Crimes Against the "Other": Conceptual, Operational, and Empirical Challenges for Hate Studies

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I. Introduction

At the most recent annual meeting of the American Society of Criminology (ASC), I was struck by the sheer quantity–if not necessarily the quality–of papers centered on hate crime and the extent to which the subject appears to have become "mainstreamed" within American scholarship and policy. As a hate crime scholar from the United Kingdom, this was a novel experience for me and evidence of how far we in the UK have lagged behind other nations with respect to developing and promoting hate crime discourse within criminology and related disciplines. Although the concept of "hate" in the context of both actions and speech is firmly enshrined across most jurisdictions with which the UK shares political and legal traditions, it is only within the past ten years that the term "hate crime" has come to assume particular relevance to criminologists and policy-makers in my country. Unlike in the U.S., for example, where contemporary hate crime discourse can be traced back to the convergence of a series of progressive social movements from the 1960s and beyond, the prioritization of hate crime in the UK has gained pace much more recently in the aftermath of a number of high-profile incidents that took place toward the end of the last and the start of the current century, most notably the murder of Stephen Lawrence in 1993 and the subsequent publication of the Macpherson report in 1999.[1]

Given its comparatively recent adoption within the policy domain, it is perhaps not altogether surprising that hate crime is, as Iganski (2008) suggests, a nascent area of scholarship for British criminology. As such, the ideas of scholars from other countries–and in particular those writing from a North American (Jacobs & Potter, 1998; Perry, 2001, 2003a) and an Australian perspective (Mason, 2005, 2007)–have acted as a catalyst for further academic enquiry within the UK (see, for instance, Iganski, 2002, 2008; Hall, 2005a; Chakraborti & Garland, 2009). That said, the types of offenses commonly grouped under the hate crime banner have in fact been researched and debated extensively within the UK, some more so than others. Hate crime cuts through numerous themes central to social scientific enquiry, whether they be "race," ethnicity, gender, sexuality, or simply

"otherness" *per se*, and while relatively few attempts have been made by British scholars to examine these themes through the conceptual lens of hate, their empirical and theoretical contributions have invariably influenced the development of hate crime scholarship within that country.

The present article draws from this emerging body of knowledge to outline some of the key conceptual, operational, and empirical challenges now facing researchers and policy-makers. Though written from the perspective of a British hate crime scholar, the issues raised are international in nature: Indeed, in much the same way that expressions of hate pose problems that cut across disciplines, across communities, and across borders, so too must responses be informed through international, intersectional, and interdisciplinary perspectives that serve to widen our understanding. Hate crime remains a contested and highly complex area of study and policy, and the deeper we delve to find solutions and answers, the more likely we are to stumble across further problems and questions. Identifying how best to resolve them is a difficult, ongoing task, but one that should form the basis of any progressive dialogue among hate crime scholars, policy makers, and practitioners. The nature of these problems and questions–and more importantly, the ways in which we can use them to shape contemporary hate crime discourse–is what this article seeks to explore.

I should note also that this article unashamedly steers clear of numbers and quantitative analysis. I made reference earlier, perhaps a little unfairly, to what I and other hate crime scholars in attendance perceived to be a lack of quality in some of the papers presented at the last ASC conference, and this in part stemmed from what seemed like a preoccupation with examining numbers of hate incidents without any accompanying critical analysis of the meaning and broader context behind these numbers. Hate crimes, as is argued more fully below, are not merely incidents that can be counted, and for us to properly develop a qualitative understanding of hate crime perpetration and victimization, we need to reflect more carefully upon the processes that give rise to hatred and the ways in which we can construct effective responses. In a similar vein to Perry's (2003b) musings on neglected areas of hate crime scholarship, this article welcomes the advances that we have made collectively in terms of developing our qualitative understanding, but focuses deliberately upon the various challenges confronting scholars and policy-makers in this field as we seek to push the "hate debate" forward.

II. Defining Hate Crime

The nature of these types of challenges will be explored shortly. First,

however–and given that this article is written from a British perspective–it is important to briefly outline what the term *hate crime* has come to mean in the context of British scholarship. Perhaps unsurprisingly, the suggestions of American scholars have been especially influential, and writers such as Sheffield (1995), Jenness (2002), Petrosino (2003), and Gerstenfeld (2004) have each helped to convey that the term has a deeper sense beyond its literal interpretation of referring to crimes motivated by hatred. As is now widely accepted, hate crimes are not simply crimes in which the offender *hates* the victim, nor indeed do such crimes need to be motivated by hatred at all in order to be classified as hate crime. It is perhaps Barbara Perry's (2001, p. 10) definition that is regarded by British scholars as offering the most comprehensive account of a hate crime:

> Hate crime . . . involves acts of violence and intimidation, usually directed towards already stigmatized and marginalized groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterize a given social order. It attempts to recreate 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.

