

# Blasphemy in a pluralistic society

Kerrie Henderson discusses the recent Monitor blasphemy case in Indonesia, and considers its implications for Australia.

**U**nder Australian common law, blasphemy can only be committed in a Judaeo-Christian context. Blasphemy against religions not based upon the bible is not an offence. To justify a conviction the material complained of must 'shock and outrage the feelings of Christians'; fairly difficult in an increasingly secularised community. Provided you express your views temperately, not even a denial of the fundamental doctrines of Christianity will found a successful prosecution.

As Australian multiculturalism develops, protecting only one religion from attack has become incongruous. It can be seen as state preference for one social group above others. For the sake of equity, some people have argued that outraging the feelings of people of any religion should be punishable, while others argue that this just highlights the absurdity of the state intervening to protect religion in a pluralistic society. The latter argue that the offence should be done away with as an interference with free speech.

## The offending material

**A** case earlier this year in Indonesia raises some pertinent questions for the Australian debate.

*Monitor* was a popular Jakarta based tabloid journal, of the gossip and scandal variety, published by one of Indonesia's largest publishing houses. The magazine's editor, Arswendo Atmowiloto, was famous as a journalist and writer and for his pursuit of celebrities with intimate questions.

*Monitor* conducted a poll in which it asked its readers to write in and nominate the person they most admired. The results were published in October 1990, and the top ten included President Suharto, the Minister for Technology (Habibie) and Arswendo himself. Unfortunately for Arswendo the top 10 did not include the Prophet Mohammed, who came in at number 11.

The outcry was immediate and dramatic. *Monitor's* permission to publish was withdrawn. Arswendo was thrown out of the Journalists' Association, sacked from all Gramedia businesses and boards and arrested on charges of affronting Islam and breaching the press

ordinances in his capacity as editor.

## The trial

**T**he principal charge against Arswendo was that he had breached section 156(a) of the *Criminal Code* which forbids conduct which affronts a recognised religion (which in Indonesia means Islam, Buddhism, Hinduism, Catholicism or Protestantism). 'Affronting' is said to be characterised by hostility towards the religion. *Monitor* was in breach of the *Main Press Ordinance* of 1982, section 19 of which prescribes the publication of blasphemous material.

On behalf of Arswendo, it was argued that the criminal offence of affronting religion required both intention to offend and the use of insulting words. While Arswendo had been careless or negligent, he had not intended to offend and had merely published a factual reflection of what readers sent him, without any comment or remark.

The bench of three judges ruled however that the *Criminal Code* did not require the use of insulting language, and that intention to do the offensive act was sufficient without intention to offend. Expert Islamic lawyers explained that according to Islamic law Allah, the Prophet and the Koran are inseparable and comparison of any of them to mortal things or people was to demean and denigrate the standing of all.

Having found that the publication was blasphemous, the judges also found that it breached the *Press Ordinance*. They then decided that, as editor, Arswendo was personally responsible for this breach even if he had in fact delegated the task of compiling results and preparing copy to others.

Arswendo is now serving a five year jail sentence and is required to pay a (Aus) \$5,000 fine.

## Australian Implications

**T**he Arswendo case highlights a number of pertinent questions which will need to be resolved if Australia's present blasphemy laws are to extend to all religions.

Firstly, how do you define what a religion is? Indonesia has adopted the course of simply recognising a limited

number of religions and requiring all citizens to adhere to one or other of them. That course would not be acceptable here. Is Scientology to be considered a religion for blasphemy purposes? Can you shock and outrage the adherents of so-called cults by suggesting that their dogma is a fraud?

Secondly, how do you determine what shocks and outrages the adherents of a particular religion? The law of blasphemy works from the assumption that everyone is Christian, with the result that any reasonable person can determine what would cause affront. Once you recognise a multiplicity of beliefs how do you assess degrees of offensiveness? In the Arswendo case the Indonesian court did so by calling Koranic lawyers as expert witnesses to testify: which means that offensiveness is assessed on a subjective basis, from the point of view of the reasonably learned adherent of the religion in question. Adopting this sort of standard creates the impossible situation where detailed knowledge of different religions would be the only way one could avoid giving offence to anyone.

Linked to this is the problem of drawing the limits of offensiveness in any given case. Simply including the Prophet in the poll was sufficient in Arswendo case. On the other hand it is unlikely that a similar listing of Jesus Christ or Buddha would generate outrage among most Buddhists or Christians. Catering to variations in religious sentiments may be even more offensive to egalitarian sentiments than the current position.

Further, who would judge such cases? Religion is an intensely personal and emotional matter, where strong views abound. It is unrealistic to expect the religious sentiments of judges and jurors to be able to be effectively excluded.

If blasphemy laws are egalitarian the preferable course is to abolish them entirely. The Indonesian laws work, if harshly, only because of the highly regulated nature of that society. In a more open pluralistic environment like ours the extension of blasphemy protection to any and all religions is more likely to result in an unholy mess than in religious equality.

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