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# The death of free expression in England

## Robert Henderson

The convictions in 2018 of Jeremy "Jez" Bedford-Turner and Alison Chabloz for simply saying things our politically correct elite do not want to hear set a new benchmark for the imposition on England of the totalitarian creed which is political correctness. It is a totalitarian creed because (1) it touches on all aspects of life through the application of the non-discrimination or equality principle and (2) its followers insist that there is only one permissible view, the politically correct one.

### The convictions

Mr Bedford-Turner has been found guilty of inciting racial hatred in a speech he made outside of Downing Street and sentenced to 12 months imprisonment, of which half will be served on licence. The main thrust of the speech was his concern about the close relationship between the Metropolitan Police and a charity Shomrim which acts as a private Jewish security force. Ms Chabloz, a singer and musician, has been convicted of three offences relating to the use of a public electronic service. These arise from three songs she had written which were placed on social media and deemed to be grossly insulting to Jews. Ms Chabloz was sentenced to 20 weeks imprisonment suspended for two years, given 180 hours of community service plus a fine, victim's surcharge and costs. She is also banned from using social media for a year. Moreover, the conviction will continue to hinder her both socially and professionally after the two years are spent because it will make it difficult or impossible for her to enter countries, especially places such as the USA and Canada.

### The Crown Prosecution Service (CPS)

Both trials eventually came about through the initiative of a charity the Campaign against Antisemitism (CAA). The Bedford-Turner case was originally turned referred to the police and the CPS by a charity which promotes Jewish interests and offers physical security services called The Community Security Trust (CST). It was turned down for prosecution by the CPS for not meeting their evidential standard. The CAA then sought and obtained a judicial review of the CPS decision at which point the CPS caved in before the judicial review was heard and reversed their decision not to prosecute.

The Chabloz case involved the CAA taking out a private prosecution against her after the CPS had initially refused to act. After their caving in over the Bedford-Turner complaint the CPS took over the private prosecution. It is a reasonable assumption that the CPS did this as a result of their failure to defend the judicial review of the Bedford-Turner case.

The fact that the CPS were unwilling to fight the threatened judicial review is disquieting because it means that a prosecution can be potentially secured by an individual or group with the means to fund both the application of a judicial review and the judicial review itself. This disqualifies the vast majority of people in the UK from pursuing such a course because of the considerable legal costs involved. That in turn creates a de facto two tier criminal justice system divided between the haves and the have-nots.

It should be noted that the CPS has not meaningfully explain publicly why they did not fight the judicial review or why they changed their minds over the likelihood of securing a conviction in both Bedford-Taylor and Chabloz cases. (The CPS evidential test for prosecution requires a better than 50% chance of securing a conviction)

## The judges
### Jeremy Bedford-Turner case

The behaviour of the judge David Tomlinson in the Bedford-Turner case gave serious cause for concern.
This trial was held before a jury. Tomlinson began by refusing a defence request to put two questions to jury members, namely, are *you a member of the CAA?* And are *you a member of the Community Security Trust CST*?

Tomlinson's reason for the refusal was that he is a strong supporter of the principle of random selection for jurors. However, if it is legitimate to refuse such obviously pertinent questions to check whether a prospective juror is compromised it is difficult to see what test of a juror's impartiality could not be refused. That is not to say the chances of a member of either the CAA or CST being put forward as a prospective juror was high, but it was a risk which if it had transpired could have been enough to halt the trial. In addition, if the questions had been asked it would have given both the defendant and the general public an assurance that the jury was not patently biased.

Once the trial was underway Tomlinson repeatedly sighed and grimaced when politically incorrect points were made and capped his performance by effectively taking over the prosecution's cross-examination of Mr Bedford-Turner on several occasions to challenge Mr Bedford-Turner's evidence, that is, the judge intervened not to elucidate a point for himself or the jury but to refute what Mr Bedford-Turner was saying.

During this passage of the hearing the judge said with noticeable distaste that it was shocking that such an organisation as the CAA needed to exist but that was the way of the world.
The other thing to note was the way both judge and prosecuting counsel treated opinion as fact and were seemingly oblivious to what they were doing, namely, enforcing the politically correct view of the world.

