

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

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It is unfortunate that in the country that was responsible for the Enlightenment we have the roll-back of basic principles such as the Voltarian one of “I wholly disapprove of what you say and will defend to the death your right to say it”.

The effect of this Bill, if passed, would be to curtail free speech – and the right to offend: “freedom of expression...is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.” (European Court of Human Rights: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57499%22\]}\).](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]})

The Bill is illiberal, puzzling, and confused and confusing. The Bill also seems preoccupied by sex (22 mentions of sex or sexuality, whereas race has three mentions).

1. The illiberal nature of the Bill is expressed in loose, ill-defined terms such as ‘stirring up hatred’, and ‘behaves in an insulting manner’ which will result in criminalisation of this is based on one person’s perception of being insulted.

2. The list of seven ‘characteristics’ to be addressed by the Bill is puzzling because why only these ones? There is no mention of hatred towards classes, towards women, or directed towards political organisations and their members such as the Communist Party or Irish Republican groups.

The Bill is puzzling because of the lack of evidence for public concern relating to some of the less well-known items on the list such as transgender identity. Furthermore, the latter ‘characteristic’ has bundled into it a sub-characteristic of ‘cross-dressing’ – this is another puzzling item in the list’s contents because it raises the question of definition of cross-dressing and, to be briefer, why are we bothering with this miniscule degree of human behaviour? Is cross-dressing under threat? And if so from whom? Whilst it is understandable that the ‘characteristic’ of religion is on the list, given the proposal to abolish blasphemy, and the substantial evidence of race hatred, the case for listing those who cross-dress as being materially affected by hatred, is not evident.

Also puzzling is mention of offences ‘committed during public performance of play’. What motivates this? What has the theatre world done to deserve this? Why not include stand-up comedy? Mention of plays gives the impression that the Bill’s drafters have a set of pet issues that they wish ‘fixed’ but are not shared with us.

3. The Bill is confused and confusing. Confused because whilst characteristics such as race and age and sexual orientation have an objective and evidential quality,

other characteristics such as 'transgender identity' are a matter of considerable debate. What constitutes transgender is controversial (pre-operation, post-operation or no-operation and self-defined, are just some of the points on a spectrum here). Plus the very notion of what constitutes identity comes into play here (how fixed is identity? Can it change from day to day? Hour to hour depending on whim? Who defines this?). To base an offence on the complainant's self-definition of identity alone seems a recipe for judicial confusion.

The Bill is confusing in its mentions of 'variations in sex characteristics' in so far as the phrase begs more questions than answers and by and large, sex characteristics are generally fixed and rarely subject to mutability.

A Bill that provides greater powers for police to have power over people's behaviour (at home or in public) needs to be much clearer than this and, arguably, the project is ultimately likely to be impossible if it is to be based upon criminalising 'behaviour of any kind and, in particular, things that the person says, or otherwise communicates, as well as things that the person does'.

As a Reader in Social Work, based in a highly respected School of Social and Political Science, I hold dearly to the right to voice (hotly, if necessary) disagreement and encourage my students to freely express differing and radically opposed opinions that have no evidential harm to anyone. The Bill's effect will be to curtail such expression of opinion.

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