

# Violent Extremism in the 21st Century



# Violent Extremism in the 21st Century:

## *International Perspectives*

Edited by

Gwynyth Overland, Arnfinn J. Andersen,  
Kristin Engh Førde, Kjetil Grødum  
and Joseph Salomonsen

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Kjetil Grødum and Joseph Salomonsen

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## **PART III**

# **ADDRESSING THE PROBLEM: POLICY**

## CHAPTER THREE

# HATE CRIME POLICY: GLOBAL CONTROVERSIES AND THE NORWEGIAN APPROACH

NINA HØY-PETERSEN AND KATRINE FANGEN

Hate crime is a fluid category that has been constructed and implemented in a variety of ways within the legal system and in political discourse. As hate crime policies have been developed in many divergent directions across the globe, the outcomes they generate are likely to be rather diverse and conflicting. This paper situates the Norwegian configuration of hate crime legislation, policy and political discourse among key international debates on the topic. It analyses political and legislative debates that occurred in Norway prior to the implementation of its updated hate crime legislation in 2015.

### **Introduction**

This chapter is not about how and why violent extremism arises, but rather about what can be done about it: restricting, however, this topic to the judicial realm by exploring Norwegian hate crime legislation. “Hate crime” first emerged as a social category appropriated by social movements to inspire respect for minorities and morally condemn those who victimise marginal identity groups. Though initially associated with the African American appeal for equal civil rights in the 1950s, the term was later applied to a string of social movements for women, ethnic minorities, the gay community, and other hate crime victims. Indeed, hate crime proved to be a particularly powerful conceptual framework: Civil rights groups re-interpreted as victims via the hate crime concept drew the interest of politicians who made law and order their central issue (Christie, 1977). This inspired penal reforms and changes to political and cultural discourse. Since then, the notion of hate crime has achieved a high level of international recognition, with several international watchdog

organisations currently monitoring national approaches to this particularly urgent social problem.

Since transitioning from the exclusive domain of U.S. social movement activists to more global political and legal domains, the original approach to battling hate crime as proposed by social movements has been widely problematised and altered (See Perry, 2002; Mason, 2014a, 2014b). Within the area of national policy, international responsibilities to incorporate difference and support heterogeneity have been evaluated against historical traditions and long-standing values of national constitutions. As a result, international hate crime legislation and discourses have “proved controversial and divisive”, their “precise meaning elusive”, and their “parameters vague” (Garland and Chakraborti, 2012: 48). As we will suggest in the current paper, vastly different international understandings exist of what constitutes such crime, who the victims are, and what the appropriate legal responses might be (see also Garland and Chakraborti, 2012). Even so, at a time when hate crime appears to be a significant issue across Europe, there is a pressing need to grasp its complexities, and develop comprehensive policies to address it (ODIHR, 2009a in Garland and Chakraborti 2012). This is particularly important as hate crimes can contribute to the marginalisation and exclusion of minorities, and thereby possibly increase the danger of radicalisation. There is, for example, a mutual relationship, albeit a loose one, between hate crime against Muslims and radical Islamisation (Spalek 2007: 203).

The paper investigates Norwegian hate crime legislation and discourse in particular with the aim of contributing towards a greater awareness of how hate crime policy is defined and implemented in the context of diverse national territories. This is particularly interesting, as no in-depth explication exists of the aggravated sentencing clause that was introduced in Norwegian hate crime policy following the reformed Norwegian penal code from 2015. We therefore refrain from performing a more detailed analysis of the other main clauses regarding hate crimes, namely §185 (formerly §135) on hate speech and §186 on discrimination, both of which have already been extensively written about.

## **Methodology**

The current paper is based on an exploration of the hate crime concept within the following: 1) The Norwegian penal legislation, dated 1902 and

20051; 2) the preliminary assessments, hearings, and debates that took place as part of the penal reform; and 3) political statements, debates and publications relevant to the topic of hate crime. We searched for certain words including “hate crime”, “hate speech”, and “hateful speech” in online government archives to retrieve all documents where these topics were mentioned. The texts were organised chronologically, enabling us to follow the Norwegian institutionalisation of “hate crime”, as well as the debates that have been the most central in its construction. The penal reform work most relevant to the topic of hate crime was notably completed prior to 2008, which explains the lack of more recent quotations from politicians and the legislative body.

### **International Controversies**

As explained by the Minister of Justice in 2005,

Our current challenge is to consider the demands Norway`s role as an actor and credible collaborator within the arena of international justice places on modifications of the penal code. [...] The penal code is no longer an exclusively national affair! (Dørum in Myhrer, 2008: 41)

In accordance with this statement, the current paper understands Norwegian hate crime legislation as a “glocal” (Robertson, 2014) policy, a locally meaningful (re) interpretation of a global concept rather than as an extension of Scandinavian judicial history.

When this is said, there are multiple international debates concerning hate crime, to which different nations have responded in divergent ways. Three of these controversies will be introduced here as being particularly relevant to our analysis, concerning namely 1) whether or not to introduce aggravated sentencing for hate crimes, 2) which victim groups to afford protected status, and 3) the relevance of motive.

### **The Controversy of Aggravated Sentencing**

The first global controversy raised in this paper concerns the judicial principles utilised to rationalise hate crime legislation, and particularly the varying emphasis placed on utilitarian and moralistic principles. Here, a key disagreement has been whether hate crimes cause greater harm than crimes not motivated by hate, thus requiring greater punishment. From

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<sup>1</sup> The new penal law was implemented in 2005. However, two chapters were first implemented in 2015, one of which included the hate crime legislation.

one perspective, crimes motivated by the victims unchangeable identity traits may lead to the following consequences: 1) cause more severe psychological damage to the victims than similar non-bias offences (Bennett, Weisburd and Levin, 1993; McDevitt et al, 2001; Herek et al. 1999); 2) spread fear to other members of the targeted group (McDevitt et al 2001; Iganski, 2001; 3) easily escalate into widespread intergroup conflict (Levin and Rabrenovic, 2001: 574; McDevitt et al. 2001), and 4) threaten democratic values (Al-Hakim and Dimock, 2012; Roberts and Hastings, 2001; Greenawalt, 1992; Weinstein, 1992). Since, according to this perspective, hate crime implies greater harm, it should be mentioned as one of several “aggravating factors” that may open up for an “exceptional sentence” beyond the standard range of sentences (see for example Wool and Stemen 2004: 3).

A contrasting view purports that the harmfulness of a crime is a product of its visibility and proximity (Slovic et al. 1982) rather than its motive (see Harel and Parchomovsky, 1999). According to this view, there are no significant differences between the impact of bias and non-bias crimes (e.g. Barnes and Ephross, 1994; Jacobs and Potter, 1998), all violence presents a similar risk of retaliation and escalation (Jacobs and Potter, 1998), and many non-bias crimes have a similarly detrimental effect on the wider community (Jacobs and Potter, 1998).

