

**JUSTICE COMMITTEE****HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM RICHARD BOŽKO**

To whom it may concern,

My first concern with this bill is a purely scientific one and has to do with the (original) public consultation process that underlined this bill. This process took the shape of a seminar the attendees of which were not randomly sampled. The magnitude of this issue can hardly be overstated, seeing as how it is impossible to know whether one is dealing with a biased sample so long as that sample is not selected randomly. *The initial public consultation process is therefore utterly worthless from a statistical point of view and cannot be regarded to reflect public opinion.*

My second concern is again a scientific one and has to do with the promotion of suffering that hate crime legislation either directly engenders or merely encourages when it deals with speech. A hate crime is defined (as per <https://www.gov.scot/policies/crime-prevention-and-reduction/hate-crime/>) as follows:

“Hate crime can be verbal or physical and has hugely damaging effects on the victims, their families and communities... In Scotland, the law currently recognises hate crimes as motivated by prejudice for based on race, religion, disability, sexual orientation, transgender identity.”

It seems expedient to state that I absolutely agree (and think it self-evident and obvious) that there is such a thing as hateful speech. There is however no credible scientific evidence that verbal attacks can have “hugely damaging effects on the victims.” Furthermore – and perhaps most importantly – legislation that deems hate to be violence and therefore (explicitly or implicitly) encourages conceptualization of speech as violence decidedly and manifestly engenders suffering in the very individuals and groups whom it purports to aim to protect. It does this by encouraging people to think in distorted ways and engage in what psychologists refer to as cognitive distortions. These distortions have been shown to cause stress, anxiety and suffering (Muris & Field 2008; Muran & Motta 1993; Yurica & DiTomasso 2005) and constitute much of what cognitive behavioural therapy labours to eradicate<sup>1</sup>. The specific cognitive distortions that this legislature encourages are (at least) these four: emotional reasoning, dichotomous thinking, mind reading, catastrophizing.

Of these four cognitive distortions the recognition of verbal attacks as violence is especially likely to make people more prone to mind reading (I feel offended, therefore the other person intended to offend me) and emotional reasoning (I was insulted/verbally attacked, therefore there was a good reason for this insult/attack). I have provided additional sources as to both the validity of the concept of cognitive distortions and the efficacy of cognitive behavioural therapy in the number-note reference above and the sources below.

Furthermore, even in cases where verbal attacks (or other much more severe life events) do genuinely cause trauma, the current scientific evidence suggests that the vast majority of people recover without clinical intervention and experience growth

that usually takes the form of an increase in personal resilience (Bonanno, Westphal & Mancini 2011).

Thus, it is for the reasons outlined above (a direct contribution to patterns of thinking that have been shown to cause anxiety, stress, and suffering) that I vehemently oppose any and all legislature the definition of hate crime of which extends to the verbal domain *with the exception of explicit threats and calls to violence*. This opposition naturally extends to the Hate Crime and Public Order Bill that is the subject of this letter.

The structure of the following feedback will follow the 10 suggestions outlined in the *How to submit your views* section of:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115038.aspx>

Any omissions from the questions as they are stated in this document are the result of my insufficient knowledge of the law as it currently stands.

1. *General:*

I do not believe there is any need for this bill seeing as how it broadens the spectrum of speech that *does not constitute an explicit threat or call to violence* and can simultaneously constitute an offence. I find that the bill goes against current relevant scientific research, that it sets dangerous precedents in terms of restrictions on speech, and that it finds itself necessarily relying on entirely subjective determinations about the nature of hate and intent. Furthermore, I believe my trepidations with regards to interpretations of intent and subjective hate judgements are entirely justified in light of the alarming frequency with which – and the context within which – the word ‘perceived’ appears in the [Hate Crime Guidance Manual](#), the [Hate Crime SOP](#), and the [SCRS Crime Manual](#). Compounding my trepidations is the fact that the wording of these documents is such that it elevates the victim’s and/or bystanders’ perceptions of intention above those of the hypothetical perpetrator (which constitutes a problem both from the perspective of well-being and science as outlined on page 1, and from the perspective of justice due to issues of ambiguity and opportunity for wilful ignorance of intent). *I thus stand entirely in opposition to this bill.*

2. *Consolidation: Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?*

I think consolidation would go a long way towards making the law easier to parse for laymen. I do not however possess sufficient knowledge to be able to provide much constructive feedback on this issue.

3. *How to prosecute hate crime: Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why?*

I think the statutory aggravation model is indispensable when dealing with acts of physical violence. However, I think the application of statutory aggravation to verbal attacks is morally reprehensible, prone to being ignorant of intent, and runs into the age-old issue of defining hate – an issue that is best encapsulated via a reduction ad absurdum such as “I think your deeming my speech hateful is being hateful towards me,” which illustrates how subjective the notion of hate is.

