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# BLASPHEMY LAWS:

Should they be Abolished?

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## THE BLASPHEMY LAWS:

*SHOULD THEY BE ABOLISHED?*

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WE have arrived at an interesting stage in the history of Freedom. The right of private judgment, the right of free discussion, liberty to think, and therefore liberty to differ, are accepted as indisputable by all parties. The intellectual basis of intolerance is cut away; the pernicious sophistry that justified intolerance is discredited. But the passion of intolerance, although now ranking as a vice, is by no means extinct. So far we have made progress. There was a time when the gratification of a depraved taste for persecution was regarded as the highest of moral duties. St. Thomas Aquinas—to whom the Pope has recently invited Christendom to turn as an oracle of philosophical truth—St. Thomas Aquinas writes, apparently with perfect seriousness, that the crime of heresy exceeds the crime of coining false money. By heresy he meant the publication of any opinions that were condemned by the authorities of the Roman Catholic Church. But it is beyond the power even of a Pope to restore to life the antiquated opinions of St. Thomas Aquinas. The true doctrine of intellectual freedom has won an ascendancy among the best representatives of the Christian faith. The danger now lies in a different direction. What is to be feared is not a revival of persecution in its old shape—naked and not ashamed—but the invention of sophistical excuses to enable persons to enjoy the exciting pleasure of persecution, while at the same time they contrive to keep on good terms with their consciences as consistent supporters of freedom of speech.

Intolerance is a strange passion to be found in a being endowed with reason. Why should I hate a man, to the point of taking away his life by torture, merely because he does not share my opinions? No man is infallible. The persecutor may be wrong, and not the victim. It is Socrates that was right, not the fanatical demos that made him drink a cup of poison. And Christians, at least, think that Jesus Christ was right, and not the Jews who nailed him to the cross. But even if the persecutor is right, that does not make his conduct any the more rational. Punishment may make a hypocrite, but it cannot make a convert. All error is involuntary, and even a savage has the sense to see that it is idiotic to punish a man for that which is involuntary. No human being can desire to believe falsehood ; naturally we desire that the facts should be agreeable to us ; but we cannot believe anything that does not appear to us to be true. Even a persecutor must admit that man would be unworthy of the reason with which he is endowed if he were to try to extinguish the light of reason. Intolerance is the paradox of human nature ; it is the treason of man against the rational soul that raises him above the beasts of the field.

How then is the existence of a persecuting spirit to be accounted for? The law that seems to govern the intensity of intolerance is that we are angry with those who differ from us in proportion as we are conscious of weakness in the grounds of our opinions. The most certain facts are those that rest upon the direct testimony of the senses. If a man blind from birth were to argue seriously that there was no such thing as light, we should not be angry with him, we should only smile. Of truths not perceptible through the senses, the most certain are the truths of mathematics. A man who should contend that two and two make five would excite perhaps compassion, but certainly not indignation. Next in rank of certainty come the established truths of physical science. Occasionally we meet with a writer who contends that the law of gravitation is a chimera, and will undertake to demonstrate that the earth is as flat as a pancake. But still we retain our composure. If, however, we turn from the established truths of science to the region of taste, we find a marked change. There is, no

doubt, such a thing as good taste; but the distinction between good taste and bad taste is not marked by any common measure that can be applied with certainty. For this reason it often happens that some men take deadly offence when their opinions on a matter of taste are questioned. In politics and sociology we are in a region of opinion, and not of science—a region not necessarily of incorrigible uncertainty, but where we are a long way from any accepted standard of truth. In this region we find that intolerance displays considerable vigour. There are many men whose self-love is mortally wounded by any contradiction of their favourite political opinions. True, in a free country, they must sulk and suffer; they are debarred from the luxury of imprisoning their opponents; but, in revenge, they soothe their vanity by describing their opponents as men of Belial, who are actuated only by the basest motives. In art, in politics, in the disputed territory where the conquests of science are not yet assured, intolerance is an unlovely weed; but it is not a serious social evil. It is when the passions of the populace are worked up in the interest of an organized body of men that we learn to what frightful excesses intolerance will go, and how man's inhumanity to man is a more deadly evil than hurricanes, earthquakes, famine, or pestilence.

In religion the conditions are favourable to extreme intolerance. On the one hand, religion is a subject of the most intense interest. It must either occupy the highest place in our esteem, or no place at all. It must be everything or nothing. On the other hand, historical facts must necessarily remain on a lower level of certainty than the truths of science. The reason of the certainty attainable in science is that experiments admit of repetition, and that any intelligent man may put himself in as good a position to ascertain any truth as the original discoverer of it. The facts, the experiments, the calculations by which Newton established the law of gravitation are open to be examined and tested by any one of us as much as by Newton. We can appreciate the enormous difference it would make to the unanimity with which the Newtonian account of the heavenly bodies is received if the truth of it rested upon a few transitory events that were known to Sir Isaac Newton

and half a dozen Fellows of Colleges, and were of such a character that they could never occur again. The truth of Christianity, to take one illustration, depends upon a series of events that are alleged to have occurred nearly two thousand years ago in an outlying portion of the Roman Empire. These events may be proved to the satisfaction of individual minds, but they cannot be repeated so that a doubter may have evidence at first hand ; and we cannot feel surprise that the unanimity that is attained in science should be very far indeed from being attained in religion.

