

*Blasphemy – And Other High Crimes*

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Those cartoons? You know the ones. Unless you've been trolling the internet, though, you may not have had a chance to see what the fuss is about. Amid global conflagration and incensed polemics from all sides of the debate, Canadian media outlets have thus far been reluctant to reproduce the images. Some chalk this up to good taste, others to a fearful knuckling-under to political correctness. It should be noted, however, that another factor may be at play - and that this controversy may provide an opportunity for a long-overdue house cleaning.

Though not much remarked upon, it is quite possibly illegal to publish those cartoons in Canada. And, before the spittle begins to fly, that conclusion doesn't derive from some happy-clappy multiculti legislation passed on a dark night by a nefarious cabal which included Svend Robinson, Hedy Fry and anonymous Human Rights Commissioners. Nothing so inventive is required. It's right there in the Criminal Code, and has been for decades: section 296 makes it a criminal offence to publish "blasphemous libel". No, seriously. It is technically possible to be thrown in prison in Canada for disseminating materials which are "blasphemous". As if to sharpen the irony for our modern sensibilities, the determination of whether something contravenes the provision is described as a "question of fact".

The Criminal Code is littered with outdated "crimes" like the blasphemous libel provisions. For the most part, they don't do much harm: no one has been charged, much less convicted, of blasphemy for decades. But the danger lies in leaving unfettered tools like the criminal law which can be twisted by overzealous police, prosecutors and politicians to ends which were not only never contemplated by the original drafters of the law, but which we would find patently offensive today. The cartoons were published on Wednesday by a student paper in PEI, and they may yet be promulgated more widely. Why should it even be an option for someone, somewhere to threaten censorship and incarceration? Would you really want to be the test case? We speak loosely of the "chilling effect" of social pressure – imagine how cold you'd be after a knock on the door from someone claiming authority under the Criminal Code of Canada.

Inequitable enforcement of outdated laws is hardly a new issue: the gay and lesbian communities have pointed out for years that the existing criminal prohibitions on anal sex (rendering the activity illegal for individuals under twenty-one years of age, or groups of three or more of any age) fall on them disproportionately and discriminatorily. Cleaning up the books to address those issues is important, but perhaps, as a purely political calculation, issues revolving around freedom of speech will find more resonance with Canadians and hence have a greater chance of prompting omnibus reforms. In these times of uncertain political outcomes, one hopes that everyone can appreciate the appeal of limiting the tools available to government agents (previously under the direction of "Trudeaupian" Liberals, today at the behest of "scary" Conservatives) to effect the shifting whims of political expediency.

The Conservatives, long associated by all points on the spectrum with a law and order agenda, would be well-advised to undertake a modernization of the Criminal Code. In a fractured Parliament, savvy positioning can appeal to all parties and interests: eliminating out-dated provisions such as those described above can be coupled with increasing penalties for gun crimes and sharply reducing the availability of conditional sentences and parole. The fundamental impetus, though, remains resolutely conservative: ensuring that the long arm of the law remains appropriately tethered to the considered decisions of the democratic mind.