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Getting the message?

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Abstract

Hate crimes, it has been said, are 'message' crimes to which society needs to respond using the most powerful and unambiguous means of communication at its disposal, the criminal law. Using empirical data collected in the course of research conducted by the authors on racially motivated violence and harassment in North Staffordshire, this article sets out to interpret the messages about hate crime sent to perpetrators, and people from their local communities, by the creation, in the Crime and Disorder Act 1998, of a new category of racially aggravated offences. To this end two possible anti-hate crime messages and three potential audiences are identified and evaluated in the light of data generated from biographical interviews with perpetrators and focus group discussions with other local people in and around the city of Stoke-on-Trent. Our conclusion is that the supposedly clear deterrent and denunciatory or declaratory messages contained in the 1998 Act are either drowned out or distorted by other signals coming from successive 'New' Labour governments about crime, immigration, nationality and 'community cohesion', and by the highly idiosyncratic and unpredictable ways in which they are mediated and interpreted by their intended recipients.

Key Words

Crime and Disorder Act 1998 • hate crime • racially aggravated offending

Introduction

Hate crimes, it has been said, are 'message' crimes (Burney and Rose, 2002: ix; Iganski, 2002: 135; Lawrence, 2002: 38). They result in (often severe) physical and psychological damage to individual victims. But they also speak to many others who share the victim's 'race', ethnicity, sexual orientation or religious beliefs. The message is that they could be next, that they should know their place. And this is not all, for hate crimes also represent an explicit rejection of the foundational values of a diverse society. They are, in effect, an attack on all citizens who subscribe to those values. To deal with this uniquely expressive form of offending, society needs to send an equally forceful and unambiguous message in reply and, for advocates of hate crime legislation, the criminal law is an important, if not the only, suitable means of communication (see Hare, 1997: 417; Jacobs, 1998: 169, 2002: 483; McLaughlin, 2002: 497 for debate on the communicative function of law in the context of legislation on hate crime).

The aim of this article is to disentangle the messages sent by the anti-hate crime provisions of the Crime and Disorder Act 1998 (CDA or the 1998 Act) and to see how they were received by a group of young offenders in North Staffordshire. With this in mind the article begins with a short history of hate crime in the wider context of 'New' Labour's policies on immigration, race equality and community cohesion. A second section reviews some of the literature on hate crime in an effort to identify the messages that legislation such as the CDA might be attempting to send, and the audiences for whom they might be intended. We then go on to provide a general overview of our own research on racially motivated offending in North Staffordshire before looking in more detail at the messages sent out by the law *in practice*, and how they were received by a group of young offenders undergoing a programme of intensive supervision and surveillance (ISSP) at a centre run by a voluntary sector service provider in Stoke-on-Trent.

Hate crime: a history

American origins

The origins of anti-hate crime legislation in the United States can be traced back to the success of the civil rights movement in the 1960s and effective lobbying at county level during the 1970s (Jenness, 2004). The first nationally significant piece of legislation only came a decade or so later when President George Bush Senior signed the Hate Crime Statistics Act into federal law in 1990. As Valerie Jenness and her colleagues (Jenness and Broad, 1997; Grattet and Jenness, 2001) have shown, hate crime was forced on to the legislative agenda largely through the efforts of radical social movements involving black people, peace activists, women, gays,

lesbians and people with disabilities working together with the markedly more conservative victims' rights lobby under the aegis of the 'Coalition on Hate Crime Prevention'. The Hate Crime Statistics Act was followed in 1994 by a federal Hate Crime Sentencing Enhancement Act, reinforced at state level by similar legislation dating back in some cases to the 1980s. However, in the process of ensuring that statistics on certain types of (usually racially motivated) hate crime were collected, and that those convicted of such offences were sentenced more severely, the original coalition of interest groups fell apart. Thus, for example, neither the federal Hate Crime Statistics Act nor the Sentencing Enhancement Act covered offences involving domestic violence. The scope of the anti-hate crime laws in force in the United States today varies from jurisdiction to jurisdiction: virtually all laws cover race and/or ethnicity; many also include religion; and some sexual orientation, gender and/or other characteristics as well (Perry, 2001; Lawrence, 2002).

The sudden popularity of legislation permitting, if not requiring, sentencers to be more severe on those convicted of hate, or—to use the more measured language favoured by legal scholars such as Frederick M. Lawrence (1999, 2002)—bias-motivated crime, has not gone unchallenged in a country that was (and still is) the most punitive in the western world. The most comprehensive and sustained critique of the concept of hate crime, and of the fashion for attempting to control it other than by means of the ordinary criminal law, has come from James Jacobs (1998, 2002; Jacobs and Potter, 1998). Apart from doubting the empirical evidence adduced to support the claim that the USA is suffering a hate crime epidemic, and questioning whether the recent rash of legislation has had any discernible impact on either the incidence or severity of hate crime, Jacobs has argued that—far from binding up the wounds of American society and affirming the nation's commitments to pluralism and diversity—hate crime laws depend on divisive constructions of identity, and have led to 'charges about double standards and hypocrisy in the way that some crimes and not others are labelled' (Jacobs, 2002: 484). Our findings offer some support to Jacobs' observation about the essentializing tendencies inherent in hate crime laws. But they also suggest that the introduction of anti-hate crime legislation in England and Wales in the form of the CDA may encourage those involved in this type of offending to believe that that they are not so much hate crime perpetrators as the unfortunate victims of law enforcement agencies biased in favour of minority ethnic groups.

