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Why the Rochdale Gang should have been sentenced as "hate crime" offenders

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[Criminal Justice Act 2003 \(c.44\) s.145](#)

**Crim. L.R. 131* This article examines the case of the Rochdale Gang (a group of Asian Muslim men recently convicted of a number of sexual offences against young white girls) by analysing whether the Gang's offences could and should have been prosecuted as "hate crimes". The article argues that sufficient scope exists under [s.28 of the Crime and Disorder Act 1998](#) and [s.145 of the Criminal Justice Act 2003](#) for the Gang's actions to be pursued by the authorities, not only as sexual offences, but as offences aggravated by racial and religious "hostility". The article posits that the authorities' denial that the Gang's actions were partly motivated by prejudice was likely to be the result of a narrowly construed conception of hate crime. In particular, it is argued that the authorities failed to acknowledge the symbiotic relationship that existed between the perceived vulnerability of the victims and the intersecting hostilities that such vulnerabilities gave rise to. The article concludes that the police and CPS should have gathered evidence of "hostility" and adduced this for consideration by the court at sentencing.

Introduction

Much has been said and written about the Rochdale Gang, a group of Asian Muslim men,² recently found guilty of committing various sexual offences against a large number of young women.³ The gang's activities have been labelled by the media as a case of "sexual grooming".⁴ This has led to much public debate on the causes and consequences of crimes targeted against "vulnerable" girls.⁵ The fact that the offenders were all Asian Muslim men and their victims were white non-Muslim females has also raised serious questions about the racial and religious element of their offences. The inter-cultural dynamics of the crimes were quickly latched onto **Crim. L.R. 132* by far-right groups who have attempted to turn the case into a "race issue". For instance, Nick Griffin of the British National Party (BNP) speaking outside Liverpool Crown Court during sentencing, told reporters that the case was demonstrative of the sexual depravity that is symptomatic of Pakistani and Muslim communities.⁶ Other commentators have rightly hit back by noting that the sexual abuse of children is not confined to certain ethnic groups, or any other community for that matter.⁷ Though the methods used to prey on the young may differ between cultures, the fact is sexual offending is an unfortunate omnipresence throughout society, both domestically and globally.⁸ One must therefore be careful not to conflate individual cases, such as those in Rochdale, as being representative of an entire ethnic community.

There is, nevertheless, an important issue that has been blurred by public debate and the racial tensions surrounding this case. That is, were the victims' racial and religious backgrounds, *in this particular case*, relevant to the motivations of the offenders? Offences that are motivated by racial or religious "hostility" are now commonly referred to as "hate crimes". The criminal law has specifically proscribed certain racially and religiously aggravated offences since the enactment of the [Crime and Disorder Act 1998](#).⁹ [Section 28 of the Act](#) states that:

"An offence is racially or religiously aggravated for the purposes of [ss.29 – 32](#) below:

if—

"(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.”

The [Act](#) does not proscribe racially and religiously aggravated versions of sexual offences. These are instead set out under the [Sexual Offences Act 2003](#) which covers the majority of sexual offences. However, this does not mean that the authorities cannot investigate and pursue sexual offences as “hate crimes”. The police and Crown Prosecution Service (CPS) have recently agreed a common definition of hate crime which states that it is

“(a)ny criminal offence which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person’s race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated ***Crim. L.R. 133** by a hostility or prejudice against a person who is transgender or perceived to be.”¹⁰

This definition means that any offence perceived by any person to be motivated by prejudice or hostility should be recorded by the police as a “hate crime”.¹¹ Where a defendant is charged with an offence that has been recorded as a hate crime, the CPS must then determine whether the crime should be pursued in court as one that is aggravated by “hostility”, based on the material evidence presented to them by the investigating officers. However, only those offences which are proscribed under the [Crime and Disorder Act](#) (such as assault or harassment) can be prosecuted in the Magistrates’ Court or Crown Court as racially or religiously aggravated offences. Offences that are not contained within that [Act](#) can still be *pursued* by the CPS in court as “hate crimes” by virtue of sentencing provisions set out under [ss.145](#) and [146 of the Criminal Justice Act 2003](#). These sections state that *any* offence is aggravated where there is evidence to prove that the offence was (partly or wholly) motivated by “hostility”, or where hostility is “demonstrated”, based on the victim’s race, religious beliefs, sexual orientation, disability or transgender.¹² As part of the CPS’ case, evidence can be adduced of racial or religious hostility at sentencing,¹³ and if proved the judge *must* treat this as an aggravating factor and state so in open court.¹⁴

The growing emphasis that has been placed on combating hate crime through criminal prosecution since the late 1990s has led to the CPS publishing specific policy guidance documents covering four of the five classified types of hate crime.¹⁵ For example, the document entitled *Policy for prosecuting cases of disability hate crime*¹⁶ outlines the ways in which the CPS should deal with disablist hate crime even though there is no such offence, for example, of “disability aggravated assault”. The guidance notes how evidence of “hostility” should be collated and adduced during sentencing, ensuring that disablist offences are still classified and punished as “hate crimes”.

Why criminalise hate?

There are multiple rationales underpinning the legislative proscription of hate crime.¹⁷ The central justifications of the law were succinctly outlined by Baroness Hale in her speech in the leading House of Lords decision in [Rogers](#) : ***Crim. L.R. 134**

“The mischiefs attacked by the aggravated versions of these offences are racism and xenophobia. Their essence is the denial of equal respect and dignity to people who are seen as somehow other. This is more deeply hurtful, damaging and disrespectful to the victims than the simple version of these offences. It is also more damaging to the community as a whole, by denying acceptance to members of certain groups not for their own sake but for the sake of something they can do nothing about.”¹⁸

