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Evidencing the harms of hate speech

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Keywords

hate, harms, speech, evidencing

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Abstract

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Keywords

Hate speech, racism, Australia, harm, free speech, ethnicity

Introduction

The extensive hate speech literature has been dominated by arguments for and against hate speech laws (eg Horton, 1993; Herz & Molnar (Eds.), 2012; Part II of Hare & Weinstein (Eds.), 2009; Heinze & Phillipson, 2015), although some advocate the adoption of normative approaches beyond a legal/constitutional focus (Maussen & Grillo, 2014). Where scholars engage with the question of whether, and how, hate speech harms even very thoughtful philosophical arguments (eg Maitra & McGowan (Eds.), 2012a; Waldron, 2012), do not tend to draw on empirical evidence when assessing the impact of hate speech on its targets, with exceptions in critical race theory (eg Matsuda, 1993). This article seeks to contribute to remedying this gap by interpolating 'the actual voices of the victims' (MacKinnon, 2012, p. xvii) into the debate. We report on data drawn from interviews conducted with 101 members of Indigenous and minority ethnic communities in Australia regarding their experiences of racist hate speech.

'Hate speech' is a term widely used, but lacking a single meaning. In this article we follow Parekh (2012) in emphasising three defining characteristics. First, it is 'directed against a specified or easily identifiable individual or ... a group of individuals based on an arbitrary and normatively irrelevant feature' (p. 40). Second, 'hate speech stigmatizes the target group by implicitly or explicitly ascribing to it qualities widely regarded as highly undesirable'. Third, 'the target group is viewed as an undesirable presence and a legitimate object of hostility' (p. 41).

In Part 2 we make a distinction between two types of harm and two types of hate speech events, to provide a framework within which to analyse the interviews. In Part 3 we relate interviewees' accounts of incidents of hate speech, which highlight how public racism is experienced as a feature of everyday life and give voice to the harms the targets told us they experienced. In Part 4 we apply the framework in Part 2 to those accounts. We conclude that everyday experiences of racism closely reflect the alleged harms of hate speech, that hate speech can be experienced as an existential attack on one's dignity, that negative effects are enduring, and that regulatory models ought to recognise these effects.

The harms of hate speech

In assessing the harms of hate speech, there are two distinctions in the literature we will disaggregate for the purposes of our argument. The first is a distinction between two types of harm, and the second is between two types of hate speech events. Both are addressed in our study. The literature distinguishes between constitutive and consequential harms (Maitra & McGowan, 2012b, p. 6); namely, between harms that are occasioned in the saying of a hate speech act, and harms that occur as a result of it. The former includes the work of Langton, who has argued that ‘speech can subordinate in virtue of unfairly ranking women as inferior’, and Hornsby and McGowan who have separately shown how hate speech can silence its targets (cited in Maitra & McGowan, 2012b, pp. 7-8). Matsuda has written persuasively of individual harms including psychological distress and risk of destruction to one’s self-esteem, and social harms such as restrictions on freedom of movement and association (1993). This is consistent with findings from psychology that individuals subjected to non-physical discrimination suffer harms to their physical and mental health (Meyer, 2003; Vijleveld et. Al., 2012; Anderson, 2013; Paradies et. Al., 2013; Gee, 2002; Harris et. Al., 2006; Victorian Health Promotion Foundation, 2012). Indirect effects include harms to dignity, ‘disregard for others whose lives qualitatively depend on our regard’ (Williams, 1991, p. 73), and the maintenance of power imbalances within social hierarchies of race (Allbrook, 2001; Bloch & Dreher, 2009; Dunn & Nelson, 2011). Some opponents of hate speech laws have expressed doubt about whether constitutive harms are sufficiently direct or serious to warrant curtailment of the right to freedom of expression (eg Strossen, 1994; 2012).

