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Blasphemy's History and the Denial of Neutrality

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The modern Western world routinely maintains a conception that religious freedom is inextricably linked with the expressly chosen profession of religious belief. This is evidenced by individuals embracing this without coercion from any form of external authority. That is, individuals are deemed to have personally chosen their beliefs, and stemming from this have explicit rights to practice these unhindered. Indeed, these very provisions are the cornerstone of how supra-national authorities, such as the European Court of Human Rights, devise and exercise standards of justice in this area against miscreant individuals, governments and states.¹ Within this modern conception the profession of religious belief is a right, according to modern understanding, which is inextricably held by individuals.

However, herein lies something of a paradox. The very idea of the sacred means that it is invested with power for the individual that is supposed to fortify them against the extremely oppositional opinions of others. The paradox within this situation is that the sacred is believed to be unimpeachable, omnipotent and inviolate, yet remains something the opinions and actions of other hostile individuals must not be allowed to “damage”—however this may happen. Such beliefs, whilst appealing to the superhuman and divine power, have remained a fragile construct for much of human history. Some legal thinkers have suggested that this nexus is inextricably connected at the very dawn of human experience. Twana Hassan has suggested that freedom of expression was a natural state before the arrival of power external to the human imagination. The construction of earthly authority to police such consciousness, and the hierarchies of power and veneration these created, made religion the first challenge to

conceptions of free expression.² In the modern world attempts to enact damage to religious beliefs are frowned upon, or indeed, in the twenty-first century, are often prohibited by law in Western countries that have gone beyond confessionalised protection. This description of the rights extended in this area—what we might call empowered modern religious toleration—is, however, a relatively recent phenomenon. The history of its development scarcely provides a simple story of liberal modernisation, as we will discover. The realm of the sacred has in many historical instances been protected by blasphemy laws—but it is important to remember that such protection has not been universal. The Emperor Tiberius famously argued it was the role of the Gods to avenge hurt aimed at and enacted upon themselves, and it was simply not the task of humankind to do so. Such an argument has regularly been used by both individuals and governments as the basis of non-intervention policies.

Blasphemy laws, at least in the Christian West, were designed to protect religion as a part of the state and its conception of morality. This process really commenced when Constantine the Great took close interest in the proceedings of the First Council of Nicea. This arguably gave birth to the idea of the confessional state. The monarch's or ruler's own religious beliefs were considered to safeguard the stability, unity and security of the state and provide ideological support for its structures. Populations at large were thus persuaded into seeing the advantages of a relationship with the orthodox religion espoused by the ruler. This conceived of religious conformity in a scarcely neutral way. The religion of the ruler, and hence the territory in which one lived, required adherence to this religion as a part of collective identity. This defined heresy and eventually blasphemy as the incidence of defaulting from these positions. Both became crimes that were punishable with highly visible shame punishments administered before the individual was reconciled with the community.³

The dissident from established religion could adopt the heretical position of another religious sect or denomination. The blasphemer, alternatively, mocked and questioned the hierarchy of powers that orthodox religion bestowed upon God in the mind of His believers. Thus, assenting to the supremacy of religion within the worldview of communities was an act of

submission both to forms of government and to a conception of the sacred. Even if individuals had their doubts about the latter, their peaceful existence within the former signified compliance with the basic morality preached by the local denomination of Christianity. This is significantly why it has been so hard for historians to investigate dissident positions—those we might call pantheist, agnostic, deist, of no religion or even atheist. Whilst Lucien Febvre argued these people were simply not there, we might consider more deeply how such individuals were supposed to leave traces in the historical record.⁴ For our purposes we should note that non-compliance was conceived of as dangerous dissidence—not neutrality. Thus, what we do know comes so frequently from authorities who were judge and jury over such dissidence conceived of as a crime.

