Chapter 7

# Challenging the Heteronormativity of Law

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Discussions about the meaning of equality before the law have been part of western legal discourse since the 19th century, and for almost all of that period, various groups and individuals have had conflicting opinions about which groups of people are to be regarded as equals. Women were for a very long time, some would say they still are, seen as inferior to men, blacks as inferior to whites, the working class to the bourgeoisie and so on. This perceived inferiority was almost always connected with the idea of difference. Men and women were seen as different, complementing each other, but not alike. The consequences of this way of thinking are still apparent in today's legal discourse and even a striving for gender-neutral legislation cannot change this. But what happens when the legislator acknowledges that gender-neutral legislation can be problematic and tries instead to work with gender-specific laws? This is the case in Swedish criminal law, where the attempt to combat domestic abuse has led to legislation that deals specifically with men who abuse their female partners. This legislation has been seen as a step forward in the struggle against domestic abuse by both women's organizations and politicians (Nordborg and Niemi-Kiesiläinen 2001). However, the legislation has also been criticized for acknowledging only certain kinds of domestic abuse, that is, heterosexual domestic abuse.

This legal construction could be criticized in terms of its deviation from the gender-neutral view of legislation that is current in Sweden. It could also be analysed in the context of theoretical debate about the meaning of 'equality'. The focal point of this chapter is not that, however, but instead the fact that the legislation specifically protects heterosexual women.[1] My hypothesis is that there are underlying assumptions about normality which inform the legislator in decisions about which groups of people are to be protected by law. The assumption regarding domestic violence is then that this is something that more or less only occurs in heterosexual relationships.

To prove my point, I will compare this regulation with the Swedish legislation governing hate crime and specifically homophobic hate crimes. The term 'hate crime' is used to differentiate 'ordinary crime' from crimes of hate and is often taken to mean a crime where the perpetrator's prejudice or bias against a group of people constitute

1 It could be said that the Swedish legislation is a form of positive discrimination legislation, in that it gives special protection to heterosexual women.

a factor in determining who is victimized (Hall 2005, 1–3; Moran 2002, 304; Perry 2001, 7–10). Such groups of people, or the categories of hate that are covered by this definition of hate crime, vary among the legal systems in different countries. In Sweden, hate crime is understood in the context of race, ethnicity, religion or sexual orientation, meaning that hate crimes against people based solely on their gender identity are not regulated in Swedish legislation. I should also point out that, unlike the domestic violence regulation mentioned above, the Swedish regulation regarding hate crime is gender-neutral.

The assumption regarding normality here would then be that hate crime is something connected with a person's sexual orientation, not their gender identity. The question then is why the legislator has chosen to exclude gender in this context and, moreover, whether it is really possible to make a clear distinction between a person's gender identity and his or her sexual orientation. I will try to provide an answer to the first part of this question, but an answer to the second part requires much more space than this chapter allows, so I will limit myself to a problematization of that part of the question.

The Swedish legislation dealing with domestic abuse and hate crimes, will be used as examples in presenting a critical view of the law's ability to protect and provide legal remedies to victims of crime, when these victims do not conform to the notions of normality as constructed by the legal system. My analysis stems from the understanding that the normal, or ideal, victim in these circumstances is presumed to be a heterosexual woman, when it comes to incidents of domestic violence, and a gay man, when a homophobic hate crime occurs.[2]

The following paragraph explains my use of the word heteronormativity: Anti-homosexual bias can be understood to exist on three levels, the individual (homophobia), the cultural (heteronormativity) and the structural or institutional (heterosexism) (Jenness and Richman 2002, 408; O'Brien 2001). Homophobia, as in individual prejudice and hatred against gays and lesbians, is largely omitted from this paper. Instead, the focus is on the cultural and the structural levels. On the cultural level, legal remedies are used to uphold the 'norm' and heteronormativity can be seen as a discursive practice that pervades literature, education and legal language. It could be said that heteronormativity emphasizes the correctness of heterosexuality and traditional family forms. Anti-homosexual bias on a structural level in this context is termed heterosexism. Heterosexism, through for example the law, religion and the economy, legitimizes the violence and discrimination that takes place on other levels. One example of heterosexism is the attitudes that gays and lesbians meet when they come into contact with the legal system as victims of crime.

