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‘Police Fiasco’, ‘The Black Army’, ‘Devil Dodgers’ and ‘Humbug’: The Apparent ‘Inevitably’ of Unfair Blasphemy Trials up to 1922

David Nash
Oxford Brookes University

Introduction

This chapter investigates the cases of blasphemous libel brought against Ernest Pack, Thomas William Stewart and John William Gott in the Edwardian period and beyond. These are seen as the culmination of both problems for authorities charged with applying and administering the law, as opportunities for defendants to point out the problems with the conception and application of the law and the enduring problems that surrounded attempts to prosecute for the crime of blasphemous libel. These issues had been endemic throughout the nineteenth century, but came to a head in the first quarter of the twentieth century. The chapter ends by suggesting how this ‘culmination’ was responsible for initiating the twentieth-century campaigns for reform of the law of blasphemy in England.

Context

The crime of blasphemy has always produced judicial proceedings that could readily be made to appear to be steadfastly out of the ordinary. Its antecedent crime of heresy regularly courted the harsh judgement of contemporaries and posterity alike, as the twin imperatives of new orthodoxies or growing toleration regularly turned them into unfortunate and inhumane anachronisms of a previous age. The late seventeenth-century blasphemy trials in England were also tied up with issues of religious dissent and individual struggle against tyrannical state oppression. Famously, the trial of James Nayler, drawn out during the 1650s under the regime of the Commonwealth, degenerated into a profound discussion about whether the very judicial procedures themselves even existed to try him, all conducted while the unfortunate Nayler

languished in a less than salubrious prison cell.[1] Such episodes, strung out over four centuries and more, constituted fertile ground for the caustic examination of blasphemy trials and persecution in a later pantheon of libertarian struggle for freedom of opinion.[2]

Such problems were exacerbated by the end of the eighteenth century when governmental action could be painted as oppression of legitimate opinion in the shape of Jacobin ideas. The forces of conservativism that sought to combat this tide were unwieldy and scarcely polished in their application of judicial power. So often they chose defenceless unpopular targets, or appeared embarrassingly tight lipped or foolish in the face of the articulate, learned or defiant. The prosecuting council, Thomas Erskine, in 1797 famously showed sympathy for the humble salesman of Paine's *Age of Reason* who had been made a hapless victim by draconian action.[3] In 1817 the government also got its fingers badly burned from its attempt to prosecute William Hone. In this instance, an erudite and skilled writer and orator clearly enjoyed himself in demonstrating the clumsiness of the case against him. From this debacle, the government emerged as intellectually underpowered, humourless and even institutionally philistine.[4]

By the time Richard Carlile and his shopmen became a veritable conveyor belt of cases throughout the 1820s and early 1830s, the concept of the inevitably unfair trial for blasphemy was becoming well established. Throughout these trials, Carlile and later his wife, sister and other fellow defendants turned the courtroom into an arena of struggle. It became a place where they attempted to discredit the cases they were called to answer and all proceedings therein. Judges who rashly sought to silence offenders were rounded on and their actions publicized beyond the court to an eager radically inclined public. The right to mount a legitimate defence, when questioned, was turned into pamphlets publicizing a so-called Suppressed Defence.[5] Similarly the actions of the government to prosecute were exposed as simultaneously tyrannical and cowardly, since it chose to hide behind the thinly veiled ineptitude of the Society for the Suppression of Vice.[6] Supposedly independent witnesses who had purchased blasphemous material from Carlile's shop were exposed as in the pay of the government; others could readily be persuaded to admit that they had not read the publications in question, nor had they been morally compromised by their contents.[7]

[1] D.S. Nash (2007) *Blasphemy in the Christian World: A History* (Oxford: Oxford University Press), pp. 119–23.

[2] See H. Bradlaugh-Bonner (1934) *Penalties upon Opinion* (London: Watts and Company), *passim* and D.S. Nash (1999) *Blasphemy in Modern Britain 1789 to the Present* (Aldershot: Ashgate), *passim*.

[3] L. Levy (1993) *Blasphemy: Verbal Offense Against the Sacred from Moses to Salman Rushdie* (New York: Knopf), pp. 336–8

[4] For more on William Hone, see F.M. Hackwood (1912) *William Hone: His Life and Times* (London: Fisher Unwin). See also Nash, *Blasphemy in Modern Britain,* pp. 80–4.

[5] Anonymous (1821) *Suppressed Defence: The Defence of Mary Anne Carlile to the Vice Society's Indictment against the Appendix to the Theological Works of Thomas Paine* (London: R. Carlile).

[6] For more on this, see P. Harling (2001) 'The Law of Libel and the Limits of Repression, 1790–1832', *Historical Journal*, 44, 1, pp. 107–34.

[7] R. Carlile (1822) *Report of the Trial of Mrs Susannah Wright for Publishing, in His Shop, the Writings and Correspondence of R. Carlile; before Chief Justice Abbott, and a Special Jury in the Court of King's Bench, Guildhall, London, on Monday, July 8, 1822: Indictment at the instance of the Society for the Suppression of Vice* (London: R. Carlile).

Beyond these assaults on procedure, such defendants were also dangerously adept at displaying apparently honest motives, since they frequently offered to withdraw such material from the public gaze if it could be demonstrated to be harmful.

Martyrdom was here worn like a well-tailored coat, and the Carlile agitations established something of a blueprint in communicating the nature of blasphemy prosecutions to the reading public at large. Blasphemy 'cases' and court appearances were contested territory, as the defendants became skilful and erudite in 'writing up' and narrativizing these. One particularly crucial effect of this was to outrage and motivate a sympathetic readership. The other side of this narrative was, however, on many occasions almost entirely missing. The agents of authority, prosecution and particularly judgement and punishment were largely silent on the matter. Whilst the public face of such prosecutions was a picture of sustained injustice and folly, it is frequently only the historian who has access to the Home Office files and opinions who can unravel the motivations of authority, both in general and at significant junctures in high-profile cases. In truth, the significant achievement of defendants was not to flout the law, or even occasionally to get the better of it, but instead their creation of a conduit through which stories of injustice and overly biased procedural operation could be disseminated. This was their greatest weapon with which to damage the law.[8] It is possible to argue that this phenomenon significantly influenced the wider cultural reception of blasphemy cases and the public profile of the offence in general. With only one side of the argument evident in public discourse, a picture of anti-intellectual tyranny was sometimes painted almost effortlessly, aided by the 'opposition's' apparent preference for silence.