But after all it is only a few that can spare the time, or feel themselves qualified, to examine for themselves the grounds upon which the credibility of historical Christianity depends. To all of us, in our early years, and to the enormous majority always, our confidence in Christianity must depend, not upon proof, but upon authority ; that is, upon assertion, upon the assertion of persons whom we have been taught to respect. Thus it comes to pass that in a community where any form of religion occupies the highest place in general reverence, the belief of almost the whole population rests upon assertion, and not upon reason or evidence. When a believer is then confronted for the first time with a serious denial of his opinions, he experiences a painful and mortifying sensation. What he regards as truths of infinite importance are assailed, and he is conscious of a total inability to deal with the arguments by which they are assailed. He is exposed to the eventual perils and present torture of doubt. A state of doubt is distressing in proportion to the importance of the matters in question, and to the difficulties in the way of restoring calm and confidence. If man were a being governed by pure reason he would, under those circumstances, adopt one of two courses. He would either stop his ears and eyes, and resolutely turn aside from those who attacked his peace of mind, or he would follow the alternative and manly course of examining the evidence for himself, and thus rising from the lower level of unintelligent belief to the higher platform of intelligent belief, or else of discarding the ideas instilled into his youthful mind. But there is a third course, involving less exercise of self-denial, which has been more generally pursued, and peace has too often been obtained by turning

round on the person that has disturbed our repose, and treating him as a malefactor of the worst species. When the grounds of deeply-cherished beliefs are assailed, man usually follows the baser course dictated by sloth and vanity, and seeks peace for his agitated mind, not in the pursuit of truth, but in the punishment of those who have roused him from intellectual torpor. If, however, there were nothing more, intolerance would not lead to much harm beyond an explosion of bad temper. Other motives are at work. There is a natural affinity between the baser passions of human nature, and intolerance soon associates itself with deadlier allies. With what grim humour does the apostle relate the instructive episode of the silversmith of Ephesus? Demetrius did a good trade in images of Diana, and when the early Christians laboured, not without success, to expose the gods and goddesses to ridicule and contempt, with what virtuous zeal did the pious silversmith lead the mob to the cry of "Great is Diana of the Ephesians!" Lord Coleridge, in his summing up in Foote's case, suggested that a law of blasphemy might possibly be defended as a means of protection to freethinkers from lynch law, and he referred to the mob that burned Dr. Priestley's house in Birmingham. Before, however, we censure the mob we ought to know what was the character of the sermons preached in the Birmingham pulpits during the months that preceded the outrage. Possibly an inquiry of that nature might lead us to a more excellent way of protecting freethinkers than the choice between imprisonment or mob violence.

In A.D. 325 the Emperor Constantine formally proclaimed Christianity as the state religion of the Roman Empire. In the century following an incredible number of statutes was passed, punishing not merely pagans and Jews, and others who were not Christians, but prosecuting even Christians themselves if they departed by a hair's breadth from the dogmas of the particular section of the Christians that had the ear of the imperial throne. The crimes of the Roman Catholic Church against the intellect of man form one of the blackest pages in the history of the world. The Protestants at first were no better than the Catholics. Until the year 1677 it was a crime punishable with death to deny or dispute the doctrines of the Church of England; but the

long struggle that ended in the triumph of William of Orange convinced even the members of the Church of England that the Dissenters were too powerful to be attacked with the clumsy weapons of the criminal law. Peace was accordingly established on the terms that the Church should have liberty to persecute the weaker sects. The reign of William III. is stained by an infamous statute\* imposing three years' imprisonment, and the forfeiture of all civil rights upon those who should deny the doctrine of the Trinity, or the truths of the Christian religion, or the divine authority of the Bible. By an accident the statute seems to have been wholly inoperative. With the intention probably of saving the Jews, the statute applied only to those persons who had been educated in or made a profession of the Christian religion; and the difficulty of proving this has thrown persecutors back upon the common law of blasphemy. It was not until 1813 that the statute was so far repealed as to permit a denial of the Trinity, and thus exclude Unitarian Christians from the operation of the criminal law.

It will not have escaped observation that the statute law is based upon the naked doctrine of persecution. The mere denial of the Christian religion, however honest the opponent, and however respectful his mode of address, is in itself a crime. That statute remains to this day unrepealed.

