

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM JONATHAN CAMPBELL

Please drop this prospective legislation. I provided a full submission previously
Hello,

Thank you for inviting the public to express their views on the Hate Crime and Public Order Bill. I welcome the idea of consolidating the existing hate crime laws into a more cogent and user-friendly form and I have several views on the subject that I would like to share.

Firstly, let me nail my colours to the mast as best as I can. I am contacting you as a sole individual - I represent no group or lobby and my views are entirely my own. I have never written to a parliamentary body before and this is the first time I have ever been involved in any kind of political action. It's more than a little bit daunting. I break my silence now because I am concerned about the reach of this legislation. I'm a liberal person, strongly opposed to authoritarianism, and some of the measures outlined in the bill represent a clear threat to civil liberties, namely freedom of expression (which I'm sure has been a subject that has been brought up regularly).

Please let me make it clear that I'm not opposed to this bill in principle - I do believe that the law should contain special provisions for the protection of minority/vulnerable communities - but I believe the laws that are to be put in place should be limited in their scope and specifically designed to address the following crimes:

1. Acts of violence motivated by hatred/prejudice towards members of the protected class.
2. Threats of and calls to violence towards members of the protected class, or towards the class as a whole.
3. The **repeated** and **targeted** harassment of an individual member of the protected class, motivated by hatred/prejudice towards the protected class.

These three stipulations provide specific protection from harm and send the message that crimes motivated by prejudice towards a protected class will be treated more harshly than other crimes of a similar nature. The provides the necessary disincentive to commit crimes against members of minority groups and allows for the type of social change that the government is ultimately aiming for.

However -

It is impossible to protect members of the public from **offence**, whether they belong to a protected class or not. This is because offence is subjective; it changes from person to person and cannot be objectively judged. The government is unable to set an objective standard that is not arbitrary, and I don't believe that it is in their best interests to attempt this in a top-down legislative way. It is impractical as well as illiberal. Luckily there is a more fluid and elegant solution that can be updated and enforced every day, without the need for government interference:

Social Discourse.

We change the way we speak to one another all the time, based on negotiation between individuals. We tailor our conversation and our language specifically to the individual we are addressing, and we constantly update it as more information is exchanged. Mostly, we try not to cause offence, but we are a somewhat awkward and clumsy people and it is very common to cause accidental offence, which is a cause for negative feelings of embarrassment and shame. Mostly (but not always) these feelings serve as a prompt to change our behaviour going forward, so we don't feel those negative feelings again. This is how voluntary human social systems operate.

However, people sometimes seek to cause offence deliberately and/or persistently, without regard for the needs of others. This is socially unacceptable, and there are built in consequences for it in our social system. The primary disincentives to malicious social conduct are ostracization and public shaming. These social consequences can now reach further than ever before with the advent of social media (and we can add loss of employment as a corollary). These consequences are significant. They are heavy enough punishments to fit the crime. The government does not need to add any additional disincentives in the form of incarceration. It can save itself a massive headache by letting us negotiate our own social interactions and bearing our own responsibility for them, while still using it's power to protect us from violence.

All of this may seem obvious, and it may seem like general common knowledge – were it not for what has been outlined in the bill as it is currently presented. Overall, this bill is too broad in what it proposes; it goes far beyond the three steps I outlined above that would protect minority groups from 'Harm', and seeks instead to criminalise perceived 'Insult/Offence', whether intended or otherwise, in violation of the Scots Law tradition of Mens Rea. This is not within the governments remit, and it is vastly out-with their ability to control without causing irreparable damage to natural social discourse. This element of the bill should be reconsidered, and preferably it should be amended in line with that quintessentially modern Scottish ideal – the ideal of freedom, that the government should restrict their involvement in the private lives of their citizens and let them live free as much as possible.

The worst issue in this version of bill seems to have come out of nowhere, and needs to be seriously considered before being allowed to go any further. This is the idea that has been presented as "Stirring up Hatred". Looking into the language around this area, it mentions the criminalisation of the possession or distribution of materials that are (or could be perceived to be) threatening, abusive, or "likely to engender hatred". This element is incredibly dangerous in it's scope. It lays the groundwork for the future wanton censorship of literature, art, religious texts, films... and almost any documented expression of an opinion that could be perceived as being offensive. Let me use some obvious examples:

1. A history student has a copy of Mein Kampf. It is 100% offensive material. It was and is used for stirring up racial hatred, by design. But it is an important historical document in understanding the nature of hatred and understanding the mind of an extremist.

2. A member of an Abrahamic religion has a copy of their religious text in their home. In this text there is offensive material about different races, different sexualities, different cultures. Some of the passages in these texts call for violence and genocide. Are they exempt because they are also members of a protected class? Or are they prosecuted for possessing and distributing a document that have been used throughout history for the justification of both war and peace?

3. An everyday citizen has a copy of Blazing Saddles on their shelf. The film is a brilliant satire of racism, but it has a highly offensive racial slur used approximately 11 times throughout it's 95 minute runtime. He also has a Billy Connolly DVD that has some material about religion that could be considered offensive. Is it a crime to possess these, or is it only a crime to distribute them? For example, if you share a clip of the content on social media and someone finds it offensive, are you charged with distribution of offensive material?

The loopholes present in this idea need to be addressed immediately. In it's current form this bill creates an allowance for a terrible thing that should not be part of any civilised society; government sponsored censorship. The police would be given the arbitrary power to decide whether an idea you hold or a form of expression that you possess could be perceived as being offensive to a member of a protected class – if they decide that it could be offensive, then straight away it becomes illegal, and that illegality is grounds for your arrest and incarceration. This is clearly unacceptable. If this element of the bill passes we will have the most authoritarian restrictions on expression out of all the countries in Western Europe. Furthermore, it is unnecessary; Scotland as a whole is a tolerant country and we are getting more tolerant every year. We do not have the kinds of problems that would require such heavy-handed solutions. I would ask that the government heavily cuts back on the measures they are looking to propose in the bill. Please keep it as simple and effective as possible. Protect people from HARM and not from offence; the people of Scotland are more than capable of negotiating the rest for themselves.

Thank you for your consideration.

Jonathan Campbell

PS. I believe decriminalising blasphemy is a correct decision, but I would oppose expanding the bill to include non-minority groups. The idea of adding women (but not men) as a protected class when they both approximately 50% of the population invalidates the purpose of having specific hate crime laws to protect minority groups. Otherwise all violent crimes would be hate crimes. Similarly, age is a universal trait – I'm not sure why this factor is being considered and not say height, weight, hair and eye colour etc. I'm not sure what there is to gain by adding some of these groups into hate crime legislation, once again it seems arbitrary.