Rethinking hate crime and intersectionality

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During my doctoral research on the emergence of hate crime legislation I interviewed a number of campaign group activists who were working on improving the criminal justice response to hate crime victimisation. Many of these worked on one specific hate crime “strand” and were members of monitoring groups looking at racist, religious, homophobic, disablilist or gendered crimes. However, one respondent worked independently and had been victimised herself in a violent attack in the street. She observed “I am disabled, gay and a woman. If I am targeted am I supposed to say which aspect was the most hurtful and damaging?” She was frustrated at a criminal justice response which would only allow her to tick one aspect of her identity as the potential cause of the attack and also at campaigners who were wedded to one aspect of identity in their lobbying efforts. This was not an uncommon opinion, with many also highlighting the competition between different charities and lobbying groups over resources, police attention and media coverage. What was clear was that hate crime policy had emerged through an identity politics which tended to oversimplify victim groups and did not necessarily take into account the diverse experiences of victims and the nuances of the harms that they might suffer.

The development of hate crime legislation has been characterised by this “silo” approach to identity, where groups are added to policy as time goes on. The Crime and Disorder Act 1998 set out specific offences for some racially aggravated crimes and that was expanded in 2001 to include crimes with a religious aggravation. In 2003 the Criminal Justice Act detailed sentence enhancements for crimes which were motivated by prejudice towards disability and sexual orientation. Transphobic hate crimes were added in 2012 under the Legal Aid, Sentencing and Punishment of Offenders Act. In June 2013 the Law Commission published its consultation looking into the further extension of hate crime provisions, suggesting that the group-based approach would continue for the foreseeable future. While this strategy does allow for the monitoring of criminal justice performance under each strand, this chapter suggests that the continuing focus on the group dimension of victimisation could be problematic. Scholars have noted that it creates a “competition to be counted” whereby some victim groups are included and others are left out (Morgan, 2002). The impact of excluding some categories of identity means that they are not only overlooked by policy, but they are also ignored as aspects of identity in other victim groups. Seeing that the original aim of hate
crime legislation was to send a positive message to communities, then this exclusion or misrepresentation of identity groups warrants attention.

The aim of this chapter is to challenge the victim group approach to policy and to consider what can be gained from an intersectional understanding of hate crime. This will be achieved by first outlining the problems of policy which is wedded to identity politics, touching upon assumptions made about what it is to experience hate crime. The chapter then moves to examine the importance of considering intersectionality by looking at an emergent body of research that assesses the impact of multiple systems of oppression on the hate crime victim experience. Fundamentally it will be suggested that hate crime policy needs to circumvent traditional notions of primary identity characteristics and to understand the fluidity of identity and the multiple ways in which prejudice and violence might be experienced. In research this means studying the lived experience of the victim and to tease out the unique harms and risks that people might face in order to gain a more comprehensive understanding. For policy, this would require increased awareness about the risks faced by people who inhabit more “complex” identities, greater community engagement and the ability to record data to take account of this.

**Hate crime policy**

Internationally, policy definitions of hate crime differ broadly but most statutes are accompanied by a list of victims or identity groups who can seek redress and potentially a harsher punishment for their perpetrator. Typically, the groups included tend to be categories with a long history of oppression and in particular, a challenging relationship with the police and criminal justice system. What also appears to be the case is that once hate crimes are enshrined in law, campaign groups mobilise in an attempt to expand the list of victims and to gain recognition for the harms that they suffer (Jenness and Grattet, 2001). In the UK, the hate crime policy domain emerged after the racist murder of Stephen Lawrence in 1993 and the subsequent Macpherson Inquiry, which identified key failings in the Metropolitan Police Service. Calls for a specific offence of racial violence were made and garnered the support of New Labour, who made a manifesto commitment to do so once in power. The calls for enhanced punishment chimed with their political objective to appear “tough on crime”. In 1998 the Crime and Disorder Act did just that, with the aim of sending a positive message but also providing a practical impetus for change within the justice system (Iganski, 1999). Already there was discord amongst some politicians and campaigners who queried the message sent to excluded groups. Lord Mackay of Drumadoon for example, wondered what message would be sent about other motivations and was concerned that they would be downgraded (Hansard (HL), 16 Dec. 1997). The exclusion of religion was a particular concern and MPs made specific reference to Islamophobia. The legislation was expanded to include religion in 2001, following revenge attacks against Muslims in the wake of the US terrorist attacks on the Twin Towers. Although Muslim organisations had been documenting Islamophobic attacks for a number of years, the 9/11 attacks also garnered media coverage about their victimisation and enabled a more concerted campaign to extend hate crime provisions (Law Commission, 2013a: 10). Importantly, campaigners wanted their victimisation correctly recognised as being linked to religious, rather than racial identity.

