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CHAPTER 5

A SOCIO-LEGAL ANALYSIS OF GENDER-BASED VICTIMIZATION, MISOGYNY AND THE HATE CRIME PARADIGM IN ENGLAND AND WALES

Marian Duggan

ABSTRACT

In England and Wales, legislation pertaining to hate crime recognizes hostility based on racial identity, religious affiliation, sexual orientation, disability or transgender identity. Discussions abound as to whether this legislation should also recognize hostility based on gender or misogyny. Taking a socio-legal analysis, the chapter examines hate crime, gender-based victimization and misogyny alongside the impact of victim identity construction, access to justice and the international nature of gendered harm. The chapter provides a comprehensive investigation of gender-based victimization in relation to targeted hostility to assess the potential for its inclusion in hate crime legislation in England and Wales.

Keywords: Gender hostility; hate crime; violence against women; law reform; victims; identity

INTRODUCTION

In 2018, the Law Commission for England and Wales began reviewing the adequacy and parity of legal protections around hate crime. Two key areas of

potential reform included inequalities among the currently recognized protected characteristics of race, religion, sexual orientation, disability and transgender identity (an issue previously identified in their 2013 review), and potentially including new characteristics such as sex, gender, age, or physical attributes. The Law Commission review sought to understand how particular characteristics should be determined, what the threshold of hostile criminal behaviors might be, and how any changes to existing legislation might affect the concept of hate crime itself. As this chapter will explore, the potential inclusion of sex or gender as a recognized ground for hostility is a welcome development for tackling gender-based victimization and violence against women, however whether this alone will have a realistic impact on reducing gendered victimization is questionable.

Hate crime has been described as “a concept which has inspired legal and social change designed to protect people from being persecuted simply because of who they are, or who they are perceived to be” (Chakraborti, 2015, p. 13). Hate crimes often stem from prejudice toward a group or individual whose identity has been subject to negative rhetoric or ideology by dominant members of society (Lyons, 2006). In the global north, the term has rapidly become a useful shorthand way of referring to targeted victimization fueled by hate, hostility, bias or prejudice and their related criminal offences (Chakraborti & Garland, 2009; Perry, 2001). Perry (2001, p. 10) offers the following useful and informative definition that has become commonplace as a starting point of analysis in hate crime scholarship:

[Hate Crime] involves acts of violence and intimidation, usually directed toward already stigmatized and marginalized groups. As such, it is a mechanism of power, 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.

The underlying motive and inherent power dynamics displayed in crimes motivated by hostility or prejudice differentiate them from regular crimes. Victims are often members of, or affiliated to, a subordinated and stigmatized group, while perpetrators often occupy a more dominant identity or status in relation to their victim(s) (Lyons, 2006). However, the identity of the aggressor is often irrelevant to the hostile motivation of the crime; rather, it is the victim (or any other person) who subjectively determines whether they are being subject to hostility based on their identity. Here, the power to ascertain and report an offence as a *hate* crime lies with the victim. The rationale for this, and the broad operational definition employed by the police, is to instill confidence in victims to report incidents where they otherwise might not have done so.

The relevant laws may all refer to hostility rather than hate, but they differ slightly to account for cultural variances (see Chakraborti & Garland, 2009; Hall, 2013; Scheppe, 2012). Northern Ireland and Scotland additionally recognize Sectarianism, but Northern Ireland does not recognize gender identity (i.e. transphobia) as grounds for hate (Duggan, 2013, 2014). Merseyside Police in England and Wales were the first force to recognize sex workers as a protected group and record hate crimes against them accordingly (Campbell, 2016, 2018).

Subsequently, North Yorkshire Police adopted this approach, while Greater Manchester Police choose to record crimes committed against people from alternative subcultures. In July 2016, Nottinghamshire Police became the first UK force to treat misogynistic street harassment as a form of hate crime, following research undertaken by Nottingham Citizens Advice that claimed 38% of women respondents had experienced a hate crime and felt in part that it related to their gender (Nottingham Citizens, 2014). Increasingly, police forces are following Nottinghamshire's lead in recording hate crimes based on either gender or misogyny according to the individual force (Mason-Bish & Duggan, 2019; Mullany & Trickett, 2018). Awareness about the significant similarities between hate crime victimization and violence against women or gender-based violence means the academic debate around "gender hate crime" predates these recent activities (Gill & Mason-Bish, 2013; Mason-Bish & Duggan, 2019). As the topic has been placed on policymakers' agendas once again through the Law Commission's review, a revived exploration of the broader issue is fitting.

The chapter begins with an overview of how hate crime legislation currently operates in England and Wales, examining the rationales for different types of protections. Of importance here is the role identity politics played in creating demarcated hate crime categories which then became hierarchized. This inequality informs wider debates among scholars, policymakers and practitioners about differential treatment between hate crimes and toward victims. This assessment of emergent hierarchies is informed by perspectives on harm and notions of victim (un)deservedness. Examining how this impacts upon victims' access to justice and recognition, the chapter unpacks the socio-legal construction of victims and victimhood. In doing so, it demonstrates how early (male) scholars determined victim "legitimacy," where identity and gender featured heavily in the production, application and rejection of knowledge and "expertise." Drawing on the broader victimological literature, the chapter explores the shifting positionality of crime victims in liberal social and political systems, alongside a gendered consideration of the backlash against the role of culpability, blameworthiness and legitimacy in determining a person's victim status.

Global academic and professional insight into violence against women has significantly expanded since the mid-twentieth century, with a wealth of gender-based research, theory, policy and practice spanning domestic and international domains. As the more recent "hate crimes paradigm" gains greater recognition and acceptance, feminist scholars have begun to explore the law's potential for reducing gender-based violence or violence against women; namely, what – if any – differences it can offer in terms of criminal justice system experiences, responses, redress or punishments. This is of interest due to the current discussions around specificity – in this case, whether to address *misogyny* rather than *gender* in any extended hate crime provisions to better recognize that women are disproportionately subject to hostility (from men). Manne (2017, p. 19) asserts that misogyny has shifted from being commonly understood as an individualized, pathologized phenomenon affiliated to lone persons, to be considered as "serving to uphold patriarchal order [and] understood as one strand among various similar systems of domination." Prioritizing misogyny as a categorization, rather than gender,

is considered necessary to recognize the particular dangers, victimization and vulnerabilities women are exposed to as a result of patriarchal oppression on both individual and structural levels (Gill & Mason-Bish, 2013; Mason-Bish & Duggan, 2019). Inherent complexities therefore exist when seeking to address gender hostility or misogyny within the current (regimented) hate crime framework.

To demonstrate these complexities and limitations more clearly, the chapter presents two case studies. The first critically addresses the specific intersectionality of gender and sexuality that manifests in structural and interpersonal acts of violence against women who identify as other than heterosexual, highlighting the limiting nature of “siloining” model of hate crime compartmentalization. The second critically explores the nature and impact of online misogyny that is increasingly manifesting on a global scale due to the rapid expansion of technology-enabled communication. The analysis contained within each demonstrates how legal responses should recognize the gendered specificities of targeted violence against women, but proceed with careful consideration and implementation to avoid exacerbating social hostilities. Finally, the chapter concludes by providing insight into necessary areas for consideration regarding gender, misogyny and hate crime.

