



MULTICULTURALISM AND FREE SPEECH

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Thank you very much for inviting me to give this distinguished lecture. It is a second occasion on which I have been honoured by this fine University, having previously been awarded an honorary degree. I have chosen the complex and sensitive issues of multiculturalism and free speech having in mind the diverse population of the City of Leicester, and its post-War history. I shall explore the various meanings of multiculturalism, integration, assimilation, and the relationship between the right to equality and dignity for ethnic and religious minorities and the right to freedom of expression. There are difficult legal and ethical choices involved, especially when vulnerable minorities seek to curtail or limit the expression of opinions which they regard as insulting, abusive or offensive.

I begin with something of the historical context. When Commonwealth immigrants came to this country after the Second World War, providing the labour needed to reconstruct the war-damaged economy, they were often looked upon as inferior and faced widespread racial prejudice and discrimination. In 1968, against the rising racial tensions and anti-immigrant sentiment fuelled by Enoch Powell and Duncan Sandys,

¹ I am grateful to Tara Lyle, Parliamentary Legal Officer of the Odysseus Trust, for her help in preparing this lecture.

the Commonwealth Immigrants Act was passed as an emergency measure in just three days and nights. It had the aim and effect of depriving British Asian refugees fleeing racial persecution in East Africa of their right of entry to the United Kingdom – their country of citizenship. Overnight they became citizens without status, solely because of their ethnicity. It was one of the worst acts of a populist Government, and confirmed my belief in the need for more effective safeguards against the misuse of public powers by our Executive-dominated Parliament.

In the absence of a written constitution or Human Rights Act, there was no means of challenging this unsightly measure in British Courts, and so some British Asians complained of the violation of their rights under the European Convention on Human Rights. I had the privilege of acting as their co-counsel. The European Commission on Human Rights gave a landmark opinion that the legislation was racially motivated and had subjected this group of British Asians to racial discrimination which was inherently degrading².

By this time, in 1974, Roy Jenkins had become Home Secretary for the second time, and I had become his Special Adviser on anti-discrimination legislation and human rights. I could not advise him about the case because of the conflict of interest, but he decided, against official advice, to accept the Commission's ruling instead of challenging it in the European Court of Human Rights. As a result, many British Asians settled here in Leicester, and have since made an outstanding contribution to this City and to the nation. Some of them or their children may be present this evening, not knowing of the importance of what happened in Strasbourg a generation ago.

² *East African Asians v United Kingdom* (1973) 3 EHRR 76, EComHR. For more information on the East African Asians' case and the events surrounding it see Anthony Lester *Thirty Years on: the East African Case revisited*, Public Law[2002] PL Spring, pages 52-72.

Two years earlier, when Edward Heath's Government was in power, in September 1972, in response to Idi Amin's threat to expel all British Asians from Uganda, Leicester City Council paid for a notice in the *Ugandan Argus* which explained that housing, education and social services were stretched to the limit and that the City could not take any more immigrants because of the threat to the living standards in the city. The notice warned that "in your own interests and those of your family you should...not come to Leicester." The Council sent a delegation to the Home Secretary urging him not to house the Ugandan Asians in Leicester.

This took place within the broader context of the policy of 'dispersal' in the allocation of housing which the Government adopted in the 1960s and 70s. Incoming refugees, in particular British Asians from East Africa, were to be diverted from towns with high inner-city concentrations of black immigrants to less well established immigrant reception areas as a means of managing the 'immigrant problem'³.

The dispersal of non-white immigrants was an attempt to preserve cultural homogeneity by ensuring the dominance of "British" culture. The indigenous population was to be protected from the "alien" cultures of the immigrants who or whose children were expected to assimilate in their new home.

This was not, however a universally held view. In May 1966, soon after Roy Jenkins became Home Secretary in Harold Wilson's first Labour Government, he made a memorable public statement of his attitude towards racial discrimination and the

³ In the long run, this attempt was unsuccessful and nearly a quarter (5,000-6,000) of the Ugandan refugees arriving in Britain in 1972 settled immediately in Leicester and by the end of 1970s, another 5,000 had moved to Leicester from their dispersed locations. See Deborah Phillips and Valerie Karn, *Racial Segregation in Britain: Patterns, Processes and Policy Approaches*, in Elizabeth D. Huttman, Wim Blauw and Juliet Saltman (eds) *Urban Housing: Segregation of Minorities in Western Europe and the United States*, p.63 at pp82-83. The Government still operates a form of dispersal in relation to refugees.

problems of integration.⁴ I helped him prepare his speech. What he said bears repeating more than forty years later.

