Hate crime and identity politics

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Jacobs and Potter’s work is a unique entry into the debate on hate crime. It injects a much needed note of scepticism into the ongoing march toward what Jenness and Grattet (2001) characterize as homogenization, elaboration and domain expansion in hate crime policies. We have come a long way in just two decades in terms of the extent to which hate crime has become entrenched as a legal construct. Jacobs and Potter are right to encourage us to be a little more reflective before forging ahead any further. In this sense, I welcome their intervention and especially their caveats about the nature and potential consequences of hate crime legislation. Scholars, activists, policymakers and practitioners should explicitly consider each of the questions that Jacobs and Potter raise. However, they should seek their own answers to these questions rather than rely on the nay-saying approach favoured in Hate Crime: Criminal Law and Identity Politics.

This work raises a number of serious reservations about the utility and potential impact of hate crime as a legal concept. I would identify the most salient as follows: the complexity of defining prejudice and establishing motive; the complexity of deciding what classes of conduct and victim to include; the illegitimate construction of a hate crime ‘epidemic’ that underlies the creation of hate crime legislation; that hate crime invokes identity politics; the futility, and potential unconstitutionality, of punishing ‘hate’; the difficulty of enforcing hate crime legislation; and that hate crime legislation balkanizes society.

While I take issue with most of the arguments the authors develop, space does not permit a review of each of these concerns. Instead, I opt to respond to two interconnected themes: the embeddedness of ‘identity politics’ in the construction of hate crime; and the contention that hate crime legislation is divisive. I refer to these as interconnected because Jacobs and Potter’s analysis suggests that it is the illegitimate insertion of
identity politics into the legal arena that conditions its subsequent Balkaniz-
ing effect. For example, in Chapter 9, they argue that:

By redefining crime as a facet of intergroup conflict, hate crime laws
encourage citizens to think of themselves as members of identity groups . . .
That in turn contributes to the balkanization of American society, not its
unification.

(Jacobs and Potter, 1998: 131)

Fundamentally, I agree that hate crime and its attendant laws are intimately
connected to identity politics. It could not be otherwise, since hate crime is
one of many facets of intergroup relations. However, I see bias-motivated
violence not as a precursor to greater intergroup tension, but as an
indicator of underlying social and cultural tensions. It is, thus, not the laws
that are divisive, but the conduct (and its antecedents) to which they refer.
The legislation does not create the hostility, for it has long existed. Moreover, it is the ongoing recognition of group membership — insider/outside or ‘us’ versus ‘them’ — that typically gives rise to hate crime.

In short, hate crimes are more than the acts of mean-spirited bigots. Such
violence is embedded in the structural and cultural context within which
groups interact (Bowling, 1993; Kelly et al., 1993; Young, 1990). It does
not occur in a social or cultural vacuum, but is a socially situated, dynamic
process. It might be seen as one of the five interrelated ‘faces of oppression’
by which Young (1990) characterizes the experiences of minority groups,
that is, nested within the complex of exploitation, marginalization, power-
lessness, and cultural imperialism. Together, structural exclusions and
cultural imaging leave minority members vulnerable to systemic violence,
and especially ethno-violence.

In particular, where the popular image of the ‘Other’ is constructed in
negative terms, group members may be victimized on the basis of those
perceptions. Hate crime is thus ‘bolstered by belief systems which (attempt
to) legitimate such violence’ so as to ‘limit the rights and privileges of
individuals/groups and to maintain the superiority of one group’ (Sheffield,
1995: 438–9). Members of subordinate groups are potential victims be-
because of their socially subordinate status. They are already deemed inferior,
deviant, and therefore deserving of whatever hostility and persecution
comes their way. In sum, they are ‘damned if they do, and damned if they
don’t’. If they perform their identities on the basis of what is expected of
them, they are vulnerable. If they perform in ways that challenge those
expectations, they are equally vulnerable.

