

**THE INTERNATIONAL COMMITTEE
FOR THE DEFENCE OF SALMAN
RUSHDIE AND HIS PUBLISHERS.**

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The International Committee for the Defence of Salman Rushdie and his Publishers has prepared this report as a contribution to the debate in Britain over the future of the blasphemy law.

The Muslim community in Britain has thought to invoke the laws on blasphemy in their campaign to suppress *The Satanic Verses*, Distress over the novel can only have been increased with the discovery that the existing law protects Christianity alone and not other faiths such as Islam.

Such discrimination in the law is unacceptable in a democratic society which should guarantee freedom for all religions as well as systems of humanist belief, atheistic or agnostic. But the proper course is not to extend the blasphemy laws to other faiths rather as this pamphlet argues, it is to abolish the offences of blasphemy and blasphemous libel outright. Freedom of religion can only be fully ensured if all faiths are treated equally before the law and if none may invoke the power of the state to deter criticism or challenge to their beliefs.

Tolerance, understanding, acceptance and respect for the diversity of faiths and beliefs in modern Britain or elsewhere in the world cannot be secured by the threat of criminal prosecution and punishment. The depressing history of the persecutions of writers and thinkers in Britain, who questioned in their day the tenets of the Christian religion, as recounted in this short study, should never be repeated. Freedom of religion and freedom of expression may need to find a new accommodation. This can only be achieved through dialogue. It will not be achieved at the Old Bailey.

This pamphlet sets out the case for abolition of the crime of blasphemy in the interest of equal treatment of religious belief as well as freedom of expression. If you as a citizen are persuaded by its argument, write to your MP and call for the abolition of these offences in this parliament.

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1. INTRODUCTION

The International Committee for the Defence of Salman Rushdie and his Publishers believes that the common law offences of blasphemy and blasphemous libel in Britain should be abolished by Parliament. The Committee disagrees with the demand by Muslims that the law should be extended to cover non-Christian religions such as their own so that under a revised law Salman Rushdie's *The Satanic Verses* could be banned. The Committee also supports the abolition of blasphemy laws in all other countries.

The view of the Committee is that the law as it stands is already an unacceptable infringement of freedom of expression and that an extended law would be even more so. We accept that the present law is discriminatory against non-Christians, and see this as an additional reason for its abolition. We also consider that the law as it stands violates the European Convention on Human Rights - a further reason why Parliament should act now and abolish the offence.

We set out below:

- 1) The case for abolition of the law as it stands;
- 2) The case against replacing the law with a new (statutory) offence which includes other religions besides Christianity;
- 3) The history of the blasphemy law in the United Kingdom.

We draw extensively in our argument on the Law Commission Report *Criminal Law: Offences against Religion and Public Worship* (1985). This report, which recommended abolition of the common law offence "without replacement", is in our view a cogent and wide-ranging summary of the issue. It is a tragedy that the recommendation was not implemented by the Government. Had it been so, some at least of the heat might have been taken out of the controversy surrounding *The Satanic Verses*, and a very real and legitimate grievance of the Muslim community would have been removed.

2 "AN UNSATISFACTORY AND ARCHAIC OFFENCE"

2.1 The law is discriminatory

The Law Commission report of 18 June 1985 described the common law offences of blasphemy and blasphemous libel as "unsatisfactory and archaic".

It noted the following definition of the offence which was given by the trial judge in the case of *Whitehouse v. Lemon* ('the *Gay News* case'):

"Blasphemous libel is committed if there is published any writing concerning God or Christ, the Christian religion, the Bible, or some sacred subject, using words which are scurrilous, abusive or offensive and which tend to vilify the Christian religion (and therefore have a tendency to lead to a breach of the peace)." [1]

On the basis of this definition and the history of the use of the law, the Law Commission noted, "the offence protects only the Christian religion, together with the rituals and doctrines of the Church of England."

There is now a widespread and, in our view, justified opinion that this aspect of the law can no longer be defended in a society of diverse cultures and religions such as exists in the United Kingdom today. It is this aspect which Muslims have focused on in the wake of the publication of Salman Rushdie's *The Satanic Verses*. Muslims have argued rightly that a law that protects Christianity from insult but does not protect their religion (and others) from insult is inherently discriminatory.

In 1949, Lord Denning said:

The reason for this law was because it was thought that a denial of Christianity was liable to shake the fabric of society, which was itself founded on Christian religion. There is no such danger to society now and the offence of blasphemy is a dead letter."

In the pluralist, multi-racial and multi-cultural United Kingdom of the late twentieth century, this is more true now than ever.

As the Law Commission put it:

'In the circumstances now prevailing in this country, the limitation of (the law's) protection to Christianity and, it would seem, the tenets of the Church of England, could not be justified."

It is our view that on these grounds alone, even if no others existed, the law in its present form should be abolished. There are, however, several additional reasons why the law is unacceptable. It is important to state these reasons because they would almost certainly continue to apply to any new offences which were instituted in an attempt to remove the discriminatory aspect of the current law by including other religions besides Christianity in their remit.

As the Law Commission put it, the deficiencies of the law "are so serious and so fundamental that it ought not in our view to remain as it is, and no measure short of abolition would be adequate to deal with these deficiencies."

2.2 The law is unacceptably uncertain

One deficiency noted by the Law Commission is that [t]he law is to an unacceptable degree uncertain". To put it simply, it is extraordinarily difficult to define what is or is not a blasphemy, especially since what is blasphemous to some may not be to others.

