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Metamorphosis of the Ideals and the Actuals: Blasphemy Laws in Pakistan and the Transplantation of Justice in British India

Abstract

While a genealogical exploration of the dichotomy between the real (legal) and the Ideal (justice) may provide us with an understanding of the historical and ideological relationship(s) between the two, a focus on this binary alone acts to conceal the multiplicities inherent in each of these terms. Just as there exist multiple manifestations of legalities/realities, these manifestations correspond to diverse notions of the ideal and justice. And these realities and ideals overlap and conflict, and affect each other's creation, transformation or transplantation. A historical glance at Pakistan's current Blasphemy Laws provides us with an insight on how the real/legal emerging from a particular notion of the ideal/justice was mediated and transplanted through Colonialism and became the real/legal manifestation of a different kind in a different locality.

Keywords

Blasphemy Law; Pakistan; Islamic Law; Colonialism; Ideal; Actual; Justice; Metamorphosis

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Introduction

The topic that has prompted this exposition is significant, both in its controversial appeal as well as the urgency for our need to understand and examine it. The issues surrounding the problematic laws and notions of Blasphemy have gained more and more prominence of late. In the geographical context of Middle-Eastern and South-Asian countries, as well as the conceptual and ideological context of Islam and religious belief in general, this issue has come to the fore time and time again with all its violence, complexity and ugly manifestations. Pakistan is one of the countries where these discourses and the problematic manifestations of laws surrounding blasphemy are blatantly apparent. It is one of the most pressing issues for the legal, political and religious discourses, both within Pakistan as well as the wider world. Western and human rights discourses condemn this concept and its consequences as part of the cultural-religious array of Islam; there are those who argue for, and those who argue against, the presence of this concept as a key tenet within Islamic principles; and, there are those who question the hazy link between the problematic laws and their colonial origins. This paper is an attempt towards providing some clarity to the issue of blasphemy and its link to the colonial history of the sub-continent. However, there are two considerations that should be spelled explicitly

here. First, this is an enquiry into the legal-historical aspect of Pakistan's Blasphemy Laws, and not an exposition of the history of the concept of blasphemy in Islam, as that is a subject more suited to theological debates and is something that lies beyond the grasp of my current knowledge. Second, there can be no definitive, singular or conclusive historical exposition of any such concept; rather we should be concerned with different perspectives, histories, expositions and genealogies. What I aim to offer here, therefore, is *one* genealogical exposition, among a possible several, of the Blasphemy Laws of Pakistan and the Indian sub-continent. In order for that, I will first question the justice/law and ideal/actual binaries and subsequently attempt to bring forth the multiplicities inherent within these concepts. The second part of this paper will examine the history of the Blasphemy Laws in Pakistan, and trace its origins to its colonial roots and beyond.

The Ideals of Justice and the Actuals of Law – against the binary

The attempts at examining the relationship or dichotomy between the ideal and the actual, justice and law, are not a recent endeavour in legal theory. It has been a key subject of discussion, not only within critical legal theory, but also in traditional political-legal philosophy where this debate has been on-going for several centuries. We see glimpses of it from the time of Thomas Aquinas – for whom human law was a “reflection of the divine reason,”¹ a man-made mirror of natural law – to the natural law theorists of today, who argue for the presence of a higher morality and strive to find a link between law and the idea of justice. The focus of such theoretical propositions has primarily been to reconcile law with justice, to argue that the actual is a reflection of the ideal, even if in its problematic and deficient manifestation it is a mere shadow of its original conception. The gap between the two – the remainder that arises in the space between the actuality and the ideal as the eventual location of Being; the excess that emerges from this unavoidable process of Becoming – is treated at best as something that needs to be overcome, and at worst as a historical or progressive necessity.² The ideal itself is postponed, always yet to come, “immanent, latent” as a futuristic Totality.³

And we live in a world surrounded by the promises of this postponed ideal, always told, as they say, “the best is yet to come.”⁴ Be it the goals of Enlightenment, of justice discovered through reason, the ideals of democracy or the ideals of colonisation and de-colonisation, the actuality stands in stark contrast to these

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¹ Roscoe Pound, *An Introduction to the Philosophy of Law* (Connecticut: Yale University Press, 1954), 27.