The middle of the nineteenth century witnessed the draconian and ill-judged case against Thomas Pooley. This individual had scrawled godless graffiti over fences and gateposts in rural Devon. The court proceedings marooned an insane man, with diminished responsibility, to abortively defend his own interests in a courtroom peopled with some of the finest legal brains in the land. This case, which occurred in 1857, attracted the attention of J.S. Mill who saw this as an example of the sustained barbarism that still undermined freedom and democracy in England.[9] The early 1880s saw George William Foote turn the case against him and the *Freethinker* into a drawn out and sustained martyrdom that was written up and syndicated through his newspapers and pamphlets. His focus on the trial proceedings took opinion down a,

[8] This was commenced by Richard Carlile with numerous pamphlets circulating in the 1820s. This was echoed later by Holyoake. It was arguably recast into an art form by the later cases against George William Foote in which the trials and Foote's subsequent imprisonment and release were both drip-fed to his weekly readership of the *Freethinker* and subsequently written up at exhaustive length to become free standing and widely sold pamphlets. See, for example, G.W. Foote (1932 edition) *Defence of Free Speech, Being a Three Hours' Address to the Jury in the Court of Queen's Bench before Lord Coleridge on April 24, 1883 – New Edition with and Introduction by H. Cutner* (London: Progressive Publishing Co.) and G.W. Foote (1886) *Prisoner for Blasphemy* (London: Progressive Publishing Co.)

[9] T. Toohey (1987) 'Blasphemy in Nineteenth Century England: The Pooley Case and its Background', *Victorian Studies*, XXX, 3, pp. 315–33. The Pooley case, as noted by Toohey, prompted Mill's assault upon the verdict and how it was emblematic of many wider issues which tainted contemporary British culture.

by now, well-trodden path illuminated with dangerous partiality, anomalies, malice and injustice. In 1908 the case against Harry Boulter was portrayed as the Common Law of Blasphemous Libel, singling out the unpolished plebeian street corner rebel rouser, whilst cynically leaving the intellectually polished (and published) blasphemer to escape the attentions of the law.[10]

Whilst we might expect such defendants to play to the gallery, pitching the shining forces of enlightenment against irrationally devious darkness, it is apparent that these episodes all also tell us something else. From the perspective of the authorities, dealing with the crime of blasphemy was scarcely easy and contained a plethora of pitfalls for the careless, nervous, over confident or unwary. First, the apparent malice and premeditation that defendants found so easy to invoke were only episodic rather than sustained and concerted policy. The authorities at any given moment were equally susceptible to being stung by public pressure to do something about blasphemy. This was generally conceived of in the public mind (or that of self-appointed agents of morality) as intervention of some kind. Either publications ought to be confiscated, or street corner oratory circumscribed. What preoccupied the public mind were intense incidents of outrage and the casual encounter with such material, although it is equally possible that providential concerns may conceivably have additionally motivated some.[11]

But equally what were those placed in charge of gatekeeping dangerous religious opinion supposed to do? Attempts to restrict such opinion were often counterproductive and indeed, on occasion, farcical, having been sprung from misunderstanding and ineptitude. The latter was largely explained by the infrequency of the law's application which itself became recast as a grievance by defendants indicting it as the former. Blasphemous material circulated in Carlile's time at a far faster rate than normal, since the decision to deny such material the protection of copyright rendered it spectacularly fair game and profitable for the producers of pirated editions![12] Likewise, when pounced upon, the attention of seizure and the road to prosecution exposed such activities to the oxygen of publicity. This, in itself, fed the free speech arguments of defendants. If it was to your taste, you could consume the publications deemed blasphemous, alongside the highly coloured reports highlighting their nature and the legal proceedings against them drafted by defendants. The sustained power of this notoriously backfired on the Home Secretary Sir William Harcourt (1827–1904) in the early 1880s with his ill-judged treatment of George William Foote's prosecution and subsequent custodial sentence.[13] After this, Home Office Civil Servants regularly worried about Harcourt's appetite for intervention, constructively working to ensure that the *Freethinker* was thereafter left alone and denied further publicity. Given how

[10] For an account of the Boulter case, see Nash (1999) *Blasphemy in Britain*. For the Home Office view of the pitfalls of dealing with Harry Boulter, see also the National Archives, Home Office Papers (hereafter HO), Registered Papers, Prosecutions for Blasphemy, 144/871/160552.

[11] See D.S. Nash (2008) '"To Prostitute Morality, Libel Religion, and Undermine Government": Blasphemy and the Strange Persistence of Providence in Britain since the Seventeenth Century', *Journal of Religious History*, 32, 4, pp. 439–56.

[12] See Nash (1999) *Blasphemy in Britain*, chapter Three.

[13] See ibid., chapter Four.

sustained and sophisticated defendant narratives had become, this readily explains how policing agencies often defaulted to evading the prosecution process entirely, or attempted to minimize the antagonization of individuals at every stage of the judicial investigation.[14]

There was also the thoroughly problematic issue of what a definition of victory looked like for the authorities. Sometimes it might have seemed even temporarily silencing them was enough. If the authorities in their various forms ever hoped that blasphemy prosecutions proved to be a forcible deterrent this was, to say the least, scarcely proven. This of course was a 'dark figure' and could never be measured. In the long run it was never clear whether blasphemy prosecutions proved to be incentive or deterrent. Skilled defendants could paint such laws as both either and both, according to their own taste and situation. Thus, the apparent logic of when to proceed against blasphemy or when to encourage others to do so was never nearly as logical as it seemed.

The defendants in such cases also had a number of factors running in their favour which could serve to make blasphemy prosecutions problematic. Blasphemy as an offence always contained within it an especially murky relationship with the concept of *Mens Rea*. Whilst admitting to publishing such works, or vending them unwittingly to government servants was instinctively what prosecutions tried to focus on, it was nonetheless difficult to prove that the individuals concerned possessed 'guilty minds'. This issue regularly provoked free speech/liberty narratives as well as enlightenment-inspired ones of undertaking work of cultural and social value to the population at large. The last of these were the speciality of Richard Carlile and Susannah Wright who further ensured that their respective orations of such ideals were publicized far and wide.[15]

Despite regularly painting the offence, and its prosecution, as being arbitrary, blasphemers had a considerable degree of discretion in 'arranging' for themselves to be prosecuted when it suited them. Progressively lowering the tone and increasing the vehemence of the blasphemous content could eventually result in prosecution – as was the case with George William Foote in 1882–1883. Changing the mode, means and place of sale could also escalate the application of the legal process. This last action

[14] This did prevent a considerable number of prosecutions going forward where evading publicity became the prime motive for inaction. Such a motive could spread as far as managing the incarceration of the convicted. Sir William Harcourt arguably miscalculated in bringing the full force of detention down upon George William Foote. However, subsequent authorities were much more scrupulous in ensuring that 'prisoners for blasphemy' were not singled out for special forms of treatment, nor denied any legitimate privileges offered by the prison system. This was precisely to avoid feeding narratives of iniquitous treatment in prison. See, for example, the later imprisonment of Harry Boulter in the Edwardian period. In this episode the Home Office took considerable pains to ensure the prison chaplain had not antagonized a potentially dangerous adversary. See National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 144/871/160552. See also National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 144/114/A25454 which noted that even Sir William Harcourt, the militant opponent of secularists and their blasphemies, was concerned at the conduct of the prison governor whose negligence almost prevented Foote and his compatriot Ramsey form conferring between their first and second trial.