The prosecutions, however, that have taken place since the reign of William III. have been instituted under the common law. By common law is meant the invention of law by the judges without any warrant from the legislature. The name of the common law offence is significant. It is not Heresy, but Blasphemy. All blasphemy is heresy, but all heresy is not blasphemy. Looking at the question historically, I think there can be little doubt that the judges who invented the law of blasphemy meant to distinguish between heresy and blasphemy, and to punish merely those who denied the Christian religion as a whole, and not those who professing to be Christians entertained heterodox opinions in regard to some doctrines; but of late years a tendency has been exhibited to interpret blasphemy in a different sense, so as to avoid the unpopularity of making

\* Appendix, p. 20.



dissent from religion a crime. This tendency culminated in the charge of Lord Coleridge to the jury in Foote's case, and a discussion on the propriety of abolishing the blasphemy laws, to be of any use, must proceed on the definition of the common law offence, which his lordship submitted to the jury. Lord Coleridge did not put forth any definition of his own, but adopted, and lent his high judicial authority to, the definition contained in *Starkie on Libel*. The passage in Mr. Starkie's work becomes of great importance, and is here given at length :

"There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation ; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right, not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinions for the benefit of others. When learned and acute men enter upon these discussions with such laudable motives their very controversies, even where one of the antagonists must necessarily be mistaken, so far from producing mischief, must in general tend to the advancement of truth, and the establishment of religion on the firmest and most stable foundations. The very absurdity and folly of an ignorant man, who professes to teach and enlighten the rest of mankind, are usually so gross as to render his errors harmless ; but be this as it may, the law interferes not with his blunders so long as they are *honest ones*, justly considering that society is more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and to truth from the exertions of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the *honest errors*, but the *malice of mankind*. A wilful intention to pervert, insult, and mislead others by means of licentious and *contumelious abuse applied to sacred subjects*, or by *wilful misrepresentations or artful sophistry*, calculated to mislead the ignorant and unwary, is the criterion and test of guilt.

“A malicious and mischievous intention, or what is equivalent to such an intention, in law as well as morals, a state of apathy and indifference to the interests of society, is the broad boundary between right and wrong.”

According to Mr. Starkie, “honest error” is no crime; a “wilful intention to mislead and pervert” is alone criminal. Mr. Starkie would seem to have overlooked the fact, that if this be blasphemy, it is a crime that no one but a lunatic could possibly commit. A dishonest freethinker in a Christian country such as ours is what metaphysicians would call an unthinkable proposition. If Christians were to-day, as they were in the second century, a small, a poor and a despised sect, we could understand dishonest attacks upon their doctrines. If the preachers of Secularism were rewarded with large incomes, with princely palaces, and with seats in the House of Lords, we may well believe that a dishonest secularist would be within the bounds of possibility. But that any man, not being honest, should publicly embrace the tenets of Secularism, and expose himself to the worldly losses and social persecution that is the lot of secularists, is a wild absurdity.

But when Mr. Starkie puts forward “honesty” as the test of innocence, he does not in the least mean it. What he does mean is this. Whether a man is honest or not does not matter; the jury or the law must make him a criminal in two cases. The first is when “wilful misrepresentation or artful sophistry calculated to mislead the ignorant and unwary” is employed. A greater piece of nonsense never was written. If a secularist lecturer is to be sent to prison because twelve jurymen, all Christians, and all ignorant of the elements of Christian evidences, think that his arguments are sophistical and his statements misrepresentations, it would be more honest and decent to say that Secularism is a crime, and to proceed under the infamous statute of William III. To say that “honest error” is no crime, but it is a crime if a jury don’t agree with your arguments, is to give justice with one hand and to take it away with the other.

The second case where “honest error” is to be turned into a crime is where contumelious abuse is applied to sacred subjects. At length we touch something like solid

ground. All that Mr. Starkie writes about "honest error," "malicious intention," is mere rhetorical bombast. What he means apparently is that blasphemy does not consist in the mere denial of Christianity, so long, as Lord Coleridge puts it, as the decencies of controversy are observed. The crime of blasphemy, if we may invoke the shade of Aristotle to elucidate the mystery, consists, not in the *matter*, but in the *form*; not in the denial of Christianity, but in the way of doing it. The question is whether the law of blasphemy thus understood is consistent with free discussion of religion, or whether it is not in the nature of a clever trap, warranted as good as the statute of William, to catch heretics.

