

3 The English Law of Blasphemy: The “Melancholy, Long, Withdrawing Roar”

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This chapter is about the history of the English law of blasphemy. The definition of blasphemy has altered over time, but its essence was expression which undermined, insulted or revealed contempt for the Christian God or the formularies of the Church of England.¹ On first encounter, the story appears to be relatively straightforward—and one which advances to the same tune as other major developments in legal, social and intellectual history. As far as the ordinary (as opposed to ecclesiastical) courts are concerned, the common law of blasphemy was born in the seventeenth century of an absolute identification between the doctrine of the established Church of England and the authority of the state. This identification was maintained (almost as an article of faith itself) until the offence was substantially narrowed towards the end of the nineteenth century to permit the questioning of elements of Christianity, so long as it was conducted in a “temperate” manner in which the “decencies of controversy are maintained.”² Indeed, by the beginning of the twentieth century, the definition of blasphemy appeared to be so etiolated and prosecutions were so rare that many believed it to be a dead

1 Richard H. Helmholz, *The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 636–637 defines blasphemy “technically” as “the attribution to God of a property inconsistent with his divinity.” See for Blackstone’s definition: William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, 59. The Blasphemy Act 1697 made it an offence for any person educated in, or who had made profession of, the Christian religion to “deny any One of the Persons in the Holy Trinity to be God, or ... assert or maintain there are more Gods than One, or ... deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority.” In this chapter, I only address the law of England and Wales. The laws of Scotland and Northern Ireland are materially different in a number of respects as, of course, is the history of religion in those nations.

2 *Bowman v. Secular Society Ltd* [1917] A.C. 406, 423, per Lord Finlay L.C.

letter. In due course, after it had made incitement to hatred on the grounds of any religious belief a criminal offence, Parliament abolished the crime of blasphemy altogether.

The history of blasphemy therefore appears to conform to our common preconceptions of progress: with secularisation and Enlightenment rationalism leading inexorably to greater freedom and pluralism.³ The aim of this essay is not just to establish that this account is misleading and unsatisfactory, but also to examine a number of puzzling elements of the English law of blasphemy. These include: the origin and persistence of the identification between Church doctrine and the state beyond the early modern period; the resurrection of blasphemy in the late twentieth century (which threatened much greater restrictions on free speech than had been thought possible during most of the previous hundred years); the depiction of the new offence of incitement to religious hatred as somehow a modern and pluralistic version of blasphemy; and the ultimate abolition of blasphemy, not as a result of principled legislative debate, but by an adventitious side wind. This far from linear progression towards liberalisation explains the titular quotation from Mathew Arnold's *Dover Beach* which the poet applied to the receding "sea of faith."

I shall examine these puzzling aspects of the law of blasphemy by describing chronologically: the emergence of blasphemy as an offence at common law, its apparent immunity to fundamental reform from the seventeenth to the late twentieth centuries, and its eventual abolition at the start of the twenty-first century. Finally, I shall say something about the relationship between blasphemy and incitement to religious hatred.

Before embarking on that account, however, some caveats are necessary. First, the distinction between blasphemy and other forms of religious crime has not always been either clearly stated or universally respected. English law once contained a substantial number of religious offences. Along with blasphemy, Sir William Blackstone, in his *Commentaries on the Laws of England* (published from 1766 onwards), described the crimes of apostasy, heresy, "profane and common swearing and cursing" and, finally, "witchcraft, conjuration, enchantment, or sorcery."⁴ Although some maintained the

3 Herbert Butterfield, *The Whig Interpretation of History* (London: G Bell and Sons, 1931).

4 William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, ch 4.

distinction between blasphemy and other offences,⁵ there was a tendency in the early cases and writings to treat all questioning or criticism of religious orthodoxy as forms of heresy or atheism.⁶

This leads to the second caveat, which is that prosecutions in the early modern period did not always distinguish blasphemy from the other forms which criminal libel could take as a matter of common law.⁷ Those other forms were seditious libel, obscene libel, and defamatory libel. Given the facts of some cases, this is not surprising. For example, Sir Charles Sedley's drunken behaviour on the balcony of a Covent Garden tavern in 1663 sounds as if it could have been designed to fall foul of more than one form of criminal libel. Once he had defecated on the crowd below and removed all of his clothing, Sedley acted "all the postures of lust and buggery that could be imagined, as abusing of the scripture, as it were, from thence preaching a Montebank sermon from that pulpit." As if that were not sufficient, Sedley then took a glass of wine "and washed his prick in it and then drank it off"; his glass refreshed, he then toasted the King for good measure.⁸ Whether the crowd objected most to being defecated upon or preached at is not recorded, but a "riot almost ensued, and some windows were broken—evidence of a breach of the King's Peace."⁹ This was an unusual case. However, even in less extreme circumstances, John Spencer has suggested that the decision to charge blasphemous or seditious libel "seems to have depended largely on the taste in vituperative epithet of the man who drafted the indictment or

5 For example, in *Naylor's case* (1656) 5 St. Tr. 825, Lord Commissioner Whitelock stated that "heresy is *Crimen Judicii*, an erroneous opinion; blasphemy is *Crimen Malitiae*, a reviling of the name and honour of God."

6 Diarmaid MacCulloch describes the tendency to treat all expressions of religious doubt as atheism as being as common as that of describing all disapproved sexual practices as sodomy (*Reformation: Europe's House Divided 1490-1700* (London: Penguin Books, 2004), 693). See, further, David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007), 48.

7 William Holdsworth, "Defamation in the Sixteenth and Seventeenth Centuries", 40 L.Q.R. (1924) 302, 397; 41 L.Q.R. (1925) 13.

8 *Sir Charles Sydlyes Case* (1662) 1 Keb. 620; 83 E.R. 1146. The reports are decorously short, but Samuel Pepys is, characteristically, less squeamish and the above quotations come from *The Diary of Samuel Pepys* (ed. Robert Latham and William Matthews, London: Bell & Hyman, 1990), vol. IV, 269 (entry for 1 July 1663). *Sedley's case* is discussed in David Lawton, *Blasphemy* (Hemel Hempstead: Harvester Wheatsheaf, 1993), 23–26.

