

Reconceptualising hate crime victimisation through the lens of vulnerability and 'difference'

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Abstract

This article suggests that the concepts of vulnerability and 'difference' should be the focal points of hate crime scholarship if the values at the heart of the hate crime movement are not to be diluted. By stringently associating hate crime with particular strands of victims and sets of motivations through singular constructions of identity, criminologists have created a divisive and hierarchical approach to understanding hate crime. To counter these limitations, we propose that vulnerability and 'difference', rather than identity and group membership alone, should be central to investigations of hate crime. These concepts would allow for a more inclusive conceptual framework enabling hitherto overlooked and vulnerable victims of targeted violence to receive the recognition they urgently need.

Keywords

Hate crime, vulnerability, 'difference', victimisation, identity

Introduction

The concept of a 'hate crime' is now a familiar one to criminologists and to scholars in the related disciplines of sociology, psychology, public policy, political science and legal studies. For many, it is a politically and socially significant crime that captures the intersections between various forms of bigotry; an umbrella concept with the capacity to unite disparate social movements and to direct attention towards the collective experiences of minority groups and the commonalities in their victimisation. For others, hate crime is a slippery and somewhat elusive term whose conceptual and operational ambiguity raises thorny questions for those charged with responding to the forms of victimisation and perpetration associated with the construct.

Whatever one's viewpoint – and many criminologists would agree that neither stance is mutually exclusive – the underlying principles of the hate crime movement are laudable. A growing awareness of the harms associated with acts of bigotry and prejudice has been evident in most Western democracies over recent decades. The apparent rise in the number of such incidents (at least in terms of recorded figures), together with greater public acceptance of 'difference' and the legacy of progressive social movements, has stimulated considerable interest within scholarly and law enforcement domains. The ensuing raft of empirical, legislative and other associated policy interventions reveals the regional, national and international prioritisation of hate crime discourse and its importance to the governance of diversity and community cohesion.

At the same time however, our understanding of hate crime is far from complete, or as Phyllis Gerstenfeld (2004: xv) observed some years ago, 'hate crimes seem to be a topic of some interest to nearly everybody, and yet few people really know much about them'. This remains a valid point despite the time that has passed since that assertion. Certainly, on the basis of what we learn through academic, policy and public discourse it would seem that hate crime can mean very different things to different people. Some, particularly lay-people, will understandably adopt a more literal interpretation of hate crimes in line with the more violent and extreme cases that make the news. Scholars, meanwhile, tend to see them as a social construct with no straightforward meaning and offer a set of defining characteristics which they regard as central to their commission.¹ Practitioners are likely to pursue a much less complex view which requires few of the machinations evident within academic interpretations.

Amidst this conceptual confusion a keenly-argued debate has taken place regarding which groups are able to think of themselves as 'hate crime victim groups', and thus be entitled to protection by relevant 'bias crime' legislation. This debate, and the accompanying legislation, has tended to centre around relatively narrow conceptualisations of identity and community, commonly regarded as immutable or fundamental as protected characteristics². Reflecting the roots of the concept of hate crime in the civil rights struggles in 1960s and 1970s America, a common pre-requisite for scholars and criminal justice practitioners regarding hate crime victims is that they must come from traditionally marginalised minority groups. In other words, members of majority communities cannot be

understood to be victims of hate crimes as this is the preserve of historically disadvantaged minorities, even if the nature of their targeted victimisation is very similar.

The limitations of this approach to hate crimes were thrown into sharp relief by the killing of goth Sophie Lancaster in 2007 in a public park in Lancashire, northern England. Sophie had been the victim of a brutal assault from five strangers who targeted her because of her visually striking appearance – her ‘difference’ (Garland, 2010). Even though the Judge at the Court of Appeal labelled the case a ‘hate crime’ no specific hate crime legislation existed under which her attackers could be prosecuted, because Sophie was not from one of those officially recognised hate crime victim groups that are included under such laws.

Since this case pressure has grown, not least from the Sophie Lancaster Foundation itself, to include other groups in the remit of hate crime legislation³. However – and as this article goes on to argue – approaching the issue of inclusion through the lens of group identity politics merely exacerbates existing problems, creating divisions among communities of identity rather than highlighting the shared nature of their victimisation. Instead, we call for a re-evaluation of the way in which hate crime has come to be stringently associated with particular forms of victimisation based upon one-dimensional, though well-intentioned interpretations of identity. Specifically, we propose that perceived vulnerability and ‘difference’ should feature more prominently in the ways in which scholars and policy-makers across the world think about hate crime in order to counter the limitations of prevailing frameworks.