[15] See Nash (1999) *Blasphemy in Britain*, Chapter Three.

would occasionally bounce local policing authorities into action. This intervention in matters of 'religious doctrine' was often undertaken with the utmost reluctance, an attitude often appreciated with considerable relish by would-be blasphemers. As such blasphemy appears in the nineteenth century to have been a strange offence, analogous to other forms of radical publishing where defendants would actively contemplate serial transgression with wider goals and targets in view.[16] This sometimes meant that there was not so much a single definitive case in each instance, but instead often a series of cases where prosecution and defence arguments built upon one another. It was also true that the serial nature of these cases meant that procedural issues and problems were transferred from case to adjacent case on a regular basis.[17]

The conduct of judges was also a lingering grievance which could regularly be dusted down for the creation of an 'unfair trial' narrative. It was relatively easy to depict individual judges as unscrupulous agents of covert Christian vested interests. More ambitiously, they could also be cast as explicit agents of state repression. This came especially easy to radicals who were able to cite the primary piece of jurisprudence in the area. This had come from Sir Matthew Hale (1609–1676) in the case against John Taylor in 1678 where he had pronounced that 'Christianity was part and parcel of the law of the land' and that assaults upon one of these entities constituted an assault upon the other.[18] This typecast judges as defenders of their own vested interest in each and every blasphemy case.

The preceding assumption could gain wider and deeper credibility when the precise actions of individual judges and law enforcement agents were scrutinized. Many blasphemers realized this scrutiny was an opportunity and made considerable efforts to ensure the prosecuted works and opinions contained therein were extensively aired in court. These frequently had the visible impact of strong antipathy demonstrated by judges and often also by prosecuting counsel. Such reactions were commonplace in the numerous prosecutions of Richard Carlile and his shopmen and shopwomen.[19] Intervention to prevent defendants continuing to disseminate their opinions featured regularly in these trials and was circumvented and criticized at every opportunity. This was a battle between defendants reaching out to wider Britain by utilizing the mechanism of court reporting, whilst judges sought to snuff out this oxygen of publicity.

On other occasions defendants would consciously publicize incidents and decisions by judges that placed them at a considerably material disadvantage. George

[16] This profile certainly fits offenders like Richard Carlile, Susannah Wright and George William Foote. However, it is interesting to note that major secularist leaders were more circumspect. Charles Bradlaugh used his legal ingenuity to avoid prosecution for blasphemy when his enemies intended it. This may have been convenient but also suggests the blasphemy prosecutions would have provided him with perhaps ambivalent publicity, since he consciously refuted other accusations about his declarations and beliefs. G.J. Holyoake made much of his prosecution for blasphemy but notably never transgressed or sought such notoriety beyond this one incident.

[17] See the parallels between the issues raised here and those contained in the chapter by Lesley Hall in Chapter VI of this volume.

[18] See Levy, *Blasphemy*, pp. 220–4,

[19] See Nash (1999) *Blasphemy in Britain*, Chapter Three. See also J. Wiener (1983) *Radicalism and Freethought in Nineteenth-Century Britain: The Life of Richard Carlile* (Westport, CONN: Greenwood Press).

William Foote noted that he was given inadequate time to prepare his defence and that his eventual sentence had been deliberately enhanced and aggravated by the addition of 'hard labour'. Even when this sentence had just been pronounced Foote eagerly quipped that the sentence had been motivated by religious malice and told the judge that it had been 'worthy of his creed'.[20] It was also possible to indict the judge's own beliefs as serving a material function in such cases. The fact that prosecutions almost invariably happened as a result of the English Common Law Offence of Blasphemous Libel meant that all resulting jurisprudence and verdicts were inevitably judge-made law. Thus, it became easy to 'read' the highly personal opinions of judges regarding religion and morality into the verdicts and outcomes of the cases they presided over.

The very law of blasphemous libel itself was also indicted as having evolved to produce dangerous, anomalous and vindictively partial proceedings. The outcome of the final Foote case of 1883 had been a moral victory for Foote. This was partly because the presiding judge, John Duke Coleridge, had been prepared to set aside the Hale judgement and actively declare that Christianity should no longer be considered either 'part and parcel' or the law of the land. This meant that criticism of it was now legally possible, but the cornerstone of this new pronouncement was that the 'manner' of the quasi blasphemous pronouncement would be the test of its offensiveness. Manner at last seemed to address elements of *Mens Rea* since the 'manner' of such pronouncements was likely to be seen as *prima facie* evidence of the direct intention to offend. If polite philosophical disagreement would escape the scrutiny of the law, then the presumption that occasions where confrontational language was used would involve the courts. Whilst this at first sight seemed to be a liberalization of the law, many argued that this introduced an unwelcome and unjust class bias around how the law would operate. As was suggested, skilled operators of rhetoric and argument could do considerable damage to religious belief and yet escape unscathed. Conversely, the unlettered and equally sincere street corner orator or publisher of coarse yet popular literature that denigrated religion would much more readily fall foul of this interpretation of blasphemous libel. Such anomalies were to be both noted and ruthlessly exploited by defendants in the years after the Foote case and into the twentieth century. Thus, by the last years of Victoria's reign a considerable variety of factors had conspired to enable trials for Blasphemous Libel to seem, and be actively cast, as the quintessential unfair trial. This accumulated case law of unfairness and infamy was available to the key defendants of Edwardian society, the last to receive custodial punishment in England before the law's repeal in 2008.

The cases against Gott, Stewart and Pack

The Edwardian period in England witnessed some of the ripples of anarchist activity which had spread both from the United States and from continental Europe.[21] As we

[20] *Daily Telegraph*, 6th March 1883.

[21] See also the chapter by Lesley Hall in this volume.

have noted, blasphemy trials and 'cases' generally did not happen as single or 'one off' affairs. They were often the product of campaigns engineered and operated by both sides. Agitators could influence successors whose actions would create subsequent cases, all with the intention of creating specific social and political effects.

As we also know, campaigns from various forms of authority could also assume many shapes. Moral reformers would often assume the authority to act on behalf of their vision of the entire moral and God fearing community. Policing authorities would, on occasion, seek to stamp out what they perceived as the arrival of nuisances within their locality. As such, the serial nature of prosecutions was a concerted attempt to damage, and/or remove, individuals who were a threat to public order. Occasionally both motives would blend seamlessly as policing agencies would be pressed into expressing their opinion on the issues they were dealing with.

