

Hate Crimes—Methodological, Theoretical & Empirical Difficulties—A Pragmatic & Legal Overview

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Hate crimes are a culture phenomenon which is perceived by most as an occurrence that should be uprooted from the society. Yet, to date, we have been unable to do so. Hate crimes are the subject of research and comments by experts in various fields. In this regard, most scholars agree that a hate based crime is distinguished from a “regular” criminal offence by the motive—the attack is aimed at a victim who is part of a differentiated minority group. However, when reading the relevant documents in the area, it seems that the differences between the experts start at the most basic point—what constitutes hate crimes?¹ This article analyses the concept of “hate crimes” via an interdisciplinary approach aimed at flashing out the fundamental gaps in the research. We have found that the problems include, inter alia, discrepancies in the definition of hate crimes, methodological difficulties regarding validity and legitimacy (mainly due to the absence of information based on the attacker’s point of view) and the lack of agreement on the appropriate legal methods required to deal with the ramifications of hate crimes. While part I of this paper revolves around the theoretical aspects of the questions put forth at the centre of this article, part II looks at the same questions from a legal viewpoint. The correlation between the two chapters shows the impact the methodological difficulties have on enforcement endeavors. This relation is further advanced through the examination of test cases from different countries, among them—Israel. Finally, the article concludes by suggesting a few thoughts on the way to overcome the theoretical problems and making the enforcement efforts more efficient.

Keywords: hate crimes, methodological problems, legal enforcement

Part I—Theoretical and Methodical Aspects

Identifying the Problem

A hate crime is differentiated from a “regular” criminal offence because it is focused on the victim—a person belonging to a group distinct from the overall population due to reasons of race, ethnicity, religion,

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¹ It should be mentioned at this point that our research showed that although there are significant differences, it is possible to conclude a few central remarks, mainly regarding the escalation of hate crimes. First, an attack against an individual from a minority group can be viewed by the public as a hate crime and be copied as such, even when the attacker’s intent did not stem from racist ideas. See J. Levin & G. Rabrenovic, Hate Crimes and Ethnic Conflict, 45(4) American Behavioral Scientist 575 (2001), at 575-576. Second, it is agreed that most perpetrators are young adults who are empowered by the attacks, since they view “strangers” as weak. The third conclusion looks at the role of the media in arousing a hatred atmosphere. Finally, an important conclusion that will be discussed further in this article is the connection between hate crimes and an ethnic conflict leading to terrorism.

sexual preference, physical or mental disability and even political views.² Meanwhile, the offence itself is merely the platform and it can take many different forums—assault, attack, murder, damage to property, bullying, arson and even “just” verbal abuse.³

The term “hate crime” or “crime based on prejudice” has been frequently used and discussed in the academic and legal sphere as well as by the mass media in the last two decades. However, the treatment of these crimes by the authorities in many countries had stagnated. Australia, the United States, Europe and Israel had their share of reported hate crimes through the years.⁴ When looking at news articles from these countries, it seems as though there has been a great incline in the amount of racial crimes; nonetheless, the number of accused that have been charged and found guilty with committing hate crimes in these countries remains relatively low.

The difference between the way the term is thrown around in the media and academia and the limited approach used by law enforcement bodies may be attributed to the difficulties attached to the definition of the expression—hate crimes.

For example, two of the leading researchers have defined it without including a political component in the definition. Most agree that a hate crime is a crime committed due to bias; the controversy is usually centered on the reasons causing the bias and the question of whether other elements are required.⁵ However, this basic premise may not be enough to bridge between theory and practice. The term bias is, in itself, highly problematic. It stems from philosophical thought, but also has roots in the idea of social physiological.⁶ For the purpose of this article we will define bias as “a negative approach towards a group, a class or people”.⁷

Another explanation to the gap between the public presentation of hate crimes and the official numbers of crimes reported has to do with the legal definition of hate crimes. If there is no criminal offence that discerns bias based crimes from other crimes, then the law enforcement authorities—the police, the state prosecuting system and the courts—lack the tools to do the same. However, we hold the view that the gap in definition is merely the manifestation of a far deeper problem flowing from the absence of a vital methodical tool in the research.

The available literature discussing the issue at hand is diverse and encompasses a variety of areas; the sociological approach, for example, focuses on the effects hate crimes have on the majority population as well as the minority groups. Criminology based research looks at the roots causes for the crimes,⁸ while legal view emphasizes the regulatory and deterrence components of the phenomenon. Though it seems as though the different studies should have different outcomes and trigger different critics, when delving into the research it becomes obvious that they all share the same systematic problem regardless of the discipline they represent—a disregard to the perpetrator’s side of the story. In this regard, it is important to note that even physiological studies, which concentrate on the aggressor’s motivations, hardly ever base their conclusions either on interviews with accused and convicted attackers or their police questioning.

