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## THE LEGAL DEFINITION OF HATE CRIME AND THE HATE OFFENDER'S DISTORTED COGNITIONS

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*The legal definition of hate crime (i.e., the offender attacks the victim because of the victim's actual or perceived race, color, religion, disability, sexual orientation, or national origin) tends to be viewed as a causality description for the offense. This paper maintains that the "because" statement in the legal definition refers to the offender's criminal intent and distorted cognitions (e.g., blaming the victim and using different group memberships to justify and rationalize their hate crimes), rather than suggests that the different group memberships for the offender and the victim cause hate crime. Clarifying the distinction between the offender's mental state and reality has implications for understanding and conducting research on hate crime and clinical interventions with the victims.*

Hate crime is defined as an offense in which the victim is targeted because of the actual or perceived race, color, religion, disability, sexual orientation, or national origin of that victim (Sullaway, 2004). This definition is based on Federal legislations that defined hate crime as an offense "that manifests evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity" (Hate Crime Statistics Act, 1990) or more recently, as a crime in which "the defendant intentionally selects a victim, . . . because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person" (Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355).

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On the basis of the legal definition, most researchers of hate crime tend to conceptualize hate crime as a manifestation of intergroup conflict or violence (e.g., Levin & McDevitt, 2002; Levin & Rabrenovic, 2001) and as motivated by the distinctiveness of the victim(s), because the offender only targets victims with different group memberships. This type of conceptualization of hate crime has influenced both clinical interventions with victims of hate crime and the research focus on the causality of hate crime. For example, intergroup relations, such as racial/ethnic group histories, are viewed as factors to be considered when working with victims of hate crime (Weiss, 2005). Hate crime as intergroup conflict is promoted by several variables, including social learning processes that provide reinforcement and symbolic interaction to continue hate attitude or behavior toward the victim groups, strained economic conditions, and/or historical events such as the destruction of the World Trade Center (see Gerstenfeld, 2002; Levin & McDevitt, 2002).

## **THE PURPOSE OF THIS ARTICLE**

This article, however, examines the definition of hate crime and its implications for research and clinical interventions from a different perspective. In this paper, I maintain that what the hate crime legal definition specifies is the hate offender's mental state, including (1) the required criminal intent (*mens rea*) and (2) the offender's cognitive distortions. This is in contrast to the position that suggests that different group memberships related to the offender and the victim are the causality for hate crime. The offender's cognitive distortions and prejudice involve misrepresenting the self's responsibility and intergroup reality and using the distinctiveness of the victim (e.g., ethnicity, race, religion, sexual orientation) to rationalize and justify the offense(s). Understanding the hate offender's cognitive distortions also helps in developing therapeutic interventions with the victims. In short, this article intends to provide mental health nurses with new knowledge for developing nursing inquiry and interventions related to hate crimes.

## **THE "BECAUSE" STATEMENT IN THE HATE CRIME DEFINITION**

The legal definition of hate crime is a criminal law definition. According to criminal law, the defendant is guilty of a crime only when the offender's criminal commission or omission occurred with

a simultaneous mens rea or criminal intent (Scheb & Scheb II, 1999).

Hate crimes, like other types of criminal offenses, require a specific criminal intent, or the presence of mens rea as one of the key elements for establishing the perpetrator's criminal responsibility. The "because" statement in the legal definition of hate crime about the distinctiveness of the victim(s) denotes the offender's mens rea and perceptions of differences in group membership.

The criminal intent (mens rea) for hate crime is not a causal description for the offense (neither is it supposed to be), just as the mens rea for sex offenders who intentionally and knowingly target certain types of victim (e.g., children or women) does not indicate that the victim is a cause of the crime or that there is an intergroup conflict. In addition, over the years, various scientific theories have been developed to account for criminal behaviors (e.g., strain theories, subculture theories, social bond theories, social reaction theories, and social learning theory). None of the models attempt to use the offender's mental reasoning as a true scientific explanation for crimes.

## **THE MEANING OF PREJUDICE**

Another aspect of the hate offender's mental state is prejudice. Although the term "prejudice" may be associated with negative feelings and behavioral tendency, the essence of prejudice involves distorted cognitions (Bodenhausen, Macrae, & Hugenberg, 2003; Fiske & Taylor, 1991; Myers, 2002).

In general, one's social cognition includes knowledge structures (schemas) about the self, others, and the world, and related cognitive processes (e.g., encoding, recalling, reasoning, perceiving, and decision-making) concerning the social entities. In particular, prejudice as a type of cognitive schema involves cognitive distortions of social reality, the indicators of which may include erroneous generalization and oversimplification, the formation of social attitudes before or despite objective evidence and other inaccuracies in categorizing, evaluating, and explaining social entities. One's distorted cognitions about social reality in turn rationalize one's attitudes and behavior that deviate from a normative standard or moral value, such as the principle of fairness, equity, or equality (Sun, 1993a). From the social cognitive perspective, although the motivation and cognition represent two separate psychological activities, they are also intimately related. All motivations, including the motivations behind hate crime, operate on the perceiver's level of awareness of human reality.

## **MOST HATE CRIMES ARE NOT INDICATIONS OF INTERGROUP CONFLICT**

Hate crime should not be considered intergroup conflict because a majority of hate offenses do not satisfy the criteria of group actions. In order for an action to be called a group action, it must satisfy the sociological and social psychological criteria (Sun, 1993b). In other words, a hate offense can be defined as an instance of intergroup conflict only when it results from the group dynamics, which includes a collection of individuals who interact or communicate with one another according to their roles or status specified by some explicit or unwritten rules or norms, with their performances characterized by a high level of cohesion and normative consensus and by shared emotional involvement in evaluation and perceptions about the meanings and missions of the actions.

