

JOURNAL OF HATE STUDIES



Gonzaga University

INSTITUTE FOR HATE STUDIES

PROCEEDINGS OF THE THIRD INTERNATIONAL
CONFERENCE ON HATE STUDIES:
"THE PURSUIT OF JUSTICE: UNDERSTANDING
HATRED, CONFRONTING INTOLERANCE,
ELIMINATING INEQUALITY" (PART I)

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CONTENTS

Preface.....	<i>John Shuford</i>	1
<i>Special: Keynote, The Journal of Hate Studies Tenth Anniversary Symposium</i>		
Is Peacemaking Unpatriotic?: The Function of Homophobia in the Discursive World.....	<i>Mari J. Matsuda</i>	9
<i>Articles</i>		
Islamophobia, Hateful Speech, and the Need to Practice Democratic Virtues	<i>Shannon Dunn</i>	29
Evil Black Guns: Hate, Instrumentality, and the Neutrality of Firearms.....	<i>Christopher B. Strain</i>	51
Cutting Off Our Nose to Spite Our Face: The Real Consequences of I-9 Audits Considered through a Case Study of Brewster, Washington	<i>Gregory C. Cunningham</i>	73
Reclaiming Justice and Eliminating Inequality through Compassionate Migration: The Relentless Struggle of Migrants Living in the Shadows	<i>William F. Arrocha</i>	85
Filipino Amerasians: Gauging Stigmatization, Intolerance and Hatemongering in a Pluralistic Asia Pacific Society	<i>Peter C. Kutschera and Marie A. Caputi</i>	119
The Price of Sunshine: Open Dependency Courts and Their Risks to LGBTQ Child Abuse and Neglect Victims	<i>William Wesley Patton</i>	145

War Crimes, Wristbands, and Web 2.0: Exploring Online Justice Advocacy, Colonialism and ‘Civilizing Missions’ through <i>Kony2012</i>	<i>Sarah Steele,</i> <i>Tyler Shores,</i> <i>and Yvette Pollastrini</i>	175
The Society of Jesus and the Eradication of Hate	<i>Michael W. Maher, S.J.</i>	197
<i>Film Review</i>		
S. Leo Chiang’s <i>Mr. Cao Goes to Washington</i> ...	<i>Jessica Maucione</i>	213
<i>Book Review</i>		
Joseph G. Bock’s <i>The Technology of Nonviolence: Social Media and Violence Prevention</i>	<i>Tyler Branson</i>	217

Preface

On behalf of the editorial board and staff of the world's first and longest-running peer-review publication devoted to advancing scholarship in this interdisciplinary international academic field, it is my pleasure to offer Volume 12 of the *Journal of Hate Studies* to our readers.

This volume and Volume 12 focus primarily on presenting peer-reviewed scholarly articles developed from the selected proceedings of the Third International Conference on Hate Studies. Themed "The Pursuit of Justice: Understanding Hatred, Confronting Intolerance, Eliminating Inequality," the conference was co-organized and hosted by the Gonzaga Institute for Hate Studies, the Gonzaga School of Law, and the Washington State Task Force on Race and the Criminal Justice System. Presenters and attendees from two dozen countries worldwide came to Spokane, Washington for four days in April 2013 in order to concentrate on how fear and ignorance of the "other" manifest in hatred, intolerance, and inequality, and thus affect the pursuit of justice for all.

Taken collectively, Volumes 11 and 12 include two keynote addresses and 15 peer-review articles, and they are thematically organized and supplemented by on-point reviews of several important recent books and films. Volume 11, in particular, tackles issues of hateful and assaultive speech, civil rights and civil liberties, hate-based phobias (Islamophobia, homophobia, and xenophobia), stigmatization and marginalization, and structural and cultural violence against target populations as accomplished through law, policy, and discourse. The volume also includes consideration of the somewhat ambivalent role of social media and digital technology utilization toward violence prevention and social change, and the historic influence and contemporary experience of Jesuits and some Jesuit-trained people in areas of politics and peacemaking where individuals, social groups, and communities stand at odds. Contributions to this volume come from scholars, researchers, and practitioner-experts in the fields of Law, History, English, Rhetoric, Religious Studies, Catholic Studies, American Studies, International Policy Studies, Peace Studies, Information Technology Sciences, Global Health, Psychiatry, Social Work, and Human Services.

About the Present Volume

The volume begins with a special contribution by Mari Matsuda, one of the most influential and innovative legal scholars of the past half-century. Professor Matsuda, of the William S. Richardson School of Law at the University of Hawai'i at Mānoa, provided the keynote address at the

Journal of Hate Studies Tenth Anniversary Symposium, which was held at American University Washington College of Law in Washington DC on September 27, 2012. Entitled “Is Peacemaking Unpatriotic?: the Function of Homophobia in the Discursive World,” Matsuda’s wide-ranging address took place shortly after the attack on the U.S. Embassy in Benghazi, Libya and amidst the ongoing uproar over the *YouTube* posting of *The Innocence of Muslims*. Matsuda’s discussion worked to reveal the sometimes-latent connections between Peace Studies, Hate Studies, Feminist Theory, Critical Race Theory, First Amendment Theory, American Pragmatism, and other fields and methodologies. Her purpose, in trying to talk publically about why it is so difficult, even dangerous, to talk the language of peace publically, led her to consider the “large role” that homophobia plays in what she calls “the dominance of dominance.” Matsuda calls homophobia “the semi-otic motherlode, the paradigm binary, the place we learn about hate, disgust, fear, inside, outside, retribution” and considers “the closet and its mechanisms of enforcement” to be “the primary mechanisms of injustice in our culture.” Thus, insofar as it concerned with understanding and addressing “the dominance of dominance,” Hate Studies has much to contribute to the work of making it possible to talk the language of peace publically. Matsuda’s thought-provoking keynote is published here for the very time because it prefigures and provides excellent complement to many “Pursuit of Justice” articles drawn from the Third International Conference on Hate Studies.

Shannon Dunn, an Assistant Professor of Religious Studies at Gonzaga University, argues in her article “Islamophobia, Hateful Speech, and the Need to Practice Democratic Virtues,” that there is certain insincerity to democratic claims of “freedom of speech” that “ignore systemic social conditions of injustice and inequality” and that use the First Amendment protections to provide cover for those engaging in insulting, inflammatory Islamophobic hate speech, especially as it appears in video/film and print. Inspired by the groundbreaking work of Professor Matsuda and harmonizing with Jeremy Waldron’s influential thesis in *The Harm in Hate Speech* (Harvard University Press, 2012), Dunn argues that “the harm caused by (hateful religiously-oriented) speech can be measured in the way that it ostracizes and stigmatizes members of certain groups, including immigrants and refugees (and those whose religious identity is also a marker of difference).” In a turn of phrase reminiscent of Matsuda’s own earlier in the volume, Dunn contends that hateful speech “resembles more an act of bullying than an expression of truth,” and thus the tolerance of such speech—legally, politically, culturally—permits and reinforces dominance and subordination rather than freedom and flourishing. Dunn’s discussion ultimately focuses on the “necessity of developing particular civic virtues,”

chiefly those of charity and solidarity, that “engender not only tolerance but also trust between groups” and actually “support free speech in a pluralist democratic society.”

Continuing the critical examination of how hate sometimes manifests and plays out in the putative exercise of civil liberties, Christopher B. Strain, Professor of History and American Studies at the Harriet L. Wilkes Honors College, Florida Atlantic University, tackles one of the most contentious issues in American political life. In his innovative article called “Evil Black Guns: Hate, Instrumentality, and the Neutrality of Firearms,” Strain considers “a provocative counter-thesis—that firearms may serve not only as mechanisms of violence in shooting rampages but also as catalysts.” The old mantra that “guns don’t kill people; people kill people” may be too simplistic, if it turns out that guns themselves contribute to such outcomes and are, somehow, something more than mere instrumentalities. Might guns themselves be non-neutral actors, Strain asks? Might they, in fact, bear some dimension of responsibility as contributing—in terms of agency—not only to gun deaths but also to other moral evils such as school shootings, hate-fueled violent rhetoric, and organized hate activity? Strain’s critical analysis, which draws influence from the Philosophy of Technology and Critical Science Studies—especially Don Ihde, Donna Haraway, and Bruno Latour—is meant to be a “first word” in opening up new areas of inquiry and theorization in this highly-polarized, hotly-contested debate. Some readers may find themselves equipped with all new tools and questions useful toward reconsidering the gun control conversation. Other readers may find themselves unconvinced by Strain’s argument but nonetheless urged to see new dimensions of a very complicated set of issues. All of Strain’s readers are likely to find his thesis provocative and challenging.

The next two articles focus on another of America’s most persistent problems: how immigration regulation and law enforcement bear on the status and treatment of unauthorized immigrants, specifically those from Mexico and Central America.

Gregory Cunningham, former Director of Immigration and Refugee Services at Catholic Charities of Spokane, uses narrative-and-analysis to explore how misaligned Federal immigration law policies, programs, and priorities are harming immigrant workers and their families and introducing conditions of instability and insecurity into entire businesses and industries, small towns and regions, and indeed the entire nation. Cunningham’s piece, entitled “The Real Consequences of I-9 Audits Considered through a Case Study of Brewster, Washington” is in some ways reminiscent of the style of social worker Jane Addams’s classic essay “A Modern Lear,” about the Pullman strike of 1894, as each attends to the historic context of socio-

political issues, puts human faces and voices to macro-level dynamics, and enlarges moral imagination and compassion by drawing out ethical lessons from what might have been otherwise avoidable conflicts.

Whereas Cunningham's essay reveals the local implications of national-level policy actions and debates, William Arrocha turns to transnational consideration of these same actions and debates. Drawing explicitly upon Peace and Conflict Studies founder Johan Galtung's theorizations of structural and cultural violence, and implicitly on Galtung's claim that the U.S. operates both as a republic and an empire, Arrocha critically examines how U.S. immigration law and policies systematically marginalize, dehumanize, and criminalize unauthorized Latina/o migrants and other non-citizens. Arrocha, who is an Assistant Professor of International Policy Studies at the Middlebury Institute for International Studies at Monterey, shows how the rights reflected in the U.S. Constitution are not extended to all those within U.S. territorial jurisdiction, let alone those outside of it, thus leaving unauthorized Latina/o migrants in predictably, perhaps in some ways intentionally, vulnerable positions as they are caught in push/pull factors and "spatial segregation produced by a juridical and political economy of social inequality." However, Arrocha's purpose is not merely to criticize the human rights violations and other abuses which these migrants and others regularly face. Indeed, Arrocha envisions possibilities and strategies for advancing human dignity and restoring justice through the concept of "compassionate migration." In this essay, called "Reclaiming Justice and Eliminating Inequality through Compassionate Migration: The Relentless Struggle of Migrants Living in the Shadows," Arrocha engages this emerging concept and identifies certain sources and standards for it, including international human rights law norms, civil society organization advocacy and practices, religious leadership and interfaith coalitions, the provisions of the proposed DREAM Act, and more expansive interpretation of U.S. constitutional law.

As each of our authors so far has demonstrated, dehumanization of the so-called "outsider within" is a global problem that is variously manifested in national and regional contexts. Furthermore, although it is shaped by warfare, colonization, migration/diaspora, and other transnational factors and relationships, dehumanization is always ultimately experienced at the personal and interpersonal levels. Our next article, "Filipino Amerasians: Gauging Stigmatization, Intolerance and Hatemongering in a Pluralistic Asia Pacific Society," turns to the public health conditions and concerns produced, in part, by U.S. foreign policy decisions and (in)actions involving the Philippines—specifically, the existence, status, and treatment of Filipino Amerasians, born of U.S. servicemen fathers, who have been neither accepted socioculturally in their homeland nor legally (in terms responsibil-

ity) by their biological fathers or the U.S. government. Data gathered through field interviews and mental and physical health assessments conducted by researchers Peter C. Kutschera and Marie A. Caputi, affiliates of the Philippine Amerasian Research Center, indicate high levels of “stigmatization, bias, name-calling, intolerance, and even hatemongering experienced by military Filipino Amerasians and other biracial Pan Amerasian progeny abandoned abroad by their U.S. servicemen fathers.” The researchers conclude that even within the pluralist, multiracial society of the Philippines, Filipino Amerasians remain highly susceptible to victimization and traumatization through “verbal harassment, hate, and occasional violence by mainstream Filipino natives or foreigners,” due often to personal morphological and cultural behavioral variances, as well as “the unproven, stereotypical view that the vast majority of Amerasians’ mothers were sex workers” (and the children were thus rejected by their biological fathers on that basis). Kutschera and Caputi note that this population has been relatively neglected from a research perspective, due in part to faulty beliefs that Filipino Amerasians experienced less severe discrimination than other Amerasian populations and also to the particular geopolitical dynamics of the ongoing U.S.-Philippines relationship. In the end, the researchers recommend that the U.S. government take greater responsibility toward this population and also conduct more searching review of U.S. foreign policy—including in the areas of immigration, military administration, and global health.

Our next article likewise focuses on stigmatization but returns to the U.S. domestic context and draws our attention to the juvenile court system and the psychopathology of LGBTQ child abuse/neglect victims. In “The Price of Sunshine: Open Dependency Courts and Their Risks to LGBTQ Child Abuse/Neglect Victims,” William W. Patton argues that in the case of such children, presumptively open child dependency proceedings—in which child protection hearings are open to the press and the public—run counter to the state’s general responsibility to “secure a safe and permanent place for abused and/or neglected children that will be in the child’s best interests” and to the specific responsibility to protect LGBTQ youth in the dependency system. This is because the open dependency environment is likely to produce compounding harmful psychological effects to children who, as LGBTQ, are already “particularly psychologically vulnerable to bullying and social opprobrium.” Patton, who is a Professor and the J. Alan Cook and Mary Schalling Cook Children’s Law Scholar at Whittier Law School and a Lecturer in Psychiatry at the UCLA David Geffen School of Medicine, “surveys the vast child and adolescent psychiatric evidence regarding the significant risks that LGBTQ youth suffer from the fear of disclosure and/or the actual publicity of their sexual orientation once child

dependency proceedings are presumptively opened to the media and the public in general.” He concludes that the “risk of disclosure of identifying facts about LGBTQ child abuse victims in presumptively open child dependency proceedings, and the consequent dangers of psychological damage to these (already-vulnerable) children” substantially outweigh the “speculative increase in system accountability from opening the courts,” and so urges policymakers to consider these realities when they seek to “determine the ambit of press and public access to those proceedings.”

Sarah Steele, who writes on global health issues from a critical humanities perspective, echoes Patton’s insight that through bringing on increased public attention and media exposure, well-intentioned but insufficiently-aware actors can produce stigmatizing, undermining, and otherwise harmful effects to those individuals and populations whom they seek to assist, advocate for, or even protect. Writing here with her colleagues Tyler Shores and Yvette Pollastrini to produce “War Crimes, Wristbands, and Web 2.0, Exploring Online Justice Advocacy, Colonialism and ‘Civilizing Missions’ through *Kony2012*,” Steele’s article critically re-reads the work of advocacy organization Invisible Children, which in March 2012 released the viral video called *Kony2012*, about the exploitation of child soldiers in Uganda by Lord’s Resistance Army leader Joseph Kony. The film has produced almost 100 million views on *YouTube.com* to date, thus indicating the tremendous communicative power that digital technologies wield, perhaps even toward preventing violence and promoting social change. Yet *Kony2012* has come under criticism by Steele et al., and many other commentators, for reproducing the “material and discursive legacies of colonialism,” specifically by “unintentionally reproducing and rapidly disseminating stereotypes, bias, and racism,” thereby having limited effectiveness and also adverse consequences when trying to address hate and exploitation. Steele and her colleagues contend that *Kony2012* and its director/producer Jason Russell have “subtly marginalized the experiences and cultural perspectives” of Ugandans and instead “privileged a Western-centric interventionism” of a particularly militaristic character. Steele is a Lecturer in Social Determinants of Health at the Centre for Primary Care and Public Health, Blizard Institute, Barts and also at the London School of Medicine and Dentistry, Queen Mary University of London.

The final article in Volume 11 comes to us from Fr. Michael Maher, an Associate Professor of History, the Director of Catholic Studies at Gonzaga University, and a member of the Jesuit Historical Institute (as appointed by Fr. Kolvenbach, then the superior general of the Jesuits). In his article “*The Society of Jesus and the Eradication of Hate*,” Fr. Maher contributes to our understanding of the Society’s historic role in ending vendettas, stopping or preventing retaliations, restoring honor, making peace, and promoting rec-

conciliation. Like others in this volume, Fr. Maher draws influence from Erving Goffman's work. Yet Fr. Maher looks not at stigmatization but instead at Goffman's development of the sociological concept of face as "the visual representation of the dignity or prestige one has achieved through personal merits or familial rank and the honor that society places on such a rank or merit." Fr. Maher traces the importance of "face" in early modern Mediterranean society—including the complex relationship between saving or losing face and such interpersonal and social manifestations of hatred as animosity and enmity. Through his careful examination of primary Jesuit texts and archival sources, Fr. Maher finds evidence to support the conclusion that the eradication of hatred "may be identified as an extension of the Jesuit's fundamental identity." This conclusion is important not only to providing a better understanding of the normative roots and historic role of the Society of Jesus, but also perhaps to guiding student formation through Jesuit education in a world that is plagued by hatred yet hungry for peace.

Due to the excellent work of Gonzaga University Law Professor Mary Pat Treuthart and Arkansas State University Professor of American Studies Rebecca Barrett-Fox, the *JHS* film and book review editors, respectively, this volume also includes reviews of two outstanding recent contributions, one by an award-winning documentary filmmaker and one by a noted expert in the field of peacebuilding.

Jessica Maucione, an Assistant Professor of English at Gonzaga University, provides a review of S. Leo Chiang's *Mr. Cao Goes to Washington* (Walking Iris Media, 2012). Chiang, who is a Taiwanese-born American film director, cinematographer, Lecturer in Social Documentation (the University of California, Santa Cruz), and fellow of the Sundance Institute Documentary Film Program, presented *Mr. Cao* during the Third International Conference on Hate Studies, and Chiang's remarks during a post-screening panel discussion advanced the conference theme. The film follows the rollercoaster ride of Anh "Joseph" Cao, a young, groundbreaking Asian-American politician who left the Society of Jesus to pursue his "calling" as public servant. Cao, who is a Republican and first-generation Vietnamese immigrant, won election in Louisiana's second Congressional district as the first Vietnamese-American member of Congress. Hailed as a progressive, bipartisan figure and for his high character and commitment to serving his predominantly African-American constituency in post-Katrina New Orleans, Cao developed a first-term voting record as the most liberal Republican in the House of Representatives and received President Barack Obama's personal thanks for his "friendship." However, Cao found himself on the political sidelines after just one term of office—due perhaps to his moral convictions. He alienated the Obama Administration when he with-

drew his initial support for the Affordable Care Act, citing the Act's insufficient language to prevent funding allocations for abortion. Cao's quick rise-and-fall provides an important lens on the subtle complexities of race, region, and religion in contemporary American political life.

The volume concludes with a review of Joseph G. Bock's *The Technology of Nonviolence: Social Media and Violence Prevention* (MIT Press, 2012), which is penned by Tyler Branson, a Ph.D. Candidate in Rhetoric and Composition at Texas Christian University. Bock, who holds a Ph.D. in International Relations from American University, has more than a dozen years of international humanitarian experience that includes overseeing global health projects and other programs in Bosnia, Croatia, Guinea, Iraq, Kosovo, Liberia, Macedonia, Montenegro, Pakistan, Rwanda, Serbia, Sierra Leone, Thailand, and Uganda. Bock has served as a consultant to the World Bank and the Asia Foundation, and was a fellow of the W.K. Kellogg Foundation. He has addressed gatherings at a UN Assembly in Cairo, the Woodrow Wilson Center, Oxford University, and elsewhere around the world. Drawing upon his richly diverse field experience and networks, Bock documents and describes various information technology tools and strategies for tracking, curbing, or even preventing violence—including incitement, hate speech, ethnoreligious conflict, gang violence, and mass atrocities—as these tools and strategies have been implemented in the Middle East, Kenya, East Africa, Chicago, Sri Lanka, and Ahmedabad, India. Ultimately, Bock makes a persuasive, evidence-based case for the success and potential of using social media to prevent violence and promote nonviolent social change.

Finally, I wish to give special thanks to the outstanding editorial team of graduate assistants, all of whom were advanced Gonzaga Law School students during the production of Volumes 11 and 12: Kevin Downs, Cullen Gatten, Michelle Herro, Anna Maria Kecskés, Grace King, Aussie Santos, and Gurjotvir Sra. Without their exceptional diligence, it would not have been possible to produce these two volumes. Thank you!

This is a very exciting time in the development of Hate Studies as an international interdisciplinary field. I thank you for supporting our *Journal*.

John Shuford, J.D., Ph.D.

Editor-in-Chief, *The Journal of Hate Studies*, Volumes 11 and 12
Director, Gonzaga University Institute for Hate Studies (2010-15)

Is Peacemaking Unpatriotic?: The Function of Homophobia in the Discursive World

Mari J. Matsuda¹
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I. SPEECH AS AGGRESSION

Ours is the only species that will kill for an idea. I wrote that sentence before knowing that American diplomats would die, in Libya on September 11, 2012, at the hand of someone who thought killing was required to defend their idea against ours.² So, first, I pause to honor our ambassador and representatives who lost their lives on a mission of peace and diplomacy. How very blessed we are that some will take this risk on our behalf.

In American jurisprudence it is sometimes said that there is no such thing as a false idea,³ but ideological neutrality is a luxury we do not have in an armed world. The person who would kill me because I am an American is motivated by a false belief. The notion that I cannot speak of their motivations in a language of peace is also a false belief.

Some of the thinkers I admire most, from John Dewey⁴ to Renato Rosaldo,⁵ would hesitate at the toxic certainty⁶ in that voice. So, I will retreat and say simply this—we must find a better ideology, a place closer to truth, without falling into the killing space of “one way, my way, not yours.”

“No such thing as a false idea” is an easy position. The harder position is one that Alexander Meiklejohn sought—an ordering of ideas, putting greater value on the ones needed for the democratic conversation, the ones that get us closer to truth.⁷ Insulting someone’s religion with the intent of inflaming hatred is not high value speech.⁸ It neither seeks truth nor invites counterargument. It aims past argument in the same way a fist to the face does. It is far from the core of the democratic conversation that we seek to protect through our First Amendment.

I have argued for limits on assaultive speech because of my concern for the basic rights of targets: the right to live, to go to school, to raise a family, to move about freely, to participate in self-governance, to speak, to thrive.⁹ The core of human rights, the core of personhood and substantive Due Process, is absent in a reign of terror under which certain groups are targeted for hatred and annihilation. Simply put, genocide is the opposite of what is protected by the Constitution and the Bill of Rights. Therefore, I have argued, the ideological underpinnings of genocide—the hate propa-

ganda that necessarily precedes it—are properly restrained under our legal system. Less dramatically, equality is foundational in a democratic system that relies on participation by all. Hate propaganda that diminishes the ability of some to participate equally in this project carries constitutional cost deserving of weight against costs to speech neutrality. This argument puts me in a decided minority under American jurisprudence, though not under international law. The justifications for American First Amendment exceptionalism are non-trivial, and I have tried to give them serious response elsewhere, primarily in my book with Charles Lawrence, Richard Delgado, and Kimberlé Crenshaw.¹⁰

This essay takes a different turn by exploring rhetorical bullying in the form of what we can and cannot say, and the origins of rhetorical bullying in the structures of subordination. If speech is as valuable as the First Amendment posits, then the conditions under which speech lives and dies are worth considering. I began writing about hate speech as a lawyer because of the effects of hate speech on the Civil Rights Movement. When people spoke up for freedom, they were predictably attacked by hate groups that used words and violence in a seamless package. “Outlaw the Klan” was a movement demand, and I wanted to figure out why this demand was so reflexively deemed unconstitutional.

I learned through talking about hate speech that the discussion of speech itself takes place in a discursive world in which certain things are considered unutterable. The discipline mechanisms that enforced this convention were decidedly male. “*You can’t say that and call yourself a lawyer,*” “*I am appalled that you are allowed to teach,*” “*You are a fascist,*” I was told in territorial, disdainful, bullying, vein-popping-out-of-the-neck tones that harked back to the primitive world of the schoolyard, or the unmediated, culturally male space of certain deposition rooms that I witnessed as a young lawyer. At one debate, a discussant grandiosely refused to shake my extended hand.

These responses are completely counter to the tone I attempt to project. I was taught, and I believe, that good scholarship considers counter-arguments and acknowledges weaknesses. I am not convinced that, in my First Amendment analysis, I have the lines drawn exactly where they should be, and have said this explicitly.¹¹ Errors in speech doctrine are costly, so movement to restrict speech should err on the side of speech protection.¹² At the same time, we are sitting on a powder keg that could blow. There are error costs on both sides, thus the need to engage deeply, as I have with respected colleagues in the civil liberties community.¹³

Self-doubt is not the custom in public debate. In adversarial speech performance, the voice of certainty carries weight. Probing, intersubjective, self-reflective conversation is odd. Yet if speech is a cornerstone of democ-

racy, if developing better ways to live on this planet without destroying it is a prerequisite to our survival, we need to bring all the necessary ideas to the table. The First Amendment can save your life; the wrong idea can kill you. This is why I am concerned about the mechanisms by which speech is suppressed in daily life, and am searching to understand the ways in which Hate Studies tells us something about conversation ending.

II. THINGS WE CANNOT SAY

Listen for peace talk, and you will find its absence in public conversation. By peace talk, I refer to a rhetoric that in substance extols and promotes peace, and in style seeks peace as a process of mutual discovery, infused with spirituality, love of humankind, and wonder, as well as standard claims of fact and proof. Peace talk leaves room for self-doubt and self-criticism. It resists binaries of us-and-them, seeks common humanity, suggests ways in which we are all complicit with violence, and proclaims our mutual responsibility to end violence. It is a kind of talk largely absent when politicians hold press conferences, when professors teach in large lecture halls, when learned experts expound on news shows or public radio. Peace talk is marginalized: “peaceniks” is a dismissive term, accompanied by stereotypes of muddle-headed, aging hippies. Academics who break the rules and openly engage in peace talk are called biased, as though violence and its absence are equally plausible choices, each deserving equal consideration in a discussion of the good life. Choosing peace is not “objective,” and since good scholarship is objective, peace advocates are not good scholars. Choosing peace ignores hard realities, is dreamy, soft, or worse, is itself an act of war: If you are arguing for peace, you must want our enemies to win.

My claim that peace talk is subject to discipline is one that comes from personal experience, from all the pejoratives—from naïve to dangerous and worse—predictably received when ideas of peacemaking are raised. As Catharine MacKinnon once said to men who were skeptical of women’s reported experience of patriarchy, “Try speaking up for women on a regular basis and see how you are treated.” Similarly, try speaking up for peace on a regular basis and see how you are dismissed.

Here are five things that one cannot say in public conversation without encountering predictable forms of rhetorical discipline and shunning:

1. People who seek refuge in Islamic extremism are our fellow human beings. Before we dismiss them all, we should ask what conditions pushed them to a place from which they see harming Americans as just.

2. We, who live in the metropol of three meals a day, exhaust-spewing belt-ways, mysterious financial instruments that can take down a country without the consent of its people, with overflowing closets stuffed with goods we don't need created in overseas factories where workers die in sweatshop fires, benefit from a system that causes others to resent us.

3. We should create an international army for peace, calling on all world citizens to reach out to others whose religion, culture, or beliefs are different from their own, and denouncing arms traffickers as the enemies of freedom. Or, as one self-described Green Zionist asked me at a multi-racial break fast¹⁴: "Why is there no Peace Department?"

4. We should teach peace in our schools, along with the languages, cultures, histories, and religions of the wide world so that we encounter our neighbors with less ignorance.

5. I am deeply sorry that someone from my country chose to say cruel, false, horrible things about your faith. I am ashamed that this came from my country and reached yours. I regret that it insulted you.

There are several reasons why we do not say or hear these things in the public sphere. First, they might strike you as polemical and therefore not useful, or counterfactual, or misleading. But what if you agree with at least some of the content? Why can't one say these things in public discourse, in a Presidential debate, in a classroom, at an academic conference, in the marketplace of ideas, without drawing ridicule and opprobrium?

Peace talk comes up against the hard fist of discipline. If you say these things, someone will proclaim that you grovel to our enemies, justify their transgression against us, and walk on the graves of good Americans who gave their lives for freedom. You are a naïve simpleton who does not understand how dangerous the world is; *you* are dangerous.

I recently taught a class on religious traditions and peace, covering readings from the Buddhist, Hindu, Islamic, Old and New Testament, and Daoist traditions, among others. The conversation was wide-ranging and personal. I wept while reading "blessed are the mourners, for they shall be comforted," as I told my students about a family I knew with three children who had just lost their father. A student who does not believe in God told of crying at the sight of a rainbow, which, as a physicist, he understood as a scientific phenomenon of light and molecules. Prompted by the rainbow story, a student with a military background said he "lost it" when, in high school, he first learned about black holes. We talked about the spiritual, the things beyond reason, in a law school classroom, as part of a reading designed to consider the role of religion in both promoting peace and generating sectarian violence. The discussion was personal, wide-ranging, emotional, open-ended, with no voice of authority or right answer. We tried to see something about the human condition and the path to peace. Every

person in the class spoke and when we left, we were not sure what we had learned.

“This conversation,” I said, “would seem strange to people outside this class,” and students could make a list of the pejoratives others would use. From “that’s not law,” to “new age BS.” Our law school discussions rest on an assumption of secular modernity, yet, as one student who had been to seminary pointed out, billions of people see some version of seeking transcendence as central to their life. That is not going to change. Another student said, “It Is.”

In the world as “It Is,” people take their spirituality seriously. They yearn for meaning. They want to join something bigger than themselves. Why not, then, offer them a worldwide peace movement? Margaret Mead argued on strong anthropological evidence that war is a human invention, not universal across either geography or time.¹⁵ We could, she said, come up with a better invention. To talk about it, however, is regarded as naïve dreaming, neither rigorous nor lawyerly. As though letting the world drift, awash in weaponry, through endless war, is somehow the smarter, more realistic, more adult response. Rejecting agency over history becomes hard; calling for a plan to ameliorate hate and protect our planet is soft. An inversion, as Critical Race Theory tells me, is a power move. *Question it.*

When a horrible incident of terrorism, prompted by sectarian hatred, falls upon us, it is too late for ordinary people to ask the questions we should have asked years before: *Who hates us, and why? What conditions created that hate? Who are our allies in ending that hate?* I honor our entire diplomatic core whose job it is to ask those questions always. Unfortunately, they explore those questions behind closed doors. Parts of that work are necessarily classified, but I suspect much of it is not discussed publically because critics will seize upon efforts to explain the causes of resentment as “un-American.”

Actual stories—of a parent mourning a child killed by one of our military accidents, or of a teenager working in a sweatshop run by one of our corporations—are not told in a way that humanizes the vast “over there.” And so, we are shocked when things erupt and the news blasts crazed faces “over there,” marching in the streets and shouting anti-American slogans. By then, any efforts to explain, understand, or complexify our world are misheard as justification: *Are you with them, or are you with us?*

I began teaching Peace Studies for law students about a decade ago at the Georgetown Law Center, in the wake of September 11, 2001. A tiny group of frightened students asked me to lead a discussion on peace. *We are under pressure to put American flags up in our dorm windows,* they said. *Any suggestion that compulsory nationalism is not our preferred*

response is not allowed. So far, we haven't found any professor willing to lead a peace discussion for us.

As time passes, I will have to explain to current students what “not allowed” meant in that period. Those students were evacuated from their school. They had to stand in line to call home on banks of phones the law school had set up when communication throughout the city shut down. I had shared with them a day of sick fear in which rumors overran Washington and all the things we counted on, from accurate news to public transportation, were suddenly gone. In the midst of fear and chaos and funerals, it is hard to say, “I want to talk about peacemaking.”

As a teacher, I felt called to open a space where teachers and students could talk about it. I helped organize discussion groups for law professors, published peace essays in hastily organized symposia,¹⁶ and prepared a course proposal and syllabus. Through those experiences, this is what I learned: In times of crisis, the voice of war is certain; the voice for peace is not. While we have the stunning counterexample of Patsy Mink and members of the Congressional Black Caucus speaking forcefully against war in the Capitol, their voices were hardly heard. They were drowned out by the fighter jets and bombers that launched immediately, to cries of “Thank God” coming from a stunned citizenry. The war machine went into action on swift wings of certitude, while on the ground the peace discussions were agonized and small.

“I can't say where I stand if I don't understand the complete situation. I don't even read Arabic,” one professor said.

“George Bush doesn't read Arabic,” I said, “We are law professors. We train our students to ask good questions. What are five good questions we should ask before an invasion?”

“I believe an invasion is wrong and will make things worse, but what if I'm wrong? What if we go into Iraq and we really are able to make things better for the people there,” a thoughtful participant in the group, DC Asians for Peace and Justice, offered quietly.

“The White House offers no evidence that good outcomes will happen. We question whether we are wrong, but the war-makers never question. That is why we have to speak for peace,” I said.

“I just have to believe they know something I don't know that justifies what they are doing,” a neighbor said.

“But we were lied to so many times before. Why should we trust them now?” I asked.

Meanwhile, unbeknownst to me, a future student of mine was deferring law school and volunteering for service in the U.S. Army. His country was attacked and he felt duty-bound to defend it; I so admire this student.

Years later, as a returning combat veteran, he ended up in my peacemaking class. I welcomed him and asked why he chose the class. “I thought I knew everything I needed to know, and now I don’t know what I know, and I’m just here to try to figure it out,” he said with a quiet humility that stilled the room.

Why is it so hard to say “I don’t know; I am figuring it out?” Does it take a Purple Heart to earn that right? I know I often mention my father’s Purple Heart when advocating peace, as though his sacrifice somehow gives me permission to challenge the certainty of warrior culture.

Watch the deployment of agnosticism versus certainty in the following argument forms:

1. The First Amendment absolutist refuses to rank order ideas. There are no false ideas.
2. The America First rhetorician admits no space for self-criticism. America, right or wrong.

As a Critical Race Theorist and peace activist, I have encountered both of these forms repeatedly, and see a commonality in the refusal, within these rhetorical moves, to do the hard work of evaluating complex historical circumstances and multiple causation. In the first rhetorical move, we have no means for evaluating truth claims and will only invite tyranny if we try to unpack the relative value and harm of assaultive speech. In the second one, we are the good guys; our choices are therefore unassailable. When we make choices that put us further at risk for global instability—choices that allow growing wealth inequality, for example—our choices are off the discussion list in unpacking the threat. In a reconfiguration of cause, critique of our choices becomes the problem.

In Critical Race Theory, we challenge both positions, wrenching open a space to speak tentatively about the conditions of our lives in a challenge to dominant stances on the knowable and the known. The method is consciousness-raising; the end is saving our own lives. The core of the First Amendment that welcomes all ideas, that rejects premature certainty, is critical: all ideas should have their hearing. This does not mean all ideas are equally valid; we should take stands on truth and value, and do the hard work that is required to have confidence in our positions. Hard work means that all ideas should have their hearing, particularly those we tend to shut down because of a need to deny our complicity with injustice.

The retrieval of voice was an early and persistent theme in feminist theory¹⁷ and Critical Race Theory,¹⁸ and it applies as well to the voice of peacemaking. The humility of the peace voice is largely absent from the

current political landscape. This is the sound of silence I was taught to listen for in anti-subordination theory—the silence that locates injustice.

Peace conversations subject ideas to scrutiny, revealing hard choices and opening new spaces:

Pay more for gas, talk to your enemy; what might those suggestions do for you? No, I'm not sure I am right. You might be right. I respect you. I listen to you because the world is wide and no one knows everything we need to know about it, because over a thousand cups of tea,¹⁹ we may find that all that makes us enemies is smaller than our need to survive, together, on this planet, this mere raft we float on as we journey to what may or may not be the ultimate destination.

If you speak this language in law school, you are called “not serious.”

III. PROFESSORS WILDMAN AND GRILLO POSE A QUESTION

Worldwide anger over an insulting anti-Muslim film erupts, an American ambassador is killed, the uprisings of the Arab Spring continue.²⁰ Demands for answers and calls for action predictably follow. These demands eclipse complex backstories, deep historical contexts, and significant missing facts, as calls for immediate answers and moral absolutes predominate.

Before we even mourned the deaths, a rhetorical dance began. Had our *State Department wrongly apologized for Islamophobic propaganda? When? Did the President speak too softly? Who failed to defend Americans? Who will pay?*²¹

What creates this conversation form, in which everything is black and white, softness is a curse, and complexity or tentative conclusions are not allowed? My answer might surprise you, but it is of direct concern to Hate Studies: *It is called homophobia.*

Professor Stephanie Wildman²² emailed recently to say, “I seem to remember Trina saying you think homophobia is the central form of subordination. Did you really say that? Can I cite it?” I emailed back, “I’ve said something like that,” and sent a few cites. “No, that’s not it,” she replied.²³ Finally I picked up the phone and we talked it through in the “what if this is true? I think maybe it is, but also consider. . .” conversation form that feminists and Critical Race Theorists have always used to see clearly through smoke and mirrors. In just such a discussion, that an insistent justice seeker like the late Trina Grillo²⁴ would push, I must have backed into a tentative claim, no doubt influenced by the work of Suzanne Pharr,²⁵ about the primacy of homophobia in shaping structures of subordination. In honor of the “noodginess” for justice that is the Grillo-Wildman team,²⁶

here I elaborate on that claim, knowing – as we always have – that the right answer is a work in progress.

Dear Wildman and Grillo,

You are right to push this question. In all our study of subordination we are careful to avoid false equivalencies, false hierarchies. Opposing hierarchy would be a central tenet in what brought us together in the first place, except that there is no central tenet in anti-hierarchical analysis. It is useful, however, to posit the existence of a primary fulcrum for injustice in our culture; I believe the closet, and its mechanisms of enforcement, is it.

What is the form of discipline that keeps us silent? The field of Hate Studies identifies structural, rhetorical, symbolic, neurological, and emotional elements to the kind of hate that turns to violence. What does it take to overcome the natural inhibition against hurting another human being? The papers discussed at the special symposium²⁷ to mark the tenth anniversary of the *Journal of Hate Studies* speak of semiotics, of disgust, of in-group solidarity, fear, and survival impulses. As I read all of this, I thought of the role of homophobia, the semiotic motherlode, the paradigm binary, the place we learn about hate, disgust, fear, inside, outside, retribution. I say this as a Critical Race Theorist who has worked all my life against racism, as a feminist woman who is conscious of the target on my back put there by patriarchy; as a union supporter who walks picket lines for workers' rights. Next to all of that, why does the closet still seem so big?

As Critical Race Theorists, we have looked long and deep at racism, its history, its permutations, functions, and ideology. When I put racism next to the closet, I see relationships: emotive and psychodynamic aspects of hate and disgust, the need for clarity of boundaries and binaries as enforced with law and violence, the valorizing of bullying behavior and stigmatizing of kindness and empathy, the driver of fear, of outcast status, the need for a group up against the liberal ideal of the individual. And at the end, I see the vulnerable body and the material consequences of stigmatized status.

In the world I grew up in, no one was out and gay—no professional athlete, no rock star, no politician, no one on television, no classmate, no teacher, no friend or workmate of my parents, no one in my neighborhood, no relative, no political comrade in the many struggles for peace, labor, and civil rights in which my family marched. Everywhere I went, the closet was there and invisible except to the people who were locked in it. Enforced conformity on this level existed for no other form of subordination in my lifetime.

As soon as I learned that there was a social system to negotiate outside of my family, I also learned that boys who were not strong were sissies, and that this dangerous charge could bring a small fist to a sickening blow that bloodied a small nose. Children saw this, and they learned. Somewhere along the way, in whispered secrets, a child was told that gay people existed, was told this with the kind of “not us” signaling that scholars of Hate Studies describe in their work as the means of transmitting hate of the worst kind: the hate that kills.

The need for clear boundaries and sharp binaries to separate normal from transgressive was nowhere more evident than in these whispers and the schoolyard bullying of the weak. Weakness was hated, and jumped on. Your own parents told you to stand up to the bully, because backing down made you a permanent target.

Alice Miller says that at home children learn not to empathize with themselves and therefore learn not to empathize with others.²⁸ I think she is right, but I also saw in my childhood that showing empathy was risky, and that many good-hearted, guilty children stood by and watched as the sissy was targeted, maybe even cheering on against their true heart’s contrition, lest they become the next target.

Growing up next to the closet, boys could not show kindness. The rare ones who could amassed social capital to resist in some way. The captain of the football team, or the funniest and most loyal charmer you ever met, might get away with gestures of empathy toward the weak. “Leave him alone,” a 12-year-old said in a field near my house. This simple intervention became legendary, because it shut down an incident when an awkward child was about to get mobbed. The children and their parents repeated this story precisely because it was so remarkable. What gives one child the power to stand up to a mob and deflate its tumbling rush to cruelty? That 12-year-old was known to his classmates as brave, humble, consistently generous, and fair to all. He was popular in a calmly confident way and he was the last one on the schoolyard anyone would call a sissy. He could do it.²⁹

What of the children who are on the fringe of that crowd, the silent witnesses, or the marginally willing participants who choose again to go along with the mob? What citizenship are they preparing for in their schoolyard? Quiet watchers are often present when group hate manifests. We rarely teach them strategies of resistance.

Where does the lynch mob come from, the Jim Crow sign, the new school segregation? Where does rape come from, power-over as sex, taking and hurting because she is “just a girl?” Why do we see buying and selling of women as a victimless crime, sweatshops as inevitable, homelessness as chronic, children killed by our robot planes as collateral costs of justified

self-defense? How do we stop seeing pain to another body as pain to our own? Human empathy makes it quite hard to watch pain to another. Even my dog does not like to watch pain, so how do we learn to stop feeling?

If you grow up next to the closet, watching “unmanly” boys backed into corners, while the master rule of “don’t tell” governs the schoolyard, you know you are on your own in this world. Get yours, find a group, don’t signal weakness, and don’t ally with the weak.

Early in my work on both hate speech and Critical Race Theory, I thought what was missing in liberal legal analysis was a deep understanding of individual identity as inextricable from group identity. People need their groups, love their groups, form a sense of self in their groups. Group identity of the solidaristic, joyful type—a tribe dancing their style, a cook seasoning food the way “we do it here,”—seems useful, human, and not only harmless but generative of warm intersubjectivity. *Come have some of this. No one makes it as well as we do here.*

I do not think our human habit of affinity is itself the problem. No. *Mean* is the problem. *Fear* is the driver. *The closet* is the mechanism. Group identity combined with power imbalances, political hegemony, subordination, forced conformity and violence, is the *social* degraded into its opposite.

Many of us are distinctly vulnerable through our group identities, or rather how others engage those identities. Libel of one’s group is therefore a libel against the individual, and, given the right historical circumstances, a threat of real and imminent harm to the individual. Lies about your race or religion, lies that could cause others to kill you, are an intrusion on your personhood, even if no one used your individual name or address. We teach our daughters rape avoidance, and as a woman, I learned early on that I was targeted as a woman. I learned someone who did not know or care a thing about my individual identity could target me for harm because of my gender. My group identity and source of pride and joy—my life as a woman—made me an object of hate.

In my youth, I witnessed the complete triumph of the closet and all the brutality that went along with it. Then began the great migration out of the closet that is beginning to show us how, overnight, we can let go of an ancient fear and just see love where we should have seen it all along. The next generation will see gay people in every single place where they were once invisible: in school, at work, at church/synagogue/mosque/temple, on television, in professional sports, in politics, in the neighborhood, raising families, or not, as they choose. It is possible that the next generation will grow up without the discipline the closet generated.

Does it make sense to call someone a sissy if every place on the con-

tinuum of girl to boy is happily inhabited by someone you know, maybe even someone you love? If you cannot call someone a sissy when that person engages in acts of kindness or silly exuberance, where will mean go? What will happen to the political accusation of “soft”?

In addition to the closet, the great looming presence of my lifetime, now also deflated, was Cold War paranoia. “Soft” was leveled at peace-makers who were soft on the enemy, soft on communism, soft on crime. No President, including the man I admire who currently occupies the White House, is allowed to seem conciliatory to those nations who are seen as our enemy. No apology when they are offended, no nod to what we admire in their culture, no inviting them for tea under vine and fig tree, even though there is no other way.³⁰

Before he became President, this wise man said we have to talk to our enemies, we have to reduce nuclear arsenals, we cannot bomb our way to world peace; negotiation and diplomacy are not the same as surrender.³¹ When he became President, this language receded, lest political opponents pounce. Peace talk gives aid and comfort to the enemy, they were waiting to say, it makes us seem weak.

The closet is falling and the cold war is over. Maybe we can say it now: *We, the vast majority of human beings who seek neither war nor hate, who want only to wake up tomorrow morning, go to work, love our families, tend our garden, would like the minority of bellicose bullies to stop making human history a river of blood.*³² *Sabre-rattling is not brave. It doesn't cause the other side to cower in submission. It will make them hate us. They will forge sabers out of plowshares while their own children go hungry.*

IV. IT'S COLD OUTSIDE

A final way I see the closet as the major enforcer of subordination of all kinds is through the inscription of the public-private split. Out of the closet is public, where we conduct business, law, war, work, and politics. Inside the closet, in private, is where we love and make love, bond, and grieve. The gay judge, rock star, quarterback, general, senator, or boss wields conventional male power, and gets to do this under the old rules, so long as he does not tell us he desires men. Desire is trivial, not important. A deal of silence is cut and love is the loser.

All of us who lived during the reign of the closet, whether straight or gay, learned to leave the soft, messy parts of ourselves at home: *Come to work with a broken heart, and function like a trooper, because in the real world of work and politics, your subjectivity must not disrupt. Hide that box of Kleenex in the bottom drawer.* This is where I have kept mine all

these years, there for the students who inevitably, every semester, come to my office carrying some unbearable pain—a parent in the hospital, a sibling addicted to drugs, or simply the heavy rock of their own lost zest for living—that they ordinarily mask. Pain is embarrassing, in this view. People apologize for it.

Is it no wonder that peace talk is outsider talk, that so few act like global warming is the emergency that it is? Peace talk breaks the rule that keeps feeling in check, love in the closet, vulnerability masked, and our own mortality an unspoken secret. We neither bleed nor mourn in the hard-edged public world the closet helped make. We put on our suits and go to work, leaving our hearts behind.

I do not see a way to take down the war machine or disable the genocide trigger if we do not talk about hate's antipode. Let go of the false hardness of so-called analytical thought that is ignorant of the actual conditions of human lives. The closet is over and anyone who calls you soft because you seek peace is lonely and afraid.

Ours is the only species that will kill for an idea. That grim observation has a promising corollary: Ours is the only species that can invent a new idea that will change our behavior. Neither slime mold nor the great apes get to do that.

In the days after September 11, 2001, the *Rafu Shimpo* newspaper sought out old Kamikaze pilots.³³ How odd that these content California retirees were once suicide bombers. The war ended, allowing them the chance to reflect on their past, war-making selves. "People in our homeland were being killed in carpet bombings. . . . It came so natural to us that we were going to sacrifice our lives to protect our beautiful country and my people," Haruki Okamoto said.³⁴ He was 15 years old, and had been told that occupying Americans would come to rape the women and castrate the men. He says he felt no fear of dying.³⁵ "It is impossible for the U.S. military to eradicate every single one of the enemy. I am very worried that hatred against us among survivors and their sympathizers would multiply, which would lead to the next retribution against us," he said of our military response to the September 11, 2001 terrorist attacks.³⁶

Another Kamikaze survivor recalled that if one teen-age trainee made an error, all members of the unit were beaten until they bled.³⁷ They were trained as a team, and every single one stepped up when volunteers were called for a suicide mission. The war's end saved him from the death he volunteered for, and he went on to serve in the U.S. Army in the Korean War.³⁸ As the bombing missions over Afghanistan began, this veteran of two wars asked simply "retribution will call for another act of retribution Why wasn't there any talk with them before this happened?"³⁹

They were young, taken from their families, chosen for a special team. They loved the team; they ate and sang and cried and trained to die together. They did not know any Americans, and they believed it when they were told the Americans would rape their sisters and mothers and grandmothers if they invaded. They had to stop them, and they were ready to die to do it.

The war ended, and the young pilots had the chance to consider a new idea. It happens! People change and grow and let go of the hate that they once consumed like food, breathed like air, knew with certainty.

CONCLUSION

From the halls of the Academy to the halls of Congress, toxic certainty ends conversations. I declare no certainty about the primary role of homophobia in generating other forms of oppression, but I do claim that homophobia plays a large role in the dominance of dominance: be hard, express no doubt, demolish the threat. I am also sure, by now, that priapic bully-talk will never save us from the jaws of the killing machine.

We may have little time before the seas rise to swallow us, before the next planned act of terror, or before random lawlessness of the enraged dispossessed hits a town where someone we love just happens to be. Instead of compulsory nationalism, premature certainty, homophobic bullying of peaceful dreamers, we can invent a new idea, or take seriously an old idea passed to us through holy hands of all human faiths: the mystery, the power, the dream, of our humble place in a larger and most beautiful cosmos.

NOTES

1. Professor, William S. Richardson School of Law, The University of Hawai'i at Mānoa. The author thanks Tiffany Dare, Daylin-Rose Gibson, and Sarah Miller for research assistance, and John Shuford, David Steib, Robert Tsai, Stephanie Wildman, and Marc Spindelman for comments.

2. On September 11, 2012, Islamic militants attacked the United States diplomatic mission in Benghazi, Libya, killing American ambassador, J. Christopher Stevens, and three other Americans. Early reports linked the attack to protests over a "14-minute, American-made video that depicted the Prophet Muhammad, Islam's founder, as a villainous, homosexual and child-molesting buffoon." David D. Kirkpatrick, *Libya Attack Brings Challenges for US*, N.Y. TIMES (Sept. 12, 2012), <http://www.nytimes.com/2012/09/13/world/middleeast/us-envoy-to-libya-is-reported-killed>

.html?pagewanted=E@80%A^&_r=0/. More recent reports claim that the attack was not an isolated incident, but a premeditated terrorist attack. See Mark Landler, *Benghazi Debate Focuses on Interpretation of Early E-mail on Attackers*, N.Y. TIMES (May 9, 2013), http://www.nytimes.com/2013/05/10/us/politics/benghazi-debate-focuses-on-interpretation-of-early-e-mail-on-attackers.html?pagewanted=all&_r=0.

3. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

4. See generally JOHN DEWEY, *THE QUEST FOR CERTAINTY* (1928).

5. See generally RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1993).

6. The phrase “toxic certainty” is borrowed from the New York choreographer, Bill T. Jones, whose dances reflect the opposite. Jones aimed to create a work of choreography that “endors[ed] the values of the Enlightenment,” and that would “cast a critical eye on what he described as a national atmosphere of ‘toxic certainty.’” The New York Times described Jones’s piece, “Blind Date,” as a “series of segments that question the expediency of war, reflect on limited opportunities for the urban poor and remark on the centrality of sexual moralism to the Republican agenda.” Ginia Bellafante, *Political Footwork from Bill T. Jones*, N.Y. TIMES (Sept. 21, 2005), <http://www.nytimes.com/2005/09/19/arts/19iht-billjones.html?pagewanted=all>.

