

# Between Justice and Hidden Intent: Proving Hate Crimes in Comparative Law

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## Abstract

*To compare law insight to the dimension of hidden intent in a hate crime. Therefore, if one is to consider a crime to be a hate crime, showing the intent of hatred is a fundamental part of this process. The study examines the proofs and legal challenges in establishing such intent, especially in the case of defendants whose misdeeds were previously referenced as using circumstantial evidence, like behaviors, racist discourse, and symbols of hatred. It further looks into the ethical and political influences on judicial processes, investigating how media, public opinion, and hate speech impact the reading of evidence. The study explores the comparison of the legal systems of the United States with those of the United Kingdom, France, and Germany. It ends by providing legal recommendations to improve mechanisms for demonstrating latent intent and guaranteeing the right to a fair trial in hate crime cases.*

**Keywords:** *Hate Crimes, Hidden Intent, Justice, Comparative Law, Proving Intent, Racist Symbols, Hate Speech.*

## Introduction

Hate crimes are an act of crime, that falls under a different category of crime, which has been gaining an increasingly important place in present criminal law, as the crime negatively affects societies and those targeted persons, as well. These crimes occur when offenders act out of hatred, or prejudice against a distinctive group of people based on one of their unique characteristics, such as race, religion, nationality, sexual orientation, or gender identity. Ordinary crimes are generally committed to satisfy a personal or material desire, while hate crimes highlight the underlying motive behind the act of crime, where the crime does not lie in the crime, but in the hatred the person is holding against a particular personality group of individuals (Channak & Amuda, 2024).

Establishing such intent is one of the biggest legal hurdles of hate crimes. Usually, detecting an offender's latent intent is problematic, particularly without direct evidence, like confessions or explicit statements. That brings up the active tenor of the trouble with perusal intent: how do legal systems grapple with this hidden state of mind? Is indirect evidence, say racist signs or the pattern of that person's discriminatory practice, enough? Is such evidence sufficient to determine that a crime was motivated by hatred? Another aspect to take into consideration is the motivational factors and socio-cultural aspects, that characterize the interpretation of intent in hate crimes, and that impact the structuring of laws and criminal justice mechanisms.

Establishing intent in hate crimes is a key hurdle in legal systems across the world. Although intent methods differ by jurisdiction, there is uniformity in emphasizing intent as the necessary element to declare a crime an offense against a person, based on their identity, warranting stiffer penalties. But without direct evidence of intent, questions linger about whether a fair verdict can be reached in such instances. So, a thorough understanding of these challenges is critical, to ensuring justice and protecting the rights of those singled out in hate crimes.

The main problem tackled in this staged study was, how to demonstrate latent intent in detest wrongdoing, explicitly in cases, without material proof or open proclamations for or against the premise of bias and detest, against a specific gathering. How far can indirect evidence, possibly in the form of symbolic gestures or patterns of discriminatory acts, go in establishing intent? How

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do cultural and social factors impact intent in such crimes? The research also investigates the legal implications of the courts from multiple jurisdictions, as they grapple with this issue and its implications on the administration of justice.

The goal of the author in this exploration, is to underline the relevant impact of latent motive within hate crimes, as well as to elucidate the ways in which this matter may play a key role in attaining criminal justice. While part of the study demonstrates how U.S. legislation differs from other legal systems, highlighting the way these systems address intent in such crimes, the other part of the study emphasizes the current legal situation regarding hate crimes in the U.S. It also seeks to address questions around, how to pursue justice in such cases despite daunting hurdles in proving intent.

This study attempts to provide suggestions, for legal study related to hate crimes, that enhance the legislative process vis-à-vis hidden intentions, where one of the greatest challenges is clearly the legal basis of hate crimes. While many countries are actively working to reduce hate crimes, one of the biggest barriers to justice in these cases is intent. With this study, the author aspires to suggest new types of legal mechanisms that can significantly strengthen and facilitate the process of proving intent in more effective ways, to better secure the necessary threshold for effective justice, for both the accused as well as for the victims and communities threatened by hate and intolerance.

## Literature Review

The following literature review includes many relevant concepts and theories behind hate crimes, including hidden intent and the methods through which it is proven in a legal sense. It further delves into legal literature and the international legislative architecture for these crimes up until now, and notes the difficulties facing the judiciary in proving mens rea, particularly if direct evidence is nonexistent.

### *The Concept of Hate Crimes*

Hate crimes are crimes motivated, in whole or in part, by bias against an individual or group based on a characteristic such as race, religion, nationality, sexual orientation, or gender identity. According to legal literature, the social and political consequentiality of these crimes even extends beyond the direct victims, which is crucial when it comes to policymaking and legislation. Finally, in his work, Sun (2006) stresses the importance of a clear legal definition of hate crimes as a means to deliver justice and foster social cohesion.

Motive is generally a subject of psychology, though criminal law may recognize its potential impact by varying the seriousness of a crime based on its motive. Motive is the most significant aspect of your crime. In contrast, motive is, in most legal systems, not an element of the crime but rather considered in sentencing to either aggravate or mitigate punishment depending on circumstances (Sun, 2006).

