one might reflect on the kind of offence the cartoons caused and what ethical, communicative, and political practices are necessary to make this kind of injury intelligible. The lacuna is all the more puzzling given how complex notions of psychic, bodily, and historical injury now permeate legal and popular discourse in Western liberal societies . . . (64)

Mahmood's concerns are analogous to Waldron's in their focus on harm, injury, and the requirements of democracy. In this connection, she asks "why such little thought has been given in academic and public debate to what constitutes moral injury in our secular world today," about the "conditions of intelligibility that render certain moral claims legible and others mute," about the "costs entailed in turning to the law or the state to settle such a controversy," and how recent scholarship on secularism tends "to complicate what is otherwise a polemical and shrill debate about the proper place of religious symbols in a secular democratic society" (64–65).

Mahmood's discussion of the "relationship that binds the image to the spectator," and of the "complex field of visual reciprocity" (65) that the relationality of subject and icon entails in Islam and other religions (including various forms of Christianity), is compelling. It is a "relationality that binds the subject to an object or imaginary," whose rupture occasions a sense of "personal loss" (68). In Islam, it involves a "relationship of intimacy with the Prophet" (69), who is "regarded as a moral exemplar whose words and deeds are understood not so much as commandments but as ways of inhabiting the world, bodily and ethically" (69). Indeed, as Mahmood viscerally describes it, "These mimetic ways of realizing the Prophet's behavior are lived not as commandments but as virtues where one wants to ingest, as it were, the Prophet's persona into oneself" (69). In the main, she argues that "within the traditions of Muslim piety, a devout Muslim's relationship to Muhammad is predicated not so much upon a communicative or representational mode as on an assimilative one" (70).

Mahmood also usefully explains the connection between race and religion that is implicated in hate speech discussions, particularly in Europe. The connection between race and religion has been a prominent feature of the UN "defamation of religions" debates, in which the rhetoric has been drawn from international covenants and declarations on both concerns. European Muslims experience offenses like the Danish cartoons as racial incidents, in a way that "challenge[s] the idea regnant among many Europeans—progressives and conservatives alike—that Muslims cannot be subjected to racism because they are a religious, not a racial, group" (73), and in a way that challenges biological notions of race. In this context, Mahmood observes, "Arguments about the racialization of Muslims provoke the fear among some Europeans that if this premise is conceded or accorded legal recognition

then it will open the door for Muslims to use European hate speech laws to unduly regulate forms of speech that they think are injurious to their religious sensibilities” (74).

Mahmood observes that the analogy of religion and race problematizes the “presumption that religion is ultimately a matter of choice” and “about belief in a set of propositions to which one gives one’s assent” (75). Such presumptions become especially problematic when they are “encoded within secular liberal understandings of injurious speech and the right to freedom of expression,” Mahmood argues, because of the way in which the “normative conception of religion as belief facilitates other claims about what counts as evidence, materiality, and the real versus psychic or imagined harm” (75). In this context and the context of the global war on terrorism, the Muslim response to the cartoons came to be seen as not only illegitimate and disproportionate, but “as a threat not simply to the civilizational essence of Europe but also to European state security and public order” (76). Cast as threats to public order, both critical speech about religion and religious objections to critique can be seen to fall within the purview of Europe’s many post-Holocaust restrictions against speech that fosters racial or religious hatred leading to violence.

While urging readers to pay heed to the senses of injury explored in the essays of Asad and Mahmood, Judith Butler also recommends attention to the further problem of the “limit of normative imagination when it is constrained by established juridical protocols on free speech” (95). In regard to both concerns, she argues:

If one objects to learning about the meaning of the injury at issue because one fears that such an understanding will directly imply a legal proscription of speech, then one embraces a certain norm at the expense of understanding itself—an anti-intellectualism that characterizes forms of moral dogmatism, whether secular or religious. Not only would one prefer to remain ignorant, but one embraces one’s ignorance in the name of unyielding moral principles—a comic and tragic position, to be sure. (95–96)

The normative dimension is central, Butler notes, since “one of the points of these essays is to show that in some ways the conflict that has emerged in the wake of publication of the Danish cartoons is one between competing moral frameworks, understanding ‘blasphemy’ as a tense and overdetermined site for the convergence of different schemes of moral evaluation” (97–98). In this context, Butler argues:

[T]o suggest that there may be other normative frameworks for understanding the problem of blasphemy or offense is not the same as saying that one ought to adopt those other frameworks or that those frameworks ought now to become the ones within which normative judgments are made. . . . Nor is the point to embrace a cultural relativism that would attribute equivalence to all moral claims and position oneself as an outsider to the normative issues at hand. . . . In my view, the point is to achieve a complex and comparative understanding of various moral discourses, not only to see why we *evaluate* (and value) certain norms as we do, but also to evaluate those very modes of evaluation. (98–99)

The primary mode of evaluation that Butler, with the book’s other contributors, wishes to interrogate is that of “hegemonic secularism” (99).

