Criminal Justice and Immigration Bill 2008

Lords debate on the clause to abolish blasphemy laws

5 March 2008

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Andrews) moved Amendment No. 144B:

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> After Clause 129, insert the following new Clause—
>
> "Blasphemy and blasphemous libel
>
> (1) The offences of blasphemy and blasphemous libel under the common law of England and Wales are abolished.
>
> (2) In section 1 of the Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8) (orders for seizure of copies of blasphemous or seditious libel) the words "any blasphemous libel, or" are omitted.
>
> (3) In sections 3 and 4 of the Law of Libel Amendment Act 1888 (c. 64) (privileged matters) the words "blasphemous or" are omitted.
>
> (4) Subsections (2) and (3) (and the related repeals in Schedule 38) extend to England and Wales only."

The noble Baroness said: It is always rather alarming to bring forward an amendment that is looked forward to so avidly in your Lordships' House, and it falls to me to introduce it on behalf of the Department for Communities and Local Government—the department that promotes social cohesion and matters of faith.

Amendment No. 144B and consequential Amendments Nos. 180D and 184A fulfil the commitment made on 9 January, at Report stage in another place, by my ministerial colleague Maria Eagle that, following a short period of consultation, we would abolish the common law criminal offences of blasphemy and blasphemous libel. The noble Lord, Lord Lester of Herne Hill, has added his name to the amendment. Unfortunately, he cannot be with us today but I pay tribute to the work that he has done over the years, particularly in the JCHR, on this continuing and long debate. Indeed, that is the burden of much of what I want to say: it has been a very long debate.

The Government are of the view that it is now time that Parliament came to a settled conclusion on this matter for two key reasons. First, the law has fallen into disuse and therefore runs the risk of bringing the law as a whole into disrepute. Secondly, we now have new legislation to protect individuals on the grounds of religion and belief. In setting out these reasons, I will also aim to reflect on the words of the most reverend Primates the Archbishops of Canterbury and York in their joint letter to my ministerial colleague, Hazel Blears. They say:

> "Having signalled for more than 20 years that the blasphemy laws could, in the right context, be abolished, the Church is not going to oppose abolition now"—

with the rider—

> "provided we can be assured that provisions are in place to afford the necessary protection to individuals and to society".

I shall address those points in some detail as I go through the argument.

First, it is important to point out that the blasphemy offences are offences of strict liability—that is, the intention to commit an act of blasphemy is not required. That contrasts with the incitement to religious hatred offence, where an intention to stir up religious hatred needs to be demonstrated. All that matters for an offence to have been committed under the blasphemy laws is that a person published material that is the subject of prosecution. It follows that a person might commit such an act inadvertently, but it would not be a defence in law to say that there had been no intention to be blasphemous.

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I believe that it is crystal clear that the offences of blasphemy and blasphemous libel are unworkable in today's society because they do not protect the individual or groups of people, they do not protect our fundamental rights—indeed, they may conflict with them—and they do not protect the sacred. That last point is very much reinforced by the recent judgment in the Jerry Springer case. I again quote the Archbishops' letter to Hazel Blears:

> "The real purpose of the offences is the preservation of society from civil strife, rather than the protection of the divine or any particular religious beliefs".

I also remind noble Lords that this is the fifth time that this House has considered this issue. It was previously considered in 2005 during the passage of the Racial and Religious Hatred Bill, in 2002 during the Religious Offences Bill, in 2001 during the Anti-terrorism, Crime and Security Bill, and in 1995 during the Blasphemy (Abolition) Bill. At each stage, Parliament has had the same information before it and has been able to draw on the results of serious parliamentary scrutiny.

That the law has fallen into disuse is evident from the fact that there have been no public prosecutions in almost 90 years—since 1922—and it has been more than 30 years since the last private prosecution. In fact, coming new to this debate, I asked my officials to go back a little further. There was hardly a rash of prosecutions before 1922. I have been able to find only two cases. The first was in 1676, when a Mr Taylor was made to stand in the pillory in several places and had to pay a 1,000 marks fine for,

> "utterly diverse blasphemous expressions horrible to hear".

Hard on the heels of that event, there was one in 1841, when a Mr Haslam, in a pamphlet castigating the clergy of all denominations, described the Old Testament as "wretched stuff" and a "disgrace to orang-utans". That was 20 years before the great Oxford debates on belief, religion and science. I am assured by my noble friend Lady Hollis, who knows about these things, that that case was probably something to do with the secularist movement and the Chartists. I am sure that she is right. Its author was described as a random idiot and he was held guilty of blasphemous libel and of appealing to the wild and improper feelings of the human mind—I suggest, anticipating notions of civil strife. It was 80 years before the law was invoked again.

5.15 pm

I am making this excursion into history not to be flippant—far from it—but simply to illustrate that, when we say that the law has fallen into disuse, perhaps we should really say that the law has never been found to be usable. The recognition that the offences appear to be moribund was reinforced by the High Court's decision on 5 December 2007 in the case of Stephen Green v City of Westminster Magistrates' Court and others, which was a private prosecution for blasphemous libel. The court's primary judgment was that the Theatres Act 1968 and the Broadcasting Act 1990 now already prevent the prosecution of a theatre, the BBC or another broadcaster for blasphemous libel.

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Noble Lords will know that this is part of a long and complex history. Over 20 years ago, the first recommendations were made to change the law, when, in 1985, the Law Commission considered the scope for reform of the law in this area. Since then, Parliament has made its own inquiries. In 2003, the Select Committee on Religious Offences, on which the noble Lord, Lord Avebury, was a leading light, spent a year gathering evidence. Its report contains an extensive discussion of the legislative options available.

When the Joint Committee on Human Rights reported on this Bill in January, it concluded that,

> "the continued existence of the offences of blasphemy and blasphemous libel can no longer be justified, and we are confident that this would also, in today's conditions, be the view of the English courts under the Human Rights Act and the Strasbourg Court under the ECHR".

As the JCHR makes clear in its report, this was on the grounds of both an ongoing risk of violations of the right to freedom of expression and of the right not to be discriminated against, on grounds of religion, in the enjoyment of the right to freedom of thought, conscience and religion.

I certainly understand some of the concerns that have been expressed and the deeply felt beliefs of many noble Lords. However, I hope that the Committee will agree that 22 years of gathering evidence—four cases in 300 years—and debating the issues and implications, as we have done time and again, suggest that the steps that we are taking today to respond to the words of the most reverend Primates' letter are not taken lightly; they are being taken after long consideration.

The question why we are doing this in this Bill and this context also merits an answer, particularly in the light of the questions raised by the most reverend Primates in their letter in relation to the recent High Court judgment on 5 December. That set out very clearly that the offence of blasphemous libel set the bar for prosecution at public disorder:

> "There is therefore ample basis for the common ground before us that the gist of the crime of blasphemous libel is material relating to the Christian religion, or its figures or formularies, so scurrilous and offensive in manner that it undermines society generally, by endangering the peace, depraving public morality, shaking the fabric of society or tending to be a cause of civil strife".

Within that context, we believe that the opportunity that we have in this Bill to resolve the matter is appropriate, timely and should be taken. It is right that we should consider these questions within a Bill that deals in some way with hate crime and public order offences and which makes further provision about criminal justice.

The most reverend Primates raised a further point about the existing protections. While the debate on blasphemy has a long history, what has changed is the fact that, whereas the offences of blasphemy and blasphemous libel do not protect the individual or groups of people from harm, the new offences of incitement to religious hatred and discrimination on the grounds of religion and belief—in the provision of goods, services and employment—do. In doing so, they afford the necessary protections that the most reverend Primates were seeking assurance on.

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Members of the Committee will be aware that in 2001 the Government introduced legislation that specifically affords protection to religious as well as racial groups in the form of religiously aggravated offences. We have also brought forward wide-reaching legislation to protect people from discrimination on the grounds of religion

or belief, both specifically within the workplace, as I have mentioned, and in society more generally, with protection against discrimination in education, in the work of public authorities, in the management and disposal of premises and in the provision of goods, facilities and services.

Perhaps most centrally in this context, we introduced new criminal offences outlawing incitement to religious hatred in the Racial and Religious Hatred Act 2006. The church made it clear in 2002 that, if such an offence were enacted and proved effective, it would provide the context in which the current offence of blasphemy could be safely repealed. This context of stronger legislation weakens any argument to keep the status quo. The offence of blasphemy also brings additional difficulties with it. For example, the provisions within legislation on incitement to religious hatred protect all parts of all our communities. Whereas blasphemy seeks to protect Christianity and the Church of England—although some would argue that it covers all faiths—it certainly does not cover those of no faith; it does not cover atheism or humanism. However, these groups are protected within the incitement provisions. This legislation recognises a more complex and diverse society, which respects those of faith and those of none.

