

LGBT Hate Crime: Promoting a Queer Agenda for Hate Crime Scholarship

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INTRODUCTION

Hate crime laws in England and Wales have emerged as a response from many decades of the criminal justice system overlooking the structural and institutional oppression faced by minorities. The murder of Stephen Lawrence highlighted the historic neglect and myopia of racist hate crime by criminal justice agencies. It also exposed the institutionalised racism within the police in addition to the historic neglect of minority groups (Macpherson, 1999). The publication of the inquiry into the death of Stephen Lawrence prompted a move to protect minority populations, which included the lesbian, gay, bisexual, and transgender (LGBT) community. Currently, Section 28 of the Crime and Disorder Act (1998) and Section 146 of the Criminal Justice Act (2003) provide courts the means to increase the sentences of perpetrators who have committed a crime aggravated by hostility towards race, religion, sexuality, disability, and transgender identity. Hate crime is therefore not a new type of crime but a recognition of identity-aggravated crime and an enhancement of existing sentences.

Hate crime in the area of LGBT is usually defined as homophobic or transphobic hate crime (Chakraborti & Garland, 2015), which provides a comfortable framework for gay men, lesbians, and trans men/women to inhabit. However, little space is provided to conceptualise the hate experiences of individuals who do not fit neatly into these concepts, such as bisexuals, pansexuals, asexuals, and non-binary people *inter alia*. I outline in this article how 'LGBT' is discussed in Criminology and explore the acronymic difficulties underpinning LGBT categories. I argue that violence directed towards non-binary identities remains unacknowledged, excluding members of the LGBT community from the gaze of hate research. Further, scholarly definitions of hate crime remain contested; the phrase 'hate crime' infers extreme acts of violence, ignoring everyday patterns of hate violence (Chakraborti & Garland, 2015; Hall, 2005). This presents unique epistemological and ontological challenges to hate crime research. I argue for a new era of hate crime theory, one that incorporates a fluid identity politics. I advocate that identity based violence such as hate crime recognise fluid, non-conforming, and unstable identities. To demonstrate this, I outline two cases of non-binary identities to expose the colonial and heteronormative

assumptions hate crime research has adopted. I then provide my recommendations for a queer agenda in hate research.

I use queer in a variety of ways. Firstly, I use it as a noun, as an interchangeable term, to describe those within the LGBT community and those who fall outside of the existing (LGBT) acronym who are not straight i.e. a queer person, the queer community, or queers. I advocate that queer also be a verb: a way of doing, in this case to *queer* research. Queer in this article is an analytical tool, which is “about disrupting, challenging, and asking uncomfortable questions that produce new ways of thinking in relation to the lives of LGBTIQ people and criminal justice processes” (Dwyer, Ball & Crofts, 2016, p. 3). More specifically, I look at the ways hate crime scholarship has assumed various ontological positions based on western gender and sexuality logics. I argue that these assumptions have created a chasm in our conceptual understanding of targeted hate towards certain genders and sexualities, as current frameworks do not acknowledge non-western or fluid genders and sexualities. This article advocates that hate researchers adopt a more fluid, less rigid hate crime framework and incorporate fluid, non-binary, and unstable identities. Firstly, I explore how current framings of LGBT identity exclude fluid and non-binary identities.

HOW CRIMINOLOGY FRAMES LGBT

Traditionally, research and scholarship involving LGBT people were commonly associated with gay and lesbian studies, which examined the sociality of lesbians and gay men in their shared experiences of transgressive sexuality. The gay and lesbian movements particularly emphasised a rearticulation of homosexuality from its medicalised roots towards a more socio-sexual and political dimension (Irvine, 1994). Gay and lesbian studies have been criticised, however, for making taken-for-granted assumptions about the identity categories we establish and dichotomise (Piontek, 2006) such as binary gender identities (male/female). Piontek (2006) attempts to queer these assumptions by challenging “the way we make meaning in the world, including the ways in which we think about gender, sexual practice, and identity” (p. 2). This includes contesting the beliefs and assumptions that research previously considered stable and sacrosanct within gay and lesbian studies. Thus, for scholars and policy makers it is no longer appropriate to conceptualise the existence of a “gay community”. Identity based acronyms like LGBT have since been utilised due to increased acknowledgement of bisexuality and transgender identity.

Hate crime is a criminal act committed towards a person, aggravated by their perceived characteristics, relating to five protected strands. The five strands are the “colloquial name for the five categories of hate crime –

ethnicity, faith, disability, sexual orientation and gender identity – monitored by criminal justice agencies and partner organisations in England and Wales” (Chakraborti & Garland, 2015, p. 163). Originally, these protections did not cover gender identity, neglecting transgender individuals. However, increased acknowledgement of bisexuality and transgender identity has been particularly useful for hate crime scholarship for several reasons. Firstly, it has allowed acknowledgement of hate towards less recognised sexual orientations, which are protected under Section 146 of the Criminal Justice Act (2003), and transgender identity (Crown Prosecution Service, 2012), providing a more inclusive hate crime framework. Secondly, categorising LGBT hate crime into particular strands has put into action mechanisms that can record and monitor (see Corcoran, Laden & Smith, 2015; Creese & Lader, 2014; Home Office, 2012). Little discussion however has taken place over how hate crime scholarship sociologically frames LGBT identities as an acronym and a community.

