
HATE CRIMES: SOME THEORETICAL CONSIDERATIONS AND THEIR POSSIBLE APPLICATION TO THE SOUTH AFRICAN CONTEXT

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ABSTRACT

Criminal conduct motivated by bias or prejudice towards certain personal characteristics of the victim is also referred to as 'hate crime'. Hate crimes were first recognised as a separate category of criminal conduct in the United States of America (US). Most of the present research relating to hate crime is consequently of US origin although there is a growing body of research that is of British origin. This Anglo-Saxon bias is apparent in the theoretical underpinnings of hate crime which have been the subject of academic criticism and disagreement. This article examines the theoretical underpinnings of hate crime and attempts to apply the theory to the South African context where, despite the non-recognition of hate crime as a specific category of criminal conduct in South African law, the term 'hate crime' enjoys some academic and intellectual usage.

Keywords: *Hate crimes; South African context; theoretical considerations.*

INTRODUCTION

Hate crimes are crimes that are motivated by prejudice or bias towards a personal characteristic of the victim.¹ Such criminal conduct could be motivated by the perpetrator's prejudice or bias towards the victim's race, ethnicity, gender, sexual orientation, religion or disability.² Some consensus exists that hate crimes were first recognised as a specific category of criminal conduct in the US (Hall, 2013: 20 and Levin, 2002: 227).³ Consequently most of the existing research relating to hate crime is of US origin. There is however, a growing body of research from Britain⁴ and a few English-speaking countries. This article will focus on hate crime-related research that has hitherto been conducted in the US, Britain and South Africa.

While hate crimes are not recognised as a specific category of criminal conduct in South African criminal law there is increased awareness of the phenomenon in this country and numerous calls have been made for the enactment of hate-crime laws. Such calls should be considered in light of the rape and murder of Black⁵ lesbian women and several countrywide outbreaks of xenophobic violence against Black foreigners (Breen & Nel, 2011: 33; Naidoo & Karels, 2012b: 614-618 and Mollema & Van der Bijl, 2014: 672-679).

While the study of hate crimes is essentially a recent area of academic research, a few academics have endeavoured to explain hate crimes in a scientific, organised manner in order to shed more light on the phenomenon. The common characteristics of hate crimes, the categorisation of hate-crime offenders, the effects of hate crimes and the possible causes of hate crime have been presented in several studies and have contributed to a growing academic and knowledge base on the phenomenon. The theoretical underpinnings of hate crimes will be considered in the present article.

THE COMMON CHARACTERISTICS OF HATE CRIMES

In one of the earliest American articles on hate crimes, Berk (1990:334) refers to the "symbolic status" of the victim as a key ingredient of such crimes. A victim's "symbolic status" refers to his/her membership of a particular social category and could include an ethnic or racial group. Berk (1990:339) submits that this has important implications for hate crimes since such crimes are primarily motivated by a victim's "actual or perceived" membership of a particular social group. Apart from the victims "symbolic status", Berk, in

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the aforementioned article, and in subsequent research, lists a number of characteristics that are associated with hate crimes, namely:

- Hate crimes are perpetrated by multiple offenders;
- The perpetrators are in their late teens or early twenties;
- The ratio of perpetrators to victims is 2:1 in hate crimes, but this applies only to personal crimes;
- The perpetrators are usually strangers or distant acquaintances of the victim;
- Hate crimes are usually perpetrated outside the residence of victims (in personal crimes);
- Hate crimes are usually perpetrated in the evening and over weekends;
- The perpetrators are usually male; and
- The perpetrators have usually not committed any other associated crimes (Berk, 1990: 341; Berk, Boyd & Hammer, 2003: 54).

Berk et al (2003: 54) do however, concede that these characteristics are based on fragmentary existing evidence and are thus not absolutely reliable. It is therefore uncertain whether the listed characteristics are applicable to all hate crimes. According to Berk et al (2003: 54) “we are uneasy with any explanations of hate-motivated crime in the absence of well-documented empirical regularities”. Some of the aforementioned hate-crime characteristics have been confirmed in subsequent research. In their seminal work, McDevitt and Levin (1993: 11) refer to an empirical study of 452 hate crimes reported to the Boston Police Department between 1983 and 1987. Based on the findings of this study, the authors list the characteristics of hate crimes as follows:

- In half the cases considered, hate crimes were excessively brutal consisting of assaults to the person where “force is exercised beyond what may be necessary to subdue the victims”.
- The victims thus required treatment at a hospital because of the injuries sustained.
- Hate crimes are perpetrated at random on total strangers. In most of the reported cases, the perpetrators were unknown to the victim.
- The victims of hate crimes are usually interchangeable. For example, any Black family that moves into a certain neighbourhood may be attacked.
- Hate crimes are often perpetrated by multiple youth offenders who attack the victim in gangs (See: McDevitt & Levin, 1993: 11-16)

In a subsequent study based on statistics from the United States Department of Justice, the aforementioned Boston Police Department study and a 1986 report by the National Institute against Prejudice and Violence, Levin (1992/1993: 166-167) repeats several of the earlier characteristics of hate crimes, namely: hate crimes are mostly violent physical attacks, the victim is attacked by multiple offenders and the multiple offenders are strangers to the victim.

In a 1996 study of hate crimes based on police reports submitted to the New York Police Department (NYPD) and the Baltimore County Police Department in Maryland, it was found that more hate crimes are committed in public places such as streets (which in the case of vandalism and graffiti sends a message or warning to the victim’s group), most hate-crime perpetrators are youngsters (40% in this study were under 18-years old), hate crimes are

overwhelmingly “stranger crimes” and hate crimes are not excessively brutal but result in the victim sustaining “relatively minor” injuries (Martin, 1996: 467-468).

