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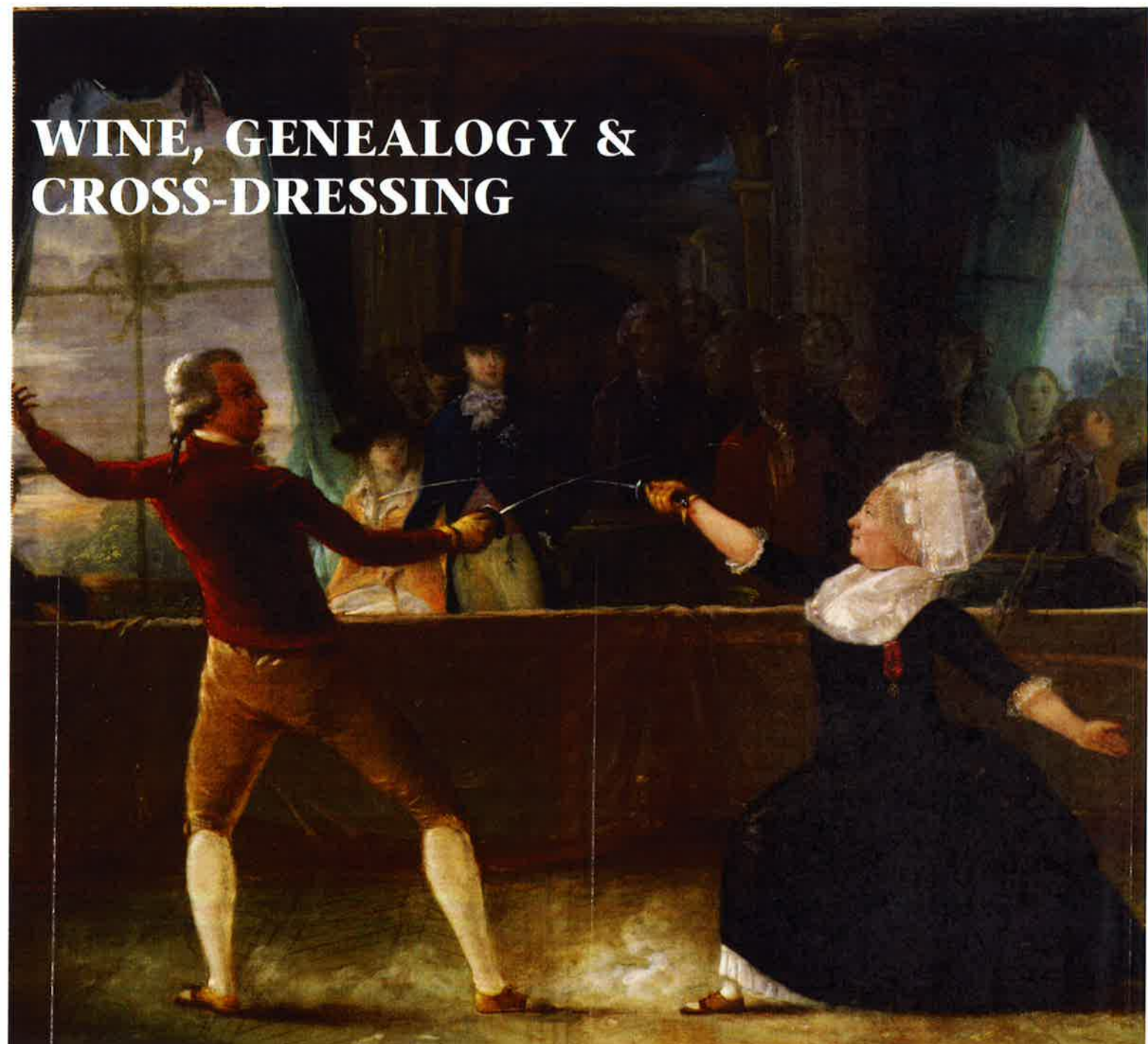
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Ireland and the history of blasphemy.

