

DO WE REALLY NEED RELIGIOUS VILIFICATION LAWS?

Religious vilification laws are diminishing freedom of speech argues **Steve Edwards**

In chapter two of his famous essay, *On Liberty*, John Stuart Mill began:

The time, it is to be hoped, is gone by, when any defence would be necessary of the 'liberty of the press' as one of the securities against corrupt or tyrannical government.

Sadly, almost 150 years after Mill's essay was published, the 'liberty of the press' is as precarious as ever, as governments impose, through vilification laws, new restrictions on what can be said.

Especially since the attacks on the World Trade Center in 2001, differences between religions (and particularly between Muslims and non-Muslims)

Steve Edwards is a former political speechwriter who is commencing his masters by research in Political Science and International Relations at the University of Western Australia.

have become important fault lines in Australian society, leading zealots to make inflammatory claims about people who practice certain religions. Subsequently, some legislatures are turning to religious vilification laws to tackle a perceived problem of sectarian bigotry. Many academics, politicians, and journalists (particularly self-styled 'progressives') contend that the potential harm done by so-called 'religious vilification' or hate speech is great enough to justify legal sanctions against any acts of collective religious defamation or vilification.

Religious vilification laws are often grouped with similar laws that aim to protect racial groups and even homosexuals, as if all genres of collective identity are comparable. As this article will argue, the comparison between 'religion' and 'race' (including the chimera that religious vilification constitutes 'racism') makes very little sense given that the former is a personal choice and the latter is inherited. On the whole, religious vilification laws set a dangerous precedent of giving statutory

protection to belief systems, and thereby pose a threat to free speech.

Religious vilification in Australia

Religious vilification is not a new phenomenon in Australia. There have been many instances of people being verbally attacked on the basis of their faith, often in language couched in a highly offensive manner. Robert Murray's account of the Labor Party rift in the 1950s, *The Split*, shows that anti-Catholic sectarianism played a large part in the political turmoil at that time—particularly as many anti-communist Labor politicians tended to be Catholics.

During a speech at Sydney University in 1988, prominent Islamic leader 'Grand Mufti' Sheikh Taj el-Din Al Hilaly claimed that Jews were attempting to 'control the world', using devious means such as 'sexual perversion', the 'promotion of espionage', 'treason' and 'economic hoarding'.¹ Fred Nile, the well known conservative Christian and New South Wales MLC, has pointed to the highly offensive floats at the 1989 Sydney Gay and Lesbian Mardi Gras parade, including the 'Sisters of Perpetual Indulgence', a group of dressed-up 'nuns', the carrying of placards reading 'Mother Teresa's Love Child', and the distribution of blasphemous posters by homosexual activists declaring 'Jesus is Gay'.²

More recently, Muslims have been the targets of religious vilification. In December 2004, the Victorian Civil and Administrative Tribunal found that two Christian pastors, Daniel Scot and Daniel Nalliah, had breached the Racial and Religious Tolerance Act 2001 of that state in claiming at a religious seminar that Muslims are liars and demons who pose a threat to democracy, amongst other things. This determination drew applause from some commentators, especially those who lobbied for the introduction of religious vilification laws in the first place, although it is not clear if the same commentators are prepared to hold to account those elements of the Islamic community who have recognised the 'Grand Mufti' as their spiritual leader. Religious vilification has certainly occurred from time to time, but legislative action has been a very recent phenomenon.

Legislative responses

Several states have already taken legislative action on the alleged need to combat religious vilification.

For example, Victoria, Queensland and Tasmania have all passed legislation outlawing the vilification of people on the basis of religious belief. In its 2004 federal election campaign, the Australian Labor Party promised to prohibit vilification on the grounds of race, religion and sexuality. In August 2004, the Premier of Western Australia, Geoff Gallop, released a public consultation paper, 'Racial and Religious Vilification', that was clearly intended to lay the path for legislation. The consultation paper implies a connection between racism and religious vilification. After invoking the Holocaust and briefly recounting the history of 19th century biological racism, it posits:

In the modern era the underlying assumption of 'racism' is a belief that differences in the culture, values and/or practices of some ethnic/religious groups are 'too different' and are likely to threaten 'community values' and social cohesion in a particular society... This form of racism is described as cultural racism...³

