

THE IMPACT OF HATE CRIME LEGISLATION

by Barbara Beebe

As modern society experiences an ever-increasing amount of violence, law makers and victims alike begin to seek refuge within the criminal justice system. In the quest for relief, the victims of crimes - especially violent and physical crimes like murder, rape and assault - are often-times eager to settle for short term solutions to their problems. The advent of 'hate crime' legislation is just such a short term solution to the problem of crimes motivated by the hatred of a particular segment of society. This is an attempt to show that hate crime legislation is a short term solution to an age old problem which - in the long run - will do more harm than good to the communities it intends to help. "As now defined, 'hate crime' refers to an act committed not out of animosity toward the victim as an individual, but out of hostility to a group to which the victim belongs." [1]

This particular definition, while correct in stating the intentions of the criminal assailant does not offer much in the way of expressing the intent of the law. The underlying message in hate crime legislation is "that prejudice by itself should not be punished; but prejudice together with violence should be." [2]

The fact of the matter is that hate crime legislation seeks to punish the motivation of crime, instead of the crime itself. This boils down to content-based legislation which the Supreme Court has typically found to be unconstitutional.

As of December, 1991, 34 states in America have enacted hate crime legislation. Of these 34 states, 20 states and the District of Columbia have enacted hate crime laws that include crimes committed against racial/ethnic and sexual minorities. [3]

St. Paul, Minnesota currently finds its hate crime legislation pending U.S. Supreme Court review. When a white, 18 year old youth "was arrested for burning a cross on the lawn of the only black family in his....neighborhood" [4], he was charged under a local St. Paul ordinance prohibiting "bias-motivated disorderly conduct." This legislation makes it illegal

"to place on public or private property a symbol, object, appellation, characterization, or graffiti, including but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, or religion or gender." [5]

Minnesota's "bias-motivated" statute is similar to other laws currently enforced in other states. Many states, not particular about the term 'hate crime,' have opted for the euphemistically-pathetic moniker 'ethnic intimidation.'

Michigan, for example, has codified a law that "specifies up to 2 years in prison and up to \$5000 in fines for 'ethnic intimidation,' in which a person assaults, vandalizes, or threatens with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin." [6]

Ohio has gone one step further than

simply highlighting 'hate crimes.' The Ohio statute "deems crimes more serious" if motivated by hatred of a particular segment of society. [7]

Much of the legislation is similar to Minnesota's. Many special interest groups, like the ADL and the NAACP, are for once at odds with the ACLU. The ACLU argues that these laws "(are) unconstitutional... because (they are) based on message, not action, and because (they are) hopelessly vague, and thus subject to abuse and arbitrary enforcement." [8]

The recent use of hate crime legislation has been to highlight not only physical acts but speech as well. The Michigan statute, for example includes the words 'threaten' and 'harass,' both terms indicative of speech. If one were to say, scream or communicate one's hatred of gays, for instance, by stating "I hate faggots!", any gay man within earshot could have a chance to subject you to the rigors of the criminal justice system.

There are numerous problems with hate crime legislation which it's proponents either fail to recognize or simply find a suitable compromise for their own agendas and narrow objectives. The problems are: (1) hate crime legislation attempts to re-educate people out of their prejudice, (2) hate crime legislation does not correct the age old problem in criminal justice - namely equal protection (particularly in law enforcement and judicial proceedings) for the oppressed people in America, (3) the socio-political slant of hate crime legislation will come back to haunt the self-same groups who now support it, and (4) the unstated goal of hate crime legislation is to punish those who hate "x" particular group and have the guts to voice that hatred. Hate crime legislation does not punish the violence itself.

Hate crime legislation attempts to re-educate people out of their prejudice. Proponents believe that by punishing the motivation they are somehow teaching the person that such hatred is wrong.

"The ADL, in a 1988 report, said, 'Importantly, laws which more severely punish violent manifestations of anti-Semitism and bigotry demonstrate the country's resolve to work toward the elimination of prejudice.'" [9]

Unfortunately, the ADL has a warped sense of a democratic government's responsibilities. The government can and should lead the country in example to live lives free of prejudice. However, for the government to legislate such behavior is tantamount to fascism. It is the government telling its citizens how to think and act toward others. This is not one of the founding principles of a democratic nation. Although the government's intentions are wonderful, its means are fascistic and dangerous.

