REF2021

Institution: University of East Anglia
Unit of Assessment: 30 – Philosophy
Title of case study: Combating Hate Speech: Influencing Public Policy and Action Around the Definition, Regulation, and Support of Victims of Hate Speech in the UK, Europe, and Beyond
Period when the underpinning research was undertaken: 2014 – 2020
Details of staff conducting the underpinning research from the submitting unit:

Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Alexander Brown	Reader in Political and Legal Theory	2009 - to present

Period when the claimed impact occurred: 2014 - 2020
Is this case study continued from a case study submitted in 2014? No

1. Summary of the impact

Brown's pioneering research has redefined how key civil society organisations, Internet platforms, and governmental agencies understand hate speech and its ethical regulation. His work has challenged the traditional understandings that inform law and practice in the UK and elsewhere by demonstrating that, contrary to widespread belief, hate speech is not necessarily or only rooted in extreme hatred, or in incitement to hatred or discrimination. Brown's research has also shown that there are a number of groups that merit protection against hate speech, that politicians ought not to enjoy special privileges, and that there are ethical ways of regulating hate speech online.

The new understanding of hate speech that Brown has developed and the policy implications derived from it have had a far-reaching impact on how public bodies, NGOs, and other groups and organisations view, treat, and attempt to counter hate speech and its effects. Brown's research has led to the adoption of new policies, governance regimes, and practices at national and European levels, and brought about new consideration and protection for the victims of hate speech. The research has directly affected the positions and practices of Stop Hate UK, the Traveller Movement, the Law Commission, the Canadian Commission on Democratic Expression, Facebook, Departments of Justice in the UK, France, and Germany, the Council of Europe (CoE), and the European Union (EU).

2. Underpinning research

Working in the field of applied normative legal philosophy, Brown's research has challenged the traditional conception of hate speech as speech that merely expresses or stirs up strong feelings of hatred. Since in this conventional understanding hate speech is free speech and there is a presumption in favour of free speech, the regulation of hate speech is held to represent an unjustified assault on free speech. It follows that protecting groups against hate speech is an attack on free speech, politicians should be allowed to express their views without inhibition, and the content of postings on online platforms should remain largely unregulated.

In two major research monographs, several journal articles, and a technical report, Brown has produced a body of research that challenges and supersedes the traditional conception of hate speech. He also develops an ethics that informs how hate speech should be regulated. He considers which groups that are victims of hate speech should be protected and why, argues that politicians should not be allowed to engage in hate speech, and produces a series of recommendations on the measures that online platforms should take to protect against hate speech.

In two initial articles (**3.1a**, **3.1b**), where he contrasts societal and legal concepts, Brown provides a rigorous analysis of the term "hate speech" that was the first in the field. In work that has become canonical, Brown challenged the false but widespread assumption that hate speech is inextricably linked to feelings of hatred. Contending for the first time that hate speech is a family resemblance concept, he extends the list of possible types of hate speech.

In his subsequent 2015 monograph (**3.2**), Brown examined the heterogeneity of hate speech and hate speech laws across the world, as well as the complex, contested, and conflicting arguments

for and against such laws. The monograph deepens understanding of a moral case for hate speech laws based on liberal democratic values of dignity, cultural recognition, and political legitimacy, and thereby challenged conventional thinking among free speech scholars, who argue that those values point only in the direction of support for free speech. It has become a key reference for both practitioners and academics worldwide.

The 2015 monograph served as a springboard for Brown's research on the groups or classes of persons that merit protection. In two articles, Brown proposes a rigorous model of the rational and moral basis on which policymakers and law courts can decide which groups do or do not merit protection under hate speech laws. Challenging the narrowness of established thinking in scholarship and government about potential victim groups and addressing concerns about consistency in their protection, Brown demonstrated the importance of a wider range of factors, including differences in identity characteristics between victim groups, and how the fundamental point and purpose of hate speech laws relates to different groups. (**3.3a**, **3.3b**).

In the first sustained treatment of politicians as hate speakers, Brown's co-authored 2019 monograph (**3.4**) developed several new arguments. The book investigated the connection between "dog whistle" hate propaganda and violence, the adverse impact of such speech on equal participation, trust in government, faith in democracy, and confidence in lawmaking, and how hate speech by politicians can legitimize, miseducate, lend authority to, and normalize ordinary hate speakers. It also provided a critical analysis of the remedies currently available to victims of hate speech in England and Wales, and made recommendations for reform, including disapplying parliamentary privilege for illegal hate speech, and strengthening parliamentary codes of conduct to disallow uses of hate speech outside of parliament.

