

[00:00:20.130] - ALYS MUMFORD

Hello and welcome to On the Engender, The Briefing. I'm Alys Mumford from Engender and I'm joined today by my co-host, Amanda Stanley. Hi, Amanda.

[00:00:28.050] - AMANDA STANLEY

Hello.

[00:00:29.130] - ALYS MUMFORD

And we also have Engender's executive director, Emma Ritch. Hi Emma.

[00:00:32.190] - EMMA RITCH

Hi!

[00:00:33.210] - ALYS MUMFORD

And very excitingly, we think possibly the first man to feature on our podcast, [Laughter], Dr. Andrew Tickell, lecturer in law at Glasgow Caledonian.

[00:00:41.850] - ANDREW TICKELL

Hello. Hello.

[00:00:42.960] - ALYS MUMFORD

Hello. Thanks so much for joining us.

[00:00:45.030] - ALYS MUMFORD

So we're recording this on the 18th of November. We've just had the news of changes in some of the Tiers in Scotland.

[00:00:54.040] - ALYS MUMFORD

So 11 new places are in Tier Four, including folk on this podcast recording, sorry guys. [Laughter]

[00:01:01.290] - ALYS MUMFORD

But lots of us are still in the post US election, sort of, haze. We've also had some potentially good news on the vaccine front. Yeah, so I don't know, I'm personally feeling sort of a bit mixed this week. At the start of the podcast we always like to share something positive to get us on the right foot. Could be a global news story, a really great tweet

[00:01:23.850] - ALYS MUMFORD

you saw, a personal baking triumph or anything else - good news you want to share with us. Who would like to say something happy for us? Amanda, I'm going to call on you.

[00:01:33.480] - AMANDA STANLEY

OK, well, [Laughter] I have two, one's personal and one is to do with Coronavirus because I feel like we should, yeah, like mention about the vaccine. But I was loving the internet yesterday, and carried on into today when it was found out that Dolly Parton had donated a million dollars [Laughter] towards the research. That made me extremely happy.

[00:01:54.910] - ANDREW TICKELL

It's epic isn't it? Absolutely. I mean, you know, Dolly's so much going for her. And so much basic decency. But curing Coronavirus is really, truly an achievement.

[00:02:03.330] - ALYS MUMFORD

And commissioning Buffy the Vampire Slayer

[00:02:05.070] - AMANDA STANLEY

And commissioning Buffy..

[00:02:06.720] - ALYS MUMFORD

Possibly greatest achievements in recent years

[00:02:09.600] - AMANDA STANLEY

As well as being an incredible country singer.

[00:02:12.070] - AMANDA STANLEY

So, yeah, that was that was lovely to see online yesterday. And then my other positive news is that which actually I thought I'd mentioned to you guys already, but I haven't. So world exclusive, huge, everyone will care. [Laughter]. Is that in January, Covid permitting, I'm going to be starting a little construction course. So I'm going to be learning how to like, building and joinery and tiling and things. Because why not? Why not? I love practical skills.

[00:02:39.220] - ALYS MUMFORD

That's super exciting, nice! [Laughter]

[00:02:40.650] - AMANDA STANLEY

So yeah, if you need your bathroom tiled maybe by next June I'll be kind of okay at doing it.

[00:02:47.490] - ALYS MUMFORD

That is very good to know. Andrew, have you got anything positive you can share with us?

[00:02:52.560] - ANDREW TICKELL

Positive. You know I was thinking just my baking has gone poorly this week. I've been attempting to embark on cardamom buns and regrettably my yeast was dead.

[00:02:58.983] - ALYS MUMFORD

Oh no.

[00:02:59.100] - ANDREW TICKELL

So although they tasted quite good, you could have played hockey with them. [Laughter] So that probably doesn't count as a positive story. Well, I do have a sort of positive story, but it's also a positive story with a kind of darker context to it.

[00:03:10.260] - ANDREW TICKELL

I'm starting up at GCU with my colleague Seonaid Stevenson, a campaign about complainer anonymity in sexual offense cases in Scotland. And it was picked up this week on BBC Radio Four in the Law in Action. It's an issue which people, I think, quite often think that complainers have a right to anonymity, but in fact, no such right exists. And know the ordinary academic thing would be to point out a problem, and then not to fix it.

[00:03:34.890] - ANDREW TICKELL

But we've decided we're going to fix it. So we're wanting to change the law on this in Scotland. And although it's a big problem, that the law hasn't been reformed in this way. And it's a big problem and a bad thing that people don't have such rights. It was a really well framed debate on the Radio Four programme with Miss M, who famously brought the civil rape case, really reflecting on what it meant. So it wasn't an arid legal thing.

[00:03:56.970] - ANDREW TICKELL

It was a really lived, human, reason for why it mattered.

[00:04:01.170] - ANDREW TICKELL

And, you know, it's so easy for these things, these ideas, these changes which you propose to be completely railroaded into another type of discussion.

[00:04:08.640] - ANDREW TICKELL

So it was really encouraging to me that, this week was just such a positive framing about why Scotland needs to change the law now. And I'm feeling reasonably optimistic that we may be able to

to fix that and bring Scotland to line with more or less every other common law jurisdictions I'm looking at, at the moment. So there's a wee sense of some progress around that.

[00:04:27.420] - ALYS MUMFORD

Oh, that's great to hear. And we will and we'll put a link to that programme in the show notes and more info about the campaign as well, if folk want to find out more about that. Emma Ritch -

[00:04:39.330] - EMMA RITCH

Yes, Alys Mumford.

