

**You can't just "Shake it Off"–  
'Hate crime', 'institutional racism' and the state  
Robbie McVeigh**

*'Cause the players gonna play, play, play, play, play  
And the haters gonna hate, hate, hate, hate, hate  
Baby, I'm just gonna shake, shake, shake, shake, shake  
I shake it off, I shake it off.* Taylor Swift

This analysis cautions against the rush to adopt 'hate crime' legislation as a panacea to racist violence in Ireland. In particular, it addresses the way in which the contemporary fetishisation of 'hate' trivialises oppression. The term 'hate crime' itself hints at some of this. Its resemblance to the Orwellian notions of 'sexcrime' and 'thoughtcrime' conveys accurately the sense of totalitarian moralising it transmits. Moreover, this wider social construction of 'hate' has diluted an original focus on racist hatred and concocted a post-modern caricature of 'evil'. In her song *Shake it Off* Taylor Swift exemplifies this infantilisation of both hate and the reaction to it. 'Hate' is inanelly reframed as something that it is possible to 'shake off' – both for the hated and – in other circumstances – for the hater. It is a 'bad thing' but only in the sense that it belongs to an ever-lengthening sequence of negatives in contemporary popular culture. In other words, 'hate' is reduced – alongside 'playing', 'heartbreaking' and 'faking' – to the status of a meme on the discontents of contemporary white America. We might observe that the Trump intervention played to the same sense of discontent – albeit to an even more offensive tune.

This is not of course to simply dismiss the ever-widening circle of hate-discourse.<sup>1</sup> We should stand in solidarity with people who feel they are hated because they have a particular body shape or belong to a particular youth subculture or have a particular colour of hair. But we should not conflate these experiences with racism. This is equally true of other systems of subordination. We need to be clear: racism is not the same as homophobia or transphobia or gender-based violence. This is not to endorse a 'hierarchy of oppressions,' but rather to insist on a degree of conceptual integrity to the analysis of racism. If we are serious about addressing racism, we need to understand the way it works politically and structurally, not simply add it to a list of things we don't like. At its heart racism involves institutionalised violence of the most egregious kind – genocide, enslavement and apartheid. It is deeply embedded in the history of Europe and North America. *And it is very often something that states do.* It cannot be 'shaken off' by people – or governments – blandly affirming their opposition to hate.

In its current form, the operationalisation of 'hate crime' becomes little more than an opportunity for virtue signalling by both its advocates and the states that adopt its principles. Here it begins to overlap with the 1980s phenomenon of 'racism awareness training,' which Sivanandan dismissed with characteristic candour as 'the degradation of black struggle.'<sup>2</sup> Once again, we observe a group of mostly white middle class experts who speak across the panoply of hates, co-opting anti-racism in the process. Once again, we observe the restricted code of the streets trumped by the elaborated code of academia. This reminds us of the notion that Spivak forwards somewhere of 'anti-racism as table manners.' The point is that we can spend far too much time on the most trivial manifestations of

---

1 For example, 'hostility to men' is now being considered *inter alia* by the British Law Commission in its review of 'protected characteristics'. BBC News 2018. 'Hostility to men and elderly people could become hate crimes' <https://www.bbc.co.uk/news/uk-45870948>

2 A. Sivanandan (1985), "RAT and the Degradation of the Black Struggle", *Race and Class*, Vol. 26, No.4, pp.1-33, <http://journals.sagepub.com/doi/abs/10.1177/030639688502600401?journalCode=racb>

racism – teaching people what should and should not be *said* while disregarding what should and should not be *done*. This starts with a challenge to black youth on the use of the ‘N word’ and ends shamelessly lecturing people of colour how they should talk about race. Somewhere along the way, ‘hate’ moves centre-stage in this process as the discourse of resistance of communities of colour dissected for evidence that it too might represent a ‘hate crime.’

### **What is ‘hate crime’? Unpacking ‘hate’, ‘hate incidents’, ‘hate speech’ and ‘incitement to hatred’**

Amidst the plethora of new analysis and intervention on ‘hate crime’, it is often difficult to identify just what is being addressed by the coupling of ‘hate’ and ‘crime’.<sup>3</sup> This confusion compounds the widespread fallacy that states have begun to take racist – or other ‘bias-related’ – violence seriously simply by undertaking public relations work around ‘hate.’