THE HATE CRIME LEGISLATIVE FRAMEWORK IN ENGLAND AND WALES

In countries that recognize hate crime and legislate accordingly, variations in approach often link to societal demographics and socio-political contexts, with most indicating intolerance of prejudice-motivated harm by ascribing to a penalty enhancement model. The Office for Democratic Institutions and Human Rights (ODIHR, 2009) suggests that hate crime policy should refer to “current social problems as well as potential historical oppression and discrimination,” although countries that adhere to their protocols not bound to this guidance (p. 38). In England and Wales, hate crime legislation recognizes *hostility* and refers to the specific identity characteristics of race, religion, sexual orientation, disability and transgender identity. Legislation differentiates between offences “aggravated” by racial or religious hostility, offences in which hostility (toward any of the five characteristics) can be grounds for “enhanced” sentencing powers, and offences of “stirring up” hatred. Scholars have noted criticism, concern and confusion around the differentiation of hate crimes from both other crimes *and* from each other (Chakraborti & Garland, 2009). Examining these legislative discrepancies provides insight into their nuanced differences.

Sections 29–32 of the Crime and Disorder Act 1998 outline basic offences that, when motivated by hostility on the grounds of race or religion, become aggravated offences. These include grievous or actual bodily harm; assault and battery; destroying or damaging property; threatening, abusive or insulting conduct toward someone with intent to cause fear of violence or provocation of violence, or cause harassment, alarm or distress; harassment and stalking; and putting people in fear of violence. The aggravating factor can be demonstrated through words, gestures or behaviors, or indicate motivation such as through

the victim's affiliation to an identifiable group. These aggravated offences carry higher sentences to recognize the presence of hostility; an assault occasioning actual bodily harm ordinarily has a maximum sentence of 5 years' imprisonment but 7 years if racially or religiously aggravated. Importantly, for accurate data collection, racially and religiously aggravated convictions appear as such on an offender's criminal record and the Police National Database.

Sections 145 and 146 of the Criminal Justice Act 2003 introduced enhanced sentencing in cases motivated by, or involving a demonstration of, hostility toward one of the five protected characteristics. The enhanced penalty cannot exceed the maximum sentence available for the offence, but the Act provides grounds for increasing it within the stipulated range. While this is a matter of judicial discretion, the judge *must* openly state in court the reasons for any sentence enhancement as part of their decision. They do this at the end of the trial, unlike in cases involving aggravated offences that require the prosecution to prove the racial or religious aggravation during the trial. Legislation pertaining to aggravated offences and enhanced sentences are separate. For example, a person charged with the offence of racially aggravated assault may be found not guilty of the racially aggravated part, but instead found guilty of the *basic* offence of common assault; however, the judge cannot increase their sentence using the enhanced sentencing provisions as the charge began as an aggravated offence. Unlike aggravated sentences, data collection in these cases is more difficult as the rationales for sentence enhancements (i.e. motivated by racial hostility) do not appear on offenders' criminal records or the Police National Database.

Finally, the Public Order Act 1986 prohibits a range of conduct that is either intended or likely to stir up hatred on the grounds of race, or is intended to stir up hatred on the grounds of religion or sexual orientation (the penalties for all are the same). Briefly, the conduct covered under this Act includes words and behavior; displaying and distributing written material; public performances and plays; producing or directing programmes; or producing material with a view to it being displayed or shown in a programme. Important differences exist between the nature of the conduct: stirring up *racial* hatred covers threatening, abusive or insulting elements, while stirring up hatred on the basis of religion or sexual orientation *must* be threatening as being abusive or insulting is not enough. This difference, and higher threshold, recognizes the tensions that may emerge because of some faith groups expressing religious or doctrinal opposition to homosexuality, as well as divisions that emerge within or between religious factions. From a harm-reduction perspective, it is pertinent to note that there is no requirement for proof that hatred *was* stirred up; rather, the offences require proof that hatred was *intended* to be stirred up (or *likely to be* in the case of race).

It is evident, therefore, that hate crime laws exist within a punitive paradigm that seeks to impose greater punishments for the prejudice-based element of the offence. While increased punishments do not necessarily prevent crime, they may prove beneficial to the victim or their wider community in other ways. Proponents of hate crime laws claim that increased punishments provide useful *symbolic* gestures to victims and society about the refusal to tolerate certain types of social conduct (Perry & Alvi, 2011). However, these gestures will remain symbolic unless

supported by prosecution figures that, according to research, remain significantly low (Walters, Wiedlitzka, Owusu-Bempah, & Goodall, 2017). On the other hand, critics of hate crime laws suggest that they unfairly enhance punitive sanctions for lesser criminalized forms of harm. Jacobs and Potter (1998) were among the first to assert that the enactment of laws designed to address hate (or “bias,” as it is often referred to in the United States) indicated more of a political desire to keep the general population happy as opposed to having any real impact on harm reduction or crime prevention. Most crimes, they suggested, comprise of *some* element of hate, prejudice, bias or targeting. Nonetheless, politicians’ granting of such legislation generally meant that they would be seen as “doing the right thing” in addressing most victims, harm, crime and bigotry in a seemingly “new” form of legislation.

Variance in Responses to Hate Crime Laws

Subsequent issues to emerge in the hate crime debate include claims of segregation (between regular and hate crimes), homogenization (under the umbrella term of “hate crime”), hierarchization (among different groups), exclusion (from official recognition) and denunciation (being measured against other groups). Carney (2001) offers a more nuanced insight into the development of the hate crime paradigm, indicating that this traditionally involves the targeting of an immutable characteristic; the interchangeability of victims; increased and communal fear within the target group; repeated and/or heightened violence; greater psychological trauma; and victims’ reluctance or failure to report victimization. Groups recognized in hate crime statutes have generally been selected based on incurring historical socio-legal persecutions, being over-policed (as offenders) and under-protected (as victims) (Chakraborti & Garland, 2009). These rationales are evident in many groups’ lobbying efforts to enact legal protections or offer legal redress for harms incurred because of identity prejudice. As such, considerations of crime victims and their experiences have moved from focusing on the *act* to addressing the victim’s *identity*. Demarcating hate crimes in this way is reminiscent of an identity politics approach to policy development (Fraser, 2003). While this has resulted in more targeted approach to prejudice-based victimization, the separate and fixed way in which identity categorization presently works creates a “siloing” effect. The construction of identity hierarchies in this manner both determines outcomes and creates disadvantages:

[...] hate crime policy has been formed through the work of lobbying and advisory groups who have had quite narrow remits, often focusing exclusively on one area of victimisation. This has contributed to a hierarchy within hate crime policy itself, whereby some identity groups seem to receive preferential treatment in criminal justice responses to hate crime. (Mason-Bish, 2010, p. 62)

These issues were, in part, the focus of the Law Commission’s initial exploration into whether hate crime laws in England and Wales required updating and amending. The review assessed (and dismissed) the benefits of extending the Crime and Disorder Act 1998 to include hostility demonstrated toward people on the grounds of disability, sexual orientation or transgender identity, while also examining the case for extending the Public Order Act 1986 to include disability

or transgender identity. At that point, the inquiry was not required to consider whether the legislation should apply beyond the five protected characteristics. The ensuing report (Law Commission, 2013, p. 8) proposed the establishment of new Sentencing Council guidelines relating to the five protected characteristics alongside improved recording of data via the Police National Computer. It is evident that the review did not go far enough in its proposals, with the failure to address extending legislation to *new* groups indicative of a lack of awareness of academic scholarship highlighting the exclusionary and discriminatory nature of categorizations among and outside of those selected for an enhanced criminal justice focus.