[00:04:41.700] - EMMA RITCH

What I had on my podcast notes was Dolly Parton, book clubs, Buffy the Vampire Slayer [Laughter]. And so I'm glad to join in the general chorus of praise for the excellent Dolly Parton. But I guess another thing that's been quite good news this week I think, has been Dominic Cummings leaving Downing Street. Or maybe not leaving Downing Street, it's kind of hard to tell, but I think one of the critical narratives that's been woven around that has been that the culture wars are over and 10 Downing Street is no longer going to be weaponising

[00:05:13.200] - EMMA RITCH

equality around various groups in its quest for political leverage. So obviously, we'll need to wait and see whether that transpires or not, but maybe some hopefulness that we can dial down some of the heat and partisanship around some of the things we all care about.

[00:05:28.361] - ALYS MUMFORD

Amazing.

[00:05:29.090] - ANDREW TICKELL

I think that's a remarkably optimistic. [Laughter]

[00:05:33.800] - ALYS MUMFORD

This is the one bit of the show where we have to be optimistic, so it's fine.

[00:05:36.770] - ANDREW TICKELL

Okay that's fine! [Laughter] I'll park my long-held cynicism.

[00:05:41.330] - ALYS MUMFORD

I want to add to the Dolly love with also putting in some Marcus Rashford love, who has also started a book scheme, presumably inspired by Dolly. But yes, in a in a good rebuttal to the newspapers who seem to find objectionable that a Black man should spend money, while also talking about child poverty. So, well done, Marcus Rashford as well.

[00:06:00.890] - ALYS MUMFORD

My positive, we've - at Engender - have held two really nice film screenings lately. So I'm going to share that because it was really nice to have a movie night with some feminists via Zoom. So thanks to everyone that joined those. We showed Who's Counting? A documentary about Marilyn Waring, which is free on YouTube and has been recommended many times on this podcast. And then just yesterday we showed Chisholm '72: Unbought and Unbossed, which I think you can get on some pay-for platforms about Shirley Chisholm's campaign for the presidential nomination, which was great.

[00:06:35.090] - ALYS MUMFORD

Yeah, really nice to have some feminist chats with women from across Scotland. So, yeah, feeling good after that.

[00:06:42.080] - AMANDA STANLEY

So, shall we move on to today's episode then?

[00:06:45.380] - ALYS MUMFORD

We'd better have.

[00:06:46.060] - AMANDA STANLEY

Yeah. So today we are talking all about Hate Crime. This is something that we covered previously back on On The Engender in season one, when we were talking about violence against women online. But now we're going to focus on Hate Crime legislation specifically as the Hate Crime and Public Order Scotland Bill is making its way through parliament and making headlines just now. Andrew, you've been one of the leading voices patiently explaining to people, and the press, what Hate Crime is and what the bill is proposing.

[00:07:12.380] - AMANDA STANLEY

So could you briefly explain to our listeners what that is?

[00:07:15.950] - ANDREW TICKELL

Absolutely, yes. I suppose it's useful to start at the beginning. You know, what's the situation with Hate Crime now? This is not a completely new bill, but it is a consolidating bill.

[00:07:25.790] - ANDREW TICKELL

So it's trying to bring all of the various shreds and threads of Hate Crime together, because as it stands at the moment in Scotland, it's a complete mess. It's distributed all over the place. There's some characteristics which are listed, others not, and there's a range of discrepancies in how the law treats it. So a while ago, the Scottish government asked Lord Bracadale, a Scottish judge, to go away and look at this area of law, contemplate the options, look at what other countries do, informed by some expert reports, by colleagues at the University of Glasgow.

[00:07:53.960] - ANDREW TICKELL

Very good reports from Professors Leverick and Chalmers on that.

[00:07:57.380] - ANDREW TICKELL

And then he came up with the report and gave that to the Scottish government.

[00:08:00.270] - ANDREW TICKELL

And this bill is really actioning most of that. But following it in the media, you might get the impression this has emerged from nowhere. And that's not the case. It's really an attempt to consolidate the rules on this, to rationalise the rules on it. But inevitably, because it does propose not just aggravators, but new offences of stirring up hatred against some of the listed groups, we have controversy, I think, legitimately to some extent, and exaggeratedly to a considerable extent, about the free speech implications of that legislation.

[00:08:29.810] - ANDREW TICKELL

So that's really what we're doing here, trying to consolidate the law. But it is proving remarkably controversial. And I think, as you rightly said, I'm trying patiently to explain it. There's an awful lot of misinformation, I think, and just simple misunderstanding, which perhaps speaks of the fact that public legal education in Scotland needs a lot of work because a lot of the things people are finding, sort of, triggering their anxieties and rage about this legislation are actually already part of the law in Scotland.

[00:08:55.090] - ALYS MUMFORD

Yeah, for sure. Thank you. And we will definitely come back to some of the things you mentioned there, some of the specifics of it. I think it's interesting as well, looking at what people's knowledge of the law and when you were talking just about the anonymity campaign at the start there. And we've also discussed things around confidentiality and court cases in previous podcasts, which a lot of people assume are law but actually are often convention, or actually exist law in a different way.

[00:09:19.760] - ALYS MUMFORD

So that's a definitely a good point about how we educate people on legislation and law. So Emma, when we look at Hate Crime, a lot of people, and I include myself in this, would probably have tended

to think about racism, homophobia, and of course, these are key concerns for feminists. But where does Hate Crime legislation fit in with other areas of tackling women's inequality that the Engender works on? And why are we talking about it?