This state response often sees the bundling of three elements which profess to represent ‘hate crime.’ *First*, we find the recording of *incidents* by the police framed as ‘hate crime.’ Confusingly, these may not involve a crime at all in any legal sense; it is simply a methodology by which police record incidents which are reported by or to them that are connected to ‘hate’ in some way. *Second*, we find the concept of ‘aggravated crime’ – the recognition that some forms of crime are made worse if they are motivated by racism (or homophobia or disablism or religious hatred). This aspect of aggravation *is* sometimes legislated as a ‘signal crime’ which defines the crime is more serious because of its societal impact.

*Third*, cutting across these categories, we find the notion of ‘hate speech.’ In some discussions of human rights standards, ‘hate speech’ is defined narrowly as speech that constitutes incitement to hatred.<sup>4</sup> At other times, however, the term ‘hate speech’ is used promiscuously to identify a whole set of speech acts that are regarded as offensive by someone, but which – once again - may or may not constitute crimes. Crucially, in terms of incitement to hatred, a hate speech act – just saying something offensive in public about a protected characteristic – is *not* sufficient to constitute a crime. The element of ‘stirring up’ hatred against a group has also to be present.

So, this whole new paradigm of ‘hate crime’ is both confused and confusing. A series of ambiguities cuts across different constructions of ‘hate crime’ in different international, national and regional contexts: the definitions often contradict each other; the ‘protected characteristics’ vary hugely both across different jurisdictions and different elements of international law. (For example, gender-based violence is rarely constructed as ‘hate crime’ despite its intimate connection to misogyny). Finally, most bizarrely of all, it emerges that – post-Macpherson – many of the incidents addressed as ‘hate crime’ are not crimes at all. In this context it is useful to ask whether the well-meaning demands for the Irish state to ‘do something’ about ‘hate crime’ in the 26 counties have any strategic value in the struggle against racism.

### **Where did ‘hate crime’ come from?**

It is useful at this point to engage with the provenance of ‘hate crime.’ The concept was invented by J. Edgar Hoover and the FBI. This history should be enough to make us pause and engage critically with the question of hate and the state. Here is a paradigm case of ‘hate’ and the ‘state’ and it doesn’t look

---

3 See ‘Incitement to Hatred in Northern Ireland’ for background context on the evolution of ‘hate crime’ legislation <https://caj.org.uk/2018/04/27/incitement-to-hatred-in-northern-ireland-research-report-by-dr-robbie-mcveigh-for-the-equality-coalition/>

4 For example, this is way in which Article 19 and the ‘Camden Principles’ use the term <https://www.article19.org/resources/camden-principles-freedom-expression-equality/>

much like a progressive intervention. If it weren't so serious, the broader list of potential subversives that attracted Hoover's attention – from Charlie Chaplin to John Lennon – becomes almost comic. But the significance of the point should be clear in our current context: this notion of 'hate' was invented as a tool of the state. Not in the sense that it invented racist hatred, of course, there was plenty of this about for generations. But in the sense that labelling 'hate' became a novel tool for the state to problematise and criminalise those it did not like. Equally conveniently, it became a tool to distance the state from responsibility for racism. 'Hate' became equated with something that 'evil' people do – it was nothing to do with the state. The converse of this is that the state does – by its very definition – have a monopoly on what is regarded as 'crime.'

So, what was the process? In August 1967, four months after Martin Luther King called the US government the 'greatest purveyor of violence in the world today,'<sup>5</sup> J. Edgar Hoover, the head of the Federal Bureau of Investigation (FBI), issued the COINTELPRO directive on 'Black Nationalist Hate Groups':

*The purpose of this new counterintelligence endeavour is to expose, disrupt, misdirect, discredit or otherwise neutralise the activities of black-nationalist, hate-type organisations and groupings, their leadership, spokesmen, membership and supporters.*

'Hate-type organisations' included groups like the Student Nonviolent Coordinating Committee and the Congress on Racial Equality, as well as Martin Luther King's Southern Christian Leadership Conference. In February 1968, Hoover issued another COINTELPRO directive to:

*Prevent the rise of a 'messiah' who could unify and electrify the militant black nationalist movement. Malcolm X might have been such a 'messiah'.... Martin Luther King, Stokely Carmichael, and Elijah Muhammed all aspire to this position.... King could be a very real contender for this position should he abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism. Carmichael has the necessary charisma to be a real threat in this way.*

So, in the 1960s, as the state began to take a serious interest in 'hate', the haters were clearly identified, *and* they included Martin Luther King. His was apparently the 'hate' that most threatened the US State.