Schweppe (2012, p. 177) has demonstrated how the recognized hate crime categories in the United Kingdom are minimal compared to some states in the United States that (variously) recognize: citizenship, economic status, family responsibility, matriculation, membership of labor organization, marital status, national origin, personal appearance, political orientation or affiliation, sex and social status. The existence of varied approaches to hate crime inclusion mirrors the subjective status of this particular type of harm. Addressing hate or hostility from a more responsive criminal justice perspective requires dismantling existing, static identity categories that are too exclusive and limiting. This, Schweppe (2012, pp. 182–183) suggests, is a necessary part of efforts to “depoliticise” hate crime:

[J]uries (or triers of fact) [should] determine whether, on the basis of the evidence before them, a hate crime was committed, rather than curtailing the operation of the legislation to a limited number of (albeit fully deserving) victim groups.

As well as improving inclusivity, this approach may also work in the wider public's favor. Despite several high profile cases, police campaigns and efforts at raising awareness among the public, confusion still exists regarding what constitutes a hate incident or crime and who is protected in law (Duggan & Heap, 2014). A statement released by the Home Office (2013) appeared to include *any* form of hate or hostility, not just that directed to members of a demarcated identity group: “Crimes based on hostility to age, gender, or appearance, for example, can also be hate crimes, although they are not part of the five centrally monitored strands” (p. 11). Following the 2007 murder of Sophie Lancaster murder, the judge drew on the alternative appearance embodied by Sophie and her boyfriend Robert Maltby (who survived the attack) when summing up, describing the act as being a “hate crime” against Goth subculture (Garland, 2010).

Similarly, the Merseyside Police approach to addressing hate crimes toward sex workers demonstrates the flexibility of hate crime policy (Campbell, 2014, 2016, 2018; Corteen, 2018). Campbell (2018, p. 61) argues that “sex workers” experiences fit established definitions foregrounding “othering” and social hierarchies, defining hate crimes as expressions of prejudice, discrimination and power. Vulnerability was central to this application, with sex workers embodying situational vulnerability and minority identity status, therefore, being subject to an enhanced risk of harm. As a result, Campbell's research found that applying the hate crime model to violence against sex workers increased the status of these crimes and the seriousness of reports, improved victim care and dedicated services

that monitored investigations and directly investigated some crimes, and led to greater joined-up approaches ensuring safeguarding and justice for sex worker victims of hate crime. While the hate crime approach has not eliminated violence against sex workers in Merseyside, Campbell (2018) argues that “it goes further than many other local regulatory approaches in the UK to prioritize sex worker safety, ensure justice and assert sex workers’ equal right to protection” (p. 69).

In hate crime law, reliance on identity categorizations is a double-edged sword. Restricting hate crime to focus on members of minority groups might limit expansion (avoiding a situation whereby *everyone* falls under *some* form of protection, thus, renders the legislation meaningless), but selective exclusion may be interpreted by some as a signifier of worthlessness (Hall, 2013). Suggestions of more inclusive approaches to recognizing the types of harm currently addressed by hate crime policies have evolved from reframing the concept as “targeted crime” (Stanko, 2001), through to “targeted vulnerability” (Roulstone & Thomas, 2009) and most recently “vulnerability and difference” (Chakraborti & Garland, 2012). Exploring these, and the potential recourse to human rights law (Schweppe, 2012), Mason (2014, p. 65) suggests that:

Together, a combination of these approaches may ultimately assist criminal law to rise to the challenge of greater inclusiveness by recognising vulnerability to victimisation based, not necessarily [on] all forms of difference but, rather, on forms of difference that have a claim to equal rights and freedom from unfair or unjustifiable prejudice.

The importance of conceiving of “vulnerability” beyond its traditional understanding has been addressed by Duggan and Heap (2014) who indicate that as well as previously recognizable “risk” factors (such as gender, age or ability), experiencing identity-based hostility, being vulnerable, and being subject to repeat victimization means hate crime victims have commanded a prioritized status in policy formulation. However, complications arise due to the separating out of responses according to different *types* of identity, despite the similarities between these forms of victimization. The potential for duplicated information, inconsistencies in process, blurred boundaries as to what identity categorization might be more suitable (where multiple are present) and general misinformation regarding the action to be taken are some of the pitfalls of having multiple responses available for similar forms of victimization (Duggan & Heap, 2014).

On the other hand, Mason-Bish (2014, p. 31) guards against consolidation, stating that as criminal justice agencies have produced specific guidance for each strand (after consulting with victim groups and campaigners), “a generic hate crime policy might be unwieldy.” Either way, encouraging victims to engage with a justice system that may cause them further trauma calls into question the usefulness of enhanced criminalization if this results in victims being doubly harmed – first by the initial incident, then by the CJS process. Victims of crime are required to engage with the CJS in a co-operative and collaborative manner if they are to avail themselves of the type of (criminal) justice promoted and offered. Hate crimes in particular encompass additional harms and consequences compared to non-targeted forms of victimization (Iganski, 2002). The potential for hate crime victims – particularly those with additional vulnerabilities – to

face *secondary* harm because of an unsatisfactory CJS experience may render ineffective any enhancement in perpetrator punishment. Nonetheless, the victim-focused approach of hate crime policy and statute signifies a discernible shift in political policy and the role of the victim in the wider criminal justice system.

THE (RE)EMERGENCE OF VICTIM IDENTITY HIERARCHIES

The surge in UK academic and professional interest in (initially racial) targeted victimization in the late twentieth century was, in part, due to the re-emergence of victimology as an area of scholarly interest and the proliferation of surveys designed to provide data and insight into marginalized and/or vulnerable groups (Bowling, 1999). This, coupled with wider social events linked to racial tensions and criminal justice responses to racial minorities, highlighted the plight of victims in criminal, social and political domains. Deans (2010, p. 199) suggests that dedicated support groups enabled the “extraordinary political reinstatement” of the victim by promoting their political voice and reclaiming spaces while acting on the victim’s behalf. Contrastingly, Green (2006, p. 1) has critiqued the turn toward a “victimocracy,” underpinned by “the emergence of rule by victim groups” whose demands upon law and policy is tantamount to special treatment:

[T]oday to be classified as a victim is to be given a special political status, which has no necessary connection with real hardship or actual oppression. Victimhood as a political status is best understood as the outcome of a political strategy by some groups aimed at gaining preferential treatment. In free societies groups often organise to gain advantages for themselves, but the increase in the number and power of groups seeking politically-mandated victim-hood raises some deeper questions.

Victims of crime have not always had access to recognition and redress in criminal justice, although this has been easier for some than others. The socio-political development of the “victim identity” in historical contexts has variously assigned culpability, deservedness and legitimacy to victimhood. Exploring this offers a conceptual framework within which to analyze the discussions around extending hate crime laws to include gender or misogyny given that hate crime studies are a relatively recent development in the victimological field.