Consequential harms can occur in four ways (Maitra & McGowan, 2012b, p. 6): persuading hearers to believe negative stereotypes that lead them to engage in other harmful conduct; shaping the preferences of hearers so that they come to be persuaded of negative stereotypes; conditioning the environment so that expressing negative stereotypes and carrying out further discrimination become (often unconsciously) normalized; and causing hearers to imitate the behaviour. Again, some have doubted the strength of evidence showing a relationship between hate speech and serious consequences including discrimination and violence (Dworkin, 2009; Baker, 2012).

A further distinction is made between two types of hate speech events (Gumperz & Hymes, 1972). The first type is face-to-face encounters and the second is incidences of general circulation.¹ Some argue these two types of events ought to be treated discretely (Heinze & Phillipson, 2016). This is because face-to-face encounters can more easily be limited to the legal category of causing a breach of the peace or incitement to violence, whereas generally circulated hate speech is a far more controversial target for regulation. Indeed, in the United States statutory prohibition of the latter is impossible due to the protections afforded public discourse by the First Amendment (Weinstein, 2011, pp. 491-3; Post 2011, p. 482). An additional reason the latter is often harder to regulate is that some regard evidence of the harms of generally circulated hate speech to be insufficient. Heinze (2013), for example, argues that bans targeting general circulation hate speech are unjustifiable in stable, long term, prosperous democracies. He posits that those who argue in favour of bans tend to rely on speculation, not evidence, about the alleged harms of this type of hate speech event (pp. 595-7).

We argue that the distinction between face-to-face encounters and general circulation hate speech is not always clear in the everyday experiences of racism endured by targets. For example, hate speech yelled at a target from a moving vehicle or on the street constitutes a face-to-face encounter, yet can also be experienced as targeted at the community to which the target is perceived to belong. Even if no-one else heard the hate speech at the time, others

will hear of it through word of mouth, community events or the media. They thereby become informed that racism is alive and well, and that they may become its target. Indeed, Waldron's (2012) recent book was concerned with the harms of generalized racist material that, he argues, undermines the assurance that every community member is entitled to; namely, that they may go about their business unimpeded by assaults on their social standing, their entitlement to be treated as equals, and their dignity (p. 5). In other words, he argued that generally broadcast hate speech can harm constitutively. We support this view, and take the position that both types of hate speech events can incur harm constitutively, consequentially or simultaneously in both ways. We will operationalize these distinctions below to do two things: first, to provide a voice to targets of hate speech, and second to provide evidence on the effects of hate speech.

Experiences of hate speech: data from Australia

Semi-structured, qualitative interviews² were conducted on our behalf by the Cultural and Indigenous Research Centre Australia (CIRCA) with 101 members of target communities. Of the total, 32 were community spokespeople³ and 69 were ordinary community members. 55 qualitative, semi-structured, in-depth, paired (46) and individual (9) interviews were conducted. All interviews were confidential, and anonymized numeric identifiers have been allocated to the transcriptions of the recorded interviews (see Table 1), with the same numeral allocated to two interviewees where they undertook a paired interview (eg 5a, 5b). We drew on the available evidence regarding racism in Australia (eg Marcus, 2014) to identify the groups most likely to be subjected to racist hate speech. Relevant factors in identifying the groups included the historical and enduring racism experienced by Indigenous peoples, post-9/11 anxieties about terrorism, controversies over asylum-seekers (Australian Human Rights Commission, 2013) and the visibility of recently arrived immigrant communities. Interviews were conducted with Aboriginal and Torres Strait Islander, Afghani, Australian-born Arabic-speaking Muslim, Australian-born Arabic-speaking Christian, Chinese, Indian, Jewish, Lebanese-born Christian, Lebanese-born Muslim, Sudanese, Turkish Alevi, Turkish Muslim, and Vietnamese people.