‘EVERYONE KNOWS WHAT BLASPHEMY IS’

By David Nash

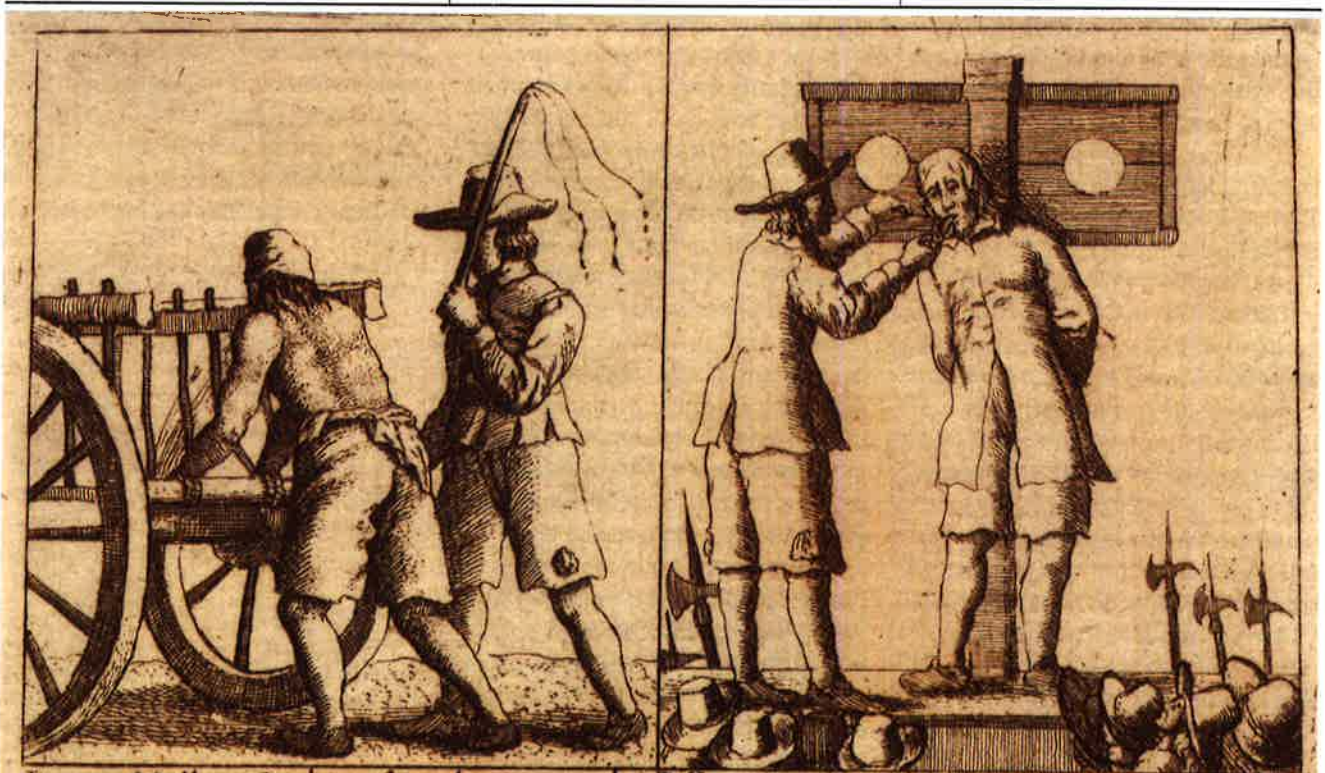
For much of the twentieth century, western governments believed either that blasphemy laws were long-dead fragments of a bygone age or that they simply sat quietly and unnoticed in dust-laden legal volumes away from the public gaze. Events at the end of the twentieth century indicated that this was anything but true, however, as a global

seismic shift brought religion sharply into international focus as a means of defining new identities that contrasted with western ideals of free speech and libertarianism. The waves of protest that were unleashed by the Salman Rushdie affair brought religion and the concept of blasphemy into the living rooms of the world. From being a free speech issue whereby

liberalising governments were forced to recognise the rise of more secular societies, matters shifted to considerations around the rights of minorities within western cultures that still wanted to simultaneously preserve tolerance and freedoms. It was elements of these pressures that were behind the decision to make Ireland revisit and amend its law in 2008/9—a law whose removal is now scheduled to be put to the Irish nation in a referendum this October.

