

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM ARKADY HUGHES

While I welcome the abolition of the offence of blasphemy the HCPO bill appears to simply spread blasphemy to include any religious belief. The "offence of stirred up hatred" includes religion as a protected characteristic. In which "A person commits an offence if...the person...communicates...insulting material to another person." This could surely be construed by religious groups or individuals as anything that THEY "find offensive." This could include art, comedy, literature as well as social media comments.

The criminalization of "abusive" behaviour is also problematic, as that would surely include vast swathes of social media and appears to suggest that characterized groups (including religious and transgender people) can define the abuse themselves (e.g. a cartoon of Muhammad being considered Islamophobic or the suggestion that transgender women are actually still biological males).

The bill seems to shift objective hate crimes to that which individuals or groups find personally "hateful" and this is already defined under hate crime law.

Freedom of speech appears to be under threat from this bill.

While the bill states "Behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes—
(a) discussion or criticism of—
(i) religion, whether religions generally or a particular religion...etc."

Again: "A person commits an offence if—
(a) the person—
(i) behaves in a threatening, abusive or insulting manner...etc."

The process appears to put the burden of proof on the supposed "abuser."

As we've seen recently in discussions online with the author JK Rowling a reasonable position merely restating scientific facts (in this case a male cannot become a female) can be widely interpreted as transphobic and with the HCPO bill could be deemed a criminal offence if individuals of the protected characteristic (transgender) deem it to be "threatening, abusive or insulting."

Who decides what is objective truth in such situations?

The bill also includes provision for sex as a protected characteristic which I welcome but that directly conflicts with the Scottish parliament's move towards transgender self ID (where any individual can identify as the opposite gender (and by definition in the law, sex) after 6 months of living as such).

How does the bill work when it comes to transgender as a characteristic when the working definition includes non-binary and as the Scottish parliament tends to use Scottishtrans.org's working definitions include cross dressing people.
How will this work with ideas such as misgendering in which the misgendered person sees it as an abusive act.

Similarly: "A person commits an offence if—
(a) the person has possession of threatening or abusive material with a view to communicating the material to another person, and
35 (b) either—
(i) the person intends, in doing so, to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3)"

This presumably means that the women's rights t-shirt "Woman: noun. Adult female" could be considered a criminal act. As could be badges such as "I will not use your pronouns" or "Don't call me cis." Who actually decides what is abusive and what is free speech?

I believe the Scottish parliament are opening a Pandora's Box here that could lead to criminalization of the most basic acts of freedom of speech that are the basis of a modern democracy.

Please rethink this.

Arkady Hughes
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