“Integration is perhaps rather a loose word. I do not regard it as meaning the loss, by immigrants, of their own national characteristics and culture. I do not think that we need in this country a ‘melting-pot’, which would turn everybody out in a common mould, as one of a series of carbon copies of someone’s misplaced vision of the stereotyped Englishman,

“It would be bad enough if that were to occur to the relatively few in this country who happen to have pure Anglo-Saxon blood in their veins. If it were to happen to the rest of us, to the Welsh (like myself) , to the Scots, to the Irish, to the Jews, to the mid-European, and to still more recent arrivals, it would be little short of a national disaster. It would deprive us of most of the positive advantages of immigration, which ... I believe to be very great indeed.

“I define integration, therefore, not as a flattening process of assimilation but as equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance. That is the goal. We may fall a little short of its full attainment, as have other communities both in the past and in the present. But if we are to maintain any sort of world reputation for civilized living and social cohesion, we must get far nearer to its achievement than is the case today.”

Roy Jenkins was passionately committed both to racial justice and to freedom of speech. No Home Secretary before or since has come close to matching his extraordinary achievements. Sadly, his two terms as Home Secretary were only liberal interludes in the post-war history of that office.

⁴ “Racial Equality in Britain”, reproduced in Roy Jenkins, *Essays and Speeches*. 1967.

Roy Jenkins was steadfast in his commitment to the values of a liberal democratic society, including the fundamental right to equality for women and to freedom of expression. He stood for a civilized, plural, and secular society in which there is respect for diverse faiths and beliefs, but his reference to cultural diversity and mutual tolerance did not mean giving way to demands within ethnic or religious minorities (or anyone else) to respect customs and practices which, for example, harm the rights of women and children, or homosexuals, or other vulnerable groups.

Jenkins' rejection of what he described as "a flattening process of assimilation" is significant. When the British ruled India, the policy of assimilation pursued by the English Utilitarians was exemplified by Macaulay's Minute on Education of 2nd February 1835 which explained that the first object should be to raise up an English-educated middle class "who may be interpreters between us and the millions whom we govern – a class of persons Indian in colour and blood but English in tastes, in opinions, in morals and in intellect."⁵ William Wilberforce, the celebrated campaigner for the abolition of the Slave Trade, was even keener on the opening of India to missionary enterprise, which he described as "that greatest of all subjects, for I really place it before Abolition".⁶

To his Evangelical mind,⁷ "the hand of God was visible in history and nowhere more surely than in the miraculous subjugation of India by a handful of English. Power carried with it an awful responsibility and duty, the evangelization of India's heathen millions. The plight of these millions was desperate, for they were not men with a feeble knowledge of God, but actual worshippers of false gods and graven images. And to the Evangelical their error was not simply false doctrine; it smelt an unclean thing. The

⁵ Cited in Erik Stokes, *The English Utilitarians and India*, Oxford, 1959, 46.

⁶ *Ibid.*, 28.

⁷ *Ibid.*, 30-31.

Hindu divinities for Wilberforce were ‘absolute monsters of lust, injustice, wickedness and cruelty. In short, their religious system is one grand abomination.’”

Happily, that kind of Christian bigotry is not prevalent in public policy in Britain today, but this chapter in British imperial history serves as a cautionary tale about the dangers of a flattening process of assimilation, driven by religious or political dogma.

