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## Defending Blasphemy: Exploring Religious Expression under Ireland's Blasphemy law

Katherine A. E. Jacob

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**DEFENDING BLASPHEMY: EXPLORING RELIGIOUS EXPRESSION UNDER  
IRELAND’S BLASPHEMY LAW**

*Katherine A.E. Jacob\**

*This Note considers the blasphemy provisions of Ireland’s Act and examines the Act’s limitations on religious expression. By analyzing the effects of religious expression’s omission from the Act’s protection, this Note argues that enforcement under the Act may be impermissible under both Bunreacht na hÉireann and international law. To rectify the Act’s failure to defend religious expression, this Note proposes that the Act be amended to permit religious expression as a defense for blasphemy. It then applies the proposed defense to examples of speech that otherwise might run afoul under the Act.*

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\* B.A., M.A. The Johns Hopkins University; J.D. Case Western Reserve University (2012).

## I. INTRODUCTION

“Yes, she should be hanged,” a group of Pakistani villagers cried out, in favor of the sentence awarded to a 45-year old woman.<sup>1</sup> Her crime? Speaking against a religion.<sup>2</sup> Her conviction occurred not in a pre-modern period, but in November of 2010.<sup>3</sup>

Blasphemy is a controversial subject worldwide. In 2009, the United Nations General Assembly voted in favor of adopting a non-binding resolution on the defamation of religion. The resolution was sponsored by the Organization of the Islamic Conference (OIC), and was supported by Pakistan, Saudi Arabia, and Venezuela.<sup>4</sup> When the resolution was resubmitted in 2010, Secretary of State Hillary Clinton vocalized U.S. opposition by stating that “the United States does not agree that protecting religious freedom means banning speech critical or offensive about religion.”<sup>5</sup> The European Union similarly opposed Pakistan’s 2009 submission of the OIC’s proposal for a defamation of religion resolution,<sup>6</sup> with the Irish Minister for Foreign Affairs stating:

We believe that the concept of defamation of religion is not consistent with the promotion and protection of human rights. It can be used to justify arbitrary limitations on, or the denial of, freedom of expression. Indeed, Ireland considers that freedom of expression is a key and inherent

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<sup>1</sup> Reza Sayah, *Family Waits to See If Mother, Accused of Blasphemy, Will Be Hanged*, CNN WORLD (Nov. 18, 2010), [http://articles.cnn.com/2010-11-18/world/pakistan.blasphemy\\_1\\_islamic-law-death-sentence-blasphemy?\\_s=PM:WORLD](http://articles.cnn.com/2010-11-18/world/pakistan.blasphemy_1_islamic-law-death-sentence-blasphemy?_s=PM:WORLD).

<sup>2</sup> *See id.* (“This month a Pakistani court sentenced Isham’s mother, 45-year-old Asia Bibi, to death, not because she killed, injured or stole, but simply because she said something.”). Pakistan is not alone among Islamic countries in convicting blasphemy offenders. *See* Samer al-Atrush, *Egyptian Jailed for Facebook Islam Insult*, AGENCE FRANCE PRESSE, Oct. 22, 2011 (“An Egyptian court sentenced a man to three years in jail with hard labour on Saturday for insulting Islam in postings on Facebook. . .”).

<sup>3</sup> *See* Ethan Cole, *U.N. Anti-Blasphemy Proposal Meets Firm Resistance*, CHRISTIAN POST (Nov. 20, 2010), <http://www.christianpost.com/news/un-anti-blasphemy-proposal-meets-firm-resistance-47724/> (critics of a U.N. Anti-Blasphemy resolution point to current examples of how such laws disproportionately target religious minorities).

<sup>4</sup> Chris Woodward, *Caution Urged on U.N. Resolution*, ONENEWSNOW (Nov. 14, 2010), <http://www.onenewsnow.com/Persecution/Default.aspx?id=1230818>.

<sup>5</sup> Cole, *supra* note 3.

<sup>6</sup> *See Irish Blasphemy Law Being Used as a Lever by Islamic Countries*, NATIONAL SECULAR SOCIETY (Jan. 8, 2010), <http://www.secularism.org.uk/irish-blasphemy-law-being-used-a.html> [hereinafter *Law Being Used as a Lever*] (“Sweden, on behalf of the European Union, responded to Pakistan’s submission to the Ad Hoc Committee specifically opposing defamation of religions as a human rights concept. It is ironic that the text to which the European Union is opposed is extracted directly from the law of a Member State.”).

element in the manifestation of freedom of thought and conscience and as such is complementary to freedom of religion or belief.<sup>7</sup>

By advocating for a U.N. resolution banning defamation of religion, the OIC is attempting to globalize the crime of blasphemy.<sup>8</sup>

Policing speech that offends religious sensibilities is not restricted to the Middle East. Like Pakistan, Ireland has a law prohibiting blasphemy.<sup>9</sup> Ireland's new blasphemy law, the 2009 Defamation Act (the Act), took effect on January 1, 2010.<sup>10</sup> Under the Act, a person can be found guilty of blasphemy if "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."<sup>11</sup> Those convicted under the new law could face a fine of up to twenty-five thousand euros.<sup>12</sup> Many in Ireland have called for the Act's repeal and the removal of blasphemy from *Bunreacht na hÉireann*, the Irish Constitution.<sup>13</sup>

<sup>7</sup> 25 *Blasphemous Quotations*, ATHEIST IRELAND (Jan. 2, 2010), [www.atheist.ie/2010/01/25-blasphemous-quotations/](http://www.atheist.ie/2010/01/25-blasphemous-quotations/). The article also notes that Michael Martin, Irish Minister for Foreign Affairs, made this statement just months before the introduction of the Act. *Id.*

<sup>8</sup> See Luiza Ch. Savage, *Stifling Free Speech – Globally*, MACLEANS (July 23, 2008), [http://www.macleans.ca/world/global/article.jsp?content=20080723\\_27859\\_27859](http://www.macleans.ca/world/global/article.jsp?content=20080723_27859_27859) ("They are trying to internationalize the concept of blasphemy." (quoting Susan Bunn Livingstone, a former U.S. State Department official)); *Law Being Used as a Lever*, *supra* note 6 ("Pakistan and the OIC seek to establish defamation of religions as a new normative standard.").

<sup>9</sup> Defamation Act 2009, §§ 35–37 (Act. No. 31/2009) (Ir.), available at <http://www.irishstatutebook.ie/2009/en/act/pub/0031/index.html> (last visited Mar. 8, 2012).

<sup>10</sup> *Id.*; see also Karla Adam, *Atheists Challenge Ireland's New Blasphemy Law with Online Postings*, WASHINGTON POST (Jan. 3, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/02/AR2010010201846.html>.

<sup>11</sup> Defamation Act § 36(2)(a).

<sup>12</sup> § 36(1).

<sup>13</sup> See IR. CONST., 1937, art. 40(6)(1)(i), available at [http://www.taoiseach.gov.ie/eng/Youth\\_Zone/About\\_the\\_Constitution,\\_Flag,\\_Anthem\\_Harp/Constitution\\_of\\_Ireland\\_March\\_2010.pdf](http://www.taoiseach.gov.ie/eng/Youth_Zone/About_the_Constitution,_Flag,_Anthem_Harp/Constitution_of_Ireland_March_2010.pdf) (last visited Mar. 8, 2012) (containing a provision prohibiting "[t]he publication or utterance of blasphemous, seditious, or indecent matter"); 188 SEANAD DEB. col. 1773 (Mar. 11, 2008) (Ir.) ("On the question of blasphemy, my view is 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.") (statement by Senator David Norris); *cf.* 152 SEANAD DEB. col. 15 (Nov. 26, 1997) (Ir.) ("I am greatly concerned at the state of well-being of the Almighty if he or she requires the assistance of Senator Ó Murchú or Senator Lydon to protect him or her. I would have thought for somebody omnipotent, it was rather unnecessary.") (statement by Senator David Norris); *cf.* 714 PARL. DEB., H.L. (2009) 405 (Ir.) (opining that Ireland's referendum on blasphemy is "largely hot air") (statement by Lord Lester of Herne Hill); see also Rob Gifford, *Irish Befuddled By New Blasphemy Law*, NPR (Jan. 4, 2010), <http://www.npr.org/templates/story/story.php?storyId=122225249> (describing general confusion within the public regarding the Irish blasphemy referendum and suggesting that the best remedy is to delete the referendum). This Note uses the official names of Ireland's political institutions

In a campaign to have the Act repealed, Atheist Ireland, an Irish advocacy group that promotes atheism, published a list of twenty-five “blasphemous” quotations.<sup>14</sup> Meanwhile, the OIC has appropriated the Act’s text verbatim in its proposal to the United Nations Ad Hoc Committee on the Elaboration of Complementary Standards urging for the implementation of global anti-defamation legislation.<sup>15</sup>

This Note considers the blasphemy provisions of Ireland’s Act and examines the Act’s limitations on religious expression. By analyzing the omission of religious expression from the Act’s protection, this Note argues that enforcement under the Act may be impermissible under both *Bunreacht na hÉireann* and international law. Part I of this Note describes the historical context of blasphemy in Irish law. It examines speech offenses in Brehon law, illustrating the long tradition of regulating speech in Ireland, and also traces the subsequent development of blasphemy through Canon law,

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instead of their English translations, such as “*Bunreacht na hÉireann*,” “*Seanad*,” and “*Taoiseach*,” instead of “the Constitution of Ireland,” “Senate,” and “Prime Minister.” *Bunreacht na hÉireann* states that “[t]he Irish language as the national language is the first official language . . . [and] [t]he English language is recognized as a second official language.” IR. CONST., 1937, art. 8(1)–(2). But, language is a complex political and cultural issue in Ireland. See, e.g., James Clarence Mangan, *The Irish Language*, reprinted in CELT: THE CORPUS OF ELECTRONIC TEXTS (2011), available at <http://www.ucc.ie/celt/published/E840000-021/index.html> (“The story of Éire shall shine forth in thee; / Thou shall sound as a horn from the lips of the Free.”); Jonathan Swift, *On Barbarous Denominations in Ireland*, reprinted in THE PROSE WORKS OF JONATHAN SWIFT, 345–46 (Temple Scott ed., 1905) (“[B]ut I am deceived, if anything has more contributed to prevent the Irish from being tamed, encouragement of their language, which might be easily abolished, and become a dead one in half an age, with little expense, and less trouble.”). For a modern Irish perspective on the Anglicization of Irish political language, see Shane Hegarty, *Ireland was Poor, Then Rich, Then Poor. Here’s a Shot of a Beggar*, IRISH TIMES, Nov. 27, 2010 (“The disconnection from watching an Irish crisis through foreign media is supplemented by the Anglicization of our political language. The Irish premier. MPs. The Irish parliament.”); cf. *War of Words Over Bilingual Street Signs*, BELFAST TELEGRAPH (Nov. 5, 2011), <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/war-of-words-over-bilingual-street-signs-16073538.html> (“Signs featuring Irish/English and Ulster-Scots/English have already been put up.”).

<sup>14</sup> 25 *Blasphemous Quotations*, supra note 7; Michael Nugent, *Atheist Ireland Publishes 25 Blasphemous Quotations*, ATHEIST IRELAND (Jan. 2, 2010), <http://www.atheist.ie/2010/01/atheist-ireland-publishes-25-blasphemous-quotes/> (“From today, 1 January 2010, the new Irish blasphemy law becomes operational, and we begin our campaign to have it repealed.”).

<sup>15</sup> *Law Being Used as a Lever*, supra note 6; see Ahern *Proposes Autumn Referendum on Blasphemy*, ATHEIST IRELAND (Mar. 14, 2010), <http://www.atheist.ie/2010/03/ahern-proposes-referendum-on-blasphemy-this-autumn/> (last visited Aug. 20, 2011) (“[T]his law is . . . dangerous because it incentives religious outrage and because its wording has already been adopted by Islamic States as part of their campaign to make blasphemy a crime internationally.”); see also Aroosa Masroor Khan & Jessie Magee, *Partners in Blasphemy: Developments in Defamation Law in Pakistan and Ireland*, EUROLINK NEWS (Mar. 6, 2010), <http://eurolinknews.com/2010/03/06/partners-in-blasphemy-developments-in-defamation-law-in-pakistan-and-ireland-6th-march-2010/> (explaining that religious groups in Pakistan and the Irish government believe that blasphemy laws protect against religious hatred).

common law, and modern Irish law. Part II analyzes the extent to which the Act might restrain religious speech, and discusses potential consequences arising from the Act's failure to defend religious expression. Part III proposes that one of the best means of protecting the freedoms of religion and expression in Ireland is to permit religious expression as a defense for blasphemy under the Act. Finally, this Note applies the suggested defense to examples of potentially blasphemous speech.

## II. THE BLASTED PAST OF BLASPHEMY IN IRISH LAW

*There will come a time when it will be appropriate for the blasphemy law to find its place in history.*<sup>16</sup>

An assessment of blasphemy's history is essential to any examination of blasphemy's position in modern Irish law. This section traces blasphemy in Irish law from speech controls under Brehon law through modern Ireland's blasphemy statute.

### A. *Speech Offenses in Brehon Law*

Brehon law was a custom-based legal system brought to Ireland by the Celts as early as 1200 B.C.E.<sup>17</sup> Recently, one Irish senator, speaking to the Seanad Éireann,<sup>18</sup> noted that Brehon law "does not answer all the questions . . . [but] it is a basic point to move towards in terms of how we should approach . . . issue[s]."<sup>19</sup> This section briefly summarizes speech and speech offenses in early Irish culture and Brehon law. It attempts to contextualize the social importance of speech and rules controlling speech in Irish culture.

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<sup>16</sup> Alan Travis, *Medieval Law Has Had Its Day*, GUARDIAN (Oct. 18, 2004), [www.guardian.co.uk/uk/2004/oct/18/religion.world/print](http://www.guardian.co.uk/uk/2004/oct/18/religion.world/print) (quoting British Home Secretary, David Blunkett, speaking in 2001 about England's blasphemy law, since repealed).

<sup>17</sup> See Niall O'Dowd, *A Love of the Law*, IRISH VOICE, Oct. 13, 2010 ("We have been arguing the toss for about 5,000 years now. . . . The first mention of the law appears to be when the Fir Bolg and Tuatha De Dannan negotiated "under the laws of battle" before the Battle of Moytura in 3303 BC.").

<sup>18</sup> In English, "Seanad Éireann" means "the Senate of Ireland." It is one of the two houses of the Oireachtas, Ireland's Parliament, the other being Dáil Éireann. *Welcome to the Houses of the Oireachtas*, HOUSES OF THE OIREACHTAS, <http://www.oireachtas.ie/parliament/> (last visited Mar. 8, 2012).

<sup>19</sup> 184 SEANAD DEB. col. 1760 (Oct. 18, 2006) (Ir.) ("It is always good to see how matters were dealt with in earlier times.").

As Brehon law was not a criminal law code, it did not contemplate crimes against the state—only crimes against individuals.<sup>20</sup> Punishment was restorative.<sup>21</sup> Victims were compensated based on the type of injury to their honor.<sup>22</sup> In early Irish society, words had force.<sup>23</sup> Under Brehon law, “[t]he body is not as vulnerable as the face/honor.”<sup>24</sup> Poets were highly regarded,<sup>25</sup> and employed words in poetry that elevated honor or injured reputation, thereby reinforcing Irish society’s hierarchical structure.<sup>26</sup> Legitimate satire had a key role in the early Irish justice system; it was one of the pressures that encouraged people to obey the law.<sup>27</sup> It was an offense to ignore satire, which Irish society believed to have the power to physically deform and mutilate a victim, thereby making the victim’s shame public.<sup>28</sup> Further,

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<sup>20</sup> John G. Browning, *The Law of the Irish*, 21 IRISH AMERICA 80, 80 (2006) (“There was no criminal law as such, since every liability incurred by wrongdoing, whether a tort or a criminal act, was answerable only in a fine.”).

<sup>21</sup> See Carl O’Brien, *New Justice System For Lesser Crimes*, IRISH TIMES, Mar. 12, 2007.

Restorative justice is a relatively new introduction to the modern justice system, although it has its roots in the old Brehon laws. It involves making the perpetrator of a crime face up to the harm they have caused and offers them a chance to undo the harm caused by crime.

*Id.*

<sup>22</sup> See Dianne Hall, *Words as Weapons: Speech, Violence, and Gender in Late Medieval Ireland*, 41 ÉIRE 122, 125 (2006) (“Gaelic Irish and Anglo-Irish families employed lawyers to judge disputes usually settled by payment of fines according to finely differentiated gradings of injury received and status of both victim and perpetrator.”).

<sup>23</sup> See Liam Breatnach, *Araile Felmac Féig Don Mumain: Unruly Pupils and the Limitations of Satire*, 59 ÉIRU 111, 122 (2009) (“[S]atire is a powerful weapon which can be used anywhere in Ireland.”).

<sup>24</sup> BRETHA NEMED DÉDENACH, translated in Breatnach, *supra* note 23, at 122.

