

Book Note

The Style Police: Law, Language, and Class

Word Crimes: Blasphemy, Culture, and Literature in Nineteenth-Century England. By Joss Marsh.* Chicago: University of Chicago Press, 1998. Pp. xii, 327. \$18.95 (paper).

That Britain is (and has been) a class-conscious society verges on being a cliché.¹ Britons, it is often commented, think about class too much. Americans, on the other hand, think about class too little, and are rarely criticized for it. While stopping short of advocating heightened class consciousness, this Book Note suggests that by not thinking about class, we overlook ways in which class biases may influence legal decisions. American legal thought could stand to borrow a page from class-conscious British history, as exemplified in Joss Marsh's *Word Crimes*. *Word Crimes* is both an innovative work of literary and legal history and an example of how class-conscious analysis can illuminate the dilemmas inherent in regulating the *manner* of speech. *Word Crimes* brings to light the curious and largely neglected history of prosecutions for blasphemy in nineteenth-century England,² but its story is relevant to current American attempts to regulate offensive speech as well.

Marsh's work is the first book-length exploration of the two hundred or so blasphemy trials that occurred in England in the nineteenth century.

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1. See, e.g., DAVID CANNADINE, *THE RISE AND FALL OF CLASS IN BRITAIN* at xi (1999).

2. For other historical treatments of blasphemy, see LEONARD W. LEVY, *BLASPHEMY* (1993) [hereinafter LEVY, *BLASPHEMY*]; LEONARD W. LEVY, *TREASON AGAINST GOD: A HISTORY OF THE OFFENSE OF BLASPHEMY* (1981), which is an earlier version of *Blasphemy*; and Milner S. Ball, *Cross and Sword, Victim and Law: A Tentative Response to Leonard Levy's Treason Against God*, 35 *STAN. L. REV.* 1007 (1983). Robert Post also deals with a number of these cases in Robert C. Post, *Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment*, 76 *CAL. L. REV.* 297, 307-09 (1988) (discussing *Regina v. Hetherington*, 4 *St. Tr. N.S.* 593 (1841); *Regina v. Bradlaugh*, 15 *Cox C.C.* 217 (1883); and *Regina v. Ramsay and Foote*, 15 *Cox C.C.* 231 (Q.B.D. 1883)).

Most readers will no doubt share her surprise that so many prosecutions could take place in an era commonly associated with the growth of secularism.³ Marsh explains this apparent paradox, however, by pointing to class conflict. In *Word Crimes*, Marsh argues for recognition of blasphemy as a “class crime of language” (p. 8); in doing so, she takes nineteenth-century blasphemy out of its normal position as a cul-de-sac on the road to freedom of speech. However, to say *Word Crimes* is simply about blasphemy prosecutions is to underestimate the richness of theory and observation that Marsh presents. Marsh’s work also takes the literary history of censorship into the nineteenth century,⁴ revealing the crucial impact of literary strategies of “encoding, indirection, and strategic compensatory maneuvers” (p. 12) on the development of the Victorian novel and its characteristic employment of euphemism. Along the way, Marsh provides fascinating new information about the blaspheming predecessors of Dickens (pp. 51-60), the interwoven legal and literary worlds of Victorian England (pp. 94-98), and Thomas Hardy’s concern with blasphemy (pp. 269-319). This Book Note, however, concentrates on Marsh’s class-based description of blasphemy as an aspect of legal history with continuing relevance today.⁵ While space limitations make this selection necessary, it also must be kept in mind that *Word Crimes* was not written primarily as a work of legal history and that this focus necessarily overlooks many of the insights Marsh offers.

I

Marsh identifies three waves of blasphemy prosecutions that correspond to periods of heightened class tension in England. The first took place between 1817 and 1825, when the publishers William Hone and Richard Carlile, along with the “volunteers” who managed Carlile’s London print shop during his incarceration, were tried. These trials coincided with the era of the Peterloo protests, named after the 1819 march

3. For the secularization thesis, see OWEN CHADWICK, *THE SECULARIZATION OF THE EUROPEAN MIND IN THE NINETEENTH CENTURY* (1975). *But see* BOYD HILTON, *THE AGE OF ATONEMENT* (1988) (describing the influence of evangelical ideas on Victorian economic and political thought).