7. It is dismaying that Meiklejohn is so frequently cited by scholars who seem not to have read his work. Meiklejohn is quoted regularly in articles criticizing my position on hate speech, to stand for the proposition that all speech of every kind should be protected, as though Meiklejohn believed that the speech commons is a trash heap unto which everyone may unload as much trash as they please. In fact, his theory is deeply humanistic and function-based: the first amendment has a function, the promotion of compassionate, informed citizens. See Alexander Meiklejohn, *The First Amendment is an Absolute*, 1961 SUP. CT. REV. 245, 255 (1961) (“Self-government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express.”); ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 26 (1948) (“It is that mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed. The principle of the freedom of speech springs from the necessities of the program of self-government.”).

8. “Low value speech” was differentiated from “high value speech” in *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (“There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any

Constitutional problem. These include . . . ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”).

9. *See generally*, MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993); Mari J. Matsuda, *I and Thou and We and the Way to Peace*, 6 ISSUES IN LEGAL SCHOLARSHIP 1 (2002); Mari J. Matsuda, *The Keynote Address: Progressive Civil Liberties*, 3 TEMP. POL. & CIV. RTS. L. REV. 9 (1994); Barry Brown, Jamie Cameron, David Goldberger & Mari Matsuda, *Language as Violence v. Freedom of Expression: Canadian and American Perspectives of Group Defamation*, 37 BUFF. L. REV. 337 (1989).

10. MATSUDA, WORDS THAT WOUND, *supra* note 9.

11. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, in WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 17 (1993).

12. *Id.*

13. Nadine Strossen, former President of the ACLU, for example, is a colleague whom I have shared the debating platform with on many occasions. *See, e.g.*, Mari J. Matsuda, *The Dialogue: Mari Matsuda’s Remarks*, in REMARKS AT THE ARLIN M. ADAMS CENTER FOR LAW AND SOCIETY AT SUSQUEHANNA UNIVERSITY (Mar. 13, 2003), *available at* <http://www.susqu.edu/documents/academics/hate.pdf> (“I admire the work of Professor Strossen and her ACLU colleagues, particularly at a historical moment when fear is driving an abandonment of fundamental constitutional ideas such as habeas corpus and due process. It is for me a season of longing for the absolutist’s allegiance to constitutional principle. No exceptions, ever, to the rights given in our foundational documents be it code orange, code red, or when bombs fall. As the Star Spangled Banner stood in the rocket’s red glare, may our Bill of Rights stand in the season of fear. I am thus glad for the company of absolutists at this time even as my commitment to democracy suggests a different cut on the question of hate speech and equality.”).

14. On the eve of delivery of the lecture from which this paper derives, the author attended the Lerner-Sneiderman annual breakfast in Shepherd Park, D.C., an event that brings together social justice workers of many ages, races, jobs, and religions in observance of a Jewish religious tradition. Among the many idealistic young people in attendance was a gentleman whose simple question I quote here.

15. Margaret Mead, *Warfare is Only an Invention—Not a Biological Necessity*, in APPROACHES TO PEACE: A READER IN PEACE 20 (David Barash, ed., 2010). I acknowledge Dr. Barash’s reader as a text that drew

me into the field of Peace Studies, and that led me to sources cited in notes 15 and 33.

16. See, e.g., Mari Matsuda, *Among the Mourners Who Mourn, Why Should I Among Them Be?*, 28 *SIGNS* 475 (2002); Mari Matsuda, *Asian Americans and the Peace Imperative*, 27/28 *AMERASIA* 141 (2001).

17. A classic feminist anthology introducing this theme is *FEMINIST THEORY* viii (Nannerl O. Keohane et. al. eds., 1982). “Whether distrustful or optimistic, the dialogue with the traditions in which feminist scholars were trained inevitably raises the question, How far can we use these theories, these languages? Are they irrecoverably centered in male experience, so that we must somehow begin from the beginning and devise our own languages, our own discourse? Yet what would it mean to do such a thing? [. . .] Instead, like Susan Griffin, we begin with an internal monologue that is a dialogue, sometimes a discordant choir, of voices from different parts of past experience and training, reworking them in painful and painstaking self-scrutiny to fashion them into the matter for a new voice, a woman’s voice.”

18. See *supra* note 9.

19. The late ambassador J. Christopher Stevens was an admired and respected diplomat, known for seeing the necessity of building relationships in the Middle East over many cups of tea. Steven Erlanger, *A U.S. Envoy Who Plunged Into Arab Life*, N.Y. *TIMES* (Sept.15, 2012), http://www.nytimes.com/2012/09/16/world/middleeast/us-ambassador-to-libya-knew-the-ways-of-the-arab-street.html?pagewanted=all&_r=0.

20. See *supra* text accompanying note 2.

21. Following the attacks on the diplomatic mission in Benghazi, Libya, then presidential candidate, Mitt Romney, released a statement saying, “It’s disgraceful that the Obama Administration’s first response was not to condemn attacks on our diplomatic missions, but to sympathize with those who waged the attacks.” Mr. Romney’s statement was in response to a statement released by the American Embassy in Cairo right before the attack in an attempt to cool tensions. The American Embassy condemned the American-made video and stated that the Embassy rejects “efforts by misguided individuals to hurt the religious feelings of Muslims.” Mr. Romney stated that the Obama Administration’s handling of the developments in the Mideast was “akin to an apology.” Peter Baker, *Obama Condemns Attack That Kills Ambassador to Libya*, N.Y. *TIMES* (Sept. 12, 2012), <http://thecaucus.blogs.nytimes.com/2012/09/12/obama-condemns-attack-that-kills-ambassador-to-libya/?gwh=E81F46349489035C913AA5A32D7101C9>. During a January 2013 Congressional Hearing, former U.S. Secretary of the State, Hillary Rodham Clinton, publicly defended her actions during the Libya attack. At one point she stated that

there was too much focus on the early characterizations of the Benghazi attacks and not enough focus on how to prevent this type of attack from occurring again. Michael R. Gordon, *Facing Congress, Clinton Defends Her Actions Before and After Libya Attack*, N.Y. TIMES (Jan. 23, 2013), http://www.nytimes.com/2013/01/24/us/testifying-on-benghazi-clinton-cites-new-security-steps.html?_r=0.

22. Stephanie Wildman, professor and director of Center for Social Justice and Public Service at Santa Clara Law, is a leading theoretician of privilege. See, e.g., STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCES UNDERMINES AMERICA* (1996).

23. Email exchanges between the author and Stephanie Wildman occurred in December 2012 (on file with the author).

24. The late Trina Grillo was a professor at University of San Francisco School of Law, known as a master teacher, committed social justice advocate, and a founding mother of Critical Race Theory. See *Trina Grillo 1948-1996*, SANTA CLARA UNIVERSITY SCHOOL OF LAW, available at <http://law.scu.edu/socialjustice/file/Trina%20Grillo%20Bio.pdf> (last visited June 4, 2013). She did not “back down from what she saw, either personally or politically.” Mari J. Matsuda, *Were You There? Witnessing Welfare Retreat*, 31 U.S.F. L. REV. 779, 779 (1997). She was able to “stop a conversation in its tracks by looking a friend in the eye and asking a pointed question.” *Id.* As an academic, Trina’s “work spanned areas from alternative dispute resolution to academic support, from teaching methods to the status of women in legal education.” Stephanie M. Wildman, *Dreaming in America: In Honor of Professor Trina Grillo*, 31 U.S.F. L. REV. 733, 734 (1997). She “held her hand out to students who didn’t come from wealthy families, who didn’t have parents who went to college, who didn’t speak English as their first language, who weren’t supposed to become lawyers. Her hand reaching out changed the course of their lives, as well as her own.” Mari J. Matsuda, *Were You There? Witnessing Welfare Retreat*, 31 U.S.F. L. REV. 779, 788 (1997).

25. See SUZANNE PHARR, *HOMOPHOBIA, WEAPON OF SEXISM* (1997).

26. For examples of the work of this team, see Stephanie Wildman & Trina Grillo, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, 1991 DUKE L.J. 397 (1991); Stephanie Wildman & Trina Grillo, *Sexism, Racism and the Analogy Problem in Feminist Thought*, in *RACISM IN THE LIVES OF WOMEN: TESTIMONY, THEORY AND GUIDES TO ANTIRACIST PRACTICE* (Jeanne Adleman & Gloria Enguidanos eds., 1995).

27. See Daniel Kato, *Constitutionalizing Anarchy: Liberalism, Lynching, and the Law*, 10 J. HATE STUD. 143 (2012); Robert Lanning, *Irrationalism: The Foundation of Hate Propaganda*, 10 J. HATE STUD. 49 (2012); Willa

Michener, *The Individual Psychology of Group Hate*, 10 J. HATE STUD. 15 (2012); Marla Stone, *Italian Fascism's Soviet Enemy and the Propaganda of Hate, 1941-1943*, 10 J. HATE STUD. 73 (2012).

28. See generally ALICE MILLER, *BANISHED KNOWLEDGE: FACING CHILDHOOD INJURIES* (1997).

29. See Robert Faris & Diane Felmless, *Status Struggles: Network Centrality and Gender Segregation in Same-and Cross-Gender Aggression*, 76 AM. SOC. REV. 48 (2011) (noting that kindness may be a luxury “enjoyed from a secure position at the pinnacle of the [social] hierarchy or by individuals who have no hope (or desire) to reach such heights.”).

30. These words were written during President Barack Obama’s first term, when, in this author’s view, the pressures upon the new President to exhibit traditionally male leadership censored his ability to use a language of peace. The second inaugural suggests an opening for a return to this language. Compare President Barack Obama, Inaugural Address (Jan. 20, 2009) (transcript available at <http://www.whitehouse.gov/blog/inaugural-address/>) (“We will not apologize for our way of life, nor will we waver in its defense. And for those who seek to advance their aims by inducing terror and slaughtering innocents, we say to you now that our spirit is stronger and cannot be broken — you cannot outlast us, and we will defeat you.”), and President Barack Obama, Inaugural Address (Jan. 21, 2013) (transcript available at <http://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama>) (“We will show the courage to try and resolve our differences with other nations peacefully — not because we are naïve about the dangers we face, but because engagement can more durably lift suspicion and fear.”).

31. Before Obama became President, he stated “Here’s what I’ll say as President: ‘America seeks a world in which there are no nuclear weapons . . . The best way to keep America safe is not to threaten terrorists with nuclear weapons it’s to keep nuclear weapons and nuclear materials away from terrorists.’” Christopher Wills, *Obama says new approach needed to rid world of nuclear weapons, touts early Iraq opposition*, L.A. TIMES, Oct. 3, 2007, available at <http://www.latimes.com/news/politics/la-ex-obama3oct03,0,3013555.story>. In the January 2008 Democratic Presidential debate, Barack Obama stated, “What I do believe is that we have to describe a new foreign policy that says, for example, I will meet not just with our friends, but with our enemies, because I remember what John F. Kennedy said, that we should never negotiate out of fear, but we should never fear to negotiate.” *Part 3 of CNN Democratic presidential debate*, CNN POLITICS (Jan. 21, 2008, 10:32 PM), <http://www.cnn.com/2008/POLITICS/01/21/debate.transcript3/index.html>. He stressed that “engaging in tough diplomacy is not a sign of weakness; it’s a sign of strength.” Lynn

Sweet, *Obama defends anti-surge stand in CBS' Katie Couric Obama interview in Amman. New biggest weakness; short on human genome info, The scoop from Washington*, CHI. SUN TIMES (July 22, 2008, 5:58 PM), <http://blogs.suntimes.com/sweet/2008/07/cbs-katie-couric.html>.

32. This Will Durant quote has haunted my students and me:

History books describe the history of the world as a river red with blood. Running fast, it is filled with the men and events that cause bloodshed: kings, and princes, diplomats and politicians. They cause revolutions and wars, violations of territory and rights. But the real history of the world takes place on the riverbanks where ordinary people dwell. They are loving one another, bearing children, and providing homes, all the while trying to remain untouched by the swiftly flowing river.

Quoted in KERMIT JOHNSON, *REALISM AND HOPE IN A NUCLEAR AGE* (1988).

33. Shigehito Onimura, *Kamikaze Veterans Warn of Real Danger in Retribution*, RAFU SHIMPO (L.A.), Sept. 28, 2001, at 1.

34. *Id.* at 3.

35. *Id.* at 1.

36. *Id.* at 3.

37. *Id.*

38. *Id.*

39. *Id.*

Islamophobia, Hateful Speech, and the Need to Practice Democratic Virtues

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ABSTRACT

This essay examines the relationship between hateful speech and its potential and realized harmful effects socially and politically vulnerable groups, particularly Muslims, in a democratic society. I critically evaluate the assumption that free speech is an absolute value of secularism and the corresponding definition of Muslims as religious “others” in European and American democratic culture. Instead of arguing strictly for the legal regulation of hateful speech, however, I contend that the cultivation of civic virtues—specifically charity and solidarity—may counteract the harmful effects of such speech, and can lend moral justification for the right of free speech.

INTRODUCTION

Pastor Terry Jones of the fundamentalist Dove Outreach Center in Gainesville, Florida, first threatened to burn hundreds of copies of the Qur’an in 2010 around the nine-year anniversary of the terrorist attacks of September 11, 2001. While Jones and his followers did not immediately follow through with this threat, in March 2011 they put the Qur’an on trial and found it “guilty” of crimes against humanity and then burned a copy. In recent years, Jones has continued to make news headlines by spewing vitriol against Muslims and by publicly supporting anti-Muslim propaganda like the amateur film, *The Innocence of Muslims*.

How do we best make sense of Jones’s actions? It is necessary to examine the global dynamics involving secularism and religious fundamentalism that have become embedded in the free speech debate. This essay places Terry Jones’s religious-nationalist rhetoric in the context of American Christian fundamentalism. Non-Muslim Americans and Europeans tend to share two misconceptions: first, that Islam is by nature an intolerant religion which begets religious violence and terror; and second, that the secular West promotes peace and tolerance. Jones selectively employs liberal ideas about free speech and yet also embraces a militant interpretation of Christianity that is highly intolerant of religious and ethnic differences. His speech and actions may also be contextualized in light of highly publi-

cized debates about freedom of speech in conflicts between the “secular” West and the “religious” Muslim worlds. Discourse surrounding these controversies has frequently replicated and reinforced this dualism: one side is for the freedom of expression, and the other is against it. Two instances are particularly definitive: the publication of, and discourse surrounding, the Danish Cartoon Controversy of 2006, as well as the uproar generated by Salman Rushdie’s *The Satanic Verses*, and Ayatollah Khomeini’s *fatwa* against Rushdie in 1988. Each generated global arguments, and sometimes violence, regarding the scope of free speech.

While there is much to be said about the political concepts of religiosity and secularity being debated through arguments about free speech, the focus of this essay is on the persons who are most vulnerable to the harmful effects of speech, including the political and social conflicts that follow from controversial speech. Jeremy Waldron identifies the aim of hate speech as seeking to “compromise the dignity of those at whom it is targeted, both in their own eyes and in the eyes of other members of society” (2012, p. 5). Waldron defines “dignity” not as a metaphysical concept, but rather as something that allows people to function and flourish socially. A central ethical issue at stake, then, is the integrity of freedom of speech as a democratic practice that supports the dignity of persons. The harm caused by such speech can be measured in the way that it ostracizes and stigmatizes members of certain groups, including immigrants and refugees (and whose religious identity is also a marker of difference) (Matsuda, 1993, 2013-14). As such, hateful speech resembles more an act of bullying than an expression of truth.

While Waldron’s solution of legal measures toward regulating hate speech is one way to address the problem, there are other productive ways to socially and politically discourage and critique hateful speech. This is important when considering the case of Qur’an burning, which may not legally constitute unprotected speech (Sacirby, 2010).¹ Terry Jones’s burning of the Qur’an may not rise to the legal level of incitement or fighting words in the view of U.S. constitutional law, but still this type of activity is arguably—morally, religiously, politically, and culturally—an instance of hate speech. This essay will examine the types of harm caused by Jones’s speech, contextualizing it in the global political environment since September 11, 2001.

I then argue that hateful speech, with its potential to harm some groups of society, may also engender greater awareness of social inequality and discrimination by making public the ugliness of racism, xenophobia, and associated hatreds. Hateful speech highlights the urgent need for charity and solidarity as virtues that support free speech in a pluralist democratic society, although not in the sense that people should “charitably” endure hateful

and untrue remarks about themselves and their communities. As a theological virtue, charity is the love of one's neighbor based on the love of God. As a democratic virtue, charity involves the practice of approaching the neighbor dialogically, or being willing to listen and learn from the neighbor. Solidarity promotes justice for all persons as participants in the common good. Toward the end of the essay, I briefly examine how acts of charity and solidarity in response to hateful speech, in the form of organized statements made in public places or expressed using social media, not only represent a more inclusive vision of democratic politics but also lend moral legitimacy to legal right of free expression. Practices of charity and solidarity engender trust between different social groups.

I. FUNDAMENTALIST RELIGIOUS POLITICS AND THE INVISIBLE "ENEMY IN THE MIRROR"

American Christian fundamentalism is a response to the rise of modern secularist politics, the bureaucratic state and values created by the market economy, and modern scientific rationalism (Mardsen, 2006). Thus, it is appropriate to characterize fundamentalism as a modern social phenomenon, although fundamentalists may reject characteristically modern or liberal beliefs about the separation between church and state, for example, or the theory of evolution. Christian fundamentalists like Terry Jones do not completely dispense with modern ideas and technologies, but rather engage in selective rejection and appropriation of them. For example, Jones rejects the liberal value of tolerance of difference at the same time as he selectively employs protected liberal rights, such as the freedom to organize publicly and the freedom to criticize the government. Jones and his followers understand and depict themselves as marginalized Christians, but also speak from positions of global power as white, Protestant-affiliated citizens of the United States.

In an article on the sociological characteristics of religious fundamentalism, Martin Riesebrodt argues, "[t]he overwhelming majority of carriers of fundamentalist movements represent those who have experienced Western 'modernization,' e.g., bureaucratization, expansion of the market economy, and secularization as threat, disappointment, or even catastrophe" (2000, p. 282). Riesebrodt observes the development of religious fundamentalisms has occurred in reaction to the conditions of modernity, and therefore is not limited to a single location or group. The rise of such groups became especially noticeable in the 1970s, and their focus was (and has continued to be) "aggressively nationalistic" and often patriarchal.

Although the term "fundamentalist" has been used to delegitimize religious movements and actors, Riesebrodt argues for its usage as an

explanatory term, insofar as it captures a type of religious movement that “reacts to social changes perceived as dramatic crisis” (2000, p. 271). In distinction from religious traditionalists, for example, religious fundamentalists tend to incorporate an ideal of world-rejection into their thinking and practices. Such world-rejection may take the form of conceptualizing a mythical world order that has its roots in an older, “pure” tradition. For Terry Jones and his followers, this world order is characterized by a return to biblical values, which entails an understanding of America as a Christian nation.

A video posted on the Dove World Outreach’s website begins with various clips of Muslims engaging in anti-American and anti-European protests around the world. Some of the clips depict Arab Muslims making death threats against America and stomping on the American flag. Terry Jones appears dressed in a suit and seated at a desk, which may be an attempt to make him appear calm and professional, in comparison to the video images of rioting Arabs in the streets. Jones accuses Christians of lacking the determination to fight against Muslims, whom he says are working to implement a vision of world domination. His vision is for the ascendancy of an American Christianity capable of fighting Islamic “infidels,” since in his view Europeans have embraced an impotent secularism that has left them unable to combat the growing influence of Islam in Europe. Jones argues, “It is not too late for America. It is too late for Europe. Europe has been given over to humanism and to Islam. So the 15 million Muslims that live in Europe make sure it becomes a Muslim continent” (Jones, 2010). Jones cites his experience as a missionary in Europe and other places in order to substantiate his claims about an imminent Muslim takeover.

The connection between Christianity and American identity operates as an important theme for Jones. He laments, “I remember a Christian America 30 years ago that had a large number of . . . young people who were radical, radical for Jesus. . . The church is [now] in terrible condition” (Jones, 2010). On the one hand, Jones thinks that America (and the world) must be “saved” from the advance of the external enemy, radical Islam. On the other, he is concerned about practices within American borders; specifically the legal protections extended to homosexuals and legalized abortion. For Jones, Christian identity can be consolidated around resistance to these practices, in addition to resistance of an external Muslim “enemy.”

In light of these facts, Jones’s argument exemplifies what Riesebrodt identifies as a fundamentalist response of world-control. This type tends to “seek power not only within religious institutions, but more importantly, in the public sphere” (Riesebrodt, 2000, p. 274). Jones urges his followers promote to their ideas in public places, from the street to the courthouse, as well as online. Jones advocates religious activism when he argues, “The

churches must stand up. We cannot expect help from any place else. Politicians are useless. . . . We must stop preaching what people want to hear. We must preach the Bible. . . . the truth [of the Bible] is not only love, healing and prosperity, but it is also about getting up” (Jones, 2010). Jones repeatedly exhorts Christians to “let their voice be heard” through public protest.

This rhetoric reflects alienation from, and yet paradoxical dependence on, multicultural and multireligious politics. Cultural shifts in the U.S. over the past fifty years have allowed for more religiously-inclusive civic engagement and imagination, in which Jews, Hindus, Muslims, and even atheists have been recognized as civic participants (Eck, 1999). In making arguments to re-claim the public sphere as Christian, Jones challenges this pluralistic ethos. In one respect, Jones’s targeting of Islam warrants special attention, in part because his religious fundamentalism and the religious fundamentalism of radical Islamists stem from some of the same sources and share similar preoccupations. For example, both Christian and Islamic fundamentalists reject the pluralist ethos of multicultural democracy, and frequently seek to control the structures of government along the lines of mythic religious state. Many attempts remain at the level of rhetoric, but in some cases religious fundamentalists employ violent means in order to acquire control.

There are, however, significant differences between these types of fundamentalism that ought not to be overlooked. Jones’s anti-Muslim bias can be traced to a medieval Christian hostility toward Islam² and a concept of Western superiority that originated in the modern period. Since the publication of Edward Said’s *Orientalism* (1979), many contemporary studies on Islam and the West have observed that Westerners have defined Islam and Muslims as “others,” or as holding inverse qualities to the rational, autonomous, and white European subject.³ The European colonization of traditionally Muslim lands in the Middle East, Africa, and Indonesia was frequently justified on racial and cultural grounds. Thus, it is worth considering how Jones’s antipathy toward Muslims is founded on a combined religious and cultural sense of superiority. Jones claims that Islam is an inherently violent religion, but he downplays his own Christian militancy (and vision of Christian domination) by calling on Christians to adopt ostensibly peaceful methods of protest and organization.

Islamic fundamentalists share with Jones a certain antipathy toward secular structures and knowledge. Significantly, for Islamic fundamentalists modernity is inseparable from experiences of displacement and alienation related to European colonial occupation and later American global hegemony (Euben, 1999). In the postcolonial period, U.S. economic and military hegemony and corrupt autocratic leadership in Arab states has fos-

tered new forms of violence, especially in the form of repressive regimes. Islamic fundamentalists also claim cultural and religious superiority, but they often do so from a place of global marginalization. Roxanne Euben attends to the differences between fundamentalisms that are rooted in economic inequality: “Despite the fact that radically different peoples have been subjected to similar socioeconomic processes, modernization and now globalization often confront postcolonial or ‘peripheral’ nations not with greater parity but rather with a more deeply entrenched inequality. . .” (1999, p. 41). Euben argues that the prototypical social-scientific construction of Islamic fundamentalism allows Westerners to define and justify the rationalist narrative. “Fundamentalism has in many ways become a negative mirror reflecting back on Western life that which it would leave behind. . .” (p. 44). For Euben, this process of othering constitutes the paradoxical creation of the “enemy in the mirror.”

Terry Jones and his Dove Outreach followers selectively employ the narrative of Western superiority and secularism. Accordingly, the secular state is problematic insofar as it does not accept and promote the metaphysical truths implied by biblical Christianity, but the state’s guarantee of religious freedoms through the separation of church and state is welcomed. Jones and his followers demonstrate a special interest in free speech as a protected constitutional right through their public burning of effigies of President Obama and the destruction of the Qur’an. Through his inflammatory actions, often broadcast online, Jones wields the liberal “value” of freedom of speech as a weapon to reinforce the twin ideas that Islam is inherently violent and that Christians are victims of violent persecution.

II. VIOLENT SPEECH

Terry Jones exhibits animosity toward the value of tolerance, and yet at the same he accepts privileges that come with the protection of freedom of expression as well as his freedom to practice his religion. Therefore, it seems appropriate to analyze Jones’s actions in the context of the debate over free speech. In the U.S., we justify freedom of speech in legal, moral, and political terms. Freedom of speech is a constitutionally protected right that plays an important political role in the U.S. of making sure that the government does not interfere with the opinions of citizens.⁴ Bollinger notes that contemporary free speech discourse focuses on its value of “getting at the truth” (1986, p.45). Morally, the value placed on an individual’s free expression represents a commitment to the principle of autonomy, or principle that people have the capacity for determining for themselves right action.

Autonomy can also be understood as entailing the ability to participate

in the public political sphere (Benhabib, 1992). Free expression ideally allows for a variety of individuals to articulate their views and participate in public discourse and political decision-making (Gutmann, 2004). Yet what happens when some persons, through hateful speech, attempt to inhibit the ability of others to participate in public discourse? In the U.S., several groups in recent history have used freedom of speech to make hateful statements against other groups, such as the members of the Westboro Baptist Church (“Westboro”), whose constitutional right to freedom of expression the Supreme Court protected from intentional tort liability (*Snyder v. Phelps*, 2010).

Chief Justice Roberts, who authored the 8-1 majority opinion, held that the First Amendment protects the right of free speech on issues related to public concern, like homosexuality in the military (*Snyder v. Phelps*, 2010). In this opinion, Chief Justice Roberts notes that a critique of the secular modern state was at the heart of the protests, which falls within the domain of First Amendment protection. Brian Britt (2010) argues that Phelps and Westboro contest the separation between religious and secular spheres in American politics. The hate speech employed by the Westboro members (e.g., picket signs reading, “God Hates Fags” and “God Hates America”) constitutes a form of religious rhetoric employed in the public sphere. Rebecca Barrett-Fox’s (2011) ethnographic work demonstrates how Westboro members engage in military protest as a platform to publicly express their strict views of Calvinist predestination and natural law theory.

The Westboro Baptist Church espouses a minority opinion, and Ronald Dworkin argues that a democracy must allow those groups in the minority to express themselves informally for the reason that “It is unfair to impose a collective decision on someone who has not been allowed to contribute to that moral environment, by expressing his political or social convictions or tastes or prejudices informally. . .” (2009, p. viii). From Dworkin’s perspective, however erroneous or hateful their speech, Westboro members’ right to freedom of expression must be protected on the grounds that it is a cost of political legitimacy (Waldron, 2012).⁵

On the one hand, the arguments of Roberts and Dworkin make sense when we think about the importance of addressing matters of public concern, and the democratic value of inclusion of differing perspectives when doing so. On the other hand, these arguments do not very well address the harm of hateful speech, which can be experienced at both an individual and group level.⁶ From a legal perspective, definitional problems arise when trying to determine what constitutes hate speech.⁷ Waldron explains, “In most hate speech legislation, hatred is relevant not as the motivation of certain actions, but as a possible effect of certain forms of speech” (2012, p. 35). In other words, hate speech is commonly interpreted as words

intended to incite hatred or to inflict dignitary harm. Yet, Britt argues, “In the United States, words that wound—insulting and humiliating statements—are not illegal unless they incite or threaten violent or other criminal action” (2010, p. 635).

That the U.S. Constitution generally protects hateful speech⁸ should not prohibit ethical analysis of the kinds of harm it can produce. What type of injury is visited upon Muslims by Terry Jones’s threats and actions? This question takes into consideration both the content of the speech and the form such speech takes, particularly as it is recorded and televised. The video posted on his website constitutes one form of attack on Muslims insofar as it labels all Muslims as violent and conspiratorial against America. When Jones burned the Qur’an in March 2011 and his followers publicized this event by posting a video of it on *YouTube.com*, the consequences were immediately more visible. In response, a mob of angry citizens in Afghanistan attacked the United Nations compound in Mazar-i-Sharif, resulting in the death of twelve civilians (Partlow, 2011). Simultaneously, Muslim leaders in Iran and Afghanistan denounced Jones and tried to capitalize on anti-American sentiment and political chaos in their own countries. Thus, it could be argued that the consequences of Qur’an-burning for purposes of national security would mandate some kind of limitation of Jones’s freedom to express his views, which did not occur (he did receive widespread condemnation from American political leaders and clergy, however, on the grounds that it was disrespectful).

How does information about contemporary international politics influence how we should evaluate the exercise, content, form, and forum of speech? Speech does not occur in a cultural vacuum, and we must read Jones’s words, publicized in a virtual format, in light of American military and economic involvement in Muslim-majority countries like Iraq and Afghanistan. To more fully grasp the kind of harm that such hate speech visits upon Muslims, we must acknowledge the destruction of actual Muslim communities that many Muslims have come to associate with the U.S.

How does information about contemporary international politics influence how we should evaluate the exercise, content, form, and forum of speech? Speech does not occur in a cultural vacuum, and we must read Jones’s words, publicized in a virtual format, in light of American military involvement in Muslim-majority countries like Iraq and Afghanistan.

It may be useful to examine, for the purpose of contextualization, another incident of Qur’an burning. In this case, the actors did not ostensibly intend to incite hatred or fear among Muslims. A few members of the U.S. Military burned copies of the Qur’an in a garbage pit in Afghanistan in early 2012, which was quickly publicized by the media and led to apologies by the U.S. Government. We might not automatically think of this as sym-

bolic hate speech. However, this does not mean that individual Afghani Muslims did not perceive it as hateful. One Afghani protester, Maruf Hotak, explained why the burning of the Qur'an by Americans—whether intentional or accidental—is harmful to Muslims: “This is not just about dishonoring the Qur'an, it is about disrespecting our dead and killing our children. They always admit their mistakes. They burn our Qur'an and then they apologize. You can't just disrespect our holy book and kill our innocent children and make a small apology” (Greenwald, February 26, 2012). The soldiers who burned copies of the Qur'an perhaps displayed more cultural insensitivity than malice, but nevertheless, this example is a reminder that tensions are high between several regions of the Islamic world and the U.S.

For Hotak, the American assault on the Qur'an is a symbolic assault on Muslims, which accompanies other non-symbolic assaults. Hotak's argument shows that it can be difficult for civilians to distinguish intentional violence from collateral damage. It also demonstrates the relative powerlessness that many civilians have experienced regarding violence in their communities. Therefore, not only should we consider the social location of the speaker in question when we evaluate speech, but also that of the intended or unintended recipient. The offense generated by Jones's Qur'an burning episodes should be interpreted contextually in the ongoing military activity in the Middle East, and the effects of violence on civilians. From this perspective, Jones's burning of the Qur'an is not an act of truth-telling, but may be interpreted as threatening more violence toward Muslims.

III. OFFENSIVE SPEECH: THE DANISH CARTOON CONTROVERSY

The real or potential injury that characterizes Qur'an burning can be clarified by examining other provocations of Muslims that claim a right to free expression as a value that defines the civilized from the non-civilized. The examples on which I draw come from Europe, and thus they are characterized by specific issues pertaining to European colonialism and contemporary postcolonial Muslim immigration (Bowen, 2012). The discourses surrounding these conflicts reveal marked inattention to the global politics that separate the privileged from the non-privileged and the insider from the outsider in ways that compare to anti-Muslim discourse in the U.S.

During the Danish Cartoon Controversy of 2005, in which a Danish newspaper published inflammatory cartoons depicting the Prophet Muhammad (including one with a bomb in his turban), the newspaper and its defenders were quick to make the debate about the alien presence of the Islamic “other” in Denmark. Many Muslims around the world took offense; some organized protests and some engaged in economic boycotts.

Christian Rostboll observes “Muslims were seen as insufficiently enlightened because they take their religion too seriously and fail to understand that ‘satire and caricatures of religion are not expressions of disrespect for or ridicule of groups because of their faith or beliefs’” (Rostboll, 2009, p. 626). He argues that this defense of the cartoons was rooted in a concept of Enlightenment liberalism, specifically in the principle of autonomy. Defenders of the cartoons’ publication argued that freedom of expression was a near absolute good, and that it promoted vigorous debate in Denmark (Bleich, 2012).⁹ Their detractors saw the cartoons as expressing anti-Muslim and anti-immigrant sentiment.

Rostboll refers to social context as providing clues about whether the publication of the cartoons could be justified in the name of autonomy, specifically the type of autonomy that prizes freedom of speech as an absolute good. He argues that the controversy surrounding their publication reveals the power of a majority against a weaker minority, and maintains that contextualizing the publication of the cartoons in Danish anti-immigration discourse is imperative. The dominant public discourse surrounding the publication re-affirmed the nativist sentiment that Muslims were outsiders.

In the aftermath of their publication, the publisher of the cartoons argued that by stereotyping Muslims and mocking the Prophet Muhammad, Danish culture was actually *including* Muslims. Flemming Rose, the editor who commissioned the cartoons, said, “By treating Muslims in Denmark as equals [the cartoonists] made a point: We are integrating you into the Danish tradition of satire because you are a part of our society, not strangers. The cartoons are including, rather than excluding, Muslims” (Rostboll, 2009, p. 631). Rostboll argues that this inclusion, for all its promise of extending recognition, is carried out only on Flemming’s terms.

This example illustrates the moral and political aspects of the free speech debate. Rostboll asks whether freedom of expression, justified by autonomy, condones or encourages disrespect for Muslims’ religious feelings. Rostboll argues that exercise of freedom of speech should be conditioned by the recognition of another’s autonomy, which places constraints on the ways that individuals express ideas. According to Rostboll, this commitment involves recognizing a person as capable of choosing and endorsing their own ends.¹⁰ Freedom of expression requires a degree of modesty about the truth of one’s convictions vis-à-vis one who does not share them.

Rostboll’s distinction between freedom of expression that encourages dialogue and expression that is harmful to others, particularly minorities, is helpful. Citizens in a democracy should reflect critically on hateful speech which is directed at those who are socially vulnerable. Was the motive of

the Danish cartoonist and publisher to cause Muslims to critically reflect on their convictions, which is consistent with a kind of autonomous choosing? Or conversely, did they seek to affirm the “backwardness” of Muslim immigrants and the crudeness of their religion? Rostboll explains that while defenders of the cartoons’ publication argued that causing offense was a moral catalyst for identifying unenlightened parts of one’s tradition, causing offense in specifically anti-Muslim ways re-affirmed Danish and European Muslims’ status as outsiders.

For Muslims to be recognized as autonomous persons in a democratic society, they must be recognized as possessing dignity. As Waldron explains, dignity is not “just a decorative fact” about an individual but something that commands recognition by other citizens and by the state (2012, p. 85); this helps to explain why the harmful effect of hate speech as a “world defining” activity (p. 74). Editor Flemming Rose’s argument that the cartoons “included” Muslims in Danish civic life meant that they, like any group, could be subjected to ridicule and offense. Attention to context reveals that while freedom to offend is an important right, speech that increases the stigmatization of minority groups who are already politically and socially (if not economically) vulnerable might cause more discrimination and even incite violence against them.¹¹

A further example will lend support to this point. Talal Asad (1993) examines *The Satanic Verses* (published first in 1988) and the impact of the Rushdie Affair on Muslim communities around the world, particularly in Britain. Many people read the fictional *The Satanic Verses* as not only critical of, but blasphemous toward, major tenets of the Islamic religion. Some Muslim groups organized book burnings of the text, and Ayatollah Khomeini issued a fatwa or legal ruling calling for Rushdie’s death in 1989. Asad addresses European and Western secular discourse surrounding the book’s reception. He argues that public discourse about *The Satanic Verses* merely reinforced harmful stereotypes about Muslims and failed to challenge the Eurocentric colonial and postcolonial worldview.

As with the case of the Danish cartoons, the Rushdie Affair throws into relief the issue of inclusion and exclusion in European society. Asad discusses a British Muslim’s praise of *The Satanic Verses*, who in a review argues that Rushdie captures a truth about multicultural Britain, about the collective experience (“our experiences”) of persons living there. Asad is quick to question the integrity of this experience, however: “The possessive pronoun in ‘our experiences’ claims to speak representatively for a collectivity, but which collectivity?” (1993, p. 279). Asad maintains that the individual characters in *The Satanic Verses* misrepresented the experiences of the people about whom it claimed to be. He argues, “The book’s stories do not connect with the political-economic and cultural experiences of [the

Indian British] population. What they do powerfully connect with are the highly ambivalent emotions generated by an anglicized Indian's gaze at the ruling class of imperial Britain" (p. 310). Asad's concerns about *The Satanic Verses* and the ensuing controversy are similar to Rostboll's concerns about the Danish Cartoon Controversy. Rostboll observes how artistic expressions can reify political and social boundaries and confirm who stands inside and outside of them. Asad is critical of art that surreptitiously privileges the experiences of Western persons above all others.

In contrast to these other cultural expressions, Terry Jones appears quite straightforward in his disregard for Muslims and does not attempt to disguise his feelings about Muslim immigration in Europe and the United States. He rejects the liberal ethos of tolerance altogether, which we may attribute to his Christian fundamentalist commitment. When Flemming Rose published offensive cartoons, he justified their publication as an exercise of freedom of expression (Rose, 2006). Implicit in this justification was that all religions, including all religious practitioners, were "free game" for criticism. In contrast, Jones unapologetically, blatantly, and crassly denounces Muslims, employing an implicit narrative of Christian-American persecution and superiority. As a white self-identified Protestant American, Terry Jones experiences freedom to express his views without the official threat of violence or imprisonment. Yet Jones's fundamentalist rhetoric is not the secular "enlightened" rhetoric found in the discourse around Rushdie's book or the Cartoon Controversy; his words are words of a dualistic war between Christianity and Islam, and they do not hide his contempt for the "enemy."

To the extent that the cartoons and the Rushdie affair were able to generate critical reflection regarding the social location of the authoritative speakers and artists, and the problem of anti-immigration and anti-Muslim sentiment, they represented a positive effect of free speech. Moreover, the relationship between art and free speech is more complex than the Jones's hate speech, simply due to the fact that art can be interpreted in multiple ways. In other words, hateful speech can occasion harm, but we ought not to discount the possibility that it can generate constructive reflection on social difference and create opportunities for the practice of social solidarity.

The potential or realized harm in both types of speech, as I have been arguing, pertains first to the relative power and social location of the speaker/actor. Flemming Rose, Salman Rushdie, and Rushdie's Eurocentric defenders all assume that their experiences are normative and create and defend as "universal" fiction and political cartoons that support their particular perspectives as privileged Europeans.¹² As a white self-identified Protestant American, Terry Jones experiences great freedom to express his

views without the official threat of violence or imprisonment. Yet Jones's fundamentalist rhetoric is not the secular "enlightened" rhetoric found in the discourse around Rushdie's book or the Cartoon Controversy; his words are words of a dualistic war between Christianity and Islam, and they do not hide his contempt for the "enemy."

IV. SPEECH, CHARITY, AND SOCIAL SOLIDARITY

A strong justification for freedom of expression in U.S. history has been the value of "speaking truth to power," which presumes a measure of critical reflection and the exercise of autonomy as well as the idea that government is not the ultimate arbiter of truth. The liberal legal tradition focuses on the protection of the individual's right to speech, especially from the coercive reach of government. To focus strictly on this argument, however, ignores the reality that individuals are members of particular communities and not only U.S. citizens and residents of states. As discussed earlier, Rostboll and Asad show that justifications for freedom of speech are hollow when grounded in xenophobic claims or claims that distort and/or exploit the experience of marginalized groups, including immigrants and refugees.

What measures ought our society take in order to redress and prevent the harm of hateful speech, especially when it targets minority ethnic or religious groups? Some scholars, like Waldron, argue for the regulation of hate speech on grounds that hate speech jeopardizes the public good of inclusiveness, which he thinks is essential for democracy, and that it threatens the social dignity of individuals. Waldron observes that most liberal democracies, excluding the U.S., have legally prohibited visible defamations of social groups. Hateful speech that targets ethnic or religious minorities can serve as a form of psychological terrorism:

The sort of attacks on vulnerable minorities that elicit attempts to regulate and suppress 'hate speech' include attacks that are printed, published, pasted up, or posted on the Internet—expressions that become permanent or semi-permanent part of the visible environment in which our lives, and the lives of vulnerable minorities, have to be lived. (2012, p. 37)

Terry Jones's Qur'an burning and other expressions of hate, posted on the Internet, might be such an example.

Waldron contends that the public order should reflect a commitment to recognizing the social dignity of each person. He explains that laws against religious defamation take into account a characteristic associated with group members, which may have some basis in fact but which is often

exaggerated. Regarding the claim that all Muslims are terrorists, Waldron argues that “a general imputation of dangerousness has a direct impact on the standing and social relations of all members of the group” (p. 57). An imputation of dangerousness, for example, affects community relationships with secular law enforcement officials, which may in turn limit the freedom and mobility of group members.

I agree with Waldron’s argument that law must play a role in recognizing and protecting the basic dignity of all persons. Like Waldron, I remain suspicious that hateful speech, especially when directed from privileged insiders to socially vulnerable outsiders, threatens the principle of autonomy that is understood to support and give legitimacy to freedom of expression. For the remainder of this essay, however, I would like to discuss more specifically the way that certain virtues, or cultural habits, can work against hate speech. Virtues are practices that help improve social life. The virtues that I think are of particular importance here, charity and solidarity, can engage the faculties of critical reflection and moral imagination, and expose hate speech for what it often is: not an expression of truth, but rather an expression of bullying.

In the fall of 2012, Pamela Geller and her American Freedom Defense Initiative posted advertisements in the New York subway that equated Islam with savagery and jihad. These advertisements also had a pro-Israel message. Despite the protest of the New York transit system (MTA), who objected to the publication of the ads, Geller’s legal right to expression was protected, and the ads were published. Geller claimed she did not see why her actions were so controversial, as she was only telling the “truth” about Islam through these ads. Several religious groups and organizations, including Jewish organizations, denounced the ads. The United Methodist Women posted signs next to the anti-Islamic advertisements that read “Hate speech is not civilized. Support peace in word and deed” (Rogers, 2012). While it may not lessen the injury caused by hate speech, this act of reminds citizens of the importance of exposing the falsehood of such speech for the common good. The non-Muslim religious communities who denounced the subway ads used similar rhetorical strategies to promote a message of peace and tolerance, underscoring the message of a shared democratic project.

The United Methodist Women illustrate the virtues of charity and solidarity by defending Muslims who were unjustly vilified as “savages” and publicly condemning such speech. Charity, which is a virtue that reflects love of God, is appropriately theological for the United Methodist Women, who ostensibly connect their love of God with the love of their non-Christian neighbor. Charity is expressed through a public statement, which also creates solidarity and reinforces the connection between diverse groups.

As autonomy is one of the main values inherent in freedom of expression, Roman Catholic legal theorist Cathleen Kaveny argues for the necessity of balancing autonomy with solidarity in law. She is critical of the liberal legal argument that “liberty has a fundamental value that overrides nearly every other value” and that the government constitutes the greatest threat to individual liberty (2012, p. 20). Kaveny prefers instead Joseph Raz’s definition of autonomy in his moral and political work as entailing social commitments, and she also draws on Pope John Paul II’s conception of solidarity as “a firm and preserving determination to commit oneself to the common good” (p. 54). Although Kaveny’s argument appeals specifically to a conception of law as a moral teacher, her insight that law is based on both a conception of autonomy and solidarity is particularly relevant to this discussion. It suggests that when we think of the moral justifications invoked for freedom of speech, we should think about the how solidarity might function in addition, or in a complementary manner, to autonomy.

Kaveny maintains that the virtue of solidarity provides an important framework for justice in our multicultural society. Noting that political communities are large and unwieldy, Kaveny argues that social solidarity presses people to consider the effects of their actions on the socially vulnerable and the larger social patterns of which individual actions are a part. The habit of solidarity, she argues, can promote “the practice of seeing ourselves as actively responsible for all persons, particularly those on the margins of the community” (p. 54). As a virtue, solidarity must be practiced and cultivated to counteract a sense of alienation that results from broad and impersonal structures of government; and yet it must also promote justice for all, including those who are targeted and marked as “other” in society.

In some cases expressions of solidarity, and its related virtue, charity, are extended by persons who are themselves the targets of hateful speech. A group of North American Muslims signed a petition, circulated on the Internet, supporting the exercise of free speech at the beginning of the Qur’an burning controversy in 2010. In the petition, “A Defense of Free Speech by American and Canadian Muslims,” they lament the anti-Muslim or Islamophobic statements made by Jones and others, but they also decry the violent actions of Muslims in response to acts of Qur’an burning and offensive cartoons. While the group argues that Muslims should condemn hateful speech, they maintain that their expressions of condemnation should be lawful. The petition states, “We uphold the First Amendment of the U.S. Constitution and the Canadian Charter of Rights and Freedoms. Both protect freedom of religion and speech, because both protections are fundamental to defending minorities from the whims of the majority” (Foundation for Pluralism, 2010). This statement draws from Qur’anic teachings about peace and tolerance such as Qur’an 5:8, “let not the hate of

others sway us from justice,” and Qur’an 25:72, “pass by worthless talk with dignity.” By affirming Jones’s legal right to burn the Qur’an, the signatories show charity toward him and others like him, and interpret the principle of protecting the minority from the will of the majority broadly and generously.

By citing Qur’anic teachings on peace and justice as a defense of protection of free expression, they engage in a more compelling interpretation of democratic freedom, and the underlying principle of autonomy, than Jones offers through his words and actions. Recall that in this context, autonomy involves choosing for oneself a meaningful moral course of action and the ability to participate in civic discourse. Islamophobic speech often asserts that Muslims are *de facto* incapable of autonomous choice and participation because of their commitments to a pre-modern tradition or because of their fundamental, essential “otherness” or outsider status (in opposition to European or Western identities, as demonstrated by the Danish cartoons). The signatories to the petition show instead that their tradition can serve as a basis for autonomy, insofar as it encourages critical reflection on hateful speech and demands a just and proportionate (e.g., non-violent, perhaps even forgiving) response. They show that certain verses of the Qur’an support the responsible exercise of freedom, even when it is difficult to do so because of persecution and injustice.

Expressions of social solidarity that embrace difference and promote justice can serve as one powerful mechanism to redress and even prevent the harm of hate speech, but also they embody the purpose of free speech as speaking truth to power. While such deeds may not convince a figure like Terry Jones of his wrongdoing, they send a message about the importance of resisting hatred with love, violence with peace, and so forth. They recognize that to engage Jones (and others) at the level of hateful discourse would be fatal to the demands of justice, whether articulated as a biblical vision, a Qur’anic vision, or a democratic vision.

CONCLUSION

Life together in the United States presents to us the task of creative conflict resolution. The protection of freedom of speech guarantees the right of persons to participate in the public sphere through speech, however narrow or generous their conceptions of those who are different from them. Terry Jones calls into question the ability of Muslims to be productive participants in American democracy or in other forms of modern non-autocratic government. When framed this way, his argument resonates with others who worry that Muslims are incapable of democratic participation for religious-identity reasons. Jones articulates fears that exist, even if in

subtle or barely discernible form, among Americans. His actions magnify assumptions and prejudices that are tolerated every day, so it is a mistake to treat them as isolated, as only belonging to a crazy man. I think we should be careful not to underestimate the level of tacit agreement among a number of Americans that Muslims are still outsiders to the process of public deliberation and decision-making, which we see in the development of “anti-Sharia” legislation in places like Kansas (Murphy, 2012).

To counteract and correct such views most effectively, we should first re-examine what we mean by autonomy, and what we value about it culturally. As I have argued, autonomy entails recognition that individuals have the capacity to make decisions for themselves and to participate in public discourse responsibly. Furthermore, autonomy defined in this way moves the focus away from a notion of identity as fixed and toward a concept of identity as process-oriented and the product of various and sometimes competing associations. Our commitments and our rationality are not static and separate from our lived experience.

Moreover, we ought to foster civic virtues that will improve our ability both as individuals and as a collective social body to resist temptations of xenophobia, racism, and other forms of hatred. To practice charity is to engage in expressions of care toward the neighbor or “other.” The practice of solidarity follows from charity, insofar as to express solidarity is to express commitment to those who are not like us, and who may be on the margins of society and the potential victims of injustice. Autonomy must be accompanied by practices of charity and solidarity, which involve a willingness to cooperate and commit to the project of the common good, marked though it might be by disagreement.

In a multireligious, multiethnic democratic society, we should not be afraid of asking one another questions about how religious ideas and identities influence individual decision-making. This act does not presume that certain groups are incapable of thinking rationally about their commitments, but rather presupposes that participants in civil discourse may and will have different ways of answering such questions. We must try to understand how different experiences shape worldviews and choices, and develop a willingness to revise our judgments and conclusions. It may be that one of the best ways to ensure this kind of democratic exchange is to regulate hate speech, as Waldron argues. Importantly, we need to continue the conversation about hate speech and free expression in a way that engages both legal discourse *and* discourse about civic virtue. By attending to both virtuous and vicious social practices of free expression, we can make the critical connection between what a person says or does and his or her environment or context. With regard to hate speech, this kind of connection is essential for determining what is harmful and why.

NOTES

1. The classification of Qur'an burning as a criminal activity seems to depend on whether an expressive act is done with either intent to insult or to intimidate, the latter being possible grounds for legal action. See also *Virginia v. Black* (2003). In writing for the majority of the court, Justice O'Connor carefully navigated the murky areas of First Amendment jurisprudence, laying down a few guidelines that a state may abrogate certain intimidating messages if that particular form of intimidation has "a long and pernicious history as a signal of impending violence." In sum, the First Amendment protection of speech might be curtailed if speech (or a very narrowly circumscribed scope of expressive conduct) is deemed intimidating and that intimidation has a distinctively long and violent precedent (e.g., cross-burning). Thanks to Anna Kecskés for her assistance on clarifying the legal significance of this case.

2. One representative source is the work of Orthodox theologian John of Damascus (676-749 CE), who argued that Islam was a Christian heresy. Later, the Christian crusades, initiated in the 11th century by Pope Urban, would also paint a condemnatory picture of Islam and Muslims, as well as leading to massive death and destruction in the holy land.

3. In Hate Studies discourse, the process of making someone an "other" refers to demonizing or dehumanizing that person, or alienating the "other" from the subject. However, some Continental philosophers take a decidedly different approach to "otherness," arguing that the presence of the "other" places one in a position of fundamental obligation. For example, the late philosopher Emmanuel Levinas (1985) wrote extensively about the basic vulnerability of the "other" as creating fundamental moral responsibility in the subject. Dehumanization is but one manifestation of a more pervasive, enduring problem of denying the alterity, and ethical demand, of the "other."

4. See Justice Harlan's ruling in *Cohen v. California* (1968).

5. Jeremy Waldron (2012, pp. 173-203) argues against Dworkin's insistence on the freedom of hate speech, in part by arguing that Dworkin's view represents American exceptionalism (all other contemporary major democracies have placed legal restrictions on hate speech).

6. Barrett-Fox's (2011) account of her interactions with Westboro Baptist Church members incorporates her insightful reflections on the types of harm that were inflicted on communities that were recipients of Westboro's hateful messages. In some ways, she shows how it is difficult to quantify "harm" as the consequence of speech: it may result in feelings of frustration, anger, or even confusion. Barrett-Fox argues that

ethnographers working with such groups must be careful not to become desensitized to hate and its effects.

