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FREEDOM OF EXPRESSION”**

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**“Blasphemy Law in Ireland: an overview of its historical development
and current proposals for reform”**

REPORT BY

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“Blasphemy Law in Ireland: an overview of its historical development and current proposals for reform”

Good afternoon ladies and gentlemen

Before I begin, I would like to thank the organisers and the hosts, the Constitutional Court of Romania for their wonderful welcome and hospitality.

It was with great enthusiasm that I accepted the invitation to give a brief presentation at today's mini-conference, 'Blasphemy Law and other limitations on freedom of expression'. This issue is topical in Ireland in light of the existence of law prohibiting blasphemy and current proposals for reform in this area of law.

Background – Report of the Venice Commission

As Mr. Durr noted in his opening address, blasphemy law as a restriction of freedom of expression received attention in the 2008 Venice Commission *Report on Blasphemy, insult and hatred: finding answers in a democratic society*.¹ The Report noted that [b]laspemy is an offence in only a minority of member states² and is “nowadays, rarely prosecuted in European states.”³ While the Commission found that incitement to hatred, including religious hatred, should be the object of criminal sanctions, as it is in most Member States, it was of the view that the offence of blasphemy should be abolished and should not be reintroduced.⁴ In Ireland, the Defamation Act 2009 provides for the offence of blasphemy.⁵ However, this provision did not appear from thin air. A look at the overall constitutional and legislative framework together with case law of the Supreme Court of Ireland goes some way towards explaining the relatively recent enactment of this blasphemy law.

The Irish Legal System

Ireland is a common law country and has been described as the “first adventure of common law”⁶ outside of England. It became independent in 1922 and is governed by a written Constitution called *Bunreacht na hÉireann* in the Irish Language, which was enacted in 1937. The Constitution provides that Ireland is a sovereign, independent and democratic State.⁷ Power derives from the people and is divided between the legislature, executive and the judiciary.⁸ The Constitution provides for a tripartite separation of powers between these organs.⁹ Importantly for the purpose of this presentation, the Constitution may only be amended by national referendum.¹⁰

¹ 'Blasphemy, insult and hatred, finding answers in a democratic society' (Venice Commission, 2008).

² *Ibid.* at 19. At the time, these member states included Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands and San Marino. The Netherlands has since abolished its blasphemy law. A footnote to the 2008 Report noted that, at the time, the introduction of the criminal offence of blasphemy was being discussed in Ireland in order to implement Article 40.6.1.i of the Constitution of Ireland.

³ *Ibid.*

⁴ *Ibid.* at page 32.

⁵ Defamation Act 2009, s. 36.

⁶ His honour Judge W.J. Johnston, 'The First Adventure of the Common Law' 36 (1920) *Law Quarterly Review* 9.

⁷ Article 5 of the Constitution of Ireland.

⁸ Article 6.1 of the Constitution of Ireland.

⁹ Articles 6, 15.2.1, 28.2, 34.1 and 37 of the Constitution of Ireland.

¹⁰ See Articles 46 and 47 of the Constitution of Ireland.

The Irish Constitutional and Legislative Framework

The Constitution of Ireland – Article 40.6.1(i)

A considerable portion of the Constitution of Ireland is devoted to the protection of fundamental rights.¹¹ Article 40.6.1(i) guarantees freedom of expression “subject to public order and morality”. This guarantee and general restriction of freedom of expression is followed by what is considered to be “one of the most extraordinary”¹² and unusual aspects of the Irish Constitution; a statement that:

“The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.”