<sup>25</sup> Peter Smith, *A Middle-Irish Poem on the Authors and Laws of Ireland*, 8 PERITIA 120, 137 ¶ 45 (1994) (“Since Aimirgein wise and diligent gave the first judgment in the beginning in Ireland, the noble judgments of traditional Irish Law belonged solely to poets.” (translating a Middle-Irish poem written by Gilla in Choimded Úa Cormaic)); see also J. A. WATT, *THE CHURCH AND THE TWO NATIONS IN MEDIEVAL IRELAND* 12 (1970) (“[The class of poet,] [l]ike that of the clergy itself, it was a privileged class.”).

<sup>26</sup> See Hall, *supra* note 22, at 126; see also Paul Douglas Callister, *Law’s Box: Law, Jurisprudence and the Information Ecosphere*, 74 UMKC L. REV. 263, 322 (“Poetic verse as a medium was valued more than life because it transcended life.”).

<sup>27</sup> The Old Irish glossing of a legal text, the SENCHAS MÁR, reads: “After Patrick and the nobles . . . established this law, it is then that they decided how they will levy their due from those who commit offenses against them, i.e. bell and psalm for the church, hostages for lords, ‘three utterances’ for poets, distraint for commoners.” Breatnach, *supra* note 23, at 121 (“[S]atire as a means of legal redress is stated to be the particular prerogative of the *fili* (poet).”). Cf. *id.* at 122 (“It is the poets who enforce the regulation of honor . . . everyone submits to the poets for fear of their satire.” (translating a provision from the law text BRETHA NEMED DÉDENACH)).

<sup>28</sup> *Id.* (“[S]o that everyone submits to the poets for fear of their satire, having their cheeks/honor as hostage.”); ANNÁLA CONNACHT, entry 1414.16, reprinted in ANNÁLA

Brehon law restrained illegitimate satirical speech by requiring the payment of a victim's honor price for: mocking a person's appearance; publicizing a physical blemish; coining a nickname that stuck; composing an unlawful satire; repeating a satire composed by another poet; taunting; wrongfully accusing someone of theft; and publicizing an untrue story which causes shame.<sup>29</sup>

Brehon law subsumed Christianity in a way that allowed the Irish to retain their social structure and many of their laws, while creating a unique version of Christianity.<sup>30</sup> Though Christianity influenced Brehon law, the ecclesiastical offenses that assimilated into Brehon law were offenses against individuals that largely supplemented pre-existing rules.<sup>31</sup> Blasphemy was not an offense under Brehon law, but arrived in Ireland with the common law.<sup>32</sup>

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CONNACHT 423 (A. Martin Freeman ed., 1944) (recording how an Irish poet's satire killed the lieutenant of the King of England), *translated in CELT: The Corpus of Electronic Texts*, <http://www.ucc.ie/celt/published/T100011/> (last visited Mar. 12, 2011).

John Stanley, lieutenant of the King of England, came to Ireland this year to destroy the Gaels of Ireland. He was a man who granted no protection to cleric or laymen or to the poets of Ireland, for he plundered every one of its clerics any men of skill in every art on whom he laid hands and expose them to cold and beggary. . . . After this the Ui Uicinn made lampoons on John Stanley and he lived only five weeks till he died from the venom of the lampoons. Now this is one of two poet's miracles, which were worked for Niall O hUicinn: the freezing to death of the Clanconway on the night after he was plundered in Clada, and the death of John Stanley from the venom of the lampoons.

*Id.*

<sup>29</sup> Philip O'Leary, *Jeers and Judgments: Laughter in Early Irish Literature*, 22 *CAMBRIDGE MEDIEVAL CELTIC STUD.* 15, 26–27 (1991) (“There are seven kinds of satire . . . for which payment of compensation is adjudged.”).

<sup>30</sup> See, e.g., John C. Kleefeld, *From Brouhahas to Brehon Laws: Poetic Impulse in the Law*, 4 *LAW & HUMANITIES* 21, 51 (2010) (“[F]or the law of nature reached many things which the law of scripture did not reach.” (quoting from the *SENCAS MÁR*)); M. J. Gorman, *The Ancient Brehon Laws of Ireland*, 61 *U. PA. L. REV.* 217, 225 (1912–13) (“[I]n Ireland, the organization of the Church appears to have been developed more according to local ideas.”); Dan. M. Wiley, *The Maledictory Psalms*, 15 *PERITIA* 261, 271 (2001) (“Some Irish curses . . . are modeled on the satires of secular poets.”).

<sup>31</sup> Brehon law also incorporated such practices as tithes and first fruits that while having “no connection with ordinary canon law . . . were local regulations between the National Church [in Ireland] and its members.” Gorman, *supra* note 30, at 225. Blasphemy remained a religious offense. See, e.g., *In Tenga Bithnua [The Ever-New Tongue]*, in *KING OF MYSTERIES: EARLY IRISH RELIGIOUS WRITINGS* 77, 87 (John Carey ed. & trans., 2000) (“There is not in heaven or earth any turning to repentance which can atone for blasphemy against God . . . only eternal existence without an end in the nethermost torments.”).

<sup>32</sup> As with blasphemy, early medieval Ireland did not have an ecclesiastical offense for heresy. See Paul O'Higgins, *Blasphemy in Irish Law*, 23 *MOD. L. REV.* 151, 158 n.46 (1960) (“[C]anon against heresy were unknown in Ireland.”).

*B. Blasphemy at Common Law*

Common law<sup>33</sup> first arrived in Ireland with Anglo-Norman<sup>34</sup> settlers between 1169 and 1172.<sup>35</sup> From the thirteenth to the seventeenth century, Brehon law and Common law coexisted in Ireland.<sup>36</sup> The territorial extent of either legal system was fluid, ebbing and flowing through centuries of frequent warfare,<sup>37</sup> but common law was largely confined to the area around Dublin loyal to the English Crown.<sup>38</sup>

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<sup>33</sup> This Note uses the term “common law” generally to mean the English legal system in its entirety. See Robin Frame, “*Leys Engleys Nees en Irland*”: *The English Political Identity in Medieval Ireland*, 3 *TRANSACTIONS OF THE ROYAL HIST. SOC’Y* 83, 87 (1993) (“[I]n the 1170s the Common Law [] was only starting to achieve definition.”). In common law, judges “use reason to ascertain the principles which, in the absence of statutes, should govern human behavior.” Jayson L. Spiegel, *Christianity as Part of the Common Law*, 14 *N.C. CENT. L.J.* 494, 515 (1983–84).

<sup>34</sup> This Note uses the term “Anglo-Norman” to describe the earliest Norman settlers of Ireland. See Janet Sinder, *Irish Legal History: An Overview and Guide to the Sources*, 93 *LAW LIBR. J.* 231, 243 n.70 (2001) (“Numerous terms are used in historical writings to describe the first Norman settlers of Ireland, especially when describing them in relation to the later English settlers: e.g., ‘Old English,’ ‘Anglo-Norman,’ or ‘the English of Ireland’ (as opposed to ‘the English of England’).”) (citing Art Cosgrove, *The Writing of Irish Medieval History*, 27 *IRISH HIST. STUD.* 97, 102–04 (1990)). Further, this Note uses the term “Native Irish” to describe the Irish-speaking peoples inhabiting Ireland before 1169 and their descendants.

<sup>35</sup> While in 1167, Dermot MacMurrough, exiled King of Leinster, along with Maurice FitzGerald and Richard de Clare, Earl of Pembroke (also known as “Strongbow”) led a small group of Norman knights to Ireland with the permission of King Henry II of England, it was not until 1169 that a sizable body of Norman, Welsh, and Flemish forces arrived, landing at Wexford. *E.g.*, *MAC CARTHAIGH’S BOOK*, entry 1165.4, *reprinted in* *MISCELLANEOUS IRISH ANNALS* (A.D. 1114–1437) 47 (Séamus Ó hInnse ed. & trans., 1947) (noting MacMurrough’s exile); *ANNALA ULADH*, entry 1167.6, *reprinted in* W. M. HENNESSY & B. MAC CARTHY, *ANNALA ULADH: ANNALS OF ULSTER* 159 (Nollaig Ó Muraíle ed., 1998) (“[MacMurrough] came from over sea this year.”); *id.* at 163, entry 1169.5 (“The fleet of Robert FitzStephen came to Ireland in aid of [MacMurrough].”); *id.* at 165, entry 1170.5 (“Ath-cliaith was destroyed by [MacMurrough] and by the transmarine men he brought with him from the east to destroy Ireland, in revenge for his expulsion over sea out of his own land and of the killing of his son.”); *ANNÁLA LOCHA CÉ*, entry 1170.9, *reprinted in* *THE ANNALS OF LOCH CÉ: A CHRONICLE OF IRISH AFFAIRS FROM A.D. 1014 TO A.D. 1590*, at 144 (W. M. Hennessy ed. & trans., 1939) (“Earl Strongbow came into Erin . . . and Saxon Foreigners have been in Erin since then.”); see also W. J. Johnston, *The First Adventure of the Common Law*, 36 *L. Q. REV.* 9, 30 (1920) (“And so the common law came to Ireland.”).

<sup>36</sup> See Sinder, *supra* note 34, at 243 (“For almost 500 years, the two systems coexisted, and the brehon law was not extinguished until the Tudor conquest of the seventeenth century.”); Charles Legge, *A Lone Thirty Years War*, *DAILY MAIL* (U.K.), Aug. 24, 2010 (“Such was the strength of Brehon law, which was the everyday law for people in Ireland who weren’t part of the Anglo-Norman elite, that it lasted until the 17th century, being finally supplemented during the Cromwellian occupation of Ireland in the mid-17th century.”).

<sup>37</sup> Border regions between Native Irish and Anglo-Norman settlements were scenes of constant violence. See *ANNÁLA LOCHA CÉ*, *supra* note 35, at 236, entries 1205.5.14–18 (“A

Generally speaking, the Native Irish, and those Anglo-Norman families who adopted native customs, used Brehon law and spoke Irish.<sup>39</sup> The English perceived Native Irish culture, and the Brehon laws in particular, as barbaric.<sup>40</sup> Common law was mostly unavailable to the Native

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fleet was brought by John de Curci from Innsi-Gall, to contest Uladh (Ulster) with the sons of Hugo de Laci and the Foreigners of Midhe (Meath). No good resulted from this expedition . . . the country was destroyed and plundered.”); *cf.* ANNÁLA CONNACHT, *supra* note 28, at 20–21, entry 1225.27 (“After the plunderings and the slaughter of men and beasts and the exposure of the inhabitants to cold and hunger, a severe attack of sickness came upon the countryside.”); *see also* COLMCILLE CONWAY, *THE STORY OF MELLIFONT* xlvi (1958) (“A war of aggression was in full swing.”).

<sup>38</sup> *See The Greivances of the Englishe Pale*, ¶ 1, in CELT: THE CORPUS OF ELECTRONIC TEXTS (2009), <http://www.ucc.ie/celt/published/E590001-006/index.html>; Thomas P. Quinn, Jr., *Judicial Interpretation of Silence: The Criminal Evidence Order of 1988*, 26 CASE W. RES. J. INT’L L. 365, 368 n.15 (1994) (“The Pale was comprised mainly of English settlers, as Gaels were technically not allowed to enter the territory.”). However, between the thirteenth and sixteenth centuries “a hybrid—typically marcher—body of laws, with borrowings from each cultural tradition” developed. *See* Nerys Patterson, *Brehon law in Late Medieval Ireland: ‘Antiquarian and Obsolete’ or ‘Traditional and Functional’?* 17 CAMBRIDGE MEDIEVAL CELTIC STUD. 43, 46 (1989).

<sup>39</sup> Writing around 1188, Gerald Cambrensis, a Cambrio-Norman clerk and chaplain to King Henry II of England, described Native Irish culture’s influence on new arrivals: “[E]ven strangers who land here from other countries become generally imbued with this natural crime, which seems to be innate and very contagious.” GERALD CAMBRENSIS, *THE HISTORY AND TOPOGRAPHY OF IRELAND* 77 (Thomas Wright ed., Thomas Forester trans., 2000); *see also* Quinn, *supra* note 38 at 368 n.15 (“[M]any English settlers began adopting the habits and customs of the Gaelic people.”); Gorman, *supra* note 30, at 221 (“Even the English settlers outside of the Pale had adopted the Brehon laws, and great Anglo-Saxon lords in Ireland kept Brehons in their service like the Irish chiefs.”).

<sup>40</sup> *See* Hall, *supra* note 22, at 135 (“[A] highly emotive and insulting slander that was used throughout medieval Ireland [w]as to call a man an ‘Irishman,’ or more specifically a ‘hibernicus,’ when he was not.”). This view of a “barbarous” Native Irish society appears to have been widely held in medieval Western Europe. *See, e.g.,* ST. BERNARD OF CLAIRVAUX, *LIFE OF ST. MALACHY* 6 (H.J. Lawlor ed., 1920) (describing St. Malachy as “born in Ireland, of a barbarous people . . . brought up there, and there received his education. But from the barbarism of his birth he contracted no taint . . . that uncultured barbarism . . . produced for us so worthy a fellow-citizen with the saints”). St. Bernard described the barbarism of the Native Irish as “a sort of paganism brought in under the name of Christianity,” comparing the Native Irish to:

[B]easts . . . men so shameless in regard of morals, so dead in regard of rites, so impious in regard of faith, so barbarous in regard of laws, so stubborn in regard of discipline, so unclean in regard of life. They were Christians in name, in fact pagans. There was no giving of tithes or first fruits; no entry into lawful marriages, no making of confessions: nowhere could be found any who would either seek penance or impose it.

*Id.* at 37, 46. To St. Bernard, civilizing the Native Irish meant that “[b]arbarous laws disappear, Roman laws are introduced.” *Id.* at 39. Criticism of Native Irish culture continued well into the modern era. *See* Colin Kidd, *Gaelic Antiquity and National Identity in Enlightenment Ireland and Scotland*, 109 ENG. HIST. R. 1197, 1200 (1994) (“It was common for Protestants

Irish,<sup>41</sup> whose legal families actively circulated eighth- and ninth-century texts on Brehon law, continuing to gloss and comment on the legal texts, through the sixteenth century.<sup>42</sup> Common law and Brehon law clashed over issues such as marriage and inheritance, and dissimilar ecclesiastical structures and practices.<sup>43</sup>

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to set the traumatic events of the seventeenth-century wars of religion against the larger ethnic context of Gaelic barbarity.”)

<sup>41</sup> See Johnston, *supra* note 35, at 28 (“[C]ommon law was, in the first instance, extended to Ireland solely for the benefit of the colonists.”); Gorman, *supra* note 30, at 221.

It was not . . . the desire of those responsible for the government of Ireland to extend the protection of these laws to the “Irishrie.” The reason was obvious, because to robe a ‘mere Irishman’ was not then theft, and to kill him was no murder. It is no wonder . . . that the Irish clung so tenaciously to their Brehon laws, because they found no protection under the English substitutes.

*Id.*; see also Hall, *supra* note 22, at 135 (“[Many Irish were] legally outside English Common Law . . . and, if killed, [an Irishman’s] death was not treated as a felony.”). Many Native Irish may have preferred using Brehon Law. See COLMCILLE CONWAY, *THE STORY OF MELLIFONT 9* (1958) (“[T]he Irish were conservative and were inclined to hold fast to the traditions of their ancestors.”); Barry O’Dwyer, *The Impact of the Native Irish on the Cistercians in the Thirteenth Century*, 4 J. REL. HIST. 290, 300 (1967) (“[T]he general conviction among the Gael may be presumed to have been that the Irish cultural and religious traditions were better suited to Ireland than those of the foreigners.”).

<sup>42</sup> Hall, *supra* note 22, at 125 (citing G. Mac Niocaill, *Notes on Litigation in Late Irish Law*, 2 IRISH JURIST 299 (1967)); Patterson, *supra* note 38, at 43 (“During the final phase of the tradition, the schools of Irish law continued to copy the ancient law tracts, along with glosses and commentary from various historical periods.”).

<sup>43</sup> At the time of the Anglo-Norman invasion of Ireland, the Native Irish Church functioned completely differently than the Roman Catholic Church. See generally WATT, *supra* note 25. By the beginning of the thirteenth century, Anglo-Norman bishops already possessed six Irish sees. CONWAY, *supra* note 37, at xli. In 1217, the Justiciar of Ireland, Geoffrey de Marisco, officially prohibited any Native Irishman’s election or promotion to an Irish see. *Id.* Instead, only clerks approved by the English King were eligible. *Id.* Pope Honorius III took action against this policy:

It has come to our ears that certain Englishmen have, with unheard-of temerity, have ordered that no cleric from Ireland, no matter how educated or good-living, shall be promoted to any ecclesiastical office. Not wishing to turn deaf ears to an abuse of such audacity and evil, we order you by authority of this letter to make public denunciation of this order as void and to prohibit these English from maintaining it or attempting anything similar in future. Irish clergy should be freely admitted to ecclesiastical offices if their learning and conduct are fitting and their election canonical.

Letter from Pope Honorius III to James of St. Victor’s in Paris, Papal Legate to Ireland (Aug. 6, 1220), translated in JOHN WATT, *THE CHURCH IN MEDIEVAL IRELAND* 104 (1998). In the first decades of the thirteenth century, the conflict extended into the Irish houses of the Cistercian Order, in the “Mellifont Conspiracy.” For more on how Native Irish monastic practices differed from the Anglo-Normans’, see generally Katherine Jacob, *Making the Mellifont Conspiracy: The Influence of Traditional Irish Monasticism in the Irish Cistercian Houses, 1142–1233* (Apr. 2009) (unpublished Master of Arts in History Dissertation, Johns Hopkins University) (on file with the Sheridan Libraries of the Johns Hopkins University).