Let us see how such a law works in practice. Mr. Foote was convicted, let us suppose, for the sake of argument, not for being a freethinker, but for violating the decencies of controversy. But what is or is not consistent with the decencies of controversy is a matter upon which perfectly fair and competent men will hold different opinions. Mr. Foote was tried before three juries. Two of them, one of these being a special jury, refused to convict. If there was this difference of opinion among the jurors, it requires but little charity to suppose that Mr. Foote himself may have been of opinion that he carefully observed the decencies of controversy. For this error of judgment, if it be an error, Mr. Foote receives a severer punishment than if he had been captain of a ship, and by an error of judgment had caused the death of hundreds of passengers. Many a man has beaten his wife to death and escaped with much lighter punishment. Whence then a sentence of one year's imprisonment? The judge did not conceal the motive, and told the prisoner plainly, if not politely, that it was because he dedicated his talents to the service of the devil. In plain English, Mr. Foote was punished for delivering free-thought lectures.

Let us consider what sort of political freedom we should enjoy if the law relating to political debate were modelled on Mr. Starkie's law of religious freedom. Let us suppose that Lord Randolph Churchill is tried, in order to make the comparison fair, by a jury of pronounced hereditary Radicals, who have been taught from the time they left their cradles

that Toryism is a horrible creed, and that every Tory either is or ought to be considered a miscreant. The accusation is based on one of his lordship's speeches on what he calls the Kilmainham Treaty. The judge, if possible a more bigoted Radical than the jury, informs the jury that honest political error is not a crime ; that the law does not interfere with the most pronounced political speeches, provided that the decencies of controversy are observed ; that it is lawful for the defendant to say that Mr. Gladstone is not infallible, and in temperate and respectful language even to go so far as to say that he totally disagrees with the policy of the Government. All this is lawful ; but if the defendant has employed artful sophistries calculated to mislead the ignorant and unwary, or has applied contumelious abuse to Her Majesty's ministers, then the jury will find him guilty. Lord Randolph escapes the first jury ; but his persecutors are not done with him, and at length, after several trials, a jury is found ignorant enough and bigoted enough to find him guilty. The judge then gives him twelve months' imprisonment. This is what so many Liberal papers call freedom of speech.

† The first essential of a good law, especially of a criminal law, is that it should be intelligible. A law is a mere trap to work injustice if a man cannot tell beforehand whether he is breaking the law or not, and when he can discover his offence only when a jury gives a verdict against him. How can any human being foretell what a jury may or may not consider to be "the decencies of controversy" ? An impression has got abroad that Mr. Foote's case was exceptional, and that the eminent writers who have published books hostile to Christianity are free from any danger of molestation. But if those eminent authors should be prosecuted they may discover their mistake, and get a year in Holloway Prison to reflect on the vanity of trying to obey the law. Lord Coleridge has given them fair warning :

"With regard to some of the others, passages from whose writings Mr. Foote read, I heard them yesterday for the first time. I do not at all question that Mr. Foote read them correctly. I confess, as I heard them, I had and have a difficulty in distinguishing them from the alleged libels. They do appear to me to be open to the same charge, on

the same grounds, as Mr. Foote's writings. He says many of these things are written in expensive books, published by publishers of known eminence ; that they are to be found in the drawing-rooms, studies, and libraries of men of high position. It may be so. If it be, I will make no distinction between Mr. Foote and anyone else ; if there are men, however eminent, who use such language as Mr. Foote, and if ever I have to try them, troublesome and disagreeable as it is, if they come before me, they shall, so far as my powers go, have neither more nor less than the justice I am trying to do to Mr. Foote."

The danger of a vague and indefinable law is not diminished when it is applied by a jury. What justice can a secularist expect from a jury of twelve ignorant and exasperated opponents? If the decencies of controversy are to be judged of fairly, both sides ought to be heard, and one half of the jury should consist of secularists. How would a Protestant lecturer like to be tried by a jury of ignorant Irish Catholics ; or a Catholic lecturer by a jury of Orangemen, the issue being whether they observed the decencies of controversy in their attacks? According to this law, the guilt or innocence of a defendant turns entirely upon the composition of the jury. If there is even one freethinker on the jury, there is no danger of a verdict of guilty. But that profits the prisoner nothing ; for the eleven Christians will stand out for a verdict, and the jury will be discharged. The prosecutor will try another jury, and so on for a hundred times, if necessary, until he gets his unanimous jury of twelve Christians. A secularist can never escape ; for unless he gets a jury wholly composed of secularists he cannot secure an acquittal, for it must be remembered that it needs a unanimous jury to acquit as well as unanimity to convict.

The decencies of controversy are best observed in those countries where difference of creed is not exasperated by the iniquitous use of the criminal law. Freethinkers, in particular, are bound over by more powerful sanctions to the observance of those decencies than their orthodox rivals. A speaker on the popular side does himself no harm, even if he indulges in the most indecent abuse of his opponents. But a freethinker cannot get a hearing except

by the most careful style of address. Christianity cannot be shaken by ridicule. There is only one way by which the stronghold can be taken. If secularists are to succeed, it can only be by producing in the minds of sober and earnest men a conviction that Christianity has no intellectual basis, and that its foundations rest on sand. If such men are to be induced even to look at the claims of secularism, they must be approached in a spirit suitable to the gravity of the task that is undertaken. From coarse and scurrilous writing no protection is needed ; it carries its antidote in its sting.