4. For a literary history of censorship in 17th-century England, see ANNABEL PATTERSON, *CENSORSHIP AND INTERPRETATION: THE CONDITIONS OF WRITING AND READING IN EARLY MODERN ENGLAND* (1984). For a more recent work on censorship in Victorian England, see BARBARA LECKIE, *CULTURE AND ADULTERY: THE NOVEL, THE NEWSPAPER, AND THE LAW, 1857-1914* (1999).

5. Unlike in the United States, blasphemy laws have remained on the books in Great Britain and Australia. For consideration of the problems posed by this survival and of the laws’ potential application to race relations, see Michael Bohlander, *Public Peace, Rational Discourse and the Law of Blasphemy*, 21 *ANGLO-AM. L. REV.* 162 (1992); Reid Mortensen, *Blasphemy in a Secular State: A Pardonable Sin?*, 17 *U.N.S.W. L.J.* 409 (1994); and Sebastian Poulter, *Towards Legislative Reform of the Blasphemy and Racial Hatred Laws*, 1991 *PUB. L.* 371.

in Manchester at which unarmed working-class protesters were killed by the local constabulary.⁶ A second wave occurred in the early 1840s, during which Henry Hetherington, the Chartist leader, and Jacob Holyoake and Charles Southwell, secularist journalists, were tried. This wave corresponded to the early years of Chartism, the largely working-class movement that demanded the passage of a Charter that included universal male suffrage and annual parliaments.⁷ Finally, a third wave in the mid-1880s included the trials of Charles Bradlaugh, England's first openly atheistic Member of Parliament, and George Foote, Bradlaugh's successor as president of the National Secular Society. These trials were contemporaneous with the agitation before the third reform bill of 1884, which extended working-class suffrage. In Marsh's narrative, the fates of blasphemy and political radicalism, influenced by the French Revolution and the writings of Thomas Paine, were closely entwined. The unrepentant blasphemers placed themselves in "a distinct tradition of conscious protest . . . that stretches back to 1817 and beyond into the 1790s" (p. 6).⁸

All of these stories culminate in the trial Marsh selects as the central subject of her study: the 1883 blasphemy prosecution of George Foote, editor of the *Freethinker*, an avowedly secularist publication that prominently featured "Comic Bible" cartoons. Foote was brought to trial three times through private prosecutions for criminal blasphemy. He was convicted and sentenced to a year of hard labor in Holloway Gaol. In his defense, Foote pointed to Matthew Arnold, T.H. Huxley, John Stuart Mill, and other upper-class doubters whose religious skepticism had not resulted in prosecutions for blasphemy. Lord Chief Justice Coleridge, in the third and most famous trial, summarily rejected Foote's arguments, finding "a difference not only in degree, but in kind and nature. There is a grave and earnest *tone*, a reverent—perhaps I might even say a religious—spirit about the very attacks on Christianity itself which we find in the authors referred to . . ."⁹ Coleridge then wrote the distinction between *matter* and *manner* into the law of England, proclaiming: "I now lay it down as law, that, if the

6. See ASA BRIGGS, *THE AGE OF IMPROVEMENT* 207-14 (1959). Working-class anger resulted from the economic downturn following the immediate postwar boom, and resentment at the government's subservience to aristocratic, landed interests, as demonstrated by the Corn Laws of 1815, which subsidized the price of grain to the benefit of landowners and to the detriment of workers.

7. Chartists demanded manhood suffrage, a secret ballot, equal electoral districts, abolition of property requirements for members of Parliament, pay for members of Parliament, and annual Parliaments. They were most influential between 1838 and 1842. There is an extensive literature on Chartism. For a recent critical interpretation, see GARETH STEDMAN JONES, *Rethinking Chartism*, in *LANGUAGES OF CLASS: STUDIES IN ENGLISH WORKING CLASS HISTORY 1832-1982*, at 90, 90-178 (1983).

8. For a discussion of radical politics in the late 18th and early 19th centuries, see JAMES A. EPSTEIN, *RADICAL EXPRESSION: POLITICAL LANGUAGE, RITUAL AND SYMBOL IN ENGLAND, 1790-1850* (1994).