7. As John Shuford observed in correspondence about this essay, Waldron is concerned with not only speech, but also definitional problems with hate more generally. According to Shuford, “Waldron seeks to bracket off the intractable conceptual problem of defining ‘hate’ from the pragmatic concern of articulating why hate speech is harmful and why such speech warrants regulation, perhaps even criminalization.” Correspondence on file with the author.

8. The criminalization of hateful speech in the U.S. can take the form of libel (written or printed defamation). Waldron (2012, p. 45) argues that criminal law attends to hateful expression that “becomes established as a visible or tangible feature of the environment—part of what people can see and touch in real space (or in virtual space) as they look around them. . . .”

9. This argument was made in spite of the fact that in Denmark, hate speech is legally prohibited (Danish Penal Code 266b). Bleich examines each of the cartoons published and makes careful distinctions between the ones he perceives as satirical and those he sees as hateful (the bomb-turban falls into the latter category).

10. Kant (1999) was suspicious of religious commitments as definitive of persons, however, and viewed religion as pertaining to heteronomous, rather than autonomous, law. Nevertheless, Rostboll sees it as continuous with Kant’s thinking about autonomy that individuals should exercise freedom in their choices about religion and morality. I agree with this interpretation.

11. See Waldron’s discussion of hate speech as a “world-defining” activity (2012, p. 74).

12. The relationship between art and free speech is admittedly more complex than the Jones’s hate speech, simply due to the fact that art can be interpreted in multiple ways; suffice it to say that in the case of the cartoons, however, an overriding message was one of anti-Muslim xenophobia.

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Evil Black Guns: Hate, Instrumentality, and the Neutrality of Firearms

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ABSTRACT

In the wake of mass shootings in Aurora, Colorado, where 12 moviegoers were killed and 70 injured; Newtown, Connecticut, where 20 children and 6 adult staff members were killed at Sandy Hook Elementary School; and elsewhere, concerned citizens may question whether guns are neutral actors in the rage killings and rampage murders that have become increasingly familiar in U.S. society. Rather than revisit the well-worn aphorism “guns don’t kill people: people do,” this article considers a provocative counter-thesis—that firearms may serve not only as mechanisms of violence in shooting rampages but also as catalysts. Can guns themselves cause violence, apart from the motivation and intent of those who wield them? What is the relationship of guns to the triumvirate of hate speech, hate groups, and hate crime? This paper seeks to explore these questions in depth to examine how guns and hate-fueled rhetoric may combine in American society with deadly effect.

INTRODUCTION

The first part of the article explores the notion that guns may be less than neutral—neither tools nor consumer items but objects with particular individualities and contexts of usage that tend to give rise to negative outcomes. This characterization, while unfamiliar, is backed by a growing body of research in the fields of instrumentality and technological determinism. The article presents a new interpretive framework, unpacks its soundness and significance, and encourages consideration of its utility as a meaningful alternative. It moves the reader from the familiar assumption that guns are neutral, to the less familiar notion that they are not neutral, to the rather foreign idea that they may harbor a certain malignancy. The latter section explores the relationship between guns and far-right extremists who employ violent rhetoric to advance a certain worldview centered on hostility toward governmental authority. In this relationship, hate is not only an emotion but also a far-reaching worldview that incorporates a host

of angry, violent, and racist subtexts, some of which rely upon guns not only as rhetorical devices but also as levers of power, control, and terror.

Whether firearms are protected under the U.S. Constitution, or whether they encourage or inhibit street crime, as Lott (1998) has argued, are irrelevant to this discussion: the focus here is on the general metaphysics of the gun. This article is not intended to be a complete exegesis on the ontology of firearms. It is instead intended to explore their status as objects and subjects, their agency (if any), their implementation, and their relationship to hate speech, hate groups, and hate crime.

I. GUNS AS NEUTRAL

Public dialogue about firearms in the United States—including political debate about the constitutionality of firearms, the right to bear arms, and the intent of the Framers of the Constitution—tends to frame guns as neutral instrumentalities. Guns are construed by those who oppose tougher gun laws and by those who support tougher gun laws alike as *things acted upon*, not as things that possess their own agency or that manifest a causal interrelationship between subject and object or user and used. Accordingly, the defense of the Second Amendment is often framed by the assumption of guns as passive receptors; in other words, it takes *someone* to design, manufacture, advertise, sell, purchase, possess, load, hold, aim, and discharge a firearm. Within this framework, guns are described as:

- 1) inanimate objects,
- 2) consumer goods like any other,
- 3) tools, and
- 4) amoral entities.

These four conventions are central in the overarching assumption that firearms are neutral—so central, in fact, that they may be used as interchangeable premises or even as tautologies that support this overarching assumption.

First, guns are often seen as inanimate objects, lacking agency beyond that of the persons who wield them. They sit in racks, closets, nightstands, glove boxes, and holsters where they wait to be implemented; without that implementation, a gun has no life force of its own. They are machines: screws, springs, and other metal parts, stamped and assembled by human hands to accomplish a task.

The guns-as-inanimate convention shades easily into the second: the claim that guns are the same as other consumer goods. Guns are no differ-

ent from toasters insofar as they are consumer products, bought and sold in free-market trade.

The third convention relates to utilitarian value. As tools, guns are implements manipulated by others to accomplish certain ends, whether defensive, military, or sporting. Ranchers use firearms to protect their livestock; hunters use them to harvest food or procure trophies; police officers use them not only to protect themselves but also to keep the peace. Wayne LaPierre, current president of the National Rifle Association (NRA), notes that guns “are kept as tools in the country, much as lawnmowers are kept as tools in the suburbs” and euphemistically refers to guns as “certain hardware items” (LaPierre, 1994, p. xiv-xv).

Fourth and finally, guns are neither good nor bad; it is a category error to ascribe to them any inherent moral valence. They can be used for good purposes (for self-protection, say, or to put meat on the table) or for bad purposes (in carrying out a crime, for instance), but firearms themselves exist in a kind of amoral stasis. They are neither moral nor immoral, lying outside the sphere in which moral judgments apply. This logic led actor Charlton Heston, then president of the NRA, to proclaim on NBC’s “Meet the Press” on May 18, 1997:

There are no good guns. There are no bad guns. Any gun in the hands of a bad man is a bad thing. Any gun in the hands of a decent person is no threat to anybody—except bad people. . .¹

And, again, on Fox News on September 15, 1997:

There’s no such thing as a good gun. There’s no such thing as a bad gun. A gun in the hands of a bad man is a very dangerous thing. A gun in the hands of a good person is no danger to anyone except the bad guys. . .²

Accordingly, neutrality is a fundamental tenet of the pro-gun lobby in the U.S., as represented by the NRA, whose rhetoric often emphasizes firearms as blank tableaux upon which meaning is projected.

Self-described as “America’s foremost defender of Second Amendment rights,” the NRA has consistently asserted since the late 1960s that guns are only as malevolent as those who would use them for ill purposes. Its most effective expression of that idea is the well-known slogan, “guns don’t kill people: people do.” It is a tautology that cannot be effectively disproven; guns do not aim and shoot themselves, and people have always killed one another—even without guns. Rather than advocating any form of gun control, the NRA has suggested a number of other solutions to gun violence, everything from gun locks to tougher penalties for crime. Guns themselves are not part of the problem. Guns themselves are inert. It is a

simple, clear position, one that offers an easy, sensible-sounding talking point in any public debate over firearms.

Assumptions about the neutrality of guns have led to analogies intended to illustrate the absurdity of non-neutrality as well as the importance of user intent. If guns cause crime, some opponents of stricter gun laws have argued, then matches cause arson, pencils cause misspelled words, and forks cause overeating and weight gain. For the gun enthusiast, the incredibility of the pro-gun control position is self-evident in such blaming-the-tool-not-the-user comparisons.

II. GUNS AS NON-NEUTRAL

Each of the four conventions relied upon to support the guns-as-neutral thesis are susceptible to counterarguments based on a different set of assumptions. If guns are tools, for example, then they are tools designed with the explicit purpose of killing: an act considered in most moral frameworks to be wrong. They can be hung on the wall and used decoratively, or they can be used to dig a hole in the ground, but their design indicates the preferred end for which they “should” be used. If guns are consumer objects like any other, then why are they not regulated like blenders or microwaves or other common household items? Why are they not rendered less harmful through built-in safety considerations, like a ground fault circuit interrupter (GFCI) designed to protect one from electrical shock? The answer, of course, lies in the fact that firearms are regulated differently from other consumer items because they *are* different from other consumer items; they are *expressly* intended to be able to take life, unlike blenders and GFCIs, and altering that fundamentally lethal purpose would result in something quite un-gun-like.

Of the four conventions, the guns-as-consumer-goods convention suffers the most from conflicting messages from the gun lobby. On the one hand, gun manufacturers claim that they are producing a product like any other consumer product; on the other, they sometimes claim special exemption from the same considerations that govern other manufacturers (Kopel, April 2000). For example, gun manufacturers are exempt from federal consumer product safety regulation. Not accountable to the Consumer Product Safety Commission, they are historically immune from lawsuits filed by victims seeking to hold gun manufacturers and sellers accountable for their role in marketing and supplying guns to criminals. Product liability cases involving firearms have been successful only when injury is alleged to have occurred due to malfunction or inadequate instructions or warnings. Of more interest are cases where guns function exactly as intended: while there have been many attempts to argue that guns are defective because they

are dangerous, the fact that a weapon injures or kills when fired has not traditionally been considered a defect in and of itself in American jurisprudence—namely because the gun lobby was able to gain an exemption for firearms from the 1972 Consumer Product Safety Act, the primary federal law that protects consumers from products which present unreasonable risk of injury. Whether guns could be made safer without affecting their intended function or destroying their utility remains unclear: there is no federal law or regulatory authority to set minimum safety standards for domestically manufactured firearms (Bejar, 1998).³

In legal terms, one must consider not only foreseeable use of a product but also intended use and actual use. If one argues that guns are *not* designed with intent to kill—thinking, perhaps, of target shooting or recreational applications—then one must at least concede that they are intended to launch projectiles at extremely high velocities, resulting in higher potential lethality at longer distances than most other close-quarter weapons. To date there have been no mass killing rampages with toasters or dining forks, and if guns are like pencils, then they do not come with erasers.

Of most interest is scholarship (Hoskin, 2001; Kleck, 1991; Tedeschi and Felson, 1994) that has pointed to guns not as subjects acted upon but rather as *actors in their own right*—active participants in their own use and operation. The intended use and disposition to be used are built into an object, but still require interaction in order for its power and utility to be realized; in this way it is intersubjective not unlike a painting or a sculpture. Pragmatists influenced in the tradition of William James or John Dewey might argue that there exist interactivities not only between gun and user but also between user and designer, manufacturer, and seller. In other words, the knowledge is built into the tool, and that knowledge predicates proper or intended use (and users). A few scholars, however, have carried the pragmatist view even further into the realm of agency. Zimring (1968) has described a “weapon instrumentality” effect, in which the presence of a gun increases the likelihood of injury and death—independent of motivation, intent, and usage. Guns alter power relationships between people by extending one’s personal command over a given situation. Accordingly, the presence of a gun may produce violence by emboldening and empowering an aggressor (or defendant) by giving its wielder the power and courage to act violently in a way he or she might not normally act. This phenomenon has been referred to as “facilitation” (Hoskin, 2001).

Such scholarship points toward the idea that guns may serve as a stimulus for heightened violence: a kind of cue for aggressive or violent behavior. According to Berkowitz and LePage (1967), guns can act as “aggression-eliciting stimuli.” Frustration and anger can lead people to act violently. Because of the learned association between weapons and aggres-

sive behavior, the sight or presence of a gun can evoke aggression in an angry or emotionally disturbed person. Noting that the finger pulls the trigger but “the trigger may also be pulling the finger,” Berkowitz (1968) has further argued that the presence of a gun can elicit negative thoughts along with negative emotions, thereby intensifying pre-existing negative emotion. In these ways, guns provide “stage directions” by prompting certain attitudes, behaviors, and actions (Selinger, 2012). As one young gangster explained to Hochschild (1995), “a gun want [sic] to get blood on itself. . . It want to get a body on it” (p. 201). If indeed guns “want” to be used, then their neutrality might be further questioned. The idea that guns themselves cause violence is relatively unexplored by policymakers and politicians in the U.S. (Strain, 2010).

The presumption that guns are neutral is part of a broader notion that technology is neutral—which is itself problematic, deriving from an effort to absolve the creators of technology from any responsibility for the consequences of their designs, according to Rey (2012). “From Frankenstein’s monster turning on its creator to Robert Oppenheimer’s own reflections on creating the bomb,” Rey writes, “Western civilization has wrestled with the question of where responsibility resides in atrocities facilitated by technology.” Technology is not neutral, according to the author, “because its birth—its very existence—is the product of both political forces and values-oriented decision making.” In other words, science and technology do not occur in a vacuum. Technological inventions are the product of human hands and minds; as such they are created with certain human assumptions—most of which, according to Haraway (1989, 1991), are both masculinized and corporatized—built into them.

According to Selinger (2012), the most common view of technology is the “instrumentalist” view that technology is value-neutral, subservient to human beliefs and desires, which it neither constrains nor determines; it is this view reflected by the aphorism “guns don’t kill people: people do.” A shooter learns that he or she alone is ultimately responsible for the consequences of pulling a trigger; however, “by equating firearm responsibility exclusively with human choice,” argues Selinger, “the NRA claim abstracts away relevant considerations about how gun possession can affect one’s sense of self and agency.” Such a position fails to convey the perceptual “affordances” provided by firearms and the transformative results of yielding to these affordances. The author notes:

To someone with a gun, the world takes on a distinctive shape. It not only offers people, animals, and things to interact with, but also potential targets. Furthermore, gun possession makes it easy to be bold, even hot-headed. Physically weak, emotionally passive, and psychologically introverted people will all be inclined to experience shifts in demeanor.

Responding to Don Ihde, a leading philosopher of technology, the author further explains how “guns mediate the human relation to the world through a dialectic in which aspects of experience are both ‘amplified’ and ‘reduced’.” The world seems less dangerous when armed with a gun—at the same time that more opportunities are offered, which might be suitably resolved through violent means. Selinger concludes with the observation by French interdisciplinary scholar Bruno Latour that the experience of possessing a gun actually changes the shooter. “You are different with a gun in your hand; the gun is different with your holding it,” Latour has argued. “You are another subject because you hold the gun; the gun is another object because it has entered into a relationship with you.”

Selinger’s argument sums up the view of *technological determinism*: that a human invention does, in fact, have a kind of animus (as disposition, not as anything specifically negative or hateful) beyond that of other simple objects. Such is the view of Melvin Kranzberg (1986), whose views have been reified among philosophers of technology simply as “Kranzberg’s Laws,” the first of which is “Technology is neither good nor bad; nor is it neutral.” The author cites DDT—once thought to be a boon for its ability to eliminate disease-carrying pests, now villified for its ability to disrupt ecological systems—as an example of technology having different results in different contexts under different circumstances than originally envisioned. A better example might be Agent Orange, whose original compound was discovered by Dr. Arthur Galston, a botanist intent on helping soybean production; regardless, the lesson here is that when seemingly benign technologies are implemented on a massive scale, unforeseen consequences can arise. Certainly the same can be said for weapons technology, though itself hardly benign. In a world in which technology enables widespread destruction (*vis-à-vis* nuclear warheads or other “weapons of mass destruction”) or limited destruction (as in the impersonal but imperfect “targeted” killing of drone strikes), the presumed innocence of technology, even for things never actually used, must be subject to further scrutiny.

Given some evidence of guns as aggression-eliciting stimuli, as power brokers in human interactions, and as lethal devices, it may make little sense to view them as neutral entities. Furthermore, given the absence of neutrality in technology itself—particularly in destructive technologies—it may be plausible that guns could harbor a kind of animus beyond current understanding. Further research is needed in this realm.

III. GUNS AS “BAD” OR “EVIL”

In critiquing Heidegger (1977) and his understanding of technology, Latour (1999) provides a bridge between the conceptualization of guns-as-

nonneutral and guns-as-“bad.” Every technological artifact has its own built-in script, he argues, capable of guiding a user to play roles in its own story. A hammer, for example, is meant to pound other objects and through its design encourages users to do so: who, with a hammer in his or her hand, has not at some point wanted to pound something? The author describes this transformative implementation as a process which he calls *translation*, in which both agents (the user and the artifact) create a new goal that corresponds to neither agent’s original program of action: “the prime mover of an action becomes a new, distributed, and nested series of practices whose sum may be possible to add up but only if we respect the mediating role of all the actants mobilized in the series” (p. 181). He discusses guns, in particular, as an example of translation, in which a citizen is transformed by carrying a gun, which “*adds something*” to the act of its use (p. 177). It instructs, directs, even contributes to its own implementation; agents (or actants) can therefore be nonhuman. “If I define you by what you have (the gun), and by the series of associations that you enter when you use what you have (when you fire the gun),” he writes, “the you are modified by the gun—more or less so, depending on the weight of the other associations that you carry” (p. 179). And not always for the better: “A good citizen becomes a criminal, a bad guy becomes a worse guy; a silent gun becomes a fired gun, a new [unused] gun becomes a used gun, a sporting gun becomes a weapon” (p. 180).

If, as Latour argues, the mere presence of guns can alter the likelihood of violent outcome, then one must relinquish the assumption that guns are neutral, independent, amoral objects/tools akin to other consumer goods. *If* guns are in fact not neutral, then it stands to reason that they might engender a particular axiological disposition—which is to say they might tend to be “good” or “bad” (or both). Any device designed and intended to take life can hardly be considered unqualifiedly “good” or indeed even contingently good, if, in fact, one considers life to be sacred; therefore, all guns, even when used for righteous purposes (for self-defense) or social sanctioned purposes (by law enforcement personnel) probably shade into the realm of “necessary evil” at best—or into something much more onerous at worst.

Consider the firearm currently under the lens of public scrutiny: the military-style assault rifle. At times, particular models (e.g., the TEC-9, popularized on the television show *Miami Vice* in the 1980s and by gangbangers in the early 1990s) or genres of guns (e.g., cheap, small-caliber imports or “Saturday Night Specials,” used not only in street crime and bar fights in the 1960s but also in the assassination of Robert Kennedy in 1968) have drawn criticism, strict regulation, or even outright bans. In the 1990s, military-style assault rifles were targeted because of their high-capacity,

rapid-fire abilities. Most recently, because of what happened in Newtown, the military-style assault rifle is again under fire.

According to Lieutenant Paul Vance of the Connecticut State Police, the primary weapon used by Adam Lanza in the Sandy Hook shooting was a .223-caliber Bushmaster rifle; the same make and caliber used by the D.C. sniper in 2002 (Almasy, 2012; Johnson, 2012). The Bushmaster may be considered a so-called “evil black rifle,” part of a family of guns related mainly by function and appearance. Popularized by gun enthusiasts on online shooting forums, the term has come to mean any military-style assault rifle, though it originally referred to the civilian variants of the M-16, namely the AR-15. When those who supported stricter gun laws began to distinguish in the 1990s between sporting firearms used for hunting and fast-cycling, high-capacity, semi-automatic “assault rifles” used for military and paramilitary purposes, those who opposed stricter guns laws began to refer to the latter, with their plastic stocks and matte finishes, as “evil black rifles.” Tongue-in-cheek, the term was intended to highlight the futility of distinguishing between particular firearms based on cosmetic appearance. Opponents of stricter laws argued that there was no real difference, apart from looks and after-market accessories, between their own “EBRs” and Grandpa’s semi-automatic hunting rifle (a .30-06 Remington Model 74, perhaps, with wood stocks and blued finish); they were functionally identical. No gun is inherently evil, they argued, but if supporters of stricter laws insisted on singling out particular firearms to demonize, then they would happily tout their preference for their own utilitarian and “ominous-looking” assault rifles.

Opponents of stricter laws are correct in noting that certain firearms should not be demonized because of the way they look. Whether dressed in black plastic stocks or not, a semi-automatic hunting rifle is little different (except in terms of how much ammunition they hold) from a semi-automatic military-style rifle. Moreover, within the neutrality paradigm, it is impossible to view *all* guns as anything other than inanimate, amoral tools, no different from other consumer goods. Outside that paradigm, however, lies a different and troubling possibility: in a non-neutral paradigm, guns have agency as pieces of technology with built-in predilections and biases, as actors in interpersonal conflict and, possibly, as morally significant entities. In this paradigm, it is not that EBRs *look* deadly, nor is it a matter of certain guns being more dangerous or more wicked-looking than others. It is in fact that *all guns* may be considered dangerous, “wicked,” and—with the aforementioned axiology—evil (for lack of a better word).

In a society with 300 million firearms in civilian hands, and in which more American civilians have died from domestic gunfire over the past forty-five years than U.S. soldiers killed in all of the nation’s wars from the

Revolutionary War onward (including the Civil War), the implications of the “evilness” of guns, though unclear, are far from insignificant. Some researchers (Passas, 2004; Davidson, 1996) include the firearms industry with both licit and illicit enterprises—everything from the tobacco industry to pesticide companies—in their studies of corporate power and abuse, which can create negative externalities (or unintended, harmful side effects). Large sectors of society consider certain products, such as alcohol or pornography, to be socially harmful; though perfectly legal, such products are still deemed offensive, inappropriate, or detrimental, usually for moral reasons, and on this basis subject to heightened regulatory control. For many, guns are part of this matrix. While there is sharp ambivalence in the American mind regarding firearms, public perceptions of the firearms industry have soured with every high-profile school shooting in the 1990s and 2000s, as it again became easier for some Americans to see gun manufacturers as “merchants of death” (as in the 1930s when this phrase was first popularized).

IV. GUNS AS INSTRUMENTS OF HATE

Again, of most interest here is the relationship, if any, between guns and hate. If guns arguably have complex agency that includes the ability to elicit aggression and violent action, then what effect can they have in the hands of those who openly express hate-filled views? While there is presumably interest in guns on both sides of the political divide, including the extremes, it is the far-right where the most emphasis is put on gun rights and civilian ownership. It is also this sector of U.S. society where the politics of enmity, so often displayed in conservative discourse, have the most potential to devolve from hate speech into hate crime (Dharmapala & McAdams, 2005).

Railing against the “liberal elite” whom they decry as having deprived their audiences of their rightful place in American public life, media demagogues have whipped up other white males through a brand of journalism in which listeners/viewers are sometimes left to conclude through inductive reasoning that misogynistic, homophobic, xenophobic, and/or racist responses would not be unreasonable. As Reimler (1999) points out, when white males, raised with an expectation of certain privileges based on race, gender, or sexuality come to the realization that being white may not necessarily give them a “free pass,” then it is unsurprising that some of these individuals choose to lash out at society in general, or at specific minorities which seem to threaten their hegemony. Ready to actualize their hate, extremists carry this irrational aggression to its furthest limits. As Levin et al. (1993, 2001, 2002, 2004, 2014-15) have noted, those who disseminate

hate-filled messages do not necessarily participate in hate crime themselves, instead aiming to incite others to act; the relationship between hate speech and hate crime, if distal, can still be causal, rather than proximate and correlative. The messages of anti-minority, anti-female, and anti-homosexual rhetoric therefore have potentially dangerous consequences when heard by a disaffected, disillusioned, and disempowered audience.

When that same audience is also heavily armed, the problem compounds and worsens: if the politics of exclusion create enemies (be they “gangbangers” or “illegals”), then fear-based consumption pushes an increasingly well-armed minority to horde even more firearms. In response to concerns that the federal and state governments would limit the sale of firearms and ammunition, consumers have responded with “panic buying,” scooping up guns and ammo in record numbers; ammunition shortages occurred after President Barack Obama’s election in 2008 (National Public Radio, 2009) and again in 2012 after the Sandy Hook massacre. Increased demands from civilians, federal agencies, and the military help to explain the shortages, with retail sporting goods stores enjoying the boost in sales. Gun manufacturers and dealers, backed by powerful lobbying groups such as the National Shooting Sports Foundation (NSSF) and the NRA—with its assurances of governmental gun-grabbing, always just around the corner—obviously profit considerably from such buying habits (Minitzer, 2013; Valentine, 2013).

Weapons caching and hate-based paranoia seem to go hand-in-hand. Far-right extremists come in different flavors and varieties; however, the one thing they seem to share—whether white supremacist, anti-federalist, survivalist, millennialist, or some combination of the above—is an appreciation of guns. As Perliger (2012) explains, the far-right is multifaceted, including the belief that the American political system was hijacked by external forces interested in promoting a “New World Order” in which the U.S. will be absorbed into the United Nations or another version of global government. These individuals and groups often espouse strong convictions regarding the federal government, believing it to be corrupt and tyrannical with a natural tendency to intrude on individuals’ civil and constitutional rights; they also often support civil activism, individual freedoms, and self-government. By itself, none of these convictions distinguishes the far-right from other strains of political and jurisprudential thought duly skeptical of the dangers of tyrannical government; instead, what is distinctive is the insistence that the right to bear arms be interpreted as the individual freedom that enables civil activism in defense of self-governance. The Second Amendment is the foundation upon which these other convictions rest; therefore, extremists in the anti-federalist movement direct

most of their animosity toward the supposed gun-grabbing ploys of the federal government and its proxies in law enforcement.

Stern (1996) has traced this fascination with firearms across a generation of far-right extremists, from the Minutemen of the 1960s to the militias of the 1990s, many of which are still active. The Minutemen stockpiled everything from machineguns to bazookas and flamethrowers. A generation later the Trochmann family (John, David, and Randy) used gun control to launch the Militia of Montana: as John Trochmann explained, “Gun control is only for one thing: people control” (p. 72). Furthermore, Stern explains how gun ownership “has become a benchmark of liberty” (p. 109). Trochmann and others used guns as symbols of freedom. Government agents who would regulate guns were cast as tyrants interested—*before* doing anything else—in disarming the citizenry in order to subjugate them; without means to resist, a disarmed populace were at the mercy of tyrants. In this framework, people have a right to arm themselves in order to engage and defeat U.S. military forces. To make this argument, militias focused on the Second Amendment to legitimize their agendas; in doing so, their rhetoric coincided with NRA rhetoric. Both the militias and the NRA advanced what Stern calls “an alternative interpretation of the Second Amendment” to justify not only the individual right to bear arms but also the right to resist the government. It is a philosophy that borrows more from Mao Tse Tung, who argued that power grows from the barrel of a gun, than from the faith in democratic process and principle as articulated by George Washington, Thomas Jefferson, and other American founders.

Horwitz and Anderson (2009) have explained the centrality of guns in right-wing ideology as a function of an antigovernment sentiment they call “Insurrectionism,” a worldview hostile toward public education, immigration, international institutions (such as the United Nations), and almost any type of social welfare program, especially those run by the federal government. Noting that antigovernment sentiment is not confined to gun enthusiasts, the authors point out that “the Insurrectionist idea” adds “an emotionally charged element to the standard conservative critique.” That is, “big government is not just inefficient or even corrupt but is an alien force that threatens to annihilate us if we fail to exercise constant vigilance against its natural tendencies toward tyranny” (p. 2). As this idea gains traction, moving from the far-right extreme toward the middle of conservative (and even some progressive) thinking, democratic values are threatened:

Right-wing populists are attracted to the idea that Insurrection through force of arms is a morally and legally legitimate instrument of political expression in a democracy largely because it fits neatly with their core

ideological premises—that is, that the government should be kept in a condition of weakness because collective approaches to social problems are wasteful at best and more often constitute an insidious threat to individual liberty. (p. 3)

In the view of Insurrectionists, who see themselves as self-protectively preparing against governmental threat, guns provide the means to keep the state in a condition of weakness.

Other scholars have reached similar conclusions. Crothers (2003) notes that militia groups in the 1990s convinced themselves that the Founding Fathers believed power should remain in the hands of the people to stop usurpation of governmental power; in their wisdom, the Founders envisioned an armed populace that could rise up at any time to overthrow elected officials. Accordingly, the author notes, “Perhaps no other policy exemplifies federal government abuse of authority better than gun control,” an important symbol of governmental evil for militias, survivalists (or “preppers”), and doomsdayers (p. 53). As part of a larger plot to undermine the individual freedoms “guaranteed” in the Constitution—perhaps even part of an international plot orchestrated at high-levels—gun control represents a particular menace to militias, whose status as armed citizens empowers them to defend themselves against a hostile government. Only guns, and the freedom to own them without restriction, spell the difference between tyranny and freedom. To limit gun ownership, and the number and type one can own, would be to limit one’s ability to check this menace; in this schema, gun control is a kind of attack on liberty itself. For those already heavily armed, it is but a small step from guns as the objects of political debate to guns as supplements to political activism used to intimidate, threaten, and control the parameters of the debate—and perhaps even to guns as political actants themselves.

It is here—in that liminal space between hate speech and hate crime, where certain individuals and groups promise to carry through on their threats and ideations—that the relationship between hate and firearms is most dangerous. In describing the lethality of far-right extremists, Perliger likens far-right violence to an iceberg, with a wide base of attacks by unaffiliated individuals that become more focused and deadly as those individuals affiliate with other like-minded individuals in organizations. The author finds that “the narrower parts of the iceberg are indeed sharper,” with a smaller number of more lethal attacks (Perliger, p. 143). Stern (1996) employs a similar metaphor, with one interviewee likening the 1990s militia movement to a “funnel moving through space,” able to pick up people at the large end through mainstream issues, such as gun control, and feed them conspiracy theories as they went further in; zealots, easily identifying with

anti-government dogma, popped out of the small end of the funnel after becoming increasingly willing and eager to kill along the way.

Reasoning that any concessions toward reform will inevitably slip slopingly toward confiscation, the National Rifle Association has done its part to enable such individuals by consistently opposing gun control (Davidson, 1998). A vintage NRA publication that criticized the 1911 Sullivan Act (which required New Yorkers to obtain a police-issued or court-ordered license to possess a firearm) argued, “Any law which. . . depends on the cooperation of the criminal has no chance of being effective” (Trefethen and Serven, 1967, p. 291). Since then, the NRA position has grown increasingly rigid and unyielding (Winkler, 2011; Melzer, 2012). As the foremost political lobbying entity for the gun-manufacturing industry, the NRA has led the cry that a strong government is antithetical to freedom—though few observers have noted that organization’s financial self-interest in promoting such a message. The shriller the warnings of confiscation, the more guns are sold. Sales spiked in 1993 and 1994, for example, before passage of the Brady Bill; sales of machine guns—“Class III” firearms restricted under the 1934 National Firearms Act—shot up dramatically in anticipation of the 1986 National Firearm Owners Protection Act, which further restricted sales of such weapons; and ammo flew off shelves in December 2008, when gun enthusiasts (wrongly) anticipated a gun-grabbing attempt by President-elect Barack Obama.

Much of the hoarding hysteria stems from online speculation about the possibility of gun-grabbing by the government. Online blogs, discussion boards, and listservs provide three important venues to express anti-gun control views, and the relative anonymity of the Internet provides a relatively anonymous forum for hate speech. The interplay between discussions about guns on pro-gun, anti-government, pro-militia, and “prepper” websites is quite fluid, with a shared tendency for hyperbolic rage. The amount of hate expressed on *Stormfront.org*, the Internet’s “premier” white-supremacist website is unsurprising, but similar views expressed on *AR15.com* or The Firing Line (whose staff fights a constant battle to check ad hominem attacks against various politicians) can be shocking to the uninitiated. One author (Adams, 2011) has described the trolling and online disinhibition, or “deindividuation,” that tends to make online exchanges susceptible to more spitefulness than is customary in face-to-face communication:

Deindividuation is what happens when we get behind the wheel of a car and feel moved to scream abuse at the woman in front who is slow in turning right. It is what motivates a responsible father in a football crowd to yell crude sexual hatred at the opposition or the referee. And it’s why under the cover of an alias or an avatar on a website or a blog—sur-

rounded by virtual strangers—conventionally restrained individuals might be moved to suggest a comedian should suffer all manner of violent torture because they don't like his jokes, or his face.

Anonymous bullying of this sort is comparatively risk-free for the bully; apart from its effects on the bullied, its greatest danger lies in its contribution to an uncivil public dialogue in which certain participants cannot distinguish between the bluster of empty threats and the real McCoy. Others (Kirshenbaum, 2011; Wolf, 2011) have also noted the toxic effects of online hate speech, worsened by the anonymity of pseudonyms.

The admiration by far-right extremists of the NRA and its policies—all of which revolve around the elevation of the Second Amendment to individual-rights primacy—seems to derive from an increasingly flagrant disregard for efforts to regulate guns, a disregard itself catalytic to outlaw subculture. Timothy McVeigh, bomber of the Alfred P. Murrah Federal Building in Oklahoma City in 1995, internalized the mantra, “The day guns are outlawed is the day I'll become an outlaw,” which would morph into the more widely intoned, “When guns are outlawed, only outlaws will have guns.” So incensed was he by the 1993 standoff at the Branch Davidian compound in Waco, Texas (that ended in an inferno in which more than eighty people died) that McVeigh arrived onsite during the standoff to demonstrate his support of the besieged Davidians; atop a nearby hill, McVeigh set up a roadside stand where he distributed bumper stickers with messages such as “Fear the Government that Fears Your Gun,” “Politicians Love Gun Control,” and “Ban Guns: Make the Streets Safe for a Government Takeover” (Linder, 2006). Many far-right extremists have embraced an outlaw identity in championing gun rights—a phenomenon only partially related to the fact that some are, in fact, actual outlaws. McVeigh's instruction manual, in fact, was William Pierce's novel *The Turner Diaries* (1978), an imaginative account of insurrection and an influential text in far-right circles. *The Turner Diaries* poses the rhetorical question, “What will they do when they come for your guns?” For Pierce, the answer was simple: start a race war (Jackson, 2004).

Other gestures are non-racialized but no less dramatic. The outlaw subculture has a legal but controversial counterpart in the open-carry movement, in which proponents openly wear holstered sidearms in public. Forty-four states have laws which allow firearms to be carried in public view with little or no restrictions; by actually doing so, open-carriers hope to draw attention to their Second Amendment rights. Their protests—as when a 22-year-old man carried an AR-15 into a Kroger supermarket in Charlottesville, Virginia, in January 2013—can be dramatic and alarming

for customers unused to seeing firearms carried in public (Urbina, 2010; Hausman, 2013).

This flair for spectacle and hyperbole has become a staple of NRA posturing. At an August 2007 concert in Oroville, California, rock musician Ted Nugent brandished two assault rifles onstage and invited then presidential candidate Barack Obama to “suck on one of these, ya punk”; during the campaign he also called Obama a “piece of s**t.” Nugent—who has served on the NRA Board of Directors since 1995—later railed against President Obama, Supreme Court Justices, and others at the NRA Convention in St. Louis on April 14, 2012, when he accused policymakers in Washington of “wiping their ass with the [U.S.] Constitution.” Nugent pledged that if Obama were re-elected he would be either “dead or in jail by this time next year,”—killed or incarcerated, presumably, in attempting to assassinate the president. Such tirades prompted an investigation of Nugent by the U.S. Secret Service (Dwyer, 2012).

If Nugent is an extremist, he is not alone in the upper echelons of NRA leadership. Yet it is not simply discomposed absolutists who use such language to display both affinity for firearms and acrimony toward gun control and those who would advance it. Mainstream Republican politicians have also voiced views that echo the rhetoric of far-right extremists on guns, individual freedoms, and ancillary topics. In the 1990s, for example, the late Helen Chenoweth-Hage [R-Idaho] heartened militiamen and white supremacists in her adopted state when she voiced the suspicion that armed federal agents were landing black helicopters on Idaho ranchers’ properties to enforce the Endangered Species Act, as many conspiracy theorists had long suspected (Egan, 1995). After Republicans took control of Congress in 1994, Newt Gingrich [R-Georgia] announced, “As long as I am Speaker of the House, no gun control legislation is going to move”; presidential hopeful John McCain [R-Arizona], who supported a number of gun-control reforms, locked up NRA support in 2008 by declaring, “I strongly support the Second Amendment and I believe the Second Amendment ought to be preserved—which means no gun control” (Winkler, 2011). It is this ability of the NRA—to inculcate its core principles in the very halls of the U.S. Capitol—that makes it a formidable lobbying group in Washington, D.C.

NRA pretense takes many forms. Under newly elected president Charlton Heston, the National Rifle Association held its 1999 annual convention in Denver, while under protest from those who urged a change of venue, no less than one week after the Columbine massacre in nearby Littleton, Colorado. There, Eric Harris and Dylan Klebold had killed twelve students and one teacher after leaving behind a hate-laced video diary (Hendren, 1999). Hoisting a rifle above his head at the 2000 annual convention in Charlotte the following year, Heston told Democratic presidential nomi-

nee Al Gore that he could have his gun when he pried it from Heston's cold, dead fingers. This posturing—an unapologetic defiance, a kind of gleeful acceptance of the collateral damage of guns in American life, and a thumb-in-the-eye to the politicians, policymakers, and reformers who would attempt to stop rampage violence and hate crime—came in the wake of school shootings like the ones in Littleton or, more recently, in Newtown, Connecticut. As Heston's successor, Wayne LaPierre has written (1994), "I submit that the actions of criminals and lunatics are irrelevant to my own right to own and use firearms in pursuit of my own personal enjoyment," thus effectively arguing that his personal affinity for recreational shooting and other "personal enjoyment" trumps the need for public safety (p. xiv). Most recently, LaPierre challenged President Obama's efforts to reform gun laws after the Sandy Hook massacre, when he vowed to increase NRA membership rolls and ramp up efforts to stop reform. Writing in *The Daily Caller*, a conservative news website, he pledged:

We will not appease. We will buy more guns than ever. We will use them for sport and lawful self-defense more than ever. We will grow the NRA more than ever. And we will be prouder than ever to be freedom-loving NRA patriots. . . We will Stand and Fight. (LaPierre, 2013)

Those who oppose stricter gun laws have highlighted the importance of proper mental health care and the necessity of keeping guns out of the hands of criminals. However, in light of LaPierre's style of rhetoric, it should come as little surprise that some foreign observers have questioned whether Americans have come to value guns more than we value the lives of our own children (Matsuda, 2013-14; Strain, pp. 3-5).

CONCLUSION

This article advances an admittedly provocative thesis, one that presents many "ifs," and certainly more research is needed on the instrumentality and axiology of firearms. In evaluating this thesis, four additional considerations are worth pondering. First, Americans from across the entire political spectrum adulate firearms. In this sense, "gun love" is apolitical; appreciation of and affection toward firearms is not limited to the far-right extreme. Second, attitudes toward firearms are varied and complex in the U.S. Gun ownership and attitudes toward guns are complicated; the former is no predictor of the latter. Many gun owners seek responsible reform, just as many Americans who do not own guns champion the rights of those who do. Third, a vast majority of Americans see a need for substantive change in gun policy. Americans seem to agree on the need to keep firearms away

from certain people who would use them to do harm to others, and a variety of polls taken after the massacre at Sandy Hook Elementary indicated that nearly all Americans continued to support mandatory background checks for gun buyers (including at gun shows), with steady majorities supporting a ban on magazines that allow ten or more bullets to be fired before reloading (Clement, 2012). Fourth and finally, guns and hate can create a toxic mix in American society, with its liberal guns laws (under the Second Amendment) and its general legal protection of hate speech (under the First Amendment), so long as that speech falls within a constitutionally-protected speech form.

According to Dorélien et al. (2009), three factors have combined in recent years to make this mix more dangerous. First, hate groups are on the rise. Second, the incendiary rhetoric of the gun lobby has ramped up fears of gun owners with false claims that the government is moving to take away their guns. Third, politicians in Washington have failed to enact reasonable measures to protect American citizens from gun-wielding extremists. If, in fact, guns can be seen not as passive objects but rather as actors themselves in this drama, then they may actualize violence committed in the name of hate in ways not fully understood or appreciated. One might add a fourth factor—that mass shootings seem to be on the rise both in numbers of incidents and fatalities, an impression confirmed by The Center for American Progress, a left-wing think-tank (Cooper, 2012).

In sum, firearms in the hands of individuals with hate-filled worldviews are, socially and societally speaking, not optimum: more hate plus more guns equals more potential for hate-fueled violence. If, in fact, these guns are somehow themselves contributing to the possibility of violence, then the U.S. situation is perhaps even worse, or at least more volatile, than earlier imagined. Whether or not guns are able to “store” hate and evil, as some academic literature seems to suggest, they do negatively empower and enable many of those who already fetishize firearms and ascribe to them weighty meanings and symbolisms.

The strange story of Christopher Dorner, the rogue ex-cop who terrorized southern California in early 2013, provides a final, chilling example of this interplay between guns, moral agency, and hate. Fired from his job with the Los Angeles Police Department, and incensed at the injustices he perceived within the department, the former Navy reservist began a one-man war against the LAPD from February 3 to February 12: a bloody campaign to “get back his name” that left four people, including two police officers, dead. In a hate-choked, 11,000-word “manifesto” posted online before the killings began, Dorner identified his enemies and warned them of his plans to shoot them to death. Paradoxically, he also pondered the need for gun-control reform to end shooting sprees, as if he himself were no

longer in control of his actions. After pointing out that all of his firearms were purchased legally, Dorner noted the ease with which he acquired silencers for his guns, rhetorically questioned why anyone needs short-barreled rifles (“SBRs”) or AR-15s (other than to assassinate police officers), renewed the call for an assault weapons ban (“AWB”), and mused that his own vendetta would have been rendered ineffective with adequate gun-control policies. “If you had a well-regulated AWB,” he observed matter-of-factly, deconstructing his own hate-fueled rampage, “this would not happen” (Dorner, 2013).

NOTES

1. A collection of NRA quotes, including Heston’s, is available at <http://www.nrawinningteam.com>. See also Charlton Heston’s September 17, 1998 address at The Claremont Institute, available at http://www.claremont.org/publications/pubid.503/pub_detail.asp, as well as excerpts from his December 7, 1997 speech to the Free Congress Foundation, available on the Violence Policy Center’s webpage at <http://www.vpc.org/nrainfo/excerpts.html>.

2. Ibid.

3. See 15 U.S.C. § 2052(a)(1)(E). The CPSC regulates virtually every one of the approximately 15,000 different consumer products that are used for household or recreational purposes; firearms, however, were specifically exempted under the 1972 law.

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Cutting Off Our Nose to Spite Our Face: The Real Consequences of I-9 Audits Considered through a Case Study of Brewster, Washington

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ABSTRACT

The phrase “cutting off one’s nose to spite the face” has many meanings, most of them violent and, historically, sometimes literal. In our times, its meaning is colloquial and suggests a needless, disproportionate, and self-destructive response to a perceived threat. This strangely violent phrase aptly describes what is happening in small agricultural communities across the country. One such community is Brewster, Washington, where Immigration and Customs Enforcement (ICE) carried out I-9 audit of Gebbers Farms, Brewster’s major employer, in December of 2009. After presenting the Gebbers Farms case, I discuss what this example from one small town in North Central Washington reveals about the workings of immigration law and law enforcement in, and upon, small agricultural communities today.

INTRODUCTION

“All politics is local,” observed the late Thomas “Tip” O’Neill, the longtime speaker of the United States House of Representatives. O’Neill’s observation is certainly true as far as immigration is concerned. Although the setting and enforcement of immigration law, codified in the Immigration and Nationality Act (INA), is the purview of the federal government, small agricultural communities around the country feel the impact of these laws in a way that other locales often do not. This is because these often rely on the labor of migrants, a high percentage of whom are not authorized to work in the U.S.

Ideally, laws exist to protect the lives and livelihoods of those who reside within the jurisdiction from irresponsible and dangerous behaviors. Yet what are we to make of laws that, although they are intended to protect communities, actually serve to damage or destroy them?

Immigration law and its enforcement are particularly egregious in this regard. Laws and law enforcement activities that prohibit presence and employment without authorization, which are arguably intended to create a

secure workplace and promote a decent wage, can destroy families, cripple enterprises, and destabilize entire communities.

Because immigration law and law enforcement cast a wide net, their impact reaches far beyond the intended targets. Although national security is an announced goal of immigration policy, in the vast majority of cases no Americans are lining up to take the jobs vacated by those unauthorized migrants who are forced away from them. What is more, the lost economic activity and lost sense of community security that results from the current regime of immigration law enforcement destabilizes communities in which these actions occur.

I. CASE STUDY: THE I-9 AUDIT OF GEBBERS FARMS

While working under the auspices of the Catholic Diocese of Spokane, Washington, I provided immigration legal services in Okanogan County, including the town of Brewster, where the case study discussed herein took place. Just before Christmas of 2009, 525 workers at an orchard and packing operation in Brewster were fired from the jobs that some had held for as long as fifteen years or more (Sanchez, 2010). Their employer, Gebbers Farms, had been audited under the I-9 audit program carried out by Immigrations and Customs Enforcement (ICE). The Gebbers Farms audit was one of 2,900 such audits conducted across the country that year. This audit threw the equivalent of one-quarter of the town's population out of work overnight; it was the biggest firing of its kind that the State of Washington had ever seen.

Okanogan County is one of the world's premier regions for harvest fruits and vegetables, as well as agricultural tourism. The town of Brewster, named for the first white settler in the area, John Bruster, is one of the most important and intriguing ones in this area of North Central Washington. Surrounded by the high, rocky hills that overlook it, Brewster sits at the confluence of the Okanogan and Columbia Rivers, just south and west of the first European settlement in the area, Fort Okanogan, which was founded in 1811 as part of John Jacob Astor's Pacific Fur Company. For miles in every direction, apple and cherry orchards line the riverbanks and climb the slopes of the surrounding hills.

The road leading to Brewster from the south and east crosses a barren landscape known as the Channeled Scablands. At Bridgeport, some twenty miles east of Brewster and the site of Chief Joseph Dam, the landscape softens and becomes less barren. The first cherry orchards appear, and compact discs hanging from branches catch sunlight to scare away birds. Migrant laborer residences are just visible from the road, tucked below grade and hidden in the trees. The road follows the Columbia River, cross-

ing a quarter-mile long bridge which connects the southern bank to the northern, and Douglas County to Okanogan, as it enters Brewster. In town, the highway becomes Bridge Street, the thoroughfare that runs from one end of the community to the other. The houses along Bridge Street are small structures, including single-story dwellings and mobile homes. Bridge Street ends at US Highway 97, which continues north up the valley to the city of Okanogan (also the county seat), and to other communities—Omak, Tonasket, and Oroville—before it crosses into Canada. Highway 97 also continues to the south, where it follows the Columbia to nearby Pateros. Wenatchee, popularly known as “The Apple Capital of the World,” lies 65 miles away. Brewster more than contributes its share, as about 17 percent of all the apples in the U.S. go through one of Brewster’s packinghouses (Fig Tree, 2010).

Brewster’s Main Street intersects Bridge Street near the north end of town. Main Street is anchored on the west end by a branch office of Sterling Savings Bank and on the east by the waterfront and a Cold War era jet fighter. Main Street is home to businesses with names like La Moderna, Ropa Para Toda la Familia, La Moda, La Milpa, Mi Pueblo, Fruiteria Tropical, Los Reyes, and Mercado Mexicano. These businesses sit cheek by jowl with ones that carry names like Precision Auto Parts, the Brewster Chiropractic Center, Legacy Memorial Funeral Home, Skirko CPA, and Webster Furniture. Sacred Heart Catholic Church, located at 5th and Hanson, offers three Masses each weekend: one in English on Sunday and two in Spanish; one on Saturday evening on one on Sunday afternoon. There are also Spanish Masses offered on Thursday and Friday evening.

Brewster represents roughly 2,730 of Okanogan County’s approximately 41,000 residents. According to the 2010 Census, Hispanics and Latinos comprise 73 percent of Brewster’s population. Though the county’s foreign born population (11 percent) is less than the statewide figure (13 percent), Okanogan is one of Washington’s most demographically diverse counties, due significantly to the size of its Native American (it is home to the Confederated Tribes of the Colville Reservation) and Hispanic and Latino populations (at 12.3 percent and 18.2 percent, respectively). Both Okanogan County and the town of Brewster are relatively poor. Sixteen percent of families, 21 percent of all individuals, and nearly 30 percent of those under age 18 living in Okanogan County live below the poverty line. By comparison, 29 percent of Brewster’s families, 32 percent of its overall population, and 38 percent of those under age 18 living in Brewster live below the poverty line.

The largest employer in the area, Gebbers Farms, is omnipresent, and according to some residents, Brewster would not exist without the company. The ancestors of the modern Gebbers family first arrived in the

Brewster area in the late 19th century. In 1899, Martha Gamble Gebbers was the first baby ever born in the town of Brewster (Gebbers Farms, 2006). Gebbers Farms has been family-owned and managed for more than a century, and today, most Gebbers family relatives are still involved in some capacity of daily operations or are learning the family business. Though it still identifies strongly as a family business, it also boasts one of the world's largest contiguous apple orchards, five thousand acres worth in all, and it is one of the world's major suppliers of late-season cherries. Gebbers Farms is well-regarded by residents, especially for investing in its workers and the community in general (Sanchez, 2010).

The company employs hundreds of people at any given time in growing, sorting, picking, and packing operations. Given the foregoing discussion, it should come as no surprise that Gebbers Farms employs a large number of Hispanic and Latino farm laborers; perhaps as much as seventy percent of whom might not be authorized to work, or be present, in the United States (Serrano, 2012; Southern Poverty Law Center, 2010).

The effects of the December 2009 I-9 audit were widely felt, though not necessarily as anticipated. Brewster and nearby communities endured economic losses, including short-term ones, as a result of the workers' pay that was taken out of local economic circulation. By rudimentary calculations and conservative estimates, removing from the local economy the income and earning power of 525 workers who earned minimum wage (\$9.19 an hour) for eight hours, or about \$62 per day after taxes, meant a short-term gross loss of real worker income of roughly \$32,500 *per day*.

The fired workers had two choices: leave Brewster or try to ride out the hard times. This dilemma reflects a primary, though not necessarily directly stated, purpose of the I-9 audits: to encourage those who are fired to then "self deport"—that is, to leave the area or the country entirely because they will not be able to sustain themselves if they remain where they have been. Yet for those who had been in the area for two decades or more, self-deportation was out of the question, for they had established what immigration law and policy refers to as "significant ties." Though some, even many, may have been born in Mexico or Central America, Brewster was home. Their children had been born in local hospitals and were being educated in local schools. They had attended local churches, supported local businesses, and buried loved ones in local cemeteries. Furthermore, these families are often "mixed status," comprised of members who are citizens, legal residents, and/or unauthorized migrants.

For those who chose to stay, religiously based community organizations provided short-term support resources. The local Episcopal Church had a food bank; the local Catholic Church furnished vouchers for food, clothing, housing, and gas, as well as immigration information and assis-

tance (Fig Tree, 2010). Many of these displaced workers and their families felt confident that things would work themselves out by the end of March 2010. Yet given the evidence of displaced workers' reliance on local relief efforts, and the sudden massive loss of employment, Brewster and other local communities had no immediate means to recoup or offset these short-term local economic losses.

Another primary purpose of the I-9 audit system is to shift the costs associated with immigration law enforcement from the government onto to those businesses who hire unauthorized migrants. Namely, either by forcing those businesses to pay a stiff penalty for breaking U.S. immigration law or to fire those people who lack authorization to work, or be present, in the United States. Businesses claim that they cannot determine with certainty just which workers are properly documented and those who are not and, furthermore, E-Verify, the government system for checking immigration status, is inaccurate. Some businesses also regard verification of employees' documents as a regulatory activity outside the scope of their business responsibility, and consider E-Verify program to be too costly and time consuming to set up (Westat, 2010). Until E-Verify is simplified and made mandatory, it is unlikely that a great number of employers will use it. As well, asking employers to force workers to prove their authorization status and the veracity of their documents borders on legally impermissible profiling and discrimination, which could lead to lawsuits. Finally, employers contend that they are not in the best position to determine legal authenticity of immigration and citizenship documents, and thus they take at face value the documents as presented to them.