In further work (**3.5**) Brown applied understanding of concern for the victims of hate speech to platform regulation, and found that, because it facilitates and even encourages immediate, unthinking communication, the Internet materially affects the extent and sort of hate speech found online. This analysis led the CoE to commission Brown to write a report that maps and critically evaluates emerging forms of moderation, oversight, and regulation of online hate speech across Europe, including looking at how victims are treated within different governance regimes (**3.6**). This ground-breaking text: generated new evidence on collaborative forms of governance; developed an original victim-centred approach to governance; generated new evidence on both practitioner and public attitudes towards governance; and produced new data on the working of EU monitoring procedures under the 2016 Code of Conduct. The study made several recommendations, including on governance tools for grey area cases, reforms to existing monitoring procedures, a victim-led approach, and appropriate use of exemptions, exclusions, and leniency programs for responsible platforms.

2. References to the research

3.1a 'What is Hate Speech? Part 1: The Myth of Hate', **A. Brown**, *Law and Philosophy* 36 (**2017**): 419-468. DOI: 10.1007/s10982-017-9297-1

3.1b 'What is Hate Speech? Part 2: Family Resemblances', **A. Brown** *Law and Philosophy* 36 (**2017**): 561-613. DOI: 10.1007/s10982-017-9300-x

3.2 Hate Speech Law: A Philosophical Examination. **A. Brown**, *London: Routledge*, (**2015**). ISBN: 978-0-415-88547-8

3.3a 'The "Who?" Question in the Hate Speech Debate: Part 1: Consistency, Practical, and Formal Approaches'. **A. Brown,** *Canadian Journal of Law & Jurisprudence* 29 (**2016**): 275-320. DOI: 10.1017/cjlj.2016.13

3.3b 'The "Who?" Question in the Hate Speech Debate: Part 2: Functional and Democratic Approaches'. **A. Brown**, *Canadian Journal of Law & Jurisprudence* 30 (**2017**): 23-55. DOI: 10.1017/cjlj.2017.2

3.4 The Politics of Hate Speech Laws. **A. Brown** and **A. Sinclair**, *London: Routledge*, (**2019**). ISBN: 978-1-4724-3914-7

3.5 'What is so Special About Online (as Compared to Offline) Hate Speech? Internet Companies, Community Standards and the Extragovernmental Regulation of Cyberhate'.

A. Brown, *Ethnicities* 18 (**2018**): 297-326. DOI: 10.1177/1468796817709846

3.6 Models of Governance of Online Hate Speech. **A. Brown**, *Strasbourg: Council of Europe*, (**2020**). (saved on file at the UEA)
https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2020/12/02/ECRI_Models%20of%20governance%20of%20online%20hate%20speech.pdf

4. Details of the impact

Brown's research has changed how hate speech is understood and approached by a range of diverse organisations, bodies, and institutions. His books and articles have been widely read within practitioner communities, especially among policy makers, lawyers, and activists. Brown has communicated findings, summaries, or policy recommendations based on his work to research users in the form of invited talks, keynotes, and other addresses in a number of policy forums. He has chaired international meetings and national policy summits, where he has given guidance directly to key decisionmakers. His reports have also been disseminated by international institutions, including the Council of Europe, to other important stakeholders. Brown's research has led to the adoption of victim-centred practices, policy, and protection by international organisations, national government, and victim support groups. It has informed law commissions and parliamentarians, led to reflection on practice on the part of online platforms, and been used in advocacy by NGOs and victim-support groups.

Brown's research has had direct impact on four main user groups, leading to substantive changes in the definition and regulation of hate speech and in the provision of support for its victims:

4.1 The Council of Europe. The Council of Europe (CoE) has historically been an adherent of the orthodox definition of hate speech in terms of incitement to racial hatred and discrimination. However, after working with Brown and having been persuaded that Brown's conceptualisation of hate speech was more robust (**3.1a**, **3.1b**), the Secretariat of the European Commission against Racism and Intolerance (ECRI) − the main human rights monitoring body of the CoE − decided to expand the definition of hate speech used in General Policy Recommendation (GPR) No. 15 (2015) (**5.6**). In the words of one senior officeholder at ECRI: *'The final text* [of GPR No. 15] *was substantially improved because the internal consultations with Dr Brown. It contains all the amendments made as a result thereof'* (**5.6**).

