

## Law & The Sacred: After Serrano Ethics, Theology and the Law of Blasphemy

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In the latest academic apologia for the antics of bad boy photographer Andres Serrano, Damien Casey attempts to portray him as not only a great liberal artist, but as a great Christian theologian too. One suspects Serrano is laughing up his sleeve at the ease with which such 'postmodern' thinking can be grafted on to the support of his iconoclasm. Casey rehearses some of the standard liberal excuses -- though with no fresh argument -- and then settles down to some more novel points concerning theology, Scripture and society. We will give some treatment of his standard liberal case first, then turn to Casey's more original contributions, and finally comment on the current state of the law regarding this issue.

### Ethics

Casey, like other liberal defenders of work like Serrano's, presents the issue in terms of a clash between the interests of artists in freedom of expression on the one hand, and the hurt such works may cause to a section of the community on the other: what Christians are said to object to is the 'offensiveness' of *Piss Christ*. However, this is only part of the problem. Ethically speaking, what was at issue in the Serrano affair was not simply offensiveness but 'blasphemy', the quite different wrong of speaking against God or the Sacred, or ridiculing things consecrated to God or held sacred. Blasphemy may occur even if no Christian is offended by the act in question (e.g. because no-one knows), and even if the agent firmly believes his act to be directed towards a religious end. This is precisely what makes blasphemy such a fascinating concept for contemporary philosophers, and not an out-moded, 'medieval' idea.

Of course, some philosophers (e.g. Feinberg 1985) believe that acts are never morally wrong unless they adversely affect the interests of some human individual(s), either harming them, or at least causing them serious offence. And for these philosophers, the only wrong in blasphemy, if any, is that it offends others. However, more contemporary thinkers, including contemporary Aristotelians, Thomists, and Kantians,<sup>1</sup> do not require a victim for there to be a moral evil: self-regarding, trivial, slothful, wasteful, cruel, or demeaning acts may offend or harm no one -- apart from the agent herself -- and still be wrong. Naturally, the public display of blasphemous or sacrilegious works *will* generally be hurtful to believers; indeed, the fact that such art-work is shocking to 'ordinary sensibilities' is generally regarded as one of its principal virtues by its creators and promoters: this kind of art only works because it hurts. However, our point is that, contrary to Casey's suggestion, hurtfulness to believers does not *exhaust* the meaning of blasphemy. At least three other dimensions mattered in the display of Serrano's *Piss Christ*.

First, accounts of the practice of religion which take it seriously on its own terms view it as a necessary part of the fulfilment of the person -- rather like aesthetic expression and experience, in fact. Thus in attacking religion the blasphemer is also attacking a crucial aspect of the human good, demeaning human dignity and undermining human community through that choice. Moreover, as well as offending believers and violating religion, blasphemy is an attack on God and/or the Sacred -- something unthinkable to theists, unreasonable for agnostics (for whom a certain caution or respect for God-as-not-impossible is appropriate) and senseless for atheists (who, in any case, generally acknowledge 'the Sacred' in some sense even as they reject a personal God). Finally, in blasphemous acts the agent not only attacks other things but also un-makes himself. Blasphemy, like other moral wrongs, has grave reflexive effects on character; it *makes* the agent offensive, irreligious and a hater of God, and this will have serious effects on his activities, identity and relationships.<sup>2</sup>

Liberal supporters of Serrano, such as Casey, draw attention to the "originality" and symbolic significance of his work, and characterise Christians who oppose it as backward and philistine. Casey claims that the photograph *questions* boundaries between the sacred and the profane, thereby "enacting what it represents"; this "threatens the identity of conservative Christians" who try to exclude it from the public. However, to question a central intellectual distinction a work of art must do something more than use a traditional gesture for insulting God, attack religion or offend believers. No critic of stature has suggested this photograph constitutes a profound intellectual investigation, a realignment of boundaries, whatever emotions it conjures up and titillates. Secondly, the work was criticised by

Christians of *all* complexions, as well as by those of other faiths and people of no faith. None of these even vaguely registered a threat to their identity; indeed, one of the work's few good effects was to clarify believers' sense of identity and common, interdenominational and interfaith, purpose. Thirdly, this was not religious people interfering with public debate but the majority of the community protesting in anger over the mis-use of the community's public space by a notorious artist and a self-appointed arts 'elite'. Casey seems not to have realised that for believers this was an assault upon their God, their divine brother, an offence from their perspective at least as great as offences against persons or property. In calling for an end to the display of this blasphemy in their public gallery people were not asking that their fragile sense of identity or boundaries be left undisturbed, but that their God be respected, their funds withdrawn from what they believed to be shameful and corrupting, and an end to their unwilling collaboration in public invitations to see what is holy reviled.