With the departure of many of the Native Irish princes in 1607, the so-called “Flight of the Earls,”<sup>44</sup> Brehon law—and Native Irish culture—was outlawed.<sup>45</sup> England’s resolve to eradicate vestiges of Brehon law characterized Irish legal history until the Act of Union in 1800.<sup>46</sup> By the

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<sup>44</sup> The “Flight of the Earls” was the 1607 departure from County Donegal of Hugh O’Neill, the Earl of Tyrone, and Rory O’Donnell, the Earl of Tyrconnell, with their families and followers for Spain. ANNALS OF THE FOUR MASTERS, entry 1607.2–3, *reprinted in* ANNALA RÍOGHACHTA ÉIREANN: ANNALS OF THE KINGDOM OF IRELAND BY THE FOUR MASTERS, FROM THE EARLIEST PERIOD TO THE YEAR 1616, at 2354–59 (John O’Donovan ed. & trans., 1990).

This was a distinguished crew for one ship; for it is indeed certain that the sea had not supported, and the winds had not wafted from Ireland, in modern times, a party of one ship who would have been more illustrious or noble, in point of genealogy, or more renowned for deeds, valour, prowess, or high achievements, than they, if God had permitted them to remain in their patrimonies until their children should have reached the age of manhood. Woe to the heart that meditated, woe to the mind that conceived, woe to the council that decided on, the project of their setting out on this voyage, without knowing whether they should ever return to their native principalities or patrimonies to the end of the world.

*Id.*; see also Chris Ashmore, *Flight of Earls Was More a ‘Strategic Regrouping,’* IRISH TIMES, Aug. 20, 2007 (“With English authority increasing throughout Ireland, they set sail for Spain with the hope of securing support in their bid to retain the control of lands under Brehon law. However, they never returned.”); Sinder, *supra* note 34, at 248 (“For historians, the defeat of Hugh O’Neill, the Earl of Tyrone, in 1603, and the Flight of the Earls in 1607 mark the end of the native Irish system and the beginning of Ireland’s complete domination by England.” (citing R.F. FOSTER, MODERN IRELAND, 1600–1972, at 36–45 (1988))); Gorman, *supra* note 30, at 221 (“The surrender of Kinsale and the fall of the Castle of Dunboy in 1602 paved the way for [Brehon law’s] final overthrow.”).

<sup>45</sup> See Seán Byrne & Neal Carter, *Social Cubism: Six Social Forces of Ethnopolitical Conflict in Northern Ireland and Quebec*, 8 ILSA J. INT’L & COMP. L. 741, 744 (2002) (“[Because of] [t]he 1692 Penal Laws . . . Catholics could not be elected to political office, practice their religion, speak the Gaelic language in public, or bequeath property unless the heir converted to the Protestant faith.”). This was not the first time Native Irish culture had been outlawed. The Statutes of Kilkenny (1351) forbid the speaking of Irish, intermarriage between the Native Irish and Anglo-Irish, and Native Irish war games, in STATUTES AND ORDINANCES AND ACTS OF THE PARLIAMENT OF IRELAND, KING JOHN TO HENRY V 430–68 (H. F. Berry ed., 1907).

<sup>46</sup> See, e.g., William Palmer, *That ‘Insolent Liberty’: Honor, Rites of Power, and Persuasion in Sixteenth-Century Ireland*, 46 RENAISSANCE Q. 308, 323 (1993).

Edmund Spenser’s *A View of the Present State of Ireland* . . . proposed [] a grim final solution which included the establishment of military rule, starvation of the indigenous population, confiscation of native lands[,] . . . transportation of those who survived the starvation to territories where they would be subject to total English control, and the destruction of all native family and kinship ties. Spenser was not the first to propose such a brutal solution.

*Id.*

twentieth century, English common law principles were securely ingrained in Ireland.<sup>47</sup>

One such common law offense was blasphemy, which is intrinsically connected to the history of blasphemy laws in Ireland.<sup>48</sup> Initially, the ecclesiastical courts had jurisdiction over punishing unorthodox religious speech.<sup>49</sup> Blasphemy was not an offense in common law until the seventeenth century.<sup>50</sup> After the English Reformation established the English monarch as both head of State and head of the English Church, blasphemy became an offense against not only the Church of England, but also the State.<sup>51</sup> Under common law, blasphemy “does not extend to religions other than Christianity.”<sup>52</sup> As a result, in the eighteenth and early years of the nineteenth century, blasphemy prosecutions targeted

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<sup>47</sup> Melisa J. Anderson, *Lawful Wife, Unlawful Sex*, 27 GA. J. INT'L & COMP. L. 139, 160 (1998); Sarah Frazier, *Liberty of Expression in Ireland and the Need for a Constitutional Law of Defamation*, 32 VAND. J. TRANSNAT'L L. 391, 404 (1999) (citing MARC McDONALD, IRISH LAW OF DEFAMATION 1–2 (1987) (“Irish civil defamation law, both common law and statute, is very similar to English common law, and is often distinguished only in its tendency to maintain traditional common law with greater vigor.”))

<sup>48</sup> OXFORD COMPANION TO IRISH HISTORY 323 (S.J. Connolly ed., 2007) (arguing that with the creation of Irish Free State in 1921 the Constitution did not preserve the laws from the first Dáil).

<sup>49</sup> See Hall, *supra* note 22, at 132–33 (“[W]ords were taken more seriously in church courts . . . than in the secular courts.”).

<sup>50</sup> See PAUL O'MAHOONEY, CRIMINAL JUSTICE IN IRELAND 6 (2002) (“[I]t is one of the ironies of the modern, independent state of Ireland that some Westminster legislation of the last century is still law, although the same legislation has long ago been repealed or revised in England and Wales.”).

<sup>51</sup> Taylor’s Case, (1676) 86 Eng. Rep. 189, 1 Vent. 293 (K.B.) (holding blasphemy was not just an ecclesiastical offense but “a crime against the laws, state and government. . . . [T]o reproach the Christian religion is to speak in subversion of the law.”); Woolston’s Case, (1909) 94 Eng. Rep. 655 (making blasphemy a criminal offense); see also *Corway v. Independent Newspapers, Ltd.*, [1999] 4 I.R. 485, at ¶ 13 (Ir.) (“Whether this was because they believed that the common law was founded on Christianity or whether it was that Christianity, in its Protestant form, was the established religion in England, is not clear. If they made the distinction they probably took the latter view.”).

<sup>52</sup> Marcus Tregilgas-Davey, *Ex Parte Choudhury: An Opportunity Missed*, 54 MOD. L. REV. 294, 295 (1991) (quoting Divisional Court judge Watkins LJ unpublished opinion in *Ex parte Choudhury*, a case deciding whether Salman Rushdie’s book, THE SATANIC VERSES, was blasphemous or seditious libel). The common law definition of blasphemy remains today, though frequently altered by statute. See Travis, *supra* note 16.

[S]ome figures in the Muslim community . . . attempted to mount a prosecution for blasphemous libel against Salman Rushdie for his book, The Satanic Verses . . . the appeal court said it was not prepared to extend the blasphemy law’s protection afforded the established church to other religions, including Islam.

*Id.*

individuals whose religious beliefs differed from the doctrines of the Church of England.<sup>53</sup>

However, as common law blasphemy evolved, it shifted from imposing religious orthodoxy to restraining obscene assaults on Christianity.<sup>54</sup> At that point, in the mid to late nineteenth century, common law blasphemy permitted academic challenges to the fundamentals of Christianity.<sup>55</sup> In one well-known statement from an 1883 case, Lord Chief Justice John Coleridge said that “I now lay it down as law, that if the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy.”<sup>56</sup> It was no longer a statement’s substance, but its style that submitted it to accusations of blasphemy.<sup>57</sup>

### C. *Blasphemy in Canon Law*

As in common law, the ecclesiastical definition of “blasphemy” has developed over time from the Bible’s indefinite uses for the term.<sup>58</sup> In the Bible, Jesus, who himself was convicted under Jewish blasphemy law,<sup>59</sup> says: “[A]lthough all matter of sins could in the end be forgiven, the sin of blasphemy against the Holy Spirit would not.”<sup>60</sup> In Canon law, “[s]in is an act contrary to reason. It wounds man’s nature and injures human solidarity.”<sup>61</sup> Blasphemy is a sin under Canon law.<sup>62</sup> It is an offense committed against God, rather than an offense against a person.<sup>63</sup> Blasphemy means assigning false attributes to God, or denying God’s true

<sup>53</sup> E.g., Jeremy Patrick, *Not Dead, Just Sleeping: Canada’s Prohibition on Blasphemous Libel as a Case Study in Obsolete Legislation*, 41 U.B.C. L. REV. 193, 199 (2008).

<sup>54</sup> *Id.*

<sup>55</sup> *Regina v. Ramsay & Foote*, (1883) 15 Cox C.C. 231, 238 (Q.B.) (Lord Coleridge).

<sup>56</sup> The House of Lords (U.K.) adopted this principle in 1917 and it remained the law in England through the twentieth century. See *Bowman v. Secular Society*, [1917] A.C. 406, 423 (H.L.) (Lord Finlay) (“I think we must hold that the law of England on this point is . . . that the crime of blasphemy is not constituted by a temperate attack on religion in which the decencies of controversy are maintained.”); *Whitehouse v. Lemon*, [1979] A.C. 617, 68 CR. APP. REP. 381, 385, 406 (H.L.).

<sup>57</sup> Patrick, *supra* note 53 (noting that matters of substance included “denial of the Trinity, Christ’s resurrection, etc.”).

<sup>58</sup> R. H. Helmholz, *The Bible in the Service of the Canon Law*, 70 CHI. KENT L. REV. 1557, 1570 (1994–95) (“The Bible presented an apparent obstacle.”).

<sup>59</sup> *Matthew* 26:64–66; see also *Leviticus* 24:16 (“He who blasphemeth the name of the Lord shall be put to death: all the congregation shall stone him.”). All references to the Bible in this Note cite to THE NEW OXFORD ANNOTATED BIBLE (Michael D. Coogan ed., 2007).

<sup>60</sup> Helmholz, *supra* note 58 (citing *Mark* 3:29); see also *Matthew* 12:31; *Luke* 12:10.

<sup>61</sup> CATECHISM OF THE CATHOLIC CHURCH 510 (2d ed. 1997) [hereinafter “CATECHISM”].

<sup>62</sup> *Id.* at 509 (discussing mortal sins).

<sup>63</sup> *Id.* at 505, 576.

characteristics.<sup>64</sup> As a mortal sin, blasphemy must concern a grave object and be committed deliberately “with full knowledge” of its sinfulness.<sup>65</sup> Thus, unlike common law blasphemy, blasphemy in Canon law focuses on the substance of a statement, rather than its style.<sup>66</sup>

#### *D. Irish Blasphemy Law Before Independence*

There are three recorded prosecutions for blasphemy in Ireland before its independence in 1922.<sup>67</sup> The earliest reported blasphemy case in the Irish Common Law Courts was in 1703 when Thomas Emlin, a Unitarian minister, was convicted for writing a book that argued that Jesus Christ was not equal to God.<sup>68</sup> The second blasphemy prosecution in Ireland was in 1852, when a Franciscan Friar was convicted of blasphemy for burning a Protestant Bible in public.<sup>69</sup> Similarly, in 1855 a Redemptionist

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<sup>64</sup> Helmholz, *supra* note 58 (citing THOMAS AQUINAS, SUMMA THEOLOGICA, at 2a 2ae, qu. 13, art. 1 (1474)) (“To say that God was unjust in visiting a flood or a famine upon a city constituted the first form [of blasphemy]; to say that God could not prevent the disaster was the second.”).

<sup>65</sup> CATECHISM, *supra* note 61, at 507. Under Canon law, unintentional ignorance acts as a defense and “can diminish or even remove the imputability of a grave offense.” *Id.* at 508. Additionally, “duress, fear, and other psychological or social factors” can diminish or nullify one’s responsibility for an action. *Id.* at 484.

<sup>66</sup> See *Corway*, [1999] 4 IR 485 ¶ 25 (Ir.) (discussing the evolution of common law blasphemy).

<sup>67</sup> *Id.* The Irish Supreme Court found it “worth noting that all three prosecutions . . . involved the prosecution of clergymen – one Unitarian Minister and two Roman Catholic Priests.” *Id.*

<sup>68</sup> *Id.* ¶ 17 (Emlin was “sentenced to one year’s imprisonment, fined £1,000 and ordered to find security for good behavior for life.”).

<sup>69</sup> *Id.* ¶ 18 (citing the case of John Syngean Bridgman (referred to in *R. v. Petcherine*, [1855] 8 St. Ir. 1086, 1087, 7 Cox C.C. 79, 84 (N.S.)) (“The indictment against him certainly appears to reflect a view that any deliberate attack on the Protestant religion as by law established would amount to blasphemy.”). The indictment against the Friar read in part:

[T]hat he not having the fear of God before his eyes, but intending to scandalise and vilify the true Protestant religion, as by law established within these realms, and to blaspheme . . . unlawfully, wickedly, and blasphemously, in the presence of divers liege subjects of our Queen, set fire to . . . a copy of the Holy Gospel of God, being the authorised version thereof, appointed to be read in Churches . . . and there holding in his hands said New Testament, wickedly and blasphemously . . . pronounced and spoke with a loud voice . . . these profane and most blasphemous words . . . that it (meaning the New Testament) is not the Word of God, but the Word of the Devil, and the Devil’s Book—Luther’s Bible, or your Heretic Bible—to the great dishonour of Almighty God, and in contempt of the Protestant religion.

*Corway*, [1999] 4 I.R. 485, ¶ 18 (quoting REV. P. M’LOSKEY, THE TRIAL AND CONVICTION OF A FRANCISCAN MONK, AT MAYO SPRING ASSIZES, 1852, FOR BURNING AND BLASPHEMING THE HOLY SCRIPTURES 13 (1852)). Baron Lefroy instructed the jury that “it is not the version of

Father was acquitted of the same charge after he burned a pile of “evil” literature and unknowingly burned a copy of a Bible.<sup>70</sup> Only one of the Irish cases, the earliest, truly dealt with the issue of denial of Christian doctrine.<sup>71</sup> The remaining blasphemy prosecutions were directed at Catholics.<sup>72</sup> Between the Church of Ireland’s disestablishment in 1869,<sup>73</sup> and the 1922 enactment of *Saorstát Éireann*, the “Constitution of the Irish Free State,”<sup>74</sup> there is no record of any blasphemy prosecution in Ireland.<sup>75</sup> It would be one hundred and thirty years before Ireland saw another prosecution for blasphemy.<sup>76</sup>

*E. Blasphemy in Modern Irish Law, 1937 to Present*

British law greatly influenced *Bunreacht na hÉireann*, adopted in 1937.<sup>77</sup> All common law principles that do not directly conflict with *Bunreacht na hÉireann* or a statute remain valid law.<sup>78</sup> Beside common law,

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the Scriptures which will warrant the commission of such an offence,” suggesting that burning any version of the Bible would be blasphemous, not just the Protestant Bible. *Id.* ¶ 19.

<sup>70</sup> *Corway*, [1999] 4 I.R. 485, ¶ 20–22.

<sup>71</sup> Stephen Ranalow, *Bearing a Constitutional Cross: Examining Blasphemy and the Judicial Role in Corway v. Independent Newspapers*, 3 TRINITY C.L. REV. 95, 99–100 (2000) (citing Courtney Kenny, *The Evolution of the Law of Blasphemy*, 1 CANON L. J. 127, 134 (1922) (“[T]he course has been to withhold the application of the penal law unless insulting language is used.”)).

<sup>72</sup> *Corway*, [1999] 4 I.R. 485, ¶ 25 (explaining that of the three blasphemy prosecutions before 1922, one was against a Protestant minister while two were against Catholic priests).

<sup>73</sup> *Id.* ¶ 23.

<sup>74</sup> *Saorstát Éireann* was the first constitution of the Free Irish State, an independent Irish country. IR. CONST., 1922. It was replaced in 1937 by *Bunreacht na hÉireann*. IR. CONST., 1937.

<sup>75</sup> *Corway*, [1999] 4 I.R. 485, ¶ 24.

<sup>76</sup> *Id.*

<sup>77</sup> See *Ardagh v. Maguire* [2002] I.R. 21, § 18 (Ir.) (“While retaining the Common Law System, Ireland wished to establish an Irish legal order. There was no reality in returning to the ancient Irish Brehon Law.”); Frazier, *supra* note 47, at 395 (“A number of political forces in play during the early years of the Irish State, some of which continue today, meant that the Irish [C]onstitution was sometimes more strongly influenced by British principles of governance than more modern constitutional ideals found in the United States.”); see also R. H. Graveson, *The Unification of Law in the British Isles*, 17 INT’L & COMP. L. Q. 118, 122 (1968) (“[Irish] law remains substantially similar to that of England and would present no great technical problem of unification. The problem would rather be psychological.”); J. C. Brady, *English Law in the Republic of Ireland*, 6 U. TAS. L. REV. 60 (1978–80) (“[I]t is not altogether surprising that a close continuum with the common law past has been preserved in what is now the Republic of Ireland.”).

