

Difficult hate terms
defined conclusively
criminology essay



**ASSIGN
BUSTER**

Why is Hate Crime Such a Difficult Term to Define Conclusively? Hate crime is a relatively new concept which originated during the 1980's in the US after a series of incidents directed towards Jews, Asians and Blacks (Green, McFalls and Smith, 2001). The term was brought to Europe and the UK in the 1990's, and hate crime became a prominent issue after the 1999 McPherson Report into the murder of Stephen Lawrence, a black teenager in London (Bowling and Phillips, 2003). It is a concept which is often used by politicians, the media, the Criminal Justice System and the public; although they often do not fully understand what the term means (Hall, 2005). This essay will explore the term hate crime and try to understand why there is no definitive definition of it, and the reasons for the many conflicting definitions. The first section will explore academic definitions and how they have developed, looking at the flaws of the early definitions and moving on to the most used and most comprehensive definitions of recent times. After this the essay will explore the official definitions used by a variety of government bodies including the Association of Chief Police Officers (ACPO) and the Criminal Justice System's definitions. This essay will then compare how recordings of hate crime differ around the world, and how different definitions of hate crime can lead to dramatically different levels in the number of hate crimes recorded (Giannasi, 2011). The next section will explore in more depth some of the topics covered already, in particular how different definitions and different countries and states include different 'factors' of hate crimes, such as sexual orientation and gender, as well as exploring the level of prejudice that is required for a crime to become a hate crime. The penultimate section explores the 'new' and borderline hate crimes and whether these groups should be protected under hate crime laws, comparing them to Perry's

<https://assignbuster.com/difficult-hate-terms-defined-conclusively-criminology-essay/>

definition of a hate crime. Finally this essay will explore incitement of hatred laws, and how these laws are seen as controversial and are argued to prevent freedom of speech (Gerstenfeld, 2011), as well as exploring the controversial nature of hate crime, looking at how hate crime laws are seen by some as punishing thought instead of actions.

In order to understand why hate crime is such a difficult term to define we first need to look at the different definitions that have been suggested, so that we can see how they differ. There have been many different definitions suggested by a variety of academics and policy makers, each trying to define what a hate crime entails (Jacobs and Potter, 1997). The most basic definition of a hate crime is a crime motivated by hate, but this is contested by most, if not all, academics due to its simplicity and the fact that not all hate crimes have hate as a contributing factor (Hall, 2005), as we shall see later the term prejudice is often preferred. Many early definitions suggested by academics, as well as more recent ones, often fail to fully describe what a hate crime is, leaving many gaps in their definition. Petrosino's (2003) definition of a hate crime only refers to victimisation of ethnic minority groups, whilst Wolfe and Copeland's (1994, as cited in Jenness and Broad, 2009) definition states that there needs to be violence towards the victim, although most definitions argue that it does not just have to be violence (Green et al, 2001). The definition that is often referred to as the best is Perry's 2001 definition (Chakraborti and Garland, 2009; Hall, 2005);

Hate crime ... involves acts of violence and intimidation, usually directed towards already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious

<https://assignbuster.com/difficult-hate-terms-defined-conclusively-criminology-essay/>

hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group. (Perry, 2001: 10).

Her definition begins by identifying that acts of intimidation and violence can amount to a hate crime, but does not specify that it is violence towards a person and therefore it can include violence towards a person's property, which is also a form of intimidation. By including all acts of violence and intimidation Perry is including the low-level forms of hate crime, such as 'simple assault, harassment, threats, and vandalism' (Bell, 2004: 185), as these are the most common hate crimes. Her definition follows Sheffield's 1995 definition, which identifies the significance of reaffirming hierarchies and the social order within society (Chakraborti and Garland, 2009). Perry's definition also identifies that the victims group are already stigmatised in society and are historically marginalised groups, such as race, religion and gender (Craig, 2002). This does cause problems when we consider the 'new' borderline groups, such as Goths, as these groups do not fit this definition, as they have not been historically marginalised, but crimes against these groups are still seen as hate crimes; this issue will be discussed later in the essay. Her definition then states that the perpetrator is not just attacking the victim but the whole of the victims group. This is echoed by the work of Hall (2005) as they both describe a hate crime as a type of message crime, which is directed towards the minority group to show that they are the minority and are lower in society than the perpetrator, not just an attack on the individual. In fact the individual victims of serious violent hate crimes is often

not know to the victim and are attacked just because of their perceived identity (Aurdley, 2005).