There was another more attractive side to British rule in the late 1820s and 30s, the side sympathetic to liberal and humanitarian reforms, such as those sought by the great Bengali social reformer, Ram Mohan Roy, in his campaign to abolish the practice of *sati* – the Hindu funeral practice in which the widow was compelled to sacrifice herself on her husband’s funeral pyre. It was because of the stance Roy took on the advocacy of women’s rights and *sati* that Lord William Bentinck was influenced to ban the practice in 1829, causing controversy among Hindus. The men who ruled imperial India throughout the nineteenth century saw themselves as carrying Kipling’s “White Man’s Burden”, applying Utilitarian dogmas to the reform of what they regarded as the “heathenism and barbarism” of native customs.⁸

Today, we reject the unpleasant jingoism and sense of racial superiority of the conqueror that was the ugly side of British imperial rule in India and elsewhere. But a century and a half later, there remain some traditional deeply anti-social customs and practices in Britain as well as South Asia and Africa, which must not be tolerated in the name of a misguided multiculturalism, or in the interests of politicians in their bid for power: practices such as child ‘marriage’, forced ‘marriage’, trafficking of children and women, abduction and so-called ‘honour’ killings, dowry abuse, forced labour, polygamy, and other practices involving the subjection of girls and women.

⁸ *Ibid*, Chapter IV, The Utilitarian Legacy.

In 1972, in a book on "Race and Law", I wrote that,⁹

"Britain is a plural society culturally as well as racially, and the tensions created by cultural diversity may be as onerous for the immigrant generation as the tensions arising from racial differences.... Cultural differences will admittedly become blurred with each succeeding generation, whereas racial differences are likely to be aggravated if an indigenous coloured population, entitled to be treated as equal men and women by virtue of their birthright and their citizenship, are treated as inferior.

"Some of the problems of cultural diversity can be safely left to solve themselves; some, but not all. It would, for example, be entirely misguided for public authorities to tolerate the exploitation of children or the maltreatment of wives and daughters because such practices were condoned by a particular national, religious or cultural group, Prejudice and discrimination ought to be opposed with equal force, whether among white or black people, natives or immigrants; and cultural tolerance must not become a cloak for oppression and injustice within the immigrant communities themselves."

That was the impulse which led me to campaign for what became the Forced Marriage (Civil Protection) Act 2007, working in partnership with the Southhall Black Sisters, *Asiana*, and *Karma Nirvana*. I discovered in the course of that campaign that well-meaning local authorities and school authorities in some areas were tolerating practices which led to the forcing of children and young women into sexual unions against their will, in the name of multiculturalism. They feared to take on those traditional male elements in British Asian communities which were both politically powerful and keen to encourage so-called "marriages" to preserve what they regard as their cultural

⁹ Race and Law, Penguin Books, 1972, at pages 17-18.

identity. I hope and believe that the 2007 Act will be translated into practice by giving protection to the vulnerable against this hideous oppression.

Like other animals, we humans need bearings and landmarks, and have a strong sense of identity of our species. We derive our sense of identity from family, birthplace, language, territory, country, culture, ethnicity, beliefs, whether religious or political, sports teams, social clubs, and so on. That sense of identity is an essential part of our humanity. It can easily become an exclusive sense of identity in which we fail to respect the common humanity of all human beings. And, if we feel rejected or alienated, we may seek refuge in a particular form of identity which involves a culture of rejection.

That is what has happened and it has enabled racist extreme groups to attack the loyalty of British Muslims and to stoke up Islamophobia. In the distorted vision of parts of the media, 'multiculturalism' has become a symbol of appeasement by liberals of unacceptable minority practices. Ian Buruma has observed¹⁰ that "Dogmatic multiculturalism, like all 'identity politics', has a lot to answer for. Bad practices are too often justified in the name of cultural difference. And people are not encouraged, to put it mildly, to broaden their minds beyond the narrow confines of their own cultural or religious backgrounds. On a practical level, anything that stands in the way of learning the language of one's country properly will be a barrier to advancement and prosperity." I could not agree more.

My idea of "integration" and respect for cultural diversity, and mutual tolerance, is an idea which promotes equality and individuality, balanced unselfishly by the rights and freedoms of others and the wider public interest; it is an approach which recognises human fallibility and encourages a spirit of liberty: what Judge Learned Hand described as "the spirit that is not sure that it is right; ... the spirit which seeks to

¹⁰ "Living with Islam", New York Review of Books, 24th May 2009, page 11.

understand the minds of other men and women; ... the spirit which weighs their interests alongside its own without bias".¹¹

Amartya Sen rightly argues that it is a fundamental error to attempt to identify people primarily by one characteristic, be it their religion, ethnicity or sexuality¹². Similarly, Dominic Grieve QC, MP, the shadow Justice Secretary, recently criticised the Government for "ranking people as members of neatly categorised ethnic, religious or social groups rather than treating everyone as individuals in their own right...courting self appointed heads of minority groups and pandering to special interest lobbies, ignoring the range of opinions and depth of diversity in modern Britain...and...stifling difficult debate under a blanket of political correctness, that marginalises those ill at ease with prevailing dogma or accepted 'progressive' wisdom¹³".