² Jayan Nayar, “The Politics of Hope and the Other-in-the-World: Thinking Exteriority,” *Law and Critique* 24.1 (2013): 63-85, 66.

³ Nayar, “The Politics of Hope,” 70.

⁴ A promise reiterated for the people of the United States by Barack Obama in his victory speech after winning a second term. Jonathan Freedland, “Barack Obama's Odyssey Continues,” (London) *Guardian* (November 7, 2012), available at <http://www.guardian.co.uk/world/2012/nov/07/obama-american-president-continues-odyssey> (last accessed January 25, 2013).

assurances of an enlightened and emancipatory future. Starvation in a world equipped to feed the entirety of its population,⁵ poverty for majority of the humanity against over-consumption of the few, disempowerment of the many in these days of rampant democratisation, the deaths and suffering of numerous in the name of greater freedom, marks out the ground we inhabit today. The difficulty that the majority of humanity faces in this age is not merely exclusion but, to borrow Boaventura Santos's terminology, absence generated by "abyssal thinking."⁶ He characterises the logic of Modern (Western) knowledge and law as a system of distinction in which the dispossessed individuals and knowledge(s), those on "other side of the line," not only become invisible but are rendered non-existent and denied their reality, thus precluding any possibility of inclusion or "co-presence."⁷ And in all this, law plays a role – it provides legitimacy to the structures of power, maintains status quo in the name of law-and-order, and prescribes avenues of *legal* modes of resistance.

This backdrop of actuality and the excess of suffering, then, compel us to choose between two different paths. We can either take the oft-tread route and adopt the same approach as it is common in the legal theory and traditional political-legal philosophy – to look at the actuality and still hope for a delayed justice, the imminence of the ideals of one kind or the other kept intact despite the continuous disappointments. Or we can look at the problematic actuality and question, challenge and (re)discover the hidden nature of ideal(s) we had so trustingly adopted.

But this task of (re)discovery will not be painless and straightforward. The legal theorists of today will have to recognise and accept the occurrence of a Kafkaesque Metamorphosis in the past: in our theories, our ideals, our laws, and our selves. In *Metamorphosis*, Kafka begins the narration by saying "As Gregor Samsa awoke one morning from uneasy dreams he found himself transformed in his bed into a gigantic insect."⁸ There have been literary debates about what this creature actually looks like, and about the semantics of whether *monstrous vermin* can correctly convey the meaning of the phrase *ungeheuren Ungeziefer* when translated from German to English.⁹ The issue of what *Metamorphosis* actually signifies is also a fertile topic for continued debate. I argue, however, that the key point in all this is not the type of creature Gregor Samsa became, neither what he could be called after the transformation. The key phrase is that "he woke up one morning" to find that the transformation had already taken place. That is the turning point of *Metamorphosis* – the awakening to see that you have already become a mutilated form of your old self; to discover that your actuality is far from what you thought it was; to realize that the ideal which you hold as your actuality, is not in proximity with the reality, and that it may never be.

This is the (re)discovery, the awakening, that we are faced with today. It challenges the conventional thinking of looking at the deficient actuality as a

⁵ For a wider discussion on this, see Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2008).

⁶ Boaventura de Sousa Santos, "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges," *Review* 30.1 (2007): 45-89, 45.

⁷ Santos, "Beyond Abyssal Thinking," 46.

⁸ Franz Kafka, *Metamorphosis* (London: Vintage, 2005) 3.

⁹ For instance, see Vladimir Nabokov, *Lectures on Literature* (New York: Harvest 1980).

mutilated form of the incorruptible ideal, of problematic laws as a wanting manifestation of notions of justice. The ideal reflected-on-the-actual (from which we think the actuality emerges) and the ideal reflected-from-the-actual (the *real* ideal that is a trajectory of the actuality), then appear to be very different: the former carrying the image of a heavenly paradise, the exquisite Garden of Justice; the latter carrying the image of the earthly actuality, of ruins, remnants of a not-so-great past.

