

Title: Thinking outside the box: intersectionality as a hate crime research framework

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Abstract:

There is little sustained exploration of intersectionality within disability studies or hate crime research. Both concepts fail to fully acknowledge the multiple, over-lapping and complicated experiences of risk and victimisation. A unified approach to disability through the social model paradigm may have distracted from the diversity of experiences of those with disabilities. Additionally, intersectionality is at odds with the silo-framework of hate crime policy and legislation. Using data from a research study on disabled people's experiences of hate crime, this article illustrates how applying intersectional analysis to hate crimes contributes to a greater understanding of experiences than the traditional single strand approach. It demonstrates that the current strand-based approach to hate crime disguises the variety of intersecting elements of identity. This paper provides an original contribution to existing literature on hate crime and intersectional criminology and offers an alternative human rights based approach.

Key words: intersectionality, disability hate crime, hate crime, disablism, victimisation

Introduction

Academic and policy interest in hate crime, although well established, has been dominated by research and debate around race and religious hatred, with disability on the margins of hate interest (Tyson, Giannasi and Hall, 2015; Sin, 2015; Chakraborti and Garland, 2015; Hall, 2013; Levin, 2013; Chakraborti and Garland, 2009). Despite a recent and welcome increase in research into disability hate crimes, there remains limited robust academic research (Mikton and Shakespeare, 2014), although that which exists suggests that disabled people are at greater risk of victimisation than the general population (Khalifeh et al., 2013; Sin et al., 2009). Many studies report a resulting lack of confidence in the criminal justice system by disabled people (Coleman, Sykes and Walker, 2013; Chaplin, Flatley and Smith, 2011; Clement et al., 2011; Vincent et al., 2009; Mind, 2007). Few studies apply intersectionality to hate crime research (Balderston, 2013; Sherry, 2013b; APPG, 2019) and this paper contributes new knowledge to this area of study.

This paper draws upon PhD research to exemplify the advantages of utilising intersectionality to understanding disability hate crime. It begins with an overview of hate crime and intersectionality as a research method, then utilises a case study approach to illustrate the contribution of intersectionality to understanding hate crime victimisation. It concludes by recommending greater integration and application of intersectionality to hate crime.

Defining Hate Crime

The concept of 'hate crime' was adopted by British researchers following the Stephen Lawrence Inquiry in relation to race hate crime (Macpherson, 1999; Hall, 2013). There are however five legally protected characteristics, or hate crime 'strands', in the United

Kingdom currently: race/ethnic origin, religion/faith, sexual orientation, disability and gender identity. The impact of civil rights activism is evidenced in the recognition of these protected characteristics over others, though there was initial resistance to some of their inclusion (Giannasi, 2015). These strands share a history of oppression, evidence of increased victimisation and a legacy of poor criminal justice responses.

The Crown Prosecution Service defines hate crime as “any incident which the victim, or anyone else, thinks is based on someone’s prejudice towards them because of their race, religion, sexual orientation, disability or because they are transgender” (CPS, undated, para 9). For the purposes of this article, attention is drawn to the use of the word “or” in this definition, as it distinguishes between each of these protected characteristics separately. Intersectionality offers an alternative approach that enables a consideration of such characteristics combined.

Hate Crime Legislation

Hate crime legislation was designed to send a positive message to specific victim groups and was deemed a useful way for police to engage with marginalised communities.

However, not all groups are protected equally within the legislation. Hate crime legislation has been criticised for creating competition between victim groups (Mason-Bish, 2015), in that not all available legislation applies to all strands and is perceived to have created a ‘two-tiered’ system of hate crimes, or what the Law Commission termed a “hierarchy of victims” (2013: 84; Roulstone, Thomas & Balderston, 2011). Despite specific legislation for racial and religiously motivated offences, established by the Crime and Disorder Act 1998 (and amended by the Anti-Terrorism, Crime and Security Act, 2001), there is no specific legislation for disability motivated offences. Rather, there are provisions within the Criminal

Justice Act (CJA) 2003 that merely call for an enhanced sentence as a result of proof of motivation or demonstration of hostility.

