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Citation:

SLOAN, Jennifer (2017). Sex doesn't matter? The problematic status of sex, misogyny, and hate. *Journal of Language and Discrimination*, 1 (1), 61-82. [Article]

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Sex doesn't matter? The problematic status of sex, misogyny, and hate

Jennifer Anne Sloan Rainbow

Abstract

In this paper, I seek to highlight and re-emphasise the ongoing problem of the disconnection between the terms 'hate' and linguistic violence against women. Despite the prevalence of violent, misogynistic and sexist actions against women, it was only in 2016 that police forces saw fit to categorise these actions as 'hate', and only then in one police force (Nottinghamshire Police) with one forward thinking (female) Chief Constable working in partnership with Nottingham Women's Centre. As such, I seek here to look in more depth at the disconnection between hate and crimes according to sex – particularly with regard to hate speech, and to unpick some of the reasons behind this, and the problems with failing to acknowledge such matters within law and social policy.

KEYWORDS: SEX; HATE SPEECH; SEXISM; HATE; MISOGYNY; DISCRIMINATION

Introduction

During the final stages of the run-up to the 2016 US Presidential election, candidate Donald Trump was revealed to have made sexist comments and inappropriate remarks and behaviours. The British newspaper *The Telegraph* created its own 'sexism tracker', detailing remarks going back to the 1990s (Cohen 2016). It includes details of Trump calling women names

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including ‘Dog’, ‘Miss Piggy’, ‘Disgusting Animal’, and also details a video recording of Mr Trump referring to ‘grabbing (women) by the pussy’, seemingly celebrating his ability to do so, as a celebrity figure. While many of us watching naïvely put this down to the distasteful individual predilections of the individual in question, we were sadly disappointed when a variety of other public figures defended Mr Trump’s stance. Nigel Farage, former leader of the UK Independence Party, referred to Mr Trump’s behaviour as ‘alpha male boasting’ and something ‘if we are being honest that men do’ (BBC 2016); and former *Happy Days* and *Diagnosis Murder* star Scott Baio stated: ‘Ladies, this is what guys talk about when you’re not around’ and ‘If you’re offended by it, grow up okay?’ (Blair 2016). Even when thousands of women (and men) took to the streets to protest in the women’s marches with so called ‘pussy hats’ (Pussy Hat Project 2017) in response to Trump’s remarks about grabbing women, this didn’t stop more public figures from making inappropriate remarks; Piers Morgan’s Twitter backlash at the marchers (‘I’m planning a men’s march to protest at the creeping global emasculation of my gender by rabid feminists. Who’s with me?’ (Morgan 2017)) stimulated much distaste, debate, and even film star Ewan McGregor refusing to share time on a TV programme with him (BBC 2017). This is all situated within Western democracies, where women’s equality and physical autonomy is seemingly protected in law and policy.

I began writing this article post-Brexit (which in itself instigated high rates of hate crime¹ within the UK – see Cuerden and Rogers 2017; Prentoulis *et al.* 2017) and in the final days of the run-up to the US Presidential election. In the weeks following these events, the presence of hate and fear was palpable, as was the obvious presence of misogyny and sexism (and the apparent lack of social policy provision to address the issues). Indeed, the two (misogyny and sexism) go practically hand in hand – as they do in the daily lived experiences of women across the globe. I say ‘women’ – while men do experience sexism and harassment, it is rarely on the same scale, rarely so intertwined with violence, and rarely so debilitating that it undermines their ability to continue to live lives that are privileged by having a penis – unless, that is, they live with another intersecting characteristic which is the subject of hate.

‘Hate crime’ in England and Wales recognises these intersecting characteristics through the process of the police ‘monitoring’ five characteristics: disability, race, religion, sexual orientation and gender identity (i.e. transgendered lives). These five characteristics are prioritised across England’s forty-three police forces for recording as subjects of hate, over and above other characteristics. That said, police forces are increasingly recognising other characteristics as being worthy of the label ‘hate crime’ – often in the

wake of a terrible tragedy which can only be attributed to hate and prejudices, such as the death of Sophie Lancaster² leading to the recognition of 'goths' as being a further group at risk of being potential victims of hate.

Misogyny and sexism are two different issues, but both are demonstrations of differential, negative treatment undertaken, based on the assumption of inequity between men and women. Indeed, in the wake of Australian politician Julia Gillard's speech including the term 'misogyny' in regard to Australian politician Tony Abbott in 2012, one Australian dictionary amended its definition of misogyny 'to reflect the fact that it is now used to mean "entrenched prejudice against women", not just hatred of them' (*The Guardian* 2012). Misogyny has traditionally been concerned with a hatred towards women, with sexism more often comprising prejudice. Indeed, sexism has been defined in numerous ways, raising issues regarding the term's complexity. Vetterling-Braggin defines sexism as 'the practices whereby someone foregrounds gender when it is not the most salient feature' (1981), whereas Mills problematises this as being too simplistic. Rather, she states the need to look beyond the individual basis for sexism, instead

'foregrounding the view that sexism, just like racism and other discriminatory forms of language, stems from larger societal forces, wider institutional inequalities of power and ultimately, therefore, conflict over who has rights to certain positions and resources [...] sexism is an index of ongoing conflict between men and women' (Mills 2008:1–2).