Agribusinesses may also find that unauthorized migrants are the only people who are willing to perform the work that they have to offer. In the instant case, Gebbers Farms lost many loyal workers who knew the company well and on whom the company had relied for many years, not just seasonally but often year-round. Indeed, this family-owned and managed business had to sever ties with many of the Hispanic and Latino families who had helped to grow and sustain the enterprise, and whom Gebbers Farms had supported through its community involvements. After the audit and terminations, Gebbers Farms placed advertisements that sought up to 1,280 minimum-wage workers who could meet requirements such as: *must be able to lift 60 pounds, climb a ladder while carrying 40 pounds and endure "wet orchards in temperatures from 30 to 100 degrees"* (Westneat, 2010).

It probably comes as little surprise, then, that the local response was less than enthusiastic. Said one orchard owner who is familiar with the Gebbers Farms case: "There is a ten percent unemployment rate. And I've not had a single U.S. American stop by and ask for a job" (Sanchez, 2010).

Unable to find replacements among the available workforce, Gebbers Farms hired 300 temporary guest workers who came from Jamaica on H-2A visas (Rural Migration News, 2010).

Many speculated that Brewster would also see declines in business activity and school enrollments. However, the Brewster School District reported that enrollments remained steady, after a temporary decline in the winter of 2010, and many businesses had bounced back to pre-audit levels in the summer of 2010. Esteban Camacho, owner of La Milpa Grocery Store, said: “Everything is back to normal. I think most of the people who stayed here wound up working somewhere else. There are a lot of the same people around” (Rural Migration News, 2010). Ron Oules, Brewster’s Chief of Police, offered a similar assessment of the I-9 audit’s impact: “It did nothing! That’s the thing. It hit the media and it looks like this great big thing, but the reality—the end result truly is, other than putting a financial burden on a local business and disrupting the lives of the residents around here, did it truly make a change? I don’t believe so, no” (Robinson, 2013). Yet one thing that did change was the influx of Jamaican workers into the community. In response to which, Mr. Camacho reported that he learned to make coconut rice and jerk chicken (Robinson, 2013). The number of Jamaicans who have remained in area after marrying U. S. citizens has increased, too.

II. LOCAL IMPLICATIONS IN A NATIONAL DEBATE

The Gebbers Farm I-9 audit and its aftermath raise questions about the goal of U.S. immigration law and enforcement, which can, in part, be defined in terms of the economic well-being and personal safety of legal residents, complex aims like community membership and security, and, of course, national security. The sections of the Immigration and Nationality Act of 2013 which address immigrant admissibility (8 U.S.C. 1182, § 212) and deportability (8 U.S.C. 1227, § 237) express the federal power to prevent people from entering the country or to remove them from it. Reasons for admissibility and deportability include: holding political philosophies that are at odds with those of the United States; lacking good character; posing a threat to national security or public safety; falsely claiming membership in American society; being in the country without permission or having overstayed that permission; and working without authorization.

Without overlooking the federal powers and interests, there are numerous local implications to the immigration debate, as well, because all migrants, whatever their authorization and documentation status, live and work in some local community or other for some amount of time. Everyone who lives within, or simply visits, the U.S. affects community member-

ship and security, as well as national security. Everyone who works in the U.S., regardless of authorization status, affects in myriad ways the economic security of those who are lawfully present and authorized to work in the U.S. These and other impacts are not just federal; they are also local. Therefore, any analysis of the Brewster audit should also consider how well the I-9 audit met national immigration goals and how doing so affected this particular community.

III. UNAUTHORIZED WORK AND PRESENCE

What primarily draws people to Brewster is the availability of work, as well as secondary benefits like quality of life, which may consist of both tangible and intangible goods. According to Census data, the Latino population in Brewster grew rapidly from 1980, when Latinos made up only three percent of the town's population of 1,337 (1980 Census of Population and Housing). Since then, the Hispanic and Latino population has climbed rapidly and propelled Brewster's growth, from 35 percent in 1990 (1990 Census of Population and Housing) to almost 60 percent in 2000 (2000 Census of Population and Housing), and finally to a total of 2,730 residents in 2010, 73 percent of whom are Hispanic or Latino. In fact, during this last ten-year period, Brewster's non-Latino population actually decreased by 28 percent (Brewster, Washington Population). Viewed in light of the major economic influence of Gebbers Farms and its historic reliance on unauthorized migrant workers from Mexico and Central America, and notwithstanding the recent influx of Jamaican immigrants, Brewster might not exist today—or at least not as it does today—without its growing Hispanic and Latino population, including those who are unauthorized migrants.

Because the economy of Brewster continues to depend on immigrant labor, and because of the high percentage of unauthorized migrants within the agribusiness workforce, it is not surprising that the economy of the town suffered greatly, at least short-term, as a result of the I-9 audit. Based on the statewide average hourly wage for picking apples, a worker could earn about \$2,113 per month before taxes (about \$1,900 after taxes). Note, however, that such workers receive compensation according to how much they *pick*, not necessarily according to minimum wage. The Washington statewide average hourly wage earned in 2009 was \$16.48 for picking cherries and \$12.19 for picking apples (Westneat, 2010). Thus, the workers' aggregate earning power might have been even greater and the lost local economic contribution more even more devastating.

With the Gebbers Farms I-9 audit, suddenly that income was gone, and there was no immediate alternate employment or unemployment insurance available to the 525 fired workers (Westneat, 2010). Furthermore, 525

fewer workers in the orchards meant less money in circulation in the community, perhaps as much as \$1 million per month, based on the previously recited estimates. Though donations from charitable organizations helped bridge the gap for those who chose to ride out the audit's aftermath, which also helped boost the local economy, reliance on charitable giving is an unsustainable strategy over the long haul.

The 111th Congress (2009-10) allocated \$135 million for ICE workplace enforcement, of which the I-9 audits are a part. In terminating these 525 workers, Gebbers Farms took the necessary action to avoid incurring a fine, the average of which in 2009-2010 was \$110,000 (Committee Reports, 2010). Gebbers Farms ultimately paid \$475 per H-2A visa to bring 300 guest workers from Jamaica to Brewster (approximately \$142,500), plus up-front travel costs which the company would require those coming to repay (Mehaffey, 2010). Employers must pay H-2A workers the Adverse Effect Wage Rate (AEWR), which in 2009 was \$8.87 per hour (Rural Migration News, 2010), less than the state minimum wage at the time. However, given that the new hires would need more time to accomplish the same work as the more seasoned and skilled workers who had been fired, the new workers (though costing less per hour) were less efficient and thus likely cost Gebbers Farms more in the long run (Reyes, 2012). A family-owned nursery in California audited around the same time as Gebbers Farms estimated a resultant 10 percent increase in costs due to an I-9 audit (Gardella, 2011).

Three years after the audit, the money circulating in the local economy remained below pre-audit levels, even when Gebbers Farms had full employment in the peak season and with some businesses, like La Milpa Store, reporting a return to normal. One reason why is that whereas the local Latino farmworkers kept most of their earnings in Brewster's economy, the Jamaican workers—who still have lesser “ties” to the area—are drawing more out of the local economy through remittances (Robinson, 2013).

IV. COMMUNITY MEMBERSHIP AND SECURITY

As mentioned, one of the goals of the I-9 audit system is to encourage those who are fired to “self deport,” to leave the country because they are unable to sustain themselves here (Reyes, 2012). This strategy does not consider the investment or contributions that unauthorized migrants have made to the communities in which they live, even without receipt of legal status. Unauthorized migrants cannot be surgically removed from their communities without having their absence reverberate throughout it. To give one illustration, shortly after the Gebbers Farms audit I received an

email from the pastor of one of Brewster's churches, in which the pastor said "ICE is now deporting people. . . They are going to the houses of the people who were fired through the audit and deporting them."¹ Although this information turned out to be inaccurate, the bottom line is that the community was destabilized and now insecure in ways beyond economic impact. Local community members were scared, rumors were flying, and since even something as minor as a routine traffic stop can turn into a deportation situation, it was not out of the question that the audit would ultimately result in a house-to-house raid. People feared that their loved ones who had lost jobs might be removed from the country and taken away from them permanently.

For Gebbers Farms, the unannounced audit also created an atmosphere of uncertainty. In general, an audit during harvest time in an apple orchard can create chaos and severe losses of produce and income. While laborers who have lost jobs with a given employer due to an audit may be able to find work with a local competitor, audited employers must attract new employees from the available pool of authorized workers (which proved impossible) or work with a labor contractor (as Gebbers Farms ultimately did) to hire temporary workers through the H-2A program.

CONCLUSION

What happened in Brewster just before Christmas 2009, which also happened in 2900 other workplaces that year, raises questions about the real effectiveness of U.S. immigration law and its enforcement. In 2012, the federal government spent \$18 billion on immigration law enforcement, compared with \$14 billion spent on all other law enforcement activities combined (Preston, 2013). In 2011, the Obama Administration deported over 400,000 individuals—a record (Gavett, 2011).

While politicians debate the merits of this or that aspect of immigration reform, the current system of laws and policies harms small towns across the country. In many ways, as Brewster shows, nothing really changes, because of the connections that those targeted by the I-9 audit have to the community, and because the community has been subject to an action that, according to its stated objectives, accomplished nothing. Yet in other ways, the I-9 audit system is producing many effects, negative ones that drain economic resources out of local communities and community organizations, burden businesses and consumers alike, and introduce community insecurity. Any real discussion of immigration reform should consider the makeup of communities like Brewster, seek to understand the factors that shape them, and look to what kinds of conditions actually promote secure communities. For just as the national debate plays out locally,

so too do immigration law enforcement actions like the Gebbers Farms I-9 audit in Brewster have an impact on the nation as a whole.

NOTES

1. E-mail on file with the author.

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Reclaiming Justice and Eliminating Inequality through Compassionate Migration: The Relentless Struggle of Migrants Living in the Shadows

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ABSTRACT

This article elaborates on the emerging concept of “compassionate migration” as a counter-hegemonic response to the institutions and systems that criminalize unauthorized immigration, including the assistance provided by those who aid such migrants out of a sense of compassion. In the name of human dignity, it is imperative that those who live in the shadows of United States immigration law and its enforcement system sense that social justice is a tangible possibility, and that they indeed may be able to free themselves from the structures that criminalize them and render them vulnerable to various forms of discrimination and other human rights abuses.

INTRODUCTION

The individual is capable of both great compassion and great indifference. He has it within his means to nourish the former and outgrow the latter.

—Norman Cousins

When any person suffers for someone in greater need that person is a human.

—Cesar Chavez

For the more than 11 million unauthorized immigrants who live in the shadows in the United States, justice is an elusive if not allegorical objective. Their success is measured by how well they can endure the direct, structural, and cultural violence within which they are entrapped. This group of immigrants is forced to struggle for dignity, rights, social justice, and other forms of justice within juridico-political and socio-economic institutions that exacerbate intolerance and xenophobia. Although these institutions treat unauthorized immigrants as a threat to the ever more elusive “American Dream,” in reality they are caught in a *de facto* system of

spatial segregation produced by a juridical and political economy of social inequality.

This article explores these structures as it attempts to elaborate on “compassionate migration,” an emerging concept—and, in this author’s ideation, a counter-hegemonic response to the aforementioned institutions and systems that criminalize unauthorized immigration, including the assistance provided by those who aid such immigrants from a sense of compassion. In the name of human dignity, it is imperative that those who live in the shadows of United States immigration law and its enforcement system sense that justice is a tangible possibility, indeed that they may be able to free themselves from structures that criminalize them and render them vulnerable to various forms of discrimination and other human rights abuses.

I. FRAMING THE STRUCTURES OF VIOLENCE, INEQUALITY, AND INJUSTICE

Many immigrant groups within the United States, particularly unauthorized immigrants from certain linguistic and national origins, are subject to a constant state of deep and chronic social injustice that Johann Galtung called “structural violence.” “[T]he violence is built into the structure and shows up as unequal power and consequently as unequal life chances” (Galtung, 1969, p. 171). In contrast with direct violence, structural violence is a concealed form of violence whereby certain social groups are deliberately marginalized by the state. Indeed, they are separated from the socioeconomic, sociopolitical, and legal structures from which they could achieve their basic needs—including their fundamental human rights—and realize their potential as individuals and collectives (Galtung, 1969; Ho, 2007).

As a distinct form of violence, structural violence is built on systems of interaction that are deeply rooted in historically-dominant political, legal, and cultural institutions of states. According to Leighton and Winter, “structural violence is almost invisible, embedded in ubiquitous social structures, normalized by stable institutions and regular experience” (2001, p. 99). Structural violence reproduces oppressive relations and other inequalities. This form of violence is so deeply rooted within dominant social and institutional structures that it is not always readily apparent. Indeed, it seems that only random acts of direct violence or uses of excessive force by state authorities against unauthorized immigrants—e.g., expressions of hate, brutality, or abuse of power—tend to capture the mass media’s attention.

Structural violence is particularly troubling in the U.S. post-September 11, 2001, as migration has been securitized. With stricter laws, harsher detention practices, the increasing militarization of its southern border and the ongoing construction of the U.S.-Mexico border fence, the regulation of

migration is now an intricate part of U.S. National Security (Ghughunishvili, 2010; Guild, 2009; Kirkham, 2011; Lyon, 2003; Martinez, 2009). A major effect has been the narrowing of the scope regarding the application of core international human rights as well as certain constitutional rights pertaining to the Bill of Rights (Sayler, 2009; Tavares, 2007). For unauthorized immigrants coming from the south, the U.S.-Mexico border fence has meant having to choose more dangerous routes through the desert, which has resulted in more deaths, as well as an increased risk of falling prey to human trafficking, gang violence, and higher barriers to justice (Amnesty International, 2013, pp. 288-90; U.S. General Accountability Office, 2006).

At the institutional level, unauthorized immigrants, as well as those who assist them to ease their suffering, are subject to harsh punitive measures, including criminalization of their immigration status (American Civil Liberties Union [ACLU], 2010). Undocumented immigration in the U.S. is criminally punishable with up to two years in prison when an undocumented immigrant has been previously deported or removed from the U.S. and later returns without the proper authorization (Reentry of Removed Aliens, 8 U.S.C. § 1326). In the post-September 11 U.S., many state and local governments have also tried to impose criminal penalties on undocumented immigrants (ACLU, 2010). Moreover, 8 U.S.C. § 1324, Bringing in and Harboring Certain Aliens, provides for severe penalties that may be applied to anyone who is willing to assist unauthorized immigrants by attempting to “transport them, conceal, harbor, or shield them from detection,” (§ 1324(a)(1)(A)(iii)) or who might “encourage or induce” a migrant to come into the U.S. without proper documents (§ 1324(a)(1)(A)(iv)). Though these articles focus on human trafficking, they are written in a manner that allows for the criminalization of travel by families of unauthorized immigrants, including minor children traveling with parents, and the actions of those who would provide such people with “sanctuary.” Furthermore, these articles ignore the fact that most unauthorized immigrants are forced to leave their places of origin due to deep conditions of structural violence.

When unauthorized immigrants are openly considered a threat to the dominant institutions and construed as “other,” the media, the state apparatuses in charge of dealing with immigration, and other social forces succumb to structural violence and reinforce “cultural violence,” which is “the symbolic sphere of our existence exemplified by religion and ideology, language and art, empirical science and formal science (logic, mathematics)—that can be used to justify or legitimize direct or structural violence” (Galtung, 1990, p. 291). These symbolic spheres are part of what Galtung refers to as “the direct-structural-cultural violence triangle” in which “violence can start at any corner . . . of the triangle and is easily transmitted to the other corners” (p. 302).

The easy expression of direct, structural, and cultural violence through the dominant sociopolitical, socioeconomic and politico-legal structures that institutionalize and internalize the three “corners” of this “triangle” of violence requires a more basic set of social and political agreements that legitimize, in political and moral terms, violence towards the “other” (Galtung, 1990, p. 292). Charles Mills focused on the historical political and moral norms that have constituted the nation’s dominant “social contract.” Although it may be more difficult to clearly identify the racial and class inequalities in the language of most political and legal contracts derived from state or local governments, Mills notes that “the economic dimension of the Racial Contract is the most salient, foreground rather than background, since the Racial Contract is calculatedly aimed at economic exploitation” (1997, p. 32). As an intricate part of such a Racial Contract, immigration laws, though written as mere pragmatic and color-blind set of rules meant to regulate migration flows, ensure the moral and political maintenance of the political economy of social exclusion and exploitation.

In theory, all general laws apply equally and are to be enforced on an equal basis toward all individuals; they do not target specific populations or traits for differential treatment. However, reality is quite different, as we know that the nationality of certain immigrants may trigger different patterns of behavior from law enforcement agents and agencies (Guild, 2009), as well as different institutional preferences in terms of permission for entry and residency. As discussed later in this article, a second tier of laws and policies in the U.S. context deals with unauthorized immigrants; these laws and policies contradict constitutional principles regarding equal protection under the law, which rest on “territorial personhood,” not on how one came to be present within U.S. territorial jurisdiction (Motomura, 2006).

The media, political pundits, and other social forces also apply their own standards in determining the threat that certain nationalities pose to dominant cultural values and social norms. In the U.S., Mexicans and other Hispanics and Latinos are routinely subject to structural violence simply on the prejudicial suspicion that they might be unauthorized migrants. However, certain unauthorized migrants from nations with similar values or ascribed racial or cultural traits as those from the host country’s dominant culture—in this case, that of the U.S.—are not subject to structural violence, despite having to go through the same regulatory frames (Arrocha, 2011; Cuauhtémoc, 2012; De Genova, 2009; Guild, 2009).

From a capabilities-focused social justice approach, the question we always have to ask ourselves when referring to the need to reach social justice for all is: what can all human beings actually do and become in a specific socioeconomic and political structure so as not to lose their human dignity (Nussbaum, 2002, p. 129)? Unauthorized immigrants, who are per-

ceived as inferior in the dominant social stratum, or as a threat to the dominant culture’s core values and norms, are excluded from those socioeconomic and sociopolitical institutions that could help them fulfill all of their capabilities as social beings, not just those capabilities strictly linked to their survival as they live in the shadows.

Although many unauthorized immigrants from various sender states suffer from social exclusion, Hispanic and Latino populations in general, and Mexican migrants in particular, arguably suffer most from the present conditions of structural violence (Arrocha, 2011; Cuauhtémoc, 2012). Specifically, they are ensnared in structures whereby they are “othered” as “illegal aliens” and, on that basis, detained, punished, and deported—in some cases, hunted and shot (Arrocha, 2011). Yet the presence of these particular migrants brings out a powerful paradox: on one hand, their labor is in great demand; on the other hand, their presence is perceived by many as a serious threat (Arrocha, 2011).

This paradox is apparent when state and local governments have put in place anti-immigrant laws such as Arizona Senate Bill 1070 in 2010 (and similar laws in Alabama, Georgia, Indiana, South Carolina and Utah) and local-level ordinances like the Hazleton (Pennsylvania) Illegal Immigration Relief Act of 2006 and the 2008 Farmers’ Branch (Texas) Ordinance 2952 Requiring That All Renters Obtain Occupancy Licenses Verifying Their Citizenship Status. These legislative regimes, which federal courts now largely or entirely deem unconstitutional, seek to exclude the unauthorized immigrants even as there is an implicit recognition that unauthorized immigrant labor is needed for the survival of certain economic sectors and industries (Burruss, 2010; Immigration Policy Center, 2012; Sols, 2010). Moreover, federal programs like the Immigration and Customs Enforcement Secure Communities (“Secure Communities”), which is mandatory for all jurisdictions (Secure Communities, n.d.) and the Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (“INA § 287(g)”), which is applied on a voluntary basis (INA § 287(g), n.d.)—coerce federal agencies, state and local authorities, and even private actors to engage in direct violence against unauthorized immigrants.

Although U.S. courts have expressed difficulties in determining the constitutional status and protections afforded to unauthorized immigrants (Nelson, 2013, p. 877), a general consensus exists that these persons are entitled to at least some protections under the First, Fourth, Fifth, Sixth and Fourteenth Amendments (Cole, 2003; Millhiser, 2011; Motomura, 2006; Nelson, 2013). For example, the Fifth and Fourteenth Amendments’ Due Process and Equal Protection guarantees, and the Sixth Amendment’s guarantees of rights related to criminal prosecutions, extended to all “persons” present in the U.S. (Cole, 2003, p. 370). Furthermore, the First Amend-

ment's protections of political speech, petition and assembly, association, the press, and religious freedoms, and the Fourth Amendment's protection of privacy and liberty, apply to "the people," which also suggests their full application. Chief Justice Rehnquist stated "'people' refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community" (*United States v. Verdugo-Urquidez*, 1990). According to Nelson, those immigrants who have established some connection with their community might thus have access to "specific rights under the First, Second, and Fourth Amendments" (2013, p. 808).

Although unauthorized immigrants cannot fully express their political connections with the U.S., or indeed in the communities where they work, study, and participate (which, also grants them certain social rights and obligations), it is difficult to accept the proposition that they are not part of that "class of persons" whom Chief Justice Rehnquist described. Yet many individuals who could be considered part of that larger "class of persons" are faced today with new forms of spatial segregation that prevent them from maintaining and expanding their connections to this country. One such form of spatial segregation is the justified fear in which many unauthorized immigrants live, due to increasing risks of detention and deportation under Secure Communities and § 287(g) (Arrocha, 2012, 2013).

Unauthorized immigrants, or the "alien invaders," as referred to by nativist groups and popular political pundits like Lou Dobbs (Arrocha, 2011), are also subject to direct violence that ignores constitutional provisions (Chiu, Egyes, Markowitz, & Vasandani, 2009). Examples of such direct violence include:

- Raids conducted by Immigration Customs Enforcement ("ICE"), which may involve the detention and/or removal of parents or children without serious consideration of their family ties ("Parental Interests Directive", n.d.);
- Application of immigrant and racial profiling;
- Denial of movement through denial of access to official ID cards, driver's licenses or permits, and denial of use of consular cards (National Immigration Law Center, 2008; Transportation Security Administration, 2003);
- Denial of legal assistance;
- Denial of protection or assistance by other members of society;
- Denial of public services that are critical for well-being; and
- Usage of shackles and other conditions of harsh and inhumane incarceration (Chiu et al., 2009; Young, 2011).

As a result, so-called "illegal immigrants" are arguably the lowest-ranking members of U.S. society—if they are considered members at all.

Their movement, labor, wages, and even living conditions are subject to control by employers who often exploit them at-will as long as they themselves are not caught by immigration authorities (Arrocha, 2011; Chacon & Davis, 2006; De Genova, 2004). Entrapped “in a chain of interlocking feudal relationships,” these immigrants are deprived of opportunities to fulfill their capabilities (Galtung, 1969, p. 177). As Galtung states, “they are deprived because the structure deprives them of chances to organize and bring their power to bear against the topdogs, as voting power, bargaining power, or violent power—partly because they are atomized and disintegrated, partly because they are overawed by all the authority the topdogs present” (p. 177). Indeed, in most ways, unauthorized immigrants hold none of these powers.

Thus, these persons are in an endless state of structural violence, even direct violence, undergirded by laws that criminalize their presence as well as their work (Arrocha, 2012; De Genova, 2004), which in turn are backed by enforcement practices that treat these fellow humans as criminals, invaders, and—perhaps most cruelly and inhumanely—inferior beings. For these persons, justice is an elusive ideal, something out of their own reach. Their success is measured by how well they can endure this violence in pursuit of the American Dream (Peterson, 1995; Ehrenreich, 2011).

Ironically, the mere possibility of this dream, let alone its attainment, persists through the cheapness and docility of their ongoing labor. Here we see that structural violence alone cannot maintain high levels of exclusion and repression; a hegemonic discourse that constantly manufactures consent to its most repressive practices is also needed. This discourse expresses cultural violence, which “makes direct and structural violence look, even feel, right—or at least not wrong” (Galtung, 1990, p. 291). Cultural violence persists when the culture of “others” is considered inferior or threatening to the dominant culture. As a consequence, the state, which aligns with the dominant classes, will attempt to suppress the culture of “others” through systematic application of cultural violence, including denial and exclusion of “others” from the social and institutional spaces where they might create and reproduce their culture.

As is the case of most nation-states, the ideology of American Nationalism has been able to maintain over time certain core values that grant it uniqueness but also expose its contradictions. On one hand, there is an almost religious reverence from political elites and the dominant media towards the idea that the U.S. is an exceptional nation endowed with the most advanced constitution and democratic institutions (Hodgson, 2009). On the other hand, a prevailing chauvinism (meaning: extreme partisanship of exaggerated patriotism) holds that specific cultural values underpin these democratic institutions, and furthermore that these values are ones that only

certain people—as based on citizenship, but not even all citizens—hold. Thus, this chauvinism is strongly hostile both to foreigners and minorities who are considered not to share these values (Lieven, 2012).

This structure of exclusion, which is inherent in the formation of dominant ideology and concomitant ideas about the acceptable parameters of national identity, also inevitably generates legal and political structures whereby those who are considered unacceptable are designated as “others” and held under ongoing suspicion of being a threat. On that basis, they remain subject to deportation, *even* if they attempt to assimilate by embracing key components of the dominant culture (Kanstroom, 2007; Ngai, 2005).

In these and other ways, migration and immigrants are securitized as a risk to the state and the hegemonic constructs of the dominant collective identity of the polity (Bigo, 2002; Guild, 2013; Huysmans, 2006). Moreover, the concept and politico-legal parameters of what constitutes citizenship and what rights it confers remain subject to revision and reconstitution in order to regulate the inclusion or exclusion of the “other” (Guillaume & Huysmans, 2013; Heisler, 2001; Kanstroom, 2007; Maas, 2013; Pickus, 1998; Schuck, 2008).

Samuel Huntington, a respected conservative theorist of American political and social systems, argued that in order to become an American, one must embrace the Anglo-Saxon Protestant nature at the core of American Nationalism and its “exceptionalism.” “Throughout American history, people who were not white Anglo-Saxon Protestants have become Americans by adopting America’s Anglo-Saxon Protestant culture and political values, benefitting them and the country” (Huntington, 2004, p. 61). Quoting Benjamin C. Schwarz, Huntington notes that American national identity and unity is “derived from the ability and willingness of an Anglo elite to stamp its image on other peoples coming to this country” (p. 61). This statement focuses on the idea that the “unity” of the nation, and therefore the survival of the state and its much-cherished institutions, cannot endure if immigrants are unwilling or unable to embrace a national culture and set of ideals with which Huntington identifies white Anglo-Saxon-Protestantism.

Of course, Huntington is merely the academic *porte-parole* of what many in the dominant media, political punditry, and wider populace have embraced as the ideal type, regardless of the rapid demographic changes that have taken place in the U.S. since the 1960s forward (Hayworth, 2006; Kaufman, 2004; Tancredo, 2006). For those who have embraced such discourse, Mexican and Latino migration, in particular, is fearsome because the White Anglo-Saxon Protestant elite has not been able “to stamp its image” on it; this is cannot do because the former cannot assimilate to the

ideal type and core values of what constitutes American Nationalism (Huntington, 1990, p. 230).

So great was his fear of how Mexican mass migration might change America that Huntington warned against the danger posed by a Mexican-American middle class: “If Mexican-Americans achieve middle-class status within the Mexican–American community, their inclination to reject American culture and to adhere to and to attempt to propagate Mexican culture might be enhanced” (Huntington, 1990, p. 245). From this statement, it is clear that the realization of the individual and the social capabilities of Hispanic and Latino immigrants, particularly those of Mexican origin, is always at risk as they somehow represent latent threats to American Nationalism and exceptionalism. Such statements and their legitimization are part of “cultural violence,” as the statements promote exclusion of a complete population and justify the use of structural violence against that population. Once this fundamental conflict-of-cultures and resultant necessity for exclusion have been established, the mechanisms of direct violence are set in motion through federal, state, and even local laws that assist stopping such threats to the perceived national unity. These laws and regulations have empowered anti-immigrant groups such as the Federation for American Immigration Reform (“FAIR”) to propound legal and social structures of violence that have as their ultimate goal the legitimization of direct violence, particularly on the U.S.-Mexico Border (Southern Poverty Law Center [SPLC], 2001, 2012).

As it now difficult to fully exclude and marginalize those Mexican-Americans and other Hispanics and Latinos who are successful citizens, indirect and direct violence has shifted toward those from these demographic groups who are labeled “illegal immigrants” (a rhetorical conflation with federally-defined “criminal aliens”) or “alien invaders.” The result is an expression of cultural violence that permits the use of direct and structural violence, as discussed above, and in the forms of immigration enforcement raids and harsh detentions. These uses of direct and structural violence include punitive methods of physical restraint accompanied by offensive language (Arrocha, 2011, 2012), detention conditions where the mental and physical health of immigrants is at risk (Young, 2011), and mass deportations whereby more than 400,000 people removed from the U.S. in 2012 alone (“News Releases,” 2012).

What results from this triangle of direct, structural, and cultural violence is a political economy wherein immigrants of Mexican and other Hispanic and Latino origins arguably constitute the lowest stratum of society, regardless of the successes of the few. They tend to work in lower paying jobs (Carnevale & Stephen, 2001) and must confront federal, state, and

even local laws that may trigger racial and immigrant profiling, as well as abuses of power from emboldened yet all-too-often ignorant authorities.

II. A POLITICAL ECONOMY FORGED AND SUSTAINED BY STRUCTURAL AND CULTURAL VIOLENCE

The fate of those immigrants who are not accepted by the White Anglo-Saxon Protestant ethos, regardless of their individual and collective efforts, are for now forced into structures of violence wherein their struggle to realize their capabilities, both as individuals and as a community, is a Sisyphean undertaking. Yet if we treat the direct manifestations, structures, and culture of violence against unauthorized immigrants as paradoxes of a system that is ideologically oriented to democratic participation and freedom for all, then we ignore the fact that the political economy of this state was founded on social inequalities (Zinn, 2010).

From the early historical development of the U.S., the dominant classes put forward an ideology of expansion, supported by the idea enshrined in Manifest Destiny that the state had to expand beyond its original boundaries. With support of the state, the expansion of capital continued to ensure new sources of cheap labor and resource markets through a new international division of labor and investment supported by the development of violent, even imperial structures (Delgado, 2013; Gindin & Panitch, 2012; Sassen, 1990).

Today, a combination of military, economic, and ideological power (as “soft power”) constantly reinforces such structures (Buhle, Konopacki, & Zinn, 2008; Chalmers, 2004; Galtung, 1971; Nye, 2009). Consider, for example, that after the tragic events of September 11, 2001, the U.S. declared a “Global War on Terror,” which the Obama Administration subsequently redubbed the “Overseas Contingency Operation.” Despite its innocuous-sounding new name, it is a war without articulated geographical boundaries or timeframes, it does not contemplate victory in the traditional sense (Angstrom & Duyvesteyn, 2006), and certain basic human rights are in jeopardy—for example, insofar as the U.S. asserts the sovereign right, based on national security interests, to kill potential enemies and even U.S. citizens without a trial (Duffy, 2005; Nedra, 2012). This war sustains, and is sustained by, a Military-Industrial-Complex (“MIC”), in which many of the most powerful U.S. transnational corporations participate. Their participation in private organizations like the Business Executives for National Security (“BENS”) or the Trilateral Commission, which influence political and legislative agendas, in turn shapes international structures of violence (Arkin & Priest, 2010; Gill, 1992; Lofgren, 2014; Public Intelligence, 2009).

Through this war and its effects, the U.S. and many other states have moved to securitize migration and treat immigrants as potential terrorism suspects (Guild, 2009). This war also continues to redefine concepts and rights of citizenship, in part by canceling or making access to justice more difficult for citizens and noncitizens alike (Cole & Mullard, 2007). Under the USA PATRIOT Act (2001), for example, the state has the power to detain suspects without charges and remove any noncitizen considered a national security threat (Kelly, 2002).

As result of the foregoing, a political economy of fear, not just legal status, determines the levels of immigrant exploitability in terms of their labor that the more basic securitization of migration. Immigrants, particularly unauthorized ones, who are part of the Mexican, Hispanic and Latino, Arabic, and Muslim communities, have been the main targets of intrusive, aggressive uses of force by the U.S. Department of Homeland Security (“DHS”) as exercised through ICE, some of which involve state and local public safety forces working with ICE (Akram & Johnson, 2009; Chavez, 2009; Dole, 2009). In sheer numbers of raids, detentions, and expulsions, unauthorized immigrants, particularly those from Mexico and Central America, have been the most punished of all those who are considered to be a threat to the state (Pew Hispanic Research Center, 2011, p. 12).

Yet the state’s targeted use of repressive measures is also alienating specific populations, such as Asian Americans and especially Hispanics and Latinos, who can now strongly influence and perhaps even determine the outcome of local, state, and federal elections. So, in order to find a balance between hard power and soft power, the dominant discourse has shifted from being openly anti-“illegal alien” to signaling an apparent conditional acceptance. In one vision, immigrants who have exceeded their permitted duration of entry or who entered the U.S. without authorization might be accepted as permanent residents if they first accept their guilt and corresponding punishment for having broken U.S. immigration laws:

People who are in America illegally have a responsibility—to pay their back taxes and admit responsibility for breaking the law, pay a penalty, learn English, pass criminal background checks, and get right with the law—or face removal—before they can get in line and eventually earn their citizenship. (President Barack Obama, 2010)

This harsh stance, which is also reflected in the current bipartisan Senate proposal for immigration reform (Border Security, Economic Opportunity, and Immigration Modernization Act, S.744 of 2013) dismisses the fact that unauthorized immigrants constantly contribute to societal wellbeing through the provision of cheap, flexible, and docile labor, and through the

income- and consumption-based taxes they pay (Hanson, 2009). Though the President's call has not yet gone into effect, and "immigration reform" remains stalled, unauthorized immigrants, and those who are suspected of being such, remain subject to myriad uses of hard power, including raids on homes and workplaces and the increasing militarization of the U.S.-Mexico border.

For young people who are unauthorized immigrants, there is perhaps more hope for consideration so long as they meet certain criteria. However, the Deferred Action for Childhood Arrivals (2012) ("DACA Guidelines") only applies to immigrants who came into the U.S. while under the age of 16 and who currently are no older than 30. Moreover, they must have been present in the U.S. for at least five years prior to the publication of the Deferred Action Process. While in the U.S., they had to have been attending school, "have graduated from high school, have obtained a general education development certificate, or have been honorably discharged veterans of the Coast Guard or Armed Forces of the United States" (DACA Guidelines, ¶ 6); finally, they cannot "have been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety" (DACA Guidelines, ¶ 7). According to the DACA Guidelines, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less, but greater than five days) and as follows:

Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or, if not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.

Considering these requirements and definitions, two conditions stand out. The first is the explicit acknowledgement that an individual's immigration status does not seem to be a problem when it comes to recruiting members for the U.S. Coast Guard and Armed Forces. The second is that significant or multiple misdemeanors, including nonviolent offenses like "unlawful possession of drugs" or "driving under the influence of alcohol or drugs," will automatically disqualify an individual from having her or his removal deferred.

That these requirements and definitions should condition eligibility for Deferred Action is unfortunate. Nonviolent offenses can be common among individuals who meet all the other DACA criteria, and such individ-

uals may be otherwise outstanding students or community members. Yet these individuals are subject to removal and deportation to a country that perhaps they do not even know and in which they may have little-to-no “ties.” Alternatively, as will be the case for many, the conditions of structural and cultural violence encourage these individuals to remain living and working in the shadows until ICE or state or local police apprehend them. In addition, the DACA program excludes families as well as the millions of individuals who do not meet its criteria yet whose labor sustains many of the U.S. economic sectors.

In political economy terms, however, the DACA program is highly successful, for while it seems to indicate ways of attaining the American Dream it does not actually permit those whose removal is deferred to request any category of migration status that could potentially put them on the path towards citizenship. This conundrum represents how administrative law has been used to trump and circumvent constitutional law protections. The Memorandum that establishes the guidelines for the Deferred Action clearly states that the program “confers no substantive right, immigration status, or pathway to citizenship” (U.S. Department of Homeland Security, 2012). Indeed, after a complex process in which each individual must undergo a security background check, those who seek Deferred Action may receive a two-year deferment on removal, subject to the discretionary power of an immigration agent. A work permit may be granted for the duration of the deferral period; this permit can be renewed indefinitely for as long as the executive order stands and the individuals meet all the DHS’ eligibility criteria, including no convictions on specified misdemeanor offenses. Yet this legal status is tenuous at best, and there are now 1.4 million young people who find themselves in it as their best-case scenario (Pew Hispanic Research Center, 2012). These individuals also form a pool for supplying cheap and docile labor, including low- and medium-skilled labor, to those sectors that need it.

The success of hard power approaches applied to immigration control has reached historical levels: In the fiscal year of 2012 alone, there were nearly 410,000 removals added to the 1.5 million under the present Administration (ICE, 2012). Incarceration totals of unauthorized immigrants also soared across the country, with 270 federal, state, and private prisons documenting increases from 250,000 incarcerated subjects in 2005 to almost 400,000 in 2012 (Detention Watch Network, n.d.; National Immigration Forum, 2012; U.S. General Accountability Office, 2011). It is not surprising then, that the fastest growing number of incarceration centers in the country are those being built to detain unauthorized immigrants (Gavett, 2011), and that the conditions of incarceration include families with children being detained alongside criminals and being held in very poor condi-

tions where emotional, physical, and sexual abuse problems are chronic (Young, 2011).

The detention process, which in many cases breaks families apart, seems to be designed to make unauthorized immigrants feel as though they themselves were convicted criminals. As Mark Flemming, Attorney for the National Immigrant Justice Center remarked in an interview for PBS on the detention centers:

ICE establishes these facilities mainly to make sure that they show up for their hearing, and if they're ordered removed, to effectuate that removal. It's not supposed to be punitive. And yet in every way, shape or form, it was punitive. It was a criminal setting. They wore uniforms as inmates. The officers had very much a criminal justice mentality. (Young, 2011)

These immigrant detainees are placed in county jails, state prisons, or even for-profit detention centers, surrounded by barbed wire, with officers who act as if they were in a criminal setting. They must wear uniforms rather than their own clothing. They are not informed of the status of their case until they are taken, in shackles, to be removed from the country. Those who are removed are not allowed to communicate with their family members before removal. In these and other ways, the process falls well short of the Due Process rights that even convicted criminals receive. Indeed, unauthorized immigrant detainees may only receive legal counsel if they can afford to provide it for themselves or if a public defender happens to be available to assist (Levy, 1970; Young, 2011). As Anthony Romero, Executive Director of ACLU states regarding their defenselessness: "We hold people. We handcuff them. We detain them. We take away the basic right to liberty. And the right to due process" (Young, 2011). Or as Cuahtémoc (2012) points out: "Prisons . . . are immigration law's necessary purgatory, the physical in-between space that must exist to facilitate the welcoming embrace of the 'good immigrant' and DHS's concerted efforts to remove unwanted immigrants" (p. 358). Many detainees are apprehended and removed by systematic practices, such as aggressive raids that violate the Fourth and Fifth Amendments, despite the Fourteenth Amendment's protection of all individuals within U.S. territorial jurisdiction (Bosniak, 2008; Chiu et al., 2009; Motomura, 2006), as well as Due Process rights under the Fifth and Fourteenth Amendments.

The annual number of raids, and record levels of immigrants to who are detained and removed, are direct results of the nation's most aggressive migration enforcement programs since it implemented the 1996 Anti-Terrorism and Effective Death Penalty Act ("AEDPA") and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). These acts focused on the detention and removal of undocumented immigrants and

radically transformed U.S. immigration laws by concentrating on those who were “unlawfully present” (Arrocha, 2012). Both acts “increased the number of criminal offenses that could result in removal, drastically expanded the severity of removable offenses to include relatively minor crimes, provided the legal authorization for local governments to police immigration law through cooperative agreements with the federal government, and eliminated relief that had been part of immigration law for decades” (Cuauhtémoc, 2012).

Secure Communities and INA § 287(g) are the leading cooperative programs under the umbrella of ICE’s Enforcement and Removal Operations. These programs use federal and local police enforcement agencies to share biometric information to identify and detain unauthorized immigrants (Secure Communities, n.d.; INA § 287(g), n.d.). Along with these programs, more than 20,000 ICE staff are spread across the country (“Overview,” n.d.) while the vast majority of Border Patrol Agents (increased in number from 4,028 in 1993 to 21,391 in 2013) are stationed at the U.S.-Mexico border (U.S. Customs and Border Patrol, 2014).

In this structure of violence, there is very little consideration given to the most vulnerable persons—children and their parents, women, and the elderly. Particularly not if they should be Mexicans or otherwise Hispanics or Latinos (Cuauhtémoc, 2012) who, if they caught within the U.S. without the proper documents or having overstayed their visas, are subject to legal chastisement and punishment. They are not granted Due Process; they may be incarcerated or removed and permanently excluded from the country, regardless of the fact that many will leave behind their children, parents, or entire families in the U.S.

Yet even for those who do come with temporary work permits, the ordeal is far from over, because they still face discrimination and exploitation. Although the state has established working visas for immigrants that grant them certain labor rights, most workers who are present under the H-2A visa programs suffer similar vexations and human rights harms as do unauthorized immigrants. Migrant workers, and their families, who fall under the H-2A, or “guest worker” program, routinely suffer high levels of exploitation. The program provides temporary working permits to farmworkers and non-farm laborers in a variety of low- to mid-skilled industries. The workers under the H-2A program are supposed to receive the protection of U.S. wage laws, workers’ compensation, and other standards. Yet, in reality these workers are routinely subject to serious violations of federal and state labor laws, as human rights abuses from state authorities, employers, and the agencies that work as the brokers between the employers and workers. All too frequently these workers are “held virtually captive by employers or labor brokers who seize their documents;

subjected to human trafficking and debt servitude; forced to live in squalid conditions; and denied medical benefits for on-the-job injuries” (SPLC, 2013). A new frame, based on humane and equitable principles for H-2A visa workers, is needed to ensure that labor rights, including those from labor conventions that have been signed and ratified by the state, are applied with no distinction as between migrant workers and citizens working in similar jobs (Lyon, 2010).

To summarize, today’s Mexican, Hispanic, and Latino immigrants, as well as other immigrants, regardless of their immigration status, are considered a threat to the core values of the state. They suffer from high levels of intolerance, xenophobia, and spatial segregation. These immigrants confront restrictive and punitive federal, state, and local laws, as well as abuses of authority and excessive use of force by U.S. border enforcement agents, as well as ICE agents (Sherman, 2013; ACLU, 2008, n.d.). Added to these vexations, many working migrants and their families, regardless of their authorization status, have to deal with routine, even constant abuses in the workplace. Moreover, as Congress and the Executive branch plan to increase the militarization of the U.S.-Mexico border, it is almost certain that the risks involved in crossing it from the south will increase, thus resulting in more deaths, more human smuggling and human trafficking, and more social tensions at the border. Finally, in addition to the problems of direct violence, the structures and culture of violence have deepened as result of a political economy that has exacerbated social and economic inequality. It is therefore imperative to work towards the establishment a framework for actions and policies shaped around a vision for “Compassionate Migration,” (Bender, 2011; Bender, Arrocha, & Shuford, 2016) which is the work of the next section of this article.

III. THE NEED FOR “COMPASSIONATE MIGRATION”

On October 3, 2013, more than 360 migrants, many of whom had already been “raped and tortured,” found their tragic fate off the shores of the Italian island of Lampedusa, Italy, when the boat in which they had traveled from Libya capsized after a fire onboard (BBC, 2013). As the world looked on in shock, former UN Secretary-General Kofi Annan cried out, “It is time we show some compassion for migrants.” Annan reminded governments that they “should view migration as a profoundly binding dimension of the human experience” because “[t]hrough migration, human beings share an understanding of sorrow, hope, and compassion” (Annan, 2014). Although such calls for compassion towards immigrants are not new, this tragedy and so many others, including the approximately 5,600 people since 1998 who have died trying to cross the U.S.-Mexico border

(Anderson, 2013; Binational Migration Institute, 2013) have pushed leaders worldwide to call for compassion toward all migrants.

Pope Francis, in his Message for the World Day of Migrants and Refugees (2013) and speaking on the theme “Towards a Better World,” sharpened the call for compassion toward global migrants: “The reality of migration, given its new dimensions in our age of globalization, needs to be approached and managed in a new, equitable and effective manner; more than anything, this calls for international cooperation and a spirit of profound solidarity and compassion” (§ 8). Furthermore, His Holiness is clear about the kinds of conditions that cause these “new dimensions” of global migration and what obligation arises for all people of conscience:

[W]e cannot remain silent about the scandal of poverty in its various forms. Violence, exploitation, discrimination, marginalization, restrictive approaches to fundamental freedoms, whether of individuals or of groups: these are some of the chief elements of poverty which need to be overcome. Often these are precisely the elements which mark migratory movements, thus linking migration to poverty.” (§ 7)

Indeed, His Holiness (2013) condemned the worldwide prevalence of debt bondage and similar forms of exploitation: “Nowadays, slave labour is common coin!” (§ 3)

For Pope Francis, it could be said, today’s dominant economic policies undergird the structural and cultural violence of the present. In the first Apostolic Exhortation *Evangelii Gaudium (Joy of Gospel)*, which outlines the Papacy’s vision for the Church’s long-term missionary work, Pope Francis denounced present neoliberal policies, which His Holiness refers as the “economy of exclusion” (2013, p. 45), and the problem of complete lack of empathy toward individuals in general as well as those who suffer from such policies. Pope Francis states that

some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Meanwhile, the excluded are still waiting. To sustain a lifestyle which excludes others, or to sustain enthusiasm for that selfish ideal, a globalization of indifference has developed. Almost without being aware of it, we end up being incapable of feeling compassion at the outcry of the poor, weeping for other people’s pain, and feeling a need to help them, as though all this were someone else’s responsibility and not our own. (2013, p. 46)

The Charter for Compassion (“Charter”), officially launched in November 2009, comes from the labor of Karen Armstrong with backing from Technology, Education, Design (“TED”), which promotes “ideas worth spreading.” Today, the Charter, which has been translated into 30 languages so far, draws signatory support from more than 106,200 individuals (including His Holiness the Dalai Lama and Archbishop Desmond Tutu) and organizations (e.g., universities, civic and civil society organizations, and entire major religious denominations), plus contributions from thousands of partner organizations, participation by some 205 cities worldwide, and adoption by whole countries (Charter for Compassion International, n.d.).

As such, the Charter is one of the largest and fastest-growing contemporary efforts to reignite a very old idea, the Golden Rule, which it considers to be variously and equally stated across human history yet explicitly a *principle of compassion* that is common to all the world’s major religious, ethical, and spiritual traditions. The Charter is a proactive response to the kinds of direct, structural, and cultural violence, as well as basic indifference, which excludes or marginalizes the “other” and treats the “other” as a threat to society and the state. As a global network, movement, forum, and basic text, the Charter emphasizes the urgency “to make compassion a clear, luminous and dynamic force in our polarized world.” It calls upon us to recognize and affirm that “Born of our deep interdependence, compassion is essential to human relationships and to a fulfilled humanity. It is the path to enlightenment, and indispensable to the creation of a just economy and a peaceful global community” (Charter, 2009).

Contemplating how to address the injustices behind global migration and improve the life circumstances of migrants worldwide, perhaps the most powerful tool that the Charter could offer is its organizational capacity for forging and leveraging partnerships with a broad set of public, private, and non-profit actors, including cities and entire nations, in ways that link the global and local levels. The International Campaign for Compassionate Cities (“Compassionate Cities”), which is one of the young organization’s most ambitious and successful efforts to date, has the main goal of connecting the leadership of cities with other social actors “to create and bring together efforts towards increasing compassion through local initiatives, policy, and projects” (Compassionate Cities, n.d.). Looking forward, coordinated actions taken through the Compassionate Cities network—various compassionate collaborations between key cities in migrant sending, receiving, and transit nations—could yield great local-to-global impact toward empowering unauthorized immigrants, as well as those social actors who work closely with them to ensure the protection of their fundamental human rights.

Yet as leaders like Annan, Armstrong, and Pope Francis all acknowledge, any organization or movement that calls forth and seeks to ignite compassionate action faces the challenges of direct, structural, and cultural violence as entrenched in a deeply dehumanizing political economy. Therefore, movements to inspire and spread compassion toward migrants should focus on the need to dismantle the triangle of violence. One way to do so would be to develop policy priorities that, from bottom-to-top, link local, state, national, and global organizations specifically to push legislative bodies to eradicate or reform those laws, policies, and practices that sustain unjust social contracts against global migrants—particularly unauthorized immigrants.

Perhaps the most comprehensive policy recommendations yet articulated toward promoting social justice and human dignity by addressing the structural causes of unauthorized migration can be found in the Interfaith Immigration Coalition Policy Recommendation on Principles for Compassionate Immigration Reform (IIC, 2012). This document outlines numerous “legislative principles” that can provide beginnings for a “compassionate migration” framework in the U.S., including:

- Work to “help reshape financial systems that unduly burden vulnerable populations—including U.S. trade policies, international financial institutions, and local economies in sending countries—toward models that support those in need”;
- Protect workers’ rights, including agricultural workers;
- Place humanitarian values at the center of enforcement policies;
- End Secure Communities and INA § 287(g) agreements, as these programs cause undue suffering, break up communities, and endanger public safety;
- Expand the protections under DACA to the family members of those who meet the Deferred Action criteria;
- Protect refugees and migrant survivors of violence;
- Reform detention practices, as based in less punitive alternatives that restore Due Process;
- Enact the Development, Relief, and Education for Alien Minors (“DREAM”) Act; and
- Keep families together.

Besides pursuing the IIC Policy Recommendation, many other steps can be taken that may help to elaborate a robust “compassionate migration” framework for justice and equality. For example, some of the world’s most important news organizations have advanced efforts to restore migrants’ human faces by changing the way that we discuss and address them in dominant discourse. The Associated Press (“AP”) took a big first step toward breaking down the discourses of othering and demonizing unauthorized

immigrants when it announced that the *Stylebook and Briefing on Media Law* would eliminate the terms “illegal” and “illegal immigrant” to refer to a migrant without proper immigration documents (Colford, 2013). This critical decision reshaped mainstream media practices; thousands of U.S. newspapers and news websites follow the AP’s editorial rules.

A further positive step toward dismantling cultural violence and promoting compassion through mainstream media institutions involves including a diverse group of people who can break down content-discrimination and offer alternative points of view (World Migration Report, 2011). Pope Francis makes a similar point, framed in terms of professional and social responsibility:

The communications media have a role of great responsibility in this regard: it is up to them, in fact, to break down stereotypes and to offer correct information in reporting the errors of a few as well as the honesty, rectitude and goodness of the majority. (2013)

The International Organization for Migration (“IOM”) agrees and goes the further step of recommending the inclusion of unauthorized immigrants as active agents of communication (World Migration Report, 2011, p. xviii). Mainstream news organizations and other social institutions that shape or influence public policy should go beyond simply informing the public on immigration issues to actually inviting immigrants, including unauthorized immigrants, to discuss—in a safe environment—the deeper causes of the social, economic, and political concerns that create negative perceptions towards immigrants.