<sup>78</sup> Frazier, *supra* note 47, at 398 n.51 (citing *Corway*, [1996] 4 I.L.R.M. 432 (Ir.)) (“It is safe to assume that the Oireachtas [the Dáil] considered that the common law offences of blasphemy and blasphemous libel would have been carried over under the Constitution as not being inconsistent with it.”).

Catholicism had the largest influence on the document's content.<sup>79</sup> The inclusion of religious elements in Bunreacht na hÉireann reflected not only the "special relationship" of the new Republic to the Roman Catholic Church and the country's Catholic majority,<sup>80</sup> but also the history of exclusion of Catholics from Irish politics.<sup>81</sup>

Today, the majority of Ireland's population is Catholic.<sup>82</sup> The government's Catholic heritage is still evident in a number of other ways, including providing financial assistance to denominational schools and the twice daily broadcasting of the Angelus on public radio and television stations.<sup>83</sup> There has been some criticism that such an inherently Catholic broadcast discriminates against those with other religious beliefs.<sup>84</sup>

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<sup>79</sup> In former article 44, section 2 of Bunreacht na hÉireann, the Irish government recognized "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." IR. CONST., 1937, art. 44, § 2 (A constitutional referendum amended Article 44.1.2 in 1972); *see also* Anderson, *supra* note 47, at 160 (noting that Ireland has a "constitution firmly based on Catholic beliefs"); Bryan Mercurio, *Abortion in Ireland*, 11 TUL. J. INT'L & COMP. L. 141, 142–43 (2003) ("[Bunreacht na hÉireann] "embodies the deeply ingrained Catholic identity critical to Ireland following its independence from Britain.").

<sup>80</sup> *See* Mercurio, *supra* note 79, at 142 ("[N]early ninety percent of Ireland's four million citizens are Catholic.").

<sup>81</sup> *See* James J. Friedberg, *Ambiguity, Sovereignty, and Identity In Ireland: Peace and Transition*, 20 OHIO ST. J. ON DISP. RESOL. 113, 116 (2005) ("The nationalist community sees itself as the victim of colonization for the better part of a millennium, beginning with the first English invasion of Ireland in 1169 by Anglo-Norman nobles and that of Henry II two years later.") (citations omitted).

<sup>82</sup> *See* Mercurio, *supra* note 79, at 142. *But see*, Roy Greenslade, *Ireland's New Blasphemy Law is a Disgraceful Inhibition of Free Speech*, GUARDIAN (U.K.) (Jan. 6, 2010), <http://www.guardian.co.uk/media/greenslade/2010/jan/06/freedom-of-speech-press-freedom> ("[M]odern Ireland is very different. The Catholic Church is no longer the power that it was. Fewer people attend mass. Priests are not only no longer feared, they are also not so respected, especially since the shocking revelations of child abuse.").

<sup>83</sup> *See* Elizabeth F. Defeis, *Religious Liberty and Protections in Europe*, 45 J. CATH. LEGAL STUD. 73, 88 (2006) ("The influence of the church in Irish society and political life is undisputed, and the Republic of Ireland is historically and culturally a Catholic nation."); Ruth McDonald, *Sixty Years of the Angelus*, BBC RADIO ULSTER'S SUNDAY SEQUENCE (Aug. 20, 2010), <http://www.bbc.co.uk/news/uk-northern-ireland-11037752> (last visited Jan. 30, 2011) ("At 12 noon and six in the evening the Angelus bells ring out across Ireland's air waves. News bulletins must wait until a minute past the hour to allow for the devotional Catholic prayer, recited in memory of the Incarnation of Jesus."). Public television stations have broadcast the Angelus since 1950. *Id.* Ireland is the only European country still broadcasting the Angelus bells on public television. *Id.*

<sup>84</sup> McDonald, *supra* note 83 ("It's part of a wider debate on what kind of society Ireland should be – a secular or a religious one.").

Bunreacht na hÉireann includes a prohibition on blasphemy in its civil liberties section as a limit to freedom of speech.<sup>85</sup> It outlaws “[t]he publication or utterance of blasphemous, seditious, or indecent matter is an offense which shall be punishable in accordance with law.”<sup>86</sup> Bunreacht na hÉireann does not define blasphemy,<sup>87</sup> though its provision is similar to the Catholic Church’s *Definition of Sin*: “Sin . . . has been defined as ‘an utterance, a deed, or a desire contrary to the eternal law.’”<sup>88</sup> Eamon de Valera, who prepared the first draft of Bunreacht na hÉireann,<sup>89</sup> opined that “no new offense had been created . . . the offense of blasphemy is one at common law.”<sup>90</sup> Blasphemy’s common law definition protected only the beliefs of the Church of England, and for fifty years there were no prosecutions for blasphemy in Ireland, a majority Catholic country.<sup>91</sup>

In 1999, the Irish Supreme Court considered a case that gave it an opportunity to define the offense of blasphemy.<sup>92</sup> In *Corway v. Independent Newspapers*, the Court found that the blasphemy law was unenforceable: Without a statutory definition, the Court had to rely on common law, which recognized only blasphemy against the Church of England.<sup>93</sup> In that case, a carpenter from Dublin commenced a private criminal prosecution against the owners and editor of the *Sunday Independent*, a widely circulated weekly newspaper, for violating Section 13.1 of the Defamation Act of

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<sup>85</sup> See Patrick, *supra* note 53, at 199 (noting that matters of substance included “denial of the Trinity, Christ’s resurrection, etc.”).

<sup>86</sup> BUNREACT NA HÉIREANN, 1937, art. 40(6)(1)(i).

The State guarantees liberty for the exercise of the following rights, subject to public order and morality: i. The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavor to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

*Id.*

<sup>87</sup> *Id.*; *Corway*, [1999] 4 I.R. 485, ¶ 11. Irish is the first official language of Ireland. In Irish, “blasphemous” is “*diamhaslach*,” which may be defined as, “blasphemous, the reproaching or dishonoring of God, the ridiculing of religion, or speaking evil of holy things.” O’Higgins, *supra* note 32, at 154 (quoting O’BRIEN’S IRISH-ENGLISH DICTIONARY (1768)).

<sup>88</sup> CATECHISM, *supra* note 61, at 505.

<sup>89</sup> O’Higgins, *supra* note 32, at 153.

<sup>90</sup> *Id.* at 153–54.

<sup>91</sup> 188 SEANAD DEB. col. 1774 (Mar. 11, 2008) (Ir.) (“There has been no prosecution.”).

<sup>92</sup> *Corway*, [1999] 4 I.R. 485.

<sup>93</sup> *Id.*

1961.<sup>94</sup> A 1995 cartoon that accompanied an article discussing the implications of Ireland's divorce referendum had offended the plaintiff.<sup>95</sup> At the time of the case, there was no act of the Oireachtas that defined blasphemy.<sup>96</sup> Consequently, the Court "consider[ed] first the evolution of the crime of blasphemy in England and then its evolution in Ireland,"<sup>97</sup> and found that "the common law offense of blasphemy could not have survived in a situation where there was no officially established religion."<sup>98</sup> Further, the Court held that "in the absence of any legislative definition of the constitutional offense of blasphemy, it is impossible to say of what the offense of blasphemy consists."<sup>99</sup> The Court's failure to define the offense of blasphemy had the consequence of eliminating blasphemy from Irish law.<sup>100</sup>

In *Corway*, the Court left it to the Irish legislature to "consider modernizing the law of blasphemy to protect all faiths,"<sup>101</sup> to which one senator warned that "[t]he difficulty in that regard is that the essence of the offence seems to consist of the hurt that is caused to the believer . . . a dangerous basis for an offence."<sup>102</sup> In both 1991 and 1996, constitutional review commissions encouraged removing the blasphemy provision.<sup>103</sup> Yet,

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<sup>94</sup> *Id.* Section 13.1 of the Defamation Act of 1961 provides:

Every person who composes, prints or publishes any blasphemous . . . libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years.

Defamation Act, 1961 (Act No. 40.1961) (Ir.) available at <http://www.irishstatutebook.ie/1961/en/act/pub/0040/index.html> (last visited Mar. 12, 2012).

<sup>95</sup> Ranalow, *supra* note 71, at 96 (describing the cartoon as depicting "a stout comic priest offering the Eucharist to the three leaders of the coalition government, each of whom was holding his hands up in rejection").

<sup>96</sup> *Corway*, [1999] 4 I.R. 485, ¶ 11.

<sup>97</sup> *Id.* at ¶ 13.

<sup>98</sup> Ranalow, *supra* note 71, at 97–98 ("As Barrington, J. pointed out, this would clearly run contrary to the guarantee of freedom of conscience contained in Article 44.2.1° by requiring the State to act as the arbiter of religious truth.") (citing *Corway*, [1999] 4 I.R. 485, ¶ 18).

<sup>99</sup> *Corway*, [1999] 4 I.R. 485, ¶ 38.

<sup>100</sup> Ranalow, *supra* note 71, at 109 (stating that the court's failure had the effect of "removing blasphemy from the Constitution by silent amendment"); G.F. Whyte, *The Frontiers of Religious Liberty: A Commonwealth Celebration of the 25<sup>th</sup> Anniversary of the U.N. Declaration of Religious Tolerance*, 21 EMORY INT'L L. REV. 43, 51 (2007) ("[T]he timidity of the Court in the face of this interpretative task has essentially neutralized this reference to blasphemy.").

<sup>101</sup> 188 SEANAD DEB. col. 1774 (Mar. 11, 2008) (Ir.).

<sup>102</sup> *Id.*

<sup>103</sup> See, e.g., THE LAW REFORM COMMISSION, CONSULTATION PAPER ON THE CRIME OF LIBEL 188 (1991), available at [http://www.lawreform.ie/\\_fileupload/Reports/rCrimeofLibel.htm](http://www.lawreform.ie/_fileupload/Reports/rCrimeofLibel.htm) (see Chapter 4's Recommendations for Blasphemous Libel).

blasphemy remains in Bunreacht na hÉireann.<sup>104</sup> A decade after *Corway*, the Irish Government finally decided to define blasphemy.<sup>105</sup>

### III. DEFINING THE PROBLEM: THE DEFAMATION ACT'S THREAT TO RELIGIOUS SPEECH

#### A. *Blasphemy in the 2009 Defamation Act*

The Act re-establishes blasphemy as a criminal offense in Irish law.<sup>106</sup> The Act took effect on January 1, 2010.<sup>107</sup> With Pakistan making news for prosecuting under its own blasphemy law, the media did not hesitate to report on the new Irish Act alongside stories of Pakistani mothers facing death by hanging.<sup>108</sup> Critics lambasted the Act as “medieval” and an unjust restriction of freedom of expression in order to protect religion.<sup>109</sup> Yet, no Irish religious leaders had asked for the blasphemy legislation.<sup>110</sup>

<sup>104</sup> IR. CONST., 1937, art. 40(6)(1)(i).

The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

- i. The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavor to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

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

*Id.*

<sup>105</sup> Act §§ 35–37.

<sup>106</sup> *Id.*

<sup>107</sup> Stephen Clarke, *Ireland: New Prohibition on Blasphemy*, LIBRARY OF CONGRESS (Jan. 8, 2010), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205401765\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205401765_text).

<sup>108</sup> See Sayah, *supra* note 1 (reporting the death by hanging sentence of Asia Bibi for blasphemy); e.g., Khan & Magee, *supra* note 15 (“Hard-line religious groups in Pakistan and the Irish government both favor [blasphemy laws]. . . . A case of strange bedfellows, indeed.”).

<sup>109</sup> See Travis, *supra* note 16; Pádraig Reidy, *Who Asked for Ireland's Blasphemy Law?*, GUARDIAN (U.K.), July 9, 2009, available at <http://www.guardian.co.uk/commentisfree/libertycentral/2009/jul/09/ireland-blasphemy-laws> (“Irish law has now enshrined the notion that the taking of offence is more important than free expression.”); *Ahern Proposes Autumn Referendum on Blasphemy*, *supra* note 15 (“[T]his law is both silly and dangerous: silly because it is introducing medieval canon law offence into a modern pluralist republic.”).

<sup>110</sup> See Robert Mackey, *Attempt to Break New Irish Blasphemy Law*, N.Y. TIMES, THE LEDE (Jan. 4, 2010, 7:59 PM), <http://thelede.blogs.nytimes.com/2010/01/04/new-irish-blasphemy-law-broken/> (“[T]he country's Christian leaders made no public request for the legal prohibition on blasphemy to be made enforceable.”); Susan Jacoby, *Irish Blasphemy Law: Monty O'Python With a Darker Side*, WASH. POST (Jan. 5, 2010), [http://onfaith.washingtonpost.com/onfaith/panelists/susan\\_jacoby/2010/01/irish\\_blasphemy\\_law\\_a\\_monty\\_opython\\_production.html](http://onfaith.washingtonpost.com/onfaith/panelists/susan_jacoby/2010/01/irish_blasphemy_law_a_monty_opython_production.html) (last visited Feb. 25, 2012) (“[N]o religious or civic group in Ireland had

Instead, the Irish government defended the Act's enactment, claiming that Bunreacht na hÉireann requires Irish law to define blasphemy.<sup>111</sup> In March 2010, the Irish Justice Minister, Dermot Ahern, released a statement asserting that he would propose a referendum to eliminate the crime of blasphemy from Bunreacht na hÉireann in the fall of that year.<sup>112</sup> No referendum on blasphemy occurred in 2010, but in March 2011 Ireland's two largest political parties agreed to hold a constitutional convention to consider removing the blasphemy provision, among other issues.<sup>113</sup>

To be liable under Ireland's blasphemy Act, an individual must publish or utter "matter that is grossly abusive or insulting in relation to matters held sacred by any religion," that causes "outrage among a substantial number of the adherents of that religion," with the intent to cause that outrage.<sup>114</sup> By requiring a *mens rea* for the defamation itself, anyone prosecuted under the Act must have intended not only to speak or write the offensive words, but also to use those words with the intent to offend.<sup>115</sup> Under the Act's defenses, to avoid conviction for blasphemy, a defendant

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crusaded for the legislation."); Gifford, *supra* note 13 ("[T]he Catholic hierarchy has not pushed for the law at all, and no senior churchmen have come out in recent days to defend it.").

<sup>111</sup> Gifford, *supra* note 13 ("[Bunreacht na hÉireann] contains a line saying that blasphemy is an offense punishable by law. But the law that sustained the constitutional provision—the 1961 Defamation Act—was being repealed and lawmakers said they were required to replace it."); Ahern Proposes Autumn Referendum on Blasphemy, *supra* note 15 ("The Minister . . . [said] that 'I was only doing my duty' in bringing in the new blasphemy law, and that 'there was an incredibly sophisticated campaign [against me], mainly on the internet.'" (quoting Irish Justice Minister Dermot Ahern)). Additionally, under Bunreacht na hÉireann, the President of Ireland has the authority to submit any statute to the Supreme Court for review of its constitutionality. IR. CONST., 1937, art. 26(1).

The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof.

*Id.* Irish President Mary McAleese did not refer the Act to the Supreme Court to review its constitutionality. See Mackey, *supra* note 110 ("[T]he bill was signed by Ireland's president, Mary McAleese.").

<sup>112</sup> Ahern Proposes Autumn Referendum on Blasphemy, *supra* note 15; Mary Minihan, *Wording for Children's Rights Close to Sign-off*, IRISH TIMES, Jan. 13, 2011 ("Minister for Justice Dermot Ahern had previously suggested a constitutional amendment to delete the prohibition on blasphemy when the referendum on children's rights takes place.").

<sup>113</sup> Deaglán de Bréadún, *Agreement For 'One of the Darkest Hours'*, IRISH TIMES, Mar. 7, 2011 (reporting that the government will consider the blasphemy provision, but did not include the provision among the five "prioritized" referendum topics).

<sup>114</sup> Act §§ 36, 36(2)(a)–(b). This is a break from common law, where the only *mens rea* constraint was the intent to publish the material, which put unwary authors in danger of outraging. See Tregilgas-Davey, *supra* note 52, at 298.

<sup>115</sup> Tregilgas-Davey, *supra* note 52, at 298.

must “prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.”<sup>116</sup> The Irish government, as well as some Irish legal scholars, has suggested that the Act is unenforceable because its defenses seem to be all encompassing.<sup>117</sup> However, the Act’s defenses still leave certain types of speech to the potential prosecution.<sup>118</sup> This Note will focus on one such category of expression excluded from the Act’s enumerated defenses: religious speech.

*B. Yes and No: Probing Problems in the Act’s Defenses*

1. The Act restricts religious expression

*For freedom that Christ has set us free.*<sup>119</sup>

While the Act cannot condemn blasphemers to death, it does present an impediment to freedom of expression.<sup>120</sup> As is the case in the Middle East, blasphemy laws in any jurisdiction can be used to enforce an ever-increasing code of religious morality.<sup>121</sup> According to the United States Commission on International Religious Freedom:

<sup>116</sup> Act § 36(3).

