

Submission of The Christian Institute to the Criminal Justice and Immigration Bill Public Bill Committee

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have 21,500 supporters in the United Kingdom, including around 3,000 churches and church ministers from across the Christian denominations.

The Christian Institute is involved in extensive religious liberties work. Over the past year we have dealt with 23 cases, in addition to the high profile case of Joe and Helen Roberts and the judicial review of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

This submission raises our religious liberty concerns regarding an offence of incitement to hatred on the grounds of sexual orientation.

Incitement to Religious Hatred

Tragic cases do not necessarily justify specific laws. There have been many tragic murders of people who have a religious faith.

Since 1996 five Anglican or Roman Catholic clergy have been murdered,¹ with a Satanist recently being convicted for the latest of these crimes.² An academic study has found that 12% of clergy had experienced physical assault, with 70% experiencing some form of violence against them.³ One in five had been threatened with harm. This has led to a suggestion from National Churchwatch that vicars should not wear their clerical collars in some non-church settings because it makes them vulnerable to attack.⁴

The Christian Institute does not believe that the way to tackle the assaults on church leaders is to clamp down on criticism of Christianity. We opposed the introduction of the incitement to religious hatred offence because of concerns over free speech. For the same reason we are against the proposed sexual orientation incitement offence.

As with the religious hatred law, evidence has been brought forward to justify a 'homophobic' hatred crime. Our view is that there is already adequate legislation to cover the kinds of cases that are being cited. And it is wrong to single out particular groups (such as religion or sexual orientation), leaving other groups (such as the elderly) with an inferior degree of protection.

The existing law

General

Under the criminal law, everyone is equally protected by existing laws against assault, murder and harassment. Public order offences outlaw threatening, abusive or insulting words or behaviour likely to cause harassment, alarm or distress. This is regardless of the culprit or victim.⁵ Civil laws on defamation and those covering basic employment rights, such as unfair dismissal, also apply equally to all.

¹ *The Guardian*, 8 October 2007

² *The Times*, 17 October 2007; *The Independent*, 17 October 2007

³ 'Violence Against Professionals in the Community Study – The Accounts and Experiences of Anglican Clergy', Economic and Social Research Council, July 2001

⁴ Tolson, N, *The Clergy Lifestyle Theory*, 2007, para. 2.4

⁵ Public Order Act 1986, Section 5

Specific offences protecting sexual orientation

Tougher sentences are given where a crime is found to have been aggravated by hostility on the grounds of sexual orientation.⁶ There are also specific reporting procedures for 'homophobic' incidents. Sexual orientation is already specifically protected by regulations covering both employment⁷ and the provision of goods and services.⁸

Legislation to replace incitement in the common law

In addition to all these laws above it is also unlawful under the common law to incite someone to commit a crime. Such incitement can be of a general nature, for example encouraging the practice of political assassinations, despite impressions to the contrary given by Stonewall.⁹

In fact the Government is currently legislating to make it even easier to prosecute those who incite the commission of crime. Part 2 of the Serious Crime Bill, which yesterday completed its passage through Parliament, repeals the common law offence of inciting a crime. New laws against "encouraging or assisting" crime are introduced instead.

In the context of the present debate on gay hatred, the Prime Minister drew attention earlier this year to these planned changes to "...incitement law to make it easier to prove reckless encouragement of criminality".¹⁰

These broad new laws will clearly render unlawful appalling rap lyrics which incite violence against and the murder of homosexuals. The changes are based on Law Commission proposals. According to the Commission: "There should be no requirement that D has any particular individual(s) or group(s) as the target of his or her encouragement. If D posts a message on a web-site urging the assassination of all immigrants, he or she ought to be liable regardless of whether the encouragement is aimed at a particular individual, a group of individuals or the world at large."¹¹

Horrendous examples of incitement to serious crime have been brought forward by Stonewall, yet the new laws address these concerns. Indeed, Home Office Minister Tony McNulty appears to have admitted that the new legislation could be used against rap lyrics which incite serious crime.¹²

Stonewall has cited the existing law in Northern Ireland against stirring up hatred based on sexual orientation as justification for introducing an equivalent law in Britain. Yet if Stonewall is concerned about rap music, why has it not sought to use the law in Northern Ireland, where such music is readily available?