A jury dealing with a blasphemy case under the present law must decide whether or not the blasphemy has been expressed in language that is "scurrilous", or "abusive" or "offensive". The Law Commission points out that "delimitation of a criminal offence by reference to jury application of one or more of several adjectives (all of which necessitate subjective interpretation and none of which is absolute) is hardly satisfactory."

One effect of this uncertainty is that it is impossible to know beforehand whether or not one is committing a criminal blasphemy. This can only be discovered after the event, according to other people's subjective interpretation of the language used.

Another effect of this uncertainty is that the application of the law has varied very considerably over time, as will be shown later. As times change, opinions of what may or may not be interpreted as "scurrilously" blasphemous will change, and indeed at any one time, different people will hold widely different views on the matter. One consequence of this is that many works of literature now accepted as of major historical significance (the outstanding example is Tom Paine's *The Age Of Reason*) have in the past been deemed blasphemous and resulted in prosecutions.

Nicholas Walter, in a Rationalist Press Association pamphlet, *Blasphemy in Britain* (1977), has stated:

"The law is unsatisfactory because it is unpredictable and unrestricted. Blasphemy has never been defined by Parliament, and it has been interpreted in widely different ways by various judges and juries to cover anything from the mere denial of Christianity to funny or frank material found offensive by sympathisers with Christianity... Almost any controversial material concerning religion could be found blasphemous. The main effect of the law is to inhibit free expression about religion in a way which is elsewhere thought to be completely unacceptable." [2]

A law based on such shifting imprecisions, the application of which is dependent on subjective interpretations that may vary widely with the times and which will be hotly disputed by those who have different subjective interpretations, is a bad law.

2.3 The Law does not take account of intent

Another deficiency noted by the Law Commission is that the offence is to an undesirable extent one of strict liability". In particular, the law takes no account of 'a mental element of all intent to blaspheme".

In other words, the defendant in a blasphemy case cannot give in evidence his or her beliefs and purposes in the piece of writing being dealt with. Nor can the defendant give in evidence its literary or other value, nor even cite the context of the blasphemy in the work as a whole, even if the spirit of the work runs contrary to the section regarded as blasphemous.

All of this, says the Law Commission, contradicts "the general principle developed during the past century that a mental element is normally required as to all the elements of the prohibited conduct both in common law and statutory crime, save in special cases of regulatory offences."

The effect of this deficiency is that a blasphemy may be committed without intent and even in the best possible faith - a situation that profoundly goes against the principle of freedom of expression.

2.4 The law's emphasis on "scurrilous", "abusive" and "offensive" forms of expression is illogical and arbitrary

A further deficiency concerns the emphasis in the law on the way the supposed blasphemy is expressed. According to many who defend the law and even argue for its extension, the purpose of the law is not to inhibit serious and considered criticism of religion expressed in measured and balanced language, but only criticism that is abusive, scurrilous etc.

Thus *Stephens Digest of Criminal Law* (9th ed., 1950) asserts:

"It is not blasphemous to speak 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 argument finds strong echoes in the current debate about *The Satanic Verses*. Freedom of expression, it has been said, should be balanced by the need to remember the feelings of others. Thus, Muslim critics of the book have been at pains to state that seriously argued criticism of Islam is acceptable, but that the gratuitous insults' etc. in Salman Rushdie's book are not. An example is the advertisement in *The Times*, placed by the Birmingham Central Mosque, which said that no-one questioned Rushdie's right to express himself, but he had no right to be vulgar, abusive or obscene. [3]

Many might agree with this as a general principle of desirable behaviour by writers and others, but as soon as the attempt is made to codify it in law, huge problems arise.

For a start, if the argument here is primarily one about the outrage to feelings caused by a publication, it is permissible to ask why the law should decide, indeed, has decided, that one form of outrage (the "scurrilous" kind) is more hurtful than another. The Law Commission points out:

"It is quite possible for a work of serious literature to induce outrage among some people and it is equally possible for rational discussion, if it be sufficiently persuasive in setting forth an unpopular argument, to induce a violently unfavourable reaction... If society would indeed suffer as a result of an absence of respect shown to religious beliefs, it may be suggested that it will suffer all the more if such beliefs are subject to destructive analysis and criticism even if temperately expressed, since reasoned persuasion is ultimately far more effective in its aim than attacks devoid of intellectual content. Yet it is precisely this type of publication which proponents of this argument are prepared to except from the ambit of criminal sanctions."

The emphasis on "scurrilous" etc. language in the law is therefore arbitrary and, as we have seen, can only be interpreted subjectively. We see no cogent reason why this factor should be considered essential in the case of criminal blasphemy when it is not considered essential for any other kind of crime (for example, defamatory libel). People should be able to discuss religion and belief in the same terms as any other subject.

2.5 To restrict the form of expression is to restrict what is expressed

The current law's emphasis in its application on acceptable and unacceptable ways of saying things does not absolve it of the charge of restricting freedom of opinion and expression.

It is clear that the blasphemy law began its life as a form of censorship, and that has remained its function. The law created boundaries round opinions that might not be expressed. Over the centuries it changed in the way it operated, but not in what it essentially did. Thus in the seventeenth century Woolston could not say that the story of Christ's miracles was an allegory (although the Bishop of Durham could say this now). In the nineteenth century Foote could not echo Tacitus and call Christianity a superstition in *The Freethinker*. In the twentieth century Professor Kirkup could not mirror physical and spiritual love in *Gay News*.