Among those who place more emphasis on moralistic rationales for hate crime legislation, however, it has been argued that the primary purpose of hate crime policy and discourse is to engage in a form of “sentimental education” (Garland, 1990: 67) about selected victim and perpetrator groups, which seeks to “re-moralise” the public (see e.g. Perry, 2002; Schweppe and Walsh, 2008). In their more moderate manifestations, sentence enhancements single out the motives of hate and prejudice as factors that exacerbate a crime, and thus imply that “prejudice itself, not just its criminal manifestation, is wrong” (Mason, 2014a: 75-6). In its extreme forms, re-moralisation involves redirecting negative feelings away from the victim and towards the perpetrators—marking them “visible reminders of who we should not be”<sup>2</sup> (Cohen, 1972: 10; also Abrams, 2002; Mason, 2009).

A contrasting view argues that “the punishment and labelling of offenders as “hate offenders” does little to challenge individuals’ hate-motivated behaviours” (Walters, 2013: 1). Instead, being marked by the state and public discourse as morally debased is likely to cause the perpetrator to feel severely stigmatised, and thereby inhibit offender

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<sup>2</sup> This could be said to be true with regard to criminality in general.

rehabilitation.

## **The Controversy of Victim Groups**

In the second global controversy, scholars, public policy developers and politicians alike have been divided on whether all communities may be understood as potential hate crime victims or whether this should be the “privilege” of historically disadvantaged minority groups (Chakraborti and Garland 2009; Garland and Chakraborti 2012; Mason-Bish 2010). This disagreement is reflected within the EU, where some member states protect all groups and others just minorities.

The inclination to recognise all people as potential victims of hate crimes (e.g. Garland and Chakraborti 2012) is supported by three arguments. First, the victim’s experience of being harassed because his or her identity is more important than whether or not the victim belongs to a minority group. Second, minorities also commit hateful acts against other minorities or majority group members. Third is the norm of sameness before the law, which asserts that “laws must apply equally to all groups and individuals of society” (Jenness 2001: 293).

In contrast, several researchers in the field of hate crime conceptualise dominant groups as the primary purveyors of hate crimes and the weaker groups as their victims (e.g. Harel and Parchomovsky, 1999; Mason 2014; Perry 2002). This stance is rooted in the belief that including the majority population under hate crime provisions reverses the intended effect of the law, and “further marginalise[s] the marginalised” (Chakraborti 2015: 1745; also Jenness, 2001; Mason, 2014a; Perry, 2002).

Similarly, related to the question of statutory provisions is what we will refer to as “the dilemma of protected groups”. On the one hand, narrowly defined victim categories might exclude less common and less publicly recognised groups that need protection (Chakraborti, 2015). However, including too many categories of victims might cause adverse effects, for example by allowing the number of reported cases to grow to unmanageable numbers and thus mitigate the effect of the law. Furthermore, including too many groups could allow members of the majority to abuse that same law. As one example, Jenness (2001) problematises this in her discussion of an “ironic turn” in hate crime discourse, referring to a bill in Oregon calling for the protection of capitalists against anti-capitalists (see also Grattett and Jenness 2001).

Moreover, it has been suggested that hate crime policy and discourse are inherently subjective and lead to an unfair process, creating a “hierarchy of victimhood” (Carrabine et al. 2004; also Jenness and Broad,

1997). As Mason (2013: 76) points out “the processes of lawmaking through which particular minority groups seek to have their interests protected in hate crime legislation are shaped, not just by merits of their political influence, but also by a hierarchy of victimhood that depends on the capacity of particular groups to engender compassionate emotional thinking that challenges prejudiced values and attitudes towards them”. An established history of stigma and discrimination, among other factors, may contribute to such hierarchies of victimhood (Chakraborti, 2015; Mason-Bish, 2010).

### **The Controversy of Motive**

The third and final controversy we will bring up in this paper, namely that concerning the relevance of motive, has emerged from empirical research evidence suggesting that very few hate crime offenders are in fact motivated by a stable ideology of hate (Iganski 2008; Levin and McDevitt 2002; Bunar 2007). In proposing an alternative depiction of hate crime perpetrators, the argument has been posed that racially motivated offenders are often generalist offenders who are likely motivated by aggression or even boredom (Messner et al. 2004; Palmer and Smith, 2010). In any case, so-called “hate crime” offenders might not necessarily be hateful people, and prejudiced or hateful statements might be little more than a “heat of the moment” way of demeaning the victim in the most potent way possible (Walters 2013; see also Charkraborti 2015; Iganski 2008).

Another debate concerning on motive is also related to the fact that some minorities are sometimes attacked due to instrumental motives rather than prejudices or hatred. One example would be to rob a person in wheelchair “not because of their antipathy towards persons with disabilities”, but because of the fact that it is easier than to rob someone physically stronger (Jenness 2001: 296). Such so-called actuarial crimes exist in contrast to hate crimes, since the latter are motivated by symbolic content. However, in some countries, this distinction is not made clear, and an actuarial crime could potentially be sentenced as hate crime.

Finally, it is worth mentioning that violent acts may be the result of more complex psychological mechanisms (Hurd 2001), and complicated webs of social relations (see Kielinger and Paterson 2007). One problem with the hate crime theories, then, “is that they tend to force our analysis on a cognitive and moral framework that defines one side as the evil perpetrator and the other side as the innocent and passive victim” (Bjørngo, Carlsson and Haaland 2004: 17). In fact, while hate crime policies tend to

assign the blame for such criminal offences to a single perpetrator, we cannot be sure that our current understanding of hate crimes as acts perpetrated by a few deviant “others” in or society is accurate. Perhaps these acts could be more aptly described as the physical manifestations of prejudice within the majority population more generally. And, if the latter view is correct—if hate crimes are caused by a general social climate rather than the attitudinal deviance of individual outliers—it would be more effective to engage in general work against racism and prejudices, than to target individual perpetrators, in order to combat hate crimes.

Against this backdrop of international controversies, we will now proceed to analyse how hate crime legislation and policy have been developed in Norway.

### **The Norwegian Model: Hate Crime in Legal Terms**

The legal framework and various political representations and discourses on hate crime have changed over the years. The Norwegian institutionalisation of hate crime as a legal and social category is often wrongfully attributed to the early 21st century. In reality, and as will be delineated in the following paragraphs, the penal code underwent multiple changes by way of hate crime legislation prior to, and as part of, the official revision work that commenced in the early 1980s. The greatest difference between the previous penal code and that implemented in 2015 is that the new code makes laws pertaining to hate crime more visible.