The provisions set out under the [Crime and Disorder Act](#) and the [Criminal Justice Act](#) enable the courts to acknowledge the deleterious harms that are caused by incidents of hate crime by enhancing the punishment of offenders.¹⁹ Additionally, the provisions provide a strong symbolic message of denunciation, providing important social condemnation of prejudice-motivated behaviour. The [Crime and Disorder Act](#) achieves this most effectively by specifically labelling an offence as one that is aggravated by racial or religious hostility.²⁰ Sentencing provisions also help to promote a message of denunciation by way of the judge explicitly stating in open court that an offence is aggravated by hostility.²¹ It is hoped that the messages promoted by specific hate crime laws help to create a society that more readily condemns racially or religiously motivated conduct, ultimately reducing the pervasiveness of hate-motivated incidents.²²

Hate crime laws also help to ensure that police services and the CPS pay specific regard to tackling hate crime.²³ Since the enactment of the [Crime and Disorder Act](#) a multitude of new initiatives have been introduced that are aimed at enhancing the detection of hate incidents.²⁴ The success of such

measures can be evidenced partly through the high number of hate crimes that are now recorded by the police.²⁵ Such statistics suggest that not only has there been an increased effort in targeting hate-motivated offenders, but a growing willingness amongst victims to report incidents to the police. Police data on hate crimes can also be compared to **Crim. L.R. 135* prosecution and conviction rates for hate crime, now published by the CPS.²⁶ The CPS' most recent report shows that the proportion of offenders charged with a hate crime offence rose from 54.9 per cent to 72 per cent between 2006–07 and 2010–11. The conviction rate during this same period additionally increased from 76.8 per cent to 82.8 per cent. The legislative focus on hate-motivated offences has also resulted in the British Crime Survey²⁷ estimating the “dark figure” of hate crime, as well as providing much-needed data on victims' experiences of hate crime victimisation and their satisfaction levels with criminal justice agencies.²⁸

By improving the criminal justice response to hate crime, the state enhances the levels of security felt amongst minority groups; victims that might otherwise be fearful that their experiences of victimisation will not be taken seriously.²⁹ In doing so, legislation helps to advance public awareness of hate incidents, which in turn promotes better scrutiny of the state's responses to hate crime. Indeed, it has been the enhanced social awareness of hate crime that has ultimately led to more effective implementation of hate crime laws and to improved police-community relations.³⁰

Reconceptualising “hostility”: the importance of on-going processes of victimisation and interpersonal relationships

The body of laws that proscribe hate-motivated offences in the United Kingdom provide prosecutors with substantial scope to pursue most crimes that are (partly) motivated by racial, religious, sexual orientation, disability or transgender hostility as “hate crimes”. Yet despite the broad scope of the provisions, the Rochdale Gang's sexual offences were never pursued or recorded as being racially or religiously aggravated. In fact, the Assistant Chief Constable of Greater Manchester Police appeared to be at pains to deny that the case had anything to do with racial prejudice. He consistently maintained that the case was about “adults preying on vulnerable young children”,³¹ inferring that the crimes were fundamentally about sexual gratification at the expense of the weak. However, somewhat contradicting the Assistant Chief Constable, Judge Gerald Clifton at sentencing told the offenders:

“All of you treated [the victims] as though they were worthless and beyond any respect... One of the factors leading to that was the fact that they were not part of your community or religion. **Crim. L.R. 136* ”³²

Such comments might be interpreted to suggest that the victims were selected, at least partly, based on a motivation of hostility that was evinced towards the victims' racial and religious background. The judge's view that the victims were seen by their offenders as being less worthy of social respect when combined with the fact that the offenders specifically targeted only young white women should have provided sufficient evidence for the CPS to pursue the crimes as being *partly* motivated by racial and/or religious hostility. Conversely, the judge was never invited by the prosecution to apply the hate crime sentencing provisions that would have not only enhanced the offenders' penalty, but which would have sent a clear message of denunciation of their prejudiced motivations.³³

So why did the police, and various other commentators, fervently refuse to accept that racism played any part in the young girls' victimisation? One possible reason may have been that the racial or religious backgrounds of the victims and offenders did not fit within conventional conceptions of hate crime. Ordinarily, hate crimes have been conceptualised as being offences committed by majority group members against marginalised minority group individuals. Indeed, the main reason that hate crime legislation was introduced was to reflect the abuse that minority ethnic groups have endured historically, and to protect these groups from racially motivated violence.³⁴ Hence, minority group members who commit crimes against those who make up part of the majority ethnic, religious or social group in Britain do not necessarily fit within the conventional picture of who hate crime offenders are.³⁵

It is certainly possible that such a perception could have influenced decisions made by the police officers who investigated this case. However, it is unlikely that the victims' racial backgrounds alone denied them hate crime victim status. Statistics obtained for this article via freedom of information applications made to all police services in England showed that just over 13 per cent of racially aggravated hate crimes recorded by the police were committed against white British victims.³⁶ It may seem surprising that such a sizeable percentage of the overall number of racially aggravated offences

was recorded as being directed against white British victims, considering that the traditional image of hate crime is that which is directed against a minority group individual. It is unclear whether these statistics reflect the actual percentage of hate crimes that are directed against white British victims.³⁷ British Crime Survey (BCS) data published in 2012 estimated that 0.1 per cent of white people are the victims of what they perceive to be a racially aggravated crime. The total number of racist hate crimes during this period was estimated at 136,000 incidents by the BCS.³⁸ Based on available population *Crim. L.R. 137 data³⁹ this would equate to roughly 4,818 of the total number of racist offences (or 3.5 per cent) estimated by the BCS.⁴⁰ These statistics suggest that the police are just as willing, if not more so, to record racially aggravated offences committed against white British victims as “hate crimes”. This finding supports previous research carried out by Elizabeth Burney and Gerry Rose for the Home Office which indicated that hate crime laws were being disproportionately used against minority ethnic groups, individuals that the legislation aimed primarily to protect.⁴¹

It therefore seems unlikely that the Rochdale offenders were not labelled as hate crime offenders because they were from minority ethnic backgrounds. More likely is the possibility that the authorities failed to comprehend the complex ways in which “racial prejudice” can be demonstrated. The most common forms of racial hostility that come before the courts involve “low-level” offences that are accompanied by racial expletives.⁴² Most “hate” cases are therefore dealt with by Magistrates who apply [s.28\(1\)\(a\) of the Crime and Disorder Act 1998](#). This section states that an offence is racially or religiously aggravated if “the offender demonstrates ... hostility based on the victim’s membership (or presumed membership) of a racial or religious group”. The section provides an objective test that *does not* require the prosecution to prove a racial or religious motivation.⁴³ “Hostility” is therefore largely understood by criminal justice agencies in terms of the vocalised or written prejudices that are commonly used during the commission of minor misdemeanours.⁴⁴

