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GENDER-BIAS HATE CRIMES

A Review

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AN AFRICAN AMERICAN MAN is dragged to his death behind a pickup truck in Jasper, Texas. A young gay college student is beaten and left to die draped on a fence in Laramie, Wyoming. Four schoolgirls and their female teacher are shot to death by two male classmates at Westside Middle School in Jonesboro, Arkansas. Each of these horrific murders left the country first reeling and then debating the causes and solutions to such violence. However, the three crimes were discussed in very different ways. The first two crimes are widely regarded as hate crimes and led to a national discussion on racism and homophobia, respectively. However, Jenness and Grattet (2001) noted the latter crime was treated very differently from the others.

In contrast to these two incidents, the murder of four young girls in a Jonesboro, Arkansas schoolyard in March of 1998 generally has not been viewed as a hate crime, despite the revelation that the young boys in custody for the killings sought to shoot girls because it was girls that angered them. That is, they selected their victims on the basis of gender. *Time Magazine* (Labi, 1998) referred to it as a “youth crime” and *Newsweek* (McCormick, 1998) called it a “schoolyard crime.” Because of this framing, the incident triggered a different set of legal and policy discussions, most often in terms of school violence and the debate over gun control. (p. 7)

The discrepancies between how these crimes were viewed, reported, and discussed illustrates the present debate over including gender-bias-motivated violence under the rubric of hate crime definitions and policy. The story of the intersection between gender and hate crime policy has been tumultuous and controversial. The debate continues today.

This article will examine the intersection of gender and hate crime policy. Before discussing the specifics of gender, hate crime policy in general will be reviewed followed by a history of gender in hate crime policy. The current debate over whether gender fits within

the hate crime paradigm will be recounted with both sides of the controversy presented. The problem of gender essentialism within hate crime policy will be presented, which means examining the multiple status categories of women; for instance, how do we talk about hate crimes against women of color and lesbian women? The article will conclude with implications for policy, practice, and research. . . .

POLICY HISTORY OF GENDER AND HATE CRIME

As previously mentioned, social movement organizations have provided the primary impetus to much hate crime policy. These organizations were outraged by the violence perpetrated against their members. Keeping informal statistics was often a way to begin to address the problem. However, as advocacy groups began to gather momentum and political clout, the organizations frequently turned to the government for action and remedies.

To begin to address the problem of hate crime, the prevalence of the problem was important to establish. The Coalition on Hate Crimes Prevention was formed to sponsor the Hate Crimes Statistics Act (HCSA) at the federal level, which would require the U.S. Attorney General to gather and publish hate crime statistics on selected groups. The coalition was composed of civil rights, religious, peace, gay and lesbian, and ethnic groups (Jenness & Broad, 1997). Women's groups were noticeably absent. The first Congressional hearings on hate crime occurred in 1985 and centered on the following three designated core categories: race, religion, and ethnicity. However, between the introduction of the HCSA in 1985 and its passage in 1990, a process termed *domain expansion* occurred. Jenness and Grattet (2001) defined domain expansion as "when claimsmakers offer new definitions for and thus extend the boundaries of the phenomenon under discussion" (p. 54). In 1986, congressional hearings were held on antigay violence due to the influence and participation of GLBT agencies and organizations, which resulted in the phrase "homosexuality or heterosexuality" being added to the bill before its passage in 1990.

Despite the process of domain expansion, gender was not added at this time. At a HCSA hearing in 1988, Molly Yard, then-president of the National Organization for Women (NOW), submitted written testimony to be included in the record (Yard, 1988). Yard sought to amend the HCSA by adding gender as a protected category. She drew on feminist theory and research to demonstrate that the majority of violence committed against women occurs at the hands of men, often the result of misogyny. Yard described rape and heterosexual domestic violence as tools of political oppression meant to keep women subordinate. She also included violence against abortion providers and clinics as falling under the domain of hate crime. She noted two states already had included gender in their hate crime laws, both California and Minnesota. Yard described the many parallels between hate crimes and violence against women. She noted the irony that other social movement groups often used rape as an analogy for the harms that hate crimes do and yet refused to add protections for women, who are primarily the victims of rape. Yard stated,

Just as ethnic, religious, homophobic, and racist violence is motivated by hate, so also are rape, wife abuse, and anti-abortion terrorism and a host of other crimes directed at women. Until we accept this concept as a nation and act on the obvious, we cannot truly understand the scope and misogyny in American society and begin to eradicate the problem and eliminate the tragic and shameful results. (p. 17)

Despite her testimony, gender as a category was not adopted.

An editorial in a women's advocacy newsletter documents the deliberate exclusion of both the status category of gender from the HCSA and women's organizations from the policy-making process.

In the winter of 1989, the National Organization for Women and the National Coalition Against Domestic Violence sought to rectify the exclusion of women from the bill through a series of meetings with the Coalition on Hate Crimes. Aside from the absence of any women's groups, the Coalition on Hate Crimes is an otherwise broad coalition of civil rights, religious, peace, gay, and ethnic rights groups. In response to the women's arguments for inclusion, the member organizations of the Coalition on Hate Crimes were polled. They agreed unanimously that they would not support a Hate Crimes Bill that included gender. The Hate Crimes Coalition then cancelled all future meetings with the women's rights groups. (de Santis, 1990, p. 1)

The reasons offered for the exclusion of women were both strategic and ideological. For instance, coalition members feared that adding gender would delay passage of the bill and suggested that gender be considered for inclusion at a later date (Copeland & Wolfe, 1991). Other rationales for excluding gender included fears that inclusion would open the door for other groups such as age and disability; would make the statistics-gathering requirement too cumbersome due to the prevalence of violence against women; and that women do not fit the hate crimes paradigm because many of them know their attackers (Copeland & Wolfe, 1991). Apparently, an internal memorandum prepared by the Anti-Defamation League (ADL) was influential in laying out the arguments both for including and excluding gender as a category (Freeman, 1990); however, the ADL does not make this document public today. Angelari (1994) commented on the Coalition's stance.