Norwegian hate crime legislation is covered by several paragraphs of the penal code, which is officially named *Penal Code 2005* (Straffeloven 2005), although the relevant paragraphs were implemented in 2015. Specifically, a sub-clause on the mockery of groups of people defined by their religion, ancestry or origin was included in 1961 (Hauge in NOU 2002: 60-61). This sub-clause was intended to include racial discrimination, and in 1970, it was made into a specific subsection (§135a). At the same time, a new section (§349a) incorporated a law that criminalised racial discrimination in matters of employment, or granting access to goods, services, or events. Combined, these two paragraphs ensured that Norway fully ratified the 1965 UN International Convention on the Elimination of All Forms of Racial Discrimination (Hauge in NOU 2002).

The process of penal reform continued, throughout the 1980s and 90s. In 1981, the racism clause (§135a) and the discrimination clause (§349a) were expanded, as homosexuality was included as a protected status (Leirvik 2011: 98; Hauge in NOU 2002: 68). In 1999, the European



Human Rights Convention of 1950 and the UN convention on Civil and Political Rights of 1966 were incorporated into Norwegian Law.

Although the so-called “racism paragraph” (§135a) was renamed “the hate speech paragraph” (§185) in the early 2000s, it remained similar to its predecessors. The exceptions were its phrasing, a new criminalisation of hateful or discriminatory symbols, and a slight expansion of protected categories to include disability<sup>3</sup> in 2013. There was also no longer a requirement that the hateful utterance be expressed in front of a larger audience. In particular, the present §185 criminalises hateful or discriminatory speech, including the use of symbols, or threats directed at a person, in public or in the presence of others, due to their skin colour, national or ethnic identity, religion, life stance, homosexual orientation, or disability. The maximum sentence for this offence is three years imprisonment.

In their report from 2015, the European Commission Against Racism and Intolerance comments that the criteria race, language, and citizenship are missing from the Norwegian legal framework. They suggest that the production and storage of written, pictorial or other types of material containing manifestations of racism should be criminalised. Lastly, they also note that the Norwegian legal framework does not take into account the dissolution of racist organisations and the suppression of their public financing. We think this is partly incorrect. Article §185 states the following:

Anyone who wilfully or through gross negligence publicly utters a discriminatory or hateful expression is punished with a fine or imprisonment for up to three years. [...] A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred, persecution or contempt for anyone because of their a) skin colour or national or ethnic origin, b) religion or belief, c) gay orientation, or d) disability.

In other words, it is correct that race, language and citizenship are not mentioned directly, but these categories are indirectly included under point a. Written material is also covered by the clause. Furthermore, we think it is debatable to criminalise the storage of material. It is the public distribution of such materials that might be experienced as threatening by

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<sup>3</sup> In the law revision documents, disability refers to reduced physical, psychological, or cognitive functions with the exception of trivial and short-term disabilities (e.g. broken leg). It also excludes cosmetic predicaments unless they cause disability (e.g. obesity) or are caused by a serious medical condition (e.g. skin disease) (Ot.prp. no. 8 (2007-2008): 343; Ot.prp. no. 44 (2007-2008): 14).

minorities. Therefore, we do not fully agree with the critiques proposed by ECRI in this regard.

Furthermore, in response to suggestions from the ECRI's (2003) third report on Norway, the "freedom of expression" article (§100) was revised in 2004 to allow for the punishment of racist expressions (§185) to a greater extent than before (ECRI 2009: 12).<sup>4</sup>

A second group of articles within Norwegian hate crime legislation has triggered sentence enhancements in cases where protected identity traits were a motivating factor for the perpetrator. Debates concerning these articles are of particular interest to the current chapter, for two important reasons. First, as they single out motive as a factor that adds to the seriousness of the crime, these articles are closely aligned with traditional hate crime legislation. Furthermore, Norwegian sentence enhancement sections cover violent assaults on protected identity categories.

The revision of the new penal law was determined by the Ministry of Law in 1978 (The Norwegian Parliament 2008: 236), enacted in 2005, however, some amendments (including the §77) were still to be made, and the law entered into force in 2015. Two chapters of the penal law were passed in 2008 after the Norwegian signature of the Treaty of Rome, which led to the creation of the International Criminal Court in 2002 (*ibid.*). What appears to be new from the penal code, dated 2005, is the introduction of a sentence enhancement law (§77(i), prepared in 2007/2008, which stipulates aggravating circumstances in the sentencing framework for all types of offences in cases where the offence is "motivated by the person's religion and life stance, skin colour, national or ethnic origin, homosexual orientation, disability, or other circumstances relating to groups with a special need for protection". However, it is important to mention that the Norwegian courts played an active role in determining sentencing, and thus already performed this function prior to the introduction of §77 (i) (Interim report I: 242, Interim report V: 210).

An aspiration for unity among the Nordic countries with regard to penal law was also an important motivating factor: Sweden introduced aggravated sentencing for hate crimes in 1994, and aggravated sentencing for racially motivated crimes in Denmark has been in effect since 2004.

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<sup>4</sup> After going through a similar revision, section §349a, which was introduced in 1970, is currently known as section §186, and protects the same identity categories as section §185.

## Historical Backdrop

Historically, utilitarian principles that aim to prevent crime and rehabilitate perpetrators, or to deter rather than simply punish, have been at the core of Norwegian legislation (see Hauge in NOU, 2002: 41ff). Scandinavian countries have developed equitable social conditions and strong traditions of local democratic self-government where there is little “need for dramatic and highly symbolic spectacles of punishment as a way of reaffirming the ruling class power” (Pratt, 2007: 129). However, since the 1960s, the scale has shifted slightly towards concepts of retribution, retaliation, and justice for victims (NOU, 2002: 119). One reason for this was the realisation that penalties did not prevent crimes or rehabilitate criminals to the extent previously assumed. Furthermore, since the 1980s, political parties have become more involved in criminal policies, and begun to promote a retributive form of justice. This has had a stronger appeal to the public than ideologies emphasizing prevention and rehabilitation.

In accordance with this development, we found that the penal revision documents reference a combination of utilitarian and retributive argumentation in their rationalisations of hate crime legislation. For example, in a bill proposal from 2008, the argument that hate crimes cause greater harm and ripple effects was used as the key rationale for hate crime sentence enhancements (Ot.prp. 2007-2008: 12, 44).

The extent of the punishment was to be perceived as a direct response to the amount of damage caused. However, referring to a retributive rationale, the Department of Justice also declared, “the purpose of punishment should be to guide future behaviours and thereby contribute to a society and coexistence presumed desirable and in line with current prevailing values” (Innst.O. no. 72 (2004-2005): 14). It was further stated that the sentence enhancement paragraph “sends a clear signal that society will not tolerate violence and discrimination motivated by prejudice and hatred” (Ot. Prp. 2007-2008: 44).

