



Auckland Unitarian Church
Love beyond belief

The Government's Hate Speech Bill: What Do You Think?

David Hines © 3 October 2021

In July I was surprised to get a call from a member of the Association of Rationalists and Humanists asking if I had written a submission on the government's new hate speech proposal. I hadn't, but I was grateful for the suggestion.

I had written a similar article a couple of years ago – taking a free speech approach, and found my thoughts had shifted a little in between.

I support the basic idea of protecting New Zealand minority groups against hate speech but I am still more on the side of free speech.

And I support the government's concern which started this inquiry.... the Christchurch mosque shootings two and a half years ago. We would all like to see some assurance that this must not happen again. But is this proposal the best way to do that?

I'd like to start with the detail. What exactly is the government Bill proposing. Could it be improved. I think it could.

But at the end I'm going to say is this law really necessary at all? Would the events of March 2019 have been any different if we had had this law back then. And I don't think it would have made a scrap of difference.

1. **Hatred would become a crime (page 30 of the discussion paper)**

The main change the government wants to make is to change the order of the four main principles of what is now section 131 of the Human Rights Act.

The present law doesn't mention hatred at all. It says a person commits an offence if they publish .. material which is threatening, abusive or insulting. Nothing about hatred at all.

But it does mention hatred in the second clause. It says these kinds of publication becomes an offence if they're done **with the intention of exciting hostility, ill-will or contempt.**

In the new proposal.... this **intention** gets moved up to the top of the list. and it says it would be a crime to **"intentionally** incite/stir up, maintain or normalise hatred.

The discussion paper says this is an improvement because threats, abuse and insults are a complicated list of actions and it would be clearer to refer just to hatred.

But I have a big problem with this, because I believe hatred itself should not be a crime.

I know lots of people who hate Muslims, regrettably. But whenever this question came up, they would assure me, they would not support violence like we saw in Christchurch. So to put the emphasis on hatred ... is in my opinion missing the mark.

2. **Does hatred really lead on to violence**

Professor Paul Morris raised the issue of hatred in a public forum on this clause a couple of months ago.

And he said **it's well established that hatred leads on to violence.** But I think that is simply false.... I have seen hundreds of instances of hatred in my lifetime, but only a handful that led on to violence.

And I believe, the principle of civil liberty means that we should not be muzzling everyone who has hatred ... **in case** it leads on to violence. **The police should only be intervening when it actually does lead on to violence, or where there is a strong chance of it leading to violence.**

And the present law makes that very point. Right down at the bottom of the list it says a publication becomes an offence **if: The words or written matter are likely to excite hostility or ill will against groups of New Zealanders on the ground of colour, race etc...**

That's the issue that I would want to put at the **top. Are there good grounds for thinking that these hateful words are going to lead to widespread harm.**

In fact, that clause about the **likely results is** missing from the new proposal altogether.

I support some of the words in the new proposal.... that it should cover stirring up trouble, and also **maintaining hatred or normalising it...** **That bit I agree with.** But I believe the law should be focussed on the actions, not the feelings.

I would re-word the first clause this way... It would be a crime to publish material which is likely to stir up or normalise violence, intimidation or social exclusion. These are the results we would expect when hatred gets out of hand.... as it did in the Christchurch killings.

But even then it is arguable. The publishing that Brendon Tarrant did was not putting an item in a newspaper ... it was wearing a head camera, so his murders could be live-streamed to a racist website. Was that action of wearing a camera, likely to make others want to do the same? It was actually broadcast. And there were a couple of copy-cat efforts to do violence but they were very minor.

And in some cases of murder, hatred may not be part of it at all.

I have a copy of a psychological manual at home, and looked up what can cause someone to kill others ... I found that narcissists may be driven to kill because of jealous rage... but other kinds of people may be driven by a desire to boast about their skill like James Bond. He was licensed to kill, but he was not driven by blind hatred. Others kill because of fear that others are out to get them, so they see it as self defence.

Is James Bond inciting other people to think they have a license to kill. Is he inciting them to drive dangerously? Is he inciting people to jump from one rooftop to another.. Is he doing this so he can have sex with attractive women? It could be any or none of these things.

From the crime point of view it doesn't matter much what their motives were... we want to stop all of these mass killers ... and all the dangerous drivers as well.

in point of fact, the court that sentenced the Christchurch killer did get psychological reports on him, and they said he did not have any particular personality disorder he was within the normal range so any hatred he may have felt was not so great that he was out of control.

3. Is this proposed new law really necessary?

It was brought in because of the Christchurch killing, but that killer was dealt with under the present law... not the human rights law, but the law against terrorism.

The judge referred to it as a hate crime, but isn't that academic, when he was already guilty on 51 counts of murder, one of terrorism , and a dozen attempted murder.

The proposed law would have made only a tiny difference.... he might have got sentenced for wearing a head camera and live-streaming it.

So I'm not **totally** dismissing the idea of this new proposal, just saying it doesn't look like the magic bullet that could catch criminals who at present might escape.

4. The proposal increases the penalties

that are awarded now under provisions such as incitement to kill. It goes from a maximum of three months in prison to a maximum of three years.

5. And this for me is one of the major issues. Punishment is an essential part of our response, but it is certainly not the whole answer.

It is not realistic to think that we can out-think and stop in advance every person who may be capable of a massive hate crime. Should we try and monitor every gun club, to find the handful of people who may misuse their guns. Could we monitor every minority group to find the handful who may go violent ironically Aarif Rasheed, the Muslim man who spoke to this congregation a couple of years ago wrote to me two months back complaining that the government was not listening him Muslims in their concerns about terrorism.... they themselves have been seen as terror suspects and he walked out of a seminar on that subject.

So I would prefer to take positive measures to deal with hatred, rather than putting so much emphasis on punishment

The huge advantage of positive measures is that they can work even when we don't know who are the future terrorists..... One such positive measure is the proposal that all religions should be taught in state schools.

This is not the whole answer, either, but I believe it is a valuable part of the answer.

And I'd point out that our PM who is so keen on stopping hate speech has herself done a massive piece of positive work to promote goodwill.

She has bent over backwards to show sympathy for the Muslim people. She has spoken at public meetings on it. And this has led to a huge outflow of goodwill. Thousands of flowers have been placed at mosques around the country.

I attended two of these mosque events and I think they were very effective at creating goodwill to Muslims..

So

Summing up:

In your group discussions, feel free to cover this whole range.... but I suggest the most interesting differences could be:

Are our present political parties:

- too much on the side of censorship?
- too much on the side of freedom of the individual?
- or about right?