<sup>117</sup> See Jacoby, *supra* note 110 (“[W]hat, exactly, constitutes a ‘substantial number’ of the outraged?”); Gifford, *supra* note 13.

[T]he law is too ambiguous. . . . “It doesn’t define what a religion is” . . . [and] the law fails to define what outrage is or what a substantial number is. . . . ‘If it’s an actual number it discriminates against small religions; if it’s a percentage of adherents, it discriminates against large religions. . . . So the law is almost impossible to enforce.

*Id.* (quoting Michael Nugent, head of the group Atheist Ireland)); see also *Law Being Used as a Lever*, *supra* note 6 (“At the adoption of the Irish Defamation Act, the Irish Minister for Justice, Dermot Ahern, referred to the constitutional basis of the Act and assured that the Act is formulated in a way to make it almost impossible to successfully prosecute.”).

<sup>118</sup> For example, in the wake of a highly publicized child abuse scandal in Ireland, the Act leaves no defense for factual speech that may offend religious sensibilities, such as criticism of the Catholic Church. See, e.g., Gary Hearn, Letter to the Editor, *Reaction to Blasphemy Laws*, IRISH TIMES, Jan. 13, 2010, available at 2010 WL 657545 (“Why does it not include the ‘truth’? This law is an insult to the survivors of child sex abuse.”); John Mallick, Letter to the Editor, *Reaction to Blasphemy Laws*, IRISH TIMES, Jan. 7, 2010, available at 2010 WL 279601 (“It is more than ironic that shortly after four bishops are forced to resign over a child abuse scandal, Ireland should pass a blasphemy law or any law protecting religion.”); see also Breda O’Brien, *Mere Recovery Cannot Save Us – What We Need is Transformation*, IRISH TIMES, Nov. 20, 2010, available at 2010 WL 23135180 (“The Catholic Church lost much of its credibility in even worse circumstances [than the financial crisis of 2010], so at the moment we are bereft of leadership.”).

<sup>119</sup> CATECHISM, *supra* note 61, at 484 (quoting *Galatians* 5:1).

<sup>120</sup> *Law Being Used as a Lever*, *supra* note 6 (“[The Act] represents a dangerous trend towards the standardization of blasphemous libel internationally.”).

<sup>121</sup> *Law Being Used as a Lever*, *supra* note 6.

National or international laws purporting to ban criticism or “defamation” of religions do not solve the very real problems of religious persecution and discrimination faced by the adherents of many religions around the world. In fact, such prohibitions do more harm than good, as evidenced by the documented human rights abuses perpetrated under them in countries such as Pakistan and Egypt.<sup>122</sup>

William Butler Yeats, a senator in the Irish Free State and the first Irishman to be awarded the Nobel Prize in Literature,<sup>123</sup> argued in a session of the Seanad Éireann that “attempt[ing] legislation upon religious grounds. . . open[s] the way for every kind of intolerance and for every kind of religious persecution.”<sup>124</sup> Ireland is now a more open society than most Middle Eastern nations, perhaps due to the liberalizing effects of membership in the European Union, but these restrictions were used quite frequently in the early days of the nation to censor books and other informational materials.<sup>125</sup> Thus, as long as the Act’s defenses fail to include a protection of religious expression, the threat of tyranny remains.<sup>126</sup>

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Constituting defamation of religion in international law or domestic legislation distorts and undermines existing international human rights protection of both the right to freedom of expression and the right to equality. . . . [It] has been abusively relied upon to stifle religious dissent and criticism of religious adherents and non-believers in a number of countries around the world.

*Id.*

<sup>122</sup> U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, THE DANGEROUS IDEA OF PROTECTING RELIGIONS FROM “DEFAMATION”: A THREAT TO UNIVERSAL HUMAN RIGHTS STANDARDS 7 (2010) [hereinafter DANGEROUS IDEA], available at <http://www.uscirf.gov/images/uscirf%20policy%20focus%20defamation%202010%20update.pdf>

<sup>123</sup> DAVID A. ROSS, CRITICAL COMPANION TO WILLIAM BUTLER YEATS: A LITERARY REFERENCE TO HIS LIFE AND WORK 21 (2009); see also *The Nobel Prize in Literature 1923*, NOBELPRIZE.ORG, nobelprize.org/nobel\_prizes/literature/laureates/1923/ (last visited Feb. 26, 2012). Yeats served in the Seanad Éireann of the Irish Free State. See 5 SEANAD DEB. col. 434 (June 11, 1925) (Ir.) (transcript of the discussions on the topic of divorce legislation, including Yeats’ participation).

<sup>124</sup> 5 SEANAD DEB. Col. 438 (June 11, 1925) (Ir.).

<sup>125</sup> See Kathryn A. O’Brien, Comment, *Ireland’s Secular Revolution: The Waning Influence of the Catholic Church and the Future of Ireland’s Blasphemy Law*, 18 CONN. J. INT’L L. 395, 406, 419–20 (2002) (noticing that joining the European Union required liberalizing changes to laws and that previously this law was used to ban certain works of literature and information).

<sup>126</sup> Cf. Fintan O’Toole, *Fear, Rage, Despair and Distrust Have Been in the Pot for Two Years. The New Ingredient is Shame*, IRISH TIMES, Nov. 20, 2010, at 1.

“The Sovereign” used to refer to the British monarch, and as such it touched the rawest of nerves in nationalist Ireland. . . . The sense of having returned to the status of a subject people . . . is palpable. . . . And that cuts right through to the most tender nerve of a former colony. What colonial overlords tell their subject peoples is: “You’re not fit to govern yourselves.” That taunt is deeply embedded in our his-

The constitutional provision that includes blasphemy as an offense, Article 40.6.1.i, also professes to ensure “the right of the citizens to express freely their convictions and opinions.”<sup>127</sup> Yet, this guarantee is limited because “organs of public opinion” may not be used “to undermine public order or morality or the authority of the State.”<sup>128</sup> Like much of *Bunreacht na hÉireann*, this provision reflects the Catholic Church’s position on the importance of civil authorities protecting human “moral and religious” freedoms “within the limits of the common good and public order.”<sup>129</sup> The *Catechism of the Catholic Church* states that “[t]he right to the exercise of freedom, especially in religious and moral matters, is an inalienable requirement of the dignity of man. But the exercise of freedom does not entail the putative right to say or do anything.”<sup>130</sup> Irish law today echoes that Catholic ecclesiastical law.<sup>131</sup> As a result, freedom of expression is considerably constrained, more so than other “fundamental rights” protected in Articles 40–44.<sup>132</sup>

2. The State is not competent to pass judgment on an ecclesiastical offense

*[W]e're now officially the most religiously deranged country in the civilized world.*<sup>133</sup>

Including blasphemy in Irish law requires a secular State to enforce an ecclesiastical offense by arbitrating matters of belief.<sup>134</sup> Critics suggest

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torical consciousness. Much of modern Irish history has been shaped by the attempt to disprove it.

*Id.*; see also *Law Being Used as a Lever*, *supra* note 6 (“[T]he reliance by representatives of Pakistan on the Irish legislation shows that the Irish law has provided an extremely dangerous international precedent.”).

<sup>127</sup> IR. CONST., 1937.

<sup>128</sup> *Id.*

<sup>129</sup> CATECHISM, *supra* note 61, at 482.

<sup>130</sup> *Id.* at 484.

<sup>131</sup> See *e.g.*, *id.* at 482 (“The right to the exercise of freedom, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person. This right must be recognized and protected by civil authority within the limits of the common good and public order.”).

<sup>132</sup> IR. CONST., 1937, arts. 40–44 (designating the rights in these articles – Personal Rights, The Family, Education, Private Property, Religion – as “Fundamental Rights”).

<sup>133</sup> Mary FitzGerald, *Ireland Drops Nine Places in Press Index Over Blasphemy Law*, IRISH TIMES, Oct. 27, 2010, at 7; Ian O’Doherty, *All Hail the...Tree*, THE INDEP. (Ir.) (July 13, 2009), <http://www.independent.ie/opinion/columnists/ian-odoherty/all-hail-the-tree-1818805.html>.

<sup>134</sup> See Savage, *supra* note 8.

that the Act provides a legal position for religious extremists to use to silence critique.<sup>135</sup> The Act casts the Irish government as arbitrator of religious speech and beliefs, potentially in violation of Article 44.2.3 of Bunreacht na hÉireann, which mandates that the State must not discriminate on religious grounds.<sup>136</sup> In common law defamation actions, truth is a defense for the accused.<sup>137</sup> But religions inherently confer conflicting claims of what is the truth, and one individual's reformation is heresy to another.<sup>138</sup> Even the decision between which belief groups constitute "religions" is problematic.<sup>139</sup> Similarly, by their nature, blasphemy laws deal in abstractions—religious beliefs, political ideologies, etc.—that rise above individuals in the laws' application.<sup>140</sup>

Furthermore, the Act is redundant as a mechanism against religious hate speech, as Irish law already proscribes such conduct through the Prohibition of Incitement to Hatred Act.<sup>141</sup> That statute protects against

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"The defamation of religions protects ideas rather than individuals, and makes the state the arbiter of which ideas are true. It requires the state to sort good and bad ideologies." By doing so, she said, the approach "violates the very foundations of the human rights tradition by protecting ideas rather than the individuals who hold ideas."

*Id.* (quoting Angela Wu, International Law Director for the Becket Fund for Religious Liberty, a public-interest law firm aimed at protecting the freedom of religious expression).

<sup>135</sup> See *Making Blasphemy An Offence Takes Europe Back Several Centuries*, REPORTERS WITHOUT BORDERS (Jan. 4, 2010) <http://en.rsf.org/ireland-making-blasphemy-an-offence-takes-04-01-2010,35672.html> ("As it stands, this law offers legal grounds to religious extremists of all kinds, it allows them to use the force of the law to impose their views.").

<sup>136</sup> *Compare* Act § 36 (fining up to €25,000 any person who utters or publishes a blasphemous remark), *with* IR. CONST., 1937, art. 44, § 2(3) ("The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.").

<sup>137</sup> See Act § 16(1) ("It shall be a defence (to be known and in this Act referred to as the 'defence of truth') to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects.").

<sup>138</sup> See Savage, *supra* note 8 ("'Truth' is no defense in such cases. The subjective perception of insult is what matters, and what puts the whole approach on a collision course with the human rights regime.").

<sup>139</sup> Despite the Act stating that "'religion' does not include an organization or cult," in practice, the distinctions between them will be difficult to distinguish. See Act § 36(4). The British Home Office summarized the problem as "impossible to define in law the difference between a religion which deserves protection and a cult or a sect which does not." Travis, *supra* note 16 (speaking in response to suggestions that England's now-repealed blasphemy law be extended to other religions).

<sup>140</sup> See Savage, *supra* note 8 ("[Those promoting blasphemy laws] are using this discourse of 'defamation' to carve out any attention we would bring to a country. Abstractions like states and ideologies and religions are seen as more important than individuals. This is a moral failure." (quoting Susan Bunn Livingstone, a former U.S. State Department official)).

<sup>141</sup> See Prohibition of Incitement to Hatred Act, (Act No. 19/1989) (Ir.), *available at* <http://www.irishstatutebook.ie/1989/en/act/pub/0019/index.html> (last visited Mar. 12, 2011)

speech or actions that are “threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred” against “a group of persons in the State or elsewhere on account of their race, color, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.”<sup>142</sup> Like the Act, the Prohibition of Incitement to Hatred Act restricts the freedom of expression guaranteed by Article 40.6.1.i of Bunreacht na hÉireann.<sup>143</sup> With the Prohibition of Incitement to Hatred Act already on the books in Ireland, the Act’s additional encroachment on freedom of expression unnecessarily obstructs speech.<sup>144</sup> By adding the Act to Irish law, the government provided itself with another avenue to pursue when prosecuting speech. Now, in any situation where a potential incitement to hatred incident has a religious element, the government can choose which offense to employ in prosecution. Under such circumstances, the Act may have the unintended effect of pushing opposing religious and political groups farther apart.

3. By regulating religious speech, the Act is a symbolic barrier

The Act is an unnecessary brick in the boundary that blocks unification between Ireland and Northern Ireland.<sup>145</sup> Yeats said that:

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(“An act to prohibit incitement to hatred on account of race, *religion*, nationality or sexual orientation.”) (emphasis added).

<sup>142</sup> *Id.* §§ 1–2.

<sup>143</sup> Compare *id.* § 2 (creating an offence for offending a religion), and Act § 6 (creating a tort for making a defamatory statement), with IR. CONST., 1937, art. 40, § 6(1)(i) (upholding “[t]he right of the citizens to express freely their convictions and opinions.”).

<sup>144</sup> See DANGEROUS IDEA, *supra* note 122, at 7.

U.N. members who support universal human rights, including freedom of religion, should . . . [w]ork diplomatically to persuade OIC members that religious intolerance can best be fought not through national or international laws prohibiting speech that ‘defames’ religions, but rather through efforts, including education, public diplomacy, and the enforcement of laws against bias-motivated violence and discrimination, to ensure respect for the human rights of every individual.

*Id.*

<sup>145</sup> The allusion to boundary walls refers to both Belfast’s “peace walls” and the de facto segregation that separates Catholics and Protestants in many ways. For information on the “peace walls,” see Dominic Bryan, *Parading Protestants and Consenting Catholics in Northern Ireland: Communal Conflict, Contested Public Space, and Group Rights*, 5 CHI. J. INT’L L. 233, 235 (2004) (“In Belfast, the fear of attacks from the other community and sporadic violence has led to the building of ‘peace walls’ between ‘interface’ areas separating ‘Protestant’ and ‘Catholic’ territories.”). On the separation of Catholics and Protestants, see Byrne & Carter, *supra* note 45, at 748–49 (“In Northern Ireland, Protestants and Catholics attend separate schools and churches, rarely intermarry, and live in separate neighborhoods for physical and psychological protection; religion preserves each group’s way of life.”). Regarding the potential for unification of Northern Ireland with Ireland, see The Agreement: Agreement Reached in the Multi-Party Negotiations 2, Ir.-U.K., Apr. 10, 1998 [hereinafter

It is perhaps the deepest political passion with this nation that North and South be united into one nation. If it ever comes that North and South unite the North will not give up any liberty, which she already possesses under her constitution. You will then have to grant to another people what you refuse to grant to those within your borders. If you show that this country, Southern Ireland, is going to be governed by Catholic ideas and by Catholic ideas alone, you will never get the North. You will create an impassable barrier between South and North, and you will pass more and more Catholic laws, while the North will, gradually, assimilate its divorce and other laws to those of England. You will put a wedge into the midst of this nation.<sup>146</sup>

Though Yeats spoke about divorce legislation, his sentiments are valid today. Both Northern Ireland and the Republic of Ireland share a common legal history,<sup>147</sup> and the continued existence of blasphemy laws in both States evidences that joint heritage.<sup>148</sup> But while legislators in the Republic

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Good Friday Agreement], available at <http://www.nio.gov.uk/agreement.pdf> (last visited Mar. 13, 2011).

[I]t is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

*Id.* (describing the process through which future unification of the two States could occur).

<sup>146</sup> 5 SEANAD DEB. cols. 435–36 (June 11, 1925) (Ir.) (discussing divorce legislation).

<sup>147</sup> Cf. Michael Bertram Crowe, *Human Rights, the Irish Constitution and the Courts*, 47 NOTRE DAME L. 281, 281 (1971–1972) (noting that Ireland used native *brehon* law before adopting English common law).

<sup>148</sup> There has never been a prosecution for blasphemy in Northern Ireland. See 714 PARL. DEB., H.L. (2009) 406 (U.K.) (withdrawing an amendment to the Coroners and Justice Bill that would have abolished blasphemy and blasphemous libel in Northern Ireland, though blasphemy was removed from English law). Yet, Northern Ireland retained its blasphemy laws because of its unique position. See Kathleen Chen, *The Voice of Reality and Justice*, 21 WIS. INT'L L.J. 469, 484 n.66 (2003) (“[I]n constitutional and legal description, Northern Ireland’s position in the United Kingdom has never been recognized as fully British.”); Jonathan Heawood, *When Blasphemy Bit the Dust*, GUARDIAN (U.K.) (Mar. 7, 2008), <http://www.guardian.co.uk/commentisfree/2008/mar/07/whenblasphemybitthedust> (“So, farewell then, blasphemy. You were so pointless for so long, and now, by 148 votes to 87 in the House of Lords, you are dead.”). But see 714 PARL. DEB., H.L. (2009) 405 (U.K.) (“[B]laspemy at common law has never operated in Northern Ireland.”). Regarding the blasphemy laws of Ireland and Northern Ireland, one English member of the House of Lords said, “[t]here is now a grotesque situation in Ireland.” Afua Hirsch, *House of Lords to Back Libel Law Changes*, GUARDIAN (U.K.) (Oct. 25, 2009), <http://www.guardian.co.uk/uk/2009/oct/25/house-of-lords-libel-laws>.

In the Republic of Ireland, there has been a rebirth of the offence of blasphemous libel for domestic constitution reasons, and in Northern Ireland we have not yet

act with an eye on unification,<sup>149</sup> Protestants in Northern Ireland oppose it, fearing it would result in an island-wide Catholic majority.<sup>150</sup> Further,

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managed to get rid of it. God no more needs to be protected by criminal law in Northern Ireland than in Great Britain.