✓ Is a jury, again, a fit tribunal to determine a question of good taste in religious controversy? To a plain jurymen, who is ignorant of non-Christian and anti-Christian literature, the mere denial of that which he has been accustomed to regard with unhesitating reverence as incontestable truth must be in the highest degree painful, or even horrible. The truth is that, whatever may be said about decencies of controversy, a jury of twelve orthodox Christians of the usual unlettered type would condemn any anti-Christian publication as blasphemous, if it was written in such plain terms that they could understand it. No treatise would escape unless it was so very learned and obscure, or the irony was so fine, that the twelve plain men did not understand it. What a task the law throws upon the grocer or baker who is summoned as a juror ! He is to perform a delicate feat of mental analysis, and say whether the shock to his system, from an open denial of his cherished opinions, is due to the fact of the denial, or to the particular words in which the denial is expressed. The case of Woolston supplies us with an illustration in point. Woolston wrote an essay on miracles, in which with bated breath and apologetic humility he ventured to say that miracles were not essential to Christianity, and were moreover not credible in themselves. Woolston was a sincere Christian, a man of learning and piety, a Fellow of Sidney College, Cambridge ; but none the less he was convicted for blasphemy. The fact is that it is idle to ask a man to distinguish between the matter and the form of a publication, when the matter is in itself intensely painful, and can scarcely be aggravated by any faults of form. The freedom that a secularist lecturer would

enjoy under such a law reminds one of the sort of freedom permitted in one of the petty Republics of ancient Greece. It was lawful for any man to propose a change in the laws, and to address the assembled citizens in favour of the change with all the arguments and eloquence at his command; but if he failed to convince his audience and carry the new law, he was to be forthwith put to death. One might as well pass a law making it lawful to skin eels alive; but if, in the course of the operation, the operator hurt the feelings of the eel, he should suffer the utmost severity of the criminal law.

Let us now try calmly to sum up the results of a prosecution for blasphemy. First of all, great physical privation and suffering have been inflicted on Messrs. Foote and Ramsey. This is an evil to them, and, on the other hand, is a good to those Christians who harbour feelings of revenge in their bosom. Perhaps it may be the case that at relatively no great expense, Messrs. Foote and Ramsey have been the means of affording a cheap pleasure to a great number of their fellow-countrymen. But do not these good people buy their pleasure too dear? We must credit them with an honest desire to uphold Christianity; and is that object likely to be gained by persecuting poor secularist lecturers? In the first place, they know well that a system of religion that cannot maintain itself, except by putting its opponents in prison, stands self-condemned. The bigot who persecutes in the criminal courts allows judgment to go against him by default in the higher court of reason and conscience. It is idle to say that Mr. Foote is not in prison because he is a freethought lecturer. When the question was submitted to a special jury whether he was guilty of blasphemy in the sense ruled by Lord Coleridge—and it must be remembered that was the only occasion when the true issue was fairly put before the jury—the jury could not agree. And even if Mr. Foote had been fairly convicted the sentence was a sentence not for blasphemy, but for being a freethought lecturer, or, as the judge put it, for serving the devil. In a short time Mr. Foote will be released. He will be met at the doors of the prison by a crowd of friends; he will be carried off to a public entertainment, and receive in gift a sum perhaps larger than he would have earned if he

had been engaged in his business. His character suffers no stain in the eyes of the only people for whose opinion he can entertain any respect ; his influence and popularity as a freethought lecturer, so far from being diminished, will increase tenfold ; for one man that went to hear him before a score will go to hear him now. He will be able to expatiate on the comparative services of himself and his persecutor, Sir Henry Tyler, to the world ; he will be able to draw a powerful picture of the ex-chairman of the Brush Light Company as the man whom the Christian world loves to honour. If the career and character of the persecutor are compared with the career and character of his victim, Mr. Foote will have an unfailing means of eliciting the sympathy of his audience. Christianity will suffer badly by the comparison.

Those who venture to apologize for the blasphemy laws try to make out that blasphemy is not a spiritual, but a social offence, and that it consists in wantonly wounding the feelings of Christians. The short answer to that is, that it is not true. The offence of blasphemy as the law now stands is complete without any proof that anybody's feelings ever were, or ever were intended to be, hurt. A lecture delivered to an audience of freethinkers is in law blasphemous, although no Christian is present to hear it, and even if no person would be admitted to the lecture if he were known to be a Christian. Mere publication, in the legal sense, constitutes the crime. Suppose a man writing a letter to a friend makes a joke about the devils that entered into the swine, and set them running down a steep place into the sea, that is a publication in the eye of the law, although the letter should never be seen by Christian eyes.