Official definitions of hate crime can also vary dramatically between different countries and different states, as well as between different agencies within the same country (Jacobs and Potter, 1997). An example of this is the differences in the definitions used by the police and the courts, which often results in a different number of recorded hate crimes when compared to the number of convictions for hate crimes (Iganski, 2002). The guidelines used by the police to define a hate crime are that of the Association of Chief Police Officers (ACPO). Their most recent set of guidelines were set out in their hate crime manual, *Hate Crime: Delivering a Quality Service - Good Practice and Tactical Guidance* (2005), which expanded on their previous 2000 definition, and split a hate 'crime' in two sections, as hate incidents and hate crimes. They define a hate incident as 'any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate' (ACPO, 2005: 9), and a hate crime as 'any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate' (ACPO, 2005: 9). As mentioned this definition defines both a hate crime and a hate incident, and is different to the single hate crime definition from their 2000 hate crime manual, as this did not include hate incidents (Gerstenfeld, 2011). This is the first problem when defining hate crime, as it is not just crimes that are included but incidents of hate as well, meaning that there is a high number of hate 'crimes' recorded by the Police when compared to different agencies. Another point is that it is not just police officers who can

classify a crime as a hate crime but the victim and any other person as well. As mentioned earlier the term prejudice is often preferred to the term hate, as hate is a strong word and often it is prejudice rather than hate that is a factor (Hall, 2005). The problem with the term prejudice in this definition is that it does not define what level of prejudice is required or the types of prejudices which are included, as prejudice against other football teams is still prejudice, but are not classed as hate crimes. These problems with ACPO's definition are not exclusive problems, as most definitions have similar problems, and they will be discussed in greater detail later. What this definition has done though is it has made it easier for crimes to be defined as hate crimes by the victim, as the victim often has a better perception of the crime than the police officer who records it.

Hate crime laws in England and Wales give certain groups and identities specific laws to protect them, and to enhance the penalties given to offenders, such as the Crime and Disorder Act 1998 and the Anti-Terrorism, Crime and Security Act 2001, which give penalty enhancements for racial and religiously motivated crime respectively (Goodey, 2005). The other legislation for penalty enhancement is the Criminal Justice Act 2003 which offers penalty enhancement for sexual orientation or disablist crimes. Other legislation for hate crimes is incitement of hatred laws, which make it a criminal offence to incite hatred of certain groups, either written or verbally. The Public Order Act 1986, the Racial and Religious Hatred Act 2006 and the Criminal Justice Act 2008 all have provisions for incitement of hatred, but they only cover certain groups, such as race, religion and sexual orientation and not other groups such as the disabled and 'new' youth subcultures

(Chakraborti and Garland, 2009). The burden of proof for all of these crimes lies with the prosecution and often the burden of proof, especially for incitement of hatred, is subjective, having to demonstrate that the offender meant to cause harm by what they said. The Criminal Justice Act 2003, which set the penalty enhancement laws for disability and religious hate crimes, states that for a penalty enhancement the defence needs to prove that 'at the time of committing the offence or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility' (Criminal Justice Act 2003: section 146). This means that for an offence to be a hate crime the perpetrator has to show hostility towards the victim at the time of the attack, and therefore the perpetrator's affiliation with far right groups or prior hatred cannot be a factor when defining a crime as a hate crime (Hall, 2005).

The number of hate crimes recorded in different countries around the world and in different states within America differ dramatically, because of the different 'measures' used to define what a hate crime is, as hate crime is a socially constructed concept (Perry, 2001). Also the different methods used to record hate crimes give different figures of recorded hate crime, because as mentioned previously anybody can class a crime as a hate crime in England when reporting it, and in other countries, such as America, it is just the police who can record it as a hate crime (Bowling and Phillips, 2003). The UK recorded 52,102 hate crimes in 2009, which is 44,302 more than USA recorded in 2008 (Giannasi, 2011), which has a population which is five times the size of the UK's. This does not mean that the UK has a greater hate crime problem than the USA, but that the recording of it is different, as they

define a hate crime differently. In Greece there were two recorded hate crimes in 2008 and 142 in Italy (Giannasi, 2011). All of this shows that the recording of hate crime differs dramatically around the world, because of the different requirements of a hate crime, and the different definitions and understandings of it.

