Good Intentions

The Enforcement of Hate Crime Penalty-Enhancement Statutes

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This article explores the practical enforcement of laws that increase criminal penalties for bias-related crimes. A review of the literature suggests that penalty-enhancement statutes are meeting some of their goals. At the same time, police implementation is highly variable, prosecutions are rare, and convictions are even rarer. This article summarizes the practical and legal hurdles to enforcement of hate crime laws, including issues regarding enforcement by local police, difficulties in proving motivation, and controversies surrounding deterrence and the larger societal impact of the laws. Because hate crime laws have been operationalized with little or no attention to societal power dynamics and social inequalities, their paradoxical consequences may include disproportionate punishment of minorities whom they were intended to protect. Furthermore, hate crime laws shine their spotlight on relatively powerless individuals at the bottom of the social order and away from the societal institutions that promote or condone discriminatory conduct.

In the past two decades, a curious marriage of civil rights groups and the crime victims’ rights movement has given birth to a national movement against hate crime in the United States (Jenness & Ryken, 2001; Maroney, 1998). With this reframing of the age-old problem of intergroup conflict and violence, hate crimes have come to the forefront of political discourse as a significant social problem. In response, the federal government and the majority of U.S. states have enacted legislation to combat hate crime.

Hate crime statutes are typically enacted due to a confluence of political lobbying by interest groups, specific triggering events, and consequent media attention (e.g., Becker, 1999; Jenness, 1999; Jenness & Broad, 1997). They are intended by their drafters to remedy—at both the symbolic and practical levels—the special harms of crimes motivated by bias or prejudice by increasing public awareness of the serious consequences of intergroup violence and providing protection for victims. Other goals include lengthening the sentences of apprehended offenders, deterring prospective offenders, identifying patterns in intergroup violence, and—ultimately—reducing violence against traditionally victimized groups.
Hate crime laws vary widely. Some states provide civil remedies for victims of hate crimes, whereas others require data collection or law enforcement training. The most widespread, and most controversial, laws are so-called penalty-enhancement statutes, which increase the standard criminal penalties when crimes target members of specified groups. Penalties are enhanced either through assigning a higher sentencing range for bias-motivated crimes or “upgrading” a bias-driven offense to a more serious category of crime (Grattet, Jenness, & Curry, 1998). Either way, the penalty is increased if a defendant intentionally selects victims “because of” or “due to” their membership in certain categories. Currently, all but seven states have penalty-enhancement statutes, most based on a model by the Anti-Defamation League of the B’nai B’rith (2001; White, 1996). All statutes list race, religion, and ethnicity as protected categories; some also include sexual orientation, gender, and disability status.

Penalty-enhancement statutes raise an interesting issue in that they are enacted due to lobbying by civil rights groups, yet enforced by the criminal justice system—police, prosecutors, and judges whose social values and practical priorities are frequently at odds with those of the civil rights movement. Thus, the practical enforcement of hate crime statutes may be quite different from that envisioned by the laws’ drafters.

This article explores what is known about the enforcement of penalty-enhancement statutes, as well as their practical impact within the legal system and in U.S. society more broadly. For example, once they are passed, how evenly and widely are the laws enforced? How successfully are they prosecuted? Do they benefit traditionally victimized minority individuals and/or groups? Do they increase social tolerance? Do they function as deterrents? Based on this exploration, suggestions for future research are provided.

POLICE ENFORCEMENT: TROUBLE IN THE TRENCHES

Although penalty-enhancement statutes for hate crimes are on the books in 43 U.S. states (Anti-Defamation League of the B’nai B’rith, 2001), accounts by legal scholars (e.g., Maldonado, 1992/1993) suggest that prosecutions are rare and, when attempted, they often fail due to practical and legal difficulties. Complications arise at every stage of the process, from the initial decision by a victim about whether to report a crime as bias-related to the ultimate decision by a judge or jury about what penalty to impose.¹

In terms of effective enforcement, probably the most important decisions are those made at the outset by investigating officers, who decide whether to categorize a crime as bias driven. Explorations of this process (Boyd, Hamner, & Berk, 1996; Martin, 1995) suggest that hate crime rates and patterns in a given jurisdiction are heavily influenced by the idiosyncratic practices of local police, which, in turn, are influenced by local politics, rank-and-file attitudes, and other subjective factors.
In a study conducted in Baltimore, one of the earliest cities to establish a special hate crimes unit, Martin (1995) found that police classifications of suspected hate crimes were guided by a subjective weighing of conflicting accounts, motivations, and provocation. Martin found that police in Baltimore took all suspected hate crimes seriously and tried to proactively reduce racial conflicts before they erupted into violence. Thus, she stated that the very existence of a hate crimes policy may sensitize police and serve as "a symbol of the department's affirmative commitment to correct prior biases" (p. 323). At the same time, she concluded that hate crimes "ultimately emerge through police definitions of situations and interpretations of laws and policies" (p. 323).

