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The Conundrums of Hate Crime Prevention

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THE CONUNDRUMS OF HATE CRIME PREVENTION

SHIRIN SINNAR*

The recent surge in hate crimes alongside persistent concerns over policing and prisons has catalyzed new interest in hate crime prevention outside the criminal legal system. While policymakers, civil rights groups, and people in targeted communities internally disagree on the value of hate crime laws and law enforcement responses to hate crimes, they often converge in advocating measures that could prevent hate crimes from occurring in the first place. Those measures potentially include educational initiatives, conflict resolution programs, political reforms, social services, or other proactive efforts aimed at the root causes of hate crimes.

Focusing on the public conversation around anti-Asian hate crimes, this Essay argues that very different conceptions of the hate crime problem lie beneath the support for hate crime prevention. Broadly speaking, proposals for hate crime prevention fall into three categories: 1) prejudice reduction measures; 2) political and structural reforms; and 3) socioeconomic investments in communities. Prejudice reduction measures, such as educational programs to reduce stereotyping, stem from a view of hate crimes as an extreme manifestation of bias. Advocacy for political and structural reforms corresponds to a conception of hate crimes as the product of intergroup struggles over power and resources often influenced by the state. Calls for socioeconomic investments link hate crimes to the conditions that produce interpersonal harm more generally, such as economic distress or public health failures.

This Essay maps out these different conceptions of hate crime prevention and relates them to theoretical perspectives and empirical

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evidence from social psychology, sociology, criminology, and other fields. Drawing on this review, it argues that the project of hate crime prevention faces several empirical and normative conundrums. In addition to disagreements over conceptualizing hate crimes, these puzzles include the relationship between attitudes and behavior, the potential tension between hate crime prevention and other socially desirable policy goals, and the difficulty of maintaining support for long-term, structural change.

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INTRODUCTION

In 2020, hate crimes surged amid the worst pandemic in a century, racial justice protests following the police killing of George Floyd, and a divisive presidential election marked by the racist rhetoric of President Trump.¹ Over

¹ As another piece in this symposium points out, hate crimes against Asian Americans spiked after the onset of the pandemic, reaching the highest level of reported anti-Asian hate

the next two years, everyday acts of racial harassment, unprovoked assaults captured on video, and mass shootings targeting non-white or LGBTQ+ people in Atlanta, Buffalo, and Colorado Springs generated widespread fear in multiple communities. At the same time, the conversation on responding to hate crimes grew more complicated amid calls to defund the police and new attention to systemic racism in the criminal legal system. While some in targeted communities called for more policing and greater enforcement of hate crime laws, others sought alternative solutions that relied less on law enforcement and imprisonment to improve safety. And people on both sides of the debate queried what could be done to prevent hate crimes in the first place, rather than simply hold offenders accountable and help victims heal when such crimes occurred.²

This Essay explores the recent surge in anti-Asian hate violence and the policy conversation surrounding it to highlight the new interest in hate crime prevention outside the criminal legal system—and the challenges it presents. Efforts to prevent hate crimes outside law enforcement channels have taken a wide variety of forms, including educational initiatives, community escort programs to protect vulnerable people, conflict resolution efforts, advocacy against hate speech, and more. Such efforts have attracted significant support, especially at the state and local levels.³ While there is broad support for hate crime prevention, programs and proposals to prevent hate crimes reflect different approaches to the problem that stem, in part, from divergent perspectives on the causes of hate crimes. Hate crime prevention efforts outside the criminal legal system fall into three broad categories: (1) prejudice reduction measures; (2) political and structural reforms; and (3) socioeconomic investments in communities. Prejudice reduction measures, such as educational programs to reduce stereotyping, stem from a view of hate crimes as an extreme manifestation of bias. Advocacy for political and structural reforms corresponds to a conception of hate crimes as the product of intergroup struggles over power and resources, often influenced by the state. Calls for socioeconomic investments link hate crimes to the conditions

crimes since 2001, and hate crimes against African Americans surged after the June 2020 racial justice protests, reaching the highest monthly total of anti-Black hate crimes ever recorded. Brian Levin & James Nolan, *U.S. Hate Crime Trends: What Disaggregation of Three Decades of Hate Crime Data Reveals About a Changing Threat and an Invisible Record*, 112 J. CRIM. L. & CRIMINOLOGY 749, 761 (2023).

² See discussion *infra* Part I.B.

³ See discussion *infra* Part I.B.

that produce interpersonal violence more generally, such as economic distress or public health failures.

This Essay explains these three approaches to hate crime prevention and relates them to theoretical perspectives and a sample of empirical evidence from social psychology, sociology, criminology, and other fields in an effort to connect the policy conversation on hate crime prevention to existing academic research. This brief overview of academic research suggests several key challenges for hate crime prevention. First, the differences in underlying conceptions of hate crimes are not just the result of resolvable empirical disagreements about hate crimes, but also the result of deeply held beliefs on such matters as the prevalence of bias and the role of the state in producing or countering it. Second, academic research on hate crimes leaves many basic questions unanswered, such as the relationship between attitudes and behavior in the perpetration of hate crimes. Research also presents normative conundrums, such as the potential tension between hate crime prevention and other socially desirable policy goals. Third, the politics of hate crime policy, like that of crime policy as a whole, make it difficult to sustain public and political support for the “root cause” systemic reforms that might prevent hate crimes in the longer term. Recognizing these conundrums can help scholars, advocates, and policymakers think through the important project of hate crime prevention.

One caveat in discussing preventative approaches to hate crimes is that the idea of “prevention” has sometimes fueled discriminatory and illiberal policies with respect to crime and political violence. For instance, in earlier work, I argued that security agencies’ “preventative” approach to terrorism fueled abusive law enforcement measures against Muslim communities based on zero-tolerance, racialized premises and overbroad proxies for suspicion.⁴ I cautioned against extending that form of prevention to white supremacist violence, despite the need for proactive measures to confront the challenge.⁵ For similar reasons, civil rights and liberties groups have resisted the federal government’s “countering violent extremism” programs—even those potentially directed at racially motivated violence—out of concern that they unreliably flag individuals as threats, entrench discrimination, and risk

⁴ See Shirin Sinnar, *Hate Crimes, Terrorism, and the Framing of White Supremacist Violence*, 110 CALIF. L. REV. 489, 518–20, 548–52 (2022).

⁵ See *id.* at 542–43, 552.

suppressing speech and expression.⁶ While prevention efforts can be misguided, theories and forms of prevention are not all identical. Programs that focus on solving social problems rather than identifying and disrupting potentially violent individuals, and that operate outside of law enforcement and security agencies, do not raise the same concerns as the prevention programs scholars and community advocates have criticized.⁷ In focusing on hate crime prevention outside the criminal legal system, this Essay addresses reforms with the potential to reduce bias-motivated violence without replicating the flawed preventative responses of law enforcement and security agencies.

This Essay proceeds as follows: Part I describes the rise in anti-Asian hate crimes since the onset of the COVID-19 pandemic and the ensuing public and policy conversation around prevention. Part II sets forth the three approaches to prevention and maps them onto academic research in various disciplines. Part III lays out several challenges of non-carceral hate crime prevention.

⁶ See, e.g., HARSHA PANDURANGA, BRENNAN CTR. FOR JUST., COMMUNITY INVESTMENT, NOT CRIMINALIZATION: A CALL TO ABANDON THE DEPARTMENT OF HOMELAND SECURITY'S VIOLENCE PREVENTION STRATEGY 20–29 (2021), <https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization> [<https://perma.cc/M3L6-R4MS>] (noting that the Department of Homeland Security has failed to offer quantitative evidence showing that its CVE programs reduce violence and warning that the very models DHS uses might undermine public safety); Letter from Various Groups to Members of Congress (Sept. 7, 2017), in BRENNAN CTR. FOR JUST. <https://www.brennancenter.org/our-work/research-reports/citing-civil-liberties-concerns-brennan-center-and-over-50-groups-oppose> [<https://perma.cc/RKF3-FB4L>] (citing the “ineffectiveness, discriminatory impact, and constitutional infirmities of CVE programs” when urging Congress to not use such programs to quell white supremacy).

⁷ See PANDURAGA, *supra* note 6, at 31–32 (advocating “[d]e-securitiz[ing]” social investments in communities and focusing on social reforms rather than “identifying individual potential offenders”); Sinnar, *Hate Crimes, Terrorism, and the Framing of White Supremacist Violence*, *supra* note 4, at 542–43 (distinguishing between the need to prevent bias-motivated violence and coercive law enforcement tactics aimed at identifying and interdicting threatening individuals); Allegra McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1218–24 (2015) (developing an alternative conception of “preventive justice” that remediates social conditions without relying on problematic law enforcement crime prevention measures).

I. NEW CALLS FOR HATE CRIME PREVENTION

A. THE SURGE IN ANTI-ASIAN VIOLENCE

By all accounts, hate crimes and harassment targeting Asian Americans have soared during the pandemic. Hate crime statistics are notoriously unreliable, in part because many victims do not report hate crimes to law enforcement.⁸ Nonetheless, many sources of data suggest a rise that seems unlikely to result simply from increased attention or reporting. The FBI's national hate crime statistics, generally thought to undercount hate crimes both because they represent only crimes reported to law enforcement agencies and because they are based primarily on voluntary data submissions from a subset of law enforcement agencies, reported 279 anti-Asian hate crimes in 2020, far higher than the totals for each of the preceding five years.⁹ Police data from individual cities also show a rise. The Center for the Study of Hate & Extremism (CSHE) at California State University, San Bernardino, reported a 146% increase in anti-Asian hate crimes reported to police in 2020 in 26 of the largest U.S. jurisdictions.¹⁰ The Los Angeles County Human

⁸ See GRACE KENA & ALEXANDRA THOMPSON, BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUST., HATE CRIME VICTIMIZATION, 2005–2019 2, 19 (2021) (finding that about 44% of hate crime victimizations reported to the National Crime Victimization Survey from 2010 to 2019 were reported to police and that 57% of violent hate crime victimizations reported to the Survey from 2015 to 2019 were reported to police); Levin & Nolan, *supra* note 1, at 762–64 (describing problems with FBI hate crime data but suggesting that trends can still be identified given aggregation of data from thousands of agencies even if overall volume is underestimated).

⁹ *Crime Data Explorer*, FBI, <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime> (last visited Sept. 5, 2022) (under “Explorer Page Filters,” select “United States” and “2020”; scroll to “Hate Crime in the United States Incident Analysis,” then select “2020” and “Current Year,” then view “Bias” category and click on “Show More” to view “Anti-Asian”); see also *id.* (showing 114 anti-Asian hate crimes in 2015; 113 in 2016; 128 in 2017; 149 in 2018; and 161 in 2019); Ken Schwencke, *Why America Fails at Gathering Hate Crime Statistics*, PROPUBLICA (Dec. 4, 2017, 8:00 AM), <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics> [<https://perma.cc/J7FT-CU4Z>] (discussing issues with national hate crime statistics data).

¹⁰ BRIAN LEVIN, CTR. FOR THE STUDY OF HATE & EXTREMISM, REPORT TO THE NATION: ANTI-ASIAN PREJUDICE & HATE CRIME 3 (Kevin Grisham ed., 2021), <https://www.csusb.edu/hate-and-extremism-center/data-reports/original-reports-hate-and-terrorism-center-staff> [<https://perma.cc/4R6N-F7YW>] (choose “Report to the Nation: Anti-Asian Prejudice & Hate Crime (April 30, 2021) - Corrected”).

Relations Commission reported the highest number of anti-Asian hate crimes in the county since 2001, the year of the September 11, 2001, attacks.¹¹

Beyond hate crimes tracked by law enforcement, community groups recorded large numbers of incidents of racial harassment that did not necessarily violate criminal laws. From March 2020 through September 2021, Stop AAPI Hate, a new organization set up at the beginning of the pandemic, logged 10,370 self-reported hate incidents, mostly consisting of harassment and shunning but also physical assaults.¹² These included stories of people spat on, punched, pushed, harassed, blamed for the pandemic, and taunted with racial epithets.¹³

In March 2021, a 22-year-old shot dead eight people, including six Asian women, at a massage parlor and spa in the Atlanta area, a rampage widely attributed to the victims' race, gender, or both.¹⁴ In other cases, viral videos captured unprovoked attacks on elderly victims. Vicha Ratanapakdee, an 84-year-old Thai immigrant in San Francisco, died after an assault by a 19-year-old who defense lawyers said had suffered a mental health

¹¹ LOS ANGELES CNTY. COMM'N ON HUMAN RELS., 2020 ANTI-ASIAN HATE CRIMES LOS ANGELES COUNTY 1 (identifying reports from dozens of police agencies and "trained community-based organizations"). For data from other cities, see S.F. POLICE DEP'T SFPD VICTIM DATA: 2021 PRELIMINARY HATE CRIME STATISTICS IN SAN FRANCISCO (2022), <https://sanfrancisco.cbslocal.com/wp-content/uploads/sites/15116056/2022/01/2021-Hate-Crime-Victim-Demographics-Final.pdf> [<https://perma.cc/TW43-55HN>] (noting large increase in anti-AAPI hate crimes from 2020 to 2021); OFFICE FOR THE PREVENTION OF HATE CRIMES, 2020 ANNUAL REPORT 4 (2021), <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/03/2020-OPHC-Annual-Report.pdf> [<https://perma.cc/5VCV-BYCE>] [hereinafter 2020 ANNUAL REPORT] (noting that New York City reports of anti-Asian hate crimes increased from 1 to 30 between 2019 and 2020, despite decrease across almost all other categories in the same period).

¹² AGGIE J. YELLOW HORSE, RUSSELL JEUNG & RONAE MATRIANO, STOP AAPI HATE, NATIONAL REPORT: 3/19/20–9/30/21 1–2, <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf> [<https://perma.cc/N8T7-JM28>].

¹³ *Id.* at 12–13.