If an individual, for whatever reason, was a momentary or habitual blasphemer then such an individual was faced with a considerable array of negative “freedoms,” generally conceived of as having stepped outside of the community. Blasphemy promoted fear amongst those still inside the community, since the blasphemer was capable of being judged providentially by a God who meted out retribution against those who denied his power or sought to command him.⁵ Tolerating such blasphemy in others was also itself a grave offence, so this negative freedom placed individual blasphemers in the category of the anti-social deviant. The devoted or conforming had a duty to prevent the blasphemer from contaminating the community and at the same time the security of society. This partly explains why rulers and governors were consistent in their approach to the blasphemer around issues associated with divine providence. It was a regular occurrence for kings and governors to initiate proceedings against blasphemers as a method of giving thanks for providential good fortune. These appear in the historical record because they were associated with important events of state, such a victory in warfare. It was also an action taken as a response to the negative providentialism associated with famine and disease.⁶

So blasphemy laws and a cultural conception of this offence amongst the populace acted as a gatekeeper of acceptable speech and action. The blasphemer essentially was regularly a source

of evidence of the alternative to conformity, as we noted with the considerable number of negative freedoms that went with this. This created the boundaries of good conduct and morals and could be an effective way of defining the conception of sin which those in a religious commonwealth sought to avoid. This explains the close regime of surveillance that has been found in Reformation Switzerland, which saw individuals denounce family members or, instead, create informal systems of reprimand that could be used within the wider household.⁷ Some other studies have indicated that the association of blasphemy and swearing often led to a popular association of blasphemous words and communication with itinerant professions and marginality.⁸ It is quite difficult to discern the origins of this link (i.e. whether itinerancy encouraged blasphemy or independent behaviours encouraged itinerancy).

Either way the accusation that blasphemy was an ongoing and lingering evil which stood on the fringes of society could be used to discipline such people and to keep a mainstream population vigilant and conformist. We can certainly see evidence of this with didactic stories readily composed and distributed as a component of other moral literature aimed at both the vulnerable and those aiming at forms of moral improvement.⁹ This literature points us to many of the traits outlined about blasphemers already discussed here. In many cases they are characterised as vain, selfish and wilful—displaying all traits we would consider to be individualistic in another age. Alongside these individuals who display what are suggested as defects of character, there are others whose lifestyle predisposes them to such words and actions. As such these works become something of a manifesto for the benefits of conformity and remaining vigilant against the blasphemer. Such people have stepped away from the benefits of conformity and instead have sought forms of terrifying isolation. In such religious cultures there are those that conform and those that dissent. In such conditions it becomes possible to believe in Febvre's assertions. The neutral, the lapsed believer, even the agnostic and the atheist do not exist. They often more readily appear as the more naturalistic, pantheist or anti-hierarchical believer/heretic, or as the blasphemer—all categories of the religious, or at least individuals readily claimed by religious historians.

For all these categories mentioned in the last paragraph the idea of religious freedom appears to be more obviously spatial than it does psychological or philosophical. If their views had been uttered privately, or in the case of angry blasphemers, in the open without an audience then their declamations and outbursts would escape detection. Indeed, when we consider the apparatus of modern surveillance and interaction then we must be aware of this very different world. It is one where a dark figure of blasphemous utterance goes resolutely undetected either by contemporaries or indeed the historical record. In this instance this is conceivably an interrupted silence that gives unwitting justification to Lucien Febvre's conception of unbelief's absence, even if the truth of this might well actually be illusory.

In many respects this same sense of freedom being spatial also applies to a number of examples of medieval heresy. The history of French heresies, including the Albigensians and the Cathars, suggests a quest to achieve physical and cultural isolation from orthodox communities. This is accompanied by an innate desire to celebrate their own religious practices in remote parts of the country away from censure and attack by the zealous orthodox.¹⁰ Similarly it is no coincidence to see a spatial element to the history of Calvinism's attempts to create the godly city ruled over by a godly prince—a construction turned into something grotesque in the hands of the Munster Anabaptists.¹¹ We might also consider the Anglo-Saxon world, where the history of Puritanism has been a search for a purer form of spiritual life away from the orthodox and the claims of government to the spiritual loyalty of its subjects. This last manifestation of unjust power is the catalyst for many instances of emigration. What is significant in the case of emigration to the American lands is the variety of religious settlements in colonial states and their differing attitudes to the offence of blasphemy. Several tried to reconstruct legal systems as closely based on biblical precedent as was manageable. Others sought to establish unfettered forms of religious freedom.¹²

Thus, our medieval and early modern conception of religious freedom is one that we can analyse as almost entirely negative. One can make choices to be different, to be dissident, unruly, nonconforming—perhaps even provocative and autonomous. However, in doing so, religious and local governing authorities made it abundantly clear that attempting to do so

came at a considerable and very dangerous cost. Choosing such a path was self-imposing a state of isolation that denied the privileges of community membership and belonging that were essential to the physical and psychological well-being of individuals. One was free to do this, yet to do so would have been stepping away from the protection of both God and the community. Given this model it becomes no surprise that most incidents of blasphemous behaviour demonstrate the miscreant as pushed into outsider status. From here the individual is generally brought back into the fold, after the application of powerful shame punishments. In less common instances they are irretrievably cast out of such a community and made to endure execution. In both cases it is important to note that the period of outsider status is considered essential by the community and authority and a solution imposing this is implemented. Only lengthy exile is a means of breaking the logic of this control of dissenting space, in itself a somewhat drastic “solution” to the relentless control exerted by the Church-state relationship.