### *Hate Crimes: The International Legal Framework*

One of the main international instruments to counter discrimination and related violence is the International Convention on the Elimination of All Forms of Racial Discrimination. At the national level, the United States' Hate Crimes Prevention Act offers a legislative framework that delineates and criminalizes behaviors motivated by animus toward specific cohorts (Hate Crime Statistics Act, 1990). Hate crime laws are driven by social and cultural values. Ideally, in some societies, such as those that prioritize human rights, laws tend to be strict, while there are some nations that practice leniency towards certain types of discrimination, making enforcement difficult (Kaplan & Guanazo, 2020).

### *Establishing Hidden Intent in Hate Crimes*

Establishing a hidden motive in hate crimes is an incredibly complicated matter, particularly in instances in which there's no direct evidence, like a confession or eyewitnesses. To combat this, the judicial system leans on indirect evidence like racist statements and symbols of hate. This evidence is taken to indicate the will of the perpetrator (German and Mauleón, 2019). Affiliation with extremist groups (like far-right, etc.) is also an indication as these organizations usually instigate violence against minorities. Yet, studies indicate that courts encounter legal obstacles to admitting such evidence, rendering the process of establishing hidden intent very complex (Mulholland, 2013; Kaplan & Inguanzo, 2020).

Hate crimes are the intersection of psychological, social, and legal constructs. Though the notion of motive is psychological, its significance is evident in laws that attempt to delineate guilt. Evidence, on the other hand, is based on a set of behavioral and societal markers to ascertain underlying intent, which speaks to the necessity of both national and international legislation that would create standardized practices to help surmount legal and anthropogenic barriers (Bateson, 2012; Scheitle & Hansmann, 2016).

### *Theoretical Framework*

The theoretical framework addresses the nature of hate crimes, in terms of the role of intent and motive, in the legal characterization of a crime. In the context of crimes, it draws a distinction between intent and motive, where intent is the mental state of the perpetrator, at the time of the act, and motive is the emotional or social cause giving rise to the perpetrator's act.

The study examines what role intent and motive play in the legislation of the US, UK, France, and Germany, within this framework. It also underscores the legal obstacles in establishing hidden intent in hate crimes, particularly when direct evidence is lacking. The study considers how judicial systems respond to such issues and the diversity among legal systems in their response to such challenges.

### *Legal Framework to Combat Hate Crimes*

The Hate Crimes Prevention Act of 2009, is the United States' first tool for recognizing hate crimes, a key element in that, it allows the use of indirect evidence, such as public statements or racist symbols, to demonstrate criminal intent (Kaplan & Inguanzo, 2020).

The treatment of hate crimes in the United Kingdom, is defined by the Public Order Act of 1986, which contains amendments whereby "repeated behavior" toward a particular group constitutes proof, that the perpetrator must hate that group. New Citation: The legislation also works on interpreting the intent and motive of the perpetrator, by examining repeated behavioral trends (Bateson, 2012).

In France, the Gayssot Act of 1990 criminalizes hate crimes, but mainly focuses on incitement to racism or discrimination on the basis of race or religion. Had it been interpreted this way, it would have allowed the generalization of their incitement to hatred. The French framework, on the other hand, struggles with defining intent on a precise level (Scheitle & Hansmann, 2016).

Germany has among the strongest hate crime legislations in Europe, codified in Article 130 of the German Penal Code, the Volksverhetzung. It specializes in verbal and physical actions inciting hate toward certain communities. However, the German system faces difficulties in establishing intent in cases of verbal expression that does not involve explicit publicly stated language (Sun, 2006).

### *Justice Metric in Hate Crimes*

Justice in hate crimes refers to two general types of justice, procedural and substantive; procedural justice has the assumption that legal proceedings should be open, fair, and transparent, whereas substantive justice seeks that some tangible fairness should be present, such as punishing the offenders and compensating for the victims (Rawls, 1971). Other than the direct relationship of the motive and its intent to sex crimes, proving this hidden intent is where justice goes substantive since, in order to convict as well for sex crimes, the accurateness of the perpetrator followed by the trial must attend since it can change the punishment. The Hate Crimes Prevention Act is one such law establishing the burden of proof on judges, allowing intent to be proven indirectly via public statements, racist symbols, etc., thereby delivering justice to all parties (Kaplan & Inguanzo, 2020).

### *What Separates Hate Crimes from Other Crimes?*

Intent and motive are critical elements in the legal categorization of hate crimes. Intent usually refers to the perpetrator's state of mind, as the crime is being committed, while motive describes the reason why the perpetrator carried out the act in the first place. This difference is significant in the case of hate crimes, where intent must be proven with greater clarity in order for the conduct in question to be classified as a hate crime (Morsch, 1991).

Overcoming the challenge of proving intent in hate crimes is essential, as it necessitates providing evidence, that the perpetrators acted with intent prior to committing the crime, and targeted a defined group, because of certain distinguishing features, such as race, religion, or gender. Classifying a crime requires intent, a key legal element. It is argued that intent is the key factor that needs to be demonstrated, to show that the act was more than an expression of anger or frustration, that it had a specific focus on the group because of an identifiable characteristic of that group (Candeub, 1994).