Further to understanding these concerns, it is important to build “open, balanced and comprehensive migration discourse” (World Migration Report, 2011, p. xvi). The focus should be on shifting the constant emphasis on problems caused by migration—both real and perceived—and creating open, safe spaces for constructive dialogues that include all stakeholders. These spaces should be expanded to include multilateral fora such as the International Dialogue on Migration (which is the regional consultative process on migration) and the Global Forum on Migration and Development (World Migration Report, 2011, p. xvi).

Such spaces for constructive dialogue should address the pressing need for sending and receiving states to share policies that, driven by compassion, are accompanied by the application and proper coordination of international norms to protect immigrant workers and their families. Pope Francis has noted that “Cooperation at different levels is critical, including the broad adoption of policies and rules aimed at protecting and promoting the human person” (2013), and has called for means of assuring that inter-

national law norms are applied at domestic levels. Quoting Pope Benedict XVI, who “sketched the parameters” of such policies, Francis calls for policies that

should set out from close collaboration between the migrants’ countries of origin and their countries of destination; they should be accompanied by adequate international norms able to coordinate different legislative systems with a view to safeguarding the needs and rights of individual migrants and their families, and at the same time, those of the host countries. (2013)

In order to accept and include the agency of immigrant perspectives and communities as key tools for such constructive dialogue, mainstream media must also change the “us versus them” narrative and discourse on immigration that polarizes society and generates fear towards certain immigrants in particular and immigration in general. By establishing a more inclusive narrative and discourse, media outlets can promote social empathy toward migrants of all backgrounds and legal status. They can also foster, or at least helpfully inform, the development of a critical mass which can in turn advocate for and support compassionate policies and actions.

The importance of compassionate media and communications mechanisms also underlines the pressing need to address other structural and cultural conditions that increase the economic and social divide within immigrant-receiving states and thus contribute to intolerance, xenophobia, and other destructive behaviors (Hoffman, 1984; Segal, 2007; World Migration Report, 2011, p. 56). Civil society organizations that struggle to enact social justice, in particular, must make concerted efforts to increase awareness and deepen understanding of the conditions of migrants in society. For although migrants are present in the daily lives, and to some extent the imagination, of almost every citizen, they are not yet perceived—let alone perceived positively—as full members of the U.S. workforce, local communities, and the body politic. Moreover, the cultural differences that accompany immigrants, regardless of their legal status, have yet to be valued as unique, rich, complex, contributions to the advancement of a more diverse and tolerant society.

While an “open, balanced and comprehensive discourse” is essential toward establishing compassion and the social empathy that underlies it, any action or policy initiative for compassionate migration should also include and build upon the fundamental principles found in core international human rights instruments—and, it should be noted, their harmonization with and support from the various non-legal sources discussed above. From the 1948 Universal Declaration of Human Rights (“UDHR”), now an

integral part of the International Bill of Rights,¹ to today's "core" international human rights instruments,² two foundational principles anchor compassionate migration. The first is the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The second is that "All human beings are born free and equal in dignity and rights" (UDHR, 1948). Although the UDHR is not a binding document, its foundational principles go beyond Westphalian notions of sovereignty, thereby allowing for the formation of mutually-agreed-upon standards for all nation-states to protect not only their own citizens but also all people under their jurisdiction (Falk, 2008). Moreover, the UDHR urges states to extend such protections universally towards "humanity," understood as the condition of being human, rather than as limited according to "some fragmentary sense of privileged or denigrated identity associated with religion, race, nation" (Falk, 2008, p. 199).

On December 18, 1990, the UN General Assembly passed the resolution to create an International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("ICMWR"). The ICMWR can be thought of as comprehensive, insofar as it integrates the fundamental principles of several other "core" international human rights instruments, as well as those pertaining to labor rights that are already recognized by the International Labor Organization ("ILO") (Lyon, 2010). The ICMWR recognizes that lawfully present immigrants have the legitimacy to claim more rights than do unauthorized ones, yet it also stresses that all migrant workers and their family members have fundamental human rights which all nations—sending, receiving, and transit—must respect (UNESCO, 2005).

Indeed, the ICMWR articulates a more extensive set of rights for unauthorized migrants than those that the U.S., which is not a party to the ICMWR, has meant to extend and protect as based on the "territorial personhood" standard. However, as the U.S. has not yet shown much interest in ratifying the ICMWR, it is important that experts in U.S. immigration law, U.S. constitutional law, and international human rights law engage in meaningful dialogue to identify the compatibility or possible harmonization of key international human rights standards with applicable bodies of American law. Some of the key protections under the ICMWR that would be appropriate and important to consider in such dialogue are:

- Freedom from torture or cruel, inhuman, and degrading treatment or punishment (Art. 10);
- Legal protection against any arbitrary or unlawful interference with privacy (Art. 14);

- Treatment with humanity and respect for one’s person and culture when in detention (Art. 17);
- Being treated as an innocent person when in detention (Art. 17);
- Being kept separate from convicted persons (Art. 17);
- Juveniles being kept separate from adults when in detention (Art. 17);
- Freedom from mass expulsions (Art. 22); and
- Recognition as a person before the law (Art. 24).

Furthermore, “migrants who are detained should have the same rights as nationals for visits by members of their families” (Art. 17). So, whenever one as a migrant worker is deprived of one’s liberty, the competent authorities of the state concerned shall pay attention to the problems that may be posed for that person’s family, in particular for spouses and minor children. Finally, the ICMWR stresses that all migrants have the “right to hold opinions and the freedom of expression” (Art. 13).

If we are concerned with promoting compassion for all migrants within the U.S., as matters of law and policy, then it is critical that the U.S., as well as other migrant-receiving states, sign and ratify the ICMWR. Meanwhile, it is essential that the U.S. Bill of Rights be fully extended to all people within the U.S., regardless of their immigration status, particularly the guaranteed freedoms of speech and assembly found in the First Amendment and those pertaining to Due Process and Equal Protection under the Fifth and Fourteenth Amendments. Moreover, “a shift is needed from the coercive and punitive nature of immigration laws and policies, particularly those of the U.S., to a more coordinated, forward-looking, and compassionate vision of regional migration policies that recognize the structural nature of the push and pull factors of the South/North migration flows as well as the demographic and societal realities of hemispheric migration today” (Bender et al., 2016).

CONCLUSION

Today, the Executive branch and each house of Congress is putting forth competing blueprints for so-called “immigration reform.” Despite their respective differences, each hegemonic design fixates on increasing the militarization of the U.S.-Mexico border, ensuring that unauthorized immigrants who want to be accepted as law-abiding individuals repent and pay for their audacity via fines and back taxes, and demanding that they “go to the back” of a line that does not exist anywhere under current immigration law. Absent from these proposals is any compassion, and the empathy on which it would rest, for those who toil in the fields and factories to feed our families, work in our homes taking care of our children, or engage in

many of the most difficult jobs that we no longer value as worthy for true Americans.

The leadership of compassion will have to come from all those who are engaged in the global struggle for a more just, humane, and equal world. In the meantime, the young DREAMers who passionately fought for the DREAM Act, which remains stalled in a deeply divided Congress, are keeping up their struggle. They seek to ensure that one day their dreams of educational access, economic empowerment, full participation, acceptance as any other young American, and a more just and compassionate society will indeed come to pass. The DREAMers, who have reshaped the immigrants' rights debate, are part of a powerful movement that will not stop until they see conferral of and respect for human rights and constitutional rights, not only for themselves but also for their parents, siblings, and all who live in constant fear (Nicholls, 2013; "History", n.d.). For young unauthorized immigrants like the DREAMers, the Deferred Action program gives them an important victory, as well as hope and fortified solidarity for their struggle. Though their struggle is far from over, they know that the battle continues; the program is but one small concession within a system that shows little compassion toward unauthorized immigrants, particularly those of Hispanic and Latino origins. If the spirit of the "Golden Door," of which Emma Lazarus wrote, is to remain open, indeed welcoming and embracing of the tired, the poor, and the huddled masses who yearn to breathe free, then—by the power of compassion—the Hadrianesque wall that separates the U.S. and Mexico, and so much more, must be dismantled and rendered an aberration in the relentless struggle of immigrants for human rights, justice, and dignity.

NOTES

1. The International Bill of Human Rights consists of the Universal Declaration of Human Rights ("UDHR") and the International Covenants on Human Rights (the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966)).

2. Today the UN considers the core international human rights instruments as consisting of ten international human rights conventions. For all core conventions see UN Office of the High Commissioner for Human Rights at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

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Filipino Amerasians: Gauging Stigmatization, Intolerance and Hatemongering in a Pluralistic Asia Pacific Society

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ABSTRACT

Empirical and evidence-based researchers have neglected stigmatization, bias, name-calling, intolerance and even hatemongering experienced by military Filipino Amerasians and other biracial Pan Amerasian progeny who were abandoned abroad by their U.S. servicemen fathers. This condition persists in the Philippines and has been reliably documented in other East and Southeast Asian nation-states, such as Japan, South Korea, and Vietnam. A relatively recent multiple-case study investigating psychosocial risk and mental health among Amerasians in Angeles, Pampanga, site of the former Clark Air Base, substantiated long-reported anecdotal claims that Anglo (White) and particularly African (Black) Amerasians were targets of victimization and traumatized by verbal harassment, hate, and occasional violence by mainstream Filipino natives or foreigners. These marginalized Amerasians faced stigmatization and ridicule because of skin color and pigment differences, uncommon facial features, hair texture variances and differential personal demeanors. Even more severe criticism was against Africans and Anglos because of the unproven, stereotypical view that the vast majority of Amerasian mothers were sex workers. For this reason, it was held that many servicemen rejected these children. The notion that within a pluralistic, multiracial society Filipino Amerasians experienced less discrimination and prejudice than might be expected within a more racially homogenous in part set the stage for the U.S. Citizen and Immigration Services to diminish easements for Amerasians. In contrast to other nation-states where Amerasians reside (e.g., South Korea, Vietnam, Thailand, and Cambodia), the belief is that stigmatization and its correlates are higher. However, these faulty conclusions take on exceptional geopolitical sensitivity in the realities that marginalized Amerasians face in the Philippines, a former U.S. colony and commonwealth.

Keywords: Filipino Amerasians, Asian Americans, stigmatization, name-calling, hatemongering

INTRODUCTION

Estimates vary widely and inconclusively as to the precise number of mixed-heritage, biracial military Filipino Amerasians living in the Republic of the Philippines (“R.P.”) today. However, what remains uncontested is that for a long time anecdotal accounts, news media reports, and a sparse volume of empirical researchers have contended that military Filipino Amerasians and Pan Amerasians (also distributed in other scattered parts of the Western Pacific Basin) face significant stigmatization largely due to their mixed-race characteristics and controversy of birth origin.

The notion of military abandonment of stigmatized and often illegitimate offspring dates to the Philippine-American War (1899-1902) and the early U.S. colonial years of the war’s immediate aftermath (Coffman, 2004; Wolff, 2006). The height of contemporary public concern over the comparatively obscure if underreported Filipino-Amerasian human tragedy seemed to reach its apogee not long after entrenched, permanent bases relocated in 1991-1992. At this time, the Philippine Senate voted not to renew extension of the Republic of the Philippines – United States (“R.P. – U.S.”) Military Bases Agreement of 1947.

Included in the mix were the massive U.S. Naval Base Subic Bay, Olongapo; the equally sprawling 13th U.S. Air Force Headquarters Clark Air Base, Angeles (“Clark Air Base”); the Crow Valley Bombing and Gunnery Range, Tarlac; and dozens of smaller Navy, Marine and Air Force installations and camps. Many bases were part of the notorious Angeles, Metro Manila, and Olongapo Amerasian (“AMO”) Triangle, a wide swath of low-lying and semi-mountainous landscape in west central Luzon, believed to contain the highest number of mixed-race Amerasians anywhere in East or Southeast Asia (Kutschera, Pelayo, & Talamera-Sandico, 2012). Attention to the AMO Triangle and the human travail that Filipino Amerasians confronted rapidly lost its luster once the U.S. Court of Claims in Washington D.C. dismissed before trial a \$69 million class action suit, *Acebedo vs. United States* (1993). The suit was brought against the U.S. Government and the Department of Navy on behalf of stranded, abandoned, and orphaned Amerasian children in the areas surrounding U.S. Naval Base Subic Bay, Naval Air Station, Cubi Point, and the U.S. Naval Communications Station- Philippines, San Miguel, all located near Olongapo City, Zambales. The cause of action sought child support, day care, job training, and other compensation (Maclear, 1995; Montes, 1995) for many thousands of impoverished Filipina national mothers, caretakers, and foster parents

left with fatherless Amerasian children. However, a group of military Amerasians living in nearby Angeles City, Pampanga, were not in that failed settlement attempt; they are the focus of this study.

This article proceeds in ten sections. Following this Introduction, the next three sections, in order, present a discussion of the demographics of Amerasians in the Philippines, a literature review, and an overview of contemporary Amerasian stigmatization and mental health studies. Section IV briefly outlines the study methodology and sample, while Section V describes in similarly succinct fashion the research instrument and research site. Section VI highlights the research results and findings under this study, with focus on risk factors and case study profiles. Section VII provides a discussion and analysis of the findings, with emphasis on emergent themes and social implication of the military Filipino Amerasian marginalization. Section VIII offers several recommendations on future lines of research and research questions, law and policy matters, and cross-sector engagement in service of this marginalized, stigmatized population. The article concludes with some contextual reminders and open-ended questions on these issues, as well.

I. DEMOGRAPHICS OF AMERASIANS IN THE PHILIPPINES

Today, the Philippines are known in the Asia Pacific region as an essentially pluralistic culture, with high population of indigenous and foreign-born persons, and diverse societal complexity (Francia, 2010). Demographically, the Philippines were shaped by successive migrations of numerous peoples including Malays, Negritos, Polynesians, Chinese, and Taiwanese, two lengthy periods of Western colonization—the Spanish Imperial period (1521-1898) and the U.S. colonial and commonwealth periods (1898-1934 and 1935-1946 respectively)—plus a conglomeration of nearly a dozen distinctly different native languages and scores of local dialects (Aluit, 1990; Francia, 2010; Luna, 1990; *The Philippines*, 2013).

According to the most widely reported and commonly publicized estimates, approximately 50,000 Amerasian infants, children, and adolescents who descended from American servicemen were abandoned, stranded, unsupported, or orphaned on the Philippine Islands (Gastardo-Conaco & Sobritchea, 1999; Levi, 1993; Montes, 1995). That unofficial estimate was made at the time of the U.S. bases withdrawal in 1991-1992. However, Kutschera and Caputi (2012) estimated that when considering all age groups (including adults, the elderly and second-generation Amerasians) the 1992 children estimate did not project the roughly 230,000 to 250,000 or more military Amerasians believed residing in the archipelago today. Significantly, neither U.S. nor Philippine governments in modern times ever

took an authentic or comprehensive census of Amerasians. Moreover, in analyzing findings from the Kutschera and Caputi (2012) research, Bondac (2012) pointed out that Amerasians in the Philippines actually continue to grow at an exponential rate. The approval of the 1999 R.P. – U.S. Status of Forces Agreement permitted U.S. military personnel (e.g., high numbers of private corporate defense contractors accompanying uniformed soldiers) to once again operate and train with the Philippine military. They conducted either publicized training events such as the annual Balikatan exercises in central Luzon or at times classified combat operations against militant Muslim extremists and terrorists with suspected Al-Qaeda links in southwestern Mindanao as part of the Global War on Terrorism.

The vast majority of military origin Amerasians—the forsaken progeny of U.S. uniformed service members, government employee, and corporate military contractor fathers and Filipina national women—became highly marginalized socioeconomically and heavily stigmatized. Kutschera (2013) and Kutschera, Caputi and Talamera-Sandico (2014) maintained that Filipinos, an ostensibly pluralistic and multiracial Asia Pacific people, ostracized many mothers and their Amerasian children because of their reputed involvement as military sex workers. However, the researchers posited that no scientific study of this widely held stereotype is available to determine its veracity.

Currently, the U.S. troops and bases deployed and garrisoned in Pan Amerasian enclave nations include Japan and South Korea as well as the heavily fortified U.S. territory of Guam. Schade (1980) reported wide dispersal of mixed-race military Amerasians in numerous other locales dating to, or even before, World War I, and extending to the Vietnam American War (1964-1975). Such enclaves included Cambodia, mainland China, Laos, Myanmar (Burma), Taiwan (Formosa), Thailand, Vietnam, the Marianas Islands, and possibly other scattered Pacific Island groups of Micronesia. Also, new pockets of modern day military Amerasians in Afghanistan and neighboring Muslim countries (including Kyrgyzstan and Uzbekistan) are present in Central Asia, where U.S. Marine, Army, and Air Force (and more recently NATO) troops and units have been active since the onset of the Global War on Terrorism (since officially renamed the “Overseas Contingency Operation”).

II. LITERATURE REVIEW

A small body of empirical literature, alongside longstanding news media reports and personal anecdotal accounts, confirm significant, consistent levels of stigmatization, discrimination, name-calling, intolerance, harassment, and isolated incitement to physical violence (hatemongering)

against biracial Filipino Amerasians, particularly toward darker-skinned Africans (Blacks). Such aggression and assaults have usually emanated from mainstream or lowlander Filipino natives and in isolated incidents, foreigners were the reported or observed protagonists.

Various inquiries undertaken in the past two decades, including either studies with various sized samples or literature studies and reviews (i.e., Ahern, 1992; Cantani, 1997; Gastardo-Connaco & Sobritchea, 1999; Levi, 1993; Montes, 1995; Sturdevant & Stoltzfus, 1992) report conditions of low socioeconomic and marginalized standards of living for most Filipino Amerasians. Kutschera (2010, 2011) found significant presence of stigmatization, discrimination, name-calling, verbal harassment, and incitement to physical violence (hatemongering) among Amerasians. The multiple-case study linked these conditions to a high number of stigma-tainted psychosocial risk and stress factors and suggested they were strongly related to elevated-to-severe levels of anxiety, depression, stress, and psychosomatic illness found among the sample.

Similar instances of stigmatization, discrimination, verbal harassment, and hatemongering have been reliably, but sporadically, reported in other East and Southeast Asian nation-states with mixed-race Amerasian populations post-U.S. troop and base deployments dating to World War II. Characterized as part of a broader *Pan Amerasian* social construct (Kutschera, 2010, 2011), these enclaves or pockets of military Amerasians were or are possibly large and dispersed enough to stand as a separate or inclusive diaspora apart from the significant Filipino Amerasian diaspora conglomeration (Kutschera, 2013).

The 1982 Amerasian Immigration Act, passed by the U.S. Congress and signed by President Ronald Reagan (Levi, 1993; Montes, 1995), specifically excluded Filipino Amerasians from immigration easements yet generously provided a number of them to other Pan Amerasian groupings. They were excluded, in part, because of the empirically untested belief that Filipinos sustained lesser degrees of stigmatization and discrimination than other military Pan Amerasians did. Additionally, by Congressional definition, the Philippines were not a modern, post-World War II combat fire zone (Ahern, 1992; de Leon, 2012a, 2012b). Although there is no comparative research to support this assumption, Cambodians, Laotians, South Korean, Thai, and Vietnamese Amerasians included in the 1982 legislation were regarded as victims of allegedly greater and more intense measures of stigmatization. Vietnamese Amerasians, for example, faced this criticism and rejection due to their origin at birth, physical features, and phenotypic mannerisms, but they were particularly socially contemptuous because they were held to be the children of enemy U.S. combat and invasion forces (Bass, 1996; McKelvey, 1999).

Gastardo-Conaco and Sobritchea (1999) and Kutschera (2010, 2011), believed to be the two most significant empirical studies published on contemporary military Filipino Amerasians, confirmed marked levels of stigmatization and discrimination. The drivers were essentially two factors: (a) the widespread belief but empirically untested hypothesis that the bulk of Amerasians were offspring of Filipina sex workers and (b) differential physical attributes, including darker skin color, non-conforming facial features, different hair texture and styles, and atypical personal and phenotypic mannerisms. These latter issues particularly affected stigmatization of African Amerasians and made them twice the victim of discrimination (Gastardo-Conaco & Sobritchea, 1999).

III. CONTEMPORARY AMERASIAN STIGMATIZATION AND MENTAL HEALTH STUDIES

Falk (2001) posited that the view of a propensity for development of stigmatization (and hence intolerance and hatemongering) pronounced among certain groups (e.g., biracial and mixed-heritage individuals, sex workers, the homeless, and immigrants, refugees or displaced populations) often came from majority populations who viewed them as being alien or from the outside. Notably, these conditions or permutations were stigma-related psychosocial risk or potential mental stress factors possessed by many military Filipino Amerasians in the Kutschera field dissertation study (2010, 2011). Conducted over a three-year period (2007-2010), all participants were from the AMO Triangle, most all specifically Angeles, Pampanga, site of the 13th U.S. Air Force Headquarters Clark Air Base.

IV. METHODOLOGY AND SAMPLE

With a multiple-case study design, Kutschera (2010, 2011) focused on the impact of stigmatization, discrimination and verbal harassment-related psychosocial risk and stress factors and their impact on a sample (N=16) of mixed-parentage Anglo (White) and African (Black) Amerasians. The sample divided into two age groups: adolescents (16-to-19 years) and young adults (20-to-39 years). The sample was nonclinical (i.e., not in mental health treatment). A purposive/judgmental sampling method ensured that the participants had a reasonable likelihood of either encountering stigma due to mixed-heritage origin of birth and physical features or to assure qualities believed typical of the study phenomena (Fortune & Reed, 1999; Rubin & Babbie, 2005).

V. INSTRUMENTS AND RESEARCH SITE

Data-gathering instruments included a semi-structured, researcher-designed interview guide and the Australian developed Depression Anxiety Stress Scales (“DASS-21”) (Lovibond & Lovibond, 1995). The research site was the Angeles-based Amerasian outreach programs of the Philippine Children’s Fund of America (“PCFA”) with cooperation from Pearl S. Buck International, long active in military Amerasian field outreach.

VI. RESULTS AND FINDINGS

A. *Risk Factors*

A total of 82 physical risk factors (e.g., homelessness and housing insecurity) and 76 mental stress factors (e.g., targets of name-calling, social isolation or living in socially dysfunctional, derivative households headed by mothers engaged in sex work occupations [Kutschera & Talamera-Sandico, 2012]) evolved from the study. Stigma-related risk and stress factors also included: exposure to biracial tension, verbal and physical harassment (intolerance), incitement to physical violence (hatemongering) and resultant or related behaviors including abandonment despair, unresolved grief and loss issues, identity confusion, family disorganization and diminished self-esteem. Strikingly, the administration of the DASS-21 measurement scales revealed over half the sample (62.5 percent) scored severe levels of anxiety and depression, and to a lesser extent stress. More than half the sample also voiced or demonstrated psychosomatic illness suggesting a robust presence of somatization disorder (Kutschera & Sandico, 2013).

B. *Case Study Profiles*

Case 1: Aretha (African Adult Female)

Aretha was a politically astute, articulate African woman in her early 30s, skillfully fluent in English and Pilipino (Tagalog), who had a series of unsatisfying, low paying jobs, promotional setbacks and an incomplete college education. A single woman with no children who sometimes maintained live-in relationships with lesbian partners, Aretha toiled at a variety of jobs including messenger, office assistant, custodian, and data entry clerk and recorder. Aretha claimed to be homeless, unemployed, or underemployed many times in her life. The misfortunes originated because of an ongoing feud with her Filipina national stepmother, whom she claimed

stepped into her life and prevented her from claiming her father's military pension, which she regarded as her birthright inheritance. About two years after her interview for the study, Aretha appeared in *Left Behind by the Ship* (2010), an Italian documentary film depicting stranded first- and second-generation African Amerasian progeny in Subic Bay-Olongapo. At that time, she worked with an Amerasian activist group counseling young Amerasians on how to fill out voluminous forms required by the U.S. Embassy in Manila to commence immigration proceedings as an Amerasian offspring.

Aretha tells a harrowing story of heavy stigmatization and discrimination throughout her life, including job rejection, failure to advance at work, lost university scholarship opportunities, virulent race baiting, and angry name-calling. "Feelings of inferiority," "angry as hell" and "putting up with insulting behavior" are all phrases used during a lengthy and at times rambling interview. Denigrating names have been hurled at her in every stage of her life: school, social situations, and the workplace included "G.I. baby," "African bastard," "African hole," "(n-word)," "alien," "bum," and "kulot" (or kinky hair). "I've been called the worse, most vile names you can ever put against a person: slave, (n-word), black hole, fat lips, mustafa (ugly dark colored person). No one gets used to this and you know what? You have no place to go on this island to try and stop it!"

Sometimes Aretha was blindly held out for ridicule for being the daughter of a sex worker though she believes that neither her natural mother nor her stepmother ever engaged in sex work. "Every Amerasian's mother worked on Fields Avenue (one of the legendary red light district streets located in Balibago, Angles City)—that's the myth."

Aretha obsessed over the stigmatization and intolerance she believed surrounded her well into adulthood, indicative of a life as a tortured journey. Mired in family dysfunction including confrontations, verbal and physical abuse from her stepmother, her teenage and early adult years featured periods of wandering and homelessness. Obviously scarred because of an unrelenting barrage of racist and demeaning name-calling and harassment she had experienced throughout the years, Aretha regarded herself as "a survivor who one day will get off these islands of hell."

Aretha self-reported 13 psychosocial risk and stress factors; in a cross-case analysis the results were significantly above the sample mean (9.93). In addition to the aforementioned conditions, including high impact stigmatization from name-calling and verbal harassment at school and on the street, her Axis IV environmental risks included: low medical and mental health access, intense social isolation, low self-esteem, psychosomatic complaints or illness, periods of unemployment, underemployment and housing insecurity. Despite it all, Aretha managed a high enough Global Assess-

ment of Functioning (“GAF”), which enabled her to stay at work even if it is intermittent or sporadic. “I won’t let them get to me,” she insisted. “I am not a bum!”

Case 2: Marvin (Anglo Adult Male)

An unemployed, socially isolated, single Anglo Amerasian who is in his early 20s and an admitted alcohol and drug abuser, Marvin lived with his natural Filipina mother in a poverty-stricken, government subsidized settlement district near San Fernando, Pampanga. His diminutive family circle survived primarily on subsistence income from a small sari-sari (household-based convenience store) hut. Marvin earned between PHP5000 to 9000 (\$115 to 200 USD monthly) from the store, an above average income for such operations, which enabled him to support his binge beer drinking and *shabu* (crystal methamphetamine) drug habits.

Marvin admitted he often passed time in idleness, fantasizing about meeting his long departed father, a U.S. Marine stationed at Subic Bay. Marvin’s Idaho-born enlisted father met his mother when she worked as a “bar fine” dancer at a club outside the base, which catered to U.S. Seventh Fleet Navy men and Marines on shore leave. His mother’s early avocation and the fact that his father eventually left and never supported the family troubled Marvin profoundly. “Whites were supposed to have it better than Blacks at school, but that wasn’t so when they suspected Mom was a whore,” he starkly admitted. Marvin experienced some of the harshest physical and verbal assaults of any Amerasian kid at school. Unrelenting victimization occurred through physical attacks, shoving incidents, name-calling, and incessant teasing from classmates, hostile neighbors, even street people and strangers.

Marvin was called “tisoy” (meaning “handsome” in a positive, cheerful sense, but also translating into the demeaning “White boy” in dark tones of voice), “singaw” (alien), and “Amerkanong hilaw” (half-breed), whether the venue was school, neighborhood fiestas, street side, at work, or even from normal interface with Filipino acquaintances. Eventually Marvin learned to steel himself from the hurt through self-imposed social isolation. “They (Africans) have definitely had it much worse than the Whites. . .treated badly, like ‘basura’ (garbage), or ‘azkals,’ or street dogs. . .but we’re not much far behind.”

Marvin self-reported a total of 13 risk and mental stress factors, including such issues as history of homelessness, low access to health care services, low social desirability, excessive school absences and tardiness, numerous psychosomatic ailments including persistent migraine headaches, and sharp back and leg pains. He also experienced somatic symptoms

including onsets of diarrhea or irritable bowel syndrome and presented feelings of not being well physically or mentally. Almost always, Marvin thought that he wasn't worth much as a person and had feelings of low self-esteem; frequently he found it hard to relax. Sometimes he felt so anxious he became conscious of his heart beating erratically despite lack of physical exertion. Clearly, when compared with the majority of sample participants, Marvin exhibited behavior reactions and physical and mental symptoms reflecting severe effects of various levels of stigmatization encountered during early childhood. "I'm still alive so I consider myself a survivor."

Case 3: Felix (African Adolescent Male)

"I got high. I guess it help me dull the pain [*sic*]. I guess you could call me 'throwaway kid,'" Felix smiled through a mouth of missing teeth and wrinkled, bruised, pockmarked facial skin. The hurt was palpable when he described how classmates called him "Aeta" or the "Igorot" (dark skinned mountain people of west central Luzon) or "ampon," meaning abandoned or sometimes adopted person. Sometimes the stigma and intolerance would manifest itself in something comparatively simple and subtle, such as not being selected or chosen last to play after school for a pickup basketball or soccer game.

Bold confrontations between African Amerasians and Filipino national kids would deteriorate into physical violence and hatemongering (in the sense of inciting or urging others to violence). The majority of kids Filipino or Amerasian would often just stand around like spectators. Felix recalled forlornly that in high school a day would rarely go by without a messy fistfight. Alternatively, pre-planned fights occurred in the play yard after school. "It was mostly always over the racial thing, the skin and hair difference, or some remark like 'you are the bastard son of a prostitute—that's why your Daddy isn't home for his G.I. baby, right. . .right Negro?'"

Felix never met his father and sporadically lived with his mother, whom he thought to be a former bar hostess, dancer and part-time sex worker. She never steadily supported him even during the brief, infrequent times they lived together. A local couple informally adopted him and his sister a few years back. He spent most of his days hanging around the street, carousing with friends, or chatting with neighbors in front of the family's tiny food stall attached to the side of the house. Sometimes Felix, a socially isolated and low self-esteem addled teenager, would venture from home selling cigarettes, chewing gum, and playing cards showing pornographic images along one of the city's traffic congested boulevards. Unsure of his father's identity and conflicted over his own, Felix would act out at

night during neighborhood fiesta nights and binge drink by swilling from cheap pints of Tanduay rum interspersed with Manila beer chasers.

DASS-21 scores revealed Felix struggled with borderline severe anxiety and moderate but significantly elevated depression, along with significant signs of psychosomatic illness. He complained of anxiety, worries, and insecure feelings over gloomy job prospects and past family hurts. Cross-case analysis revealed he had 12 psychosocial risk and stress factors, which placed him among the highest of any adolescent sample participant. Especially painful were stigma and harassment from his days as a skinny, dark-skinned military Amerasian arriving at grade school and finding that he was unwelcome. A sense of physical and mental anguish seems to erupt from many places, he complained: "They (his classmates) just never let you forget that you were different from them in any number of ways."

Case 4: Mariah (African Adolescent Female)

A frail, thinly framed asthmatic teenage souvenir vendor, Mariah is one-half Aeta. She is truly an anomaly among the sample as a participant who could be doubly stigmatized. Her Clark Air Base sergeant father was African American; her mother, a dark, full blooded Aeta, the daughter of the indigenous mountain people native to Zambales near Mount Pinatubo. Her father met her mother at Clark Air Base when she worked at the base laundry. So their relationship and Mariah's origin was the natural offshoot of many "boy-girl" or "man-woman" liaisons arising between military personnel and Filipina national women. Yet Mariah remembers that many times she was harassed as much by Filipinos for her very dark skin, as she was for possibly being the daughter of a sex worker. "It was blind sometimes, the kind of criticism we would take; it was mindless."

Mariah's DASS-21 scores indicated she had severe anxiety cutoff levels, and recorded moderate but clearly elevated levels of depression and stress. She self-reported 10 psychosocial personal risk and mental stress factors; cross-case analysis showed this number to be one above the mean for the sample. Negative personal or physical risk factors ranged from high poverty, housing insecurity, and low access to medical and mental health services to low social desirability and excessive school tardiness and absences.

Like many respondents reporting high stigmatization presence in their personal lives, Mariah also exhibited many symptoms of psychosomatic illness with a provisional diagnosis of somatic disorder and possibly comorbid acute anxiety disorder. Her somatic complaints consisted of persistent, severe headaches, unexplained sudden onset of indigestion, diarrhea, intermittent insomnia, and unexplained fatigue. Such conditions were

likely to worsen, given she was reluctant to seek professional help because of low family income and limited access to community health services. Additionally, a tradition among many Aetas was not to go to outside sources for resolution of personal issues or health problems, because their women were reputedly highly skilled in the tradition of herbal medicine. This cultural belief represents a community wisdom and reliance on their wisdom in contrast to that of “outsiders.”

Case 5: Michelle (Anglo Adult Female)

Michelle was a light-skinned Amerasian single mother caring for two pre-teen children. Her DASS-21 score readings were among the most normal within the sample. She self-reported a handful of psychosocial risk and stress factors including low income, periodic homelessness, a history of underemployment, witness to intense name-calling, discrimination, and bi-racial stress and originating from a family with derivative family construct features.

Employed at one of the expanding number of corporate telephone call centers, Michelle provided customer service for U.S. corporate account sited at the Clark Freeport Zone. Despite being the best educated of the sample, with a bachelor’s degree in behavioral health, she was unable to find immediate employment as a psychology counselor, which was an original professional goal. At the time of her interview, Michelle believed that having a mixed-race Amerasian origin might have held her back professionally. Yet a few years later, after her employment as an addictions counselor with the Philippine Department of Social Welfare and Development, Michelle said that being a mixed-heritage Anglo Amerasian with pronounced Caucasian features and light skin color, may have eventually helped her. Upon deeper reflection, she maintained that several of her Anglo Amerasian female friends and acquaintances had experienced similar good fortune related in some measure to their more U.S. American than native Filipina physical appearances and phenotypic mannerisms. She maintained that this so-called *mestiza*, or mixed look favoring the Caucasian side, was very popular and an appearance and style sought by many mainstream, but darker skinned contemporary Filipinas.

Michelle struggled as a daughter from an impoverished household nominally headed by a sex worker. When she reached puberty, she became pregnant and had two out of wedlock children of her own by a wayward, unsupportive Filipino boyfriend. Despite these early personal setbacks, Michelle successfully educated herself by winning several full college tuition scholarships. The great irony, said Michelle, is that to the best of her knowledge, Latino, Chicano, or Hispanic Amerasians have remained essen-

tially unaffected by the stigmatization and intolerance phenomenon. “Unless their mothers are suspected of having been in the sex industry, they probably experienced the least bias from Filipinos. This situation occurred because, by appearance, many Latino Amerasians actually look very Filipino.” Many even had a popular mestizo appearance, but were not necessarily viewed as Amerasian outsiders.”

While growing up, Michelle witnessed race prejudice directed at both Anglos and Africans, but notes that it was always more intense for Africans. “I had a great deal of empathy for them. There is no question they’ve had it the worse.” Michelle claimed she personally witnessed extreme prejudice, name-calling, harassment, even violence and beatings of Africans in high school and in the tent city “resettlement area” in Angeles where her mother and family lived following the disastrous 1991 Mount Pinatubo volcanic eruption.

“In a sense, sometimes it took on an almost illogical and automatically destructive (*sic*) form. Black Amerasians were viewed as outsiders, period. Therefore, they were deserving of what anyone could throw at them!” Later on while working at the call center, she noticed, perhaps in a more subtle application, that “even though African Amerasians were hired and actually sought out because they were capable of speaking clearly and understandably to other African American customers back in the states, they were actually treated poorly. They often had to work night or odd hour shifts and very rarely ever promoted once hired.” As to social settings, Michelle recalled, “It’s was not unusual at all to go to a party, a fiesta and hear someone call out hey, hey ‘tiso’ (White) to me, or hey, hey ‘(n-word)’ to my African friend. Then they’d stare us down making us feel unwanted and inferior.” These kinds of comments can get very personal. “My own friends at college automatically assumed my African Amerasian pal was a ‘bar girl’ because of her dark skin. In their view all African women are automatically connected to the *kasarian industriya* (sex industry).”

VII. DISCUSSION AND ANALYSIS

The five representative cases included here reflect a cross section of the sample of 16 adolescent and adult participants in the main study. Many of their testimonials and conditions were also typical across the spectrum of the remaining sample and are discussed below.

A. *Emergent Themes*

Among the predominant psychological themes and conceptual patterns emanating from the research interview schedule—many laden with stigma-

related overtones—were expressions of intense abandonment as result of the father’s absence. In several instances, abandonment occurred by both natural parents. Other prominently expressed themes and patterns included stigmatized, intense, and dramatic exposure to racial prejudice, bias, and discrimination by mainstream Filipinos, personal identity conflict, confusion, tension, and social exclusion.

Several themes and patterns percolated from analysis of these case studies. When focus is specifically on testimonials of stigmatization, intolerance, and hatemongering, the themes and patterns which emerged from analysis essentially supported the observations and conclusions drawn in the Cattani (1997), Gastardo-Conaco and Sobritchea (1999) and Kutschera (2010, 2011) research studies, as well as other scattered informal research on the topic (e.g., news media reports and long standing personal anecdotal claims). Hatred and prejudice, which at the least are unacceptable and inappropriate conduct, and at the worse are despicable and repulsive behaviors by most societal standards, manifested themselves in most venal ways against mixed-race Amerasians. Such were truly surprising expressions as the research unfolded, given that the Philippines is known in the Asia Pacific region for its essentially pluralistic culture, high population of persons with foreign-born origins, and diverse societal complexity (Francia, 2010).

The research studies cited above maintained that the primary direction of anti-social behavior and prejudice against Amerasians covered a range of expressions and reactions, but appeared to concentrate summarily on two primary forms. The first is the almost mindless, illogical, and unstudied belief that most Filipina mothers of Amerasian progeny were sex workers (Kutschera, Caputi, & Talamera-Sandico, 2014). The mothers and their children were regarded as totally deserving of universal, unrelenting condemnation and blame from society-at-large. The second form of expressions and reactions focused on attribution of physical and phenotypic differences of Amerasians, predominantly those of African Amerasians. These attributions include anatomical ones (e.g., skin color or pigment, hair texture, shape and slope of head, facial features of the eyes, lips, nose, and ears, and general physique) plus factors such as personal mannerisms, including how a person interacts within the surrounding environment. Falk summarized such reaction phenomena as “sex, rejection and contempt” (2001, p. 265).

Additionally, a more subjective component to this hate formula—relating to individual disposition or the way a person carries or portrays themselves to others – was a form of mannerism (i.e., how they physically and emotionally composed themselves and interacted with the environment surrounding them, sometimes described as a phenotypic component). Falk

maintained that such stigmata have a way of highlighting the differences or enhancing the concept of “the other” or “an outsider,” much in the way that “an immigrant (of which the Amerasian has many characteristics in common) is also, by definition, an outsider and hence the target of stigma.” Falk further noted: “[T]he degree to which the stigma of foreigner or alien to an immigrant varies considerably because of the experiences and cultures from whence the immigrant came varies so much” (2001, p. 219). Thus, as Michelle graphically described her memories and emotional state after witnessing what appeared to be a pattern of banal abuse directed at African Amerasians, she analyzed the events in the following way:

In a sense, sometimes it took on an almost mindless and automatic destructive (*sic*) form. Black Amerasians were viewed as outsiders, period. Therefore, they were deserving of what anyone could throw at them!

Most tellingly, Mariah used the same precise terminology in discussing her own experiences of Filipino violent reactions to the widely held notion that all Amerasians were bastardized, contemptible children of Filipina sex workers: “It was blind sometimes, the kind of criticism we would take. *It was mindless*” (Italics added).

The evidence clearly reflected that the severe level of stigmatization and intolerance directed against military Filipino Amerasians had contributed in a negative way to many of their psychosocial personal risk and stress factors. In the Kutschera (2010, 2011) research, these factors were a contributing and possible causal factor in their high levels of core mental health symptomatology and propensity to develop psychopathology or mental disorder. In retrieving literature for his study, Kutschera cited Finch, Hummer, Kolody, and Vega (2001), who identified the seminal studies of Hughes and Demo (1989) and Pearlin (1989) in categorizing stigmatization and discrimination as stressful life events. Often times these events resulted in or appeared to contribute to anxiety, depression, or general malaise. In the large sample utilized in the Hughes and Demo longitudinal inquiry, a 13-year study of low socioeconomic status and poverty stressed African Americans, the researchers found that “[R]acial inequity and discrimination have serious negative effects on personal self-efficacy” (1989, p. 403).

Klonoff, Landrine, and Ullman (1999) cited an equally lengthy study by Jackson, Brown, Williams, Torres, Sellers, and Brown (1996) on the same population in their own longitudinal study as significant not only in their own research on the subject of stigmatization and discrimination, but also on its impact on psychiatry relating to African Americans. Jackson et

al. had assembled a probability sample of 2,107 African Americans with their interview responses resulted in the finding of a “relationship between racial discrimination and psychological distress or symptoms” (as cited in Klonoff, Landrine, & Ullman, 1999, p. 330).

Demonstrably, in case study after case study, and not only among the five sample participants from Kutschera (2010, 2011) chosen above for representative discussion, the highest and most widespread core mental health symptomatology recorded was anxiety. For example, study participants Aretha, Marvin, and Felix all presented DASS-21 elevated anxiety ranges from borderline severe to extremely severe. All offered personal accounts of intense experiences and incidents with stigmatic and racial hatred on the part of Filipino antagonists. Each was provisionally diagnosed with an anxiety-related disorder (i.e., generalized anxiety, acute anxiety to post-traumatic stress disorder).

Moreover, Aretha, Felix, and Marvin, like Mariah and five other participants in the study, reported many symptoms resembling psychosomatic illness or possible somatic disorder. Johnson (2004) conceptualized that psychosomatic illness was anxiety and stress-related and had valuable diagnostic implications for underlying mental depression and mood disorders, bipolar, anxiety related disorder and stress related illness, symptoms of which all presented in one form or another in the 2007-2010 Angeles study. Fischbein (2011) noted that psychosomatics were routinely described as illnesses in which somatic or physical symptoms presented. However, due to mental trauma, patients do not necessarily recognize the symptoms and thus are they susceptible to receiving misdiagnoses by medical doctors, physician’s assistants, and medical or clinical social workers, as well as psychiatric nurses who may be among the first to receive and examine these patients in a health care setting.

The Angeles research sample frequently presented traces of somatic illness. It requires further understanding of this complex, physical and mentally intertwined disorder on a larger sample and expanded study into the issue of prevalence of psychosomatic symptoms and apparent somatization disorder among Filipino Amerasians (Kutschera & Talamera-Sandico, 2013). The researchers also concluded that the high presence of somatic complaints and illness found in the Angeles sample was primarily anxiety-related, suggesting a profound linkage to the high levels of stigmatized-influenced psychosocial personal risk and mental stress factors, including numerous instances of harassment and hatemongering identified by the nine participants reporting signs of this malady.

B. *Social Implications of the Military Filipino Amerasian Marginalization*

From birth onward, many Filipino Americans have experienced abandonment or neglect is something that many Filipino Amerasians have known intimately from birth. Much of which is attributable to their wayward or stray American military fathers, as well as the institutional practices by and lack of attention from the U.S. Government, as amplification of attitudes and policies that range from outright rejection to bare-minimum response given to this marginalized, stigmatized population. In short, the historical record shows that the U.S. Government, through departmental policy, Congressional acts, and outright inattention and denials of responsibility, appears to have placed Filipino Amerasians at or near the bottom of all Pan Amerasians in terms of providing for or holding out hope for possible future recompense. Supporting this summative claim are the following examples:

1. The U.S. Department of Defense (“DOD”): In a 1970 statement commenting on the unknown number of babies born from G.I. servicemen and Vietnamese national women, the DOD made a well-publicized statement on the condition which stands to this day as its laissez-faire policy affecting all military Pan Amerasians: “The care and welfare of these unfortunate children. . .has never been and is not now considered an area of government responsibility” (Lamb, 2009, p. 1). Ironically, the U.S. Government—not the military—ultimately came to aid Vietnamese Amerasians vis-à-vis the Amerasian Homecoming Act of 1987, which allowed fast-track immigration for Amerasian refugees; however such a break was never afforded to military Filipino Amerasians.
2. The Amerasian Immigration Act of 1982, along with current U.S. Embassy-Manila and U.S. Citizenship and Immigration Services (“USCIS”) restrictions in force and affecting Filipino Amerasian immigration: While allowing liberalized immigration easements for Cambodian, Laotian, South Korean, Thai, and Vietnamese Amerasians, this statute specifically excluded Filipino, Okinawan Japanese, and Taiwanese Amerasians, all of whom were included in the original draft (Ahern, 1992). One of the reasons for Filipino exclusion was the belief that stigmatization and intolerance were greater for other Amerasians, especially Vietnamese, who had been viewed as children of the enemy (McKelvey, 1999). Even today in the Philippines, many marginalized Filipino Amerasians remain resentful and feel they have been forgotten, ignored, and even trashed by their former U.S. colonizers and current allies for having

been excluded from this piece of legislation (Ahern, 1992; de Leon, 2012a, 2012b). Highly restrictive immigration rules administered by the U.S. Embassy-Manila and the USCIS make it extremely difficult for impoverished first- and second-generation Filipinos Amerasians to claim permanent residency or citizenship due in great measure to the onerous paperwork, documentation hurdles, and, at times, seemingly arbitrary or shifting policies and procedures (Kutschera & Caputi, 2012).

3. Stigmatization involving other Pan Amerasians: When responding to the needs of Amerasians, the U.S. Government has tended to favor non-Filipinos (Kutschera & Caputi, 2012). The 1987 Amerasian Homecoming Act (“AHA”) underscored this policy by ultimately permitting 26,000 Vietnamese Amerasians and 75,000 of their close relatives to immigrate to the U.S. mainland (Lamb, 2009). The AHA’s legislative history and enactment, and likewise for the 1982 Amerasian Immigration Act, appeared to ignore, if not conveniently or deliberately overlook the fact that large installations in the Philippines were utilized for supreme forward command, military support, and launch platforms for massive naval and air offensives in both the Vietnam American and Korean Wars. These launch facilities included Clark Air Base, Pampanga, the U.S. Naval Base Subic Bay, U.S. Naval Air Station Cubi Point, U.S. Naval Communications Station Philippines, San Miguel, Zambales; Mactan Air Base, Cebu, in addition to several others (Ahern, 1992; Karnow, 1989). Historical records and other sources provide ample evidence and relatively reliable documentation that other Pan Amerasians (i.e., Okinawans and other Japanese, Koreans, and Vietnamese) experienced virulent episodes of stigmatization, intolerance, name-calling, and social exclusion. However, except perhaps for a briefly coordinated U.S. Government effort focused on Vietnamese Amerasians in the post-Vietnam American War era, comprehensive or comparative research studies examining systematically specific levels in these nation-states were either never conducted, unavailable, or unknown. Many isolated, uncoordinated or independent studies, books, or reports have presented evidence and trends of stigmatization, intolerance, hatemongering, and socioeconomic marginalization of Pan Amerasian cohorts (e.g., Bass, 1996; Kim, 2009; Lamb, 2009; Lee, 2007; McKelvey, 1999; Moon, 1997; Sims, 2000; Song, 2003; Wu, 2012; Yarborough, 2005; Zhou & Bankston, 1998). On the subject of military Filipino Amerasians, in particular, the landscape of empirical research and relevant publications is even sparser.

VIII. RECOMMENDATIONS

The situation today, as described in the Kutschera studies (2010, 2011), has not dramatically changed in the Philippines or, for that matter, in the shrinking number of East Asian countries and other areas where U.S. forces remain (primarily Japan, Okinawa, South Korea, and the strategically fortified U.S. territory of Guam). In 2012, the Obama Administration announced its new effort to rebalance or “pivot” emphasis of U.S. international defense posture from the Middle East and other regions of the globe to the Western Pacific Basin (Cloud, 2021; O’Callaghan & Mogato, 2012), which may have some peripheral impact on the largely dormant Amerasian question. The question remains whether these efforts will redirect the public spotlight onto the mostly forgotten, but languishing and perplexing military Amerasian conundrum (Kutschera, 2013).

In view of this contemporary state of affairs, the following recommendations are offered:

Expanding Research: Given the dearth of research on this population, fostering research community interests and inquiry into the Filipino and Pan Amerasian condition within academia is a critical first step, particularly given that these enclaves possess many characteristics of diaspora populations and may be of great interest to Ethnic Studies, Asian American Studies, Anthropology, and related fields (Kutschera & Caputi, 2012).

Alerting Human Rights Organizations: Both the U.S. Government and the East and Southeast Asian governments which have hosted U.S. military presence are complicit in, and responsible for, the fate which has befallen military Amerasians, particularly those who remain socioeconomically and psychologically at risk and reflect trauma and damage from prejudice, discrimination, intolerance and hatemongering. Thus, alerting human rights organizations, including Amnesty International, Human Rights Watch, and the UN High Commissioner for Refugees, as well as agencies specializing in the reduction of global poverty such as the Asia Foundation, the Asian Development Bank, the UN Development Program, and others, may bring this ignored or minimally discussed human problem out from the shadows.

Encouraging Military Research and Policy Changes: The U.S. and other military intervention and peacekeeping powers in the world (e.g., NATO, the U.N., the African Union, Russia, France, etc.) engage in periodic military- or alliance-based field deployments or combat forays. As such, the worldwide potential exists for further interactions between female civilians and male deployment personnel (both military and contractor). Such contacts may increase the likelihood of fraternization and mixed-heritage childbirths, and along with these phenomena the excesses of stigmatization and intolerance experienced by mixed-heritage children as has

occurred in the East and Southeast Asian contexts. Thus, researchers in military science disciplines should initiate focus on evaluating current policies and formulating new ones, and on reviewing command control procedures. The scope of research would include policies related to monitoring troop rest and recuperation, governing off-duty leisure time pursuits, and placing limits or boundaries on troop and military contractor consorting with female civilians (e.g., immigrant and refugee women and girls who might be involved in sex work or sex slavery) in troop-occupied areas.

Increasing Awareness: With the documented levels of stigmatization, intolerance, harassment, name-calling, and hatemongering experienced by the majority of impoverished Filipino Amerasians, the potential impact of these phenomena on the population's mental and physical health is an ongoing issue that needs rectification and coordination across multiple domains. Clearly understudied, inadequately researched and reported, and all but ignored by the U.S. Government, the plight of Filipino Amerasians and most other Pan Amerasians is virtually unknown to the American public. With the upsurge in bullying, the reported increase in sex and harassment offenses involving U.S. female troops by male troop cohorts, and comparative violence in the U.S. and elsewhere in the world, these situations are may be related and—assuming that they are—require the kind of coordinated responses and interventions that only result from increased awareness.

Extending Services to Filipino Amerasians: Finally, a coordinated, collaborative effort initiated by the UN to establish a consortium of agencies and organizations dedicated to extending their current services to this neglected group is well in order. Federal agencies, such as the National Institutes of Health (NIH) and the Substance Abuse and Mental Health Services Administration (SAMHSA), in combination with private funding, need to consider ways to support research and research-based services for this neglected population. Foundations that financially back and otherwise support international and global projects need to consider underwriting research studies and programs to support to this type of consortium on global health concerns.