Ironically the Coalition argued that "without the inclusion of sexual orientation in the act, there would be two standards. Crimes against gays and lesbians would be viewed as less significant, less pervasive, and less reprehensible than crimes motivated by racial, religious, or ethnic prejudice." That a coalition of religious, civil rights, and gay and lesbian organizations should fail to see that their actions relegated crimes against women to the same secondary position illustrates one of the major obstacles that women's advocates must overcome before violence against women will be treated as a hate crime. (p. 85)

Therefore, gender was not included as a category for protection in the HCSA that passed in 1990, and statistics on gender-bias-motivated crime are not reported at the federal level with other hate crimes. Disability, both mental and physical, was added as a category in 1994 under a provision of the Violent Crime Control and Law Enforcement Act (FBI, 1999a).

Gender was often omitted at the state level as well. The ADL formulated a model statute in 1981 that was adopted by many states. However, the statute did not include gender as a status category. This occurred in spite of the fact that the first hate crime law passed in the United States was in California in 1978, which included gender as a category.

Perhaps due to its exclusion from the HCSA, 2 years later Congress sought to address violence against women in a separate bill, the Violence Against Women Act (VAWA), which subsequently passed in 1994. The bill had multiple provisions including funding for victim

services, education, and training for members of the criminal justice system. The law also contained a historic civil rights provision, Title III, which declared for the first time that “violent crimes motivated by the victim’s gender are discriminatory and violate the victim’s federal civil rights” (Goldscheid & Kraham, 1995, p. 505). Although not specifically termed *hate crime*, this was the effect of Title III. Unfortunately, the U.S. Supreme Court declared this section of the VAWA unconstitutional in 2000. *United States v. Morrison et al.* held, by a 5–4 ruling, that Congress did not have the authority to legislate the civil rights provision under the basis of the either the Commerce Clause or the Fourteenth Amendment, which Congress had cited as sources of federal authority (*United States v. Morrison et al.*, 1999).

In 1994, Congress passed a sentence enhancement law, the Hate Crimes Sentencing Enhancement Act of 1994 (HCSEA), which called for enhancing sentences by no less than three offense levels for hate crimes. For the first time in federal policy, the list of protected statuses included gender. Currently before Congress is the Local Law Enforcement Enhancement Act (formerly termed the Hate Crimes Prevention Act) that seeks to expand hate crime coverage for three categories, gender, sexual orientation, and disability, as well as expanding the application of hate crime law to a greater sphere than currently permitted. In a Senate hearing on this bill, gender as a status category was debated with several groups specifically addressing the inclusion of gender including the Center for Women’s Policy Studies, the NOW Legal Defense and Education Fund, and GenderPAC (Combating Hate Crimes, 1999).

Jeness and Grattet (2001) described the early policy process in which social movement organizations were critical in defining the problem of hate crimes, specifying target status categories to be included, and advocating for legal solutions. Women’s organizations were not active in the process, sometimes even being deliberately shut out, as previously described. However, a second wave of hate crimes policy making commenced that allowed gender to be added as a category in the VAWA, HCSEA, HCPA, and more than 20 states (for a listing of states, see Lawrence, 1999, pp. 178–189). This top-down addition of gender can be attributed to the fact that gender was already a standard subject of state and federal discrimination law and, thus, became folded into hate crime policy by lawmakers rather than grassroots activists. As part of this move to increasingly include gender as a status category, in 1996, the ADL added gender to its model hate crime statute (ADL, 1999). In the current hate crime policy arena, gender is often likely to be on the list of protected statuses in proposed legislation.

Earl and Soule (2001) found that states that had previously passed hate crime law were less likely to go back and add gender as a category. Looking at various factors that affected whether a state included gender in their hate crime law, Earl and Soule found high issue salience, high per capita income, and a low non-White population were predictors of the inclusion of the status category of gender in the state statute. Also, states in the Pacific Northwest were more likely to include gender than southern states.

When Steven M. Freeman, director of the ADL Legal Affairs Department and author of the 1990 ADL internal memorandum, was asked why his organization first excluded and then included gender as a category, he (Steven M. Freeman, personal communication, March 24, 2000) responded,

It would not be accurate to say that gender was first excluded, and then we had a change of heart. It would be more accurate to say that after we had some experience with the statute, the

question was raised internally as to whether it should be broader than originally drafted. When we brought to our lay leadership the question of whether to include gender, the vote was affirmative.

Freeman (Steven M. Freeman, personal communication, March 24, 2000) also offered the following caveat:

I would also point out that including “gender” as a category is different than including “women,” even though it is obvious that in most gender-based hate crimes, the victims are women. We regard it as legally and politically significant that people of different races, religions, national origins, sexual orientations, and genders are covered by our language—not merely minorities.

Freeman’s point is well taken. Although not widely acknowledged in the media, hate crime law protects people of any race, ethnicity/national origin, all sexual orientations, religions, and both genders, no matter whether they are in the majority or minority. Therefore, men are protected when they are targeted due to their gender, as are women.

In a newspaper search, only two instances were found in which crimes were successfully prosecuted on the basis of gender bias (Jordan, 1994; Perry, 2000). According to J. McDevitt (personal communication, October 4, 2001), the bar is being raised for prosecuting gender-bias-motivated crimes. For instance, in Massachusetts, the criteria for prosecution require that epithets uttered during the commission of the crime denigrate women as a class and that at least two restraining orders have been filed on a perpetrator by two different persons for hate crime charges to be filed in a domestic violence case.