On the other hand, motive is about the emotional or social explanation that prompted the offender to act, such as hatred or bias toward a particular group. While motive can be relevant to explaining criminal action, on its own it is not adequate to find that a given act constitutes a hate crime under a law in a given court of law. Motive can add to the social understanding of why a crime occurred but, in and of itself, it is insufficient to establish intent, and therefore motive is a less conclusive basis for establishing hate crime (Chakraborti & Garland, 2012).

*Hate Crime Cases: Legal Challenges.* Arguments for expanding the scope of hate crime laws, to include new categories of bias-motivated violence are often based on principles of social justice rather than social science. In the United States, proof that a crime meets the legal definition of a hate crime, is typically based on more indirect evidence, such as racist comments or symbols, which shows that the crime was carried out with hatred toward an identifiable group. In the UK, courts may consider the offender's previous behavior towards a certain group as evidence that the defendant had predetermined the current hate crime. In France, symbols of culture or religion—like swastikas or depictions of inflammatory images aiming at racial groups—are seen as strong indicators of hostile intentions in hate crime. The most significant difficulty with these legal orders arises around the distinction of hidden intent and personal motive; the simple act of proving that the offense was committed with real hatred is not always possible. This is especially relevant when the offender engaged in acts motivated by personal conviction or emotional triggers.

In Germany, laws against "Volksverhetzung," or public incitement to hatred, exist. As such, demonstrating intent aimed at a specific group is a demanding task, making addressing these types of crimes challenging in various legal realms (Bateson, 2012; Scheitle & Hansmann, 2016).

## Research Methodology

Using a comparative legal methodology, this research seeks to explore the mechanisms available for the proof of hatred in hate crimes law in four important jurisdictions: the United States of America, United Kingdom, France, and Germany. The study examines the determination and definition of intent, with regard to hate-motivated crimes.

The research underscores observation of legal cases, and the statutory text that are binding within each legal inquiry, as well as circumstantial evidence whether, for example, public statements or racist symbols would validate intent.

The purpose of the article is, to present a methodology that differentiates qualitative analysis of legal and judicial sources, based on literature review of recent writings, regarding the approaches to proving different forms of intent. Importantly, the research includes a comparative analysis, of how each legal system developed and approached the issue of the burden of proof with hate crimes, outlining challenges and opportunities to improve the shaping of existing legislation between each jurisdiction.

Through these methods, this research seeks to provide legal recommendations to improve the ability to investigate and prosecute hate crimes to ensure criminal justice for the injured parties.

### *Hate Crimes Legislation: A Comparative Framework Across Legal Systems*

Hate crimes legislation is, therefore, a significant pillar of the struggle against this phenomenon, as well as the balance of individual rights/guarantees against community/society values.

### *Hate Crime Legislation Across Diverse Systems*

Even though these crimes themselves are incorporated by legal systems in every country, this reflects the attitude of each country towards these crimes. This chapter focuses on hate crimes legislation and its place in legal systems such as the U.S., U.K., France, and Germany (definitions of crimes, proving the intent, and national regulation roles in these cases). Also studied are courts' struggles, the difficulties they have with enforcing these legislations, and what justice means for both the victims and accused perpetrators.

However categorized differently in legal systems, each definition reflects the cultural and historical context of their national legislations.

“The Hate Crimes Prevention Act” clearly defines hate crimes in the USA, where a person or a group of people are targeted based on religion, race, national origin, and sexual orientation; gender identity. This is based very much on circumstantial evidence, such as indirect evidence of a person’s acts or racist symbols, which suggests that in criminal law more widely and in hate crime in particular, establishing mens rea is hard to do (Kaplan & Inguanzo, 2020).

In the UK, the “Hate Crime Act” defines hate crimes by, the motivation of the perpetrator. A crime is classified as such when, there is a pattern of the same behavior targeting a particular racial or religious group, and such patterns suggest an intent to spread hate. The main difference between this system and the U.K. system is that the U.K. system focuses more on the social aspects of behaviors and social interactions than the U.S. system, which focuses more on physical evidence such as racist symbols and slogans (Bateson, 2012).

In France, hate crimes are identified through a set of laws focused on, the fight against racism and religious discrimination. French law generally acknowledges as evidence symbols of racism or religion—be it cultural or religious—as motive. Treatment by judicial system of indirect evidence in France, emphasizes some flexibility in terms of acceptance of indirect evidence as an integral part

of interpretation, on the part of the offender. However, obstacles still exist in ways to interpret, such evidence as it pertains to accurately understanding the intention (Scheitle & Hansmann, 2016).

In Germany, there is “Volksverhetzung”, the incitement to hatred law, which does not tolerate hate crimes and targets extreme verbal, and physical hate against groups of people. Things like inciting hatred, through racist speech or verbal abuse are classified as crimes, which is part of Germany's fierce commitment to defending individual and societal rights. Still, the German system struggles to accurately determine intention in cases of verbal acts without apparent physical actions (Sun, 2006).

