

A Feminist Liberal Approach to Hate Crime Legislation

Amy R. Baehr

In a perfect world, because your child is gay, you don't worry about their safety. You just worry about them being happy.

—Judy Shepard (mother of Matthew Shepard)

In recent years, progressives have pushed hard for the passage of hate crime laws both in the states and at the federal level.¹ Such laws increase penalties for crimes motivated by particular kinds of bias.² Though hate crime laws differ from state to state and could, in principle, name bias motivation against any characteristic as deserving of increased penalties, extant laws have named some or all of the following: bias against a victim's race, nationality, religion, gender, disability status, and sexual orientation. Thus progressives have seen the passage of hate crime laws as an important step toward more equal social status for traditionally disadvantaged groups. The laws have posed an interesting problem, however, for traditional liberals. Liberals tend to endorse at least the core of the Millian harm principle, according to which citizens should not be punished for what they think, but only for acts which harm others.³ Of course liberals will differ on what this principle means precisely and how it is to be justified. But hate crime laws seem to violate any obvious reading of it. That is, hate crime laws seem to require extra punishment for criminals who think a particular way about their victims.⁴ If this is indeed what these laws do, then to endorse them is to support using the law to punish thoughts. This would open up the possibility of criminalizing whatever ways of thinking the majority happens to reject. Thus, while the laws have enjoyed endorsement by politicians both right and left,⁵ liberal scholarship on the issue has been mixed.⁶ And even those liberals who endorse hate crime laws have done so only tepidly.⁷

For feminist liberals the trouble is even more complex.⁸ Feminists endorse the ends toward which the laws are thought to be a means. And they endorse the message that hate crime laws communicate to the public, namely, that the victimization of already disadvantaged citizens is particularly morally reprehensible. Yet feminist liberals will, at least as a political matter, also endorse something like the Millian harm principle and thus would seem to have to reject hate crime laws.⁹ This tension in feminist liberalism between commitments that recommend for and commitments that recommend against hate crime laws suggests strongly that feminism and liberalism are incompatible. The tension might seem to show that there is no coherent liberal feminism or feminist liberalism. Indeed, much has been written about what many see as

a necessary and unresolvable tension between feminism and liberalism.¹⁰ In what follows, I contribute to the argument *for* the compatibility of feminism and liberalism. Specifically, I argue that although liberal worries about criminalizing thoughts are important, hate crime laws do not necessarily amount to such criminalization. And thus it is possible for a feminist liberal to endorse them.

In section I, address two *nonliberal* feminist approaches to hate crime legislation, one critical (the all-things-considered approach) and one supportive (the feminist perfectionist approach), and show why a feminist liberal may not endorse either of these approaches. In section II, I evaluate, ultimately to reject, three not necessarily feminist attempts to justify hate crime laws. These are the greater-harm argument, the greater-intent argument, and the greater-vulnerability argument. In section III, I propose my own justification for hate crime laws, which is both consistent with some of the most important considered convictions of feminists and satisfactory to liberals.

I. Two Nonliberal Feminist Approaches to Hate Crime Legislation

A. A Feminist 'All Things Considered' Rejection of Hate Crime Legislation

In a recent article in the *Nation*, Katha Pollitt (1999) argues *against* hate crime laws. According to Pollitt, the *most important reason* for rejecting hate crime laws is not that they penalize people for what they think, nor is it that they privilege one type of victim over another (though she does worry about *this*). For Pollitt, what's most troubling about hate crime laws is that they are an expression of our culture's current punitive zeal. Pollitt observes that "America is in a punitive mood these days." "Where are the affirmative programs that . . . foster understanding?" she asks rhetorically. Pollitt is surely right that to 'criminalize hate' is quite likely more expensive, less effective, and more morally troubling than 'fostering understanding.'

But we might put a hypothetical question to Pollitt: What if our society were not in a punitive mood? Could penalty enhancements for hate crimes then be acceptable? Or, putting it another way, all things being equal, could it ever be acceptable for the state to require additional punishment for crimes motivated by hatred toward a victim's group membership? Pollitt seems to recognize that one might ask this question. But she does not pursue it in her article. For liberals, in contrast, this is a key question, because it asks whether hate crime laws satisfy what liberals take to be a minimal condition for legitimacy. For our purposes at this point that minimal condition is that only harms but not thoughts be the basis for punishment.

Pollitt is primarily concerned not with whether hate crime laws satisfy some minimal condition for legitimacy such as respect for liberty of conscience, but with a very different set of questions, such as: Will hate crime laws distract us from the real work we must do to achieve racial, ethnic, or other reconciliation? Will they result in even longer sentences, or worse, for the minority men who are disproportionately represented among those under criminal justice supervision? Will they result in more prosecutorial discre-

tion?¹¹ Will the laws exacerbate other disadvantages suffered by minority citizens?¹² These are important, even crucial questions. They are questions that ask how hate crime legislation relates to the moral-political outcomes many progressives and liberals endorse. Feminists especially are concerned with these questions, since feminists have come to see that concern for women's well-being requires that we think critically about all social hierarchies—male supremacy, White supremacy, heterosexism, and others—and the institutions, such as the criminal justice system, that may support them. Answers to these questions should help an informed citizenry, including liberals, decide whether, all things considered, we should have enhanced penalties for hate crimes.

I will call these the 'all things considered' questions and distinguish them from the 'all things being equal' question. The former ask whether a full consideration of all morally salient features would support the endorsement of the practice. The latter asks whether it could ever be right, whether it violates some liberal minimal condition for legitimacy, for the state to use its coercive power to enhance punishment based on a perpetrator's animus toward a victim's group. Both kinds of questions are vital to the legitimacy of law. Sometimes the answers to all-things-considered questions trump the answers to the all-things-being-equal question. Consider the death penalty as an example. One might decide that, all things being equal, it's all right for the state to execute people who commit certain crimes but at the same time believe that our governmental institutions are hopelessly incapable of applying the death penalty impartially. In this case, one might reasonably reject the death penalty. Notice that one would be rejecting it not all things being equal, but all things considered. But one thing that distinguishes a liberal from a nonliberal is that the liberal takes a negative answer to the all-things-being-equal question as normally sufficient for rejecting a practice.¹³ That is, liberals, including feminist liberals, give that question priority.

But surely a good deal must be said by liberals to explain the distinction between all-things-considered questions and the all-things-being-equal question and to justify the prioritization of the latter. Some may worry that one cannot distinguish so neatly between asking whether a practice is an acceptable use of state power all things considered and asking whether it could ever be considered an acceptable use of state power. Addressing this worry will allow me here to point up some of the important commitments of liberals, and thus also of feminist liberals.