Peter Tatchell has written recently that laws against incitement to murder and incitement to violence should be used before seeking to create a new hate crime. He went on to raise serious concerns about free speech.¹³

⁶ Criminal Justice Act 2003, Section 146

⁷ Employment Equality (Sexual Orientation) Regulations 2003

⁸ Equality Act (Sexual Orientation) Regulations 2007

⁹ *Inchoate Liability for Assisting or Encouraging Crime*, The Law Commission, No. 300, July 2006, para. 3.22, and Select Committee on Religious Offences in England and Wales, Session 2002-03, HL Paper 95-I, vol. 1, para.70 cf: House of Commons Public Bill Committee – Criminal Justice and Immigration Bill, Hansard, Second Sitting, 16 October 2007 (Afternoon), col. 79

¹⁰ *Pinknews.co.uk*, 17 July 2007

¹¹ *Inchoate Liability for Assisting or Encouraging Crime*, *Op cit*, para. 5.52

¹² House of Commons, Hansard, 22 October 2007, cols 118-119

¹³ *Guardian Online*, 10 October 2007

Inciting crime and legitimate free speech

There is crucial difference between inciting the commission of a crime and expressing an opposing view. Incitement to commit a crime, e.g. violence or murder, is rightly an offence and one which is about to be made much broader by the changes included in the Serious Crime Bill. But the law must also protect freedom of speech, the right to express an opposing view – however strongly that view is expressed. The incitement to hatred offence sought by Stonewall violates the boundary. Such a law could be used to outlaw the expression of a legitimate opposing view.

In the debates over the religious hatred law Parliament decided that protecting the free speech of millions of people must come before restricting even the insulting and abusive pronouncements of the BNP.

The Director of Liberty, Shami Chakrabarti sees an incitement to hatred offence as a further restriction on free speech:

“What seems to me to be one of the dangerous by-products of so much legislation, so much authoritarian legislation in the last decade, is that we can become quite infantilised as a population, that we think that everything that isn’t banned by criminal law equals sensitive, smart, good conduct. And what we should have is a space, a personal, ethical moral space that governs us before the criminal law governs us. And just because something is legal doesn’t mean that it’s a nice thing to say... But I do think that we could do with less anti-speech law in this country. For example, blasphemy, incitement to religious hatred, some overboard public order offences.”¹⁴

Inadequate safeguards

The Christian Institute is often contacted by Christians who fear censure if they express their orthodox Christian beliefs on homosexuality. There are inadequate safeguards for religious liberties in the existing law. There already is a chilling effect.

Public Order Act.

The Public Order Act 1986 has been applied on some occasions in a way that it was never intended to be used. The most alarming case of injustice is that of the pensioner Harry Hammond, who suffered from Asperger’s Syndrome, a form of autism. Sufferers can lack awareness of what is going on around them. When preaching in Bournemouth town centre, Mr Hammond held up a sign saying:

“Stop Immorality”, “Stop Homosexuality”, “Stop Lesbianism”, “Jesus is Lord”.¹⁵

Mr Hammond was physically attacked by a group of protesters. Despite being forced to the ground and having mud and water thrown over him, it was Mr Hammond that was arrested, prosecuted and convicted under section 5 of the Public Order Act. One of the police officers on duty disagreed with his colleague over the arrest and he appeared as a witness for the defence.¹⁶ Peter Tatchell has attacked Mr Hammond’s conviction.¹⁷

The Hammond case is a disturbing precedent because it was a clear infringement of the right to free speech and freedom of religion. Mr Hammond was expressing the orthodox Christian belief that the practice of homosexuality is sinful, a belief which has since been recognised as being worthy of recognition under Article 9 of the European Convention on Human Rights.¹⁸ The obvious concern is that, as Mr Hammond sharing his view on homosexuality

¹⁴ *The House Magazine*, 8 October 2007

¹⁵ Ahdar, R and Leigh, I, *Religious Freedom in the Liberal State*, OUP, 2005

¹⁶ *The Mail on Sunday*, 5 May 2002

¹⁷ *The Mail on Sunday*, 26 May 2002

¹⁸ The Christian Institute & Ors, Re Application for Judicial Review [2007] NIQB 66, para. 50

was deemed to be committing a general public order offence, a specific sexual orientation incitement offence would be a further restriction on religious liberty. This would particularly be so if the wording of the offence mirrored the racial hatred law by covering "threatening, abusive or insulting words or behaviour". Section 5 of the Public Order Act uses these very same words, and yet Mr Hammond's sign was found to fall within this definition.