The early modern period saw religious freedom become clouded and arguably supplanted by the idea of confessionalisation. This enforced conformity to the religious denomination was prescribed by the state or head of state. Frequently the adoption of this was seen as a method of preserving the security of the community as nation, but also of ensuring the security of the rulers. We might also be prepared here to perhaps expand our definition of who these rulers were. It is notable that this period saw the extension and practice of state apparatus, machinery that became increasingly skilled and successful in the detection and detention of the religiously miscreant whether heretic or blasphemer. We should also be aware of the capacity for this machinery to burgeon and to develop its own logic and *raison d'être*.

An obvious example of this is provided by the growth and development of papal inquisitions. These originated in individual papal initiatives against specific dangers and threats and their levels of both organisation and longevity were scarcely envisaged. ¹³ Eventually the Inquisition became an intelligence gathering machine which invented a form of information science. This enabled it to track heretics and religiously unorthodox people across regions, and even across borders whether natural or political. Again we might choose to consider this a further part of

the negative freedoms associated with taking a religiously dissident stance.

Yet the early modern period also provides instances of some failed experiments in definitions and operating ideas of religious toleration that really pointed up its limits to observers and the governed. A particular case in point for this is provided by the Cromwellian Commonwealth, which for many constituted a period of turmoil in both political and religious stability. The Commonwealth ushered in statutes which proclaimed apparently complete religious toleration, something which also included an invitation to Jews to resettle in England.¹⁴ Very quickly this conception of religious tolerance discovered its own limits, which were transgressed by both religious groups and individuals. Antinomian groups such as the Ranters and Muggletonians forced the state to act against them. This was largely because both groups actively disrupted existing religious groups either through cursing them in a highly public manner (Muggletonians) or by disrespecting the concept of public morality (Ranters) through excessive demonstrations of otherwise sinful behaviour.¹⁵

Quakers were also targets for similar actions on the grounds that they regularly disrupted church services and thus showed religious intolerance in a society learning hard lessons about this ideal. Quakers also constituted a significant public order problem with their extreme demonstrations of belief. This resulted in James Naylor being imprisoned and publicly punished for blasphemy for a notorious breach of public order. This was because of his set piece entrance of Bristol on a donkey in imitation of Christ, alongside other pronouncements he made which intimated that he saw his own identity now blended with Christ.¹⁶ Naylor suffered alongside others, such as Paul Best and John Biddle, who both held Socinian views which involved conscientious objection as well as the denial of the divinity of Christ and anti-trinitarianism, views that made them ancestors of modern Unitarianism. All three individuals provoked Parliamentary debate about the nature of toleration as well as parliament's own ability to try individuals for such an offence in an era of supposed toleration. However, they were all eventually punished, despite the fact that many were opposed to such an action.¹⁷ The punishment of Naylor, Best and Biddle opened a long-running discussion about the acceptable

limits of toleration. This seemed to have obvious limits that bear closer examination since some of them effectively have a strangely modern ring to them.

We can note that attempts to curtail the actions of those whose unorthodox religious stances flout morals in the pursuit of their own goal or vision has an emphatically mixed history. In the twentieth century this appears analogous to the legion of writers and artists whose works provoke controversy and occasionally uproar. Material considered blasphemous from these outlets is occasionally banned or its circulation curtailed. In many instances government eventually agrees tacitly to leave such material alone since action, when contemplated, has occasionally been clumsy and counterproductive. This often leads to decisions that consider leaving the material unmolested, which is a viable option for government which believes drawing attention to such material is damaging in itself. Whatever the actions of government such material cannot be stopped in the conventional sense and its consumption may continue in marginal forms and marginal circles. The cursing and provocative actions of Muggletonians and Quakers constituted a genuine public order problem. As such they appear to have manifested the classic dilemma facing tolerationist regimes, that of investigating strategies about the limits of tolerating the intolerant.

