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P A P E R S  
*towards a biblical mind*

# *Blasphemy Law in the Secular State*

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## Summary

The English blasphemy law is often criticised for being anachronistic. This paper argues for a two-tier approach. This would involve the creation of a new offence of incitement to religious hatred, which would encompass all faiths, while retaining a distinct and specifically Christian blasphemy law.

## Introduction

In 1979, Mrs Mary Whitehouse proved ultimately successful in her prosecution of *Gay News* for the publication of a blasphemous libel. Many at the time were disappointed that the House of Lords had not taken the opportunity to declare the offence dead. There had not been a conviction in England for over fifty years. Such a discriminatory protection of a religious minority was felt to be an anachronism in the modern secular state, an unwarrantable restriction on the individual's freedom of expression. About a decade later, Salman Rushdie published *The Satanic Verses*, to the indignation of many Muslims both in this country and abroad. But the High Court held that the Chief Metropolitan Magistrate was correct in refusing to issue a summons for blasphemous libel. It was a straightforward application of the law as stated by Lord Scarman at the Whitehouse prosecution:

"Every publication is said to be blasphemous which contains any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ, or the Bible, or the formularies of the Church of England, as by law established. It is not blasphemous to speak of or publish opinions hostile to the Christian religion, or to deny the existence of God, if the publication is couched in decent and temperate language. The test to be applied is as to the manner in which the doctrines are advocated and not as to the substance of the doctrines themselves."

This time the protests were different. The law of blasphemy was not too wide but too narrow. Surely in our multi-faith society the religious feelings of all should be respected. Either too wide or too narrow, our law of blasphemy is generally perceived to be unsatisfactory. While recognising the need for the greater recognition of religious groups, this paper will seek to demonstrate that good arguments can still be made for retaining a specifically Christian blasphemy law.

## A Christian position

In the Bible, we find that the word blasphemy covers a spectrum of wrongdoing. "Misusing the name of the Lord" includes both cursing God and living in a manner inconsistent with one's status as the people of God (e.g. Ezekiel 36:22-23). Blasphemy also covers the taking of false oaths and other instances of profanity. But we are particularly concerned with the central case of blasphemy as cursing God. A number of important aspects of this should be noticed.

First, it is never a trivial matter. The Third Commandment carries the added warning that "the Lord will not hold anyone guiltless who misuses his name", and the offence, which was one of very few restrictions on speech, was punishable by death in the Israelite community.

Secondly, although one might have expected such a punishment in a society which rested so clearly on a covenant relationship with God, it was not restricted to members of that society. Thus, after some doubt on the part of the assembly, it is established that even the alien who blasphemes the Name must be put to death

*volume 1*

*number 4*

*december 1992*

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(Leviticus 24:10-16). God is seen carrying out the punishment himself against the Assyrian army after Sennacherib's violent abuse (2 Kings 18 & 19).

Thirdly, blasphemy is to be distinguished from heresy in that it must contain an element of violence or mockery. In mourning the desecration of the temple, the Psalmist is particularly distressed by the way in which God is reviled and mocked (Psalm 74:10, 18, 22). The apostle Peter captures this violent aspect in his condemnation of the false prophets who "blaspheme in matters they do not understand. They are like brute beasts..." (2 Peter 2:12). While the advocacy of falsehood may be a matter of discipline within the church, the sincere heretic is not automatically a blasphemer.

Finally, blasphemy is not just a matter of individual responsibility. The curses uttered on Mount Ebal are uttered against Israel as a nation if they cease to live up to their new status as the people of God (Deuteronomy 27). But the concept of national responsibility does not stop there. In the Revelation of John, the evil kingdoms of the world are represented as "a woman sitting on a scarlet beast that was covered with blasphemous names" (Revelation 17:3). Judgement occurs not only at the end of time but within time. As mankind refuses to glorify God, he gives them over to an increasing spiral of depravity and corruption (Romans 1:18-32). The consequence of despising the good authority of God is an unhappy oscillation between anarchy and tyranny. For blasphemy is the supreme expression of sinful humanity's rebellion against their Creator and rejection of their Saviour. The nation that tolerates it will not survive.

## Convincing the World

This position is problematic for the Christian legislator. The act of blasphemy operates in a vertical plane, that is, it is directed against God, and yet it results in catastrophic harm both to the individual and society. Because it requires the agency of God, the causation of this harm is visible only to the eye of faith. Thus the claims set out in the last section would be simply incomprehensible to most people in Britain today. And it is a fundamental requirement of respect for individuals created as rational beings in the image of God, however marred, that the grounds of our criminal law are at least comprehensible to those subject to them, even when controversial and violated.