² Mia Dauvergne & Shannon Brennan, Police-reported hate crimes in Canada, 2009, Statistics Canada no. 85-002-x.

³ Ibid.

⁴ Stephen Tomsen, “Hate Crimes and Masculinity: New Crimes, New Responses and some Familiar Patterns,” *Australian Institute of Criminology* 3 (2001), pp.1-11.

⁵ James B. Jacobs & Kimberly A. Potter, “Hate Crimes: A Critical Perspective,” *Crime and Justice*, Vol. 22 (1997), pp. 1-4.

⁶ Ibid. p. 3-4.

⁷ *International Encyclopedia of the Social Sciences* (1968). One of the main problems with this definition is the fact that the prejudice may also be positive.

⁸ Mark Sherry, *Hate Crimes against People with Disabilities*, University of Queensland, (January 2000), p. 3-4.

This discrepancy affects not only the general debate on the topic, but is highly relevant to the results of various studies and the statistical base they rely upon as well as the practical implications for enforcement efforts. Therefore, the theoretical question we wish to address is—what is the appropriate database when researching hate crimes? This question is, in turn, directly relevant to the empirical aspect of the paper—how do you identify a hate crime? What are the applicable conditions required?

In order to evaluate the questions mentioned above, this article will first focus on bringing to light the following methodical problems:

a. Research in all disciplines lacks a valid methodological basis, due to the absence of official data gathering based on common criteria and the fact that there is no information collected from the perpetrators themselves.

b. The divergences in hate crimes classification cause governmental organizations to take different approaches toward the problem creating incoherent and discriminative enforcement.

We will then go further to show that the consequences do not stop at the theoretical sphere but seep into the legal one, preventing the courts from providing a solution, which often causes civic unrest and widens the rift between the majority and minority groups.

Research Authentication

The study of the hate crimes phenomena is surrounded by a few methodical problems which are significant enough to raise basic questions regarding the validity of the research's conclusions. The common denominator of these problems is that they prevent scholars from obtaining complete and objective information, thus causing the deductions to be partial and biased themselves.

The first difficulty is the fact that many hate-offences are not reported to the authorities. Victims are afraid to complain because they are aware of their statutes as a minority and they do not believe the authorities will act. Another problem has to do the classification of the instance by the investigating authority. As will be shown below, in more cases than not, the choice of how to classify the crime (as a “regular” crime, a hate crime or as a crime of terror) is put in the hands of the local investigating officer. As the classification detracts the tools allocated to the investigation, it has to be done at a very early stage, when the officer does not necessarily have the full picture of what happened. However, it is rare for the classification to be changed, even if the investigation progresses and new evidenced that is discovered points to a different direction from the one taken at the beginning. This means that official data collection is based on early classification, which does not always reflect the true motive of the crime, but it is used as the basis for the evaluation of hate crimes by academics and practitioners alike.⁹

A third problem stems from reliance on victims accounts while ignoring the perpetrators' statements.¹⁰ Victims tend to attribute serious attacks between individuals from different groups to a bias motive, even when they were caused by a financial, romantic or other personal connection between the people involved. On the other hand, many hate crimes are viewed as “youth mischief” rather than hate crimes.¹¹ Without the attackers'

⁹ Caroline Harlow, *Hate Crime Reported by Victims and Police*, Bureau of Justice Statistics Special Report, U.S. Department of Justice (2005), p. 4.

¹⁰ One noticeable case was occurred in Israel during 2011 when 2 gays were attacked by one offender. They claimed that the assault happened because their sexual orientation. During the sentence the accused person admitted that he does not like gays but he did not say that he hates them.

¹¹ Harlow, p. 2.

report, one cannot compare the versions of the story to objectively conclude whether a hate crime has transpired.

This problem is intensified when turning to private organizations that have a separate data collection process. These organizations are often focused a specific minority group and therefore tend to produce tendentious and limited reports.¹²

The next parts of the article will illustrate how these theoretical problems of representation trickle into the way hate crimes are dealt with by the legal structure, thus creating a system of selective enforcement that tend to maintain the majority's advantages.

What Is a Hate Crime?

As was mentioned above, there is a lack of agreement within the academic community on the definition of hate crimes. This leads directly to a different outlook of government authorities, even in likeminded states.