The worry may take at least two forms, the first relatively easy, the second difficult to address. The first says that asking whether something is acceptable all things being equal is nonsense because all things actually aren't equal! Our society and its legal system aren't free of racism; we aren't free of punitive zeal; our politicians still stir up hysteria about crime; prosecutors won't be giving up the plea bargain system any time soon, in which penalty enhancements can be used as leverage against defendants in negotiations. The all-things-considered questions, which ask about these clearly morally salient factors, weigh so heavily right now that it is pointless to ask whether, if there were no such factors, hate crime laws would be a legitimate use of state power. That is, there is obviously so much wrong with penalty enhance-

ments in our context that we need not proceed to ask whether they could ever be acceptable.

As I see it, this might very well turn out to be true in the case of hate crime legislation. But even if it does turn out to be true, it doesn't constitute an argument against going on to explore whether hate crime laws could ever be a permissible use of state power. It would just imply that exploring the question today in our context is a highly hypothetical exercise. But then so is much of political theory. So we may proceed to the all-things-being-equal question, so long as we admit that it may be a trivial question. But while one might concede triviality in the case of hate crime legislation or the death penalty, these do not represent all kinds of cases. What about cases in which a consideration of 'all things' produces a preponderance of reasons *for* a practice? (Some feminist perfectionists, as I explain below, believe this is the case with hate crime legislation.) In such cases, a liberal will not concede the triviality of the all-things-being-equal question, for it functions for them as a minimal condition of legitimacy.

But there's a second challenge that is more difficult to address. This challenge suggests that distinguishing all-things-considered from all-things-being-equal questions, and then prioritizing the latter, amounts to an endorsement of conventional values. If this is what a liberal approach does, then liberals may rightly be accused of taking the bite out of normative evaluation, rejecting a serious consideration of morally salient features in favor of mere moral hand waving. To understand and evaluate this criticism, we must finally say more about what the all-things-being-equal question asks. What are we asking when we ask whether a practice could ever be a legitimate use of state power? Without being exhaustive, we can mention here three possible liberal responses: state power should be used only in ways that are compatible with our conception of ourselves as autonomous,¹⁴ state power should be used only to protect citizens from harm from others,¹⁵ and state power should be used only in ways consistent with general principles that can be endorsed using public reasons.¹⁶ Thus we can say that to ask whether, all things being equal, penalty enhancements for hate crimes are a permissible use of state power is to ask whether such penalty enhancements are compatible with our conception of ourselves as autonomous, whether they serve to protect citizens from harm from others, or whether they are endorseable using public reasons. For many liberals it seems obvious that hate crime laws fall afoul of these conditions, because they seem to punish thoughts.

Our challenger worries that none of the key ideas here, autonomy, harm, or public reason, can be given any sense apart from our particular cultural context. This would mean that in a sexist society, in which autonomy is equated with male independence, public funding to make public spaces accessible to the disabled may seem inconsistent with citizens' conception of themselves as *autonomous*. In a racist society, in which criminality is associated with a particular 'race,' racial discrimination in sentencing might count as an effective way to *protect citizens against harm*. In a society with a strongly Calvinist understanding of desert, *public reasons* may support just about any increase in punishment. If the challenger tells the truth, then far from helping to distance us from the biases of our culture, the all-things-being-equal ques-

tion leads us to draw unreflectively on them. On this account, liberalism really amounts only to an endorsement of conventional values. But according to feminists, conventional values are the problem! As feminists we seek a political theory that can help us criticize conventional values. And if liberalism can't help us do that, then so much the worse for liberalism. Indeed, this is a common criticism of liberalism, one that puts serious strains on an attempt to reconcile feminism and liberalism.

Although a full defense of liberalism is not possible here, let me make a few remarks to show why a feminist liberal, like this writer, will continue to think it sensible to ask about a law's coherence with some minimal condition, such as its consistency with public reason. (For the purposes of this discussion, I use consistency with public reason as my framework and leave behind for reasons of space the other versions of liberalism's minimal criterion.) When we ask whether a given law is a use of coercive state power consistent with general principles that can be endorsed using public reasons, the feminist liberal acknowledges that what count as public reasons will be a subset of those values that are present in the culture in question (thus in that sense they will be conventional values). Public justification will always draw on the values that are found in a given culture. But it is important to note that cultures are not monoliths. Even the most homogenous cultures are, to some extent, internally pluralistic. Our own culture is evolving, includes a plurality of values, many of which are in conflict with one another. Thus when liberalism leads us to draw on conventional values, it does not lead us to a determinate, homogenous set of values, with their determinate applications, turned to stone under the weight of sedimented tradition. It leads us rather to a plurality of values, contested and conflicting, whose appropriate applications are also not set in stone but are also pluralistic and contested. It should thus be clear how fundamentally liberal justification depends on the existence of a vibrant and pluralistic realm of public discourse. Feminist liberals are committed to contributing to robust discourse in the public realm to ensure that feminist values are among those present in that discourse.

It is true that this cauldron of values ensures nothing for women if it contains only patriarchal values. Pluralism alone is no guarantee of, and may sometimes even be a danger to, women's well-being, if it leaves them at the mercy of religious and cultural traditions that seriously disadvantage women.¹⁷ But on a liberal view, while a vibrant and pluralistic public culture is important, not all values present in a culture can count as public reasons. Public reasons are those that are addressed to all persons as citizens and thus do not depend for their validity on the truth of some particular comprehensive doctrine. Feminism, on a liberal view, is engaged in the vital work of pointing out that male supremacy is a particular comprehensive doctrine¹⁸ (or more precisely, it is a module of most religious and cultural traditions) that is incapable of producing public reasons. Male supremacy is incapable of producing public reasons because it does not address women as equal citizens, but merely as inhabitants of a subordinate social role.¹⁹ As Martha Nussbaum (1999) has argued, the fundamental conception of the person as having "a core of moral personhood . . . exerts claims on government no matter what the world has done to it" (71). Indeed, she tells us that "liberal individualism,

consistently followed through, entails a radical feminist program" (67).²⁰ Thus feminist liberals will tend to see feminism as an extension, and not a rejection, of liberal ideals. And though I'm not sure what Nussbaum means by "radical feminist program," in section III I show that there are resources in liberalism sufficient to justify hate crime laws, which many feminists take to be an important feminist initiative.

