

Hate Crime and Public Order (Scotland) Bill

Observations from

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Your call for feedback on the current version of the Bill invites comment under three headings.

The first is:

Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures?¹

My comments mainly relate to this question ... which I am pleased to see phrased in a way that is unusually open in such consultations.

While I have no problem with the intention to de-criminalise blasphemy, I have a lot of problems with the thinking which seems to lie behind the rest of the Bill.

It would appear that those who drafted it have ignored the comments of those who, it would seem from the report on the earlier consultation on the proposed Bill, responded by saying that the legislation should be rolled back and the problems it seeks to address dealt with in other ways.

I find the current fashion to criminalise anything that someone in authority does not like extremely dangerous.

Witness, precisely, the effects of historical decisions to criminalise blasphemy and homosexuality.

At heart, this predilection is based on the assumption that one has a right to impose whatever one believes to be good and right on others, by force if necessary, and without regard for the wishes of those concerned or the long term effects on society.

When combined with a pre-occupation with some kind of moral crusade this becomes a quest to impose a “pure” society as defined by those in authority, in other words fascism.

Make no mistake: The passion to do the equivalent of burning heretics at stake and stoning blasphemers to death is only too evident today.

Witness the harassment and abuse of people who are accused of causing offence by telling the truth² and the “de-platforming” and “cancelling” of people who are deemed to have made

“racist” or “offensive” remarks via the “social” media³. They may not have their tongues cut out, but their voices have been silenced, their incomes and careers destroyed, and their families devastated.

A situation has arisen in which many people are terrified to say anything of significance in social media posts, in the community, or in their workplaces. They have to watch their words and their thoughts. Right now I am looking over my shoulder, wondering how much of this commentary may be redacted before it can reach its destination.

Note that the infliction of such extreme harm by members of the public and those charged with enacting current legislation has been fuelled and exacerbated by legislation that was ostensibly designed to protect against harm and abuse.

The unrealistic quest to engineer a state free of hate and harm is producing one in which people live in fear of abuse from all around them.

These are not, as I am aware some of my friends are writing, “*possible*”, hypothetical, effects of the legislation currently being promoted. These things that are happening **here, now**. And they are, at least in part, a *consequence* of the current hate crime legislation.

Nor is this infliction of harm and abuse confined to the “social” media.

It is evident in the extraordinary harm that was, for a period of time, inflicted on football fans for shouting “sectarian” slogans and has been, and is currently, inflicted on many others for what are essentially trivial offences.

Such criminalisation is out of all proportion to the crime, involving the infliction of extreme stress and destruction of networks of friendships and family life (on “guilty” and “not guilty” alike) as soon as legal proceedings are mooted and, if those proceedings are successful, the subsequent lifelong deprivation of employment opportunities and welfare benefits.

The same applies to the pursuit of a huge range of minor offenses in the hate crimes, abuse, and sexual harassment area.

Paradoxically, the effects of these measures provide a basis for hatred of the state, its institutions, and its officers.

I have little sympathy for the current quest for a nanny state which will protect everyone from all adverse experiences and in which people believe that the state should protect them from all such adversity.

I am 84 years old. I have been belted, bullied, mugged, harassed, raped, hi-jacked, ostracised, and robbed.

And I have been guilty of doing several such things myself. That’s life.

It is not at all clear that making any of these things even more illegal would in any way have helped to prevent them, still less resulted in compensation for damage done.

Nor would I wish to have been protected from many of these experiences by having venues and exciting areas of cities “cleaned up” and closed down in ways that many puritanical dogooders would wish and are, indeed, hell-bent on doing. As far as I am concerned such actions constitute serious infringements of my civil liberties.

I would not wish, even if it had been possible, to inflict the hardships and trials associated with criminalisation on those who abused me.

There must be better ways of dealing with at least some of these situations.

I am convinced that, by and large, the attempt to fix such things via criminalisation and the law outweighs the benefits.

So, although it is something of a contradiction, I would support a campaign to criminalise the criminalisers.

In my experience, the most serious abuses have been perpetrated by authorities. Not merely by teachers in schools or individual police or gangs of police or soldiers, but by authorities sitting in their offices drafting regulations for e.g. “benefits” conditionalities, school attendance, school curricula, the creation of “hostile environments”, and deep intrusions into family life, values, and sexual and other behaviour in pursuit of some single-minded crusade deemed worthwhile.

