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Historical Evolution of Hate Speech: Pre-World War II to the Digital Era

PREETHI H*

ABSTRACT

Hate speech has moved from being a historical tool of social exclusion and political domination to being one of the major problems facing modern democratic states. This paper examines how offensive speech was regulated before the outbreak of World War II, looking at the role of sedition, blasphemy and public order laws in Europe and in colonial India. It then considers the transformative effect of the war, showing how the experience of propaganda and the Holocaust reshaped legal thinking and led to a body of international human rights law centred on dignity, equality and non-discrimination. The paper closes by tracing what that history means for the regulation of hate speech in the present online environment.

Keywords: *hate speech, World War II, sedition, public order, propaganda, Holocaust, dignity, equality, non-discrimination*

I. INTRODUCTION

Hate speech has become a prominent subject of public debate on the internet, but it is not a new phenomenon. Speech has long been used to treat particular groups badly, to secure the dominance of some communities over others, and to set people against one another. The use of language to dehumanise people and to justify discrimination has a very long history, and speech has been deployed to injure others throughout that history. Broadly, the history of hate speech may be divided into two stages: before the Second World War and after it. The significance of that division lies in the fact that many current legal measures were introduced as an outcome of the destructive power of propaganda and discrimination during the Second World War. Media and rhetoric that had been used to justify persecution and genocide became the reason for reconsidering legal thinking and for introducing international human rights law to protect dignity and prevent discrimination. Technological change has since altered the character of hate speech itself.

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II. REGULATION OF HATE SPEECH BEFORE WORLD WAR II

Before World War II there was no legal concept of "hate speech" as an independent category of speech regulation. Speech acts that would now be termed hate speech were regulated indirectly, through the law of public order, sedition, blasphemy and defamation. The concern was not the protection of minority dignity as it is understood today, but rather the maintenance of public order and political stability.

A. The Evolution of Hate Speech Regulation in Europe

One of the earliest structured legal attempts to regulate harmful speech can be found in the *Allgemeines Landrecht* (ALR) of 1794, the General State Laws of Prussia. This comprehensive legal code included provisions addressing speech that threatened religious groups and state authority.¹ Article 151 prohibited acts of incitement against certain religious communities and against the state, as well as dishonouring speech directed at individuals. Article 214 similarly prohibited speech that insulted or dishonoured state-recognised religious societies. These provisions demonstrate that although the term "hate speech" was not in use, the law acknowledged that certain forms of speech could disrupt social order and undermine recognised groups within society. Regulation during this period was therefore concerned primarily with maintaining hierarchical and religious stability rather than with promoting equality. These controls remained influential until 1849, particularly in relation to speech that defamed recognised classes or estates of society. The political upheaval that followed the revolution of 1848 may be described as a defining moment for the question of civil liberties. The revolution initially held out the promise of civil liberties, including freedom of the press, association and assembly. Those hopes did not last: by November 1848 martial law had been imposed and civil liberties were considerably diminished.² The political struggle between revolutionary elements and monarchic power made speech a key arena of contest. In June 1849 King Friedrich Wilhelm IV issued a Press Ordinance intended to deal with political unrest. The ordinance made it a criminal offence to incite public hatred or contempt among members of the state against one another, the penalty being a fine of up to two hundred thaler or imprisonment for two years. Although some censorship measures were later relaxed in light of earlier constitutional promises, the broader regulatory framework remained intact. Following the revolution, the government introduced three legislative bills in March 1849 to regulate public speech, associations and assemblies further. These proposals attracted criticism because of the extensive discretionary powers they granted to police authorities. Notwithstanding that debate, the

¹ Ann Goldberg, *Hate Speech and Identity Politics in Germany, 1848-1914*, 48 CENT. EUR. HIST. 480 (2015).

