3. Are we capable of offending God? Taking blasphemy seriously

Helen Pringle

Until quite recently there appeared to be a consensus in Western democracies as to the desirability of abolishing the offence of blasphemy and blasphemous libel. Indeed, in 1949, Lord Denning argued that ‘the offence of blasphemy is a dead letter’. According to Lord Denning, the basis of the law against blasphemy was the idea that ‘a denial of Christianity was liable to shake the fabric of society, which was itself founded upon the Christian religion’, a danger that no longer existed.¹ A long series of judicial remarks and government reports, most recently by the House of Lords Select Committee on Religious Offences in 2003,² stressed the archaism of the offence, and endorsed some form of proposal to abolish or further confine it. However, in the 1990s, dissenting voices were raised against the consensus, particularly from Muslims who argued that in fact the law should be extended beyond Christianity. Misgivings about the effect of such an extension on the freedom of speech have dogged such proposals, particularly where they have found form in laws against religious vilification.

The offence of blasphemy is often treated as a question of freedom of speech. A frequent argument against the continued vitality of the law of blasphemy is that it is an outmoded imposition on the freedom of speech, as can be seen in the public framing of the two most notorious modern cases: *Gay News*, which concerned the publication of a poem by James Kirkup,³ and *Choudhury*, concerning Salman Rushdie’s *Satanic Verses*.⁴

I do not hold to the position that freedom of speech is an absolute. Moreover, I do not think that it is in general necessary or even useful to treat speech as a class distinct from action, or that expression deserves some different protection over and above other forms of action. Indeed, my argument in this chapter is that the problem with the law of blasphemy has very little to do with the fact that it (largely) targets speech. The central difficulty of the law of blasphemy is not that it deals with speech and its freedom, but that it deals with the place accorded to God, or to different Gods, in human society. The law of blasphemy appears archaic and incoherent today not because it unfairly restricts speech, although it might indeed do so in specific instances. My argument is that the law of blasphemy is incoherent insofar as it has lost its central rationale, the requiring of offence *to God*.

In making this argument, I draw on the story of Thomas Aikenhead, who was the last person executed for blasphemy in Britain. Even in Aikenhead’s time, in

the late seventeenth century, the law of blasphemy had largely lost its coherence as punishment of affront to God, and had largely been reconstituted in terms of punishment of offence to believers. This shift in the focus of the law destabilised the category of blasphemy, long before widespread liberalisation of views on free speech. A final implication of my chapter is that attempts to recover some of the ground of the law of blasphemy through religious vilification laws are misguided. Religious vilification laws can be defended on other grounds, for example as measures against discrimination, but not as a practical reclamation and extension of the object of the law of blasphemy.

Before I begin, I want to caution that in the course of the chapter I shall be repeating claims that have been prosecuted in law and culture as blasphemous, and my repetition of those claims might be counted as a further transgression, traditionally requiring the tearing of garments. This practice is portrayed in cultural artefacts, from Giotto's *Christ before Caiaphas* through to Mel Gibson's *The Passion of the Christ*, that represent the moment when Jesus is brought before the Sanhedrin and is asked whether he is the Christ (Matthew 25). On Jesus' allegedly blasphemous reply, the high priest Caiaphas tears his robes. Such rending of garments was required even in the presentation of evidence in ancient blasphemy prosecutions. However, I shall take my lead from Rabbi Hiyya, who said that after the destruction of the Second Temple, such rending is no longer required, otherwise we would all be walking around in tatters.⁵

L'affaire Aikenhead

An important milestone in the history of blasphemy concerns a young medical student at the University of Edinburgh in the 1690s called Thomas Aikenhead.⁶ Aikenhead engaged in spirited conversations with his friends and fellow students on matters of religion. Accounts by at least five of those friends formed the basis for his indictment before the Scottish Privy Council which alleged that Aikenhead,

shakeing off all fear of God and regaird to his majesties lawes, have now for more than a twelvemoneth by past...[vented] your wicked blasphemies against God and our Saviour Jesus Christ, and against the holy Scriptures, and all revealed religione...you said and affirmed, that divinity or the doctrine of theologie was a rapsodie of faigned and ill-invented nonsense, patched up partly of the morall doctrine of philosophers, and partily of poetickall fictions and extravagant chimeras,...