Hate crime provisions in Britain were further extended in 2003 to include sexual orientation and disability. Although not a specific offence, the Criminal Justice Act allowed for judicial discretion in adding a sentence enhancement. This too followed a high profile hate crime in which neo-Nazi David Copeland targeted the black, Bangladeshi, and gay
communities, which demonstrated a broad spectrum of hate crime and similarities in the impact on victims. The debates in the House of Lords surrounding the amendment show that politicians drew upon victimisation surveys to show the scale of the problem of homophobic and disablist hate crimes when discussing these categories (Hansard (HL), 5 Nov. 2003). Transgender identity was added to this list in 2012, again with policymakers having viewed convincing evidence that these communities faced increasing violence that needed to be deterred. However, the work of lobbyists does not finish at the enshrinement of statute and research has shown that once included in hate crime law, victim groups have continued to work hard to ensure that provisions are implemented. For example, the Crown Prosecution Service did not produce a policy on prosecuting disability hate crime until 2007, which only came about after a series of murders of disabled people added impetus to the claims being made by the disability movement (Mason-Bish, 2012b). The involvement of myriad activists, monitoring organisations and advisory groups has been central to maintaining pressure on the criminal justice system to work on hate crime policy.

**Identity politics and intersectionality**

The character of hate crime legislation in Britain has been defined by an identity politics approach to which recognition is the main aim. According to Nancy Fraser, such objectives tend to be merely affirmative in recognising a simplistic aspect of identity and do little to really transform underlying structures (Fraser, 2003). Hate crime legislation shares this characteristic with other “recognition struggles” which have been critiqued for their tendency to create competition between victim groups. As Barbara Hobson notes:

> Recognition politics are dynamic: social actors seize political opportunities, reclaim and refashion public discourse and reconfigure the politics surrounding recognition and redistribution. But claims and claims-makers exist in political cultures. Socio-political context can be seen as a field of constraints and opportunities both in terms of a) who and what gets recognised; and b) where and how cultural identities are embedded. (Hobson, 2003: 8)

This demonstrates the way that activists have to grab opportunities as they arise in order to have an impact. This comes with a compromise in that some groups will not achieve the same level of recognition. Hate crime policy in Britain demonstrates this quite clearly because only five types of identity characteristic have been enshrined in law. Jon Garland’s work on the exclusion of subcultural identity is a case in point. In 2007 Sophie Lancaster was brutally murdered for her appearance as a Goth and despite the judge labelling it as a “hate crime” there was no legal mechanism to prosecute it as such (Garland, 2010: 41; see also this volume). However, the case shared many characteristics associated with traditional forms of hate crime such as a history of marginalisation and being attacked because of perceived difference.

Chakraborti and Garland also draw attention to “undesirable” groups including the homeless, those with drug and alcohol dependency and refugees for not being included because they lack lobby group support and political experience (Chakraborti and Garland, 2012: 504). Therefore, hate crime is both a moral and legal construct that requires groups to engender “emotional thinking that encourage[s] others to see them as the undeserving victims of prejudice” (Mason, 2007: 249). Academic Jo Morgan takes this point further, arguing that hate crime laws are particularly damaging because:
Competition to be “counted” and the political clout required to be counted has not only frozen out disorganised groups and individuals that experience hate crime, it has also led to in-fighting between social movements in the US.

(Morgan, 2002: 32)

Morgan’s work looks particularly at attacks on people who work in abortion clinics, sex workers and paedophiles and shows the similarities in their experiences when compared with more established hate crime groups. She observes that excluding groups because they lack political impetus is distinctly damaging in that it further fails to recognise their victimisation and renders them powerless. Furthermore, it creates a competition between groups who are seeking to show that their particular experience is worse and therefore needs recognition in law. This message is something that policymakers have clearly been acutely aware of. When the provisions for racially aggravated offences were being discussed in 1998, concerns were raised about the signal sent to other groups. Now in 2013, the Law Commission are considering amending hate crime provisions and their impact assessment warns against the “potential for harm to the reputation of the CJS as other groups . . . do not get the same protection” (Law Commission, 2013b: 3). For hate crime policy, you are either in or out.