There is a further and more important argument driving this timetable. As long as this law remains on the statute book, it hinders the UK's ability to challenge oppressive blasphemy laws in other jurisdictions, including those used to persecute vulnerable Christian minorities. As signatory to a number of international conventions that commit us to tackling discrimination in all its forms, the UK is regularly criticised by international bodies for having these laws. As recently as February this year, the UN special rapporteur on freedom of religion expressed concern at the continuing existence of the blasphemy offences in this country. As such, their presence represents a blemish on what is otherwise an excellent record on combating discrimination and promoting human rights. It is therefore right that we should seek to abolish them without further delay.

The Government are both respectful of and grateful for the fact that the Church of England has indicated that it will not oppose abolition at this time, with the support of a number of other churches. I hope that I have made our reasons as clear as possible in what I have said, but let me quote again from the Secretary of State's recent letter in response to the concern of the churches. She made it clear that, in speaking to the amendment, the Government,

> "will take the greatest care to explain fully its case for taking this step, and in particular its belief that abolition of these laws should not in any sense be interpreted as being further indication of a drift towards a secularisation of society".

The amendment is about removing offences that have long been recognised as unsatisfactory and unworkable. It is not an attack on the sacred in our society. I quote again from the Secretary of State's letter:

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> "Neither should it be viewed as a licence for the expression of disrespect towards faiths or those that hold them".

In my personal view, the decision by the churches not to oppose the amendment reflects the resilience of Christian belief in this country and its significance in our history, culture and character. We have a strong tradition in this country of respect for others, justice, the right to freedom, the right to belief and a sense of right and wrong. The Christian tradition has had a profound effect on the way in which these freedoms and traditions have been shaped. It continues today in the role that it plays in contributing to and shaping the life of our communities.

I make the point of saying that because, in thanking the churches, I have to stress that the Government are well aware of concerns expressed particularly, but by no means exclusively, by members of the Christian community that abolition would represent further evidence of a drift towards secularisation. Let me reassure noble Lords that we have been at pains to emphasise that the proposal is in no way an attack on those beliefs

and values or on the church, let alone on Christians themselves. Indeed, I believe that, by removing a law that has fallen into disuse and some disrepute, we are demonstrating confidence rather than the reverse. We do not need to rely on such a law to remind ourselves that the sacred still has a role to play in today's society. I would go further and remind noble Lords of the response that the Government made in 2003 to the report from the Religious Offences Committee:

> "We particularly welcome the report's reflections and conclusions about the role religion plays in people's lives in the UK today. We entirely endorse its view that changes to society in recent years have not resulted in the ebbing of religious values and the consequent emergence of the United Kingdom as a 'secular state'. Religious values do indeed still play a significant part in shaping social values, perhaps increasingly so".

The proposal has already attracted broad cross-party support in another place. Such representations as we have had on the issue have been broadly supportive. I know that some noble Lords have tabled similar amendments but I hope that, given the Government's amendment, they will not move them.

I shall conclude by quoting the right reverend Prelate the Bishop of Southwark, who spoke in "Thought for the Day" on the "Today" programme yesterday. He said:

> "The possible removal of what is now generally recognized as being a not very workable law should not be interpreted as a secularising move or as a general licence to attack or insult religious beliefs. It should spur us all to work harder to respect and protect the common good".

I say amen to that and I hope that noble Lords are able to join me. I beg to move.

The Earl of Onslow: I rise to speak to the amendment that I tabled. The noble Baroness, Lady Stern, and I both sit on the Joint Select Committee on Human Rights. I give the Minister the undertaking that we will not move our amendment, even though it is shorter and makes exactly the same sense. However, the Government like to have their own way and put down longer amendments. It struck me that it is deliciously new Labour that the Minister with responsibility for local authorities should remove the blasphemy clauses, aided by Hazel Blears. You could not ask for anything better.

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On the question of blasphemy, it has always struck me that if Jesus Christ exists, and if Jesus Christ in his Godlike form was capable of creating the universe, then he could quite easily hack the bit of left-wing obscurantism and b-mindedness that writes things such as "Jerry Springer: The Opera". If he does not exist, nothing will happen; if he does exist, it is up to him to get hold of the chap who wrote it and make sure that he does time in the diabolical house of correction. The offence is unnecessary.

It also seems that the provision applies only to the Church of England, not to the doctrines of the Roman church, as far as I can gather. You can be just as rude and insulting as you like about the doctrine of the Assumption of the Blessed Virgin Mary, papal infallibility, or what the Church of Rome says about contraception; you can be blasphemous about those without any possibility of being prosecuted.

Blasphemy is a crime that is open to intense mockery. As the Minister said, something that is open to mockery and has been used only four times since 16-something-or-other has no place on the statute book.

The Church of England is quite capable of looking after its own; it is a great and wonderful institution which has been a great influence on our society from the Reformation onwards. It has on the whole been an influence for the better, but, like all human institutions, it has on occasion—unlike another church, which claims infallibility—been fallible. That is why I like the Church of England, even when it does nasty things to the Book of Common Prayer. Please let us now get rid of the crime of blasphemy. It is unnecessary and otiose.

5.30 pm

Lord Avebury: I rise to speak to the amendment in my name and to thank the noble Baroness, Lady Andrews, for her succinct and helpful summary of the law of blasphemy and of the history of the attempts to abolish it during the past few years—to which I made a small contribution in 1995, again in 2001, and, as she said, in a year's work on the report of Select Committee on Religious Offences, which I commend to your Lordships as a useful summary not only of the state of the law as it was then but of the arguments both for and against abolition. I pay tribute to the distinguished chairmanship of the noble Viscount, Lord Colville, whom I am very glad to see in his place. I hope that he may feel inclined to contribute to our discussion before we dispose of the amendment.

The Minister said that the last successful prosecution for blasphemy in England was the *Gay News* case 30 years ago and that the arguments for abolishing the offence were helpfully set out in the Law Commission's working paper, published in 1981, followed by its paper, *Offences against Religion and Public Worship*, in 1985. It concluded then that there was no argument sufficiently powerful to justify the derogation from freedom of expression that any such offence must occasion. The Select Committee on Religious Offences found that it would be extremely

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unlikely for any prosecution to get under way today. As the noble Viscount, Lord Colville, suggested when the committee's report was debated in your Lordships' House,

> "there will be no more prosecutions for blasphemy. Any such case, if launched by a private individual, would be taken over by the Director of Public Prosecutions, and he would put paid to it. I do not think that he himself would allow the Crown Prosecution Service to bring such actions of its own accord".—[*Official Report*, 22/4/04; col. 444.]

As the noble Baroness said, there was a recent attempt to launch a private prosecution by two members of the radical group, Christian Voice, which confirmed the prediction of the noble Viscount. They applied to a district judge for summonses against the producer of "Jerry Springer: The Opera", which has been mentioned, against the director-general of the BBC, which had broadcast the work on 8 January 2005. The judge found that there was no prima facie case and that the application bordered on the vexatious.

Christian Voice applied for judicial review of the decision. In the High Court, Lord Justice Hughes recited the history of the offence and, following a reference to Lord Scarman's judgment in the Whitehouse v Lennon case, said in paragraph 16 of his judgment that there was common ground on the gist of the offence—that the material had to be,

> "so scurrilous and offensive in manner that it undermines society generally, by endangering the peace, depraving public morality, shaking the fabric of society or tending to be a cause of civil strife".

It seemed to Lord Justice Hughes that,

> "the necessity for this essential ... element in the crime is also consistent with the requirement ... that any such crime be compatible with Article 10 of the European Convention on Human Rights".

He went on to outline the provisions of Article 10(2), concluding that insulting a person's deeply held religious beliefs did not affect his right to hold or practise his religion. Although, because of the way the application was put to the magistrates in this case—perhaps a tribute to the skill of Christian Voice's legal advisers—it was not necessary to decide on consistency with Article 10, it was significant that Lord Justice Hughes emphasised the point, which would have been central if the case had been allowed to proceed. If I may say so, it might have been helpful if the Archbishops had acknowledged this in their letter to the Secretary of State for Communities and Local Government last week.

If Christian Voice had succeeded in launching this case, or a similar one, as the Select Committee on Religious Offences in England and Wales predicted, and as the most reverend Primates might like to be reminded, it would be likely to fail on grounds either of discrimination or of denial of the right to freedom of expression. Article 10(2) of the European Convention on Human Rights requires that any restrictions placed on this right must be prescribed by law, which means that there must be certainty about what is or is not permitted. The common law of blasphemy fails that test, and although in the Wingrove case the European Court of Human Rights upheld the decision of the BBFC not to grant a certificate to the film "Visions of

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Ecstasy" on the grounds that it was blasphemous, that judgment was based on the false assumption that what Lord Scarman had said in his judgment on the *Gay News* case defined the actus reus of blasphemy in common law.