This is the only crime provided for in the Constitution of Ireland. However, as the Irish professor of law, Cox, has noted, it is not an aspect of the Constitution that has “unduly troubled the Irish courts.”¹³ There are very few records of blasphemy cases in Ireland, and only one since the enactment of the Constitution.¹⁴

Other references to religion in the Constitution

The blasphemy clause is one of many allusions to religion in the Constitution of Ireland.¹⁵ Religious references are contained in Article 44.4.1, which provides that the State “acknowledges that the homage of public worship is due to Almighty God” and states that “[i]t shall hold His Name in reverence and shall respect and honour religion.” The Constitution guarantees freedom of conscience and the free profession and practice of religion, “subject to public order and morality”.¹⁶ It prohibits the State from endowing any religion¹⁷ or imposing any disabilities or making any discrimination on the grounds of religious profession, belief or status.¹⁸

The Constitution once referred to the “special position of the Roman Catholic church”¹⁹ in addition to recognising certain other specified religious denominations.²⁰ However, the fifth amendment of the Constitution removed this provision in the early 1970s.²¹

The Defamation Act 2009

The Defamation Act 2009 gives statutory definition to the constitutional crime of blasphemy. It provides for a maximum fine of €25,000 upon conviction of the publication or utterance of blasphemous matter.²²

¹¹ Articles 40 to 44 of the Constitution of Ireland.

¹² Cox, *Sacrilege and Sensibility: The Value of Irish Blasphemy Law* (1997) 1 DULJ 87. 88.

¹³ *Ibid* at 89.

¹⁴ *Corway v Independent Newspapers* [1999] 4 IR 484.

¹⁵ See generally Daly, *Religion, Law and the Irish State* (Clarus 2012).

¹⁶ Article 44.2.1 of the Constitution of Ireland.

¹⁷ Article 44.2.2 of the Constitution of Ireland.

¹⁸ Article 44.2.3 of the Constitution of Ireland.

¹⁹ Article 44.1.2 previously stated : “The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens.”

²⁰ Article 44.1.3 previously provided: “The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution.”

²¹ Fifth Amendment of the Constitution Act, 1972.

²² Defamation Act 2009, s. 36.

According to the 2009 Act, a person publishes or utters blasphemous matter if:

“(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and

(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.”²³

It is a defence to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.²⁴ It has been noted that this means that it would be very difficult to bring a successful prosecution for blasphemy and that, arguably, “the terms of the statutory offence are so tightly drawn that it is highly unlikely to have any application in practice.”²⁵ In fact, there have been no prosecutions under the 2009 Act to date.

Prohibition of Incitement to Hatred

An attack on religion may constitute an offence under the Prohibition of Incitement to Hatred Act 1989,²⁶ a hate speech law which prohibits the publication or distribution of written material, words, behaviour, visual images or sounds which are “threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred.”²⁷ It has been suggested that a high standard for proof under the 1989 Act has resulted in a lack of prosecutions under the 1989 Act.²⁸

European Convention on Human Rights

Ireland incorporates the European Convention on Human Rights through the European Convention on Human Rights Act 2003, and therefore Article 10 of the Convention forms part of Irish law.²⁹ When challenged, the European Court of Human Rights has upheld the application of domestic blasphemy laws.³⁰ This morning, Ms. Grigc provided a comprehensive overview of the case law of the European Court of Human Rights.³¹

Early Common Law Developments

The current constitutional and legislative framework of Irish blasphemy law can only be properly understood when put in its historical context. I will therefore refer briefly to early common law developments in England and Ireland.

England

In England, there were many prosecutions for blasphemy in the 18th and 19th centuries. The crime of blasphemy was originally perceived as a crime against Christianity. In Taylor’s

²³ *Ibid*, s. 36(2).

²⁴ *Ibid*, s. 36(3).

²⁵ See *Sixth Report of the Convention on the Constitution: The removal of the offence of blasphemy from the Constitution, Expert Presentation by Cox on Introduction and the Irish context* (January 2014).

²⁶ Prohibition of Incitement to Hatred Act 1989, s. 2. This was enacted as a response to Ireland’s obligations under the International Covenant on Civil and Political Rights.

²⁷ Prohibition of Incitement to Hatred Act 1989, s. 2(1).

²⁸ Cowhey, ‘Racist Hate Speech Law in Ireland: the Need for Reform’ (2006) 4 *Cork Online Law Review* 34, 39.

²⁹ Section 2(1) of the 2003 requires Irish courts to apply statutes and laws so that they are compatible with the Convention so far as possible.