I share these views, and agree with the recent editorial in *The Times*¹⁴ entitled "Doing God: Religious faith provides civic inspiration, but should take no stronger political role." The editorial noted that

"the UK has developed a workable compromise on the status of religious faith in public life ... An established Church is a constitutional idiosyncrasy, but the Church of England and other denominations and faiths have produced some outstanding voices of social witness. The corollary, however, is that religion should be a voice in the public square, rather than a monolith. A liberal democracy will recognise that its citizens have many ties of belonging, among

¹¹ Learned Hand, "The Spirit of Liberty", speech at an "I am an American Day" ceremony, Central Park, New York City, 21 May 1944, in *The Spirit of Liberty*, 3rd ed.' Enl.,ed. Irving Dilliard, p.190 (1960).

¹² Amartya Sen, *Identity and Violence: The Illusion of Destiny*, Penguin Books 2006.

¹³ Dominic Grieve: *Multiculturalism – A Conservative vision of a free society*
http://www.conservatives.com/News/Speeches/2008/12/Dominic_Grieve_Multiculturalism_-_A_Conservative_vision_of_a_free_society.aspx

¹⁴ 7th February 2009, "Doing God".

which those to churches, synagogues, mosques and temples are important. But the overriding characteristic is a common civic identity and equality before the law. A statesman and a political system cannot properly represent a cosmopolitan and heterogeneous society while being religiously sectarian.”

It is a common mistake to lump people into groups rather than treating them as individuals. As Sarfraz Manzoor laments¹⁵, it means that “anyone who is male and Muslim – and, even worse, happens to have Pakistani heritage – can get mistaken for a potential terrorist. It isn't just the police who have a problem telling the difference”. It also means that it becomes more difficult for challenges to be made to the reactionary view of some self-appointed minority community leaders who are treated as representative.

We live in a mass society – a society of mass production and consumption, mass media, and mass politics. It is tempting to follow the lines of least resistance to the mass pressure to conform, instead of seeking what the poet Seamus Heaney described as “the freedom of being myself”. It is an important function of anti-discrimination legislation to encourage us to comply with the law’s command rather than the prejudices – real or supposed – which we attribute to others, whether neighbours, customers, employers, workers, or voters.

Much more needs to be done, voluntarily as well as by public authorities, to promote equality and to combat prejudice and discrimination. I hope that the Equality and Human Rights Commission will use its strategic legal powers more vigorously and effectively than did the Commission for Racial Equality. That is what we intended in the White Paper on *Racial Discrimination* more than a generation ago¹⁶.

¹⁵ <http://www.guardian.co.uk/commentisfree/2009/apr/25/terrorism-islam-police>

¹⁶ *Racial Discrimination*, Cmnd.6234, September 1975.

We are still very far from achieving Roy Jenkins' vision. The last ten years have seen race riots, acts of terrorism and violence, racism dressed up as counter-terrorism and an increasing sense of discontent and alienation. There is growing concern about the withdrawal of some of our fellow citizens into divisive and alienating separatist identities, whether a politicised ethnic identity, as among some Scottish nationalists, or a politicised religious identity, as among Islamicists who reject the values of Britain's liberal, secular democratic society with foreign radical encouragement and support.

This is the context in which reactionary, xenophobic and divisive organisations, such as the BNP, seek to whip up group hatred, now using anti-Muslim propaganda as a surrogate for racist hostility to British Asians, whereas in the past their targets were Jews and black people. They are helped by terrorist outrages committed in Britain in the name of a politically distorted version of Islam, as well as by the militant rhetoric of fundamentalist clerics, recruited from abroad, preaching their own brand of hatred.