Rather than traditionally conceptualized as “innocent” actors in a criminal enterprise, the academic exploration of victimhood was founded on assessing the degree to which the *victim* was culpable for the commission of the criminal act. Three distinct stages characterize academic and political discourse around the victim: their pre-nineteenth century determination as an “essential actor”; their mid-nineteenth to late twentieth century characterization as a “symbolic actor”; and their twentieth century onwards conceptualization as a “fragmented actor” (Kearon & Godfrey, 2007, pp. 30–31). It was due to the scholarly focus during this middle, “symbolic” period that led to the victim occupying a greater role in the central/criminal justice stage, and is of most importance to analyses of hate crime victimization in particular. Key theorists linked to the development of victimology include Benjamin Mendelsohn (1956), Hans von Hentig (1948), Marvin

Wolfgang (1957), Stephen Schafer (1968) and Wolfgang's student Menachem Amir (1971). These early (positivist, male) victimologists sought to investigate the nature of the criminal or victimizing act; the relationship between the criminal and his victim; the actions of either or both preceding the act, and the actions – if any – taken by the victim to deflect or deter the victimization from occurring. Their findings produced several victim typologies which were based on the victim's identity characteristics, their level of responsibility (as indicated by their actions or behaviors), and the degree of attributable victim culpability. These scholars' works set a precedent for what has since been reconceptualized and termed "victim-blaming," with some victims being more adversely affected than others. Victim-blaming discourses first emerged in the 1940s when Mendelsohn identified causal factors that held crime victims to account for the harms they had incurred. His aim was to boost crime prevention efforts using the information he gathered about victim precipitation, facilitation and provocation. Subsequent works by von Hentig, Mendelsohn and Schafer would indicate clear distinctions between identity characteristics and structural factors in terms of victim culpability. Identity aspects, such as the victim's age, gender or mental capacity, may go toward increasing their legitimate claim to victim status, while actions such as provoking a criminal response from an aggressor would lessen or negate this.

The emergence of victim typologies can be seen as linked to, and influential in, developing notions of victim "deservedness" which informs the degree to which victims are seen as more (or less) worthy of justice than others. This in turn can affect access to justice, particularly when coupled with pre-existing stereotypes. The popularity of these early victim typologies influenced further studies on contributory victim precipitation. Wolfgang's (1957) research into homicide indicated that this had often begun with a minor altercation but escalated due to the victim's contributory factors (i.e. carrying weapons, instigating violence or retaliating). However, Wolfgang's student Menachem Amir's research into police reports on forcible rapes in Philadelphia, United States added a new gendered aspect to victim blaming. Using police data, Amir (1971) concluded that a fifth of the rapes in his (limited) sample were victim-precipitated, drawing heavily on prejudicial and sexist ideology when outlining the contributory factors such as the victim being intoxicated, acting or being dressed "seductively," being of dubious reputation or known as sexually "available." The impact of this supposed "expertise" was profound and ongoing; rape and sexual violence continues to be one of the few crimes where the (female) victim's reliability, credibility and potential culpability are scrutinized as closely, if not more so, as those of the alleged perpetrator (Jordan, 2004).

The response from second-wave feminists was to highlight the gendered needs and experiences of female victims, many of whom had been physically or sexually abused by men and faced a significant lack of support services (Cook & Jones, 2007; Hoyle, 2007). The feminist critique exposed implicit bias in measuring victim "deservingness" while simultaneously highlighting the degree to which the "victim" label had become saturated with (masculinist) cultural meaning. They demonstrated how encroaching governance and governmentality was increasingly constructing victims as stakeholders in their own safeguarding (Garland, 1996). This was particularly evident for women held accountable for their own safety

and the actions of those who harm them. The qualities associated to different groups of victims according to their identities, experiences or actions and behaviors gives an early indication as to why some groups of victims may be favored over others. The more blameless a victim (or group of victims) appear to be, the easier it is to push punitive law and order policies.

Being at the bottom of any hierarchy may be undesirable, but being omitted altogether means those in most need may have least access to help. People seen by the dominant majority in society to be troublesome or distasteful – for example, rough sleepers, sex workers and those with problematic drug or alcohol dependencies – often find their needs deprioritized. Their marginalization reinforces often-critiqued ideology behind the concept of “victimhood” as encompassing passivity and suffering (Miers, 1978). This imposed passivity is often exacerbated if victims are also considered vulnerable and without autonomy. Butler (2016) guards against disassociating vulnerability and resistance or agency, suggesting that an interrogation of vulnerability may instead result in a greater understanding of agency. Yet while there has been little problematization of mainstream ideologies of passivity and vulnerability afforded to victims of crime, changes have been evident among grassroots circles (Godfrey, Cox, & Farrall, 2007; Newburn & Stanko, 1994) and gendered domains. In particular, criticisms against employing an unproblematized language of vulnerability in relation to gendered victimization have highlighted the wider deleterious effects:

Our culture, politics, and academic criticism remain troublingly invested in a story of female fragility, a story based on a few key assumptions: women, children and non-masculine men are the victims of male violence, female injury demands society’s retribution, and pain renders the victim of violence helpless. (Hagelin, 2013, p. 3)

Feminists’ adoption of the term “survivor” to refer to women and children who have survived abuse, most usually from men, is a way of counteracting the disempowering passivity (and elements of culpability) which had come to be associated with the “victim” label (Kelly, 1988; Rock, 2007). Survival is fluid, whereby victimhood appears static or disempowering (Fohring, 2018). Surviving abusive experiences also involves a greater degree of personal investment and struggle to “make it” – something not necessarily captured in victim terminology. As Spalek (2006, p. 26) indicates: “Underpinning the ‘victim as survivor’ identity is the theme of individual victim as agent who has resisted their abuse to become emotionally and psychologically stronger.”

Similar critiques prompted Nils Christie’s (1986) seminal work on the “ideal victim,” elements of which still permeate popular and political discourses around victims and victimization (Duggan, 2018). Christie noted how legitimate victim status, or deserving victims, were popularly characterized in specific ways. They should be weak in relation to the offender, ideally female, sick, very old or very young. They should be virtuous, or engaged in legitimate, everyday activity, therefore blameless for what happened to them. They should be unrelated to the offender; this “stranger” element also implied that it is a person, not an organization, who committed the (singular) offence. The offender should be big and bad, allowing the victim to elicit unqualified sympathy through their attained victim

status. The weak, vulnerable, disempowered victim contrasts the strange, scary and motivated perpetrator in a way that provides a clear dichotomy, or divisions, in numerous respects. Situating victims on binaries both against offenders *and* against one another leads to problematic hierarchies. Victim hierarchies based on the “ideal victim” categorization drew on victims’ innate identity characteristics such as gender and age. Christie’s (1986) ideal victim concept marries with Aradau’s (2004) “politics of pity,” whereby emotions toward victims are used by governments to reconstruct and manage their situation, as long as the suffering is recognizable, identifiable and induces sympathy. The nature of the suffering is not necessarily reflective of any inherent value but may feed into responses to it. Exploring who, how and why individuals or groups become worthy of pity, and how this shapes criminal justice responses to them can be illuminating.

As outlined earlier, the current justice approach to hate crimes is one of enhanced punitiveness, with the rationale for additional penalties based on the prejudice harbored by the perpetrator toward the victim(s). Mason (2014, p. 65) outlines the purpose of this, suggesting that “hate crime laws rely upon the mechanism of punitive justice to achieve, not just the instrumental goals of retributivist justice, but also the wider symbolic goals of social justice.” Therefore, laws have the potential to address socially or politically informed hostilities that can manifest as hate crimes. The following section explores the dynamics of gender-based violence and violence against women, examining the contradictions between theories of justice and the lived realities of harm to more fully explore the potential for hate crime statutes to address misogyny or gender hostility.