There will, of course, be numerous other cases where an offender is (partly) motivated by racial or religious hostility but where the offender does not verbalise his or her animosity during the commission of the offence. Offences which are motivated by hostility are set out under [s.28\(1\)\(b\) of the Act](#) which states that an offence is aggravated where it “is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.” This is a subjective test that includes not only the basic intent of the offence committed, but requires additional proof of motivation. The application of [s.28\(1\)\(b\)](#) is much less frequent than [s.28\(1\)\(a\)](#). This is both the result of difficulties found in law when proving hostility, and the fact that there are fewer crimes *motivated* *Crim. L.R. 138 by hostility compared with offences where an individual simply “demonstrates” hostility during the commission of an offence, often in the “heat of the moment”.⁴⁵

Burney and Rose’s research previously highlighted the practical problems associated with proving hate-motivation.⁴⁶ For instance, they reported that the police often criticised the fact that prosecutors downgraded a racially aggravated offence to the basic offence too easily, or overlooked the possibility of a racially aggravated charge.⁴⁷ Furthermore, once in court, prosecutors were too ready to accept pleas for the basic offence. A key problem that prosecutors face when applying [s.28\(1\)\(b\)](#) is that they must adduce evidence of the offender’s “motive”. Although motive is often a key element within police investigations, it has traditionally been resisted by the criminal law due to the minutiae the courts would face in deciphering what the offender’s motive was in *addition* to proving what he intended.⁴⁸ The fact that most hate crime offenders tend to deny the racial or religious element of their offence makes prosecution all the more difficult.⁴⁹ Without a direct admission by the offender that he or she was at least partly motivated by the victim’s race or religious beliefs, prosecutors will find proving hostility beyond reasonable doubt an arduous task.

This does not mean that proving hate-motivation is beyond the reach of the CPS. There are a variety of ways of proving that the offender was wholly or partly motivated by racial or religious prejudice.⁵⁰ [Section 28\(3\) of the Crime and Disorder Act](#) will be of particular relevance to successful prosecutions of offenders whose hostility forms only part of the basis for the commission of an offence. This section states that it matters not that the “offender’s hostility is also based, to any extent, on any other factor not mentioned in that paragraph.” Further, under [s.145 \(3\) of the Criminal Justice Act 2003](#), which applies to all offences, it states that “ [Section 28 of the Crime and Disorder Act 1998](#) (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of [sections 29 to 32 of that Act.](#)” Together these sections clearly show that Parliament intended *all* offences, whether solely or partly motivated by hostility, to be included within the meaning of racial or religious aggravation. If interpreted literally, this section should mean that any offence where there is evidence of hostility, even if this evidence is just one part of a complex jigsaw of other factors, should be pursued by the authorities as a hate crime.

One way for the prosecution to prove partial hostility as motive is to determine that a pattern of offending existed which was connected to the victim's identity background. Recent research into hate crime has shown that far from being one-off acts of violence, hate crimes are frequently ongoing processes of victimisation sustained over prolonged periods of time.⁵¹ Hate incidents should therefore be understood, not only as random acts of violence, but as everyday incidents which **Crim. L.R. 139* occur during the activities of everyday life.⁵² Pam Thomas, for example, notes that disablist hate crimes can often involve a process of grooming by a perpetrator known to the victim who will go on to violently abuse the victim once he is in a position of trust.⁵³ Mark Walters and Carolyn Hoyle's research study into hate crime also highlights the fact that many hate incidents are committed by people who live in close proximity to their victim.⁵⁴ Though not conclusive of hostility, the targeting of victims from particular identity groups, over a sustained period of time, provides persuasive evidence that the offender is motivated, at least in part, by prejudice.

Yet despite the emergence of a process-led approach to understanding hate crime within the criminological milieu, conventional conceptions of hate crime, those which are understood as random acts of violence committed by strangers, continue to shape criminal justice agencies' understanding of the phenomenon.⁵⁵ This has mainly been the result of high profile cases that are portrayed by the media and discussed by politicians, such as the brutal murder of Stephen Lawrence.⁵⁶ The term "hate crime" therefore often conjures up images of violent unprovoked attacks committed by those who purposefully seek out the "other". The existence of an interpersonal relationship between perpetrator and victim thus contradicts the conception of hate crime as being a form of "stranger danger". If we are to move beyond such constructs, we must continue to highlight the commonality of hate incidents as often involving on-going forms of abuse targeted at those deemed as "different".

The targeting and grooming of young white non-Muslim girls in Rochdale over a sustained period of time strongly indicated that race and religion were factors that motivated the offenders. Yet, as the Assistant Chief Constable of Greater Manchester implied, such a pattern was not regarded as evidence of racial prejudice. It is asserted that the reason for this lies, not in a lack of evidence of racial prejudice, but in a misinterpretation of what the evidence suggested. It was because the crimes were committed by perpetrators who had become known to the victims—offenders who had given gifts to the victims—together with the fact that the crimes were not random acts of racial and religious violence, which meant that the issue of racial hostility passed unacknowledged. It is likely that the criminal justice practitioners involved in this case perceived the process of victimisation, including the intimate victim-offender relationships, as being solely about sexual exploitation.⁵⁷ Indeed, it is now commonly recognised that sexual violence can **Crim. L.R. 140* occur between people known to each other, while incidents involving young victim are frequently committed after a period of grooming by the offender.⁵⁸ Such an understanding is yet to be extended to hate crimes.

