

<b>Institution:</b> Oxford Brookes University		
<b>Unit of Assessment:</b> 18, Law		
<b>Title of case study:</b> Shaping Policy and Legal Reform of Online Hate Speech and Hate Crime		
<b>Period when the underpinning research was undertaken:</b> 2007–present		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Chara Bakalis	Principal Lecturer in Law	[text removed for publication]
<b>Period when the claimed impact occurred:</b> 2014–present		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>  <p>The regulation of ‘hate’ within the criminal law has been an ongoing concern for successive UK governments since the murder of Stephen Lawrence in 1993. In parallel to this, as the power and reach of social media platforms has grown, regulating online speech has become a major policy priority for states across the globe. The debate on how to regulate the internet, protect society from online harms and promote equality without impacting unduly on civil liberties, is both important and challenging. Research by Bakalis has made a significant contribution, nationally and internationally, to law reform proposals relating to the regulation of online hate speech and hate crime. The research has generated the following impacts:</p> <ol style="list-style-type: none"> <li>1) Shaped legal reform proposals on online communications and hate crime through contributions to two Law Commission projects;</li> <li>2) Redirected the structure and content of law reform proposals in an independent review of hate crime in Northern Ireland led by Judge Murrin;</li> <li>3) Produced the basis of legal reform proposals for the Armenian government on hate speech under the auspices of the Council of Europe.</li> </ol>		
<b>2. Underpinning research</b>  <p>Bakalis’s work on the regulation of online hate speech and hate crime law represents not only a major contribution to scholarship in these two distinct areas, but also the first sustained synthesis of the two in order to develop a novel legal framework that encompasses both.</p> <p>Bakalis’s research has attended to the growing problem of online hate on social media platforms. Regulating online speech has become a major policy priority for states across the globe. It is a key challenge for legislators to create a set of laws which maintains a balance between citizens’ right to freedom of expression on the one hand, whilst at the same time protecting minority groups from the harm caused by the widespread dissemination of hate speech against them. As one of the first hate crime legal scholars to engage in depth with this emerging research area, Bakalis has developed a number of innovative proposals for law reform. In a series of high-profile publications, she has highlighted the imperative for governments to reframe existing provisions originally designed for the offline world, and to keep pace with technological advances in order to ensure victims of online hate are properly protected.</p> <p>In parallel to this, her research focuses on the contentious legal issues around the regulation of ‘hate’, which have faced successive UK governments since the murder of Stephen Lawrence in 1993. Through her research, Bakalis has shown that, since 1998, a series of incremental changes to hate crime provisions across England, Wales and Northern Ireland has resulted in a legal framework which is unprincipled, inconsistent and in urgent need of reform.</p>		

### Regulation of Online Hate Speech

Bakalis's research highlights the fundamental differences between online and offline hate speech, registering the importance of separate legislation for each (**outputs 1 and 2**). This goes against the prevailing legal and policy approach to online hate, which focusses instead on ensuring parity between the online and offline world. Bakalis's systematic review of existing provisions (**output 2**) identified serious failings in existing provisions and has led her to call for a number of reforms such as: the repeal of s. 127(1) of the Communications Act 2003 (CA) and s. 1 of the Malicious Communications Act 1988 (MCA); the replacement of outdated terms such as 'grossly offensive' or 'indecent' with modern terminology that focusses on the harm caused rather than the nature of the conduct; and the need to replace s. 127(1) CA with an offence which is compatible with freedom of expression. She has also argued for a more expansive understanding of the harm caused by online hate, putting forward a framework for identifying different types of 'bystanders' who, whilst not the direct targets of hate, are nevertheless harmed by it.