¹⁴ Associated Press, *The Atlanta Spa-Shooting Suspect Pleads Not Guilty in 4 Killings*, NPR (Sept. 28, 2021, 10:58 AM), <https://www.npr.org/2021/09/28/1041137210/atlanta-spa-shooting-suspect-pleads-not-guilty-robert-aaron-long> [<https://perma.cc/S8SB-MRMR>] (noting that prosecutors intended to seek a hate crime penalty enhancement under Georgia law); Shaila Dewan, *How Racism and Sexism Intertwine to Torment Asian-American Women*, N.Y. TIMES (Mar. 18, 2021), <https://www.nytimes.com/2021/03/18/us/racism-sexism-atlanta-spa-shooting.html> [<https://perma.cc/DJ33-RX2L>] (describing interrelationship between racism and sexism in denigration of Asian women).

breakdown.¹⁵ Days after that incident, an unhoused man with a history of “significant mental health issues” and addiction shoved a 91-year-old to the ground in Oakland’s Chinatown.¹⁶ Whether or not all these incidents qualified as hate crimes, they radiated fear within Asian American communities already reeling from explicit, widespread racial harassment. In 2021, nearly a third of U.S. Asian adults reported fearing they would be threatened or attacked, and almost half said they had experienced racially offensive incidents since the pandemic began.¹⁷ Asian American communities and others rallied to “stop Asian hate” and demand solutions from all levels of government.

¹⁵ Jaeah Lee, *Why Was Vicha Ratanapakdee Killed?*, N.Y. TIMES MAG., <https://www.nytimes.com/2021/08/17/magazine/vicha-ratanapakdee.html> [https://perma.cc/K427-AYXU] (Aug. 18, 2021) (describing Ratanapakdee’s death, possible motivations, and tensions between the Asian American and Black communities). The case helped launch the movement against anti-Asian hate violence, although prosecutors did not ultimately bring a hate crime charge against the defendant. Rachel Swan, *Man Accused in Street Attack that Killed 84-Year-Old Thai Man in San Francisco To Face Trial*, S.F. CHRON. (June 17, 2022, 7:14 PM), <https://www.sfchronicle.com/bayarea/article/Man-accused-in-street-attack-that-killed-17249717.php> [https://perma.cc/799M-F6BH].

¹⁶ Momo Chang & Darwin BondGraham, *Crime, Race, Safety: What’s Really Happening in Oakland Chinatown?*, OAKLANDSIDE (Feb. 12, 2021), <https://oaklandside.org/2021/02/12/oakland-chinatown-policing-hate-crimes-community/> [https://perma.cc/4UCS-UD9Z] (internal quotation marks omitted); *see also id.* (describing violent assaults in Oakland and whether they were racially motivated). Doubts quickly surfaced over whether the Oakland Chinatown attack fit the pattern of anti-Asian violence. *Id.* The elderly victim in the case was Latino, although media reports initially described him as Asian, and the suspect had been arrested for a number of other assaults that were not clearly against Asian victims or racially motivated. *Id.*

¹⁷ Neil G. Ruiz, Khadijah Edwards & Mark Hugo Lopez, *One-Third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them is Rising*, PEW RSCH. CTR. (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising> [https://perma.cc/V9PF-WAHG]. However, in 2022, a smaller percentage of Asian adults said violence against Asian Americans in the United States was increasing (63% in 2022 compared to 81% in 2021). Luis Noe-Bustamante, Neil G. Ruiz, Mark Hugo Lopez & Khadijah Edwards, *About a Third of Asian Americans Say They Have Changed Their Daily Routine Due to Concerns Over Threats, Attacks*, PEW RSCH. CTR. (May 9, 2022), <https://www.pewresearch.org/fact-tank/2022/05/09/about-a-third-of-asian-americans-say-they-have-changed-their-daily-routine-due-to-concerns-over-threats-attacks> [https://perma.cc/84NK-X5JF].

B. SUPPORT FOR HATE CRIME PREVENTION

The surge in anti-Asian violence triggered—or revealed—deep disagreements within Asian American and other communities on the role of hate crime laws and law enforcement in responding to the violence.¹⁸ Many called for increased policing to ward off violent attacks on Asian Americans in New York, California, and elsewhere, and argued that law enforcement agencies were not taking the violence seriously.¹⁹ National civil rights organizations, including prominent Asian American groups, supported the passage of the COVID-19 Hate Crimes Act to better track and respond to hate crimes. The Act provided grants for local and state governments to assist law enforcement agencies.²⁰ At the same time, support for abolitionist perspectives or criminal legal reform, especially in the wake of George Floyd’s killing and national racial justice protests, led others to resist greater policing and carceral responses to hate crimes. Some Asian community groups protested the creation of an NYPD Asian Hate Crimes Taskforce in New York,²¹ and over 100 local-level Asian and LGBTQ groups objected to

¹⁸ On the shift in views about hate crime law enforcement among civil rights groups and affected communities, see Shirin Sinnar & Beth A. Colgan, *Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration*, 95 N.Y.U. L. REV. ONLINE 149 (2020).

¹⁹ See, e.g., Alexandra E. Petri & Daniel E. Slotnik, *Attacks on Asian-Americans in New York Stoke Fear, Anxiety and Anger*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/nyregi-on/asian-hate-crimes-attacks-ny.html> [https://perma.cc/5AW2-VT45]; Kellen Browning & Brian X. Chen, *In Fight Against Violence, Asian and Black Activists Struggle to Agree*, N.Y. TIMES (Dec. 19, 2021), <https://www.nytimes.com/2021/12/19/us/black-asian-activists-policing-disagreement.html> [https://perma.cc/NY4E-RQJ2].

²⁰ See Barbara Sprunt, *Here’s What the New Hate Crimes Law Aims to Do as Attacks on Asian Americans Rise*, NPR (May 20, 2021, 4:32 PM), <https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise> [https://perma.cc/3LHD-NSJK]; Press Release, Asian Americans Advancing Justice, Historic Passage of COVID-19 Hate Crimes Act Celebrated by Asian Americans Advancing Justice—AAJC (May 18, 2021), <https://www.advancingjustice-aajc.org/press-release/historic-passage-covid-19-hate-crimes-act-celebrated-asian-americans-advancing> [https://perma.cc/M54F-VHTA]; COVID-19 Hate Crimes Act, Pub. L. No. 117-13, § 5(f)(2), 135 Stat. 265, 269 (2021) (giving the Attorney General ability to fund local law enforcement efforts “to prevent, address, or otherwise respond to hate crime”).

²¹ Asian Am. Feminist Collective, *We Want Cop-Free Communities: Against the Creation of an Asian Hate Crime Task Force by the NYPD*, MEDIUM (Sept. 3, 2020), <https://aafcollective.medium.com/we-want-cop-free-communities> [https://perma.cc/HY8S-SED8].

the Covid-19 Hate Crimes Act for what they viewed as centering law enforcement solutions.²²

Despite the rift over policing and hate crime laws, a wide spectrum of Asian Americans, civil rights organizations, community groups, and political leaders expressed support for non-law enforcement measures to prevent hate crimes to either replace or supplement law enforcement responses. In a nationally representative online survey of Asian Americans, about half called for education and “community-based solutions” to address hate crimes. Civil rights enforcement and increased law enforcement followed as other strong areas of interest.²³ The Asian and LGBTQ organizations that opposed the COVID-19 Hate Crimes Act because it failed to “address root causes” advocated investments in “non-coercive mental healthcare infrastructures, neighborhood-based trauma centers, community food banks, and more.”²⁴ Their advocacy aligned with abolitionist approaches to the criminal legal system as a whole, which call for addressing the structural causes of violence through community investment rather than imprisoning individuals.²⁵

Meanwhile, prominent civil rights organizations that had historically championed, and continued to support, hate crime laws also acknowledged a greater need to focus on prevention. The Movement Advancement Project, writing in partnership with national organizations such as the Anti-Defamation League (a longtime promoter of hate crime laws), advocated supplementing hate crime laws with “efforts to prevent violence and hate at

²² 100+ Asian and LGBTQ Orgs., *100+ Asian and LGBTQ Organizations’ Statement in Opposition to Law Enforcement-Based Hate Crime Legislation*, REAPPROPRIATE (May 12, 2021) [hereinafter 100+ Asian], <http://reappropriate.co/2021/05/75-asian-and-lgbtq-organizations-statement-in-opposition-to-law-enforcement-based-hate-crime-legislation/> [https://perma.cc/88PL-NNRB].

²³ YELLOW HORSE, JEUNG & MATRIANO, *supra* note 12 at 3–4. A separate Pew Research Center poll of Asian Americans in 2022 found nearly half identified stronger hate crime laws as their top solution to anti-Asian violence, although the only alternatives the poll asked about, besides a catch-all “Other” option, were creating community watch programs, increasing police presence, and electing more Asians to public office. Noe-Bustamante et. al., *supra* note 17.

²⁴ 100+ Asian, *supra* note 22; *see also* Li Zhou, *Hate Crime Laws Won’t Actually Prevent Anti-Asian Hate Crimes*, VOX (June 15, 2021, 8:00 AM), <https://www.vox.com/2021/6/15/22480152/hate-crime-law-congress-prevent-anti-asian-hate-crimes> [https://perma.cc/5ZCX-PFBC].

²⁵ *See* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1225–31 (2015) (describing social investments and interventions outside the criminal legal system that can reduce crime and violence).

their roots.”²⁶ Although their report deemed hate crime laws a valuable means of expressing societal condemnation, it recognized critiques that these laws operated reactively and only against individual perpetrators. Thus, the report also recommended investments to improve the social safety net (increasing minimum wage, affordable housing, mental health, and substance use programs) and violence prevention measures such as multicultural education, conflict resolution training, and inclusive coalition-building at the local level.²⁷

Government bodies heeded such calls, especially in progressive cities and states. The New York City Office for the Prevention of Hate Crimes, launched in 2019 largely in response to antisemitic attacks, announced a three-pronged approach to hate crime prevention that included not only law enforcement responses but also education and community relations.²⁸ In 2021, the California legislature passed the “Asian Pacific Islander Equity Budget,” a \$156 million package of measures, to address hate violence and racial equity issues affecting AAPI communities.²⁹ In addition to funding victim services, school-based restorative justice programs, mental health services, and ethnic media outreach,³⁰ the budget included a new grant program for nonprofit entities to support hate crime prevention and provide other services. Those other services include “community engagement and education, community conflict resolution, in-language outreach, services to escort community members in public, community healing, collaboration,

²⁶ MOVEMENT ADVANCEMENT PROJECT, POLICY SPOTLIGHT: HATE CRIME LAWS iv (2021), <https://www.lgbtmap.org/policy-and-issue-analysis/2021-report-hate-crimes> [<https://perma.cc/65PB-JHN9>].

²⁷ *Id.* at 34–35.

²⁸ 2020 ANNUAL REPORT, *supra* note 11, at 3, 5, 23.

²⁹ Claire Wang, ‘Historic Investment’: California Allocates Millions to Fight Anti-Asian Hate, NBC NEWS (July 13, 2021, 1:42 PM), <https://www.nbcnews.com/news/asian-america/historic-investment-california-allocates-millions-fight-anti-asian-hat-rcna1312> [<https://perma.cc/EYF5-5PNM>]. The budget attracted widespread support among Asian-American groups. See Letter from Various Groups to Hon. Phil Ting, Chair, Assembly Budget Committee & Hon. Nancy Skinner, Chair, Senate Budget Committee, RE: API Equity Budget Proposal of \$200 million (May 13, 2021), https://drive.google.com/file/d/1EBc3RSqmmKbzxavg7NWn734_59Zh7F00/view.

³⁰ Press Release, Joint Statement: Governor Newsom Signs API Equity Budget, Comm’n on Asian and Pacific Islander Affairs (July 13, 2021), <https://capiaa.ca.gov/media/press-statements/governor-signs-api-equity-budget> [<https://perma.cc/ZB3E-K27Y>].

cross-racial building, and community diversity training.”³¹ In 2022, California legislators also introduced three new bills to address anti-AAPI targeting, especially the targeting of women, via a multiyear public education campaign on street harassment, transit agency safety initiatives, and the strengthening of civil rights protections at businesses.³²

To be clear, this interest in hate crime prevention was not entirely new, and hate crime waves in earlier decades also led to funding for prevention programs such as anti-bias education.³³ But growing critiques of hate crime laws, policing, and prisons, alongside highly visible white nationalist mass shootings and anti-Asian hate crimes, redoubled interest in non-carceral approaches to the root causes of hate crimes.³⁴

³¹ CAL. GOV'T CODE § 8260 (2021); *see also* Stop the Hate Program Funding, CAL. DEP'T OF SOC. SERVS. (Feb. 28, 2021), <https://cdss.ca.gov/inforesources/cdss-programs/civil-rights/care-funding> [<https://perma.cc/5BU8-WG6C>] (describing grant program and listing awardees).

³² Claire Wang, *California Bills Aim to Curb Anti-Asian Attacks Against Women, Vulnerable Groups*, NBC NEWS (Feb. 18, 2022, 9:10 AM); *The No Place for Hate Agenda Continues to Pick Up Momentum*, CHINESE FOR AFFIRMATIVE ACTION (Mar. 31, 2022), <https://caasf.org/2022/03/no-place-for-hate-california-momentum> [<https://perma.cc/U6AH-9NHF>]. These legislative initiatives stemmed from a set of policy recommendations issued by Stop AAPI Hate, a new national organization formed during the pandemic. *See* CANDICE CHO, SANTOSH SEERAM-SANTANA & ANDY WONG, STOP AAPI HATE, CALIFORNIA STATE POLICY RECOMMENDATIONS TO ADDRESS AAPI HATE: A STARTING POINT FOR TAKING ACTION 2–3 (2021), https://stopaapihate.org/wp-content/uploads/2022/01/SAH-State-Policy-Agenda-10.13.21-w_urls-2.pdf [<https://perma.cc/KUA7-DZS6>].

³³ PHYLLIS B. GERSTENFELD, HATE CRIMES: CAUSES, CONTROLS, AND CONTROVERSIES 248–49 (4th ed. 2018); WILLIAM J. KROUSE, CONG. RSCH. SERV., RL33403, HATE CRIME LEGISLATION 13 (Oct. 19, 2009), https://www.everycrsreport.com/files/20091016_RL33403.pdf [<https://perma.cc/CR9B-NP52>] (referring to allocation of Department of Education grants for hate crime prevention under the Safe and Drug-Free Schools and Communities Activities Grants Program).