Again this philosophically questions the neutrality of the state's claims to religious freedom. In this instance the concept creates an ideal type of religion which is peaceable, significantly private and autonomous. In this conception religious freedom is conceived of as an individual inalienable right which people "take away" with them after their dialogue with the state about the desire and sometimes campaign to acquire such rights. There is also here a malevolent ideal type of the miscreant who damages this agreement. They are considered wilful and deliberate individuals who intend to damage the religious and social peace. Occasionally this is further emphasised with the accusation of an additional crime, namely that they seek to profit from such actions. These malevolent ideal type components often have an incomplete or incoherent understanding of non-religious motivation. Importantly they also presume the intention to attack and to offend. This has been a perennial issue with blasphemy laws in many eras which

are, of course, always reactive to spoken, broadcast or published material.

The impact of framing laws in this manner is that they presume, as they have to, the *Mens Rea* of the offence of blasphemy. One impact of this is that there can ironically be no “ideal type” blasphemer, since each becomes a victim of the individual circumstances of their particular case. Even blasphemers who court prosecution (in England this would include individuals such as Richard Carlile, Susannah Wright and George William Foote, in the early and late nineteenth century) were unable to predict what particular publication or utterance they would be prosecuted for.¹⁸ This problem became still more acute for the later members of the artistic professions who fell foul of the law. These individuals were often wholly unable to predict when such laws might be used against them. Indeed, there were cases where some individuals made much of the fact that they were shocked that such laws were still contemplated by modern societies, or indeed that the material they had broadcast was even remotely blasphemous.¹⁹

This climate brought with it still more negative freedoms with what modern contemporaries involved in campaigns for blasphemy repeal have called the “chilling effect.” This is characterised as an altered climate which institutionalises self-censorship of anything critical of religion. This means that many types of discussion and critique are never voiced because of the silencing power of blasphemy laws and the fear of offence that they generate. Frequently this has meant that broadcasters, where such laws exist, have routinely censored or warned those critical of religion in advance about any potential public statement carried by their media that could be actionable at law.²⁰

If we can recap and remind ourselves of our explorations thus far. Dissent from early modern religion exposed the individual to a range of negative freedoms, when judged by the standards of post-enlightenment societies that have a far more developed sense of the secular. Conformity and consent to various species of confessionalisation appear historically to have been deeply persuasive options. Accepting this state of affairs also seems regularly to have become consent to state control of religion, alongside the frequent conflation of morals with

religion. Many statute laws against dissent seem to represent this latter phenomenon. This also is a scarcely neutral act of exclusion from citizenship. Some groups find themselves in a condition of invisibility, existing in a situation where they are denied legal recognition of their existence. Indeed, in some states, such as the Irish Republic, atheists did not legally exist until modern times.

In some respects blasphemy statutes and legislation at the end of the seventeenth century showed a heightened connection between religious conformity and the security of the state. England's blasphemy statute of 1698 was merely one of a range of measures that aimed at ensuring discipline and conformist behaviour. All such measures in England were prompted by contemporary concerns about Jacobite challenges to the rule of the House of Orange. North of the border, in Scotland, a similar statute was embraced and enacted by a country facing similar threats. An uneasy sense of foreboding was deepened by a number of contemporary events which meant the country faced an enhanced sense of its providentially poor fortune. The impact of these events upon this society's sense of damaged nationhood contrived, and even conspired, to bring about the execution of the only convicted blasphemer to be the unfortunate victim of a capital sentence that was carried out.²¹ Yet this event also contained ambiguities which would have subsequent considerable influence upon this society's understanding of religious tolerance and experience of its enabling machinery which made this concept possible. The unfortunate individual concerned, Thomas Aikenhead, had expressed arcane and unorthodox religious views and was particularly unfortunate to have been arrested and imprisoned for blasphemy when providential fear of God's judgement upon Scotland was at its height. He was thus the victim of vested interests which saw this action as a method of cleansing the country of pernicious challenges to secular and religious authority.