In contrast to the Baltimore police, detectives in two separate divisions in a large, unidentified city studied by Boyd et al. (1996) believed that true hate crimes were exceedingly rare. Despite this shared belief, the two divisions produced widely divergent hate crime rates due to their different categorization methods. One division focused on inferring motivations, with the explicit goal of unfolding as many potential hate crimes as possible. The other division focused on facts and categorized a case as a hate crime if it contained any element even remotely suggestive of prejudice: "Any incident during which racial, ethnic, or religious epithets were hurled, regardless of how peripheral to the crime, would be counted by the division as a hate crime" (p. 842).

As examples of how the divisions' philosophies produced different results (Boyd et al., 1996), in the first division, juveniles "were treated categorically as immune from hate motives; rather, their actions were most often dismissed as acts of irresponsibility" (p. 837). When a group of teenagers shouted "Sieg Heil" outside a synagogue, they were scolded by police and dismissed as "just screwing around" (p. 837). By contrast, in the other division, when an unknown suspect drove a golf cart across a fairway and crashed it into a hedge, the case was tallied as a hate crime based solely on the complainant's statement that the incident was similar to one 2 years earlier that had likewise occurred on the eve of Rosh Hashanah.

Three other studies support the notion that local implementation of hate crime laws is highly variable and contingent on numerous subjective factors, including the attitudes, beliefs, and practices of individual officers, the perceived tractability of the problem, police funding and training, and public opposition to hate crime policies (Haider-Markel, 2000; Nolan & Akiyama, 1999; Walker & Katz, 1995). Surveying 16 police departments that claimed to have special bias crime units, Walker and Katz (1995) found that the agencies varied greatly in their procedures and in their commitment to enforcing hate crime laws, with only half providing officers with any specialized training. Furthermore, only one fourth of the agencies that claimed to have a special bias-crime unit actually had such a unit. Nolan and Akiyama (1999) also reported disparate practices among police agencies depending partly on geographic locale, with Northeastern and Western police tending to be more committed to hate crime data collection than were Central or Southern police. Similarly, examining local
implementation of hate crime laws in 250 large U.S. cities, Haider-Markel (2000) reported that the traditional discretion afforded individual officers in enforcing the law is even greater when it comes to enforcing hate crime laws. Variables influencing effective enforcement included the attitudes of rank-and-file officers, the support of police leaders, the levels of funding and training for hate crime procedures, and public attitudes toward hate crime policies.

Taken together, these studies suggest that despite recent efforts by the Federal Bureau of Investigation to provide training at the local level, variable practices among individual police agencies exert tremendous influence on the rates and patterns of reported hate crimes and thus on the public’s understanding of the nature and size of the hate crime problem.

THE NEXT HURDLE: PROVING MOTIVATION

When police do record an arrest as a hate crime, prosecutors must then decide whether to attach a penalty enhancement (in the states in which this applies), whether to take a case to trial, and how to present evidence if a trial ensues. For a criminal penalty to be enhanced, statutes typically require that a defendant committed the act “by reason of” or “because of” the victim’s membership (or, in some cases, perceived membership) in a protected group. One of the major constraints faced by district attorneys—and one that it is sometimes hard for the lay public to understand—is the inherent difficulty in proving hatred or bias as a primary motivation.

An example of the potential difficulties, as well as the potential intrusion into free speech and privacy rights, is State v. Wyant, a landmark 1992 Ohio case involving an interracial dispute at a campground. When the defendant, a White man, testified that he was not a racist and that he had many Black friends, the prosecutor challenged: “All these Black people that you have described that are your friends, I want you to give me one person, just one, who was really a good friend of yours.” The prosecutor then cross-examined the defendant about his relationship with an elderly Black neighbor, asking whether the two had ever dined, drank beer, or gone to a movie together (cited in Jacobs & Potter, 1998, pp. 106-107). Thus, the quality of a defendant’s interracial friendships can be explored for evidence of bias, which in turn is assumed to underlie hate crimes.

As this case suggests, it is frequently difficult to prove a biased motive. Indeed, based on her in-depth study in Baltimore (described earlier), Martin (1995) concluded that bias was only a secondary motivation in “a sizable proportion” of reported hate crimes. For example, people may hurl racist, sexist, or antigay epithets in the heat of a confrontation that is rooted in more tangible concerns. Or, the symbolic status of a victim may engender crimes based on actuarial goals, such as when women, gay men, or disabled people are robbed because they are perceived as easy targets (e.g., Steadman, 1999).

A vivid example of the complexities in assessing the role of bias was a highly publicized 1991 case in Atlantic Beach, New York. Initial media accounts
described the incident as follows: A White high school student, Shannon Siegel, became angry when he saw a Black man flirting with a White woman at a party. Shouting racial epithets, he started a fight, and was ejected from the gathering. Later that evening, he and four friends returned, stalking and brutally attacking the Black man with a bat. Siegel was taken to trial under an aggravated harassment statute requiring that the victim was harassed "because of" his race (Fleisher, 1994).