I do not think it wise to give such authorities more power to intervene in such matters.

At the drop of a hat they will generate another 150 regulations which will have counterintuitive, and usually counterproductive, effects⁴. And require us, as a society, to pay thousands of lawyers, advisors, and inspectors.

In connection with the counterintuitive effects of legislation, it is salutary to reflect on the way in which fear of the accusation of “racism” deterred social workers and police from exposing widespread systematic sexual abuse in Rotherham and elsewhere and at the same time facilitated the unprofessional “investigation” of celebrities like Cliff Richard and Lords Bramall and Brittan⁵.

My inclination is to “cool it”.

I am not sure that tolerance of homosexuality, for example, was greatly facilitated by legislation rendering harassment illegal. It was mainly achieved by decriminalisation of homosexuality, by the way in which deaths from AIDS revealed that many film stars portraying heterosexual roles on the screen were actually homosexual, through campaigns like “Gay Pride”, and by all sorts of people being seen to get together in same-sex relationships and lead unproblematic lives.

It seems to me that, in this, as in other areas, authoritarian proclamations of eg “Zero tolerance” (of what is deemed to be one form of unacceptable behaviour or another) are likely to be counterproductive.

Day to day evidence of acceptance of people leading their own lives in their own way even if it is very different from one's own preferences combined with intolerance of unacceptable behaviour would be more effective.

It was not the police who rescued me from mugging in New York. It was a passing taxi driver.

So, to conclude. My recommendation is, on the one hand, to remove as many of these laws and regulations as possible and, on the other, to make arrangements to facilitate supportive action on the part of individuals who become aware of unsatisfactory situations. The task is, not to condemn those who engage in unacceptable behaviour, but to find ways of ameliorating some of its causes and to assist both offenders and offended when it occurs.

Nevertheless, despite this recommendation, I have to say that, given that my voice and that of others like me were ignored in the earlier consultation, it is unlikely that those drafting this legislation will pay any more attention to us now. Under these circumstances I would urge those concerned to pay close attention to the research reported in Note 1 below and the submissions currently being made by the Humanist Society of Scotland and the Free Speech Union.

¹ This is a personal response. A detailed professional examination of the effectiveness of hate crime legislation in the USA will be found at Along, B. (2017) The Negative Ramifications of Hate Crime Legislation: It's Time to re-evaluate whether Hate Crime Laws are Beneficial to Society. *Pace Law Review* 37 Issue 1 <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1941&context=plr> See also the Wikipedia entry : https://en.wikipedia.org/wiki/Hate_crime#Opposition.

² Examples will be found in O'Neil, B. (2015). *A Duty to Offend*. Ballarat, Victoria, Australia: Connor Court Publishing.

³ Some examples of people being de-platformed and cancelled for things they have said include:
Peter Whittle – Toby Young <https://www.youtube.com/watch?v=yVmFFebZd0o&t=1125s>
Harry Miller: police checking his thoughts: <https://www.youtube.com/watch?v=YUuZMyqhUUk> and <https://www.youtube.com/watch?v=x0wC7c9Sywk>
Peter Whittle - Konstantin Kisin https://www.youtube.com/watch?v=M8dt1Qcv_RY&t=1247s
Frank Furedi <https://www.youtube.com/watch?v=qsb2Kbxu6hM>
Paul Weston arrested for quoting Churchill on Islam ... "because it might offend someone". Taken down video: <https://www.youtube.com/watch?v=WB7en-eu0X8>
Mark Collet: Stifling of socially important issues via a Kafkaesque network of police academy-generated guidelines to enable anyone saying anything important to be seized or summarily constrained under police-generated "hate crimes" and "hate incident" guidelines which have never been publicly discussed and the danger of which would be readily apparent to most people. https://www.youtube.com/watch?v=QQ8WPzu_u9U

⁴ In technical terms they imply a pervasive failure to engage in systems thinking on the one hand and reveal an extraordinary desire to engage in a crusade informed by tunnel vision on the other.

⁵ Accounts of the devastating effects of the latter have been published by *The Guardian*, 26 July 2019 <https://www.theguardian.com/uk-news/2019/jul/26/carl-beech-vip-paedophile-ring-accuser-jailed-for-18-years>. Not surprisingly, there are fewer published accounts of such experiences by the victims of the Scottish Government's legislation relating to hate crime and other abuses. Nevertheless, such accounts as do come to light suggest that the experience is widespread.