

# == Chapter 1 ==

## Introduction: The Hate Crime Agenda

As THE *National Law Journal* has noted, the 1990s may go down in history as the “decade of hate—or at least of hate crime” (Rovella 1994, A1). Although it remains an open question whether America is actually experiencing greater levels of hate-motivated conduct than it has in the past, it is clear that the ascendancy of hate crime as a concept in policy discourse has focused attention on the behavior in a new way. It is an age-old problem approached with a new conceptual lens and sense of urgency. During the 1980s and 1990s, multiple social movements began to identify and address the problem of discriminatory violence directed at minorities. Federal, state, and local governments instituted task forces and commissions to analyze the issue. Legislative campaigns sprang up at every level of government. New sentencing rules and categories of criminal behavior were established in law. Prosecutors and law enforcement officials developed special training policies and specialized enforcement units (Kelly 1993). Scholarly commentary and social science research on the topic exploded. The U.S. Supreme Court weighed in with its analysis of the laws in three highly controversial cases. In the process, criminal conduct that was once undistinguished from ordinary crime has been parsed out, redefined, and condemned more harshly than before.

These extraordinary developments attest to the growing concern with, visibility of, and public resources directed at violence motivated by bigotry, hatred, or bias. They reflect the increasing acceptance of the idea that criminal conduct is “different” when it involves an act of discrimination. Hate crime has clearly secured a place in the American public sphere and the “social problems marketplace” (Best 1990; Hilgartner and Bosk 1988). As this process unfolds, it is as timely as it is important to ask how we got here. Why did the reconceptualization

of intergroup violence as hate crime emerge at this particular historical moment? Why has it come to signify the range of biases and behaviors that it has? How has the way in which hate crime has been conceptualized affected our ability to respond to violence in the United States?

## The Hate Crime Policy Domain

That the use of the term “hate crime” is now commonplace in settings as diverse as prime-time television, the evening news, academic conferences, and presidential proclamations reflects the success of the anti-hate-crime movement and subsequent policy making. In a short period of time, hate crime has arrived as a political, media, and scholarly category. To those who have promoted and embraced it, the concept of hate crime evokes drama, passion, and righteousness, and it signifies human tendencies toward tribalism and the historic challenges to freedom and equality faced by minority groups. It is a reminder of the shameful and vivid episodes of racism, anti-Semitism, nativism, xenophobia, homophobia, misogyny, and other forms of discrimination and brutality of our collective and recent past.

A seemingly simple pairing of words—“hate” and “crime”—creates a signifier that conveys an enormous sense of threat and an attendant demand for response. With regard to the former, advocates have portrayed the problem as increasing, even reaching “epidemic” proportions.<sup>1</sup> As for the latter, war metaphors are frequently used to describe the desired response. For example, during the Persian Gulf war, President George Bush drew a parallel between the actions of Saddam Hussein and hate crimes: It is “a sad irony,” he noted, “that while our brave soldiers are fighting aggression overseas, a few hate mongers here at home are perpetrating their own brand of cowardly aggression. These hate crimes have no place in a free society and we are not going to stand for them” (George Bush, “State of the Union Address,” *New York Times*, February 1, 1990, D22). More recently, President William J. Clinton has called for an expansion of hate crime laws as “what America needs in our battle against hate” (Sullivan 1999, 52).

From the beginning, however, discussions of what to do about bias violence have been inextricably linked to considerations of law and policy rather than military confrontation. Hate violence politics is, first and foremost, a law-centered politics. As Representative Mario Biaggi (D-N.Y.) argued during an early congressional debate on hate crime, “The obvious point is that we are dealing with a national prob-

lem and we must look to our laws for remedies" (*Congressional Record* 1985, 19844). More than a decade later, New York governor Mario Cuomo argued that "as government, our single most effective weapon [against hate crime] is law" (cited in Jacobs 1998, 169). In the war on hate violence, criminal law, rather than domestic military intervention, educational programs, media campaigns, or community activism, has been the primary weapon of choice.

