Safer Communities
A journal of practice, opinion, policy and research

Volume 16 Number 4  2017

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Number 4
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ISBN 978-1-78743-848-4
Introduction to the special issue

The five articles in this special issue of *Safer Communities* emerged from an inter-disciplinary meeting on “Brexit Criminology” held at the Plymouth University on 5 April 2017. The impetus for the meeting was to contribute a previously absent criminological voice to the discussion and debate surrounding the UK’s decision to leave the European Union. The resultant selection of papers presented here are diverse in range, perspective and disciplinary origin, illustrating the on-going importance of examining Brexit through a criminological lens.

The academic community has had much to say in the wake of the EU referendum and the subsequent invocation of Article 50, the formal notification of the UK’s intent to withdraw from the membership of the EU. Much of this work however concentrates attention on the implications of Brexit on industry (Song, 2016; Cumming and Zahra, 2016), the economy (McMahon, 2016; Barrett et al., 2015) and the legal field (Wenger, 2017; Farrand, 2017). Similarly, in the huge number of news reports, and documentary coverage devoted in the mainstream media to the topic of Brexit, the voices of criminologists have been strangely absent. In a post-political age (see Badiou, 2009), where “Brexit means Brexit” is accepted as an adequate explanation of a potentially politically transformative event, it is our belief that the academic community has a duty to understand the underlying drivers of change and to offer progressive critique over the coming months and years. The papers presented here illustrate the breadth of critical thought that criminology is able to contribute and are, we hope, indicative of a prolonged period of engagement.

While we may expect discussion around overtly “criminological” phenomena such as the spike in hate crime following the EU referendum (Smith and Hayhurst, 2016), it is our hope that this is only the starting point for a criminological interrogation of Brexit which must necessarily consider a range of harms and inequalities that play out against a backdrop of political and economic instability.

The first paper in this special edition is “Beyond empty promises? A reality check for hate crime scholarship and policy” by Neil Chakraborti and Stevie Hardy. This paper argues that hate crime scholarship and policy are failing to sufficiently impact on the lived experiences of hate crime victims, despite the wealth of knowledge developed in this area and some excellent policy and practice in place. Using evidence from extensive empirical research, Chakraborti and Hardy challenge the communicative function of hate crime policy and legislation as hate crime reporting rates remain low and victim confidence in processes of justice are likewise low. Further they suggest the need for greater knowledge of perpetrator motivations and rehabilitative responses to hate crime. Given the significant growth in reported hate crimes in the period post-Brexit vote and the likelihood that such official figures are underrepresentative of actual hate crimes, this paper argues for a collective response to prejudice and hatred that will address the existing gaps in knowledge and provision.

Following on from Chakraborti and Hardy’s analysis of hate crime policy and practice, Joanna Haynes and Rowena Passy examine the role of universities in providing space for free speech and critical discourse. In their paper entitled “Racism, prevent and education: insisting on an open space”, they focus specifically on the tension between different statutory duties within the university sector that are intended to promote academic freedom and prevent radicalisation. This paper considers this tension in light of the socially polarising Brexit campaign and subsequent outcome of the UK referendum. Akin to Chakraborti and Hardy’s paper, Haynes and Passy note the rise in hate crime post-Brexit vote and they specifically engage with the troubling evidence of a rise in anti-Muslim hate crime in universities. As such they acknowledge the vulnerability of many students while also recognising the insecurities of staff who have been responsible to not only support them, but also to look out for signs of their radicalisation, an action which could easily alienate those students most in need of support. Through policy...
analysis and literature review, this paper posits that universities should provide a safe space for critical analysis, discussion and reflection, wherein disagreement and controversial ideas are not suppressed, but engaged with and challenged. As such the paper suggests that universities should provide a safe space to bridge the polarising arguments of the post-Brexit social world.

“Homophobia, Brexit and constitutional change” by Iain Channing and Jonathan Ward presents a different approach to thinking about Brexit by utilising a socio-legal approach to the issue of homophobia and LGBTQI rights. This paper highlights the protective factors provided by EU membership as opposed to its ineffectiveness as discussed in the articles by Chakraborti and Hardy above and James and Smith below. By examining specific cases and legal provisions, this article considers the fact that Brexit may lead to and result in a review of existing human rights legislation in the UK. The authors suggest that this could give rise to a rolling back of rights provided to LGBTQI individuals in society and subsequently place them in a vulnerable and tenuous position, particularly given the heteronormative nature of society that continues to be challenged by the human rights agenda and wherein homophobic hate crime remains problematic despite protections provided by law. The paper interestingly raises the issue of prejudicial attitudes within the parliament and thus the potential ease with which the constitution might change in a post-Brexit environment.

The paper by Steve Hirschler, “Brexit, immigration and expanded markets of social control”, directly addresses the most polarising issue in the pre-Brexit debates by discussing the potential impact of new immigration policies in the UK. This paper constitutes an analysis of the literature on voting patterns in the referendum and specifically the relationship between migration patterns to the UK and voting behaviour. Subsequently, Hirschler considers how the commitment of both right-wing and left-wing political parties in the UK to tighter immigration controls may result in significantly more people being processed by that system which is dominated by private, rather than state, provision. Such privatised social control mechanisms are therefore likely to see an increase in their profits as migrant bodies are managed out of the UK. Hirschler’s paper reviews an extensive literature evidencing the lack of appropriate provision for migrants within the existing immigration control system and he suggests that these circumstances are likely to be augmented as more people enter the system post-Brexit and within a societal context that places primacy of profit over welfare.

The final paper in this special edition by Zoë James and David Smith, entitled “Roma inclusion post-Brexit: a challenge to existing rhetoric”, brings the special edition full circle by revisiting the issue of hate crime policy and its capacity to effectively provide inclusion for marginalised communities. The paper specifically considers anti-Gypsism in Europe and subsequent EU attempts to provide Roma inclusion. This opinion piece argues that Roma inclusion is unlikely to be more or less facilitated in a post-Brexit Europe, given that EU policy has failed to sufficiently address their exclusion thus far. Chakraborti and Hardy had noted in the conclusion to their paper, that the political, economic and social conditions of late modernity have enabled greater denigration of marginalised groups. This paper engages with that context by suggesting that the power and mechanisms of neoliberal capitalism have resulted in social harms experienced by the weakest people in society. It argues that EU policy has failed to provide inclusion due to its focus on measureable harms that impact individuals, rather than systemic harms such as discrimination, that impact on broad swathes of the least powerful in society, including Roma, but also other minority groups and the working class. As such, the paper concludes by suggesting that transnational policies and strategies for social inclusion should incorporate a consideration of the harms caused by the contemporary neoliberal capitalism.

This special edition has therefore provided an eclectic mix of papers by engaging with complex and challenging issues. Brexit came as a shock to many in the academic world and should serve as a point of departure for a forward-looking public criminology. We hope that the papers herein function to provoke debate and discussion in the discipline.

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Beyond empty promises? A reality check for hate crime scholarship and policy

Neil Chakraborti and Stevie-Jade Hardy

Abstract

Purpose – The purpose of this paper is to highlight an urgent need for new and improved approaches to supporting hate crime victims and tackling hate crime perpetration in the light of escalating levels of hate crime and growing concerns over the effectiveness of existing interventions and support structures.

Design/methodology/approach – The paper draws from the authors’ own extensive fieldwork conducted with more than 2,000 victims of hate crime over a series of recent studies. The research was designed to uncover lived experiences of hate crime, to understand the physical and emotional harms suffered by victims and their families, and to identify ways of improving the quality of support offered to victims.

Findings – The findings illustrate that current responses to hate crime are hampered by a range of perceived challenges and barriers to justice which exacerbate the harms associated with hate crimes. This includes low levels of public awareness of relevant policies, laws and support services, a lack of meaningful engagement between professionals and marginalised communities and a failure to provide victim-centred criminal justice interventions.

Practical implications – This paper includes a number of recommendations in relation to how scholars, policy makers and professionals can overcome the failings that have been identified, which includes prioritising engagement with diverse communities, improving awareness of hate crime and generating a more comprehensive evidence base on hate crime perpetration.

Originality/value – These themes discussed within this paper are based upon the views and experiences of an extensive sample of hate crime victims, many of whom have never previously shared their stories with researchers, the police or any other support organisations.

Keywords Diversity, Victims, Hate crime, Marginalization, Criminal justice policy, Targeted hostility

Paper type Research paper

Introduction

In the months following the June 2016 EU referendum, the UK experienced an unprecedented surge in reports of hate crime. In excess of 14,000 hate crimes were recorded by police forces in England and Wales between July and September 2016, with three-quarters of forces reporting record levels of hate crime during that period (BBC News, 2017). Hate incidents have continued to escalate in the aftermath of recent terrorist attacks in Manchester and London, with evidence suggesting that “trigger” events of local, national and international significance can influence the prevalence and severity of hate incidents within cyberspace and the physical world (Awan and Zempi, 2017). This rise is rooted too within a wider, structural process whereby attacks against the “other” can feed off economic instability, political scaremongering and media stereotyping to the point where violence becomes a mechanism used to reinforce power dynamics between dominant and subordinate groups and to create cultures of fear within marginalised communities (Chakraborti and Garland, 2012; Perry, 2001).

During the past two decades, a series of steps have been taken by law-makers, non-governmental organisations, activists and professionals within and beyond the criminal justice sector to develop improved responses to hate crime through the introduction of relevant legislation and evidence-based policy guidance. However, this paper reveals that those developments have been only partially effective in addressing real-life needs. Instead, the damage caused by hate crime can often be overlooked as a result of disconnects between state-level narratives and victims’ lived experiences.
realities, and through a failure to translate empirical and policy progress beyond empty promises and into meaningful action for some of the most stigmatised and marginalised members of society. The paper draws from a series of recent studies conducted by the authors which uncovered the experiences and perceptions of an overall sample which consisted of more than 2,000 hate crime victims from a diverse range of backgrounds and which included victims who had been targeted on the basis of having multiple identity characteristics and on multiple occasions.

The first of these studies – the Leicester Hate Crime Project – was a two-year piece of research funded by the Economic and Social Research Council. A total of 1,106 victims of hate crime aged 16 and over shared their experiences and perceptions through completion of online or hard copy surveys, while 374 victims took part in in-depth, semi-structured interviews. The profile of research participants was diverse in terms of their age, gender identity, ethnicity, religion, sexual orientation and disabilities, and included sizeable numbers of participants from “hidden” or emerging communities including members of recently arrived migrant groups, victims targeted because of their “different” modes of dress, appearance or lifestyle and people with learning disabilities and/or mental ill-health. The second study, funded by the Equality and Human Rights Commission, focused specifically on the experiences of 50 lesbian, gay, bisexual and transsexual (LGBT) victims of hate crime based in Leicester and Leicestershire. Again, the sample was made up of a diverse profile of ages, ethnicities and socio-economic backgrounds and included victims who described themselves as having a range of overlapping identity characteristics, such as being gay and Muslim, or being trans and physically disabled. The third study was commissioned by the Office for the Police and Crime Commissioner (OPCC) in Hertfordshire and was based on the perceptions and experiences of 1,652 actual and at-risk victims of hate crime through responses to online and hard copy questionnaire surveys (n = 1,604) and in-depth interviews (n = 81). This approach was mirrored within the final study referred to within this paper, which was conducted on behalf of the OPCC in the West Midlands. A diverse sample of 373 people took part in the West Midlands-based study through participation in an online or hard copy survey (n = 360) or through an interview (n = 45).

Further details about each study, and their individual methodologies, findings and recommendations can be found elsewhere (Hardy and Chakraborti, 2017; 2016; Chakraborti and Hardy, 2015; Chakraborti et al., 2014). For the purposes of this paper, relevant analysis from each study is presented collectively to identify common failings in relation to meeting the needs of hate crime victims and facilitating access to justice. Before turning to this analysis, the paper first presents a necessarily brief outline of the policy framework in place to address hate crime domestically in order to offer context to the findings which follow.

**Signs of progress within the domains of hate crime scholarship and policy**

Many different definitions of hate crime can be found within the wider literature and almost all refer to a broader range of factors than hate alone to describe the motivation that lies behind the commission of a hate crime (see, inter alia, Chakraborti et al., 2014; Hall, 2013; Chakraborti and Garland, 2012; Perry, 2001). These academic contributions have used terms such as “targeted hostility”, “prejudice” and “bias” to highlight that the presence of “hate” itself is not central to the commission of a hate crime and have illustrated the relationship between structural hierarchies, institutionalised prejudices and acts of hate. They have shown that some hate crime victims can be targeted because they are seen as being especially vulnerable or “different” in the eyes of the perpetrator through the interplay of multiple identity characteristics, situational factors and prevailing social and economic conditions within different micro-spaces. These academic contributions have also highlighted the multiple layers of harm associated with hate offences which commonly include excessive physical violence and brutality, emotional damage, psychological scars and the escalation of social tensions (see also Iganski and Lagou, 2015; Office for Democratic Institutions and Human Rights (ODIHR), 2009).

Beyond the academic domain, notable efforts have been made to generate a consistent approach to hate crime policy formation within the UK. College of Policing (2014) guidance requires the police to record and investigate any hate incident perceived by the victim or any other person (such as a witness, a family member or a carer) as being motivated by hostility or prejudice towards any one of the five monitored strands of identity, namely, disability, race, religion, sexual orientation and transgender status. Most domestic hate crime policy is based around these five
strands, although the same guidance gives police forces the licence to think beyond those strands and, where appropriate, to record other forms of targeted hostility as hate crime in response to regional needs or priorities. This has enabled a number of forces to monitor other offences – including violence against alternative subcultures and sex workers, and more recently misogynistic harassment – as additional strands of hate crime within their local areas (Mason-Bish, 2016; Garland and Hodkinson, 2015; Campbell, 2014).

These developments within the domains of policy and scholarship have been supported at the state level through the introduction of hate crime laws which allow for “enhanced” sentences to be imposed in relation to offences which have been aggravated by hostility towards the victim’s identity (for a fuller review, see Law Commission, 2014), and by successive UK Government Action Plans (Home Office, 2016; HM Government, 2012) which are designed to reinforce the state’s commitment to tackling hate crime. The most recent of these, “Action Against Hate”, was published in the wake of the post-Brexit rise in recorded hate incidents across many parts of England and Wales (Home Office, 2016). However, while this Action Plan presents laudable aims in relation to prevention, reduction and support for victims, it fails to cover how these goals will be achieved and evaluated, or how the empirical evidence produced by academic research will be used to promote best practice (Walters and Brown, 2016). As such, and often despite the very best of intentions, academic research and policy can often have limited value to those directly affected by hate crime. Indeed, despite the growth of empirical contributions, a flurry of policy interventions and an apparent increase in state prioritisation, we are living in times where levels of hate crime have reached an all-time high, where many victims are unwilling to report hate crime and where victim satisfaction with the handling of cases is lower for hate crime than it is for other crime types (see, inter alia, Corcoran et al., 2015; Chakraborti et al., 2014). With this backdrop in mind, the paper now draws from the authors’ own fieldwork to illustrate a set of perceived failings, challenges and barriers to justice which serve to undermine the effectiveness of existing interventions.

Problems in relation to reporting and engagement

Responses to hate crime are contingent on incidents being reported by the victim or any other person present. The importance of reporting in the context of generating effective prioritisation and service delivery is well documented (Chakraborti and Garland, 2015; HM Government, 2014) but the disparity between the number of police-recorded hate incidents, which in 2015-2016 was 62,528, and the corresponding Crime Survey for England and Wales (CSEW) figure of 222,000 (Corcoran and Smith, 2016) suggests that many cases go unreported. This was certainly a theme within our research. Within The Leicester Hate Crime Project, for instance, fewer than one in four participants had reported their experiences of hate crime to the police (24 per cent; n = 265) and fewer still had shared their experiences with a teacher (4 per cent; n = 47), victim support (3 per cent; n = 31), their local authority (3 per cent; n = 28) or a social care worker (2 per cent; n = 20) (Chakraborti et al., 2014). Only 1 per cent of participants had contacted a community support organisation, such as an LGBT, disability or race equality network, while none had ever utilised any of the third-party reporting options available through local libraries or online, despite third-party reporting schemes being promoted within successive Government Hate Crime Action Plans (Home Office, 2016; HM Government, 2014).

