Addressing Hate Crime and Incidents in Neoliberal Universities

An Examination of Universities' Policies

Kahyeng Chai

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Addressing Hate Crime and Incidents in Neoliberal Universities: An Examination of Universities' Policies

BY

KAHYENG CHAI

University of Leicester, UK

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Contents

Part 2: Framing the Study

Part 3: Examining English Universities' Policies

Part 4: Way Forward

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List of Figures and Tables

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List of Abbreviations

AAPI	Asian American and Pacific Islander
BLM	Black Lives Matter
CMA	Competition and Markets Authority
CPS	Crown Prosecution Service
CST	Community Security Trust
EDI	Equality, Diversity and Inclusion
EHRC	Equality and Human Rights Commission
EU	European Union
HESA	Higher Education Statistics Agency
KEF	Knowledge Exchange Framework
LGBT	Lesbian, Gay, Bisexual and Transgender
NSS	National Student Survey
NUS	National Union of Students
ODIHR	Office for Democratic Institutions and Human Rights
OfS	Office for Students
OSCE	Organisation for Security and Co-operation in Europe
PSED	Public Sector Equality Duty
REF	Research Excellence Framework
SU	Students' Union
TEF	Teaching Excellence Framework
UCL	University College London
UK	United Kingdom
UKRI	UK Research and Innovation
UPP	University Partnerships Programme
US	United States

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About the Author

Kahyeng Chai obtained a PhD in Criminology from the School of Criminology, Sociology and Social Policy at the University of Leicester, UK. Her research focuses on the critical examination of equality, diversity and inclusion-related issues within higher education settings, including students' experiences of hate crime and incidents, as well as how universities are responding to the problem.

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Part 1

Context

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Chapter 1

Understanding Hate Crime, Hate Incident and Microaggression

1.1 Hate Crime: A Global Problem

In 2024, misinformation on the identity of the perpetrator of a mass stabbing in Southport led to the eruption of race riots across 27 towns and cities in the United Kingdom (UK), in which mosques and hotels housing asylum seekers were attacked (Downs, 2024). In the same year, a surge in racist, homophobic and transphobic attacks during the French election campaign followed after the victory of National Rally in the European parliament elections, as well as the divisive, anti-immigrant proposals by the far-right political party (Kassam, 2024; Richardot, 2024). In 2023, as a result of the ongoing war between Israel and Palestine, a record number of religious hate crime has been reported in England and Wales (Home Office, 2024). Specifically, following the October 7 attack, Tell MAMA (2024) recorded 2,010 cases of Islamophobic incidents – a 335% increase from the previous year. Similarly, the Community Security Trust (CST) (2024) recorded 4,103 cases of antisemitic incidents – a 147% increase from the previous year. In 2022, two people were killed and 21 sustained serious to slight injuries in a shooting targeted at the lesbian, gay, bisexual and transgender (LGBT) communities in Oslo, Norway (Henley, 2022). In 2021, a psychiatrist was murdered in a homophobic attack in Cardiff, Wales (BBC, 2022). In 2020, the COVID-19 outbreak led to a spike in targeted violence against East and Southeast Asian communities across the globe (Croucher et al., 2020; O'Sullivan et al., 2020), in which references to the pandemic as the 'Chinese virus', 'Wuhan virus' or 'Kung-Flu' in media reports and statements by political figures emboldened racist and xenophobic sentiments (Walker & Anders, 2022).

In 2019, a shooting at two mosques in Christchurch, New Zealand, resulted in 51 deaths (Roy & Martin, 2019). In 2018, six African migrants were seriously injured in a racially motivated shooting in Macerata, Italy (Reynolds, 2018). In 2017, six people were killed and five were seriously injured in a shooting at the Quebec Islamic Cultural Centre (Zine, 2021). The presidential campaign and subsequent election of the Trump administration in 2016 has led to a rise in hate crimes against ethnic minorities, immigrants, as well as the LGBT communities in

Addressing Hate Crime and Incidents in Neoliberal Universities, 3–19

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the United States (US) (Warren-Gordon & Rhineberger, 2021). In the same year, an upsurge in xenophobic, racist and Islamophobic incidents was observed across the United Kingdom following the European Union (EU) referendum (Burnett, 2017). In 2015, three Muslim college students were murdered in a shooting in Chapel Hill (Woolf, 2015).

