Quantifying Hate: The Evolution of German Approaches to Measuring ‘Hate Crime’

ERIK BLEICH and RYAN K. HART

This article examines and explains the rise of ‘hate crime’ as a category recognised by the German state. It documents the transition from a fluid and unspecific concern about violence against vulnerable groups in the immediate post-unification years to the formal adoption of ‘hate crime’ and its counterpart ‘right-wing politically motivated crime’ as official statistical categories. It uses theories of policymaking coupled with insights from scholarship on sociological uncertainty and policy transfer to explain the adoption, adaptation, and limitations of the hate crime concept in Germany.

Because of its past, evidence of racism in Germany is closely scrutinised both within the country and by the international community. In particular, German authorities have been sensitive to manifestations of racism in the form of far right political parties, the actions of right-wing extremists, and Holocaust denial. While these racist actors and actions are especially significant in the German context, they have tended to crowd out attention to other dimensions of racism that have been at the forefront of agendas in places like Britain or North America, such as racial discrimination in jobs, housing, and provisions of goods and services, institutional racism, and hate crime. On at least one of these dimensions, however, German and Anglo-American concerns have been converging since the early 1990s. With unification and the subsequent spate of attacks against immigrants and asylum-seekers in cities like Hoyerswerda, Rostock, Mölln and Solingen, Germany’s long-standing concerns about right-wing extremism began to evolve toward a focus on hate crime.

The concept of hate crime has developed rapidly over the past two decades in North America and Western Europe, with such crimes defined as those ‘motivated by bias toward individuals or groups based on particular status characteristics such as race, religion, ancestry, sexual orientation, or gender’.¹ In this time period, violent attacks motivated by such identity markers have captured tremendous media and public attention, they have resulted in a number of dedicated hate crime laws, and they have culminated in a series of major international conferences and activities sponsored by the Organization for Security and Co-operation in Europe.² Yet what is striking about this new policy energy is precisely that – its newness. Such violent attacks have taken place for centuries, yet the term hate crime has only been the focal point of policymaking since the 1980s in North America and in the past ten years in Western Europe.

While the birth and expansion of the concept of a hate crime has been well documented in its original US context,³ almost no research has been conducted on the spread of the term to other liberal democracies. The preponderance of academic

ISSN 0964-4008 print/1743-8993 online
DOI: 10.1080/09644000701855143 © 2008 Association for the Study of German Politics
studies of the early post-unification years in Germany focused on the patterns and causes of anti-foreigner crime, which only in retrospect was referred to as a 'hate crime wave'. At the time, however, German authorities lacked the unifying concept of hate crime around which to orient their understanding of the social and political problems of the day. This article therefore documents and explains the German transition from a fluid concern about violence by right-wing extremists against vulnerable groups to its formal adoption of 'hate crime' and its German counterpart 'right-wing politically motivated crime' (right-wing PMK, or PMK-R) as official statistical categories. Its primary focus on statistics contributes to a growing literature by sociologists and political scientists who have recognised that statistical categories reflect and reify broader societal concepts and in turn can shape identities and political outcomes.

In order to follow Charles Lees' injunction to connect single-country case study work to the broader comparative theoretical literature, it is necessary to ground our analysis of the German transition toward the hate crime concept in prevailing approaches to the study of policymaking. Many accounts of the policymaking process emphasise one or another of what Hugh Heclo has memorably termed 'powering' or 'puzzling', focusing on the role of societal actors lobbying vote-seeking politicians for their desired outcomes or on the influence of state actors seeking to solve pressing social problems by developing workable policy solutions. A third and equally prominent policymaking framework is represented by John Kingdon's modified garbage can model, which integrates insights from other schools of thought by identifying 'streams' of problem recognition, policy proposals, and politics that converge in policy windows offering opportunities for change.

Our argument draws heavily on Kingdon's model, yet also supplements it with insights derived from research on sociological uncertainty and on policy transfer. Concretely, this article emphasises the role of three factors – uncertainty, political opportunities, and focusing events – as the primary variables that affected the agenda-setting phase of policymaking. It demonstrates that in the early 1990s, German authorities attempted to monitor what came to be known as hate crime or PMK-R, but were casting about for categories that would best capture the problem and were shifting their counting methods virtually year by year. The substantial uncertainty of the 1990s laid the groundwork for subsequent modifications, but the likelihood of change grew significantly given the new political opportunities offered by the 1998 Red–Green coalition and its interest in citizenship, immigration, integration and right-wing extremism. Political opportunities expanded through the summer and autumn of 2000 in the wake of a series of high profile attacks against immigrants, but it was the focusing event of late summer media exposés critical of official right-wing murder statistics that concentrated pressure on the government to undertake a major review of its statistical system. Within days of the exposés, politicians and even leading members of the civil service were openly calling for an overhaul; within a year, German authorities had revised their statistical categories and had organised them around the twin concepts of 'right-wing politically motivated crime' and its sub-category of 'hate crime'.

Yet the adoption or even adaptation of the hate crime concept was by no means foreordained at the alternative selection phase of policymaking, as there were no
GERMAN APPROACHES TO MEASURING 'HATE CRIME'

major societal, political, or bureaucratic constituencies pushing the hate crime agenda in Germany at the time. To explain the outcome, we turn to insights from scholarship on policy transfer. This literature emphasises that actors are likely to draw in ideas from abroad when they satisfy an administratively and politically urgent need to ‘do something’. This article argues that the German state moved toward the hate crime and PMK-R concepts because they resolved long-standing bureaucratic problems of uncertainty and because they provided elected and appointed officials with political cover from groups complaining of their incompetence or ill will. It also demonstrates that, in keeping with another set of insights from the policy transfer and ideational diffusion literatures, issues of institutional and cultural fit led German authorities both to adapt the term for domestic use – by creating its PMK-R system that codes such crimes with reference to right-wing perpetrators and to political motivations, two elements seldom found in other liberal democracies’ use of the hate crime concept – as well as to limit the impact of the more robust legislative hate crime agenda that has been implemented in the United States, Britain, and elsewhere. In sum, this article seeks to explain why statistics rose on the agenda, why hate crime terminology was selected for the new system, and why the hate crime concept was both adapted by the state and has played such a limited role in Germany.