An important by-product of the identity strand approach to hate crime policy has been to oversimplify the victim experience and to fail to acknowledge the lived reality for victims. This simplification of identity is described by Moran and Sharpe as the “either/or logic” (Moran and Sharpe, 2004: 410). Essentially, hate crime legislation has functioned by adding categories as seemingly separate entities – race or sexual orientation, disability or religion – and has not encouraged an understanding of identities that intersect. This sends the potentially harmful message that one aspect is irrelevant. Moran and Sharpe illustrate that it is impossible to find policy that makes reference to the transgender experience of racial violence, thus rendering it insignificant, difficult or invisible. Writing about the experiences of lesbian, gay, bisexual and transgender (LGBT) people, Doug Meyer found that approaches which only consider one aspect of oppression tend to provide “homogenized and distorted views of marginalized groups, advancing the interests of more privileged individuals” (Meyer, 2012: 850). Such criticisms have certainly been levelled at organisations such as Stonewall for failing to adequately campaign on behalf of black and minority ethnic (BME) people and for the large disability charities which have been criticised for speaking for and not with disabled people. Similarly, as is often a characteristic of identity politics, deeper structural and economic issues affecting victims of hate crime are often subsumed under the broader and simpler title of an identity characteristic (Fraser, 2003: 133). How might a wealthy gay man experience hate crime differently to a gay man living in poverty? Obviously such nuances are not just for policy to consider, but also relate to the importance of hate crime scholarship, which will be examined shortly.

The nuances of victimisation are also lost when totalising assumptions are made about group characteristics. For example, the Crown Prosecution Service (CPS) disability hate crime policy was criticised for failing to account for the diverse ways that disabled people experience hate crime. The CPS had to revise its policy to reflect the fact that disabled people might face very particular forms of hatred which had not necessarily been considered before – such as being attacked by pseudo-friends (Mason-Bish, 2012b). Of further importance has been the assumption that disabled people are inherently vulnerable and “easy targets” of hate crime, rather than victims of intentional hatred. Roulstone et al. observe that there has been a long history of labelling disabled people in this way and assuming that their identity is rooted in
weakness and requires a paternalistic response (Roulstone et al., 2009: 8). It has been suggested that this has been at the root of difficulties in getting disabled people to report hate crime. Furthermore, the role of social exclusion, class and ‘space’ in the impact of hate crime on disabled victims warrants further attention. Chakraborti and Garland note that it is important to recognise that “hate crime can be the outcome of prejudice based on multiple, distinct yet connected, lines is important for recognizing the reality behind both the experience of victimization and the commission of the offence” (Chakraborti and Garland, 2012: 504). As was evidenced by the monitoring efforts of disability campaigners, adding a category to a list of hate crime victims then requires great efforts to understand the diversity of experiences within that simple grouping.

As hate crime policy is defined by the list of victim groups included, it draws attention to those left out of the list. The limits of a group-based approach to hate crime have also been evidenced by the absence of gender from provisions. It has been suggested that gender-based violence is different from hate crime for a number of reasons. First, some have suggested that women are not a ‘minority’ group and so do not require the protection that legislation affords. Second, gender-based violence might be more likely in the context of a personal relationship and women already have significant protection under other legislation (Mason-Bish, 2012a). These reasons, amongst others, demonstrate again that the silo approach to hate crime policy has meant that victim groups are evaluated in rather simplistic ways to see if they ‘fit’ or not. The limited debate that there has been draws on assumptions about the nature of violence that women experience and seeks to categorise it as either hate crime or something else. In reality, there might be instances of violence which are and which are not. But gender is seen as a complicated identity category that is best left out of the hate crime canon. A further impact of this has been that campaigners also evaluate the limits of hate crime policy as a tool to combat violence against women. In recent research by Gill and Mason-Bish it was discovered that campaigners on violence against women and gender-based violence were often cautious about hate crime policy, feeling that it lacked the sophistication to handle intersectionality and diversity (Gill and Mason-Bish, 2013). The London Feminist Network conference in 2010 raised concerns that such an approach would essentialise gender and ignore the intersection of race, class, religion and sexual orientation (Anthias, 2011). Furthermore, campaigners consider the effect of simply adding categories, meaning that a new identity group would be at the bottom of a long list. Academic Phyllis Gerstenfeld notes the victims of gender-based hate would be “subsumed under the larger rubric of bias crime, and thus will be largely forgotten” (Gerstenfeld, 2004: 9). This results in making women invisible from hate crime policy.