4. *Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?*

I would have no problem with adding a new statutory aggravation on age hostility to Scottish hate crime legislation *as long as it does not encroach into the domain of speech.*

5. *Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?*

I would rather sectarianism be regarded as a separate offense.

6. *Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?*

I strongly oppose Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred on the grounds that “[material that is] ‘threatening, abusive or insulting,’ accompanied by an intention or likelihood to stir up hatred,”<sup>2</sup> is entirely subjective and consequentially threatens to set an ambiguous standard – something the law cannot afford to do. Furthermore, how is the intention to stir hatred to be determined, and by whom?

7. *Do you have any views on the Scottish Government’s plans to retain the threshold of ‘threatening, abusive or insulting’ behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale’s views that ‘insulting’ should be removed?*

I absolutely agree that ‘insulting’ ought to be removed. Though I would go further in insisting that in the verbal domain the threshold should consist *only and solely* of ‘threatening’.

8. *Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?*

I find the ‘protection of freedom of expression’ section of the Bill inadequate in fulfilling its purpose and protecting freedom of speech on account of the fact that it fails to categorize explicit verbal threats and calls to violence as the *only* kind of verbal activity that does not fall under its protection. I believe any restrictions on freedom of speech that go beyond explicit threats are simultaneously reprehensible, dangerous, and harmful (for reasons I outlined above). *Consequentially, I believe the section on ‘protection of freedom of expression’ should include explicit protection of all statements that are not intended as explicit threats or calls to violence.*

9. *Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?*

I do agree that Section 50A should not be repealed.

10. *What is your view on the plans for the abolition of the offence of blasphemy?*

I think it is high time that blasphemy laws be removed from the legislature of every country including Scotland.

1. For list of cognitive distortions see:

Treatment Plans and Interventions for Depression and Anxiety Disorders, Second Edition, by Robert L. Leahy, Stephen J. F. Holland, and Lata K. McGinn.

For evidence of the efficacy of cognitive behavioural therapy see the following:

(Hofmann, Asnaani, Vonk, Sawyer & Fang 2012; Cukor, Spitalnick, Difede, Rizzo & Rothbaum, 2009; Margolies, Rybarczyk, Vrana, Leszczyszyn & Lynch 2013; Foa, Rothbaum & Furr 2003; Foa, Davidson, Frances, Culpepper, Ross & Ross 1999)

2. <https://www.gov.scot/publications/hate-crime-bill-what-it-will-do/>

Muris, P., & Field, A. P. (2008). Distorted cognition and pathological anxiety in children and adolescents. *Cognition and emotion*, 22(3), 395-421.

Muran, E. M., & Motta, R. W. (1993). Cognitive distortions and irrational beliefs in post-traumatic stress, anxiety, and depressive disorders. *Journal of Clinical Psychology*, 49(2), 166-176.

Yurica, C. L., & DiTomasso, R. A. (2005). Cognitive distortions. In *Encyclopedia of cognitive behavior therapy* (pp. 117-122). Springer, Boston, MA.

Bonanno, G. A., Westphal, M., & Mancini, A. D. (2011). Resilience to loss and potential trauma. *Annual review of clinical psychology*, 7, 511-535.

Leahy, R. L., Holland, S. J., & McGinn, L. K. (2011). *Treatment plans and interventions for depression and anxiety disorders*. Guilford press.

Hofmann, S. G., Asnaani, A., Vonk, I. J., Sawyer, A. T., & Fang, A. (2012). The efficacy of cognitive behavioral therapy: A review of meta-analyses. *Cognitive therapy and research*, 36(5), 427-440.

Cukor, J., Spitalnick, J., Difede, J., Rizzo, A., & Rothbaum, B. O. (2009). Emerging treatments for PTSD. *Clinical psychology review*, 29(8), 715-726.

Margolies, S. O., Rybarczyk, B., Vrana, S. R., Leszczyszyn, D. J., & Lynch, J. (2013). Efficacy of a cognitive-behavioral treatment for insomnia and nightmares in Afghanistan and Iraq veterans with PTSD. *Journal of clinical psychology*, 69(10), 1026-1042.

Foa, E. B., Rothbaum, B. O., & Furr, J. M. (2003). Augmenting exposure therapy with other CBT procedures. *Psychiatric Annals*, 33(1), 47-53.

Foa, E. B., Davidson, J. R., Frances, A. E., Culpepper, L. E., Ross, R. E., & Ross, D. E. (1999). The expert consensus guideline series: treatment of posttraumatic stress disorder. *The Journal of Clinical Psychiatry*.

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