Agitators often saw that they had a gift in the wording of indictments and summonses against them. These frequently betrayed opinions on the nature and effect of blasphemy pronouncements as part of the summons. These were regularly later reproduced by defendants as part of their own 'indictment' of proceedings. Many of these motifs and narratives, alongside the others outlined in the introduction, came together in the cases against Gott, Pack and Stewart. These cases span the period 1903 until 1912 – although there were later cases and John William Gott was notorious for being the last man to serve a custodial sentence for blasphemy in England. He died shortly after having served his sentence in 1922. Nonetheless these cases (or 'extended case') represent both an accumulation and culmination of the airing of defendant grievances and the mixed history of prosecution responses.

The precise issues surrounding this case began in November 1903 when John William Gott and George Weir received summonses for having 'published a certain scandalous and impious blasphemy' in their newspaper *The Truthseeker*. The matter in question was a spoof article advertising a prize fight between 'G. Hovah' and 'B.L. Zebub'. This contained some obviously popular contemporary references, but also noted some sections of the Bible which had provoked mirth before – namely Foote's ribald misappropriation of the Exodus text for which he had been prosecuted in 1883.[22] They noted that the prosecution was really a culmination of attempts to stamp out the nuisance these embodied. However, the publication (and the occasion that the authorities had chosen in this instance) constituted a problem of credibility for the prosecution. As the defendants stated the precise material indicted had appeared in the *Freethinker* some fifteen years previously. As they also noted this had been published and had been ignored, indicating that the defence could make some capital out of indicting the opinions and proclivities of those seeking to prosecute.[23] This could also be painted as the capricious and arbitrary nature of opinion altering through a changed atmosphere or periodic moral panic – something any 'publisher' of opinions could never be certain of, appearing to be a manifestation of injustice.

[22] The text is Exodus xxxiii, 21–3 'And the Lord said … I will put thee in a cleft in the rock … and thou shalt see my back parts: but my face shall not be seen.'

[23] E. Pack (1912) *The Trial and Imprisonment of J.W. Gott* (Bradford: Freethought Socialist League), p. 2.

Harassing previously unprosecuted material could also be suggestively portrayed as the exertion of malice at the behest of powerful individuals.

Ernest Pack noted that these proceedings were hastily dropped when a realization of the previously unhindered circulation of these opinions dawned upon the authorities; a motif that was to reoccur. Perhaps fancifully this was pounced upon as evidence that partiality, skulduggery or incompetence had all either been exposed or somehow defeated by the forces of discussion and reason.[24] The ignominious end to the case gave Pack the opportunity to note that other radical pamphleteers such as the anti-vaccinationists were left well alone and that such a judgement could only be painted as a manifestation of partiality and malice. Certainly the end of this particular episode seems to have produced a situation where prosecutions for blasphemy fell, at least for a time, off the agenda. However, the Bradford Socialists scarcely relaxed their campaign or the potency of their publications and propaganda.[25]

Pack and his compatriots suggested that after this incident, policing authorities grew wary of escalating their action to the level of prosecution. This meant that the motive for this period of inaction in the north of England could readily be painted by would-be blasphemers as evidence of fear, or bias, or indeed once prosecution was resumed, as a subsequent episode of incompetence, recklessness, or out-and-out malice. The Bradford Socialists as a group wrote as though their whole unified campaign was considered a danger that should not be confronted lightly. However, the Home Office files reveal a rather different story. They suggest that Gott had been in their sights for some time and, whilst a thorough nuisance, he did not on his own arouse the imperative to take substantial and immediate action. It seems that it was the arrival of Thomas William Stewart (and the eye and ear catching Dr Nikola persona) which was regarded as increasing the inflammatory nature of these outdoor campaigns.[26] Another conceivable motivation for increased scrutiny comes from examining the close connection between international events and some of these set piece meetings.

Police surveillance of large public gatherings had increased in the previous three years in response to a conceivably more enhanced threat from anarchism. The Home Office had received a number of reports about how radical rhetoric blended with delight at the consequences of anarchist direct action against international statesmen which had proved fatal.[27] Subsequent moves against the Bradford Socialists thus began again in August 1911 when a summons was served on the new menace Stewart (under his platform pseudonym Dr Nikola). This was for speaking, and thereby publishing, ' … scandalous, impious, blasphemous and profane matters things of and concerning the Holy Scriptures and the Christian Religion against the peace of Our Sovereign Lord

[24] Ibid., p. 3.

[25] Ibid.

[26] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 6 – Report from the Leeds Chief Constable 10 December 1911.

[27] See National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 144/871/160552 item 20 – Letter from Chief Constable of Birmingham, C.H. Rafter, 10 February 1908. This communication noted assaults upon council buildings and a meeting in which the assassination of the King of Portugal was actively lauded and celebrated.

the King, His Crown and Dignity'.[28] As Ernest Pack noticed, such a charge squarely reinforced the enduring logic behind blasphemy as a Common Law and as a statutory offence – namely that religion was closely regarded as ' … part and parcel of the law of the land'. Police evidence suggested that the sentiments were likely to have been ' … most offensive and distressing to respectable persons passing by'.[29] On the same day, a similar summons was presented to Gott, but this time it was more specific implicating the comic pamphlet *Rib Ticklers*. This was a compendium of irreverent and semi-puerile jokes and profane stories making light of biblical events and central figures – alongside some rehashing of anti-clerical themes and stereotypes.[30]

At the initial examination of the case against Stewart, the defendant believed he had actively succeeded in establishing that apparently verbatim notes of his speech, which had prompted the summons, had been irregularly tampered with. These appeared to have been edited and subsequently 'completed' in ink. Moreover, a policemen who had testified that Pack had described Jesus as 'a dirty fellow' in his speech was unable to find corroborating evidence in the original notes he had taken, although they appeared in those subsequently written up as evidence for the hearing. The Bradford Socialists saw the adjournment of this case (*sine die*) merely as evidence of bungling. However the Home Office subsequently believed this had been a legitimate and calculated shot across their bows, one that ought to have been heeded and something undertaken so that the public nuisance would cease.[31]

Whatever their reading of the failure of this case to proceed, Gott and Stewart continued to lecture and a second round of summonses was the inevitable result. The indictment followed a speech given by Stewart on 20th August 1911. This concentrated upon a particular diatribe against the Christian doctrine of forgiveness, something which was a great favourite of Victorian and Edwardian secularist speakers and writers. This aimed at feeding a perceived moral repugnance at the idea that the worst of sinners could be saved whilst the most virtuous might find themselves damned. One of Foote's most sophisticated cartoons from 1882, entitled 'Going to Glory' pursued this theme with a depiction of a murdered man descending to hell, whilst his murderer is forgiven by a priest and admitted to heaven. Given Gott and Pack's familiarity with Foote's publications, they conceivably used this cartoon as the inspiration for this particular diatribe against forgiveness.[32]

Pack actively elaborated upon this critique and gave it a profoundly contemporary feel – citing Dr Crippen as the murderer in his rejuvenated story. Crippen was allowed into heaven whilst others (including Pack himself who offered a sincere denial of the scriptures) were not. This possibly suggests a further and clearer adaptation of the story with the murderer (in this case Crippen) portrayed as a devout Christian and

[28] Pack, *The Trial and Imprisonment of J.W. Gott*. p 6.