GPR No. 15 in its expanded version has itself become widely cited as the standard reference point for reports, studies, and recommendations on hate speech by key European human rights institutions and organisations. Its purpose is to advise member states of the CoE on how to reduce the incidence of hate speech, including online; how to mitigate the adverse consequences of hate speech on victims; and how to lessen or prevent some of the associated harms, risks, costs, and other negative effects on people and groups to whom hate speech is directed. GPR No. 15 has been cited on numerous occasions by major European bodies: for example, in European Court of Human Rights factsheet on hate speech (2019), in European Court of Human Rights case no. 20373/17 (2019), in Council of Europe Steering Committee for Human Rights Guide CDDH R91Addendum (2019), in Council of Europe Committee on Equality and Non-Discrimination report no. 1484520 (2019), in Council of Europe GPR No. 2 (2018), Council of Europe Parliamentary Assembly Resolution 2144 (2017), and in Council of Europe Dialogue with Roma and Traveller Organisations report (2016). Since these resolutions and reports provide a body of work that will frame future policymaking and practice debates for the coming decades across Europe, the impact of the conceptualisation of hate speech in the light of Brown's research is far-reaching.

Moreover, Brown contributed an Explanatory Advice Paper on the differences between hate speech and hate crime, which was commissioned by the Secretariat of ECRI. This is used within the Secretariat to provide guidance to staff working on country reports, and to shape how they understand and report cases of hate speech and hate crime to the CoE (**5.7**).

4.2 Law Commission. Brown's research (**3.3a**, **3.3b**) has also influenced public policy debates in the UK on extending current hate speech laws to include gender and disability through the written evidence he submitted to government reviews in England and Wales, Scotland, and Northern Ireland respectively. Brown organised and chaired a national policy summit on

misogynist and disablist hate speech at UEA in 2019, bringing together the Law Commission, the Home Office, civil society organisations, journalists, activists, and academics. Brown facilitated and joined leading experts in making recommendations directly to the key policymakers. Pursuant to this national policy summit, Brown was commissioned to work as an expert consultant for the Law Commission on its Hate Crimes Public Consultation Paper 2020. In the words of one member of the Law Commission: '*the new material contained in sections 18.235-238 of the Consultation Paper […] was inserted following* [Brown's] *comments on Incel movements stirring up hatred against women online. […] We also included a much more detailed consideration of online publication in the published CP (18.103-140) following* [Brown's] *comments on the way we'd initially dealt with online publication*' (**5.5**).

4.3 Internet platforms and the regulation of hate speech online. Brown's research has had an impact on Internet platforms. The conceptualisation of hate speech that he developed in his early articles (**3.1a**, **3.1b**) influenced internal policy debates within Facebook concerning the definition of religious hate speech. They led specifically to a better understanding of grey area cases where content seems to refer to both religious people and aspects of religious identity. According to the organiser of a special working group on religious hate speech, commissioned by Facebook (and who facilitated and chaired the meeting between Brown and Facebook): '*Facebook is currently attempting to expand its definition and identification of what constitutes hateful sentiment on their platform. They are struggling in particular with whether there is a distinction between verbal animosity and harm directed towards people or towards related concepts. Your expertise and insights on this were invaluable. It is to be hoped that the conversation will drive change in how Facebook responds to a broader class of dangerous speech, thereby enhancing the safety of its users*' (**5.1**).

More broadly, Brown's technical report on regulating online hate speech (**3.6**), which was published on the CoE website and advertised through CoE listings, reached various user constituencies. Brown also chaired two high-level consultation meetings in London and Berlin in 2019, which brought together representatives from national governments, intergovernmental organizations, Internet companies, and civil society organizations from across Europe. The report has already begun to influence policy debates within Europe about the need for victim-centred approaches to online hate speech. These debates have fed into the drafting of the EU Digital Services Act which includes new provisions on hate speech. Project Head of Neue deutsche Medienmacher e.V., a leading German civil society organization in this field, describes the impact of the report as follows: '*the study of Dr Alexander Brown and its outcomes have* [had] *an impact on the public debate, especially being cited in the consultative meetings with the justice ministry* [in Germany]*, but also in semi-public debates and meetings with internet companies and civil society organizations*' (**5.8**). Likewise, Project Manager for the CoE's Inclusion and Anti-Discrimination Programmes Division writes: '*The Anti-Discrimination Department of the Council of Europe has referred to* [Brown's] *report during its engagement with the European Union on its work on combating hate speech and internet governance, including on the EU Digital Service Act initiative. We are confident the report will remain a reference document in our future work with member states, civil society partners and Internet Industry, including through cooperation projects in the foreseeable future'* (**5.8**).