³⁰ See *Lemon v United Kingdom* (App No 8710/79) (1983) 5 EHRR 123 (1983); *Otto-Preminger-Institut v Austria* (App No 13470/87) (1995) 19 EHRR 34; *Wingrove v United Kingdom* (app no 17419/90) (1997) 24 EHRR 1.

³¹ Aida Grigc (Lawyer, Registry, European Court of Human Rights) ‘*Blasphemy and other limitations to the freedom of expression in the case law of the European Court of Human Rights*’.

Case in 1675, the first reported case of the common law offence of blasphemy, Sir Matthew Hale defined blasphemy as “contumelious reproaches of God or the religion established.”³² Blasphemy law was concerned with the protection of the legal order, of which the Anglican Church was a part, so blasphemy law did not apply to other religions.³³ Any denial of Christianity amounted to a breach of blasphemy law. However, by the middle of the 19th century, a new rationale had developed for blasphemy law, which was concerned with the protection of religious sensibilities from scurrilous attack rather than any mere denial of Christianity.³⁴ In the 1917 House of Lords decision Bowman V Secular Society,³⁵ Lord Parker stated that blasphemy involved “such an element of vilification, ridicule, or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace.”³⁶

Ireland

In Ireland, there are three recorded blasphemy cases in the common law courts, the earliest dating from 1703.³⁷ The final blasphemy case in Ireland prior to independence in 1922 was R v Petcherine.³⁸ This case involved a Redemptorist priest who had organised a bonfire to destroy so called “vile English novels” and inadvertently burned a bible which was hidden in these novels. He was acquitted as the Court found that for a blasphemy prosecution to be successful, it would have to be demonstrated that the accused intended to burn the Bible. Baron Green referred to the ambit of blasphemy law at the time:

“It has been truly stated to you that the Christian religion is part and parcel of the law of this land. Any publication or conduct tending to bring Christianity or the Christian religion into disrespect, or to expose it into hatred or contempt, is not only committing an offence against the majesty of God, but is in violation of the common law of the land.”³⁹

This was the last case to come before the Irish courts for over 140 years. In the meantime the following developments occurred:

1. The Church of Ireland, a province of the Anglican church, ceased to be established by law in 1869;⁴⁰ and
2. Ireland became independent in 1922.

Therefore, the original rationale for blasphemy law, which was the protection of the established order, was redundant. The dearth of case law since the case of Petcherine meant that it was unclear whether Irish law experienced the change that is evident from the English

³² For a discussion of Taylor’s case, see Kenny, *Evolution of the Law of Blasphemy* (1922) 1 *CLJ* 129.

³³ See *R v Gethercole* (1838) 2 *Lew* 237; 168 *ER* 1140 at 1145. where Baron Alderman stated: “If this is only libel on the whole Roman Catholic Church generally, the defendant is entitled to be acquitted. A person without being liable to prosecution for it may attack Judaism or Mahomedanism or even any sect of the Christian religion save the established religion of the country, and the only reason the latter is in a different situation from the others is because it is the form established by law and is therefore part of the constitution of the country.”

³⁴ *R v Hetherington* (1841) 4 *St Tr* (ns) 563; 5 *Jur* 529. In the 1883 case of *Ramsay and Foote* (1883) 15 *Cox* 230, which involved the prosecution of the publishers of a weekly newspaper which depicted offensive caricatures of religion, Lord Coleridge LCJ expressed the view at 235 that it was permissible to attack the fundamentals of religion “if the decencies of controversy [were] observed.”

³⁵ [1917] *AC* 406

³⁶ [1917] *AC* 406 at 446.

³⁷ The earliest recorded case concerned the trial of a Unitarian Minister, Thomas Emlyn, the author of a book called *A Humble Enquiry into the Scripture Account of Jesus Christ*. The next blasphemy law trial in the common law courts was the 1852 case of John Syngean Bridgman, a Franciscan friar, who was convicted of “unlawfully, wickedly and blasphemously” setting fire to a Protestant Bible. For a discussion of these cases, see Law Reform Commission, *Consultation Paper on the Crime of Libel* (1991) at pp. 14 - 16.

³⁸ *R v Petcherine* (1855) 7 *Cox* 79.