[29] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 6 – Report from the Leeds Chief Constable 10 December 1911.

[30] Anonymous (1900) *Rib Ticklers OR Questions for Parsons* (Bradford: J.W Gott).

[31] See respectively Pack, *The Trial and Imprisonment of J.W. Gott.* P. and National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 6.

[32] See *Freethinker*, 3rd September 1882.

the victim as an honest freethinker. This manifestly apparent and moral injustice led Pack to conclude that ' … God is not respectable company for a man like me'. Throughout this, and indeed all these prosecutions, the Bradford socialists believed themselves to be protected by the essence of the Coleridge dictum, drawn from the resolution of the last case against Foote, that had concluded with Justice John Duke Coleridge unravelling the belief that Christianity was ' … part and parcel of the law of the land'.[33] Yet this also contradicted their earlier assertion that the doctrine was alive and well.

The arrival of the defendants in court became the opportunity for them to invoke a commonplace of blasphemy trials. They made efforts to size up the jury and readily concluded that they were 'the twelve apostles'. Moreover, they seemed obviously unlikely to be sympathetic to their case and the issues at stake – at least those pertaining to the exercise of free speech.[34] Levity was introduced into such discussions when Ernest Pack afterwards speculated that it was likely that they were less than assiduous in their duties. He noted that a local cattle show was more likely to have drawn their attention, and similarly that Leeds juries were similarly notorious for failing to retire to the jury-room when asked to consider their verdicts.

Pack's case was heard first and he proceeded to follow a, by now, established line of cross-examining the policemen charged with compiling evidence in the trial. His questioning sought to suggest that the policemen present were given careful instructions to note down potentially offensive material. This was scarcely surprising in itself, especially given the previous summons and the defendants' avowed commitment to continue the propaganda activity. However, this became the prelude to Stewart seeking to establish that his material deemed most blasphemous and offensive had been uttered in response to frequent interruptions from members of his audience. This ostensibly led to an accusation that agent provocateurs had been placed in the audience as a calculated act of incitement. Stewart scored a very cheap point by explaining the meaning of that term to the policeman before him, whilst also illuminating further that the uneducated were expected by the offence of blasphemy to adjudicate in theological matters. This line of argument led nowhere and intended to signal forms of oppression to an audience beyond the courtroom. In truth, establishing the existence of agent provocateurs was irrelevant to the case. The authorities were within their rights to continue to scrutinize the meetings of the Bradford socialists. Even if agent provocateurs had been involved, they could justifiably argue that they were motivated by religious conviction (or organized by religious organizations), rather than any malignant motive aimed at curtailing individual freedom. Stewart, during the course of cross-examining a second policeman, again reiterated the suggestion that the notes taken of his speeches were not verbatim and memory of their precise nature could be blurred from the original context. This line of thought was also an attempt to destabilize the idea of exact expressions being the basis of prosecution. If

[33] Nash, *Blasphemy in Modern Britain,* p. 183.
[34] Pack, *The Trial and Imprisonment of J.W. Gott*. p. 30.

they were deemed harmful to the ideas of others, these needed to be examined with precision in a court that had chosen to prosecute them.

After this, Stewart returned to the matter in question behind the original 1911 case which had been postponed and then dropped. Precisely how was it that local authorities presumed to prosecute ideas and beliefs that had been routinely published in the past? To enable this defence, Stewart called Ernest Pack himself to the witness stand and succeeded in establishing that the sentiments he expressed had been published in a book by the leading nineteenth-century American freethinker Colonel Robert Ingersoll. Pack then asked further questions to establish Ingersoll's reputation and the scope of the audience he had reached since publication.[35] The judge, Justice Thomas Gardner Horridge, must have sat up in his seat at this and recognized that this might constitute a legitimate evidence. He ordered that such evidence would be considered admissible if the relevant book could be produced in court.[36] Unluckily for Stewart, this did not run in his favour since it became obvious that finding the work would prove difficult in the circumstances.

Stewart, however, did have better luck when the judge asked the witness how frequently blasphemy had been prosecuted and Pack was able to reply citing the Foote case (artfully forgetting the Boulter case that should have been fresh in the memory).[37] Things improved still further when he called to the stand another secularist sympathizer George Weir. What transpired also trod a path well established by previous secularist defendants when accused of blasphemy. Foote in his 1883–1884 case had suggested that the unprovoked and, to him, unwelcome outbursts of the evangelical street preaching of the Salvation Army was anathema to him. It was vulgar and many of the sentiments appeared, to his finely tuned disposition, calculated to offend him and any other rational citizen.[38] Weir was similarly eagerly invited to note that the 1903 incident had (allegedly) been accompanied by a religious speaker who had spoken to the crowd before Weir had arrived. Upon being asked, he recalled that the speaker had quoted the biblical passage 2 Kings 18 v 27.[39] Stewart histrionically asked Weir if he was willing to discuss his reaction to this text. Weir replied that he would refuse to repeat these words in court and that he had upbraided the Christian preacher for being what he termed 'a dirty fellow', to find that portions of the audience were in complete agreement with Weir and his opinion. This may or may not have been a contrived and fictional narrative, nevertheless it did have the desired effect. When laughter cascaded through the court Justice Horridge stifled this immediately, anxious to regain an atmosphere of seriousness.[40]

[35] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 18.

[36] Ibid.

[37] Ibid.

[38] See the *Freethinker* 4th August 1881, 4th December 1881, 3rd September 1882 and 1st October 1882 for Foote's assaults upon the Salvation Army.

[39] The King James Bible renders this as 'But Rabshakeh said unto them, Hath my master sent me to thy master, and to thee, to speak these words? *hath he* not *sent me* to the men which sit on the wall, that they may eat their own dung, and drink their own piss with you?'

[40] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 18 – Shorthand notes of the trial.