You can still find this information on the FBI website, in the 'FBI vault.'<sup>6</sup> Moreover, the contemporary FBI is at pains to emphasise that, 'COINTELPRO was later rightfully criticized by Congress and the American people for abridging first amendment rights and for other reasons.' It also subtly reframes its analysis of what it called 'Black Nationalist Hate Groups' as 'Black extremist'. It retains the term, 'White Hate Groups' however, for White Nationalist groups – so you know who the really bad guys are now.

We shouldn't, however, give the state too much credit for coming clean on this history. This COINTELPRO programme remained in place until it was exposed in 1971 by the anti-war activist burglary of documents from an FBI office in Pennsylvania.<sup>7</sup> COINTELPRO's activities were subsequently investigated by the United States Senate 'Church Committee' in 1975. The committee declared COINTELPRO's activities were illegal and contrary to the US Constitution.

---

<sup>5</sup> 'Martin Luther King, Jr's Searing Antiwar Speech, 'Fifty Years Later'  
<https://www.newyorker.com/culture/culture-desk/martin-luther-king-jr-s-searing-antiwar-speech-fifty-years-later>

<sup>6</sup> 'COINTELPRO' <https://vault.fbi.gov/cointel-pro>

<sup>7</sup> 'Burglars who took on FBI abandon shadows' <https://www.nytimes.com/2014/01/07/us/burglars-who-took-on-fbi-abandon-shadows.html>

At this point the story should begin to hint at some of the complexities of this cocktail of ‘hate,’ ‘the state,’ and ‘crime.’ Quite apart from the formal criminality of the burglary, the direct action was hardly ‘constitutional.’ You might surmise that had Hoover got his hands on the activists first, they might well have been dismissed as a ‘hate group’ (or ‘communists’ or ‘terrorists’ or ‘un-American’) and the truth buried forever.

The presence of Stokely Carmichael (later Kwame Ture) on the FBI list of dangerous ‘Black messiahs’ also presents a neat juxtaposition on ‘hate.’ Alongside his activism with SNCC and the Black Panther Party, he was co-author with Charles Hamilton of *Black Power – The Politics of Liberation* – the seminal analysis which theorised the notion of ‘institutional racism’:

*When white terrorists bomb a black church and kill five black children, that is an act of individual racism, widely deplored by most segments of the society. But when in that same city – Birmingham, Alabama – five hundred black babies die each year because of the lack of power, food, shelter and medical facilities, and thousands more are destroyed and maimed physically, emotionally and intellectually because of conditions of poverty and discrimination in the black community, that is a function of institutional racism.*

In 1965, the FBI formally *named* the perpetrators of the Birmingham bombing cited in this definition. J. Edgar Hoover blocked prosecutions and refused to disclose evidence with prosecutors. In 1968, the FBI formally closed their investigation into the bombing without filing charges against any of the suspects, and the files were sealed on Hoover’s orders. There is perhaps no clearer example of the complex interplay of individual racism, institutional racism and the state. And whether Hoover was motivated by ‘hate’ or by a sense of duty really has little bearing on the outcome.

### **Whatever happened to institutional racism?**

The world has changed enormously in the intervening 50 years but the currency of ‘institutional racism’ should remain clear – you can swap ‘Birmingham, Alabama’ for ‘Yemen’ or ‘Gaza’ or ‘Myanmar’ and make the same point about contemporary racism. Equally tellingly, you can look at African American experience in contemporary Birmingham, Alabama or, indeed, the experience of migrant communities in Birmingham, England and make exactly the same point. Institutional racism keeps up its remorseless logic across generations, across communities, across the world, reproducing inequality and entitlement, condemning communities of colour to underdevelopment and reproducing white privilege. The concept retains both its explanatory power and its revolutionary simplicity.

There are two key lessons from this in terms of our discussion. First, this incisive theoretical understanding of the structural aspects of racism emerged – very directly – out of black struggle that was labelled as ‘hate’ by the contemporary US state. Second, the state that did this was a paradigmatic example of ‘institutional racism’. This general position obtains – racism institutionalised through the state is its most dangerous, egregious form of all. This was true historically across the colonial states of Europe; it was true in Nazi Germany and it was true in apartheid South Africa. It remains true of contemporary states across the world.