Centering the discussion of hate-motivated violence on law means that the key questions concern how to craft a legal definition of hate crime, focusing attention on which forms of law and policy are justifiable, likely to be effective, and constitutional. In the early 1980s, state lawmakers throughout the United States put forward a novel legal strategy: the reclassification and enhancement of penalties for criminal acts stemming from certain kinds of bias. These laws have since spread to nearly every state in the union. By the middle of the 1980s, federal lawmakers were considering legislation to add hate crime to federal crime data collection laws. Since then, several pieces of federal hate crime legislation have been passed, forming an increasingly elaborate system of federal laws on the subject. More appear likely to follow in the near future.

Ironically, throughout these legislative campaigns, the symbolic dimensions of both hate crimes and hate crime policies have been highlighted. According to proponents of hate crime law, hate-motivated violence is different from other crime because it is not only an act of brutality and violence against an individual victim, but it also transmits a terrorizing symbolic message to the victim's community. As John Conyers (D-Mich.), the congressional representative most responsible for initiating federal hearings on the issue, has explained, "Hate crimes, which can range from threats and vandalism to arson, assault, and murder, are intended to not just harm the victim, but to send a message of intimidation to an entire community of people" (*Congressional Record* 1988, 11393). In effect, hate crimes have two kinds of victims, individuals and their communities. This broadening of the parameters of victimization associated with hate crime serves to justify enhanced penalties and other governmental policy responses (Lawrence 1999).

Hate crime policies are also partly justified on symbolic grounds. They are designed to transmit the symbolic message to society that criminal acts based upon hatred will not be tolerated. As Conyers notes, "Enactment of such legislation will carry to offenders, to victims, and to society at large an important message, that the Nation is committed to battling the violent manifestations of bigotry" (Con-

gress 1985a, 62). Thus, the symbolic spirit of hate crime policy is to affirm principles of tolerance and to reassure the actual and potential victims of bias-motivated violence that their safety will be protected.

Fueling these policy changes is a steady stream of incidents that have been easily incorporated into and analyzed under the rubric of hate crime in the popular media. Examples from the last decade are easy to come by: repeated attacks on African Americans who moved into a predominately white neighborhood in Philadelphia; attacks by neighborhood youths on families of Cambodian refugees who fled to Brooklyn; the beating death of a Chinese American because he was presumed to be Japanese; the harassment of Laotian fishermen in Texas; the brutal attack on two men in Manhattan by a group of knife- and bat-wielding teenage boys shouting "Homos!" and "Fags!"; the assault on three women in Portland, Maine, after their assailant yelled antilebian epithets at them; the stalking of two lesbian women while they were camping in Pennsylvania, including the brutal murder of one of them; the gang rape, with bottles, lighted matches, and other implements, of a gay man who was repeatedly told that he was getting "what faggots deserve"; the stabbing to death of a heterosexual man in San Francisco because he was presumed to be gay; and the gang rapes of a female jogger in Central Park and a mentally handicapped teenager in Glen Ridge, New Jersey (Sheffield 1992).

In 1998—the year this book was in progress—three highly publicized cases of homicide occurred in which the victims appeared to have been chosen because of a social characteristic. Each of these cases provided a platform for renewed public discussion of the meaning of hate crime and the responsibility of law to recognize the difference between hate crime and "ordinary crime." The first was the murder of James Byrd Jr. in Jasper, Texas, in June 1998. This event, covered extensively in the national media, presented the murder as a hate crime after it was revealed that Byrd, a forty-nine-year-old black man, had been beaten, and then dragged behind a truck until he died, by three white men known to be affiliated with a white supremacist group. Despite this construction, which has been promoted by leading civil rights groups, the case was not prosecuted under the Texas hate crime law. Although publicly understood as a hate crime, in legal terms the incident was defined as aggravated homicide. The maximum penalty for the murder could not have been enhanced because aggravated homicide is a capital crime; however, in the eyes of many, Texas's decision not to charge the offenders with a hate crime signaled a failure of the legal system to correctly identify and therefore hold out for public condemnation the evil that had precipitated the

crime. More recently, the murder of Matthew Shepard, a young gay man who was pistol-whipped, tied to a fence, and left to die, was treated as a hate crime by the national news media and immediately inspired federal hearings to pass yet another piece of hate crime legislation in the United States. However, like the Byrd case, it was not prosecuted as a hate crime because Wyoming is one of a handful of states that currently has no hate crime law on the books. Thus, both cases have evoked the notion of hate crime and triggered demands that the coverage of hate crime law be extended and rendered more uniform.

