

# RACIALISM AND THE LAW

 **Libertarian  
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It is part of the intellectual consensus of the present day that racialism — by which I mean any dislike of, or prejudice against, the members of particular racial groups, or any belief that they should be accorded inferior treatment — is a uniquely iniquitous social phenomenon which must be kept in check by a special system of laws designed solely for that particular purpose. This belief has received the official sanction of the United Nations in two international treaties, as follows:

## **International Convention on the Elimination of All Forms of Racial Discrimination, 1965.**

### **Article 4**

“State parties ... (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in any such organisations as an offence punishable by law.”

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## **International Covenant on Civil and Political Rights, 1966**

### **Article 20.2**

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

The same attitude has been enshrined in British law by the Race Relations Acts of 1965, 1968, and 1976, and in the field of international relations it has manifested itself in the organised ostracism of South Africa, the only country in the world today where racialism has been institutionalised in the political system. I believe, however, that this attitude is more in the nature of a taboo than a rational prohibition, and my aim in the present essay is to argue that there is no reason why a crime or act of oppression motivated by racialism should be regarded as any more heinous than an identical act inspired by any other motive, and to challenge the need for any special laws controlling or regulating racist behaviour.

Under the Race Relations Act of 1976, incitement to racial hatred is prohibited by British law in the following words:

“A person commits an offence if (a) he publishes or distributes written matter which is threatening, abusive or insulting, or (b) he uses in any public place or at any public meeting words which are threatening, abusive or insulting, in a case where, having regard to all the circumstances, hatred is likely to be stirred up against any racial group in Great Britain by the matter or words in question.”

### **Incitement and Crime**

The first question which must be asked about this law is: why should it be a crime to incite people to do something which is not a crime in itself? It is not illegal to hate a person, whether on the grounds of her or his race or on any other grounds, so why should incitement to hatred be illegal? It makes perfectly good sense to prohibit incitement to assault, rape, murder or any other crime of violence — and, in fact, such incitement was already prohibited under British law long before Race Relations Acts were introduced — but not for mere hatred.

Furthermore, if we accept, just for the sake of argument, that incitement to hatred should be a crime, is there any reason why the law should be confined to racial hatred? The communist organisations which are among the keenest supporters of the Race Relations Acts are surely guilty of incitement to class hatred, so, by the same criteria, their propaganda ought to be banned as well. Racially motivated acts of violence are crimes because they are acts of violence, not because they are racially motivated. If hatred as such is not a crime to start with, the motive behind it surely cannot justify making it one.

### **DISCRIMINATION AND THE LAW**

In addition to incitement to hatred, the Race Relations Acts also prohibit discrimination on racial grounds. The libertarian case against this part of the law is based on

the principle of economic freedom, according to which no one can have a right to force any individuals or organisations to participate in any economic transactions against their will, since no one can have a right to any thing which can only be secured at someone else's expense. In fact, in a free market economy, any law which prevents firms from refusing to hire workers for reasons unconnected with the workers ability to do the job in question (or which prevents shops, pubs or other establishments from refusing to serve customers for equally illogical reasons) is totally superfluous, since any business which adopts such a policy must inevitably lose trade to those of its competitors which choose not to ignore such valuable opportunities for making money, and therefore it must cease to discriminate in order to maintain its position in the market. As the experience of Jews and Orientals in the USA has shown clearly, racial discrimination can never prevent any group of people from raising their living standards *in the long run* if free market conditions prevail. If a person's race is indeed irrelevant to his ability to do a particular job, then laws against racial discrimination are unnecessary. On the other hand, if race is relevant, then such laws impose an unfair burden on employers by forcing them to incur the expense of hiring unsuitable workers.

The reason why race has acquired the status of a taboo subject in recent years, and why so many people have come to accept the need for special laws against racialism, is not hard to discern. The National Socialist massacre of millions of Jews during the Second World War was undoubtedly one of the greatest crimes against humanity that the world has ever known. However, we should not allow our entirely justified horror at the enormity of the Nazis' actions to blind us to the true nature of their crimes and the real reasons for their guilt. Granted that the Nazis' attempted genocide of the Jews was one of the worst atrocities in the history of mankind, and that it was an atrocity motivated by racialism, it does not follow logically that it was an atrocity *because* it was motivated by racialism. If Hitler had murdered millions of innocent people who had been chosen for some reason other than their racial origins, would that have been any less heinous an atrocity? The present century has also witnessed one other major instance of mass murder, namely Stalin's purges in the USSR, which according to some authorities, may have been responsible for many more deaths than Hitler's massacre of the Jews. Were Stalin's crimes against humanity any less grave than Hitler's because he did not choose his victims according to their race? It is true that Stalin's purges have never received quite the same condemnation as the crimes of the Nazis, because the USSR emerged on the winning side in the Second World War, and because Marxism is still regarded as a perfectly respectable ideology by large sections of the intelligentsia throughout the Western world. But they nevertheless serve as a good illustration, that racially motivated oppression is not necessarily worse than any other conceivable form of oppression.

### **A Distinctive Evil?**

The only rational argument which has ever been put forward to justify treating racialism as something special is

that used by the South African black nationalist leader Albert Luthuli, who is quoted by Peter Hain in *Don't Play With Apartheid* (George Allen and Unwin, London, 1971) as follows:

“Do not deceive yourself into thinking that racialism is just another tyranny. Like political tyranny, or religious tyranny. I know many men who have changed their religion, and many who have changed their politics. But I know of no man who has ever changed his race. And that is the way to Armageddon. For racialism is the only absolute tyranny.”

The flaw in Luthuli's argument is that it confuses the ease of committing a crime with its moral gravity. It is perfectly true that people can change their political or religious beliefs, but that is not the point. Why should they have to? A government which embarks on a policy of racial persecution may have an easier task in identifying its victims, and they may find it harder to evade the government's clutches. But the difficulty of committing a crime is not normally accepted as a mitigating circumstance in courts of law. It is more difficult to burgle a house if it is equipped with electronic alarms and has an alsatian dog on guard, or to mug a man if he has taken karate lessons, but that does not make the crime any less serious once it has been committed. The seriousness of a crime depends solely on how much harm it does to the victim. In fact, some black African rulers who have held power in recent years — such as Amin in Uganda, Bokassa in the Central African Republic, Mengistu in Ethiopia and Nguema in Equatorial Guinea have been guilty of crimes against human rights far surpassing anything seen in South Africa by any conceivable standards. These dictators — although, they were never subjected to the same opprobrium as the South African regime by the Western world's intelligentsia — succeeded in murdering many times as many innocent people, even though their victims were not chosen because of their race and therefore, according to Luthuli's argument, had more chance of escaping. Were these tyrannies any less absolute than that in South Africa? It is undoubtedly true that South Africa has an undemocratic government which systematically violates human rights, but so, unfortunately, do the majority of countries in the world today, the rest of Africa not excepted. Surely it is only logical and humane that all oppressive governments should be judged by the same standards.

### **The Libertarian View**

The libertarian position on racialism is that a racist act should only be illegal if it is also a coercive act. Violence is a coercive act, but hatred is not, and neither is the withholding of economic cooperation. Any kind of unmerited hatred or prejudice is an evil, but it is a matter of *private* morality rather than the kind of evil against which the law should be invoked. In a libertarian legal system, all illegal racist acts would still be equally illegal if they were not motivated by racialism, and therefore no special anti-racist laws would exist.