

Hiding the harm? An argument against misogyny hate crime

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Abstract

In 2016, following a campaign by Nottingham Women's Centre, Nottingham became the first locality in England to make misogyny a hate crime. Two years later, an independent evaluation judged the policy a success and recommended a national rollout, something the Law Commission of England and Wales has included in their current consultation on hate crime more broadly. However, support for the change is far from universal.

This chapter takes a critical approach to the current debates on making misogyny a hate crime in England and Wales. Orienting around long-standing feminist concerns with the concept of 'hate', it examines the reasons behind the initial exclusion of 'gender' as a hate crime category, and questions what its inclusion would mean for the current national strategy on violence against women. It revisits the Nottingham evaluation considering recent studies on justice from the victim's perspective to propose that the findings can be reinterpreted to suggest that investment might be better spent in rolling out comprehensive and consistent prevention work. Ultimately it argues against the inclusion of misogyny or gender as a hate crime category, claiming that locating public sexual harassment as a hate-based phenomenon may help to obscure the full range of women's experiences in public as well as the full extent of its harms.

Introduction¹

This chapter focuses on the current debate about the inclusion of misogyny² as a hate crime category in England and Wales. We write as feminist academics and activists working across hemispheres who have both foregrounded the study of public sexual harassment in our research, writing, and campaigning. Our work focuses on public spaces, both physical and online, and has drawn on feminist geographers such as Gill Valentine (1989) and Rachel Pain (Pain, 1991, 2000; Koskela & Pain, 2000) to suggest that such harassment can be understood as a spatial expression of patriarchy, functioning to reinforce and reproduce the exclusion of women, and more broadly of trans, non-binary, and gender non-conforming people and communities, from public life (Fileborn, 2012; Fileborn & Vera-Gray, 2018; Vera-Gray & Fileborn, 2018; Vera-Gray & Kelly, 2020)

Reflecting on our own and others' research, as well as existing evidence on the operation of both hate crime policy broadly and 'misogyny hate crime' specifically, here we set out an argument against the introduction of the category of misogyny hate crime. We do so not to undermine the activism and passion of our sister campaigners who support such a move. We hold up the work of Nottingham Women's Centre and its then manager Melanie Jeffs, in advocating for this new policy in Nottingham (English Midlands, UK), as an example of feminist activism at its best: channelling the experiences of women to change the mechanisms of the state. The result has been to grow the evidence base on whether, how, and to what ends, hate crime policy works to prevent and provide recourse for men's violence against women and girls (VAWG). Instead of a challenge or criticism of the work that has come before us, we are motivated by a shared desire to end violence against women. We

¹ This chapter is dedicated to the activist Emma Ritch, the kind of feminist we all want to be. The world was made better because you were in it.

believe that the evidence shows that not only will the introduction of misogyny as a hate crime category not achieve the ends that are attributed to it, but that it may work against them.

To speak directly to the current Law Commission's review into hate crime,³ we will be focusing on England and Wales only. We have organised the chapter to respond to the key claims we have identified in feminist campaigns supporting the change. Though these six claims are interrelated and may overlap in practice, we separate them here to ensure we reply to each in detail. The claims are not exhaustive and may not be shared across campaigning groups, but we found them to be the reasons most appealed to in publicly available documents advocating for misogyny hate crime. The first three relate primarily to the substantive benefits of misogyny hate crime, namely that it: (1) provides women with greater protection against violence and harassment; (2) supports the collection of better data on non-criminal forms of VAWG; and (3) responds to widespread support from victim-survivors. There are, however, an additional set of reasons that argue for its more conceptual or symbolic function, that is that misogyny hate crime (4) acknowledges the root causes of VAWG; (5) connects women's experiences across the continuum of sexual violence; and (6) helps change attitudes and supports prevention. We believe that both sets of arguments, the practical and the principled, do not justify the introduction of misogyny hate crime. Before addressing these in detail, we first set out the basics of hate crime policy in England and Wales.