9. *Regina v. Ramsay and Foote*, 15 Cox C.C. 231, 239 (Q.B.D. 1883) (emphasis added).

decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy.”¹⁰

Coleridge's new definition of blasphemy was not without precedent. In 1841, a parliamentary commission had reported that application of the penal law against blasphemers was largely reserved for cases in which “insulting language is used.”¹¹ Similarly, in the 1841 blasphemy case against Henry Hetherington, Chief Justice Denman instructed the jury that:

[The question of blasphemy] must be, in a great degree, a question as to the *tone, and style, and spirit*, in which such enquiries are conducted. . . . [E]ven discussions upon [the great doctrines of Christianity] may be by no means a matter of criminal prosecution, but, if they be carried on in a *sober and temperate and decent style*, even those discussions may be tolerated, and may take place without criminality attaching to them: but that, if the tone and spirit is that of offence, and insult, and ridicule . . . the jury will hardly feel that the indictments are undeserved.¹²

Against this backdrop, Coleridge merely codified what had already emerged as practice in the law of blasphemy, namely, that the important element in the offense was not the denial of church doctrine but rather the style in which such opinions were expressed.

By focusing on manner, Coleridge's definition of blasphemy inevitably implicated class, just as his own opinion sought to separate out the upper-class skeptics from the defendants at bar. Foote himself argued that “[b]lasphemy is simply skepticism expressed in plain language and sold at the people's price” (p. 127). Marsh notes that “the theoretical equality of all men before the law breaks down when the crime in question is a crime of words, language, style” (p. 159). Perhaps not coincidentally, this transformation of the law of blasphemy from a crime of substance into one of style occurred at a time when accents in spoken language were increasingly interpreted as markers of social status. Beginning in the late eighteenth century and continuing into the nineteenth century, ideas of “proper” spoken English hardened. As one commentator noted, by 1881, “H, in speech, is an unmistakable mark of class distinction in England, as every person soon discovers.”¹³ As speech became the primary evidence of class membership, blasphemy's legal definition as a crime of linguistic style was inextricably linked to class identity.

10. *Id.* at 238.

11. *Regina v. Lemon*, 1979 All E.R. 898, 913 (H.L.) (Edmund-Davies, L.J., dissenting).

12. *Id.* at 924 (Scarman, L.J.) (emphasis added).

13. LYNDA MUGGLESTONE, ‘TALKING PROPER’: THE RISE OF ACCENT AS SOCIAL SYMBOL 70 (1995) (quoting ALFRED LEACH, *THE LETTER H* 10 (London, n.p. 1881)).

The judicial condemnation of blasphemy was also based on the potential for social unrest. Prosecutors pointed to the influence of blasphemy on unsuspecting members of the lower classes. Blasphemy was defined as that which was “calculated to mislead the ignorant and unwary” (p. 84). Marsh’s evidence clearly demonstrates an upper-class desire to control the flow of viewpoints to the lower classes. Outrageous speech was thought to be dangerous when it appeared to be directed at members of the lower classes. “What would your feelings be if you found such a paper had been put into the hands of your offspring and domestics?” demanded Attorney-General Gifford in one blasphemy prosecution (p. 62).¹⁴ The use of a term such as “half-pay,” for example, was thought to be indicative of incendiary intent not because of any intrinsic content, but rather because it would be readily understandable to a lower-class audience familiar with the practice of placing soldiers on half-pay during peacetime (p. 118). Similarly, the price of an allegedly offensive work was used as a gauge of its intended audience, and works priced in pence were subjected to far more searching scrutiny than those priced in guineas. Underlying this paternalism was the fear of revolution; as Marsh writes, “[F]ear of insurrection inflated the charges of coarse ‘grossness’ and vulgar ‘brutality’ to produce a belief in the potential and even actual revolutionary ‘violence’ of plain speech” (p. 75).