(Table 1)

Recruitment of interviewees⁴ was undertaken by CIRCA researchers in a method known as network sampling (Neuman, 1997, p. 207) or 'rhizomatic' sampling (Stehlik, 2004, p. 40). As a recognized method in the social sciences (Galletta, 2013), its benefits are that it is consistent and commensurate with our interpretive approach to the data, and enables us to examine targets' interpretations of their own experiences, and the experiences of their communities. The project aimed to 'explore people's subjective experiences and the meanings they attach to them' (Devine, 2002, pp. 198-199, 205). Below, we report on those experiences and meanings. Semi-structured, qualitative interviews suited both our number of respondents and the use of multiple interviewers.

We acknowledge that concerns have been raised that this sampling method can produce bias (eg Reid & Smith, 1989, p. 179). We took a number of measures to prevent biased selection. Interviewees were not selected on the basis of having had personal experiences of hate speech, and neither we nor the interviewers had prior knowledge of whether they had experienced hate speech personally. As part of the interviews, they were asked whether they were aware of incidents of hate speech in their community or had experienced it themselves. We utilised interviewers employed by CIRCA with high level interviewing skills and

experience. We did not ask interviewees to nominate other potential interviewees. We conducted interviews with people in a range of locations: in four capital cities (72 interviewees), in regional cities⁵ (7 interviewees) and in remote areas (14 interviewees). As noted above, we targeted a total of 13 communities for interview. 42 interviewees were women and 59 were men. For 20 of the interviewees, interviews were conducted in 7 languages other than English.⁶

The majority of interviewees reported having been personally targeted, or knowing others in the community who had been targeted for hate speech. The interviewees' own accounts of what they considered to be hate speech incidents, and their reporting of incidents concerning family and community members, blurred the distinction between whether they had personally been targeted or knew others who had. Their reports spoke strongly to the view that this was not an important differentiation to them. Therefore we have not utilised this distinction in our analysis. Incidents occurred in a range of environments: at school, at university, during sporting activities, in service environments (eg supermarkets, banks), on the street, in the workplace, at cultural events, on public transport, inside one's own home (eg by phone call), in media reporting, and on stickers and posters. Some interviewees reported how common it was to be subjected to hate speech, eg 'I think for me ... every day I get vilified' (3). A majority of interviewees felt that media reporting focussed on extreme cases and contributed to and reinforced negative stereotypes. In Table 2 we summarise the evidence of face-to-face incidents. In Table 3 we summarise accounts of broadly circulated incidents. We have consciously chosen to present what the interviewees told us about their experiences of public racism in this relatively unmediated way, with analysis following.

We do not suggest that all these incidents would necessarily satisfy a legal definition of hate speech, incitement to violence or a breach of the peace. Rather, we report these incidents as they were reported to us, to contribute to redressing the absence of victims' voices in the literature about hate speech. Although judicial and quasi-judicial decisions in legal cases⁷ might be thought to provide insights into the nature of individuals' experiences of hate speech, such cases represent only 1.8% (citation redacted for anonymity) of all official hate speech complaints nationally, and therefore comprise too small a proportion of the hate speech that occurs to be a reliable source of data.

We are at pains to avoid any suggestion that the experiences of hate speech by each group are homogenous. Necessarily our categorisations and analyses of harm highlight shared experiences, but we recognise that group, personality and situational differences are in play, and that hate speakers can also be members of minority communities. We have avoided comparing the experiences of different racial/ethnic groups because the methodology of the interviews was not designed to sustain such generalisations. Rather, it was designed to collect and collate reports of experiences of racist hate speech.

(Table 2)

(Table 3)

These incidents demonstrate that public expressions of racism are common experiences. We argue that one of the powerful and original contributions made by our presentation of this data is to draw attention to the gap that exists between public racism as it is *experienced* by Indigenous, racial, ethnic and religious minorities in Australia and public racism as it is *defined* and sanctioned at law, since only three interviewees had either lodged a complaint

under those laws or knew someone else who had. An examination of the reasons for this gap is beyond the scope of this article.⁸ We turn now to examine how the interviewees told us the hate speech incidents affected them.

