Homophobic Violence as Hate Crime

Leslie Moran explores the challenges that homophobic violence raises for the way we understand 'hate crime'.

Homophobic violence, which I define widely to include physical violence, threats, harassment and verbal abuse, is ordinary everyday violence. Many victim surveys confirm this state of affairs (Stanko *et al* 2002). While the time frame and the sample size of these studies may vary, the experiences reported fall into a common pattern. 70-80% of respondents report experiences of homophobic harassment and abuse. Experiences of serious physical assault are reported by 20-30% of respondents. The surveys indicate that the majority of these incidents take place in public places and involve acts of violence by persons unknown to those who are the targets of violence. Also there is ample (but often overlooked) evidence that significant amounts of homophobic violence takes place in and near the home, in the immediate neighbourhood and in the place of work (including schools and colleges). This is not homophobic violence as stranger danger but homophobic violence performed by those intimate with and known to the one who is targeted (Stanko 2001). The same surveys record that few of these incidents are reported to the

crime. The guide is a statement of 'agreed strategies and tactics' and 'good practice' for policing hate crime. It is intended for 'front line police staff, their line managers and also senior managers' (ACPO, 2000). While the administrative and bureaucratic impact of naming homophobic violence as hate crime varies across police services, some changes are slowly taking place. Posts with responsibility for lesbian gay bisexual transgender (LGBT) liaison are being established. Other developments include enhanced training, new recording practices, new protocols for investigation, changes in victim support services and new or extended mechanisms for closer LGBT community relations and advice.

Various major challenges to taking homophobic violence seriously still loom large. One is that there is still little research on the current policing and criminal justice response to homophobic violence. Little is known about how administrative changes are impacting upon the police response to homophobic violence. More generally, little is known of lesbian and gay experiences of the provision of police services. One source of

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police. Furthermore official statistics of homophobic violence (still a rare official category) suggest that levels of reporting homophobic violence are lower than reports of other categories of violence associated with prejudice, such as racial violence (Perry, 2001 and see www.met.police.uk/crimestatistics/index.htm). Victim surveys suggest that the most common reason offered for this is expectations and prior experiences of prejudice from those in the police service.
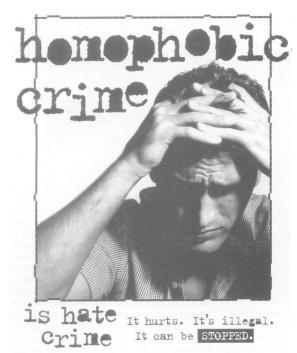
In crude terms this data has been used in support of an argument that the police and the more generally the criminal justice system do not take homophobic violence seriously. The rhetoric and politics of defining hate crime have become an important dimension of the activities of those who seek to change this state of affairs in most common law jurisdictions (Jenness and Broad 1997; Jenness and Grattet 2001; Mason and Tomsen 1997). In the UK attempts to introduce or extend 'bias' or 'hate' offences and related sentence enhancement provisions to include sexual orientation have to date been unsuccessful (Thatchell 2002). In the UK, as in the USA, rhetoric and politics of hate crime have had most attention, in terms of law reform, in the context of racial violence and most recently religious prejudice. As Jenness and her colleagues illustrate, the addition of sexual orientation is usually perceived to be much more politically controversial and hence problematic.

In the UK a greater success has been achieved in the characterisation of homophobic violence as hate crime in administrative and bureaucratic contexts. For example the *Guide to Identifying and Combating Hate Crime: Breaking the Power of Fear and Hate* produced by the Association of Chief Police Officers includes homophobic incidents as a category of hate

information about the impact of policing is official data. Statistics produced by the Metropolitan Police make depressing reading. Clearup rates for homophobic incidents in London, for the financial year 2000-2001, varied from a high of 24.5% in Westminster to a low of 14.7% in the North East sector of the Metropolitan Police area. In some areas of London monthly clearup rates are as low as 8% (2002/Feb. South East. For the same period clear-up rates for racial incidents recorded a high of 39.8% in Westminster and a low of 24.2% in the South East.)

A second challenge takes the form of low levels of reported violence. Unless individuals report, so the argument goes, the police can do little to pursue perpetrators of violence or provide assistance to respond to the specific security and safety needs of those targeted through these acts of violence. The dominant response to this lack of reporting has been twofold. The first dimension promotes the reform of the police service to reduce the homophobia of those who provide the service. A second dimension is the development of more diverse reporting mechanisms, including third party and anonymous reporting. While these changes are important there remains little evidence that they have made a dramatic impact on reporting levels, either in the UK (where they are relatively new developments) or in other jurisdictions. How is the apparent reluctance to report homophobic violence to be understood?