4.4 NGOs. Brown's research has been used by a number of NGOs, including human rights organisations, to advocate for better protection for victims of hate speech and provide better support for these victims. As a result of his role as special adviser to the Canadian Commission on Democratic Expression, Brown was able to improve understanding of the range of regulatory responses to online hate speech, and the possibility of victim-sensitive forms of regulation. In the words of the Executive Director of the Canadian Commission on Democratic Expression: '*The information* [Brown] *shared with the Commission helped to highlight different European approaches to preventing and mitigating online hate speech, as well as the strengths and limitations of these approaches*' (**5.2**).

Minority rights advocacy groups have been inspired by and have drawn on the arguments developed by Brown in his 2019 monograph in relating to hate speech by parliamentarians. His recommendations were formally adopted in a Position Paper by Traveller Movement − a leading civil society organisation promoting the rights of gypsies, Roma, and traveller peoples – which

cited the research. According to its Senior Policy Manager: '*Dr Brown made me aware of his latest publication The Politics of Hate Speech Laws by Brown and Sinclair (2020), which outlines potential sanctions for parliamentarians who utter hate speech in parliament. […] Following this meeting I wrote a position paper on AntiGypsyism3 which became a key part of our lobbying campaign. The paper has since been used to lobby for effective change to the current parliamentary code of conduct*' (**5.4**).

Finally, Brown's research had a direct impact on the operating practices of Stop Hate UK, a leading UK-based hate crime victim helpline, which provides independent, confidential, and accessible reporting and support for victims. Working with its chief executive and other team members, Brown drew on arguments, understandings and recommendations to reform existing practices set out in his research (**3.1a**, **3.1b**, **3.2**). He undertook a review of how the organisation handled and recorded cases of stirring up hatred, instigation of hate crime, and speech-based hate crime. His report provided practical guidance on how to better differentiate and record different kinds of cases via the website, app, call handlers, and backroom data recording programmes, and delivered a training session to its helpline staff and to their web and app teams. According to Stop Hate UK's Chief Executive: '*The training session and report provided by Dr. Brown significantly impacted the operations of Stop Hate UK, including (1) how it deals with and records cases of stirring up hatred, (2) how it encourages and facilitates reporting by witnesses and third parties, as well as victims, and (3) how it provides members of the public with information on "hate speech"*' (**5.3**).

In summary, Brown's body of research has had a far-reaching impact in how diverse organisations, institutions, and groups understand hate crime. It has led to an expanded definition used by the main monitoring body advising the CoE, which spread subsequently to become a new, authoritative, and widely used understanding. As a result of the research, several bodies have extended their working definitions of which groups should be considered victims of hate speech. The research has informed changes in understanding and practice on the part of online platforms, and increased the pressure on regulators to take stronger action on online hate speech. It has also been taken up by human rights organisations, minority rights groups, and groups that support the victims of hate crime. They have used Brown's conceptualisations of hate speech and his recommendations for its regulation in advocacy and calls for new legislation, as well as to inform new procedures and practices.

5. Sources to corroborate the impact

5.1 Testimonial from organiser of special working group on religious hate speech, commissioned by Facebook (22.12.20), and follow-up email exchanges with Facebook (01.12.20).

5.2 Testimonial from the Executive Director of the Canadian Commission on Democratic Expression (18.12.20).

5.3 Report and program from training day provided to STOP Hate UK (July 2017), and written testimony from the chief executive of Stop Hate UK (30.11.20).

5.4 The Traveller Movement Position paper, 'Anti-Gypsyism', October 2019, combined with written testimonial from the Policy Manager of the Traveller Movement (16.12.20).

5.5 Law Commission Hate Crimes Public Consultation Paper 2020 (18.235-238, p.479 & 18.103-140, pp.456-463) and email exchange from member of the Law Commission (25.09.20).

5.6 Written testimony from the then Executive Secretary to ECRI (05.01.15), and the final version of GPR No. 15 (2015) published on the CoE website.

5.7 Explanatory Advice paper on the difference between hate speech and hate crime (09.12.19), supported by email exchanges with the Council of Europe (November 2019).

5.8 Written testimonials from the Project Manager for the Council of Europe's Inclusion and Anti-Discrimination Programmes Division (12.11.20), and from the Project Head of No Hate Speech Movement, Germany (18.02.20).