A New Reason For Blasphemy Reform – Part I

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The 1978 Committee Against Blasphemy Law

In this three-part article I put forward (not for the first time) the proposal that the offence of blasphemy or blasphemous libel be abolished in English law. Since I am nothing if not practical I also propose a practicable way in which this might be achieved; in fact two ways.

The first time I proposed in public that the crime of blasphemy be abolished in English law was in 1978. A document titled "A Statement Against Blasphemy Law" was published by the Committee Against Blasphemy Law (of which I was a member) on 8 January 1978. The Committee was set up following the conviction in 1977 for blasphemous libel of the editor and publishers of the journal *Gay News* in a private prosecution brought by the late Mary Whitehouse. The journal had published a poem by James Kirkup, "The Love that Dares to Speak its Name". This recounted the homosexual fantasies of a Roman centurion as he removed the body of Christ from the cross, in which he described in explicit detail acts of sodomy and fellatio with the body of Christ immediately after his death and ascribed to Christ during his lifetime promiscuous homosexual practices with the Apostles and other men. The defendants were convicted by 10-2. On appeal to the House of Lords the conviction was upheld by 3-2. The principal points of law established were (1) it was irrelevant whether the defendants really intended to blaspheme, (2) it was irrelevant that there was no "attack" on the Christian religion.

The document titled "A Statement Against Blasphemy Law" said that its signatories, who included over twenty members of both Houses of Parliament including Lord Gardiner, a former Lord Chancellor, deplored the *Gay* News convictions. It went on:

> "This was the first successful prosecution for the 'crime' of blasphemy in over 50 years, and it demonstrated that the common law can be a device by which censorious elements can, by using the courts, impose their standards on all. The common law offence of blasphemy is clearly a threat to freedom of expression in religious, literary and artistic matters. So long as it is possible . . . for litigious persons to initiate legal proceedings for blasphemy or blasphemous libel, the threat of prosecution, often resulting in crippling financial outlay and even the danger of imprisonment, will hang over artists, writers, journalists, publishers and commentators. This is intolerable in a free society."

The statement said that the removal of statutory provisions regarding blasphemy by the Criminal Law Act 1967 and the Statute Law (Repeals) Act 1969 had been welcomed by freethinkers and libertarians, who did not believe that the common law offence merited further attention from reformers; and added that the *Gay News* case had highlighted the urgent necessity to deal with this anachronism. The signatories feared that attempts would be made to extend blasphemy law to protect other forms of religion in addition to Christianity. Such a proposal might appear to be just and reasonable, but "would encourage zealots of other religious faiths to exploit this obsolete law". The statement ended:

> "The result would be to increase the divisions between the religious and radical groups within the community. A more satisfactory solution would be to recognise the pluralist nature of our society and to abolish the offence of blasphemy altogether."

The Hon. Secretary of the Committee Against Blasphemy Law, W. McIlroy, said the supporters of the statement covered a surprisingly wide spectrum of opinion, adding "it is significant that people like A. E. Dyson and Michael Duane, Francis Bennion and Peter Hain, and Brigid Brophy and the Dean of Manchester, should join forces on this important issue". The report concluded by saying that at a meeting of the Committee on 22 January 1978 various people had spoken. My own contribution is described as follows:

> "Francis Bennion, speaking as a lawyer, commented on the legal aspects of blasphemy law as it had been used in the past and in the *Gay News* case. No-one would enact such a law now, he said. A disturbing feature of the case was the way the normal committal proceedings were by-passed. Another strange aspect of the trial was that expert evidence was not allowed. A change in the law was important . . . and a relevant Bill was being introduced into the House of Lords by Lord Willis in the near future. Extracts of the poem were read by Mr Bennion on the ground that people had a right to know what the poem was about. 'This antique law' he added, 'is an unwarrantable interference with free speech and communication'."[1]