The examples presented are a selection of targeted violence against marginalised minority communities that have gained media coverage over the last decade. In social landscapes that are increasingly characterised by divisive sentiments, these examples clearly illustrate that hate crime is, indeed, a global problem that is entrenched in broader political and cultural contexts. But what exactly is a hate crime? The discussions below explore how hate crime as a concept can be comprehended through the legislative frameworks in place, as well as developments in the academic literature over the last four decades.

1.1.1 Legal Provisions Across the Globe

As reflected in the series of media reports, hate crime, as a concept, has gained traction primarily in the Western world – including Europe, the United States, Canada, Australia, and New Zealand. However, significant variations in legislative provisions as well as protected characteristics can be observed across the countries.

Within the context of England and Wales, hate crime is not a criminal offence in and of itself. Instead, section 66 of the Sentencing Act 2020 allows for sentences to be uplifted if an offence was motivated by hostility towards the victim's actual or presumed race, religion, disability, sexual orientation or transgender identity (Crown Prosecution Service (CPS), 2022). Sections 28–32 of the Crime and Disorder Act 1998 also allow for racially and religiously aggravated offences to be uplifted (CPS, 2022). The predominant focus on racially motivated hate crime is attributable to the mass migration from the Caribbean and South Asia to the United Kingdom since the 1940s, the murder of Stephen Lawrence in 1993, and the ensuing publication of the Macpherson Report in 1999 (Garland & Chakraborti, 2012).

In Germany, hate crime is regarded as a form of politically motivated offence (Bleich & Hart, 2008). According to the Federal Criminal Police Office (2020, p. 116), prejudices against 'political views, nationality, race, skin colour, religion, ideology, appearance, disability, sexual orientation, social status' may be recorded as hate crimes. The focus on political motives and ideologies can be traced to its history of racism and antisemitism during the time of the National Socialism, as well as the violence against immigrants and asylum seekers in cities including Hoyerswerda, Rostock, Mölln and Solingen following the reunification of East and West Germany (Glet, 2009). As such, laws and public policies were primarily designed to prevent the resurgence of antisemitism, right wing extremism, as well as Holocaust denial (Glet, 2009).

In the United States, the Civil Rights Act of 1968 functions as a key precursor to the legislative provisions in place today. This is because the Act established the

use of federal criminal civil rights laws to protect people against targeted violence on the basis of race, religion and national origin (Farrell & Lockwood, 2023). Legislative provisions were improved through the enactment of the Shepard Byrd Act in 2009 – the Act removed requirements for the victim to be engaged in a federally protected activity or had their federally protected rights to be interfered with (Naidoo, 2017). As such, this is the first federal statute that allows for the criminal prosecution of hate crime (Naidoo, 2017). Subsequently, the Department of Justice enforces federal hate crime laws for offences that are committed on the basis of race, colour, religion, national origin, sexual orientation, gender, gender identity or disability. However, it is important to note that the protected characteristics vary between state laws (Farrell & Lockwood, 2023).

In Canada, legislative provisions for hate crime have been set out through a number of sections in the Criminal Code of Canada. This includes section 318 (promotion of genocide against a targeted group), section 319(1) (public incitement of hatred), section 319(2) (wilful promotion of hatred), section 430(4.1) (bias-motivated mischief against religious properties or other types of property used primarily by an identifiable group) and section 718.2(a)(i) (allows for penalty enhancement of criminal offences motivated by prejudice towards race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression) (Corb, 2014; Ndegwa & McDonald, 2023). The recognition of language as a basis of prejudice can be attributed to the historical tensions between English and French Canadians (Sioufi & Bourhis, 2017).

At the federal level in Australia, the Criminal Code Act 1995 sets out a number of regulations that are relevant for addressing hate crime. This includes section 11.4 for the incitement of violence, section 80.2B for the incitement of violence against individuals on the basis of race, religion, nationality, national origin, ethnic origin or political opinion and section 471.12 for the use of postal or similar service to menace, harass or cause offence (Federal Register of Legislation, 2024). In response to the rise of hate speech, the Criminal Code Amendment (Hate Crimes) Bill 2024 has been put forward. As an amendment to the Criminal Code Act 1995, the Bill introduces new offences for threatening force or violence against targeted groups, as well as to further include sex, sexual orientation, gender identity, intersex status and disability as protected characteristics (Mills, 2024). Legislative provisions for hate crime across the Australian states and territories, however, vary significantly (Vergani & Link, 2021). For example, in New South Wales, under section 93Z of the Crimes Act 1900, alongside race, religion, sexual orientation, gender identity, threats or incitement of violence on the grounds of HIV/AIDS status is also unlawful. The recognition of HIV/AIDS status as a protected characteristic may be attributed to targeted violence against the LGBT communities as a result of a moral panic on the spread of HIV/AIDS in New South Wales in the 1980s and 1990s (Thomsen, 1993).

