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Making Sense of the Violence

When we hear news about mass violence directed against people based on their race or ethnicity in the United States, the first question we should ask—but too often fail to ask—is a simple one: *What are we talking about?* Are we talking about so-called “hate crimes”? Are we talking about “terrorism”? Or is it more complex than that? The answer is not always obvious.

As I was pondering this question a few weeks ago, I ran across an amazingly relevant 77-page paper published last year in the California Law Review. The paper was titled “Hate Crimes, Terrorism, and the Framing of White Supremacist Violence.” The author was Stanford Law professor Shirin Sinnar. I’ve quoted Sinnar a couple of times recently, but her thinking is so clear in this piece that I am offering a very lengthy summary of the entire Article. Let’s get to it.

The very first words of the Article grabbed my attention: “Even before the assault on the Capitol on January 6, 2021, a rising chorus of policymakers and pundits had called for treating White supremacist violence as ‘terrorism.’ After multiple mass shootings motivated by White supremacist ideology, commentators argued that the ‘hate crime’ label failed to convey the political nature of the violence or assign it the stigma and attention it deserved. This Article unpacks the historical roots and contemporary implications of the hate crimes and terrorism frames.”

One point before we begin: Sinnar’s paper relies heavily on something called “Framing Theory,” drawn from the fields of sociology and mass communications. You might not be familiar with the concept, so here is a very brief summary by a mass communications guy named Gavin Davie. Writing in his blog called “Mass Communication Theory,” Davie tells us:

“In essence, framing theory suggests that how something is presented to the audience (called ‘the frame’) influences the choices people make about how to process that information. Frames are abstractions that work to

organize or structure message meaning. The most common use of frames is in terms of the frame the news or media place on the information they convey. They are thought to influence the perception of the news by the audience; in this way it could be construed as a form of second level agenda-setting: they not only tell the audience *what to think* about (agenda-setting theory), but also *how to think* about that issue (second level agenda setting, framing theory).”

The italics that you see here, and henceforward, were added by me, just to make sure you don’t miss what I consider to be highlights. In the paragraph above, for example, I want you to notice that being told what to think and how to think about it is how Thought Systems are constructed and maintained. And I talk about Thought Systems all the time!

Analyzing Two Frames

Sinnar notes right off the bat that “neither the hate crimes nor terrorism frame is consistent with evolving notions of racial justice.”

So what? “The Article contends that the decision to frame violence as hate crimes or terrorism matters because these frames diverge starkly in their conceptualization and legal treatment of five issues.” And she lists them:

#1 The Nature and Severity of the Threat

“While hate crimes are construed as a civil rights and criminal law problem, terrorism is seen as a far more serious problem, with dimensions of both crime and war, to be addressed with national security strategies.”

#2 The Reactive Versus Preventative Nature of the Law Enforcement Response

“Law enforcement agencies take a reactive approach to

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Greetings,

As we hurtle toward the next Presidential election in the United States, many people expect that ideologically-motivated violence in the United States will increase. The news is already filled with stories about mass violence, and as the political temperature rises we're bound to see and hear more and more stories about violent attacks and the trauma that results. What we hear, and how we think about what we hear, will be largely shaped by some type of media.

This issue is unusual for Nygaard Notes, devoted as it is to summarizing one single article that was published in an obscure scholarly journal over a year ago. In fact, in the entire nearly-25-year history of this modest newsletter I can't remember ever publishing an issue made up of what is essentially one big "Quote" of the Week!

Why am I doing this? Because I've been talking a lot about the importance of Thought Systems, those socially-created and super-powerful systems that shape our understanding of the world. And this article—while never mentioning "Thought Systems"—illustrates in great detail one part of the process of creating the dominant Thought System, a process known as Framing.

Since the paper is so long (77 pages!) I don't expect people to read the whole thing. But I hope my summary will be as fascinating as I found the whole article to be, and that it will help you to understand, and defend yourself against, the powerful forces at work in our heads as the United States becomes ever more polarized.

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Making sense *from page 1*

hate crimes that focuses on after-the-fact investigation and prosecution, while they apply a preventative approach to terrorism."

