

**JUSTICE COMMITTEE**

**HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL**

**SUBMISSION FROM DOUGLAS HAMILTON**

Dear Sir / Madam

**The Hate Crime and Public Order (Scotland) Bill – response to call for views**

Thank you for the opportunity to comment on the above bill. I have read through the list of questions on the parliamentary website. The only question I wish to respond to is question 6, on which my comments are as follows:

**1. General comment**

The Government's aims may be laudable in the target state they are trying to create. However, I find the proposal to legislate against 'stirring up of hatred' to be somewhat sinister in its potential outcomes. Poorly designed or conceived legislation leads inexorably towards undesired results.

Occasionally, this can force a welcome rethink of the legislation; witness the **Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012**. That does not diminish the number of doors which such poorly conceived legislation can open towards these outcomes – a symptom of the unwritten law of unintended consequences. Therefore, before embarking on the implementation of this legislation, the Scottish Government would be well served to consider these potential outcomes, particularly as they relate to the muzzling of free speech.

I am sure I do not have to convince any reader that free speech is a fundamental pillar of a free, fair and just society. If the government is intent on creating such a society, it needs to consider these potential outcomes carefully.

**2. Specific concerns**

I list several specific items here, as examples of my concern:

- a) An offence could be committed by someone who does not even realise they are transgressing the law. Genuinely threatening or abusive behaviour is already covered by existing legislation, therefore does not need any new legislation.
- b) Scotland has witnessed a creeping intolerance in recent years, towards those who have deeply held religious views. Such use may be expressed in personal and private conversations, or from a public forum such as a church or mosque. Disagreeing with these views in the spirit of a free society is one thing: criminalising these views is something else, and should not be encouraged under any circumstances.
- c) It should also be noted that people of no religious belief could be prosecuted for expressing their opposition to religious views; at best, hardly commendable and at worst downright wrong in a society where we should be championing free speech.

d) A similar vein of logic applies to the field of transgender issues. No one should be punished, or threatened with punishment, for stating biological facts. It is a tragedy that such a sentence has to be written in modern day Scotland; a country which has historically, and rightly, prided itself in its cultural history and scientific endeavour.

e) In all potential cases, the setting of the bar for abusive behaviour is extremely subjective. Who gets to decide such a bar? The maxim of '*Quis custodiet ipsos custodes?*' surely applies here. History is replete with examples of governments creating legislation which can be used to suppress views they do not like.

f) Whether or not the current administration has that particular motivation, there will inevitably be subsequent administrations, pressure groups or individuals who will use this legislation to prosecute their own agendas at the expense of others. Once that genie is released from its bottle, it is extremely difficult to restrain it again.

g) My understanding is that Lord Bracadale's review on hate crime indicated the need for distinguishing between legitimate debate and rabble rousing. This bill does not reflect his findings.

I assure the reader that all of these points are well intentioned for the good of our nation, and hope that they can be read in this spirit.

Douglas Hamilton  
20 July 2020