

## English Blasphemy

England's blasphemy laws were abolished by an act of Parliament on May 8, 2008. This occurred with remarkably little fanfare, although not before a major parliamentary inquiry in 2002–3 and, prior to that, an attempt by a Muslim man (Mr. Choudhury) to launch a prosecution against Salman Rushdie's *The Satanic Verses* in 1990, on the grounds that it blasphemed against the Islamic religion.<sup>1</sup> Interpretations of these developments have been strikingly different. Some commentators have viewed them as symptoms of the last gasps of a law whose enforcement of a national religion was an anachronism and whose replacement by offenses based on liberal toleration and respect was long overdue.<sup>2</sup> Others, though, have seen the relegation of the protection of religion in favor of the protection of individual rights and freedoms as symptomatic of the West's "intolerance of Europe's Others" and "the secular modern state's awesome potential for cruelty and destruction."<sup>3</sup> In what follows I make a historical case for viewing these events neither as the triumph of rational liberalism over a confessional state nor as the tragic repression of an immigrant religious "Other" by a liberalism acting as the ideological bludgeon for the secular modern state.<sup>4</sup> They should be viewed, rather, as part of the final undoing of the Anglican constitutional order that had lasted from the 1660s to the 1830s before undergoing a gradual dissolution. In the protracted struggles that led to this outcome, the theory of politics and society propounded by English liberalism operated as an intellectual weapon deployed against the Anglican civil order. This dictates that we must begin our discussion by reminding ourselves that the currency of liberalism pertains to its cultural and political displacement of the Anglican order, rather than to its capacity to conceptualize the "modern secular state," or to its use as a means of keeping "Europe's Others" in ideological thrall to such a state.

One of the most striking features of recent discussions of liberal political orders is the lack of agreement on how they are to be conceptualized and described.<sup>5</sup> This applies in particular to discussions relying on the abstract noun "liberalism," and which posit various definitional cores for what is presumed to be fundamentally a theory, doctrine, or ideology. Of course there is no denying the existence and efficacy of abstract conceptualizations of something called liberalism. We need to keep in mind, however, that these concepts only began to appear in the early nineteenth century and did so as a result of acts of abstraction performed on lower-level political, juridical, and ecclesiastical discourses operative in various "liberal" reform programs. This historical activity of abstracting philosophical concepts and doctrines of liberalism continued into the twentieth century, especially within universities. Sometimes this occurred in

a purely philosophical manner, as in John Rawls's remarkable reworking of Kantian moral philosophy to provide a grounding for liberal rights in the free choices of rational beings whose abstraction from social and historical context permits their choices to agree.<sup>6</sup> At other times it has assumed a historical guise, as in claims that concepts of liberalism and democracy, abstracted during the nineteenth or twentieth century, were already being thought in the seventeenth: by Locke, for example, or even Spinoza.<sup>7</sup> In accounts whose sophistication consists in acknowledging the difference between abstract norms of liberalism and the contingency of historical liberal orders, it is imagined that this difference is being erased through the dialectical movement of history itself.<sup>8</sup>

It is not just its philosophical proponents, though, who assume that liberalism names a theory or doctrine capable of founding the historical political and juridical arrangements to which the adjective "liberal" has been applied. This assumption is shared by the declared philosophical and theological opponents of liberalism. In identifying it with a doctrine of individual rights grounded in rational choice, liberalism's communitarian opponents also assume that this doctrine captures the reality of a particular kind of society, albeit one that they characterize negatively as a society of "atomized individuals" or "buffered selves."<sup>9</sup> This is because they are intent on advancing an opposed (Thomistic) social doctrine that projects a different model of society.<sup>10</sup> According to this model, rather than being something that individuals choose to enter to protect their rights, society is the moral community to which individuals must belong as the condition of realizing their nascent virtues.<sup>11</sup>

Postcolonial critics of liberalism also tend to assume that the concept captures or programs a historical reality. In this case the reality is that of a polity whose claim to be grounded in the exercise of a neutral individual rationality disguises the imposition of a hegemonic culture on an array of minority cultures.<sup>12</sup> To the extent that it views minority cultures as moral communities responsible for forming the identity and capacities of their members, then postcolonialism overlaps with communitarianism, as do some forms of multiculturalism.<sup>13</sup> It distinguishes itself by identifying these communities not with European religious communities but with non-European communities, whether those subjected to imperial rule or those arising from post-colonial immigration to Europe. Postcolonial theory thus imagines the reality of liberalism by identifying it with the doctrine of the neutrality or universality of rationally grounded state power. It then treats this doctrine as an ideology responsible for subjecting colonized peoples to European imperialism, or for subjecting morally autonomous immigrant communities to the specious neutrality of European law and government.<sup>14</sup> When the immigrant communities are religiously constituted—the usual case being European Muslim communities—then the postcolonial critique of liberalism doubles as a critique of secularization; on the presumption, that is, that secularization be understood in terms of the doctrine of the (specious) neutrality of rationally grounded state power.<sup>15</sup>

Were it to be the case, then, that philosophical concepts of liberalism do not have the kind of intellectual efficacy presumed by their proponents and opponents—were they to prove incapable of providing either a rational or an ideological foundation for historical political orders—then that of course would alter the terms of the discussion

in a quite fundamental way. John Gray's *Two Faces of Liberalism* takes us a good way down this path by distinguishing between a philosophical liberalism and a more historical and pluralistic form. Gray argues that it is philosophical liberalism—of the kinds found in such thinkers as Locke, Mill, Kant, and Rawls—that presumes different forms of ethical life can be reconciled in a rational consensus that will legitimate a liberal state.<sup>16</sup> Philosophical liberalism—the liberalism of the European philosophical caste—is the form that is defended as the rational foundation of the liberal polity and attacked as the ideological hammer of minority cultures, but that Gray argues is insignificant in comparison with a second, quite different form. Rather than presuming that conflicting ways of life can be rationally reconciled, this second form—Gray calls it *modus vivendi* liberalism—treats social conflict as irresolvable and permanent, and it views the state as the historically evolved means of managing such conflict in order to maintain social peace.<sup>17</sup> Far from ignoring the role of moral and religious communities in forming identities, this form of liberalism is centrally preoccupied with it. On the one hand, it views this role as an incendiary source of social division and conflict, and, on the other, as a pedagogical source of social pacification, in either case requiring management by a state that has achieved some degree of detachment from its constituent communities.

Despite the important pointer that it offers, there is a sense in which Gray's *modus vivendi* liberalism also remains overly indebted to a particular abstract source—Hobbes's *Leviathan* as interpreted by Michael Oakeshott—and thus insufficiently attuned to the melee of political, juridical, and religious discourses into which Hobbes's text was parachuted in the context of a religious civil war. Despite its philosophical underpinnings and generalizing aspirations, and even if it were intended to transform the means of thinking about political authority, Hobbes's work remained a programmatic combat text launched into the thick of England's religious civil war.<sup>18</sup> In fact, *Leviathan* was designed to trump the opposing forces of Presbyterian republicanism and Anglican royalism through the figure of a sovereign whose absolute power arose from the absolute task of maintaining peace while preparing for war, although the character of the Anglican settlement entailed the marginalization of Hobbes in Britain by the end of the seventeenth century.<sup>19</sup>

If Hobbes's thought remained tied to and limited by the cultural and political circumstances in which it sought to intervene, then so too did Locke's "liberalism." The view of Locke as the philosophical apologist for a secular, rights-based liberal individualism—still current in so much communitarian and postcolonial commentary—has to be revised in the wake of a historical scholarship that has long since resituated his thinking in the context of the cultural and political programs of the Dissenting Whigs for whom he wrote.<sup>20</sup> Here Locke appears above all as a dedicated opponent of Anglican royalism, thus as the exponent of an individualism grounded not in secular property rights but in a factional political theology, one whose unitarian and congregationalist dimensions supported far-reaching doctrines of political resistance and rebellion.<sup>21</sup> The methodological lesson to be drawn from this revisionist and contextualizing historiography is not that the magisterial abstractions of a Locke or a Hobbes are to be discounted, but that they are to be turned into objects of historical investigation: in terms of the manner in which they transformed

lower-level discourses; the degree to which they were actually taken up and used; the kinds of groups that used them; and the purposes that governed such use. There is little point in attacking or defending a philosophical liberalism grounded in rational consent and rights if it was marginal to the discourses operating within the institutions of political and ecclesiastical authority. But then this also applies to *modus vivendi* liberalism.