In the United States and Australia, there is a large volume of literature on the topic, while the same research in Eastern European countries almost does not exist. This should not come as a surprise, as many of the incidents are not classified as hate based crimes by the local legislation. Complaints of hate crimes in Romania, Bulgaria, Slovakia and the Former East Germany were not investigated by the authorities. When asked, the regime often claimed that the act in question was caused by fear and a sense of loss of personal security felt by individuals of the majority group.¹³ In some cases, such as burning of homes based on Gypsis persecution in Poland, Hungary and Slovakia, officials blame the victims for threatening the society's traditional values and causing the attacks.¹⁴

The disagreement on the definition and the perpetrators' motivations affects not just the ability to conduct theoretical research but also on the availability of reliable and objective databases. In this regard, the United States is a good example. Ever since World War I, the FBI has been tasked with fighting hate crimes, therefore, making it a federal priority.¹⁵ However, a hate crime is not a distinct federal offense. The FBI's involvement depends on state and local law enforcement forces reporting the occurrence of a hate crime.¹⁶ At the state level, the situation is as multifaceted as the number of states and counties. Some states have formed specialized police forces that are charged with combating hate crimes and therefore also collect relevant data. Other states have not differentiated hate crimes from non-bias crimes and most have adopted only some elements of the definition. In other words, the decision is often made based on political calculations. A good example that shows the complexity of the matter is the situation in Los Angeles County. The county consists of 88 cities and towns. Each municipality has its own police force; according to the relevant law, the local Chief of Police is the person who classifies a crime as a "hate crime" and then calls the county Sheriff who calls in the FBI. Hence, there can be three results to the process—full cooperation between all parties—a join investigation, partial cooperation or no cooperation at all—the investigation is left at the hands of the local authorities. In other

¹² See for example the Anti-defamation league's report which focus on racial hate crimes, 2012 or reports published by Human Rights Campaign reports focusing on hate crimes against LGB (2009).

¹³ Facing facts, *Make Hate Crimes Visible, Mapping Report*, (January 2013), www.facingfacts.ed; See also: Paul Hockenos, *Free to Hate The rise of the right in post-communist Eastern Europe*. Routledge, (2013), pp. 21-33. For the Israeli case studies see below.

¹⁴ Margaret Brearly, "The Persecution of Gypsis in Europe," *American Behavioral Scientist*, Vol. 45, No. 4, December 2001, p. 592.

¹⁵ FBI Website, *Hate crimes add an element of bias to traditional crimes and the mixture is toxic to our communities*, available at http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes.

¹⁶ FBI Website, *Hate Crime Overview*, available at http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes/overview.

words, the local police's chief decision carries an impact on federal data collection.¹⁷

The same happens in Europe. The European Union invests resources in collecting and publishing information regarding hate crimes in its territory.¹⁸ It has even published guidelines addressing the definition of hate crimes.¹⁹ Nonetheless, there is no conformity in the Members States implementation and the issue is dealt in accordance to political will. In Great Britain and the Netherlands, government gives the problem its full attention. Consequently, there is comprehensive data collection, based on many cases of enforcement (investigation, arrest and prosecution). On the other hand, in many other countries within the EU the data gathering is selective at best. In fact, some do not collect data on hate crimes, because harming the outsider is considered acceptable.²⁰

The situation described so far highlights the fact that the definition and enforcement of hate crimes hinges on political views, marginalizing the attacker's outlook in the process. This, in turn, harms attempts at a balanced comparative research. As was pointed earlier in this paper and will be demonstrated below—through different illustrations—it also has a direct influence on the legal outcome of prosecution of hate crimes, therefore, causing further mistrust in the authorities and pushing individuals to take action into their own hands and escalating the tensions.

Part II—Enforcement and Legal Aspects

Germany

In the 1980s, migrant workers came to the state to perform low skills jobs that German citizens were unwilling to take upon them. The workers were housed in townships, such as Hoyerswerda, but were unwelcomed by the local residences. The workers presence at night clubs and local bars caused many families to forbid their daughters to go out at night. The locals' dissatisfaction, however, did not stop with the African immigrants, one of the town's residents commentated that "my father works with polish people. They are dirty, drunks and always looking for prostitutes. Strangers are everything that is bad".²¹ Soon, the dissatisfaction was translated into verbal abuse. One immigrant said "we learned that the locals hate us. We have filed complaints with the police, but it does nothing to help—they claim there is no problem".²²

In 1991, a decade after the African immigration began, the tensions reached a climax—skinheads hit a worker to a bloody pulp. The incident evolved into mass violence—where immigrants houses were burned, while they were not allowed to leave them. The police intervened and evicted the workers from the town after six days and only when they had reports about other violent outbreaks. One of the outbreaks occurred in Rostock, were protestors carried signs "Rostock for the Germans, we will not let it become multicultural".²³

The riots happened despite the fact that the East German regime established a strict policy prohibiting targeting foreigners, yet they (like many other soviet countries) restricted the freedoms allocated to minorities, such as Roma. They were not allowed to speak in their own languages, to form political groups, give new name to their children, live as nomads or practice traditional occupations. The government in Czechoslovakia went

¹⁷ Karen Umemoto and Kimi C. Mikami, "A Profile of Race-bias Hate Crimes in Los Angeles County," The Ralph Lewis Center for Regional Policy Studies, UCLA, 1999. p. 7.