Critique of hegemonic secularism (and any mode of evaluation) must be “comparative and interruptive” (102). Through such critique, Butler tell us, “we become aware of the contingent conditions under which we feel the shock, outrage, and moral revulsion”—and crucially, when it comes to Westerners seeking to understand things like Muslim responses to the publication of Prophet-caricaturing cartoons—“we end up feeling shocked and outraged by our lack of shock” (102). Butler takes up Asad’s critique of the liberal idea of self-identity and self-ownership,

which she distills into the question, “Is there an idea of the human implied by the prohibitions and protections related to speech, and if so, how does this idea serve to distinguish between what is called the religious and what is called the secular?” (111). Asad’s analysis raises, for Butler, the possibility that in the blasphemy debates, we are dealing, in the Muslim response, with a “different conception of subjectivity and belonging than the one implied by self-ownership,” such that “what is at stake is not so much a question of whether speech should be free or prohibited as a way of conceiving a mode of living outside of self-identity and self-ownership” (112–13). Consistent with Asad’s description of seduction, Butler argues, “The cartoons are injurious not only because they fail to understand this way of life but also because they deploy the iconography of Muhammad to direct the viewer toward a repudiation of that way of life” (113).

Butler also takes up Mahmood’s critique of secular “abstention,” or neutrality, in matters of religious sensitivity (114). Mahmood, Butler notes, addresses most directly the question of how we “reconcile freedom of religion with freedom of speech” (114). Privatization of religion, in Butler’s view, is not an option, since it gives rise to a cramped understanding in which “freedom of religion relies upon and confirms a public/private distinction that cannot address some of the public forms that religion takes and some of the contemporary conflicts that call for understanding and adjudication” (114). Butler affirms Mahmood’s argument that these disputes may require a transformation that is more ethical/cultural than legal in nature. At the same time, she does not let law off the hook; rather, she asks: “[I]s it right to understand law as radically distinct from questions of sensibility? After all, does law (civil rights law, for instance) not function on certain historical occasions to change sensibilities, to foster new parameters for equality and justice, including new sentiments, or are we being asked to understand ‘sensibilities’ as definitionally extrajudicial? Are there not legal sensibilities at issue here?” (117). And, in the European context that Mahmood describes, Butler raises some further provocative questions that go to the normative heart of freedom of speech itself. Specifically, she maintains, “The question is not whether hateful speech is part of free speech, but rather, why has freedom in certain European contexts come to define itself as the freedom to hate? What does it mean when the notion of freedom has been twisted to ratify discrimination, xenophobia, racism, and nationalism?” (123–24).

#### SOME CRITICAL AMERICAN REFLECTIONS

Indeed, Butler’s questions are good ones. These questions, and the questions raised by Guiora, Marshall and Shea, Dacey, Waldron, and Butler’s co-contributors to *Is Critique Secular?*, illustrate the complex, interreligious, and transnational issues at stake in the current clash between the freedom of religion and freedom of speech. Americans, with their robust but sometimes knee-jerk and anti-intellectual defenses of these freedoms, are often themselves highly resistant to critique on these matters, which risk becoming additional areas of “American exceptionalism,” in the pathological sense. We are, in the bloodless and neutral language of the social sciences, *outliers* on these issues. And yet our complex jurisprudence on both freedom of religion and freedom of speech, drawn from our own internal wranglings over these issues, has some valuable lessons to impart to the world.