Given that a concept such as liberalism will only ever abstract from limited arrays of concrete discourses, and that its scope and significance will vary with particular contexts of reception and use, this methodological shift is very damaging for the twin assumptions I have been discussing. It calls into question the philosopher's assumption that a concept or theory of liberalism might be capable of rationally conceiving and founding a whole social or political order, since such concepts or theories will be inflected by the programmatic purposes of the factions seeking to intervene in such orders. Yet it is no less damaging for the mirror assumption that liberalism might fail to achieve an accurate conceptualization of social order and, in failing, give rise to an ideology that sustains this order under the false consciousness of a global "social imaginary."<sup>22</sup> For this assumes that liberalism could try to achieve such a conceptualization, as opposed to being an umbrella term for a variety of concepts defined by their use in competing cultural and political programs. This methodological shift aligns with an understanding of history in which its forces are never collected into a single consciousness where they might be recognized or misrecognized, subjected to rational control, or unleashed as false consciousness. Rather, these forces are understood to be articulated in a variety of programmatic concepts and discourses that form part of the play of forces themselves, which historiography may only record from the perspective of a particular state of play or playing-out. This does not mean that historical political orders are unintelligible, only that their intelligibility will be tied to programmatic ways of shaping or imagining them, defending or attacking them, which in turn form the object of the history of political thought.<sup>23</sup>

This embeddedness of political concepts in various contexts of use, and in the purposes of the groups who use them, helps to explain the intractability of the conflict between philosophical liberals and their (no less philosophical) communitarian opponents. Not only are their understandings of liberalism embedded in mutually opposed cultural-political programs—the former viewing liberal society as grounded in individual acts of rational self-reflection, the latter viewing it as an atomizing threat to immersion in a virtue-forming moral community—but, in treating liberalism as a concept capable of grounding a social order, they imagine that the issue between them might be resolved through philosophical arguments conducted in academic journals. The issue that divides philosophical liberalism and communitarianism, though, is not conflicting concepts but the fact that they are rival cultural-political programs, behind which we can discern the continuing sectarian conflict between Protestant and Catholic scholasticism.<sup>24</sup> Yet for the same set of reasons, postcolonial critics should not presume that nineteenth-century European imperialism or twentieth-century legal regulation of immigrant communities within Europe were grounded in a philosophical conception of liberalism—as individual rights grounded in secular reason—that functioned as a Eurocentric ideological "social imaginary."<sup>25</sup> To do so is to assume

that international imperialism and domestic government arose negatively from an ideological eclipsing of man's true consciousness or being, rather than positively from programmatic forms of juridical and political thought; and this in turn runs the risk of presuming that the actual histories of imperialism and liberal government could have been rendered transparent and brought under rational control, even if that rationality is qualified as "dialogical" or "agonistic."

To argue that such histories might not be capable of being brought within conceptual consciousness and rational control, however, is not to declare that liberalism is itself a kind of religion. The limited rationality of such European political concepts as liberalism is not due to an eclipsing of knowledge that turns them into a faith. Rather, it is due to the fact that their reach is limited to their immanent use in the shaping and criticism of political programs and institutions whose history (and present) is regionally European. Their incapacity for conceiving non-European communities other than as objects of Latin European law and politics is thus not due to the quasi-religious faith that Europeans have in their own political and juridical concepts. Instead, it results from the fact that, as with other historical peoples, European capacities for conception do not reach beyond the histories that have made them what they happen to be.

In this way we can establish an appropriate historiographic symmetry between Latin European and Islamic civilizations, allowing us to take with due seriousness Talal Asad's comment that

the idea that a people's historical experience is inessential to them, that it can be shed at will, makes it possible to argue more strongly for the Enlightenment's claim to universality . . . The belief that human beings can be separated from their histories and traditions makes it possible to urge a Europeanization of the Islamic world. And by the same logic, it underlies the belief that the *assimilation* to Europe's civilization of Muslim immigrants who are . . . already in European states is necessary and desirable.<sup>26</sup>

Once Asad's remarks on the inseparability of civilizations from their histories have been applied to Europeans, then the assimilative drive of European law and politics will be seen to arise from a quite different source from the one that he posits: not from some specious or ideological Enlightenment "idea" of universality or neutrality, but from the far less escapable fact that European political thought is indigenous and immanent to its own regional histories of law, politics, and religion. If what counts as "liberal" for Europeans is determined by forms of thought forged as weapons in historical struggles between rival religious and political communities—like Locke's "liberalism" in the context of the English civil war—then this will be no more capable of being "shed at will" than what counts as "halal" (or permitted) within a particular Islamic community. This applies even, or perhaps especially, where the minority status of an Islamic immigrant community within Europe means that what counts as halal will be juridically subordinated to what counts as liberal. With this reorientation in place we can return to the emergence and dissolution of the crime of blasphemy, now viewed from the perspective of the playing-out of a regional English history.

Blasphemy and kindred sacrilegious offences are deeply rooted in the history of Latin Christianity. They testify to a nexus of holy words, rituals, objects, and spaces through which the divine is communicated to man and is thus opened to a profanation whose horror consists in the disruption of this communication and the potential dissolution of the circle of communicants. Radiating outward from the space of the church and the practice of holy communion, medieval Christianity constituted a network of diocesan spaces in which the lives of a community—their births, baptisms, sins, marriages, and deaths—could be spiritually regulated. Expanded by internal European conquest and colonization between the tenth and fourteenth centuries, this was also a space from which other faith communities could be excluded, sometimes violently, as sacrilegious or blaspheming threats to holy things and places and the divine communication they channeled.<sup>27</sup> Popular pogroms against Jewish communities were thus typically triggered by accusations that Jews had desecrated the altar or the host or had sought to use them sacrilegiously for their own blasphemous rituals.<sup>28</sup> During the thirteenth and fourteenth centuries this diocesan network of sacral spaces received juridical delineation and consolidation through the expansion of Romano-canon law under the aegis of the Holy Roman Empire.<sup>29</sup> Through their codification of canon law—law deriving from the decisions of the church’s own episcopal courts—the university canonists of northern Italy effected a significant juridification of spiritual regulation, one that linked sacrilege, blasphemy, heresy, and witchcraft in a nexus of criminal sins subject to a common legal process. This was the inquisitorial procedure that could be initiated by denunciation, was focused on the interrogation of the accused regarding their heretical beliefs, permitted the regulated use of torture to obtain evidence, and could result in the punishment of death by burning.<sup>30</sup> In England parallel developments led to the law *De haeretico comburendo* (On the burning of heretics), passed in 1401 to defend the Catholic Church of England against the Wycliffe heresy (Lollardy), but lasting until the Elizabethan Act of Supremacy in 1558.<sup>31</sup>

The presence of sacrilegious religious offences in early modern Europe was symptomatic of a matrix of sacramental practices, juridical procedures, and authority structures, anchored in the rival but overlapping powers of the papacy and Holy Roman Empire. Despite the relative civil autonomy of the northern Italian city-states, elsewhere in Europe this matrix had the potential to superimpose the sacramental on the civil community. Threats to the sacramental community resulting from sacrilege, heresy, and blasphemy, once proved by the ecclesiastical courts, thus could be punished as crimes by the civil authorities, as in the case of *De haeretico comburendo*. Conversely, threats to civil authority were themselves treated as analogous to sacrilege against the sacred person of the prince, who was God’s viceroy on earth.<sup>32</sup> It is this very superimposition of the sacramental and civil communities, however, that helps to explain the intensity and uncontrollability of the religious-political conflicts that followed from the splitting of the church at the beginning of the sixteenth century.<sup>33</sup> Once the heresy that would become the Protestant religion had escaped the juridical and political machinery designed to contain such outbreaks, Protestant princes could use the same apparatus to defend their religion against the Roman church and against rival Protestant churches and sects.

In fact, the potential for aligning spiritual and civil power that was embedded in the dualistic authority structures of Christian Europe was not realized until the Reformation, centrally during the period 1550–1650, now generally known to as the period of confessionalization.<sup>34</sup> Confessionalization refers to the unplanned overlapping and partial convergence of two distinct historical developments. First, triggered by Luther's act of theological rebellion, each of the three emergent religions—the Catholic, Lutheran, and Calvinist or Reformed—underwent major confessionalizing reconstructions. Driven by mutual opposition and competition for converts, their theologies, catechisms, and liturgies were distinguished, tightened, and rendered mutually exclusive. This meant that their members would be imbued with a much clearer sense of the faith that defined their community, centrally through the negative characterization of the heretical faiths of rival communities. Despite modern distaste for its hereticating outcomes, this was a period of extraordinary theological and liturgical inventiveness. It was the defining moment in which the rival churches assembled their greatest intellectual talents in order to reconfigure their religious doctrines and practices, the tip of the theological icebergs being visible in the series of doctrinal statements or confessions: the *Augsburg Confession* of German Protestantism (1550), subsequently departed from by the (anti-Calvinist) Lutheran *Formula of Concord* (1577); the Calvinistic *Helvetic Confession* (1536, 1566), Huguenot *Confession de Foi* (1559) and *Heidelberg Catechism* (1563); and the *Tridentine Confession* (1564), through which the Catholic church laid down the theological terms of its counter-Reformation.

The second dimension of this movement of confessionalization was its overlap with a period in which existing political realms—Spain, France, England, Sweden—began to consolidate their territories and populations into national kingdoms, and in which an array of princely dynasties within the Holy Roman Empire sought to carve out states that would exercise territorial sovereignty over national populations (as opposed to the empire's rule over its estates). If this territorial state-building offered a political carapace for the emerging confessions—Luther would have been just another dead heretic without it—then confessionalized churches offered emerging dynastic states a powerful pedagogical means of shaping the national identities of their immured populations, which were fundamentally religious identities.<sup>35</sup>

A central outcome of this unplanned and uncertain convergence of confessionalization and state-building was the emergence of a series of confessional states, that is, states where the alliance between a state-building dynasty and a territorialized church permitted a combined civil and religious rule to be exercised through quasi-theocratic legal and political systems. In the German empire these arrangements received formal expression in the Peace of Augsburg (1555) that concluded the first religious wars, whereby two religions, Protestant and Catholic, were recognized under imperial public law. Under the terms of the treaty, Protestant princes were invested with a dual civil and religious persona—as supreme ruler and highest bishop—and given the legal right to reform the churches within their territory (the *ius reformandi*), in accordance with the slogan of *cuius regio eius religio* (whose realm, his religion). It was in the confessional states of the sixteenth and seventeenth centuries—in Catholic Spain, France, Poland, and Bavaria; in Lutheran Saxony and Sweden; in Calvinist Scotland, Geneva,

and Holland—that the sacrilegious offenses of blasphemy, heresy, and witchcraft were most emphatically inscribed in the criminal codes and most firmly prosecuted in the courts of increasingly centralized judicial systems.<sup>36</sup>