This framework offered by Perry makes reference to the relationship between hierarchies and hate, and gives primacy to the notion of violent and intimidating behavior being somehow different when it involves an act of bigotry directed toward stigmatized and marginalized communities. Moreover, Perry's conceptualization of hate crime recognizes that hate crime is not a static problem, but instead should be seen as a dynamic social process involving context, structure, and agency. In this regard, Perry takes her lead from the work of Bowling (1993, 1999), whose reference to the relevance of repeated or systematic victimization, historical context, and the social relationship between all the actors involved in the process of victimization is seen by Perry as being directly relevant to the way in which we should conceive of hate crime. Also key for Perry is the group identity of the victim, with hate crimes best being viewed as "message crimes" directed not only toward the victim, but also toward the wider community to which he or she belongs—as acts of violence or intimidation designed to spread fear and to reaffirm "the hegemony of the perpetrator's and the 'appropriate' subordinate identity of the victim's group" (Perry, 2001, p. 10).

While hate crime scholars have sought to grapple with what they see as the complexity associated with the term, official classifications have

tended to be significantly less intricate in their interpretations of hate crime. Within the UK, the key source of policy guidance on hate crime comes from the Association of Chief Police Officers (ACPO), whose operational definition is enshrined within their guidelines for police forces in England, Wales, and Northern Ireland (ACPO, 2000, 2005, 2010).[2] Importantly, this guidance distinguishes between hate *incidents* and hate *crimes*, requiring police forces to record all incidents, even if they lack the requisite elements to be classified as a notifiable offense later in the criminal justice process. In this context, ACPO takes its lead from the landmark Macpherson inquiry; the group's attempts to address the deep-rooted institutional racism identified as being embedded within police culture by that inquiry resulted in the adoption of a more flexible interpretation of a racist incident.[3] Under this interpretation, it is not the police officer, but the victim (or indeed any other person present) who decides whether an incident should be classed as racist; moreover, the incident need not be a crime for it to be recorded by the police, but can include any occurrence; nor must it have an evidential basis or an obvious causal link to be classed as racist: In the UK's post-Macpherson environment, perception on the part of the victim is the key to an incident's being defined as racist (for further discussion, see Hall, Grieve, & Savage, 2009).

Accordingly, the hate crime guidance issued by ACPO stipulates that any hate incident, whether a *prima facie* "crime" or not, should be recorded if it meets the threshold originally laid down by the Macpherson definition of a racist incident–namely, if it is perceived by the victim or any other person as being motivated by prejudice or hate–and not the stricter, evidential threshold required under criminal law for notifiable offenses. Moreover, this policy framework makes specific reference to prejudice, and not simply hate. In stating explicitly that hate crimes or incidents are not always concerned with hate but rather with prejudice, ACPO's guidelines follow the logic presented by the academic definitions described above in suggesting that the presence of hate is not central to the commission of a hate crime.

Evidently, *hate* might appear to be a distinctly unhelpful term in many respects, as both academic and practitioner definitions tend to direct our attention toward certain forms of prejudice, a considerably more expansive notion than that of hate, covering many varieties of human emotion, of which hate may be only a small and extreme part (Hall, 2005a). This is a point of concern to some commentators, and one to which the article returns in due course. However, ACPO's (2005) guidance does offer some assistance with regard to distinguishing between "acceptable" and "unacceptable" prejudice by alluding to particular grounds for prejudice or hatred: namely, "race," sexual orientation, transgender status, faith, and disability. According to the UK's official criminal justice system interpretation of hate

crime, therefore, it is not just *any* prejudice that can form the basis of a hate crime, but rather prejudice based upon those particular grounds specified by ACPO.[4]

III. The Development of Hate Crime Laws

In the context of the discussion that follows, it is worth also outlining very briefly the UK's legal framework for hate crime, as it is quite different in some respects from the American approach. In the U.S., the concept of hate crime is firmly enshrined within the law through a series of federal- and state-level hate crime acts, and these have been bolstered most recently through the expansion of federal hate crime law to cover crimes committed on the grounds of gender, sexual orientation, gender identity, and disability. As Lawrence (2009) points out, virtually every state in the U.S. criminalizes hate crime, with some laws giving primacy to the animus exhibited by the perpetrator of a crime against a member of a perceived or actual protected group and others focusing on the perpetrator's selection of the victim. There is no comparative set of laws as such in the UK that gives as explicit an acknowledgement of the term *hate crime,* and this is reflective of hate crime's different origins within the two countries and of the more established status of hate crime within the popular lexicon of American society.