At the same time, the Government's counter-terrorism policies have had a disproportionate adverse impact on British Muslims, who feel increasingly isolated and victimised. As David Miliband has said¹⁷: "Over the last decade, the focus of the relationship between the west and the Muslim world has narrowed. Terrorism has distorted our views of each other and skewed our relationship with each other. Organisations with different aims, values and tactics were lumped togetherThe upshot was that the west came to be seen not, as we would have wished, as anti-terror, but as anti-Islam."

Ethnic and cultural diversity do not threaten what we mean by "Britishness". Part of the essence of "Britishness" is the plural nature of our society. The question of what it means to be British and the search for Britishness as a defining identity have been

¹⁷ Speech at the Oxford Centre for Islamic Studies, on 21st May, calling for a "coalition of consent" with the Muslim world.

seized upon as a way of binding together a society which seems increasingly divided along ethnic and religious lines. The present Government has made Britishness one of its over-arching themes, and the past few years have seen a plethora of surveys, articles, and television and radio programmes questioning what it means to be British today. It is a hazardous undertaking in a democracy where it is not obligatory to love one's country.

For a plural society to be successful it needs a common sense of belonging, and one of the essential conditions for citizenship is loyalty to the law of the land, including the equality and equal opportunities. Some of the policies pursued by the government to accommodate groups have driven people apart and encouraged separateness and segregation, for example, by promoting education in faith schools.

I again agree with Ian Buruma¹⁸ that "while citizenship in a democracy should be defined by a shared respect for the law and not culture, culture, custom and tradition do have a part in fostering that respect." It is peculiarly difficult to foster that respect for the law in this country, because almost alone in the democratic world, we have no codified constitution; no defining document containing the fundamental law protecting our rights and freedoms as equal citizens and the underlying civic values. The closest thing that we have to a modern constitutional Charter of Rights and Freedoms, is the Human Rights Act whose norms are wrongly regarded as "alien" because the Human Rights Act derives them from a European Convention rather than from a new and enduring constitutional settlement. The Human Rights Act lacks political legitimacy with the Official Opposition and the media, and the Rt. Hon David Cameron MP has recently repeated his intention to seek to repeal the Act if he wins power.

¹⁸ Note 11 above, at page 12.

Another common mistake is to surrender to demands from self-appointed “community leaders” who claim to protect minorities by censoring or punishing the exercise of the vital freedom of speech. In seeking to promote equality, diversity and human dignity, we must not stifle or inhibit robust critical discussion and debate on matters of legitimate public interest and concern. Religious groups should be open to criticism for their views on homosexuality and women’s rights, and religious and minority groups should be allowed to criticise government policy and express their views on foreign affairs, abortion and discrimination.

Twenty years since the publication of the Satanic Verses and the fatwa which forced Salman Rushdie into hiding, the right to free speech has been a central element of several of recent confrontations involving racial or religious groups: the furore over the Danish cartoons; the closure in 2004 by the Birmingham Repertory Theatre of a play entitled “Dishonour” (*Bezhti*) by a young Sikh author, Gurpreet Kaur Bhatti, after a rioting crowd of Sikhs created public disorder and stormed the theatre; the firebombing of the house of a British publisher over the historical novel *The Jewel of Medina*, and the Home Secretary’s banning of Dutch MP Geert Wilder’s entry to the UK to prevent him from showing a controversial anti-Islamic film, *Fitna*, in the House of Lords, to name just a few recent events.

The reaction of Government Ministers to the closing down of *Bezhti* and the need for the playwright to go into hiding for her own safety indicated a weak commitment to free speech in the face of mob pressure. Intimidation was allowed to work. Fiona Mactaggart, former chair of Liberty, and MP for Slough, was Home Office Minister for Racial Equality. She refused to defend either the theatre or the playwright. She insisted that the protesters were merely exercising their free speech, which was “as important as that of the artist.” Ms. Mactaggart defended the hounding of the show, saying “That people feel this passionately about theatre is a good sign for our cultural life. It is a sign of a lively flourishing cultural life.” Estelle Morris (now Baroness Morris of Yardley)

was Arts Minister and MP for Birmingham Yardley. She sought to defend “freedom of speech and artistic expression – within the law” as a “cornerstone of our democracy”, whilst at the same time praising the theatre for having withdrawn the play!