The issue of perceived vulnerability

The fact that hate crime victims frequently experience repeated forms of targeted abuse suggests that certain minority groups may be especially "vulnerable" to victimisation. The concept of "vulnerability" relates to a victim's likelihood of victimisation and to the enhanced impact that abuse may have on particular victims.⁵⁹ Individuals are not necessarily innately vulnerable to victimisation, but certain people can be more prone to it where offenders *perceive* them to be weak.⁶⁰ Perception will often depend on context and circumstance.⁶¹ In the Rochdale case, the victims' experience of abuse was predominantly observed in terms of their vulnerability which related to the victims' age group, gender, and perhaps even social class. These factors put the victims in a position that allowed older male offenders to take advantage of them. It is contended that this resulted in the crimes being construed by the authorities *only* in terms of the sexual violations that took place at the expense of weaker younger females, rather than the racial and religious prejudices that also may have partly motivated the offenders.

The police's outright denial that the case had anything to do with racial prejudice suggests that they failed to appreciate that a connection existed between the victims' perceived vulnerability (relating to their age, gender and class) and the offenders' prejudices against the victims' race and (non)religious beliefs (factors that made the victims additionally vulnerable to victimisation). The correlation between perceived vulnerability and hostility has been rarely understood by criminal justice agencies tasked with combating hate crime.⁶² As Alan Roulstone and Kim Sadique note, "By definition if a crime is established to be motivated by perceived vulnerability then potential for establishing hate/hostility... is severely reduced."⁶³ This is because hostility and vulnerability have been implicitly constructed as opposites.⁶⁴ One is either targeted because he is perceived to be vulnerable or because he is hated.

It has rarely come within the thinking of policy makers to ***Crim. L.R. 141** appreciate that someone can be perceived as vulnerable *because* he or she is perceived as “different”.⁶⁵

It has only been in recent years that the issue of “perceived vulnerability” has been brought to the forefront of hate crime theorisation; most prominently in relation to disablist abuse.⁶⁶ For example, in 2008, Brent Martin, a young man with learning difficulties, was beaten to death by three assailants who placed a £5 bet on which of them could knock him unconscious. After each blow that rained down, Martin tried to shake the culprits’ hands pleading with them that he was their friend.⁶⁷ Finally, the perpetrators stripped Martin from the waist down and left him in a pool of blood, absconding only after they had posed for photos with him dying on the ground. Martin later died from brain damage having suffered 18 separate blows to the head and neck.⁶⁸ The offenders were later arrested and charged with Martin’s murder. In a further indication of the offenders’ animosity towards the victim, one of them was later heard telling a friend “I am not going down for a muppet”,⁶⁹ a clear reference to his perception of Martin as someone who was subhuman.

Despite the heinous nature of their crimes, and the fact that the offenders had clearly targeted Martin because of his disability, the defendants were not sentenced as “hate crime” offenders. The courts instead referred to the fact that Brent’s disability made him vulnerable to victimisation which had led to the offenders taking advantage of this.⁷⁰ The persistent failure of the players within the criminal justice system to understand the interconnection between vulnerability *and* hostility has resulted in significant criticism within the literature.⁷¹ And in turn, the case of Brent Martin—along with a range of other high profile disability abuse cases⁷²—has undoubtedly challenged the CPS’ conventional understanding of disability hate crime. Indeed, two years after the case, the CPS published supplementary guidance on disablist hate crime.⁷³ It states

“(w)hen the nature of a person’s disability makes it easier for the offender to commit a particular offence, police and prosecutors often focus on the victim being ‘vulnerable’, an ‘easy target’ and no further thought is given to the issue of hostility. This approach is wrong... The vulnerable situation, within ***Crim. L.R. 142** which a disabled person may find themselves, can provide the opportunity for an offender to demonstrate their hostility based on disability. Investigation can reveal evidence both of opportunism and hostility.”⁷⁴

Prosecutors who read this document should appreciate the fact that offenders who target those perceived as vulnerable may do so, at least in part, because of a “hostility” held against a victim’s disability. The hostility is not one of deep-seated hatred but of prejudice against those seen as somehow less human.

Similarly, many victims who are targeted because of their racial or religious background are selected because they are seen as vulnerable *and* because they are deemed as less deserving of social respect than those from the offender’s “in-group”. In Rochdale, the victims were partly vulnerable to victimisation because of their gender, age and social background. However, as the judge noted, the offenders also treated the victims as being of less value as human beings because of their ethnicity and (lack of) religious beliefs. The denial of someone’s value as a human being based on that person’s racial or religious identity is rooted to conceptions of prejudice⁷⁵ and as such should fall within the meaning of “hostility”. Vulnerability and hostility must therefore be viewed collectively, not only in determining the offenders’ motivations, but in how we as a society should respond to such crimes. Unless we accept that race and religion may have played even a small part in Rochdale, we will have little hope in truly understanding why such crimes occurred. This ultimately affects the way in which the criminal law is utilised and how the offenders will be treated by the justice agencies with whom they come into contact.

The Rochdale case shows us that prejudice, and its various manifestations, can be demonstrated in covert ways that are often masked by factors relating to vulnerability. This does not mean that the issue of hostility is more important than that of vulnerability. This article is also not intended to be read as indicating that the racial or religious element of the case was more important than the sexual abuse the victims suffered. Rather, what this article endeavours to convey is that racial and religious hostility should not be ignored in cases where it is *partly* causal to the commission of an offence. Understanding the symbiotic relationship between hostility and vulnerability becomes important to the task of ensuring that offences aggravated by hostility are pursued as such by the police, CPS and ultimately by the courts. This will entail legal practitioners looking deeper into the situational contexts of each case in order to determine whether an offender may have been (partly) motivated by “hostility”. If the police and courts are to deal with these types of hate crime more effectively it is important that they appreciate that hostility is not just about direct expressions of bigotry and

prejudice but can also arise through the insidious targeting of those perceived as vulnerable. **Crim. L.R. 143*⁷⁶

The small matter of politics

Finally, one cannot ignore the politicisation of the Rochdale case and whether efforts to maintain “community cohesion” may have impacted on prosecutorial decisions. The authorities appeared to be acutely aware that by making these sexual offences into “hate crimes” they risked turning the case into an issue about race.⁷⁷ This, in turn, could have risked fanning the flames of racism rather than countering such prejudices. After all, the English Defence League and the BNP were quick to use the case as propaganda for their extreme ideologies. Outside the Crown Court about 20 BNP supporters gathered holding placards, one reading “Our Girls are not Halal Meat”, whilst also vocalising other prejudices against Asian and Muslim communities.⁷⁸ It is no wonder that politicians such as Keith Vaz MP, chairman of the Home Affairs Committee, vehemently denied that the case was about race, considering that highlighting this factor risked stigmatising “a whole community”.⁷⁹ Moreover, had the media focused on the racial component of the case, there would have been a genuine risk of further incidents of hate crime occurring in retaliation against the Asian community and, perhaps worse still, a repeat of the 2001 race riots seen in Bradford, Burnley and Oldham.⁸⁰ It is likely that the community tensions embodied by this case influenced the CPS’ determination on whether it was in the “public interest” to pursue the case as a “hate crime”.

