

International Journal for Crime, Justice and Social Democracy



The Politics of Hate Crime: Neoliberal Vigilance, Vigilantism and the Question of Paedophilia¹

David McDonald

University of Melbourne, Australia

Abstract

This article examines vigilantism and the question of hate crime. Broader shifts in penology have occurred in tandem with changes in the ways in which child sexual abuse has come to be understood. Using these shifts as a contextual backdrop, the article examines vigilance against the fear of crime where it manifests into vigilantism against real or perceived paedophiles. In doing so, the article attends to the politics of hate crime: namely, whether these actions belong within the confines of hate crime provisions or, alternatively, whether such provisions should expressly exclude the category of paedophilia. In its entirety, the article interrogates the dimensions of disgust associated with paedophilia, and explores issues arising from an alignment between paedophilia and hate crime.

Keywords

Paedophilia, hate, disgust, vigilance, vigilantism, neoliberalism.

Introduction

Since the 1970s, public recognition of child sexual abuse has gained, in the words of Jenkins, 'a new sensibility' (1998: 128). Whereas child sexual abuse today appears to present self-evident facts or orthodoxies – encompassing its widespread nature, the monstrosity of those responsible, and so on – this obscures the contingent and historically recent nature of such meanings. One notable consequence of contemporary ideas surrounding child sexual abuse is the unique disgust that the category of the paedophile elicits.² Indeed, it may now be said that the paedophile has become *our* contemporary monster. This article is broadly concerned with the consequences that arise from the trajectory of disgust through which paedophilia has come to be seen as a category of dangerousness and abjection *par excellence*. Its focus is on the consequences which flow from the contemporary aversion that has accompanied this new sensibility regarding child sexual abuse.

While the contemporary fear of crime is of course not unique, it has gained a particular salience as a product of the new sensibility governing public understandings of, and attitudes towards, child sex offending. Occurring alongside other shifts in penology, the presence – real or rumoured – of child sex offenders residing in community contexts commonly leads to intense

fear, widespread media coverage, community outrage, and often vigilantism (Buttler and Anderson 2005a, 2005b, 2005c; Buttler and Power 2005; Critcher 2002; Cross 2005; Hodgson 2005). This article is concerned with the latter, examining instances in which vigilance against the fear of crime translates into vigilante violence against actual or perceived paedophiles. Such violence can raise something of a conundrum for courts, legal scholars and others: namely, whether this should constitute a hate crime or, instead, whether paedophilia is a category inconsistent with, or antipathetic to, the protections afforded by hate crime provisions (Mason 2009a; Mason and Dyer 2012; McDonald 2012). It is this conundrum that the article interrogates.

Structurally, the article proceeds by first situating these concerns within historically recent shifts in criminal justice. Section one attends to the way in which broader structural shifts concerning the state's commitment to manage or prevent crime have been replaced by a neoliberal context that prioritises principles including retribution, deterrence, incapacitation and the management of risk. Section two examines the trajectory of disgust through which child sexual abuse has increasingly been recognised as widespread and, associated with this trend, subsequently become the subject of greater fear and aversion. The remainder of the article moves on to more substantively engage with some of the unintended consequences that arise from this contemporary scenario: specifically, instances in which vigilance against the fear of crime translates into vigilantism against 'paedophilies', as well as the politics of naming such acts as hate crimes. While the article proceeds from the recognition that child sexual assault demands condemnation, it seeks to interrogate the manner in which prevailing ideas about paedophilia may contain unintended consequences which threaten to obscure the more normative or routine scenarios in which child sexual assault occurs.

Neoliberalism and the punitive turn

In his authoritative account of historically recent shifts in penology, David Garland (2001) charts the movement away from the penal-welfare model towards a renewed embrace of punitiveness and individual responsabilisation against the fear of crime. In the 1970s, with political actors and government agencies struck by the uncomfortable reality of rising rates of crime, a belief in or commitment to the state's capacity to control crime and promote security was thereby diminished. The result was a subsequent decline in a welfare-oriented response to crime, replaced by penal goals including deterrence, retribution, incapacitation and the management of risk. At their heart, these principles underscore a subtle though important reconceptualisation of the individual subject. With the state having abrogated its commitment to prevent crime or rehabilitate criminal actors, this has subsequently been replaced by an emphasis upon individual autonomy and the responsibility of offenders, alongside a renewed vigour in community deterrence initiatives that reflect the neoliberal state's reorientation of criminal justice.