Mere publication cannot hurt anybody. Before a Christian is able to procure the shock to his feelings that, we are told, really constitutes blasphemy, it is necessary that he should procure a copy of the publication and read it. This is his own voluntary act. The mere publication is inoffensive and harmless. The harm and offence arise from the act of the party who professes to be injured. Now it is a maxim, not merely of a refined system of jurisprudence, such as we desire the English law to be, but even of barbarous systems of law, that no wrong can be done to a man



by anything that is done with his own consent. *Volenti non fit injuria.* It is quite superfluous for the law to protect us from injuries that cannot be done without our own wilful concurrence. A person who chooses to read a blasphemous publication has nobody but himself to blame. If he does not want his susceptibilities to be harrowed, he has an easy and simple remedy in his own hands. Bear in mind that the sole offence of which Messrs. Foote and Ramsey were convicted was mere publication, and that, as a matter of fact, not a single Christian obtained from them a copy of the *Freethinker*, even at their own request. The truth is that few, if any, Christians ever read the publication. It was a paper written manifestly for non-Christians. The real reason for the hostility to the publication was, not that it gave pain to Christians, but that it gave pleasure, or was supposed to give pleasure, to non-Christians. As Macaulay says of the Puritans, they objected to bear-baiting, not because it gave pain to the bear, but because it gave pleasure to the spectators.

One of the most surprising things in the discussion to which recent cases have given rise is, that the Indian Penal Code should have been quoted in support of the blasphemy laws. It is with some sense of humiliation that one finds such an authority invoked. The Government of India has to control a populace extremely ignorant and very fanatical. One might be permitted to hope that the measure of religious freedom that was considered safe in India is not to be taken as indicating the high-water mark of freedom in a country like ours, that boasts of being free and the great mother of free nations. But, as a matter of fact, there is far more religious liberty in India; and we may even go farther, and say that there is nothing in the Indian Penal Code to prevent, or even to restrict, the fullest liberty of speech. There is no section of the Indian Penal Code under which Mr. Foote could have been indicted. In India he could edit and publish his *Freethinker* without molestation, no man daring to make him afraid. One blushes to think that there should be less freedom in religion in this country than is found by experience to be safe amid the fanatical populations of the East.

The Indian Penal Code contains a chapter on "Offences

relating to Religion" in four sections. The first punishes the injuring or defiling a place of worship with intent to insult the religion of any class ; the second punishes wilful disturbance of any assembly lawfully engaged in the performance of religious worship or religious ceremonies ; and the third makes it an offence to trespass on a place set apart for burial or the performance of funeral rites with the intention of insulting the religious feelings of any persons. All these are very proper regulations.

The fourth section is of wider extent, and must be quoted in full : "Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment [with or without hard labour] for a term which may extend to one year, or with fine, or with both."

Under this section no one can be prosecuted for the mere publication of any matter, however offensive. It proceeds upon the distinction I have adverted to, that a person who voluntarily procures or reads offensive publications has himself to blame if he is pained.

If, however, a person were to exhibit pictures caricaturing the objects held sacred by Christians, with the deliberate intention of wounding their religious feelings, he could be prosecuted under this section.

Whether the exhibition of such pictures, with a view to sale in the course of ordinary business, although they might be in such a position that Christians, if they chose, could see them, would be a violation of the section, is a question perhaps open to doubt.

But the section proceeds upon the correct lines. It does not permit a blow to be directed against religious opponents under the pretext that they have published blasphemous libels ; while it effectually protects the professors of every form of religion from personal insult.

Our Blasphemy Laws cannot invoke the assistance of the Indian Penal Code ; on the contrary, the law in India puts us to shame. These laws, at rare intervals, are employed to subject some freethought lecturers to serious personal suffering, and to injure their health by long terms of imprison-

ment. But they have the consolation of knowing that their sufferings advance the cause they have at heart more effectually than their most eloquent discourses. All that is best in Christianity revolts from such persecutions, that recall to mind the indignities and cruelties practised upon the founders of that religion. These laws are, I believe, condemned by all good men, whatever their views on religion, as being, not merely at variance with the principles of justice, but as a weapon that injures most the hand that wields it. Is it too much then to hope that the Bill \* drafted by Mr. Justice Stephen, for the total abolition of Blasphemy Laws, may soon be taken into consideration by the legislature and passed into law, and that this miserable relic of ancient barbarism be entirely swept away?

\* Appendix, p. 23.

## APPENDIX.

## I. THE STATUTE LAW.

(9 Will. III. c. 32.)

“An Act for the more effectual suppressing of Blasphemy and Profaneness.