In contrast with these two incidents, the murder of four young girls in a Jonesboro, Arkansas, school yard in March 1998 generally has not been viewed as a hate crime, despite the revelation that the young boys in custody for the killings sought to shoot girls because it was girls that angered them. That is, they selected their victims on the basis of gender. *Time* magazine referred to it as a "youth crime," and *Newsweek* called it "schoolyard crime" (Labi 1998; McCormick 1998). Because of this framing, the incident triggered a different set of legal and policy discussions, most often presented in terms of school violence and the debate over gun control (J. R. Moehring, "Boys Sentenced for Arkansas School Murders," *Los Angeles Times*, August 12, 1998, A1).

The fact that the events in Jasper and Laramie were interpreted as hate crimes and that the event in Jonesboro was not reveals a key aspect of the contested terrain of hate crime: that who and what is included is a matter of interpretation, legal and otherwise. Yet how those interpretations are formed, how some persons and some behaviors become considered eligible for inclusion, and how law is shaped in light of diverse interpretations is a fundamentally political process. Whereas other research focuses on determining the causes, manifestations, and consequences of intergroup violence, hate-motivated violence, and hate crimes (see, for example, Baird and Rosenbaum 1992; Barnes and Ephross 1994; Green and Rich 1998; Green, Strolovitch, and Wong 1998; Pinderhughes 1993), we examine hate crime as a specific policy domain. Our view is that what we are witnessing is a broad phenomenon: the birth and formation of an entire domain of public policy. Accordingly, the way this policy domain has emerged—its key players, practices, and substantive focus—forms the backdrop against which the behavior and consequences of hate crime can be best understood. To understand what hate crime has come to mean we must understand the political processes that allowed it to become a meaningful category in the first place.

Throughout this study we frequently refer to hate crime as a policy domain. As Paul Burstein notes in a review of the literature on the formation and evolution of policy domains, “sociologists interested in politics have increasingly turned in recent years to the study of policy domains.” The term policy domain denotes “components of the political system organized around substantive issues” (1991, 328, 327).<sup>2</sup> Policy domains are fundamentally rooted in definitional and classification schemes that are properly characterized as “social constructions.” This means that the substantive focus and boundaries of policy domains are not based upon inherent qualities of “problems.” Instead, the distinctions reflect evolving and prevailing dominant modes of conceptualizing issues. Such distinctions are routinely revealed as “constructed” by problems that stretch across boundaries. For example, education, employment training, and crime policies are usually seen as distinct policy domains with different core interest groups, policy theories, and state agencies at work to address these issues, despite the fact that education, employment, and criminality are empirically intertwined phenomena. Recognizing that policy domains are rooted in social constructions does not, however, mean that the social conditions they address are not real or, by extension, that the social facts and attendant suffering underlying a problem are only illusory. Rather, it merely acknowledges that the way problems are defined and the responses they elicit are contingent upon available frameworks of meaning that actors appropriate and deploy in key institutional settings.<sup>3</sup>

Our orientation to the dynamics of policy domains implies that the causes and consequences of a social problem cannot be fully comprehended apart from an understanding of the larger processes that identified, defined, and ultimately generated the problem. More specifically, the term policy domain refers to two things. First, it refers to the range of collective actors—for example, politicians, experts, agency officials, and interest groups—who have gained sufficient legitimacy to speak about or act upon a particular issue. Second, it refers to the cultural logics, theories, frameworks, and ideologies those actors bring to bear in constructing and narrating the problem and the appropriate policy responses.