Perhaps unsurprisingly, these penal shifts have occurred in tandem with the rise of neoliberalism, which has recalibrated the relation between citizens and the state more generally. Key components of neoliberalism include free trade, privatisation, deregulation, and retrenchment of the welfare state (Brown 2011: 130). These moves may mark a reorientation of the state; however, this is not to say that it has withered away when it comes to crime. While the weight that the discipline of criminology has afforded the state has fluctuated – in large part as a result of a shift in emphasis away from 'late capitalism' to 'late modernity' – the state persists as a site of significance in its more recent neoliberal incarnation (Hallsworth and Lea 2012: 190).³ As Wacquant demonstrates, the decline of welfare has been accompanied by progressively more severe responses to criminality (2009). For him, this is not an accident of neoliberalism, but central to its very architecture. The trope of individual responsibility that neoliberalism so explicitly espouses requires an intrusive and expansive penal apparatus in order to manage and

contain the insecurity and inequality that is compounded by neoliberalism (2009: 306-7). So while the state has on one level absolved itself of its prior commitment to criminality and community safety, at the same time it has ushered in much more punitive sentences that reflect neoliberal ideals of individual responsibility at the expense of structural and other factors. The result has been increased rates of mass imprisonment, longer sentences, and a range of measures that were arguably inconceivable previously.

This 'new punitiveness', which cannot be isolated to any one jurisdiction, has thus functioned to legitimise significant changes in criminal justice, and the treatment of convicted offenders (Brown 2011; Brown and Pratt 2000; Pratt 2000, 2006, 2007, 2008; Pratt and Clark 2005; Simon 1998, 2007). Governments now do not simply absolve themselves from a commitment to manage or limit criminality: instead, punitive criminal justice has become a crucial means through which governments, both left and right, are increasingly mandated through their expressed commitment to govern *through* crime (Simon 2007). As Wacqaunt observes, neoliberalism is a key factor underpinning this: 'the root cause of the punitive turn', he writes, 'is ... neoliberalism, a project that can be indifferently embraced by politics of the Right or Left' (2009: 305). That is to say, the fear of crime has afforded governments of various political persuasions a means to use crime as a pragmatic vehicle through which politics can be effectively played out. This has occurred in distinct contrast to, and isolation from, the social and other costs that may accompany this.

The consequences of the neoliberal project have inevitably led to particular shifts *within* communities. This is not simply an increase in inequality and insecurity. With the state no longer committed to its responsibility in managing crime, the consequence has been a pronounced sense of responsibilisation regarding the fear of crime. As I go on to argue, this has led to distinct and troubling consequences within community contexts. This has particularly been the case when it comes to 'paedophiles', owing in large part to the unique disgust that such offenders have come to solicit. It is to this concern that I now turn.

A trajectory of disgust

In the introductory section of this article I referred to a new sensibility regarding the problem of child sexual abuse. In this section I develop this claim, demonstrating the shifting nature in which such harm has been shaped and, ultimately, contemporaneously conceived. Philip Jenkins' *Moral Panic: Changing Conceptions of the Child Molester in Modern America* compellingly attests to this trend, charting periodic cycles that have governed intelligibility concerning child sexual abuse. For the purposes of this article, his account reveals two points of particular significance: first, that ideas about child sexual abuse are not objective reflections of the nature of such harm; and second, that recent debates associated with this tend to predominantly focus on the most exceptional or extreme scenarios (such as child killers), which in reality constitute an incredibly small proportion of homicide offences, and sexual offences more generally (1998: 11). This latter observation assists in coming to understand how and why the contemporary fear and fixation upon the paedophile has gained such traction.

Another factor underpinning this relates to important social changes occurring from roughly the 1970s onwards. Around this time, feminist debates about sexual violence increasingly began to broaden their analysis to the problems of incest and child sexual abuse (Angelides 2004). This was an important and overdue dialogue that feminists during this time must be credited for. However, while these moves remain beyond reproach, for the purposes of this article, of significance is the manner in which they have inadvertently assisted to usher in a new era marked by a consensus which regards the paedophile as a unique object of hate.

To regard the contemporary aversion for paedophilia simply as a product of disgust, however, is to overlook the particular *fascination* that also underpins this. As Kincaid writes, 'few stories in our culture right now are as popular as those of child molesting' (1998: 3). What this underscores is the particular allure that accompanies such stories. While broad social recognition of the problem of child sexual abuse is without qualification positive, particularly in contrast to previous contexts in which it was often denied or overlooked, or where victims were themselves held as blameworthy, this is not to say that the new contemporary 'consensus' is beyond interrogation. As Kincaid asks, 'why do we generate these stories and not others? What rewards do they offer? Who profits from their circulation, and who pays the price?' (1998: 3). The answer to this last question – who pays the price – is, I would contend, paedophiles, as well as others who are marked out as different, and perceived to fit the profile of such offenders.

One way in which the price of the contemporary orthodoxy of paedophilia as monstrous and exceptional can be witnessed is the raft of legal measures that such offenders are increasingly subjected to. Indeed, broader shifts in criminal justice have been felt particularly keenly when it comes to paedophiles and other 'serious sex offenders'. Initiatives such as sex offender registries, working with children checks, post-sentence preventative detention, and post-sentence monitoring and supervision all crystallise, on one level, into more generalised penal and legislative shifts. However they also attest to the particular trajectory of disgust charted here. Perhaps more importantly – and concerning – is the fact that the measures such offenders are increasingly subjected to often depart from many long held legal principles, including finality of sentence, retrospective punishment, and so on (Douglas 2008; Keyzer and O'Toole 2006; Keyzer, Pereira and Southwood 2004; McSherry 2005, 2007; Warner 2003). In spite of this, they have generally been met with comparatively little opposition, and thus cannot be understood in isolation from the seemingly universal consensus surrounding the 'unique' risk posed by such offenders.