The characteristics of hate crimes as presented in Levin and McDevitt’s original work have been referred to in a number of subsequent academic articles (Levin, 1998: 6-21; Scotting, 2000/2001: 853-892; McDevitt, Balboni, Garcia & Gu, 2003: 139-151). Several academic books written by eminent American scholars also refer to these characteristics. Lawrence (1999: 39-40), for instance, cites the excessive violence of assaultive hate crimes, the fact that hate crimes are stranger crimes, the interchangeability of victims (which he terms the “fungibility” of victims) and the fact that multiple perpetrators commit these crimes.

Perry (2001: 29), refers to consistent trends and patterns associated with hate crimes and confirms some of these characteristics. According to Perry (2001: 29-30), hate-crime victims are “more likely to be at the receiving end of excessively brutal violence” which is not always necessary to subdue them. In addition she notes that hate crimes are overwhelmingly perpetrated by White males. Notably, Perry (2001: 29) concurs that hate crimes are ‘stranger crimes’: “The victims simply represent the ‘other’ in generic terms ... that he or she is a member of the hated or demonized group is enough to leave them vulnerable to attack ... further knowledge of their identity (or) personality ... is unnecessary”.

In a later empirical study based on statistics from the Federal Bureau of Investigation (FBI) in 1999, which compared hate crimes to non-hate crimes, Messner, McHugh and Felson (2004: 607-609), found that hate crimes are more likely to be committed by strangers, that they are more likely to inflict serious injury on the victims but that the offenders commit a variety of crimes, not only hate crimes.

Consensus does not, however, exist amongst scholars about the oft-repeated characteristics of hate crimes. Gertsenfeld (2013: 22), for example, questions Levin and McDevitt’s finding that hate crimes are excessively brutal since their study was based on a small sample consisting of 452 hate crimes reported to a single law-enforcement agency. She questions the accuracy of the existing law-enforcement data since hate crimes often go unreported. Mason-Bish (2010: 70), disputes the assertion that hate crimes are randomly perpetrated against strangers, noting that hate-crime policy and legislation never take cognisance of the fact that the perpetrators are not known to the victims. Ostensibly, most of the characteristics of hate crimes are emphasised by social scientists rather than by legal scholars. Since McDevitt and Levin’s first study, the listed characteristics of hate crimes have been compiled from a small number of empirical studies that are limited in terms of both sample size and location. It is consequently not clear how these findings, which have been generally applied to all hate crimes, would apply to crimes which are motivated by specific victim characteristics. It is uncertain, for example, whether these characteristics could be applied equally to hate crimes motivated by race and ethnicity as they would to hate crimes motivated by the sexual orientation or disability of the victim.

HATE-CRIME OFFENDER TYPOLOGIES

McDevitt and Levin (1993: 65-98; 2002: 67-98), present different typologies of hate-crime offenders based on the motivations of the perpetrator(s). As mentioned above, McDevitt and Levin’s findings were based on an empirical study of 452 hate crimes that were reported to the Boston Police Department. In their typologies of hate-crime offenders, they identify the following categories:

Thrill-seeking offenders:

These offenders are usually motivated by a desire for fun and excitement. According to the authors, thrill-seeking offenders “enjoy the exhilaration and thrill of making someone else suffer” (McDevitt & Levin, 1993: 65). While not truly prejudiced, thrill seekers are usually youths who commit crimes in groups in which group solidarity is strong and peer acceptance is important. The youthful offenders in this category usually target victims from groups

whom they regard as inferior and ~~the~~ generally do not leave their immediate neighbourhood to commit hate crimes (see McDevitt & Levin 1993: 65-73; 2002: 67-75, for more detail).

Reactive/defensive hate-crime offenders:

Initially referred to as “reactive” (McDevitt & Levin, 1993: 75-88) and subsequently as “defensive” offenders (McDevitt & Levin, 2002: 65-75), these offenders, unlike thrill-seeking offenders who are motivated by fun and excitement, use a particular incident as a catalyst or trigger to commit a hate crime. Such an incident could materialise in the form of the arrival of a Black family in a previously all-White residential area, or the hiring of a worker from a different minority group in the workplace. The hate-crime perpetrators therefore react to this perceived incident in order to defend something they consider to be rightfully theirs. The victim is thus not randomly chosen (nor is the victim interchangeable); rather a particular person who enters the neighbourhood or workplace is targeted. Reactive/defensive hate-crime offences are intended to convey a message to outsiders that they are not welcome since the newcomer is regarded as a personal threat to economic resources in times of recession or is deemed a threat to job security or to the ways of life of the perpetrators’ community (see McDevitt & Levin, 1993: 75-88; 2002: 65-75, for more detail).

Mission hate-crime offenders:

McDevitt and Levin concede that mission hate crimes are rare and a more extreme example of hate crime. The perpetrators of these hate crimes have a mission or purpose to destroy all members of a group that they despise, whether on the basis of race, ethnicity, religion, etc. The perpetrators are usually psychotic or tend to suffer from a serious mental illness which could include “hallucinations ... impaired ability to reason ... (and) ... withdrawal from contact with other people” (McDevitt & Levin, 1993: 90). While mission hate-crime offenders are often suicidal, they first wish to kill an entire class of people whom they hold responsible for their personal problems (see McDevitt & Levin, 1993: 89-98; 2002: 91-98, for more detail).