The history of the gender status category within the hate crime model is one of first exclusion and then gradual inclusion as hate crime policy became institutionalized. However, the inclusion of the category remains more symbolic than realized as it is rarely invoked and remains controversial. Less than one half of the states include gender in their hate crime laws. For many, the gender category remains an uneasy fit in the hate crime model.

FITTING GENDER INTO THE HATE CRIME PARADIGM

Although gender is frequently becoming a part of the hate crime policy template, its fit within the hate crime paradigm remains controversial. Weisburd and Levin (1994) noted, “The theoretical fit between gender-motivated crimes of violence and traditional bias crimes is concedingly not an exact fit, but we believe it is a substantial one” (p. 42). Following are reasons it is not an exact fit and arguments for both its exclusion and inclusion.

Reasons for an Uneasy Fit

One reason gender fits less easily within a hate crime paradigm is the simple fact that it came later in time in the hate crime policy-making process. As mentioned earlier, the triad of race, ethnicity, and religion are considered “core” or “classic” status categories. The U.S. Attorney General charged the Federal Bureau of Investigation (FBI) with collecting hate crime statistics in accordance with the HCSA’s mandate. To collect the data, the FBI had to develop guidelines to establish which criminal acts constitute bias crimes (FBI, 1999b). The agency built the guidelines around the statuses covered in the HCSA at that time; that

is, race, religion, sexual orientation, and ethnicity/national origin. The guidelines direct investigators to assess specific factors in attributing bias. A few of the guidelines are (a) certain objects, items, or things that indicate bias were used (e.g., the offenders wore white sheets with hoods covering their faces or a burning cross was left in front of the victim's residence); (b) the victim was engaged in activities promoting his/her race, religion, disability, sexual orientation, or ethnicity/national origin (e.g., the victim was a member of the NAACP or participated in gay rights demonstrations); and (c) the incident coincided with a holiday or date of particular significance relating to race, religion, disability, sexual orientation, or ethnicity/national origin (e.g., Martin Luther King, Jr. Day, Rosh Hashanah, and so forth) (FBI, 1999b).

Although the guidelines give concrete examples that refer to race, religion, and sexual orientation, none of the examples presented for clarification refer to gender. Subsequent federal training manuals also did not mention gender (see for example, McLaughlin, Brilliant, & Lang, 1995). As a result, the racial animus model became the prototypical hate crime and the racial animus offender became the prototypical offender (Wang, 1997). The "typical" hate crime is often used as a measure by police officers who often compare the crime to a typical hate crime to see if it meets certain criteria; that is, no provocation by the victim, a specific target, no prior encounter between victims and perpetrator, and accompanying derogatory remarks (Boyd, Berk, & Hamner, 1996). Therefore, one reason gender fits less well, at times, into the hate crime paradigm is merely because the policy was tailored around the inclusion of the other specific status categories and the exclusion of gender. The status category of gender comes in as a second-tier hate crime, which may allow it to be treated differently, and perhaps not as seriously as the top tier hate crimes of race, religion, and ethnicity/national origin.

It is also interesting to note that the FBI determined that it was not necessary to create new crime categories but instead collect additional information, primarily on bias motivation, on crimes currently reported to the Uniform Crime Report (UCR) program (FBI, 1997). Ironically, 1 of the 11 traditional offenses named included "forcible rape." Because under the HCSA the category of gender was not recognized as a status category, the rape of a woman is not a hate crime unless the victim is sexually assaulted because of the perpetrator's bias due to her race, religion, ethnicity/national origin, sexual orientation, disability, or religion.

Other reasons why gender-bias crimes are often not viewed as hate crimes are more structural and represent institutional sexism. As Choundas (1995) explained, "Habitual preconceptions, unexamined assumptions, and unconsidered judgments—as invidious and damaging as more deliberate prejudices when finally implemented into discriminatory disadvantaging—are the evasive phenomena most reliably suspected as yielding the exclusion of gender-crime victims from enhanced protection" (p. 1162). For instance, society's continued belief in rape myths and separation of the public and private spheres continue to cause violence against women to be seen in a different, and often less serious, light. A painful example is demonstrated by the words of Senator Orin Hatch (R-Utah) during a Congressional hearing on the VAWA (cited in Gaffney, 1997):

Say you have a man who believes a woman is attractive. He feels encouraged by her and he's so motivated by that encouragement that he rips her clothes off and has sex with her against her will. Now let's say you have another man who grabs a woman off some lonely road and in the

process of raping her says words like, “You’re wearing a skirt! You’re a woman! I hate women! I’m going to show you, you woman!” Now the first one’s terrible. But the other’s much worse. If a man rapes a woman while telling her he loves her, that’s a far cry from saying he hates her. A lust factor does not spring from animus. (p. 259)

In this case, clearly rape myth acceptance and ignorance by policy makers play a role in not understanding gender-based violence. The socialization of sex roles, gender stereotypes and expectations, the historic legacy of minimizing violence against women, and the male justification of rape all play a part in not recognizing violence against women as a hate crime.

Choundas (1995) offered two additional reasons that cause people to miss seeing violence against women in the same light as racial or religious prejudice; its prevalence and the fact that women constitute half the population. These two factors make violence against women look like “essentially random and unrelated manifestations” (p. 1082). When women make up more than half the population, they do not fit the model of a powerless minority.

Another reason for not seeing women as fitting a hate crimes model is the acceptance of liberal rather than radical feminist perspective to explain violence against women. Largely due to the work of liberal feminists, violence against women has received increased attention, funding, and legal reform. However, the liberal feminist perspective focuses on gaining equality with men in the public sphere, often without explicating the root causes of the inequalities. However, a radical feminist perspective acknowledges the existence of a patriarchy in which violence is used as a tool of male oppression. For instance, Brownmiller (1975) wrote,

From prehistoric times to the present, I believe rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear. (pp. 14–15)

The radical feminist perspective is not widely accepted by policy makers and hate crime actors, leading to the conceptualization of violence against women as personal and individual, not political. A radical feminist perspective more firmly situates the category of gender within the hate crime paradigm, whereas a liberal feminist perspective primarily seeks legal safeguards without addressing the underlying causes or motivations of violence against women.

