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The false promise of hate crime laws

By Sarah Lamble

Over the past few months, various news stories have reported on the [alarming rise](#) in the number of recorded incidents of hate-motivated violence. Whether the case of [two lesbians attacked on a London Bus](#), a [black soldier confronted with racist graffiti on his car](#), rising rates [of online abuse targeted against disabled people](#), or growing [attacks against trans people](#), many community groups have been sounding the alarm about the pervasiveness of hate-motivated attacks. Assaults against immigrants and religious minorities are also up, particularly [Islamophobic harassment and abuse](#).

Some have attributed these trends to a [post-Brexit referendum environment](#), others to the growth of racial nationalism and expansion of [far-right ideologies across Europe](#). Recent reports also suggest that anti-Asian racism and xenophobia are on the rise [in the wake of Covid-19](#).

Many people, particularly those of us from targeted communities, are worried about these trends and feel strongly that greater collective effort is needed to address these harms. Yet the main calls for responding to such violence are focussed on hate crime legislation. Various community groups have been calling for greater reporting to police, more enforcement of hate crime laws, harsher penalties for perpetrators and new laws to expand the scope of hate crime to cover additional grounds, such as misogyny.

While these calls are made in the name of justice and equality, ultimately, they are unlikely to reduce violence and harm. This is because hate crime laws don't actually achieve what we want them to; hate crime legislation is a false promise.

Why hate crime laws don't work

At the heart of the problem is the way that hate crime laws work. Although framed as 'prevention-oriented', hate crime laws are actually punishment driven; they simply add harsher penalties for convictions *after* a harm has occurred. The main power of hate crime legislation is to treat offences as 'more serious' when they are deemed to be motivated by hate or hostility against a protected group. Sometimes this can mean requiring police to take reports of hate crime more seriously by intervening to arrest people or by launching [public awareness campaigns](#) which communicate that hate-motivated violence is an offence.

But in most instances, treating hate crimes more seriously simply means applying harsher penalties. So if you are convicted of a hate crime, you basically go to prison for longer than you would otherwise. There are two main ways this can happen – either through what's known as a 'sentence uplift', where you are convicted for a regular offence but get a harsher sentence or through 'aggravated offences' which are special categories of offences that allow for even higher maximum penalties to account for hate-motivation. In other words, hate crime laws are primarily about imposing more severe punishments; they don't actually prevent violence and harm.

Many people also wrongly assume that tougher sentences work as deterrents and therefore have the potential to prevent future harms. But there is no clear evidence to support this. As the Law Commission itself acknowledged in its recent [consultation report](#) “there is no empirical evidence that higher sentences are capable of deterring offenders.” The problem then, is that we are expecting hate crime laws to do something they are incapable of achieving.

It is also important to acknowledge that threshold for proving that an offence was motivated by hate is quite high, so the application of such penalties is unlikely to tackle many of the everyday forms of harassment and abuse that most people want addressed. For example, some of the groups [advocating for misogyny to be treated as a hate crime](#) have emphasised the problem of street harassment, cat calling and online trolling. These are pressing problems that need to be addressed, but it is unlikely that most of these behaviours will meet the threshold for prosecution as a hate crime.

Even if such incidents did meet the hate crime threshold (or new criminal laws were enacted to specifically target these behaviours), it is unlikely that these laws would actually reduce such behaviour. This is because hate crime laws are an investment in punishment after a harm has occurred rather than a strategy to prevent harm in the first place. And punishment, particularly via imprisonment, is not actually an effective tactic for preventing or reducing harm.

As a feminist, I want to see misogyny challenged and addressed, but more criminal laws are unlikely to be the remedy we are hoping for. We already have a number [of public order laws that cover verbal abuse and street harassment](#), but such laws are not very effective. It is unclear how additional laws are likely to work any better. As the past fifty years of attempts to address gender-based harm via legal reforms have shown, [criminalisation has not been a particularly effective strategy](#).

Longer prison sentences do not make us safer

We are often told that hate crime laws will protect us by locking up those who harm us. But when we look at the profile of the people who actually fill our prisons, we see this notion of safety-through-imprisonment is another illusion.

First, the vast majority of people who commit violence and harm are [not prosecuted](#), let alone convicted. In the case of hate motivated violence, this is partly because hate crimes are significantly [under-reported](#) but also because policing is highly selective and unevenly applied.

Second, of those who are convicted, the vast majority are from [socially disadvantaged and marginalised groups](#) in society. Black people, migrants, Irish travellers, disabled people, Muslim and LGBT people—the very groups that the hate crime legislation claims to protect—are the same groups that are disproportionately locked up by the criminal justice system. This doesn’t mean that people sent to prison have done no harm, but rather that

policing and imprisonment are highly discriminatory in their targeting. The people who end up in prison are often those who lack wealth and other privileges which offer a buffer to criminalisation.

In fact, the people who enact the *most harm* in society are the *least likely* to go to prison. This includes those responsible for creating the wider conditions for hate crimes to flourish (e.g. politicians who stir up anti-immigrant sentiments or governments that enact policies like [Prevent](#) that encourage Islamophobia) as well as those who facilitate wider harms and inequalities in society (e.g. those responsible for financial crises, Grenfell, covid-deaths, austerity, war crimes, climate crisis, etc).