Chakraborti and Garland (2015) define LGBT as “the abbreviation commonly used to collectively represent lesbian, gay, bisexual or transgendered people (sometimes expressed as LGB and T, LGBTQ (where ‘Q’ is ‘queer’ or ‘questioning’), or LGBTQI (where ‘I’ is ‘intersex’))” (p. 164). Consequently, there are many complexities in using such an inconsistent and ever expanding acronym. Despite its problems, inclusive steps such as stars (LGBT*) or plusses (LGBT+) have been made to acknowledge those outside of LGBT recognition (Cronin & King, 2010). However, if the aim is inclusivity and recognition, starring (*) or plussing (+) identities which fall both outside of heteronormative gender and sexuality logics problematically invisibilizes unrecognized identities further.

The expansion of the acronym moves away from the historical pathologization of homosexuality (assumed male) to a more inclusive typology, which acknowledges other sexual and gender diverse demographics (Herek, 2010). However, the LGBT acronym still excludes many sexual, romantic, and gender diverse groups (Parent, DeBlaere & Moradi, 2013). As seen above, attempts have been made to include queer, questioning, and intersex people. However, the following identities, to my knowledge, have little recognition within current acronyms; asexual (without sexual feelings), polysexual (sexual attraction to multiple genders), pansexual (sexual attraction not limited by gender identity i.e. an attraction to all genders), non-binary (gender identity outside of male and female binaries), agender (without gender), genderqueer (not prescribed to traditional gender distinctions but identities with both, neither, or a combination of genders), panromantic (romantic attraction not limited by gender identity), bigender (identify with two genders), third gender (neither man nor woman but a separate third gender), and two-spirit (mixed gender identities of Indigenous North

America) people. This is by no means an exhaustive list; yet, it demonstrates the diversity of gender and sexuality labels. The LGBT acronym limits the identities that researchers recognise as experiencing oppression, marginalisation, and hate crime. Hate towards non-binary people is overlooked if current identity logics within hate research remain stable and binary. One only has to recall leading news anchor Piers Morgan's attempts to deny, publicly, the existence of non-binary people (see Percival, 2017) in order to recognise the targeted hostility towards unstable, non-fluid, and non-binary identities. These experiences however go unacknowledged without a fluid identity politics within hate frameworks.

Browne, Bakshi and Lim (2011) note the slippery nature of the LGBT acronym and are "conscious not to connote homogeneity, or aspatial or ahistorical coherency among its component terms" (p. 754). I urge hate crime scholars to recognise similarly, the socio-cultural framings of sexuality, in particular non-heterosexuality. Conversely, categories have to exist so that a sense of value is made, such as the value of safety for queer people from violent heteronormative, power structures (e.g., see Yep, 2002; 2003). However, when the socio-political landscape is shaped by visibility and invisibility (who is seen and who is unseen) the recognition of identity categories for hate crime research is currently only occupied by those who are "seen". Thus, hidden identities (Clair, Beatty & Maclean, 2005) outside of the visible LGBT strand are subject to unseen violence and an invisibilization of their experiences (Kidd & Witten, 2007). This has ramifications on the knowledge systems constructed by research, if these experiences go unrecognised (Mason, 2002; Moran, Skeggs, Tyrer & Corteen, 2004).

Hate crime research has long been critiqued for its silo approach. Using discrete and rigid categories of identity – race, religion, disability, sexuality, transgender identity – limits scholarship too narrowly and prompts us to think too simplistically about victim groups (Chakraborti & Garland, 2015). The recognised strands are too limiting if they are not examined intersectionally (Crenshaw, 1991; Garland, 2012; Meyer, 2010, 2014; Perry, 2009; Walters & Hoyle, 2011). Intersectional frameworks look at the interrelationship between these identities, as a nexus for where hate crime is experienced (Chakraborti & Garland, 2015). In spite of this, these categories are unfit for purpose for those who are meant to inhabit them, such as LGBT for non-heterosexuals (pansexuals, asexuals, demisexuals etc.). Those who fall outside of this category are rendered stateless from their community and go unrecognised within hate scholarship. Attempts have been made to reframe hate crime through the lens of vulnerability and difference (Chakraborti & Garland, 2012) in order to include previously excluded victims, such as homeless populations, sex workers, and members of subcultures. However, this is a general critique of hate crime frameworks

and does not account for the recognition of identity; a quintessential component of hate based violence. I argue for the specific queering of LGBT hate crime approaches in order to incorporate fluid, non-binary, and unstable identities.

