

# Types of offence and hate crime criminology essay



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The following essay aims to critically assess the above statement with reference to its implications for hate crime scholarship and policy. In doing so, it will first outline what is meant by hate crime and the problems posed by the difficulty in accurately defining it. Then two case studies will be introduced – namely the death of Sophie Lancaster, and football hooliganism – both examples of crimes which throw up definitional problems for hate crime theorists. We will consider in greater depth whether most hate crimes can be thought of as ‘ordinary’ types of crime committed by ‘ordinary’ citizens before discussing the implication this has for policy makers in the law enforcement sphere. We will also look briefly at legislation introduced by the current British Government, which attempts to establish a framework under which bias-aggravated crime attracts a higher range of penalties than ‘ordinary’ offences.

## **Background**

Hate crimes are an increasingly important area of study for academics and policy makers, given their relevance in an increasingly cosmopolitan society in the global era. People of different social, cultural, ethnic, religious and national groups are increasingly being brought together by factors outside of their own control. For all the benefits, this social restructuring also brings tensions, and finding a way to mitigate these is in the interests of societies the world over.

It is difficult to characterise offences as hate crimes, even though their definition is fairly well established. Commonly, “ a hate crime can be defined as a criminal offense committed against a person or property which is motivated in whole or in part by the offender’s prejudice against the victim’s

race, religion, ethnicity or national origin, disability, or sexual orientation” (Johnson & Byers, 2003, 227).

This would seem straightforward enough, except that it is very difficult to apply in practice. By way of example, consider the following excerpt, taken from an American psychology journal shortly after the terrorist attacks on the World Trade Centre in New York on 11 September 2001. The passage is taken from an article discussing recent attacks on people who the writer identifies as ‘ Arab-Americans’. It reads:

Most Americans would never overtly act on the feelings of mistrust that may have developed since the attacks. But a small proportion of Americans have participated in incidents ranging from name-hurling to full-blown hate crimes, like the much-publicized murder of a Sikh gas-station owner by an Arizona man or another person’s attempt to run over a Pakistani woman in a Huntington, N. Y., parking lot (DeAngelis, 2001, 60).

In this excerpt, notice how the author distinguishes between “ name-hurling” and “ full-blown hate crimes”. If ‘ name hurling’ is not considered to be a “ full blown hate crime”, then what is? What is telling in this example is way in which one form of hate crime is seemingly downplayed. In effect, it gives the impression – even if only through subtext – that it is fine to act on racist impulses, as long as nobody gets ‘ seriously’ hurt in a physical sense.

Name calling is not uncommon; it might even be called ‘ ordinary’. But perhaps as these offenses accumulate, they reveal something more sinister – something that the hate crime victim experiences every day, while other members of society hardly notice. Yet despite this seeming indifference,

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society is outraged when something more dramatic happens - when an innocent youth gets murdered because of their skin colour, for example.

Moreover, research into hate crime suggests that offenders do not fit the pattern that we have been conditioned by the media to expect. Rather than being depraved sociopaths, most offenders seem average, almost 'normal' - meaning there was nothing that would make anyone suspect that they would eventually act out in such a way. This makes preventative measures very hard to target. In the words of one analyst, Paul Iganski,

What the experiences of victims shows is that, contrary to media depictions of the problem, many incidents of 'hate crime' are not committed by extremist bigots, do not involve premeditated attacks by thugs who are pre-disposed to violence, often do not involve physical violence at all, and in many instances do not involve 'hate'. Instead, many incidents are committed by 'ordinary' people in the context of their 'everyday' lives in patterns consistent with 'routine activity' of crime" (Iganski, 2008, 3).

Intuitively, it is logical to say that murder and 'name-hurling', for example, are different offences. Certainly any murder, under relatively normal circumstances, attracts a higher sentence in legal systems around the world than a simple case of verbal abuse would. But should a hate-based murder be treated any differently to an 'ordinary' murder? At what point can crimes become hate crimes? How do we differentiate? These are questions that this essay will consider.

The problem lies in how difficult it is to define hate crime, given that our only means of conceptualizing it is as a contributing factor in the commission of a  
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particular offence. Hate is not a crime, until it is acted on – thoughts alone cannot be punished. We will now introduce two examples which show how difficult it is to distinguish between cases where hate may be a factor.

## **Case studies**

The following cases will feature in our further discussions on whether hate crimes, and the people that commit them, are ‘ordinary’. Both can be shown to throw into question the very definition of ‘hate crime’, but for different reasons. Both were also singled out for analysis by researchers Neil Chakraborti and Jon Garland in their book *Hate Crime: Impact, Causes and Responses*.