The penal committee nevertheless sought to avoid purely symbolic or moralistic elevations of punishment (Myhrer, 2008). They asserted that behaviour should not be punished simply because the majority of citizens dislike it, if the behaviour only hurts communal morals, or if the punishment provides no benefits other than the restoration of moral order. Following this principle, it was highlighted that aggravated and seemingly retributive punishment can be justified in relation to the utilitarian function it serves: for example, building a communal experience of safety, security, and trust in the justice system, as well as a presumed lowering of

vigilante activities. Moreover, in Norwegian penal revision work, discussions of aggravated sentencing more commonly refer to these beneficial effects rather than symbolic arguments. As expressed by the penal committee:

There might be reason to consider the symbolic effect and sense of safety crime punishment has on the citizenry's mental hygiene. Similarly, penalties may strengthen people's experience of social solidarity. However, it would be questionable to identify some "common enemy" and disown them in the name of social solidarity (NOU 2002: 127).

In other words, and unlike those who emphasise the re-moralizing purpose of hate crime laws and claim that the primary purpose of hate crime legislation is to engender the expectation that to "be racist is to expect the unequivocal condemnation of the community and the state" (Mason 2014b: 307), the Norwegian judicial rationale for hate crime legislation is more utilitarian than it is retributive and moralistic.

According to a committee appointed to consider legal protection against ethnic discrimination, hate crime status does not necessarily require signs of "a fully contemplated ideological or political conviction—there is *no requirement for ideological foundation* whatsoever" (NOU 2002b: 81). Instead, and as explained in the 2008 bill arguing for section §77 (i) on sentence enhancements, this paragraph is intended for cases where the crime is *wholly or partly motivated* by the protected identity categories (Ot.Prp. 2007-2008: 271).

Norwegian hate crime legislation states that the behaviour "must be *motivated by* other people's ethnicity [etc.]", or "perpetrated *because of* the person's ethnicity [etc.]". In the U.S., which adopts the same "because of" phrasing, hate crime legislation also applies to actuarial crimes, where the perpetrator's motive is instrumentalist. According to Norwegian law practice, crimes against minorities with instrumental motivations will not count as hate crimes (see Hansen 2013: 9). The point is that there must be a motive of prejudice against the members of a minority for a crime to warrant sentence enhancement.

### **Hate Crime in Norwegian Politics**

Since the 1980s, and particularly over the course of the past decade, politicians have become increasingly involved in criminal law, and begun to initiate changes in the penal code (Hauge in NOU, 2002a). Given this increasing political influence on legislation, it is relevant to explore the contrasting political stances on hate crime law. More specifically, in

discussing how Norwegian politicians relate to the concept of hate crime, we will continue to focus on the most evident lines of conflict, namely 1) views on aggravated sentencing, 2) representations of victim groups, and 3) views on motive.

## **Political Views on Aggravated Sentencing**

Between the years 2005–2013, when debates concerning sentence enhancements for hate crimes (§77 i) were taking place, the government coalition consisted of the Labour Party, the Centre Party, and the Socialist Left Party. There was broad support for hate crime legislation between the legislative body and the Labour Party coalition. The Minister of Justice from 2005 until 2011, Knut Storberget (Labour Party), portrayed hate crimes as particularly harmful, as they cause multiple ripple effects in society:

[...] Hate crimes are criminal acts characterised by the fact that they are not contingent on the situation or the result of an antagonistic relationship with the individual victim, but rather motivated by a generalised hatred towards anyone with a certain conviction, appearance, origin or sexual preference. This is a particularly dangerous type of crime. [...] The reason for this is that hate crimes cause greater fear among targeted individuals, as well as within all people that are in the same situation. They cause antagonism in society and increase the likelihood of retaliation and escalation of violence. The case of Rodney King in the US, which was followed by riots in Los Angeles, is a prominent example of this. (Minutes from the Odelsting February 12, 2008).

It was suggested that sentence enhancements on hate crime would have a normative effect on the public. As declared by Christian Democrat Hans Olav Syversen, “the sentence enhancement paragraph underpins social values. As I see it, laws still regulate attitudes, and it follows that what the legislator decides to communicate is crucial” (The Norwegian Parliament, 2008: 347). In the words of Storberget (Labour Party): “Should we punish these types of offences more severely than other cases of violence? This is a normative question of values. All parties except the Progress Party have decided to answer yes to this question” (The Norwegian Parliament, 2008: 347).

The Progress Party’s stance was indeed the only one that differed from the majority in this regard. As the party representatives were about to vote on legislative proposition §77 (aggravated sentencing), Progress Party representative Jan Arild Ellingsen stated the following:

I understand and respect the current focus on crimes that are provoked by ethnicity, sexual orientation and so on, but regardless, our approach has been to view the crime from the victim's perspective. Currently, this type of crime is classified by motive. You can certainly do that, but for us, it seems more sensible to justify [sentence enhancements] based on the victim's experience. Here, there's a clear distinction between the majority and Progress Party politics, as we assert that the law should be blind in regards to motive (Minutes from the Odelsting February 12, 2008: 238-239).

Accordingly, the Progress Party's alternative suggestion when the parties voted for the implementation of section §77 on sentence enhancements was to remove subsection §77(i) regarding protection for minority groups. The Progress Party's stance on this issue can be interpreted in terms of support for the "equality principle", in suggesting that the victim's minority status should not grant them access to extended rights. Rather, all victims of crime should be treated equally, and specific hate crime legislation is unnecessary as specific acts of violence (such as bodily harm, harassment, rape etc.) are already criminalised. Applying an alternate interpretation, however, Ellingsen's statement can be read as a mere excuse to avoid extra protection for minority groups, particularly seeing that motive—which Ellingsen deemed irrelevant in cases of hate crime - already serves a well-established core function as a trigger for sentence enhancements in penal law more generally. Examples would include distinctions made between self-defence and intentional, premeditated violence. In any case, we see here an understanding of hate crime where the problem is not the prejudices of the perpetrator. Regardless of their opposing views, however, Ellingsen stated that the Progress Party would secondarily vote for the majority alternative if their alternative suggestion did not receive majority support. This ended up as the final decision.

### **Political Views on Victim Groups**

Being construed as victims of hate crime and lobbied for under the hate crime umbrella can have important implications for minority groups. Therefore, it is important to explore which groups in particular are being constructed in political discourse, as the victims of hate crime. The parties of the coalition government from 2005-2013 (the Labour Party, the Socialist Left Party and the Centre Party) agreed on a conceptualisation of hate crimes as acts perpetrated against vulnerable minority individuals. Following an "equalizing protection against crime" paradigm (Harel and

Parchomovsky, 1999: 510), the Labour Party spoke of hate crime legislation as being an extra measure of protection for “high-risk” groups.

