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CANADIAN BLASPHEMY LAW IN CONTEXT: PRESS, LEGISLATIVE, AND PUBLIC REACTIONS

JEREMY PATRICK[†]

I. INTRODUCTION

Canada has always outlawed blasphemy. From the earliest days of the New France period, through the era of “Upper” and “Lower” Canada, past Confederation and the eventual enactment of the original Criminal Code, and still today, blasphemy has been considered a criminal offence in the Canadian legal system.¹ However, this prohibition, whether expressed through common law or statute, has rarely been enforced through actual prosecution.² In the 117 years since the Criminal Code was enacted, its prohibition on blasphemous libel has been enforced only five times in reported cases.³ A study of the Criminal Code provision and these five prosecutions provides valuable information on the legal treatment of blasphemy throughout Canadian history. However, it reveals little about what the criminalization of blasphemy meant to people other than lawyers and judges. The purpose of this article is to analyze the Canadian prohibition of blasphemy in the context of what it

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1. *See generally*, Jeremy Patrick, “Not Dead, Just Sleeping: Canada’s Prohibition on Blasphemous Libel as a Case Study in Obsolete Legislation,” (2008) 41 U.B.C. L. Rev. 193; Jeremy Patrick, “Blasphemy in Pre-Criminal Code Canada: Two Sketches,” St. Thomas L. Rev. (forthcoming 2010).

2. *See id.*

3. *See R. c. Rahard*, [1936] 3 D.L.R. 230 (Que. C.S.P.); *R. c. St. Martin* (1933), 40 R. de Jur. 411 (Que. C.S.P); *R. v. Sterry* (1926), 48 C.C.C. 1 (Ont. C.A.) (annotation only); *R. c. Kinler* (1925), 63 C.S. 483 (Que. Sup. Ct.); *R. c. Pelletier* (1901), 6 R.L.(n.s.) 116 (Que.).

meant historically to journalists, theologians, politicians, and activists in the first half of the Twentieth Century when the majority of prosecutions occurred. Some groups saw blasphemous expression as part of legitimate religious debate and argued against the involvement of the criminal justice system in policing it, while others saw blasphemy as a coarsening of public life, a sin, or even a crime, and supported a variety of means to reduce its prevalence in public life.

Section II of this Article provides an in depth look at Canada's most famous blasphemy prosecution, that of Eugene Sterry in 1927. Perhaps because it took place just a year and a half after the *Scopes* trial,⁴ Sterry's trial for blasphemy captured the front pages of newspapers across Canada. American editorialists focused on the Canadian legal system to an unusual degree, and an unprecedented public debate was sparked as to whether, and when, blasphemy should be the subject of judicial attention. Although a purely legal analysis of this case has been performed elsewhere,⁵ the discussion here considers the *Sterry* case from two different perspectives: first, from a "behind-the-scenes" look at dissention between prosecutors over the case; and second, by drawing a portrait of how the press and public reacted to the trial.

In response to Sterry's arrest and prosecution, populist M.P. J.S. Woodsworth attempted to repeal the blasphemy provision of the Criminal Code. Woodsworth had a history of taking up unpopular causes, but in trying to repeal the blasphemy law, he met his match. Not only did his bill display a fundamental misunderstanding of what would happen should he succeed, but Woodsworth faced strong opposition by the Minister of Justice, adversaries in the House of Commons shouted down an ally's attempt to read Sterry's impugned writing, and only a handful of Woodsworth's fellow legislators ended up supporting him. Section III of this article covers Woodsworth's bill, the last serious attempt to decriminalize blasphemy in Canada.

Section IV provides a brief look at two Quebec-based public movements that were against the perceived social evil of blasphemy: *Le ligue contre le blasphème* (1926); and a more informal campaign led by future Governor General Georges Vanier (1942). Each campaign prepared public notices on the dangers and illegality of blasphemy, samples of which were sent to government officials for approval. Although available records on each movement are scarce, a limited study of each

4. See generally, Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion* (Cambridge, Mass.: Harvard U. Press, 1997).

5. See Patrick, *Not Dead*, *supra* note 1, at 223-225.

movement still provides intriguing clues as to how activists invoked both legal and moral arguments in their quest to rein in blasphemy.

Attempting to understand the history of legal concepts solely through published case reports leads to a form of tunnel vision that obscures a full understanding of how law is interpreted and used by individuals outside of the criminal justice system. As Carolyn Strange and Tina Loo have written, “studying law on the books allows us to address regulatory objectives, but it reveals nothing about actual processes of moral regulation.”⁶ Furthermore, “concentrating on formal law reinforces the false impression that legal statutes provide the only means of regulation.”⁷ By examining the context surrounding the prohibition of blasphemy, this Article sheds light on how non-legal actors have understood or used the law throughout Canadian history.

II. VICTOR STERRY’S NOTORIOUS BLASPHEMY

A. STERRY’S EARLY LIFE

In the words of a *Toronto Star* headline, Eugene Victor Sterry “learned to be atheist at his mother’s knee.”⁸ Sterry was the thirteenth of twenty-two children, though only seven of his brothers and sisters lived to maturity.⁹ He grew up in the heavily industrialized city of Norwich, England, where he attended a Baptist school for six years, followed by two years at a Catholic school.¹⁰ His father, a wealthy shipowner, was a devotee of the 18th century Swedish Christian mystic Emmanuel Swedenborg.¹¹ However, Sterry’s mother was, in his words, “an avowed atheist.”¹² She was a “keen botanist” and would travel hours to hear lectures by the famous freethinkers of the era such as Herbert Spencer and Charles Bradlaugh.¹³ Religious and social issues were often discussed over the family dinner table,¹⁴ and Victor apparently gravitated more towards his mother’s views than those of his father.

6. Carolyn Strange & Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: U of T Press, 1997) at 5.

7. *Id.*

8. Unsigned, “Learned to be Atheist at His Mother’s Knee,” *Toronto Daily Star* (12 January 1927).

9. *See id.*

10. Unsigned, “Arrest Atheist Editor Charge of Publishing a Blasphemous Libel,” *Toronto Daily Star* (11 January 1927).

11. *See id.*

12. *See* “Learned to be Atheist,” *supra* note 8.

13. *See id.*

14. *See id.*

Soon after coming of age, Sterry married and then (leaving his wife behind) moved to New Zealand, where he spent a couple of years in the real estate business.¹⁵ He had been able to travel and live on his father's money until his father suddenly cut him off completely, accusing him of being a "----- Socialist."¹⁶ Sterry did not want to live in England, but he could not persuade his wife to join him in New Zealand.¹⁷ They talked about moving to the United States, but she insisted on living somewhere under the British Empire. Finally, the impasse was ended when they decided to relocate to Canada. They settled in Toronto in the summer of 1909.¹⁸

Canada provided a fresh start, but Sterry had a tough time of it. He drifted between jobs, working as everything from a census taker, to a road breaker, to a real estate agent.¹⁹ His work in real estate caused Sterry trouble down the line. In 1924, he entered into a deal with a Chinese laundryman named Joe Ying in which Sterry was to oversee the construction of a new building for Ying's cleaning business.²⁰ Ying gave Sterry a \$200 deposit toward the construction, but no work was ever done.²¹ Ying believed Sterry simply took the money and disappeared. Sterry, on the other hand, claimed that he passed the money along to the developer, who absconded to Chicago with it.²² Ying filed charges against Sterry for theft,²³ but for the next few years, the police showed no particular interest in pursuing the allegation. In the next stage of his life, Sterry would begin to express his controversial views on religion in a very public way—and these views would ultimately cause an end to his stay in Canada.

B. STERRY'S ARREST

After his move to Toronto, Sterry was still very much interested in philosophical and religious issues. In May of 1926, he became one of the founding members of the Rationalist Society of Canada, an organization chartered with the purpose, *inter alia*, of "promot[ing] the study of science and philosophy as laid down for us by the great masters[.]" "find[ing] our place in and our duty to the great body social[.]" "promot[ing] among our fellows true morality as based on

15. *See id.*

16. *See id.* The deleted epithet is in the original.

17. *See id.*

18. *See id.*

19. *See id.*

20. *See* "Arrest Atheist Editor," *supra* note 10.

21. *See id.*

22. *See id.*

23. *See id.*

natural law[,]” and “produc[ing] unity and concord along sane and logical lines[,] and . . . [producing] happiness and prosperity in Canada[.]”²⁴

Around this time, Sterry was working as a construction laborer when he was hit by a fallen brick that broke his arm.²⁵ “Some of my friends said it was a visitation from above!” Sterry later remarked.²⁶ As he was now out of a job, he decided to use some of his spare time to start up a rationalist newspaper named *The Christian Inquirer*.²⁷ He was 55 years old, a “short, slimly-built individual,” and the *Christian Inquirer* fit nicely with his “well-known . . . soap-box advocacy of what he chooses to term ‘Rationalism.’”²⁸ The newspaper was envisioned as lasting for ten issues, with a stated purpose of “provid[ing] in the cheapest form the reviews and arguments and demonstrable facts usually kept more or less concealed from the mass of the people by the aristocracy of intellect, the leaders in Science, Letters and Philosophy.”²⁹ The first issue contained several articles on familiar freethinker topics, like “Is Man So Unlike an Ape?” “The Scientific Observation of the Universe,” and “Is the Soul Separate From the Body?”³⁰

Sterry’s newspaper came to the attention of government officials in an unusual way; he gave it to them in person. According to Sterry:

I met [Ontario Conservative Premier] Hon. G. Howard Ferguson, [Attorney General] Hon. W.H. Price and [M.P.] Hon. Mr. McCrea in the corridors of the ground floor of the parliament buildings two or three days before Christmas. I walked up to them and said: ‘I want to find out who has the keenest intellect—the politician, the medical man, the legal mind . . .’ Hon. Mr. Ferguson added: ‘or the clergyman.’ They all laughed and continued on their way. I overtook them at the elevator and gave

24. Articles of Incorporation of the Rationalist Society of Canada (11 May 1926), in *Attorney General, Regina, Sask.: Re Rationalist Society of Canada, Inc.*, Toronto, Archives of Ontario, RG 4-32, Creator Code 154 (1936). In the Articles of Incorporation, Sterry’s occupation is listed as “Labourer”. Fellow founders included a “Cabinet Maker”, a “Rigger,” a “Married Woman,” and a “Salesman.”