According to the evidence of his friends, Aikenhead called the Old Testament 'Ezra's fables', and the New Testament 'the History of the Imposter Christ'. Aikenhead had affirmed that Jesus 'learned magick in Egypt, and that coming from Egypt into Judea, he picked up a few ignorant blockish fisher fellows,

whom he knew by his skill and [sic] phisognomie, had strong imaginations, and that by the help of exalted imaginatione he play'd his pranks', that is, miracles.

The indictment and evidence in the case present for the most part a consistent account of what Aikenhead had said, and Aikenhead and his counsel seem not to have disputed the reports offered as evidence. The summation of the indictment noted that Aikenhead claimed that he 'preferred Mahomet to the blessed Jesus', and continued with a recital of claims:

and that you have said that you hoped to see Christianity greatly weakened, and that you are confident that in a short tyme it will be utterly extirpat, and you have been so bold in your forsaid blasphemies, that when you have found yourself cold, you have wished to be in the place that Ezra calls Hell, to warme yourself there'.

This latter remark was made outside the Tron kirk, apparently in August.⁷

The mention of the Prophet is of course a very interesting aspect of Aikenhead's case to us today. I think that too often we assume that multiculturalism and the problems it raises are something new to modernity, and that older societies were more homogeneous in action and belief than was actually the case. Aikenhead was tried at the end of a century of civil conflict and war in England, a conflict which concerned the place of God in civil and political matters and which revolved in part over who wore what on their heads. Aikenhead was allegedly more loyal to the Prophet than to any of the warring Christian dispositions. Patrick Midletoune, a fellow student, testified that Aikenhead had told him that 'Mahomet was both the better airtist and polititian than Jesus'.⁸ Although some of the sources of Aikenhead's ideas are clear, it is possible that Aikenhead knew of the extraordinary work by Henry Stubbe, *An Account of the Rise and Progress of Mahometanism*.⁹ As Abdal Hakim-Murad notes, the vehemence of some seventeenth century polemics against Islam also suggests that there was more sympathy for Islam within English Dissenter circles at that time than is commonly acknowledged.¹⁰ The minister Robert Wylie hushed the critics of the action against Aikenhead by arguing that 'no man shuld in the face of a people spitefully revile & insult the object of their adoration,' adding that, after all, 'a Christian could not be innocent who should rail at or curse Mahomet at Constantinople'.¹¹

Aikenhead was charged under Scotland's two blasphemy acts. The 1661 Act passed by the first Scottish Parliament under Charles II mandated death for one who 'not being distracted in his wits shall rail upon or curse God, or any of the persons of the blessed Trinity'. The 1695 post-Settlement Act upheld the 1661 Act and set out a graduated scale of penalties depending on the obstinacy of the offence by 'whosoever shall in their wryteing or discourse denye, impugne or quarrell, or argue, or reason against the being of God, or any of the persons of

the blessed Trinity, or the authority of the holy Scriptures, of the Old and New Testaments, or the Providence of God in the government of the world'.¹²

In November 1696, Aikenhead was summoned to the Scottish Privy Council to be charged, and was sent 'to be tryed for his life' to the courts. Five of the jurors summoned had refused to attend and were fined; while these refusals are seen by some writers as a protest against the action, I am not so sure given the assiduousness with which many people avoid jury duty. Aikenhead was found guilty of cursing and railing against God the Father and the Son, denying the incarnation and the Trinity, and scoffing at the Scriptures. He submitted a petition for leniency at the end of December and again on 7 January, although it has been suggested by Michael Hunter that the 'gushing profession of faith' in these petitions might have been written on Aikenhead's behalf by others.¹³ On 8 January 1697, at the age of 20, Thomas was hanged and buried on the road to Leith.

This was the last recorded execution for blasphemy in Britain. Soon after, the Scottish Privy Council began what was to be the last major witch-hunt in Scotland, the affair of the Renfrewshire witches.¹⁴ Macaulay's history later linked the Aikenhead and Renfrewshire prosecutions as actions 'worthy of the tenth century', conducted by men whose 'own understandings were as dark and their own hearts as obdurate as those of the Familiars of the Inquisition at Lisbon'. These men, Macaulay says, 'perpetrated a crime such as has never since polluted the island', executing Aikenhead for nothing more than 'the prate of a forward boy'.¹⁵ The cruelty of the prosecution and sentence certainly did not go unremarked or unprotested at the time either.

