



THE LAWYERS' CHRISTIAN FELLOWSHIP

PUBLIC POLICY UNIT

*I will speak of your statutes before kings
(Psalm 119:46)*

STRENGTH IN DIVERSITY Towards a Community Cohesion and Race Equality Strategy

September 2004

EXECUTIVE SUMMARY

The Lawyers' Christian Fellowship is concerned about the Government's proposal to introduce a new crime of incitement to religious hatred. Principally, it is concerned that this measure could threaten the freedom to preach the Gospel of Jesus Christ because people with other beliefs could be offended by the message. In our response, we will seek to demonstrate that the crime of incitement to religious hatred is inappropriate in the sphere of religious belief, impractical in enforcement, counterproductive to the stated aims of the Consultation Paper and an unnecessary addition to the criminal law.

Accordingly, the Lawyers' Christian Fellowship recommends that the *status quo* in this area of law be preserved.

RESPONSE

INTRODUCTION

1. This submission is made in response to the Home Office's consultation paper "Strength in Diversity"¹ in relation, *inter alia*, to religious hatred. One of the objects of the Lawyers' Christian Fellowship (the "LCF") is to seek to uphold Christian principles in the administration of the law throughout the United Kingdom. Membership of the LCF is, in general, open to anyone who is a Christian and involved with the law. Currently there are approximately 1500 members.
2. It is clear that the government intends, as part of its Community Cohesion and Race Equality Strategy, to reintroduce an offence of incitement to religious hatred (the "**Proposed Offence of incitement to religious hatred**" or "**Proposed Offence**"). In July 2004, the Home Secretary stated that:

*"In 2001 we tried unsuccessfully to introduce an offence of incitement to religious hatred ... we cannot allow people to use religious differences to create hate ... I hope to fill this gap in the legal protection for faith communities as soon as the legislative opportunity arises."*²

LEGAL ANALYSIS

A New Offence of Incitement to Religious Hatred would be *Inappropriate*

3. Previous attempts to introduce the Proposed Offence have been made by suggesting an amendment to the offence of incitement to racial hatred under the Public Order Act 1986³. Religion and race, however, are not analogous in this context. Religion is not an inherent and unchangeable biological fact; it is about ideas and beliefs, philosophies and moral choices. Unlike race, a religious belief can be wrong. In many ways, religion is more akin to political thought than to race. Yet no democratic society could consider introducing a crime of incitement to political hatred. Like politics, constant controversy and debate regarding religion is necessary and good. It is in society's interests that such debates are as free as possible without fear of prosecution and persecution (see paragraphs 10-12 below).
4. The argument that the Proposed Offence is needed because of the particular vulnerability of religious minorities does not justify the curtailment of freedom of expression that would be necessary to enforce such a law. There are many vulnerable groups who are not afforded such privileged protection. There is no offence of sexual hatred, or of disability hatred, or of asylum seeker hatred. Furthermore, the fact that a particular group is particularly vulnerable does not mean that they can be afforded additional protection that curtails the rights of others. The European Convention on Human Rights deals with this issue in the following way:

*"Nothing in this Convention may be interpreted as implying for any State ... any right to ... perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*⁴

5. The Home Secretary has sought to give assurances that this new law would not affect people's right and ability to debate matters of religion or to proselytise⁵. However it is difficult to see how this could be the case. It is not always possible to separate vilification of a certain belief or practice from vilification of the person who holds that particular belief or who observes that particular practice. Christians believe that God commands them to hate sin but to love sinners. However, a passionate attack on the morality of shariah law, for example, would be interpreted by some Muslims who agree with shariah law as incitement to hatred of them, either personally or as a group. It is inevitable that criticism of others' religious beliefs will be taken to be insulting. But this must not be allowed to stop people from challenging the correctness of those beliefs.

¹ Strength in Diversity: Towards a community cohesion and race equality strategy, Home Office (<http://www.homeoffice.gov.uk/docs3/5517-HO-Strength.pdf>).