CONCLUSION

More than three decades ago, Schade (1980), an authority on the Pan Amerasian human experience and former executive director of the Pearl S. Buck Foundation (now Pearl S. Buck International), wrote that mixed-heritage, biracial Amerasians were the equivalent of abused American children. These children were left forgotten and forsaken in foreign lands by their U.S. servicemen fathers who would never return. He estimated two million

Amerasians were born in East and Southeast Asia between the 1898 Spanish American War and 1980 when he concluded his count. Since that time, tens of thousands of Amerasian childbirths have been attributed to both U.S. servicemen and an increasing number of corporate defense contractors, who directly support the military more than ever.

What occurred with the military Filipino Amerasian marginalization and in numerous other Pan Amerasian enclaves, including documented evidence of intolerance and hatemongering, constitutes a shameful indictment of the U.S. uniformed military services, corporations who employ military civilian contractors, and the nation as a whole. The chance that these dynamics continue, or that a similar scenario presents itself in another part of the world, is not implausible. In view of these continuing conditions, many questions and challenges remain as to how best to serve this marginalized population. Perhaps more fundamentally, however, the questions are: Do these discarded, diaspora populations have the right to a certain quality of life? If so, what is the source of that right? And, what is required to provide these populations with the medical and mental health services needed to fulfill that right?

NOTES

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The Price of Sunshine: Open Dependency Courts and Their Risks to LGBTQ Child Abuse and Neglect Victims

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INTRODUCTION

The primary goal of child dependency law is to secure a safe and permanent placement for abused and/or neglected children that will be in the child's best interest.² States have identified LGBTQ child abuse victims as children who are particularly psychologically vulnerable to bullying and social opprobrium.³ For instance, the California Legislature has promulgated specific protections for LGBTQ youth in the dependency system.⁴ However, in my fifteen years of studying the jurogenic effects of open dependency court systems on abused and neglected children,⁵ I have rarely encountered legal literature that specifically looks at the effects on LGBTQ child victims of opening child protection hearings to the press and the public. For instance, the three most extensive state-level pilot project studies on the effects of open courts on abused children (the *Minnesota Pilot Study*,⁶ the *Arizona Pilot Study*,⁷ and the *Connecticut Study*⁸) do not even discuss the effects of public and media attendance on the psychopathology of LGBTQ child abuse victims in those dependency court systems.

The following analysis surveys the vast child and adolescent psychiatric evidence regarding the significant risks that LGBTQ youth suffer from the fear of disclosure and/or the actual publicity of their sexual orientation once child dependency proceedings are presumptively opened to the media and the public in general.⁹ As I have previously demonstrated elsewhere,¹⁰ the speculative increase in system accountability from opening the courts is substantially outweighed by the additional psychological damage that open systems cause for this already-vulnerable population.

There is no longer any serious debate as to whether LGBTQ status, bullying, and suicide are causally, indeed inextricably, intertwined. For example, "A recent review of the research identified 19 studies linking suicidal behavior in lesbian, gay, and bisexual (LGB) adolescents to bullying at school. . ."¹¹ Therefore, the risk that disclosure of identifying facts about LGBTQ child abuse victims in presumptively open child dependency proceedings, and the consequent dangers to those children, must be taken into consideration when policymakers determine the ambit of press and public access to those proceedings.¹²

I. DEMOGRAPHICS OF LGBTQ CHILD ABUSE VICTIMS IN JUVENILE COURTS

The demographics of LGBTQ¹³ children in the child dependency system are complex and nuanced. LGBTQ children include:

- Young people who are open about being LGBTQ in all facets of their lives;
- Young people who identify as LGBTQ but do not disclose those identities to other persons;¹⁴
- Young people who come out as LGBTQ to their lawyers but ask that they not reveal those identities to others;
- Young people who experience same-sex desire, engage in same-sex behaviors, or do not conform to gender norms, but do not personally identify as LGBTQ;
- Young people who are not LGBTQ but are perceived to be so by their peers, families, or communities; and
- Young people who are questioning their sexual orientation or gender identity.¹⁵

The effects of publicity on each of these groups may be dramatically different.¹⁶ Those LGBTQ child abuse victims who are completely open about their sexual orientation¹⁷ may still not want the public in general to know about their abuse. Others may merely want a limited disclosure to potential caretakers so that special accommodations can be provided for their needs and safety.¹⁸ Those abuse victims who identify as LGBTQ but who are in “transition”¹⁹ toward disclosure are at severe risk from publicity since they may still not be ready to accept the public reaction to their new status.²⁰ Abuse victims who are not LGBTQ, but who are identified by their peers as such, may suffer greatly from the publicity, especially if there are any facts indicating same-sex abuse; this information may feed peers’ and the community’s false perceptions. Finally, those child abuse victims who are struggling and questioning their sexual orientation may become emotionally devastated if facts regarding their as-yet undecided sexual orientation and/or gender identification are disclosed.²¹

In addition to the variety of sexual orientations and gender identities among LGBTQ child abuse victims, sub-groups also vary according to race, ethnicity, religion, and disabilities.²² Indeed, sexual identity cannot be separated from cultural identity since it is a “complex, dynamic, and interactional process by which subjects construct their sexual identities in dialogue with existent cultural possibilities, and in the context of their everyday social relations.”²³ For example, Latina/o LGBTQ children may live within a Hispanic and/or religious culture in which disclosure can subject them to family ostracism, “losing friends, stigmatization in the school, verbal vio-

lence, or fear of being attacked in the streets due to their sexual identity.”²⁴ The threatened loss of family respect and support is a strong incentive for Latina/o LGBTQ children to remain silent as regarding both their abuse and their sexual identities:

A close relationship with the family is especially desirable in youth definitions of what it meant to be good sons or daughters. However, for these youth sexual identity or orientation contravenes their families' expectations about their children.²⁵

The landscape of LGBTQ child abuse victims is further characterized by some youth who “simultaneously operate within marginalized racial and sexual statuses.”²⁶ For example, Black LGBTQ children may not only have to use forms of cultural “code switching” when dealing with White culture; they must also switch their speech and mannerisms in an attempt to hide their sexual identity.²⁷ The juvenile dependency system cannot hope to understand the psychology of Black gay children without accounting for the intersectionality of their social and psychological status:

Whether conceptualizing being Black and gay as interlocking, in opposition with one above the other, or as spatially significant, the narratives provided by the Black gay men. . . reveal that each characterization had implications for the relationship these men felt they shared with other Blacks, gays and the larger Black and gay communities.²⁸

Thus, these child abuse victims must psychologically chart a course through Black/White cultures, LGBTQ cultures, and the horror of also having been an abuse victim.

Since adolescents fear being perceived as different, it should come as no surprise that they fear peer and cultural reactions to previously undisclosed information, including information on their mental health and psychotropic drug use. In addition to fears by Black and Latino LGBTQ child victims about disclosure of the details of their abuse and of their sexual identity and orientation, they may fear reactions to disclosure of their required use of psychiatric drugs and thus may seek to keep it “secret in order to protect oneself from social teasing and taunting”²⁹ For example, “[s]tatements from African-American adolescents revealed greater negativity in stereotypes of people with mental illness. . . [and that] [f]amily norms. . . may lead African-American youths to use secrecy to a greater degree than whites to protect themselves.”³⁰ Likewise, Latina/o children are “less likely than others to use follow-up [mental health] services outside their schools.”³¹ Further, Latina/os “use of antidepressants is likely to be interpreted as a sign of severe depression, being ‘crazy’ or weak, or as a

sign of illicit drug use. Thus stigma is a prominent concern among racial-ethnic minority groups and a major contributor to lesser treatment involvement and lower adherence.”³² Since it is estimated that approximately two-thirds of children in the juvenile court system have some form of mental health problem,³³ a substantial number of those children may fear disclosure of their mental health conditions or treatments.³⁴

Other groups of LGBTQ children may fear disclosure of their sexual orientation because of strict religious or cultural taboos. For example, gay Muslim children may face prejudice from their own families and communities, and the Qur’an has an explicit prohibition against homosexuality.³⁵ Thus, disclosure of LGBTQ status for Muslim child abuse victims “may be threatening at the social level, as it potentially exposes the individual to discrimination, and at the psychological level as it entails the assimilation-accommodation of gay identity within the self.”³⁶ Coming out, or being outed by the child dependency system, is “construed as posing threats to a crucial dimension of their ethno-religious identity, namely ‘izzat’ (honour).”³⁷

Therefore, when child dependency judges who sit in presumptively open court systems, or even in closed ones, decide whether a dependency hearing should be opened or closed to the press and public, they must start to make much more sophisticated determinations of the risks of disclosure, and do so based upon the many variables inherent in that abused child’s religious, cultural, and racial milieu.

II. BULLYING

LGBTQ youth are at grave risk of bullying.³⁸ Nationwide, approximately “84 percent of LGBTQ youth report verbal harassment,” 25 percent physical harassment, and “up to 70 percent experience problems in school due to prejudice and discrimination based on sexual orientation”³⁹ Meanwhile, the most comprehensive study of gay bullying in California schools, which surveyed 230,000 students, found that “91 percent of students reported hearing students make negative comments based on sexual orientation. . . [and] 46 percent of students said their schools were not safe for lesbian, gay, bisexual and transgender (LGBT) students.”⁴⁰ LGBTQ bullying thus comprises a serious topic in an increasing number of court opinions.⁴¹

The newest form of bullying, cyberbullying,⁴² has a dramatically intense effect on boys who suffer “negative psychological, emotional, and behavioral outcomes” from the “taunting and rumor spreading involving homosexuality. . . .”⁴³ Effects can be similar for girls, who comprise a greater percentage of cyberbullying victims than boys and who are targets

of “name calling, rumor mongering. . .and sexual solicitation.”⁴⁴ Bullying and cyberbullying are so pervasive that the White House recently hosted a conference to discuss such harassment, and forty-four states have anti-bullying legislation.⁴⁵ Thus, the significant risk to LGBTQ child abuse victims from publicity generated bullying is not illusory, but rather is manifest,⁴⁶ as “victimization of lesbian, gay, bisexual, and transgender (LGBT) students in middle school and high schools is pervasive.”⁴⁷

III. SUICIDE

Bullying and cyberbullying have resulted in several LGBTQ children committing suicide.⁴⁸ A new term, *bullycide*, refers to the intentional tormenting of gay students that results in their suicides as an avenue of escape.⁴⁹ Gay youth comprise “30% of all completed adolescent suicides,”⁵⁰ and LGBTQ youth are “three times more likely than their peers to have attempted suicide. . .”⁵¹ In addition, “[e]arlier age of disclosure of being gay. . .is associated with higher likelihood of suicide attempts” because younger child victims are “less able to deal with the psychosocial tasks of coming out in a hostile milieu . . .”⁵² In 2009-2010, children who were bullied about being gay committed suicide in Tehachapi, California, Houston, Texas, Greensburg, Indiana, Providence, Rhode Island, and in the states of New Jersey and Colorado.⁵³ A Utah study of youth suicide they found that “[s]ixty-three percent of decedents were involved with the juvenile court system.”⁵⁴ Elsewhere, another child, before committing suicide, told his mother that

[T]hey keep telling me this. . .this gay word, this gay, gay, gay. I’m tired of hearing it. They’re telling me the same thing over and over.⁵⁵

Therefore, non-consensual publicity in open dependency courts regarding the sexual orientation of young child abuse victims may dramatically increase their risk of suicidal ideation and/or of suicide.⁵⁶ Other disclosures may also result in suicide.⁵⁷ This occurred in New Orleans, when an abused child’s confidential HIV status during an open court child dependency hearing led to the child’s commission of suicide.

The most serious risk to LGBTQ child abuse victims in the dependency system is non-consensual disclosure of their sexual orientation and/or sexual identity, because they are at their weakest psychologically during that phase of sexual questioning and discovery of self.⁵⁸ “LGBT youth and youth who were questioning their sexual orientation reported the highest levels of depression, suicidal feelings, and alcohol and marijuana use,”

according to a 2011 study.⁵⁹ In addition, LGBTQ boys who receive the most bullying are most at risk of suicidal ideation and/or suicide.⁶⁰

In a Canadian longitudinal study of child abuse victims who might be called to testify in open court, the researchers found that abused children described the psychological stress from fearing public disclosure as an “arduous time,” and those child victims had “[s]evere acting-out behaviors, depression or suicide attempts”⁶¹ A frequent response by those abused children, when asked how to make the proceedings friendlier for abused children, was “closing the courtroom to the public.”⁶²

IV. MEDIA OFTEN PUBLISH CHILD VICTIMS’ IDENTIFYING DATA

Several recent empirical studies have demonstrated that the media frequently publish information that identifies or leads to the identification of child sexual abuse, physical abuse, and emotional abuse victims.⁶³ In fact, “[i]dentifying information about the child victim (e.g. name of the child’s street, school or a family member’s full name [among other identifying data]) was published in 51 percent of articles covering child victimizations.”⁶⁴ Shockingly, child victim identifiers were published in 37 percent of cases involving child sexual abuse and in 78 percent of cases involving physical and/or emotional neglect.⁶⁵ No newspaper in the U.S. has an ethics code that prohibits or warns reporters against publishing identifying information about all three types of child abuse victims appearing in child dependency proceedings: sexual abuse victims, physical abuse victims, and emotional abuse victims.⁶⁶ Therefore, it should not be a surprise that the media frequently provide identifying information about those abused children since doing so is not even considered unethical reporting under national and/or local media codes and norms.⁶⁷

V. MANY LGBTQ CHILD VICTIMS DESPERATELY ATTEMPT TO HIDE THEIR SEXUAL ORIENTATION FROM FAMILIES AND PEERS AND FEAR THAT DISCLOSURE OF FACTS ABOUT THEIR ABUSE WILL ALSO REVEAL THEIR SEXUAL IDENTITIES

Most victims of child abuse are profoundly fearful of publicity about their abuse, and approximately 58 percent of survivors delay disclosing their abuse until adulthood.⁶⁸ Child abuse victims are anxious about maintaining confidentiality in order to hide their embarrassment and shame from the intimate facts about their abuse.⁶⁹ Psychologists have long demonstrated that abused children’s fears are often realized when their disclosure of abuse leads to “unsupportive responses or negative social reactions,”

which often exacerbate their anxiety and mental health problems caused by the original abuse.⁷⁰

LGBTQ child abuse victims face a double danger through both publicity of their sexual orientation and disclosure of their abuse and/or neglect.⁷¹ They share the fear of humiliation, embarrassment, and shame with their heterosexual child abuse counterparts regarding the details of their child abuse, but they also risk disclosure of their sexual orientation at a time when they may not yet be prepared to announce publically their LGBTQ status. LGBTQ children are often “victimized further when they disclose their sexual orientation—to peers and adults, and are at risk of losing social support” at the time that support is critically necessary in relation to their child abuse.⁷²

Some gay youth use elaborate self-preservation and “masking” strategies to hide their sexual orientation in order to survive the school peer environment, including modifying their “clothing, speech, postures, interests, friends and demeanor.”⁷³ Those LGBTQ child abuse victims thus not only fear disclosure of the intimate nature of their abuse, but also are extremely anxious that their sexual orientation or gender identity will somehow be directly or indirectly disclosed against their will during the open child dependency hearings.

VI. STATES LACK SUFFICIENT MENTAL HEALTH RESOURCES TO TREAT LGBTQ CHILD ABUSE VICTIMS WHEN THEIR PSYCHOPATHOLOGY IS EXACERBATED BY PRESUMPTIVELY OPEN DEPENDENCY SYSTEMS

“One in five abused children needs mental health services.”⁷⁴ The majority of abused children identified with mental disorders have “Major Depression [and] Anxiety Disorders,” conditions which cannot be cured through short-term mental health services.⁷⁵ Approximately 30 percent of abused children in foster care have post-traumatic stress disorder, and they are eight times more likely to be taking psychotropic medications and utilize psychiatric services than children living with their own families.⁷⁶ Because “an individual’s ability to overcome and thrive despite adversity reflects an individual’s resilience or development of resiliency,”⁷⁷ the LGBTQ population of abused children in the dependency system is at great risk of mental health trauma, as cumulative stress lowers their resiliency to ward off the effects of bullying and family and community opprobrium concerning their sexual orientation and identity.

Many abused and neglected LGBTQ child victims are caught in a psychological trap. First, many of the factors that assist victims in overcoming the most critical psychological consequences of victimhood do not exist in their world. Resiliency increases as the quality of “family support, and pos-

itive school climate” increase.⁷⁸ In addition, protective factors have an additive or cumulate protective effect, as “each additional protective factor further reduces the impact of risk on the negative outcome. . .[and] the presence of more protective factors [is] associated with a linear decrease in victimization.”⁷⁹ However, as already demonstrated, a large percentage of LGBTQ child abuse victims are also victims at school and have families that are intolerant toward their sexual orientation and identification. LGBTQ child abuse victims are thus more at risk, since family, community, and peer networks are often not available for protection and comfort. More frequent and severe victimization occurs when youth lack “safe and secure environments (i.e., low-risk) that can serve as sanctuaries in which to cope with challenges”⁸⁰

Second, in addition to increased risk of serious mental health problems as caused by victimization and low resiliency, the frequency of bullying and social ostracism experienced by LGBTQ child abuse victims preconditions them to stress reactions that can be triggered by lesser and lesser degrees of stress:

The stress sensitization or ‘kindling’ hypothesis proposes that individuals become sensitized to the life events that precipitate depression, and to the depressive episodes themselves, such that less stress is required to precipitate recurrences of depression than was required to precipitate the first onset.⁸¹

The frequency and cumulative effects of bullying, combined with lack of family, peer, and community support, leave abused LGBTQ victims at greater risk from lesser stressors.

Despite the potential for serious psychological re-traumatization of LGBTQ child abuse victims by an open dependency court process, states lack sufficient mental health resources to treat this at-risk victim group. In light of current budget crises, many states have substantially cut mental health services for children.⁸² For instance, the projected California budget for 2011-2012 did not increase funding for the State Department of Mental Health; rather it reduced by \$861 million the General Fund allocation for Early and Periodic Screening, Diagnosis, and Treatment programs.⁸³ California’s inadequate and outdated mental health services for abused children were exposed in the class action law suit, *Katie A. v. Bonta*,⁸⁴ in which a federal court ordered a radical change in the mental health treatment of these at risk children. The State of California Department of Social Services stated that in “recent years 92% of referrals have not received safety or change-oriented services, such as . . .therapeutic interventions.”⁸⁵ Further, adolescents, the group of abused children most likely to be questioning their sexual orientation and identity, have the highest percentage utilization

rate of mental health services of any age group⁸⁶ at a time of diminishing state mental health availability.

The U.S. Surgeon General has recognized that the child abuse system must provide sufficient mental health services to child abuse victims whose mental health problems continue long after a court case has been finalized:

Child maltreatment has traditionally been thought of as a criminal justice issue. It is also very much a public health issue. . . . The wrenching mental and physical health effects of child maltreatment continue for the child and the family long after he or she has been placed in a safe environment.⁸⁷

Because mental health services for children are severely strained, the Surgeon General listed improving “the infrastructure for children’s mental health services including support for scientifically-proven interventions across professions” as one of the seven most important goals of United States mental health policy.⁸⁸

It is cruel for states to open their child dependency systems to the press and public before they at least have sufficient mental health services available to help treat both heterosexual and LGBTQ child abuse victims who suffer from the fear of publicity or from the actual publication of the intimate facts of their abuse and/or sexual identity. Thus, at least sufficient prophylactic health measures should be made available to this young group of victims before a state presumptively opens its child dependency courts to the press and public. An even better policy would be to avoid the exacerbated psychopathology to this young group by shielding them with a cloak of confidentiality in juvenile dependency proceedings.

CONCLUSION

“[T]here are sound reasons to believe that publicity or fears about publicity cause harm to juvenile crime victims” and that they “will feel more embarrassment and shame if many people know about” the facts of their abuse.⁸⁹ The fears and potential psychological harm to LGBTQ child abuse victims is magnified by the additional fear of disclosure of their sexual orientation and/or gender identification without their consent and the resultant potential bullying by peers and/or family, as well as potential community rejection.⁹⁰

Child dependency proceedings should not be presumptively open to the press and public. The potential for and/or actual publicity about the intimate facts of their child abuse and about the intimate personal decision regarding whether to make public their sexual orientation places heterosex-

ual and, particularly, LGBTQ child abuse victims at great risk.⁹¹ Dependency proceedings should only be opened if a juvenile court judge finds that a person or organization petitioning for access to the hearing has sufficiently demonstrated that the abused child will not be further psychologically damaged by openness, or if the child abuse victim provides informed written consent waiving confidentiality and permitting the media and public to attend. Placing the consent for openness with the child abuse victim will shield those children who want to avoid publicity, while at the same time providing those children who want to tell their stories in a public forum a means for accomplishing that goal.⁹²

NOTES

1. Professor and J. Alan Cook and Mary Schalling Cook Children's Law Scholar, Whittier Law School; Lecturer, UCLA David Geffen School of Medicine, Department of Psychiatry.

2. *In re Marilyn H.*, 5 Cal. 4th 295, 307, 19 Cal.Rptr.2d 544, 851 P.2d 826 (1993) (“[t]he objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time.”). For instance, CAL. WELF. & INST. CODE § 300.2 provides that the purpose of the dependency code “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and ensure their safety, protection, and physical and emotional well-being of children who are at risk of that harm.”

3. See Robert Garofalo, R. Cameron Wolf, Lawrence S. Wissow, Elizabeth R. Woods & Elizabeth Goodman, *Sexual Orientation and Risk of Suicide Attempts Among a Representative Sample of Youth*, 153 ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 487 (1999); Gary Remafedi, Simone French, Mary Story & Michael D. Resnick, *The Relationship Between Suicide Risk and Sexual Orientation: Results of a Population-Based Study*, 88 AM. J. PUB. HEALTH 57 (1998); HUMAN RIGHTS WATCH, HATRED IN THE HALLWAYS: VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDIES IN U.S. SCHOOLS 75 (2001) (citing several state studies that chronicled the three to four times higher rate of suicide of bullied LGBTQ students in relation to heterosexual students.); GAY, LESBIAN, AND STRAIGHT EDUCATION NETWORK, FROM TEASING TO TORMENT: SCHOOL CLIMATE IN AMERICA: A SURVEY OF STUDENTS AND TEACHERS (2005), available at <http://glsen.org/sites/default/files/From%20Teasing%20to%20Torment%20Full%20Report.pdf>.

For public schools' responsibility to address sexual orientation harassment, see Catherine A. Lugg & Autumn K. Tooms, *Trouble in Toms River*, 14 J. CASES EDUC. LEAD. 15 (2011).

4. See FOSTER CARE ANTI-DISCRIMINATION ACT OF 2003 (codified as CAL. WELF. & INST. CODE §§ 6001.9, 16003, and 160013 and as CAL. HEALTH & SAFETY CODE §§ 1522.41, 1529.2, and 1563); AB 458 Fact Sheet: The California Foster Care Non-Discrimination Act, National Center for Lesbian Rights (June 2006), available at <http://www.f2f.ca.gov/res/pdf/AB458FactSheet.pdf> (The Foster Care Anti-Discrimination Act of 2003 has been called "the first of its kind in the United States to explicitly include protections for lesbian, gay, bisexual, transgender and questioning [LGBTQ] youth and adults involved with the foster care system"). For a discussion of LGBT foster child statutory protections, see generally Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual and Transgender Young People In State Custody: Making the Child Welfare and Juvenile Systems Safe for All Youth Through Litigation, Advocacy, and Education*, 79 TEMPLE L. REV. 415 (2006). Even though some states provide statutory protection and treatment for LGBTQ youth, many issues regarding their needs still exist. For instance, most states do not provide medically and psychologically necessary surgery for transgender youth in foster care. For an extensive discussion of transgenders' medical needs, see generally Lauren Turner, *From the Inside Out: Calling on States to Provide Medically Necessary Care to Transgender Youth in Foster Care*, 47 FAM. CT. REV. 552 (2009) (A child in state custody "has a right to receive necessary services to prevent psychological harm."); Randy Estrada & Jody Marksamer, *The Legal Rights of LGBT Youth in State Custody: What Child Welfare and Juvenile Justice Professionals Need to Know*, 85 CHILD WELF. 171, 177 (2006).

5. See William Wesley Patton, *Pandora's Box: Opening Child Protection Cases to the Press and Public*, 27 W. ST. U. L. REV. 181 (1999-2000); *The Connecticut Open-Court Movement: Reflection and Remonstrance*, 4 CONN. PUB. INT. L. J. 8 (2004); *Revictimizing Child Abuse Victims: An Empirical Rebuttal to the Open Juvenile Dependency Court Reform Movement*, 38 SUFFOLK U. L. REV. 303 (2005); *When the Empirical Base Crumbles: The Myth That Open Dependency Proceedings Do Not Psychologically Damage Abused Children*, 33 L. & PSYCH. REV. 29 (2009).

6. Fred L. Cheesman, II, MINN. S. CT. ST. CT. ADM'RS. OFF.: KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS. FINAL REP. – VOL. 1, NAT'L CTR. FOR STATE COURTS (2001).

7. Ernst Hunter, *What's Good for the Gays Is Good for the Gander*:

Making Homeless Youth Housing Safer for Lesbian, Gay, Bisexual, and Transgender Youth, 46 FAM. CT. REV. 543, 545 (2008) [hereinafter Ernst Hunter, *What's Good for the Gays*] (“In addition to creating a risk to physical health and safety, violence against LGBT youth in shelters contributes to their emotional and behavioral problems. LGBT youth who are physically assaulted are more likely to attempt suicide.”); Juliette Noel Graziano & Eric F. Wagner, *Trauma Among Lesbians and Bisexual Girls in the Juvenile Justice System*, 17 TRAUMATOLOGY 45, 46 (2011) [hereinafter Graziano & Wagner] (Nine percent of LGBT “youth met criteria for a PTSD diagnosis. Three times the number of girls reported PTSD compared to boys.”). The homeless status of LGBTQ youth is sufficiently serious that the White House convened a conference to discuss the issue. See Winnie McCroy, *Advocates Attend White House Conference on Homeless LGBT Youth*, EDGE ON THE NET, Mar.ch 12, 2012), available at http://www.edgeonthenet.com/news/national/news/130862/advocates_attend_white_house_conference_on_homeless_lgbt_youth; Karen Ocamb, *HUD Secretary Donovan Addressed White House Conference on LGBT Homelessness*, LGBT/POV (Sept. 3, 2012), available at <http://lgbtpov.frontiersla.com/2012/03/09/hud-secretary-donovan-addressed-white-house-conference-on-lgbt-homelessness/>

8. JUV. ACCESS PILOT PROG., ADV. BD. REP. TO THE CONN. GEN. ASSEMBLY (Dec. 31, 2010), available at http://jud.ct.gov/committees/juv_access/Final_report_123010.pdf.

9. Abused and/or neglected LGBTQ children are equally at risk of disclosure in the delinquency system, not merely from having their cases transferred to adult court, but also from the particular placements and conditions of those placements should their delinquency petitions be sustained. It is estimated that 13 percent of detained juvenile delinquents are LGBTQ, that many detention facilities do not have professionals with adequate training or resources to properly care for LGBTQ delinquents, and that many LGBTQ children suffer physical, sexual, and psychological abuse while in those facilities. Katoyoon Majd, Jody Marksamer & Carolyn Reyes, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 10 (2009) [hereinafter MAJD ET AL., HIDDEN INJUSTICE], available at http://aja.ncsc.dni.us/conferences/2010Annual/SpeakerMaterials/32%20-%20Marksamer%20Hidden_Injustice_Executive_Summary.pdf.

10. See generally sources cited *supra* note 5.

11. Suicide Prevention Resource Center, *Suicide and Bullying: Issue Brief*, at 3 (March 2011), available at http://www.sprc.org/sites/sprc.org/files/library/Suicide_Bullying_Issue_Brief.pdf (Although most literature focuses on the severe verbal and/or physical attacks on LGBTQ children, in

reality they suffer a constant bombardment of lesser insults or attacks termed “microassaults and microinsults, suggesting that that LGB persons may. . . experience overt discrimination on a more regular basis.”); Kevin L. Nadal, Marie-Anne Issa, Jayleen Leon, Vanessa Meterko, Michelle Wideman & Yinglee Wong, *Sexual Orientation Microaggressions: “Death by a Thousand Cuts for Lesbian, Gay, and Bisexual Youth*, 8 J. LGBT YOUTH 234, 252 (2011) (“[B]etween 25 and 35 percent of sexual minority adolescents report at least one suicide attempt. . .”); N. Eugene Walls, Pam Hancock & Hope Wisneski, *Differentiating the Social Service Needs of Homeless Sexual Minority Youths from those of Non-homeless Sexual Minority Youths*, 13 J. CHILDREN & POVERTY 177, 182 (2007) (New York City has a policy in finding the homeless with shelter consistent with their gender identity). In 2006 the NYC policy provides that “staff will address individuals with names, titles and other terms appropriate to their gender identity . . . [and] staff at Intake/Shelter assignments will receive training on diversity, transgender and intersex issues.”); Dianna Scholl, *For Transgender Homeless, Choice of Shelter Can Prevent Violence*, CITY LIMITS (Dec. 6, 2010), available at <http://www.citylimits.org/news/articles/4235/for-transgender-homeless>. For an excellent discussion of the risk factors for LGBTQ youth, see Susan M. Swearer Napolitano, *Risk Factors for and Outcomes of Bullying and Victimization* in EDUC. PSYCH. PAPERS & PUBS. (2011), available at <http://digitalcommons.unl.edu/edpsychpapers/132>.

12. Shannan Wilber, Carolyn Reyes & Jody Marksamer, *The Model Standards Project: Creating Inclusive Systems for LGBT Youth in Out-of-Home Care*, 86 CHILD WELF. 133, 140 (2006) (“Unless disclosure is required, no one should disclose information about sexual orientation or gender identity unless that person can identify a direct benefit to the youth.”); Sarah E. Valentine, *Traditional Advocacy For Nontraditional Youth: Rethinking Best Interest For The Queer Child*, 2008 MICH. ST. L. REV. 1053, 1054 (2008) (There are, of course, circumstances under which disclosure of a child’s sexual orientation or gender identity should not be disclosed even if an adult thinks that it would benefit that child. The most obvious exception is when a child confidentially informs her attorney about her intimate secrets. If the attorney violates the attorney/client relationship, that disclosure can have a devastating impact on the already traumatized child and her ability to more quickly attempt to gain emotional equipoise in light of the abuse and/or neglect. “Any advocacy model allowing an attorney to substitute his or her own judgment as to what is in a queer child’s best interest is potentially devastating for queer child clients. . .”). For a discussion of the effects of abused and neglected children’s attorneys’ violations of the duties of loyalty and confidentiality, see generally William

Wesley Patton, *Viewing Child Witnesses Through a Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 WIDENER L. REV. 369 (2010).

13. "LGBTQ" refers to lesbian, gay, bisexual, transgender, and children that are "questioning" gender identity and/or sexual orientation. Barbara Fedders, *Coming Out For Kids: Recognizing, Respecting, And Representing LGBTQ Youth*, 6 NEV. L. J. 774, 775 (2006) [hereinafter Fedders, *Coming Out for Kids*].

14. See Graziano & Wagner, *supra* note 7, at 49 (It is quite understandable that LGBTQ abuse and neglect victims may want to protect their sexual orientation and/or identity from their parents since in one study "90% identified a lack of parental support as a serious problem. . .").

15. Graziano, at 102 (citing to Fedders, *Coming Out for Kids*, *supra* note 13, at 780). One study found that "[t]wenty-two percent of incarcerated youth self-identified as bisexual and 5percent self-identified as lesbian/gay. Girls, however, were 6 times as likely to identify as bisexual than boys and 3 times as likely to identify as homosexual compared to boys." *Id.* at 47.

16. LGBTQ youth have provided a variety of reasons for keeping their sexual orientation and/or gender identity confidential, including "thinking people would neither understand nor accept them. . .fear of being judged or ridiculed. . .fear of being a victim of violence. . .[and] not having identified as LGB to themselves at the time." Anne Gallegos, Catherin Roller White, Caitlin Ryan, Kirk O'Brien, Peter J. Pecora & Preneka Thomas, *Exploring the Experiences of Lesbian, Gay, Bisexual, and Questioning Adolescents in Foster Care*, 14 J. FAM. SOC. WORK 226, 230 (2011). LGBTQ youth have much to fear in the foster care system beyond the potential for abuse. Many child welfare systems lack sufficient training for prospective foster parents regarding LGBTQ youth. This can lead to foster parents' unwillingness to care for LGBTQ children or to a rejection of LGBTQ children living with foster parents, or both, which exacerbates the children's existing psychopathology "by failing to create a supportive environment." Jennifer A. Clements & Mitchell Rosenwald, *Foster Parents' Perspectives on LGB Youth in the Child Welfare System*, 19 J. GAY & LESBIAN SOC. SERV. 57, 58-59 (2008). There is also often a disparity between the amount of social worker training regarding the needs of LGBTQ youth between large and small communities. Lori E. Ross, Rachel Epstein, Scott Anderson & Allison Eady, *Policy, Practice, and Personal Narratives: Experiences of LGBTQ People with Adoption in Ontario, Canada*, 12 ADOPTION Q. 272, 288 (2009).

17. Joday Marksamer, Dean Spade & Gabriel Arkles, A PLACE OF RESPECT: A GUIDE FOR GROUP CARE FACILITIES SERVING TRANSGENDER AND GENDER NON-CONFORMING YOUTH 1 (NAT'L CTR FOR LESBIAN RTS.,

SPRING 2011) [hereinafter A PLACE OF RESPECT] (“Sexual orientation” refers to a “person’s emotional, romantic, and sexual attraction, to individuals of the same sex or of a different sex.”)

18. *Id.* at 21 (“Developing an understanding of the stigma, rejection, and harassment that transgender and gender non-conforming youth commonly face and how it can negatively affect their psychosocial development and behavior can help group care staff to better meet these young person’s needs and ensure their safety.”)

19. *Id.* at 10 (The term “transition is often used to describe both the process and the time period when a transgender person starts publicly living in line with his or her core gender.”)

20. Even within the more accepting or tolerant atmospheres found in many colleges and universities, 20 percent of those LGBTQ students, faculty, and staff interviewed in one study feared for their safety and “one out of two concealed their sexual orientation or gender identity to avoid intimidation, with LGBT people of color more likely than white LGBT people to do so.” Lynn C. Holley, Nancy C. Larson, Madelaine Adelman & Jesús Treviño, *Attitudes Among University Undergraduates Toward LGB and Five Ethnic/Racial Groups*, 5 J. LGBT YOUTH 79, 82 (2008). Furthermore, “sexual minority youth who are out to their heterosexual peers suffer more friendship loss and report higher levels of worry about the health of their existing friendship ties than do heterosexual students.” Billie Gastic, *Urban Students’ Attitudes about Sexual Minorities across Intersections of Sex and Race/Ethnicity: Data from a Longitudinal Study*, 9 J. LGBT YOUTH 42, 44 (2012).

21. Fedders, *Coming Out for Kids*, *supra* note 14, at 777 (“Young people may be unsure of whether their same-sex desires and sexual behaviors are indicative of a fixed identity as opposed to a temporary or experimental phase. They may be actively fighting their same-sex desires and in denial about their sexual behavior. Alternatively, they may be sure that they are sexually oriented toward people of the same sex but nevertheless feel culturally alienated from the terms “gay,” lesbian,” and “bisexual.”).

22. Thomas Scott Duke, *Lesbian, Gay, Bisexual, and Transgender Youth with Disabilities: A Meta-Synthesis*, 8 J. LGBT YOUTH 1, 1 (2011) (One of the least studied groups is LGBT children with disabilities, who have been described as “members of multiple cultural minority groups” who experience multiple forms of oppression and have “multiple service needs involving disabilities. . .[and] identities.”). Although all LGBT children with disabilities may suffer humiliation and harassment, LGBT youth who share the same disability (i.e. autism, Down syndrome, or particular physical or mental impairment) share similar unique experiences. *Id.* at 44.

23. Carmen Yon-Leau & Miguel Muñoz-Laboy, *“I Don’t Like to Say*

That I'm Anything": *Sexuality Politics and Cultural Critique Among Sexual-Minority Latino Youth*, 7 *SEXUALITY RESEARCH & SOC. POL'Y* 105, 106 (2010) [hereinafter Yon-Leau & Muñoz-Laboy] ("LGBT youth of color also often face the dual dilemma of homophobia within their ethnic communities, and racism from white gay communities."); Jen Reck, *Homeless Gay and Transgender Youth of Color in San Francisco: "No One Likes Street Kids" – Even in Castro*, 6 *J. LGBT YOUTH* 223, 239 (2009) ("[R]acial/ethnic identity is increasingly recognized as a critical component of identity development, particularly during adolescence."); Felicia D. Smith, Meghan Woo & Bryn Austin, *"I Didn't Feel Like Any of Those Things Were Me": Results of a Qualitative Pilot Study of Race/Ethnicity Survey Items with Minority Ethnic Adolescents in the USA*, 15 *ETHNICITY & HEALTH* 621, 625 (2010); see also Susan Hazeldean & Pradeep Singla, *Out in the Cold: The Challenges of Representing Immigrant Lesbian, Gay, Bisexual, and Transgender Youth* (2002), available at <http://www.urbanjustice.org/pdf/publications/lesbianandgay/OutintheCod.pdf>; Risha K. Foulkes, *Abstinence-Only Education and Minority Teenagers: The Importance of Race in a Question of Constitutionality*, 10 *BERKELEY J. AFR.-AM. L. & POL'Y* 3, 38 (2008).

24. Yon-Leau & Muñoz-Laboy, *supra* note 23, at 109; Edward H. Frankhanel, *The Identity Development and Coming Out Process of Gay Youth in Puerto Rico*, 7 *J. LGBT YOUTH* 262, 264-267 (2010) (One cannot, however, simply generalize about the effects on ethnic or racial minorities regarding either voluntarily "coming out" or involuntarily having one's gender identification or sexual preferences being made public. For instance, "being gay in a Puerto Rican family is not the same as being gay in a Mexican family" and being part of a group defined as a minority in one country, for example, Latinos in the mainland U.S., is not the same as that same person living in the Commonwealth of Puerto Rico, which although it is a U.S. unincorporated territory, is unlike most parts of the U.S. because of the former's majority Riqueño-Latino population).

25. *Id.* at 109-10; Cynthia L. Conley, *Learning About a Child's Gay or Lesbian Sexual Orientation: Parental Concerns About Societal Rejection, Loss of Loved Ones, and Child Well Being*, 58 *J. HOMOSEXUALITY* 1022, 1022 (2011) ("Studies focusing specifically on parental reactions to learning that their children are gay or lesbian. . .have overwhelmingly revealed that parents tend to react in a negative fashion."); *Id.* at 1034 ("[P]arents' overall concern levels were higher for their gay sons than for their lesbian daughters. This finding is supported by the anecdotal information that society is far more accepting of lesbian women.").

26. Marcus Anthony Hunter, *All the Gays are White and all the Blacks are Straight: Black Gay Men, Identity, and Community*, 7 *SEXUALITY*

RESEARCH & SOC. POL'Y 81, 82 (2010) [hereinafter Hunter, *Black Gay Men*].

27. *Id.* at 82 (“Research on Black and Latino LGB individuals has shown they often confront homophobia in their racial/ethnic communities and alienation from their racial/ethnic identity in the LGB community.”); see also Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674, 678 (2003) [hereinafter Meyer].

28. Hunter, *Black Gay Men*, *supra* note 26, at 90.

29. Derrick A. Kranke, Jerry Floersch, Bridget O. Kranke & Michelle R. Munson, *A Qualitative Investigation of Self-Stigma Among Adolescents Taking Psychiatric Medication*, 62 PSYCH. SERV. 893, 898 (2011). “[B]ecause peer acceptance is often adolescents’ biggest concern, youths emphatically do not want to feel different from others.” *Id.* at 894.

30. *Id.* at 898.

31. Pin Wu, Bozena J. Katic, Xinhua Liu, Bin Fan & Cordelia J. Fuller, *Mental Health Services Use Among Suicidal Adolescents: Findings From a U.S. National Community Survey*, 61 PSYCH. SERV. 17, 22 (2010).

32. Alejandro Interian, Alfonso Ang, Michael A. Gara, Bruce G. Link, Michael A. Rodriguez & William A. Vega, *Stigma and Depression Treatment Utilization Among Latinos: Utility of Four Stigma Measures*, 61 PSYCH. SERV. 373, 374 (2010). Latinos desire to have “social distance from individuals with depression, stigma concerns related to antidepressant use, and depression treatment in general.” *Id.* at 379.

33. Devon C. King, Karen M. Abram, Erin G. Romero, Jason J. Washburn, Leah J. Welty & Linda A. Teplin, *Childhood Maltreatment and Psychiatric Disorders Among Detained Youth*, 62 PSYCH. SERV. 1430, 1430, 1437 (2011).

34. The lack of mental health services in the juvenile and dependency court systems makes treatment and management of these children’s mental health problems extremely difficult. Elizabeth M. Z. Farmer, Barbara J. Burns, H. Ryan Wagner, Maureen Murray & Danna G. Southerland, *Enhancing “Usual Practice” Treatment Foster Care Findings From a Randomized Trial on Improving Youths’ Outcomes*, 61 PSYCH. SERV. 555, 556 (2010) (For instance, many juvenile mental health systems cannot afford to provide contemporary evidence based treatment models because of a “lack of resources to hire required staff. . .and use of contract, rather than in-house, clinicians.”).

35. Rusi Jaspal & Asifa Siraj, *Perceptions of ‘Coming Out’ among British Muslim Gay Men*, 2 PSYCHOL. & SEXUALITY 183, 183 (2011).

36. *Id.* at 185.

37. *Id.* at 189.

38. For a comprehensive discussion of bullying in the United States school systems, see Michael J. Higdon, *To Lynch a Child: Bullying and Gender Nonconformity in Our Nation's Schools*, 86 *IND. L. J.* 827 (2011); see also *CNN: Bullying: It Stops Here, Transcript*, 5-6 (CNN television broadcast Oct. 9, 2011), available at <http://transcripts.cnn.com/TRANSCRIPTS/1110/09/cp.01.html>; Chris Welch, *Dealing with gay students, bullying in very different ways*, Oct. 13, 2011, available at <http://www.cnn.com/2011/10/12/us/minneapolis-bullying-schools/> (During the show, which illustrated the widespread bullying of gay students in American schools, a student named Dylan said, "They would call me like gag and gross and say that I'm going to hell and stuff. It just makes you feel like you're the grossest person in the world." Another student, Kyle, described his life at school: "I had to use the bathroom. And I walk in the door, and these people were just watching me. They were just staring at me. I go into the stall. And then I hear laughing. I hear laughter. And I look up, and I have something dripping down my head. And someone was peeing on me." Another student stated: "Kids made me feel like I was the grossest person in the world. And they would just go against the walls and say here comes the he/she or here comes the trash. And they just made me feel gross. And I didn't feel safe at school. So I just left."); Sarah Kramer, *Coming Out: Audio, Photos, Stories of Gay Teens*, *N.Y. TIMES* May 23, 2011, available at http://www.nytimes.com/interactive/2011/05/23/us/20110523-coming-out.html?_r=0 (Chronicling the coming out stories of over a hundred gay teens, with head quotations from those stories including, "My entire family trans-bashes me on a daily basis," "The shame of being bullied was too great," "I'm still in the closet," "I was the one who bullied him because I thought it helped me hide my own secret," "It took 37 stitches to fix the damage," "I couldn't go forward but I couldn't die," "She said to me: 'I know what you are and it's disgusting'," "I haven't spoken to or seen my parents since," "No one there to stop me from taking that knife into my hands," and "I had moved 3343km to acceptance.").

39. Faye Mishna, Peter A. Newman, Andrea Daley & Steven Solomon, *Bullying of Lesbian and Gay Youth: A Qualitative Investigation*, 39 *BRIT J. SOC. WORK* 1598, 1599 (2009). Bullying results in life-long negative effects for LGBT children and is associated with "suicidality during adolescence. . . ." Russell B. Toomey, Caitlin Ryan, Rafael M. Diaz, Noel A. Card & Stephen T. Russell, *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *DEV'L. PSYCHOL.* 1580, 1582 (2010) ("[E]xperts say that much bullying revolves around taunts about other youths' sexuality. Gay, lesbian, and bisexual youths (GLB) are five times more likely than their peers to miss school because they feel unsafe. . .");

see also Julie C. Luecke, *Working with Transgender Children and Their Classmates in Pre-Adolescence: Just Be Supportive*, 8 J. LGBT YOUTH 116, 118 (2011); John Greenya, *Bullying*, 15 THE CQ RESEARCHER 101, 103 (Feb. 4, 2005), available at <http://www.thecqresearcher.com> (One study found that 90 percent of transgender students reported “verbal gender expression harassment” and 53 percent were physically harassed).

40. Molly O’Shaughnessy, Stephen T. Russell, Katherine Heck, Christopher Calhoun & Carolyn Laub, *SAFE PLACE TO LEARN: CONSEQUENCES OF HARASSMENT BASED ON ACTUAL OR PERCEIVED SEXUAL ORIENTATION AND GENDER NON-CONFORMITY AND STEPS FOR MAKING SCHOOLS SAFER*, Executive Summary at 2 (California Safe Schools Coalition, San Francisco, CA, Jan. 2004), available at <http://casafeschools.org/SafePlacetoLearnLow.pdf> (One study found that “82% of middle school students and 73% of high school students identified as lesbian, gay, bisexual, and transgender heard derogatory remarks such as ‘faggot’ or ‘dyke,’ frequently or often at school.”); see also Nancy J. Cunningham, Mathew Taylor, Michael E. Whitten, Patrick H. Hardesty, Katheryn Eder & Nancy DeLaney, *The Relationship Between Self-Perception of Physical Attractiveness and Sexual Bullying in Early Adolescence*, 36 AGGRESSIVE BEHAV. 271, 279 (2010).

41. For a discussion of the many appellate court opinions discussing LGBTQ bullying in the schools and the First Amendment limitations on schools to control hate speech, see Douglas D. Frederick, *Restricting Student Speech that Invades Others’ Rights: A Novel Interpretation of Student Speech Jurisprudence in Harper v. Poway Unified School District*, 29 U. HAW. L. REV. 479 (2007); Amy Lai, *Tango Or More? From California’s Lesson 9 to the Constitutionality of a Gay-Friendly Curriculum in Public Elementary Schools*, 17 MICH. J. GENDER & L. 315 (2011); Nicolyn Harris & Maurice R. Dyson, *Safe Rules or Gay’s Schools? The Dilemma of Sexual Orientation Segregation in Public Education*, 7 U. PA. J. CONST. L. 183 (2004).

42. Robyn M. Cooper & Warren J. Blumenfeld, *Responses to Cyberbullying: A Descriptive Analysis of the Frequency of and Impact on LGBT and Allied Youth*, 9 J. LGBT YOUTH 153, 154 (2012) (“Cyberbullying involves the use of information and communication technologies such as Internet websites, e-mail, chat rooms, mobile phones for making calls and text messaging, and instant messaging.”). In one study 41.2 percent of LGBT students reported receiving harassing cyber messages, and almost 33percent reported missing at least one day of school for safety concerns. *Id.* at 157. The most frequent response to cyberbullying by LGBT children is depression (56 percent) and 19 percent had suicidal thoughts. *Id.* at 167.

43. Anne Wade & Tanya Beran, *Cyberbullying: The New Era of*

Bullying, 26 CAN. J. SCH. PSYCHOL. 44, 57 (2011) [hereinafter Wade & Beran]; see also Wanda Cassidy, Margaret Jackson & Karen N. Brown, *Sticks and Stones Can Break My Bones: But How Can Pixels Hurt Me?: Students' Experiences with Cyber-Bullying*, 30 SCH. PSYCHOL. 383 (2009).

44. Wade & Beran, *supra* note 43, at 55 (Noting that lesbian girls experience “significantly more sexual harassment than heterosexual girls.”); see also James E. Gruber & Susan Fineran, *The Impact of Bullying and Sexual Harassment on Middle and High School Girls*, 13 VIOLENCE AGAINST WOMEN 627, 632 (2007).

45. Clay Calvert, *Fighting Words in the Era of Texts IMS and E-Mails: Can a Disparaged Doctrine be Resuscitated to Punish Cyber-Bullies?*, 21 DEPAUL J. ART., TECH. & INTEL. PROP. L. 1, 9 (2010) (“[T]he Federal Bureau of Investigation (FBI) has reported that roughly 11 percent of all hate crimes in the USA in 2007 were committed at schools or colleges.”); Rebecca L. Stotzer, *Sexual Orientation-Based Hate Crimes on Campus: The Impact of Policy on Reporting Rates*, 7 SEXUALITY RESEARCH & SOC. POL’Y 147, 147 (2010).

46. Ernst Hunter, *What’s Good for the Gays*, *supra* note 7, at 545 (LGBT abuse and neglect victims are also at risk of bullying and harassment in foster care and group home placements. In one study, “of those LGBT youth placed in group homes, one hundred percent were verbally harassed and seventy percent physically assaulted because of their sexuality or gender expression while living at the group home.”). Two characteristics of child welfare agencies and their placements affect the quality of LGBT experiences: (1) “religious affiliation”; and (2) “agency size.” Mitchell Rosenwald, *A Glimpse Within: An Exploratory Study of Child Welfare Agencies’ Practices with LGBTQ Youth*, 21 J. GAY & LESBIAN SOC. SERV. 343, 352 (2009) (“[N]onreligiously affiliated agencies were stronger in acknowledging they served LGBTQ youth, although interestingly, religiously affiliated agencies report they provide more training on LGBTQ issues to foster and adoptive parents.”).

47. Stephen T. Russell, Caitlin Ryan, Russell B. Toomey, Rafael M. Diaz & Jorge Sanchez, *Lesbian, Gay, Bisexual, and Transgender Adolescent School Victimization: Implications for Young Adult Health and Adjustment*, 81 J. SCH. HEALTH 223, 223 (2011) [hereinafter Russell et al.].

48. Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 BARRY L. REV. 103, 106-107 (2009).

49. Jason A. Wallace, *Bullicide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L. J. 735 (2011) (Pointing out that many studies “have linked suicidal behavior in LGB adolescents to school-based harassment, bullying or violence because of sexual

orientation.”); *see also* Ann P. Haas, Mickey Eliason, Vickie M. Mays, Robin M. Mathy, Susan D. Cochran, Anthony R. D’Augelli, Morton M. Silverman, Prudence W. Fisher, Tonda Hughes, Margaret Rosario, Stephen T. Russell, Effie Malley, Jerry Reed, David A. Litts, Ellen Haller, Randall L. Sell, Gary Remafedi, Judith Bradford, Annette L. Beautrais, Gregory K. Brown, Gary M. Diamond, Mark S. Friedman, Robert Garofalo, Mason S. Turner, Amber Hollibaugh & Paula J. Clayton, *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations*, 58 J. HOMOSEXUALITY 10, 22-23 (2010) [hereinafter Haas et al.].

50. Robb Travers & Margaret Schneider, *Barriers to Accessibility for Lesbian and Gay Youth Needing Addictions Services*, 27 YOUTH & SOC’Y 356, 358 [hereinafter Travers & Schneider] (“Elevated levels of depression and suicidal ideation among males can be explained by their high rates of LGBT school victimization.”); *see also* Russell et al., *supra* note 47, at 223.