Casey's approach also includes a new slant on the liberal case against mainstream Christians; he invokes something called the "pluralist Church", and challenges the Christian community with 'intolerance' towards their own. He also criticises some Church authority(ies) -- it is not clear just which - for usurping Christians' religious symbols. We are not privy to Casey's peculiar ecclesiology, but surely the claim that Christian and other religious leaders leading their people to oppose sacrilege and blasphemy is "intolerant" and "authoritarian" towards their flocks is absurd. If observation of the 'First Table' of the decalogue is not a solemn duty of Christian leaders, calling for clear and strong leadership, then what is?

Another claim is that most religious believers have been blinkered and conditioned and so have not recognised that this photograph reveals a "genuine and insightful religiosity" and is actually a "prophetic" work -- something only Serrano, Casey and a few other like-minded observers of Christianity have realised. Casey even makes the astonishing claim that *Piss Christ* is "profoundly religious" and "speaks to the very heart of Christianity". Hyperbole aside, can he really mean this? As the Serrano affair unfolded, the artist repudiated his earlier claims -- that his art is simply colourful and that it is deliberately shocking -- asserting instead that, far from intending to scandalise, his goal all along had been to increase the devotion of his fellow Christians by helping them identify more closely with Christ in his pain, suffering and humiliation. Whether this revisionism was entirely candid on Serrano's part might be doubted, but, as some of the artist's defenders observed, Jesus very likely did lose control of his bladder in the crucifixion and was probably 'pissed on' by the Roman soldiers. The photograph might be said merely to allude to this and to invite our compassionate engagement with the real man. But do the sacred and the venerated really work in this way? This is not the place to explore at length the implications of works such as Otto on the numinous, Eliade on the sacred and the profane, Turner on the liminal, Douglas on sacred symbols, or Gadamer on mimesis and anamnesis in art. But what can be said briefly is that none of these classic studies of the anthropology of religious symbols would lend credence to the kind of "restoration" or "enhancement" proposed by Casey in his apologia.

Another liberal ploy has been to characterise those who disagree with public display of Serrano's photographs as irrationally caught up in a 'dead white male' time warp, prissily avoiding the confronting insights of modernity. On this front Casey argues that an exhibition of the work of Rembrandt taking place at the Victorian National Gallery would have benefited from the continuation of the Serrano exhibition; like Serrano, Rembrandt is dealing with "the ambiguity of the abject and its relation to the sacred". The comparison between Serrano's photographs and Rembrandt's moving and human images is comical, if not grotesque; the idea that Serrano can teach us something important about the relation between God and man surely both. Pondering the relation between Christ's human life, suffering and death and his divine nature, and the meaning of all of this for ourselves, has been part of Christian tradition and enquiry at least since Chalcedon; what radical new insights might Serrano have to offer here? We should recall that at the same time that *Piss Christ* was exhibited, Melbourne hosted another Serrano exhibition featuring photographs of a woman urinating in a man's mouth, a woman squatting naked before a horse as she masturbates it, a clergyman gagged with a studded leather collar etc. Such a range of professional interests hardly suggest deep and well-informed theological and philosophical reflection -- or the expressive genius of the Old Master.

Nevertheless, Casey plunges ahead, suggesting this is "good religious art", an exploration of the theology of icons, and an 'Hegelian' reversal of our expectations about the divine so that God can more clearly be manifested.<sup>3</sup> It is difficult to know what to make of this. On the Hegelian point, suffice to say that doing the 'rude and unexpected' is a cheap understanding of that philosopher's dialectic. While making a *Crucifixion* scene in which Jesus had lost control of his bodily functions might not be

sacrilege, immersing a *crucifix* in urine can only be a profanation according to the standards of the culture and religion of which it is an artefact, and photographing and displaying such a deed can only be a blasphemy in that culture. Hegel would not have treated the ethical life of a community in so cavalier a fashion, especially after the community had clearly spoken its preference in overwhelming numbers. On the point about icons, if this work is to be regarded as pious and devout, can anything be impious? If even this work is an icon, what on earth is not?