³⁴ Note that the new interest in non-law enforcement approaches to hate crimes applies both to preventing and responding to hate crimes. This Essay focuses on prevention, but in other joint work, I have assessed potential alternatives to the traditional criminal legal *response* to hate crimes, such as restorative justice diversion programs, improved victim compensation programs, and social services for hate crime victims and communities. *See generally* Sinnar & Colgan, *supra* note 18 (discussing victim compensation programs and restorative justice diversion programs as responses to hate crimes); TYLER BISHOP, ARIELLE ANDREWS, SAM BECKER, LAUREN MARTIN, BENJY MERCER-GOLDEN, MARIEL PÉREZ-SANTIAGO, TIARRA ROGERS & KAI WIGGINS, STAN. L. SCH. L. & POL'Y LAB & BRENNAN CTR. FOR JUST., EXPLORING ALTERNATIVE APPROACHES TO HATE CRIMES (2021) [hereinafter EXPLORING ALTERNATIVE APPROACHES] (discussing critiques of hate crime laws and

II. HATE CRIME PREVENTION: THE ACADEMIC SCHOLARSHIP

Community advocates and policymakers have embraced a range of approaches to hate crime prevention. Current calls for prevention, and the proposals and programs that have emerged from that advocacy, can be classified into three broad categories: prejudice reduction initiatives, political and structural reforms, and socioeconomic investments in communities.³⁵ While not mutually exclusive, these categories reveal a difference in emphasis that often stems from different underlying conceptions of the hate crimes problem. In part, these differing conceptions reflect the fact that the “hate crimes” construct covers a large and heterogeneous set of incidents and motivations, not a monolithic category.

This Part explains these three categories of hate crime prevention and their basic assumptions, and then maps them onto different theoretical approaches and empirical studies within several academic disciplines. Within each category, the Essay synthesizes some of the relevant empirical research bearing on the interventions proposed by advocates and policymakers.³⁶ That research presents few definitive conclusions. Indeed, a constant refrain in the academic literature on hate crime prevention is an appeal for more research.³⁷ While there are voluminous bodies of scholarship on related topics like prejudice reduction, racial equity, or violence prevention, relatively little research focuses specifically on hate crimes or racial violence from a preventative perspective. The consensus is that few rigorous studies have

alternative approaches to better serve hate crime victims, both at the individual and communal level).

³⁵ The focus here is on non-law enforcement, non-carceral initiatives, and proposals that target “root causes,” rather than interrupting violence that might otherwise occur (such as through bystander trainings or community escort programs).

³⁶ This review is necessarily selective. It focuses primarily on literature in social psychology, sociology, and criminology, with some reference to studies in economics, public health, education, and history. Even within the fields surveyed, it aims at providing a sample of relevant research highlighting different approaches, rather than a comprehensive description.

³⁷ See, e.g., HEALTH AFFAIRS, HATE-MOTIVATED BEHAVIOR: IMPACTS, RISK FACTORS, AND INTERVENTIONS 6 (2020), <https://www.healthaffairs.org/doi/10.1377/hpb20200929.601434/full/health-affairs-brief-hate-behavior-public-health-cramer.pdf>; GERSTENFELD, *supra* note 33, at 266.

assessed interventions to prevent or reduce hate crimes, and that policy recommendations are thus largely untested.³⁸

While no short review of this kind could comprehensively survey the field, this Part makes clear the divergence in approaches and tees up the questions and challenges considered in Part III.

A. PREJUDICE REDUCTION

One approach to preventing hate crimes focuses on reducing prejudice by mitigating the stereotypes and bias towards other groups that can motivate hate crimes. Educational and public messaging initiatives often take this approach. For instance, the New York Office for the Prevention of Hate Crimes believes that its educational efforts to break down stereotypes and prejudice will interrupt systemic racism as well as hate crimes.³⁹ The office developed a hate crime curriculum for middle and high schools and launched an art contest and comic book project to engage young people.⁴⁰ Asian American advocates also called for expanding ethnic studies programs and sex education to address beliefs that might lead to racist or gender-based violence.⁴¹

Hate crime prevention programs do not always spell out their theoretical premises and may reflect a variety of theories of change. For instance, some support educational programs to prevent hate crimes by changing the beliefs and attitudes of people who might otherwise commit them or the beliefs and attitudes of people around them.⁴² Other efforts might strive to reduce bias-related harassment through altering *norms* of acceptable behavior, rather than beliefs.⁴³ While both of those kinds of interventions strive to address prejudiced beliefs or behavior in individuals and fall into the broad category of prejudice reduction, other educational programs directed at hate crimes

³⁸ See HATE-MOTIVATED BEHAVIOR, *supra* note 37, at 3 (“[T]here are few thorough scientific evaluations of the effectiveness of strategies to reduce hate-motivated behavior.”); GERSTENFELD, *supra* note 33, at 261.

³⁹ 2020 ANNUAL REPORT, *supra* note 11, at 10.

⁴⁰ *Id.* at 5.

⁴¹ ASIAN AMERICAN ADVANCING JUSTICE—ASIAN LAW CAUCUS, POLICY RECOMMENDATIONS FOR ADDRESSING HATE VIOLENCE 4, <https://drive.google.com/file/d/1ATww3j0s2FUWnYkc7r4QU5TFTfZNI-xx/view> [<https://perma.cc/R9S9-HM8U>].

⁴² See *id.* at 4.

⁴³ See, e.g., CHO ET. AL., *supra* note 32, at 8 (advocating a policy framework that aims at “a cultural and normative shift toward treating street harassment as serious, harmful, and not to be tolerated in any setting”).

have distinct objectives. For instance, some efforts to teach structural racism focus on empowering students from marginalized communities rather than on shifting the attitudes or behavior of would-be perpetrators.⁴⁴ Thus, real-world programs can reflect multiple, or unspecified, theories of change. The programs described in this section encompass a diverse array of approaches, but all are premised on the idea that interventions directed at individuals to reduce prejudice towards other groups can prevent hate crimes.

1. Tying Hate Crimes to Prejudice Reduction

The prejudice-reduction approach to hate crime prevention starts from the basic premise that prejudice motivates hate crimes. At one level, this idea is uncontroversial because legal definitions of hate crimes often require proof of a bias motive or, at the least, the targeting of a victim because of a legally protected identity.⁴⁵ Some hate crime statutes go further to require that the victim's identity be a "but for" cause of a hate crime, not just a factor behind it.⁴⁶

While the link between hate crimes and prejudice is frequently definitional, the exact relationship between them is less clear. Researchers have long argued that the intensity of prejudice varies across hate crime perpetrators. In one widely cited study of perpetrator motivations,

⁴⁴ Terry Tang, *Racist Attacks Revive Asian American Studies Program Demand*, AP NEWS (May 15, 2021), <https://apnews.com/article/race-and-ethnicity-health-coronavirus-pandemic-lifestyle-education> [<https://perma.cc/664A-SDXZ>] (describing growing mobilization for Asian-American studies programs to increase visibility and representation of Asian Americans in curricula).

⁴⁵ Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 870–71 (2014). The FBI uses the following, widely cited definition of a hate crime in collecting national hate crime statistics: a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity." *Hate Crimes*, FBI, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>. Some hate crime statutes require that a crime is targeted at victims of a particular group, but do not explicitly require a bias motivation. While largely intended to cover acts motivated by bias, Eisenberg, *supra*, at 871, the latter formulation also encompasses cases in which offenders target victims of a particular group because they perceive them as appealing or vulnerable targets (more likely to carry cash, for instance), rather than because of animus towards that group. See FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW 30 (1999) (providing examples of conduct covered by "discriminatory selection" hate crime statutes as opposed to those requiring proof of animus).

⁴⁶ See *United States v. Miller*, 767 F.3d 585, 594 (6th Cir. 2014) (interpreting federal Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act to require that the victim's legally protected characteristic be a "but for" cause of a crime).

criminologists Jack McDevitt, Jack Levin, and Susan Bennett concluded that the majority of hate crimes that the Boston Police Department reported and investigated in the early 1990s where “the offender was known and represented” were “thrill-seeking” attacks intended to achieve a “high” and “bragging rights,” and that only the rare case involved a “mission” offender “totally committed to bigotry.”⁴⁷ Their typology of perpetrator motivations has problems, but few dispute the more general point that hate crime perpetrators differ in their level of commitment to prejudiced beliefs.⁴⁸ Similarly, hate crimes differ according to the centrality of bias as a causal factor. Cases involving offenders with multiple motivations are common, especially in hate crimes that involve individuals who know each other prior to the incident.⁴⁹ Thus, even accepting that bias is a factor in hate crimes, it is less clear how often it is the *driving* factor or how much it separates those who commit hate crimes from others who do not. If bigotry is not the primary motivation for many hate crime offenders, one researcher concludes, then efforts to reduce prejudice will not have their intended effect in reducing hate crimes.⁵⁰

⁴⁷ Jack McDevitt, Jack Levin & Susan Bennett, *Hate Crime Offenders: An Expanded Typology*, 58 J. SOC. ISSUES 303, 306–09 (2002).

⁴⁸ McDevitt, Levin, and Bennett distinguished between “thrill-seeking,” “defensive,” “retaliatory,” and “mission” offenders. See McDevitt et. al., *supra* note 47, at 311 (presenting table listing characteristics of hate crimes based on offender motivation). One basic problem with this typology, especially insofar as it attempts to determine what kind of motivation is more prevalent, is that it relies on police investigators’ reporting of hate crime motivations. See *id.* at 306–07 (noting that the Boston Police Department provided case files to research team). Police investigators’ reporting of motives reflects both the explanations that suspects gave police for their actions as well as how the police investigators interpreted those reports. One would expect, however, that suspects facing potential criminal prosecution had an incentive to downplay their prejudice or the seriousness of their actions and overstate the extent to which peer dynamics influenced them. Moreover, police investigators’ preconceptions about the prevalence (or lack thereof) of racial bias may have influenced how much they credited suspects’ attempts to deny prejudice as a motivation. In addition, the four categories of hate crime offenders that these researchers identified—“thrill-seeking,” “defensive,” “retaliatory,” and “mission” offenders—are overlapping categories. For instance, it is difficult to know where to draw the line between “defensive” perpetrators seeking to defend their neighborhoods from perceived outsiders, who might cite stereotypes of those outsiders’ behavior as a reason for their defense, and “retaliatory” offenders responding to “real or perceived” crimes against their identity group.

⁴⁹ See MARK AUSTIN WALTERS, *HATE CRIME AND RESTORATIVE JUSTICE: EXPLORING CAUSES, REPAIRING HARMS* 9–11, 21–23 (2014) (citing research on hate crime motivations and victim-offender relationships).

⁵⁰ GERSTENFELD, *supra* note 33, at 262.

Moreover, even accepting that prejudice is a significant causal factor, there are secondary questions concerning the efficacy of focusing on reducing prejudice in order to reduce hate crimes. For one thing, given that the proportion of people within any population who will commit hate crimes is relatively small, an intervention would have to reach a large number of people before it might actually result in a reduction in hate crimes. For this reason, many educational programs aimed in part at reducing hate crimes describe their stated objectives more broadly to include reducing prejudice or prejudiced behavior of different kinds.

2. *Social Psychology of Prejudice Reduction*

Although few academic studies measure the effect of prejudice reduction interventions on hate crimes in particular, social psychologists have researched prejudice reduction so extensively that it now forms a subfield within the broader field of the psychology of prejudice.⁵¹ Within psychology, explanations of prejudice have moved beyond highly individualistic theories that attribute prejudice to personality types,⁵² and now embrace explanations that view “prejudice as originating in the social relationship between groups.”⁵³ Theories of prejudice and intergroup relations, for instance, suggest that “prejudice seems to be the result of threat: threats to the material interests of the group (realistic conflict theory), threats to the distinctiveness or integrity of the group (social identity theory) and threats to the group’s social position (relative deprivation theory).”⁵⁴

⁵¹ Elizabeth Levy Paluck, Roni Porat, Chelsey S. Clark & Donald P. Green, *Prejudice Reduction: Progress and Challenges*, 72 ANN. REV. PSYCH. 533, 534 (2021) (reviewing and analyzing 418 experimental studies concerning the science of prejudice reduction as well as evaluations of prejudice reduction intervention programs). Studies in other disciplines have also examined prejudice reduction, including psychology, education, sociology, and health. See, e.g., MAUREEN MCBRIDE, SCOTTISH CENTRE FOR CRIME & JUST. RSCH., WHAT WORKS TO REDUCE PREJUDICE AND DISCRIMINATION? A REVIEW OF THE EVIDENCE 9 (2015), <https://www.gov.scot/publications/works-reduce-prejudice-discrimination-review-evidence/pages/4> [<https://perma.cc/L7XE-FGPS>] (describing theories of prejudice reduction specifically concerning sectarianism in Scotland).

⁵² See RUPERT BROWN, PREJUDICE: ITS SOCIAL PSYCHOLOGY 28–33 (2d ed. 2010) (reviewing studies concerning the limitations of individualistic theories and highlighting predictors of prejudice including social context and historical trends).

⁵³ *Id.* at 143.

⁵⁴ *Id.* at 174.

Still, compared to other disciplines, social psychology research on prejudice tends to focus more on individuals as a unit of analysis, including their beliefs, emotions, and cognitive processes.⁵⁵ This is even more true of the subfield of prejudice reduction; empirical studies often evaluate interventions that enable contact between different groups, provide for cooperative learning of peers of different identities in schools, train students or workers on diversity or multicultural perspectives, or encourage people to categorize groups differently or regulate their emotions.⁵⁶ These interventions largely take social and political structures as they are, and then attempt to change the attitudes or behavior of group members within those structures.

Psychologist Elizabeth Paluck and political scientist Donald Green conducted two of the most extensive reviews of the academic literature on prejudice reduction, concluding in the first review that, despite the impressive scope of the scholarship, the literature provided few firm conclusions on what kinds of interventions actually worked.⁵⁷ In that 2009 review of nearly 1,000 articles in psychology, sociology, education, and other fields, they concluded that rigorous evaluations did not exist for the “overwhelming majority of prejudice-reduction interventions” in the real world.⁵⁸ While laboratory experimental studies creatively sought to measure reductions in prejudice through manipulating the information or conditions presented to research participants, these lab studies did not fully account for the “larger institutions and social processes in which interventions are embedded . . .”⁵⁹ Paluck and Green called for more experimental field studies—of real programs in the real world, evaluated through random assignment and control groups—in order to provide stronger evidence to

⁵⁵ See *id.* at 8–9 (taking a social psychological perspective that focuses on “*individuals*’ perceptions of, evaluations of, and behavioural reactions towards, members of other groups” while recognizing that prejudice is a group process and that individuals act as group members).

