

Thornett and Religious Hatred: A Trot Who's Lost the Plot

Geoffrey Brown

AT ITS national conference in November 2005, Respect – the Unity Coalition quite rightly voted down a motion sponsored by the International Socialist Group, the British section of the Fourth International, that would have committed Respect to opposing the Racial and Religious Hatred Bill, which proposes to extend the existing law against inciting racial hatred to cover religious hatred.

The ISG's position on this issue was outlined by Alan Thornett in an article published in the November 2005 issue of the FI's monthly theoretical journal *International Viewpoint*. It is evident from the article that Thornett has made no attempt to understand the arguments in favour of the religious hatred law. Instead, he uncritically repeats the false and dishonest assertions of its opponents, notably the Liberal Democrat peer Anthony Lester.

Thornett gives this misrepresentation a "left" spin by claiming that the Racial and Religious Hatred Bill is "a cynical ploy by new Labour to redress the damage done to its Muslim vote by its war in Iraq". If this is so, how does he explain that the government first tried to bring in legislation against religious hatred back in 2001? The law would have been on the statute books long before the Iraq war if it had not been rejected by the House of Lords.

It is certainly true that the original decision to introduce a religious hatred law was partly motivated by the need to sweeten the pill of the government's anti-terror measures, which had antagonised Britain's Muslim communities. But it ill becomes socialists to join with those accusing the government of "appeasing Muslims". If members of minority communities face incitement to hatred and call for legislation to defend them against this, it is surely the duty of socialists to support them, or at the very least listen to and honestly assess the views expressed by those who are the actual victims of oppression.

Thornett tries to wriggle out of this by telling us that "Muslim opinion is divided on the Bill". The reality is that Muslim opinion is overwhelm-

ingly in favour, as he himself implicitly recognises – for how could the legislation be a "cynical ploy" by Blair to win electoral support from Muslims, if the majority of them did not support it? The Muslim Council of Britain, which is the most representative Muslim organisation in the UK with some 400 affiliates, has given its official backing to the Bill. Leading figures in the MCB have repeatedly made public statements supporting the proposed new law and criticising the Bill's misrepresentation by its critics. Thornett shows no sign of having bothered to familiarise himself with their arguments.

Why a new law is needed

The Racial and Religious Hatred Bill is in reality a welcome (and long overdue) move by the government to address a loophole in Part 3 of the 1986 Public Order Act, which criminalises incitement to racial hatred. As it stands, the anti-hatred law protects Jews and Sikhs, who are held to be members of mono-ethnic faiths, but it does not cover adherents of multi-ethnic religions such as Islam and Hinduism. In the aftermath of 9/11, with Islamophobia having become the favoured weapon of racists and fascists, this loophole has been extensively used by the British National Party in order to disseminate its race-hate propaganda without falling foul of the law.

Echoing Lord Lester, Thornett claims that, under the existing law against incitement to racial hatred, "Jews and Sikhs are protected as ethnic groups, i.e. because of their ethnicity not because of their religious belief. Stirring up hatred against Muslims because of their ethnicity – as Asian or Pakistani for example – would equally be protected". But this is a complete distortion of the current legal position.

When the far Right incites hatred against Jews, even if it does so ostensibly on the basis of their religious beliefs, it is clear that the aim and effect is to incite racial hatred. Similarly, if the BNP incites hatred against Islam, this is not because it objects to the tenets of that religion as such, but because the overwhelming majority of Muslims

belong to minority ethnic communities. In the former case, the fascists can be successfully prosecuted under the racial hatred law, because Jews are held to be members of a single ethnic group. In the latter case, successful prosecutions are difficult, if not impossible, because the fascists' Islamophobic propaganda is not directed against a particular ethnic community. "Islamophobia is racial hatred under a religious guise", Thornett tells us, quite correctly. What he ignores is the legal obstacles that exist to proving this is so.

As an example of the present racial hatred law's inadequacy when it comes to defending Muslim communities against racists, the Commission for Racial Equality has related how in May 2004 it wrote to the West Yorkshire police asking for action to be taken against the BNP for publishing a sickening leaflet headed: "The Truth About Islam: Intolerance, Slaughter, Looting, Arson, Molestation of women." This had been distributed by the fascists in Dewsbury where there is a sizeable Pakistani community, popularly referred to by the local white majority community as "the Muslims".