### Hate Crime Law

Under hate crime law, a perpetrator who is motivated by or demonstrates hostility towards their victim's protected characteristics is currently punished more harshly than one who has no such motivation. This has generated major scholarly debate in this area over how we justify this additional punishment, with a consensus forming around the argument that hate crimes 'hurt more'. Bakalis has challenged this approach (**outputs 3 and 4**) and contends that this argument cannot justify the way in which hate crime is currently protected in England and Wales under the aggravated offences in the Crime and Disorder Act 1998. She proposes instead that the justification for the existence of hate crime lies in the broader equality movement, a view which adheres more rigorously to fundamental principles of the criminal law. This approach also has implications for which characteristics should be given protection under hate crime legislation. Bakalis argues that hate crime legislation should only include those characteristics which are currently given protection under the Equality Act 2010, and which can be shown to suffer from targeted violence.

### 3. References to the research

1. Bakalis, C. (2016). Regulating Hate Crime in the Digital Age. In: M. Walters and J. Schweppe (Eds.), *The Globalisation of Hate: Internationalising Hate Crime?* (pp.263-276). Oxford University Press ISBN: 9780198785668
2. Bakalis, C. (2017). Rethinking cyberhate laws. *Information and Communications Technology Law*, 27(1), 86-110. DOI: 10.1080/13600834.2017.1393934
3. Bakalis, C. (2017). The Victims of Hate Crime and the Principles of the Criminal Law. *Legal Studies*, 37(4), 718-738. DOI: 10.1111/lest.12171
4. Bakalis, C. (2015). Legislating Against Hatred: The Law Commission's Report on Hate Crime. *Criminal Law Review*, 3, 192-207.

### 4. Details of the impact

As the power and reach of social media platforms has grown, the harm caused by hate speech both to minorities but also to our wider conceptions of democracy and broader societal values such as equality has become apparent. As such, reforming hate speech and hate crime laws has become a major policy priority for western liberal democracies. The debates on how to achieve this epitomises modern concerns about how to regulate the internet, protect society from online harms and promote equality without impacting unduly on civil liberties. Bakalis's research has directly influenced and shaped major law reform bodies in their development of proposals for reform of hate crime and online hate speech, both nationally and internationally. Impact has occurred in three main ways:

#### 1. Influencing Law Commission Proposals on online hate speech and hate crime

**a) Regulation of Online Hate in UK**

The Law Commission has consulted Bakalis at key stages of its recent review of harmful online communications. As the law reform body for England and Wales, the Law Commission has been tasked by the Ministry of Justice to make recommendations for the reform of online communications. These reform proposals (**source 1**) are currently out for consultation, after which a final report will be produced that will be used by the government as a roadmap for legal reform. Reform of the law is needed to protect victims from harmful online behaviour including abusive messages, cyber-flashing, pile-on harassment, and the malicious sharing of information known to be false (**source 1**).

Bakalis's expertise on online hate speech was sought by the Law Commission through invitations to consult at important junctures of the 'Reform of the Communications Offences' project (**source 2**). A number of her research findings were applied by the Law Commission to shape final consultation proposals. Her contribution is of significance as it was often cited as the source for reform proposals in the Law Commission's 'Harmful Online Communications: The Criminal Offences' (Consultation Paper No. 248), launched on 11 September 2020. For example, Bakalis's views on the breadth of s.127 of the Communications Act are quoted and approved (**source 1, page 19**), as are her conclusions on the implications of s.127 and s.1 on freedom of expression (**source 1, page 21**). Bakalis's criticism that s.127 contravenes freedom of expression is ultimately used as a justification for proposing the repeal of these offences. Furthermore, the Law Commission has recommended that existing provisions, which are unwieldy and diffuse, should be replaced by a single offence of causing emotional and psychological harm. This important reform constitutes a major intervention in current provision by focusing on the harm caused to victims, rather than on the offensiveness of the communication. Bakalis is singled out amongst academics as having steered this decision (**source 1, page 59**). The new offence additionally recognises the harm caused not only to direct targets of hate speech, but also to any likely audience. Again, Bakalis is singled out as having articulated a new legal understanding of 'harm' and her work on bystanders (**output 2**) is cited to justify this part of the offence (**source 1, page 112**).