³⁹ *Ibid.* at 84.

⁴⁰ Irish Church Act 1869.

case law leading up to and including the 1917 House of Lords decision in *Bowman*. There is debate as to whether pre-1922 decisions of the House of Lords were carried over into Irish law following independence.⁴¹ If such a change did occur, the nature of the language would be of crucial significance to a successful prosecution for blasphemy.

President Éamonn DeValera, who oversaw the drafting of the 1937 Constitution of Ireland said that the constitutional crime of blasphemy did not create a new offence, but simply mirrored the old common law offence.⁴² However, it was unclear what the common law offence of blasphemy involved.

This was the position of blasphemy law in 1999 when the Supreme Court of Ireland considered *Corway v Independent Newspapers*,⁴³ the first blasphemy case instituted in Ireland since independence.⁴⁴

Corway v Independent Newspapers

The applicant in *Corway* sought leave under the Defamation Act 1961 (the applicable legislation at the time) for the bringing of a criminal prosecution against the publishers of an article and cartoon in a popular weekly Sunday newspaper. The article followed a referendum in 1995 favouring the removal of the prohibition of divorce from the Irish Constitution. One group in a campaign poster had used the phrase “Hello Divorce, Bye Bye Daddy.” The newspaper article at issue in *Corway* questioned whether the referendum result indicated a decrease in the influence of the Catholic Church in Ireland. The article was accompanied by a cartoon of a plump priest offering the Eucharist to three prominent politicians. They were portrayed as walking away from the priest and the cartoon was captioned, “Hello Progress – Bye Bye Father?”

Although the Constitution criminalises blasphemy, there was neither a constitutional nor a legislative definition of blasphemy at the time. The Defamation Act 1961 simply provided for the penalties and seizure of material.⁴⁵

The Supreme Court considered the development of the offence of blasphemy at common law, to which I have briefly referred. Having done so, the Court found that the common law offence of blasphemy, which was solely concerned with Christianity, was incompatible with Article 44.2.3 of the Constitution of Ireland, which prohibits discrimination by the State on grounds of religious profession, belief or status in addition to the general equality guarantee in Article 40.1. However, Barrington J, giving the judgment of the Court, noted that the crime must exist in Irish law as the Constitution says so.⁴⁶ The Supreme Court found:⁴⁷

“In this state of the law, and in the absence of any legislative definition of the constitutional offence of blasphemy, it is impossible to say what the offence of blasphemy consists... The task of defining the crime is one for the legislature not the courts. In the absence of legislation and in the present uncertain state of the law the Court could not see its way to authorising the institution of a criminal prosecution for blasphemy...”⁴⁸

⁴¹ For a discussion of some of the conflicting case law on this issue, see Byrne and McCutcheon, *The Irish Legal System* (Bloomsbury 2014) at pp. 509 - 510.

⁴² See Paul O’Higgins, ‘Blasphemy in Irish Law’ (1960) 23MLR 150, 153.

⁴³ [1999] 4 IR 484.

⁴⁴ As noted by Kelly, *The Irish Constitution* at p. 1753.

⁴⁵ Defamation Act 1961, s. 13.

⁴⁶ [1999] 4 IR 484 at 501.

⁴⁷ *Ibid.* at 436 to 437.

⁴⁸ In concluding that the absence of a statutory definition of blasphemy meant that it was impossible to define it, the Supreme Court had regard to the separation of power between the judiciary and legislature, as guaranteed by Article 15 of the Constitution.

In *Corway*, the Supreme Court “essentially neutralised the reference to blasphemy”.⁴⁹ The decision meant that a prosecution for blasphemy could not be brought under the Defamation Act 1961 until the legislature provided a statutory definition of blasphemy in the Defamation Act 2009. The 2009 Act takes into account the constitutional principles of religious pluralism, equality and freedom of conscience by applying to all religions. As I mentioned, there have been no prosecutions for the offence of blasphemy under the 2009 Act.