[00:09:45.050] - EMMA RITCH

The idea of Hate Crime is one that we broadly support. So it boosts the sanctions for crimes that are carried out to terrorise or exclude a particular group. And every minority group obviously includes women, as you kind of tucked into your question. And I think you're right, Alys, the kinds of examples of Hate Crime that come most readily to mind, things like violent assaults on lesbian couples, arson attacks by white supremacists. And so Hate Crime is the justice system's way of recognising that an attack on an individual from a minority group

[00:10:18.220] - EMMA RITCH

will affect the whole of that group. And make members of that group feel literally less safe. There are a couple of reasons why the concept doesn't track so easily to women. Firstly, women aren't a minority group, and the people most likely to attack, hurt, and harm us are the people we live with. And that presents a really uneasy fit. So is FGM a Hate Crime, for example? Is violence perpetrated on a disabled woman by a carer ever a Hate Crime?

[00:10:48.610] - EMMA RITCH

And secondly, and relatedly, there is an increasing association with Hate Crime and extremism across Europe. And while there are terrorists who are motivated by hatred against women, a lot of the violence perpetrated against women is a product of power differentials, which could be expressed as things like superiority, entitlement, indifference, towards women rather than hate. The concept of Bias Crime rather than Hate Crime is starting to gain some traction. But feminists have done a lot of work to theorise violence against women, and it makes a lot of sense to Engender that we start there, in generating ideas about the law.

[00:11:28.610] - EMMA RITCH

And as you've said Alys, misogyny is all around us. Sexist harassment impacts on women's safety and well-being every day. We're always trying to be creative and ambitious in ways to interrupt that, but the current offer on the table of a gender or sex aggravation - we don't think is the right answer.

[00:11:46.540] - AMANDA STANLEY

So can we just take a minute just to talk a wee bit more about aggravation? So am I right in thinking that you can't be convicted of a Hate Crime in the same way you can be convicted for breach of the peace or manslaughter?

[00:11:57.040] - ANDREW TICKELL

You couldn't be convicted of manslaughter at all in Scotland, because it's culpable homicide. That's the English offence. That's the inner law teacher in me, I couldn't help myself. Yeah, so aggravators don't create any new criminal offences at all. They are, as the name suggests, aggravating factors. They make more extreme. They reflect in punishment the nature of a crime. So we attach them mostly to charges like threatening or abusive behaviour, which is already a criminal offence and is very often used in these kind of public facing contexts to prosecute behaviours.

[00:12:25.660] - ANDREW TICKELL

So aggravators are really about two things at the moment. Either, where we can prove that the crime was motivated by malice or ill will towards the victim's perceived characteristics, not what they actually are, but the perception of the attacker. Or alternatively, and much more commonly, where the attacker or the person who threatens the individual says something immediately before, during, or after the commission of the offence. Which evinces malice or ill will, effectively demonstrates hostility towards the victim based on these characteristics.

[00:12:58.360] - ANDREW TICKELL

So it's really often about what the accused person says, in the course of an attack which allows you to ground the aggravator. But it has no free speech implications, I would argue, because it doesn't make

anything criminal, which is currently lawful. It's simply a way of marking out, testing, recording, condemning, identifying these types of offences where you do have that motivation rooted in malice and ill will. There's some suggestion in the course of this bill that we should move towards the idea of simply demonstrating hostility.

[00:13:26.710] - ANDREW TICKELL

Lord Bracadale recommended that it's simply more comprehensible to the average punter than this sort of Dickensian vocabulary of evincing malice or ill will. But that's what an aggravator basically is. And if this bill was just about that, I take Emma's point about the alternative interpretation of it.

[00:13:42.070] - ANDREW TICKELL

But it was just aggravators we were having. There's no way this bill would be causing all of the heat and lack of light that we're currently seeing around at all.

[00:13:49.980] - ALYS MUMFORD

So the aggravation is something that gets sort of added onto the offence, based on people's intent or the language used?

[00:13:58.120] - ANDREW TICKELL

Yeah, usually what they say, almost always what they say.

[00:14:00.330] - ANDREW TICKELL

I mean, because it's so often difficult to prove what people's actual motivations are in these contexts. I mean, if someone, for example, has a WhatsApp group where they go out and arrange to go and attack people of a particular ethnic minority or sexuality or whatever. Then you've got the evidence to back that up. But most of the time it's based on, you know, what did they say before, during or after the offence? And unlike the crime itself, it doesn't have to be corroborated in Scotland.

[00:14:22.680] - ANDREW TICKELL

So you don't need a second independent source of evidence to prove the aggravator. One source is sufficient to do that. And it's the most important part of the bill in practice. You know, people who've been slacking off the Hate Crime bill as some kind of misconceived, woke nonsense and all of those kinds of talking points. Just completely ignore part one of the bill, despite the fact that for people in reality, who are going to experience harassment in the street, in public, people being threatening or abusive towards them, it's the most important section of this legislation.

[00:14:51.360] - ANDREW TICKELL

But it's been completely hijacked by discussion of the second part about stirring up of hatred. I mean, understandably to some extent, because those are the provisions which do have some free speech implications on any reading. But nevertheless, I think it's kind of unforgivable that folk have given themselves permission just to, sort of, slate the legislation, ignoring the fact this is absolutely critical for recognising the kind of harassment and appropriately punishing it through the criminal justice system for sure.

[00:15:18.700] - ALYS MUMFORD

And yeah, I think that's always a really good reminder when we talk about any legislation really, that it's got people at the end of it. You mentioned there the stirring up and intent I wanted to talk about that a little bit. And as you were talking there Emma, about the misogyny that we see in society and the fact that for women, the most likely place it happens is home. There are examples you mentioned of men's violence or incitement to violence, which is so clearly rooted in misogyny.

[00:15:46.770] - ALYS MUMFORD

So I'm thinking here of Roosh V, of Addy A-game, of incels in general who are encouraging sexual violence towards women and other forms of violence.

