

# **Clause 61**

## **The Coroners and Justice Bill**

1. Freedom of speech and respect for human life are fundamental characteristics of a free and healthy society.
2. The Criminal Justice and Immigration Act 2008 created the offence of incitement to hatred on the grounds of sexual orientation. An amendment to ensure protection for freedom of speech was accepted in the House of Lords, removed in the House of Commons, and re-accepted in the Lords.<sup>1</sup> At that time, the Government said that they would not contest the amendment further.
3. However, in Clause 61 of the Coroners and Justice Bill 2009 the Government are doing just that: they are attempting to withdraw the free speech protection clause. The Government's move is generating widespread concern.
4. The protection clause is an important element in the sustaining of freedom of speech in this country. The effect of withdrawing it would be to allow groups or individuals to attempt to portray as incitement to hatred:
  - The expression of views other than their own on sexual ethics and personal conduct.
  - The encouragement or discouragement of particular modes of sexual behaviour.
5. A further very real danger is the chilling effect of withdrawing clear-cut protection for freedom of speech. Harm is often done when the police are

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<sup>1</sup> The free speech amendment provides that 'In this Part, for the avoidance of doubt, discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices is not to be taken of itself to be threatening or intended to stir up hatred.'

pressed to intervene to stop a perfectly lawful speech or debate on the grounds that a speaker is stirring up hatred. This is especially so, given that the CPS guidance can cause the police to feel obliged to intervene even when an incident clearly falls short of a crime. Moreover, unnecessary and unjustified police intervention wastes police resources and can cause substantial injustice in the form of harassment, stress, inconvenience and expense to the people investigated.

6. A recent report ‘describes the wholesale removal [in the United Kingdom] of rights that were apparently protected by the Human Rights Act and set down nearly 800 years ago in Magna Carta’.<sup>2</sup> It notes ‘how the unarticulated liberties that we assumed were somehow guaranteed by British culture have been compromised’. In particular, it describes the Government’s attempt to remove free speech protection from the law on incitement to homophobic hatred as an attack on civil liberty.
7. In short, while the free speech protection clause clearly falls within Article 10 of the European Convention on Human Rights (ECHR), the attempt to withdraw it runs contrary to Articles 18 and 19 of the United Nations Universal Declaration of Human Rights and to Article 10 of the ECHR.<sup>3</sup>
8. Not only does Clause 61 of this Bill mount a direct attack on freedom of speech: it also constitutes an indirect attack on the institution of marriage as the fundamental unit of human society.
9. This Bill is being deliberately used, therefore, as a Trojan Horse to press secular humanist demands which do not directly relate to the main proposals of the Bill, which are not at issue here.
10. In introducing Clause 61, the Government is seeking to reverse a provision of a law that was enacted only a year ago. Members of the House of Lords have expressed the belief that the Government’s approach is

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<sup>2</sup> *What We’ve Lost*, University College London. The report cites the Government’s attempt to remove free speech protection on this issue.

<sup>3</sup> Article 18 of the Universal Declaration of Human Rights states: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’ Article 19 states: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’ Article 10 of the European Convention on Human Rights states: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’

constitutionally improper, and described it as ‘truly extraordinary... as far as I know, without precedent’.<sup>4</sup>

11. This comes at a time when Parliament is already in deep disrepute among the majority of the people in our nation and there is a widening gulf between politicians and people.
12. Already Christians face investigation for simply expressing publicly their beliefs on the important social issue of sexual ethics.
13. Clearly, if the Government succeeds, through Clause 61, in removing protection for the right of free expression, that will enable those who wish to suppress comment on these issues to make malicious complaints and trigger police investigation of those who express different views.
14. Indeed, the clause opens the door for those who give views which the state deems to be unacceptable to be subject to police investigation, prosecution in a court of law and possible imprisonment. This is precisely what happens in totalitarian regimes – it is one of the defining characteristics of them. It happened in Nazi and Communist dictatorships. To some extent it is happening in Islamic states. Clause 61 would undermine the basic right of people in this nation to speak freely. There are no conceivable grounds upon which a person of good intent would support this measure.
15. Furthermore, the clause could have an entirely unintended consequence. The aggravation that it would cause to ordinary people in having to guard what they say in everyday conversation in their homes, clubs and pubs could easily cause substantial antipathy towards the ‘gay’ community to arise among the general public. This would be totally counter-productive.
16. The significance of what is being proposed is that it moves us towards a Police State, in which state bureaucracy suppresses the free expression of opinion and robs us of our fundamental human rights. This is not what the majority of people in this country want.
17. Moreover, if Clause 61 were to stand, it would be essential for the Government to issue substantial guidance to the public and the police on the specific words and phrases that teachers and the general public were not allowed to use. Without exact guidance, the work of the Crown Prosecution Service in determining whether a potential prosecution was