Even if it were true that the blasphemy law only criminalised some ways of expressing ideas (and [roar the cases above it does not seem that this is so] the law would still be and still is a form of censorship).

Footnote, who described himself as a comparatively unlettered artisan, argued in his case in the 1880s that to restrict him to the decencies of controversies in educated society was to silence him. What was he to know of such things? To set a standard for writing about religion which does not exist in other areas of argument is to deny to some sections of the population a right to argue about religion.

Equally important, to say that you must write differently is in practice to say that you must write about different things. The way of saying something is part of that which is said. Something said with scorn is different to something said in moderation. Bibles are not written in syllogistic logic. Whatever form, erotic, poetic, allegorical and so forth, found in other literature is also found in scriptures, Why should some forms of expression be denied to those who wish to express their feelings about religion? Any law which dictates *how* you may speak about religion will always, also, be dictating *what* you may speak about religion. Any blasphemy law will always be a heresy law.

The Law Commission in its report agrees with the argument that restrictions on the method of saying things amount to a restriction on what is said:

"Such restrictions would in particular have adverse consequences for what many would consider to be proper criticism of matters pertaining to religion and religious belief. Ridicule has for long been an acceptable means of focusing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context use of abuse or insults may well be a legitimate means of expressing a point of view upon the matter at issue. The imposition of criminal penalties upon such abuse or insults becomes, in our view, particularly difficult to defend in the context of a "plural or multi-racial, multi-religious society. Here one person's incisive comment (or indeed seemingly innocuous comment) may be another's "blasphemy", and to forbid use of the strongest language in relation, for example, to practices which some may rightly regard as not in the best interests of society as a whole would, it seems to us, be altogether unacceptable."

To put it simply, to deny Rushdie or anyone else the right to be, in some other's eyes, "vulgar, abusive and obscene" is precisely to deny him the right to express his vision of the world. And to deny him that right is to deny him the same right claimed by those others when they pursue the worship of their God. Equality demands the repeal of the blasphemy law, not its extension.

2.6 The law does not protect the faithful so much as penalise the unfaithful

Originally designed to prevent the expression of ideas contrary to the official faith of the land, the blasphemy law became modified over time to the point where it is now claimed that it solely aims to protect the feelings of believers. But in practice, it is non-believers

who are affected by the law rather than those who believe. John Spencer, writing in *The Independent*, explains:

"The crime of blasphemy is not needed to protect believers from persecution by having their services desecrated, or by being forced to listen while insults to their faith are poured into their unwilling ears, because these kinds of misbehaviour amount to a whole range of criminal offences. But what it does do is make it an offence for A to publish material to B which C, one of the faithful, feels shocked and outraged that B should see.

"When I asked for the number of *Gay News* containing the poem for which Mrs Whitehouse had brought her successful blasphemy prosecution, Cambridge University Library refused my request lest they commit the offence of blasphemy by granting it - and legally they were in the right. This is surely monstrous.

"That Mrs Whitehouse is shocked and disgusted when she reads it may be a valid ground for making it an offence to show a blasphemy to her; but how can the fact that she is shocked and disgusted at the thought of my reading it possibly justify its being an offence to show it to me, an unbeliever who shares neither her shock nor her disgust?" [4]

Believers can always avoid outrage by exercising their right not to read material which may outrage them, without recourse to law. Under the blasphemy law, however, those who may not be outraged can be prevented from exercising their right to read such material. It is the latter group who are affected by the law rather than the former.

Spencer concludes:

"That the law should enable Christians to censure other people's reading matter is bad enough. That any and every religion should also have the legal right to do so would be absolutely intolerable. Yet how can we begin to convince our Muslims that they are not second-class citizens when Christians can use the crime of blasphemy to do this, and they cannot. In the interests of free speech and religious equality, the crime of blasphemy must be abolished once and for all."

3 THE LAW SHOULD NOT BE EXTENDED TO COVER OTHER RELIGIONS

The current law on blasphemy is discriminatory because it protects Christianity from blasphemous insults, but does not protect any of the other religions practised in the United Kingdom. We consider that this discrimination violates the European Convention on Human Rights. As a solution to this, it has been proposed that the present law should be repealed, and an Act of Parliament should extend protection to other religions as well as Christianity. As already outlined, the Committee agrees that the present law should be abolished, but it is equally clear that a new law covering other religions would be an unacceptable danger to liberty, would be virtually impossible to frame and would be unworkable in practice.

3.1 The impossibility of defining religion

The principal difficulty in extending the law is that it would seem to be impossible to provide a satisfactory definition of religion for the purposes of such a law. Both the Law Commission in its report to Parliament and the Church of England in its Report on Blasphemy failed to do this in the early 1980s. What other bodies could be entrusted with the task of reaching such a definition?