Within hate crime scholarship, sexuality and gender are arguably constructed through a binary lens: male/female, gay/straight. This renders the LGBT(+) community as a naturalised and essentialised collective (Leachman, 2016; Meyer, 2012), with little discussion of the complexities and nuances in between and outside of the binarist acronym. Progress on making the case for a more inclusive hate crime framework (Garland, 2010) has already been made in the short time research has focused on this area. Arguably, the framing of gender and sexuality into binarisms - as male/female, hetero/homo is too limiting if the true complexities of victimisation, within the parameters of hate crime, are to be understood. This binary is the dominant ideological construct or assumption that criminological scholarships habitually assume.

Goffman (1959), West and Zimmerman (1987), and later Butler (1988, 1990) have all demonstrated that gender and sexuality are every day, patterned processes of 'doing'. Gender and sexuality are social products and constructs; contesting 'naturalised' binarisms. Goffman (1977) sustains that the gender binary is produced, reproduced, and maintained by continually "doing" the gender binary. For example, every time a person walks into a single-sex toilet, they are reinforcing the binary between male and female. Similarly, every time hate research assumes binarist gender and sexuality logics it reproduces those binaries. Much of this can be attributed to Western cultural preferences.

Western culture is littered with the idea of two single genders and sexes. As a by-product of this construct, a homo/hetero(sexual) divide has been established, with bisexuality placed as attraction to either gender. This in turn has shaped the way sexuality and gender has been researched within hate crime scholarship. Indeed, "because it is a fundamental ideological construct, the gender binary can also coerce analysts into seeing through binary lens things that might better be seen differently" (Eckert, 2014, p. 530). In consequence, one is male/female, straight/gay or bi, masculine/feminine. The construction of LGBT labels sit within a nexus of binary identities, disallowing a full consideration of the inequalities constructed by the categories themselves (Valocchi, 2005). Amalgamating these identities together homogenises non-heterosexuals whilst overlooking the minority groups within this minority group (Cashore & Tuason, 2009).

Dichotomous ways of thinking discursively limit what is allowed to exist (Manning, 2009) so that those existing outside of polarised gender and sexual identities (man/woman – hetero/homo) become disembodied and go

unrecognized. This process affects all those who experience hate crimes motivated by hostilities towards gender or sexuality. In effect this stabilises the heterosexual/homosexual categorisation in a hierarchical position (Green, 2007) whilst rendering intersex, pansexual, non-binary, and unacknowledged queers invisible (Manning, 2009). For example, the Women and Equalities Committee (2016) report on Transgender Equality found that the Equality Act (2010) “is couched in terms that are seen as outdated and confusing, with its references to ‘gender reassignment’ and ‘transsexual’ persons” (p. 23). Consequently, there is widespread misapprehension that protections only cover trans people seeking medical diagnoses and who go through surgical treatment. Further, those who fall outside of the binaries of male/female but “falling within such a broader definition of trans identity could have ‘no certainty’ of being protected from discrimination” (Women and Equalities Committee, 2016. p. 23). My recommendation - in line with the wide body of activism promoting queerness (e.g. see Valocchi & Corber, 2003) - is for hate research conducted in this area to incorporate those falling outside of the male/female binaries, in order to recognise these experiences of victimisation.

Indeed, gender and sexuality ideologies (norms, values, and logics) are ways of structuring society and governing everyday social interactions and actions. These ideologies and logics are contextually, historically, culturally, and socio-politically framed; not products of our natural environment. As Lugones (2007) outlines “gender itself is a colonial concept and mode of organization of relations of production, property relations, of cosmologies and ways of knowing” (p. 186). How we organise sexuality into straight or LGB, and gender into man/women is rooted in a historical baggage of colonial systems. Hate scholarship has maintained its critiques of heterosexism, heteronormativity, racism, homophobia, and transphobia. However, it has remained silent on the mechanisms which underpin all of these issues and which base our individual positionalities as gendered or sexual beings within the world. Thus, the LGBT acronym is based on a heterosexist, colonial system that routinely frames sexuality and gender as binary. The binaries of man/woman, gay/straight are often the only choices available to people (Cashore & Tuason, 2009). Hate crime approaches to gender and sexuality would benefit by acknowledging identity beyond this binary. It is for this reason that I now turn to examine the Western assumptions of gender and sexuality.

WESTERN UNDERPINNINGS OF LGBT

As is the case with many of the social disciplines, Criminology has centrally focused on the West and has concentrated on phenomena, such as

gender, sexuality, ethnicity, using Western models of thinking (Cuneen & Stubbs, 2004). Lesbian, gay, bisexual, and transgender are Western labels applied to certain sexual and gendered behaviour (Cashore & Tuason, 2009) which arguably have been promoted into identities. One is no longer a person who engages in (deviant) same-sex behaviour but is now lesbian, gay, or bisexual (Froide, 2001; McKeon, 1995; Trumbach, 2003). Culturally, western perceptions of whiteness, nationhood, and gender sustain these identities.