Unlike the federated system in Australia, New Zealand operates on a unitary system in which criminal justice responses are regulated by a single parliament (Asquith, 2014). As such, under section 9(1)(h) of the Sentencing Act 2002, hostility towards the individual's race, colour, nationality, religion, gender

identity, sexual orientation, age or disability will be recognised as an aggravating factor – this allows for the enhancement of criminal sentences. And in 2019, a Royal Commission of Inquiry into the Christchurch mosque shootings was conducted, in which recommendations for the reformation of existing hate crime legislations were put forward. Specifically, the Commission (2020) recommended for the replication of approaches currently in place in England and Wales – instead of recognising the hate motivation at sentencing, hate motivation is recognised as an element of the offence. The Commission (2020) further recommended that this could be possible through the creation of new hate-motivated offences in the Summary Offences Act 1981 and the Crimes Act 1961. Following recommendations from the Commission, the Law Commission (2024) published its Terms of Reference for its review of hate crime laws in September 2024, in which public consultations are expected to be conducted in early 2025.

Based on the examples presented, it is clear that the legislative provisions in place reflect the history and politics of the respective countries. However, to comprehend the geographical variations observed in the range of protected characteristics, there is also a need to consider the influences of non-governmental organisations and community advocacy groups (Vergani & Link, 2021). This is because community activism is of paramount importance in establishing the empirical credibility of victims' experiences of targeted violence, as well as garnering both social and political attention needed to necessitate change (Mason-Bish, 2018). The lobbying efforts of advocacy groups, however, are often focused on one victim group (i.e. Human Rights Campaign, National Council of Canadian Muslims, Stop Asian American and Pacific Islander (AAPI) Hate, Race Equality Foundation). Consequently, Mason-Bish (2010) suggests that the identity-based approach has contributed to the construction of a hierarchy of hate crime, in which concerns of some victim groups may be prioritised over others. As such, not all protected characteristics may be afforded with the same level of legal protection. Instead, the extent of legal attention and protection afforded would be dependent on the victim group's ability to garner and mobilise the necessary social and political support (Bakalis, 2017).

The hierarchy of hate crime can be observed through current legislative provisions in England and Wales – as social movements, media reports and academic discussions have been primarily focused on experiences of racially motivated hate crime (James & Simmonds, 2013), disablist hate crime remains peripheral to criminal justice responses and hate crime scholarship (Garland, 2012). This is evident through how racially and religiously aggravated offences are specifically established in the legislations, but specific legislative provisions for disablist hate crime remains absent. Such disparities can be attributed to the fact that in comparison with other identity groups that achieved greater success in the attainment of legal recognition, disablist hate crime lacked the political representation and lobbying effort needed to challenge and reframe stereotypical perceptions of disabled victims as undesirable and hence less worthy of legal protection (Ralph et al., 2016). The affordance of legal protection to selected victim groups, in turn, reinforces the victim hierarchy, as it conveys a message that recognised groups are more important and deserving of attention and protection.

1.1.2 Academic Theorisations

As a result of jurisdictional differences in legislation, deliberations on identities that should be recognised as protected characteristics, as well as debates on the spectrum of behaviours that should be covered, theoretical conceptualisations of hate crime have been fraught with dilemmas (Schweppe, 2021). As such, a universal definition of hate crime is absent in the academic literature. The origins of hate crime can be traced to the 1980s, in which the terminology first emerged in the United States to describe bias-motivated violence against Jewish, African Americans and the lesbian, gay and bisexual communities (Green et al., 2001). Since its emergence four decades ago, academic definitions of hate crime have undergone significant development.