Some of the strongest objections to the showing of *Bezhti* came from other religious organizations. Both the Anglican Bishop of Birmingham and the Roman Catholic Archbishop denounced the portrayal of the *Gurdwara* within the play. Archbishop Vincent Nichols (now Cardinal) said that a “deliberate, even if fictional, violation of the sacred place of the Sikh religion demeans the sacred place of every religion”.

These concerns about threats to free speech must be set within the context of the controversial relationship between religion and the secular State. There are increasingly insistent demands from religious groups that their belief system be given a more influential place in the public sphere. Faith groups have exerted powerful pressure and successfully influenced the outcome of proposed law reforms on the termination of pregnancies, medically assisted suicide and human fertilisation.

As counsel for Penguin Books, the publishers of *The Satanic Verses*, I successfully persuaded the Divisional Court¹⁹ that common law blasphemy should not be extended to other religions since one person’s religion was another’s blasphemy and it would be divisive for the criminal law to set one against the other, as well as chilling the freedom to criticize religious beliefs and practices. The European Commission of Human Rights in turn decided²⁰ that the absence of criminal sanctions against publications which offended against non-Christian belief was not a violation of the freedom of religion protected by Article 9 of the European Convention. In a positive step, last year Parliament at last abolished the archaic common law offence of blasphemy rather than extend its reach to protect faiths other than Christianity against insult.

¹⁹ *R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 QB 429.

²⁰ *Choudhury v United Kingdom* 12 HRLJ 172 (1991).

Before the last General Election, a coalition of Liberal Democrats, Conservatives and Cross-Benchers in the House of Lords defeated the Government's attempt to include a loosely-worded offence of incitement to religious hatred in the Serious Organised Crime and Police Bill. The Muslim Council of Britain had pressed vigorously for the new offence on the ground that the old common law offence of blasphemy protected only Christianity against gross insult, and that the offence of incitement to *racial* hatred protected Jews and Sikhs but not Muslims, since Muslims are considered to be a religious rather than a racial group. They wanted a new-fangled offence to protect Islam.

However, Tony Blair's Government was worried that the Liberal Democrats' opposition to the invasion of Iraq might make them popular with British Muslim voters. The Home Secretary, the Rt. Hon. Charles Clark MP wrote to every British mosque and Muslim political organizations blaming the two Opposition parties for having blocked the legislation. His letter²¹ stated that he was "sure that you and other members of the Muslim community will take very careful note of that, particularly the opposition of the Liberal Democrats on this issue." He explained that it remained Labour's "firm and clear intention to give people of all faiths the same protection against incitement to hatred on the basis of their religion."

After the General Election, the Government kept their promise and included the offence of incitement to religious hatred in the Racial and Religious Hatred Bill. The offence was sweepingly broad, covering abusive and insulting words as well as threatening words, and placing the burden of proof on the defence. It created a real threat to the exercise of the right to freedom of speech in books, newspapers, broadcasts, theatre, and political discourse.

²¹ A copy of the letter is available at: <http://www.civitas.org.uk/pdf/ClarkeLetter.pdf>

I set about amending the Bill in three ways: first, to confine the offence to threatening words; secondly, to place the burden of proof on the prosecution to prove an intention to stir up religious hatred; and thirdly, to make it clear that the offence could not be invoked to threaten the freedom of speech, including what became known as the English PEN clause. That clause deserves to be quoted in full because of the latitude it gives to the enjoyment of the right to free speech.

“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practicing their religion or belief system.”

The amendments were approved in the Lords, and, in spite of Government opposition, in the Commons.

I dislike hate speech offences which tend to have perverse effects in promoting rather than combating bigotry and intolerance. We should bear in mind the wisdom of *Soli Sorabjee SC*, the former distinguished Attorney General of India, who wrote that²²: “experience shows that criminal laws prohibiting hate speech and expression will encourage intolerance, divisiveness and unreasonable interference with freedom of expression. Fundamentalist Christians, religious Muslims and devout Hindus would then seek to invoke the criminal machinery against each other’s religion, tenets or practices. That is what is increasingly happening today in India. We need not more repressive laws but more free speech to combat bigotry and promote tolerance”.