This article begins by examining the overarching themes of such frameworks, and considers them within the context of particular lived realities of hate crime victimisation that have been marginal to the construction of theory and policy. It then argues the case for a fresh vulnerability-based framework designed to prevent scholars, law enforcers and practitioners from becoming side-tracked by factors peripheral to targeted victimisation. Such a focus, we assert, would extend recognition to the more 'hidden' victims of hate crime and would enable them to receive access to a more extensive range of support services.

Conventional conceptual frameworks

As with crime in general, hate crime is a social construct. It emerges from a complex network of events, structures and underlying processes, and, as such, will be constructed according to different actors' perceptions, whether they are scholars, law enforcers or victims (Hall, 2012). That hate crime can have multiple meanings is evident from the variety of interpretations offered within the existing literature. For some, hate crimes are those which inflict greater harm upon their victims than other crimes (Iganski, 2001). For others, they are illegal acts motivated, at least in part, by the group affiliation of the victim (Gerstenfeld, 2004). Alternatively, and reflecting the UK's post-Macpherson victim-oriented agenda,⁴ hate crimes can refer simply to any incident perceived by the victim to be motivated by hate or prejudice (ACPO, 2005).

In the absence of a universal definition it is Barbara Perry's (2001) work in this area that has garnered the most support. Perry's contribution is by no means the only one to have influenced the development of hate crime scholarship (see for example, Lawrence, 1999;

Jacobs, 2002), nor does it offer a hegemonic conceptualisation that has anchored academic interpretations or law enforcement responses. That said, her conceptual framework has left an indelible imprint upon contemporary hate crime discourse not just in her 'home territory' of North America but elsewhere as well (see, *inter alia*, Hall, 2005; Iganski, 2008; Chakraborti, 2010; Garland, 2012). As such, it is worth examining her stance in some detail as its implications – and limitations – are central to the arguments that follow in this article.

According to Perry (2001: 10):

Hate crime ... involves acts of violence and intimidation, usually directed towards already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group. It is a means of marking both the Self and the Other in such a way as to re-establish their 'proper' relative positions, as given and reproduced by broader ideologies and patterns of social and political inequality.

For Perry, violent and intimidating behaviour is distinctive when it involves an act of bigotry directed towards marginalised communities. As such hate crime cannot be divorced from the power dynamics present within modern societies that reinforce the 'othering' of those who are different. Indeed, the process of 'doing difference' is a central tenet of Perry's

framework which sees hate as rooted in the ideological structures of societal oppression that govern normative conceptions of identity. Within such a process, hate crime emerges as a response to the threats posed by 'others' when they attempt to step out of their 'proper' subordinate position within the structural order. It is, in other words, a mechanism through which violence is used to sustain both the hegemonic identity of the perpetrator and to reinforce the boundaries between dominant and subordinate groups, reminding the victim of their place (Perry, 2009). Hate crimes in this view are acts of violence and intimidation directed towards the collective wider community whom the victim is perceived to represent. As such, hate crimes symbolise the 'natural' relations of superiority and inferiority within the confines of structural norms, and are designed to transmit a message to the victim's community that they are 'different' and that they 'don't belong'. Within this framework, the victims themselves are interchangeable and almost invariably strangers with whom the perpetrator has had little or no contact as they are chosen on the basis of their generic subordinate identity rather than any individual characteristics (Perry, 2001: 29).

Perry's conceptualisation of hate crime within the broader psychological and socio-political contexts that condition hostile reactions to the 'other' has been of considerable value. Crucially, her framework recognises that hate crimes are part of a process of repeated or systematic victimisation shaped by context, structure and agency (see also Kelly, 1987; Bowling, 1993). However, despite the strengths of Perry's definition and its influence upon contemporary hate studies, its implications for the way in which we conceive of hate crime victimisation and perpetration are not exclusively constructive. Whilst there is merit to each of the composite propositions of Perry's framework, there is danger in simply interpreting

them as automatic pre-requisites to be 'chalked off' when seeking to identify a hate crime. Hate crimes are more expansive than even this framework allows, and scholars should not be discouraged from stepping outside of its confines when seeking to shape criminological and criminal justice responses to them.