To put it simply: which religions would be brought within the scope of the extended law, and which would not? Will the Unification Church and the Church of Scientology be protected? Will Rastafarianism? If not, what will be the distinction between those religions protected and those not? Will it turn on how many people they can get demonstrating in the streets? If some religions are not protected, what will be the reason for their exclusion? How will others know when they are trespassing on another's faith? And in relation to each religion, how will blasphemy be defined? Will it depend on the tenets of each faith? How will the Courts decide what the tenets of the faith are? Will blasphemy be measured by the religion or by the law? For example the Ahmadiya sect in Islam deny almost all of that which other Muslims would regard as the main features of the Islamic faith. Must a British Court adjudicate on that which is blasphemous in Islam (deciding perhaps that the Ahmadiya fail to meet the precepts of Islam)? Alternatively, having extended the blasphemy law to cover Islam, will Muslims be told that the test of blasphemy in Islam is a test of British law that pays little attention to the theological disputes of Islam; that much of what they consider offensive is still permissible under British law? If the courts are to judge blasphemy in other religions, expert witnesses must be called. Who will judge their fitness? If Christianity were under consideration, would the Bishop of Durham be an adequate witness or, rather, his detractors? How can all religions be equally treated in courts dominated by those from a Judeo-Christian background?

The Law Commission commented on its own working paper on the subject:

'The paper came to the conclusion that, while an offence of wounding or outraging the feelings of adherents of any religious group could be envisaged, it seemed impossible to construct a sufficiently precise definition of what was meant by 'religion' in this context, and that other elements would also have an unacceptable degree of imprecision; this shortcoming, in the view expressed by the working paper, fatally flawed this possible offence'

3.2 It is against the interests of religion to have the law extended

All religions, by their nature, propose beliefs which contradict the beliefs of other religions, and as such may be regarded by other religions as blasphemous. For example, the Christian belief that Jesus Christ was the Son of God may be regarded as blasphemous and hurtful by Muslims and Jews who do not believe that this is the case, while the belief of Muslims and Jews that Jesus was not the Son of God may be regarded as blasphemous and hurtful by Christians. For this reason, all religions from time to time produce writings which offend the religious susceptibilities of adherents of other religions - to say nothing of writings by free-thinkers and atheists which argue that religion itself has done harm to mankind and that people should be freed of its shackles.

Soh J. Sorahjee, writing in *The Times of India*, notes:

"A person is entitled to persuade others to accept his or her religion. In other words, it is not improper to convert a person by discourse and... by writings which are meant to convince him about the error of his religious beliefs, or lack of them..

'Such writings from their very nature are bound to hurt the feelings of different religious communities.'" [5]

Novelist Daniel Easterman, a Cornier lecturer in Islamic Studies, has pointed out:

"The problem is that some of the offending statements - some of the blasphemies - may, for other people, be true or represent valid comment on specific beliefs or life in general. We are, after all, dealing here with more

than private beliefs. Religions are also ideologies, often militant and uncompromising, and eager to convert.'" 161

Easterman comments "If such ideologies cannot be criticised, even mocked, our most basic freedoms are all at risk."

To this we can add that the freedom of religions themselves- their freedom to proselytize their beliefs, their freedom to attempt to convert others - could also be at risk, since such attempts could well offend the religious feelings of those of different faiths and therefore invite pro Sec Lit ion

Easterman puts it thus:

To the extent that people choose to believe desperately in one thing rather than another, it is inevitable that some of the things they do not believe will offend them, It is also inevitable that some of the things they (IC) believe (and say) will give offence to others.."

"The proposal to extend the law of blasphemy is superficially attractive, carrying as it does heavy overtones of liberalisation, a promise of widening tolerance in a multi-cultural but divided society. That it would actually result in greater, not less, intolerance, is a possibility so far ignored by all who spoken in its favour."

Freedom of religion is best guaranteed by freedom of expression - indeed, freedom of expression may be said to be the child of freedom of religion. since it emerged historically to enable people to assert differing religious convictions without fear of prosecution or interference by the State or the established Churches. An extension of the law of blasphemy to cover other religions besides Christianity would open up the possibility of renewed religious strife, and would therefore harm religions rather than protect them.

To this we may add that not only religions would be adversely affected. Tony Benn MP., writing in *The Guardian* about his introduction of a Bill to abolish the blasphemy law, points out:

"The idea of extending the offence of blasphemy to cover all religions would require a tight legal definition of what is a religion, and could open up a nightmare of endless court cases which, if they succeeded, would silence all humanists, atheists, heretics and free-thinkers, and might even provide precedents for similar restraints on political dissenters." [7]

Let Easterners have the last word:

"The heresy hunt and the witchcraft trial are not alien to our culture; but like slavery and feudalism, they belong nowhere in the present." [8]

3.3 There is no case for giving religion special protection

It is reasonable to ask why a law framed to prevent offence to strongly held religious convictions should limit itself to religious convictions alone. Why not any other strongly held philosophy or belief system which is capable of being offended by attack?

As the Law Commission noted:

"Reverence for God, it may be argued, does not differ fundamentally in character from reverence accorded to any person against whom those according respect are unwilling to entertain grounds of criticism... It ought to follow that the protection given to adherents of organised religion by a law of blasphemy should be extended to protect the susceptibilities of those who have a similar unqualified reverence for another person or institution, whether this be a person holding a unique position in the minds of a substantial number of people such as the Monarch, or an object which is the focus of similar feelings such as the national flag, or even a philosopher, artist or musician whose work has for some the spiritual significance which religion possesses for others."

The Law Commission concludes:

"Material on another subject (besides religion) which maybe comparably offensive to a substantial number of people is not subject to the criminal law; and the hurt which any such material - whether or not relating to religious matters - may inflict upon the sensitivities of particular segments of the population is in our view not in itself a sufficient argument for constraints upon its publication."