Reported harms

Interviewees reported a variety of negative emotional and physical consequences arising from hate speech that they, or others, experienced, which we have collated under headings of our own construction. Readers may disagree with the designation of some of these as ‘harms’, but our aim here is to give voice to the targets of public racism, and to communicate their accounts of the harms they feel they and others have suffered. In the next section we will assess the correlation between these experiences and the harms asserted in the literature.

Interviewees reported that hate speech could result in feelings of being hurt and upset by hate speech:

‘Vietnamese people are used to sufferance as victims of insult. I have known a few people being insulted in Centrelink offices, even by their interpreters, then come to cry in counsellor’s office.’ (17)

When anyone ‘targets’ [our] cultural values and traditions ‘we really feel upset and we’re sensitive and all that too because we have been brought up in that culture. ... It might be the content or maybe the tone of the conversation, or the media news or whatever it is. It can be upsetting.’ (22)

‘We do not show any reaction but sadly I am upset by it.’ (28a)

‘It is very rude and affects me badly and causes emotional distress.’ (29a)

‘Although I’m not a mosque visitor or mosque goer, it really upsets me when I see on TV people protesting because they don’t want a mosque in their community.’ (33)

‘I think people, particularly in high profile positions ... I think you need to take responsibility and be really careful about what comes out of your mouth, because it can be really hurtful.’ (45)

Feelings of being hurt and upset do not, and many argue should not, reach a standard for legislative intervention. However, at times interviewees reported that this hurt could be experienced very deeply, as an existential kind of pain:

‘It was like crushing emotionally and spiritually. And physically.’ (1)

‘To me the saddest thing is [there] not a recognition of the special status of what we add to this country. We don’t take away from; we add... but it’s always put up there as a negative, that Aboriginals don’t add to the fabric of this country, that we don’t – and ... I think that it is painful ... Yes, it does hurt and it strikes at your very being.’ (2)

‘You can never, you can never repair damage in that content once it’s been put out there. It lingers, it stays, it smells, it hangs around. You can’t get rid of it and racism is racism, it builds and feeds on that.’ (3)

‘Our kids also feel hopeless and ask why their parents as Muslims are doing something wrong.’ (28b)

Targets voiced the fear that resulted in communities subjected to hate speech:

‘When you see the infection of that kind of hate, that’s scary stuff.’ (4)

'Why is it that our Turkish school on Saturday is the only school that has to have a security guard on Saturdays? Because we're fearful of attack.' (44)

People yelling hate speech (eg 'fucking Jew', 'heil Hitler') out of car windows when a man walks home from the synagogue on Friday evenings with his children, who get quite scared and intimidated. (50)

These fears were reported as affecting communities' ability to utilize regulatory mechanisms to try and stop the conduct from recurring:

'People can lodge complaints but they just don't do it, they don't use it [the law] 'cause they're scared.' (26a)

A number of interviewees reported that hate speech could disempower its targets to act against hate speech.

'The vilification laws in Australia are not useful because in order to protect the community that have been vilified you've got to have resources. The Human Rights Commission of Australia is a toothless tiger. It doesn't go around acting on behalf of these groups that have been vilified, start laying down standards... They don't stand up. They do not take on the Alan Jones⁹ of the world. They do not take the Bolts¹⁰ on; they do not take the media on. They allow these racist mentalities, these racist structures to go on unimpeded and yet it's their role that the Commonwealth Government is established to monitor human rights in Australia. What's the good of monitoring when these abuses are going on. They're doing nothing to stop them. It's just for face value gesture' (3)

Difference between vilification directed at a footy star – media picks up – but if the victim was 'a little person in street ... well what do you do? ... How much money has a black fella got to get a solicitor?' (9)

Hate speech could lead to a withdrawal from targets' opportunities to express themselves.