To lay the groundwork for the argument, part one briefly reviews the theoretical approaches to policymaking that inform this analysis, introducing relevant concepts and generating alternative explanatory hypotheses. Part two draws on the empirical evidence to demonstrate the effect of uncertainty, political opportunities, and focusing events as the core factors opening the policy window for change. Part three discusses the adoption, adaptation and limitations of the hate crime concept in German bureaucracy and law. The conclusion summarises the theoretically important aspects of the empirical findings. It also briefly assesses the consequences of this transition for the German state and society and reflects on how this policy shift fits into a larger pattern of steps Germany has taken over the past decade toward more Anglo-American concepts in the domains of citizenship, immigration, integration, and antiracism.

THEORETICAL TOOLS FOR UNDERSTANDING THE TRANSITION TO HATE CRIME TERMINOLOGY

To account for the adoption, adaptation, and limitations of Germany’s use of hate crime as an official statistical category, it is necessary to explain how such statistics arrived on the government’s decision agenda, how the hate crime concept was introduced as a particular policy solution, and why it was implemented in a circumscribed form. Several bodies of theory offer insights into these elements. In his seminal work, Hugh Heclo has made a useful distinction between ‘powering’ and ‘puzzling’ as two fundamental dynamics of policymaking. The powering approach focuses on the relative strength of organised actors who lobby vote-seeking politicians to secure a policy that is in their interest. Puzzling approaches, by contrast, focus on problem-solving and learning by policy communities who are interested in social problems facing the country. John Kingdon offers a third and widely used perspective based on a modified garbage can model. It argues that policymaking, while embodying elements of powering and puzzling, is better seen as loosely organised around relatively
independent streams of problem recognition, policy proposals, and politics. These streams converge at certain moments called ‘policy windows’ where a viable proposal is matched to a particular problem in the context of a favourable political climate, thereby enabling policy change.16

Of the three perspectives, the transition toward hate crime statistics in Germany is best captured by Kingdon’s model. The process did not entail organised interest groups lobbying for the hate crime concept, nor was it primarily one of bureaucrats ‘puzzling’ to arrive at a comprehensive solution to a social problem. However, Kingdon’s model does not perfectly reflect the dynamics of policy change in this case. At both the agenda-setting and alternative selection stages it fails accurately to describe and to account for the process in crucial respects. In order to analyse this policy change, it is thus necessary to probe briefly both the strengths and weaknesses of Kingdon’s model – highlighting key concepts, but also central shortcomings – and then to supplement this model with concepts drawn from literatures on the sociology of uncertainty and policy transfer.

Of the three policymaking streams identified by Kingdon, elements of the problem recognition and political stream are most relevant to our case. Kingdon and others have highlighted the potential of focusing events to shock political actors into elevating an issue area to the top of the policy agenda.17 Normally, such focusing events are crises or disasters, but they can also be powerful symbols that emerge to crystallise a problem in people’s minds.18 If they strike a chord with pre-existing concerns and emerge at a moment of favourable political opportunities, the second relevant stream, they may have a tremendous effect. In our case, we argue that the media generated just such a focusing event by highlighting a shortfall in official right-wing murder statistics during the politically favourable early stages of the Red–Green coalition’s years in power.

However, although Kingdon rightly notes that new conceptualisations of solutions are possible with new definitions of problems,19 we argue that his model does not pay sufficient attention to issue area uncertainty as an underlying factor that facilitates policy change.20 Although concerns about tracking violence against minorities rose on the bureaucratic agenda in the 1990s, methods for understanding and categorising such violence fluctuated significantly across the decade. This fundamental sociological uncertainty about the nature of the real-world problem laid the groundwork for the changes that took place in 2000–2001. Together, the three factors of uncertainty, political opportunities and a focusing event helped to generate the impetus for changing the statistical categories.

Moreover, Kingdon’s model for understanding the eventual policy solution that was selected works as poorly as those suggested by the powering and puzzling schools. It assumes the relative independence of streams and the often pre-existing nature of policy solutions that policy communities are ready to advocate given the potential to do so. If this were true in the German case, there would be evidence of social groups, politicians, or experts organising and mobilising around the hate crime concept, as was the case in the United States in the years leading up to passage of the Hate Crimes Statistics Act of 1990.21 Yet, such evidence is absent in Germany. Is it true, by contrast, that (in keeping with the puzzling perspective) policymakers considered a range of viable options before settling on the they believed best
suited the circumstances? This model comes close to accounting for the British implementation of ‘racially aggravated offences’ in its 1998 Crime and Disorder Act, before which British civil servants conducted a review of American hate crime legislation.\textsuperscript{22} However, evidence of such overt and informed lesson-drawing is also lacking in the German case. The eventual outcome in Germany was both to adopt and adapt the hate crime concept, while also to limit its implementation to the statistical sphere without extending it to the legislative sphere – in other words, to layer the concept into Germany’s statistical system without making it the primary category and to avoid its potential extension into the realm of hate crime laws present in other political systems that have taken on the concept.

