

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Racial and Religious Hatred Bill

Liberty's briefing for Second Reading in the House of Commons

June 2005

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

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Summary

- Liberty believes that Government plans to extend Part 3 of the Public Order Act 1986 (POA) to include offences of religious incitement should be opposed.
- The proposals will restrict free speech and are likely to prove counterproductive.
- Liberty accepts that there are vulnerable minorities who need protection.
- The hate speech the Government is concerned about might be religiously expressed but is racially motivated.
- This protection can be provided by an amendment to Part 3 that specifically allows racially motivated religiously expressed hate speech within the definition.
- This will provide the necessary protection while ensuring there are no disproportionate inroads into freedom of expression.

Introduction

1. This Bill is the third attempt the Government has made to extend Part 3 of the Public Order Act 1986 to include religious as well as racial hatred. On the two previous occasions¹ the proposals met resistance in both the Commons and (in particular) the Lords. In both cases the relevant clauses were dropped in order to allow the main provisions of each bill to pass. The extension has now been published as a stand alone bill, which will allow the Government to use the Parliament Act if the House of Lords votes against it (See later).

2. In the press release announcing the publication of the Bill, the Home Office listed a number of organisations that support its proposal. While we do not want to draw up a ‘for’ and ‘against’ list, it should be noted that support is far from universal. Many faith groups are deeply concerned. For example Dr Ghayasuddin Siddiqui of the Muslim Parliament does not accept it will provide any real protection to Muslims:

*“The Muslim concern for protection, equality, and social inclusion is real and genuine. However, this piece of legislation is driven by political motives to stem the hemorrhaging of Labour support amongst the Muslim community... This law will be cosmetic and fail to prevent abuses hurled at Muslims.”*²

3. For any extension to the criminal law to be justified two tests should be satisfied. Firstly, that there is a specific social need that must be addressed. Secondly that this need can only be addressed through an extension of the criminal law. This need for justification is particularly strong when the plan is to criminalise inciting others to do something that is not itself a crime. It is not a crime to hate someone. Even if Parliamentarians accept that there is a need that must be addressed, it is possible to do so through a clarification, rather than an extension of the existing law.

¹ The ‘Anti Terrorism Crime and Security’ and ‘Serious Organised Crime and Police’ Bills

² Muslim Parliament press release 13 June 2005

The Bill

4. The Bill itself is extremely short, consisting of two Clauses and a Schedule. The Schedule defines ‘religious hatred’ as ‘hatred against a group of persons defined by reference to religious belief or lack of religious belief’. This is an extremely broad definition. As the explanatory notes to the Bill make clear, it not only covers a wide range of religions but also sects within religions as well as systems of non belief such as humanism or atheism.

5. Criminalising even the most unpalatable, illiberal and offensive speech should be approached with grave caution in a democracy. Free speech is far more precious than protection from being offended. The criminalisation of expressed opinions is often turned on the vulnerable communities it was designed to protect. Further, it is likely to make martyrs of thugs and bullies who are better punished for a plethora of crimes against persons and property. Our criminal statute book is bursting with public order, violent, and property offences directed at those who strive to turn hate into real intimidation or action against people.

6. Liberty accepts that free speech is not completely unlimited. Most healthy democracies regulate pornography, defamation, confidence and intellectual property. The existing offences relating to inciting *racial* hatred are an existing recognition of the need to balance competing imperatives. However races are recognised by visual (and immutable) characteristics, whereas religions are identified by a body of ideas and practices. This makes the broad criminalisation of ‘religious hate speech’ far more dangerous to freedom of conscience and expression. The line between hatred for a system of ideas and its proponents is fine and subjective. Lord Lester of Herne Hill summarised the distinction during debate on the provisions when contained in the Serious Organised Crime and Police Bill³:

‘Hatred is not an activity; it is an emotion or a state or mind. The deliberate stirring up of hatred - that is, the intense dislike - of members of a racial group is an offence, even though it creates no immediate risk of stirring up violence. That is an acceptable

³ Hansard 14 March 2005 Column 1114

use of the criminal law because criminalising incitement to racial hatred does not normally threaten the right to free speech. A verbal attack on members of a racial group is an attack on their common humanity and ethnicity. However, a verbal attack on members of a religious group, expressing intemperate criticism of, or hostility to, the beliefs, teachings or practices of their religion, is not an attack on their common humanity unless, in reality, it involves an attack on their ethnicity, origin and biology—for example, when it uses a religious attack to stir up racial hatred against Jews, Sikhs, Hindus or Muslims of Asian descent.’

7. Despite the extremely broad nature of religion in the Bill the motivation is essentially twofold. First, the Government has stated the Bill will help protect against the excesses of the far right. Second, while still in post as Home Secretary, David Blunkett publicly stated a desire to target and prioritise certain Islamic clerics for prosecution once the proposed extension of the law was passed. Whilst the Bill may have greater scope, these two reasons are why the Government has made repeated attempts to introduce the extension. We are concerned that either justification will make the extended criminalisation counterproductive, rather than lead to religious tolerance. Whether those prosecuted are BNP members or Islamic preachers, the criminalisation of speech will produce martyrs that other extremists will flock to.

8. Liberty believes that much of the anti-Muslim hatred promoted by parts of the far right constitutes racial rather than religious hatred. In recent years the BNP have ensured they avoid committing any offence of incitement to racial hatred by focusing their derogatory comments at Muslims. Given the widespread concerns expressed by politicians and commentators across the political spectrum it is quite possible that, should the offence become law, senior members of the BNP will court prosecution. This scenario is backed up by comments on the BNP website such as *‘This latest attack on the BNP which is the last defender of free speech in Britain, could however be the undoing of any support left for New Labour amongst the indigenous British folk’*. Two members of the BNP are currently facing prosecution for the offence of incitement to racial hatred for comments filmed and shown on the BBC programme *Secret Agent*. As the proceedings are ongoing it is not appropriate to comment on the substance. However, there is another very telling comment on the BNP website which shows how they will use the trial to gain maximum support and publicity. Urging

members to attend at court when the trial begins the website states “*The party will be able to reap the maximum benefits from the huge publicity that the trial will attract*”. How can this square with the Governments assertions that this extension to the criminal law is needed to keep the BNP quiet?