Heterosexism could also be seen as the institutional discrimination faced by gay and lesbian people as a consequence of entrenched heteronormative assumptions. I would argue that the assumption that the 'normal' family is one that consists of a mother, a father and one or more children is an example of heteronormativity. The

2 For a discussion about the concept of the 'ideal victim', see for example Christie 1986.

legal prohibition of same-sex adoption rights or same-sex marriage is an example of a heterosexist structure.

## Swedish Legal Reforms Regarding Domestic Abuse

The idea that law in itself, and the legal system, consist of a neutral and objective system of rules has been successfully challenged by feminist legal scholars.[3] One result of these challenges, and also of a more 'woman-friendly' political agenda during the 1990s, is that certain problems facing women have received more attention and led to proposals for law reforms.

In 1998, Sweden changed the criminal law so as to be able to deal more effectively with sexualized violence against women, and one year later the buying of sexual services was criminalized.[4] These are very promising reforms, but there are also some shortcomings. The new legislation on domestic violence, Gross violation of a woman's integrity (*grov kvinnofridskränkning*), focuses primarily on heterosexual domestic violence. This legislation added a paragraph to the general criminal law – the Penal Code – with the aim of criminalizing the systematic abuse and degrading of a person that is the result of violence in a close relationship, violence that can take the form of harassment, threats and various kinds of battering (Larsson 2004, 61–63). The paragraph is structured in two sections; the first dealing with abuse that one person inflicts on another in a 'close relationship', Gross violation of integrity (*grov fridskränkning*). This relationship is defined in the preparatory works as that between a child and its parents or between siblings or other people sharing a household (Prop. 1997/98:55, 132).

The second section of the paragraph deals specifically with abuse that a man inflicts on a woman. The relationship here is defined as one where the man 'is, or has been, married [to the woman] or with whom he is, or has been cohabiting under circumstances comparable to marriage …'.[5] I should point out that the penalty for this crime is the same, regardless of which section is applied. The perpetrator can be sentenced to a prison term that ranges from six months to six years, although most sentences are at the lower end of the range. The difference between the two sections lies instead in that the second deals with close relationships of a sexual nature, that is, the abuser and the victim have to have been living together, either as husband and wife or in cohabitation comparable to marriage. And it is here, in the legislation's definition of a close relationship of a sexual nature, that we can see an example of the law's heteronormativity.

Victims of same-sex domestic abuse have to use the first section of the paragraph, the one which criminalizes abuse between people living together in a shared household, since the second section deals only with abuse that a man inflicts on a woman. By constructing the paragraph this way, it could be said that the

3 See for example Naffine and Owens 1997; Lacey 1998; Cornell, 1998. In a Nordic context, see for example Nousiainen *et al*. 2001.

4 For information about the law proposals, see Prop. 1997/98:55.

5 This translation of the relevant section of the Penal Code (chapter 4 paragraph 4a) can be found in Nordborg and Niemi-Kiesiläinen 2001, 364.

legislator sees the heterosexual relationship as the 'normal' one, even when it comes to violence. Same-sex relationships have been legally recognized in Sweden since 1987, when the law on cohabitation came into force. In 1995 gays and lesbians were able to register their partnerships, leading to a marriage-like legal relationship including, for example, inheritance rights.[6] Why then leave these relationships out of the section that specifically deals with domestic violence?

I would argue that the construction of the paragraph in this manner can be seen as an example of the heteronormativity of the law. The normal relationship is assumed to be that between a man and a woman, the heterosexual relationship, even in the context of domestic violence. In all fairness, I should point out that in one part of the preparatory works, the government commission, it is mentioned (in one sentence) that violence also occurs in same-sex relationships, so there is not total ignorance of the problem.[7] At the same time, it is obvious that neither the government commission that presented the original law proposal nor the government in its bill saw it as such a big a problem as heterosexual domestic violence.