¹⁸ See, footnote --

¹⁹ Ibid.

²⁰ Facing facts, Make Hate Crimes Visible, pp. 8-13.

²¹ Hockenis, Free to hate, pp. 21-30.

²² Ibid.

²³ Ibid.

even further and sterilized gypsy women to minimize their percentage in the population. In Germany, being a gypsy was considered a disease; in Italy, they were classified as thieves and prostitutes and in Slovakia, the Prime Minister states, in 1993, that they were unsocial, stupid and uninhabitable.²⁴

Despite the government of West Germany's assurances that they have learned their lesson from the holocaust, similar events occurred in there too. In many towns around the country, dozens of citizens demonstrated under the slogan—"Germany is for the Germans", refusing to accept a reality in which Germany became multicultural. The main arguments heard in the demonstrations were that the outsiders have destroyed the environment and therefore the civilians had to protest against it, by all means, to keep Germany safe.

West Germany's Interior Minister at the time, Diter Haklmann, explained that the source of the acts was not hatred or racism; it was also not the acts of extreme rightwing minority group. The riots were caused by dissatisfaction due to the foreigners' exploitation of West Germany's asylum laws.²⁵

When looking closely at the situation in Germany today, more than three decades later, it seems as though nothing has changed. In 2014, Patrick Schrader, a neo-Nazi activist stated in a media interview that,

I hate the Muslims, because they invaded Germany and they wish to establish a new society here. There are schools in Berlin where there are no German Children and you are not allowed to eat white meat. If someone in the government supports this—it is his right, but my friends and I will not let it happen. I also don't like the fact that more and more Jews take over property in Berlin.²⁶

These sentiments were echoed in recent demonstrations that took place in Germany under the title "anti-Islam".²⁷

Even when classified as statements made by fringe or rouge groups, the views expressed show a willingness to act upon one's hatred toward others in order to "keep Germany safe"; in other words, to maintain the identity and values of their idea of a German state. It is our view that Germany represents, perhaps above all other countries referred to in the article, the authorities inability to deal with hate crimes, when the offences in question are considered "lightweight" offences in the realm public opinion.

Australia

On December 11, 2005, Australia awoke to a day that should be remembered for many years to come. On that summer day in Sydney, 5,000 white Australians, most of them drunk, run amok assaulting everyone who passed their way and was considered Middle Eastern. The Australian historian, Derek Moses, defined the event as a violent attack aimed to put the minority in its place.²⁸

A week before the riots, the police was notified about an incident that took place at Cronulla beach. A group of white Australian lifeguards muttered towards four young men with Lebanese features something along the lines of "Lebanese people cannot swim". After hearing the remark, the men attacked the lifeguards, stabbing two of them.

After the incident, the newspapers demanded that justice will be done with the "Middle Eastern Hooligans". The New South Wales, right wing, government adopted this line of thought—Morris Aima, the

²⁴ Margaret Brearly, *The Persecution of Gypsies*, p.591, 595-596.

²⁵ 24. In this regard, it should be mentioned the 1990s showed a sharp increase in documented hate crimes within Germany. Some have claimed that this is partly due to the unification between East and West Germany.

²⁶ An interview to Israeli Television, Channel 10, October 7, 2014.

²⁷ The Up Rise of the Dissent, the Economist, Jan. 10, 2015. Available at <http://www.economist.com/news/europe/21638194-xenophobic-marches-continue-parts-germany-others-stand-up-uprising-decent>.

²⁸ Scott Poynting, "What caused the Cronulla riot?", *Race and Class* 2006: 48: p. 85.

NSW governor stated he will ensure the Lebanese men will receive 25 years imprisonment. The assistant Chief Inspector reminisced about his childhood days in Cronulla and vowed to defend the “Australian way leading to the beach”; Marches were organized, on a regular basis, meant to [return the beach to its rightful owners] and the local paper named the events as the “battle on the beach”. Rightwing groups opened a campaign calling white Australians to come to the beach and raise signs claiming that “this is our beach and you will never be welcome” as well as “let’s kill them boys”.

As a result of the stabbing, roamers were spared acts, allegedly, committed by foreigners. It was said they hate women and attack, at times viscusly, white women; therefore, expressing un-Australian values.