There is certainly a legitimate concern over the labelling of offences as “hate crimes” and what this may mean for community cohesion.⁸¹ One cannot deny that on occasion a decision to pursue the hate element of an offence may have the effect of provoking further prejudice-motivated acts between identity groups. The difficult decision to prosecute hate in such sensitive cases must therefore be balanced against the broader aims of hate crime legislation. Baroness Hale clearly states these in [Rogers](#), noting that the law must challenge racism and punish those who inflict additional harms on society by demonstrating racial and religious hostilities. Of fundamental importance to this balancing act is an appreciation of the principle of equality before law. This principle requires that hate crime laws are applied to *all* hate-motivated offenders regardless of the type of hostility that is demonstrated and regardless of their ethnic, religious or social background.⁸² The law’s commitment to neutrality when faced with “difference” is one which has long been entrenched in common law.⁸³ However, there is a genuine danger of undermining **Crim. L.R. 144* the potency of hate crime legislation if the authorities begin to pick and choose the cases that the law should be applied to. The provisions set out under the [Crime and Disorder Act](#) and [Criminal Justice Act](#) must be utilised fully if the law is to play its part in stamping out hate crimes and preventing the divisive harms that racial, religious, sexual orientation, transgender, and disability hostilities cause to individuals, local communities and society more broadly. The law must convey a clear message that all crimes (partly or wholly) motivated by hostility will be punished by the state. If we begin to kowtow to the very prejudices that we aim to eradicate, the law will ultimately become a hollow tool in the fight against hate crime.

Conclusion

This article has highlighted the need for criminal justice agencies to improve their understanding of the complex ways in which racial and religious prejudice (and hate crime more broadly) can be demonstrated. Police investigators and prosecutors must look beyond the vocalisations of “hostility” which are typically used to evidence racially and religiously aggravated offences if they are to appreciate the more insidious attempts to exert power over those seen only for their “difference”. Central to our understanding of prejudice-motivation is the fact that victims are frequently selected because they are *perceived* as being vulnerable. The issue of vulnerability in hate crime cases must not be viewed as the innate weakness of certain individuals, but seen through a prism of “difference”, that which enables offenders to actively express their prejudices. It is the victim’s “difference” which allows an offender to see his or her victim as being of little or no social value. As such, authorities, including the courts, must approach issues of vulnerability in relation to the hostilities which also underlie offenders’ actions. Whilst the connection between vulnerability and hostility is becoming more readily accepted in cases of disablist abuse, this article suggests that the relationship must be better recognised for all types of hate crime.

It is also important that police, prosecutors and the courts do not deny the racial or religious element of a case because it risks stirring cultural tensions between identity groups. Offences that are motivated, if only partially, by hostility must be identified as hate crimes if the state is to effectively deal with this element of the offence. The deleterious harms caused by racial and religious prejudice

to victims, communities and society must not be swept under the proverbial carpet. That is not to downplay that other factors were fundamental to the Rochdale case, especially the sexual nature of the offences and the gender, age and social backgrounds of the girls targeted. However, ignoring racial and religious prejudice will not make it go away. Confronting it may at times be difficult, but we must remain resolute on the issue. The criminal law's message must be loud and clear: all acts of prejudice are condemnable, including those vocalised by the hate groups who use cases such as Rochdale as a means of demonising entire ethnic communities.

Mark Austin Walters

Crim. L.R. 2013, 2, 131-144

1. My thanks to Professor Craig Barker for his helpful comments on an earlier draft of this article and to Rachel Gordon-Smith and Christelle McCracken for their research assistance.
2. Eight offenders were of Pakistani decent with the remaining offender being of Afghan decent. This is one of a number of cases that have garnered media attention in which groups of Asian men have groomed and sexually abused young white females. The Rochdale case is used as an example of the way in which these types of cases are dealt with by the authorities.
3. The offences included amongst others, rape, aiding and abetting a rape, and sexual assault.
4. P. Valley, "Child sex grooming: the Asian question" (May 10, 2012), *Independent.co.uk* <http://www.independent.co.uk/news/uk/crime/child-sex-grooming-the-asian-question-7729068.html>, [Accessed November 24, 2012].
5. Valley, "Child sex grooming: the Asian question" (May 10, 2012), *Independent.co.uk* <http://www.independent.co.uk/news/uk/crime/child-sex-grooming-the-asian-question-7729068.html>, [Accessed November 24, 2012]. Many more articles were written in the press.
6. Valley, "Child sex grooming: the Asian question" (May 10, 2012), *Independent.co.uk* <http://www.independent.co.uk/news/uk/crime/child-sex-grooming-the-asian-question-7729068.html>, [Accessed November 24, 2012].
7. Valley, "Child sex grooming: the Asian question" (May 10, 2012), *Independent.co.uk* <http://www.independent.co.uk/news/uk/crime/child-sex-grooming-the-asian-question-7729068.html>, [Accessed November 24, 2012]. Many more articles were written in the press.
8. G. Guilerab, M. Fornsa, J. Gómez-Benitob, "The prevalence of child sexual abuse in community and student samples: A meta-analysis" (2009) *Clinical Psychology Review* 328.
9. [ss.28 – 32](#), including: assault, harassment, criminal damage and public order offences. Religious aggravation was added to the [Act](#) later by [s.39 of the Anti-terrorism, Crime and Security Act 2001](#).
10. See *Crown Prosecution Service, Hate crime and crimes against older people report 2010–2011 (CPS: 2012)*. See also, *True Vision, What is hate crime?* http://www.report-it.org.uk/what_is_hate_crime [Accessed November 23, 2012]
11. *Association of Chief Police Officers, Total of recorded hate crime from regional forces in England, Wales and Northern Ireland during the calendar year 2010 (2011) available at: http://www.report-it.org.uk/files/acpo_hate_crime_data_for_2010.pdf* [Accessed November 24, 2012]. A total of 48,127 hate offences were recorded by police in England and Wales between 2010–2011.
12. [s.28 of the Crime and Disorder Act](#) is used to define racial and religious aggravation.
13. Evidence of racial or religious hostility may be also adduced during the trial where it is relevant to the commission of the offence.
14. *Crime and Disorder Act s.145(2)(a) & (b)*.
15. *Crown Prosecution Service, "Information About Hate Crime"* available at http://www.cps.gov.uk/your_cps/crime/hate_crime.html [Accessed November 24, 2012]. Transgender has only very recently been added to the legislation, hence there is no policy guidance as of yet.
16. (CPS: London, 2007) available at http://www.cps.gov.uk/publications/docs/disability_hate_crime_policy.pdf [Accessed November 24, 2012].
17. Arguments for inclusion of hate crime provisions within the criminal law are now well-rehearsed within the literature. See for e.g. I. Hare, "Legislating Against Hate: The Legal Response to Bias Crime" (1997) *O.J.L.S.* 415; P. Iganski, "Why make 'hate' a crime?" (1999) *Critical Social Policy* 386; M. Malik, "'Racist Crime': Racially Aggravated Offences in