Organised hate groups:

The authors draw a number of parallels between organised hate groups and international terrorist groups but submit that only about five percent of hate crimes are committed by organised hate groups (McDevitt & Levin, 2002: 103). Gerstenfeld (2013: 104-105), concurs that it is difficult to distinguish organised hate groups from terrorist groups, extremist groups or even street gangs. This notwithstanding, she contends that not all organised hate groups are comprised of White extremists and cites the example of Black-American organised hate groups such as the Nation of Islam and the Black Panthers (Gerstenfeld, 2013: 105). Gerstenfeld (2013:165-166) refers to the proliferation of organised hate-group websites on the Internet as a vehicle for the recruitment and distribution of propaganda. (See McDevitt & Levin, 1993: 99-98; Levin, 2002: 99-113; and Gerstenfeld, 2013: 104-105 & 165-166, for more detail on this category).

Retaliatory hate-crime offenders:

Apart from the above typology of hate-crime offenders, in 2002, McDevitt, Levin and Bennett (2002: 108-116) revisited their original categories and identified an additional typology. Based on 169 police reports of hate crimes reported to the Boston Police Department during the period July 1991 to December 1992, the study found that the majority consisted of thrill hate crimes (66%), a smaller percentage comprised retaliatory/defensive hate crimes (25%) and less than one percent were mission hate crimes (McDevitt et al, 2002: 111). In this study, McDevitt et al propose a fourth hate-offender typology, namely “retaliatory” hate-crime offenders. The authors explain retaliatory hate crimes as those where offenders act in response to a hate crime, whether “real” or “perceived”. These attacks are

based on revenge and occur when a rumour of a hate crime causes the offender(s) to take revenge (McDevitt et al, 2002: 112).

Empirical studies which tested the validity of the hate-crime offender typology

Only a few empirical studies have given credibility to the hate-crime offender typologies posited by McDevitt and Levin. In a study dealing with hate crimes against an Amish community,⁶ interviews were conducted with eight perpetrators (Byers, Crider & Bigger, 2004: 118-129). All the perpetrators were young men who engaged in “claping” which is a colloquial American term that is used to describe the harassment, and intimidation of the Amish and the vandalising of their property (Byers et al, 2004: 118). The findings revealed that all the perpetrators held negative perceptions of the Amish, that they enjoyed the activities and found it “thrilling” and that the offences were never committed alone but always in groups (Byers et al, 2004: 121-122). While this study seems to confirm that thrill seeking is a motive amongst young hate-crime offenders and that the activities are committed in groups, it was based on a small sample of hate-crime offenders.

In a study of racially and ethnically-motivated hate crimes committed by youth in the Brooklyn area of New York city, it was found that White youths regarded Blacks who ventured into their neighbourhoods as trouble seekers who intended to commit crimes (Pinderhughes, 1993: 478-492). White youths thus felt they had not only a right but also a duty to defend their territory against Blacks and to “send a message to Blacks from outside their neighbourhood to stay out of their communities” (Pinderhughes, 1993: 485). Pinderhughes (1993: 480) does, however, concede that the small sample utilised in this study in one area of New York, makes it difficult to generalise the findings and apply them to the entire city. The findings do, however, suggest that reactive/defensive hate crimes are committed in an attempt to protect territory and to serve as a warning to the victim’s group.

In a more recent study which tested *inter alia*, the efficacy of the hate-crime offender typology, 30 cases, reported as hate crimes and submitted for prosecution to one county in the state of New Jersey, were analysed (Phillips, 2009: 883). Of the 30 hate crimes under study, 13 were classified as “thrill hate crimes”, four as “mission hate crimes”, one as a “defensive/reactive hate crime” and one as “retaliatory” (Phillips, 2009: 895). The study concludes that the “defensive/retaliatory” and “mission” cases were classifiable with “relative ease” (Phillips, 2009: 899). Despite this, many cases could not be classified according to any of the predetermined categories offered by McDevitt and Levin. Even though an element of bias or prejudice was present in these cases, this was not the primary motive for committing the crime (Phillips, 2009: 898-899). In cases where bias was a “peripheral component” of the crime, it was more difficult to apply the typology (Phillips, 2009: 895).

Academic opinions about the validity of the hate-crime offender typology are divided. Gerstenfeld (2013: 95-96) cautions that although the hate-crime offender typology developed by Levin, McDevitt and Bennett is “the most complex that has been offered”, it is based on police data from only one US city and she cautions that no large-scale efforts have been made to replicate their findings. Shively and Mulford (2007: 4), by contrast, regard the typology and offender categories as the “most widely discussed and accepted”. Phillips (2009: 886) writes that the hate-crime offender typology developed by McDevitt and colleagues has been cited in scholarly research and has been widely used by law-enforcement authorities in their training materials.⁷

While there are no known empirical British studies which have tested the hate-crime offender typologies posited by Levin and McDevitt, some research has shown that after the terrorist attacks on the London transport system in July 2005 the Islamic Human Rights Commission in Britain received reports of more than 200 anti-Islamic hate crimes which included violent assaults, acts of criminal damage to property and one fatal stabbing (See further: Cole, 2009: 1682; Allen, 2011: 281; Dixon & Ray, 2007: 117; Meer, 2008: 72). This

research ostensibly lends some credibility to the retaliatory hate-crime offender typology where the offenders retaliate in response to a hate crime and out of revenge.

