Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Martin Brennan

If media reports are accurate this Bill has its provenance in the remarks made – for the purest of reasons, no doubt - by senior police officers and the much quoted Police Federation spokesman, Les Grey, in the aftermath of a Scottish Cup replay. In terms of crowd behaviour this match was by no means exceptional but what was exceptional was the intense media searchlight trained on Neil Lennon and Alistair McCoist. In the following weeks, outrage – whether genuine or counterfeit – was the tone adopted by the civil and sporting authorities. There was general agreement that ‘Something Must Be Done’ and no shortage of candidates to do that something. This all culminated in a hastily drafted and un-workable Bill which was just as hastily ruled off-side. It is my belief that this new Bill may prove equally un-workable unless a number of questions are addressed in tandem with any legislation. I have listed a number of questions below. Each question is accompanied by an explanatory note. My questions are seriatim:

1. Does Scotland have a sectarian problem? Is there any hard evidence that Catholics suffer discrimination in modern Scotland? What are the attitudes of modern Scots to the descendants of Irish immigration? Do Scottish institutions reflect the religious diversity of the population at large?

Four questions are posed above and, superficially, not one relates to football or internet abuse. But, I would argue, these questions address the core issue at stake more properly than the putative legislation. In fact, objective evidence might reveal to what extent bigotry is a clear danger to society or whether it is largely a media construct. To the best of my knowledge Catholics now – possibly belatedly – enjoy similar job opportunities and standards of living non-Catholic citizens. However, all is not clear. Researchers acknowledge that the detailed analysis of sectarian assaults is a key indicator of contemporary attitudes. Full disclosure of these crucial statistics has not been available for some years. Official transparency in this area is essential for public debate to be informed. To sum up, serious research is required preferably ante rather than post legislation. Otherwise we will get what we got last time round – policy on the hoof based on, at best, pious aspirations or, at worst, blind prejudice. Finally, on this question, it is surprising that in a modern democracy like Scotland’s there is no credible, disinterested body of research upon which legislators may draw. To sum up – the Bill’s very narrow terms of reference may appeal to those tasked with framing legislation but that same legislation is the more likely to fail if there is no regard to a wider context.

2. What is offensive behaviour? This question may not be as crass as it appears. For example, a government Minister cited ‘aggressive signs of the cross’ as potentially offensive. Now, I think I see what she meant. But the state may be placing itself in an invidious position if it intervenes on behalf of those offended by what is, after all, a prayer. It could also be argued that some fault lies with the mind-set of those inflamed by a prayer which is offered in public and without comment across the civilised world. In
addition, it will be down to the police to enforce this legislation and they will be placed in the position of having to distinguish instantly between behaviour that is ‘offensive’ as opposed to merely boisterous or indeed prayerful. If that proves to be the case then the door is open to some highly subjective judgements. What chance has the humble policeman/woman when our Justice Minister a few months ago deemed the sectarian outpourings which characterised the mood music at the League Cup Final as representing an advert for Scottish football? Another logistical problem the police will almost certainly encounter remains, as always, the impossibility of arresting up to 30,000 malefactors. Is this where the sport’s authorities are expected to demonstrate leadership? If so, the application of sanctions must be built into the legislation.

3. Will there be review procedures for the enacted Bill?
Despite the reservations of its critics this Bill is the product of decent instincts. But I fear that so many anomalies and inconsistencies will arise from its application that it will require more than a few amendments to render it reasonably acceptable. The doomsday scenario would entail one section of the community perceiving themselves as victims of heavy-handed political correctness. Resentment – or worse - could be a consequence. There may also be a temptation for the police to make arrests in line with some kind of informal quota with a view to demonstrating even-handedness.

4. Do Catholic schools cause trouble at football grounds?
In most modern democracies this question would be seen as risible. But, time after time, the self same question is rehearsed when there is trouble at football games. World-wide evidence would suggest that there is little or no causal link between Catholic schools and sectarianism. In England, for example, 10% of school pupils attend RC schools as opposed to 12% in Scotland. The difference is that in England sectarianism has long since been consigned to a more primitive past. That said, not all opponents of faith schools in Scotland are bigots. So, the subject is up for debate. Personally, I would suggest that the proponents of faith schools will win hands down.

In very brief compass, I would suggest that the proposed legislation will be fraught with varying degrees of danger. In my opinion, there should have been some kind of educational process prior to this quite unusual Bill. The root question here is sectarianism not football and very few know the full scope and ambit of that problem – if it is indeed a problem. Quite simply we must find out more about Scotland and the Scots before passing laws which may or may not be appropriate.

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