Name of petitioner

Mark McCabe

Petition title

Common law of blasphemy

Petition summary

Calling on the Scottish Parliament to abolish the common law crimes of blasphemy, heresy and profanity to the extent that they remain law.

Action taken to resolve issues of concern before submitting the petition

I have written directly to the Scottish Government asking them to abolish blasphemy and heresy by a simple clause in a bill. The Scottish Government responded that, as no one has been charged with the crime for over a century, it is irrelevant and there are no plans to abolish it.

Petition background information

Hume's *Commentaries* (vol i) deals with and defines the crimes of blasphemy, heresy and profanity:

"Blasphemy consists, in a scoffing, contemptuous or railing manner with passion and reproach, and clearly and explicitly, in (a) denying God's being, attributes or nature, or (b) uttering impious and profane things about God or the authority of the Holy Scriptures."

"Heresy is clause (b) of blasphemy when it is uttered "dispassionately or conveyed calmly and advisedly", and punishable as blasphemy according to the degree of what is uttered. Statutes (since repealed) expanded these definitions to include "any of the Trinity", denying or challenging the authority of the Old or New Testaments or of "God's providence in the government of the world" or of any of the Trinity." Intoxication has been held, Hume says, not to be a defence. Blasphemy was punished with death on the first offence and heresy with death on the third offence.

"Profanity is (a) profane cursing and swearing, (b) indecent scoffing at religion, (c) disturbance of divine worship, (d) profaning Sundays by working or engaging in amusement, (e) contempt or mockery of religion, or (f) reviling, scoffing at and reproaching the Established Church, its ordinances, discipline or worship."

Gordon (1967) notes that the last reported prosecution for blasphemy was against Thomas Paterson in 1843 (1 Broun 629). He does not think it is any longer a crime, but no court has ruled on its desuetude so it probably remains criminal. If abolished, Gordon says "indecent blasphemy publications" can be prosecuted as indecent
Gordon says "indecent blasphemous publications" can be prosecuted as indecent publications, and "blasphemous statements likely to provoke a breach of the peace" as a breach of the peace; they can, it is argued, also be prosecuted as hate crimes. This can equally apply to profanity too.

All the statutes listed by Hume as relating to these crimes have since been repealed. The crime of blasphemy certainly remains at common law (see Gordon 1967), but he makes no mention of heresy and profanity, so it is unclear if they too remain crimes at common law.

The United Nation's Human Rights Committee General Comment No 34 (para 48) disapproves of any crime of blasphemy in criminal law as infringing freedom of expression and opinion.

What Gordon states about blasphemy, that it has not been prosecuted in such a long time (with the consequent implication that it is irrelevant in the modern day), was also applicable to the common law crimes of sedition and leasing-making, both of which the Scottish Parliament abolished in the Criminal Justice and Licensing (Scotland) Act 2010 (s 51). It is argued that the same treatment is long overdue for the crime of blasphemy. Blasphemy and blasphemous libel were abolished in England and Wales by the Criminal Justice and Immigration Act 2008 (s 79).

It seems unfathomable that Scotland still has this archaic crime when the rest of Great Britain has abolished it, and all that theoretically stands between a person and prosecution is the good grace of the police and prosecutor.