9 Geoffrey Robertson, *Obscenity: An Account of the Censorship Laws and their Enforcement in England and Wales* (London: Weidenfeld and Nicolson, 1979), 21.

information,” rather than upon distinctions of substance.¹⁰ Blasphemy and obscenity have remained close companions (if not exactly bedfellows) up to the present day, especially in the field of artistic expression.¹¹

Thirdly, an account of the history of blasphemy cannot be entirely divorced from the legal regulation of religion as a whole in English law. Such regulation was broad and extensive: a collection of ecclesiastical statutes from 1847 ran to five volumes, and in its more than two thousand pages covered subjects from “Abbeys,” “Abjuration,” and “Advowsons” to “Usury,” “Witchcraft” and “Writs.”¹² Although the criminal penalties for blasphemy

- 10 John Spencer, “Criminal Libel-A Skeleton in the Cupboard” [1977] Crim. L.R. 383. John Spencer gives the example of *Reg. v. Keach* (1665) 6 St. Tr. 701 in which a book contrary to the teachings of the Church of England was prosecuted as seditious (rather than blasphemous) libel. This confusion between sedition and blasphemy also appears to have been a characteristic of the exercise of ecclesiastical jurisdiction (Richard H. Helmholz, *The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 636).
- 11 The indictment in *Whitehouse v. Lemon* [1979] A.C. 617 (discussed further below) particularised the offence as “an obscene poem and illustration vilifying Christ and His life and His crucifixion,” cited by Viscount Dilhorne at 639. In the Court of Appeal, the inclusion of “obscene” was stated to be a matter of regret by Counsel for the Crown (*R. v. Lemon (Denis)* [1979] Q.B. 10, 15B). Other examples are given in David Nash, “Last Temptation and Visions of Ecstasy: Blasphemy and Film”, Ch. 7 of David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007). Outside film, Andre Serrano’s ‘Piss Christ’ and Chris Offili’s ‘The Holy Virgin Mary’ provided further examples from the 1990s.
- 12 *The Ecclesiastical Statutes at Large extracted from the great body of the statute law, and arranged under separate heads* by James Thomas Law (London: William Penning and Co, 1847). St John A. Robillard’s *Religion and the law* (Manchester: Manchester University Press, 1984) devotes only 20 of his 200 pages to blasphemy. Some statutes went so far as to prescribe religious orthodoxy with some precision. For example, the “Act for abolishing of diversitie of opinions in certaine Articles concerning Christian religion” (sometimes referred to as the Act of the Six Articles) asserted the orthodoxy of transubstantiation, clerical celibacy, vows of chastity, private masses and auricular confession (31 Hen. VIII, c. XIV). This Act was described by Eamon Duffy as marking “a decisive turning-point for the progress of radical Protestantism under Henry” in *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005), 424. Later Reformation statutes went much further in distancing the Church of England from that of Rome and were supplemented by a range of non-parliamentary measures, including Convocation’s Ten Articles (“the first official doctrinal formulary of the Church of England” (*ibid.*, 392)) and Thomas Cromwell’s Injunctions of 1536 (attacking pilgrimages and the cult of images and relics) and 1538. However, my focus is almost entirely on the common law of blasphemy. There is some justification for this as, for example, there was never a prosecution under the Blasphemy

were among the most violent and brutal, many more individuals suffered from the legal disqualifications which for centuries affected the ability of non-adherents of the Church of England to own land, sue in a court of law, bequeath their property on death, or hold many forms of public office.¹³ The extent of the reach of the law of blasphemy is further illustrated by the legal treatment of two of the Romantic era's greatest poets: Shelley was denied custody of his children because of his "impiety and irreligion" (which was manifested in his blasphemous writings in *Queen Mab* and elsewhere) and an injunction was refused to restrain publication of an unauthorised copy of Byron's *Cain* because of its blasphemous content.¹⁴ An account of blasphemy cannot therefore give a fully representative picture of the extent to which the doctrine and practices of the Christian Church were for centuries woven into the fabric of English society.¹⁵ Subject to those caveats, I now return to the chronology outlined above.

THE EMERGENCE AND ENDURANCE OF BLASPHEMY AT COMMON LAW

The story of the development of the offence of blasphemy at common law is well known.¹⁶ Originally, jurisdiction over religious offences lay exclusively

Act 1697. For an account of the statutory provisions see Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005), 379–477 and Frederic William Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1911), 506–526.

- 13 St John A. Robillard, *Religion and the law* (Manchester: Manchester University Press, 1984), contains an Appendix which sets out the principal "moves towards religious toleration in the nineteenth century."
- 14 *Shelley v. Westbrooke* (1821) Jac. 266; 37 E.R. 850 (the quotation comes from *Warde v. Warde* (1849) 2 Phillips 786, 791) and *Murray v. Benbow* (1822) Jac. 474; 6 Petersdorff Abr 558n (see further Isabella Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford: Hart Publishing, 2010), at 72–3 for a discussion of this and *Don Juan*). A bookseller was successfully prosecuted for selling *Queen Mab* in *R v. Moxon* (1841) 4 St. Tr. NS 693.
- 15 The outstanding account of pre-Reformation religious practice remains Eamon Duffy in *The Stripping of the Altars: Traditional Religion in England c.1400-c.1580* (2nd edn., (New Haven, CT: Yale University Press, 2005) and (on a smaller scale) *The Voices of Morebath: Reformation and Rebellion in an English Village* (New Haven, CT: Yale University Press, 2003). For the later period see D. MacCulloch, *The Later Reformation in England 1547-1603* (London: MacMillan Education, 1990).
- 16 David Nash, *Blasphemy in the Christian World* (Oxford: Oxford University Press, 2007), Ch. 2; Leonard Levy, *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie* (Chapel

in the Ecclesiastical Courts¹⁷ and the ordinary courts would refuse to permit actions concerning purely spiritual matters to proceed before them.¹⁸ Atwood's case confirmed that justices of the peace had no jurisdiction over the uttering of scandalous words, such as that "the religion now professed was a new religion...preaching was but prating" [empty or pointless talk].¹⁹ As we have seen, Sedley's case involved conduct in which the profane could properly be said to outweigh the divine (with elements of obscenity, sedition, blasphemy and a threatened breach of the peace). As such, the temporal court of King's Bench felt well able to deal with him. However, it was not until Taylor's case in 1676 that the Court of King's Bench addressed itself to purely religious expression.²⁰ Taylor's statements included that "Christ is a whoremaster, and religion is a Cheat...I am Christ's younger brother and that Christ is a bastard." Chief Justice Hale justified the jurisdiction of the Court of King's Bench over such matters in the following terms:

These words, though of ecclesiastical cognisance, yet that religion is a cheat, tends to the dissolution of all government, and therefore punishable here, and so of contumelious reproaches to God, or the

Hill, NC: University of North Carolina Press, 1993), ch. 10; and Hypatia Bradlaugh Bonner, *Penalties Upon Opinion* (London: Watts & Co, 1934), 1–34.

- 17 Richard H. Helmholz explains that the ecclesiastical jurisdiction survived the passing of statutes on blasphemy (such as 3 Jac 1, c. 21 (1605))—which would normally have the effect that the ordinary courts would take over decision-making—by express provisions preserving the position of the ecclesiastical courts (*The Oxford History of the Laws of England, Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 276).
- 18 John Baker, *The Oxford History of the Laws of England, Volume VI: 1483–1558* (Oxford: Oxford University Press, 2003), 791–792. Professor Baker notes that by the 1540s the Court of Common Pleas would countenance some spiritual element in proceedings before it, for example, where an individual was accused of being a heretic. In such cases, the secular element of defamatory libel provided a basis for the common law courts to exercise jurisdiction even though the subject-matter of the libel was religious.
- 19 (1618) 1 Vent. 293. In *Traske's case* (1618) Hob. 236, the defendant's views "that the Jewish Sabbath ought to be observed, and not ours, and that we ought to abstain from all manner of swines' flesh" were punishable only in the Ecclesiastical Courts, but his criticisms of the King and Bishops tended to sedition and were properly a matter for the Star Chamber: William S. Holdsworth, *History of English Law, Vol. VIII* (London: Methuen, 1903–1926), 406–407. On the history of blasphemy before 1660 see Gerald D. Nokes, *A History of the Crime of Blasphemy* (London: Sweet and Maxwell, 1928), 1–42.
- 20 (1676) 3 Keb 607; 84 ER 906.

religion established. An indictment lay for saying the Protestant religion was a fiction for taking away religion, all obligations to government by oaths etc ceaseth, and Christian religion is a part of the law itself, therefore injuries to God are punishable as to the King, or any common person.²¹

Before analysing this reasoning, a number of points should be made about the historical context in which the decision was delivered. Seventeenth century England had seen unprecedented political turmoil in the form of the English Civil War (which led to the execution of King Charles I) and the Interregnum. It was also a period of great controversy about the philosophical basis of government with seminal contributions from Thomas Hobbes, Robert Filmer and John Locke.²² Hale was familiar with Hobbes' work and wrote his own *Reflections on Hobbes' Dialogue of the Law*.²³ Moreover, England's break with Roman Catholicism had, for the first time, unified secular and religious authority in the King who was not only head of state, but also Defender of the Faith. There were also institutional reasons for the King's Bench to expand its role. The Star Chamber (which had previously prosecuted blasphemy)

- 21 The other report of *Taylor's case* (1 Vent 293; 86 ER 189) states: "Christianity is parcel of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law". Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), 177 quotes Hale from the Fairhurst Papers in Lambeth Palace Library on the power to suppress religious dissent: "the reasonableness and indeed necessity of this coercion in matter of religion is apparent for the concerns of religion and the civil state are so twisted one with another that confusion and disorder an[d] anarchy in the former must of necessity introduce confusion and dissolution of the latter." See further William Hawkins, *A Treatise of the Pleas of the Crown* (8th edn., (London: S. Sweet, 1824), Bk. 1, 358.
- 22 John Locke, *The Second Treatise of Civil Government and a Letter Concerning Toleration* (Oxford: Basil Blackwell, 1946) (originally published in 1689); Thomas Hobbes, *Leviathan* (Oxford: Basil Blackwell, 1955) (originally published in 1651); Robert Filmer, *Patriarcha* (Oxford: Basil Blackwell, 1949) (originally published in 1680 (after Hale's death), but much of this work was published in other forms during Hale's lifetime).
- 23 The *Reflections* were not published until the early nineteenth century. Thomas Hobbes' *A Dialogue between a Philosopher and a Student of the Common Laws of England* (Chicago, Ill.: University of Chicago Press, 1971) (originally published in 1681) contains a chapter 'Of Heresie' which also addresses blasphemy. Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995) includes in Chapter 7 an account of "Restoration: constitutional theory," with an understandable emphasis on the work of Coke and Selden. Cromartie concludes that there was no evidence that Hale read Filmer: *ibid.*, 116 fn 105.

was abolished on the death of Charles I, and the King's Bench inherited its criminal jurisdiction. Moreover, the Ecclesiastical Courts "had suffered under Cromwell a paralysis from which they had not fully recovered."²⁴ More personally, Hale was a Royalist and a devout Christian.²⁵

These circumstances might provide some justification for why Taylor's case was decided as it was in 1676, but they do not explain how it came to provide the philosophical and doctrinal basis for the common law of blasphemy for more than two hundred and fifty years.²⁶ The influence of Hale's judgment is all the more surprising when its reasoning is examined. In common with most of that age, the reports of the judgment are very short. They do not include any reference to previously decided cases. Some commentators have suggested that Hale may, in fact, have relied on an inaccurate translation in one of the authorities.²⁷ Whether or not that is so is less important than the quality of the reasoning itself. Hale's reasoning is entirely circular: Taylor is guilty of an offence punishable before the Court of King's Bench not because he has breached any particular law or statute, but because his criticism of religion undermines or subverts the obligation to obey the law in general. This assertion is unjustified as a matter of fact on at least two bases. First, the law of England plainly was not the same as the moral teachings of the established Church.²⁸ Secondly, there was no