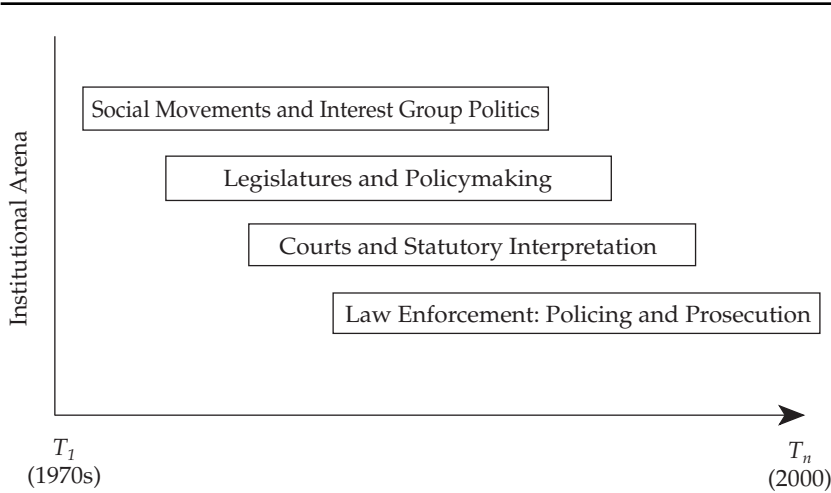
The culture and structure of a policy domain is organized in four overlapping phases: issue creation, the point at which a problem is recognized, named, and deemed in need of a solution; the adoption of a particular policy solution from a range of alternatives; the rule-making phase, in which government officials and the courts “flesh out” the precise meaning of the policy; and, finally, the classification and

application of the rules by enforcement agents to specific “real world” circumstances. Thus, policy making occurs not just at the moment of legislative enactment; it is renegotiated and redefined at multiple points. In the process, the problem is similarly renegotiated and redefined. Thus, the “problem” is as much a consequence of how the policy domain is organized as it is a cause of its construction.

Across these four phases of the policy-making process, hate crime is likely to be understood differently over time, across space, and across institutional locations that constitute the policy domain. Temporal, spatial, and institutional variation in the meaning of hate crime occurs because the formation of a policy domain is rooted in the social processes of innovation, diffusion, and institutionalization. That is, the social construction of hate crime and its official responses diffuse across jurisdictional and geographical space and across the “streams” of the policy-making process. This phenomenon is contingent upon institutionalization, the process by which the meanings and practices that constitute hate crime stabilize, become cognitively taken for granted by actors, and attain a high level of normative consensus (Meyer and Rowan 1977; Powell and DiMaggio 1991; Zucker 1987).

From this perspective, the appropriate target of analysis of an emergent social problem like hate crime is not the horrifying incidents that reach the public consciousness (though those are certainly worthy of examination); rather, it is the social processes that generated and sustained the problem as a framework for understanding such incidents. Accordingly, in the pages that follow we show how the concept of hate crime emerged, how its meaning has been transformed across multiple segments of the policy domain, and how it became institutionalized. Figure 1.1 summarizes this approach.

We show how social movements constructed the problem of hate-motivated violence, how politicians—at both federal and state levels—passed legislation defining the parameters of hate crime, how courts have elaborated the meaning of hate crime, and how law enforcement officials classify, investigate, and prosecute that behavior which is defined by statute as criminal. Throughout, we take a fundamentally sociological approach, one most heavily informed by the work of political scientists, criminologists, and sociolegal scholars. This approach allows us to examine how specific policy decisions relate to the broader social forces that surround them, which in turn allows us to reveal the social processes that have resulted in the production of hate crime and hate crime policy, both within and outside of the justice system.

**Figure 1.1 Summary of Select Institutional Spheres of Policy Activity on Hate Crime**

*Source:* Authors' compilation.

## Theoretical Underpinnings

The broader theoretical context for this work derives from social constructionist, social movement, and institutionalist literatures on social problems and policy solutions. Although each perspective is deployed throughout the book, here we offer a brief overview for readers who are not familiar with these perspectives.

