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Blasphemy law doesn't apply to Muslims

ANNE FLAHVIN THE AUSTRALIAN SEPTEMBER 28, 2012 12:00AM

THE controversy over the Innocence of Muslims video has generated a global discussion as to what the limits of freedom of speech ought to be when it comes to criticism of religious beliefs and icons.

As US President Barack Obama appeared before the UN General Assembly this week to defend freedom of speech against demands that the US and other Western countries criminalise blasphemy, Australian Foreign Minister Bob Carr was asked at a press conference for his view.

Speaking from New York, Carr said Australia rejected calls for a global ban on blasphemy on the ground that it was incompatible with Western traditions. But what many probably don't know is that we do have a law of blasphemy. It just doesn't apply to Muslims.

Like the ancient British law on which it is based, our law of blasphemy applies only to words that outrage and insult the feelings of Christians. Those who see blasphemy laws as incompatible with Western traditions of freedom of speech might take some solace from the fact that there has been no successful blasphemy prosecution in Australia since 1871, when a Mr Jones was sentenced to three years' jail for publicly denying that the Bible was the word of God.

While the offence of blasphemy was expressly abolished in the ACT in 1996, in every other state a person who publishes a "blasphemous libel" risks criminal prosecution. You might think that the risk is largely theoretical. It's possible that an Australian court would find that the law of blasphemy has effectively lapsed due to the length of time since the last successful prosecution, but this is by no means certain.

The last attempt to rely on the law was as recent as 1998. The then archbishop of Melbourne,

George Pell, sought an injunction to prevent the National Gallery of Victoria from displaying the Andres Serrano artwork, *Piss Christ*. The work was a photograph of a crucifix immersed in a vat of urine. The court declined to grant the injunction on technical grounds without determining whether the Serrano work was blasphemous.

Britain abolished the offence of blasphemy in 2008 after a review that was triggered when a court confirmed that the law did not protect the feelings of non-Christians.

A Muslim man, Abdul Choudhury, tried to issue a summons against Salman Rushdie and the publisher of *The Satanic Verses*, alleging that the book was blasphemous. A magistrate refused to issue the summons on the ground that the law did not extend to attacks on Islam, but was confined to attacks on Christianity.

The court explained that the reason for this was that the Church of England, unlike other religions, was part of the constitutional fabric of the state. In other words, the ancient English law of blasphemy is a close relation to sedition. The Choudhury case led to calls for the law to be extended to all religions. But how would such a law be drafted? Would it define "religion", or would that be left to the courts? Would Scientology be in or out?

Some suggested that the law should apply to a list of religions that could be varied by ministerial order. The House of Lords committee charged with considering this matter worried that a law that protected the feelings of those who believed in a deity, but not those with non-theistic beliefs or those who rejected religious beliefs, would be in breach of the British Human Rights Act.

Britain has a law that prohibits speech intended to stir up racial hatred, but blasphemy has been consigned to the history books.

The question of what to do with blasphemy in Australia appears to have been put into the "too hard" basket. Some states have introduced religious vilification laws.

While these laws are not intended to prohibit speech that criticises or ridicules particular religious figures, doctrines or beliefs, the line between speech that is critical of religion and speech that might be thought to vilify members of a particular faith is in some cases quite blurred. Religious vilification laws can start to look a lot like blasphemy laws by another name.

Like Carr, I think blasphemy laws are incompatible with freedom of speech. But while we are having that discussion, we might take the time to deal with the fact that we do have a law that criminalises blasphemous attacks on one religion, and one religion only, and it might be coming to an art gallery near you.

Anne Flahvin is a media and communications counsel with Policy Australia