As regards organised hate groups, one organised hate group that has gained some notoriety in Britain is the 'Skinheads.'⁸ Bowling (1998: 42-43), traces the emergence of the Skinheads to the working class suburbs of the East End of London in the late 1960s and early 1970s. According to Gerstenfeld, (2013: 145) from the late 1960s to the early 1970s, unemployment had peaked in Britain, salaries were low and large waves of immigrants had begun to arrive from Pakistan, India and the West Indies. The Skinheads thus emerged as a result of opposition to the economic difficulties and social changes, to protect their working class values and their neighbourhoods (Bowling, 1998: 42-43). The newly-arrived foreigners, particularly Pakistanis and Asians, soon became the targets of their White frustration (Gerstenfeld, 2013: 145). Bowling (1998: 42-43) writes that a number of racist murders of Pakistanis and Asians in the 1970s and the 1980s were committed by the Skinheads.

THE EFFECTS OF HATE CRIMES ON THE VICTIM, THE VICTIM'S COMMUNITY AND ON SOCIETY AS A WHOLE

Research has shown that all victims of crime are, to some extent, negatively affected by their experience. In physical assaults the victim's physical well-being is affected. The victim might sustain injuries which require some form of medical intervention (Craig-Henderson & Ren-Sloan, 2003:482). Victims of crime may also suffer psychological effects: some victims are so traumatised that they develop "clinical symptoms", in which case a diagnosis of post-traumatic stress disorder is warranted (Craig-Henderson & Ren-Sloan, 2003: 482). However, hate crimes are said to be different from non-hate crimes because they impact more severely on the immediate victim, the victim's community and on society generally (McDevitt & Levin, 1993: ix-x; McDevitt et al, 2003: 139-151). This assertion is however, not without its detractors. In this section, the effects of hate crimes on the immediate victim, on the victim's community and on society as a whole will be examined.

McDevitt and Levin (1993:11-16), in referring to the "excessive brutality" of hate crimes, conclude that such crimes involve unnecessary force and that the victims usually require hospitalisation or treatment. Yet, as discussed earlier, these findings were based on a small sample of hate crimes in a limited study. Gerstenfeld (2013: 1-22) criticises these findings since there is no indication in the study whether comparisons were made between hate and non-hate crimes in the sample prior to drawing the conclusion that hate crimes are indeed more brutal than their non-hate-crime equivalents.

In a study comparing violent hate- and non-hate-aggravated assault victims, McDevitt et al (2003: 142-151) conducted a survey of victims in the city of Boston for the period 1992-1997. Despite a poor return rate in respect of the questionnaires used in the survey, the study found that hate-crime victims sought medical treatment less frequently than non-hate crime victims: 29 percent compared to 43 percent (McDevitt et al, 2003: 146). There was also very little difference in terms of the reported percentages between hate-crime and non-hate crime victims who required overnight hospital treatment: 15 percent in the case of the former as compared to 16 percent in the case of the latter (McDevitt et al, 2003: 146). The researchers concede that the findings seem to suggest that non-hate aggravated assault victims are more likely to be severely injured or that hate-crime aggravated-assault victims are less likely to go to hospital for overnight treatment (McDevitt et al, 2003: 146). Thus it is not possible to draw definitive conclusions from this study as regards the severity of the injuries sustained by hate-crime victims.

While Gerstenfeld (2013:21-22) acknowledges that some hate crimes can be exceptionally brutal and vicious, she regards most of the evidence relating to the use of excessive physical force as 'anecdotal'.

Apart from the physical effects which hate crimes have on the victim, a number of authors argue that hate-crime victims suffer additional psychological, emotional and traumatic effects (Gellman, 1991/1992: 340; Levin, 1992/1993: 167-168, Lawrence, 1998: 150-152; Levin; 1999: 17; Iganski, 2001: 628 and Scotting, 2000/2001: 862-863).

According to Matsuda (1988-1989: 2337), the negative effects of “hate messages” and “vicious hate propaganda” include the victim resigning from work to avoid racist messages, forgoing education, avoiding certain public places and modifying their overall behaviour. She also writes that racist speech “has a devastating effect on one’s self esteem” and “... hits right at the emotional place where we feel the most pain” (Matsuda, 1988-1989:2338). It is not clear, however, whether Matsuda’s views are also applicable to physically violent hate crimes such as assault. According to Gertsenfeld (2013: 20), “[i]f verbal affronts alone can cause such dire consequences, one can only imagine that the effects of attacks upon one’s property or body would be even greater.

In expanding on the reason for a hate-crime victim’s vulnerability, Lawrence (1998/2000: 150) writes that hate crimes “strike at the very core of his (the victim’s) identity”. The hate-crime victim according to Lawrence, is not randomly attacked, but is attacked for a personal reason and can therefore not lessen the risk of being attacked in the future since he cannot change the characteristic that made him a victim in the first place. Lawrence (1998/2000: 151) does, however, acknowledge that the psychological trauma of being specifically chosen as a victim for racial reasons exists equally for White and Black victims of hate crime.

Craig-Henderson and Ren-Sloan (2003: 484) argue that individuals who are targeted because of a personal characteristic such as race or ethnicity, experience unique reactions since the assault is directed at an integral part of their identity. Particularly within the context of the US, race and ethnicity are representative of fundamental, salient identities which are highly visible. An assault motivated by the victim’s race or ethnicity therefore affects the victim profoundly since he/she has no control over such an assault and also because his/her racial or ethnic group is often already negatively stereotyped or stigmatised (Craig-Henderson & Ren-Sloan, 2003: 484). A similar argument could be made in respect of hate crimes that are motivated by the sexual orientation of the victim. Since sexual orientation is a personal characteristic of the victim, a hate crime motivated by the victim’s sexual orientation, in a heteronormative society would have a profound effect on the victim.