In presenting this argument, we do not wish to contest the legitimacy of Perry's framework of 'doing difference' nor to downplay its relevance for understanding hate crime as a product of underlying social and cultural tensions. Rather, our concern lies with the way in which her explanation has been used by scholars, policy-makers and practitioners to shape the parameters of what is categorised as hate crime without giving due regard to whether such an explanation satisfactorily accounts for the experiences and motivations that are connected to various manifestations of hate. Her framework assumes that hate offences are mechanisms of oppression designed to reinforce the hegemonic and subordinate identities of the perpetrator's and victim's group, are directed towards particular communities only, and that perpetrators and victims are strangers to one another. In so doing, it inadvertently marginalises a range of experiences that could, and should, be considered alongside the more familiar aspects of hate crime discourse. It is to these issues that the article now turns.

Challenging conventional frameworks: hate crime victimisation

A consistent theme throughout much of the literature on hate crime is the idea that expressions of hate are intrinsically linked to prevailing power dynamics that reinforce the dominance of the powerful and the marginalisation of the 'other'. When viewed through such a lens, hate crimes prop up the perceived superiority of the perpetrators whilst simultaneously keeping victims in their 'proper' place by conveying a hate-fuelled message

to their wider community. While this stance accounts for many expressions of hate crime, it does not cover them all. Missing from this picture are those more spontaneous actions which result not from any entrenched prejudice on the part of the perpetrator but which occur in the context of a highly individualised 'trigger' situation (McGhee, 2007). Not all perpetrators of hate crime are prejudiced all or even most of the time, but instead may express prejudice as the outcome of a particular trigger incident or event in a departure from their standard norms of behaviour. The vast array of disputes and conflicts that could conceivably be motivated only in part by prejudice challenge the assumption that hate offences are invariably a mechanism of power designed to suppress the 'other'.

This assumption also seems to overlook the 'ordinariness' of much hate crime: ordinary not in relation to its impact upon the victim but in the sense of how it is conceived of by the perpetrator (see also Iganski, 2008). As Kidd and Witten (2008) observe in the context of transphobic violence, victims of hate crime may be targeted not just for their violation of accepted social norms but because they are stereotypically perceived as 'easy' or 'soft' targets. While hate crimes are undeniably linked to the underlying structural and cultural processes that leave minorities susceptible to systemic violence, conceiving of these offences exclusively as a mechanism of subordination overplays what for some perpetrators will be an act borne from more banal motivations.

This point is key to drawing attention to those groups of victim whose experiences have been marginalised in conventional hate crime frameworks. Wachholz (2009), for instance, notes that there has been a long tradition of subjecting the homeless to acts of violence and

intimidation and yet this victimisation has been excluded from the social construction of hate crime. A review of recent cases in the UK suggests that similar points could be made in relation to targeted violence suffered by elderly and isolated victims (Meikle, 2011); by those with mental health issues or drug and alcohol dependency (Doward, 2010); by members of alternative subcultures such as goths or nu-metallars (Garland, 2010); by sex workers (Carter, 2010); or by foreign nationals, refugees, asylum seekers, migrant workers or overseas students (Athwal, Bourne and Wood, 2010; Fekete and Webber, 2010). These groups of victims could all conceivably be classified as 'stigmatised and marginalised groups' (to use Perry's (2001) description), yet they are not. Lacking either the support of lobby groups or political representation, and typically seen as 'undesirables', criminogenic or less worthy than other more 'legitimate' or credible victim groups, they are commonly excluded from view.

Hate crime frameworks can also fail to recognise the diversity within the broad labels that are used to denote categories of hate crime victim. In her study of hate crimes against Asian Americans, for example, Ahn Lin (2009) notes the rich diversity of ethnic groups associated with the term 'Asian American' – Asian Indians, Cambodians, Chinese, Filipinos, Hmong, Japanese, Koreans, Samoans, Thai and Vietnamese – whose experiences might deliberately or unwittingly be homogenised by scholars and policy makers. Similar points have been made in relation to the experiences of those who are grouped under the broad-brush categories of BME (black and minority ethnic), LGBT (lesbian, gay, bisexual and transgender) and disabled communities, where the dynamics and specificities of victimisation can be lost through the deployment of generic labels (Garland, Spalek and Chakraborti, 2006; Sherry,

2010). Generalising about diverse populations – or relying on empty notions of ‘community’ – instead of considering the discrete experiences of those who fall within the parameters of a particular group label tells us little about their particularities and the context behind their vulnerability.