⁵⁶ For descriptions of these and other studies, see Elizabeth Levy Paluck & Donald P. Green, *Prejudice Reduction: What Works? A Review and Assessment of Research and Practice*, 60 ANN. REV. PSYCH. 339, 358 (2009); Paluck et. al., *supra* note 51, at 535–36.

⁵⁷ Paluck & Green, *supra* note 56, at 340. Paluck and Green defined prejudice reduction as including “the reduction of negative attitudes toward one group (one academic definition of prejudice) and also the reduction of related phenomena like stereotyping, discrimination, intolerance, and negative emotions toward another group.” *Id.* at 341. A subsequent review, discussed *infra*, was published in 2021. See Paluck et. al., *supra* note 51.

⁵⁸ *Id.* at 341, 343.

⁵⁹ *Id.* at 349.

inform policy recommendations.⁶⁰ Paluck and Green also noted that some interventions had shown promising preliminary results. For instance, they observed that media campaigns, reading programs in schools, and other communication initiatives had shown some real-world success in reducing prejudice, including through influencing perceptions of social norms, inspiring participants to take the perspective of other groups, and providing vicarious exposure to other groups.⁶¹

In a subsequent 2021 review, Paluck and Green assessed 418 experimental studies conducted after their earlier evaluation, choosing to focus on such studies because researchers consider experiments particularly reliable tests of causal inference.⁶² They concluded that the most rigorous studies (field studies with experimental designs, large samples, and transparent data) showed relatively modest effects of interventions on prejudice, while smaller laboratory studies often found larger effects, suggesting that publication bias afflicted many smaller studies.⁶³ Despite this cautionary note, Paluck and Green specifically noted several “exceptionally well-designed and executed” studies that could shed some light on interventions.⁶⁴ For instance, several “landmark” studies showed that face-to-face contact between members of different castes and religious groups (albeit in non-U.S. contexts) led to less discriminatory behavior, and two U.S. studies found that face-to-face doorstep visits encouraging people to take the perspective of transgender people or undocumented immigrants reduced prejudice.⁶⁵

The positive findings from these field studies add further support to one of the most important theories of prejudice reduction in social psychology: the contact theory articulated most prominently by psychologist Gordon Allport in the 1950s.⁶⁶ Allport argued that contact between racial or religious

⁶⁰ *Id.* at 357.

⁶¹ *Id.* at 353, 356, 358.

⁶² Paluck et. al., *supra* note 51, at 533–35.

⁶³ *Id.* at 536. Publication bias refers to the phenomenon of studies with positive effects getting published while those that do not show effects do not, conveying the false impression that tested programs are more effective than they really are. Paluck and Green also warned against the proliferation of “light touch interventions,” interventions that are “easy to implement, brief, and cheap,” but that might not produce enduring effects. *Id.* at 549, 555.

⁶⁴ *Id.* at 551.

⁶⁵ *Id.* at 551–52.

⁶⁶ Earlier researchers had theorized and attempted to test intergroup contact, but Allport offered “the most influential statement of intergroup contact theory” to date. Thomas F.

groups could reduce prejudice where it involved people of equal status meeting in the pursuit of common objectives, where the contact led people to perceive common interests, and especially where laws, customs, or other institutions sanctioned the contact.⁶⁷ Researchers have found “extensive empirical validation” of the contact theory, although some studies specify additional conditions for successful contact, such as personal acquaintance between group members and the development of cross-group friendships.⁶⁸ A 2006 quantitative meta-analysis of over 500 studies concluded there was clear evidence that “intergroup contact typically reduces intergroup prejudice,” that these results were “not artifacts of either participant selection or publication bias,” and that the reduction in prejudice generalized beyond the group of people to whom participants had direct contact.⁶⁹ Some research also supports the view that contact interventions apart from direct face-to-face encounters, such as those that transmit knowledge of other in-group members’ positive associations with outgroup members (“extended contact” interventions), can reduce prejudice.⁷⁰ Together, the literature suggests that increasing exposure to other groups may reduce prejudice, but under conditions that do not exist in all real-world settings and through mechanisms that remain the subject of considerable debate.

Despite empirical support for the contact theory and some other interventions, researchers in the prejudice reduction field acknowledge doubts about the potency of these interventions to work against deep social and political conflicts. Even the most promising interventions, such as those based on the contact theory, may require preconditions that do not apply in

Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCH. 751, 752 (2006).

⁶⁷ GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 261–81 (1st ed. 1954).

⁶⁸ John F. Dovidio, Angelika Love, Fabian M.H. Schellhaas & Miles Hewstone, *Reducing Intergroup Bias Through Intergroup Contact: Twenty Years of Progress and Future Directions*, 20 GRP. PROCESSES & INTERGRP. RELS. 606, 608–09 (2017).

⁶⁹ Pettigrew & Tropp, *supra* note 66, at 753, 766. This study further concluded that the reduction in prejudice applied even in intergroup contact scenarios that did not meet all Allport’s ideal conditions. *Id.* at 766. Pettigrew and Tropp acknowledged that the results of studies were heterogeneous and reflected a wide range of effect sizes, but further noted that more rigorous studies were associated with larger effects. *Id.* at 757, 759.

⁷⁰ Dovidio et. al., *supra* note 68, at 608 (citing S.C. Wright, Arthur Aron, T. McLaughlin-Volpe & S.A. Ropp, *The Extended Contact Effect: Knowledge of Cross-Group Friendships and Prejudice*, 73 J. PERSONALITY & SOC. PSYCH. 73, 73–90 (1997)).

contexts with longstanding divisions.⁷¹ In their latest review of prejudice reduction, Paluck and Green repeated their earlier observation that many prejudice reduction interventions offer weak treatment for “global conditions in which prejudice is expressed through violence, discrimination, and exclusion.”⁷²

B. POLITICAL REFORMS AND STRUCTURAL SOLUTIONS

A second category of efforts to prevent hate crimes focuses not on reducing prejudice, but on addressing the political or structural roots of hate-driven violence. Like proponents of educational efforts to reduce prejudice, advocates of these reforms do not always specify the theories undergirding their proposals. But their advocacy suggests a set of beliefs about the origins of hate violence. In particular, many community advocates tie racial violence to systemic ideologies of power, especially white supremacy, and to power relations across groups rather than individual prejudice.⁷³ Moreover, many insist that the acts of private individuals cannot be isolated from state violence, including U.S. wars abroad, discriminatory policing, and immigration exclusions.⁷⁴ Unlike many government programs established to fund hate crime prevention, this advocacy for political and structural reforms is explicitly political and often sees state practices as the problem, not the solution.

In response to the surge in anti-Asian violence, Asian Americans frequently called for ending political leaders’ racist rhetoric and policies, exemplified by President Trump’s characterizations of the coronavirus and the Justice Department’s China Initiative, that presented Chinese Americans as a threat.⁷⁵ Advocates argued both that government policies communicated

⁷¹ See BROWN, *supra* note 52, at 279 (“Indeed, it is my view that it is quite likely that the world’s long-standing conflicts and their associated prejudices will first require some radical socio-political transformation before any intergroup contact, be it direct or extended, is even remotely conceivable.”).

⁷² Paluck et. al., *supra* note 51, at 555.

⁷³ See, e.g., Grace Deng, *How Anti-Asian Hate Crimes Are Connected to State-Sanctioned Violence*, PRISM (Feb. 22, 2022), <https://prismreports.org/2022/02/22/how-anti-asian-hate-crimes-are-connected-to-state-sanctioned-violence> [<https://perma.cc/QK2Q-BWRE>].

⁷⁴ See *id.*; see also ASIAN AMERICANS ADVANCING JUSTICE–ASIAN LAW CAUCUS, POLICY RECOMMENDATIONS FOR ADDRESSING HATE VIOLENCE, *supra* note 41, at 1 (connecting vulnerability to interpersonal violence to race- and gender-based systemic state violence).

⁷⁵ See, e.g., Bruce Y. Lee, *Trump Once Again Calls Covid-19 Coronavirus The ‘Kung Flu’*, FORBES (June 24, 2020, 12:20 AM), <https://www.forbes.com/sites/brucelee/2020/06/24/>

the social acceptability of biased acts, licensing private violence, and that they created material conditions that heightened vulnerability to violence. After the Atlanta spa shooting, for instance, hundreds of organizations followed the lead of Red Canary Song, a New York-based grassroots massage worker coalition, in urging the decriminalization of sex work as the only real solution for protecting massage workers and sex workers from violence.⁷⁶

1. *Structural Theories of Hate Violence*

Academic scholarship in criminology, sociology, political science, and other disciplines often notes the limitations of individual-level analyses of prejudice in explaining hate crimes.⁷⁷ In an important theoretical contribution, criminologist Barbara Perry argued twenty years ago that hate crimes are not purely acts of “mean-spirited bigots,” but emerge “within a network of enabling norms, assumptions, behaviors, institutional arrangements, and policies, which are structurally connected in such a way as to reproduce the racialized and gendered hierarchies that characterize the society in question.”⁷⁸ Critical race and queer theorists likewise connect hate violence to dominant ideologies, social hierarchies, and state violence.⁷⁹

trump-once-again-calls-covid-19-coronavirus-the-kung-flu [https://perma.cc/792A-J8FQ]; *Donald Trump CPAC 2021 Speech Transcript*, REV.COM (Feb. 28, 2021), https://www.rev.com/blog/transcripts/donald-trump-cpac-2021-speech-transcript [https://perma.cc/67TQ-8WC8] (referring several times to the “China virus”); Claire Wang, *Asian American Groups Call on Biden to End Controversial China Initiative*, NBC NEWS (Dec. 20, 2021), https://www.nbcnews.com/news/asian-america/asian-american-groups-call-biden-end-controversial-china-initiative-rcna10219 [https://perma.cc/Q23K-W4AP].

⁷⁶ Press Release, Red Canary Song, Red Canary Song Response to Shootings at Gold Massage Spa, Young’s Asian Massage, & Aroma Therapy Spa, https://www.redcanarysong.net/media-kit [https://perma.cc/D25J-6LZE].

⁷⁷ See NATHAN HALL, HATE CRIME 100–22 (2d ed. 2013) (describing various disciplinary perspectives on hate crimes).

⁷⁸ BARBARA PERRY, IN THE NAME OF HATE: UNDERSTANDING HATE CRIMES 1–2 (2001). Perry argued that preventing hate crimes required more than education and publicity initiatives, but also “transformative” efforts to reclaim the state in its commitment to social justice, eliminate exclusionary laws, and mobilize as social movements to restructure how society valued intergroup differences. *Id.* at 226–46.

⁷⁹ See, e.g., Mari J. Matsuda & Charles R. Lawrence III, *Epilogue: Burning Crosses and the R.A.V. Case*, in WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 133, 136 (Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado & Kimberle Williams Crenshaw eds., 1993) (“As critical race theorists, we do not separate cross burnings from police brutality nor epithets from infant mortality rates.”); DEAN SPADE,

Acknowledging such critiques, hate crimes researchers today often distinguish between individual (typically psychological) and structural explanations for hate crimes.⁸⁰ A vast literature in sociology and political science explains racial or ethnic violence in structural terms (though these disciplines lack a well-developed literature on prevention akin to that in social psychology). Much of this structural literature originates in “power threat” and related “group threat” theories of racial violence. In 1967, sociologist Hubert Blalock theorized that relationships between dominant and subordinated racial groups stemmed from “intergroup power contests.”⁸¹ Blalock argued that fear of a minority group’s power (“power threat”) explained certain forms of discrimination, such as restrictions on minority political rights, and that where this was true, a majority group’s motivation to discriminate would grow as the minority percentage of the population rose.⁸² Other sociologists applied Blalock’s power-threat theory directly to racial violence, especially lynchings, and debated whether the rate of lynchings in Southern jurisdictions corresponded more to the extent of economic competition, the size of the local Black population, or other variables.⁸³

NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW 42–46 (Jade Brooks & Ken Wissoker eds., Duke Univ. Press 2015) (2009) (critiquing the individualistic focus of hate crime laws and connecting hate crime laws to state violence).

⁸⁰ See, e.g., MARK AUSTIN WALTERS, RUPERT BROWN & SUSANN WIEDLITZKA, EQUALITY & HUM. RTS. COMM’N, CAUSES AND MOTIVATIONS OF HATE CRIME 7–8 (2016) (distinguishing between social psychological and structural explanations for hate crimes); HATE-MOTIVATED BEHAVIOR, *supra* note 37, at 2 (distinguishing between individual, interpersonal, and structural causes and solutions for hate-motivated behavior).

⁸¹ HUBERT M. BLALOCK, JR., TOWARD A THEORY OF MINORITY-GROUP RELATIONS 109 (1967). Blalock conceptualized group power as having two components: the total resources of a group and the mobilization of those resources to achieve an objective. *Id.* at 110. It should be noted that, while Blalock’s work is widely recognized as significant in developing the power theory of race relations, it also contains reflections on Black culture and comparisons to other minority communities that have racist overtones. See *id.* at 135.

⁸² *Id.* at 187 (contending that when “fear of the minority’s power underlies prejudice, there should be a positive nonlinear relationship . . . between minority percentage and motivation to discriminate”).

⁸³ See, e.g., STEWART E. TOLNAY & E. M. BECK, A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930 157 (1995) (arguing that gains in cotton prices between 1883 and 1930 were associated with reduced lynching of black people, especially between 1883 and 1906); Stewart E. Tolnay, E. M. Beck & James L. Massey, *Black Lynchings: The Power Threat Hypothesis Revisited*, 67 SOC. FORCES 605, 620 (1989) (rejecting power threat hypothesis for lynchings, premised on Black population share, on the grounds of insufficient

More recent work also explores relationships between hate crimes and demographic change, especially in neighborhoods that are undergoing racial transition. The “defended neighborhoods” thesis postulates that racially motivated crimes occur in communities as residents seek to defend a community image and identity from perceived outsiders.⁸⁴ Legal scholars have documented the persistence of “move-in violence” aimed at preventing racial integration.⁸⁵ A prominent quantitative study concluded that demographic change, rather than economic hardship, predicted racially motivated crimes against Black, Asian, and Latino victims in New York City, with bias crimes “rising where non-whites move[d] into white strongholds and falling where nonwhites have long resided in significant numbers.”⁸⁶

Within these lines of scholarship, some studies suggest policy interventions such as integrating neighborhoods to decrease negative racial attitudes.⁸⁷ But there is a long-standing debate over the extent to which

evidence); Cornelius Christian, *Lynchings, Labour, and Cotton in the U.S. South: A Reappraisal of Tolnay and Beck*, 66 *EXPLORATIONS ECON. HIST.* 106, 107, 116 (2017) (confirming Tolnay and Beck’s hypothesis of the relationship between economic competition and lynchings with new evidence).