Offending the *Ens entrum*...or the beliefs of believers?

I am fascinated by the story of Aikenhead for a number of reasons. An extremely vivid picture of the intellectual life of a young man in late seventeenth century Edinburgh is painted in the documents, particularly in Aikenhead's parting speech and a letter to his friends. In his parting speech, noted on one copy as his '*Cygnea Cantio*', or swan song, Aikenhead attributes his heterodoxy to an 'insatiable inclination to truth' which led him from an early age to search for a grounding of his faith. Aikenhead says that his doubt led him to the question, 'whether or not man was capable of offending *Ens entrum*'.¹⁶ Aikenhead concludes that we are not capable of such offence, for reasons that I do not explore here. What interests me in Aikenhead's question has more to do with the definition and understanding of blasphemy: what exactly does blasphemy perform, and in particular, whom or what does blasphemy wrong?

Modern answers to these questions are fairly clear on two main counts. First, a long tradition of judicial and political commentary understands blasphemy as an attack of some sort on social or civil order, that is, as closely allied to incivility

at one end of the scale, and sedition at the other. The emergence of blasphemy as an offence of civil order can be pegged to around the time of *Taylor's Case* in 1676. John Taylor was accused of uttering '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.' Sir Matthew Hale held in this case

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.¹⁷

The terms of Hale's judgment on Taylor also restricted the scope of blasphemy law to the protection of Christianity, a restriction recently reiterated in *Choudhury*, although it had been questioned by Lord Scarman in *Gay News*.¹⁸

John Taylor's offence was understood as akin to sedition. Understandings of the wrong of blasphemy as a fomenting of civil disorder underlie much of modern blasphemy law. For example, in the 'Piss Christ' case in Australia, the definition of blasphemy was said to hinge on the risk of such disorder. In 1998, the then Archbishop of Melbourne, George Pell, had sought an injunction to restrain the National Gallery of Victoria from showing a photograph by Andres Serrano. The photograph depicted the crucified Christ immersed in urine. Justice Harper remarked that if the offence of blasphemous libel did exist, it would be necessary to show that the exhibition of the photograph would cause unrest of some sort—and in the absence of that showing, no injunction could be granted. Justice Harper's refusal to grant an injunction in this case was however made on other grounds.¹⁹

The second important characteristic of modern understandings of the wrong of blasphemy is that it involves an offence to the beliefs of believers. As Lord Scarman noted in the *Gay News* case, the 'true test' of blasphemy is 'whether the words are calculated to outrage and insult the Christian's religious feelings'.²⁰ At issue in the case was the publication by the magazine *Gay News* of James Kirkup's poem entitled 'The Love that Dares to Speak Its Name', alongside a somewhat lurid illustration by Tony Reeves. Prior to this case, blasphemy seems not to have been successfully prosecuted in the United Kingdom since 1921, when John William Gott was sentenced to nine months in prison for publishing pamphlets that suggested that Christ looked like a clown as he entered Jerusalem on a donkey.²¹

The action against *Gay News* was a private prosecution by Mrs Mary Whitehouse, the Secretary of the National Viewers and Listeners Association. She explained

the grounds of her case in the course of an interview by saying, 'The blasphemy law is to protect the feelings of people rather than Christianity. Its purpose is to implement one of the three basic civil rights set out by the Geneva Convention that people shall not be offended on the grounds of race, class or religion.' However, it had *not* in fact been the claim of the prosecution deposition that Kirkup's poem offended the feelings of Christians, but rather that the poem 'vilified Christ in His death, His life and his Crucifixion'.²²

