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Chapter 15: Policy Futurities of Disability Hate and Hostility: Reflections from two jurisdictions

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Abstract

This chapter explores the limits and potentialities of future hate crime policy in addressing disablist hate and hostility in two jurisdictions, England and Wales, and Ireland. Despite having radically different policy trajectories, I explore how both jurisdictions grapple with on-going legislative dilemmas about the positioning of disabled people as a protected group in hate crime policy, and understandings of hate in the context of disability. The chapter asks what the role of hate crime legislation should be in policy futures where disabled people continue to experience stigmatising attitudes and exclusions from within the criminal justice system itself, and indeed wider society. Drawing on critical discussions of hate crime which recognise it as situated and relational, the chapter calls for an acknowledgement of the wider socio-political relations within which hate crime policy is produced and enacted, and the on-going structural inequalities which contribute to experiences of hostility in disabled people's lives.

Introduction

In 2020, the Irish government launched its report of a consultation process to initiate the introduction of hate crime legislation for the first time in Ireland. At the same time, a consultation process was underway by the Law Commission in England and Wales to review legislative provisions for tackling hate which have been in existence for over 20 years. While the two jurisdictions occupy radically different positions in terms of their trajectories of hate

legislation - borne out of distinct socio-political and cultural contexts – it is notable that both seek to grapple with what Taylor (2022, p.15) refers to as the 'unsettled' nature of disability within hate crime legislation. One of the stated reasons for the Law Commission's review was to examine the challenges of prosecuting disability hate crime, which it acknowledged was not adequately served by current legal tests which may not capture the subtler forms of hostility often experienced by disabled people (Law Commission, 2021a, 2021b). At the same time, debates have also been raised in Ireland about how best to reflect the lived experience of hostility and abuse experienced by disabled people in a context where some may not recognise it as 'hate', and where disabled and deaf people's organisations (DDPOs) have been relatively marginal in campaigns for hate crime legislation.

In this chapter, I draw on these consultation processes and debates to reflect on broader questions which continue to frame and stymie attempts to tackle disablist hate and hostility across the two jurisdictions. These include on-going issues of definition in terms of how disabled people are recognised as a protected group within a potential 'hierarchy' of victims/survivors, and what constitutes hate in the context of disability (Grattet and Jenness, 2001; Hall, 2019; Roulstone *et al.,* 2011; Taylor, 2022; Walters *et al.,* 2017). More broadly, these questions lead me to ask what the place of hate crime law itself should be in policy futures where disabled people continue to experience stigmatising attitudes and exclusions from within the criminal justice system in terms of access to justice, and indeed wider society.

A growing number of commentators have called for a more critical discussion of hate crime and hate crime policy that recognises its relational and situated characteristics beyond individual acts of perpetration and criminal justice responses (Browne *et al*., 2011; Hall, 2019, 2022; Hall *et al.,* 2022; James and McBride, 2021, 2022). Building on these debates, I suggest that future policy trajectories need to recognise the complex assemblage of actors,

institutions and environments which shape broader feelings and experiences of un/safety – and not just hate - for disabled people (Edwards and Maxwell, 2023). While hate crime laws are one part of this assemblage, I argue that they will have little effect if they are not seen as part of a wider set of actions and social relations which address both the attitudes and practices of those charged with enacting hate legislation *and* the broader structural inequalities and prejudice which contribute to experiences of hostility in disabled people's lives.

Critical studies of hate and the analysis of hate crime policy

The past twenty years have witnessed a growing literature exploring the causes of, and responses to, hate and hate crime (Chakraborti and Garland, 2015; Hall, 2013; Hall *et al.,* 2022). The discourse of 'hate' in and of itself has come into being particularly in US and UK contexts to describe bias-motivated forms of violence, abuse, hostility, and harassment against minority groups. In response, and partly prompted by social movement activism, states have introduced policy responses to hate-based incidents, which have largely been constituted in and through a criminal justice lens (Hall *et al.,* 2022). Thus, acts of hate have been deemed to be *hate crimes* with key concerns revolving around how hate should be defined in legislation, which groups should be protected, and how bias motivation can be proven. The merits or otherwise of these responses have been the subject of significant contestation (Colliver and Silvestri, 2022; Jacobs and Potter, 1998; Meyer, 2014; Moran and Sharpe, 2004; Morgan, 2002; Valcore and Dodge, 2019). While many commentators have drawn attention to the importance of hate crime legislation in signifying society's intolerance of discrimination and hostility against minority groups, others have raised questions about the role of identity politics in shaping criminal justice work. Such perspectives view hate

crime legislation as having the potential to create divisions and competition within and between those groups assigned victim status or not (Jacobs and Potter, 1998).