At Siegel’s trial, the motivations became more murky. The White woman in question turned out to be the defendant’s former girlfriend. The Black victim had been the defendant’s friend. The defendant’s father testified that three fourths of Siegel’s friends were Black, and that he “idolized” one Black friend in particular. Other friends testified that Siegel hung out with a mainly Black crowd that routinely used racial epithets with each other. Not only that, Siegel walked and talked as if he himself were Black and, according to one Black friend’s testimony, seemed to feel that he was “really Black on the inside” (Fleisher, 1994, p. 35). Jurors rejected the bias motivation, deciding the crime would have occurred anyway, due to a combination of jealousy and Siegel’s bruised ego about being ejected from the party. As this case illustrates, the truth, invariably, is more complex and elusive than the initial media sound bytes suggest.²

In another detailed case analysis, Hutchinson (1999) illustrated how even when a crime was clearly motivated by bias, the reductionistic nature of hate crime politics may cause different interest groups to vie for claim to the victim. Thus, after the highly publicized beating of Loc Minh Truong, a Vietnamese American, on a gay section of Laguna Beach, California, in 1993 by a large group of White teenagers, Vietnamese and gay activists argued over which victim label should apply, with prosecutors ultimately choosing to prosecute for antigay animus. Through such essentialism, individuals who may belong to more than one oppressed group are made invisible, as are questions of wealth, poverty, and power, Hutchinson (1997, 1999) argued.

With motivations so difficult to pin down, it falls on police, prosecutors, judges, and jurors to sort out whether the victim’s group status was a contributing factor, an irrelevant factor, or even “a nonexistent but objectively possible reason” (Gellman, 1992/1993, p. 514). The inherent subjectivity of this process invites arbitrary and uneven application of penalty enhancements. As Gellman (1992/1993, p. 514) pointed out, “some prosecutors, courts, and juries might apply the statute to some mixed motive situations and others would not, inviting arbitrary and even discriminatory application and inconsistent results.”

Confronted by the vicissitudes of penalty-enhancement statutes, anecdotal evidence suggests that jurors and judges may be reticent to convict and sentence under them. Migdalia Maldonado, a former prosecutor in the Brooklyn, New York, civil rights bureau, reports that many jurors view hate crime laws as “an example of how public officials cave in to special interest groups” (Maldonado, 1992/1993, p. 561); jurors also believe that some groups are more likely than others to report regular crimes as hate crimes to promote a political agenda.
Maldonado further reports that many judges are disinclined to mete out harsh sentences based on penalty enhancements. Although the judges may thus be perceived as insensitive to hate crime victims, they may be reluctant because they do not believe that incarceration will engender greater tolerance, particularly in youthful offenders "perceived to be exercising a rite of passage" by participating in a group assault (p. 561).

Other than recent mock jury studies examining factors that might influence decision-making (Marcus-Newhall, Blake, & Baumann, 2002 [this issue]), there has been little systematic study of prosecutions or dispositions in hate crime cases. For example, there have been few attempts to empirically determine specific characteristics of either the crime, the offender, or the victim that might influence decisions to prosecute and/or to convict. However, Hernández (1995) argued that unconscious racism leads prosecutors to trivialize or ignore bias crimes, engendering a systematic bias toward nonenforcement. This bias remains largely undetected, she argued, because prosecutorial discretion is traditionally not reviewed by outside authorities.

PUNISHING MINORITIES?

The suggestion of racial bias in prosecutorial decision making is troubling in light of evidence that members of traditionally oppressed groups, which hate crime laws were ostensibly enacted to protect, appear to be disproportionately arrested under penalty-enhancement statutes. This can occur because the laws are operationalized without regard to societal power dynamics. In other words, bias crimes that target Whites, heterosexuals, or Protestants are regarded as seriously under these statutes as those targeting traditionally victimized social groups. Commenting on FBI arrest data for antiheterosexual bias crimes, Bufkin (1999, p. 170) conjured up the ludicrous image of "a lone heterosexual attacked, perhaps almost beaten to death, by a group of young, inebriated gay men who are bragging about their homoerotic prowess."

Bufkin uses this facetious portrayal to argue that hate crime control may end up creating as much oppression as it controls. Indeed, in a foreshadowing of things to come, one of the first applications of an enhancement statute was against an African American man in Florida who called a police officer who was arresting him a "cracker" (Gey, 1997). Similarly, the controlling Supreme Court case in this area, Wisconsin v. Mitchell (508 U.S. 476, 1993), involved a Black-on-White crime. In that case, a penalty enhancement was imposed against Todd Mitchell for inciting his friends to attack a White boy after the group watched a scene from the movie Mississippi Burning, in which a White man attacks a Black child.