Vigilance as vigilantism

These broader shifts in penology, alongside attitudes associated with child sex offenders, have led to – or at the least been accompanied by – new and unique attitudes *within* communities about their own responsibility when it comes to criminality that may occur in their proximity. This has been devastatingly and spectacularly demonstrated when it comes to 'paedophiles', particularly with regard to instances in which vigilance against the fear of crime manifests or translates into vigilantism.

The complex relationship between vigilance and vigilantism was infamously borne out following the *News of the World's* campaign for 'Sarah's Law' in July 2000 (Bell 2002; Evans 2003; Lawler 2002; Williams and Thompson 2004). This campaign, in which child sex offenders were publicly named and shamed by the newspaper, followed the death of seven-year-old Sarah Payne at the hands of Roy Whiting, who had prior child sex offence convictions. The campaign led to significant community unrest, including rioting, widespread property damage and clashes with police, most notoriously in the Portsmouth housing estate in Paulsgrove but also in areas in Plymouth, Berkshire, Manchester, London and Wales (Bell 2002; Evans 2003). As Evans astutely observes, these events cannot be understood in isolation from the then-Blair government's dual approach to sex offenders which coalesced neoliberal governance with penal populism: a central outcome of this coalescence, she writes, 'is the collapse of a meaningful distinction between vigilance and vigilantism' (2003: 165).

In the context of these events in the early 2000s, it was the important 'campaigning' role played by one newspaper that helped foster fear and vigilante violence. However, the fear of crime is often experienced as so pronounced, and the need for vigilance so persistent, that violence of this nature continues in the absence of any explicit agenda driven by media agencies. In July

2013, Bijan Ebrahimi – a 44-year-old Bristol man – was beaten, set alight and murdered. Subsequent accounts of his death suggest his head was repeatedly stamped upon prior to his body being burned. Uncertainty persists as to whether he was deceased at this point or not. According to his neighbours, he was a paedophile. They had witnessed him taking photographs of local young people, prompting a complaint to police. One of his killers, father of three Lee James, had called police in the days prior, warning that he would ‘sort it out himself’ if they did not intervene (Peachy 2013: no pagination).

When police did finally intervene, it was to arrest Ebrahimi and take him away for questioning. Upon this, locals gathered to chant ‘paedo, paedo’. On inspection of his camera, the reality of the conflict within this public housing complex was revealed. Ebrahimi had been taking photographs of locals damaging his garden hanging pots, which he himself had complained to police about, and explained that he had taken the images as evidence. Ebrahimi’s family have since described him as ‘a quiet, disabled man whose only joys in life came from his horticultural interests and his cat’ (cited in Farmer 2013: no pagination). They also emphasised that ‘he was a caring, loving and unselfish man. He was an excellent uncle and a warm, supportive brother’ (cited in Farmer 2013: no pagination). Marked out as different by his neighbours, his prized garden became the subject of routine vandalism. His efforts to thwart this, and also support police in doing so, ultimately led to his erroneous designation as a paedophile. While independent inquiries into the actions of police are currently underway, it appears that, in the context of the return to his home by investigating officers and in the absence of any explanation to his neighbours to rectify their unfounded suspicions, two young men felt entitled in taking the law into their own hands. Having been returned home on the Friday evening, he was dead by the early hours of Sunday.

The two men responsible for Ebrahimi’s deaths have since been convicted and sentenced. Regardless of this formal outcome, the case is without question devastating. Notwithstanding this, for the purposes of this article its significance lies in the parallels it reveals with other instances in which communities have become emboldened to resort to vigilantism where they believe a child sex offender resides in their proximity.

Another relatively recent case – albeit far less devastating in its consequences – was heard before the New South Wales Court of Criminal Appeal in 2007.⁴ In this case the court was required to give consideration to whether such acts – vigilantism motivated by perceived paedophilia – may be considered hate crimes. In 2005, Darren Brian Dunn and Ibrahim Arja were neighbours in a complex of public housing units in the Sydney suburb of Riverwood. In the early hours of 29 August 2005, while Arja was overseas, Dunn set fire to chairs on the porch of Arja’s unit. The fire destroyed the chairs, as well as the window of the unit’s front room. On 30 October 2005, around two months after the initial fire, Dunn again set fire to Arja’s unit. Though Arja had returned from overseas, he was not home at the time. This fire resulted in significant damage to the complex of units, which were subsequently deemed uninhabitable.