Much discussion has focused around hate crime legislation's 'silo-ing' of victim categories, (Neller 2018, p.76; see also Schweppe, 2012). It is argued that whilst such categories may recognise the disproportionate harms experienced by particular groups in society, they also bring with them a number of limits or challenges. These include the essentializing of victim identities and an associated failure to recognise the complexities and ambiguities of experiences of hate which can cut across identity categories (Moran and Sharpe, 2004; Neller, 2018); the creation of 'ideal victim' subjectivities which those seeking justice under these categories must enact and embody (Mason-Bish, 2018; Neller, 2018; see also Edwards, 2014); and more broadly, a dividing imperative which creates exclusions and hierarchies between groups in terms of protection (Neller, 2018). It is for this reason that Moran and Sharpe (2004, p.411) have suggested that while we should not abandon identity politics in responding to hate-based harms, we 'need to take seriously the multiple connected experiences of social division and social hierarchy which organize our lives in different identity contexts'.

Moran and Sharpe's (2004) assertion speaks to a broader critique of the criminal justice lens in understanding hate-based violence and hostility. This is that it has the potential to narrow our analytical frame to individual incidents and justice responses, and to an understanding of hate crimes 'as psychological matters of personal prejudice or bias' (Clayton *et al.,* 2016, p.65) abstracted from wider social and structural relations. To this end, a growing cross-disciplinary body of work which might be termed critical studies of hate is seeking to expand analyses of hate-based harms beyond the individual crime-based lens by drawing attention to

the complex socio-political relations within which incidents of hate take place. Describing hate-based harms as a form of systemic and structural violence, for example, James and McBride (2022a, 2022b) relate hate perpetration to the precarious conditions of living within neoliberal capitalism (see also Burch, 2018; Healy, 2020). Hall (2019, p.253), moreover, in outlining a relational understanding of disability hate crime, draws on assemblage thinking to illuminate how experiences of hate 'emerge through social relations between disabled and non-disabled people in particular micro-spaces and times, within broader contexts of socio-spatial exclusion and cultural abjection' (see also Hall and Bates, 2019). As such , he argues that 'hate' requires a multi-faceted and multi-scalar response that does not just focus on the victim's identity category but the situated contexts and wider socio-structural processes that shape their everyday life.

A critical perspective also draws attention to the need to connect these processes – including hate crime law and policy - with the subjective experience and agency of those impacted by hate-based harms (see Wilkin, 2020 for examples). Focusing on individuals' understanding and agency is significant because their experiences often exceed those set down in legislative definitions of hate crime. While hate crime may seek to 'bound' hate based-incidents in particular ways, a range of commentators have shown how hostility and violence can happen on a continuum which includes pervasive, everyday microaggressions as much as extreme acts of physical violence (Hall *et al.,* 2022). Individuals do not necessarily think about their lives in terms of experiences of hate, partly because they may normalise microaggressions and abuse in their everyday lives, but also because they may not see it as helpful to 'take on' the victim subjectivities set down in hate crime legislation. Indeed, they may actively reject these identity constructions (Browne, *et al.*, 2011; Edwards and Maxwell, 2019). Edwards and Maxwell (2023) for example, suggest that it may be more helpful to think about hate and

hostility in disabled people's lives in terms of wider senses of un/safety, of belonging and discomfort in different spaces which are constantly in flux (see also Corteen, 2002; Hall and Bates, 2019). Within this context, they show how disabled people develop spatial strategies in their lives to pre-empt, and deal with potential incidents of abuse or hostility, many of which do not involve engaging with criminal justice agencies (see also Browne *et al.,* 2011).

