



Legal Insurrection

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Hate crimes laws go both ways

Posted by [William A. Jacobson](#) Saturday, February 25, 2012 at 9:42am

Can lesbians be charged with a hate crime for beating up a gay man?

Why not? Once we make motive an element of a crime, it goes both ways, and all ways.

So a Jew can be guilty of an anti-Jewish hate crime, a black of an anti-black hate crime, and in this case in Boston, three lesbians of an anti-homosexual hate crime for calling a gay man names while beating him up.

Via [The Boston Herald](#):

Three women identified by their lawyers as lesbians were arraigned yesterday on a hate crime charge for allegedly beating a gay man at the Forest Hills T station in an unusual case that experts say exposes the law's flawed logic.

"My guess is that no sane jury would convict them under those circumstances, but what this really demonstrates is the idiocy of the hate-crime legislation," said civil liberties lawyer Harvey Silverglate. "If you beat someone up, you're guilty of assault and battery of a human being. Period. The idea of trying to break down human beings into categories is doomed to failure."

Prosecutors and the ACLU of Massachusetts said no matter the defendants' sexual orientation, they can still face the crime of assault and battery with intent to intimidate, which carries up to a 10-year prison sentence, by using hateful language.

"Someone who is Jewish can be anti-Semitic," said ACLU staff attorney Sarah Wunsch. "The mere fact that someone is a member of the same class doesn't mean they could not be motivated by hatred for their very own group."

This is the definition of [hate crime](#) in Massachusetts:

"Hate crime", any criminal act coupled with overt actions motivated by bigotry and bias including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by racial, religious, ethnic, handicap, gender or sexual orientation prejudice, or which otherwise

deprives another person of his constitutional rights by threats, intimidation or coercion, or which seek to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation....

By the wording, it would seem that if a lesbian were prejudiced against gay men, and committed a crime against the person while acting on that prejudice, that would qualify.

[Silvergate](#) is an interesting guy. He's a [co-founder](#) of [F.I.R.E.](#) and an adjunct scholar at the CATO Institute. He's also right about how easy it is to end up with absurd results when the criminal law gets tangled in motives as opposed to acts.

It's not an easy position to take because opposing hate crimes law opens one up to the false allegation of being in favor of the acts constituting the crimes.

But given two identical crimes, why should one victim be deemed more worthy of greater protection not based on the status of the victim (e.g. a child) but based on the motive of the perp?