Neil MacCormick in his paper on *The Ideal and the Actual of Law and Society* presents us with a similar distinction. He critiques James Lorimer's assertion that positive law is a "relativized" form of a higher, natural law,¹⁰ on the basis that the comprehension of any ideal form of law cannot be independent of, and prior to, law in its concrete manifestation.¹¹ As a contrast, he elaborates and agrees with Miller's argument that we "discover the universal in the particular, the abstract by reflection on the concrete, not vice versa."¹² I would, however, challenge, and combine, both these positions based on the supposed binary between the ideal and the actual. What is required is to change the lens and move beyond the Platonist or Cartesian "split world."¹³ The ideal and the actual, justice and law, do not merely exist in a binary relationship, but there are multiplicities inherent within the two. If we can speak about the actuality of laws in the plural, so should we discuss the plurality of ideals, of *justices*. And these diverse formulations of ideals and justice are not limited to different temporal and geographical actualities; rather, they can create and emerge from the same actuality.

The distinction between the ideal reflected-on-the-actual and the ideal reflected-from-the-actual provides us a pivot, and makes the multiplicity of justices and ideals evident. The actual emerging from an ideal gives birth to a new ideal, which may be less pleasant in its appeal, more *verminous* than human. The term Paradise, which forms the foundation of this volume, provides us a similar analogy. For Xenophon, *pairidaeza* meant the courtyards and gardens of the Persian nobility, from which the ideal of a heavenly paradise later emerged (an ideal reflected-on-the-actual).¹⁴ The ideal reflected-from-the-actual, however, was not as exquisite – *pairidaeza* in Persian parlance still referred to the wall around the courtyard, rather than the garden inside, or heaven above.¹⁵

The ideal that gives birth to the actual is distinct from the ideal that the actual itself creates; the conception of justice that creates the law may be completely divergent from the conception of justice that law creates. This cycle of mutual birth and mutation is continuous: it can be a downward spiral, or a move upward; it has ebbs and flows from one historical period to another. The multiplicities of justice, then, create laws in their own image, only to give birth to

¹⁰ Neil MacCormick, "The Ideal and the Actual of Law and Society" in *Law, Values and Social Practices*, ed. John Tasioulas (London: Ashgate, 1997) 15.

¹¹ MacCormick, "The Ideal and the Actual of Law and Society," 35.

¹² MacCormick, "The Ideal and the Actual of Law and Society," 17.

¹³ Riccardo Baldissoni's paper on "Sovereignty Forever" in this volume.

¹⁴ Anne van Erp-Houtepen, "The etymological origin of the garden," *The Journal of Garden History* 6.3 (1986): 227-231, 229.

¹⁵ Erp-Houtepen, "The etymological origin of the garden," 229.

new conceptions of justice, and new formulations of laws. This “dance of the ideal and the actual” is continuous.¹⁶

A historical account of the binary of justice and law limits us to focus on the excess, the remainder between the two, holding the ideal into a position of unchallenged supremacy and purity, assigning to it a constant messianic futurity. A genealogical examination of the multiplicities, on the other hand, asks us to move away from this remainder, from the problems of implementation of laws, from historical necessities and political exigencies, to dispute, recognize and (re)discover the ideal itself, and unmask its potential or its inherent repression.

A genealogy of the problematics surrounding the controversial Blasphemy Laws in Pakistan provides us a foothold into this interplay of multiplicities of law and justice. It is not only that in the Foucauldian sense we find here “that there is ‘something altogether different’ behind things: not a timeless and essential secret, but the secret that they have no essence or that their essence was fabricated in a piecemeal fashion from alien forms.”¹⁷ But also that in the Kafkaesque sense, once we wake up, we find that the metamorphosis from humanity to a verminous nature had occurred long ago.