These critiques necessarily pose a challenge in seeking to legislate for hate. For disabled people in particular, the issues and challenges with hate crime legislation have been well-documented (Taylor, 2022). These include the failure of the legal system to see beyond understandings of disabled people's 'vulnerability' and to recognise how abuse and hostility manifests in disabled people's lives (Roulstone *et al.,* 2011; Roulstone and Mason-Bish, 2013; Taylor, 2022). Thus, while dominant constructions of hate crime may focus on the extreme violent act perpetrated by a stranger in public space (Mason, 2005) disabled people's experiences of institutional abuse and also 'mate crime' (Thomas, 2011) – that is, harms perpetrated by people known to the individual, sometimes in the space of the home (see for example, Burch, 2023; Macdonald *et al*., 2021) – have struggled to achieve recognition and definition as hate. Such issues speak to the wider social and cultural contexts within which disability and victimisation is understood and which are made manifest in on-going paternalistic attitudes which construct disabled people as Other (Hughes, 2009). These attitudes are not just evident in the construction of legislation itself but the institutional structures of the criminal justice system – including the police and legal personnel - which create barriers to disabled people's access to justice (Edwards, 2013; 2014). A critical approach to hate crime policy therefore suggests a need to recognise the broader structural contexts within which hate legislation is developed and enacted.

Contextualising hate crime law and reform: policy trajectories in Ireland and England and Wales

Despite being near neighbours, the trajectories of hate crime policy and legislation in England and Wales and in Ireland have been markedly different, reflecting distinct social and political histories. The emergence of hate crime legislation – including how it pertains to disability and disabled people - in England and Wales has been well-documented and in part reflects the way in which high profile incidents and social movement activism have shaped the construction of hate crime responses (Taylor, 2022). Influenced by the racist murder of Black teenager Stephen Lawrence in 1993 and the subsequent Macpherson inquiry, the first hate crime provisions were introduced in the Crime and Disorder Act 1998 (CDA), which made provision for racially and subsequently (in 2001) religiously aggravated offences. Disability and sexual orientation were added as protected characteristics under Section 146 of the Criminal Justice Act 2003 (CJA), which came into force in 2005, amended in 2012 to incorporate transgender hostility (Law Commission, 2021a). Legislation was shaped by high profile incidents. In the context of disability, this included the death of Fiona Pilkington and her disabled daughter, Francesca Hardwick who took their own lives after years of abuse, and the brutal murder of Brent Martin, a young man with intellectual disabilities who was brutally attacked and beaten to death (Hall *et al*., 2022; Scope, 2008).

Despite disability having been lobbied for and included as a protected identity category in the CJA, its enactment in practice has been subject to significant criticism by DDPOs , bodies such as the Equality and Human Rights Commission (EHRC, 2011), academics and inspectorates (see for example Walters *et al.,* 2017; Criminal Justice Joint Inspection (CJJI), 2013). Explaining the strikingly low prosecution rates of disability hate crime compared to other identity categories, a joint inspection report in 2013 (CJJO, 2013, p. 4) pointed to the 'the inability of the criminal justice system to combat prevalent social attitudes and to deal

effectively with cases that can have inherent complexities'. Of key concern is that the term 'hostility' used in current legislation fails to capture many of the ways in which disabled people experience abuse and harassment. Walter *et al's* (2017, p.171) research for example showed that 38 percent of disability hate crime cases related to 'property offences and sexual offences' which is a markedly different profile to hate crimes across other identity categories (where assault and other forms of public harassment and abuse are more common) (see also Macdonald *et al.,* 2017). Meanwhile, the conflation of hostility with vulnerability continues to hamper prosecution rates.

At a more general level, there is concern that what Walters *et al* (2017, p.36) refer to as the 'piecemeal' development of hate crime legislation has led to a confusing mosaic of legislation and different levels of protection across the five different groups. For example, whilst the CDA creates 'more serious versions of pre-existing, or "basic", offences based on aggravation of race and/or religion' (Walters *et al.,* 2017, p.37), the CJA provisions centre only around creating a greater penalty at sentencing stage (known as a sentencing 'uplift') for crimes aggravated by any of the five grounds. Moreover, legislation protecting against hate speech, the Public Order Act 1986 creates 'stirring up hatred' offences on the grounds of race, religion and sexual orientation, but not disability and transgender identity (Law Commission, 2020). It is within the context of these inconsistencies and disparities that the Law Commission consultation in 2020 sought to review the totality of hate crime provisions in England and Wales (Law Commission, 2020). The final report published some 34 recommendations, but these have yet to be actioned by the government.