That said, however, within the UK we do now have a number of laws that adhere to the principle that crimes motivated by hatred or prejudice toward particular features of the victim's identity should be treated differently from "ordinary" crimes. Within this context, an especially significant piece of legislation is the Crime and Disorder Act 1998, and in particular sections 28-32. These are the provisions relating to racially aggravated offenses, which in essence amount to a "penalty enhancement statute" (Lawrence, 1999, p. 92) enabling higher sentences to be awarded for crimes that are racially aggravated. The original Crime and Disorder Act provisions have also been amended by section 39 of the Anti-Terrorism, Crime and Security Act 2001, which extends the principle of penalty enhancement to include religiously aggravated offenses; similarly, section 146 of the Criminal Justice Act 2003 empowers courts to impose increased sentences for offenses motivated by hostility toward the victim's sexual orientation, or his or her mental or physical disability.

Hate has also been criminalized through the various strands of incitement legislation. Protection against the incitement of racial hatred can be found within section 17 of the Public Order Act 1986, which prohibits the use of words, whether oral or written, or behavior deemed "threatening, abusive or insulting," and puts in place both a subjective standard of guilt

(where there is intention to stir up racial hatred) and an alternative objective threshold (where "having regard to all the circumstances racial hatred is likely to be stirred up thereby"). More recently, the Public Order Act has been amended through section 29 of the Racial and Religious Hatred Act 2006, which governs the incitement of hatred toward people on the basis of their faith. While similar in many respects to the equivalent racial hatred laws, the incitement to religious hatred provisions have a higher legal threshold in that they can be used only in cases involving threatening (and not abusive or insulting) words or behavior, and where the prosecution can prove that the perpetrator intended to stir up religious hatred (i.e. a subjective standard of guilt). The protective coverage of incitement laws–or anti-vilification laws, to borrow a term used by Australian hate crime scholars (Gelber & Stone, 2007)–has also been extended to the incitement of hatred on the grounds of sexual orientation under section 74 of the Criminal Justice and Immigration Act 2008, which criminalizes the stirring up of hatred against LGBT communities[5] under a threshold similar to that specified in the Racial and Religious Hatred Act.

Notwithstanding the various concerns associated with the effectiveness, legitimacy, and interpretation of these pieces of legislation (see, *inter alia*, Chakraborti & Garland, 2009), this necessarily brief overview of the current legal framework illustrates the way in which the concept of hate crime has, within a relatively short space of time, been given an established legal footing within the UK. Nevertheless, while there is some degree of consistency in the message conveyed to criminal justice agencies, sentencers, and the general public through this emergent hate crime agenda, there is also a series of inconsistencies associated with the application of hate crime that have raised questions over its future viability. It is to a consideration of these inconsistencies that the paper now turns.

IV. Conceptual Challenges

Despite improvements in policy and practice associated with the rise of the hate crime agenda, commentators remain divided on the application of the hate crime label. One especially contested and well-documented aspect of hate crime relates to its conceptual ambiguity. As discussed already, police forces across the UK are obliged to record hate incidents, and not just crimes, meaning that much of what falls under the remit of hate crime may not be crimes *per se,* but incidents perceived by the victim as being motivated by hate or prejudice. Therefore, hate crimes may not necessarily be crimes, and may not necessarily be motivated by hatred. Most academic and practitioner definitions are consistent in recognizing hate crime as conduct motivated by prejudice on particular grounds or directed

against particular groups of people. Prejudice is a much more expansive notion than hate, covering all manner of behaviors, some acceptable, some unacceptable, and this clearly has implications for those framing hate crime laws who are required to make difficult moral judgements about the types of prejudices to be punished or tolerated and the groups of peoples to be protected or unprotected (Hall, 2005a).

It is not simply the decision over which forms of prejudice to legislate against that presents cause for concern, but also the strength of the causal relationship between the prejudice and the offense. Famously, Jacobs and Potter (1998, pp. 22-28) present arguably the most forceful illustration of this point by categorizing hate crimes into four broad types, some of which, they argue, are more contestable than others. For instance, they see no problem with describing offenses that are carried out by highly prejudiced perpetrators, and whose prejudice has a strong causal bearing on their offending behavior, as hate crimes: These are crimes that might immediately spring to mind if one were conceiving of "hate" in its literal sense, such as organized extremist hatred or acts of violence clearly motivated by hatred of a particular group identity. Limiting the scope of hate crime to offenses such as these would be uncontroversial, but of limited practical utility since these types of extreme cases would in most jurisdictions already be punishable under the highest possible sentencing tariff.

