

# Incitement to religious hatred

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### INCITEMENT TO RELIGIOUS HATRED.

The Home Secretary, David Blunkett, announced last month that he intends to try once more to introduce a law to criminalise Incitement to Religious Hatred. The last time Blunkett tried this, as part of the his anti-terror legislation, it was scuppered by the House of Lords.

So, why does Blunkett feel that this law is necessary, when so many others so passionately oppose it? There is no doubt that racist groups such as the BNP are attempting to avoid existing race hate laws by focusing their venomous propaganda on Muslims or Islam. In this way they can create hostility to Asians without using their race to do it.

Increasingly though, religious hatred is being expressed by one religious group against another -- sometimes by simply citing passages from "holy books" that are perceived as hateful by competing religions. In the state of Victoria in Australia, where legislation similar to that being proposed by Blunkett is already in force, a case of Religious Vilification is dragging through the courts brought by an Islamic group against a group of fundamentalist Christians. In retaliation, fundamentalist Christians are busily taking notes about what is preached during devotions in mosques. So, after seeing their judicial proceedings and indeed the law itself reduced to farce, some of those who pressed hardest for the law in Victoria are now wishing it had never been introduced.

The religious proponents of such legislation in the UK tend to argue in favour of such a law on the grounds of equality. Case law in 1983 had the effect of bringing Sikhs and Jews under the protection of the Incitement to Racial Hatred legislation, but this was because they were deemed to be identifiable ethnic groups, not because of their religion. Nevertheless, this illusory disparity has given those of other religions who do not enjoy protection the spurious justification to call for equality in the form of an extension of the incitement to racial hatred law to include religions. Such calls have become more insistent because there is an increasing tendency for ethnic minorities to identify themselves in religious terms rather than, as hitherto, geographic minorities. Religions have codes of behaviour, spokespeople, and leaders who often hold much greater sway on their followers -- and the government - than minority ethnic leaders had been able to do.

### Some drawbacks

But before leaping into passing new laws we need ask - are they necessary? Will they really eradicate religious hatred or simply lead to even greater problems?

We already have a plethora of laws on the statute book to deal with most forms of anti-social behaviour -- from harassment and defamation right up incitement to violence and murder. Any complaint that might be brought under the proposed new legislation could, as far as I can see, be dealt with under already existing legislation. Anything more would be superfluous -- and even dangerous.

Nor is incitement law the panacea that Mr Blunkett appears to think it is. The one incitement to

hatred law we already have, the racial one, "has not significantly affected the production and circulation of racist material", according to the Commission for Racial Equality when giving evidence to the House of Lords Religious Offences Committee (see below). The Committee went even further in concluding in 2002 about the incitement law: "it has been argued that laws against inciting racial hatred create more expectations than can be fulfilled by prosecuting authorities anxious to avoid giving racist utterances the publicity of a trial and the endorsement of an acquittal." So, a further reason for not pressing on with this law is that it is unlikely to be effective.

Previous attempts by Parliament, both fruitless

An extension of the incitement law to include religious hatred has already been considered in Parliament in detail at least twice and rejected. Mr Blunkett's first attempt to do so was included in the Anti-terrorism, Crime and Security Bill introduced in the immediate aftermath of the 11 September attack in 2001. His intransigence in the face of widespread objections infuriated his opponents who came from every party including his own, and formed what was probably the most broadly based opposition to any Government measure seen in the Westminster for some decades. At the very last minute he offered concessions -- and significantly they aimed to be placate the religious bodies worried about being prosecuted for using the texts they hold sacred. But few of his critics were won over and he was forced to drop the incitement provisions. The stark alternative was to lose the whole anti-terrorism bill and with it the remainder of his political credibility.

The overwhelming majority of the opposition came from those worried about the implications for freedom of expression, although there were also objections to the legislation being prepared too hastily, and that an Anti-Terrorism Bill was an inappropriate vehicle for such a change. So, soon after Blunkett's measures were defeated, the Lords Select Committee on Religious Offences was set up largely to recommend how incitement to religious hatred could best be outlawed. Their starting point was to that they probably needed to do little more than replicate Blunkett's formula of adding "and religious" to incitement to racial hatred legislation. The National Secular Society argued against this in both a written submission and in oral evidence before the Committee. Seeing no easy way forward by this route, they changed tack and - for the best part of a year - examined a number of alternatives, but failed to find a satisfactory way of framing legislation.