'Hate crime' comes to Britain

The history of British attempts to outlaw hate in the interests of better 'race relations' dates back some 40 years to the Race Relations Act 1965 and the amendment of the Public Order Act 1936 to create a new offence of 'incitement to commit racial hatred' (Malik, 1999: 414). However it was

not until the late 1990s that the term 'hate crime' came into popular usage in the UK. It was also during this period that the incoming 'New' Labour government moved to create a new class of racially aggravated offences carrying enhanced sentences, including higher fines and longer periods of imprisonment. That a court was already required to treat proof of racial motivation as an aggravating factor in sentencing an offender had been conclusively established by the Court of Appeal three years earlier in the case of *R v. Ribbans*, *R v. Duggan*, *R v. Ridley*,[1] but the new government was determined to go further and sections 29–32 of the Crime and Disorder Act 1998 provided that, where one of a number of 'basic offences' involving assault, criminal damage to property, harassment and public disorder, could be shown by the prosecution to have been 'racially aggravated', a higher maximum penalty would apply.[2] Meanwhile, section 28 of the CDA provided that an offence is racially aggravated if:

1 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 group; or
2 the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.[3]

Three things need to be said about the hate crime offences created under sections 28–32 of the CDA. The first is that some of the 'basic' offences listed in the Act—common assault and disorderly behaviour contrary to section 5 of the Public Order Act 1986 are the two obvious examples—are relatively trivial and would normally attract no more than a moderately stiff fine or a short term of imprisonment. Thus, though it is important not to underestimate the impact of even apparently minor infractions on the victims of racially motivated crime, it is evident that the 'basic' offence for which a racially aggravated offender has been convicted may not in itself be especially serious. The second point to note is that, as Maleiha Malik (1999) argued shortly after the 1998 Act was passed, it may not always be safe to treat the use of racist language or symbols (such as a swastika) as conclusive evidence of the racial (or religious) 'hostility' required by section 28 when its use is viewed from the *subjective* position of an offender who has assimilated and articulated attitudes prevalent in his or her community.[4] According to Malik (1999: 423), considerable care would be needed if the new law was to find support in such communities by distinguishing 'between "acceptable" racist views and stereotypes and the violent behaviour of the perpetrators of serious racist crime'.[5] The third and final point is that the post-CDA case law on racially aggravated offending has made it clear that section 28(1)(a) was, in the words of Mr Justice Maurice Kay in *DPP v. Woods*, 'not intended to apply only to those cases in which the offender is motivated solely, or even mainly, by racial malevolence'. On the contrary, as the Court held in *DPP v. M*, section 28(3) makes it clear that it is immaterial for the purposes of section 28(1)(a) or (b) whether the

offender's hostility to the victim is also based to any extent on a factor other than his or her membership of a racial or religious group.[6] In practice, the courts have tended to treat language such as 'bloody foreigners'—the epithet used by the defendant in *DPP v. M* in the course of an argument over payment for food with the Turkish chef in a takeaway kebab shop—as sufficient evidence of racial hostility for the purposes of section 28(1)(a) without pausing to consider the particular social context in which it was used (Burney, 2003).[7]

'Hate crime' in context

Paul Iganski has remarked that there were 'few objections and little academic debate' (1999: 386) about the 'hate crime' provisions of the CDA 1998. Although, as we shall see in a moment, a critical literature has emerged over the seven years since the CDA was passed; Eugene McLaughlin spoke for many in arguing that, notwithstanding the problems identified by Jacobs and others,

> hate crime legislation must be seen as an important part of the ongoing process of identifying and articulating the values, sensibilities and ground rules of vibrant, multicultural societies, including the public recognition and affirmation of the right to be different.
>
> (2002: 497)

We want to postpone further discussion of that critical literature until it becomes directly relevant to the data we have collected in the course of our own work in North Staffordshire. But before we turn to our research, it is important to see the CDA's criminalization of hate as just one of a number of policy initiatives in the field of what the Home Office (2005) continues to call 'race equality'. So, for example, in its latest, pre-election, strategy *Improving Opportunity, Strengthening Society*, the Government promises to 'step up our work to further reduce racially motivated offending' (Home Office, 2005: 49), among other things by ensuring that racially and religiously aggravated offences are vigorously prosecuted and—'tough on crime, tough on the causes of crime'—helping to address 'the underlying drivers of racist behaviour' (2005: 50). Significantly, this commitment is contained in a chapter on 'building community cohesion' which also talks about the need for an 'inclusive sense of Britishness', the essential elements of which are 'respect for others and the rule of law', 'tolerance' and 'mutual obligations between citizens' (2005: 42). Apart from 'helping to ensure that racism is unacceptable' (2005: 48) and 'marginalising extremists who stir up hatred' (2005: 50), other sections of the chapter are concerned with 'helping young people from different communities grow up with a common sense of belonging' (2005: 43) and 'helping immigrants to integrate into our communities' (2005: 45). Thus the criminalization of hate by the CDA 1998 is seen as contributing to the creation of the cohesive communities—and a nation united in its sense of Britishness—that has

become the leitmotif of 'New' Labour rhetoric since the urban riots (or uprisings) of 2001.[8]