In the recent case of *Snyder v. Phelps*,<sup>16</sup> in which the US Supreme Court upheld the military funeral protests of the Westboro Baptist Church as protected speech under the US Constitution, the majority decision, written by Chief Justice John Roberts, hit all the usual secular neutral notes,

<sup>16</sup> *Snyder v. Phelps*, 131 S. Ct. 1207 (2011).

contrasting the *public* concern of Westboro's speech against the claims of *private* harm by the family of fallen soldier Matthew Snyder and also invoking the public/private divide in its ruling. In the end, Chief Justice Roberts concluded, "Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. . . . Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate."<sup>17</sup>

Not all of the justices subscribed to the majority's "public concern" argument in Westboro's defense—Justice Stephen Breyer, while concurring with the decision, specifically rejected the publicity argument and read the decision as a narrow ruling that did "not hold or imply that the State is always powerless to provide private individuals with necessary protection."<sup>18</sup> On the other hand, Justice Samuel Alito dissented, as he had in an earlier free speech case on depictions of animal cruelty in "crush" videos, arguing, against Roberts, that "[o]ur profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case."<sup>19</sup> In Alito's assessment, the Westboro Baptist Church has "strong opinions on certain moral, religious, and political issues, and the First Amendment ensures that they have almost limitless opportunities to express their views."<sup>20</sup> What they do not have, in Alito's view, is the right to "intentionally inflict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate."<sup>21</sup> Instead of a constructive contribution to that debate, the protests sought to manipulate that debate as part of a "cold and calculated strategy to slash a stranger as a means of attracting public attention."<sup>22</sup>

There is room to quibble with Alito's understanding of the injury. His sensibility seems to hang on the possibility that the protests defamed Matthew Snyder with a false allegation of homosexuality that would have inevitably and painfully conflicted with his religious identity as a Catholic,<sup>23</sup> but it also notably rested on the broader sympathetic conviction that "[a]llowing family members to have a few hours of peace without harassment does not undermine public debate," and on the related view that "[i]n order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims."<sup>24</sup>

The effect of the Westboro protest in the *Snyder* case was sadly limited to the ill-chosen audience of a fallen soldier's family and friends. But today, videotaped protests and other speech can be transmitted around the world in an instant. In the aftermath of the Benghazi incident, the US State Department is reported to have briefly considered waiting periods for prior review of

17 Ibid. at 1220.

18 Ibid. at 1221 (Breyer, J., concurring).

19 Ibid. at 1223 (Alito, J., dissenting). The animal "crush" video case was *United States v. Stevens*, 559 U.S. 460 (2010).

20 *Snyder*, 131 S. Ct. at 1223 (Alito, J., dissenting).

21 Ibid.

22 Ibid. at 1227.

23 In fact, in recent surveys, Catholics in the United States and abroad have shown high levels of support for same-sex marriage and for justice, equality, and dignity for gays and lesbians. See Jacob Poushter, "Before Pope's Comments, Latin American Catholics Expressed Acceptance of Homosexuality," *Pew Research Center Fact Tank*, July 30, 2013, <http://www.pewresearch.org/fact-tank/2013/07/30/popces-comments-on-gays-have-support-within-his-flock/>; Pew Research Center, "Gay Marriage Gains More Acceptance," October 6, 2010, <http://www.pewresearch.org/2010/10/06/gay-marriage-gains-more-acceptance/>.

24 Ibid. at 1228, 1229.

diplomatic tweets.<sup>25</sup> Such a restriction would seem to defeat the purpose of the new social media of which Twitter communiqués are a part. But the new sensitivities around speech—especially religious speech—will continue to be important issues at the intersection of law and religion. Some of the most intriguing new data come from the field of genocide studies, in which social scientists are now seeking to quantitatively and qualitatively assess when speech risks turning deadly.<sup>26</sup> Such data, and the accumulation of global events involving clashing freedoms of religion and speech, may also give rise to new hermeneutics and new laws in these areas. At a minimum, they will bear watching in our ever-smaller world.

#### ACKNOWLEDGEMENTS

*This review essay is dedicated to my nephew, William Prescott Gillette, a fourth-grade possible ethicist-in-the-making, who has written on this topic for homework, was my interlocutor on several of the points addressed here, has a keen eye for fairness and justice, and almost always tries to do the right thing.*

---

25 Elise Labott, “Tweets Gone Wrong a Concern at State Department,” *CNN* (blog), December 10, 2012, <http://security.blogs.cnn.com/2012/12/10/tweets-gone-wrong-a-concern-at-state-department/>.

26 See Elizabeth Dovell, “Hate Speech Leads to Genocide,” *World Policy Institute* (blog), November 11, 2010, <http://www.worldpolicy.org/blog/2010/11/11/hate-speech-leads-genocide>; Kadim Shubber, “Crowdsourced Hate Speech Database Could Spot Early Signs of Genocide,” *Wired.co.uk*, April 5, 2013, <http://www.wired.co.uk/news/archive/2013-04/5/hatebase>. See also the work of the Voices that Poison project at <http://voicesthatpoison.org>, and the Sentinel Project at <http://thesentinelproject.org>.