Although Dunn did not give evidence at trial, his sentencing judge sought to establish a motive for his attacks. In doing so, the judge relied on evidence provided by a police informant about a conversation he had with Dunn, along with a report provided to the court by a psychiatrist for the prisoner. The police informant gave evidence that, three days after the second fire, Dunn stated that he had lit the fire because Arja was a ‘rock spider’. This term is predominantly used by prisoners to hierarchically distinguish paedophiles from other imprisoned offenders. The psychiatrist further recorded a conversation in which Dunn stated that the fires were intended as a ‘scare tactic’ because Arja was a ‘rock spider’.⁵

While Dunn’s belief that Arja was a paedophile was found to be erroneous, the sentencing judge held that a significant factor motivating Dunn was his ‘feelings of antipathy towards his

neighbour Mr Arja who he believed without justification at all, was a paedophile'.⁶ These findings, the judge ruled, constituted a significant aggravating factor in line with s 21A(2)(h) of the *Crimes (Sentencing Procedure) Act* (NSW) 1999. This section provides that sentencing judges may have regard to whether an offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged. Specifically, it constitutes the means by which New South Wales courts distinguish hate crimes from other forms of offending behaviour.

Dunn appealed against this sentencing, requiring the Court of Criminal Appeal to give consideration to whether paedophilia may constitute grounds for hate crime. The court's ruling was unambiguous. It found that:

Applying s 21 A(2)(h) it is clear that the offences come fairly and squarely within it. The offence was motivated by a hatred or prejudice against Mr Arja solely because the applicant believed him to be a member of a particular group, ie paedophiles. The examples given in parentheses⁷ are merely that, ie examples, they do not comprise an exhaustive list of the groups envisaged by the subsection.⁸

The consequence of this finding was the recognition that a belief that an individual is a paedophile is sufficient to constitute an aggravating factor in sentencing: that is to say, the belief an individual is a paedophile may give an act the character of a hate crime. It is this case's reception, and the politics that underpin this, that occupy the remainder of this article.

The politics of hate crime

For the purposes of this article, the reception this judgment has received is of significance. Legal scholar Gail Mason has written extensively on hate crime (2001, 2007, 2009a, 2009b, 2009c, 2012).⁹ In response to this case, Mason writes that 'this decision appears to be a world first. The protection offered by hate crime laws has never before been extended to paedophiles as a group' (2009a: 254). Elsewhere she describes it as a 'provocative and unique decision' (2009b: 337). Writing in the context of the recent history of hate crime as a concept, Mason emphasises how it has typically been deployed in order to place 'discriminatory violence on the public agenda as a recognisable social problem' (2009a: 254). Hate crime laws, she argues, aim to 'make a broad moral claim that prejudice is wrong and thereby reinforce prosocial values of tolerance and respect for marginalised and disadvantaged groups' (2009a: 254). Because of their expressive function in denouncing intolerance and violence toward traditionally underprivileged groups, 'hate crime laws have tended to mimic the kinds of "social fissure lines" also protected under discrimination law: race, religion, ethnicity, colour, age, sexuality, physical and mental disability and so on' (2009a: 254-5).

If prejudice is the crucial factor that hate crime laws seek to address, then, according to Mason, this prejudice must be *irrational* or *unjustifiable*: 'prejudice by very definition denotes an irrational or unjustifiably negative attitude towards members of a particular group' (2009a: 255). However, she regards paedophilia as something of a limit when it comes to hate crime. Whereas other forms of prejudice are irrational or unjustified, this attitude lacks these qualities when applied to the paedophile. As she writes:

Adults who engage in sex with children inflict a clear and identifiable harm upon others, namely children. Condemnation of such behaviour is neither unwarranted nor unjustified. Indeed, many would argue we have a moral imperative to denounce exploitative conduct of this nature. (Mason 2009a: 255)

Elsewhere Mason has examined the political dimensions that can underpin what is or is not labelled as hate crime. In her compelling analysis of the Snowtown case,¹⁰ she highlights the ways in which hate crime can engender emotional thinking, including compassion for victims and disgust for perpetrators (2007). As she argues here, the question of whether an act is *labelled* a hate crime is not simply determined by whether it meets a requisite legal definition. Drawing on Nils Christie's concept of the 'ideal victim' (1986), in the context of Snowtown she demonstrates how a sense of moral failure on the part of victims precludes a broader public recognition of these acts as constituting a hate crime. Her examination of the legal case alongside public reportage reveals that, while hatred towards homosexuals and paedophiles was the primary (albeit not exclusive) motive for these deaths, because of the broader moral judgment that is socially ascribed to homosexuality and paedophilia, this case has rarely if ever been properly labelled as a hate crime.

Returning to the case of *Dunn*, for Mason prejudice against paedophilia is not irrational or unjustified, therein precluding such vigilante violence from being understood as a category of hate crime. While I am broadly indebted to Mason's extensive and insightful work on hate crime, in this article I offer a critical departure from these arguments. This departure arises first from the assumption that hatred of paedophilia is neither irrational nor unjustified; and second, from the need, I would emphasise, to distinguish between social attitudes regarding paedophilia and the phenomenon of child sexual assault itself.

The cultural aversion to paedophilia is not a direct correlation of the objective reality of child sexual assault. As Jenkins (1998) observes, attitudes towards child sexual assault are cyclical in nature. In spite of this, the current formulation of child sexual exploitation is presented as an *evolutionary* stage in social development: whereas it has previously been conceived as a problem of overstatement or infrequency, the current and widespread acceptance of child sexual assault as a problem is marked by its statistical prevalence. Specifically, the contemporary orthodoxy is that child sexual assault is an overwhelmingly prevalent phenomenon, and that this orthodoxy is a measure of its reality. Further, to the extent that the 'reality' of child sexual assault is conceived as a prevalent one, it follows that the fear or panic attached to it is amplified.