[00:15:56.730] - ALYS MUMFORD

Where does that fit in with all of this?

[00:15:59.520] - EMMA RITCH

Roosh V, I think would be the most of the examples you cited Alys, likely to fall under the heading of incitement. The Addy A-Game example, I think, really underlines why aggravation might be a problem.

[00:16:14.700] - ALYS MUMFORD

So can you briefly explain what Addy A-Game is Emma? I know I mentioned it.

[00:16:16.930] - EMMA RITCH

Yes, sure. So Rape Crisis Scotland spoke recently at a webinar we did on Hate Crime and they talked about a so-called pick up artist called Addy A-Game. He was a man who was exposed by BBC's The Social in January 2019. And he had been targeting, following and approaching young woman as part of a so-called game, to teach other men how to pick up women. And he was covertly filming those encounters on the streets.

[00:16:46.710] - EMMA RITCH

And then apparently audio of women having sex. Following a massive public outcry. There was a police investigation and that led to a kind of cobbling together of offences to try and charge him with. And he was charged with sexual assault and voyeurism and later convicted of five counts of threatening and abusive behaviour in September 2019. And the jury was convinced he was behaving in a threatening manner, likely to cause a reasonable person to suffer fear or alarm. He was 35 at the time and the young women were 16, 17, 20 and 24.

[00:17:24.720] - EMMA RITCH

His conviction was overturned a couple of months ago in September for a number of reasons. But I think quite importantly for us, the judgement stated in that instance: it does not seem to us that a polite conversational request or compliments can be construed as threatening merely because it is uninvited or unwelcome. There was nothing in the appellant's behaviour, the judgement carried on, which was overtly threatening or which could reasonably be construed as threatening. And there seems to be a disconnect between what the court understands to be harassment and what women understand to be harassment and an aggravation really wouldn't have helped there.

[00:18:05.670] - EMMA RITCH

It wouldn't have created a new offence, and it didn't seem like it would have assisted the court in any way in determining that what he was doing was sexist or that he was evincing malice and ill will.

[00:18:19.800] - ANDREW TICKELL

Yeah, I think that's absolutely right. I mean, an aggravator would do nothing. It's a curious judgement that by Lord Turnbull in that case. I've been showing it to my students recently who are mostly, in Glasgow Cali, you know, young women, many of them younger than the folk that were approached by Adnan Ahmed.

[00:18:35.100] - ANDREW TICKELL

And they are rather jarred by that conclusion, the interpretation of the law. I did wonder if it could account as stalking under Section 39 as an alternative. If he'd done it on more than one occasion, then that might be a routine. But again, it's cobbling together, as you described it there Emma, a kind of legal solution, which doesn't really fit the phenomenon that we are talking about. I mean, in an oblique way, I think the court's analysis in the Adnan Ahmed case boosts the argument that if there is a problem, as we know there is, with misogynistic harassment on the street in Scotland. And the law, as it stands, is not adequate to deal with it.

[00:19:06.090] - ANDREW TICKELL

It clearly makes that point, in the way that if his conviction had been upheld perhaps, it would be more contestable.

[00:19:12.240] - ALYS MUMFORD

Thank you, and did you want to say anything there about the stirring up?

[00:19:14.760] - ANDREW TICKELL

Sure. Yeah. Stirring up offences. Yeah, most of the controversy on the bill has really focused on these stirring up offences. Now, at the moment in Scotland, there is only one stirring up of hatred offence on the statute books, that's stirring up of racial hatred. In England and Wales,

[00:19:28.230] - ANDREW TICKELL

since 2006, there have been offences of stirring up hatred on the grounds of religion and of sexual orientation. But Scotland didn't embrace those and they didn't come in under devolution, except very briefly under the football legislation for religion. So Lord Bracadale and the Scottish government have accepted the idea that effectively, there should be stirring up of hatred offence for all of the different characteristics. Now, this has caused considerable consternation, partly because of how the Scottish government initially framed it. As all Legally Blonde fans know,

[00:19:56.400] - ANDREW TICKELL

if you're going to have a criminal offence, you need to prove Mens Rea - the mental element around an offence. And the first version, the use of proposed, basically said that you would be guilty of an offence if your behaviour was threatening or abusive, and either intended to stir up hatred against the group in question or alternatively was likely to do so in all of the circumstances. And that last part of the test caused considerable anxiety. After all, you know, if I don't intend to stir up hatred, how do we judge whether it's likely or not that my behaviour is going to do that, encourage other people to hold antipathy against groups?

[00:20:30.300] - ANDREW TICKELL

Now, responding to the negativity around, the Justice Secretary knocked out that second element. So, now, in order to convict anyone of these offences, you'd have to prove threatening or abusive behaviour and that there was an intention on the part of the accused person to stir up hatred. Now in the media coverage, much of it that has followed and a bunch of the Holyrood submissions have followed, you may well think it's a minor change to the offence, but it's not it's huge. Now this idea that it's a small thing to prove that the person actually intended to stir up hatred is, I think, entirely without foundation.

[00:21:02.790] - ANDREW TICKELL

And from my perspective, at least, I mean, I suggested in my own submission that he should do this. I think it knocks out a bunch of the well-founded concerns about the impact this bill might have on terms of free expression. But the arguments about that continue as we speak.

[00:21:16.740] - ALYS MUMFORD

Great. Thank you. And we will again link to the evidence that Andrew mentioned there in the show notes if you want to read, or indeed watch, what he said.

[00:21:26.820] - ANDREW TICKELL

It's a very long session two or three hours! [Laughter]

[00:21:31.350] - ALYS MUMFORD

We can put it in some time stamps! It's fine. [Laughter]

[00:21:33.510] - ALYS MUMFORD

You may be overestimating or underestimating the geekiness of our listeners.