However, some persist in the idea that God and religion need the honesty and courage of the Serranos of this world. Casey quotes Serrano's defence of the work as 'redefining and personalising' his own relationship with God. Is this tongue in cheek? In Melbourne at the time of the controversy Serrano said: I, you know, I just find that, and I started that work as an attempt to reduce and simplify a lot of the ideas and images that I had been doing up until that time. I didn't do it to be provocative, I did it because damn, the colours would look good, you know. [clapping and cheering] I mean, sometimes I just feel like, you know, what I do has the simplest answers, but they're not good enough. People want more of a story and I realise I try to give them a story, but sometimes I have to say: look, you're reading too much into this shit really, you know.<sup>4</sup>

This hardly suggests a humble attempt to convert -- or 'redefine and personalise' his relationship to God.

## Theology

A more serious criticism is that Christians have lost the dramatic meaning of the central event of Christianity -- for Casey, not the Resurrection but the Crucifixion -- domesticated their faith and lost contact with the human suffering which Christ came to share and redeem.<sup>5</sup> Casey believes Christians have sanitised, 'quarantined', their central symbol. However, it is a radical misunderstanding of the anthropology of symbols and sacramentals to imagine that by adding 'grime' to them the artist will help make them more relevant and so devotional. Ironically, reinventing the image according to a pattern less 'sanitised' than that received in the tradition may do the exact opposite. A crucifix certainly expresses muck, and will not do so if worn as costume jewellery; but neither will it do so if simply smeared with muck. To think a religious object can be extracted from its context and 'purified', 'restored' or 'improved' by doing to it something unthinkable among adherents of that tradition, is a condescension of the kind we rightly abhor in white Australians, Canadians or Americans who seek to 'improve' on Aboriginal artefacts.<sup>6</sup>

In the second section of his paper, Casey makes it clear he regards those who object to *Piss Christ* as not only deluded but dishonest: "there seems to be an aura of the disingenuous about any accusation of blasphemy". It is a serious charge. A page earlier, however, he admits that "*Piss Christ* is indeed blasphemous to the extent that it subverts the sacrificial interpretation of Christ's death". But if its critics would just open their eyes and minds they would discover that it is good-blasphemous not bad-blasphemous: the blasphemy is acceptable because it "prophetically" "calls to mind something perhaps even more essential and original to Christianity". Now just what that prophetic 'something' is, is never made quite clear. Instead we read

In accordance with the logic of sacrifice anything overly ambiguous or permeable that defies the principle of non-contradiction becomes the excluded middle... The abject... are those things that blur the neat distinction between subject and object and consequently threaten the substantiality of identity.

Try as we may, we cannot make head or tail of such passages, and there are many of them in Casey's article. The word 'abject', however, occurs quite a bit here, and seems to function as a hooray word, as opposed to 'sacrifice', a boo word. On side with 'the abject' (hooray!) are 'abominations' and 'mess', heterology, powerlessness, permeability, and the 'many' mediaeval mystics who thought of Jesus as a woman giving birth; on 'the sacrificial' side (boo!) are sovereignty, homophobia, 'ossified' doctrines and dogmas, the clean and the impermeable. Later Casey returns to this dichotomy, comparing mainstream Christianity, which has erroneously made the cross the great symbol of sacrifice and transcendence, with the more profound Christology of Serrano. This artist-theologian tries "to return the crucifix to the bodily processes of becoming", and thereby "to retrieve the meaning of the incarnation... Serrano returns to this *arche* its repressed and forgotten element, the metonymic as expressed by the biological

processes that have been abjected by the symbolic order". In its sacrificial theology mainstream Christianity does not understand its central symbol, the cross; only Serrano and Casey do, and "an elite" who have "retained and lived" the true anti-sacrificial interpretation of the crucifixion.