*Id.* (quoting Liberal Democrat peer Lord Lester).

<sup>149</sup> When drafting the 1922 SAORSTAT EIREANN, Irish framers tempered the republican influence, fearing “that any hopes of Northern Ireland joining the Free State would be dashed if the language offended the majority of Protestants in the North.” Frazier, *supra* note 47, at 397. Similarly, the drafters of the 1937 Bunreacht na hÉireann were influenced by the “need to fashion a cohesive concept of Irish nationhood that could serve to unite the Irish people.” *See id.* at 402. Today, the Irish government still acts with an eye on unification. *See, e.g.*, 149 SEANAD DEB. col. 1601–03 (Feb. 5, 1997) (Ir.).

There must be peace in Ireland in the long term which will encompass North and South and that must be recognized in our institutions. . . .

In the light of the developments in Northern Ireland, in the inevitable re-establishment of the peace process and the longer term bringing together of institutions, North and South, in a new framework for Ireland, we will have a unique opportunity to make major changes. They will not be made in a piecemeal, haphazard way; they will only be done in the context of an overall revision of the Constitution and the putting in place of a permanent structure which will give effect to some of the views of the people, North and South.

*Id.* Leading up to the Republic’s October 27, 2011 Presidential election, Sinn Féin’s candidate, Martin McGuinness, brought “united Irelandism” back to the forefront of the Republic’s political discourse. *See* Henry McDonald, *Martin McGuinness Would Still Preside Over Partition*, GUARDIAN (U.K.) (Oct. 11, 2011), <http://www.guardian.co.uk/commentisfree/2011/oct/11/martin-mcguinness-irish-presidential-election> (noting former deputy first minister of Northern Ireland McGuinness’s “amazing turnaround in fortunes . . . from chief of staff of an illegal organization—the Provisional IRA—to the [candidate for] commander in chief of the Irish defense forces, the official military force of the state”). *But see* Nick Cohen, *Martin McGuinness’s Candidacy is an Affront to Decency*, GUARDIAN (U.K.) (Sept. 24, 2011), <http://www.guardian.co.uk/commentisfree/2011/sep/25/martin-mcguinness-presidency-ireland-ira> (“[McGuinness] keep[s] the idea of violent republicanism alive by pretending it was a justifiable reaction to British oppression or a continuation of the struggle for Catholic equality by other means.”). Further, continued sectarian violence remains a campaign discussion point. *See e.g.*, *Fine Gael Leader in Dissidents Vow*, BELFAST TELEGRAPH (Jan. 22, 2011), <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/fine-gael-leader-in-dissidents-vow-15061348.html> (describing Fine Gael politician Enda Kenny’s vow “to confront the threat of dissidents on both sides of the border if he is elected to lead Ireland in the forthcoming General Election.”); *United Call from Derry Politicians to Dissidents*, DERRY J. (Ir.) (Jan. 4, 2011), [http://www.derryjournal.com/news/local/united\\_call\\_from\\_derry\\_politicians\\_to\\_dissidents\\_1\\_2359993](http://www.derryjournal.com/news/local/united_call_from_derry_politicians_to_dissidents_1_2359993).

Elected representatives from all political parties in Derry have issued a united call to dissident republicans to end their armed campaigns in 2011. In an unusual step, politicians from the SDLP, Sinn Féin, the DUP, UUP, and Alliance Party, released a joint statement calling on the various armed groups active in the city to lay down their weapons.

*Id.*

<sup>150</sup> *See* Henry McDonald, *The Kingdom Will Remain United — in Ireland, at Least*, GUARDIAN (U.K.) (June 17, 2011), <http://www.guardian.co.uk/politics/2011/jun/17/life-and>

Northern Ireland's recent economic downturn has sparked an increase in sectarian violence.<sup>151</sup> The Northern Irish legal system has long reflected

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times-survey-united-ireland ("In a further blow to the hopes of a united Ireland . . . only 4% of Protestants want Irish unity. . . . [W]hen it comes to the existential question of the state, unionists will always vote to keep themselves unionists."); Chen, *supra* note 148, at 483 n.61 ("Unionists have sporadically, and certainly since 1969, feared British 'abandonment' and their being overrun by Catholics and Republicans."); Byrne & Carter, *supra* note 45, at 752–53 ("Protestants in Northern Ireland have developed a pronounced 'siege mentality.' They considered the Republic of Ireland as hostile to their interests and identity and thus deem any move toward *rapprochement* with Catholics in Northern Ireland as acceptance of eventual Irish unification."); Shane O'Neill, *Liberty, Equality, and the Rights of Cultures: The Marching Controversy at Drumcree*, 2 BRITISH J. POL. & INT'L REL. 26, 27 (2000) ("[T]he apparent intransigence of many unionists might be explained by their insecurity within the United Kingdom.").

<sup>151</sup> See Ed Curran, *Ulster Heading for Another Chilly Winter of Discontent*, BELFAST TELEGRAPH, Oct. 11, 2011, available at <http://www.belfasttelegraph.co.uk/opinion/columnists/ed-curran/ulster-heading-for-another-chilly-winter-of-discontent-16061581.html> ("Dear David Cameron[:] Are you gambling with the peace process? Are your cuts in public spending a step too far?"); Owen Bowcott, *Belfast Riots: A Setback for Area Barely Reshaped by Peace Process*, GUARDIAN (U.K.) (June 22, 2011), <http://www.guardian.co.uk/uk/2011/jun/22/belfast-riots-setback-peace-process> ("High youth unemployment, reinforced by Ireland's severe economic downturn, has also left a pool of recruits susceptible to paramilitary influence. . . . The fear is that violence may spread. . . ."); Henry McDonald, *Continuity IRA Member Rules Out Peace Moves*, GUARDIAN (U.K.) (July 14, 2011), <http://www.guardian.co.uk/uk/2011/jul/14/continuity-ira-member-rules-out-peace-moves> ("[N]ew figures . . . show a spike in terrorist violence since power-sharing and devolution were restored to Northern Ireland [in 2006]."); Simon Jenkins, *From Newry to Helmand, the Lessons are the Same*, GUARDIAN (U.K.) (Feb. 23, 2010), <http://www.guardian.co.uk/commentisfree/2010/feb/23/newry-helmand-lessons-are-same> ("Northern Ireland sees a terrorist incident, a bombing or a shooting, twice week, double the rate of a year ago. Someone is charged with terrorism every six days. . . . Northern Ireland has learned to live with low-level terrorism on a scale greater than anything being experienced from Islamists in mainland Britain."); *Hardline Republicans to Continue Campaign*, DERRY J. (Ir.) (Jan. 4, 2011), <http://www.derryjournal.com/news/local/hardline-republicans-to-continue-campaign-1-2359991> ("In a New Year statement, the 32 County Sovereignty Movement (32CSM), regarded by many as the political wing of the Real IRA, defended the right of groups to resort to armed struggle and added it was 'inevitable.'"); *Officer's Trauma Revealed as 26 Riot Accused Returned for Trial*, BELFAST TELEGRAPH (Jan. 22, 2011), <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/officerrsq-uos-trauma-revealed-as-26-riot-accused-returned-for-trial-15061179.html> ("A policewoman hit by a concrete block during rioting in north Belfast was left in excruciating pain. . . ."); Martyn Frampton, *The Making of a Dissident Movement*, IRISH TIMES, Nov. 20, 2010, available at 2010 WL 23135214 ("The lifeblood of physical-force republicanism has survived the demise of the Provisional IRA and been decanted into new vessels. . . . [I]t does not appear set to expire any time soon."); see also Chen, *supra* note 148, at 492 ("Sectarian violence is still a fact of life. Paramilitary groups on both sides of the conflict hold on to their weapons."); Byrne & Carter, *supra* note 45, at 757 ("Sectarian attacks conducted by both Loyalists and Republicans produced a state of fear and powerlessness marked by a self-perpetuating pattern of deterrence and revenge."). Continued violence may negatively impact Northern Ireland's economy. See Henry McDonald, *Northern Ireland "Has No Strategy to Deal with Sectarianism,"* GUARDIAN (U.K.) (July 13, 2011), <http://www.guardian.co.uk/politics/2011/jul/13/northern-ireland-strategy-sectarianism> ("The

sectarian hostilities.<sup>152</sup> Thus, establishing a political system—by international treaty such as the Good Friday Agreement, or by referendum

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leader of Northern Ireland’s trade union movement has claimed that . . . the power-sharing government at Stormont has no strategy to deal with sectarianism.”). Further, some immigrants have fled areas due to the hostilities. *See, e.g., Northern Ireland Violence Drives Out Immigrant Families*, GUARDIAN (U.K.) (July 16, 2011), <http://www.guardian.co.uk/uk/2011/jul/16/east-timor-immigrants-fled-northern-ireland-violence> (“Immigrant families from East Timor fled a Catholic area . . . when loyalist rioters tried to attack nationalist homes.”).

<sup>152</sup> *See Gerry Adams: Unrepentant Irishman*, BELFAST TELEGRAPH (Sept. 9, 2009), <http://www.belfasttelegraph.co.uk/news/politics/gerry-adams-unrepentant-irishman-14483817.html> (“[Northern Ireland was] a statelet run by Protestants for Protestants. . . . Catholics were given the worst houses, locked out of the best jobs, and threatened by marauding loyalist militia, while the political system was gerrymandered to ensure Catholic votes didn’t count.”); *Pat Finucane Murder: A Scary Admission by the State*, GUARDIAN (U.K.) (Oct. 13, 2011), <http://www.guardian.co.uk/uk/blog/2011/oct/13/pat-finucane-scary-admission-state> [hereinafter *Pat Finucane Murder*] (“State collusion in murder is routinely alleged . . . [but] [t]he public admission of ‘state collusion in murder’ by a member of the cabinet is a rare event. . . .”); *Split Over Bloody Sunday March Plan*, BELFAST TELEGRAPH (Jan. 26, 2012), <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/split-over-bloody-sunday-march-plan-16109332.html> (“[T]he march plan[s] to retrace the route of the ill-fated demonstration where British paratroopers killed 14 civil rights marchers in January 1972. A public inquiry by Lord Saville declared all the victims to be innocent, prompting an apology from [British] Prime Minister David Cameron in 2010.”); Loraine Taylor Letter to the Editor, *Time Long Past for Change at Maghaberry Prison*, DERRY J. (Ir.) (Jan. 13, 2012), <http://www.derryjournal.com/news/letters/time-long-past-for-change-at-maghaberry-prison-1-3416478>.

[T]he conditions and tensions . . . are increasing daily in Maghaberry due to alleged physical, social, emotional and psychological abuse that [R]epublican prisoners are being subjected to . . . by some of the prison staff. . . . The [p]risoners are currently on a dirty protest and no wash protest essentially opposing the lack of association given to [Republican] prisoners . . . and the daily forced strip searches.

*Id.*; *see also* Chen, *supra* note 148, at 488 (“[R]esidents have long known that the law is written for some, and not others, and enforced against some, but not others, even, and sometimes especially, when the text seems to be perfectly clear.”). As a result, dissident Republicans mistrust police, frequently targeting officers in attacks. *See* Henry McDonald, *Northern Ireland Violence Triggered by Ideology and a Mistrust of the Police*, GUARDIAN (U.K.) (July 12, 2011), <http://www.guardian.co.uk/uk/2011/jul/12/northern-ireland-violence-ideology-police> (noting that the “historic mistrust of the police” adds to young Republicans’ “lethal cocktail of resentment towards any force of authority in society”); Henry McDonald, *Facebook Shuts Down Page Targeting Northern Ireland Police*, GUARDIAN (U.K.) (Aug. 4, 2011), <http://www.guardian.co.uk/uk/2011/aug/04/irish-republicans-facebook-identify-police> (“Republicans living in the dissident areas of Tyrone and Derry posted images and personal details of officers serving in the PSNI, claiming that the pictures showed officers ‘harassing [R]epublicans.’”); Henry McDonald, *Ronan Kerr Death: Woman, 23, Arrested Over Car Bomb Murder of Police Officer*, GUARDIAN (U.K.) (July 27, 2011), <http://www.guardian.co.uk/uk/2011/jul/27/ronan-kerr-woman-arrested-killing> (“Constable Kerr, 25, died in a booby-trap blast outside his home . . . after a bomb was attached to his car. He was the second member of the [police force] in the past two years reportedly to die at the hands of dissident [R]epublicans.”); *Belfast Riot Shooting Blamed on Dissident Republicans*, GUARDIAN (U.K.) (June 22, 2011), <http://www.guardian.co.uk/uk/2011/jun/22/belfast-riot>

resulting in unification—that ensures the equal treatment of all cultural groups under the law is essential to stability on the island.<sup>153</sup>

In 1998, the British and Irish governments signed the Good Friday Agreement, which established a devolved legislature, the Northern Ireland Assembly, and signaled a decrease in sectarian violence.<sup>154</sup> In the Good Friday Agreement, Ireland promised to “continue to take further active steps to demonstrate its respect for the different traditions in the island of Ireland.”<sup>155</sup> The Good Friday Agreement reads, in part:

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shooting-republican-dissidents (“Petrol bombs, fireworks, bottles and bricks were among items thrown at police during a second night of the worst violence in east Belfast for many years.”).

<sup>153</sup> See Liam Clarke, *Northern Ireland Says Yes to Bill of Rights, Claims Poll*, BELFAST TELEGRAPH (Nov. 14, 2011), <http://www.belfasttelegraph.co.uk/news/politics/northern-ireland-says-yes-to-bill-of-rights-claims-poll-16076840.html> (“More than 83% of unionists and 86% of nationalists say it is important that a Bill of Rights be introduced in Northern Ireland. . . . [I]t is no longer seen as an orange/green issue by most voters . . . .”); Letter from Jim Keys, Letter to the Editor, *Why we Should March in Memory*, DERRY J. (Ir.) (Jan. 20, 2012), [http://www.derryjournal.com/news/letters/why\\_we\\_should\\_march\\_in\\_memory\\_1\\_34\\_42090](http://www.derryjournal.com/news/letters/why_we_should_march_in_memory_1_34_42090) (“There is much work to do in bringing us as a people . . . to the point where we all . . . pick up that banner we dropped in 1972. . . . As the quotation on the monument says, ‘Their epitaph is in the continuing struggle for democracy.’”); see also Bryan, *supra* note 145, at 236 (“Managing this mix becomes a central problem in building a working political system. Fundamental to this problem is the way in which groups are treated by the law, particularly minority groups.”).

<sup>154</sup> Good Friday Agreement, *supra* note 145, at 2. The Good Friday Agreement is also known as the “Belfast Agreement,” the “Stormont Agreement,” and “The Agreement.” *Northern Ireland Politics*, SEE-BELFAST.COM, <http://www.see-belfast.com/northern-ireland-politics.html> (last visited Mar. 9, 2012). Certain sectarian leaders and dissidents continue their opposition to the Good Friday Agreement. In May, 2005, Democratic Unionist leader, Reverend Ian Paisley, told reporters outside of his Downing Street meeting with British Prime Minister Tony Blair that the agreement “should be given a reasonable burial,” and that he opposed power-sharing with Sinn Féin because he did not “trust them[,] and the people don’t trust them.” Matthew Tempest, *Bury Good Friday Agreement, Urges Paisley*, GUARDIAN (U.K.) (May 19, 2005), <http://www.guardian.co.uk/politics/2005/may/19/northern-ireland-devolution> (contrasting Paisley’s statements with Sinn Féin leader, Gerry Adams’s insistence that “British direct rule is not tenable in the longer term so the only way forward . . . is through getting the Good Friday Agreement implemented”).

<sup>155</sup> Good Friday Agreement, *supra* note 145, at 17–18.

The Irish Government will also take steps to further strengthen the protection of human rights in its jurisdiction. The Government will, taking account of the work of the All-Party Oireachtas Committee on the Constitution and the Report of the Constitution Review Group, bring forward measures to strengthen and underpin the constitutional protection of human rights. These proposals will draw on the European Convention on Human Rights and other international legal instruments in the field of human rights and the question of the incorporation of the ECHR will be further examined in this context. The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland. In addition, the Irish Government will . . .

The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular . . . the right of free political thought; the right to freedom and expression of religion; the right to pursue democratically national and political aspirations; . . . [and] the right to freedom from sectarian harassment.<sup>156</sup>

While not all speech that causes “outrage among a substantial number of the adherents of that religion”<sup>157</sup> is “expression of religion,”<sup>158</sup> without a defense for religious speech in the Act there remains the potential for its abuse.<sup>159</sup> Further, “[a]gainst the background of the recent history of communal conflict,” the existence of a law regulating speech that offends someone’s religious beliefs is contentious.<sup>160</sup> Discussing the complexity of the existence of blasphemy laws in Ireland and Northern Ireland, one Member of the British Parliament remarked, “the problem is that one person’s religion is another person’s blasphemy.”<sup>161</sup> “The problem” is a substantial one in Ireland, long divided along religious and political boundaries.<sup>162</sup>

Moreover, in Northern Ireland, the designations “Catholic” and “Protestant” are cultural limitations more intricate and far-reaching than their more common application as religious denominations.<sup>163</sup> In that

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continue to take further active steps to demonstrate its respect for the different traditions in the island of Ireland.