In order to improve hate crime reporting rates, policy makers and professionals need to improve their understanding of the different barriers that communities and groups encounter, and to develop solutions to overcome them. Within our studies, one of the most frequently cited barriers to reporting was a shared perception amongst all strands of hate crime victims that they would not be taken seriously. This tended to be expressed most commonly by those victims who had been subjected to “everyday” forms of targeted hostility, including name-calling and other forms of intimidatory behaviour. For example, in our most recent study, 76 per cent (n = 240) of participants stated that they would be “unlikely” or “highly unlikely” to report being verbally abused to the police and 49 per cent (n = 156) were “unlikely” or “highly unlikely” to report being harassed in person or online (Hardy and Chakraborti, 2017).

Under-reporting has important implications for the uptake of support services. Within the context of hate crime, awareness of and access to support services is often dependent upon a victim being “signposted” to support by a public-sector agency. With so few hate crime victims coming
forward to report their experience to the police or to a non-governmental organisation, the concern is that the majority of victims are effectively being denied access to much needed support by virtue of not being aware of its existence. Our research evidence suggests that fewer than 10 per cent of hate crime victims have accessed a support service as a result of their victimisation, with a lack of awareness of these services emerging as a significant contributory factor to this low uptake (Hardy and Chakraborti, 2016, 2017). Knowledge of hate crime policy, legislation and support was found to be especially limited within those communities who are socially, economically and politically marginalised within society, including asylum seekers and refugees, people with learning difficulties and/or physical disabilities and/or mental ill-health and transgender people (Chakraborti et al., 2014). More worrying still, this problem is only likely to become more entrenched in the current climate of economic instability, and through the enforced spending cuts to services and staffing within the public sector, as illustrated by these observations from practitioners and victims shared within our studies:

It seems to have got worse since the restructure. I personally don’t feel we’re doing very much at all for those victims […]. You can’t do meaningful engagement.

Cuts to specialised services are only making groups more and more vulnerable to attacks.

We’re finding that because all of the funding is so restricted now, and all of the councils have had to make their cutbacks, what people used to be able to access isn’t available anymore.

What’s the point of reporting it? Nobody will pay attention to it, nobody will do anything about it.

Increasingly, the time and resource that professionals have available to take part in meaningful engagement is diminishing, and this in turn has led to channels of communication with diverse, “hard to reach” communities becoming increasingly narrow and tokenistic. This is despite the fact that engagement with these communities forms a key theme within much of the policy guidance around hate crime (College of Policing, 2014; HM Government, 2014, 2012; ODIHR, 2009). With levels of hate crime escalating, and awareness of and confidence in the support provided by public-sector agencies deteriorating, it is imperative that scholars and professionals take meaningful steps to connect with those communities who are most vulnerable to targeted hostility and to develop more effective awareness-raising campaigns which are tailored to the needs and experiences of specific groups.

Problems in relation to existing interventions

Although prima facie improvements have been made within the domain of criminal justice which include greater consistency in the recording of hate incidents across police forces, the introduction of hate crime laws across all monitored strands and the publishing of strategies and guidance notes by criminal justice agencies across England and Wales (Walters and Brown, 2016; Crown Prosecution Service, 2016; College of Policing, 2014; Law Commission, 2014), evidence suggests that these developments have yet to generate significant benefits for hate crime victims. Findings from the CSEW indicate that victims of hate crime are far less satisfied with the response that they receive from criminal justice agencies when compared to other forms of crime, with 52 per cent of hate crime victims very or fairly satisfied compared with 73 per cent of victims of non-hate offences, and 35 per cent very dissatisfied with the police handling of their case compared to 14 per cent of victims of other forms of crime (Corcoran et al., 2015). This was confirmed within each of our studies where criticisms of the initial response tended to stem from a feeling of not being listened to, not being taken seriously and not being treated with an appropriate level of decency.

Interviews revealed that problems encountered at the pre-reporting and initial response stages were compounded by what they perceived as a slow, intimidating and incomprehensible criminal justice system. We heard countless recollections of the difficulties that victims faced in relation to making sense of the complex, unfamiliar terminology used in reference to hate crime, of the relentless delays in waiting to receive any form of communication or follow-up, of the failure to keep victims informed on the progress of their case and of the lack of empathy shown by frontline practitioners working within the police service and other agencies including local authorities, housing associations and the Crown Prosecution Service (CPS). These factors exacerbate the harms associated with the original hate incident and cause added distress to victims, their families and wider communities.
The appropriateness of prevailing criminal justice responses which are broadly punitive in nature have also been called into question. Hall (2013), for instance, observes that prison has limited deterrent value to many hate crime offenders, that such environments are often breeding grounds for intolerance and hostility and that the overcrowded and constrained conditions within many prisons offer scant opportunity for the kind of rehabilitation required to truly address prejudicial beliefs. Moreover, our own studies indicate that a preoccupation with punitive responses is at odds with the needs and expectations of hate crime victims who, despite assumptions to the contrary, often favour alternative educational interventions and restorative approaches to conventional criminal justice outcomes (Hardy and Chakraborti, 2016; Chakraborti et al., 2014).

In our most recent study, for example, fewer than half (44 per cent; \( n = 131 \)) of participants referred to longer prison sentences as their preferred response to hate crime. Instead, 82 per cent (\( n = 246 \)) called for greater use of tailored programmes of education within schools and local communities as a way of informing young people about positive aspects of diversity and the harms of hate crime, 55 per cent (\( n = 167 \)) wanted to see more use of community “payback” orders for hate crime perpetrators and 32 per cent (\( n = 97 \)) were in favour of more face-to-face supervised mediation between the victim and the offender (Hardy and Chakraborti, 2017). Crucially, those views were commonplace amongst victims of different types of violent and non-violent hate crime and from different communities, ages and backgrounds.

Despite the extended use of such interventions in the context of other criminal offences, their use in the context of hate crime remains relatively limited. Walters and Brown (2016, p. 21), for instance, refer to the CPS policy against the use of conditional cautions for hate crime and the failure of the 2016 Government Hate Crime Action Plan to even mention restorative justice as evidence of the resistance amongst some statutory agencies to endorse restorative interventions. Equally, although the same Action Plan names a selection of education programmes to evidence its support for early interventions, it is difficult to see how these programmes can deliver sustained success within the context of the many other complex challenges within schools and in the absence of wider investment to take the pressure of delivery away from teaching staff ill-equipped to engage pupils on issues relating to hate crime. Such indifference not only undermines the aims enshrined within national and local strategies, guidance documents and Action Plans to deliver effective hate crime responses but also the importance attached to addressing the needs and expectations of the many thousands of hate crime victims who are failing to receive adequate support from existing criminal justice interventions.

Preventative and rehabilitative interventions will only be effective when they are rooted in research evidence, and this reinforces the importance of learning from empirical research to generate a more comprehensive and sophisticated evidence base on hate crime perpetrators. Much of the academic undertaking within this field has focused upon the processes, forms and impacts of hate crime victimisation, with far less attention being paid to the motivations underpinning this form of perpetration. Crucially, once collected, this evidence needs to be shared amongst policy makers, practitioners, NGOs and other service providers who, collectively, will then be able to implement policies and programmes which are tailored to specific strands of hate crime, to different types of perpetrators and to pressure points within local areas.

Conclusion

This paper has identified a number of issues with current policy-level responses to hate crime which undermine their credibility in the eyes of victims. In particular, it has highlighted problems with levels of awareness and understanding amongst hate crime victims, with feelings of confidence in criminal justice agencies and partner organisations, with the uptake of support services and with the appropriateness and effectiveness of existing criminal justice interventions. All of these factors have the capacity to cause additional damage to the emotional and physical well-being of victims, and to reinforce the sense of powerlessness typically felt within groups who encounter targeted hostility as a routine feature of being “different”.

This paper is not intended to overlook the good practice that is taking place across different sectors, or the professionalism of many practitioners across different sectors who work in increasingly pressured environments and remain committed to addressing problems associated
with hate crime. Rather, it is designed to offer honest reflection on the shortcomings which constrain the effectiveness of responses to hate crime and to identify ways in which we can begin to address these shortcomings. In the context of prevailing economic, political and social conditions which act as enabling factors for the denigration of “marginal” communities, and with levels of hate crime continuing to surge both within the UK and beyond, it is imperative that scholars, policy makers, professionals, communities and individual citizens embrace their collective responsibility to challenge all forms of prejudice and hatred and to provide support to those most in need.

Note
1. A total of 33 research participants in the Hertfordshire-based study completed a questionnaire survey and also took part in an interview.

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Further reading


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Racism, Prevent and education: insisting on an open space

Joanna Haynes and Rowena Passy

Abstract
Purpose – The purpose of this paper is to discuss the links between the Brexit referendum and changes to the nature of racism in Britain, and following on from this, the implications of the counter-terrorist Prevent agenda with regard to universities.

Design/methodology/approach – First, the authors discuss the Brexit referendum and its links to changes in the nature of racism in England, drawing on Burnett’s (2013) work to demonstrate how “local conditions, national politics and global conditions” have prompted violent racism in new areas of the country. Within this atmosphere of heightened tension, anti-Muslim abuse and attacks have risen over the past two years, with a proportion of these incidents taking place in universities. The authors then examine the implications of the counter-terrorist Prevent agenda, then disturbing trends that characterise students as vulnerable and university life as potentially damaging to wellbeing, and how these link to anti-extremism dialogue that is expressed in an epidemiological and therapeutic language; the vulnerable are framed pathologically, as “at risk” of radicalisation.

Findings – The authors argue that educators’ statutory duty to “have due regard to the need to prevent people from being drawn into terrorism” is in considerable tension with the university statutory duty to uphold the freedom of speech/academic freedom; this “duty of care” effectively requires university staff to act as agents of the state. The authors argue that this threatens to damage trust between staff and students, restrict critical enquiry and limit discussion, particularly in the current circumstances of sector insecurity that have arisen from a combination of neoliberal policies and falling student numbers.

Originality/value – Developing the argument on how these conditions present a threat to the freedom of speech/academic freedom, in the final section, the authors argue that universities must keep spaces open for uncertainty, controversy and disagreement.

Keywords Higher education, Dialogue, Brexit, Racism, Academic freedom, Prevent

Paper type Viewpoint

Introduction

This paper arises from the Brexit: Crime, Justice and Society Conference held at Plymouth University in April 2017. The reaction to the presentation, in which delegates showed a deep interest in the issues we were raising, together with the invitation to contribute to this special issue, encouraged us to write this position piece in the short time available. In what follows we have further developed our initial ideas about the connections between Brexit, racism, the Prevent agenda, discourses around student vulnerability, and their effects on higher education.

Context: the times we are in

The Brexit referendum in June 2016 appeared to unleash a renewed polarisation within the British society, seen particularly in an “emboldened” and “celebratory” racism (Bagguley cited in Kaheeli, 2016) that framed immigrants and refugees as the enemy that needs to be expelled or kept out of Britain. While the rise of such views from (often) the political far right can also be seen in Europe (Chakelian, 2017), British media reports at the time of the referendum showed a spike in racism and hate crime (e.g. Chakrabortty, 2016; Kaheeli, 2016; Versi, 2016), and this...
was supported by a subsequent analysis of crime statistics that demonstrated an increase of 41 per cent in incidents of racist or religious abuse in the month following the vote (BBC, 2016). Such reports need to be treated with caution, but it was notable that the Brexit campaign included considerable racist and xenophobic rhetoric, which presents the possibility that the referendum was a kind of “trigger” event that can “galvanise tensions and sentiments” (Awan and Zempi, 2015, p. 9) against those who seemingly have a different heritage. More cautiously, perhaps, Ford and Goodwin (2017) argue that the campaign stimulated a “high-profile and deeply polarizing debate” over issues such as identity, nationalism, social values and social change (p. 28) and that it “exposed and deepened a […] set of cleavages that are largely cultural” (p. 29).

These views of divisions within the British society may partially be explained by Bagguley’s (2016) suggestion that, over the last decade, a central part of anti-European Union discourse in the British media has been a sense that Britons are different to other Europeans, and that this has given rise to a generalised type of racism that is aimed at those who are perceived to be outside the category of “white English” (cited in Kaheeli, 2016). However, Sivanandan (1989 cited in Taras, 2013, p. 422) comments that:

[...] racism never stands still. It changes shape, size, contours, purpose, function, with changes in the economy, the social structure, the system and, above all, the challenges, the resistances, to that system (Sivanandan, 1989 cited in Taras, 2013, p. 422).

Burnett (2013) argues that violent racism has been “spreading” from major cities in the UK to areas that previously had no such history (p. 3), and that this needs to be understood in terms of the interaction between “local realities, national politics and global conditions” (p. 4). He contends that demographic changes, in which “new” migrants find themselves in cities or areas that until recently have had a majority white British population, have resulted in racist attacks against asylum seekers, migrant workers and international students. More established communities, such as Muslims, have also been targeted, largely through hostility generated by the so-called “war on terror”. He suggests that the ideas of multiculturalism undermining national identity, of Britain becoming overwhelmed by migration, and of migrants’ perceived responsibility for local economic difficulties have taken hold in the media, thereby legitimising the core racist, anti-immigration messages of the political far right. He argues that in response, more mainstream political parties have competed to demonstrate their strength on issues connected to asylum, immigration and race, which has deepened hostility around these issues. And, since 2010, austerity politics have widened economic inequalities within and between localities, and have reduced the number of, and available expertise in, advice and support centres around the country for those targeted by racist abuse. This has left individuals, including students, and families isolated and vulnerable, without access to the types of established support structure that have been developed over years within larger, industrial cities that experienced earlier waves of immigration (Burnett, 2013, pp. 4-6).

Within this environment of heightened fear and tension, the organisation Tell MAMA (2016) reports that the incidents of anti-Muslim abuse and attacks in public areas of the UK rose by over 300 per cent in 2014/2015, with women disproportionately targeted. Their findings are supported by a recent Taskforce report on hate crime in universities (Universities UK, 2016), which demonstrates that Muslim women are particularly likely to experience hate crime on campus:

Evidence submitted to the Taskforce suggested that a rise in religious and race hate crime, exacerbated by a wider climate of anti-Muslim hate crime and harassment, means that female Muslim students are at greater risk of attacks. The NUS Black Students’ Campaign also stated that “72% of Muslim women have experienced verbal abuse and threatening behaviour relating directly to their visible Muslim presence” (Universities UK, 2016, p. 26).

Solutions for the Taskforce lie in reporting, supporting and monitoring systems within individual universities, with an emphasis on the “duty of care” within higher education institutions (HEIs). It is important to remember, however, that one important aspect of any university’s duty of care stems from the Counter-Terrorism and Security Act (HM Government, 2015a, Section 26) which, since September 2015 and as part of the “Prevent” counter-terrorist agenda, has placed a statutory duty on UK universities to “have due regard to the need to prevent people from being
The Prevent agenda has been controversial from its instigation; as part of the government’s counter-terrorism strategy, launched originally in 2007 in response to the 2005 terrorist bombings in London, it was initially widely criticised for the lack of clarity in its aims, and for its divisive effects, both between Muslim and other communities and within the different Muslim communities in Britain (e.g. Kundnani, 2009; Thomas, 2010, 2017). Following a review under the coalition government (HM Government, 2011), the current iteration has presented university frontline staff with a difficult situation in which they are “responsibilised” for spotting “radicalisation” (Thomas, 2017, p. 315) while upholding the other statutory duty to promote the academic freedom and the freedom of speech.