HATE, HOSTILITY AND VIOLENCE AGAINST WOMEN

Violence against women is currently being afforded an unprecedented level of visibility globally, with past, present and potential victims occupying a central role in this rhetoric. Recent events such as the global #MeToo movement has given a platform for many to share their experiences of sexual harassment and victimization. A substantial amount of feminist research on gender-based violence (GBV) and violence against women (VAW) has highlighted women’s vulnerability to violent victimization, seemingly based on gender alone. The World Health Organisation and United Nations both estimate that 35% of women worldwide will experience physical and/or sexual violence at some point in their lives (FRA, 2014; United Nations, 2015; WHO, 2013). Similarly, reports indicate that up to 70% of women globally have experienced physical and/or sexual violence from an intimate partner specifically (WHO, 2013). Patriarchy is evident in much of this violence, particularly when it is fatal; most domestic murders of women are by their male partner (Aldridge & Browne, 2003; Howarth, Stimpson, Barran, & Robinson, 2009; Howe & Alaattinoğlu, 2018). Often, the reasons given are indicative of male entitlement: threats to his “honour” through her supposed insubordination, promiscuity or infidelity; her rejecting him; her requesting a separation and so forth (Dobash, Dobash, & Cavanagh, 2009; Howe, 2018). Family relations can make it difficult for victims to escape abuse, particularly if there is an expectation that women will remain in a relationship or face wider family abuse or condemnation (Gill, 2014). In the United Kingdom, the Forced Marriage Unit

provides direct support to hundreds of victims annually, while the United Nations estimate that many thousands of women are victims of family-perpetrated “honour” violence annually across the globe (Manjoo, 2012).

Hate crime victimization research has indicated that gender can be a key feature in the disproportionate targeting of women. Higher levels of vulnerability and risk of harm – particularly sexual harm – are notable among women with disabilities (Casteel, Martin, Smith, Gurkha, & Kupper, 2008; Sherry, 2010). Verbal, physical and sexual threats made by men toward Muslim women who wear religious clothing such as the hijab or niqab illustrate a range of gendered elements, from experiencing the voyeuristic “male gaze” through to expressions of male entitlement to women’s bodies (Chakraborti & Zempi, 2012; Zempi & Chakraborti, 2014). In their analysis of women’s experiences of street harassment, Mason-Bish and Zempi (2019, p. 12) indicate how the gendered environment of public space is illustrative of structural hierarchies of power where “to be a woman in public is to be available for men’s comments.” Mason-Bish and Duggan (2019) highlighted similar findings in their empirical research on gendered victimization, with women citing far greater and more frequent experiences of verbal and physical harassment.

Where hostility is directed at women as a group, the fear of violence – especially sexual violence – can lead to women altering their behaviors to reduce perceived risks even if they have not directly experienced harm or threats (Jenness & Broad, 1994). Individual acts of violence against women send a message to *all* women that they should “stay in their place” (Pickup, Williams, & Sweetman, 2001, p. 20). The degree to which acts of violence against individual women can subordinate and frighten women on a wider scale has led feminist scholars to reconceptualize this, initially as “sexual terrorism” (Sheffield, 1992) and more recently as “domestic terrorism” (Pain, 2014). It is notable that the use of this language does not put VAW/GBV on par with discussions around “global terrorism” despite affecting women internationally. The conceptualization as terrorism indicates how the potentiality of this actual or symbolic violence not only serves to regulate women, but also can cause them to internalize fears of victimization to the extent that this has detrimental consequences on their mental health (Silvestri & Crowther-Dowey, 2008; Westbrook, 2008).

In terms of GBV/VAW, there is potential in considering victimization from a perspective of *similarity* rather than difference. Violence against women, as with other forms of recognized hate crime, affect both the individual and their wider community. This is why Carney (2001, p. 319) argues that “rape is the paradigmatic hate crime.” Drawing on the immutable characteristic notion of what characterizes hate crimes, she asserts that like other hate crime victims

the rape victim is selected because she possesses and immutable characteristic – her gender Rape is not an act of violence that simply happens to women – it is an act of hate that happens to women because they are women. (Carney, 2001, pp. 319–320)

The failure to consider rape as a gendered hate crime may reflect the status of law as a traditionally androcentric domain (MacKinnon, 1991). The inherently masculinist nature of legislation (including hate crime laws) makes the consideration of gender or gendered perspectives for inclusion more difficult (Gill & Mason-Bish, 2013). As with much discourse around violence against

women, male agency is frequently removed or denied, especially cases of domestic or sexual violence where women are often framed as being manipulative in order for the crimes against them, or perpetrators of harm, to be excused or mitigated (Howe, 2018). The “message” element of hate crimes is further evidence of the power of social regulation through the fear or threat of violence; individual violent acts work to subordinate members of the target group(s) by instilling fear among group members (Westbrook, 2008). As well as focusing on crime prevention, this may also involve dealing with or managing the impact of crime once event has taken place.

While victim policy remains focused on fitting “new” categories of victims into existing moulds, victims’ specific needs or wants will remain unmet. With regards hate crime, demarcating along identity lines or arbitrarily enhancing the criminalization of existing offences is unlikely to reduce or prevent targeted victimization. An examination of the social and economic factors *underpinning* such prejudice – perhaps especially that which is gendered – must also be present to effect positive change. To do this requires adequate recognition that people embody multiple (minority) identities, therefore, may be more vulnerable to targeted victimization else victims “fall through gaps”:

Conceiving of hate crimes simply as offences directed towards individual strands of a person’s identity fails to give adequate recognition to the interplay of identities with one another and with other personal, social and situational characteristics. (Chakraborti, 2015, p. 17)

The concept of “intersectionality” (Crenshaw, 1989) seeks to remedy this by recognizing and providing space for different sites of identity to meet – or intersect – as parts of a whole. Intersectionality usually refers to the different identities one person will embody (e.g. their race, gender, class, age, etc.) at any given time. This means addressing the different aspects of a person’s identity that may have resonance in the victimization they have experienced, or render them more a vulnerable target due to the intersections of race, ethnicity, transgender identity, class and disability (Chakraborti & Zempi, 2012; Meyer, 2008). Research on people’s experiences of prejudice on multiple bases has indicated the futility and falsification of trying separate out intent or impact along identity lines (Fogg-Davis, 2006; Lloyd, 2005; Spelman, 1990). Therefore, addressing intersectionality and targeted victimization at policy level may be more effective if focused on harmonizing, rather than separating out, identity-based initiatives (Duggan & Heap, 2014). For women in particular, situating intersectionality alongside gender indicates the complexities of the current hate crime siloing approach and the impact of excluding gender or misogyny as a discreet category. To assess these issues in more depth, the following section explores two case studies: the first addressing the intersectionality of gender and sexual orientation in lesbian women’s victimization, and the second outlining how misogyny manifests in the online gender-based victimization of women.

Case Study One: Intersectionalities of Gender and Sexual Identity in Violence Against Women

Violence against women, alongside violence against people who identify as lesbian, gay, bisexual, transgender or queer (LGBTQ), is variously acknowledged

in domestic and international policy and law. The recognition of a woman's right to be free from gender-based violence has been codified in international human rights, including the *Convention for the Elimination of All Forms of Discrimination Against Women*¹ and the *Declaration on the Elimination of Violence Against Women*.² These pre-date the recognition of sexual orientation as requiring specific protection (established in 2011) despite earlier recognition that discrimination based on gender *and* sexual orientation render lesbians more vulnerable to victimization. The Special Rapporteur reports on Torture and Cruel, Inhuman or Degrading Treatment or Punishment noted how perceived deviance from socially constructed gender expectations had resulted in sexual minorities being disproportionately subjected to dehumanization, ill-treatment and torture, with a particular focus on specific allegations of abuses perpetrated against lesbians, including rape and sexual violence, as a means of intimidation and social regulation.³

There is a growing acceptance in perceptions of biological sex (i.e. male/female) as being different to gender (i.e. man/woman) with socially constructed gender roles often being measured against a dominant form of heteronormativity (Butler, 1990; Meyer, 2008). These socially imposed gender roles guide the "acceptable" behavior of particular genders, reinforcing compliance or punishing "deviance" with the threat or actuality of hate-based violence. Set against a backdrop of male violence toward women, research has indicated that women are "more likely to be attacked when they [are] not performing gender appropriately" with the added dynamic that the victimization they experience functions as a regulatory tool to others (Mason-Bish, 2014, p. 24). The added dynamic of embodying an LGBTQ identity may exacerbate these perceptions of deviance – and exposure to victimization – along both gender and sexual orientation lines.