9. Muslims are an extremely vulnerable group of people in society at this moment in time. By accidents of history, genealogy and judicial interpretation, the *race* hatred offences are said to protect Jewish and Sikh people but not Muslims. If the Home Office really seeks to address this specific problem by way of criminal statutory amendment, it should first consider small amendments to the existing race hatred offences - for the avoidance of doubt - to protect Muslims from *race hatred* properly so-called. This could be a proportionate way forward.

10. During Committee stage of the Serious Organised Crime and Police Bill in the House of Commons Liberty drafted an amendment to the Bill which, instead of creating a new offence of incitement to religious hatred, provided clarification of the existing offence of incitement to racial hatred. This solution was also proposed by the Liberal Democrats through Dr Evan Harris MP and Lord Lester of Herne Hill. The existing offences in the POA penalise the use of threats, abuse or insults where racial hatred is either intended, or likely, to result. We now urge support for this Liberal Democrat amendment. There is no reason to read Section 18(1) POA for example – ‘a person who uses threatening, abusive or insulting words or behaviour’ – as limited to behaviour that is specifically *racist*, so long as the intention, or likely effect, is to stir up racial hatred. Therefore, abuse of Islam, if intended or likely to result in hatred of, for example, Arabs or Pakistanis (or both), could constitute an offence.

11. It is interesting that the Home Office make this point in connection with the racially aggravated offences in the Crime and Disorder Act 1998⁴:

‘2.4 It is important however to investigate whether an offence, which may appear to be motivated by religious hostility, also contains a racist element. Section 28(3) clarifies the test set out in section 28(1)(a) and (b) to emphasise the fact that the test

⁴ See <http://www.homeoffice.gov.uk/docs/racagoff.html>.

of what amounts to "racially aggravated" requires that the racial hostility is "wholly or partly" a motivating factor. It follows that even if there is a religious hostility provided that part of the hostility is racist then the offence is covered by these provisions.

2.5 In some cases, for example, where the victim may be described by the perpetrator as a "Muslim", it will emerge that the hostility arises from the perpetrators perception of the victim's race rather than any knowledge of the victim's religion. In this way an attack on a Muslim for example, would be covered by the Act's provisions provided part of the motivation was based on racial motivation or hostility.'

What is to stop this principle being applied to incitement to religious hatred? Currently racial hatred is defined in Section 17 POA as 'hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins'. There is nothing to *exclude* religiously expressed but racially motivated incitement from the definition of Section 17. The way to square the circle would be to include a specific amendment to the POA allowing racially motivated religiously expressed incitement to be brought into the definition of 'racial hatred'. This would not expand but clarify the existing law. It will also have other advantages.

11. First, as successful prosecution would require a jury to be satisfied that there was racial motivation, the arguments about limiting legitimate free speech would fall. Second, the offence would require that the religion have a link to a particular ethnicity. While the courts will determine exactly what religions do have such a link, it is certain that Scientologists or Jehovah's Witnesses, for example, would not be covered. The Government has made this offence as broad as possible to ensure no faith or non-faith group will complain of exclusion. While this might limit opposition, the only possible justification for the extension is a need to protect identified vulnerable groups. Another unfortunate but possible consequence of this catch all approach could be a range of belief groups demanding prosecutions.

12. We have stated that the creation of new crimes is only justifiable as response to a need that only the criminal law can remedy. Even if parliamentarians accept there is a social need to extend protection to particular vulnerable groups, there is no need for the planned extension. A clarification of the existing crime of incitement to racial hatred will provide the solution without resorting to a new offence.

Blasphemy

13. This Bill could also be used as a means to repeal the offence of blasphemy. Blasphemy law as it stands is both outmoded and illiberal, and should be abolished. Similar concerns have been voiced by various commentators and the Law Commission recommended abolition as far back as 1985. The offence has no true value or purpose in society today. Originally, blasphemy was a criminal libel offence. There were strong links between sedition and blasphemy since an attack on Anglican beliefs was considered as being one on the state and one of the principle justifications for its existence lay in this need to protect the State religion.

14. There is no need for the law in modern society. The danger of offence to Christianity leading to a threat to the social fabric of the state is both an outmoded and unrealistic concept. The growth of secularism and the presence of different religious and non-religious beliefs within the UK render blasphemy law of little use in the specific context of state protection. Considering how little it has been used in practice, (the last successful prosecution dates back to the late 1970s), this is a law viewed by many as being largely obsolete. As far back as 1949 Lord Denning described the offence as a 'dead letter'. If an attempt to repeal blasphemy is introduced during the course of this Bill, we would urge parliamentarians to support it.

The Parliament Act

15. As the extension has been introduced as a stand alone bill it is likely that the Government will attempt to use the Parliament Acts of 1911 and 1949 to restrict the power of the House of Lords to block legislation. To be eligible for the Parliament Acts procedure, a bill must be passed in the Commons in a second session of Parliament (a) at least one year after it received its second reading in the first session

and (b) be sent up to the Lords at least one month before the end of the second session. The bill sent to the Lords in the second session has to be identical to the bill sent to the Lords in the first session. This will allow the Government to pass the bill into law without the approval of the Lords. We would urge members of parliament to ensure the suggested amendment is adopted in the Commons to prevent the Government from resorting to the Parliament Act.

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