Calls for reform

Reaction to Defamation Act 2009

The introduction of the blasphemy provision in the 2009 Act attracted considerable controversy in Ireland and was strongly opposed by secular organisations.⁵⁰ The relatively recent enactment of legislation referring to blasphemy is unusual in a ‘Western’ liberal democracy, with the trend leaning towards the abolition of blasphemy offences.⁵¹ In addition, some would say that its introduction in Ireland is surprising given what has been described as the “secularisation of constitutional adjudication and constitutional discourse”.⁵²

The then Minister for Justice, Equality and Law Reform admitted that the 2009 Act had been drafted to “make it virtually impossible to gain a successful prosecution”⁵³ under the legislation. However, at the time of its enactment, the Minister stated that he did not “have the luxury of ignoring our Constitution”⁵⁴ and “faced a choice – referendum or reform.”⁵⁵ The concern was that a law repealing the Defamation Act 1961 without replacing it may not have withstood constitutional scrutiny in light of the constitutional provision for the offence of blasphemy.

Recommendations of the Law Reform Commission

Calls for reform in this area of law are nothing new. In 1991, the Law Reform Commission of Ireland had, in its *Report on the Crime of Libel*, recommended that “in any revision which may be undertaken by referendum of the Constitution, so much of Article 40.6.1.i which renders the publication or utterance of blasphemous matter an offence should be deleted.”⁵⁶ Following a consideration of the arguments in favour and against retaining the offence, it concluded that “there was no place for an offence of blasphemous libel in a society which respects freedom of speech.”⁵⁷ However, the Commission observed that abolition of blasphemy legislation could

⁴⁹ Kelly, *The Irish Constitution* at p. 1753.

⁵⁰ It was immediately opposed by Atheist Ireland, who published what it referred to as 25 blasphemous quotations from famous people, accompanied by a challenge from the chairperson to the Irish Government to prosecute him Michael Nugent, Atheist Ireland Publishes 25 Blasphemous Quotes (1st January 2010) available at www.blasphemy.ie that the law was “silly and dangerous... silly because medieval religious laws have no place in modern secular republic, where the criminal law should protect people and not ideas. And... dangerous because it incentives religious outrage, and because Islamic states led by Pakistan are already using the working of the Irish law to promote new blasphemy laws at UN level.” During parliamentary debates preceding the enactment of the legislation, one senator expressed a view that “God, assuming he or she exists, is quite able to sustain slings and arrows of mere mortals in terms of his or her reputation. What people are usually doing when talking about blasphemy is protecting their own feelings. It is understandable that people have strong feelings, but this is covered by incitement to hatred.” (Seanad Éireann Debates, Vol. 188, No. 22 11th March 2008).

⁵¹ For example, in England and Wales the common law offences of blasphemy and blasphemous libel were abolished in 2008 by the Criminal Justice and Immigration Act 2008. In the Netherlands, the offence of blasphemy, which had been provided for in Article 147 of the Netherland penal code, was officially abolished on the 1st January 2014.

⁵² Daly, *Religion, Law and the Irish State* (Clarus Press, 2012), pp. 41 – 47.

⁵³ Select Committee on Justice, Equality, Defence and Women’s Rights Debate, 1st July 2009.

⁵⁴ ‘Amending the Law on Blasphemous Libel’ Speech by the Mr. Dermot Ahern T.D., Minister for Justice, Equality and Law Reform at the Dáil Committee on Justice, Equality Defence and Women’s Rights, Wednesday, 20th May, 2009.

⁵⁵ *Ibid.*

⁵⁶ Law Reform Commission *Report on the Crime of Libel 1991* at p. 26.