Seen in the wider context of government policy on immigration, asylum, nationality and criminal justice the response to the disturbances in Oldham, Burnley and Bradford in 2001 has been contradictory, even quixotic. So, and only by way of example, the criminalization of hate has been accompanied by: the no less energetic—and arguably more successful—criminalization of those involved in the 'riots' (McGhee, 2003, 2005: ch. 2); the continuing, post-Macpherson manifestation of 'state racism' in the use of police powers of stop and search and the reform of the criminal justice system (Bridges, 2001); the growing stridency of 'New' Labour's 'xeno-racist' (Sivanandan, 2001) rhetoric on immigration and asylum, and the increasingly draconian steps taken to reduce the number of people permitted to take refuge in Britain (Kundnani, 2001); and, finally, the promotion of an ostensibly inclusive notion of Britishness that claims to privilege 'no one set of cultural values' (Home Office, 2005: ch. 4, para. 4) yet, at least in the formulation of the former Home Secretary David Blunkett (2005), is strengthened by the celebration of an admittedly personal, but also breathtakingly constricted, 'English identity' more redolent of 1955 than 2005.

Getting the message? Interpreting anti-hate crime laws

What we are suggesting here is that the 'message' of the CDA is only one of many communications competing for attention amid the clamour of government policy on a much wider range of issues than the criminalization of hate. If, as McGhee (2003, 2005) argues, the severity of the sentences meted out to Bradfordian rioters of South Asian heritage seemed calculated to send a 'clear message to the community', what exactly is it that the enactment and enforcement of sections 29–32 of the 1998 Act is intended to say to the perpetrators of racially aggravated crime, their victims and the public at large? Following Paul Iganski's (1999) helpful dissection of the reasons for making hate a crime, it is possible to make out two possible messages and three potential, but not necessarily mutually exclusive, audiences. The first of the messages contained in the CDA is concerned with deterring future offending, the other with denouncing past wrongdoing. And the possible audiences are made up of: individual offenders; the general public (including victims and their communities as well as those at risk of offending); and, finally, the individuals and institutions that make up the criminal justice system. The nature of our research and the data it has generated mean that we will have more to say about some of these message/audience combinations than others, but we will at least touch on all the more plausible possibilities in what remains of this article.

The research in North Staffordshire

First, however, we must say a little more about these data, and the two-year, Economic and Social Research Council-funded study from which they derive.[9] The main aim of the research was to study the social contexts in which racially motivated crime takes place and the motivations of those responsible for committing it.

Biographical interviews

After a period of consultation with local agencies working with minority ethnic groups and both the victims and perpetrators of racially motivated offending, we conducted in-depth biographical interviews with 15 people convicted of, or implicated in, some form of racially motivated violence or harassment using the free association narrative interview method developed by Wendy Hollway and Tony Jefferson (2000). Fourteen of our respondents were interviewed twice, and the 15th was spoken to on three occasions. Thus we conducted a total of 31 separate one-to-one interviews. The sample we selected was drawn for reasons of both convenience and theoretical interest. It comprised people who had been prosecuted for racially aggravated offending as well as those who had not; people who had been physically violent as well as those who had been only verbally abusive; and people who admitted to having some sympathy with the politics of the far right as well as those who had none. It would therefore be a mistake to draw inferences about the general shape of the perpetrator population from our sample, and we use the term 'perpetrator' here in a very broad sense so as to include 'harassers' who had not been convicted of any unambiguously criminal conduct. Having said that, we believe that our respondents' experiences, and their reflections on those experiences, can be used to illustrate some of the ways in which the messages contained in anti-hate crime legislation can be distorted, even lost, in transmission.

