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PLAIN REASONS'

WHY PROSECUTION FOR BLASPHEMY
SHOULD BE ABOLISHED.

THE SUBSTANCE OF A SPEECH DELIVERED IN THE WOOD GREEN
PARLIAMENTARY DEBATING SOCIETY.

BY

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"Thus, then, judge-made but by judges doubted of, like some monstrous fossil concerning which the geologists do wrangle, stands or sprawls our law of blasphemy. How much longer shall it so stand or sprawl?"



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Plain Reasons why Prosecution for Blasphemy should be abolished.

I.—The Obscurity of the Blasphemy Laws.

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WRITING on this subject in the *Fortnightly Review*, Mr. John Macdonell says :—

“The law has not been uniformly laid down; it has been changed, not once only, but often, not by one judge, but by several; it has been made the voice of the morality, and also of the passions and prejudices, of the hour; and the history of this law lies in the nature of these fluctuations.”

The truth of this statement may be made sufficiently clear, by a consideration of the alternative definitions of the offence given by Sir James Fitzjames Stephen, in his “Digest of the Criminal Law;” of the conflicting statements of Judge North in the two trials of Foote, Ramsey, and Kemp; of the still more striking disagreement between these and the law as laid down by Lord Chief Justice Coleridge in his charge to the jury in the case of *Regina v. Charles Bradlaugh*; of the opinions advanced by various eminent authorities (Dr. Blake Odgers in his “Law of Slander and Libel,” his article in the *Modern Review*, and his paper read before the Social Science Congress; Emeritus Professor Hunter; the able author of the article on Blasphemy

in the *Westminster Review* for July, 1883 ; the writer in the *Fortnightly*, quoted above, etc., etc.) ; and of the utter impossibility of reconciling the judgments delivered in the various trials which have taken place during this century, and which constitute the foundation of the Common Law of England as regards Blasphemy at the present time. The framing of an exact legal definition of Blasphemy has become, in fact, a problem of a most difficult kind, if indeed it be not an utterly hopeless task. Sir James Stephen's opinion, that the Blasphemy inheres in the matter, and not merely in the manner of the libel, is at striking variance with several authorities almost as eminent. The prevailing voice in the present decade, declares the penal part of the offence to lie in the *manner*. Loud profession is made of indisposition to punish honest expression of opinion, however opposed to religious dogma, so long as ridicule is not used ; but John Stuart Mill, the foremost logician of the age, says : "The line between argument and reviling is too difficult for even legal acuteness to draw." It is strongly urged in some quarters, notably by Dr. Odgers, that "our religious emotions" demand protection from the law. But why religious opinion more than other opinion needs protection is difficult to see. It would seem that Dean Cockburn may grossly insult Mary Somerville by name from the pulpit of York Minster, on account of her teachings in physical science, and that the clergy may roundly abuse Darwin from their coward's castle ; but dogmatic theology must have police protection. Another view of the case upholds the existing condition of the law, because of blasphemous libels incit-

ing to breaches of the peace ; but surely disturbers of the peace can be summarily dealt with without our hearing of blasphemy ! It is a mere matter of opinion, at the present time, whether Foote, Ramsey, and Kemp were sent to prison because of the opinions they held honestly upon religious matters, because they *ridiculed* religious opinion, because their publication was vulgar to cultured tastes, because their newspaper had irritated the spleen of Sir Henry Tyler, or because they fell the victims of a blow aimed at the junior member for Northampton. It looks to me a gross outrage to imprison peaceable citizens ostensibly under a law which exists in a state of such inexplicable confusion.

II.—The Danger of their Vindictive Application.

The recent prosecutions were not called for by any religious organisation. They were notoriously instigated by known political and bitter enemies.¹ They took place in the very hot-bed of corruption. Lying misrepresentations and suggestions of lascivious indecency were put forth by a counsel known to be an unscrupulous personal hater of the accused most

This statement has since been well corroborated by the editor of *St. Stephen's Review* (the new first-class Conservative publication), who expressly admits that the prosecution of Mr. Bradlaugh for blasphemy was commenced because certain Conservative members believed "that Mr. Bradlaugh could, by a conviction for blasphemy, be disqualified from sitting as a member, and so completely got rid of," and, the editor adds, "proceedings were taken accordingly."

sought to be injured by the prosecutions. The judge, known to have strong feelings of his own towards persons such as the accused, acted more the part of prosecuting counsel than that of an impartial person presiding over a trial at law; made it extremely difficult for one of the accused to speak in his own defence with the freedom and latitude usually allowed in such cases; roughly refused bail when the first jury refused to convict, although all the defendants had been given bail on commitment; and, having made a change in his laying down of the law, and the second jury having convicted, he passed a sentence which has been almost universally condemned as grossly excessive. It is impossible to say whether his almost immediate removal from the trial of criminal cases was owing to an opinion on the part of the Government of his unfitness. As in older time personal spleen could be easily sated by trumped-up charges of witchcraft, so in this last quarter of the nineteenth century the country has witnessed an iniquitous and hypocritical prosecution, under laws thought to be obsolete, result in the imprisonment for excessive terms of three law-abiding citizens.