In contrast to England and Wales, where discourses of hate and hate crime are accepted and well-embedded within government policy structures and indeed amongst DDPOs , Ireland's move towards hate crime legislation is in an emergent phase. Debates about diversity and the need to protect minoritised others have emerged relatively recently in Irish public and

political discourse, largely in response to the rapidly changing nature of Irish society over the past 20 years. In particular, the growing ethnic and racial diversity of the population has challenged long-held national imaginaries of Ireland as a 'monocultural place where no minority cultures exist and the problems of racial and religious bigotry, so prevalent in other countries, simply do not present a significant problem' (Department of Justice, 2020, p.15). The narrative of Ireland as a hateless state has however been challenged by minority communities and their organisations who have drawn attention to the history of systemic abuse and discrimination that has been perpetrated against particular groups in Irish society – including the Traveller community, LGBTQI+ community and disabled people - often at the hands of the state (Haynes *et al.,* 2017; Haynes and Schweppe, 2017). Ireland is currently a European outlier in not having specific legislation that identifies and prosecutes hate crime (Haynes and Schweppe, 2017). Ireland's only legislative hate provisions are set down in the Prohibition of Incitement to Hatred Act 1989, which makes it an offence to incite hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. Significantly no mention is made of disability as a criterion in this piece of legislation. The Act has been widely criticised as ineffectual and has led to only a small number of prosecutions (Haynes and Schweppe, 2017).

In response to growing pressure from the Coalition Against Hate Crime (CAHC), a group of 22 civil society organisations and supporting academics, and external bodies including the European Union and Organisation for Security and Cooperation in Europe (OSCE), the Irish government initiated a public consultation reviewing Ireland's hate crime and hate speech provisions in 2019. Following publication of the consultation report in 2020, the government published a General Scheme of the Criminal Justice (Hate Crime) Bill 2021. The General Scheme was subsequently amended and published as the Criminal Justice (Incitement to

Violence or Hatred and Hate Offences) Bill 2022 in October 2022 following pre-legislative scrutiny. Having proceeded through the Dáil (the lower house of the Irish parliament), the Bill is continuing its journey through the Seanad (upper house). The Bill itself brings together provisions for both hate crime and hate speech in one piece of legislation, and adds the identity categories of disability, gender, descent and sex characteristics to those outlined in the 1989 legislation which will be repealed when the new legislation comes into effect (Oireachtas Library & Research Service, 2022). For all of the ten characteristics, it creates specific offences aggravated by hate (by amending other criminal justice legislation), requires courts to take into consideration hatred in sentencing for those offences not named in the Bill, and creates an offence of incitement to violence or hatred (Oireachtas Library & Research Service, 2022). The Bill has not been without controversy, with concerns across the political spectrum ranging from the potential of the legislation to limit free speech, through to the effects of the unspecified definition of hate in the Bill (Hamilton, 2023; Leahy, 2023; Taylor, 2023).

It is important to note that, unlike England and Wales, disabled people and DDPOs have been relatively marginal within public debates and civil society advocacy about the proposed legislation and indeed hate crime more generally in Ireland. While two organisations – Independent Living Movement Ireland and Inclusion Ireland (which works with people with intellectual disabilities) - are members of CAHC, anti-racism organisations and those representing the LGBTQI+ community have been more prominent in hate crime legislation campaigns. Indeed, in a piece of research conducted in 2018, disabled people and DDPOs seemed unsure about the usefulness or relevance of the label of hate crime in addressing issues of hostility and safety (Edwards and Maxwell, 2019). More than that, they did not perceive it as a priority given the range of other pressing issues facing disabled people in the State. This is not to deny the significant hostility that disabled people have experienced in

Ireland historically, particularly in the context of institutional abuse, and which they continue to experience in their daily lives (see for example Disabled Women Ireland, 2023; Edwards and Maxwell, 2023). Ireland's response to disabled people has been steeped in paternalism and only in the past twenty years have policy trajectories sought to move disabled people out of congregated settings and promote their independence in the community. Many DDPOs therefore remain concerned with fighting for basic rights and services (such as Personal Assistance Services) in a context of welfare constraint and it is partly because of this, I would suggest, that campaigning against hate crime has not been a central part of their role or mission.

