

Ep 29: Scotland's new blasphemy law?

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You are listening to the National Secular Society podcast hosted by Emma Park (EP). In

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April this year Scotland's Justice Minister, Humza Yousaf, introduced to the

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Scottish Parliament to The Hate Crime and Public Order Bill. According to the

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Scottish Government's Justice and Safety blog, the purpose of this Bill is to

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modernise, consolidate and extend Scotland's existing hate crime law. One

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of the ways it will do this is by introducing new offences relating to

0:00:32.259,0:00:36.970

'stirring up hatred' as it puts it against various protective groups including

0:00:36.970,0:00:41.680

those categorised by religion. The National Secular Society, along with some

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academics and religious groups, has opposed the Bill claiming that it

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represents a direct attack on freedom of speech. But Mr Yousaf has claimed that

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Part 2 of the Bill, which deals with

the 'stirring up hatred' offences in fact

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sets a very high threshold for criminality.

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Moreover, partly because of the Bill's attempt to protect all sorts of

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minorities from what it calls 'threatening abusive behaviour' it has actually

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received widespread support among the Scottish public. At the same time, in

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what appears to be a step forward in the freedom of speech the Government has

0:01:12.250,0:01:15.549

announced that the same bill will abolish the old common law offence of

0:01:15.549,0:01:20.649

blasphemy. But is the Scottish Government actually abolishing blasphemy with one

0:01:20.649,0:01:26.289

hand and reinstating it with another? Can free speech worth the name survive in

0:01:26.289,0:01:30.880

Scotland? To answer these questions I'm joined now by Neil Barber (NB), Communications

0:01:30.880,0:01:34.780

Officer of the Edinburgh Secular Society, and the National Secular Society CEO

0:01:34.780,0:01:37.649

Stephen Evans (SE).

0:01:39.229,0:01:43.560

(EP): The Bill was introduced into the Scottish Parliament by Justice Minister

0:01:43.560,0:01:48.600

Hamza Yousof. Let's start by going through the provisions that have been argued by

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secularists to be problematic. The key part in this Bill is Clause 3, entitled

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'Offences of stirring up hatred'. Under subsection 2(a) it is an offence if

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someone either behaves in a threatening or abusive manner or communicates

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threatening or abusive material to another person and also intends to stir

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up hatred which we'll get onto next. So to begin with on this Clause it looks

0:02:12.900,0:02:16.920

like there are two types of behaviour nowadays in this new Bill which will be

0:02:16.920,0:02:22.140

able to get you into trouble: being either threatening or abusive. So Neil

0:02:22.140,0:02:27.650

what's wrong with this dichotomy between being either threatening or abusive. (NB): Well

0:02:27.650,0:02:32.519

at the top of this let me say that it's a great thing that

0:02:32.519,0:02:37.709

the Government of Scotland is seeking to create a bill that protects

0:02:37.709,0:02:43.380

minority groups. It is a great thing so no way wanting to mourn about it

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but the concern is the actual wording of it when it comes to religion. There's a

0:02:49.380,0:02:58.049

lot of Social Work evidence that hate speech aimed at somebody based on who

0:02:58.049,0:03:02.610

they are is more hurtful. There's more manifest damage involved and there's

0:03:02.610,0:03:07.440

more manifest damage involved to the community of which they are a part. So

0:03:07.440,0:03:12.120

that is rightly recognised in the law, but in terms of what is threatening

0:03:12.120,0:03:17.940

or abusive - there's a fine line. I mean for example I think people should be

0:03:17.940,0:03:23.850

entitled to oppose marriage equality as long as they don't ship up at gay

0:03:23.850,0:03:27.930

weddings with a placard. That's the point at which there are existing laws on

0:03:27.930,0:03:33.180

harassment that they would police against that. It's okay to oppose

0:03:33.180,0:03:36.769

abortion as long as you're not guilt-tripping women outside the clinic.

0:03:36.769,0:03:42.150

You know, so there's a fine line between having an idea on being threatening and

0:03:42.150,0:03:47.420

being abusive. Now in terms of what abuse means

0:03:47.420,0:03:53.840

we have to at this early stage play the 'Life of Brian' card. I mean you know had

0:03:53.840,0:03:59.510

this law existed in those days there might well have been concern that 'Life

0:03:59.510,0:04:05.660

of Brian' was abusive and therefore a criminal act. In terms of

0:04:05.660,0:04:11.239

communicating on threatening abusive material to another person, well you've

0:04:11.239,0:04:14.989

got to think what if the shoe were on the other foot in terms of religious

0:04:14.989,0:04:22.639

belief? I mean the great Abrahamic books of religion they all talk about how gay

0:04:22.639,0:04:28.850

people will burn in eternal hell and the disbelievers should be put to death. Now

0:04:28.850,0:04:34.040

if that's not threatening and abusive behaviour I don't know what is. So in

0:04:34.040,0:04:39.260

terms of communicating that sort of a material to another person it wouldn't

0:04:39.260,0:04:45.229

be too ridiculous to imagine somebody taking Gideons to court for sending

0:04:45.229,0:04:50.330

Bibles to primary schools. We've got to bear in mind that there's a great

0:04:50.330,0:04:57.050

difference between threats and abuse so the law rightly protects everyone

0:04:57.050,0:05:02.390

against being threatened. But abuse is a different sort of

0:05:02.390,0:05:08.660

thing. (EP): Steven I mean just on that point - I mean abusive to you

0:05:08.660,0:05:13.880

or Neil as well - I mean: What is wrong with that? Is that taking, is your problem

0:05:13.880,0:05:19.370

that it's taking the definition too wide? (SE): Yeah absolutely I think the inclusion of

0:05:19.370,0:05:25.190

'abusive' is a particular problem because it risks capturing and criminalising

0:05:25.190,0:05:29.180

quite a vast array of speech or behaviour. It makes the threshold for prosecution