Reading this as a cyclical pattern over different historical periods, linked to an *overstated* fear or panic, Jenkins draws on Stanley Cohen's authoritative work on moral panics (1973). For Jenkins, this assists in understanding how concern about child molestation has fluctuated widely over the twentieth century. For him, these changes reflect the shifting role of interest groups over time, such as child protection movements, feminists, psychiatrists and therapists, as well as politicians and other officials. As he writes, 'this impressive range of interest groups stood to benefit from claims about threats to children, and the number of beneficiaries increased as each crisis developed' (1998: 219; see also Angelides 2004).

So while increased recognition of the prevalence of, and repudiation for, child sex offending is to be welcomed, this should not preclude a critique of the manner in which paedophilia has come to constitute monstrosity and hatred *par excellence*. Following Jenkins' identification of a moral panic surrounding paedophilia, this panic itself may be misplaced or out of proportion. By delegitimising the potential for paedophilia to encompass a category of hate crime, recognition of the irrational or unjustified moral panic surrounding paedophilia is foreclosed. Indeed, the phenomenon of vigilantism against paedophiles is one key consequence of our moral panic surrounding the category of the paedophile. While Mason recognises that such vigilantism is not warranted, I would nonetheless maintain that vigilantism arises from the same site of hate itself. It is difficult in practice to decry vigilantism during which time we delegitimise the potential for retributive and/or vigilante violence on the basis of paedophilia to be legally defined *as* a hate crime.

Hate as disavowal

With this in mind, here I explore in further detail the extent to which paedophilia extends beyond the scope of intellectual defence under the auspices of hate crime provisions. To be clear, the argument that follows is not a defence of paedophilia. Instead, it is a rebuttal to the claim that vigilantism directed towards real or perceived paedophiles cannot and should not be encompassed within respective jurisdictional hate crime provisions. A more explicit interrogation is required of the complex reasons why individuals feel emboldened to take the law into their own hands with such violent outcomes in the first place. As Evans writes in the context of the events at the Paulsgrove estate in 2000, it is important to ask 'the question of what actions *mean* to the particular "communities" and individuals who do get involved' (2003: 172; original emphasis; see also Bell 2002; Clarke 1999; Maruna, Matravers and King 2004). Indeed, scholarship on hate crime – some of Mason's included – demonstrates the powerful *possibilities* for affiliation and affection that arise from acts of hate.

In her cultural history of fear, Bourke writes that 'when we identify the emotion of fear it is our fear that concerns us. It is the fear *of* something that may befall us, rather than fear *for* others, those people on whom we inflict suffering' (2005: x; original emphasis). Following this, fear – and hate, I would add – functions according to an exclusionary dynamic. Importantly, however, hate and fear are *productive* in nature. As Ahmed insightfully observes, hate *organises* bodies: it produces affiliations and identifications through the disavowal of other bodies (2001). This can particularly be witnessed in the context of vigilante violence against paedophiles. Similarly, it can also be witnessed in the desire to *foreclose* hate crime as incompatible with paedophilia. On one level this may appear reasonable, perhaps ideal. But to consider it in these terms is to overlook the fact that this disavowal entails political consequences. It designates certain bodies as emblematic of child sexual assault, at the same time that it also *neglects* to designate *other* bodies as such.

In this respect, there is a conceptual and political imperative, I would argue, to recognise the distinction between paedophilia and child sexual assault. Throughout this article I have used the terms 'child sexual assault' and 'paedophilia' with as much precision as possible. One consequence of the moral panic surrounding the paedophile is to cast this category, or type of person, as emblematic of, and synonymous with, child sexual abuse. However the alarming prevalence of child sexual assault demands that the category of the paedophile cannot stand in for this troubling – and troublingly *frequent* – phenomenon. Through our aversion to the paedophile, I argue that we lose sight of the much more routine reality of child sexual assault. In this respect my argument parallels Hannah Arendt's in the context of the Adolph Eichmann trial (1963). For Arendt, what characterised Eichmann was not his monstrosity or extraordinary exceptionality. Instead, it was his very *ordinariness*, his *banality*. For her, this is what made his crimes much more terrifying. In the same way, I would suggest that our increased fixation on 'the paedophile' functions to disavow the routine or much more prevalent nature of child sexual assault, therein losing sight of those child sex offenders *amongst us*, or who indeed may *be us*.