Weir noted that the police had taken no action against this speaker and that the Freethought Socialist League's speeches delivered by Stewart had only received one complaint about their atheist sentiments, and not explicitly against any utterance or publication. When Weir had left the stand, Stewart proceeded with the task of putting two and two together. Building upon the presence of police, their note taking and their failure to behave similarly in the presence of a potentially offensive Christian speaker, Stewart suggested that all of this constituted a form of calculated entrapment. Citing the ignominious so-called failure of the first case against himself and Gott, Stewart described this latter case as 'deliberately worked up … to hide the bungling in the first case'.[41] Even if true, this was unlikely to elicit sympathy from those in court. What was arguably more serious was his suggestion that the summonses had been incorrectly worded. The wording of the summons suggested that the precise words spoken and indicted were said to be contrary to the 9 & 10 William III Blasphemy Statute of 1698, which implied precise doctrines were under attack and were here being protected by law established. Yet paradoxically the prosecution opened the case in court by suggesting Stewart's words were contrary to the Common Law, and thus were indictable for causing offence because of the reaction they might provoke.[42] Such anomalies would regularly emerge in blasphemy cases and lack of experience and familiarity with the law would contribute to their frequency. Further sympathetic witnesses were called and their evidence trawled far and wide both geographically and chronologically. This searched supposedly in vain for any other evidence of disgust and outrage from Stewart's lecturing style and content in other localities. Looking backwards in time, one witness could recall Charles Bradlaugh lecturing and using similar language to Stewart and escaping prosecution around twenty years earlier.[43]

Stewart's own appearance in the witness box proved inconclusive. He reiterated the evidence about the apparently uncontroversial nature of his lectures elsewhere, and his belief that he was ostensibly protected by the logic of the Coleridge dictum in the Foote case of 1883. He was, however, caught slightly unawares by the judge who questioned him about a collection taken at the meeting, again a constant motif in the criticism offered by authorities both local and national, which maintained a belief that individuals who were accused of blasphemy were frequently following nefarious economic motives.[44]

Justice Horridge approached his summing up to the jury by acknowledging Stewart's invocation of the Coleridge judgement, and informing the jury that the law of blasphemy had evolved in recent years. He made it clear that the manner of expression had become the supreme test of offence. But, importantly, some of what the judge had to say departed from the logic of this judgement. Horridge noted that

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] See National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 11 – Letter to Sir Edward Troup (Home Office) from Chief Constable of Leeds 13 December 1911 which describes the Bradford Socialists as ' … making money out of sensationalism'.
[45] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 18 – Shorthand notes of the trial.

individuals had the right to say what they liked concerning religion but ought to be much more circumspect when talking about morals.[45] This line of argument was never followed up by the judge, but might conceivably have referred to the association with neo-Malthusianism which attended Stewart, Gott and Pack.

Beyond this, the summing up also further departed in some interesting ways from the 'manner'-based logic of the Coleridge judgement; ways which influenced the law's profile for the rest of the twentieth century. Horridge had new issues to deal with when faced with Stewart. Coleridge's judgement in the Foote case had followed Foote's ribald newspaper publication, and the judge here may have thought the offensive material could be assimilated and overlooked with a degree of contemplation. Horridge had speakers at a public meeting to contend with, and thus began to consider how the law would, and ought to work in a context much more closely linked to public order. The inherent problems of ruling on this case were laid bare by Horridge's relief at the fact that he was ' … always glad that a jury has to decide these questions, because they have not got to give reasons for their decisions. They have not got to justify them in arguments.'[46] Although he suggested that 'common sense' would be their guide, it was still not clear precisely how a jury were supposed to decide between ' … fair discussion on a religious subject' or ' … a malicious abusive attack'.[47] Given this it emerges as scarcely surprising that Horridge reminded the jury that they did not have to give reasons for their eventual decision. Nonetheless, Horridge also proceeded to rehearse the language used, asking the jury to consider very carefully their judgement of its character. He also made an explicit point of reminding the jury that they had to administer the law of the land, and should not be considering whether it was prudent to be prosecuting for the offence of blasphemy or not.[48]

After conferring, the jury found Stewart guilty and without invitation, the foreman of the jury declared: 'We consider that he went beyond the bounds of decency in his language.'[49] The judge sentenced Stewart to three months' imprisonment at hard labour. Taking his imitation of Foote to the ultimate degree, Stewart quipped back, 'The sentence is worthy of your religion, my Lord, and great may be your reward in Heaven.'[50]

The Assizes then moved on to consider the case against Gott. This summons had been laid upon him in respect of his publication *Rib Ticklers*. Gott quite readily admitted to having published this work alongside a great many others. Following the lead of Stewart, Gott likewise decided to play to the gallery with his interrogation of members of the local constabulary. Beyond asking the policeman whether a complainant ' … fastened his collar at the *back of his neck*', Gott's parade of witnesses and questions mirrored those previously utilized by Stewart.[51] The well-established and widespread

[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Pack, *The Trial and Imprisonment of J.W. Gott*, pp. 13–15.

circulation of Gott's works and the failure to generate complaints from successive audiences were both stories retold for the benefit of the jury.

However, one particular addition to this is worthy of some note. Gott continually reiterated that he was prepared to repurchase any of his publications if they failed to satisfy in any way. This was rather more than the guarantee that it seemed, since it also served as a rudimentary and crude species of warning sign to would-be purchasers warning of the nature of his publications.[52] Whether wittingly or unwittingly, Gott was addressing some of the thinking behind blasphemous libel being a Common Law offence. This flexibility meant the application of the law was intended to ensure it adapted to changing elements of public taste and sensibility. When questioned, Gott might have legitimately argued that he had done everything possible and reasonable to ensure that he was selling his wares to an aware and responsible niche audience, and thus not offending anyone beyond this grouping. This approach of placing legal responsibility with the consumers of such culture was an important principle in subsequent legislation in many European countries. Whilst not wholly indemnifying writers, artists and publishers he was further adding a greater cultural respect to the concept of free speech and free expression. As Gott put it:

> I have always made it perfectly clear when offering it for sale that it was an Anti-Christian pamphlet. My usual cry being that it was the new plan for getting rid of the Black Army, the Sky Pilots, the Devil Dodgers, the Fakers and the Humbugs – the parsons.[53]

From this point onwards, Gott found himself on ground that was more familiar and had been well-trodden by defendants during the course of the nineteenth century. Since he was talking about a publication, this was more familiar territory in which to argue that publications could be the subject of changing elements of taste and sensibility. Gott started by invoking a cultural relativism which tried to undermine the idea that an objective standard of what was precisely blasphemous could realistically be achieved. He asked, quite legitimately, whether it was conceivable that those who flourished without God could actually be accused of blasphemy.[54]

The standard invocation of moral revolt followed with Gott railing against the Bible as an obscene book ' … deliberately thrust into the unsuspecting hands of innocent children, who are requested to read, mark, learn, and inwardly digest it'.[55] He likewise pursued an enduring suggestion that Christianity quite readily profited financially from prosecutions for blasphemy. The nature of sentences passed against the convicted was the next link in the chain of Gott's argument. These seemed in many respects arbitrary, but notably there appeared to be a reduction in their severity over recent time. This was offered as evidence that society was becoming more enlightened.