In the following section, we examine these two duties and the tensions between them, arguing that this creates distinctive issues for the higher educational sector. We then explore the idea of student vulnerability, both in terms of the narrative of the contemporary student and the student “at risk”, contextualising these tensions in the wider climate of an increasingly marketised higher education environment. We argue that, despite the potential difficulties of creating and maintaining an environment conducive to discussion and deliberation, this conjuncture provides new opportunities to sustain the open and dialogical space that should characterise good-quality higher education.

Policy and precariousness: insecurities within the academic community

The HEI Guidance to the Prevent legislation (HM Government, 2015b, p. 5) states that governmental concern about students’ potential to be drawn into terrorism includes “not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit”. The details of how and what to identify, however, are left unspecified in the Guidance, other than noticing “changes in [students’] behaviour or outlook” (HM Government, 2015b, p. 4), while the extremism in a more general Guidance publication is defined as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs” (HM Government, 2015c, p. 2). The whole gives the impression of a porous set of ideas about what might constitute extremism (of any kind) and how it could be identified, leaving HEI staff positioned as an important frontline staff against the threat of terrorism but with an uncertain conceptual or practical framework within which to carry out these duties.

It is noticeable in this context that the university statutory duty to uphold the freedom of speech/academic freedom is mentioned in passing these documents. In the HEI Guidance, for instance, upholding these freedoms is mentioned only in relation to the question of inviting external speakers, suggesting that HEIs should “consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups” (HM Government, 2015b, p. 4). However, Saeed and Johnson (2016, p. 40) suggest that the Prevent-related duty of care “trumps the possibility” of the academic freedom in practice. They argue that the duty of care relating to extremism is “in direct contradiction” to the Education Reform Act of 1988, which states the importance of ensuring that academic staff have the freedom to test received wisdom, put forward new and controversial ideas or unpopular opinions “without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions” (HM Government, 1989, cited in Saeed and Johnson, 2016, p. 40).

In a burgeoning body of critical literature relating to the Prevent legislation and agenda, a number of commentators (e.g. McGovern, 2016; O’Donnell, 2016a; Thomas, 2017) have argued that the Prevent strategy amounts to HEI staff being charged with the responsibility of identifying and reporting people who have committed no crime and who may (or may not) be currently involved in some kind of “non-violent extremism”, or who may potentially be involved in some kind of extremism or terrorism in the future. These authors suggest that placing this duty of care within the realms of pre-crime – rather than committed crime – has profound implications for both staff and students. Neither of these groups can be certain about the boundaries of what it is acceptable to say within the context of their work and study, and both O’Donnell (2016a) and McGovern (2016) argue that this uncertainty, together with the positioning of HEI staff effectively
as agents of the state, will have the consequence of destroying trust, restricting enquiry and limiting discussion. Indeed, researchers are beginning to find that Religious Education Initial Teacher education students are limiting their engagement with issues related to racism, culture and faith (Elton-Chalcraft et al., 2017) and that Muslim students are self-censoring because of the environment of mistrust within their HEIs (Saeed and Johnson, 2016). This early research demonstrates the practical difficulty of balancing the duty of upholding the freedom of speech/academic freedom with the duty of care to students and staff, and seems to support Saeed and Johnson’s view that the duty of care trumps that of upholding the freedom of speech. But it also gives rise to questions about the prevalent conditions within HEIs that can – and do – influence staff and student responses.

McGovern (2016) argues that universities are becoming increasingly risk-averse as neoliberal policies of marketisation and privatisation have shifted towards HEIs, and that the Prevent agenda will deepen what he refers to as “cultures of compliance” (2016, p. 49). We agree, and suggest that some of the symptoms of neoliberal policies experienced by schools in England and elsewhere are now spreading to the HEI sector; just as choice, competition and privatisation in the school sector have led to new forms of accountability to state, school managers, parents and pupils (Passy, 2013), so universities are discovering the implications of developing and implementing marketing strategies, of the impact of so-called “league tables” and of providing government-required, publicly accessible data on such issues as student employability. These include increasing the amount of time spent on bureaucratic procedures such as lesson planning, updating different kinds of pupil data and teacher performance data in schools which are reflected in university requirements that staff monitor, student attendance, collecting data around teaching quality (increasingly so in anticipation of the Teaching Excellence Framework) and coping with complex information technology systems that are aimed at making all processes visible and accessible. While none of this is necessarily a bad thing per se, the amount of time involved sap energy (e.g. NASUWT, 2016; National Union of Teachers, 2014) that would be more productively harnessed to, for instance, a creative mediation of the two potentially conflicting duties discussed above.

At the same time, universities are also experiencing a collective insecurity on a number of different levels. First, the so-called demographic dip, in which fewer young people in the country means a diminished number of potential students (Fazackerley, 2017), coupled with fears relating to fewer permitted international students as a means of reducing government-imposed levels of immigration (Foster, 2017) and the repercussions of Brexit on student numbers, are causing HEIs across the country to reduce staffing levels, sometimes drastically (Pidd, 2017). This institutional insecurity is mirrored in university staff, who are rightly concerned about the uncertainty of their employment, and in university students, who are no longer guaranteed a smooth passage from university to graduate-level jobs (Brown et al., 2011; Standing, 2015), giving rise to a kind of collective anxiety in which it is simply easier to keep one’s head down rather than open up possible avenues for controversy or discord. We argue that most people need an element of security in order to function as confident, independent thinkers who are unafraid of taking possible risks, whether they are university staff – who need to create an atmosphere of trust in which all are free to question, to discuss controversial topics and to be uncertain about knowledge, and who have the responsibility to carry out research on controversial or unpopular issues – or students, who need to feel secure enough to participate in potentially risky discussions without jeopardising their marks or prompting a greater surveillance of their actions.

This combination of increased workload and an insecure academic community, when taken in the context of the social and political trends discussed in the first part of this paper, are precisely the conditions in which the inherent tensions between the duty to uphold the freedom of speech/academic freedom and the Prevent-related duty of care can become magnified. In addition, any “cultures of compliance” (McGovern, 2016, p. 49) can become more pronounced. The issue is given further complexity by individual universities’ approach to implementing the Prevent-related duty of care, exemplified by Olohan et al.’s (2015) presentation at a Universities UK Prevent conference, in which they examine the tensions between the different agendas of the different agencies involved in Prevent in HEIs. The central question for this presentation is who leads the implementation process: if led by the university...
security, the authors argue that the process will focus primarily on security; if led by registry, they claim it will focus on compliance; and if led by student services, they suggest it will focus on safeguarding and community cohesion. This potentially brings in new levels of institutional uncertainty and adds a further layer of ambiguity around the working relationships between students and HEI staff.

In the following section, we consider shifts in these relationships by examining discourses around student welfare, the practices that they engender, and how staff and students are positioned within these discourses. We then discuss the implications for staff and student critical engagement in HEIs.

Care and concern in the “total” university community

As student bodies have become more diverse in terms of age and background over the past 30 years or so, and as students have increasingly managed their studies alongside other roles such as carers and workers, HEIs have had to reconsider the role and extent of student support (Jacklin and Le Riche, 2009). The variety and complexity of students’ lives, in which they balance such demands within a competitive and precarious economic climate, have shifted the terms of relationships between students and academic staff. There are growing pressures for staff to be more aware of, and to address any additional pressures on students, particularly as they have become consumers of higher education and are accumulating large debts in order to complete their studies. Within this context, we suggest that academics are increasingly positioned as providers of “extra” care, not only from the Prevent-related duty discussed above, but also from the wider case that is currently being made – with growing purchase – that student wellbeing in general, and their mental health in particular, is a cause for wider concern. Statistics indicate that the percentage of the student population affected is small, at 0.8 per cent, in total, in 2013 (Universities UK, 2015, p. 5), but 27 per cent of students responding to a recent survey reported that they had experienced a mental health condition while at university, with depression and anxiety the most frequently cited (YouGov UK, 2016). More recently, Marsh (2017) reports on the rapidly increasing dropout rate of university students on grounds of poor mental health, citing the Higher Education Statistics Agency finding of 1,180 students experiencing mental health problems and leaving university early in 2014/2015, a rise of 21 per cent on figures for 2009/2010. Marsh also reports a large rise in the number of students seeking counselling, and draws on quotations from former Health Minister Norman Lamb to underscore the sense of increased pressure on university counselling services as an unfolding crisis. What is particularly pertinent for this paper, in terms of the positioning of students as vulnerable and in need of protection, and of academics in need to be alert to students’ mental health, is the reported view of a student health GP cited in the article:

Dominique Thompson, a student health GP, said she feared students could be leaving early as they struggled to cope with the gulf between school teaching and university education (Marsh, 2017).

What is the “gulf” to which this article alludes? A Universities UK (2015) report attributes the growth in mental health issues in part to student life being a time of greater transition, change, encounters with different cultures and financial strain. We believe that it is important to recognise the particular pressure on the current generation of students. It is also vital to examine how a particular narrative of stress might lead to overly pessimistic conclusions about students’ general wellbeing and capacity to engage with university learning. While it is evident that the enormous burden of debt on students is growing and financial constraints are exerting different kinds of pressure, the notion of encounter with change and difference as a “risk factor” in mental wellbeing is contestable. To contest this view is to question neither the provision of good services to students with mental health issues nor the accuracy of the reported increase of such conditions. However, the notion of such a “gulf” and problematic encounter with the new ideas is at odds with the idea of university education as adult education; as an opportunity for broadening of intellectual and social horizons; and finding a way in the world in dialogue with others. Appearing to characterise students as mentally fragile and generally insecure can be a powerful (and probably unhelpful) framework for those starting or engaged in university studies.
Positioning students as (young) people who need ever higher levels of guidance and oversight also suggests that all staff should be fully alert to the "signs" of potential vulnerability and know what course of action to take, thereby indicating expectations about the kinds of services available in the university community. The same GP cited in Marsh’s (2017) article discussed above suggests that the solution lies in providing increased access to relevant study skills, alongside a wide range of mental health and wellbeing options: a kind of supermarket of total services. While we are not denying the importance of these services, we are arguing that notions of student fragility and university life as “dangerous” present a wider threat to the academic freedom and open discourse that are historically at the core of university education. This is a situation perhaps unwittingly exacerbated by the accountability measures taken by HEI staff to demonstrate students’ satisfactory engagement with their studies, which, as Macfarlane (2015) argues, reduces students’ autonomy and freedom, and has a negative effect on students’ rights and capacity:

[...] to choose how to use study time, to learn as individuals, to speak or be reticent, and to develop their own ideas and values (Macfarlane, 2015, p. 339).

It is important to recognise how this wider narrative of stress and vulnerability, if accepted without question, shapes epistemic relations in the university setting. If student fragility is placed in the foreground of academics’ concerns, it has the potential to have negative effects on the ways in which they regard students in their capacities as knowers. The so-called and generalised “vulnerability” of young people and students to new and different knowledge, and the powerful emotions that they might arouse, appears to have become deeply embedded in the discourses and culture of education, including in the Prevent policies discussed above. The idea of radicalism itself has become tainted with implications of psychological imbalance and disconnected from the search for the new ideas to address social and worldly ills. We could say that it is a concept that has been appropriated (Sukarieh and Tannock, 2016). O’Donnell (2016b) suggests that this results in a silencing of dissent, and she questions the ways in which anti-extremism discourse is expressed in an epidemiological and therapeutic language: the “vulnerable” are framed pathologically, as “at risk” of radicalisation. Such “vulnerability” has an elusive quality, as it refers to a future potential risk, rather than a tangible and present danger. Extremist ideas are portrayed as highly contagious viruses that spread easily and take hold; students and young people, particularly from Muslim communities, are regarded as more likely to be “infected”. The vulnerable student is characterised as a diminished subject, whose capacity to resist infection, now or in the future, is reduced by virtue of youth, instability, or a religious and cultural association. O’Donnell argues that Prevent constitutes a pedagogical and epistemic injustice, by denying credibility to those who contest it and by constructing racialised frameworks that present Muslims as routine suspects. Muslim students, and others, are subjected not only to stereotyping, but are further denied credibility or the capacity for a political dissent, on the grounds of that stereotyped identity. She also argues that Prevent is anti-educational because it “securitises” education; by framing the Prevent duty of care as safeguarding the community, academics are positioned not only as guardians and protectors, responsible for identifying the “symptoms” of vulnerability, but also in the frontline of intelligence gathering (O’Donnell 2016a, p. 2). It is easy to see how such framing might lead to self-censorship and silencing, and contribute towards a wider climate of anxiety, distrust and suspicion between students and staff.

In his review of Prevent policy enactment in schools and FE colleges, Thomas (2017) argues that readings of its enactment have to be carefully nuanced and should take into account the “engaged contestation” (p. 306) by, for example, the front line professionals, Muslim organisations and trade unions. Thomas (2017) argues “the day-to-day lived reality of educational experience can often look and feel significantly different from the picture painted in elite-level policy discourse, thanks to the ways that ground-level institutions like schools interpret and ‘enact’ these top-down policy strictures” (p. 311). There is clear opposition to the Prevent agenda from education unions (e.g University and College Union, 2015), Muslim organisations such as the Muslim Council of Britain (2015) and, as we have seen above, from members of the academic community. All argue that the policy discriminates against Muslims and that it stifles the freedom of speech. The distinctive space of dissonance at Prevent’s ground-level enactment in higher education policy contexts post-Brexit, together with the...
responses of academics and of student societies and unions, are issues that we argue require further research. As a preliminary, this paper has mapped out some of the prevailing policy strictures and discourses.

In order to stay in business, universities are competing for students, and the competition is intense (Doward and Ratcliffe, 2016). The expansion of the HE sector has taken place under the banner of widening participation and upward social mobility. Marketing departments are driven by the need to portray a distinctive experience for students: a “total” and good value package for money that will manage not only the “delivery” of academic courses, but housing, health and wellbeing, employability and a bright future. In this new culture of extra care in universities, pastoral relationships between academics and students are increasingly imbued with a marketised version of the “student experience”, with promises of active participation, success and upward social progress. Academics, already worried about their job security, are expected to micro-manage this student experience, arguably drawing their energies and attention away from the core activities of teaching and research. It is important to note these features of the higher education market and the additional uncertainty Brexit has created for the European and international students and staff. At the same time, the political climate is a rapidly changing and fluid one, and the challenge to neo-liberal values appears to be gaining momentum, including in relation to the higher education in the UK, where we have recently seen calls to account for vice chancellors’ levels of pay (Adams, 2017) and for the abolition of student fees (Mason, 2017) and mitigation of student debts (Walker, 2017). On the other hand, in a speech on delivering value for taxpayers and students, Jo Johnson (2017), the current Minister of State for Universities, Science, Research and Innovation, has suggested students would get better value for money through the introduction of (neo-liberal) contracts between students and universities that specify the details of their university education. In the light of this dispute over policy and the political fluidity of Brexit negotiations, Thomas’ (2017) call to closely observe and note contestation and ground-level enactment of policy seems particularly pertinent and well-advised. In the following section, we turn to consideration of ground-level responses and pedagogies that might offer holding grounds or antidotes to the kind of insecurities that are circulating.