The biggest problem with hate crime legislation, however, is that it does not correct the age old problem in criminal justice of equal protection under the law. To the contrary, hate crime legislation deems the oppressed to be some special group deserving of special laws. Dr. Patricia J. Williams, in *The Alchemy of Race and Rights*, presents powerful documentation of the neglect racism, sexism, homophobia and other social ills have received in the judicial system. She points out that we feel a reluctance to mention these social ills unless they are blatantly stated and in doing so discount a great deal of the impetus for crime in this country. Williams relates that the biggest myth in the American society is that "a prejudiced society is better than a violent one." [10]

This is a myth because

"the attempt to split bias from violence has been society's most enduring and fatal rationalization." [11]

In our attempt to validate the individuality of people, we have discounted pervasive social phenomena experienced by groups of people and in doing so have created the tension that we see today in the criminal justice system. The advent of hate crime legislation - overwhelmingly supported by organized groups of gays, blacks, women and other oppressed groups in America - actually buys into this system of thought that equates these groups and their differences with inferiority in the grand scheme of American jurisprudence.

What the oppressed need is equal protection under the law. In order to achieve this protection it is necessary that we are seen as a valid part of the American fabric, not some special group of victims who need special laws of protection. There are no special laws for assaults against white people, straight people, or men. These groups are victims of violent crimes, yet they are taken seriously because of their status. Hate crime legislation does not achieve this same protection for the oppressed. On the contrary, it further enhances one's notion of separateness from the American fabric.

When Paul Broussard, a 27 year old gay man was violently clubbed to death by a group of teenagers, gay activists convinced the Houston police to develop a special undercover unit to patrol the city's gay areas.

"On national television, the officers talked about how shocked they were at the level of violence against homosexuals." [12]

These policemen would not have been so "shocked" had they taken the pleas of the gay community seriously. For many years and even today, it was seen as "OK" to beat up on gay people. This is not equal protection under the law. It is not "OK" to beat up on anyone, regardless of the particular community in which they belong. Hate crime legislation exacerbates the hardening of division without highlighting the wrongness of violence to any group.

The socio-political slant of hate crime legislation will come back to haunt many of the 'groups' who now support it. Hate crime legislation is vague enough so that anyone can be classified as a minority. The typically oppressed groups (gays, blacks, women) may find themselves on the other end of the legislation they now support. For example, many activists - when marching - carry politically abrasive signs to highlight their message. Activists against the government have been known to equate national leaders with Hitler and to use the swastika as a symbol of degradation. What

if someone takes this sign to mean something else? What if the activist places the sign against the White House, which is a typical maneuver for many activist that march near the Capitol? According to the vague wording of the Minnesota statute (which is similar to the D.C. statute), the activist could be charged with placing a swastika on a public building! How's that for a boomerang effect! If this possibility seems to vague, here's a reality: "In Florida a black man has been charged under the state's hate-crime law for calling a white policeman a 'cracker.'" [13]

Lastly, the unstated goal of hate crime legislation is to punish those who act out their hatred for "x" particular group. Jonathan Rauch, a gay, Jewish journalist who is adamantly opposed to hate crime legislation, points out the fallacy of such a goal:

"Not only is wiping out bias and hate impossible in principle, in practice "eliminating prejudice" through force of law means eliminating all but one prejudice - that of whoever is most politically powerful." [14]

Rauch continues his opposition with a staunch admonishment to the communities who support such legislation:

"I think it's ironic...that gays, of all people, would endorse a criminal sentence that has overtones of forced re-education. Homosexuals know a thing or two about being sent for therapy for re-education to have their attitudes straightened out. Jews, too, know something about courts that decide whose belief is 'hateful'...The best protection for minorities is not prejudice police but public criticism." [15]

Hate crime legislation, while meant to protect violence against minorities, will do more to simply hide the prejudice and increase the violence against those same groups. The oppressed in society should fight and demand equal protection under the law, not special protection. In the long run, all people must fight to eradicate violence against others and the way to start is not by singling out particular groups.

Notes:

[1] Lisa Heinzerling, "A New Way of Looking at Violence Against Women," *Glamour*, 10/90, p.112.

[2,6,7,9,13,14,15] Jonathan Rauch, "Thought Crimes," *The New Republic*, 10/7/91, p.18.

[3] "Organized Hate Increased in '91." *The Front Page*, 3/27/92, p.1.

[4,5,8] "Breaking the Codes." *The New Republic*, 7/8/91, p.7.

[10,11] Patricia J. Williams. *The Alchemy of Race & Rights*, Harvard University Press, Cambridge, MA. 1991, p.61.

[12] James N. Baker. "Crimes of Prejudice," *Newsweek*, 11/25/91, p.25.