In this paper, I seek to re-emphasise the ongoing problem of the disconnection between the terms 'hate' and violence against women (particularly in the form of hate speech), misogyny, and sexism, an issue which has been repeatedly pointed out over the years (Mason-Bish 2016; Perry 2001), yet generally continues to go unnoticed and/or unaddressed. Despite the prevalence of violent, misogynistic and sexist actions against women,³ it was only in 2016 that police forces saw fit to recognise these actions as 'hate', and only then in one police force (Nottinghamshire Police) with one forward thinking (female) Chief Constable working in partnership with Nottingham Women's Centre following the Nottingham Citizens' 2014 'No Place for Hate' report (Nottingham Citizens 2014; Nottingham Women's Centre 2016). As such, I seek here to re-emphasise the hateful nature of offences against women simply because they are women; to re-examine arguments as to why this is not a political priority; to highlight how the failure to recognise such actions as hate crime is based on a numbers game as well as to highlight the overwhelming scale of the problem in modern British society (and beyond).

The relationship between the sub-disciplines of hate crime and physical violence against women is one of tension and debate. Some argue that

physical violence against women and rape are manifestations of hate (Gill and Mason-Bish 2013; Maher, McCulloch and Mason 2015). Others argue that extending the definition of hate crime to include violence against women risks marginalising issues of sexuality (Tomsen and Mason 2001) as well as marginalising the other forms of hate due to the overrepresentation of women if included as a characteristic (McPhail 2003). This situation confuses motivations and meanings of ‘hate’ (McPhail 2003), highlighting the conflict between freedom of expression and censorship (see Edström 2016; Jacoby 2002; Phillips 2002) as well as raising issues of public policy (Gelber, 2000). As such, the matter of physical violence against women as a manifestation of hate is a well-trodden path; here, rather, I am concerned with linguistic ‘violence’ against women in the form of hate speech and acts of misogyny and sexism.

In this paper, I argue that the discipline of hate crime needs to take a more inclusive approach to other forms of harm targeted at particular distinct groups, and that sex is one of the most obvious places to start. I argue that we need to look not only at violence against women as a form of hate crime – as others have argued already (see Chakraborti and Garland 2009; Choundas 1995; Iganski and Levin 2015; McPhail 2003; Weisburd and Levin 1994) – but also include sexism and sexual harassment within this dimension as forms of hate speech. To do so would make great advances in seeing such offences as worthy of critical attention by all – rather than sidelining it to the realm of feminists – and acknowledging that this is one of the most serious issues of discriminatory harm that we see in modern society, having implications for half the population and spanning across age, class, sexuality, race and religion.

Sex as a protected characteristic

Within English⁴ legislation, social policy and criminal justice, the notions of ‘sex’, ‘hate crime’ and how they are defined and intertwine, is an interesting conundrum.

Sex

The Equality Act 2010 – a piece of legislation intended to

‘have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; [...] to prohibit victimisation in certain circumstances; to require the exercise of

certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct [...] (Equality Act 2010: Introduction)

– includes sex as one of nine ‘protected characteristics’⁵ which found the basis for discriminating conduct. ‘Sex’ is defined here as follows: ‘(a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman; (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.’ (Equality Act 2010 s11). Here, there is clearly a provision to protect against sexual discrimination, i.e. treating someone differently as a result of their sex, albeit while conforming to the medicalised binary definition which itself is problematic. The Equality Act 2010 places considerable responsibilities on organisations and groups to protect against such discrimination and uphold equality in day-to-day life, and civil cases in the courts to find justice in the event of an infringement have been numerous. As such, there is a precedent for the recognition of sex as an important ‘othering’ characteristic within civil dimensions of social policy. Criminal social policy in the form of hate crime – which might be the obvious place to start when it comes to discrimination against personal characteristics – is another story.

‘Hate crime’

The accepted definition of hate crime is:

‘any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic.’ This common definition was agreed in 2007 by the police, Crown Prosecution Service, Prison Service (now the National Offender Management Service) and other agencies that make up the criminal justice system. [...] Hate crimes are a subset of notifiable crimes that are recorded by the police [...] and make up around 2 per cent of all crimes. (Corcoran and Smith 2016:2)

Hate crime is relatively new as a sub-discipline of criminological debate, and itself is subject to a number of different definitions, this being one of the key problems with hate crime in practice. In fact, the notion of hate crime in practice is an interesting one; while there are characteristics that are protected and recognised as being the potential subject of hate, in reality this will only impact upon processes of sentencing, rather than being actual distinguishing offences in themselves. In this respect, ‘hate crime’ as a term is a misnomer; it is more accurate to think in terms of ‘hate sentencing’ or ‘hate recording’, although these sound much less appealing.