According to a respondent in a study by Iganski (2001: 628), “...there is no way that someone can no longer be Black and therefore protect themselves from the vulnerability that led to their prior attack”. Since hate crimes are motivated by one or more of the victim’s unchangeable characteristics, such crimes are more damaging psychologically and emotionally. The psychological and emotional symptoms prevalent amongst hate-crime victims include depression, withdrawal, anxiety, feelings of helplessness and a sense of isolation (Lawrence, 1998-2000: 150). Levin (1999: 17) refers to these symptoms as the “grievous psychological trauma” which the victim has to deal with.

In a 1994 study, Barnes and Ephross (1994: 247-251), interviewed 59 White, Black and Asian hate-crime victims from several US cities. Most of the respondents were victims who had been subjected to physical assault, verbal harassment and threats. Of the sample respondents, 68 percent reacted with anger towards the perpetrator and 51 percent feared further injury. The study also found that 33.9 percent of the victims reported behavioural changes in order to cope following the attack, which included moving out of the neighbourhood, lessening socialisation, purchasing a gun and upgrading their home-security systems. The study was, however, based on a small sample of hate-crime victims which limits the generalisability of the findings to all victims of hate crimes. Since the study did not compare the reactions of non-hate crime victims it is doubtful whether these findings do in fact prove that hate-crime victims suffer more severe emotional and psychological effects (Barnes & Ephross, 1994: 247-251).

In a study conducted from 1993 to 1996 on 2 300 homosexual men and lesbian women who had been victims of a personal or property-related hate crime in the Sacramento area, Herek [sa], found that the victims exhibited psychological distress which manifested as depression, stress, and anger amongst others. Moreover, the stress and depression lasted for up to five years after the incident. Herek ([sa]) cautions against applying these findings to other victims of hate crimes, but argues that it would be: "... reasonable to expect that victims of hate crimes based on race (or) ethnicity ... may also experience heightened psychological distress because the incident represents a serious attack on a fundamental aspect of the victim's personal identity."

In a 1999 study of racist victimisation conducted in Britain, Chahal and Julienne [sa], interviewed 74 Black and ethnic-minority respondents from four cities. All the respondents had been verbally abused and harassed. The findings showed that these experiences led to a number of behavioural changes on the part of the victim which included a reluctance to leave their homes, not going out at night and not allowing their children to play outside the home. Moreover the victims reported feelings of anger, stress, depression, and a sense of isolation (Chahal & Julienne, [sa]).

It should be noted that not all scholars agree that hate-crime victims suffer more severe psychological and emotional effects than other victims of crime. Jacobs and Potter (1997: 1-50) adopt a more sceptical view. By referring to earlier literature on the effects of victimisation and to research conducted by the American Psychological Association Task Force on the Victims of Crime and Violence, Jacobs and Potter (1997: 31), state that victims of non-hate crimes such as assault, robbery, burglary and rape, exhibit similar psychological and emotional reactions to the victims of hate crimes. These reactions include anger, shock, disbelief, fear, anxiety, and helplessness which could also be accompanied by sleep disturbances and nightmares (Jacobs & Potter, 1997: 31). This could lead to long-lasting psychological and emotional responses such as depression, loss of self-esteem and deteriorating personal relationships (Jacobs & Potter, 1997: 31). Jacobs and Potter (1997: 30) also question the validity of the findings of a number of the above studies where no comparison was made between hate-crime victims and non-hate crime victims. Blee (2005: 608) questions whether hate-crime victims actually receive a message that they are more vulnerable to further violence and abuse. In her study, which deals with the victims of racial violence, she contends that the victim's personal characteristics and his/her levels of "social support, community organisation, political ties, experience with the police, citizenship status, economic vulnerability...and visibility", all effect how he/she receives a message of violence (Blee, 2005: 608).

A later empirical study compared the responses of aggravated-assault hate-crime victims with those of aggravated-assault non-hate crime victims (McDevitt et al, 2003: 50-57). In this study conducted in Boston, McDevitt et al (2003: 54) used a sample of 91 hate-crime victims and 45 non-hate-crime victims. The psychological reactions of the hate-crime victims included more victims (59%) feeling unsafe after the attack as compared to the non-hate-crime victims. Of the hate-crime victims, 44 percent felt unsafe to return to the scene of the crime compared to two percent of non-hate-crime victims (McDevitt et al, 2003: 55). On the whole the study found that hate-crime victims of aggravated assaults were nervous, more depressed, had more trouble concentrating and felt that they no longer wanted to live (McDevitt et al, 2003:54). Since this study was also based on a small sample of victims in a single US city it would not be prudent to generalise the findings to all hate crimes. The study was also not specific about the victim characteristic(s) which motivated the attack (for example, how many victims were targeted because of their race or ethnicity).

It cannot be concluded with certainty that hate-crime victims actually suffer more emotional and psychological effects than non-hate-crime victims. Most of the studies supporting this view are based on small samples in limited locales. Gerstenfeld's (2013: 21), hedged opinion aptly sums up the position with regard to the psychological and emotional

effects of hate crimes on the immediate victim: "It seems ... under some circumstances, hate crimes might be more traumatic than other crimes."

