



## Open Research Online

### Citation

Slapper, Gary (2007). The legality of assaulting ideas. *The Journal of Criminal Law*, 71(4) pp. 279–281.

### URL

<https://oro.open.ac.uk/20962/>

### License

None Specified

### Policy

This document has been downloaded from Open Research Online, The Open University's repository of research publications. This version is being made available in accordance with Open Research Online policies available from [Open Research Online \(ORO\) Policies](#)

### Versions

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding

# OPINION

## *The Legality of Assaulting Ideas*

Gary Slapper\*

*Professor of Law, Director of the Centre for Law, The Open University*

Humanity is not at its best when racist. A madness at the heart of racism was captured in a letter Groucho Marx wrote to an exclusive country club that had just barred his family from its swimming pool as it did not admit Jews. Marx wrote to the club, referring to his daughter Melinda, and asked, 'Since my daughter is only half-Jewish would it be alright if she went in the pool only up to her waist?'

Historically, racism in Britain was common. It even hissed from people in high places, including the Bench. In the 1970s and 1980s, various Acts prohibiting racist conduct were milestones on the path to civilisation. More recently, the Racial and Religious Hatred Act 2006 extended the field of unlawful hate-mongering. It prohibits the stirring up of hatred on religious grounds. The Act, however, stipulates that it is not an offence to attack *the ideas* of any religion or body of thought. That licence is a good thing. In allowing such assaults on ideas, the law protects a freedom of immeasurable importance in a democracy.

The most significant thing about anyone's beliefs is that they are just that: beliefs. We inhabit a society comprised of a considerable palate of supposed fundamental truths, many of which are oppositional. Society is organic. It is not inert. It develops, and the best way for it to develop smoothly and peaceably is for all ideas to be subject to rigorous public debate.

### *Racism*

In relatively recent history, society was tolerant of racist attitudes even among those occupying elevated office. In a trial in London in 1978 at the Central Criminal Court, a jury found that a man who had in a speech used the words 'niggers, wogs and coons' was not guilty of inciting racial hatred. The trial judge, however, Judge Neil McKinnon QC, himself a white Australian, had told the jury that the words in question were not necessarily inflammatory because, among other reasons, the judge's nickname at school had been 'nigger' and *he* had not been offended to be called that name. He said:

In this England of ours at the moment we are allowed to have our own views still, thank goodness. (*The Times*, 7 January 1978)

In his closing remarks, after the racist had been acquitted, the judge said to him in court, 'By all means propagate the views you have . . . I wish you well'.

\* The views expressed in this article are those of the author and do not necessarily reflect the views of the Open University or *The Journal of Criminal Law*.

Happily, today, we would not countenance such warped reasoning from a judge. Today's social climate, reinforced through law, is less acquiescent in speech that encourages one group of people to despise another group on the basis of race. Today, racism or apparent racism is not accepted in public life. In March 2007, for example, Patrick Mercer, a senior white Conservative politician and Homeland Security Spokesperson, was immediately sacked from that office by the leader of his party after saying, without an expression of regret, that being called a 'black bastard' is part-and-parcel of life for ethnic minorities in the Armed Forces (*The Times*, 9 March 2007).

It should be underlined, though, that no legal proceedings were brought against Mr Mercer for this outburst as none was appropriate on these facts. This is a good illustration of why legally guaranteed freedom of expression is desirable and should not be curtailed in order to sanitise society of offensive comment. One of the great virtues of free speech is that idiocy will wilt under public scrutiny. It is regrettable that incendiary remarks can still come from people one step from government. But it is a benefit of freedom of expression, protected by the Human Rights Act, that we get to learn what Mr Mercer thinks while he is still treading an intended path to power.

### *Criticising ideas not condemning people*

The Racial and Religious Hatred Act 2006 creates new offences by amending the Public Order Act 1986. The new offences of stirring up hatred on religious grounds apply to various situations including the use of words or behaviour or display of written material (new s. 29B of the 1986 Act), publishing or distributing written material (new s. 29C), the public performance of a play (new s. 29D), and broadcasting (new s. 29F). For each offence the words, behaviour, written material, recordings or programmes must be threatening and intended to stir up religious hatred. Religious hatred means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

The reference to 'religious belief or lack of religious belief' is a broad one, and is in line with the freedom of religion guaranteed by Article 9 of the European Convention on Human Rights. It includes religions widely recognised in Britain such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'ism, Zoroastrianism and Jainism. Equally, branches or sects within a religion can be considered as religions or religious beliefs in their own right (see [www.uk-legislation.hmso.gov.uk/acts/en2006/2006en01.htm](http://www.uk-legislation.hmso.gov.uk/acts/en2006/2006en01.htm)).

Crucially, Parliament legislated (inserting 29J, a new section in the Public Order Act 1986) to guarantee a healthy freedom of speech. The new section permits criticism and ridicule of any belief system. It reads:

#### **Protection of freedom of expression**

**29J.** 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 practising their religion or belief system.

This is a most valuable right for those who wish to speak freely against the religious ideas held by some people. To criticise an idea is not to insult the person who holds the idea. If attacking an idea were indistinguishable from attacking its adherents, and saying someone was 'wrong' were the same thing as saying they were 'despicable', then most discourse would end in bloodshed.

Some people (who lost the parliamentary debate) argued for a sort of legal sacrosanctity for religious ideas, so that, in a medieval way, anyone who attacked a religious article of faith would be committing a crime. Such a law would have meant that a religion could favour, say, children coming into contact with not more than one person of their age group during any given month, while no one could speak against the imposition of such dreadful nonsense because to do so might be to offend the believers by attacking their dogma.

#### *The precious value of free debate*

The growing inclination of religious organisations to act to extinguish the expression of ideas they do not like should be seen as a profoundly disturbing development. The right of people to express unpopular ideas, or ideas that offend certain parts of society, is a defining characteristic of an open democracy. It is from a free, wide, robust and animated debate that progress is made in any part of life.

Sensibly, legal constraints prevent people from saying things which incite racial hatred. That is because people do not choose their race. But people can and do choose their ideas. So, for 'consumer protection', the public forum in which ideas are debated and put on offer should be a lively place with no dogmas being given false protection from criticism.

Supposing I am an adherent of Boxism, a religion asserting that the world was created by three invisible boxes 4,000 years ago. Should I be allowed to prevent people from ridiculing my worship of the boxes? No. Should I be able to silence critics by telling society that Boxism itself declares opposition to it to be unacceptable and punishable treachery? No.

In a democracy, diverse opinions should flourish. In the phrase of one great American judge, Justice Jackson, in 1943, 'Compulsory unification of opinion achieves only the unanimity of the graveyard'.