Any law framed to protect religious sensibilities from outrage would have to justify itself by explaining why those particular sensibilities need protection while others do not.

3.4 The danger to liberty

Suppose the blasphemy law was amended to include other religions besides Christianity, and suppose Salman Rushdie and his publishers were successfully prosecuted for the offence caused to Muslims by *The Satanic Verses*. What would follow? Daniel Easterman has formulated an all-Rx-possible scenario:

"A year or two later, it will happen again. It may not be a novel next time. In all likelihood, it will be an academic work, something scholarly h=but not too obscure. The theme will be early Islamic history, the Quran or the Sacred Traditions. The argument may not be very original, perhaps no more than a restatement of standard Western views; but someone somewhere will be sure to find it offensive; someone with like-minded friends who do not need to read books before burning them. This time they will have the force of precedent... (and)...the law on their side.

"It may not be an academic work, of course. It could just as easily be something classical: Dante's *Divine Comedy*, Voltaire's *Mahomet*, Carlyle's essay on the Prophet from *heroes and Hero- Worship*... Who knows what the hardline fancy may light upon? Someone has already threatened to blow up Dante's tomb in Ravenna.

"To make 'flatters worse, next lime it may not even be a book about Islam. All religions, all sects have their fundamentalists, their no- compromisers

- and fundamentalists are by nature ready to take offence...

'A year from now, Sikhs may take to the streets because a Hindu has insulted Guru Nanek; or Mormons because Brigham Young has been portrayed in a new biography as a womaniser; or Jews because someone has written an anti-Zionist novel; or Moonies because Sun Myung Moon has popped up in an unfavourahie light in yet another anti-cultist publication. Extend this list at your own discretion. A ban on "The Satanic Verses' would be the golden key to unlock a Pandora's box most of us did nor suspect was even lying in the cellar. 19]

It is only too easy to imagine how an extension of the blasphemy law could have these kinds of consequences. The *independent* reported on April 17th 1989 that a month after

the Ayatollah's death-threat against Salman Rushdie, Hindu militants had threatened to kill an Indian historian, M.M. Kalburgi, for writing a book which they claimed blasphemed a 12th century saint. As a result Mr Kalburgi had been given 24-hour police protection in the city of Dharwar in Southern Karnataka state,

A further likely consequence of an extended blasphemy law must also be stated: already, a considerable degree of censorship and self-censorship has been unleashed by the furore over *The Satanic Verses*. For example, in April of this year Williani Collins, the publishers, turned down a commissioned manuscript on the Rushdie affair entitled "The Rushdie Dossier" in circumstances that gave rise to serious suspicions of censorship. [10] The Royal Court Theatre insisted on changing the title of Howard Brenton and Tariq Ali's play from a "A Mullahs Night Out" to the supposedly less controversial "Iranian Nights". [11] Other examples abound.

If people are already afraid to publish material that might be taken as critical of Muslims and Islam in the present circumstances, how much worse will the situation be if this fear is compounded by fear of prosecution and that not only for publishing material about Islam, but about any and every religion? Free discussion and debate about religion and freedom of expression itself would be fatally infringed by such a development.

3.5 The primacy of freedom of expression

It has been argued that two competing principles are at stake in all this. The one asserts the primacy of freedom of expression over all other issues, while the other asserts the primacy of religious belief. Some have argued, in the wake of *The Satanic Verses* controversy, that there are occasions where freedom of expression must give way to strongly held religious convictions, the more so if issues such as multi-culturalism and anti-racism also appear to be involved. At the very least, it has been argued (by John Berger, writing in *The Guardian* [12]) that two "sacred beliefs" are involved in the Salman Rushdie affair, and that these beliefs are of equal weight in the minds of their upholders and must therefore be equally respected (though Berger appears to argue that in this case the belief in freedom of expression must give way to the religious beliefs of Muslims).

But (here is a crucial sense in which these beliefs are not equal and that freedom of expression can be defended as having the prior claim when it comes to legal protection, as explained by Philip Green in *New Statesman and Society*:

"Such a defence..., is located in the distinction between institutions that are constitutive of a social or political system, and those that, however laudable, are incidental to it. Free speech is such a constitutive institution; along with a few other related institutions, such as the right to vote, freedom of association, accountable government, equality before the law, and equal opportunity, it is constitutive of the political system we call 'democratic'. Freedom of speech is constitutive of democracy because in its absence the very process

of democracy, the voluntary formation of groups of persons with like-minded views about what the public good or public interest requires, cannot go forward. Contrarily, no particular religious belief is essential to democracy. In this respect, and in this respect only, free speech and religious dogma, however much they may deserve to be called "sacred beliefs", are not on an equal footing. [13]

We would add that as already noted, freedom of expression is in the end a precondition for freedom of religion and therefore for respect for religious Convictions or beliefs.

3.6 Conclusion

The promotion of tolerance for the diversity of religions or beliefs in Britain and the world requires that all faiths be equal before the law. Abolition of the offence of blasphemy will achieve that equality.

For these reasons, the International Committee opposes any plan to extend the criminal offences of blasphemy and blasphemous libel to include non-Christian religions. Instead, we say that because they discriminate against non-Christians and for the other reasons given, the criminal offences of blasphemy and blasphemous libel should be abolished. They should be abolished, as the Law Commission recommended, without replacement.

