

Richard Rampton QC

Law, liberty and consequences

Tolerance of difference: freedom of thought and expression

Voltaire is supposed to have said – though he probably didn't –
"I disapprove of what you say, but I will defend to the death your right to say it."

I don't know how many of us would go quite that far – perhaps, in truth, quite a number of us, – but there can't be much doubt that it expresses one of the basic principles of western democratic civilisation. It may be thought to exemplify a model of society which is inherently antithetic to tyranny, one which in principle rejects, except where absolutely necessary for the maintenance of its citizens' safety and well-being, the ideology of compulsion in favour of debate and persuasion. In essence, its philosophical foundation is, perhaps, the perception that all citizens are of equal value, with equal rights to say and do whatever they wish, so long as they do not cause serious harm to others.

The proscription of *acts* which are perceived to be harmful to others is relatively uncontroversial. On the whole, it is not difficult to achieve consensus at any given time in history about what kinds of behaviour need to be declared unlawful and what do not – though there will always be debate and disagreement about particular issues (for example, at the present time, 'substance abuse').

It is with *ideas*, and the words used to express them, that the real difficulty arises. When, if ever, does one citizen, or one group of citizens, however powerful or vociferous, have the right to suppress or censor the ideas of others and the means by which those ideas are expressed? The answer, in an ideal world, ought to be, Never.

The reality is somewhat different. All western democracies – even, despite its First Amendment, the USA – have laws which impinge on freedom of thought and expression. But those are mostly civil laws, which leave citizens free to choose whether to use them, and, if they do go to law, to settle their disputes voluntarily. *Compulsion* in this area, whether it derives from the State through the apparatus of the criminal law, or is exerted by extra-judicial means, such as threats of victimisation or violence, is another matter entirely. And it is here that we have, I think, now reached a point that requires us to reflect most earnestly upon how to proceed for the future.

Perhaps no-one will dispute that a person who incites others to murder those who have expressed ideas or opinions which he or she disagrees with or finds offensive ought to be constrained by criminal process. But that's an easy one: murder is itself a crime, so inciting it should be, too.

But what of the person who first expressed the offensive or insulting idea that provoked the threat of murder or violence? Is he also to be prosecuted? Is he to be intimidated into silence by the threat of prosecution and punishment?

Let me take an example. Several countries in Europe have made Holocaust denial a crime – Germany and Austria, unsurprisingly, perhaps; but also France, Belgium, Spain, Poland and a number of the other of the old Communist bloc countries. But we have not; nor has the

USA. And, at least for the present, rightly not, in my view. For though Holocaust denial is often, both in its intention and its effect, a vehicle of dynamic anti-semitism, the traditions of free discussion and debate that we have for so long nurtured in this country are still the best way of dealing with such disreputable phenomena. Holocaust denial is both morally offensive and historically absurd. But, even when it cannot be ignored, it can be met and mastered by argument, both moral and historical.

Why, then, do some sections of society, both here and elsewhere in the western democratic world, reject such an approach to the rebuttal or demolition of ideas or opinions that they find repugnant? Why do pro-life campaigners in the USA murder doctors who carry out abortions? Why do animal rights extremists attack the persons and the property of those who use animals for research for the benefit of their fellow human beings? Why should the presence of a fake severed head of the Prophet (amongst others) in a production of *Idomeneo* in Berlin cause the cancellation of the opera for fear of violent reprisals from so-called Islamic extremists? Why should two senior BBC executives who were thought to be responsible for the broadcast of *Jerry Springer - The Opera* need security guards to protect them from violence threatened by supposedly devout Christians? And what is it that provokes someone who disapproves of the notorious Danish newspaper cartoon to call for the execution of those responsible for its creation and publication?

These are but a few examples of the intolerance of ideas and opinions that presently seems to flourish in our western democracies. There is obviously no single answer to the question of what its causes might be. These will vary from case to case, and I do not think it sensible or satisfactory to try and explain them in terms of simple religious bigotry. For though the supposed tenets (often misrepresented) of a religion are commonly the banner under which intolerance goes to war, I think it obvious that the true causes are often more complex and varied than that.

But that we have to recognise the resurgent phenomenon of intolerance and try to deal with it there can be no doubt. If we do not, then it will gather force and begin to infect the whole way in which we have, until now, felt able to deal with it. Indeed, there may come a point when the reaction to it will become as repellent as the phenomenon itself, and when the apparatus of the State moves beyond the criminalisation of overt incitement to violence and racial hatred and into the criminalisation of thoughts and words which the government and its supporters 'disapprove' of or find uncomfortable. I fear, indeed, that we may already have started to move in that direction: how else can one explain how it is that a young woman who stood by the Cenotaph in Whitehall reading out the names of the Iraq War dead in protest at what she believed to be an illegal and immoral invasion found herself prosecuted and convicted of a criminal offence? That way, I venture to suggest, lies perdition, where the spectres of the Third Reich and Soviet Russia, and countless other tyrannies before and since, will stalk our streets, listening in to our conversations, controlling the information we receive from the media and punishing those who espouse or express ideas that the authorities perceive to be 'incorrect'.

Better by far, I would suggest, to try and pre-empt such a ghastly scenario by means of *education*. We have in this country the history, the tradition and the resources to enable us to teach our children about the true meaning of tolerance. No matter from what religious, ethnic, cultural or economic sector of our diverse society the young people come, we have

the wherewithal to inform them of what Voltaire said and to explain to them why it is that he was right - even if he didn't say it.

But saying isn't doing - fine words never buttered any parsnips - so let's get on and do it. It can be done, though it will undoubtedly take time; and it is precisely what this charity has set itself to start doing.

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