Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Dr Stuart Waiton

The concern about the moral aspects of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (from here on in known as the ‘Football Bill’) has already been commented upon in the media by Michael Fry (Scotsman 26th May 2011). Elsewhere political concerns have been raised by commentators who highlight a number of issues including the potential of the Bill to increase tension at football games in Scotland. There has also been wider concern about the ‘undemocratic’ time scale of the reading of the Football Bill from church and human rights organisation.

This report will touch upon some of these concerns and raise some other issues with particular reference to an online petition set up by Take a Liberty (Scotland) (with relatively little publicity), which has already received support from 900 signatories.

Key issues being raised below relate to the disproportionate nature of the Bill and the level of punishment being proposed; the issue of ‘offence’ and in particular the lack of context being given when considering the nature of football games and even football blogs; and the apparently discriminatory aspect of the Bill that deliberately targets football fans and the kinds of language often adopted by working class people. With reference to this last point, a question is also raised here about the lack of clarity about the meaning of ‘sectarianism’ in the Bill, and indeed research cited below raises questions about the extent to which we should understand various actions and activities as being ‘sectarian’.

Regarding all of the above, questions are also raised here about the Bill and the potential for it to be seen to undermine the democratic process, to bring the government, parliament and even the law into disrepute, for it to be and to be seen to be discriminatory, and finally for it to potentially encourage a more anxious and intolerant climate across Scotland.

Consultation and legal legitimacy

Since I started to write this report, around half an hour ago, the petition signatories has already increased from 900 to 957. Given that bills often take a year before they are passed, if the Football Bill were to follow ordinary procedures and timescales, it is likely that the petition would end up with tens, possibly hundreds of thousands of people signing it. This lack of concern for public consultation appears to be a problem at a number of levels.

Firstly, the process surrounding the discussion of this Bill appears, and arguably is, undemocratic. Secondly, and perhaps most importantly, there is a serious problem in introducing a criminal law and a criminal offence that substantial sections of the population do not see as appropriate or valid.
In the petition it is clear, despite the many different views being expressed, that there is a general consensus that the offences discussed in the Bill should not be seen as criminal. This does not mean that they should not be seen as wrong necessarily, simply that they should not be criminalised. In a recent Glasgow City Council report on sectarianism (see endnote iv), of the 1029 people in Glasgow surveyed, it was noted that two-thirds of respondents believed that saying ‘sectarian’ words or chants is ‘always wrong’ (although this does not mean they think it should be necessarily criminal), but also that one-third think that at football matches it is acceptable to chant certain things and use certain words. That at least one third of the population (taking the survey as a representative sample of Glasgow) not only reject the idea of chanting ‘sectarian’ songs at football matches as being criminal but do not even see it as wrong suggests a major problem with the appropriateness of this Bill.

It is hard to think of any other ‘crime’ that is not generally recognised as a crime – not least of all one that can result in being sent to prison for five years. Assault, burglary, rape and so on would find few condoners because the law clearly reflects the sense of right and wrong of the public on these matters. Here, on the other hand, we have a potential criminal law with a severe punishment attached to it that significant sections of the population and potentially even the majority do not believe should be treated as criminal. The ramifications of this for the rule of law and the respect for the law are serious.

Criminalising fans

A serious omission in the Football Bill, in terms of contextualising offensive behaviour, is the ignoring, or even ignorance, portrayed regarding how people actually behave at football matches: Especially, but not exclusively, how the ‘rowdies’ behave.

In the Football Bill the discussion about ‘creating fear’ or causing an offence to a ‘reasonable’ person appears to miss the point of football fandom, chants, slogans, the use of intimidating language and so on. Here the Bill lumps together (confusingly) types of behaviour at a football match, on an online blog and on the street. Pointing, shouting and being offensive in someone’s face on the street is already criminal. However pointing, shouting, being aggressive and offensive at football matches (whether sectarian or not) and online are not seen as criminal but within the act will become so.