Critically analysing disability hate crime law and reform

In the sections that follow, I seek to analyse some of the emerging issues and debates from both the Law Commission (2021a) hate crime consultation in England and Wales and consultation and legislative process of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 in Ireland. In so doing, I draw on documents from both processes, namely the Law Commission initial consultation document and final report, and selected submissions from DDPOs . In the Irish context, I draw on government-published documents, including the findings of the consultation exercise, the report from the Houses of the Oireachtas (Irish parliament) Joint Committee on Justice's pre-legislative scrutiny, and selected submissions from civil society organisations. My discussion focuses on two themes. Firstly, I explore how the proposed (re)configuration of hate crime law in both jurisdictions seeks to position, or make (in)visible, the categories of both 'disability' and 'hate', bearing in mind Moran and Sharpe's (2004, p. 412) warning about hate crime law's 'essentializing and totalising logic'. Secondly, I ask what the consultations tell us about how the law is understood in the wider socio-structural context of hate relations – that is, to what extent do

we see an articulation of the role of wider material and political relations in addressing hate and enacting hate crime legislation. Overall, then, I aim to explore the implications of the definitional and material relations of hate crime legislation in addressing disablist hostility.

Making disablist hostility (in)visible in hate crime law

As multiple commentators have highlighted, hate crime law is an imperfect tool in seeking to capture and reflect everyday experiences of hate, hostility and abuse (Colliver and Silvestri, 2022; Neller, 2018; Schweppe, 2012). In seeking recognition and legitimacy through hate crime law, disabled people must become visible under multiple, intersecting, definitions and categories. Their experience of hate or abuse must match a particular legislative definition; they must meet, and take on, the proscribed identity of their 'protected characteristic'; and often, they must be positioned in relation to other protected groups. In this complex legal assemblage, disabled people – and disablist hostility - may become visible at particular points, but also recede from view.

Within England and Wales, the dearth of successful disability hate crime prosecutions bears witness to the failures of current legislation to render visible and legitimate disabled people's experiences of disablist hostility and abuse. There are arguably two elements to this legislative 'disappearing' (Haynes and Schweppe, 2017, p.17). Firstly, the disparity in current protections that exist across identity categories which construct disabled people and disability as secondary compared to more well-recognised or 'visible' categories of race and religion. Secondly, the way in which current provisions and legislative terminology – that is, definitions of 'what abuse is' (Browne *et al.,* 2011, p. 747) - fail to bring into view hate-based harms as they are enacted against disabled people in their everyday lives. These issues,

described by Inclusion London (2020, p.6), in its submission to the consultation as ‘‘parity’ and ‘clarity’’, are also at the heart of debates about the proposed Irish legislation.

One of the key rationales for undertaking the Law Commission (2020) review was the recognised lack of equity of protection between different identity categories – including disability - in current legislative provision. As the Commission writes: ‘We remain of the view that we expressed in our 2014 report that the current hierarchy of protection is unfair and sends a distinctly negative message to victims of hate crimes on the basis of disability, sexual orientation and transgender identity’ (Law Commission 2021a, p.320). Disabled people and their organisations have been vocal about this lack of parity in hate legislation and its effects (see for example Disability Rights UK, 2022). As expressed by Stay Safe East (2020, p.10), an organisation run by disabled people to support deaf and disabled victims/survivors of hate crime and abuse, this includes not just the symbolic message that it sends that disablist hostility is somehow of lesser importance, but also its material effects, such that there is ‘little incentive for police to gather evidence’ given that disability hate crime is only dealt with at sentencing stage. They and others have long argued for equity across characteristics, noting also in practical terms that ‘streamlined legislation would also provide a framework to help police and other professionals who deal with hate crime (p.10-11).

Reflecting this argument and the need for equity as a ‘fundamental reform’ (Law Commission, 2021a, p. 319), the Law Commission recommended extending the protections of aggravated offences and stirring up hatred offences to all five categories of protected characteristics, also proposing that all hate crime provisions be contained in a single Act. This ‘streamlined approach’ is arguably more present in Ireland’s Criminal Justice (Incitement to

Violence or Hatred and Hate Offences) Bill 2022, where disability is named as one of ten named characteristics across all provisions in the legislation – from aggravated offences, to sentencing and hate speech. In both cases then, the proposed reforms potentially seek to mitigate against a 'hierarchy of hate' and appear to offer a way of addressing some of the dividing effects of hate crime legislation which has been critiqued for appearing to set different identity categories and communities against each other in claims for legitimacy (Neller, 2018).