In the same interview, Mrs Whitehouse noted that, 'When the poem arrived on my desk and I read it, I had one overwhelming feeling that this was the recrucifixion of Christ with 20th century weapons—with words, with obscenities, and if I sat there and did nothing I would be a traitor. It was just as simple as that'.²³ As many people at the time of the trial reminded Mrs Whitehouse, in principle it would have been quite possible for her to bring an action for obscene libel, rather than for blasphemy, given the character of the poem and illustration at issue. What is striking however is the notion of traitor that Mrs Whitehouse invokes. There is nothing to suggest that Mrs Whitehouse has in mind being a traitor to herself if she 'did nothing'. She uses the word 'traitor' with its connotations of betrayal of trust, falsity, and failure in allegiance in such a way that indicates that she is thinking about being a traitor *to God* by not avenging his honour. So while Mrs Whitehouse certainly thinks, like Lord Scarman, that blasphemy is an attack on the sincere religious *beliefs of believers*, she also voices a sense of blasphemy as violence to God. That is, Mrs Whitehouse thinks that we are entirely capable of offending God—and, I think, that God is entirely capable of being offended by us. But she has not quite settled on one of these alternatives—offence to beliefs of believers, or to God—as constituting the central wrong of blasphemy.

The confusion of Mrs Whitehouse about what blasphemy performs is more general, and it is not confined only to the modern world. In Aikenhead's time, there was a similar lack of clarity as to what blasphemy does and to whom it does it. While it would be tempting to see Aikenhead's trial and execution as the last gasp of older ways of understanding and of addressing blasphemy, I do not think it is quite that simple. Blasphemy has been a difficult thing to define at least since it was set loose from enforcement by the ecclesiastical courts. In regard to Aikenhead's prosecution, many of his contemporaries thought that he had done something wrong, but that it wasn't blasphemy. For example, James Johnstoun wrote to the philosopher John Locke,

It's plain Aikenhead must have died by the first Act of 1661, since it was his first fault as he himself pleads in his petition, and that he did retract, which delivers him from the second article of the first act. Now the words of the first article being *railing* and *cursing*, no evidence except that of Mr Mungo Craigs (in which he is said to have called Christ an

imposture) seems to answer the meaning of those words, and as to this Craig Aikenhead in his speech in which he owns other things, denies his evidence and no doubt he is the decoy who gave him the books and made him speak as he did, and whose name is not put in the copy of the petition to the Justiciary sent to you, because the writer would spare Craig.

The age of the witnesses is observable and that none of them pretend, nor is it laid in the Indictment that Aikenhead made it his business to seduce any man. Laws long in desuetude should be gently put in Execution and the first example made of one in circumstances that deserve no compassion, whereas here there is youth, Levity, docility, and no design upon others.²⁴

In other words, Aikenhead was simply speculating and bantering, and lacked intention either to outrage the feelings of believers or to incite disorder.

The perspective taken by Johnstoun and others on Aikenhead's case came to flower in 1883, when Lord Coleridge argued that 'if the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy'.²⁵ Lord Coleridge was echoing Lord Denman's remark in the 1841 case of *Hetherington*, that blasphemy lies not merely in what is said, but in how it is said. Lord Denman had argued that, even in regard to the fundamentals of Christian religion,

If they be carried on in a sober and temperate and decent style, even those discussions may be tolerated, and may take place without criminality attaching to them; but that, if the tone and spirit is that of offence, and insult, and ridicule, which leaves the judgment really not free to act, and, therefore, cannot be truly called an appeal to the judgment, but an appeal to the wild and improper feelings of the human mind, more particularly in the younger part of the community, in that case the jury will hardly feel it possible to say that such opinions so expressed, do not deserve the character [of blasphemy] affixed to them...²⁶

Again, this approach to blasphemy as necessarily including incitement to wildness or impropriety has received wide and continuing legal approval.

However, if the 'decencies of controversy', and not the particular content of the utterance, is what counts in defining the width of the offence of blasphemy, then it becomes difficult to argue that religious utterances should have any particular protection over and above any other utterance. Blasphemy is not a facially neutral category in a way that, say, the category of obscenity is. Whatever else they do, laws against blasphemy do not protect the beliefs and/or feelings of unbelievers. As Mary Whitehouse noted in answer to the question

of why the beliefs of humanists are not protected by laws against blasphemy: 'Well, if they are non-religious, they can't be offended in their religious feelings, can they?'.²⁷ In *Gay News*, however, Lord Diplock voiced the rather cryptic note on this point that 'the poem and accompanying drawing were likely to shock and arouse resentment among believing Christians and indeed many unbelievers', which echoed Lord Trevethin's remarks in *Gott* that the libel then at issue was 'offensive to anyone in sympathy with the Christian religion, whether he be a strong Christian or a lukewarm Christian, or merely a person sympathising with their ideals'.²⁸

To use the language of Cass Sunstein, why maintain the asymmetry of a special category for blasphemy, if it is possible to address its performances and effects in terms of such neighbouring categories as sedition, obscenity, or defamation? The distinctiveness of blasphemy as an offence is difficult to uphold if its focus is offence to the beliefs of believers. Even in Aikenhead's time, it was not clear to many people what constituted the exact difference between blasphemy and atheism, apostasy, idolatry, irreligion, etc. Aikenhead himself felt impelled to say that while he might have blasphemed, he certainly did not practise magic or converse with devils.

