The Treatment of Blasphemy in English Law

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Opening

I should begin by explaining that I am not an expert on blasphemy law. Nor am I an expert on religion. I have had to do a good deal of research for this talk. This has not been easy, because the subject is complex and the materials are scattered or non-existent. Some of you who have read Max Beerbohm's Oxford novel *Zuleika Dobson* may remember the uncouth undergraduate named Noaks who shared lodgings with the gilded Duke of Dorset. I have discovered what Noaks (spelt Nokes) did when he left Oxford. He wrote a history of the crime of blasphemy, which was published in 1922. It seems to be the only book entirely devoted to the treatment of blasphemy in English law. I hastened to study it in the Bodleian Law Library, where I do my research. Alas it was stolen from the library in 1980, and has not been replaced. Such are the tribulations of the legal researcher.

Here I must utter a warning. Normally in a talk of this nature it is possible to enliven the proceedings by giving examples. However if I gave examples to you today I might offend religious susceptibilities. Moreover I would be committing breaches of the criminal law. I must therefore rely on straightforward exposition, though inevitably it will be necessary to quote some extracts that may offend.

The law of blasphemy has been much in the news in recent years. As I speak, we are awaiting the decision of the High Court in a case where the Action Committee for Islamic Affairs are attempting to bring a blasphemy prosecution against Salman Rushdie and his publishers over *The Satanic Verses.* This is part of an ongoing controversy over whether our law of blasphemy (1) should be extended to cover all religions, or (2) should remain as it is generally believed to be now (applying only to Christianity), or (3) should be abolished. I hope in this talk to give you some material on which to form a judgment of your own on that question.

Blasphemy has been dealt with in English law over many centuries, though in many different ways. It is necessary therefore for my treatment of the subject to be on historical lines. We can distinguish three periods:

1. Pre-Reformation.

2. The Court of High Commission 1558-1640.

3. The common law period.

Pre-Reformation

The Bible

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

'And thou shalt speak unto the children of Israel, saying, whosoever curseth his God shall bear his sin. And he that blasphemeth the name of the Lord, he shall surely be put to death, and all the congregation shall certainly stone him: as well the stranger, as he that is born in the land, when he blasphemeth the name

of the Lord, shall be put to death.' [Leviticus 24, 15-16.]

Jesus himself was often accused of blasphemy. When they brought him a man sick of the palsy, Jesus said: 'Son, be of good cheer; thy sins be forgiven thee'. Whereupon 'certain of the scribes said within themselves, This man blasphemeth'. [Matthew 9, 2-3.]

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

Historical

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

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

The nature of English law

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

Then came the Norman Conquest. This introduced the feudal system to England. Manorial courts were set up. Towns became important, and were equipped with their own borough courts. William the Conqueror sent round the country his own travelling judges, known as justices in eyre, to try grave crimes and important civil causes. He decreed that church courts must be separated from royal and other state courts. Separation of the church court from the secular court had been emphasized when in about 1072 the Conqueror decreed that no bishop or archdeacon should hold pleas in the hundred court, but in a place named by the bishop. In 1164 the Constitutions of Clarendon had further defined the boundary between church and secular courts. The main provisions were that clergy charged with crimes should be tried in the king's courts, that bishops, abbots and other prelates should be subject to feudal burdens, that the king's courts should try all disputes as to advowsons and presentations to church livings, that clerics should obey the king's summons, that land disputes between clerics and laymen should be tried by the king's judges, and that suits for debt should be tried by those judges even though a trust or other religious obligation was involved. In this way the king asserted his overall power in the realm. If a church court attempted to try a case where it lacked jurisdiction, the king's writ of prohibition was available to prevent it.

The medieval courts were different from each other, and the law administered in them was different. Local

courts of the shire and the hundred administered local customary law. The baronial and manorial courts administered feudal law. The church courts administered civil law (derived from the old Roman law) and canon law (the developing law of the Church). The punishment of blasphemy, and other manifestations of heresy, fell within canon law.

Church law could be divided into the special law which regulated the church itself, including its bishops, priests and other orders of varying ranks, and the general law which regulated the whole of the church's flock. Blasphemy fell into the second category, which I shall call the general law of the Church.

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

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

So we have the situation, in that formative period the thirteenth century, that the king's courts are coming to control all other courts, including the church courts, and Parliament by its enactments is coming to control even the king's courts. The enactments are however still very fragmented, covering only a small proportion of the law.