Our analysis draws on the policy transfer literature to provide an account of the uptake but limited use of the hate crime concept in Germany. This literature argues that there are strong incentives to look abroad for solutions when problems rise quickly to the top of the agenda, but it also highlights impediments to complete policy transfer, such as imperfect fit with domestic institutions and prevailing ideas as well as a lack of buy-in by organised societal groups.\textsuperscript{23} In particular, we argue that organising statistics around the concepts of hate crime and right-wing politically motivated crime provided a solution to long-standing problems of bureaucratic uncertainty that prevailed during the 1990s, while also offering political cover to leaders whose motives and competence were called into question during the media-generated focusing event that catapulted statistics on to the agenda. However, the long-standing German focus on right-wing extremism has kept the adapted category of right-wing politically motivated crime predominant in the statistical arena, and has helped impede the spread of hate crime policy into the legislative arena. In this way, the literature on policy transfer offers a better analytical framework than the powering, puzzling or garbage-can model alternatives for understanding the adoption, adaptation, and limitations of the hate crime concept in Germany.

FROM THE 1990S TO 2000: TERMINOLOGICAL UNCERTAINTY, POLITICAL OPPORTUNITIES, AND FOCUSING EVENTS

‘Hate crime’ is a term that reflects a contemporary concern in Germany about crimes motivated by racial, ethnic, religious and other biases. It is a bureaucratic, legal, and political term used in many Western democracies, which thus allows for comparison within an international context. Yet, although the term is understood in Germany, until recently it was neither a widely used concept nor a formal statistical category. In fact, German bureaucratic terminology has evolved considerably in this domain. While this poses challenges for those seeking to summarise the state’s object of interest as ‘hate crime’, this fact also demonstrates a profound uncertainty in Germany about how to describe complex social realities.

The development of this statistical domain is rooted in the long-standing West German practice of collecting data on extremist offences that threaten the democratic political system.\textsuperscript{24} Founded in 1951, the Federal Criminal Police Office (Bundeskriminalamt, or BKA) began collecting such information in 1961 as part of its KPMD-S statistical system.\textsuperscript{25} Racially motivated offences \textit{per se} were not included in this system, however, until the early 1990s. At that time, high-profile attacks on
asylum-seekers and ethnic minorities in cities such Hoyerswerda, Rostock, Mölln, and Solingen caused deep concern both within the country and in the international community. Under public and political pressure, the BKA expanded its KPMD-S system to include xenophobic and anti-Semitic crimes in 1992 and 1993 respectively. The principal source for public information about such offences – the Federal Office for the Protection of the Constitution, or BfV – began publishing this information as soon as it was available, but also issued limited information on such crimes in its annual reports prior to those years. The statistical system thus shifted over the 1990s to devote attention not only to crimes aimed at overthrowing the democratic order by a specific type of perpetrator (right-wing extremists), but also toward crimes defined by biased motives (xenophobia, anti-Semitism, etc.) targeting particular victim groups (foreigners, Jews, political opponents and others), following a more standard hate crime logic.

This transition, however, was both incomplete and rife with complexities. The Federal Office for the Protection of the Constitution’s 1990 and 1991 reports contained only passing references to victim groups. By contrast, over the course of the next few years its annual reports featured increasingly prominent discussions and tabulations of the motives and targets of right-wing extremists. Yet just which motives and targets were deemed worthy of tracking and just how they should be grouped and labelled was not immediately obvious. The 1992 BfV report enumerated extreme-right crimes (a category that included both violent and non-violent acts) defined by motivation as either xenophobic crimes, anti-Semitic crimes, crimes against political opponents, or ‘other’ right-wing extremist crimes. However, when discussing in greater depth the targets of right-wing violent crimes, it looked not only at xenophobic, anti-Semitic, and anti-political opponent violence, but also included sections on violence directed against police officers and against those viewed by right-wing extremists as ‘un-German’ (‘Undeutsche’), such as the homeless, prostitutes, gays, and the handicapped.

This was the state’s first attempt to summarise systematically the targets and motives of what would eventually be called hate crime. However, there was deep uncertainty surrounding the way in which the data was organised and presented, and the categories were revised almost yearly. The 1993 BfV annual report shifted its emphasis considerably. It removed specific information on non-violent crimes directed at all groups other than foreigners, and it focused primarily on violence that was motivated by xenophobia. While it continued to include sections on anti-Semitic and anti-political opponent violence, it eliminated its prior year’s discussion of violence directed at police officers and excised the term ‘un-German’ in favour of specifically listing the four groups mentioned above. In 1994, the report changed tack again, tallying both violent and non-violent crimes with an anti-foreigner, anti-Semitic, anti-political opponent, and ‘other’ background carried out because of extreme-right motives. The category ‘other’ was redefined to exclude prostitutes and to include members of the criminal justice system.

Beginning in 1997, the bureaucracy omitted information on non-violent crimes for all categories except for those motivated by xenophobia. Starting in 1998 the annual reports further refined the list of targeted groups by separating violence against left-extremists from the category of violence against other political opponents. These shifts reflect the ever-evolving search for an appropriate list of right-wing extremist victims. Which groups were the most important targets of right-wing activity.
and how much attention should they receive compared to other victims in official reports? How should the victims be grouped together or distinguished from one another? Was it acceptable for the state to adopt the right-wing terminology of 'un-German' in its official reports? As actors in the BfV responsible for publishing this information sought answers to these questions throughout the 1990s, they continuously altered their categories and their presentation of statistics. The near-constant evolution in the attention devoted to various victims reveals the on-going uncertainty surrounding the precise problem these statistics were intended to capture in post-unification Germany. This uncertainty laid the groundwork for the 2000–2001 overhaul of the system that was intended to resolve these definitional fluctuations; however, as should be clear from its on-going nature, such sociological uncertainty was not enough to raise the profile of the issue to the top of decision-makers' agendas, nor did it suggest a specific alternative to be implemented.