25. See “Learned to be Atheist,” *supra* note 8.

26. *Id.*

27. See *id.* An advance approval copy (sent to news dealers) of the first issue of the *Christian Inquirer* can be found intact in the files of J.S. Woodsworth. See *Blasphemy, n.d. 1928*, Ottawa: National Archives of Canada, MG27-III-C-U, Vol. 5, File 4 (1928) [hereafter, “Woodsworth Archive”].

28. See “Arrested Atheist Editor,” *supra* note 10.

29. See Victor Sterry, “Our Object,” *The Christian Inquirer* (No. 1, Undated) in *Woodsworth Archive, supra* note 27.

30. See *id.*

them each a copy of the 'Christian Inquirer.' . . . On Friday, Dec. 24, I went to [Crown Attorney] Mr. Eric Armour and gave him a copy of the 'Christian Inquirer,' and he said he would certainly criticize it and let me know what he thought about it. I never heard from him, but I was told this morning that [Assistant Crown Attorney] Mr. Murphy was acting for him as crown attorney in my own case.³¹

After Sterry handed Crown Attorney Armour a copy of the *Christian Inquirer*, Armour contacted the head of the Morality Office for a consultation.³² Together, they determined that the publication was blasphemous and had three officers of the Morality Office arrest Sterry on January 10, 1927.³³ A local newspaper noted that "[Sterry] made no show of resistance at the time."³⁴ He was released on \$ 1,000 bail (paid by a friend), pending his appearance the following day in Police Court.³⁵ The arrest sparked great interest in newspapers like the *Toronto Daily Star* and the *Globe and Mail*. The newspapers, apparently unaware of the irony, quickly reprinted the entire passages of the *Christian Inquirer* that the Morality Office had labelled blasphemous,³⁶ giving Sterry a far wider audience than he had ever managed through his own efforts.

The following discussion of the Old Testament particularly raised the ire of government officials:

Read your Bible if you have not done it before, and you will find in it hundreds of passages relative to the Divine Being, which any moral and honest man would be ashamed to have appended to his character. . . . The God of the Bible is depicted as one who walked in the Garden of Eden, talked with a woman, cursed a snake, sewed skins together for clothes, preferred the savory smell of roast cutlets to the odors of boiled cabbage, who sat in a burning bush or popped out from behind the rocks, this irate Old Party who thunders imprecations from the mountain or mutters and grouches in the tabernacle, and whom Moses finds so hard to tame, who in his paroxysms of rage has massacred hundreds of thousands of His own chosen people, and would after have

31. See "Learned to be Atheist," *supra* note 8.

32. See Unsigned, "Arrested on Charge of Blasphemous Libel" (partial newspaper clipping, source unknown) in *R. v. Sterry prosecution for blasphemous libel*, Toronto, Archives of Ontario, RG 4-32, Creator Code 78 (1927) [hereafter, "Sterry Archive"].

33. See *id.*

34. See *id.*

35. See *id.*

36. See *id.*; "Arrest Atheist Editor," *supra* note 10.

slaughtered the whole lot if cunning Old Moses hadn't kept reminding him of 'What will the Egyptians say about it?' This touchy Jehovah, who the deluded superstitionists claim to be the Creator of the whole universe, makes one feel utter contempt for the preachers and unfeigned pity for the mental state of those who can retain a serious countenance as they peruse the stories of His peculiar whims, freaks and fancies, and His frenzied megalomaniac boasting, to the high displeasure of Almighty God.³⁷

Sterry, however, denied that these passages were blasphemous, claiming that he was not referring to the Christian God "but to the God of the Jews."³⁸ The suggestion that portrayals of God in the Old and New Testament vary greatly is not particularly remarkable today,³⁹ but the references to "this Irate Old Party," "cunning Old Moses," and "touchy Jehovah" apparently carried a certain tone of disrespect that authority figures of the time could not bring themselves to overlook,⁴⁰ setting the stage for Canada's most famous blasphemy trial.

C. PRE-TRIAL MANEUVERING

Between Sterry's arrest and arraignment, the police managed to dig up the three-year-old accusation that he had disappeared with Joseph Ying's \$200 construction deposit, and Sterry faced a charge of theft in addition to blasphemous libel.⁴¹ The two charges would be tried separately, but criminal cases in Police Court apparently moved quickly at the time. Less than two weeks after being charged with theft, Sterry was tried, convicted, and sentenced to a four-month jail term.⁴² Both Ying and Sterry testified at the trial. Sterry was cross-examined by Crown Attorney E.J. Murphy, who would later be the lead prosecutor in Sterry's blasphemous libel case.⁴³

The blasphemy charge would not be heard for another six weeks, but in the meantime, other aspects of the case provided fodder for the

37. See "Arrest Atheist Editor," *supra* note 10. This passage, as quoted in the newspapers, is actually a combination of two separate columns from the *Christian Inquirer*: one titled "Can You Honestly Believe It" and the other titled "The Jewish God." See *Christian Inquirer*, *supra* note 29.

38. See "Arrested on Charge," *supra* note 32.

39. See, e.g., Jack Miles, *God: A Biography* (NY: Random House, 1996).

40. See, e.g., Unsigned, "References to Deity Called Blasphemous Sterry is Committed," *Toronto Daily Star* (25 January 1927); Jury Charge, *R. v. Sterry*, 5 Can. Bar Rev. 362, 364 (1927).

41. See Unsigned, "Editor of Inquirer Faces Two Charges," *Globe and Mail* (12 January 1927).

42. See Unsigned, "Sterry is Sentenced to Four Months' Term," *Toronto Daily Star* (1 February 1927). The conviction also carried a six-month indeterminate sentence.

43. See *id.*

newspapers. Rumours circulated that the Rationalist Society could face (unspecified) charges as well, and government officials publicly stated that if the Society was convicted, its provincial charter could be revoked.⁴⁴ Clarence Darrow was expected to attend the trial, but he cancelled at the last minute due to illness.⁴⁵ Although Darrow was not in attendance, Sterry's own lawyer, E. Lionel Cross, attracted some press attention, primarily because he was black, or as the newspapers of the time put it, because he was "a cultured colored barrister[.]"⁴⁶

Cross was the subject of a short profile in the *Star*.⁴⁷ He was born in the British West Indies, spent several years as a journalist in the United States, and then moved to Canada where he enlisted and fought in World War I.⁴⁸ After the war, he earned a law degree from Dalhousie University.⁴⁹ He had only been practicing law for a few years when he took up Sterry's case. He wanted to defend Sterry because he believed strongly in the value of free expression.⁵⁰ In fact, Cross and Sterry shared offices in the same building and Cross even advertised in the first issue of the *Christian Inquirer*.⁵¹

In addition to attracting Cross, Sterry's case attracted the attention of "local interested parties" who "were wholly out of sympathy with what they regarded as a form of persecution[.]"⁵² These unnamed parties offered to foot the bill for Sterry's defense and to supply him with "eminent counsel" who would "collaborate" with Cross.⁵³ Cross, however, saw their interest as an attempt to edge him out of the case, and he refused their offer.⁵⁴ The *Telegram* published an article stating that "the

44. See Unsigned, "May Cancel Charter," *Toronto Daily Star* (12 January 1927). See also, "Arrested on Charge," *supra* note 32. ("There is said to be a close and definite relationship between the *Christian Inquirer* and the Rationalist Society of Canada, Inc., consequently the police are debating whether the leaders of the movement may not have laid themselves open to prosecution for distributing allegedly atheistic literature"). The rumours of forthcoming charges proved unfounded.

45. See Unsigned, "Darrow Not Coming," *Toronto Daily Star* (12 March 1927).

46. See "Arrest Atheist Editor," *supra* note 10.

47. See "Learned to be Atheist," *supra* note 8.

48. See *id.*

49. See *id.*

50. See *id.* Cross was only the fourth black man admitted to practice law in Ontario. See Constance Blackhouse, *Gender and Race in the Construction of "Legal Professionalism": Historical Perspectives*, The Chief Justice of Ontario's Advisory Committee on Professionalism, First Colloquia on the Legal Profession, (20 October 2003) at 2-7 n.14. Available at http://www.lsuc.on.ca/media/constance_blackhouse_gender_and_race.pdf. Cross was disbarred in 1937, at a time when discriminatory disciplinary practices appeared common in the Law Society of Upper Canada. See *id.* at 2-12 and 2-13 n.32.