'Cultural racism', it continues, can lead to 'property damage', 'violence', and 'the distribution of inflammatory material' relating to ethno-cultural differences. Such is the subtle influence of 'racism' that we may not even recognise its pervasive presence. With much further excavation we can discover a new genre of 'unconscious' racism that 'does not require overtly racist behaviour' but is instead 'carried within the occupational culture' of an organisation, as if by conspiracy. One example of this crypto-racism is apparently a refusal on the part of private companies to allow employees to wear turbans or 'head covering' during work hours.⁴ If you do not allow an employee to wear a *chador*, you may be guilty of 'systematic racism'.

Beset on all sides by racists, 'cultural racists' and 'unconscious' racists, we must *surely* be in need of a substantial increase in the coercive powers of the state to weed out the swelling numbers of wrongdoers, conscious or otherwise. Indeed, the WA Government canvassed three options for legislative reform, including amending the existing Equal Opportunity Act, creating 'stand alone' racial and religious vilification legislation, and developing new civil procedures (or 'torts') to allow 'victims' to pursue a complaint through the courts. Yet

the consultation paper proved unpopular with the community, and in November 2004 the WA Government officially dropped the idea of religious vilification legislation on the grounds that it was 'too hard to devise laws that could be fair and workable'.⁵

For refusing to comply with the wishes of the anti-vilification industry, the State Government was criticised by the convener of the Australian Partnership of Ethnic and Religious Organisations, who helpfully suggested a more nuanced approach to the democratic consultative process—in effect for the Government intentionally to reverse a stated policy once the minor inconvenience of a state election is safely out of the way:

[The Government's back-flip] is probably because the State is facing an election,' the group's convener, Abd-Elmasih Malak, said from Sydney. 'I hope that this will change after the election.'⁶

Unfortunately, the Victorian Government could not resist the wares of the 'anti-vilification' lobby, and the Victorian Racial and Religious Tolerance Act was assented to on 27 June 2001. Section 8(1) of the Act specifies:

A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.⁷

In section 9(1) a person's motive for engaging in any such conduct is deemed 'irrelevant', while section 10 specifies that any incorrect assumptions made about the religious beliefs of others are also 'irrelevant'. However, section 11 specifies an exemption if the person in question acted 'reasonably and in good faith' in the conduct of the 'performance, exhibition or distribution of an artistic work'; or for any 'genuine academic, artistic, religious, or scientific purpose'; or other acts that are deemed to be 'in the public interest'.

It is not clear why artists and academics should enjoy particular freedom under the Act; nor what is considered 'in the public interest' and why; nor why one's motivation is 'irrelevant' on one hand yet one may act 'reasonably and in good faith' on the other. It is particularly interesting that two classes

of people are effectively created—those engaged in 'genuine' academic, artistic, religious or scientific pursuits, and the remaining rabble who do not qualify. As Anglican Bishop Robert Forsyth asks, 'Why does anyone need to be exempted if the conduct is so bad?'⁸ There is clearly much wriggle room for an adventurous judicial interpretation of the Act, leaving aside the adventurous nature of the Act itself.

Arguments for religious vilification laws

Gary Bouma, a Melbourne sociology professor and Anglican associate priest, has argued in favour of religious vilification legislation generally, and the Victorian legislation particularly. Religious vilification is apparently 'loutish', 'injurious to others', 'stereotypic', and could even 'cause inter-group conflict and violence'. According to Bouma, religious vilification tears our social fabric, and must therefore be banned:

All societies regulate inter-group relations formally and informally. We have expectations about what is fair, reasonable and permissible. These expectations change over time... Make a certain type of behaviour illegal and a powerful message is sent to those who might be wavering, to those who consider a little anti-Semitism a part of polite conversation, or to those who think it permissible to make disparaging comments about someone who dresses differently on account of their religion.⁹

Waleed Aly, a Melbourne lawyer and member of the executive of the Islamic Council of Victoria, has suggested that religious vilification laws are comparable to racial vilification laws. Of the inflammatory claims made by Pastors Scot and Nalliah, Aly argues:

If such things were said of an individual, it would be undoubtedly defamatory. If said of a racial group, it would have long been illegal under racial vilification laws (just as Holocaust denial has been).¹⁰

On this basis, Aly concludes that religious vilification laws are therefore 'consistent with the traditional Australian approach to free speech'. Arguing that religious vilification poses a threat to informed

debate, he continues, ‘If...we allow misleading, hate-inducing vilification to masquerade as debate, we are actually undermining the very democracy that is so dear to all of us.’¹¹

Iqbal Sacranie, Secretary-General of the Muslim Council of Britain, has taken these arguments to their logical conclusion. After bemoaning the fact that European writers have often questioned the morality of the prophet Mohammed, Sacranie posits:

Is freedom of expression without bounds? Muslims are not alone in saying ‘No’ and calling for safeguards against vilification of *dearly cherished beliefs*. Earlier this year, the BBC accepted complaints from Catholics and withdrew its cartoon series Popetown. Why does society not show the same courtesy and sensitivity towards Muslims?¹² (emphasis added)

Sacranie suggests that the vilification of religious groups in Britain has led to physical violence and laments, ‘there are laws against those who are stirred into committing these offences, but not against those that do the stirring’.¹³ Yet Sacranie makes it perfectly clear that penalising ‘those that do the stirring’ against Muslims will not satisfy the Islamic community’s sense of justice. He also wants to protect ‘dearly cherished beliefs’—in other words, to give Islam statutory protection from those wretched stirrers.

This is the inevitable end-point of banning ‘religious vilification’—just as people who dedicate their entire lives to the service of their God will take grave offence at being vilified for *holding* certain beliefs, they are equally likely to take offence when the ‘dearly cherished beliefs’ *in themselves* are entire object of ridicule. There is little, if any, practical separation between believers and their beliefs.

Arguments against religious vilification laws

It is certainly possible that ‘dearly cherished beliefs’ may be accorded legal protection in practice. Indeed, in his ‘Summary of Reasons’ for ruling against Pastors Scot and Nalliah in the Victorian Civil and Administrative Tribunal, Judge Michael Higgins wrote:

Pastor Scot . . . made fun of Muslim beliefs and conduct. It was done, not in the context

of a serious discussion of Muslims’ religious beliefs; it was presented in a way which is essentially hostile, demeaning and derogatory of all Muslim people, their god, Allah, the prophet Mohammed and in general Muslim religious beliefs and practices.¹⁴

As Judge Higgins clearly states that making fun of Islam is a major reason for finding against Pastor Scot, it is worth asking whether we are dealing with religious vilification legislation or something far more serious, such as a de facto blasphemy law. Some salient questions follow: is it particularly appropriate for a secular liberal democracy effectively to outlaw blasphemy to promote ‘tolerance’ and ‘diversity’? Should we overturn two centuries of liberal progress by according legal protections to established religions?

Yet, there is still more cause for concern in the judge’s summary. Astonishingly, Judge Higgins found that the defendants breached the Victorian Racial and Religious Tolerance Act by eliciting laughter from the seminar audience, quoting violent verses from the Qu’ran, and citing incorrect statistics on the size of the Australian Muslim population.¹⁵ The effect of both the Act and Higgins’ judgment will be the curtailment of free speech, as people will be afraid to speak out on controversial issues should there be even a slight chance of being taken to court on a technicality, leaving aside the numerous threats of violence that arose as a direct consequence of the recent case.¹⁶

Amir Butler, the executive director of the Australian Muslim Public Affairs Committee, would agree, arguing that the Victorian legislation has ‘served only to undermine the very religious freedoms’ it was supposed to protect. Butler reports that ‘small groups of evangelical Christians’ are now attending Islamic lectures for the purpose of ‘jotting down any comment that might later be used as evidence’ in court.¹⁷ This Orwellian scenario has Muslims and Christians using the legislation as a tactical weapon, engaging in mutual surveillance for the sole purpose of silencing one another, as is now happening. Butler implies religious vilification legislation is by nature impossible to draft properly as religions are inherently sectarian:

If we believe our religion is the only way to Heaven, then we must also affirm that all

other paths lead to Hell... Yet this is exactly what this law serves to outlaw and curtail: the right of believers to passionately argue against or warn against the beliefs of another.¹⁸

Religious vilification legislation is unlikely to function practically; it is conceptually unsound on many levels. It has been shown that religious vilification laws are often grouped with racial vilification laws, for example where the WA Government suggested that religious vilification was a form of 'cultural racism'; in the title and provisions of the Victorian Act; and in the arguments of commentators such as Waleed Aly.

