Goggins A Gogo

FRANCIS BENNION*

Page 87

Introductory

This continues the theme of my previous article, which dealt with police handling of hate crimes and incidents[1]. In it I cited a remarkably erudite police officer who told the subjects of a hate complaint that they were "walking on eggshells". I did not point it out in the article, but it occurred to me later that this was a reference to King Agag in the Old Testament's First Book of Samuel. Lord Denning once said that "like Agag (1 Samuel XV, 32) the court must tread delicately"[2].

One vowel different is the adverb *agog*. The Oxford English Dictionary [3] gives as an example of its use "to set men agog upon mischief". That is what the Home Secretary Charles Clarke did to his underling Paul Goggins when he gave him charge of the Bill dealing with religious hatred, which is my subject this time. (Fortunately the House of Commons rose to the occasion and told Goggins where to get off.) Perhaps one should travel a step further to *a gogo*, defined by the OED as "in abundance, galore, no end of".

Since he was appointed by Mr Blair as a junior Home Office minister I have several times had occasion to tilt at Mr Goggins. It happened over the Bill for the iniquitous Sexual Offences Act 2003[4]. It happened once over the Bill I am now discussing, the Racial and Religious Hatred Bill.[5] Now it has happened again, once more over this much-hated attack on free speech. A cause of my dismay is the following radio pronouncement on the Bill by the egregious Mr Goggins, which is wrong on three counts (indicated by italics):

> "Well of course *the police have to investigate when complaints are made* . . . Guidance which accompanies the Bill . . to the Crown Prosecution Service and the Police in the way these investigations are carried out will need to be made very clear and *I will want to do that* in consultation with a range of *stakeholder* groups . . ."[6]

Other grounds for complaint against Mr Goggins

---

* Francis Bennion is an author, constitutional lawyer and draftsman of state constitutions. A former UK Parliamentary Counsel, he is currently a member of the Oxford University Law Faculty and a Research Associate of the Oxford University Centre for Socio-Legal Studies.

[1] F A R Bennion, "New Police Law Abolishes the Reasonable Man (and Woman)", 170 JP (January 21, 2006) 27.

[2] *Taylor v Co-operative Retail Services Ltd* [1982] ICR 600 at 602. King Agag's delicacy did not in fact avail him, for he was at once despatched as a sacrificial offering.

[3] Second edition, 1989.

[4] See F A R Bennion, *Sexual Ethics and Criminal Law* (Oxford, Lester Publishing 2003); F A R Bennion, "The UK Sexual Offences Bill: A Victorian Spinster's View of Sex" 12 *Commonwealth Lawyer* (April 2003), 61; F A R Bennion, "The Meaning of 'Sexual' in the Sexual Offences Bill" 167 JP (2003) 764; F A R Bennion, "Criminalising Children under the Sexual Offences Bill", 167 JP (2003) 784; F A R Bennion, "*Sexual Offences Act - Briefing on Sexual Offences by Children* (3rd edn, Oxford, Lester Publishing, 2003).

[5] F A R Bennion, "Gilding the Lily on Religious Hatred" 14 *Commonwealth Lawyer* (December 2005) 35.

[6] *Sunday*, BBC Radio 4, January 29 2006.

emerged in the Commons debate on the Bill which took place on January 31, when the Opposition pulled off a brilliant ambush. I will discuss these later. First I want to deal with that word *stakeholder*.

Misuse of "Stakeholder"

When Mr Goggins spoke of being "in consultation with a range of stakeholder groups" what did he mean? Apparently he meant consulting people who are interested. Why didn't he say this? Because he is in the clutches of a silly piece of Whitehall jargon. Truly a stakeholder is a person who holds the stake when two people bet with each other. What has that got to do with how this Bill is to be enforced when it becomes an Act? Nothing. So what is going on? Aren't we supposed to be in the age of plain English?

Of course it's a silly point, not worth spending time on. But like the bit of grit in your shoe it irritates. And it doesn't go away. Last April I fired the following at the Home Office:

> In her speech on clause 110 of the Serious Organised Crime and Police Bill (Lords Hansard 6 April 2005, column 757), Lady Scotland used the word "stakeholder" three times. It did not seem to have its proper meaning of a person who holds the stake while a contest between two other people is being decided, and I do not know what it was supposed to mean. As a former Parliamentary Counsel I am seriously interested in this point and hope I may be given an explanation.