² *Id.*

provision regarding the press was carried into the Prussian Criminal Code of 1851 as Article 100. Article 100 punished acts that threatened the public peace, including inciting hatred and contempt of the government, the chambers of the Landtag, other public institutions or certain social classes. The article also dealt with inciting members of such social classes to commit physical assaults against each other. The punishment was imprisonment for a period of not less than one month and not more than two years. Article 100 was carried forward into Section 130 of the German Imperial Criminal Code (*Kaiserreich Strafgesetzbuch*), known as *Volksverhetzung*, or incitement to hatred, and that development is a significant landmark in German legal history. Although the provision had initially been focused on safeguarding state power and public order, it established the basis of contemporary legislation concerning hate speech. After World War II, Section 130 of the German Criminal Code came expressly to punish incitement to hatred and insults aimed at attacking human dignity, directed at individuals or at groups defined by race, nationality, religion or ethnic origin. In present-day Germany the provision has been applied against those making threats or disseminating racist and anti-Semitic propaganda.³

Before World War II, speech regulation in Germany moved from being concerned principally with safeguarding state power and religion to being increasingly conscious of the risk of inciting violence against particular social groups. Although these early rules were not motivated by equality or human dignity, they laid the groundwork for contemporary hate speech laws.

B. Hate Speech in India

i. Sedition Law and the Colonial Regulation of Speech Before World War II

In the colonial era in India, freedom of speech was not treated as a fundamental right. Freedom of expression was strictly regulated by the colonial British government through the law of sedition contained in the Indian Penal Code (IPC).⁴ Unlike modern hate speech laws, which are designed to protect marginalised groups from discrimination, colonial-era laws were designed specifically to stifle political dissent. The history of sedition in India goes back to the nineteenth century. A sedition provision was present in the Draft Indian Penal Code of 1837 prepared by Thomas Babington Macaulay,⁵ but it was not carried into the IPC as enacted in 1860. In 1870, sedition was formally criminalised by an amendment to the IPC. Section 124A, which

³ Dan Glaun, *Germany's Laws on Hate Speech, Nazi Propaganda & Holocaust Denial: An Explainer*, FRONTLINE (PBS) (July 1, 2021), <https://www.pbs.org/wgbh/frontline/article/germanys-laws-antisemitic-hate-speech-nazi-propaganda-holocaust-denial/>.

⁴ Saptarshi Bhattacharya, *The Law of Sedition and India: An Evolutionary Overview*, THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY (Aug. 27, 2022), <https://www.thehinducentre.com/the-arena/current-issues/the-law-of-sedition-and-india-an-evolutionary-overview/article65721149.ece>.

⁵ Bhattacharya, *supra* note 4.

criminalised disaffection towards the established government, was proposed by the British politician and jurist James Fitzjames Stephen. It was introduced against the background of the Wahhabi trials and the wider political unrest of the period.⁶ The British government justified the law on the ground that the political situation in India demanded more stringent measures than were needed in Britain: what might be tolerated in Britain could not be tolerated in India, because it could lead to action and not merely to empty words.⁷ Early use of the sedition law reveals its intended purpose as a means of political control. The first major sedition case in India was *Queen-Empress v. Jogendra Chunder Bose*,⁸ in which the High Court at Calcutta considered charges against the accused, who were associated with the newspaper *Bangobasi*, for publishing articles criticising the Government's policy of raising the age of consent to sexual intercourse. Although the case was ultimately withdrawn by the Crown after the accused apologised, the proceedings revealed how broadly the court was prepared to define sedition. The section was subsequently used with far greater force to prosecute leading figures of the Indian freedom struggle. Bal Gangadhar Tilak was one such figure, and he was prosecuted for sedition twice. In 1897 the Bombay High Court convicted Tilak for speeches made during a Shivaji festival celebration in Pune, delivered shortly before the murder of two British officials in the city.⁹ In that case the court read the term "disaffection" in Section 124A expansively, as covering disloyalty to the Government. Tilak was prosecuted again in 1908 for articles published in Marathi in his newspaper *Kesari*. One of the best-known sedition cases is that of Mohandas Karamchand Gandhi in 1922. Gandhi was charged in respect of articles written against British rule in the publication *Young India*. At his trial before the Sessions Court at Bhadra, Gujarat, Gandhi admitted his disaffection towards British rule. He described Section 124A in court as "an attempt to crush down the spirit of liberty" and said that "affection cannot be manufactured". He was sentenced to six years' imprisonment.

