

*Introductory note by Francis Bennion*

The following article is about so-called hate crime, a term not known to the law. As the article says, this pseudo-law was invented by the police and a group of civil servants in the Home Office. Since publication of the article the latter have put on the Home Office website at <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/> the following, described as 'our definition of a hate crime':

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

Another development since the following article was published is that the police have caved in over the case of Joe and Helen Roberts, described on page 28 of the article. A press release at [http://www.christian.org.uk/rel\\_liberties/roberts\\_case/joint\\_statement\\_22dec06.pdf](http://www.christian.org.uk/rel_liberties/roberts_case/joint_statement_22dec06.pdf) says:

'Wyre Borough Council and Lancashire Constabulary have apologised to Mr and Mrs Roberts for the way the incident was handled and have revised their policies and procedures to ensure that the rights of all parties are protected. This includes the right of free speech and the right to protect vulnerable groups. The Constabulary recognises the need to investigate incidents appropriately. The Roberts' have agreed to withdraw their claim on the basis that they will be paid £10,000, which will be donated to charity by them, and legal costs.'

David Green, Director of the think-tank Civitas and author of *We're (Nearly) All Victims Now* discusses hate crime in an article on the Police Federation's website ([http://www.polfed.org/page12\\_13\\_hear\\_no\\_evil\\_111206.pdf](http://www.polfed.org/page12_13_hear_no_evil_111206.pdf)).

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## **New Police Law Abolishes the Reasonable Man (and Woman)**

**FRANCIS BENNION\***

### **Introductory**

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.

A whole package of this unlawful law is contained in a 104-page booklet *Hate Crime: Delivering a Quality Service*. Real laws are promulgated by Parliament. This pseudo-law was promulgated by the police and a group of civil servants. The chief non-crime it parades is a "hate incident". Another is "hate crime repeat victimization", which also applies to hate incidents. These two are causing a lot of trouble, as we shall see.

Proper English law requires of citizens conduct no better than that considered reasonable by the ordinary person. In the 1930s a wise Law Lord (Lord Macmillan) put it this way:

"In the daily contacts of social and business life human beings are thrown into, or place

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themselves in, an infinite variety of relations with their fellows; and the law can refer only to the standards of the reasonable man . . .”<sup>1</sup>

Today’s Judge would add a reference to the reasonable woman, but otherwise this still represents what the real law requires, except where it imposes a higher standard in

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special circumstances such as strict liability under the rule in *Rylands v Fletcher*<sup>2</sup>. This higher standard has not been imposed by the real law in relation to so-called hate crime (a name invented by the police), but the police are behaving as if it had.

The duty of chief police officers is to enforce the law, not go beyond the law. That’s called police harassment. Lord Denning’s concern for the public interest was shown in a famous decision of his concerning this duty of enforcing the law. The Metropolitan police had decided on a local policy of not prosecuting shoplifters (more attempted law-making by the police). The matter came before Lord Denning. He held that it is the duty of every chief police officer to enforce the law, adding:

“He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself.”<sup>3</sup>

That description of the duty of chief police officers would now be modified in the light of the creation of the Crown Prosecution Service by the Prosecution of Offences Act 1985, but otherwise holds good.

### **Feeling collars**

Chief police officers have formed a society, the Association of Chief Police Officers (ACPO). In relation to hate crime this body has taken upon itself to widen the duties of police officers well beyond what the law requires, to the annoyance of the aforesaid honest citizens. When it comes to so-called hate crime they may no longer “go about their affairs in peace” as Lord Denning put it. On the contrary, they are liable, on the flimsiest grounds, to get their collars felt by the Filth (as some call them). A Balliol undergraduate recently spent a night in a police cell for saying a police horse was gay. Here are details of half-a-dozen other recent examples of so-called “hate incidents”.

*Anne Robinson* North Wales police spent nearly £4,000 on an inquiry into anti-Welsh comments made by Anne Robinson on the BBC show *Room 101*, which asks guests to list their pet dislikes. She described the Welsh as “irritating and annoying”, asking: “What are they for?” The director-general of the BBC became the target of a police investigation into this, which came to nothing.<sup>4</sup>

*Ken Livingstone* The mayor of London, Ken Livingstone, is in trouble for allegedly likening a Jewish journalist to a Nazi concentration camp guard. Complaints from the Jewish board of deputies led to formal charges. If found guilty Mr Livingstone faces a five-year ban, suspension from office, censure or being forced to apologise or undergo “training”.<sup>5</sup>

*Tony Blair* North Wales police recently interviewed Lance Price, the former Downing Street assistant to the Prime Minister Mr Tony Blair, after he reported in his published diaries Mr Blair’s reaction to poor Labour Party results in the 1999 Welsh assembly election. He quoted the Prime Minister as saying “f\*\*\*\*\* Welsh” repeatedly as the election results arrived. A member of the public complained about this to the police. A police spokesman said they were

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<sup>1</sup> *Donoghue v Stevenson* [1932] AC 562 at 619.