Critical engagement in higher education

The creation of “safe spaces” in higher education is important for critical engagement with sensitive and controversial topics, including those associated with Prevent. However, it is also a troublesome idea because there is always a tension between maintaining students’ confidence and willingness to explore the difficult ideas and rights of tutors and students to challenge each others’ beliefs and views, and the idea of what constitutes a safe space is contested. This has recently provoked a considerable public debate in the press. On one hand, former NUS President Malia Bouattia defends the policy of “no platform” for racist, xenophobic and homophobic speakers on campus, arguing that the policy is necessary to preserve safe spaces on campus, where students are free from threat or intimidation (Bulman, 2016). On the other hand, this particular interpretation of safe spaces has been attacked in the House of Commons by UK Prime Minister Theresa May as undermining not only free speech but also posing a threat to innovation in the interests of social and economic progress. May describes the freedom of expression as a fundamental British value (Mason, 2016). However, the same government is responsible for the Prevent legislation and guidance around that legislation, offering – at best – mixed messages about how to enact that freedom of expression. There is the risk that silence, avoidance, overreaction or tension are increasingly likely as staff and students grapple with concepts such as protection, extremism and radicalisation within the context of the staffs’ legal obligation to identify and report those vulnerable to extremism. These trends represent a real and unevenly distributed threat to the rights of students to speak and of others to hear them speak in the university classroom. We suggest that these conditions are not conducive to open and critical engagement and consequently present a threat to the academic freedom and the freedom of speech.

Critical enquiry and engagement are typically associated with courage, openness, robustness and the normalisation of passionate expression and disagreement. On the other hand, the
provision of a safe classroom can elicit notions of caution, protection and control within the context of student vulnerability. Staff and students’ capacity to be comfortable with uncertainty seems to be at the heart of this issue. Critical enquiry relies on the free expression of perspectives and on uncertainty and doubt in the face of strongly held ideas, beliefs and values. However, as Chetty (2017) has pointed out, under the Prevent guidelines, some varieties of doubt seem to automatically suspect and indicative of an unsound mind. What kinds of culture, relationships and teaching expertise do these real and present dilemmas about the freedom of expression demand? What is the antidote to insecurity and vulnerability? We want to argue that much greater attention and resource needs to be given to the kind of pedagogical knowledge and conditions required to keep the space of robust and confident critical dialogue open in the university classrooms and on campus, and that this is a question to mobilise the interests of students and staff alike.

O’Donnell (2017) argues that, unlike indoctrination, education is all about critical enquiry, exploring and questioning a range of different ideas in order to come to a deep understanding of a given subject. O’Donnell (2017) further suggests that educators are committed to creating the conditions for contestation in classrooms, but cautions that this is troublesome when education institutions are required to justify and shape their practice with direct reference to a security agenda. Embracing doubt and uncertainty as essential aspects of education can be seen as the first step in creating conditions for disagreement, as uncertainty is a close relative of curiosity. Naturalising disagreement and contention is a further step in keeping the space of free expression open, and should become an ingrained habit. Similarly, becoming familiar with emotional upheaval and learning to value the power of negative affect to inform and illuminate both our thinking and understanding of the most pressing issues of our times are important aspects of the educative process (Shotwell, 2011).

Conclusion

Our discussion has shown how different current trends and discourses in contemporary Britain that relate to Brexit, racism, the marketisation of higher education and perceptions of student vulnerability are changing the nature of the relationship among HEI staff and students, and potentially closing down the spaces for open discussion on sensitive and controversial issues. The tension between the statutory duty of HEI staff to report people that they believe to be at risk of radicalisation needs to be examined and mediated with the statutory duty of upholding the academic freedom and the freedom of speech to avoid any further reduction in the willingness of all to engage with difficult issues in the university classrooms. This would reduce the richness of a university education in which students should have the opportunity to explore, examine and experiment with the ideas and issues; to engage critically with each other and the world around them; and to experience, at a practical level, the democratic processes of dialogue and discussion – all of which help to encourage a well-informed, thoughtful and politically engaged citizenry. For these reasons, it is essential that we strive to keep these spaces open for uncertainty, controversy and disagreement in HEIs.

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Homophobia, Brexit and constitutional change

Iain Channing and Jonathan Ward

Abstract

Purpose – This paper addresses some of the future challenges that the vote to leave the European Union (EU) may have on the UK’s constitutional framework. The potential abolition of the Human Rights Act 1998 and its replacement with a Bill of Rights is examined in relation to the interpretation of freedom of expression. More specifically, this is analysed in relation to the often conflicting freedoms to express homophobic views and to freely express one’s sexual identity. With EU law protecting many of the recently won rights favouring lesbian, gay, bisexual and transgender (LGBT) equality, the purpose of this paper is to underline the potential dangers should this layer of international scrutiny be lost and highlight where more improvements for equality are still needed.

Design/methodology/approach – This paper offers a critical reflection on the recent political and judicial rhetoric which has accompanied the issues of LGBT social and legal equality. Recent judgements from domestic and European courts are analysed to identify how any potential re-interpretation of freedom of expression may affect the LGBT community.

Findings – While the UK has made welcome strides in improving the legal equality of the LGBT community, it is argued that the potential loss of judicial scrutiny from the European Court of Human Rights and the European Court of Justice may have negative consequences. An examination of recent judicial and political discourse demonstrates that homophobic expression – or at least tacit acceptance of it – still permeates throughout these institutional spheres.

Originality/value – The paper highlights how the subtleties of constitutional changes following Brexit may threaten the current progression of LGBT rights in the UK and proposes that a commitment to freedom of expression must give greater recognition to the right to express sexual identity.

Keywords Homophobia, Human rights, Brexit, Freedom of expression, Judicial discourse, Parliamentary discourse

Paper type Research paper

Introduction

This paper offers a critical analysis of recent judicial and political rhetoric relating to lesbian, gay, bisexual and transgender (LGBT) issues and frames them within the ongoing Brexit discussions. As the negotiations are still in progress, the potential impact of any future constitutional change must be speculated upon to help inform significant legal developments. In response to Ball’s (2016) polemic call to use queer criminology as activism, this paper applies a socio-legal lens to the continuing injustices felt by LGBT people as a result of a legal framework which constrains equal rights and protections. Further, it considers the potential constitutional change following Brexit and the subsequent re-interpretation of human rights at a domestic level that must receive consideration given that the protection of homophobic religious views systemically trumps the rights of LGBT people to protection from intolerance. The importance of this was highlighted in July 2017 by the human rights group Liberty, after winning a legal battle to ensure pension equality for same-sex couples. They highlighted that the “ruling was made under EU law […] [and urged the Government to] promise that there will be no rollback on LGBT rights after Brexit” (Liberty, 2017). This paper first examines the criminological and sociological implications of homophobia and the social constraints that exist in freely expressing a sexual identity. In a judicial discourse analysis from key cases, the (sometimes surprising) judgements from the different jurisdictions are examined. Then, the parliamentary debates which have taken place since the
Marriage (Same Sex Couples) Act 2013 are assessed in relation to the noticeable absence of more direct homophobic rhetoric.

It is argued that if any future constitutional changes materialise following the decision to leave the European Union (EU), the deficiency in the protection of LGBT people from homophobic abuse should be addressed despite the manifest ranking by politicians and the judiciary of the rights of religious freedom of expression over that of sexual orientation. Prejudicial attitudes expressed in the parliament have two important ramifications. First, those views help shape our law. Second, MPs may express illiberal views on a social minority without any legal retort, which can serve to legitimise hatred and prejudice which is based on certain characteristics. The paper concludes that Brexit presents the removal of a significant layer of scrutiny available to aid reconciliation of intractable social issues within the legal system.

Sexual orientation, homophobia and freedom of expression

The vote in the referendum on the continuing membership of the UK in the EU in June 2016, heralded a widely reported surge in hate crime (Burnett, 2016) and press reports indicated that the LGBT community were also victimised (Lusher, 2016; Townsend, 2016). The General Election of June 2017 ignited a public debate about political homophobia both before and after the vote. Before, Tim Farron, then Leader of the Liberal Democrats continually evaded questioning about his views on homosexuality (Khomami, 2017). After, the failure of the Conservative Party to secure a majority government forced them into coalition talks with the Democratic Unionist Party (DUP) – who opposed equality for same-sex relationships. Paradoxically, the General Election saw 45 MPs elected to the House of Commons who identify as LGBT; the highest number of openly gay and lesbian MPs ever voted in to the House of Commons (Wilson, 2017). Such polarised political principles on same-sex relationships in the public sphere command evaluation of current political culture and the implications for forthcoming constitutional change following the vote to leave the EU.

Brexit presents a significant challenge to the constitutional framework in the UK. The constitution provides the mechanism for the protection of fundamental rights and liberties, much of which lie in the European law. The parliament have also indicated a desire to replace the Human Rights Act 1998 with a new British Bill of Rights, although press reports suggest this may wait until departure from the EU has been addressed (Swinford, 2017). The proposed change would repeal the Human Rights Act 1998 and the text of the European Convention on Human Rights (ECHR) would be enshrined in domestic legislation. Therefore, the European Court of Human Rights (ECtHR) would no longer bind the UK Supreme Court and the parliament would be the “ultimate source of legal authority” (Conservative Party, 2015). If such changes were enacted, the loss of additional international judicial scrutiny would pose several challenges to the interpretation of human rights in the UK.

This year marks the 50th anniversary of the Sexual Offences Act 1967 which partially decriminalised male same-sex activity. Homophobic rhetoric within parliamentary debates accompanying legal equality for same-sex couples between the 1967 Act and the Marriage (Same Sex Couples) Act 2013 has been discussed at length (McGhee, 2001; Johnson and Vanderbeck, 2014). Yet, despite Stonewall’s suggestion that the passing of the Marriage Act represents the “last piece of the legislative jigsaw providing equality for gay people” (Edge, 2015, p. 262), legal flaws persist. Indeed, this serves as a reminder that it is not just physical violence that causes harm – structural, systemic and social inequalities may have even more pervasive effect as Yar (2012) suggests:

Practices such as […] symbolic denigration on the basis of […] sexual orientation […] are properly harms in that they deny those subject to them the experience of self-esteem or recognition of the distinctive worth of their identities and ways of life.

The structural denial of legal recognition, which has excluded homosexuals from certain rights and privileges enjoyed by heterosexuals or, more particularly, those embracing the heteronormative model, devalues and dehumanises that group, propagating victimisation and social exclusion.

Homophobia as a term is not unproblematic. Monk (2015a, p. 203) has suggested it is a crude “label or theoretical frame of reference for capturing differential treatment in an age of
formal legal equality”. This is an alluring definition but when we are discussing hate speech and hate crime something more is required – some demonstrable fear, hatred or dislike of either a homosexual individual or characteristic or act associated with the LGBT community (Chakrabarti and Garland, 2015, p. 48). Chakrabarti and Garland (2015) discuss various homophobic attacks, highlighting that they tend to be more violent and brutal than other forms of hate crime. In homophobic murder cases, particular violence is evident.

In Plymouth in 1995, Terry Sweet was brutally murdered in a homophobic attack. His head and stomach was stamped upon. The cutting of his groin with a craft knife suggests specific sexual hatred. The second victim at the scene, Mr Hawken, survived but was “rendered an effective cabbage[1]”. The local community was not universally supportive. Hate speech, in the form of graffiti, appeared with statements such as “In memory of Terry Sweet, may he rest in pieces […] ha ha” and “Please step over spilt AIDS”. Whilst clearly homophobic hate speech, aside from the issue of criminal damage, such expressions may not be deemed unlawful[2]. Today, following the Criminal Justice and Immigration Act 2009, homophobic hate speech is criminalised as long as there is an element of threat associated with it. Therefore, other expressions written as graffiti, such as, “kill the faggots” and “No queer’s[sic] here, your[sic] banned or face death” would now be seen as a specific homophobic hate crime, rather than a more general public order offence (Plymouth Herald, 2015).

This raises fundamental questions about the freedom of expression. The tension between freedom of expression and freedom from discrimination is well encapsulated in this tragic vignette but the issues are more complex than is first apparent. The social utility in such graffiti being lawful is questionable. Such explicit expressions of homophobia strike the freedom to express sexual orientation. Following the murder, the press quoted a 24-year-old homosexual male who stated, “There was this sense of ‘what did you expect’? and that it was inevitable if you were going to live this lifestyle” (Plymouth Herald, 2015). The inevitable fear and reluctance to express a homosexual identity, or outwardly express same-sex desire, surely erodes the individual and goes to the heart of discussions about tensions within any theory of freedom of expression. Without being able to freely express one’s sexuality, one’s self-esteem, self-worth and self-identity will be harmed; such self-denial of an integral aspect of identity ultimately leads to a more difficult and unsatisfying life (Altman, 1993).

It is heretical to arbitrarily weigh one species of right more heavily than the other and so this admits closer analysis of mainstream and entrenched heteronormativity. It is possible to draw from Harding (2015) the view that societal institutions, structures and systems are such as to place heterosexuality in a position of privilege and establish it as a norm. This is consistent with Herek’s (2009, p. 67) view that heterosexism “serves as the foundation and backdrop for individual manifestations of sexual stigma” which are borne out of “sexual prejudice”. This can operate to categorise homosexuals as deviant and legitimise discrimination and aggression[3]. Stigma and prejudice are constructed from tradition, interaction with societal institutions and wider social interaction (Herek, 2009). There is an apparent synthesis between these sources, social interaction is informed by legitimated structure (legislatures e.g.) as those stigmatising seek to embed their values, acting as a majority privileged group, in organs of society. In the UK, much of this seems to manifest in rhetoric about the structure of the family, of love and of wider moral values (Harding, 2015). If this is so, sexual prejudice is structurally embedded, legitimating hate speech.

If we examine the legislative response and hold up notions of equality and freedom of expression (particularly sexual identity) against formal legal equality, such as it is in the UK, we quickly see an emergence of neoliberal homonormativity (Duggan, 2003): equality by the imposition of heteronormative institutional standards which, when received, confers the privilege it enjoys. What emerges is the advent of successful consumerist monogamous same-sex partnerships. This entails structural indirect inequality, for example same-sex couples may adopt but only if their relationship conforms with heteronormative monogamous models[4]. It is an exercise in silencing difference (Monk, 2015a).

All the time that heteronormativity[5] and desensitisation (behind the veil of freedom of expression) perpetuate sexual prejudice and drive even low-level forms of harassment, particularly within educational settings and social media, concerns remain for young people together with the possibility that demonstrable same-sex desire, such as holding hands in public, will not be
publicly expressed for fear of violence[6]. The ideological framework of freedom of expression presents an internal conflict which must be resolved within the formal institutional framework. In addition, the harm involved in silencing a negative view, may be systemic rather than merely an erosion of one person’s right against another. Pereira et al. (2016), for example, hypothesise that certain beliefs could lead individuals confronted with anti-prejudice norms to be even more resistant to the suppression of their prejudiced attitudes, this seems an uncontroversial argument if it is considered that some negative attitudes may stem from, for example, strong religious conviction and therefore not be recognised as prejudice by those expressing them[7].

Constitutional freedom of expression

With religion occupying a privileged position that can discriminate against and promote prejudice towards homosexuals, legal responses still require fundamental change. Indeed, the criminal and legal justice institutions have been the key in regulating the “deviance” of the LGBT people (Ball, 2016). Given the UK Supreme Court becomes the final appellate court following potential post-Brexit constitutional change, it is appropriate to analyse recent judgements relating to freedom of expression in regards to sexual orientation and homophobia. Freedom of expression for individuals in the UK lies in a constitutionally significant principle, Article 10 of the ECHR. This is not an unqualified right and may be subject to conditions, restrictions and penalties.

In terms of domestic legislation, the Criminal Justice and Immigration Act 2009 criminalised homophobic hate speech. However, as mentioned above, an element of threat is needed for the offence to be made out, therefore, religious preaching can still express a belief that homosexuality is immoral, unnatural and sinful. This legislation was tested for the first time in R v. I hjaz Ali & Ors (2012). In this case, three men were successfully prosecuted for distributing leaflets with provocative images of a mannequin hanging from a hangman’s noose with various statements including a suggestion that classical literature was concerned only with what method of execution should be brought to bear on homosexuals. The defence ran the argument that they had not intended to threaten anyone but felt it their duty to advertise Islam’s stance on homosexuality (Chakraborti and Garland, 2015). The judge made much of the importance of freedom of expression (R v. I hjaz Ali & Ors, 2012). Notably, reference was made in sentencing remarks to the men distributing earlier leaflets with the statement “turn or burn” which, according to the sentencing judge, may not have been threatening (R v. I hjaz Ali & Ors, 2012). It is also notable that the authors cannot locate any other successful prosecutions under this legislation.