Judicial interpretation further clarified the nature of the offence during this era. In *Niharendu Dutt Majumdar v. King Emperor*,¹⁰ the Federal Court pointed out that the law of sedition is not meant to defend the pride of the government; it is meant to prevent public disorder of the kind that may follow if respect for the government is wholly lost. In practice, however, the law of sedition was frequently used to crush political criticism.

⁶ Malavika Parthasarathy, *Sedition Law in India: A Timeline*, SUPREME COURT OBSERVER (Apr. 27, 2022), <https://www.scobserver.in/journal/sedition-in-india-a-timeline/>.

⁷ *Id.*

⁸ *Queen-Empress v. Jogendra Chunder Bose*, (1892) ILR 19 Cal 35.

⁹ *Queen-Empress v. Bal Gangadhar Tilak*, (1897) ILR 22 Bom 112.

¹⁰ *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22.

One crucial feature of speech control in the colonies was the differential treatment of political dissent and of community discourse. Speech expressing hostility towards a particular community could go unpunished so long as it did not disturb the public peace or threaten colonial rule. Speech challenging British colonial power and inciting nationalist sentiment, by contrast, met with severe punishment. This selective application makes it clear that the principal aim of colonial speech policy was the maintenance of imperial power.

The sedition provision under Section 124A of the IPC thus acted as the principal instrument of colonial speech regulation before World War II. Although it was framed in terms of preventing disaffection and preserving public peace, the law was used extensively to suppress the Indian independence movement and political dissent. Colonial speech policy accordingly placed security considerations above individual freedom, and political loyalty above freedom of expression. That history retains its relevance, although Section 124A is itself no longer on the statute book: it was not carried into the Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code with effect from 1 July 2024. The nearest provision in the new Code, Section 152, is differently framed. It reaches words, signs or electronic communication that excite or attempt to excite secession, armed rebellion, subversive activities or separatist feelings, or that endanger the sovereignty, unity and integrity of India, rather than disaffection towards the Government established by law, and it carries a far heavier penalty of imprisonment for life or for a term which may extend to seven years.¹¹

ii. Communal and Religious Speech

The decades before World War II also saw a rise in religiously charged provocation in colonial India. The Penal Code of 1860 contained no general provision penalising insult to religion, and the need for such a clause became evident during a period of rising communal sensitivity at the beginning of the twentieth century.¹² An important development followed the pamphlet *Rangila Rasul*, published in May 1924 by Mahashay Rajpal in Lahore, which attacked the personal life of the Prophet Muhammad. According to the accounts relied on here, the pamphlet gave rise to widespread protest and was followed by communal disturbances.¹³ At the time of publication there was no provision penalising the deliberate insult of a religion. Proceedings were instituted under Section 153A of the IPC, which had been inserted in 1898, but the absence of any provision directed at religious insult made the prosecution difficult, and Rajpal was acquitted

¹¹ Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 152 (India) (brought into force July 1, 2024).

¹² J. Sai Deepak, *A Civilisational Approach to Blasphemy*, THE DAILY GUARDIAN (last visited Mar. 5, 2026), <https://theguardian.com/acivilisational-approach-to-blasphemy/>.

¹³ Yash Siha, *Blasphemy Law in India: An Overview*, MANUPATRA (last visited Mar. 5, 2026), <https://articles.manupatra.com/article-details/Blasphemy-Law-in-India-An-Overview>.

by the High Court at Lahore in 1927 on the ground that Section 153A was not attracted. The episode made clear the need to amend the existing law on inflammatory speech and communal rioting. To relieve the tension, the Government of India inserted Section 295A into the Indian Penal Code in 1927 by amendment. That section made it an offence, punishable with imprisonment for up to three years, or a fine, or both, for a person with deliberate and malicious intention to outrage or attempt to outrage the religious feelings of any class of citizens of India, by words, signs or visible representations insulting their religion or religious beliefs. The provision is now substantially reproduced in Section 299 of the Bharatiya Nyaya Sanhita, 2023, in the same terms and with the same maximum punishment, the one addition being that the new section expressly extends to insults conveyed through electronic means.¹⁴ Section 153A, for its part, criminalised the promotion of feelings of enmity or hatred between different classes of people on grounds of religion, race, place of birth, residence or language, and acts prejudicial to the maintenance of harmony. Its object was to control speech capable of instigating enmity between groups. Its successor is Section 196 of the Bharatiya Nyaya Sanhita, which reproduces Section 153A in substance, retaining the three-year maximum and the enhanced penalty of five years for offences committed in a place of worship, the principal change again being the express inclusion of promotion by electronic communication.¹⁵ Before World War II, therefore, speech regulation in India developed to address not only political dissent but also hostility between communities: while Section 124A sought to restrict anti-colonial political speech, Sections 153A and 295A were directed at religious insult and inter-group hostility.

