The Hate Crime Concept(s)
Moral, Legal and Political Considerations

when Law & Hate collide

David Brax and Christian Munthe,
University of Gothenburg
Hate Crime - the Philosophers Perspective

• Why are philosophical considerations relevant?

• Legitimacy and practice
  
  • Failure to work out the justification of hate crime laws will lead to failures of implementation

• Judges are reluctant to apply this law. Police officers unclear about definitions. Monitoring is flawed (Sweden)

• Needed: A clear view of the hate crime concept and its moral foundations
Hate Crime Concepts - Functions

- **Basic concept**: Hate Crime - crime committed with a hate/bias motive

- **Functions**
  - **Criminal law** - punishment enhancement
  - **Monitoring** - enabling reliable, comparable statistics
  - **Prevention** - policy measures

- Different concept for each function? Awkward and possibly counter productive - but inevitable?

- A unified **hate crime policy** should cover all of these functions
Moral Considerations

1. **Harm** - Hate Crimes *hurt more* than other crimes (victim, group, society)

2. **Intention** - Hate Crimes performed with intention to threaten/harm a certain group

3. **Motive** - Hate/Bias is in itself *worse* than other motives (bad values)

4. **Character** - Hate Crimes reveal a *bad* character

5. **Content/expression** - Hate Crimes *express* wrongful negative evaluation of a group

6. **Reasons** - Hate Crimes involves *acting for a bad reason*
Legal Considerations

• The question: even if Hate Crimes are worse than other crimes, is punishment enhancement justified?

• Legitimacy - The limits of criminal law

• Certain restrictions may apply: responsibility - culpability

• The Law does/should not judge attitudes/thoughts/values?
  • Motives are sometimes used as mitigating factors

• Are the aggravating features of Hate Crimes covered by other laws?
  • Hate Crime as discrimination - minority rights violation
  • Hate Crime as terrorism - specific intentions
  • Hate Crime as defamation (etc) - hate speech/incitement
Functions of Hate Crime laws

• What do we want from a Hate Crime law/statute and enhanced punishment?
  
  • Retribution - for (greater) wrongdoing
  
  • Reparation - for (greater/specific) harm
  
  • Prevention (detention/deterrence)
  
  • Rehabilitation - of the hate offender
  
  • Support for victims and targeted groups
  
  • Expression of societal values (toleration, equality etc)
Political Considerations

- **Is the specific problem** with Hate Crimes something the law shouldn't adress, but policies might?

- **A special problem for communities/societies**, not for individual victims or even specific groups?

- **Monitoring** - tracking and addressing *causes* of crime

- **Making Hate Crime a *Priority***, rather than the subject of specific punishment?
  - May be more effective - not subject to the same restrictions. Too dependent on political fluctuations?

- **Target prejudice at earlier stages?** Part of a problem with a wider scope

- **The Hate Crime Concept** used here probably should include motive - as an essential, explanatory part
4 Hate Crime Concepts

1. Crime *motivated/caused* by hate/prejudice/bias

2. *Specific Intent* Crimes

3. Crime identified by *specific harm*  
   (Primary, secondary, tertiary - distress, fear, societal unrest)

4. *Crime with Hate Expression/Content* - "hate speech" added to the "base crime"
A concept with variables

1. **Type of crime**

2. **Type of attitude**

3. **Victims** - Criteria for inclusion (vulnerability, history, immutability, frequently targeted)

4. **Relations** between 1 and 2!

- **Hate Crime** - A crime (1) committed with (4) a certain attitude (2) towards a certain group (3)

- How much variation can we allow between the EU countries, yet gain from comparisons and common policies? (Some variability may be *essential* for comparability!)
Hate Crime: A conceptual framework

- **A conceptual framework** - a concept which variables determined by context

- **A framework** encompassing the morally relevant factors: crime that involves Specific Intent or Acting for a bad reason - as evidenced by content (proof of motive) likely to cause additional distress

- **Is motive targeted or directly relevant?** Need not be - reasons to avoid it in a legal concept

- **But**: a concept useful for policy making and monitoring - a "statistics enabling" concept - here motive seem to be directly relevant

- **Ideally we would have a single concept** - so that police and court data can be gainfully used in monitoring and evaluating policies

- **A dilemma!** The various functions may favour different concepts

- **A conceptual framework** is a useful way to start
Thank you!