All policy domains emerge from the process of issue creation. For a social condition to become a public issue, some group of persons must first define it as a problem requiring an organized response (Burstein 1991, 331). How public issues are created and defined is a key question addressed by constructionist social problems scholars. Over the past three decades the social constructionist approach to social problems has constituted the dominant paradigm for research and theory in the area (Schneider 1985, 210; compare, Goode and Ben-Yehuda 1994). It has generated an enormous body of empirical studies on a wide range of social conditions, including alcohol and driving (Gusfield 1963, 1967, 1975, 1976, 1981), hyperactivity (Conrad 1975), child abuse (Best 1987, 1990; Coltrane and Hickman 1992; Johnson 1989; Pfohl 1977), acquired immunodeficiency syndrome (AIDS) (Albert 1986, 1989), alcoholism (Chauncey 1980), cigarette smoking (Markle and Troyer 1979), crime (Fishman 1978), rape (Rose 1977), homosexuality (Spector 1977), premenstrual syndrome (Rittenhouse



1992), chemical contamination (Aronoff and Gunter 1992), drug abuse (Orcutt and Turner 1993), satanism (Richardson, Best, and Bromley 1991), and prostitution (Jenness 1990, 1993, 1996). Rather than focusing on the causes and correlates of the behavior or condition, however, this work explores the claims-making activities and efforts of experts, the media, politicians, legal officials, activists, religious leaders, and other actors and organizations who define such conditions as problematic (that is, a social problem).

Consistent with constructionists' commitment to analyzing "the interpretive processes that constitute what comes to be seen as oppressive, intolerable, or unjust conditions" (Miller and Holstein 1993, 4), our examination of hate crime focuses on how the actors operating within the spheres summarized in figure 1.1 narrate specific acts of violence and specific types of people as victims of such conduct. As is the case with most social conditions that achieve the status of a social problem, the victims of hate crimes have been rendered apparent in this process. The construction of victims unfolds according to a well-established pattern. Persons who have been unjustly harmed or damaged by forces beyond their control are labeled victims and hence interpreted as deserving of support and protection (Holstein and Miller 1990; Weed 1995). In the case of hate crime, we can now point to racial minorities who are victimized by racially motivated violence, Jews who are victimized by anti-Semitism, gays and lesbians who are harmed by violence motivated by homophobia, and women who are harmed simply because they are female. In each case, individuals clearly suffer from psychological and physical harm born of exogenous conditions. However, it is only recently that these types of harms have been deemed sufficient to warrant specific legal protection against bias-motivated hatred; and who is deemed a victim worthy of policy response is time specific and institutionally qualified. In light of this, in this book we identify the processes by which such victim status has been and continues to be constructed as a function of a criminal act and institutionalized as a large-scale social problem with particular—and routinely changing—features.

Constructionists are particularly interested in understanding the definitional processes that result in the assignment of victim status to some individuals and groups but not to others. Such processes are critical to our understanding of social problems insofar as victim status, once designated, carries with it distinct understandings of the social relations that surround the individual as well as his or her relationship to a larger social problem. Among other things, the label of victim underscores the individual's status as an injured person who is harmed because of forces beyond his or her control; dramatizes the

injured or harmed person's essential innocence; renders him or her worthy of others' concern and assistance; and often evokes calls for legal reform designed to address the attendant social problem (Holstein and Miller 1990; Weed 1995). John Leo (1989) recognizes the benefit of victim status in his *U.S. News and World Report* article entitled "The Politics of Hate." "More and more aggrieved groups," he writes, "want to magnify their victim status. This is one of the little intergroup truths nobody talks about: The more victimized you seem, the more political leverage you have. But you cannot win the victimization Olympics without lots of plain hard work" (Leo 1989, 24). This book documents that work as it relates to hate crime.

In light of the constructionist formulation of social problems as projections of collective sentiments rather than simple mirrors of objective conditions (Best 1999; Holstein and Miller 1989, 1990; Mauss 1975; Spector and Kitsuse 1977; Miller and Holstein 1993), understanding the construction of emergent and institutionalized victimization requires not so much a focus on objective harm as a focus on the categorization processes and institutional workings that bestow victim status upon select groups and individuals at particular points in time. Accordingly, in this work we do not devote analytic attention to assessing the factual characteristics of victims, nor are we concerned with determining which types of harm should or should not constitute a hate crime and qualify as bias-motivated victimization. Rather, our focus is on processes of recognition, categorization, and institutionalization through which some types of people get social recognition as victims and some types of events are deemed hate crimes. This approach to understanding victimization departs radically from conventional formulations of the victimization process insofar as it allows us to reconceptualize victimization in terms of interactional, discourse, and institutional practices.