⁸⁴ For one originating source of this idea, see GERALD D. SUTTLES, *THE SOCIAL CONSTRUCTION OF COMMUNITIES* 21–23 (1972) (theorizing a “defended neighborhood” as one that residents construct based on their “cognitive map” of a city in order to “regulat[e] spatial movement to avoid conflict between antagonistic groups.”).

⁸⁵ JEANNINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING* 1–9 (2013) (observing that minority families who move into white neighborhoods for better opportunities experience violence upon arrival, incentivizing them to return to their minority communities and undermining moves towards ethnic and racial diversity).

⁸⁶ Donald P. Green, Dara Z. Strolovitch & Janelle S. Wong, *Defended Neighborhoods, Integration, and Racially Motivated Crime*, 104 *AM. J. SOC.* 372, 373, 397 (1998); see also Christopher J. Lyons, *Community (Dis)organization and Racially Motivated Crime*, 113 *AM. J. SOC.* 815, 846–47 (2007) (using police, census, and community survey data to conclude that “antiblack hate crimes are most numerous in relatively organized communities with higher levels of informal social control, and especially in internally organized white communities undergoing the threat of racial invasion”).

⁸⁷ See, e.g., J. Eric Oliver & Janelle Wong, *Intergroup Prejudice in Multiethnic Settings*, 47 *AM. J. POL. SCI.* 567, 568, 578, 580–81 (2003) (concluding from regression analysis of survey data on racial attitudes and census data from three U.S. cities in the early 1990s that “with the exception of Asian Americans, those who live amongst more out-groups have more positive attitudes toward those groups,” that self-selection does not fully explain those results, and suggesting that neighborhood integration may improve tolerance).

residential racial integration will reduce racial conflict,⁸⁸ and much of this literature does not even attempt to make policy recommendations. While these structural accounts might help explain social phenomena at a macro level, they rarely offer prescriptions for policymakers seeking to influence those phenomena.

2. *The Effect of Political Speech and Policies*

Some research within sociology, political science, and related fields, however, potentially allows for greater inferences regarding prevention, because it measures the effect of relatively discrete political events on hate crimes. A growing number of studies show the influence of high-profile political events, prominent political rhetoric, and government policies supporting or targeting racial or ethnic groups on rates of hate violence. There is increasing evidence for such influence across a variety of national contexts and categories of hate crimes, but with the important caveat that both political support for and opposition to minority groups can trigger violence against those groups.

Legal scholars, especially critical race theorists, have long posited a mutually reinforcing relationship between “public” rhetoric and policies, on the one hand, and “private” hate violence on the other. For example, scholars connected the over 1,000 hate crimes targeting Muslim, South Asian, Sikh, and Arab communities in the months after September 11, 2001, to the U.S. government’s explicit racial profiling of those communities.⁸⁹ Others have linked the Atlanta spa shooting to the long history of gendered immigration

⁸⁸ For a recent study noting this debate and arriving at a more skeptical conclusion about the effect of integration, see Ravi Bhavnani, Karsten Donnay, Dan Miodownik, Maayan Mor & Dirk Helbing, *Group Segregation and Urban Violence*, 58 AM. J. POL. SCI. 226, 242 (2014) (simulating patterns of intergroup violence in Jerusalem under different proposals for dividing the city and concluding that, “short of fundamental changes designed to ameliorate group relations,” such as curbing Jewish expansion in East Jerusalem or investing in Palestinian neighborhoods, arrangements that *reduce* intergroup interactions “can be expected to dampen current levels of violence”).

⁸⁹ See Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259, 1265–67 (2004); *id.* at 1277 (describing hate crimes and racial profiling of these communities as “different facets of the same social, political, and cultural phenomena,” such that “the analyses of each are largely interchangeable”); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1581–83 (2002) (describing “the actions of the U.S. populace, in the form of hate violence attacks, as bearing a relationship to the explicit racial profiling by the government”).

exclusion of Chinese women, the sexual exploitation of women in U.S. wars in Asian countries, and state discrimination against Asian Americans.⁹⁰

Recent empirical studies substantiate the notion that government speech and actions towards racial minority groups can influence the level of hate crimes committed against those groups. For instance, studies have shown an increase in hate crimes following certain political events, like the election of President Donald Trump⁹¹ or the U.K. Brexit referendum,⁹² that change

⁹⁰ See Shoba Sivaprasad Wadhia & Margaret Hu, *Decitizenizing Asian Pacific American Women*, 93 U. COLO. L. REV. 325, 362 (2022); Angela R. Gover, Shannon B. Harper & Lynn Langton, *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. CRIM. JUST. 647, 649 (2020) (situating anti-Asian hate crimes during the pandemic as part of historical process of “othering” Asian Americans and racial minorities).

⁹¹ See BRIAN LEVIN & JOHN DAVID REITZEL, CTR. FOR THE STUDY OF HATE & EXTREMISM, CAL. STATE. UNIV., SAN BERNARDINO, REPORT TO THE NATION: HATE CRIMES RISE IN U.S. CITIES AND COUNTIES IN TIME OF DIVISION & FOREIGN INTERFERENCE 3, 15 (May 2018), <https://www.csusb.edu/sites/default/files/2018%20Hate%20Final%20Report%205-14.pdf> [<https://perma.cc/QCK2-KG4C>] (observing that November 2016 represented the highest monthly total for hate crimes since 2007, with a spike on the day after the election of President Trump and in the following two weeks, and that in 2017, hate crimes reported to law enforcement in the ten largest U.S. cities rose 12.5%, the fourth consecutive annual rise). Other studies using FBI hate crime data similarly showed a spike in hate crimes during the month of November 2016 or the final quarter of 2016. *See id.* at 15 (listing studies); *see also* Griffin Edwards & Stephen Rushin, *The Effect of President Trump’s Election on Hate Crimes* (Jan. 14, 2018) (manuscript at 1, 3), <https://ssrn.com/abstract=3102652> [<https://perma.cc/3HUP-Z2NL>] (finding “a statistically significant surge in reported hate crimes across the United States, even when controlling for alternative explanations” and that “[c]ounties that voted for President Trump by the widest margins in the presidential election experienced the largest increases in reported hate crimes”). Edwards and Rushin argue that it was not the rhetoric alone, but Trump’s subsequent election, which appeared to “validate[]” his claims and led hate crimes to spike. *Id.* at 18.

⁹² Several empirical studies attributed a spike in hate crimes in England and Wales to the unexpected “Brexit” referendum vote to leave the European Union, which was associated with anti-immigrant sentiment. *See, e.g.*, Daniel Devine, *Discrete Events and Hate Crimes: The Causal Role of the Brexit Referendum*, 102 SOC. SCI. Q. 374, 374, 382–83 (2021) (concluding that Brexit vote led to a 19–23% increase in racial and religious hate crimes and that this result is consistent with the explanation that the “outcome of the referendum legitimated or validated these underlying [anti-immigrant] prejudices enough to lead to public expressions of this prejudice in the form of hate crime.”); JOEL CARR, JOANNA CLIFTON-SPRIGG, JONATHAN JAMES, SUNČICA VUJIĆ, IZA INST. LAB. ECON., LOVE THY NEIGHBOUR? BREXIT AND HATE CRIME 2–5 (Nov. 2020), <https://docs.iza.org/dp13902.pdf> [<https://perma.cc/687N-NN2U>] (concluding that Brexit vote correlated to a 15–25% increase in racial and religious hate crimes); Facundo Alborno, Jake Bradley, Silvia Sonderegger, *The Brexit Referendum and the Rise in Hate Crime: Conforming to the New Norm* 4–5 (Nottingham Interdisc. Centre for

perceptions of social norms such as the acceptability of anti-immigrant or racist views. In this symposium, researchers Brian Levin and James Nolan note that levels of hate violence respond not just to exogenous events, like terrorist attacks, but to political leaders' speech interpreting and framing those events.⁹³ Evidence from international contexts also supports causal connections between hateful rhetoric and mass violence, as in the Rwandan genocide.⁹⁴

Still, extrapolating from these studies to hate crime prevention is complicated, not least because the impact of political discourse and policies on intergroup violence can cut in two different directions. Criminologist Laura Dugan and political scientist Erica Chenoweth recently observed that the literature on racial and ethnic conflict offers two contrasting predictions on the relationship between government policy toward a particular minority group and hate violence against that group.⁹⁵ "The *political threat* hypothesis

Econ. and Pol. Rsch., Working Paper No. 2020–06, 2020), <https://www.nottingham.ac.uk/research/groups/nicep/documents/working-papers/2020/nicep-2020-06.pdf> [<https://perma.cc/SBA4-M6EQ>] (concluding that increase in hate crimes was greater in areas that voted to remain in the E.U. and theorizing that Brexit vote updated perception of social norms especially for people within pro-Remain areas who had previously repressed anti-immigrant beliefs because of social norms).

⁹³ Levin & Nolan, *supra* note 1, at 775–77 (observing dramatic drop in post-9/11 anti-Muslim hate crimes after President Bush's statements expressing tolerance at a Washington, D.C., mosque, and noting that the worst period for anti-Muslim hate crimes in 2015 was after then-candidate Donald Trump's call for a ban on Muslims, not the immediate period after the San Bernardino attack) (citing BRIAN LEVIN & LISA NAKASHIMA, CTR. FOR THE STD. OF HATE & EXTREMISM, REPORT TO THE NATION 2019—FACTBOOK ON HATE & EXTREMISM IN THE U.S. & INTERNATIONALLY (Brian Levin, Kevin Grisham & Lisa Nakashima eds., 2019), https://www.csusb.edu/sites/default/files/CSHE%202019%20Report%20to%20the%20Nation%20FINAL%207.29.19%2011%20PM_0.pdf [<https://perma.cc/J26H-VKRM>]). Earlier studies showed that hate crimes often spiked after high-profile political events. *See, e.g.*, Ryan D. King & Gretchen M. Sutton, *High Times for Hate Crimes: Explaining the Temporal Clustering of Hate-Motivated Offending*, 51 CRIMINOLOGY 871, 873–877 (2013) (concluding that "hate crimes often cluster in time and escalate in close temporal proximity to events that stir intergroup conflict, and leave one group with a grievance against another," such as the 9/11 attacks or the high-profile interracial criminal trials of O.J. Simpson or the police officers who assaulted Rodney King).

⁹⁴ David Yanagizawa-Drott, *Propaganda and Conflict: Evidence from the Rwandan Genocide*, Q. J. ECON. 1947, 1950 (2014) (finding that radio broadcasts encouraging violence against Tutsis increased direct participation in violence and led to spillover effects in villages neighboring those with radio access).

⁹⁵ *See* Laura Dugan & Erica Chenoweth, *Threat, Emboldenment, or Both? The Effects of Political Power on Violent Hate Crimes*, 58 CRIMINOLOGY 714, 716 (2020).

predicts that violent backlash against specific groups is triggered by political gains made by those groups,” while “the *emboldenment hypothesis* [] predicts that increases in violent hate crimes against certain populations are triggered by government elites who signal supremacy over those groups, emboldening some members of the dominant group to commit violent action.”⁹⁶ Dugan and Chenoweth found support for both effects in their study of the relationship between U.S. federal government speech and policies supporting or opposing racial minorities and federal violent hate crime statistics.⁹⁷

Another study evaluating the relationship between public policies protecting LGBTQ people and hate crimes, using a panel regression model across states, also found results that could indicate both effects. This study concluded that the passage of employment nondiscrimination laws and hate crime laws that recognized LGBTQ status “are associated with reduced reports of hate crimes,” but that laws that recognized same-sex partnerships led to the reporting of more hate crimes during the implementation year and in the subsequent two years.⁹⁸ The researchers believed the higher hate crime numbers were more likely the result of increased reporting rather than increased retaliatory violence but acknowledged the possibility that the higher numbers resulted from backlash.⁹⁹

Thus, even “good” policies or developments that affirm minority groups, make progress towards inclusion, or otherwise suggest an improvement in the power of marginalized groups might inspire hate crimes.¹⁰⁰ That idea may explain, for instance, why white supremacist organizing *increased* after the 2008 election of President Obama, the nation’s

⁹⁶ *Id.*

⁹⁷ *Id.* at 742. The study concluded that data covering the period between 1992 and 2012 showed federal actions against immigrants and Latinx persons emboldened the commission of violent hate crimes against them, but that federal speech and actions supporting Black people “tend[ed] to trigger violent anti-Black hate crimes.” *Id.*

⁹⁸ Brian L. Levy & Denise L. Levy, *When Love Meets Hate: The Relationship Between State Policies on Gay and Lesbian Rights and Hate Crime Incidence*, 61 SOC. SCI. RES. 142, 154 (2017).

⁹⁹ *Id.*

¹⁰⁰ For another articulation of this idea, see Ryan D. King & William I. Brustein, *A Political Threat Model of Intergroup Violence: Jews in Pre-World War II Germany*, 44 CRIMINOLOGY 867, 872 (2006) (contending that “the perceived success of political movements associated with the minority group increases intergroup conflict and violence”).

first Black president.¹⁰¹ It is also consistent with historical arguments that the Supreme Court's decision in *Brown v. Board of Education* declaring school segregation unconstitutional catalyzed racist violence as part of intense southern resistance to desegregation.¹⁰²

C. SOCIOECONOMIC INVESTMENTS IN COMMUNITIES

A third set of preventative approaches to hate crimes identifies socioeconomic investments in communities as key to a long-term solution. Advocates for such investments often link hate crimes to economic deprivation, the lack of affordable housing, mental illness, substance abuse, or related socioeconomic factors that might also affect crime not targeted at particular identity groups. In some cases, advocates question whether incidents publicized as hate crimes actually qualified as such because factors other than prejudice appeared to be at play or because the same individuals had committed other crimes that did not appear to be targeted at particular identity groups.¹⁰³ For instance, after high-profile assaults and robberies in Oakland, California's Chinatown that received attention as examples of anti-Asian hate, several local activists attributed the incidents to crime in general,

¹⁰¹ Wesley Lowery, *Did President Obama's Reelection Depress Hate Groups? This Study Says Yes*, WASH. POST (Feb. 26, 2014, 12:46 PM), <https://www.washingtonpost.com/news/the-fix/wp/2014/02/26/did-president-obamas-reelection-depress-hate-groups-this-study-says-yes> [<https://perma.cc/Y85E-LPEQ>] (describing Southern Poverty Law Center's reporting of a surge in number of far-right hate groups after President Obama's 2008 election but a decline after reelection).