Divine judgement

Blasphemy laws are of some antiquity and came into being as a means of protecting the state from the perils of divine judgement. Early modern kings would routinely carry out pogroms against blasphemers in thanksgiving for providential successes or, indeed, to atone for failures during their reign. Early modern Venice rooted out blasphemers as a preventative measure to save the city from the threat of plague, hoping to appease the



James Nailor Quaker, set 2 howers on the Pillory at Westminster, whiped by the Hangman to the old Exchange London, Som dayes after, Stood too howers more on the Pillory at the Exchange, and there had his Tongue Bored throug with a hot Iron, & Stigmatized in the Forehead with the Letter: B: Decem: 17: anno Dom: 1656!

Almighty. The Reformation in Europe provided a much greater impetus to the spread of blasphemy as a legal and cultural concept and further inspired the growth of laws to prevent it. The godly states of Lutheran Germany and Calvinist Switzerland placed a greater emphasis upon instilling high levels of religious discipline in their citizens and persuading the population at large to guard against such moral lapses. This discipline saw drunks, gamblers and even angry members of individual households reported to city authorities, who promptly had them up in court to answer for blasphemous crimes.

The early modern world displayed a quite dazzling array of punishments for this crime. Many focused on ostracising such individuals from the community or by making them visibly stand out by branding their faces or mutilating their mouths. In seventeenth-century England, the Civil War religious dissident Quaker James Nayler was punished by having holes bored through his tongue. Elsewhere many were exhibited in the pillory, while in the American colonies individuals had to watch effigies of themselves being ritually executed by the hangman, or had to ritually kiss the earth in front of gathered groups of witnesses. Places like the Netherlands even made miscreants attend church dressed in a bizarre wooden barrel contraption. More seriously, the crime occasionally carried the death penalty and this could be enacted when societies were particularly fearful of providential judgement, as happened in the only instance in the British Isles, when an anxious and fearful Scotland executed the confused and

Opposite page: A 1656 engraving of English Quaker James Nayler, who, having been found guilty of blasphemy, was pilloried, whipped through the streets and had his tongue bored through with a hot iron. (NPG)

Above right: The waves of protest that were unleashed by Salman Rushdie's *Satanic verses* (1988) brought religion and the concept of blasphemy into the living rooms of the world. (Reuters)

careless Edinburgh student Thomas Aikenhead in 1697.

Nevertheless, there were religious dissidents who were prepared to suffer for their opinions and they can be found everywhere in the European world at this time. Whilst Paul Best and John Biddle were imprisoned for anti-Trinitarian views (modern Unitarianism) in mid-seventeenth-century England, Ireland saw the prosecution and imprisonment of Thomas Emlyn for the same offence in 1603. Legislative action to prevent blasphemous opinions from circulating in Ireland was contemporary with the Aikenhead case and resulted in the Profane Oaths Act of 1695. Although England acquired its own statute law in the very last years of the seventeenth century, the law was never successfully strengthened further in Ireland.

The lack of interest in the statute law is explained by the fact that Ireland initially inherited England's common law and it was this that had been English law's mainstay method of controlling blasphemy. From the end of the eighteenth century English rulers, judges and lawyers came to like this concept, since the law's interpretation was in the hands of judges, giving considerable flexibility in the conduct and resolution of each case.