Furthermore, accounts of hate crime need to be more attuned to the intersectional nature of identity. For example, the harassment of lesbians may be caused by homophobia and by misogyny. A similar issue occurs in some instances against transgendered people where the higher level of victimisation incurred by male-to-female (MtF), as opposed to female-to-male (FtM) transgender people has been explained by gender oppression (Whittle *et al.*, 2007). Equally, the intersections between a range of identity characteristics – including sexual orientation, ethnicity, disability, age, class, mental health, material deprivation or bodily shape and appearance (to name but some) – have been observed by a number of scholars, all of whom have exposed what Moran and Sharpe (2004: 400) describe as ‘the differences, the heterogeneity, within what are assumed to be homogeneous identity categories and groups’ (see also Dick, 2008; Meyer, 2010; Sherry, 2010).

Recognising that hate crime can be the outcome of prejudice based upon multiple distinct yet connected lines is important for recognising the reality behind both the experience of victimisation and the commission of the offence. For instance, the accumulation of years of disablist harassment directed towards Fiona Pilkington and her family – which tragically led to her taking her own life and that of her daughter Francessca⁵ – has since been referred to as a watershed for the prioritisation of disablist victimisation.⁶ However, whilst the case acts

as a potent reminder of the nature and impact of prejudice directed towards disabled people, the relevance of related factors such as the family's social isolation and their economically deprived locality should not be discounted. Hate crimes can often be exacerbated by socio-economic conditions, and some potential targets of hate crime may be better placed than others to avoid persecution by virtue of living at a greater distance from prejudiced neighbours or in less overtly hostile environments (Walters and Hoyle, 2012).

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 frameworks, 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. **As Walters and Hoyle (ibid) suggest, it can become very difficult to distinguish between supposed perpetrators and victims during long-running and complex neighbourly disputes that feature hate incidents. Yet, within the study of hate crime, the contrasting roles of perpetrator and victim have often been taken as a 'given'. This is reflected in Perry's model which, by describing perpetrators and victims of hate offences in terms of their 'superior' and 'subordinate' identities, reinforces the sense that these are majority versus minority crimes; crimes which sustain the boundaries between dominant and subordinate groups and between perpetrator and victim. However, to conceive of hate crimes exclusively in this manner is to discount prejudice-fuelled violence and harassment perpetrated by minorities against fellow minorities, or indeed against those who might conventionally and simplistically be described as majority group members. Put simply, the kinds of biases, prejudices and stereotypes that form the basis of hate crimes are not the exclusive domain

of any particular group. The article now turns to acknowledge several similarly marginalised features of hate crime perpetration that can shape the development of a more nuanced conceptual framework.

Challenging conventional frameworks: hate crime perpetration

One of the more problematic issues surrounding hate crime relates to the fact that successful prosecution is contingent upon proof of the offender's motive. However, contrary to popular stereotypes and the emotive imagery conjured up by the terminology, hate crimes are only very rarely committed by members of organised hate groups, supremacists or far-right extremists; the kinds of people whom one might immediately associate with being motivated by 'hate' for their victim and what they purportedly stand for. Rather, in much the same way that we referred to the 'ordinariness' of much hate crime offending in the passages above, most hate crimes tend to be committed by relatively ordinary people in the context of their everyday lives. For instance, Mason (2005: 844) has warned against the pursuit of 'one size fits all' explanations in this context, suggesting that hate crime perpetrators are often familiar to their victim either as an acquaintance, friend, family member, carer or partner. Equally, Iganski (2008) drawing on the work of Marcus Felson, reminds us that hate offenders are not so different from non-offenders in terms of their values and attitudes that they share. Studies conducted by Sibbitt (1997) and Ray, Smith and Wastell (2004) have come to similar conclusions regarding the parallels between racist offenders and perpetrators of non-hate crimes. For these scholars, hate offending is best understood as a feature of the 'everyday' prejudice that can be located in mainly deprived urban neighbourhoods⁷ where situational cues can give rise to the 'animus expressed by

offenders, which lies beneath the surface of everyday cognition for many individuals' (Iganski, 2008: 41).