In July 2006, six months after the riots, the Sydney police indicted 104 people (in 285 indictments) for their involvement in the fights. The charges included: damage to public property; assaulting police officers; resisting arrest; carrying a weapon without a license; threats and public disorderly. White defendants were sentenced to jail time of up to 13 months. Some of the offenders were found guilty of crimes against Islam and Muhammad and distraction of property belonging to minorities. Not one person was charged with committing a hate crime, even though such an offence exists within the Australian criminal code.²⁹

On the other hand, Justice Jaclyn Traad (herself from a Lebanese origin) sentenced one of the Lebanese attackers to 500 hours of community service. In here judgment Justice Traad stated that the accused turned his back to his family, his culture and his home country. She added “for centuries, the forefathers of many citizens, including mine, came to this country looking for a refuge from hate, intolerance, violence seeking a chance to improve their family’s life”.³⁰ When reading the judgment it can seem as though the Judge blamed the defendant for the riots that erupted, but she did not convict him for hate crimes.

The public supported the white defendants’ actions whole heartedly. Almost 70% of listeners to local public radio stations supported their “right to hate”.³¹ The permission to hate was conveyed through a differencing policy of enforcement—a tapered approach toward hate crimes parallel to a strict non tolerance, public, attitude towards violence committed by foreigners or minorities. The means used against minorities were varied and included publicized arrests, surveillance, the use of secret police, raids on homes and detention without trial.

The media reports demonized the foreigner—he was portrayed as a person aiming to cause harm to the society and undermine its values. In 2005, Muslims across Australia were tagged as terrorists. This view, which was backed by the events of September 11, steam from the authorities’ negative treatment of immigrants in the 1990s. Muslims and immigrants from the Middle East were viewed as coming from a backwards culture, violent and irrational. The government adhered to a “white Australia” policy, which was implemented by sending Navy ships to prevent refuge boats from arriving at the Australian shores. However, this supremacy attitude began well before the 1990s. The Australians massacred the aborigines, abused Chinese work immigrants and Afghan refugees all for the name of cultural values and dominance.

United States

The US has the widest, most extensive research regarding hate crimes. The literature on the subject attempts to understand a phenomenon which is an integral part of the American society. As a result, the

²⁹ The Federal Law of Australia, Hare Crime.

³⁰ Geesche Jacobson, “Cornulla fighters betrayed our safe haven: magistrate,” Sunday Morning Herald, 30.9.2006.

³¹ Poynting , What caused the Cronulla riot, p. 88

enforcement of hate crimes, both in the federal level and the state level, is highly advanced. But, even the system in the United States is flawed and suffers from the same underlying and basic problems.

In 1955, Emmet Hill, a black teenager from Chicago, was kidnapped and murdered in Mississippi, after he allegedly muttered “goodbye baby” towards a white woman. An all white jury acquitted two white defendants from murder charges. In 1963, Madger Avers, the head of the Non White Advancement League in Mississippi was shot while parking his car. The killer, Byron De La Bekwith, a member the White Citizens’ Council was found not guilty. He was convicted in a retrial in 1994 and was sentenced to life imprisonment.

Almost two decades later, in 1982, in Detroit, Vincent Chen (an American born Chinese) was murdered. The shooter shot him because he mistook Chen to be Japanese. He wished to avenge the American auto industry’s loss of revenue. In 1984, Allan Berg, a Jewish radio host from Denver was murdered at his driveway by a group of neo-Nazis. In 1992, Hattie Mea Conese, a black lesbian and Brian Mook, a white disabled person, were burnt alive when skinheads torched their apartment in Oregon, as a reaction to a public debate regarding affirmative action towards the gay community.³² In the same year, in Los Angeles, unprecedented riots began in April 29th and lasted for 6 days. The riots began after four white police officers were acquitted for allegedly detaining and beating Rodney King—an African-American.³³ The same happened, in Missouri, in 2014, when a white cop shot and killed a black teenager.³⁴

The cases mentioned above are but a drop in the sea of hate crimes that occurred in the USA. The reason they caught the public attention was the result—someone belonging to a differentiated minority died. However, there are many other cases—reported and not reported—of attacks, bullying and threats that often do not even reach the courts. Until the 1990s, verbal racial abuse was not enforced by the police or the attorney general, as it was considered a waste of the taxpayer’s money. In such an atmosphere, it is no wonder that whites accused of killing blacks were found not guilty. Nearly four decades later the racial tension in the US has not subsided.

