

CHAPTER EIGHTEEN

18. 'Disharmonious speech' and Christianity

Paul Moon

"...there is no such precision in any of the proposals relating to what constitutes disharmonious or hateful speech, and neither is there any clarity as to where exactly the threshold of criminal speech lies."

The opening proclamation in the Gospel of John – 'In the beginning was the Word, and the Word was with God, and the Word was God'²⁷⁸ – is one of the most profound passages not only in the Bible, but in any literature. Of course, it is plain that the 'Word' is a metaphor for Christ, but there is much more to this term than its function as a rhetorical device. The 'Word' is a translation of 'Logos' in Greek. In this context, Logos refers to God being revealed in the world, but elsewhere in the New Testament, it is used for 'speech,' 'message,' or 'word.' Speech and words carry enormous importance in the Bible. Think of blasphemy, prayer, commandments, rebukes – these are all examples of speech at work, for various purposes.

Speech has remained important to Christians from the outset. In *Paradise Lost*, the seventeenth-century poet John Milton, depicted Satan boasting to the other fallen angels of his success in corrupting Creation in the Garden of Eden. The Devil then waited for 'universal shout and high applause,'²⁷⁹ for his accomplishment, but instead was shocked when he instead he heard:

On all sides, from innumerable tongues
A dismal universal hiss, the sound

²⁷⁸ John 1:1.

²⁷⁹ John Milton, *Paradise Lost*, Book IX, line 505.

Of public scorn.²⁸⁰

God had punished the fallen angels by a fate Milton regarded as particularly damaging: removing their ability to speak. For Milton, the liberty to speak and to argue freely was ‘above all liberties’²⁸¹ and was a central element of his faith.

The potency of speech was brought to the fore again in New Zealand following the terrorist attack on Christchurch mosques in March 2019. In the wake of that eruption of evil, some media outlets decided not to mention the terrorist’s name, in an effort to avoid giving him even the scantest of recognition. This power of words was addressed more comprehensively at the close of 2020, when the Royal Commission’s report on the attack tackled the issue of speech in relation to extremism. The Commission recommended that the Crimes Act 1961 be amended to include a provision covering the incitement of racial or religious disharmony. It proposed that it would be a criminal offence for a person who ‘says or otherwise publishes or communicates, any words or material that explicitly or implicitly call for violence against or is otherwise, threatening, abusive, or insulting to such group of persons.’²⁸²

This recommendation was in keeping with the sentiment of a suggestion from 2017, contained in a report from the Human Rights Commission, which urged the Government to address and punish ‘hateful and disharmonious speech targeted at the religion and beliefs of ethnic minority communities.’²⁸³

²⁸⁰ Ibid., lines 507 - 509.

²⁸¹ John Milton, *Areopagitica*, para. 93.

²⁸² Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019, *Ko to tātou kāinga tenei: Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, 2020, hate speech and hate crime related legislation, S. 51 b), 33, companion report to *Report: Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, accessed July 6, 2024, <https://christchurchattack.royalcommission.nz/assets/Publications/Hate-speech-and-hate-crime-related-legislation-Companion-legal-paper.pdf>.

²⁸³ Human Rights Commission Te Kāhui Tika Tangata, *Appendix to Submission of New Zealand Human Rights Commission 21st and 22nd Periodic Review of New Zealand under the Convention on the Elimination of All Forms of Racial Discrimination*, 2017, recommendation 2 (a), 1, accessed July 6, 2024, [https://hrc-nz-resources.s3.ap-southeast-2.amazonaws.com/files/8215/0171/9491/Appendix to NZHRC CERD Submission 2017 - Summary of Recommendations.pdf](https://hrc-nz-resources.s3.ap-southeast-2.amazonaws.com/files/8215/0171/9491/Appendix%20to%20NZHRC%20CERD%20Submission%2021-22-Summary%20of%20Recommendations.pdf).

Clarifying hate

Violence, threats, and abuse are antithetical to the message of the Gospel, and so Christians might be expected to sympathise with the sentiments of these proposed changes. However, when it comes to 'insulting' language, hate speech, and so-called 'disharmonious speech,' there is certainly something of the devil in the detail, and for several reasons.

Firstly, the suggestion of criminalising 'hate,' although superficially appealing, is beset by a critical problem. For most other categories of crime dealt with by legislation, such as drink-driving, theft, assault, or fraud, the law is very clear on how these are defined. However, it is crucial to note that there is no such precision in any of the proposals relating to what constitutes disharmonious or hateful speech, and neither is there any clarity as to where exactly the threshold of criminal speech lies.

The implications of this are chilling. The suggestion that a category of crime could be manufactured where the exact definition of what constitutes that crime is not spelt out, where offences would be judged on a case-by-case basis rather than against any specific, predetermined criteria, and where the accused would ultimately only find out if they are guilty of breaking the law at the moment that they are convicted, goes against many of the principles of natural justice.

It is also important to bear in mind that no jurisdiction in any country has yet delivered an unambiguous definition of hate speech. Instead, the potential will be for 'hate speech' to be defined in the same way that obscenity was categorised by the United States Supreme Court Justice Potter Stewart in 1964, with his pithy and wholly inadequate definition: 'I know it when I see it.' The vagaries of judicial intuition hardly seem like a solid basis on which to convict New Zealanders.