II

Despite the fact that *Word Crimes* is first and foremost a work of literary history, Marsh’s deployment of evidence is, at times, disconcerting to the legal historian. For a work that purports to center on a single case, *Word Crimes* is curiously indifferent to the legal record of the case itself. Marsh does not dwell upon the legal opinion that is the centerpiece of her work; indeed, Coleridge’s reasoning in *Regina v. Ramsay and Foote*, aside from the manner/matter distinction, is left unanalyzed. Instead, Marsh’s main sources are pamphlets and memoirs.

Oddly enough, if class analysis is one of the main strengths of *Word Crimes*, it is also the book’s Achilles heel. For historical background, Marsh relies heavily on the scholarship of a previous generation of cultural Marxist scholars who placed class (and class consciousness) at the center of historical progress.¹⁵ As a result, Marsh tends to dismiss non-class-based

14. This concern persisted well into the 20th century. Prosecuting counsel at the 1960 trial of Penguin Books for D.H. Lawrence’s *Lady Chatterley’s Lover* asked, “Would you want your servant to read this book?” (p. 98).

15. See, e.g., E.P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* (1963); RAYMOND WILLIAMS, *THE LONG REVOLUTION* (1961). For current skepticism regarding the Marxist approach to British history, see CANNADINE, *supra* note 1, at 8-16. On cultural Marxism

motivations for blasphemy. In a work dealing with the crime of blasphemy, religious belief gets shockingly short shrift: Nineteenth-century blasphemers who were motivated largely by non-Anglican religious convictions are labeled “religious extremists” and explicitly excluded from Marsh’s study (pp. 13-14); statements of religious belief in working-class periodicals are disregarded as “quasi-Christian” (p. 87).

Class is troublesome in a number of other ways as well. Marsh tends to overlook the problems raised by the uncertain relationship between class language and “reality.” Recent historians have tended to examine class as a discursive formation rather than as a simple socioeconomic category. As summarized by social historian David Cannadine, the events of the years covered in *Word Crimes* are not best described as “[t]he making of class’, be it the middle class or the working class What *was* going on was an unprecedentedly agitated discussion of social structure”¹⁶ Had Marsh acknowledged the tensions between class as rhetoric and class as reality, her account would have been richer and more convincing. Instead, she takes for granted the existence of classes, even when her own evidence resists simple class divisions based on a tripartite model. For example, while Marsh grounds her argument on class, her own stated class categories fit her narrative awkwardly at best. At the outset, she informs us that “[a]ll except a handful [of blasphemers] belonged to . . . the *elite* of the working class For convenience, this study calls this combination of upper working and lower middle classes ‘lower class’” (p. 5). One is left to wonder exactly what is meant by a “lower class” encompassing members of the middle class.¹⁷ Similarly, Marsh is influenced by contemporary Victorian practice in her discussion of printers and essayists as members of the working class or as artisans, largely on the basis of their intended audiences (pp. 74 & 118). Class as discursive formation and class as social and economic status cohere uneasily, just as a simple tripartite framework strains uncomfortably against the complexities of Victorian society.

III

Coleridge’s distinction between matter and manner has remained a problematic part of the jurisprudence governing speech. It has echoes in

in general, and Thompson and Williams in particular, see DENNIS DWORKIN, *CULTURAL MARXISM IN POSTWAR BRITAIN* (1997).

16. CANNADINE, *supra* note 1, at 75. For examples of the discursive approach to class, see JONES, *supra* note 7; and DROR WAHRMAN, *IMAGINING THE MIDDLE CLASS: THE POLITICAL REPRESENTATION OF CLASS IN BRITAIN, C. 1780-1840* (1995).

17. Cannadine describes an oscillation between a tripartite model of class—upper, middle, and lower—and an oppositional model—elite and non-elite, or “us” and “them.” See CANNADINE, *supra* note 1, at 20-21. Perhaps the latter best describes Marsh’s modified class scheme.