0:05:29.180,0:05:34.130

too low and I think it seriously risks chilling free speech to the point where

0:05:34.130,0:05:37.250

people feel the need to censor themselves in fear of accidentally

0:05:37.250,0:05:40.880

transgressing the new law. You know clearly threatening people is wrong. I

0:05:40.880,0:05:44.030

don't have a problem with threatening behaviour being against the law. Actually

0:05:44.030,0:05:49.190
it already is as Neil said. 'Abusive'
speech on the other hand is much more

0:05:49.190,0:05:53.960
subjective, it's vague, it's open to
interpretation and therefore it's going

0:05:53.960,0:05:59.060
to be open to abuse. Hate speech laws are
a great way to sense before you disagree

0:05:59.060,0:06:03.230
with. So just look at the dictionary
definition of 'abusive' and you'll see

0:06:03.230,0:06:08.330
it's defined as 'extremely offensive and
insulting' so straight away you start to

0:06:08.330,0:06:13.760
see the problem. Neil mentioned 'The Life
of Brian'. I think perhaps a modern-day

0:06:13.760,0:06:19.340
example of that could be publishing
cartoons of the Prophet Mohammed and

0:06:19.340,0:06:24.080
that could clearly become unlawful if
this law is passed and if that's not a

0:06:24.080,0:06:28.310
blasphemy law then I don't know what is.
There is clearly a lot of speech and

0:06:28.310,0:06:31.700
behaviour out there that people are
finding offensive, and may even consider

0:06:31.700,0:06:37.730
to be abusive. A lot of people seem
deeply offended by a lot of things right

0:06:37.730,0:06:39.650
now
and I'm not sure if it because of the

0:06:39.650,0:06:43.490
lockdown or what, I don't think it's
helping, but you know there has been

0:06:43.490,0:06:47.420
a growing culture of offence for some
time now . Whether it's about religious

0:06:47.420,0:06:51.740
matters, transgender issues, racial issues
or whatever else - a lot of people

0:06:51.740,0:06:56.960
offended. (EP): And is this the point - that I
mean basically
people just have to deal with being

0:06:56.960,0:07:01.010
offended in a free society? (SE): I think so
but you know if social media platforms

0:07:01.010,0:07:04.690
want to ban people for violating the
platform's

0:07:04.690,0:07:09.350
terms of engagement, their rules, well
that's one thing but criminalising

0:07:09.350,0:07:13.130
speech that we find abusive I think
that's quite another

0:07:13.130,0:07:16.760
because if law can be used to shut down
discussions and debates about these

0:07:16.760,0:07:20.660
issues then I think we're in a very
dangerous place and I think the way this

0:07:20.660,0:07:25.340
new law is drafted may well lead to
vexatious complaints and attempts to

0:07:25.340,0:07:30.080
prosecute people when all we're really

talking about for the most part is a

0:07:30.080,0:07:35.150

disagreement, maybe a fundamental difference of opinion but that's what it

0:07:35.150,0:07:37.940

is and sometimes it may be ill-tempered, it could be provocative.

0:07:37.940,0:07:41.930

It often is. But people do need the freedom to speak freely on these matters,

0:07:41.930,0:07:45.680

however contentious they are, and frankly I think police have got better things to

0:07:45.680,0:07:50.330

be doing than referee in our cultural wars. (EP): Yes, and the whole of 'Private Eye' might

0:07:50.330,0:07:51.300

you know be abolished and any satirical publications if we have such a law.

0:07:51.300,0:07:55.610

(NB): I know

0:07:55.610,0:07:59.600

we're going to come on to this in terms of the

0:07:59.600,0:08:02.419

qualitative difference between religious belief and other protected

0:08:02.419,0:08:06.530

characteristics, but just on what's on the point Stephen was making: I had a

0:08:06.530,0:08:10.789

debate recently with, well it wasn't a debate - we discussed recently the fact

0:08:10.789,0:08:15.150

that some American estate agents are

seeking to change

0:08:15.150,0:08:22.380

the word 'master bedroom' into 'primary bedroom' and so everyone on Facebook was

0:08:22.380,0:08:24.900

split . There was the 'Oh that's ridiculous it's political correctness

0:08:24.900,0:08:29.570

gone mad, it's ridiculous" and then on the other hand there's a sense that well

0:08:29.570,0:08:35.970

words contain power and if we can change words that are not going to hurt

0:08:35.970,0:08:41.610

people then what's the harm with that? But with the religious belief

0:08:41.610,0:08:45.390

you'd NEVER KNOW what's going to be harmful to them, that's the thing. You

0:08:45.390,0:08:49.410

just don't know. It's something that they choose to believe

0:08:49.410,0:08:55.170

and set up this set of completely peculiar esoteric ideas of what is

0:08:55.170,0:08:59.880

offensive and I think that we have to look at that as we examine the hierarchy

0:08:59.880,0:09:04.350

of protected characteristics. (EP): Absolutely and I mean there's a wider question

0:09:04.350,0:09:08.580

which we go into now about the general censorship of language. Should we just be

0:09:08.580,0:09:13.500

brave and deal with the fact that, that

language doesn't always conform to a

0:09:13.500,0:09:17.880

particular set of values at a particular time? But Neil, in terms just very

0:09:17.880,0:09:22.530

quickly you said in terms of the 'threatening' aspect of this provision

0:09:22.530,0:09:28.500

it's already covered in the law and harassment and so is it even necessary

0:09:28.500,0:09:33.390

to have this law at all if the threatening covers already covered? (NB): Well

0:09:33.390,0:09:39.390

in Scotland what we have just now it's about causing fear and alarm. Now the

0:09:39.390,0:09:43.980

protected characteristics that we have: age, disability, religion, sexual

0:09:43.980,0:09:48.210

orientation, transgender identity, they're all covered

0:09:48.210,0:09:53.280

already. What has changed is this notion of 'stirring up hatred'. Now there was

0:09:53.280,0:09:57.890

always a stirring up hatred bill in Scotland but it applied only to race.