The dilemma arising when the Christian conscience declares behaviour wrongful which society in general accepts has led some to abandon the battle for social reform in favour of exclusive concentration on evangelism. Only when society has turned to God can just law be enacted. While we would want to affirm the primacy of the proclamation of the Gospel, this approach is unsatisfactory. For then, if social reform is ever to be achieved, one must assume that society will indeed grow more and more Christian. In God's grace, this can, and does occasionally, happen, but this cannot be presumed upon. As a rule, Scripture suggests the contrary (e.g. 2 Timothy 3:1-4). At best there will always be a residue of unbelievers to whom an argument based on the agency of God will be incomprehensible. Secondly, one might doubt whether just laws will simply appear given a largely Christian society. The abolition of slavery was undoubtedly made easier by the eighteenth century revival, but it still had to be fought for – and, sadly, amongst many who saw themselves as following the same authoritative Scripture. The obligation to be salt in our communities is expressed in the search for arguments which, while they may not be the compelling motives for our concerns, are nonetheless sound ones which the majority of people can assent to. The rest of this paper will examine some such arguments.

## A brief survey of justifications

Not surprisingly, this tension between the Christian case for blasphemy law and the need to justify it to unbelievers can

be seen in the variety of justifications of the present offence. A justification that was often used, particularly around the end of the eighteenth century, was that an attack on Christianity was an attack on general morality; the one could not survive without the other. This was often linked with the idea that a blasphemous statement somehow endangered the faith of the intellectually weak.

Around the start of this century there were judicial hints of a need to find a threat to public order in the statement. On this view, the law of blasphemy prevented civil unrest among the (largely) Christian population.

But the growing, and now predominant, rationale is that the material is "calculated...to outrage and insult the Christian's religious feelings" (per Viscount Dilhorne in *R. v Lemon*). This is a type of harm which the law will not permit.

Finally, one must note the original justification for criminalising blasphemy which was, in Sir Matthew Hale's memorable words, that "Christianity is part of the law of England...to reproach the Christian religion is to speak in subversion of the law". (*R. v Taylor* 1676).

We can therefore summarise the potential justifications for a blasphemy law as follows: support of society's moral code, protection of the intellectually weak, prevention of public disorder, protection from outrage and insult, and maintenance of the law. These must be considered in greater detail.

## The support of society's moral code

It is plain that this argument will be extremely controversial. Most would want to maintain that morality is possible without, or is in some way prior to God. It no longer appears obvious that without God there can be no moral imperative. For instance, philosophers such as J. L. Mackie argue strongly for a system of ethics which depends solely on reason interpreting the human condition. But since I am, presumably, free to be irrational, in what sense am I bound to be morally upright, even when I am capable of establishing what that requires? Reason, intuition, social practice and the criminal process are no substitute for the all-seeing eye of a just and powerful God. Perhaps without God everything is indeed permissible. So there is still currency in the argument from morality, but few at present will be convinced by it.

## The protection of the intellectually weak

This argument had only a short currency, and for good reasons. It is true that the law does try to protect members of society from the persuasive presentation of some ideas, for example in regulating advertising. This cannot apply to matters of faith. For one must then assume that the faith of less intelligent people is weaker than that of the more intelligent. But the connection between faith and intelligence simply does not exist (1 Corinthians 1:26-28).

## The prevention of public disorder

The problem with the public disorder and offence justifications is that they are speech-content neutral. In other words, they look solely to the effect the speech is likely to have on others regardless of its intrinsic merit. They have nothing particularly to do with blasphemy, and if found convincing would lead to protection for all religions. Using public order reasons to justify restrictions on expression is always dangerous, because the person primarily responsible is the rioter. No-one ever has to riot because he is told to. In addition, there should always be a concern about the heckler's veto, lest a person's right to speak is controlled by the intolerance of his audience. Nonetheless, the law is quite restrictive of speech on the grounds of public order. At its most extreme, anyone who uses threatening, abusive or insulting words or behaviour within the hearing or sight of any person likely to be caused harassment, alarm or distress is guilty of an

offence (Public Order Act 1986 s.5). This is already wide enough to cover speech with religious overtones.

### **Arguments from outrage and insult: Incitement to religious hatred**

The argument from offensiveness is generally perceived to be the most convincing argument for restrictions on blasphemous speech. But Muslims were as much offended by *The Satanic Verses* as Christians by Professor Kirkup's poem in *Gay News* – what they heard about it. As Lord Scarman recognised, if offensiveness is the only rationale, there would be good grounds in a multi-faith society for a multi-faith blasphemy law. But such a position is only possible if the relevance of the content of the speech, rather than its manner, is so suppressed as to be almost non-existent. The question then becomes whether the offensive speech is orientated against "religions", a broad and hazy category, not "Christianity", which is relatively easy to define. And again, it cannot be blasphemous both to assert and deny that Jesus of Nazareth is the Son of God. The law would then have started to use "blasphemy" in a sense too far removed from current practice. For "blasphemy" is inextricably linked to exclusive truth-claims. And if the content is indeed irrelevant, are we not talking about another offence altogether, such as obscenity? For as we have seen, blasphemy in the Bible is concerned with a vertical man-God relationship not a horizontal one between people. The offensiveness argument is concerned precisely with this latter relationship:

Some legal theorists would indeed like to see potential cases of blasphemy dealt with under the obscenity laws. In a liberal democracy, people must be thick-skinned enough to withstand whatever criticisms are made of them and their beliefs. Thus under the United States constitution, a restriction on speech by virtue of its content is not permissible. The law will only intervene when the manner of speech becomes unacceptable – that means, primarily, obscene.

But this line of reasoning underestimates the strength and nature of religious commitment. Christians stand together with those of other faiths at this point. For the sceptic, one's religion is essentially a matter of uncontrolled, and thus arbitrary, choice. But from within a religion, the commitment stems from a recognition of the truth. Unbelievers are blind, not mistaken. One's own faith cannot simply be changed at will. In addition, at least in the religions of Islam, Judaism and Christianity, an attack on God is peculiarly personal to the believer in a way that an attack on a philosophy or ideology is not. These two characteristics of irrefutability and personality demonstrate that one's religion is far more akin to one's race than, for example, one's career. This provides a strong case for the introduction of an incitement to religious hatred law similar to the present racial hatred laws. It is foolish to deny that British Muslims form any less a homogeneous grouping than Jews simply because they do not come from one ethnic stock.

Now the title of the offence of incitement to racial hatred is somewhat misleading: the inspiration of the offence was the prevention of public disorder. The title gives the impression that it exists to stop one person causing a second to hate a third, but in practice it operates as a prohibition on racial vilification. Likewise the offence suggested here, although entitled "incitement to religious hatred" would operate to prohibit the vilification of a religious grouping. The reason for adopting this misleading title "incitement to racial hatred" is purely practical. The necessary legislative change could be achieved by a minor amendment to the existing Public Order Act 1986 (another misleading title!). But its motivation is nonetheless the desire to prevent the social discord engendered by gross and unnecessary insult to anybody's deeply-held religious convictions.

Of course, it is inconceivable that Salman Rushdie would ever have been successfully prosecuted under such a law.

While the boundaries are awkward to draw, his work would appear to constitute Islamic heresy rather than the vicious abuse of Islam as such. Although the people of minority faiths need to be assured that their identity as a religious grouping is recognised and respected, statements of heresy alone cannot be criminalised.

Cases of Christian religious hatred may be cases of blasphemy too. Part of the confusion noted at the start of this paper stems from the fact that in the past these two categories could be assimilated. Christianity was the only religion permitted in Britain. The Salman Rushdie affair has highlighted the need to separate them.

### **A blasphemy law – in theory**

We have already noted how a blasphemy law is primarily concerned with the content of a particular expression, and only secondarily with its manner. Many today would find any restriction on expression by reference to its content alone unacceptable. No truth-claim should be stifled in the marketplace of ideas. But this model of freedom of speech requires at least one restriction on speech. Since the concern is with truth, it requires the speech enshrining truth-claims to be answerable; that it does not, by its manner, render the recipient "dumb with outrage". Thus obscenity can be seen as the unanswerable promotion of gross violence or sexual immorality. The question is whether this is the only necessary type of restriction on freedom of speech. If it is, one must seek to explain every justifiable limitation on speech in terms of the language or visual impact of expression, and not the root idea which is being communicated.

There are two reasons for doubting whether this is possible. First, in our law we find restrictions which seem right but which cannot be justified in terms of manner alone. Instigating soldiers to desert in time of war is always a crime, however rationally and politely done. Secondly, the model of freedom of speech just outlined itself rests on certain (controversial) truth-claims. It presupposes that unrestricted discussion is a better means to the perception of truth than state-controlled, or majority-controlled, discussion. It presupposes that it is best for the individual to decide what is good for himself. It presupposes that an individual commitment to truth is, in general, more important than social harmony. But it must be stressed that these value judgements are not shared by everyone. It is thus possible that speech which challenges these presuppositions must be discriminated against in order to preserve maximal freedom of speech.

In a secular state – one that attempts to hold the balance between competing religious claims – it is clear that no one religion can be forced onto people. But a religion could be prioritised, by being awarded special protection, if it promoted the basic values on which the state itself rested. In order to maximise general freedom of speech, the state can legitimately restrict particular instances of speech that attack religions themselves committed to that freedom.