When the Privy Council said that they would grant Aikenhead a reprieve, the Church of Scotland refused, on the basis that it was necessary to put an end to 'the abounding of impiety and profanity in this land'.²⁹ In 1696, the Scottish Privy Council had ordered that search be made of Edinburgh booksellers for 'atheistical, erroneous or profane or vicious' works, and John Frazer was gaoled and put in sackcloth for reading deist works. Tacked on at the end of the *State Trials* report on Aikenhead is the story of Francis Borthwick, a convert to Judaism, who was declared 'outlaw and fugitive, and all his goods and gear to be brought in for his majesty's use, for his contempt and disobedience; which was pronounced for doom'. At this time too, University of Edinburgh students were in the habit of pelting Catholics coming out of Mass.³⁰ Blasphemy was not the only available category into which religious offences could fall, and other forms of religious insult to the beliefs of believers were matters of lively controversy. But what was becoming ambiguous was the sense of blasphemy as a specific wrong entitled to a specific remedy.

Conclusion

Some, perhaps even many, people in Thomas Aikenhead's time held the view that it is possible to offend God, and that dire consequences would follow from such offence. For example, the informer Mungo Craig argued in his first pamphlet against Aikenhead that the magistrates should 'attone with Blood, th'affronts of heav'n's offended throne'.³¹ Although the category into which a particular form of speech or action fell might be unclear, God in the view of Craig and

others was certainly capable of being offended, and (civil) persons were capable of avenging the affront and restoring divine order. Moreover, they had a *duty* to respond on God's behalf. In concluding, I want to suggest that understandings of blasphemy changed decisively not when we became secular, and devoted to free speech, but at some point much earlier, when understandings of God began to shift radically, such that God was understood as incapable of being offended.

Some fragments of the earlier understandings can still be glimpsed in other than Christian religious traditions. For example, in a remarkable reflection on Rabbi Hayim Volozhiner's *Nefesh ha'Hayyim*, Emmanuel Levinas argues that our acts, words and thoughts condition the association of God with the world(s). Levinas quotes Volozhiner:

Let nobody in Israel—God forbid! ask himself, 'what am I, and what can my humble acts achieve in the world?'. Let him rather understand this, that he may know it and fix it in his thoughts: not one detail of his acts, of his words, and of his thoughts is ever lost. Each one leads back to its origin, where it takes effect in the height of heights, in the worlds...The man of intelligence who understands this in its truth will be fearful at heart and will tremble as he thinks how far his bad acts reach and what corruption and destruction even a small misdeed may cause.³²

In this view of God and his demands, blasphemy is perhaps best understood as the opposite of prayer, or rather of the moment of offering and grace in the benediction. Levinas argues that in prayer we make possible the association of God with the worlds in a creating and sustaining association. In contrast, blasphemy is something like a violent infidelity to God which shakes the foundations of the world by destroying its ethical intelligibility, not just by disturbing the social or political order by insulting believers. What flows on from blasphemy in this view is the malediction, not of God's punishment, but simply of the breach between God and the world.

According to such older views, few remnants of which survive today, the verb 'to blaspheme' is transitive, and the object of the verb is God. Hence it was possible to claim that someone had 'blasphemed God', or to claim like St Paul to have been 'blasphemed'. In older understandings of blasphemy, there was still the difficulty of whether we *as citizens* are capable of repairing the violence to God accomplished by the blasphemer, that is, whether the faithful have *standing* to apply for a *civil* remedy of wrong to the deity. Such a difficulty aside, the coherence of the position rests centrally on acceptance of blasphemy as constituted by affront to God, not to fellow believers.