²² Quoted in the report of the House of Lords Select Committee on Religious Offences in England and Wales, HL Paper 95-1, 10 April 2003, paragraph 52

Most of the debate around free speech and religion focuses on the relationship *between* religious groups. The need for freedom of speech *within* religious communities is often neglected, in particular the need to safeguard the views of those who do not agree with the orthodox view: the women who challenge discriminatory attitudes and practices in traditional dogma.

Dr Taj Hargey, an Imam and founder of the liberal Muslim Educational Centre of Oxford, recently sued the *Muslim Weekly* successfully for libel over claims that he was heretical and un-Islamic. Dr Hargey argues that British Muslims should resist foreign theological imposition and create a British Islam that is not only faithful to the original uplifting teachings of the faith but one that is natural to and at home in modern British society. *Muslim Weekly* took umbrage to his views. The case is an example of the use of libel law to widen, rather than to narrow, the freedom of speech and dissent. In responding to the decision, Dr. Hargey said that “this historic case highlights the right to freedom and dissent within the British Muslim community. Iconoclastic thinkers, liberals and non-conformists who dare to challenge religious authority in Islam by striving to present a rational interpretation of their faith are invariably branded as apostates and heretics²³”

To take another current example, the Irish Government’s current Defamation Bill contains a new-fangled offence of blasphemous libel, because its Supreme Court ruled that the common law offence was unenforceable, and the Justice Minister considers himself under a constitutional obligation to fill the gap. The offence would apply to any matter published which was “grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of the religion”, where the outrage was intentional and the publication lacked

²³ <http://www.timesonline.co.uk/tol/comment/faith/article6057677.ece>

literary or artistic merit. The National Union of Journalists is one of many groups which has protested, describing the proposal as a “fatwa against freedom of expression”.

We all need to recognise that freedom of speech protects not only information and ideas which are favourably received, but also expression which would offend, shock or disturb the state of any section of society²⁴. But we also need to remember that the fact that there is a *right* to offend does not mean that there is a *duty* to offend. The BNP and other extreme political groups deliberately offend members of ethnic and religious minorities while posing as champions of free speech. That is one reason why the use of hate speech crimes to prosecute bodies like the BNP is problematic. If a racist publication is successfully prosecuted, the defendants claim to be martyrs to free speech. If the prosecution fails, the defendants claim that the publication was accurate and legitimate. The best remedy for evil speech is more speech rather than less, nailing lies and providing honest and well-informed rebuttal.

When I was at Cambridge University, fifty years ago, the novelist EM Forster gave a public lecture entitled: “Did Jesus have a sense of humour?”, a question he answered in the negative. There was no objection from Christians in what was then a very Christian Evangelical University. Rabbi Lionel Blue might well ask even an orthodox Jewish audience whether God has a sense of humour, without provoking outrage.

We must guard against political correctness that panders to the thin-skinned and which lacks common sense or a sense of proportion. On the other hand, politicians and the press have a particular responsibility to respect the human dignity of vulnerable minorities. To quote Ian Buruma once more²⁵: “Radical Muslims and others who use violence to impose their views are enemies of free speech and breakers of the law. And

²⁴ *Sunday Times v United Kingdom* (1979) 2 EHRR 245, paragraph 65, European Court of Human Rights.

²⁵ Note 11 above, page 13.

they must be treated accordingly. But that is no reason to go easy on demagogues who use free speech as an excuse to instigate popular hostility to fellow citizens, who happen to embrace a religion that the radicals use to justify revolutionary violence.”

As one whose life has been spent practising and preaching the use of law to advance social reforms, I know that the law is no panacea, and that legal standards alone cannot solve the problem of how to maintain a fair balance between free speech, freedom of religion, non-discrimination, and human dignity. Law alone cannot compel people to feel that they belong to a country or to identify with a political and ethical system. A well-designed constitutional framework is necessary but not sufficient. We need to work together to promote a sense of civic pride and public service, a culture of respect for the rights and freedoms of others, a culture which cherishes diversity without loosening our common ties as equal citizens of a united country. That is the challenge.