The government bill specifically stated that the legislation on domestic violence was part of an initiative to achieve recognition of the fact that men's violence against women is a great problem in society and should be dealt with accordingly (Prop. 1997/98:55, 21). I am not suggesting that men's violence against women is anything other than an important problem, but I would like to point out that it is not the only one. As I have stated above, domestic violence is not only a problem in heterosexual relationships, it also occurs in same-sex relationships. Victims of same-sex domestic abuse are protected by the same general criminal regulations as heterosexual victims, but this specific paragraph – that has been invoked to show that domestic violence is not acceptable – cannot be used by victims of same-sex domestic violence on the same terms as it can be used by heterosexual women.

By formulating the new legislation on domestic violence – Gross Violation of a Woman's Integrity – in this way, I would argue that the Swedish legislator has made it more difficult for victims of same-sex domestic violence to gain protection from the law, and made it harder for GLBTQ-people (gay, lesbian, bisexual, transgender and queer) generally to feel that the law and the legal system can be used to further their rights. There is a substantial literature that shows the problems that heterosexual women face when trying to leave an abusive relationship.[8] It includes the effects of the normalization of violence that typically occurs in an abusive relationship, where the victim is made to feel that she is worthless, stupid, ugly, and in fact in some way responsible for the abuse that her partner puts her through. There is also the problem of isolation, the fact that family and friends are often unaware of what is going on, which makes it even harder to get help. Finally, if the victim succeeds in leaving the abuser, perhaps by living in a shelter for battered women, the next step includes

6 This was stated in the Registered Partnership Act (SFS 1994:1117).

7 SOU 1995:60, 307. Same-sex domestic violence is not mentioned in the government bill, and in the government commission, there is one sentence that says: 'Violence can also occur in homosexual relationships.' (My translation).

8 For this discussion in a Swedish context, see for example Lundgren *et al*. 2002; Holmberg and Enander 2005.

contact with the police, the prosecutor and the courts. This is a long and difficult journey for any victim of domestic violence, but, as I will outline in the next section, the journey becomes even more difficult if you are a lesbian woman or gay man.

## Domestic Violence in Same-Sex Relationships

There are many similarities between domestic violence in heterosexual and same-sex relationships, but also some important differences (Elliot 1996). Heterosexual battering exists in a context of unequal power between men and women, and this relationship model, being the dominant one in western society for hundreds of years, influences all relationships. This model, where one party has greater power and control, also provides the foundation for same-sex battering (Allen and Leventhal 1999). But the cultural context is different. A straight batterer may threaten his victim in various ways, perhaps by saying that he is going to tell everyone that she is a bad mother who cannot take care of her children. A same-sex batterer may threaten her victim on the basis of her lesbianism. A bad mother is one thing; a lesbian mother is quite another. The threat of outing is a reality in a heterosexist society and the isolation of the victim becomes, in this context, even more effective (Gårdfeldt 2003).

The resources for providing help are also different. Many women's shelters do not accept lesbian victims of domestic abuse and a gay man or a transgender person has nowhere to turn (Holmberg and Stjernqvist 2005; Allen and Leventhal 1999, 76–77). Contact with the legal system is another hurdle. There are accounts of how victims of same-sex domestic violence have been mistreated by the police or other legal officials (Pfeifer 2005; Knauer 1999). People in general are, nowadays at least, more ready to accept that women in heterosexual relationships can be the victims of domestic abuse. It is easier to understand that a man can beat up a woman; after all, men are over-represented in crime statistics. But a gay man that tries to file a complaint against his partner may often be met with ridicule or total indifference. Violence between two men living together is not seen as abuse, it is seen as a fight between two equal partners (Gårdfeldt 2003, 18). Culturally in our society, amongst straights as well as queers, there is often a view that men are supposed to be able to defend themselves against violence; they are not supposed to be victims. This is also a problem faced by a straight man abused by his female partner. A 'real' man cannot be abused by a woman. There are very few Swedish studies of female on male domestic violence, and almost no statistics can be found, but domestic violence is also a reality for some straight men.[9]

A lesbian that informs the authorities that her partner abuses her is often not taken seriously (Elliot 1996, 5). Women are not supposed to fight; they are seen as peaceful and cuddly. The concept that two women can have a sexual relationship has historically been very hard to accept (Sorainen 1999, 61). To understand that such relationships exist and that they can even be abusive is even harder to recognize.