The College of Policing defines ‘hate crime’ as ‘any criminal offence which is perceived, by the victim or any other person, to be motivated by a

hostility or prejudice' (2014:4) based on one of five 'monitored' characteristics: race, religion, sexual orientation, gender identity (i.e. transgender) or disability. There are easily seen parallels with the spirit of the Equality Act 2010 here, but with noticeable absences in categories. As such, crimes motivated by one of these five characteristics are recorded by the police as being motivated by hate, with such records allowing a longitudinal record of victimisation according to such characteristics. Crimes falling under other characteristics are treated differently, as the College of Policing goes on to discuss:

There are, however, many other groups in society who have been targeted with hostility and crime. During consultation to agree the monitored strands, a further 21 different groups were identified for consideration. It is essential that the focus on the monitored strands is not used to deny the existence of other hate crimes. Additional strands that were considered, but not included, range from sexual abuse to football violence.

Agencies and partnerships are free to extend their own policy response to include the hostilities that they believe are prevalent in their area or that are causing the greatest concern to the community. Telling a victim that a crime is not a hate crime could be deeply offensive to them. This is particularly the case when the circumstances fit the first part of the common definition: 'Any crime or incident where the perpetrator's hostility or prejudice against an identifiable group of people is a factor in determining who is victimised'. (College of Policing 2014:7)

On the face of it, this appears to demonstrate a commitment to recognising all potential personal characteristics as having the potential to be the basis of hate. Yet, in reality, we know that this is unsustainable. Pressures placed upon the Police and Crown Prosecution Service (CPS) when charging mean that definitions and perceptions of seriousness within social policy mean everything, and the fact that sex does not fall into one of these named 'monitored' hate crimes gives it a different dimension: it is not a privileged category within law or policy. Tatchell describes the issue as 'some people are more equal than others' (2002), and Nielsen argues that 'members of traditionally disadvantaged groups⁶ face a strikingly different reality on the street than do members of privileged groups' (in this instance, discussing racist and sexist hate speech) (2002:265). Discrimination is apparent: sex is treated differently. At least in the realm of hate crime, sex, it would seem, doesn't matter enough.

This is not exclusive to England and Wales (although discussions about the matter in this paper are limited to this jurisdiction). Indeed, Granström (2007) has criticised the lack of legislation against hatred against women in Sweden; Weston-Scheuber (2012) makes a similar argument regarding

Australia; Brown (2004) highlights the issue in New Zealand; and Nielsen discusses the issue in the American context, where freedom of speech is held in particularly high regard (2002). As such, the issue and its lack of recognition is, therefore, international in scale.

What is also lacking is a joined-up, UK-wide police force approach to the treatment of other personal characteristics. That said, the recording of an offence as a hate crime does not necessarily guarantee any further acknowledgement by the criminal justice system as, in terms of legal provisions, the treatment of hate crime offenders is limited. The only real criminal justice elements available are in the form of harsher sentencing provisions in the event that an incident falls into certain categories within Acts of Parliament, namely the Criminal Justice Act 2003. Sections 145 and 146 of the Criminal Justice Act 2003 allow for an increased sentence to be given for racial or religious aggravation (s145) or for aggravation related to disability or sexual orientation (s146), as long as this was an aggravating factor, and the use of these sections is stated in open court. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 s65 extends this latter provision to include transgender identity.

Despite the fact that women form a substantial category of victim, and dominate certain crime types such as intimate and sexual violence to such a degree that sex is a clear defining characteristic for risk, there is a great reluctance to see sex as a characteristic worthy of being singled out in the same way as race, religion, sexuality, disability and transgendered identity. Indeed, 'society's continued belief in rape myths and separation of the public and private spheres continue to cause violence against women to be seen in a different, and often less serious, light' (McPhail 2003:266). This sends a key message to victims through social policy – as Perry notes:

By leaving gender out of the hate crime equation, legislators are recreating the myth that gendered violence is an individual and privatised form of violence, unequal to the public and political harms suffered by racial or religious minorities, for example. (2001:210)

Hate crime academics have argued for hate crime to include violence against women due to the similarities that run parallel to monitored hate crime characteristics – 'if domestic violence is a form of *gendered* crime that impacts worst upon women, and if women are viewed as a disadvantaged group, then there may be some parallels with other forms of hate crime' (Chakraborti and Garland 2009:85). Yet this also runs the risk of trying to shoehorn women's experiences into a broader debate of harm, which could run the risk of losing much of the distinctive attention and

resources directed solely towards female victims. McPhail makes the point that,

‘Largely due to the work of liberal feminists, violence against women has received increased attention, funding, and legal reform. However, the liberal feminist perspective focuses on gaining equality with men in the public sphere, often without explicating the root causes of the inequalities.’ (2003:267)

It is arguable that situating sex within hate crime would mean a loss in distinctive attention to women as a victim group. That said, it might actually help in terms of highlighting the problematic state of masculinity that leads to men (who make up the majority of violent offenders) attacking other men and women merely due to differences in characteristics. But, yet again, hate speech directed at women goes unrecognised within such debates.