⁵⁷ Law Reform Commission *Consultation Paper on The Crime of Libel 1991* at p. 172.

not occur without a constitutional referendum, and a referendum solely for this purpose "would rightly be seen as time wasting and expensive"⁵⁸ and should occur in the course of a more extensive revision of the Constitution. In the meantime, it recommended that the offence be redefined as the "publication of matter the effect of which is likely to cause outrage to a substantial number of the adherents to a religion by reason of its insulting content concerning matters held sacred by that religion", and that "religion" for the should include Christian and non-Christian religions.⁵⁹

Report of the Constitution Review Group

In 1995, the Irish Government established the Constitution Review Group "to review the Constitution, and in the light of this review, to establish those areas where constitutional change may be desirable or necessary".⁶⁰ The Group of 15 members from different backgrounds was of the view that Article 40.6.1.i as drafted was unsatisfactory and recommended it be replaced with a new clause protecting free speech based on Article 10 of the ECHR.⁶¹ It concluded that the constitutional offence of blasphemy was inappropriate.⁶²

Report of the Joint Committee on the Constitution

In 2007, the Joint Committee on the Constitution was established by the Houses of the Oireachtas. It had the role of identifying areas requiring reform and recommending change where necessary. The First Report of the Committee concentrated of the constitutional Freedom of Expression provision, including the prohibition against blasphemy. The Committee endorsed the view of the Constitution Review Group and also recommended that the reference to blasphemy in Article 40.6.1.i should be deleted. It stated that "in a modern Constitution, blasphemy is not a phenomenon against which there should be an express constitutional prohibition"⁶³ and "[i]f there is a need to protect against religious offence of incitement, it is more appropriate that this be dealt with by way of legislative intervention, with due regard to the fundamental right to free speech."⁶⁴

The Convention on the Constitution

Most recently in 2012, the Convention on the Constitution was established to discuss proposed amendments to the Constitution. The Convention was a new venture in participative democracy and comprised 100 members, including 66 randomly selected citizens of Ireland. It was asked to consider eight issues, one of which was the removal of blasphemy from the Constitution. Two of the issues considered by the Convention have already been the subject of constitutional referenda. In a referendum which took place on 22 May 2015, 62.07% of Irish voters approved a provision in the constitution that marriage be recognised irrespective of the sex of the partners – a worldwide first for popular vote. On the same day the electorate rejected a proposal to reduce minimum the age of presidential candidates from 35 to 21.

Following a consideration of the constitutional offence of blasphemy, a clear majority of members of the Convention on the Constitution (61%) voted in favour of its removal from the Constitution.⁶⁵ Most members (53%) favoured its replacement with a general constitutional

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* at pp 12 – 13.

⁶⁰ Report of the Constitution Review Group 1996 (Dublin, Stationary Office, 1996).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ First Report of the Joint Committee on the Constitution: Article 40.6.1.i – Freedom of Expression (2008) at p. 73.

⁶⁴ *Ibid.*

⁶⁵ See Sixth Report of the Convention on the Constitution (January 2014). Available at <https://www.constitution.ie/AttachmentDownload.ashx?mid=b96d3466-4987-e311-877e-005056a32ee4> (last accessed 29th June 2015).

prohibition of incitement to religious hatred; and a significant majority (82%) favoured the introduction of a new set of detailed legislative provisions concerning incitement to religious hatred.⁶⁶ Interestingly, 49% of members believed there should be legislative provision for the offence of blasphemy.⁶⁷

On the 2nd October 2014, the Government of Ireland announced in response to the Constitutional Convention that it will “put this question to the people, and that a referendum should be held on the question of amending Article 40.6.1(i) of the Constitution to remove the offence of blasphemy.”⁶⁸ As two referenda were held in 2015, the Government has said that there will not be a referendum on the issue of blasphemy this year.⁶⁹

Conclusion

Recent debate

The offence of blasphemy has had an interesting, if somewhat uneventful life. For the moment, it remains nestled within our Constitution. Debate regarding its existence was rekindled following the terrible events which took place at the offices of Charlie Hebdo in Paris in January of this year.⁷⁰ It was suggested that publication by national newspapers in Ireland of the Charlie Hebdo cartoons or ‘survivor’s issue’ depicting the prophet Muhammad, could form the basis of a blasphemy prosecution.⁷¹ The chairman of a secular organisation in Ireland has said that although there have been no cases under the Defamation Act 2009, it creates “the chilling effect of self censorship.”⁷² It is impossible to say whether such an effect was responsible for the failure by most Irish media to publish the cartoons, or whether it was due to the view (expressed by the Irish Times) that “publication of the cartoons was likely to be seen by Muslims as gratuitously offensive and would not contribute significantly to advancing or clarifying the debate on the freedom of the press.”⁷³

Freedom of Expression

The nature of the Irish constitutional referendum process has been described by Mr. Justice Hogan in the High Court of Ireland as follows:

“The Constitution envisaged a plebiscitary as well as a parliamentary democracy and, in doing so, it has created a state which can demonstrate - in both word and deed - that it is a true democracy. By providing in Article 6.1 for popular sovereignty in which the

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Dáil Debates, unrevised, 2nd October 2014.