Well, how does Casey justify this rather grandiose claim? In one of the few falsifiable propositions in the paper he assures us that "despite common perceptions, the sacrificial interpretation of the death of Jesus can be found in only one book of the New Testament, and that book, the *Letter to the Hebrews*, is about the end of sacrifice". Really? The most recent comprehensive literature reviews by Peter Head (1995) and Roger Beckwith (1995) demonstrate that the whole New Testament, and not just the *Letter to the Hebrews*, is replete with sacrificial language, imagery and theology. They demonstrate conclusively that

in Mark, in Matthew, in Luke and Acts, and in John and 1 John, the death of Jesus is described, sometimes by himself and sometimes by others, sometimes explicitly and sometimes implicitly, as sacrificial. Thus, in the Synoptic Gospels, he speaks at the Last Supper of 'my blood of the covenant' (or 'the new covenant in my blood') 'which is to be shed for many' (or 'for you'), Matthew's version adding 'for the remission of sins'. He is spoken of in John (and also, incidentally in 1 Peter 1: 19 and Revelation 5: 6-10; 13: 8) as the slain 'lamb' of God, who by his precious blood 'takes away the sin of the world' -- a lamb being an animal used in various sacrifices, in sin offerings, guilt offerings, burnt offerings and peace offerings, as well as the Passover sacrifice. In 1 Peter, again, Christ is said to be a sacrifice 'without blemish', that is, without the moral blemish of sin, not the physical blemishes which disqualified OT sacrifices; and we ourselves are said to be 'sprinkled; with his blood (1: 2, 19). Similarly, in 1 John we are said to be 'cleansed' by his blood 'from sin' (1: 7, 9), the language of sprinkling and cleansing being drawn from the OT sacrificial ritual, and perhaps from the Covenant sacrifice of Exodus 24, also alluded to at the Last Supper. This is to recall only some of the more explicit passages, from various books of the NT, in which a sacrificial interpretation of Christ's death is given. Passing on now to the teaching of Paul, we find there similar statements, along with others... (Beckwith 1995: 130).

Here Head and Beckwith give a standard exegesis of the biblical texts, one that would be confirmed by most contemporary Scripture scholars; it is in turn followed by serious-minded theologians (e.g. Fiddes 1989; Gunton 1988; Hengel 1981).

Yet, like Humpty Dumpty in *Through the Looking Glass*, Casey may well believe that "when I use a word" -- or a symbol like a cross -- "it means just what I choose it to mean, neither more nor less". Perhaps he would assert that his claim about sacrifice in the New Testament was not an *exegetical* claim (since texts have no intrinsic meaning) but rather a 'creative reading' of the text through the looking glass of contemporary cultural anthropology. Yet even a scant acquaintance with the classic studies in the anthropology of religion by Edward Tylor, William Robertson Smith, James Frazer, Henri Hubert, Marcel Mauss, E. E. Evans-Pritchard and Luc de Heusch, or the more recent standard works of Barth (1961), Chilton (1992), Daly (1978), Hengel (1977), Yerkes (1952) and Young (1975 & 1979), or even the more controversial but currently influential work of Rene Girard,<sup>7</sup> all suggest very different conclusions to Casey's. All these writers insist, for instance, upon the centrality of the sacrifice idea to Christianity and the close relation, not opposition, of this concept to 'the abject'. Time and again one is left wondering: does Casey even know the standard literature in this area?

Closely related to Casey's untenable contrast between sacrifice and abjection is another contrast, between a (true) kenotic Christ stripped of all power and the (false) concept of Christ as a divine master. This is not the place to rehearse the complexities and tensions in ideas like power and service or divestment and glorification as understood in traditional and contemporary Christology: suffice it to say that, at least since J S Whale's classic work in the early 1960s, no simplistic either-or, such as Casey seems to require, has featured in serious theology. This is no mere debating point: Casey's central claim is that Jesus' identification with "the poor and the oppressed and all those we treat *like shit*" relies upon the Crucified being imaged in ignominy, covered in excrement. No Pantocrators here!

We need not reflect for long on Casey's powerless 'fellow sufferer' Christ to realise that this craving represents a radical distortion of relationships. 'Misery loves company', certainly, but we do not take this observation as a counsel and set about causing misery to give the miserable some companions. We look to others to understand and respond to our pains, to do something to cure or at least palliate them.

We do not want the dentist to feel our toothache with us: we want him to remove it, kindly, but with a certain detachment too. We do not want our counsellor to suffer disorientation, disintegration and despair with us: we want her to help reorient, reintegrate and give hope to us, again with some objectivity. In prayer we do not petition a fellow patient for a cure, but a physician.