When voting for §77, the Conservative Party thought it was important to include a group of “others” with the minorities specifically mentioned in the clause, as underlined by representative André Oktay Dahl:

Another important element that now enters the Criminal Code is a statute regarding aggravating and mitigating circumstances in sentencing. With the new law, the fact that an offense is motivated by prejudice and hatred is an aggravating circumstance. This is important, since many people may have felt on their bodies what it means to have a different skin colour, sexual orientation or another origin than Norwegian. I believe it is right that the bill is too narrowly designed [...] for a more general and overarching legislation in regards to discrimination, regardless of reason. Therefore, we propose to ensure that hate crimes also defined on the basis of “other status” are given the same legal protection as other hate crimes. Both the ECHR and the UN Convention have used the term “Other status” in all their anti-discrimination provisions. The 50<sup>th</sup> case law of the Court of Human Rights has thus shown that “other status” does not imply any dilution of protection, on the contrary. “Other status” has, however, secured discrimination protection for a variety of groups in great need (minutes from meeting in the Odelsting, 2008: 239).

The argument for including the group of “others”, as underlined here, is different from that of the Progress Party’s stance (as outlined previously), which was motivated by a desire not to give minorities extra protection (or extra rights). Instead, the argument is that there might be additional groups of minorities than those specifically mentioned in the clause, and the addition is meant to ensure that no group in need of extra protection is forgotten. However, one problem with this undefined “other” category is that it entrusts the court system with the responsibility to define (through practice) who should and who should not be included in this open category.

In addition to this, there was some disagreement among the different parliamentary parties regarding which victim groups they thought of as most important to protect. The Progress Party was mostly concerned about hate crimes against Jews, and not particularly concerned about hate crimes towards immigrants in general, or Muslims in particular:

Committee members from the Progress Party will emphasise their concern for racism—in all its forms. These members believe that Jews are the group in Norway today who are the most subject to racism. These members would also emphasise that being an immigrant to Norway does not necessarily preclude one from racist attitudes. Take for example the

discrimination and persecution many Christians suffer in countries with a predominantly Muslim population. These members cannot unconditionally support the statement of the committee majority that Norway is a multicultural society. There are large minorities of immigrants in major cities, particularly Oslo and Drammen, where in certain areas it will soon be a question of integrating the majority into a minority. (Innst. 2011-2012: 3).

Mason (2014b) raises a relevant point which helps us frame the final part of this quote, stating that “ascribing the roles of chief offenders and chief victims to racial, cultural and religious minorities [creates] the impression that hate crime is largely a minority-on-minority problem of failed integration and multiculturalism” (Mason 2014b: 307; also Perry 2002). For example, recognizing the dominant white group as a potential victim of hate crime might amount to disproportionate reports of white victimisation, as white victims are more likely to trust law enforcement (see Blee 2007; Perry 2001; also Herek et al. 1999). This is the case in the U.S, where blacks have been reported as hate crime offenders at a disproportionate rate (Bakken 2002).

Other parties explicitly pointed to the need to not only combat anti-Semitism, but also hate crimes directed at other victim groups. As one example of this, Raja, from the Social Liberal Party, stated in response to the third Christian Democratic call for an action plan against Anti-Semitism: “I think we need a broad action plan, not only for combating anti-Semitic attitudes” (The Norwegian parliament, 2014: 1804). Karin Andersen, from the Socialist Left Party, presented a similar view:

The Jewish genocide was such an extensive crime that it will overshadow many other problems unless we are able to recognise the very core of the problem [...] The only thing that puzzles me in the matter is that a note made by the Labour Party, the Centre Party, the Left and the Socialist Left—about the survey conducted by the Centre for Holocaust and Minority Minorities Studies [...]—is not supported by the majority. What it shows is that it is 12 per cent of the Norwegian population who show prejudices to Jews, but even more have prejudices towards Muslims, Somalis and Romanis, i.e. Gypsies. The fact that we have strong anti-Semitic positions in Norway is terrible, but it is also unacceptable that there are prejudices against other groups. (Minutes from meeting March 18th, The Norwegian parliament, 2014: 1801.

What is pointed out here is that “new” groups experiencing hostility can easily be neglected, as they do not have an established history of victimisation (Bunar, 2007). During the past couple of years, however, we see that selected groups have less frequently applied the term “hate crime”



to conceptualise the experience of victimisation. Instead, the term is utilised to encapsulate and discuss a development of xenophobic attitudes within the majority population, and to place the majority's progressively xenophobic sentiments under the microscope. This matter will be discussed next.

### **Political Representations of Motive**

In accordance with the international discourses, Norwegian politicians have been concerned that the hate crime perpetrator is not an "Other" who is distinctly different from the majority population. Instead, the crime perpetrator's act is explained as the culmination and manifestation of xenophobic and prejudiced attitudes inherent in "all of us". Indeed, as stated by Raja from the Social Liberal Party:

Is it primarily because we feel sorry for Muslims and Jews that we want to do something about this? I think this is the wrong perspective. We must do something because it is a sign of disease within our people that we have hatred toward groups of people (The Norwegian parliament, 2014: 1803).

As noted by the European Commission against Racism and Intolerance (ECRI 2015), following the hate-motivated attacks on July 22, 2011, politicians and journalists reflected on their own anti-immigration rhetoric and how it may have influenced the attacks. Not long after the attacks, the Conservative Party proposed increased efforts against hate and extremism. Notably, they did not draw an equally direct link between low-level prejudice and violent acts, as did the Centre-Left coalition. However, one might infer from the Conservative Party's (2012: 3) proposal that they also consider a generalising critique of immigration as being based on discourses that potentially inspire hatred, or that there is a link between low-level xenophobic discourses, hatred, and extremism. Conservative Party representative Trond Helleland states this in the following way:

Political disagreements concerning immigration and integration politics, and critiques of religion as well as cultures are all legal, legitimate, and welcomed in a liberal society. The discussion should therefore be based on the premise that it is hate speech and extremism that harms our society and needs to be counteracted [...] There is a big difference between violence and hate speech. The question of whether there is a clear connection—whether hate speech leads to violence—has been much disputed [...] Cultural differences and religion are becoming central topics for those who support discrimination and express hatred. [...] This is a new form of racism. [...] Problems arise when critique evolves into generalisations,

verbal abuse, and stereotypical representations of different groups [...] It will be easy for those who wish to spread misguided ideas of irreconcilable cultural differences if the process of integrating immigrants is represented as far less successful than it really is. It will be easier for them if an illusion is created that Norwegians have to give up their culture because people with diverse cultural origins live here, and if immigrants and Muslims in Norway are treated as a group and not as individuals (The Norwegian Parliament 2012: 3495).