[52] Ibid., p. 17.
[53] Ibid.
[54] Ibid., p. 16.
[55] Ibid., p. 17.

This theme was enhanced by Gott seeking to quote from Robert Blatchford's *God and My Neighbour*.[56] This investigated the truth of the New Testament, ironically by subjecting it to the scrutiny of a court of law. This noted that the messages of the New Testament and the persons mentioned in in its events would not successfully satisfy the laws of evidence, as understood by a court in England. Quoting this also had the benefit of exposing those in the court to material that had remained in circulation unmolested, yet it was apparently more offensive than anything Gott had published.[57] After further digressions, Gott wound up with a plea to the jury to defend the principle of free speech, hoping for a verdict of not guilty since he demonstrated ' … confidence in this enlightened age'.[58] In the event, this 'optimism' whether sarcastic or otherwise, was to be dashed since Gott was convicted and the judge sentenced him to four months' imprisonment.

Evidently some lessons had been learned from the case against Stewart and his infringement upon public order, since a small flurry of cases followed. In 1912 a case against an E. Stephens (who went under the alias of S.E. Bullock) was brought at the Leeds Assizes for using blasphemous language at a meeting in Rotherham. Stephens was a stridently apostate member of the Church Army who chose this meeting to rail against his former faith. It seems his repentance in court was as vehement as his proselytizing, yet this did not save him from a three months' prison sentence.[59]

Stephens could be dismissed as a youthful hothead, and seeking to police such meetings seemed to be bearing fruit. Certainly the police authorities were actively profiting from their experience. In this same year a further prosecution was aimed at another Bradford Socialist, Thomas Jackson. This one was notable for a change of tactic when he was charged under Section 28 of the 1847 Town Police Clauses Act. In particular he was indicted for ' … using profane or obscene language'. Jackson claimed the Act did not apply to him, thereby disputing the definition of 'profane'. The judge disagreed and Jackson received a sentence of fourteen days. Hypatia Bradlaugh-Bonner believed that this had been the first time this Act had ever been used against secularist or freethought speakers.[60] She also declared that religious offences, under an Act of 1842, were mandated to be tried at the assizes. From this it looked likely that the use of the Town Police Clauses Act of 1847 was an expedient to avoid such proceedings.[61] Jackson, like Stewart and Gott before him, refused to give undertakings to amend his behaviour and he underwent a similar term of brief imprisonment that came to resemble a 'cat and mouse' game akin to the frequent prosecution, detention and release of numerous Suffragettes.

[56] Ibid., pp. 21–3
[57] Ibid., p. 18.
[58] Ibid., p. 25.
[59] Bradlaugh-Bonner, *Penalties upon Opinion*, p. 124.
[60] Ibid.
[61] Pack, *The Trial and Imprisonment of J.W. Gott.* P 35.

The 'problem' of blasphemy at governmental levels

On the face of it, these blasphemy prosecutions appeared to have at least partly fulfilled their function. Despite the occasional false start, none of the defendants succeeded in escaping the law and its attempts to prosecute them and thereby combat a public nuisance. As far as the police in Leeds and Bradford were concerned, they had addressed and pacified local public opinion that had been opposed to the public meetings. They had thereby also, for the moment, prevented the circulation of advanced literature and the potentially unwelcome opportunity to accidentally hear views expressed which would inflame religious and moral sensibilities. They might even feel, perversely, that they had satisfied the quest of Gott, Pack, Stewart and Jackson for both their sustained mini-martyrdom and their episodic days in court. Yet this also was the Achilles heel of blasphemy prosecutions against the determined. Stewart was again lecturing upon his release and the Home office continued to receive reports and verbatim notes of his lectures from all over the country. His diatribes now included material he had obviously worked up during his imprisonment. He was prosecuted once more in Wolverhampton in September 1913 and Stafford in November 1913, again receiving a sentence of hard labour.[62]

However, these local victories, even though they were inevitably short-lived, were overshadowed by the ripples these prosecutions had caused in the wider cultural landscape of England. These trials effectively kick-started the modern twentieth-century movements for the repeal of the blasphemy laws. The Rationalist Press Association submitted a petition to the Home Secretary, Reginald McKenna (1863–1943) seeking the release of Gott and Stewart. The petition carefully stated that 'blasphemy' was a pejorative legal label placed upon the phenomenon of religious denial when it suited certain authorities. It then proceeded to suggest that ' … the prosecution of which would not now be tolerated by public opinion and indeed according to the generally received view such denial is not a crime at all'.[63] McKenna also had to confront the particularly cogent intervention of the noted Freethinker politician John MacKinnon Robertson who was keen to ensure McKenna knew that many took a dim view of the prosecutions.[64] Robertson was well known as a determined intellectual heavyweight and his involvement certainly made the Home Office wary and circumspect.

The reaction of Home Secretary McKenna is informative in the context of these particular cases. The idea of blasphemy repeal had been aired before the 1911 crescendo of cases against the Bradford Socialists. Just after the cases had been heard, McKenna received a letter from the MP George Greenwood drawing his attention to Justice James Fitzjames Stephen's celebrated opposition to the Coleridge judgement, and how this had been enshrined in the 1894 edition of his *Digest*. McKenna was unimpressed and suggested that this had survived into the 1894 edition solely as a

[62] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 55 and 45/10665/216120 item 51.
[63] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 12.
[64] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 21.

result of it being updated by Stephens' own son.[65] This was suggesting that at this point Mckenna believed the law and its operation, as he understood it, functioned quite adequately at the local level.