However, the other three "types" are more problematic for Jacobs and Potter (1998). Their second "type," for instance, refers to offenses again committed by highly prejudiced offenders but whose offending behavior is not strongly or exclusively linked to their prejudice, and they argue that it would be wrong to automatically assume that *all* offenses under this category–namely, offenses committed by prejudiced offenders against minority groups–are hate offenses. Equally, offenses committed under their third grouping–by offenders who are not especially prejudiced individuals, but whose prejudice, perhaps subconsciously, bears a strong link to the offense–makes up the majority of officially designated hate crimes in the U.S. because it is often assumed (erroneously, in the eyes of Jacobs and Potter) that a crime committed by a member of one group against a member of another constitutes a hate crime irrespective of the strength of the prejudicial motivation. The hate crime label is even applied sometimes to what they refer to as situational offenses, their fourth "type": offenses that are neither the product of highly prejudiced beliefs nor strongly linked to the offender's prejudice, but that instead arise from "ad hoc disputes and flashing tempers" (1998, p. 26).

Jacobs and Potter's (1998) critique underlines that hate crime is a conceptually ambiguous construct open to different interpretations, and it is this ambiguity–and its potential to create hierarchies of acceptable and unac-

ceptable prejudices and to penalize behavior motivated only in part by prejudice–that leaves it susceptible to criticism. However–and crucially in the context of mapping a way forward for scholarship and policy–the arguments of critics such as Jacobs and Potter do not lend themselves to a particularly straightforward alternative. For instance, one option could be to simply "do away with" the concept of hate crime, a seemingly logical stance to adopt were we to follow those arguments through to their conclusion. But in real terms, such a move would raise an even thornier set of questions. Would abandoning the concept of hate crime require governments to repeal existing sets of laws governing hate acts and speech? Would abandoning the concept of hate crime send out the right kind of message to the more vulnerable, marginalized members of society, or indeed to those who feel it is legitimate to express prejudice toward such groups? And would this lead to a regression in criminal justice policy, practice, and attitudes following the progress that has evolved with hate crime movement across most Western societies?

There are also problems associated with other options for the present conceptual framework. For example, some might favor a route where we stop short of abandoning the hate crime label, but instead take steps to restrict its application to a more literal interpretation–namely, crimes (not incidents) motivated by hate (not prejudice) toward a particular group identity. Undoubtedly, this would help to offset some of the ambiguity inherent in the concept as we presently know it: The hate crime label would be used solely in cases in which perpetrators truly hated their victim on the basis of their membership in a particular group or community and in which this hatred was the sole or predominant cause of the offending behavior. However, while conceiving of the concept in such a way would make hate crime more easily recognizable, as the label would apply exclusively to the more violent or extreme acts that one might ordinarily associate with crimes of hate, it would also result in hate crime scholars and policy-makers' overlooking the subtler, but equally damaging expressions of prejudice experienced by victims of hate crime. As a number of writers have shown (Kelly, 1987; Bowling, 1999; Chakraborti & Garland, 2004), if we are fully to understand the impact of hate victimization, we need to recognize the routine, everyday nature of many experiences of prejudice—experiences that in themselves may not appear especially serious, but that cumulatively, and when considered in the context of repeat victimization and broader patterns of "othering," can have damaging and lasting effects upon the victim, the victim's family, and the wider community. The cumulative "drip-drip" effect of this process might well be marginalized under a more restrictive conceptualization of hate crime.

If we feel that this more literal take on hate crime is too constraining,

another option might be to reconfigure the label in terms of what it might more accurately represent. Therefore, if hate crime is not really about hate as such but more about prejudice, bias, bigotry, or *-isms*, as most scholars seem to suggest, then perhaps reconfiguring it something along the lines of "prejudice crime" or "bias crime" might help to capture the essence of what these crimes really center on. British scholars such as Hall (2005a, 2005b) and Goodhall (2007) make reference to the seemingly curious state of affairs that exists presently, wherein we employ the word *hate* as a catchall term to describe behavior motivated by other factors and emotions; indeed, in some respects, the way in which the term *bias crime* is often used interchangeably with *hate crime* within much of the North American literature offers support for using this as a viable alternative (see, for instance, Perry, 2001; Lawrence, 2002; McDevitt, Levin, & Bennett, 2002; Bell, 2003).

That said, however, reclassifying these offenses in accordance with a different descriptor of the motivation that underpins them does not address the related conceptual issue of how one should decide which forms of prejudices or bias should count as warranting enhanced punishment. To take the current UK position as an example, official ACPO guidance earmarks hate crime as hate or prejudice motivated on particular grounds–race, faith, sexual orientation, transgender status, and disability. At one level, placing restrictions on the types of "unacceptable" prejudice that can constitute a hate crime is critical to its operational viability, but limiting its applicability to certain groups and not others is a process fraught with danger, as this requires difficult judgements to be made regarding who should be deserving of "special protection." Consequently, the capacity for hate crime to create a hierarchy of victims, wherein some groups are seen as more important or worthy than others, is a problem that is central to debates over the conceptual basis of hate crime, and one that would remain just as contentious were we to reconfigure such offenses as prejudice or bias crime.

