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LEGAL HISTORY AND THE LAW OF BLASPHEMY

*Morris S. Arnold**

TREASON AGAINST GOD: A HISTORY OF THE OFFENSE OF BLASPHEMY. By *Leonard W. Levy*. New York: Schocken Books. 1981. Pp. xviii, 414. \$24.95.

In 1916, Virginia Woolf suggested to a friend that she turn her efforts to legal history. This seemed appropriate, she thought, because her acquaintance wanted "to work at something that matters to no one; and will never be used, seen, or read, and can be done for no more or less than 3 hours a day."¹ No doubt most legal historians (we are not known for our sense of humor) would bridle at least slightly at this appraisal of what they do. But we are all familiar with similar appreciations of the field of legal history; and our colleagues, teachers of "real law," often ask of our field: "What is it for?" It is a fair question and it may be usefully asked not only of the field in general but also of individual contributions to it.

Professor Levy's book does not fare very well when the question is directed at it. No doubt there are many good, or at least acceptable, forms of legal history. Perhaps most in vogue is the sort of writing that treats legal history as a kind of comparative law in time, fitting observed legal changes into a "larger conceptual framework" (fashionable phrase) and accounting for them in social and political terms. Almost certainly this is the most interesting and useful of historiographic modes; probably most legal historians hope someday to produce an example of this interpretive *genre*. But legal history of the traditional, doctrinally oriented sort can also be excellent and is often much admired. Even expository and descriptive pieces are sometimes entitled to attention and serious study. Finally, anecdotal tale-telling about law in past times at least frequently has some entertainment value, and antiquarian curiosity can eventually lead neophytes to the consideration of serious and important questions.

Unfortunately, *Treason Against God* seems not to be a distinguished example of any of these *genres*. As its subtitle indicates, the

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1. 1 THE DIARY OF VIRGINIA WOOLF, 1915-1919, at 152 (A. Bell ed. 1977) (entry for June 6, 1918). (My friend, Professor Sue Sheridan Walker, recently brought this quotation to my attention.)

book is a history of the offense of blasphemy; this volume carries the story to 1700, and a sequel is promised.

* * *

The author alludes, both at the beginning and the end of his work, to the present: He says that blasphemy prosecutions are rare today and that, in any event, the continued validity of laws prohibiting blasphemy is much to be doubted, given the present judicial attitude toward the first amendment (pp. xi, 338). Neither of these observations is likely to draw much criticism; but more than that, they are obvious. No real effort, however, is made to explain this shift in attitudes, or to fit it into any larger pattern of social change. I do not suggest that this would be an easy task, only that the job is worth attempting — and without it the book seems virtually pointless.

There is some attempt to divine the substantive content of the notion of blasphemy as it changed through the centuries. Thus, the author argues that the biblical offense of blasphemy was fairly specific, consisting in reviling God or defamation of the deity, and that this definition was further narrowed by the Talmudists. But, the argument continues, the early Christians broadened the term:

[B]lasphe-my became so bloated with meanings that it burst all bounds, becoming almost meaningless; by 400 "blasphemy" was hardly more than a vile epithet and in a confused way similar to the concept of "heresy." [P. 63.]

Thus, "the concept of blasphemy, once a description of an exact crime, had all but lost its meaning" (p. 100). With a few exceptions, therefore, most commentators on legal matters regarded all heretics as blasphemous.

If this is true (and it may well be), even to say that it is a small point is to exaggerate it far beyond its significance. Professor Levy then proceeds to survey the history of heresy in some detail. But the reader is likely to be bewildered by the wide variety of heterodox Christian beliefs presented to him: Gnostics, Docetics, Marcionites, Montanists, Sabellians, Arians, Donatists, Manichaeans, Albigensians, Wycliffites, Lollards, Socinians, Unitarians, Baptists, Free Spirits, Ranters, Diggers, Antinomians, Levellers, Millenarians, Muggletonians, Quakers, Pantheists, and God knows who else are all presented briefly for inspection by the curious. Levy becomes the great *pasticheur* of heresy; and except for those who require a kind of elementary encyclopedia of Christian heretical doctrine, this will all seem tedious.

Finally, not since John Foxe produced his gruesome *Book of Martyrs* has a more accomplished martyrologist exhibited his skills. The book is a parade of horrors, and the reader inclined (for reasons of piety or otherwise) to be intrigued by the suffering and degradation of the wicked will find here much relevant matter: Branding,

flogging, burning to death, pulling out and boring of tongues, hanging, and torture are all liberally represented. One unfortunate, his heresy posthumously discovered and condemned, was disinterred and his corrupt body burned. What macabre reportorial urge inspired these parts of the book I cannot guess.

* * *

Professor Levy describes his work as "an unfashionably Whiggish book" (p. xii). If by that he means that he believes liberty to be a good thing and its enemies evil, then this reviewer is completely in sympathy with his aims. I think that the field could be much illuminated by a libertarian writer who was intent upon tracing and explaining the fate of individual liberties during the period of this book. (Indeed, there is some interesting matter to be found here about early libertarian thought (pp. 192, 217).) Such a work would furnish a much-needed antidote to the vulgar Marxism so prevalent in modern historiography: Individualism is not a disguise for fascism nor does it require or applaud the exaltation of the depraved and predatory. Much good history could be written with the rights of individuals as its focus and when it is written official religious bigotry will obviously be a topic of grave concern. But readers in search of such history must look elsewhere than this book.