24 Courtney S. Kenny, "The Evolution of the Law of Blasphemy", 1 *Camb. L. J.* (1922) 127, 129.

However, the mere fact that the spiritual courts would not provide a remedy did not require that the secular courts should—as the Court of King's Bench very properly held in declining jurisdiction over the "printing of bawdy stuff" in *R v. Read* (1708) 11 Mod. Rep. 142. The Court soon changed its mind and invented the common law offence of obscene libel in *R v. Curl* (1727) 2 Str. 788; 1 Barn K.B. 29; 93 E.R. 849. A full account is given in Geoffrey Robertson, *Obscenity: An Account of the Censorship Laws and their Enforcement in England and Wales* (London: Weidenfeld and Nicolson, 1979), Ch. 2.

25 Hale presided over the well-known trial of Amy Duny and Rose Cullender for witchcraft in March 1662 at the Assizes in Bury St Edmunds. Both were hanged. Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), 237–239 includes an appendix on "Hale and witchcraft".

26 Leonard Levy describes it as "the most important [case] ... that had ever been or ever would be decided in England on the subject" in *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie* (Chapel Hill, NC: University of North Carolina Press, 1993), 220.

27 Courtney S. Kenny, "The Evolution of the Law of Blasphemy", 1 *Camb. L. J.* (1922), 130–131 accepts the view that the work usually called Finch's *Common Law* (1627) contained a material mistranslation which may have misled Hale.

28 As Lord Cranworth famously pointed out, "none of us have ever seen a man indicted in a Court of Law for not loving his neighbour as himself", quoted by Kenny, in *ibid.*, 130. Lord Atkin in *Donoghue*

evidence to suggest that Taylor's words had any effect in reducing obedience to the law—still less that they tended “to the dissolution of all government.”

The real criticism of Hale's reasoning, though, is that it is based on a contradiction. In order to punish Taylor for his statements on matters of religion, Hale was forced to identify a secular basis for the jurisdiction of the ordinary (as opposed to ecclesiastical) courts. However, once he identified that basis as the undermining of the authority of the state and of respect for the law, there was no reason for common law courts to punish blasphemy as a distinct offence because the law of sedition already provided an ample basis for dealing with such conduct. The law of sedition was well-established by this time and might be thought to be a more appropriate basis upon which a secular court could restrain expression which threatened the authority of the state or incited hostility between different members of society.²⁹

Despite this fundamental difficulty, Taylor's case and its rationale continued to be cited with approval well into the nineteenth century.³⁰ It was explicitly adopted by Blackstone.³¹ This point should not be overstated: Hale's justification for the common law of blasphemy was, of course,

v. *Stevenson* [1932] A.C. 562, 580 induced from the mass of single instances in which liability had previously been imposed the classic statement of the tort of negligence in these terms: “The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? receives a restricted reply.” In the context of the common law right to a fair hearing, Fortescue J. stated in *R. v. Chancellor, Master and Scholars of the University of Cambridge* (1723) 1 Str. 557, 567 that “even God himself did not pass sentence on Adam before he was called upon to make his defence”. As Lord Hoffmann pointed out subsequently, this cannot have been to improve the quality of God's subsequent decision given His Omniscience (*Secretary of State for the Home Department v. AF* (No 3) [2010] 2 A.C. 269, [72]).

29 Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (London: MacMillan and Co, 1883), 298–316 traces the history of sedition back to the Plantagenets, but states that it was “highly important and prominent” by the time of the Tudors. See further *Stephen's Digest of the Criminal Law* (9th edn, London: Sweet and Maxwell, 1950), art. 114.

30 Examples of cases in which later courts (including several Chief Justices) relied not just on the authority of *Taylor's case*, but expressly adopted Hale's rationale include *Dominus Rex v. Woolston* (1728) Fitz. 64; 94 E.R. 655 (for suggesting that Christ's miracles should be read allegorically and not literally); *R. v. Williams* (1797) 26 St. Tr. 653 and *R. v. Carlisle (Richard)* (1819) 3 B. & Ald. 161 and *R. v. Carlisle (Mary)* (1821) 1 Str. Tr. N.S. 1033 (for publishing Thomas Paine's *The Age of Reason* (1794)).

31 William Blackstone, *Commentaries on the Laws of England* (8th edn. Oxford: Clarendon Press, 1778), Book IV, 59 defined blasphemy as: “denying [the Almighty's] being or providence; or by contumelious reproaches to our saviour Christ. Whither also may be referred all profane scoffing at the Holy Scripture, or exposing it to contempt or ridicule. These are offences at common law

elaborated by later judges. In some cases, a further paternalistic motive of protecting the young or uneducated from attacks on Christianity was relied upon, particularly where the “tone and spirit [of the attack] is that of offence and insult and ridicule, which leaves the judgment really not free to act.”³² However, these refinements did not call into question the fundamental rationale of Taylor’s case.

THE APPARENT NARROWING OF BLASPHEMY

In the late nineteenth century, as sober and temperate criticism of religion became a respectable part of public discourse, the law appeared to tolerate the reasoned denial of the truth of Christianity.³³ By the early twentieth century, it appeared that Hale’s reasoning was finally displaced as the basis for the law of blasphemy in favour of a rationale based on preserving public order. In 1917, Lord Parker stated that:

punishable by fine and imprisonment, or other infamous corporal punishment: for Christianity is part of the laws of England.”

32 *R. v. Carlisle (Mary)* (1821) 1 Str. Tr. N.S. 1056 (the sentencing decision) and *R. v. Heatherington* (1841) 4 St. Tr. NS 563, 591 (the source of the quotation). *Heatherington* also marks a change of focus in examining the tone of the expression, rather than whether it seeks to undermine aspects of doctrine.