However, Aikenhead had been a medical student at Edinburgh University and was not the archetypal early modern drunkard or itinerant sailor/carter that regularly populated the fearful imaginations of rulers and ruled. Aikenhead's unorthodox religious views were the product of his interaction with philosophical writings circulating within an intellectual hub which operated

at least covert ideas of free exchange of ideas and of expression. Universities and the availability of cheap print culture were scarcely neutral agents in the process of education and power. Controlling their consumption and the remaining justifications for doing so became increasingly tenuous and slid eventually into the indefensible. This became more obviously the case when the questioning of many perceived wisdoms revolutionised economic, social, cultural and political life. Indeed, it became a motive for invoking Scottish Enlightenment critiques, as a measure of how far a culture not motivated by religious impulses had travelled away from the recent past.

The example of Thomas Aikenhead itself was a significant cultural touchstone for Scottish society and its evolving self-image. In the years following his execution the rise of the Scottish Enlightenment and the obvious benefits it bestowed upon Scottish culture and society were regularly contrasted with its recent troubling, and increasingly embarrassing, past.²² Rational Enlightenment had replaced what was seen as partial and vindictive obscurantism. The very power of this narrative of the enlightenment is instructive because it indicated the fallibility, and often the vested interests, of the state. As such it became a phenomenon that went beyond protecting and provided a form of statutory inclusion within the community. Instead these new developments now sought a control of knowledge and opinions that radical voices argued had become self-evidently unwarranted. Twana Hassan has argued that narratives of the value of freedom and its association with freedom of expression developed most obviously in England and the Netherlands. These spawned a philosophy in which the critique of power was one of its essential tasks enabled by questioning and reason.²³ This was later developed, again in England most obviously by J.S. Mill, who saw lingering religious persecution as the most pernicious expression of illegitimate power in England. In particular he cited a recent courtroom incident around the blasphemy laws as especially indicative of the persistence of religious persecution.

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Such critiques also emerge from scrutinising a number of early nineteenth century blasphemy cases. Many individuals prosecuted for blasphemy turned their show trials into defences of the

right to free speech and free publication and relentlessly argued that doing so was the utmost service they could perform for their society. Certainly many of these individuals had exceptional pedigrees and track records of doing so. Thomas Paine had long exhibited a penchant for uncovering and displaying specious forms of authority and their dubious claims to legitimacy and loyalty. In many respects it was fitting that those who espoused his views and actively disseminated his works should stand trial for the act of doing so.²⁵ This demonstrated simultaneously the social utility and popularity of their ideas, but also that sections of society would actively subscribe to such principles and face hardship and legal challenges to do so.

Some later advocates, such as Richard Carlile and Susannah Wright, went beyond this to reflect the importance of other forms of knowledge that the state sought to limit and control. Both Carlile and Wright argued that their discussion of the Christian religion and its obvious flaws could only be of benefit to society and the population at large.²⁶ Authority, through the retention and active participation in blasphemy laws, was seeking to close down access to the knowledge produced by wider unfettered discussion. Religious scruples also created a hypocritical morality which denied populations at large free access to family limitation knowledge and practices. Such knowledge was frequently cast as having profound social utility and it was argued that it was scandalous that the state should seek to limit access to it.²⁷ The proximity of blasphemy prosecution and family limitation knowledge advocacy is striking. It was not, as opponents painted it, indicative of moral lapses but rather a kindred assault upon the idea of hidden knowledge and the failure to promote open discussion.²⁸

As the nineteenth century wore on cases against blasphemers in England and America (such as those against Foote in England and C.B. Reynolds in America) further showed the gulf between the state's sense of immovable entrenched establishment and the cultural freedoms individuals aspired to and actively craved. Leading figures in the literary world and liberally minded political establishment could regularly be counted upon to sign petitions and actively speak up for those prepared to criticise religion and risk potential imprisonment for doing so.²⁹ Intriguingly one of the narratives that regularly emerged in the wording of petitions and courtroom defences was

the motif of “the spirit of the age”—something which defences championed and also accused prosecutions of systematically ignoring. This idea was used to identify state legal action against individuals as contrary to contemporary ideas of progress and the unequivocal social utility bestowed by free expression. Amassing heavy weight support behind such an idea added gravitas to the notion that the state’s practice of power in this area was illegitimate and socially ruinous.