One of the more interesting recent developments in regard to the offence of blasphemy are attempts to salvage what is still alive in the offence by substituting the category of religious vilification for that of blasphemy. For example, the

Victorian *Racial and Religious Tolerance Act* of 2001 makes unlawful the incitement of hatred, contempt, revulsion or severe ridicule on the grounds of religious belief or activity.³³ Rather than being explicitly targeted against discrimination, the Act is linked to the promotion of tolerance. In this way, I would argue, the Act understands vilification as akin to blasphemy, by construing the issue as involving offence to believers and as a matter of public order. Hence, I would argue, the Act does not avoid the problems of modern blasphemy law, and still does not grapple with the problem of offence to God.

ENDNOTES

¹ Lord Denning, *Freedom Under the Law*, Hamlyn Lectures 1st series, London, 1949, p. 46.

² House of Lords Select Committee on Religious Offences, *Religious Offences in England and Wales – First Report* [HL Paper 95-I, Session 2002-03], <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelof/95/9501.htm>>, viewed 11 August 2005. In Australia, see esp. New South Wales Law Reform Commission 1992, *Discussion Paper: Blasphemy*. <<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/DP24TOC>>, and 1994, *Report: Blasphemy*, <<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r74toc>>, viewed 11 August 2005.

³ *Whitehouse v Gay News*, *Whitehouse v Lemon* [1979] AC 617; [1979] 2 WLR 281; [1979] 1 All ER 898 (HL), and *Gay News Ltd. and Lemon v United Kingdom* [Eur Comm HR] 5 EHRR 123 (1982).

⁴ *R v Chief Metropolitan Magistrate, ex parte Choudhury* [1991] 1 QB 429.

⁵ Sanhedrin 60a. I use the Soncino edition of the Talmud.

⁶ The primary documents on Aikenhead are printed in 'Proceedings against Thomas Aikenhead, for Blasphemy, 8 William III. A.D. 1696', in Cobbett W. and T. B. Howell et al. (eds), *A Complete Collection of State Trials*, 34 vols., London, 1809-1828, [State Trials], vol. 13, cols. 917-940, and Hugo Arnot (ed.), 1785, *A Collection and Abridgement of Celebrated Criminal Trials in Scotland*, Edinburgh, pp. 324-7. The documents printed in State Trials are from the records of the Justiciary in Edinburgh, and from a collection of manuscripts in the property of Lord King, now kept in the Lovelace Collection of Locke's papers in the Bodleian Library at MS Locke b.4, ff 86-106. Michael Hunter notes that 'an early 19th-century commentator on Locke's Aikenhead material described it as being 'In a bundle of MSS. On the subject of Toleration': Francis Horner, 1843, *Memoirs and Correspondence*, Leonard Horner (ed.), 2 vols, London, i. 487'; see Hunter, Michael 1992, "'Aikenhead the Atheist': The Context and Consequences of Articulate Irreligion in the Late Seventeenth Century', in Michael Hunter and David Wootton.(eds), *Atheism from the Reformation to the Enlightenment*, Oxford, Clarendon Press, p. 231, fn. 27.

⁷ State Trials, vol. 13, p. 919.

⁸ State Trials, vol. 13, p. 925.

⁹ E. Hafiz Mahmud Khan Shairani (ed.) 1954, *An Account of the Rise and Progress of Mahometanism, with the Life of Mahomet, And a Vindication of him and his Religion from the Calumnies of the Christians*, Lahore, Orientalia. I was led to Stubbe by a passing reference in a talk by Sheikh Hamza Yusuf, and found that no library in Australia holds a copy of the work.

¹⁰ Hakim-Murad acknowledges Stubbe and his influence in 'British and Muslim?', lecture given to a conference of British converts to Islam, 17 September 1997, <<http://www.masud.co.uk/ISLAM/ahm/british.htm>>, viewed 11 August 2005.

¹¹ Hunter, "'Aikenhead the Atheist'", p. 238, quoting letter from Wylie to William Hamilton, 16 June 1697.

¹² Printed in Thomson, T. and C. Innes (eds), *The Acts of the Parliament of Scotland*, 12 vols, Edinburgh, 1814-1975, vol. 7, pp. 202-3 and vol. 9, pp. 386-7.

¹³ Hunter, 1992, p. 228.