Again, the Progress Party view differed from the political majority in that it explicitly distinguished between hate crimes and majority xenophobia, including critiques of religion, culture, immigration and integration. In a response to the 2012 Conservative Party's proposal for increased efforts against hate and extremism, Progress Party member Morten Ørsal Johansen stated that people who engage in extreme behaviours "have some fundamental attitudes that are far from the established norm within the wider population" (The Norwegian Parliament 2012: 3495). He further rejected the Conservative Party's claim that critiques of religion and culture represent a new form of racism that should be mentioned in a proposition for an action plan against hate and extremism. From the Progress Party perspective, and as expressed by representative Anders Anundsen in response to Christian Democrat Hans Olav Syversen's 2008 interpellation concerning a new wave of racist violence in 2008, "the Progress Party is the only party with a realistic approach to integration and immigration politics, and I refuse to drop those discussions on the basis that some people may feel stigmatised or get the wrong ideas" (The Norwegian Parliament 2008: 346).

Perhaps as an implication of the broad political agreement that the majority population may embody xenophobic attitudes that can culminate in violent acts, there seems to be widespread agreement on a grassroots approach to combating hate crime. For example, in his response to a more recent action plan against anti-Semitism proposed by the Christian Democratic Party (2014), Social Liberal Party representative Raja urged focus on "everyday racism" in the fight against radicalisation:

The focus on radicalisation and the like is important, but these other issues must not be forgotten. *All this filth is closely linked.* The old and well-known saying "fight all racism, where you work, where you live" is the key to success, and this must be reflected in the government action plan [italics added].

The Centre-Left coalition government was not opposed to battling hate crimes through more punitive means such as prison sentences; early

prevention, however, played a large part in their narrative. As explained by Labour Party representative Lise Christoffersen, “safety and security are not all about bars and barriers—on the contrary. [...] We must expose and challenge hate speech and acts” (The Norwegian Parliament 2012: 3498). In another example, Labour Party representative Bjørnflaten suggested that the fight against hate crime atrocities such as the Holocaust and groups like the KKK starts within all areas of society:

All parties, with the exception of the Progress Party, supported the implementation of aggravated sentencing for criminal acts motivated by prejudice and hate. [...] History is full of atrocious hate crime cases and their harmful consequences. The Holocaust and the Ku Klux Klan are examples of genocide and war crimes that were originally motivated by hate. With this in mind, society in its entirety must contribute to breaking down prejudiced attitudes [...]. All social sectors have this responsibility, whether it be schools, sporting clubs, the Church, public institutions, agencies or private businesses—and last, but not least, each and every one of us (The Norwegian Parliament, 2008: 345).

Beyond calls for majority self-reflexivity and fighting everyday racism in all areas of society, preventive solutions to the problem of hate crime were proposed by limiting or challenging critical discourse on immigration and integration. For example, in response to Christian Democratic Party representative Syversen’s interpellation on racially motivated violence (2008), Labour Party minister Storberget stated that limiting the negative focus often directed towards immigrants and asylum seekers would be an important solution to the problem of violent crime. As he explained, this is because these discourses, along with less visible forms of racism, discrimination, and fear of the “other”, are the basis of more extreme cases of racist violence. Responding to the 2012 Conservative Party proposition on increased efforts against hate and extremism, Labour Party representative Lise Christoffersen referred to “the increasing support for xenophobic, populist parties around Europe as the single great threat to our values” (The Norwegian Parliament 2012: 3498). Also in the context of Christian Democrat Syversen’s interpellation about a new wave of racist violence, Socialist Left Party representative Akhtar Chaudhry criticised the Progress Party rhetoric more directly:

I think two things are particularly important when it comes to fighting racism. First, we must all strive to restrain our inner racist. The second challenge is to ensure that those in positions of power are not allowed to behave in a racist manner, as the combination of power and our inherent racism is what creates the real problem. If not, it’s not just generals with

canons that can become dangerous, as was the case in Nazi-Germany [...] It is important that we don't play with words and emotions and engage with forces that may be dangerous to our multicultural society. One such example is the Progress Party's action plan from 2002-2005 where they state the following: "The Progress Party wants for Norway each year to receive a maximum of 1000 people from countries outside of the western cultural circle". This is a formulation that divides the world into "us" and "them". Those who are not from the circle of western culture do not belong with us, and we represent a culture that is better than theirs. [...] We should all reject attitudes, actions, and formulations that promote prejudice (The Norwegian parliament, November 3 2008: 346).

As mentioned previously, the Progress Party distinguished itself from majority politics in suggesting that hate crime should not be understood as a problem of majority on minority violence. They further proposed a different set of strategies against hate crime, which reveals underlying assumptions about this particular problem. Reacting to Syversen's 2008 interpellation concerning racist violence, Progress Party representative Horne shed some light on these matters:

It's not just Norwegians that perpetrate violence against immigrants, and immigrants also discriminate against one another [...] then there's the question: What should be done about this? First of all, I think it is about establishing a good integration strategy. If we're going to have a multicultural society, we need to do something about this. Furthermore, since this results in violent acts, it is important that the police are granted enough resources and become knowledgeable about this challenge; then they would be able to respond appropriately and show that we do not tolerate this. Additionally, we need to consider aggravated sentencing. The Progress Party supports aggravated sentencing. All violence should be punished severely, particularly hate crimes, but we see no reason to prioritise hate crimes over other types of violence (the Norwegian Parliament, 2008: 345).

In other words, the solutions proposed by Horne, and the Progress Party more generally, are 1) to punish minority as well as majority individuals for hate crimes, 2) to improve integration strategies and 3) to grant more resources to the police. Though not directly stated, these proposed solutions appear to be based on the presupposition that hate crime is the result of failed integration for which immigrants are largely responsible. By remaining too "different", they aggravate members of the majority population, or remain unable to behave according to Norwegian norms and legislation. This position stands in contrast to the majority of the

parties, who were in favour of extra protection for minorities, and who did not explain hate crimes as a result of failing integration.

## Conclusion

The concept of hate crime is controversial, and has been interpreted in diverse ways across the globe. To compare different national interpretations, applications, and outcomes of hate crime policies would require detailed and accessible national analyses of each country's approach. This chapter has examined the key international controversies concerning the hate crime concept, and explored the Norwegian legal and political response.