### **The murder of Sophie Lancaster**

On 11 August 2007, a 20-year-old woman named Sophie Lancaster and her 21-year-old boyfriend Robert Maltby were walking home from a friend’s house through a local park in Bacup, Lancashire. The two were viciously attacked by a group of young males, resulting in horrific injuries for Robert and Sophie’s ultimate death. The ‘reason’ for the attack – or rather, the reason that they were targeted – was that Sophie and Robert were ‘goths’. Goths are a subcultural group who listen to a particular style of music and sport piercings, dreadlocks, and black clothing as common forms of attire.

The judge who eventually sentenced the young offenders who committed the attack stated that “this was a hate crime against completely harmless people who were targeted because of their appearance was different” (Hodkinson, 2008). Certainly no other conclusion could be reached, given the

admission of a witness that “ this mosher’s just been banged because he’s a mosher”, in reference to Maltby (Hodkinson, 2008).

The problem this poses for hate crime scholarship is that the identification of Sophie and Robert with a particular subculture does not fit the ‘ traditional’ definition of a hate crime. It was not on religious, racial, or ethnic grounds that they were targeted; nor did it have anything to do with their sexuality. Neither was disabled, either. What it does suggest is that the definition of hate crime must be broadened in line with new forms of identity politics at work in contemporary society.

## **Football Hooliganism**

While Sophie’s death might seem unusual for being based on sub-cultural affiliation, it is interesting to compare this with football hooliganism. As something that was often historically referred to as ‘ the English disease’, football hooliganism refers to the unruly, often violent and usually destructive behavior engaged in by football fans – often initially taking the form of aggression between supporters of different teams. The issue has been considered such a problem in the past in the United Kingdom that a specific Act was introduced by Parliament under which to prosecute such offences (HMSO, 1991).

Officially titled the Football (Offences) Act 1991, it is actually listed on the Home Office website as part of the legal framework under which hate crime falls. However, this is itself subsumed under the larger umbrella category of violent crime.

Interestingly, football club affiliation could almost be considered a subculture; certainly many people identify so strongly with it that plays a meaningful part in shaping their value system. However, perhaps the reason it is not seen this way is that team affiliation is often based on other factors, themselves formative in identity construction in the first place. This is perhaps most common in clashes between supporters of different national teams - arguably then, there may be racism or nationalism involved. Domestically, incidents in Northern Ireland may be underscored by religious differences for example, while different clubs in London may represent different ethnic communities or be based on race. In any case, it is the connection between club and one of these wider sociological tropes, and arguably not club affiliation per se, which is the underlying motive for the tendency to act out.

Despite this and the Home Offices' characterization of the offence, there is no firm consensus over whether football hooliganism should be considered a form of hate crime. Theorists Chakraborti and Garland think it should not, arguing that "football hooliganism has too many dissimilarities with hate crimes for it to be treated as such" (Chakraborti & Garland, 2009, 104). They contrast it with so-called "clear cut" hate crimes, of which Sophie Lancaster's death is said to be one.

## **Discussion**

Chakraborti and Garland's point is that hooliganism is a form of mob violence, usually resulting in acts of vandalism. The racial component event, when apparent, is typically downplayed because it is difficult to weigh racist motivations against other possible causes. It is, for them, an 'ordinary' crime

in contrast to the murder of Sophie Lancaster, seen as an obviously “clear cut” offense.

But, having said this, even supposedly ‘clear cut’ hate crimes can be tried as ordinary offenses. Hate is, at best, only a motive. The youths who were eventually convicted for the murder of Sophie Lancaster were initially charged with causing grievous bodily harm with intent, with the charges upgraded to murder following her death. However, there was no ‘special category’ under which they were charged. It was an ‘ordinary’ offence as far as the legal system was concerned.

‘Ordinary’ hate crime has no specific legal grounds. The example of ‘name-hurling’ mentioned earlier is such an example: at worst this is a form of abuse, but the characterization of it as such hardly seems to recognize the more sinister overtones the crime contains. If these acts count, then most hate crime does occur in everyday acts which may be perceived as threatening to the victim, but are largely dismissed by society at large. Summing up this predicament, researchers Johnson and Byers note that “most of the recorded hate crime fits into the categories of “intimidation” and “harassment” (Johnson & Byers, 2003, 229).

Undervaluing ordinary crimes with a hate-based dimension downplays the impact that they have, and sends out the wrong kind of message to the community.

The pervasive nature of hate crime, affecting both ‘ordinary’ crime as well as the more “clear cut” examples poses a further problem: in those cases which are not “clear cut”, it is not so easy to identify offenders.



Take for example racist attacks perpetrated by skinheads. In these cases, no-one is surprised by the profile of the attacker. But in less clear-cut cases, it is not so easy to predict likely perpetrators.

Take for example a study of disabilist hate crime commissioned by the Scottish Parliament. Respondents interviewed during the course of the study, all of whom were disabled and had encountered hate based violence, reported “ under 16-year olds were responsible for almost half of the incidents, and they were most commonly a stranger or a group of strangers” (Disability Rights Commission Scotland, quoted in Iganski, 2008, 9).

