



## Why Designating Extremist Offenses Such as Terrorism and Hate Crimes is Difficult – and May Be Unnecessary

Wesley S. McCann, George Mason University

Extremism is difficult to define and discuss. Many kinds of people and acts can be called extreme – ranging from the bigoted citizen who destroys someone’s car with racist graffiti, to the individual who shoots up a historically black church to scare black people into leaving town, to a person who murders people who practice a religion other than their own.

Discussions about extremism are often entangled in debates about what is legitimate and illegitimate action – what is protected versus illegal behavior. This has widespread implications for those who hope to address and reduce “extremist” crimes. If this debate about definitions could be resolved or avoided, then simple and coherent criminal categorizations rather than a highly politicized debate could emerge. Regular laws already cover almost all hate crimes and acts of terrorism, such as arson, destruction of property, murder, and conspiracy. In consequence, these legal categories can be redundant and counterproductive.

My research attempts to disentangle political debates about extremism and help chart a path toward a less violent future via more successful classification and prosecution. To start, it is important to address the two similar and often-conflated crimes: terrorism and hate crimes.

### Terrorism and Hate Crimes

At their core, hate crimes and terrorism are crimes driven by an underlying belief system. Put another way, both hate crimes and terrorism are triggered by the perpetrator’s underlying motivation to achieve some social or political objective. The objective may be intimidation, policy change, or another group impact. The fact that these crimes are motivated by a belief or ideology is important – and distinguishes them from other criminal offenses.

Researchers have studied, at length, the difficulty of prosecuting suspects of hate crime and terrorism, but few have compared the two to examine how they overlap and differ in terms of legal definition and legal practice. My research helps address the overlap in the legal definitions of “hate crime” and “terrorism” – and the legal differences concerning “ideology,” “bias,” and “hate”; which are essential legal components to be considered in properly classifying and prosecuting these crime..

Definitions of these crimes often influence how they are treated. Beyond media coverage and public discussions, definitions can also affect how and whether these crimes are prosecuted. While terrorism is often considered more violent and serious than hate crimes, it is usually prosecuted under statutes that are not specific to terrorism, and prosecutions are more successful when “terrorists” are treated like regular criminal offenders. Similarly, hate crimes are rarely prosecuted as such, but when they are, they too are usually adjudicated via traditional criminal legal statutes. In the end, the utility of laws that criminalize terrorism and hate crimes specifically are highly questionable. Essentially, the labels may be largely irrelevant to prosecutorial results.

Often, crimes are labeled as terrorism if the suspect was a member of a certain group or aligned with a group’s goals or ideology. In the same vein, hate crimes typically earn their title if the underlying motivation was “prejudice” or “bias.” However, distinguishing between these two concepts is not easy. It is extremely difficult, within the legal system, to determine whether the crime was motivated by an ideology of hatred – such as religious antipathy to gays – or by a personal bias or prejudice towards someone who is gay. Furthermore, the distinction can be complicated by Constitutional free-speech protections that allow people to have whatever beliefs they wish so long as to they do not commit or incite others to violence.

## Federal and State Government Approaches to Extremism

Some states have no laws on hate crime or terrorism at all. The states that do have such laws rely on definitions of terrorism and hate crime that vary significantly. Nearly half of state-level legal definitions share the same core legal elements, including a “target,” a “motivation,” and “violence.” Despite this, research shows that most prosecutions for hate crimes and terrorism are for non-violent infractions. States do not adequately distinguish “motivation” (terrorism) from “bias/prejudice” (hate crime). Some states only define (and use) the terms “hate crime” or “terrorism” in sentencing enhancements – laws that require judges to sentence certain types of criminals more harshly.

Terrorism is prosecuted at the federal level, whereas hate crimes are usually handled at the state level (though the federal government can assert or obtain jurisdiction over hate crimes in some cases). Place of residence often determines whether a person is (or is not) protected by hate crime laws. Some classes protected from hate crimes have become very inclusive – such as police officers, military personnel, and political dissidents – in a way that departs from the original intent of such laws.

### Ways Forward

There are many actions that could remedy deficiencies just discussed issues, and I present five possibilities here – ranging from the most to least ambitious reforms.

- Eliminate “hate crime” and “terrorism” from state and federal criminal codes. Existing common-law crimes already cover almost all crimes encapsulated in each.
- Eliminate “hate crime” and “terrorism” from state and federal criminal codes and, instead, retain just the possibility of using evidence of ideological motivation or group biases as factors to consider during sentencing proceedings.
- If retained, “hate crime” needs to be explicitly defined as a bias crime that lacks some overarching social goal (for example, to induce racial wars), because “terrorism” should be reserved for goal-oriented actions in the political, social, or religious realm.
- If both types of criminal designations remain, and “hate crime” is not redefined, legislatures need to better operationalize the meanings of “ideology”, “bias”, or “prejudice”.
- States need to rethink the inclusion of some protected classes in existing hate crime statutes, because too many render existing statutes more difficult to prosecute. .

**Read more in Wesley S. McCann and Nicholas Pimley, “Eliminating Extremism: A Legal Analysis of Hate Crime and Terrorism Laws in the United States,” working paper (2019).**