9 In a study from the National Council for Crime Prevention (Brottsförebyggande rådet, Brå) 1999 it was estimated that women were responsible for 4 per cent of the domestic violence in heterosexual relationships. BRÅ-rapport 1999:15, 36.

We must also remember that discrimination against and abuse of GLBTQ people has a long historical tradition, where the law and the legal system have been vital parts of the oppression (Jenness and Richman 2002, 404). It is not realistic to expect that these groups will instantly trust the system that used to oppress them. There are also accounts of homophobia – or heterosexism – in the courts, where victims of same-sex domestic abuse are asked very intimate questions about the nature of their relationship. One of the biggest problems, however, is still that so few cases find their way to the courts. The obstacles on the way are many. The legal rules are insufficient and the attitudes amongst representatives of the legal system towards GLBTQ people leave much to be desired.[10]

I would argue that the heteronormativity that can be detected in the legislation is also repeated in the community, in that same-sex domestic violence is not taken seriously by those institutions or organizations that usually deal with domestic abuse. The ideal victim here is a heterosexual woman, not a gay man or a lesbian woman, or for that matter a transgender person. I will conclude this section with a telling example. As stated above, lesbian women are not always welcome at shelters for abused women, and gay men or transgender persons have nowhere to turn. As a consequence of this, *RFSL* (the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights) started their own crime victim's help-line in Stockholm in 1998 (BRÅ-Apropå no. 4-5/2005). This help-line, staffed by professional social workers, caters to both victims of domestic abuse and to victims of homophobic hate crimes.

The help-line's work has been recognized as important and needed, but the organizers have been unable to get public funding. On the contrary, when they applied for public funding from *Socialstyrelsen* [the National Board of Health and Welfare], they discovered that since they did not work with issues concerning violence against women, they were not eligible for funding. This, in my opinion, is a rather narrow and unfortunate view of the scope of domestic violence, but it illustrates the kind of situation I want to define as an example of heteronormativity in this context. Violence against women is seen as something that victimizes heterosexual women and the perpetrators are seen as heterosexual men who have or have had a relationship with these women. When asked by the Swedish newspaper *Stockholms Fria Tidning* whether domestic violence in lesbian same-sex relationships constitutes violence against women, a representative from the National Board of Health and Welfare said: Yes, it does, 'but violence against women is still not RFSL's main area of interest'.[11]

## Homophobic Hate Crimes

So far, the focus in this chapter has been on domestic violence. I will now turn to gay and lesbian victims of violent crimes that take place *outside* the domestic context. The example I am going to use is victims of hate crimes, specifically homophobic hate crimes. As I noted earlier, the definition of hate crime is that it is

10 See for example Berrill and Herek 1992, 293–295. For the Swedish context, see BRÅ-rapport 2002:9 and Granström 2006.

11 http://www.ft.fria.nu/modules.php?name=News&file=article&sid=3763

crime motivated by prejudice. The groups of people who are protected vary among different legal systems. Usually, the different legislations target crimes motivated by an individual's bias or hatred of a person's or group's perceived race, religion, ethnicity or sexual orientation.[12]

The term hate crime has a rather short history in a Swedish context (Granström 2006). It is not a legal term, in that there is no category of crime called 'hate crime', and there is no specific paragraph in the Swedish Penal Code that prohibits hate crime. It is, however, possible for the prosecutor to argue for a more severe punishment if it can be shown that a person was motivated by prejudice when committing a crime. In chapter 29 of the Penal Code, on the determination of punishment and exemption from sanction, paragraph 2 states that:

> In assessing penal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime: … whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation or other similar circumstance.[13]

Recent statistics from that part of the Swedish Police Service responsible for hate crime statistics, *SÄPO* (National Security Services), shows an increase in the number of hate crimes in Sweden, especially homophobic hate crimes (Säkerhetspolisen 2005). As many victim surveys show, however, as there is a reluctance amongst gays and lesbians to report instances of homophobic crimes, there is a strong possibility that the numbers of victims and crimes are even higher that the police report.[14]

Still today, even if the victim reports the crime, the chance that the case will be taken to court is not great. There are not many sentences for crimes according to this specific statute meaning that even if a case is brought to court, there is no guarantee that it will be seen as a homophobic crime, rather than an 'ordinary crime'. There is no requirement for the court either to state specifically that the statute has been used or what consequences the use of the statute had in the sentencing (Granström 2006; Tiby 2000, 110).

Another matter that should be taken into account is the homophobic – or heterosexist – tendencies in the courts (BRÅ-rapport 2002:9; Hutchinson 2002). As I noted above in the section on same-sex domestic violence, the legal rules do not sufficiently recognize this type of violence, and the attitudes amongst representatives of the legal system towards GLBTQ people leave much to be desired. The same can be said when it comes to hate crimes. The 'homosexual panic defence' (Ruthchild

12 But it should be said that sexual orientation has not been, and in a great many countries is still not, accepted as worthy of protection. See for example Moran 2002, 304; Jacobs and Potter 1998, 65.

13 There is also a special provision in the Penal Code that prohibits hate speech, chapter 16 section 8. The protected groups are religious and ethnic minorities, and since the year 2003 the statute also protects sexual orientation. See Granström 2006.

14 See for example Tiby 2004. Another explanation for this increase could also be the fact that in the past such crimes went completely unrecognized. If reported, they would not be seen as crimes, or not as hate crimes.

1997) is not a valid defence strategy in the Swedish legal system, but I would still argue that this way of thinking about or interpreting violence against gays and lesbians influences Swedish legislators and decision makers. The most obvious example of this is a case that was decided in the Swedish Supreme Court in 1995 (NJA 1995 s. 464). The perpetrator had stabbed his victim 64 times as a result of – as the perpetrator stated – the victim's sexual advances towards him. The Supreme Court, when having to decide if the stabbing should be categorized as murder or manslaughter, focused on the perpetrator's perception of sexual advances from a gay man as a provocation, and sentenced him to eight years of imprisonment for manslaughter.[15]

This case can be seen as an extreme example of what Berrill and Herek (Berrill and Herek 1992), among others, have termed the secondary victimization of gay and lesbian victims of hate crime. This secondary victimization occurs when victims of hate crime come into contact with a legal system that is not prepared, nor especially interested in, dealing with the crimes that they have been subjected to. There is instead a tendency to focus on the victim, on his or her actions, and to accuse the victim of provocation or of inviting the attack (Berrill and Herek 1992, 295).

## Is there a Need for a Gender Perspective on Hate Crimes?

In the section on same-sex domestic violence, I argued that one aspect of the heteronormativity of the law is that the legislator in recent law reforms has tended to focus on heterosexual domestic violence as the 'normal' violence. A critical reading of the Swedish legislation regulating hate crime also presents us with one or two interesting points of discussion on what is seen as the norm in this context; first, the lack of a gender perspective when it comes to violence against gay men and lesbian women, and second, the fact that gender-based violence is not criminalized as a hate crime. I will start with the first point of discussion here and conclude my chapter with a problematization of the latter.

Some scholars claim that anti-gay and anti-lesbian violence differs, that is, that homophobic hate crime is not necessarily the same thing for gays and lesbians (Jenness and Richman 2002; Moran 2002; Mason 1997). Jenness and Richman say that:

> Distinguishing between violence directed at gay men and violence directed at lesbian women is crucial insofar as a defining characteristic of violence against lesbians is that it exists on a continuum, from exclusively anti-women to exclusively anti-gay conduct.[16]

15 In the Swedish Penal Code, a sentence of murder results in a prison term of ten years or life imprisonment. If there are mitigating circumstances, a person can be found guilty of manslaughter instead, a crime that results in a prison term of six to ten years.

