

A close-up photograph of a person's hand with the index and middle fingers extended, forming a raised fist. The hand is positioned in the center-left of the frame, set against a dark, textured grey background. The lighting is dramatic, highlighting the contours of the hand and the texture of the skin. The overall mood is one of solidarity and protest.

# HATE CRIME

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NO5 CHAMBERS

# INTRODUCTION

- WHAT IS HATE CRIME?
- THE LEGISLATION
- HATE CRIME IN PRACTICE
- DISCUSSION



# WHAT IS HATE CRIME?

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# WHEN MOST OF US THINK OF HATE CRIME ...



# BUT IT'S ALSO THIS

Figure 2. Jihadi terrorist attacks news coverage in UK national newspapers



a) Example of sensationalist media coverage (the regulator ruled in the aftermath that the Sun violated Editor's code of Accuracy)

b) Most frequent words in newspaper articles on jihadi terrorist attacks

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# COMMON PRINCIPLES

- AT THE TIME OR IMMEDIATELY BEFORE OR AFTER
- DEMONSTRATES
- MOTIVATED BY
- HOSTILITY
- BASED ON RACE, RELIGION, DISABILITY, SEXUAL ORIENTATION, TRANSGENDER IDENTITY

# AT THE TIME OR BEFORE / AFTER

- EITHER AT THE TIME OR IMMEDIATELY BEFORE OR AFTER
- WHAT IS IMMEDIATE?
- PARRY V DPP (2004) EWHC 3112 (ADMIN)
- BABBS (2007) EWCA CRIM 2737
- CONTEXT IS KEY IN EACH CASE
- VICTIM NEED NOT HEAR OR SEE THE HOSTILITY

# “DEMONSTRATES”

- WORD OR ACTION MAKING THE MEANING CLEAR
- COMMON SLURS
- BUT ALSO INNOCENT WORDS USED IN A HOSTILE WAY
- WHITE (2001) EWCA CRIM 216 – “AFRICAN BITCH”
- WOODS (2002) EWHC 85 – “BLACK BASTARD”
- WEARING CERTAIN ITEMS
- SINGING SONGS
- HOLDING A BANNER



# “DEMONSTRATES” IN GROUP CONTEXT

- JOINT ENTERPRISE
- DAVIES AND ELY (2003) EWCA CRIM 3700
- G AND T V DPP (2004) EWHC 183:

*“...In my judgment, an offender may demonstrate racial hostility by joining in the activities of a group of people where a sufficient number of members of the group are themselves demonstrating racial hostility, and where the defendant's adherence to the group is such as to go beyond mere presence within the group, but so as to associate himself or herself with the demonstration of racial hostility which the group as a whole is displaying.”*

# “MOTIVATED BY”

- EITHER DEMONSTRATED OR MOTIVATED
- LOOKING AT MOTIVE – ONE OF THE FEW TIMES WE DO THAT IN CRIMINAL LAW
- HOW CAN WE PROVE IT?
- LACK OF ANY OTHER OBVIOUS MOTIVATION
- HISTORY / PREVIOUS CONVICTIONS
- MEMBERSHIP OF A GROUP
- POSSESSION OF CERTAIN MATERIAL

# “MOTIVATED BY” IS DIFFERENT FROM TARGETING

- TARGETING – MAY SEE SOMEONE AS AN EASY TARGET
- BUT NOT NECESSARILY BE MOTIVATED BY HOSTILITY
- E.G. TARGETING A PERSON WITH A DISABILITY NOT BECAUSE THEY HATE DISABLED PEOPLE BUT BECAUSE THEY THINK THEY’RE AN EASY TARGET
- IN REALITY, BOTH WILL AGGRAVATE SENTENCE



THE LEGISLATION

1872 — 1883

ACTS

TAX CASES  
OF  
REPORTS

# RELIGION / RACE DISTINCT FROM OTHER PROTECTED CHARACTERISTICS

- DIFFERENCE IN THE WAY RACIAL / RELIGIOUS CRIMES ARE TREATED AND THOSE RELATING TO OTHER PROTECTED CHARACTERISTICS
- RESULT OF THE WAY THE LAW CAME ABOUT
- NOW WE HAVE A TWO-PART SYSTEM
- ONE: SPECIFIC RACIALLY/RELIGIOUSLY AGGRAVATED OFFENCES
- TWO: 'CATCH-ALL' LEGISLATION THAT OPERATES AT THE SENTENCING STAGE

# RELIGION/RACE: SPECIFIC OFFENCES

- A NUMBER OF SPECIFIC OFFENCES
- ARGUABLY THE MAIN STATUTE IS THE CRIME AND DISORDER ACT 1998

# CRIME AND DISORDER ACT 1998

- SECTION 28 OF THE ACT DEFINES RACIALLY OR RELIGIOUSLY AGGRAVATED
- AT THE TIME OR IMMEDIATELY BEFORE / AFTER
- DEMONSTRATES HOSTILITY BASED ON RELIGION/RACE OR
- MOTIVATED BY HOSTILITY BASED ON RELIGION/RACE

# OFFENCES UNDER CRIME AND DISORDER ACT 1998

- ASSAULT
- CRIMINAL DAMAGE
- PUBLIC ORDER OFFENCES
- PUBLIC ORDER OFFENCES = HARASSMENT, ALARM, DISTRESS



# PUBLIC ORDER ACT

- INCITEMENT TO RACIAL HATRED
- SECTION 18 TO 23
- INCITEMENT TO HATRED ON BASIS OF RELIGION OR SEXUAL ORIENTATION
- SECTIONS 29B TO 29G