There have also been calls for additional categories of protected characteristics and the Law Commission is currently reviewing existing hate crime legislation, with their report expected in early 2020. Strong arguments have been put forward for legislative inclusion for groups with less social advocacy, such as homeless people, asylum seekers, those with drug or alcohol dependency, and other marginalised groups such as sex workers, the elderly and, particularly, women (Chakraborti, 2016; Chakraborti, Garland and Hardy, 2014a; Chakraborti and Garland, 2012; Garland, 2011; Perry, 2001). Similarities are highlighted between the experiences of these groups and those of existing strands. For example, Garland and Hodkinson (2014) identify a number of comparables between those in alternative subculture and traditional hate strands. Failure to extend protection to these other groups suggests that they are less deserving of protection than other minority communities and highlights concerns that the strand system is unfair and leads to rivalries and competition for resources (Garland, 2011; Mason-Bish, 2010; Jacobs and Potter, 1998). This challenges the purported positive message that hate crime legislation is supposed to be sending out (Mason-Bish, 2015), however, extending the legislation runs the risk of watering down the provisions to the point of meaninglessness (Mason, 2015). To include additional groups downplays the historical significance seen in established strands and risks disappointing those very groups the legislation was originally enacted to protect. Ultimately, any approach to legislation which focuses on specific identity-characteristics contributes to a 'silo' approach, where groups are added to policy as time goes on (Mason-Bish, 2015). This approach fails to consider the intersections of existing strands with other, excluded groups; for example, those who may be multiple-disadvantaged through being both disabled and a member of an ethnic minority community (Mason-Bish, 2015; Crock,

Ernst and McCallum Ao, 2011). As such, the current strand-based approach to hate crime has tended to oversimplify victim groups and does not take into account the diversity of victims and their experiences.

A strand-based approach also communicates that one particular element of a victim's identity is more prevalent than others (Chakraborti and Garland, 2012). Multiple identities are largely ignored in favour of "simplistic, individualist, single-identity protection" (Sherry, 2013a: 83) whereas hate crime policy would be better placed to "understand the fluidity of identity and the multiple ways in which prejudice and violence might be experienced" (Mason-Bish, 2015: 25; Garland, 2011). This article contends that hate crime frameworks must also be mindful to recognise the diversity *within* groups, as the dynamics of particular elements of subgroups can be lost (Sherry, 2013a). The next section considers the contribution intersectionality can offer to the debate.

Intersectionality in research practice

Intersectionality within research involves the concurrent analyses of multiple, intersecting elements of identity, based on the principle that the impact of one form of subordination may differ depending on its combination with other potential sources. Thiara and Hague define intersectionality as "the intersection of multiple systems of oppression and domination [which] shapes individual and collective experiences and struggles" (2013:107). Intersectionality challenges the researcher to contemplate what it means to have a marginalised status within a marginalised group (Purdie-Vaughns and Eibach, 2008). Originating in Black Feminist and Critical Race theories, it was originally most associated with the work of Kimberle Crenshaw in her research on multiple forms of oppression experienced by African-American women (1991). Subsequent research has utilised an intersectional approach to explore oppression not simply on the basis of gender and race

but also by class, sexual orientation and ability. For example, Liasidou (2013) and Balderston (2013) advocate it as a suitable method for interpreting experiences of disability hate crime, as it explores the way in which social and cultural categories inter-weave and compound forms of oppression and marginalisation, yet its usage has been limited to date. Its analytical approach to researching minority groups considers the meaning and consequences of multiple and overlapping categories of identity, difference and disadvantage. By considering multiple, intersecting layers of oppression or subordination, the impact of experiences of crime, and by extension, hate crime, can therefore vary.