“Whereas 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; Wherefore, for the more effectual suppressing of the said detestable crimes, be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons of this present Parliament assembled, and by the authority of the same, that if any person or persons having been educated in, or at anytime having made profession of, the Christian religion within this realm shal, by writing, printing, teaching, or advised speaking, [*deny any one of the persons in the Holy Trinity to be God,\**] or shal assert or maintain there are more gods than one, or shal deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, and shal, upon indictment or information in any of his Majesties Courts at Westminster, or at the assizes, be thereof lawfully convicted by the oath of two or more credible witnesses, such person or persons for the first offence shal be adjudged incapable and disabled in law to all intents and purposes whatsoever to have or enjoy any office or offices, employment or employments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage appertaining to them, or any of them. And if any person or persons so convicted as aforesaid shal at the time of his or their conviction, enjoy or possess any office, place, or employment, such office, place, or employment shal be voyd, and is hereby declared void. And if such person or persons shal be a second time lawfully convicted, as aforesaid,

\* Repealed 53 Geo. III. c. 160.

of all or any the aforesaid crime or crimes that then he or they shal from thenceforth be disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacie or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical for ever within this realm, and shall also suffer imprisonment for the space of three years, without bail or mainprize from the time of such conviction.

“ Provided always, and be it enacted by the authority aforesaid, that no person shall be prosecuted by virtue of this Act for any words spoken, unless the information of such words shall be given upon oath before one or more justice or justices of the peace within four days after such words spoken, and the prosecution of such offence be within three months after such information.

“ Provided also, and be it enacted by the authority aforesaid, that any person or persons convicted of all, or any, of the aforesaid crime or crimes in manner aforesaid, shal, for the first offence (upon his, her, or their acknowledgment and renunciation of such offence, or erroneous opinions, in the same court where such person or persons was or were convicted, as aforesaid, within the space of four months after his, her, or their conviction) be discharged from all penalties and disabilities incurred by such conviction, anything in this Act contained to the contrary thereof in any wise notwithstanding.”

Depraving, despising, or reviling the Sacrament of the Lord's Supper is a misdemeanour. (1 Edw. VI. c. 1 § 1; 14 Car. II. c. 4 § 20.)

It is also a misdemeanour to say anything in derogation or despising of the Book of Common Prayer. (1 Eliz. c. 2 § 3; 14 Car. II. c. 4 § 20.)

It is not known that any prosecution has ever taken place under the statute of William III.; but no public record is kept of such prosecutions, and we cannot therefore say that the statute has been a dead letter.

## II. ECCLESIASTICAL LAW.

At the present day any person, whether Christian or Jew, may be proceeded against criminally in the Ecclesiastical Courts "in cases of Atheism, blasphemy, heresy or schism, and other damnable doctrines or opinions, and they may proceed to punish the crime according to his Majesty's ecclesiastical laws, by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death." A person convicted of heresy is liable to imprisonment for not more than six months. The jurisdiction of the Ecclesiastical Courts is subject to this qualification, that if the offence is punishable in the ordinary courts, it is not a matter of ecclesiastical cognisance. But this is a poor consolation; for the ordinary courts have power to inflict a much longer sentence of imprisonment. Special interest attaches to the ecclesiastical jurisdiction, in view of the more liberal statement of the common law recently made by the Lord Chief Justice of England. Whatever is cut out of the common law thereby at once falls under the Ecclesiastical Courts, and the liberality of the ordinary tribunals is thus effectually checkmated.

Let it not be said that no one would dare in the present day to bring forth the rusty weapons of ecclesiastical censure. Recent experience warns us that we are never safe so long as a bad law exists. At any moment some malicious fool may set the law in motion.

### III. DRAFT BILL.

"Whereas certain laws now in force and intended for the promotion of religion are no longer suitable for that purpose, and it is expedient to repeal them,

Be it enacted as follows :

"1. After the passing of this Act no criminal proceedings shall be instituted in any Court whatever, against any person whatever, for atheism, blasphemy at common law, blasphemous libel, heresy, or schism, except only criminal proceedings instituted in Ecclesiastical Courts against clergymen of the Church of England.

"2. An Act passed in the 1st year of his late Majesty King Edward VI., c. 1, intituled 'An Act against such as shall un-reverently speak against the Sacrament of the body and blood of Christ, commonly called the Sacrament of the Altar, and for the receiving thereof in both kinds,' and an Act passed in the 9th and 10th year of his late Majesty King William III., c. 35, intituled 'An Act for the more effectual suppressing of blasphemy and profaneness,' are hereby repealed.

"3. Provided that nothing herein contained shall be deemed to affect the provisions of an Act passed in the 19th year of his late Majesty King George II., c. 21, intituled 'An Act more effectually to prevent profane cursing and swearing,' or any other provision of any other Act of Parliament not hereby expressly repealed."