Secondly, as overseas experience has amply demonstrated, once put into legislation, speech offences can lead to egregious breaches of personal liberties. Comments that are not illegal can still be investigated by the police. There are many documented incidents in the United Kingdom, for example, where individuals have been apprehended by the police and had their electronic devices seized, and homes searched for expressing aspects of their religious faith in public.²⁸⁴ And although

²⁸⁴ See, for example, Carrie Clark, "The Urgent Need to Teach the Police About Free Speech," *Free Speech Union*, March 2023, 8-12. Accessed July 6, 2024, <https://freespeechunion.org/wp-content/uploads/2023/05/The-Urgent-Need-to-Teach-the-Police-About-Free-Speech.pdf>.

convictions may not always follow, the sheer effect of being apprehended, questioned, and having one's personal belongings examined simply for expressing an honestly-held religious belief can have the effect of suppressing the extent to which those beliefs are heard in public.

One of the specific categories that has been mentioned in the discussion on the proposed changes to the law to target 'hate speech' or 'disharmonious speech' is hate directed at particular religious beliefs. Again, on the surface, this hardly seems objectionable, but there would be critical implications for Christians if such measures were legislated for in New Zealand. The so-called 'Great Commission' – that injunction in Matthew 28, to 'go and make disciples of all nations'²⁸⁵ – could come crashing against the brick wall of statute. Spreading the Christian message might be regarded (as it already has in overseas examples) as a form of disharmonious speech, and therefore those who undertake this activity could face legal consequences.

In addition, more generally, such a restriction would stifle opinions, curtail discussion, and potentially increase misunderstandings about people's faiths. Instead of honest examinations of religious beliefs, the ensuing climate of caution would merely prop up and perpetuate creedal caricatures, with only the brave or unwise few prepared to probe and challenge them. There is something fundamentally infantile in trying to build a legislative wall around a belief system, as a means of shielding it from criticism.

Testing the truth

Milton warned about this protective approach to religious beliefs. He condemned the sort of 'cloistered virtues' that were never put to the test. When did the truth ever suffer as a consequence of facing 'a free and open encounter?' he asked.²⁸⁶ Of course, the answer has to be 'never,' because if a belief was dismantled through discussion, then it was not the truth it was purported to be in the first place.

Another consideration that the threat of hate speech or disharmonious speech laws does not allow for is the possibility that the tenets of some religions might *deserve* ridicule or contempt. Should we be free, for example, to direct our strong

²⁸⁵ Matthew 28:19.

²⁸⁶ *Areopagitica*, para. 95.

condemnation towards those followers of the Celtic religion who carried out human sacrifice – or would such criticism be an incitement of religious disharmony? And what if a religion preaches some form of racism? Surely, stirring up contempt for such beliefs should almost be obligatory rather than prohibited? The proposed speech laws that would ban hate speech or disharmonious speech are (unsurprisingly) mute when it comes to such dilemmas. This betrays a simplistic appreciation of the issues involved in free speech.

One of the most crucial deficiencies with the notion of disharmonious speech is that it would not, strictly speaking, address the *content* of what is said, but rather the *reaction* to what is said. A statement would be deemed disharmonious by virtue of the fact that it resulted in disharmony, rather than specifically what was said. It therefore follows that a disharmonious reaction to a statement would be an effective means of shutting down the person making that statement. This empowers an opponent of certain speech by giving them the opportunity to criminalise those making comments that they do not like, rather than confronting the alleged deficiencies in those comments through reasoned arguments. Such measures would end up rewarding those throwing the tantrum rather than encouraging them to contest in a mature way the views that they find disagreeable.

Yet another deficiency with proposed laws against hate speech or disharmonious speech is the naivety on which such proposals are based. The suggestion that 'hate' (however it is defined) can somehow be reduced through legislation goes against all experience. Instead of hateful views being extinguished by statute, history shows that, on the contrary, prohibitions are far more likely to have the effect of driving hate underground, where it festers before re-emerging in newly codified forms that camouflage the hateful core, and consequently make it much harder to tackle.

Furthermore, there are numerous historical examples where what would be classified as categories of disharmonious speech have led to social improvement. The abolition of slavery, the civil rights movement in the United States, and the anti-apartheid movement in South Africa are all cases where disharmonious speech directed at systems of belief led to millions of people's lives being improved. Indeed, Christianity itself emerged in an environment which was hostile to its tenets, and since its inception, innumerable of its adherents have been persecuted and killed for expressing their beliefs.

Challenges ahead

From all these examples, it ought to be self-evident that any plans to criminalise honestly expressed speech that has no ill intention, and to judge it according to a definition of disharmonious speech that no jurist has ever defined with sufficient precision, are deeply troubling. It is just as concerning that the measure of disharmonious speech would not be the content of that speech, per se, but the reaction to it by the offended party – an aspect of disharmonious speech that effectively encourages disharmonious reactions rather than reasoned responses to comments. And if what's past is prologue, such changes to the law regulating speech would have a suffocating effect on the free expression of honestly held views and would have the potential to debilitate efforts to spread the Christian faith in any jurisdiction where there are individuals or groups who are prepared to act disharmoniously to its message.

What can we do? The questions below will help you consider a response.

Conversation questions for small groups:

1. What aspects of Christianity have you noticed have become unpopular to talk about over the past few decades?
2. Are there environments where you feel it would be unwise to discuss all aspects of your faith?
3. What examples are there in the New Testament of people sharing their faith in hostile environments?

Author Profile:

Paul Moon teaches history at Auckland University of Technology and is the author of a number of books on aspects of New Zealand colonial history, including biographies of several of the country's significant historical figures. Popular titles include *The Rise and Fall of James Busby* and *A Draught of the South Land*.