*Id.* However, the Good Friday Agreement has no formal mechanism for monitoring each government’s progress, other than the British-Irish Intergovernmental Conference. *See* 714 PARL. DEB., H.L. (2009) WA73.

<sup>156</sup> Good Friday Agreement, *supra* note 145, at 16.

<sup>157</sup> Act § 36.

<sup>158</sup> Good Friday Agreement, *supra* note 145, at 20.

<sup>159</sup> *See* Savage, *supra* note 8 (“The religious defamation laws urged by the resolutions rely on subjective emotional reactions and are therefore easy to abuse.”).

<sup>160</sup> Good Friday Agreement, *supra* note 145, at 16. *See generally*, Bryan, *supra* note 145, at 234–35 (“[Northern Ireland] is ethnically divided between people who belong to the Protestant community and view themselves as British, wishing to remain part of the United Kingdom, and those from the Catholic community who see themselves as Irish, wishing to be part of a politically united Ireland.”). While Ireland’s population is about ninety percent Catholic, *see supra* note 80, only around forty percent of Northern Ireland’s population is Catholic. *See* Bryan, *supra* note 145, at 235.

<sup>161</sup> 714 PARL. DEB., H.L. (2009) 405 (U.K.).

<sup>162</sup> *E.g.*, Jenkins, *supra* note 151 (“[V]iolence will continue as long as sectarian segregation exists in housing and schools, subsidized by the British taxpayer. It will continue as long as Northern Ireland remains a living monument to Europe’s long history of religious intolerance.”).

<sup>163</sup> Bryan, *supra* note 145, at 236 (“The relationships between Protestant and Catholic communities are complex.”); *cf. Most of Orange Order Say “Catholics are IRA Sympathis-*

context, religious speech can be synonymous with political speech,<sup>164</sup> and in that way it could be covered by the Act if the speaker “prove[s] that a reasonable person would find genuine . . . political . . . value in the matter to which the offence relates.”<sup>165</sup> But, placing religious speech under the Act’s “political speech” defense presents a challenge. Whose inflammatory speech made in the name of their religion is protected under the Act? The Protestant Orangemen marching through Catholic neighborhoods in South Armagh on “the Twelfth” in commemoration of the Battle of the Boyne and subsequent Protestant supremacy in Ireland for the next three and a half centuries?<sup>166</sup> The Apprentice Boys parading around Derry’s walls overlooking the Catholic neighborhood of the Bogside, in remembrance of the Relief of the Siege of Derry, when Derry was relieved from the

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ers,” BELFAST TELEGRAPH, Nov. 23, 2011, available at <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/most-of-orange-order-say-catholics-are-ira-sympathisers-16081349.html> (“60% of Orange Order members surveyed thought Catholics backed [R]epublican militants. . . . [T]he survey reveal[s] only 6% of the [Orange Order] respondents would be happy for their son or daughter to marry a Catholic.”).

<sup>164</sup> Bryan, *supra* note 145, at 236 (“[A] person could be deemed to come from one community or another [Catholic or Protestant] without necessarily having any strong religious belief.”). See, e.g., Henry McDonald, *The Truth about Belfast’s Riots*, GUARDIAN (U.K.) (June 27, 2011), <http://www.guardian.co.uk/politics/2011/jun/27/the-truth-about-belfasts-riots> (“Most of the locals on the Protestant/loyalist side . . . were full of praise for the UVF’s actions . . . . St. Matthew’s Catholic church [] was—not for the first time—a repeated target of the UVF-controlled rioters . . . .”).

<sup>165</sup> Act § 36(3).

<sup>166</sup> See *Twelfth ‘Should Be a National Holiday’ in the South*, BBC NEWS: NORTHERN IRELAND (July 22, 2010), <http://www.bbc.co.uk/news/uk-northern-ireland-10724321?print=true> (“The Orange Order and its parades continue to be a source of controversy and division in Northern Ireland . . . a source of tension between nationalists who see the parades as triumphalist and intimidating, and Orangemen who believe it is their right to walk on public roads.”). On July 12, 2011, twenty-four police officers were “injured in violence surrounding the parades and new rioting [that] flared in north Belfast.” Henry McDonald, *Northern Ireland Marching Season Ends with New Outbreak of Violence*, GUARDIAN (U.K.) (July 12, 2011), <http://www.guardian.co.uk/uk/2011/jul/12/northern-ireland-marching-season-violence> (briefly noting that “[a] bus was hijacked . . . with the driver dragged from the vehicle. . . . It was then driven at police lines. . . . A van was also set alight.”); Orangemen’s Day, or July 12th, is a government-sanctioned bank holiday in Northern Ireland. See *Bank Holidays*, N. IR. DIRECT GOV’T SERVICES, <http://www.nidirect.gov.uk/bank-holidays> (last visited Mar. 12, 2012) (listing the Battle of the Boyne or Orangemen’s Day as July 12). Marches frequently spark sectarian violence. See Fionola Meredith, *Northern Ireland in July—Silly Season is Here Again*, GUARDIAN (U.K.) (July 14, 2011), <http://www.guardian.co.uk/global/2011/jul/14/northern-ireland-orange-parade-riots> (“Burning cars, cops with their helmets on fire, rubble-strewn roads—yes, it can only be Northern Ireland in July.”); Henry McDonald, *Sectarian Clashes Erupt Again in East Belfast Following Orange Order March*, GUARDIAN (U.K.) (July 1, 2011), <http://www.guardian.co.uk/uk/2011/jul/02/riots-belfast-sectarian-violence>.

besieging Catholic King James II?<sup>167</sup> Where is the line drawn between religious and political speech in Ireland? Are the religious expressions of Irish Catholics and Protestants protected by the Act's "political speech" defense,<sup>168</sup> but not the speech of an Irish Muslim, stating that he believes Jesus to be a prophet rather than the Son of God?<sup>169</sup> As Yeats said in the Seanad: "You will not get the North if you impose on the minority what the minority consider to be oppressive legislation."<sup>170</sup> Even if there are no or few prosecutions brought under the Act,<sup>171</sup> so long as the potential for discrimination remains it will serve as yet another wall between the North and South, Catholic and Protestant, perpetuating unease and suspicion, and dividing unification.<sup>172</sup>

#### 4. Irish blasphemy and Europe

*Ireland has just taken the European Union back several centuries and has clearly not weighed the future consequences.*<sup>173</sup>

Within twenty-five years of gaining independence from the United Kingdom, Ireland joined the European Union (EU) in 1973.<sup>174</sup> Beside

<sup>167</sup> See *Arrests Made at Apprentice Boys March*, IRISH EXAMINER (Aug. 8, 2009), <http://www.breakingnews.ie/ireland/eycwkfidkfq/rss2/> ("There are those who take part, those who watch, and those who choose to ignore the day. . . . It is that freedom to choose that is an essential element of civil and religious liberty for which the Siege Heroes fought so hard.").

<sup>168</sup> Act § 36(3). One example illustrating the difficulty distinguishing between "religious" and "political" in Northern Ireland occurred on the "Twelfth" in July 2011. After the Parades Commission prohibited a Loyalist band from playing sectarian songs during a sensitive part of the marching route, restricting the band to only play hymns, the band "hit back by playing the familiar loyalist marching favorite, The Sash, to the delight of the crowds." Meredith, *supra* note 166. The band justified the song, arguing that "there is no specific definition of what constitutes a hymn tune . . . [it] refers to any tune to which 'sacred' or 'hymn-type' words could be sung." *Id.*

<sup>169</sup> Savage, *supra* note 8 ("Under the standards promoted by the 'defamation of religion' resolutions, when a Muslim states his belief that Jesus was a prophet, but not God incarnate, such statements could also be considered 'defamation' against the Christian faith of many believers.").

<sup>170</sup> 5 SEANAD DEB. col. 436 (June 11, 1925) (Ir.).

<sup>171</sup> Before *Corway*, 4 I.R. 485, there were no prosecutions for blasphemy in Ireland since Independence.

<sup>172</sup> Cf. Bryan, *supra* note 145, at 235 ("In Belfast, the fear of attacks from the other community and sporadic violence has led to the building of 'peace walls' between 'interface' areas separating 'Protestant' and 'Catholic' territories.").

<sup>173</sup> *Making Blasphemy An Offence Takes Europe Back Several Centuries*, *supra* note 135.

<sup>174</sup> Ciarán O'Kelly, *Being Irish*, 39 GOV'T & OPPOSITION 504, 515 (2004) ("Entry into Common Market . . . was largely founded on the idea that membership would enable Ireland to weaken or break its economic ties with Britain."); Mercurio, *supra* note 79, at 148 ("Since its inclusion, Ireland has been a strong supporter of the Community." (citing *Ireland and the*

Ireland, blasphemy is an offense in only eight other EU member States, though most place some restrictions on religious insults.<sup>175</sup> Those EU member States with blasphemy laws infrequently prosecute blasphemers.<sup>176</sup>

The European Convention for Human Rights (European Convention) safeguards all United Kingdom and Irish citizens under European law.<sup>177</sup> Ireland ratified the European Convention in 1953.<sup>178</sup> The European Convention established the European Court of Human Rights (ECHR), which hears complaints about state violations of European Convention-protected rights.<sup>179</sup> Ireland has accepted that, under the European Convention, its citizens have the right to bring complaints against the Irish government before the ECHR.<sup>180</sup> In addition, since ratifying the European Convention on Human Rights Act 2003, Irish courts must interpret all laws in a fashion consistent with Ireland's responsibilities under Articles 2–14, and the first, fourth, sixth and seventh Protocols of that document.<sup>181</sup>

The ECHR has issued a number of rulings that could suggest it would uphold Ireland's blasphemy law.<sup>182</sup> In the context of regulating commercial speech, the ECHR has held that "necessary" restrictions on expression are those that both serve a "pressing social need" in a democracy

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*European Union*, IR. DEP'T FOREIGN AFF. (Nov. 24, 2002), <http://www.irlgov.ie/iveagh/eu/facts.html>). *But see* O'Kelly, *supra* ("[Some Irish people are] concerned that any loss of sovereignty will lead to a loss of cultural homogeneity.").

<sup>175</sup> *Report on the Relationship Between Freedom of Expression and Freedom of Religion*, at 8, no. 406 / 2006 (Oct. 17–18, 2008), available at [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf). The other States with blasphemy statutes are Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands, and San Marino. *Id.* "Religious insult" broadly means, "insult based on belonging to a particular religion" and "insult to religious feelings." *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Friedberg, *supra* note 81, at 121.

<sup>178</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. 5, [hereinafter "European Convention"], available at <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

<sup>179</sup> European Convention, arts. 19–32.

<sup>180</sup> Whyte, *supra* note 80, at 51.

<sup>181</sup> *See id.* at 56.

<sup>182</sup> Under certain conditions, the European Council of Ministers may act to oppose religious discrimination by member States. *Id.* Under Article 13 of the Treaty of Amsterdam 1997, if, having consulted with the European Parliament, the European Commission presents the Council of Ministers with a proposal; and the Council of Ministers unanimously approves that proposal; then the Council may act. *Id.* Yet, it is unlikely that the Council of Ministers would contest the Act. Article 12 of Council Directive 89/552/EEC (Oct. 3, 1989), affords that advertisements on television must not offend religious beliefs. *Id.* at 57 (citing Council Directive 89/552/EEC, art. 12, 1989 O.J. (L 298) 23, 28).

and that are proportionate to that need.”<sup>183</sup> Additionally, in 1996, the ECHR upheld a blasphemy law that was used to prohibit an erotic video.<sup>184</sup> Similarly, in 1982, the ECHR’s predecessor, the European Commission of Human Rights, held that laws against blasphemous libel could reasonably limit free speech.<sup>185</sup> The offensive speech prosecuted in the latter two cases would probably fall under the “literary, artistic, [or] political” defenses in the Act.

In a case addressing religious expression, *Murphy v. Ireland*, both the Irish Supreme Court and the ECHR upheld a law prohibiting religious advertising.<sup>186</sup> In *Murphy*, the Irish Supreme Court found that the State lawfully restricted the plaintiff’s right to free speech in the interests of the common good.<sup>187</sup> The ECHR upheld the Irish Supreme Court’s ruling, and held that States have discretion when regulating expression that could be offensive to individuals’ moral or religious beliefs.<sup>188</sup> However, *Murphy* addressed the legality of a civil statute that censored commercial speech, and it is conceivable that the Act could prosecute religious expression that takes a form other than an advertisement.

#### IV. A SOLUTION *DE FIDE*: IN DEFENSE OF RELIGIOUS SPEECH

In the preceding Part, this Note discussed Ireland’s blasphemy Act and analyzed its lack of religious expression defense. With this discussion

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<sup>183</sup> *Barthold v. Germany*, App. No. 8734/79, 90 Eur. Ct. H.R. (ser. A) para. 55, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695309&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (Eur. Ct. of Human Rights Judgment); see also *Barthold v. Germany*, App. No. 8734/79, 6 Eur. H.R. Rep. 82, para. 80 (1983), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=803509&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (“[I]t cannot reasonably be considered as necessary in a democratic society to suppress true statements which are expressed in fair and moderate language and which are appropriate to back up legitimate criticism expressed in relation to a state of affairs of public concern.”).

<sup>184</sup> Travis, *supra* note 16 (referring to “*Visions of Ecstasy*, about a 16th century nun”).

<sup>185</sup> Jeremy Waldron, *Dignity and Defamation: the Visibility of Hate*, 123 HARV. L. REV. 1596, 1603 (2010) (citing *Gay News Ltd. v. United Kingdom*, App. No. 8710/79, 5 Eur. H.R. Rep. 123 (1982)).

<sup>186</sup> *Murphy v. Ireland*, 2003-IX EUR. CT. HR 44179.

<sup>187</sup> *Id.* para. 14 (“The Supreme Court considered that religion was a private and a public affair and that the impugned provision was a restriction of the applicant’s right freely to communicate and of his right to freedom of expression . . . which rights could be limited in the interests of the common good.”).

<sup>188</sup> *Id.* para. 73 (noting that in *Murphy*, restriction was permitted because of the history of religious divisiveness in Ireland).

in mind, this Part proposes the institution of religious speech as a defense to blasphemy in Ireland.

A. *Proposed Defense*

It is possible that for some forms of religious expression, such as those closely linked to politics in Northern Ireland, one or more of Act's given defenses could apply, particularly for political speech. A clever lawyer could no doubt spin certain religious expressions as political or artistic expressions.<sup>189</sup> Yet, to many, what will stand out is that religious speech, however nominal, is being prosecuted by the State as *blasphemy*; that the State is taking a position on the relative importance of personal beliefs; and that someday the State could persecute their own faith.

Incorporating a defense protecting religious expression would resolve some of the challenges caused by the Act's limiting of speech. A religious speech defense would better protect individual freedoms. This Note proposes the following defense of religious expression:

(1) It shall be a defense (to be known and in this Act referred to as the "Religious Speech Defense") to a blasphemy action for the defendant to prove that the statement in respect of which the action was brought is an articulation of the defendant's personal religious beliefs in all material respects.

(2) In a blasphemy action in respect of a statement containing two or more distinct allegations against the defendant, the Religious Speech Defense shall not fail by reason only of the articulation of the defendant's personal religious beliefs of every allegation not being proved, if the words not proved to be the defendant's personal religious beliefs do not materially cause offense.<sup>190</sup>

In sum, Section (1) provides that a defendant under the Act can claim that their alleged blasphemous expression was actually a communication of their religious beliefs. Section (2) affords that in cases featuring more than one allegation of blasphemy against a defendant: If the defendant has not proven that their expression was a verbalization of their beliefs, *and* that particular expression did not materially cause offense, *then* the Religious Speech Defense validly protects the defendant from prosecution. Working together,

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<sup>189</sup> Act § 36.

<sup>190</sup> This proposal of a Religious Speech defense is modeled on the defense of truth in the Act. *See* Act § 16. The proposal's form is solely to clarify the content of the defense. In practice, barring an amendment to the Act, a defendant would raise the Religious Speech Defense based on rights guaranteed in Bunreacht na hÉireann or international treaty.

the defense's two sections ensure that individuals' religious speech is protected.

Furthermore, while the Act does not explicitly contain a defense for religious speech, such a defense is consistent with the common law offense of blasphemy.<sup>191</sup> The Act expressly forbids publishing or uttering “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,”<sup>192</sup> which appears to lean toward the early form of common law blasphemy that regulated the substance, and not solely the style, of speech.<sup>193</sup> Yet, because those common law principles that are not directly inconsistent with *Bunreacht na hÉireann* or a statute remain valid law,<sup>194</sup> the essence of common law blasphemy—that the style of a statement rendered it blasphemous, not its substance—remains valid law in Ireland. Thus, so long as the offensive speech concerns the speaker's religious beliefs and is not presented for the singular purpose of inciting outrage, offenders may utilize the Religious Speech defense. This limit ensures that the State has the capacity to prosecute speech only nominally based in religious tenets, and aligns the Act's prohibition of publishing or uttering “matter that is grossly abusive or insulting” with common law by addressing the style of speech instead of its substance.<sup>195</sup> Stated simply, the proposed Religious Speech defense protects against prosecutions based on the *substance* of offensive speech, but not those focused on the *style* of that speech. The focus shifts from prohibiting expressing offensive speech to barring speech that is expressed offensively.