Both national and local data indicate that these two cases are not anomalies, as African Americans are disproportionately represented among identified assailants. For example, in 1993, the Southern Pacific Leadership Conference, which maintains a national hate crimes database, announced that 46% of racially
motivated killings were committed by Blacks and concluded that “hate violence committed by Blacks in the United States is escalating at an alarming rate” (Appleborne, 1993, p. A12). Statistics from the Federal Bureau of Investigation also document that African Americans are accused of hate crimes in numbers exceeding their proportion of the population. For example, in 1999, about 19% of known-race hate crime offenders were African American; anti-White hate crimes accounted for about 18% of racially motivated hate crimes (Federal Bureau of Investigation, Criminal Justice Information Services, 2000).

Echoing FBI data, disproportionate arrest rates of African Americans have been documented at the state and local levels as well. For example, in the first year of data collection under a Florida hate-crime-reporting act, Whites were the largest category of reported victims, 50%, with Blacks representing 38% of victims. Of known offenders, 27% were Black, compared with 33% White and 40% unknown (Czajkoski, 1992). In Kings County, New York, of the 238 bias-related complaints referred to the district attorney’s office in one 18-month period, anti-White crimes were the second-largest category (after anti-Semitic), with 46 cases (compared with 44 anti-Black and 14 anti-homosexual incidents) (Maldonado, 1992/1993).

The statistics are less extreme in California, which was the first state to pass a penalty-enhancement statute and which has the most extensive data-collection system, reporting about a quarter of the nation’s hate crimes. Of 1,321 known suspects in racially based incidents in 1999, 15% had committed anti-White crimes (California Attorney General, 2000). However, even in California, two researchers identified non-White youths as major perpetrators of racist hate crimes in Los Angeles, based on analyses of geographic locales with high rates of reported hate crimes (Umemoto & Mikami, 2000).

The irony of using the term hate crime to describe crimes by members of traditionally oppressed groups against members of the dominant culture is apparently lost on these researchers, as it is on White activists who have protested that anti-White hate crimes are not sufficiently publicized or prosecuted. “Newspapers just don’t report on hate crimes by non-European Americans,” wrote a San Jose, California, organization dedicated to combating slurs against European Americans. “In 1991... 71% of 85 local hate crimes were perpetrated by non-European Americans, who provide about 55% of the population. . . . There were no local news stories at all about such hate crimes” (Resisting Defamation, 1996, p. 33).

The disproportionate representation of African Americans among reported offenders may reflect several factors. It is possible that African Americans commit higher rates of intergroup crime (or use more racial epithets) than do other groups. If so, the question is whether these crimes merit greater punishment than do Black-on-Black crimes (based on a theory of greater harm to victims as a class). Another factor is that some groups—including African Americans, immigrants, and gays and lesbians of color—are less likely to report crime victimization (Czajkoski, 1992; Hutchinson, 1999; Umemoto & Mikami, 2000).
Last, the legal system’s traditional, well-documented bias against certain classes of offenders and toward certain classes of victims (e.g., Davis, Estes, & Schiraldi, 1996; Males & Macallair, 2000) undoubtedly manifests itself in hate crimes just as it does in other types of crimes (Bufkin, 1999). For example, both police and crime victims may be more likely to label an event as a hate crime if the offender is African American than if he or she is White (Gerstenfeld, 1998; also see Green, McFalls, & Smith, 2001). This consequence of hate crime laws, similar to the disproportionate use of the death penalty against Blacks who kill Whites (Fleisher, 1994), will undoubtedly reinforce African Americans’ long-standing perception that the legal system responds more harshly to crimes by Blacks against Whites than to either Black-on-Black or White-on-Black crimes.

WHO OFFENDS, AND WHY?

The open question of why African Americans are disproportionately represented among reported assailants raises the issue of what is known about hate crime offenders. Is there a distinguishable type of individual who is driven by bias or prejudice to commit crimes against members of specific, legally defined minority groups, as implied in hate crime legislation? If so, what are this individual’s characteristics? What motivates him or her to commit hate crimes? Information on who commits hate crimes and why is essential to the design of effective rehabilitative interventions, as well as educational and policy interventions to deter potential offenders (see Cogan, 2002 [this issue]).

Our current knowledge of offenders comes primarily from the following three sources: arrest data, information provided by crime victims and witnesses, and hate crime databases, which typically include information from both police sources and victim reports. Analyses of these databases have not revealed any demographic patterns that distinguish hate crime offenders from violent offenders overall, other than possible younger age. Rather, typical offenders appear to be fairly average young men acting as part of an informal group. However, the available data are limited by several factors.