33 Such a modification was necessary to avoid exposing to prosecution Charles Darwin and Thomas Huxley (as Roskill L.J. pointed out in *R. v. Lemon (Denis)* [1979] Q.B. 10, 17). In *R. v. Ramsay and Foote* (1883) 15 Cox CC 231, 236, Lord Coleridge C.J. directed the jury in the following terms: “A wilful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and the unwary, is the criterion and test of guilt.” This passage was also thought to have established (or affirmed) the requirement that the defendant must have intended to insult or vilify religious subjects. When read in context, this view is not justified as a requirement of intention would have been incompatible with the numerous convictions of booksellers for blasphemous material who might well have been unaware of the precise content of what they or their servants sold (John Spencer, “Blasphemous Libel Resurrected—Gay News and Grim Tidings”, *Camb. L.J.* 38 (1979) 245). The earlier formulations of the law had been most influentially criticised by John Stuart Mill in *On Liberty* (2nd edn, (London: John W. Parker and Son, 1859), 54, which refers to the “stain ... of legal persecution: in relation to penalties for expression” and relies on the then recent example of Thomas Pooley, “an unfortunate man, said to be of unexceptional conduct in all relations of life,” who was sentenced at Bodmin Assizes in July 1857 to 21 months’ imprisonment for blasphemy (although ultimately receiving a free pardon from the Crown).

To constitute blasphemy at common law there must be such an element of vilification, ridicule or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace.³⁴

More importantly for our purposes, Lord Parker appeared (250 years after it was decided) to bury Taylor's case, which he summarised as follows:

to the effect that Christianity is part of the law of the land, the suggested inference [is] that to attack or deny any of its fundamental doctrines must therefore be unlawful. The inference of course depends on some implied major premise. If the implied major premise be that it is an offence to speak with contumely or even to express disapproval of existing law, it is clearly erroneous. If, on the other hand, the implied major premise is that it is an offence to induce people to disobey the law, the premise may be accepted, but to avoid a non sequitur it would be necessary to modify the minor premise by asserting that it is part of the law of the land that all must believe in the fundamental doctrines of Christianity, and this again is inadmissible. Christianity is clearly not part of the law of the land in the sense that every offence against Christianity is cognizable in the Courts.³⁵

Lord Sumner was more succinct:

My Lords, with all respect for the great names of the lawyers who have used it, the phrase 'Christianity is part of the law of England' is really not law; it is rhetoric...³⁶

34 *Bowman v. Secular Society Ltd* [1917] A.C. 406, 446, per Lord Parker. Lord Sumner, in *ibid.*, 466–467, stated that the limits of lawful expression were exceeded where criticism of Christianity or the Church of England tended to “endanger the peace then and there, to deprave public morality generally, to shake the fabric of society, and to be a cause of civil strife.” *Bowman* was not a prosecution for blasphemy, but addressed the question of whether a bequest to the Secular Society (whose aim was to promote the philosophy that human conduct should be based upon natural knowledge, and not upon supernatural belief) was valid. The House of Lords held that it was (Lord Finlay L.C., 423; Lord Dunedin, 433; Lord Parker of Waddington, 445–446; and Lord Buckmaster, 470).

35 *Ibid.*, 446.

36 *Ibid.*, 464.

Neither judge pursued these views to their logical conclusion: if the law of blasphemy was henceforth to be based on the secular justification of preserving the public peace, there was no reason for it to exist as a crime distinct from the established common law offences relating to the maintenance of public order.³⁷ However, the decision in *Bowman* did appear to confirm that the scope of blasphemy had narrowed to an extent more consistent with the exercise of free speech in a modern democracy.³⁸ Indeed, it led many informed commentators to suggest that the law of blasphemy was moribund.³⁹ Save for the case of *Gott*,⁴⁰ there was no prosecution for blasphemy after *Bowman* until 1977.

RESURRECTION?

However, in that year, the moral campaigner Mary Whitehouse instituted a successful private prosecution for blasphemy against the editor and publishers of *Gay News*.⁴¹ Mrs Whitehouse objected to the publication of the poem, 'The Love that Dares to Speak its Name' by Professor James Kirkup, which was accompanied by a drawing of Christ. The poem was described in court as ascribing to Christ promiscuous homosexual practices with the

37 Anthony T.H. Smith, *The Offences Against Public Order* (London: Sweet and Maxwell, 1987).

38 Lord Sumner also stated in *Bowman v. Secular Society Ltd* [1917] A.C. 406, 466–467: "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault ... In the present day reasonable men do not apprehend the dissolution or the downfall of society because religion is publicly assailed by methods not scandalous." He also stated that he would not want to limit the power of a future society to expand the scope of blasphemy again to deal with "future irreligious attacks, designed to undermine fundamental institutions of our society."

39 Lord Denning, *Freedom under the Law* (London: Stevens & Co, 1949), 46. Sir James Fitzjames Stephen had said as much in 1883 in *A History of the Criminal Law of England* (London: MacMillan and Co, 1883), Vol. II, 396, describing the offences against religion as "all but entirely obsolete." Lord Goddard C.J. referred to the "somewhat obsolete offence of blasphemy" in a different context in *R. v. Morris* [1951] 1 K.B. 394, 397.

40 *R. v. Gott* (1922) 16 Cr. App. R. 87. Gott had described Christ as entering Jerusalem "like a circus clown on the back of two donkeys" and the Court of Appeal upheld his conviction for distributing such pamphlets in a manner which might provoke a breach of the peace in "anyone in sympathy with the Christian religion, whether he be a strong Christian, or a lukewarm Christian, or merely a person sympathizing with their ideals": 89–90.

41 *Whitehouse v. Lemon* [1979] A.C. 617.