III. POST-WORLD WAR II

The end of the Second World War was a decisive turning point for hate speech regulation. The atrocities of that period, and in particular the use of propaganda to dehumanise and persecute marginalised groups, revealed the destructive effects of unchecked hateful speech. Where pre-war speech regulation had been aimed at maintaining state sovereignty and order, the post-war period brought a dramatic change: a shift from a sovereignty-centred approach to a rights-based approach to speech regulation.

That paradigm shift was made possible by the creation of international human rights law following the founding of the United Nations and the drafting of the Universal Declaration of Human Rights. These instruments recognised freedom of expression as an essential element of democracy while also recognising the need to restrict speech that advocates hatred and denies

¹⁴ Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 299 (India).

¹⁵ *Id.* § 196.

individuals equal standing in society. Hate speech thereby came to be understood as an act that violates human dignity.

In India, the change found expression in the Constitution adopted after independence, which guarantees freedom of speech while permitting restrictions in the interests of public order and morality and for the protection of the dignity of citizens. The post-World War II period therefore supplies the normative basis for the regulation of hate speech.

A. The Role of War-Time Propaganda in the Dehumanisation of Minorities

During World War II the Nazi government used speech as an instrument of discrimination and dehumanisation. After Adolf Hitler came to power in 1933, the government established a propaganda apparatus, the Reich Ministry of Public Enlightenment and Propaganda, under the leadership of Joseph Goebbels. The Ministry exercised control over the press, radio, films, theatre, literature, school textbooks, speeches, posters, pamphlets and the visual arts.¹⁶ Posters and visual symbolism performed a particularly strong function within the propaganda machine. They typically portrayed the supposedly perfect "Aryan" citizen, healthy and of sound moral standing, against caricatures and distortions of Jews and other minorities.¹⁷ Jews were depicted as greedy and manipulative conspirators operating behind the scenes of world political events, and visual propaganda represented them as controlling the Allied powers, including Britain, the United States and the Soviet Union. Radio broadcasts and speeches amplified these messages. In speeches broadcast across Germany on state-controlled radio, Hitler frequently depicted political opposition as a racial conflict, and Jews were portrayed as supporters of communism and as traitors to the nation.¹⁸ Propaganda thus generated fear and hostility among the population by associating minorities with national decline. Educational texts and children's literature were also used to propagate racial ideology. School books were designed to teach children racial theories so that they would come to regard racial hierarchy as natural. Documentaries and films produced within the state-controlled system portrayed themes of racial superiority and of the moral and biological inferiority of minorities. At the same time, propaganda extolled the "Aryan ideal": magazines and official documents promoted childbearing and motherhood as an

¹⁶ UNITED STATES HOLOCAUST MEMORIAL MUSEUM, *Ministry of Public Enlightenment and Propaganda*, HOLOCAUST ENCYCLOPEDIA (last visited Mar. 6, 2026), <https://encyclopedia.ushmm.org/content/en/article/ministry-of-propaganda-and-public-enlightenment>.

¹⁷ UNITED STATES HOLOCAUST MEMORIAL MUSEUM, *Nazi Racism*, HOLOCAUST ENCYCLOPEDIA (last visited Sept. 23, 2025), <https://encyclopedia.ushmm.org/content/en/article/nazi-racism>.