51. See *Christian Inquirer*, *supra* note 29.

52. See Unsigned, "Says Aid Offer Meant Betrayal of Client," *Toronto Daily Star* (15 January 1927).

53. See *id.*

54. See *id.*

deal fell through because Mr. Cross insisted on acting as senior counsel[,]” but Cross denied it in a rather vague statement to the *Star*.⁵⁵

I approached this offer with an open mind and accepted the sincerity actuating it. But ‘eminent counsel’, as the *Telegram* stated, took an attitude, which, had I acceded to, would have literally relegated me to such a position that it would have amounted to nothing less than a betrayal of this cause. I could not out of honor or self-respect comply, so politely but firmly declined.⁵⁶

For the prosecution, the last hurdle before trial was a preliminary hearing in front of a Toronto Magistrate. Cross appeared on Sterry’s behalf at the hearing and indicated that the case would eventually have to be heard at a higher court because “[t]remendous issues are at stake . . . If the Godhead has a sense of humour, He might laugh at the things we say about religion.”⁵⁷ At the hearing, the prosecution called the head of the Morality Office as a witness, and then Crown Attorney E.J. Murphy argued at length about how extracts from the defendant’s writings were clearly blasphemous. Murphy argued that Sterry’s description of God as “preferring the smell of roast cutlets to that of boiled cabbage” was a reference to the sacrifices of Cain and Abel, that Sterry’s phrase “this irate Old Party” “tended to indicate a defect of character on the part of God,” and that Sterry’s reference to “denuded superstitionists” “means ourselves, the Christians, I suppose.”⁵⁸ Sterry’s counter-argument was that his writing was not blasphemous because he was referring to the “God of the Jews” and not the Christian God.⁵⁹ However, Murphy argued that this argument provided no defense because in Murphy’s words, “[t]here aren’t twelve Gods—the God of the Jews is the God of the Christians, no matter how they may put it.”⁶⁰ Murphy concluded by referencing the long-standing English rule that criticism of religious beliefs was allowed unless the language used went beyond the “decencies of controversy.”⁶¹ The Magistrate overseeing the hearing had no difficulty finding that the charges warranted trial:

There are two things that the crown must establish, and I find they have been so established. The first is publication and the

55. *See id.*

56. *Id.*

57. “References to Deity,” *supra* note 40.

58. *Id.*

59. *See id.*

60. *Id.*

61. *Id.* *See* Patrick, “Not Dead,” *supra* note 1 at 200-01.

second is that the statements contained in the publication are blasphemous, and I believe that they are blasphemous, inasmuch as it is a most indecent and offensive attack on Christianity and the scriptures, couched in the most scurrilous and opprobrious language. I find it was the defendant's intention to asperse and vilify Almighty God, in composing and publishing these scandalous, impious, blasphemous, and profane libels of God.⁶²

Blasphemous, indecent, offensive, scurrilous, opprobrious, scandalous, impious, and profane—this was a laundry list of negative adjectives in one short paragraph, and a clear indication that Sterry and Cross would face a tough time convincing a jury to acquit.

Meanwhile, in confidential deliberations, high-ranking Ontario government officials were questioning the wisdom of the prosecution. Two days after Sterry was taken into custody, the Ontario Attorney General, W.H. Price, received a long letter decrying the arrest from a retired minister named J.C. Hodgins.⁶³ As Price considered Hodgins to be a “very high type” who “has done a great deal of speechmaking throughout the Province[.]” the complaint letter was disturbing.⁶⁴ On the same day that Price received the letter, he sent a memo to his Deputy Attorney General asking for “inquiries [to] find out why [charges were] laid in this case more than in many others that have seemed just as bad.”⁶⁵ Although Price “was not prepared to say whether this charge should have been laid or not,” he thought that Hodgins had made several good points.⁶⁶

The Deputy Attorney General wrote to Crown Attorney Eric Armour asking for “a report on the origin of this charge, whether the defendant was warned to discontinue and if not, why this was not done.”⁶⁷ Armour was, of course, one of the officials originally approached by Sterry about the *Christian Inquirer*, and Armour was the one responsible for contacting the Morality Office about the periodical in the first place.⁶⁸ Although the newspapers reported that charges were laid only after

62. “References to Deity,” *supra* note 40.

63. See Letter from J.C. Hodgins to W.H. Price (9 December 1926), in Sterry Archive, *supra* note 32. Although the letter is dated December 9, 1926, it was almost certainly written sometime thereafter, as this date fits neither with the newspaper accounts reporting Sterry's arrest nor with Sterry's own recollection that he circulated the *Christian Inquirer* “two or three days before Christmas.” See *supra* note 31 and accompanying text.

64. Memo from W.H. Price to E. Bayly (12 January 1927) in Sterry Archive, *supra* note 32.

65. *Id.*

66. *Id.*

67. Letter from E. Bayly to Eric Armour (13 January 1927) in Sterry Archive, *supra* note 32.

68. See *supra* notes 31-32 and accompanying text.

Armour was consulted,⁶⁹ the beginning of Armour's response to the Deputy A.G. was probably strictly true even if ingenuous: "I beg to advise you that the charge was laid by the police."⁷⁰ Armour went on:

The defendant was not warned first to discontinue publication. The general rule of this office is when newspapers, etc. publish anything which may be grounds for a criminal charge, to write to the editor drawing attention to the objectionable matter and ask him to discontinue publishing it. This course is usually effective. This publication, however, is not a newspaper or a periodical but a propagandist sheet. . . . I have no doubts about getting a conviction but as a charge of theft has also been laid against the above, if he is sent to Jail on that charge, the libel charge could be dropped. *The local religious organizations here have been raising much ado about the publication in question, and it perhaps would be better to go on to a finish now [that] a prosecution has been commenced.*⁷¹

Thus, Armour simultaneously deflects attention from his own involvement in the matter, and suggests that for political reasons the prosecution should continue.

After receiving Armour's response, the Deputy Attorney General wrote an internal memo to Attorney General Price, opining that "I do not think this charge should ever have been laid and would suggest that after a true bill is found by the Grand Jury a Stay of Proceedings be entered."⁷² Price's response was short: "I am not sure that I would have entered this case at the beginning. Now that it has been entered I rather think it would be inadvisable to have it withdrawn."⁷³

69. See "Arrested on Charge," *supra* note 32 ("The charge was laid by Inspector McKinney, after a consultation with Crown Attorney Eric Armour" and "After he had noted its contents the Inspector took up the matter with Mr. Armour. The result was the issue of a warrant for Sterry's arrest.").

70. Letter from Eric Armour to E. Bayly (13 January 1927), in Sterry Archive, *supra* note 32.

71. *Id.* (italics added).

72. Memo from E. Bayly to W.H. Price (29 January 1927), in Sterry Archive, *supra* note 32.

73. Memo from W.H. Price to E. Bayly (10 February 1927), in Sterry Archive, *supra* note 32.

FIGURE 1:

E.L. Cross & Ernest Sterry (Source: *Toronto Daily Star*, Jan. 25, 1927)



D. THE TRIAL

When the trial began on March 14, 1927, the courtroom quickly filled up with spectators.⁷⁴ Extensive wrangling took place over whether the indictment was drawn up properly,⁷⁵ whether it should be read to the jury,⁷⁶ and what exactly it was that the Crown needed to prove.⁷⁷ Both sides took jury selection seriously, with Cross for the defense challenging four prospective jurors, and Murphy for the prosecution challenging thirteen.⁷⁸ Inspector McKinney of the Morality Office was the first witness called.⁷⁹ Murphy introduced two exhibits into evidence: Sterry's *Christian Inquirer* and a copy of the Bible.⁸⁰ He then proceeded to question McKinney about whether the first comported with the second.⁸¹

The defense did not allow this exchange to sit unchallenged with the jurors. Sterry's attorney cross-examined McKinney and asked "[Do] [y]ou have the power to prosecute anyone who circulates literature that does not meet with your approval?"⁸² McKinney answered in the affirmative, "With the consent of the crown attorney, yes. When I read this it seemed discourteous to me, and I laid the case before the crown . . . I read enough of it to be disgusted."⁸³ When the defense asked McKinney to specify exactly what it was that he objected to, he mentioned generally the wording of the paper, its Biblical references, and, more specifically, the statement about "the Jewish God," stating that "[t]he language there was very repulsive."⁸⁴ McKinney went on, "The gentleman himself said he referred to the God of the Jews but I said I knew but only one God. I thought we all believed in the one God. I was

74. Unsigned, "Sterry Puts Up Fight Disputing Allegation of Blasphemous Libel," *Toronto Daily Star* (14 March 1927).

75. *See id.* The Crown Attorney, E.J. Murphy, said that although the indictment was in common law form as drawn from *Archibald's Criminal Proceedings*, it would suffice for the present case. Cross argued that the indictment needed to be specifically tailored to the Criminal Code provision prohibiting blasphemous libel.

76. *See id.* Cross believed language in the indictment was prejudicial to the jury.

77. *See id.* Murphy apparently believed he needed to first show that Sterry's statements were blasphemous and then show that the language employed exceeded the "decencies of the controversy," while Cross wished to dispense with the first step and move directly to the second issue. The two also argued with whether (and how) the issue of intent was involved. These are recurring issues in blasphemy prosecutions. *See* Patrick, "Not Dead," *supra* note 1, at 217.

78. *See* "Sterry Puts Up Fight," *supra* note 74.

79. *See id.*

80. *See id.*

81. *See id.*

82. *Id.*

83. *Id.*

84. *Id.*

taught that as a child.”⁸⁵ McKinney repeated his belief that there was only one God and that although “[h]e had heard of others, [he] never believed in them.”⁸⁶

The defense next took the tactic of trying to show that Sterry was being prosecuted in part because of his status as a relatively unknown author. “Inspector, if you were aware that books were being circulated in Toronto by well known authors contain[ing] similar statements would you be prepared to lay charges?”⁸⁷ Murphy immediately objected, arguing that “[s]urely the inspector does not have to crawl all over the bookshelves.”⁸⁸ The prosecution’s case-in-chief ended with McKinney asserting that he would do the same thing regardless of the author involved.⁸⁹

Sterry himself was apparently the only witness called by the defense.⁹⁰ He repeated his earlier assertions that the *Christian Inquirer* article at issue was meant as an attack on the “Jewish tribal God” and wasn’t the way he thought about the Christian God—in his opinion, several passages of the Old Testament were themselves “a blasphemous libel on Almighty God.”⁹¹

Apart from closing arguments, the trial only lasted a single day.⁹² It seems ironic that a case that received so much attention in the press would end with a trial in which each side called only one witness. Today, we might imagine that such a case would have been filled with expert testimony from theologians, literature professors, and the like, arguing over whether or not Sterry’s paper was written, as the blasphemous libel statute put it, “in good faith and in decent language[.]”⁹³ It’s not clear whether the short trial is simply a reflection of the legal culture of the period, a conscious litigation strategy by both

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *See id.*

90. *See* Unsigned, “Expect Sterry Case to Go to Jury Today,” *Globe and Mail* (15 March 1927). No other witnesses are mentioned in the various newspaper accounts of the trial and closing arguments began the same afternoon as Sterry’s testimony. Unfortunately, the newspapers give only a very brief summary of Sterry’s testimony compared to the far more extensive account of Inspector McKinney’s.