One way (some would say the dominant way) in which social conditions come to be seen as social problems and injured people are, at least initially, recognized as victims is through the work of social movements (Gerhards and Rucht 1992; Mauss 1989; Troyer 1989; Goode and Ben-Yehuda 1994; Holstein and Miller 1989; Miller and Holstein 1993). As early as 1975, Armand Mauss (1975, 38) presented the case for considering "social problems as simply a special kind of movement." This case rests in large part on the proposition that the characteristics of social problems are typically also those of social movements, and social problems are always outcomes of social movements. Mauss (1989, 33) argues that "because claims-making activities are indistinguishable from social movements activities, social problems are indistinguishable from social movements." In this formulation, the study of social movements and the study of social problems

are rendered compatible through an examination of the genesis of social movements, the organization, mobilization, and natural history of a social movement, and the decline and legacy of the social problem it seeks to redress.

More recently, in *Social Problems & Social Movements*, Harry Bash (1995, xiii–xiv) argues that “what is addressed as the Social Movement, in the one instance, and what is targeted as a host of social problems, in the other, may not reflect distinctive sociohistorical phenomena at all.” Although we recognize that not all agree with this position, we nonetheless find it useful to employ this conceptualization in this work.<sup>4</sup> This allows us to focus on social movement organizations as a key source of claims-making activity that has proved consequential for the development of the policy domain under study. Indeed, no fewer than five major social movements (examined later in this chapter) are implicated in the study of hate crime.

Finally, this work draws on and elaborates institutional analysis. Walter Powell and Paul DiMaggio (1991, 3) recognize that “there are in fact many new institutionalisms—in economics, organization theory, political science and public choice, history, and sociology.” However, we draw on the sociological variant of institutional analysis.<sup>5</sup> Sociological institutionalism rejects the reductionist impulse of much social science theory, which is based on the idea that the organization of social, economic, and political activities is ultimately attributable to the aggregation of individual interests and choices, the level of technological or economic development, or the social and demographic composition of society (Powell and DiMaggio 1991; Schneiberg and Clemens 1999). From an institutionalist perspective, the way activities within these spheres are organized is highly contingent upon broadly held cultural theories and rules, which generate templates, schemas, and models of organization—that is, institutions.

Institutions have cognitive, normative, and regulatory mechanisms that affect the organization of social practices. Cognitively, institutions create patterned social action by supplying actors with basic constructions of reality so that the way a particular activity is organized seems obvious, natural, and appropriate. Normatively, institutions operate by attaching positive or negative informal social sanctioning to conformity and violation of the underlying cultural rule—that is, penalties for transgressing an institution are paid in the currency of legitimacy. Finally, regulatory mechanisms operate through formal sanctioning procedures—usually carried out by superior organizations like the state or a professional association—that enforce institutionalized rules by restricting specific organizations’ access to social goods.

Thus, central research questions in institutionalism concern how

and why economic, social, and political organizations assume particular forms. From an institutional perspective, organizational design results more from a process of conforming to supraorganizational models than from the internal characteristics of an organization or efficiency, the needs of the organization's service population, or a rational calculation of the costs and benefits of one form or another. Institutionalism has been primarily concerned with the analysis of the diffusion of organizational forms (that is, the spread of particular organizational practices across fields of organizations). In the aggregate, institutionalism notes that one by-product of diffusion is a striking homogenization of organizational forms both within and across sectors of society (Grattet, Jenness, and Curry 1998; Powell and DiMaggio 1991; Strang and Meyer 1993).

Applied to the design of governmental and political organizations, institutionalism has several implications. First, it suggests that policy formation is substantially determined by intergovernmental processes and developments, such as the endorsement of a particular policy model by a powerful interstate organization, galvanizing period-specific events that dramatize the need for a policy response, and the formation of interstate social networks that channel the communication of models across social space. Second, policy domains are characterized by temporal homogenization. That is, over time units come to adopt similar organizational models. Institutionalism points to specific variables—such as “cultural linkages” (Strang and Meyer 1993), number of prior adopters, and interorganizational networks—that affect the rate of diffusion and thus help to account for why some units adopt policies early and others not until later. Third, increasingly, the taken-for-grantedness of a particular policy approach is reflected in the discourse of official actors (Dobbin 1994); debate and discussion diminish as actors converge around a set of policy practices and definitions of problems. Fourth, over time the role of collective action in sustaining policy definitions diminishes; a policy formula takes on a life of its own and no longer requires active promotion by particular collective actors. Finally, moments in the policy-making process, from formulation, agenda setting, and adoption to enforcement, are “decoupled.” That is, practices, definitions, and categories are used differently across phases of the policy-making process (Meyer and Rowan 1977).