The Blasphemy Laws in Pakistan

In August 2012, the Rimsha Masih case generated headlines across the world. Masih, a young girl living in a poor suburb of Islamabad, Pakistan, was accused of defiling the Quran by burning pages containing its verses.¹⁸ Charged by a local religious cleric for blasphemy, she was threatened and attacked by a mob bent on meting out vigilante justice, but was taken into police custody. Later investigations, though far from satisfactory, established that she was a child aged between 11 and 16 years, belonged to the minority Christian community of the locality, and that she suffered from Downs Syndrome.¹⁹ Despite all this, Masih was arrested and put into solitary confinement, allegedly for her own protection. Human rights groups, minority rights advocates and solidarity groups denounced this arrest. There were also calls from international media and Christian groups, as well as the Vatican, condemning this case.²⁰ It later emerged that the case was based on a false accusation by the local cleric, who fabricated the evidence in an effort to threaten and intimidate the Christian minority of the locality into leaving the area.²¹ In the light of this evidence,

¹⁶ With gratitude to Prof George Pavlich, University of Alberta, for his comments on my presentation at the Conference, and for coining this apt term.

¹⁷ Michel Foucault, *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. Donald F. Bouchard and Simon Sherry, trans. Donald F. Bouchard (Ithaca: Cornell University Press, 1977), 142.

¹⁸ Agencies, “Girl accused of Blasphemy denied meeting with lawyer” (Islamabad) *Dawn* (August 23, 2012), available at <http://dawn.com/2012/08/23/rimsha-accused-of-blasphemy-traumatized-activist/> (last accessed January 29, 2013).

¹⁹ Mubashir Zaidi, “Lawyer moves court for bail of blasphemy accused girl” (Islamabad) *Dawn* (August 24, 2012), available at <http://dawn.com/2012/08/24/lawyer-moves-court-for-bail-of-blasphemy-accused-girl/> (last accessed January 29, 2013).

²⁰ Associated Press, “Muslim Clerics urge fairness for Rimsha Masih” (Islamabad) *Dawn* (August 28, 2012), available at <http://dawn.com/2012/08/28/pakistani-christian-girl-accused-of-blasphemy-ruled-minor-lawyer/> (last accessed January 29, 2013).

²¹ AFP, “Paul Bhatti hopes for end to blasphemy law abuse” (Islamabad) *Dawn* (September 4, 2012), available at <http://dawn.com/2012/09/04/paul-bhatti-hopes-for-end-to-blasphemy-law-abuse/> (last accessed January 29, 2013).

Islamabad High Court dismissed the case and a case was instead registered against the cleric, while Masih and her family have been moved by the government authorities to an undisclosed location for protection.²²

However disturbing this scenario appears, it is far less gruesome than the outcomes of some of the other incidences linked with the controversial Blasphemy Laws of Pakistan. There have been numerous cases filed in Pakistani courts for alleged cases of blasphemy, both against Muslims and non-Muslims, and there are several people in jail at present charged under these offences, 16 of whom remain on death row.²³ Moreover, there have been several instances of mob justice where people alleged to have committed acts of blasphemy have been killed, their houses torched, and whole communities threatened and forced to leave. Challenging these laws has become just as problematic because of the growing conception that these laws are indeed derived from Islamic scripture. In 2011, a Federal Cabinet Minister and the incumbent Governor of the province of Punjab were assassinated for their criticism of the Blasphemy Laws.²⁴

The laws being referred to here are titled *Offences Relating to Religion*, and constitute Chapter XV of the Pakistan Penal Code. The provisions of this Chapter include prohibitions against:

“295. Injuring or defiling place of worship, with Intent to insult the religion of any class

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs

295-B. Defiling, etc., of Holy *Qur'an*

295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet (peace be upon him)

298. Uttering words, etc., with deliberate intent to wound religious feelings

298-A. Use of derogatory remarks, etc., in respect of holy personages

298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places

298-C Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith.”²⁵

These Blasphemy Laws and the instances arising from them have raised several debates in Pakistan. There are legal arguments against the structure of these laws, for instance that these laws do not include the condition of *mens rea* (the intention of committing an offence) and that the entire focus is on the actual act of the

²² Mubashir Zaidi, “Rimsha released from Adiala Jail, flown to unknown location” (Rawalpindi) *Dawn* (September 8, 2012), available at <http://dawn.com/2012/09/08/rimsha-released-from-adiala-jail-flown-to-unknown-location/> (last accessed January 29, 2013).