Arguments against Gender Fitting in a Hate Crime Paradigm

There are many arguments made why gender should not be included as a category in hate crime policy. Opponents of gender inclusion often fail to see gender fitting the standard bias crime model; that is, “the victim is attacked because he [sic] possesses the group characteristic” (Lawrence, 1999, p. 14). Hate crime logic often posits that victims are interchangeable and that victims have little or no preexisting relationship with the perpetrator. The fact that many female victims know their attackers precludes some advocates and policy makers from fitting rape and domestic violence into a hate crime model. However, Lawrence (1999) provided a helpful rebuttal of this assertion.

The existence of a prior relationship between victim and perpetrator, moreover, is not incompatible with the existence of a bias crime. The lack of prior relationship may be a description of most bias crimes, but it is not a *sine qua non* for all bias crimes. (p. 16)

Unfortunately, many hate crimes are perpetrated on neighbors and coworkers. Making a prior relationship a disqualification of hate crime status would exempt these crimes as well.

There is a long history of a prior relationship between an offender and victim causing violence against women to be viewed in a different, less serious, light. For instance, traditionally, most state sexual assault laws included a “marital rape exemption” clause that specifically excluded the husband from prosecution for raping his wife. The use of a prior relationship to exclude hate crime determination is just the latest in a long line of justifications for using a woman’s acquaintance with her attacker to minimize and rationalize violence. In response, Pendo (1994) stated, “In fact, the previous relationship makes the crime more heinous because the sense of connection and shared community implied in social familiarity is viciously shattered” (p. 168).

How far this standard can be pushed was demonstrated in a successful prosecution of gender-motivated violence under the California hate crime law. In this case, the perpetrator was accused of attacking five women. In four of the attacks, the man, who was unknown to all of the women, approached them with a question or a comment. The women generally responded with a few words before moving away, and then were physically assaulted by the perpetrator. In the fifth attack, the man knocked a female victim to the ground without either of them saying a word, causing her to suffer a fractured skull. Although there was a pattern of discriminatory selection of women for attack, the jury made a distinction between the five cases. The assault in which the woman spoke not a word to him was deemed a hate crime, and the other four assaults were termed “misdemeanor battery.” Because the other four women had exchanged a few words with the assailant, they were determined to have “spurned his advances” and therefore the perpetrator’s motivation was deemed their rejection of him rather than his bias toward women (Perry, 2000). Prosecutor Deputy District Attorney Hector Jimenez, head of the hate crime prosecution unit, reported that the mixed verdict revealed the difficulty of using the hate crime statute in attacks on women (Perry, 2000).

Lesbian battering is also an uneasy fit into the hate crime paradigm. Not only does it have the same intimacy element problems that heterosexual violence does, in addition the perpetrators are of the same gender and the same sexual orientation. This would generally preclude it from being termed a hate crime because the FBI guidelines state that the perpetrator and victims must be from different status categories (FBI, 1999b). However, the primary distinction of a hate crime is that it was committed due to bias against the group. In a review of the literature, West (1998) found that battering within lesbian relationships is often caused by the same factors as within heterosexual violence, such as substance abuse, a family history of violence, dependency/autonomy issues, and power imbalances. However, an untested but strongly suggested underlying dynamic is that of internalized homophobia (West, 1998). That is, societal discrimination and hatred of homosexuals is turned inward, and then outward, in acts of violence toward a lesbian partner. With this understanding, lesbian battering could fit the hate crime paradigm; that is, the violence was a result of bias against a group, despite the fact that the perpetrator belongs to the same group. Such an argument, however, would be a stretch of the hate crime paradigm and most likely

deemed an uneasy fit, as is gender generally. Heretofore, hate crimes due to sexual orientation bias is largely recognized, researched, and discussed when heterosexuals target GBLT victims. Clearly, lesbian battering is an area that warrants further exploration and discussion with regard to its fit in the hate crime framework.

Another argument often cited in the disavowal of gender as a status category is the fact that there are already special laws that address violence against women, such as sexual assault and domestic violence laws. Although this is true, these laws do not always provide the redress and justice sought by survivors of violence. For instance, the report *The Response to Rape: Detours on the Road to Equal Justice*, prepared by the majority staff of the Senate Judiciary Committee (1993), found that (a) more than half of all rape prosecutions result in either a dismissal or acquittal; (b) a rape prosecution is more than twice as likely as a murder prosecution to be dismissed and 30% more likely to be dismissed than a robbery; (c) almost one quarter of convicted rapists are not sentenced to prison but instead are released on probation; and (d) 98% of rape victims will never see their attacker apprehended, convicted, and incarcerated. Although laws are in place, and certainly are an improvement over even a decade ago, clearly the laws as they stand do not adequately address issues of violence against women. Adding gender as a category in hate crime laws could give prosecutors and police officers new tools to secure convictions, give convicted offenders enhanced penalties, and give the public a better understanding of the motivations of much of the violence committed against women. Declaration of the unconstitutionality of the VAWA Title III civil rights provision only adds to this argument.

Another reason given for exclusion of gender as a category is less ideological and more logistical. For instance, some opponents fear the addition of gender into hate crime categories will overwhelm data-collection efforts. Goldscheid (1999) responded to that argument,

Perhaps the principal or underlying objection to treating domestic violence and sexual assaults as civil rights cases is the staggering number of those crimes committed each year. Yet it would be an absurd perversion of our justice system if the prevalence of a problem became the justification for ignoring it. (p. 151)

A related fear is that with violence against women being so prevalent, including gender as a status category would make the other status categories look less important and frequent in comparison.