The first and perhaps at the core of the debate concerning hate crime pertains to whether hate crime legislation, and aggravated sentencing clauses in particular, should be forged on utilitarian or moralistic judicial principles. In broader terms, the central Norwegian arguments for enhancing the sentences of crimes motivated by prejudice and hate are utilitarian in nature. To be specific, the Norwegian approach emphasises that aggravated sentencing for such crimes may 1) help strengthen the public's experience of safety and security; 2) develop trust between the State and minority individuals; 3) facilitate good "mental hygiene" for citizens who have experienced victimisation; and 4) reduce retaliatory vigilante activities. The moralizing impetus of Norwegian hate crime laws is recognised, albeit to a lesser extent, and in a softer form that endorses collective moral education rather than the moral devaluation of individual perpetrators. Hate crime legislation is intended to send a clear signal that society will not tolerate violence and discrimination motivated by prejudice and hatred. This will presumably help guide future behaviour and thereby contribute to a society and coexistence desirable and consistent with assumed current prevailing values.

The utilitarian focus is also visible in Norwegian debates concerning the importance of motive in hate crime cases. Again, the above mentioned issues of developing trust, good mental hygiene for victims, and avoiding retaliation, is a more important rationale for punishment than is the prejudiced motive of the perpetrator in itself. One important reason for this is that there seems to be a widespread understanding in Norway among legislators and politicians alike, that the motive of so-called hate crimes is not necessarily hatred or even ideologically underpinned. Furthermore, the Norwegian policy is founded on an understanding of hate crimes not as acts perpetrated by deviant outliers in our society, but rather as manifestations of a bad attitudinal climate of prejudice in the majority

population. The motive of individual perpetrators, and their individual blameworthiness and culpability, becomes less important as blame is assigned to society more generally.

Indeed, in the Norwegian political debates that took place before the implementation of the updated hate crime legislation in 2015, the majority of politicians emphasised that in the work against hate crimes, we also need to focus on prejudice within the majority population to prevent such acts—to inspire majority self-reflexivity and limit negative discourse—particularly in politics. The elimination of hate crimes is believed to depend on prevention measures and problematizing xenophobia. To achieve the desired effects, the claims contained within the category of hate crime require on-going repetition and reinforcement. As such, we can say that the moral impetus of the Norwegian law is soft; it is one of repetitive, collective moral education of the majority population rather than the moral condemnation and stigmatisation of individual perpetrators. In our opinion, this is good. For one, as we have seen in research on radicalisation and extremism, the process of “othering” someone will often accelerate their deviance (Fangen 1999, Fangen and Carlsson 2013). “Othering” hate crime perpetrators, who perhaps do not in fact embody strong and stable feelings of hatred and prejudice, in the name of inclusivity and respect for marginalised groups, would be ironic and dysfunctional.

The final hate crime controversy discussed in this chapter was that concerning protected groups. As we explained, current Norwegian hate crime legislation is intended to serve as a protection for “high risk” or vulnerable minority groups that have “a genuine problem with hate crime of a certain scope” (Ot.prp. 2007-2008 no 8: 44). Additionally, and according to the proposed law (§77) developed in 2007-2008 (ibid), “it seems these groups are often less favoured by the public opinion”. Moreover, while the Council of Europe (2011) has claimed that many minority groups in Europe are left unprotected from harassment and violence, Norwegian hate crime legislation appears inclusive, especially since the “other status” category was included in section §77 (aggravated sentencing). As the preparatory work for the new legislation specifies that hate crime legislation should apply only to groups that have a history (including recent history) of victimisation, it is unlikely that this broadening of protected categories will result in a watering down of Norwegian hate crime legislation.

The alternative to this approach would be to recognise all people, by law, as potential victims of hate crime, insofar as they feel targeted due to unchangeable identity traits. However, as we have seen for example in the

US, this can cause a flood of hate crime reports so that “the protection for all becomes a protection for no-one”. Furthermore, if minority on majority crimes can be filed as hate crimes, there will likely be a much greater reporting of such crimes. The majority, feeling confident to manoeuvre the bureaucracy and engage with the police, will likely make more such reports, giving the false impression that hate crime is mainly a minority on majority (black on white) crime. With this in mind, we feel confident that Norway’s inclusive definition of hate crime victims restricted to vulnerable groups with a history of victimisation, presents the best option. And, while this may not be “equality before the law”, it is indeed “equity before the law”, in the sense that the level of protection determines people’s level of protection that particular group of people needs.

That said there is wide consensus concerning the Norwegian hate crime legislation as presented here. In fact, the Progress Party is the only political party that has been against the hate crime concept from the very beginning. The main objections against clause §77(i) by the Progress Party are that the ideological motive of the perpetrator should not be given consideration, and that it is irrelevant whether the victim is from a minority group or not. The Progress Party, in particular, differs from the previous coalition parties in its representation of perpetrators and causes of hate crime, as it also includes minority-on-minority and minority-on-majority crimes, and in general maintains that motive should not be in focus. But with the Progress Party as the only exception (in a national assembly comprised of nine political parties), the Norwegian approach to hate crime appears stable for the future. Of course, it remains to be seen how the law is put to use—whether it has a moralizing effect on the public, or whether it instead aggravates those who deem it unfair to have extra protection for some. Given that it was implemented in 2015, we have not yet witnessed how the updated Norwegian hate crime legislation is enforced, and how it functions in practice.

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# CONTRIBUTORS

## About the Editors

**Gwynyth Overland** holds a PhD in sociology of religion, and works at Southern Norway Trauma Competency Centre (RVTS Sør). Her published books include *Posttraumatic Survival: the Lessons of Cambodian Resilience* (2013) and *Nordic Work on Traumatized Refugees. Do we Really Care* (2014).

**Arnfinn Andersen** Dr polit. is Research Director at the Norwegian centre for violence and traumatic stress studies (NKVTS), with research interests in radicalisation, refugees, mental health, social integration and welfare.

**Kristin Engh Førde**, holds a PhD in Medical Anthropology and is Senior Researcher at the Norwegian centre for violence and traumatic stress studies, focusing on policies and practices for prevention of radicalisation and violent extremism.

**Kjetil Grødum** holds a PhD in sociology of religion and is head of research and development at Arkivet Peace and human rights centre and Platform, Norwegian institute for the prevention of radicalisation and violent extremism.

**Joseph Salomonsen** is senior advisor at Norwegian Directorate of Integration and Diversity (IMDi). His policy report *The Democratic Surplus* won the Council of Europe's article competition in 2010. His research focuses on the power dynamics of integration.

## About the Authors

**Kennedy Amone-P'Olak**, researcher and professor of Psycho-traumatology at the Department of Psychology, University of Botswana, is the author of numerous journal articles and book chapters on psychological trauma resulting from war, stressful life events and social deprivation.

**Preben Bertelsen**, professor at the Department of Psychology, Aarhus University, has written extensively on Life Psychology and been co-creator of the mentoring program in the Aarhus Model and the national Danish prevention and exit programs.