51. Stephen T. Russell & Kara Joyner, *Adolescent Sexual Orientation and Suicide Risk: Evidence from a National Study*, 91 AM. J. PUB. HEALTH 1276 (2001) (reporting that bullying is associated with “poorer mental health” of LGBTQ youth) *see also* Neil Katz, *Schools Battle Suicide Surge, Anti-Gay Bullying*, CBS NEWS (Oct. 11, 2010), available at <http://www.cbsnews.com/news/schools-battle-suicide-surge-anti-gay-bullying/> (noting that physical and/or sexual child abuse and neglect are among the strongest risk factors for teen suicide; the risk of suicide is increased when that depressed child is subject to peer bullying); PREVENTING YOUTH SUICIDES: TIPS FOR PARENTS AND EDUCATORS, NAT’L ASSOC. OF SCH. PSYCHOLS., available at http://www.nasponline.org/resources/crisis_safety/suicideprevention.aspx (“Some victims of bullying have even attempted suicide rather than continue to endure such harassment and punishment.”); AM. ACAD. OF CHILD & ADOLESCENT PSYCH., FACTS FOR FAMILIES 80: BULLYING (updated May 2011) [hereinafter FACTS FOR FAMILIES], available at <http://www.aacap.org>; Hunter, *What’s Good for the Gays*, *supra* note 7, at 545 (“LGBT youth who are physically assaulted are more likely to attempt suicide.”).

52. Peter A. Newman, *Coming Out in a Hostile Social Environment: Challenges for HIV Prevention Among Young Gay Men*, 1 J. HIV/AIDS & SOC. SERV. 81, 85 (2002).

53. Devona Walker, *Homophobic Bullying Takes Another Child’s Life*, ALTERNET (Sept 30, 2010) [hereinafter Walker, *Homophobic Bullying*], available at <http://www.alternet.org/speakeasy/2010/09/30/homophobic-bullying-takes-another-child%25e2%2580%2599s-life>; Jeremy Hubbard, *Fifth Gay Teen Suicide in Three Weeks Sparks Debate*, ABC NEWS, Oct. 3, 2010, available at <http://abcnews.go.com/US/gay-teen-suicide-sparks->

debate/story?id=11788128; Margaret Talbot, *Pride and Prejudice*, THE NEW YORKER, Oct. 25, 2010, available at http://www.newyorker.com/talk/comment/2010/10/25/101025taco_talk_talbot; see also Mickey Eliason, *Introduction to Special Issue on Suicide, Mental Health, and Youth Development*, 58 J. HOMOSEXUALITY 4, 4 (2011).

54. Doug Gray, Kristin L. Dawson, Todd C. Grey & William M. McMahon, *The Utah Youth Suicide Study: Best Practice for Suicide Prevention Through the Juvenile Court System*, 62 PSYCH. SERV. 1416, 1416 (2011).

55. Walker, *Homophobic Bullying*, *supra* note 53, at 2 (“Some victims of bullying have even attempted suicide rather than continue to endure harassment and punishment”); FACTS FOR FAMILIES, *supra* note 51, at 1. Studies have also indicated that victims of bullies are much greater risk of suicide ideation than other students. Ian Rivers & Nathalie Noret, *Participant Roles in Bullying Behavior and Their Association With Thoughts of Ending One’s Life*, 31 CRISIS 143, 144 (2010). In addition, the rate of suicide attempts among those children in the child welfare systems is higher than that for children in the general population. Stavros P. Kiriakidis, *Bullying and Suicide Attempts among Adolescents Kept in Custody*, 29 CRISIS 216, 216 (2008). Furthermore, “childhood trauma may predispose individuals to suicidal behavior.” Ana Sfoggia, Marco Antonio Pacheco & Rodrigo Grassi-Oliveira, *History of Childhood Abuse and Neglect and Suicidal Behavior at Hospital Admission*, 29 CRISIS 154, 154 (2008).

56. LGBTQ child abuse victims must be understood as having few psychological protective mechanisms available to ameliorate the cumulative and multifaceted attacks on their mental tranquility. See Jennifer Langhinrichsen-Rohling, Dorian A. Lamis & Patrick S. Malone, *Sexual Attraction Status and Adolescent Suicide Proneness: The Roles of Hopelessness, Depression, and Social Support*, 58 J. HOMOSEXUALITY 52, 53 (2010) (“For many youth, the process of acknowledging that one is gay and sharing that information with peers, friends, and family is considered stressful. Moreover, experiencing same-sex attractions can impact the availability of resources that are available to the adolescent with a problem; in turn, these narrowed options can increase the probability of suicidal behavior in these youth.”) *Id.* at 56, 61-62. (noting that increased stressors related to LGBTQ suicide include: “increased likelihood of experiencing other related stressors; increased internal conflict regarding one’s sexuality; greater levels of victimization; reduced peer support; and/or increased family discord related to the adolescent’s sexual orientation and dating behavior. . . , and hopelessness and depression”); see also Joan Rosenbaum Asarnow, Larry J. Baraff, Michael Berk, Charles S. Grob & Mona Devich-

Navarro, *An Emergency Department Intervention for Linking Pediatric Suicidal Patients to Follow-Up Mental Health Treatment*, 62 PSYCH. SERV. 1303, 1308 (2011) (pointing out that although “we currently lack treatments with clear evidence documenting efficacy for reducing suicide attempt rates by adolescents. . .,” follow-up outpatient treatment after emergency treatment does appear to be a promising development.).

57. David R. Katner, *Confidentiality and Juvenile Mental Health Records in Dependency Proceedings*, 12 WM. & MARY BILL RTS. J. 511, 538-539 (2003-2004).

58. LGBTQ youth are caught in a trap: if they disclose their sexual identity, they fear the negative consequences; however, their inability to share their deepest concerns leads to isolation where they cannot benefit from those who could help them cope. See Michael Sadowski, Stephen Chow & Constance P. Scalon, *Meeting the Needs of LGBTQ Youth: A “Relational Assets” Approach*, 6 J. LGBT YOUTH 174, 175 (2009) (“Isolation is one of the experiences gay and lesbian youth have reported consistently in research published over the last two decades. . . [and] more than 95 percent of gay and lesbian youth in one study experienced ‘feelings of being alone, of being the only one who feels this way, of having no one to share feelings with.’”).

59. Russell et al., *supra* note 47, at 224.

60. *Id.* at 227 (“Population-based studies have consistently shown that students who identify or are perceived to be LGBT are at dramatically higher risk for a wide range of health and mental health concerns including sexual health risk, substance abuse, and suicide, compared with their heterosexual peers.”); *Id.* at 228 (observing that LGBT children have varying levels of persistence, which helps them cope with negative social reactions; one study found that the strongest variables that affect resilience are “higher self-esteem, a higher sense of personal mastery, and greater perceived social support. . .”); see also Arnold H. Grossman, Anthony R. D’Augelli & John A. Frank, *Aspects of Psychological Resilience among Transgender Youth*, 8 J. LGBT YOUTH 103, 112 (2011).

61. Child Witness Project, *Three Years After the Verdict: A Longitudinal Study of the Social and Psychological Adjustment of Child Witnesses Referred to the Child Witness Project 96* (CTR. FOR CHILDREN & FAMILIES IN THE JUSTICE SYS., SEPTEMBER 1993), available at <http://www.lfcc.on.ca/3yrsexecsum.pdf>.

62. *Id.* at 112, 114, 117.

63. Ross E. Cheit, Yael Shavit & Zacherty Reiss-Davis, *Magazine Coverage of Child Sexual Abuse, 1992-2004*, 19 J. CHILD SEXUAL ABUSE 99 (2010); Lisa M. Jones, David Finkelhor & Jessica Beckwith, *Protecting*

Victims' Identities in Press Coverage of Child Victimization, 11 JOURNALISM 347 (2010) [hereinafter Jones et al.].

64. Jones et al., *supra* note 63, at 347.

65. *Id.* at 354. Some media reports have a doubly negative impact on child abuse victims. First, they identify the child, and second, they sometimes present child sexual abuse victims “as less than innocent parties to their own abuse. . .” See also Nicole Corbella & Steven J. Collings, *The News about Child Sexual Abuse: A Systematic Analysis of Reports in the South African English-Language Press*, 35 SOC. BEHAV. & PERSONALITY 387, 395 (2007).

66. See CAL. WELF. & INST. CODE § 300.2, *supra* note 2.

67. In a recent article, William Wesley Patton analyzed dozens of media ethics codes in the U.S. and in over two dozen foreign countries, and determined that no media codes prohibit the publication of identifying information about all three classes of child abuse victims who appear in California dependency courts. William Wesley Patton, *The Psychiatric Implications of Media Ethics Code Policies Regarding the Publication of Child Abuse Victim Data: A Universal Deontological Model Code*, 16 U.C. DAVIS J. JUV. L. & POL. 37 (2012)

68. Melissa Ming Foynes, Jennifer J. Freyd, & Anne P. DePrince, *Child Abuse: Betrayal and Disclosure*, 33 Child Abuse & Neglect 209, 210 (2009) [hereinafter Foynes et al.]; see also Lisa Aronson Fontes & Carol Plummer, *Cultural Issues in Disclosure of Child Sexual Abuse*, 19 J. CHILD SEXUAL ABUSE 491, 493 (2010) [hereinafter Fontes & Plummer].

69. David Finkelhor & Charles Putnam, *Protecting the Privacy of Child Crime Victims*, 17 NAT'L CTR FOR PROSECUTION OF CHILD ABUSE 2 (American Prosecutors Research Institute, 2004) [hereinafter Finkelhor & Putnam]. Heterosexual male child abuse victims often do not disclose abuse by women because their peers will think that they are not “manly”, and also withhold abuse committed by a male because of a fear of being “suspected of being gay. . .” Fontes & Plummer, *supra* note 68, at 498.

70. Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEXUAL ABUSE 19, 21 (2007); see also Foynes et al., *supra* note 68, at 210 (“[I]f disclosure of a negative experience leads to *negative* feedback, *nondisclosure* actually predicts better outcomes.”). At the March 1, 2010 Judiciary Hearing on California Assembly Bill 73 (which would have presumptively opened the dependency courts to the press and public), an abused child who is a member of the California Youth Connection testified that many abused children do not want “their business put out there” and instead want privacy and confidentiality in child abuse proceedings.

71. For an interesting analysis of how the United States Defense

Directive 1304.26 (10 U.S.C. § 654 (1993)), more commonly known as “Don’t Ask Don’t Tell,” affected relationships when LGBT soldiers were forced operate in silence about their sexual orientation and/or identity, see Shawn A. Trivette, *Secret Handshakes and Decoder Rings: The Queer Space of Don’t Ask/Don’t Tell*, 7 *SEXUALITY RESEARCH & SOC. POL’Y* 214, 214 (2010).

72. Faye Mishna, Peter A. Newman, Andrea Daley & Steven Solomon, *Bullying of Lesbian and Gay Youth: A Qualitative Investigation*, 39 *BRIT. J. SOC. WORK* 1598, 1607 (2008) (Pointing out that providing LGBT youth with necessary and proper governmental support is difficult because they comprise 35 percent of homeless youth and their “‘nomadic’ existence results in having few resources at their disposal, low educational outcomes, few job opportunities, and unreliable relationships. . .”); see also Jen Reck, *Homeless Gay and Transgender Youth of Color in San Francisco: “No One Likes Street Kids” – Even in Castro*, 6 *J. LGBT YOUTH* 223, 224, 226 (2009).

73. Daniel J. Carragher & Ian Rivers, *Trying to Hide: A Cross-National Study of Growing Up for Non-Identified Gay and Bisexual Male Youth*, 7 *CLIN. CHILD PSYCHOL. & PSYCH.* 457, 460, 468 (2002). “Those gay and lesbian adolescents who manage to hide their sexual orientation experience the stress of constantly monitoring their behavior, of trying to behave heterosexually. . .and living with the fear of being discovered.” Travers & Schneider, *supra* note 50, at 358.

74. *CWS Stakeholders Group: CWS Redesign: Conceptual Framework 41* (May 2002) (estimating that between 70 to 84 percent of dependent children need mental health services); *Court Orders Community Mental Health Services for Thousands of California Foster Children* (Mar. 15, 2006), available at <https://www.aclusc.org/releases/view/101688> (“[C]hildren in foster care . . . are among the populations of most concern because they have the greatest need for services, defined by a higher risk for or prevalence of mental disorder than a relevant comparison population.”); OFF. OF THE SURG. GEN., CTR FOR MENTAL HEALTH SERVS. & NAT’L. INST. OF MENTAL HEALTH, *MENTAL HEALTH: CULTURE, RACE & ETHNICITY* 16 (August 2001), available at <http://www.ncbi.nlm.nih.gov/books/NBK44243/>.

75. CO. OF LOS ANGELES DEPT. OF MENTAL HEALTH AGENCY REP., *THE STATUS OF CHILD ABUSE IN LOS ANGELES*, at 218, 225 (ICAN 2010), available at http://ican.co.la.ca.us/PDF/Data_2010.pdf [hereinafter *CHILD ABUSE IN LOS ANGELES*](pointing out that in one study “gay males (42%) were more likely to meet criteria for a major depressive episode than heterosexual males (24%). Sexual minority youths were also more at risk for suicidal ideation (73%) than were heterosexual adolescents

(53%). . .[and] [l]esbians (64%) were nearly twice as likely as their heterosexual counterparts (37%) to have attempted suicide.”); Maurice N. Gattis, Psychological Problems Associated With Homelessness in Sexual Minority Youths, 19 J. HUMAN BEHAV. SOC. ENV'T. 1066, 1070 (2009).

76. Robert Racusin, Arthur C. Maerlender, Anjana Sengupta, Peter K. Isquith & Martha B. Straus, *Psychological Treatment of Children in Foster Care: A Review*, 41 COMMUN. MENTAL HEALTH J. 199, 202-293 (2005).

77. Tyronne Donnon, *Understanding How Resiliency Development Influences Adolescent Bullying and Victimization*, 25 CAN. J. SCH. PSYCHOL. 101, 102 (2010). Having strong resiliency lowers victimization. *Id.* at 110. Although self-esteem may increase resiliency, “high degrees of heterosexist discrimination influences PTSD symptoms both directly and indirectly by diminishing one’s self-esteem, which in turn results in more PTSD symptoms.” Dawn M. Szmanski & Kimberly F. Balsam, *Insidious Trauma: Examining the Relationship between Heterosexism and Lesbian’ PTSD Symptoms*, 17 TRAUMATOLOGY 4, 9 (2010).

78. Shawn C. Marsh, William P. Evans & Daniel J. Weigel, *Exploring Models of Resiliency by Gender in Relation to Adolescent Victimization*, 4 VICTIMS & OFFENDERS 230, 231 (2009).

79. *Id.* at 232, 242.

80. *Id.* at 243. The “minority stress” model “describes stress processes, including the experience of prejudice events, expectations of rejection, hiding and concealing, internalized homophobia, and ameliorative coping procedures.” Meyer, *supra* note 27, at 675 (“Recent analyses suggest that for lesbians, gay men, and bisexuals, empirical evidence about stress processes and the main effect support social stress hypotheses. Studies have shown that lesbians, gay men, and bisexuals who experience more prejudice-related stress have more mental health problems than those who have experienced less stress. . .”); Sharon Schwartz & Ilan H. Meyer, *Mental Health Disparities Research: The Impact of Within and Between Group Analyses on Tests of Social Stress Hypotheses*, 70 SOC. SCI. & MED. 1111, 1113 (2010).

81. Kate L. Harkness, Alanna F. Bruce & Margaret N. Lumley, *The Role of Childhood Abuse and Neglect in the Sensitization to Stressful Life Events in Adolescent Depression*, 115 J. ABNORMAL PSYCHOL. 730, 730 (2006) (“GLB adolescents also experience more depressive symptoms compared with heterosexual adolescents”); Claire McCallum & Suzanne McLaren, *Sense of Belonging and Depressive Symptoms Among GLB Adolescents*, 58 J. HOMOSEXUALITY 83, 84 (2011) (Suicide rates and depression of LGBT youth are “strongly linked to homophobia, youth victimization, harassment, and rejection in their homes, schools, and communities).

82. U.S. DEPT OF HEALTH & HUMAN SERVS., SUBSTANCE ABUSE &

MENTAL HEALTH SERVS. ADMIN. CTR. FOR MENTAL HEALTH SERVS., FUNDING & CHARACTERISTICS OF STATE MENTAL HEALTH AGENCIES 2009, xiii, , available at <http://store.samhsa.gov/shin/content/SMA11-4655/SMA11-4655.pdf> [hereinafter FUNDING & CHARACTERISTICS] (“From 2005 to 2007, the majority of SMHAs [state mental health agencies] experienced budgetary expansion and an increase in the number of persons served. However, during 2008, the U.S. economy began a drastic slowdown resulting in the deterioration of state government finances. As a result, almost all state governments are experiencing major declines in state revenue, forcing 48 states to reduce expenditures for FY 2009 and FY 2010. Readers are cautioned that growth in state mental health services may not continue beyond the period covered in this report. During the summer of 2009, the National Association of State Mental Health Program Directors (NASMHPD) Research Institute, Inc. (NRI), surveyed SMHAs about the impact of the recession on mental health services. Of the 45 SMHAs responding, 89 percent have experienced a reduction to their fiscal 2010 budgets. While the budget reductions in some SMHAs are relatively small, nine face budget cuts greater than 10 percent to their mental health programs in 2010. Five SMHAs expect budget reductions of five to 10 percent, and an additional 13 SMHAs anticipate budget cuts, but whose budgets had not been finalized to the point they could report specific budget reductions.”); Am. Acad. of Pediatrics, *Insurance Coverage of Mental Health and Substance Abuse Services for Children and Adolescents: A Consensus Statement*, available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;106/4/860> (“Mental health needs of children and adolescents are increasing while access to behavioral health, mental health, and substance abuse services is decreasing.”).

83. ST. OF CALIF. GOV.’S BUDGET, ENACTED BUDGET SUMMARY 2011-12, HEALTH & HUMAN SERVS., available at <http://www.ebudget.ca.gov/2011-12-EN/pdf/Enacted/BudgetSummary/HealthandHumanServices.pdf>.

84. *No. CV-02-05662 AHM (SHx)*, US District Court for the Central District Court of California/Western Division, filed December 20, 2002. For a history of *Katie A. v. Bonita*, visit http://www.youthlaw.org/litigation/ncyl_cases/child_welfare/00/. For the Los Angeles County Department of Mental Health’s response to *Katie A.*, see CHILD ABUSE IN LOS ANGELES, *supra* note 75.

85. *CWS Stakeholders Group: Summary of CWS Stakeholders Conceptual Framework: Year Two Report 13* (February 2003) see also Paul J. Wright & Christopher J. McKinley, *Mental Health Resources for LGBT Collegians: A Content Analysis of College Counseling Center Web Sites*, 58 J. HOMOSEXUALITY 138, 145 (2011) (finding that mental health services for LGBT college students are totally inadequate; “despite the fact

that LGBT students are at a disproportionate risk for violence and harassment, only 30% of counseling centers stated that they offered individual counseling for LGBT students and only 11.3% stated that they offered group counseling for LGBT students.”); Erik Eckholm, *States Slashing Social Programs for Vulnerable*, N.Y. TIMES, Apr. 12, 2009, at A1 (reporting on how the sustained economic recession during 2008-2009 required many states to reduce drastically their governmental mental health services to abused children).

86. FUNDING & CHARACTERISTICS, *supra* note 82, at 18. In addition, children served through state mental health facilities have the highest per day cost of treatment than any other segment of the population serviced. *Id.* at 74. The poor economy has affected the child dependency system in the following ways: (1) hiring slowdowns or freezes; (2) consolidation of DCFS field offices; (3) elimination of contracts with private mental health care provider; and (4) non-profit service providers have reduced staff and salaries. Bruce A. Boyer & Amy E. Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J. L. & SOC. POL’Y 300, 308-309 (2011) [hereinafter Boyer & Halbrook]; Elizabeth T. Boris, Erwin de Leon, Katie L. Roeger & Milena Nikolova, URB. INST. NAT’L. STU. OF NONPROFIT-GOV’T. CONTRACTING 1 (2010), <http://www.urban.org/UploadedPDF/412227-National-Study-of-Nonprofit-Government.pdf>. In addition, during economic downturn, the “availability of contract-based therapeutic services” is substantially reduced, and attorneys within dependency court systems have complained that parents and children within the system must suffer much more “extensive waiting periods for psychological evaluations, which often form the foundation for meaningful therapy.” *See* Boyer & Halbrook, *supra* note 86, at 311.

87. Surg. Gen. Workshop Agenda, *Making Prevention of Child Maltreatment a National Priority: Implementing Innovations of a Public Health Approach*, NAT’L INSTS. OF HEALTH (March 30–31, 2005), available at <http://www.surgeongeneral.gov/topics/childmaltreatment/>.

88. U.S. Public Health Service, *Rep. of the Surg. Gen. Conf. on Children’s Mental Health: A Nat’l Action Agenda*. U.S. DEPT. OF HEALTH AND HUMAN SERVICES (2000) at 4, available at <http://www.surgeongeneral.gov/cmh/default.htm>.

89. Finkelhor & Putnam, *supra* note 69, at 1.

90. Meyer, *supra* note 27, at 680 (“Research has suggested that LGBT youth are even more likely than adults to be victimized by antigay prejudice events, and the psychological consequences of their victimization may be more severe”); *see also* Kathryn E. Grant, Bruce E. Compas, Alice F. Stuhlmacher, Audrey E. Thurm, Susan D. McMahon & Jane A. Halpert,

Stressors and Child Adolescent Psychopathology: Moving From Markers to Mechanisms of Risk, 129 PSYCHOL. BULL. 447 (2003). Haas et al., *supra* note 49, at 22 (“[C]onsensus has grown among researchers that at least part of the explanation for the elevated rates of suicide attempts and mental disorders found in LGB people is the social stigma, prejudice and discrimination associated with minority sexual orientation.”).

91. Cai Wilkinson & Anna Kirey, *What’s In A Name? The Personal and Political Meanings of “LGBT” for Non-Heterosexual and Transgender Youth in Kyrgyzstan*, 29 CENT. ASIA SURV. 485, 489 (2010) (“[N]ot disclosing one’s non-heterosexual or transgender status still requires information control, since there is a danger of being ‘outed’, that is, having someone discover one’s status.”).

92. See HIDDEN INJUSTICE, *supra* note 9, at 7 (One of the “Core Recommendations” by the Equity Project for LGBT children is that all “[j]uvenile justice professionals must adhere to all confidentiality and privacy protections afforded LGBT youth. These protections must prohibit disclosure of information about a youth’s sexual orientation and gender identity to third parties. . .without first obtaining the youth’s consent.”); A PLACE OF RESPECT, *supra* note 17, at 34 (“Disclosure should not occur without first talking with the youth and obtaining his or her consent.”).

War Crimes, Wristbands, and Web 2.0:
Exploring Online Justice Advocacy,
Colonialism and ‘Civilizing Missions’
through *Kony2012*

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ABSTRACT

On March 5, 2012, the advocacy organization Invisible Children released a short 30-minute film entitled *Kony2012*, on *YouTube.com*. Within days, the video had gone viral, gaining a mass global viewership. By December 2012, the video had received over 94 million views worldwide, attaining the unofficial status as “the most viral video of all time.” While *Kony2012* raised awareness about the urgency of the manhunt for Lord’s Resistance Army (LRA) leader Joseph Kony and his exploitation of child soldiers in Uganda, the film generated much controversy. Commentators, both from within Uganda and beyond, raised serious questions about the oversimplified Colonial-style intervention (with its especial focus on military intervention) that the video seemed to promote. This article explores in-depth to what extent the *Kony2012* phenomenon embodies both the material and discursive legacies of colonialism. It finds that, while fostering a digital citizenship that promotes the sharing of valuable information, such online advocacy may also unintentionally reproduce and rapidly disseminate stereotypes, bias, and racism. Thus, *Kony2012* is a case study of the ways in which online media can be both productive and limiting in addressing hate and exploitation. While the *Kony2012* campaign quickly and impressively raised popular awareness of child trafficking and exploitation, it nevertheless subtly marginalized the experiences and cultural perspectives of the Ugandan people and privileged a Western-centric interventionism.

INTRODUCTION

Right now there are more people on Facebook than there were on the planet 200 years ago. Humanity's greatest desire is to belong and connect. And now we see each other, we hear each other . . . Who are you to end a war? I'm here to tell you, who are you not to? (*Kony2012*)

At worst, we can find our own work contributing to the very problems we hoped to solve. Humanitarianism tempts us to hubris, to an idolatry about our intentions and routines, to the conviction that we know more than we do about what justice can be. (Kennedy, *The Dark Sides of Virtue*)

In February and March 2012, the U.S.-based advocacy organization Invisible Children uploaded a 30-minute film called *Kony2012* onto several social media sites, including firstly *Vimeo.com* and then *YouTube.com*. Within six days of loading the video to *YouTube.com*, it had reached a stunning 100 million views worldwide. Thanks to a strategy of targeting celebrity “culture makers” and policy makers, the *Kony2012* video sparked a *Kony2012* movement, which drew extensive media attention and captivated social media audiences. In little over a month, the hashtags #stopkony and #kony2012 had over 12 million Twitter mentions. From status updates to rally events listings, the story of the warlord Joseph Kony, the leader of the Lord's Resistance Army (LRA) guerrilla group, and his involvement in the alleged abduction of 30,000 African children largely from the region of northern Uganda had seemingly forced itself upon the (online) popular consciousness.

The stated goal of Invisible Children's campaign was to stop the Ugandan warlord's crimes against humanity, by drawing as much attention as possible to his continued atrocities. As the film's narration simply states, “The problem is 99% of the planet doesn't know who he is. If they knew, Kony would have been stopped long ago.” At its core, *Kony2012* assumed the most important tool of any advocate is knowledge, and that a powerful message could move an audience from viewing a problem, to solving it.

However, criticism of this strategy quickly emerged. Some commentators such as blogger Grant Oyston (March 8, 2012) attacked the financials of Invisible Children, while others assailed the film for over-simplifying the issues and situation at hand. Commentators, for instance, expressed a “nagging sense of weird racial and colonial politics” (Read, 2012). Indeed, racial politics became a focal point of discussion both online and in mainstream media. Critics were quick to point out that the film's overall effect “subtly reinforces an idea that has been one of Africa's biggest disasters: that well-meaning Westerners need to come in and fix it. Africans, in this

telling, are helpless victims, and Westerners are the heroes” (Fisher, 2012). As Ugandan journalist Angelo Izama (2012) pointed out, “[m]any African critics are unsurprisingly crying ‘neo-colonialism!’” on grounds that the video and related campaigns disempower Ugandan voices. Izama identified the video as “just another bad solution to a more difficult problem,” and one that embodies “[t]he simplicity of the good versus evil narrative, where good is inevitably white/western and bad is black or African, . . . reminiscent of some of the worst excesses of colonial era interventions.”

The apparent simplicity of such a narrative doubtless contributed to the viral success of *Kony2012*—and when images were released on the Internet of the filmmakers bearing heavy arms while in Africa (Zennie, 2012) a chorus of critical voices, including Uganda’s largest independent newspaper suggested the photo represented “a neo-colonialist mentality where the white charity worker came off as the long-awaited savior.” Against the backdrop of human rights and war crimes advocacy, the issues of race and the nature of online advocacy came to the forefront of discussion.

This article explores how an online advocacy campaign surrounding an at-large war criminal came to ignite such controversy, and in doing so, highlights both the potential and perils of a viral advocacy movement. Specifically, this discussion explores how the Internet can be used to promote social causes and galvanize large online communities (including ending hate) while at the same time may also foster a “pornography of violence” in which a Western-centric audience may gaze into and appropriate the “developing world” as a site of titillation (Redding, 1998, pp. 13-14). In such a situation, the victims of such violence are rendered objects of cruelty; a representation that not only recirculates misinformation about the realities of Africa but also itself embodies racism. Or, as one commentator noted, “*Kony2012* and the debate around it are not about Uganda, but about America. Uganda is largely just the stage for a debate over the meaning of political activism in the U.S. today” (Branch, 2012). As such, this article argues that while social media sharing has a tremendous potential to foster a digital citizenship that allows for valuable debate and expression, users must also be especially conscious that the technology, as with any tool for communication, can easily replicate and restate colonialist scripts and other forms of dangerous, discriminatory discourse.

I. LITERATURE REVIEW

A. *Exploring Post-Colonialist Intervention and the “Pornography of Violence”*

In analyzing human rights advocacy with a view to illuminating depic-

tions and assumptions about race, this inquiry draws on an abundant literature that suggests power is tethered to knowledge and social structures, and furthermore that this relationship can be exposed by examining the rhetoric involved. We draw upon the rich tradition of postcolonial scholarship—specifically critiques of both development and international human rights advocacy—as well as the emerging literature on race and the Internet. At its core, this article draws upon claims that there must be critical awareness and acknowledgement of “racism of the past and its legacy” because it remains “noticeable in an unequal world, and continue[s] to entangle or ensnare individuals through structures of development and create a platform for the relations between them” (Loftsdóttir, 2009, p. 7). Given the far-reaching cultural legacies of both colonialism and neocolonialism, it is perhaps inevitable that racist attitudes borne from traditions of social stratification still “reverberate in the postcolonial moment, long after the Empire has been dismantled” (Kapur, 2005, p. 22). Discourse surrounding human rights and development, then, is certainly not immune to traces of both past and present racism and social stratifications.

Many existing studies of human rights intervention and development projects acknowledge that such practices are about power and remain tied in many ways to colonialist structures (Loftsdóttir, 2009, p. 6). While most development and human rights literatures and actions do not focus on race, emphasis is often placed on culture. Furthermore, “the relations between colonizer and colonized were re-worked into those between developer and developing” (Kothari, 2006, p. 12). Much as colonialist narratives focused upon the white man as a civilizing force, the new rhetoric of development too often suggests the need for a civilizing force in order to address poverty and violence. Even the post-Cold War evolution of the label “Third World” now clearly delineates a hierarchy between the Developed and the Developing; there is a crucial assumption that there are some who “are less developed than others” (Kothari, 2006, p. 13). Loftsdóttir (2009) observes that these “underdeveloped peoples” are generally the formerly colonized, who are still shaped as needing assistance (p. 4).

Distinctively Amerocentric and Western Eurocentric interventionist ideologies toward the African continent have been shaped not simply through “economic muscle and technological might,” but also through discursive means; that is, through the “power to define . . . what is real and what it means to be human” (Sardar, 1999, p. 44). Development and the implementation of human rights involve the twin Western-identified ideas that there is a pathway from the traditional to the modern, and that a failure to advance along this path marks some cultures as inferior and therefore in need of support and assistance from the more “modern” states. The markers of underdevelopment and lack of progress are not just economic, but

integrally also deviant or deficient—including gross violations of human rights, often in the form of violence. This conceptualization of development implies both “progress and perfectibility” (Tucker, 1999, p. 4).

In framing development in such a way, Africa is constructed as a “symbol of cultural inflexibility, political dysfunction and underdevelopment” and the “third world as black, poor and tribal, and as a wasteland of limited resources” (Kothari, 2006, pp. 11, 13). Violations of economic and social norms, including human rights, require a humanitarian, “civilizing,” and usually Western force to intervene in order to protect the vulnerable. The existing literature well-acknowledges the construction of Black men as prone to violence and mayhem, while suggesting that those in African nations experience systemic violence, the result of which is to engage in a persistent, frequently homogenizing, “Orientalist discourse” that paints Africa as “the dark continent” (Kothari, 2006, p. 12).

Integrally, the media—including social media—is awash with images and stories of African poverty and violence. One of the most prominent examples is the “Save Darfur” campaign on *Facebook.com*, which has by most measures shown to be largely ineffective despite being the largest such social media campaign of its kind (Lewis, Gray, Meierhenrich, 2014). A “pornography of violence”—a glorification of violence in consumer culture—has emerged in which “civilized” people condemn such violent acts, but continue to have their interest “pricked” by it and therefore “neurotically almost, [they] work obsessively, impossibly, to avoid contaminating [themselves]” (Redding, 1998, pp. 13-14). Victims of violence become dehumanized commodities (ibid, pp. 15-21), driving a market in human rights advocacy that results in what has been labeled “the White-Saviour Industrial Complex” (Cole, 2012). As much as calls to end violence are universally acknowledged, there remains a push-and-pull that implicates audiences with a “pathologic compulsion to look at scenes of torture and murder” (Huppauf, 1997, p. 4), where scenes of violence in Africa come to be “emotionally arousing” in ways that seek condemnation but simultaneously require our interest and gratification (Russell, 1993, pp. 3-12).

As a result, non-Africans, usually Westerners (and specifically Americans and Europeans), are positioned as the most knowledgeable, powerful, and therefore most able to intervene. The result is a dichotomy that bolsters the power of those already holding disproportionate power, and to restate, as Said observed, that Westerners are “rational, peaceful, liberal, logical” (Kapoor, 2002, p. 650). Such a positioning justifies interventions by “modern” societies directed at remedying the backwards traditions of the lesser developed, because these act as “an impediment to advancement” (Sardar, 1999, p. 45). Such interventions may involve direct engagement in the form of hard power (e.g., military intervention), exercise of soft power (e.g.,

social and economic influence), or both. The Internet has become central to soft-power strategies. The idea that the Internet in general, and social media in particular, spreads Western democracy has been well explored in the media and culture literatures, and therefore is central to understanding contemporary post-colonial traces; a literature we now turn to explore.

B. *Web 2.0 and Online Advocacy*

On various levels, both popular media and academic literature often frame the Internet as free and equal, “a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity” (Barlow, 1996). An assumption in this literature, as well as *Kony2012*, is that the online world produces “netizens,” who populate the Internet developing it as a space and resource for other users and humanity at large (Hauben, 1995).

While the notion of neutral, or value-free, technology has become an increasingly popular subject of scholarly interest, much of the literature on Web 2.0 applications, such as blogs, social networks, wikis, and mash-ups, argues that in fact “we make our technologies, and they, in turn, shape us” (Turkle, 2011). Even acknowledging this reciprocity of influence, the tools themselves are not always as value-neutral as they might seem. This is because a tool, through its use, can contribute to shaping our purposes and, furthermore, that tool can, in fact, contain an ideological bias (Postman, 1993).

What is more, the dispersion of digital technology, including Web 2.0, does not provide a universally similar benefit to all, and the ability to access the Internet and mobile applications is not universal. The uneven distribution of technology (including access and usage) creates a “digital divide,” wherein a lack of physical connection or resources leaves certain individuals disconnected and, therefore, in many ways disempowered as a result of income, age, education and race (NTIA, 1995; NTIA, 1998; NTIA, 1999; Cooper, 2002). Studies conducted mostly in the U.S. suggest that members of poor communities of color have significantly less access to online technologies (Martin & Robinson, 2007; Compaine, 2000). Disparate technological access has a two-fold effect: less-connected populations become disempowered while the already-privileged voices of those on the more fortunate side of the digital divide are further empowered (see, e.g., analysis of Hurricane Katrina in Crutcher & Zook, 2009).

Likewise, rather than offering the possibility for egalitarianism with respect to information and online advocacy, the disparity in access to the tools needed for this type of advocacy allows for certain constructions of evil and hate to arise; the people without, or with lesser, access to these

tools are left without similar ability to counter these constructions and offer constructions of their own. Thus, while the initial literature on race and the Internet suggested that technology could offer a way to overcome discrimination and conceal one's identity (Kang, 2000, p. 1153), the new literature suggests many inequalities are reproduced by and within cyberspace itself in an ever-evolving manner. "While Internet use may hold out the possibility of emancipation, we must at the same time be aware of how it might create new mechanisms of suppression" (Slevin, 2000, p. 109). Such suppressive mechanisms can manifest both in overt and less overt, often impliedly, racist depictions online.

As Dahlgren (2004) cautions, "there are clear threats to the civic potential of the Internet, and it certainly cannot be seen as offering any 'quick fix' for democracy" (p. 6). Recent policy commitments by platforms such as Facebook and Twitter to limit harmful and hateful speech serve as acknowledgement that the Internet's "openness" holds the potential for dissemination of discriminatory speech, but demonstrate the work that can be done to contest such speech through Web 2.0's own values and commercial commitments. Interestingly, while announcing their hate speech policy, Facebook also argued that "We've also found that posting insensitive or cruel content often results in many more people denouncing it than supporting it on Facebook" (Levine, 2013). In as much as Web 2.0 (and the Internet more broadly) can disseminate hate, it can also help to create and shape new responsibilities both online and beyond.

Online advocacy has become a powerful tool and is facilitated actively by many Web 2.0 platforms. However, research evidences that well-funded online organizations often act as gatekeepers in deciding what is an important social issue online (Maratea, 2008). Independent and issue-oriented websites receive far less traffic than corporate-owned online media campaigns. For example, a 2012 Pew survey of U.S. online news consumption indicated that large, corporate-controlled news sites constituted the overwhelming majority of sources ("Cable Leads the Pack as Campaign News Source," 2012). Elite discourses therefore circulate and are restated, reformed, and imbued with further power online. While as Shirky (2011) suggests, "the more promising way to think about social media is as long-term tools that can strengthen civil society and the public sphere. . . as an important input to the more fundamental political freedoms," we must be aware of its capacity to replicate structures and stratifications.

For these and other reasons, the supposed neutrality of the Internet appears to be a dubious proposition. Perhaps it is more likely the case that the Internet is a tool used for what Heidegger (1954) famously called "human" activities. As such, it presents a unique site for studying and disrupting hegemonic understandings of violence against racial minorities, for

transforming the way historically marginalized groups are treated, and for challenging this treatment. It is in light of such recognitions about the possibilities and limits of Web 2.0 for ending racial discrimination that we approach *Kony2012*.

II. ANALYSIS: THEMES AND ISSUES IN *KONY2012*

As noted in the Introduction, *Kony2012* attained an unprecedented level of viral success, dominating the online media landscape from the week following March 5, 2012. The film sought to address the fact that, although the International Criminal Court had indicted him in 2005 on charges that included crimes against humanity, Joseph Kony had managed to evade arrest and continue to commit unlawful acts without consequence. The premise of the film was simple: Kony would continue in this fashion until the world knew his face and until the U.S. and the Western world staged an intervention in the Ugandan region to facilitate Kony's arrest. Several themes emerged in the production: social interaction and democracy; invisibility; impunity; impetus; and advocacy for action coupled with a sense of urgency (i.e., the campaign would "expire" on December 31, 2012). Each of these themes are analyzed in the sections that follow.

A. *Social Interaction and Media as Building Democracy*

Kony2012's first image is that of the global: an image that gives way to text headlined by the (unattributed) Victor Hugo quotation: "NOTHING IS MORE POWERFUL THAN AN IDEA. . . WHOSE TIME HAS COME. . . WHOSE TIME IS NOW." A narrator's voice then accompanies a montage of images of people around the world doing everyday things with technology, including using a mobile phone, emailing photos, and sharing links to video streaming sites. The narrator suggests that:

[T]his connection is changing the way the world works. Governments are trying to keep up. . . Now we can taste the freedom. . . The next 27 minutes are an experiment. But in order for it to work, you have to pay attention.

These initial few scenes set out the video's main concept: that social media can be used to produce a widespread social movement that demands bringing a person to justice while improving the lives of persons whom many viewers do not know and will never actually meet. At its core, the production aims to foster a sense of digital closeness, to make "us" feel like a global community who share a common mission. The sequence seeks to

emphasize our roles as netizens, encouraging us to explore our sense of belonging (Hauben, 1995).

Centrally, the sequence inspires a sense that viewers are connected as well as responsible (Hauben, 1995). The film seeks to reshape space, place, and identity (i.e., to adopt the language of geographers) to drive a revolution to “change the course of human history,” as the film proclaims—a radical transformation—in thinking. We are encouraged to conceive understandings, rights, and duties as naturally and properly moving across borders. Implicitly with this globalized communication, there is a sense of universalism, especially of norms such as human rights. While it appears that the universalization of certain norms, including human rights, is a positive force, there remains a potential for a new form of colonialism to emerge subtly in response to human rights issues.

Kony2012 projects a type of colonialism in that Anglo-American dominance is assumed throughout the documentary. For instance, English is the sole language used in the production, and the film was not released in other languages during March 2012. Likewise, throughout *Kony2012* there is a prolific use of subtitles to aid specifically American English-literate viewers to understand the accents of Jacob Acaye, Ugandan politicians Santo Okot Lapolo and Norbert Mao, as well as ICC chief prosecutor Luis Moreno Ocampo. At one point, the filmmaker asks Jacob “You go to school here. That’s why you know English so well?” Such comments suggest a lack of appreciation of Ugandan history and culture, including the fact that even after the end of colonial rule, English has continued to be one of the official languages of Uganda. Thus, despite a supposedly global campaign to find Kony, in this and other ways it is clear that the target audience for *Kony2012* is largely Anglophone or English-speaking, and perhaps even specifically American.

However, the effect of the aforementioned comment is not just to convey a clear Western, English-speaking worldview that guides the project, but also to silence Ugandan voices behind voiceovers and subtitles that blunt the raw emotion and tone of what is said by survivors. Indeed, the voices of the local are secondary to the voices of Americans, who speak for them or direct what they can say and how it should be said. When the filmmaker’s friend, Jacob, speaks, for example, it is almost entirely in question-and-answer form, with the narration serving to direct the course of Jacob’s “testimony.” Jacob’s own voice and flow of emotion is lost behind Russell’s continued interjections. The film does not allow for the multiplicity of voices of Kony’s victims, and Kony’s acts are shaped by their personal relevance to one American’s friend. This point in particular was a prominent source of criticism, and some African advocacy experts have urged that such interventionist approaches “must be willing to use their

media to amplify African voices, not simply their own” (Araia, 2012). As well, the film overlooks larger impacts on, and actions by, Ugandans and local peoples. For instance, the Ugandan Army is discussed solely with regard to American training and funding programs, while the Ugandan Army’s own troubling history of human rights abuses and practices are ignored.

Such colonialist overtones are immediately apparent, leading some Ugandan journalistic commentators to suggest that the film is made into a dangerously oversimplified narrative of good versus evil, wherein “good is inevitably white/western and bad is Black or African” (Izama, 2012). Like colonial era interventions, the local population is depicted as too incompetent to represent themselves and therefore the more able, more powerful, Western influence must speak and act for them. It is in this sense that the premise of the film reveals the issues at stake in a digital citizenship: it implies that there are those who lack the resources to use the Internet to its full potential themselves—often those who are the worst off in traditional global politics will remain “invisible”—and conversely those who are best able to harness its power for the global good.

B. *Rendering the Invisible Visible*

The concept of invisibility is explored throughout the film. As suggested by the name of the organization, Invisible Children, behind the film, many of those affected by Kony’s activities have largely been unseen. This idea is played out through contrasting imagery of the filmmaker’s son and Jacob’s story. Immediately after the opening views of the global community, the film shifts to a sequence of home movies, which act to reveal this contrast in experiences. The implicit purpose of the initial set of scenes is clear: that the children of Uganda have not received adequate attention. Further to this is the implicit suggestion that these children would have received greater attention and assistance if the same were to take place under the watchful eye of Americans. For example, Russell at one point states, “If that [kidnapping of white children] happened one night in America, it would be on the cover of *Newsweek*.”

Izama’s (2012) observation of the good-versus-evil narrative is clear here, as Americans presumably would do better. Notably, there is an implication that trafficking and abuse of children would receive greater, more effective responses if these occurred in a way that Americans could see. However, Russell’s statements seem ill-informed and overly simplistic, given that child slavery and sexual servitude occur in the U.S. and other countries daily.

Still, Russell’s statement highlights a prevailing American outlook and

indeed the dominance of Russell's worldview. Russell explains the situation through his lens, to personalize his narrative, and in the end it is of course the task of the audience to keep in mind that all documentary creations, political or otherwise, inevitably contain traces of the creator's worldview. Yet a balance should be struck between a compelling personal narrative and one that might "deliver more sophisticated, nuanced, and respectful narratives that recognize capturing Kony is a collective responsibility" (Araia, 2012). *Kony2012* fails to strike this balance.

Following Russell's discussion of his own personal history, the film returns to Jacob and Russell engaged in an interview. A brief summary of the interview will help illustrate an example of *Kony2012*'s Westernist perspective. In one of the film's most poignant moments, Jacob tells Russell "it is better when you kill us" and that he wishes to meet his murdered brother in heaven. Russell promises to Jacob "we are going to do everything that we can to stop them." Russell then explains that has spent the past nine years working to keep this promise and informs the audience that it is no longer just about him and Jacob, but that "it's also about you." With an increasing sense of urgency he suggests that "this year, 2012, is the year that we can finally fulfill it. . . . And if we succeed, we change the course of human history."

The screen returns during this statement to the image of a spinning globe, as we are given a deadline of December 31, 2012 when the film "expires." The effect is to create an emotional closeness, such that we are already in fact tied to this promise: "We can finally fulfill it." The sense is, therefore, not that Jacob's experiences and plight matter in and of themselves. Rather, it is that Russell's own commitment that creates the universal obligation; Russell's promise itself becomes the focus of the narrative. The emphasis is not on Jacob's experience of trauma and the courage of his witnessing. Instead, his testimony is woven together with Russell's narrative of how and why the promise was made. The film therefore does not bear witness to atrocity and grant voice to those who have experienced trauma; it merely perpetuates a form of advocacy that seeks to end impunity in, and on, Western terms. The result of this focus on Western norms and responses is to render Jacob and the other child soldiers inaudible "victims"—objects of violence—who are best spoken for, rather than being survivors with a voice. While raising Western awareness is the initial concern of the film, as Russell states "now *we* know what to do." Yet the crucial work of translating that awareness into ending impunity has been clearly restated as a Western task, thus demanding Western voices.

C. *Ending Impunity*

The film raises the issue of impunity numerous times throughout, at one point matter-of-factly stating, “It’s obvious that Kony should be stopped.” After Jacob’s interview, the film turns to images of members of the Lord’s Resistance Army (LRA) and its leader, Kony, followed immediately by scenes in which Russell attempts to explain the crimes to his own son, Gavin. An overview of Kony’s activities is then provided, citing Kony’s history of kidnapping over 26 years, forcing girls to be sex slaves and boys to be soldiers (who are caused to kill and mutilate, even their own parents). Images of child soldiers, of children being abducted, and of victims mutilated effectively present the stark, sobering reality of the terrible plight. We are told that Kony has done this to over 30,000 children, and that Jacob was one of these children.

Despite photographs emerging of Russell’s journeys to the region and his rather controversial choice to pose with guns (Flock, 2012), the film itself does not depict Russell engaging with the variety of individuals he obviously met in Uganda. *Kony2012* does not provide the testimonies of on-the-ground non-profits, locals, or survivors, many of whom have subsequently come out criticizing the video and indicating their desire to speak for themselves. Ugandan Journalist Rosebell Kagumire summarizes the difficulty of speaking for Ugandans, suggesting:

How you tell the stories of Africans is much more important than what the story is; because if you are showing me as voiceless, as hopeless [then] you have no space telling my story. You shouldn’t be telling my story if you don’t believe that I also have the power to change what is going on (2012).

Encapsulated in this statement are a number of salient criticisms of the film’s structure. In suggesting the children are not only invisible but also voiceless, the film fails to attend to their status as survivors. According to Russell’s depiction, the children firmly are victims whose bodies have been brutalized at the hands of Kony and his army; yet without Jacob, we have no other voices of corroboration. While it is possible that children who have survived atrocities may not speak on film or publicly about their memories for any number of reasons (e.g., consciously or unconsciously blocking out traumatic events as part of the very act of survival), there is also a failure on the part of the filmmaker to draw on other forms of ‘voice’ such as art and literature to depict the experiences of survivors.

This absence is particularly notable in light of well-publicized UN “creative peacebuilding” projects in the region. These projects produced

vast amounts of art by survivors of child soldiering, with the art itself acting both as therapy and as a mechanism to give a voice to survivors of the violence. According to UN Fine Art Goodwill Ambassador Ross Bleckner, the importance of the creative peacebuilding process for survivors is that they are able “to create something that they can be proud of, and which can help them on the arduous path to restoring their dignity and sense of self-worth” (Kennedy, 2009). *Kony2012* notably fails to draw on this powerful resource or to produce similar projects of memory directed at healing as well as advocacy. As a result, the focus that emerges from the film is that advocacy prevails over empowerment.

However inadvertent the focus on American intervention may be, and with due acknowledgement that the film’s technical and aesthetic shortcomings may reflect greater challenges and constraints typical in creating such a film, *Kony2012* is not a film about solidarity. Rather, it speaks for the Ugandans through an American voice that disempowers the Ugandan community. While the film raises global awareness of a human rights atrocity of which most Westerners had little or no knowledge of prior to its release, the failure to actively engage the Ugandan community in any proposed solution leaves room to question the cultural sensitivity of any interventions. Notably, screenings of *Kony2012* in Uganda were met with strong reactions. The nonprofit organization African Youth Initiative cited one audience member:

If you care for us the victims, you will respect our feelings and acknowledge how hurting it is for us to see you mobilizing the world to make Kony famous . . . It was very hurtful for victims and their families to see posters, bracelets and t-shirts, all looking like a slick marketing campaign, promoting the person most responsible for their shattered lives (“Uganda’s Reaction to Kony 2012”).

Indeed, a telling moment halfway into the film features a crowd of U.S. college student advocates, loudly chanting: “We’ve seen these kids. We’ve heard their cries. This war must end! We will not stop. We will not fear.” At the same time as the film successfully empowers a youthful, U.S.-targeted audience, it also implies that Africans remain as voiceless, incapable actors.

Kony2012’s main assumption—and that of Invisible Children as an organization—is that by making Kony famous he can be brought to justice; this point is made explicit several times throughout the film. But “recent history . . . has made one thing clear: making a war criminal famous is only half the challenge” (Gibb, 2012). Consider the example of Omar al-Bashir, the President of Sudan, whose crimes are well-known and subject to an ICC

indictment. Bashir is seemingly insulated from prosecution through an ongoing failure by other African states to arrest and extradite him when he travels to their jurisdictions. Again, any failure is displaced onto Africans, and thus the film provides an overly simplistic view of international and domestic U.S. politics. Okwir (2012), himself an LRA survivor, questions whether advocacy focused on “sounding the war drums” truly speaks for the victims of the LRA conflict. Through paying little attention to the African Union, regional bodies, and domestic politics in Uganda and surrounding countries, the film overlooks the multiplicity of actors capable of interjecting. The film constructs the U.S., despite its repeated objections to the ICC, as the most capable global actor to bring Kony to justice.

Unfortunately yet through no necessary fault of his own, the filmmaker’s choices demonstrate a lack of understanding of both the ICC’s politically contested position and serve as an example of the ways in which many Western audiences tend to misunderstand, or understand in a simplistic sense, the African community as a whole. Although this film has successfully and impressively raised awareness of the human rights atrocities in Uganda, questions arise whether it has also done harm if, as we are suggesting, it diminishes rather than strengthens the power of Ugandans. Commentators such as Kate Cronin-Furman and Amanda Taub (2012) question whether the less visible harm is that such projects may “absorb resources that could go toward more effective advocacy, and take up rhetorical space that could be used to develop more effective advocacy.”

Yet, we contend, the film itself is not the problem. As further elaborated below, *Kony2012* is but one example of a general U.S. orientation toward Africa that perpetuates a notion in which development and human rights are best implemented through externally-imposed private, military, and legal intervention rather than through community empowerment and capacity building. Indeed, it is the continued deferral of acting *for* rather than acting *with* Ugandans that troublingly situates the film as a continuation of prior colonial scripts.