It took a shift in the political opportunity structure to increase the likelihood of action. In several key respects, the year 2000 was an auspicious time for a review of state conceptions of violence against vulnerable groups. The coalition of Social Democrats and Greens had been in power since 1998, and had completed a landmark 1999 law that eased access to German citizenship for long-standing resident immigrants. In 2000, the political elite was turning its attention to issues of right-wing extremism and racism in a sustained way for the first time since the early 1990s; over the course of the middle months of the year, successive parliamentary parties submitted motions calling for more attention to these topics. In May, the government established the nationwide Federation for Democracy and Tolerance, a group designed to unite disparate local initiatives against right-wing extremist violence in order to create stronger networks against racism. And in early 2000 the BKA decided to organise its major annual Autumn Meeting around the themes of right-wing extremism, anti-Semitism, and xenophobia.

The summer of 2000 proved a turning point in elevating racist violence to the national agenda, due to a combination of focusing events that created an ever more favourable political opportunity structure. In June, three young skinheads beat a Mozambican immigrant into a coma from which he died a few days later. The following month, a bomb exploded in a Düsseldorf S-Bahn train station, seriously injuring ten immigrants, six of whom were Jewish. These acts received a tremendous amount of national publicity during what was otherwise a slow news summer. Partly in response to this growing wave of concern, Chancellor Schröder spoke out against right-wing extremism in his two-week tour around the Eastern Federal states in late August and early September. The government also began pursuing a ban on the far right German National Party (NPD) on the grounds that it was undermining democracy through its racist platform. In the autumn, Chancellor Schröder launched a programme exhorting Germans to exhibit 'civil courage' and to participate in an 'uprising of the decent' as a response to the early October firebombing of the Düsseldorf synagogue. As important as these violent focusing events were for creating a political atmosphere favourable to change, these forces were not sufficient to spark an overhaul of the official categories the state used to understand problems of violence against vulnerable groups. The popular discourse against racism in 2000 did not focus on statistics; these two aspects remained entirely separate until the late summer of 2000.
Investigative journalism brought them together. The raft of mid-year press interest in racism included two stories from late August and mid-September that shone the spotlight specifically on the state’s right-wing murder statistics. On 24 August 2000, the influential television news magazine Panorama aired a stinging exposé entitled ‘The Concealed Dead – Authorities Hush Up the Measurement of Radical Right Violence’. The show’s editors used inflammatory rhetoric to condemn the government’s numbers. The episode cited the official government figure of 24 murder victims of right-wing extremism between 1990 and 2000, only to challenge the count by asserting that ‘the number of victims was held at its lowest possible level, and indeed by every possible trick’. It argued that the official figure of deaths due to right-wing extremism mysteriously dropped from 34 to 24 when the new left-of-centre government coalition took power in 1998, and countered that the actual number was at least 117 dead. When asked about the decline in official victims, an Interior Ministry representative maladroitly replied that the government was probably ‘happy that there weren’t so many’, but that the statistics from the two eras were not directly comparable because of changes in the way they were compiled. Clearly unsatisfied with this response, the Panorama interviewer ended the report on a note of sarcasm: ‘It’s that simple. Just like that a few fewer people became victims of the brown shirts.’

Three weeks later, the Berlin-based Tagesspiegel and the Frankfurter Rundschau published the results of a months-long joint investigation into right-wing murders. The Tagesspiegel ran a series of articles on 14 September 2000 that included the headline work of journalist Frank Jansen, along with a person-by-person description of those killed through right-wing violence since 1990 and an introduction to the articles by editor-in-chief Giovanni di Lorenzo. In the introduction, di Lorenzo announced the principal finding of the research— that there had been 93 deaths in ten years from right-wing extremist and xenophobic motives, and that this number was far higher than the Federal Interior Ministry’s official figure. In arriving at the final count, the newspapers attempted to stake out ground in the middle of the spectrum by not only criticising the government for its low figures, but also by claiming that they could not uncritically accept the much longer list of suspected right-wing murders put forward by leftist anti-fascist groups. Therefore, they argued, it was necessary to organise independent research into deaths that followed from ‘rightist motives’, which include hate toward ‘those who are different’, ‘foreigners’, or ‘those who are inferior’. The public response to this investigative reporting was so strong that the Tagesspiegel published a follow-up special edition on the murder victims of rightist violence only eight days later.

These reports, and particularly the mid-September newspaper exposés, served as a symbolic focusing event that drew attention to the ‘problem’ of undercounting right-wing murders. In the wake of these articles, other important actors joined the fray. Within the original article series, two prominent academic experts argued that the ‘obviously unsuitable criteria’ for evaluating right-wing violence ‘must be urgently changed’, with the widely respected director of the Criminological Research Institute of Lower Saxony suggesting the government employ an independent ombudsman to document right-wing crimes. This pressure for a major systemic overhaul was quickly seconded by the PDS spokesperson on domestic politics (long time antiracist MP Ulla Jelpke) in late September, in December by the six-month old Alliance
GERMAN APPROACHES TO MEASURING ‘HATE CRIME’

for Democracy and Tolerance, and in March 2001 via a four-party (SPD, Green Party, FDP, and PDS) Bundestag motion.51

The initial media stories caught the government flat-footed and caused ‘great excitement’ among the Interior Ministry and Federal Criminal Police Office bureaucrats.52