Did Mr Bedford-Turner have a chance of acquittal? He had a jury trial so that gave him some chance of a not guilty result. Had it been a trial without a jury he would almost certainly have had no chance of being found innocent for it is very difficult to imagine in our present politically correct charged circumstances that a judge sitting on his or her own would have found Mr Bedford-Turner not guilty.

But even with a jury the odds were heavily against a not guilty verdict. In the minds of jurors must be the fear of being called a racist which has been so successfully inculcated in the general population of the UK that it produces a reflex of panic and fear when someone is faced with the possibility of the label of racist being stuck on them. Consequently, any juror faced with a case such as this must have it in the back of their minds that to return a not guilty verdict would be to risk being called a racist.

There is also the sheer shock factor of hearing politically incorrect views being unashamedly spoken in a society which has been conditioned to associate such words with danger to those who might express sympathy with them or even be thought not to have condemned them enthusiastically enough.

In the event the jury was out for less than two hours and returned a unanimous verdict of guilty. For the record, on the jury there were two black women and one black man on the jury. The rest were white.

**Alison Chabloz**

The original judge in the Chabloz case was the Senior District Judge (Chief Magistrate), Emma Arbuthnot. Arbuthnot is married to Baron Arbuthnot of Edrom, PC, who was a Tory MP until 2015 and who now sits in the House of Lords.

Both Lady Arbuthnot and her husband are members of the Conservative friends of Israel and have received hospitality in Israel. Lady Arbuthnot did not stand down on her own initiative,

but did so when confronted with her membership of the Conservative Friends of Israel. Her replacement as judge was John Zani.

The Chabloz case then took an extraordinary twist. A onetime schoolmate of Zani at Highgate School wrote to him, viz:

*"Hi, John, I'm an OC [RH Old Cholmeleian – an OB of Highgate School] you may remember me – maybe I am a bit older than you (64) – I was in the public gallery – I fight anti-Semitism, I have a blog on Jewish News.*
*"[Redacted by the court]*
*[This is an] "Important case for us . . . . . and as you said, a path breaking one. (I'm not a lawyer, I'm an economist)."*

The writer was Jonathan Hoffman, a well known Zionist. Quite properly Zani called in Ms Chabloz's barrister Adrian Davies and prosecution counsel Karen Robinson and revealed to them that he had received an email which compromised him. (Zani was reportedly noticeably distressed during this meeting).

The only rational interpretation of the text of the email is that the sender was attempting to improperly influence the judge. The email was consequently both a contempt of court and a clear attempt to pervert the course of justice. It was a potentially extremely serious action because the case was being heard without a jury and the verdict was Zani's alone to make. Because of the letter Zani offered to stand down from the case, but this offer was refused by the defence.

Before her trial Ms Chabloz wrote to the Attorney-General asking for the criminal law to be brought to bear on Hoffman. A reply came from the office of the Solicitor-General refusing to act without giving any plausible explanation of why such a blatant attempt to influence a judge could not be prosecuted. I reproduce the letter in full:

*Dear Mrs Chabloz,*

*I write in relation to your letter of 3rd July, addressed to the Attorney General in which you asked that consideration be given to bringing contempt proceedings against Jonathan Hoffman as the result of an email that he sent to District Judge Zani at Westminster magistrates' court.*

*The Solicitor General has now considered the matters set out in your letter, as well as the documents you attached. In reaching his decision the Solicitor General has borne in mind that, for contempt proceedings to succeed, he would need to satisfy the High Court beyond a reasonable doubt (i.e. the criminal standard of proof) that the content of the email sent by Jonathan Hoffman created a real risk that the criminal proceedings brought against you would be prejudiced or impeded. He has concluded there is no realistic prospect of proving to the required standard that the email created such a risk and has therefore decided not to institute contempt proceedings.*

*For the sake of completeness, the Solicitor General also considered the content of the postings about your case, which you drew to his attention that had appeared on Mr Hoffman's Facebook account between December and February. In relation to those, the Solicitor General has also concluded that there is no realistic prospect of contempt proceedings succeeding.*

*Thank you nevertheless for bringing these matters to our attention.*

*James Jenkins*
*Head of Casework*

Unadulterated waffle sums up Jenkins' reply. Indeed, it is insulting in its inadequacy – no attempt is made to present any argument for the decision not to prosecute or even investigate. All that is offered is a bald lordly statement from the powers-that-be that they judge that Hoffman cannot be successfully prosecuted. Whether or not Hoffman's intervention was likely to have any effect on Zani's behaviour is irrelevant. The offence is the attempt to influence a judge, which is a very serious crime carrying a potential life sentence.