Part of the argument presented in the Bill is that these rowdy activities should be seen as leading to ‘public disorder’. At the Cross Party Meeting on Human Rights (held at the Scottish Parliament on Tuesday 21st June 2011), the civil servant defending the Government’s case argued that this was a ‘public disorder’ issue because if the police were not present then disorder would emerge. This is presumptive and denies a difference between words (however unpleasant) and violent actions carried out by football fans.

In the Policy Memorandum of the Football Bill (subsection 52) the point is made that the Bill targets behaviour that will incite public disorder related to football, ‘as well as any other behaviour likely to cause public disorder related to football which would be offensive to a reasonable person in Scotland’. Rather than specifically targeting
sectarian or discriminatory behaviour this appears to criminalise potentially any ‘aggressive’ behaviour at football.

Consequently the Bill criminalises ‘rowdy’ football behaviour at any football match in Scotland, ignores the reality and difference between action at a game and action between individuals on the street and is also potentially discriminatory against people who simply use ‘bad language’. Shouting and screaming at football is consequently to become a serious criminal offence.

One potential offshoot of this is that fans may begin to use the new law to point out those they deem to be ‘being offensive’, thus creating a whole new level of tension at games.

It is undeniable that many fans are offensive at football games. But this is part of the ‘tribal’ nature of the event itself, and indeed is part of the reason why many people love football. If taken onto the street these activities are already seen and treated as criminal. However, to conflate football chanting in a crowd with one-to-one personal intimidation is to see criminal activity when none exists.

Finally, on a different note regarding criminalising fans’ actions, there is constant reference in the Bill to the cases last year of mail bombs and the attack on Neil Lennon. These criminal activities are seamlessly linked with wider (as yet non-criminal) actions of ‘rowdy’ fans and discussed as part and parcel of the same problem.

This would appear to be prejudiced in the true sense of the word where people chanting incorrect slogans in an aggressive manner are connected to mail bombers and those who assault football managers. This literally is to pre-judge potentially thousands of non-violent citizens who do little more than shout and scream on the terraces.

The problem of sectarianism

Perhaps the most contested and arguably most confused aspect of the Football Bill and within the debate about football in Scotland is the issue of sectarianism. That the Bill itself cannot define what this is appears to be problematic. However, if we take it to simply mean an expression of religious bigotry, it is debatable to what extent sectarianism is a major problem in Scotland, even in Glasgow.

Indeed, that the issue is ‘contested’ again raises a serious problem with the speed with which the Bill is being pushed through parliament without sufficient time for discussion.

A core purpose of the Bill is to challenge sectarianism expressed through football. But there are serious doubts that have been raised in academia and in research about the level of sectarianism not only in Scotland but also in Glasgow itself.

Work by Professor Steve Bruce at Aberdeen University questions the extent of religious bigotry in Scotland. Employment, poverty and wider indications of discrimination based on religion are not evident in Scotland. Similarly, there does not
appear to be a serious problem at a personal level in terms of inter-marrying. For instance, over half of Scottish Catholics under the age of 35 are married to non-Catholics.

The perception of sectarianism remains relatively high, but the evidence for this is scant. Indeed one argument that is made is that the issue of sectarianism is kept alive more by those who demand ‘we must do something about it’, than by those doing anything based on their sectarian beliefs.

In a useful report published by Glasgow City Council, the exaggerated nature of the belief in sectarianism is expressed, with two thirds of respondents believing sectarianism is a problem and the same number believing that sectarian violence is a problem. But this is in stark contrast to the thoughts and prejudices of the individuals questioned. For example, when asked about who they would not want as a neighbour almost 100 percent said a drug addict, around 30 percent said homosexuals but only one and two percent respectively said Protestants and Catholics (this being a survey of 1029 people, not in Scotland, but in Glasgow). When asked about what sectarian violence they had experienced the survey also found that despite people thinking this was a serious issue, only seven people or 0.7 percent of respondents had experienced sectarian violence while a similar small number had experienced sectarian threats.

Bigotry and prejudice (for example against homosexuals) has clearly not gone away. But serious religious prejudice appears to be limited and also to be declining – with over-60s, for example, being more inclined to have concerns about inter-marrying or negative views based on religious prejudice.

