

## ***Article in Justice of the Peace***

Page 448

### **Farewell to the Blasphemy Laws**

**FRANCIS BENNION\***

#### **Introductory**

*The Old Testament is wretched stuff and a disgrace to orang-utans.*

If I had made the above bold statement in last week's issue I would, on the authority of an 1841 case<sup>1</sup>, have been liable to be convicted of, and punished for, the common law offences of blasphemy and blasphemous libel (and so would the publishers of this journal). All is well, however. Since last week's issue was published those offences have been abolished by the Criminal Justice and Immigration Act 2008<sup>2</sup>. I described the history and nature of the offences in a three-part article in 2005<sup>3</sup>. Now I perform the obsequies.

My 2005 article was titled "A New Reason for Blasphemy Reform". The reason in question was the Racial And Religious Hatred Bill then passing through Parliament. At the end I said:

"The obvious way to achieve reform of the law on blasphemy is for the House of Lords to add to the Racial And Religious Hatred Bill, when they consider it in the autumn, a consequential provision abolishing the common law offences of blasphemy and blasphemous libel<sup>4</sup>."

The House of Lords did not oblige at that time, but they did do what I had suggested when considering three years later the Criminal Justice and Immigration Bill 2008. Here is the story.

#### **History of Blasphemy Reform**

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. "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 and said that Parliament should recognise the pluralist nature of our society and abolish the offence of blasphemy.

In 1981 the Law Commission published a Working Paper on blasphemy law reform<sup>5</sup>. In 1985 the Commission published a report recommending that the common law offences of

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<sup>1</sup> Cited by Baroness Andrews, Parliamentary Under-Secretary of State, Department for Communities and Local Government, Lords Hansard, March 5 2008, col. 1119.

<sup>2</sup> Sections 79, 149, and 153(2) and Sch. 28. The abolition took effect on Tuesday July 8, 2008.

<sup>3</sup> 169 JPN 588, 609 and 629, <http://www.francisebennion.com/2005/044-046.htm>

<sup>4</sup> Page 631.

<sup>5</sup> Law Commission W.P. No. 79, Offences against Religion and Public Worship.

blasphemy and blasphemous libel be abolished and not replaced<sup>6</sup>. The impact of the report was blunted by the fact that of the five commissioners a minority of two (including the Chairman of the Commission Ralph Gibson J) dissented, so not surprisingly the report was not implemented. However, it did contain an important suggestion:

“ . . . abuse or insults directed at the beliefs or practices of a particular religion may in substance amount to an attack upon adherents of that religion because of the views they hold . . . if such attacks appear to be or become a real social problem, the appropriate response in our view is not to extend the law of blasphemy but rather to adapt the present offence penalising the publication of matter likely to arouse hatred towards persons on account of their race so that it would penalise publication of matter likely to arouse hostility to others on account of their religious beliefs.”

My 2005 article took up this suggestion in relation to the Racial And Religious Hatred Bill then before Parliament. This proposed to extend the race hate offences in Part III of the Public Order Act 1986 to cover stirring up hatred against persons on religious grounds. The article concluded:

“ . . . it seems that the Government are determined to put their Racial And Religious Hatred Bill on the statute book. That being so, we are in a new situation as regards the abolition of blasphemy offences. As the title of this article suggests, there is a new reason for blasphemy reform. The arguments for the reform were already strong. Now they are overwhelming. Even after the reform has been carried out there will in future still be protection for Anglicans, however unnecessary. Only now there will also be protection, however misconceived, for holders of other beliefs as well.”

The Bill was enacted as the Racial And Religious Hatred Act 2006. As I have said, the Act did not include my proposed amendments. That did not of course prevent their addition to it at a later date. As mentioned above, this is what has now happened.