<sup>2</sup> (1866) LR 1 Ex 265.

<sup>3</sup> *R. v. Metropolitan Police Comr., ex parte Blackburn* [1968] 2 Q.B. 118 at 136.

<sup>4</sup> *Sunday Times Review* (Online) 15 January 2006.

<sup>5</sup> *Ibid.*

obliged to investigate whether these comments constituted “incitement” under the Public Order Act. After looking into it the police solemnly decided they did not.<sup>6</sup>

*Joe Roberts* Wyre Borough Council were among several local authorities running a campaign to offer assistance to gay and lesbian people so as to win the Navajo Charter Mark for Equality & Diversity. This involved the display of gay rights leaflets on council premises. Mr Joe Roberts, aged 73, felt this offended his Christian beliefs, as did the use of the council’s theatre for ceremonies under the Civil Partnership Act 2004. He told the council this, and asked if he could display his Christian literature alongside the gay rights leaflets. The council reported Mr Roberts to the police, who visited him at his home. His account of the visit was:

“They warned me that being discriminatory and homophobic is in line with hate crime. The phrase they used was that we were ‘walking on eggshells’. I asked the officer, if I phoned the police with a complaint that the council were discriminating against Christians would he go to interview them?”

A council spokesman said Mr Roberts and his wife Helen had “displayed potentially homophobic attitudes”, adding:

“The council referred this matter to the police for further investigation with the intention of challenging attitudes and educating and raising awareness of the implications of homophobic behaviour.”

Lancashire police said its visit to the family home was a matter of routine after a complaint from the council. A police spokesman added: “Words of suitable advice were given and we will not be taking any further action.”

The local Labour MP Joan Humble said the council’s decision to call the police was heavy-handed. She added: “The council should have replied to Mr and Mrs Roberts to explain their policy and allay their fears about the nature of the literature.”<sup>7</sup>

*Iqbal Sacranie* Sir Iqbal Sacranie, head of the Muslim Council of Britain, said on BBC Radio 4’s PM programme that the practice of homosexuality is not acceptable, adding:

“Each of our faiths tells us that it is harmful and I think, if you look into the scientific evidence that has been available in terms of the forms of various other illnesses and diseases that are there, surely it points out

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that where homosexuality is practised there is a greater concern in that area.”<sup>8</sup>

Following a complaint by a member of the public the Metropolitan Police launched an investigation into this broadcast, then passed the file to the Crown Prosecution Service, which advised that Sir Iqbal had no case to answer. He commented:

“I can see that a balance is required. But before announcing an investigation, the police can certainly communicate with the person complained of and look at whether it is clear-cut before they take the matter further.”<sup>9</sup>

*Lynette Burrows* Lynette Burrows is a well-known author, and mother of six children. She said in a discussion programme on BBC Radio Five Live that placing boys for adoption with two homosexual men was as obvious a risk as placing a girl with two heterosexual men. The next day she was contacted by a policewoman who said that a homophobic incident had been registered against her. Ms Burrows asked if homophobia was a crime, and was told it was not. She said:

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<sup>6</sup> Ibid.

<sup>7</sup> This account is based on a report by David Sanderson in *The Times*, December 23 2005.

<sup>8</sup> BBC News Online, January 3 2006.

<sup>9</sup> *The Mail on Sunday*, January 15, 2006.

“The constable only told me that it wasn’t a crime because I asked her straight out. Otherwise I could have been left thinking, ‘Well, I must have missed this legislation, it must have gone through Parliament without me noticing, and now I’ve broken the law’.”<sup>10</sup>

Ms Burrows believes we now live in a police state. “We really do”, she said. “Somebody, somewhere, can decide that they don’t like your opinions, and in response the police will either lean on you or threaten you. It is insidious, it really is.”<sup>11</sup>

Now I am worried myself. Not only do I agree with the views expressed by Ms Burrows but I have said so in print. I had the following letter published in this journal six years ago:

“Raymond Knowles (article, 13 November 1999) ‘refrains from expressing a view’ about the *Times* interview with Dame Elizabeth Butler-Sloss headed ‘Senior judge backs adoptions by gays’ (16 October 1999). I do not know why he deprives us of his view, which I for one would have liked to have.