Gender and hate crime: the current context

The need to separately address crimes motivated by hostility or prejudice gained prominence in the UK after the murder of Stephen Lawrence, an 18-year-old Black British student who was stabbed to death by a group of white racists while he was waiting for a London bus (Yuval-Davis, 1999). Stephen's murder, and the subsequent mishandling of the case by police, fuelled the introduction of the Crime and Disorder Act 1998 which is generally accepted as the first piece of 'hate crime' legislation in England and Wales (Mason-Bish & Duggan, 2020). As the idea of crimes motivated by hate or prejudice as worthy of unique attention grew, other nationally recognised strands of hate crime were introduced: religion (2001); disability and sexual orientation (2003); and transgender identity (2012). This means that there are now five nationally monitored strands. Notably, 'gender' was not excluded from this development merely by omission. The debate about whether gender-based crimes should be considered hate crimes is not new, with a history of feminists in the UK and internationally arguing both for its usefulness (for example Gill & Mason-Bish, 2013) and against (for example Horvath & Kelly, 2007). Our intention here is to both reference and build on this ongoing discussion, using the evidence we now have from how misogyny hate crime has operated in Nottingham.

Misogyny hate crime sits within the broader problematic framework of hate crime in the UK outlined in the Introduction and noted by others (e.g., HMICFRS, 2018; Walters et al, 2016). Using the ability of police to monitor and record local strands of hate crime, Nottingham was the first policing district in England and Wales to introduce misogyny hate crime in May 2016 (Nottingham Police, 2018). The change followed a locally organised hate crime commission run by the charity Nottingham Citizens during 2014 (for more detail see Legg and Nottingham Citizens, 2019). The commission found a significant proportion of hate crime against women was experienced as being motivated by their gender and that the majority of this would be best understood as forms of public sexual harassment, something

which was felt to have less attention in policy terms than other forms of VAWG (Nottingham Women's Centre, 2018). As a result, Nottingham Women's Centre – whose then CEO was a commissioner on the inquiry – put forward a successful case to local police that misogyny should be included in hate crime definitions (Nottingham Women's Centre, 2018).

At the time of its introduction the policy generated extensive media interest, furthered two years later when an evaluation of the policy heralded it a success (Mullany and Trickett, 2018). The report authors recommended that the policy be implemented nationally (albeit with some changes, such as moving away from the term 'misogyny' and introducing efforts to improve public awareness of the policy). At the time of writing, local rollouts of both misogyny hate crime (for example in North Yorkshire) or gender hate crime (for example in Bristol) have fuelled the push for the category to be adopted nationally, including a tabled amendment to the Domestic Abuse Bill. This groundswell of support led to the Government seeking a review from the Law Commission into hate crime, including whether it should include a category designed to capture VAWG (see Law Commission, 2020). While the review has been broadly welcomed, Parliament's Women and Equalities Select Committee has made clear the need to consider whether introducing what will ostensibly be a hate crime category for VAWG 'would bring *substantive advantages to victims* and *achieve a reduction in the incidence* of such harassment.' (2019, para 86. italics our own). The evidence which we present here suggests, unfortunately, that it won't.

Providing greater protection to women

A 2019 joint letter from campaigning groups supporting the inclusion of misogyny as a hate crime category, puts forward an equalities-based argument centred on protecting women and girls:

At present if someone is abused because they are disabled, from an ethnic minority group, because they are LGBT, or because of their faith, that is recognised as a hate crime... however because misogyny – acts that are targeted at women, because they are women – is not included within the law, women are left unprotected. (Fawcett, Citizens UK, Women's Aid, 2019).

Increasing protection is one of the most visible claims in feminist campaigns for the introduction of misogyny hate crime. However, it rests on confusion as to what 'protections' are actually offered by the hate crime provisions. The campaigns for misogyny hate crime in England and Wales are not broadly campaigns for misogyny to become a standalone aggravated offence.⁴ This is contrary to the position in Scotland, where leading women's groups were strongly opposed to the introduction of misogyny hate crime. As such gender has not been included as a hate crime category in Scottish legislation and instead a standalone offence of serious misogynistic harassment is being discussed as part of a governmental working group on criminal justice and misogyny (Scottish Government, 2021). In short, misogyny hate crime as campaigned for in England and Wales provides women with the same forms of legal recourse against men's violence and harassment that already exist. Women will receive *the same legal protection* after the reforms, which, given the extent of violence against women in England and Wales (and indeed worldwide), has little, if any, preventative effect.