Rahman (2010) exemplifies this when discussing the ‘clash’ of Muslim identity with “Americanness”. His argument can be adapted to include the link between “Britishness” equalling whiteness. Both in America and Britain debates of race and religious identity have become situated and interwoven with symbols of otherness and outsiders who challenge, “a national sense of belonging rooted in whiteness and Christianity” (Phillips, 2006, p. 27). Rahman (2010) argues that Western cultures deem Islam, and bodies perceived as Muslim, to be inherently patriarchal; the supposed antithesis to democratic Western values and a rejection of liberal ways of thinking. The identities of “gay” and “Muslim” are therefore polarised and constructed as mutually exclusive entities, unable to intersect. Gay is constructed as Western; Muslim is constructed as non-Western, restricting identities within specific cultural logics. Gay Muslim identities therefore challenge the ways in which we construct particular identities in certain cultural contexts (Rahman, 2010) and understand how those identities exist and intersect with each other.

Plummer (2015) maintains that the homogenising, white, Western-centric view of sexuality universalises a diverse range of experiences by co-opting and dominating the other. Thus, Muslim and African queers are often seen as victims of their brutal religion or as homophobes who fail to understand what it is to be LGBT/Queer. The Western liberal citizenship that takes precedent within scholarship disavows non-Western cultures and non-Western sexuality and gender logics (i.e. most of the world) (Plummer, 2015). Experiences of hate crime where these identities intersect are culturally disembodied. How Criminology constructs gender, sexuality, ethnicity, age, and LGBTQ phenomena within its discourse is culturally bound and socially organised. By situating violence and hate crime against LGBT identities within binary colonial logics, scholars risk reproducing colonial, patriarchal, and heteronormative power dynamics and hierarchies (Manning, 2009). Remaining aware and reflective of this process is the first step in reducing this risk. In order to demonstrate other non-Western ways of “doing” gender and sexuality I will present two cases using anthropological evidence: *Fa’afafine* the third gender of Samoa, and *Two-Spirits* of Native American and Canadian First Nation cultures.

Fa'afafine

In Samoa, there exists a third gender alongside the traditional binary genders, known as Fa'afafine; what Western thinkers may prescribe as being transgender (Vasey & Bartlett, 2007). Fa'afafine, pronounced Fa-a-fa-fee-nay, is translated literally as "in the manner of a woman" (Bartlett & Vasey, 2006, p. 660). These are penis-bodied individuals who are androphilic - attracted to men and masculinity - and who self-identify as Fa'afafine, not as men. Fa'afafine engage in sex with other penis-bodied people who self-identify as "straight" men.¹ Straight men are identified by the gender presentation they perform rather than the sexual practices they engage in. Whilst most are gynophilic - attracted to women and femininity - some of these men engage in sexual practices with Fa'afafine and other straight men. In fact, participants in Vasey and VanderLaan's (2010) study found that most straight men engaged sexually with Fa'afafine at some point in their lives. Sexual identities such as gay or homosexual do not exist in Samoa in the way they exist in the West (Bartlett & Vasey, 2006; Vasey & Bartlett, 2007). These labels are not used to construct specific sexual identities. Accordingly, transgressing the gender binary is therefore not constructed as being transgender. Fa'afafine is a third gender in its own right where sexual attraction exists on a very fluid basis. Therefore, western gender and sexuality logics are not easily translatable, if at all, into the Samoan context.

Importantly, Fa'afafine are a heterogeneous group of people and as such are as diverse as non-Fa'afafine's. According to Bartlett and Vasey (2006), this third gender still exists on a spectrum. Some adopt gender presentations that are culturally viewed as feminine; they wear makeup, feminine clothes, jewellery, feminine hairstyles, speak with a feminine voice etc. whilst some do not attempt to appear feminine as adults. Inclusion as a Fa'afafine is based on gender presentation rather than sexuality. Being androphilic is seen as an optional consequence of this gender rather than a defining component (Bartlett & Vasey, 2006). Western people and Western research inquiries understand the relationship between gender-atypical behaviours and sexuality, such as "camp" gay men, very differently. Our knowledge of how hate crime intersects with identity is currently culturally restrictive. Overcoming this allows us to incorporate non-binary, fluid, and unstable identities within hate approaches. Western notions of transgender carry medicalised connotations, where one who does not agree with the gender they have been assigned at birth is diagnosed with gender dysphoria. There is little evidence to suggest that Fa'afafine are gender dysphoric, hate their bodies, or wish to surgically change them (Farran, 2010). Vasey and Bartlett (2007) posit that it is reasonable to assume west-

ern clinicians would conclude that Fa'afafine have gender identity disorder, even though in the Samoan context third gender identities are not conceptualised in such a medicalised way. The framing of non-binary, genderfluid, genderqueer, and trans people as disordered is again a colonial, culturally specific, construction.

Indeed, Farran (2010) argues that whilst labels can be utilised to protect, they can also create straightjackets when applied within different social and cultural settings. Further, Western colonial and neo-colonial constructions of binary genders influence cultural expectations over marriage rites, family organisation, division of labour, norms surrounding sexuality, and sway our everyday patterns of life. Violence motivated by hate - the aetiology of which stems from these normative power structures and patterns of organisation - is therefore founded upon Western values. Learning from societies and cultures where gender non-conforming practices are non-medicalised normative practices enables hate scholars to identify the specific cultural power structures that create hate-based violence whilst identifying the gendered assumptions and logics reinforced within hate research.