Squaring the circle

So far this chapter has critically assessed the strand-based approach to hate crime policy and thought about its limits in terms of simplifying or totalising the victim experience. However, there are some studies which have begun to look at the complexities of identity in relation to hate crime and these utilise an intersectional approach. Arguing that identity politics “conflates or ignores intragroup difference”, intersectional theorists argued that it also tended to “expound identity as a woman or person of colour as an either/or proposition, they relegate the identity of women of colour to a location that resists telling” (Crenshaw, 1991: 1242). Instead of being members of separate groupings, the reality is that identity can be fluid, with aspects of oppression and inequality overlapping each other. The concept of intersectionality has been used to expose the flaws in a criminal justice response that assumes uniformity
Within categories (Marchetti, 2008; Crenshaw, 1991). Furthermore, an increasing number of researchers are using it to highlight the impact of multiple systems of oppression on a person’s life. As such, intersectionality is an appealing concept for better understanding hate crime and victimisation. It is used in this chapter as a concept that “aims to make visible the multiple positioning that constitutes everyday life and the power relations that are central to it” (Phoenix and Pattynama, 2006: 187).

In his study on LGBT experiences of homophobic violence, Doug Meyer used the concept of intersectionality to understand how social position might impact on how victims evaluate harm. He was critical of the way that previous studies had assumed that the victim experience of violence and hate could be hierarchically ranked (Meyer, 2010: 982). For example, victimisation studies would require those surveyed to rank their most serious experience and to assume that people within a victim category did this in the same way. After conducting in-depth interviews, Meyer found that LGBT people with a white middle class background would frequently view the violence experienced as severe, whereas those from a working class background did not. The latter often had non-LGBT friends who had experienced worse violence and so posited that “it could be worse” (Meyer, 2010: 986). Part of this was down to support networks and friendship groups. For example, Meyer suggests that the white middle class respondents were often encouraged to report their victimisation because violence was an exceptional event in the circles that they mixed. The lower income LGBT groups had their violence minimised – usually by a family member. Quoting a respondent named Jayvyn, a 33-year-old black gay man who was assaulted in the street, he says:

> For the longest time, I didn’t see it as a big deal. Everyone kept telling me, “well, you weren’t hurt, you weren’t killed, like so and so.” But I was hurt. I mean, I had the scars to support it.

(Meyer, 2010: 985)

As such the social networks of victims affect their perceptions of the severity of their victimisation. Furthermore, Meyer found that class and race also had an impact on their expectations about whether they would be victimised in the first place. Poor LGBT black people anticipated violence because their “race, class, gender and sexual identities had been attacked in the past” (Meyer, 2010, 987). This tended to lead to them minimising the brutality of their experiences as something normal that they would probably not report.

Adopting an intersectional approach to hate crime can be particularly illuminating where gender is concerned. In their examination of Muslim women who encounter Islamophobia, Chakraborti and Zempi argue that the Muslim veil itself is an intersectional issue (Chakraborti and Zempi, 2012: 274). The veil carries with it connotations of gender dominance and is viewed as a symbol of the oppression of Muslim women. Therefore, it is not sufficient merely to understand hate crimes against them as Islamophobic attacks because women will experience this differently from men. For Muslim women, the veil is part of their female identity but also means that they are targets and will avoid certain situations if they feel they might be at risk. Behaviour which might come under the title of “Islamophobia” cannot really be understood without examining how gender compounds or complicates it. Research has also demonstrated this in relation to lesbian experiences of hate violence. Corteen’s study found that as lesbians were seen to transgress both gender and sexuality norms, they were at increased risk from violent attacks (Corteen, 2002: 266). Women were more likely to be attacked when they were not performing gender appropriately – such as when wearing trousers, no make-up or flat shoes (Corteen, 2002: 270). In Meyer’s study he concluded that
gay men decrease in status when identifying as feminine and were particularly attuned to verbal insults as an attack on their gender and sexuality. For lesbians, sexual violence was one of the most damaging forms of homophobic abuse because women are more likely to be subject to the threat of sexual assault in a way that men are not. As such, the experience of homophobia needs to be viewed through an intersectional lens. In these examples, Muslim women and lesbians are “doing gender inappropriately” and thus more at risk of attack and likely to be affected in different ways.

Some studies have looked at the difficulties of some victims of hate crime in seeking support and recognition within their own communities. In her study of violence against women in immigrant communities, Yasmin Jiwani found that the young women would “walk a tightrope” between violent racism that they would experience from the host or dominant society and the need to conform to different roles and norms in their own community (Jiwani, 2005: 846). They negotiate multiple identities on a daily basis and were acutely aware that it was necessary to assimilate into their new community in order to avoid racist violence committed against them (Jiwani, 2005: 868). This need to fit in meant that they had to privilege cultural norms of the new society over the ones associated with their home and family. Their immigrant status made them fearful of the police, so they would become more reliant on their family for support and even less likely to report violence experienced within their own community. Therefore:

the othering resulting from gendered socialization combined with the othering resulting from racialisation heightens the complex and intersection forms of violence that girls and young women of colour experience.