Blasphemy laws in Ireland

Ireland had tried episodically to revisit its blasphemy laws in the years since the concept was enshrined in the 1937 Constitution and, like other western societies, would engage in critical discussion as to what precisely the law was intended to do. In the case of *Conway v. Independent Newspapers* in 1995 the appeal court argued that the Irish Constitution's guarantee of freedom of expression had superseded the earlier common-law English precedent that had been enacted to protect an established religion. Despite this, some wondered why blasphemy lingered on as a clause in the Irish Constitution.

The answer to this question was not clear and would often frustrate, encompassing a wide range of



things to different people—which might explain why it persisted for so long. Such a situation at least partly explains Charles Haughey's far-sighted yet cryptic comment when he was justice minister that 'Everyone knows what blasphemy is'. This was an indication that the state was less sovereign in this area than individual religious feelings and that the responsibility had been passed to the individual, who was now tasked with thinking these issues through.

Ironically, it was this model of individual rights that provoked Ireland into revising its blasphemy laws and strengthening them in the process. As many countries discovered, their antique laws were formulated to protect the national religion (Christianity in western countries), and often only protected a specific section of it in the shape of the national church established by law. This manifestly discriminated against religious minorities, and supra-national organisations (such as the European Commission) began chastising governments for their failure to address this issue. Many, such as the United Kingdom, thought that addressing the problem through enacting new hate crime legislation to protect religion was the answer. This drew on the precedent and experience of attempts to address the phe-



nomenon of race hatred.

2009 Defamation Act

Ireland's response, however, was wholly unexpected, and to a rather bemused Dáil the then justice minister Dermot Ahern introduced a section to the 2009 Defamation Act

Above: A *schandmantel* ('barrel of shame') on display in a torture museum in Freiburg im Breisgau, Germany — one of a dazzling array of punishments for blasphemy (and other crimes) used throughout early modern Europe and colonial America.

that wholly revised the blasphemy law away from both past and current precedents. Indeed, it was to become one of the main criticisms levelled at it that it was quite anomalous and simply did not resemble past precedent, or an inheritance from any other legal philosophy or culture. The measure passed into law because of Fianna Fáil's then governing majority. Despite the suddenness of its arrival, its provisions represented an attempt to address the modern liberal social democratic govern-

ment's dilemma of having to protect rights of free speech while offering protection to individuals and their belief systems. Thus it offered legal redress to those who considered their beliefs to have been violated, but also tried to put in place some legitimate defences that could be used in court to argue for free speech rights. On the protection side, individuals or groups were to be prevented from publishing or airing material that was considered 'grossly offensive', but with the proviso that this had to be potentially offensive to a 'substantial' number of adherents of that particular religious group. Fears that extremists and cranks could now use religious belief as a cloak for nefarious activities prompted the law to declare that it was not there to protect cults or groups that used mind control or existed solely to make money for their supposed leaders. The right to debate also, at first sight, seemed protected by the clause that stated that you could have a legal defence for publishing or uttering blasphemous words if you could demonstrate genuine artistic or academic merit.

However well intentioned such a law might have been at its inception, it contained a range of glaring anomalies and legal holes. Religion itself remained undefined—a contentious bugbear that had frustrated the UK Home Office as early as the 1930s—whilst other concepts intended to indicate questions of degree, like 'grossly offensive', 'substantial number' and 'genuine merit', all appeared to have slippery and worryingly indistinct definitions. The law also contained a section requiring the intention to offend to be clear and evident—again a problem that had plagued legal thinking on the subject, since not all instances of the public subsequently deciding words spoken to be blasphemous fitted with this suggestion of cold calculation. The rights given to the Gardaí to seize publications also conjured up imagined oppression all too easily, as did the original eye-watering fine upon conviction of €100,000,

which was hurriedly 'commuted' to one of €25,000.

Stephen Fry's 2015 interview

Opposition was not slow in coming forward, and groups representing those of no religion (such as Atheist Ireland) alongside writers and civil liberties groups protested against this new and unwelcome law. Atheist Ireland retaliated by placing on its website a range of potentially blasphemous comments from many sources (including members of the Irish clergy and government figures) that it believed would likely fall foul of the legislation. In the face of this the law remained strangely inactive, prompting rumour and speculation that it was symbolic and that its progenitors had never really intended that it be used, making the situation comparatively safe for everyone.