Glazer, Dixie and Green conduct an anonymous survey meant to uncover the reasoning behind hatred towards blacks in the American society. They choose this particular topic as hate crimes against blacks are reportedly the highest.³⁵ The research aimed to understand the motivation to support violence against the group. As opposed to previous studies which based the motivation on the need to compete for resources, the three concluded that people’s fear derives mainly from the idea of mixed marriages and the possible presence of minorities within the traditional white community. Most people interviewed mentioned a threat on basic values as a reason for separation.³⁶ The most intense objection from the interviewees (all white) came as a response to their reaction to marriage between a black woman and a black man. Some commented “it would be better to kill

³² For more details see: Terry A. Maroney, “The Struggle against Hate Crime: Movement at Crossroad,” *New York University Law Review*, Vol. 73 (1998), pp. 564-620.

³³ Staten, Clark (April 29, 1992), Three days of @#!*% in Los Angeles, *Emergencynet News Service (ENN)*. Archived from the original on September 3, 2007.

³⁴ Alcindor, Yamiche; Bello, Marisol, “Police in Ferguson ignite debate about military tactics”, *USA Today*, August 19, 2014. Available at <http://www.usatoday.com/story/news/nation/2014/08/14/ferguson-militarized-police/14064675/> See also, Lowery, Wesley “Even before Michael Brown's slaying in Ferguson, racial questions hung over police,” *The Washington Post*, August 13, 2014 Available at <http://www.washingtonpost.com/politics/> & Roig-Franzia, Manuel; Brown, DeNeen L.; Lowery, Wesley, “In Ferguson, three minutes—and two lives forever changed,” *The Washington Post*, August 16, 2014. Available at <http://www.washingtonpost.com/politics/>.

³⁵ Jack Glaser, Jay Dixit and Donald P. Green, “Studying Hate Crime with the Internet: What Makes Racists Advocate Racial Violence,” *Journal of Social Issues*, Vol. 58, No. 1, 2002, pp. 177-193.

³⁶ *Ibid.* p. 179.

him. Him and her... I'm not joking... I would do it if it was my sister and happily go to jail... it is preferable to knowing some half-breed would be calling me uncle."³⁷ Most interviewees even supported the use of extreme violence to stop the marriage. These answers that showed dread from the idea the white dominance may crack was discovered, yet again, in the answers provided in relation to the possibility of minorities integrating into a white culture, regardless of marriage.

Israel—The Fine Line Between Hate Crimes and Terrorism

The Methodological difficulties described so far are part and parcel of the Israeli research on the issue of hate crimes. Academic publications about hate crimes and their influence on society are nearly nonexistent and the data basis is lacking. Data received from the Israeli police show that only in 2014 did they start regularly collecting information on hate crimes.³⁸ Another conclusion that is evident from the information provided by the Israeli Police is that even though the number of hate crimes has been rising from 2009 onwards, they are still classified as “regular” criminal offences or nationalistic crimes (crimes caused by an objection to the existence of the State of Israel or its democratic or Jewish nature).

Furthermore, crimes that are reported to the police are classified according to the receiving officer’s judgment when the complaint is registered. The classification is not changed even if the investigation shows a different motivation. Therefore, even a case of shooting at a gays’ club was considered “just” a murder, despite the investigator’s assumption that the suspects reasoning for committing the murder was hate toward gays. As will be discussed below, this unchanged classification affects the prosecution and the court’s ruling.

Another difficulty that exists in Israel as well as in other countries is selective data collection by civil society organizations. NGOs in the field of human rights and minority rights do collect information about hate crimes, however, many tend to focus on a specific area, such as attacks against Arabs, women, the LGB community, refugees and so forth.

On the other hand, any hate crime research in Israel must take note of a unique perspective that warrants particular attention and concrete data collection—“Tag Mehir” (literally: Price tag). This is the name used to describe violent acts committed by Israeli-Jewish citizens towards non-Jews. The actions are usually explained, by the perpetrators, as a reaction to acts of terror committed by Arabs or a reaction to political decisions which are viewed as harming the Jewish majority interests. Such acts include, inter alia, burning of trees and orchards, distraction of property, burning of Mosques, paint-spraying in churches and throwing stones. The phenomenon, which began in the West Bank in 2008, has since then spread into the “green line” area.³⁹ In 2010, for example, the police investigated 97 cases of “Tag Mehir”, yet some claim not all incidents were reported and treated by the authorities.⁴⁰ This sheds light on the unique Israeli situation regarding hate crimes.

³⁷ Ibid. p. 184.

³⁸ Israeli Police Information Center, National Crimes in Israel, November 19, 2014.