## Law

Curiously for a writer in a legal journal, Casey seems to be completely uninterested in the legal action to which the Serrano controversy gave rise. He recalls that Archbishop Pell sought an injunction from the Supreme Court of Victoria to restrain the National Gallery of Victoria from publicly displaying *Piss Christ* and says little more about the law thereafter. However, reflecting upon that legal action may help clarify just what was at issue in the dispute as it unfolded.

The Archbishop of Melbourne sought an injunction on the grounds that the public display of this photograph would constitute a breach of Victoria's Summary Offences Act, as well as the common law misdemeanour of blasphemous libel. The Act makes it an offence for any person to exhibit or display an indecent or obscene figure or representation in a public place.<sup>8</sup> The common law treats as criminal blasphemy every publication which, beyond the decent limits of legitimate difference of opinion, treats Christianity in an offensive, scurrilous and insulting manner calculated to outrage the feelings of believers and sympathisers. In making these offences the grounds of his application, the Archbishop was in effect seeking to restrain an apprehended breach of the criminal law with civil remedies. This is something that the courts are generally very reluctant to countenance, for the reasons set forth most famously in *Peek's Case*,<sup>9</sup> and the Archbishop was no doubt aware his action was 'a long shot', but one he thought worth undertaking.

There are two elements to the offence of blasphemous libel: a scurrilous insult to Christians and their beliefs beyond the bounds of what is generally accepted as decent difference of opinion, and the publication of that insult. There are two things which it is important to note here. First, blasphemous libel does not involve 'censorship' in the sense of excluding certain opinions from being expressed in the public realm. As early as 1840 it was held that the offence of blasphemy lies not in making rational arguments against particular religious doctrines but in the incitement of "wild and improper feelings".<sup>10</sup> In 1883 it was held that no offence is committed by the simple profession of a religious or irreligious opinion: blasphemy required the tendency in a work "to shock, outrage, or ridicule" believers or their faith.<sup>11</sup> A decision in 1917 reiterated this, and emphasised 'vilification, ridicule or irreverence' as the requirement for establishing blasphemous libel.<sup>12</sup> In the words of Mr Justice Phillimore from an earlier case, "a man is free to speak and to teach what he pleases as to religious matters" but were a person to make a "scurrilous attack" on common religious doctrines "in a public place where passers-by may have their ears offended, and where young persons may come, he will render himself liable to the law of blasphemous libel".<sup>13</sup>

Secondly, blasphemy is an offence of strict liability. The only intention that has to be established is an intention to publish, and clearly a decision by an art gallery to publicly exhibit a blasphemous work manifests such an intention. Just as we argued above regarding the ethics of blasphemy, the good or bad intentions of the author are irrelevant in determining at law whether the impugned publication constitutes a blasphemous libel. Serrano's intention in producing this photograph and the National Gallery's intention in displaying it remain unclear, but in the eyes of the law it does not matter whether their intention was to shock, to revere or simply to display some nice colours. The crucial thing, from the law's point of view, is the effect of the publication of this photo. As Lord Scarman stated in the most important recent case in this area, "the character of the words published matters; but not the motive of the author or publisher".<sup>14</sup> The long string of blasphemy cases makes this much clear: had this case proceeded it would have been very difficult for any judge or jury to conclude that a photograph of a sacred Christian symbol immersed in excrement was anything other than objectively blasphemous.

For the sake of completeness, a few points might briefly be made about the offence under the Summary Offences Act of public exhibition of an obscene or indecent representation -- the other ground of Archbishop Pell's application. The leading formulation of the meaning of the words 'indecent' and 'obscene' is found in the English case *R v Stanley*: "indecent or obscene convey one idea, namely, offending against the recognised standards of propriety, indecent being the lower end of the scale and

obscene being at the upper end of the scale".<sup>15</sup> The leading case in Victoria is *R v Close*, in which it was held that the ordinary sense of the word 'obscene' denotes something

indecent or disgusting. The notion is of that which offends good taste or decency, it could quite properly be used of something which has no sexual significance, and of something which is not likely to corrupt or deprave anybody.<sup>16</sup>

Like blasphemy, indecency and obscenity are not mere matters of opinion or interpretation: they are to be understood in relation to objective characteristics and the prevailing standards of the community. While recognising that human mores change over time, the law also recognises that public standards of decent or civilised conduct never entirely disappear, and the enormous public support for the stand taken by Archbishop Pell -- one poll suggested 93% support -- provides the most powerful recent instance of this.