The Select Committee also examined the suggestion made by some witnesses that the abolition of the offence of blasphemy would open up the floodgates to masses of scurrilous and offensive books, pamphlets, cartoons or films—a bogey now raised again by the most reverend Primates when they tell Hazel Blears in the letter that has already been mentioned that this amendment,

> "should not be capable of interpretation as a general licence to attack or insult religious beliefs and believers".

There is nothing in the law to stop publications of this nature against any religion other than Christianity now, and it is this discrimination that is one of the most objectionable features of the present law. It is clear that a great deal of the material that is offensive to Christians is already published without attracting any legal penalty.

In their response to the Select Committee report of December 2003, the Government said that the Home Secretary was attracted to repeal but saw the need for full debate to inform the way forward. That ignored the many debates in both Houses over the years, as well as the huge volume of comment in the print media and in broadcasting ever since the *Gay News* case. Perhaps we should be thankful that now their anxiety to make progress with this legislation has persuaded the Government to table their own amendments 24 years after these were first recommended by the Law Commission and five years since the Select Committee went into the matter so thoroughly, taking evidence from all the major religious organisations and dozens of other people. My regret is that no Government have had the stomach to face up to the vociferous minority since the Law Commission reported, and I doubt whether it would have happened now if it had not been for the sterling efforts of my honourable friend the Member for Oxford West and Abingdon in another place.

The statutory religious offences were also examined by the Law Commission and the Select Committee. I thank the Minister for getting rid of blasphemous libel in the Criminal Libel Act 1819, and for eliminating the reference to blasphemy in the Law of Libel Amendment Act 1888. It appears that Section 3 of that Act had already been repealed—a small defect in the amendment, which may be remedied at a later stage. The Government have unfortunately neglected the opportunity to repeal the other ancient statutory religions offences, which were covered by the Select Committee's report in 2003. Briefly, the main one that is still used occasionally is Section 2 of the Ecclesiastical Courts Jurisdiction Act 1860, which forbids,

> "riotous, violent or indecent behaviour in any Cathedral Church, Parish or District Church or Chapel of the Church of England ... or in any Place of Religious Worship".

The Select Committee discussed that at some length, and it was noted that the Law Commission had recommended its repeal.

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In the last couple of years for which the figures were available to the Select Committee—2001 and 2002—three and six prosecutions had been brought under that Act, leading to no convictions and one conviction respectively. For the three years 2003 to 2005, there were 15 prosecutions and seven convictions, but those figures must be interpreted with caution, as the noble Lord, Lord Hunt, emphasises in a footnote to the figures. Apart from transcription errors in extracting data from the large administrative data systems generated by the courts and police forces, the statistics do not tell you whether there were multiple charges or whether the conviction was obtained under some other statute.

No evidence was received by the Select Committee of acts of desecration dealt with under the ECJA which did not constitute offences under some other Act such as the legislation on criminal damage or public order. We received no evidence that the Act had ever been used against riotous behaviour in a non-Christian place of worship. The best-known case which everyone remembers was that of Mr Peter Tatchell, who interrupted a sermon by the then Archbishop of Canterbury in Canterbury Cathedral. After a two-day trial he was fined £18.60 by the magistrate, thereby showing, by the reference to the 1860 Act, what he thought of the charge.

In their response to the Select Committee, the Government said that it was—

Noble Lords: Time.

Lord Avebury: I think I deserve my day in court, having been at this for some 20 years, if you do not mind.

In their response to the Select Committee, the Government said that it was,

> "unclear whether the ECJA in practice really addresses a form of conduct which is not covered by other criminal offences".

But, in the event of an opportunity arising from the reform of the law, they said that they would,

> "look ... carefully at the case for retaining or updating the ECJA".

In order to be able to do that, it would be necessary to scrutinise individual cases to see whether the conduct in question was or could have been dealt with under other legislation. Having given that undertaking, I hope that the Government will produce that analysis now for the benefit of the Committee. When we have discussed these matters in the past, those who want to retain the ECJA have said that there were cases where a church was desecrated without a person other than the offender being present, which is an essential ingredient of Sections 4 and 5 of the Public Order Act 1986, without which a prosecution could not have taken place.

Mr Tolson, of National Churchwatch, who I consulted on this, was not able to give me details of any case since 2002, and none has been reported in the print media to my knowledge. There may have been cases in mosques, but not many are registered under the Places of Worship Registration Act 1855, as they would have had to be for the charge to be used. I hope that the Minister will ultimately agree not only that the ECJA should now be repealed but that, given this opportunity, the other minor offences which are hardly if ever used should also be repealed.

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The Archbishop of York: My Lords, in the light of what the noble Earl, Lord Onslow, has said, perhaps I may attempt to give a definition of "blasphemy" provided in Stephen's *Digest of the Criminal Law* and adopted by Lord Scarman in a 1979 case which states:

> "Every publication is said to be blasphemous which contains any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ, or the Bible, or the formularies of the Church of England as by law established".

Jesus Christ and the Bible, I submit, are for all Christians and not just for the Church of England. He continued:

> "It is not blasphemous to speak or publish opinions hostile to the Christian religion or to deny the existence of God, if the publication is couched in decent and temperate language. The test to be applied is as to the manner in which the doctrines are advocated and not as to the substance of the doctrines themselves".

There is little doubt that such a definition is unworkable. On that, at least, there should be common agreement. It is more difficult to reach for an understanding that replaces the common law of blasphemy with a law that essentially provides for a protection not exclusively of the Christian faith but of the fabric of society, as the case in December decided.

In the letter to the Secretary of State for Communities and Local Government, the most reverend Primate the Archbishop of Canterbury and I said that it is not our intention to oppose abolition now, as the Government propose, provided—and it is a big proviso—that we can be assured that provisions are in place to afford the necessary protection to individuals and society. The offences against incitement to religious hatred are new on the statute book and have yet to be tested in the courts. So we are not quite sure, and we are still in uncharted waters.

5.45 pm

It is extraordinary that at a time when religion and religious identity have come to dominate global and domestic concerns, parliamentarians seek to stick their heads in the sand by attempting to relegate considerations of religion and faith from matters of public policy to the private sphere. The mover of the motion in the other place seems to assume that religion no longer matters and as such there is no need for the law of blasphemy in a society which he believes is very secular. I want to ask this: where is the spirit of magnanimity which shaped this nation? Perhaps I may employ another analogy. This is akin to saying that because a child is consistently late for school, there is no need to have a clock. Persistent lack of punctuality does not do away with the need for time.

The place of Christianity in the constitutional framework of this country as governed by the Queen in Parliament under God is not in question, but some Members of the other place seem to question that reality. The relationship between the church and the state, reaffirmed by the Government in July in *The Governance of Britain*, will not continue to provide a context in which people of all faiths and of none can live together in mutual respect in this part of the realm, where again the governance is by the Queen in Parliament under God.

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However, it is apparent from the debate in the Commons on 9 January that a number of those calling for the repeal of these offences misunderstand both what the existing law is intended to achieve and the extent to which, in doing so, it protects society against civil strife. That is what it is all about. A recent High Court decision made it clear again that the law works against civil strife.

Finally, I am compelled to comment on the inherent link between the

> "damage to the fabric of society",

mentioned in the recent judgment, and the nature of that fabric, which has been formed through the operation of the Christian faith in this land. Of late, the Government and others have concerned themselves in trying to discover what it means to be British and what the essential elements of Britishness might be. While we may agree that virtues such as fair play, kindness and decency are part of the nation's make-up, do they qualify as those things which make us quintessentially British?

It is my belief that such virtues and those associated with them which form the fabric of our society have been woven through a period of more than 1,500 years of the Christian faith operating in and upon our society. The

Christian faith has woven the very fabric of our society just as the oceans around this island have shaped the contours of our geographical identity. While it is of course true to say that the virtues of kindness to our neighbours, fair play and common decency are not unique to the Christian faith, just as they are not unique to Britain, it is equally true to say that these virtues have become embedded into our social fabric and heritage as a result of the Christian faith and its influence on society. Without wishing to appear syncretistic, I say that these virtues are found in all other faiths, but the background against which they have been shaped has been quintessentially a very Christian understanding.

It was the Venerable Bede in his *Ecclesiastical History of England* who wrote of the way in which the Christian faith played a major socialising and civilising role by uniting the English and conferring nationhood on them, turning this land from a nation of warring tribes into one of united purpose. That is why it is particularly important that the Government should provide clarity over precisely why the common law offences are being abolished and what the implications of their removal are for the position of the Christian religion as by law and statute established.