Such ideas began to dawn on those who exercised such authority when their actions extended publicity to blasphemers, or were sometimes inept or badly choreographed. Whilst the authoritarian mind was persuaded to hold back, legal changes similarly rendered blasphemy cases problematic for other reasons. In England the Foote case of 1883-5 unravelled the legally active sense of a Church/Law/State link as the seventeenth century had understood it.³⁰ Pronouncement of the judge, Justice John Duke Coleridge, moved to permit criticism of the Christian religion as long as the manner in which it was attempted was acceptable. Although problematic in practice, since it arguably heightened the offence deliberate offenders sought to perpetrate, it was a potential liberalisation. Henceforth religion was no longer “part and parcel of the law of the land.” In the United States a long term trend saw blasphemy prosecution become the preserve of local legal entities, although these were increasingly frowned upon by centralised legal thinking. This process was to eventually see blasphemy prosecutions to be declared unconstitutional by the end of the 1950s.³¹ This has involved a number of interesting debates around the concepts of equality before the law and the Separation of Church and State. Some religious groups have sought to proclaim their exclusion from defined public space as something beyond the alleged secular neutrality claimed for it. This narrative laid claim to the idea that the secular as a concept was not an equal and neutral playing field, but instead acted as actively anti-religious.

In response to accusations against the state as wielding unsanctioned power some European approaches to blasphemy sought to devolve power to artistic and free speech practitioners. Some laws came to stipulate that warnings about offensive material be given, thus enabling

individuals to make informed choices about their willingness to consume or be confronted with controversial material.³² In England government stepped away from involvement in blasphemy cases and was only prepared to act when it could be persuaded that public order issues were at stake.

All of these indicate a surrender of state initiative in the area of blasphemy law, legislation and cultural perception of the crime. Most states tried very hard to conceive of themselves as neutral in the matter, even if blasphemy legislation protected only a single religion that remained on the statute books. Even here work could be done to shift the responsibility for the execution of such laws. In England one irritated civil servant at the Home Office countered the frequently heard “spirit of the age” argument with a startling riposte of his own. Instead of the “spirit of the age” being a liberal progressive motif this civil servant turned it around into being an organic safeguard against dangerous challenges to religious sensibilities. Moreover it had a stake in maintaining blasphemy laws. He noted that prosecutions for blasphemy, or indeed the lack of them, exactly reflected the spirit of the age as the law conceived of it. If the public, rather than the government, were to find material offensive and blasphemous then this would trigger the use of the Common Law and prosecutions for the offence would result.³³ As one generation was replaced by another the apparent wisdom of this stance would become obvious until any new incident would send legal minds rushing back to old, and long neglected, legal texts. With states craving neutrality the corollary of this was a desire to make individuals responsible for both processing and acting upon any religious hurt or offence they detected, or actively felt. Increasingly such laws, and indeed cases in the twentieth century, did not focus upon specific religious doctrines or apparent “truths” of Christianity. As a result of state devolved responsibility the laws enacted by individuals changed the nomenclature of blasphemy to describe it as wounding or hurting “religious feelings” rather than specific doctrines.

All this worked “relatively” successfully for Western states that believed in the idea that Christianity was unconsciously secularising itself and religious feelings could be expected to

retreat almost completely into the private sphere. This certainly reckoned without forms of religious and moral fundamentalism that would seek power. This was arguably at least partly in response to what they saw as betrayal from both those they deemed responsible for media and cultural institutions and their increasingly daring and dangerous output. This outlook would also frequently come to argue against the attitudes of those in the hierarchies of mainstream Christianity. These were individuals who seemed tainted by compromise, ill-considered liberalism and sell-outs that amounted to an outright “ecumenical” relationship with secular godlessness.³⁴

The West’s long association with blasphemy against the Christian faith was also spectacularly unravelled with the demands of Muslim populations confronted with the globalised phenomenon of Salman Rushdie’s “The Satanic Verses.” Muslims with religious outsider status as a result of blasphemy laws framed around Christianity sought protection from what they deemed to be assaults upon their beliefs. In Western states whose laws only protected Christianity the apparent neutral status they had consent for from their Christian populations dissolved before their eyes. Failure to allow such laws to simply adopt, or co-opt, Muslim religious feelings was swiftly followed by supra- and international organisations declaring religiously partial blasphemy laws as unequal and actively discriminatory. Thus many states’ neutrality had been doubly questioned by circumstances that its pragmatic rapprochement with Christianity could never have foreseen. In the experience of being pulled away from its once craved neutrality the state was now being asked to protect the religious who identified as indissoluble communities which was a status favoured over the west’s idealisation of the individual.