Blasphemy is just one of those indistinct offences which are peculiarly liable to the danger of being used by unscrupulous people to wreak vengeance upon a foe not otherwise to be reached—"a weapon," says Emeritus Professor Hunter, "always ready to the hand of mischievous fools or designing knaves."

The transparently hypocritical character of the prosecution of Foote has excited the almost universal reprobation of persons whose piety is undoubted, and

who remember the rebuke which Jesus Christ gave to his followers when they wished fire to be called down from heaven upon his enemies.

III.—Their Unequal Application

In the first trial of Messrs. Foote, Ramsey and Kemp, Mr. Justice North said: "Now, if by writing or verbally, anyone denies the existence of the deity, or denies the providence of God, if he puts forward any abuse, or contumely, or reproach, with respect to the Almighty, or holds up the persons of the trinity, whether it is our Savior Christ or anyone else, to contempt or derision; or ridicules the persons of the trinity, or God Almighty, or the Christian religion, or the Holy Scriptures in any way—that is what the law considers to be blasphemy." After the jury had refused to convict under the law as thus laid down, Mr. Justice North gave a new law, and said: "What you have to consider is, is there any contumelious reproach, or profane scoffing against the Holy Scriptures, or anything exposing the Holy Scriptures to ridicule, contempt, or derision?" Foote, Ramsey, and Kemp were immured in gaol under one of these interpretations of the law. Then why is not the publication of the works of Byron, Shelley, Swinburne, Froude, Matthew Arnold, Huxley, John Morley, Bishop Colenso, Herbert Spencer, and a galaxy of other stars made the subject of prosecution? There can only be one logical answer to this question: If the recent prosecutions were just these others ought to follow. For

if these writers have not "exposed the Holy Scriptures to ridicule, contempt, and derision," words have no meaning. Mr. Justice North did not say to the jury: "What you have to consider is, Is there any vulgarity in the defendants' journal, any pandering to the tastes of vulgar people?" If he had said this the miscarriage of law would have been too patent. Yet the charge most commonly heard against these men from people who profess to tolerate free discussion is that their caricatures were indecent and vulgar. It is usually explained that by the word "indecent" is not meant anything obscene, but only something vulgar. It is perhaps an awkward alternative to have to choose between saying that Foote is imprisoned for vulgarity, and so admitting that the actual charge against him was a false and hypocritical one; and admitting that he is imprisoned for an offence of which all our best and most popular writers are guilty. If the feeling of poor people that one law exists for them and another for the rich ever had justification, it has it in the fact that a publication purchased by them to the number of tens of thousands, a publication uttering only in plainer words what the best literature of the day contains, a publication not immoral or inciting to breaches of the peace, has been prosecuted, and its conductors degraded to the punishment of common felons. So

"Great men may jest with saints; 'tis wit in them,
But in the less, foul profanation."

IV.—The Charge of Blasphemy is Anachronism.

Blasphemy is a survival, and is hardly heard of in police courts once in a generation. Much more frequently magistrates have to hear cases where witchery is alleged. Mr. Justice North attributed Mr. Foote's perversity to the direct inspiration of "the devil," and an old woman, a few days ago, pricked another on the ear with a needle to remove the charm of her witchcraft. These are survivals, and they are interesting as pictures of past times, in which, as Lord Chief Justice Coleridge remarked, "happily we do not live." But when these things are made use of to obtain the unjust imprisonment of honest men, when they are made use of to wreak vengeance for the telling of unpalatable truths, their interest is of a different character. A survival and an anachronism, however, blasphemy is. It comes down to these times from the age when a magnificent woman was torn alive on a Christian altar in Alexandria, through centuries whose deeds have blackened Christian history, and ought to make the modern emulators of the old defenders of the faith slink silently into the shade.

V.—It is a Priest-made Offence.

Soon after Christianity was adopted as the religion of the Roman Empire, the laws were so adjusted as to favor priestly aggrandisement and the protection of priests from civil and criminal responsibility. The

degree of insolence reached by the priesthood is so well known that it need not be described. Occasional outbursts of it in our times show the height to which it once reached. Even Dr. Vaughan, the Dean of Llandaff and Master of the Temple, had the courage to move for the dismissal of the Professor of Chemistry at the University College of South Wales because of his supposed sympathy with Secularism. This priestly arrogance, which devised the writ *de heretico comburendo*, invented the offence of blasphemy. Without priests we should have had no blasphemy. This is at least *prima facie* cause for suspecting the justice of prosecutions for the so-called offence. Most of what the Church has devised in the past is being gradually got rid of, and although its riches are held for the moment, recent statistics show that only about twelve per cent. of the whole population sufficiently respects the priesthood as to be regular attendants on their ministrations.