Similar questions have been asked in the ECtHR. In Vejdeland & Ors v. Sweden (1813/07) 2012, four men distributed leaflets to a secondary school suggesting homosexuality is deviant and destructive to society, that HIV and AIDS was associated with the promiscuous lifestyle of homosexuals (contributing to a plague) and linking homosexuality and paedophilia. The Swedish criminal justice system sentenced the men concerned. The applicants contended that this conviction breached their Article 10 right but, in an interesting and important judgement, the ECtHR concluded that it did not. The criminalisation of abusive and threatening homophobic expression is clearly welcome, however, in each case there is some ambiguity of where the threshold between hate speech and hate crime is.

In the next case, we consider the jurisprudence emerging from the European Court of Justice (whose rulings will not necessarily be binding in the UK after Britain’s departure from the EU). The case concerned three asylum applications in the Netherlands on the basis of feared persecution attributable to homosexuality in the applicant’s home countries. The issue was if it was legitimate to expect homosexuals to exercise restraint when expressing their sexuality (Hueting and Zilli, 2014). The court reached the welcome conclusion (para 69-71) that:

[...] requiring [people] sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity [...] an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution.

However, despite this ruling, a report from Human Rights Watch has accused the UK Home Office’s approach to gay Afghans being deported to Kabul is to “[p]retend you are straight” (Graham-Harrison, 2017). These cases serve to demonstrate not only the cross-jurisdictional approach to homophobic hate crime but the importance of freedom of expression of sexual identity.
There are more subtle consequences of heteronormativisation evident in judicial discourse even after formal equality. In *Baynes v Hedger and others* (2008), Margot Baynes contested the will of her partner Mary Watson arguing that she had not been adequately provided for. Under the Inheritance (Provision for Family and Dependents) Act 1975, an unmarried partner can bring a claim for provision under the will of a deceased, if they can satisfy the Court that they were living as the husband or wife of the deceased. This case followed the Civil Partnership Act, and the court found that the same must apply to those same-sex partners living as if they were civil partners. The court found that the applicant and deceased were living together in a committed and loving relationship. However, the claim failed because the relationship was entirely private and not presented publicly. Whilst there is nothing at all to suggest that the court would not have reached the same finding were a heterosexual relationship before it, it is difficult to imagine circumstances in which heterosexual parties would have hidden their relationship for fear of harassment based on their sexual orientation (Monk, 2015b).

The commitment of the UK courts to protecting the freedom of LGBT people to express their identity without negative repercussions was challenged this year in a Family Court sitting at Manchester in *J, B v. The Children* (2017) EWFC 4. Here, following the divorce of an Orthodox Jewish couple in 2015, the father of the five children the marriage produced now lives as a transgender woman. Seeking contact with the children aged between 2 and 12, the father’s (as she is referenced in the transcript) argument was that she should be sensitively reintroduced to the children to help them understand her new way of life. Justice Peter Jackson rejected the application for direct contact with her children. He stated:

I have reached the unwelcome conclusion that the likelihood of the children and their mother being marginalised or excluded by the ultra-Orthodox community is so real, and the consequences so great, that this one factor, despite its many disadvantages, must prevail over the many advantages of contact.

This is a difficult case but it is important to establish that the balance in issue is that of harm to children, not the balance of freedom of religion with freedom from discrimination. It seems the judge applied the appropriate tests in law and it is right, as a matter of law, that the welfare of the children were his primary consideration – the case should not turn on LGBT or religious rights. The published judgement considers evidence given by the members of the religious community who appear to demonstrate, even reluctantly, the inevitability of ostracising the subject children simply if they were to have direct contact with their father. Whatever the perception of the outcome, the fact is that the expression of a particular religious doctrine was permitted at law to prevail. Clearly, the court had to balance the harms and acted to minimise, as far as it could, the harm the children would suffer. It is a persuasive argument that the law should not operate to martyr these children to a cause which is not their own in the name of answering questions about the balance of freedoms – that is a separate issue. Yet the fact that religious freedom of expression should have such a profound influence on the operation of the legal system in a multi-cultural society, with such enormous consequences for the vulnerable members of society is problematic for the legislature.

Difficult cases such as this will arise. It is not just prima facie hate crime which must be addressed legislatively and neither is formal legal equality enough to prevent it. The wider social and philosophical issues presented by this case may well be intractable and it is not the purpose of this paper to offer any observation as to the justice of the outcome. The point is that discussion of international jurisprudence was prominent in the published judgement in this case. If Brexit heralds the reduction in international jurisprudential scrutiny, and sovereignty stops ultimately unchecked at a domestic level, then a hugely significant layer of protection and guidance is lost when trying to deal with such intractable issues.

**After the Marriage (Same Sex Couples) Act 2013: a honeymoon period?**

The flagrant homophobic rhetoric which has been expressed in both Houses of Parliament since the 1960s has been well documented (McGhee, 2001; Johnson and Vanderbeck, 2014). The opposition to greater legal equality for LGBT people and the passing of Section 28 of the Local Government Act 1988, which prohibited the promotion of homosexuality in schools or other areas of council work, demonstrate that the journey has been more of an ebb and flow than
a linear progression to a more enlightened system. However, in the years following the Marriage Act 2013, Parliamentary debate has witnessed the retreating of such discernible objections to LGBT equality. While the parliament may be entering a phase of significant transition in relation to championing LGBT rights (or at least the toleration of them), this change in culture must be analysed in relation to the competing rights of freedom of expression, freedom of conscience and religion and freedom from discrimination.

The Marriage Act was met with significant resistance with 175 MPs voting against the Bill going forward to the Second Reading. Despite two general elections in the years since the Bill’s passing, 121 MPs opposing homosexual equality of marriage rights retained seats. The 2017 General Election saw the Conservative Party win 330 seats (with 107 of those previously voting against the Marriage Act), meaning 32 per cent of the government’s MPs have problematic views on equality for same-sex couples. When coupled with the DUP coalition, significant questions about the political commitment to LGBT rights were raised. Homophobic rhetoric may have been largely silenced since the Marriage Act, but it is questionable that MPs who have rejected equality for same-sex couples would have altered their attitudes, attracting analysis of the parliamentary debate since 2013.

In 2015, the Psychoactive Substances Bill (before its final iteration) operated to criminalise poppers as well as other substances that were frequently referred to as “legal highs”. The significance of these debates were that it exposed elements of the Conservative Government who displayed little understanding or concern for the potential dangers such a blanket ban of substances would have on a significant amount of gay men who use poppers recreationally during male homosexual activity. Despite receiving warnings that the risks associated with banning this substance outweigh the benefits, the parliament was determined to proceed. Owen Thompson proposed an amendment which would exempt poppers from the act based on the lack of evidence that there were any harmful effects; largely because of the regulation of the constituent compounds. The proscription of poppers would end regulation endangering the health of users who may turn to illegal and unregulated alternatives. Andrew Gwynne suggested that users might access harder drugs and Lyn Brown highlighted medical evidence from the practitioners which supported the exemption of poppers from the Psychoactive Substances Bill.

The Minister for Policing, Crime and Criminal Justice, Mike Penning, rejected these arguments, seeking a blanket ban. While he did “not want to be seen to be picking on any individual group in any shape or form”, it was obvious that the ban had significant ramifications for gay men. Despite this, Penning sought to “protect the public” considering this best achieved by rejecting exemptions. On this analysis, gay men were placed in a less privileged position in society. By the initial inclusion of poppers in the Bill, the parliament arbitrarily went into the bedroom of a significant proportion of the population, indicating that they would review the ban at a later date which did little to protect gay men from discrimination. Whilst the final Act does proscribe poppers, the reasoning behind those that sought to criminalise it remains problematic.

The debates on psychoactive substances represent an ebb rather than flow in a political culture that is becoming more embracing of same-sex relationship accommodation and equality, other debates are devoid of such discriminating views. For example, in 2015 the NHS was criticised in the House of Commons for purportedly referring LGBT people to gay conversion therapy. Quoting figures from the USA, Stuart Andrew highlighted that those people who had received gay conversion therapy were “8.9 times more likely to commit suicide, 5.9 times more likely to suffer depression and three times more likely to take illegal substances than their peers.” The unanimous condemnation from the House on such practices is obviously welcomed. However, the view may have only been silenced rather than eradicated. While MPs avoid the promotion or support of such practices, religious groups and institutions do not condemn them so readily. In a report on the family, Pope Francis (2016) highlighted that there were no grounds for the Catholic Church to recognise same-sex unions and, in a nod to gay cure therapy, stated that those “who manifest a homosexual orientation […] should receive the assistance they need to understand and fully carry out God’s will”. With the importance of procreation stressed in his report, the Roman Catholic stance on homosexuality being unnatural and a treatable condition is still evident. While the Church of England may be more lenient here, by calling on the government to ban gay cure therapies, the Anglican group, Core Issues Trust, still promotes treatment that helps people
move “away from unwanted feelings and behaviours, to allow new desires to gradually develop” (Roberts, 2017; Core Issues Trust, 2017).

A petition of the citizens of the UK to exonerate persons convicted of gross indecency and related “homosexual offences” was presented to Parliament on 15 December 2016 which built upon the pardon granted to Alan Turing by HM the Queen in 2013, and following the Policing and Crime Act 2017, pardons for living and deceased men have since been granted. In the debates on pardons, Conservative Nigel Adams used it as a platform to apologise for his opposition to the Marriage (Same Sex Couples) Act. He stated:

[...] having reflected and having seen how the Marriage (Same Sex Couples) Act 2013 has made such a positive difference for thousands of couples around the country, I deeply regret that decision [...] I apologise to friends, family members and constituents who identify as gay, lesbian or bisexual[13].

Attitudes may shift and apologies be genuine; the value of political compromise should not be underestimated. The perseverance and activism of those promoting strongly held principles raising public and political support for bold or radical causes are imperative to the democratic process and success is dependent on the politicians’ attitudes towards compromise (Gutmann and Thompson, 2010).

There has also been a noticeable change in the House of Lords where the traditional negativity towards same-sex relationship equality had existed[14]. In 2014, the House of Lords debated the treatment of lesbian, bisexual and trans women in the NHS which showed no signs of any of the previous homophobic rhetoric. Condemning the number of complaints from women who had been treated insensitively because of their sexuality, Earl Howe highlighted that the NHS constitution needed to enshrine the duties of a civilised society, before highlighting a number of different funding initiatives to help educate and remove such discrimination[15].

Other recent developments address obscure discrimination. The Merchant Shipping (Homosexual Conduct) Bill 2017 repeals Sections 146(4) and 147(3), the right to dismiss a seafarer on a UK merchant ship for homosexual conduct. Although the Equality Act 2010 effectively emasculated the discriminatory provision, the Bill is of “deeply symbolic importance[16]” removing “an ugly relic from a bigoted past[17]”. These views from the House of Lords demonstrate the strong language used to acknowledge previous homophobic discrimination in the law, and argue that recent social and political change is making such laws outdated. Interestingly, Christopher Chope forwarded an amendment to make the Bill retrospective to pardon those dismissed of service since 1994. This was opposed by Conservative Sir Greg Knight as being undemocratic. Chope’s amendment was uncharacteristic as he had previously opposed the Marriage (Same Sex Couples) Bill and the Alan Turing (Statutory Pardon) Bill. Within such political compromise, mutual respect plays an important part of the democratic process, and while many MPs have poor voting records as to LGBT rights, there is a necessity to treat citizens as autonomous agents who have a role in the creation of legislation, rather than just being the objects of it (Gutmann and Thompson, 2010). Therefore, shifting social attitudes require consideration in the relation of policy creation.

The 34th British Social Attitudes report suggests increased acceptance of same-sex relationships and marriage. The 2017 report highlights that while there has been greater acceleration in more liberal views in the last five years, taking a longer view shows significantly different attitudes. In 2017, 64 per cent of respondents identified that same-sex relationships were “not wrong at all”. This represents a significant change from the 11 per cent which responded this way in the 1987 survey. In 2017, 19 per cent of respondents thought same-sex relationships were either “always” or “mostly” wrong. In 1987, 74 per cent of people responded in those terms (NatCen, 2017). Such revolutions in social attitudes require politicians to also adapt, sometimes against their own principles. To air an unpopular or distasteful opinion can serve to prematurely end a political career.

The increasing use of social media and news media affords greater opportunity for public denunciation of homophobic views. It has also been highlighted that social network sites can enable greater dialogue between the public and politicians which increases accountability and transparency (Khazaei and Stockemer, 2013). Conservative MP Andrew Turner dropped out of the 2017 election after an A-level student reported that he had told students that homosexuality was
“wrong” and “dangerous to society” (Asthana, 2017). Although recent years had witnessed MPs forward similar views with impunity, this is an indication that such views now might be unwelcome. Religious MPs, such as Edward Leigh, whose outspoken homophobic discourse in the past had been used to support Section 28 and oppose the Civil Partnership Bill, must now find alternative outlets for their position. Leigh proposed an amendment to the Local Government Bill in 2015 protecting the Judaeo-Christian tradition as the historical foundation of the UK by providing “a legislative basis for continuing the tradition […] of prayers before meetings in local government[18]”. This retrograde amendment clings to the symbiotic relationship between religion and the state, creating conflicts of interests when considering LGBT equality. While momentum in silencing parliamentary homophobic rhetoric grows, political culture has not necessarily eradicated such discrimination, but a combination of political compromise, opportunism and silent tolerance have now become strategically important to politicians, especially those with strongly held religious beliefs.

Conclusion: what does this mean in terms of potential constitutional change?

The prospect of significant constitutional change commands a focus on the balancing of competing rights, not only as amongst private individuals but with greater care being paid to broader consequences and systemic inequalities. Article 9 of the Bill of Rights 1688 enshrined parliamentary freedom of expression – that is to insulate members from judicial scrutiny and systemic accountability for anything they might say. Within the constitutional framework of the UK, membership of the EU has acted as a significant weapon in the judicial armament and conferred upon the judiciary a means of scrutinising parliamentary activity which might otherwise remain unfettered.

There is, to a great extent, formal legal equality. Yet to regard this as sufficient is to put the cart before the horse. The unfettered freedom of speech enjoyed in the parliament over five decades has and continues to legitimate and perpetuate homophobic hate speech and silence difference. Although there has been noticeable change in relation to the use of parliamentary expression in recent years, the continuing alignment with religious values continues to pose problems. Religious institutions which formally exclude LGBT people, with the support of the parliament and the courts, constitute state engineered denigration. The effects of this should not be underestimated as it serves to deny recognition to people based on their sexual orientation causing harm to their identity and self-esteem. Departure from the EU and reconfiguration of the constitutional framework for the protection of rights presents a significant risk. The nuances of freedom of expression cannot be confined to the right to express an offensive opinion weighed against freedom from discrimination. The greater issue for our constitution is the freedom of expression of identity of minority groups weighed against the unfettered freedom of the parliament to vindicate homophobia with impunity and the obligation on domestic courts to comply.

Notes
2. However, there may be a case that to that the language used was abusive and may cause harassment alarm or distress which would qualify it for prosecution under Section 5 of the Public Order Act 1986.
3. The question of whether non-monogamy (consensual or non-consensual) irrespective of gender binary models is outside heteronormativity is outside the instant discussion.
5. It should be noted that this is not just gender binary; for example non-consensual (or consensual) non-monogamy, whether gender binary or not, falls outside the heteronormative, although is perhaps more widely tolerated.
6. Herek (2009) offers an interesting discussion about self-stigma on this point.
7. For a critical debate about the oppression of religious views and homosexual expression, see Hodge (2005) and Melendez and LaSala (2006).
14. For example, the Labour Government had to resort to the Parliament Act 1911 to overrule the House of Lords who voted against equalising the age of consent for gay men to 16 in 2003.