First, arrest data are limited because only a small percentage of crimes categorized as bias related are resolved through arrests. For example, a 1995 national study found that only 16% of antigay violence reported to police resulted in arrests, compared with 45% of violent crime overall (National Coalition of Anti-Violence Programs, 1996). Furthermore, suspects are more likely to be identified and arrested for offenses at the two extremes of severity, that is, those involving extreme violence or those involving nuisance behaviors such as repeat telephone or mail harassment. The individuals who commit the broad majority of hate crimes—such as threatening behaviors, property damage, shouted epithets, and graffiti spraying—are much less likely to be apprehended. Thus, arrested assailants cannot be generalized as representative of hate crimes offenders overall.
Information from eyewitnesses and victims is also limited. Witnesses and victims can provide rudimentary demographic data (e.g., approximate age, race, and sex) in incidents that were observed. But despite being the primary data source, victim accounts are not always reliable when it comes to inferring an offender’s motivation. For example, if an assailant shouts a presumably hateful epithet such as “nigger,” “faggot,” or “bitch,” it is not always obvious whether this is due to hatred per se or, rather, is because name-calling is “the parlance of violent struggle” (Green et al., 2001). This was illustrated in Franklin’s (1996, 1998) in-depth interviews with offenders. For example, one young man insisted that he assaulted a group of male strangers because of anger over a traffic dispute (Franklin, 1998), and that he only used the term “fag” to provoke a fight:

It’s a way to talk to put them down, to make them lower, to make them mad. Usually a confrontation comes up after that. They’re supposed to throw something at that point. . . . I don’t know if they were gay. You can’t tell by looking at someone, you have to get to know them a bit. (p. 162)

To overcome the limitations of arrest data and victim accounts, Franklin (2000) conducted a survey of potential perpetrators, asking 484 young adults to explain the reasons for any acts committed against homosexuals. The results suggested multiple motivations underlying acts that could be labeled as hate crimes. These motivations include not only intergroup prejudice but also peer group dynamics, thrill seeking, and perceived self-defense.

Qualitative interviews with 11 assailants, several convicted under penalty-enhancement statutes, suggested two additional, often overlooked factors relevant to understanding hate crimes (Franklin, 1996, 1998; see Dong, 1997, for similar interviews). The first is that the more violent hate crimes are typically committed by individuals who were raised in violent milieus and who practice violence frequently and indiscriminately in their lives. Although these individuals typically cite larger cultural norms to justify their actions, they are living on the social fringe and are riding express trains toward the nearest penitentiary. Thus, because extreme crimes tend to garner media attention, the popular image of the hate crime problem is based on the actions of a small minority of pervasively violent individuals at the bottom of the social order.

A second, related dynamic that is typically neglected but is necessary to a full understanding of hate crimes is the role of social class divisions. Connell (1995) has described how economically and socially disempowered men may pursue violence as a means of distracting themselves from their relative powerlessness. Several assailants in Franklin’s (2000) study expressed class resentment toward gay men in particular, describing them not only as sexual deviants but also as affluent, powerful, and blessed with undeserved special rights. This conflation of sexuality and economic class (which has historical roots beyond the scope of this discussion) (see Healy, 1996) helps to explain why gay men serve as an ideal
target for socially powerless men to vent their rage. As a young Texan who terrorized and murdered a gay man so cogently expressed it (Bissinger, 1995),

I work all my life tryin' to have something nice and make something of myself. About the best job I can get is working in a restaurant makin' minimum wage.... From the time I was a kid it seemed like there was a lot against me, and yet here they [homosexuals] are, they're doing something that God totally condemns in the Bible. But look at everything they've got. They've got all these good jobs, sittin' back at a desk or sittin' back in an air-conditioned building not having to sweat, not having to bust their ass, and they've got money. They've got the cars, they've got the apartments. They've got all the nice stuff in 'em. So, yeah, I resented that. (p. 88)

Thus, homosexuals in particular may be targeted not only as sexual deviants but also as archetypal symbols of ruling-class oppression. This motivation was evidenced, for example, in the Matthew Shepard case. Speaking of the economic divide in Laramie, Wyoming, the Rev. Stephen Johnson, leader of a Unitarian Universalist congregation there, told a news reporter, "This is going to happen again and again and again unless the have-nots of this town become part of the community again" (Lewan & Paulson, 1998). In exploring this motivation, Green et al. (2001) pointed out that hate crime does not mechanistically derive from group power differentials or macroeconomic changes but, rather, from a group's collective beliefs that its status or way of life is threatened by outsiders.

Ethnographic studies suggest that similar, misplaced resentments may contribute to the victimization of racial and religious minorities as well (e.g., Ezekiel, 1995; Pinderhughes, 1993). Indeed, there likely are both similarities and differences in the motivations underlying assaults on different minority groups. For example, minority group members are fairly interchangeable for thrill-seeking assailants (Franklin, 2000; Levin & McDevitt, 1993). However, assailants motivated by perceived self-defense might view themselves as protecting their bodies from sexually predatory homosexuals, their neighborhoods from intruding African Americans or Asians (Green, Strolovitch, & Wong, 1998), and their traditionally male workplaces from women. This has implications for hate crime prevention because a one-size-fits-all campaign against hatred is likely to be ineffective if different motivations underlie hate crimes targeting different minority groups.