We may go on to a lot more conversation and discussion on this, but I come to my concluding remarks. The common law offence of blasphemy could be said to serve the four following ends: the protection of society in the sense that it is important that religion, or at least the Christian religion, be treated with respect; the protection of public order; the protection of the bonds that hold society together in a more general sense; and signalling the fact that the Christian religion holds a special place within the social and constitutional fabric of the nation. Were

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the current offence to be abolished, no other single offence could clearly achieve all these ends. What are the Government doing to ensure that they protect them?

I finish by saying that the protection of society is achieved by ensuring that the Christian religion is treated with respect and by signalling the fact that the Christian religion holds a special place in the social and constitutional fabric of the nation governed by the Queen in Parliament under God as understood by the Church of England by law established. How are we going to guard this? I shall listen eagerly to the Minister to see whether we are given further assurances.

I greatly respect the noble Lord, Lord Avebury, because he has been a trenchant defender of human rights, but, nevertheless, I hope we shall see off his amendment. Like a gigantic Christmas tree it has attracted discordant baubles—that is, other offences—that have nothing to do with the law of blasphemy. If nothing else, your Lordships' House must resist it for the sake of keeping in play the issue of protection of places of worship raised by Section 2 of the Ecclesiastical Courts Jurisdiction Act 1860. Social strife must be avoided.

Baroness O'Cathain: My Lords, I oppose government Amendment No. 144B, together with Amendments Nos. 145 and 148.

The Minister, in a beguiling manner, led us to believe that the government amendment is a mere tidying up and that repealing the blasphemy law is not a measure for descending into a secular state. We have heard the history of blasphemy from my noble friend Lord Onslow; we have heard the history of the attempts of the noble Lord, Lord Avebury, to get the blasphemy law repealed; and I would like now quickly to give the history of the amendment. It is not as it seems.

The amendment was not in the original Bill. Some 70 MPs were led by Dr Evan Harris, who sent us an e-mail today giving the history of what happened in the other place. He wrote:

> "I am writing as a Member of Parliament who sponsored the cross-party blasphemy abolition amendment to the Criminal Justice and Immigration Bill at Report stage in the Commons which prompted the Government to pledge to introduce its own abolishing amendment in the Lords after a short consultation with the Church of England".

At the end of the covering note, which was received by me on my computer—I am sure many other noble Lords received it as well—he said:

> "I thought it might be helpful to provide a critique of the Archbishops' letter, which is attached, as well as a copy of the all-too-brief debate in the House of Commons on January 9th".

Your Lordships will be relieved to know that I am not going to read through it all. But, the Minister having said that she does not believe that this is directed towards secularisation of the state, perhaps I may read from the critique. The letter from the most reverend Primates stated that abolition is not a sign of secularisation. Dr Evan Harris said in response:

> "It should be seen as a secularising move, and with pride".

I rest my case.

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The Government have been reactive to a proposition by the secularists and are trying to beguile us into saying, "Everything is going to be all right. It is nothing at all". I am afraid—I do not like to say this because I am a member of the church—that I believe the Church of England has been duped.

As many will remember, a recent census found that 72 per cent of the UK population identified themselves as Christians. Following these figures, even the *Guardian* newspaper admitted on 28 February 2003 that:

> "This is a Christian country simply in the unanswerable sense that most of the citizens think of themselves as Christians".

Amendment No. 144B sweeps that view of the public aside and can only undermine social cohesion in our increasingly fragmented society.

I remind your Lordships that the Coronation Oath, the Monarch as defender of the faith, the establishment of the Church of England and the Church of Scotland, together with the blasphemy law, constitute an explicit denial that Britain is a secular state.

As I have said before in debates on this issue, evidence for that is all around us. Parliament begins each day with prayer. National events are marked by church commemoration services or memorial services. State-funded church schools throughout the country provide a high quality education and are much sought after by parents who do not profess any faith but understand that the values that are present in those schools are the values they wish their children to aspire to.

It is essential that we step back and put this issue in its true perspective. Of course there are people who want to see the establishment of Britain as a secular state, and they are certainly vocal. For them, abolishing blasphemy law is an important step in that direction. I have already referred to how that happened. When the Government yielded to demands for repeal, they believed that abandoning the blasphemy law would not give us a secular constitution overnight, but there is no doubt that it paves the way for a much greater assault on our Christian inheritance. That is how it is seen by many people who do not know anything about the history of the blasphemy law, about the work of the noble Lord, Lord Avebury, or about the workings of Parliament, but who have written to us by the letter-load. They believe that once something like this is pulled away, the whole edifice will collapse.

I wholly accept that there are Christians who do not agree with me. They argue that it would be better if they saw a more liberal approach. However, abolishing the blasphemy law does not demonstrate neutrality; rather, it contributes to a wider campaign for the adoption of a secular constitution, which, despite what the most reverend Primate said, would actually be hostile to religion. There is no neutral ground here. Every society has

some cherished beliefs that it protects in law. The Government are about to remove blasphemy law at the same time as they are increasingly adopting hate-speech laws, which are, in a sense, a form of replacement.

The effect of Amendment No. 144B would be to legalise the most extreme and profane blasphemy. A bona fide expression of opposition to Christianity has not met the legal criteria of blasphemy for centuries.

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The offence requires the publishing of contemptuous, reviling, scurrilous and/or ludicrous material relating to God, Christ, the Bible or the formularies of the Church of England—as quoted from Lord Scarman. It extends to cover Christian beliefs beyond the confines of the Church of England, despite what has been said, as shown by the 2007 High Court decision concerning the decision on "Jerry Springer — The Opera". That same judgment also affirms that the blasphemy law is compatible with the European Convention on Human Rights, as demonstrated by the 1996 Wingrove case. Notwithstanding those points, the High Court found that the blasphemy law could not be used against "Jerry Springer — The Opera" because the performances and broadcasts were protected by the Theatres Act 1968 and the Broadcasting Act 1990. However, in what I think noble Lords will agree is a most unusual move, the judgment has been strongly criticised in a 2008 *Criminal Law Week* critique of the decision, which says:

> "The court's extravagant interpretation of the legislation was no doubt convenient, but is devoid of any legal merit".

The editor goes on to show that those Acts provide protection against obscenity prosecutions but do not concern blasphemy or blasphemous libel.

Let us be clear. The amendment before us proposes to legalise the most intense and abusive attacks on Christ, who is the central figure in our history. As the Bible records, God has exalted Him to the highest place and given Him a name beyond every other name. The fundamental question is this: should we abolish Christian beliefs and replace them with secular beliefs? As long as there has been a country called England it has been a Christian country, publicly acknowledging the one true God. Over the centuries the Christian world view has given us individual liberty and parliamentary democracy. Christians have been at the forefront of humanitarian endeavours; we need only call to mind Wilberforce, Shaftesbury and Josephine Butler. Noble Lords may cry "freedom" in support of Amendment No. 144B, but I urge them to pause and consider that the freedom we have today was nurtured by Christian principles and continues to be maintained and guarded by them. I urge noble Lords to oppose Amendment No. 144B.

6 pm

Lord Davies of Coity: The amendment has been tabled rather late in the passage of the Bill. Although I cannot quarrel with what the Minister said about the blasphemy Act and its history, those arguments could have been advanced when the Bill was first proposed—I wonder why they were not.

I agree that the content of the Act remains and may be dormant or in disrepute, as was described by the Minister, but I am concerned not so much with the content of the Act as with the abolishing of it and the perception, perhaps suspicion, that will be generated as a result. I recall a dormant clause in another Act concerned with promoting homosexuality in schools. The Act had not been applied, but when we went to abolish the relevant schedule, mayhem broke out. I wonder whether we should not leave the Act as it is, as

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I think was the Government's intention when they framed the Bill—otherwise, they would have put in the clause then. They are now doing it at a late stage, perhaps because of what the noble Baroness, Lady O'Cathain, has said.

Lord Elystan-Morgan: I support the amendment, although in so doing I respect greatly the deep sincerity and total commitment with which the noble Baroness, Lady O'Cathain, spoke. It is not a question of seeking to

remove something from statute that has any real significance or life at the moment. If I felt that it had, I may well have taken a different approach. It is a part of the law that has essentially fallen into desuetude. It begs the question, therefore, whether one should allow it to clutter the statute book and the concept of our common law.

If I am wrong, and it is still a live and relevant law, one has to look very carefully at the situation. There are many old laws that never end in prosecution because the practices that they condemn do not occur, or occur perhaps only once every half-century. That is not the situation here. I have read within the past few weeks *The God Delusion* by Professor Dawkins. I ask noble Lords to listen to the following passage. The author speaks of the God that we as Christians worship and states that He is,

> "a petty, unjust, unforgiving control freak; a vindictive, bloodthirsty ethnic cleanser; a misogynistic, homophobic, racist, infanticidal, genocidal, filicidal, pestilential, megalomaniacal, sadomasochistic, capriciously malevolent bully".