A heckler's veto

There is no doubt that it was only Harry Hammond who was physically assaulted, not any of the crowd listening to him. Yet the violent actions of the hearers were viewed as public disorder caused by Mr Hammond.

The law therefore creates an incentive for a heckler to riot, a heckler's veto. To stop someone you don't like you create a disturbance and have the speaker arrested.

An incitement to 'homophobic hatred' law would work in a similar way, especially if the offence was triggered by the threshold of abuse or insult. Such a law creates an incentive for individuals to react strongly when criticised. The more offended the reaction, the more hateful, abusive and insulting the statement must surely have been.

Under the existing law, complaints to the police have already been used as a campaign tactic by some gay rights sympathisers. An incitement law will make matters far worse. It will encourage disharmony, rather than tolerance, between those with conflicting strong beliefs on sexual conduct.

The free speech threshold: religious vs racial incitement

The threshold for the incitement to religious hatred offence is much higher than the racial hatred offence for three main reasons:

1. words or behaviour must be threatening;
2. abusive or insulting words or behaviour instead of triggering the offence (as with race) are actually protected under a freedom of expression clause if they are made against a religion;¹⁹
3. intention to stir up hatred is required to commit the religious hatred offence, whilst the racial offence can be committed where hatred was "likely" to be stirred up by the words or conduct.

A homophobic incitement law even with robust safeguards for free speech would still have a massive chilling effect well beyond what the law says. This is best illustrated by considering the hate incidents policy, in which the safeguards for religious liberty are plainly unsatisfactory.

Hate incident reporting procedure

The ACPO guidance describes a homophobic incident as:

"Any incident which is perceived to be homophobic by the victim or any other person."²⁰

The subjective emphasis of this definition, coupled with the pressure placed upon the authorities to respond to complaints, has caused significant problems. By emphasising the perception of the victim or any other person in defining something as an 'incident', regardless of the consideration of context or content that an objective evaluation could make, any semblance of reasonableness is stripped away. The ACPO guidance actively

¹⁹ Public Order Act 1986, Section 29J

²⁰ 'Delivering a Quality Service: Good Practice and Tactical Guidance', Home Office Police Standards Unit and the Association of Chief Police Officers, March 2005, page 11

encourages the police, on hearing a complaint, to confront individuals over their views on homosexuality, even when no crime has been committed.

A realistic concern

Are the concerns about free speech realistic? Is there any evidence that such a law would be used to interfere with religious liberty? In recent years there has been a number of cases where police officers have investigated individuals because they made critical comments regarding homosexual practice. In many cases, these have been dealt with as 'hate incidents'.

In 2005 a Christian couple, Joe and Helen Roberts, were interrogated by police because they complained about their local council's 'gay rights' policy. The police said they were responding to a reported 'homophobic incident'. The police later admitted that no crime had been committed and, following legal action by the Roberts, the police and council issued a public apology.²¹

The Bishop of Chester was investigated by the Cheshire constabulary in November 2003 after he told his local newspaper of research showing that some homosexuals re-orientated to heterosexuality. The police passed a file to the Crown Prosecution Service who decided not to prosecute. A statement issued by Cheshire Constabulary said, "The Crown Prosecution Service has been consulted with at length, and Cheshire Police are satisfied that no criminal offences have been committed, as current public order legislation does not provide specific offences based on sexuality."

In 2006 a Member of the Scottish Parliament asked Strathclyde Police to investigate remarks made by the Roman Catholic Archbishop of Glasgow. The Archbishop had defended the institution of marriage and criticized civil partnerships in a church service.

In 2004 the Christian Union of the University of Cambridge was reported to the police following its distribution of St John's gospel to students and hosting an evangelistic meeting where the Dean of Sydney Cathedral put forward "a traditional biblical view on homosexuality".

In December 2005 police questioned the family-values campaigner, Lynette Burrows, after she expressed the view on a radio programme that homosexual men may not be suitable for raising children. Police telephoned saying they were investigating a reported 'homophobic' incident.