Several authors have affirmed that the effects of hate crimes extend beyond the actual victim to affect his/her community (Gelman, 1991/1992: 342; Scotting, 2000/2001: 864 & Lawrence, 1998/2000: 152-153). According to Lawrence (1998/2000: 152), the effects of hate crimes extend to the community that shares the same personal characteristics as the victim. Members of this community experience hate crime in a way that has no equivalent in the public response to a similar crime (Lawrence, 1998-2000: 152). The victim's community considers such a hate crime as a personal attack. Hate crimes have the effect on the victim's community of deeming such attacks a portent of further violence to be inflicted on all members of such a community (Iganski, 2002: 135). This is termed the "in terrorem effect" of hate crime where all members of the victim's community view themselves as targets (Hall, 2013: 166). Apart from the terroristic effect on the victim's community, the effect of hate crimes extends further, to other minority groups. According to Gellman (1991/1992: 342), attacks on one minority group may cause other disempowered groups to feel apprehensive. For example, attacks on African-Americans may create fears amongst Hispanics, Jews and Asians in the same neighbourhood (Gellman, 1991/1992: 342). Levin (1992/1993: 168), who considers a hate crime as sufficiently volatile to disrupt an entire community cites the example of the Los Angeles riots of 1992 following the assault on Rodney King, an African-American motorist. Moreover it is possible for a single hate crime to cause the victim's community to direct their anger, fears and apprehension at all members of the perpetrator's group. This has the potential to spark long-standing tensions and feuds within a community (Lawrence, 1999: 43). Hate crimes thus have a retaliatory effect on the victim's community and could extend to the neighbourhood and to the community at large.

In an experimental study, Craig (2004: 58-66) endeavoured to investigate whether hate crimes actually spark retaliatory violence. She selected 24 African-American and 49 White male students between the ages of 18 and 24 from a Midwestern American university. The participants were shown videotaped scenarios depicting, *inter alia*, racial, assaultive hate crimes and non-hate crimes. After viewing the videotapes the participants were asked to complete a questionnaire about the scenarios. They were asked whether they would have desired revenge if they were in the same situations as the victims in the videos (Craig, 2004: 61-62). The study found that while African-American participants were more likely to express a desire for revenge if they were in the same situation as the victims in the videotaped racist hate-crime scenarios, White participants were more likely to suggest that a victim of a racist hate crime respond passively by fleeing the scene, or pretending to be hurt rather than retaliating (Craig, 2004: 64). Given the small size of the sample used in Craig's study, Gerstenfeld (2013: 23-24) cautions that the findings "do not support the hypothesis that hate crimes spark additional retaliatory violence". As was the case with the effects of hate crimes on the immediate victim, not all scholars believe that the effects of hate crimes extend to the victim's community and beyond.

The Oldham, Bradford and Burnley race riots in Britain in 2001 demonstrate how hate crimes can affect an entire community. The riots commenced in Bradford in northern England when about 500 Asian youths who had attended a meeting by the Anti-Nazi League were verbally abused and provoked by members of the National Front, a British right-wing party. (Amin, 2003 :461; and Kundnani, 2001: 105). The riots soon spread to the towns of Burnley and Oldham, when young British-born men of Pakistani and Bangladeshi origin, violently clashed with the police, broke windows, damaged properties and vehicles and shouted abuse (Amin, 2003: 461; Kundnani, 2001: 105).

Jacobs and Potter (1997: 32) question the extent of such effects arguing that only a campaign of hate crimes against a particular community could have a traumatic effect on a community as a whole. They question the validity of the claim that hate crimes have an effect on the victim's community since such claims have not been systematically documented and

also due to the paucity of supporting empirical evidence (Jacobs & Potter, 1997: 32). They state that ordinary street crime, drug-related crimes and Black-on-Black violence in the cities of the US have had a more devastating and destabilising effect on inner-city communities (Jacobs & Potter, 1997: 32). In a subsequent publication, Jacobs and Potter (1998: 88), while conceding to the reality of the retaliatory effects of hate crime on the victim's community and beyond, opine that these effects are more likely to occur in racial and ethnic hate crimes and conflicts. They do, however, caution that this does not apply to ethnic groups such as Jews and Asians. Most likely, they arrived at this conclusion because Jewish and Asian communities are less likely to retaliate in response to hate crimes.

Blee (2005: 608) also doubts whether a victim's entire community (more specifically the victim's racial group) receives the message of hate in a similar manner. As discussed earlier with regard to the effects of hate crimes on the victim, not all victims, and communities perceive hate crime similarly. A host of other factors, including the victim's personal characteristics, support within the community and economic status, all play a role in how the message of a hate crime is received (Blee, 2005: 608).

While it is an oft-repeated assertion in academic literature that hate-crimes impact more severely on the immediate victim and the victim's community, a less frequent assertion is that hate crimes impact more negatively on society as a whole (Lawrence, 1999: 43). According to Lawrence (1999: 43), hate crimes do not only impact on society's general concern for safety, but they also impact on "the shared value of equality among its citizens and racial and religious harmony in a heterogeneous society". Hate crimes thus impact negatively on the right to equality and the principle of non-discrimination which Lawrence regards as integral to the American legal system and to American society as a whole.

Despite a certain degree of academic scepticism about the consequences of hate crimes, some judicial recognition has been accorded to the effects of hate crimes. In the American Supreme Court case of *Wisconsin v Mitchell*⁹ a number of *amici curiae* submitted briefs which supported the assertion that hate crimes inflict greater individual and societal harms. Based on these briefs, Rehnquist CJ in delivering the majority opinion of the court stated that hate crimes are: "more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims and incite community unrest." (*Wisconsin v. Mitchell*, 1993: 488).