0:09:57.890,0:10:02.670

What is happening is that these these other protected characteristics, I

0:10:02.670,0:10:08.040

believe most significantly religious belief, are being added to the 'stirring

0:10:08.040,0:10:12.270

up hatred' and they have kind of bunged in the other

ones as an afterthought I have to say. I

0:10:12.270,0:10:17.760

think this whole thing is focused on accommodating the religious reaction to

0:10:17.760,0:10:21.420

the fact that the blasphemy law is being changed. (EP): Leaving the other protective

0:10:21.420,0:10:25.050

characteristics aside they may have their own issues but focusing on the

0:10:25.050,0:10:28.350

religion you're saying it's just unnecessary to bring religion

0:10:28.350,0:10:33.980

into this hate speech bill. (SE): Yeah well for me I don't think the new

0:10:33.980,0:10:38.580

offences are necessary at all. People in Scotland are already adequately

0:10:38.580,0:10:44.490

protected by the law. If we look at the Criminal Justice and Licensing Act of

0:10:44.490,0:10:49.920

2010 Section 38 already outlaws threatening and actually abusive

0:10:49.920,0:10:54.360

behaviour where that behaviour causes reasonable person to suffer fear and

0:10:54.360,0:10:58.770

alarm. So this law protects everybody, doesn't focus on protected

0:10:58.770,0:11:02.280

characteristics

it's a law that protects everyone from the sort of

0:11:02.280,0:11:06.930
behaviour that the Justice Secretary says
he wants to outlaw. So if it's already

0:11:06.930,0:11:09.180
outlawed
I think there's absolutely no

0:11:09.180,0:11:12.990
justification for the introducing new
speech laws. (EP): Yeah okay so it looks like

0:11:12.990,0:11:18.060
they're just trying to do more control
of our language and our behaviour than

0:11:18.060,0:11:22.290
it's necessary. In terms of this
specific way that the legislation is

0:11:22.290,0:11:28.230
drafted there also seems quite dramatic
restrictions on what people can do

0:11:28.230,0:11:32.940
because under Subsection 2 of this
clause about the offence of 'stirring

0:11:32.940,0:11:40.020
up hatred', in addition to behaving in a
threatening or aggressive manner, the

0:11:40.020,0:11:45.450
person to be guilty of the offence must
either: intend to stir up hatred against

0:11:45.450,0:11:49.730
a group of persons based on
characteristics including religion; or,

0:11:49.730,0:11:54.540
even if they did not intend to stir up hatred,
they can still be guilty of a

0:11:54.540,0:11:58.890
criminal offence if as a result of their
threatening or abusive behaviour it is

0:11:58.890,0:12:05.400
likely that hatred will be stirred up
against group. So in other words a person

0:12:05.400,0:12:10.740
can behave in a certain way which is
deemed abusive and then if it's likely

0:12:10.740,0:12:15.480
that hatred somehow or other way will be
seriously stirred up that person can be

0:12:15.480,0:12:20.010
guilty of an offence even if they didn't
intend to do so. Neil is this a real

0:12:20.010,0:12:27.330
objection to the Bill? (NB): Well indeed I
think as
I said before religious ideas are

0:12:27.330,0:12:32.330
sometimes quite peculiar to the
religious group that practise them.

0:12:32.330,0:12:38.850
For them to say that this manifestly
offends me in a way that might not have

0:12:38.850,0:12:43.160
involved any intent to offend, or
even an understanding of what is being

0:12:43.160,0:12:49.970
offended against, it seems like a step
too far. I mean, for example, the law

0:12:49.970,0:12:55.970
prevents protected characteristics from
being threatened or abused or insulted,

0:12:55.970,0:13:02.420
but religion uniquely is being exempt
from the insulted aspect of it. So again

0:13:02.420,0:13:07.490
I think that's that's the kind of 'Life

of Brian' angle. But if there's this
0:13:07.490,0:13:11.630
notion that religion is somehow
qualitatively different from these
0:13:11.630,0:13:15.019
from these other protected
characteristic and somehow shouldn't
0:13:15.019,0:13:19.970
shouldn't be protected from being
INSULTED and yet is being protected from
0:13:19.970,0:13:26.990
being ABUSED. On these nuances pivots
religious privilege and if they think
0:13:26.990,0:13:31.220
for a minute that they can claim that
they're being insulted in a way that is
0:13:31.220,0:13:37.250
going to stir up hatred then I think
it's a dangerous precedent. (EP): Stephen now
-
0:13:37.250,0:13:41.060
What do you think? Is there
a problem, is there a fine line between
0:13:41.060,0:13:46.010
insulting and abusing? (SE): Well if you look
at the definition of abusive, it's
0:13:46.010,0:13:49.700
something that's extremely offensive so
I think there is a very fine line. I
0:13:49.700,0:13:52.790
don't really know where the line is to
be honest. I think it's very vague and
0:13:52.790,0:13:57.709
that's the problem with these sort of
laws. But on the question you asked about
0:13:57.709,0:14:02.120

criminalising actions deemed LIKELY to
stir up hatred. As Neil said that you
0:14:02.120,0:14:05.839
know this does drastically widen the
reach of the Bill. People can commit a
0:14:05.839,0:14:11.329
stirring up offence a stirring up of
hatred offence without ever intending to
0:14:11.329,0:14:15.140
do so. There doesn't even need to be
hatred actually stirred up. It just needs
0:14:15.140,0:14:19.459
to be deemed LIKELY that hatred will be
stirred up. And you know in these
0:14:19.459,0:14:23.089
polarised and you know somewhat feverish
times I think that's a very low
0:14:23.089,0:14:26.899
threshold. Post almost anything on
Twitter these days and someone somewhere
0:14:26.899,0:14:30.649
will probably accuse you of stirring up
hatred. But more often than not I think
0:14:30.649,0:14:35.630
the heat and the hatred is stirred up by
professional offence takers who want to
0:14:35.630,0:14:39.920
whip these things up which serve their
identity politics agenda if you like and
0:14:39.920,0:14:43.670
I think sometimes this can be even
compounded by police forces who involve
0:14:43.670,0:14:48.680
themselves in these somewhat petty
disagreements online. But these offences
0:14:48.680,0:14:53.390

that Scotland is planning to introduce will actually punish people by up to

0:14:53.390,0:14:56.899

seven years' imprisonment. And that's a big deal. That's a big loss of

0:14:56.899,0:15:01.459

liberty. So I think there should absolutely, it should absolutely be

0:15:01.459,0:15:05.990

necessary for the prosecution to demonstrate some sort of intent. (EP): Yeah

0:15:05.990,0:15:10.880

that the mens rea, the guilty mind which we normally associate with criminal intent. Yeah I

0:15:10.880,0:15:14.779

mean even to me the very phrase 'stirring up hatred' sounds rather

0:15:14.779,0:15:20.029

sinister and it reminds me of the crime of provoking quarrels which is a

0:15:20.029,0:15:25.459

sort of catch-all crime used by the Chinese Communist Party against any citizen that

0:15:25.459,0:15:29.690

dares to say anything critical of its politics. Do you think there's

0:15:29.690,0:15:34.839

something sinister about this general metaphorical phrase 'stirring up hatred'?