[00:21:39.980] - ANDREW TICKELL

That's possible, I mean, it's a fascinating, fascinating session. I encourage everyone to watch it. [Laughter]. Academic impact in the real world.

[00:21:45.240] - AMANDA STANLEY

So on the back of that, the Bracadale report recommended that gender hostility aggravation was adding to the existing list of characteristics like race and sexuality. And that's something that



Engender and other national women's organisations have been advocating not to do. Emma, why is that?

[00:22:03.830] - EMMA RITCH

So, I think there's a couple of critical weaknesses for us with an aggravation approach. And the first is that it would create hierarchies within violence against women offences. So you could end up in the ridiculous scenario that an individual rape is recorded as being motivated by malice and ill will and another one is not. And secondly, we think that because there are such significant gaps in the law that Andrew has outlined, that potentially the Addy A-game instance, kind of underlines. And real gaps in understanding some of the gendered public and online sexual harassment, that an aggravation model just would not fill those gaps.

[00:22:43.290] - EMMA RITCH

And so I think those are the kind of critical concerns we have about the aggravation model. When we look internationally and the work that Fiona Leverick and James Chalmers have done on this has been really, really helpful to Engender and other women's organisations. We find that in other jurisdictions, this adding sex or gender or some similar protective characteristic to a list of other protected groups in a Hate Crime law just hasn't been effective for women. And so in New Jersey, which has a population of around about nine million, they are currently seeing fewer than one report a year of Hate Crime based on sex.

[00:23:25.470] - EMMA RITCH

So women just are not recognising themselves in the law. Police don't understand the offences that are being perpetrated against women as being Hate Crime. Prosecutors don't understand how women and hate crime fit together. And so it's really not being used as a way of disrupting misogynistic harassment or protecting women. And quite similar findings have emerged from the council of Europe, they looked at hate speech, hate crime provisions and really said, you know, gender for gender, for women, this just isn't working.

[00:23:59.410] - ANDREW TICKELL

That's really interesting I mean, in terms of, you know, practically I wasn't aware that it was just one reported case.

[00:24:05.350] - ANDREW TICKELL

I mean, that does suggest a kind of sheer mismatch, doesn't it, between public understandings of the law and people's own perception of what's happening to them and how the law might articulate or understand that.

[00:24:15.290] - EMMA RITCH

You know, their law has been on the go for 20 years and they've had 18 reports during that time, according to Engender analysis and also other publications made by the state of New Jersey. So it's had a long time to bed in, a long time to be promoted and understood, and it just isn't working at all.

[00:24:32.560] - EMMA RITCH

And conversely, I think we've seen the parliament and government since devolution, have actually done some really strong work on violence against women. And it's been informed by a feminist analysis of what violence against women is. Hate crime, especially the way we've framed it in Scotland, doesn't have that same understanding of power. And squishing women into a framework that isn't designed around our needs, just doesn't work. And we've seen that over and over again with the law.

[00:24:59.980] - ANDREW TICKELL

Can I ask a question? Because it's something which I've been kind of wondering about under the law. As it stands, there's this standalone offence, of racialised harassment, racist harassment, which is not proposed to be got rid of by this bill, so it's going to remain on the statute book, according to the cabinet secretary. I mean, is it that the kind of model that you have in mind there, of a sort of misogynistic harassment type offence?

[00:25:18.830] - ANDREW TICKELL

I think it's in Section 50a of the Criminal Law Consolidation Scotland Act, 1995? You know how to tell them.

[00:25:25.300] - ANDREW TICKELL

I mean, is that the kind of model that you have in mind, Emma? In so far as you've developed that?

[00:25:29.620] - EMMA RITCH

Yeah, the proposals we've made for the misogynistic working group, and we don't know if they've been taken up yet or not. This Scottish government's agreed to the group, but hasn't said exactly what that's going to consist of. So what we've asked for is some analysis of what the gaps in the law are, and then the creation of a law that legislates into those gaps. So we think there's probably a wide range of things that are not covered. There's a whole range of experiences around public sexual harassment, online sexual harassment, potentially things like choking, which seem very under punished, considering how dangerous they are. That are perpetrated against women by men almost universally and yet there isn't much sanction for those.

[00:26:16.510] - EMMA RITCH

So I think all of those types of things we would want the working group to consider, but really being very evidence-led, looking at women's experiences and then looking at the way the law responds to those.

[00:26:27.550] - AMANDA STANLEY

Why is gender different to, for example, race where it does seem to have an impact? So like a key question, I think we understandably get asked a lot at Engender is, why not just take the aggravation? Why is that - isn't it better than nothing?

[00:26:41.980] - EMMA RITCH

So the position I think Scottish government has is that the misogyny working group is going to consider whether having this sex aggravation is helpful or not. And I think it's right that that group does think about that in the round. But we are quite sceptical, I think, about the possible negative consequences of doing that. And there's a couple of things we're worried about, first of all, as I mentioned, Equally Safe, the Violence Against Women Policy Framework in Scotland is quite feminist.

[00:27:09.070] - EMMA RITCH

It really understands well that violence against women is a cause and a consequence of women's inequality. But having a top line policy position doesn't mean that everyone understands that, and that all organisations and institutions responsible for implementing work to end violence against women deeply understand that themselves. So we do come across public bodies, individuals within them, that institutionally believe the same myths about what causes violence against women as the general public has. So it's caused by alcohol, poverty, short skirts.

