

*Salt and Light Papers provide important information and analysis to help Christians and Churches to engage with 21<sup>st</sup> century social issues*

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## PROTECTING FREE EXPRESSION, IN THE ABSENCE OF VOLTAIRE

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The government's capitulation over the free speech clause on 12 November was a remarkable but much-needed providence.

What the government wanted was a provision in the Coroners and Justice Bill to remove the free speech clause from the Criminal Justice and Immigration Act 2008. However, it was thwarted by the House of Lords which on 9 November voted to remove from the Coroners and Justice Bill the words which would have removed the free speech clause from the 2008 Act. Running out of time, and not wanting to put the rest of the Bill at risk, the government caved in on 12 November and the Bill received Royal Assent that same evening.

The effect of the government's decision is that we can all discuss sexual practice and conduct much more openly and freely, without fear of the law suddenly intervening and holding us to account.

If any government has the heart for it, there will be a Justice Bill or two in the future into which it could slip a few words to remove free speech clauses from here and there, but until then we rejoice, convinced that freedom of expression is a significant blessing to any society, and deeply satisfied that, for the time being at least, that freedom has been supported and defended by the recent turn of events.

It is not sufficient, however, to be grateful and move on. We need to challenge and rebuke the present government which appears to claim the moral high ground, while denying in practice the elements which give expression to that morality.

Prime minister Gordon Brown, for instance, is quoted by *The Daily Telegraph* [8 August 2009] as saying that 'the country's values were based on religious teachings, and that it would be wrong if the devout were forced to keep their beliefs private.'

Such a quotation reads like the utterance of a champion of the free speech clause, rather than a quotation from the leading figure of a government which opposes it.

Bulletin readers will be aware of the famous quotation attributed to Voltaire: 'I disapprove of what you say, but I will defend to the death your right to say it.'

In fact, Voltaire (1694-1778) never uttered these words. The famous dictum was created by Voltaire's biographer, Evelyn Beatrice Hall (1868-1919). She coined it for her biography, *The Friends of Voltaire* (1906), as an attempt to summarise the French writer's attitude to free speech.

It is not surprising that the words have an English parentage, given that the quotation so well expresses what on this side of the Channel is strongly supposed to be a fundamental attribute of British character and society. If Voltaire believed *that*, the typical Brit might say, *the British nation more so*. In harmony with this national psyche, the government piously trots out its allegiance to this deeply-held British value.

All of which is, of course, hypocritical nonsense. The current government attitude to free speech won't defend anyone's right to express themselves as far as the end of the next street, let alone 'to the death.' The shadow of Voltaire does not currently grace the corridors of Whitehall or Westminster.

Increasingly frequently, the truth is that if, in the UK, someone expresses an opinion or an attitude of which society, or, more accurately, the policing and monitoring agencies of society, 'disapproves,' there will be no Voltaire-like magnanimity, rejoicing in the wider benefits which freedom of expression protects. Instead, the police will be at your door.

### **'Hate crime' suspicion**

This is precisely what happened when a 67-year-old grandmother, Mrs Pauline Howe, wrote to Norwich City Council, objecting to public sponsorship of a gay pride event. Her complaint was forwarded by the Council to the police, on suspicion that she may have committed a 'hate crime.'

The reply the Council sent to Mrs Howe, explaining that it had referred the matter to the police, perfectly illustrates the State's present priorities with regard to social values:

*'As a local authority we have a duty along with other public bodies to eliminate discrimination of all kinds. A hate incident is any incident that is perceived by the victim or any other person as being motivated by prejudice or hatred. A hate crime is any hate incident that constitutes a criminal offence. The content of your letter has been assessed as potentially being hate related because of the views you expressed towards people of a certain sexual orientation. Your details and details of the content of your letter have been recorded as such and passed to the Police.'*

This letter shows that the State's priority ambition is to 'eliminate discrimination of all kinds,' rather than to uphold the right to free expression. The anti-discrimination agenda is currently so dominant in the spheres of UK legislation, formal guidance and public policy that the free speech 'value,' whenever it arises, will be trumped every time. In spite of Gordon Brown's assertion that 'it would be wrong if the devout were forced to keep their beliefs private,' Norwich City Council's letter shows that the cause célèbre is eliminating discrimination. There are no leaflets in town halls encouraging us all not to be afraid to express ourselves in the light of the inalienable right of free speech.

## Disturbing imbalance

This disturbing imbalance highlights the necessity of the free speech clause being retained within the legislation. However, there is a second equally compelling reason.

In the case of Mrs Howe, the Norfolk police, while concluding and stating clearly and publicly that she had committed no crime, are quoted as saying: 'If it has been reported to us as a crime then we have to investigate.'

For as long as local authorities think that they have to pass on to the police details of opinions expressed by members of the public, and for as long as the police think that they are obliged to investigate anything reported to them as a crime, the ordinary man in the street will remain in desperate need of the protection of the law in connection with his freedom of expression.

### *Protection of freedom of expression (sexual orientation)*

In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.

*The above is the precise wording of the free speech clause in the Justice and Immigration Act 2008*

The free speech clause expressly sanctions discussion and criticism of sexual conduct, and ought to give both local authorities and the police the confidence and sense to recognise that a particular incident lies entirely within the context of an expression of opinion, and cannot therefore be an actual or potential crime. Individual complainants do not always know what constitutes an offence and what does not, but there is no excuse for public authorities and agencies. Any failure by such bodies to recognise and uphold the right of freedom of expression will lead justly to their being pilloried for failing to respect the law and individual liberties.

The retention of the free speech clause ought to give greater certainty to those who want to discuss issues of sexuality. No-one should have to fear a visit from the police. This should remove some of the chilling effect – the voluntary abandonment of lawful activity out of a fear that it may be unlawful, or be viewed as unlawful.

Without being deliberately provocative, evangelicals now have a new and unexpected opportunity to establish the legitimacy of engaging in public debate about the biblical and moral principles associated with current sexual attitudes and practices.

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*The above was published in The Bulletin [November 2009]*

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