I've shown so far that a feminist liberal will find an all-things-considered approach to hate crime legislation to be unsatisfactory. My claim is not that a feminist liberal may not consider all things when evaluating hate crime laws. It is rather that an all-things-considered approach does not prioritize the question of whether the laws satisfy a minimal condition for legitimacy (that a law be capable of being endorsed using public reasons). Insofar as feminist liberals, indeed all liberals, will want that question prioritized, they will find an all-things-considered approach to be wanting. In section III I present a justification that satisfies this criterion.

B. A Perfectionist Feminist Approach

While some feminists *reject* hate crime laws in the nonliberal way I have just described, other feminists *endorse* hate crime laws in nonliberal ways. One nonliberal way in which a feminist perfectionist might endorse hate crime legislation would be to focus on two considerations.²¹ The first is that hate crime legislation is likely to bring about the political outcomes sought by feminists (namely, a more thoroughgoing equality of well-being and respect among citizens). The second is that hate crime laws *express* a central moral claim of feminism (namely, that the messages communicated in hate crimes are worse than the messages communicated by other crimes).²² For our purposes here, I'll put aside the obvious problem that hate crime laws might not be instrumental in the ways feminists and others hope. And I'll also bracket the fascinating question of how much a law's expressive meaning should count toward its legitimacy. I want to focus rather on why a feminist liberal may not endorse this justification.

The feminist perfectionist takes a law's resonance with her/his own substantive conception of justice to be the decisive test of its legitimacy. Of course from some common feminist moral point of view, there is a particular moral urgency about remedying the causes of women's disadvantage. A liberal, however, will insist on distinguishing between what seems morally urgent from some particular moral point of view and what may be enforced with state power. The latter is determined, on a Rawlsian view, by the fundamental principles which our (reasonable) fellow citizens can be expected to endorse. The feminist perfectionist does not make such a distinction, perhaps primarily because she anticipates that her fellow citizens do not endorse what are to her the most important ends. Our society has been decidedly sexist, racist, and homophobic. Liberals, it would seem, expect feminists to temper their lobbying to satisfy the racists, sexists, and homophobes with whom they are unfortunate enough to share a political community. This underscores again the claim made by many, feminists and others, that liberal claims to neutrality commonly mask the endorsement of conventional values.

Because she/he believes this, the feminist perfectionist recommends that feminists use the law unabashedly to further their ends and not worry about what their fellow citizens could endorse.²³ As we saw, liberals worry that hate crime laws punish people for their motivating thoughts and that this seems to clearly violate some liberal minimal condition for legitimacy. But this worry is misplaced, argues Dan Kahan, because our criminal law *commonly* punishes defendants for their motivating thoughts!²⁴ Though it is not widely acknowledged, “When offenders’ motives show that they value the right things in the right amount . . . the law exonerates them. . . . When their motives show they value the wrong things altogether, the law punishes them all the more severely” (Kahan 2001, 178). Consider the ‘true man doctrine.’²⁵ This doctrine is used to exonerate a man for “killing an attacker he could easily have evaded” (Kahan 2001, 178). The doctrine clearly shows that the law endorses the man’s belief that, in this context, his honor is more important than the attacker’s life. Consider at the same time the law of self-defense, which treats “the battered woman’s desire to escape a life of degradation as an ‘unreasonable’ ground for killing her sleeping husband” (Kahan 2001, 178). Here the law rejects the woman’s belief that her honor is more important than the life of an attacker she could have evaded (at least in that moment). The feminist perfectionist points out that hate crime laws do nothing different. They simply say that the values expressed by the hate criminal are particularly bad, and thus the criminal deserves to be punished more severely than someone who did ‘the same thing’ on different motivations.

According to a feminist perfectionist view, because the law is irreducibly moralistic (and is so currently in a masculinist way!), feminists should reform it so that it is moralistic in favor of values feminists support. Thus feminists should change the law so that it condemns more harshly defendants who value what we take to be the wrong things (such as hatred of minority groups or women) and excuses defendants whose actions show that they value the right things (such as a woman’s honor over the life of her abusive partner). The feminist perfectionist’s claim that liberal neutrality only masks the furthering of conventional values leads him/her to recommend that feminists use the law (the criminal law, its most coercive part) to their ends, without concern for whether other citizens could find those ends acceptable.

What is a feminist liberal to reply here? One approach would be to suggest that feminist perfectionists may really be closet liberals.²⁶ This suggestion is motivated by the fact that the feminist perfectionist appeal to exonerate the battered woman who kills her batterer when he is sleeping seems to be grounded in a *comparison* to the case of the ‘true man’ who stands his ground even when he could safely flee his attacker. Such comparisons seem to suggest that feminist perfectionist argument begins “from the middle, demanding . . . that we proceed from the . . . modest position that a just criminal law must, at a minimum, make consistent evaluative claims” (Nourse 1998, 1476). Such beginning ‘from the middle’ is a hallmark of liberal argument. This is because if we were truly concerned only with convincing our fellow feminists, we would not need to appeal to consistency in the law. Appeal to consistency means appealing to those who may disagree with us about midlevel moral issues, concerning, say, the relative moral urgency of

violence against women. Thus to demand consistency is to work within, not to reject, a model of liberal justification to object to male supremacist bias in the law. Indeed it is to claim that liberalism includes a principle strong enough to reject the ultimately caste-based claim that men's honor is more important than women's.

This response would be inadequate, however. For according to feminist perfectionists, consistency will not necessarily be helpful to feminists in a society like ours that has a tradition of gender hierarchy (and racism and homophobia). This is because being consistent in a male supremacist (or racist or homophobic) context requires being consistent with male supremacy (or racism or homophobia).²⁷ A feminist perfectionist may appeal to consistency for strategic political reasons; but consistency cannot be held to be an end in itself.

So if a feminist liberal cannot respond to the feminist perfectionist challenge by showing that it is really a closet liberalism, what response is possible? A more effective feminist liberal response focuses on unmasking the false dilemma feminist perfectionists construct. According to their view, we have two choices. We can either capitulate to conservative foes or use the law unabashedly to further our interests. If these were our only two options, surely we should choose the latter. But as feminist liberals will point out, there is a third possibility: that there is a liberal anticaste principle strong enough to address gender and other hierarchies and also capable of being endorsed using public reasons. I explain and justify that liberal anticaste principle in section III.