91. *Id.*

92. *See id.*

93. Canada’s prohibition on blasphemous libel, unchanged in relevant respects from the time of Sterry’s trial, is currently found in Criminal Code Section 296 (R.S.C. 1985, c. C-46).

sides, or perhaps, as Sterry's defence attorney stated, a way to have the issue "threshed out" in a higher court.⁹⁴

Each side was aggressive during closing argument. Cross was definitely provocative, saying that "The Old Testament is nothing but mythologies."⁹⁵ He went on to argue that there was no indecency in Sterry's writing and quoted various and contradictory definitions of "blasphemy" from published sources.⁹⁶ Cross was right, of course, that "blasphemy" was (and is) an unsettled legal concept.⁹⁷ However, such arguments were likely quickly forgotten after Murphy's closing argument for the prosecution cast Sterry as a grave threat to both Christianity and the existence of a peaceful and orderly Canada:

Were the Crown to tolerate and permit such a wicked and profane libel of God to go unnoticed it would deal a death blow to the state as a Christian state, and would blot out all that relates to God and is sacred to a Christian people. . . . [Y]ou are sworn on the gospels to try a charge of wickedly and profanely attempting to bring that gospel and the holy religion it reveals into disbelief and contempt. . . . [Sterry] is no more entitled to outrage our feelings by obtruding his impiety on us and to say he is exercising his right of discussion than to establish a yard for butchering horses close to our house and say he is exercising his right of property, or to run up and down the street naked and say he is exercising his right of locomotion. . . . [H]e must use all his rights so as not to infringe the rights of others.⁹⁸

If Sterry and Cross hoped that a favorable jury instruction would blunt Murphy's rhetoric, they were sorely disappointed. Judge Coatsworth started off reasonably enough by discussing the reasonable doubt standard and quoting the blasphemous libel statute.⁹⁹ He then veered off into a lengthy digression that would give heart palpitations to any supporter of the separation of church and state:

94. See "References to Deity," *supra* note 40. The words in quotation marks appears to be a newspaper paraphrase of Cross's actual statement.

95. See Unsigned, "Find Sterry Guilty of Blasphemy," *Toronto Daily Star* (15 March 1927).

96. *Id.*

97. See Patrick, Not Dead, *supra* note 1.

98. See "Find Sterry Guilty," *supra* note 95. The concept that laws against blasphemy or "religious vilification" are necessary to protect the integrity of the Christian state is rarely invoked by modern supporters of such laws. However, the concept that the right of free speech should be limited by the right not to be outraged is still frequently made by those supporters, either explicitly or implicitly.

99. *R. v. Sterry* (Jury Charge), (1927) 5 Can. Bar. Rev. 362.

Probably nothing is more sacred to us than our religion. We have ever been taught to reverence the name of God. I know I am right in saying this is so strongly impressed upon our lives that we not only speak but think of God with reverence. We regard Him as the supreme Ruler of the Universe. Also as our Maker and Creator through whom alone we live, move and have our being. We regard taking God's name in vain as a sin. He is to us our heavenly Father. It is part of our faith that God so loved the world that He gave His only begotten and well-beloved Son that whosoever believeth on Him should not perish but have eternal life. . . . Our conception of God is so much a part of every life that it is an integral part of our national life. So much is this the case that we are prepared to say that love to God and trust in Him are the very foundation of our nation's greatness. The Bible, the Holy Scriptures, are to us the revelation of God's will concerning us and all His people. It contains the only history of creation, and in this Book God's will and law for His people's guidance is revealed. We look upon the Bible as the basis of every good law in our country. It is to us the dearest and most precious book in all the world. Sooner would we part with every other book than the Bible. . . . We do allow that any person may disbelieve in God and the Bible and may express that belief in language or by writing. . . . When the language or writing is in such disrespectful and indecent terms as to be resented by and be an offence to all our God-fearing people and to outrage their feelings and sense of propriety, then it becomes blasphemy.¹⁰⁰

Judge Coatsworth went on to quote some definitions of blasphemous libel from prior cases and then repeated portions of Sterry's *Christian Inquirer*, noting that Sterry's use of the phrase "deluded superstitionists" "means you and me."¹⁰¹ He finished by instructing the jury that "[i]f . . . you come to the conclusion that [Sterry] has outraged the feelings of the community then it is your duty to bring in a verdict of guilty."¹⁰²

In an editorial, the *Globe and Mail* raved about Coatsworth's jury charge.¹⁰³ In the *Globe's* opinion, the charge "will be heartily endorsed by the overwhelming mass of the people of this Province . . . [i]t is

100. *Id.*

101. *Id.*

102. *Id.* Coatsworth did accede to Cross's request that the jury be recalled and instructed that Sterry had to intend to outrage the community in order to be convicted. *See id.*

103. Editorial, "Judge Coatsworth's Charge," *The Globe and Mail* (16 March 1927).

distinctly encouraging to have . . . such a clear and reverent statement of the cardinal truths of the Christian religion.”¹⁰⁴ The editorial strongly supported the law against blasphemy, arguing that “when the language of anyone, whether spoken or written, passes the bounds of decency and violates the most sacred convictions of the great mass of the people, it is time to call a halt.”¹⁰⁵

The jury retired shortly after noon on the second day of the trial and returned 25 minutes later with a guilty verdict.¹⁰⁶ “Serry appeared to take his conviction quite seriously as he was led away to the cells[,]” reported the *Globe* in its front-page story of the verdict.¹⁰⁷ Judge Coatsworth announced that sentencing would be postponed until the following morning.¹⁰⁸ However, the Morality Office was already planning to make an application to the Governor General to have Serry deported back to England.¹⁰⁹ Special dispensation was necessary because Serry had lived in Canada long enough to make compulsory deportation impossible.¹¹⁰ The Morality Office needn’t have bothered, however; Serry took the unusual step of consenting to his deportation at the end of the 60 day jail sentence imposed by Coatsworth.¹¹¹ As the crime of blasphemous libel was punishable by up to a year in jail,¹¹² Serry may have felt that a voluntary return to England would be preferable to a lengthier stay in a Toronto cell.

Just two months later, the appellate division of the Supreme Court of Ontario unanimously dismissed Serry’s appeal in an unpublished decision.¹¹³ Newspaper reports indicate that Serry’s counsel received a frosty reception at oral argument.¹¹⁴ When Cross began by discussing the history of blasphemy, he was told by the Chief Justice that “[a] history of blasphemy may be of interest to you. It is not of interest to the court. Let us get down to the facts. . . . We want brass tacks.”¹¹⁵ Cross moved

104. *Id.*

105. *Id.*

106. *See R. v. Serry* (Jury Charge), *supra* note 99, at 365.

107. Unsigned, “Verdict of Guilty Returned By Jury in Blasphemy Case,” *The Globe and Mail* (16 March 1927).

108. *See* “Find Serry Guilty,” *supra* note 95.

109. Unsigned, “Deportation of Serry Being Sought by Police,” *The Globe and Mail* (16 March 1927).

110. *See id.*

111. *See* Unsigned, “To Do 60 Days in Jail and To Be Deported, Sentence on Serry,” *The Globe and Mail* (17 March 1927).

112. *See id.*

113. *See R. v. Serry* (Jury Charge), *supra* note 99, at 365.

114. *See* Unsigned, “Serry Conviction Upheld Court Considers Language an Insult to Christianity,” *Toronto Daily Star* (4 May 1927) (noting how Cross “was told in no uncertain terms that the language used by Serry was an offense against the Christian religion”).

115. *Id.*

on to discuss excerpts from Sterry's article in the *Christian Inquirer* in an attempt to show that they were written in good faith, but his argument didn't get very far. "Do you call that decent language?" inquired one judge, while another asked whether such language would be tolerable if said to the King or the Governor-General.¹¹⁶ According to the report, the Chief Justice "said he could not understand how any jury could have found otherwise than did the sessions jury before Judge Coatsworth."¹¹⁷ Months before, when Sterry was arrested, Cross had said the case would have to be "threshed out" in a higher court;¹¹⁸ well it was, but not with the outcome he had been hoping for.

E. THE PUBLIC REACTION TO STERRY'S TRIAL

Although the jury and the trial judge unanimously held that blasphemy in general, and Victor Sterry in particular, were threats to decency and morality in Canada, the press and religious leaders were split on the issue. As discussed earlier, the *Globe and Mail* strongly favored suppression of blasphemy.¹¹⁹ However, in contrast, the *Toronto Daily Star*, although avoiding editorial comment on the case, published several articles that were favorable to Sterry in tone and content, providing Sterry and his supporters a public stage to criticize the prosecution.