As such, it is arguable that there is a pyramid of priorities of hate within criminal policy; those falling within the pre-decided five categories which have been included within legislation are given the greatest impact through sentencing, while other forms of crime which are based upon other defining characteristic of identity may be recorded as hate by police forces, with no real implications for the offender. Therefore, there is clear discrimination against certain characteristics compared with others. Finally, there are those incidents where defining characteristics are not really seen to matter as much, and not seen to fall into the realms of hate. In essence, while sex is given some protection in civil law, it has not been seen by legislators to qualify for the label of ‘hate’.

The importance of the problems of definitions

Some readers may criticise me at this point based on semantics; true, misogyny is not a recognised monitored hate crime, but it can be recognised by police forces as an addition. This is undoubtedly the case – Nottinghamshire Police Force being the leaders in pushing the recording of misogyny as hate crime forward. That said, however, it is important to recognise that definitions and where they lie within social policy and policing and crime priorities *do* matter. The fact that misogyny and sexism (and all crimes based on sex) are not readily recognised as a monitored hate crime has serious implications further down the line in terms of legislation and social policy. The key to monitored hate crimes is that they are recorded and monitored (as the name implies). The generation of such statistics is not merely for academic professing or news soundbites – government policy is, more often than not, based on such statistical pronouncements.

It is well known that government ministers do not have time to sift through qualitative research findings – they need, and use, statistics, no matter how problematic those statistics may be. Without such statistics, it is unlikely that an issue will be made a priority with regard to policy formation, or funding. As such, to leave sex-based offences *out* of monitored hate crimes means that these are missing from the picture of hate crime more generally, and will not be seen in quite the same way.

Again, this might be met with the argument that violence against women *is* recorded in statistics, just in different ways. I would argue that there are three key problems with this approach. One, the separating out of violence (of any form) against women away from hate crime does, in fact, make it more likely to be sidelined as another issue – not hate, but something ‘just about women.’ Indeed, Mills discusses this apparent disconnection between sexism and hate speech: ‘Sexism seems, even in its most violent misogynistic manifestations, to be fundamentally different to hate speech [...] It could be argued that this is because of the very different relationship between women and men within society and the other groups which are subject to discrimination’ (Mills 2008:39). She goes on to note that in most cases of hate crime, the aim is to differentiate and separate groups from wider society, whereas ‘by contrast, society as a whole is based on the notion of the female-male heterosexual couple who live together in an intimate relationship’ (2008:39).

While this contradiction between women and other hate crime victim groups is clear to see, to say that sexism is different to a hate crime because the hate/harm is not directed against *all* women has the same effect of making these offences somehow different, despite in every other way aligning with hate crimes against other groups. Such an argument fails to acknowledge the intersecting factors that result in hate crimes occurring in everyday life: an offender will rarely attack just any individual, and there is often some form of rational choice or opportunity element involved (see Clarke and Felson 1993; Clarke and Cornish 1985). To leave women out of hate crime discussions due to their somehow being a ‘different’ category is a fundamental error. Hate affects everyone in different ways, but victims of hate tend to experience such events in very similar ways regardless of characteristic – ‘hate crimes hurt more’ as Iganski states (2001). He notes that hate crimes generally have to attempt to demonstrate two types of injury to be seen as a distinct class of crime: ‘psychic injury’ and emotional harm; and the sending out of a message of ‘terror’ (Iganski 2001:635). Those working in the areas of violence against women know all too well the emotional and mental impacts that harassment, stalking, sex-based

violence and aggression can have (Zinzow *et al.* 2012); and the term ‘terrorism’ often goes hand in hand with such harms (Johnson 2011).

Indeed, Iganski notes that ‘little is known about the effects of hate crimes beyond the impact on the initial victims’ (2001:636) – in actuality, we *do* know that women police their behaviours in response to the perceived and experienced threats against their sex in a multitude of manners (to be discussed later). With particular regard to hate speech against women, Edström notes that threats and hate speech directed against Nordic journalists have had two key problematic outcomes. First, ‘the purpose of the threats is to silence [...] the harassment might also scare other women and keep them from entering into journalism’ (2016:102). This links neatly to Iganski’s notion of waves of harm (2001) spreading outward from a hate crime incident to impact upon wider and wider groups. Secondly, ‘one never knows when words will turn into actions [...] hateful speech can serve as fuel for an action where you least expect it’ (2016:102). Again, this links well with Iganski’s work – particularly the notion of hate as terror with all its symbolic and potential for physical violence (2001:635).