today's efforts to define the parameters of permissible regulation of speech in the United States. At first glance, however, it is difficult to see how such efforts might relate to nineteenth-century English blasphemy law.¹⁸ Blasphemy and the issue of class bias in the law seem quite different from our current regime of speech regulation. Blasphemy has scarcely figured in American law,¹⁹ despite a scattering of nineteenth-century cases in which it was found to be a common-law crime applicable in the United States as well as England.²⁰ Class, meanwhile, rarely enters the ambit of legal discussion. When class is discussed, it is often considered a proxy for (or a complication of) race. But, considered as analogy, the history of blasphemy can reveal ways in which class persists as a hidden presence in the law of speech governing both obscenity and hate speech.²¹ Some caveats are in order here. I do not argue that a simple, tripartite class structure captures the social complexity of contemporary America. Nor do I mean to suggest that hate speech is an integral part of working-class identity. However, the *manner* of communication still serves as a class marker. For this reason, the striking similarities between the justifications advanced in nineteenth-century British blasphemy prosecutions and those put forth for modern speech regulation in the area of hate speech reveal the potential for disparate impact across classes in contemporary hate-speech regulation. This possibility exists on at least two levels: First, individuals of lower socioeconomic status may be charged under such laws at a disproportionate rate; second, unconscious class biases may influence judges to treat offenders with greater severity because of a perception that such language crimes are lower class in nature. Whether such bias exists is extremely difficult to know, as the class status of defendants is almost never described explicitly and can only be guessed at through such markers as language. But the difficulty of even formulating the questions reinforces the point that discussion of class is effaced in American legal thought.

Obscenity cases are an area in which the analogy to blasphemy is relatively clear. Foote's most obvious modern successor would seem to be Andres Serrano, the photographer whose picture of a crucifix immersed in urine ignited public controversy in 1989. Foote's "Comic Bible" cartoons offended through, among other things, their depiction of the naked rear end

18. Robert Post links blasphemy law by analogy to proposed contemporary regulation of pornography. However, Post discusses blasphemy in terms of pluralism, with reference to "ethnic group[s]" rather than class. See Post, *supra* note 2, at 303.

19. In Britain, however, two prominent cases have focused attention on the remaining blasphemy laws: the *Gay News* case of 1977 and the *farva* against Salman Rushdie, which British Muslims sought to enforce in England through a private blasphemy prosecution. See Poulter, *supra* note 5.

20. See LEVY, BLASPHEMY, *supra* note 2, at 400-23.

21. For an overview of hate-speech regulation, see FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW (1999).

of God (p. 142). In the United States, obscenity has been configured as a conflict between youth culture and tradition (“a sept[ua]generian in Tuscaloosa and a teenager in Las Vegas”²²), or between the artistic avant-garde and community-based standards of decency (“[a]vant-garde *artistes* . . . remain free to *épater les bourgeois*”²³). By locating the conflict as one taking place between different aesthetic philosophies, class is removed from the equation; indeed, the avant-garde can be seen as resisting social classification along with other forms of conventionality. But the Court is still willing to apply standards like those used in class-biased blasphemy trials. In *NEA v. Finley*, for example, the Court upholds use of “decency” as a standard in making administrative decisions.²⁴ Rather than protecting the “matter” or the belief being expressed, the Court left Congress free to regulate the manner of its expression. Just as the “Comic Bible” cartoons were thought to be so far beyond the realm of good taste that they could be left legally unprotected, so too was Serrano’s *Piss Christ*.

However, it is actually in the realm of hate-speech regulations that the analogy to blasphemy is at its most unsettling. Like the rationales advanced by blasphemy courts of the nineteenth century, hate-speech decisions have focused on the manner of the speech in question. Even while striking down the hate-speech ordinance in question in *R.A.V. v. City of St. Paul*,²⁵ the Court carved out an exception that runs parallel to the nineteenth-century English case law on blasphemy. St. Paul, the Court noted, can single out “a particularly intolerable (and socially unnecessary) *mode* of express[ion].”²⁶ The majority opinion compared fighting words to a sound truck, emphasizing the *manner* of communication rather than its content.²⁷ Selecting a particular manner of expression to regulate comprehensively, the Court urged, would save the statute from its problem of selectivity.²⁸ *R.A.V.* thus opened the door to a matter/manner distinction of the sort espoused by Coleridge.²⁹

22. *NEA v. Finley*, 118 S. Ct. 2168, 2176 (1998); *see also* *Cohen v. California*, 403 U.S. 15 (1971) (protecting the right of young war protesters to employ offensive language).