Given the variety of motivations underlying bias crimes, it is not surprising that the stereotype of offenders as members or affiliates of extremist organizations has not been borne out by research. Comparing apprehended offenders in North Carolina with known White supremacists, Green, Abelson, and Garnett (1999) found significant differences between the racial beliefs of offenders and White supremacists, despite both groups' greater racism and social conservatism than a matched sample from the general population. Furthermore, a full 16% of the White general population fit the profile of either hate crime offenders or organized extremists. In other words, both extremists and offenders "may be
drawn from a much larger pool of like-minded individuals” (p. 17) who refrain from illegal displays of their biased beliefs. This supports the commonsense notion that extremist rhetoric sways vulnerable individuals, perhaps explaining the finding of sharp increases in cross-burnings following public demonstrations by White extremist groups (Green & Rich, 1998).

These findings suggest the importance of focusing not only on individual factors but also on environmental factors that may contribute to intergroup violence. In this regard, Green et al. (1998) found evidence of increased crime against racial minorities in “defended” White urban neighborhoods that had recently experienced in-migrations of minorities. Similarly, Medoff (1999), using economics methodology, found a correlation between hate crime rates and a state’s unemployment and education levels, among other factors. Although Medoff’s methodology was flawed (and hate crime data are not sufficiently accurate to permit such studies), such a meta-approach does suggest the utility of examining larger structural variables, including the role of economic disenfranchisement suggested earlier in this discussion as well as the related roles of political discourse and the media, factors that have received more attention from European scholars (for a discussion see Green et al., 2001).

**DETERRENT EFFECTS**

The obvious impact of the environment on individual behavior suggests that hate crime laws might be beneficial in establishing a tone of decreased social tolerance for bigotry and intergroup violence. Unfortunately, due to the vagaries of hate crime reporting as well as the difficulties inherent in measuring deterrence, an accurate estimate of the deterrent value of hate crime laws is unlikely to be achieved. In addition, penalty enhancements do not impose punishment where none previously existed; they merely increase the severity of punishment. In general, this has not been found to be an effective deterrence strategy.

On an individual level, it is unlikely that penalty enhancements alone will deter apprehended offenders from committing future hate crimes. Among offenders interviewed by Franklin (1996, 1998), prosecution increased their belief that they were the victims of oppression by a more socially privileged and powerful elite. Thus, penalty enhancements paradoxically increased, rather than decreased, their resentment of minorities. The likelihood that enhancements will strengthen offenders’ bias is even greater if they are sent to prison, where virulent racism and homophobia are the norm. However, it is possible that bias might be reduced in offenders who receive some type of educational intervention or treatment; this would be a fruitful area for further study.6

In terms of more generalized deterrent effects, there is some indication that a widely publicized hate crime may paradoxically cause a spike in reported hate crimes (Richardson, 1992) similar to regional spikes in murder rates following a
highly publicized execution. For example, New York City experienced a near-twelvofold increase in reported hate crimes following the infamous Howard Beach incident in 1986, in which three African Americans were attacked by a group of White teenagers. Finding that a single hate offense is often followed by a large number of follow-up attacks, Levin and McDevitt recently expanded their original typology of hate crimes (Levin & McDevitt, 1993) to include a category of “retaliatory hate crimes” (McDevitt, Levin, & Bennett, in press). Copycat crimes have also been implicated (along with economic incentives to collect on insurance claims) in the 1995 to 1996 rash of Black church burnings in the Southern United States (Greenberg, 1997).

Several factors may account for this observed pattern. These include (a) copycat crimes by other bias offenders; (b) victims' greater willingness to report incidents (due to increased awareness of the laws and/or increased belief that they will be taken seriously); (c) false reports by individuals seeking personal or group attention or other forms of gain; and/or (d) retaliatory strikes by members of a victim's social group.

Only the last of these factors has been addressed by research, in a laboratory study by Craig (1999). The research goal was to ascertain whether hate crimes were more likely than intragroup assaults to provoke a desire for retaliation by members of the victim’s racial group. Craig found that desire for retaliation differed by race, with African American men more likely than White men to endorse returning to the scene of victimization with friends, to look for the offender.

A rash of false hate crime reports on college campuses around the United States in the wake of the Matthew Shepard murder (Gose, 1999) suggests that false reporting may be a significant barrier to accurate assessment of the hate crime problem. Some false reports are motivated by the desire for personal attention, whereas for others, the goal is furthering a political cause. For example, among Black students, “The hate crime hoax is usually conceived as an effort to energize Black student activism or to press the administration to move more quickly on Black students' concerns” (“When a Hate Crime,” 1998/1999, p. 52). Other motivations for the filing of false hate crime reports include financial gain in insurance cases (Journal of Blacks in Higher Education, 1998/1999) and obtaining investigative priority (e.g., Boyd et al., 1996) or harsher treatment of an offender in routine assault or vandalism cases. Based on her experiences as a hate crime prosecutor in New York City, Maldonado (1992/1993) reported that complainants frequently embellish accounts to obtain a hate crime designation and thereby be taken more seriously. Interestingly, Maldonado reported that many false reports come from heterosexual White men rather than members of traditionally victimized groups.

