

New Hate Crimes Law Ill-Advised

You'd never know it from local media reporting, but the Indiana legislature passed a hate crimes law fifteen years ago. It's still on the books (Indiana Code 10-13-3-39).

To be precise, the Code speaks of "bias crime," rather than "hate crime." "Bias" is more clearly definable, legally speaking, than "hate." It more accurately specifies the type of crime that "hate crimes legislation" purports to address. [Many crimes, e.g., fratricide, may be driven by hate yet have nothing to do with the victim's perceived identification or affiliation with a particular protected status group.]

The Indiana Code defines "bias crime" and mandates reporting of all such crimes by law enforcement agencies to the Indiana central repository for criminal history information. The information gathered must also be "collected, submitted, and reported" in a manner consistent with the provisions of the Federal Hate Crimes Statistics Act.

With such a law already on the books, why then the widespread claim that Indiana is one of only five States without a hate crimes law? The answer, I think, is quite simple and obvious: Indiana law does not explicitly provide for harsher punishments, euphemistically called "enhanced penalties," for those convicted of crimes involving bias. [According to the State Supreme Court, however, trial judges can impose extended sentences in certain criminal convictions where bias motivation has been proven.]

It may also be the case that the existing bias crime law goes unreported because compliance by law enforcement agencies is virtually non-existent. Bloomington City Police apparently do comply, and IU Campus Police sometimes do, but to my knowledge no other law enforcement agencies in Monroe and surrounding counties are in compliance. How embarrassing that Indiana actually has a "hate crimes law," but it is apparently being mostly ignored if not forgotten. That sounds worse than having no law at all.

Yet passing a new law with harsher punishments would be ill-advised, to say the least. In the first place, it would be done in ignorance. Whatever happened to fact- and evidence-based legislation? Although there seems to be little doubt that bias crimes occur in Indiana, we have scarce documentation of their nature or extent. My guess is that most law enforcement agencies are ill-equipped to define precisely what a bias crime is, and have little or no experience in actually determining when one has occurred. I don't like bias, and I don't like bias crime, but I also don't like erratic law enforcement.

In the second place, one must wonder whether the push for "hate crimes legislation" is much more than a public relations effort, so that Indiana doesn't look bad to those who might wish to do business here. Unfortunately, people assume that "enhanced penalties" will help deter bias crimes, but where's the evidence for that? There's evidence to the contrary. And harsher punishments are surely no way to improve prospects for offender rehabilitation. If anything, offender hatreds may grow.

Bias crime is not just a legal problem, it's a social and cultural problem. It demands to be addressed, but not by "locking 'em up" We already have an extraordinarily punitive – not to mention racially biased – criminal justice system that is manifestly failing to make us a safer or better society. There's little reason to believe that a new "hate crimes law" would be administered in a way that is fair, just, and conducive to reducing the bias hatred that dwells in our midst.

Let's enforce the law we have, so we can learn more about what we are up against. We might even gain some clues about what we can effectively do about it.

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