¹⁸ UNITED STATES HOLOCAUST MEMORIAL MUSEUM, *Nazi Propaganda and Censorship*, HOLOCAUST ENCYCLOPEDIA (last visited Sept. 23, 2025), <https://encyclopedia.ushmm.org/content/en/article/nazi-propaganda-and-censorship>.

obligation of citizenship necessary to strengthen the racial future of Germany.¹⁹ The survival of the race was said to be secured by women's contribution to the state through childbirth. Marriages between Germans and Jews, Roma, Slavs and others were presented as a threat to racial purity that made racial cleansing necessary, and measures such as the Nuremberg Laws were justified in these terms. Besides Jews, many other groups were targeted by propaganda, among them Roma, people with disabilities, Slavs, Black people, political opponents and homosexuals. They were described as a burden on society, as a threat, or simply as degenerate. By presenting discrimination and racial exclusion as natural, propaganda made sterilisation, internment, imprisonment and ultimately extermination appear lawful and justified.

Taken together, propaganda through posters, speeches, radio, films, literature, education and public demonstrations allowed speech to function as a means of reconceptualising morality. Members of minority groups were stripped of individual identity and characterised as existential threats rather than as human beings deserving respect. War propaganda therefore did not merely communicate ideology; it legitimised discrimination and created the psychological conditions in which the crimes of the Holocaust could be carried out. After the end of World War II there was a marked change in the way legal thought approached the regulation of speech. The propaganda, and the atrocities that followed from it, showed that speech could be an instrument of real harm, particularly when it dehumanised and marginalised large groups of people. It became clear that the pre-war focus on public order had to give way to a system founded on human dignity and equality.

B. Regulation of Hate Speech in the International Human Rights Framework

The post-World War II era brought fundamental changes in the way human rights were understood internationally and in what states were expected to be accountable for. The genocide committed by the Nazi regime against Jews, Sinti and Roma, homosexuals, people with disabilities and others shocked the world.²⁰ That experience lay behind the Nuremberg and Tokyo trials, in which representatives of political and military power structures were found guilty of war crimes, crimes against peace and crimes against humanity. From these proceedings emerged the fundamental idea that individuals, including government officials, bear

¹⁹ UNITED STATES HOLOCAUST MEMORIAL MUSEUM, *Victims of the Nazi Era: Nazi Racial Ideology*, HOLOCAUST ENCYCLOPEDIA (last visited Mar. 6, 2026), <https://encyclopedia.ushmm.org/content/en/article/victims-of-the-nazi-era-nazi-racial-ideology>.

²⁰ Yehuda Bauer, *On the Holocaust and Its Implications*, in DISCUSSION PAPERS JOURNAL: THE HOLOCAUST AND THE UNITED NATIONS OUTREACH PROGRAMME, vol. I (last visited Mar. 6, 2026), https://digitallibrary.un.org/record/664654/files/dpj_i.pdf.

responsibility under international law for gross violations of human dignity. The atrocities of the war also made clear that the protection of basic rights could no longer be treated as a purely domestic concern of states. The formation of the United Nations in 1945 may accordingly be viewed as a pledge by the international community to support peace, avoid conflict and protect fundamental human rights.²¹ The experience of war made it necessary to ensure that no one would again be arbitrarily deprived of the rights to life, liberty, housing, nationality and other basic human rights.

The Universal Declaration of Human Rights (UDHR), adopted in 1948, provided the normative basis on which the modern system of human rights was built.²² The UDHR contains no specific clause regulating hate speech, but its principles are highly relevant to the issue. It guarantees equality before the law and protection against discrimination and against incitement to discrimination.²³ These principles reflect the core commitment to protecting human dignity and to preventing expression aimed at violating equality. Later international instruments developed along the same lines and elaborated further on discrimination, dignity and the limits of harmful expression. While protecting freedom of expression as a human right, they stress that it must not be used to incite hatred, discrimination or violence.

In recent years the United Nations has expressed concern about the rise of hate speech, particularly in digital communications. That concern was reflected in 2019, when the Secretary-General launched the United Nations Strategy and Plan of Action on Hate Speech, the first system-wide approach to addressing hate speech and related crimes such as genocide.²⁴ The Strategy sets out how Member States may be supported in countering hate speech consistently with international human rights standards. It highlights the importance of cooperation with technology and social media companies, and the role of artificial intelligence in combating hate speech, both positive and negative. The international community has further expressed its commitment through resolutions encouraging States and other relevant actors to intensify action against discrimination and hate speech in line with human rights law.

