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Hate Crimes as Discriminatory Violations

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Abstract Hate crimes are new concept in the academic research. Clearly, they are not a new phenomenon and it is important to bear in mind that what is currently being addressed as "hate crimes" has a long historical line. What is however new in this context is the cultural plurality of societies as a result of increased migration and postmodern awakening of old identities. Not to forget the strong role that globalization has in the facing of cultures to each other. Thus, the hate crimes that are otherwise older are placed in this new context. The first part of the text gives an overview of some of the wider and more elaborated definitions that are central for our conceptual understanding of hate crimes. Following this understanding the second part of the text tries to analyse the unique harm or injury that hate crimes are causing and to illuminate more precisely the discriminatory violence and how it brings further humiliation to the victim.

KEYWORDS: hate crimes • dignity • discrimination • humiliation • harm

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1 Introduction

While bigotry is probably as old as humanity and human life in the societal community, the notion of "hate crimes" is a new term that appears together with the idea of a separate legal treatment of the discriminatory violence. The basics in the policy domain for the hate crimes were made possible by the activities of the movement against acts of hatred that has emerged in the US in the late 1970s, and was built on strategies to mobilize the civil rights movement and the rights of victims of 1960 and 1970s (Jennes, Grattet, 2001; Iganski, 2008: 5; Grattet, Jenness, 2004: 23–44).The hate crimes, as a term and as a legal category, are basically a product of the increased awareness of the issues of race, gender and sexual orientation in contemporary American society. However, until the mid-1980s the term (s) did not exist. After a series of incidents in the 80s targeting Jews, Asians and blacks who were accompanied by much publicity, the term "hate crimes" came into general use in the United States. This term, as well as the overall theme of the acts of hatred received further international publicity with the wave of racist violence (against foreigners) that occurred in Northern Europe during the 1990s.[1]

The general use of the term implies the establishment of a crime, a violation of criminal law. So it is being said that "hate crimes are crimes in which the perpetrator is motivated by the characteristics of the victim that identify her as a member of a group to which the offender feels some animosity.“[2] Hate crimes indicate unlawful - violent, disruptive or threatening behavior in which the perpetrator is motivated by bias against the supposed societal victim's group (Green, McFalls, Smith, 2001: 1). Hate crime generally means an offense against persons or property motivated in whole or in part by racial, ethnic, religious prejudices, prejudices based on sexual orientation, etc. (Jacobs, Henry, 1996: 366). In other words, hate crimes are "offenses committed against persons or property that are motivated by intolerance or prejudice the offender towards the racial, ethnic, religious or sexual identity of the victim.“ (Boyd, Berk, Hamner, 1996: 819; Green, McFalls, Smith, 2001: 2).

These definitions, despite their mutual differences reflect the general characterization of hate crimes as offenses motivated by prejudice against the victim group.

However, in all the variations this legal definitions of the term do not capture or minimize the nature and purpose of the crimes that are motivated by prejudice. For example to say that hate crimes include violence motivated by bias against racial identity of the victim means that attacks of whites over blacks and blacks over whites are joined in the same classification. Whatever its merits are as a policy or as a means of building consensus, this impartial definition that makes no distinction between attacks perpetrated by the dominant versus subordinate groups poses a challenge for those seeking to explain why the hate crimes appear. Sometimes authors are trying to overcome this problem contained in their definitions, explaining how victims of the hate crimes include members of racial, ethnic and religious minorities, homosexuals, bisexuals and physically disabled persons. In this way they make an attempt to limit their impartial definitions to the unlawful conduct that is directed towards the subordinated groups (Green, McFalls, Smith, 2001: 2).

Below we will try to enclose some of the broader and elaborated definitions which are central to our understanding of the concept of hate crimes. They all in different extend address the importance of the deeply rooted identity hierarchies that generate hate crimes. Following this conceptual understanding the article will to analyze the unique harm caused by hate crimes. The main purpose of the article is to illuminate these crimes more precisely as a discriminatory violence that brings additional humiliation to the victim. Methods used are the descriptive method, the interpretative method and content analysis method.

2 Definition of hate crimes

Carolyn Petrosino gives the following basic definition of hate crimes as "victimization of minorities because of their racial or ethnic identity done by the members of the majority" (Petrosino, 2004: 5). She actually uses the existing American literature to identify a set of common features of hate crimes to suggest that: a) most of the victims are members of certain racial or ethnic (cultural) minority groups; b) most groups of victims are clearly less politically and economically powerful of the majority; and finally, c) victims for the perpetrator present a threat to the quality of life (eg. economic stability and/or physical security). These common factors suggest her basic definition of hate crimes. Petrosino points out that the definition focuses on "the imbalance of power between perpetrator (the majority) and the victim (the minority) - highlighting the potential for injury in cases of hate" (Petrosino, 2004: 4).