¹⁰² See Michael J. Klarman, *How Brown Changed Race Relations: The Backlash Thesis*, 81 J. AM. HIST. 81, 82, 104–07 (1994) (arguing that *Brown* indirectly contributed to mid-1960s civil rights legislation by catalyzing southern resistance, including both private and state violence, and pushing northern whites to support civil rights reform); CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* 75–97 (2016) (describing violent and legal resistance to *Brown*). Other scholars attribute southern white violence less to *Brown* than to the civil rights movement's mobilization of Black protest. See Gerald N. Rosenberg, *Brown is Dead! Long Live Brown! The Endless Attempt to Canonize a Case*, 80 VA. L. REV. 161, 165 (1994) (arguing that civil rights mobilization, rather than *Brown*, spurred southern anti-Black violence); Tony Badger, *Brown and Backlash*, in *MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION* 39, 51 (2005) (contending that southern white violence resulted less from *Brown* than from "the notion of African Americans dictating the timetable of racial change" through direct action efforts).

¹⁰³ See Kimmy Yam, *Violence Against Asian Americans and Why 'Hate Crime' Should Be Used Carefully*, NBC NEWS (Feb. 25, 2021, 9:44 AM), <https://www.nbcnews.com/news/asia-america/violence-against-asian-americans-why-hate-crime-should-be-used-n1258793> [<https://perma.cc/L9UX-DY28>].

or to homelessness and untreated mental illness.¹⁰⁴ One community leader called for resources to help Chinatown businesses stay open during the pandemic and improved street lighting; another called for more resources and extra parking spots near shops to increase safety.¹⁰⁵ After the stabbing death of Christina Lee in New York's Chinatown, Asian-led groups and civil rights organizations rallied for improvements to city mental health services, which had failed to offer care to the suspect despite his earlier arrests suggesting the need.¹⁰⁶ Likewise, Asian American and LGBTQ community groups opposing the COVID-19 Hate Crimes Act proposed that government should instead fund "resources such as non-coercive mental healthcare infrastructures, neighborhood-based trauma centers, community food banks, and more."¹⁰⁷

1. *Hate Crimes and Economic Deprivation*

Calls for socioeconomic investments in communities to prevent hate crimes reflect the view that these crimes stem, at least in part, from economic precarity and other social conditions linked to it such as homelessness or substance abuse. A small body of academic research has probed the extent to which hate crimes correlate with economic deprivation or downturns. Theories in sociology, comparative politics, and psychology have hypothesized a relationship between economic strain and intergroup violence.¹⁰⁸ The empirical literature offers conflicting conclusions. One of the most studied contexts is the lynching of Black people in southern states, where researchers continue to reach varying conclusions regarding whether the frequency of lynchings rose with heightened economic competition.¹⁰⁹

Outside the lynching context, fewer quantitative studies exist. In a study of New York City police hate crime data from 1987 to 1995, political

¹⁰⁴ Chang & BondGraham, *supra* note 16.

¹⁰⁵ *Id.*

¹⁰⁶ Greg B. Smith & Clifford Michel, *Christina Lee's Alleged Killer Had Arrests but No Mental Health Intervention*, NBC NEW YORK (Feb. 16, 2022, 6:45 AM), <https://www.nbcnewyork.com/news/local/christina-lees-alleged-killer-had-arrests-but-no-mental-health-intervention/3556359> [[https://per ma.cc/BUG7-XSUU](https://per.ma.cc/BUG7-XSUU)].

¹⁰⁷ 100+ Asian, *supra* note 22.

¹⁰⁸ See Donald P. Green, Jack Glaser & Andrew Rich, *From Lynching to Gay Bashing: The Elusive Connection Between Economic Conditions and Hate Crime*, 75 J. PERSONALITY & SOC. PSYCH. 82, 82 (1998) (describing related theories from multiple disciplines).

¹⁰⁹ See TOLNAY & BECK, *supra* note 83, at 157; Tolnay et. al., *supra* note 83, at 620; Christian, *supra* note 83, at 116.

scientist Donald Green and colleagues failed to discern a relationship between unemployment rates and hate crimes targeting groups based on race, religion, ethnicity, or sexual orientation.¹¹⁰ Green and colleagues acknowledge that, even if empirical studies in both the lynching and contemporary hate crime contexts failed to establish a connection to economic deprivation, a variety of historical examples exist where political elites directed resentment towards racial minorities during economic downturns.¹¹¹ They surmise that “[t]he relationship between economic discontent and intergroup aggression may hinge, then, on the ways in which political leaders and organizations frame and mobilize such grievances.”¹¹² According to this view, economic difficulties do not necessarily lead to greater hate crimes but can do so when elites exploit such difficulties for their own agendas.

2. Hate Crimes and Mental Illness

Others have connected the recent spike in hate crimes to public health failures, specifically inadequate mental health services. Several suspects in attacks classified as hate crimes during the pandemic reportedly struggled with mental health problems. New York City’s Hate Crime Task Force reported that nearly half of those arrested for hate crimes in 2022 had been previously documented by the NYPD as “emotionally disturbed” individuals.¹¹³ Some of these attacks might not ultimately qualify as hate crimes, despite being unprovoked attacks against victims of a minority group, if the evidence shows that they did not stem from prejudice or target victims of a particular identity. But some incidents that qualify as hate crimes may involve perpetrators for whom mental illness, not just bias, played a role in

¹¹⁰ Green et. al., *supra* note 108, at 86; *see also* Donald P. Green, Dara Z. Strolovitch & Janelle S. Wong, *Defended Neighborhoods, Integration, and Racially Motivated Crime*, 104 AM. J. SOCIO. 372, 373 (1998) (finding “no relationship between unemployment rates and racially motivated crime” in New York City).

¹¹¹ Green et. al., *supra* note 108, at 89.

¹¹² *Id.*

¹¹³ Arun Venugopal, *Nearly Half of Those in Hate Crime Attacks Had Mental Health Issues: NYPD*, GOTHAMIST (May 4, 2022), <https://gothamist.com/news/most-subway-crime-attributed-to-see-also-Nicole-Hong-Ashley-Southall-Ali-Watkins-He-Was-Charged-in-an-Anti-Asian-Attack-It-Was-His-33rd-Arrest>, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/06/nyregion/nyc-asian-hate-crime-mental-illness.html> [<https://perma.cc/8UGP-D5R5>] (describing arrests of people with a history of mental health episodes or homelessness in several anti-Asian attacks).

the attack. If true, improved mental health services may provide a partial preventative solution.

Whether there is a relationship between hate crimes and mental illness, however, is a fraught question. The public conversation often stigmatizes those with mental health challenges, risks excusing racist violence as the product of individual pathologies, and tends to neglect the extent to which people with mental illness or disabilities are also the victims, not the perpetrators, of violence.¹¹⁴ After mass shootings or other grisly acts, commentators frequently assume that perpetrators must be mentally sick, conflating moral failures or incomprehensible behavior with diagnosable conditions.¹¹⁵ There is, in fact, little empirical research on the relationship between hate crime perpetrators and actual mental illness. Some studies describe the number of people with mental illness in a given population of hate crime offenders, but without making a comparison to the proportion of the general population struggling with mental illness, or without explaining the basis for such a comparison.¹¹⁶ In addition, it is difficult to draw

¹¹⁴ On the prevalence of bias crimes against people with disabilities, see generally MARK SHERRY, *DISABILITY HATE CRIMES: DOES ANYONE REALLY HATE DISABLED PEOPLE?* (2010).

¹¹⁵ See, e.g., *The Daily: Most Violence is Not Caused by Mental Illness*, N.Y. TIMES (June 8, 2022), <https://www.nytimes.com/2022/06/08/podcasts/the-daily/most-violence-is-not-caused-by-mental-illness-from-the-archive.html> (playing audio of responses to mass shootings in Buffalo, New York, and Uvalde, Texas).

¹¹⁶ See, e.g., MICHAEL JENSEN, ELIZABETH YATES & SHEEHAN KANE, NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM & RESPONSES TO TERRORISM, MOTIVATIONS AND CHARACTERISTICS OF HATE CRIME OFFENDERS 1–2 (Oct. 2020), https://www.start.umd.edu/sites/default/files/publications/local_attachments/START_BIAS_MotivationsCharacteristicsOfHateCrimeOffenders_Oct2020.pdf [<https://perma.cc/3FF6-F2T6>] (concluding from examination of violent and non-violent bias crime offenders in the Bias Incidents and Actors Study that offenders displayed “significantly higher rates of . . . mental illness . . . than the general population,” without identifying rates of mental illness in the general population); MICHAEL JENSEN, ELIZABETH YATES & SHEEHAN KANE, NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM & RESPONSES TO TERRORISM, CHARACTERISTICS AND TARGETS OF MASS CASUALTY HATE CRIME OFFENDERS 1 (2020), https://www.start.umd.edu/sites/default/files/publications/local_attachments/START_BIAS_MassCasualtyHateCrimeOffenders_Nov2020.pdf [<https://perma.cc/X7EF-X3MT>] (finding that 14.4% of “[n]on-[m]ass [c]asualty [v]iolent [o]ffenders” in Bias Incidents and Actors Study had mental illness, compared to 35.2% of mass casualty offenders, defined as those who “perpetrated, or attempted to perpetrate, an attack with the intention of killing or injuring four or more people”); see also Edward Dunbar, *Symbolic, Relational, and Ideological Signifiers of Bias-Motivated Offenders: Toward a Strategy of Assessment*, 73 AM. J. ORTHOPSYCHIATRY 203, 205, 207 (2003) (observing that nearly 1 in 4 of 58 convicted hate crime offenders in Los Angeles County from 1995–1997 had a history of psychiatric treatment prior to the hate crime,

conclusions from cases where hate crime perpetrators had treatment for mental health prior to committing the crime, because the direction of causation can be unclear: is a person's preexisting mental illness contributing to their violence or is a person's prior expressions of interest in violence leading to referrals to mental health care?¹¹⁷

All this suggests the need for caution in considering a link between hate crimes and mental illness. Still, outside the hate crimes context, research suggests a link between *subsets* of serious mental illness and violence,¹¹⁸ and

without offering a comparison to the general population). Comparisons of rates of mental illness among hate crime offenders and in the general population can also be problematic when the measures of mental illness are not identical. For instance, a separate publication drawing on the Bias Incidents and Actors Study database of hate crime offenders compared those motivated by religious bias who had "documented or suspected mental health concerns" in that database with statistics from a Johns Hopkins University website on the estimated proportion of mental health disorders in the general population. MICHAEL A. JENSEN, ELIZABETH A. YATES & SHEEHAN E. KANE, NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM & RESPONSES TO TERRORISM, A PATHWAY APPROACH TO THE STUDY OF BIAS CRIME OFFENDERS 16 (2020), <https://www.ojp.gov/pdffiles1/nij/grants/300114.pdf> [<https://perma.cc/2682-MWYB>]. The latter statistics, however, which are attributed to the National Institute of Mental Health Disorders, referred to the proportion of adults who "suffer[] from a diagnosable mental disorder in a given year." *Mental Health Disorder Statistics*, JOHNS HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> [<https://perma.cc/MMS5-HTYX>]. Those defined as having "mental health concerns" in the Bias Incidents and Actors Study database and coded as such based on a review of open-source materials such as court records and news articles, might represent a broader category than those with *diagnosable* mental disorders in the general population, making any direct comparison of the two populations misleading. See JENSEN ET. AL., A PATHWAY APPROACH, *supra* at 8, 29 (describing coding).

¹¹⁷ See *Buffalo Shooter Had Mental Health Evaluation After Threatening School Last June*, WIBV4 (May 15, 2022, 5:55 PM), <https://www.wivb.com/news/buffalo-supermarket-mass-shooting-tops/buffalo-shooter-had-mental-health-evaluation-after-threatening-school-last-june> [<https://perma.cc/DXB6-KY4H>] (reporting that Buffalo mass shooting suspect underwent mental health evaluation after he threatened shooting at high school); Ken Dilanian & Didi Martinez, *Here's How Some Experts Think Attacks Like the Buffalo Shooting Might Be Prevented*, NBC NEWS (May 20, 2022, 3:35 AM), <https://www.nbcnews.com/news/crime-courts/s-experts-think-deadly-incidents-buffalo-supermarket-shooting-might-pr-rcna29667> [<https://perma.cc/V5N6-X6BQ>] (reporting similar).

¹¹⁸ These studies consider the association between mental illness and crime or violence in general, not hate crimes in particular. See Daniel Whiting, Paul Lichtenstein & Seena Fazel, *Violence and Mental Disorders: A Structured Review of Associations by Individual Diagnoses, Risk Factors, and Risk Assessment*, 8 LANCET PSYCH. 150, 158–159 (2021) (concluding from a review of existing studies that "some individual psychiatric disorders, particularly schizophrenia spectrum, personality, and substance use disorders, are clearly associated with increased relative risks of violence," but that "serious violence is rare among

other studies suggest that expanding the availability of mental health services can reduce crime.¹¹⁹ If research more rigorous than that conducted to date establishes a relationship between particular mental health disorders and hate crimes, then improving access to mental health care may potentially contribute to hate crime prevention.

3. *Hate Crimes and Non-Carceral Crime Prevention*

Beyond addressing economic deprivation and mental health interventions, other non-carceral crime prevention measures might also reduce hate crimes to the extent that the causes and contributors to hate crimes overlap with those for crime in general.