In considering the treatment of blasphemy in this period we must remember that in the Middle Ages the whole of Europe, including the British Isles, constituted what was called Christendom. Under the Pope, backed by the Church Councils he called from time to time, there was an undivided ***union of faith*** to which the Jews were the sole exception. The general law of the Church was the same throughout Christendom. It was administered informally by all officers of the Church, from the Pope downwards. Under this church law, blasphemy was regarded as a mortal sin.

Medieval church law: Bishop and Archbishop in Oxford

Here it may be helpful to take a particular place as typical of the position in the Middle Ages. Since we are in Oxford, let us take that. Oxford at this time is a walled city. The spot we are in now is a rough wattle-and-daub dwelling near the city wall, close to the East Gate. [If you enter St Edmund Hall by the lodge gate and keep walking straight ahead as far as you can go you will come to a fragment of the old city wall.] The walled city is divided into twelve parishes, each with its church. This spot is in the parish of St Peter in the East. Its church is now the library of St Edmund Hall. There was a Saxon church on the site, though the church was first recorded in 1086, when it was held by Robert D'Oilly. The timber church was then replaced by a stone building, which Wood says was 'the first church of stone that appeared in these parts'. The present crypt, attributed to St Grymbald, is early 12th century. The present chancel is also 12th century. In medieval times it was the wealthiest parish in Oxford.

Here is an example of how church law was operated by the bishops. St Hugh, bishop of Lincoln 1186-1200, punished by excommunication a young Oxford wife, daughter of one of the burgesses, who committed adultery. The story is told in the *Life of St Hugh of Lincoln*. The wronged husband appealed to the bishop, on one of his visitations to Oxford (which was then in the Lincoln diocese). Within a crowded

church (we are not told which), the bishop earnestly appealed to her to give her husband the kiss of peace and return to his roof. Her reply was to spit in her husband's face, although he was standing near the altar. The bishop sternly said 'As you have spurned my blessing and have desired my curse, my curse shall fall upon you' and at once excommunicated her. The chronicle continues-

"She went home still stubborn and during the few days vouchsafed to her by the divine mercy to come to a better frame of mind, her heart became more hardened and not in the least repentant. Then being suddenly strangled by the devil, her illicit and temporary delights were exchanged for perpetual torments as she richly deserved."

This is an example of church law being administered by the bishop, who kept a prison for the purpose. His court was known as a Consistory court, and normally the Chancellor of the diocese presided over it. There was a right of appeal to the court of the Archbishop, as the following example, connected in a way with St Edmund Hall, shows.

St Edmund Hall takes its name from St Edmund of Abingdon, Archbishop of Canterbury 1234-40, who traditionally resided and taught at a house in the western end of the present front quadrangle when he was a regent master of arts in the 1190s. Early in the thirteenth century the site of the front quadrangle was owned by John de Bermingham, Rector of Iffley, whose relatives in 1261-2 sold part of it to Thomas of Malmesbury, perpetual vicar of Cowley. In 1271-2 Thomas granted his part of the site to the great Abbey of Augustinian canons known as Osney Abbey. This was founded by Robert D'Oilly's son, also named Robert. The earliest surviving reference to the name *Auli Sancti Edmundi* is in a rentroll of Osney Abbey for 1317-1318, but it may be considerably older.

At the western end of the town was the Castle built by Robert D'Oilly senior at the behest of the Conqueror. Outside the city wall, just beyond the Castle, was Osney Abbey. In the year 1222 a provincial council of the Church was held at Osney Abbey. We know this from surviving written records, which is where most of our knowledge of the period comes. This was a council of the province of Canterbury (the other English province is York). It was presided over by the Archbishop of Canterbury, Stephen Langton. One of its duties was to hear appeals from persons convicted of grave offences against church law.

Among the appellants was a young man. We do not know his name, but I shall call him John. What offence had John committed? He had fallen in love with a young Jewess of Oxford. Again we do not know her name, but I shall call her Judith. To obtain the pleasure of this young woman's embraces, John found it necessary to obey her wish that he desert his faith and adopt her's. Therefore he circumcised himself, renounced the Christian religion, and became a Jew. This constituted the offence of apostasy, for which there was only one punishment. The council excommunicated John. Then they delivered him to the lay power in the shape of the Sheriff of Oxfordshire, the dreaded Fawkes de Breaute, whose soldiers immediately burnt him to death, probably at a site outside consecrated ground near Osney abbey. This illustrates how the state came to the aid of the Church, which was not allowed to inflict the penalty of death. Where the Church's penalty was excommunication, and the delinquent remained defiant, the bishop could apply to the king's chancery for a writ of ***Significavit***, by which the sheriff would be ordered to imprison the excommunicated person.