Focus group discussions

In order to set the biographical experiences of our interviewees in their proper social context, we also conducted a series of 14 discussions with naturally occurring groups of between four and nine people drawn from parts of North Staffordshire that included, but were not limited to, the city of Stoke-on-Trent and were roughly congruent with the areas from which our sample of perpetrators originated.[10] We decided to talk to groups of people—including members of a local residents association, mothers involved in a support group for parents of pre-school age children and young people using two neighbourhood youth centres—who shared some common experience, and already had a relatively well-established set of relationships with each other, in order to hear (and see) them interact in a familiar social context, thus overcoming some of the artificiality inherent in the focus group discussion method. The price of this relative normality was

that the talk that did take place in our focus groups—who said what and when—was structured by, and has to be interpreted in the light of, the relationships and status differentials that already existed, and would continue to exist after the discussion was over, between group members. Again it would be naïve to assume that the participants were completely representative of the population of North Staffordshire, or even of that segment of the population that might share either the group's general demographic profile (e.g. age, gender, ethnicity), or any other characteristic (e.g. recent experience of unemployment or involvement in criminal behaviour). What we can say, however, is that the attitudes and opinions of the group of six young white male offenders we concentrate on in this article were broadly replicated across the other three groups of young white people, both male and female, with whom we spoke during the course of our research.[11]

Getting the message? Anti-hate crime laws in action

Impetus for the criminal justice system

The first message/audience combination we want to consider here is the possibility that the racially aggravated offences introduced by the CDA might, in Iganski's words, provide the agencies involved in the criminal justice system with 'not only the means, but also the impetus, for a more effective response to [racially aggravated] incidents' (1999: 390). In fact, as he went on to suggest in his conclusion, Iganski (1999: 393) believed that the invigorating effects on the criminal justice system of the special denunciation of racially aggravated offending implied by the creation of the new offences might prove the legislation's most valuable and enduring legacy. Now it seems to us that, even if the CDA has encouraged the police and the rest of the justice system to take racially aggravated offending (more) seriously, it is hard to justify using the criminal law to send a hortatory message to institutions and individuals that have been charged with enforcing it but, by implication, are failing to do so. The difficulty here is that, in practice, this message/audience combination operates only by further criminalizing people who are already seriously disadvantaged in a number of ways, not least by virtue of their previous contacts with the criminal justice system.

Let us use our own data to illustrate the point. The first thing that needs to be said is that, taking our sample of 15 perpetrators as a whole, criminal justice outcomes in the form of a conviction for one or more racially aggravated offences were poor indicators of racist attitudes: some of the least racist interviewees had convictions for racially aggravated crimes; some of the most racist had none. If the criminal justice system has indeed been sensitized to racially aggravated crime by the CDA, its response to these legislative promptings seems distinctly arbitrary. Of the eight interviewees who had been charged with a racially aggravated offence, five were

white but three came from minority backgrounds. And of these three, one, a young man of Pakistani descent we will call Shahid, had been found guilty of a racially aggravated public order offence in the course of a confrontation with the police; a second, a young man from a Bangladeshi family (Kamron), had been convicted of assaulting a fellow pupil at a local school whom he suspected of writing racist graffiti on a wall; and the third, a lesbian woman (Emma) in her late 20s of mixed heritage (she identified her nationality as 'Afro-Caribbean') had committed a number of racially aggravated offences after exchanging a series of racial and sexual insults with a Pakistani shopkeeper. Apart from having to put up with routine abuse about her sexuality, Emma's many problems included a history of mental illness, self-harm and alcohol abuse while Kamron, against whom charges of racial aggravation had eventually been dropped after he had spent eight months in custody awaiting trial, was a regular cocaine user. Many of the five white interviewees charged with a racially aggravated offence had similar problems to their minority ethnic counterparts. Thus Alan, a man in his late 30s, had experienced a number of psychotic episodes over several years and claimed to have no recollection of assaulting and racially abusing an Asian taxi driver as a result of his illness. Carl meanwhile, though only 25, was a chronic alcoholic who had been drinking since the age of 12 and had got into trouble after calling a policewoman a 'dyke' and a 'black bitch' in the course of a drunken scuffle with her and seven other officers. Carl's drinking had brought him into adversarial contact with the police on numerous previous occasions and he felt a deep sense of resentment at the way in which he had been (as he saw it) falsely accused and unjustly convicted of crimes in the past.

The picture that emerges from our research is that the anti-hate crime provisions of the CDA may be used against (often multiply) disadvantaged people, including individuals from minority ethnic backgrounds. Indeed, on occasions, as the experiences of Shahid and Carl suggested, charges of racial aggravation may be used as a resource by the police in dealing with particularly troublesome individuals who, for various reasons, fall into the category of 'police property' (Lee, 1981). Similar data to our own has been collected by Burney and Rose (2002) and by Ray and colleagues (2003), and leads us to argue that the further criminalization of already disadvantaged and marginalized people is too high a price to pay for creating the impression that the criminal justice system is taking 'race equality' seriously, particularly in the absence of convincing evidence that the incidence of hate crime has fallen since the 1998 Act came into force.