Few studies, however, investigate the extent of overlap. In one such study, sociologist Christopher Lyons used Chicago police reports and survey

individuals with mental illness”); Eric B. Elbogen, Paul A. Dennis & Sally C. Johnson, *Beyond Mental Illness: Targeting Stronger and More Direct Pathways to Violence*, 4 CLINICAL PSYCH. SCI. 747, 756 (2016) (concluding that link between serious mental illness and violence is indirect and mediated by other risk factors); Sherry Glied & Richard G. Frank, *Mental Illness & Violence: Lessons from the Evidence*, 104 AM. J. PUB. HEALTH 2, e5, e6 (2014) (recommending a targeted approach to disorders that have been specifically linked to criminal activity, while cautioning that mental health interventions will have a small overall effect on societal violence given that most violence is not committed by people with diagnosed disorders); Fred E. Markowitz, *Mental Illness, Crime, and Violence: Risk, Context, and Social Control*, 16 AGGRESSION & VIOLENT BEHAV. 36, 39–40, 42 (2011) (citing several studies showing an elevated risk of violent behavior for those with mental illness but noting that perceptions of violence can stigmatize and limit opportunities for people with mental illness, despite “modest” number who are at risk for violence or crime).

¹¹⁹ See Monica Deza, Johanna Catherine Maclean & Keisha T. Solomon, *Local Access to Mental Healthcare and Crime*, J. URB. ECON., Dec. 4, 2021, at 1, 13 (finding that increase in the number of mental health care provider offices in a county leads to a modest decrease in the overall county crime rate, while acknowledging that those who receive health care in such settings “may depart from the modal individual who commits crime.”); Christopher Blattman, Julian C. Jamison & Margaret Sheridan, *Reducing Crime and Violence: Experimental Evidence from Cognitive Behavioral Therapy in Liberia*, 107 AM. ECON. REV. 1165, 1166–67 (2017) (finding lasting reductions in “antisocial behaviors” in high-risk men in Liberia who were provided both cognitive behavioral therapy and cash payments in a randomized controlled trial); Elisa Jácome, *Mental Health and Criminal Involvement: Evidence from Losing Medicaid Eligibility* 3–4 (Feb. 2022) (unpublished manuscript), https://elisajacome.github.io/Jacome/Jacome_JMP.pdf (concluding that low-income South Carolina men who lost Medicaid coverage at age 19 were 14% more likely to be incarcerated in the next two years, compared to a matched group that did not experience loss in coverage at that age, and explaining that “the effects are particularly pronounced for men who were using behavioral health services right before their 19th birthdays and for those who relied on Medicaid for access to mental health medications”).

data to ask whether racial hate crimes arose in resource-poor “socially disorganized” communities—which are generally associated with higher levels of conventional crime and violence—or in well-resourced communities with social capital.¹²⁰ He concluded that the answer depended on the type of hate crime: anti-Black hate crimes were “most numerous in relatively organized communities” that had higher informal social control—departing from crime in general—whereas anti-white crimes were “somewhat more likely in disadvantaged communities,” particularly those with population turnover.¹²¹ Lyons suggested that, while perpetrators of anti-Black crimes may have “specialize[d]” in hate crimes and were primarily motivated by racial prejudice, general criminal inducements in disadvantaged communities may have motivated perpetrators of anti-white hate crimes.¹²² By this account, the causes of some hate crimes are not so different from the causes of ordinary crime, but much depends on the subset of the broad hate crimes category at issue.

Beyond the Black/white binary, at least some well-publicized recent assaults of Asian American victims by unhoused, unstable individuals seem associated with larger social failures. To the extent that the factors that propel crime in general also influence hate crimes, social investments found to reduce conventional crime may also reduce hate violence. In recent decades, new research on crime prevention has emerged from the convergence of public health prevention science and evidence-based approaches to crime policy.¹²³ Criminologists, sociologists, economists, and public health researchers have found that a range of social programs can reduce crime. A study of nonprofits formed in U.S. cities over two decades concluded that the rapid growth of community organizations in the 1990s likely contributed

¹²⁰ Lyons, *Community (Dis)Organization & Racially Motivated Crime*, *supra* note 86, at 815–16.

¹²¹ *Id.* at 846–48.

¹²² *Id.* at 848 (internal quotation marks omitted).

¹²³ Brandon C. Welsh & David P. Farrington, *The Science and Politics of Crime Prevention: Toward a New Crime Policy*, in *THE OXFORD HANDBOOK OF CRIME PREVENTION* 508, 508–11 (Brandon C. Welsh & David P. Farrington, eds., 2012). For an early review of the cost-effectiveness of social programs to reduce crime, see John J. Donohue III & Peter Siegelman, *Allocating Resources Among Prisons and Social Programs in the Battle Against Crime*, 27 *J. LEGAL STUD.* 1, 3 (1998) (arguing that, if the most effective early childhood intervention programs could be scaled up and targeted to at-risk populations, “diverting resources from continuing large increases in incarceration and directing the social savings to preschool interventions could reduce crime without increasing spending”).

significantly to the drop in violent crime that began that decade.¹²⁴ Some research finds that home mortgage lending to at-risk neighborhoods reduces violent crime, in alignment with theories that emphasize the role of external political and economic investment decisions in shaping neighborhood viability and crime.¹²⁵ Other studies conclude that emergency economic assistance to people experiencing temporary income shocks¹²⁶ or increased availability of substance abuse treatment¹²⁷ can reduce serious crimes. Still other research credits environmental design improvements with reducing

¹²⁴ PATRICK SHARKEY, *UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE* 5–6, 50–53 (2018).

¹²⁵ See María B. Vélez, Christopher Lyons & Blake Boursaw, *Neighborhood Housing Investments and Violent Crime in Seattle, 1981-2007*, 50 *CRIMINOLOGY* 1025, 1047–48, 1028–29 (2012) (concluding from a longitudinal study of prime mortgage lending and neighborhood violence in Seattle that mortgage lending influenced violent crime rates, but that, contrary to expectations, prior rates of violence did not influence mortgage lending to particular neighborhoods).

¹²⁶ See Caroline Palmer, David C. Phillips & James X. Sullivan, *Does Emergency Financial Assistance Reduce Crime?*, 169 *J. PUB. ECON.* 34, 34–35 (2019) (concluding from a quasi-random variation in provision of temporary financial assistance to Chicago residents experiencing income shocks that those who receive such aid are less likely to be arrested for violent crimes for up to three years after the assistance, possibly by stabilizing housing).

¹²⁷ See Samuel R. Bondurant, Jason M. Lindo & Isaac D. Swensen, *Substance Abuse Treatment Centers and Local Crime*, 104 *J. URB. ECON.* 124, 125 (2018) (concluding that expanding number of substance abuse treatment centers at the county level contributes to reducing local crime, especially for “relatively serious violent and financially motivated crimes”). Bondurant and his colleagues noted that a prior, extensive literature on the relationship between substance abuse treatment centers, drug abuse, and crime, including several randomized control trials, “provides consistent evidence that treatment programs can reduce crime.” *Id.* at 126.

crime, such as “greening” vacant lots¹²⁸ or adding street lighting¹²⁹ in cities. While additional research would help establish the scalability and cost-effectiveness of promising programs, this accumulating evidence points to the value of non-carceral socioeconomic investments in reducing crime. If the etiology of subsets of hate crimes converges with that of crime in general, socioeconomic investments offer an additional avenue for hate crime prevention.

III. CONUNDRUMS OF HATE CRIME PREVENTION

This brief review reveals the diversity in theoretical perspectives and empirical findings that academic research in social psychology, sociology, criminology, and other fields has generated on hate crime prevention. Drawing on that research, this final Part identifies three challenges for those seeking to design policies to prevent hate crimes outside criminal legal and law enforcement measures.

A. CONCEPTUALIZING HATE CRIMES

As Part II argued, the three approaches to preventing hate crimes described above proceed from very different conceptions of the hate crimes problem. The prejudice reduction approach conceives of hate crimes as an extreme behavior arising out of bias; calls for political and structural

¹²⁸ Michelle Kondo, Bernadette Hohl, SeungHoon Han & Charles Branas, *Effects of Greening & Community Reuse of Vacant Lots on Crime*, 53 URB. STUD. 3279, 3291–92 (2016) (finding from a difference-in-differences study in Youngstown, Ohio, that vacant lot greening was associated with reduced felony assaults, burglaries, and robberies in the vicinity of treated lots, but increased motor vehicle theft); see also John M. Macdonald & Charles C. Branas, *Reducing Crime by Changing Places: Assessing the Benefits of Abating Vacant and Abandoned Land in Urban Spaces* 4 (Penn Inst. for Urb. Rsch., Working Paper, 2019) (“Today, a growing body of high-quality studies demonstrates that abating vacant land in an urban neighborhood can dramatically reduce crime.”). An earlier, small sample randomized controlled trial of vacant lot greening in Philadelphia found *non*-statistically significant net reductions in aggravated assaults with guns and total crime at a greening site. Eugenia C. Garvin, Carolyn C. Cannuscio & Charles C. Branas, *Greening Vacant Lots to Reduce Violent Crime: A Randomised Controlled Trial*, 19 INJURY PREVENTION 198, 200–01 (2013).

¹²⁹ See Aaron Chalfin, Benjamin Hansen, Jason Lerner & Lucie Parker, *Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City*, 38 J. QUANT. CRIM. 127, 129, 138 (2022) (concluding from 2016 randomized field experiment in New York City that installation of street lighting in public housing projects “reduced outdoor nighttime index crimes” by roughly 35%, defining index crimes as a set of serious crimes including “murder and non-negligent manslaughter, robbery, felony assault, burglary, grand larceny, and motor vehicle theft” but excluding rape and arson).

remedies highlight power relations among groups and the state's role in creating and perpetuating hierarchies; and advocacy for socioeconomic investments connects hate crimes to broader conditions, apart from bias, that lead to interpersonal violence and crime in general. The first challenge of hate crime prevention is to understand the sources of these differing conceptions and the extent to which they are compatible with one another. Put differently, does hate crime prevention require a choice among them, or are all these approaches applicable to the problem?

The conceptual differences stem from at least two sources: the heterogeneity of the hate crimes category and the diversity in beliefs about the prevalence of bias and the role of the state. First, despite the fact that public discourse or research might treat hate crimes as a monolith, the category encompasses a diverse array of conduct and causes. Under common definitions, hate crimes comprise acts against a variety of protected statuses (race, religion, gender, sexual orientation, and disability generally among them); involve considerable differences in severity (from acts of vandalism to mass shootings); reflect a range of perpetrators (including members of every demographic group and both subordinated and dominant communities); demonstrate different levels of planning and organization (from spontaneous, individual acts to premeditated, group endeavors); and suggest a range of motivations (from personal "thrill-seeking" to the instigation of deliberate political change).¹³⁰ Given the breadth of the category, it is natural that different subsets of hate crimes might better fit different conceptions of the problem. Some hate crimes appear to stem from deep-seated prejudice, while others occur for reasons not limited to prejudice, such as peer pressure or an incomplete grasp on reality due to mental health crises.¹³¹ Some hate crimes arise in tandem with government policies that exclude or harm particular identity groups; other hate crimes reflect individual bias but show little evidence of state sanction or support (such as crimes against members of dominant groups).¹³² Thus, there are real differences across hate crimes that at least partly explain and validate the

¹³⁰ See *supra*, Part II.A; EXPLORING ALTERNATIVE APPROACHES, *supra* note 34, at 6–7 (noting the wide range of conduct that counts as hate crimes and cautioning against a "singular policy response"); Sinnar, *supra* note 4, at 504–06 (describing definitional overlap between hate crimes and terrorism).

¹³¹ See *supra*, Part II.A. and II.C.

¹³² See Sinnar, *supra* note 4, at 500–03, 512–13 (describing relationship between white supremacist violence and the state as well as the inclusion of crimes targeting members of dominant groups within the hate crimes category).

variety in conceptions of hate crimes. To the extent that conceptions of hate crimes turn on empirical facts about the prevalence of various subsets of hate crimes, better data and evidence could guide the discussion on prevention. For instance, further study may illuminate whether factors such as economic deprivation, substance abuse, or mental illness influence the commission of hate crimes.

But different ideological beliefs and political positions—not just the real variation in hate crimes or insufficient empirical understanding—also play a role in conceptualizing hate crimes and, therefore, hate crime prevention. For instance, the preference for prejudice reduction or structural/political approaches to hate crime prevention may reflect a disagreement over whether those who commit hate crimes are aberrant individuals or reflect larger social forces and ideologies, including state practices. Because the prejudice reduction model focuses on individual attitudes and behaviors, it does not require any set of beliefs about social forces or state sanction. In that sense, it may be more politically palatable to those who condemn hate violence as extreme individual acts but who do not accept that state institutions have perpetuated or reinforced those beliefs.¹³³ It is also an easier model for government agencies to implement because it does not require agencies to fault the practices of other government actors. The second approach, by contrast, is explicitly political and often lays the blame for hate crimes on state rhetoric, policies, and structures. Early advocates of hate crime laws often saw hate crimes in these terms—as connected to systemic racism and state violence, thus requiring a redistribution of power. But as hate crime laws developed, they instead prioritized increasing punishment for individual offenders, treating the problem as one of individual bigotry.¹³⁴ While civil rights advocates often continue to emphasize a political and structural conception of hate crimes, it is in tension with the individualistic focus of the

¹³³ Even then, specific programs justified as prejudice reduction may attract controversy, like the teaching of critical race theory or ethnic studies. See Laura Meckler & Hannah Natanson, *New Critical Race Theory Laws Have Teachers Sacred, Confused and Self-Censoring*, WASH. POST (Feb. 14, 2022, 6:00 AM), <https://www.washingtonpost.com/education/2022/02/14/critical-race-theory-teachers-fear-laws> [<https://perma.cc/6SAC-H7DR>] (describing backlash to efforts to teach about race and racism in U.S. schools).

¹³⁴ Sinnar, *supra* note 4, at 512; see Emmaia N. Gelman, *Empire Against Race: A Critical History of the Anti-Defamation League (1913–1990)* 248, 265, 287–95 (2021) (Ph.D. dissertation, New York University) (on file with author) (documenting this historical transition in approach).

hate crimes framing that has dominated the criminal legal response to hate crimes.¹³⁵

The third conceptualization of hate crime prevention also implicates deeply held beliefs but with a different political valence. While government hate crime agencies may be reluctant to pin the blame for bias-motivated violence on other government actors, targeted communities may be reluctant to recognize that prejudice is not always the central factor behind acts of violence against community members. The idea that some hate crimes stem in part from economic and social problems, rather than bias or ideology alone, may challenge prevailing hate crime narratives that see these acts as entirely driven by prejudice. Because government leaders and law enforcement officials have often peremptorily dismissed the possibility of prejudice after incidents—for instance, the local sheriff who notoriously suggested that the Atlanta spa shooter was simply having a “bad day”—many people in targeted communities suspect *any* hesitation to label an attack a hate crime to be ill-motivated.¹³⁶ Some perceive doubts expressed regarding bias motivation as questioning the seriousness of the incident, the prevalence of bias in the lives of community members, or the emotional impact of an incident on the community. But the assumption that *all* incidents against victims of a particular group are necessarily or exclusively bias-motivated hinders consideration of other causal factors that could be otherwise mitigated.