² Home Office, "New challenges for race equality and community cohesion in the 21st century", a speech by the Rt. Hon. David Blunkett MP, Home Secretary, to the Institute of Public Policy Research, 7th July 2004, p. 12. (Available at www.homeoffice.gov.uk/docs3/race-speech.pdf).

³ House of Lords Select Committee on Religious Offences in England and Wales, Volume 1-Report, 10 April 2003, p. 23.

⁴ Article 17.

⁵ Home Office, "New challenges for race equality and community cohesion in the 21st century", a speech by the Rt. Hon. David Blunkett MP, Home Secretary, to the Institute of Public Policy Research, 7th July 2004, p. 12. (Available at www.homeoffice.gov.uk/docs3/race-speech.pdf).

A New Offence of Incitement to Religious Hatred would be *Impractical*

6. It is not possible to define “religion” or “religious” adequately. In a Home Office research study on tackling religious discrimination, the authors came to the conclusion that the best way to define religion is to leave it to the courts to define⁶. However, they also say that:

“the legal system does have experience in attempting to define in religion and in establishing principles by which to recognise religions. This shows that no single or universal definition is possible.”⁷

Although the major religions would clearly be included in any legal definition of “religion” (and accordingly, “religious”), it would be impossible to decide with sufficient legal clarity which other groups should be included. Many groups may argue that they are in fact religious groups, including scientologists, druids, humanists, secularists, satanists, mystics and any number of religious cults.

7. Further, there are groups within groups that may feel themselves distinct from each other. For example, if a Catholic could be guilty of inciting religious hatred against a Protestant, could an Anglican be equally guilty with respect to a Baptist? Or a Methodist against a Free Methodist? The same distinctions apply within all major religions. If “religion” is so difficult to define, then, *a fortiori*, there will be insurmountable problems defining “religious hatred”. There could even be instances of incitement to religious hatred against a particular religious group by a member of that group. Just because a person is an Orthodox Jew himself, he does not suddenly become incapable of inciting hatred against other Orthodox Jews. This type of situation becomes a real possibility when one considers how members of religious groups may become disillusioned, or may be preparing to form a break away group (whether consciously or not).
8. Further, any definition of *incitement* to religious hatred would be very subjective. Some people could be incited more easily than others. This could create a system of indirect discrimination. For example, a Christian who feels that someone has incited religious hatred against him may not complain, because he chooses to abstain from legal proceedings as an act of loving his enemy in accordance with his religious beliefs. Conversely, a fundamentalist Muslim may hear a Christian pastor quoting sections of the Bible presenting Jesus Christ’s claims to divinity, exclusive truth and salvation (and thereby implying Islam to be a false religion) and accuse the pastor of inciting religious hatred. The law would be punishing the most tolerant and protecting the least tolerant in society.

A New Offence of Incitement to Religious Hatred would be *Counterproductive*

9. Freedom of religion and freedom of expression must both be protected by the law⁸. This Proposed Offence seems to be an attempt to find a balance between these two rights. However, a Proposed Offence of incitement to religious hatred would ultimately curtail both. It could be abused to try and stifle the teaching of fundamental beliefs that go against the teaching of other religions (thus curtailing freedom of religion), but also to stifle criticisms of other's beliefs and practices (thus curtailing freedom of expression).
10. Contrary to improving relationships, the Proposed Offence would be likely to increase intolerance and hatred as different groups would attempt to use it as a weapon against each other. An example is the use of similar laws in Australia where Christian pastors faced charges for criticising Islam and raising concerns about the morality of certain of its teachings. One former prominent supporter of the law, Amir Butler, executive director of the Australian Muslim Public Affairs Committee, now states that:

“All these anti-vilification laws have achieved is to provide a legalistic weapon by which religious groups can silence their ideological opponents”⁹.