²³ Human Rights Watch, “World Report 2013 – Pakistan,” available at <http://www.hrw.org/world-report/2013/country-chapters/pakistan> (last accessed February 1, 2013).

²⁴ Karin Brulliard and Shaiq Hussain, “Shahbaz Bhatti, Pakistan's sole Christian minister, is assassinated in Islamabad” (Washington) *Washington Post* (March 2, 2011).

²⁵ Pakistan Penal Code (Act XLV of 1860). Full text available at <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html> (last accessed January 31, 2013)

offence.²⁶ There are also issues surrounding evidence and witness testimonies, the requirements for which are not considered rigorous enough and which are claimed to favour the accusers rather than the accused.²⁷ Valid critiques in their own right, these arguments are further strengthened by discussions on the origins of the said laws. There are scholars, both religious and secular, who argue that the Blasphemy Laws owe their existence more to the Indian sub-continent's colonial history rather than the tenets of Islam. Conscious of the fact that tracing the theological underpinnings of the concept of blasphemy in Islam is both beyond my expertise and the ambit of this paper, I will nonetheless take the argument for the colonial roots of Blasphemy Laws as a pivot to trace a different genealogy of the Laws.

A Different Genealogy

Theorists who examine the concept of blasphemy argue that the logic behind blasphemy laws is primarily related to identity construction, of demarcating the sacred from the unholy. Laura Tomes writes that such laws (similar to the concept of heresy) are used to “maintain fixed parameters by which to locate the religious ‘other’, and serve to demarcate the speech and practises of the other from that of ‘true’ believers.”²⁸ She quotes Boyarin's contrasting proposition who argues that the “articulations of heresy should be understood not as absolute borders between the sacred and the profane, but as rhetorical attempts to demarcate and define the social and cultural boundaries of religious groups.”²⁹ These borders are “man-made, constructed, and mobile. They are not inherently meaningful in themselves, but become so within the context.”³⁰ I would take it a step further and reassert that a genealogical examination of such boundaries and laws not only reveals that there is no permanent essence behind them (in the Foucauldian sense), but also that the essence, the ideal, that lays at its foundation is itself a construction. This essence can travel, it can be transplanted, and it goes through a metamorphosis along with its actual manifestation. The ideal and actual – corresponding to the notions justice and formulations of laws – affect and emerge from each other in a continuous cycle. And a historical exposition of the Blasphemy Laws of Pakistan follows the same trajectory.

The wider legal structure that governs Pakistan today was inherited from the Colonial State of the Indian sub-continent at the time of decolonisation in 1947. The Pakistan Penal Code in force today, of which the Blasphemy Laws are a sub-section, is an offspring of the Indian Penal Code (XLV of 1860). It is widely acknowledged that Indian Penal Code of 1860, fashioned on the laws of the United Kingdom, introduced the provisions of blasphemy in the Indian colonial laws. Academics argue that these laws were created to safeguard the religious harmony in the multi-faith Indian

²⁶ Osama Siddique and Zahra Hayat, “Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects, and Free Speech Implications,” *Minnesota Journal of International Law* 17.2 (2008): 303-385, 348.

²⁷ Jon Boone, “Pakistani girl accused of Qur'an burning could face death penalty” (London) *Guardian* (August 19, 2012), available at <http://www.guardian.co.uk/world/2012/aug/19/pakistan-christian-tensions-quran-burning-allegations> (last accessed January 31, 2013).

²⁸ Laura Tomes, “Blasphemy and the Negotiation of Religious Pluralism in Britain,” *The Politics and Religion Journal* 4.2 (2010): 237-256, 241.

²⁹ Tomes, “Blasphemy and the Negotiation of Religious Pluralism in Britain,” 241.