The second problem is that the very thing being measured through recording violence against women and (where it is even recorded) instances of sexism and misogyny, comes down to the differential and discriminatory treatment of women over men. That is what sexism and misogyny are. As such, sidelining sex-based crimes as ‘other’ merely repeats the very problem on a larger scale – it posits it as different and not worthy of the same attention. While some may argue that this is beneficial as resources can be focused on women as opposed to other categories of victim, it is arguable that this continued separation merely replicates the problem of sexism and misogyny. Indeed, as soon as you ‘other’ a category of people, discrimination and differential treatment follow – where this can benefit one group, the balance usually tilts against another. With regard to social policy and equality, this is a counterintuitive approach. Walters (2014) makes this point with respect to rape as a hate crime:

... exclusion [from hate crime definitions] may actually perpetuate the myths surrounding why men choose to rape women. In other words, the state’s refusal to acknowledge gendered violence as gendered ‘hostility’ may actually send an unintended counter message that gendered crimes are not gendered at all. This, in turn, feeds directly into misogynistic beliefs about women being partly to blame for their own victimisation.

The third problem lies in the common assumption that hate crime and victimisation is synonymous with physical harm and victimisation. It is all very well for those wanting to maintain separation between hate crime and

violence against women services, but what about those instances where women are targeted verbally? In these cases, they do not fall within the scope of such service providers focusing upon violence, so to ignore them in other instances where they could be given police (or other) attention seems to imply that they are not seen to be as serious as physical victimisation.

Yet, when we look at women's experiences of misogyny and violence, it is important to remember again that the lived experience and interpretation of incidents varies substantially from person to person. Kelly's (1987) continuum of sexual violence positions experiences according to prevalence rather than seriousness. Kelly critiques presumptions regarding victim experiences of seriousness, noting that seriousness and victimisation experiences are subjectively processed and cannot be so easily categorised. It is important to recognise that women will experience gendered harms differently to other women – and this is the crux of the problem. Women do not always see harms against them as serious when they are so prevalent in everyday life. This became evident upon creation of the Everyday Sexism Project by Laura Bates (see <http://everydaysexism.com>), which sought to find a central place for women (and men) to report sexism incidents experienced. While thousands report their experiences on social media, it is rare for these to transfer to police reports or crime statistics, being seen as an everyday part of life as a woman.

Similarly, when looking at the statistics on those hate crime categories that *are* reported and recorded by the police, physical victimisation does not form the majority of overall reports (Corcoran and Smith 2016:15). Indeed, Nielsen has found that incidents of hate speech are 'often quite subtle, leaving all but intended victims unaware that it occurs [...] such interactions occur with regularity and leave targets harmed in significant ways' (2002:265). As such, there is a need to take into account those experiences of hate that are not as clearly visible as the physical with greater sensitivity than is often experienced.

Sex and hate

I had hoped that I would be able to demonstrate the importance of gender as an intersecting characteristic in existing hate crime data by breaking down the existing hate crime statistics for the five monitored characteristics according to sex. Unfortunately, these data are not readily available with regard to police recorded crime, the information is not there (at least not within the public sphere). Such a lack of information is interesting, and communicative, in itself. When looking at the Crime Survey for England and Wales (CSEW), although the figures are there, the actual total number

of hate crimes only accounts for a small proportion of the entire population of England and Wales (0.4%; CSEW 2016b:Appendix Table 4.03). What data there are indicate that of all the hate crimes reported in the CSEW in 2015, 0.4% of men had experienced hate crime, and 0.3% of women (CSEW 2016b:Appendix Table 4.05). Yet this is subject to the fact that this only records for the five monitored strands of hate crime previously defined. When looking at violence statistics, we see that 2.2% of men are victims of all violence as opposed to 1.4% of women (CSEW 2016a:Appendix Table 1.01). If, however, we look at the number of women reporting intimate violence (which is only one of the potential manifestations of hate), against the total numbers of hate crime in the CSEW, we see a slightly different picture. Whereas only 0.3% of women have been victims of hate crime, 26.3% of women have been victims of domestic abuse since the age of 16 (compared with 13.6% of men) and 7.7% of women have been victims in the last year (compared with 4.4% of men) (ONS 2017).

When looking at the proportions of offences which the police flagged as domestic abuse (DA) related in 2016, it was seen that 11% of all offences were DA related, and in particular 32% of violence against the person incidents. Sexual violence shows a similar dominance of women as victims (2.7% women versus 0.7% men, CSEW 2015:Table 4.01). As such, when we look at the motivations behind certain offences through the lens of sex-based violence being a manifestation of hatred towards that sex, the picture looks much more compelling. Once again, it raises the worrying issue that only the most serious cases of harms against women are available within statistics; we cannot even begin to unpick the instances of hate speech that women may be suffering – the data simply are unavailable.

The argument to see violence and harms against women, sexism and misogyny as forms of hate becomes even more persuasive when looking at crimes against particular groups of women. Perry, for instance, notes that violence against lesbians is a clear extension of male misogyny (2001:10). Another excellent example is that of sex workers. The need for an organisation such as National Ugly Mugs, who:

take reports of incidents from sex workers and produce anonymised warnings which are sent directly to sex workers and front-line support projects throughout the UK [...] share anonymous intelligence to the police [...] support sex workers in making full reports to the police so that the perpetrators can be identified, arrested and convicted [...] ensure sex workers have access to professional services when they have been a victim of crime (UKNSWP 2016)

highlights the at-risk state of such groups of women (it is women who dominate this field of work). Serial killers such as Jack the Ripper, Peter Sutcliffe

and Steve Wright in England – and Gary Ridgway, Robert Hanson and Joel Rifkin in the USA – bring the fact that violence against sex workers *is* a sex issue to the fore. These individuals attacked female sex workers in the main – not male sex workers. Although this may be due to the greater numbers of women in sex work, and the greater visibility of those women, there is arguably something about the fact that it is their gender that makes such individuals more vulnerable.

