



The Philosophy of Hate Crime

Concepts, Values and Tensions in the European Context

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Contents

- Philosophical issues: concepts, values and reasons
- Levels of inquiry
- Actions taken, ongoing and forthcoming
- General analytical scheme and conceptual framework
- Variables to clarify in policy design
- Selected themes and controversies
- Prospects of a European hate crime policy



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Philosophical Issues 1: Concepts

- What different **concepts of hate crime** are there, and how do they differ?
- To what extent is a **common European concept** possible?
- How may concepts interplay with **basic values** and connected reasons to have, design and implement **hate crime policies**?
- **Key challenge:** a concept that both allows for a high degree of flexibility and inclusiveness, but also for comparison, evaluation and justified direction from an EU standpoint.

Philosophical Issues 2: Values

- How may specific legal arrangements – **hate crime laws** – be justified or criticised? Eg. protected groups, indicators, penal or other responses
- Ditto regarding **preventive and monitoring policies**
- How may a base of values and reasons justifying a hate crime policy be connected to specific hate crime concepts, as well as a common European concept of hate crime?
- What are the prerequisites for justifying **an overarching European hate crime policy**?
- **Key challenge:** taking account of several types of values on different levels in relation to legitimate variations between member states and the ambition of European harmonisation.

Levels of Inquiry

- **Ethics** – what makes (or may make) a hate crime especially bad?
- **Political philosophy** – what societal or public values and reasons have a bearing on shaping proper societal responses to HC?
- **Jurisprudence** – what qualities of the criminal legal and penal system need to be observed when this system is used for responding to HC?
- **‘Holistic’** – how do these levels of inquiry relate to each other with regard to the justification of a comprehensive hate crime policy with regard to, e.g., monitoring needs.

Actions

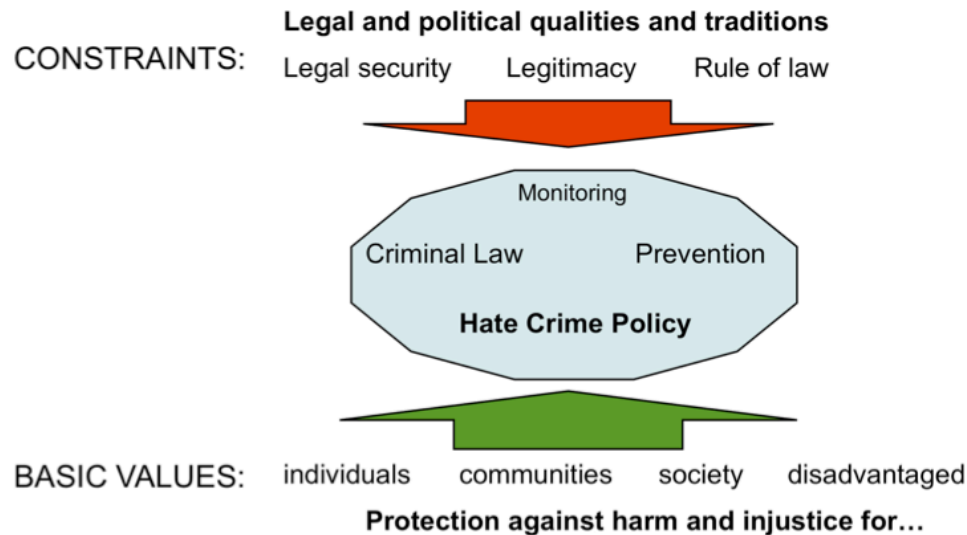
- Symposium on the philosophy of hate crime (Gothenburg, 2011). Videos available via Youtube, blog and the project webpage.
- Network building and communication with scholars, practitioners, agencies and NGOs
- Public engagement via social media, blogs, radio, talks, debate articles
- Literature review: Annotated bibliography w. substantial introduction available via project homepage shortly
- Special issue of the *Journal of Interpersonal Violence* (in early 2014)
- Further books, chapters and articles in production



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General Analytical Scheme



Three types of HC concepts

- Function specific
- Country specific
- Conceptual framework (describes what HC is across functions and countries)

Justified choices of specific concepts need appeal to values and reasons and be within scope of the framework

- **Framework concept:** HC = a crime that **connects in an adequate way** to a **group-oriented negative bias** of the offender towards the victim (slight expansion of OSCE-ODIHR suggestion)
- All reasons are potentially valid, but may also conflict and need to be balanced in specific cases
- Reason may play out differently in different states and times, e.g. with regard to proper choice of protected groups, connection to bias, specific policy responses, mix of actions, etc.

Variables to Clarify in Policy

- **Type of crime** (all/violence/property/other)
- **Type of attitude** (bias/prejudice/hostility - motive/intention/expression)
- **Type of victim** - criteria for inclusion (all types of social groups/ disadvantaged/frequently targeted/historically targeted/especially vulnerable/especially “worthy” of protection)
- **Relation between attitude and crime** (Volitional/causal/symbolic)
- **Relation between attitude and victim** (representative/symbolic connection)
- **Type of policy response** (penal/other criminal legal/preventive actions)

Selected Themes and Controversies

- The Bias Attitude Should (should not) be Understood as...
 - **Specific intention:** makes HC akin to terrorism or political extremism, fits well with established jurisprudential doctrines re. strong culpability, makes the HC concept narrow
 - **General motivational state:** includes everyday, unreflected or unconsciously biased/ socially discriminatory criminal behaviour – more difficult to fit with traditional jurisprudential notions of strong culpability
 - **Actual expression of bias:** makes HC akin to hate speech – tension re. basic freedom of expression, challenge to harmonise law, easily proven
 - **Adding a wrong towards the victim as an individual person** (besides experienced harm): makes HC akin to (structural) discrimination, honour crime, exploitation – policies may harm individual victims by highlighting the presence of such extra wrong
- The Philosophical Basis of Hate Crime Prevention...
 - Actualises different issues and value tensions to the issue of hate crime laws
 - To what extent should freedom of opinion, thought and expression be restricted?
 - Risks of infringing human/fundamental rights (cf. preventive terrorism policies, may even increase hate crime risks)
 - Allowing group-oriented bias to exist while effectively preventing hate crime?
 - General prevention of *crime* through fighting inequality? (may perhaps decrease bias?)
 - The philosophical analysis needs to become more developed in this area



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Prospects of a European Hate Crime Policy

- Coordination: monitoring (very important!)
 - Support of existing attempts (OSCE-ODIHR) and recent suggestions (FRA)
 - Develop a well-working function specific concept for European HC monitoring
 - Methods to capture HC that is not captured/handled by national policy
 - Methods for spotting, e.g., improperly unprotected or overly protected groups
 - Define clear detection points, common to all states
 - Dilemma: sacrificing some backward comparability.....
- Guidance and support: capacity building
 - Help member states to design, develop, implement and evaluate HC policies
 - Assessment of state specific needs and requirements in light of general values
 - Build on existing initiatives: OSCE-ODIHR and others
- Oversight and direction: human rights protection
 - Do member states have appropriate HC policies?
 - Protected groups, preventive measures, legal security and rule of law, effectiveness
 - Do criminal law statutes re HC properly connect punishment enhancement to severity?
 - Overcome tensions between HR-motivated action and local legitimacy factors



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