³⁰ Tomes, “Blasphemy and the Negotiation of Religious Pluralism in Britain,” 241.

society.³¹ The Indian Law Commission of 1837 which was given the responsibility to formulate the Indian Penal Code stated in the Preface of the concerned Chapter:

“The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act but from which the British Government in India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.”³²

This is the basis on which it is claimed that the true essence of the Blasphemy Laws for the British colonial state was to safeguard the right to religion of every subject, ensure religious harmony, and not prefer any one faith to another. And this trend can be seen to continue after the independence of Pakistan in 1947. In 1948, M. A. Jinnah, a Barrister and a constitutional lawyer trained in England, who is celebrated as the founder of Pakistan, stated in his speech before the First Constituent Assembly of the newly independent country:

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State. As you know, history shows that in England, conditions, some time ago, were much worse than those prevailing in India today. The Roman Catholics and the Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. *Thank God, we are not starting in those days. We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another.*”³³ (emphasis added)

Though the statement above is evidently a charter for a secular state, in the following years there were phases of gradual move towards Islamisation of Pakistan’s laws and the Constitution. The most significant of these movements occurred in the 1980s when the military regime led by General Zia-ul-Haq decided to support the United States in its policy of containment. To provide volunteers for the Afghan War with the Soviet Union, the discourse of Islamic conception of holy war was used,³⁴ the ramifications of which still resonate today. In the specific instance of the Blasphemy Laws, the express linking of the *Offences Relating to Religion* to Offences Against Islam, particularly to acts of defiling the Quran and claims against the character of the Prophet Muhammad (PBUH), occurred in these years. This continued beyond the 1980s, when the punishment of death for blasphemy was added to the Penal Code in 1991.³⁵ These amendments to the laws not only placed one religion on a seat of prominence over all others, but also started a chain reaction of religious conservatism that continues till this day.

Till now, our journey across the history of the Blasphemy Laws has taken the common route: it conveys that the actual legal manifestation of the ideal to safeguard religious freedom in India, gradually became corrupted and deficient in its

³¹ Siddique and Hayat, “Unholy Speech and Holy Laws,” 337.

³² Siddique and Hayat, “Unholy Speech and Holy Laws,” 336.

³³ M. A. Jinnah, “First Presidential Address to the Constituent Assembly of Pakistan,” in *Pakistan Movement Historical Documents*, ed. G. Allana (Karachi: University of Karachi, 1969) 407-411.

³⁴ Charles H. Kennedy, “Islamisation and Legal Reform in Pakistan, 1979-1989” *Pacific Affairs* 63.1 (1990) 62-77, 62.

³⁵ Siddique and Hayat, “Unholy Speech and Holy Laws,” 327.

implementation. To uncover the metamorphosis of the ideal(s), some additional steps are required.

The argument, that the said laws were British state's attempt to maintain religious harmony in India relies too heavily on the assumption of benevolence on part of the colonial state. This assertion about the good-natured colonial power completely contradicts the "strong element of self-interest,"³⁶ and the "principle of divide and rule" that governed the colonial policies.³⁷ Two other perspectives, then, stand on a much better footing to explain the rationale behind the Blasphemy Laws. First, these laws were introduced right after the Indian Mutiny of 1857, for which the Muslims were considered by the British to have provided the main impetus behind the rebellion.³⁸ The Penal Code of 1860 marked a chapter in the post-Mutiny legislation that provided the "decisive break with Muslim criminal law as the basis of Anglo-Indian jurisprudence."³⁹ In this light, the enshrined laws, rather than bringing the communities in harmony, would have served to reserve for the colonial state the right to demarcate and govern the boundaries between different communities and religious groups.

The second and more significant explanation revolves around the role of the leading figure behind the Indian Penal Code, Lord Thomas Babington Macaulay. Macaulay is famous in the Indian colonial history for refashioning the educational history and educational systems of the subcontinent. A firm advocate of the superiority of Western culture, language and literature, he stated before the British Parliament in 1835, "I have never found one among them who could deny that a single shelf of a good European library was worth the whole native literature of India and Arabia."⁴⁰ Through his reforms English, in place of Sanskrit, Arabic and Persian, became the only language worthy enough to be considered of educational value. He is noted for thus creating the so-called *Macaulay's Children* – a class of comprador elite, Indian in appearance, but English in intellect, reason and values. He believed that to truly conquer India, it was important to