The second, and somewhat more complex issue, relates to the way in which hostility, harassment and abuse against disabled people exceeds those definitions laid down in legislation, and thus is often rendered invisible in the context of reporting and prosecution. As Neller (2018) and others have highlighted, hate crime legislation's essentializing imperative creates ideas of both what hate abuse looks like, but also who the ideal victim is (see for example Mason-Bish, 2018). On both counts, disabled people's complex experiences of hate encounters – from harassment and abusive acts which happen at the boundaries of public and private space, to those which involve known others, and incidents which involve long-term exploitation, often of finances or property (see also Macdonald et al in this volume) – frequently fall foul of taken for granted understandings of hate crime embedded in legislation.

This concern was acknowledged by the Law Commission (2021a, p.367), which stated that 'compared with the crime experienced by other protected groups, the presence of hostility is often less apparent or more difficult to prove. This is partly because pervasive negative attitudes towards disabled people are often characterised by derision, contempt, and a perception that they are 'easy targets'. For Walters *et al.* (2017, p.177), at the heart of this issue is 'the meaning of "hostility" (see also the Introduction to this volume) and how a literal

interpretation of this word has failed to include targeted abuse towards someone's disability'; this was echoed by the Foundation of People with Learning Disabilities who stated in the consultation that 'the use of the word 'hostile' is a major barrier to prosecuting learning disability hate crime' (cited in Law Commission 2021a, p.368). To this end, the Law Commission (2021a, p.370) proposed amending the wording in the motivation test to ask 'whether the crime was motivated by "hostility or prejudice" towards the protected characteristic', as a way of reflecting the more subtle and hidden forms of hate experienced by disabled people. Whilst many DDPOs agreed with this addition, others felt it did not go far enough. Some advocated adding the word 'contempt' as a more accurate description of the discrimination underpinning many incidents of disablist hostility. However, the Law Commission (2021a, p. 375-6) stopped short of this word change, arguing that 'A significant proportion of the criminal offending against disabled people is characterised by contemptuous attitudes and behaviour towards them. However, in our view, such a further expansion is unnecessary as it is difficult to conceive of a "contemptuous" motivation towards a characteristic that could not also be described as prejudicial or hostile'.

These linguistic debates about how hate should be recognised have also been raised in relation to Ireland's Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022. Currently, the Bill uses the term 'hatred' throughout, defined as 'hatred against a person or group of persons in the State or elsewhere on account of their protected characteristics or any one of those characteristics' (Oireachtas Library & Research Service, 2022, p.31). Such an open definition, which refers to 'hatred' rather than 'hate', has been critiqued by CAHC (2023, p.2) for failing to meet international 'best practice', where hatred tends to be used in the context of hate speech, and hate used in terms of hate crime. They have therefore recommended that a new definition of hate be introduced, defined as, ''Hate'

includes bias, prejudice, contempt, hostility and bigotry' (CAHC, 2023, p.2). This recommendation was also made by the Joint Committee on Justice's pre-legislative scrutiny, which advised adding the word 'contempt' to any definition of hate, 'aimed at allowing for a broader framework to address instances of hate crime against disabled individuals' (Houses of the Oireachtas, 2022, p.7). To date however, the government has failed to amend the Bill, arguing that it will be up to the courts to determine what hatred means in a particular context (Hamilton, 2023; Taylor, 2023).

This definitional wrangling is concerning as years of international evidence – including from England and Wales - have shown that the police, judiciary and wider society have difficulties in constructing abuse against disabled people as hate or even hatred. Thus, whilst the Law Commission's (2020, 2021a) consultation and recommendations draw attention to the vital importance of the nuances and specificities of language in determining disablist hate, the Irish government is seeking to introduce a 'catch all' approach and definition of hate that it hopes will be given meaning and interpreted across all protected identity categories. That it will rely on judicial interpretation is however concerning in a country context where paternalistic attitudes still tend to dominate understandings of disability in the justice system, and where disabled people's voices have been silent in the space of hate crime policy (Edwards *et al*., 2012; Cusack *et al*., 2022). Indeed, it is notable that while the Department of Justice held one consultation meeting with some national disability organisations, very few DDPOs made submissions to the public consultation and no disabled people or DDPOs were asked to appear at the Joint Committee on Justice hearings. There is a serious concern therefore that despite the parity afforded to disabled people as a protected category in the new legislation, their differentiated experiences of harassment and hostility will be lost from the process by an ill-defined understanding of 'hate'.