This regulatory approach has become increasingly evident alongside greater variations in the way people visibly express and identify their gender (Dragiewicz, 2008; Stearns, 1995). While gender does not determine a person's sexual orientation, the two links in the sense that a person's gender is associated with how others infer their sexual orientation. Additionally, sexual orientation is determined not only by a reading of the individual's gender but also the gender(s) of those in whom they have a sexual interest (Stearns, 1995). In recent years, the socially constructed nature of gender has led to a multiplicity of both gender and sexual orientation identities emerging in line with a greater awareness of variance within these (i.e. non-binary, genderqueer, asexual, pansexual, etc.). However, where specificity remains constant – for example, lesbians being women with a sexual interest in other women – gender and sexual orientation coalesce within the lesbian identity.

Bell and Perry (2015) assert that homosexuality is associated with the violation of gender norms, therefore homophobia is considered to be informed by heterosexism; the promotion of heteronormativity alongside an ideological stigmatization of non-heterosexual behaviors and identities (Herek, 2000). Heteronormativity promotes attraction to the opposite sex, so deviation from this norm simultaneously implies gender role deviation, which can lead to responses rooted in patriarchal fear and hatred. This may be implicit or explicit, given that patriarchy is understood to be "...a system of social structures, and

practices in which men dominate, oppress and exploit women” (Walby, 1989, p. 214). Societies shaped by religious doctrine and mandated by male authorities have developed attitudes and systems that promote and normalize male dominance, supposedly on (male) interpretations of doctrine that depict women as inherently inferior or subservient to men. Heteronormative regulation of women’s identities, behaviors and expressions embodies the heteropatriarchal notion that women are submissive to men, which in turn emphasizes the heterosexual dynamic of violence against women (Hearn, 1998). This dynamic plays a significant role in hate crimes committed against women generally, and LGBTQ women specifically as the interactional dynamics between sexual orientation, gender, and patriarchy creates a toxic environment for those who do not conform to expectations. However, to capture the gendered nature of this victimization, it is more accurate to describe this as “lesbophobia” (Robson, 1992).

VAW and lesbophobia/homophobia share characteristics, such as often taking the form of “low-level” victimization (i.e. verbal abuse, intimidation or threats of physical assault) reported to peers or third parties rather than authorities. These incidents rarely result in victims accessing any form of criminal justice, or even receiving wider public attention. The presence of a sensationalist element can instigate media coverage, particularly if it conforms to popular tropes. An example of this was the voluminous press attention paid to a 2019 incident involving two women attacked on a bus by four teenage boys in London, England. The group verbally harassed the women in a sexually aggressive manner, including demands that they kiss for the boys’ entertainment. Upon failing to do so, members of the group physically attacked the women whereupon the image of their bloody and distraught faces quickly gained traction in the press. Several boys in the group were charged with aggravated hate crime offences (BBC News, 2019). As there is no gender or misogyny hate crime strand currently available, and as the women identified as lesbian, pursuing the case as hostility based upon sexual orientation prejudice appears prudent. However, this incident was inherently misogynistic – it was the women’s gender *and* their sexual identity that was being centered on in the demands made for the boys’ voyeuristic entertainment. Furthermore, it was the women’s insubordination to the boys’ demands to kiss which resulted in them being subject to male violence; their sexual identities alone were not the initial grounds for hostility. Therefore, the women’s gender is crucial to understanding this incident, yet it will be pursued as a homophobic hate crime.

Lesbians who alter their appearance or behaviors in an attempt to “pass” as heterosexual to deter lesbophobic/homophobic victimization from heterosexual men may avoid this, but instead be subjected to sexist or misogynistic abuse due to the relative impunity with which men’s verbal hostility toward women is treated (Connell, 1992; Ferraro, 1996; Mason-Bish & Duggan, 2019). Social theorists have noted how societies (and the labels they produce) variously create and reinforce roles and norms through seemingly everyday practices which become embedded to the point of naturalization (Goffman, 1974). Inherent power structures function to construct hegemonic perspectives on identity, which inform social institutions and cultural practices (Connell, 1987). The regularity and familiarity of these structured actions serve to reinforce their naturalization, only becoming

evident when imposed “norms” are transgressed in some way (Messerschmidt, 1993). However, rather than demonstrating the multiplicity of ways of being, these transgressions may result in reinforcing the naturalized construction of the pre-existing state of being. Notions of difference, therefore, are assessed along hierarchical lines and benchmarked against this pre-existing state; actions to reinforce, sustain or impose divisions may be read as “doing difference” (Perry, 2001) in that the symbolic nature of targeting based on difference reinforces segregation as natural rather than problematizing it. Men’s verbal or physical hostility toward lesbians invokes this hierarchy, initially at the point of expression and subsequently in the absence of social condemnation.

Responses to targeted abuse have sought to capture the wider social dynamics informing prejudice. Drawing on Goffman’s idea of “framing,” Snow and Benford (1988, 1992) explored the potential of “collective action frames” in providing foundations upon which social campaigns are built. These campaigns are characterized by shared action-oriented beliefs and used to negotiate the wider socio-political environment that embeds and responds to activism. Lesbian (and gay) anti-violence movements have used collective action frames to expose the structural factors informing and sustaining lesbophobic/homophobic prejudice in a given society. However, Jenness and Broad (1994) demonstrated how a gendered analysis did not feature as prominently in these movements as it had in the feminist arena. The failure to recognize the impact of patriarchy in lesbophobic (and homophobic) victimization created a distance between the two movements where a shared approach was needed. Intentionally or otherwise, critiques of patriarchy at the time developed the notion of “sexual terrorism” along heterosexual lines. Sheffield (1992, p. 392) defined sexual terrorism as “a system by which males frighten and, by frightening, dominate and control females” through actual and implied violence. The implied element was of significance as it speaks to the socially controlling potential of fear that serves to regulate behaviors. The notion of sexual terrorism expands on Brownmiller’s (1975) work which indicated how men benefited from social control techniques (such as instances of rape) which primarily affected women, even if they were not complicit in manifesting these. Davis (1994) also noted the base level at which such control can operate in public environments, citing street harassment as a means through which to remind women of their vulnerability to sexual violence. The appropriation of the language of terror was more recently adopted by Pain (2014) who argued that within the private sphere, domestic violence can be considered a form of “everyday terrorism.”