11. It is clear that those who are intolerant of other views themselves may use the Proposed Offence to silence those views.
12. Further, the laws on incitement to *racial* hatred have often been invoked to punish the very people they were primarily intended to protect (i.e. racial minorities). Although there is no racial breakdown available of the prosecutions for racial hatred, it is known that the first prosecution was of a black activist, and that

⁶ Home Office Research Study 221, Tackling Religious Discrimination: practical implications for policy makers and legislators, by Bob Hepple QC & Tufyal Choudhury, Home Office Research, Development and Statistics Directorate, February 2001 (Available at www.homeoffice.gov.uk/rds/pdfs/hors221.pdf).

⁷ *Ibid.*

⁸ Articles 9 and 10, European Convention on Human Rights.

⁹ Pakistan Christian Post, “Religious hate law: a threat to free speech?”, 4th September 2004 (www.pakistanchristianpost.com/newsviewsdetails.php?newsid=265).

this was followed by prosecutions of other black activists.¹⁰ This has led some people to believe that the legislation was actually to restrain the growth of black power movements¹¹. There is no reason to think an offence of incitement to religious hatred would develop any differently.

13. There is also the danger that the Proposed Offence would prevent people from reporting human rights abuses with a religious dimension that are taking place in other countries for fear of being prosecuted for inciting racial hatred in the UK. The Barnabas Fund, a UK charity working with Christians in Islamic societies, has raised concerns that the proposed offence could be used against modernist Muslims calling for reform of Islam, to hinder work for greater protection of rights for Muslim women and to silence those who campaign against injustices endured by non-Muslims living under Islam¹². The same could be said of reporting criminal activity to the police. Similarly, scientists whose studies show that there is, for example, a greater propensity for violent crime among young men of a certain religious group may choose not to publish these findings for fear of prosecution. Yet this information is vital for building a society with community cohesion and an effective race equality strategy.
14. In short, the Proposed Offence is likely to cause the deterioration of good relations between different groups and hinder the enforcement of law and order.

A New Offence of Incitement to Religious Hatred would be Unnecessary

15. If the Proposed Offence were not to curtail freedom of expression to an unacceptable extent the threshold for a prosecution would have to be extremely high. It would have to allow hostile criticism and condemnation of people's most dearly held beliefs. However, an act that goes further than this is already prohibited by the criminal law. For instance, offences against the person, property offences and public order offences already provide remedies when there is violence, a threat of violence or incitement to violence. One particular example is section 5 of the Public Order Act 1986 which prohibits the use of "*threatening, abusive or insulting words or behaviour ... within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby*". Anything done or said which is not insulting or likely to cause distress to another person could not meet the high standard needed by the Proposed Offence without unacceptably restricting freedom of expression.

RECOMMENDATIONS

16. In the light of the above, the LCF recommends that an offence of incitement to religious hatred should not be introduced. For the sake of freedom of religion, freedom of expression and community cohesion, the *status quo* in this area of law should be preserved.

CONCLUSION

17. It would be impossible for a proposed offence of incitement to religious hatred to achieve what the Government wants. It would be practically impossible to prevent abuse of the law so that religious freedom and freedom of expression were not unacceptably violated. The LCF is particularly concerned that the principle of turning the other cheek¹³ which is unique to Christianity will mean that Christians will be the least protected of groups in a society where the majority regard themselves as Christian.
18. If abuse of the proposed offence could be prevented, people would be disappointed and frustrated that the law did not prevent malicious and hostile criticism and condemnation of their faith that fell short of incitement to hatred. In either case, intolerance, bitterness and hatred would increase to the detriment of society. If the Government is truly concerned about strength in diversity, community cohesion and race equality it will allow people to express their religious beliefs freely rather than seek to silence them.

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¹⁰ Submission from the Islamic Human Rights Commission to the Select Committee on Religious Offences in England and Wales. (Available at www.publications.parliament.uk/pa/ld200203/ldselect/ldrelol/95/95w42.htm).

¹¹ *Ibid.*

¹² Cybercast News Service, Christian groups troubled by UK religious hate law proposal, by Patrick Goodenough, 15 September 2004. (<http://www.cnsnews.com/ViewForeignBureaus.asp?Page=%5CForeignBureaus%5Carchive%5C200409%5CFOR20040915b.html>)

¹³ The Gospel of Matthew 5:39.