(Jiwani, 2005: 851)

Continuing this theme, Meyer found that black LGBT people experienced this jarring between communities where hate crime was concerned. He found that they would often interpret their violent experiences as an attempt to punish them for not representing their racial community appropriately (Meyer, 2012: 858). Black lesbians often felt that homophobic violence directed towards them was a statement that they had caused harm to the community by converting other women into lesbianism. Black gay men were often keen to highlight that they were still good role models for the black community, due to their physical and emotional strengths (Meyer, 2012: 861). This difficulty in managing roles also feeds into the ability of victims to overcome traumatic hate crimes. In their study of transgender people of colour, Singh and McKleroy observed that victims who had a strong sense of pride in both their racial and gender identity were more resilient after victimisation. This type of acceptance took time because their gender identity was not necessarily accepted within their family (Singh and McKleroy, 2011). Their minority status as being both black and transgender also made it hard to connect with activists and support networks. So their identity as people who were marginalised on many fronts meant that they could not always access support and validation of their lives.

Conclusion

This chapter has sought to re-examine the identity-based approach to hate crime policy by looking at its historical development. Hate crime legislation has been characterised by an approach which lists victim groups in a rather simplistic way. In keeping with other policy defined by identity politics, such groupings do not always acknowledge diversity and leave
out victim groups who do not fit neatly within the hate crime framework. Taking a more intersectional approach highlights that this totalising logic inhibits our understanding of the victim experience. Policy is often reduced to one axis of oppression, meaning that intersections and diversity are rendered invisible. The impact of this is to “miscategorise” people who might then suffer from a lack of support and face difficulty in negotiating different social and cultural spaces. Some might also be at heightened risk of attack due to this and to the fact that they might be more visibly “different” and performing their identity inappropriately – as in the case of Muslim women for example. As Nancy Fraser would argue, this type of misrecognition means that policy is merely symbolic and does not have the power to really transform the experiences of victims.

The concept of intersectionality is a useful tool to break away from the strand-based approach to hate crime but it has its limitations. One might question how many aspects of identity need to be considered. While it is important to note how race and gender might intersect, these too are simplistic characteristics that offer limited appeal. What about sexuality, disability, class, age, weight or appearance? Can we ever have policy that truly takes account of each individual’s experiences of oppression? The group-based approach to hate crime certainly possesses some intuitive appeal. It allows for the monitoring of recorded hate crimes by the police and criminal justice agencies – giving them a focus. Commentators have noted the importance of legislation for not only having a deterrent effect to perpetrators, but in forcing the criminal justice system to produce policy and be seen to take real action (Iganski, 1999). To take away the victim categories would be to make it difficult to monitor success in particular areas. As Chakraborti observes, placing limits on the groups attached to hate crime “is critical to its operational viability” (Chakraborti, 2010: 17). Criminal justice agencies including the CPS have been able to produce guidance for each strand after consulting with victim groups and campaigners. A generic hate crime policy might be unwieldy.

This chapter has shown that although not perfect, a consideration of intersectionality assists in better understanding the victim experience and points towards potential policy improvements. The role of policing is key in improving community engagement and an understanding about the diversity of its members. These individuals, who might be termed “hard to reach”, need additional support due to the increased risk that they face (Moran and Sharpe, 2004: 409). So instead of adding new groups to hate crime policy, it is necessary to think about how identity categories interlock with multiple aspects of identity working simultaneously. Demographic factors such as class, social isolation, socio-economic status also need to be considered. As Chakraborti and Garland note:

Vulnerability to hate crime stems from a broader range of factors than singular conceptions of identity allow and this should be factored into contemporary conceptual framework as should a further, often overlooked, dynamic of hate crime: namely, the capacity for members of minority groups to be perpetrators as well as victims of hate crime.

(Chakraborti and Garland, 2012: 504)

The research findings which point towards the normalisation of violence for some groups also means that greater targeting of resources is needed to engage with them and provide support. It is also important for activists to work together to draw out their connections and share good practices, rather than seeing other strands as different or a competition for resources. Hate crime research needs to better understand how identity impacts on victimisation and how this notion shifts across time and space. Identity is messy. It is time for hate crime policy to better acknowledge this.
Bibliography


Hansard (HL), 5 Nov. 2003, vol. 654, cols 800 to 864.