16 Jenness and Richman 2002, 411, with references to Comstock 1991; von Schulthess 1992.

In an Australian study that Mason presents, lesbians were more likely to suffer violence committed by older men, men acting alone and men that they knew. The 'typical' perpetrators of anti-gay violence are often a group of young men. The settings for the types of violence were also different (Mason 1997, 18). Lesbians were more likely to be victims in their homes, or in their work-place, a setting that corresponds to violence against heterosexual women, where the 'private' domain of the crime, and the previous relation to the perpetrator are common aspects. Moran explains it as follows:

> The experience of anti-lesbian violence is intimately connected with but different from violence against women. In simple terms, lesbian brings together sexuality, that might point to distinctions between women and gender that suggests connections between women who might be separated by sexuality. (Moran 2002, 301)

Following the arguments presented above, it is obvious that our understanding of hate crime would benefit from an analysis from a gender perspective. Gender and sexuality are strongly linked in our culture, and it can therefore be difficult to pinpoint whether a perpetrator of a hate crime is provoked by what is seen as a transgression of a gender stereotype or perceived as a sexual aberration (O'Brien 2001, 66–76). Is the butch that is harassed or beaten outside a gay club victimized because she deviates from gender norms of femininity or because she has sexual relations with other women and not with men?

But we must also consider another aspect: whether there is a tendency to focus on the homophobic violence that gay men suffer, and to see that as the 'normal' hate crime. Some lesbians might see this as another example of the 'gay' agenda having more power than the lesbian feminist agendas, as laws concerning vilification on the basis of sexual orientation tend to advantage men more than women. I would argue that we could see this as an example of a gendered power structure even in questions concerning hate crime. It could also be seen as a normalization of the gay man as the victim of hate crime, just as the heterosexual woman is normalized as the victim of domestic violence. Either way, there is no legal recognition of the lesbian woman, as a victim of hate crime, or as a victim of domestic violence.[17]

Perhaps this way of thinking would also give us some insight into the final question for this chapter, that regarding why crimes motivated by prejudice based on gender are not seen as hate crimes in Sweden.

## The Private (Straight) Woman and the Public (Gay) Man

As I have noted above, the Swedish regulation on hate crime targets crimes motivated by someone's bias or hatred of a person's or a group's perceived race, religion, ethnicity or sexual orientation. Sweden is no exception here in not including gendered violence or violence against women in its hate crime definition; the situation is the same in most other countries that have some sort of hate crime legislation (Moran

17 I would like to thank one of the editors of this book, Margaret Davies, for reminding me of this aspect of the problem.

2002, 304). The arguments for this state of affairs range from maintaining that there are already enough laws and regulations that address violence against women to arguing that the level of violence against women is so high that to define these crimes as hate crimes would reveal too much hatred in society.

This assumes, of course, that there is some discussion at least on why gender-based violence is not considered a hate crime. There has been hardly any discussion in Sweden concerning violence against heterosexual women. The one exception occurred in 1995 when a governmental commission (the same commission that proposed the new crime Gross Violation of a Woman's Integrity) suggested that gender bias should be seen as a hate crime (SOU 1995:60, 295). But the government in its bill in 1998 said that only especially vulnerable groups, such as immigrants and homosexuals, should be protected by the regulation on hate crimes. The argument was that a regulation of this character would run the risk of losing its significance if it was extended to more or less the whole population (Prop. 1997/98:55, 86–87). Furthermore, the government proclaimed that there was really no need for such regulation, since the crime Gross Violation of a Woman's Integrity would lead to more severe punishments for those who abused another person in a close relationship. Based on this argumentation from the governmental bill, it is safe to say that when the question was raised, of whether it is possible to view gendered violence as a hate crime, the answer is no.