Although a difference in group membership between the hate offender and victim is often a necessary condition for defining hate crime, recognizing the difference is not sufficient for understanding and overcoming ambiguities in identifying the transgression (Nolan III, McDevitt, Cronin, & Farrell, 2004). Neither is there evidence suggesting that other people sharing the same group membership with the hate offender(s) endorse the hate crime. For example, far less than 1% of the members of a particular group (e.g., racial or religious one) become involved in hate crimes (National Criminal Justice Reference Service; NCJSR, 2005). Because both offenders for hate crime and law-abiding people share the same group memberships, the commonality between criminals and non-criminals is an invalid explanation for the offenders' behavior. In addition, using group differences between the hate offender and the victim to explain hate crimes (e.g., ethnic conflict) only focuses on how the victims are distinctive from the offenders, but this approach ignores the offenders' individual and situational characteristics that separate them from the rest of the members in the same group.

## **HATE OFFENDERS TEND TO BLAME THEIR VICTIMS**

The group differences for the hate offender and victim do not explain the causality for hate crime because hate offenders' explanations for their offenses tend to misrepresent the social reality about what actually causes the crimes. Empirical research shows that hate offenders' mental state involves using the victim memberships to justify and rationalize hate crime, including applying such methods as denials of injury, the victim, and the responsibility; condemnation of the condem-

ners; and “appeal to higher loyalties” by claiming the so-called “racial” motivation behind their criminal and other activities (Byers, Crider, & Biggers, 2004). Although these techniques of neutralization were first documented in criminological research (Minor, 1981; Sykes & Matza, 1957), these concepts have been a focus of social cognition research using the attribution theories.

Research in social cognition has shown that self-serving bias tends to characterize people’s explanations for their actions (Bodenhausen, Macrae, & Hugenberg, 2003; Fiske & Taylor, 1991), which include rationalizing or justifying their actions, making them desirable and reasonable from the agent’s viewpoint (Davidson, 1990).

In summary, the weaknesses of using different group memberships for the hate offender and victim to explain hate crimes involves a false suggestion that it is the distinctiveness of the crime victims or their different group membership rather than the offender’s individual and situational characteristics that are responsible for the hate offenses, thus taking the responsibility away from the individual offender. In addition, this type of explanation implies that the hatred is innate and permanent, because a group membership (e.g., race, religion, or sexual orientation) involved in hate crime generally represents a stable and ascribed status.

## **IMPLICATIONS AND CONCLUSIONS**

This paper has differentiated between the hate offender’s mental state/reasoning and the variable of group memberships of the hate offender and his or her victim. It maintains that the “because” statement in the legal definition of hate crime involves the descriptions of the offender’s mental state that includes the content of the required criminal intent and the offender’s cognitive distortions (prejudice and reasoning that uses group differences between the self and the victim to rationalize crime). Understanding the distinctions between the hate offender’s mental state and intergroup reality has several implications:

First, it helps focus our research efforts on examining how the offender uses different group memberships to explain and justify his or her hate crime. Instead of focusing on differences between group memberships of the offender and victim, research needs to investigate how group affiliations, along with social learning environments, economic conditions, and other social variables influence the hate offenders’ motivations through their impacts on developing, validating, and sustaining the offenders’ distorted cognitions of their selves, others, and interpersonal and/or intergroup realities.

In addition, the above discussions suggest that research needs to examine characteristics and attributes of hate offenders that separate them from the rest of those who share the same group memberships. These characteristics may include such psychological variables as the offenders' childhood traumas and harsh treatments, rigid thinking, categorization, deindividuation, dehumanization, and sense of self vulnerability (e.g., Berkowitz, 2005; Staub, 2005).

Furthermore, understanding the distinction between the hate offender's mental state and intergroup reality can help mental health professionals conduct more effective counseling with the victims of hate crime. In addition to psychological distress, including fear, anger, and feeling insecure and unworthy, and the perception that the world is disorderly (Willis, 2004), one of the main mental symptoms of hate crime survivors is self-blame (Herek, Gillis, & Cogan, 1999). The study by Herek et al. showed that hate crime victims demonstrated significantly more symptoms of depression, anger, anxiety, and posttraumatic stress, and more attributions of their victimization experiences to the self than did non-bias crime victims. Weiss (2005) suggests that therapists working with victims of hate crimes should take into consideration such factors and methods as intergroup relations, fear, anger, racial/ethnic group histories, current concerns, and family contexts of the victims, legal issues, and mediation between the victim and the offender. However, these clinical approaches, which apparently are based on the assumption that hate crime manifests intergroup conflict, have difficulty addressing the issue of self-blame and the victims' misperception that their group membership is the source of their own victimization.

This article suggests that clinical interventions need to include teaching the survivors of hate crime to attribute their victimizations to the cognitive distortions of the offenders rather than to the distinctiveness of the victims. Although there are no nursing studies on applying the attribution method to help victims of hate crime, research in social cognition has produced evidence that the attribution method can alter the negative self-concept and self-blame. For example, attribution retraining, which involves techniques of teaching child victims of sexual abuse to attribute responsibility for the abuse to the perpetrators rather than to the self, has shown some effectiveness (Celano, Hazzard, Campbell, & Long, 2002). This method merits further investigations in clinical interventions with hate crime survivors.

In short, the issues examined in the article can benefit nursing inquiry and clinical interventions, because the problem of hate crime is a matter of global health concern. Furthermore, clinical interventions with the

victims fall within the range of psychiatric and mental health nursing (Thomas, 2004; Willis, 2004).

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