We invoke these theoretical resources for the purpose of understanding hate crime as a policy domain with three audiences in mind. First, we hope to speak to social scientists interested in the development and organization of policy domains, processes of institutionalization, and the creation and content of law. As social scientists, we

situate the work that follows in a sociohistorical perspective and build a general framework for understanding hate crime as a political, legal, and policy concept. Second, consistent with the spirit of the Rose Series, of which this volume is a part, we have policy concerns in mind. Drawing from the sociological insight provided in the pages that follow, it is our aim to reflect on the nature of hate crime as a particular type of criminal activity, as well as the range of state responses to this particular type of conduct. As Burstein (1991, 330) has noted, "To explain policy outcomes, it is necessary to focus on policy domains." Third, and most important, we have tried to write this book in such a way that it speaks to the general public, or at least those interested in seeking to be informed about hate crime and to think critically about the topic as they participate in the multitude of responses to bias crime.

## Overview of the Book

Chapter 2 considers the question, "Why now?" Why did the hate crime policy domain emerge in the mid-1980s and 1990s in the United States, despite the fact that the conduct at issue has been around for centuries? By pointing to the historical precursors and the political developments that coincided with the formation of hate crime policies, we first discuss the social movements and discursive themes that animated the discovery of "hate crime" as a particular type of social problem and the development of policy responses to this problem. The modern civil rights movement, the contemporary feminist movement, the gay and lesbian movement, and the crime victim movement provided key organizational and ideational resources that facilitated the growth of an anti-hate-crime movement in the United States. Accordingly, we identify the key watchdog organizations that accompany and sustain the anti-hate-crime movement and, in so doing, bring newfound policy attention to select forms of violence. These historical sources fed into the early conceptualization of hate crime as a kind of violence and intimidation that victimized blacks, Jews, and immigrants. Later, gays and lesbians, women, and persons with disabilities were incorporated into the concept. Chapter 2 demonstrates how both liberal and conservative social movements and the public discussions they inspired provided the crucible for subsequent policy making that transformed hate-motivated violence into hate *crime*.

Chapter 3 addresses the question of how the social movement mobilization interfaced with the policy-making process to shape the official definition of hate crime in such a way that some forms of violence

are recognized and some are not. As with other kinds of policy reforms, the legislative conceptualization of hate crime emerged from the process by which proposals are introduced, managed, and accepted or rejected in legislative arenas as legislative debates occur, constituency interests are negotiated, and political wills are enacted. The emergence and evolution of three federal hate crime laws (the Hate Crime Statistics Act, the Violence Against Women Act, and the Hate Crimes Sentencing Enhancement Act) reveal that one of the most important elements of the substantive character of hate crime law—the adoption of select status provisions, such as race, religion, ethnicity, sexual orientation, gender, and disabilities—unfolded in such a way that some victims of discriminatory violence have been recognized as hate crime victims whereas others have gone unnoticed. In particular, people of color, Jews, gays and lesbians, women, and those with disabilities increasingly have been recognized as victims of hate crime, whereas union members, the elderly, children, and police officers, for example, have not. The difference between categories of victims that are included and those that are not reveals the crucial role social movements play in the early formulation of policy: those constituencies unconnected to a social movement that has effectively called attention to violence related to the category are not initially included. However, later in the process, social movement involvement in the formulation of the laws, through drafting, testifying, and campaigning for the legislation, is no longer critical.