In terms of hate crime, there is virtually no available data (Vasey & VanderLaan, 2010) that targeted violence is directed towards Fa'afafine in Samoa. Saying that absolutely no discrimination is directed at Fa'afafine would be an overstatement and erroneous. However, research indicates that family member's remark on how fortunate they are to have a Fa'afafine in the family, enabling them to enjoy high levels of acceptance within Samoan society (Vasey & VanderLaan, 2010). It is not this paper's aim to replicate hate crime research within the Samoan context. Rather, it is to expose researchers to other non-Western ways of being and doing gender whilst contributing to existing cross-cultural research. Therefore, I argue that one cannot understand violence directed towards LGBT people without acknowledging its colonial history or reflecting on its Western cultural circumscription.

Cultural criminologists such as Ferrell propose that "cultural dynamics carry within them the meaning of crime" (as cited in Newburn, 2017, p. 220). Therefore, hate crime is cultural, contextual, and socially specific. Indeed Ferrell, Hayward and Young (2012, 2015) maintain that culture is the symbolic environment where individuals make sense of their social and material world. Crime exists within those symbolic environments, which take shape in the context of social dynamics and the meanings created. It is clear that cultural framings of gender and sexuality in the West impose heteronormative structures, creating the impetus for anti-LGBT violence. Naegler and Salmon (2016) comment on the androcentricism of cultural criminology by maintaining that "the binary of masculinity and femininity is one - if not the primary - cultural distinction foisted onto human beings

from birth” (p. 356). Thus, crime as a cultural product, particularly crime motivated by hostility towards LGBT people, cannot be divorced from Western cultural preferences and structures of gender and sexuality.

I do not aim to align Western constructs of gender and sexuality to Fa’afafine, such as framing them as transgender women or as gay men. To do so hijacks this embodiment of gender and sexuality out of its socio-cultural context and sustain third and diverse genders in colonial positions that are inappropriate to the ways in which Samoans see themselves (Schmidt, 2001). To my knowledge, no research on hate crime has currently taken place in Samoa. However, with the growing body of research towards intersex (Ben-Asher, 2006; Reis, 2007), non-binary (Corwin, 2009; Rankin & Beemyn, 2012), and gender fluid (Johnson, Singh & Gonzalez, 2014) recognition, it is becoming ever more important to remain reflexive of the Western, colonial, and binary foundations we use to produce, limit, and construct sexuality and gender in relation to crime. Reflexivity in this sense is imperative to hate scholarship as Manning (2009) outlines that existences and identities are only able to be if we are aware and conscious of them. In turn, hatred and marginalisation towards those identities are only able to be if we recognise them. I am not advocating here for Western scholars to carry out research in Samoa. The Samoan context here is justified to expose scholars of other gendered and sexual ways of existing in the world. Genders outside the traditional binary constructs are becoming more and more prominent in the West, as I have highlighted above. However, we do not yet have current hate crime frameworks to understand fully hate crimes towards non-binary or intersex people *inter alia*. Consequently, it is essential for Criminologists to be aware of other genders outside of the traditional man/woman.

Two-Spirit

Third genders in Indigenous North American cultures, what scholars now term “Two-Spirit”, are - what Western logics would describe - androgynous people who are distinguished from “men” and “women” by their work, religious practices, and their authority within tribes (Wiesner-Hanks, 2011). “The term *Two-Spirit* was chosen as an intertribal term to be used in English as a way to communicate numerous tribal traditions and social categories of gender outside dominant European binaries” (Driskill, 2010, p. 72). The term Two-Spirit is preferred to the previous *berdache*, a term borrowed from Arabic, which anthropologists previously used to describe effeminate penis bodied individuals or those who did not fit neatly into binary gender categories. However, the term *berdache* has been heavily

criticised as incongruously articulating European assumptions of gender and sexuality (Wilson, 1996).

Two-Spirit is a broad term used,

to reconnect with tribal traditions related to sexuality and gender identity; to transcend the Eurocentric binary categorizations of homosexual vs. heterosexual or male vs. female; to signal the fluidity and non-linearity of identity processes; and, to counteract heterosexism in Native communities and racism in LGBT communities. (Walters, Evans-Campbell, Simoni, Ronquillo & Bhuyan, 2006, p. 127)

Prior to European settlement and colonisation, Native cultures held greater acknowledgement of gender diversity, variation, and expression outside the binary male/female, man/woman. Two-Spirit people were believed to house both masculine and feminine, male and female spirits, within one body, as if their body contained two spirits (Sheppard & Mayo Jr, 2013; Wiesner-Hanks, 2011). Two-Spirits were originally revered and regarded as highly gifted and spiritual people; often performing spiritual, ceremonial, medical, and economic roles. They acted as shamans or healers, often advising in conflict resolution (Sheppard & Mayo Jr, 2013). Existing outside of male and female binaries, sexual relationships between Two-Spirits and men were not understood as same-sex relationships. Using Western and binarist ideas of sexuality and gender, European colonisers labelled them as homosexual sodomites, prescribing identities which were and are culturally inappropriate and erroneous (Wiesner-Hanks, 2011). Settlers prescribed the sodomite status of Two-Spirits by misgendering them as men who had same-sex relations. Retrospectively, it is important to acknowledge that this was not the case as they do not have the same gender as men or women and therefore cannot engage in same-sex behaviour with men or women. The colonisation and Christianisation of Indigenous cultures undermined and attacked Indigenous conceptions of gender expression and sexuality. As a result, much tribal acceptance and reverence for Two-Spirit and non-binary genders was replaced with disgust, deviancy, shame, and stigma (Walters et al., 2006).