THE CAUSES OF HATE CRIMES

A sociological theory that is frequently cited in an attempt to explain the commission of hate crime is Robert Merton's Strain Theory (Perry, 2001: 35-41; Gerstenfeld, 2013: 114-115; Hall, 2013: 111-113). In his formulation, Merton, an American sociologist is regarded as having borrowed from and elaborated on Emile Durkheim's earlier Theory of Anomie (Anderson & Dyson, 2002: 132-133). According to Merton (1938: 680), US society places great emphasis on economic affluence, financial success and social achievement. Since US society is structured on the basis of class, not all Americans are afforded the same opportunity to pursue their social aspirations or achieve the same level of success (Merton, 1938: 680). In Merton's view (1938: 680) the US's preoccupation with financial success and ambition has given rise to exaggerated anxieties, hostilities, neuroses and antisocial behaviour. Some individuals respond to the disjunction between socially prescribed goals and the inaccessibility of the means to achieve these goals by resorting to crime. Strain Theory is sometimes implicitly linked to the commission of hate crime. McDevitt and Levin (2002: 32) refer to the worsening economic conditions in American society when corrective measures (such as affirmative action), which are intended to achieve racial equality, cause opposition to and resentment towards minority groups. This strain leads to the commission of hate crimes against African-Americans and other minority groups. Lawrence (2002: 40-41), writing from a British perspective, considers the arrival of large numbers of ethnic minorities from the

colonies and former colonies in post-World War II Britain as having contributed to the persistent problem of racial violence and racial riots. The arrival of foreigners in post-war Britain is thus regarded as having led to strain, racial violence and confrontations (Lawrence, 2002: 40-41).

Strain Theory is also explicitly mentioned when explaining the recruitment of White men into organised hate groups. According to Blazak (2004: 213), organised hate groups are based on a dominant White, heterosexual, male premise of superiority. Therefore when concepts such as “antiracism” and “multiculturalism” begin to dominate social discourse, these men feel tremendous strain as their traditional picture of the world and their place in it is threatened. Gerstenfeld (2013: 116-117), points to organised hate groups gaining momentum and increasing recruitment during periods of economic and social strife. The link between organised hate-group recruitment and Strain Theory is also made by Perry (2001: 36) who writes that Strain Theory could explain why youths from the lower classes resort to hate crimes against minority groups. Since these youths lack access to certain privileges in society they commit hate crimes against minorities in an attempt to achieve the status and prestige denied them by the majority culture (Perry, 2001: 36).

Hall (2013: 111), writing from a British perspective, similarly considers the link between Strain Theory and hate crimes against minority groups and foreigners. He sees the presence of minority groups as increasing the perception of strain being felt by the majority population. In other words, strain is experienced with regard to limited resources and economic insecurity, which foreigners seem to be threatening. Hall (2013: 111-112) thus views hate crimes as a product of and a response to that strain.

Walters (2011: 314), also writing within the British context, regards Strain Theory as being able to account for racist and anti-immigrant hate crimes but not all hate crimes. He does, however, regard the hate-crime offender’s own feelings of social and economic inadequacy, as being the cause of strain (Walters, 2011: 314). Such strain is then directed at foreigners who are regarded as ‘outsiders’ and the source of all the offender’s personal failures and problems (Walters, 2011: 317).

In expanding on the link between Strain Theory and hate crimes, Perry (2001: 38) posits that Strain Theory cannot explain why certain university students, who are already advantaged by their access to education, continue to victimise their peers from minority groups. Strain Theory also cannot explain why those who are “empowered” such as the police, who are “agents of social control”, brutalise not only criminals but also Black youth (Perry, 2001: 38). Perry (2001: 37) concludes that Strain Theory cannot adequately explain hate crimes since women and minorities are the most economically, socially and politically disadvantaged members of US society. Given that they are the most strained members of society it follows that they should also be the most common hate-crime offenders, which is not the case (Perry, 2001: 37).

While Strain Theory has often been implicitly or explicitly used to explain the commission of hate crimes, this theory cannot adequately explain why certain advantaged and empowered individuals in society resort to hate crimes.

POSSIBLE APPLICATIONS OF THE THEORETICAL UNDERPINNINGS OF HATE CRIMES TO THE SOUTH AFRICAN CONTEXT

Since the existing theoretical underpinnings of hate crime are largely based on research conducted in the US and to a lesser extent on research conducted in Britain, it is unclear whether such theory is applicable to the South African context.

As regards the characteristics of hate crimes, a closer inspection of such crimes that have been perpetrated against Black lesbian women in South Africa reveals that all the victims were raped by Black men who tended to be known to the victims. (Naidoo & Karels, 2012a: 246) This is in contradistinction to the oft-cited characteristic that hate crimes are

perpetrated by White males and people who are strangers to the victims. In accounts of xenophobic violence in South Africa, all the foreign Black victims were victimised or killed by Black South Africans (Gqola, 2008: 213), which is another apparent contradiction of the finding that most hate crimes are perpetrated by White males.

Many of the crimes against Black-lesbian women and Black foreigners in South Africa were excessively violent and were perpetrated by several individuals (Naidoo & Karels, 2012a: 248 and Gqola, 2008: 213) which seems to confirm the characteristic that hate crimes are excessively violent and are perpetrated by multiple perpetrators.

In McDevitt and Levin's typology, several types of hate-crime offenders were identified. Their description of the "reactive/defensive hate-crime offender" resonates to some extent with that of certain perpetrators of xenophobic violence in South Africa who have been accused of protecting their interests or their 'turf' (territory) against foreign interlopers. (Sharp, 2008:1)

As regards the effects of hate crimes on victims, anecdotal reports have revealed that many Black-South-African lesbians who were raped were infected with the human immunodeficiency virus (HIV) and other sexually-transmitted diseases (Naidoo & Karels, 2012a: 247-248). No comparisons were, however, made with non-hate-crime victims of rape therefore it is not clear whether Black-lesbian hate-crime victims are more seriously affected.

