



FSU
FREE SPEECH UNION

The Law Commission would make Mohammed cartoons illegal:

Ten reasons to throw out the Law Commission's Anti-Free Speech Proposals

The Law Commission, an unelected quango that recommends changes to the law in England and Wales, has published a 533-page consultation on reforms to “hate crime and hate speech laws”. Its proposals are chilling. The new Bill it wants to bring before the House of Commons is tantamount to an Anti-Free Speech Bill which is an all-out attack on freedom of expression. Andrew Tettenborn, a law professor at Swansea University, describes the Commission’s proposals as “the Scottish Hate Crime Bill on steroids”.

1. The Law Commission wants to make the *Charlie Hebdo* cartoons illegal

Freedom of expression is the linchpin of a democratic society, but the Law Commission suggests it is merely one among “[other] rights” and should not necessarily take priority when “setting parameters for acceptable conduct”. What are those parameters? The Commission suggests that “inflammatory cartoons” should not be covered by our right to free speech.

The Commission writes: “Several recent incidents involving inflammatory images create grounds for concern... These include Islamophobic cartoons...”

The Commission is concerned that, as the law stands, a person who sent another person an “inflammatory cartoon” can only be prosecuted under section 127(1) of the Communications Act 2003. It then goes on to complain: “However, this does not carry the same gravity or labelling as the stirring up offences. It does not reflect the fundamental harm involved, which is not that it is offensive, but that it incites hatred.”

The Commission refers to various cartoons in the Consultation, but it is clear that its plans include the cartoons that were published in *Charlie Hebdo* and resulted in 12 people being murdered in a terrorist attack. The Commission calls Mohammed cartoons “infamous” and suggests that “the British media were right not to publish them”.¹

The Law Commission says that the offence of “stirring up hatred” under the Public Order Act 1986 should be extended beyond written material, which would mean that people who publish “inflammatory images”, i.e. newspaper and magazine editors, could face up to seven years in jail.

If the law of England and Wales was changed in this way – and publishing “offensive” cartoons became a hate crime – that would represent an extraordinary victory for terrorism.

¹ The Commission outlined the views of American jurist Ronald Dworkin on the Mohammed cartoons, stating: “Discussing the infamous “Danish cartoons”, Dworkin acknowledged that... the British media were right not to publish them in the interests of public order...”. This calls the cartoons “infamous”, without quotation marks, as if this were beyond dispute. Its use of the word “acknowledged” suggests there was no question that “the British media were right not to publish them”. <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/10/Hate-crime-final-report.pdf> (p.67).

2. The Commission will effectively scrap the need to show “intent”

Currently, a conviction for “stirring up hatred” usually requires the court to show intent – that the accused *intended* to stir up hatred. The Commission wants to make it easier for the court to secure a conviction. If its plans become law, it won’t matter how your tweet or cartoon was meant. A court could simply decide it was “likely” to stir up hatred (or when there was an intention this need not have involved any threatening, abusive or insulting words at all), which will be enough to secure a criminal conviction, meaning up to seven years in jail.

3. The Law Commission wants many more characteristics to be “protected”

The law already outlines five “protected characteristics” (race, religion, sexual orientation, disability, and transgender identity), whereby a “[hate crime](#)” is committed when offences are “motivated by hostility” or the offender “demonstrates hostility” to a person or group who has any of these characteristics.

The Commission wants many more characteristics to be protected. It wants to classify women – over half the population – as a protected group, making “misogyny” illegal. It suggests that “age” could be a protected characteristic; that “race” could include “immigrants” and “asylum seekers”; that “sexual orientation” could include “asexuals”; that “transgender identity” should include cross-dressers; and that “sex workers” could become a protected identity group, so expressing disapproval of prostitution could be a hate crime.

We know from an FOI request that the police forces of England and Wales recorded 120,000 “non-crime hate incidents” in the past five years. That means the police have been investigating an average of 66 people a day whom they suspect of having committed a hate crime under the existing law. Just how busy will the police become if the number of “protected” characteristics is increased in the way the Law Commission proposes?

4. The protection of “philosophical belief” stifles free debate

The Commission suggests special legal protection for non-religious philosophical beliefs like humanism. No belief system should be “protected” from robust intellectual challenge, but to protect a philosophy rooted in the Enlightenment idea of rational and limitless enquiry would be laughable. The Commission even suggests that “alternative subcultures” should be among the groups that should have “protected” status and gives “punks” as an example. Do punks – famous for being anarchists and loathing state authority – really need special state protection? These plans would balkanise society, encouraging more and more people to see themselves as victims in virtue of the “oppressed” identity group they belong to.