### **Parpworth Article**

I must at this point bring in the article “The Abolition of the Blasphemy Laws” by Neil Parpworth, which was published in these columns earlier this year.<sup>7</sup> The article updated my three-part 2005 article. It described the 2007 case of *R (on the application of Green) v City of Westminster Magistrates’ Court*<sup>8</sup> which concerned the unsuccessful attempt to bring a private prosecution for blasphemous

*Page 449*

libel against the producer of “Jerry Springer: the Opera”. It also noted that on January 9 this year, in the Commons proceedings on the Criminal Justice and Immigration Bill 2008 (mentioned above), the Liberal Democrat MP Dr Evan Harris, put down an amendment which sought to abolish the common law offences of blasphemy and blasphemous libel. Mr Parpworth gave Dr Harris’s reasons for advocating abolition, including that the blasphemy law only protects the religious beliefs of the Church of England, as confirmed in *R v Metropolitan Stipendiary Magistrate ex parte Choudhury*<sup>9</sup>. In this case the Divisional Court upheld a first instance decision not to issue summonses against the author and publishers of Salman Rushdie’s *The Satanic Verses* for the offence of blasphemous libel.

Mr Parpworth noted that the amendment moved by Dr Harris enjoyed cross party support in the House of Commons. At the end of the debate, however, he did not press his new clause to a division. His reason was that in responding on behalf of the Government Maria Eagle MP, Parliamentary Under-Secretary of State at the Ministry of Justice, agreed that it was high time that Parliament reached a conclusion on the issue. The Government accepted that the offences

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<sup>6</sup> LAW COM No. 145, Offences against Religion and Public Worship.

<sup>7</sup> Page 164 *ante*. For the text see [www.francisbennion.com/2008/nfb/001.htm](http://www.francisbennion.com/2008/nfb/001.htm).

<sup>8</sup> [2007] EWHC 2785 (Admin).

<sup>9</sup> [1991] 1 All ER 306.

had largely fallen into desuetude and that they appeared to be moribund. Accordingly, it had every sympathy for the case for formal abolition. However, before bringing forward an abolition amendment when the Bill reached the House of Lords, the minister stated that the Government wished to conduct a consultation with the Anglican Church, given that it would be particularly affected by the abolition of the offences.

Although Mr Parpworth did not mention this, there was some opposition in the Commons to the abolition of the blasphemy laws. Miss Ann Widcombe MP, a former Home Office minister, said that within the last two years the European Court has ruled first that countries may have blasphemy laws, and secondly that those laws are permitted to apply to one religion and not to others. Roger Gale MP asked why it is wrong to protect the tenets of the Church of England, the nation's established church. Mark Pritchard MP alleged that the abolitionists were using arguments by stealth for the eventual disestablishment of the Church of England. Angela Watkinson MP asked Dr Harris if he did not recognise that "gratuitously and grossly offensive material, of a sort that would never be tolerated or permitted against the Prophet Mohammed, is routinely published against the Christian religion".

This brings us to the proceedings in the House of Lords on the Criminal Justice and Immigration Bill 2008.

### **House of Lords Proceedings**

The amendment to abolish the blasphemy laws was moved by Baroness Andrews, Parliamentary Under-Secretary of State at the Department for Communities and Local Government, which she described as the department that promotes social cohesion and matters of faith. She said there were two key reasons for the abolition:

"First, the law has fallen into disuse and therefore runs the risk of bringing the law as a whole into disrepute. Secondly, we now have new legislation to protect individuals on the grounds of religion and belief."

An additional objection, said Lady Andrews, is that the blasphemy offences are offences of strict liability—that is, the intention to commit an act of blasphemy is not required. That contrasts with the new incitement to religious hatred offence, where an intention to stir up religious hatred needs to be proved.