But the Crown Prosecution Service declined to take legal action against the BNP, even though it accepted that the leaflet was designed to incite Islamophobia. "The stirring up of fear and hatred against Muslims is ... a likely result of its publication given the strength of the language used", the CPS wrote. "Muslims are not, however, a racial group ... and the hatred stirred up could not therefore be defined as racial hatred.... It might be that evidence could be gathered to establish whether or not the term 'Muslim' is generally understood to mean 'Pakistani' or 'Indian'. The difficulty in relation to this particular leaflet ... is that [it states] 'This problem is not a matter of race. Those Muslims oppressing and murdering infidels and women have included Arabs, Pakistanis, Black Nigerian and White Bosnians'. Given this specific statement it would not be possible to infer incitement to racial hatred."

In reaching this conclusion, the CPS was no doubt drawing on the experience of an earlier case involving a BNP member named Dick Warrington. He was prosecuted for incitement to racial hatred after displaying a window poster reading "Islam Out of Britain – Protect the British People" and featuring a picture of the World Trade Center on fire, but he was found not guilty at Leeds magistrates court in 2002. Celebrating Warrington's acquittal, the BNP wrote: "The snag for the police, however, is that Islam is not covered by the anti-free speech race law.... it's legal to say anything you want about Islam, even far more extreme things than the very moderate message on the poster."

Thornett claims that "the Bill adds nothing to current law since incitement to religious hatred – in its various forms – is actionable under existing

legislation. In particular under an amendment to the 1998 Crime and Disorder Act, which extends the offence of causing alarm or distress to include cases that are racially or religiously aggravated".

Again, Thornett misrepresents the position. It is true that Mark Norwood, a BNP member in Shropshire, was convicted in 2002 on the charge of causing religiously aggravated "harassment, alarm or distress" after displaying the BNP's "Islam Out of Britain" poster. But this is a much lesser charge than incitement to racial hatred, and in Norwood's case his conviction resulted only in a £300 fine, a sum that was no doubt covered by a quick whip-round among his fellow Nazis. If he had displayed a poster with the slogan "Jews Out of Britain", Norwood could have been prosecuted under the racial hatred law and would undoubtedly have received a much more severe sentence. Thus the fact that it is sometimes possible to secure a conviction for an offence of religiously aggravated harassment still does not give Muslims or Hindus parity with those faith groups who have protection under the law against incitement to racial hatred.

A threat to free speech?

Thornett, like all opponents of the Bill, claims that a law against religious hatred would be a major threat to freedom of expression. However, as a young Muslim woman at the Respect conference argued: "Sikhs and Jewish people are already covered – if they suffer abuse [strictly speaking, incitement to hatred] because of their religion, they are protected under the law. So why, when a bill is put forward that will give Muslims the same protection, does it suddenly become an issue of limiting people's free speech?"

This is a question that Thornett's article fails to answer. If the proposed religious hatred law threatens free speech, as he repeatedly asserts, does that not equally apply to the existing law against incitement to racial hatred? After all, the government's Bill does little more than go through Part 3 of the 1986 Public Order Act and, where that refers to racial hatred, it adds the words "and religious". Indeed, from the time that a law against racial hatred was first introduced, in the 1965 Race Relations Act, it has been attacked as an unwarranted restriction on freedom of expression. These arguments have, however, previously come almost exclusively from the Right.

Thornett quotes his political muse Lord Lester: "Freedom of speech, like equality and freedom of religion, is a fundamental civil and political right. Its protection is at the heart of our liberal democratic society. The right of freedom of speech means the right of everyone to communicate information and opinions without unnecessary state control or interference. That includes evil ideas expressed intemperately or in ways that shock." So why doesn't this same reasoning apply

to the legal suppression of material and behaviour inciting racial hatred?

In fact, Thornett goes on to indicate that he is against *all* laws that criminalise incitement to hatred. He approvingly quotes Soli Sorabjee, a former Indian Attorney-General, who argues: "Experience shows that criminal laws prohibiting hate speech and expression will encourage intolerance, divisiveness and unreasonable interference with freedom of expression." If this is so, then again, in all consistency, Thornett should be campaigning for the repeal of the existing ban on incitement to racial hatred.