I myself have not been so backward in coming forward, and my criticisms are expressed at length in an article in the current *New Law Journal* (12 November, 1999). In that I cite Sir William Blackstone’s dictum that the independent judiciary are ‘the main preservative of the public liberty’ so that their duty is to resist fashionable trends where they contravene the public interest. Perhaps I might be allowed to give the following extract from my article here-

‘In relation to children, the Family Division is the custodian of the Crown’s ancient *parens patriae* jurisdiction. This humane doctrine has for centuries manifested the royal concern for the welfare of those subjects too young to fend for themselves. In recent legislation Parliament has supported this view, stating in various Acts that in making court orders the interests of the child must always be treated as paramount. Are the interests of the child being treated as paramount when two gay men are indulged in their wish to adopt a young boy?’<sup>12</sup>

Will I now get my collar felt by the Filth?

### **The new Police puritanism, or Dogberryism *in excelsis***

The *Oxford English Dictionary* ascribes the following meaning to the adjective “puritan”:

“Applied, chiefly in reproach or ridicule, to one who is, affects to be, or is accounted, extremely strict, precise, or scrupulous in religion or morals.”<sup>13</sup>

That seems an apt description of these 21<sup>st</sup> century Dogberries<sup>14</sup> who lean on honest citizens for expressing an opinion, who tell them they are “walking on eggshells” and give them “words of suitable advice” at the behest of a jumped-up council official. We had better watch out I think, and check this nonsense before it gets completely out of hand.

Where does it come from? I have done some investigating, and run it down to the 104-page booklet mentioned above, published jointly by ACPO and the Home Office Standards Unit. This is Dogberryism *in excelsis* all right. It begins with a portentous and exaggerated statement by the Chair of the ACPO Race and Diversity Working Group:

“Hate crime scars its victims beyond the legacy of any physical injury. If it is not professionally and successfully countered by the agencies of social control, its

<sup>10</sup> Although homophobia is not itself an offence it can lead to an increased sentence on conviction for something that is an offence: Criminal Justice Act 2003 s 146.

<sup>11</sup> *Sunday Times Review* (Online) 15 January 2006.

<sup>12</sup> 163 *Justice of the Peace* (1999) 931.

<sup>13</sup> Second edition (1989).

<sup>14</sup> The OED says of “Dogberry” “The name of a foolish constable in Shakespeare’s *Much Ado About Nothing*, hence, allusively, an ignorant consequential official”. It quotes the *Daily Telegraph* for December 7 1883: “Is this firm government? It seems to us Dogberryism *in excelsis*.”

pervasive effect is to create alarm and fear as it chips away the mortar of social cohesion.”<sup>15</sup>

Here it is relevant to note that Human Rights law protects freedom of speech and it protects freedom of religious belief, but it says nothing whatever about freedom from having one’s feelings hurt by nasty people saying unpleasant things about one. Even members of what Mary Robinson recently referred to as the human rights community<sup>16</sup> proceed on the basis of the old nursery rhyme:

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Sticks and stones may break my bones  
but words will never hurt me.

The note struck by the egregious Chair is reinforced in a Foreword by the Director of the Police Standards Unit:

“Hate crimes where people are targeted because of the nature of their diversity affects not only the primary victim but also the wider family and sometimes communities. It is a serious crime often committed against victims who are particularly vulnerable due to their individual circumstances. The Police Service . . . needs to take a holistic approach in respect of the manner in which we deal with such victims and raise the confidence levels amongst these groups in their Police Service. I would recommend Forces revisit their policies and tactical options particularly in relation to Repeat Victimisation with a clear emphasis on enforcement prevention and *intervention at the earliest stages*.”<sup>17</sup>

The italicized words in the above passage give a grim clue to what is going on here. In obedience to this booklet, officers are jumping in before they have a chance to assess what may be a trifling or even mischievous complaint. Here are ten further worrying passages from the booklet, which I have numbered for convenience.