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<sup>4</sup> Lord Kingsland; Lord Waddington. See Appendix 1.

sustainable, and the work of Ofcom in determining what should and should not be permitted in broadcasting, would be made almost impossible. It would be almost impossible for the Association of Chief Police Officers to issue proper instructions to their staffs, yet it would be entirely improper for the Government to oblige local police commanders and members of the Police Federation to make judgements for themselves on what was and was not permitted. It would be unprincipled and a dereliction of duty for the Government, for want of precise definition in the legislation, to leave the precise definition of what was within the law and what was outside it solely to the judiciary.

18. Similarly, to attempt to use this Bill to legitimize euthanasia is unsatisfactory. If further steps are again to be taken to try to legalize euthanasia, they must be properly debated in Parliament and the country.
  19. We live in a time when, in addition to the greatest financial and social crisis this nation has known for many years, there is serious social alienation. There is no public demand for the inclusion in this Bill of highly controversial amendments and clauses such as Clause 61. They are widely seen as a dishonest and insidious way of ‘sneaking’ legislation through the parliamentary process. They reflect no honour on the Government.
  20. The present Government was elected by only 36% of the popular vote, and only 22% of the electorate, and since then its support base has further declined. The Government should therefore be far more ready to respond to genuine concerns about highly controversial clauses or amendments to the Bill. Rather than seeking to override those concerns, the Government should have the good grace to withdraw the controversial clauses.
  21. The free expression and public debate of religious and political convictions is fundamental to our human liberty and to our way of life. If the Government persists in robbing us of these human rights they will unleash a new and evil tyranny upon our nation.
  22. It is therefore imperative that Clause 61 of the Coroners and Justice Bill is withdrawn.
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## **Appendix I: Quotations from the House of Lords' Debate, 18 May 2009<sup>5</sup>**

**Lord Waddington:** *'My Lords, in deference to the noble and learned Lord,<sup>6</sup> I will not refer to the Bill as a ragbag, but he cannot deny that it is made up of a collection of unrelated measures... **Clause 61 repeals a provision that only last year the Government put on the statute book. That is truly extraordinary behaviour and, so far as I know, behaviour without precedent.***

*'...last May, there were many hours left for the amendment to be further considered by the Commons and for it to come back to us, but after a short while **we were told that the Government were not going to contest the measure further.** It is then said that the Government made it plain that, although accepting the amendment, they would seek the first opportunity to remove it. I have to tell your Lordships – I shall not mince my words – that that is simply untrue.*

*'Jack Straw asserted in the Commons that I had always made it plain that my purpose was to make a conviction for stirring up hatred on the grounds of sexual orientation more difficult. Of course, I have never said anything of the sort. What I have often said is that... I want what is outside the scope of the Bill to be made absolutely plain in order to avoid the scandals of the past and to protect freedom of expression. Not only have I said that, but Mr Straw's own notes on the clauses say that the free speech clause does not raise the threshold for the offence or make prosecutions more difficult.*

*'...the 2007 CPS Guidance on Prosecuting Cases of Homophobic and Transphobic Crime... says that **homophobia does not necessarily mean hatred of gays but covers mere dislike of their practices...** By that guidance the police are as good as encouraged to investigate incidents that amount to no more than a member of the public complaining that someone else has had the temerity to criticise homosexual practices.*

*'No decent person supports the stirring up of hatred, but **no reasonable person should object to peaceful criticism and discussion of sexual behaviour.** The law, as it stands with the free speech safeguard, makes the point with complete clarity. It is sad that the Government should be setting out to blur what is now clear and to remove a protection that events have already shown to be necessary.*

*'**They could not pick a worse time to behave in this way. There is, right now in this country, an intolerance of Christians of a sort that I never thought I would see.***

*'I fear that, if the Government get their way, not only will this intolerance grow, but those bent on silencing all who disagree with them [will] gain new strength, but many will take the revocation of the safeguard as a signal that voicing views on morality... could attract the attention of the police and that they would be wise to keep quiet. People will be reluctant to express their views, when the right to express views, including views that other people might not like, is one of the hallmarks of a free society.'*

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<sup>5</sup> The first three extracts are not in chronological order. Underlining is our emphasis.

<sup>6</sup> Lord Falconer.