A final conceptual alternative that conceivably could get around this problem might be to restrict the applicability of hate crimes to those who some might argue are intended to be the primary beneficiaries of its conception, namely minority groups. Such a switch in focus would, in principle, offer a number of advantages. Conceiving of these offenses as forms of "minority group victimization" would arguably make the rationale behind hate crime laws more explicit and would divert the attention of scholars and prosecutors toward the bridging factor that links different types of victim (their shared minority status) and away from the ambiguities associated with offender motivation. Moreover, although the question of which minority groups are worthy of extra legislative protection is still open to debate under this framework, recognizing minorities as the intended beneficiaries of this protection would nevertheless make explicit the reasons for dis-

counting certain crimes that at face value might involve an element of hate–acts of terrorism, for instance–while including others that might not necessarily seem to be especially "hate-motivated." Again though, this stance is not without its own problems. If we were to take this interpretation to its logical conclusion, then presumably–and wrongly–members of majority groups could not under any circumstances be protected by hate crime legislation, even if prosecutors could prove that they had been the victims of an attack based upon their group identity–their whiteness or their Christian beliefs, for example. However persuasive the rationale for prioritizing the protection of minority groups, formulating policies that differentiate between majority and minority group members, targeted and victimized for the same reasons and in the same manner, creates its own set of difficulties.

V. Operational Challenges

It is not just conceptually that hate crime has been contested. Commentators have raised questions about its operational viability, and in particular the way in which hate crime laws have been framed and enforced. As discussed above, the notion of hate crime has been given explicit recognition within the UK through the introduction of both penalty enhancement and anti-vilification legislation. These pieces of legislation have by no means been universally welcomed (see, for instance, Iganski, 2002; Cumper, 2008; Meer, 2008), but their introduction has given weight to the principle behind hate crime by encouraging criminal justice agencies and sentencers to regard hate crimes as qualitatively different from the same crimes motivated by different reasons, and by conveying a message to the public at large, and perhaps more specifically to extremists, that denounces hatred as not just unpalatable, but also criminal (see also Lawrence, 2002; McGhee, 2005).

The deterrent capacity of this message has been questioned by critics—Jacobs and Potter (1998), not surprisingly, among them—who have raised doubts over the justifications for hate crime laws. For Jacobs and Potter (pp. 67-68), the declaratory message of condemnation conveyed through such laws will have a negligible impact upon potential and actual hate crime offenders, who are unlikely to be any more responsive to this message than they are to the threats and condemnations enshrined within other laws that they might regularly contravene. Moreover, these laws can also have unforeseen consequences: For instance, Bowling and Phillips (2002) have referred to the unintended backlash against minority groups that the introduction of hate crime laws can create among those who believe that such groups receive preferential treatment, while similar observations have come from Dixon and Gadd (2006), whose research highlights the

possibility of those prosecuted under hate crime legislation's concluding that they are less the perpetrators of a serious offense and more the victim of a legal system biased in favor of minorities.

The legal provisions governing hate crime can be especially problematic when we begin to take a closer look at the operation of the laws themselves. Let us take the example of the UK, where concerns have been raised by the Crown Prosecution Service (CPS) over the level of evidence required to justify the imposition of enhanced punishment. As the CPS (2008) acknowledges, proving that offenses are motivated by prejudice is a process fraught with difficulty, and one that requires either a clear statement of intent by the accused or background evidence of motive that often is not forthcoming. Consequently, and as they go on to observe, many hate crime cases result in No Further Action (NFA) and do not progress to the prosecution stage, either because of insufficient evidence or because the victim is unwilling to support a prosecution. Prosecution figures, therefore, do not in themselves offer a reliable indication of the extent of hate crime taking place in the UK, though comparable datasets from other European countries give us next to nothing to go on. Indeed, the 2007 statistics on hate crimes taking place in the OSCE (Organisation for Security and Co-operation in Europe) region reveal that relatively few hate crimes are recorded by other nations. In countries as large as Italy and Poland, for example, official figures present a total of only 148 and 125 hate crimes respectively for the entire year, while the annual totals for other countries are equally eye-catching: criminal proceedings initiated in as few as 170 hate crime cases in Russia; ten hate crime cases brought forward for prosecution in Denmark; no cases whatsoever in Iceland (ODIHR, 2008).

Nevertheless, CPS data on the number of prosecutions brought under the UK's respective aggravated provisions do raise important questions, not so much for the legitimacy of hate crime laws as for the enforcement of hate crime laws. I would argue that these data are a reflection of how hate crime laws are being interpreted, and should not be seen as evidence *per se* to suggest that the provisions are difficult to enforce or unnecessary additions to the statute book. For instance, the stark difference between the number of racial and religiously aggravated prosecutions in 2009—145 as opposed to 27–is largely attributable to the way in which the CPS decides how an offense should be charged, as indicated in their guidance below, which uses antisemitism as an example (CPS, 2008, point 23):

> The CPS determines whether an offence should be charged as racially or religiously aggravated. This will depend upon the circumstances of the case. If the evidence proves hostility towards the Jewish people, the

> charge will be racially aggravated. If the hostility is directed more specifically towards the Jewish faith, the charge will be religiously aggravated.