4 A BRIEF HISTORY OF BLASPHEMY

In British law, blasphemy took over what heresy had begun, the punishment of dissident views on religion. The first prosecution under common law was that of one Nicholas Atwood who, in 1617, was fined for sneering at Anglican preachers that "preaching was but prating". [14] In 1977. Denis Lemon was convicted under the same law, for publishing a poem.

4.1 Burning Heretics

Prior to the Norman Conquest there does not appear to have been any clear line of demarcation between ecclesiastical and civil affairs. At the Conquest, two orders of courts were definitely established. Church Courts decided all ecclesiastical cases under guidance of Canon (Church) Law which were concerned with moral offences. The Civil or King's Courts were concerned with "crimes" which included all offences against the person or property, Under this arrangement, blasphemy and other offences against Church teachings came within the scope of the ecclesiastical powers. Their authority in this respect was very great and extended to the imposition of the death penalty.

Still wider powers were obtained in 1400 from the new King Henry IV. The infamous statute, "De Heretico Comburendo", empowered the bishops at their will and pleasure to

arrest and imprison heresy suspects including 'all preachers of heresy, all school-masters infected with heresy and all owners and writers of heretical books'. On refusal to abjure or a relapse after abjuration the heretic could "be handed over to the civil officers, to be taken to a high place before the people and there to be burnt, so that their punishment might strike fear into the minds of others". [15] William Sawtrie, a Clergyman, who quit his Norfolk rectory to preach the new doctrines of Wycliffe, was convicted of heresy in April 1399 and put to penance. He was later cited, before the Archbishop of Canterbury, as a relapsed heretic, convicted, and burned to death on March 2nd 1400, eight days prior to the passing of this Act. [16]

There followed many such prosecutions; possibly hundreds during the next fourteen years. Many cases resulted in hanging, burning and, sometimes, both punishments. One such victim was John Badby, a tailor of Worcester, who in 1410 was excommunicated, refused to abjure and, persisting in his heresy, he was handed over to the secular arm with a petition that he ought not be put to death. However, he was burned in the presence of the Prince of Wales and, his groans taken for a recantation, the Prince ordered the tire plucked away. The offer of life and a pension 'ailed to weaken the courage of the half-burned man and he was thrust back into the flames'. [17]

The Statute of Heretics was only finally abolished in 1677, during the reign of Charles II, but it was expressly stipulated that nothing in the Act should extend or be construed to take away or abridge the jurisdiction of Protestant archbishops or bishops, or any other judges of any ecclesiastical courts, in cases of atheism, blasphemy, or schism, and other damnable doctrines or opinions", [18] The death penalty for heresy and blasphemy was finally abolished but only after an unknown, but certainly very large, number of men and women had been burned to death or otherwise punished for their beliefs.

4.2 Laws of Henry VIII and Edward VI

New laws against heresy were enacted by Henry VIII and prosecutions became even more common than before. Edward VI made it a misdemeanor to "deprave, despise, or condemn the Sacrament of the Lord's Supper, by using concerning it words of depraving, reviling, or despising"; and by a later Act it was made an offence to say anything in derogation of the Book of Common Prayer; or to procure anyone to do so; or to interrupt any minister in any church in singing or saying common or open prayer, or in ministering the Sacrament. For the first offence the penalty was a fine of 100 marks, or six months' imprisonment; for the second offence, 400 marks or twelve months imprisonment; for the third, Forfeiture of all the delinquent's goods and chattels and imprisonment for life. [19]

Under the reign of Mary, Roman Catholicism was reinstated and Protestants were vigorously persecuted as heretics.

4.3 Blasphemy and the Civil Courts, Naylor's Case (1651)

In the seventeenth century, the civil courts took over the task of the suppression of heretics from the Church courts, In 1651, James Naylor, a Quaker of Bristol, was charged with claiming equality with God. He was tried before the High Court of Parliament, and, after several days' debate, it was decreed that he be repeatedly set in the pillory and scourged; that he be branded on the forehead with the letter 'B'; to have his tongue bored with a red hot iron; to be confined afterwards in prison, and to be set at hard labour. A vote that the petition for death was defeated with 52 for and 96 against his execution. Naylor was repeatedly placed in the pillory and scourged, and at one of these whippings it was said that "there was no skin left between his shoulders and his hips". [20] Naylor's was the first clear instance in which the offence of blasphemy was decided by other than an ecclesiastical court.

4.4 "Christianity being parcel of the Laws of England"

In 1676 John Taylor, whose language showed him to be deranged, was brought from Bedlam to be tried before the Lord Chief Justice, Sir Matthew Hale. Taylor was charged with having said that Jesus Christ was a bastard and a whore-roaster, religion was a cheat; and that he was a king's son, and his father had sent him as a fisherman to take vipers; that he was Christ's younger brother, and an angel of God; and that he feared neither God, devil, nor man. He was convicted publishing a blasphemous libel and set in the pillory. This case is significant because it was during this trial that the rule was first laid down that Christianity was apart of the law of England. Hale's actual words were:- "That such kind of wicked and blasphemous words were not only an offence against God and religion but a crime against the laws, States, and Government....and therefore punishable in this court, that to say religion is a cheat, is to dissolve all those obligations whereby civil societies are preserved; and Christianity being parcel of the laws of England, therefore to reproach the Christian religion is to speak in subversion of the law". [21] No one has ever been quite clear as to what Hale meant by this extraordinary statement; it is quite possible that he meant nothing in particular, but subsequent judges fastened on it as one of those quasi-magical formulae, the chief potency of which lies in their obscurity.