One further point needs to be made about feminist perfectionism. Sometimes feminist perfectionists will endorse liberal ends, for example, liberty of conscience. What distinguishes them from feminist liberals is that when feminist perfectionists do endorse those ends, they may endorse them only prudentially, not on principle. This will be true of others who hold strong values (with clear political implications) that are not widely shared by others in society. Traditional Catholics, for example, may believe that there could not possibly be a truly fundamental right to worship the devil or Allah or not to worship at all.²⁸ But such a Catholic might still endorse such a right to religious liberty on prudential grounds. That is, such a Catholic might recognize that denying citizens such a right today, given our political realities, would require sacrificing other very important goods, such as peace or human life, and that these costs would be too high.

Feminist perfectionists will be in a similar position with respect to liberal values. Take as an example a feminist approach to pornography. A feminist perfectionist might endorse the core of Catharine MacKinnon's and Andrea Dworkin's antipornography ordinance, according to which depictions which denigrate women and cause them harm should be restricted (MacKinnon 1987). This very same feminist, however, might endorse a principle of freedom of expression that includes pornography even of this sort out of fear that restrictions on pornography will end up limiting women's access to feminist and lesbian pornography that can play a libertory role in women's lives. Thus there may be feminist perfectionists who, at times, endorse a liberal principle of freedom of expression, but on prudential grounds. A feminist

liberal will argue for a tighter, not just a prudential, relationship between some of the fundamental considered convictions of feminism and liberalism.

In this first section I have shown how feminist liberals may object to feminist all-things-considered and feminist perfectionist approaches. Unlike feminists taking an all-things-considered approach, feminist liberals will require that laws meet some threshold condition for legitimacy, such as the condition of public reason. And unlike feminist perfectionists, feminist liberals will claim that such a criterion is not so anemic as to be unhelpful to feminism. In section next section, I explore three not necessarily feminist attempts to justify hate crime legislation and show that each is unsatisfactory. In section III I develop a justification that I think could be found acceptable by feminist liberals.

II. Looking for a Public Justification for Hate Crime Legislation

Besides the feminist perfectionist argument for hate crime legislation discussed above, there are a variety of other justifications offered in the literature. I will discuss three here which I ultimately reject. What makes these arguments most interesting for our purposes is that they are attempts to justify hate crime legislation using public reasons. That is, unlike the feminist perfectionist justification discussed above, they represent attempts at justification aimed to convince citizens holding a wide variety of views (feminist and not). The arguments I consider are these: (A) Harming people because of their membership in racial, ethnic, and other groups is particularly wrong because it does more harm, and thus deserves more punishment, than similar but non-hate-motivated crimes. (B) One who commits a hate crime can be shown to have heightened intent, and increased intent implies increased punishment. (C) The victims of hate crimes are particularly vulnerable and thus deserve enhanced protection.

A. *The Greater-Harm Argument*

Perhaps hate crimes cause more harm than crimes which are the same but just lack the bias motivation. Indeed, some have suggested this.²⁹ Clearly, the amount of harm caused by a crime seems relevant to determining the amount of punishment a criminal should be given. In the case of hate crimes, it has been suggested that such crimes often cause secondary harms: they terrorize whole communities and often leave psychological scars on their victims that add to whatever other suffering they may have endured. Thus, it is concluded, additional punishment seems appropriate. Because this argument relies on a relatively simple notion of quantifiable harm, it would seem to be a good candidate for a public justification.³⁰

But while it is surely true that many hate crimes produce secondary harms, so do many other crimes. For example, a mugger who preys on people in a certain neighborhood terrorizes the entire neighborhood; a criminal who targets athletes terrorizes thousands of athletes and their families. Should the neighborhood prowler or the terrorizer of athletes receive enhanced penal-

ties? This was clearly not intended by lawmakers. Also, should those *hate crimes* that, for whatever reason, do not cause secondary harms then *not* receive penalty enhancements? Consider, for example, a White supremacist who, acting alone, kills a loner African American because the supremacist hates Blacks. Also imagine that because the crime is not publicized and the victim is a loner, there are no secondary harms. If hate crime legislation is really a way to address secondary harms, this crime should not earn the perpetrator extra punishment. But surely this is the kind of crime hate crime laws are meant to target. Perhaps we can be sure that crimes such as these will receive ample publicity today and thus that they will always produce secondary harms. My point is, however, that if extra punishment is warranted in a case like this, it is not because the case happened to be publicized.

Often lawmakers will use one criterion as a proxy for another. So one might claim that hate crime laws use bias motivation as a proxy for secondary harms. I hope I've shown that the proxy would be inexact. Surely if lawmakers had wanted to punish for secondary harms they could have fashioned laws that do that better. But what's more important is that it seems quite clear from the public discussion around hate crime laws that far from lawmakers' wanting hate to stand in for something else, bias motivation, or hate, is precisely what the law's proponents want to target.³¹ Can we make sense of this without falling afoul of liberal worries about making certain kinds of thoughts criminal?

B. The Greater-Intent Argument

Might it be that people who harm others because of their group membership are somehow more culpable than people who commit harm for other reasons because they have greater intent to do harm?³² It is a common guiding idea in criminal law that the degree to which someone intends to commit a crime has bearing on his/her culpability; and thus it is relevant to the severity of punishment. So if we could show that those who commit hate crimes are more culpable in this sense than those who commit otherwise identical crimes, we'd have some justification for penalty enhancements. And because intent seems to be a rather uncontroversial concept, we might have found the beginnings of a public justification for hate crime laws.

Unfortunately, it is not at all clear that committing a hate crime implies *greater* intent on the part of a perpetrator than committing a non-hate crime does. Surely the fact that you are a homophobe may play a role in determining whether or not the harm you inflicted on a gay man or a lesbian was intentional. So your homophobia may be relevant to determining your intent. But is more criminal intent present when one explicitly intends to harm someone *because* he or she is Black, than when one explicitly intends to harm someone *because* he or she is annoying? The answer is clearly no. Thus all things being equal, hate criminals are no more culpable than non-hate criminals are. This is, of course, unless hate somehow independently creates culpability. But the greater intent justification we are considering here tries to derive the culpability-generating quality of hate from the purported presence of heightened

intent, so we could avoid the claim that hate is independently punishable and avoid liberal concerns. Thus if we do not presuppose that hate is independently punishable, we must conclude that hate criminals are not necessarily any more culpable than non-hate criminals.³³

C. The Greater-Vulnerability Argument

Alon Harel and Gideon Parchomovsky (1999) propose a justification for hate crime laws based on what they see as a principle of distributive justice implicit in the criminal law. As I see it, this attempt at justification points in the right direction but does not take us all the way. On this view, the state has an obligation to protect its citizens from crime—and to protect its most vulnerable citizens somewhat more than its less vulnerable citizens. Though Harel and Parchomovsky do not explicitly state which principle of equality they would like to introduce into criminal law, they imply that protection should be provided to each according to need, so that while not all citizens would receive the same amount of protection, each would be equally safe. They give examples from current sentencing practice to show that such a principle already informs the law. Judges do often inflict harsher sentences on those convicted of harming particularly vulnerable victims.