**b) Hate Crime in England and Wales**

Bakalis has been involved throughout the gestation of the Law Commission's project on the review of hate crime law, including its launch which took place at Oxford Brookes in March 2019. This project reached the consultation stage at the end of the assessment period with the 'Hate Crime Laws' (Consultation Paper No. 250) being published in September 2020 (**source 3**). Bakalis's research linking hate crime to the principle of equality as enshrined in anti-discrimination legislation (**output 3**) underpinned the Law Commission's justification of the existence of hate crime (**source 3, page 194**). Acknowledging this link is an important step since the usual justification for hate crime – that it 'hurts more' than other crime – is not a sufficient explanation for the way in which hate crime is currently protected in England and Wales. Bakalis's research provided the Law Commission with a clearer and more principled justification for the existence of hate crime law. The principle of equality as put forward in Bakalis's work was also used as part of the Law Commission's proposed test for determining which characteristics to include in hate crime legislation (**source 3, page 194**). Bakalis's contribution was also evident outside of the report itself. She was one of three academics singled out for thanks in this report for providing 'important challenge to many of [the] provisional policy proposals' (**source 3, page 26**). In particular, her contribution as a consultant during the project's early stages proved influential in refining the Law Commission's test, used to determine which characteristics to include in hate crime legislation. The original test included the concept of 'identity' and 'disadvantage' which Bakalis criticised for being imprecise and incoherent. The Law Commission wrote to say that Bakalis's 'thoughtful and constructive criticism' had 'caused [them] to reconsider some of the policy relating to characteristics selection' (**source 4**), and the test they finally proposed removed reference to 'identity' and 'disadvantage' (**source 3, page 196**). And thus avoided the pitfalls of creating a test that does not accurately reflect the wider purposes of hate crime law.

**2. Shaping Law Reform Proposals in Northern Ireland**

Judge Desmond Marrinan was appointed by the Department of Justice in Northern Ireland to lead an independent review into hate crime legislation. The final report on 'Hate crime legislation in Northern Ireland' was presented to Justice Minister Naomi Long on 30 November 2020 and published on 1 December 2020 (**source 6**). The final report will form the basis of the Northern Ireland Executive Government's reforms on hate crime.

Owing to her 'unrivalled knowledge' (**source 5**) and expertise on online hate, Bakalis was invited by Judge Marrinan to become a member of the Core Expert Group, noting that 'her [Bakalis] academic work in the field of hate crime law had been favourably referenced in the final report of Lord Bracadale who carried out a similar exercise to my own work in Scotland' (**source 5**). The Core Expert Group 'scrutinised and challenged emerging ideas to ensure that any recommendations would be robust and practicable' (**source 6, page 62**). In the acknowledgements for the report, Bakalis's role and contribution to the Core Expert Group was singled out in particular: 'A good example of this support was an excellent briefing paper on online hate speech provided by Chara Bakalis which was of immense help in analysing this difficult and seemingly intractable subject' (**source 6, page 63**). Furthermore, Judge Marrinan confirmed (**source 5**) that Bakalis's work on online hate 'greatly shaped' the structure and content of the proposals and that her research findings 'inspired and informed' a large number of the final recommendations.

Recommendations made by Bakalis in her briefing paper to the Group (**source 7**) were directly used in the consultation paper and the final report (**source 8**). These recommendations, listed below, all stem from Bakalis's research, evidenced by **outputs 1, 2, 3 and 4**:

- To adopt Bakalis's view of equality law as the normative basis for hate crime legislation, and to use the Equality Act 2010 as a guide for deciding which characteristics should be given protection under the law (**source 6, page 181-183**)
- To amend the use of the term 'publication' in the Public Order Act Order 1987 (**source 6, page 29, adopting source 7, page 30**)
- To remove the dwelling defence from Part III of the Public Order Act 1987 and replace it with a defence of 'private conversations' (**source 6 page 29, adopting source 7, page 30**)
- To amend s. (1) of the Public Order Act Order 1987 to remove the need to demonstrate that words used were threatening, abusive or insulting where there is an intention to stir up hatred or arouse fear (**source 6, page 29, adopting source 7, page 30**)
- To introduce provisions similar to those under s. 4, 4A and 5 of the Public Order Act 1986 to Northern Ireland (**source 6 page 29, adopting source 7, page 24**)
- To set up a regulatory regime to oversee social media companies along the lines of the Online Harms White Paper (**source 6, page 43, adopting source 7, page 14**)
- To provide a mechanism for which offending behaviour can be removed from the internet through court order or similar (**source 6, page 44, adopting source 7, page 19**)