The first article, published shortly after he was arrested, allowed Sterry to talk at length, and without interruption, about his childhood, his relationship with his father, how he came to Canada, his employment history, and more.¹²⁰ It included interviews and brief biographies of Sterry's lawyer and other members of the Rationalist Society.¹²¹ Every person quoted in the article was a supporter of the concept of freedom of expression and its extension to Sterry's writings.¹²² No similar attention was given to his detractors in the Crown Attorney's office or that of the Attorney General—and when the *Telegram* published an article suggesting that Sterry's lawyer was being obstinate in refusing to step down in the face of an offer from "eminent counsel" to represent Sterry, it was the *Star* that E.L. Cross went to in order to defend himself.¹²³

116. *See id.*

117. *Id.*

118. *See supra* note 57.

119. *See supra* notes 103-105 and accompanying text. Another example of the *Globe's* support of blasphemy legislation will be seen in the next section on J.S. Woodsworth's attempt to repeal the law.

120. *See* "Learned to Be Atheist," *supra* note 8.

121. *See id.*

122. *See id.*

123. *See* "Says Aid Offer Meant Betrayal," *supra* note 52.

Soon after, the *Star* devoted an article to the views of a local rabbi who was critical of anti-blasphemy legislation.¹²⁴ The rabbi, F.M. Isserman, told the members of his synagogue that “[r]eligion does not need the courts to defend it[,]” and that “words [do not] blaspheme the Deity, but rather deeds [like] Injustice . . . Prejudice . . . War . . . Poverty . . . [and] Persecution.”¹²⁵ He went on to link suppression of blasphemous speech with the burning of heretics throughout history and argued that challenges to religious orthodoxy have always initially been labelled “blasphemy.”¹²⁶ He concluded that “I would not go one step out of my way to punish a blasphemer, though I would go far to win him over to a religious point of view.”¹²⁷

After Sterry’s trial, the *Star* published an article with the headline, “Say Sterry’s Conviction Savors of Medieval Age.”¹²⁸ It reported the views of four Saskatchewan religious leaders on the Sterry trial. The principal of Emmanuel College called the conviction “a backward step into the dark ages, when the rack and the wheel were used to save men’s souls.”¹²⁹ The reverend of Grace United Church stated that he was opposed to government interference in religious matters unless the blasphemous material was “calculated to harm the country’s youth.”¹³⁰ A Toronto Baptist minister also attacked the blasphemy law.¹³¹ The prosecution did have one fan; a Catholic priest compared blasphemous speech with “indecent literature and immoral plays” and strongly supported the authorities’ actions.¹³²

A week later, the *Star* published an article titled “Handling of Sterry Case is Criticized in U.S. Press[,] Too Much Dignity Given It.”¹³³ According to the article, “American editorial opinion on the Canadian blasphemy trial . . . upholds the thought that unwarranted dignity was

124. See Unsigned, “Win Blasphemers Over to Religion,” *Toronto Daily Star* (29 January 1927). The *Star* article includes extracts taken from a much longer piece published by Rabbi Isserman in two issues of the *Canadian Jewish Review*. The entirety of Isserman’s writing can be found in the archived files of J.S. Woodsworth. See Ferdinand M. Isserman, “A Religious Teacher’s View of Blasphemy,” *Canadian Jewish Review* (4 Feb. 1927 and 11 Feb. 1927) in Woodsworth Archive, *supra* note 27.

125. *Id.*

126. *Id.*

127. *Id.*

128. Unsigned, “Say Sterry’s Conviction Savors of Medieval Age,” *Toronto Daily Star* (25 March 1927).

129. *Id.* (the quoted words appear to be the *Star*’s paraphrase of what was actually said).

130. *Id.* (the quoted words appear to be the *Star*’s paraphrase of what was actually said).

131. See *id.*

132. *Id.* (the quoted words appear to be the *Star*’s paraphrase of what was actually said).

133. Unsigned, “Handling of Sterry Case is Criticized in U.S. Press Too Much Dignity Given It,” *Toronto Daily Star* (2 April 1927).

given to the offense of the newspaper writer.”¹³⁴ Excerpts from editorials in eight different American papers were included to support the point.¹³⁵ The *Indianapolis News*, for example, wrote that “[t]he Canadian method is likely to make a martyr out of extremely poor material” and that “[i]n this country probably we should feel that silent contempt would be wiser treatment for such an offense than court action.”¹³⁶ The *Rock Island Argus* agreed that prosecution makes blasphemers into martyrs, and added that “[i]t has always been our idea that a religion worthy of belief can take care of itself, and that the oftener it is brought out into the limelight, and dissected and investigated, the better.”¹³⁷

However, some American papers were supportive of the prosecution. The April 9, 1927 issue of the American periodical *Literary Digest* ran an article titled “Libeling God in Canada” that also canvassed the views of U.S. newspapers on the *Sterry* case.¹³⁸ “[T]he case attracts no little attention this side of the border, where the *Scopes* case is still fresh in memory” the article noted.¹³⁹ The *Pittsburgh Gazette Times* argued “well that any example be made of one who makes himself grossly offensive[.]”¹⁴⁰ The *Hartford Times* likened blasphemous speech to breaching the peace and concluded that “when directed against the dearest sentiments of one’s neighbors and friends, [blasphemy] becomes unkind and inexcusably offensive.”¹⁴¹ The *Omaha Bee* expressed its sentiment that the grass was always greener on the other side of the border by writing, “The incident stresses the Canadian reverence for law. One violates law in Canada with the certainty of punishment. Some day that condition may prevail on our side of the border.”¹⁴²

F. CONCLUSION

There does seem to be some truth to the view that using the criminal law to suppress blasphemous speech is likely to draw far more attention to it.¹⁴³ If left alone *Sterry*’s *Christian Inquirer* would likely have circulated

134. *Id.*

135. *See id.*

136. *Id.*

137. *Id.*

138. Unsigned, “Libeling God in Canada,” *Literary Digest* (9 April 1927), Vol. XCIII No. 2 at 30.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. English legal history provides another example, where a 1977 private prosecution for blasphemous libel was successful against the editor and publisher of a gay newspaper for printing a poem titled “The Love that Dares to Speak its Name” which portrayed Jesus as a homosexual. After the prosecution, the poem was reprinted by other British newspapers and offered for free in the mail

among a small number of people and faded into obscurity. Instead, prosecution lent Sterry's writings on the Old Testament widespread public attention in the contemporary press and the curious type of immortality that comes through inclusion in case law reporters¹⁴⁴ (not to mention law review articles like this one).

Why did the *Sterry* case gain so much attention from the press? Part of the answer may lie in the fact that contemporary newspapers mistakenly believed that it was "the second case of its kind in the history of the British law courts[.]"¹⁴⁵ the "[f]irst trial of its kind in Canada[.]"¹⁴⁶ or even "the first time in the history of Canadian law that a man has been convicted of blasphemy[.]"¹⁴⁷ Of course, prior to the *Sterry* case, both England and Canada had a long (if inconsistent) practice of prosecuting blasphemy as a criminal offense.¹⁴⁸ However, the newspapers' belief that they were reporting on something unprecedented may have added to their interest. Also, as mentioned earlier, some of the newspapermen may have even hoped they were going to see a Canadian version of the Tennessee *Scopes* trial.

Another explanation for the heightened interest may have been Sterry himself; he was articulate, intelligent, and willing to defend his views. Instead of quietly pleading guilty and letting the case fade away, he hired a lawyer (an African-Canadian one, a rarity at the time), gave long interviews to the press, testified at his own trial, and appealed the verdict. His comments on the God of the Old Testament in the *Christian Inquirer* were offensive to many, but not so offensive that they couldn't be excerpted or summarized in a mainstream newspaper. Had he not made the surprising decision to voluntarily accept deportation back to England (a country he hadn't lived in for decades), we could imagine Sterry and perhaps other members of the Rationalist Society coming into conflict with the Morality Office again.

Publicly at least, the case provided the Canadian government the opportunity to take a very hard line on blasphemy. The prosecutor labelled Sterry's writing a "wicked and profane libel of God" that would

by "The Free Speech Movement." See *Whitehouse v. Lemon*, (1978) 67 Cr. App. R. 70 (C.A.); Leonard W. Levy, *Blasphemy: Verbal Offense Against the Sacred, From Moses to Salman Rushdie* (New York: Knopf, 1933) at 549.

144. See *R.v. Sterry* (1926), 48 C.C.C. 1 (Ont. C.A.) (annotation only).

145. "Arrest Atheist Editor," *supra* note 10.

146. "Sterry Puts Up Fight," *supra* note 74.

147. "Libeling God in Canada," *supra* note 138.

148. For England, a thorough history is provided in Levy, *supra* note 143. For Canada, see Patrick, "Blasphemy in Pre-Criminal Code Canada," *supra* note 1 and Patrick, "Not Dead, Just Sleeping," *supra* note 1.

be “a death blow to the Christian state” if it went unpunished.¹⁴⁹ The trial judge’s jury instruction was full of similar language about the necessity of punishing blasphemy.¹⁵⁰ Also, the Appellate Division showed *Sterry*’s attorney great impatience.¹⁵¹ Therefore, the mild surprise and perhaps reluctance to continue the prosecution revealed by internal Attorney General documents¹⁵² may provide a partial explanation for why the case did not begin a crackdown on other blasphemers in Ontario.¹⁵³

Contemporary newspaper editorials show a clear split in how laws against blasphemy were viewed: they were either an important safeguard of order and morality, or a wrong-headed anachronism likely to do more harm than good by drawing attention to odious views. The degree to which newspapers reflect general public opinion is also unclear. Mainstream religious groups, for example, appear to have taken a mostly hands-off approach to the *Sterry* controversy, but this judgment is made only by their lack of presence in the newspapers—other archival sources may reveal stronger lobbying efforts.

The next section of this article looks at one other significant product of the *Sterry* case, J.S. Woodsworth’s bill in Parliament to repeal Canada’s law against blasphemy.