That he does not explicitly argue this position is not unconnected with the fact that, were he to do so, he would find himself in a bloc with the likes of the BNP. They have of course been vociferous in denouncing the racial hatred law and demanding its repeal so they can spread their race-hate propaganda without legal restraint.

The freedom to insult and offend

Thornett assures us that, under the proposed new law, "language only has to be considered 'insulting' to be actionable". This is not true. As we have noted, the Racial and Religious Hatred Bill merely amends that part of 1986 Act dealing with incitement to racial hatred by inserting the words "and religious". Under the religious hatred law people would be no more likely to be prosecuted for insulting religious groups than they are now for insulting ethnic groups.

Comedians such as Bernard Manning and Jim Davidson are notorious for telling "jokes" that are widely regarded as racist and are clearly deeply offensive to members of minority ethnic communities. Neither of them has been prosecuted under Part 3 of the 1986 Public Order Act, for the simple reason that racial insults are not a criminal offence under that Act. What is criminalised is the incitement to racial *hatred*.

Equally, those more serious forms of artistic expression that minority communities find insulting or offensive are free from the threat of prosecution. As a mono-ethnic faith group, Sikhs are covered by the racial hatred law. But the staging of the play *Behzti*, which offended and angered many members of the Sikh community, did not lead to the prosecution of the Birmingham Repertory Theatre under the Public Order Act. Offending people and making them angry is not at all the same thing as inciting hatred against them.

Exactly the same position would apply under the new provisions proposed by the Racial and Religious Hatred Bill. Comedians, playwrights and other writers and performers could insult or offend Muslims, Hindus, Christians and other faith groups to their heart's content. What they would not be able to get away with is inciting hatred against these communities.

More distortions

Like many of its opponents, Thornett asserts that the religious hatred law amounts to an extension of the blasphemy law. However, as Frank Dobson MP has pointed out: "It doesn't. If it did, I wouldn't dream of supporting it because I have been campaigning for years to abolish the blasphemy law.... If the proposed new law were widely drawn, it could in effect extend the blasphemy law. But it isn't. It is narrowly drawn, confining the offence to expressions or behaviour intended or likely to stir up hatred."

Thornett warns us that "similar legislation in Australia ... has been used against Muslims by Christian fundamentalists". But Section 8 of the Racial and Religious Tolerance Act, adopted by the Australian state of Victoria in 2001, is in fact framed much more broadly than the Racial and Religious Hatred Bill. It states: "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." The government's Bill, by contrast, specifically restricts the offence to one of inciting *hatred* – not contempt, revulsion or ridicule.

The Victoria state law has so far resulted in just one successful prosecution – that of two evangelical Christian pastors who were convicted in 2004 on the basis of articles and speeches stating that Islam is an inherently violent faith and that Muslims were planning to take over Australia. To my knowledge, no case has been launched against Muslims in Victoria by Christian fundamentalists.

Furthermore, unlike in Victoria, any prosecution for incitement to religious hatred in Britain will have to be agreed by the Attorney-General. This will ensure that frivolous or vexatious prosecutions cannot be launched by small and unrepresentative religious groups in support of their own extreme views.

Thornett is aware of the role of the Attorney-General, because he refers to it in his article. Yet he also tells us: "Already a protestant evangelical pressure group, Christian Voice, has warned that it will seek to use it to prosecute bookshops selling the Qur'an for inciting religious hatred. Its director Stephen Green told the *Guardian*: 'if the Qur'an is not a hate speech, I don't know what is'." Does Thornett seriously believe that there is the slightest prospect of the Attorney-General authorising the prosecution of a Muslim bookshop for selling the Qur'an?

Hatred and intent

Thornett once more quotes his friend Lord Lester on the offences contained in the Racial and Religious Hatred Bill: "Unlike most other serious offences they require no criminal intent." Again, if the Bill were passed, the position with regard to

religious hatred would be no different from that applying to racial hatred under the 1986 Act, which combines the test of objective effect with the allowable defence that there was no intention to incite hatred. This formulation is the result of long experience in relation to racial hatred legislation.