Another heretic punished by this church council at Osney was an unbelieving youth who refused to enter any church building or obey his priest, but masqueraded as Jesus Christ. He had marked his body, head and hands with signs of crucifixion. Together with a woman who called herself Mary Mother of Christ, and presumed to celebrate mass, the youth was ordered to be kept in close confinement (or possibly walled up alive).

Medieval church law: the Archdeacon's court

The local church court was the court of the archdeacon for the area, who acted as the bishop's deputy. The only surviving English record of such a court relates to the deanery of Wych, Worcestershire, in 1300.

Fifty-five cases are recorded, of which forty-eight relate to fornication, six to adultery, and one to wife beating. The punishment is invariably whipping, often 'through the market'.

The summoner was the officer whose function it was to require accused persons to attend upon the church court to answer for offences against general church law, to enforce payment of sums owed by delinquents to the church, and to administer punishments imposed by the church court. The medieval name of the Oxford intramural road we know as Ship Street, along with its lost eastward continuation known as Exeter Lane (now the site of Exeter College chapel) was Summoner's Lane. One of Chaucer's Canterbury Tales is that of the summoner:

He was a noble varlet and a kind one,
You'd meet none better if you went to find one.
Why, he'd allow - just for a quart of wine -
Any good lad to keep a concubine
A twelvemonth and dispense him altogether!
And he had finches of his own to feather:
And if he found some rascal with a maid
He would instruct him not to be afraid
In such a case of the Archdeacon's curse
(Unless the rascal's soul were in his purse)
For in his purse the punishment should be.
"Purse is the good archdeacon's Hell" said he.
But well I know he lied in what he said;
A curse should put a guilty man in dread,
For curses kill, as shriving brings salvation.
We should beware of excommunication.

The Court of High Commission

Blasphemy became a serious element in church politics only with the breaking up of Christendom at the Reformation. It then replaced heresy as the principal charge against forms of Christian belief that were seen as undermining both faith and society. It became a term of abuse employed to describe error in doctrinal controversy.

'During the Tudor period, as in the mediaeval period, Church and State were regarded, from many points of view, as a single society which had many common objects; and the two members of that single society were still regarded as bound to give one another assistance in carrying out those common objects. The Church must help the State to maintain its authority, and the state must help the Church to punish non-conformists and infidels. The Church was the church of the State, and membership of it was therefore a condition precedent for full rights in the state; the king was the supreme govemor of the Church; and the law of the Church was the king's ecclesiastical law [and Christianity was] part of the law of England. In fact, not only Christianity, but also that particular variety of Christianity taught by the Anglican Church, was part of that law' (Holdsworth).

A series of Acts of Henry VIII, starting in 1529, removed the papal jurisdiction over England. When Catholic Mary came to the throne these were repealed by an Act of 1554. However in 1558 the Act of Supremacy, the first Act of the reign of Elizabeth, finally removed the papal jurisdiction. Section 8 (which is still in force) said that all powers 'for the visitation of the ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm'.
Under powers conferred by the Act of Supremacy the Court of High Commission was set up in 1559 to exercise the royal jurisdiction in church matters. It consisted of 44 commissioners, some clerical and some lay. Any three, provided they included a bishop, could impose punishments including spiritual censures,

fines or imprisonment. The procedure was based on canon law, so the common law doctrine against self-incrimination did not apply. However the church law as applied by the court began to diverge from the general body of canon law. The emphasis of the law came to be put on blasphemy rather than heresy, and this was to remain to the present day.

The Court dealt with Puritans and Independents. At the Revolution against Charles I the court was found to wield too great a discretionary and dispensing power in favour of the Crown. Like the prerogative Court of Star Chamber, it was abolished in 1640. Acts of 1648 and 1650 designated blasphemy a capital crime, having in view Anabaptists, Socinians, Familists and Ranters.