**Lord Kingsland:** *'...the correct constitutional approach would have been to reverse, in another place, the amendment... and to have come back to your Lordships' House in the usual way. The Government chose not to do that. Therefore, I do not think it is constitutionally proper for the Government to raise the issue at the first opportunity after those events took place.'*

**The Bishop of Southwell and Nottingham:** *'Our concern is with the potential application of the law to restrict legitimate discussion and expression of opinion...'*

**Baroness Williams of Crosby:** *'It is a very difficult situation where, at second Reading, there is precisely one minute for every 20 clauses of the Bill... This is deeply disturbing...'*

**Baroness Finlay:** *'...we should not use this Bill as a Trojan Horse to try to revisit the issues that were looked at...'*

**Lord Moran:** *'I feel very strongly about the enormous importance of unrestricted freedom of speech in our country... it should apply to the protection of rational debate and discussion, and the expression of opinion on anything, including homosexual practices... I was concerned about reports that people who expressed their deeply held religious convictions on homosexuality had been harassed by over-zealous police officers who sometimes threatened them with jail.'*

*'It seems extraordinary that the Government should put this forward, so showing an apparent indifference to the preservation of free speech.'*

*'Liberty, an organisation which seeks to protect civil liberties and promote human rights for everyone, reportedly opposes the Government's approach on free speech grounds... the Government... should do all they can to protect and promote freedom of speech and never compromise on this.'*<sup>7</sup>

**Lord Hylton:** *'I fear that Her Majesty's Government may have caved in to pressure from the fashionable homosexual lobby. What evidence is there that this important defence, protecting freedom of expression and speech, has done the slightest harm? The burden of proof is surely entirely on the authors of the Bill... Innocent people should not have to be investigated unnecessarily. [We should] leave the Public Order Act 1986 as it is. Free speech is always being whittled away; we should rally to its defence.'*

## **Appendix 2: Hate Crime**<sup>8</sup>

The newly introduced concept of "hate crime" is already causing confusion, and will undoubtedly inhibit freedom to promulgate Christian faith.

In recent years Christians have begun to face threatened or actual police action after supposedly "being motivated by hate or prejudice" to commit a "hate incident". The

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<sup>7</sup> It is reported that a campaign to defend civil liberty has been backed by *The Guardian* newspaper, Amnesty UK and Liberty.

<sup>8</sup> *Our Christian Identity*, Maranatha Community, July 2008, p25.

guidelines issued by the Association of Chief Police Officers and the Home Office (which have never been approved by Parliament) effectively reverse the long-recognised presumption of innocence until proved guilty, as the “prosecution” do not have to meet a specific burden of proof.

The guidelines define a “Hate Crime” as:

*“Any incident, which constitutes a criminal offence, **which is perceived by the victim or any other person** as being motivated by prejudice or hate.”*

and a “Hate Incidence” (sic) as:

*“Any incident, which may or may not constitute a criminal offence, **which is perceived by the victim or any other person**, as being motivated by prejudice or hate.”<sup>9</sup>*

Defining a hate incident as any incident “*which is perceived by the victim or any other person as being motivated by prejudice or hate*” gives rise to the extraordinary, and untenable situation that on the basis of the testimony of any one person who may not have even been in the vicinity of the supposed offence, police must investigate. Failure to do so, according to the guidelines, constitutes “*secondary victimisation*”. (*Ibid p11*)

Alarming, this legislative threat to the “*freedom of thought, conscience and religion*” and the “*freedom of opinion and expression*” (*Articles 18 and 19, Universal Declaration on Human Rights*) has not been promulgated by elected and publicly accountable Members of Parliament. It is not a law, but a pseudo-law. In the words of one constitutional lawyer, “*When is a law not a law? When it’s made by the police. It looks like a law. It’s enforced like a law. But it’s not a law. So the police are acting unlawfully.*” (*Bennion, 2006, New Police Law Abolishes the Reasonable Man (and Woman)*)

This pseudo-legislation has had the effect of limiting people’s sense of freedom to express Christian views publicly.

The guidelines are also illogical and difficult to police. Perception is not a sound foundation for dealing with a criminal offence. Complaining of a homophobic hate incident might, in and of itself, constitute a faith-related hate incident. Such a situation is untenable.

17 June 2009

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<sup>9</sup>*Hate Crime: Delivering a Quality Service*, Home Office, March 2005, p9, emphasis added.

# maranatha

The Maranatha Community is a national movement and network of Christians in all denominations. Comprising thousands of active members of churches of all traditions, it is committed to healing, unity and renewal of faith. Formed 28 years ago, its members have been very deeply involved in care and relief work, and it has also taken the initiative in broad areas of national concern both in Parliament and throughout the country.

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