0:15:34.839,0:15:38.930

(SE): Well it's an interesting one because of course it's not unlawful to hate people.

0:15:38.930,0:15:43.899

Hatred is not against the law so it's I think it's hard to understand why

0:15:43.899,0:15:48.769

encouraging other people to hate should be against the law. (EP): Yeah absolutely

0:15:48.769,0:15:54.649

and in terms of 'stirring up hatred', looking further at the details, the

0:15:54.649,0:15:59.510

offence is defined not in terms of stirring up hatred against individuals

0:15:59.510,0:16:05.089

but only against groups. But how do you define group for these purposes anyway?

0:16:05.089,0:16:09.500

What is a group? Who gets to decide which group any particular individuals

0:16:09.500,0:16:14.269

belongs to as a matter of law? Does this mark of identity politics? Neil what

0:16:14.269,0:16:18.980

do you think? (NB): Well I don't think anybody should be hated for any reason. I

0:16:18.980,0:16:24.850

mean let's be clear. There's there's no reason to hate anybody. But

0:16:24.850,0:16:36.949

the difference between the protected characteristics listed and religious belief is that religious

believers a choice I mean I accept that

0:16:36.949,0:16:41.300

belief is a choice. I accept that people that are that are born into fundamentally religious communities and

0:16:41.300,0:16:47.660

brought up as such. It's walking away from them that is going to be difficult but

0:16:47.660,0:16:51.230

it's not impossible. I mean just ask any member of the Council of ex-Muslims of

0:16:51.230,0:16:56.360

Britain you know. There is no such council of ex-disabled people of Britain

0:16:56.360,0:17:02.149

or ex-gay people of Britain you know. It's a completely different sort

0:17:02.149,0:17:07.169

of category as we touched on in that it is being not being protected

0:17:07.169,0:17:14.129

from insult as we talked about in the last question. So you can't declare a

0:17:14.129,0:17:19.109

religious belief on Monday and then expect a whole raft of protections for

0:17:19.109,0:17:26.850

that on Tuesday. Religious belief is (I mean you know we're

0:17:26.850,0:17:31.009

campaigning for secularism we're not campaigning against religion) but

0:17:31.009,0:17:37.289

religious belief is sometimes a little esoteric. You can't assume a chosen

0:17:37.289,0:17:43.649

religious philosophy and expect it to be given parity with sexual orientation or

0:17:43.649,0:17:50.340

sex identity or whether you're disabled or not. They're

0:17:50.340,0:17:55.169

completely definitely I think frankly it's a little insulting to

0:17:55.169,0:18:00.570

people for whom they're protected characteristic identity is an integral

0:18:00.570,0:18:04.799

part of their nature as opposed to a jacket that they can put on and take off.

0:18:04.799,0:18:08.039

(SE): I think Neil makes a fair point then that religion or belief

0:18:08.039,0:18:12.119

it clearly is different from other protected characteristics such as race,

0:18:12.119,0:18:16.889

sex, sexual orientation, disability. You know they are chosen where

0:18:16.889,0:18:22.109

religion is a free choice or at least it should be and I think maybe one

0:18:22.109,0:18:27.139

consequence of it being a protected characteristic on a par with the

0:18:27.139,0:18:32.159

immutable characteristics then is that it has become harder to discuss and critique

0:18:32.159,0:18:37.970

religion. So criticism of Islam for example has really been extensively

0:18:37.970,0:18:42.600

problematised as Islamophobic. But no religion should be beyond scrutiny,

0:18:42.600,0:18:47.879

criticism or even contempt. And I do understand that religion is often, it's

0:18:47.879,0:18:52.470

very central to a person's identity. Nevertheless I do think there needs to

0:18:52.470,0:18:56.879

be greater recognition of the difference between beliefs which are chosen, and the

0:18:56.879,0:19:02.009

other characteristics which aren't. (EP): Absolutely I mean especially if you

0:19:02.009,0:19:06.779

think about how you define a religious group. Because I'm talking to various

0:19:06.779,0:19:11.519

people have been on this podcast if you if you decide a group is defined by a

0:19:11.519,0:19:14.759

community leader what about those individuals who may have slightly

0:19:14.759,0:19:20.249

different beliefs within that group. So it's not like a religious group is

0:19:20.249,0:19:23.049

obvious perhaps in the way that the disability

0:19:23.049,0:19:28.900

is obvious. (NB): Well indeed it's something you can walk into or walk away from at

0:19:28.900,0:19:33.820

any stage and therefore it's not something. I mean again nobody should be

0:19:33.820,0:19:40.030

hated for any reason. I think ultimately you know, I mean the idea that hate

0:19:40.030,0:19:47.110

crime should be administered by an ever-widening number of of protected

0:19:47.110,0:19:52.030

characteristics it is maybe the wrong direction to think of this. In

0:19:52.030,0:19:57.100

general I mean maybe we should just have this notion that a crime against

0:19:57.100,0:20:02.740

somebody based on their identity, which in itself does no harm to anybody

0:20:02.740,0:20:10.299

else, is a crime. And there is I think it's right we are right to consider hate

0:20:10.299,0:20:14.530

crime as a different sort of crime. I mean you know there's social work

0:20:14.530,0:20:20.200

evidence that there is more manifest harm in being attacked because of

0:20:20.200,0:20:24.400

your protected characteristic rather than your number just coming up

0:20:24.400,0:20:28.480

in a dark alleyway. (SE): On this is yeah I mean this is why we have

0:20:28.480,0:20:32.200

aggravated offences because that recognises that when it's core to a

0:20:32.200,0:20:36.669

person's identity yeah the harm of that offence is

0:20:36.669,0:20:41.290

greater. So I think it all is already recognised in law in that way. But you

0:20:41.290,0:20:44.860

know and everyone as Neil said, everyone should be protected from discrimination,