Applying intersectionality to disability hate crimes

As intersectionality acknowledges a compounding effect, it advocates awareness that every individual occupies multiple categories simultaneously and that those individuals can be members of majority and minority communities concurrently. The challenge exists therefore in applying intersectionality to hate crime research. The All Party Parliamentary Group's recent report on hate crime acknowledges that "the current legislation does not allow for this intersectionality to be recorded so the picture that authorities have lacks depth and subtlety" (2019: 4). Intersectionality is inherently at odds with hate crime legislation and policy, in that it not just acknowledges overlapping 'layers', or elements of identity, but considers that traditional, simplistic analyses fail to make sense of the lived experience of victims (Horvath and Kelly, 2007). Contrastingly, hate crime is based on a silo or strand-based, additive approach. Perry (2009) proposes that this single-strand approach to hate crime undermines victims' confidence in the criminal justice system as it misses opportunities to meet victims' needs and prevent further crime. Policy should not assume that one element of identity is dominant over others, as a single strand approach to hate crime risks failing to capture the entirety of a victim experience. Rather, what is needed is consideration of the multiple identities involved. Research has shown how the experience of

disability is compounded when disabled individuals belong to multiple minority groups (Coleman, Sykes and Walker, 2013; Clement et al., 2011). However, lack of integration between current strands of hate crime and the possible neglect of gender and socio-economic perspectives at policy level further contributes to inadequate crime prevention and ineffective responses. Accumulated risk factors can heighten the likelihood of being a victim, both on an individual and socio-environmental level, producing different levels of risk and experience (Sin, 2015).

A hate crime model informed by intersectionality thus needs to engage on multiple levels and reduce the “real risks of oversimplifying the victim experience” (Perry, 2009: 9). There have been calls for further intersectional analysis of disability hate crimes to identify and explore how other elements of identity can impact upon experiences (Sin, 2014; Sherry, 2013b) and this paper addresses that call. To date there have been limited attempts to understand the experiences of those who occupy multiple positions of inferiority such as women with disabilities (Sin et al., 2009; Perry, 2003), although there are some exceptions (Williams and Tregidga, 2014; Barclay and Mulligan, 2009; Brownridge, 2006). A possible explanation for a lack of sustained exploration of intersectionality in Disability Studies may be the dominant ethos of the disabled people’s movement as a homogenous group. Its unified political identity, which has successfully gained recognition and legislation for disabled victims of crime, could have potentially detracted from an acknowledgement of the diversity of disabled people, resulting in an absence of insights from Disability Studies exploring intersections and multiplicity (Thiara, Hague and Mullender, 2011). Added to this are pre-existing perceptions about disability on the part of both non-disabled people and researchers that can obscure both intragroup difference and emphasise possible commonalities across disabled communities (Cole, 2009). Presenting the disabled people’s

movement as a united, marginalised 'other' may have contributed to a denial of personal and multiple identities within (Peters, 1996).

Miller, Gillinson and Huber (2006) raise concerns as to the suitability of intersectionality to disability hate crime research, as many disabled people are essentialised and pathologised by their impairments and therefore lack an equal starting point. Yet, an intersectionality approach does not assume a level of equality of positionality. As Anthias (1988) notes, different layers of identity are dominant at different times. There is no deficiency in disabled people being placed in an unequal position, because the very nature of intersectionality allows for an understanding of that inequality and perceived inferiority. What intersectionality offers to disability is a move away from such individual pathology and towards a framework on social justice and human rights as a method of tackling wider systemic regimes, in sympathy with social model proponents (Liasidou, 2013).