Harel and Parchomovsky acknowledge that some differences in vulnerability stem from choices citizens make, and they suggest that the law should provide special protection for citizens whose vulnerability stems not from their own choices, but from aspects over which they have no control, like their sex or race. If we could show that hate crime victims are particularly vulnerable to crime because of aspects about themselves over which they have no control, then it would seem that a conception of distributive justice in protection from crime would, if itself defensible, provide some public justification for hate crime legislation. Because equal protection seems to be a value capable of public endorsement, this would seem to be a fruitful approach.

But while a principle of distributive justice in protection from crime would justify more protection for those who are most vulnerable and thus more punishment for those who prey on them, hate crime laws do not do this. Many groups are especially vulnerable to crime: the elderly, police officers, children, the poor, members of some minority groups. Hate crime laws do not protect them in general. The laws protect only those whose vulnerability to a specific crime was due to someone else's bias against some group of which they were members. Crimes against especially vulnerable citizens that are not examples of special vulnerability created by someone else's bias do not fall under hate crime laws. We should of course ask, if law should provide equal protection, as Harel and Parchomovsky recommend, why should the law treat victims differently on the basis of the motivation of the perpetrator? African Americans are especially vulnerable to crime,³⁴ but hate crime laws protect them only if bias motivation is involved.

Thus the idea of vulnerability cannot explain hate crime laws' special concern with bias motivation. Harel and Parchomovsky point us in the right direction, however. They urge us to consider the way that hate can create vulnerability. Again, though, can we explain why this special kind of vulnera-

bility should be of special interest to the state without claiming that certain kinds of thought are punishable? I propose such an explanation in section III.

A successful approach to justifying hate crime laws will have to explain why bias motivation is directly relevant to determining punishment, without running afoul of liberal worries about punishing thoughts. As I see it, none of the justifications discussed in section II accomplishes this. That is, if penalty enhancements for hate crimes are justifiable, it is not going to be because hate crimes cause more harm than otherwise identical crimes, not because a hate criminal necessarily intends to harm more decisively than someone committing an otherwise identical crime, and not because the victim's vulnerability stems from some aspect about herself that she cannot change.

III. The 'Badges of Subordination' Justification

On my view, hate crime laws survive liberal worries because while they mention the biased thoughts of a perpetrator, it is not the thoughts that they punish. What they punish is a particular proscribable act, distinct from similar but non-hate crimes, what I will call violent subordination.³⁵ By 'violent subordination' I mean private acts of violence that reenact an official public social hierarchy which our political society has explicitly repudiated.

Consider that as a matter of historical fact, our society, through both public and private coercion, at one time enforced the political and social disenfranchisement of certain groups of persons. We are all familiar with the legally sustained disenfranchisement and virtual enslavement of non-Black women, which began to be dismantled in the nineteenth century. Persons of nearly any measure of African descent were officially enslaved until 1863 in much of the United States and were held in a state of serious political and social marginalization until even into the second half of the last century. These hierarchical systems, male and White supremacy, functioned both by official denial to certain citizens of equal protection of the laws and by *empowering private citizens, both formally and informally, to maintain the subordination of others with the use of private coercion*. Because of this history, our culture often has trouble identifying violence by Whites against Blacks or men against women as rights violations. Examples of the state formally empowering private citizens to enforce the subordination of women and Blacks are the practices of *couverture*, according to which a woman's legal identity is subsumed under that of her husband at marriage, and slave statutes which permitted slave holders to physically restrain and discipline enslaved people. Informal empowerment of private citizens to maintain the subordination of women and Blacks include law enforcement's looking the other way when violence is perpetrated by husbands against wives, such as in wife battery, or by Whites against blacks, such as in lynching. Similar, though less drastic, hierarchies of heterosexuals over homosexuals were maintained and still linger. Hierarchies keeping followers of some religions subordinated to those of another religion were also relatively widespread, though less rigid and more varied than sex and race hierarchies. Other groups, for example, the disabled, suffered analogous, though different, levels of official and informal marginalization.

What's significant to this study is that our political culture has explicitly repudiated such official hierarchies. It has repudiated the denial to women and Blacks of equal protection under the law and has explicitly taken away the freedom of private citizens to enforce hierarchies with coercion. The reconstruction amendments to the Constitution and their interpretive history clearly show this repudiation. And though there is no one act of Congress or the Supreme Court abolishing women's servitude to men, there is an accumulation of such acts which together express a clear moral-political consensus in favor of abolishing both governmental and private maintenance of women's servitude. This process of repudiation is by no means complete. Important work remains to be done. Especially in the case of the legal maintenance of the status of gays and lesbians as second-class citizens—denial of their right to marry and denial of protection from firing because of their sexual orientation, for example—there is a great deal yet to be done.

On my proposal, hate crime laws are best justified by showing that the prohibition on reenacting, with private violence, official social hierarchies which our political society has explicitly repudiated derives from the public value articulated in the Thirteenth Amendment to the Constitution and its interpretive history. Consider that while the Thirteenth Amendment abolished slavery and involuntary servitude, it has been authoritatively interpreted as prohibiting not only these practices. It abolished both the public and *private* infliction of what have been called the 'badges of slavery.' Akhil Reed Amar (1992) uses this prohibition on the infliction of the badges of slavery to derive a justification for the prohibition of hate speech. I adapt his proposal concerning hate speech to show how the prohibition of the badges of slavery may also justify penalty enhancements for hate crimes.

Amar writes, "The Thirteenth Amendment's abolition of slavery and involuntary servitude speaks directly to private, as well as governmental, misconduct; indeed, it authorizes governmental regulation in order to abolish all of the vestiges, 'badges and incidents' of the slavery system" (Amar 1992, 155).³⁶ Accordingly, cross burning on the lawn of an African American family may be prohibitible as a form of harassment or trespass, but also as a 'badge of slavery' (155). The important idea here is that abolishing a system of official subordination may require and justify prohibiting not only its formal institutionalization, but also informal acts by private citizens which reenact the subordination with the use of private violence. (I use the term 'subordination' rather than 'slavery' to include as protected classes all groups that have suffered a history of serious subordination.)