The concept of 'hate incidents' and their impact on police practice has been analysed by constitutional lawyer and former Parliamentary Counsel, Francis Bennion. His article begins:

"When is a law not a law? When it's made by the police. It looks like a law. It's enforced like a law. But it's not a law."²²

He considers the examples of the Roberts, Iqbal Sacranie and Lynette Burrows as cases where the definition of homophobic incidents has led to overzealous police action. Bennion describes it as police harassment. That these scenarios already take place raises the concern that the introduction of such an offence can only make matters far worse.

²¹ For supporting evidence on this and the subsequently mentioned cases, see:

http://www.christian.org.uk/rel_liberties/cases/index.htm

²² Bennion, F, 'New Police Law Abolishes the Reasonable Man (and Woman)', *Justice of the Peace*, 170, January 2006, page 27

Given the number of cases which have been briefly referred to it does not seem unreasonable to fear that an incitement offence will be an even more powerful tactic to silence those who preach orthodox Christian views on homosexual practice.

A climate of fear

One consequence of the current raft of legislation outlawing discrimination on grounds of sexual orientation is that it has created a climate of fear. So much so that a recent official enquiry concluded that one social work department failed to adequately investigate allegations of child abuse involving homosexuals for fear of being labelled 'homophobic'.

Social workers at Wakefield Council missed signs that Ian Wathey and Craig Fauch were abusing boys placed in their care between 2003 and 2005. An inquiry report into the case, published in August 2007 states: "The fear of being seen as prejudiced, the risk of talking about the words gay and paedophile together, was too great. There was a pervasive anxiety that, if this view was put forward in writing or verbally, the person putting it forward would be accused of being prejudiced and homophobic."²³

Another staff member said: "You don't want to reflect negatively on gay couples, especially in social services. I'd be thinking 'am I being prejudiced, is it my own prejudice making me doubt the skills of these carers, these two gay men, is it because I'm homophobic?', rather than just asking the simple question 'are they abusing kids?'."²⁴

Similarly, the official enquiry into the Islington child abuse scandal of the 1980s and 1990s found that investigations into homosexuals were blocked for politically-correct reasons. The report of the enquiry, the 'White Report', was strongly critical of the Council's application of equal opportunities policies to the detriment of child welfare.²⁵

If social workers in these cases felt nervous about investigating homosexuals for fear of being labelled 'homophobic', it is in no way far-fetched to say that Christians will feel greatly intimidated by the presence of an incitement offence.

A warning from Sweden

A similar law to the proposed incitement offence was introduced in Sweden in 2003. The Swedish law banned 'agitation' against homosexuals. When it was being proposed, Christians in Sweden were concerned that it could interfere with their freedom to express their religious belief that homosexual practice was sinful. But politicians assured them that in no way was the law intended to act in that way. The law was passed without specific protections for free speech and religious liberty.

Within the year a Christian minister was being prosecuted because he preached a sermon in his church in which he said homosexual practice was wrong. The case was pursued by the police and prosecuting authorities at the insistence of a local homosexual activist. The original trial found Pastor Ake Green guilty and sentenced him to one month in prison. Pastor Green had to fight all the way to the Swedish Supreme Court to clear his name. He succeeded under European Convention rights to free speech and religious liberty.²⁶

²³ Independent Enquiry Report into the circumstances of Child Sexual Abuse by two Foster Carers in Wakefield, Wakefield Metropolitan District Council, August 2007, page 75, para. 9.232

²⁴ *Ibid*, page 125, para. 9.537

²⁵ *The Independent*, 24 May 1995; *The Observer*, 6 July 2003; *The Sunday Times*, 16 November 2003

²⁶ See http://www.christian.org.uk/rel_liberties/cases/green_ake.htm

The reality is, once a law like this is on the statute book, pressure will be brought to bear to prosecute public statements of opposition to homosexual practice. Given recent high-profile police investigations into 'homophobic incidents', it is not unreasonable for Christians to think that free speech and religious liberty will be unjustly interfered with under an incitement law.

Tolerance is a two way street

Roman Catholics have been labelled as being worse than paedophiles by eminent atheists. The BNP has similarly branded all homosexuals paedophiles. Both comments are untrue and felt to be deeply offensive, but why should it be legally permitted in one case, but not the other?