Consequently, consideration of hate crime on an individual strand basis fails to recognise the interplay of various elements of identity with other social and situational characteristics (Mason-Bish, 2015; Chakraborti and Garland, 2015; Chakraborti, 2015; Walters and Hoyle, 2012). For example, disabled women are more likely to have lower socio-economic status, and be at greater risk of domestic violence (Brownridge, 2006), and thus the experiences of all disabled people will not be the same. Researching hate crime through a wider lens, beyond simple constructions of identity, acknowledges the roles other elements have to play in experiences of victimisation, including that of socio-economic conditions. In addition, strand-based approaches draw attention to those left out of hate crime protection and victim groups are presented in simplistic forms. However, the concept of intersectionality has its limitations in terms of practical and policy questions as to how many aspects of identity should be considered (Mason-Bish, 2015). The following section uses research findings to illustrate the contribution of intersectionality to interpreting disability hate crime experiences.

Methodology: Intersectionality in disability hate crime research

The research presented herein is drawn from a completed PhD examining disabled people's experiences of hate crime. Utilising a social constructivist perspective, it explored social, cultural and historically constructed meanings of disability and identity, within a participatory framework (Healy, 2019). The findings presented herein are taken from one section of the study: 12 narrative interviews with victimsⁱ of disability hate crimes, the majority of which were conducted in 2014.

Content analysis of interviews was conducted with the aid of an NVivo software package (QSR NVivo 8.0 and 10.0). An inductive approach to data analysis was taken, utilising thematic coding of interviews (Flick, 2006). Participation was confidential and anonymised and in compliance with the Data Protection Act (DPA; HM Government, 2003). The research was approved by Middlesex University's School of Law's Ethics Sub-Committee and was in alignment with the British Society of Criminology's Code of Ethics (2015).

During the early stages of the narrative interview process, multiple and overlapping categories of identity emerged within participants' stories, raising the question as to whether an intersectional approach to analysis would have utility. Methodologically, researchers often hold one category as constant (often race or gender) so that they can manage their comparisons (Simien, 2007). Intersectionality, however, requires more than this simple separate analyses and a move away from traditional theories to interpret results (Cole, 2009; Horvath and Kelly 2007). It endeavours to construct new theories and methodological approaches that address this complex process through which social categories shape and determine ourselves, although its complexity can make analysis difficult if it includes a wide range of dimensions and categories (McCall, 2005). The analysis drew upon McCall's

(2005: 1777) intracategorical approach which advocates for an explicit recognition of a 'master category' (or element of identity) to be researched. For this study, disability/impairment was identified as the master category. Although recognising that disability may not always have been the most important or significant element of identity to the participants at all times, participants had self-identified as disabled or having an impairment or condition (often multiple). As such, it was the dominant category in their descriptions of themselves. This intracategorical approach allowed for other categories to *emerge* from the fieldwork and data collection processes. Participants' self-perceptions do not always fit with the perceptions of others or with external identity markers that may be placed upon them (Aldridge, 2014) and this process enabled participants' *own* self-categorisation. This reduced the risk of researcher bias in determining which elements of identity were most relevant. Rather, the research was being directed to this by the meaning and description provided by participants themselves. This fitted within the narrative, Feminist-influenced framework. Self-categorisation subverts the unequal power relations and is a method of resistance for members of subordinated groups (Crenshaw, 1993).

As expected, many participants self-identified through the interview process as having one or more categories of identity or "dimensions of social life" (McCall, 2005, p.1772) which were important to them. By asking participants to 'tell me about yourself' this allowed them to identify the relevant and most important elements of their identity. Drawing upon Feminist scholarship in this way engaged with the problematic nature of researching the complex lives – and priorities – of others whilst avoiding essentialising them through potentially tokenistic, objectifying or voyeuristic means (Crenshaw, 1993). It recognised their own categorisation, not just to the researcher's 'master category' of disability, but to other, equally valid elements of identity and social life. Through their narratives, participants naturally and authentically indicated how multiple dimensions of identity shaped their

experiences. Thus, by applying an intersectional approach to disability research, the findings achieved a shift away from individual pathology towards a framework bent on tackling wider socially and culturally systemic regimes, sympathetic to the social model of disability.