III. A VOICE IN THE WILDERNESS: J.S. WOODSWORTH’S REPEAL BILL

A. WOODSWORTH & RELIGION

Given what we know about the man’s views on religion and civil liberties, it is not surprising that J.S. Woodsworth would be a strong proponent of removing blasphemy from the Criminal Code. At the time of the *Sterry* trial in 1927, Woodsworth was a well-known figure on the Left and a Member of Parliament with several years of legislative experience under his belt.¹⁵⁴ Woodsworth had a history of taking up unpopular causes—labour rights, pacifism, and civil liberties among them.¹⁵⁵ He had personal experience with government suppression of unpopular speech: in June of 1919, Woodsworth was arrested and

149. See “Find *Sterry* Guilty,” *supra* note 95.

150. See *R. v. Sterry* (Jury Charge), *supra* note 99.

151. See “*Sterry* Conviction Upheld,” *supra* note 114.

152. See *infra* Section II(C).

153. See *infra* note 3 (*Sterry* the only Ontario case listed).

154. See generally Kenneth McNaught, *A Prophet in Politics: A Biography of J.S. Woodsworth* (Toronto: Univ. Toronto Press, 1959). Woodsworth entered Parliament in 1922. See *id.* at 159.

155. See generally McNaught, *supra* note 154 and Allen Mills, *Fool for Christ: The Political Thought of J.S. Woodsworth* (Toronto: Univ. Toronto Press, 1991).

charged with seditious libel for newspaper editorials supporting the Winnipeg General Strike.¹⁵⁶ Government prosecutors were later embarrassed to realize that two of Woodsworth's passages, labelled as "seditious" in the indictment, were in fact Bible verses, and the charges against him were dropped.¹⁵⁷

Woodsworth was a notable member of the broad Social Gospel movement.¹⁵⁸ In particular, he was a participant in the short-lived Labour Church which he joined, in the words of one of his biographers, as "part of his wish to 'secularize' religion—to make it part and parcel of everyday living."¹⁵⁹ According to Woodsworth:

Religion in this broad sense is simply the utmost reach of man—his highest thinking about the deepest things in life; his response to the wireless messages that come to him out of the infinite; his planting of the flag of justice and brotherhood on a new and higher level of human attainment and purpose.¹⁶⁰

After the Labour Church disintegrated, Woodsworth's interest in religion lessened as well, and he focused more on politics.¹⁶¹ He was heavily influenced by John Stuart Mill and in his later years fought hard against a variety of anti-sedition laws, Quebec's *Padlock Act*, and other infringements on civil liberties.¹⁶²

B. INTRODUCING THE BILL

Two weeks after Sterry's conviction, Woodsworth introduced a bill to repeal the Criminal Code's prohibition on blasphemous libel.¹⁶³ The press had different reactions to the introduction of the bill. The *Star* noted that during his time as an MP, Woodsworth "has championed the

156. See McNaught, *supra* note 154, at 135-136. The Winnipeg General Strike was a landmark event in Canadian labor history, and the mass protests, violence, and political uproar resulting from it led to significant governmental reforms. See generally, Donald C. Masters, *The Winnipeg General Strike* (Toronto: University of Toronto Press, 1973).

157. See McNaught, *supra* note 154, at 99, 135-136.

158. See Elizabeth Mooney, "Social Gospel" in *The Encyclopedia of Saskatchewan* (online: http://esask.uregina.ca/entry/social_gospel.html) ("J.S. Woodsworth used the tenets of the Social Gospel to foster strong social consciousness through political activism in Saskatchewan").

159. McNaught, *supra* note 154, at 137.

160. Quoted in McNaught, *supra* note 154, at 138.

161. See McNaught, *supra* note 154, at 139 ("this statement of his religious views was to need little change until the end of his life") and Mills, *supra* note 154, at 56-61 (discussing Woodsworth's declining religious beliefs).

162. See Mills, *supra* note 155, at 134-135.

163. See Unsigned, "Western Laborite Moves to Abolish Blasphemous Libel," *Toronto Daily Star* (1 April 1927); Unsigned, "Blasphemous Libel Law May Now Be Abolished," *Globe and Mail* (5 April 1927).

report of the uttermost freedom of speech” and it called the repeal bill “another step in this direction[.]”¹⁶⁴ The *Globe*, however, was not so charitable. It wrote:

Already a popular Toronto preacher has expressed his conviction that the retention of the blasphemy law is an interference with the principle of religious liberty. But is it? Is it considered a violation of moral liberty when a person is arrested, as he can be, for using profane or obscene language in a public place? There are many people who yield to none in their love of liberty and the right of every man to his own convictions, religious or otherwise, who nevertheless believe that no one has any more right to outrage the most sacred religious and spiritual convictions of his fellow-men in blasphemous language than he has to outrage their moral convictions in language that is obscene and vile. . . . The *Globe* cannot see that religious freedom is imperilled in any way by the retention of the blasphemy law. A man may still believe or disbelieve what he pleases. To curb his license does not interfere with his liberty.¹⁶⁵

If the *Star* comes across as the paper of progressives and reformers, the *Globe* certainly seems like a defender of the establishment: of “decent and respectable” men who shouldn’t have to deal with the outrageous ideas of upstarts and outcasts from conventional society. Implicit in this and other editorials is full confidence that the authorities can distinguish between liberty and license, between deeply-held beliefs and attempts to outrage, between religious freedom and blasphemy. Difficulties with line-drawing, suppressing legitimate religious belief, or giving the government too much power never seem to be concerns which trouble the *Globe*.

In any event, Woodsworth’s bill languished for several months before it was taken up again at the beginning of 1928.¹⁶⁶

C. DEBATE AND DEFEAT

Woodsworth’s bill was simple and straightforward:

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

164. Unsigned, “Laborite Would End Trial for Blasphemy,” *Toronto Daily Star* (5 April 1927).

165. Unsigned, “The Blasphemy Law,” *Globe and Mail* (6 April 1927).

166. See *House of Common Debates*, Volume 1, 1928 (10 February 1928) at 362-367. [hereafter *Debates*]

1. Section one hundred and ninety-eight of the *Criminal Code*, chapter thirty-six of the Revised Statutes of Canada, 1927, is hereby repealed.¹⁶⁷

Although simplicity is often a virtue in legislative drafting, in this particular case it proved to be a serious mistake. Woodsworth's bill didn't tinker with the language or replace the blasphemous libel section with a new one; it removed the provision from the *Criminal Code* entirely.¹⁶⁸ Crucial to the issue, however, is that at this time in Canadian law, common law crimes still existed¹⁶⁹—repealing the *Criminal Code* provision on blasphemous libel simply meant that the common law meaning of the offense would come back into effect. An internal memorandum for the Minister of Justice explained the ironic implications of Woodsworth's bill:

Speaking offhand, I am not sure just what the effect of the Bill would be. If passed, it will operate to repeal section 198 of the *Criminal Code*. . . . As you know, the *Criminal Code* is in large part a codification of the common law. In the case of blasphemous libels, however, the common law was originally most rigorous, and it is not unlikely that if a person were prosecuted under the provisions of section 198 he would find his defence easier than if he were prosecuted under the common law.¹⁷⁰

What Woodsworth *should* have proposed, according to the Memo, was that “notwithstanding the law of England, as it is in force in certain of the provinces, no one in Canada shall be guilty of an offence who publishes a blasphemous libel.”¹⁷¹ However, the Minister of Justice, Ernest Lapointe, was no ally of Woodsworth—at least on this issue. Instead of helping to fix the bill, Lapointe kept the flaw in reserve for use during the House of Commons debate.

On February 10, 1928, Woodsworth was given an opportunity before the House to make his case for why blasphemous libel should no longer be a

167. Bill 5, *An Act to amend the Criminal Code (Blasphemous libels)*, 2d Sess., 16th Parl., 1928.

168. *See id.*

169. Now, of course, common law crimes (other than contempt) have been abolished. *See Criminal Code*, R.S.C. 1985, c. C-46, s. 9(a).

170. Memo from W.S.E. (full name unknown) to Minister of Justice (10 February 1928) in *Mr. Woodsworth Bill to repeal section 198C*, Ottawa, National Archives of Canada, RG13, Series A-2, Vol. 2193, File 1928-330.

171. *Id.*

crime in Canada.¹⁷² He began by noting that most people in Canada did not even realize that blasphemous libel was still an offense until the *Sterry* case was publicized.¹⁷³ After quoting passages from Judge Coatsworth's jury instructions in that case, including the statement that "[w]hen a man begins to express his opinion in a way that hurts others, then he should be curbed whether his opinions are right or wrong,"¹⁷⁴ Woodsworth suggested "that goes too far if we are to have any liberty in the expression of opinion in the country."¹⁷⁵ He then proceeded to talk at length about the number of letters of support to repeal the law he had received in the past year, and he quoted at length several passages written by Rabbi Isserman against the law.¹⁷⁶ Woodsworth summed up his opening statement by noting that "[o]ne of the difficulties with this legislation as it now stands is that there is no definition of blasphemy. The beliefs of one religious group are undoubtedly blasphemies in the eyes of other groups."¹⁷⁷ To prove his point, Woodsworth quoted one of the thirty-nine articles of the Church of England, which labelled the Catholic practice of holding Mass as "blasphemous fables, and dangerous deceits."¹⁷⁸ When challenged, he went on to cite Socrates, Jesus, Mormons, and others who were all labelled blasphemers in their day.¹⁷⁹

After making a general religious freedom argument, Woodsworth discussed the language of the blasphemy statute.¹⁸⁰ In his view, the "safeguard clause" of the blasphemous libel law¹⁸¹ was insufficient to save the statute since it didn't even operate as a barrier to *Sterry's* conviction.¹⁸² And in Woodsworth's view, *Sterry's* writing isn't any more "blasphemous" than that of mainstream religious bodies:

The article in question [*Sterry's*], which I have read carefully, is no more extreme than many articles which are written, in perhaps less popular language, in the theological journals of a great many bodies that are carrying on religious work here in

172. See *Debates*, *supra* note 166.

173. See *id.* (J.S. Woodsworth).

174. Quoted in *id.* at 362.

175. *Id.* at 362 (J.S. Woodsworth).

