Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Supplementary written submission from the Catholic Church (on behalf of the Catholic Bishops’ Conference of Scotland)

Introduction

We are grateful for the invitation to participate in the consideration of the Offensive Behaviour at Football and Threatening Communication (Scotland) Bill and are pleased to offer more detail to our original submission to the committee.

The Catholic Church condemns behaviour and beliefs which foster hatred of any individual or group. All persons are entitled to respect and to live without fear and intimidation and consequently maintaining public order is a central task of government. Public authorities therefore have the competence and duty to deal with disorder and behaviour which threaten the wellbeing of citizens and society as a whole.

Enacting laws and designing policies aimed at resolving such problems must be pursued with prudence and wisdom to ensure that measures are suitable and proportionate for the problem they seek to address. The freedom of citizens in their movements, beliefs and expression is foundational to a decent society and these ordinary rights must be protected as far as is practicable. The exercise of government powers can contribute to this work by giving leadership in fostering the values necessary for a safe and ordered society. These powers need to be used wisely and to this end democratic governance is marked by a separation of legislative, judicial and executive powers. Such a separation ensures an adequate balance within the democratic process which avoids arbitrary and poorly formulated decisions. \(^1\) The relationship between the Parliament and the Scottish Government in handling this, and any other, bill needs to be respectful of their respective roles and competences.

Categorising the nature and extent of the problem

Bigotry and sectarianism need to be properly understood such that views or actions which may be regarded as sectarian but which in themselves merely indicate support, belonging or empathy for particular sectional or community interests, are not proscribed.

The bill proposes very broad criteria for catching behaviour which the government wishes to eradicate. The bill in our understanding was initiated to tackle the specific problem of disorder arising from bigotry in the context of football matches. The scale of that problem itself has to be examined with a sense of proportion. For example the trouble associated with other football matches in Scotland and in other contexts

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\(^{1}\) C.f. Centesimus Annus, Pope John Paul II, Paragraph 25
\(^{2}\) Ibid Para 44
where no religious sectarian element exists can provide a basis for measuring the magnitude of the problem in Scotland.

**Wide ambit of the provisions**

In regard to the broad ambit of sectarianism envisaged by the cumulative characteristics identified in the bill there is a need for ensuring that the impact on civil liberties. It has to be seriously considered if there is a need to include such a wide scope of categories of people given that the bill has been introduced ostensibly to deal with a much narrower issue, namely bigoted intolerance against particular perceived Christian denominations.

This widening of the ambit of what the bill can catch is exemplified by the introduction of five forms of transgender identity discriminations which may give rise to criminal offence.³ We are unclear as to the source of such categories appearing in the bill and are unaware of individuals who may define themselves under such a category having been specifically targeted for mistreatment in the context of football matches. This gives rise to concerns that a much wider agenda is being addressed by the provisions of the bill than that which is commonly perceived as being limited to football related sectarianism, which has commonly been accepted as referring to bigoted anti-social behaviour. These provisions in fact seem to deepen the embrace of an ideological understanding of human sexuality which is rejected by the Catholic Church and which is contrary to natural law.⁴

There has been an extensive level of attention to the issues of equality over the last decade which indicate that wider equality issues have been addressed in that forum and that a bill dealing with football related trouble is not the proper vehicle for introducing extensions to the concepts of protected characteristics which this part of the bill seems to represent. Specifically we have fears that the extension of protected characteristics in this bill is being used to implement an ideological view of human nature to the detriment of the freedoms of other members of society who hold differing views. The significance of this is considerable given that there arises a threat of legal sanction for making sensible distinctions between individuals or for expressing views which are frowned upon by other members of society. We therefore suggest that a widening of equality categories is not undertaken in this bill.