They also prompted immediate and forceful responses from members of the cabinet. Confronted with the newspapers’ murder estimates, Interior Minister Otto Schily proclaimed that the official count of victims did indeed reflect a ‘shortfall in registration’ (Erfassungsdefizit).53 When asked why the government was reacting to action by newspapers, Justice Minister Dübler-Gmelin replied ‘Very simply because no one, not even you, knew of the results of this research’. She went on to declare that ‘Now the police and criminal statistics have been contested. Therefore, we’re reviewing them’.54 In late September, the Interior Ministry explained that the apparent decline in right-wing murders under the SPD–Green regime was the result of a 1996 administrative change in recording crimes that had recently been retroactively applied to the years 1990–93.55 This clarification failed to satisfy critics of the government, and a subsequent formal review of all cases resulted in an upward revision in the official count of deaths from right-wing violence to 36.56

Some of the strongest language condemning the undercount emanated from within the bureaucracy itself. The Vice President of the Federal Criminal Police Office (BKA), the institution responsible for assembling national data (based on reports from state authorities), was among the most public voices decrying the weaknesses of the existing system.57 In the November ‘Autumn Meeting’ of the BKA, Bernhard Falk stated that criticisms of the police statistics were justified, and spoke of ‘false and too low’ numbers that led to a ‘distortion of reality’. The President of the BKA admitted that the absence of well-known cases of right-wing extremist murders in the government’s count called into question the credibility of all of the statistics, while Vice President Falk asserted that ‘we cannot allow ourselves to be reproached for downplaying the significance of right-wing extremist acts’.58

These immediate and strong reactions from the political and bureaucratic leadership led to a top-to-bottom review of the statistics. Following the press stories of late summer 2000, the Interior Minister announced plans to form a working group of experts from the federal and state criminal services to improve how such crimes were recorded.59 By November, the working group had been formalised, and by early 2001, they were moving toward a new system.60 The new statistical structure was formally instituted on 10 May 2001, with the revised coding system backdated to 1 January 2001.61 The 2001 transition could not have taken place without the uncertainty surrounding the pre-existing system, nor without a favourable structure of political opportunities in the summer and autumn of 2000. But it was the focusing event of the media exposés that highlighted the problem of statistics and that spurred a widespread political response leading to the revision of the entire system.62

THE NEW SYSTEM: HATE CRIME AND RIGHT-WING POLITICALLY MOTIVATED CRIME

In its 2000–2001 overhaul, the German bureaucracy imported the term ‘hate crime’ as a statistical category, drawing on the American concept that has spread throughout the
international system. In official German statistics, a hate crime (Hasskriminalität) is any crime committed on the grounds of nationality, ethnicity, race, skin colour, religion, origins, outward appearance, handicap, sexual orientation, or social status. As a sub-category of hate crime, the Federal Criminal Police Office also collects data on xenophobic crimes (which include those based on nationality, ethnicity, race, skin colour, religion and origin) and anti-Semitic crimes. However, in Germany, hate crime statistics per se are not available to the public through the BfV or the BKA. They therefore do not formally play as central a role as in the United States, where hate crime data published yearly by the FBI as mandated by the federal Hate Crimes Statistics Act of 1990.

Instead, the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution publish annual information on ‘right-wing politically motivated crimes’, which subsumes all hate crime and also includes acts committed because of a victim’s political beliefs or ideology (Weltanschauung). In fundamental ways, the PMK-R category is a close analogue to standard hate crime categories found in other liberal democracies — with hate crime commonly defined as those ‘motivated by bias toward individuals or groups based on particular status characteristics such as race, religion, ancestry, sexual orientation, or gender’ — because the exact list of protected groups varies from jurisdiction to jurisdiction. The overlap between the German category of right-wing PMK and American statutes is considerable, but whereas many US states penalise acts undertaken because of gender and age — two categories omitted in German statistics — only four have provisions against crimes directed at victims because of political affiliation, and none count or protect against acts based on outward appearance, social status, or ideology, as does the German system.

There are, however, two more fundamental distinctions between Germany’s right-wing PMK categories and the American and international models, and these are critical to understanding how Germany adapted rather than simply adopted the hate crime concept. While most definitions of hate crime focus strictly on the identity of the victim and the biased motives of the action, the German system also emphasises the identity of the perpetrator and the political motives of the action. There is a presumption in Germany that hate crime — by definition since they come under the right-wing PMK umbrella — are perpetrated by actors motivated by right-wing convictions. Moreover, there is a belief that such crimes are almost always linked to a political motivation, either because they explicitly target people on the basis of their political beliefs (such as right-winger attacks on anarchists or antifascists) or because right-wing actors are presumed to have a political agenda. The American and international definitions of hate crime assume neither of these elements.

The adaptations of the hate crime concept embedded in the PMK-R formulation also highlight the limits of the state’s use of hate crime as an organising concept in German policymaking. In the United States, for example, the 1990 Hate Crimes Statistics Act (which mandated federal statistics on hate crime) was followed in 1994 by the Hate Crimes Sentencing Enhancement Act which allowed increased penalties for a range of hate crime. Similar statutes have both pre-existed and post-dated the federal laws in almost every US state. Among European countries, Britain instituted a new category of ‘racially aggravated crimes’ in 1998 and extended the logic to ‘religiously aggravated crimes’ in 2001, and Sweden, Spain, Belgium, Austria, Italy and
France have analogous penalty enhancement provisions. By contrast, there has been no discernible pressure to extend the hate crime concept either to supersede the PMK-R designation in the realm of statistics or to form the basis for laws that penalise such acts in a symbolically powerful way.