Specific and general deterrence

The second and third message/audience combinations considered by Iganski (1999: 387–8) concern the specific (or individual) and general deterrent effects of providing enhanced sentences for racially aggravated offences. As Iganski notes, the critical factor here is the *marginal* deterrent

effect of the amount by which the sentence for the 'basic' offence is enhanced following a finding that it was racially aggravated. The deterrent effect of the CDA thus inheres not in the total sentence of, say, 27 months' imprisonment a defendant might receive for a racially aggravated assault, but in the *additional* 9 months s/he might be given over and above the sentence that would have been imposed for the 'basic' offence.[12] For reasons to do with the theory and practice of specific and general deterrence ably summarized by Andrew Ashworth (1998: 44–52), Iganski is right to be sceptical about the likely deterrent effects of such marginal increases in sentence severity on either the individuals who receive them, or generally on the public at large. We are equally sceptical and only add a few observations about general deterrence here because, as the following extracts show, some of the participants in our focus group of young offenders had strong opinions about the way in which racism was used and interpreted by people from minority ethnic groups and the police as gatekeepers to the criminal justice system.

In the first extract, the dominant and most articulate member of the group, a 17-year-old we will call Ben complained that people he described as 'Pakis' get away with racially abusing white people like him in circumstances in which, if he were to use similar language, he would be in trouble with the law.

> Ben: The police don't see it as racism if they call us 'white boys', you know what I mean? Or 'homeboy' . . . or whatever . . .
>
> Luke: . . . or 'redneck' . . .
>
> Ben: Yeah . . . 'redneck'. But if we go around . . . say I walked up there now and I saw a Paki . . . they'd be after you [. . .] and I said, 'Oi, Paki', they could get me done for racism, mate, or slander, or whatever they wanted to, mate. But if they come up to me and they're like, 'Oh, white boy, redneck', and all this, like, you just see it as an offence, but you wouldn't go out and ring the police would you? But even if the police heard 'em saying that they wouldn't do nothing. I been there before, mate, when the police have heard them calling me 'white boy' and that, and I've never said nothing back because I know I can get in trouble for it. But it's one rule for one and one for another.

Later in the discussion Ben explained why he was always getting involved in fights with 'mates, associates, friends', but tried to avoid confrontations with 'Pakis' for fear of violent retribution from their friends:

> Ben: . . . I never fight a Paki. That's for the simple reason that, if I beat one, then the rest are going to come. [. . .] What I say is, if they come to me, then they're in my space at the end of the day . . .
>
> Gary: . . . if you hit fucking one, that's it . . .
>
> Ben: . . . but if they don't come to me, I don't go looking for trouble with them.

> Dale: They all come looking for you, man.
>
> Ben: [. . .] I don't like 'em because then you are going to have a lot of shit on your head . . .
>
> Gary: You hit one, that's it, mate . . . fucking. . . .
>
> Ben: Do you know what I mean? If it's shit hits the fan, you're going to get covered then, aren't you? If you don't go looking for it . . . but if they come to you, then you do what you can.

This second extract indicates that, although Ben made no attempt to disguise his dislike of 'Pakis', he was also astute enough to recognize that the kind of drink and/or drug-fuelled violence he routinely used in gaining and retaining the respect of his 'mates' could get him into serious trouble if deployed against people who could count on their own kind to exact swift and painful revenge. Taken together, these extracts suggest that Ben was deterred from acting on his dislike for 'Pakis' at least in part because of the ease with which 'they' could represent a confrontation as 'racist' and the seriousness with which he believed such allegations would be viewed by the police. However, the extent to which the deterrent effect of the prospect of official sanction was the result, either direct or indirect (via its impact on the police), of the sentence enhancement provisions of the CDA, is hard to estimate. For our part, we suspect that Ben's anxieties stemmed not from any fears about receiving a more severe sentence but from the kind of system effects that Ashworth (1998: 51) attributes to the existence of the 'institution of legal punishment', reinforced by a vague, but not unrealistic (Burney, 2003), awareness of heightened police sensitivity to 'racist incidents' in the wake of the report of the Macpherson Inquiry (1999).

Denunciation effects

The third set of message/audience combinations we want to consider here relates to what Iganski (1998: 388) and McGhee (2005: 8) describe as the 'declaratory value of legislation' such as the 1998 Act. For many commentators the criminal law is perhaps uniquely capable of delineating the boundaries of tolerable behaviour (Hare, 1997: 417). Anti-hate crime laws also reflect the stress placed on 'legal forms of regulation and integration' as the basis for modern, pluralistic social orders according to both the Durkheimian and Weberian traditions in social theory (Ray and Smith, 2001: 206). Thus, as the Association of Chief Police Officers put it in their response to a Home Office consultation document on what became sections 28–32 of the CDA:

> The legislative changes will do much to reinforce the seriousness with which the vast majority of members of our society view crime and conduct motivated by racial hatred. It will send out important messages to perpetrators and victims alike, that racist violence and harassment will not be tolerated and that positive action will be taken where this is exhibited.
>
> (quoted in Iganski, 1999: 389)

The extent to which the CDA speaks to the victims of racially aggravated crime was beyond the scope of our research, but it is important to point out that, as we have seen, its provisions are a distinctly double-edged sword, and it cannot be assumed that the victims of racially aggravated crime will always come from 'previously subordinated or marginalized groups' (McLaughlin, 2002: 497) and the perpetrators from among the ranks of the dominant and the powerful. What Valerie Jenness calls the 'norm of sameness' means that, in Britain as in the United States:

> Hate crime laws are written in a way that elides the historical basis and meaning of such crimes by translating specific categories of persons (such as Blacks, Jews, gays and lesbians, Mexicans, etc.) into all-encompassing and seemingly neutral categories (such as race, religion, sexual orientation and national origin).
>
> (2002: 24–5)

In other words, the CDA, like most other anti-hate crime legislation, denounces racially aggravated offending without fear or favour and may be used with equal facility against minorities as against the majority, the bearers of hegemonic power as well as those who suffer from its exercise.