[00:27:41.650] - EMMA RITCH

Now, it's definitely not caused by those things, to be clear. But there are widespread misapprehensions about that. And so anything that undermines that understanding is concerning. And saying that some violence against women is motivated by men's animosity or malice and ill will and other violence against women is not motivated by that.

[00:28:03.790] - EMMA RITCH

I think just interjects a whole set of confusion into why violence against women happens and how we stop it. I think there's also a concern with us about the danger of introducing what would be a symmetrical offence. So we're talking about a characteristic of sex. We're not talking about protecting women. And I think that ignores the social reality of who experiences misogynistic harassment. That just isn't an equivalent misandristic harassment that happens in Scotland. It doesn't constrain men's freedoms. It isn't understood by all men as a group to be something that creates fear and alarm.

[00:28:42.550] - EMMA RITCH

There aren't hate crimes against men, because they are men. And yet introducing a symmetrical offence can present risks, and particularly to the kinds of feminist speech that Andrew was talking about with regards to the stirring up offense

[00:28:58.110] - ANDREW TICKELL

And it's kind of interesting, though.

[00:28:59.250] - ANDREW TICKELL

I mean, The Law Society of Scotland obviously don't like the idea of just talking about misogyny and saying, what about misandry?

[00:29:05.060] - ANDREW TICKELL

It is sort of interesting, that idea, that kind of liberal legal idea of, sort of, let's efface questions of gender and sex from the law in general. You know, most of the modern statutes really try and avoid anything which definitively says much about who the person, either perpetrator or the complainer, might be in these types of cases. But, you know, in terms of this discussion around this, when I was sort of thinking about this, every year I ask my students about these kinds of things because very often I find my students are actually quite quite sceptical, often of feminist analysis. Not all of them, but in general, they're not always really very on board with even the language of feminism and just trying to concretise, sort of, experiences that we all share of society in life.

[00:29:47.570] - ANDREW TICKELL

It's very striking that if you ask around things like street harassment, how many people have experienced these kinds of things, then all of the ethnic minority students have experienced it. And those that are perhaps more sort of visibly orientated towards sexual minorities experience it. All of the women, and who are the only people left in my class who never have experienced this?

[00:30:07.280] - ANDREW TICKELL

It's the central casting heterosexual men, you know. And I think for them, that's often a bit of a surprise. You know, they're 18, 19, 20 years of age. But I think they're often quite struck by just the visible isolation of their experience in a room, surrounded by other people for whom this is just taken for granted as a feature of life, you know.

[00:30:26.600] - ALYS MUMFORD

Yeah, I mean, really interesting discussions about parallels with reverse racism and which again, doesn't exist. And also looking at, you know, the fact that these institutions, whether it's law, whether it's social media, whether it's politics, are from a misogynistic world. And, you know, we've all - probably all our listeners - have had experiences of people's comments being flagged on social media if they seem to be anti-men. We've certainly had lots of those reported and things.

[00:30:56.900] - ALYS MUMFORD

So because of this lack of understanding of the power dynamics that exist in the real world, as it was. I'm going to close us off now and with a couple of sort of final questions. So one is just to draw again on this idea of the sort of potential negative side effects of the bills. We've covered the sort of symmetrical offence in a in a non symmetrical world.

[00:31:18.950] - ALYS MUMFORD

And we touched before on this idea of stirring up hatred and, sort of, freedom of speech, which is, as you say Andrew, been where lots of the press discourse has been around it. Has anyone got anything else to add around this idea of sort of potential things that we need to be vigilant for when we're looking at this Hate Crime legislation. And yeah, any other thoughts?

[00:31:37.850] - ANDREW TICKELL

Well, I suppose I mean, if you listen to much of the Scottish media, you think this is a bill which is mainly directed at male middle-aged columnists. [Laughter]

[00:31:44.780] - ANDREW TICKELL

Would be your strong impression if you follow much of the Scottish media. That's a grotesque, narcissistic, ignorant conclusion about what the realities of Hate Crime is experienced by people in Scotland. And I think we can never say that enough, in terms of it's not really about you.

[00:32:01.700] - MULTIPLE VOICES

[Laughter]

[00:32:02.360] - ANDREW TICKELL

So, I think that's easily overlooked in this context. I do think, though, however, that in terms of sort of credibility, if you like, people have given themselves permission to say that this bill is any number of odious and misconceived things, which I think is very often exaggerated in terms of the rules on this. But I do think it's important it has credibility. I think it's important that it isn't perceived as some sort of erroneous or generally inappropriate thing for the Scottish Parliament or government to do.

[00:32:30.540] - ANDREW TICKELL

It's very easy to write these things off short-hand, but I do think it's the government's responsibility to kind of land this bill. And they have singularly failed to do so thus far, I think, in terms of winning over confidence.

[00:32:41.840] - ANDREW TICKELL

And I think there are ways that actually you could amend the bill to make that a little clearer. There's free speech provisions in the legislation at the moment,

[00:32:49.010] - ANDREW TICKELL

but they are only about issues of religion, and only about issues around sexuality. So if you are trying to encourage people to cease practising religion, well, that isn't in and of itself threatening or abusive. If you're critical of people who are gay in terms of the lifestyles, that is not in and of itself threatening or abusive. I think there is scope to sort of perhaps reassure parts of the Scottish public around this by taking another look at the defences. It's a defence to all of these charges to say, well, what I was doing was reasonable in the context.

[00:33:17.270] - ANDREW TICKELL

And that's a word which people are making great play of not being able to understand about what that can mean. But I think there is ways the Scottish government can signal who it's talking about and who isn't talking about in terms of this bill. So I've argued, I don't know if anything will come of it, but, you know, you could add a non-exhaustive list of things to that idea of reasonableness, to give people some reassurance.