The obscenity aspect of the Archbishop's application for an injunction received very little public attention and no comment from writers such as Casey -- primarily because from Day One of the controversy the debate was cast in terms of blasphemy. But this itself highlights one of the most remarkable aspects of the whole affair. Various attempts were made in the 1960s and 1970s to use the law concerning indecency and obscenity to insist on civilised standards in art, film and literature. These attempts generally ended in failure and in the rare cases of success turned out to be counter-productive. Ironically, in the far more secularised and pluralistic environment of the 1990s, a case was made for the supposedly out-moded concept of blasphemy which grew more and more compelling amongst the general public with each passing day. Although the court action failed, the moral victory went to the Archbishop, and this significant sociological development offers no comfort to the regnant values of Damien Casey's 'liberal excess', the values of the cultural *ancien regime*.

We come at last to the judgment of Mr Justice Harper. His Honour explained his own approach with the aphorism of Chief Justice Dixon: "there is no other safeguard to judicial decisions in great conflicts than a strict and complete legalism".<sup>17</sup> Whilst acknowledging that the offence of blasphemous libel undoubtedly continues in English law, His Honour held that the continuing existence of the offence in Australian jurisdictions was uncertain.<sup>18</sup> But even if there is such an offence, His Honour was persuaded by the claim made by counsel for the Gallery that an essential element for the offence of blasphemous libel is a risk of breach of the peace or perhaps widespread civil unrest.<sup>19</sup> Remarking that there was "no evidence before me of any unrest of any kind following or likely to follow the showing of the photograph in question", the judge concluded that there would be no breach of the criminal law if *Piss Christ* were to be publicly displayed and thus no offence in prospect which could rightly be prevented by injunction.<sup>20</sup> His Honour also rejected the argument that the exhibition of the photograph would be "indecent" or "obscene" under the Summary Offences Act, holding that these words "are associated more with lewdness than with blasphemy".<sup>21</sup> But in the end it was the principle that civil courts should not grant injunctive relief "where the legislature or the common law provide sanctions which have not been exhausted" that was decisive in this case.<sup>22</sup>

There are several points to be made about this judgment. First, whatever the history of the offence, it seems quite clear that the offence continues to exist in Australian jurisdictions. Mr Justice Harper himself refers to section 469AA of the Victorian Crimes Act which gives the court discretion to order the seizure and destruction of a blasphemous publication upon conviction -- clear evidence that the offence has been recognised by the Parliament of Victoria. Whether the offence has lapsed is another question, but the Archbishop's action and the absence of any ruling on this point at least leaves the continuance of the offence an open question.

Secondly, the finding that a breach of the peace is a necessary element of blasphemous libel is the weakest aspect of the (admittedly hurried) judgment. There is only one case among the authorities to support this proposition,<sup>23</sup> and this was not cited in the judgment. More importantly, this view was expressly rejected by two members of the House of Lords in *Whitehouse v Lemon* and omitted as an element in the formulation of the offence provided by two others. The irony in this aspect of the judgment is that at least two breaches of the peace *did* indeed arise from the publication of the photograph, and the second of these breaches was the ostensible reason for the sudden cancellation of the entire exhibition. On prudential public policy grounds alone it would seem unwise to insist on breach of the peace as an element of such an offence.

Thirdly, Mr Justice Harper restricted obscenity to "lewdness" or matters pertaining to sex. But as observed above, the leading Victorian case on the matter in Victoria, *R v Close*, held that the concept "quite properly" encompasses matters which have no sexual component and which are not likely to corrupt or deprave anyone. Here, once again, law matches well the principles of ethics and theology articulated above, and the display of *Piss Christ* would seem to be a prime candidate for obscenity so defined.

In the end, however, the case was decided on the principle that the court should not employ its civil jurisdiction to provide an injunction as a means of preventing the commission of a crime. This leaves open the question of the basis, nature and scope of the offences of blasphemous libel and obscenity. One thing the Serrano affair made abundantly clear was that the reasons for such a law remain as compelling today as at any time in the past. The protection of individual feelings, civil peace, and commonly accepted standards of civilized behaviour (which themselves demand respect for God, religion and morality), necessitate the continuation of this offence just as surely as they require proper laws against the vilification of ethnic and religious minorities -- even if these reasons fail to exhaust the evil of blasphemy as understood in ethics and theology. The case of *Pell v National Gallery of Victoria* serves to highlight the need to extend to Christians the anti-discrimination and anti-vilification protections increasingly being extended to other minorities, and possibly the need to extend to other religions the protection of the anti-blasphemy laws.

