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## Hate-speech laws are no friend of minorities

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Scotland's Hate Crime Bill is well-intentioned. But history shows us that censorship is no way to fight hate.

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Topics **FREE SPEECH** **UK**

‘Nothing is more apt to surprise a foreigner than the extreme liberty which we enjoy in this country of communicating whatever we please to the

public...’ Thus wrote Scottish philosopher David Hume in 1742, extolling free speech as ‘the common right of mankind’.

Unfortunately, Scotland’s free-speech tradition would be gutted by key provisions in the government’s Hate Crime Bill, introduced in April. It endangers even serious public-policy debates about important – and sensitive – issues touching on ‘age, disability, race, religion or... perceived religious affiliation, sexual orientation, transgender identity and variations in sex characteristics’.

If passed, the bill would criminalise a broad range of communications ‘relating to stirring up hatred’ based on these characteristics, with draconian seven-year prison terms. Departing from a key precept of Hume’s celebrated ‘common right’, the bill would impose such severe punishment even when the speaker had no negative intent, so long as the expression is deemed ‘likely’ to ‘stir up hatred’. Worse yet, the bill even outlaws the mere ‘possession’ of ‘inflammatory material... with a view to communicating [it] to another person’.

In our polarised political climate, a limitless range of communications about taboo topics can be potentially ‘inflammatory’, which means that the policing thereof will depend on the subjective discretion of the enforcing officials. David Hume warned against punishing the ‘abuse’ of free speech by ‘giving very large discretionary powers to the court to punish whatever displeases them’. And while he acknowledged that ‘the unbounded liberty of the press’ could lead to dangers, he thought that such overbroad restrictions were a cure worse than the disease.

In this case, the bill's censorial 'cure' is worse than the disease of 'prejudice', which its proponents commendably target. No matter how well intended, such vague and subjective restrictions – even when formally neutral – tend to perpetuate and entrench the values of dominant in-groups and further marginalise out-groups.



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Unfortunately, British history is no exception to this dynamic. And one does not need to go all the way back to 1697, and [the execution](#) of the irreverent Edinburgh student Thomas Aikenhead for blasphemy, to find examples.

Britain's colonial past is a case in point. In India, the penal code criminalised promoting 'feelings of enmity or hatred between different classes of Her Majesty's Subjects'. In 1908 this provision was used [to convict](#) the Indian nationalist leader Bal Gangadhar Tilak to six years in prison for newspaper articles protesting British rule. In 1934 'hatred' between classes [was interpreted](#) to include calling on poor labourers to protest exploitation by the rich, resulting in six months in prison for the author of a pamphlet.

Similarly reflecting the inevitable majoritarian bias of broad, vague speech restrictions, in 1918 the British governor of Guyana urged colonial censors

to prevent the circulation and ‘harmful effect’ of anti-colonial material sent to ‘certain negroes’.

The British Board of Film Censorship guidelines from 1926 prohibited depicting ‘antagonistic or strained relations between white men and the coloured population of the British Empire’. In Hong Kong these were expanded to include ‘showing the white man in a degrading or villainous light’ and ‘racial questions, especially the intermarriage of white persons with those of other races’.



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SPIKED

One might argue that the Scottish Hate Crime Bill is aimed at preventing the sort of racial discrimination that fuelled colonial censorship.

But given their inherent vagueness and overbreadth, even well-intentioned hate-speech laws are prone to majoritarian bias in enforcement. In 1965 the British Race Relations Act introduced important anti-discrimination protections for minority groups. But section six also prohibited ‘incitement to racial hatred’. The first person to be prosecuted for this offence was a black man. Several other black Britons were prosecuted for anti-white hatred, including leaders of the Black Liberation Movement. In 1968, one such leader was sentenced to a year in prison for a speech decrying anti-black discrimination by whites who were ‘vicious and nasty people’. In contrast, such a prominent anti-immigrant

crusader as Enoch Powell was left alone. Perhaps the ultimate irony was that this law, which was intended to restrain the neo-Nazi National Front, has also barred expression by the Anti-Nazi League.

There is also reason to fear how Scottish police will enforce the pending bill. At the 2017 Glasgow Pride parade, two 'anti-fascist' LGBTQ activists were arrested for 'breaching the peace with homophobic aggravation'. Their crime? Holding a placard with the words 'These faggots fight fascists', which clearly was meant to – and 'likely' to – empower rather than offend the gay community. In 2014 Police Scotland tweeted that it would 'monitor comments on social media and any offensive comments will be investigated', after an English pundit offended Scottish sensibilities on Twitter. The bill would let loose police and others to comb through social media on the hunt for the innumerable tasteless and intemperate tweets that someone could interpret as 'likely' to stir up hatred, with an incalculable chilling effect.

While it has narrow exceptions to safeguard discussion of religion and sexual orientation, the Hate Crime Bill could also pit various groups – including the very marginalised groups that it purports to benefit – against each other in a free-speech race to the bottom. For instance, members of religious communities (including minorities) with traditional beliefs about gender identity and sexual orientation might well still risk punishment for expressing their moral convictions. But women, members of the LGBTQ community or transgender persons could plausibly also be punished for critiquing those religious communities because of their

traditional views. This is not idle speculation. In 2017, two British street preachers were arrested and initially convicted for preaching from the Bible, including statements that were deemed ‘insulting’ to LGBTQ persons and Muslims. Conversely in 2016, a leader of a French LGBTQ rights organisation was fined 2,300 euros for calling the president of an organisation that defends traditional family values and opposes same-sex marriage a ‘homophobe’.

As Scottish justice secretary Humza Yousaf stressed in introducing the bill, ‘We all have a responsibility to challenge prejudice’. But human-rights activists around the world have concluded that speech that challenges prejudice may well be more effective than censorship in promoting the ‘inclusive and respectful society’ that Yousaf appropriately endorsed. In the words of veteran LGBTQ-rights campaigner Peter Tatchell: ‘The most effective way to defeat bigoted ideas is not by proscription but by challenging and exposing them.’ As it happens, David Hume also championed this ‘more speech’ approach, explaining that citizens ‘being every day more accustomed to the free discussion of public affairs, will improve in the judgment of them, and be with greater difficulty seduced by every idle rumour and popular clamour’.

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