In this respect, what is often left unspoken within the cultural aversion for paedophilia is the complex relation of self and other that underpins this disgust. Broadly speaking, debates about criminal justice tend by their nature to construct particular communities and, in doing so, accord to an exclusionary logic. As Alison Young observes, 'the mere existence of an offender is set up as turning everyone (else) into victims. Thus the lines are rigidly drawn between those who belong to the law (and the community) and those who do not: the outlaws' (1996: 9). As I have demonstrated, hate crime itself has been examined by reference to the complex manifestation of this dichotomy between self and other, offering a complex insight into the construction of identity (and community) through the infliction of retributive violence. Such

scholarship reveals a novel manifestation through which prejudice-motivated crimes function to construct a community of 'us' via the enactment of violence upon an 'other'. In the context of, for example, homophobic violence, such acts can constitute a performative arena through which to construct oneself as heterosexual. As Mason recognises, the naming of these acts as hate crimes provides an important expressive statement about community that resists this sort of heteronormative excision of sexual difference. Similarly, I would argue here that child sexual assault *demand*s the recognition that such offending cannot be reduced or collapsed to the monstrous and abject category of the paedophile. What needs to be recognised instead is the very *communal* nature of such harm, alongside a rejection of the impulse to delegate this to an abject other ('the paedophile').

By foreclosing paedophilia from legal definitions of hate crime, there is a risk that we further entrench this cultural preoccupation for paedophilia and, in so doing, obscure from consideration the reality that child sexual assault is not synonymous with paedophilia. Indeed, most child sex offenders are not 'paedophiles', as properly understood (Ardill and Warlde, 2009: 258). By focusing on individual factors or predispositions that denote certain individuals as different and exceptional, we obscure the remarkable prevalence of such offending. This prevalence suggests that it is not something inherent to certain 'others' that leads them to commit such acts, but that 'we' – or perhaps more accurately, a masculinised 'we' – are responsible for such offending. That is to say, that we *are* child sex offenders. Through our fixation with the category of the paedophile, however, this troubling reality is conveniently erased and disavowed. Further, naming an act as a hate crime is, following Mason, an important emotional statement that serves to delegitimise the motivation that underpins such acts. In the case of racism, sexism, homophobia and so on, the import of this is obvious. However, in a context in which paedophilia as a category of criminality has come to be understood as abject *par excellence*, there are dangers that arise from denying that acts motivated by prejudice against this class of offenders meet the requirements of legal definitions of hate crime. This need only be witnessed via the array of harms that child sex offenders released back into the community can experience. At the same time that we repudiate child sexual abuse, I contend that there remains a need to resist the urge to simultaneously foreclose a capacity to understand retributive violence on the basis of paedophilia as a legally recognised form of hate crime.

Conclusion

Scott writes that 'the appearance of a new identity is not inevitable or determined, not something that was always there simply waiting to be expressed' (1998: 65). That is to say, it is 'not something that will always exist in the form it was given in a particular political movement or at a particular historical moment' (1998: 65). Categories of identity (including the category of the paedophile) are contingent upon particular political or historical contexts. As I have demonstrated in this article, a particular trajectory of disgust underpins contemporary attitudes to paedophilia. Through this, I have sought to offer a context in which to render meaningful the contemporary aversion for paedophilia. Since the 1970s, during which time child sexual assault was commonly silenced or trivialised, the child protection lobby and feminists have made important strides in bringing to light the prevalent nature of this form of victimisation (Angelides 2004). One consequence of this has been an increased repulsion for those who have been responsible for such conduct. However, while denunciation for paedophilia is both important and necessary, a growing moral panic surrounding this is not without consequence. This can be witnessed via retributive or vigilante violence that many convicted child sexual offenders – and others suspected as such – experience upon their release from prison.

The argument advanced throughout this article is not, it should be emphasised, an endorsement of greater punitiveness towards people who perform vigilante violence against paedophiles.

Along with Mason (2009c), I am cognisant of the contradictions – the possibilities and limitations – that hate crime as a concept presents. It can be simultaneously socially progressive, while also resembling or reinforcing the punitive turn that this article has examined. Thus, my claim is not for a *more* draconian stance towards vigilante violence. To the contrary, the contemporary neoliberal state is *already* punitive and draconian when it comes to crime. As I have demonstrated, this is particularly pronounced in the context of paedophiles. Instead, what this article seeks to advocate is a need to recognise and identify the unique hatred that accompanies paedophilia, as well as the troubling and disturbing trend in which individualisation, responsibilisation and vigilance translates into vigilantism. Alongside this is the conceptual imperative to be able to read or recognise this violence *as* hate, and the complex and contradictory impulses that seek to deny it as such. In the absence of doing so, vigilante violence against actual or suspected ‘paedophiles’ – such as that as experienced by Bijan Ebrahimi – appears troublingly likely.

Further to this, what requires underscoring is the fact that increased hysteria regarding convicted child sex offenders is itself often misplaced, instilling a false sense of security to the public. As Barnes notes, this diverts attention from the ‘individual who presents as a decent law-abiding family man’ (cited in Ardill and Wardle 2009: 258). My argument is not that paedophilia should be condoned, but that a more troubling consequence may arise from the trajectory of disgust chronicled throughout the article. Foremost amongst these potentials is the risk of re-affirming a cultural obliviousness to this otherwise law abiding and ‘respectable’ family man.

