

Victims as vote-winners? The antisocial behaviour/ hate crime nexus

Marian Duggan and Vicky Heap cast a critical eye over the policy connections

Antisocial behaviour (ASB) and hate crime have a number of connections: both are relatively recent notions, both are underpinned by their subjective nature and both have laid the foundational concepts for reimagining the 'victim' in the criminal justice system. Over the past two decades, victims of crime and ASB have been promoted to the forefront of criminal justice policy developments. The status of victims has been elevated, but in a prescriptive manner that determines the most appropriate course of action. This paper explores whether continued efforts by the coalition to elevate victims' status will actually benefit victims, or are a case of political posturing to secure the populist law and order vote, using the ASB/hate crime nexus as an example.

The capitalisation of social issues by governments is a key tactic in fighting and winning elections. Issues relating to the criminological arena are usually focused on targeting crime and punishing criminals; victims have – until relatively recently – been an afterthought in the criminal justice system. Despite the advent of the crime-drop in the 1990s, New Labour began creating a whole new conduct-regulating discourse around anti-social behaviour (ASB) as a means of capitalising on penal populism. This broadening of the criminological gaze focused on targeted, harmful or annoying behaviours which were not strictly criminal, but which resonated strongly with the voting public who demanded enhanced responses from police and politicians. Furthermore,

it began to highlight and elevate the status of victims within the criminal justice system by addressing such quality of life issues. This was quickly followed up with a new-look approach to tackling another form of targeted victimisation: 'hate crime'. New Labour passed a series of laws which addressed acts motivated by a prejudice towards a victim's actual or perceived identity category in relation to race, religion, sexual orientation, disability and – now – gender identity (albeit not 'gender').

Since assuming power in 2010, the coalition government has appeared to revise and extend the 'victim-focused' work of the previous New Labour administration by introducing a raft of victims' policies. With both recorded and perceived crime rates still falling, addressing victimisation is perhaps seen as the best method of upholding the 'strong on law and order' ideology particularly favoured by the blue proportion of the coalition. This approach may also be salient financially in times of austerity, due to the high cost of more traditional crime control policies such as increasing the prison population. Furthermore, this rhetoric pertaining to protect victims fulfils the populist vote-winning criteria.

Taking the ASB/hate crime nexus, this paper illustrates the very different political and policy responses to quite similar forms of victimisation. Whilst a separatist approach may prove politically advantageous, the duplications, inconsistencies, blurred boundaries and misinformation may ultimately prove detrimental for the most vulnerable in society.

Antisocial behaviour and hate crime share some common

characteristics: they often encompass what is termed 'low level' victimisation or harassment (verbal abuse, intimidation, criminal damage, breach of the peace, minor assault) by similar cohorts (young people, often in groups of three or more) and go largely unreported as a result of victim perceptions of criminal justice system capabilities to intervene (Heap, 2010; Duggan, 2012). In some cases (such as Fiona Pilkington, see below), the complexity of categorising people in one camp or the other has resulted in statutory failures and tragic circumstances.

The subjective power given to victims in determining what constitutes ASB and hate motivation is unprecedented in any other part of the criminal justice system. For ASB, victimisation is distinguished by whether the perpetrator's behaviour causes harassment, alarm or distress. This elastic definition is set to extend further with the implementation of the *Anti-Social Behaviour, Crime and Policing Bill* (due to receive Royal assent in spring 2014), with the inclusion of behaviours that are capable of causing nuisance and annoyance. With hate crime, a successful prosecution on the basis of the perceived motivation can extend sentences by up to two years (motivators such as sexual orientation, disability, and gender identity), or constitute a recognised hate crime conviction (race or religion).

Parallels can also be found in the relationship between ASB and hate crime victims and their perpetrators, with there often being some degree of familiarity (Mason, 2005), which may adversely impact on a victim's willingness to report incidents. This may negatively affect the government's drive to boost the number of restorative justice interventions among 'lower level' types of victimisation, as fears around retribution or retaliation can be enhanced by this degree of familiarity among victim(s) and perpetrator(s) (Walters and Hoyle, 2012).