When a guest speaker at a community event, speaking about her national sport, the audience teased the interviewee and made jokes 'which affected me very badly. I tried to be proud of myself ... but it wasn't possible to keep going and continue my presentation.' (29)

Interviewee told of an Indian work colleague who with a Masters degree decided not to pursue her career to higher levels because she was sensitive to being criticized or subjected to racist comments because of her Indian/Asian identity. (22)

Some interviewees said explicitly that they felt hate speech could render its targets unable to respond directly at the time *and* could silence them in more diffuse ways:

'When people say things about [Indigenous] people and communities these days, it's putting out that negative story to the public and in a way, it's affected [our] people, it's disempowered [our] people in many ways.' (10)

'Some people do ignore things ... they never report incidents related to racism. The problem is that they think they will not succeed even if they report them. They believe that cases related to them will not be taken seriously.' (24b)

'We were worried about talking to girls, because it got to a stage where if you were to approach a girl, she could turn around and say, "Lebanese, they are trying to rape me, go away" ... it created paranoia.' (36)

At a meeting at work, 'one of the participants jumped up and said, "look, that's a Jewish organisation, that's a Jewish organisation, that's a Jewish organisation". Like why, just out of the blue ... everyone just sits silently and I usually can never ... respond, I get totally paralysed.' (48)

The media '... ascrib[es] a derogatory collective description to the Jewish community as a whole as people who try to censor other people and ... who use their history or suffering in the past to try to silence other people or stifle debate ... it's this general sweeping categorical ascription of some evil motive to an entire community... I believe it's an attempt to silence the community, to stop the community from having its voice.' (46a)

'[Hateful online commentary] has a long slow accumulative effect on people's views and attitudes towards Jewish people, because when they get relentlessly bombarded ... it does have a substantial and real impact on their judgement and their opinions.' (50)

Interestingly, some interviews consciously articulated silence and withdrawal as tactics community members could take to avoid hate speech:

'They give you a hate speech, okay, just who cares. Just run away.' (15)

'It is better to ignore them and not waste our time.' (28)

Some interviewees articulated the exclusion that could result from hate speech:

When told by a student to 'go where you belong' ... 'I feel that's – I know that I'm different from them. That's – it was totally coherent, his curly hair and blue eyes. And I'm hurting, I feel that I'm living here and I'm [earning] my livelihood here, my family is here but I'm still not in their [good]will. I'm not having the ownership of – yeah. I feel that.' (14)

'It was just because of that fear of being judged, of that fear of being sort of like prosecuted, being excluded from the nation's society.' (18)

'I have observed through social contacts that many people do not want to share their privilege and in fact feel uncomfortable to be around us.' (20)

'In the workplace ... you tried to avoid that and you rather prefer to be by your own because we were a bit concerned that I'm to be in a group that we don't know what kinds of comments they're going to make next.' (22)

'The media plants seed of doubt and question marks, which leads them to fear us' (32b)

'The media hate our community. They want South Sudanese to be frustrated and feel as if they are not Australians.' (24b)

'There is a division in this Australian society because the politics accept you as a citizen but the community doesn't accept you even if you are a citizen for 100 years, you are still a wog for them.' (38)

But you can also be very influential so you're influencing other people to think the same way ... you're creating hate, maybe not your intention, but what you're saying is creating hate amongst the general community about a particular group.' (45)

Others spoke of how hate could violated rights or left targets feeling dehumanized:

Being racially abused on a train and in a supermarket, 'In both incidents, I deeply felt my human right as a citizen or simply a passenger was violated.' (13)

Interviewee was told that he couldn't be seen in the dark: 'he was like saying that we were too black and that he couldn't even recognize that there were people there. He could only [see] the white people in the room.' (24b)

Provocation to anger and frustration was reported to be a common experience:

After having been abused in a supermarket, 'I was furious but attempted to control myself. I did not continue the fight and turned around to leave.' (13)

When people experience hate speech 'they do nothing. They just feel angry. When they come back home after that thing, they think about it. Again they feel very desperate, frustrating.' (15)

'When people make that type of judgment without any facts or basis and it's just hearing it, for me, it disappoints me. I don't get angry any more because I've heard it and seen it all before.' (19b)