This reality was most famously acknowledged at state level by [Sir William Macpherson in his 1999 report into the murder of Stephen Lawrence](#). In the UK context, Macpherson redefined ‘institutional racism’ as:

*The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in*

*processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.*

This is less powerful, less functional, and much less radical than the Carmichael/Hamilton definition. Nevertheless, it was an example of a state engaging with its own culpability in terms of ‘institutional racism.’ In this sense it was a high-water mark for state reformism on racism to work to such a definition. And what was the response? First, the state denied – the Metropolitan Police, despite the damning evidence of Macpherson, insisted that it was not ‘institutionally racist.’ Then, for a brief moment, the state engaged – the UK Home Secretary suggested that Macpherson was a ‘blueprint for the eradication of racism from the criminal justice system.’ Then, perhaps recognising the can of worms it had opened with such a bold commitment, *it swapped the focus on ‘institutional racism’ for ‘hate crime.’*

We can emblemise this shift in the UK with the appearance of House of Commons [\*Northern Ireland Affairs Committee report on The Challenge of Diversity: Hate Crime in Northern Ireland: Ninth Report of Session 2004–05.\*](#) This report – engaging with Northern Ireland, *the UK polity most obviously associated with inequality institutionalised across the state* – could develop its whole analysis without any serious reference to Macpherson or Stephen Lawrence. It was as if the UK state’s own ‘blueprint for the eradication of racism from the criminal justice system’ had never existed. As so often, Northern Ireland was the testing ground – and swapping ‘hate crime’ for ‘institutional racism’ allowed the UK state to remove itself from the petard it was hoist upon with the Macpherson report.

More generally, this approach to repudiating institutional racism took the ‘individual racism’ side of the Carmichael/Hamilton argument on an even stranger journey. Now states that showed little commitment to addressing the structural inequality framed so powerfully by ‘institutional racism,’ suddenly became very keen to line up against ‘hate.’ This is a general trend that extends well beyond race and racism, but one example of how this works politically will suffice. We all know about the ‘Charlie Hebdo’ attacks. This violence wasn’t hard to problematise – the murder of journalists, however provocative their work, cannot but raise profound questions of free speech; the racist murder of Jewish people cannot but raise profound questions of antisemitism. But the political response from the state was telling. As ordinary people mobilised against the attacks, the political elite of Europe (and beyond) found it necessary to position itself at the head of a march against hate.<sup>8</sup> One observer characterised it as ‘a rogue’s gallery of political leaders.’<sup>9</sup> Organisers had tried to exclude Marine Le Pen and the *Front National*, but President Hollande insisted that all French people could be there. (And, yes, then Taoiseach Enda Kenny was there too). The Prime Minister of Iceland was lambasted as the *only* western European head of government *not* to attend the march.

It seems almost churlish to single out any of these leaders since they were individually associated with a panoply of ‘institutional racisms’ – from David Cameron’s ‘hostile environment’ for migrants to the EU’s ‘Fortress Europe.’ But Israel’s Benjamin Netanyahu – he who would go on to excuse the slaughter of 50 Palestinian protestors earlier this year as ‘self-defence’ – and Hungary’s Viktor Orban – the architect of ‘illiberal democracy’ who wants to rebuild Europe with his own toxic combination of Islamophobia and anti-migrant policies – attracted particular opprobrium at the time. To cap it all,

---

<sup>8</sup> ‘Huge crowds gather for Paris unity rally - as it happened’

<https://www.theguardian.com/world/live/2015/jan/11/1m-expected-for-anti-terror-rally-live>

<sup>9</sup> Press Gazette ‘Charlie Hebdo march was amazing demonstration of unity marred only by ‘rogues gallery’ of political leaders’ <https://www.pressgazette.co.uk/charlie-hebdo-march-was-amazing-demonstration-of-unity-marred-only-by-rogues-gallery-of-political-leaders/>

Saudi Arabia's ambassador to France was there. His country's approach to press freedom had been demonstrated the previous week with the flogging of a blogger imprisoned for 'insulting Islam.' More recently, of course, their approach to freedom of speech was confirmed by the murder of journalist Jamal Khashoggi *inside* the Saudi consulate in Istanbul. But the Saudis, too, could unite against hate. In stark contrast, this same 'rogues gallery' remains silent in 2018 as Saudi missiles kill children across Yemen – because this political violence has been conveniently labelled as something other than 'hate.'

### **Northern Ireland: A 'Hate Crime' regime in action**

So, the notion of 'hate crime' is dangerous because it allows states to label some racist violence out of existence. But it is often equally dangerous when it is operationalised. In this context, it is particularly apposite to look across the border at Northern Ireland. The Six Counties has become a perfect example of how a focus on hate crime does very little to address racism in general and racist violence in particular. Since the 2004 'Hate Crime' report referenced earlier, there has been a flurry of activity around 'hate crime' in Northern Ireland – in terms of both criminal justice and wider campaigning – with *everyone*, including the police, 'uniting against hate.'<sup>10</sup> In part, this was a response to the identification of Northern Ireland as 'the race hate capital of Europe' and Belfast as the 'most racist city in the world.' In practice, however, the criminal justice system in Northern Ireland responded to the 'race hate capital' accusation by doing very little apart from signalling its dislike of hate and its commitment to tackling 'hate crime.'