#### *A Comparative Perspective on Legal Systems*

By comparing various systems, it is seen that each legal system uses different approaches to define and enforce laws on hate crimes. In terms of intent assessment, American and British systems emphasize symbolic and behavioral evidence over cultural evidence, while the U.S. and U.K. systems embrace legal flexibility in their acceptance of cultural evidence. Germany, on the other hand, enforces strict procedures but struggles (at least in practice) to make hidden intent stick to verbal actions. The second area of difference is the impact of its legislation on social justice and victims' rights, which reflects differing priorities in legal policy among countries.

#### *Challenges of Proving Hate Crimes: The Nature of Intent and the Role of Legal and Social Values*

Prosecuting hate crimes poses challenging legal obstacles, the toughest being that the prosecutor must prove that the the hiddeen intent behind the crime was based on hate. Without direct evidence, determining this intent is a challenge, and this differs among legal systems tailored to the social and legal values of every country. The level of intent is, of course, an important aspect of proving hate crimes, and this section discusses why the legal and social values affect the examination of evidence and the course of judicial processes in the US, UK, French, and German contexts.

#### *The Establishment of Intent Within Hate Crimes*

Intent is a bedrock of proving hate crimes, meaning the prosecution must prove evidence that the crime is motivated by hatred, or bias, toward a particular group, whether it be racial, religious, or national. Intent is a key element of proving a crime, which is usually a requirement of common-law systems. In hate crimes, intent is not only about the general intention to commit a crime but, instead, a specific intent targeted against a group classified by personal or cultural characteristics (Miller, 2014).

Establishing intent requires meticulous examination of the evidence, at the prosecutor's disposal—whether direct or circumstantial—proving without a doubt, that the perpetrator committed that act with animus toward a specific group. Often, direct evidence may be sparse or non-existent, with indirect evidence—such as public statements, hate symbols, or the perpetrator's previous behavior in relation to hate—serving vital roles in establishing intent (McGowan, 2013).

An example of this is “R v. R” (1987) in the UK, where the accused was found guilty of attacking someone out of religious hatred. Their intention to inflict terror on these individuals through their past actions—and use of slurs against the victims—tied them strongly to racial motives and hate as a driving force behind their actions.

In the United States, “Wisconsin v. Mitchell” (1993) involved statements made by the perpetrator, during the commission of the crime, being allowed to be used as evidence of hate intent, in resulting, the crime being classified as a hate crime. Here, the offender attacked a target because

of their race, where hateful remarks were included when the crime was committed and after (Baumeister & Vohs, 2007).

For example, in Austria, in “Supreme Court of Austria - 18 Os 28/19s” (2020), it was seen that there was a clear hate motive of the perpetrator, against the group of foreigners from public statements, made by the perpetrator himself, which led to a conclusion of criminal intent. To determine intent in hate crimes, the court relied on indirect evidence, including hate speech on social media and during public protests.

In France, in “Cour de Cassation - 14-82521” (2019), the French Court of Cassation sentenced a transmitter of hate online. The court noted that the perpetrator's public statements, on social media are sufficient proof of intent in hate incitement crimes, even where there are no direct witnesses to the act itself.

In Germany, “Bundesgerichtshof, BGH, Judgment of 16 July 2020 (Case No. 1 StR 304/19)” used the racist references of the offender made prior to the commission of the crime to conclude intent, and thus consider it a hate crime. Use of the perpetrator's statements as evidence to establish hate intent is intended to illustrate the proposition that statements can assist in the proving of intent.

These recent judicial references illustrate the importance of proving intent in hate crimes and the use of circumstantial evidence, such as racist language and past behavior, in a range of legal systems. Universally, they emphasize that intent is a central element of hate crime proof, with public statements and previous actions being significant evidence in this regard.

#### *The Influence of Legal and Social Values on Evidence Assessment and Judicial Procedures in Proving Evil Intent in Hate Crimes*

Hate crimes are particularly unique in terms of their legal and social values, which are instrumental in interpreting evidence, and establishing a case where the intent was a function of racism or bias. The analysis of evidences is highly -sensitive to the context of each country, because it is strongly based on the values of the legal system in every country. These norms differ between jurisdictions, having considerable repercussions on the administrative procedures, followed by courts and the interpretation of evidence, consequently creating different situations for courts, to determine what was actually intended, with regard to the activities that are the subject of dispute.

Freedom of speech, as a core legal value, plays a role in the way evidence is interpreted in the American legal system. Hate crimes generally include a component, that needs to prove incitement to hate or violence, but the U.S. legal system has a major challenge with that requirement, as the most common values surrounding freedom of speech weigh in even, when the prevailing content of the speech is to incite hate. Hate is not speech (Article 4, Paley). This article discusses how proving intent is a key differentiator in hate crimes, as it seeks to balance the issue of verbally disseminating one's views against the protection of individual,s in targeted violence attributable to those beliefs or identities. This test illustrates the expansive concept of free speech in the U.S., which muddies the prosecution of hate crimes and requires evidence to be treated with exceptional care.