#3 The Perceived Redeemability of Perpetrators

"The law treats hate crime perpetrators as deserving of greater punishment than other defendants, but as ultimately redeemable; meanwhile, the law treats those affiliated with terrorism as perpetually dangerous criminals, if not enemy combatants.

#4 The Identity of Victims and Perpetrators

"The hate crimes frame casts identity groups as the primary victims, whereby prototypical victims are minority-group members and prototypical perpetrators are majority-group members; the terrorism frame considers the nation as the primary victim, often represented as a White or multiracial entity, and it casts perpetrators as

foreigners who are prototypically Muslim and non-White."

#5 The Role of Individual Rights and Courts

"Hate crime law embodies strong First Amendment protection for defendants and weak judicial deference to the executive branch, while terrorism cases reflect weak First Amendment protection and strong judicial deference, even when individual rights are implicated."

The Hate Crimes Frame

"The hate crimes frame often fails to recognize *the systemic and political character of White supremacist violence.*"

"Although the standard depiction portrays hate crime laws as a product of civil rights advocacy or activism from affected identity groups, a range of scholarship has highlighted the contribution of law-and-order ↗↗↗

→→ politics to their passage.

“A historical context of waning support for civil rights and swelling support for carceral [prison-related] policies shaped hate crime laws in three important respects. First, by focusing on enhancing sentences for offenders, hate crime laws framed the problem of bias-motivated violence as one of *individual rather than societal responsibility*. The enactment of hate crime laws allowed political leaders to respond symbolically to racist violence, without addressing the structural causes of such violence and while simultaneously displacing local-level mobilization [aimed at initiating] more pragmatic and holistic responses to minority victimization. While early advocacy against racist violence at both the local and federal levels emphasized its connection to systemic racism and state violence and called for a redistribution of power, hate crimes discourse and laws increasingly diagnosed bigotry as the problem, not power relations, and turned to the punishment of individual offenders as a remedy.”

“Like other civil rights statutes, hate crime laws applied to bias without regard to the dominant or subordinated status of the victims.”

“The development of hate crime laws grew out of domestic civil rights advocacy but bore the marks of the conservative backlash against civil rights—stressing individual blame and punishment, equating perpetrators from dominant and subordinated groups, and de-emphasizing ideology and racist speech. Moreover, hate crime legal remedies centered on criminal law solutions requiring implementation by law enforcement officials, thus focusing on private rather than state violence. The anti-hate crime movement proved less able to challenge police brutality, despite perceptions within minority communities that police were ‘among the most common perpetrators of bias-motivated violence.’

“There is little evidence that the passage of hate crime laws, including sentence enhancements, deters would-be perpetrators.”

The Terrorism Frame

“After September 11, 2001, the terrorism frame came to be strongly associated with military action, aggressively preventative law enforcement, and exceptions to ordinary law—almost entirely with respect to Muslim and Arab communities.

“Some imagine that reframing White supremacist violence as terrorism will thereby recognize the ideological and systemic nature of the threat, assign it the preeminent stigma of terrorism, and shift state resources and prioritization towards the threat. But *the move comes with grave risks*: it shifts institutional power towards a national security apparatus and an industry of ‘terrorism experts’ far removed from affected communities; it entrenches preemptive law enforcement practices that surveil and prosecute people on suspicion of future threats; and it ignores the U.S. tendency to respond most severely to security threats appearing to challenge the dominant racial and socioeconomic order.”

“Framing White supremacist violence as terrorism shifts power to security agencies and those viewed as terrorism experts, as opposed to civil rights groups or communities of color.”

“I adopt a conception of racial justice as including not simply the provision of formal legal equality but also the proactive repair of racial subordination and the promotion of structural reforms that enable all racial communities to thrive. . . . Despite their differences, neither the hate crimes nor terrorism frame addresses White supremacist violence in a way that is consistent with developing ideas of racial justice...”

“Counterterrorism programs overestimate their ability to identify those who present the greatest risk from a larger pool of people deemed threatening.”