Looking beyond the law: the socio-political relations of hate and hate crime policy

The challenges with disabled people's (in)visibility and issues of definition outlined above must also be understood in the context of the wider socio-political relations, structures and attitudes within which hate crime policy is developed and enacted. Whilst recognising the importance and necessity of criminal justice responses which focus on the reporting and prosecution of hate, Hall (2022, p.260) suggests such an emphasis may fail 'to address deeply-embedded challenging issues of exclusion and discrimination' which perpetuate hate behaviours. To this end, he proposes a socio-ecological response to hate, which recognises the need for a range of scales and types of intervention to address and prevent hate-based harms, in conjunction with, but also beyond, the justice system.

The evidence and recommendations presented in the Law Commission's (2021a, 2021b) report and submissions from organisations bear witness to the significance of these wider socio-structural relations. Of particular importance are the institutional structures and actors of the criminal justice system itself – including judges, barristers but also the police – which affect how hate crime legislation law is understood and implemented. As the Law Commission (2021b, p.26) states in its report on the consultation, 'many of the greatest concerns raised with us were related to the implementation of the law in practice'.

A range of studies in England and Wales have demonstrated the significant challenges with getting key actors within the justice system to take disablist hate crime and indeed, disabled people, seriously. Walters *et al.* (2017, p.171) in his review of disability hate crime prosecution states that 'both the police and judges came in for consistent criticism' in relation to their failure to recognise and identify hostility in relation to cases involving disabled people (see also CJJI, 2013). Similarly, Stay Safe East (2021, p.6) write in their submission

to the consultation: ‘There is ample evidence that whilst hate crime against disabled people is now recognised at national policy level, on the ground disabled people meet with whole unsatisfactory responses from the police and other criminal justice agencies, local authorities and other public bodies’. Noting their own challenges of engaging with police, for example, they state: ‘Stay Safe East’s experienced advocates report hate crime on behalf of clients to the police and regularly find themselves having to argue that these are indeed hate crimes (p.7). Such experiences bear witness to the need to not only change attitudes and practices towards disability and disabled people within the criminal justice domain, but also wider society. To this end, one of the issues considered in the consultation - and which was subsequently recommended - was the establishment of a Hate Crime commissioner who could monitor legislation, raise awareness of hate crime in society more broadly, implement educational initiatives and explore non-criminal justice responses to hate crime (Law Commission, 2001a, 2001b).

Recognition of the need to address the wider societal contexts in which hate takes place and hate crime law is enacted is also evident in Ireland’s consultation exercise. The Department of Justice’s (2020, p. 48) report on the public consultation stresses as one of its conclusions that criminal law should be a ‘measure of last resort’ and that preventative non-criminal measures, such as education and awareness-raising are vital in any approach to tackling hate crime. Civil society groups in Ireland have been unanimous in stating that a broader societal response is required to address hate-based harm. The report from the Joint Committee on Justice’s pre-legislative scrutiny of the Bill, at which civil society organisations and academics gave evidence, for example, notes that ‘witnesses emphasised that the legislation alone will not be enough to address the wider societal issues surrounding racism, prejudice, issues of institutional discrimination and the hesitancy of those from minority communities to report hate crimes’ (Houses of the Oireachtas, 2022, p.27). The CAHC has been particularly

vocal in calling for the introduction of an Action Plan Against Hate which would bring together multiple stakeholders to devise and deliver specific actions aimed at data-gathering, education, awareness raising, and victim support.

The need for an 'all of society' approach in Ireland is patently obvious in the somewhat shocking finding from the consultation report which highlighted the significant experiences of prejudice experienced by minority groups from those in authority:

> *The lived experience as reported by participants in this consultation included many, many reports of a first experience of hate speech at the hands of a person in authority such as a primary school teacher, a healthcare professional, an immigration official or other interaction with a professional. This clearly speaks to the need for professional training in bias and the harm of hate speech, which is outside the scope of the criminal law* (Department of Justice, 2021, p.48).

For disabled people, these reports of prejudice and ignorance are perhaps unsurprising. To take their relationship with the criminal justice system as victims of crime as one example: what little research exists in Ireland demonstrates that members of the Gardaí (Ireland's national police force) and indeed judiciary have little understanding of disability, receive limited training and often fail to accommodate deaf and disabled people's support requirements (such as the need for an Irish Sign Language Interpreter or other communication supports) (Cusack *et al.,* 2022; Edwards *et al.,* 2012; Edwards, 2014; Edwards and Maxwell, 2019). Reflecting international research, this leads to a reluctance on behalf of disabled people to contact and engage with the Gardaí for fear that they will not be

taken seriously, with a deleterious effect on disabled people's access to justice (Edwards and Maxwell, 2019).