The 1965 Race Relations Act, which introduced the first ever law against racial hatred, criminalised “threatening, insulting or abusive” words or actions done “with intent to stir up hatred” against someone on the basis of their colour, race, or ethnic or national origin. Thus the law did require proof of intention for a successful prosecution. This turned out to be a major weakness in that law, making it very difficult to secure convictions.

In a famous case which came to court in 1968, members of a Sussex-based far Right group rejoicing in the name of the Racial Preservation Society were charged with inciting racial hatred after their newsletter *Southern News* warned of the dangers of “racial mixing”, accused politicians of favouring “racial levelling” and asserted that Black people were genetically inferior to whites. Though the newsletter clearly had the effect of stirring up racial hatred, it was impossible to prove that this was the intention behind its publication. The racists claimed that the material was “innocently informative” rather than “intentionally inflammatory” and on that basis they were acquitted.

During the inquiry into Kevin Gately’s death during a demonstration against a National Front rally in Conway Hall, Red Lion Square in 1974, Lord Scarman drew attention to the weaknesses in the existing racial hatred law. He argued that it needed “radical amendment to make it an effective sanction, particularly, I think, in relation to its formulation of the intent to be proved before an offence can be established”.

The 1976 Race Relations Act amended the racial hatred law accordingly. Whereas the 1965 Act required proof that the offending words or actions be done “with intent to stir up hatred”, the 1976 Act required only that “having regard to all the circumstances, hatred is likely to be stirred up”. When the racial hatred law was incorporated into the 1986 Public Order Act this wording was retained. Both the 1976 and 1986 Acts allowed the defence that the stirring up of hatred was not intentional, but it is for the defendant to demonstrate that this is the case, rather than the prosecution being required to prove the existence of intent.

The Racial and Religious Hatred Bill maintains this position, with the addition that the offending words or actions must be “likely to be heard or seen by any person in whom it is likely to stir up racial or religious hatred”. This is to cover the legitimate objection that material which is not accessible to a public audience should not be actionable. That does not prevent Thornett quoting Lord Lester to the effect that the offences under

the Bill “apply not only to words spoken in public but in private”.

Lord Lester’s tactics

Throughout the controversy over the proposed religious hatred law, Lord Lester has played a quite atrocious role, using his legal expertise to generate confusion and misunderstanding about the aims and implications of the legislation. It is quite clear that he is opposed to any law against religious hatred, but rather than argue this position openly and honestly he has adopted the tactic of presenting amendments which appear reasonable, at least to those lacking a detailed understanding of the issues, but which would in practice have the effect of completely neutralising the legislation.

Initially, Lord Lester sought to organise opposition to the government’s legislation around the celebrated “Lester amendment”, which proposed to add to Part 3 of the 1986 Public Order Act a clause making it a criminal offence to incite religious hatred “as a pretext for stirring up racial hatred against a racial group”. During the second reading of the Racial and Religious Hatred Bill last June, Lester’s fellow Liberal Democrat, Evan Harris MP, assured the House of Commons that “Lord Lester’s amendment leaves no hiding place for the BNP”.

This was simply untrue, as both Lester and Harris must have been well aware. Sher Khan of the MCB was among those who identified the hole in Lester’s argument. “If it were possible to identify religious hatred as linked to racial hatred”, he wrote, “there would be no need for the proposed law. The point of the proposal is to protect a group of people who don’t fall into a single racial identity. This is precisely why law-enforcement agencies believe current legislation is inadequate.” In other words, the “Lester amendment”, if adopted, would have left Muslims and Hindus in exactly the same legal position that they are at present.

The writers’ organisation PEN and journalist Nick Cohen were among those who promoted the “Lester amendment”, insisting that, in so far as there was a loophole in the existing racial hatred law, Lester’s proposal would close it. However, the government’s attempt to incorporate a new offence of incitement to religious hatred into the Serious Organised Crime and Police Act had to be abandoned in the run-up to the general election because of opposition from the Lords, and the present Bill was drawn up post-election. Unfortunately for Lester, this extended process gave supporters of the religious hatred law time to expose the fraudulent character of his amendment and show that its effect would be to maintain the status quo, leaving members of multi-ethnic faiths still without legal protection against incitement to hatred.

