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Hating Hate Crime Legislation

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Over the years, Canada has become more and more multicultural. During the 1970's, the government began to support multiculturalism by reforming immigration laws to allow more fair access to Canada and by beginning to celebrate people's differences (Perry, 2001: 330). However, with the changing composition of Canada came severe prejudices. In response to this, the government enacted laws and policies oriented to dealing with hate crimes. Hate crimes can be defined as crimes motivated by hatred or prejudice towards one's perceived membership to a particular social group, which include: race, gender, sexual orientation, religion, disability, class, age, nationality or political affiliation (Perry, 2011: 367).

'Hate crime' is a socially constructed phenomenon. Hate is a very ambiguous term that means different things to different people and can evoke passionate responses of outrage or agreement dependent upon one's characteristics. (Chakraborti & Garland, 2009: 3). In the UK for instance, hate crimes are defined very differently than in North America. There, it is viewed that any crime could be a hate crime, anyone could be a victim of hate crime if they perceive themselves to be one, and any offender can be a hate offender (Hall, 2005: 19). In other words, any crime can be a hate crime, thus making the notion of hate crime, simply just a crime. In North America, hate crimes are defined to *only* include minorities. What is and is not considered a hate crime is based on the socially constructed ways of one's society. However, addressing hate as a crime has several implications associated with it. The way Canadian society has described hate crime and imposed legislature for such crime is ineffective as it perpetuates social inequality.

One aspect of hate crime that is often overlooked is the fact that it is natural for human beings to have prejudicial feelings. We are social beings, whereby we learn to associate and in effect, disassociate as well (Hall, 2005: 34). If prejudice is inherently normal, why is it being regulated? There are motivations for everything we, as humans, do. Punishing specifically for an innate trait in humans that serves as motivation is unjust.

Furthermore, it is not only unfair to define a crime by its hateful motivations, but it is unfair that hate motivated crime is punished more severely than the same crime committed without being motivated by prejudice. If motivations are to be considered, they should be inclusive. If a man were to murder someone because they suffered from a mental illness and received punishment based on this motivation, it would only be fair to give someone who

murdered someone out of revenge, the same sentence. However, hate crime legislation does not allow this. Consideration of motivations is non-inclusive. The crime should be looked at for what the actual offence was, regardless of the motivation.

The law surrounding hate crime is in an attempt at abolishing oppression and seeking equality. However, by defining a hate crime by those who fall into a particular group, we are ascribing blame to one group and innocence to another, thus creating a two tiered system where racial profiling is inverted (Hall, 2005: 20). Ultimately, “if everyone, except the white straight able bodied male, is regarded as a possible victim of hate crime... and white men are presumed guilty until proven innocent, and members of minorities are free to hate” oppression has then been reversed, yet it is still existent (Hall, 2005: 20). The minorities end up having more protection than others (DeMint, 2009). This implies that crimes against a ‘less special’ person, (the white male), should have less punishment and vice versa. On the other hand, if we were to include the white male in our definition of victims of hate, there would be no need for the notion of hate crime in the first place (Hall, 2005: 20). Once again, hate crime is simply a socially constructed concept which is counteractive and furthers prejudicially motivated crime.

What’s more, hate crime laws demonstrate depreciation for people who are not considered a minority. For instance, if a white man was to cheat on his white spouse, and the spouse in turn killed him out of rage, while they are not a recognized minority the crime was still motivated by hate but not treated the same way. This example demonstrates the inconsistencies of the justice system and how there are numerous interpretations of hate. For example it would be regarded as a hate crime if a straight man threw a stone at a homosexual man, but if a homosexual man threw a stone at a white man it would not be viewed as a hate crime. The emphasis is then put on the prejudices that may or may not be there rather than the crime itself.

The enactment of such laws automatically recognize that people have differences, thus, creating an ‘other’. Immediately there is a distinction made between people. This ‘othering’ leads to oppression and in effect, “hatred groups may respond to their oppression with a hate of their own and be subsequently caught up in legislative efforts that are arguably designed primarily to protect them” (Hall, 2005: 19). Moreover, it is hypocritical to attempt to preserve equality when, in defining hate crime the differences of people are acknowledged.

Defining crime by motivations of hate also exemplifies implications presented in the labelling theory. This theory states that individuals who are deviant have labels assigned to them, in time, internalizing the labels and then living up to the label (Skaggs, 2009). If someone becomes recognized as a bigot, they may in fact adopt that identity.

Lastly, the legislation concerning hate crimes also infringes on the fundamental rights of Canadians. For instance, section 15 of the Canadian Charter of Rights and Freedoms states that “every individual is equal before and under the law and has the right to equal protection” (1982). However, as previously stated, creating an ‘other’, where all, but the able bodied straight white man, are victims, is not promoting, nor enforcing equality. Furthermore, imposing harsher sentences for those motivated by hate is a violation of Section 15 of the Charter simply by way of how the law and society are constructed. “How can a victim’s perceived status or a perpetrator’s perceived opinions possibly determine the severity of a crime?” (DeMint, 2009). Imposing inconsistent sentences for differing motivations is unfair, and in fact not holding individuals “under the law” (Canadian Charter of Rights and Freedoms, 1982).

As well, there is the issue of regulating people’s associations, expressions and free speech (McPhail, 2000:647). Section 2 of the Charter states that everyone has the “freedom of thought, belief, opinion and expression” as well as the “freedom of association” (1982). Whether someone is a part of a white supremacist group prior to a crime should be an impartial factor.

Another implication is that hate crime laws also allow for perceptions of offenses, victims and offenders to be skewed. For instance, if a white man was put on trial for the murder of a black man, regardless of the circumstances, any mention of the crime being a “racially motivated hate crime” would alter the perceptions of the jury and members of the court and immediately impose a bias, creating an unfair trial, a violation of the Charter under section 11. Furthermore, while the initial crimes themselves ought to be served justice, bringing biases into the criminal justice system takes away from the original act committed.

In conclusion, while crimes motivated by hatred are heinous, imposing legislature on hate crimes is injudicious. Crimes should by all means have penalties, especially violent crimes that are committed. However, as previously discussed, the implications of regulating prejudicial crimes are vast. Having a prejudice is human nature. Whether or not well intentioned, legislation

which confers special status based on a prejudice constitutes a violation of rights in a number of ways. Hate crime legislation is contradictory in that it creates oppression and divides people into groups, when its purpose is to promote equality. Thus it is counterproductive to true justice to label a crime as a hate crime. Hate crime laws are not inclusive of all those who can be victims of hate crimes and if they were there would be no need to distinguish a hate crime from any other criminal act.

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