As mentioned previously the word prejudice is used more frequently than the term hate, because hate is not always present, as the crimes are often more about reaffirming hierarchies and the social order than because of hatred towards a specific identity (Hall, 2005). Most definitions state that the offence needs to be motivated by prejudice towards the victim and their group identity. The problem with this is they do not state how much prejudice needs to be present to make it a hate crime. In ACPO's definition of a hate crime it states that a hate crime should be 'motivated by prejudice or hate' (ACPO, 2005: 9), but this leaves questions about how much it needs to be motivated by prejudice or hate. The Criminal Justice Act 2003 states that this prejudice needs to be present at the time of the offence, shortly before or shortly after (Hall, 2005). The level of prejudice is hard to define as hate crime is a socially constructed concept and therefore it is often down to an individual to determine if the prejudice was sufficient (Jacobs and Potter, 1998). Because of the difficulties in defining the amount of prejudice required it is difficult to define a hate crime, as there are differences in interpretations of the levels of prejudice required because it is an individual decision, and therefore there is no specific measure of when a crime becomes a crime of prejudice towards the victim's identity and therefore a hate crime, or what is acceptable or unacceptable prejudice (Hall, 2005).

As we have seen the definitions of hate crime vary geographically between different countries and different states (Chakraborti and Garland, 2009).

Hate crime has been an issue for discussion in the USA for much longer than in the UK, but they do not have a universal definition for a hate crime. One of the most notable conflicts in definitions between different states in the USA is the different victim groups that hate crime laws cover. There are some federal hate crime laws which are enforced over all states and jurisdictions in America, such as laws to give enhanced penalties for crimes against certain groups, such as race and religious crimes (Green et al, 2001). But it is mainly down to individual states to define what a hate crime is and as a result the groups covered by these laws vary between different states, and they also vary between different countries. Some states classify gender and sexual orientation as hate crime victims, while other states do not (Gerstenfeld, 2011). This is a problem when it comes to conclusively defining hate crime, as there is no consensus on who can be victims of a hate crime.

In England and Wales there are five main strands of hate crime as set out by ACPO (2009), these are race, religion, sexual orientation, transgender and disability. All of these groups fit with Perry's definition of who hate crime victims are, as they are all historically marginalised minority groups.

Although these are the main groups there are many other minority groups which can be victims of hate crimes. One group which has caused many discussions as to whether or not they should be classified as a hate crime victims are victims of domestic violence (Gerstenfeld, 2011). One of the arguments for domestic violence being a hate crime is that it matches the definition suggested by Perry (2001) as women are a historically marginalised

minority group, and domestic violence is to reinforce the hierarchies of society, with men being dominant (Batsleer, Burman, Chantler, Pantling, McIntosh, Smailes and Warner, 2002). The opposing argument is that it should not be a hate crime because women are not being attacked because of their group identity; instead they are being targeted because they are close to the perpetrator and an easy target for them, and therefore it is not a message crime to the wider female population (Dutton, 2006).

ACPO (2008) does not identify age as one of its main strands, but does recognise it as a form of hate crime (Chakraborti and Garland, 2009).

Although the ACPO (2009) and the Home Office (2008) identify ageism as a form of hate crime only about one third of police forces record it as such (Chakraborti and Garland, 2009). Ageism is similar to disablist hate crime in that it is often committed by a person of trust (Cuddy and Fiske, 2004) and 'behind closed doors'. There are some arguments that ageism should not be classified as a hate crime because often the victim is not attacked because of their age, or to reinforce the social order of society but instead it is because they are an easy target, as a result of their age (Wolhunter, Olley and Denham, 2009). Another argument against classifying ageism as a hate crime is that the elderly are a heterogeneous group and include people from a variety of backgrounds (Lister and Wall, 2006). The arguments for ageism being classified as a hate crime is that older people often develop disabilities and therefore crimes towards a victim because of their age is often seen as disablist hate crimes, although they differ from people who are born with a disability (Chakraborti and Garland, 2009). The main differences between those who are victims of a hate crime because of their age when compared

to other disabilities is that everyone is likely to become old and therefore everybody has a chance of becoming potential victims of ageism.

Goths, Punks and other 'new' youth subcultures are also borderline hate crime victims (Garland, 2010). Hate crimes against these groups was highlighted by the murder of Sophie Lancaster in 2007. She was murdered because of her Gothic identity and at court the judge commented that this was a hate crime and imposed an enhanced punishment because so (BBC News, 2008). The reason for crimes like this being a classed as a hate crime is that the victims are often targeted because of their identity and their appearance (Gifford, 2010), and often it is a 'message' crime towards all members of the subculture, which is meant to reinforce the hierarchies of the majority (Garland, 2010). These crimes against 'new' youth subcultures do not fit the definition suggested by Perry of a hate crime. This is because they are not an historically marginalised minority, as they are a relatively new group, but the harm and impacts these crimes have on the wider community is the same as other forms of hate crime (Garland, 2010). There are many other borderline expressions of hate that do not fit the existing definitions of a hate crime, but are still crimes of hate or prejudice. Another example is sectarianism hate crimes, which are crimes committed by members of the Protestants, Unionist or Loyalist communities towards members of the Catholic, Nationalist or Republican communities and vice versa (Chakraborti and Garland, 2009). These are crimes of prejudice against the opposite community because of their identity, but unlike other crimes they do not have to be committed by the majority towards the minority, and instead can be committed by either side (Jarman, 2005). There is much

debate as to whether sectarianism crimes should be classified as hate crimes or not, as they do not conform to the general definitions of what a hate crime is. All of these borderline crimes further show how difficult it is to define a hate crime, as crimes that do not fit the conventional definitions are often seen as a hate crime.