**Tore Bjørge**, professor at the University of Oslo, Adjunct Professor of Police Science at the Norwegian Police University College, and Director of the Centre for Research on Extremism (C-REX) at the University of Oslo, has written extensively on the subject of terrorism, extremism and radicalisation.

**Beret Bråten**, holds a PhD in Political Science from the University of Oslo, is postdoctoral researcher at the Health Services Research Unit, Akershus University Hospital and is currently on leave from the Fafo research group on migration, integration and skills.

**Yngve Carlsson**, Special Advisor on crime prevention and the prevention of extremism at the Norwegian Association of Local and Regional Authorities (KS), has been involved in local prevention of violent extremism in Norway for three decades as both researcher and practitioner

**Valerie DeMarinis**, professor in Psychology of Religion, is leader of the “Well-being and Health” theme of IMPACT research program at Uppsala University, Sweden, Guest Professor in Public Mental Health at Umeå University, Sweden and at Innlandet Hospital Trust, Norway.

**Jitka Doležalová** holds a PhD in Economics and is Assistant Professor at the Department of Economics, and administrator for the project Determinants of Growth of Extremism and Populism in Times of Economic Crisis at the Department of Economics, Faculty of Economics and Administration, Masaryk University, Brno.

**Jessica Dorsey**, J.D., LL.M., is Project Officer in Humanitarian Disarmament at the peace organisation PAX, Associate Fellow of the International Centre for Counter-Terrorism (ICTT), The Hague and Assistant Editor of the international law weblog *Opinio Juris*. She has taught human rights and international criminal law at Utrecht University and Duke University,

**Eva Entenmann**, Master of Laws from Vrije Universiteit Amsterdam, is Programme Manager at the International Centre for Counter-Terrorism

(ICCT) and Research Fellow at Leiden University's Institute of Security and Global Affairs (ISGA) in The Hague. She is also a member of ICCT's Editorial Board

**Katrine Fangen** is Professor in sociology and Head of Department at the Department of Sociology and Human Geography at the University of Oslo. She has published many books and articles within the fields of migration, nationalism, racism, right-wing extremism and youth research.

**Hana Fitzová** holds a degree in mathematics and economics from Masaryk University in Brno, where she works as a researcher at the Institute for Transport Economics, Geography and Policy in applied econometrics and determinants of the growth of extremism and populism.

**Eugene Guribye** holds a PhD in social anthropology from the Faculty of Psychology at the University of Bergen, and is currently Head of Research at Agder Research, Norway.

**Roy Gutman** has reported on war and peace, human rights and war crimes for more than four decades. His reporting on the "Ethnic Cleansing" of Bosnia won a Pulitzer in 1993. His published books include *Witness to Genocide*; *Crimes of War* and *How We Missed the Story: Osama Bin Laden, the Taliban, and the Hijacking of Afghanistan*.

**David Hansen** holds a PhD in South Asian Studies from the University of Oslo and is Associate Professor at the University College of the Norwegian Correctional Service and the Norwegian Police University College.

**Liesbeth van der Heide** is a Research Fellow at the International Centre for Counter-Terrorism (ICCT) and Coordinator for ICCT's activities on rehabilitation and reintegration of violent extremist offenders, as well as a Researcher and Lecturer at the Institute of Security and Global Affairs (ISGA), Leiden University, The Hague.

**Nina Høy-Petersen** is a doctoral candidate in sociology at the Centre for Research on Extremism (University of Oslo). She draws on the cultural sociology tradition to explore topics such as xenophobia, cosmopolitanism, embodiment and phenomenology.

**Deeyah Khan** is an Emmy and Peabody award-winning documentary film director and founder of Fuuse, a media and arts company that puts women, minorities, and third-culture kids at the heart of their own stories. In 2016, she became the first UNESCO Goodwill Ambassador for artistic freedom and creativity. For her work supporting freedom of expression, human rights and peace she has received the University of Oslo's Human Rights Award and the Peer Gynt Prize from the Parliament of Norway.

**Kai Krogh** holds a PhD in Clinical Psychology, and works at Northern Norway Trauma Competency Centre (RVTS Nord). His research interests include trauma, radicalisation, and veterans' mental health

**Anders Lundesgaard** is a Clinical Psychologist at Northern Norway Trauma Competency Centre (RVTS Nord) and University Hospital, Northern Norway. His main clinical and academic fields of interest are trauma, refugee mental health, domestic violence and radicalisation.

**Rabbi Michael Melchior** is an internationally renowned Jewish leader, Orthodox rabbi, thinker, and activist, a former Minister of Social and Diaspora Affairs, former Deputy Minister of Foreign Affairs and member of Knesset for Meimad. He is the Rabbi of a vibrant community in Talpiyot, Jerusalem (Beit Boyer), while still holding the title of Chief Rabbi of Norway.

**Christian Picciolini** is co-founder of a non-profit peace advocacy organisation called "Life After Hate". His memoir *Romantic Violence: Memoirs of an American Skinhead* details his time as a leader of the American White supremacy movement. In 2016, Picciolini won a Regional Emmy as executive producer and director of ExitUSA's *There is life after hate*.

**Murray Robinson** is a Social Worker and General Manager on the Youth Parole Board, Department of Justice in Melbourne. His interests are in understanding the impact of trauma for young people in custody and in developing a holistic model of care for those in custody for terrorism offences.

**F. LeRon Shults** is Professor and Director of the Modelling Religion in Norway (MODRN) project at the University of Agder in Kristiansand, Norway. He has published 17 books and over 70 articles and book chapters on topics related to the scientific study of religion.



**Silje Sønsterudbråten**, M. Phil in Peace and Conflict Studies, at the University of Oslo, is a researcher at Fafo research institute in Oslo focussing on migration, integration and skills with a special focus on youth's migration experiences and challenges of transnational parenting.

**Viggo Vestel**, a social anthropologist and researcher at Oslo Metropolitan University, has done qualitative research on multicultural youth milieus for more than two decades. In two recent projects he has focused on young persons' relations to political extremism in the form of both radical Islam and extreme right wing milieus.

**Rob Faure Walker** is a PhD Fellow at University College, London, Institute of Education where he is researching the emergence of "radicalisation" and "extremism" in UK political discourse. He is also a secondary school teacher in London and manages the website, [www.preventdigest.co.uk](http://www.preventdigest.co.uk).

**Daan Weggemans** is Research Fellow at the International Centre for Counter-Terrorism (ICCT) and at Leiden University's Institute for Security and Global Affairs. He has focussed on processes of de-radicalisation and re-integration as well as radicalisation and preparatory processes of Dutch Foreign Fighters. Currently he is researching the re-integration of (former) extremist detainees.