Correspondence: Dr Dave McDonald, Lecturer in Criminology, School of Social and Political Sciences, University of Melbourne, Parkville, 3010, Australia. Email: mcdj@unimelb.edu.au

¹ An earlier version of this article was presented at the *Crime, Justice and Social Democracy Conference* at QUT in 2013 (see McDonald 2013). I am grateful to the participants who engaged with it in this forum, as well as the anonymous reviewers for their insightful comments on this extended version.

² Throughout this article I use the terms child sexual abuse and paedophilia with distinction. As the subsequent analysis goes on to demonstrate, these are not synonymous terms. Conflating the phenomenon of child sexual abuse with the category of the paedophile, I argue, can lead to dangerous consequences in the way in which this form of criminality is conceived.

³ I am cognisant of the subtle but important distinction between Garland’s concern with ‘late modernity’ (2001), and Wacquant’s (2009) much more sustained critique of neoliberalism (see also Brown 2011; Hallsworth and Lea 2012; and Nelkin 2010). I am broadly indebted to both of these accounts, and do not propose to arbitrate their distinctions here.

⁴ See *Dunn v R* [2007] NSWCCA 312. On this case, see also Mason (2009a, 2009b).

⁵ *Dunn v R* [2007] NSWCCA 312 at para 12. Dunn had reported to the psychiatrist that he was sexually assaulted as a child; however, this was found to conflict with statements made by Dunn elsewhere.

⁶ *Dunn v R* [2007] NSWCCA 312 at para 17.

⁷ The examples provided in the Act are as follows: people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability.

⁸ *Dunn v R* [2007] NSWCCA 312 at para 32.

⁹ Mason’s work on hate crime and the question of paedophilia relates specifically to Australian jurisdictions where the courts have been required to consider this issue. Notwithstanding discrepancies between jurisdictions, the cultural aversion that surrounds paedophilia has an international scope to it. Similarly, the consequences of a declining penal-welfare model, alongside the rise of a neoliberal reorientation of criminal justice also cut across jurisdictions. Thus, while it may be that courts in other international jurisdictions are yet to canvass whether paedophilia should constitute a ground of hate crime, the argument developed throughout this article is not specific to any particular jurisdiction.

¹⁰ In 1999 eight bodies were initially discovered in barrels in an unused bank vault in the town of Snowtown. John Bunting and Robert Wagner were convicted of eleven and seven murders respectively, while two other men, James Vlassakis and Mark Heydon, were convicted of having accompanied the men in a number of these murders.

References

- Ahmed S (2001) The organisation of hate. *Law and Critique* 12(3): 345-365.
- Angelides S (2004) Feminism, child sexual abuse, and the erasure of child sexuality. *GLQ* 10(2): 141-177.
- Ardill A and Wardle B (2009) Firebombs and Ferguson: A review of hate crime laws as applied to sex offenders. *Alternative Law Journal* 34(4): 257-258.
- Arendt H (1963) *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books.
- Bell V (2002) The vigilant(e) parent and the paedophile: The *News of the World* campaign 2000 and the contemporary governmentality of child sexual abuse. *Feminist Theory* 3(1): 83-102.
- Bourke J (2005) *Fear: A Cultural History*. London: Virago.
- Brown D (2011) Neoliberalism as a criminological subject. *Australian and New Zealand Journal of Criminology* 44(1): 129-142.
- Brown M and Pratt J (2000) *Dangerous Offenders: Punishment and Social Order*. London: Routledge.
- Buttler M and Anderson P (2005a) Monster used prison to plot new horrors. *Herald Sun*, 15 July: 2.
- Buttler M and Anderson P (2005b) House spruced up for Mr Baldy; Victim angry at makeover. *Herald Sun*, 26 August: 3.
- Buttler M and Anderson P (2005c) We find Mr Baldy. *Herald Sun*, 15 July: 1.
- Buttler M and Power E (2005) Mr Baldy rumours spark attack. *Herald Sun*, 8 August: 3.
- Chitcher. C (2002) Media, government and moral panic: The politics of paedophilia in Britain 2000-1. *Journalism Studies* 3(4): 521-535.
- Christie N (1986) The ideal victim. In Fattah E (ed.) *From Crime Policy to Victim Policy*. Basingstoke: Macmillan.
- Clarke S (1999) Splitting difference: Psychoanalysis, hatred and exclusion. *Journal for the Theory of Social Behaviour* 29(1): 21-35.
- Cohen S (1973) *Folk Devils and Moral Panics: The Creation of Mods and Rockers*. London: Granada Publishing.
- Cross S (2005) Paedophiles in the community: Inter-agency conflict, news leaks and the local press. *Crime, Media, Culture* 1(3): 284-300.
- Douglas H (2008) Post-sentence preventative detention: Dangerous and risky. *Criminal Law Review* 11: 854-873.
- Evans J (2003) Vigilance and Vigilantes: Thinking Psychoanalytically About Anti-Paedophile Action. *Theoretical Criminology* 7(2): 163-189.
- Farmer B (2013) Man accused of being paedophile and murdered for photographing garden vandals. *The Telegraph*, 28 October. Available at <http://www.telegraph.co.uk/news/uknews/crime/10409326/Man-accused-of-being-paedophile-and-murdered-for-photographing-garden-vandals.html> (accessed 29 January 2013).
- Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.
- Hallsworthy S and Lea J (2012) Reconnecting the King with his head: The fall and resurrection of the state in criminological research. *Crime, Media, Culture* 8(2): 185-195.
- Hodgson S (2005) Sex fiend fear delays release. *Herald Sun*, 19 March: 2.
- Jenkins P (1998) *Moral Panic: Changing Concepts of the Child Molester in Modern America*. New Haven: Yale University Press.