Several reported that hate speech could result in a restriction of community members' ability to identify with their ethnicity or religion:

On media commentary on who 'qualifies' as a 'real' Aboriginal person: 'So they're taking away the right of self-determination of Aboriginal people to define ourselves as people.' (3)

'You didn't want to be identified as a Vietnamese person.' (18)

'Those women wearing hijab are targeted by young people ... some women even desperately avoid wearing hijab.' (29)

'I stopped speaking Arabic in public after the Tampa.¹¹ Because Mr Howard stands there in parliament, "We don't want those kinds of people". I have been in Australia 30 years by then. And I was very, very offended.' (33)

'Well in my workplace, and I work in a government department, I definitely never use my language or my ethnicity ... I just wanted to fit in like everyone else, because I heard a lot of the crap that was going on about Arabs and Lebanese and ... I was not one of them, I was Australian.' (39)

'If I'm in a busy train, I wouldn't read my Arabic newspaper, so people would not recognize me as a middle eastern.' (40)

'If I went into the city... and I started talking in Turkish ... I would be a little bit concerned and maybe opt to talk more English than my own language.' (43)

A strong theme was how the media could play a particularly unhelpful role in perpetuating negative stereotypes. Interviewees noted that the media could also be helpful and that in some cases portrayals of their community had improved. Nevertheless, negative media portrayals created hurt, upset, hatred from the general community, exclusion, silencing, and fear by the mainstream community of members of the targeted community.

'The media ... has reinforced a lot of stereotypes that we're trying to break down' (6a), 'It's always one-sided.' (6b)

'We were always portrayed as the ignorant race that were just too stupid, that couldn't do a darn thing.' (4)

'They very often talk about the dark side of China ... there is a strong hostility and prejudice towards China behind the media reporting.' (13)

'Definitely they stereotype Vietnamese with ... drugs'. (19)

'Recently three Vietnamese people were caught drug trafficking. The TV news program I watched still pointed its finger to the whole community.' (20)

'90% or 95% of the time they'll be highlighted as criminals.' (24a)

'The media ... always have some perspective thinking, oh, we are black therefore we are from war country, therefore we always solve things in violent way and we have like a temper.' (26a).

Afghanis and Muslims interviewees were highly critical of the way the media portrayed them as terrorists ('they make the connection that all Muslims are terrorists' (28)), and a Lebanese interviewee reported that Lebanese people are portrayed as 'collectively guilty' (32) for offences committed by people of Middle Eastern descent. A Jewish interviewee reported that Jews are portrayed in some sections of the media as evil: 'it's this general sweeping categorical ascription of some evil motive to an entire community' (46a).

Analysing the data

The reflections shared by the interviewees confirm that public racism in Australia occurs in face-to-face encounters and general circulation in targeted communities. These two types of hate speech were not experienced as qualitatively different in terms of seriousness or harmfulness. The interviews powerfully document the range of harms experienced in public expressions of racist hate speech, and support five important insights.

First, the harms attested to by interviewees – as experienced, perceived and feared – bear a close resemblance to the harms alleged in the literature, and are both constitutive and consequential. Consequential harms included persuading others to believe negative stereotypes, conditioning the environment such that racism is normalized and causing hearers to imitate the behaviour of hate speakers. Constitutive harms included subordination, silencing, fear, victimisation, emotional symptoms, restrictions on freedom, lowering of self-esteem, maintenance of power imbalances, and undermining of human dignity. Of course, not every instance of hate speech need result in all the harms elucidated for the argument to be sustained. Nor need it be shown that harms always result from hate speech – some of the interviewees said they thought a target could just walk (or run) away from a hate speaker, and sometimes they brushed off the incident as being ineffective. This does not undermine the premise that hate speech is *capable* of inflicting the harms elucidated.

Second, public hate speech is frequently experienced as an attack on worth and dignity. Negative stereotypes in the media are a quintessential form of generally circulated messages that stir up hatred against a group. The interviewees attested to being aware of negative stereotypes being propagated in the media, and of extensive harms that resulted from this. The fact that the interviewees spoke so strongly about this indicates that broadly circulated negative stereotypes can and do inflict the harms indicated.