In summary, penalty-enhancement statutes, on their face, do convey the message that intergroup violence is unacceptable. However, there is currently little
evidence that, in and of themselves, they will lead to a reduction in intergroup conflict. Furthermore, publicity surrounding their enforcement may frequently lead to increases in both true and false reporting of hate crimes.

SOCIAL AND POLITICAL IMPACT

Hate crime laws are aimed not only at decreasing the actual incidence of hate crimes but also at creating a more tolerant social climate by framing intergroup violence as a social problem. The passage of these statutes signals society's moral condemnation of heinous conduct based on prejudice. Hate crime advocates share a commitment to using the laws as a tool to fight racism, heterosexism, anti-Semitism, and other prejudices.

The use of penalty enhancements to achieve these social goals has proved quite controversial. Penalty enhancements have been widely criticized by legal scholars, often out of concern about potentially negative social ramifications such as infringement on free speech (e.g., Gellman, 1992/1993; Gerstenfeld, 1992; Jacobs & Potter, 1998; Morsch, 1991). Indeed, legal scholars have argued that for such laws to pass constitutional muster on First Amendment grounds, bias-motivated crimes must be shown to cause "a more particularized and specific harm" than nonbias crimes (Gey, 1997, p. 1044).

This idea of special harm, dovetailing with the social movements for victims' rights over the past two decades, gets at another fundamental purpose of hate crime laws. That is, they are designed in part to provide redress for groups that have historically been the victims of societal prejudice: "Crimes of hate can happen to anyone, but hate crimes justifying penalty enhancement happen to traditional victims of bias" (Hughes, 1998, p. 621).

Thus, one research goal has been to establish that crimes based on a victim's symbolic status are indeed more psychologically damaging than random crimes. In a large-scale study of the effects of hate crimes on victims, Herek, Gillis, and Cogan (1999) found significantly greater psychological sequelae among gay male and lesbian hate crime victims than among a matched sample of homosexuals who were the victims of similar nonbias crimes. Activists have also noted the terrorizing impact of hate crimes on entire communities.

The establishment of greater harm to victims and victim groups does not in and of itself establish, however, that victims are necessarily benefited by enhanced penalties for offenders. As described earlier, African Americans do not uniformly benefit from the laws because they compose a disproportionate percentage of those arrested. Furthermore, it remains an open question as to whether penalty enhancements will lead to increased tolerance of minorities among the general public. Some critics argue that the laws, although well intentioned, may actually increase the social divisions they are designed to ameliorate (e.g., Crocker, 1992/1993; Gey, 1997). They cite the popular belief that hate crime laws are an example of certain groups receiving special rights not accorded to other citizens.
CONCLUSION

Hate crime penalty-enhancement statutes have been promulgated by socially concerned people with justifiable intentions. And it is precisely because these statutes are intended to address not just the victimization of individuals but broader social injustices that they must be evaluated to determine how well their actual effects match the intentions of their promulgators.

Without question, the laws are meeting some of their intended goals. They are identifying patterns in the commission of intergroup crimes. They are drawing public attention to an important social problem. To the extent that they are prosecuted, they will probably result in longer incarceration of apprehended offenders. They have also been highly successful in some jurisdictions in sensitizing police, prosecutors, and judges to the problems faced by minority crime victims (e.g., Paynter, 2000).

These effects must be weighed against the statutes' unintended negative consequences. One particularly pernicious consequence is that the laws appear to be contributing to increased criminal penalties against African Americans, one of the groups they were designed to protect. This has occurred because hate crime laws have been operationalized with little or no attention to societal power dynamics and social inequalities (Miller & Myers, 2000). Indeed, Umemoto and Mikami (2000) argued that many gang-related assaults by one minority group of another should be prosecuted as race-based hate crimes, thereby further expanding the domain of hate crime statutes and meting out additional punishment to the already dispossessed. Given the well-documented race and class biases within the legal system (e.g., Baldus, Woodworth, & Pulaski, 1990; Davis et al., 1996; Harris, 1997; Males & Macallair, 2000), it is not surprising that without explicit attention to issues of social power, hate crime laws will end up replicating the very power imbalances and inequalities they were designed to ameliorate.

Another highly significant and paradoxical problem is that hate crime laws may increase divisions between social groups at a time when boundaries in U.S. society are becoming more fluid. As Crocker (1992/1993) pointed out, increased racial categorization will not lead to less racial discrimination: "Racism will decline as [racial] classifications become more difficult [and] of less significance, . . . [It will] turn out to be a losing antiracist strategy to give operational significance to—and to emphasize—racial divisions" (pp. 506-507).