The final argument most often given for the exclusion of gender concerns the perpetrator's motivation. That is, some argue that men who attack and assault women do not necessarily hate them. Although this can be true, it is true for all other status categories as well. As previously addressed, "hate" crime is less about hate than bias or prejudice. Weisburd and Levin (1994) noted, "The key to bias crime categorization is not really about the hateful 'specific intent' of the offender, but rather the offender's discriminatory use of violence to enforce a particular social hierarchy that is biased against the targeted status category" (p. 36). Jenness and Grattet (2001) reported that recent judicial decisions on hate crime cases have shifted the focus from the offender's motivation to the offender's discriminatory selection of his victim.

Women are both discriminatorily selected on the basis of their gender and also due to animus, in this case, misogyny, as well as other motivations. In one report of the motives of rapists (Scully & Marolla, 1985), perpetrators admitted a variety of motivations, many of

which fell into either the discriminatory selection model or the animus model, or both. Several of the stated reasons included motives of power, collective liability, and sexual access to unwilling women, as well as recreation, adventure, or a fantasy come true. The authors noted,

We found that rape was frequently a means of revenge and punishment. Implicit in revenge-
rapes was the notion that women were collectively liable for the rapists' problems. In some
cases, victims were substitutes for significant women on whom the men desired revenge. In
other cases, victims were thought to represent all women, and rape was used to punish, humili-
ate, and "put them in their place." In both cases, women were seen as a class, a category, not as
individuals. (p. 261)

Also, it is important to note that in other types of hate crimes, the motives are mixed as well and not always about hate. For instance, Franklin's (1998) interviews with men who had perpetrated assaults on gay men found "multiple determinism" rather than simple accounts of motivation such as hate or repressed homosexuality. Men used this crime for "demonstrating their masculinity, garnering social approval, and alleviating boredom" (p. 19). Franklin compared the similarities between men who are "gay-bashers" and men who rape women because, in both groups, the offenders often act in a peer context in which the victim is an object, "a dramatic prop, a vehicle for ritualized conquest" (p.12).

Our society in general seems reluctant to label male violence against women due to "hate." Individual mental or moral defects in the man or provocation by the woman are much more readily accepted by laypersons. Pharr (1990) noted an irony in this, " 'Man-hater' is a common expression but 'woman-hater' is not, despite the brutal evidence of woman-hating that surrounds us: murder, rape, battering, incest" (p. 3).

Arguments for Gender Fitting in a Hate Crime Paradigm

Violence against women fits the hate crime paradigm when women are selected as victims due to their gender (discriminatory selection model) or due to the perpetrators hatred of women (animus model). In either case, women are targeted because they are women. Many crimes committed against women fit these models, such as rape, domestic violence, and murders of women in which men are the primary perpetrators and women the primary victims. One criteria of a hate crime is that offender and perpetrator(s) are from different groups. Although same-sex violence occurs, violence against women is primarily committed by men. However, just like any other crime, the facts of the case must be weighed to make a judgment of whether it meets the criteria of hate crime. The formulation of violence against women as hate crime fits with radical feminist theories of violence that emerged with the women's movement.

One of the major successes of the women's movement was transforming the conceptualization of violence against women from a personal problem of individual men to a political process meant to subordinate women. MacKinnon (1991) presented the radical feminist perspective when she stated, "Women are sexually assaulted because they are women; not individually or at random, but on the basis of sex, because of their membership in a group defined by gender" (p. 1301). Caputi and Russell (1992) term the murder of women femicide, that is, "the most extreme form of sexist terrorism, motivated by hatred, contempt, pleasure, or a sense of ownership of women" (p. 15). What may be "new" argu-

ments for many actors within the hate crime policy domain are actually old arguments within the feminist movement. This hatred of women and the discriminatory selection of women for violence meets the broad ideological basis for hate crime. One horrific incident of violence against women is frequently held up as the hallmark of gender-biased hate crime. The crime occurred in Montreal, Canada, on December 6, 1989, at the University of Montreal. Caputi and Russell (1992) described the massacre.

On that day, 25-year-old combat magazine aficionado Marc Lepine suited up for war and rushed the school of engineering. In one classroom, he separated the women from the men, ordered the men out, and, shouting, "You're all fucking feminists," opened fire on the women. During a half-hour rampage, Lepine killed 14 young women, wounded 9 other women and 4 men, and then turned the gun on himself. A three-page suicide note blamed all of his failures on women, whom he felt had rejected him and scorned him. Also found on his body was a hit-list of 15 prominent Canadian women. (p. 13)

This horrific crime is almost unanimously agreed to be a hate crime and opened the door for viewing other violence against women as gender-bias hate crime.

The rape of women is almost always a hate crime, one exception possibly being statutory rape. Senator Joseph Biden (D-Delaware), primary sponsor of the VAWA, stated, "Theoretically, I guess, a rape could take place that was not driven by gender animus, but I can't think of what it would be" (cited in Gaffney, 1997, p. 260). Gaffney suggested that gender animus is present in all sexual assault cases and recommends that courts adopt a rebuttable presumption of gender animus in rape cases.