[00:33:36.200] - ANDREW TICKELL

Listen, it's not about artists and theatres. It's not about locking up directors. It's not about lifting journalists. It's not about locking up editors. It's about none of these things.

[00:33:47.990] - ANDREW TICKELL

And, I think it's a bit of mischief which is driven that, as an agenda around this bill, but I think there are kind of performative, if not legally necessary ways, that the text of the legislation could be amended. So this bill wins public confidence and its critics have less reason credibly to be critical. But we'll see how the bill goes. It's still a very early stage yet.

[00:34:08.230] - ALYS MUMFORD

OK, but how do we shut up some of those white male commentators?

[00:34:14.410] - ANDREW TICKELL

Oh we want to shut them up! [Laughter] How do you - I think if people are ignorant and uninterested in obviating their ignorance of it, what can you do?

[00:34:25.510] - ANDREW TICKELL

I think there are some good faith and some bad faith critics of this bill. I mean, I was critical initially around the free speech dimensions of this, too. Those are concerns that I share. I think it's good that Holyrood is thinking about free expression. That's very often the Scottish Parliament hasn't really thought about those kinds of things.

[00:34:38.440] - ANDREW TICKELL

But I do think it's, not just a shame, I mean, it makes me quite angry just the way some of this has been discussed in this cavalier, very privileged, very casual, sort of condescending way by people with nothing at stake. And as far as they seem to be able to see, only something to lose through this legislation. I mean, when I was giving evidence about the bill, I talked about a specific episode as a as a law lecturer where a few years ago students came to me and said, Andrew, I'm not coming to class tomorrow.

[00:35:05.650] - ANDREW TICKELL

And, you know, usually it's the dentist appointment. Usually it's, you know, I'm taking my sister to the hospital or something like that. But this day was different. On this occasion. They were not coming to class because they had read in the news they'd seen on the Internet that tomorrow was punish a Muslim day, that flyers had circulated across the UK with a range of horrific forms of, suggestions about what you could do and win points in terms of Muslim people persecuting them, attacking them.

[00:35:31.510] - ANDREW TICKELL

And these young women in Glasgow, from Glasgow, their mothers were anxious that they would go into uni. And I just I mean, I didn't know whether to blow a gasket or burst into tears at such a thing.

[00:35:42.820] - ANDREW TICKELL

And if that's the reality of what we're talking about, our own stirring up of hatred, this giving yourself permission to discuss it in this sort of sneery way, which basically most of the mainstream media columnist types have done without any obvious, serious, morally serious reflection on that.

[00:36:06.460] - ANDREW TICKELL

And I think it's pretty disgusting, to be honest.

[00:36:10.000] - ANDREW TICKELL

So I take all of Emma's points, I mean, about the around issues around sex and gender. But I do find that the way this bill has been discussed, to be deeply demoralising about how seriously we take some of these issues.

[00:36:21.100] - EMMA RITCH

Some of the public conversation seems to be being led by people who want to be protected from the law, rather than focusing on the groups who will be protected by the law.

[00:36:31.000] - EMMA RITCH

And I think that the debate has really focused on questions of freedom of expression in a way that seems disingenuous in some quarters. Engender is certainly mindful, though, that laws like this have been used against feminist speech. And one of the most recent examples is a woman in France, Pauline Harmange, who wrote a short essay called I Hate Men. And one of the special advisers to France's Gender Equality Ministry actually wrote to the publisher of this essay and said that they should be wary of befalling France's Hate Crime law on that.

[00:37:08.350] - EMMA RITCH

This actually had the opposite effect, I think to that he intended, in that they immediately sold out of the essay and had to reprint it 20 times. [Laughter]. So it actually got the ideas more out there. But I think other feminists in France were very concerned because to them the essay was about social interaction between women. It was about separatism, but it wasn't about hatred. And it certainly, according to them, did not include any references to violence. So I think in order to perhaps do what Andrew was describing, as something that was a little bit performative, but potentially reassuring. I think Engender has been keen to support a more generalist exception, a more generalist carveout that

would apply to all of the protective characteristics in the bill. But would be restricted to an assessment of the speeches contribution to necessary and political debates against the harm to a marginalised cause, group, or individual.

[00:38:03.610] - EMMA RITCH

So we've made that proposal to the Justice Committee. In terms of what we hope will happen next - more detail on the misogyny working group. I think some clarity on what its remit is going to be. And then a piece of collaborative, creative legislation that really does start to get to grips with women's public sexual harassment, online sexual harassment, and creates a safer Scotland for women and girls to live in.

[00:38:31.150] - ALYS MUMFORD

Boom. Thank you. Amanda, do you want to close us out?

[00:38:34.290] - AMANDA STANLEY

Yes, yeah.

[00:38:35.140] - AMANDA STANLEY

Thank you both so much. That was so insightful. I'm sure we could have carried on talking about this for hours. I feel I can learn a lot, [Laughter], which is what I love about recording these podcasts

[00:38:45.490] - AMANDA STANLEY

And yeah, thanks again to Andrew and Emma. So to close this off now, just, you know, to return to some lighter conversation, I'm going to ask for a final recommendation from everyone - perhaps some further reading on the topic, or it could be an upcoming event that you've seen online, or a thought for the day, or television, something! Let's start with Emma.

[00:39:08.300] - EMMA RITCH

Thanks, Amanda. Obviously, I recommend Engender's report on this, [Laughter] which is called Making Women Safer in Scotland. And that's also an absolute banger of an essay by Professor Liz Kelly on the Trouble and Strife website, which is mounting a feminist critique of Hate Crime as a concept. And I also recommend The Crown, which is full of problematics, but extremely pleasing autumn viewing [Laughter].