Given that campaigners are aware that misogyny hate crime creates no new offences, what they may be referring to is sentence enhancement. The substantive argument here is that

women will gain increased protection by offenders being incarcerated for longer. We believe this argument rests on a fundamental mistake about how successful the criminal justice system currently is in convicting offenders of VAWG. The enhanced sentencing provisions require proof to be established of the crime being motivated by hostility *after* guilt for the offence has already been established. Leaving to one side the evidential difficulties in attempting to prove that the forms of violence against women most intended to be picked up as hate crimes (such as forms of public sexual harassment) are motivated by hostility, there is a clear problem here for any feminist who has knowledge or experience of how the criminal justice system responds to violence against women.

Drawing on decades of practice-based knowledge from frontline service providers, we know that most forms of VAWG are simply not reported or processed through the criminal justice system at all. This is heightened for women from minoritised communities, with evidence from specialist Black and minoritised ethnic women services that reporting violence to the police can result in their feeling criminalised themselves (Imkaan, 2018). Indeed, in this moment in England and Wales, feminist campaigning groups the End Violence Against Women Coalition and the Centre for Women's Justice have launched a legal challenge against the Crown Prosecution Service for their failures in prosecuting rape (Hymas, 2020).

These failures are in many ways amplified in relation to sexual harassment in public and semi-public spaces, such as the street, public transport, licensed venues and so forth. International research shows that women and girls routinely experience harassment and intrusion from men, ranging from verbal comments and uninvited conversation, staring/leering, wolf-whistling, following, catcalling and so forth (Livingston, 2015). There are practical policing difficulties directly connected to public sexual harassment such as the fleetingness of the encounter and the anonymity of the perpetrator that combine with the broader failures of policing and prosecution in relation to all forms of VAWG (Fileborn & Vera-Gray, 2017). These issues may be amplified for the most common forms of harassment, such as verbal comments and staring, which can be ambiguous in nature and typically leave little tangible evidence. These issues have been acknowledged by Nottingham Police as real limitations of the misogyny hate crime provisions (Nottingham Police, 2018), meaning that low rates of arrests and prosecutions are inevitable.

Further the evaluation of the Nottingham provisions found that over the two years since its introduction (April 2016 – March 2018), 174 women had reported misogyny hate crimes, with 101 of these classified as incidents, that is recorded but not constituting a crime (Mullany & Trickett, 2018). Importantly, only one perpetrator was convicted during this period where misogyny hate crime featured as a flag on their record. Thus, existing evidence shows that most reports of misogyny hate crime do not and would not progress to the point of prosecution and conviction, meaning that the aggravated sentencing provisions will have no real impact in terms of offering women additional protection.

Providing better measurement of non-criminal forms of VAWG

Connected to the protective claim, is the argument that misogyny hate crime gives women a substantive basis from which to report incidents of misogynistic harassment to the police, even where these are not criminal offences. Protection is seen in its widest sense, women are able to 'walk taller' (Fish, 2020) because they can report manifestations of men's violence and harassment that do not meet criminal thresholds of harm – as is often the case with public sexual harassment (Fileborn, 2017). Here the benefit of the hate crime provisions orients

around not hate crimes but ‘hate incidents’. Advocates of misogyny hate crime often point to the mechanism it provides for reporting hate incidents, arguing that this recognises the seriousness of non-criminal forms of VAWG, enabling their better measurement, and helping police to divert resources to prevent crimes before they occur (for examples see Hooper, 2018; Fawcett, Citizens UK, Women’s Aid, 2019; Oppenheim, 2020).

This argument rests on a fundamental problem: namely that reports of hate crimes generally, including incidents of misogyny hate crime, have been publicly acknowledged by police as ‘the tip of the iceberg’ (Bates, 2016). Put simply, instead of recognising the harms of such behaviours and supporting better management and resourcing, using hate crime provisions as a mechanism to collect data on non-criminal forms of VAWG has real potential to undermine the extent of the problem.