“During the racial justice protests in the summer of 2020. . . . Several Republicans invoked the war on terror in calling for a military response to those protests. Rep. Matt Gaetz tweeted: ‘Now that we clearly see Antifa as terrorists, can we hunt them down like we do those in the Middle East?’ And Senator Tom Cotton stated, ‘Let’s see how tough these Antifa terrorists are when they’re facing off with the 101st Airborne Division.’ Thus, political leaders on the right moved from advocating legal designations to calling for military force within the United States, all in the context of protest movements led by Indigenous people and people of color.”

“Although some initial calls for recognizing racist violence as terrorism came from communities of color, the most vocal advocates for expanding domestic terrorism laws were law enforcement and national security officials who had prosecuted the war on terror. Civil rights groups and racial justice activists, especially

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→→ those contesting counterterrorism and policing practices, increasingly challenged such efforts. For instance, the Leadership Conference on Civil and Human Rights, a coalition of over two hundred national organizations, publicly opposed proposals to create a new domestic terrorism crime. The Leadership Conference expressed concern that such charges would be used to target marginalized communities and “reinforce counterterrorism policies, programs, and frameworks that are rooted in bias, discrimination, and denial or diminution of fundamental rights.”

A Racial Justice Frame

Toward the end of her Article, Sinnar asks, “If both hate crimes and terrorism are inadequate frames for White supremacist violence, what would a better approach look like? She observes that “In a society deeply structured around race and racial injustice, the framing of any social problem ought to be evaluated for its attention to racial justice concerns.” Having said that, she makes a crucial point: “But *the importance of racial justice as a criterion is paramount when the subject is White supremacist violence—a form of violence inspired by a belief in White superiority and historically leveraged to subjugate Native people, Black Americans, immigrants, Muslims, Jews, and other groups seen as threatening White dominance.* What racial justice requires in relation to the framing of White supremacist violence is not simple or self-evident, and ultimately requires public deliberation both on the meaning of racial justice and its application to the problem.”

“[One] prominent racial justice theme is the prevalence of state violence and repression—a theme that both the hate crimes and terrorism frames obscure.”

“A broader frame attuned to racial justice might consider forms of accountability beyond criminal law and incarceration. For instance, if White supremacist violence is as much a political problem as a crime, then a quest for accountability should focus at least as much attention on those in power whose words or behavior license White supremacist violence, compared to the individuals who act upon that license. Whether that accountability takes the form of investigative commissions, electoral strategies, social media deplatforming, civil litigation, or the withdrawal of corporate sponsorship, *the underlying idea is that political violence merits responses*

directed at political leaders, not just the low-hanging fruit.”

A focus on structures and systems can be achieved by going “beyond the ‘bad apples’ perspective to consider how these institutions teach ideas and transmit practices that contribute to White supremacist violence.”

“For example, when an armed group plotting violence against non-White people or governments includes members of the military, the question should not only be how to identify ‘extremists’ in the armed forces. A racial justice perspective would also consider how the twenty-year war on terror and earlier foreign interventions conditioned members of the military to see non- White populations as threats to be countered by battlefield and counterinsurgency practices.”

Here is Sinnar’s brief but powerful Conclusion: “Originating in different histories, the hate crimes and terrorism frames are now commonly invoked in response to White supremacist violence. . . . Despite their differences, neither frame is consistent with racial justice. While the hate crimes frame offers only a limited account of the challenge, calls for expanding the terrorism frame to counter White supremacist violence neglect the power shift to security agencies that would accompany that framing, the problems with preventative and punitive counterterrorism, and the potential for expanded domestic terrorism laws to target subordinated communities. Addressing White supremacist violence should begin with recognizing the frames that have shaped the social and legal treatment of political violence and that continue to limit our imagination.”

Framing is a powerful form of propaganda, as Sinnar notes: “Once a particular frame has become common, it may be difficult to view phenomena outside that frame, because it seems so natural; those who depart from established frames risk not being understood.” I’ll close with a note of hope that reminds us that, in the face of this propaganda, each and every one of us has a role to play in the process. Professor Sinnar reminds us that “frames are neither permanent nor uncontested, and the framing of an issue can shift as a result of strategic action by elites or social movement actors.”

Social Movement Actors. That’s you and me. Let’s keep questioning the dominant frames, and keep working for racial justice.

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