Early interpretations of hate crime conceptualised the form of victimisation as a random act, where victims and perpetrators do not know each other at all (Mason, 2005b). As such, victims are targeted solely based on their actual or perceived membership in a minority group. The conceptualisation of hate crime as a form of 'stranger danger' (Mason, 2005b, p. 587) has led to the development of safety advice such as 'don't walk alone' and 'leave with someone' (Moran, 2001, p. 338). While initially well-received, the stranger danger approach was challenged by a growing body of evidence suggesting that hate crime victimisations are often perpetrated by acquaintances including neighbours, colleagues, carers and even family members (Walters & Hoyle, 2012). Moreover, the approach has limited capacity to account for incidents occurring in 'private domains', including workplaces, local neighbourhoods and residential homes (Mason, 2005a, p. 81). This is particularly evident among victims of disablist hate crime. In the study on hate crime within disability studies, 'mate crime' has emerged as a concept to examine the relationships between perpetrators and disabled victims, where the exploitation of power dynamics has been suggested as a key factor in perpetuating the experiences of victimisation (Thomas, 2011, p. 108). In other words, hate crime should not be assumed to be perpetrated exclusively by strangers (Clayton et al., 2022).

In an effort to construct a more nuanced understanding towards the victim-perpetrator relationship, Perry (2001) posits hate crime to be a mechanism of power, where such intergroup conflicts are consequences of broader patterns of social and structural oppression. In response to the perceived threats presented by the minority out-group, hate crimes are committed by the majority in-group as a form of assertion of dominance (Perry, 2001). This is because the perceived differences of an out-group may instigate feelings of insecurity and animosity among the in-group, arising from an innate fear that the in-group's sociocultural norms would be encroached upon, and hence present as a threat to their dominant position in the society (Perry, 2001). For example, operating within hetero- and cis-normative social structures, the systemic violence and hostility targeted towards transgender communities are justified on the basis of their perceived non-conforming identities (Colliver & Silvestri, 2022). As such, hate crime functions as a form of social process, where a sense of control could be regained by reaffirming the subordination of the out-group (Perry, 2001). Subjected to systemic violence and oppression, autonomy of out-groups would thus be limited.

Despite the utility of Perry's (2001) definition of hate crime, its inability to account for why perpetrators of hate crime are often individuals who are 'most affected by socio-economic strain' has been highlighted as a shortcoming (Walters, 2011, p. 319).

Expanding Perry's (2001) structural conceptualisation of hate crime, Chakraborti and Garland (2012) focus on the notions of difference and vulnerability. The definition acknowledges that in addition to the actual or perceived membership in an out-group, victims are targeted as their differences have been determined to be a form of threat or weakness from the perpetrator's perspective (Garland, 2012). Such theoretical conceptualisation of hate crime suggests that an individual would not be automatically targeted because of their actual or perceived differences, but such differences would simply heighten their vulnerability to victimisation (Garland, 2012). Chakraborti and Garland (2012) further suggest that instead of targeting a specific aspect or identity that is unique to the victim, hate crime is predicated upon how the targeted identity intersects with other facets of selfhood, alongside social and situational characteristics which render the victim vulnerable. Conceptualising hate crime as a socially and historically situated construct which influences the perceived vulnerability of individuals is useful in rationalising the surge in targeted violence during the Trump administration (Kang & Yang, 2022) and following the EU Referendum (Williams et al., 2022), all of which functioned as tools for the political legitimisation of xenophobic, racist and antisemitic views. The media representation during COVID-19 was similarly responsible for legitimising prejudiced views which emboldened discriminatory expressions towards the East and Southeast Asian communities (Schumann & Moore, 2022).

Finally, according to the critical hate studies perspective, influences of neoliberal capitalism underpin every aspect of power in contemporary democratic societies (James & McBride, 2022). As such, understandings of hate crime and the language used in the reporting of such occurrences would all be influenced by neoliberal capitalist norms (James, 2020). Hate crime can therefore be interpreted as both systemic violence, in which the harms of hate are inherently embedded within governance structures and spaces of interaction, as well as symbolic violence that is expressed through language and discourse (James, 2020). The critical hate studies perspective further posits that individualism and hyper-competitiveness, as defining characteristics of a neoliberal capitalist society, could account for hate crime motivations that may be either banal or extreme in nature (James & McBride, 2022). This is because divisions and differences often arise when people are pit against each other in a hyper competitive neoliberal society (James & McBride, 2022). Such divisions could, in turn, become motivations for the lower-level, everyday hate incidents that do not constitute as criminal offences (James & McBride, 2022). And in extreme cases of hate crime, James and McBride (2022, p. 99) attributed such criminal occurrences to the offender's desire to make sense of their 'feelings of objectless anxiety' in an individualistic society, where a target to direct their ire upon is identified.