Knowledge of the social context of evidence analysis is particularly important in the context of the UK, where the British legal system is committed to investigating the big picture: the circumstances that surround a particular crime. In hate speech or discriminatory statements cases, the cultural and social context determines how intent is interpreted. Speech, the report continues, may seem neutral at face value, but should be categorized as a hate crime if you take its social context into consideration. This means that social values in the UK are important to how the judiciary deals with evidence in hate crime cases, making them powerful determinants of verdicts(Westbrook, 2008).

France has a legal system that follows a philosophy, that strongly upholds social values—these include the preservation of social unity and a rejection of racism or hatred toward any section of society. French legislation is more restrictive of hate speech or incitement against specific groups, and social context is critical for determining whether a statement or act is a hate crime. French social orientations (for instance, their tolerance and openness to cultural diversity) directly impact judicial procedures in cases of xenophobia and racial discrimination (Delgado, 1994). The French system uses social evidence that is deeply rooted in cultural context to offer greater protection against hate speech.

Studies in Germany, for example, show that such social values about the rights of racial and religious minorities, have been incorporated into the legislative framework, that operates in interpreting evidence in hate crime situations, demonstrate the German system classifies hate speech as a criminal act of violence, which in cases with evidence of discriminatory intent deserving of punishment. In fact, considering all that people have said or done that glorified violence, has to be understood in the broader context of what society in Germany stands for, and what we will not tolerate when it comes to racism and discrimination against minorities. (Boyd et al., 1996)

### *Globalizing the Values of International Law*

Both local legal and social values, the principles established by international law, including human rights treaties, have a significant impact on how hate crimes are addressed. International agreements such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) are binding on the signatory states to protect individuals from hate crimes. These accords focus on protecting people from discrimination, based on race, religion, and other grounds, and bolstering domestic laws banning hate speech and incitement to violence.

### *Hate Speech as a Motivator in the Development of Aggressive Behaviors and the Rise of Hate Crimes*

Hate speech is a leading cause of violence, especially violent acts like hate crime behavior. Its reach is not restricted to media and the internet but also includes extremist groups, political rhetoric, religious discourse, education, and cultural heritage. All this contributes to the spread of hate, and results in the rise in violence against a specific social or cultural group. Consequently, many countries have created legislation and laws that try to limit the damage of hate speech, which will be covered below

### *Where does hate speech come from? And who is it directed at?*

Hate speech is not a new phenomenon, but rather an established facet of many movements and groups, that surfaced at different moments in history. Such acts of violence and inciting hatred against individuals based on race, religion, social status, or group affiliation are often perpetrated by these groups. In the United States, one of the most infamous extremist groups in the country's history is the Ku Klux Klan (KKK). This group, the second Ku Klux Klan, was initiated in the late 19th century after the Civil War, became infamous for its white supremacy ideology. Its members employed systematic violence against minorities, especially African Americans, and against Jews and immigrants. In such fashions, Islamophobia, the fear of Islam and Muslims, is an increasing phenomenon in many Western countries and a form of hate directed at Muslims. Attacks on mosques and Islamic centers, spiked after the events of Sept. 11, 2001, when Muslims were falsely painted as a security threat. For example, there has been an increase in attacks and anti-Islamic rhetoric, against Muslim communities in the US and European countries. The case in France clearly proves the point: how for a country with many Muslims, Islamophobia has been utilized by some politicians and media tools to escalate fear of the "Islamic threat," the outcome of which is an escalation of violence against Muslims (Sardar, Serra & Jordan, 2019; Cianitto, 2018).



If violence against Black people is the measure of hate, hate speech against people of African descent has remained strong in several countries, like the United States. Moreover, notwithstanding far-reaching advancements for Black individuals in civil rights, there still exists an extremely challenging existence for many as racism against them remains a virulent societal issue in the United States. The White movement is one of the most well-known movements against Black people that is not preceded by a label. The roots of this phenomenon stretch back to the antebellum era, when African slaves were property, not people. Since that time, racially motivated behaviors and attitudes towards Black individuals have persisted across decades, with the repeated episode of systematic racial discrimination in the American South, and most recently, in the violent suppression of the Black Lives Matter protestors mobilized against police brutality targeting Black lives (Jacobs & Henry, 1996; Bryan & Trickett, 2021).

Hatred of women's liberation, however, is a new phenomenon as many societies have rejected gender equality, regarding women's freedom as a threat to the traditional social order. And this type of hatred expresses itself through the resistance to women's rights, whether it be education, work, or political participation. In many conservative countries, feminists are perceived, as a threat to the traditional religious and cultural system, resulting in the spread of hate speech against women and their rights. In some Eastern societies where women are being harassed, being victims of domestic violence, because of their struggle for equality and freedom. This kind of dogma exists among some Islamic constituencies, where women's rights are often viewed through a traditional lens that contrasts with American values of gender equality. Similarly, certain Western nations continue to perpetuate stereotypes about women. For example, in today's America, some states are still fighting to grant women the right to abortion (Hare, 1997; Dharmapala & McAdams, 2005).