A reply from one Ben Morgan said Baroness Scotland "attributed to the term its Oxford English Dictionary definition as 'a person with an interest or concern in something'", adding that in this sense it is in widespread use across Whitehall to describe the organisations and people who have an interest in Government initiatives, legislation or other matters. I retorted that from the two words of which it is composed this word indicates very strongly a meaning involving a genuine property interest. I said that the Oxford English Dictionary (2nd edition) has the following as its sole definition-

> (a) one who holds the stake or stakes of a wager, etc.;
> (b) one who has a stake (sense 1c) in something, esp. a business.
> Sense 1c of "stake" is:
> c. fig. to have a stake in (an event, a concern, etc.): to have something to gain or lose by the turn of events, to have an interest in; esp. to have a stake in the country (said of those who hold landed property). Hence spec., a shareholding (in a company).

I said to Mr Morgan:

> "You say the term is in widespread use across Whitehall to describe the organisations and people who have an interest in Government initiatives, legislation or other matters. The entire population has an interest of this kind, so it is not very informative to use the term in this sense and I wish it would be discontinued."

Mr Morgan did not reply further. I complained to Sir Andrew Turnbull KCB, CVO, Head of the Home Civil Service, but he did not reply at all. I left it there.

Civil servants are to blame for the spread of this etymological nonsense because they write briefs for people like Paul Goggins, who read them out in Parliament without bothering their heads about the etymology.

Must the police investigate every complaint?

In my previous article I gave details of half a dozen cases where the police pestered a person just because someone had lodged a hate complaint against them. In the Commons debate on the Racial and Religious Hatred Bill the Conservative MP Ann Widdecombe said of the cases I mentioned:

> "All those examples have one thing in common. Someone somewhere decided to take

> offence at what had been said. That person made a complaint to the police, who believe—erroneously, in my view—that it is sufficient for a complaint to be made for it to have to be investigated. I am 58 and I have often been insulted in my life. I have no doubt whatever that I will be insulted again, but I shall not think that the remedy for feeling insulted is to go off whingeing to a policeman. We already live in a society in which things that would have been unthinkable a few years ago are a daily reality: a society in which, if one simply speaks to a viewpoint, one can end up on the wrong end of a police investigation. That is not the Britain that I want to live in, and this Bill makes it more likely that that effect will be increased, not decreased."[7]

Several MPs commented on the chilling effect produced by this police pestering. The Labour MP Mark Fisher said:

> "The damage is done as soon as an offence is reported; that is when the suppression of views takes place . . . There will be a rash of mischievous and extremist accusations, attempted prosecutions and reports to the police."[8]

The shadow Attorney General Dominic Grieve MP said the supposed safeguards in the Bill would not prevent police from knocking on people's doors and saying: "You'd better be careful, we heard what you had to say in your preaching hall last week and we didn't like it".[9] He commented that the bill would give a weapon to every malevolent [*sic*] who wished to browbeat other groups that might criticise him, adding:

> "Many people would disagree with the remarks made by Sir Iqbal Sacranie[10], but they were clearly honestly made and part of his belief. His fate in the past few weeks
>
> *Page 89*
>
> —the fact that he was left in a position of uncertainty for several days while police investigated his remarks—is, I am afraid, something of which we shall see a great deal when the Bill is on the statute book. The Bill will be a weapon in the hands of every extremist group, whether religious or secular, with which to browbeat its opponents."[11]

It is not only a complaint that may land a person in trouble; a mere objection may be enough. The Rev. Ian Paisley said in the debate:

> "There was a recent case involving a minister of religion. He was standing in the open air reading the birth record of our Lord Jesus Christ in the gospel of Matthew, as he had done for years. A police officer said to him, 'You must stop reading this because it has been objected to'."[12]

A further grave problem is that there is evidence of police differentiation favouring some causes over others. Contrast the case mentioned by Mr Paisley with what happened when a person objected to a London procession of Muslims displaying placards with bloody threats of murder in protests against cartoons of the Prophet on February 3. The placards were not removed by the police, and the procession was allowed to continue displaying them. A policeman was reported as telling a protester: "Don't worry. We are photographing them"[13]. That would not be much use, since many were masked.

Ought the police to allow a procession to march through the streets of London carrying placards with such messages as "Behead those who insult Islam", "Massacre those who insult

---

[7] Commons Hansard, January 31 2006, col. 228.
[8] Ibid, cols. 226-227.
[9] Ibid, cols. 209-210.
[10] See my previous article.
[11] Commons Hansard, January 31 2006, col. 206.
[12] Ibid, col. 191.
[13] *The Guardian*, February 4 2006.