If by “modern” we mean a state capable of exercising a unified political and juridical government over a political territory and its population, then early modern confessional states may be regarded as modern. Indeed, some of them—England, France, Spain, Sweden—survived until the end of the eighteenth century or into the nineteenth and perhaps beyond that. There is thus nothing intrinsically secular about the form of the centrally administered territorial state, and it was quite common for “Christian cameralist” states to pursue the bureaucratic streamlining of their legal, economic, ecclesial, military, and university systems in ways that were calculated to maximize both the wealth and the godliness of their countries.<sup>37</sup> At the same time, there can be little doubt that, when combined with the dynastic rivalries between Spain, France, and the Habsburg empire, the division of central Europe into a patchwork of opposed confessional states housing mutually hostile religious “nations” led to protracted religious and political warfare, culminating in the carnage of the Thirty Years War (1618–48).<sup>38</sup> Neither is there much doubt that the emergence of confessionally disciplined and mutually hostile religious communities within kingdoms and their colonies led to religious civil wars, of the kind that rocked France during the second half of the sixteenth century, England during the first half of the seventeenth, and America during the latter part of the eighteenth.<sup>39</sup> Finally, there can be little doubt that by the middle of the seventeenth century the need to preserve their states and ensure the survival of their religions led political elites to seek the means to lasting religious peace, giving rise to the religious settlements of the latter part of the century. In reconfiguring the political and religious topography of the confessional states in several different national ways, the religious settlements repositioned the sacrilegious offences of blasphemy, heresy, and witchcraft that had stood at the center of quasi-theocratic judicial systems, thereby setting the scenes of their modern histories.<sup>40</sup>

The character of the European religious settlements depended on how the play of religious and political forces that had driven particular conflicts unfolded in various peace strategies. In England, following the collapse of the Presbyterian commonwealth, the scene was set by the restoration of the monarchy and the Church of England. This resulted in the unaccommodating settlement of 1661–62 in which the royalist Parliament passed an Act of Uniformity of 1662, requiring that all the liturgies, prayers, rites, and doctrines of the Church of England be conducted as prescribed in the Book of Common Prayer, acceptance of which was the condition of holding office in church or state.<sup>41</sup> The Act of Uniformity was supported by the Corporations Act of 1661, which required all municipal officials to take Anglican communion, and it was bolstered by the Test Acts of 1673 and 1678, which required swearing disbelief in Catholic transubstantiation as a condition of civil office-holding. The Act thus spearheaded a suite of measures that excluded Catholics and unreconciled Presbyterians from public office and made adherence to a specific confession—the “Thirty-Nine Articles” of the Church of England—mandatory for membership of the Anglican church and access to civil offices.<sup>42</sup>

By this stage a century of religious war and repeated peace negotiations had made

it possible to argue for religious uniformity on the secular grounds of its role in securing political stability, as Hobbes had done in *Leviathan* and Locke at the time of his “Two Tracts of Government” (1660).<sup>43</sup> The Act of Uniformity passed by the Anglican gentry and clergy was driven not by the secular logic of social peace, however, but by their suspicion of Charles II’s Catholic sympathies and their fresh and unforgiving memory of the perfidious role of the Calvinist Presbyterians during the civil war. Moreover, it was supported by an Anglican political theology that declared the Church of England to be the one true church, grounded in the apostolic succession and enforced by a law and state in accordance with divine right and providence.<sup>44</sup> This political theology was by no means uncontested, however, even within the Church of England, whose “latitudinarian” wing advanced a trinitarianism loose enough to treat Christ as a semi-divine governor, as well as a theology rational enough to entertain Platonic philosophical conceptions of the presence of spirit in matter.<sup>45</sup> Nonetheless, these latitudinarian positions remained distinct from “Socinianism” (or Unitarianism)—whose declaration of Christ’s nondivinity was associated with the denial of the authority of the church as his mystical body on earth—and also from deism, or the view that God acts through abstract laws of nature rather than through a providential governance of it.

Rather than excluding nonconformists, the latitudinarian strategy of “comprehension” sought to bring the moderate Presbyterian clergy and their flocks back within the Church of England by expanding the category of *adiaphora*—doctrine and liturgy deemed inessential for salvation—and by developing a minimalist theology.<sup>46</sup> A second strategy, “indulgence” or toleration, would offer freedom of worship to those who refused to reconcile with the Church of England, but it remained tainted by the suspicion that Charles II had advanced it in order to emancipate the Catholic minority.<sup>47</sup> The settlement that finally emerged—following the deposition of Charles’s Catholic brother James and the installation of the Dutch Protestant William of Orange in 1688—might be regarded as an imposition of Anglican uniformity that incorporated aspects of the comprehension and indulgence strategies, but not in a manner that weakened the establishment of the Anglican Book of Common Prayer as the basis of “national worship” and civil participation. The character of the settlement can be gauged from the so-called Toleration Act of 1689, which neither repealed the Corporation and Test Acts nor recognized rights of conscience but was designed to mitigate the penalties of these acts for Dissenting Protestants and permit them freedom of worship under limited circumstances.<sup>48</sup>

The Anglican hegemony thus was not achieved through a covert ideology of liberal individualism. It was imposed openly and directly through the legal and political empowerment of a broad Protestant confessional community and the constitution of Dissenters and Catholics as minorities defined by their civil disabilities. At the same time, while the religious settlement was indeed a *modus vivendi*, it was not based on the recognition and reconciliation of a plurality of values. Rather, it was the product of protracted negotiations among Protestant political and ecclesial elites and was based on such strategies as *adiaphora* and doctrinal minimalism that permitted the piecemeal adjustment of the cultural identity of the Protestant nation to accommodate moderate

Presbyterians while continuing to exclude their more radical brethren and the Catholics. This is what made Locke's *Letter Concerning Toleration*—with its conception of individual religious rights grounded in the free use of reason—marginal to the settlement. Nonetheless, the greater the amount of liturgy and doctrine declared to be *adiaphora*, or indifferent with regard to salvation, the narrower became the grounds for the offenses of heresy and blasphemy, and the more the latter came to be restricted to acts and utterances that disturbed the order of the Anglican settlement itself. It was as a result of these specific historical developments that English heresy and witchcraft laws fell into disuse while blasphemy lost its basis in sacrilege and assumed the form of an offense against an Anglican civil order.

It is the fact that the modern crime of blasphemy emerged as part of the legal enforcement of an Anglican Christian civil order that makes it so difficult to understand from the standpoint of what have been called “juridical histories.”<sup>49</sup> Often written with one eye on contemporary law reform, juridical histories presume normative continuity between past actors and present commentators—typically a shared platform of rationally grounded individual (sometimes human) rights—and they conceive the law as updating itself in accordance with timeless principles.<sup>50</sup> Seen from the viewpoint of juridical history, the fact that the offense of blasphemy was a means of maintaining an Anglican religious civil order makes it into an anachronism; as such, history projects today's imagined foundation of law—in the consent of rational individuals—backward into early modernity.

From the viewpoint of a different “contextual” historiography, however, it is juridical history that is anachronistic. In assuming normative continuity across time it imbues past actors with ideas and values that they never held and sets them within cultural and political horizons quite foreign to them. The recent rise of immigrant communities whose own cultures presume the legal enforcement of religious civil orders—in particular (for our present concerns) the emergence of Muslim communities within the United Kingdom—shows the rashness of treating blasphemy law as an anachronism. It also shows the danger of assuming that modernity can be understood in terms of convergence on a shared normative viewpoint, rather than in terms of ongoing struggles between a plurality of them. In order to gain some understanding of this situation, so full of historical irony and political ambivalence, we need to situate it in the history of the Anglican religious settlement that I have been sketching.

The career of the modern common law offense of blasphemy dates from 1676. It was at this point that the defunct common law writ *De haeretico comburendo*—in which blasphemy had formed a series with heresy, schism, and atheism under the jurisdiction of the ecclesiastical courts—was supplanted by the precedent set in Chief Justice Hale's judgment of *Taylor's Case*.<sup>51</sup> Delivered during the bedding-down of the new Anglican constitutional order, Hale's judgment gives symptomatic expression to the moment when the older alliance between a trans-territorial (“universal”) church and a dynastic kingdom was transforming into the alliance between the territorial Church of England and a territorializing state, an alliance sealed by the common law itself. Given the cumulative force of the Act of Uniformity, the Corporations Act, and (first) Test Act, Hale could hardly do otherwise than declare that blasphemy was a

crime because Anglican Christianity was now part of the constitutional order of the English state:

Such kind of wicked blasphemous words were not only an offence to God and religion, but a crime against the laws, State and Government, and therefore punishable in this Court [of the King's Bench]. For to say, religion is a cheat, is to dissolve all those obligations whereby the civil societies are preserved . . . Christianity is parcel of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law.<sup>52</sup>

It is unhelpful to view Hale's judgment either as a politicization of religion or as a confessionalization of politics, as if religion were essentially spiritual and nonpolitical (noncoercive), while political governance fundamentally secular and rational. These respective views of religion and politics indeed were among those contending in the pamphlet wars that surrounded the religious settlement, and versions of both were reciprocally present in Locke's *Letter Concerning Toleration*.<sup>53</sup> It is a mistake, though, to regard them as intrinsically true of their respective objects, and they remained marginal to the Anglican settlement. Its apologists held to the contrary that, despite their different operational registers, spiritual and civil authority were jointly incorporated in the Established Church and in the dual persona of the king—as head of the church and the state—grounding both forms of authority in divine right and in a longstanding providentialist view of England as an elect nation.<sup>54</sup>