Domestic violence can also fit the hate crime model, as the violence is often a repeated and patterned attack on women. Serial and repeated attacks by a perpetrator are often characteristic of hate crimes. Gender-biased epithets are common during a hate crime assault and such language is common in domestic abuse of a woman by her male partner (NiCarthy, 1986). Goldscheid (1999) noted that women who are battered are particularly vulnerable when they are pregnant, when their "femaleness" is most apparent. She also noted a pattern of battering violence either with one woman over a long period of time or with multiple women. A man in New Hampshire became the first man in his state to be sentenced under a hate crime law due to gender-biased violence (Jordan, 1994). His history of violence toward women along with repeated referrals to women with "degrading, insulting, and intimidating words" put him in the same category of someone acting out of racial or religious bigotry according to the judge. Again, epithets that target the victim's group status are often a hallmark of hate crimes. Women being attacked are often termed "bitches," "cunts," and "whores," words that target their femaleness.

Another hallmark of hate crime is the harm it does to the victim's community in addition to the individual victim(s). For instance, although not all women are raped, most women fear rape (Gordon & Riger, 1989). Women alter their daily lives in numerous ways to avoid the violent behavior of men. Choundas (1995) noted, "While potential victims of racial, ethnic, or religious violence might attempt to avoid certain neighborhoods in which prejudice might run particularly rampant, women remain safe from street harassment and violent assault only by staying out of those areas known as public" (pp. 1090–1091). And yet, even in "private," women are not safe from the hands of intimate partners. Again, this intimate relationship often cloaks the reality of the violence.

Characteristics of hate crime also include the pervasive social harm such acts inflict on society in general. In this case, the pervasive social harm to women includes constant threats of violence and restrictions on freedom to move about the world, which may impinge on economic opportunities. Domestic violence also inflicts harms on the institution of the family, adds costs and dangers to the workplace, has links to criminal and suicidal tendencies, and instills violent propensities in the next generation of males (Choundas, 1995).

Another characteristic of hate crime is whether the target community perceives it as a hate crime. This was the case in the following example. In November 1994 at the University of New Mexico's Zimmerman Library, more than 100 bound volumes of gender and gay studies journals were taken, and those left defaced with swastikas and scrawled messages such as "Where is your bitch propaganda?" (Hood & Rollins, 1995). Although some university administrators and faculty saw the crime as a matter of censorship or a prank (especially when the volumes were later found hidden in the library), feminist faculty and staff defined it as a hate crime. The next year, the Board of Regents passed a hate crime policy, which included gender as a category, with the library incident noted by local press as a motivating factor.

Finally, several other factors, often particulars of the crime, make gender-bias violence fit the hate crime paradigm. Levin (Webb, 1994) believed violence against women is a hate crime because it is often characterized by (a) hate language, (b) the absence of another motive (such as robbery), (c) excessive brutality including genital and breast mutilation, (d) lack of provocation, and (e) victims suffer long-term harm. Perpetrators of hate crime are often young men in groups (Levin & McDevitt, 1993), which is often characteristic of violence against women, especially gang rapes. Another criteria of hate crime is that the characteristic the victim is targeted for is an immutable one; that is, the person cannot change it. Therefore, the person is powerless to avoid being targeted, now or in the future. Although transgenderists and postmodernists would disagree, gender is generally viewed as an immutable trait. Transgendered individuals are often themselves targets of hate crime, and recent legislation in California includes transsexuals as a protected category (Jenness & Grattet, 2001).

Gender Inclusion Benefits

The policy benefits of having gender as a status within hate crime policy are numerous. Perhaps the primary benefit is the one cited by Weisburd and Levin (1994), "By recognizing the group-based animosity underlying these victimizations, we not only decry the violence but also take the first step in confronting the underlying attitude that allows the violence to occur" (p. 41). The solutions to social problems are determined by the definitions attributed to the problems. If the problem is identified as personal and individual, as violence against women has been considered for so long, then solutions will follow that individualized model. Placing gender in its proper place among hate crimes redefines the problem as public and political, causing the victims to be viewed as worthy of legal redress instead of blame.

Angelari (1994) listed other benefits including new legal remedies and increased public awareness of the seriousness and prevalence of violence against women. The new legal remedies include increased penalties, which provide incentives for police and prosecutors to take violence against women more seriously, opportunities to seek civil remedies, dam-

ages in civil award suits to pay for treatment, civil suits offering emotional reward for establishing guilt of the attacker, and offering “victims of gender bias-motivated violence confirmation that their suffering is part of a greater, and regrettably unaddressed, social problem of violence against women” (p. 102). A rape survivor hauntingly spoke (Kalven, 1999) of this connection to the larger group of victimized women: “I feel in touch with something so large. I felt it from the first moments. I feel connected to cavewomen, to women who’ve been raped through history. It’s like a weight, bearing down on me” (p. 142).

The benefit of increasing public awareness of the seriousness of violence against women is that it (a) directs attention away from rape myths and onto motives of hate, power, and control, (b) shifts attention away from the victim and on to the motives and actions of the perpetrators, and (c) also moves attention away from the relationship and onto the violence. A shift in focus on motivation from victim to perpetrator would change the questions asked of the victim from “Why don’t you leave?” and “What were you wearing?” to asking the perpetrator “Why did you target women?” and “What part does misogyny play in this violence?” Also, such a shift changes treatment of the perpetrator in ways already practiced within the feminist community; that is, having rapists or domestic violence abusers recognize that they have more than a problem with individual women but a problem with how they view and treat women more generally (Gondolf & Russell, 1987).

To increase the rewards of recognizing gender as a status category, the interaction of gender with other status categories must also be acknowledged. Not to do so unnecessary limits the understanding of hate crime as it applies to women and serves to make many women invisible, especially women who occupy multiple status categories.

GENDER ESSENTIALISM

Hate crime policy is largely focused on providing increased protection and remedies for specific, targeted groups of people based primarily on a history of discriminatory practices and widespread prejudice expressed toward their group. This division of people into specified categories can be a source of contention. For instance, Jacobs and Potter (1998) criticized such categorization as leading to identity politics and the “Balkanization of American society” (p. 8). Harris also offered a critique of categorization, however, based on a much different premise. Harris (1993) was critical of feminist legal theorists who speak of “gender” as though it were both universal and separate from other systems of domination. Harris defined “gender essentialism” as “the notion that there is a monolithic ‘women’s experience’ that can be described independent of other facets of experience like race, class, and sexual orientation” (p. 348).