If that law counts for anything at all, it is clear that it will encompass a comment of that nature. I do not suggest for a moment that the learned professor, who is professor of philosophical studies at Oxford, should be prosecuted, but if one prosecuted people for expressions such as those, thousands of persons would be prosecuted year in, year out.

I do not for, a second reason, believe that it is right for the law to remain as it is, and applaud the amendment for this reason: I can remember some 30 years ago some excellent programmes on television on a Sunday night, when various propositions of immense weight and substance were debated in a jury/courtroom format. I remember Lord Hailsham appearing on behalf of those who supported the existence of God. After a brilliant cross-examination and a splendid address to the jury, his party carried the day. I cannot remember who the acting judge was, but he asked Lord Hailsham, "Do you ask for costs?". Lord Hailsham, bouncing up and down like an electrified blancmange, as was his wont, said, "No, my Lord, my client does not require costs". May I suggest that the second and most profound reason here is that the good Lord does not require this defence? I do not know what my forebears, many of whom were non-conformist ministers, would say of that. Perhaps I shall have to meet them on the Day of Judgment, but I suggest that I will have far graver things to worry about on that particular occasion.

The Lord Bishop of Portsmouth: The presence of a number of right reverend Prelates this evening should not fill your Lordships with a sense that we are not interested in the rest of the Bill, because we have been watching it very carefully as it has grown and contracted.

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I would have been in my place last week if I had not had a heavy cold. Perhaps I should declare an interest as a member of that Select Committee, with the noble Lords, Lord Avebury and Lord Clarke, and others whom I see here, which met under the eagle and twinkling eye of our chairman, the noble Viscount, Lord Colville of Culross.

I shall provide a little background from these Benches. The Archbishops' letter has been referred to by both the Minister and, briefly, by the most reverend Primate the Archbishop of York, with all the humility he could muster as one of the authors. A limited timescale was involved—we are not griping about that—and therefore a limited consultation. There was fairly comprehensive consultation, but not everybody could be consulted—that is a game that we all know in modern life: running any organisation. For example, his Eminence the Cardinal Archbishop of Westminster was consulted; hence, the letter that emerged.

Part of our work on the Select Committee was to take evidence from the other faiths. It is interesting to note that the Muslims were keen on the retention of a blasphemy law, but that the Sikhs, Hindus and Buddhists were not. Those were the groups that came to us; I make no pretence to speak for all members of those faiths.

The Archbishops were quite clear that they would not oppose repeal. It has been said already by a few speakers, but it has also been misunderstood outside this place. But they had three reservations. The first was that the process had been tacked on to an already complex Bill. The noble Baroness, Lady O'Cathain, too, has drawn

attention to that, and perhaps put the knife in a bit, with some justification. Secondly, the new religious hatred law has not had enough time to be tested, which is a very understandable caution to be registered at this stage. They were also concerned, as has been expressed by some speakers, about the possible secularising perception. I am glad that the most reverend Primate, the Archbishop of York, referred to the census, because it is frequently forgotten. The assurances that the Minister has given will obviously be important, but we may need to hear a little more on that front—40 per cent of the population went to a carol service of some sort or another last Christmas, which is not generally appreciated in public comment. One of the nice things about becoming a bishop is that you do not have to go to as many carol services as a parish priest.

I now turn to the amendment of the noble Lord, Lord Avebury. We find most of it acceptable except subsection (2)(d), which repeals Section 2 of the Ecclesiastical Courts Jurisdiction Act 1860. We cannot accept that amendment unless and until something comparable and more comprehensive is put forward: on that, we are quite adamant. In any case, the argument about absence of prosecutions may suggest the success of the law and not necessarily argue against it.

We have heard several histories of blasphemy. Let me add my own. I do not want to compete with the noble Earl, Lord Onslow, but here is mine. It is a Greek word that comes from ancient Greek society and is defined as,

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> "the profane speaking of God or sacred things".

It entered the Latin Bible. Jerome was responsible at the end of the 4th century. He did not like using Greek words, and that is part of the beauty of his Latin text, but on this particular occasion he was stumped and so blasphemia became Latinised. That is how it eventually entered Middle English.

After that enjoyable and irrelevant diversion, I come to the actual Act, having its background in 17th century law and so forth. The unworkability of this Act has to be balanced against its symbolic nature. Although I do not agree with the noble Baroness, Lady O'Cathain, I understand the feeling of its symbolic character. There is nothing wrong with a law that has a symbolic nature, but it is a question of whether it is workable and that is where the balance may tip in the negative direction.

Finally, noble Lords may wonder how we will all vote. I cannot speak for the other Bishops—we are a very independent breed. Not even archbishops can tell us how to vote, least of all the General Synod, and it is a question of which way the balance tips. For myself, having lived through the experience of the Select Committee and listened to all the different evidence, I am quite clear that the blasphemy law should be repealed and be replaced by a law about incitement to religious hatred. That is easier said than done, and I remember long conversations about how "incitement" can be defined, and—in those days, we were perhaps thinking less clearly than we are now—the difference between religious hatred and racial hatred. I am sympathetic to those who want to argue for freedom of speech, but the law of incitement to religious hatred is hardly one that could be equated with some mythical law against the journalistic incitement of archiepiscopal ridicule—I do not think that we are quite into that, although some of us might dream of that possibility in more facetious hours. We have a fairly adequate although not perfect law about religious hatred. Therefore we should repeal the blasphemy law as an act of realism and of generosity, but certainly not as one of secularisation.

6.15 pm

Lord Elton: The right reverend Prelate the Bishop of Portsmouth is back in bouncing form on the Bishops' Bench, but could I persuade him that there is another path to take with honour and satisfaction? I was not going to take part until the noble Lord, Lord Elystan-Morgan, rose and trailed the name of Dawkins and *TheGod Delusion.* I recommend that he reads a better and more recent book, *The Dawkins Delusion?,* which I am glad to see he has in his hand. The noble Lord's principal objection to the blasphemy law is that it does not work and

is not used and that it is cluttering the statute book. I have yet to discover what harm is done by clutter on the statute book. It may incense people such as the noble and learned Lords, but it does not disturb most of us.

Lord Avebury: Like several other noble Lords, the noble Lord, Lord Elton, referred to the Act. It is not an Act: it is not on the statute book. It is common law.

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Lord Elton: In that case, it cannot clutter anything.

Lord Elystan-Morgan: The noble Lord will accept that I referred both to the statute and to common law as it stood. The point that I sought to make, which I may not have made succinctly, is that where you have a law that is seldom used but broken daily on thousands of occasions, and a blind eye is turned to that, you are corrupting the sovereignty of that law and it is better to remove it.

Lord Elton: I take that point, but you have to consider the alternative. We have had demonstrated to us very forcefully today by our mail bags, the press and, most notably, by my noble friend Lady O'Cathain, that the law has enormous symbolic importance. The noble Lord mentioned that my late and learned friend Lord Hailsham had said that his client did not need costs. The noble Lord, Lord Avebury, said that the client does not need defence, but that is not what the blasphemy law seeks to defend. It seeks to defend our image of our maker and our concept of our society. What is offended when people bring it into ridicule is our sense of who we are and what this nation is. Therefore, we need to look at this not in the high-flown language of the courts or the acerbic language of theology, but at what is proper in Parliament—pragmatism. The pragmatic situation is that, until very recently, there was no proposal on the Floor of the House to make this change in the law. It will greatly offend a large section of our society as a gesture towards secularism. Even if it is not that, that is how it will be seen. That is troubling the waters of our social life quite unnecessarily. The pragmatic thing is to let that sleeping dog lie, as Walpole would have said.

The Earl of Onslow: Surely great faith does not need the protection of blasphemy laws: it is great enough not to need them. That is the point that the noble Lord, Lord Elystan-Morgan, and I were making. If your faith is so dodgy that a few people making obscene jokes about Jesus will upset it, your faith is not as strong as I believe it to be.

Lord Elton: I was not talking about faith: I was talking about the perception of the British people of who they are, and our concept of the fabric of our society being woven out of a Christian history. People who fly against that fly against the nature of this country, which is under attack from a whole mass of different pressures. It is simply unnecessary and unwise to add to that now.

Lord Davies of Coity: The noble Earl, Lord Onslow, talked about the faith of the people, but the perception will be that the law is trying to undermine that faith.