As researchers working on public sexual harassment, we routinely encounter the limits of the existing evidence base about the prevalence of the most mundane forms of the harassment and intrusion many women experience from men in public. There is clearly an urgent need for reliable, national data in this area. The introduction of misogyny hate crime will not do this. One of the consistently acknowledged operational problems with the existing hate crime provisions is low reporting (HMCIFRS, 2018; Walters et al, 2016). This is echoed in the existing evidence on misogyny hate crime. After two years of the policy being in place the Nottingham evaluation showed *no change* in reporting levels. Just 6.6 percent of survey respondents who had experienced behaviours identified by Nottinghamshire Police as Misogyny Hate Crime had reported these to the police (Mullany & Trickett, 2018: 12), and close to 85% of respondents said that the change in policy *did not influence* their decision to report.⁵ The report concludes that ‘under-reporting is a significant issue and remains so, despite the introduction of the policy’ (Mullany & Trickett, 2018: 12).

Under-reporting is not unique to public sexual harassment: it plagues virtually all forms of police data on VAWG. However, we believe that the argument for misogyny hate crime as a data collection mechanism risks shoring up a system that sees police reports as the only legitimate form of knowledge on women’s experiences. This in turn provides fuel for the myth that if a woman does not report criminal forms of violence, then they either were not harmed, or it did not really happen. Given that we know that both police data on VAWG in general, and police data on hate crime in general, gives a wholly unreliable picture about what is happening on the ground, the combination of the two is most likely to severely distort the real prevalence of VAWG as it will inevitably be under-reported through this mechanism. This could have serious consequences, including the potential for local commissioners to reroute funding (for specialist women’s services as well as other resource allocation such as policing) based on ‘low levels’ of VAWG in their area.

Responding to widespread support from victim-survivors

The third substantive argument we see made in campaigns for a national rollout of misogyny hate crime is that the policy-change is widely supported by victim-survivors, namely women. Here we are happy to agree that this may be the case. We draw only on academic research and acknowledge the practice-based knowledge of frontline support providers may paint a different picture.

Saying that, our discussion of this argument begins from the premise that hate crime should be understood as a criminal justice system response in that it uses the police as the

mechanism to report, whether or not what is being reported ‘counts’ as criminal. There is an ever-growing research basis pointing to the limitations of this system in meeting the justice needs of victim-survivors of sexual, domestic, and ‘honour’ based violence (Gangoli, Bates, and Hester, 2020; McCulloch et al, 2020; McGlynn and Westmarland, 2019). Our own work on victim-centred responses to public sexual harassment supports this, finding that many victim-survivors prefer non-criminal justice responses (Fileborn and Vera-Gray, 2017). Here our participants highlighted how the harms of public sexual harassment were experienced as cumulative, lived as an ongoing process, rather than a one-off event. This meant that many wanted a community-based response, outside of a criminal justice system which is designed for discrete incidents connected to individual perpetrators. In this they are not alone, for example Donovan et al’s (2018) conceptualisation of ‘hate relationships’ also challenges a purely episodic understanding of what constitutes harassment and thus how we can measure harm.

In connection with this, we argue that the evaluation from Nottingham cannot be said to accurately reflect the voices and experiences of the women who had used the ability to report misogyny hate crime. Here we want to focus on the evaluation in a little more detail. The claim that the policy in Nottingham is supported by victim-survivors is based on both qualitative and quantitative data. However, victim-survivors who had used the ability to report in Nottingham are not properly represented in the qualitative data: of the 174 reported victims of misogyny hate crime, only four came forward to talk to researchers (p.3). There is limited exploration in the report as to why there was such a low-level of engagement with the research if the policy was so supported by those who had used it.

There are also clear limitations with the quantitative data. For example, findings which suggest that just over a third of survey respondents supported treating the behaviours that comprise misogyny hate crime as criminal (p.7) should also be viewed with caution. There is a methodological point here about providing a list of behaviours to respondents – some of which are criminal and would be broadly supported by most people to be criminal (for example sexual assault), and some of which are not criminal and would be broadly understood as impossible/undesirable to criminalise (i.e. whistling) – and then asking respondents their opinions on criminalisation based on that broad list. This makes the data unreliable. Respondents may have strongly supported criminalisation for already criminal acts, such as sexual assault, but this does not necessarily mean that, on their own, they would similarly support criminalising wolf-whistling. With the list combined in this way, it is not possible to establish whether respondents were in favour of criminalising non-criminal acts. This point about confusion is also applicable to broader public opinion polls showing support for the policy. As we have explored above, hate crime is notoriously misunderstood both regarding what it is supposed to do, and what it actually does, which mean that opinion polling data is fairly unreliable as it does not provide a space to question understandings or definitions. A YouGov (2017) poll for example, often used as evidence of support for the policy, explained misogyny hate crime as meaning ‘longer sentences for... perpetrators found to have acted out of a hatred for women’. It is likely that respondents to this question did not understand that crimes such as rape or domestic violence were excluded from misogyny hate crime, nor that sentence enhancement provisions do not actually allow for any longer sentences than the maximum sentences already set for offences. As such we would urge caution in using opinion polls as a measure of public support for what the changes actually mean in practice.