One of the important factors that has received relatively little attention so far is the uncritical assumption of the 'crime paradigm'. Stanko and Curry (1997) have drawn attention to the way the 'crime paradigm' informs victim surveys that document the reporting gap, and much of the associated activism that seeks to reduce that gap. The 'crime paradigm' generates an assumption that those who have suffered harm will always

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It hurts. It's illegal. It can be STOPPED.

institutional landscape of criminal justice. One dimension of this changing landscape is captured in the paragraph that opens the ACPO Guide. It opens with the following statement:

"Hate Crime is a most repugnant form of crime. The police service alone cannot be effective in combating it. The active support of partner agencies, group leaders, communities, witnesses and victims is essential to effective prevention and investigation." (ACPO 2000)

On the one hand these remarks announce the seriousness of hate crime (including homophobic incidents) as a threat to order. At the same time they formally declare the limited capacity of the police, one of the key institutions of the sovereign state dedicated to the provision of internal order, safety and security, to deal with that threat to good order. David Garland has commented that, far from having a monopoly over responses to crime the state now seeks to, "spread out the crime control effort beyond the specialist state organizations that previously sought to monopolize it." (Garland 2001). Disorder and insecurity is now being addressed by way of state institutions set within a public/ private multi-agency network. The *Crime and Disorder Act 1998* gives this contemporary shape and legitimacy. Certainly the first round of crime and disorder safety audits and strategies produced under that legislation suggested that little attention was being paid to either homophobic violence in particular or lesbian and gay safety more generally in this wider network of safety and security providers. Homophobic hate crime initiatives need to address this institutional shift and take it more seriously.

At the same time as the criminal justice state is loosening its monopoly over safety and security provision, demands for new laws and sentence enhancement provisions are reinforcing the role of the state. A concern here is the way lesbian and gay demands for reform are being aligned with a law and order politics that promotes what Garland has described as 'punitive segregation'. Of particular concern is the emphasis on retribution as a primary objective of punishment. The following observation by Murphy and Hampton (1998) draws attention to various attributes associated with retribution: "...criminal law institutionalizes certain feelings of anger, resentment and even hatred that are typically directed towards wrong doers, especially if we are the victims of those wrong doers."

There is a certain irony in the possibility that demands to take homophobic hate motivated violence more seriously may take the form of demands for an institutionalised form of hated.

By way of conclusion I turn to a comment made by Barbara Perry. She captures an issue which for me is at the heart of attempts to respond to homophobic violence. She observes, "In a generally-homophobic culture, violence motivated by hatred is not deviant behaviour. In fact it conforms – It is an affirmation of the gendered and sexualised hierarchy that constitutes the 'legitimate' social order." (Perry, 2001 emphasis added). The challenge is how to address and respond to this state of affairs in order to bring it to an end. Making homophobic violence into 'hate' crime (a new category of violence in general and crime in particular) is a solution that is fraught with problems. Furthermore it is far from the only approach. Much remains to

define either the incident or the injuries as 'crime'. In turn it presupposes that once so defined individuals will invoke the protective institutional mechanisms traditionally associated with 'crime' (policing and criminal justice) as the first and perhaps only response. These assumptions are problematic. For example research data generated as part of the ESRC Violence Sexuality Space project examining homophobic violence and safety, suggests that lesbians assume high levels of personal responsibility for their own safety.

Violence is rarely framed according to the crime paradigm, particularly in terms of the immediate problem of managing homophobic violence and the threat of violence. While perceptions and expectations of prejudice associated with the police and criminal justice system may be one factor in this state of affairs it is unlikely to be the only factor. In general the crime paradigm may well be an exceptional and last resort approach to making sense of violence or the need to manage violence and safety. If changes to policing and new reporting mechanisms are to be useful and reasonable more research needs to be done to understand how and when law and criminal justice paradigms come into play in lesbian and gay experiences of safety and danger. In turn the 'crime paradigm' that informs and generates expectations and demands needs to be questioned and rethought.

Another challenge is associated with the continuing demands for new laws in particular the introduction of new offences of 'hate' or 'bias' crime together with sentencing enhancement provisions. I explore these in more detail elsewhere (Moran *et al* forthcoming 2003). In brief this challenge relates to a need to place demands that homophobic violence be taken seriously in the context of changes in the

arising from the incident-based analysis of criminal allegations and the conceptualisation of the wider social context of 'hate crime' or 'targeted violence'. Many of the so-called 'hate crime' incidents that come to the attention of the police are the 'rubbish' incidents that do not result in criminal prosecutions. These are the incidents that most often cannot be dealt with by pro-active operations and detailed targeting of individuals. A deeper understanding of the overall patterns of the 'ordinary' as well as the extremely violent or organised attacks on strangers is necessary before strategic decisions can be made about intervention and prevention. In this analysis of the richer context of the 'ordinary' incidents that govern 'everyday' life the URHC project is providing the MPS with a means to that understanding. It is a lesson that others might wish to take on board. As we grow increasingly convinced by our own data, challenging targeted violence demands that we target the social resources for social (and indeed criminal) threat and intimidation. ∎

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be done not only to understand the problem but also to conceptualise the solutions to the problem. More debate is needed on the role of criminal law and the nature and form of punishment in this context. Alternatives also need to canvassed and explored. ∎

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the more insidious tendency to align 'hate crime' with a conservative law and order lobby and the politics of victimhood.

While the existence of 'hate crime' legislation will not by itself solve the problems of a deeply divided society, it could nevertheless be argued that the absence of such legislation in Northern Ireland sends a message to various individuals that their actions will be tolerated and given some kind of social, cultural and political sanction. Such a view has no place in a society that is trying to come to terms with the legacy of the past thirty years, and which in a post-conflict phase is attempting to establish mutual trust and tolerance. ∎

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