[00:39:34.910] - AMANDA STANLEY

What a pivot. [Laughter]. Andrew, what about yourself?

[00:39:41.120] - ANDREW TICKELL

Jeez, that's a difficult one. I mean, emotionally, considering we're in what week - what seems like 148 of Tier Four lockdown, I'm mostly recommending to myself probably, gin, at the moment. [Laughter].

[00:39:53.590] - ANDREW TICKELL

Well actually I have kind of moved on. I can recommend something a bit left-field. My friend Yalcich got me on to something which is called Cynar. I don't have ever encountered it? It's an Italian artichoke based bitters, which you can have -

[00:40:07.100] - AMANDA STANLEY

Wow.

[00:40:07.640] - MULTIPLE VOICES

[Laughter]

[00:40:07.840] - ALYS MUMFORD

I'm in.

[00:40:09.490] - EMMA RITCH

That sounds amazing.

[00:40:11.630] - ALYS MUMFORD

I'm growing artichokes in my little garden! And it's very exciting.

[00:40:15.170] - ANDREW TICKELL

I don't know if you can do at home. [Laughter]. I mean I commend your bootleg still - but it's got a kind of, murky kind of, golden vibe to it.

[00:40:25.700] - ANDREW TICKELL

I'm finding it very pleasing, it's getting me through. Put it that way, it's getting me through.

[00:40:30.440] - AMANDA STANLEY

That sounds so delicious, and Alys I mean, hopefully we'll be out of this by this time next year. But there might be some artichoke moonshine from your crop by then?

[00:40:38.960] - ALYS MUMFORD

I mean, currently I've got two leaves on my oldest eggplant, so it's going well. [Laughter].

[00:40:44.180] - AMANDA STANLEY

A single batch!

[00:40:45.980] - MULTIPLE VOICES

[Laughter]

[00:40:49.670] - ALYS MUMFORD

So Alys, what about yourself?

[00:40:51.440] - ALYS MUMFORD

Okay, I really tried to think of something like feminist-y, but as I recommended feminist films at the start, I'm just going to say I've been really enjoying, to a ridiculous level, What We Do in the Shadows, again, probably it's very problematic.

[00:41:05.840] - ALYS MUMFORD

But it's a sort of spoof documentary about vampires living in Staten Island, based on the original film by Taika Waititi. And it is, it's just so joyful. I laugh like a drain. So you give yourself 25 minutes of joy of an evening.

[00:41:24.530] - ALYS MUMFORD

And also I just remembered that this weekend was Engender's AGM. And as part of it, my colleagues indulged me by letting me host a quiz, as the fun bit after the AGM. And that will be available on Engender website. If you fancy doing some feminist emoji interpretation, there's a cracking music round. Yeah, if you're not totally sick of Zoom quizzes, feel free to use that for your next family gathering.

[00:41:50.780] - EMMA RITCH

Best feminist quiz ever Alys.

[00:41:55.070] - ANDREW TICKELL

This is quite good - from Buffy to vampires. It's really come full circle.

[00:41:57.760] - ALYS MUMFORD

That's true. And we had a Legally Blonde mention. Podcast's have everything.

[00:42:02.930] - ANDREW TICKELL

Well you know, Elle Wood's remains one of the finest lawyers known to humankind.

[00:42:07.640] - AMANDA STANLEY

My recommendation is, and I know we always talk about Bake Off, but I thought I'd bring up the fact that MasterChef Professionals has returned to the television. Because at the end of a day, all I can concentrate on is people trying to make food.

[00:42:20.900] - AMANDA STANLEY

So, yeah, I'm so thrilled, that it's just something that's like very comforting to watch, it's like an hour long.

[00:42:27.470] - AMANDA STANLEY

You know, people are very good at it on the show, and it's just nice to watch in the same way as Bake Off. So I've been trying really hard as well to watch The Fall since March - so what, nine months ago nearly? And I failed miserably at that. So MasterChef is the lane in which I stick into because I'm really good at watching that one.

[00:42:47.870] - ALYS MUMFORD

Nice. And if you really need to, you know, make it feminist, you can get involved in some discourse around, you know, why women are cooks and men are chefs. And there's a whole you know, there's an angle there if you need it.

[00:42:57.597] - AMANDA STANLEY

Indeed.

[00:42:58.020] - ALYS MUMFORD

But also do feel free to just enjoy it with some artichoke liquor. [Laughter].

[00:43:03.710] - AMANDA STANLEY

I'm still curious about this liquor now.

[00:43:06.530] - ANDREW TICKELL

Available from almost no stockists near you. [Laughter].

[00:43:12.050] - AMANDA STANLEY

Oh, great. Oh, well thank you so much.

[00:43:14.270] - ALYS MUMFORD

Fantastic. Yeah. Thank you all.

[00:43:15.470] - ALYS MUMFORD

Thanks for listening, I hope it's been informative about what's going on with with Hate Crime in Scotland. We'll obviously link to lots of briefings and more info in the show notes, as well as links to where you can find some of the things we've recommended. We hope everyone listening is coping alright in the times we find ourselves, and staying safe. And we'll be back with another episode soon.

[00:43:37.730] - ALYS MUMFORD

Thank you so much to my co-host, Amanda, and our guests, Emma and Dr. Andrew Tickell.

[00:43:49.510] - AMANDA STANLEY

This episode of On The Engender was hosted by Alys Mumford and produced on behalf of Engender by Amanda Stanley. The music featured throughout was written and performed by Bossy Love. You can find out more about Engender by heading to their website, [engender.scot](http://engender.scot) and following us on Twitter @EngenderScot. And be sure to click subscribe to this podcast so you don't miss the next episode.