

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM PAUL BRATERMAN

I wish to comment on the draft Hate Crime and Public Order (Scotland) Bill. I welcome the abolition of blasphemy, which I hope is in no way controversial, but an eight-word Bill would suffice for that.

I am a member of an ethnic minority group, and have been subjected to abusive speech likely to stir up hatred. Despite this, I am completely opposed to this Bill, which introduces a large number of necessarily ill-defined terms, and is likely to achieve the opposite of what is intended. I am particularly concerned at the creation of a new class of offence based on the extremely ill-defined concept of “abuse”, as well as the fact that it is possible to offend under this Bill with no intention of doing so.

If this Bill or anything at all like it becomes law, it will be possible for me to offend without intending to do so by communicating material considered abusive, even if I do not consider it abusive, and even in the absence of complaints from anyone who is allegedly targeted, if it is found that it is likely (whatever that may mean) that what I communicate will stir up hatred, even if that was not my intent. I expect that many of us have offended multiple times by these criteria.

As current very public disputes show, remarks that by some are considered to be simple statements of fact, or legitimate opinions, are regarded by others as abusive and liable to stir up hatred. Thus the police would undoubtedly receive many complaints under this legislation, making impossible demands on their judgement as to which ones to pursue. Moreover, the intrinsic vagueness of any legislation of this kind is such that it will be impossible to remain safe from such complaints without intolerable restriction of expression.

I would add that the terms “insulting”, “abusive”, “likely”, and “hatred” are hopelessly subjective, while the term “only”, in Sections 11 and 12 requires a distinction between a religion or behaviour, and the individuals who practice that religion or behaviour, in a way that will undoubtedly prove extremely difficult to sustain. The Minister has told Parliament that “Context of course will be key, including the likely audience and it will rightly be a matter for our independent courts to determine whether an offence has been committed on the basis of an independent, objective assessment of the available evidence.” This is an admission that the courts would be required to decide such matters on a case-by-case basis, depending on the circumstances, without even being able to rely on precedent, since contexts will never be identical. Thus even after the establishment of a body of case law (itself a time-consuming and expensive process), the legislation will remain hopelessly vague.

Finally, we may be confident that the worst among us will test the limits of this Bill, presenting themselves as martyrs in the cause of free speech, thus gaining notoriety

both for themselves and for material that may indeed be highly offensive, and actually increasing the audience for malicious material, directly contrary to the Bill's objectives. There is precedent for this.

For all these reasons, it is my view that this Bill, with the exception of Section 16, should be withdrawn.

Paul S. Brateman
14 July 2020