¹⁴ See especially Larner, Christina 1981, *Enemies of God: The Witch-hunt in Scotland*, London, Chatto & Windus, and Larner, Christina 1984, 'The Crime of Witchcraft in Scotland' in Alan Macfarlane Larner (ed.) *Witchcraft and Religion: The Politics of Popular Belief*, New York, Blackwell. The bundle of documents on Aikenhead in Locke's manuscripts also includes material relating to the Renfrewshire incident.

¹⁵ Macaulay, T. B. Firth, 1915, Charles Harding (ed.) *The History of England, from the Accession of James the Second*, 6 vols, London, Macmillan, vol. 6, pp. 2698-9. In the context of blasphemy, recall that Ma-

caulay had sponsored the Indian Criminal Code, which penalised religious incitement, though not in quite those terms—and which has sometimes been put forward as a model for addressing religious affronts. See Lord Scarman's mention of Macaulay's reform in *R v Lemon* [1979] 2 WLR 281 (HL), at 308.

¹⁶ 'Thomas Aikenhead's Paper', in *State Trials*, vol. 13, p. 931. Also 'Thomas Aikenhead his Cygnea Cantio', Harleian MS 6846, ff 400-101, as noted in Hunter, 1992, p. 229, fn. 25.

¹⁷ *Taylor's Case* (1676) 1 Vent. 293 (KB), 86 ER 189.

¹⁸ *R v Chief Metropolitan Magistrate, ex parte Choudhury* [1991] 1 QB 429.

¹⁹ *Pell v National Gallery of Victoria* [1998] 2 VR 391.

²⁰ *R v Lemon* [1979] 2 WLR 281, at 312 per Lord Scarman.

²¹ *R v Gott* (1922) 16 Cr App R 86.

²² See Anderson, Ingrid and Pamela Rose, 1978, "'Who the Hell Does She Think She Is?'" interview with Mary Whitehouse, *Poly Law Review*, vol. 3, no. 2, p. 13.

²³ Anderson and Rose, 1978, p. 15. The interviewers present the interview in order 'to demonstrate that the watchdog of this country's moral welfare appears to have no coherent philosophy of law or morality'.

²⁴ [James Johnstoun?] to [Locke?], 27 February 1697, BL MS Locke b4 ff 86-87, enclosures 92-7, reprinted in de Beer, E. S. (ed.), 1981, *The Correspondence of John Locke*, 8 vols, Oxford, Clarendon Press, vol. 6, 19. No record remains of a reply by Locke to Johnstoun on this matter.

²⁵ *R v Regina and Foote* 15 Cox CC 231 (1883), 238.

²⁶ *R v Hetherington* (1841) 4, *State Trials* ns. 563, at 590-1.

²⁷ Anderson and Rose, 1978, p. 13.

²⁸ *R v Gott* (1922) 16 Cr App R 86, 89-90 per Trevethin LCJ.

²⁹ See Macaulay's accounts of the period, and Hunter, 1992, p. 239-41.

³⁰ Case of David Mowbray, 'Of Tumult within Burgh', in Hugo Arnot (ed.), 1785, *A Collection and Abridgement of Celebrated Criminal Trials in Scotland*, p. 270.

³¹ Craig, Mungo 1696, *A Satyr against Atheistical Deism*, Edinburgh, quoted in Hunter, 1992, p. 233.

³² Levinas, Emmanuel 1984, 'Prayer without Demand', trans. Sarah Richmond, in Seán Hand (ed.) 1989, *The Levinas Reader*, Oxford, Basil Blackwell, p. 230.

³³ See *Racial and Religious Tolerance Act 2001* (Victoria), <http://www.austlii.edu.au/au/legis/vic/consol_act/rarta2001265/>. The act was tested in the Catch the Fire case: see *Islamic Council of Victoria Inc. v Catch the Fire Ministries Inc* [2003] VCAT 1753 (21 October 2003), <<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/vic/VCAT/2003/1753.html>>, *Islamic Council of Victoria v Catch the Fire Ministries Inc* (Final) [2004] VCAT 2510 (22 December 2004), <<http://www.austlii.edu.au/au/cases/vic/VCAT/2004/2510.html>>, and *Islamic Council of Victoria v Catch the Fire Ministries Inc* (Anti Discrimination – Remedy) [2005] VCAT 1159 (22 June 2005), <<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/vic/VCAT/2005/1159.html>>, all viewed 11 August 2005.