In making acceptance of Anglican theology and liturgy into the condition of civil, ecclesial, and military office-holding, and in requiring the excluded Catholics and radical Dissenters to acquiesce in this set of arrangements as the condition for their tolerated private worship, the constitutional settlement had aligned the religious identity formed through Anglican worship with the civil persona formed through office-holding.<sup>55</sup> It thereby superimposed the religious and political nations and gave rise to an Anglican civil order standing on the twin pillars of the Church of England and the English common law.<sup>56</sup> Blasphemy thus threatened civil order not in the manner of a modern public order offense—by giving rise to breaches of the peace—but by publicly denying or impugning the religious doctrines and practices that conditioned the existence of this order and were empowered by it. This is what allowed blasphemy to join obscenity and sedition in a new criminal series—blasphemous, obscene, and seditious libels—as a trio of threats to a social order that was both religious and civil. Heresy ceased to be a crime for the same historical reasons, since in accordance with its traditional understanding—as an obstinate error in the articles of faith—it now fell within the tolerated zone of private worship inhabited by Catholics, Dissenters, and freethinkers.<sup>57</sup>

This state of religious and juridical affairs, which lasted throughout the eighteenth century, is captured in Blackstone's commentary "Offences Against God and Religion," written in the 1760s. Without derogating from the rights of the "national church," Blackstone declares that the holding of heretical beliefs should not be punishable in civil courts, "for the bare entertaining them, without an endeavour to diffuse them, seems hardly cognizable by any human authority."<sup>58</sup> Due to its public character, however, the "offence of reviling the ordinances of the church" committed

by the “disciples of Rome and Geneva” should indeed be punishable. This was in part to preserve the “purity as well as decency of our national worship,” and in part for the “political reasons” that had embedded this form of worship in the constitution of the British state.<sup>59</sup> By publicly “denying [the Almighty’s] being or providence; or by contumelious reproaches of our Saviour Christ,” or by “profane scoffing at the holy scripture, or exposing it to contempt and ridicule,” blasphemy too transgresses the jointly spiritual and constitutional order of the “national worship” and is thus subject to civil punishment, here Blackstone citing Hale’s dictum from *Taylor’s Case* that “Christianity is part of the laws of England.”<sup>60</sup>

There are two modern assumptions that make it impossible to understand Hale’s and Blackstone’s construction of blasphemy law: first, the assumption that the public authority of the law arises from the rational consent of individuals to have it protect their rights to “life, liberty and property”; and second, the assumption that the truth of religion is a private matter arrived at through the free exercise of individual reason.<sup>61</sup> These twin assumptions, which form the basis of Locke’s *Letter Concerning Toleration*, give rise to the view that the use of blasphemy law to protect one religion at the expense of others is an abuse of legal authority—that blasphemy law is really a “political” suppression of dissent—since it is impossible for individuals to delegate their private pursuit of religious truth to a public authority. This is typically how juridical histories view the blasphemy prosecution brought against Thomas Williams in 1797 for his publication of Thomas Paine’s *The Age of Reason*.<sup>62</sup> If the role of the law is only to protect those parts of life that men have delegated government the powers to protect, and if the free pursuit of religious truth is a power that could never be delegated to church or state, then Paine’s scoffing critique of biblical trinitarian Christianity—as a mythology imposed by power-hungry clerics—must be regarded as an exercise of free reason whose legal suppression could only be a covert act of political repression.

This view of the Williams-Paine case—and other similar prosecutions of “free thinkers”—represents a double misunderstanding of the historical significance of blasphemy prosecutions at the end of the eighteenth century. On the one hand, in presuming that the juridical authority is or should be based on the consent of rational individuals seeking to protect their rights—that is, based on something like “liberalism”—it ignores what the law pertaining to religious offenses was actually based on: namely, the raft of legislative measures that had terminated England’s religious civil war by making Anglican “national worship” into the condition of full civil participation in the new polity. Since this legislation neither was nor could have been grounded in the rational agreement of individuals seeking to protect their rights—its historical premise was a century of disagreement and civil war—its use to establish a “national religion” at the center of the religious settlement might well be regarded as legitimate, at least to the extent that this way of settling religious civil war is regarded as legitimate, or perhaps simply as incontestable.

On the other hand, in assuming that Paine’s discourse in *The Age of Reason* was grounded in the free exercise of reason—that is, in a conduct of the intellect independent of inculcated doctrines and commitments—this view ignores the degree to which Paine’s intellectual conduct was actually grounded in theological doctrines and

practices of self-cultivation deeply embedded in the minority culture of Protestant Dissent and its successor, Rational Dissent.<sup>63</sup> Paine belonged to the radical fringe of the Whig party whose opposition to the Tory party was driven by a Dissenting political theology factionally opposed to Anglican political theology and the Protestant constitution.<sup>64</sup> In declaring that the doctrines of trinitarian Christianity would vanish at the touch of “reason” and “philosophy”—as indeed would the doctrines of Islam and Judaism—what Paine meant by reason was not something immediately evident and universally accessible. (It was not what Kant or Hegel meant by “reason,” for example.) Rather, it was a particular mix of doctrines, practices, and attitudes that had emerged from the Dissenting culture in which he had been raised and educated.<sup>65</sup> In stating that “my own mind is my own church,” Paine spoke more truly than he knew.<sup>66</sup> For Paine’s mind was equipped with a polemical theology, in the form of an anticlerical mythography treating trinitarian Christianity as a species of pagan polytheism invented for “power and revenue”; a political theology that viewed “national religions” as “pious frauds” designed to exercise political power by propagating superstition; a Socinian Christology that regarded Jesus as nothing more than a “virtuous and amiable man” who preached a benevolent morality; and a deistic natural theology whereby Paine declared that the philosophical contemplation of nature would itself reveal the objective and eternal principles of a divinely ordered cosmos.<sup>67</sup> Above all, however, Paine’s mental church was equipped with an inner ritual of self-scrutiny and self-formation that permitted him to view this inculcated theological array as if discovered and validated in his own individual reason.<sup>68</sup> Rather than free rational criticism of inculcated religious doctrines and practices, Paine’s excoriation of trinitarian biblical Christianity was itself based in theological doctrines and practices that were no less inculcated and pious for being practiced within the mental church of a Protestant rationalist.<sup>69</sup> When the judges found that in publishing *The Age of Reason* Williams was guilty of blasphemous libel, this was not a political abuse of the law to stifle the radical effects of the free use of reason. In fact, it was a routine exercise of the laws that supported the national religious settlement against a late manifestation of religious Dissent, which—through its cheap dissemination to the “industrious classes”—had crossed the criminal threshold of public propagation.<sup>70</sup>

It is thus a misunderstanding to regard English blasphemy law as the product of a “confused history” that had mixed up the maintenance of civil order with the establishment of a particular religion, hence a history that would be clarified and disentangled through reforms that refounded the law in the protection of rationally agreed individual rights.<sup>71</sup> Far from the product of confusion, the grounding of the English civil order in the empowerment of a Protestant national religion was a negotiated strategy for ending civil war by bringing accommodating Presbyterians under the Anglican settlement and the laws that anchored it in the constitution. The transformation of blasphemy law during the course of the nineteenth and twentieth centuries—leading to its extinction at the beginning of the twenty-first—was therefore not the result of a process of legal reform that recovered the true basis of law in the reason and rights of free individuals. Rather, it was the outcome of the piecemeal and contingent undoing of the Anglican settlement itself.

The central elements of this undoing occurred as three interlinked moments at the beginning of the nineteenth century: the repeal of the Test Acts in 1828; the lifting of remaining civil disabilities on Catholics in the Catholic Relief Act of 1829; and the electoral Reform Bill of 1832 that extended voting rights to propertied males. It was the first two measures that would prove crucial for the future of blasphemy law, as they undermined the constitutional basis of the Anglican settlement and confessional state and thence the cultural hegemony of the national religion. Without attempting to capture the details of a complex array of cultural and political battles, let me suggest that Catholic emancipation and the repeal of the Test Acts were not the achievement of a secular democratic rationalism but of a protracted period of parliamentary struggle, coalition-building, and negotiation. This process was driven by a Whig party that was broadly sympathetic to the Dissenting cause but crucially dependent on sympathizers within the Tory party, resulting in a parliamentary coalition to which radicals like Paine and Priestly remained decidedly marginal.<sup>72</sup> “Whig history,” though, would retrospectively portray the parliamentary work of this negotiated religious and political coalition as a moment in the progressive history of secular democratic reason, governed by the telos of church-state separation. This is the anachronistic viewpoint that would come to inform juridical histories of blasphemy.

The disintegration of the Protestant constitution had two transformative effects on nineteenth-century blasphemy law. First, Catholic emancipation and the repeal of the Test Acts undermined Hale’s dictum that “Christianity is parcel of the laws of England.” This in turn made it difficult to treat public denunciation of trinitarian Christianity as the *actus reus* or defining element of the crime of blasphemy. As a result, a series of precedent-setting judgments reset the threshold of criminality, shifting it from the content of publications to their manner and tone.<sup>73</sup> Attacks on trinitarian faith grounded in sober argument and evidence now would be beyond the reach of the law, while those based in abuse, ridicule, and insult of sacred subjects—indicative of a “malicious and mischievous intention”—would not, especially when their dissemination to the “ignorant and unwary” was calculated to disturb “society.”<sup>74</sup>

The second effect of the dissolution of the Protestant constitution was that the notion of a religious civil order began to lose its intelligibility, as manifest in a deepening uncertainty about how blasphemous speech or writing might actually disturb social order. As already discussed, this had not been a problem during the period in which subscription to Anglican doctrine and liturgy had been a constitutional condition of civil office-holding, for that made theological attacks on the national religion into political assaults on the civil constitution and religious peace. Once the Protestant constitutional order had been dissolved and, as a result, the preservation of social order through the imposition of a national religion came to appear as a “confused history,” it became increasingly difficult to comprehend how attacks on religion might threaten civil order.<sup>75</sup> This was especially the case for those groups whose conversion to philosophical liberalism led them, against all historical evidence, to view the civil order and its laws as if they were based on the consent and rights of rational individuals, a viewpoint that would eventually hold great sway among common lawyers. These were the circumstances in which the criminality of blasphemy

would slip its mooring as a threat to the constitutional order and drift toward being understood in terms of disturbance to the peace, where it would lose its religious significance and dissolve into a public order offense.