The designation of 18 June as the International Day for Countering Hate Speech indicates the growing recognition of the international character of the phenomenon, particularly online. Initiatives such as the Global Digital Compact likewise indicate the rising importance of the

²¹ *History of the United Nations*, UNITED NATIONS (last visited Mar. 6, 2026), <https://www.un.org/en/about-us/history-of-the-un>.

²² *The Foundation of International Human Rights Law*, UNITED NATIONS (last visited Mar. 6, 2026), <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

²³ Universal Declaration of Human Rights art. 7, G.A. Res. 217 (III) A (Dec. 10, 1948).

²⁴ *United Nations Strategy and Plan of Action on Hate Speech*, UNITED NATIONS (last visited Mar. 6, 2026), <https://www.un.org/en/hate-speech/un-strategy-and-plan-of-action-on-hate-speech>.

proper governance of digital technologies and of protecting fundamental rights while regulating hate speech.

IV. REGULATION OF HATE SPEECH IN THE DIGITAL ERA

The rise of the internet, and of social media in particular, has transformed global communication by enabling instantaneous interaction and the exchange of information on a global scale. It has affected politics, public participation and social interaction in ways that are largely positive for democracy. The same technology, however, has increased the potential for abuse, because hateful messages and calls for violence can now reach a mass audience faster than ever before. Regulating such messages requires a balance between protecting freedom of speech and preventing hate speech. Freedom of speech is guaranteed by almost every Constitution and by international human rights law, but although the right is acknowledged in principle, its practical protection is not always secured. One of the main dangers of regulating online hate speech is the possibility that regimes with anti-democratic tendencies will abuse such regulation as a pretext for stifling opposition.

Digital media have compounded the problem of self-publication by making it possible to publish anonymously and instantly. In traditional media, editorial scrutiny facilitates prior review of offending material; social media, which operates largely on a self-publication model, lacks that filter. Besides the absence of prior review, the speed at which content is produced poses further challenges for regulators. The tools used to control unlawful speech tend to be slower and less efficient than the speed at which digital content spreads. Online hate speech has several features that make it especially pernicious: it is anonymous, permanent and highly infectious.

In the Indian setting, the absence of a statutory definition of hate speech has produced piecemeal legislation on the subject. That absence contributes to ambiguity and uncertainty regarding enforcement, procedure and application, which in turn has led to divergent views. The issue is urgent in an era of digitisation. The internet has made it possible to transmit offensive or provocative material to very large numbers of people within a very short time. Although it has played an important role in connecting the world, it has also opened avenues of unregulated communication.²⁵ The anonymity of online communication makes it easier for people to create and transmit harmful material without much fear of prosecution. The Human Rights Council of the United Nations has acknowledged the internet as an essential medium for realising the right

²⁵ Mehvish Ashraf, *Online Hate Speech in India: Issues and Regulatory Challenges*, 3(5) INT'L J.L. MGMT. & HUMAN. 919, 919-37 (2020).

to freedom of opinion and expression, while noting that the right is subject to exceptions that take account of the intention behind an expression, the circumstances in which it is made and the effect it causes.²⁶ International law accordingly permits limitations where speech incites violence, discrimination or hostility, provided that those limitations satisfy the criteria of legality, necessity and proportionality. Hate speech laws in India are for the most part medium-neutral, covering print, broadcast, theatrical and electronic media, but advances in communication technology have prompted frequent recourse to special legislative measures. These measures attempt to fit the problems posed by new media into the established penal law. The dynamic nature of digital media nevertheless creates legal and governance problems that are not easily resolved. There is therefore a need for a well-defined framework for regulating hate speech online without violating the constitutional rights to free speech and expression.

V. CONCLUSION

In the light of the historical examination above, future legislation should rest on a holistic rather than a fragmented legal framework, one able to maintain an effective balance between the right to freedom of speech on the one hand and protection against hate speech on the other. As hate speech continues to change and develop, particularly in cyberspace, there is a pressing need for legal reform and judicial interpretation alongside collaborative regulation.

²⁶ U.N. HUMAN RIGHTS COUNCIL, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013), <https://digitallibrary.un.org/record/756267>.