How do we account for the adoption but also adaptation and limitation of the hate crime concept in Germany? We should note at the outset that there are limits on our ability to answer this question fully given that the decision-making process took place behind closed doors. Nonetheless, the available evidence suggests that there were two central reasons for drawing on the hate crime concept in revising Germany’s statistical system, and two additional reasons for adapting and limiting it.

One of the principal innovations of the PMK-R system was to carve out a logically defensible rationale for cataloguing what most countries call hate crime. Until 2000, the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution had as their primary task in this area the tracking of extremist crimes, defined as those that threatened Germany’s constitutional order. The innovation of collecting and publishing information on xenophobic, anti-Semitic and other such crimes in the 1990s had been a stretch of the federal mandate, in the sense that many attacks on individuals did not constitute extremist challenges to the democratic system. The new interest in such acts generated significant uncertainty because there was no available concept around which to organise the statistics. While the PMK system instituted in 2001 retained a focus on acts that threatened the democratic state, it also explicitly acknowledged the importance of hate crime aimed at victims solely because of their identity, even in the absence of an overt extremist, anti-state ideology. The new methodology thus resolved long-standing uncertainties and institutional tensions by generating a relatively coherent system for tracking attacks against vulnerable groups that did not constitute threats to the democratic order.

There were also political considerations. As Colin Bennett has written, when strong domestic pressures call for swift action, ‘then incentives might be quite high to utilise a program from elsewhere as a ready-made solution’. We have demonstrated the intense criticism from the media, politicians, and even from leaders of the BKA, but it is important to note that other significant actors also condemned the pre-existing system in the wake of the late summer 2000 media exposés. For example, in early 2001 the head of the police union, Konrad Freiburg, publicly criticised the lack of accurate and comparable statistics across Germany. The federal state of Thuringia challenged the existing method which, in its view, disadvantaged it for rigorously reporting all relevant crimes when other states were sweeping some incidents under the rug. According to Bennett, the desire to mollify political pressure of this nature is frequently coupled with a ‘need to innovate, to find a response to a relatively new problem for which there are no legacies within the historical experience of that state’ and is likely to lead adopting a foreign programme more quickly and with less reflection than might otherwise be the case.

The PMK-R and hate crime statistical systems did not, of course, eliminate all criticism of German authorities responsible for tracking such crimes. However, they did allow bureaucratic and political authorities to deflect such criticisms with an assertion that they had developed an appropriate response. During the BKA’s 2000 Autumn Meeting, for example, the Interior Minister, and the President and Vice President of the
BKA noted that a comprehensive review was underway when openly discussing the public criticisms levelled at the state’s data collection methods. In its own publications, the Federal Office for the Protection of the Constitution has touted the benefits of the new system, claiming that now ‘data can be analysed according to specific needs, providing a foundation for targeted use of appropriate measures for deterrence and prevention’. Moreover, official reviews undertaken since its inception have shown that over 90 per cent of specialists surveyed were content with the system, even though quasi-civil society victim advisory centres regularly arrive at considerably higher counts of crimes than official bodies.

That the hate crime concept helped to resolve long-standing problems of sociological uncertainty and provided a political solution under pressure help account for why German authorities incorporated it into their statistical system in 2001. However, these factors are not sufficient for understanding why the concept was implemented through the predominant PMK-R format, or limited to just the statistical sphere. Wade Jacoby’s work has usefully identified three dimensions of imitation and institutional transfer, distinguishing between ‘wholesale and piecemeal transfer’, between ‘exact transfer and the functional equivalent approach’ and between ‘continuous interaction and single-moment transfer’. Given these criteria, the case examined here is a minimal one along all three dimensions, as opposed to extensive or maximal transfer that has taken place with regard to hate crime institutions across many US states and between the United States and Britain.

Two factors help explain the relatively low level of hate crime policy and institutional borrowing in Germany. As many studies of policy transfer have asserted, the fit of new ideas to existing administrative and cultural structures can play a large role in influencing the effect of policies drawn in from abroad. In the German case, long-standing embedded attention to far right political actors arguably slowed down the move toward any type of hate crime statistical structure in the 1990s, and also limited its impact in the 2000–2001 institutional overhaul. As much as Germany moved toward organising its statistics around biased motives and the victim’s identity, it also retained its focus on political motives and perpetrator identity. These two latter emphases are much more in keeping not only with the deep-rooted practice of collecting data on extremism that threatens the democratic political system, but also with the emphasis on tracking right-wing extremist groups exhibited in the annual Report on the Protection of the Federal Constitution, and in the very name of the Ministry of Interior-sponsored civil society umbrella organisation called Federation for Democracy and Tolerance – against Extremism and Violence. By the BKA’s Autumn Meeting, the Interior Minister and President of the BKA were already using the term ‘politically motivated crime’ but were not yet discussing ‘hate crime’, relying instead on the more specific ‘right-wing extremist’, ‘xenophobic’ and ‘anti-Semitic’ violence categories that had prevailed (with fluctuations) throughout the 1990s. The hate crime concept was in many ways a poor fit with pre-existing administrative and cultural institutions, which gravitated more quickly and more naturally toward the right-wing politically motivated crime framework. Even though Germany adopted hate crime terminology in meaningful ways, it also adapted the concept to achieve a closer fit to its domestic institutions.
As of 2000 there were a wide variety of state and civil society initiatives throughout Germany designed to counter xenophobia and violence as well as to promote integration, yet there were no initiatives designed to address 'hate crime', as the concept was not deeply rooted at the time.\textsuperscript{88} This suggests the relevance of an additional insight from the policy transfer literature in accounting for the limitations to the spread of hate crime institutions in Germany, namely that 'for effective institutional change to persist and perform, it must be "pulled in" by social actors.'\textsuperscript{89} Multiple interviews conducted in Germany in 2003–04 and subsequent follow-up interviews demonstrated very little interest in the hate crime concept or in extending its use into the legislative sphere in the form of a dedicated hate crime law.\textsuperscript{90} The concept of hate crime has simply not been pulled in by social actors in Germany, who continue to focus primarily on problems of right-wing extremism, anti-Semitism and xenophobia. Thus, while 'hate crime' was formally established as a statistical category in Germany in 2001, its implementation has since been confined to a narrow application in the realm of official statistics.