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Brexit, immigration and expanded markets of social control

Steven Hirschler

Abstract

Purpose – The purpose of this paper is to explore the implications of EU citizens’ exposure to UK immigration practices currently operating on non-EU migrants in the wake of the Brexit referendum.

Design/methodology/approach – This paper draws on recent literature analysing the impact of immigration as a factor in voter decision making during the Brexit referendum. It challenges Hollifield’s (1992) concept of the “liberal paradox” through an analysis of private security firms’ roles in contributing towards the expansion of immigration control markets. The paper concludes with a review of migrant experiences within prisons, detention facilities and dispersed housing for asylum seekers.

Findings – The findings suggest that the abandonment of EU citizens’ freedom of movement into the UK will result in their exposure to a privatised immigration control regime that contributes to the commodification of immigrants at the expense of human welfare.

Originality/value – This paper provides a conceptual link between the role of immigration in the Brexit referendum and the implications of expanding the population of persons subject to immigration control to include EU immigrants. It draws on current debates about privatised social control markets to illuminate the social impact of valorising migrant bodies.

Keywords Immigration, Public policy, Privatisation, Brexit, Detention, EU citizens

Paper type General review

Introduction

Among the many uncertain outcomes of the UK’s pending withdrawal from the European Union, European citizens’ immigration status remains a question to which “neither the government nor external researchers have more than a vague idea [of an] answer” (Portes, 2016, p. R16). Border control was a central theme of the Leave campaign prior to the 2016 “Brexit” referendum, but support for Brexit was not linked exclusively to desires to limit EU immigration. The ambiguous aim to “take back control” was also associated with economic concerns, wariness of ceded sovereignty and dissatisfaction with political “elites”. Nevertheless, support for tighter border controls and communities’ exposure to increased immigration rates indicated greater support for the Leave message (see: Hobolt, 2016; Vasilopoulou, 2016; Goodwin and Heath, 2016). If the UK government is to retain legitimacy in the estimation of Brexit supporters, it is likely that the freedom of movement of European Economic Area (EEA) citizens to and from the UK will no longer be guaranteed under the European Parliament and Council Directive 2004/38/EC. This is evident in the 2017 Conservative Party manifesto, which states that “for the first time in decades, […] we will be able to control immigration from the European Union” (Conservative Party, 2017, p. 55). If EU immigrants are subjected to further control, they face increased exposure to private security environments currently operating on other migrant categories. This paper explores the implications of European immigrants’ inclusion within an expanding immigration control market dominated by private security firms scrutinised for contractual failings and welfare concerns.

While recent developments in the privatised social control sector challenge Hollifield’s (1992) “liberal paradox”, his concept provides the basis for a discussion of the UK’s seemingly incompatible objectives of promoting free market expansion while maintaining a restrictionist
approach towards immigration. The referendum outcome places new demands on the UK government to favour popular calls for tighter controls at the expense of business demands for a widely available labour force. Given the uncertainty of EU immigrants’ legal status post-Brexit, this paper considers the implications of their entry into a privatised social control environment. The experiences of non-EU immigrants and asylum seekers within the detention and dispersal estates reveal the conditions greater numbers of people may face if immigration rules applying to EU migrants become more restrictive.

**Brexit, immigration and the imperatives of the state**

In exploring immigration policy in liberal democracies, Balch (2016, p. 74) writes that “understanding the politics of immigration is [...] understanding the essential features of the state”. The state exists as an outcome of population management strategies and its legitimacy depends on its capacity to demarcate the boundaries of belonging. Young (2003) explains that logics of exclusion operate to reinforce national identities. “Nationalism, fundamentalism, [and] racism”, he writes, manufacture “a fixed identity based on the notion of a cultural essence which is reaffirmed, rediscovered and elaborated upon” (Young, 2003, p. 457). Foucault’s “state racism” illuminates the distinction between populations worthy of protection and those excluded or allowed to die. In defining the parameters of belonging, the state promotes an “internal racism of permanent purification” (Foucault, 2004, p. 62). From this perspective, the state not only organises differences within populations, it also creates those distinctions. Immigration control can be understood as the operationalisation of racism, as it employs techniques and apparatuses of power to distinguish between permitted and illicit populations. Doty (1996, p. 236) explains that “national identity is constructed vis-à-vis the representation of the other”. While support for Britain’s withdrawal from the EU reflected sentiments ranging from dissatisfaction with perceived political elites to frustration regarding economic conditions, immigration remained a central issue for Leave campaigners and supporters. The referendum result represents a distillation of nationalist identity rooted in exclusionary conceptions of belonging.

Hollifield (1992) argues that in liberal democracies, states are compelled by two incompatible imperatives. States must continue to serve their traditional function of defining the limits of belonging and demonstrate their commitment to strict borders. However, they must also promote market expansion and the free flow of capital; this requires permeable borders through which labour can pass with little obstruction. This “liberal paradox” represents the state’s inability to fully address domestic demands for border tightening, as politicians respond to business pressure for access to global labour resources. He writes that “[r]ules of the market require openness and factor mobility; but rules of the liberal polity, especially citizenship, require some degree of closure, mainly to have a clear definition of the citizenry and to protect the sanctity of the social contract” (Hollifield, 1998, p. 623). Freeman (1995) suggests that immigration policy generally favours the interests of markets over popular calls for restrictive immigration control in liberal democracies. However, as consecutive UK governments have introduced more restrictive controls on migrant categories including asylum seekers, foreign students and family members of UK citizens, this gap is narrowing. Morales et al. (2015) acknowledge that immigration has become a more prominent factor in political decision making due to persistent media attention and public pressure, though Statham and Geddes (2006, p. 248) contend that policy development remains an “elite-led highly institutionalised field with a decisively restrictionist stance”. Still, anti-immigration positions have become normalised alongside increased popularity of Eurosceptic positions, such as those forwarded by the UK Independence Party (UKIP). Immigration was a key concern for voters before the 2015 General Election; 70 per cent of respondents in the British Election Study stated that they favoured decreased immigration (Dennison and Goodwin, 2015, p. 175). UKIP played a central role in the Brexit campaign, as it aligned the Leave vote with a vote against immigration. This was best exemplified when Nigel Farage, the former UKIP leader, posed in front of a poster featuring migrants at the border between Croatia and Slovenia that warned of a “breaking point” for the UK (Stewart and Mason, 2016).

The EU referendum represented a rare opportunity for the electorate to directly inject populism within the political process without the buffer of representative decision making and oppositional
pressure from businesses. The imbalance between Freeman’s restrictionist “popular opinion” and the “organised opinion” of political and corporate elites tipped towards populism, as politicians faced a crisis of legitimacy if they rejected the majority view. The referendum outcome resulted in a perceived mandate for tighter borders between Britain and other EU states. Within the Leave narrative, immigration contributed to strains on public services and housing. This narrative was effective. Gietel-Basten (2016, p. 674) explains, because it drew upon existing concerns about net immigration rates. The “deliberate” conflation of refugees and EU migrants exemplified in UKIP’s poster served to “exploit currents running much deeper than concern about primary school places or hospital waiting lists” (Gietel-Basten, 2016, p. 676). In their survey of 5,000 British citizens, Hobolt and Wratil (2016 in Hobolt 2016, p. 1263) found that “immigration and the economy emerge[d] as the main arguments” of the campaign with intended Leave voters focussed on “concerns about immigration”. Menon and Salter (2016, p. 1310) suggest that “[t]he steady focus on immigration made it hard for Remain campaigners to emphasise the economic arguments”.

While the UK government has not committed to a strategy for managing EU migration after Brexit, the Prime Minister, Theresa May, has suggested that free movement of EU citizens may continue beyond the conclusion of Brexit talks during an “implementation period” (May quoted in Parker (2017)). A possible outcome for EU citizens includes their classification as persons subject to immigration control (PSICs) similar to non-EU citizens under current immigration rules. The government “could subject EU citizens to the Immigration Act 1971 and make it as difficult as possible for people to stay” (Tingley in O’Carroll (2017)). Stricter entry requirements for EU citizens would increase the possibility of some entrants breaking new and expanding rules, particularly those related to employment. Portes (2016, p. R17) explains that “[j]ust as previous extensions of free movement rights to the citizens of new Member States reduced illegal working […], any controls will have the reverse effect”. This increased potential for illegality means that EU citizens accused of breaking immigration rules may be subject to the same penalties that face non-EU migrants, including detention and deportation.

Expanding markets of control

Any policy changes associated with EU immigration are likely to lead to expanded forms of illegality, and uncertainty about EU migrants’ immigration status in the UK coincides with an increasingly privatised approach to immigration control. This widening social control environment has provided the foundation for new markets in which migrant bodies are commodified. In 2013, foreign nationals represented 13.9 per cent of the inmates incarcerated in prisons in England and Wales (Pakes and Holt, 2017, p. 67). Banks (2011, p. 189) explains that increases in the foreign national prison population since 1999 do not necessarily reflect foreigners’ proclivity towards criminality, as rates for “sexual and violent offences [are] either comparable or lower for foreign nationals” than they are for British nationals. Instead, “increasingly restrictive immigration policy” has broadened the parameters of illegality, including expanded offences for asylum seekers, such as arriving without a passport or attempting to deceive immigration officials (Banks 2011, pp. 190-191). As Allverti (2012) suggests, the increased use of criminal law to manage immigration offences illustrates the state’s reliance on it as a deterrent and an alternative to appropriately implemented immigration policy.

Foreign national prisoners exist in a regime that merges penal and border control tactics within an institutionalised programme of targeted exclusion. This is reflected in the 2009 “hubs and spokes” policy that installed officials of the then UK Border Agency within six “hub” prisons identified as primary sites for foreign nationals in addition to a further two meant specifically for foreigners (Webber, 2009; Bosworth, 2011). While this system was designed to facilitate post-sentence deportation efforts, it also reflects a racialised construction of foreign and British-born inmates. As Kaufman (2012, pp. 705-706) explains in her study of foreigners incarcerated in England and Wales, “nuanced self-identification processes” and “identifying foreign nationals along racialised lines” has resulted in misidentification of British prisoners and the segregation of foreigners. Additionally, foreign inmates face further incarceration following the end of their sentences while awaiting possible deportation (Fekete and Webber, 2010, p. 5). The nexus between criminal justice practice and immigration control, which Stumpf (2006) refers
to as “crimmigration”, represents a consolidation of carceral logics intended to classify and isolate migrants as uniquely deviant. “In this way”, explain Pakes and Holt (2017, p. 65), “both criminal justice and immigration law are brought to bear on the individual […] in a sequential fashion: first the prison sentence, then (the threat of) deportation”.

At times, little distinguishes those detained for removal from those incarcerated for criminal offences. Indeed, prisons have been used to hold immigration detainees that have not been convicted of an offence (Chatwin, 2001 in Malloch and Stanley, 2005, p. 64). If EU migrants become subject to immigration control, they may be remanded within an immigration removal centre. The Immigration Act 1971 permits the use of detention “where a deportation order is in force against any person” “pending his removal or departure from the UK” (Sch. 3, para. 2(3)). In practice, migrants whose immigration decisions remain outstanding have also been detained (Malloch and Stanley, 2005, p. 63). In 2016, over 2,700 foreign nationals were detained in 11 IRCs around the UK at any time, while nearly 29,000 entered detention during the year (Silverman, 2017, p. 3). For Bosworth (2011), detention is linked to the broader criminalisation of migrants, particularly those from minority ethnic backgrounds. Popular representations of migrants as criminal and exploitative contribute to the carceral rationalities underpinning the use of IRCs as a display of sovereign control. Fekete (2005) explores how the criminalisation of immigration has contributed to the ill treatment of immigrants and asylum seekers within social control environments and during deportation. “Target-driven deportation programmes”, she writes, “legitimise force and institutionalise brutality against asylum seekers. The harsh methods of control and restraint used to enforce removals have on occasion led to the deaths of asylum seekers, mainly from suffocation” (Fekete, 2005, p. 71). In this estimation, border control logics represent symbolic forms of violence as much as they are an example of systemic harm.

Narratives employing Agamben’s (1998) “bare life” to describe the state’s reduction of refugees and other migrants to populations subject to sovereign power situate the state as the primary definer of belonging (see Phillips, 2009; Ajana, 2013; Muller, 2004; Diken, 2004), while critical approaches address networks of power across agencies and the capacity for resistance amongst immigrants (see: Owens, 2010; Tyler, 2006; Darling, 2013). Consideration for the role of expanded markets is important in developing nuanced representations of power. Foucault (1998) argues that biopower, or the management of populations through diffuse forms of social ordering and techniques of control, represented “an indispensable element in the development of capitalism” (pp. 140-141). Similarly, neoliberal logics of marketisation are embedded within modern social control regimes and they typically reinforce constructed representations of immigrants and criminals. This is evident in related fields of study, which highlight the links between neoliberalism and crime control strategies. For instance, Linnemann et al. (2013) examine state responses to methamphetamine use and conclude that visual representations of typical users are stratified along class lines. “Built on fear, sophisticated advertising techniques and free market rationalities”, they write, visual campaigns “mark an important intersection of late-modern consumer culture and crime control” (Linnemann et al., 2013, p. 605). Whyte (2007) expands the position further, linking the protection of markets to the jingoism associated with the war on terror. He explains that the militarism of the USA in the early 2000s allowed for the expansion of new markets, which were often advanced by US corporations. Developing border control practices follow similar trajectories, as protectionist, neoliberal narratives invite the entry of private actors into the management of border security mechanisms.

For the private security sector, non-citizens are indispensable commodities within the criminal justice estate. The broadened role of private actors is evidenced in the privatisation of prison management, surveillance technologies, prisoner transportation, policing, electronic tagging and security services (see: Jones and Newburn, 2004; Nells and Bungerfeldt, 2013; Paterson, 2014; White, 2014). Private firms including G4S, Serco, GEO and Mitie are also contracted to manage immigration removals centres across the UK (Bosworth, 2012, p. 127). While these centres are ostensibly the final stage of immigration control prior to deportation, some detainees have been held for months or years. Silverman (2017, p. 4) states that “as of Q4 2016, foreign national offenders were detained for an average of 118 days before deportation”. IRCs, like prisons, are sites of an intensified criminal justice response to immigration that “has its own logics that shape population boundaries in new ways both within and beyond the sovereign state” (Silverman and
Massa, 2012, p. 680). Security firms are essential to the delivery of border control practices, as they provide the resources and personnel necessary to maintain real and symbolic forms of social organisation.

Marketised immigration control valorises migrant bodies, or as Bloom (2016, p. 900) states, it has led to the “commodification of noncitizenship construction”. The expansion of this market challenges Hollifield’s “liberal paradox”, because it represents a convergence of otherwise incompatible state aims. For Hollifield, the state’s commitment to free market liberalism is at odds with its efforts to restrict immigration. Whereas capitalism demands readily available, inexpensive labour resources, local populations often resist the perceived intrusion of migrant residents and labourers. As Castles (2004, p. 866), states, “[t]ypically, employers […] favour recruitment of migrant workers, while competing local workers may be opposed”. However, some industries benefit from the existence of securitized populations. In the context of the privatised immigration control sector, the gap between public sentiment and government policy catering to business interests is bridged, as neoliberal strategies are employed in the expansion of the immigration control sector. Increases in the number of PSICs will result in an expanded pool of commodified bodies. During a segment on Question Time on 27 March 2017 (Rawlinson, 2017), David Davis, the Secretary of State for Exiting the European Union, stated:

I think most people are in favour of migration, so long as it’s managed. And the point is, it will need to be managed. […] From time to time, we’ll need more [migrants] and from time to time, we’ll need less. You’ve got industries dependent on migrants, you’ve got social welfare, you’ve got the National Health Service. You have to make sure they continue to work.