With hate speech comes the potential for verbal and/or physical violence, which is how it plays a role in determining intent in crimes, committed after the fact, as it becomes possible to label the crime a hate crime. For instance, in case the aggressive act was driven through hatred toward a specific organization, due to religion, race, or gender, intent will become an element to criminal prosecution and qualification. In these instances, motivation speaks not just to the goal of the individual, who commits the attack, but also to the atmosphere of hateful discourse and the social attitudes that fuel it. Muslim mosques get subjected to direct attacks, and racial violence against Black people may not just result from one person acting on their beliefs, but rather also come from public rhetoric circulating around society, affecting people at various levels. Therefore, rhetoric becomes one of the ways the judiciary can use as evidence for proving hate, or hostility and validating the racist, religious, or sexist nature of the crime which in turn, contributes to the categorization of a hate crime according to legislation both domestically and internationally (Fisch, 2002; Wang, 2022; Daskal, 2019).

#### *Hate Speech Under Pressure: Freedom of Expression or Incitement to Violence Legal System Comparisons*

One of the biggest legal challenges in today's legal systems, is how to accommodate hate speech, where to draw the line between free speech, and the protection of individuals from whatever violence or incitement that speech may entail. The struggle between free speech and hate speech has grown, with the advent of social media and the proliferation of online platforms (Fatma, 2019), that make it easy to voice opinions. It can be hard to define what is an expression of opinions, and what is incitement to violence against a given group in society. Hate speech can incite hate and hostility, making violent crimes more likely — either targeting individuals or specific groups.

In this context, one of the most significant problems, is the challenge of constructing a criminal intent element for cases, where hate speech is instrumentalized to incite violent action. The speaker of hate speech is also not always a direct inciter but passes on views that incite hatred without physically committing violence. Whether the speaker truly meant to incite violence, or whether the speaker's words caused collateral damage sometimes becomes difficult to discern.

Legally, the prosecution faces the task of proving, that the hate speech speaker possessed a criminal mind to hate. The legal status of the speaker reflecting hate speech differs in this situation. The practical implication of that, is in some legal systems they are considered direct inciters, while in others, when viewed merely as somebody conveying an opinion, they theoretically don't hold any legal responsibility. For example, in the United States, freedom of expression is a constitutional right par excellence, and the criminalization of hate speech is limited to direct and clear incitement to violence. The same is not true for European systems, like France and Germany, with stricter limits on hate speech, making it a crime in several cases involving incitement to violence or hatred against racial and religious groups (Parker, 2017; European Court of Human Rights, 2018).

Hate speech laws, such as in France, make it a crime to promote hatred toward individuals, based on their race or other attributes in society. Under French law, any speech that incites people to, discriminate against, or commit violence against groups is a crime, and should be punished, as part of protecting public security and social order. Article 24 of the 1881 "Passage to Freedom" prohibits hate speech, under which punishment can lead to prison or fines (Fassin, 2011).

In Germany, it is also criminalized by the German Criminal Code, particularly, when it constitutes incitement to violence, encouragement of hatred against racial or religious groups. It is Article 130 of the German Penal Code that forms, the basis of prosecuting individuals, who promote hate speech through either media or online platforms. Such data leads to the experience of censorship in Germany, where the law forbids the distribution of any content inducing violence or promoting racial or religious discrimination, with imprisonment as a possible punishment (Wagner, 2004).

The French and German legal systems are much tougher on hate speech, since they view this type of speech as an attack on social security, that should be fought through effective legal means (Potts et al., 2023). This is an important distinction in comparison with flourishing in some other countries, such as the United States, that grant wide-ranging protections to freedom of expression.

Therefore, the law should clarify under which circumstances hate speech is considered incitement to violence, striking a proper balance between the individual's right to freedom of speech and the need to protect society from the potential threats posed by hate speech.

### *Demonstrating Nature of Intent in Hate Crimes: Issues to Solutions*

As many have found in the study of hate crimes, one of the biggest challenges for legal systems in many jurisdictions is determining the nature of criminal intent. The challenge comes in determining whether a crime was fueled by hatred, as the motivation can overlap with other reasons for a crime, like personal animus or revenge, so that it becomes difficult to draw the line between discriminatory intent and motives from other sources. Here we draw on the approaches taken by American and European legal systems in grappling with this problem, as well as the attendant legal and technical responses, that have emerged to help ascertain, capturing what was in someone's mind. A discussion is held on how legislation and investigative mechanisms can be adjusted to help bring justice in such complex cases.

### *Challenge 1: Legal Ambiguity*

This creates ambiguous legal texts of hate crime legislation, hampers the classification of crimes as hate-motivated. In some legal systems, there is a more fundamental problem, with hate crimes defined imprecisely, or leaving room for competing interpretations about: what would qualify as a discriminatory motive. Such ambiguity leads to a lack of clear application of laws, uncertainty about whether a crime qualifies as a hate crime, and ultimately hinders justice. Research has shown that in some legal systems, the reluctance of courts to convict a single perpetrator can complicate these regulations (Garland, 2020; Quillian & Pager, 2017).