Throughout this article, and much of the hate crime policy domain, status categories are spoken of as if they were discrete and separate categories. Such notions not only create divisions between categories of people, they fail to recognize that people occupy multiple categories. By ignoring people who fall within multiple targeted status categories, it is often women who are made invisible. The FBI defines a multiple-bias incident as “any hate crime incident in which one or more of the offenses were committed as a result of two or more bias motivations” (FBI, 1999a, p. 7). However, the category is little used. In 1999, when the FBI reported 9,301 hate crime offenses, only 10 were recorded as multiple-bias incidents.

Ignoring multiple status categories in theoretical discussions as well as statistical reporting leaves gender out of the picture. For instance, Jenness and Broad (1994) noted how the gay and lesbian antiviolence projects have adopted many of the strategies of the

women's movement's antiviolence projects without adopting a gendered understanding of violence. Ault (1997) echoed this point by noting that gay and lesbian antiviolence projects often fail to note the connections between sexual orientation and gender discrimination, resulting in the assumption that lesbian women have more in common with gay men than heterosexual women. Another assumption follows: that is, that attacks on gays and lesbians are exclusively due to homophobia and not misogyny. Attacks on gay men may be due to misogyny, due to their perceived similarity to women, as well as homophobia. Hate crimes against lesbian women are often attributed solely to homophobia rather than some combination of homophobia and misogyny. Such discrete categorizations "create a false dichotomy between the categories 'lesbian' and 'woman' and 'anti-lesbian' and 'anti-woman.' Anti-lesbian is quintessentially anti-woman; violence against women of all sexual orientations is often overtly 'anti-lesbian' " (Ault, 1997, p. 59).

Not including gender as a category creates problems for women who are hate crime victims. Pharr (1990) questioned,

When hate crimes are limited to anti-Semitic, racist, and homophobic violence, there is inherent confusion: when Jewish women are killed, when women of color are killed, when lesbians are raped or killed, it is often impossible to determine if they were attacked because of their religion, race, sexual identity, or their gender. (p. 2)

Police often have difficulty determining motive when there are multiple identities. In her study of the identification of hate crimes by police officers, Martin (1995) related the problem with determining motive in the following two cases involving women of color. In one incident, two African American women were soliciting for a charity door to door. A White homeowner yelled at them, "Get the fuck out, niggers!" and then chased them down the street while he was naked. The police determined this to be a racial incident because the man yelled "niggers," but noted in their report that he probably would not have done the same to two African American men. Another incident occurred when a White man in a car yelled, "move, you Black nigger bitch mother fucker!" which was recorded by the police as racial harassment. However, the victim is noted to have said, "If I were a man he wouldn't have done that" (Martin, 1995, p. 321).

Harris listed reasons why gender essentialism is so attractive: (a) as a matter of intellectual convenience, it is easy; (b) essentialism represents emotional safety; (c) it provides opportunities for power games and hierarchies of oppression; and (d) cognitively, it provides a way of organizing data, even at the cost of leaving some data and experiences out. Such a gender essentialist focus does have problematic consequences in hate crime policy. For instance, enhanced penalties are often seen as a solution to hate crime, which may disproportionately affect men of color because they are likely to face increased discrimination in the criminal justice system (Angelari, 1994). African American women may be less likely to support penalty enhancements due to their unique vantage point at the intersection of race and gender. Violence against women also may be very different for various subgroups of women. For example, race and rape intersect to make a very different experience, especially for African American women because of the legacy of rape during eras of slavery, Reconstruction, and Jim Crow (Davis, 1981).

Having a checkmark for "multiple bias" is not enough. It is more than a bookkeeping or accounting problem. The result of category essentialism is that the gendered nature of

much violence is once again ignored or marginalized, especially as it affects women who are targeted due to their membership in multiple targeted status categories. The interconnections among systems of oppression have been brought to the forefront by numerous women of color theorists, including Davis (1981) and Collins (2000). Collins used the terms “intersectionality” and “matrix of domination” to describe the interconnections of oppressions. Intersectionality is defined as the “particular forms of intersecting oppressions, for example, intersections of race and gender, or of sexuality and nation” (p. 18). For example, a female Muslim hate crime victim may be acknowledged, but the bias is often solely attributed to her religion rather than a combination of her gender and religion. In the hate crime literature, the intersections are ignored, which often leads to a marginalization of the gendered nature of violence.

IMPLICATIONS FOR RESEARCH, PRACTICE, AND POLICY

Gender as a status category has taken a detour on the road to hate crime policy acceptance but is traveling the road nonetheless. Although still not universally included in hate crime policy, gender is frequently included as a status category. However, victory cannot yet be claimed. There are still struggles ahead to keep gender in the paradigm, to see that the policy is effectively implemented, and to face the new challenges that lie ahead. There is concern that the policies will be viewed as more symbolic rather than to be practically implemented. There is also concern about the institutionalization of these policies as the law enforcement community implements them. The implications for research, practice, and policy will be discussed.

Research

Because the hate crime domain is still in its infancy, research is needed in all areas of hate crime in general and gender bias in particular. Currently, much of the literature on gender-bias violence consists of conceptual arguments within legal circles and little empirical research. The research focus must include gender bias and the multiple statuses of many targeted women. One specific research suggestion includes surveying law enforcement officials to determine their knowledge of, and interest in, identifying and prosecuting gender-bias hate crimes. Additional calls for research are included in two new hate crime reports (Green, McFalls, & Smith, 2001; McDevitt, Balboni, & Bennett, 2000).