0:20:44.860,0:20:49.929

harassment and threats and everyone in Scotland already is protected. So I think

0:20:49.929,0:20:54.730

we need to be much clearer that you know you could, the beliefs you hold dear can

0:20:54.730,0:20:59.799

be criticised even in the strongest most offensive and even abusive terms. But

0:20:59.799,0:21:05.110

individuals are worthy of protection and all individuals should be protected. (EP): Yeah

0:21:05.110,0:21:09.580

and on that question of balance Stephen between the right to freedom of

0:21:09.580,0:21:14.590

speech and the right to protecting individuals you know we're talking now

0:21:14.590,0:21:18.850

about the Article 10 of the Human Rights Act which guarantees freedom of

0:21:18.850,0:21:23.559

expression but it's subject to restrictions which are necessary in a

0:21:23.559,0:21:27.640

democratic society. And that's the test, such as to prevent crime or to protect

0:21:27.640,0:21:31.929

other people's rights or reputation. Neil, so the Scottish government I mean

0:21:31.929,0:21:34.929

would they presumably argue that the restrictions that

0:21:34.929,0:21:40.960

they're trying to impose through this Bill are unnecessary? But where do you draw the

0:21:40.960,0:21:44.559

line between people's right to be protected and their right to freedom of

0:21:44.559,0:21:48.809

expression? Is this the Scottish Government fulfilling necessary tests?

0:21:48.809,0:21:54.790

(NB): Well it's it's a tricky question because I mean I'm old enough to remember Clause

0:21:54.790,0:22:02.170

28. You know as a system where the state actually was aggressive to gay

0:22:02.170,0:22:10.300

identity. And so to now feel that the state is seeking to protect gay people

0:22:10.300,0:22:15.010

and seeking to protect minorities it's a great thing you know. It's

0:22:15.010,0:22:22.240

difficult when assessing this Bill to lay aside our own minority interests and

0:22:22.240,0:22:27.160

assess it as what on in terms of what is fair for everyone involved.

0:22:27.160,0:22:34.570

I mean I've spoken to other people about about the Bill and people are

0:22:34.570,0:22:37.990

supporting it for different reasons. I mean Tim from the Quality Network which

0:22:37.990,0:22:43.120

is a Scottish charity worked which works for lesbian gay bisexual transgender and

0:22:43.120,0:22:49.210

intersex equality, they are supporting the Bill. They like the new language it's

0:22:49.210,0:22:53.500

using about trans and intersex identities, they like the general feeling

0:22:53.500,0:23:00.940

of it and the women's groups they've spoken to are quite in support of the

0:23:00.940,0:23:04.720

part of this there is the possibility of introducing an offence of misogynist

0:23:04.720,0:23:09.370

harassment. On the other hand my other friend who works for a group called

0:23:09.370,0:23:16.570

abused men in Scotland, she's concerned about the the offence of

0:23:16.570,0:23:20.830

misogynist harassment because she says that something like 25 or 30

0:23:20.830,0:23:26.380

percent of domestic abuse victims are men. And to underscore the notion of

0:23:26.380,0:23:32.770

misogynist harassment in law is maybe taking the eye off the ball on that one

0:23:32.770,0:23:40.480

a little bit. So we have to be careful as we seek to protect to protect

0:23:40.480,0:23:44.110

people who need protection. I mean obviously we're all singing from the

0:23:44.110,0:23:46.909

same hymn sheet in terms of - religion doesn't

0:23:46.909,0:23:52.879

need the same protection - but in terms of and, to be ad absurdum about this, when is

0:23:52.879,0:23:56.929

the point at which somebody says, 'Oh I've beaten up Ralph because I didn't like his

0:23:56.929,0:24:01.729

jacket'? You know, should jackets become a protected characteristic? When is hate

0:24:01.729,0:24:08.179

crime just crime. (EP): Yes that's it, that's a very good point, so where does

0:24:08.179,0:24:11.269

where does this line come? What counts as something that should be

0:24:11.269,0:24:15.950

protected? Stephen what do you think? (SE): Well to go back to your question of where

0:24:15.950,0:24:19.549

does the balance lie and have the government got the balance right I think

0:24:19.549,0:24:23.929

there should always be a presumption in favour of free speech and we need to

0:24:23.929,0:24:30.679

tiptoe very carefully away from that presumption. Speech and expression should

0:24:30.679,0:24:35.989

only be limited by the State when there's a really overwhelming strong

0:24:35.989,0:24:42.259

case for doing so. So incitement to violence, defaming people, shouting fire

0:24:42.259,0:24:46.999

in a crowded place, the public order exception. These are clear examples of

0:24:46.999,0:24:51.769

reasonable limits to free speech, but as soon as you go down the road of

0:24:51.769,0:24:57.830

criminalising the causing of offence and being abusive about people's beliefs or

0:24:57.830,0:25:02.330

even about people's identity to some extent. I think that really

0:25:02.330,0:25:06.859

starts to spell the end for free speech. So yes individuals should be protected

0:25:06.859,0:25:12.229

from harm, and as I say I think they already are. But being offended, for me,

0:25:12.229,0:25:17.330

doesn't constitute a serious enough harm, I think that's a very flimsy basis for

0:25:17.330,0:25:21.229

taking away the fundamental right of free speech. (EP): Absolutely and I

0:25:21.229,0:25:25.429

think one of the problems is that identity has become such a big deal in a

0:25:25.429,0:25:28.609

way that it wasn't before and it's become so closely associated with being

0:25:28.609,0:25:33.349

offended. I think now there seems to be a real real problem there. (NB): Well it's as Steven