Of course, these explanations of offending behaviour do not necessarily contradict Perry's thoughts about hate offences being mechanisms of oppression designed to reinforce the structural order. For Perry, such ideas can be applied even to perpetrators in positions which might be deprived or disadvantaged because it is the *relative* position of the powerful and subordinate groups within a social structure that confers 'dominance, normativity and privilege' on certain identities, and 'subordination, marginality and disadvantage' on others (Perry, 2001: 47). However, we would suggest that this line of thinking accounts for some, but not all forms of hate offending. Offences that we label as hate crimes may sometimes have little to do with any entrenched prejudice or hate on the part of the perpetrator but may instead arise as a departure from standard norms of behaviour; or through an inability to control language or behaviour in moments of stress, anger or inebriation; or from a sense of weakness or inadequacy that can stem from a range of subconscious emotional and psychological processes (Dixon and Gadd, 2006; Gadd, 2009; Walters, 2010). Equally, the selection of 'soft' or convenient targets because they are obviously 'different' (for instance, through markers of language, skin colour, dress or culture) or because they seem vulnerable (because of their age, isolation, disability or physical presence, to name but several factors) may have little to do with any conscious intent to suppress the 'other' or to communicate a message of hate to the victim's wider community. Conceiving of these offences purely as a mechanism of oppression or subordination overplays what for some perpetrators will be an act borne from boredom, jealousy, convenience or unfamiliarity with 'difference'. This

reality may not make the act any less reprehensible, but recognising it does affect our interpretation of hate crime.

The relevance of perceived vulnerability and 'difference'

The identity-based approach that has shaped conventional explanations of hate crime is constrained by the parameters set by official discourses, which often limit the reach of hate crime to prejudice directed towards the specific group identities. However, a vulnerability-based approach acknowledges the heightened level of risk posed to certain groups or individuals that can arise through a complex interplay of different factors, including hate, prejudice, hostility, unfamiliarity, discomfort or simply opportunism or convenience. Vulnerability has rarely taken centre stage in hate crime discourse, although it is considered in some North American theorising, most notably in Woods's (2009) work on unfair advantage theory which advocates that courts impose additional punishment in those cases where perpetrators exploit perceived disadvantages stemming from their victim's group membership. Indeed, Woods (2009) advocates the use of the discriminatory selection model of hate crime, for which the notion of vulnerability is especially well suited. Under such a model, offenders target victims because of their particular characteristics which may or may not be inspired by hatred or hostility; or to use the words of the Office for Democratic Institutions and Human Rights (ODIHR, 2009: 48), where the offender 'selected victims based on prejudices or stereotyped information about victim vulnerabilities'. As the ODIHR note, laws based on the discriminatory selection model can be easier to apply in practice and are more likely to better address the harms associated with hate crime than laws based

on a hostility model where proof of hostility or hatred towards the victim's identity is required.

Although the term 'vulnerability' is increasingly used by the mass media, politicians and scholars to characterise the significance of the fragile and contingent nature of contemporary society, its meaning is not always clear (Misztal, 2011). According to Cops and Pleysier (2011: 59), vulnerability refers to 'the perception of exposure to danger, a loss of control over the situation and a perceived inadequate capacity to resist the direct and indirect consequences of victimisation'. Typically vulnerable groups or individuals include those who are impoverished, disenfranchised, or subject to discrimination, intolerance, subordination and stigma (Nyamathi, 1998). In the context of the preceding discussion this would include the elderly, the homeless, sex workers, refugees and asylum seekers, people with mental health issues or drug and alcohol dependency as well as other marginalised, invisible and tabooed populations targeted on the basis of their apparent vulnerability or obvious markers of 'difference'. The victimisation suffered by these groups is likely to 'hurt' every bit as much as that suffered by established hate crime victim groups – and in some senses much more so.

Green (2007) argues that vulnerability can have a political currency indicating the 'value' of the victim in the sense that the more vulnerable someone is, the greater the level of sympathy they elicit and the greater their need for security to minimise chances of victimisation (thereby cementing their transformation from victim to commodity). However, there are particular types of vulnerable victim who appear to have little or no political

currency whatsoever. Indeed as we write, the announcement of a package of ring-fenced UK government funding to protect society's most vulnerable and persistently targeted victims makes no mention of the kinds of marginal, disenfranchised groups referred to above, but instead refers to victims of rape, sexual and domestic violence, robbery and burglary, anti-social behaviour and other worthy, yet familiar groups of victims (Ministry of Justice, 2011)⁸. This continued failure to account for the experiences of those who find themselves at the bottom of the hierarchy of victimisation and denied victim status (Walklate, 2011) underlines the relevance of vulnerability to criminology.