More recently, modern Indigenous peoples are reclaiming the term Two-Spirit to refer to sexuality and gender diversity among people of Indigenous North American descent (Taylor & Ristock, 2011). It is a term used to pay homage to gender and sexuality diversity and non-conformity, which existed in traditional Indigenous societies prior to European colonisation. It is a term used,

to reconnect with traditions in some First Nations related to sexual and gender identity; to move beyond Eurocentric binary categories of sex and

gender; to signal the fluid, non-linear nature of identity processes; and to contradict heterosexism in Aboriginal communities and racism in LGBTQ communities. (Taylor and Ristock, 2011, p. 303).

According to Walters, et al. (2006) study, the reclamation of Two-Spirit identity by Native peoples emphasised the importance of Indigenous worldviews and experiences. Specifically, how they have been shaped and neglected by White hegemony i.e. the construction of whiteness as the default race, where people who are perceived as white can move around raceless (see Dyer, 1997; Hughey, 2010; Stratton, 2009), within the mainstream LGBT movement. The assimilationist stance (emphasising sameness) of gay and lesbian politics (Gamson, 1995; Nardi, 2002; Seidman, 2006; Varela, Dhawan & Engel, 2011) led to an erasure of the specific and intersectional oppressions that shape non-white lives (Crenshaw, 1991). Historically this has led to the erasure of Indigenous constructions of gender and sexuality in favour of a white, colonial, and Christianised worldview.

These epistemological assumptions privilege a two-gender system within hate crime scholarship and negate more fluid, less-stable, gendered and sexual bodies existing outside of the binary. This binarism further reproduces colonial and racial hierarchies by disallowing the recognition of prior-colonised gender expressions such as Two-Spirits. Although hate scholarships have advocated for the normalisation and protection of LGBT people (Birkett, Espelage & Koenig, 2009; Browne, et al., 2011; Chakraborti and Garland, 2015; Hall, 2005; Herek, 2004; Iganski, 2003) they have not critically unpacked the oppressive power structures which underpin gender and sexuality categorisation. Reincorporating non-Western and gender fluid logics includes queer people who fall outside of the LGBT boundary. In line with feminist, post-structuralist and queer traditions, I advocate that hate scholarships move beyond advocating for legislative protections of LGBT people. A starting point is to attempt to dismantle dual gender systems that exclude those outside of the LGBT acronym, such as Two-Spirit, and restrict those within it. Dismantling dual gender systems, structurally, promote a greater freedom for all (Bilodeau & Renn, 2005) whilst concurrently dismantling colonial and racist hierarchies. Indigenous Two-Spirits are using their sexuality and gender reclamations to critique colonialism, queerphobia, racism, and misogyny both within wider society and LGBTQ movements. These critiques highlight past colonial struggles of Indigenous groups, in particular, how their experience of heteropatriarchy under gender-polarised (binary) colonial regimes have shaped and controlled their gender and sexual identities (Driskill, 2010).

In 2001, Fred Martinez Jr., an openly Two-Spirit young person, was killed in a racially motivated attack. Navajo locals understood this to be a

targeted murder, perpetrated by local white young people who sporadically attacked Navajo people as a “rite of passage”. Gay and queer activists at the time argued that this was also motivated by transphobic and homophobic hostility (Balsam, Huang, Fieland, & Walters, 2004) towards Fred’s Two-Spirit identity. Two-Spirit people face high levels of trauma and violence that is consistent with many Native and Indigenous people’s experiences. Balsam et al. (2004) report that most Two-Spirit people face homophobic and transphobic oppression both within their communities and in mainstream society. Such violence is a cultural product of European colonisation and Western preferences for binary gendered structures. Driskill (2010) therefore advocates that knowledges surrounding such oppression - for instance hate crime - be queered. He asserts that understandings of gender and sexuality cannot take place without “an understanding of the ways colonial projects continually police sexual and gender lines” (Driskill, 2010, p. 73). The queering of research is therefore fundamental to exposing the cultural framings and trappings of gender and sexuality, which in turn are required to understand how and why violence against LGBT people manifests.