Christians are routinely called Nazis, lunatics, and much worse. People in the public eye say in all seriousness that religion should be banned. Charities even exist which campaign for society to be free from religion. No one attempts to silence this criticism.

Religious believers have to have a thick skin.

Richard Dawkins in his book *The God Delusion* sets out a sustained argument that Roman Catholic priests are worse than paedophiles.

He states that "a significant proportion of the male population" of Ireland have as children suffered "legendary" brutality at the hands of Roman Catholic "Christian brothers". The same thing is claimed about school girls at the hands of the "often sadistically cruel nuns".²⁷

Dawkins then goes on to say that the sexual abuse of children by priests "was arguably less than the long-term psychological damage inflicted by bringing the child up Catholic in the first place".²⁸

In similar vein Dawkins attacks Protestants for teaching creationism in schools. They too are guilty of the mental abuse of children.

Harry Hammond held up a sign saying "stop homosexuality". But similar sentiments are expressed about religion all the time. For example, Elton John recently said:

"From my point of view I would ban religion completely. Organised religion doesn't seem to work. It turns people into really hateful lemmings and it's not really compassionate."²⁹

Under its trust deed the *British Humanist Association* (registered charity no. 285987) is committed to:

"The mental and moral improvement of the human race by means of the advancement of Humanism, that is to say, the moral and social development of the community free from theistic or dogmatic beliefs and doctrines."

Peter Tatchell compares Christians to Nazis for their 'crimes' against gays:

"The Bible is to gays what Mein Kampf is to Jews. It is the theory and practice of Homo Holocaust."³⁰

²⁷ Dawkins, R, *The God Delusion*, Bantam Press, 2006, page 317

²⁸ *Loc cit*

²⁹ *Press Association National Newswire*, 11 November 2006

Hateful lyrics in music

Some heavy metal rock music includes extreme, blood-thirsty lyrics which call for Christians to be murdered. Here is one example from the track "Kill the Christian" from the album *Once upon the Cross* by Deicide (which is available to buy in the UK from Amazon.co.uk):

You are the one we despise
Day in day out your words compromise lives
I will love watching you die
Soon it will be and by your own demise...

... Satan wants you dead
Kill the christian, kill the christian...

... Armies of darkness unite
Destroy their temples and churches with fire...

... Kill the christian
Kill the christian...dead!

Stonewall rightly protests about rap music which advocates killing homosexuals. The truth is that there are similarly murderous lyrics written about Christians or women. Rap music is also riddled with racism.

We certainly agree that some music is so dangerous that it should be banned. We believe that the Serious Crime Bill will render this music unlawful. If this does not happen then the right approach may well be to have a certification procedure in the same way that we have for films, DVDs and, increasingly, computer games. There is still a level of censorship with films, DVDs and games, albeit at a very high level.

The rap lyrics quoted by Stonewall are abhorrent. But homosexuals are by no means the only targets of music. Other lyrics are racist, sexist, anti-Semitic and anti-Christian. For example:

Artist: Menace Clan
Album: Da Hood
Year: 1995
Title: Kill Whitey

Niggas in the church say: kill whitey all night long...
the white man is the devil... the CRIPS and Bloods are
soldiers I'm recruiting with no dispute; drive-by shooting on this
white genetic mutant... let's go and kill some rednecks...
Menace Clan ain't afraid... I got the .380; the homies think I'm
crazy because I shot a white baby; I said; I said; I said: kill
whitey all night long... a nigga dumping on your white [REDACTED]; [REDACTED]
this rap [REDACTED], nigga, I'm gonna blast... I beat a white boy to
the [REDACTED] ground.

³⁰ <http://www.petertatchell.net/religion/2000.htm> as at 19 October 2007

Artist: Plan B
Album: Who Needs Actions When You Got Words
Year: 2006
Title: Kidz

If I see something I want, then I'll take it, girl wont give it up, then I'll rape it,
break it, inpenetrate it, I'm gonna make it happen, impregnate it, if she has a
Jew I act like it aint mine, make her have an abortion for the 8th time.

Artist: Ice Cube
Album: Death Certificate
Year: 1991
Title: No Vaseline

...cuz you let a Jew break up my crew....

Cuz you can't be the Nigga 4 Life crew
with a white Jew tellin' you what to do.