- the Crime and Disorder Act 1998 Part II" (1999) M.L.R. 409.
18. [Rogers \[2007\] UKHL 8; \[2007\] 2 A.C. 62; \[2007\] Crim. L.R. 579](#) at [12] and [13].
 19. Criminological research suggests that hate crime cause greater levels of harm compared to non-hate motivated incidents, see for e.g. G. Herek, J. Cogan, J. Gillis, and E. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues" (1997) *Journal of Interpersonal Violence* 195; J. McDevitt, J. Balboni, L. Garcia, and J. Gu, "Consequences for Victims: A Comparison of Bias and Non-bias-Motivated Assaults" (2001) *American Behavioural Scientist* 697; see also K. Smith (Ed.), D. Lader, J. Hoare, and I. Lau, *Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey: Supplementary Volume 3 to Crime in England and Wales 2010/11* (London: Home Office, 2012).
 20. P. Iganski, *Hate Crime in the City* (Bristol: The Policy Press, 2008).
 21. See Hare, "Legislating Against Hate: The Legal Response to Bias Crime" (1997) O.J.L.S. 415; Malik, "'Racist Crime': Racially Aggravated Offences in the Crime and Disorder Act 1998 Part II" (1999) M.L.R. 409.
 22. Home Office, *Improving Opportunity, Strengthening Society: The Government's strategy to increase race equality and community cohesion* (London: Home Office, 2005).
 23. Iganski, "Why make 'hate' a crime?" (1999) *Critical Social Policy* 386.
 24. Such as community safety units that are tasked with investigating hate crimes. See Iganski, *Hate Crime in the City* (2008).
 25. ACPO, fn.10. Especially when compared to other countries across the world, see *Office for Democratic Institutions and Human Rights, Hate Crimes In The OSCE Region—Incidents And Responses: Annual Report* (Warsaw: OSCE, 2011). It should, however, be noted that while the police and CPS apply the same working definition of hate crime, the legislative definition of racial or religious hostility is more narrowly prescribed. This means that some crimes that are recorded as hate crimes by the police will not fit within the definition of racial or religious hostility as set under legislation. As such, comparisons between recorded hate crimes and conviction rates should be viewed with caution.
 26. Association of Chief Police Officers, *Total of recorded hate crime from regional forces in England, Wales and Northern Ireland during the calendar year 2010* (London: ACPO, 2011) available at: http://www.report-it.org.uk/files/acpo_hate_crime_data_for_2010.pdf [Accessed November 24, 2012]. A total of 48,127 hate offences were recorded by police in England and Wales between 2010–2011.
 27. Recently changed to "Crime Survey for England and Wales".
 28. Smith et al, *Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey: Supplementary Volume 3 to Crime in England and Wales 2010/11* (London: Home Office, 2012).
 29. Iganski, *Hate Crime in the City* (2008).
 30. See Crown Prosecution Service, *Hate crime and crimes against older people report 2010–2011* (CPS: 2012). See also: *True Vision, What is hate crime?* http://www.report-it.org.uk/what_is_hate_crime [Accessed November 23, 2012]; Association of Chief Police Officers, *Total of recorded hate crime from regional forces in England, Wales and Northern Ireland during the calendar year 2010* (London: ACPO, 2011) available at: http://www.report-it.org.uk/files/acpo_hate_crime_data_for_2010.pdf [Accessed November 24, 2012]. A total of 48,127 hate offences were recorded by police in England and Wales between 2010–2011; Crown Prosecution Service, "Information About Hate Crime" available at http://www.cps.gov.uk/your_cps/crime/hate_crime.html [Accessed November 24, 2012].
 31. BBC, "Rochdale grooming trial: Nine found guilty of child sex charges" (May 8, 2012) <http://www.bbc.co.uk/news/uk-england-17989463> [Accessed November 24, 2012].
 32. BBC, "Rochdale grooming trial: Nine found guilty of child sex charges" (May 8, 2012) <http://www.bbc.co.uk/news/uk-england-17989463> [Accessed November 24, 2012].
 33. Iganski, "Why make 'hate' a crime?" (1999) *Critical Social Policy* 386.
 34. *Second reading speech of the Crime and Disorder Bill, Lord Williams of Mostyn, December 16, 1997*, Hansard, HL Deb. Col.534.
 35. See G. Mason, "Hate Crime and the Image of the Stranger" (2005) *Brit. J. Criminol.* 837.
 36. The number of recorded racially aggravated crimes, broken down by victim ethnicity, was obtained from 37 out of 39 police forces in England via FOI applications. The statistics also showed that the number of racially aggravated hate crimes committed against white British victims recorded by the police were higher in areas where the population of BME individuals was greater.
 37. Smith et al, *Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey: Supplementary Volume 3 to Crime in England and Wales 2010/11* (London: Home Office, 2012), p.31.