176. *Id.* at 362-363 (J.S. Woodsworth). See also, *supra* notes 124-127 and accompanying text (Isserman).

177. *Id.* at 363 (J.S. Woodsworth).

178. *Id.*

179. See *id.*

180. At the time, the statute was codified in Section 198 of the Criminal Code.

181. "Provided that no one is guilty of a blasphemous libel for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject." Quoted *id.* at 364.

182. See *id.*

Canada. This man Sterry may have been infelicitous in his way of expressing himself, but I repeat that it is dangerous to leave on the statute books a law which may be invoked against an individual for expressing himself along religious lines.¹⁸³

Lapointe, the Minister of Justice, seized the opportunity to deploy the argument he had earlier read about in a memo: “The repeal of the section to which my hon. friend has reference[d] would not have the effect of repealing the common law, and under the common law those gentlemen whom my hon. friend desires to protect would be prosecuted more severely than under the code.”¹⁸⁴ Lapointe continued on, stating that Canada is a Christian country and that Parliament should not “be so anxious to protect people who really want to offend what is the religious feeling of the people of Canada.”¹⁸⁵ He concluded that even if the verdict in *Sterry* was “strict,” that doesn’t mean the governing law was necessarily in need of repeal.¹⁸⁶

Lapointe’s support of the present blasphemy law was immediately seconded by a Member of Parliament named G.R. Geary, who adopted a position very much like that of the *Globe and Mail*.¹⁸⁷ Geary stated that “there is no limit to free speech and free discussion of religious belief from any aspect or point of view whatever in this Dominion, *so long as it is properly done*.”¹⁸⁸ He suggested that even Woodsworth himself wouldn’t be happy to read Sterry’s article aloud or to associate himself with the statements expressed within.¹⁸⁹

Woodsworth took the bait, and one of his supporters (an ex-clergyman) immediately moved to have Sterry’s blasphemous article read into the record,¹⁹⁰ a move which “shocked the Commons” according to an account of the debate.¹⁹¹ A lengthy procedural debate followed over whether the Speaker should allow the article to be read.¹⁹² Although the Speaker eventually ruled that Sterry’s article could be read, Woodsworth’s supporter had by that time changed his mind “out of

183. *Id.*

184. *Id.* at 364 (Lapointe).

185. *Id.*

186. *See id.*

187. *See supra* note 165 and accompanying text.

188. *Id.* at 364 (Geary) (emphasis added).

189. *See id.*

190. *See id.* at 364-365 (Woodsworth and Bird).

191. Unsigned, “Commons Defeats Proposed Revision in Blasphemy Law,” *Globe and Mail* (11 February 1928).

192. *See House of Commons Debate, supra* note 166, at 365-366.

deference to what seems to be the view of a large section of the house"¹⁹³ and decided not to read it.

After some desultory back-and-forth about Sterry and the history of blasphemy in England, Woodsworth's repeal bill was voted down "[w]ith a roar of almost angry disapproval[.]"¹⁹⁴ Following the defeat, the *Globe* once more editorialized about the value of having a law against blasphemy, in language similar to its previous efforts.¹⁹⁵

D. CONCLUSION

Woodsworth's bill was the last serious attempt to repeal Canada's blasphemy law. With the benefit of hindsight, it seems clear he made two major mistakes: (1) failing to recognize the legal implications of repealing a statutory crime when a corresponding common law crime would then take effect; and (2) focusing the debate on the content of articles written by a convicted and deported freethinker like Ernest Sterry. On the other hand, it's difficult to imagine what Woodsworth could have done to win a majority of Parliament to his side. The outcry from "Christian Canada" would surely drown out the applause of rationalists and religious minorities. Why would a Member of Parliament of that day and age (or ours) want to risk being labelled anti-Christian with so little tangible gain? In reality, Woodsworth's attempt may have been doomed from the beginning. To his credit, Woodsworth continued to defend other aspects of civil liberties until his death in 1942.¹⁹⁶

IV. FOR THE BETTERMENT OF ONE'S FELLOWS: PUBLIC CAMPAIGNS AGAINST BLASPHEMY

The urge to stamp out blasphemy in Canada wasn't just expressed through laws and prosecutions. Ordinary citizens made their concerns known through public campaigns designed to deter blasphemy through moral suasion, religious command, and the threat of criminal action. Two examples of such movements can be found in government archives: the 1926 *Ligue contre le blasphème* and the 1942 Vanier campaign.

193. *Id.* at 366 (Bird).

194. "Commons Defeats Proposed Revision," *supra* note 191.

195. See Unsigned, "The Blasphemy Law," *Globe and Mail* (13 February 1928) ("Woodsworth's plea for the repeal of the law . . . carried no weight with the Commons, nor will it the public, who can differentiate between freedom of thought and speech and license to blaspheme and defame the holiest and most sacred convictions of men and women.").

196. See McNaught, *supra* note 154, at v.

Although the information available on these campaigns is slim,¹⁹⁷ they serve as a reminder that blasphemy was a concern to more than just lawyers and legislators.

A. LA LIGUE CONTRE LE BLASPHEME

In February of 1926, just a year before the arrest of Victor Sterry, the Federal Minister of Justice received a request to lend his approval to an anti-blasphemy campaign.¹⁹⁸ The request was sent by *La ligue contre le blasphème*, a Catholic group organized in the parish of Assomption de Notre Dame in the small Québec village of Baie Des Sables.¹⁹⁹ In the letter, *La ligue* expressed its hope that the Minister “approve this movement, organized with the purpose of helping to improve observance of the law[.]”²⁰⁰ Specifically, the group wanted the Minister’s “authorization to print and post notices”²⁰¹ like the following:

PUBLIC NOTICE

WARNING TO BLASPHEMERS!

They are liable to a fine of fifty dollars (\$ 50.00) or imprisonment, with or without hard labour, of six months, or both punishments at the same time, according to articles 238-f and 239 of the Criminal Code as follows:

[text of Criminal Code ss. 238-f and 239 omitted]

PROSECUTE BLASPHEMERS, THE LAW PROTECTS YOU

(CRIMINAL CODE, Art. 501)

Published with the authorization of the Honourable Minister of Justice²⁰²

Oddly enough, the provisions of the Criminal Code that the notice quotes (ss. 238-f and 239) had nothing to do with blasphemy specifically. Instead, they forbade “vagabonds,” “libertines,” and others from

197. This Article has examined Federal and Provincial archives; further research using individual church archives may shed additional light on how anti-blasphemy campaigns operated.

198. See Letter from Gérard LaBrie to Minister of Justice (9 February 1926) in *La ligue contre le blasphème*, Ottawa, National Archives of Canada (RG 12, Series A-2, Vol. 303).

199. See *id.*

200. *Id.* (all translations mine).

201. *Id.*

202. *Id.*

disturbing the peace in streets and other public places.²⁰³ One can only assume that *La ligue* was unaware of the Criminal Code's section on blasphemous libel, especially since it provided a stiffer penalty (up to a year in prison) than breaching the peace (6 months and/or \$ 50).²⁰⁴ In any event, the group received a bit of a brush-off from one of the Minister's assistants:

I can tell you that if you wish to publish the notice entitled "Warning to Blasphemers!", you don't need the authorization of the Minister of Justice and I don't see that it will be advantageous to add to your circular that it is published with his authorization.²⁰⁵

Unfortunately, archives correspondence stops there with no further clue as to whether *La ligue contre le blasphème* persisted in its plan or was disheartened by the Minister's lack of interest.²⁰⁶

B. THE VANIER CAMPAIGN

A second and unrelated campaign against blasphemy was launched in World War II with the purpose of dissuading soldiers from blaspheming. The spark for the campaign was an important speech given in March of 1942 by Georges Vanier, the then Brigadier-General and Commander of the Military District of Quebec (and future Governor General) to his assembled soldiers.²⁰⁷ In the speech, Vanier begins by giving himself credibility on the subject of blasphemy:

I haven't spent four years at war without having known the sadness and the shame of hearing some. I speak therefore, unfortunately, knowing the cause. I have heard the names of God, of Jesus Christ, of the Holy Virgin, pronounced in such a fashion that I shook with horror.²⁰⁸

The speech continues with Vanier asking rhetorically, "How to explain the sacrilege if it isn't by the intervention of Satan, who uses our faith,

203. See *id.*

204. See *id.*

205. See Letter from J. Ad. Rénard to Gérard LaBrie (15 February 1926) in *La ligue contre le blasphème*, *supra* note 198.

206. See *La ligue contre le blasphème*, *supra* note 198.

207. See generally, Robert Speaight, *Vanier: Soldier, Diplomat, and Governor General* (Toronto: Collins, 1970).

208. See *Don't Blasphème* (Pamphlet) (Current Events in Tracts No. 20) in *Campagne contre le blasphème*, Ottawa, National Archives of Canada (MG 32-A2, Vol. 14, File 16) (Vanier fonds) (all translations mine).

our understanding of worship, to arm us against God?”²⁰⁹ An anecdote follows, in which Vanier describes “a certain night of battle” where, advancing towards enemy positions, shells burst overhead in the darkness and one of his men begins blaspheming.²¹⁰ “These blasphemies, at the moment where we were so close to death, filled me with fear because blasphemy brings divine curses. I managed to reach the blasphemer and ask him[,] ‘What is it that Christ did to you, my friend, that you offend him so?’ He trembled like a child and burst into tears.”²¹¹ The anecdote serves to dramatize the perceived danger of blasphemy by setting it in the context of a battlefield—in such a dangerous situation, why would anyone want to risk God’s wrath?