There is also not enough engagement with the limited representation of the experiences of minoritised women in the Nottingham evaluation. Survey respondents were overwhelmingly white (only 2% of respondents were Black, and just 0.7% were Asian), a key limitation acknowledged in the report. We contrast this with evidence from Australia on the ways in which hate crime provisions can perpetuate inequality by disproportionately processing minoritised perpetrators of hate crime through the criminal justice system (Mason, 2014). There is an ethical imperative for feminists engaged in any form of police or criminal justice advocacy for women to seriously contend with its implications for racial injustice – something brought into sharp focus through the global Black Lives Matter movement.

Taken together all of this suggests considerably more work is needed to understand the views of women who have used misogyny hate crime, centering the experiences of women from minoritised ethnic groups, before any such measures should be claimed as widely supported by victim-survivors.

Defining motivation and acknowledging the root causes

The problems we have outlined so far regarding misogyny hate crime are largely operational. Now, we move to address the more conceptual arguments for the change, the most visible of which is the claim that ‘(a)cknowledging the misogyny that drives...crimes against women makes plain its roots’ (Creasy, 2020). We suggest that on closer examination the hate crime framing obscures what motivates most perpetrators of violence against women and, in doing so, makes it harder for us to work towards prevention.

Our concern orients around the need for hate crimes to be perceived by the victim as motivated by hostility or prejudice – something that has again been identified as a problem with hate crime provisions in general. It is far from clear that hate crimes are always or only driven by hostility (Chakraborti, 2018; Hall, 2013). Though ‘hate crime’ may resonate with some victim-survivors, there is evidence to suggest that many, including those who have experienced what would be counted as misogyny hate crime, do not perceive perpetrator motivations in this way. Bianca Fileborn’s research with people who have experienced street harassment in Australia (underway at the time of writing), for example, has found that participants most commonly believed that men engage in street harassment for the purpose of homosocial bonding (see also Quinn, 2002), a sense of entitlement, fear of the ‘other’ (particularly for harassment relating to gender diversity and sexual orientation), power, misplaced notions about appropriate sexual interaction, and the absence of any meaningful community-based approaches to hold perpetrators to account. Very few participants have viewed their experiences as a result of hatred and prejudice, and none in relation to misogyny. Although this research is still underway at the time of writing, published research from the UK has found similar results. A joint inspection report on hate crime from 2017 found that for the existing strands of monitored hate crime, the majority of victims do not perceive perpetrators to be motivated by hostility (HMCIFRS, 2017), and a 2020 study specifically on victims of gender-related victimisation found that just 35 of the 85 participants labelled their experience as a hate crime (Mason-Bish and Duggan, 2020).

These findings, particularly when related to VAWG, are unsurprising. Most forms of VAWG are perpetrated by those closest to us, partners, relatives, friends – positioned in relationships of intimacy, trust and care (Horvath and Kelly, 2007). Known perpetrators are unlikely to be motivated by hostility or prejudice, and even if they are, it is even more unlikely that they would be perceived to be either by ourselves or by society at large. The motivation of

hostility then is more likely to be applied to stranger perpetrators, and here we see the hate crime frame as propping up harmful myths about VAWG. This is acknowledged in the recently published consultation paper from the Law Commission (2020: 258) which found evidence that ‘implementing laws concerning sex or gender-based hate crime in the context of sexual offences might have the unintended consequence of contributing to damaging myths about ‘real rape’.’