Hate crime, then, is a forceful illustration of what it is to engage in
situated conduct. The interactions between subordinate and dominant
groups provides a context in which both compete for the privilege to define
difference in ways which either perpetuate or reconfigure hierarchies of
social power. Simultaneous and oppositional efforts to do difference set up
tensions in which the act of victimization co-constructs the victim and
perpetrator. This confrontation is informed by the broader cultural and
political arrangements which ‘allocate rights, privilege and prestige according to biological or social characteristics’ (Sheffield, 1995: 438). Perpetrators attempt to reaffirm their dominant identity, their access to resources and privilege, while at the same time limiting the opportunities of the victims to express their own needs. The performance of hate violence, then, confirms the ‘natural’ relations of superiority/inferiority. It is a form of interpersonal and intercultural expression that signifies boundaries. And, significantly, the boundary is ‘capable of organizing personal interactions in sometimes lethal ways’ (Cornell and Hartmann, 1998: 185).

The sort of sociological and cultural analysis of hate crime suggested here allows us to recognize it as an outgrowth of a structural complex of relations of power grounded simultaneously in race, class, gender and sexuality. Jacobs and Potter would take issue with this construction of hate crime as an indicator, rather than facilitator, of intergroup hostility. They argue that ‘it would make far more sense to look at . . . survey data for drawing conclusions about the prevalence and intensity of various prejudices’ (Jacobs and Potter, 1998:135). And such data do support the contention that hate crime is contextualized within a culture of widespread prejudice. Rather than contradict the cultural bases of bias-motivated violence, the data reinforce them. Feagin and Vera (1995) present ample survey data to support the contention that individual Americans subscribe to a range of intolerant and bigoted attitudes and stereotypes. Whatever the questions tapped — beliefs about criminal activity, industriousness, welfare dependency, interracial marriages — white respondents tended to characterize ethnic and racial minorities in negative terms. For example, a 1993 Gallup poll found that, when asked which racial group was responsible for the bulk of crime (among blacks, Hispanics, Asians and whites), respondents rated blacks at the upper end of the continuum, and whites at the lowest end (Gallup, 1993a).

The public position on gays is somewhat more ambiguous and, in fact, contradictory. On the one hand, a large proportion of respondents indicated in a Gallup poll that gays were demanding ‘special rights’, rather than the same rights as others. Nonetheless, the majority surveyed did feel that gays should be protected from discrimination in employment (Gallup, 1993c). However, while public support for gay rights with respect to housing and jobs seems to be increasing, this does not necessarily reflect acceptance of homosexuality per se. In line with the stereotypical image of gays as paedophiles, many respondents continue to resist the notion of gay men and women as high school (49 percent) and elementary school (54 percent) teachers (Gallup, 1992). More generally, 57 percent of those surveyed in 1992 considered homosexuality an unacceptable ‘alternative lifestyle’ (Gallup, 1992).

A backlash against immigrants is also reflected in public sentiments. In general, survey data reveal perceived threats associated with immigrants: 55 percent of respondents felt that immigration ‘threatened American culture’. Respondents show dramatic prejudices in their response to the
following question: ‘For each (nationality) please tell me whether you believe their presence has generally benefited the country or generally created problems for the country’ (Gallup, 1993a: 14). Irish, Poles, Chinese and Koreans were seen by the majority to have benefited the USA. In contrast, Mexicans, Cubans, Iranians and Haitians were overwhelmingly perceived as problematic. No more than 29 percent of respondents supported any of these groups. Corresponding to this are the findings from another Gallup poll (1993b) that 29 percent of those surveyed feared that immigrants were more likely than other groups to commit crime.

There are chilling parallels between dominant and subordinate groups’ readings of other minority groups. Holmes (1994: B8) reports the findings of a national poll commissioned by the National Conference of Christians and Jews. The results suggest strongly that blacks, Asians and Hispanics generally hold even more negative views of one another than do whites. Some 46 percent of Hispanics and 42 percent of blacks saw Asians as ‘unscrupulous, crafty and devious in business’. Some 68 percent of Asians and 49 percent of blacks agreed that Hispanics ‘tend to have bigger families than they are able to support’. Some 31 percent of Asians and 28 percent of Hispanics believed that blacks ‘want to live on welfare’.