Surely, we should be encouraging all our citizens to see themselves as autonomous individuals who can shape their own destiny?

5. The plans are an attack on equality before the law

The Law Commission wants victims of crime to be treated differently depending on whether they’re a member of a “protected” group, which is at odds with the principle of equality before the law. The Commission approvingly quotes a Critical Race Theorist who says: “The hostility demonstrated towards certain groups is more blameworthy... hatred of specified groups causes a different type of harm to society than that of the underlying offence.”

If we abandon the principle of equality before the law, we will further divide society, not create more social cohesion, which is one of the Law Commission’s professed aims.

As President Obama said: “The strongest weapon against hateful speech is not repression; it is more speech.”

6. The Law Commission's plans mean more thought-control

The Commission says: "The whole point of hate-crime law... is to educate the public". Criminalising misogyny, it says, would remind people that "negative attitudes towards women are not acceptable". But the law does not exist to control people's thoughts and our opinions are no business of the state. As one writer [put it](#): "The [consultation] drips with contempt for the British public: we are either hateful and in need of re-education, or pathetic and in need of protection."

7. The Law Commission's plan for reducing hate crime will have the opposite effect

In 2012, the "Cross-Government Hate Crime Programme" tried to use "positive images" to "change attitudes". Clearly, this didn't work or the Law Commission wouldn't feel the need to do more. It is demanding that a new "Hate Crime Commissioner" be created to promote even more re-education programmes (or, in the Commission's words, to "challenge prejudicial attitudes").

But there is no evidence that these sorts of campaigns, or criminalising "hate speech", leads to less of it. In fact, the Law Commission implies that the result of ever more laws against "hate crimes" has been an increase in the very problem these laws are designed to tackle.

We share the Law Commission's desire to reduce hateful behaviour, but this isn't the way to go about it.

Recorded hateful behaviour frequently increases, instead of falls, after hate crime laws are introduced.

8. There is already too much surveillance of speech. The Law Commission wants even more

The Commission claims there are "barriers to reporting" hate crimes, like "lack of trust in law enforcement agencies". In fact, police forces have already established "[portals](#)" to make it easier for people to report their fellow citizens for speech-crimes without ever visiting a police station – one of the reason they find themselves investigating an average of 66 reports a day that turn out not to be hate crimes and have to be re-classified as "non-crime hate incidents".

9. The Law Commission proposes to sideline the Attorney General

At present, if the Crown Prosecution Service wants to prosecute someone for stirring up hatred it needs the consent of the Attorney General. This stays the hand of over-zealous prosecutors who want to haul people into the courts for expressing ideas they disapprove of.

The Commission wants to do away with this safeguard.

Henceforth, all that would be required would be the consent of the Director of Public Prosecutions. It even criticises what it calls the "reluctance" of Attorneys General to prosecute people for "stirring up" offenses.

Shouldn't we be celebrating that "reluctance", given that a successful prosecution could see someone being jailed for a slip of the tongue?

10. The Law Commission wants people to be prosecuted for conversations at the dinner table or in the bedroom

Hate speech laws do not currently cover what you say in the privacy of your own home – there is a "dwelling exemption". The Commission wants to scrap this. If you use words "likely" to "stir up hatred" against a vast array of

“protected” groups at the dinner table – again, without intending to – you will be liable for prosecution and could end up being jailed for seven years.

One of the hallmarks of a totalitarian society is that the state’s writ extends into every nook and cranny of people’s lives, eroding the distinction between private and public. Is this what the Law Commission wants? To set children against parents, husbands and against wives, all in the name of boosting social cohesion?

In the Soviet Union, surveillance like this made [parents fear their own children](#).

Historian Orlando Figes quoted one Soviet woman: “We were brought up to keep our mouths shut. ‘You’ll get into trouble for your tongue’ – that’s what people said to us children all the time. We went through life afraid to talk. Mama used to say that every other person was an informer. We were afraid of our neighbours, and especially of the police.”

This is not the kind of country we want to live in.

Dr Radomir Tylecote
Research Director, The Free Speech Union
November 2020