**Freedom of religion**

At the heart of religious bigotry is an intolerance of religious faith. The present bill presents an important opportunity to ensure an adequate appreciation of religious freedom which will in turn help overcome intolerance. Given that this bill is concerned with intolerance directed at people of a perceived religion we particularly encourage the incorporation of a provision which re-asserts the freedoms safeguarded by articles 9 and 10 of the European Convention of Human Rights.⁵

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³ Offensive Behaviour at Football and Threatening Communications (Scotland) Bill 2011, Sections 1(4)(f) and 4(3)(b)
⁴ For example writers who support ‘Queer Theory’ (Tatchell, Butler, Fuss et al) assert that gender is not an intrinsic characteristic of the human person and therefore gender identity as traditionally recognised is to be eradicated.
⁵ ARTICLE 9
Responsible freedom

Citizens carry responsibility for exercising their freedom responsibly and for contributing to cordial relations. Church communities play a particular role in contributing to good community relationships and their efforts, along with other parts of civic society, to encourage responsible behaviour throughout our communities are vital to creating the proper environment for a genuinely tolerant society. In Scotland, the different Christian denominations and faith communities have led by example in fostering good relationships and building close and collaborative partnerships. In particular the Catholic Church has worked to perform its task of inculcating the moral virtue of justice through its teaching role and directly through our efforts in parishes and schools in developing and sustaining an ethos of genuine respect for all persons. Our example in collaborating closely with other Christian denominations, other faiths and all people of good will, on a variety of issues is in sharp contrast to the disordered and anti-social behaviour which sometimes flares up in social settings such as at football matches. It should be noted that those responsible for such behaviour in no way represent the faiths to which they may be perceived to give adherence.

The re-assertion of respect for religious freedom will contribute to a culture of greater tolerance and we recognise the need for further work in this area across Scotland in addition to the steps which are being taken within the present legislation.

A healthy democracy should also encourage the participation of citizens in political choices by ensuring adequate opportunity to contribute meaningfully to the decision-making processes of government and parliament. In this context we are pleased that the timetable for this bill has been greatly extended to permit such participation.

Communicating threats of serious violence

Threats of violence are of course unacceptable in society. There requires however an objective standard for considering the appropriateness of state intervention in

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Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

ARTICLE 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It is in pursuit of Justice that the role of the State and the Church intersect; the former having a responsibility for promoting and securing justice. C.f. Pope Benedict XVI, Deus Caritas Est, paragraph 28, Libreria Editrice Vaticana 2005

Ibid Para 46
communications which may be made in jest, rashness, through lack of adequate reflection, or which are without practicable foundation for being carried out. This may be achieved by giving adequate latitude to freedom of expression. Legislation, covering England and Wales\(^8\), which is similar to that proposed in this bill includes explicit protection of freedom of expression. The bill now under consideration may benefit from the inclusion of such a provision in line with articles 9 and 10 of the European Convention on Human Rights, as mentioned above.

We believe it wise to give particular emphasis to the danger of laws undermining confidence in the freedom of expression owing to the necessity of this right for a democratic polity. The introduction of legislation which criminalises particular types of expression needs to be done mindful that it can have an unintended chilling effect on society if not adequately circumscribed by provisions to protect established civil liberties.

The present bill for example could be used to challenge those who express views found to be offensive to religious believers. Whilst the Church may at times find such verbal attacks hurtful and misguided; we recognise the legitimate right of expression\(^9\) and would not wish ordinarily that such expressions would lead to prosecution and would expect that Catholics would be free to articulate their views in a forthright manner. The human person’s dignity is properly acknowledged by respecting a wide limit to this freedom and democratic society is dependent on healthy debate to permit the opportunity to reflect on competing views and arguments. European jurisprudence has consistently recognised this important right even to the point of defending the freedom to “offend, shock or disturb”\(^10\) contained within this right, albeit that we recognise that the need to protect morals as identified in article 9 of the ECHR has been somewhat neglected over recent years. Such a strong support given to freedom of expression does however serve society by preventing a narrow consensus which can grow detached from objective measures which are best identified by reasoned reflection and a willingness to engage ideas even those from which we find challenging.

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Catholic Parliamentary Office
8 September 2011

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\(^8\) Public Order Act 1986 Section 29J as amended by the Religious Hatred Act 2006
\(^9\) Albeit that we urge this freedom to be exercised in society with due concern for the individuals who hold views which others find disagreeable.
\(^10\) Handyside v UK (1976) 1 EHRR 737