These findings are indicative of intense hostilities between groups. They reinforce the assertion that the society of the USA is grounded in constantly shifting hierarchies of oppression. Ethno-violence emerges within this network of enabling norms, assumptions, behaviours, institutional arrangements and policies, which are structurally connected in such a way as to reproduce the racialized and gendered hierarchies which characterize American society.

In sum, hate crime legislation does not create intergroup hostility. It is one among many efforts to respond to this manifestation of long-standing antagonisms. Nonetheless, in the final analysis, I find myself agreeing with Jacobs and Potter’s underlying thesis that legislation is not necessarily the most appropriate means by which to confront hate crime. However, my agreement is grounded in a very different rationale, since I do not believe that hate crime legislation further divides American society: hate crime is an effect, rather than a cause, of intergroup tensions. My agreement with the postulate resides more in my general reservations about the utility of legal redress, some of which parallel concerns voiced by Jacobs and Potter.

Rights claims embedded in hate crime legislation can be powerfully transformative discourses; while law can be and has been used effectively to advance the place and protections afforded long-disadvantaged groups, its limitations mean that law alone is an insufficient field of discourse. On the one hand, law has some progressive potential. As the history of hate crime legislation shows, law is vulnerable to the impact of ongoing struggles between groups (Jenness and Broad, 1997). Consequently, it has been used effectively to extend the rights and protections afforded women, people of colour, gays, and ethnic and religious minorities. The Violence Against
Women Act has dramatically expanded the protections and services available to battered women. Successive Civil Rights Acts, both nationally and at the state level, have been crucial to the recent political and economic advances of people of colour in particular.

On the other hand, law can effectively exclude or restrict the participation of particular groups in the ongoing activities and processes of society. For example, immigration and naturalization laws have historically prevented many Asians from entry, or from attaining citizenship. Through its omissions, law can exclude groups from protections afforded others (for example, the failure to include gays or women in hate crime or civil rights legislation). Law can also marginalize others: sodomy legislation criminalizes gays; anti-abortion policies limit women’s autonomy; social security restrictions endanger and exclude immigrants; the military’s ‘don’t ask, don’t tell’ policy silences gays. In their own way, each of these serves to marginalize or subordinate the groups in question. In other words, law is a dramatic form of political and cultural expression which ‘draws the boundaries that divide us into groups, with momentous effects on our individual identities’ (Karst, 1993: 2). Law is implicated in the shaping and valuing of difference. It is an integral part of the field in which difference is constructed and reaffirmed.

This dilemma may be especially relevant in the context of hate crime legislation about which, ironically, progressive and reactionary forces may agree. Maroney (1998) identifies hate crime legislation as a tool of appeasement for minority communities that has few political drawbacks. Like Jenness and Broad (1997), Maroney (1998) acknowledges that the hate crime movement arose out of the successes and rhetoric of the civil rights and victims’ rights movements. While the former often correlates with liberal politics, the latter is closely aligned with conservative ‘get tough’ crime policies. Consequently, hate crime legislation is a curious blend of progressive and conservative sentiment. Cleverly, it takes both a ‘caring’ approach to crime victims and a punitive approach to perpetrators. In short, anti-hate crime measures have been institutionalized in a way that abrogates protection of minority victims to the very state authorities that have so frequently and so long contributed to their subordination.

In sum, it is vital that legislative initiatives be embedded in a broadly based politics of difference that operates at multiple levels and in multiple sites. As Jacobs and Potter point out, the past two decades of the 20th century saw a flurry of hate crime legislation and other state activities, none of which have had an appreciable effect on the frequency or, certainly, the severity of hate crime. Such initiatives are insufficient responses to bias-motivated violence in that they do not touch the underlying structures that support hate crime. Abdicating responsibility for countering such violence to the state, then, will not be a sufficiently effective long-term strategy. Moreover, the ultimate goal should be both to attack hate crime and to disrupt the institutional and cultural assumptions that condition hate crime in the first place. As a society, we must redefine the ways in which
difference ‘matters’, and strive for a just and democratic society in which the full spectrum of diversity is re-evaluated in a positive light. In other words, we should continue to practice identity politics through legal redress, but must not restrict social redresses to this realm.

References


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