#### B. *Application of the Religious Speech Defense*

In this Section, this Note will apply the Religious Speech Defense to Atheist Ireland's *25 Blasphemous Quotations*, and illustrate the potential limits of the Act's defenses.<sup>196</sup> Of the twenty-five quotations Atheist Ireland published on January 1, 2010, at least seventeen are likely defensible under the Act's given defenses.<sup>197</sup> The remaining eight quotations include two

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<sup>191</sup> Patrick, *supra* note 53, at 199.

<sup>192</sup> Act § 36(2)(a).

<sup>193</sup> Patrick, *supra* note 53, at 199 (discussing common law blasphemy's evolution into a doctrine that prohibits “obscene” speech).

<sup>194</sup> See *supra* note 78 and accompanying text

<sup>195</sup> Act § 36(2)(a).

<sup>196</sup> See *25 Blasphemous Quotations*, *supra* note 7.

<sup>197</sup> To reiterate, in defense of a potentially “blasphemous” statement, the Act provides defenses for “genuine literary, artistic, political, scientific, or academic” speech. Act § 36(3).

quotes attributed to Jesus Christ,<sup>198</sup> and one each to Muhammad,<sup>199</sup> Pope Benedict XVI,<sup>200</sup> Irish Minister for Justice Dermot Ahern,<sup>201</sup> the former First Minister of Northern Ireland Rev Ian Paisley,<sup>202</sup> an American biology

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<sup>198</sup> The first “blasphemous” quote is attributed to Jesus Christ, responding to a question whether he was the son of God.

“Thou hast said: nevertheless I say unto you, Hereafter shall ye see the Son of man sitting on the right hand of power, and coming in the clouds of heaven.” According to the Christian Bible, the Jewish chief priests and elders and council deemed this statement by Jesus to be blasphemous, and they sentenced Jesus to death for saying it.

<sup>25</sup> *Blasphemous Quotations*, *supra* note 7 (quoting *Matthew* 26:64). The second quote is from *John* 8:44, when Jesus Christ was speaking to Jews about God.

“Ye are of your father the devil, and the lusts of your father ye will do. He was a murderer from the beginning, and abode not in the truth, because there is no truth in him.” This is one of several chapters in the Christian Bible that can give a scriptural foundation to Christian anti-Semitism. The first part of *John* 8, the story of “whoever is without sin cast the first stone,” was not in the original version, but was added centuries later. The original *John* 8 is a debate between Jesus and some Jews. In brief, Jesus calls the Jews who disbelieve him sons of the Devil, the Jews try to stone him, and Jesus runs away and hides.

*Id.*

<sup>199</sup> The third quote is from Muhammad, quoted in Hadith of Bukhari, Vol. 1 Book 8 Hadith 427.

“May Allah curse the Jews and Christians for they built the places of worship at the graves of their prophets.” This quote is attributed to Muhammad on his deathbed as a warning to Muslims not to copy this practice of the Jews and Christians. It is one of several passages in the Koran and in Hadith that can give a scriptural foundation to Islamic anti-Semitism, including the assertion in Sura 5:60 that Allah cursed Jews and turned some of them into apes and swine.

<sup>25</sup> *Blasphemous Quotations*, *supra* note 7.

<sup>200</sup> The twentieth quote was said in 2006 by Pope Benedict XVI, quoting a 14th century Byzantine emperor. “Show me just what Muhammad brought that was new and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached.” *Id.*

<sup>201</sup> The twenty-fifth quote is from Dermot Ahern, Irish Minister for Justice, as he introduced the Act at an Oireachtas Justice Committee meeting in 2009, in reference to remarks made about him.

“They are blasphemous.” Deputy Pat Rabbitte replied: “Given the Minister’s self-image, it could very well be that we are blaspheming,” and Minister Ahern replied: “Deputy Rabbitte says that I am close to the baby Jesus, I am so pure.” So here we have an Irish Justice Minister joking about himself being blasphemed, at a parliamentary Justice Committee discussing his own blasphemy law that could make his own jokes illegal.

*Id.*

<sup>202</sup> The ninth quote is from First Minister of Northern Ireland Rev Ian Paisley, then a MEP, speaking to the Pope in the European Parliament in 1988: “‘I denounce you as the Antichrist.’ Paisley’s website describes the Antichrist as being ‘a liar, the true son of the father of lies, the original liar from the beginning... he will imitate Christ, a diabolical imitation, Satan

professor,<sup>203</sup> and the Icelandic singer Björk.<sup>204</sup> One could argue that the Act should permit the other eight quotations, as well. However, on the surface they each appear vulnerable to prosecution under the Act.

Of the eight “indefensible” quotations provided by Atheists Ireland, the former First Minister of Northern Ireland Rev. Ian Paisley’s is perhaps the most telling in regards to the religious tensions behind the political and social situation in Northern Ireland.<sup>205</sup> It occurred in 1988, as Roman Catholic Pope John Paul II spoke to the European Parliament supporting European economic and administrative union, and calling for more attention to shared Christian values.<sup>206</sup> Paisley, representing Northern Ireland as a Member of the European Parliament (MEP), yelled out, “I denounce you as the Antichrist!”<sup>207</sup> Paisley held a poster reading, “Pope John Paul II – Antichrist,” and implied that the Pope was supportive of the Irish

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transformed into an angel of light, which will deceive the world.” *Id.* Paisley “dominated Ulster politics throughout the Troubles, as a fundamentalist, firebrand, and latterly, peace-maker. Paisley was a key player in the Ulster workers’ strike of 1974, which brought down the first power-sharing government between unionists and nationalists, and condemned Northern Ireland to decades of political stasis.” Henry McDonald, *Firebrand Turned Peace-maker Ian Paisley Steps Down as MP*, *GUARDIAN* (U.K.), Mar. 2, 2010, available at <http://www.guardian.co.uk/politics/2010/mar/02/ian-paisley-northern-ireland>.

<sup>203</sup> The twenty-second quote is one from American biologist PZ Myers, concerning desecrating a Roman Catholic communion host.

You would not believe how many people are writing to me, insisting that these horrible little crackers (they look like flattened bits of styrofoam [sic]) are literally pieces of their god, and that this omnipotent being who created the universe can actually be seriously harmed by some third-rate liberal intellectual at a third-rate university. . . . However, inspired by an old woodcut of Jews stabbing the host, I thought of a simple, quick thing to do: I pierced it with a rusty nail (I hope Jesus’s tetanus shots are up to date). And then I simply threw it in the trash, followed by the classic, decorative items of trash cans everywhere, old coffeegrounds [sic] and a banana peel.

<sup>204</sup> *25 Blasphemous Quotations, supra* note 7.

<sup>204</sup> The thirteenth quote come from the singer, Björk.

I do not believe in religion, but if I had to choose one it would be Buddhism. It seems more livable, closer to men. . . . I’ve been reading about reincarnation, and the Buddhists say we come back as animals and they refer to them as lesser beings. Well, animals aren’t lesser beings, they’re just like us. So I say fuck the Buddhists.

*Id.*

<sup>205</sup> See *id.*; cf. Martina Devlin, *We Need a Balanced View of Northern Irish History*, *INDEPENDENT* (Ir.) (Oct. 6, 2011), <http://www.independent.ie/opinion/columnists/martina-devlin/martina-devlin-a-balanced-view-of-northern-irish-history-2897820.html> (“[One] final thought on the North is this: peace-makers are thin on the ground compared with bomb-makers.”).

<sup>206</sup> *Ulster Protestant Interrupts Pope, Yelling, “Antichrist!”* *N.Y. TIMES*, Oct. 12, 1988, at A3.

<sup>207</sup> *25 Blasphemous Quotations, supra* note 7.

Republican Army in some way.<sup>208</sup> Paisley's website goes into great depth about his view that the Pope is the Antichrist, explaining that:

It is clear that Antichrist as depicted by our Lord and John will wear a mask. He will profess one thing and act another. He will enter the church as Judas entered the garden to betray the Son of man with a kiss. Peace will be in his tongue but war in his heart. He will imitate Christ, a diabolical imitation, Satan transformed into an angel of light, which will deceive the world for centuries. The only exception to his lies and deception will be those who through the Holy Spirit's teaching will be able to tear off the mask and cry out in recognition, "*I know thee who thou art, the Antichrist from hell.*"<sup>209</sup>

Paisley's outburst offers a real-world example of the sort of religiously motivated speech that occurs in Northern Irish politics.<sup>210</sup>

On the surface, Paisley's speech appears to violate the Act. He interrupted Pope John Paul II's speech, uttering matter that is "grossly abusive or insulting in relation to matters held sacred by" Catholics.<sup>211</sup> Thereby, Paisley caused "outrage among a substantial number of" Irish Catholics.<sup>212</sup> His poster proclaiming the Pope to be the Antichrist illustrates Paisley's intent to outrage Catholics.<sup>213</sup> Would Paisley's exclamation be

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<sup>208</sup> *HEADLINERS; Papal Audience*, N.Y. TIMES, Oct. 16, 1988, § 4, at 7 ("Other members of Parliament snatched the sign away and threw papers at Mr. Paisley, who was then quickly ejected from the building. An unruffled John Paul continued his speech."). For Paisley's opinion that the Vatican supported the IRA, see *Ian Paisley in His Own Words*, GUARDIAN (U.K.) (Mar. 2, 2010), <http://guardian.co.uk/politics/2010/mar/02/ian-paisley-in-quotes>.

This year will be a crisis year for our province. The British government, in cahoots with Dublin, Washington, the Vatican and the IRA, are intent to destroy the province. The so-called talks process is but a front. Behind it the scene is set and the program in position to demolish the province as the last bastion of Protestantism in Europe.

*Id.*

<sup>209</sup> Ian R.K. Paisley, *Antichrist An Enemy Of Christ Under A Mask*, EUR. INST. PROTESTANT STUD. (Aug. 16, 2000), [http://www.ianpaisley.org/article.asp?ArtKey=antichrist\\_6](http://www.ianpaisley.org/article.asp?ArtKey=antichrist_6).

<sup>210</sup> A separate potential offense is Atheist Ireland's publication of Paisley's speech. While the Religious Speech defense would not apply--Atheist Ireland promotes "atheism and reason over superstition and supernaturalism," and therefore could not claim to believe that the Pope is the Antichrist—it is probable that the political speech defense would apply because Atheist Ireland published the speech to protest the Act.

<sup>211</sup> See Act §§ 36, 36(2)(a)–(b); *HEADLINERS; Papal Audience*, *supra* note 208 ("Other members of Parliament snatched the sign away and threw papers at Mr. Paisley, who was then quickly ejected from the building. An unruffled John Paul continued his speech.").

<sup>212</sup> See Act §§ 36, 36(2)(a)–(b).

<sup>213</sup> *HEADLINERS; Papal Audience*, *supra* note 208 ("Other members of Parliament snatched the sign away and threw papers at Mr. Paisley, who was then quickly ejected from the building. An unruffled John Paul continued his speech.").

covered by the Act's political speech defense?<sup>214</sup> Possibly. However, categorizing such speech as "political" glosses over its religious foundation. Further, as previously discussed, permitting some but not all religions' speech under the Act's political speech defense creates additional religious discrimination issues.

The Religious Speech defense provides a more functional approach. The first element to consider is whether the content of Paisley's speech qualifies as religious expression. Based on Paisley's numerous public statements and publications, his 1988 outburst during the European Parliament appears to accurately reflect his personal religious beliefs.<sup>215</sup> The second element under the Religious Speech defense is whether the way that Paisley expressed his beliefs was offensive. Paisley, attending as a MEP, interrupted a speech given by the Pope, leader of the Catholic Church and sovereign of Vatican City, by holding a sign and yelling that the Pope was the Antichrist.<sup>216</sup> On his disruption alone, Paisley might fall outside the Religious Speech offense. When considering the overall nature of Paisley's communication during the Pope's speech, it becomes highly unlikely that the Religious Speech defense would apply because the *style* of Paisley's expression caused offense.

Though Paisley's speech reflects one extreme sectarian view, it effectively illustrates the types of speech that the Act might prohibit. Applying the proposed Religious Speech defense demonstrates its effectiveness in safeguarding the content of religious expression. Instead, it leaves the Act to police the manner of expression. Paisley, as all individuals, should have the right to convey their religious beliefs, however offensive to others, so long as the communication's manner is not offensive.

#### V. CONCLUSION: ENDING WITH A WHIMPER

*Christ in the mouth of everyone who speaks to me . . . Christ in every ear which hears me.*<sup>217</sup>

Today, Ireland faces a "crisis of values."<sup>218</sup> In the wake of a financial crisis, many in Ireland are reexamining Irish culture and the role of the State.<sup>219</sup> Ireland has broken free from its common law past and taken

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<sup>214</sup> Paisley lived in Northern Ireland and not in Ireland, but his speech provides an example of sectarian speech, and it is relevant to the Act in the context of unification.

<sup>215</sup> *E.g.*, Paisley, *supra* note 209.

<sup>216</sup> *HEADLINERS; Papal Audience*, *supra* note 208.

<sup>217</sup> *Faeth Fiada*, in *KING OF MYSTERIES: EARLY IRISH RELIGIOUS WRITINGS*, *supra* note 31, at 134.

<sup>218</sup> O'Brien, *supra* note 118 (commenting on the 2010 Irish financial crisis).

<sup>219</sup> O'Toole, *supra* note 126.

substantial steps toward religious freedom by officially opening Ireland's "blasphemy" definition to include religions other than the Church of England. Yet, in this era of multiculturalism and a united EU, blasphemy laws raise images of horrific injustices at the hands of tyrants and religious extremists.<sup>220</sup> Such laws have no place in a modern Ireland, a country slowly moving beyond its recent past of sharp religious distinctions.<sup>221</sup>

While discussing the Act before its enactment, one senator noted that "[t]he offence of blasphemy is problematic for all kinds of reasons."<sup>222</sup> The Act's shortcomings are most apparent when approached from the perspective of religious expression. The Act's list of defenses to prosecution excludes religious speech,<sup>223</sup> thereby creating the potential for abuse. In the

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Watching the . . . IMF team . . . scrutinize our books and negotiate our fate, it was hard not to think of TS Eliot's line from *The Hollow Men*: 'This is the way the world ends: Not with a bang but a whimper.' . . . When we start to pick up the pieces of that broken dream, the discarded notions of cultural continuity, of being in touch with a premodern sensibility that gave Irish culture its depth, will become potent. But can those notions really be recovered? The answer, as always with Irish culture, is yes and no. . . . That sense is surely gone for good: 21st-century Ireland cannot reconstruct the mentality of rural societies with vibrant oral cultures. Nothing, therefore, is more traditionally Irish than the attempt to find some continuity in the midst of flux and displacement. Whatever tradition we can reconnect to will not be pure and simple and authentic. And it never was.

*Id.* (quoting TS Eliot, *The Hollow Men*, see Cleanth Brooks, *TS Eliot: Thinker and Artist*, TS ELIOT 97, 108 (Harold Bloom ed., 2003)). Additionally, the Republic's recent economic problems further hinder unity with Northern Ireland. *The Kingdom Will Remain United*, *supra* note 150 ("Given the stark economic challenges facing a near-bankrupt Republic, unity is a far-off prospect."); *McGuinness Would Preside Over Partition*, *supra* note 149 ("The idea that the Republic could somehow absorb the public sector-dominated Northern Ireland economy . . . looks highly unlikely."); Henry McDonald, *Survey Deals Blow to Sinn Féin Hopes of United Ireland*, GUARDIAN (U.K.) (June 17, 2011), <http://www.guardian.co.uk/politics/2011/jun/17/survey-sinn-fein-united-ireland> ("[T]he Irish Republic has been perceived to be less attractive to northerners following Dublin's fiscal crisis and the ongoing recession."); Cohen, *supra* note 149 ("As the remnants of the IRA rise in Ireland and nationalist and anti-immigrant parties rise across Europe, we may be about to learn that recessions rarely bring anything but change for the worse.").

<sup>220</sup> Savage, *supra* note 8.

<sup>221</sup> See Mercurio, *supra* note 79, at 142 ("Within the last decade . . . a shift in public attitude on abortion has slowly evolved among the Irish people and Irish jurisprudence."); *Beautiful Singing, Sandwich-throwing and Irish Whingeing*, IRISH TIMES, Nov. 20, 2009, available at 2009 WL 23402941 ("[T]he general population has become decidedly cool about religion."); *Talks on Northern Ireland's Past Bid Stalled*, BELFAST TELEGRAPH, Nov. 3, 2011, <http://www.belfasttelegraph.co.uk/news/politics/talks-on-northern-irelands-past-bid-stalled-16072386.html> ("The Westminster government has rebuffed calls for all-party talks on dealing with Northern Ireland's past.").

<sup>222</sup> 188 SEANAD DEB. col. 1772 (Mar. 11, 2008).

<sup>223</sup> See Act § 36(3) (including a defense for "genuine literary, artistic, political, scientific, or academic value").

future, the Act could be inappropriately applied to prosecute religious—and in the Irish context, political—opponents. While presumably enacted to protect the religious from offensive speech, in actuality the Act fails to defend the devout’s ability to communicate their spiritual convictions without fear of government-sanctioned repercussions.