## The impossibility of defining grossly offensive

The question of what is grossly offensive has not been properly examined in either Mr Bedford-Turner or Ms Chabloz's case. It has two facets. The first is the inherent impossibility of defining what is grossly offensive in a way which makes the judgement other than an expression of opinion.

The second facet is the obvious fact that what is grossly offensive to one person can and often is either only mildly offensive or not offensive at all. Indeed, the same person may find the same material offensive in one setting and inoffensive in another. For example, the telling of a risqué joke in mixed company may make a man uncomfortable, but hearing the joke in all male company will probably make the man unselfconsciously laugh. Another example would be telling sick jokes. These may be highly offensive when seen written down in a court of law but in normal life they often appear innocuous. This is what should happen in a free society, social custom regulating behaviour without the intervention of the law.

There is also the awkward fact that truths are often "grossly insulting". The implication of the prosecution's case in both trials is that some truths could be judged illegal because they are either grossly offensive, frightening or arouse feelings of racial hatred. That is a very dangerous road to go down for any statement about a matter of importance could be suppressed on such grounds.

## Value judgements

Both judges have relied on value judgements made by others which they then obtusely or dishonestly (take your pick) treated as objective facts. For example, Zani in his written judgement (para

112), gives a test for what is grossly offensive which is not only a value judgement but a straightforwardly ideological statement made in the politically correct interest, viz:" Put shortly, this court is satisfied that the material in each of the songs is grossly offensive as judged by an open and multiracial society -as opposed to, for example, merely offensive. "

Tomlinson used a very similar statement during Mr Bedford-Turner's trial to validate his prosecution.

The fact that Tomlinson and Zani have cited the definition of other judges and authorities does not give those definitions any objective validity. All they have done is shift the burden of defining what is grossly offensive onto other shoulders.

## Free expression and democracy

But the real question is not whether words are grossly offensive or just offensive. The important thing is the fact that it is impossible to have a democracy if there are legal restrictions on what can be said because the essence of democracy is the ability to debate and change anything. Indeed, the idea that there can be limits to insult or offence in a democracy is chilling. Moreover, there is a long tradition in England of the most devastating political insults most notably in the cartoons of the likes of Gillray and Rowlandson.

Take away the freedom to be as insulting as you like and British politics would become a constricted fearful business. Indeed, this is already happening for political correctness generally is being imposed through a mixture of the criminalising of opinions which oppose the dictates of political correctness and the non-legal penalties such as being driven out of a job.

## **Threats of violence and incitement**

Ah, but what about threats of violence? I can hear readers saying.

The way to deal with these or incitement to violence (or any other criminal act) is not to ban the words per se, but rather to examine the circumstances of the threat and decide whether there is a credible threat of the threatened violence – who has not said I'll kill X or I'll kill Y? -or if there is incitement to see the incitement as being credible enough to form a conspiracy between the inciter and incited.

## The CPS and Zani's judgment

In Ms Chabloz's case there is a curious mismatch between the CPS' original decision that the case did not reach the CPS evidential standard of a better than even chance of a conviction and Zani's emphatic judgement that she was unreservedly and obviously guilty.

There was also a distinctly odd element in Zani's sentencing. When Zani gave his verdict on 25th May he emphasised two things, remorse and the fact that he judged Ms Chabloz had comfortably passed the standard of offensiveness required for a custodial sentence.

On remorse Zani said this in his written judgement (para 108) : "Far from there being any real remorse for or appreciation of the offence that this court finds will have undoubtedly been caused to others, Ms Chabloz remains defiant that her claim to free speech trumps all else and that any attempt to curtail her right would be quite wrong…"

The impression left was clear: Ms Chabloz must express remorse if she wished to escape a custodial sentence. This she could have done when she attended a meeting with a probation officer who compiled a report before sentence was given. However, according to Zani Ms Chabloz did not express remorse when she met with the probation officer.