Most shockingly in this context, the state failed to legislate for 'hate crime' *at all*. As the Northern Ireland Policing Board (NIPB) recently made clear, '*there is no such thing as a "hate crime" in Northern Ireland.*'<sup>11</sup> Bizarrely, given the amount of discussion there is around 'hate crime' across Northern Ireland, there is *no legislation criminalising such behaviour*. In contrast to the situation in Britain, evidence of racial or religious or homophobic motive allows for increased sentencing, but it is not a distinct crime. In consequence, in a state that has pontificated at length on its opposition to 'hate crime,' actual convictions are rare. Moreover, when a probation intervention attempted to do some work with some of these 'hate criminals,' it couldn't identify them since none of them were in prison.<sup>12</sup>

Put simply, even when issues of race are not lost in the wider sweep of more general discussions of 'hate' and 'hate crime,' this approach does nothing to address the specificity of racist or sectarian violence in Northern Ireland. This hate crime regime presents a bizarre post-modern spectacle – by Kafka out of Orwell. *Everybody* – from the Sinn Féin/DUP (non)government to loyalist paramilitaries and the police – 'unites against hate' in the 'hate capital of Europe' and yet the state acknowledges that there is 'no such thing as hate crime in Northern Ireland.' Meanwhile the relentless progression of racist and sectarian violence continues.

### **Coda**

As the Northern Ireland experience suggests, the notion of 'hate crime' often constitutes a lightning rod for public disquiet about different forms of violence. It also provides an easy way for the police

---

<sup>10</sup> See, for example, Unite Against Hate <http://www.uniteagainsthate.org.uk> and PSNI 'Hate Crime' <https://www.psni.police.uk/crime/hate-crime/>

<sup>11</sup> 'Thematic Review of Policing Hate Crime' <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/race-hate-crime-thematic-review.PDF>

<sup>12</sup> See 'Living the Peace Process in Reverse: Racist violence and British nationalism in Northern Ireland' <http://journals.sagepub.com/doi/abs/10.1177/0306396814567403>

and criminal justice system to be seen to be ‘doing something.’ But the growing demand for a similar intervention on ‘hate crime’ in the south of Ireland should carry a huge health warning. It is clear from our review that activity around ‘hate crime’ does as much to *disguise* racism as it does to address it. Moreover it is clear that states have cynically used the focus on hate crime to displace attention from institutional racism – not least because this concept addresses real structures of power and inequality rather than caricatures of ‘evil.’ Most cynically of all, the hate crime finesse allows the state to reinvent itself as anti-racist. This allows the state to join – and often *lead* - the coalition against ‘hate’. But it assumes this role without addressing any of the racism that continues to be institutionalised through the state – in the criminal justice system and the immigration system and the refugee system and in every other state institution.

By way of conclusion, we can make a couple of simple observations. First, if the capacity to label ‘hate crime’ is surrendered to the state, it is as likely to be used against people of colour as it is in their defence. Second, if either Viktor Orban or Benjamin Netanyahu or the Saudi Ambassador is linking arms in solidarity with you against ‘hate,’ you are standing in the wrong place. So, we need to think long and hard before we buy into the notion that the ‘hate crime’ paradigm offers any kind of a model for anti-racism in Ireland. For all that the state condemns ‘hate,’ it is rarely on the side of racial justice. Despite the admissions of ‘illegality’ and ‘unconstitutionality,’ the old COINTELPRO programme was reframed in the US. ‘Hate groups’ are back on the FBI agenda. And, yes, an awful lot of people would like to see *Black Lives Matter* added to the list....<sup>13</sup>

**Bio:**

**Robbie McVeigh** is an Irish writer and researcher based in Edinburgh. He is currently working on publication on Ireland and legacies of colonialism with Bill Rolston. I hope this photo will suffice - come back if you need something with higher resolution!

---

13 See ‘The FBI’s Dangerous Crackdown on “Black Identity Extremists”’  
<https://www.nytimes.com/2017/11/15/opinion/black-identity-extremism-fbi-trump.html> and ‘Black Lives Matter is Not a Hate Group’ <http://time.com/4413786/splc-black-lives-matter/>