The common law period

Nayler and Taylor

With the demise of the Court of High Commission a vacuum was left, since the punishments that could be imposed by the old church courts had lost their effectiveness. It was filled by the common law, as enforced by the Court of King's Bench. Occasionally ***Parliament*** acted as a court, as in the case of the Quaker ***James Nayler***. In 1656, for allowing himself to be honoured as Jesus Christ, he was sentenced by the House of Commons to be put in the pillory, whipped from Westminster to the Exchange, again placed in the pillory, to have his tongue bored, his forehead branded with "B", then taken to Bristol, there again whipped, and then sent to Bridewell until Parliament should release him.

The report of ***Taylor's Case*** (1676) 86 ER 189 is brief-

'An information exhibited against him in the Crown Office, for uttering of divers blasphemous expressions, horrible to hear, (viz.) that Jesus Christ was a bastard, a whoremaster, religion was a cheat; and that he neither feared God, the devil, or man. Being upon his trial, he acknowledged the speaking of the words, except the word bastard; and for the rest, he pretended to mean them in another sense than they ordinarily bear, (viz.) whoremaster, i.e. that Christ was master of the whore of Babylon, and such kind of evasions for the rest. But all the words being proved by several witnesses, he was found guilty. And Hale [Sir Matthew Hale LCJ] said, that such kind of wicked blasphemous words were not only an offence to God and religion, but a crime against the laws, State and Government, and therefore punishable in this Court. For to say, religion is a cheat, is to dissolve all those obligations whereby the civil societies are preserved, and that Christianity is parcel of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law. Wherefore they gave judgment upon him, (viz.) to stand in the pillory in three several places, and to pay one thousand marks fine, and to find sureties for his good behaviour during life.'

Legislative interventions

The preamble to the Blasphemy Act 1697 recited that 'many persons have of late years openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the Christian religion, greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom'. For the benefit of Jews, it applied only to persons educated in, or at any time professing, the Christian religion.

The 1697 Act made it an offence (1) to deny any one of the persons in the Trinity to be God, or (2) to assert that there are more gods than one, or (3) to deny the Christian religion to be true, or (4) to deny the Bible to be of divine authority. For a first conviction the offender was deprived of the right to hold any office or employment. For a second conviction he was liable to be deprived of civil rights and imprisoned for 3 years. According to the Law Commission there were few if any convictions under the Act, which was repealed in 1967.

Fox's Libel Act 1792 was passed through the instrumentality of Charles James Fox. It provides that it is a

question of fact for the jury, and not as hitherto a question of law for the judge, to decide whether a publication really is a blasphemous or other libel. This enactment, passed in what was known as the Age of Reason, enabled juries to soften the force of the law in favour of atheists etc. Starkie's book on libel (1830) stated the new view of the law-

'There can be no doubt as to the general right of inquiry and discussion even upon the most sacred subjects, provided the licence be exercised in the spirit of temperance, moderation, and fairness, without any intention to injure or affront ... It cannot be doubted that any man has a right, not merely to judge for himself on [the questions of the relations between the Creator and the beings of his creation], but also legally speaking to publish his opinions for the benefit of others.'

The justification for this distinction between an appeal to reason and an appeal to the emotions was stated by Lord Denman CJ in ***R v Hetherington*** (1841), when he described the latter type of publication as one where 'the tone and spirit is that of offence and insult and ridicule, which leaves the judgment really not free to act and therefore cannot truly be called an appeal to the judgment, but an appeal to the wild and improper feelings of the human mind, more particularly to the younger part of the community'. Of course this disregards the question whether if a person truly considers that for the public good a religious doctrine should be opposed he ought not to be able to use effective means such as satire, sarcasm and ridicule.

The Libel Act 1843 assisted publishers of blasphemous and other libels such as newspaper editors or proprietors by exempting them if they proved that they were unaware of the nature of the item and had not been careless. They were further aided by the Law of Libel Amendment Act 1888, which required the leave of a judge before prosecution for newspaper libel.

State security

A large number of common law prosecutions for blasphemy occurred in the late 18th and early 19th centuries. In ***R v Gathercole*** (1831) Alderson B told a jury-

'... a person may, without being liable to prosecution for it, attack Judaism, or Mohamedanism, or even any sect of the Christian religion (save the established religion of the country); and the only reason why the latter is in a different situation from the others is, because it is in the form established by law, and is therefore part of the constitution of the country.'

In a 1981 Working Paper the Law Commission said the state's primary interest at this period this was its own security. They went on-

'Consequently the State intervened by using the criminal law to punish those whose attacks on Christianity or the Deity were regarded as a menace to the foundations of the established religion and thus to society in general. It is therefore not surprising that the number of prosecutions increased during the disturbed period following the French Revolution for fear that the denial of Christian truths in such a work as Paine's ***Age of Reason*** might give rise to civil disobedience.'