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What happened to Lord Willis's Bill, which he introduced into the House of Lords in 1978? I will go to an unexpected source to tell you. Among the many groups shocked by Mrs Whitehouse's successful *Gay* News prosecution were the British Buddhists. One of them, D. P. E. Lingwood, a convert who had adopted the name Sangharakshita, wrote of the position following the convictions in that case:

> "This is a state of affairs that gravely concerns every Buddhist in the land. It is well known that the notion of a personal God, the creator and ruler of the universe, has no place in the Buddha's teaching . . . Under the present interpretation of the law any Buddhist bearing witness to the truth of this fundamental tenet of Buddhism . . . runs the risk of committing the crime of blasphemy – even though the offending words were spoken [by the Buddha] five hundred years before Christianity was born."[2]

As for Lord Willis's Bill, Sangharakshita reported that it was withdrawn without a vote after strong opposition from their Lordships "like the baying of distant wolves". He added:

> ". . . no Buddhist, no non-Christian in fact, can feel really safe so long as the blasphemy laws remain unrepealed. The baying of wolves, however distant, is not a very reassuring sound to more pacific beasts."[3]

To explain where we are now, I need to give some historical background about the treatment of blasphemy in English law.[4] We can distinguish three periods:

1. Pre-Reformation.
2. The Court of High Commission 1559-1640.
3. The common law period.

Pre-Reformation

We start of course with the Bible. God said to Moses:

> 'And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God

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[1] *The Freethinker* Vol 98 No 1, January 1978, pp. 1, 24. For the full report see http://www.francisbennion.com/pdfs/non-fb/1978/1978-003-nfb-supportforblasphemylaw.pdf http://www.francisbennion.com/pdfs/non-fb/1978/1978-005-nfb-blasphemy-meeting.pdf

[2] *Buddhism and Blasphemy* (London, Windhorse Publications, 1978), p. 7.

[3] Ibid, pp.8-9.

[4] The historical excursus that follows is based on a lecture, not previously published, which I delivered at the Ross McWhirter Foundation's Dicey Trust conference on Religion and the Rule of Law at St Edmund Hall Oxford on 13 March 1990. (See www.francisbennion.com/1990/006.htm)

> shall bear his sin. And he that blasphemeth the name of the Lord, he shall surely be put to death, and all the congregation shall certainly stone him: as well the stranger, as he that is born in the land, when he blasphemeth the name of the Lord, shall be put to death.'[5]

Jesus himself was often accused of blasphemy. When they brought to him a man sick of the palsy, Jesus said: "Son, be of good cheer; thy sins be forgiven thee". Whereupon "certain of the scribes said within themselves, This man blasphemeth".[6]

These two instances show two different aspects of blasphemy, which we shall find recurring. The first shows what is also called profanity, cursing the name of God. The second is more to do with doctrine. By claiming the right to forgive sins, Jesus seemed to the Jewish scribes to be usurping the power of God. His claim was heretical in the context of the Jewish faith, though of course it was orthodox in relation to what came to be known as Christianity. We can also distinguish between early treatment of blasphemy as an offence injuring God, and later treatment of it as injuring (1) religion as a social institution, (2) individuals or groups of believers, and (3) the fabric of the state.

Historically blasphemy, literally evil speaking or name calling, in most if not all its forms can be looked on as a species of heresy. So too can such sins as apostasy (renouncing the faith), sorcery, witchcraft, perjury and cursing (using God's name in vain). The word heresy comes from a Greek word meaning to choose. The orthodox obediently follow the course laid down by the practice and authority of the Church; the heretical choose to adopt the doctrine or practice that suits them, even though it is condemned by the Church. The freethinker is a heretic because he insists on choosing for himself what he will believe. The atheist is a heretic because he has no belief. Thomas Aquinas equated heresy in all its forms with unbelief.

The whole course of the Christian church up to the Reformation showed the Pope and the Church Councils striving to lay down right doctrine in the face of constant attempts by various heretical groups to go off and follow lines of doctrine of their own. Complying with God's command to Moses, the Church punished all such attempts in whatever form they occurred. Its reason for doing so was concern for the souls of its flock.

