Hate crimes and their criminalization

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New Approaches to Social Problems Treatment

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Abstract

This chapter considers overlapping legal and policy issues related to hate crimes, summarizing the problem with an emphasis on societal responses. The theoretical insight that law can be understood as an expression of societal values is combined with an emphasis on the empirical study of law in action. The approach taken is theoretical and conceptual in nature, but is also informed by relevant case law and various empirical studies and is concerned to suggest how hate crime research can address issues of both theoretical and policy significance by analyzing how hate crime law is practiced. Some of the findings are that hate crime law can be seen to express values in a wide variety of settings and to express values intentionally, neither of which has been properly acknowledged to date. It is important for public policy analysis and practice as well as for theory development to acknowledge the limitations of both rational choice/deterrence approaches and moral education theories in the hate crime policy domain. Instead of understanding criminal law as a type of threat or type of instruction, in the case of hate crimes the law may be practiced and evaluated most realistically without assuming that hate criminals will be attentive to potential legal sanctions or amenable to moral education. The discussion includes elements of literature review, policy debate, theoretical analysis, and methodological reflection suggesting how hate crime law can be analyzed as expressive law in action, providing material relevant for students, theorists, policy-makers and analysts, and researchers.

Citation


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Most state hate crime laws include crimes committed on the basis of race, color, and religion; many also include crimes committed on the basis of sexual orientation, gender, gender identity, and disability. Crime. The “crime” in hate crime is often a violent crime, such as assault, murder, arson, vandalism, or threats to commit such crimes. Under the First Amendment of the U.S. Constitution, people cannot be prosecuted simply for their beliefs. People may be offended or upset about beliefs that are untrue or based upon false stereotypes, but it is not a crime to express offensive beliefs, or to join with others who share such views. However, the First Amendment does not protect against committing a crime, just because the conduct is rooted in philosophical beliefs. Hate crimes should be illegal because they pose a specific threat outside of the realm of traditional forms of abuse. Acts of hate should be criminalized because they represent a systematic threat to a society. Without criminalization, the acts of hate will lead to disaster. As the world is becoming one global village, migrations are becoming very common. Criminals should be judged by their acts, not their views. Hate crime laws establish the precedent that it is acceptable to base punishments on the views of the criminal, not their acts. The danger of this is that as time goes on, the definition of hate crimes will tend to expand to fit the prevailing politics of the day, eventually allowing the state to criminalize acts of political protest. The term ‘hate crime’ can be used to describe a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim’s disability, race, religion, sexual orientation or transgender identity. These aspects of a person’s identity are known as ‘protected characteristics’. A hate crime can include verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property. The perpetrator can also be a friend, carer or acquaintance who exploits their relationship with the victim for financial benefit.
such groups can include, and are almost exclusively limited to: sex, ethnicity, disability, language, nationality, physical appearance, religion, gender identity or sexual orientation. Non-criminal actions that are motivated by these reasons are often called