Preservation of the King's peace has always been a prime concern of the common law courts. In the case of ***Bowman v The Secular Society*** (1917) Lord Parker of Waddington said that 'to constitute blasphemy at common law there must be such an element of vilification, ridicule, or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace'. In the same case Lord Sumner said 'the gist of the offence of blasphemy is a supposed tendency to shake the fabric of society generally'. He added that the question whether a given opinion is a danger to society 'is a question of the times and is a question of fact'. Thirty years later we find Lord Denning saying of this in his Hamlyn lecture (1949) 'There is no such danger to society now and the offence of blasphemy is a dead letter'.

The present position

The last successful prosecution for blasphemy before the Gay News case in 1977 was ***R v Gott*** (1922), where the defendant, who had three previous convictions for blasphemy, was sentenced to nine months with hard labour for selling blasphemous pamphlets. A paper called 'The Liberator' contained 'two pamphlets, entitled respectively "Rib Ticklers, or Questions for Parsons" and "God and Gott". One man in the crowd said: "You ought to be ashamed of yourself": one woman said "Disgusting, disgusting!" Nothing further occurred'. The Lord Chief Justice, upholding the conviction, said 'It does not require a person of strong religious feelings to be outraged by a description of Jesus Christ entering Jerusalem "like a circus clown on the back of two donkeys" ... Such a person might be provoked to a breach of the peace'.

The Gay News case in 1977 was a private prosecution brought by Mrs Mary Whitehouse. The paper had published a poem by James Kirkup entitled 'The Love that Dares to Speak its Name'. The Law Commission description is: 'The poem recounted the homosexual fantasies of a Roman centurion as he removed the body of Christ from the cross, in which he described in explicit detail acts of sodomy and fellatio with the body of Christ immediately after His death and ascribed to him during his lifetime promiscuous homosexual practices with the Apostles and other men'. The defendants were convicted by 10-2. On appeal to the House of Lords the conviction was upheld 3-2. The principal points of law established were (1) it was irrelevant whether the defendants really intended to blaspheme, (2) it was irrelevant that there was no 'attack' on the Christian religion.

There have been recent statutory interventions in relation to broadcasting and video recordings, though these do not relate specifically to blasphemy. The Broadcasting Act 1981 requires the Independent Broadcasting Authority to ensure that its sound and TV programmes do not include anything "which offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling". The BBC charter imposes similar restrictions.

The Video Recordings Act 1984 empowered the Home Secretary to refer videos to the British Board of Film Classification, and made it an offence to supply uncertified videos. In general, a certificate must not be issued if the video is not suitable for general viewing. It is possible for the certificate to specify an age (not over 18) which must be attained by viewers, and also to specify that the video must only be supplied in a licensed sex shop. Last year a certificate was refused for ***Visions of Ecstasy***, a video about St Teresa of Avila. This linked her mystical experiences with her supposed sexual feelings about Jesus.

In 1985 the Law Commission published a report recommending that the common law crime of blasphemy be abolished and not replaced. The impact was marred by the fact that of the five commissioners two (including the Chairman of the Commission Ralph Gibson J) dissented. The minority wished to replace the present law by a new offence modelled on a provision in the Indian Penal Code which prohibits the deliberate outraging of the religious feelings of any person. There is no definition of 'religious', but this has caused no difficulty during the century or so for which the provision has been law in India.

The Humanist view

Humanists are campaigning against the current use of the human rights concept of Freedom of Religion to undermine the democratic ordering of society. Article 9 of the European Convention on Human Rights, which embodies Freedom of Religion, is now taken to mean that individual choices must be allowed to override the democratic ordering of society if they are prompted by the teaching of some religion or other. It is also taken to mean that no religious precept must be challenged by the organs of society.

This denies the right of society to decide that the teachings of a particular religion or so-called religion are anti-social, and to combat them. For example in Britain the state finds itself compelled to finance the running of exclusively Roman Catholic schools, even though (as events in Northern Ireland demonstrate) such educational segregation is clearly against the public interest.

Some religious systems purport to regulate every aspect of life. Thus a Muslim parent said on the 'Everyman' BBC 1 television programme on 28 January 1990 'without Islam, life is meaningless. Islam

tells you everything; how to eat; how to sit, how to stand'. The Freedom of Religion principle gives a licence to any actual or purported religious system to override every aspect of the law and other arrangements laid down for the individual by his or her democratic state.