### 3. Forming Council of Europe Law Reform Proposals for Armenian Government

The international reach of Bakalis's impact is shown by her being commissioned by the Council of Europe to produce, on their behalf, a report for the Armenian Ministry of Justice with recommendations on the reform of Armenian hate speech laws. Bakalis, in her capacity as an international expert and assisted by an Armenian law expert, produced a 'Comparative study on hate speech laws and Armenian legislation' (2020) with a list of proposals for reform (**source 9**). These have been received 'positively' by the Armenian Ministry of Justice who, at the time of writing, have 'initiated legal reforms in line with the conclusions of [the] study' (**source 10**). These reforms are viewed as 'positive developments [for] Armenian legislation and practice' (**source 10**). A plan was in place to use the study to launch an event for several Armenian ministries, the Parliament, the Ombudsman, journalists and civil society to discuss conclusions and prioritise actions. Unfortunately, due to Covid-19 and the war with Azerbaijan, this activity at the time of writing is currently on hold. The Ministry has however committed to taking these

actions forward in the future (**source 10**).

Among Bakalis's recommendations which are highlighted as particularly significant are those related to practice improvements, training, and reinforcing the role of the Ombudsman – who has shown an 'interest [in] follow[ing] [the] recommendations' (**sources 9 and 10**). Bakalis's proposed reforms in relation to the use of administrative offences, which would obviate over-reliance on criminal offences, have been recognised as particularly innovative. The study has also been crucial to 'regulating and forming' the relationship between the Council of Europe and Armenia on this issue. Bakalis's input has shown 'the way ahead' as it has decisively 'clarified both the problem and possible solutions' (**source 10**).

### 5. Sources to corroborate the impact

1. Law Commission, [Harmful Online Communications: The Criminal Offences, Consultation Paper No. 248](#), September 2020 and [Reform of the Communications Offences](#) project's web site.
2. Emails from Law Commission showing evidence of consultation throughout the 'Reform of the Communications Offences' project.
3. Law Commission, [Hate Crime Laws, Consultation Paper No. 250](#), September 2020.
4. Emails from Law Commission showing evidence of consultation and of contribution to change of test for protected characteristics.
5. Letter of appreciation from Judge Marrinan, October 2020.  
In his letter, Judge Marrinan also highlights that Bakalis's work had been favourably referenced in Lord Bracadale's [Independent Review of Hate Crime Legislation in Scotland - Final Report](#), May 2018. Lord Bracadale utilised Bakalis's classification of different types of hate speech legislation (output 2) to determine whether there were any gaps in Scottish law. (see pages 71-73 in particular, and pages 76 and 82)
6. Northern Ireland Review of Hate Crime [Independent Review of Hate Crime Legislation in Northern Ireland - Final Report](#), December 2020; NI Department of Justice '[Hate crime legislation independent review](#)' website.
7. Briefing Paper produced for Judge Marrinan's Core Expert Group which was used as the chapter in the consultation paper on online hate speech along with email exchange from Judge Marrinan confirming this. This can be used to justify claims made in relation to the final recommendations made in source 6.
8. Hate Crime Legislation in Northern Ireland, [An Independent Review, Consultation Paper](#), January 2020. A comparison with source 7 will confirm claims made in relation to this.
9. Comparative Report on Hate Speech Laws and Armenian Legislation, Council of Europe and European Union by Chara Bakalis and Ara Ghazaryan, September 2020.
10. Letter from Mara Georgescu, Senior Project Officer, Council of Europe – Directorate General of Democracy, Anti-Discrimination Department – No Hate Speech and Co-operation Program.