Ultimately, while better data and empirical study can answer certain questions about hate crimes, the differences in conceptualizing hate crimes are not purely about empirics. They also turn on disagreements that are likely to persist: in beliefs about the prevalence of bias, the connection between hate crimes and state violence, and the role of the state.

B. BIG DEBATES OVER BASIC QUESTIONS

A second challenge apparent from the research on hate crime prevention is that some very big questions remain unsettled, even beyond the conceptual question discussed above. For instance, to a non-specialist, one of the more

¹³⁵ Cf. Sinnar, *supra* note 4, at 541–43 (describing limits of the conventional hate crimes frame).

¹³⁶ Meryl Kornfield & Hannah Knowles, *Captain Who Said Spa Shootings Suspect Had ‘Bad Day’ No Longer A Spokesman on Case, Official Says*, WASH. POST (Mar. 18, 2021, 8:33 PM), <https://www.washingtonpost.com/nation/2021/03/17/jay-baker-bad-day> [https://perma.cc/N6NK-AH7R].

surprising findings from the social psychology literature on prejudice reduction is that prejudiced attitudes and prejudiced behaviors do not necessarily align. In some studies, attitudes towards other groups appear to show improvement while behaviors do not change. This might be an artifact of the studies' methods for measuring attitudes and behaviors but might also reflect a real gap between them.¹³⁷ Other studies suggest that prejudice reduction initiatives can change discriminatory behavior without reducing bias.¹³⁸ One explanation for this might be that people change their behavior in response to changes in their perceptions of social norms, even if their beliefs remain the same.¹³⁹ If there is, in fact, a significant gap between attitudes and behavior with respect to prejudice, it would undermine an implicit assumption behind hate crime prevention programs aimed at shifting attitudes, and would cast doubt on program evaluations that measure changes in self-reported beliefs rather than observe actual behavioral change. But confirmation of this disconnect between prejudicial attitudes and behavior might lead to greater experimentation with alternative policy interventions directed at altering people's perceptions of *norms*, which research suggests can change more readily than underlying attitudes.¹⁴⁰

Academic research on structural contributors to racial violence also suggests empirical and normative conundrums. On the empirical side, the fact that both inclusionary and exclusionary political speech or policies can exacerbate bias-motivated violence means that predicting the effects of particular rhetoric or policies on hate crimes can be challenging. On the normative side, this finding raises questions about how much to prioritize

¹³⁷ See, e.g., BROWN, *supra* note 52, at 216 (noting studies in which surveys of participants' attitudes show improvement but unobtrusive evaluations of behavior do not).

¹³⁸ Paluck et. al., *supra* note 51, at 553. For instance, one experimental field study of a religiously integrated soccer league in Iraq found that measures of prejudiced attitudes did not change, but that those who were on an integrated team were more likely to train with or vote for outgroup members for an award. *Id.* at 551.

¹³⁹ See Paluck & Green, *supra* note 56, at 354 (describing year-long field study in Rwanda that "pointed to an integrated model of behavioral prejudice reduction in which intergroup behaviors are linked more closely to social norms than to personal beliefs").

¹⁴⁰ See Margaret E. Tankard & Elizabeth Levy Paluck, *Norm Perception as a Vehicle for Social Change*, 10 SOC. ISSUES & POL'Y REV. 181, 183 (2016) (describing greater malleability of perceptions of norms, compared to attitudes, and the difference between attitude change and norm change campaigns). Tankard and Paluck offer this example of the difference in approach: "Instead of persuading individuals that recycling is important and hoping that they will then recycle, a norm change intervention may, for example, expose people to a popular peer who recycles, provide people with information that most of their peers recycle, or advertise new recycling guidelines from an important and trusted community institution." *Id.*

violence prevention when it exists in tension with other social goals. Few would suggest that governments should reject inclusionary policies because they might lead to greater violence towards the newly included groups. But acknowledging the prospect of backlash violence means accepting that hate crime prevention is not an absolute priority to be pursued above all other racial or social justice goals. Indeed, some might view a certain amount of backlash violence as an inevitable consequence of genuine social transformation towards greater equality or towards a redistribution of power and resources. One cannot assume that political reforms that improve the lives and status of marginalized communities will necessarily reduce vulnerability to hate crimes, at least in the short term, but one should also not assume that hate crime reduction is a goal to be single-mindedly prioritized above other goals sought by targeted communities.

C. THE POLITICAL CHALLENGES OF “ROOT CAUSE” SOLUTIONS

A third challenge to hate crime prevention is maintaining political support for long-term, structural reforms in the face of political backlash to non-punitive approaches to curbing crime. In June 2022, the successful recall of San Francisco District Attorney Chesa Boudin, a progressive prosecutor ousted in part by opposition from the city’s largest Chinese American community, symbolized the challenge of criminal legal reform in even the most progressive U.S. cities.¹⁴¹ A former public defender, Boudin had been one of the most prominent reformist prosecutors elected around the country on promises to reduce incarceration and address racism in the criminal legal system.¹⁴² While prominent Asian-American groups had championed non-carceral hate crime prevention, many Asian American residents voted for Boudin’s recall because they viewed his response to anti-Asian hate crimes as insensitive and not tough enough.¹⁴³ The question is whether the public

¹⁴¹ Claire Wang, *How San Francisco’s D.A. Recall Election Shows a Rift in the Asian American Community*, NBC NEWS (June 10, 2022, 2:26 PM), <https://www.nbcnews.com/news/asian-america/san-franciscos-d-recall-election-shows-rift-asian-american-community-rcna33017> [<https://perma.cc/WJF9-DFCV>].

¹⁴² Shaila Dewan, *The Lessons Liberal Prosecutors Are Drawing From San Francisco’s Backlash*, N.Y. TIMES (June 15, 2022), <https://www.nytimes.com/2022/06/13/us/justice-reform-boudin-recall-san-francisco.html> [<https://perma.cc/2MU7-JJHM>].

¹⁴³ Wang, *supra* note 141; Joe Fitzgerald Rodriguez & Han Li, *Why High-Profile Attacks on SF’s Asian Communities Rarely Lead to Hate Crime Charges*, KQED (June 2, 2022), <https://www.kqed.org/news/11915634/why-high-profile-attacks-on-sfs-asian-communities-rarely-lead-to-hate-crime-charges> [<https://perma.cc/6CAT-M8L7>].

demand for, and political interest in, hate crime prevention outside the criminal legal system is sustainable.

Many solutions offered to prevent hate crimes take time to show results, from educational initiatives to rooting out white supremacy in state institutions to improving the health and socioeconomic welfare of communities. But the politics of crime policy, including hate crimes, are at odds with long-term reform. Hate crime prevention captures attention when horrific incidents become the subject of dramatic news coverage and viral videos. Yet the very thing that draws public and political attention to hate crimes also challenges the pursuit of non-carceral, long term solutions. Shocking images of the worst incidents—the Atlanta mass shooting or the unprovoked homicides of Asian American elders shoved to the ground—lead many people to demand immediate measures to restore community members’ lost sense of safety. Moreover, in these emotional contexts, even suggesting that a given crime may not have stemmed from bias or prejudice triggers angry backlash. While this may be an understandable reaction to the frequently knee-jerk denial that prejudice is at play, the insistence that incidents are *necessarily* hate crimes, in the absence of evidence, compounds the fear that drives law-and-order preferences within targeted communities. Especially tragic incidents also shape public discussion around the worst offenders, such that discussions of hate crimes center not on representative perpetrators but on the most culpable ones.¹⁴⁴

The political pressure generated by high-profile, shocking incidents drives political responses. Politicians facing reelection have “short time horizons” in which to demonstrate success, challenging crime prevention measures other than increasing policing or locking up more people.¹⁴⁵ When communities mobilize to oppose non-punitive structural reforms in the wake of these incidents, political incentives make the pressure difficult to resist—as illustrated by New York City officials’ decision to drop plans to open new homeless shelters in Chinatown after concerted protests following the murder

¹⁴⁴ See RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 19–20, 106–09 (2019) (making these points in the context of crime in general). Asian American anti-hate groups have tried to counteract this tendency by emphasizing that most hate incidents facing Asian Americans are not criminal offenses and that verbal harassment of women is especially pervasive, suggesting the need for responses outside the criminal legal system. See CHO ET. AL., *supra* note 32, at 2–3.

¹⁴⁵ Welsh & Farrington, *supra* note 123, at 513.

of an Asian American woman, Christina Lee, by a homeless person in the vicinity of one of the planned shelters.¹⁴⁶

Many systemic reforms to prevent hate crimes aim at long-term change, and possibly have little or no impact in the short term. To be clear, this is not true of all non-law enforcement responses. Some reforms—such as the provision of stable housing to unhoused individuals in a given community—may immediately address a category of unmet needs and reduce opportunities for conflict, preventing hate crimes (or other crimes) that might have otherwise occurred even in the short term.¹⁴⁷ In addition, some non-law enforcement solutions that community groups have proposed, such as strengthening the civil rights obligations of businesses to prevent customer-on-customer harassment, aim to intervene in the present. Still, many reforms seeking structural change or remedying root causes will take longer to make an impact. Undoing racial segregation or expanding racial justice education may take years to show results, not months. The mismatch between demands for immediate safety and the time scale of reforms to create that safety challenge any political project of hate crime prevention.

In addition to the time horizon for successful reform, the scale of root causes often requires far more systematic change than localities or institutions charged with hate crime prevention can provide. Even the most ambitious hate crime prevention efforts to date, like California's grant program to community groups, primarily fund small programs in particular communities. It will be hard to measure success for a conflict resolution or educational program in a single community, given that hate crimes are not so numerous that numbers will measurably change even in response to successful interventions. And certain changes, like improving mental health care treatment, require effort and resources to reform at a large enough scale that they could produce an observable difference in hate crimes. Compounding the issue of scale, the institutional actors in a position to deliver this kind of reform are not necessarily the actors charged with reducing hate crimes. Just as progressive prosecutors cannot control city

¹⁴⁶ Andy Newman & Jeffrey E. Singer, *Reeling from Anti-Asian Attacks, Chinatown Fights City's Shelter Plan*, N.Y. TIMES (Apr. 27, 2022), <https://www.nytimes.com/2022/04/27/nyregion/chinatown-nyc-shelter-anti-asian-attacks.html> [<https://perma.cc/9UG5-DLNC>]; Andy Newman, *Shelter in Chinatown is Canceled After Community Protests*, N.Y. TIMES (Apr. 28, 2022), <https://www.nytimes.com/2022/04/28/nyregion/chinatown-shelter-protests.html> [<https://perma.cc/4V4Z-GZDD>].

¹⁴⁷ I thank Angela Chan for pointing this out.

programs supplying affordable housing or substance abuse treatment, hate crime offices and program administrators generally lack jurisdiction over education, public health, and other systems that could benefit hate crime prevention.¹⁴⁸

Many of these challenges apply to crime prevention outside the criminal legal system, not just to hate crimes. One distinguishing feature of hate crimes, providing some reason for optimism, is that the public voices and interest groups active in providing victim perspectives on hate crimes include people from minority communities who have experienced over-policing and mass incarceration. That provides a contrast to the conventional racial demographics of most debates on crime policy, which often pit white communities against people of color suffering the brunt of criminal legal measures.¹⁴⁹ If members of targeted groups continue to advocate for alternative prevention measures, these structural reforms may stand a chance. The challenge will be, in part, for activists in communities of color who believe in these alternatives, including Asian Americans, to persuade members of their own communities to invest in them. No amount of empirical knowledge on what prevents hate crimes will help solve the problem if the community support and political will are not there to invest in longer-term structural reform.

CONCLUSION

Community advocates and policymakers seeking to prevent hate crimes beyond the criminal legal system are exploring programs spanning the gamut from prejudice reduction initiatives to political and structural remedies to socioeconomic investments in communities. For each of these categories, existing research provides good reason to experiment with potential interventions. For instance, within the prejudice reduction approach, there is significant empirical support for the idea that programs that increase intergroup contact, under specific conditions, can reduce intergroup prejudice. Among political and structural approaches, there is growing evidence that high-profile political rhetoric stigmatizing particular groups, or

¹⁴⁸ John Pfaff, *The Real Reason Democrats Can't Agree on How to Address Rising Crime*, SLATE (Mar. 8, 2022, 8:00 AM), <https://slate.com/news-and-politics/2022/03/rising-crime-has-created-a-schism-among-democrats.html> [<https://perma.cc/92GQ-RQ84>] (“Progressive prosecutors, by and large, can minimize some criminal legal system harms, but they have no ability to push for solutions that fall outside of the justice system.”).

¹⁴⁹ See BARKOW, *supra* note 144, at 108 (describing influence on public opinion of media’s presentation of crime as having white victims and minority defendants).

political events that convey the social acceptability of prejudicial views, can increase levels of hate violence against those groups—suggesting a real value in countering such speech. And within the category of socioeconomic approaches, a range of studies conclude that various social programs outside policing and prosecution can reduce crime and violence.

Yet fundamental questions remain with respect to all three approaches. Will initiatives designed to reduce prejudice or crime in general, for instance, make an impact on hate crimes in particular? Will hate crime prevention efforts that succeed on a small scale be potent and scalable enough to make a concrete impact on the problem? Moreover, the challenge of hate crime prevention is not simply the lack of data, to be fixed by greater testing of pilot programs and well-designed studies to evaluate impact. The project of hate crime prevention requires confronting the deeper beliefs about hate crimes that underlie different approaches as well as the political constraints that sometimes channel prevention efforts into individualistic, limited programs that fail to address structural contributors to bias-motivated violence. Finally, maintaining political support for non-carceral hate crime prevention requires advocacy that highlights the harm of hate violence while directing the ensuing public concern into reforming underlying conditions rather than simply punishing individual perpetrators.