Apostles and other men during his lifetime and depicting in graphic detail acts of sodomy and fellatio with the body of Christ immediately after his death (perhaps to demonstrate that there is no rest for the virtuous either).⁴²

In *Whitehouse v Lemon*, the House of Lords confirmed the continued existence of the offence of blasphemy at common law. However, the main issue in the appeal was whether or not the prosecution had to prove an intention to shock or arouse resentment or whether it was sufficient that the defendant intended to publish material which was in fact blasphemous. The majority held that the latter was all that the law required.⁴³ Although not in issue in the appeal, two members of the House of Lords expressed the clear view that there was no requirement to demonstrate a tendency to cause a breach of the peace.⁴⁴ *Lemon* therefore appears to reverse two of the most important elements of the progress which was thought to have been made in narrowing the definition of blasphemy over the previous century: by requiring an intention to insult or cause offence and by confining it to cases where a breach of the peace was likely. Viscount Dilhorne went further and held that the elements of the offence of publishing a blasphemous libel had not altered since 1792.⁴⁵ Finally, *Lemon* affirmed the fundamental shift in the common law: from punishing attempts to undermine elements of Church of England doctrine to protecting the “feelings of the general body of the community.”⁴⁶ The House of Lords did not explain how this new rationale justified criminal restrictions on free speech, especially where the feelings

42 The phrase “no rest for the wicked” appears to derive from the *Book of Isaiah*, verses 48:22.

43 *Whitehouse v. Lemon* [1979] A.C. 617, Viscount Dilhorne, 645F–656C; Lord Russell of Killowen, 657G–658A; and Lord Scarman, 665F–G. The editor of *Gay News*, Denis Lemon, was originally sentenced to nine months’ imprisonment (suspended for 18 months) and fined £500; the publishers were fined £1,000. The Court of Appeal quashed the custodial elements of Lemon’s sentence and left the fines in place. The other members of the House held that an intention to shock or cause resentment was required (Lord Diplock, 635H–636B; and Lord Edmund-Davies, 656B–E).

44 *Ibid.*, Lord Edmund-Davies, 656G and Lord Scarman, 662D–E.

45 1792 was the date of Fox’s Libel Act which made all questions of fact in a libel case a matter for the jury, rather than the judge.

46 *Whitehouse v. Lemon* [1979] A.C., 662C–D, per Lord Scarman. This is also clear from the majority’s approval of the trial judge’s direction to the jury which included the following: “Did it shock you when you first read it? ... Could you read it aloud to an audience of fellow-Christians without blushing? ... Could it hurt, shock, offend or appal anyone who read it?”

of the community which are entitled to protection are confined to those of members of the Church of England.⁴⁷

Lemon marked the final stage in the development of the common law of blasphemy. There are, however, two more cases to deal with in this history. In the first, a Mr Choudhury sought unsuccessfully to bring a private prosecution against Salman Rushdie and the publisher of *The Satanic Verses* for blasphemous libel.⁴⁸ In *Choudhury*, the Divisional Court decided that it had no power to extend the common law of blasphemy to other religions.⁴⁹ The second is the decision of the Divisional Court which ultimately ended 340 years of blasphemy prosecutions.

ABOLITION

Jerry Springer: The Opera, a stage show which ran in London and elsewhere between 2003 and 2006, was a parody of the television chat show which pioneered a confessional and confrontational format for addressing personal problems. The stage show was produced by Jonathan Thoday, who was one of two named defendants in the prosecution; the other was Mark Thompson, the Director General of the BBC, which broadcast the production in January 2005. In January 2007, the national director of an organisation called Christian Voice (Stephen Green) sought to bring a private prosecution for blasphemous libel in the City of Westminster Magistrates' Court. The BBC received a substantial number of complaints about the broadcast. It appeared that Mr Green objected particularly to Act Two, in which the character of

47 Robert C. Post in *Constitutional Domains: Democracy, Community, Management* (Cambridge, Mass.: Harvard University Press, 1995), 97–100, regards Lord Scarman's judgment and his call for the law to be extended to other religions as "an instrument of pluralism."

48 *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 Q.B. 429. In *R. v. Gathercole* (1838) 2 Lew 237, 254; 168 ER 1140, 1145, Alderson B stated: "A person may, without being liable to prosecution for it, attack Judaism or Mahomedanism, or even any sect of the Christian religion, save the established religion of the country; and the only reason why the latter is in a different situation from the other is, because it is the form established by law, and is therefore part of the constitution of the country." See Jeremy Waldron, "Rushdie and Religion", in *Liberal Rights-Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993) and Colin Munro, "Prophets, Presbyters and Profanity" [1989] *Pub. L.* 369.

49 *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 Q.B., 447B–448E, per Watkins L.J.

Mr Springer descends into hell and there meets various characters from the earlier parts of the play who now represent religious figures. For example, in the course of Act Two, there is an argument between Satan and Christ (who is dressed in a large baby's nappy and accepts that he has coprophiliac tendencies) in which the latter admits to being "a little bit gay" and, holding up his hand, tells Satan to "Talk to the stigmata"; the figure of God is portrayed as inadequate and in need of therapy; and the chorus chants *Jerry Eleison* (a parody of the *Kyrie Eleison*, which features in many Christian services). *Jerry Springer* was unlikely to be everyone's cup of tea, but the question for the District Judge was whether a summons for blasphemy should be issued.

The Judge decided not, and the Divisional Court rejected Mr Green's attempt to overturn that decision by way of judicial review.⁵⁰ The Divisional Court upheld the decision that, on the facts, there was no *prima facie* case of blasphemous libel and, as a matter of law, the prosecution was barred by the Theatres Act 1968 and the Broadcasting Act 1990.

The Divisional Court upheld the finding that the play could not be regarded as an attack on Christianity, but was really aimed at the exploitative television chat show. On the facts, this finding was plainly open to the Court.⁵¹ However, it is surprising in the light of *Lemon*, which can only be understood as having shifted the focus of the inquiry from whether the expression undermined Christianity to whether it was offensive. Whatever view one takes of *Jerry Springer*, it cannot be disputed that many Christians would find it deeply upsetting.⁵² The Court also relied on the fact that the play had been performed regularly for two years without any evidence that it undermined society or occasioned civil strife or unrest to support the conclusion that there was no *prima facie* case of blasphemous libel.⁵³ Again, this is an admirable finding as a matter of principle, but it sits very

50 *R. (on the application of Stephen Green) v. The City of Westminster Magistrates Court & Ors* [2007] EWHC 2785 (Admin); [2008] E.M.L.R. 15 (the 'Jerry Springer' case).