Lord Forsyth of Drumlean: I did not intend to speak at any great length about this, but listening to the right reverend Prelate the Bishop of Portsmouth, I was struck by a sermon that was preached in my church, which is a Scottish Episcopal Church, by the rector some months ago in response to the legal judgment that was made on the Jerry Springer case. I remember

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the sermon very vividly, which I have to say is not true of all his sermons although they are very good. Our church usually has a congregation of about 25 on a Sunday. I often wonder what it is like to work very hard on a sermon, preach it to 25 people and work in a society which is increasingly secular and in which our religion is increasingly subject to attack from the media and other sources. In that sermon, he expressed dismay that no

one was prepared to stand up and defend God and the integrity of Christ, and that the ruling which had been made in respect of the blasphemy law was sending out a signal which made it much more difficult to do the work of the church. I sensed anxiety in the right reverend Prelate's speech about the signal that was being sent.

I am the last person to argue that laws should be put on the statute book in order to send a signal. Of course, that would be wrong. But removing them also sends a signal. The noble Lord, Lord Elystan-Morgan, talked about cluttering up the statute book, which is being dealt with. However, there are at least 140 pages in this Bill that will clutter up the statute book in addition to all the other criminal justice Bills that we have had. I do not think the Government should give as a reason for introducing this measure that we should remove from the statute book laws which have not been implemented, far less put into force. That is not a wise stance for the Government to adopt. However, I am very confused by the argument which appears to be that this law is not used, is in disrepute and is unenforceable. If that is the case, why is it necessary to remove it from the statute book? On the one hand, it is suggested that it is a redundant law and, on the other, that it creates particular problems.

For example, I think it is still the case that under parliamentary privilege the Speaker has powers to summon any journalist who is in contempt of the House to the Bar of the House of Commons and can send him to prison. These powers still exist. The Government and no one else have suggested that they should be repealed because they are no longer used. However, they exist because they uphold the standing and status of Parliament. I believe there is a parallel here. No one expects the Speaker, however provoked he may be these days, to use these powers, but no one would argue that they should be removed as that would damage the status and standing of Parliament. I believe that the Government's last-minute attempt to remove these blasphemy laws causes similar concern and is an assault on the very deeply held beliefs of those within the church. It is quite unnecessary for the reasons they have spelt out; namely, that the law is almost unenforceable and not used. I very much support my noble friend Lady O'Cathain. It is a very sad day for many committed Christians that the Church of England has not argued with an undivided voice for the retention of this legislation on the statute book.

The Lord Bishop of Durham: I hope that your Lordships will indulge one more Bishop speaking. These Benches have just been presented with quite a challenge and I hope that we do not respond in the acerbic language of theology. I was not aware that theological language was acerbic, but that is the kind of language one hears in some places. Rather, I think

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there are more fundamental issues here than have yet been addressed. There is an irony here. Let's face it, we in this country and in the western world are in the middle of a stand-off between secularism, for want of a better word, and fundamentalism, for want of a better word. When you are in that polarised situation, the danger is that anyone who tries to have something reasonable which is neither of those is shot at from both sides as though they are colluding with whichever side the shooter does not happen to like. The secularists clearly want to abolish the blasphemy laws for the same reason that they want to abolish the establishment and lots of other things. The fundamentalists want to keep the blasphemy laws for the same reason; namely, in my view a mistaken belief that this forms an absolute linchpin of the Christian establishment and that if you pull it out the whole lot will come tumbling down. I simply do not believe that. I defy anyone on these Benches or elsewhere to call me a liberal for it. I think that my friends here would be surprised to know that the Bishop of Durham happened to be a liberal. That may have been the case in times past but I hope that is not the case at present.

As some noble Lords will know, I was invited to give a lecture at the London School of Economics three weeks ago. It is a strange place for a Bishop to lecture in; a sort of high temple of secularism. I argued as strongly as I could that the Christian faith should be considered an honoured, valued and fundamental part of our society and, indeed, argued for the establishment of the church. I just about got away with my life. It was an interesting experience. So I am not going to collude with the secularists for one minute. But here is the paradox and it is the paradox of democracy itself; namely, that democracy has to tolerate some forces which might make for its overthrow, otherwise, it is not being true to itself as a democracy. Likewise, for Christians at the heart of the Christian faith there is a re-evaluation of power which is focused on Jesus himself, who refused to be defended

and, indeed, spoke very severely to one of his followers who got out his sword to try to protect him. Rather, he was content to be mocked, spat at and ultimately crucified precisely on, interestingly, a charge of blasphemy, which was then transformed into a charge of sedition.

Edward Shillito, one of the First World War poets, wrote:

"The other gods were strong; but Thou wast weak;They rode, but Thou didst stumble to a throne;But to our wounds only God's wounds can speak,And not a god has wounds but Thou alone".

It is because I uphold that at the centre of my Christian faith that I find it very odd then to think of mounting laws to say that we must defend Jesus against wounds today. When Christians say, as we do, that at the name of Jesus every knee shall bow—as the noble Baroness quoted from Philippians—that is a statement of sure and certain faith about the future, not a statement of social policy to be enforced by statute. It subverts the normal types of power; it does not imitate them. Therefore, I fear that the existing law, by appearing to defend Jesus—as some Christian groups are insisting it does—is in an odd paradoxical relationship at best with the Jesus of the Gospels. This

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is a biblical and Christian argument for abolition. I am sorry to have to make it at a time when the head of steam happens to have come from secularism but it is an argument that I have made over the past 20 years whenever I have been asked about it and that happens to coincide with things that have come from the other place with the secularist tag on, to which the noble Baroness drew our attention.

Of course there is such a thing as offensive behaviour. Recently in the BALTIC on Tyneside, in my diocese, there was a deeply offensive statue of Jesus which I shall not even attempt to describe—I was going to say in a family newspaper but I should say in your Lordships' House. If that statue had been proposed of any other religious leader, I wonder whether the museum would have allowed it to be seen. That is a problem but in my view that should not be dealt with by a blasphemy law but rather under other statutes—which we are getting—dealing with offensive and inflammatory public behaviour. Recent legislation has attempted to address that and we are grateful for it although, as my noble friends here have said, we could have wished that this issue had come up after that new legislation had had a chance to be road tested in the courts. We look eagerly to see how the Government and the courts might apply it.

Rather, what we need is protection for groups, communities and individuals who are at risk. We look to this Government to provide that as they have said. Some people are vulnerable in this respect. Public order is vulnerable when there is gratuitous and inflammatory material. Therefore, I hope it is clear that in supporting the government amendment I am not for one minute colluding with the mood towards secularism, liberalism or any such agendas. I am grateful for assurances on this subject. Actually, if paradoxically, I am doing my best to work through the implications of the fact that it is Jesus himself, not some power-hungry demigod of the same name, who stands at the heart of the faith professed by over 70 per cent of people in our country and whose strange presence continues to haunt and challenge our culture in ways that many understandably find disturbing but to which we on these Benches do our best to bear witness.

6.30 pm

Baroness Park of Monmouth: I did not intend to intervene. However, I strongly support what my noble friend Lord Elton said. We have to remember that the ordinary person out there does not read *Hansard* and that the press will certainly not report this debate except in some mischievous and irrelevant way. An enormous number of ordinary Christians, some of whom are rather old like me, feel threatened and vulnerable. It is good that the country will have a Bill covering incitement to hatred, but that must happen before any other signal is sent. If you wait for that and you send this signal now, you are abandoning those people, who already feel pretty threatened. They are often surrounded by unfriendly communities. It is true that they have not thought much about this; they probably do not even get to church. However, that does not alter the fact that they are Christians and that they feel that this is a Christian country in which

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they have a right to some defence and consideration. The Government now say, “Forget blasphemy. It is out of date, very difficult to apply and totally irrelevant”. They must also say, “We will have an incitement to hatred Bill that will protect ordinary people and their faith”.

We also have to remember that we are not alone in the world. There are Christians in Africa and all sorts of places who already feel pretty threatened. If we as a Christian country say, “Actually, it doesn’t matter very much because the blasphemy law is inapplicable and nobody really took it seriously”, that will not help ordinary Christians who are simple and do not say much about their faith, but who care and want to be protected. I beg the Committee to consider that we should not dismiss this lightly unless something positive is said and done to protect people and to make them feel protected and valued. A lot of them feel very undervalued. I hope that the right reverend Prelates will forgive me, but I am sorry to say that those people do not necessarily feel particularly well defended by those who are supposed to be in charge of their flocks.

Lord Selsdon: Occasionally Governments do something that I regard as pointless—I do not mean that it has no point; I mean that it has less point than anything that I can think of—or useless, by which I mean that it is perhaps of some use but I cannot think what the use is. I will speak from a different point of view. The signal that is sent by doing this causes me concern. I refer to my experience of the more difficult things in life, when I was sent on useless and pointless missions after a mistake had been made that was regarded as blasphemous.