This ruling was to have consequences on countless prosecutions throughout the next two centuries.

4.5 Ninth and Tenth of William III

A major statute on blasphemy was the Ninth and Tenth of William III c.32. Called "An Act for the more effectual suppressing of Blasphemy and Profaneness", it was originally passed in response to an address to the King asking for the suppression of pernicious books and pamphlets contrary to the Christian religion. As originally designed it would have rendered every non-Christian in the country liable to prosecution. An exception was made for Jews. There was a subsequent modification of the Act which permitted the denial of the doctrine of the Trinity. The Act proclaimed that anyone who "shall by writing, printing, or advised speaking assert that there are more gods than one, or shall

deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, shall upon conviction be deprived of all office or employment, civil or military, or of any profit arising from them. And if they so offend a second time, they shall be disabled to sue, or prosecute in any court of law, to receive a legacy, to be the guardian of a child, or executor or administrator of a will, and shall be deprived of any office forever, and shall also suffer three years' imprisonment". This Act was abolished in 1967.

Through the centuries the common law offence of blasphemy slowly developed. In 1729, Woolston, a fellow of Sidney College, Cambridge, wrote a series of pamphlets which, he said, were intended to show that the miracles of the New Testament had no place in historical reality but, rather, were allegorical representations of important religious truths. Unlike the present Bishop of Durham, Woolston was successfully prosecuted for blasphemy. Anything, said the court, which struck at the very root of Christianity was blasphemy.

4.6 Tom Paine and Richard Carlile

Towards the end of the 18th century and at the beginning of the 19th, there occurred the series of prosecutions which gathered around Thomas Paine's *The Age of Reason*. The titanic figure here is Richard Carlile. He spent no less than nine years and seven months in gaols for the offence of selling *The Age of Reason*. His arrest was followed by that of his wife and his sister, who took his place as publisher of the book and were sentenced to two years' imprisonment. At one time no less than eight of Carlile's employees were in prison for selling the book and it has been estimated that 150 people were imprisoned over this one book.

There followed a long list of people, imprisoned or fined for publishing, printing, or selling pamphlets deemed blasphemous, among them Thomas Davison in 1821, Tunbridge in 1822 (for publishing Palmer's *Principles of Nature*), and Smith in 1822 (who pirated the lectures of Mr Lawrence, a celebrated surgeon). On November 14th 1822, Mrs Susannah Wright, one of Carlile's volunteers, was tried and found guilty of having published a libel against the Christian religion. The *Annual Register* described her appearance thus: she was neatly dressed, but seemed to have suffered in health from the imprisonment she had undergone". Sentenced to eighteen months in the House of Correction in Cold Bath Fields and fined £100, the *Annual Register* says: "Mrs Wright was taken from the Court, protesting against the sentence, and with a contemptuous smile on her countenance".

Matilda Roalfe, who went from London to Edinburgh to volunteer in the work of selling "blasphemous" publications, was arrested in 1844, sentenced to two months imprisonment, and on leaving prison continued selling the condemned literature.

4.7 Charles Bradlaugh

In 1861, Charles Bradlaugh, the celebrated freethinker, was arrested in Devonport as he was about to deliver a lecture. He had only uttered the words, "Friends, I am about to address you on the Bible", when he was detained. Refused bail, and held overnight in a stone cell, the following day his case was dismissed. Bradlaugh sued for wrongful imprisonment and the jury found for the plaintiff with one farthing damages. Such harassment was not uncommon.

There are frequent instances where bequests to persons known to have convictions for blasphemy were contested and made void. By a covenant, in a separation deed, executed in 1873, between the Rev Frank Besant and Mrs Annie Besant, it was agreed that the infant daughter of the marriage should remain in the custody of the mother during eleven months in each year. However, in 1878, Mrs Besant was deprived of the custody of her child when her husband brought a petition against her. The Master of the Rolls, Sir George Jessel, stated that one of the elements which induced him to come to this conclusion was that Mrs Besant not merely believed in no religion, but published and avowed that unbelief that she had published and written pamphlets, and had delivered lectures, avowing she had no belief in a Providence or a God; that she had tried to convince others that denial of all religion was a right and proper thing. He added, "and I certainly should upon this ground alone decide that this child ought not to remain under the care of the lady". [22] Mrs Besant's appeal against the order of the court was dismissed.

4.8 Efforts at Reform

A small, but determined body of people began to unite throughout the country in an effort to repeal the blasphemy law. Prosecutions continued. Charles Bradlaugh published a pamphlet in 1878, *The Laws Relating to Blasphemy and heresy*, and in the same year the Sunday Lecture Society issued in pamphlet form an address on *The Past and Present of our Heresy Laws*. In 1882 Sir James Fitzjames Stephen wrote *The History of the Criminal Law*, which contained a chapter on "Offences against Religion".

In 1883, Lord Chief Justice Coleridge in an important judgement redefining the law on blasphemy stated: "if the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel." [23] Blasphemy, from being an offence against "Almighty God", was now to be justified as controlling the use of immoderate language in religious controversy.

4.9 The Twentieth Century

Prosecutions continued, intermittently, into the twentieth century. Between 1910 and 1924 there were many such instances, and it is worth noting that in 1921 a Mr. J.W. Gott was indicted for having published a blasphemous

libel, a printed pamphlet, entitled *Rib Ticklers, or Questions for Parsons*.

and sentenced by Mr Justice Avery to nine months' imprisonment with hard labour, although he was suffering from an incurable disease. This extraordinary sentence aroused great public indignation, with strong criticism in the press, and condemnation by a number of clergymen.