Artist: Grief Of Emerald
Album: Christian Termination
Year: 2002
Title: Christian Termination

Christian termination
Christian termination
Cut their throats one by one
Christian termination has begun

The Bishop of Chester case: can you change sexual orientation?

The orthodox Christian view is that all sex outside of marriage is wrong. A homosexual inclination is not wrong, but homosexual practice is.

The clash between modern liberal views and Christianity is not just over sexual practice, but also over whether it is possible to change sexual orientation.

Even in gay circles there is a debate as to whether people can change their sexual orientation. Peter Tatchell has described the gay gene theory as "obviously a totally implausible theory". He continued, "it *is* a choice, and we should be glad it's that way and celebrate it for ourselves"³¹.

In 2003 Professor Robert Spitzer published a study demonstrating that many of those in his study had changed their sexual orientation.³² Professor Spitzer is a leading supporter of gay rights.³³

³¹ *The Observer*, 25 April 1999

³² Spitzer, R L, 'Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation', *Archives of Sexual Behaviour*, 32(5), 2003, pages 403-417

In the week when the study was published the Bishop of Chester quoted Spitzer's conclusions that people can reorientate from homosexuality to heterosexuality. The Bishop was simply participating in the debate, yet a complaint led to a police investigation and even a file being passed to the Crown Prosecution Service. This was without an incitement law existing.

In such a controversial area, legislating for incitement on the grounds of sexual orientation risks unjustifiably silencing one side of the 'gay gene' argument. In response to the Spitzer research even pro-gay academics now accept that there can be "true change in core sexual orientation".³⁴

"Temperate" language

Ben Summerskill from Stonewall is one of the main proponents of a homosexual incitement offence. He believes that an incitement offence would allow religious beliefs about homosexuality to be stated provided they were expressed in a temperate way.³⁵

Strong language

The Old Testament describes spiritualism, cross-dressing, and homosexual practice as "an abomination".³⁶ Roman Catholic teaching describes homosexual practice as "an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder."³⁷

'Perversion'

The late Cardinal Winning, former head of the Roman Catholic Church in Scotland, said of homosexuality:

"I hesitate to use the word 'perversion', but let's face up to the truth of this situation, that's what it is. Are we now being asked to say what was wrong before is now right, and they can go ahead and do it?"³⁸

The Cardinal made his remarks in the context of a debate about the repeal of Section 28, the law which banned the promotion of homosexuality in schools. If Stonewall succeeds in getting its law onto the statute book, a cardinal would face prosecution for saying something similar. This is a reasonable conclusion since Ben Summerskill has openly admitted that he wants an incitement law to criminalise statements of opinion such as one given by a protester outside Parliament in January 2007. Mr Summerskill heard someone shouting:

"Don't allow homosexuals to pervert these children".³⁹

³³ His campaign led to the declassification of homosexuality as a psychiatric illness in the USA.

³⁴ Wakefield, JC, 'Sexual Reorientation Therapy: Is It Ever Ethical? Can It Ever Change Sexual Orientation?' in *Ex-Gay Research: Analysing the Spitzer Study and Its Relation to Science, Religion, Politics, and Culture*, Drescher J and Zucker, K J (Eds), The Haworth Press, 2006

³⁵ *Daily Mail*, 9 October 2007; House of Commons Public Bill Committee – Criminal Justice and Immigration Bill, Hansard, Second Sitting, 16 October 2007 (Afternoon), col. 76

³⁶ Deuteronomy 18:9-12; 2 Kings 23:24; Deuteronomy 22:5; Leviticus 18:22 [Authorised Version]

³⁷ *Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons*, Joseph Cardinal Ratzinger, section 3, 1 October 1986 See

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html as at 19 October 2007

³⁸ 'Winning Weighs In', BBC Frontline Scotland Programme 4 April 2000 see also

<http://news.bbc.co.uk/1/hi/scotland/701223.stm> as at 19 October 2007

³⁹ House of Commons Public Bill Committee – Criminal Justice and Immigration Bill, Hansard, Second Sitting, 16 October 2007 (Afternoon), col. 78

Mr Summerskill stated in oral evidence before the committee that this was “almost certainly incitement”.⁴⁰ He has said that he was shocked that the Metropolitan Police permitted this particular Christian protest outside Parliament on 8 January 2007.⁴¹

The protest coincided with a House of Lords debate on whether to pass the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006. Like Cardinal Winning the protesters were concerned about the promotion of homosexuality in schools. They were also concerned that the Regulations established a harassment law which restricted free speech. Subsequently the protesters’ concerns were accepted by the Belfast High Court which quashed the controversial harassment provisions and ruled that the Regulations did not apply to the curriculum (rectifying statements made by Government ministers).