As already noted, some might argue that these men did not hate *all* women (see McPhail 2003): that may be so, but being a woman was the key defining feature which made the victims targets – albeit the hatred intersecting with another profession-based characteristic (sex work). Yet, at the same time, referring to notions of intersectionality⁷ often sidelines the underlying commonality of femaleness that surrounds victims of such hate crimes. Crimes against gay women, female Muslims, disabled women, trans women and women from other racial backgrounds (see Weston-Scheuber 2012) all share the fact that they are women; however, the femaleness goes under-examined compared with examining the 'otherness' of such victims relative to the general population (see also Weston-Scheuber 2012). Perhaps such 'otherness' is the reasoning behind such visibility: in modern society we thrive and categorise ourselves based on difference – be that individuality or through processes of competition. To focus on similarities running through victims (and offenders) with regard to sex undermines this approach to social positionality, meaning addressing this issue is a mammoth task to undertake in social policy and criminal justice spheres.

When considering the statistics noted, it is important to remember that this does not even take into consideration the large numbers of people who do not report such incidents, nor those who do not recognise such incidents as being worthy of criminal justice attention. The definition by the College of Policing noted above does raise an interesting issue of the notion of 'offence', i.e. 'Telling a victim that a crime is not a hate crime could be deeply offensive to them' (College of Policing 2014:7). In reality, hate crime is focused upon prejudicial treatment of individuals based on some defining feature, and is particularly concerned with notions of the victim recognising such prejudicial behaviours as being offensive.

It is also important to situate the victim against the offender, and against wider notions of patriarchy and structural inequality and misogyny. As Asquith notes with regard to 'name calling' within hate speech:

What brings us the greatest offence or causes the greatest harm and distress will have as much to do with who we believe ourselves to be as it does with how others perceive us. In this sense, naming one's subjectivity can be a positive act of nomination and an act of subordination, depending on who is naming, and

who has the power to name. Subordinating the other through naming creates a hierarchy of subject positions. (Asquith 2010:118)

When paired together with the fact that it is often men using hate speech against women – just as it is men who are generally in more dominant structural positions than women within culture and society – we can see an accumulation of harms against women which are greater together than their individual parts. Indeed, ‘sexualised hate speech can be seen as an expression of power or lack of power’ (Edström 2016:102).

Sex and language

Asquith’s argument about notions of power and hierarchy noted already is useful. However, when this is applied to sexist speech, there is a clear disconnection between how we view women and how we view other protected and monitored characteristics. There has been a substantial cultural shift in the use of various derogatory terms regarding the five monitored characteristics (and many more), even if this has been met with some critique by those arguing for the sanctity of freedom of speech (Hume 2015). Yet the same firm attention to ‘political correctness’⁸ does not seem to have fed through with regard to sexist speech, as President Trump’s words highlighted. The phrase ‘like a girl’ is still used to imply weakness (in spite of Always Sanitary Towels attempting to rephrase this through their advertising campaign #likeagirl showing women’s strength [seemingly in spite of their menstruating tendencies])). Indeed, the habit of referring to women as ‘girls’ shows the infantilising processes placed upon women.

While research on violence against women far outweighs that in existence about hate speech, there is some evidence of its prevalence. For example, the National Union of Students (NUS) conducted a survey in 2010 regarding women students’ experiences of harassment, stalking, violence and sexual assault and found that 65% of respondents had experienced:

- ‘Someone making sexual comments that made them feel uncomfortable;
- Someone wolf whistling, catcalling or making sexual noises at them;
- Someone asking them questions about their sex or romantic life when it was clearly none of their business;
- Someone asking them questions about their sexuality when it was clearly none of their business’ (NUS 2010:12)

and that 'the most common behaviours reported were making sexual comments and sexual noises that made the respondent feel uncomfortable' (NUS 2010:12). This is within a university setting – one of the more liberal and inclusive of places (one might think/hope) that an individual experiences. Yet even in these places, sexed hate speech is rife, along with misogynistic 'lad culture' and physical harm (Universities UK 2016).

Mason-Bish (2016) makes the point that, despite the 'normality' of such experiences, such encounters *are* harmful and upsetting, a point that was found in a piece of empirical research undertaken by Dr Maggie Wykes and Dr Jennifer Sloan at the University of Sheffield in 2013. When individuals living in South Yorkshire were asked about their experiences of sexism and sexual harassment, it was found that, in response to such experiences, 52% of the 374 respondents avoided being alone; another 52% avoided going out late at night; 28% changed their appearance; 17% carried an alarm or spray; 16% changed a relationship; 12% avoided using public transport (similar findings were found problematising public transport in Coventry – see Osborne, 2013); 10% closed an online account; and 5% changed their work. It is clear that sexism and sexual harassment have a profound effect upon individuals' behaviours post-'victimisation'; on top of this, there is an argument that the normalisation of sexual aggression, sexism and misogyny has the potential to lead to an accepting rape culture⁹ (Baker 2015; Thomae and Pina 2015). Indeed, misogyny being at the root of violence against women was one of the rationales for the attempt by Nottinghamshire Police and Nottingham Women's Centre to address the behaviour.