While the distinction between the matter and manner of suspect publications permitted the continuation of blasphemy prosecutions during the nineteenth century—marking the threshold at which the religious rationalism and political radicalism of the Dissenting elite crossed over into popular proselytizing and Jacobin propaganda—the progressive dissolution of a civil order capable of religious disturbance would undermine the intelligibility of the crime itself. It is significant, then, that the last two public prosecutions for blasphemy—*Bowman v. Secular Society Ltd* (1917) and *R v. Gott* (1922)—were directed at freethinking publications whose attacks on Christianity were held to have crossed the line separating sober argument from scurrilous insult and vilification of sacred objects and beliefs.<sup>76</sup> It is no less significant that these were the only twentieth-century cases for fifty years, and that the two cases that would briefly return blasphemy to the center of legal attention were private prosecutions, although of very different kinds.

*Whitehouse v. Lemon* (the “Gay News” case) was a prosecution brought by a morals campaigner in 1976 against a publication that combined obscenity and blasphemy—a poem describing Jesus engaging in various acts of gay sex—and hence concerned the criminality of elite aesthetics rather than popular radicalism. It thus stood on the margins of the history I have been tracing, and the final judgment in the case—the House of Lords decision that confirmed the conviction and fining of the defendants—dealt only with the limited question of whether the crime required *mens rea* (the intention to commit a crime), which it did not.<sup>77</sup> The second private prosecution was that brought in 1990 by a Muslim man (Mr. Choudhury), acting for the British Muslim Action Front, who asked the Chief Metropolitan Magistrate to charge Salman Rushdie with blaspheming the Islamic religion in his novel *The Satanic Verses*. The magistrate’s refusal to prosecute led to an appeal to the Divisional Court, whose confirmation of this refusal simply reaffirmed that under English common law only Anglican Christianity is capable of being blasphemed.<sup>78</sup> Our chief interest in these two rousings of the dormant law lies in the public reaction to them—particularly among reforming jurists and human rights advocates—as this shows the degree to which religious rationalism and philosophical liberalism had eroded understanding of the history of blasphemy law.

The degree to which current legal and parliamentary thinking about blasphemy is shaped by religious rationalism and philosophical liberalism is shown in the report of the UK parliamentary Select Committee on Religious Offences in England and Wales of 2003. Appointed to investigate laws dealing with religious hatred in the context of the Anti-Terrorism, Crime and Security Bill of 2001—which was itself a response to the September 11 attacks by Muslim terrorists on the United States—the Committee was centrally concerned with the adequacy of blasphemy law to protect minority religious communities, the Muslim community in particular. For our present concerns, one of the most striking features of the report is the history of blasphemy law that it uses to frame its deliberations. In commenting that “the legal notion of blasphemy dates back many centuries,” the Committee declares that this was a time

when “faith was seen to be at the root of society’s political and moral behaviour,” which meant that offenses against faith were punishable as threats to the “fabric of political and moral society.”<sup>79</sup> Not only does this view of blasphemy as a legal anachronism ignore the specific historical roots of the crime in the Anglican constitutional settlement but it also overlooks the concerns of those faith communities that continue to regard religion as integral to political and juridical order, treating them as living anachronisms. It becomes clear that the Committee’s history is informed by the view that the use of law to enforce a religion is actually a ruse of power, serving political rather than religious ends: “It must be appreciated that the definition [of blasphemy] has developed to meet various, primarily political rather than religious, perceptions of a need for the law to protect institutions, originally the State itself.”<sup>80</sup> This view is so deeply informed by the assumption that genuine religion cannot be maintained through legal and political means that it has forgotten how this assumption first emerged: namely, as a Dissenting political theology directed against a Protestant constitution in which a genuine religion was indeed maintained through legal and political means for jointly religious and political purposes.

If my conjecture is tenable, and the Committee’s philosophical liberalism is indeed an inheritor of the Dissenting political-theological attack on the Anglican confessional state, then we might expect it to suffer twin blind spots: first, with regard to immigrant religious communities seeking the juridical protection of the British state; and second, with regard to the character of the juridical order that emerged from the dissolution of the Protestant constitutional order. This proves to be the case. With regard to the first issue—of faith communities seeking juridical protection—the Committee received a variety of submissions. It is particularly noteworthy that the Islamic Society of Britain sought the retention of blasphemy law and its extension to all religious communities, yet arguing primarily from the need to protect the Islamic community from “Islamophobia,” particularly that instigated by the British National Party.<sup>81</sup> For its part, the Muslim Council for Religious and Racial Harmony argued the need to strengthen laws against incitement to religious hatred, but also against “sacrilege and abuse of religious sanctities,” citing Rushdie’s *Satanic Verses* as a prime example of “filth against Muslims.”<sup>82</sup> The Board of Deputies of British Jews, however, was not unhappy with the protection provided by the law covering incitement to racial hatred—from which Judaism benefits as an ethnically based religion—and was more worried by the apparent failure of the Crown Prosecution Service to use the law, particularly against anti-Jewish attacks by Muslims. The Board was happy for the blasphemy law to remain in its current form, as protection of the Church of England, but would support an incitement to religious hatred statute in order to extend protection to the Islamic community.<sup>83</sup> For their part, the Anglican and Catholic churches agreed that a law against incitement to religious hatred should be introduced and, were this to prove successful in protecting religious communities, then the blasphemy laws could be repealed.<sup>84</sup>

Given this diversity of viewpoints it is perhaps not surprising that the Committee could not reach a consensus on any of the three options before it: to leave the blasphemy law unchanged; to repeal it; or to replace it with a broad-based blasphemy law covering all religions. The Committee’s discussion of the third option—advanced by

the Islamic Society of Britain—shows, however, that it was not so much the diversity of viewpoints that proved difficult; rather, it was the very idea of legally protecting a community on the basis of its faith, as distinct from the civil rights of its members. It is true that the Committee does cite the difficulty of enshrining the third option in a nondiscriminatory law: a list of religions would have to be drawn up that would have to include both nontheistic believers and atheists. Lying behind this objection, however, is the underlying presumption that the role of religious-offenses legislation is not to protect the faith community as such. For the Committee, the role of such legislation, rather, is to protect the members of such communities when viewed as free individuals, with duties of toleration and liberties of speech arising from membership of the nation: “Such a law would need to recognize the overriding need for tolerance as well as protection; and for freedom of speech, one of our most cherished national freedoms, as well as for freedom of religion.”<sup>85</sup> This invocation of a nation of tolerant individuals needs to be situated in the “liberal” political culture that succeeded the dissolution of the Anglican constitution, a development that was not grounded in a philosophy of free reason and speech but in a coalitional politics intent on lifting the civil disabilities on Dissenters and Catholics. Setting aside the Committee’s appeal to “cherished national freedoms,” in this historical context the Islamic Society’s demand for the extension of blasphemy law to cover all faith communities could only appear as an impossible return to the old religious constitution, since under that constitution blasphemy law was fundamentally a defense against heterodoxy, as the Muslim Council grasps in its view of Rushdie as committing apostasy and “sacrilege and abuse of religious sanctities.”

This in turn is a pointer to the second blind-spot arising from the Committee’s philosophical liberalism: namely, its presumption that with the dissolution of the Protestant constitution English law can assume its proper role as the protector of individual rights. The Committee thus invokes the European Convention on Human Rights as a means of supplanting the old blasphemy law—whose protection of a particular religion now appears politically discriminatory—with a new legal framework whereby religious protection would be an individual human right, hence a right to be balanced against other such rights. In particular, the Human Rights Convention is held to be capable of balancing a right to religious worship (Article 9) with a right to freedom of expression, including, presumably, the right to criticize religion (Article 10). The Committee is thus confident that in restricting its protection to (Anglican) Christians, English blasphemy law would not be regarded as an acceptable constraint on freedom of expression by the European Court of Human Rights (ECHR), under Article 10.2, and would be in breach of the prohibition of discrimination under Article 14.<sup>86</sup>

That this confidence was not necessarily well founded, however, is suggested by *Wingrove v. United Kingdom* of 1997. This case arose from the British Board of Film Classification’s banning of a film—portraying a nun engaged in erotic acts with Christ’s corpse—on the grounds of blasphemy, but without reference to the Church of England.<sup>87</sup> In refusing to uphold the filmmaker’s appeal against the ban, the ECHR made use of its “margin of appreciation” doctrine. This doctrine is in effect a casuistical device for exempting particular national laws from the provisions of the

Convention on Human Rights—the prohibition on discrimination, for example—under circumstances where lack of accord among member states prevents the ECHR from arriving at a definitive ruling. The margin of appreciation doctrine is a pointer to the fact that in attempting to resolve English blasphemy law through a decisive recognition of human rights at the level of international law, the Committee encounters a profound obstacle: namely, the dependence of such recognition on the policies and politics embedded in national jurisdictions.<sup>88</sup>

This observation triggers the even more sobering reminder that the rights and disabilities pertaining to blasphemy law within the English jurisdiction were themselves profoundly dependent on politics, in the form of the legislation that made acceptance of Anglican worship into the condition of full civil participation under the religious settlement. If the legal liability for English blasphemy was dependent on the Protestant constitution of the Anglican confessional state—rather than on any order of personal rights, recognized or not—then the disintegration of this liability was not the result of some exemplary recognition of long-lost human rights. I have argued that it was the outcome of the political dissolution of the Protestant constitution itself. The problem for historical understanding of this transformation is that a powerful clutch of intellectual traditions—“Whig history,” philosophical liberalism, and juridical history—have retrospectively portrayed the undoing of the Anglican constitutional order as if it were the long-delayed victory of secular, democratic rationality, rather than as the factional victory of a persistently oppositional religious and political coalition.