Findings: Intersecting disability, sexual orientation and gender

Analysis of interview data identified two interwoven trends within an intersectional framework. The first is that of intersecting hate *strands*. The participants recognised that hate crimes can overlap different minority strands and that individual victims are often targeted for multiple reasons. For example, 'Gemma' recognised that she was targeted for being disabled and being gay. She recounts experiences of hate crime when she was younger where she was targeted for her sexual orientation. This changed as she developed impairments and disabilities later in her life. The type of language used more recently was directed at both her disability and her sexuality: "I've been called a fucking faggot, fat queer, you know erm, I've been told, you know you should've all been drowned at birth". In addition to a compound effect of multiple layers of discrimination and violence, for Gemma the difference is also practical. What distinguishes the homophobic targeting in her youth and the multiple-identity targeting of late is her physical ability to respond. She could defend herself then, but not now, she says. The nature of her disability and impairments means she cannot outrun her assailants and she is physically unable to fight back. Whilst no victim should be targeted in this way, for Gemma she is multiply-restricted because of her own health limitations. Although she resisted a victim-label, she has had to adapt her lifestyle as a consequence of her experiences as a *disabled woman*, more so than when she was targeted for *homophobic* crimes. Mason-Bish (2015) highlights the frustration that can be

felt when a victim experiences more than one form of victimisation in this way. She urges policy to “understand the fluidity of identity and the multiple ways in which prejudice and violence might be experienced” (2015: 25). Many of the participants identified with this layering of multiple-identities. Applying a single-strand approach fails to appreciate the increased risk Gemma, and others, faced.

Secondly, and linked to the finding above, the research identified the intersections of gender and disability, with women reporting more violence, bullying and threats than men, and sexual violence identified as a form of hate crime for three of the female interview participants. This is not unexpected, given the evidence that disabled women face double disadvantage through both gender and disability, making them particularly vulnerable to sexual violence and exploitation (e.g. Sherry, 2013b; Balderston, 2013; Brownridge, 2006; Brown, 2004). For example, although ‘Ruby’ was assaulted as a teenager, which she believed was as a consequence of her disability, she was also threatened with sexual assault as a method of harassment and abuse, with language indicative of gendered sexual violence. She describes how: “the kids threatened to rape and stab me” and their language included: “I’m gonna stick you with my great big 12 inch cock, I’m gonna stab you ...” and “I’m gonna stab you up the arse”.

The stories by Ruby and other participants support the literature regarding sexual assault as a method of disability hate crime against women (for example, Barclay and Mulligan, 2009; Coleman, Sykes and Walker, 2013; Sherry, 2013b). Research by Chakraborti, Garland and Hardy (2014a) reported that 22% of disabled respondents had experienced sexual violence, demonstrating that sexual violence is a method of disability hate crime and that there are intersections of gender and disability occurring (see also Balderston 2013a). Sherry (2013b) advocates for greater recognition of rape as a gendered hate crime, without

which he argues disabled women may lack recognition or identification as hate crime victims. The evidence here provides additional confirmation for this.

These findings illustrate how a strand-based approach to hate crime disguises the variety of intersecting elements of identity that changes a victims' experiences and consequently could reduce their likelihood of reporting their experiences. Efforts must be made to engage with harder to reach groups and, if reported, to record these experiences adequately and accurately to reflect all of these elements. As Mason-Bish (2015) suggests, policy needs to adapt to be able to consider the risks involved in more complex identities, and be able to record data to take account of this.

The demise of a strand based approach

Consideration of hate crime on an individual strand basis fails to recognise the interplay of these elements of identity with other social and situational characteristics (Mason-Bish, 2015; Chakraborti and Garland, 2015; Chakraborti, 2015; Walters and Hoyle, 2012).