Some people have opposed anti-vilification laws as a totalitarian restriction on their freedom of expression; commentators such as Casey in the wake of the Serrano affair have been given to hysterical claims about the spectre of censorship and declining artistic freedom. In fact, however, the outcome of this affair represents a triumph for tolerance and mutual respect in our society. Whereas Christianity and the values of ordinary people were once considered fair game by the cultural and artistic *arriere-garde*, there is now a little more sensitivity and respect. This can only be a good thing for all those who sincerely value authentic tolerance and wish to see the expansion of its realm. Serrano was something of a turning-point in Australian public affairs. After Serrano we need high-quality and accessible debate in ethics, theology and law, not the fashionable but unintelligible responses of an increasingly irrelevant academic elite.

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## Footnotes

1 E.g. Sherman 1997; O'Neill 1996; Finnis 1998.

2 See Ramsay and Fisher 1999.

3 Neither the claim about icons nor that about Hegel is sourced.

4 ABC Radio National, *Arts Today*, 14/10/97.

5 Casey believes that the title '*Piss Christ*' somehow invokes the irony of the notice hung above the crucified One, 'The King of the Jews'; *Piss Christ* tries to re-educate us in the shocking irony of the Roman guards' gesture. Perhaps Casey does not grasp the full depth of the irony: the ironic reality for those who venerate the crucifix is that Christ was indeed the King of the Jews, unrecognised and executed; the 'last laugh' here is God's.

6 Two of us argue this more fully in: Ramsay & Fisher 1999.

7 Girard's works are well introduced to the English language reader in Williams 1988. His work on violence, sacrifice and mimetic desire has been applied by several theologians.



8 Summary Offences Act 1966 (Vic), s. 17(1)(b).

9 *Peek v New South Wales Egg Corporation* (1986) 6 NSWLR 1, per Kirby P (as he then was) in the New South Wales Court of Appeal.

10 *R v Hetherington* (1840) 4 St Tr (NS) 563 at 591.

11 *R v Ramsay and Foote* (1883) 15 Cox C C 217.

12 *Bowman v Secular Society* [1917] AC 407 at 445, per Lord Parker.

13 *R v Boulter* (1908) 72 J P 189.

14 *Whitehouse v Lemon* [1979] AC 617.

15 *R v Stanley* [1965] All ER 1035 at 1038.

16 *R v Close* [1948] VLR 445 at 463.

17 *Pell v Trustees of the National Gallery of Victoria*, Supreme Court of Victoria, 8-9 October 1997. No 7358 of 1997. Transcript of judgment. Victorian Government Reporting Service. 3. (Hereafter cited as *Pell v NGV*)

18 His Honour accepted the argument that the origins of the offence lay in historical circumstances peculiar to England and its established church; because the Anglican Church was never the Established Church of Australia, it was uncertain whether the offence had survived transplantation to the colonies; but even if it had been transplanted it may have "lapsed through desuetude". Here he was relying upon argument of counsel for the Gallery derived largely from the New South Wales Law Reform Commission Report, *Blasphemy* (1994), but that report's discussion of blasphemy is philosophically very weak, and its historical analysis tendentious. As a consequence, its conclusions -- that retention, codification or replacement of the offence would be unjustified and contrary to free speech and multiculturalism -- were unpersuasive and have not been followed in that jurisdiction. The Report's principal argument for abolition of the offence was that it had been little used in the previous fifty years: ironically it was only three years later that the prosecution of this very offence became a matter of national interest.

19 *Pell v NGV*, at 4-6, quoting the NSWLRC report at length in support.

20 *Pell v NGV*, at 8-9.

21 *Pell v NGV*, at 7-8, citing the definitions given in the *Butterworths Australian Legal Dictionary* and the *Macquarie Dictionary* in support.

22 *Pell v NGV*, at 9-10.

23 *R v Gott* (1922) 16 C App R 86.