But what of the denunciatory effects of the CDA on our focus group of young offenders? Writing shortly after the Act had become law, Malik argued that it was 'particularly important that the new racially aggravated offences should reflect attitudes and meanings which are likely to find support in the wider community, and especially the communities where racist crime occurs' (1999: 423). The evidence from our focus groups with young people in North Staffordshire, reflected in the following extracts from the discussion with young offenders, suggests that there may be some important discrepancies in the way in which behaviour is interpreted and evaluated by the state, the law and the courts on the one hand, and by young people from (for want of a better phrase) perpetrator communities on the other.

We chose to explore focus group participants' reactions to racially aggravated offending by discussing a case reported in Stoke-on-Trent's local daily newspaper, *The Sentinel*. In most groups the participants read an extract from the story for themselves. In the young offenders group, however, one of the research team (BD) read it out loud. The story, headlined 'Brothers Jailed for Race Attacks', reported that 3 men aged 22, 29 and 32 from deprived, and almost exclusively white, neighbourhoods on the outskirts of Newcastle-under-Lyme had been imprisoned for carrying out two racially aggravated assaults. All three were reported to have been drinking before the two younger ones, Sean and Joseph, 'racially assaulted and occasioned actual bodily harm to a black student from Keele University, who was waiting for a taxi with his white girlfriend' in the foyer of a local multiplex cinema. They had then been joined by their older brother, Roy, in attacking, and inflicting grievous bodily harm on, a 'fifty-year-old

Turkish man' in the car park of a nearby night club. According to the newspaper report, Sean and Joseph had been 'imprisoned for a total of four years each' while Roy 'received an eighteen month sentence'. No mention was made of whether and, if so, by how much, any or all of these sentences had been increased above the level that would have been imposed for the 'basic' offences to reflect the racially aggravated nature of the assaults.

The way in which participants reacted to this story has to be read in the wider context of their own experiences of inter-ethnic violence. We have already seen how (and why) one of the young men, Ben, claimed that he would 'never fight a Paki', unless 'they' came to him and he had no alternative but to defend himself and his 'space'. One of the other young men, 14-year-old Danny, recounted how, only the previous evening, he had been chased by 'a load of Pakis' who objected to him wearing his England-branded baseball cap. Asked why he was wearing it, he had ignored the questioners and 'just carried on walking'. At this, Gary, aged 17, and the only serious challenger to Ben's dominance of the group, intervened to say that he would 'run' for nobody. If he had been in Danny's position, he would have gone, 'Fuck you, Punjabi', and stood his ground. When he boasted that he could take on '50 of them', punching, biting and 'duffing them up', Ben was dismissive: 'That's impossible that is'.

Later in the discussion, Dale, also aged 17, talked about a similar but much more serious incident. He said that he had been 'jumped', racially abused—he had been called a 'dirty white bastard'—kicked and then stabbed 'by a bunch of fucking Pakis' in an inner-city neighbourhood in Stoke-on-Trent well known for having a high proportion of Pakistani residents. Asked by one of the researchers what had happened after this incident and whether he had gone to the police, Dale's reply was drowned out by the following exchange:

> Gary: Why go to the police? They're only going to fucking deny it, aren't they?
>
> Ben: 'Cos they all look the same, you can't . . .
>
> Gary: They all look the same and they all fucking smell the same. They all talk the same . . . do you know what I mean? [. . .] They all eat the same fucking shit, so they're all going to look the same, aren't they?

Note too the group's lack of confidence in the police, and their view of 'Pakis' as a homogenous, impenetrable mass, indistinguishable in speech, smell and diet.

A third incident involved both Luke and the police, and was to end with him appearing in court for racially aggravated public order offences within days of the discussion. Initially, Luke presented the incident, which took place at a filling station near his home, as beginning with an unprovoked attack on a 'mate' of his by 'three Asians' armed with 'metal bars and everything'. He had come to his friend's assistance and managed to drag two of the Asians away. Only later in Luke's account did it emerge that his

friend had been attacked after 'robbing' the filling station shop. Reflecting on what had happened, Luke was aggrieved that the police had come looking for him. The robbery was 'nothing to do' with him. All he had done was go to the aid of a 'mate' outnumbered by three well-armed assailants. What we were given then was a very partial, and almost certainly self-interested, account of a chain of events sparked off by Luke's 'mate', in which evidence of racial motivation beyond the mere fact that the protagonists were from different ethnic groups was strikingly (possibly deliberately) absent, but also in which the police and the courts were seen as unjustly criminalizing Luke's actions in defending a friend in the direst need.