0:25:33.349,0:25:38.029

says, I mean the law already protects all the protected

0:25:38.029,0:25:43.609

characteristics. There's already laws about alarm and fear that exist in

0:25:43.609,0:25:47.509

in Scottish law. (SE): And not just the protected characteristics. I mean nobody

0:25:47.509,0:25:50.629

should be caused alarm and fear by

abusive and threatening behaviour and

0:25:50.629,0:25:55.159

that's what the law says at the moment so that's the non-identitarian approach which I think

0:25:55.159,0:25:59.590

is the best approach. (NB): And what has changed, what has changed is

0:25:59.590,0:26:04.899

is adding to the fact that race is already protected in terms of stirring

0:26:04.899,0:26:08.350

up hatred, added to that list is now all

0:26:08.350,0:26:13.870

the protected characteristics which already are protected. So what religious

0:26:13.870,0:26:21.490

people are maybe going to try and use is the fact that now there's a law against

0:26:21.490,0:26:26.710

the likelihood of stirring up hatred against religious belief. Now that

0:26:26.710,0:26:31.240

is incredibly incredibly vague and incredibly esoteric and something and

0:26:31.240,0:26:37.029

something which which is well intended by the Justice Minister but I think

0:26:37.029,0:26:41.490

he hasn't thought through the implications of what this means for

0:26:41.490,0:26:46.720

belief or religious belief. (SE): I think Neil's quite right to point out

0:26:46.720,0:26:50.379

that this is actually well-intentioned

for the most part. I think it comes from

0:26:50.379,0:26:55.749

a place where policy makers want to create a more harmonious society and

0:26:55.749,0:27:01.240

achieve social cohesion through suppressing difficult free speech. But I

0:27:01.240,0:27:04.990

think that's wholly misguided. I think it's the aim but I think it's misguided

0:27:04.990,0:27:09.580

in diverse pluralistic multicultural societies. You know that there are a lot

0:27:09.580,0:27:13.840

of people of different persuasions living side by side and inevitably that

0:27:13.840,0:27:16.960

creates a bit of friction from time to time and people will get offended from

0:27:16.960,0:27:23.440

time to time. But I think the answer for some people to reduce that

0:27:23.440,0:27:27.909

friction is by trying to limit free speech but I think it's counterproductive

0:27:27.909,0:27:32.190

I don't think that banning words or arguments which a particular group finds offensive -

0:27:32.190,0:27:37.299

it's never led to social harmony and I think with the rise of identity politics

0:27:37.299,0:27:42.789

and the politics of grievance and the idea that has spread quite prolifically

0:27:42.789,0:27:48.009

that groups have some sort of right not

to be offended. In a way this sounds nice.

0:27:48.009,0:27:52.600

It's good to be polite right? It's a respectable sounding idea and it gets

0:27:52.600,0:27:56.200

votes from identity groups that want their beliefs to be insulated from any

0:27:56.200,0:28:01.860

sort of criticism. But in fact the whole idea is toxic to liberal democracy.

0:28:01.860,0:28:06.999

(EP): Absolutely and on that point Stephen let's just compare the Scottish Bill

0:28:06.999,0:28:11.619

with the law that's currently the case in England and Wales, which is under the

0:28:11.619,0:28:15.810

Racial and Religious Hatred Act 2006. And this is a very short

0:28:15.810,0:28:19.710

Act and it states that 'a person who uses threatening words or behaviour or

0:28:19.710,0:28:24.480

displays any written material which is threatening' (so it's only threatening) 'is

0:28:24.480,0:28:29.040

guilty of an offence if he intends thereby to stir up religious hatred'. So

0:28:29.040,0:28:34.290

that's where the religious hatred comes in to English law. But in terms of the

0:28:34.290,0:28:39.480

differences with the Scottish provision. First of all the intention has

0:28:39.480,0:28:42.200

got to be there, a

person must intend to stir up hatred, and

0:28:42.200,0:28:46.680

secondly it's not about stirring up hatred against any particular groups so

0:28:46.680,0:28:50.700

there's no idea that the groups can say what they find offensive and thereby

0:28:50.700,0:28:55.650

define the law. And also it looks like this offence is solely about

0:28:55.650,0:28:59.100

religious hatred so it's a sort of a very narrow specific provision.

0:28:59.100,0:29:03.150

Stephen what do you think overall is this better than the Scottish provision

0:29:03.150,0:29:09.380

and how has it worked in practice since it's come into force? (SE): Right so yeah laws

0:29:09.380,0:29:13.880

against stirring up of racial hatred were introduced in England Wales in

0:29:13.880,0:29:19.830

1986 and it was in 2007 that these offences were extended to include this

0:29:19.830,0:29:23.310

stirring up of hatred on grounds of religion. And a respect of the stirring

0:29:23.310,0:29:27.750

up of hatred on religious grounds in England and Wales 'words or conduct must

0:29:27.750,0:29:31.050

be threatening' so not merely abusive or insulting. So

0:29:31.050,0:29:35.670

that's one difference . You asked about

what the effect of the law has been. Well

0:29:35.670,0:29:40.020

prosecutions for stirring up hatred aren't particularly common. There were 13

0:29:40.020,0:29:46.020

prosecutions in 2018-19 11 of which resulted in convictions. And

0:29:46.020,0:29:52.140

I think that was the highest number of cases prosecuted in any year to date. And

0:29:52.140,0:29:57.090

one of the reasons the number is so low is because of the higher evidential

0:29:57.090,0:30:03.180

thresholds. There are key protections that the National Secular Society along

0:30:03.180,0:30:09.000

with other free speech and human rights defenders worked hard to secure. So the

0:30:09.000,0:30:12.750

law in England and Wales now recognises that it's absolutely essential in a free

0:30:12.750,0:30:16.560

democratic tolerant society that people are able to exchange views even where

0:30:16.560,0:30:20.610

offence is caused and this was achieved by an amendment during the passage of the