How can one know whether a given crime is a hate crime? How can we know whether the murder of Matthew Shepard, or the acts of a serial batterer, are acts of violent subordination as I'm using the expression? At the very least we must know about the motivation of the actor—the actor's *thoughts*—because they tell us whether the act was a denial of someone's rights based on their membership in a group with a history of official subordination. That is, the actor's thoughts tell us whether the act was a reenactment of such an official hierarchy, what I'm calling violent subordination. (Indeed, we can never adequately describe any act without making reference to an actor's reason for acting.) (There is no science capable of discerning

which acts count under this definition. And hopefully time will blur our ability to identify anything as such an act in the future.) On this reasoning, penalty enhancements are justified on the grounds that, besides being examples of prohibited conduct such as trespass, vandalism, assault, or murder, hate crimes are also a prohibited infliction of the badges of subordination.

Consider several benefits of my approach. First, because the thoughts of the criminal are important to figuring out whether the act committed was one of violent subordination, my justification of hate crime laws explains why they mention the thoughts of the criminal. But it also explains why such mention does not amount to punishing people for what they think. Clearly, we have to know what someone was thinking to know what kind of an act she/he committed. Thus we may say that hate crime laws punish acts and not thoughts, though the laws mention thoughts.

Second, my proposal is an example of public justification. That is, while it resonates with the concerns of progressives, it draws on values present in our political culture (call them conventional values), namely, those embodied in the Thirteenth Amendment and similar authoritative decisions of judges and lawmakers.

Third, the harm and intent approaches, as I showed above, suffer from both problems of under- and overinclusivity. That is, they suggest that some crimes should earn penalty enhancements but hate crime laws as written ignore them, and that some crimes should not earn penalty enhancements though hate crime laws as written would require them. It might seem that my proposal is also overinclusive. That is, it might seem that my proposal would permit enhanced penalties for any crime committed in an attempt to violently subordinate another. Surely much violent crime, not just hate crime, is violent and subordinating. But I avoid overinclusivity by defining 'violent subordination' carefully to mean not any violent and subordinating act, but rather only those acts which are attempts to re-create, with private violence, an official social hierarchy which our political culture has explicitly repudiated. Thus while the kidnapping of a wealthy investor may be violent and subordinating, it does not count as a hate crime.

My proposal may, however, suffer from underinclusivity in the following sense. It would seem to exclude from the set of possible hate crimes much minority-on-minority crime and all Black-on-White,³⁷ female-on-male, and gay-on-straight crime. My view is, of course, that because such crime cannot count as inflicting badges of subordination, it does not warrant enhanced punishment. However, hate crime laws, as written, tend to include these types of crime. Given how hesitant we are in the United States to stray from the principle of same treatment, hate crime laws are not likely to gain widespread support unless they protect all citizens, regardless of their group membership.³⁸ And while this may be the best that we can do at this time, I believe that the prohibition on inflicting the badges of subordination, rather than the idea that hate is generally punishable, accounts for the moral core of hate crime laws.

One might worry that the badges-of-subordination justification for hate crime laws I've offered is actually a version of the greater-harm argument,

which I purport to reject above. That is, one might interpret the argument as suggesting that because the extra wrongness of hate crimes derives from their subordinating effect, it derives from the fact that hate crimes create more harm (what they add is the subordinating effect) than otherwise identical crimes. This, however, is not what the badges-of-subordination argument says. The argument does not claim that hate crimes necessarily have a particular subordinating effect, though often they do. If the argument said this, it would run into at least two problems. The first is that because some hate crimes may not have a subordinating effect—let’s say because the victim has abundant self-esteem—they would not justify a penalty enhancement. This counterintuitive implication should be avoided. The second problem is that if hate crime laws are justified because hate crimes create subordinating effects the state would like to reduce, justification of penalty enhancements would require showing that such enhancements deter subordinating effects. But defenders of hate crime laws seem much less interested in whether penalty enhancements deter hate crime and much more interested in the state’s condemning hate crimes. If this is accurate, then the penalty enhancements are not justified because there is some extra harm (the effect of violent subordination) that needs to be deterred (though this is not ruled out). They are justified because they are examples of acts of which our political society especially disapproves. But as I have shown, the ground for this disapproval is not a prohibition on certain kinds of thoughts, but rather a public consensus concerning the illegitimacy of official social hierarchies.

Conclusion

A feminist liberal may endorse a badges-of-subordination justification of hate crime laws because the anticaste principle on which it is based is at once an important liberal and an important feminist value. It is the exploration of these points of overlap between feminism and liberalism to which feminist liberals are committed. But *should* a feminist liberal endorse hate crime laws? This question, of course, requires an all-things-considered response. Such a response would require that we examine closely whether hate crime laws can be expected to reduce crimes against women, gays and lesbians, African Americans, and others who have experienced systematic disadvantage. We would have to know whether passage of the laws would help or hinder racial reconciliation or whether it would distract us from work that might be more effective at furthering racial reconciliation. But I do not offer a consideration of all things here. I would suggest, however, that it is not inconceivable that close scrutiny of all things would lead a reasonable feminist liberal to reject the laws. As I suggest in section IA, the laws add to prosecutorial discretion and the disempowering of the accused; they increase the amount of time that the convicted spend in jails which contribute nothing to their rehabilitation; they satisfy our culture’s taste for vengeance, distracting us from the productive work of reconciliation between groups. These facts about hate crime laws weigh heavily and just might tip the balance against them. Such an all-things-considered approach would probably necessitate distinguishing among the various groups picked out for protection, for the social meaning

and effect of the laws are different for different groups.³⁹ Such an all-things-considered approach might lead, for example, to endorsing hate crime laws that protect certain groups and not others. But that project is not pursued here. So although I think that feminist liberals are free to endorse hate crime laws without worry that the laws punish thoughts, all citizens would do well to consider all things before endorsing an expansion of the coercive power of the state.⁴⁰

I am grateful to the Blumenfeld Center for Ethics at Georgia State University for the opportunity to participate in a conference on hate crime legislation in the spring of 2000. Thanks are due to the participants in that conference, and to the following people for helpful comments: Andrew Altman, Kenneth Baynes, Dan Kahan, and the participants in colloquia at which I presented drafts of this article, as well an anonymous reviewer for this journal.

