

God knows the answer

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Despite secular Australia's best efforts, Christmas and catastrophes like the Boxing Day tsunami provoke public anxiety about religion: whether its rituals should be observed at all - in school nativity plays, or even more; and whether or not God is just or merciful, as to which no right judgment can be made.

Just before Christmas 2004, too, a Victorian judge brought down his long-awaited decision on complaints of religious vilification first brought in 2002 by Victoria's Islamic Council against the fundamentalist Catch The Fire Ministries. He found that Pastor Scot had, in breach of Victoria's new Racial and Religious Vilification Act, incited hatred against Muslims. An unholy row then broke out over this 'infringement' of religious freedom and/or freedom of speech. As one who does not believe that any 'anti vilification' legislation deals effectively with hate speech – though I drafted them as chairman of the Law Reform Commission in WA in 1990, and administered them as Commissioner for Equal Opportunity in two states, and a HREOC hearings commissioner - I have a suggestion for reform.

Most don't know the facts of the case. The Judge found Pastor Scot was an unreliable witness, which is just short of calling him a liar, who had selectively quoted the Qu'ran, as if it could only be read literally; claimed that it promoted domestic violence and that women be treated as chattels of derisory value, and represented the extreme views of a Gulf sect as those of all Muslims (as if Amish, Anglicans and Catholic Christians equally rejected modern technology). He called Muslims liars, demons, terrorists, warmongers, a threat to democracy through their commitment to violence, terror and large families, and even that they were 'getting visas' as refugees through shipping themselves to Australia from the very countries where Christians were being 'raped tortured and killed' and 'What stops the Muslims from doing the same in Australia?'

I could go on but you get the sickening drift.

The Pastor was not entitled to the statutory defence that he was acting reasonably in good faith, because of his misleading testimony about his publications and motivations. As a British court said in 2001 in dismissing David Irving's defamation action against a journalist for calling him an apologist for Hitler and a Holocaust-denier, one who manipulates and misrepresents his sources is neither a scholar nor entitled to professional respect.

That said, anti vilification policy needs to be revised: this years-long endurance trial did nothing to right the wrong done to Australian Muslims.

Vilification is a public act that associates people with evil, or offensive or dangerous behaviour because of their race or religion and encourages intolerance and anti social acts. It intimidates or frightens targets that may already be vulnerable because of experience of persecution, unpopularity and minority status. It takes away their confidence to participate in public life; causes distress, pain, psychological damage and illness, encourages distrust and appeals to our instinctive desire as a group to reject, detest or despise difference, often expressed as a fear that our culture cannot survive 'too much' difference.

We have two options: to build on trust and goodwill, or try to control the expected bad behaviour of others. If the former, expecting fellow citizens to reciprocate if we behave generously towards them, our response would be to emphasise communication, education, understanding and agreement, as current anti discrimination laws do. But this does not work for fanatics and fundamentalists, bigots and bullies: these, we may have to coerce and deter.

The primary objection to anti vilification laws is, as John Laws claimed after he was directed to apologise for on-air 'poofter-bashing,' that they infringe 'freedom of speech' – in his case, ridicule of a gay couple (the law in NSW covers homosexual vilification). Others like Mr Scot would squat under the umbrella of 'genuine religious belief'. Yet others, including some victims, believe these laws encourage sneaky vilification and discrimination, or trivial complaints by the oversensitive or manipulative. Another view is that these laws give too many 'outs' for blatant racists and religious crusaders, and there is some truth in that.

There will always be a need to control hate groups that deliberately incite serious hatred. Most racial and religious vilification is not of this magnitude. If we fear 'too much' difference, we need to strengthen our culture, through effective conversations and facing what we fear.

There should be a range of responses to public vilification, not a single remedy, just as there is no single way to communicate effectively or protect vulnerable people in each circumstance. More effective communication means evoking agreement in the listener, because the speaker calls on shared experience, familiar values and standards of behaviour and palpable sincerity. That is why resourcing, supporting and enabling targets to 'speak back' should be the remedy of choice.

The best way to enable hate speech targets to counter, contradict and 'speak back' in their own voice to those who vilify them, in a way that is as 'valid' to the listener and that increases their own confidence and conversational presence in the community, is not through a complaint or a court case. What should be tried is giving an independent statutory office such as the various Equal Opportunity or anti discrimination bodies in the states, or a court or tribunal, the power to authorise the use of community resources, with or without an application by a victimised group, to set the record straight, promptly. They could approach the target, not wait to be approached, and advise them on the best way to reach the audience affected by the public lies – open up effective access to the same paper or newsletter, publish the right ads, design and place the posters, provide TV or radio talkback – whatever worked.

It would only cover serious vilification against targets 'silenced' by opponents who were more numerous and articulate, better financed and more media-savvy, and who were already disadvantaged and discriminated against. That would rule out bullying by campaigning, already influential groups or overuse by the oversensitive.

The advantage would be its immediacy: the vilifier would not have to cooperate and there would be no need to prove responsibility or punish anyone. It would encourage more, not less, discussion. The relative power of the hate speaker could be directly challenged. There would be more 'facts' in the conversation. Victims own voices would contradict the 'truth' claims of hate speakers and their own validity.

How might it work in this case? Muslims wounded by gross misinformation could directly contradict Pastor Scot's claim to 'validity' by distributing the facts in the most effective way, to the same people as went to his seminar, read his newsletter and his photocopied 'book', or published articles, whether he liked it or agreed or didn't agree – as an entitlement, with the support of the state. No court case, no year of waiting for an outcome, no trumpeting of win or lose. Religious freedom is fragile, but serious vilification undermines all faiths: it's time for a much more nuanced response.

About the author

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