Nonetheless, there is some resistance to the term 'vulnerability' in the field of hate studies. References to the disabled as vulnerable, for example, have been criticised for being inherently disablist in automatically conflating disability with vulnerability⁹ (Sherry, 2010; Quarmby, 2011) and for casting victims of disablist hate crime as requiring adult protection measures and a social care response rather than the fullest range of legal rights and protections provided through a criminal justice response (Perry, 2008). Roulstone, Thomas and Balderstone (2011) meanwhile, criticise the use of 'vulnerable' for its connotations of weakness and make reference to the inherently paternalistic process of powerful majority group members designating another as vulnerable as part of their service provision responsibilities.

These concerns are certainly valid up to a point. However, we would argue that 'vulnerable' encapsulates the way in which many hate crime perpetrators view their target: as weak, defenceless, powerless or with a limited capacity to resist. A conceptual focus upon

perceived vulnerability should not be construed as suggesting that those in vulnerable positions suffer hate crime as an inevitability or as passive victims. As Walklate (2011) notes, we should not overlook victims' capacity for resilience, and identifying factors that make people more or less resilient to hate crime victimisation should be a priority for researchers. Nor is it the case that *all* crimes against the vulnerable will invariably be hate crimes: legal frameworks tend to require evidence of bias motivation against the victim, whether this takes the form of hostility, prejudice, bigotry or hate, in conjunction with the crime itself (ODIHR, 2009).

Moreover, it is not someone's identity (their disability, their sexuality and so on) *per se* that makes them vulnerable in the context of hate crime. Rather, they may become a victim because of how that aspect of their identity intersects with other aspects of their self, and with other situational factors and context, to make them vulnerable in the eyes of the perpetrator. Green (2007), for instance, suggests that the higher rates of victimisation among black and minority ethnic communities should be understood not simply through reference to ethnicity but by recognising the relevance of socio-economic circumstance, age and the type of area they live in. A similar argument could be extended to other categories of hate crimes where the likelihood of being targeted is increased by the presence of factors that are separate from an individual's 'main' or visible identity characteristic. Such a view underscores the relevance of our manner of dress, our command of English, our social class, our isolation, our routine activities, our physical presence – to name but some factors – to the process of victim selection. Whereas these factors are peripheral to an identity-centric

framework they assume a more prominent position within a framework which recognises vulnerability and 'difference'.

Understanding how 'difference' is central to many acts of hate crime is important if the notion of hate crime is to be reconfigured into a more inclusive concept. While being 'different' does not automatically mean that someone is singled out for harassment or abuse, it can mean that those in vulnerable situations are at heightened risk of victimisation. For instance, a number of studies have shown that being 'different' in some conservative and traditional rural environments can be dangerous in communities intolerant of non-conformity and outsiders (see, for instance, Neal, 2009; Cloke, 2004). Arguably, a fear of 'difference' fuelled the harassment and bullying of Mary Fox and her son Raum in Bodmin in the West of England in 2009. Both were deemed to be 'eccentric' by local youths who subjected them to a sustained campaign of physical and verbal abuse that in the end resulted in Mary's death (BBC, 2010).¹⁰ This case bore similarities to that of Fiona and Francessca Pilkington, discussed above, as it involved the bullying of those who were judged to be 'different' and whose learning difficulties made them appear an 'easy target'. Elsewhere, Perry (2001) and Moran and Sharpe (2004) have argued that gay and transgendered people may be targeted because they too 'stand out' from accepted gender norms, while Hodkinson (2002) suggests that male Goths are harassed due to their 'effeminate' appearance as well as their membership of an alternative subculture, leaving them especially vulnerable through this intersection of two aspects of their identity. In these instances, vulnerability is exacerbated through social conditions, prevailing norms and people's reactions to 'difference'.

Interpretations of vulnerability are diffuse, and incorporating factors that are vague or ill-defined into our theoretical and policy frameworks could conceivably undermine the concept of hate crime. That said, vulnerability is no more ambiguous a term than any of the existing factors necessary for establishing whether or not a hate crime has occurred, whether this be hate, prejudice or hostility. Nor indeed is it any more ambiguous than some of the protected characteristics currently enshrined in different countries' legislative hate crime frameworks, including social position or health status (Croatia¹¹), political affiliation (Russia¹²), ideology (Spain¹³) or philosophy of life (Belgium¹⁴). Both the motivating factors and the protected grounds that form the basis of hate crime theory and policy in most countries are contingent upon contextual factors relevant to individual cases and are open to the interpretation of law enforcers.