**CONCLUSIONS**

This article has both described and explained the German state's transition toward a hate crime system, discussing the adoption but also adaptation and limitations of the term in Germany. It has argued that Kingdon's modified garbage can model of policymaking better accounts for the decision-making process than alternative 'powering' or 'puzzling' approaches, but it has also noted the limits of the Kingdon approach and supplemented his insights with those drawn from the literature on sociological uncertainty and policy transfer. It has demonstrated that the 1990s terminological uncertainty, the political opportunities offered by the new Red–Green government as well as by the increased attention to racist violence in 2000, and the focusing events of media exposés about right-wing murders placed statistics on the government's decision agenda, and that issues of uncertainty, political incentives, institutional fit, and lack of civil society advocacy explain the way in which the hate crime concept entered the system suddenly, but was subsumed under the right-wing politically motivated crime category and has made little impact in other bureaucratic or legislative arenas in Germany.

Although the evidence from a single case is not enough to validate or invalidate an existing theory, it can provide new insights that modify prevailing theoretical assumptions.\textsuperscript{91} In this case, two significant implications for the policymaking literature emerge. The first involves the circumstances under which the media can help set the governmental agenda. According to Kingdon, the media rarely play this role, although they can serve the purpose of 'magnifying movements that have already started elsewhere'.\textsuperscript{92} In many other models of policymaking, the media is seen as an intermediary between experts, policymakers, and public opinion.\textsuperscript{93} In this case, the media did not magnify a pre-existing movement, simply report findings of experts, or generate a moral panic.\textsuperscript{94} Rather, it used investigative journalism to connect the specific issue of statistics to the government’s decision agenda. They were able to do this largely because such statistics had been the subject of bureaucratic uncertainty, debate, and revision for a decade, and, because their exposés were published at a moment of
favourable political opportunities. In other words, if an issue is ripe for review and if the publication comes at the right moment, the media may be able to bridge the gap between political opportunities and the placement of specific issues on the government's agenda.

A second theoretical insight derived from this study involves the role of uncertainty as a factor amplifying the impact of focusing events and facilitating policy change. Notions of path dependency and policy incrementalism suggest there is an embedded bias against sudden, significant change. This is most true when policy issue areas are well established, under which circumstances change is likely to be prompted only by a very dramatic focusing event or a significant shift in political opportunities. Building on the insights of other work on problem definition and agenda-setting, however, it is likely that in new policy domains or in policy domains characterised by fundamental uncertainty, lesser developments—such as the media exposés outlined here—may become focusing events that prompt relatively larger policy changes. This suggests that focusing events of a similar intensity are unlikely to have the same effect across policy areas, even holding constant Kingdon's other policymaking streams.

Beyond the implications of this study for policymaking analysis, it is important to assess the effects of the policy changes themselves. The German method for categorising and counting hate crime has remained stable since 2001. The most important effect of the right-wing politically motivated crime system—its nested subcategory of hate crime—was in resolving many of the ambiguities and inconsistencies of the previous decade's ever-shifting terminology. According to German authorities, this allows for a more accurate and consistent assessment of how many and what types of crimes are committed within its borders, leading to a firmer foundation for policies designed to counter such acts. A second effect has been to elevate the profile of such statistics among observers who criticise the government for what they perceive as a too-restrictive system and who lobby for more attention to such attacks. Ultimately, however, while it is probable that fewer crimes are being overlooked or undercounted with the new framework in place, there is little evidence of improved policies attributable to the new statistical categories. This is likely the case largely because German civil society groups have not mobilised around hate crime to advocate for the legal or policing changes that have taken root in other countries.

It is also vital to assess the broader implications of introducing the hate crime concept for the trajectory of German politics and society. Over the past decade, German leaders have engaged—often haltingly, partially, and with significant resistance—in a series of policies that together demonstrate a trend toward a more Anglo-American approach to issues of pluralism. Viewed from this perspective, Germany's move toward the hate crime concept parallels steps taken in the related domains of citizenship, immigration, integration, and anti-discrimination. In all of these cases, longstanding German approaches often criticised by international observers have begun to shift, enabling increasingly 'progressive' policies. The 2000 expansion of citizenship rights may contribute to further changes, especially as it renders minorities more politically active and majorities more sensitive to impediments that inhibit full inclusion for migrants and their descendants. In this context, the introduction of the hate crime
concept serves as one more indication of this emerging trend, and of the potential for larger changes to come.

ACKNOWLEDGEMENTS

The authors wish to thank David Art, Belinda Cooper, Pepper Culpepper, Simon Green, Chris Klyza, Judy Layzer, Mark Williams and the editors and anonymous reviewers of *German Politics* for helpful comments on this article, and David Haglund for research assistance. We also wish to thank Middlebury College and the German Marshall Fund of the United States for grants that made this research possible.