51 The Court had regard to the play "as a whole" (*ibid.*, [32] per Hughes L.J.) which is a further departure from many of the earlier cases where the judgments focus on particular phrases of passages.

52 A point the Court concedes, *ibid.*, [32], per Hughes L.J.

53 *Ibid.*, [32]–[33], per Hughes L.J. The Court did refer to the fact that there were demonstrations outside BBC Television Centre on the day before and the day of the broadcast (the latter attended by 500 people). There was some disorder at the first demonstration and at least one arrest.

uncomfortably with the clear decision in *Lemon* that demonstrating a likelihood of unrest was no part of the prosecution's burden.⁵⁴

As to the Theatres Act, s. 2(4) provides (as relevant):

No person shall be proceeded against in respect of performance of a play or anything said or done in the course of such a performance—

(a) for an offence at common law where it is of the essence of the offence that the performance or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality ...

That was held to work for Mr Thoday. Mr Thompson was entitled to the protection of an identical provision in paragraph 6 of Schedule 15 to the Broadcasting Act 1990. There can be no dispute that blasphemy is a common law offence. It is also arguable that, after *Lemon*, the essence of the crime is offensiveness.⁵⁵ However, this definition of the gravamen of blasphemy sits ill with the Court requiring an attack on Christianity and relying on the absence of evidence of unrest to deny that a *prima facie* case of blasphemy had been made out. If offensiveness is the essence of blasphemy, surely Mr Green had a *prima facie* case. What is most surprising about *Jerry Springer* is that the Theatre and Broadcasting Acts were found to be applicable to blasphemy at all. When their language, statutory context and legislative

54 The Court in *Jerry Springer* makes the valid point that the issue in *Lemon* was the mental element of the offence and so the House of Lords did not have to address the *actus reus* in great detail. However, several members of the House of Lords were clear that the only consequence of the vilification of religion that the offence requires is that it should “be likely to arouse a sense of outrage” among believers (for example, Lord Diplock in *Whitehouse v. Lemon* [1979] A.C., 632D and 638C, Lord Edmund-Davies, 646H–647B and 654H and Lord Russell, 657A). The Court in *Jerry Springer* also accepts that two of the judges in *Lemon* stated that there was no requirement of an “imminent” breach of the peace. As we have seen above, those judges went further and stated that there was no need to show that the expression tended to lead to a breach of the peace (whether imminent or not). Lord Scarman’s reference to safeguarding “the internal tranquillity of the kingdom” goes much further than preventing an imminent breach of the peace as he makes clear by referring to protecting religious beliefs from “scurrility, vilification, ridicule and contempt” (*Whitehouse v. Lemon*, 658B–C). In fact, the Court’s requirement that the act “must be such as tends to endanger society as a whole, by endangering the peace, depraving public morality, shaking the fabric of society or tending to cause civil strife” was based on a concession (*Jerry Springer*, [10]).

55 *Ibid.*, [19]–[20], per Hughes L.J.

history are examined, it is clear that these provisions are about obscenity and that neither Act was intended to apply to blasphemy.⁵⁶

The Divisional Court reached what is undoubtedly the correct decision as a matter of principle, but only by failing to follow binding precedent and ignoring orthodox guides to legislative meaning. The ramifications of the decision were also likely to be extensive. If Parliament considers that protection from offensive religious expression is not necessary in relation to broadcasting, it is very difficult to argue that restrictions on the written word will be justified, as the broadcast media are invariably regarded as more intrusive and therefore subject to greater legitimate regulation.⁵⁷ *Jerry Springer* appeared therefore to have achieved what commentators had wrongly predicted in the previous century: that the law of blasphemy was a dead letter.

Within just over a month of the decision in *Jerry Springer*, the government proposed to abolish the offences of blasphemy and blasphemous libel after a short period of consultation.⁵⁸ On 5 March 2008, Baroness Andrews introduced the relevant clauses to the House of Lords by way of amendment to the Criminal Justice and Immigration Bill.⁵⁹ The new clauses came into effect in July 2008, thereby ending 350 years of legal history. I have described elsewhere the numerous unsuccessful attempts to amend, repeal or replace the law of blasphemy: all of which met with failure.⁶⁰ The decision in *Jerry Springer* realised what these noble and concerted efforts over more than a century had failed to achieve, and within eight months.

INCITEMENT TO RELIGIOUS HATRED

One of the arguments relied on by those seeking to introduce a law of incitement to religious hatred was the apparent unfairness of confining the

56 Ivan Hare, "Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine", in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009), 298–299.

57 E. Barendt, *Freedom of Speech* (2nd edn, Oxford: Oxford University Press, 2005), 444–449.

58 HC Deb., 9 January 2008, Col. 454.

59 Ibid., cols. 1118–121.

60 Ivan Hare, "Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine", in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009), 296–297.

protection of the law of blasphemy not just to Christianity, but to the Church of England. This difference of treatment was exacerbated by the fact that certain religious groups (notably Jews and Sikhs) were treated in English law as “ethnic groups” and hence protected by the law on incitement to racial hatred, whereas Christians, Muslims or Hindus were not.⁶¹ As early as 1936, the first suggestions were made that incitement to religious hatred should become a criminal offence in its own right. Initiatives re-emerged throughout the late twentieth and early years of the twenty-first century.⁶²

The Religious Hatred Act became law in 2006. It defines religious hatred as “hatred against a group of persons defined by reference to religious belief or lack of religious belief.”⁶³ The offence is defined as follows in s. 29B(1):

A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.