### **Conclusion**

In the event, the history of English blasphemy law was brought to a close neither by a communitarian or postcolonial recognition of the religious rights of faith communities, nor by an exemplary philosophical-liberal recovery of human rights supposedly lost since the time of the Anglican settlement. Instead, it occurred as a playing-out of the dissolution of the Protestant constitution itself. Once civil participation was no longer conditional on subscription to the national religion—making it increasingly difficult to understand how an attack on trinitarian Christianity could threaten the civil order—blasphemy began to lose its religious character, slowly migrating into the domain of public order offenses. This migration was completed with the passing of the Religious and Racial Hatred Act of 2006. Enacted as an amendment of the Public Order Act of 1986, the new act did little more than add incitement of religious hatred to those other forms of threatening, abusive, or insulting words likely to cause public affray and violence, with religion now only naming a particular class of targeted individuals, no different from race in this regard.<sup>89</sup> Religions would now be protected only insofar as abuse of their individual members threatened public peace, not in order to punish “sacrilege and abuse of religious sanctities” as the Islamic Council had requested in 2003 and as the Church of England had been granted in the 1670s. The abolition of the blasphemy laws in 2008 was the most anticlimactic of historical events, tacked on as it was to a housekeeping bill—the Criminal Justice and Immigration Act—designed to tidy up a *mélange* of matters pertaining to the running of the criminal justice system.<sup>90</sup>

Although it might give rise to misunderstandings, it would not be inaccurate to characterize these developments as resulting in a “secularization” of this part of the law. The protection of religious belief was indeed removed from the definition of religious offenses, turning them into public order offenses, and thereby giving expression to a certain separation of church and state. This was not a secularization grounded in an atheist philosophy, however, nor in a philosophical-liberal construction of rationally grounded individual rights, nor even in an earlier “disembedding” of transcendent values from human community that supposedly led to a disciplinary society inhabited by atomized selves. Rather, it resulted from those historical developments in which the juridical enforcement of the Anglican civil order was undone, in part at least through an excluded Dissenting political theology that would later mistake itself for secular democratic reason.

Given this, it is understandable that some commentators should view such secularization and church-state separation as grounded in a liberal philosophy operating as a kind of secular religion or metaphysics for the modern state.<sup>91</sup> This runs the risk, though, of buying into philosophical liberalism’s own self-understanding—as a body of philosophical ideas and beliefs—and forgetting the degree to which the elements of English liberal thought were forged in the struggle against Anglican political theology and grounded in a particular way of life. In the mix of anticlerical mythography, Socinian rationalism, and deistic contemplation that I identified in Paine—all of it grounded in a spiritual practice of relentless self-excitation—we see not the contours of an abstract individualism but the liturgy of a “mental church.” If a certain kind of militant individualism emerges here, then it does so neither from reason nor from faith, but through the inner exercises required by this intellectual liturgy, and in the form of a distinctive comportment of the self and form of life. Paine’s deistic rationalism represented only the marginal Jacobin wing of Rational Dissent, but broader currents of this liturgical rationalism would flow through the conduits of Whig history, philosophical liberalism, and juridical history into the outlook of modern law reformers. It was not, then, through the ideological assertion of a speciously rational individualism that our law reformers denied immigrant faith communities access to blasphemy law. Rather, it was as a result of their personification of an intellectual outlook and way of life that had been forged in the battle against the Anglican confessional state, and that they could no more shed than the members of the faith communities could shed theirs.

#### NOTES

To the memory of William Birchall Hunter, 1920–2012. I am grateful to the journal’s anonymous reviewers for the comments on a precursor draft, and to David Saunders for several helpful suggestions. Special thanks go to Knud Haakonssen for pointing out a number of problems in the penultimate draft, the corrections of which have materially improved the essay, leaving me solely responsible for the remaining weaknesses.

1. The offense of blasphemy was abolished in the Criminal Justice and Immigration Act of 2008. The inquiry into religious offenses was conducted by the House of Lords Select Committee on Religious Offences, whose report was published in April 2003. The failure of Mr. Choudhury’s case against Rushdie is recorded in *R v. Chief Stipendiary Magistrate, ex parte Choudhury* [1991]

- 1 All ER 313; and the failure of his appeal to the European Commission on Human Rights in *Choudhury v. United Kingdom*, App. No. 17439/90, 12 Hum. Rts. L.J. 172.
2. Lawrence McNamara, "Blasphemy," in *Law and Religion: God, the State and the Common Law*, ed. Peter Radan, Denise Meyerson, and Rosalind F. Croucher (London: Routledge, 2005), 182–203; and David Edwards, "Toleration and English Blasphemy Law," in *Aspects of Toleration*, ed. John H. Horton and Susan Mendus (London: Methuen, 1985), 75–98.
3. Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, Calif.: Stanford University Press, 2003), 306. See also Asad, "Free Speech, Blasphemy, and Secular Criticism," in *Is Critique Secular? Blasphemy, Injury, and Free Speech*, ed. Asad (Berkeley, Calif.: Townsend Center for the Humanities, 2009), 20–63.
4. For a comprehensive and informative discussion of the issues that goes beyond these opposed interpretations, see Peter G. Danchin, "Islam in the Secular *Nomos* of the European Court of Human Rights," *Michigan Journal of International Law* 32, no. 4 (2011): 663–747.
5. For a helpful discussion, see Raymond Geuss, "Liberalism and Its Discontents," *Political Theory* 30, no. 3 (2002): 320–38.
6. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972).
7. John Marshall, *John Locke, Toleration and Early Enlightenment Culture: Religious Intolerance and Arguments for Religious Toleration in Early Modern and "Early Enlightenment" Europe* (Cambridge: Cambridge University Press, 2006); Jonathan I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity, 1650–1750* (Oxford: Oxford University Press, 2001).
8. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, Mass.: MIT Press, 1996).
9. Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007), 90–145.
10. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1988). David Hollenbach, S.J., "A Communitarian Reconstruction of Human Rights: Contributions from Catholic Tradition," in *Catholicism and Liberalism: Contributions to American Public Philosophy*, ed. R. Bruce Douglass and Hollenbach (Cambridge: Cambridge University Press, 1994), 127–50.
11. Richard Bellamy, *Rethinking Liberalism* (London: Pinter, 2000); Michael J. Sandel, "Religious Liberty: Freedom of Choice or Freedom of Conscience," in *Secularism and Its Critics*, ed. Rajeev Bhargava (Delhi: Oxford University Press, 1998), 73–93; Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998).
12. Bhikhu Parekh, "Dilemmas of a Multicultural Theory of Citizenship," *Constellations* 4, no. 1 (1997): 54–62; Anna Elisabetta Galeotti, "Neutrality and Recognition," in *Pluralism and Liberal Neutrality*, ed. Richard Bellamy and Martin Hollis (London: Cass, 1999), 37–53.
13. Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1994), 25–74; Tariq Modood and Jan Dobbernack, "A Left Communitarianism? What about Multiculturalism?" *Soundings*, no. 48 (Summer 2011): 54–65.
14. Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999), 1–28; Bhikhu Parekh, *European Liberalism and "the Muslim Question"* (Leiden: Amsterdam University Press, 2008); Iris Marion Young, "A Multicultural Continuum: A Critique of Will Kymlicka's Ethnic-Nation Dichotomy," *Constellations* 4, no. 1 (1997): 48–53.
15. Asad, *Formations of the Secular*, 159–201.