The definition of Petrosino gives a certain idea of who are the victims of hate crimes. It reveals the imbalance of power between the perpetrator and the victim. Using the framework of power relations to describe this kind of victimization is certainly more constructive way of looking at hate crimes. It enables us to understand hate crimes not as abnormality or anomaly, but as a natural extension of prejudice, marginalization and oppression that minority groups experience within the structure of society. However, as pointed out by Neil Chakraborty and John Garldand, this definition limits the conceptualization of hate crimes in two important ways. First, Petrosino explicitly recognizes only the victimization of ethnic minorities, thus leaving out other minority groups who we might assume to be vulnerable to the imbalance of power to which she refers. Secondly, this definition neglects to show how the very act of hatred contributes to the subordination of the less powerful (Chakraborti, Garland, 2009: 5).

More extensive than Petrosino, Leslie Wolfe and Lois Copeland concluded that hate crime is a "violence directed against groups of people who are generally not valued in the larger society, who are suffering from discrimination in other areas, and do not have full access to the means to correct or fix the societal, political and economic injustices" (Wolfe, Copeland, 1994: 201). This definition is useful in the sense that it recognizes that the predominant victims of hate crimes are those who are already marginalized in other ways. Unlike the definition of Petrosino, it is not limited exclusively to ethnic minorities, but yet again, it is unable to show how the very act of hatred contributes to this marginalization.

The definition of Carol Sheffield is another step ahead. According to Sheffield "hate violence is motivated by social and political factors and is secured by systems of belief that are trying to legitimize such violence ... it reveals that the personal is political; that such violence is not a series of isolated incidents but a consequence of the political culture which distributes or allocates the rights, privileges and prestige according to the biological or social characteristics "(Sheffield, 1995: 438).

As pointed out by several authors (Hal Perry, Chakraborty and Garldand) Sheffield explicitly addresses the importance and political and social context that determines the hate crimes. She also emphasizes the importance of the deeply rooted identity hierarchies that generate hate crimes. But, what is still lacking in this definition as in the previous is feeling of the impact hate crimes have on the participants - the victim, the perpetrator and their respective communities. (Perry, 2001: 10).

Indeed this omission or default is addressed within the general definition of Barbara Perry. Her definition in this regard offers the most developed hate crimes review. According to Perry, hate crime includes acts of violence and intimidation which are directed to the already stigmatized and marginalized groups. As such, it is a mechanism of power and oppression, which aims to confirm the uncertain hierarchies that characterize a given social order. It simultaneously tries to re-create the endangered (real or imagined) hegemony of the group of the perpetrator and the "adequate" subordinated identity of the victim's group. It is a means of labeling of oneself and the Other in a way to re-establish or establish their 'adequate' respective positions, given and reproduced by broader ideologies and patterns of social and political inequality.

Like other definitions, the definition of Perry emphasizes the connection between the hierarchies of power and hatred. It gives primacy to the notion of violent and intimidating behavior that Perry sees it as a special or somehow different when it is being motivated by intolerance and manifested as discrimination against marginalized communities (Chakraborti, Garland, 2009: 6). As an expression of hatred, such acts of intimidation "include confirmation of oneself through others constituted as "the Other" (Perry, 2001: 9).

What this definition of Perry makes especially significant is that it allows the hate crimes to be understood as a process, and not simply as an event. In this regard Perry follows the pioneer work of Benjamin Bowling for understanding the racist violence. According to Benjamin Bowling, a hate crime as a category and as a social phenomenon is dynamic and in a state of constant movement and change, not static and fixed (Bowling, 1993: 238). The hate crime does not occur in a cultural or social vacuum, nor is "completed" when the offender goes on. Taking the views of Bowling, Perry confirms the hate crime not as a static problem, but historically and culturally dependent process and dynamic social process that includes context and actors or participants, structure and mediation. By recognizing the different characteristics of the process invoked by Bowling (historical and social context, relations between actors, and relations between communities) and by incorporating them in the framework of power, hierarchy and oppression sketched in her definition, Perry illuminates the complexity

related to hate crimes and the need to define them "in such a way that would give a "life" and meaning to the term (Perry, 2001: 9).