Similarities abound with regards to reasons for non-reporting. Heap (2010) has noted a silence around

highlighting ASB to the authorities as being linked to fear of repercussions and/or perceived inaction on the part of statutory agents, factors replicated in much hate crime literature (Chakraborti, 2009). To address this, various reporting mechanisms have been established which indicate a discernible difference in procedure for ASB and hate crime. The 'partnership' approach adopted to tackle ASB means that reports can be made to a number of agencies including the police, local authorities and social housing providers. However, this results in numerous issues, ranging from double counting incidents between agencies to cases of unidentified repeat victimisation. For hate crime, the establishment of 'third-party reporting' via public authorities, community centres and online forms allows victims to report incidents and crimes to an intermediary without having to engage directly with the police. This in turn means that many incidents may not be officially recorded and, in some cases, result in under counting or discrepancies between what is recorded where.

Different responses

In spite of these similarities, a key difference between ASB and hate crime is how an incident is *responded* to. The victim's identity, their perception of motivating factors and the nature of the incident(s) are integral to discerning what the incident is categorised as and what protocol is employed. Seemingly similar incidents may be classed as ASB, if the victim does not fall into one of the recognised hate crime strands, and *hate crime* if they do. As ASB is regarded as sub-criminal and 'low level', most victim experiences are noted, with victims given a diary to detail further incidents in order to build a case. In contrast, policy guidelines for hate crime in some policing areas (such as South Yorkshire) dictate that a responding officer must make contact with the victim within one hour of the incident being logged.

The difference between these responses has been illustrated by the tragic case of Fiona Pilkington, who killed herself and her severely

disabled daughter in 2007 after years of harassment by local youths. During misconduct proceedings against members of Leicestershire Police, it emerged that over 30 reported incidents had been logged as ASB rather than disability hate crime. For people affected by disability prejudice in particular, extra vigilance is required to avoid hate crimes being recorded as ASB due to the victim being unaware of more applicable legislation existing.

Increasing the public's knowledge of policing practices and procedures can enhance and ensure suitable responses. Within the hate crime domain, many statutory and third sector organisations exist which are dedicated to informing minority communities of criminal justice processes related to targeted victimisation. By contrast, this is not as pronounced for victims of ASB, who therefore may not even bother reporting incidents in the first place if they feel that the police are unwilling or unable to help them. This may mean that victims become more disillusioned with a criminal justice system which they see as prioritising a 'hierarchy of victimisation' which is not in their favour. Or, as ASB is not identity-dependent, it may also be seen as a 'catch-all' for those who do not see themselves reflected in legislation addressing the 'targeted' aspect of victimisation. Alternatively, victims who are aware of which policy is currently being championed and who are in a position to choose may tailor their reporting on the basis of what appears to be the more guaranteed resolution.

The ASB/hate crime nexus remains an issue to those who fall within this legislative black hole, with their fate determined by the both the victim's knowledge of available procedures, and the quality of the individual receiving and categorising the initial report. Thus, tangible gaps in provision persist, particularly surrounding the delineation between seemingly similar forms of victimisation.

Empowering victims, shaping political outcomes?

With a 2015 general election looming, it is perhaps unsurprising

that the coalition's revived interest in ASB policy illustrates a politically salient pledge to '(re)focus on the victim'. Drawing on failings from the Pilkington case (and others), the *Anti Social Behaviour, Crime and Policing Bill* outlines plans for a 'Community Trigger' which requires relevant bodies to review their responses to complaints of ASB if a threshold level of reports is met. This delegation of more public responsibility and (limited) power in cases where persistent ASB is seen to be affecting a community should, theoretically, provide victims with a riposte if their needs have not been met. It also delineates a bottom-up approach to dispersing power where previous attempts to give victims a 'voice' in crime prevention have been top-down. The establishment of political figureheads, for example, a Victim's Champion and Victim's Minister, sought to raise the profile of victims within the criminal justice system. It is clear that the status of some victims has been elevated, but in a prescriptive manner that determines the most appropriate course of action. However, the 'appropriateness' of this action can be called into question as to whether it serves victims' needs, or if instead it is predicated on the political wishes of the authorities. ■

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