Practice

Practice implications include developing and implementing training programs for police officers, judges, and prosecutors on gender-bias crimes. Although hate crime training is available, often it does not include the category of gender. Such training also would need to be evaluated to determine its effectiveness in raising both awareness and knowledge of gender-bias hate crimes and whether that awareness or knowledge translates into specific actions and protections for women. Models for training could include programs often provided by women’s rape crisis and domestic violence programs to police cadets and officers. Theoretical models most appropriate would be radical feminist theory or social dominance theory (SDT). SDT posits that all human societies are structured as systems of group-based hierarchies, which includes a gender system in which males have disproportionate power over females (Sidanius & Pratto, 1999). Education for the general public would also be beneficial. Programs addressed to elementary, secondary, and higher

education students could focus on preventing hate crimes through increased acceptance and tolerance while dismantling hierarchies and promoting equality.

Because women's organizations were shut out of the initial policy process, they must be invited into the process. Because the gender component came from top-down rather than from women's activists, a first step might be for women's organizations to learn about how gender fits within the hate crime paradigm. Although this is occurring at the national level among women's organizations, it does not appear to be happening at the state and local levels. A discussion should ensue on how to best address violence against women to ensure the best use of scarce resources. Women's organizations must be informed about the potential benefits of categorizing violence against women as gender-bias hate crimes. Armed with such knowledge, women's organizations can once again take the lead in both training and monitoring the implementation of the law.

Maroney (1998) suggested advocacy groups develop leadership at the regional and national levels, form long-lasting coalitions and resist divisiveness between status categories, and resist seeing hate crime legislation as an end unto itself or a substitute for real systemic change. Elaborating on the last point, Maroney reminded us,

It is possible to support anti-hate crime measures without supporting the more controversial and resource-heavy demands of disenfranchised groups for equality in housing, education, wealth, and sexual freedoms. Doing so allows government authorities to condemn the most extreme manifestations of prejudice without committing to eradication of lesser, more pervasive forms. (pp. 584–585)

Addressing discriminatory violence against women is merely one piece of a wider agenda to improve the status of women.

Policy

Another focus must be on policy. The focus on policy must include monitoring the implementation of hate crime policy, including the possibility of unintended consequences. Policy concerns include continuing to add gender as a status category to state and federal policies as well as revising FBI and other guidelines to include gender examples. Women's organizations can join with hate crime coalitions to work on a state-by-state basis to ensure gender is a status category in all 50 states. Maroney (1998) cautioned that hate crime law is now in the hands of the criminal justice system whose views of hate crime might differ from the advocacy groups that successfully proposed the laws. One concern is that the law may be used against those people it was intended to protect. Angelari (1994) noted that policies meant to protect women have had unintended consequences, such as the dual arrests of both parties under mandatory arrest policies in domestic violence cases. Monitoring policy implementation is necessary to see that legislative intent is carried out and that no unintended consequences befall women as a class.

McDevitt et al. (2000) suggested that the FBI convene a working group to discuss the inclusion of gender in its national report because many states are beginning to collect local statistics. Statistics on violence against women are notoriously underreported and subject to controversy. Including the number of women who are victims of gender-bias assaults in the national report will pose unique difficulties. The FBI and other law enforcement guidelines must also be rewritten to include examples that include gender. Such examples might

include adding “Take Back the Night Marches” to gay and lesbian pride parades and Martin Luther King, Jr. Day celebrations. It would include adding gender-bias epithets or other comments including stereotypical and derogatory statements about women as a class or group. Such statements often include blaming women for provoking or deserving the attack and blaming women for the perpetrator’s present position or difficulties either during the commission or after the commission of the crime. Again, the multiple statuses of women must be taken into account in developing the FBI guidelines. That is, investigators must ask if the crime was motivated in part by the victim’s race, religion, or sexual orientation, but also in conjunction with the victim’s gender.

Maroney (1998) warned of the potential danger when hate crime becomes institutionalized.

Anti-hate crime efforts, once adopted, have come firmly within the control of the legislators, government authorities, police, prosecutors, and judges that shape and implement them. That institutional control, coupled with inadequate movement activity outside of those institutions, has frustrated larger attempts to alter systemic mistreatment of hate crime. (p. 598)

Maroney detailed many present and potential problems, such as the bias of police officers, prosecutors, and judges who have much discretion; law enforcement’s tendency to only address “extraordinary cases”; the possibility of selective enforcement with target communities having the laws turned against them; and the irony of having the police, who are guilty of many hate crimes themselves, responsible for apprehending other bias offenders. This latter situation is directly applicable to violence against women as police officers have frequently been charged with domestic violence, rape, sexual harassment, and other misogynist assaults either against women in their personal lives or women they encounter in the course of their work.

Gelber (2000) raised different concerns about hate crime policies: “While the logic of hate crime categorisation seems readily extendable to incorporate certain crimes against women, the hate crime argument begins to raise questions which challenge assumptions about the usefulness of hate crime legislation.” She is concerned about how the laws might be applied inappropriately or inconsistently, also sharing concerns that penalty-enhancement laws might disproportionately punish already marginalized populations. Gelber suggested a shift in focus to monitoring hate crimes, community education to raise awareness, and greater provision of services to victims.

CONCLUSION

Clearly, the case for gender fitting a hate crime paradigm can be made. However, there is much room to debate when and how it should be incorporated into the violence against women movement. There is a danger that in incorporating women into the hate crime paradigm, the model is stretched so thin that it collapses. The gender bias hate crime model is in its infancy; much work needs to be done to assess its effectiveness in its adolescence. Violence against women is a serious problem. Only time and continued analyses will tell if the hate crime paradigm offers effective solutions and strategies for violence against women rather than a symbolic gesture with few real protections.

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