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CONNECTIONS; Hate Crimes: What Is Gained When Forbidden Acts Become Forbidden Beliefs?

By EDWARD ROTHSTEIN

Thirty years ago, hate crimes did not exist, though plenty of crimes committed out of hatred did. Could it be that the only thing that has changed is that we now have both? And perhaps that the concept of hate crime is more a burden than a benefit?

Such was the unease I felt on Tuesday night at the New York Tolerance Center of the Simon Wiesenthal Center listening to a panel of human rights advocates discuss a new report about hate crimes. The report, "Everyday Fears: A Survey of Violent Hate Crimes in Europe and North America," written by Michael McClintock, the director of research for Human Rights First (formerly the Lawyers Committee for Human Rights), focuses on the United States, Canada, and 53 European and Central Asian countries.

It argues that hate crimes are on the increase and are not being taken seriously enough. In France, reports of violence against gay men more than doubled from 2002 to 2003. In Britain, anti-Semitic assaults on individuals doubled from 2003 to 2004. In the Netherlands, anti-Muslim violence flared after the murder of the filmmaker Theo van Gogh in 2004, leading to acts of arson and assault. The particular accounts are chilling.

What is to be done? At the panel, Mr. McClintock argued that "data stops hate," that knowing the extent of hatred would lead to legislation and control. His report argues for the expansion of legal and governmental structures to monitor and prosecute hate crimes.

Europe might already seem well armed. The Organization for Security and Cooperation in Europe has increased its focus on hate crimes in its Office of Democratic Institutions and Human Rights. According to Mr. McClintock's report, the security organization also has an international hate crimes program that has been documenting its member nations' failures to document those crimes. The European Commission Against Racism and Intolerance and the European Monitoring Center on Racism and Xenophobia also combat what the monitoring center calls "racism, xenophobia, Islamophobia and anti-Semitism at the European level."

But Human Rights First also says that only 19 of the 55 nations in the security organization actually have hate crime legislation and that only five include "sexual orientation and disability bias" in their criteria. Denmark does not make racism a factor in criminal law; France does but won't separate out statistics about particular groups. As for the United States, in the latest survey 90 percent of enforcement agencies did not report data on hate crimes at all.

The report suggests that all hate crimes are vastly undercounted, noting that "the highest levels of violence were found where there was increasingly effective monitoring and reporting (in Germany and France)."

But how are such crimes to be identified? The concept of hate crime developed only in recent decades out of a particular political perspective. It asserts that there are groups so injured by being at society's margins that any further injury rising out of hatred is particularly heinous. A hate crime is not just an individual crime but a reflection of a presumed social crime. Prosecution of hate crimes is a form of social exorcism, a declaration that traces of past sins will be expunged.

This is more peculiar than it may seem at first. Usually, a crime is prosecuted because it is a forbidden act; a hate crime is prosecuted because of a forbidden belief. Usually, punishment is assessed by judging a criminal's plans: Was the murder premeditated? Was it accidental? In hate crimes the motive is central: Was it done out of greed? Was it done out of hatred? Prosecuting hate crimes is meant to be an attack on prejudice, meant to reform feelings, not just behavior.

Thus hate crimes tend to fit a particular political ideology. It is not really group hatred that gives hate crimes their meaning, but social grievance. In the United States, for example, there is palpable discomfort when an incident of black-on-white crime is called a hate crime. It doesn't fit the model: where's the victim's social grievance? Anti-Semitism has also typically been seen as the spur to a hate crime only when it comes from the far right, as an extension of familiar fascistic victimization.

Human Rights First refers to terrorist acts as spurring hate crimes in retaliation but not as hate crimes themselves. They are ignored even though the Washington sniper of 2003, John Allen Muhammad, made his group hatred apparent, and even though radical Islamic clerics regularly preach hatred against Jews, infidels and Westerners and urge that it be acted upon (with considerable success). These are not considered hate crimes because the victims are not considered socially aggrieved.

In fact, debates about hate crimes can even resemble debates over who merits social restitution. This report urges that the concept be standardized: hate crimes should be crimes based on prejudice motivated by race, religion, ethnicity, gender, sexual orientation and disability.

Given all this, it is not surprising that statistics are inconsistent and difficult to come by, that some hate crimes prove to be crimes committed for other motives, that some hate crimes are not crimes at all and that others go unrecognized. Hate crimes are hard to prove and easy to claim, related to feelings not acts. It is not clear that monitoring and reporting will eliminate hate crimes. More agencies and legal structures are now devoted to them than ever before, without diminishing their prevalence.

Is it possible that one of the best ways to eliminate hate crimes is to jettison the concept itself? As for eliminating acts of hatred well, that is a more serious problem.

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