Similarly, another potential question mark against the widening of our conceptual understanding would be in relation to the practical implications this has for hate crime policy. Might the advantages of adopting a more inclusive interpretation of hate crime be offset by the operational challenges the expansion would pose to the development of policy guidance for legislators and criminal justice agencies? We would argue not. Many states use forms of bias motive as a factor which can result in a penalty enhancement for a criminal offence. Targeting someone because of their vulnerability could be one such factor that is incorporated into penal codes without overhauling existing hate crime laws. Equally, the dissemination of operational guidance on how to interpret hate crime which occurs at both

the state and transnational level could easily incorporate explicit direction on the relevance of perceived vulnerability.

There are three further inter-related justifications for developing hate crime thinking around notions of perceived vulnerability and 'difference'. First, and crucially, it directs attention towards those who fall between the cracks of existing scholarship and policy frameworks. At present we have little understanding of the victimisation directed towards less visible targets who may lack the power of class or language, the privilege of advocacy groups and support networks, or the bargaining clout of political, economic or social mobility. All too often these are people on the margins of society, or as Allan (2011) observes with reference to the homeless, 'an inconvenient collection of individual tragedies ... [people who] conjure an instant mental image, a quickening of the footsteps, an urge to rush past avoiding eye contact'. Acknowledging these kinds of 'stigmatised and marginalised groups' (to use Perry's (2001) description) is precisely what hate crime scholarship and policy-making should be chiefly concerned with if it is to have meaning and legitimacy.

Secondly, a vulnerability-centred approach to thinking about hate crime would be better attuned to recognising the intersectionality of identities that can be targeted by perpetrators of hate crime. Conceiving of hate crimes simply as offences directed towards individual strands of a person's identity fails to give effect to the interplay of identities with one another and with other personal, social and situational characteristics. However, broadening our lines of enquiry to look at those targeted on the basis of their perceived vulnerability or 'difference' might allow us to move beyond singular constructions of

identity, and in particular to recognise the interplay between social class, socio-economic status and vulnerability. Many harrowing accounts of hate crime victimisation take place in areas on the economic margins – in areas that are avoided, ignored, written off – and yet the relevance of class and economic marginalisation to the commission of hate crime has rarely been a central feature of academic enquiry.

Thirdly, giving greater focus to vulnerability feels all the more urgent in the current global financial climate where governments across the world are making drastic cuts to public and welfare services as part of ongoing austerity measures. These cuts are – and will continue to have – alarming social implications, as acknowledged by the United Nations Department of Economic and Social Affairs (UNDESA) who have urged governments not to forget the risk posed by austerity measures to social protection, public health and education programmes (UNDESA, 2011), and by recent warnings from the Council for Europe Commissioner for Human Rights emphasising the potential impact of budget cuts on vulnerable groups (PILA, 2011). A painful reality for most, if not all of the societies we live in is that grants are running out, contracts are winding down and the provision of services is shrinking at an alarming rate. Many of these are the kinds of unglamorous, sometimes discretionary or charitable services which rarely generate widespread publicity but whose closure has dire implications for the more disadvantaged and vulnerable members of any society.

Conclusion

Hate crime is a conceptually ambiguous and divisive subject area within criminology and this article has deliberately steered away from rehearsing now familiar ground in debating the

pros and cons of the hate crime label. Instead, and in light of the increased prioritisation of hate crime amongst criminologists and within criminal justice policy, this article has sought to re-align our conceptual focus in order to facilitate a more sophisticated model of theorising and policy formation. Within this context we noted the enduring influence of Barbara Perry's (2001) theoretical framework, and observed that whilst there is little that is intrinsically contentious about this framework we have concerns about the way in which it has been interpreted to define the parameters of hate crime victimisation unduly narrowly.

In particular, we have been critical of the way in which dominant interpretations of hate crime have reinforced the marginalisation of key issues. This includes our understanding of the more individualised acts of hate borne from boredom, jealousy or unfamiliarity with 'difference'; our awareness of those groups of victims whose experiences have been marginalised because they typically lack access to resources or political representation or because they are seen as less worthy than other more 'legitimate' victim groups; and our recognition of the intersectionality of identities that can be targeted by perpetrators of hate crime. These are all issues which should be central to our understanding of what a hate crime is, whom it affects and how we should respond.