³⁹ The U.N. General Assembly’s November 29, 1947 decision (resolution 181) regarding the partition of Palestine between Arabs and Jews triggered the outbreak of the war over Palestine. In 1949, a string of cease-fire agreements between Israel and its neighbors came into effect, including the general armistice agreement between Israel and Jordan, commonly referred to as the Rhodes Agreement (See Israel-Jordan Armistice Agreement, Apr. 3, 1949, 42 U.N.T.S. 303). Within the framework of the Rhodes Agreement, cease-fire lines were drawn that would eventually become known as the green line. The parties to the agreement specifically declared that they did not view the line as political, but rather the product of military constraints (art. II(2)—“It is also recognised that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations”).

⁴⁰ Israeli Parliament (Knesset), Education Committee, May 8, 2013. Retrieve in June 2, 2013.

In a political reality where there is an ethnic, religious or national conflict between two or more groups, every attack committed by one of the parties to the conflict can be considered as a hate crime. In other words, since the conflict itself is based on hatred between the parties all acts conform to the definition of hate crimes. The Israeli society is a tapestry of ethnic, cultural, religious, national and other differences. Consequently, it can serve as a test case to understand what variables are relevant when the authorities define the same crime as a hate crime or terrorism in some circumstances and as a “regular crime” in others?

Like in other states, the question of what constitutes a hate crime depends on a legal definition. Racism is defined, in Israeli law, as “persecution... towards the public or part of the public, because of skin color, race or ethnic-national origin”.⁴¹ The law also states, in article 144D1, that when a person commits an offence, due to racist motivation, the punishment shall be doubled or raised to 10 years imprisonment.⁴² This legislation creates a situation where if the victim of the attack is Jewish it is classified, in most cases, as a terror attack, but if the perpetrator is Jewish it will, more often than not, be classed as a hate crime or a “regular crime”. In other words, since like in the US and Australia and Europe, most offenders do not tend to question the identity of their victims, but rather harm anyone they consider to be threatening their Jewish identity, the victims include a range of minority groups (Arab Israelis, Palestinians, non-Muslim Arabs, refugees and work immigrants).

A hostile public atmosphere against minorities that is supported by religious leaders and public figures⁴³ resulted in a sharp rise in the number of hate based crimes against non-Jews or those outcast by the sexuality.⁴⁴ But, as in other places, only the most severe cases end up investigated and prosecuted. In this regard, the analysis of four different cases that fall into the definition of hate crimes and have gone full circle (investigation, indictment and prosecution) allows us to reexamine the assumptions that were put forward in this article and reinforce its conclusions.

Case I

The incident, which took place in 2004, was characterized by the Jerusalem District court as an attack against minorities due to racism. The defendants, who belonged to an orthodox religious group, decided to humiliate, harm and attack Arabs, because of the victims’ affiliation with the Arab nationality.⁴⁵

The indictment included at least seven different incidents where the defendants attacked Arabs and caused bodily harm and damage to property (sometime in a premeditated way). According to the indictment all attacks included verbal abuse. In fact, in one case, the defendants attacked a Jewish person whom they mistakenly thought was Arab and caused him to lose consciousness.

The court found the three guilty on all counts and emphasized the severity of their actions “because they were committed due to a racist intent... these are actions that disrupt a cultured community’s acceptable way of life”.⁴⁶ The Judge added that these were not spontaneous events, but actions committed out of hatred and the willingness to hurt those who are different. The judge stated that the criteria of deterrence and the importance of enforcement were her guidelines when she decided to sentence the accused to time in prison. Nonetheless,

⁴¹ Israel’s criminal law, 1977, Article 144A.

⁴² Ibid.

⁴³ Einat Horowitz, *Racist in the name of Halakha: An Incitement for Racism by Rabbis*, The Reform Center for State and Religion, November 2011.

⁴⁴ The Israeli media has reported since 2009 consistently on hate crimes against Arabs, immigrant workers, asylum refugees and Jewish that look seemingly like strangers.

⁴⁵ *The State of Israel v. Yizhak Ohayon, Ovadia Yehuda and Arie Bar Orian*, Jerusalem Court, May 2005, p. 1.

⁴⁶ *The State of Israel v Yizhak Ohayon, Ovadia Yehuda and Arie Bar Orian*, Jerusalem Court, August 2005, p. 4.

since the indictment did not include a racism offence, they were convicted of “regular” criminal offences, such as robbery, aggravated assault and destruction.

Case II

On February 2010, Ahmad Jabrin, an Israeli-Arab, attacked two people in the city of Or Yehuda, due to his belief that they are gay and they are propositioning him. Jabrin attacked the two using a wooden bat and a pocket knife; he also threatened to kill them during the attack. According to the police officers’ testimonies, in his questioning, Jabrin admitted to the charges against him and said “what am I, gay, that they think they can hit on me?”⁴⁷

In the judgment, the court concluded that at the time of the attack, the defendant knew that the victims are gay and that was the reason for the attack.⁴⁸ In other words, while the court defined the accused’s actions as hate crimes, he was not charged with the relevant offences by the prosecution and therefore, the Judge could not find him guilty for hate crimes.