Nottingham Police's approach to record misogyny as hate crime shows one attempt to address this behaviour,¹⁰ while highlighting the problems of addressing misogyny more broadly: 'Whilst misogynistic behaviour in itself may not be a criminal offence, so doesn't always lead to prosecution, reporting it means we can investigate and establish whether a crime has taken place' (Nottinghamshire Police 2016:11). Developed in partnership with Nottingham Women's Centre, the approach was received well by citizens of Nottingham in terms of engagement: between 1 April 2016 and 12 October 2016, fifty-one misogynistic hate crime incidents and crimes were recorded, of which fourteen were recorded as crimes (Nottinghamshire Police 2016:7). Yet a problem is clear with this approach. While excellent in principle, it is being led by, and supported by, women. Indeed, at an event held in the Palace of Westminster on 25 October 2016 where the policy was showcased, of the thirty-three people in the room, only six were men. While the dominance of women should be fine in principle, without the buy-in of men, the future of such a policy initiative is fragile, as men are (in the main) the perpetrators of sexist and misogynistic violence and

crime. In addition, Kimmel (1994) argues that men act out their masculinity (sometimes in the form of negative – i.e. violent or abusive – manifestations) for the benefit of other men who grant them their masculinity. With this in mind, men are arguably more likely to change and police their own behaviour if held to account by other men.

Discussion

So why is there so much aversion to including sex as a protected and monitored characteristic in hate crime? A few ideas were mentioned earlier in this piece, but perhaps the most compelling is the notion put forward by McPhail (2003) and Jacoby (2002) in combination:

A related fear is that with violence against women being so prevalent, including gender as a status category would make the other status categories look less important and frequent in comparison. (McPhail 2003:269)

and

Equal protection under law is the ideal of every democratic society. A government that takes that ideal seriously tells potential criminals that they will be punished fully and fairly, regardless of the identity of their victims. Hate crime laws, by contrast, declare that some victims are more deserving than others. This is a message no citizen should be willing to accept. (Jacoby 2002:122)

When seen together, these statements highlight a key issue with situating sex as a protected and monitored characteristic: the offenders – men. Indeed, some would argue that such bias-crimes are actually a means of men acting out their gendered identities (Bufkin 1999; Messerschmidt 1993; West and Zimmerman 1987) – often for the purposes of positioning themselves in the masculine hierarchy for male audiences (Kimmel 1994). As noted, although men can be victims of sexism and sexual harassment by women, this is less prevalent. If sexism, sexual harassment and violence against women were to be problematised to the same degree that other forms of hate crime are, this would raise a serious issue concerning male behaviours at every level of power. To address this would require an enormous cultural shift, huge resource implications, and the problematisation of male behaviours of even the very men creating the legislation, social policy and policing. The fact that this has not happened on any large scale just re-emphasises the point made earlier – without buy-in from the very men doing the harm, there is little hope for wide-scale change.

Yet some men *do* buy in – Ewan McGregor is an excellent example – although perhaps his actions might have been better placed in confronting

the misogyny and sexism, rather than boycotting being near the perpetrator. Men *are* working towards addressing misogyny and sexism – not least those police officers who enforce Nottinghamshire's policies. As such, it is clearly not that hard to achieve such change in reality, if there is acceptance of its importance from the top down.

In addition, there is a serious lack of knowledge regarding the motivations and implications of gender-based hate crimes. Indeed, McPhail and DiNitto found that prosecutors they spoke to were 'insufficiently informed about gender-bias hate crimes [...] and] attribute violence against women to motivations of power and control rather than hate' (2005:1162). This shows serious issues of misunderstanding at the physical end of Kelly's continuum of experiences; it is, therefore, unsurprising that those experiences that are often seen to be 'less serious' (i.e. hate speech) go under-acknowledged within criminal justice systems. It should also be recognised that this is the documented problem in Western democracies which subscribe to (attempt) greater equality for women and have been subject to long-term pressure from (particularly feminist) organisations and public interest groups; in those societies where women are afforded much less protection under the law, the case is even more problematic.