As shown by this tenuous distinction between hostility directed toward people and hostility directed toward faith, these grounds for determining whether offenses should be charged as racially or religiously aggravated are barely distinguishable. This can result in "race" and faith being conflated, which runs contrary to the original rationale behind the introduction of separate provisions on religious aggravation.

Equally, there is more than an element of inconsistency surrounding the way in which anti-vilification laws have developed in recent years. Again, taking the UK as an example, under the Public Order Act 1986, incitement to racial hatred provisions criminalize words, behavior, or materials that are threatening, abusive, or insulting and that are intended to stir up hatred, or where hatred is likely to be stirred up. However, the corresponding provisions on incitement to religious hatred are considerably more restrictive, criminalizing only *threatening* (not abusive or insulting) words, behavior, or materials, and requiring evidence of subjective intention to incite hatred. A similarly tight threshold has been laid down for incitement to hatred on the grounds of sexual orientation, meaning that there is a clear distinction between the broader framework of protection guarding against the incitement of racial hatred and the much narrower framework governing the incitement to hatred on the grounds of faith and sexual orientation.

This deliberate distinction was further underlined through the inclusion of explicit defense clauses for freedom of expression that accompanied the respective sets of provisions on incitement to hatred on the grounds of faith and sexual orientation.[6] The inclusion of these clauses–designed primarily to counter accusations that the laws would unfairly penalize criticism of religion or sexual conduct–is reflective of the delicate balance legislators have tried to strike between criminalizing hate speech and adhering to the right to freedom of expression enshrined within Article 10 of the European Convention on Human Rights. What this leaves us with is a series of disparities between different types of hate speech: There is no equivalent freedom of expression clause governing the incitement of racial hatred, and there are no incitement provisions whatsoever governing the incitement of disablist hatred.

Without question, this area of hate crime has proved to be particularly contentious; while most of us would in principle welcome the firmer legal footing for hate crime that has emerged in recent years, having laws in place is no guarantee of improved protection from hate unless the laws are properly framed and implemented. Certainly, the operation of hate crime laws in any given society will need to be monitored closely by scholars before

we can conclude with any certainty whether we have been blessed with an effective set of laws or have created an ineffective set of compromises.

VI. Empirical Challenges

Hate crime poses a further set of challenges when it comes to advancing our empirical knowledge. Unquestionably, much good work has been done across different disciplines to develop our understanding, evidenced perhaps most vividly through the very welcome publication of Barbara Perry's (2009) five-volume set *Hate Crimes*, a comprehensive collection of North American and international contributions from the fields of law, criminology, sociology, psychology, and public health. Similarly, in my country we have seen important work emerge from within British criminology that has helped to move the "hate debate" into fresh areas of empirical and theoretical enquiry. However, numerous issues remain un- or underexplored in this field and demand urgent attention from hate scholars from different countries and different disciplines. For example, what little research evidence there is on hate crimes against the disabled and trans communities suggests that these are growing problems that have been overlooked by criminal justice agencies and policy-makers despite those groups' being recognized "beneficiaries" of most official discourses on hate crime (Whittle, Turner, & Al-Alami, 2007; Quarmby, 2008). Greater focus on these areas would enable scholars to explore their commonalities and differences with other, more familiar stands of hate crime in terms of perpetrator motivations and experiences of victimization.

In a similar vein, while we now know more about the experiences of BME (black and minority ethnic) and LGBT communities in a broad sense, crass generalizations are often made that result in the overlooking of specificities and intersectionalities of victimization within these broad-brush categories. Making generic assumptions about diverse communities at the expense of learning about the discrete experiences of those who are all too often subsumed through the labeling of such communities gives us insufficient information about who the victims of hate crime really are and the context behind their vulnerability. To truly understand the dynamics of difference requires us to look toward underresearched and potentially more complex lines of analysis, whether this be minority-on-minority or minority-on-majority violence, interfaith tensions, violence against lesbian women, or the experiences of those who occupy multiple positions of culturally defined inferiority. Equally, it could be argued that we know far too little about processes of cyberhate, not to mention the collective experiences of the homeless, the elderly,[7] members of youth subcultures,[8] and other

groups whose vulnerability extends beyond the boundaries of most hate crime policy and scholarly frameworks.