I had the unfortunate job, as chairman of the Middle East trade committee, of dealing with “Death of a Princess”, where the true story never came out. At the same time as the play “Anyone for Denis?”, I had to deal with another play in London; I took the Saudi ambassador to see a dress rehearsal of “Goose-Pimples”, which caused a few problems. Another time when things were difficult, I had to go to Libya on my own—as ever, when no visas were being granted. As a hereditary Peer in your Lordships’ House, I was seen as a perfectly justifiable casualty, who should have been put down. It was useful to be able to go there and to say that I was sent because I was worthless.

The final thing was when a particular man wrote a book called *The Satanic Versus* and I was the only one allowed to go to Tehran, where I sat with great names and prelates. I learnt that the monotheists or the people of the book, as they are called, who believe in one God, were pretty considerable—roughly half the world’s population. I would be there as the Jesus man; there would also be a Moses man and a Muhammad man. We would sit and debate. It is difficult when you have bowlegs to sit cross-legged in the dark smoking hookah pipes with a few people and trying to have a discussion when you are not briefed. In the holy city of Isfahan I was given a team of a couple of lawyers and a couple of mullahs and we had a debate about blasphemy.

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There is a big difference between a spiritual and a temporal fatwa—I had the feeling that the noble Baroness, Lady Andrews, was about to issue a temporal fatwa. For example, Ayatollah Khomeini issued a fatwa that said that you could not play chess because it was too secular and you were defending the king. The prelates pointed out that the king was the weakest person on the board and even the queen was more powerful. The king hid behind his castles, knights or bishops. Even the peasants could move two steps forward and attack the king. Another fatwa was that you could not eat caviar anymore because it was not halal. Cousteau, who became a Muslim, worked out that the sturgeon’s backbone was stronger, so suddenly the British embassy, which was flooded with cheap caviar, found that it could eat it again. When you issue a spiritual fatwa, however, which cannot be revoked except by a higher authority, you come to great ground.

In all these areas—and there are other incidents to which I could draw attention—you will find that people get worried and anxious for the wrong reasons. They then turn to blasphemy. I have heard people arguing that the

law of blasphemy in this country effectively protects God. We can help when people insult prophets and things of that sort, but it is the same thing. The symbolism of removing this causes me concern. I am not saying that war and religions or beliefs are related or that trade and religions or beliefs are related. People's desire for their own beliefs is critical and to try to interpret other people's beliefs is worrying. Has the Minister consulted the other monotheists—those who believe in one God—and the other religions? What is their attitude? Their attitude before was that we should perhaps amend the law on blasphemy to make it applicable to other faiths. This is a very doubtful area in which to tread without having consulted over a wider range than just within Parliament.

The Lord Bishop of Chester: I hope that your Lordships will accept a fourth voice from these Benches, but it will be a voice expressing support for the noble Baroness—in the Division Lobby, too, in due course. The words "rock" and "hard place" swim around in my mind as I try to wrestle with these very difficult issues.

I came into the debate not knowing which way I would vote. The reason for my conclusions and why I have been persuaded is partly that, as the feelings that have been expressed suggest, this is a complex subject and one, therefore, that it is not appropriate to introduce into this Bill at a late stage. It is not appropriate to have consultation with the Church of England through the Archbishops, who may have spoken to one or two other church leaders. It raises much more profound issues with other faith communities, as the noble Lord, Lord Selsdon, just mentioned.

Associated with that, I think that there should be a free vote. This is a serious matter; it is a matter of conscience. There has been the decline in the provision of free votes on matters of morality and conscience in Parliament in recent years. We have seen

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that recently with the Human Fertilisation and Embryology Bill. The original Act went through in 1990 on a free vote, as I understand it. However, the recent Bill was whipped through, time and again, with the majority of people who voted not having heard a word of the argument. If we vote now, as we probably will, we know that the Government will win because the vote will be whipped through, probably with the support of the Liberal Democrats. I say to the Liberal Democrats—perhaps they are not having a whipped vote, but the vote is certainly whipped on the government side—that this is surely a matter of conscience and therefore should not be treated in this way.

The Earl of Onslow: May I, who proposed much the same amendment, support the right reverend Prelate and beg the Government to have a free vote? This is nothing to do with government policy, even though I support and will vote for the Minister.

The Lord Bishop of Chester: I shall refer to my close friend the right reverend Prelate the Bishop of Durham and say that I think that the position that I am advocating is true liberalism. The way in which things are being forced through your Lordships' House on these sorts of issues is wrong. I think that the right reverend Prelate the Bishop of Durham was arguing more for a replacement of the law than for its abolition; he was arguing for this to be looked at in the round.

We have recently enacted the Racial and Religious Hatred Act. The most reverend Primate said that we were in uncharted waters and my noble friend and kinsman—I am married to his sister—the right reverend Prelate the Bishop of Portsmouth said that the law was adequate. However, it is untested and I have a feeling that it will be just as useless as the blasphemy laws. It is qualified by a provision whereby it shall not,

> "be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents".

With that on the statute book, the recent law might well turn out to be absolutely as hopeless as some people think the blasphemy law is. There is a real sense of uncharted waters and untested law. I suspect that the recent

law is utterly useless. We certainly do not know that it is not utterly useless, so I find the timing of this provision unhelpful.

There are issues of deep symbolism here and it would be wiser not to push this through as a late provision in this very unsatisfactory Bill but to delay for further consideration. For that reason, and others, I shall join the noble Baroness in the Lobby.

Lord Elton: Will the right reverend Prelate take the opportunity to whisper in his brother of Durham's ear the question why, since he wishes that there had been a chance for the present law to have been tested for longer, he feels it necessary to assist the mover of the amendment before that test has taken place?

Lord Armstrong of Ilminster: I had not intended to take part in this debate, but I wish to speak briefly in

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support of the noble Lord, Lord Elton, on the symbolic significance of the amendment. The fact that one has not had a flood for a very long time does not mean that one should destroy the floodgates. My fear is that the removal of this provision will be seen as encouraging people to make outrageous statements that are needlessly offensive to a great many people. They will only do it to annoy, because they know it teases.

Therefore, I align myself with those who would like to see more time for consultation on this matter. I find it paradoxical that in one and the same piece of legislation we are asked to approve a measure that will appear to encourage religious hatred while we are also asked to approve a measure that will discourage sexual hatred. I wonder whether we really have to sort ourselves out on this matter. I very much hope that the Government will take time for more reflection and consultation before introducing this into the Bill.

Lord Neill of Bladen: I was not going to intervene on this, but I support what the noble Lord, Lord Elton, and my noble friend Lord Armstrong said. We should not rush to judgment on this proposal, which comes before us at a very late stage. We need to exercise the quality of humility; we do not immediately have present within us all knowledge and all wisdom.

I was chairman of the Committee on Standards in Public Life. When we looked at the funding of political parties, which was the first task when I was on that committee, we travelled around the country to several places and had hearings with interested witnesses who would say what people in that locality thought about the system. This is part of a Bill with the most amazing history. If only the public knew—they do not, because the papers never report it—the history of the Bill: that great hunks of it were never considered by the House of Commons, that bits had been snatched away and then put back on our agenda and that at the last minute we are having this blasphemy debate. That is absolutely no way to proceed in the 21st century.

Lord Avebury: The Select Committee did exactly what the noble Lord said. It trundled around and took evidence from every single faith, and from many people of no faith, over a period of 12 months.

Lord Neill of Bladen: The information is not and has not been properly before us. We have not had preparation time for this; there may be a mass of material that we could read, including earlier committee reports. My simple message is: let us not rush to judgment thinking that we are very wise today. There is no urgency about this at all. I have not detected any urgency. Even the learned Professor Dawkins does not say what a scandal these laws are or that they must be repealed immediately. I support earlier speakers on this.

6.45 pm

Lord Kingsland: The Opposition are going to have a free vote on this matter. In a way, that puts me in a more uncomfortable position than I would have been

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in had we had a whipped vote, because I am personally answerable to my noble friend Lady O'Cathain for the way in which I vote. I cannot simply refer her to an instruction from the Whips' Office.

In a case that has been cited by many noble Lords this afternoon, the Jerry Springer case—more formally Green v the City of Westminster Magistrates' Court—the court held that what was necessary to make the publication of potentially blasphemous material a crime is,

> "that the community ... generally should be threatened",

which,

> "will be established if but only if what is done or said is such as to induce a reasonable reaction involving civil strife, damage to the fabric of society or their equivalent".

If that is what the offence today amounts to, it is a redundant offence, because a very large number of offences on the statute book connected with public order and related matters will fulfil the function of blasphemy just as well as that definition of the crime itself. If this was the only issue in the debate, that would be the end of the matter. But, as so many noble Lords have said, it is not quite as simple as that.