"break the very backbone of this nation, which is her spiritual and cultural heritage... for if the Indians think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their native self culture and they will become what we want them, a truly dominated nation."⁴¹

Ascribing no value to any indigenous culture, literature, belief, education or tradition of India, it is difficult to fathom how Macaulay as the principal drafter of the Indian Penal Code would have included the Blasphemy Law provisions to safeguard precisely those beliefs that he considered worthless. What the colonial laws, therefore, were attempting to do was to create a class of people anglicised, or

³⁶ H. V. Hodson, *The Great Divide: Britain-India-Pakistan* (Oxford: Oxford University Press, 2008) 3.

³⁷ Hodson, *The Great Divide*, 15.

³⁸ Hodson, *The Great Divide*, 12.

³⁹ Nancy Gardner Cassels, *Social Legislation of the East India Company: Public Justice versus Public Instruction* (New Delhi: Sage Publications, 2010) 20.

⁴⁰ Thomas Macaulay, "Macaulay's Minute on Education," available at <http://www.english.ucsb.edu/faculty/rraley/research/english/macaulay.html> (last accessed January 31, 2013)

⁴¹ R. M. Pujari et. al., *Pride of India: A Glimpse into India's Scientific Heritage* (New Delhi: Samskrita Bharati, 2006) 5.

civilized in every way, the true subjects who would submit willingly to the colonial authority. The Blasphemy Laws of 1860 were a step in the same direction.

Like several other provisions of the Indian Penal Code, the Blasphemy Laws too were borrowed from the existing laws of the British homeland. The provisions against blasphemy derived from English Canon Law were introduced in English law by the Blasphemy Act of 1697. To challenge the apostates and the deist movement, the main purpose of these laws were to safeguard the Anglican version of Christianity as “a parcel of the laws of England.”⁴² Interestingly, one does not have to travel back centuries to find further evidence of this. In 1991, while hearing the petition for a judicial review arising from a case brought against Salman Rushdie, the Queen’s Bench ruled that the purpose of the blasphemy law in English common law tradition was to safeguard only Christianity.⁴³ The irony is not only in the matter that the Blasphemy Laws of English Canon Law have travelled through different mediums to be transplanted in Islamic Law provisions in Pakistan, but also lies in the fact that, while Britain so vehemently criticises Pakistan’s Blasphemy Laws, its own such laws, despite not being used for decades, were in force until 2008.

Conclusion

Through this brief tour, I have attempted to highlight how a four-century old ideal to safeguard a particular version of Christianity in England became a law of the time; how this actuality was transplanted through the colonial control as an actual in the Indian sub-continent, where after another 150 years it is being regarded as an ideal of completely another culture, a different religion, a different time. And the actuals emerging from this metamorphosed and transplanted ideal are generating their own repressions, their own actualities, their own ideals.

To return to the theme of this volume, while Xenophon borrowed the term *pairidaeza* from Persian, which later became a term to denote paradise, there is also another etymology of this term. This term made its way into the subcontinent through Persian and Mughal routes, and became part of Urdu and Hindi. While paradise is commonly used to refer to heaven in this part of the world as well, *pairidaeza* itself became *pardes* – which in Urdu/Hindi means foreign land, something that does not come from one’s own society (from *par*, signifying distance or distinction, and *des* meaning land). But from where both these interpretations emerged, *pairidaeza* still meant the wall around the courtyard. Perhaps the ideal and the actual follow the same pattern – in one interpretation of the ideal, we see something heavenly and we work towards an actuality based on that. While in another case, the interpretation is more repressive, and it generates its own version of actuality. The real, prior Actual however remains what it was – something in between. And law and justice, in this sense, keep moving in an unending cycle of birth and rebirth, embroiled in mutual mutilation, evolution and decay.

⁴² J. R. Jones, *Liberty Secured: Britain Before and After 1688* (California: Stanford University Press, 1992) 162.

⁴³ *Regina v Chief Metropolitan Stipendiary Magistrate, Ex parte Choudhury* (1991) 1 Q.B. 429