Epple (1998) explicitly outlines the importance of critical classification by scholars and the impact terminology has for research. She reasons that scholars and researchers have tended to construct “The Perpetual Homosexual”, overlooking the cultural boundedness of sexuality and subsuming Two-Spirit, Lakota, Nadleehi, and other Native identities under current Western classifications of sexuality (Epple, 1998, p. 270). Hostility and hate towards non-binary and sexually fluid identities is therefore a culture product. Naegler and Salman (2016) argue that gendered, cultural biases influence criminological research, with criminologists historically treating “masculinized” activities of crime as the main event. Further, gendered analyses - theories of masculinity, patriarchy, heteronormativity, heterosexuality - are infrequently considered as explanations of crime. I argue that one cannot understand hate towards gender and sexuality without understanding the structural and cultural - binary and colonial - contexts from which they emerge. Without this understanding, the typologies and language constructs applied to people with genders outside of the binary may be misused.

Two-Spirit and LGBT are not interchangeable terms as the former note the ritual, ceremonial, and spiritual backdrop to these identities. By subsuming identities into one LGBT conglomerate there is a failure to capture the meanings that form these identities and overlook how violence and victimisation intersect with them (Padgug, 1979). This has negative implications for non-binary people experiencing victimisation akin to hate crime, if the correct epistemological tools do not articulate their identities fully.

Arguably, understanding the hate crime of Fred Martinez Jr. as homophobic and transphobic is inappropriate due to these labels misaligning or awkwardly juxtaposing against Two-Spirit identity. Acknowledging other genders and sexualities outside of Western binary constructs, allows them to become legitimate in criminological research. Currently there is a risk of perceiving these identities as deviations or derivatives of what gender and sexuality should be (Epple, 1998; Manning, 2009). It is through these critiques that hate research can link the ongoing decolonial struggles, the intersectionality of race, gender, sexuality, colonisation, and queer victimisation, together (Ball, 2016; Driskill, 2010).

Balsam et al. (2004) find that Two-Spirits in North America actively establish themselves as living in harmony with their Indigenous roots and Native values by rejecting modern constructs of Native masculinity, femininity, and gender diversity. However, the enculturation of Christianity and Western values have made non-Two-Spirit Indigenous people internalise binary perceptions of gender and sexuality. Thus, Two-Spirits often face discrimination and prejudice within their Indigenous communities, forcing them to choose between honouring their ethnic identity or their sexual identity (Balsam, et al., 2004). This is important for hate crime scholars as we do not have the language to currently conceptualise people who adopt a different model of gender and sexuality outside of the one assumed by the West. Homophobia and transphobia are concepts that do not fit congruously with Two-Spirit people or Fa'afafine who are culturally not gay or transgender. Such language arguably reinforces the ongoing colonisation process of non-Western beliefs and worldviews whilst simultaneously overlooking non-binary, genderqueer, and gender fluid people who are at risk of discrimination, victimisation, and marginalisation stress (Richards et al., 2015).

The lasting legacy of colonisation projects for Aboriginal, Indigenous, and Native people has been poverty, state violence, exposure to trauma, and disempowerment. Indeed, the negative effects of colonisation span beyond the homophobic and racist discourses that structure Aboriginal queer relationships, communities, families, and service providers (Taylor & Ristock, 2011; Walker, 2004; Weaver, 2009; Willmon-Haque & BigFoot, 2008). Further, the hegemonic prioritisation of Western epistemologies and constructs, a major component to colonisation processes, has always silenced and invisibilised Native people's worldviews (Walker, 2004). Incorporating a fluid gender and sexuality framework allows for an inclusion of the identities I have highlighted throughout and provides space for Western non-binary individuals to articulate their hate experiences. I move to my overall justifications and recommendations for queering hate research.

QUEERING LGBT HATE CRIME

There are two interlinked justifications for queering LGBT categories within hate crime approaches. First, it enables researchers to think critically about their own social position within the world. Fundamentally, this is reflexivity with the purpose of understanding how the researchers' social position constrains the ideological biases and knowledge underpinning hate crime research. Spalek (2008) maintains the importance of reflexivity "whereby dominant knowledge constructions and research approaches are being challenged through an inclusion of, and focus upon, social difference, with a concomitant acknowledgement of the fluidity and fragility of any knowledge claims" (p. 199). Criminology has a long tradition of questioning established assumptions, leading to the development of a variety of alternative epistemological and ontological positions. Utilising intersectionality as an intellectual framework Paik (2017) identifies that whilst Criminology incorporates race, class, and gender, very few theorise about the intersections of these stratifications and identities. Although Meyer (2010, 2012, 2014) provides Criminology an intersectional lens with which to research hate crime "the application of an intersectional lens has remained marginal within British criminology" (Parma, 2017, p. 37).

To advocate for intersectional criminological scholarship (see Parma, 2017; Sanchez, 2017) is to advocate beyond race, class, gender, and sexuality as discrete categories. I advocate in this article for discrete and rigid gender and sexuality "strands" of hate crime to be more inclusive and to incorporate fluid and non-binary identities so that identity-based violence towards queer people is fully acknowledged and embodied. Therefore, I recommend that hate researchers remain reflexive of their own ontological and epistemological positions that they assume when researching gender and sexuality.