The wider turn to patriarchy and the framework of structural analysis it offered in highlighting women’s victimization at the hands of male perpetrators was fundamental to connect instances of violence across time periods, cultures and societies. Indeed, as Caputi (1992, p. 240, original emphasis) noted, “one of the most significant achievements of the Women’s Liberation Movement has been the naming of *sexual violence* as a systematic form of patriarchal oppression.” This in turn necessitated a gendering of the subjects (usually women) and objects (usually men) of fear, as well as the types of violence involved. Certainly, many cases of men’s violence toward lesbians comprises of a sexualized component that

addresses the woman's gender and sexual orientation in a threatening manner. Nonetheless, Jenness and Broad (1994) highlighted the failure to apply this gendered analysis to lesbophobic/homophobic victimization. Examining several US anti-violence campaigns that were either gay and lesbian-sponsored or feminist-inspired, they discovered (at the time) that:

There is no advice given regarding whether women should report the rape to a gay/lesbian anti-violence project, a feminist-sponsored anti-violence project, or both. Thus, violence against lesbians as *women* is omitted from the work of gay and lesbian-sponsored anti-violence projects. (Jenness & Broad, 1994, p. 414, original emphasis)

This separation continues in societies where hate crime legislation exists. Lesbian women form a minority cohort in both homophobic hate crime *and* violence against women data, research and policy. In foregrounding gender, the VAW literature prioritizes the experiences of “women” but may overlook some of the nuanced aspects affecting lesbian women specifically. On the other hand, in foregrounding sexuality, homophobia scholarship may overlook *women's* experiences specifically when seeking to account for hate and bias based upon sexual orientation prejudice. Therefore, lesbian women's intersectional experiences may be sidelined or omitted on the basis of both gendered and sexuality differences by virtue of not being dominant in either domain, but do feature in hate crime paradigms. By comparison, violence against heterosexual women – who do not occupy a recognized protected characteristic – does not enter the hate crime framework of analysis based on gender alone.

Case Study Two: Misogyny in the Online Gender-based Victimization of Women

The advent and proliferation of social media is a key element of social change that features heavily in contemporary experiences of gendered or misogynistic victimization (KhosravikNik & Esposito, 2018). Social media facilitates greater interactions between people in virtual spaces, with free-to-use platforms *Facebook*, *Instagram* and *Twitter* dominating among the most popular forums where people can indulge their desire for “constant connectivity” (Keipi, Nasi, Oksanen, & Rasanen, 2017, p. 2). Since its creation in 2006, *Twitter* in particular has become an immensely prevalent means of sharing information and comment globally. However, alongside the rise in popularity of social media has been a proliferation of harmful and problematic behaviors leading to the development of a “new frontier for spreading hate” (Banks, 2010, p. 234). Hardaker (2013) outlines how the “trolling” of individuals involves targeting them for abuse and harassment, usually by unidentifiable people, in a manner that can escalate very quickly in a largely unregulated cyberspace. The use of this term for online misogyny specifically has been critiqued on the basis that it “does not adequately capture the sexually explicit rhetoric, stark misogyny, or violence of contemporary gendered cyberhate” (Jane, 2017, p. 65). Instead, Jane (2017, p. 64) offers an overview of how these behaviors have also been variously described as “cyber harassment” (Citron, 2014), “technology violence” (Ostini & Hopkins, 2015), “technology-facilitated sexual violence” (Henry & Powell, 2015, 2018), “gendertrolling” (Mantilla, 2015), “cyber VAWG” (United Nations, 2015) and “cybersexism” (Poland, 2016).

The proliferation of terms addressing the gendered nature of online abuse has emerged in tandem with research on the issue. A UN report (2015) which evidenced the significantly gendered nature of online hostility detailed how almost three-quarters (73%) of women and girls had experienced or been exposed some form of online violence, with those at heightened risk being aged between 18 and 24 years old. Organized forms of this “cybersexism” involves men using technology to express their vilification of, and power over, women (Poland, 2016, p. 3). In the gaming world, the online abuse of high-profile women became prolific enough to be termed #Gamergate (Braithwaite, 2018). In the United Kingdom, women with high profiles have been targeted, including Cambridge Professor Mary Beard (who received bomb threats following a television appearance), Caroline Criado-Perez (who received rape and death threats for her campaign to have Jane Austen represented on a sterling bank note) and Labor MP Stella Cresey (who received rape threats for publicly supporting Criado-Perez’s campaign) (Hardaker & McGlashan, 2016, “Real men don’t hate women”: Twitter rape threats and group identity). While two of Criado-Perez’s abusers – Isabella Sorley and John Nimmo – were jailed for several weeks, for the most part misogynistic abuse remains unchallenged or unreported on *Twitter*.

The rise in “technology-facilitated sexual violence” (Henry & Powell, 2015, Embodied harms: Gender, shame, and technology-facilitated sexual violence) goes far beyond harassment, encompassing threats, image-based abuse, cyberstalking, impersonation and a phenomenon directly linked to the cyber domain: doxing. Doxing, or disseminating someone’s personal information online without their consent, incites Internet antagonists or encourage and enable people to “hunt targets offline” (Jane, 2017, p. 68). However, the futility of policing the vast number of sexist, misogynistic or threatening comments made to online women commentators means tolerance levels of certain types of online abuse alter accordingly to the point where such behavior is expected or even anticipated (Moynihan, 1993). Bannister and Kearns (2009, p. 182) have indicated how

the sociospatial situation in which we find ourselves both influences our predisposition towards tolerance and determines a set of other drivers of the tolerant response, so that our thresholds of tolerance are spatially specific and spatially variant.

Consequently, some types of behavior – or some types of victim – may become acceptable in settings where levels of tolerance and behavioral expectations fuel, lessen or fundamentally alter perceptions of “legitimate” victimization.

The anonymity afforded to users breeds otherwise morally objectionable behaviors that inform enhanced notions of disinhibition and de-individuation (KhosravikNik & Esposito, 2018). Trolling on *Twitter* has provided ample evidence of the “normalising of deviancy,” where ordinary people are increasingly guilty of new forms of deviance in comparison to traditionally deviant criminal behaviors, which are increasingly seen as normal (Krauthammer, 1993, p. 20). What may begin with isolated commentators can quickly become groups of people actively harassing a particular target. Therefore, linked to de-individuation is the rise in group salience and polarization, often achieved by bringing previously diverse individuals or fragmented groups together through fostering “a collective

identity and sense of community” (Banks, 2010, p. 234). These communities engage in prejudice enacted through “hate speech”; hatred is expressed against particular targets while they are simultaneously excluded from

participating in the broader deliberative processes required for democracy to happen, by rendering them unworthy of participation and limiting the likelihood of others recognising them as legitimate participants in speech. (Gelber, 2011, p. 198)

Hate speech can incite physical violence. Williams’ (2006) research demonstrated the virtual and physical offending patterns of perpetrators of online misogyny. This is evident through the rise of online groups of men who identify as “involuntary celibates,” otherwise known as “incels.” Incels are an increasingly global phenomenon whose actions and beliefs are reminiscent of patriarchal ideologies imbued with misogynistic values. Online communities of incels are mainly composed of men who share the collective experience of being denied sex by women; this “inceldom” is characterized as incredibly self-loathing and aggressive toward anybody who is sexually active (Williams, 2018). Occupying areas of the internet commonly referred to as the “manosphere,” incels upload blogs, forums and podcasts linked to men’s rights activism, regularly decrying feminists and women’s groups by using misogynist language and imagery (Marwick & Caplan, 2018). Members seek encouragement and justification through engaging in online discussions through social media platforms; sometimes implicated in attacks labeled as “gender terrorism” by the mass media (Squirrell, 2018). The activities demonstrated by members of these groups illustrate the inherent dangers of involuntary celibacy ideology within a wider misogynistic online sphere. This includes vitriolic backlashes against supposed “feminist agendas” and anti-rape efforts, with many claiming that rape culture is little more than a feminist-inspired moral panic (Gotell & Dutton, 2016). Marwick and Caplan (2018, p. 70) demonstrate how men’s rights activists rely on adverse feminist reactions, often manipulating academic work to reinforce and justify their claims to deluded feminist agendas. The largely unrestricted nature of the Internet means that the misogynistic language and toxic views about women that are central to the involuntary celibate agenda may encourage individuals to commit violent crimes in the real world.