1. “It is a mark of the civilisation of a liberal democracy that it deploys the resources of the state to protect the vulnerable. As part of those resources, the police service has specific responsibilities for the protection of life, prevention and detection of crime and the preservation of order. How well it protects those particularly vulnerable to hate crime is a mark of sophistication in the thinking and action of a contemporary police service.”<sup>18</sup>
2. “It is now acknowledged that some incidents, in themselves not grave in the hierarchy of crime or disorder, have a significant impact on individuals, their families and particular communities. An inadequate police response has therefore a corresponding impact on the trust of that community and similar communities elsewhere. The focus has therefore rightly shifted to external impact from concentration on the internal effect on a police service’s resources or media image.”<sup>19</sup>
3. “A Hate Incident is defined 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>20</sup>
4. “A Hate Crime is defined as: Any hate incident, which constitutes a criminal offence, *perceived by the victim or any other person*, as being motivated by prejudice or hate.”<sup>21</sup>
5. “It is vitally important to note that all hate crimes are hate incidents. However some hate incidents may not constitute a criminal offence and therefore will not be recorded as a

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<sup>15</sup> *Hate Crime: Delivering a Quality Service*, p 5.

<sup>16</sup> BBC Radio Four “Today”, December 5, 2005.

<sup>17</sup> *Hate Crime: Delivering a Quality Service*, p 6 (emphasis added).

<sup>18</sup> Para. 1.2.1.

<sup>19</sup> Para. 1.2.7.

<sup>20</sup> Para. 2.2.1. (emphasis added)

<sup>21</sup> Para. 2.2.2. (emphasis added).

hate crime. For example, making inappropriate reference to the colour of someone's skin, in a non-confrontational social setting, may well be perceived as a racist incident. However there may be insufficient evidence that it would constitute a racist crime."<sup>22</sup>

6. "The police are responsible for data collection in relation to hate incidents and hate crimes. It is important that this data is comprehensive and sufficiently robust to establish trends and inform an intelligence driven response."<sup>23</sup>
7. "*The perception of the victim or any other person* is the defining factor in determining a hate incident. The apparent lack of motivation as the cause of an incident is not relevant as it is *the perception of the victim or any other person* that counts. The prejudice or hate perceived can be based on any identifying factor including disability, age, faith, sexual orientation, gender identity and race. A victim of a hate incident does not have to be a member of a minority group or someone who is generally considered to be vulnerable. For example, a heterosexual man who is verbally abused leaving a gay bar may well perceive that it is motivated by homophobia although he himself is not gay. Therefore effectively anyone can be the victim of a hate incident, including people working inside the police service."<sup>24</sup>
8. "The deciding factor lies in *the perception of the victim or any other person*."<sup>25</sup>
9. "For data recording purposes the police are obliged to record hate incidents where *the perception of the victim or any other person* that the motivation for the prejudice or hate is based upon:
  - Race
  - Sexual orientation
  - Faith
  - Disability."<sup>26</sup>
10. "The agreed ACPO/PSU definition for hate crime repeat victimisation is: Where a person or immediate family member suffers more than one hate incident in a 12 month period following the date the first crime was reported."<sup>27</sup>
11. "If, as victims of hate crimes or incidents, individuals experience indifference or rejection from the police this in effect victimises them a second time. Secondary victimisation takes place whether or not the police are indifferent or reject the victims if that is how the victim feels about the interaction. Whether or not it is reasonable for them to feel that way is immaterial. *The onus falls entirely on the police to manage the interaction to ensure that the victim has no residual feelings of secondary victimisation*."<sup>28</sup>

### **Discarding reason**

The main conclusion from the above ten passages is that the police have discarded reason. No less than six times it is rammed home that the test is not the perception of the reasonable man or woman (our law's true rational test) but

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the perception of the so-called victim (who may not be a victim at all) or any other person. It is explicitly stated that whether or not it is reasonable for them to feel that way is immaterial.

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<sup>22</sup> Para. 2.2.3.

<sup>23</sup> Para. 2.2.4.

<sup>24</sup> Para. 2.2.6 (emphasis added).

<sup>25</sup> Para. 2.2.7 (emphasis added).

<sup>26</sup> Para. 2.2.8. (emphasis added)

<sup>27</sup> Para. 2.4.1.

<sup>28</sup> Para. 2.5.1 (emphasis added).

Now it would be bad enough to make the whole matter turn on the possibly irrational reactions of a so-called victim. But what on earth were the compilers of this booklet thinking of when they dragged in *any other person*, whether connected with the matter or not?

I can tell you where that curious notion came from. It came from the Stephen Lawrence Inquiry report<sup>29</sup>, recommendation 12.<sup>30</sup> Indeed from that well-meaning report into a wicked racist murder sprang all the excesses described in this article. Righteous indignation can have much to answer for.

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<sup>29</sup> Cm 4262-I.

<sup>30</sup> See *Hate Crime: Delivering a Quality Service*, para. 2.3.2.