16. John Gray, *Two Faces of Liberalism* (Cambridge: Polity, 2000), 1–29.
17. *Ibid.*, 157–209.
18. For an overview of Hobbes's intervention and reception in this context, see Jon Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640–1700* (Cambridge: Cambridge University Press, 2007). On Hobbes's mobilization of the rhetorical resources of political humanism to deal with his fractious political circumstances, see Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996). On Hobbes's development of an anti-scholastic natural law designed to function as a political philosophy under circumstances of fundamentally contested morals and politics, see Noel Malcolm, "Hobbes and Spinoza," in *The Cambridge History of Political Thought, 1450–1700*, ed. J. H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 530–57.
19. See the nuanced discussion of this in Mark Goldie, "The Reception of Hobbes," in *The Cambridge History of Political Thought, 1450–1700*, 589–615. Hobbes's increasing marginality to the British debate more or less coincided with his increasing centrality in Protestant Germany—thanks to his reception in Pufendorf's natural law—where the character of the Brandenburg-Prussian religious settlement was far more favorable to Hobbes's construction of civil sovereignty. See Horst Dreitzel, "The Reception of Hobbes in the Political Philosophy of the Early German Enlightenment," *History of European Ideas* 29, no. 3 (2003): 255–89. See also Fiammetta Palladini, "Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *Socialitas*," *History of European Ideas* 34, no. 1 (2008): 26–60.
20. For an early and iconoclastic formulation of this revisionism, see J. G. A. Pocock, "The Myth of John Locke and the Obsession with Liberalism," in *John Locke: Papers Read at a Clark Library Seminar, 10 December 1977*, ed. Pocock and Richard Ashcraft (Los Angeles: Clark Library, 1980), 2–24. No less iconoclastic is the view of Locke as a marginal Dissenting political theologian presented in J. C. D. Clark, *English Society, 1660–1832: Religion, Ideology and Politics during the Ancien Regime*, 2nd ed. (Cambridge: Cambridge University Press, 2000), 126–40.
21. See the succinct and balanced account in Mark Goldie, "John Locke and Anglican Royalism," *Political Studies* 31, no. 1 (1983): 61–85.
22. Closely related to earlier conceptions of *Zeitgeist*, "social imaginary" is a phrase coined by Charles Taylor to characterize the transformation of a theory such as liberalism into the popular outlook of a whole society, allowing him to envisage the unity of an "age" or society through its mode of consciousness, although he nominates no particular society and presents no evidence that whole populations do indeed share a single way of imagining their existence. There is of course much evidence to the contrary. See Taylor, *Secular Age*, 159–211.
23. For more, see J. G. A. Pocock, "The History of Political Thought: A Methodological Inquiry (1962)," in *Political Thought and History: Essays on Theory and Method* (Cambridge: Cambridge University Press, 2009), 3–19; and Pocock, "The Politics of Historiography," *Historical Research* 78, no. 199 (2005): 1–14.
24. For a symptomatic acknowledgment of this ongoing religious conflict, presented from a Catholic standpoint, see Pierre Manent, "Christianity and Democracy: Some Remarks on the Political History of Religion, or, on the Religious History of Modern Politics," in *Modern Liberty and Its Discontents*, ed. Daniel J. Mahoney and Paul Seaton (Lanham, Md.: Rowman and Littlefield, 1998), 97–116. A more balanced reflection is given in Bernard Laurent, "Catholicism and Liberalism: Two Ideologies in Confrontation," *Theological Studies* 68, no. 4 (2007): 808–38.

25. For skeptical commentary on this set of assumptions, see Duncan S. A. Bell, “Political Theory and the Functions of Intellectual History: A Response to Emmanuel Navon,” *Review of International Studies* 29, no. 1 (2003): 151–60; and Bell, “Empire and International Relations in Victorian Political Thought,” *Historical Journal* 49, no. 1 (2006): 281–98. See also Ian Hunter, “Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations,” in *Law and Politics in British Colonial Thought: Transpositions of Empire*, ed. Shaunagh Dorsett and Hunter (Basingstoke: Palgrave Macmillan, 2010), 11–29.
26. Asad, *Formations of the Secular*, 169–70 (original emphasis).
27. See in particular Robert Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change, 950–1350* (Princeton, N.J.: Princeton University Press, 1993).
28. David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1996).
29. On the internal colonization and Christianization of Europe, see Bartlett, *Making of Europe*. For an overview of the medieval expansion of Romano-canon law jurisdiction, see Antonio Padoa-Schioppa, “Hierarchy and Jurisdiction: Models in Medieval Canon Law,” in *Legislation and Justice*, ed. Padoa-Schioppa (Oxford: Oxford University Press, 1997), 1–15.
30. See Winfried Trusen, “Rechtliche Grundlagen des Häresiebegriffs und des Ketzerverfahrens,” in *Ketzerverfolgung im 16. und frühen 17. Jahrhundert*, ed. Silvana Seidel Menchi (Wiesbaden: Harrassowitz, 1992), 1–20. On the role of blasphemy law in some late medieval German urban jurisdictions, see Gerd Schwerhoff, “Blasphemie vor den Schranken der städtischen Justiz,” *Ius Commune* 25 (1998): 39–69.
31. The law was passed by Parliament following a petition from the clergy. It took the form of a writ that delivered those found guilty of obdurate heresy in the ecclesiastical courts over to the secular authorities for punishment by burning. See A. K. McHardy, “*De heretico comburendo*, 1401,” in *Lollardy and the Gentry in the Later Middle Ages*, ed. Margaret Aston and Colin Richmond (Stroud: Sutton, 1997), 112–26.
32. For an instance of this reciprocating structure of criminal sin and sacred civil authority, elaborated in a Catholic counter-Reformation context, see Adam Contzen, *Politicorum libri decem* (Cologne, 1629). For a Protestant criminal code based on the same structure, see Benedict Carpzov, *Practica nova imperialis saxonica rerum criminalium* (Frankfurt, 1635).
33. Martin Heckel, *Deutschland im konfessionellen Zeitalter* (Göttingen: Vandenhoeck and Ruprecht, 1983), 128–80.
34. For helpful overviews, see Heinz Schilling, “Confessional Europe,” in *Handbook of European History, 1400–1600: Latin Middle Ages, Renaissance and Reformation*, vol. 2, *Visions, Programs and Outcomes*, ed. Thomas A. Brady, Jr., Heiko A. Oberman, and James D. Tracy (Leiden: Brill, 1995), 641–82; Heinz Schilling, “Die Konfessionalisierung im Reich: Religiöser und gesellschaftlicher Wandel in Deutschland zwischen 1555 und 1620,” *Historische Zeitschrift* 246 (1988): 1–45; and Ernst Walter Zeeden, *Konfessionsbildung: Studien zur Reformation, Gegenreformation und katholischen Reform* (Stuttgart: Klett-Cotta, 1985).
35. Heinz Schilling, “Confessionalisation and the Rise of Religious and Cultural Frontiers in Early Modern Europe,” in *Frontiers of Faith: Religious Exchange and the Constitution of Religious Identities, 1400–1750*, ed. E. Andor and I. G. Tóth (Budapest: European Science Foundation, 2001), 21–35; Wolfgang Reinhard, “Zwang zur Konfessionalisierung? Prolegomena zu einer Theorie des konfessionellen Zeitalters,” *Zeitschrift für Historische Forschung* 10 (1983): 257–77. Reinhard’s and Schilling’s approach has been criticized by scholars questioning their emphasis on the state and

top-down confessionalization, arguing instead for the self-confessionalizing capacity of local religious communities. See, for example, Randolph C. Head, “Catholics and Protestants in Graubünden: Confessional Discipline and Confessional Identities without an Early Modern State?” *German History* 17, no. 3 (1999): 321–45; and Heinrich Richard Schmidt, “Sozialdisziplinierung? Ein Pläydoyer für das Ende des Etatismus in der Konfessionalisierungsforschung,” *Historische Zeitschrift* 265 (1997): 639–82. While significant, these modifications of the confessionalization paradigm have no direct bearing on the present argument, which accepts the role of local religious communities as willing participants in the process.

36. See, for example, the account of the intensification of prosecutions of sacrilege in sixteenth- and seventeenth-century counter-Reformation Poland in Magda Teter, *Sinners on Trial: Jews and Sacrilege after the Reformation* (Cambridge, Mass.: Harvard University Press, 2012). In the course of a determined re-Catholicization of the country, Protestants and Jews were often linked in cases charging theft and defilement of the communion host or its container, the sacred ciborium. Theft from Protestant churches or Jewish synagogues did not attract the charge of sacrilege, as these were declared not to be sacred spaces.

37. Horst Dreitzel, “Das christliche Gemeinwesen,” in *Die Philosophie des 17. Jahrhunderts*, vol. 4, *Das heilige Römische Reich deutscher Nation, Nord- und Ostmitteleuropa*, ed. Helmut Holzhey and Wilhelm Schmidt-Biggemann (Basel: Schwabe, 2001), 673–93.

38. Joachim Whaley, *Germany and the Holy Roman Empire*, vol. 1, *Maximilian I to the Peace of Westphalia, 1490–1648* (Oxford: Oxford University Press, 2012), 566–72.

39. See Mack P. Holt, *The French Wars of Religion, 1562–1629* (Cambridge: Cambridge University Press, 2005); Jonathan Scott, *England’s Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge: Cambridge University Press, 2000); and J. C. D. Clark, *The Language of Liberty, 1660–1832: Political Discourse and Social Dynamics in the Anglo-American World* (Cambridge: Cambridge University Press, 1994).

40. For an overview of the different national religious settlements and cultures, see David Martin, *On Secularization: Towards a Revised General Theory* (Aldershot: Ashgate, 2005), chap. 5.

41. For a recent account of the Restoration Settlement, see Jacqueline Rose, *Godly Kingship in Restoration England: The Politics of the Royal Supremacy, 1660–1688* (Cambridge: Cambridge University Press, 2011).

42. Clark, *English Society*, 43–123.

43. On Locke’s defense of a politically established church during the period 1660–62, see Jacqueline Rose, “John Locke, ‘Matters Indifferent,’ and the Restoration of the Church of England,” *Historical Journal* 48, no. 3 (2005): 601–21.

44. Mark Goldie, “The Political Thought of the Anglican Revolution,” in *The Revolutions of 1688*, ed. Robert Beddard (Oxford: Clarendon, 1991), 102–36.

45. J. G. A. Pocock, *Barbarism and Religion*, vol. 1, *The Enlightenments of Edward Gibbon, 1737–1764* (Cambridge: Cambridge University Press, 1999), 13–27.

46. Mark Goldie, “Priestcraft and the Birth of Whiggism,” in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993), 209–31.

47. For an account of the maneuvering around the strategies of comprehension and indulgence—the latter strategy seeing Dissenters supporting royal supremacy—see Rose, *Godly Kingship*, 171–84.