Bearing in mind these remarks on remorse and sentencing it was

somewhat of a surprise that Zani imposed a suspended sentence. What was going on here? To my mind the most plausible explanation is that Zani never had any intention of sending Ms Chabloz to prison and his performance on the 25th May was simply to intimidate her into collapsing in heap and saying she was sorry and that her actions and words had been very wrong. Why would Zani have been unwilling to give a custodial sentence? For an explanation of that one must look at the reason for prosecutions such as this. Our politically correct elite (which includes the mainstream media and academia) want the convictions **to frighten** the general public (and maintain politically correct discipline within the agencies of the state who enforce political correctness). **But what our politically correct elite do not want is widespread mainstream media coverage of trials which reveal what is going on, namely, the criminalising of a very wide and ever expanding range of views.**

As an aside on this point it is worth mentioning that a striking thing about both the trials was the paucity of mainstream media comment. The coverage was either simple reporting of the proceedings or, where it entered into comment, invariably unfavourable to the defendants. It might have been thought that the mainstream media would have jumped all over such contentious trials but the only mainstream press regularly attending the trials was the Press Association. Why was that? I suspect it was because the politically correct mainstream media did not want the politically incorrect nature of much of the evidence to come before the public's eyes.

## Politically correct doublethink

Our politically correct elite- or at least the true believers in political correctness – have arrived at a state of Orwell's doublethink in which they sincerely believe in two contradictory things, in this case they wish at one and the same time to censor whilst maintaining a claim that they are in favour of free expression. There was a marvellous moment in his sentencing when Zani dilated on the necessity and value of free speech in a democracy

before saying in the next sentence that there are limits to free expression. Tellingly, he showed absolutely no embarrassment when putting these contradictory statements together.
The reality of free expression is that it is a beautifully simple concept: you either have it or you have a range of permitted opinion which can be altered at any moment.

## 'The standards of an open and multi-racial society'!

**The claim by the judges and prosecution in both the trials of Mr Bedford-Turner and Ms Chabloz that their words were to be judged *' by the standards of an open and multi-racial society'* is in itself an unequivocal statement of political correctness.** It assumes that the standards of political correctness on the subject of race and ethnicity are shared by the overwhelming majority of the UK population, for unless such values are shared by most they cannot be the standards by which UK society operates.

There is strong objective evidence that *"the standards of an open and multi-racial society"* are not the standards which the large majority of the UK population shares. Polls on immigration consistently show a solid majority of those polled concerned about immigration and its effects. Indeed, this concern played a strong role in achieving the Brexit vote. Research by the think tank British Future published in 2014 as How to talk about immigration found a strong majority for ending mass immigration and 25% of those questioned wanted the removal of all immigrants already in the UK (see p17 of the report).

**Providing a legal defence in "race hate crime" cases**

There is a general problem with these types of cases which means an orthodox defence is effectively worthless. It is next to inconceivable in the present politically correct public atmosphere that a judge sitting without a jury will find a

defendant not guilty on all charges.

With a jury a defendant might have a very slim chance of being found not guilty, but the odds are, especially with a jury chosen from the population of London, that a jury would be very likely to convict on these types of charges for the reasons I have already given.

In the light of this general problem, which has been emphatically demonstrated in both Jeremy Bedford-Turner and Ms Chabloz's cases, unorthodox methods should be used. These methods are simple: embarrass the complainants (such as the CAA), prosecuting authorities, the courts and politicians in the hope of prosecutions either not being started or dropped if they have been started.

There is a fair chance that any judge will have publicly compromised their impartiality in dealing with these types of cases through their judgements and membership of organisations by expressing politically correct views relating to race and ethnicity which are publicly accessible.

In cases where accusations of anti-Semitism are involved there is more than a fair chance that a judge will have some Jewish connections. That was the case in Ms Chabloz's prosecution. Getting Emma Arbuthnot to recuse herself because of her association with the Tory Friends of Israel was a good start.
If Zani's offer to stand down because an old school friend sent him an inappropriate email had been accepted there is an outside chance that would have killed the prosecution stone dead. But even if it did not it would have offered the chance of finding some compromising Jewish connection on the third judge. If that had happened I think the prosecution would have collapsed.
If a trial goes ahead I suggest that the defence is built around the principle of free expression being a sine qua non of a democracy and a necessity for the defence of personal freedom. Witnesses for the prosecution should be subjected to questioning to get them to explain what they find grossly offensive or

frightening in whatever the offending words or images are the cause for the trial. They will almost certainly not be able to give a coherent account of what they feel.