Davis’s comments reflect a qualified acknowledgement of the UK economy’s reliance on immigrant labour. Despite negative representations of migrants within media (Vollmer, 2017), academic research illuminates migrants’ net benefit to the economy. Pointing to circumstances in the USA and elsewhere, Coleman and Rowthorn (2004) suggest that this contribution is relatively small. However, Dustmann and Frattini (2014, p. F595) find that between 2001 and 2011, EEA migrants and non-EEA migrants provided a substantial “positive fiscal contribution” to the economy, were less likely than British citizens to claim benefits and brought degree qualifications and associated “human capital”. While Davis’s quote addresses this contribution, it masks another reality. His “industries” also include those benefiting from the control of immigrants. The average daily cost of detaining a foreign national in an IRC is £86 (Home Office, 2017 in Silverman, 2017, p. 9). This is over twice the weekly allowance the Home Office issues to individual asylum seekers on Section 95 support under the 1999 Immigration Act, which currently amounts to £36.96 (Home Office, 2017, p. 3).

The private detention industry offers security firms a springboard for entry into new markets; this expansion is unlikely to abate if Brexit generates new populations subject to immigration control. Representatives of private security firms understand that intensified border strategies promise future business opportunities. This is evident in Mitie’s (2016) annual report, which states: “[W]e have a growing track record in providing services including immigration removal centres. The Home Office is a key client and we see a continuing flow of opportunities for our Care and Custody business” (p. 14). While expanding social control markets may be driven by financial incentives, profit may not be the only reason firms enter the sector; the opportunity for further expansion may be a goal in itself. For instance, the Commercial and Operating Managers Procuring Asylum Support (COMPASS) project represents a series of contracts between the Home Office and three private security firms to house asylum seekers worth about £620 million when introduced in 2012 (Twinch, 2013). However, the cost of procuring housing and managing asylum accommodation has not necessarily led to immense financial returns for participating companies. Still, involvement with COMPASS may lead to new contracts in other sectors or generate wealth through tangential means, such as through expanded property portfolios. During a Home Affairs Committee meeting on asylum in June 2013 (House of Commons, 2013, p. 12), the former CEO of Serco, Jeremy Stafford, explained the firm’s acceptance of low profit margins in the COMPASS contract, stating:

[We are very focused on building an accommodation business […]]. We felt that we could establish a very good platform that we felt was scalable. You are probably aware that some of the services that we develop in the United Kingdom we then go and take to other geographies. […] For us, we felt accommodation management was an important development area.
While such opportunistic strategies may reflect overlap between popular desires to limit immigration and corporate interest in profiting from population management schemes, advocates of restrictive policy face challenges from other business sectors. The Conservative government has been unable to offer a consensus on the length of time freedom of movement will continue after Brexit talks conclude, and businesses reliant on immigrant labour seek to avoid abrupt disruptions if current employees are suddenly subjected to immigration control (Elgot and Mason, 2017). The Home Secretary, Amber Rudd, attempted to diminish concerns about such a scenario by contradicting another minister’s claims that freedom of movement would end in 2019, suggesting instead that a transition phase would follow Britain’s withdrawal from the EU (Mason and Rawlinson, 2017). However, concessionary arrangements do not signal a reversal in plans to end freedom of movement, as this remains the ultimate objective of both the Conservative government and Labour opposition. Unless businesses supporting unfettered EU migration fully convince officials to abandon these plans, which may necessitate the abandonment of Brexit altogether, a more restrictive response to EU immigration remains an eventual outcome.

Outcomes of the privatised immigration control industry

The immigration control market has contributed to a variety of vulnerabilities for those within security firms’ custody. For instance, G4S and Serco have been associated with major contractual failings, fraud and the ill treatment of detainees. Despite being awarded a £284 million contract to provide security services at the 2012 Olympics, G4S was unable to fully staff the event; military personnel were brought in to make up the shortfall (Fussey, 2013, p. 221). In 2013, G4S and Serco were referred to the Serious Fraud Office following suspicions that they overcharged the Ministry of Justice for the electronic monitoring of prisoners, as the firms were invoicing the government for prisoners that were dead or incarcerated (Meikle, 2013). Conditions within immigration removal centres contribute to concerns for detainees’ welfare. Athwal and Bourne’s (2007) review of immigration detention in the UK illuminates firms’ disregard for detainees’ physical and mental health care. Canning (2014, p. 10) addresses the accusations of sexual abuse perpetrated by Serco staff in Yarl’s Wood IRC and explains that “[t]he use of private companies in prison and detention” has resulted in a “lack of accountability in the cases of abuse, deaths in custody or death during forced removal”. This was also evident in the case against G4S officers suspected of manslaughter in the death of Jimmy Mubenga during his deportation in 2010 (Taylor and Booth, 2014). While the officers were acquitted, the case remains indicative of the state’s capacity to deflect criticisms of systemic harm by focussing attention on the failings of individual officers. Private firms’ size and the state’s dependency on their services means that formal prosecution of companies is impractical; punishment is limited to forfeited contracts or fines.

The privatisation of the immigration sector has contributed to the exclusion and stigmatisation of foreign nationals, particularly those most vulnerable to the extremities of the system. This is evident in the experiences of asylum seekers within the COMPASS housing project. In 2014, the National Audit Office identified problems with the delivery of COMPASS by G4S, Serco and their subcontractors. Issues included residents’ inability to voice complaints, male officers’ unannounced entry into female accommodation, poor housing conditions and disruptions to children’s schooling during the transition period (National Audit Office, 2014). Grayson (2016, p. 6) writes that the “UK asylum housing market” is composed of “private landlords and private housing companies making excessive profits from asylum tenants” poor quality and overcrowded properties. Asylum seekers’ utility as a profit-generating bodies has led to the normalisation of tactics contributing to their poor treatment (Darling, 2016). While EU migrants will not be subject to asylum dispersal rules, the COMPASS project reveals the potential conditions immigrants face in privatised social control markets. As long as profitability remains a key driver, human welfare may remain a secondary concern.

Conclusion

The Brexit referendum result and government responses to public pressure suggest a further reversal of Freeman’s (1995) view that public policy favours liberal approaches to immigration...
control. National identities were reaffirmed along exclusionary boundaries of belonging following the referendum. Theresa May has avoided detailing the Conservative government’s plans for EU citizens wishing to reside in the UK (Mason and Elgot, 2017). However, the 2017 Conservative Party manifesto is clear in its intent to restrict future EU immigration and the Labour Party has bluntly declared the end of freedom of movement for EU citizens in its manifesto (Labour Party, 2017, p. 28). Despite pressure from UK businesses to diminish the impact of government plans to end freedom of movement, increased restriction remains a likely eventuality. While Hollifield’s “liberal paradox” is illustrative of the disconnect between business interests and popular opinion, it is insufficient when attempting to model the increased harmony between restrictionist aims and expanding social control markets.

Should EU migrants be subject to immigration rules like those established in the 1971 Immigration Act, they face greater exposure to the privatised social control regime currently operating in the management of non-EU migrants. The commodification of immigrants within a marketised social control environment has contributed to concern about migrants’ welfare, as the firms involved are associated with fraud, harmful treatment and inadequate service provision. The expansion of this market to include EU immigrants may lead to the further valorisation of migrant bodies and bolster a system that promotes corporate profit at the expense of human welfare.

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Further reading


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Roma inclusion post Brexit: a challenge to existing rhetoric?

Zoë James and David Smith

Abstract
Purpose – This paper proposes that the UKs exit from the EU is unlikely to impact heavily on the lived reality of Roma, given its negligible impact prior to Brexit. The paper sets out a critique of existing EU approaches to anti-Gypsyism that are based in discourses of racism and anti-nomadism and are typified in the EU hate crime agenda. The paper argues for recognition of the systemic social harms caused by discrimination against Roma in the EU and the commonality of their experience with other socially excluded groups that do not conform to the requirements of contemporary neoliberal capitalism. The paper aims to discuss these issues.

Design/methodology/approach – The paper comprises an opinion piece that sets out a critical examination of existing literature on policy and research in Romani studies and utilises theoretical work within criminology and social policy.
Findings – The paper explains the inability of existing EU approaches to tackle social harms experienced by Roma throughout the EU. In doing so it suggests that the UKs exit from the EU may not have a significant impact on Roma in the UK.
Originality/value – The paper challenges extant discourses and proposes new ways of thinking about anti-Gypsyism.

Keywords Discrimination, European Union, Neoliberalism, Hate crime, Brexit, Anti-Gypsyism, Roma

Paper type Viewpoint

Introduction
This paper is an opinion piece which argues that the EU has had a negligible impact on the lived realities of Roma[1] in Europe and therefore that Brexit is unlikely to have a significant impact on them either. We suggest that existing narratives and analyses of Roma exclusion fail to appreciate or acknowledge the wider organising social structures of capitalist neoliberalism that places the majority of Roma, along with multiple other marginalised groups, at the bottom of a hierarchy that fortunes the wealthy and privileged few. In doing so, we intend to challenge those popular scholarly narratives for anti-Gypsyism that are located fundamentally in discourses on anti-nomadism and racism. The paper will first set out how this existing rhetoric has explained the stigma experienced by Europe’s Roma populations. It will then consider how the EU has responded to anti-Gypsyism within that context, particularly considering its engagement with the hate crime agenda. Finally, the paper will suggest that the EU response to anti-Gypsyism has largely only served to identify Roma experiences of subjective violence that manifest as hate crime, rather than acknowledging the systemic violence they experience as discrimination. In doing so the EU approach has insufficiently challenged anti-Gypsyism due to its neglect of the structural and systemic origins of this phenomenon.

In order to effectively discuss the failure of the EU to address anti-Gypsyism as a systemic issue, this paper considers the problem from a Europe-wide perspective. In doing so it is then able to set out the potentially negligible impact on Roma communities of the UK’s exit from the EU. The paper does not intend to provide a policy analysis, but rather it aims to promote discussion of inequality, the role of the EU and Brexit as it unfolds.
Existing rhetoric on anti-Gypsyism

Since the mid-nineteenth century what was to become known as Romani studies has comprehensively examined the lives and experiences of the Roma (for example, Kenrick and Puxon, 1972; Okely, 1983; Fraser, 1992; Acton, 2010). As part of this work the prejudice and discrimination often shown towards Roma by majority societies has largely been explained in two interrelated ways: as products of anti-nomadism and racism. We will now briefly set out those perspectives and a critique of them in turn.

In the first, the Roma’s nomadic lifestyles have been seen as diametrically opposed to sedentarist principles of modernity that rely on wage labour and fixed residence (Sibley, 1994; Halfacree, 1996). McVeigh (1997, p. 9) defines sedentarism as “the system of ideas and practices which serve to normalise and reproduce sedentary modes of existence”. This divergence around attitudes to, and practices in relation to, work and land use has resulted in community tensions, social distancing and the stigmatising of nomadic communities. As such, Roma have been described as “insular” minorities (Ryder, 2011), living “outside” the modern environment (Karner, 2004).

While this difference in attitudes and practices may explain some animosity and conflict between communities we would argue that it is an insufficient explanation for anti-Gypsyism on its own. To begin with, such explanations tend to be overly focussed on the small proportion of Roma that are still mobile communities. Mobility does not equate to nomadism, nor does it denote Roma identity. Roma culture instead values “the tradition or even potential of nomadism, economic independence and flexibility, different family structure, language and caravan dwelling” (Kabachnik, 2009, p. 469), rather than specifically mobility. Additionally, even when settled in housing or on permanent sites Roma often continue to be stigmatised by the surrounding population (Smith and Greenfields, 2013). Anti-nomadism as an explanatory framework also conflates mobility with migration (Acton, 2010) and while Roma migration may help us to understand aspects of their stigmatisation it does not fully explain it (Acton, 2010; Mawby and Gisby, 2009). This is most obviously because most Roma communities, including those in the UK, have been settled in their home country for centuries. Moreover in the early modern period the Roma were one small element of a much larger peripatetic population with social mixing between different sections of the population. Consequently many modern day Gypsies and Travellers in the UK, for example, are of indigenous, not ethnic-Roma, origins (Beier, 1985; Mayall, 1988). Finally the notion of Roma living “outside” of the economic and social structures of modernity and existing as anachronistic premodern minorities is problematic; Roma have long relied on the provision of certain goods and services to the majority of the population for their economic survival (Okely, 1983). Typically this relationship is dependent upon a distinct “peripatetic’s niche” and its ability to exploit its “social resource” base thus implying not isolation, but a long history of interaction and exchange with majority societies (Gmelch, 1986).

To turn to the second focus of existing studies of anti-Gypsyism, Racism has undoubtedly been a major factor in the stigmatisation of Roma. Racist notions are based on colonial ideologies of racial hierarchy which located the Roma in the category of “backward/primitive” for their apparent indifference to the “benefits” of modernity. As with other minority ethnic communities, Roma have been classified as “dirty” (Sibley, 1994), as pollutants that are strangers in modern society (Simmel, 1971). Notwithstanding some debates on the nature of racism against Roma research on the racialised nature of anti-Gypsyism has been extensive (Acton, 2016).

We would argue, however, that on its own racism only provides a partial view on the current situation of Roma. Their historically vulnerable position has worsened in recent decades as a result of the wide reaching economic, social and political changes brought about by contemporary neoliberalism and globalisation. Within this environment, the endless pursuit of profit and associated consumerism has resulted in social harms that have also impacted on other minority communities and large sections of the working class (Reiner, 2007; Winlow et al., 2017). From a UK perspective, in terms of employment these changes have rendered many traditional forms of work carried out by Gypsies and Travellers redundant. Also, labour driven migration and increased mobility of the wider workforce throughout Europe has intensified competition for the seasonal agricultural work those communities had long performed. Additionally, many of the
goods and services that mobile Gypsies and Travellers in the UK had once provided have become virtually obsolete, and travelling lifestyles are increasingly difficult to maintain due to anti-nomadic legislation and policies (Belton, 2005; James, 2006, 2014). Similar forms of exclusionary work patterns have impacted on the seasonal employment of Roma in the West of Europe, while in the East the employment, housing and healthcare provided to Roma within communist regimes has subsequently been lost (Cahn and Vermeersch, 2007; Raihman, 2007). These Roma have suffered chronic levels of economic exclusion and labour market discrimination that has served to push them to migrate to the West, where they compete with other migrants for seasonal work that ironically may have previously been performed by their indigenous counterparts. Vilified by western Europe as economic migrants or “benefit tourists” and by the east as harbingers of negative western perceptions about the “primitive” eastern and central regions of Europe, Roma are placed in an untenable position (Acton, 2010).

In addition to and associated with shifting patterns of employment, Roma have been spatially excluded within rural and urban environments. As land and property have become more valuable in western Europe and as wealth has been gained from its sale and use, Roma have been removed from it (Morris and Clements, 2002). Cities have gentrified and rural areas been appropriated by the middle classes as their idyllic playground. Despite the fact that research has evidenced the illusive nature of Roma ethnicity (Acton, 2016), a romantic myth of what constitutes legitimate ethnic “Gypsy” identity has burgeoned while the reality of impoverishment and marginalisation for Roma is their lived reality (Sibley, 1994; Somersan and Kirca-Schroeder, 2007). Holloway (2005, p. 360) found in her research in the UK that positive public perceptions of Roma were particularly associated with dark skin colour, rather than the cultural markers of their contemporary identity. Indeed, she found that those Roma who did not conform to romantic stereotypes of their “traditional” characteristics, including having darker skin colour and living in horse-drawn wagons, were regarded as criminals and “hangers on”. The reduction of identity to ethnicity evidenced here has served to essentialise Roma and produced an inverted racism wherein their whiteness denotes inferiority. A double bind therefore occurs: dark skinned Roma migrants to the UK experience prejudice such as the negative press coverage that focussed on their “foreign” and alien customs, such as childhood engagement, bride auctions and child marriage, whereas indigenous Gypsies and Travellers are often portrayed as a sub-element of the white British underclass (Smith, 2016). Interestingly then, the prejudice is meted out against Roma on the basis of their cultural markers of poverty and exclusion as well as their ethnicity.