Third, harms are often enduring and not ephemeral. One does not easily ‘shake off’ a racist slur, especially when the encounter and its memory are fresh the next time the target hears of another attack or reads generally circulated hate speech about his/her community. Our analysis suggests that there is a close and complex relationship between constitutive and consequential harms, and the harms are experienced cumulatively. Attempts to draw a neat distinction between these two types of harm risk misrepresenting, and being insensitive to, lived experiences of public racism. The debate over hate speech laws tends to focus on discrete single incidents and assess the legitimacy of legal sanctions attached to *that* event. Although that may be necessary to enforce a law, it is an artificial and inaccurate way to understand the experiences of being on the receiving end of hate speech.

Fourth, the data provide strong support for the argument made by Delgado (1993, p. 57) that ‘direct, immediate, and substantial injury’ (p. 57) may be caused whether or not there is a ‘fighting words’¹² dimension or risk of immediate public disorder, and Parekh (2012), who argues it is a ‘mistake, commonly made, to define hate speech as only that which is likely to lead to public disorder’ (p. 41). Harms of hate speech that fall outside these narrow categories are not trivial. They have a serious impact on targets, and impede their opportunity to participate fully in society. The isolation and silencing experienced by some interviewees, and others’ practices of denying their identity speak to the gravity of these harms, and the incompatibility between targets’ lived experiences and the goals of inclusion and equality embedded in hate speech laws.

Fifth, the data offer empirical justification for the breadth of Australia’s unique approach to hate speech laws (citation redacted for anonymity). Opponents of hate speech laws have reserved trenchant criticism for Australia’s national law because of its relatively inclusive harm threshold, and the absence of an incitement component. In 2014 the Australian Government mooted a proposal to narrow this law by exempting virtually all public debate, and limiting it to conduct that ‘vilified’ or ‘intimidated’.¹³ Although the proposal was subsequently shelved (Aston, 2014), part of its rationale was that the current law caught conduct that was insufficiently serious to warrant legislative intervention. Our interview data confirm that hate speech does not need to involve violence to be harmful. The harms reported by many interviewees are far from trivial. To treat them as ‘lesser’ harms, and undeserving of legal redress, is a denial of lived racism that is inconsistent with the aims of hate speech laws (Nelson, 2013).

One of the strengths of Australia’s national hate speech law is that the impact of hate speech is assessed from the point of view of a member of the targeted group and not the traditional (allegedly) neutral ‘reasonable person’. The government’s ill-fated 2014 plan to narrow the scope of the law would have amended this, so that harm would be assessed from the perspective of ‘an ordinary reasonable member of the Australian community’. While it is widely understood in the scholarly literature that engagement with victims’ perspectives is central to understanding and addressing racism (Applebaum, 2010), this sort of sensitivity is infrequently manifested in hate speech laws. In this respect, the Australian law is unique. The

interview data strongly support the maintenance of this aspect of the extant definition of unlawful racist hate speech. As Rice (2014) has argued, it not simply a matter of being sensitive to victims of public racism, but of recognising that they are uniquely placed to gauge and articulate the harms done.

Conclusion

We have given voice to targets of hate speech who have recounted the types of hate speech events they and their community members are subjected to, and the harms experienced. Members of target groups experience face-to-face encounters and widely broadcast negative stereotypes, and their experiences strongly reflect and support the alleged harms of hate speech in the literature. The data suggest that there are important inter-relationships between constitutive and consequential harms, and between confrontational hate speech and its indirect wider dissemination. To the extent that hate speech laws are sufficiently broad and flexible to address the types of speech events and spectrum of harms attested to by the interviewees, and to assess harm from the perspective of the targeted communities, members of Indigenous and racial/ethnic minority communities in Australia enjoy, potentially at least, a greater level of legal protection than equivalent communities in the many countries that have not been prepared to define the field of unlawful hate speech as broadly.