A final point to note from all three of these stories, and from Ben's personal risk-avoidance strategy, is that people described as 'Pakis' were seen as the real or potential source of danger, as well as the object of Ben and Gary's crude racism. Precisely who was covered by this term—for Gary it included Iraqis and Afghans as well as people with some connection to Pakistan itself—was not entirely clear. What was evident was that 'Pakis' represented not only the antithesis of the participants' own sense of Englishness, but also a sharp contrast with 'niggers' and 'half castes' who, despite the disparaging language, participants saw as coming from England and belonging in places like Manchester and Stoke-on-Trent. The significance of this construction of English identity in relation to a distinctively 'Paki' rather than African or African-Caribbean 'other' will become evident in a moment.

Returning to the story of the three brothers we can see how both personal experiences and particular constructions of identity interfere with the message conveyed by anti-hate crime legislation. Ben, as usual, attempted to set the agenda for the discussion by maintaining a running commentary on the story as it unfolded. He had three contrasting reactions to the newspaper's account reflecting his nuanced understanding of the 'other' as an acceptable target for violence. When the brothers' jailing for, at that point, still unspecified 'racially aggravated assaults' was mentioned, his reaction was to say, 'Good on them'. To the revelation that the black student from Keele had suffered actual bodily harm, Ben merely repeated 'ABH'. Finally, when the attack on the Turkish man was mentioned he very visibly clenched his fist as if celebrating a goal by his favourite football team. To judge by these contrasting reactions, Ben's first reading of the story was not that the brothers' violent racism had been appropriately denounced but that they had done something to be applauded, at least in so far as the attack on the 'Paki', or passably 'Paki'-like, Turkish man was concerned. At this stage, Ben's reaction seemed to be governed by his particular identification of the 'other'.

Once the story had been completed, Luke—always the most reluctant participant—led an attempt to bring the discussion to a close by arguing that the incident had nothing to do with any of them, and that they didn't want to know anything more about it either. Dale agreed that it was old

news but added that the brothers 'shouldn't have fucking jumped [the student] for fuck all'. Ben merely rehearsed his earlier opinions about not 'looking for trouble' but accepting it if it happened to come his way. He too had said all he needed to say. Only after calculating that there was little chance of staff at the ISSP centre allowing them to go home for the evening did the participants agree to continue the discussion. When they did resume, their reading of the story became increasingly subtle.

One issue had been raised by Luke immediately after the researcher had finished reading the story and concerned the veracity of the account provided by *The Sentinel*. Although Ben was prepared to accept that the local paper was more credible than, say, the *Daily Sport*, he found its account improbably one-sided: '[T]here's always two sides to a story, and there isn't two sides to that story.'

A second, and closely related issue was the apparently random nature of the assaults. If the attack on the black student had indeed been unprovoked, Luke, Ben, Dale and the otherwise almost totally silent Lenny were unanimous in their incomprehension of why the brothers had 'jumped' him. Notwithstanding his own impending court appearance, Luke was also convinced that, in the absence of any provocation, the two younger men deserved their four-year sentences, and he could not understand why the third brother had been treated so leniently; although he had not been directly involved in assaulting the student, he had prevented him from running away. In the case of the Keele student, the only conceivable provocation that any of them could come up with was the fact that he had a white girlfriend. Ben however was quick to dismiss this as any excuse for such a violent attack. A more plausible and, in the case of the Turkish man, a more likely, explanation was that the brothers' attack had been a response to some provocation that had gone unreported in the newspaper's account of the incident. Inspired by Ben's reservations about the one-sidedness of *The Sentinel*'s account, Gary suggested that the 'Asian guy might have gone, "Oh, you fucking wankers"'. Dale thought that he could have given them 'a funny look' which, in Ben's view, was 'all that it takes when you're pissed up'—as he assumed, with some justification, that the brothers may well have been.

To the participants in our young offenders' group the punishment of the three brothers under the terms of the CDA was only deserved in so far as the attacks on the black student and the Turkish man were inexplicable. And they were seen as inexplicable only if the local newspaper's account was credible on the critical issue of provocation. And, finally, even though *The Sentinel*'s story gave no hint that either of the attacks were provoked, participants were not convinced that the Turkish man, as the more obvious representative of the dangerous 'other', had not done something that might have justified three white men—sensitized by alcohol to the merest hint of disrespect—resorting to physical violence. Thus the message of the CDA communicated through the pages of a local newspaper was affected not only by the perceived reliability of the medium but also

by the constructions of 'self' and 'other' adopted by those who heard it, and by the listeners' own experience of similar incidents and the reaction of the criminal justice system to them. As the talk that took place in our focus group discussion suggests, the clear message of denunciation contained in the CDA may be interpreted in highly idiosyncratic and unpredictable ways.