However as events unfolded after this point, Mckenna was forced to concede ground and allow his civil servants to investigate the issue of repeal. One aspect of this process may have been caused by public ignorance. In reply to Sir Arthur Quiller-Couch, Mckenna noted how frequently he had to reiterate that the proceedings for prosecution were instigated by local agencies and were not the implementation of centrally operated statute law.[66] This indicates several things that stand out as important in understanding this episode and its subsequent influence on the wider history of blasphemy under English Common Law. Public understanding of the law presumed that a national statute was the means to prosecute whether fairly or unfairly. It also indicated a gulf between this and the public understanding of what Common, and thus judge-made law was seeking to achieve in this area. The Home Office had addressed those who would comment on the procedural elegance of the law directly. Civil servants had long believed that judges in individual cases would be guided by their interpretation of the moral outlook of the age. This was a clear and elegant safeguard to impress on both sides of the argument. Such interpretation by judges effectively reflected contemporary opinion, thereby arguing that the law was not obsolete. But this supposed elegance had merely a small informed audience and such elegance was so frequently lost on outside observers with other concerns and agendas.[67] The gulf between local action and disdainful distant opinion of such actions contrasted metropolitan relaxed complacency with urgent provincial fears. This had both advantages and disadvantages to government and its observers. Detachment from initiating such action could readily become a useful expedient. Righteous disappointment or chagrin could be displayed by the Home Secretary, even if private opinions argued otherwise. Yet distancing the Home Secretary from the implementation of the law was thoroughly capable of quickly calling the law itself into question. Certainly the Pack/Gott episode of 1911/12 inevitably drew the Home Secretary into debating the wisdom of repealing both the 9 & 10 William c 35 Blasphemy statute and the Common law of Blasphemous Libel – presumably as the defendants in this flurry of cases must have hoped.

By the end of 1914, Home Office opinion was rapidly mellowing and seemed to have retreated to a prepared defensive position. The ongoing and problematic nature of the cases against the Bradford Socialists had, at the very least, called into question the supposed purpose of a blasphemy law. Whatever their public defence of the law in response to letters of complaint, the Home Office was privately, but persistently, worn down by the determination of the offenders and the outcry they elicited from

[65] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/24619/217459 item 2 – Letter from George Greenwood to Reginald McKenna 26 December 1911.

[66] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/10665/216120 item 83 – Letter from Reginald McKenna to Sir Arthur Quiller-Couch 3rd February 1914.

[67] The Attorney General Sir John Simon called the existing law ' … a striking instance of the Common Law adapting itself to the times and changing in accordance with a general change of view in regard to religious matters.' National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45 10665/216120 item 86.

concerned liberals at large. Certainly when the matter reached the tabling of a Blasphemy Laws Amendment Bill in 1913 and in 1914 their response was pragmatic. The experiences of the previous four years had crystallized their belief that the sole virtue of the existing blasphemy laws was the protection they afforded to elements of public order. This meant that all subsequent commentary that emanated from the Home Office on the subject of blasphemy repeal sought to ensure that public order was protected. Such sentiments were echoed in the words of one Civil Servant who responded to the Blasphemy Laws Amendment Bill of 1913 by suggesting:

> Public blasphemy is on much the same footing as public exposure of the person. Any one may expose his person or utter blasphemy in the privacy of his own home but when he offends the feelings of others by his public displays his acts should be criminal. It is plainly impossible at present to amend the law of blasphemy on the right lines – and to abolish it would lead to public scandals. It is never used now except in cases where blasphemy amounts to a public outrage. And no one would be the better for its repeal except those who want to make themselves offensive to their neighbours.[68]

Conclusion

Blasphemy cases throughout the long nineteenth century had a reputation for unfairness cultivated around them. The very subjective nature of the offence, as it developed over the course of the nineteenth century (especially after the Coleridge pronouncement in the Foote case), was a root cause of this. Proceedings could easily be painted as biased, as well as portrayed as motivated by a strange mixture of fear and malice. The diversity of court proceedings and attempts to supposedly stifle free expression, both in and out of court, provided important and influential journalistic and pamphleteering copy for the radicals who gamely took on the blasphemy laws and the authorities. Their success at this made the concept of an unfair blasphemy trial something of a commonplace.

The law itself was clearly something of a series of anomalies that could be made to look embarrassing in court. The ideas of individuals found themselves on trial like nowhere else in the legal canon and, in such instances, indicting the opposition with accusations of bias and malice was inevitably a result. Government itself regularly fought shy of being centrally involved in prosecution and much preferred outside agencies to take the lead in such matters. This, on occasions, led to bungling and mistakes. Procedural anomalies instigated by judges could very easily be portrayed as the exercise of premeditated malice, and a calculated means of circumventing free expression and a fair trial. This malice appeared still more stark when defendants regularly reminded themselves and the courtroom that Blasphemy prosecutions

[68] National Archives, HO, Registered Papers, Prosecutions for Blasphemy, 45/17459/8 – Commentary on the Blasphemy Laws Amendment Bill 1915 and Comment by 'C.J.' 20 June 1913.

almost invariably were brought under the Common Law of Blasphemous Libel. This ensured that all law that was practised was judge-made law and, whether drawing upon the past or exercising new initiatives in the present, the legal bias of the Christian ages seemed to inevitably cling to these proceedings. Because of this, defendants in blasphemy cases could easily problematize such proceedings by suggesting that they unfolded invariably following the bias and personal opinions of the presiding judge.

The flurry of cases against Gott, Stewart, Pack and Jackson were effectively the culmination of nineteenth-century radical secularist defendants seeking to bring the blasphemy law into spectacular disrepute. Many of the defences, lines of argument, narratives, loopholes and counter accusations that these earlier defendants had used were revisited in these cases. The words and sentiments of their prosecuted forebears provided a miscellany of ways in which to paint prosecutions for blasphemy, and the courtroom proceedings attached to them, as intrinsically unfair.

Yet many of these elements scarcely disappeared from blasphemy trials right up to repeal in 2008. During the *Gay News* case of 1977/8 the defence counsels found themselves regularly wrong-footed by the procedural decisions taken by the judge Justice Alan King-Hamilton. Geoffrey Robertson and John Mortimer's defence case was immediately destabilized when the judge departed from the established practice of allowing both the prosecution and the defence to address the jury at the outset. This meant the prosecution case was heard without respite, allowing calumny to be heaped upon calumny. King-Hamilton also ruled theological and academic evidence to be inadmissible, commenting in court upon the text of the poem that was effectively on trial. In his instructions to the jury, the judge also showed the innate power of judges in a Common Law case, spontaneously departing from the Coleridge dictum by suddenly declaring that the motives of those who wrote and those who published the poem were irrelevant. Reaching back to Justice Horridge and those civil servants in the Home Office in 1914, King-Hamilton focussed upon the public order element of individuals being suddenly faced with a poem which he declared to be ' … blasphemous on its face'.[69]

Blasphemy cases from 1800, right through to 1978, represented a series of incidents where the partiality and bias inherent within legal proceedings against defendants were exposed for each generation. In secularist and liberal circles, radical reputations were carefully constructed around being a defendant in such proceedings. Yet for all its apparent power and the track record of successful prosecution that resulted, policing authorities, legal authorities and law itself were regularly damaged by such actions. These, arguably, drip-fed the call for reform and repeal which itself served to alter policing priorities in favour of public order issues. Yet as the *Gay News* case demonstrated, even these apparently clear uncertainties could be instantly overturned by a judge with a new agenda.

[69] G. Robertson (1999) *The Justice Game* (London: Vintage), pp. 138–51.