Despite this, one individual broke ranks to respond to Stephen Fry's supposedly blasphemous declaration at the end of an interview with Gay Byrne in 2015. This apparently indignant individual reported the content of the interview to a Dublin Garda station, requesting that it be investigated under the 2009 Defamation Act. Byrne had asked Fry what he would do if he were ever to meet the Almighty in the afterlife. Fry's answer was a variation on the classical philosophical issue of the 'problem of evil', citing its existence as a denial of the concept of a benign and loving God. Fry said that he would castigate 'a capricious, mean-minded and stupid God' who had been apparently malevolent enough to create bone cancer in children. Fry had been openly asked his opinions and his intention to offend was not evident. Likewise, given Fry's reputation as a raconteur, he might also have been able to make a case for demonstrating 'academic merit'. The Gardaí opted to sit on the complaint for some two years and were perturbed when it was revisited in the spring of 2017. After some further discussion, the issue was dropped on the grounds that it could not be proved that Fry's words had offended 'a sig-

nificant number of adherents'. In the right hands, the law of blasphemy as outlined in the 2009 Defamation Act could be rendered toothless, if only on Irish soil.

Constitutional Convention

This last issue provides the fundamental clue as to why Ireland's law lurched into trouble and began to encounter the wrath of all sides. Quietly forgetting about blasphemy within Irish society was Ireland's own matter, but within an interconnected world such laws stood out as a dangerous precedent. Countries with moribund blasphemy laws waiting on the statute-book to be repealed were one thing, but the international impact of a brand-new law amongst countries that were urging repeal on the rest of the world was quite another. Countries more favourable to blasphemy laws began to quote the Irish precedent and thereby managed to stall international efforts to eradicate them. International agencies weighed in with advice, notably the United Nations special rapporteur on freedom of religion, Heine Bielefeldt, who stressed that Ireland's solution to solve religious speech and freedom issues went manifestly against prevailing trends and harmed the international attempts to find other solutions. The Irish government, now under a Fine Gael/Labour coalition, introduced a discussion of blasphemy into the Constitutional Convention, which met to discuss this at Malahide in November 2013. After consideration it voted to remove blasphemy from the constitution, with 61% voting for its removal.

With Ireland moving towards a referendum about repealing blasphemy (the referendum's wording was published in the third week of July), it is a mistake to think that this is a move towards modernisation that will potentially sweep away a cherished aspect of Ireland's past. In fact, it runs counter to the trends set in other recent referenda. The blasphemy law that the Irish people are being asked to decide on is not some aspect of the distant



past that in their mind linked them forever with their conception of God and the Church. It is seeking to amend a surprisingly recent, hurriedly concocted and ill-thought-out quick fix that has proved counter-productive both nationally and internationally. Everyone from government through to members of the hierarchy seems to have realised this mistake, which has made Ireland appear more than a trifle foolish upon the international stage, placing even the Christian beliefs of others abroad in peril. Repeal would put this issue to rest and make Ireland's protection for all its citizens rely upon other, more equitable and agreed standards of behaviour and policing.

David Nash is Professor of History at Oxford Brookes.

FURTHER READING

- L. Levy, *Blasphemy: verbal offense against the sacred from Moses to Salman Rushdie* (New York, 1995).
- R. McChrystal, 'Beyond belief, will Ireland's new government finally phase out the country's blasphemy law?', in *Index on Censorship* (April 2016).
- D. Nash, *Blasphemy in the Christian world* (Oxford, 2007).

Above: Stephen Fry — his castigation of 'a capricious, mean-minded and stupid God' in an interview with Gay Byrne in 2015 led to a complaint to Gardaí under the 2009 Defamation Act.