Freedom of expression

Mr Blunkett's entering the ring for a second time presumably means he thinks he has found a solution to a conundrum that defeated a committee of eminent peers who struggled with it for a year and it is no surprise that he is already facing a barrage of opposition similar to what he did last time round.

Not everyone opposes this law of course, and as would be expected, the main supporters are minority religious groups. There are however some among our own ranks who believe there should be legislation to address this problem, providing freedom of expression is not compromised. They acknowledge however that what Mr Blunkett is proposing and that is all that is on offer so far is unlikely to satisfy that criterion.

Nick Cohen, writing in the Observer made a spirited and compelling case against Blunkett's proposals. If incitement to religious hatred had been a crime at the time of the persecution of Rushdie, he warned us, his enemies would certainly have tried to bring him to trial.

Cohen recalled that when in 1857 the then Lord Chief Justice "persuaded Parliament to limit free speech by passing the Obscene Publications Act" he told them that "censorship would apply 'exclusively to works written for the single purpose of corrupting the morals of youth and of a

nature calculated to shock the common feelings of decency in any well regulated mind.' Only hateful pornographers had anything to fear. His assurances were worthless. Dry guides on birth control were prohibited. The works of Emile Zola, Gustav Flaubert, James Joyce, D H Lawrence Jean-Paul Satre and even Daniel Defoe (for Moll Flanders ) couldn't be sold, while tens of thousands of authors and publishers censored themselves for more than a century. After that experience, if you're relaxed about extending prohibition you should be careful about what you wish for because you will have no right to be dismayed by what you get."

Cohen's point about the already worrying trend of self-censorship is well made. This even happened with Section 28 of the Local Government Act which sought to ban in schools "the promotion of homosexuality" as if it were a fizzy drink. Many schools quietly stopped initiating any references to homosexuality, and teachers tip-toed round the subject avoiding it completely if possible. And that was despite the fact that the law was hopelessly framed and, effectively, unusable. There will be no such mollifying factors with Mr Blunkett's law, and writers and critics will restrain themselves "just in case" they say something that will land them in court.

The opposition facing Blunkett may be even more intense this time because of resentment about Section 39, a provision with severe freedom of expression implications which was spirited through the 2001 Anti-Terrorism Act. The Home Secretary recently admitted --it almost seemed, boasted -- on Radio 4's Today programme that Section 39, which introduced Religiously Aggravated sentences, carrying jail sentences of up to seven years for insulting behaviour, had slipped through almost unnoticed. This was probably because the fight over Incitement to Religious Hatred provisions diverted peers from subjecting the rest of the Bill to as much scrutiny as it would otherwise have received. The oversight was an extremely serious one. I am convinced that Section 39 is already causing greater restriction freedom of expression and am concerned that, gradually over time, case law might -- as some are pressing for --extend its protection against insult from protecting people to protecting beliefs. In other words, a back door blasphemy law protecting all religions, and one with very harsh penalties.

Having also heard the Home Secretary's contempt for what he described as the "liberati", I do not expect him to be moved by, or even to listen to, those extolling the importance of protecting freedom of expression at all costs. But his scorn for protecting freedom of expression has overwhelmed him to the extent that he seems unable to appreciate that there is also a strong pragmatic element in the freedom of expression arguments.

The widely-held fear is that the real beneficiaries of an incitement to religious hatred law will be religious extremists. It will be them who will use the law bringing fear to others who will become too intimidated to criticise them, and so giving them ever more confidence to spout about the inferiority of infidels and non-believers. I cannot emphasise the importance of this too highly. The most effective way to control such people, and racist extremists, is to expose their utterances and bring forth vigorous counterarguments in the public arena.

So even ignoring the key freedom of expression point, why is Mr Blunkett going out on such a limb once more, given the incitement law's ineffectiveness and the strength of the opposition to it demonstrated so effectively in 2001? Could it be that in the wake of the Iraq war - as even the mirage of weapons of mass destruction disappears - New Labour has woken up to the fact that through its own acts it has almost entirely alienated the Muslim vote? And now it has to pay compensation in the form of this illiberal and dangerous legislation?