Notes

¹For an overview of hate crime laws, see Dillof (1997).

²The legislation often also provides funds necessary for the prosecution of hate crimes and the gathering of statistics. The focus of this article is not on such provisions, but only on the penalty enhancement portion of the legislation.

³On the role of the Millian principle in this debate, see Kahan (2001).

⁴For arguments against hate crime laws on these grounds, see Gellman (1995).

⁵Those on the right will tend to reject laws that include homosexuality, and sex has been controversial as well. But national origin, religion, and race have enjoyed widespread support.

⁶Andrew Altman (2001) has tentatively supported hate crime laws on liberal grounds. Heidi Hurd (2001) and Anthony Dillof (1997) have emphatically rejected them on liberal grounds.

⁷There is the additional problem that some advocates of hate crime laws have argued against including bias-motivated violence against women as a variety of hate crime. "Twenty-one states have failed to include gender-motivated violence among those crimes meriting harsher punishment," according to Choundas (1995, 1071). Weisburd and Levin note that "[t]he Hate Crimes Statistics Act of 1990 also excluded gender" (1994, 34). See also Rothschild (1993, 269–278) and Taylor (1996). One reason given for not including crimes against women in the category of hate crime is that those who commit gender crimes (such as rape, battery, or murder) tend to know their victims well and thus seem not to have animus toward all women, or at least such animus does not seem to be the sole or primary motivation for their crimes.

⁸I count as feminist liberals those who seek to reconcile key considered convictions of feminism and liberalism. For example, see the work of Okin (1989), Nussbaum (2000), Hampton (1993), Lloyd (1998), McClain (1992), Phillips (1992), and Cornell (1998). On feminist liberalism, see Baehr (forthcoming).

⁹As a moral matter, feminist liberals may of course take strong stands against the content of a hate criminal's thoughts. The question is, however, whether feminist liberals can, as a political matter, endorse the use of state power to punish citizens more harshly when those citizens' crimes are motivated by animus toward a victim's group membership.

¹⁰See Jaggar (1983) for one of the most influential articulations of this claim.

¹¹A significant portion of criminal cases are resolved through plea bargaining. In plea bargaining, the bargaining position of the defendant is inversely proportional to the harshness of the punishment a prosecutor may threaten. Because hate crime laws provide for harsher punishments, they decrease the bargaining position of defendants. Thus to those who believe that prosecutors already have enough, or too much, power,

hate crime laws seem problematic. Also, for an argument suggesting that minorities are more likely to be targeted by prosecutors wielding hate speech ordinances that apply equally to majority-on-minority and minority-on-majority abuses, see Strossen (1990).

¹²On these issues, see also Card (2001).

¹³Of course, a positive answer to the all-things-being-equal question will not be sufficient for endorsing a practice. This point becomes important in my conclusion.

¹⁴For an example of such a view, see Scanlon (1971).

¹⁵This is, of course, Mill's famous principle.

¹⁶For an example of such a view, see Rawls (1993).

¹⁷For a discussion of the complex relationship between feminism and pluralism, see Okin (1999) and Baehr (forthcoming).

¹⁸A doctrine is comprehensive when it recommends a way of life, a set of social roles, or a conception of political justice that, while surely attractive to its adherents, cannot be expected to be endorsed by a wide variety of citizens in a pluralistic society (see Rawls 1993, 13).

¹⁹Gender hierarchy is not capable of public justification. But this should not be confused with the libertarian feminist position that says that no distinctions based on gender are ever justifiable. Distinctions based on gender, or race, for that matter, are consistent with liberalism when they are supportable using public reasons. My view on this matter is that of Ronald Dworkin in his "Why Bakke Has No Case" (1977).

²⁰Nussbaum (2000) and others have argued, however, that liberalism must be rethought with an eye to the concerns of women traditionally excluded from liberal theory. On transforming liberalism see also Thompson (1993) and Koggel (1998).

²¹On feminist perfectionism in general, see Yuracko (1995, 2002). On feminism's relationship to liberalism and perfectionism, see also Exdell (1994).

²²On the expressive function of hate crime laws, see Kahan (2001).

²³Although I do not know what Catharine MacKinnon's view of hate crime legislation is, it is clearly her view that because liberal neutrality is a sham, feminists should use the law unabashedly to further their ends. See MacKinnon (1993, 1989).

²⁴Kahan draws here on Carol Steiker's (1999) work.

²⁵For a discussion of the 'true man doctrine' with an eye toward comparing it to hate crime laws, see Steiker (1999).

²⁶Victoria Nourse (1998) makes something like this claim.

²⁷I thank both Andrew Altman and Dan Kahan for correspondence on this point.

²⁸On a traditional Catholic response to liberalism, see White (1997).

²⁹The Supreme Court took this position in *Wisconsin v. Mitchell* (1993).

³⁰On the superficiality of the concept of harm, and the controversy it often masks, see Kahan (1999).

³¹Of course it is possible that the laws are ultimately justified in ways other than what their proponents propose.

³²For an insightful, but skeptical, treatment of hate crime laws focused on the concepts of harm and culpability, see Dillof (1997).

³³In section III I explain how hate creates culpability without running afoul of liberal worries about criminalizing thoughts.

³⁴For example, in 1998 African Americans were six times more likely to be victims of murder than Whites (<http://www.census.gov/prod/2001pubs/statab/sec05.pdf>).

³⁵Abbey Mueller (1993) makes a similar suggestion when she writes: "Hate crimes are distinguished from underlying crimes by the additional intention to intimidate, not merely by the actor's motivation for choosing a victim." However, Mueller thinks that "the best way to translate the real purpose of hate crimes into legislation would be to remove the word 'motive' from the statutes [because] the use of 'motive' raises constitutional questions and it is really the intent to send an intimidation message that distinguishes the crime, not 'why' the actor chose his victim" (632). I believe that we need not show that there was a separate, specific intent to intimidate, however. On my view, the intent to harm someone because of her/his membership in a group with a history of oppression (the general intent to commit what constitutes what I'm calling subordination) is

itself an especially proscribable act. And knowing the actor's motive is crucial to knowing whether the act was one of violent subordination.

³⁶ Amar cites *The Civil Rights Cases* (1883).

³⁷ In *Wisconsin v. Mitchell* (1993) the Supreme Court supported the application of hate crime laws against Blacks for bias-motivated violence against Whites.

³⁸ On this issue see also Altman (2001).

³⁹ I thank Andrew Altman for this point.