3 The concept of "harm"in the case of hate crimes

3.1 Hate crimes as more harmful than ordinary crimes

Hate crimes differ from ordinary crimes not only because of the motivation of the offender, but also because of how this motivation affects the victim and the wider environment. Namely, it has been noted that hate crimes are more harmful than the same crimes without motive of prejudice. This means that hate crimes have consequences that make them different from other crimes and that, therefore, justify a different legal approach.

The question is, what makes the hate crimes different in this regard, in particular, more harmful. The issue of the harm hate crimes cause is usually reviewed through analysis of their impact on the immediate victim of the crime; the target community, i.e. community that shares the race, ethnicity or religion of the victim; and their impact on society as a whole.

There are three main types of arguments for the claim that hate crimes consistently impose greater harm to the victim. These arguments relate to: greater physical injury, greater mental injury and discriminatory treatment or violation of the concept of equality that hate crimes cause. However, the great emotional and psychological injuries to the victim of hate crime can only be understood (correctly) in the light of its discriminatory treatment. And the intention of this text is to focus more specifically on explaining these crimes as discriminatory violations.

3.2 The impact of discriminatory treatment of victims or violation of the concept of equality

Number of authors points out that the primary harm coming from hate crimes lies in the discriminatory treatment of the victim. In other words, the victim of hate crime has been damaged over the general right not to be physically harmed because it is treated discriminatory (Harel, Parchomovsky, 1999: 507–539).The claim that hate crimes are discriminatory violations is one way of thinking about the idea that hate crimes violate some concept of equality. There is another way to say that hate crimes seriously violate the norm of equality of human beings.

As Frederick Lawrence points out, the victim of hate crime is not attacked by accidental cause, such as for example the person accidentally injured during the incident with gunfire in the public space. Neither is it attacked for some non-personal reason, as for example, the victim of a money robbery. The victim of hate crime is flanked by specific personal reason - his or hers race, ethnicity or other protected characteristic. Additionally, the victim of hate crime cannot reasonably minimize the risk of future attacks because it is unable to change the features that make her a victim. For example, African-American cannot change his or hers race to prevent further victimization, he or

she will continue to be African-American. Hate crime "is an attack from which there is no escape“ (Lawrence, 1999: 39).One thing is, says Lawrence, to avoid the park at night because it is not safe. But quite another thing is for the person to avoid certain neighborhoods because of its race, i.e. ethnicity (Lawrence, 1999: 39–40). Basically, this means that the expressed values of the perpetrator of hate crime are those that lead to the injury. The values of the attacker - painfully evident in his actions - hit the core of the identity of the victim, and this hurts more (Iganski, 2008: 83).

Hate crime therefore violates the victim at the very core of her identity. Besides the sense of violation by the parallel crime, hate crime deeply hurts the dignity of the individual. Unlike ordinary criminal offenses in the case of hate crime there is an additional humiliation of the victim. Let us clarify.

Dignity, as Avishai Margalit points out, constitutes the external aspect of self-esteem. "Self-esteem is an attitude that people have towards the fact that they are people" (Margalit, 1996: 51). And humiliation supplies the victims with reasonable cause to believe that their self-esteem is damaged. Damage to self-esteem is possible, because although it is an attitude that we have towards ourselves, it also depends on the attitude of others towards us. This dependence is not purely causal in the sense that what people think about us and the way they treat us, has a psychological impact of our own attitude towards ourselves. Addiction is also a conceptual one, explains Margalit. "The justification of the (equal) respect for human beings lies in the fact that we all recognize each other as part of humanity and for this reason alone we deserve respect.

The justification from the beginning is based on attitude and not on feature" (Margalit, 1996: 124–125). So, because of the necessity of the attitude of others, self-esteem, although based on a person's human value in his own eyes, implicitly assumes the need for other respectful creatures.

