

INTERNATIONAL LEGAL NOTE

Hate crimes and social work

An international perspective

● Daniel Pollack

The home of a family has racist graffiti spray painted on it.
A bottle is thrown and ethnic slurs are shouted at a man by someone in a passing car.
A teenager is chased home from school by a gang wielding baseball bats.
A physical attack and verbal taunts are made against someone wearing a distinctively ethnic head covering.

Few areas of social policy and law create more confusion and spark more heated debate than hate crimes. Those in favor of designating an offense a hate crime make no apologies for treating perpetrators of the same crime differently because one of the perpetrators commits the offense while speaking words or exhibiting behavior that is deemed particularly hateful from a societal perspective. These offensive remarks or actions may take the form of being associated with race, color, religion, national origin, gender, sexual orientation, gender identity or disability, depending on the law. When an offense is categorized as a hate crime, the law often provides for an enhanced penalty.

Proponent position

Because victims are selected at random, hate crimes may be difficult to solve and can therefore trigger feelings of victimization, vulnerability and fear in a community at large. Proponents say that

hate crime statutes are needed to convey unequivocally that crimes motivated by prejudice will not be tolerated. When society is morally outraged it has a right and an obligation to prescribe criminal sanctions in direct proportion to the perceived social harm of the offense. The more highly prized the societal value, the more strictly we penalize its violation. Following this line of reasoning many countries, or jurisdictions within countries, have enacted hate crime laws. New Zealand's law is typical. The Sentencing Act of 2002 provides, in section 9(1)(h), that where an offender commits an offence wholly or partly because of hostility towards a group of persons with common characteristics such as race or color, nationality, religion, gender identity, sexual orientation, age or disability, this must be taken into account as an aggravating factor by the court in the sentencing process. Other countries have enacted hate crime laws or have ratified treaties that address hate crimes in a broader sense. Appendix 1 identifies some of these countries and the relevant citation of law or treaty. The countries range in size and characteristics from the smallest, Andorra and Liechtenstein, to the largest, the Russian Federation; from the newest Baltic and Former Soviet Union countries, to the oldest, Denmark, Portugal, France and the United Kingdom. The reader should note that not all of the countries endorse the notion of an enhanced penalty for a hate crime.

Opponent position

Those opposed to the designation and enhanced penalty aspect of hate crimes warn that the definition of hate crime, if undertaken at all, must be made with considerable caution. What happens to the principle of equality before the law? As Sullum (2007) writes: 'The rationale for such unequal treatment is that crimes motivated by bigotry do more damage than otherwise identical crimes with different motivations because of the fear they foster.' By penalizing inappropriate speech and expression when coupled with inappropriate actions, we may see the day when mere inappropriate thoughts will not be condoned. Indeed, the designation may simply serve to mask the fact that society is doing little to address the real problems of hate and is instead applying political make-up. Opponents point out that hate crime statutes serve to increase the penalties against those who commit a crime for reasons of 'bias or prejudice' against only designated 'politically correct' groups. Besides, the criminal offenses to which hate crimes are

attached are already illegal. Why should a crime committed because of bias or prejudice against groups categorized by race, sexual orientation, etc. receive extra protection? A hate crime designation does nothing to criminalize behavior; rather it criminalizes the thought and motivation behind criminal acts. Ironically, hate crime statutes, however well intended, may invariably be used to restrict the very politically incorrect thought and speech we hold so dear, and the alarmist concern and moral panic (Ungar, 2001) about a single act of hostility becomes disproportionate to the punishment. Will traditional religious beliefs that certain behaviors are sinful be categorized as expressions of hate? A dire warning from opponents is sounded: We should steer clear of the Orwellian thought police who are poised, ready to make animus its own crime.

Discussion

As is evident, these laws are controversial for numerous reasons, as follows.

- Variations in police enforcement of hate crime laws may be significant (King, 2007).
- Each side questions the frequency of hate crimes, accusing the other of inflating or minimizing the figures (McDevitt et al., 2002a; Nolan et al., 2002; Rubenstein, 2004).
- Queries are raised about the role the media has had and continues to have in constructing and legitimizing this new social concern. Some researchers believe that violence motivated by hate is simply an ancient problem dressed up in a stylish sense of urgency and a disproportionate amount of media attention has made it a part of our everyday reality (Colomb and Damphousse, 2004). Similarly, they question the role social activists, legislators, courts and law enforcement personnel have in refining and defining our societal acceptance of this perceived phenomenon (Grattet and Jenness, 2001; Jenness and Grattet, 2001).
- Unaddressed and unchallenged in the professional literature is the assumption that all victims of hate crime should be similarly treated. Some classes of victims should be distinguished from others.
- Some critics characterize the laws as identity politics, and some proponents even voice concern that homophobia, racism and other prejudices are cultural problems that should be addressed by education rather than legislation.

- Legislators on both sides continuously ask: what is the operational definition of a hate crime anyway? While cross burning by white supremacists in the southern states of the USA was an obvious example, most actions are less clear.

Profile of a perpetrator

What is the profile of a person who commits a hate crime (McDevitt et al., 2002b)? As Green et al. (2001: 481) note:

Formulating a principled defense of any particular list of protected groups is complicated further by the two-sided quality of each category. To specify, for example, that hate crime encompasses violence motivated by racial hatred means that both white-on-black and black-on-white attacks are lumped into the same classification. Whatever its merits as public policy or as a vehicle for consensus building, an even-handed definition that makes no distinction between attacks committed by dominant as opposed to subordinate groups poses a challenge to those who seek to explain why hate crime occurs. Should one expect that the same factors that propel straight-on-gay attacks also produce gay-on-straight attacks?