The principle of equality in the eyes of God is the basis of the rule of law in our society, developed by common law judges over the centuries informed by Christian principles. Christianity has been absolutely fundamental to the development of our constitutional freedoms and I worry a little that this is no longer understood in our society. Secularisation will bleach from our memories the inextricable link between Christianity and so much of value in our society and in our system of law and government.

Would keeping blasphemy on the statute book arrest that process, or at least be an enduring symbol that Christianity remains, and ought to continue to remain, at the root of our society? This is a difficult question, which I have found very hard to resolve myself. I have decided, on balance, that things are best left as they are.

Lord Thomas of Gresford: Noble Lords will know that these Benches are not empty at Prayers and that there are people of deep religious faith and from various expressions of faith among the Liberal Democrats who sit in this House. I heard the right reverend Prelate the Bishop of Durham say that he was supporting the Government but wanted to make it very clear that he was not a liberal. Neither he nor your Lordships will be surprised therefore that there may be a consensus of views on these Benches on the appropriate way to vote on the amendments.

The noble Baroness, Lady O'Cathain, referred to Mr Evan Harris's response to the letters from the Archbishops. She quoted only half a sentence and I owe it to him to complete his sentence. In the context of saying that the Bishops should see that the blasphemy law was a general repression on valid free expression, he said this:

> "It should be seen as a secularising move and with pride"—

that is as far as your Lordships heard—

> "by both religious and secular people—because it removes a layer of religious privilege in, and religious censorship of, society which is no longer seen as appropriate".

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That is Mr Harris's view. I know him well and know that he would defend to the death the right of any person in this country to express a religious belief of any sort that that person chooses. He is for free expression. This

is a free vote on our side of the Committee and it had not crossed my mind that anyone could think that the Liberal Democrats would be whipped through the Lobbies on an issue such as this.

Baroness Andrews: As was predictable, this has been a profound and fascinating debate. I am very grateful to everyone who has spoken, particularly those who supported our amendments. We have seen divisions across the House and, indeed, within the family of the church—literally. I am grateful that noble Lords have been able to air their deep feelings and passions in the way that has happened. We recognise that the consultation period was short, but it has come after 22 years of debate—debate in which many people both inside and outside this House have engaged—and the issues have been thoroughly aired. The opportunity has been taken in this Bill, because it was appropriate and timely to do so. There is integrity in that. This debate has a long history. I do not want to make it longer, but I do want to deal with the amendment of the noble Lord, Lord Avebury, before returning briefly to sum up the substantial debate.

The noble Lord's amendment goes further than the abolition of the offence of blasphemy. It seeks to abolish the historic offences as set out in his amendment in paragraphs (2)(c) to (f) and also in paragraphs (1)(b) and (1)(c), which seek to abolish two separate and distinct offences of disturbing a religious service and assaulting a clergyman. On the latter amendments, although I completely respect the noble Lord's conviction that they are necessary, they seem to overlap somewhat with the historic offences. In fact, as the Law Commission itself pointed out, there is some doubt whether these offences exist at all. The last prosecution was in 1765 and even then there was some doubt about whether the offences existed. The noble Lord will therefore not be surprised when I say that we cannot accept his amendment.

Let me turn to the historic offences that the noble Lord specifically wants to remove. Although some of them may appear anachronistic and unnecessary, the evidence suggests that at least some continue to be useful. Their use is infrequent, but we believe they serve a continuing purpose. Their purpose is quite simply to ensure that places of religious worship are treated with respect and that people are free to worship in an atmosphere of peace and dignity. These may be old offences and some may apply only to Christian places of worship, but that is not the case with all of them. The laws are used infrequently but it is important to retain them. In 2003, the Select Committee considered that the evidence on that point was finely balanced. Specific evidence from the Director of Public Prosecutions stated that there was value in the legislation, and the statute has recently been deemed appropriate to use.

Lord Avebury: He also said that, in 40 years of experience, he had never come across a case under the ECJA.

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Baroness Andrews: That did not stop him saying that it would probably continue to be of value to keep the offence. Very little has changed since then and we see no reason for departing from that position. This provision to ensure that places of worship are treated respectfully has survived the test of time and still reflects commonly held values which are as relevant today as they were when the law was made.

We accept that the offences which the noble Lord proposes to abolish in his amendment may in some cases duplicate provision in the general law, but they do not potentially offend freedom of speech or appear to offer significant special privileges to the established church in the way that the blasphemy provisions do. With respect, I cannot accept those aspects of his amendment.

I turn to the primary subject of debate this afternoon: abolition of the offence of blasphemy. I say to the noble Earl, Lord Onslow, that my department is also the "communities" department and not just the "local government" department. Communities are what we are concerned with in the Bill and in this amendment, not least the way in which communities respect each others' faiths. It is perfectly appropriate for us to introduce this amendment.

I shall not repeat what I said in my opening speech—it was long enough—except to reiterate three main points. First, it is absolutely appropriate and right for Parliament to take the step of repealing the law on blasphemy and blasphemous libel. The law has proved itself anachronistic; there has been general agreement across the Committee on that. To all intents and purposes the law is unworkable, as evidenced by the fact that very few prosecutions have been brought. It is a law which serves to protect neither the divine nor the individual believer. It is a law which—as many noble Lords have agreed—to be effective, requires that the offence provokes civil disorder and civil strife, a threshold which is virtually impossible to achieve or prove and does not do what those most concerned about the change really want: protection of the individual who holds a deep belief in something which for them is sacred.

We have talked a lot this afternoon about signs and symbols. I would say to noble Lords who are concerned about the perception of a drift to secularism that I do not think that perceptions of the value, sincerity, influence and place of faith in our society are supported or served by such a law. That case has been made by members of the church in this Committee. On the apparent drift to secularism, the right reverend Prelate the Bishop of Durham made an extraordinary and powerful case to the effect that the Church does not need law to defend itself. I do not think that that could possibly be improved on. I rest our case on those words.

Secondly, we have argued, as have noble Lords across the Committee, and members of the church have agreed, that we already have a raft of legislation dating from 2001—as the noble Lord, Lord Kingsland, agreed—that offers far more appropriate and useful protection to those who find themselves

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victims of religious hatred and violence. I am particularly grateful for the support of the right reverend Prelate the Bishop of Portsmouth on this point. We have specific laws which, for example, protect against specific forms of discrimination in employment and the provision of goods and services.

Thirdly, in addition to the profound and proud traditions of free speech in this country, we now have the extra protection offered by the European Court of Human Rights and our own Human Rights Act. These protect our right to religious belief and to religious faith, or no faith, and our right to free speech. All of this suggests that we have achieved a balance of law and a protection that is workable—that protects the individual and his personal beliefs while maintaining the value and necessity of free speech.

Noble Lords have asked why we should repeal a law that is redundant. I shall give two reasons. There are two different voices in this, the first of which is that of the church itself. The letter from the Archbishops states:

> “At a time of continuing debate about the nature of our society and its values, this change needs to be seen for what it is, namely the removal of what has long been recognised as unsatisfactory and not very workable offences in circumstances in which scurrilous attacks on the Christian religion no longer threaten the fabric of society”.

The second voice is that of the law and the Attorney-General. On 20 February she said:

> “If the law is not such that a public prosecutor would have regular recourse to enforcement of it, then the question arises as to whether general uncertainty as to its application should be allowed to persist, or for the clarification of this to be left to the vagaries of private prosecution”.

Those are two very sound arguments for abolishing the law.

Lord Forsyth of Drumlean: If the Government felt so strongly that it was an important issue for the two reasons the Minister has given, why was it not in the original draft of the Bill?

Baroness Andrews: The noble Lord has been in government and will know that sometimes opportunities are presented more appropriately in other ways. We took advantage of the opportunity.

I am very grateful for the way in which the debate has been conducted and am particularly grateful to have had the views of the church. I believe that we have a shared understanding and hope that we can therefore put this

debate to rest. The noble Baroness, Lady O'Cathain, will probably not be persuaded by me but I hope that she will be persuaded by the most reverend Primate the Archbishop of York. In his final words, he invited the Committee to see this offence off, and I hope that that is what it will do.

Baroness O'Cathain: Perhaps I may ask the Minister a simple question. In view of the comments of my noble friend Lord Kingsland and the noble Lord, Lord Thomas of Gresford, have the Government imposed a Whip on this issue?

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Baroness Andrews: Yes, we have a Whip because we think that it is sufficiently important to take our supporters through the Lobby this evening.

7 pm

On Question, Whether the said amendment (No. 144B) shall be agreed to?

Their Lordships divided: Contents, 148; Not-Contents, 87.

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Resolved in the affirmative, and amendment agreed to accordingly.

Lord Hunt of Kings Heath: My Lords, I beg to move that the House do now resume. In moving the Motion, I suggest that Committee stage begin again not before 8.11 pm.

Moved accordingly, and, on Question, Motion agreed to.

House resumed.