In order to address these oversights, we have proposed that perceived vulnerability and 'difference' should be given a more prominent position within hate crime frameworks. Such a stance would encourage criminologists and policy-makers to move beyond the conventionally hierarchical identity-based approach that stringently, and singularly, associates hate crime with particular strands of victims and particular sets of motivations,

and instead to focus upon factors that unite victims of hate crime, which in essence is their perceived vulnerability and 'difference'. It is not someone's identity *per se* which makes them a vulnerable target in the eyes of the perpetrator, but rather the way in which that identity intersects with other aspects of their self and with other situational factors and context. As such, conceiving of hate crime through the lens of perceived vulnerability and 'difference' gives effect to the realities of targeted victimisation, and in so doing allows us to transcend the homogenised generalisations all too prevalent within scholarly and policy domains.

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¹ This may include characteristics such as the group affiliation of the victim; the imbalance of power between perpetrator and victim; the relevance of context, structure and agency to the process of hate crime; or the notion of acts of hate being 'message' crimes designed to create fear within the victim's broader community (Chakraborti and Garland, 2009: 150).

² In the context of the United Kingdom for example, ACPO's (2005) strategic hate crime guidance obliges the police to record all incidents where the motivation for hate or prejudice is based upon race, sexual orientation, faith, disability or transgender status. Across other countries, race, national origin and ethnicity are the characteristics most commonly protected through hate crime policy, closely followed by religion, whilst gender, age, disability and sexual orientation are also quite frequently protected characteristics (ODIHR, 2009).

³ The SOPHIE (Stamp Out Prejudice, Hatred and Intolerance Everywhere) campaign, run by the Sophie Lancaster Foundation, aims to attain equal legal protection for members of alternative subcultures with those groups that are included in hate crime legislation.

⁴ The Macpherson report – or the Stephen Lawrence Inquiry report as it sometimes referred to – is the report of a public inquiry, chaired by Sir William Macpherson, into the flawed police investigation into the racist murder of Stephen Lawrence in south-east London in 1993. Published in 1999 the report produced over 70 recommendations designed to transform the policing of 'race' and diversity within the UK, including Recommendation 12 which places the power to define racist incidents (and subsequently all hate incidents) in the hands of the individual victim rather than the police, thereby reducing the influence of discretion and occupational culture in the recording of a hate crime.

⁵ Fiona, a 38 year old mother of Francecca, an 18 year old girl with learning difficulties, was driven to kill herself and her daughter in October 2007 by setting light to her car, with them both inside, near their home in Leicestershire, England, following years of disablist abuse from local youths directed at her family. Or 'Macpherson moment' for disablist hate crime (Williams, 2009).

⁷ See also Chakraborti and Garland (2004) for an analysis of how everyday prejudice operates within a rural context.

⁸ Other vulnerable victim groups referred to in the Ministry of Justice announcement include victims of serious violent crime; individuals bereaved by murder and manslaughter; and bereaved families of fatal road traffic crimes. Victims of hate crime are also included, and although no explanation is offered as to which groups this includes and how they would be supported through guaranteed funding, it presumably extends to those groups recognised within current Ministry of Justice and Association of Chief Police Officers guidance: namely, victims of racist, religiously motivated, homophobic, disablist and transphobic hate crime.

⁹ Pain (2003: cited in Walklate, 2011) makes a similar point in relation to the stereotyping of the elderly as 'frail' through presumptions of physical vulnerability.

¹⁰ The harassment of Mary and Raum culminated in a firework being put through their letterbox on 5 November 2009. Mary was killed in the resultant fire (BBC, 2010).

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- ¹¹ As noted in article 89, para. 36 of Croatia's Criminal Code which criminalises hatred motivated by factors such as the victim's social position or health status.
- ¹² As noted in article 63 of the Russian Criminal Code which includes hatred or animosity towards a political group as an aggravating factor.
- ¹³ As noted by article 22.4 of Spain's Criminal Code which includes discrimination motivated by the victim's ideology as an aggravating factor.
- ¹⁴ As noted in articles 33-42 of Belgium's Law of 10 May 2007 which includes hatred against philosophy of life as one of the aggravating circumstances that can double the penalty of specified crimes.