What are the criteria for expanding the number of protected groups? By addressing one issue perhaps are we creating another: if some groups are left out of the definition of hate crime, they will be vexed and resentful at the selective depreciation of their own victimization.

Most importantly, is there any evidence that hate crime laws are having a positive effect in curbing such violence while simultaneously leaving other broad civil liberty concepts undisturbed? As social workers we pride ourselves on endorsing programs and policies that have been rigorously evaluated. In fact, few hate crime response and prevention programs have been undertaken. It is therefore not surprising that the inability to predict or explain the phenomenon of hate crimes, along with the lack of evaluation research, has lead skeptics to question the real impact of these statutes and programs.

The position of social work organizations internationally

Some social work organizations are supportive of hate crime laws. For instance, in the USA the National Association of Social Workers is supporting pending federal hate crime legislation. Their reasoning is: 'One core mission of social work is to serve underrepresented and marginalized communities. For this reason, social workers are profoundly committed to advocating for a humane society that will resolve to fight intolerance, bigotry, and injustice against all people' (National Association of Social Workers, 2007). A review of the IFSW, ICSW

and IASSW archives does not reveal a formal endorsement of hate crime statutes.

Proponents of hate crime legislation have good and honorable intentions. They want to see less bigotry and more good will. However the international social work profession views this debate, perhaps the discussion itself is the most important undertaking. After all, the bright light of open debate is often the first step to ameliorating hate.

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Appendix Table 1 Countries that have ratified treaties or enacted legislation that address hate crime

Country	Legal citation
Albania	http://www.legislationline.org/legislation.php?tid=218&lid=8161&less=false
Andorra	http://www.legislationline.org/?tid=218&jid=3&less=false
Armenia	http://www.legislationline.org/?tid=218&jid=4&less=false
Azerbaijan	http://www.legislationline.org/legislation.php?tid=218&lid=7135&less=false
Belarus	http://www.legislationline.org/legislation.php?tid=218&lid=8163&less=false
Belgium	http://www.legislationline.org/?tid=218&jid=8&less=false
Bosnia and Herzegovina	http://www.legislationline.org/legislation.php?tid=218&lid=8167&less=false
Bulgaria	http://www.legislationline.org/?tid=218&jid=10&less=false
Canada	http://www.legislationline.org/?tid=218&jid=11&less=false
Croatia	http://www.legislationline.org/legislation.php?tid=218&lid=8182&less=false
Czech Republic	http://www.legislationline.org/?tid=218&jid=14&less=false
Denmark	http://www.legislationline.org/?tid=218&jid=15&less=false
Estonia	http://www.legislationline.org/?tid=218&jid=16&less=false
Finland	http://www.legislationline.org/legislation.php?tid=218&lid=8184&less=false
France	http://www.legislationline.org/?tid=218&jid=19&less=false
Georgia	http://www.legislationline.org/?tid=218&jid=20&less=false
Germany	http://www.legislationline.org/?tid=218&jid=21&less=false
Hungary	http://www.legislationline.org/?tid=218&jid=24&less=false
Iceland	http://www.legislationline.org/legislation.php?tid=218&lid=7833&less=false
Ireland	http://www.legislationline.org/?tid=218&jid=26&less=false
Italy	http://www.legislationline.org/?tid=218&jid=27&less=false
Kazakhstan	http://www.legislationline.org/legislation.php?tid=218&lid=7819&less=false
Latvia	http://www.legislationline.org/legislation.php?tid=218&lid=8186&less=false
Liechtenstein	http://www.legislationline.org/?tid=218&jid=31&less=false
Lithuania	http://www.legislationline.org/?tid=218&jid=32&less=false
Luxembourg	http://www.legislationline.org/?tid=218&jid=33&less=false
Malta	http://www.legislationline.org/?tid=218&jid=34&less=false

Moldova	http://www.legislationline.org/legislation.php?tid=218&lid=7824&less=false
Montenegro	http://www.legislationline.org/legislation.php?tid=218&lid=8188&less=false
Netherlands	http://www.legislationline.org/?tid=218&jid=37&less=false
Norway	http://www.legislationline.org/?tid=218&jid=38&less=false
Poland	http://www.legislationline.org/?tid=218&jid=39&less=false
Portugal	http://www.legislationline.org/?tid=218&jid=40&less=false
Romania	http://www.legislationline.org/legislation.php?tid=218&lid=8219&less=false
Russian Federation	http://www.legislationline.org/?tid=218&jid=42&less=false
Serbia	http://www.legislationline.org/legislation.php?tid=218&lid=8223&less=false
Slovakia	http://www.legislationline.org/?tid=218&jid=45&less=false
Slovenia	http://www.legislationline.org/?tid=218&jid=46&less=false
Spain	http://www.legislationline.org/?tid=218&jid=47&less=false
Sweden	http://www.legislationline.org/?tid=218&jid=48&less=false
Switzerland	http://www.legislationline.org/?tid=218&jid=49&less=false
Tajikistan	http://www.legislationline.org/?tid=218&jid=50&less=false
Turkey	http://www.legislationline.org/?tid=218&jid=51&less=false
Turkmenistan	http://www.legislationline.org/legislation.php?tid=218&lid=7829&less=false
Ukraine	http://www.legislationline.org/legislation.php?tid=218&lid=8191&less=false
United Kingdom	http://www.legislationline.org/legislation.php?tid=218&lid=8220&less=false
United States	Most states have enacted hate crime legislation. The US Supreme Court has upheld the constitutionality of hate crime statutes. See <i>Wisconsin v. Mitchell</i> , 508 U.S. 476 [124 L.Ed.2d 436, 113 S.Ct. 2194] (1993)

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