Too often, men’s violence is positioned as an ‘isolated incident’ perpetrated either by ‘deviant’ individuals or by normal men ‘made deviant’ by extremes of emotion generally caused by women, whether that be sexual arousal, or anger, or jealousy. Though there may of course be perpetrators who are driven by thrill and fear, if not outright prejudice and hatred, this focus hides the extent to which many forms of men’s violence are normalised as legitimate sexual interaction (Gavey, 2018); ways of doing masculinity. This ‘public story’ (Donovan and Hester, 2010) about VAWG as driven by individual pathology or emotion will only be further embedded by locating some forms as worthy of enhanced sentencing (thus positioned as more serious) when a motivation of hostility or prejudice is proven. Far from revealing the root causes of VAWG then, we find that misogyny hate crime conceals them: perpetuating damaging myths about perpetrators and supporting a hierarchy of harm.

Connecting women’s experiences and positions

The argument about root causes is in many ways an argument about connection being made for misogyny hate crime in two respects: the first about connecting women’s experiences across the continuum of sexual violence, and the second about intersectionality.

The claim that hate crime provides a needed means to link the different forms of VAWG through the common framing of misogyny applies predominantly to the legal framing of VAWG, which positions it as a series of distinct offences ordered hierarchically in terms of their harm or seriousness. In contrast, policy frameworks in the UK already recognise the interconnections between all forms of VAWG, with the more recent strategy refresh specifically addressing sexual harassment (Home Office, 2019). As with the claim about root causes, we find the opposite of this argument to be true. Rather than drawing connections, the inclusion of misogyny as a hate crime in practice *separates* the various forms of men’s violence that women experience over a lifetime. It separates these in terms of what forms are and are not included, as well as by separating out motivations and locating those as motivated by hostility only as eligible for enhanced sentencing.

While the siloed effect caused by hate crime provisions applies generally, it is particularly problematic in relation to VAWG as it runs directly counter to the widely accepted continuum model of sexual violence (Kelly 1988). The continuum model recognises the interconnection between *all* forms of sexual and gender-based violence and does not assume their seriousness or harm based on a presumed hierarchy of motivation. Such a model is antithetical to misogyny hate crime both conceptually, and in practice, something that has been acknowledged by campaigners.

Nottingham Women’s Centre (2018) for example, have publicly stated that their intention in introducing misogyny hate crime was for the provisions to cover *some* forms of VAWG *and not others*. The Fawcett Society have similarly argued against applying a hate crime aggravation in the context of sexual offences and domestic abuse as ‘to do so may forge an artificial distinction between ‘misogynistic’ and ‘non-misogynistic’ sexual offences or

domestic abuse against women’ (Law Commission, 2020: 257). As such, misogyny hate crime is simply not intended to be applicable to all forms of VAWG. In fact, it works to separate out forms that are mostly perpetrated by strangers and, through its enhanced sentencing provisions, imply these are more serious and/or more harmful than the other forms on the continuum. In this we see it advancing problematic narratives of ‘stranger danger’, narratives that are subtly classed (see Meyer, 2014) and raced (see Burke, 2019).

In addition to missing the connections between different forms of violence, the hate crime framework itself runs the risk of further embedding identity-based inequality and difference. Hate crime provisions have been widely critiqued for siloing inequalities (Chakraborti, 2014; Mason-Bish, 2011), treating identity categories as homogeneous and reified (Perry, 2008) and creating hierarchies of worth and seriousness based on whose experiences of prejudice ‘count’ (Chakraborti, 2014; Hall, 2013; Mason-Bish, 2011; Mason-Bish & Duggan, 2020). These critiques become particularly important when discussing how misogyny hate crime interacts with an intersectional feminist perspective.