### **Maintaining the law: modern-style Christendom**

This conclusion points us back to the oldest rationale for criminalising blasphemy: that Christianity is part of the law of England. We can now recast that argument in the form outlined above. The state is justified in prioritising Christianity to the extent that there is a coincidence between the values underpinning the modern secular state and those promoted by Christianity.

To mount an argument that Christianity and the law still have this special relationship is going to be controversial. A vigorous exponent of this view was Lord Denning<sup>1</sup>. Nor would we want to claim that the present law approaches a per-

<sup>1</sup> Denning, A. T. (Baron), *The Influence of Religion on the Law*, Earl Grey Memorial Lecture No. 33, Kings College, Newcastle upon Tyne, 1953.

fect embodiment. While the history of Britain would lead us to expect such a relationship, this understanding is generally weakened by the belief that the modern state is value-neutral, that freedom of expression and religious toleration, to name but two ideals, somehow grow out of scepticism, or a bare commitment to treating individuals equally, whatever that means. Such a claim must be open to serious doubt.

To demonstrate the presence of Christian values in the law would be a lengthy process, so a few comments must suffice. One could point to the fact of religious toleration itself, which can only find a secure home in Christianity (see the first and third papers in this series). The tension we find in Scripture between individual responsibility and individual helpfulness can be seen mirrored in the blend of free enterprise and welfare state, however much we might disagree exactly where the boundaries should lie. Concern for the economically weak has led to careful regulation of potential exploiters. Equality before God is seen in the ideal of equality before the law, however hard that is to achieve. Elements of procedural justice, which are still neglected the world over, appear already in the trial of Adam and Eve (*audi alteram partem*: the accused should always be heard) and throughout the Old Testament, for example in the need for two concurring witnesses. The list is endless. The abusive denigration of Christianity will ultimately undermine the freedom of people to disagree about matters of faith at all.

For an example of this we need only look to the states of the former Communist bloc. A commitment to economic equality coupled with atheism led to a loss of freedom not just for Christians and those of other faiths, but also for intellectuals, scientists and artists alike. What the Western countries have to offer these states is not Capitalism, but an uninterrupted, albeit declining, heritage of Christian values. Market economies coupled with atheism are no better substitute for the old order and will only lead to similar bondage. One's quality of life can be as impoverished in a corporation as in a collective.

Given that Christianity could plausibly be prioritised in the secular state in this way, what about other faiths? This would have to be done by legislation. There could be little problem with Judaism, although the need is not so pressing, since Jews qualify for protection under the racial hatred laws.

The vexed question is undoubtedly that of Islam, the problem being compounded by the wide diversity of views within it. While most British people could identify with the high moral standards enshrined in Islam, other features, such as the role of women, would be unacceptable. And since conversion to Islam is largely a matter of correct form, rather than correct relationship, it cannot share Christianity's commitment to religious toleration. The subversion

of our democratic process by the formation of the so-called Muslim Parliament is also profoundly disturbing. One must conclude that an offence of incitement to religious hatred outlined above provides as much protection as we can afford to give.

However, even if protection for a faith other than Christianity is justified on value-supporting grounds, we are still left with the problem that what will be prosecuted will not be blasphemy. Blasphemy is inextricably linked to a creed. Where two creeds conflict, to vilify both might be unjustifiable, but it cannot be blasphemy in both cases.

## Various objections

The most common objection to our conclusion is that the state ends up fighting the church's (or God's) battles. This is misconceived, for the state is reacting out of pure self-interest in protecting its own underlying value-system. Nor is a blasphemy law counterproductive in that it will produce "martyrs for the truth". This danger cannot be denied, but it would be caused primarily by the present lack of a requirement of intent to blaspheme. One can be punished merely for publishing a statement which happens to be blasphemous. The biblical understanding, with its element of mockery, surely requires an element of intent. In addition, the main purpose of a blasphemy law is not to pillory individuals, but to act as a restraint on publication and a statement of the country's common values. As now, one would hope that prosecutions would be rare.

## The way forward

The ideal way forward would therefore seem to be this. A law should be introduced protecting all recognisable religious groups from threatening, abusive or insulting words or behaviour used with the intent to outrage, or likelihood of outraging, the feelings of a significant number of the group. Exactly what a religion is has to be left to the courts to decide on a case by case basis. Such an exercise has been done before in the case of charity law, and the vast majority of instances are obvious. The simplest way of achieving this reform is to insert the word "religious" into the relevant sections of the Public Order Act 1986, containing the existing offence of incitement to racial hatred.

The old offence of blasphemy should not be simultaneously abolished, but left as a largely symbolic reminder of the Christian basis to our law. For the British secular state ignores both the power of religious commitment and its heritage of Christian values at its peril. The Christian community too must fulfil its God-given obligation to be the salt of social justice. If we do not, we cannot complain if we lose the privileges we once had (cf Matthew 5:13).