23. *Finley*, 118 S. Ct. at 2182-83 (Scalia, J., concurring); *see also* *FCC v. Pacifica Found.*, 438 U.S. 726 (1978) (upholding the regulation of “indecent” broadcast communications).

24. *See Finley*, 118 S. Ct. at 2180.

25. 505 U.S. 377 (1992).

26. *Id.* at 393.

27. *See id.*

28. *See id.*

29. In *Ohio v. Wyant*, 508 U.S. 969 (1993), a case decided shortly after *R.A.V.*, the Court seemed untroubled by the criminalization of rude speech. In *Wyant* the defendants had been convicted under an Ohio statute providing for increased penalties for ethnic intimidation. *See State v. Wyant*, 597 N.E.2d 450, 450 (Ohio 1992). David Wyant, a white man, had occupied a camp lot next to an African-American couple. When the couple complained to the park management about Wyant’s blaring music, he started yelling, “We didn’t have this problem until those niggers moved in next to us,” and “I ought to shoot that black mother fucker.” *Id.* The Court vacated the Ohio Supreme Court’s finding that the statute in question was unconstitutional, and Wyant’s conviction was reinstated. *See State v. Wyant*, 624 N.E.2d 722, 724 (Ohio 1994).

In a second parallel, hate-speech regulation is routinely justified by the threat of violent disorder, much like the threat of social insurrection supposedly stanching by blasphemy prosecution. In *Wisconsin v. Mitchell*³⁰ the Court found that hate speech was “more likely to provoke retaliatory actions . . . and incite community unrest.”³¹ In *R.A.V.* Justice Stevens pointed to the risk of riot, although he joined the Court in overturning Robert Viktora’s conviction for burning a cross on an African-American family’s lawn.³² Stevens compared such conduct to burning trash near an ammunition dump.³³ He glumly reminded his brethren, “One need look no further than the recent social unrest in the Nation’s cities to see that race-based threats may cause more harm to society and individuals than other threats.”³⁴ While its concern for preventing race riots is laudable, the Court’s reliance on the specter of unrest has uncomfortable parallels with the history of prosecutions for blasphemy.³⁵

These parallels should suggest something more than the repetitiveness of history. They also reflect the degree to which the class implications of speech regulation are absent from American legal thought. We think to ask if the young are disproportionately represented among convicted hate criminals,³⁶ but not if the poor might be similarly affected. We may suspect that such laws weigh more heavily on the Robert Viktoras of the world rather than on the authors of *The Bell Curve*,³⁷ but we know little of why that might be so. Justice Blackmun dubs offenders “hoodlums,”³⁸ but still we do not ask if class bias, conscious or unconscious, might help explain his reasoning. While the elaborate class consciousness of nineteenth-century England may seem distant and unattractive, reviewing its history reminds us that language and class are intimately related. We need to question whether packaging racism in the wrapping of expensive editions exempts it from prosecution in the late twentieth century, just as the

30. 508 U.S. 476 (1993).

31. *Id.* at 488.

32. *See R.A.V.*, 505 U.S. at 416 (Stevens, J., concurring in the judgment).

33. *See id.*

34. *Id.* at 433 n.9.

35. American parallels can also be found in early 20th-century cases using the possibility of social revolution as justification for the restriction of speech. These cases turned on the supposed volatility of the audiences being addressed. *See, e.g., Burns v. United States*, 274 U.S. 328, 335 (1927) (“The purpose and probable effect of the printed matter circulated and of the things said in furtherance of the declared purposes of the organization are to be considered having regard to the capacity and circumstances of the persons sought to be influenced.”).

36. For identification of youth as an important factor explaining bias crimes, see Alice K. Ma, Comment, *Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights*, 83 CAL. L. REV. 693, 698-99 (1995), which notes that at least half the people arrested for hate crimes are between the ages of 16 and 25. *See also* LAWRENCE, *supra* note 21, at 24 (“[W]hite teenage males commit most bias crimes generally . . .”).

37. RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994).

38. *R.A.V.*, 505 U.S. at 416 (Blackmun, J., concurring in the judgment).

hallmarks of respectability saved upper-class atheism from blasphemy prosecutions in the nineteenth century.

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