Above we have identified some of the economic, social and political forces that have eroded the mobility, autonomy, and self-reliance that have characterised Roma communities throughout history, pushing many into the disenfranchised end of the working class. In contemporary society we would suggest that it is necessary to acknowledge that once there they have been subject to the same neoliberal policies of deregulation and privatisation that have channelled large swathes of the working class, including other minority ethnic communities, into the precariat; those groups whose lives are defined by precariousness and insecurity, especially in relation to work (Standing, 2014). As the precariat experience this “massive structural violence from above” (Wacquant, 2008, p. 24), so they have been consigned to “neighbourhoods of exile”. Such neighbourhoods are marked by “territorial stigma” and are far removed spatially and socially from the professional middle classes who write about these trends from a distance. They therefore do not necessarily identify and thus obscure to many observers the underlying structural forces at play here. It is necessary to address the spatial outcome of these trends that is an increasing geographic concentration of those, including the Roma that lack or reject the forms of “capital” necessary for social mobility in globalised, neoliberal and post-industrial societies. Further, additional to the exclusion of those within the precariat, as a consequence of shared residential space and competition for the same pool of work Standing (2014, p. 42) notes, “Tensions within the precariat are setting people against each other, preventing them from recognising that the social and economic structure is producing their common set of vulnerabilities”. Social tensions therefore arise within and beyond the precariat that can be seen in the rise in hate crimes throughout Europe (OSCE, 2015). These hate crimes have commonly been attributed to an increase of far-right groups and ideology rather than neoliberal capitalism that has actually created the conditions within which hate festers (Winlow et al., 2017) or is “enabled”, as noted by Chakrabarti and Hardy earlier in this special edition.
Roma experiences of marginalisation therefore are augmented by their economic and social vulnerability and exacerbated by racist and anti-nomadic policies such as ethnic profiling, segregation and forced expulsions (McGarry, 2011). The capacity of EU institutional and policy mechanisms to address the deep rooted social exclusion of many Roma across the EU through focussing on “anti-Gypsyism” will be considered next.

EU policy and the hate crime agenda

Roma inclusion has been a central plank of EU equalities policy, particularly since post-communist transition. Specific recognition of Roma victimisation in central and eastern Europe led to the 2011 EU Framework for National Roma Integration Strategies. This involved scrutiny of existing and prospective EU member states monitoring of “anti-Gypsyism” and securing civil and human rights as a condition of joining the EU.

Victimisation on the basis of identity has been classified as “hate crime” and “hate speech” in academic and policy environments in recent years, following policy examples from the USA (Perry, 2001). The EU monitors hate crimes specifically (European Union Minorities and Discrimination Survey, 2012; OSCE, 2011, 2012, 2015) while EU funded projects have examined the impact of hate speech against Roma communities (PRISM, 2015). How far these measures have improved the lot of Roma communities though is open to question. In the run up to EU accession some countries simply minimised recorded hate against Roma to that end (Sobotka and Vermeersch, 2012) and it is evident that across Europe Roma communities continue to be used as scapegoats by the political right that has identified them as the fearful “other” (Stewart, 2012; James, 2015).

In the face of an upswing in anti-Gypsy sentiment across much of central and eastern Europe post 1989 combined with EU expansion, as noted above there has been a westward migration of Roma to the UK and Western Europe (Mawby and Gisby, 2009). Once there Roma have been used by anti-EU parties to symbolise all that is wrong with the EU principle of freedom of movement. Media and politically driven moral panics surrounding a potential influx of criminally inclined Roma “welfare tourists” from Romania and Bulgaria were a key element in stoking up fears over large scale migration in the run up to the UK EU referendum vote (Smith, 2016). Indeed, we recognise that such fear mongering was partly responsible for the rise in hate crimes during that period (Sharman and Jones, 2017).

Commentators such as Morris (2016) have argued that Brexit may represent a dire environment for Roma who will be beyond the reach of the security provided by EU inclusion policies that frame, fund and support national strategies for Roma integration (EU, 2011). However, the cursory response of the UK government and other member states to the EU Framework indicates the low priority governments attach to complying with these requirements. The failure of states to act has been described by Perry (2001) as a form of collusion with those who commit hate crime, and the lack of international statute to address states failure to conform to EU policy has resulted in local intransigence, such as the failure of the state of Ireland to legislate against hate crime (Haynes and Schwepppe, 2016). Burns (2016) research shows that there has also been a lack of successful cases sent to the European Court of Human Rights wherein state-tolerated and state-sponsored violence against Roma has been claimed. This may suggest that there were no cases to answer, though this seems unlikely given the wealth of evidence of such activity gathered by civil society and the academy (for example see: James, 2007; Clough Marinaro, 2009; Kesetovic, 2009; Szikinger, 2010; Bumbu, 2012; Buckova, 2012). It perhaps purports instead to the incapacity of the European Court to serve the justice needs of the precariat more widely and Roma more specifically.

EU policy on Roma focusses on the necessity to tackle racism. However, this has served to remove the Roma experience from a wider discourse on poverty and exclusion such as that suggested above. The advance of identity politics and the assertion of “difference” between the majority and various ethnic minorities since the 1970s has on one hand, been politically beneficial and brought a measure of social and political inclusion for minority group members. On the other hand, as Alleyne (2002, p. 609) notes, this approach can “totalize people into ‘communities’ and serve to reinforce historically and theoretically untenable notions of difference
between things unreflexively and ahistorically imagined as ‘cultures’, ‘communities’, ‘ethnic groups’ and ‘races’”. This makes it an effective strategy for governing as it drives conflict both between and within different social and ethnic groups. From this perspective social and economic inequalities are articulated as ethnically and culturally based through its preoccupation with what divides people and downplaying the underlying economic and political processes that are driving those inequalities and which impact on all social groups. Multiculturalism, as Winlow et al. (2017) note, therefore offers a positive cultural programme alongside a brutally negative economic programme characterised by ferocious economic competition and does not serve the needs of all, let alone the needs of the few.

EU policy and associated practice has disconnected Roma from the rest of society by essentialising their identity (Surdu and Kovats, 2015). This has served the purpose of identifying Roma as a vulnerable group, alongside other minorities that are “hated” and victimised on that basis. Thus, hate crime policy and practice has set out with the laudable aim of protecting the vulnerable in society (Chakraborti and Garland, 2012). However, the hate crime agenda has not sufficiently embraced the question of why such crimes occur in late modernity. Although, as one reviewer of this paper noted, EU policy may not intend to tackle the causes of hate, it has certainly asserted that membership should enable equalities and challenge prejudice (EU, 1997). Perry (2003) has noted the power of hate crime to serve as a message to the vulnerable not to challenge the hegemonic order but it is the lack of recognition of neoliberalism’s impact on the vulnerable in society, of which Roma are a part, which has resulted in policies that serve the interests of the status quo. The beneficiaries of identity politics then, from which the hate crime agenda is derived, have subsequently largely been self-appointed community leaders working in unison with their well-educated, middle class advocates and “experts” whose existence and social privilege is contingent on the continuing exclusion and stigmatisation of those groups they represent. Civil society organisations can be insular, failing to represent Roma voices (Okely, 2014; Acton and Ryder, 2015) while Valeriu (2013) lambasts the EU Roma agenda for its failure to truly engage with Roma and its:

Useless and very expensive conferences, bombastic empty speeches, copy and paste type newspeak reports, training for the sake of spending money and poorly thought projects focused on absorption of money rather than addressing the problems did nothing but delegitimised the European Commission and Member States efforts and weakened even further the already weak Roma civil society.

A hierarchy of need, vulnerability and victimisation has been created, reasserting existing racisms by setting up who are legitimate victims and who are not (Chakraborti and Garland, 2012). This in turn has encouraged right-wing extremists to utilise that hierarchy and identify “others” as scapegoats for society’s ills thus diverting attention from exclusionary processes experienced in common with many working class and minority ethnic people. Identity politics and the EU policies borne from them have divided the disenfranchised, rather than united them. Despite its aims to challenge powerful elites, the hate crime agenda has fed this process by embracing multiculturalism without an accompanying critique of the political economy of neoliberalism (as was originally denoted by civil rights movements in the 1960s). The capacity of contemporary research, policy and practice to be blindsided by the “logic” of neoliberalism evidences its dispersed power and ability to shape even the most inclusive of agendas (Fisher, 2009).

We will now go on to consider the social harm caused by the hate crime agenda’s narrow and partial focus and argue for the need to recognise discrimination against Roma as part of the spectrum of hate in late modernity.

**Discrimination as systemic violence**

The research and policy focus on Roma experiences of “hate crime” in itself is problematic. Hate crime legislation and policy distinguishes between hate crimes and hate incidents but does not incorporate discrimination motivated by hate. Research evidence shows that discrimination is as harmful to Roma communities as hate crimes, if not more (James, 2011). It is therefore the bias motivation, rather than the action, that counts from the Roma perspective. This has been misinterpreted by hate crime scholars and policy makers as necessitating legislation and policy against bias-motivated crimes, rather than a consideration of where that motivation comes from
and how to address it. The populist punitive response to hate crime is driven by the horrific nature of hate victimisation, including murder, arson, physical assaults and criminal damage against Roma throughout Europe (see James, 2015 for a review of the literature). The insecurity created by these events for the individuals affected and their wider communities can be catastrophic (Bowling, 1999) and push them further in to the disenfranchised spaces of the precariat. However, as Reiner (2007) notes, the culture of neoliberalism creates an anomic society that erodes moral values and social solidarity. Consequently punitive law and order strategies do not impact on the perpetrators of hate, whose prejudice is borne of fear and insecurity that is exacerbated by those very measures and is reflected in media discourse and state discrimination as discussed below.

Despite the extensive impact of hate crimes on communities, it is the discrimination they experience that really troubles Roma and impacts directly on their daily lives (James, 2015). As such it should be acknowledged as the central aspect of their experience of exclusion (Phillips and Bowling, 2006). Discrimination against Roma exists on multiple levels: exclusion from health and education services, from physical spaces and from civil participation. Across the EU around 90 per cent of Roma live in households below national poverty lines and less than one in three are in paid work (FRA, 2011). Further, they have some of the worst outcomes in terms of health, education and welfare throughout Europe (European Public Health Alliance, 2014).

Hate crime policies that record EU wide levels of bias-motivated offending constitute recording of what Zizec (2008, p. 1) refers to as “subjective violence” experienced by Roma in society, where a perpetrator and victim can easily be distinguished. By contrast the discrimination they suffer as a consequence of the neoliberal political order is “systemic violence” that is not measured or acknowledged. The precarious position of Roma as victims of discrimination has been evidenced by reports and research as noted above and significantly by the UN Special Rapporteur on minority issues who acknowledged “the deeply embedded social and structural discrimination Roma face worldwide” (2015, p. 5). However, the minority rights approach to resolving that discrimination simply reasserts cultural political discourse that uses racism and anti-nomadism as the tools to deconstruct the problem.

The minority rights perspective produces policy interventions to promote social inclusion that start from a “deficit model”. Roma’s social and economic exclusion are treated as a matter of individual competency and a lack of skills due to a cultural orientation that places a low value on social mobility or self-improvement. At the same time racism and anti-nomadism are seen as products of individual attitudes that can be rectified through education and “cultural awareness” training. Silva (2014) argues that in this regard the current politics of “integration” in the EU constitutes a strategy of denial that depoliticises and therefore shuts down discussion of the political and legal structures which protect privilege and govern minorities.

The discrimination experienced by Roma is exacerbated by racism and anti-nomadism that structures their lived experience. However, it is determined by the systemic violence that manifests in their societal position as one part of the precariat – their insecurity in a global capitalist system based on individualism and consumption within which “non-productive” elements like Roma are redundant and fair game for repressive and discriminatory policies and treatment. This social structural location in turn reproduces the systemic violence imposed upon it, replicating the hierarchies of wider society and pitching battles within different elements of the working classes along fissures of race, gender, competition for work, affordable accommodation and use of limited spaces. The hate that manifests as subjective violence within the precariat is described by Winlow et al. (2017, p. 8) as “inarticulate anger” which is directed at the fearful other, who are likely victims of the same socioeconomic and political processes themselves. We would argue therefore that EU policy and practice, including the hate crime agenda, should challenge the divisive capacity of single issue politics and propose a collective approach to challenging systemic violence such as discrimination.

Conclusion

In this paper we have set out an initial critique of existing scholarly explanations for anti-Gypsyism that utilise anti-nomadism and racism to explain the marginalised position of Roma throughout Europe. Such explanations have been embedded into EU policy and practice and specifically
inform the hate crime agenda. We have proposed that the EU response to anti-Gypsyism is based on a divisive approach that separates the experiences of different marginalised communities despite their commonalities as part of the precariat. The paper has therefore argued that the EU has failed to acknowledge or provide mechanisms to address either bias-motivated crimes committed against Roma or discrimination against Roma. Our analysis has utilised Zizek’s (2008) concept of violence in order to distinguish between the subjective violence experienced by Roma as hate crime, and the systemic violence experienced by Roma as discrimination. The EU hate crime agenda has provided some measures of hate victimisation (though as noted above these measures are themselves problematic), but it has not acknowledged the potential cause of hate crime. We suggest here that hate crime is a social harm caused by the neoliberal political economy of late modernity that is itself systemically violent.

Callinicos (2015, p. 4) argues that rather than representing the transcendence of nationalism, the EU “has provided a framework in which the larger European capitalisms could pursue their interests” and that “for the past 30 years […] has functioned as an engine promoting neoliberalism both within and beyond its borders”. Roma do not fit within this system because their cultures are based on sustainable and communal lifestyles rather than on the fleeting individualised cultures of consumer capitalism. At best then, EU policies have resulted in recognition of the subjective violence committed against Roma. The capacity of this to result in changed systems and attitudes is questionable while the systemic nature of that hate remains neglected and not addressed.

Laclau and Mouffe (1985) propose a broad based democratic coalition between migrant, black, women’s, working class groups and new social movements and we would commend a more critical approach from hate crime scholars to evidence the need for changed process and practice. It is clear that post Brexit a more inclusive approach must recognise that our most fundamental problems as a society are economic inequality and exclusion rather than a lack of tolerance and cultural acceptance (Winlow et al., 2017). Indeed it is economic injustice and exclusion that is fueling intolerance and divisions along ethnic/cultural lines. Such a reorientation of priorities is needed to both transcend the narrow and sectional cultural politics and to challenge the rise of right-wing populism or the potential for growing social divisions and hate crime remains high. Overall then we would suggest that the EU system currently in place has not sufficiently benefitted Roma communities and as such the UK’s exit from the EU is unlikely to have a significant impact on Roma experiences of daily life in the UK. This does not mean to say that transnational approaches to tackling social exclusion should not be embraced. Rather, that they require a consideration of the systemically violent nature of contemporary neoliberal capitalism in order to develop strategies for change.

Note
1. We have deliberately chosen to use the over-arching term “Roma” for the purposes of this paper in order to conform to the agreement at the first World Romani Congress in 1971 to use this moniker. However, we recognise that in the UK many prefer the titles Gypsy or Traveller, rather than Roma, and likewise in mainland Europe the communities are diverse. Liegeois refers to Roma as “a rich mosaic of ethnic fragments” (1994:12, Kostadinova, 2011).

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Further reading


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ISBN 978-1-78743-848-4