Islam" and (a reference to the suicide bombers of the July 7 London attack) "Europe you will pay, fantastic 4 are on their way!!!"?[14] A police statement on February 5 said:

> "[The protesters] were well natured [*sic*] and in the main compliant with police requests. Arrests, if necessary, will be made at the most appropriate time . . . Specialist officers were deployed . . . to record any potential evidence . . . All complaints will be passed to the public order crime unit for further investigation."[15]

The police requests should surely have included one requiring the unlawful placards to be removed. The most appropriate time for an arrest is when a grave offence is being committed in the presence of police officers, not some later time when it is all over.

So is Ann Widdecombe right in saying that the police believe erroneously that it is sufficient for a complaint to be made for it to have to be investigated? They certainly believe it, in a selective way. Their Home Office political boss Mr Goggins believes it. I quote him above as saying "Well of course the police have to investigate when complaints are made". In the Commons debate he said: "Of course, if there is a complaint the police must investigate it."[16]

In fact this is untrue. The mere fact that a person has made a complaint to the police in relation to an alleged hate incident does not automatically mean that a police investigation, involving questioning of the alleged offender, must be initiated. The police should first ask themselves whether the complaint has any substance, or is merely frivolous, misconceived, malicious, or otherwise not worthy of being treated seriously and taking up police time. Before approaching the subject of the complaint it is their duty to consider carefully the evidence proffered by the complainant. Only if it gives rise to genuine suspicion that a criminal offence has been committed should the police proceed further. This is in fact how the police actually behave – unless it suits them to do otherwise.

Unfair protection for Jews and Sikhs?

The basic reason given for the Bill has been that followers of some religions, but not others, are protected by race relations law, and this is unfair. Mr Goggins said:

> "I emphasise that current legislation on incitement to religious hatred protects Jews and Sikhs. We have always sought to ensure that there is parity in the law so those who follow other faiths—including Christians, Hindus, Muslims and people of no faith at all—are also covered."[17]

There is a profound misconception here. A Jew is protected by race relations law on racial, not religious grounds. If one who is a Jew by birth changes his religion, the race relations law does not protect him in his new faith. Benjamin Disraeli was born in London in 1804. His father, Isaac D'Israeli, had Benjamin baptized into the Church of England when he turned 13 - in spite of the boy's mother's desire for him to continue practising the Jewish faith. If alive today Disraeli would not be protected by race relations law against attacks on his religion any more than Muslims or Hindus would. As Mr Grieve pointed out in the Commons debate, the racial hatred laws do not exist to protect the beliefs, but the racial and ethnic identity, of the believer.[18] Another Conservative MP, Edward Leigh, said that Jews and Sikhs are protected only by racial laws: there is no protection for the religions of Judaism and Sikhism.[19] Dr Julian Lewis (Conservative) said:

> "If a group of people following a particular form of undesirable activity set themselves up as a cult or religion, could they not use the Bill to claim protection from criticism? It is gradually dawning on moderate Muslims just how restrictive the Bill could be. For

[14] Photograph in *Daily Mail*, February 4 2006.
[15] *The Guardian*, February 6 2006.
[16] Commons Hansard, January 31 2006, col. 196.
[17] Ibid, col. 200.
[18] Ibid, col. 213.
[19] Ibid, col. 207.

> instance, a group or people with bizarre sexual preferences might say that those practices were part of their religion. [Hon. Members: 'Like the Liberal Democrats'.][20]

The former Lord Chancellor Lord Mackay of Clashfern

Page 90

made a similar point in an earlier debate on the Bill when he pointed said it would be equally an offence under the Bill to incite justified hatred against a follower of an extremist Islamist sect since "nothing in the Bill would prevent a perversion of Islam being just as much a religion as Islam itself".[21]

Stirring up hatred

Another basic error made by Mr Goggins was expressed by him as follows:

> "People will not be caught by the Bill if they use language about their belief, or other beliefs, even to the point at which the language is abusive and insulting, if they do not intend to stir up hatred."[22]

Before he entered politics Mr Goggins was a social worker. If he had been a lawyer he would know that a fundamental rule of the law is that a person is taken to intend the likely consequences of his acts. If his act is to vilify a particular religious belief, a likely consequence is that he will be taken to vilify holders of the belief: it is two sides to one coin. So to stir up hatred against a religion is to stir up hatred against followers of that religion; since the two are inseparable. As Anne Main MP (Conservative) said: religious practitioners and faith go together—one cannot criticise one without criticising the other[23]. Mr Grieve said that attacking the belief must undermine the status of the adherent. "That is the Bill's most fundamental flaw".[24] As the columnist Polly Toynbee said: "Calling people's religion a dangerous and misogynist primitive fetish feels to them like incitement to hatred".[25] The comedian Rowan Atkinson said:

> "I have always been sceptical of the benefits of separating the concepts of beliefs and believers in that I have never believed that you can attack one without attacking the other . . . One should try to look at it from a comedian's or dramatist's point of view. A comedian is unlikely to attack a religion by pure reference to religious practices or beliefs: he is going to attack it by reference to the people who believe or follow those practices. All jokes and drama have to characterise a situation in human form. Knowing that there is a law that states that it is a crime to 'threaten, abuse or insult a group of people defined by their religion' remains, I am afraid to say, very intimidating."[26]

I will leave the last word on this point with the Liberal Democrat MP Dr Evan Harris: "we blame Nazis for Nazism or communists for communism . . .".[27]

Guidance from Goggins

There are other points on which I could attack Mr Goggins over this pernicious Bill – for example the fact that although repeatedly challenged, on numerous occasions, to cite examples of incidents where the Bill would fill a gap in the law he managed to produce only one.[28] However flogging a dead horse becomes tedious and I will bring the catalogue to a halt

---

[20] Ibid, col. 211.
[21] Lords Hansard, October 11 2005, cols. 170-171.
[22] Commons Hansard, January 31 2006, col. 191.
[23] Ibid, col. 208.
[24] Ibid, col. 209.
[25] *The Guardian*, January 31 2006.
[26] Cited Commons Hansard, January 31 2006, cols. 211-212.
[27] Commons Hansard, January 31 2006, col. 212.
[28] See ibid, cols. 220-221.

with a word about this ex-social worker's desire to publish "guidance" to the police and Crown Prosecution Service on how they should proceed when the Bill becomes an Act.

At the beginning of this article I mentioned Mr Goggins' wish, conveyed in a broadcast, to give this guidance. In the Commons debate he said: "One extremely important outcome of the Bill once it is enacted will be the drafting of the guidance for the police in their investigation of the offence, and so on."[29]

Now of course I realise that Mr Goggins will not in fact write this guidance himself. The work will be done by able civil servants in the Home Office who know very well what they are about. The Home Office is accustomed to give expert guidance to the police. This reduces error and aids uniformity of practice. The only real objection I have regarding guidance for the police is Mr Goggins' pose that he himself will draft the guidance, which would be cause for alarm if true. Mr Mark Fisher expressed this apprehension:

> "Will the Minister return to what he was saying about the word, 'guidance'? Nobody doubts his personal good intentions in what he says from the Dispatch Box, but we cannot legislate on the basis of guidance that may or may not appear. We are passing laws that will criminalise people by giving them a seven-year sentence. We cannot accept that guidance will get us out of a hole that we are liable to dig for ourselves."[30]

Mr Goggins responded: "I accept that I have a responsibility, in drawing up the guidance for the way in which the measure is to be enacted [*sic*], to ensure that people have confidence and know what they can and cannot do."[31] This drew a tart comment from Michael Gove MP, former *Times* columnist:

> "There is an unwarranted and ominous extension of Executive power in the reliance that the Minister places on guidance to the prosecuting authorities and to the police. It is quite wrong for us to trust the Executive to decide what prosecutions could and should be brought in the future."[32]

This brings me to my real objection to what Mr Goggins says about giving guidance. In his ignorance he seems to think it is his job as a Home Office minister to issue guidance to the Crown Prosecution Service. It is not. As I have repeatedly pointed out in published writings,[33] the CPS is under the superintendence of the Director of Public Prosecutions acting in accordance with directions given by

Page 91

the Attorney General in his quasi-judicial capacity as holder of the prosecutive power of the state.

As was said by Sir Frank Newsam, a former permanent secretary to the Home Office, the Government "has no significant concern with prosecutions". He added: "Nowadays it is well recognised and has frequently been stated in Parliament that the Home Office is not a prosecuting authority".[34]

Conclusion

At the end of the Commons debate on January 31 the Home Secretary said that the Racial and Religious Hatred Bill would now proceed to Royal Assent as amended in that debate. Because of Government defeats the resulting Act would not after all penalize insulting or abusive behaviour, but only threatening behaviour. The behaviour would need to be intentional; since merely reckless behaviour would not after all attract liability. Thus at the third attempt the

---

[29] Ibid, col. 197.
[30] Ibid, col. 198.
[31] Ibid, col. 200.
[32] Ibid, col. 231.
[33] See eg F A R Bennion, "Curious Behaviour of the Attorney General", 169 JP (March 5 2005) 168.
[34] *The Home Office*, 2nd edn 1955, pp. 133-134.

Government will succeed in enacting a much-criticised, misconceived and controversial measure – but only in watered-down form. Mr Goggins and his ministerial colleagues proved impervious to prolonged rational argument against the Bill from all quarters. Thankfully the House of Commons has, if only partially, rescued the nation from the consequences of such extraordinary obtuseness.