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¹ The national *Racial Discrimination Act 1975* (Cth), s 18C makes it unlawful to engage in conduct likely to ‘offend, insult, humiliate or intimidate’ a person because of their race/ethnicity, with this phrase interpreted as referring to conduct with ‘profound and serious effects, not to be likened to mere slights’ (*Eatock v Bolt* (2011) 283 ALR 505, 561), and with exemptions in s 18D. In NSW, a model which has been adopted in most Australian states and territories, it is unlawful to engage in public conduct likely to ‘incite hatred towards, serious contempt for, or severe ridicule of’ a person or group because of their race/ethnicity (eg *Anti-Discrimination Act 1977* (NSW), s 20C).

² We apologize for any harm caused by the repetition of hate speakers’ expressions, which is done to serve a legitimate research purpose.

³ People who act in a formal or informal representative capacity for their community.

⁴ The authors did not have the means to recruit sufficient numbers or the required range of interviewees from the community, nor the language skills to conduct interviews in languages other than English. Australian privacy laws prevented us from using existing contact lists of ethnic or Indigenous organizations to recruit interviewees. We therefore engaged the services of CIRCA to conduct the interviews. This is an organization that specializes in conducting research with people from culturally and linguistically diverse backgrounds and Indigenous Australians. It employs skilled bilingual and Indigenous researchers in over 30 languages. Experienced researchers used their existing knowledge of, and contacts within, culturally and linguistically diverse communities to identify interviewees. Ethics approval for this research was granted by [redacted for anonymity].

⁵ Consistently with the Australian Bureau of Statistics’ classification of ‘regional’ and ‘remote’ areas, see <http://www.abs.gov.au/websitedbs/d3310114.nsf/home/remoteness+structure>.

⁶ Dari, Arabic, Hazaragi, Pashto, Dinka, Vietnamese and Mandarin.

⁷ eg *Wagga Wagga Aboriginal Action Group v Eldridge* (1995) EOC 92-701; *Patten v NSW* [1995] NSWOT (21 January 1997); *Cohen v Hargous*; *Karellick v Hargous (No 2)* [2006] NSWADT 275 (22 September 2006); *Casey v Blume* [2012] QCAT 627 (21 November 2012); *Kahlil v Sturgess* [2005] VCAT 2446 (23 November 2005); *Clarke v Nationwide News Pty Ltd t/as Sunday Times* [2012] FCA 307; *Eatock v Bolt* [2011] FCA 1103; *Jones v Scully* (2002) 120 FCR 243; *Jones v Toben* [2002] FCA 1150; *Campbell v Kirstenfeldt* [2008] FMCA 1356 (30 September 2008).

⁸ We explore this gap in (citation redacted for anonymity). We have argued both that it is a product of statutory definition, and that it arises from the significant procedural barriers that targets face when enforcing civil hate speech laws.

⁹ Alan Jones is a radio broadcaster in Sydney, Australia, who was the subject of a long-running, successful racial vilification complaint for his remarks regarding Lebanese Muslims in Australia: *Trad v Jones (No. 7)* (2014) NSWCATAD 225 (December 19, 2014).

¹⁰ Andrew Bolt is a journalist who was the subject of a successful racial vilification complaint: *Eatoock v Bolt* (2011) 283 ALR 505.

¹¹ In August 2001 the Norwegian ship, the *MV Tampa*, rescued a sinking boat carrying asylum seekers off the Australian coast. The government's hostile response prompted a major controversy and ignited debated over Australian refugee law and policy (Crock, Saul & Dastyari, 2006).

¹² United States First Amendment jurisprudence treats 'fighting words' (that is, speech likely to 'incite an immediate breach of the peace') as undeserving of protection (*Chaplinsky v. New Hampshire*, 315 US 568 (1942)). See also Bangstad (2014).

¹³ Freedom of Speech (Repeal of S. 18C) Bill 2014.