*How This is Addressed by Legal Systems:* American System: In the U.S., although laws exist (for example, the Hate Crime Prevention Act), their application is difficult because of ambiguities present in some texts that define the types of crimes considered in this case. The laws might be vague as to what counts as a “hate motive” versus other kinds of motives such as revenge or personal vendetta. The responsibility of interpreting these texts and deciding whether a crime was motivated by discriminatory intent, according to the evidence present, lies with judges and lawyers (Bryan & Trickett, 2021). In European systems: while there is sophisticated anti-hate law, some laws fail to clearly distinguish between normal crime and hate crime. For example, in some European nations, such as France or Germany, the use of vague language in the laws to characterize crimes committed against targets based on race, religion, or sexual identity can present challenges to ensuring that laws are uniformly implemented across member states. Member States' implementation of hate crime laws shows wide discrepancies, according to a European Union study, which the organization attributes to ambiguities in certain texts of law (European Union Agency for Fundamental Rights 2019).

### *Comparison of Legal Systems*

American and European Systems: Both systems struggle with the vagueness of certain legal texts, that make it difficult to define hate crimes. In the U.S., we have laws like the "Hate Crime Prevention Act," but there are certain aspects of their application that remain obscure. In Figure 2 of the appendix, the level of clarity in European systems differs between countries, leading to differences in law enforcement between states (Garland, 2020). These challenges impact how effectively law enforcement can act in justice when they face hate crime cases.

### *Potential Solutions and Evaluation of Effectiveness*

It is crucial for legal systems to define hate crimes as clearly as possible, emphasizing the intent behind the crime. Laws should precisely define crimes driven by hate and establish clear, uniform criteria for their application. In the U.S., a more comprehensive "hate law" could be developed, including a definition of discriminatory acts (Bryan & Trickett, 2021).

Similarly, in the European system, clearer definitions are needed. An agreement among EU member states to align their definitions would help ensure more consistent and effective application of hate crime laws, as research has shown that such alignment could improve the uniformity of implementation across member states (Wang, 2022; European Union Agency for Fundamental Rights, 2019)

### *Challenge 2: The Problem of Identifying the Nature of Intent and Differentiating Intent from Other Reasons*

The difficulty in proving intent in hate crimes, is one of its biggest challenges in legal systems, as multiple motivations often intersect, it can be hard to show the crime was done out of hatred. Criminal intent in hate crimes, may stem from the motivation of racial, religious, or cultural discrimination, but differentiating this intent from other motives, including revenge or personal animosity, is very complex. In addition, there is not always direct evidence of discriminatory intent, putting an enormous burden on investigators, judges, to prove this intent correctly. The task of ascertaining, whether a crime was committed with the requisite mens rea for a hate crime, is far from simple, and questions of hate crimes, as opposed to other possible motivations like personal disaffection or revenge, make this an area of extremely difficult guidance (Fisch, 2002; Lawrence, 1994).

### *How Legal Systems Take on This Challenge*

American Legal System: In the U.S., the determination of hate intent, heavily relies on contextual evidence, such as behaviors that may indicate a discriminatory motive. Classes only have to do with criminal intent, and the Hate Crime Prevention Act requires that crimes be classified only if there is a clearly discriminatory intent. This system is largely dependent on indirect evidence, which

is evidence that can be based on the offender's behavior or usage of language (Hate Crime Prevention Act, 18 U.S.C. § 249) (Bryan & Trickett, 2021).

**British Law:** The “Hate Crime Act” in England that covers acts motivated by race, religion, or sexual identity. Victim testimonials and visual evidence are used by the courts to substantiate discriminatory intent. Police reports and community testimonies also assist in and bring to the forefront the intent of the offender towards a specific group (The Crime and Disorder Act 1998, Section 28) (Wang, 2022).

**French Legal System:** France addresses hate crimes, including those based on race and religion, under the “special criminalization of hate” law, which serves to heighten sanctions for crimes motivated by discriminatory purposes. In a court of law, any discriminative comments or actions surrounding the crime are taken into account in order to assess the intention behind the offense (Code Pénal, Article 132-77-1) (Sardar, Serra, & Jordan, 2019).

**German Justice System:** In Germany, hate-motivated crimes fall under the “laws against racism and hate,” which defines crimes that are motivated by racial or religious discrimination. In addition to hate behaviors aimed at specific groups (Strafgesetzbuch (StGB) Section 130) (Chan, Ghose, & Seamans, 2016), German courts also exert digital evidence from the internet (Wani et al., 2023)

*Cross-legal System Comparative Analysis:* American and British Legal Systems: Both systems use indirect evidence, or the behaviors or statements that could indicate discriminatory intent. This can be things like personal testimonies or police reports. But in the U.S. system, digital evidence may loom larger than in the British system, which relies more on direct testimony from victims. About the French System: The French system uses direct evidence, such as discriminatory statements, like the American and British systems, but emphasizes hate crime penalties more heavily. In this case, the French law is more rigorous for cases of hate over ethnicity or religion. The German system is notable for a heavy emphasis on digital evidence, echoing a larger European trend toward using technology to establish crimes. Its legal system also acknowledges the damage that a hate-motivated crime causes, which further enhances the responsibility of the perpetrator (Bryan & Trickett, 2021; Wang, 2022; Sardar, Serra, & Jordan, 2019; Chan, Ghose, & Seamans, 2016).