Minors, who are not granted the right to vote because they are not considered to be able to make these kinds of complex decisions, would hardly seem to be the most logical choice when asked to predict who the most likely perpetrators of hate based crime might be. Nor is an isolated case: it seems that more and more, those who are committing hate based crime in contemporary society are not the people “ we might automatically associate with the commission of hate offences” (Chakraborti & Garland, 2009, 143).

Certainly in the murder of Sophie Lancaster, those responsible were legally children. Many commentators have noted that they largely came from broken homes and lived in housing estates, as some way to explain their behavior where other explanations fall short. However, this is hardly convincing as some kind of causal argument: plenty of children who are socio-economically disadvantaged and raised by single parents do not go on to kill passers-by based only on their choice of clothing.

Iganski argues that in such cases, it is possible that “ the offenders had taken the snap decision to restore justice as they see it by inflicting a harm on the victim for the harm that they perceived had been inflicted upon themselves” (Iganski, 2008, 6). But in the case of Sophie Lancaster, it is difficult to imagine what harm the victim’s subculture could have wrought on the boys that killed her. The explanation falls short.

Perhaps such an explanation is more convincing when used to explain a passing racist remark or jibe, but it is hard to imagine what harm the disabled pose to physically healthy Scottish teenagers.

Psychology offers conflicting information when it comes to explaining why people commit hate crimes. According to some researchers, “ those who commit hate crimes are not mentally ill in the traditional sense—they’re not diagnosably schizophrenic or manic depressive... What they do share, however, is a high level of aggression and antisocial behavior (DeAngelis, 2001, 61). Yet at the same time, others argue that perpetrators are able to recognize the violation of social norms which is committed when they commit a hate act - hardly the response of a sociopath. For instance, Home Office research indicates that “ most people accused of a racially aggravated offence vehemently deny the accusation not merely because they fear a heavier penalty but because they recognise the shame of a racist label” (Burney & Rose, 2002, 115).

Hate crimes are committed by ordinary, rational people. Perhaps the fact that they are, is fuelled by a kind of false bravado which comes from the perception that they are on the side of the majority. In Iganski’s words, “

Individual offenders serve as proxies for the sentiments and values shared by many in the communities to which they belong” (Iganski, 2002).

## **Implications for scholarship and policy**

The implication that these observations have for scholarship and policy are numerous. The most obvious is the challenge for policy makers to put formal procedures for dealing with offenders in place when there is no formal basis for prosecuting hate crime directly. Surprisingly, “ the term ‘ hate crime’ has no legal status in the United Kingdom. No law uses the term... What’s more, when the motivating impetus behind so-called ‘ hate crime’ is examined the emotion of ‘ hate’ often has little to do with the crime in question” (Iganski, 2008, 1).

There are groups who have argued that hate crimes should be tried under their own legal framework, in order to send a message to the offenders and bolster public support for the victims. A Home Office research study suggested that “ there are groups, mainly minorities, who have been victimized by powerful majority groups, so that special laws, such as hate crime laws, are needed to protect these victimized groups, and that these advocacy organizations are fighting to see that such laws are passed” (Johnson & Byers, 2003, 229).

This does, however, raise ethical questions: for instance, how would one weigh the value of a life taken by a random act of violence as opposed to a random act of violence based in hatred?

Under the Labour government, British policymakers have introduced various acts under the Criminal Law legislation in order to try Bias-motivated

Violence. Under the Crime and Disorder Act 1998, racially-aggravated offences were introduced in England and Wales. The Anti-Terrorism, Crime and Security Act 2001 further amended this Act to include specifically “religiously aggravated offenses”. For offences falling under the new provisions, the maximum penalty for each offence is higher where racial or religious aggravation can be proven than had that element not been involved. Similarly, changes to the Criminal Justice Act 2003 have brought into effect enhanced penalties where bias on the basis of sexual orientation or disability can be proven.

While obviously meeting some of the concerns of those who argue for a specific hate crime framework, the question is whether these provisions go far enough. Certainly, there are many kinds of bias that would not qualify, such as gender-based violence. There is also a failure to treat bias as an Aggravating Factor to Specific Common Crimes (Human Rights First, 2010). This being so, it is questionable what degree of success such laws will have – for instance, Sophie Lancaster’s killers would not achieve a higher sentence under these laws, as the reason for targeting her fits none of these categories.

More fundamental issues are of an academic nature and relate to whether or not it is even proper to enact means of differentiating ‘ordinary’ hate crime from other offences is preferable, given that it may impinge upon notions of free speech. For instance, analysts have noted that “the debate continues as to whether, on the one hand, prosecuting ‘identity crime’ is unconstitutional and divisive or, on the other hand, it is a necessary expression of fundamental social values” (Burney & Rose, 2002, 5).