Penalty-enhancement statutes are "part of a larger American syndrome of adopting harsh punishment as an expedient response that deals only with the most superficial manifestations of complex, deep-seated problems" (Weinstein, 1992, p. 16). They provide politicians with an easy way to demonstrate that they are doing something about a perceived social problem, while sidestepping the complex causes of prejudice and violence in American society.

These criminal justice sanctions did not materialize in a political vacuum. They were drafted during a conservative period in U.S. history, the Reagan Era,
due to an alliance between some civil rights groups and the conservative victims' rights movement (Jenness & Ryken, 2001). Ironically, by focusing on the narrow concept of hate, these laws have helped to restrict the enforcement of civil rights laws dating back to Reconstruction (White, 1996). They are part of a broader judicial trend over the past two decades to ignore societal patterns of discrimination in favor of individual explanations (Harris, 1997). That is, rather than focusing on group and institutional sources of animus as did the earlier laws, hate crime statutes shine the spotlight on a small minority of violent individuals who are merely reflecting—rather than creating—larger social norms that allow if not encourage intergroup violence. In the long run, this may not do much to ameliorate prejudice, discrimination, or the harmful consequences of intergroup violence.

NOTES

1. The significant problems in data collection go beyond the scope of this article and have been the topic of recent attention (e.g., Grattet, 2000; Nolan & Akiyama, 1999; Steadman, 1999). Although proponents of hate crime legislation frequently claim a growing "epidemic" of hate crimes or, more dramatically, a "rising tide of bigotry and bloodshed" (Levin & McDevitt, 1993), these claims are premature due to the recency of efforts to collect data and the vagaries in the ensuing data. Indeed, some Southern and Midwestern states that never passed hate crime statutes report little or no hate crimes to the FBI, leaving the impression that hate crimes are highest where enforcement is strictest; California, for example, accounts for nearly a quarter of all reported incidents (Grattet, 2000). Studies of individual police departments also suggest that their data are highly unreliable; for example, only one fourth of the agencies who reported to the federal government that they had bias-crime units actually did have such units (Walker & Katz, 1995).

2. The Atlantic Beach case was far from an aberration. Typically, hate crimes are initially presented simplistically and, as the public and the media obtain more information, complexities gradually emerge that shed doubt on hatred as a pure motivation. For an excellent example of the subtleties of another well-known case, the 1986 killing of Yusuf Hawkins by a group of White teens in Bensonhurst, New York, see Fleisher (1994).

3. One exception is the state of California Department of Justice, which publishes comprehensive data on prosecution rates. For 1999, of 1,962 total hate crimes reported, 1,039 were referred by police for prosecution, and 372 (19%) resulted in the filing of criminal complaints. Of these, 46.8% resulted in hate crime convictions, including 109 through pleas of guilty or no contest, and 65 through convictions at trial (California Attorney General, 2000).

4. Databases in the United States include those of the Federal Bureau of Investigation and several national organizations, including the Anti-Defamation League of the B'nai B'rith, the National Gay and Lesbian Task Force, and the Southern Poverty Law Center. Local organizations also collect data in many large U.S. cities. Because of their partisan nature, these watchdog groups may provide unreliable data (Green, McFalls, & Smith, 2001).

5. A related problem is the conceptualization of hate crimes as primarily stranger-on-stranger assaults. Harassment in schools, workplaces, and institutional settings such as the military, prisons, and law enforcement is grossly underreported. Victimization data may also overrepresent those with more social status. For example, in the case of homosexuals, White gay men are more likely than lesbians or non-White gay men to report victimization (Berrill, 1992). There is also some evidence that nonminorities are proportionately more likely to report hate crime victimization than are members of traditionally victimized groups (see discussion and citations in text).
6. Outcome research has yet to be conducted on diversion programs, which include Juvenile Offenders Learning Tolerance (JOLT) in Los Angeles (Wessler, 2000), Stamp Out Hate Crimes in New Jersey (Greenberg, 1997), and the Anti-Defamation League of the B’nai B’rith’s programs for anti-Semitic offenders in New York City and Boston.

7. Boyd, Hamner, and Berk (1996) explained how, in the city they studied, suspected hate crimes are automatically assigned to a special hate crimes detective and receive a level-1 priority, requiring the investigation to be completed within 10 days. In contrast, level-2 cases must be investigated within 30 days, and level-3 cases may not require any follow-up investigation at all.

8. A controlling Supreme Court case, Wisconsin v. Mitchell, has been used in a similarly paradoxical manner to rebut First Amendment challenges to the Don’t Ask, Don’t Tell policy excluding gays from the military, and to punish environmental dissidents protesting old-growth logging in Oregon (Gey, 1997). As Gey pointed out, this use of the Mitchell case is “an example of a common phenomenon: A politically progressive speech-regulation theory that ends up providing the government with an excellent justification for suppressing politically progressive speech” (p. 1015).

REFERENCES