Third, sending people to prison for their discriminatory views doesn't address the reasons why people hold those views in the first place. Instead, punitive responses can create a backlash where such attitudes become more entrenched. Prison environments often make this worse, because prisons are organised in ways that heighten social divisions and foster group-based animosities. In fact, as institutions that are rife with hostility, intolerance and discrimination, prison environments are frequently sites of hate group activity and recruitment – hardly the conditions that are likely to reduce prejudice or shift discriminatory attitudes.

Ironically, if we want to take hate-motivated violence seriously, we cannot leave it to the criminal justice system to address.

The false offer of recognition

While many forms of verbal or physical attack can be traumatic, what makes hate-motivated violence especially distressing is the sense that we are targeted simply because of who or what we are perceived to be. This kind of targeting can feel like an attack against our core sense of self and a blow to our sense of safety and well-being.

Hate crime law is seductive because it seems to offer a recognition of that pain. Hate crime laws enable the state to publicly acknowledge that particular groups are targeted for violence and to send a public message that such acts of harm are not acceptable. By extending hate crime laws to groups that face high levels of discrimination or stigma such as sex workers or homeless people, the state appears to be saying 'I see and recognise your pain.' This recognition is important, particularly for groups that are often abandoned or treated as disposable by the state.

But the problem with hate crime legislation is that it offers a false promise. It takes the symbolic aspect of recognising harm and channels it into a punitive response (tougher sentencing) that does little to stop violence and instead shores up the powers of the carceral state. While politicians often use the language of 'protection' and 'safety' when advocating for hate crime laws, that's not how hate crime legislation actually works. The state is merely showing 'care' through increased use of punishment and prisons.

The problem with legal parity

As governments across [Scotland](#), [England & Wales](#) and [Northern Ireland](#) are currently reviewing and [reforming](#) their hate crime laws, it is important to collectively resist the pursuit of harsher penalties as the answer to harm. Existing hate crime legislation in the UK does warrant overhaul – current laws are messy, complex and inconsistent. The development of hate crime laws over time has been piecemeal, and as a result different strands of hate crime law are covered in different statutes, with varying forms, criteria and outcomes. But the current direction of travel to remedy the legislation is unlikely to improve things; in fact many of the current proposals are likely to make matters worse.

A key example is that in England and Wales, the penalties for ‘aggravated’ hate crime offences currently apply only to racial and religious hostility and not to sexual orientation, disability and transgender status. To address this the [Law Commission](#) has undertaken a review to streamline the laws and make them more consistent in their application. The government is also considering whether particular groups that were previously not covered by existing hate crime legislation should now be included (such as homeless people, sex workers, and older people).

On the surface, these proposed changes look like a positive move for equality and justice; the reforms seek to establish sentencing parity across the existing protected characteristics (race, religion, gender identity, disability and sexual orientation) and potentially add new protections for other groups. It seems only fair that the penalties should be consistent. But in most cases, ‘parity’ means increasing penalties upwards, so that more situations will be eligible for higher penalties. It’s a net-widening move and an expansion in punishment.

Hate crime laws do not address root causes of violence

Another key problem with hate crime legislation is that it takes what is ultimately a social, economic and cultural problem (i.e. systemic inequality and discrimination) and [reduces it to an issue of individual attitudes](#) (i.e. hate and prejudice). By focussing primary attention on punishing individual perpetrators, lawmakers divert attention from the structural causes of violence, including the state’s role in passing laws and policies that entrench inequality or enable discrimination to flourish.

It is also important to recognise that individuals who target others through violence often do so in response to their own feelings of insecurity, precarity or powerlessness, which can be linked to wider structural issues of poverty, marginalisation, and inequality. This doesn’t make such behaviour in any way excusable, but it means that if we want to address patterns of violence, we need to confront the underlying causes.

Hate crime laws also tend to emphasise ‘stranger danger’, but the vast majority of violence (particularly [gender-based violence](#)) occurs between people who are known to each other – family members, partners, ex-partners, neighbours, co-workers, etc. Focussing on individual ‘dangerous others’ rather than reckoning with the pervasiveness of harm within our

everyday relationships, means we fail to address the ways in which violence and harm are normalised and embedded within our communities.

Finally and most importantly, harsher penalties don't meet victims' needs. While some victims do want punishment, most want healing, safety and reparation. We want to know why it happened. We want to feel like the issue has been taken seriously. We want the person who harmed us to understand the impact of their actions. We want support to deal with the impacts of trauma. We want to feel safe and secure in our communities. Longer prison sentences rarely achieve any of that.

Shifting from punishment to support, healing and prevention

Rather than investing our energies into funnelling more people into prison, we need to shift away from punishment and move towards [prevention](#), [intervention](#) and reparation. We need to refocus on healing, support and safety for people who have been harmed. This is particularly important for hostility-based violence, as such attacks not only have reverberations for those who are directly targeted but for wider members of their communities.

Strategies that focus on [genuine prevention, collective accountability and community healing](#) are far more effective in addressing hate-motivated violence than longer prison sentences.

In short, hate crime laws are an [empty promise](#). Harsher sentences may give the appearance that the government is doing something about hate-based violence, but in reality these laws will do little to stop violence. Instead these reforms risk exacerbating existing inequalities in sentencing and contributing to yet another pressing problem: the [ever-expanding prison population](#) in Britain.

If we are serious about addressing violence, inequality and harm, we must not be seduced by the false promise of hate crime laws.

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Sarah Lamble is an organiser with Abolitionist Futures and a founding member of the Bent Bars Project, a penpal project for LGBTQ+ prisoners in Britain. Lamble also teaches criminology at Birkbeck, University of London.