It could be argued that what we are witnessing at Celtic and Rangers games is not only a form of ‘performance’ in terms of the general football fandom, but also a historically based ‘sectarian’ pantomime – a ninety minute war of words (with the occasional idiot jumping on the pitch and rightly getting carted away), followed by the huge majority of even ‘ranting’ fans going home to Catholic wives, protestant mates and neighbours whose religion they care nothing about.

In this respect it is less accurate to say that sectarian passions and rivalry is riding on the back of football. On the contrary, it would appear that football passion and rivalry is riding on the back of an ersatz form of sectarianism. The research appears to suggest that if Celtic and Rangers football clubs disappeared ‘sectarianism’ itself would also largely disappear. Indeed it is rare to find a discussion about sectarianism that is not centred around football. This is strange if we are to believe that this is a societal wide problem of prejudice and discrimination. The problems (to the extent that they are problems at all) that are being discussed should consequently be understood more as an expression of football tribalism than any serious religious prejudice or discriminatory attitudes on the part of either Celtic or Rangers fans.

**Class discrimination**

The Football Bill consciously distinguishes football fan activity from the words and behaviour of artists, comedians and other performers. That football rowdiness is arguably part of a ‘performance’ specific to games is ignored. This aspect of the Bill
appears to be wholly discriminatory against football fans who would no longer be treated equally under the law.

Furthermore, and perhaps more contentiously, the focus on what could be described as crude and rude words – Fenian, Tim, Hun and so on – which are more part of everyday language amongst poorer sections of society, means that these people are again potentially criminalised for simply lacking politeness or using what is deemed to be politically incorrect language.

It would appear legitimate to be opposed to the use of such terms morally and politically. But to make them potentially criminal is highly problematic and potentially discriminatory.

The consequences for individuals who are charged under this act, in terms of a criminal record and the chance of losing their job and becoming unemployable, should also be considered more seriously.

The discussion about ‘hate’ at Celtic and Rangers matches appears, in part, to justify the need for the Bill. However, ‘hatred’ at football is part and parcel of the game and should not be taken literally and certainly should not be addressed (if it needs addressing at all) legally. Once again, regardless of individuals’ true beliefs or prejudices, the activity of sections of fans, generally young working class men who are the most aggressive and apparently ‘hate filled’, will be criminalised.

Finally, with regard to ‘hate crimes’, it is worth noting that a study of hate crime in the United States concluded that despite the intentions of the law to target extremists, the result had been that both black and white working class men had simply ended up filling up the prisons because it was they who would blurt out ‘incorrect’ words when drunk or when in a fight and so on. These laws in the U.S. consequently have not targeted racism but have criminalised further poorer sections of society.

By constructing a crime based on a pre-judgement of potential ‘public disorder’ (at a football match when being aggressive and confrontational is part and parcel of the game) results in the criminalisation of working class football fans.

**Creating an intolerant cultural climate**

Finally, I believe it is worth raising a concern about the freedom of speech aspect of this Bill, not simply in terms of criminalising ranting football blogs or online postings, but more generally about the climate that is created for young people when certain words become ‘unacceptable’ (indeed that can potentially be perceived as criminal). This can have the consequence of limiting speech and thought concerning the nature of sectarianism and racism.

As a university lecturer it is noticeable that students I teach already can find themselves tongue-tied and uncomfortable discussing issues like race and racism. It would be an unhelpful development if the politicisation of ‘correct’ and ‘incorrect’ words regarding sectarianism were to limit the capacity of students and the public more generally to relate to these issues freely.
Rather than a criminalising approach being taken through the Football Bill that appears to embody its own form of intolerance, discrimination and prejudice, Take a Liberty (Scotland) believes the Enlightenment ideal, attributed to Voltaire, that, ‘I may hate what you say, but will defend to the death your right to say it’, would be a far more tolerant, civilised and progressive framework to relate to issues of prejudice and discrimination.

Dr Stuart Waiton
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1 http://www.scotsman.com/rangersfc/Michael-Fry-A-totally-unnecessary.6774395.jp
3 See http://www.petitiononline.com/1967a/petition.html. I would recommend the comments made by people signing the petition be read to get an idea about the concerns being raised and the depth of anger being expressed against this Bill.