As previously mentioned there are hate crime laws for incitement of hatred, as well as penalty enhancement laws. Incitement of hatred is a greater issue in the UK than it is in the US, as the first amendment of the US constitution states that there cannot be laws which prevent their freedom of speech (Levin, 1999). The UK has several laws which govern incitement of hatred, making speeches and articles which contain threatening, abusive or hatred behaviour towards a minority group illegal. These laws have been very controversial in the UK, as they restrict freedom of speech, which is a human right (Gerstenfeld, 2011). The 2004 Serious Organised Crime and Police Bill aimed to make incitement of religious hatred illegal, as had already been done for incitement of racial hatred by the Public Order Act 1986. But there was much opposition towards this new bill, much of which came for comedians and was led by Rowan Atkinson, claiming that 'the freedom to criticise ideas is one of the fundamental freedoms of society' (Atkinson, 2004 as cited in BBC News, 2004).

There have also been discussions and arguments over what hate crime laws are punishing, as laws such as the Crime and Disorder Act 1998 and Criminal Justice Act 2003 give an increased punishment for perpetrators of hate crime. The reason for this is that hate crimes cause more harm to the victim and their wider community than ordinary crimes, as they are being targeted

<https://assignbuster.com/difficult-hate-terms-defined-conclusively-criminology-essay/>

because of who they are, rather than something they have done, and therefore they feel more at risk of repeat victimisation (Craig, 2002). This has led to arguments over whether punishing a hate crime is just in fact punishing peoples thoughts rather than their actions (Iganski, 2002). A crime usually has two factors that determine its severity and the reasons for it; these being the intent and the motive (Hall, 2005). The intent of the perpetrator is how much hurt or damage they meant to cause to the victim and the motive is why they did it. Hate crime focuses on the motive and unlike punishment for most offences, where the amount of damage or hurt determines the perpetrators punishment, it is also the reasons for their actions which determine their punishment (Hall, 2005). Therefore many see it is punishing people's thoughts and the way they think rather than their actions (Jacobs and Potter, 1997).

This essay has aimed to explore why the term hate crime is so difficult to define conclusively. It has done this by exploring the academics definitions of what a hate crime is and the problems with some of the many definitions suggested by a variety of academics. It identified Perry's definition as the most definitive, although there are flaws with her definition, as with all definitions (Chakraborti and Garland, 2009). The reason for identifying this definition is that it is the most often used definition by other academics, as it is the most comprehensive (Chakraborti and Garland, 2009; Hall, 2005). The essay then went on to explore the official definitions used in the UK, such as those used by ACPO and the Criminal Justice System. It explored how these definitions contradict each other as the police record hate incidents, which are not crimes and therefore the courts cannot punish offenders for them.

The levels of recorded hate crimes around the world vary dramatically with the UK recording nearly seven times the number of hate crimes compared to the USA (Giannasi, 2011); despite the USA having a population that is five times that of the UK. This shows how definitions of hate crime vary dramatically around the world, especially as Greece only recorded two hate crimes in 2008 (Giannasi, 2011). The next section expanded on some of the issues mentioned previously when discussing the different definitions of hate crime. It explored how different definitions, countries and states have different victim groups and how some include gender and sexual orientation, while others do not. The essay then went on to discuss different victim groups who are classified as borderline hate crime groups. This includes ageism, Goths and other 'new' youth subcultures as well as sectarianism; although these groups do not fit Perry's definition of what a hate crime is, they are recognised as a hate crime by many people, due to the effects that crimes on these groups can have. The final section of this essay explored incitement of hatred, and how laws to prevent this have caused much debate over the protection of human rights to comment and criticise ideas (BBC News, 2004). This section discussed how hate crime laws can be seen as being a way of punishing people's thoughts, rather than their actions as these laws can increase sentences for perpetrators based on the reasons for their actions rather than the actions themselves. Overall this essay has identified the reasons why hate crime is so difficult to define conclusively, due to the different victims, crimes and levels of prejudice, and how this has led to difficulties in creating definitions and comparing hate crime geographically.