In a related issue, namely whether transgender persons should be protected by the legislation criminalizing hate speech, the government stated in its bill that even though transgender persons deserve the same protection as homo- or bisexual persons, the question was whether they were victims in the same way (Prop. 2001/02:59, 39). That is, the government said that the number of violations against transgender persons was still rather low. You could say that what was needed was more evidence of hate speech against transgender persons, before a need to change the law was seen. Here it would seem that transgender persons were judged to be too small a group to claim special protection.

I would argue that the opposite reasoning is used when it comes to women as a group (as seen above concerning the proposal for viewing gendered violence as a hate crime); they are seen as too large a group, not a minority that could claim special protection, or that there is even a need for special protection. So are the sheer numbers, the size of the specific group or minority, the reason why some groups are offered protection and others not?

That might, however, be too easy an explanation. This question could also be discussed in terms of the distinction between the public and the private sphere of society; that is, whether hate crime is seen as something that happens between strangers, and whether women are normally seen as victims in instances defined as domestic violence. Is it really an expression of the normalization of gendered violence that it is almost 'normal' for women to experience violence from the person they are living with? I think the answer might lie somewhere between these lines of discussion. The question of size, that is whether you are part of a legitimized minority group, could be something to take into account, but also the idea of the normal victim has to be considered. As Mason, amongst others, has pointed out there

is a tendency to see homophobic violence against gay men as some sort of norm for hate crime (Mason 2002, 39–40; Mason 1997).

Why then is violence against (heterosexual) women not seen as a hate crime? As has been noted above, many cases of anti-lesbian violence are characterized by the fact that it is not always easy to determine whether the woman was attacked because she was a woman, or because she was a lesbian. Was the violence gender based or sexual-orientation based, and is this even a relevant question? The question is relevant in that in posing it, the interaction between gender and sexuality is brought into focus. In the Swedish context, the question is of course relevant because if the violence is seen as based on sexuality, it will fall within the definition of hate crime, whereas it will not if it is 'only' gender-based violence.

It has been debated whether it is in reality possible to separate out violence based on gender from violence based on sexuality (Mason 1997, 15). Moran argues that the theoretical challenge is to try to overcome the separation of the ontological and political connection between identities such as sexuality or sexual orientation, sex/gender, race and ethnicity. We can use the term intersectionality, as the critical race theorists coined it in the 1990s or we can talk about interplay between different aspects of an individual's identity.[18] The result of the use of either concept would hopefully be a deeper understanding of the way that the inter-relationship between different aspects of our identities makes us more complex as individuals, and also more complex as victims of crime. Then again, maybe this is too much to hope for in legislation, since it tends to be a rather blunt instrument.

But one last question remains: What would be the point of defining violence against heterosexual women as a hate crime? I would argue that one reason would be to try and overcome the separateness of different acts of violence against groups of people or individuals. In so doing, we would be able to see more clearly and analyse the process of violence and discrimination against these different victims and through that analysis understand that what connects these victims, be they victims of same-sex domestic violence, heterosexual domestic violence, hate crimes or gender discrimination, is greater than what sets them apart.

As I have tried to show in this chapter, there are disadvantages with both gender-specific and gender-neutral legislation. A gender-specific legislation tends to present a static view, a normalization, of the ideal victim in certain instances; my example has been the Swedish regulation of domestic violence. Here the heterosexual woman is seen as the normal victim, therefore there is a tendency to overlook and belittle the plight of those victims of domestic abuse who are not heterosexual women.

On the other hand, the gender-neutral formulation of the hate crime regulation tends to normalize the gay man as the ideal victim, making lesbian crime victims the anomaly. And in choosing not to see gendered violence as a hate crime, the Swedish legislators are upholding the division between the public and the private sphere in the lives of victims of crime and in society as a whole. There is an unwillingness to see that both sexual orientation-based as well as gender-based hatred is not just an individual, but also a cultural and structural problem.

18 See for example Crenshaw 1995; Moran 2002, 310; Mason 1997, 25.

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