Incel group dynamics allow for a collective loss of individuality and, in turn, personal responsibility for activities otherwise deemed morally abhorrent. The growth of shared ideologies leads to the formation of cyber “mobs” (Citron, 2009) whose identities are often polarized from those they seek to denigrate. The expression of strong, inflammatory and often controversial opinions are designed to attract the attention (and support) of likeminded others, and are more easily fostered in an online – as opposed to physical – environment. Known as “flaming,” members’ engagement in such behaviors help reinforce the collective identity uniting affiliates while also setting up the context in which “martyrs” – those who act out their hatred – emerge. Jane (2017) has indicated how the evolution of such “flaming” behaviors when targeted at women specifically highlight the inherent misogyny that has come to shape the collective targeting of women while also raising the profile of men affiliated to such abusive rhetoric.

The 2014 Isla Vista Killings and the 2018 Toronto Van Attack indicate the potential power of these cyber-dynamics. In Isla Vista, 22-year-old Eliot Rodger uploaded an autobiographical manifesto and YouTube video where he outlined his misery, loneliness and aggression, blaming women for him still being a virgin; soon after, he killed six people and injured a further fourteen before shooting himself. Incels who considered Rodger a martyr for the cause and a hero lauded him online. Among them was Toronto resident Alek Minassian, who posted a Facebook status praising Eliot Rodger: “The Incel Rebellion has already begun! We will overthrow all the Chads and Stacys! All Hail the Supreme Gentleman Elliot Rodger!” (BBC News, 2018). Moments later, Minassian drove a large van into members of the public, killing 10 people and injured 14 more. As before, several online posts surfaced praising Minassian as a community hero and thanking him for his service to the “cause.” Such evident male entitlement indicates a correlation between patriarchal ideals of rights and expectations, particularly around women’s bodies and sexuality; this is espoused by Incel ideology that in turn justifies gendered acts of aggression and violence (DeKeseredy & Schwartz, 2016).

The power of virtual condemnation becomes more powerful as global connectivity increases. With this comes the potential for the enhanced persecution of those accessing such spaces. KhosraviNik and Esposito (2018, p. 55) suggest that while academic insight into cyberhate has evolved rapidly:

gender has not received sufficient institutional and academic attention as a source of hate in its own right. While the dangers and risks of the digital world are well acknowledged, we still lack a clear grasp of what it actually entails being a woman navigating the cyberspace, and which specific threats and troubles this journal can bring about.

In their research into victims of online misogyny, Lewis, Rowe, and Wiper (2018, p. 528) indicated how discerning actual hatred was difficult as “perpetrators seemed not to hate women in a categorical sense but rather to be motivated by a perception that women engaging in feminist debate were transgressing appropriate gender roles.” In other words, it is a powerful, cheap and almost effortless way to silence, control and contain women in virtual spaces. Similarly, D’Souza, Griffin, Schackleton, and Walt (2018) explored the failure to legislate against gender hate speech in Australia, showing how the nature and impact of this speech, alongside the direct and indirect harms affiliated to this form of victimization, highlighted the silencing impact gender hate speech can have on all women – not just those directly targeted by such hostility. They argue that regulating gender hate speech is necessary to enhance women’s agency, particularly in the public domain, allowing them equal access to civil society.

The open nature of such spaces and wider visibility to others beyond the intended targets means the impact can be much wider ranging. Weinstein (1992) categorized the collective fear of a victim’s cultural group following the victimization of members of that group as the “in terrorem” effect to demonstrate how wide the impacts of harm can resonate. Jenness and Grattet (2001, p. 179) argue that states have a responsibility to ensure the safety and security of vulnerable groups in a way that affirms “prosocial values of tolerance and respect” to wider society. The enactment of laws against such harm sends an important message

that liberal democracies have a “strong interest ... in promoting diversity and demonstrating equal concern and respect for all citizens” (Al-Hakim & Dimock, 2012, p. 572). The failure to fully implement such laws and safety practices may be rooted in structural notions of victim-blaming directed toward women targets of gendered cyberhate; instead of support and assistance, they incur further shame and blame in a manner reminiscent of traditional forms of domestic, sexual and gendered victimization prevention “advice”:

Advising or coercing women to opt out of or dramatically change their online engagement is a form of digital disenfranchisement. It is at odds with the recognition by an increasing number of nations that equality of access to affordable and effective broadband is vital for nations’ economic and social development. (Jane, 2017, p. 73)

In line with traditional approaches to gendered victimization, directing the (female) cyber victim to modify, limit or forgo their online presence is an easier and more convenient activity than seeking out or reprimanding the (male) cyber perpetrator.

CONCLUSION

The exclusion of gender or misogyny from hate crime protections in England and Wales has been founded on several grounds: women not constituting a “minority,” the presumption that much of the victimization they experience takes place within the context of an interpersonal or familial relationship, and the fact that legislative protections already exist to address many of these harms (Mason-Bish, 2014). It is true that not *all* violence against women is rooted in hate or hostility, but the invoking of such thresholds for debates on gender and misogyny hate crime (but not other strands) is telling. Much gender-based victimization which involves repeat or targeted elements – for example, online hostility – would likely be characterized as “more serious” in nature if considered a hate crime. This in turn would require more active protections and responses by organizations and statutory agencies. The continued failure to include gender or misogyny is testament to the gendered power structures in society that determine which gender dictates the law. Linked to this is the knowledge that, traditionally, engagement with the criminal justice system has not been a positive experience for women as victims of crime and may account for why many women remain silent about the harms they have incurred. Therefore, if the law was changed to incorporate gender or misogyny as recognized grounds of hostility for the purposes of prosecution, whether or not women would avail themselves of this legal redress remains to be seen.

Those active as advocates, practitioners or campaigners in the field of violence against women prevention have also expressed caution about the ability of hate crime policy as it currently stands to address issues of intersectionality and diversity in gendered harm at a sophisticated level (Gill & Mason-Bish, 2013). While it is encouraging that the Law Commission are looking at this issue again in light of ongoing cultural developments (i.e. #metoo), it is important to note that legislation which targets individuals and acts can only do so much; real change needs to come at a structural level. The prevalence of violence against women is the result

of unequal power relations between men and women in society (Pickup, Williams, & Sweetman, 2001). Many forms of male violence against women are reminiscent of existing hate crimes in terms of intent, approach and impact, yet the issue may not be with the *gender* of the victim per se but the gender relations informing the aggressor's feelings of entitlement and resentment toward the victim. This is why it is important to include in protections as it fits with the framework used for other characteristics. However, it is important to acknowledge that addressing gender or misogyny in hate crime legislation may do much for data collection and capture, but likely very little to effectively reduce actual victimization.

In terms of whether it should be "gender" or "misogyny" that is recognized, valid arguments exist for both. While adopting "misogyny" would highlight the specificity of this type of abuse and who is affected, it risks being considered exclusionary (of men) and potentially underused if the term is one that people are unfamiliar with or misunderstand. Adopting "gender" not only lends itself to greater inclusivity but also allows for people of all genders (and none) to avail themselves of these protections. In doing so, scholars, practitioners and policymakers will be able to clearly see the differences between who is (and is not) experiences or reporting gender hate crime, who/what this involves and what – if any – criminal justice outcomes arise as a result. This is vital if efforts to recognize, respond and reduce targeted victimization on the basis of gender are to prevail.

NOTES

1. G.A. Res. 34/180, UN GAOR Supp. No. 46.
2. G.A. Res. 48/04, 48 UN GAOR Supp. No. 49.
3. UN Doc. A/56/156, July 3, 2001 and UN Doc. E/CN.4/2002/76, December 27, 2001.

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