38. *Smith et al, Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey: Supplementary Volume 3 to Crime in England and Wales 2010/11 (London: Home Office, 2012), p.31.*
39. *Office of National Statistics, Population Estimates by Ethnic Group 2002–2009 (2009).*
40. These statistics must be read with caution and may not be accurate. In particular, caution should be paid to the fact that police data obtained showed the number of racist offences committed against white “British” victims, whereas the BCS data provides statistics on “white people”. The latter may include British and non-British white victims, such as those from Eastern Europe who may be victimised because of their nationality or ethnicity rather than because of the colour of their skin. Such incidents are still recorded as “racially” aggravated as defined under [s.28\(4\) of the Crime and Disorder Act 1998](#). It should also be noted that the BCS data covered England and Wales, whereas the police data obtained covered England only.
41. *E. Burney and G. Rose, Racist Offences: How Is the Law Working? (London: Home Office, 2002).* See also, B. Dixon, and D. Gadd, “Getting the message? ‘New’ Labour and the criminalization of ‘hate’” (2006) *Criminol. & C. J.*, 309.
42. Most commonly public order offences or assault. *Association of Chief Police Officers, Total of recorded hate crime from regional forces in England, Wales and Northern Ireland during the calendar year 2010 (London: ACPO, 2011)* available at: http://www.report-it.org.uk/files/acpo_hate_crime_data_for_2010.pdf [Accessed November 24, 2012]. A total of 48,127 hate offences were recorded by police in England and Wales between 2010–2011. See also, [DPP v Woods \[2002\] EWHC 85 \(Admin\)](#) ; [DPP v McFarlane \[2002\] EWHC 485 \(Admin\)](#) ; [Attorney General’s Reference \(No.4 of 2004\), Re \[2005\] EWCA Crim 889; \[2005\] 1 W.L.R. 2810; \[2005\] Crim. L.R. 799.](#)
43. See [Rogers \[2007\] UKHL 8; \[2007\] 2 A.C. 62; \[2007\] Crim. L.R. 579](#). Though this has often caused some confusion within the lower courts, see for e.g. [SH \[2010\] EWCA Crim 1931; \[2010\] 1 Cr. App. R. 14 \(CA Crim D.V\).](#)
44. For example, the use of slurs such as “Paki” or “Black bastard”, see [DPP v Woods \[2002\] EWHC 85 \(Admin\)](#) ; [DPP v McFarlane \[2002\] EWHC 485 \(Admin\); \[2002\] All E.R. \(D\) 78 \(Mar\)](#) ; [Attorney General’s Reference \(No.4 of 2004\) \[2005\] EWCA Crim 889](#) ; [D \[2005\] EWCA Crim 889.](#)
45. See D. Gadd, “Aggravating Racism and Elusive Motivation” (2009) *Brit. J. Criminol.* 755.
46. *Burney and Rose, Racist Offences: How Is the Law Working? (2002).*
47. *Burney and Rose, Racist Offences: How Is the Law Working? (2002).*
48. J. Morsch, “Problem of Motive in Hate Crimes: The Argument against Presumptions of Racial Motivation” (1991) *J. Crim. L. & Criminology.* 659; M. Walters, “Hate crimes in Australia: Introducing punishment enhancers” (2005) *Crim. L.J.* 201.
49. See B. Elizabeth, “Using the Law on Racially Aggravated Offences” [2003] *Crim.L.R.* 28; See *Burney and Rose, Racist Offences: How Is the Law Working? (2002).*
50. As is required under [s.28\(1\)\(b\) of the Crime and Disorder Act 1998](#).
51. See J. Garland, and N. Chakraborti, “Recognising and Responding to Victims of Rural Racism” (2006) *I.R.V.* 49; *Iganski, Hate Crime in the City (2008).*
52. *Iganski, Hate Crime in the City (2008).*
53. *P. Thomas, “Hate crime or mate crime? Disablist hostility, contempt and ridicule” in Alan Roulstone & Hannah Mason-Bish (eds) Disability, Hate Crime and Violence (Abington: Routledge, 2013).*
54. Most frequently as neighbours. M. Walters, and C. Hoyle, “Exploring the everyday world of hate victimization through community mediation” (2012) *I.R.V.* 7. See also, *B. Bowling, Violent Racism: Victimization, Policing, and Social Context (Oxford: Oxford University Press, 1998).* The persistent targeting of victims can have a cumulative impact on their mental and physical health which is long lasting.
55. *Mason, “Hate Crime and the Image of the Stranger” (2005) Brit. J. Criminol.* 837.
56. *Mason, “Hate Crime and the Image of the Stranger” (2005) Brit. J. Criminol.* 837. Other high profile cases include, amongst many others, the murder of Anthony Martin and Jody Dobrowski. Each victim was randomly and savagely attacked for no other reason than because they were “different”. See case studies, *N. Chakraborti, and J. Garland, Hate Crime: Impact, Causes and Responses (Sage: 2009).*
57. It should be noted that a recent report into the problem of sexual exploitation in Rochdale found that “While some organisations were consistently supportive in their response ... overall child welfare organisations missed opportunities to provide a comprehensive, coordinated and timely response... and, in addition, the criminal justice system missed opportunities to bring the perpetrators to justice”, *Rochdale Borough Safeguarding Children Board, Review of Multi-agency Responses to the Sexual Exploitation of Children (2012), p.19.* This finding was partly linked to a lack of training amongst criminal justice practitioners. While the report does not refer to the issue of race it does highlight the problems that exist amongst the authorities in relation to understanding the complex nature of these types of crimes.
58. Though it should be noted that rape myths still persist, including the belief that sexual violence is less likely to occur

between people known to each other, despite the fact that research shows a high percentage of rapes being committed by friends and acquaintances. See J. Temkin, and B. Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude* (Oxford: Hart Publishing, 2008).