These issues and concerns were reflected in findings from the Department of Justice's public consultation meeting with disabled people and DDPOs , which noted that 'the Gardaí were raised as a key target for training' (Charlton *et al.,* 2020, p.28). The report also stated that 'the difficulties in reporting hate speech and/or crime was highlighted and the need for accessible information' (p.28). At a broader societal level, disabled participants in the consultation called for awareness raising work with disabled people themselves, as they felt they might not be aware of, or understand, what hate speech is. They also identified a need for campaigns in particular spaces where they had experienced incidents of abuse, particularly on public transport (see for example, Wilkin, 2022), and called for 'adequate funding for wrap around services' to support the legislation (Charlton *et al.,* 2020, p.30). As is apparent therefore, many of disabled people's concerns relate to the wider social, political and indeed material contexts within which hate crime legislation is to be introduced, and which as yet, appear to be unspecified in any accompanying hate crime action plan.

Conclusion

In this chapter, I have sought to bring together legislative developments in two jurisdictions to explore some of the conceptual and practical issues shaping future policy responses to disablist hate. While England and Wales, and Ireland are at significantly different stages in their trajectory in addressing hate and hate crime, my discussion indicates the enduring challenges of hate crime legislation which seek to generate and ascribe particular victim subjectivities based around the idea of hate and hostility (Mason-Bish, 2018; Neller, 2018). Hate crime law is based on a complex intertwining of multiple definitions – of disability and

of hostility or hate – which can at once render disabled people visible in the law but also cause them to recede from view. Thus, whilst the proposed Irish legislation makes disability an identity category on a par with other protected characteristics, based on international evidence, there is a risk that a lack of a nuanced definition of hate will lead to a failure of the justice system to recognise and make visible the differentiated ways in which disablist hostility takes place. Built on a history of inequity between identity categories, it is hoped that the Law Commission's (2021a) recommended reforms – in particular the addition of the term 'prejudice' as a basis for motivation, and the recognised parity of disability as a protected category – will address some of the challenges and shortcomings of current legislation. Nevertheless, this will only happen if wider institutional structures and actors within which the law is embedded respond to, support and resource the implementation of these reforms.

One of my concerns in this chapter has been to question the dominance of criminal justice approaches to hate and recognise the need to 'reclaim the term 'hate' as both an inter-subjective lived experience and as a structural, spatial and situated process' (Hall *et al.,* 2022*,* p.27). To this end, hate crime law and policy cannot be understood as separate from wider socio-political relations within which they are situated. My analysis suggests that there is still much 'societal work' to be done in a range of spaces – in communities, schools, in the media and so on – to challenge discriminatory attitudes and abuse in addressing hate-based harms experienced by disabled people. A practical question remains however as to who will do this work. What is clear from the context of England and Wales is the particularly significant role that DDPOs have taken up in providing victim/survivor services, working in partnership with local police forces, lobbying for policy change and undertaking preventative educational work around disablist hate crime (see for example, Department for Work and Pensions (DWP), 2012). These responses reflect the way in which communities

themselves hold expertise in responding to hate-based harms and can provide spaces of peer support which recognise the nuances and complexities of experiences of hostility and abuse (Browne *et al.,* 2011). However, these forms of community-building also require support and resources, as the submissions from DDPOs to the Law Commission's (2020) consultation articulate.

In the current context of Ireland's disability sector and DDPOs , it is difficult to see how such substantive forms of peer-based support can currently be developed given the parlous state of funding and the other pressing concerns facing these organisations, not least the fight to obtain personal assistance to enable independent living. Within the State, some unfunded, voluntary groups such as Disabled Women's Ireland has started to address issues of abuse and violence; they have argued that 'public awareness campaigns should be co-developed with and led by disabled people and their DDPOs, to combat anti-disability stigma, violence and abuse' (DWI, 2023, p.2). While there is a slow and steady recognition of the incidence of violence amongst deaf and disabled women (see for example Bartlett and Mears, 2011; Disabled Women Ireland, 2023), there are no organisations in Ireland that work specifically with disabled people who have been victims of crime, or indeed hate crime. There is, therefore, a pressing need to both engage with, and resource,DDPOs if hate crime legislation is to enable disabled people's right to live safely in the community, and not to be introduced into a vacuum abstracted from their everyday lives.

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