Humanists believe that an unlimited Freedom of Religion principle, though having an apparent validity, is in fact dangerous to the health of society. It may licence teaching of falsehoods to children, brainwashing of adolescent converts, bizarre exceptions to a just law (such as that requiring the wearing of crash helmets by motor- cyclists), and other anti-social practices.

The Freedom of Religion principle is against the nature of religion itself. By demanding that all actual or so-called religions be accorded equal respect it runs counter to claims of religious truth. The Christian religion, for example, insists that it is the only true faith: 'No one comes to God except by me' (John 14.6). The Talmud and Koran make similar claims.

How should the secular state react to the claims of organised religions? A proposed ethical Code for humanists runs as follows.

1. In this Code-

"anti-social" means destructive of social wellbeing;

"immoral" means immoral in terms of secular ethics, and other references to morality are to be construed accordingly;

"socio-religious system" means a system of religious belief, or a sect within any such system, so far as it purports to regulate the social behaviour of believers or others;

"social wellbeing", in relation to any citizen, means his or her wellbeing as judged by the social standards and norms laid down or supported by the state;

"the state", in relation to a democratic state (this Code does not apply to any other), means the citizens of the state acting collectively, whether or not with a minority of dissentients, by established constitutional procedures or social consensus.

2. The human rights concept of Freedom of Religion, though of value as a defence for the individual against oppression, becomes immoral if used by any socio-religious system to override the democratic ordering of society.

3. The state has both a moral right and a moral duty to ensure that the tenets and actions of any socio-religious system operating within it do not adversely affect the social wellbeing of any citizen, whether a believer or not.

4. If a citizen is of opinion that any tenet or action of a socio- religious system operating within the state adversely affects the social wellbeing of believers or other citizens it is his or her moral right and moral duty to counter that tenet or action by such lawful means, whether consisting of propaganda, demonstrations, educational initiatives, fictional or non-fictional literary or media criticism or satire, promotion of changes in law, or other steps, as appear to him or her appropriate.

5. Since for the health and wellbeing of society the tenets and actions of a particular socio-religious system may need to be opposed with utmost vigour even though considered by believers to be sacred or holy, steps taken in accordance with clause 3 or 4 above are not to be treated as immoral by reason that they cause hurt or offence to believers, or are alleged by them to be profane, blasphemous, heretical, scurrilous, vilifying, or otherwise objectionable.

6. Since it is the moral duty of every citizen to uphold the social wellbeing of others, it is immoral for supporters of any socio-religious system to oppose steps taken against its tenets or actions in accordance with clause 3 or 4 above.

7. Since the tenets of a particular socio-religious system may be held by persons of any race, a particular instance of opposition to it is not to be taken as racist unless it appears that racism is the dominant motive.

8. The state should conform to and support the principles of this Code, and accordingly it is immoral for any law or policy of the state to conflict with those principles.

Conclusion

By way of summary I offer the following seven propositions for your consideration.

1. While Christendom endured, that is until the sixteenth century, blasphemy was a matter for the Church, by whom it was treated as a form of heresy: first as an offence injuring God, and later as an offence injuring individual souls.

2. In England blasphemy was punished by the Church courts until the Reformation.

3. The Act of Supremacy 1558 marked the great and lasting change, when the English Crown finally took over the functions of the Pope. However dealing with church offences by the royal prerogative, without the common law principle against self-incrimination, proved unacceptable to the English people.

4. The common law then took over, with occasional interventions by Parliament. It came to be accepted that the prime purpose of the laws against blasphemy was to safeguard the stability of the state and prevent breaches of the peace. Linked with this was the fact that Anglicanism was, and still is, the established religion.

5. It therefore became accepted, and still is, that it is not unlawful merely to deny or question the truth of the Christian religion, but is unlawful to insult or ridicule it.

6. The courts have for more than 100 years insisted that a person may, without being liable to prosecution for it, attack Judaism, or Mohamedanism, or even any sect of the Christian religion other than the established religion (which is part of the constitution of the country).

7. In the so-called multi-faith society of present-day England Humanists are campaigning against use of the human rights concept of Freedom of Religion (laid down by Article 9 of the European Convention on Human Rights) to undermine the democratic ordering of society, while Muslims in particular are campaigning in the opposite direction - for extension of the blasphemy law to all religions.

FRANCIS BENNION