Case III

Dmitri Bogatich, a resident of Tel Aviv, headed a neo-Nazi gang that operated in Israel for two years (2005-2007). A part of it Modus Operandi, the gang members attacked homosexuals, Ethiopian Jews, foreign workers, homeless people and drug addicts. The group’s nine members were charged with assault, verbal violence, incitement and distribution of Nazi propaganda under the slogan “white is power”.⁴⁹ They used to film the actions and upload it to social media networks. Unlike the other cases discussed above, in this case the defendants were charged with racism offences. Hence, the court was able to not only express her views regarding the accused’s behavior, but could manifest his views in the sentencing process.

Case IV

The final case that will be reviewed deals with the attack of Palestinians by five Israeli Jews in Ramat Megron south (an area that was proclaimed as “a closed military area” by the Israeli defence forces). The attack was part of the “Tag Mehir” campaign. The attackers used iron and wood rods and injured four Palestinian farmers at their olive and date grove. In a hearing at the Jerusalem District Court, the attackers were charged with aggravated assault due to a racist motivation. The Judge stated that “the offenders have no boundaries. They do not think twice about using extreme violence to achieve their goals and to harm people that did not cause them any harm. There is great concern that these are repeat offenders”.⁵⁰ In fact, based on the indictment and the evidences, the Court was able to determine that they committed a violate act based on ideology. The Israeli Supreme Court supported the conclusion, where upon appeal the Judges stated that,

it is an act that was well thought about... a group of savages collected, in advance, bats and rods... there is no evidentiary proof to the claim that the attack was based on a feud between ranchers... the act was not only one committed by bullies but was motivated by racism or hostilities towards a certain public... it was a hate crime... the danger of the act is inherent, as a hate crime steams from toxic ideology.⁵¹

The case was the first time a court in Israel addressed “Tag Mehir” related offences as hate crime. It is clear that the legislative changes which defined these acts as terrorism enable the court to treat them as such

⁴⁷ The State of Israel v. Ahmad Jabareen. Tel Aviv Court, May 2012. p. 2.

⁴⁸ Ibid. p.11.

⁴⁹ http://www.mako.co.il/tv-ilana_dayan/d0a2066bd9686110-1e9dba003aa7c110/Article-3b866ce47951911004.htm. See also: State of Israel v. Dimiry Bogotich, Tel Aviv Court, November 2011. p. 1.

⁵⁰ The Israel State versus Joseph Weinberg and Eliran Landau, the Supreme Court, May 2014, p. 3.

⁵¹ Ibid. p. 9-10.

and not stop at merely voicing its outrage.

When looking at all four judgments together it becomes clear that the first calcification of a crime carries a long lasting effect that influences the court's ability to issue a stricter sentence, that takes into account the racial motivation behind the offences, and can serve as a deterrence and educational tool. In the first two cases, the court clearly indicated that the defendants acted out of hatred, but due to the police and prosecution's decision to exclude the racism based offences from the indictment, the conclusion could not be evident within the sentencing.

Conclusion

In this article, we endeavored to take a broader look at the concept of hate crimes and to try and understand how the different disciplines affect one another. Part One of the article dealt with the theoretical inconsistencies in the term, while the Second Part analyzed legal cases from four countries in order to view the same problems from an operational spectrum. Based on the subjective and objective methodological difficulties in the research of hate crimes, it seems as though there aren't many empirical conclusions that can be drawn out.

Nevertheless, we take the stand that some important conclusions can and should be brought to light. First, the problems in the research itself must be further explored. In this regard, it should be mentioned, yet again, that in all the countries that were examined, no studies were based on interviews with the attackers themselves. All data collection and research relied on victims or witness reports, media publications and information received from NGOs. What is more, the enforcement in these countries is lacking—at times due to a public atmosphere that, at the very least, did not oppose the behavior and in other cases due to a (real or false) sense of fear.

From the enforcement perspective, it is also clear that the authorities are often reliant on the legal definition of hate crimes. Hence, it is political interests that dictate the government's policy towards offenders, rather the moral or cultural values. Frequently, hate crimes are considered less threatening to society than brutal criminal crimes or "classic" terrorism, even when they are aimed at causing intimidation.

On the other hand, the changes in the Israeli definition of hate crimes, in correlation to "Tag Mehir" proves that a change in the public discourse and social atmosphere can lead to a legislative change that provides the investigation and judicial authorities the proper tools to affect cultural change. It is our observation that when it comes to the banishment of hatred based on ideology it laterally takes a village.

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