In October, when the Bill reached the committee stage in the House of Lords, Lester therefore

suddenly dropped his original proposal without explanation and sprang an entirely new amendment on his fellow peers. Instead of extending Part 3 of the Public Order Act to cover both racial and religious hatred, as the government's Bill proposed to do, Lester's new amendment proposed to leave Part 3 of the Act unchanged and to introduce a new Part 3A that would deal exclusively with religious hatred. Like the original "Lester amendment", this new version was carefully crafted to sound sensible and reasonable, and the House of Lords passed it by 260 votes to 111.

Under Lester's 3A, a person would be guilty of an offence when he "uses threatening words or behaviour, or displays any written material which is threatening ... if he intends thereby to stir up religious hatred". The new offence of incitement to religious hatred thus differs from the existing offence of incitement to racial hatred in two important respects.

First, the test of objective effect is removed and the prosecution is required to prove subjective intention. In other words, Lester proposes to reintroduce the very same requirement which was such an obstacle to securing convictions for incitement to racial hatred under the 1965 Race Relations Act – and which was removed by the 1976 Race Relations Act for that reason. Secondly, under the new Part 3A only words or behaviour that are "threatening" constitute a criminal offence, and stirring up hatred by means of abuse and insults is entirely within the law. This would produce an offence that would be even less likely to result in successful prosecutions than that in the 1965 Act, which like all subsequent laws criminalised incitement to hatred by means of abusive and insulting words and behaviour.

The opportunities Lester's amendment would offer to racists and fascists to evade criminal charges are quite obvious. Material like the "Truth About Islam" leaflet distributed by the BNP in Dewsbury, which is abusive and insulting but does not include any explicit threats of violence, would probably still be immune from prosecution.

In other words, the new Lester amendment – just like the earlier one – would leave the legal position in practice little different from what it is now. While Jews and Sikhs would qualify for relatively strong protection under the racial hatred law, the only protection offered to Muslims and Hindus would be a religious hatred law which set the threshold for prosecution so high that it would be virtually impossible to convict anyone of an offence. This would maintain the same unjust and discriminatory situation that we have at present – which, of course, is exactly what Lord Lester intends.

Indicative of Thornett's inability to grapple with the issues here is his utter failure to understand what Lord Lester is up to. Instead of condemning a dishonest attempt to wreck a piece of

progressive legislation, Thornett criticises Lester's amendment on the grounds that it fails to reject a religious hatred law outright:

"The Lords amendment is designed to tighten up the definition of language needed to bring a prosecution which would then be restricted to 'threatening' rather than 'insulting' or 'abusive' language. They argue that this would make prosecutions more difficult in some cases – we would not know until it was tested in the courts. What we do know is that the principle of the Bill would be the same. It would still threaten free speech and would be just as divisive as the original wording."

It would be difficult to find a better example of getting hold of the wrong end of the stick.

Conclusion

At the time of writing the government is still engaged in negotiations with Lester and his supporters in an attempt to achieve a consensus before the third reading of the Bill in the Lords. It seems unlikely, though, that the opposition will have any real interest in reaching a compromise settlement and agreeing to accept a prosecutable religious hatred offence. It is possible that the Lords will insist on returning the Bill in its amended form to the Commons, where the government may decide to introduce its own alternative amendments.

Throughout this process, it will be the duty of anti-racists to put pressure on the government to stick to the principles of the Bill and not dilute the proposed legislation in an attempt to placate its opponents.

While the outcome of the struggle over the Racial and Religious Hatred Bill is difficult to predict, what can be said is that Thornett's article provides a glaring example of a worrying development on the Left. Over the years, there have been numerous grounds for criticising the politics of the Trotskyist movement – the mistaken perspectives on which the Fourth International was founded, its unreconstructed Leninism, its tendency to produce sects and even cults – but the movement's commitment to the defence of the oppressed was never in question.

Today this is no longer the case. Recently two Trotskyist groups, Lutte Ouvrière and the Parti des Travailleurs, shamefully supported Chirac's disgraceful ban on the wearing of the Islamic headscarf in French state schools, and now we have the official British section of the Fourth International contemptuously rejecting appeals from Muslims for legal protection against the hate-propaganda of the far Right. As we have already noted, Islamophobia is now the preferred weapon of the BNP, and the defence of Muslim communities against racism and fascism has become a vital political issue. Unfortunately, a section of the Left has chosen to take its stand on the wrong side of the ideological barricades. ■