The issue of what types of people and what types of conduct occupy center stage in the battle against bigotry is further developed in chapter 4. Here we explain the diffusion of hate crime laws across the United States. As with federal hate crime law, the central issue faced by state legislators was what exactly the laws should cover, in terms of both conduct and constituencies. Ultimately, conduct and constituency coverage is highly sensitive to the timing of adoption. Early on, there was little agreement about how the laws should be drafted and what they should cover. Later, in a pattern that is well known in policy diffusion research, states began to converge around a dominant basic approach to lawmaking that reflects an expanded conception of the types of activities that qualify as hate crime and the types of people who are vulnerable to hate crime. However, once that happened, successive adopters actually began to expand the coverage from the basic template, thereby embracing increasingly robust versions of the law. In concrete terms, as time went on, states adopted laws that covered more status categories and a wider array of conduct. As a result, laggard states, those who passed the laws later, ironically tended to employ a more expansive and progressive definition of hate crime.

Once a social movement concept is expressed in statute form, courts intervene to sharpen the meaning of the statutes. Accordingly, chapter 5 is devoted to understanding the evolution of the hate crime concept within judicial discourse. Across all appellate case law, including two U.S. Supreme Court cases, judicial opinions reflect the increasing “settledness” of hate crime laws. In the process, the judicial interpretations have rejected some meanings of the statutes and embraced others. As the concept of hate crime has become more settled, its meaning has become more nuanced and complex and its range of coverage more expansive. In particular, judges have created a foundation for hate crime laws that situates them within a broader body of antidiscrimination principles. This has helped resolve the highly controversial constitutional question of whether hate crime statutes punish motives by specifying, instead, that they punish acts of discrimination. The development of the case law mimics the dynamics uncovered in chapter 4 with respect to legislation. Thus, the institutionalization of the laws within judicial discourse is reflected in the convergence in the behavioral and motivational characteristics judges associate with hate crime. In other words, the case law suggests that judges increasingly agree about what hate crime is and how the law should be framed to respond to it and to pass constitutional challenges.

After legislatures and courts have spoken, legal concepts must be put into use in concrete day-to-day circumstances by officials on the front lines of the criminal justice system. As much research on law enforcement suggests, law enforcement officials—especially police and prosecutors—possess a considerable amount of discretion in their work. Chapter 6 addresses the way law enforcers wield this discretion in the policing and prosecution of hate crimes. With respect to policing, the consensus among researchers is that the awareness and enforcement of hate crime laws varies considerably from one jurisdiction to another. Not surprisingly, then, the general orders of California police and sheriff’s departments reveal substantial variation in the working definition of hate crime across policing units. Of course, discretion results in variation in enforcement behavior in all kinds of crime. Perhaps more important than the observation that there is variation in hate crime policing is the question of whether it is increasing or decreasing over time. Recent evidence suggests that variation in hate crime policing is decreasing and will likely continue to do so. Similar patterns are reflected in the prosecution of hate crime. Although some have suggested that hate crime laws are unenforceable, we show that prosecutors in California are not encountering any significant and consequential difficulties. Once cases are filed as hate

crimes, prosecutors obtain convictions at rates that are comparable to those for other kinds of crimes; moreover, hate crime conviction rates have shown a general increase in recent years. Thus, like legislators and judges, prosecutors appear to be converging in their understandings and practices of dealing with hate crime as ambiguity about what the concept is and how it should be applied are diminishing.

Based on the empirical analyses put forth in separate chapters throughout this book, our concluding chapter is devoted to teasing out theoretical and policy implications. With regard to the former, we highlight a series of interrelated and temporally bound processes through which the concept of hate crime—and indeed, the entire policy domain of hate crime—has emerged and been transformed in the United States. We argue that through these processes, cultural forms, especially policy and legal forms, are both affirmed and reconstituted over time. As for policy implications, we address a debate provoked by the publication of *Hate Crimes: Criminal Law and Identity Politics*, by James Jacobs and Kimberly Potter (1998) and, more recently, *Punishing Hate: Bias Crimes Under American Law*, by Frederick Lawrence (1999). Jacobs and Potter argue that policy makers would be ill advised to use criminal law to address the problem of intergroup violence manifest as discrimination, whereas Lawrence suggests otherwise. We respond to these positions with an alternative view that recognizes the symbolic and instrumental importance of law and, at the same time, concedes that the law alone will not solve the problem of discriminatory violence in the United States.