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, under the act of Congress, approved March 3, 1879, and amended March 3, 1879, and March 3, 1880, and March 3, 1881, and March 3, 1882, and March 3, 1883, and March 3, 1884, and March 3, 1885, and March 3, 1886, and March 3, 1887, and March 3, 1888, and March 3, 1889, and March 3, 1890, and March 3, 1891, and March 3, 1892, and March 3, 1893, and March 3, 1894, and March 3, 1895, and March 3, 1896, and March 3, 1897, and March 3, 1898, and March 3, 1899, and March 3, 1900, and March 3, 1901, and March 3, 1902, and March 3, 1903, and March 3, 1904, and March 3, 1905, and March 3, 1906, and March 3, 1907, and March 3, 1908, and March 3, 1909, and March 3, 1910, and March 3, 1911, and March 3, 1912, and March 3, 1913, and March 3, 1914, and March 3, 1915, and March 3, 1916, and March 3, 1917, and March 3, 1918, and March 3, 1919, and March 3, 1920, and March 3, 1921, and March 3, 1922, and March 3, 1923, and March 3, 1924, and March 3, 1925, and March 3, 1926, and March 3, 1927, and March 3, 1928, and March 3, 1929, and March 3, 1930, and March 3, 1931, and March 3, 1932, and March 3, 1933, and March 3, 1934, and March 3, 1935, and March 3, 1936, and March 3, 1937, and March 3, 1938, and March 3, 1939, and March 3, 1940, and March 3, 1941, and March 3, 1942, and March 3, 1943, and March 3, 1944, and March 3, 1945, and March 3, 1946, and March 3, 1947, and March 3, 1948, and March 3, 1949, and March 3, 1950, and March 3, 1951, and March 3, 1952, and March 3, 1953, and March 3, 1954, and March 3, 1955, and March 3, 1956, and March 3, 1957, and March 3, 1958, and March 3, 1959, and March 3, 1960, and March 3, 1961, and March 3, 1962, and March 3, 1963, and March 3, 1964, and March 3, 1965, and March 3, 1966, and March 3, 1967, and March 3, 1968, and March 3, 1969, and March 3, 1970, and March 3, 1971, and March 3, 1972, and March 3, 1973, and March 3, 1974, and March 3, 1975, and March 3, 1976, and March 3, 1977, and March 3, 1978, and March 3, 1979, and March 3, 1980, and March 3, 1981, and March 3, 1982, and March 3, 1983, and March 3, 1984, and March 3, 1985, and March 3, 1986, and March 3, 1987, and March 3, 1988, and March 3, 1989, and March 3, 1990, and March 3, 1991, and March 3, 1992, and March 3, 1993, and March 3, 1994, and March 3, 1995, and March 3, 1996, and March 3, 1997, and March 3, 1998, and March 3, 1999, and March 3, 2000, and March 3, 2001, and March 3, 2002, and March 3, 2003, and March 3, 2004, and March 3, 2005, and March 3, 2006, and March 3, 2007, and March 3, 2008, and March 3, 2009, and March 3, 2010, and March 3, 2011, and March 3, 2012, and March 3, 2013, and March 3, 2014, and March 3, 2015, and March 3, 2016, and March 3, 2017, and March 3, 2018, and March 3, 2019, and March 3, 2020, and March 3, 2021, and March 3, 2022, and March 3, 2023, and March 3, 2024, and March 3, 2025, and March 3, 2026, and March 3, 2027, and March 3, 2028, and March 3, 2029, and March 3, 2030, and March 3, 2031, and March 3, 2032, and March 3, 2033, and March 3, 2034, and March 3, 2035, and March 3, 2036, and March 3, 2037, and March 3, 2038, and March 3, 2039, and March 3, 2040, and March 3, 2041, and March 3, 2042, and March 3, 2043, and March 3, 2044, and March 3, 2045, and March 3, 2046, and March 3, 2047, and March 3, 2048, and March 3, 2049, and March 3, 2050, and March 3, 2051, and March 3, 2052, and March 3, 2053, and March 3, 2054, and March 3, 2055, and March 3, 2056, and March 3, 2057, and March 3, 2058, and March 3, 2059, and March 3, 2060, and March 3, 2061, and March 3, 2062, and March 3, 2063, and March 3, 2064, and March 3, 2065, and March 3, 2066, and March 3, 2067, and March 3, 2068, and March 3, 2069, and March 3, 2070, and March 3, 2071, and March 3, 2072, and March 3, 2073, and March 3, 2074, and March 3, 2075, and March 3, 2076, and March 3, 2077, and March 3, 2078, and March 3, 2079, and March 3, 2080, and March 3, 2081, and March 3, 2082, and March 3, 2083, and March 3, 2084, and March 3, 2085, and March 3, 2086, and March 3, 2087, and March 3, 2088, and March 3, 2089, and March 3, 2090, and March 3, 2091, and March 3, 2092, and March 3, 2093, and March 3, 2094, and March 3, 2095, and March 3, 2096, and March 3, 2097, and March 3, 2098, and March 3, 2099, and March 3, 2100.