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Libel and the cult of the forbidden

English libel law is as real a threat to free inquiry as the repressive zeal of anti-terrorism policy



Ken Macdonald
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Our dignity consists of many things. Prominent among these is that freedom of expression is a critical human right: it may only be limited in the most exceptional circumstances. But does English libel law respect this shining principle? Well, the Americans don't think so. Many of their state legislatures have enacted laws protecting citizens from the chilling grasp of our law by making English libel awards unenforceable in American courts. And now the House of Representatives is considering a bill to protect all citizens in the same way. That is to say, from our courts and from our judges. In fact, let's be frank – from us.

This extraordinary development should be a matter of shame to the British government. And yet it doesn't seem to be. That's why [Index on Censorship](#) and [English Pen](#) joined together yesterday to launch [Free Speech is Not For Sale](#), an important report calling for the fundamental reform of our libel laws.

The Americans call their legislation Rachel's law, after a US academic named Rachel Ehrenfeld who wrote a book, *Funding Evil*, to examine the international financing of terrorism. Published in the United States, this was doubtless an estimable piece of work.

Unfortunately it sold only 23 copies in the UK, and each of these was purchased over the internet from America. You wouldn't find Rachel's book in Waterstone's or in WH Smith's. I never noticed any copies in the remainder bins at Heathrow and I don't believe there were any at Gatwick, either. In fact, I don't know anyone who read it.

But if Ehrenfeld was disappointed by this apparent lack of interest in her work in Britain, she was probably even more disappointed to find herself being sued for it in the Royal courts in London by a fabulously wealthy Saudi businessman, Khalid bin Mahfouz. He'd obviously taken good legal advice because he realised that those 23 convenient copies, shockingly present in our jurisdiction, meant that English courts would find no difficulty in taking a case that their American counterparts would have dismissed with a growl of contempt. Ehrenfeld, to her credit, didn't turn up to the proceedings.

In July last year, the United Nations human rights committee said that our libel law was discouraging critical reporting on matters of serious public interest, and adversely affecting the ability of scholars and journalists to publish their work. It said the internet meant that all this was having a depressing effect upon freedom of expression across the world.

Yet our law should be nurturing the free exchange of ideas. It should be protecting research and science. It should allow free and autonomous people to be thoroughly offensive to one another. And it certainly shouldn't have any role in shielding chancers and charlatans.

Of course no one is saying that we shouldn't have any libel laws at all. Malicious and deliberate falsehoods should always be actionable, with the burden of proof on the claimant. But we don't want laws that encourage corporate bullying, or stifle scientific inquiry, or chill investigative reporting. We certainly don't want laws that associate our country with the suppression of free comment or the stifling of information so that it dies before it can pass around the world.

Unhappily, the government's obvious reluctance to act has to be seen within a growing tendency to undermine free speech in the United Kingdom in recent years. Home secretaries have seemed to promise boundless security and we have suffered the consequences.

So this is not just about defamation, privacy laws and libel tourism. It's not just about super-injunctions and the intimidation of scientists and researchers. It's also about legislative provisions broadening categories of hate speech to include even religion: as though belief systems need or deserve the special protection of the law.

And it's about terrorism legislation. It's about criminalising the possession of material – often freely available on the internet – and ill-considered offences of encouraging terrorism, as we imagine we can outlaw something even vaguer than conspiracy, and try to create evidence with snapshots of the miscreant's mind.

Naturally, much of this is borne of protective zeal. People in power often feel guilty when bombs go off or when communities are put under threat. Put bluntly, they overreact. But we should make it clear that we don't want that kind of protection. We should make it clear that we prefer to accept some risks in order to live as freely as possible.

Otherwise it will remain no surprise that it is here in Britain, where too often the criminal law is engaging with free speech in ways undreamed of until recently, that libel presents such a potent threat to free inquiry.

This is, indeed, an unhappy time to place whole categories of research and reporting into a box marked forbidden – too dangerous or too risky to contemplate without fear.

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