How in the case of hate crimes this relationship works? It is true that the hate crime harms particular person. However, as already mentioned, he/she is not harmed as a separate individual, but as a member of a particular community with which he or she shares a specific cultural, racial or religious background, and is a carrier of related features. This is what Margalit calls "mediated rejection", which means no direct rejection of human beings as people, but refusal of the group to which the person belongs, which in turn determines the way the person shapes his life as a human being. As we can see, humiliation consists of rejecting the way a person expresses himself as a person. It is precisely this fact, says Margalit, that gives content to the abstract concept of humiliation as rejection of human beings as people. The feeling of devaluation is especially strong because the humiliation involves existential threat. "The degradation as rejection of human beings as people, even if performed ritualistically or symbolically without any physical cruelty, serves as a signal of existential refusal that is not symbolic at all." The victim, explains Margalit, "sees the existential threat in the humiliating act and is aware of her own helplessness in the face of this threat" (Margalit, 1996: 122, 137 and 143). In the case of hate crimes that involve an attack on the body or the property of the victim (where the direct and indirect rejection intertwine) this threat, i.e. humiliation is transfixing!

As Dan Kahn, a leading proponent of the expressive theory of punishment writes, the offender who attacks or kills someone because of his or hers race, ethnicity, religion, etc., shows that he enjoys not only in the suffering of another human being, but also in experience of domination and subordination which is affiliated with the humiliation of what the victim considered essential for itself. Khan claims that what makes us condemn the perpetrator for harming the other is not simply that his actions have lowered the welfare of the other person, but the fact that his actions express an attitude for the unworthiness of the other person. It is true that every crime reflects inadequate value of the victim. However, hate crimes carry particularly large degradation or dehumanization arising from the even greater mistake of the objective (real) worth of their victims (Kahan, 2001: 182–183).

The victims of the hate crimes in this regard are often compared with victims of rape or torture (Salecl, 1994: 87) in the sense that the physical injury, no matter how great, is less important than the strong sense of violation, of violence that accompanies it (Weiss, 1993: 174 and 182). As Richard Rorty points out, what is worse than the actual physical violence is the violence that on the symbolic level, "disintegrate our world." Rorty invokes the point developed by Elaine Scarry in her work *The Body in Pain: The Making and Unmaking of the World*. Since argument Barbecues follows that "the worst thing which you can do to someone is not to make him scream in agony, but to use the agony in such a way that even when it is over the person cannot re-establish itself again.“ (Scarry, 1985; Rorty, 1989: 177–178). Hate crimes can in this sense disintegrate the victim's world so that she can never again be the same person as before.

Followed empirically, such a victim will often be hypersensitive in anticipating the contact with other members of the society which he or she sees as "normal" and will usually suffer from a kind of self-doubt which negatively affects his or hers relations with the members of his or her group. This individual may experience clinical symptoms such as high blood pressure or increased drug and alcohol. Additionally, humiliation can display itself in such symptoms as a social approach to parenting that trims the confidence of the child and confirms the expectation of social failure. All these symptoms may arise from the humiliation contained in non-violent hate crimes. Injuries or harms are more serious in the case where the potential for physical injury was being realized in the case of hate crime (Lawrence, 1999: 41).

Bearing all this in mind, the violation of the concept of equality that hate crimes cause becomes clearer. In other words, hate crimes as *identity crimes*, cause harm to their victims over the common injury of the victims of "ordinary" crimes. The victims are seriously degraded and dehumanized in the very act of victimization. The hate crimes carry a clear message that the victim is of marginal value and may be subject to greater humiliations. They lower her social status and humiliate her in her own eyes. They deprive her of the right to participate in community life on equal bases, for reasons that have nothing to do with what the victim did, but with what the victim is. Hate crime is more than an attack on the physical welfare. It is an attack on essential human value of the victim.

4 Conclusion

Hate crimes differ from ordinary crimes not only because of the motivation of the offender, but also because of how this motivation affects the victim and the wider environment. Namely, it has been noted that hate crimes are more harmful than the same crimes without motive of prejudice. This means that the hate crimes have consequences that differs them from other crimes and that, therefore, justify a different legal approach. This paper tries to enlighten the claim that the primary harm coming from hate crimes lies in the discriminatory treatment of the victim. In other words, the victim of hate crime has been damaged over the general right not to be physically harmed because it is treated discriminatory. Unlike ordinary criminal offenses in the case of hate crimes there is an additional humiliation of the victim.

Notes

[1] European countries experienced explosion or huge wave of hate crimes. There were 1,483 official reports of violent acts of hate in Germany only in 1991. The works of hatred continued unabated in the new millennium. In 2005 for example, police recorded nearly 53,000 racially aggravated incidents in England and Wales. This was almost five times higher figure than that recorded in the US, perhaps due to the fact that the statistics of the UK includes hate speech, which for example is generally not punishable in the United States.

[2] Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives, OSCE/ODIHR, Published by ODIHR, Warsaw, Poland, 2005, p. 10.

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