⁴⁰ Besides recommending enhanced penalties, hate crime laws generally provide funds necessary for states to collect data on the frequency of hate crimes and funds that enable local authorities to prosecute crimes thoroughly. These functions of hate crime laws can, to my mind, be much more easily endorsed. In addition, the state wields not only coercive, but also persuasive, power. Clearly it is important for the state, using the bully pulpit, to work toward racial reconciliation, respect for women, and the acceptance of gays and lesbians as having full human dignity.

Works Cited

- Altman, Andrew. 2001. The Democratic Legitimacy of Bias Crime Laws: Public Reason and the Political Process. *Law and Philosophy* 20(2):141–73.
- Amar, Akhil Reed. 1992. The Case of the Missing Amendments: *R.A.V. v. City of St. Paul*. *Harvard Law Review* 106:124–61.
- Baehr, Amy. ed. Forthcoming. *Varieties of Feminist Liberalism*. New York: Rowman and Littlefield.
- Card, Claudia. 2001. Is Penalty Enhancement a Good Idea? *Law and Philosophy* 20(2): 195–214.
- Choundas, George P. 1995. Neither Equal nor Protected: The Invisible Law of Equal Protection, the Legal Invisibility of Its Gender-Based Victims. *Emory Law Journal* 44:1069–85.
- The Civil Rights Cases*. 109 U.S. 3, 35–6 (1883) (Harlan, J., dissenting).
- Cornell, Drucilla. 1998. *At the Heart of Freedom: Feminism, Sex, and Equality*. Princeton: Princeton University Press.
- Dillof, Anthony M. 1997. Punishing Bias: An Examination of the Theoretical Foundations of Bias Crime Statutes. *Northwestern University Law Review* 91:1016–81.
- Dworkin, Ronald. 1977. Why Bakke Has No Case. *New York Review of Books* 24:11–15.
- Exdell, John. 1994. Feminism, Fundamentalism, and Liberal Legitimacy. *Canadian Journal of Philosophy* 24(3):441–63.
- Gellman, Susan. 1995. Hate Crime Laws after *Wisconsin v. Mitchell*. *Ohio Northern University Law Review* 21:863–70.
- Hampton, Jean. 1993. Feminist Contractarianism. In Louise M. Antony and Charlotte Witt, eds., *A Mind of One's Own*, 227–55. San Francisco: Westview Press.
- Harel, Alon, and Gideon Parchomovsky. 1999. On Hate and Equality. *Yale Law Journal* 109:507–39.
- Hurd, Heidi. 2001. Why Liberals Should Hate Hate Crime Legislation. *Law and Philosophy* 20(2): 215–32.
- Jaggard, Alison. 1983. *Feminist Politics and Human Nature*. New York: Rowman and Littlefield.
- Kahan, Dan M. 1999. The Secret Ambition of Deterrence. *Harvard Law Review* 113:413–500.
- Kahan, Dan M. 2001. Two Liberal Fallacies in the Hate Crimes Debate. *Law and Philosophy* 20(2):175–93.
- Koggel, Christine. 1998. *Perspectives on Equality*. Lanham, Md.: Rowman and Littlefield.
- Lloyd, Sarah. 1998. Toward a Liberal Theory of Sexual Equality. *Journal of Contemporary Legal Issues* 9:203–23.
- MacKinnon, Catharine. 1987. *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard University Press.
- MacKinnon, Catharine. 1989. *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press.

- MacKinnon, Catharine. 1993. *Only Words*. Cambridge: Harvard University Press.
- McClain, Linda. 1992. "Atomistic Man" Revisited: Liberalism, Connection, and Feminist Jurisprudence. *Southern California Law Review* 65(3):1171-1264.
- Mueller, Abby. 1993. Can Motive Matter? A Constitutional and Criminal Law Analysis of Motive in Hate Crime Legislation. *University of Missouri at Kansas City Law Review* 61:619-32.
- Nourse, Victoria. 1998. The New Normativity: The Abuse Excuse and the Resurgence of Judgment in the Criminal Law. *Stanford Law Review* 50:1435-69.
- Nussbaum, Martha C. 1999. *Sex and Social Justice*. New York: Oxford University Press.
- Nussbaum, Martha C. 2000. The Future of Feminist Liberalism. *Proceedings of the American Philosophical Association* 74(2):47-79.
- Okin, Susan Moller. 1989. *Justice, Gender, and the Family*. New York: Basic Books.
- Okin, Susan Moller. 1999. *Is Multiculturalism Bad for Women?* Princeton: Princeton University Press.
- Phillips, Anne. 1992. Must Feminists Give up on Liberal Democracy? *Political Studies* 40:68-82.
- Pollitt, Katha. 1999. Hate Crimes Legislation. *The Nation* 269(18) (November 29):10.
- Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.
- Rothschild, Eric. 1993. Recognizing Another Face of Hate Crimes: Rape as a Gender-Bias Crime. *Maryland Journal of Contemporary Legal Issues* 4(2):231-85.
- Scanlon, Thomas. 1971. A Theory of Freedom of Expression. *Philosophy and Public Affairs* 1(1):203ff.
- Steiker, Carol S. 1999. Identity and Equality: Punishing Hateful Motives. Old Wine in a New Bottle Revives Calls for Prohibition. *Michigan Law Review* 97:1857-83.
- Strossen, Nadine. 1990. Regulating Racist Speech on Campus: A Modest Proposal? *Duke Law Journal*: 483-572.
- Taylor, Kristin L. 1996. Treating Male Violence against Women as a Bias Crime. *Boston University Law Review* 76:575-603.
- Thompson, Janna. 1993. What Do Women Want? Rewriting the Social Contract. *International Journal of Moral and Social Studies* 8(3):257-72.
- Weisburd, Steven Bennett, and Brian Levin. 1994. 'On the Basis of Sex': Recognizing Gender-Based Bias Crimes. *Stanford Law and Policy Review* 5:21-47.
- White, Michael J. 1997. *Partisan or Neutral? The Futility of Public Political Theory*. New York: Rowman and Littlefield.
- Wisconsin v. Mitchell*. 508 U.S. 476; 113 S. Ct. 2194 (June 11, 1993).
- Yuracko, Kimberly A. 1995. Toward Feminist Perfectionism: A Radical Critique of Rawlsian Liberalism. *UCLA Women's Law Journal* 6(1):1-48.
- Yuracko, Kimberly A. 2002. *Perfectionism and Contemporary Feminist Values*. Indianapolis: Indiana University Press.