Researching hate crime through a wider lens, beyond simple constructions of identity, acknowledges the roles other elements have to play in experiences of victimisation, including that of socio-economic conditions. In addition, strand-based approaches draw attention to those left out of hate crime protection and victim groups are presented in simplistic forms. However, the concept of intersectionality has its limitations in terms of practical and policy questions as to how many aspects of identity should be considered (Mason-Bish, 2015).

Efforts to tackle disability hate crime may benefit from a critical examination of the lessons generated from discourse on violence against women. Violence (and by default

discrimination) is both a cause and consequence of inequality and there are a variety of ways in which experiences of victimisation are connected to inequalities and human rights (Horvath and Kelly, 2007). Victimisation follows the contours of disadvantage and exclusion, and thus belonging to a group that is discriminated against increases the likelihood of experiencing violence or abuse. Reframing violence against women as one of a human rights issue has placed individual experiences within a wider pattern of inequality, reflecting a broader, gendered construct of society, and requiring cultural change. Barclay and Mulligan (2009) suggest this could provide useful lessons for tackling targeted violence against disabled people, such as conceptualising targeted violence against women as a cause and consequence of their inequality, underlining that this is a human rights issue. Whilst conceding that there are differences between groups, areas of commonality between violence against women and hate crimes include the structural context of inequality and its link to violence as part of a wider pattern of behaviour that reinforces such inequality. Targeted violence against disabled people can therefore be “conceptualised as the wider subordination of disabled people within society”, shifting focus away from individual issues and towards “systemic disablism and abuse of human rights” (Barclay and Mulligan, 2009: 44) through a social model interpretation. However, as Murray and Powell (2009) warn in their research on domestic violence, tensions can arise between situating responses within a discourse on rights to participate equally in society, and framing women as vulnerable and in need of protection. The same caution should be applied to disability research. Just as protectionist discourses have tended to pathologise women as vulnerable or helpless victims in order to legitimise policy responses, so have the same discourses labelled disabled people as inherently ‘vulnerable’ (Alhaboby et al., 2016; Roulstone and Saddique, 2013).

Priority can be given to service provisions for victims of violence by placing violence within an equalities concept. Targeted violence against disabled people prevents disabled people from fulfilling their potential and realising their rights. By considering this issue within an equalities framework, greater legislation is available for recourse. Furthermore, by using a human-rights based approach, the onus is placed on the state to protect individuals proactively (Barclay and Mulligan, 2009). However, equalities work in the UK has tended to be one or two dimensional, and therefore a challenge to intersectional analysis (Horvath and Kelly, 2007). Failure to think about the equality strands as interconnected may therefore result in inappropriate policy responses, as with hate crime policy. Any examination of the role of inequality needs to consider how individuals (and groups) are embedded in cultural and historical contexts (Cole, 2009).

Conclusion: Thinking beyond the box

Mason-Bish (2015: 31) rightly concludes that “identity is messy” and that “it is time for hate crime policy to better acknowledge this”. The current hate crime approach is too simplistic in terms of identity. Structural and economic issues are often subsumed or ignored (Mason-Bish, 2015). This paper illustrates how a strand-based approach disguises or inhibits the variety of intersecting elements of identity that, combined, can increase risk of victimisation. By thinking beyond traditional conceptualisations, or outside of the ‘box’ within which hate crime legislation and policy currently sit, this paper recommends a more holistic and intersectional interpretation of victims’ experiences and illustrates this by drawing on disability hate crime research. It suggests a human rights perspective may offer an alternative to current strand-based policy.

This paper was presented at the British Society of Criminology’s annual conference in 2019. It contributes to the gap in evidence-based research on disability hate crime, and the

debate on intersectionality as a research framework, beyond traditional realms of race and gender. As such it provides an original contribution to existing literature on hate crime and contemporary intersectional criminology.

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ⁱ In line with hate crime policy, the term victim is used to represent those who have experienced hate crimes, but this author accepts and recognises the use of survivors, and/or victim-survivors, as alternative terms.