This also raises another problem – the fact that the attention that *is* being given is often women-driven. The seating of the issue within feminist discourse has the potential to create problems in itself: indeed, the fact that I am a woman arguing for greater recognition of the problem of sexism, misogyny and violence against women, and the fact that I have thrown in the privileged nature of having a penis, will probably mean that my arguments are immediately attributed to 'feminist rantings' and therefore seen as of lesser importance. Even at this level of discussion and debate, the feminist label appears to have been demonised and undermined with images of the 1970s radical feminist movements, bra-burning and anti-male discourses. Even women are struggling to embrace the feminist label (in spite of inspiring words from new-age feminists like Beyoncé and Caitlin Moran):

The survey of members of Netmums, Britain's largest women's website, revealed almost a third (28 per cent) think traditional radical feminism is 'too aggressive' towards men while a quarter (24 per cent) no longer view it as a positive label for women. One in five describe feminism as 'old fashioned' and simply 'not relevant' to their generation. And less than one in 10 (nine per cent) of those aged 25 to 29 identified with it, while a quarter of older women aged 45 to 50 described themselves as a feminist. [...] And one in six women (17 per cent) even claim feminism has gone too far, oppressing men and losing sight of the natural roles of men and women. (*The Telegraph* 2012)

Elsewhere, I argue that feminists need to recognise men more in their discussions and policies, rather than sidelining them as offenders who should merely be punished (Sloan, forthcoming). I would make a similar point here with regard to hate crime. While the inclusion of sex as a defining characteristic within hate crime discourse will drastically alter the boundaries of the issue due to the massive problem that is misogyny, sexism and violence as experienced by women, in order to address hate crimes in general there needs to be some recognition of the fact that the offending group tends to be the same throughout: men. Ault goes a step further to discuss the implications for other men too: 'by ignoring violence against women as hate crime, and by failing to interpret anti-gay violence as gender-motivated, many hate crime policies promote the end of heterosexism without challenging male domination' (1997:49). Including sex as a monitored characteristic allows the role of masculinity and patriarchy to be seen much more clearly, and there are clearly advantages to the inclusion of gender within the law as an aggravating factor for prosecutors and the judiciary to take into consideration (so long as they are adequately informed regarding the lived experiences of such victims – McPhail and DiNitto 2005) (see Angelari 1994; Maher, McCulloch and Mason 2015).

By integrating the existing work being done to support victims of crime due to sex, it is arguable that a more joined-up and effective approach to dealing with hate more broadly can be found and integrated into social, political and even personal policy, not least including it within hate crime statistics across all of the forces. Without this, the ad hoc nature of recording risks losing out on best-practice models of working, as well as losing the symbolic force and importance of a national approach and buy-in from a higher level of power. Working together to combat hate clearly makes more sense. It would help to show that sex *does* matter.

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Acknowledgements

Many thanks to Dr Katherine Albertson, for her comments, suggestions and critical friendliness, and to Dr Maggie Wykes for allowing me to refer to our Sexism in Sheffield work.

Notes

- 1 The rise in hate crime post-Brexit became visible in particular due to the irregularity of such enormous socio-political events at the time. When considering hate crime against women, the opposite often happens – it becomes invisible due to its regularity (see also Weston-Scheuber 2012).
- 2 In 2007, Sophie Lancaster was attacked and beaten to death in Lancashire due to prejudice directed against 'goths' held by a group of teenagers. 'Goths' refers to a subculture that is commonly identifiable by virtue of wearing dark clothing and make-up, and with an interest in 'goth' music (although the actual definition is subject to some debate – BBC 2013).
- 3 The Crime Survey of England and Wales, an annual victimisation survey, reported that '26% of women [...] had experienced domestic abuse since the age of 16, equivalent to an estimated 4.3 million female victims' (Office for National Statistics 2017:3), with women 'around twice as likely to have experienced domestic abuse since the age of 16 (26.3%) than men (13.6%)' (2017:7), and with women 'over 5 times as likely as men to have experienced [sexual assault (including attempts)] since the age of 16' (2017:7).
- 4 The legal jurisdictions of the United Kingdom are numerous, so in this paper I simply focus on England and Wales, which share a legal and criminal justice system.
- 5 Along with age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; and sexual orientation (Equality Act 2010 s4).
- 6 There is little argument that globally women are often highly disadvantaged and suffer inequalities to a great extent.
- 7 Intersectionality has been defined as: 'the relationships among multiple dimensions and modalities of social relations and subject formations' (McCall 2005:1771).
- 8 Indeed, there is some feminist debate about the usefulness of the term 'political correctness': 'The term which has been generally adopted by the popular press in discussions about sexism has been "political correctness" which suggests an over-punctilious concern with the "trivial" issue of language, rather than serious questions of equal opportunities and discrimination against women' (Mills 2008:5).
- 9 Writing for *The Guardian*, Laura Bates defines 'rape culture' as follows: 'It describes a culture in which rape and sexual assault are common (in the UK over 85,000 women are raped and 400,000 sexually assaulted every single year). It describes a culture in which dominant social norms belittle, dismiss, joke about or even seem to condone rape and sexual assault. It describes a culture in which the normalisation of rape and sexual assault are so great that often victims are blamed, either implicitly or explicitly, when these crimes are committed against them. A culture in which other factors such as media objectification make it easier to see women as dehumanised objects for male sexual purposes alone' (Bates 2014).
- 10 Other police forces are following the approach, albeit in an ad hoc, rather than force-wide, manner.

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