⁶⁹ See comments of Taoiseach Enda Kenny, Dáil Éireann Debates, unrevised, 14th January 2015; and response of Taoiseach Kenny to an open letter from Atheist Ireland, available at <https://www.dropbox.com/s/8d33n3a40y3o4z1/Prime%20Minister%20Letter.pdf?dl=0> (last accessed on 30th June 2015). A Bill entitled Amendment of the Constitution (Removal of Blasphemy) Bill is on the Government Legislation Programme Spring/Summer Session 2015.

⁷⁰ In a terrorist attack which took place in Paris on 7th January 2015 at the offices of satirical newspaper, Charlie Hebdo, two males fatally shot twelve people and injured 11 others. See ‘Paris Attack: Manhunt under way after 12 killed at offices of Charlie Hebdo magazine’ (Irish Times, 7th January 2015) and ‘Charlie Hebdo attack: Three days of terror’ (BBC News Europe, 15th January 2015), available at <http://www.bbc.com/news/world-europe-30708237> (last accessed on 30th June 2015).

⁷¹ ‘Irish media asked not to publish images of Charlie Hebdo cover’ (Irish Examiner, 14th January 2015); ‘Dublin-based Islamic cleric warns of legal action over religious depictions’ (RTE News, 8th January 2015).

⁷² RTÉ Broadcast, Prime Time, 8th January 2015. Available at <http://www.rte.ie/news/primetime/2015/0109/671453-prime-time-08-january-2015/> (last accessed 2nd July 2015).

⁷³ The Irish Times defended unequivocally the right of Charlie Hebdo to publish, but said of its decision not to publish the cartoons that the “right to offend”, an essential corollary of the right to freedom of expression, could be defended and upheld... by other means than causing further offence to the overwhelming majority of a community which deplored the threats to... the attack on *Charlie Hebdo*. See “The Irish Times and the cartoons’ (Irish Times, 13th January 2015).

People would "in final appeal... decide all questions of national policy", it envisaged a society in which all citizens would be called upon from time to time to make critical decisions regarding their future, the future of their neighbourhood and, ultimately, the future of their country."⁷⁴

It is likely that it will be through this important process that the Irish electorate will decide the fate of Ireland's blasphemy law - an issue affecting the right to freedom of expression, a right which Lord Steyn once described as "the lifeblood of democracy".⁷⁵ Many have spoken with impassioned words on the importance of freedom of expression. American jurist, Mr. Justice Benjamin Cardozo once referred to it in the case of *Palk v Connecticut*⁷⁶ as the "the matrix, the indispensable condition, of nearly every other form of freedom".

The English poet John Milton's 1644 prose, *Areopagitica*⁷⁷ is one of history's most powerful and influential defences of freedom of speech and expression. Milton made the following plea to the Parliament of England in response to a law concerning pre-publication licensing, which he distributed in pamphlet form in defiance of the very law against which he campaigned:

"... [C]onsider what Nation it is whereof ye are, and whereof ye are the governours: a Nation not slow and dull, but of a quick, ingenious, and piercing spirit, acute to invent, subtle and sinewy to discours, not beneath the reach of any point the highest that human capacity can soar to...

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."

On that note I will finish ladies and gentlemen, and thank you for listening.

⁷⁴ [2012] IEHC 211; [2012] 2 IR 594 at 603 – 604.

⁷⁵ R v Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115 at 126.

⁷⁶ (301) US 319 at 327.

⁷⁷ *Areopagitica*: a speech by Mr. John Milton for the Liberty of Unlicenc'd Printing, to the Parliament of England.