59. See Green, S. "The Victims' movement and restorative justice", in Gerry Johnstone and Daniel Van Ness (eds) *Handbook of Restorative Justice* (Cullompton, Devon: Willan Publishing, 2007).
60. A. Roulstone, and K. Sadique, "Vulnerable to Misinterpretation: Disabled People, 'Vulnerability', Hate Crime and the Fight for Legal Recognition" in Alan Roulstone & Hannah Mason-Bish (eds) *Disability, Hate Crime and Violence* (Abington: Routledge, 2013).
61. See N. Chakraborti and J. Garland, "Reconceptualizing hate crime victimization through the lens of vulnerability and 'difference'" (2012) 16(4) *Theo. Crim.* 499.
62. Chakraborti and Garland, "Reconceptualizing hate crime victimization through the lens of vulnerability and 'difference'" (2012) *Theo. Crim.* doi: 10.1177/1362480612439432.
63. Roulstone and Sadique, "Vulnerable to Misinterpretation: Disabled People, 'Vulnerability', Hate Crime and the Fight for Legal Recognition" in Alan Roulstone & Hannah Mason-Bish (eds) *Disability, Hate Crime and Violence* (2013), p.27.
64. Roulstone and Sadique, "Vulnerable to Misinterpretation: Disabled People, 'Vulnerability', Hate Crime and the Fight for Legal Recognition" in Alan Roulstone & Hannah Mason-Bish (eds) *Disability, Hate Crime and Violence* (2013), p.27.
65. Roulstone and Sadique, "Vulnerable to Misinterpretation: Disabled People, 'Vulnerability', Hate Crime and the Fight for Legal Recognition" in Alan Roulstone & Hannah Mason-Bish (eds) *Disability, Hate Crime and Violence* (2013), p.27.
66. See K. Quarmby, *Getting away with murder: disabled people's experiences of hate crime in the UK* (London: SCOPE, 2008) ; A. Roulstone & H. Mason-Bish (eds) *Disability, Hate Crime and Violence* (Abington: Routledge, 2013).
67. Chakraborti, and Garland, *Hate Crime: Impact, Causes and Responses* (Sage: 2009), p.94.
68. Equality and Human Rights Commission, *Inquiry into Disability-related Harassment*, available at <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/ten-cases/case-ten> [Accessed November 24, 2012].
69. Equality and Human Rights Commission, *Inquiry into Disability-related Harassment*, available at <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/ten-cases/case-ten> [Accessed November 24, 2012]., case ten.
70. [Stephen Bonellie \[2008\] EWCA Crim 1417; \[2009\] 1 Cr. App. R. \(S.\) 55; \[2008\] Crim. L.R. 904.](#)
71. See Quarmby, *Getting away with murder: disabled people's experiences of hate crime in the UK* (2008) ; Roulstone & Mason-Bish (eds) *Disability, Hate Crime and Violence* (2013).
72. See "ten cases", Equality and Human Rights Commission, *Inquiry into Disability-related Harassment*, available at <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/ten-cases/case-ten> [Accessed November 24, 2012].
73. Crown Prosecution Service, *Disability Hate Crime - Guidance on the distinction between vulnerability and hostility in the context of crimes committed against disabled people* (London: CPS, 2010) available at http://www.cps.gov.uk/legal/d_to_g/disability_hate_crime/#a05 [Accessed November 24, 2012].
74. Crown Prosecution Service, *Disability Hate Crime - Guidance on the distinction between vulnerability and hostility in the context of crimes committed against disabled people* (London: CPS, 2010) available at http://www.cps.gov.uk/legal/d_to_g/disability_hate_crime/#a05 [Accessed November 24, 2012]., see section entitled "Hostility and Vulnerability".
75. See B. Perry, *In the Name of Hate: Understanding Hate Crimes* (New York: Routledge, 2001).
76. Though slightly outside the scope of this article it is worth noting that there is a broader argument to be had over whether the gendered nature of the gang's crimes should, by themselves, bring the offences under the "hate crime" umbrella. The fact that the victims were young and predominantly from deprived social backgrounds inferred that the crimes were fundamentally about the exertion of power, dominance and control. As with the racial element of the case, the victims' gender and social background meant they were viewed as less deserving of respect and dignity; factors which are intrinsically linked to a prejudice held about their value as human beings. As such, acts of gendered violence, including rape, should not just be seen simply as matters of "lust", but as potential expressions of dominance and control, or in terms of hate crime law as demonstrations of "hostility". For further criminological theorisation of gendered hate crime see Perry, *In the Name of Hate: Understanding Hate Crimes* (2001). See also, J. Hodges, *Gendered Hate: Exploring Gender in Hate Crime Law*, (Boston: Northeastern University Press, 2011).
77. Some commentators also expressed the concern that the police refused to acknowledge the racial element of the case through a fear of being labelled racist themselves, N. Bunyan, "Rochdale grooming trial: Police accused of failing to investigate paedophile gang for fear of appearing racist" (May 8, 2012), telegraph.co.uk [Accessed September 28, 2012].

- [78.](#) The *Daily Herald*, "British sex grooming cases spark racial tensions," (June 29, 2012), dailyherald.com [Accessed September 28, 2012].
- [79.](#) BBC Radio 4, *The Today Programme*, (May 9, 2012).
- [80.](#) D. McGhee, *Intolerant Britain?: hate, citizenship and difference* (New York: Open University Press, 2005).
- [81.](#) See J. Jacobs and K. Potter, *Hate Crimes, Criminal Law and Identity Politics* (New York: Oxford University Press, 1998)
- [82.](#) See, V. Jenness, "Engendering Hate Crime Policy: Gender, the Dilemma of 'Difference', and the Creation of Legal Subjects" (2003) *Journal of Hate Studies* 73.
- [83.](#) See M. Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (New York: Cornell University Press, 1990).

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