Whilst some states made ill-conceived and ill-fitting attempts to “equalise” their blasphemy laws, others looked beyond such laws at approaches which advocated the full scale construction of incitement to religious hatred laws.³⁵ These generally drew upon the precedent of incitement to race hatred and occasionally inherited some of the problems associated with this area of legislation and jurisprudence. It is equally possible to argue that

incitement to religious hatred laws inherit many of the issues that irked free speech advocates of previous generations, these solutions, at least for the moment, appear to be the de facto offering protection to the religious in Western countries. What is also obvious is that the act of moving in these directions further feeds the idea that such laws are necessary. It might well be argued that the open and vocal theorising of incitement to religious hatred laws has become a stimulus to other regimes who revisit and actively modernise and reconstruct their own older blasphemy laws.³⁶ Likewise the arrival of new laws provides a further stimulus and precedent—this became a crucial argument in the quest for repeal of the Republic of Ireland’s 2009 law.

We may here note that the pendulum has swung to offering protection, perhaps more readily than permissive freedom of expression and its attendant liberties. The state’s attitude to blasphemy laws involved early enthusiasm for their power and logic in both the medieval and early modern period. This was founded upon their effectiveness as tools for confirming and encouraging orthodoxy and the nuanced affirmation of communal religious identity. The enlightenment pursuit of rights demanded state neutrality as a central component of enabling conceptions of advancing liberal and apparently secularising societies. Many states, after several false starts, eventually grew to be comfortable with this, retaining such laws as a litmus test for religious and secular sensibility. Very often such states would retreat into the supposed neutrality of a “fail safe” desire merely to protect public order.

Such a relaxed and hands-off approach to the enactment of the relevant legislation in this area was rudely shattered by other religious groups and their voices, which demanded that, once more, the state should abandon its subsidiary role and offer full and effective protection to religious beliefs and their adherents. The problem with such a re-adoption of the medieval acceptance of religion as a system of fully coherent belief and morality that homogenises communities is their capacity to marginalise individuals and individuality. Attempts to recreate this will very swiftly recreate the religious dissident.

From a long-term perspective the historian of this area might fruitfully ask if the age of individualistic free speech challenges to state power around religious speech is over as a result of an end to parochial national histories of religion and belief—outlooks supplanted by a transnational and globalised world. Or might we view this simply as one turn in a cycle in which the preponderance of either religious protection or of free speech imperatives provokes reaction—and will yet stimulate a further cyclical turn of the wheel!