Yet the two categories are clearly not comparable. One's ethnic ancestry is a fixed and immutable identity, yet a religion is simply a body of ideas that one can adopt, change, or reject—rather like a political ideology. Nobody is seriously calling for political vilification laws, despite the well-known potential for political vilification to lead to violence,¹⁹ and even so, the absence of anti-vilification legislation has never implied the legalisation of violence or the incitement to commit violence.

If one should be legally protected from vilification for holding a random group of ideas, why should religion be the only category of belief? There are so many causes of violence and mistrust in the community that to ban all expressions of hatred or ridicule—indeed to criminalise hate—could lead only to a massive extension in the powers of the state.

Furthermore, the concerns of the anti-vilification lobby clearly include those 'unconscious' (or 'systematic') forms of racism that do not always involve 'overtly racist behaviour', instead entailing any implied racist attitudes that may have a subtle, and equally damaging, effect on their victims. However, in the absence of a government programme of totalitarian mind control, anti-vilification legislation cannot possibly have any positive effect on unspoken bigotries; invoking 'unconscious' racism in this instance is nothing more than a rhetorical trick.

Conclusion

Attempts to curtail religious vilification are bound to fail due to the very nature of religious belief—one cannot practically separate the believers from their beliefs, implying that we are really observing the return of anti-blasphemy laws. Racism and

religious vilification are two separate issues, as a religion (or culture) is defined with reference to observed behaviour rather than racial ancestry.²⁰ Furthermore, there are few valid philosophical grounds why religious beliefs should be the only beliefs protected from 'stirrers' and 'haters'. Will political vilification (which can certainly encourage acts of violence) be the next target of the anti-vilification lobby, and what does this mean for Question Time in the House of Representatives?

On balance, religious vilification legislation is an ill-conceived idea that ought to be consigned to the dustbin of history at the earliest opportunity—lest 'dearly cherished beliefs', such as the belief that mankind should be free from the arbitrary rule of tyrannical government, come under serious threat.

Endnotes

¹ Gerard Henderson, 'Think Murder and Then Call It Poetry', *The Sydney Morning Herald* (9 March 2004).

² Fred Nile, *Fred Nile: An Autobiography*, (Sydney: Strand Publishing, 2001), 132-3.

³ Government of Western Australia, *Racial and Religious Vilification Consultation Paper* (August 2004), 9.

⁴ As above, 10.

⁵ Norman Aisbett, 'Shock at Religious Hate Law Reverse', *The West Australian* (16 November 2004), 13.

⁶ As above.

⁷ *Victorian Racial and Religious Tolerance Act (2001)*

⁸ Robert Forsyth, *Dangerous Protections*, Occasional Paper 78 (Sydney: CIS, 2002) 20.

⁹ Gary Bouma, 'Why Costello is Wrong on Vilification Laws', *The Age* (1 June 2004).

¹⁰ Waleed Aly, 'Freedom to Inform, Not Inflamm', *The Herald-Sun* (21 December 2004).

¹¹ As above.

¹² Iqbal Sacranie, 'We Need Protection From the Pedlars of Religious Hatred', *Daily Telegraph*, United Kingdom (14 December 2004).

¹³ As above.

¹⁴ Judge Higgins, *Summary of Reasons for Decision*, Victorian Civil and Administrative Tribunal Human Rights Division, Anti-Discrimination List (17 December 2004).

¹⁵ As above.

¹⁶ Barney Zwartz, 'Hate Case Pair Had "Death Threats"', *The Age* (5 March 2004).

¹⁷ Amir Butler, 'Why I've Changed My Mind on Vilification Laws', *The Age* (4 June 2004).

¹⁸ As above.

¹⁹ One could point to the assault of elderly One Nation supporters outside public meetings in the lead up to the 1998 federal election.

²⁰ To the extent that one's religion is voluntary in a free society such as Australia.