NOTES

6. As discussed below in depth, right-wing politically motivated crime is a close functional equivalent of a hate crime, as it includes acts undertaken on the grounds of nationality, ethnicity, race, skin color, religion, origins, outward appearance, handicap, sexual orientation, or social status, and also political belief or ideology.
8. C. Lees, ‘We Are All Comparativists Now: Why and How Single-Country Scholarship Must Adapt and Incorporate the Comparative Politics Approach’, *Comparative Political Studies* 39/9 (2006), pp.1084–108. We also follow Lees’ suggestion to deploy evidence from foreign cases (where called for) to sharpen our analysis.


15. Ibid., pp.86–9.


19. On uncertainty and the social construction of policy problems, see Parsons, Public Policy.

20. Jacobs and Potter, Hate Crimes; Jenness and Grattet, Making Hate a Crime.


25. The BKA is under the oversight of the Federal Ministry of the Interior.


27. The Bundesamt für Verfassungsschutz is specifically tasked with safeguarding the democratic system. It is also bureaucratically overseen by the Federal Ministry of the Interior.


29. With the exception of a passing reference to anti-Semitic crimes; see Bundesamt für Verfassungsschutz, Verfassungsschutzbericht 1993 (Bonn: Bundesministerium des Innern, 1994), p.103.


33. See German Bundestag documents 14/3106, 14/3516, 14/4067 and 14/4145.

34. See http://www.bundesrats-nachrichten.de/.


37. Süddeutsche Zeitung, 29 July 2000. It was later discovered this was not a classic hate crime because the victims were known to the perpetrator (communication with the Interior Ministry, 17 May 2006).

38. For an overview of the events of 2000, see FAZ, 19 March 2003; on the slow news summer, see the Tagesspiegel, 14 September 2000.


44. See ibid., p.6.

45. Jansen was invited to speak publicly on this theme at the Autumn Meeting of the BKA in November 2000; see Bundeskriminalamt, Rechtsextremismus.

46. The Tagesspiegel and Frankfurter Rundschau are themselves left-leaning, a fact which undoubtedly helps to account for their interest in this issue. They are close enough to the middle of the political spectrum, however, that their findings were taken seriously.

47. See Tagesspiegel, 14 September 2000.

GERMAN APPROACHES TO MEASURING ‘HATE CRIME’

50. See Togesspiegel, 14 September 2000.
56. Ibid., p.27; see also Togesspiegel, 31 March 2001.
60. Rühl, Study on Racism Violence, p.12; see also Spiegel, 12 February 2001; FAZ, 14 March 2001.
61. Kleffner and Holzberger ‘War da was?’, p.56; Rühl, Study on Racism Violence, p.12; Singer, ‘Erfassung der Politisch Motivierten Kriminalität’, p.34.
63. Rühl, Study on Racism Violence, p.12 and Jansen (Togesspiegel, 31 March 2001) attribute the model to the United States, while the Bundeskriminalamt (Informationsystem, p.8) and the BMI (correspondence, 17 May 2006) merely refer to the ‘international’ concept or to knowledge from other countries.
64. This concept is also referred to as Hassverbrechen or Hassstutzen.
67. Interview with manager of the German University of the Police, 16 June 2006.
68. See the BfV annual reports since 2001 as well as Bundeskriminalamt, Informationen.
69. Jenness and Grattet, Making Hate a Crime, p.77.
70. F.M. Lawrence, Punishing Hate: Bias Crimes under American Law (Cambridge, MA: Harvard University Press, 1999), Appendix A. By comparison, British police forces are obligated to record hate crimes motivated only by race, sexual orientation, faith and disability; see ACPO, Hate Crime: Delivering a Quality Service - Good Practice and Tactical Guidance (London: Home Office Police Standards Unit and Association of Chief Police Officers, 2005), p.10.
71. For an extended discussion of the cases incorporated into the PMK-R system, see BMI/BMJ, Zweiter Periodischer Sicherheitsbericht, pp.137–8.
72. Jenness and Grattet, Making Hate a Crime, p.45.
73. See the 1998 Crime and Disorder Act and the 2001 Anti-Terrorism, Crime and Security Act.
75. Interviews with German policymakers and civil society actors 2003–2007. Many interviewees have argued that there is no need to do this in Germany because over the course of the 1990s the state included such acts in its list of ‘base motives’ subject to discretionary penalty enhancement. This is true, but it takes into account neither the symbolic effect of a law nor the fact that such motives were often already subject to increased penalties in other jurisdictions that nonetheless enacted dedicated hate crime laws. For an extended discussion, see S. Seehafer, Strafrechtliche Reaktionen auf rechtsetzungs- und -fremdenfeindlich motivierte Gewalttaten – Das amerikanische ‘hate crime’ Konzept und seine Übertragbarkeit auf das deutsche Rechtssystem (Berlin: Dissertations, Juristische Fakultät, Humboldt-Universität, 2003).
80. Thuringia was identified in the BKA’s 2000 Autumn Meeting as having the most such crimes, per capita, of any federal state, to which it offered a robust response in the ensuing days and months. See Bundeskriminalamt, Reichsterrorismus, p.60; Holzberger, ‘Offenbarungseid der Polizeifunktionär’, p.30; Süddeutsche Zeitung, 23 November 2000; FAZ, 14 March 2001.


82. Bundeskriminalamt, Reichsterrorismus.


85. Jacoby, Imitation and Politics, p.34.


87. Bundeskriminalamt, Reichsterrorismus.


89. Jacoby, Imitation and Politics, 15.

90. See also Seehafer, Strafrechtliche Reaktionen.

91. See Lees, ‘We Are All Comparativists Now’.


95. Parsons, Public Policy, Part 2.