The background of prosecution witnesses should be vigorously examined especially with regard to their social media. If the witnesses have engaged in social media contributions which could conceivably come within the present definition of hate crimes make a complaint to the police.

Make a subject access request under the Data Protection Act to any organisation which is involved in a prosecution of you. That will not only probably make things awkward for the organisation and possibly get useful data, for example, indiscrete emails about you, but also show the people involved that you are not going to collapse in a heap.

## Something very sinister is happening

What has been made very clear in these two trials is that we have an elite which is hell bent on squeezing the range of permitted opinion ever more tightly into a politically correct shape. A good example of how far we have gone down that path is the College of Policing's operational guide to hate crimes which is frightening in its breadth. It defines these groups as being subject to hate crimes:

*3.2.1 Gypsy, Traveller and Roma communities*
*3.2.2 Asylum, refugee and migrant communities.*
*3.2.3 Anti-Semitism.*
*3.2.4 Anti-Sikh hate crime*
*3.3 Religious hate crime*
*3.3.1 Anti-Muslim hate crime.*
*3.3.2 Other types of religious hate crime*
*3.3.3 Sectarian crime*
*3.4 Sexual orientation*
*3.5 Transgender hate crime.*

I will cite the College of Policing's examples of what constitute anti-Semitism to give a flavour of how broad and unexpected can be their guidance on "hate crimes" (see p37 of the College of Policing guidance for the full details)*:*
*Contemporary examples of anti-Semitism in public life, the media, schools, the workplace, and in the religious sphere could include, but are not limited to:*

- *calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion*
- *making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as individuals or the power of Jews as a collective, including especially, but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions*
- *accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews*
- *denying the fact, scope, mechanisms (eg, gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust)*
- *accusing Jews as a race, or Israel as a State, of inventing or exaggerating the Holocaust*
- *accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.*

*Examples of the ways in which anti-Semitism manifests itself with regard to the State of Israel could include:*

- *denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour*

. *applying double standards by requiring behaviour not expected or demanded of any other democratic nation*

- *using the symbols and images associated with classic anti-Semitism (eg, claims of Jews killing Jesus or blood libel) to characterise Israel or Israelis*
- *drawing comparisons of contemporary Israeli policy to that of the Nazis*
- *holding Jews collectively responsible for actions of the State of Israel.*
-

Hands up anyone who thinks they would be safe from prosecution with this police guidance in play if they criticised Jews or Israel. Or ask yourself how the well-known journalist Peter Oborne would escape being caught in the police net for his Dispatches programme Inside Britain's Israeli Lobby?
Of course it is very unlikely that a journalist such as Oborne would be prosecuted at present because the laws relating to "hate crimes" are rarely if ever applied to those with power and/or influence, something which is a serious ill in itself because it undermines the idea of equality before the law. But that could change in the future for when a system of ideological censorship is in place no one is entirely safe however slavishly the party line is followed. You can go to bed one day thinking you know the "party line" only to find it has changed by the following day without you knowing with the result that you unwittingly transgress.
It is also important to understand that the British elite's desire to enforce political correctness is by no means exhausted. Penalties for politically incorrect transgressions could be about to become even more penal because the Sentencing Council which advises government on sentencing has recommended that penalties for inciting racial hatred and suchlike should be raised to a maximum of six years.

## Where does this leave us?

**The short answer is in a very perilous place**. **Free expression is essential to democracy and political freedom. Take it away and oppression soon fills the void**. **Freedom** of expression is also necessary for personal liberty to exist because without it no element of personal freedom is safe from obliteration by censorship.

**Free expression** also has a tremendous general cultural value in that it stimulates thought and debate.

The damage censorship does, not least in the paranoia it generates, is wonderfully portrayed in the recent film release "The death of Stalin", a very funny but also extremely sinister film. See it if you can.

Censorship always means the censor has no solid argument for their position. I will leave the last word to John Milton who more than three centuries ago understood the power and utility of free expression when he wrote:

*'And though all the winds of doctrine were let loose upon the earth, so truth be in the field [and] we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter…' [Milton – Areopagitica].*

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