Conclusion: does legislating against racial violence work?

Jenny Bourne's answer to the question 'does legislating against racial violence work' is 'an emphatic "No"' (2002: 85). Like Lee Bridges (2001), Bourne argues that there has always been enough law to deal with racial violence and harassment; what has been lacking is the willingness to use it. We have some sympathy with Bourne's scepticism about the usefulness of anti-hate crime legislation as a response to racially motivated offending. Based on our research in North Staffordshire, we doubt whether the CDA either sends out a clear and comprehensible message to the criminal justice system and the general public, or is capable of doing so without unnecessarily criminalizing significant numbers of already marginalized and relatively disadvantaged people whose principal offence may not be any extraordinary commitment to racism, but an inability to control their language in moments of stress and/or when under the influence of alcohol. The danger in this is that, as Bourne (2002) goes on to suggest, the whole issue of racially motivated crime becomes trivialized. To the extent that the CDA fails to take adequate account of the way 'racist incidents' are experienced and understood by the individuals involved—perpetrators as well as victims—and by other people living in the neighbourhoods from which they come, there is a serious risk that support for punishing those who, in Malik's words, 'commit acts of violence and harassment of minorities out of a deliberate and conscious hatred' (1999: 423) may be seriously diminished. Meanwhile, and conversely, the confidence of black and other minority ethnic people in the law may be undermined if anti-hate crime legislation is used too readily against them.

Given the very mixed messages conveyed by the CDA in practice, a cynic might be excused for agreeing with Lee Bridges' (2001) conclusion that it may never have had anything more than 'a symbolic political purpose'. In other words, the legislation may be little more than a token of 'New' Labour's commitment to 'race equality' as it seeks to minimize the corrosive domestic effects of globalization 'after empire' (Gilroy, 2004) by further tightening controls on immigration and fostering a new British identity based on the integration (Young, 2003: 453) of those who, like the Bradford 'rioters', are already here but stubbornly refuse to conform. The irony of all this of course is that the rhetoric of Britishness and the threat of the 'bogus' asylum seeker so beloved of David Blunkett, Michael Howard and large swathes of the political establishment (not to mention

Nick Griffin and the British National Party) only serves to legitimize and give substance to the fears underlying much of the 'hate crime' at which the CDA is ostensibly directed at either deterring or denouncing.

Notes

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1 Section 145 of the Criminal Justice Act 2003 requires sentencers to treat racial or religious aggravation as an aggravating factor in considering the seriousness of offences other than those under sections 29 to 32 of the Crime and Disorder Act and to state in open court that they are so doing.
2 In the leading case of *R v. Kelly and Donnelly*, the Court of Appeal approved a two-stage approach to sentencing racially aggravated offences first proposed by the Sentencing Advisory Panel. Under this procedure the judge should clearly distinguish between that part of the sentence appropriate to the 'basic' offence and the amount by which the sentence is being enhanced to take account of racial aggravation.
3 Section 28 was amended by section 39 of the Anti-Terrorism, Crime and Security Act 2001 to provide for religiously as well as racially aggravated offences.
4 Malik (1999) cites evidence collected by Sibbitt (1997) to support this argument. The definition of a 'racist incident' adopted by Sir William Macpherson's (1999: ch. 47, para. 12) inquiry into the death of Stephen Lawrence is subjective, but takes the perception of the 'victim or any other person' rather than that of the perpetrator as decisive.
5 Burney and Rose (2002: 93) found that some of the criminal justice practitioners they interviewed were anxious to set supposedly everyday remarks such as 'black bastard' in context. Others disagreed, emphasizing the hurt that such expressions could cause, however common their use might be.
6 See also *DPP v. Green*. However, when it comes to sentencing, the Court of Appeal in *R v. Kelly and Donnelly* said that, in deciding on the amount by which a sentence should be enhanced to take account of racial aggravation, the fact that 'the motivation for the offence is not racial and the element of racial hostility or abuse is minor or incidental' should be regarded as tending to reduce the degree of aggravation.
7 Apart from saying 'bloody foreigners', the defendant in *DPP v. M* had cracked the shop window and had been charged with racially aggravated

criminal damage contrary to section 1 of the Criminal Damage Act 1971 and section 30 of the CDA.

8 See Cantle (2001) and Denham (2002) for earlier entries in what Derek McGhee (2003) calls the 'community cohesion archive'.

9 See Gadd et al. (2005) for a summary of the findings.

10 A total of 86 people took part in our 14 focus group discussions. One of these 86 participants was also the subject of two biographical interviews.

11 None of the six young offenders who took part in this focus group discussion were included in the sample of perpetrators with whom we conducted biographical interviews.

12 In *R v. Kelly and Donnelly*, the Court of Appeal held that sentences of 18 months would be appropriate for 'basic' offences of assault occasioning actual bodily harm involving the use of a biro pen and a bottle while a further nine months was sufficient enhancement for racial aggravation that was not at the top of the scale.

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