48. The tenor of the act can be gathered from its actual title, which was not Toleration Act

but “Act for Exempting Their Majesties Protestant Subjects Dissenting from the Church of England, from the Penalties of Certain Laws.” For more, see the helpful discussion in Martin Fitzpatrick, “Natural Law, Natural Rights, and the Toleration Act in England, 1688–1829,” in *Naturrecht und Staat: Politische Funktionen des europäischen Naturrechts (17.-19. Jahrhundert)*, ed. Diethelm Klippel and Elisabeth Müller-Luckner (Munich: Oldenbourg, 2006), 35–58.

49. See the illuminating discussion in Andrew Sharp, “History and Sovereignty: A Case of Juridical History in New Zealand/Aotearoa,” in *Cultural Politics and the University in Aotearoa New Zealand*, ed. Michael Peters (Palmerston North: Dunmore Press, 1997), 159–81.

50. For juridical histories of blasphemy—albeit ones that remain informative on a range of issues—see Mcnamara, “Blasphemy”; and Edwards, “Toleration and English Blasphemy Law.”

51. For an enlightening discussion of Hale and the manner in which he responded to the Restoration settlement, see David Saunders, “The Judicial Persona in Historical Context: The Case of Matthew Hale,” in *The Philosopher in Early Modern Europe: The Nature of a Contested Identity*, ed. Conal Condren, Stephen Gaukroger, and Ian Hunter (Cambridge: Cambridge University Press, 2006), 140–59.

52. *Taylor’s Case* (1676) 1 Ventris 293 (1676) 293; 86 E.R. 189.

53. For a view of religion as an inward spiritual relation to Christ that is destroyed by worldly motives and sanctions—mounted as an argument against the Test Acts by a “low-church” Anglican—see Benjamin Hoadly, *An Answer to the Representation drawn up by the Committee of the Lower-House Convocation concerning Several Dangerous Positions and Doctrines Contain’d in the Bishop of Bangor’s Preservative and Sermon* (London, 1718), 152–64, 219–22. For a contemporaneous view of politics as secular, rational, and coercive—grounded in a textbook Hobbesian account of civil sovereignty arising from the need to establish peace through the commanding imposition of laws on both society and church—see Adrian Houtuyn, *Politica contracta generalis* (The Hague, 1681), esp. chap. 1. One finds a similar reciprocal division of labor between a spiritualized non-coercive religion (the “kingdom of truth”) and a secularized coercive politics (the “civil kingdom”) in Samuel Pufendorf’s *De habitu religionis christianae ad vitam civilem*, which had been published in Sweden in 1687 and translated into English in 1698. See Pufendorf, *Of the Nature and Qualification of Religion in Reference to Civil Society*, ed. Simone Zurbuchen (Indianapolis, Ind.: Liberty Fund, 2002). Pufendorf’s text is significant because its radical separation of church and state pertained to a different religious settlement—that of Brandenburg-Prussia, where the failure of Calvinist confessionalization had resulted in the recognition of a plurality of public religions overseen by a neutral state—ensuring the text’s importance in Germany and marginality in England.

54. See Goldie, “Political Thought of the Anglican Revolution,”; Rose, *Godly Kingship*, 130–37; and Stephen Taylor, “William Warburton and the Alliance of Church and State,” *Journal of Ecclesiastical History* 43, no. 2 (1992): 271–86.

55. On the centrality of the concept of office-holding to early modern English religious and political thought—as opposed to philosophical concepts of moral personality—see the fundamental study by Conal Condren, *Argument and Authority in Early Modern England: The Presupposition of Oaths and Offices* (Cambridge: Cambridge University Press, 2006).

56. Clark, *English Society*, 14–42.

57. Asad’s claim that “Common law did not distinguish between heresy . . . and blasphemy . . . as medieval canon law had done” thus has no historical basis. Neither does the conclusion that he purports to derive from this alleged fact, that “from the seventeenth century on, the crime

of blasphemy was entangled with the question of political toleration and the formation of the secular modern state.” See Asad, “Free Speech, Blasphemy, and Secular Criticism,” 35. In fact, the common law crime of blasphemy emerged with the Anglican confessional state and its Protestant constitution.

58. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon, 1765–69), 4:49.

59. *Ibid.*, 4:51.

60. *Ibid.*, 4:59.

61. For a critical discussion of these assumptions, see Danchin, “Islam in the Secular *Nomos*,” 674–85.

62. See, for example, McNamara, “Blasphemy,” 186–88; and Leonard V. Levy, *Treason Against God: A History of the Offense of Blasphemy* (New York: Schocken, 1981), 331–32.

63. On Rational Dissent and its emergence from Protestant Dissent, see Knud Haakonssen, “Enlightened Dissent: An Introduction,” in *Enlightenment and Religion: Rational Dissent in Eighteenth-Century Britain*, ed. Haakonssen (Cambridge: Cambridge University Press, 1996), 1–11; and R. K. Webb, “The Emergence of Rational Dissent,” in *ibid.*, 12–41.

64. For revealing discussions of the conflicting positions, see Mark Goldie, “John Locke and Anglican Royalism,” *Political Studies* 31, no. 1 (1983): 61–85; and Goldie, “Political Thought of the Anglican Revolution.”

65. For an overview of Paine’s emergence from this culture, see Clark, *English Society*, 385–95. For a somewhat different view of Paine, one that accepts his membership of a “Protestant Enlightenment” but recognizes his contribution to public debate, the criticism of inherited beliefs, and to “cultural Protestantism,” see Wayne Hudson, *Enlightenment and Modernity: The English Deists and Reform* (London: Pickering and Chatto, 2009), 148–49.

66. Thomas Paine, *The Age of Reason, Part the First, Being an Investigation of True and Fabulous Theology* (London: Carlile, 1819), 4.

67. *Ibid.*, 6–11, 14–17, 4–7, 22–30.

68. *Ibid.*, 2–4, 35–43. Consider the following typical expression of this exercise in spiritual self-scrutiny and self-certification: “Any person, who has made observations on the state and progress of the human mind, by observing his own, cannot but have observed, that there are two distinct classes of what are called Thoughts: those that we produce ourselves by reflection and the act of thinking, and those that bolt into the mind of their own accord. I have always made it a rule to treat those voluntary visitors with civility, taking care to examine . . . if they were worth entertaining; and it is from them I have acquired almost all the knowledge I have” (35). And: “Man does not learn religion as he learns the secrets and mysteries of a trade. He learns the theory of religion by reflection. It arises out of the action of his own mind upon the things which he sees . . .” (46).

69. For a parallel treatment of Kant’s religious philosophy as a proselytizing religious rationalism—albeit of a different kind to Paine’s—see Ian Hunter, “Kant’s *Religion* and Prussian Religious Policy,” *Modern Intellectual History* 2, no. 1 (2005): 1–27.

70. See *R v. Williams* (1797) 26 St Tr 654 at 697.

71. See McNamara, “Blasphemy,” 197.

72. See G. M. Ditchfield, “The Parliamentary Struggle over the Repeal of the Test and Corporation Acts, 1787–1790,” *English Historical Review* 89, no. 252 (1974): 551–77; and G. I. T.

Machin, "Resistance to Repeal of the Test and Corporation Acts, 1828," *Historical Journal* 22, no. 1 (1979): 115–39.

73. The precedent-setting cases were *R v. Hetherington* (1841) 4 St Tr NS 563; and *R v. Ramsay & Foote* (1883) 15 Cox CC 231. Both the offending publications were freethinking denunciations of biblical Christianity, making use of mythographic, Socinian, and Deistic arguments in the style of Paine. Both groups of defendants were found guilty, but not before the judges had shifted the test of blasphemy from the content of the publications to their intemperate and insulting style.

74. Lord Chief Justice Coleridge, in *Ramsay & Foote*, 235.

75. The transition is clear enough in Lord Sumner's dictum in *Bowman v. Secular Society Ltd* [1917] AC 406, 466: "Our courts of law . . . do not, and never did that I can find, punish irreligious words as offences against God . . . They dealt with such words for their manner, their violence, or ribaldry, or, more fully stated, for their tendency to endanger the peace then and there." But this juridical history only declared the law as it stood in 1917, not in 1676 when public attacks on trinitarian Christianity infringed the law regardless of whether they disturbed the peace, because they contravened the national worship and the elect nation established by God's providence.

76. *R v. Gott* (1922) Cr App R 87.

77. *Whitehouse v. Lemon* [1979] 2 WLR 281.

78. *R v. Chief Stipendiary Magistrate, ex parte Choudhury* [1991] 1 All ER 313.

79. *Select Committee on Religious Offences in England and Wales* (London: House of Lords, 2003), 46.

80. *Ibid.*, 47.

81. *Written Evidence: Select Committee on Religious Offences in England and Wales* (London: Her Majesty's Stationery Office, 2003), <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/95w44.htm> (accessed June 20, 2012).

82. *Ibid.*

83. *Ibid.*

84. *Ibid.*

85. *Select Committee*, 14.

86. *Ibid.*, 14–15, 47–9.

87. *Wingrove v. United Kingdom* (1997) 24 EHRR 1.

88. See the bracing discussion in Martti Koskenniemi, *The Politics of International Law* (Oxford: Hart, 2011), 133–52.

89. Racial and Religious Hatred Act 2006 (c. 1) (United Kingdom, 2006).

90. See Criminal Justice and Immigration Act 2008 (c. 4) (United Kingdom, 2008), section 79.

91. See Asad, "Free Speech, Blasphemy, and Secular Criticism." See also Saba Mahmood, "Secularism, Hermeneutics, and Empire: The Politics of Islamic Reformation," *Public Culture* 18, no. 2 (2006): 323–47; and Mahmood, "Is Critique Secular? A Symposium at UC Berkeley," *Public Culture* 20, no. 3 (2008): 447–52.