VI.—To Apply the Obsolete Laws of Blasphemy is Insulting to the Intelligence of the Age.

What would be thought of a judge who, sitting in a High Court of Justice, should to-day reiterate as his own opinion the words of that upright judge, Sir Matthew Hale, who said: "That there were such creatures as witches he made no doubt at all, for the Scriptures had affirmed so much." He could not be

tolerated. Yet such an anachronism, and so plain a remnant of ecclesiastical arrogance as Blasphemy, is allowed to be so used as to enable a subject of personal pique to obtain the imprisonment of three law-abiding citizens ! At a time when the intellect of the country is agnostic, it is possible to imprison a man of Mr. Foote's ability upon a charge which has no meaning, or which, at least, is interpreted by seven legal authorities in seven different ways. Whether Foote be imprisoned for daring to deny priest-made dogma ; or for ridiculing religious beliefs held by few rational people ; or only because a judge could be found to apply an obsolete law in a prosecution started by a Sir Henry Tyler ; his imprisonment is an insult to modern intelligence. No punishment would be meted out to one who should ridicule the myth of Leda and Jupiter (which needs no ridicule) ; yet if the immaculate conception and the hypostatic union be ridiculed, somebody's feelings are to be understood as hurt, and the author must be sent to jail. How, pray, are these dogmas to be met, if not with laughter ? When the Jewish and Christian literature have taken their proper place in popular estimation, their stories will be no more ridiculed than the story of Leda or the story of Perseus.

VII.—Liberty is made a Sham.

While the spirit of the age is against these prosecutions ; while the Secretary of State for the Home Department, in his place in the House of Commons,

deprecates them ; while the Lord Chief Justice of England disapproves them ; while Sir James Fitzjames Stephen expresses himself adversely to them ; it appears to be possible to an enemy to sate his spite by initiating such a prosecution, for a judge to order a second trial immediately upon the failure of a first, and for three fellow-citizens to be shut up in prison as common offenders for exercising freedom of speech. It seems to be necessary to obtain some express legislation, while the present Common Law regarding blasphemy exists, to prevent people being sent to gaol for an offence, the exact nature of which no one is able to satisfactorily define. We have been accustomed to boast of our national freedom, of the freedom of our press, of the freedom of our platforms, of the freedom of our opinion. It is true we have been warned of the existence of these blasphemy laws, but the warning was unheeded—no one believed it possible that another prosecution could take place. In a moment of unwatchfulness, however, bigotry and hypocrisy stole a march, and three men were insulted from the bench and handed over to the jailer under the obsolete law.

VIII.—Such Prosecutions fail of their object.

Richard Carlyle spent nine years in prison, his wife, daughter, and shopman likewise were put into gaol for a publication which is now sold freely without persecution. Shelley's "Queen Mab" was prosecuted, and found to be a blasphemous libel, yet the people

who are understood to favor the perpetuation of blasphemy as an offence, buy freely and read that splendid composition. The works of Thomas Paine have been prosecuted more than once, but they are sold with impunity by every bookseller. Moreover,

IX.—The Real Blasphemers are not interfered with.

These are such as he whom I heard a few weeks ago in a Wood Green pulpit, during a prayer, complimenting the Almighty upon his good intentions, and sympathising with him on account of the difficulties which unbelieving men throw in his way. Lord Brougham declared that blasphemy is an offence that can be committed only by a believer in the existence of the deity blasphemed. The real blasphemers are those who pretend to the same intimacy with their deity as with the man who lives in the next house; those who credit their god with ordering or approving the atrocities committed by the ancient Jews; and those who, believing that a personal god exists, who is the author and controller of all things, think unworthy thoughts of his character. They are real blasphemers who blaspheme their god by degrading thoughts, and blaspheme man by acts of injustice, of tyranny, of hypocrisy.

X.—Magna est Veritas.

It is not truth which needs the police. It is a superstition owning great wealth, and which writhes beneath a criticism destined to deprive it of the unjust possession of its riches, which requires the aid of a silly law to silence its foes. A faith which cannot withstand the most severe criticism, which is open to ridicule and yet cannot bear it, is a faith unworthy of protection by English law. No more hollow and worthless plea was ever put forward than the plea for the shielding of religious feeling by the magistrate. Scientific men do not stoop to ask such protection from the police against satirical journalists. Martin Tupper does not descend to crave the protection of the law against the ridicule which his proverbial philosophy has had to encounter. Ridicule is a potent weapon against all kinds of shams, and all kinds of eccentricities, but it cannot pierce the armor of truth, nor harm one hair of the just. Truth is mighty, and will prevail