- Keyzer P and O'Toole S (2006) Time, delay and feigning: The *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld). *Alternative Law Journal* 31(4): 198-202.
- Keyzer P, Pereira C and Southwood S (2004) Pre-emptive imprisonment for dangerousness in Queensland under the *Dangerous Prisoners (Sexual Offenders) Act 2003*: The constitutional issues. *Psychiatry and Law* 11(2): 244-253.
- Kincaid J (1998) *Erotic Innocence: The Culture of Child Molesting*. Durham: Duke University Press.
- Lawler S (2002) Mobs and monsters: *Independent man meets Paulsgrove woman*. *Feminist Theory* 3(1): 103-101.
- Maruna S, Matravers A and King A (2004) Disowning our shadow: A psychoanalytic approach to understanding punitive public attitudes. *Deviant Behavior* 25(3): 277-299.
- Mason G (2001) Not our kind of hate. *Law and Critique* 12(3): 253-278.
- Mason G (2007) Hate crime as a moral category: Lessons from the Snowtown case. *Australian and New Zealand Journal of Criminology* 40(3): 249-271.
- Mason G (2009a) Prejudice and paedophilia in hate crime laws: *Dunn v R*. *Alternative Law Journal* 34(4): 253-256.
- Mason G (2009b) Hate crime laws in Australia: Are they achieving their goals? *Criminal Law Journal* 33(3): 326-340.
- Mason G (2009c) J.V. Barry Memorial Lecture: The penal politics of hatred. *Australian and New Zealand Journal of Criminology* 43(3): 275-286.
- Mason G and Dyer A (2012) A negation of Australia's fundamental values': Sentencing prejudice-motivated crime. *Melbourne University Law Review* 36(3): 871-914.
- McDonald D (2012) Ungovernable monsters: Law, paedophilia, crisis. *Griffith Law Review* 21(3): 585-608.
- McDonald D (2013) The politics of disgust: Paedophilia, retributive violence, and the im/possibilities of hate crime. In Richards K and Tauri J (eds) *Crime, Justice and Social Democracy: Proceedings of the 2nd International Conference 2013, Volume 1*. Brisbane: Crime and Justice Research Centre, QUT: 123-130.
- McSherry B (2005) Indefinite and preventative detention legislation: From caution to an open door. *Criminal Law Journal* 29(2): 94-110.
- McSherry B (2007) Sex, drugs and evil souls: The growing reliance on preventative detention regimes. *Monash University Law Review* 32(2): 237-274.
- Nelkin D (2010) Denouncing the penal state. *Criminology and Criminal Justice* 10(4): 331-340.
- Peachy P (2013) A death foretold: Vigilante Lee James' warning to police days before he murdered disabled man Bijan Emrahimi after he was wrongly outed as a paedophile. *The Independent*, 28 November. Available at <http://www.independent.co.uk/news/uk/crime/a-death-foretold-vigilante-lee-james-warning-to-police-days-before-he-murdered-disabled-man-bijan-emrahimi-after-he-was-wrongly-outed-as-paedophile-8969034.html> (accessed 16 January 2013).
- Pratt J (2000) The return of the wheelbarrow men; or, the arrival of postmodern penalty. *British Journal of Criminology* 40(1): 127-145.
- Pratt J (2006) The dark side of paradise: Explaining New Zealand's history of high imprisonment. *British Journal of Criminology* 46(4): 541-560.
- Pratt J (2007) *Penal Populism*. London: Routledge.
- Pratt J (2008) When penal populism stops: Legitimacy, scandal and the power to punish in New Zealand. *Australian and New Zealand Journal of Criminology* 41(3): 364-383.
- Pratt J and Clark M (2005) Penal populism in New Zealand. *Punishment and Society* 7(3): 303-322.

- Scott J (1998) Experience. In Smith S and Watson D (eds) *Women, Autobiography, Theory: A Reader*. Madison: University of Wisconsin Press: 57-71.
- Simon J (1998) Managing the monstrous: Sex offenders and the new penology. *Psychology, Public Police and Law* 4(1/2): 452-467.
- Simon J (2007) *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. Oxford: Oxford University Press.
- Wacquant L (2009) *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Dunham: Duke University Press.
- Warner K (2003) Sentencing Review 2002-2003. *Criminal Law Journal* 27(6): 325-340.
- Williams A and Thompson B (2004) Vigilance or vigilantes: The Paulsgrove riots and policing paedophiles in the community. *The Police Journal* 77(3): 99-119.
- Young A (1996) *Imagining Crime: Textual Outlaws and Criminal Conversations*. London: Sage.