The concept of the hate crime is mysterious in a multiplicity of ways. Its very existence as a meaningful category is open to question: it is, after all, difficult to imagine such a thing as a loving crime of violence. Articulating a concept of hate crimes which is a meaningful category, whose boundaries mark out something of moral significance, is one task which may benefit from philosophical investigation. Justifying the heightened punishment hate crime legislation recommends is another. And, of course, these tasks are not easily separated; what marks out a particular crime as a crime of bias\(^1\) will be relevant in justifying the greater punishment such a crime will receive, when compared to a comparably brutal non-bias crime.

Nonetheless, it is perhaps desirable to make one’s questions as narrowly focussed as possible. I will begin this paper by examining the first question in isolation from the second. My particular focus will be on the forms of social identity based upon which the category of the hate crime is constructed, as this category is understood in current legislation and in theoretical discussion. The best way to describe what I want to establish is by introducing two central propositions which have guided my thinking on this subject.

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\(^1\) I would like to thank Christopher Heath Wellman, Peter Lindsay, Sean Greenberg, Tim Scanlon and the participants at the Jean Beer Blumenfeld Center for Ethics conference on Hate Crime Legislation for helpful comments on a previous draft of this essay.

In this paper, I use “hate crime” and “bias crime” interchangeably. Some commentators prefer the latter term, since it emphasizes the prejudiced nature of the criminal’s motivation. The former term, however, is that by which these crimes are known in popular political discourse, and I see no reason not to use this term as well.

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First: conventional discussions of hate crimes have not, I believe, offered an adequately subtle analysis of the diverse forms of criminal action. It is common in the literature dealing with hate crimes to divide criminal acts into two categories. In the first are those crimes which make no reference to social identity at all; examples include robbing a bank teller in virtue of her job, or assaulting an individual who has offered a personal insult. In the second are those crimes whose motivation comes from prejudice and bias against the members of a group, where the members understand themselves to be a part of that group and use the fact of membership as a way of describing their social identity. This dichotomy, I think, does not do justice to the true variety of human wickedness. In particular, I think it is possible that there exist crimes which do not fit comfortably in either category; crimes might exist which result from bias and prejudice but which do not make reference to the social self-understandings of the victim in question. Inquiring after these crimes will, I think, enable us to better examine whether or not the concept of the hate crime as currently understood marks off a category with some moral significance.

Second: much of the importance of hate crime legislation derives from its expressive function. The true significance of such legislation derives not simply from its retributive or deterrent consequences for attackers and (potential) victims, but upon the proposition it expresses to all regarding the ideal of tolerance and mutual respect. The best way to understand hate crimes, I believe, is as the extreme case on a continuum of intolerant actions, a continuum which extends to include such comparatively less horrific actions such as stigmatizing slights and prejudicial stereotyping. What we say about the worst cases represents the public expression of an ideal of toleration which has normative implications for how the less egregious cases ought to be seen as well. Put simply, few of us will face violence as horrifying as that which took the life of Matthew Shepard; but more subtle acts of intolerance and discrimination

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2 Frederick Lawrence, for example, distinguishes hate crimes from non-bias crimes based upon this analysis. See Frederick M. Lawrence, *Punishing Hate: Bias Crimes Under American Law* (Cambridge: Harvard, 1999), p. 9.