Questions also remain about the perpetrators of hate crime, and we have seen steps taken in recent years to challenge the popular stereotype of organized hate groups or committed extremists being responsible for the majority of offenses. But then who are hate offenders? Are they, as Iganski (2008) suggests, ordinary people like "us"—"normal" people acting on mainstream, "common-sense" bigotries that encourage them to blame the Other for problems blighting their own lives? This, for example, is the kind of explanation that may account for recent rises in levels of antisemitic hate crime across the West, where the "transfer of tensions" from the Middle East and an increase in anti-Zionist or anti-Israeli sentiment is said to have fueled antisemitic activity (Community Security Trust, 2009). Or might far-right organizations and hate groups be to blame after all, perhaps not directly as perpetrators, but because of the influence that their violent rhetoric can have on everyday individuals not committed to an extremist ideology? Moreover, when thinking about who hate crime perpetrators are, we may also need to question their relationship to the victim. Are perpetrators strangers to victims whom they target on the basis of their association with a particular group identity as opposed to any individual traits, or might they be more familiar to their victim either as an acquaintance, a friend, a family member, a carer, or a partner? This would certainly be true of disablist hate offenses; a number of recent cases in the UK have highlighted the vulnerability of people with learning difficulties to bullying, violence, sexual abuse, and even torture from those well-known to them. Or perhaps the victim may know the perpetrator at some level and yet still feel emotionally distant from him or her, thereby allowing us to conceive of hate crimes as stranger-danger crimes even when they are committed by people familiar with their target. As Gail Mason (2005, p. 844) rightly contends, there are no "one size fits all" solutions to these sorts of questions; rather, and as with research into victims of hate, we need to refrain from drawing neat, overly simplistic conclusions based on our assumptions and instead use these multiple realities as the basis of our empirical journeys.

Furthermore, and in light of the earlier challenges raised within this paper, future research should be geared toward analyzing the way in which hate crime victimization and perpetration are dealt with through the criminal justice system. This in itself opens up an array of empirical opportunities. For example, police responses could be monitored more extensively to explore the ways in which individual forces and ground-level officers operationalize the guidance offered at a senior strategic level in their responses to the different strands of hate crime. The increased awareness that has come through the introduction of regular and systematic police diversity

training over the past ten years or so is certainly a step in the right direction;[9] that said, and as we have seen in the UK, the cultural difficulties surrounding the policing of diversity, and the evidence of residual and mutual mistrust among minority groups and police officers, makes it difficult to know whether the strategic prioritization of hate crime has fundamentally altered the way in which officers on the ground conceive of the process of victimization or engage with issues of diversity (Chakraborti, 2009).

Similarly, while the bulk of scholarly attention in this context has focused on policing in its narrow sense, we have much to learn about the ways in which hate crimes are punished, how laws are enforced, and how offending behavior and motivations are addressed. In this regard, the decision-making processes at play in the recording and prosecuting stages of the criminal justice response to hate crime could be subjected to more extensive investigation. So too could the effectiveness of measures introduced specifically to improve the situation for potential and actual hate crime victims, whether this be the deployment of third-party reporting mechanisms,[10] community engagement strategies, or the practical application of victim support mechanisms: While the maturation of hate crime discourse over the past ten years or so may have led to a welcome growth of such initiatives, taking steps to ensure that they work effectively, and not merely tokenistically, should feature highly on the hate studies agenda. Alternatively, scholars might choose to focus their energies on examining the scope for using alternative modes of justice for dealing with hate crime perpetrators, as American writers have done for some time now in calling for further deployment of restorative interventions (Shenk, 2001). Indeed, researchers from different countries and disciplines are now increasingly exploring the use of non-punitive responses to hate crime offenders—and the limitations of solely punitive responses in repairing the harms suffered by victims and in challenging offender prejudices–and such moves are both laudable and highly necessary (see, *inter alia*, Walters & Hoyle, 2010; Gadd, 2009; Coates, Umbreit, & Vos, 2006).

VII. Conclusion

Hate crime is clearly a challenging subject with the capacity to divide opinion among scholars committed to challenging prejudice and "othering" in its various guises. Problematizing the notion of hate crime has been an important part of the academic agenda over recent years, but at the same time, it is important not to become preoccupied by its associated difficulties and to thereby lose sight of the positive developments that have taken place as a result of the hate crime movement. Certainly, it is no accident that the

emergence of hate crime discourse has coincided with real change in political and cultural attitudes toward prejudice perpetuated against a range of minority groups. While in the past there may have been something of a hierarchy of recognition among minority groups, with "race" and minority ethnic concerns arguably receiving the most attention, it would seem that this hierarchy has leveled out to the point where other identities are rightly attracting increased attention within policy and scholarly domains. Along with this wider recognition has come a more nuanced understanding of the way in which people can belong simultaneously to different communities, and can therefore have multiple identities and be prone to multiple forms of victimization (Garland, Spalek, & Chakraborti, 2006).