### *Suggested Solutions and Evaluation of Their Effectiveness*

**Digital Evidence and Personal Testimonies:** The Future to Prove Intent of Hate: With an improvement to prove this hate intent, the next step would be to get into advanced technology to analyze the evidence on every digital space available, including hate speeches. These might work better in systems like those of the U.S. and Germany.

**Effective Measurement of Intent:** In the UK and France, where direct testimonies are prominent, training for the police and judges on how an offender's body language and language can be interpreted would increase in effectiveness.

**Application of Digital Content Analysis Tools:** More evidence is needed to help convict perpetrators of abuses in legal systems, such as French and German, where a breach of law that is discriminatory has to be undertaken, and if digital content had more depth, it may assist (Aziz, 2024).

### *Challenge 3: Curating Evidence from Hate Crimes Is a Challenge*

Key to the prosecution of hate crimes is the challenge of establishing a defendant's intent—that the defendant was motivated by a protected status such as race, ethnicity, or religion. The intent, especially discriminatory intent, is often hidden and intertwined with other elements, including personal grudges or revenge. This makes it difficult to prove that a crime was motivated by hatred as opposed to other reasons (Fisch, 2002; Lawrence, 1994).

This issue presents great challenge across different legal jurisdictions. U.S. investigators rely on indirect evidences, such as a suspect's statements or online activity, under the Hate Crime Prevention Act. British law follows suit, using what it calls victim impact evidence, police statements, and community impact statements to make inferences about intent under the Crime and Disorder Act. In French courts, attention is directed towards prejudicial statements or behaviors, as defined in Article 132-77 of the Penal Code, while German jurisprudence complements hate-induced intent with digital footprints, specifically those over online platforms (Chan, Ghose & Seamans, 2016; Wani et al., 2023).

**Proposed Solutions:** Such challenges require a technological leap for developing digital evidence collection. AI-fueled tools have the potential to comb through terabytes of records, from social media posts to search histories to surveillance video, to find anomalies that suggest a discriminatory motive. In addition, better programs to train law enforcement officers and members of the judiciary will help these professionals recognize physical and verbal indicators of bias (Aziz, 2024). Legal systems should have clearer definitions of hate crimes and uniform principles on how to collect and interpret evidence neuroscientifically. This makes for consistent prosecution without ambiguity as to how intent can be proven. Such measures would address the evidentiary challenges in hate crime cases, helping make the legal system more accountable and just (Sedik et al., 2024).

## Conclusin

Any mens rea in a crime ultimately relies on intent, is a foundation of criminal liability. In traditional crimes, the presence of intent plus the commission of a crime is enough to sustain the charge and attach criminal liability. In hate crimes, however, an additional ingredient is required by law — the requirement to show "hate intent" as a specific mens rea to invoke criminal liability. This type of intent, a volition of hate against a group based on the group's characteristics — be it race, religion, sexual identity, etc. — is central to criminal liability in hate crimes. To prove hate intent, therefore, demands that the judiciary discover a motive for crime, that is deeper than the obvious. This means bringing to bear a look at the social and psychological reality around the action. Thus, hate crimes include an extra component of "hate intent," which is a basic premise for criminal liability. The legal problem lies in proving this intent through careful examination of the circumstances surrounding the crime, and a detailed discussion of the perpetrator's motives.

One of the significant findings of this study is that mens rea — the basis of criminal liability in general — must be proven, even if it is required to prove intent, either intentional or negligent. But with hate crimes, traditional intent is insufficient. Rather, there must be an "additional intent" defined — in this case, hate intent. Unlike traditional intent, hate intent is a more insidious motive that arises out of hatred and prejudice targeting certain sections of society based on their race, religion, or sexual identity. Hate speech may be the most common manifestation of this form of incitement to discrimination and violence and serves to spread hatred and encourage discrimination or violence against members of given groups. To prove this intent, the prosecution must examine complex evidence, including the perpetrator's previous words and attitudes and the social and psychological context of the crime. Thus, the prosecution of hate intent needs extra work from the judiciary to ascertain that the crime was carried out with the motive of hatred. The need for clear legal frameworks designed to define how hate intent is proven in hate-related crimes must be understood. These frameworks must establish clear legal criteria, that can be used in adjudicating such crimes, including provisions to establish hate intent based on the context of the crime and/or perpetrator behavior, presuming hate intent in such cases consistent with the context of the crime or conduct of the perpetrator. Proving this assumed intent in some cases would help judicial authorities to grapple with the intricacies of hate-related cases. It also means improving measures to counter hate speech in the media and on social media, which can incite hate-motivated crime. Moreover, judges and lawyers would need additional training to understand the framework of such cases, focusing on looking at psychological and social evidence that can aid in understanding the intent of the perpetrator. At the international level, establishing mechanisms of cooperation

between states to level standards of proving hate intent in international crimes would deliver justice and safeguard the rights of individuals everywhere.

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