Despite the intersectional nature of harassment being recognised by some supporters of misogyny hate crime (Bates, 2016), others such as Stella Creasy MP, have advocated for the ability of misogyny hate crime to ‘ensure that no woman from any background is asked to tick a box in order for the police and courts to act when she is a victim of crime’ (Topping, 2020). Our concern is that this latter argument hides rather than reveals the ways in which women who are located differently in relation to social inequalities are differentially targeted by perpetrators and differentially responded to by both bystanders and criminal justice agencies (Gill & Mason-Bish, 2013). In many ways, it suggests that gender is the primary inequality for women, a position which has been critiqued by decades of thought from Black, Indigenous, and post-colonial feminists (see for example Amos and Parmer, 1984; or more recently Suzack, Huhndorf, Perreault, and Barman, 2011). Though victim-survivors are able to identify multiple ‘motivations’ (for example reporting one incident as both misogyny hate crime and a disability hate crime), this embeds an additive rather than intersectional approach to social inequalities. They are presented as discrete boxes to be ticked and prioritised, multiplied and subtracted, instead of understanding how they co-constitute one another and often cannot be readily separated. In this way, hate crime as a framework for VAWG disconnects and ranks different forms of violence and requires victim-survivors to disconnect and rank ourselves. As such we find it irreconcilable with an intersectional feminist perspective.

Changing attitudes and preventing violence

All of which brings us to the final claim for misogyny hate crime and the central aim of all feminist anti-violence campaigns: to change attitudes and ultimately prevent the violence from happening in the first place. Melanie Jeffs who led the campaign in Nottingham, has stressed that the aim of the change is to change attitudes, challenge the normalisation of misogynistic abuse, and ‘enable women to move freely around their city without being intimidated, abused or harassed’ (Bates, 2016). Others have pointed out that we cannot ‘measure the success of this by the number of calls, but by the number of women who’ve said they feel like they’re walking taller – just to know it’s there’ (Bates 2016). This sentiment is also encapsulated by former CEO of Women’s Aid, Polly Neate, in giving evidence on misogyny hate crime to the All-Party Parliamentary Group on Domestic Violence in 2017. Neate explained that ‘while categorising misogyny as a hate crime won’t stop it from occurring completely, it sends a clear message that society does not condone this behaviour -

which is vital for preventing domestic abuse and VAWG in the long term' (All-Party Parliamentary Group on Domestic Violence, 2017).

Symbolic effects are important. In our research, the symbolic and communicative power of the law was the main reason some participants supported legislative regulation of street harassment, even if they viewed a criminal justice response as otherwise ineffective (Fileborn and Vera-Gray, 2017). Additionally, the work in Nottingham has had a significant impact in sparking widespread public debate about the extent of public sexual harassment and its consequences for women's safety and freedom. We recognise the importance this kind of public conversation can have in informing the general public and potentially shifting attitudes (Maher, McCulloch & Mason, 2015).

While acknowledging these potential benefits, we remain sceptical that these will actually come into fruition through changing hate crime policy. It is unfortunately not the case that the existence of the hate crime provisions in relation to race, religion, disability, sexual orientation, and transgender identity have had this effect in practice. We know this is also true for criminal justice responses to VAWG more broadly where problematic attitudes and misconceptions persist (and are often perpetuated by the criminal justice system itself), even in the face of seemingly 'progressive' reforms (Burgin, 2019). It is also questionable whether impacts such as 'walking taller' or feeling more able to report will persist over the longer term if they are not met with substantive change in the operation of the criminal justice system, or a reduction in perpetration.

The Nottingham evaluation even offers evidence that introducing misogyny hate crime will not change public attitudes not least because the report found that many respondents were unaware of the policy. The high level of public support for the policy found by the report, something that has since been drawn on by campaigners to support a national rollout, was only found *after the policy was explained*. It is hard to argue for a change in attitudes if no one knows about the change in policy. It appears that shifting attitudes is much more related to public awareness campaigns about what misogyny is and why it is incompatible with a fair and just society, than about including it as a form of hate crime. This echoes wider work on the prevention of VAWG which has found the key to prevention lies in changing social norms and reducing gender inequality (Alexander-Scott, Bell, and Holden, 2016; Haylock, Cornelius, Malunga, and Mbandazayo, 2016; Jewkes, Flood, and Lang, 2015).

Conclusion: some thoughts on next steps

Evaluating the arguments for misogyny hate crime in relation to the evidence has left us with the distinct feeling that we are trying to fit a square peg in a round hole. There are numerous problems with the hate crime frame, and the current campaign for misogyny hate crime has simply not engaged enough with its potential to negatively impact feminist efforts against violence against women. The policy's potential for harm has been hidden in an attempt to seek public and state recognition of the seriousness of men's violence and harassment in public space. We hope here to have made this harm visible.