Just as importantly, while there are clear limits to the deterrent capacity of hate crime laws, we should not underestimate the symbolic role that such laws can play in societies in which the values, identities, and cultures of particular communities are under increased scrutiny. Hate crimes are often described within the academic literature as "message crimes" designed to convey a message from the perpetrator to the victim and to their wider community that the victim "doesn't belong"; to extend the analogy, governments too can convey a message of solidarity to vulnerable communities through the criminalization of actions or expressions that violate the core values of a diverse society.

This more hopeful take on hate crime–which encourages scholars to weigh up its limitations against the not inconsiderable advances that have been made on behalf of potential and actual victims–does not mean that we should close our eyes to the problems associated with the concept. Rather, it requires criminologists to scrutinize its practical application to ensure that the core values at the heart of the hate crime movement are not diluted or subverted. In this respect, I agree with the sentiments of Barbara Perry (2010), who describes the present situation in the following terms:

> My review of the post-9/11 scholarship on hate crime leads me to conclude that, while out of its infancy, the field has not yet matured into adulthood. There is still considerable ground to cover. I don't see this necessarily as cause for despair so much as it is inspiring for those of us working in the field. It means that there are niches that we can carve out, contributions that are still to be made.

As the preceding discussion will ideally have made clear, these sentiments are certainly true; there are niches to carve and contributions still to be made, and the underlying impetus behind our efforts in this regard should be our ongoing battle against processes of "othering." Despite the international prioritization of hate crime–and the associated series of academic publications, action plans, policy reviews, and guidance documents that

have accompanied this prioritization–we still live in societies characterized by disturbingly high levels of hate crime, and this is testimony both to the continued marginalization of the Other and to the failings of existing policy and enforcement mechanisms. We may have made some progress, but nonetheless the sheer extent and impact of hate crimes taking place should preclude our feeling complacent with regard to how far we have come. Indeed, while it is true to say that there is now much greater awareness than ever before about hate crime and its dynamics, the preceding discussion has hinted at just how much more there is to learn.

NOTES

1. 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 southeast London in 1993. The report produced over 70 recommendations designed to transform the policing of "race" and diversity within the UK and to improve levels of trust and confidence in the police among minority ethnic communities.

2. While unavailable at the time of writing, an updated guidance manual on hate crime is due to be published by ACPO in 2010/11.

3. Recommendation 12 of the Macpherson report defines a racist incident as "any incident which is perceived to be racist by the victim or any other person" (Macpherson, 1999, para. 45.17).

4. While ACPO's guidance is not directly applicable to Scotland, the Scottish Working Group on Hate Crime consultation document of 2003 indicates an almost identical line of thinking to that developed in ACPO's guidance to police forces in England, Wales, and Northern Ireland.

5. LGBT is the abbreviation commonly used to collectively represent lesbian, gay, bisexual, or transgendered people.

6. The freedom of expression clauses were inserted into the Public Order Act by the Racial and Religious Hatred Act 2006 and the Criminal Justice and Immigration Act 2008 in sections 29J and 29JA respectively.

7. Help the Aged (2008) reports that, at any one time, over half a million older people are subject to elder abuse–which can take the form of physical, sexual, psychological, or financial abuse, neglect, or discriminatory treatment–with two-thirds of these acts of abuse committed at home by someone in a position of trust. The research of O'Keeffe, Hills, Doyle, McCreadie, Scholes, Constantine, et al. (2007) estimates that around 227,000 people aged 66 and over in the UK were neglected or abused in the year leading up to their study.

8. The murder of Sophie Lancaster served as a particularly acute reminder of the vulnerability of members of youth subcultures, with the judge at the trial of her murderers specifically referring to the case as a hate crime in which the victims had been singled out because of their "difference." Sophie and her boyfriend, Robert Maltby, both committed Goths, were confronted by a gang of youths on August 10, 2007 as they were making their way home across a park in Bacup, Lancashire (the north of England). The attackers kicked and stamped upon Robert until he lay unconscious before turning on Sophie, leaving both in a coma. While Robert recovered sufficiently to be able to leave hospital two weeks later, Sophie died as a result of the brain injuries she suffered.

9. In the UK, the publication of the Macpherson report in 1999 gave impetus to the delivery of mandatory diversity training to police officers, while police training schemes

such as the Law Enforcement Officers Program (LEOP) run by the Office for Democratic Institutions for Human Rights has seen a similar prioritization emerge elsewhere in Europe.

10. Third-party reporting is the mechanism by which victims of hate crime can report their experiences to organizations other than the police service. Following the publication of the Macpherson report, these reporting schemes have been widely adopted in the UK as a way of encouraging higher rates of reporting from minority victims.

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