Chapman Cohen wrote a moving pamphlet in 1922, *Blasphemy - a Plea for Religious Equality*, published by the Pioneer Press. It stated:

"Blasphemy laws are a heritage from a wicked and deplorable past. In their essence they belong to a period when laws were far more ferocious than they are today, and when it was held the duty of the State to enforce and openly coerce opinion. They are also part of the general belief that the right discharge of the duties of citizenship depends, in some more or less obscure way, on the holding of right religious beliefs. In such circumstances, unbelief, heresy, and blasphemy partake of the nature of treason. The heretic is one who is a threat to the welfare of the tribe or nation, and, in the interests of the whole group, he must be suppressed. The blasphemy laws are aimed at opinion, and opinion alone. It is to the spirit of persecution they owe their existence; it is the spirit of intolerance and persecution they always serve".

4.10 The *Gay News* Case 1977

The prosecution and conviction of the editor and publisher of *Gay News* for printing James Kirkup's poem *The Love That Dares To Speak Its Name* in July 1977 was the first such case for more than half a century. Professor James Kirkup, author of five previous volumes of poetry, a distinguished writer whose work had already been much anthologized (including in *The Oxford Book of Twentieth Century English Verse*), published a poem about Christ. Like Bemini's statue, *Ecstasy of Saint Teresa*, sculpted 350 years before, Kirkup's poem used the imagery of physical love to convey his feeling of union with his God. The poem was published in *Gay News*, a newspaper written for, and read by, the gay community and those interested in the gay community. Writing as a homosexual, Kirkup's images were of homosexual love.

Mary Whitehouse, not herself a regular reader of *'Gay News'*, instituted a private prosecution against the newspaper and its editor, Denis Lemon, alleging breach of the common law offence of blasphemy. Three years later, in 1979, the House of Lords finally decided that both *Gay News* and Lemon were guilty. Thus blasphemy, the offence that Lord Denning had declared a dead letter in 1949, rose from the grave. It was the first successful prosecution for over fifty years, and the last to date.

In 1977, representatives of humanist organisations founded the Committee Against Blasphemy Laws, following in the footsteps of similar organisations which existed from the 1880s. The Committee has recently revived its campaign.

On Wednesday, 12th April 1989, Mr Tony Benn MP presented a Bill to abolish blasphemy with the support of MPs from all parties, including David Steel, Sir Ian Gilmour and other Conservative and Liberal as well as Labour members. This was one

hundred years to the day since Charles Bradlaugh introduced 'A Bill to Abolish Prosecutions for the Expression of Opinion on Matters of Religion'.

5 Footnotes and sources

[1] This and all subsequent Law Commission quotations from: The Law Commission, Criminal Law: Offences against Religion and

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[5] Sorabjee, Soli J., The Times of India, October 21 1988.

[6] Easterman, Daniel, The Bookseller, April 28 1989.

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[8] Ibid.

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[10] Maitland, Sarah, The Independent, May 9 1989

[11] Ali, Tariq, Time Out, April 12 1989.

[12] Berger, John, The Guardian, February 25 1989

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[15] Stubbs, Vol.111, p373; Green, p.259

[16] Hypatia Bradlaugh Bonner, Penalties Upon Opinion, 1912

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[19] Bradlaugh Bonner, Hypatia, Penalties Upon Opinion, 1912

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[21] Cohen, Chapman, Blasphemy - A Plea For Religious Equality, 1922

[22] Law Reports, xi., Chancery Div., p.508

[23] Cohen, Chapman, Blasphemy - A Plea For Religious Equality, 1922

International Committee for the Defence of Salman Rushdie and his Publishers

Organisations constituting the International Salman Rushdie Committee (UK) include:

ACTT

ARTICLE 19

The Arts Council

The Association of Authors' Agents

The Black Voices in Support of Salman Rushdie anti Satanic Verses

The Booksellers' Association of Great Britain and Ireland

Book Trust

Charter 88

English Centre of International PEN

The Independent Publishers Guild

Index on Censorship

The International Press Institute

The Islington Friends of Salman Rushdie

The Library Association

The National Campaign for the Arts

The National Union of Journalists

New Statesman and Society

Liberty, NCCL

Poets International

The Publishers Association

The Society of Authors

lara Arts Group/Black Theatre Forum

Theatre Union of Writers

The Writers Guild of Great Britain

The Committee acts in liason with writers' groups in a wide range of countries, 0 ther supporting organizations include:

American Booksellers Association

American Civil Liberties Union,

Association of American Publishers

Association of American University Presses

Author's Guild

I G Autoren

International Booksellers Association

Fund or Fiec Expression

Human Rights Watch

PEN American Center

People for the American Way

National Writers' Union

French PEN

The Norwegian Writers' Union

The Iranian Writers' Union

English-speaking Canadian PEN

Swedish Writers' Union

Swedish PEN

Serbian PEN

Egyptian PEN

PEN Centre German Democratic Republic

PEN Centre Federal Republic of Germany

Writers Union of the Netherlands

Netherlands Centre of PEN

Polish *PEN* Centre

Writers' Association of Slovenia

PEN Centre of Slovenia

Writers Union of Iceland