0:30:20.610,0:30:25.530

Racial and Religious Hatred Act which explicitly states that the law doesn't

0:30:25.530,0:30:29.710

restrict discussion, criticism, expressions of

0:30:29.710,0:30:35.740

antipathy, dislike, ridicule, insults or abuse of particular religions or the

0:30:35.740,0:30:40.270
beliefs or practices of their adherents,
And that's a key difference. The Scottish

0:30:40.270,0:30:45.490
law has a much weaker free speech
provision it only protects people from

0:30:45.490,0:30:51.130
being convicted solely on the basis that
behaviour involves or includes discussion

0:30:51.130,0:30:57.130
of criticism or religion. So it seems to
me like the Scottish Government seems to

0:30:57.130,0:31:01.450
want to kind of police the way people
talk about religion. So polite discussion

0:31:01.450,0:31:06.190
and criticism might be okay but you know
you'd better mind your language and

0:31:06.190,0:31:09.760
watch your tone and I think that's a
massive overreach on the part of the

0:31:09.760,0:31:14.320
state. As before you know, don't get me
wrong, I think people generally speaking

0:31:14.320,0:31:19.120
should be polite and not go out of their
way to offend others. I just don't think

0:31:19.120,0:31:23.230
the state should be policing this sort
of thing. Free speech means absolutely

0:31:23.230,0:31:28.000
nothing unless it gives us the right to
offend, to speak freely, to shock and even

0:31:28.000,0:31:32.200
disturb people and you know there are
unpleasant and hateful people out there

0:31:32.200,0:31:35.500
saying unpleasant things but it
shouldn't be criminal. Civil society

0:31:35.500,0:31:42.130
should push back, social media platforms
maybe should push back. It shouldn't be a
matter for the law. (NB): In Scotland I think
think

0:31:42.130,0:31:45.910
concerns on this front are made more
poignant by the existence of what's

0:31:45.910,0:31:52.030
known as the existence
of sectarianism in Scotland, what's known

0:31:52.030,0:31:56.680
as 'Scotland's shame'. I think that
kind of sharpens the whole

0:31:56.680,0:32:00.880
notion of religious offence.
I mean sectarianism in Scotland,

0:32:00.880,0:32:05.200
especially in the west coast, blights
communities. You know people are

0:32:05.200,0:32:12.880
polarised but I think the idea
of dealing with that in this

0:32:12.880,0:32:19.210
top-down sort of way you know, policing
the behaviour of the hate speech that is

0:32:19.210,0:32:24.280
manifest of sectarianism, is naive given
that the Scottish government funds

0:32:24.280,0:32:30.970
Catholic faith schools and facilitates
Orange marches down our streets. You know

0:32:30.970,0:32:37.180

it's just I think it's a bit
top-down in terms of

0:32:37.180,0:32:39.580
dealing with the existence of these
things. And of course then in

0:32:39.580,0:32:44.820
England there was the hateful example of
the, of the Birmingham protests about

0:32:44.820,0:32:53.430
about the 'No Outsiders' campaign where
the religious parents were citing

0:32:53.430,0:32:57.910
protected characteristics in defence of
their discrimination. They were saying

0:32:57.910,0:33:02.500
you know: 'Yes we get that homosexuality
is a protected characteristic but so is

0:33:02.500,0:33:06.190
religious belief
so you're discriminating against us in

0:33:06.190,0:33:10.630
denying us the right to discriminate
against other people'. It's

0:33:10.630,0:33:14.590
absurd and I think you have this kind of
hierarchy of protected characteristics

0:33:14.590,0:33:19.750
and religion shouldn't be on the list.
(EP): Yeah and I mean even a hierarchy might

0:33:19.750,0:33:23.670
think that just it's a certain point
where two of them clash it's about that

0:33:23.670,0:33:27.820
ultimately you then might just suppress
every possible form of criticism of

0:33:27.820,0:33:30.970

everything.
I sort of reduction ad absurdum. But

0:33:30.970,0:33:36.700
talking about these laws and the idea of
policing free speech. This goes back

0:33:36.700,0:33:40.750
a long way actually because you know
we've had blasphemy laws both in England

0:33:40.750,0:33:44.440
and Scotland for a very long time
and in the nineteenth century for

0:33:44.440,0:33:48.070
example it was considered dangerous to
say anything in print that could be

0:33:48.070,0:33:51.880
interpreted as 'bringing the Holy
Scriptures and the Christian religion

0:33:51.880,0:33:57.220
into ridicule and contempt' as one Scottish
judge once put it. So to give listeners a

0:33:57.220,0:34:02.680
little background on this, you may
remember that in 2008 the common

0:34:02.680,0:34:06.850
law offence of blasphemy was abolished
in England and Wales but in Scotland it

0:34:06.850,0:34:10.120
still exists, even though the last
prosecution is the blasphemy happened

0:34:10.120,0:34:15.640
way back in 1843. Now the Scottish
Government has said that it is going to

0:34:15.640,0:34:20.170
abolish their common-law offence of
blasphemy at the same time as it

0:34:20.170,0:34:25.630

brings the Hate Crime Bill into force as an act. Neil what do you think

0:34:25.630,0:34:29.550

about this? Is the Scottish Government abolishing blasphemy with one hand and

0:34:29.550,0:34:34.660

re-enacting it with the other? (NB): I think that the abolishing of the blasphemy law

0:34:34.660,0:34:39.160

is the very founding of this whole debate about changing the definition

0:34:39.160,0:34:44.320

of a hate crime. I mean we've had a blasphemy law for a while.