Vanier goes on to argue that blasphemy is a symptom of carelessness and a failure to fully respect Christ’s love.²¹² He suggests two remedies. First, if tempted to blaspheme, a soldier should “try to substitute the name of Christ with the name of your father, and the name of the Holy Virgin with the name of your mother.”²¹³ It will be impossible to succeed in blaspheming, Vanier says, because “everything in you rises up to stop you from committing such a crime against nature” and the same thing should happen when sacred things are disparaged.²¹⁴ Second, he argues that “[p]rayer is the means most efficacious to curb blasphemy. Those who pray well can’t blaspheme, because prayer and blasphemy are two irreconcilable enemies.”²¹⁵ He concludes by encouraging his men to not only refrain from blasphemy, but to get their friends to stop as well, so that, “we [can] draw the blessing of heaven on our flags.”²¹⁶

209. *Id.*

210. *See id.*

211. *Id.*

212. *See id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

FIGURE 2:
First page of "Ne blasphèmez pas!", *L'actualité en tracts*
No. 20 (1942)

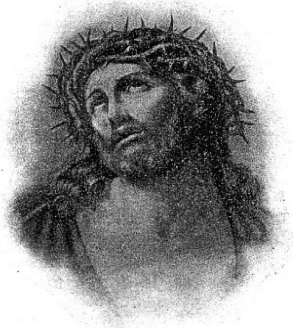
L'ACTUALITÉ EN TRACTS

No 20

Ne blasphèmez pas !

Allocution prononcée par le brigadier Georges-P. Vanier au camp de Valcartier, après la messe dite par Mgr C. L. Nelligan, aumônier catholique en chef, à l'occasion de l'inauguration de la campagne contre le blasphème, le dimanche 8 mars 1942.

Permettez-moi de vous dire que je sais trop ce que c'est que le blasphème. Je n'ai pas pu passer quatre années de guerre sans avoir connu la tristesse et la honte d'en entendre quelques-uns. Je parle donc, malheureusement, en connaissance de cause. J'ai entendu les noms de Dieu, de Jésus-Christ, de la Sainte Vierge, prononcés de telle façon que j'ai frémi d'horreur. J'ai entendu profaner les noms de ces objets sacrés qui servent au saint sacrifice de la messe, ces objets que vous voyez ici sur l'autel, le calice, le ciboire, le tabernacle même... Comment expliquer ce sacrilège si ce n'est par l'intervention de Satan, qui se sert de notre foi, de notre connaissance du culte pour nous armer contre Dieu ?



Je me rappellerai toujours un certain soir de bataille. Péni-blement, nous montions à la file indienne vers la première ligne — il faisait noir — les obus éclataient. Soudain, j'entendis dans la nuit une voix qui blasphémait. Ces blasphèmes, au moment où nous étions si près de la mort, me firent peur parce que le blasphème attire la malédiction divine. Je réussis à atteindre le blasphémateur et lui demandai : « Qu'est-ce que le Christ vous a fait, mon ami, pour que vous l'outragiez ainsi ? » Il trembla comme un enfant et faillit fondre en larmes. Il avait

To a modern listener, the language of Vanier's speech may seem overwrought and even melodramatic.²¹⁷ Suppressing blasphemy may even seem to be an odd priority for military leadership in the middle of wartime. But as Vanier's biographer notes, "only when he launched his campaign against blasphemy did Vanier have the undivided support of nationalist Quebec."²¹⁸ Letters of support poured in from every quarter: fellow soldiers,²¹⁹ Members of Parliament,²²⁰ civic organizations,²²¹ and more. The speech was reprinted as a tract by a Catholic publishing house,²²² while other organizations sought Vanier's endorsement (and the military's money) to print wall plaques with sayings like:

BLASPHEMY

AN OFFENSE AGAINST FAITH, CIVILITY, PATRIOTISM.

COMBAT IT!²²³

Vanier gave his permission for the speech to be reprinted and for the purchase of wall plaques,²²⁴ but he presumably soon became enmeshed in more pressing business, as his correspondence from the time period shows no further involvement in the fight against blasphemy.²²⁵

217. One gets the sense from reading Speaight's biography of Vanier that the future Governor General was prone to such language.

218. Speaight, *supra* note 207, at 240.

219. *See, e.g.*, Letter from Gerard Coutusics to Georges Vanier (17 March 1942) in *Campagne contre le blasphème*, *supra* note 208 ("Your speech . . . [is] a precious addition in the holy mission against blasphemy").

220. *See, e.g.*, Letter from Lucien Dubous to Georges Vanier (17 March 1942) in *Campagne contre le blasphème*, *supra* note 208. ("Seeing the magnificent words that you have said brought tears to my eyes, and we have an irresistible need to weep with joy at the thought that Québec, like France, also has its Castelnau and its Foch.").

221. *See, e.g.*, Letter from Catholic Professional Association of Merchants of Canada to Georges Vanier (25 March 1942) in *Campagne contre le blasphème*, *supra* note 208 ("The Québec section of the APCV adopted at its last meeting a resolution of congratulations for the energetic words that you have pronounced against blasphemy").

222. *See supra* note 208. Speaight calls the speech "meat and drink to a *bienpensant* publishing house in Montreal" which also published "Pius XII on feminine fashions and other less eminent authors on Social Credit, the Corporate State, and the Conversion of Russia." *See* Speaight, *supra* note 207, at 240-241.

223. *See* Letter from Catholic Action Committee of the Parish of the Holy Sacrament to Georges Vanier (12 March 1942) in *Campagne contre le blasphème*, *supra* note 208. Another organization also wanted Vanier's endorsement for anti-blasphemy plaques. *See* Letter from Catholic Professional Association of Canadian Merchants to Georges Vanier (28 March 1942) in *Campagne contre le blasphème*, *supra* note 208 ("You have courageously denounced the terrible plague of blasphemy and you have given to your listeners advice truly worthy of a clergyman.").

224. *See* Letter from Georges Vanier to Joseph Archambault (21 April 1942) in *Campagne contre le blasphème*, *supra* note 208 (tracts); Letter from Georges Vanier to W.E. Cannon (29 April 1942) in *Campagne contre le blasphème*, *supra* note 208 (plaques).

225. *See* *Campagne contre le blasphème*, *supra* note 208.

C. CONCLUSION

These two campaigns demonstrate very different approaches to combating blasphemy. The first campaign adopted a deterrence approach, highlighting the illegality of blasphemy and the harsh penalties available for violating the law. The second approach emphasized the purportedly immoral and un-Christian nature of blasphemy with an attempt to appeal to listeners' faith and patriotism. However, blasphemy was a relatively low-priority offense in Canada during the first part of the 20th Century, and anti-blasphemy campaigns never received the type of widespread and zealous public and government support that bolstered other social movements, like temperance or anti-Communism. While blasphemy was taken seriously and considered quite offensive, it was likely just one of a vast array of perceived social evils—such as gambling, profanity, or Sabbath-breaking—that also, from time to time, excited the attention of social crusaders.²²⁶

V. CONCLUSION

What do the *Sterry* case, Woodsworth's repeal bill, and the two public campaigns discussed above tell us about how blasphemy was perceived by non-legal actors in Canada? First, blasphemy seemed to hover right at the border of criminality. An actual prosecution was rare enough to be viewed (even if erroneously) as unprecedented and received a great deal of media attention. On the other hand, day-to-day blasphemy was sufficiently widespread (at least in the views of some) that church groups spent their own time and money to combat it. Second, supporters of anti-blasphemy legislation in the press, judiciary, and government furthered a particularly "Canadian" (and here I acknowledge the stereotype) justification for the law: blasphemy should be prohibited not necessarily out of religious zeal or a real fear that it would lead to breaches of the peace (as in some U.S. and English cases²²⁷), but simply out of a belief that "decent" people shouldn't have to be exposed to views or language they find offensive. In the frequent reiteration of the "of course nothing is more valuable than freedom of speech, *but . . .*" argument, one finds a similarity to more modern justifications for hate speech laws: an acknowledgment of a seemingly absolute principle but with a quick move to dilute the principal by invoking other values like civility or tolerance.

226. See generally, Strange & Loo, *supra* note 6.

227. See, e.g., Patrick, *Not Dead*, *supra* note 1, at 217.

The urge to suppress blasphemy can exist in communities of varying religiosity and may be triggered through either zeal or fear. In communities that are deeply religious, blasphemous speech can raise an immediate visceral reaction of outrage and offense, leading to demands for swift and certain punishment. Other communities, especially those that *lack* intense religious devotion, may feel threatened by outsiders who hold alien beliefs that threaten to quickly spread and undermine widely-shared values. Such an insecure community may feel the need to invoke the criminal justice system to set an example of what happens to those who disrespect the predominant culture.

Why wasn't blasphemy punished more often in Canadian history? One possible answer is that in the first half of the 20th Century mainstream Canada was largely secular in day-to-day life—although this secularism was still backdropped by a long and steady tradition of Christianity.²²⁸ The “blasphemous” talk of an occasional freethinker or non-Christian, while still vexing to some, could be safely ignored by most.

228. Québec is the obvious exception, as the Catholic Church had a strong presence in government and civic life before the Quiet Revolution. It therefore makes sense that four out of the five reported blasphemy prosecutions in Canada took place within that province and that three of those four involved direct criticism of the Catholic Church. See Patrick, “Not Dead,” *supra* note 1, at 229.