# FOOTBALL OFFENCES ACT 1991

- SECTION 3 OF THE FOA 1991 = OFFENCE OF INDECENT OR RACIALIST CHANTING
- **3. Indecent or racist chanting.**
- *(1) It is an offence to engage or take part in chanting of an indecent or racist nature at a designated football match.*
- *(2) For this purpose—*
- *(a) “chanting” means the repeated uttering of any words or sounds (whether alone or in concert with one or more others)]; and*
- *(b) “of a racist nature” means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.”*

# OFFENCES AGAINST MINISTERS / PLACES OF WORSHIP

- FAR LESS COMMON
- BUT WORTH BEING AWARE OF

# ALL PROTECTED CHARACTERISTICS: SENTENCING UPLIFT

- STATUTORY OFFENCES ONLY ADDRESS RACE AND RELIGION, AND TO A MUCH LESSER EXTENT SEXUAL ORIENTATION
- THE REST ARE DEALT WITH AT SENTENCE
- SECTIONS 145 AND 146 OF THE CRIMINAL JUSTICE ACT 2003

# SECTION 145 OF THE CJA 2003

- SENTENCING UPLIFT FOR RACE / RELIGION

*(1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).*

*(2) If the offence was racially or religiously aggravated, the court—*

*(a) must treat that fact as an aggravating factor, and*

*(b) must state in open court that the offence was so aggravated.”*

# SECTION 146 OF THE CJA 2003

- SENTENCING UPLIFT FOR TRANSGENDER, SEXUAL ORIENTATION, DISABILITY

*“(3)The court—*

*(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and*

*(b) must state in open court that the offence was committed in such circumstances.*

*(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that paragraph”*

- THESE CIRCUMSTANCES = SEXUAL ORIENTATION, DISABILITY, TRANSGENDER MOTIVATION OR DEMONSTRATION

# SENTENCING HATE CRIME – STAGED APPROACH

- ONE: WHAT IS THE SENTENCE WITHOUT AGGRAVATION?
- TWO: WHAT IS THE SENTENCE WITH AGGRAVATION?
- THREE: ANNOUNCE THE AMOUNT OF UPLIFT
- KELLY AND DONNELLY (2001) EWCA CRIM 170

*“... a sentencer should first arrive at the appropriate sentence, without the element of racial aggravation but including any other aggravating or mitigating factors. The sentence should then be enhanced to take account of the racial aggravation ...”*



# HATE CRIME LAW IN PRACTICE



# PREVALANCE OF HATE CRIME

- INDICATION THAT IT IS UNDER-REPORTED
- HOME OFFICE PAPER – 26 NOVEMBER 2021 – MOST PEOPLE ARE UNLIKELY TO REPORT HATE CRIME TO THE POLICE SO THE STATISTICS ARE UNDER-REPRESENTATIVE
- HOW MANY TIMES HAVE YOU EXPERIENCED SOMETHING AND NOT REPORTED IT?

# THE POLICE AND HATE CRIME

- HATE CRIME TRAINING
- HATE CRIME LEADS
- DEPENDS ON THE FORCE
- HATE CRIMES MUST BE FLAGGED ON THE SYSTEM
- CPS GUIDANCE SOUGHT FOR CHARGING DECISION

# THE POLICE AND HATE CRIME

- DO THE POLICE DO ENOUGH?
- CONCERN THAT CAN'T DO ANYTHING UNTIL CRIME COMMITTED
- PERCEIVED BUILD-UP TO A CRIME MAY BE A CRIME IN ITSELF
- HARASSMENT, STALKING, PUBLIC ORDER OFFENCES

# CROWN PROSECUTION SERVICE AND HATE CRIME

- CPS MUST FLAG IT
- CPS DECIDE A) EVIDENCE TO PROSECUTE? AND B) IS IT IN THE PUBLIC INTEREST
- HATE CRIME ALWAYS IN PUBLIC INTEREST TO PROSECUTE

# IS HATE CRIME TAKEN SERIOUSLY BY THE AUTHORITIES?

- IT SHOULD BE!
- THE MECHANISMS ARE IN PLACE
- PRACTICE MAY BE DOWN TO EACH INDIVIDUAL AREA
- MAY BE MARKED DIFFERENCES IN REGIONS

# WHY MIGHT HATE CRIME NOT LEAD TO TRIAL OR CONVICTION?

- POSSIBLE REASONS:
- RELUCTANCE TO REPORT
- MISUNDERSTANDING
- NORMALISATION
- POLICE MISUNDERSTANDING
- CPS MISUNDERSTANDING
- BARRISTERS MISUNDERSTANDING
- JURY MISUNDERSTANDING

# EDUCATION AND UNDERSTANDING ARE KEY

- CRUCIAL THAT WE ALL DO OUR BEST TO UNDERSTAND THE HATE CRIME LAWS
- AND HOW THEY MAY PROTECT US, OUR CLIENTS AND OUR LOVED ONES
- MECHANISMS ARE IN PLACE; WE NEED TO KNOW HOW AND WHEN TO USE THEM
- CONVERSATIONS LIKE THE ONE WE ARE HAVING ARE ONLY GOING TO HELP

# THANK YOU FOR ATTENDING

- COMMENTS, QUESTIONS OR CRITICISMS ARE WELCOME!

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