So what was the treatment of blasphemy in English law? This question forces us to ask what in this context we mean by English law. The answer is different for different periods. In the Anglo-Saxon period there was little distinction between church law and state law. The bishop sat on, and often presided over, the shire court along with the elders. His archdeacon sat on the hundred court. The law administered by these courts was both clerical and secular.

Then came the Norman Conquest. This introduced the feudal system to England. Manorial courts were set up. Towns became important, and were equipped with their own borough courts. William the Conqueror sent round the country his own travelling judges, known as justices in eyre, to try grave crimes and important civil causes. He decreed that church courts must be separated from royal and other state courts. Separation of the church court from the secular court had been emphasized when in about 1072 the Conqueror decreed that no bishop or archdeacon should hold pleas in the hundred court, but in a place named by the bishop. In 1164 the Constitutions of Clarendon further defined the boundary between church and secular courts. The main provisions were that clergy charged with crimes should be tried in the king's courts, that bishops, abbots and other prelates should be subject to feudal burdens, that the king's courts should try all disputes as to advowsons and presentations to church livings, that clerks (clerics) should obey the king's summons, that land disputes between clerks and laymen should be tried by the king's judges, and that

[5] Leviticus 24, 15-16.
[6] Matthew 9, 2-3.

suits for debt should be tried by those judges even though a trust or other religious obligation was involved. In this way the king asserted his overall power in the realm. If a church court attempted to try a case where it lacked jurisdiction, the king's writ of prohibition was available to prevent it.

The medieval courts were different from each other, and the law administered in them was different. Local courts of the shire and the hundred administered local customary law. The baronial and manorial courts administered feudal law. The church courts administered civil law (derived from the old Roman law) and canon law (the developing law of the Church). The punishment of blasphemy, and other manifestations of heresy, fell within canon law. Church law could be divided into the special law which regulated the church itself, including its bishops, priests and other orders of varying ranks, and the general law which regulated the whole of the church's flock. Blasphemy fell into the second category.

The key to understanding these various jurisdictions is that in the Middle Ages each of the magnates (that is earls, barons and knights, bishops and abbots) possessed a power, usually conferred by royal charter or papal decree, to decide disputes among his retainers. A similar power was possessed by borough and other local courts. In Oxford the Chancellor of the University possessed such a power by the 1250s. Clerks could be tried by the Chancellor for offences short of homicide or theft, they being prohibited from seditious pacts and factions, night prowling, poaching, loitering after curfew, games which led to quarrels, or the temptations of women of ill fame.

At this time the king's courts began to develop what came to be known as the common law of England. During the thirteenth century the English common law assumed its lasting shape, the king became accepted as the fount of justice, and the kings' courts began to assert the supremacy they still have over all other courts. The one exception was the High Court of Parliament. Though in the Middle Ages that too was in a sense, as it still is, one of the monarch's courts, it was jealous of the royal power, jealous lest new writs, new forms of procedure, should mean new laws made without its approval. Its growing assertion of the power to legislate provided yet another source of law: statute law.

So we have the situation, in that formative period the thirteenth century, that the king's courts are coming to control all other courts, including the church courts, and Parliament by its enactments is coming to control even the king's courts. The enactments are however still very fragmented, covering only a small proportion of the law. In considering the treatment of blasphemy in this period we must remember that in the Middle Ages the whole of Europe, including the British Isles, constituted what was called Christendom. Under the Pope, backed by the Church Councils he called from time to time, there was an undivided *union of faith* to which the Jews were the sole exception.

In this period the general law of the Church was the same throughout Christendom. It was administered informally by all officers of the Church, from the Pope downwards. Under this church law, blasphemy was regarded as a mortal sin. The local church court was the court of the archdeacon for the area, who acted as the bishop's deputy.

In Part II of this article, to be published in next week's issue, the historical account of blasphemy law is concluded. Part III, to be published the following week, surveys connected issues, particularly the Government's Racial And Religious Hatred Bill, and gives an account of the two alternative ways in which blasphemy law abolition might at last be accomplished.