We have outlined how responding to VAWG through a hate crime framework has the potential to severely distort the prevalence of VAWG; shore up a system that sees police reports as the only legitimate form of knowledge on women's experiences; reinforce damaging myths about the perpetrators, causes, and victims, of violence; disconnect and rank different forms and victims of violence; and undermine the integrated VAWG framework at a

national level. For a possible benefit of some women feeling safer for some of the time, these risks just are not worth it. Particularly when there are alternatives.

We suggest something much simpler is needed, drawing on the lessons from public health. The World Health Organisation is clear that VAWG is ‘a public health problem of substantial proportions’ (Krug et al, 2002: 172), yet in England and Wales a public health perspective is commonly superseded by one focused on crime. A public health approach takes a population rather than an incident-based approach. This means it is possible to gain reliable evidence on the nature and extent of VAWG without hitting the problems encountered in using the criminal justice system as a measurement tool. A key recommendation from the Women and Equalities Committee inquiry into public sexual harassment was that ‘(d)ata on sexual harassment in public places should be collected through the Crime Survey of England and Wales or brought together through other official data-gathering processes’ (Women and Equalities Committee, 2018: 23), something the Government has agreed to do (Women and Equalities Committee, 2019). Without further information on government plans here we are unable to evaluate how this would work in practice. However, given that such data-gathering will provide population level information, we believe this would deliver a more robust evidence base to inform resource allocation and preventative work. As such, both advocates for and against misogyny hate crime should come together to hold the Government to its commitment.

Likewise, there are examples of non-criminal legislation internationally that would support the symbolic and communicative function campaigners see as driving the usefulness of misogyny hate crime. A key example here is the Washington DC *Street Harassment Prevention Act of 2018*, which created a legal definition of street harassment, and an imperative for government to undertake data collection, introduce policy, and develop public awareness campaigns amongst other actions (Vizvary, 2020). Importantly, this Act *does not* criminalise perpetrators, out of recognition that this would only work to perpetuate other forms of inequality and marginalisation (Vizvary, 2020). The approach taken in DC thus represents an avenue for addressing VAWG that prioritises prevention through education and capacity building, rather than criminalisation. Importantly, this response emphasises structural factors underpinning this violence, and maintains a firmly intersectional understanding rather than taking a siloed approach.

Both examples illustrate that it is possible to implement alternative responses to address the substantive and symbolic changes that campaigners for misogyny hate crime are fighting for. Such responses do so while avoiding the harmful consequences of trying to fit VAWG into a framework that is full of problems to begin with. After reviewing the available evidence, we are both more convinced than ever that hate crime is incompatible with feminist aims and that a national rollout of misogyny hate crime has real potential to rollback efforts to achieve greater public understanding of VAWG as well as its prevention.

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Endnotes

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² The feminist campaigns in England and Wales have been focused on the introduction of 'misogyny' as a hate crime category, not 'gender', and so our discussion uses the term 'misogyny hate crime' as it is to these campaigners that we want to speak. We note that the current Law Commission consultation into hate crime recommends the inclusion of gender/sex as a characteristic, not misogyny. While our discussion speaks directly to misogyny hate crime, we believe that some of our arguments can be applied to the category of gender/sex particularly insofar as it is operationalised in relation to men's violence against women. Indeed, the evaluation of the Nottingham misogyny hate crime provisions found that the term misogyny was not widely understood, and that gendered hate crime may have greater resonance with victims, police, and members of the public (Mullany & Trickett, 2018). We recognise however that there are differences in intention and application of the two terms and highlight that Nottingham police (2018) have argued for misogyny not gender/sex as the preferred term to meet the aims of the policy. As such we believe that 'misogyny' or 'gender/sex' are not completely interchangeable and require full and detailed consideration in and of themselves, some of which can be found in Mason-Bish and Duggan (2020) and Haynes and Schweppe (2020).

³ The Law Commission Review into hate crime was announced on the 18th of October 2018, with the public consultation launched on the 23rd of September 2020. See Law Commission (2020).

⁴ A key exception here is the work of the young-women led campaigning group *Our Streets Now* (Pike, 2020).

⁵ Though it is unclear as to whether these incidents took place in the two-year period within which misogyny hate crime had been introduced (as well as whether this is about experiencing or witnessing).