0:34:44.320,0:34:48.160

Edinburgh Secular Society and others have been campaigning against this for quite

0:34:48.160,0:34:53.780

some time and I think then that in acceding to our

0:34:53.780,0:34:58.800

demands that this is changed, there has been a sense that they have to replace

0:34:58.800,0:35:07.020

it with something. I mean the whole idea that an idea is so flimsy that it

0:35:07.020,0:35:14.010

requires protection from the State to defend its existence rather than simply

0:35:14.010,0:35:21.210

depending on its own on the strength of its own argument, is quite absurd plus

0:35:21.210,0:35:26.609

the fact of course that as we've all argued, Scotland can't say to Saudi

0:35:26.609,0:35:32.130

Arabia 'You've got to stop executing people for blasphemy when they might turn to it say

0:35:32.130,0:35:35.580

'But you've got a blasphemy law, what what's the problem? So it's important

0:35:35.580,0:35:44.400

that we show that we're on a par with the idea that blasphemy

0:35:44.400,0:35:48.510

shouldn't be right for anyone. But in Scotland I think as I said

0:35:48.510,0:35:53.970

before a lot of moderate religious believers have agreed to that. But there

0:35:53.970,0:35:59.520

are some fundamental religious leaders that are quite comfortable with the

0:35:59.520,0:36:04.440

existing wall of blasphemy . It's a background hum that serves their

0:36:04.440,0:36:13.560

purpose and so when it's repealed I think the concern for the

0:36:13.560,0:36:17.490

Scottish Government was to replace it with something that would comfort what

0:36:17.490,0:36:23.340

is essentially a block vote. The religious block. And that in

0:36:23.340,0:36:27.960

my judgment is this has been the start of all this change

0:36:27.960,0:36:31.790

in the law. It's almost as if the other protected characteristics being added to

0:36:31.790,0:36:39.450

you know the law about stirring up hatred is an afterthought. It's really

0:36:39.450,0:36:46.020

been focused I think on addressing the perceived concern that repealing the

0:36:46.020,0:36:52.020

blasphemy law has brought. (EP): Stephen, is that your impression as well, that

0:36:52.020,0:36:56.730

fundamentally this whole Hate Speech Bill is about blasphemy really in one

0:36:56.730,0:37:00.840

way or another? (SE): Yes, I think there are parallels and the blasphemy laws are an

0:37:00.840,0:37:04.710

affront to free speech. They're an anachronism and it's great that Scotland's law is

0:37:04.710,0:37:06.990

being abolished. Of course all religions should

0:37:06.990,0:37:11.670

be open to debate. But Neil's got a point. I do worry that hate speech laws are

0:37:11.670,0:37:15.720

replacing blasphemy laws as a means of punishing speech that's deemed offensive

0:37:15.720,0:37:19.890

and whereas that was once restricted to religion with blasphemy laws I think we

0:37:19.890,0:37:23.790

are seeing it now been expanded out to other areas such as gender or gender

0:37:23.790,0:37:28.200

identity. And it's not always helpful. Because laws against hate speech are

0:37:28.200,0:37:33.300

notoriously subjective and they're wide open to abuse and so they do end up

0:37:33.300,0:37:38.670

chilling free speech. And you know to some extent attempts to restrict free

0:37:38.670,0:37:43.470

speech about religion - it's always been about control. It's about preventing your

0:37:43.470,0:37:47.340

religion from being challenged, to prevent your religion from losing

0:37:47.340,0:37:52.110

arguments, losing face, losing authority and today I think plenty of people want

0:37:52.110,0:37:56.760

to close down speech because it's easier sometimes to shut down debate than win

0:37:56.760,0:38:01.830

arguments. We've all seen people on social media platforms or in real life

0:38:01.830,0:38:05.880

who instead of arguing back with rational arguments, facts, logic and

0:38:05.880,0:38:10.530

reason just simply go straight to outrage and take offence, making

0:38:10.530,0:38:15.210

accusations, name-calling as a way of winning an argument. So I am concerned

0:38:15.210,0:38:19.850

about what I see is the growing kind of cancel culture and it's damaging

0:38:19.850,0:38:25.320

effect on free expression. And I think modern hate speech laws, like blasphemy

0:38:25.320,0:38:29.520
laws of old, do contribute to a climate
where free speech is chilled and I don't

0:38:29.520,0:38:33.810
think that's healthy for a democracy
where all ideas, however controversial

0:38:33.810,0:38:38.670
however challenging some people, they do
need to be open to scrutiny and debate

0:38:38.670,0:38:42.540
and if they're bad ideas then I think
you know free speech is the best

0:38:42.540,0:38:47.490
disinfectant to bad ideas. So there's no
question for me for the most part. Hate

0:38:47.490,0:38:52.800
speech laws are well-intentioned but of
course the road to hell is always paved

0:38:52.800,0:38:56.040
with good intentions and ultimately I
think they're counterproductive and

0:38:56.040,0:39:02.460
quite clearly threaten the principle of
free speech. (EP): Yeah great thanks Stephen.

0:39:02.460,0:39:06.420
Well if you listening to this podcast
and you would be interested in

0:39:06.420,0:39:10.770
supporting the Edinburgh Secular Society
or the National Secular Society in

0:39:10.770,0:39:15.810
opposing the Hate Crime Bill maybe
Stephen and Neil you could tell listeners

0:39:15.810,0:39:20.040
what they might be able to do to get
further involved. (SE): Sure well do subscribe

0:39:20.040,0:39:23.280
to News Line
the National Secular Society's (NSS) weekly
newsletter, visit the

0:39:23.280,0:39:26.910
website and you will find ways to get
involved. The Scotland's Justice

0:39:26.910,0:39:31.470
Committee is asking for views and it's
accepting submissions until I think the

0:39:31.470,0:39:35.280
24th of July.
For listeners in Scotland, we also have a

0:39:35.280,0:39:41.339
suggested letter to NSPs, so yes please
do visit the NSS website and use your

0:39:41.339,0:39:44.339
free speech to defend free speech.
Because if you don't use it and defend

0:39:44.339,0:39:47.550
it you'll lose it. (EP): Neil Barber and Stephen
Evans thank you

0:39:47.550,0:39:50.540
very much. (NB): Thank you!

0:39:56.030,0:40:00.660
that was episode 29 of the National
Secular society podcast hosted by Anna

0:40:00.660,0:40:04.800
Park my guest speakers were Neil Barber
and Stephen Evans if you would like to

0:40:04.800,0:40:08.400
help us challenged unfair religious
privilege and support freedom often from

0:40:08.400,0:40:12.869
religion in Britain today why not become
a member of the NSS for all details are

0:40:12.869,0:40:17.609

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0:40:17.609,0:40:21.270

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0:40:21.270,0:40:24.920

our website thanks for listening