This is narrower than the equivalent offence of incitement to racial hatred (originally introduced in the Race Relations Act 1965): the religious offence is confined to threatening words or behaviour, whereas incitement to racial hatred may be committed using “threatening, abusive or insulting” words or behaviour; further, as is clear from the above definition, incitement to religious hatred requires a specific intent to stir up hatred and has no alternative that hatred is likely to be stirred up (unlike racial hatred). Finally, there is an express limitation clause in s. 29J:

61 *Mandla (Sewa Singh) v. Dowell Lee* [1983] 2 A.C. 548 (Sikhism) and *R. (E) v. Governing Body of JFS* [2009] UKSC 15; [2010] 2 A.C. 728 (Judaism).

62 Ivan Hare, “Crosses, Crescents and Sacred Cows: Criminalising Incitement to Religious Hatred” [2006] *Pub. L.* 521, 522–523. See further Karen Goodall, “Incitement to Religious Hatred: All Talk and No Substance?”, 70 *Modern L. Rev.* (2007) 89. Incitement to religious hatred has been prohibited in Northern Ireland since the Public Order (Northern Ireland) Order 1987 (see Brigid Hadfield, “The Prevention of Incitement to Religious Hatred - An Article of Faith?”, 35 *N.I.L.Q.* (1984) 231 and Therese Murphy, “Incitement to Hatred: Lessons from Northern Ireland”, in Sandra Coliver (ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (London: Article 19, 1992).

63 The Religious Hatred Act has inserted amendments into the Public Order Act 1986. This definition is in s. 17A of the 1986 Act.

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practising their religion or belief system.

The new offence is a serious one: the maximum penalty is seven years' imprisonment.

In the absence of any prosecutions in the ten years since it was passed, it is difficult to say much more about the offence in this context. However, it is misleading to regard the new offence as a modern form of blasphemy for a number of reasons. First, it applies equally to beliefs which are secular or even anti-religious (as long as they occupy a position of equivalent importance to the individual and do not conflict with the fundamental rights of others).⁶⁴ Secondly, it cannot sensibly be regarded as a secular equivalent of blasphemy as the limitation clause makes clear that the offence provides no protection for the tenets of any sacred belief or the practices of any religion: its focus is entirely on words or behaviour which threaten and are intended to stir up hatred against individuals or groups of individuals. Incitement to religious hatred is therefore more closely related to prohibitions on discrimination than to the old laws of blasphemy.⁶⁵ In the field of discrimination law, English courts have set their faces firmly against providing legal protection for the content of a religious belief "in the name only of its religious credentials."⁶⁶

64 *Kokkinakis v. Greece*, 17 E.H.R.R. (1993) 397, [31] acknowledges the importance secular beliefs may have for the individual. The test for the recognition of such beliefs is described in *R. (Williamson) v. Secretary of State for Education and Employment* [2005] 2 A.C. 246, [23] and *Grainger Plc v. Nicholson* [2010] I.C.R. 360; [2010] I.R.L.R. 4.

65 The incitement to hatred laws now cover race, religion and sexual orientation (the latter enacted by the Criminal Justice and Immigration Act 2008 which abolished blasphemy). The Law Commission of England and Wales has recently concluded against further extending the offences to cover the other prohibited grounds of disability and transgender identity in *Hate Crimes: should the current law be extended?* (May 2014), Law Com. no. 348, Cm.8865 (upon which see Ivan Hare, "Free Speech and Incitement to Hatred on Grounds of Disability and Transgender Identity: the Law Commission's Proposals" [2015] *Pub. L.* 385).

66 *McFarlane v. Relate Avon Ltd* [2010] EWCA Civ 880; [2010] I.R.L.R. 872, [25]. *McFarlane* was a refusal of permission to appeal against the decision of the Employment Appeal Tribunal rejecting

For example, in rejecting a claim by a Christian who had been sacked for failing to provide sex counselling services to same-sex couples on grounds of his beliefs, Laws L.J. stated:

The Judaeo-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of lawmakers as to the objective merits of this or that social policy...But the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled.⁶⁷

Finally, it is a notable feature of the debate that the introduction of the offence of incitement to religious hatred has not quieted calls for a new law of blasphemy which would provide protection for the beliefs of all religious groups.⁶⁸

CONCLUSION

The focus of this chapter has been the history of the English law of blasphemy. Given the volume and complexity of the material, there has not been the opportunity to address directly the difficulties the law presented for the protection of free speech or the elimination of religious discrimination. Nor have I had the space to analyse blasphemy against the background of

his challenge to his dismissal. *McFarlane* was upheld by the European Court of Human Rights in *Eweida v. United Kingdom*, 57 E.H.R.R. (2013) 8.

⁶⁷ *McFarlane*, *ibid.*, [23]. The case was unusual in that a witness statement from Lord Carey of Clifton, the former Archbishop of Canterbury, was submitted to the court by counsel for *McFarlane*. In the witness statement, Lord Carey requested that cases involving religious discrimination should be heard by an expanded bench of judges who have a “proven sensibility to religious issues” (quoted at *McFarlane*, *ibid.*, [17]). Lord Carey has also intervened in the press, arguing that a *de facto* blasphemy law is operating in Britain as a result of a reluctance on the parts of the press to criticise Islam (*Sunday Times*, 11 January 2015, available at: http://www.thesundaytimes.co.uk/sto/news/uk_news/National/article1505845.ece. (accessed 31 January 2016)).

⁶⁸ “Muslims Call For Blasphemy Law In UK And UN To Prevent Repeat of Anti-Mohammed YouTube Film” on *The Huffington Post* for 25 September 2012, available at: http://www.huffingtonpost.co.uk/2012/09/25/muslims-blasphemy-law-uk-un-mohammed-youtube_n_1912004.html (accessed 28 January 2016).

the European Convention on Human Rights and Fundamental Freedoms or other international law provisions or to compare it to other legal systems which have had to grapple with many of the same problems. However, it is to be hoped that this account of blasphemy's "long and at times inglorious history in the common law"⁶⁹ has revealed something of the difficult relationship between religion and the English state and the sometimes stuttering progress towards making England a freer and more secular polity.

69 Lord Diplock in *Whitehouse v. Lemon* [1979] A.C., 633B.