In a joint letter on the amendment, sent by the Archbishops of Canterbury and York to the secretary of state Hazel Blears MP indicating broad assent to the amendment, they had pointed out that: "The real purpose of the offences is the preservation of society from civil strife, rather than the protection of the divine or any particular religious beliefs". The modern public order legislation provides sufficient protection from civil strife, which alone shows the blasphemy offences to be otiose. Lady Andrews added:

"The recognition that the offences appear to be moribund was reinforced by the High Court's decision on 5 December 2007 in the case of *Stephen Green v City of Westminster Magistrates' Court and others*, which was a private prosecution for blasphemous libel. The court's primary judgment was that the Theatres Act 1968 and the Broadcasting Act 1990 now already prevent the prosecution of a theatre, the BBC or another broadcaster for blasphemous libel."

In her reply to the letter from the Archbishops, Hazel Blears said that abolition of the blasphemy laws "should not in any sense be interpreted as being further indication of a drift towards a secularisation of society", but Baroness O'Cathain pointed out that Dr Evan Harris, the moving spirit behind the amendment, had circulated a letter saying that the amendment should be seen as a secularising measure, and with pride. "I believe the Church of England has been duped", she went on. Abandoning the blasphemy law paves the way for a much greater assault on our Christian inheritance: "once something like this is pulled away, the

whole edifice will collapse”. Lord Kingsland said: “Secularisation will bleach from our memories the inextricable link between Christianity and so much of value in our society and in our system of law and government”.

Several other peers feared that abolition of the blasphemy laws would damage the valuable message of Christianity. The Archbishop of York said:

“It was the Venerable Bede in his *Ecclesiastical History of England* who wrote of the way in which the Christian faith played a major socialising and civilising role by uniting the English and conferring nationhood on them, turning this land from a nation of warring tribes into one of united purpose.”

He added that the common law offence of blasphemy served four ends: the protection of society in the sense that it is important that religion, or at least the Christian religion, be treated with respect; the protection of public order; the protection of the bonds that hold society together in a more general sense; and signalling the fact that the Christian religion holds a special place within the social and constitutional fabric of the nation. How were we going to guard these if the offence were abolished?

*Page 450*

Lord Elystan-Morgan said he supported abolition only because free speech was nowadays given priority. No one would wish to prosecute even extreme language such as that in *The God Delusion* by Professor Dawkins. The author speaks of the God that we as Christians worship and states that He is, “a petty, unjust, unforgiving control freak; a vindictive, bloodthirsty ethnic cleanser; a misogynistic, homophobic, racist, infanticidal, genocidal, filicidal, pestilential, megalomaniacal, sadomasochistic, capriciously malevolent bully”.

Lord Elton said of Lord Elystan-Morgan that his principal objection to the present law was that it is cluttering the statute book. He added, in words striking chill to reformers like myself:

“I have yet to discover what harm is done by clutter on the statute book. It may incense people such as the noble and learned Lords, but it does not disturb most of us.”

How true – and how unfortunate!

The Bishop of Portsmouth said the present law may be unworkable but it has symbolic value. Lord Elton agreed, saying it has “enormous symbolic importance”. People who fly against that, he said, fly against the nature of this country, which is under attack from a whole mass of different pressures. “It is simply unnecessary and unwise to add to that now.” Lord Armstrong also agreed on the symbolic significance of the amendment:

“The fact that one has not had a flood for a very long time does not mean that one should destroy the floodgates. My fear is that the removal of this provision will be seen as encouraging people to make outrageous statements that are needlessly offensive to a great many people.”

I conclude with the Bishop of Durham, who put a different view. He reminded their Lordships that Jesus Christ had preached non-resistance by Christians to the church’s enemies. He cited Edward Shillito, one of the First World War poets:

“The other gods were strong; but Thou wast weak;  
They rode, but Thou didst stumble to a throne;  
But to our wounds only God’s wounds can speak,  
And not a god has wounds but Thou alone”.

**Postscript**

Some may think that in this article I have indulged in excessive quotation from parliamentary speeches. They may be interested in the following said by Baroness Park of Monmouth in the House of Lords debate:

“We have to remember that the ordinary person out there does not read *Hansard* and that the press will certainly not report this debate except in some mischievous and irrelevant way.”

I have tried to report it in a fair and balanced way, because that is what I believe readers would want.