Mr Summerskill believes a homosexual incitement law is necessary because of statements by the BNP to the effect that gays are paedophiles.⁴² Perhaps he interprets the word “pervert” as referring to paedophilia. However the context of the Christian protest was clearly about the promotion of homosexuality in the school curriculum and in society more generally. In the English Dictionary the word “pervert” means: “1 turn (a person or thing) aside from its proper use or nature. 2 misapply (words etc). 3 lead astray from right conduct or (esp. religious) beliefs; corrupt”.⁴³

Whatever the case, this serves to illustrate how misinterpretation of meaning could lead to accusations of incitement when in fact no offence is even close to being committed. Mr Summerskill made it clear that he was comfortable with leaving the determination as to whether or not incitement has taken place to a jury.⁴⁴ This seems a rather blasé and reckless approach to legislating in such a controversial area and enhances the concerns expressed above regarding the chilling effect. It is dangerous to create a law under which people will not know where they stand until they are actually in court.

The nature of religious discourse

The expression of sincerely-held, mainstream religious beliefs may necessarily involve strong statements about moral conduct and eternal consequences. This is the nature of religious discourse. It is no less true when debating religious beliefs on sexual ethics. For example, the current Pope (when he was still a Cardinal) has said:

“Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.”⁴⁵

The Bible itself contains strong statements about the eternal consequences of unrepentant sinful conduct. It speaks of hell for those who have not trusted in Christ for the forgiveness of their sins, which includes – amongst many things – unrepentant immoral sexual practice.

No doubt references to hell, “intrinsic moral evil” and “objective disorder” will be deeply insulting to many. Yet phrases like these do form part of mainstream religious discourse. Given that this is the case, there is genuine concern that an incitement offence would have a disproportionate impact on free speech where the expression of a religious belief is involved.

⁴⁰ *Loc cit*

⁴¹ *Stonewall EBulletin*, 14 February 2007

⁴² House of Commons Public Bill Committee – Criminal Justice and Immigration Bill, Hansard, Second Sitting, 16 October 2007 (Afternoon), col. 75

⁴³ Pocket Oxford Dictionary, OUP, 2000

⁴⁴ House of Commons Public Bill Committee – Criminal Justice and Immigration Bill, Hansard, Second Sitting, 16 October 2007 (Afternoon), col. 84

⁴⁵ Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons, *Op cit*

Is this incitement law necessary?

Homosexuals can be found at all levels of public life. Gay entertainers can be amongst the most popular people in Britain. The general population (including Christians) do not hate homosexuals. They treat them as any other member of society, though that doesn't mean that they approve of homosexual practice.

A leading liberal journalist has argued that gay rights are more advanced than racial rights. The Guardian journalist Jonathan Freedland (who is strongly pro-gay rights) has written on the heavy-handed actions of the police against people who disagree with homosexuality. He comments:

"There are several intriguing elements here. One is the way the principle of gay rights has become so established that to oppose it is to guarantee one's ostracism from mainstream society: even the police have fully signed up. For this gay campaigners deserve enormous credit; it is one of the great political success stories of our time, for it now occupies a space that racial equality has struggled to reach."⁴⁶

Rap artists and the BNP take pot shots at many groups, not just homosexuals. Tolerance is a two way street. If we want freedom of speech then we have to grant that right to others. Any material which is threatening or which incites violence against anyone is a proper matter for the criminal law. Short of this the law does not exist to prevent people being offended.

Even prominent homosexuals say there is no need for the new law. The gay journalist Matthew Parris comments:

"Lines of absolute principle are hard to draw, but some groups may be so weak and fragile as to need the law's protection from hateful speech. I'd like to think we gays are no longer among them."⁴⁷

25 October 2007
The Christian Institute

⁴⁶ *The Guardian* 18 January 2006

⁴⁷ *The Times*, 11 October 2007