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The brunt of the impact has to be borne by operational policy makers who work largely in the law enforcement field, as it is their responsibility to see that police adequately respond to the changing face of hate crime. Their efforts are hampered at the outset, for two main and related reasons. The first involves under-reporting of hate crime, typically 'ordinary' hate crime. This stems from that perception that it is of lesser importance than 'clear cut' cases, and the fear of victims that they will simply be dismissed if they come forward. What's more, they may perceive that by making their experience into 'an issue', they risk drawing attention to the phenomenon and thus increasing the frequency of instances.

The second challenge, related to under-reporting, stems from the uneasy relationship between some potential victims of hate crime and law enforcement authorities which also makes them wary to be identified as victims. This may be particularly prevalent when, say, the victim experiences race-based hate attacks and they come from a community in another country which has traditionally associated police with corruption, making them reluctant to put any faith in officers.

There have been moves made by British police to increase the level of hate crime reporting, in order to gain a more realistic picture of the phenomenon and help identify repeat offenders. They work to a definition which must see the victim self-identify as a hate crime victim. There is now a " requirement for all incidents to be recorded by the police even if they lack the requisite elements to be classified as a crime widens considerably the scope of the hate umbrella: any hate incident, whether a prima facie 'crime' or not, must be recorded if it meets the threshold originally laid down by the Macpherson

definition of a racist incident—namely, if it is perceived by the victim or any other person as being motivated by prejudice or hate” (Chakraborti, 2009, 122).

Nonetheless, it is still difficult to accurately gauge the scale of the problem. This is largely because “ the police, together with other criminal justice agencies, tend to recognize and respond to incidents and not this ongoing social process” (Chakraborti, 2009, 123).

It is difficult to imagine how this situation could be meliorated, except to say that there is role to be played by the media and advocacy groups, who should bring the frequency and unacceptable nature of hate crimes into the public arena in a sustained and forthright way. Certainly, if anything can be gained by the tragic death of Sophie Lancaster, it is through the work of the community association set up by her family and friends that aims to promote awareness of her death and advocates for the right of all people to dare to be different. Sophie Lancaster’s mother, interviewed after her daughter’s death, noted that “ I realised that prejudice and intolerance was the new racism” (Hodkinson, 2008) – but it appears that not everyone has adopted a similar approach to the issue.

## **Conclusion**

Following the death of a Black British youth named Stephen Lawrence, an enquiry was launched under Sir William Macpherson, to examine the nature of the police response. He found that the British police force was institutionally racist and that this had contributed to the failure to adequately punish Lawrence’s killers. Subsequent reforms have meant that so-called ‘

'hate crimes', and ways to prevent them, have become a high priority of British law enforcement. Their task is not an easy one.

The distinction between clear-cut and ordinary hate crime is not a simple one, and much of what is referred to as hate crime includes relatively 'ordinary' types of offence committed by relatively 'ordinary' types of people.

In some cases - usually, those that first come to mind when one searches for examples of such a crime - it is easy to establish that hate is a factor: genocide is a prominent example. Genocide, by definition, is the attempt to forcefully exterminate a group based on their religion, race, ethnicity, or nationality. But in most cases, what are considered hate crimes are no different from 'regular' crimes, except for motive. Hate crimes can be murders, assaults, disputes, disturbances and so on; but the reverse is not necessarily true. Not every murder, for example, is a Hate Crime. In a sense, as genocide is to war crime, hate crime is to 'regular' crime.

When one thinks now of the camps in world war two Germany where Jews were put to their deaths, it is almost inconceivable to imagine that civilians living in close proximity to these areas could claim ignorance of what was going on. The sheer scale of the exercise is what is most frightening about it. The fact that they could deny this defies belief, but yet it happened. It happened, and millions of people died. What hope is there then, for the plight of individuals subjected to hate based crime in contemporary society?

Obviously there is a spectrum of 'hate crimes', which is what makes them so difficult to both define and prove.

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While it is right to acknowledge the senseless death of people like Sophie Lancaster for being deprived acts, and necessary to take steps to prevent further instances of racially or other discriminatorily motivated crime, it is very difficult to determine what constitutes a hate crime and draft appropriate laws which criminalize them. And it is these 'big' crimes that garner media attention and stir up public outrage. It is the 'lesser' forms of the crime, perhaps where the observable consequences aren't as obvious, that become very difficult to police against. This includes the name calling, and perhaps football match sledging. But the line is a thin one.

Perhaps all crimes contain an element of hate - but that being so, then the distinction is useless, and there is no way to draw useful lessons from the deaths of the innocent. The challenge for academics and policy makers is to maintain a useful distinction between hate crimes and other offences, so that one does not fade into the other.