Calls for the queering of research methodologies have been made outside of criminological inquiry. Warner (2004) argues that methodological assumptions constrain sexuality and gender in ways that construct a restricted version of what it is to be a sexual and gendered being. The wide body of activism promoting queer research aims to mock such barriers and question naturalised approaches and assumptions. Warner (2004) cautions that the nature of queer research, as questioning established ways of doing and being, means that there cannot be one queer methodology. Many queer methodologies are required as there is no single ontological truth - or epistemological standpointism - for gender identity and sexuality (Hammers & Brown III, 2004). Thus, there is no precise method for gaining answers in relation to queer people. However, a beginning point is to recognise the role of researchers in knowledge production, including generating an awareness

of the Western, colonial, and binary preferences of gender and sexuality that they carry.

Secondly, queering LGBT hate crime scrutinises the linguistic capital and power that frames existing research. The lived realities, identities, and narratives that have been “storied” so far have been restrictive. As Thomas and Stornaiuolo (2016) state:

When people only have access to a single story – one that simplifies and flattens the complexity of human experience and excludes many perspectives from being represented – they can become constrained in what they imagine to be possible. (p. 313)

I have highlighted throughout the definitional obstacles and complexities in defining ‘hate crime’, as ‘hate’ conjures images of the extreme or severe (Chakraborti, 2012; Chakraborti & Garland, 2012) whilst on the surface ignoring the structural violence and oppression facing minority groups. Further, there are definitional issues over LGBT acronyms as they exclude non-heterosexual identities that are not LGBT. Hate crime frameworks allow only certain victimised experiences to be embodied and told. Re-examining hate crime through a queer lens forces researchers to review, reflexively, the linguistic power at their disposal to construct epistemological restrictions on whose identities are legitimised. In addition, a queer lens enables researcher to think critically about the language they use to impose hate crime frameworks on research participants. Bourdieu (1991) for instance proposes that language is situated firmly within power relationships, dynamics, and interactions. Specifically, the linguistic capital available to individuals, groups, and nations influence the process of naming and categorisation; a social tool used to construct vulnerability and victimisation. Arguably, language upholds dominant power structures such as heteronormativity and patriarchy. These power structures socially and culturally reify identity-based violence, such as hate victimisation, as the way things are (Perry, 2001). I recommend that scholars incorporate the language of non-binary, fluid, and queer identities so that hate research embodies these experiences. Indeed, Hammers and Brown III (2004) insist that without queering social research, aspects of gender and sexuality become distorted or ignored, when in fact they need to be deconstructed (Seidman, 2001).

As highlighted by Plummer (2015), the emerging recognition and presence of our globalised and cosmopolitan sexualities force us to embody and research identities, which were not recognised ten, even five years ago. Hate studies can attempt to queer these narratives by restorying them through an intersectional queer framework, which can be used to represent the full diversity of gendered and sexual experiences. A non-binary per-

son's experience of hate crime may be different from a trans woman's experience of hate crime, which in turn may be different from a lesbian Muslim woman's experience of hate crime. All of these narratives are lost if hate research goes unqueered as the systems that produce crime and victimisations towards these identities may go unchallenged. Prioritising the agenda to queer our understanding of hate crime against sexual and gender minority groups helps to embody their experiences and narratives. I have outlined throughout that LGBT hate crime does not exist in a vacuum. It arises from systems of heteronormative, heterosexist, cisnormative, and patriarchal power structures. Incorporating non-binary identities into hate research empowers researchers to connect hate crime to much wider structural systems of marginalisation that oppress those outside of the gender binary.

CONCLUDING THOUGHTS

Criminologists concerned with hate crime in the past have adopted a silo approach, using one or several discrete identities to examine hate crime. I have noted that hate crime phraseology is ambiguous and contested among scholars. Deliberately I have avoided rehashing this debate, as it is well documented in the literature. Instead, I have centred this article specifically on LGBT hate crime by suggesting that epistemological approaches within hate studies suit queer people more appropriately. In relation to sexuality and gender, silo 'category' approaches insufficiently capture the diversity of hate experiences towards queer identity. The unstable and fluctuating nature of sexuality and gender requires scholars to re-evaluate, consistently, their own assumptions and framings of gender and sexuality. Many of the constructs we interact with and interpret are based on Western and colonial logics. However, younger generations are embodying identities such as Two-Spirit, non-binary, agender etc., which force research inquiries to think more critically about identity-based crimes.

A wider understanding of queer identity helps contribute towards a more inclusive hate crime framework. Reflexively, this recognises and legitimises identities outside of the established LGBT acronym. Further, it sheds light on and scrutinises the western and colonial foundations upon which these identities exist. Heteronormative, cisnormative, and patriarchal structural systems of oppression are the aetiology of hate crime. Ignoring these sustain queer identity as ontologically "other" within criminological scholarship. Examining this relationship between structure and hate crime encourages criminology as a whole to challenge the foundation where hate occurs. Identity is not *per se* the root of hate crime experience; rather it is the structural, "othered", position of that identity within society, and its dis-

cursive (dis)acknowledgement and (dis)embodiment within criminological scholarship.

NOTES

1. This is western nomenclature. Terms such as homosexual and gay do not apply to the cultural context of Samoa. Gynophilic and Androphilia are therefore used.

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