NOTES

1. See Neville Cox, "Blasphemy and Defamation of Religion Following *Charlie Hebdo*," in *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre*, ed. Jeroen Temperman and Andras Koltay (Cambridge: Cambridge University Press, 2017), 53-83.
2. Twana A. Hassan, "A historical analysis of the development of free speech justifications," *The Journal of Jurisprudence* 28 (2015): 487-506.
3. John Bossy, *Christianity in the West, 1400-1700* (Oxford: Oxford University Press, 1985), 35. See also Maureen Flynn, "Blasphemy and the Play of Anger in Sixteenth Century Spain," *Past and Present* 149, no. 1 (1995): 29-56.
4. Lucien Febvre, *The Problem of Unbelief in the Sixteenth Century: The Religion of Rabelais*, trans. Beatrice Gottlieb (Cambridge, MA: Harvard University Press, 1982).
5. David Nash, *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press, 2007), Introduction (1-11).
6. See Élisabeth Belmas, "La Monteé des blasphèmes," in *Injures et blasphèmes: Mentalités*, ed. Jean Delumeau (Paris: Imago, 1989), 13-33.
7. Francisca Loetz, *Dealings with God: From Blasphemers in Early Modern Europe to a Cultural History of Religiousness* (Farnham: Aldershot, Ashgate, 2012).
8. Alain Cabantous, *Blasphemy: Impious Speech in the West from the Seventeenth to the Nineteenth Century* (New York, Columbia University Press, 2002).
9. David Nash, "Gendering Moral Crimes in Early Modern England and Europe - Blasphemy the Mirror Image of Witchcraft?," in *Gender in Late Medieval and Early Modern Europe*, eds. Marianna Muravyeva and Raisa Toivo (Abingdon: Routledge, 2013), 153-73.
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11. Sigrun Haude, *In the Shadow of "Savage Wolves." Anabaptist Munster and the German Reformation During the 1530s* (Boston: Humanities Press, 2000).
12. Sanford Cobb, *The Rise of Religious Liberty in America* (New York: Macmillan, 1902); Leonard Levy, *Blasphemy: Verbal Offense Against the Sacred from Moses to Salman Rushdie* (New York: Knopf, 1993), 45.
13. William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basque Lands to Sicily* (Cambridge: Cambridge University Press, 1990); Helen Rawlings, *The Spanish Inquisition* (Oxford: Blackwell Publishing, 2006).
14. David S. Katz, *Philo-Semitism and the Readmission of the Jews to England, 1603-1655* (Oxford: Oxford University Press, 1982).
15. Christopher Hill, *The World Upside Down: Radical Ideas During the English Revolution* (London: Maurice Temple Smith, reprinted by Penguin, 1972); Nigel Smith, *A Collection of Ranter Writings: Spiritual Liberty and Sexual Freedom in the English Revolution* (London: Pluto Press, 2014).
16. Nash, *Blasphemy in the Christian World*, 119-22 and 158-9.
17. Nash, *Blasphemy in the Christian World*, 62, 120-1 and 158.
18. David Nash, *Blasphemy in Modern Britain 1789 to the Present* (Farnham: Aldershot, Ashgate, 1999), Chs. 3 and 4.
19. See Nash, *Blasphemy in the Christian World*, 226-30.
20. This was a regular occurrence in the Irish Republic before the repeal of the blasphemy laws in October 2018. Atheist Ireland contributors to radio and television programmes were regularly warned about their conduct before broadcasting of these programmes commenced.
21. For Aikenhead, see Michael Graham, *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment* (Edinburgh: Edinburgh University Press, 2008).
22. David Nash, "The Uses of a Martyred Blasphemer's Death: The Execution of Thomas Aikenhead, Scotland's Religion, the Enlightenment and Contemporary Activism," in *Law, Crime and Deviance since 1700: Micro-Studies in the History of Crime*, ed. Anne-Marie Kilday and David Nash (London: Bloomsbury, 2017), 19-36.
23. Hassan, "A historical analysis," 503-4.
24. Timothy Toohey, "Blasphemy in Nineteenth century England: The Pooley Case and its Background," *Victorian Studies* 30, no. 3 (1987): 315-33.
25. Levy, *Blasphemy: Verbal Offense*, 339-41; Nash, *Blasphemy in Britain*, 76-7.
26. Nash, *Blasphemy in Britain*, 83-8.
27. For more on this association with Carline see Michael Bush's edition of Carline with a critical introduction: Michael Bush, *What is Love?* (London: Verso Books, 1998).

28. This was linked in with the cases against Carlile and his compatriots. It was also a component over eighty years later against the Bradford Socialists, notably Ernest Pack.

29. Nash, *Blasphemy in Britain* 147-9.

30. Nash, *Blasphemy in Britain* 155-7.

31. This was as the result of *Burstyn v Wilson*, 343, U.S. 495 (1952).

32. Nash. *Blasphemy in the Christian World*, 181. But note also the verdict in the Otto Preminger Institute case (*Otto Preminger Institute v Austria* Application Number 5493/72). This justified the seizure of a film intended for a select audience that received warnings about its content. This once again considered the material to be objectively offensive.

33. Home Office papers (HO) 45 24619 217459/8 and Nash, *Blasphemy in Britain*, 196.

34. This was an accusation frequently levelled by Mary Whitehouse in many of her campaigns against the permissive society and its apologists. For her, those in charge of religious denominations had "sold out", leaving the earnest and faithful laity to continue campaigning. Importantly this was not simply about sexual permissiveness but also about the place of religion, and how it was to be portrayed to society.

35. These are effectively discussed in Peter Cumper, "Blasphemy, Freedom of Expression and the Protection of Religious Sensibilities in Twenty-First Century Europe," in *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre*, ed. Jeroen Temperman and Andras Koltay (Cambridge: Cambridge University Press, 2017), 137-66.

36. See the Account in Austin Dacey, *The Future of Blasphemy: Speaking of the Sacred in an Age of Human Rights* (London: Continuum, 2012). See also Study no. 406/2006 of the Venice Commission, "Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred", doc. CDL-AD(2008)026, 23 October 2008, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)026-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)026-e). See also Venice Commission, "Blasphemy, insult and hatred: finding answers in a democratic society", (2010), available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD%282010%29047-e>.

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