Some South African research has however, been conducted on the effects of hate crimes on foreigners. A 1998 study conducted by Morris in central Johannesburg amongst twenty Nigerian and Congolese migrants found that they were frequently the victims of crime, prejudice and racism, particularly by Black South African men (Morris, 1998: 1116-1136). The participants in this study also revealed that that they were often the victims of police brutality and corruption (Morris, 1998: 1116-1136).¹⁰ A South African Migration Project study in 1998 amongst 500 Black foreigners in South Africa found that many foreign migrants were the victims of police brutality and corruption (Crush, 2001: 114). The South African police often destroyed the identification documents of foreigners or forced them to pay bribes in order to avoid arrest (Crush, 2001: 114). A 2001 study by Harris ([Sa]) on foreigner's experience of crime in South Africa found that foreigners often complained of harassment, bullying, verbal insults and threats of violence by ordinary South Africans and by agents of the state. However, it is not clear from these studies if Black foreigners were more adversely affected by crime, prejudice, racism, police brutality and corruption than White foreigners residing in South Africa.

In the absence of any reliable empirical research on the effects of hate crimes on victims in South Africa it is difficult to comment on the effects that hate crimes have on victims and their communities.

Strain Theory was found to be most commonly used to explain the causes of hate crimes. It is submitted that Strain Theory could explain many of the instances of xenophobic violence where the perpetrators reside in the most impoverished areas of South Africa where unemployment is high and resources are scarce (Sharp, 2008: 1) It could be argued that the strain experienced by South Africans in these areas is directed at foreigners who are scapegoated and specifically targeted for acts of violence.

CONCLUSION

The theoretical underpinnings of hate crimes have been the subject of academic criticism and disagreement since they are based on studies that relied on small, limited samples of hate-crime victims. The studies were also geographically constrained, often being confined to a single urban US setting. In many of the studies, comparisons were not made between hate-crime and non-hate-crime victims. Most of the existing hate-crime theories are based on research conducted within the US context. In a few instances, these theories have been applied to the British context. This article has shown that some of the theoretical

considerations are applicable to the South African context. However, in the absence of any reliable local empirical research on the phenomenon of hate crime, a South-African scholar engaged in a study of this topic is left with no choice but to refer to US and British research as a point of departure or as a point of reference. There is therefore a need for reliable empirical research to be conducted on the phenomenon of hate crime in South Africa. Empirical research on for example, the effects of hate crimes on specific categories of victims,¹¹ the causes of hate crimes and typologies of hate-crime offenders in South Africa could inform law-making efforts and future government policy.

As stated in the introduction, despite the non-recognition of hate crime as a specific category of criminal conduct in South African law, locally there is growing awareness of the phenomenon. The term 'hate crime' enjoys some academic and intellectual currency in this country (see for example: Breen & Nel, 2011: 33-43; and Mollema & Van der Bijl, 2014: 672-679). It is submitted that the term 'hate crime' is gradually being adopted into South African social parlance as recognition and awareness of this type of criminal conduct increases. It is the writer's contention that the enactment of hate-crime laws in South Africa would facilitate the prosecution of criminal conduct motivated by prejudice or bias and would subject such conduct to judicial scrutiny. Hate crimes would also be subjected to greater public and media scrutiny, which would, in turn, stimulate interest in hate crime as an area of academic study and could contribute to a home-grown body of empirical and theoretical research on the subject.

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Endnotes

1. It is the writer's submission that a convenient distinction may be drawn between hate crimes and 'non-hate crimes'. 'Non-hate crimes' are crimes that are not motivated by prejudice or bias but could have been motivated *inter alia*, by the lust, greed, passion, revenge or economic need of the perpetrator.
2. The victim characteristics that are recognised in a hate-crime law are entirely dependent on the jurisdiction concerned.
3. The idea underpinning hate crimes may be traced back to the enactment of federal-criminal civil-rights laws in the post-civil-war period in the US. Criminal civil-rights laws were intended to protect newly-manumitted slaves in the Southern states of the US, who were subject to abuse and murder. An example of such a federal civil-rights law is the Civil Rights Act of 1871 which enabled the American federal government to prosecute offenders who conspired to deprive others of their civil rights. However, the earliest example of a contemporary federal hate-crime law in the US is the Hate Crime Statistics Act of 1990.
4. Reference to Britain in this article is a shortened form of reference to the United Kingdom of Britain and Northern Ireland.
5. The term 'Black' in this article is used in a narrow sense to refer specifically to African persons or to persons of African origin. When referring to the US context, however, the term African-American is used.
6. The Amish are a religious Mennonite community who settled in the US in the early 18th century (See Hostetler, 1984: 33).
7. The hate-crime offender typology developed by McDevitt *et al* has been used by the American Prosecutor's Research Institute and by the National Centre for Hate Crime Prevention, Education and Development.
8. According to Bowling (1998: 42-43), the name, 'Skinheads', derives from their shaved heads or shortly-cropped hair and a particular style of fashion which included wearing jeans, boots and braces, as a symbol of opposition to established British values.
9. 508 U.S. 476 (1993).
10. It should be noted that a very small sample of foreign respondents participated in this study.
11. In this regard there is a need for reliable empirical research on the effects of hate crimes on foreigners in South Africa and on Black lesbian women who have been raped – so-called 'corrective' rape.