D. *Advocacy for Action*

The focus on advocacy is made explicit when the film details the activism process that Russell and his friends encountered when they returned from Uganda to the U.S. The film shows various Washington, D.C. interviews and meetings, while Russell himself details that the U.S. government does not like to become entangle in conflicts in which it has no national security or financial interests. The film then shows how Invisible Children sparked a grassroots global community to come together to work on the issue, to bring hope to the people of Uganda. A Facebook group member-

ship counter repeatedly flashes on screen to show the ever-growing number of supporters, interspersed between photos of action groups and advocates. Viewers are shown how this global community, through their giving of funds and their time, has rebuilt schools in Uganda, created jobs, and established an early warning radio network. Next, the film provides a montage of politicians who make statements on Kony, before the scene changes to the Invisible Children offices where Russell tells us of a victory in October 2011: the sending of 100 U.S. military advisers to Uganda to bring about the arrest of Kony. To emphasize that the job is not complete, a communiqué flashes on-screen; a young boy who escaped Kony tells of how Kony is changing tactics, as he knows the Americans are after him. Russell tells how this change has made it even harder to capture Kony. To compound that sense of urgency, U.S. Senator Jim Inhofe then returns to the screen and tells viewers “it’s got to be 2012.” The Prosecutor for the ICC follows, informing us that action is needed from “everyone.”

Kony2012 thus plays on a sense of “White Man’s Burden”—specifically, “a notion that persons of European descent inherit a quality of guilt for their ancestors” inclination for slavery and colonialism, requiring an activist response to finally correct the situation by “saving Africa” (Bowie, 2012). In this sense, the film does not create a new social climate or discourse, but instead draws on many existing scripts about “never again.” At one point the film states, “when we heard about injustice, we cared, but we didn’t know what to do. Too often we did nothing.” The implication of who “we” are is clear. While such rhetorical appeals may be valuable for reiterating messages on how inaction can further violence, such an approach is nevertheless problematic, as Russell again advocates interventionism that empowers Americans—both private actors and the State—to do something *for* Ugandans, not *with* them.

The *Kony2012* campaign directs a plan toward Americans and their government leaders, without acknowledging past or present African efforts, including those in concert with the international community, to address child soldiering. What is more, the action points proposed in the film, which Russell provides as clear actionable steps to be completed by U.S. citizens, do not include any suggestions for ways in which Ugandans and other affected African nations could be part of the solution.

Using a series of projector screens, in the film Russell details scene-by-scene the steps needed to bring about Kony’s arrest, stating that troops must find him, which in turn requires the political impetus of Americans telling their government to keep their troops on the ground, which even more basically requires that everyone, everywhere, must know who Kony is. To do this, Russell details the “20-12” plan, which targets 20 culture makers and 12 policymakers. Images of the relevant persons are flashed

on-screen, including pop stars, athletes, and billionaires with the stated goal of “redefining the propaganda we see all day, every day, that dictates who and what we pay attention to.” The aim, according to Russell, is to make Kony infamous. To do this, Russell details that we should:

1. sign a pledge to show support;
2. buy a bracelet and action kit; and
3. sign up for the TRI campaign to donate and join the army for peace.

Russell then declares April 20, 2012 the day to “cover the night,” when activists will plaster thousands of posters all over the world with the aim of “demanding justice on every corner.” Finally, the film’s viewers are told to share the link to the movie, which it is restated is “free,” as well as the link to *Kony2012.com*. The overall effect of such a strategy was to “raise awareness about the issue of child soldiery, [and] actively promoted engagement by identifying a specific task for the audience” (Karlin and Matthew, 2012). By motivating consumers and empowering them with information, the film appeals with the promise that through such actions, those who take action will be able to bring about progress and arrest Kony.

The film makes this point overtly in the last scene, with a restatement that Facebook and other social media are creating a global community, in which the power (and responsibility) now lies with the many, thereby reaffirming the concept that the Internet spreads democracy (O’Reilly, 2005; Shirky, 2011). Russell suggests that bringing about the arrest of Kony “will prove that the world we live in has new rules, that the technology that has brought our planet together is allowing us to respond to the problems of our friends.” Viewers are told that a better world is coming, but that it is “just waiting for us to stop at nothing.” Finally, the film pans out back to the global sequence at the start of the film and more text flashes up telling us again that:

NOTHING IS MORE POWERFUL THAN AN IDEA WHOSE TIME
HAS COME. NOTHING IS MORE POWERFUL THAN AN IDEA
WHOSE TIME IS NOW. NOW.

Contrary to inspiring motivated action, however, one common strain of criticism levied against *Kony2012* is that the film actually promotes ineffectual “slacktivism.” Web-based, pseudo-activism is encouraged, according to some, which may amount to nothing more ‘than clicking computer keys’ (Davis, 2012).

While the Kony2012 “Cover the Night” campaign involved some real-world action, it largely focused upon “sharing” and wearing Kony-branded promotional tools like bracelets and stickers. Although such actions might

raise a general sense of awareness through encouraging Facebook “friends” to repost, there was, as Gladwell has noted, a propensity for such social media to continue to breed weak action because “weak ties seldom lead to high-risk activism” (2010). Drawing upon the work of researchers such as sociologist Mark Granovetter (2003) in suggesting that this new form of connectedness relies on thousands of distant links between Facebook “friends”—many of whom are at best acquaintances and certainly not close friends—online advocacy may only be effective in bringing about slight changes, and not the levels of social activism and galvanizing movements of the 1960s through events such as sit-ins (Gladwell, 2010).

Indeed, in April 2012, international media reported on the general lack of participation in “Cover the Night.” Furthermore, the failure to arrest Kony by the film’s December 31, 2012 “deadline” left many questioning the campaign’s lasting impact. Both in the U.S.—the hub of the campaign—and around the world, the campaign failed to drive anything more than awareness. As of 2014, long after the film’s deadline, Kony remained at large. While one achievement of the film is that the international media continues to follow the case, one researcher reflected recently upon the local impact: “[m]aybe 2 percent of the entire Acholi population even knew about that film, and of that percent, very few cared. The international arena is not so important” (Storr, 2014). This article, along with many commentators from 2012, notes that the film actually did harm by failing to empower the region’s victims and survivors. Commentators noted that there was little effect felt on the ground, where it has been most needed (Harding, 2012). More troubling still is the suggestion of longer-term effects that continue to haunt daily Ugandan life:

[I]f left unacknowledged, these hurts can fester. If they’re allowed to turn toxic, painful stories from people’s lives have the potential to become dangerous, by threatening to tip Uganda’s decades-long cycle of violence into a new revolution (Storr, 2014).

Specifically, *Kony2012*’s depiction of the U.S. military as central to ending Kony’s impunity and saving Uganda’s invisible children overlooks the complexity of transitional justice and memorialization processes, which often focus on productive and healing practices (Steele, 2006). This kind of glaring oversight, and the assumptions and ignorance which underpin it, has led commentators to argue that *Kony2012* may unintentionally “do more harm than good” (Harding, 2012).

However well-intentioned, the film echoes the “Save Darfur” Campaign of a decade earlier, which commentators found unfortunately promoted a “stereotype of Africa as a black hole of disease and death” (Iweala,

2007). The unintended racial undertones of *Kony2012*'s message for advocacy and intervention, both in light of history and the intervention proposed, do not pay sufficient attention to Africa's needs and strengths, but instead focus on what at least some Americans *think* Africa needs and consider its lack of strengths. The impact of such colonial-inflected thinking has reverberated throughout the continent for centuries now, and many say it has created more and new problems in the region, including the perpetuation of the very human rights violations that interventionists have sought to extinguish.

CONCLUSION

Clearly well-intentioned advocates have sought to create impetus for justice and bring to an end a regime of dire human rights violations. Yet this article has sought to show how a Western-centric interventionism embodied in a filmmaker's worldview actually reproduces many colonial scripts which themselves have widely fostered oppression.

In many ways, the claims made in *Kony2012* ask us to act to extend our reach and "civilize" the situation, using the supposedly democratic forum of the Internet, specifically through Web 2.0 and social media. This civilizing mission is most readily apparent through the plot and narration of the film itself. Jason Russell, a wealthy American male, presents us with what he has done and then advocates for what we, collectively, should do. Uganda's children, therefore, do not come to be formed or presented as fully-developed people. Rather, they emerge as a rhetorical device for Russell's purpose of explaining his worldview and project.

In focusing upon Russell, one important and likely unintended, effect of *Kony2012* is to displace and render invisible the significant work done and led by Ugandans. The slogans and products of the Kony2012 campaign are attention-grabbing marketing and inarguably succeeded in drawing widespread attention to the case. However, they fall short of directing people to start thinking about realistic long-term solutions to a complex problem. More pertinently, they do not expound the views and wishes of the people whom they are supposedly seeking to make visible.

Against the backdrop of *Kony2012* as a prominent example, it is necessary to exercise due caution about the capacity for Web 2.0 to bring about mass change or to "change the course of human history." While Web 2.0 may hold a tremendous capacity to expand our worldview, in looking at *Kony2012*'s embedded colonialist aspects, it is in many ways clear that Web 2.0 can just as easily embody history, even repeat and disseminate harmful discourses. As we continue to experience an ever-evolving awareness of Web 2.0 as a platform for hate, we have been less aware of its

potential to reproduce scripts that dehumanize and demonize in other ways, through oppression and conveyance of more subtle forms of discrimination. Users of Web 2.0 should be mindful to ensure that they do not project existing repressive views, as these views may easily be shared and amplified with the masses. Indeed, as we witness the emergence of debate sites and knowledge sharing forums, such as *Change.org*, which offer positive interactional mechanisms designed to enlighten and to empower, we should exercise caution to ensure that these mechanisms and activities do not bring with them unintended acts of hate and oppression.

Perhaps, then, the lasting impact of *Kony2012* is underscoring the importance of including the multiplicity of voices—in an open online democratic forum—to truly empower those who survive oppression, as well as those who wish to act *with* them, rather than *for* them.

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The Society of Jesus and the Eradication of Hate

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INTRODUCTION

The reality of vendettas, and violent responses against real or supposed breaches of personal or familial honor, marked the landscape of Europe during the early modern period, from nautical expansion, which began in 1450, through the French Revolution in the 1790s. In particular, in cultures identified as Mediterranean, as described as a discrete cultural archetype by historian Fernand Braudel (1972), specific societies held codes of honor and “face,” the term used to designate a personal appearance that reflected a status of inner dignity and exterior relations. Subsequently, violent outbreaks resulted from attempts to return honor, good face, and the respective social and familial relations. As important protagonists in early modern life, the Jesuits found themselves involved in the important the effort to “save face” and to eradicate the hatred that resulted in the accusations against personal or familial honor. This study examines how members of the Society of Jesus worked toward the eradication of hatred and why this effort may be identified as an extension of the Jesuit’s fundamental identity. In order to understand why the Jesuits involved themselves in the eradication of hatred caused by retaliations, vendettas, and other violence related to saving face, this work will first explore the significance of honor in early modern Mediterranean society.

I. HONOR, SHAME, AND “FACE” IN THE MEDITERRANEAN REGION

Building on the work of Erving Goffman (1959; 1963; 1982), which is still considered the surest starting point for a study of the sociological concept of “face,” those working in that field have identified face as the visual representation of the dignity or prestige one has achieved through personal merits or familial rank and the honor that society places on such a rank or merit. The nature of face is complex, involving both individual and societal identities. These identities reflected relationships that designated realities, either actual or perceived, two distinctions that had very blurred, if not non-existent, parameters in early modern society. Face represented the individual person, and for many Mediterranean cultures, a person’s “face” was viewed as the equivalent of the totality of that person, not just an external manifestation of one’s individuality. A contemporary application of this idea of face is Facebook, a digital extension of the perceivable construct

created and preserved by a person for social consumption and relationship. This particular aspect of social media has replaced the *piazza* as the setting for the expression of face and has become the environment for adulation and honor as well as their reverse: ridicule, hazing, and bullying.

The etymology of the word “person” reveals the social implications and connections of persons in a way that we today may not consider. A *persona* was a Greek theater mask used in the great tragedies such as those of Euripides, Aeschylus, and Sophocles, to identify character types. Those familiar with the television series *Gunsmoke* would know the stereotypes presented of the hero, the humorous sidekick, the wise old man, and the kind-hearted woman in the characters of Matt, Festus, Doc, and Miss Kitty. In the case of *Gunsmoke*, the audience understood each role by means of a character’s persona reflected by clear externals such as white hats, black hats, gestures, and facial physiognomy (Stark, 1997). By means of this familiarity of persona, the plot could move forward without excessive explanation of how each character would act.

An analogous situation occurred in Mediterranean society when society itself depended on an individual’s persona to enable the currency of social interaction and understanding. For this reason, the concepts of both face and honor preservation existed as important aspects of both Mediterranean and early modern society. One’s persona, or face, provided the means of social currency; its devaluation, not surprisingly, was met with the dual response of hatred and violence. An example of this comes from autobiographical writings of one of the first recruits to the companions of Ignatius, which would become the Jesuit order. This incident, described in *The Confessions of Pedro Ribadeneria*, occurred sometime during the academic year 1539-1540:

[O]ne night it happened that I was in the papal palace along with the pages of Cardinal Farnese. The Pope was giving a big party for all the members of the Farnese family. While I was in the same room with several cardinals and gentlemen, because of an insult given me by another gentleman’s page, I gave the boy a hard slap, and then hit him with the candlestick I was holding. (1920/1923, p. 7)

The collective society, the community, existed as both actors and audience in a complex theater of life where, particularly for Catholic Mediterranean countries, one played out both societal expectations and eternal salvation before God and others.

The importance of acting, masks, and social performance was not lost on those who lived in the early modern period and who viewed human activity as analogous to acting out a performance on stage. Shakespeare’s Antonio in *The Merchant of Venice* (Act I, Scene I) and Jacque in *As You*

Like It (Act II, Scene VII) both expressed the commonly held belief that the stage and acting provided the best allegory for human society. This analogy held importance in Mediterranean cultures with their emphases on honor, shame, vengeance, and vendetta (Burke 1987a; Burke 1987b; Blok, 1981; Bryson, 1935; Peristiany, 1965; Martinnes, 1972; Busquet, 1994). Persons viewed the world as a stage and created a specific urban setting, the piazza, as the platform for human performance. Some of these piazzas were actually designed to look like a stage set, as in the case of the urban setting in front of the church of St. Ignatius of Rome designed by Filippo Raguzzi in 1728. To further the performance's success, persons indulged in conspicuous consumption involving costumes and carriages as props to both appropriate and advance the theatrical nature of life (Lotz, 1973). Questioning honor or, even worse, doing something against honor was equivalent to assassination since such actions disabled or even terminated social interaction. That hatred would result, as illustrated in the case of Pedro Ribadeneria, should come as no surprise. Shakespeare sets the stage for such a conflict in the prologue of *Romeo and Juliet* where he notes the "continuance of [the] parents' rage" of the "pair of star-cross'd lovers" as evidence of the "ancient grudge" that existed between the two families (Prologue). In early modern Europe, evidence of hatred usually indicated a breach in relationships and absence of hatred indicated the possibility or even the reality of peace. Again, we may turn to Shakespeare, noting how *The Tempest* concludes with the eradication of hatred and vengeance evidenced by the presence of peace and reconciliation between the major characters (Act V, Scene I).

Whereas Shakespeare employed the dramatic conventions of magic, illusion, and mistaken identity to advance the eradication of hate as well as to demonstrate the consequences of hatred, these literary works only provided *dramatic* catharsis as a means by which animosity could be eliminated within families and communities. That hatred needed to be eradicated was obvious, but the means to attain that goal were not often apparent. With a lack of viable juridical structures to resolve the more complex questions of honor, angered parties often chose vendetta and violence, which only created a trajectory for further violence and escalating hatred and civil strife. This article will demonstrate how it was that, amidst this cauldron of heaped-up hatreds within European societies, the Jesuits offered both personal advice and the implementation of structures to resolve such problems. It is to the Society of Jesus, the Jesuits, and to the structures that this religious order created to eradicate hatred that we now turn.

II. THE SOCIETY OF JESUS AND THE WORK OF PEACEMAKING

Ignatius of Loyola founded the Society of Jesus, which received official approval by the Church in 1540 (Bangert, 1972; O'Malley, 1993; Ganss, 1991). Although many consider the efforts of the Society to be extensions of "Counter Reform"—that is, a direct rebuttal of Protestant thought—this in fact was not the case, as James D. Tracy argues in *Europe's Reformations: 1450-1650* (1999). The *Formula of the Institute*, the document that Ignatius composed, Pope Paul III approved, and which the Society of Jesus considered as its formative identity, states the following concerning the order's purpose:

He is a member of a Society founded chiefly for this purpose: to strive especially for the defense and propagation of the faith and for the progress of souls in Christian life and doctrine, by means of public preaching, lectures, and any other ministration whatsoever of the word of God, and further by means of the Spiritual Exercises, the education of children and unlettered persons in Christianity, and the spiritual consolation of Christ's faithful through hearing confessions and administering the other sacraments. Moreover, this Society should show itself no less useful in reconciling the estranged, in holily assisting and serving those who are found in prisons or hospitals and indeed in performing any other works of charity, according to what will seem expedient for the glory of God and the common good. (Ganss, 1970, p. 66)

The *Formula of the Institute* laid out the fundamental goal for the Society of Jesus as the "propagation of the faith and for the progress of souls in Christian life and doctrine" and then established a litany of possible means to achieve this end. The *Formula of the Institute* also empowered the superior general and his advisors to compose constitutions that would clarify the best means to achieve this fundamental purpose of the Society (Ganss, 1970, p. 67). These *Constitutions* were written by Ignatius and officially approved after his death in 1558. The *Formula of the Institute* and *Constitutions* supplied the Jesuits with the fundamental goal of the order and suggested means to achieve that purpose. Both the *Formula of the Institute* and the *Constitutions* identified efforts toward establishing peace and the eradication of hatred as an important work of the Society. The *Formula* saw "reconciling the estranged" as one of the ways in which the Society of Jesus could promote its ultimate goal, and the *Constitutions* provided specific admonitions for settlements that should be avoided, such as lawsuits and acting as witnesses, that would engender dislike toward the Society (Ganss, 1970, p. 264). The *Constitutions* reiterated the advice found in the *Formula* with its recommendation to assist in the "reconcilia-

tion of the disaffected. . . both by their personal work and by getting others to do it” (Ganss, 1970, p. 283). The Eternal City provided more than ample opportunities for the eradication of hatred. The frequency of violence caused by hatreds was identified by the commission created by Pope Paul III in 1537 charged with the detecting the ills that affected the Church. Among the many issues cited by the Commission, one was the “hate and enmity between private citizens.” As a solution, the Commission recommended that “native Romans should be appointed to settle all quarrels and reconcile the citizens with each other” (Gleason, 1981, p. 99).

III. INDIVIDUAL EFFORTS TOWARD PEACEMAKING: IGNATIUS AND OTHER JESUITS

Pope Paul III officially recognized the Society of Jesus in 1540, three years after the submission of the Commission’s report. It seems that the Jesuits took the recommendation to heart with their efforts at reconciling the disaffected, a service that became a well-known personal work of the Jesuits and in particular of St. Ignatius. As described by Cándido de Dalmases, S.J., Ignatius established a residence for the *malmaritate* (“badly married”) as a type of half-way house in hopes that there could be reconciliation between husband and wife (1985, p. 181). In one of his few departures from the city of Rome after being elected superior general in 1541, Ignatius went to Naples on March 2, 1552 in an attempt to reconcile Joan of Aragon and her husband Ascanius Colona. Likewise, he attempted to resolve a family misunderstanding with the Crescenzi family in 1544 (Young, 1959). All the families involved were either related to popes, kings, or both, and settling marital disputes and family squabbles would be similar today to diplomatic attempts to prevent outright war among nations.

Ignatius found the practice of dueling as a means of conflict resolution to end hatred to be particularly abhorrent. When Ignatius had heard that two Portuguese brothers in Rome had killed their challengers, he wrote to the Jesuit James Miron, a Jesuit working in Portugal at the time, and asked him to petition the King to strengthen the edicts against dueling. In his letter, Ignatius played on the important idea of honor by advising that the king should refute the effect of the duel by imputing dishonor and shame upon those who participated in such an action. In addition, Ignatius also advised that the king appoint four prominent men who could settle disputes that arise from dishonor (Young, 1959).

Ignatius’ first companions also engaged in activities that encouraged the eradication of hatred. Juan Polanco, in his record of Jesuit activity of the first 30 years of the order’s existence, recorded the experiences of a

Jesuit preacher, Fr. Landini, who was sent to the village of Corregio and recorded the extreme nature of the violence caused by hatred:

The vendettas in that place were so many that forty-five people, three of them priests, had been killed; armed men came right up to the altar. (Donnelly, 2006, p. 109) Thanks to his preaching, Fr. Landini created a peace or a *pace* between warring factions; both sides agreed to comply with his conditions for cementing a lasting peace. Other Jesuits were equally active in negotiating peaceful resolutions to conflicts in Faenza and Modena among factions within these cities (Donnelly, 2006, p. 189). Marital strife provided a field for reconciliation, as seen in the case of Antonio Araroz, a Jesuit who settled a domestic dispute between the duke and duchess of Calabria. Religious houses benefited from the Jesuit intervention as well, as illustrated in the work of Laínez, who negotiated a *pace* between the Benedictines and the diocesan clergy in Monreale. As difficult as it is to imagine, squabbles even actually occurred among professors; this previously unheard of event arose at the University of Ingolstadt in 1550. Jesuits living there were called to establish a *pace* between the opposing camps within the University (O'Malley, 1993). Unfortunately, the specific nature of many of these disputes is unknown. These records of peacemaking represent negotiations that required secrecy and confidentiality so as to assure success and their specific details were, alas, kept from the records. If they were recorded, these works were often destroyed. These records are similar to Jesuit reports that indicated the number of persons going to confession but with no specifics kept concerning the sin. Since reconciliation frequently involved behavior that could be considered sinful, confidentiality was expected and presumed.

IV. THE USE OF GROUPS AS MEANS OF SOCIAL AND RELIGIOUS REFORM

The preceding examples identified the implementation of the *Constitutions'* recommendation that Jesuits, "by their personal work," could reconcile the disaffected. Those same *Constitutions* identified how "getting others" to do this work was a viable option as well, a means that Ignatius advised in his recommendation to the king of Portugal. This advice of "getting others" to do an important work was followed by the Jesuit Giovanni Tellier when he created the *Carcerati* Confraternity (Black, 1989). Tellier established this confraternity in 1575 to help support the sacramental and temporal needs of those in prisons (Paglia, 1978; 1980). How the Jesuits "got others" to advance the work of eradicating hatred caused by assaults against honor recalls another group structure, that of the establishment and progress of the Marian Congregations.

In 1563, Jesuit Jean Leunis, a teacher of grammar of the lower classes

at the Roman College, gathered several students so as to further promote the fundamental goals of the Society of Jesus: the progress of souls in Christian life and doctrine. According to a contemporary house history of the Roman College, these young men, about the age of twelve, went to confession every week, received communion once a month, attended daily Mass, recited daily prayers, and served the poor (Polanco, 1916, p. 470). Although a Jesuit served as moderator, strong lay leadership occurred with the election of a prefect and twelve subsequent lesser officials. Since fervor often outruns discretion, especially among college students, it was not surprising that the Jesuit director limited the amount of time spent serving the poor in hospital visits. Contact with the sick was risky business, as evidenced in the case of Aloysius Gonzaga, a young Jesuit student at the Roman College who died while assisting the sick in 1591.

Just as other Jesuit schools were established and modeled on the Roman college (founded in 1551), so too did these schools create groups similar to the one established by Jean Leunis in 1563. The success of this organization encouraged its continuity and historians have identified these organizations as one of the primary means used by the Jesuits to advance reform (Châtellier, 1989; Lazar, 2005; Maher, 2002). As these young men matured and graduated, similar groups were founded for former students who now had positions of authority and responsibility within the city of Rome. On December 5, 1584, Pope Gregory XIII recognized the Jesuits of the Roman College as the directors of a system modeled on the first “gathering” or Congregation that had begun in 1563. This organization would serve as the model and a type of central office for all other groups established in imitation of the first Congregation. These became known as the Congregations of the Blessed Virgin, or the Marian Congregations, since the first group was dedicated to Mary’s Annunciation, the dedicatory title of the school’s chapel. Graduates of Jesuit schools, who first experienced congregation membership in a collegiate setting, desired to continue to participate in congregation life and so established congregations under Jesuit direction. Soon congregations were established of men from different classes who perhaps had no connection with a Jesuit school but still sought out membership as a means of spiritual advancement.

Cities in Europe and Asia counted several congregations comprised of nobility, merchants, and artisans, in addition to those of students. Members of these post-collegiate congregations were older and more experienced, with skills, money, and connections to civic or religious power; therefore, they had the potential for a greater impact on the community (Maher, 2002). The religious formation provided by the Jesuit directors of these congregations, combined with the members’ talents, connections, and fiscal resources, made these congregations one of if not the most influential

means to advance Catholic reform and the Jesuit means to that reform, as persuasively argued by Louis Châtellier (1989) in *Europe of the Devout: The Catholic Reformation and the Formation of a New Society*. A study of the Congregation of the Assumption located at the mother church of the Jesuits in Rome allows for a more detailed analysis of the structures created for establishing peace within the city of Rome. Pope Paul III had indicated Rome's serious need for assistance in eradicating the feuds and vendettas that were the cause of so much hatred and the social instability that ensued. The Commission he had appointed demanded a solution, which soon came in the form of the establishment of a group by the Society of Jesus in Rome for advancing religious reform and social harmony.

V. THE CONGREGATION OF THE NOBLES AND THE STRUCTURES USED FOR ERADICATION OF HATRED AND THE ESTABLISHMENT OF PEACE

In 1593, the Jesuits established a congregation of gentlemen and prelates dedicated to Mary, known as the Congregation of the Assumption (*Archivium Romanum Societatis Iesu (ARSI)*; *Annale della Casa (Annale, 1593)*). A house history describing the activities of the order's principal church, *Il Gesù*, noted the founding of this Congregation dedicated to Mary's Assumption and its status as aggregated to the Marian Congregation system. The membership provides a clue to its potential abilities (*Annale, 1593, 242r*). The group embraced a higher social class of Romans. Of the initial fifty members, thirty-four percent were either on their way or already had earned membership in the *Referendario delle due Segnature*, which required doctorates in both canon and civil law—the surest step to power and influence in Rome. The social composition of this congregation soon evolved to membership in the highest ranks of Roman society. By the writing of the 1629 *Regole*, those admitted had to supply information identifying their noble status. By this time, the group was known by its more common name, the Congregation of the Nobles. This insistence on the clarification of nobility reflects a trend in the Latin West, which saw an increasing division of social class, rank, and status (Scott, 1995). The very existence of a congregation of nobles designates the importance of honor and rank and likewise indicates the volatile nature of 17th century Rome, a place where honor required recognition and the denial of honor could and did lead to violence.

The first *Regole* of the Congregation of the Assumption, composed in 1593, identified one of its primary goals as negotiating peaceful settlements, *far le paci* [*Archivio de' Nobili del Gesù (ANG)*, Vol. XIX (*Gesti*), p. 5]. A house history of *Il Gesù* confirmed this practice when it noted how

members established peace among discordant factions (*il metter'paci fra discordi*) by the use of noble and titled persons (*nobili e titolate*) who were instrumental in stopping the shedding of blood (*spargimento di sangue*). The diary of the Congregation notes various successes but unfortunately did not record specific details of the disputes. For example, the entry for January 6, 1594 recorded how the *fratelli* of the Congregation created a *pace* within the household of Cardinal Girolamo Mattei. A month later, a peace was negotiated between two Roman gentlemen (*Gesti*, p. 23).

The Rule of 1593 quickly became outdated in relation to the importance of peacemaking, and the demands of this work soon required a more developed system for monitoring and establishing *pace* within the city. In August 1594, the officers of the Congregation decided that a member of the Congregation would supervise each of the thirteen *rioni*, or districts that comprised the city of Rome. According to these directives, each supervisor was to be in conversation with the pastors of the parish within his *rione* and would offer the services of the Congregation if a conflict within a parish required a *pace*. Many of these supervisors came from titled or influential families and held positions of power within the government, both civil and ecclesiastical. This assignment of well-placed persons certainly followed Ignatius' recommendation that prominent men be delegated as arbitrators in situations of conflict. Likewise, the establishment of these supervisors followed the advice given to Pope Paul III by the select committee for the reform of the Church. The diaries of the Congregation record some of the causes of discord and hate. In one entry, the secretary noted how "injurious words" occurred and resolution and restitution of *honore* would have depended upon the death of many persons if a *pace* had not been negotiated (*Gesti*, 4v). Another entry notes a *pace* that occurred between persons who lived in the *rione* of Ripetta near the Piazza del Popolo. One man claimed that another man hit him with a stick (*bastonate*). A notary of the same *rione*, assisted by a member of the congregation, eventually drew up (*rogare*) a *pace* between the two men. Although the records do not indicate the details of this *pace*, a peaceful resolution would require a careful enumeration of what would satisfy the aggrieved parties and assurance that these requirements would be fulfilled.

Peacemaking continued to be an important work of the Congregation, as reiterated in the Rule composed in 1629 with its identification of the creation of peace "among enemies" and the mitigation of discord as one of its particular and proper works. By this time, the method used to establish *pace* within the city had evolved into a more detailed and centralized system. According to the 1629 Rule, three different officials were involved in creating peace: the secretary of the peace, the visitors for each of the *rioni*, and those who were deputed to devise a peaceful resolution. The

Segretario delle paci acted as a type of clearinghouse for all the matters entailed in coordinating the efforts between the diocesan pastors and members of the Congregation (*Regole*, 1629 p. 37-39). The *segretario* maintained a list of all the pastors within the Roman diocese, and this office required that each *rioni* have an effective visitor, a man who maintained conversations with the pastors concerning outbreaks of conflicts within their respective parishes. According to the 1629 Rules, the secretary was to record all pertinent information in a book: the names of the persons involved in the conflict, who in the congregation established the *pace*, the reasons for the conflict, and the progress of the negotiations, as well as how the whole affair was terminated. Unfortunately, this book has never been found, and the requirements of secrecy and possible volatility of such information perhaps explains its regrettable disappearance from the archives.

In order to keep the information flowing between the secretary of the peace and the officials delegated to negotiate specific reconciliations, the Rule required *visitatori*, one for each *rioni*, who reported to the secretary of the peace (*Regole*, 1629, p. 39-43). These *visitatori* worked with the pastors of the diocese with “respect and submission,” offering the assistance of the Congregation when needed. Once a month, the *visitatori* surveyed the parishes and questioned the pastors concerning incidents of hatred that could lead to violence. After his visitation, the visitor wrote out on paper that he had made his monthly visitation at every parish within his *rione* and reported to the *Segretario delle paci* either that there were no conflicts within a parish, or gave an account of how these conflicts were being resolved (*Regole*, 1629, p. 42).

The actual work of negotiating a *pace* was done by another set of officials within the Congregation: the peacemakers or the *paciatori* (*Regole*, 1629, p. 43-48). The 1629 Rule noted the difficulty of establishing peace and reminds those who undertake this effort that great patience is required. The third Rule for the *paciatori* reads like any modern recommendation for conflict resolution when it advises that the task of peacemaking would not be accomplished in one visit and that peacemakers would frequently come across obstacles and difficulties. Not all parish conflicts were the domain of the *paciatori*, however. The Rule mandated that all conflicts involving only women, between husband and wife, or dealing with civil litigation were to be avoided. Members of the Congregation of course would not involve themselves in any matter that required sacramental confession. Before a negotiated settlement could proceed, the peacemaker involved was to discuss the matter with the secretary of the peace who would in turn review the matter with the Jesuit director of the Congregation. The final rule cautions the *paciatori* that these works were to be done in secrecy, and that information was not to be revealed to the other members of the congre-

gation unless necessary. Perhaps for this reason those records that recorded the particulars of a *pace* have disappeared.

VI. OTHER JESUIT-DIRECTED CONGREGATIONS AND THEIR ROLE IN THE ERADICATION OF HATRED

The *Formula of the Institute* identified the importance of reconciliation of the estranged and the promotion of consolation. These efforts and structures of peace-making identify one specific means used by the Society of Jesus, by way of its congregations, to advance these goals. The powerful and the influential who comprised the Congregation of the Nobles were better equipped for negotiating peaceful resolutions, and the Jesuits saw in this group a viable means to a desired end. However, the Society of Jesus expected other congregations that they had established in Rome to work toward the eradication of hatred as well. One of these groups was a congregation of merchants under the dedicatory title of Mary's Nativity (in Italian: *Natività della Madonna*), established by the Jesuits at the Church of the *Gesù* in Rome in 1594 [*Annale*, 1593, f. 263r; (*ARSI*, 1594, Rom. 127, Vol. II ff. 265-288v)]. This congregation's wider spiritual outreach included caring for the sick in hospitals, visiting and feeding prisoners, and "making peace not only among the brothers of the Congregation, but among others has been described by the Congregation of the Nobles" (*Annale*, 1593, 243r).

Although the Merchant's Congregation did not establish such a carefully worked out system for the eradication of hatred as the Congregation of Nobles, the 1657 Rule of the Congregation required its members to love and respect each other, and, if conflict arose, to inform the Jesuit director of the Congregation (*Regole*, 1657, p. 8). Jesuits kept journals or "house histories," and these records provide fascinating glimpses into the daily life and the workings of Jesuit ministries. One of these house histories records how participation in the Congregation of the Merchants helped eradicate hatred and lack of membership led to domestic strife.

According to this house history, on the day of a meeting of the Merchant's Congregation, one of the members received an image of a guardian angel from the father director. Upon arriving home he attached the image to the wall over his bed. During the night he awoke from his sleep and did not find his wife. He got out of bed, went to another room, and found her *in flagranti delicto*. The other man (*adultero*) had fled and left the woman behind, and the enraged husband was about to strike his wife, who expected to be killed (*aspettando la morte*). Instead, the husband caught sight of the image of the guardian angel and decided to forgive her. Whereas the eradication of hatred and subsequent violence came about by

participation in the Merchant's Congregation, absence from participation led to domestic strife. This same history notes that because a husband did not attend the Congregation's meetings, he fell into sin with a serving girl and impregnated her, this to the great sorrow of his wife. The records fail to indicate what occurred at this home, but the moral was clear: membership and participation in Congregation life leads to reconciliation. Although these stories did not involve a structured *pace* as instituted by the Nobles' Congregation, both narratives identify membership as consequential for either eradicating or causing hatred.

Other Congregations established by the Jesuits encouraged their membership to eradicate hatred and work for the establishment of peace. Although the Congregation of the *Buona Morte*—a Congregation established to provide spiritual guidance and recommendations for charitable works so as to calm the conscience in one's approach to death and judgment—was not an affiliate of the Congregations established at the Roman College, this Congregation likewise admonished its members that they were to be advocates of peace. One Rule, composed in 1795, notes the presence of *pacieri* and *paciere*, male and female peacemakers among the officials of the Congregation (*Congregazione Delle Congregazioni Della Buona Morte*, p. 184).

CONCLUSION

These and other examples indicate how the Jesuits worked to eradicate hatred by means of establishing peace. Although the actual compromises and resolutions that were negotiated were secret and thus cannot be studied more closely, it is clear that the presence of these various congregations and their methods of restoring peace indicate a means by which the Jesuits worked toward restoring honor and avoiding violence. Jesuits worked in the early modern period to eradicate hate by establishing both personal involvement and elaborate structures to assure Christ's gift of peace within the community. Although these archival reports demand a careful reading, some success in eradicating hatred caused by both individual efforts and organized ones seem to have generated some success in establishing peace. Perhaps we can find in these Jesuit attempts toward the eradication of hatred the first efforts within the early modern period at arbitration and mediation by non-legal entities. The use of extant power structures that relied on honor and status, and not necessarily on legal structure, provided an interesting alternative to legal alternatives, a route which the rather full civil court archives indicate was a well-trodden path. An important aspect of this eradication of hatred involved lay leadership and direct action of the laity. The presence of these groups demonstrate the important role played

by the laity played in the eradication of hatred, as well as a dependency of the Society of Jesus on these same lay leaders to advance the work of peacemaking.

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FILM REVIEW

S. Leo Chiang's *Mr. Cao Goes to Washington*

[Walking Iris Media, 2012. 72 minutes]

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THE DOWNFALL OF AN IDEALIST IN THE FACE OF PARTISANSHIP

S. Leo Chiang's documentary-biopic, *Mr. Cao Goes to Washington*, opens in New Orleans in 2010 as Joseph Cao closes out his two years in the U.S. House of Representatives and hopes desperately but doubtfully for re-election—a situation Cao likens to “waiting to see a dentist before you get your teeth pulled out.” Part character study and part exposé of the current state of partisan politics in Congress, the film tells the story of Cao's 2008 victory—the biggest upset of the 2008 Congressional elections—and his two years of service. During his term, Congressman Cao goes from enthusiastic idealist to a man whose face registers the alarm of one who has mistakenly but irreversibly offered himself up to the machinations of a sadistic dentist.

Mr. Cao has known disappointment prior to his foray into politics. As a younger man, Cao joined the seminary fueled by the fervent belief that membership would position him to effectively “alleviate human suffering.” Six years in the Society of Jesus left him feeling “impatient,” he explains—the blighted world remained indifferent to his faithful efforts. Cao then answers another calling, this time to political office in which he believes a genuine public servant could more swiftly bring about change.

The titular analogy to Mr. Smith of Frank Capra's 1939 academy-award winning drama, *Mr. Smith Goes to Washington*, seems obvious. Chiang's camera records close-ups of Mr. Cao's face in its trajectory from a repository of enthusiasm and naiveté (still intact subsequent Cao's disenchantment with the priesthood) to a manifestation of a brand of disillusionment unique to the gap between what American democracy promises and what it practices. Yet the allusion proves more layered as the film triangulates race, class, and partisan politics in 21st-century America. While Capra's fictional idealist, Jefferson Smith, is appointed to a vacant seat in the U.S. Senate on a lark, Joseph Cao—member of the Republican Party and the small Vietnamese American community of New Orleans—is elected over an African American democratic incumbent by the mostly

African American and Democrat constituents of Louisiana's Second District. Cao is the first Vietnamese American Congressman and the first Republican elected by this district in more than a century. News clips and interviews with Second District constituents reveal that circumstance—the corruption of the nine-term incumbent, William Jefferson, had become evident with the discovery of \$90,000 cash in his freezer—prompts voters to either abstain on election day or take a chance that Cao is sincere in his pledge to loyally represent the post-Katrina needs and desires of the district.

Chiang's portrayal of Cao explores the ways in which the Vietnamese immigrant—"survivor of the fall of Saigon" as one newscaster describes him—however idealistic or naïve, might actually be uniquely situated to embody the refreshing possibility of utilizing a seat in Congress to transcend partisanship and give voice to one of the most severely disenfranchised communities in the country.

For viewers, perhaps especially those whose voting records reflect constituents' records in Louisiana's Second District, the film highlights a handful of dramatic moments that speak to the rhetorical and political possibilities of Congressman Cao's exceptional positioning. In an address to a gathering of Young Republicans, Mr. Cao implores the sea of nonplussed white faces: "There are 178 members of Congress who are Republican and guess how many are nonwhite? One. You're looking at him. So—we have to be a party of diversity that reflects the American melting pot."

Elsewhere in the film, through his swift response to the catastrophic British Petroleum Oil Spill, Cao demonstrates an authentic understanding of the lives and livelihoods of those working in the Louisiana fishing industry. He chides BP corporate executives, noting "[t]he clean-up process has been a disgrace" and that "the claims process has been dismal." Cao follows this indictment with the harsh assertion that, instead of requesting the executives' resignations, it would have been more fitting to use a Samurai-era approach where "we would give you a knife and ask you to commit hari-kari," he explains.

These moments, along with Cao's initial support of President Obama's health care plan, are incredibly satisfying to his constituents as well as to American filmgoers poised to embrace any sign of bipartisan cooperation or thinking in the House. As it turns out, however, Cao's congressional career hinges upon what U.S. citizens have tended to either celebrate or demonize as "Obamacare." Thus, Cao's unlikely triumph of the 2008 election disintegrates into a sort of double tragedy at the intersection of the personal and the political by 2010.

Having lost all Republican backing as a result of going rogue as the only Republican to vote for President Obama's health care plan, Cao decides to vote against it in the second round—citing his Roman Catholic

opposition to abortion as the primary reason. Cao's about-face comes as a disappointment, especially after the clear explanation Cao gives in defense of his controversial first vote for "Obamacare": simply, it was the "right thing to do for [his] district." President Obama and Second District voters alike conclude that Cao could have been the right person to represent New Orleans, but that it is impossible as long as he is with "the wrong party."

The film concludes with the camera still lingering on Joseph Cao's contemplative and now even more bewildered face. Having lost his father with whom he was able to spend very little time in his last days, as well as having lost the 2010 congressional election to Cedric Richmond—a candidate Obama endorses but Cao considers a morally unworthy opponent—Cao looms in Chiang's camera as the ultimate lost innocent. In two years, Mr. Cao became a dismayed fatherless son set adrift once again, but this time without a new calling to reset the path he had so eagerly and doggedly forged toward the lofty goal of saving the world through honest, whole-hearted public service.

Unexpectedly, viewers—even those who, like me, imagine themselves either too jaded or too sophisticated to get emotionally caught up in an updated rendition of Capra's *Mr. Smith*—discovered that we, too, have lost something. And, worse, recent goings-on in Washington demonstrate that we are not going to get those losses back. Likewise, viewers walk away with a sense of Cao's exceptional, if brief, rise and fall, but also with the unfortunate understanding that the camera is not likely to be pointed on "the accidental Congressman" again anytime soon.

BOOK REVIEW

Joseph G. Bock's *The Technology of Nonviolence: Social Media and Violence Prevention*

[Cambridge, MA: MIT Press., 2012. 304 pp. \$32.00]

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In the wake of the 2009-2012 Arab Spring protests—the first large-scale wave of Arab demonstrations in the Internet age—many pondered the significance of the use of Information and Communication Technology (ICT) in the movement. While the actual impact of technology in the Arab Spring is contested (Morozov, 2012), we can nevertheless tentatively note that the examples of technology being used throughout the Arab Spring are at the very least compelling for the field of peacebuilding, including violence prevention. In this unique cultural and technological contemporary moment, scholars who study violence should be asking themselves: in socially and politically tumultuous places, can technology predict or even be used to prevent violence?

Joseph G. Bock, Director of Global Health Training and Teaching Professor in the Eck Institute for Global Health, presents tempered and nuanced approaches to this question with *The Technology of Nonviolence: Social Media and Violence Prevention* (2012). Bock writes that the young protestors in the Arab Spring “did not simply step into a civic vacuum using social media to overthrow the dictators. They were organized. They had a sophisticated strategy, developed over a period of years” (p. xv). In other words, while Arab Spring demonstrators united through social media and crowdsourcing to stifle violent outbreaks, they did so while utilizing a critical synthesis of “grassroots organizing in combination with crowdsourcing techniques” (p. xv).

In this way, Bock recognizes that technology alone will not solve all the problems of violence and violence prevention in communities across the world. Bock maintains that advances in technology are potentially useful and can lead to creative violence prevention efforts when combined with strategic organizing, and that no matter what kind of technological advances are available, “a central feature of a successful violence prevention strategy is the support of *local capacity* to respond quickly and effectively when tensions begin to escalate” (p. 13, italics added). In any community where

strategic violence prevention is sought, Bock argues, the local community plays a key role as a resource for early warning and early response to violence.

Bock is primarily responding to a field that for the longest time has advocated “top-down” violence prevention efforts that involve top-level leaders or even international outsiders. Bock writes that these efforts have a “disappointing record” (p. xiii). However, to swing the pendulum the other way and advocate for primarily grassroots violence prevention is just as dangerous. Instead, Bock puts forth a compelling case of transitioning to what he calls a “middle-out” approach that links grassroots violence prevention efforts “with moderate leaders at the middle and top levels of political, civic, and religious leadership” (p. xiii). This is where technology enters. Bock writes that current technological trends in violence prevention, such as crowdsourcing and GPS software, have been encouraging. And, he writes, “while these technologies can be extremely helpful, we are learning that they are most effective if combined with sophisticated strategies and effective organizing” (p. xiii).

For example, Bock’s research suggests that crowdsourcing, a data-collection approach that allows volunteer observers to identify and report events of violence, is best coupled with people “on the ground,” or rather, a cadre of people who know how to get reliable information (what Bock calls “sourcing”) and to disseminate that information discretely (“feeding”). Bock suggests that “*bounded crowdsourcing*” (crowdsourcing through a trusted network of trained individuals as well as the crowd), “*bounded crowd feeding*” (disseminating warnings back to the trained individuals and the crowd), and “*restricted feeding*” (disseminating warnings only to specific individuals, volunteers, or trusted officials) are all better and more efficient approaches than “crowdsourcing” by itself. In other words, Bock writes, “training people still matters. Organizing still matters. Strategy still matters” (p. xiv). Bock thus issues a call for a critical synthesis of innovative technological efforts and strategic violence prevention theories.

Bock, whose Ph.D. is in International Relations and specialty is violence prevention, a subfield of global health, grounds the book in theories of violence prevention from a social scientific perspective. Bock writes that early warning and early response for violence prevention involves three main activities: collecting information, analyzing it over time, and conveying warnings to those who can adequately take action (p. 37). Bock seeks to develop an applied theory of violence prevention by utilizing a range of analytical theories that has the following dimensions: “underlying conditions, time and space considerations, pathological social-psychological processes, and ‘levers’ for impact” (p. 35).

However, Bock also recognizes the limitations of empirical method-

ological approaches to violence prevention (p. 35). Bock instead wants to understand “the usefulness of analytical frameworks and theories,” which is, by and large, a kind of “reflective practice” (p. 35). In other words, Bock differs with others in his field who value “pure social sciences” in favor of an “applied science,” which requires critical reflection to understand “how violence unfolds, how we can detect that it is unfolding, what can be done to stop it, how much time there is to stop it, and who can reasonably be expected to take the actions needed to stop it within that time frame” (p. 35).

Considering Bock’s twelve years of international humanitarian experience during which he oversaw programs in Bosnia, Croatia, Guinea, Iraq, Kosovo, Liberia, Macedonia, Montenegro, Pakistan, Rwanda, Serbia, Sierra Leone, Thailand, and Uganda, one can understand his almost Deweyian pragmatism: “I do not feel researchers and practitioners focused on applied theory and practice need to wait until that research is further along,” he writes, “to design approaches that are useful in preventing the violence causing massive human suffering all over the world” (p. 35). Bock thus employs a pragmatic approach to conflict, citing extensive social scientific research and empirical studies but also referencing the work of social theorists such as Paulo Freire, who calls for a “collective” sense of discovery through respectful dialogue (p. 32).

Having situated himself in this unique methodological arena, Bock analyzes, in subsequent chapters, five different case studies of technologically mediated violence prevention efforts.

“Organizing against Ethnoreligious Violence in Ahmedabad” profiles the humanitarian relief non-governmental organization (NGO) of the Catholic religious order the Society of Jesus called St. Xavier’s Social Services Society. Bock describes St. Xavier’s “low-tech” approach to violence prevention in the slums of Ahmedabad, India, that from 1992-1994 developed a deliberate community outreach program to other slums in Ahmedabad that advocated communal harmony through art contests, songs, and street plays to confront violence ideologically.

“Interrupting Gang Violence in Chicago” profiles the CeaseFire Project, which mobilizes at the community-level by training former gang members to intervene before violence erupts. The project utilizes a social-media virtual reality videogame called “Second Life” to train “violence interrupters” from a distance.

“Counteracting Ethnoreligious Violence in Sri Lanka” profiles an international non-governmental organization (INGO) that engages local and governmental leaders and utilizes a complex set of data collection strategies that cull information from field officers, newspapers, radio and television

stations, and websites in order to issue reports that are dispersed to trusted officials.

“Crowdsourcing during Post-Election Violence in Kenya” profiles Ushahidi, an open source software program developed by a group of journalists in Nairobi that integrates crowdsourcing through geo-coded maps that aggregate text messages, information sent through social media, or email reports of violence in order to warn people at a local level of impending violence.

Finally, “Circumventing Tribal Violence in East Africa” profiles CEWARN, an inter-governmental organization across seven different regions in East Africa that used text messaging and digital mapping, as well as high-frequency radios (due to lack of cell-phone towers) to track conflict in selected regions.

Throughout the case studies, Bock is careful not to valorize one approach over another, for even the non-technological example in Ahmedabad successfully prevented violence through the promotion of cultural harmony (p. 79). Rather, Bock writes that these case studies represent “a quilt of technologies, sewn together by innovative, passionate people trying to make a difference in their communities” (p. 56). Bock notes that preventing violence is a messy business, and no one approach best guarantees success. In fact, approaches are most successful when they stay attuned to a multitude of contingent factors. Thus, Bock’s case studies of how different groups implement technology to prevent violence can help us “learn about the benefits and limits of technology in our attempts to make our troubled world a more peaceful, less violent place” (p. 56). Bock concludes these studies by reflecting that more often than not, politics trumps technology, reminding us, “We must always keep the big—including the political—picture in mind.” However, the challenge of the work should not detract us from the fact that violence prevention at all levels of leadership, from the local to the global, can and has saved lives: “The question is not so much whether technology can be helpful, but what configuration is best in a given circumstance” (p. 203).

Bock suggests that violence prevention technologies are most effective when they are “combined with building trust networks, community organizing, bounded crowd feeding, and restricted crowd feeding at grassroots, middle-, and top-levels of leadership so that early action can be initiated in locations where tensions are acute” (p. 205). He urges us away from a technologically deterministic approach to violence prevention, calling attention instead to the “limits of trend analysis, pattern recognition, and visualization as compared to human induction” (p. 205). For example, Bock writes, “a person in an area of tension, seeing information from different sources, can infer meaning in ways that computers cannot, but computers

can be helpful in pulling disparate information together, showing trends, identifying patterns, and providing summary pictures of complex situations” (p. 205). In other words, we cannot put all our eggs in one nonviolent basket.

Bock’s final recommendation shifts from theoretical and pragmatic advice about effective violence prevention toward a more hopeful plea for more competent leaders. What we need, Bock writes, are all the good things about technology, all the inductive skills of humans, the adequate funding of NGOs and INGOs, and most of all, proper leadership to prevent violence. Competent leaders, Bock writes, have “*credibility* with those who are threatened. They need to be *skilled at negotiation and persuasion*. At least some of them need to have *forceful personalities or charisma*. . . . And the local leaders, as well as those at the middle- and top-levels, must have *compassion*, a certain amount of *moxie*, and, not infrequently, considerable *courage*” (p. 207).

Bock’s skillful synthesis of social scientific methods, critical reflection, primary experience, and public policy creates an intricate and hopeful technological web that situates Bock in a unique interdisciplinary space. His work will be of great use to scholars and activists in the field of peacekeeping and violence prevention, New Media scholars looking for practical application, and even scholars in the field of rhetoric who are interested in the interplay between democracy and technology. Ultimately, Bock posits optimism for a peaceful world with a tempered skepticism of technology. Those interested in doing public or community-based scholarship will heed Bock’s observation that in order for any large-scale initiative to work, the local and situational contexts must be taken into account. Bock writes, “violence prevention at a local level is essential to the success of strategic nonviolence. . . . [I]t is also critical in overcoming the messy, difficult, overwhelming challenges involved in the transformation from oppressive dictatorship to democratic governance” (p. 205).

Perhaps the only unequivocal valorization Bock provides in this book goes toward the human peacekeepers, who, armed with their negotiation skills, walk into situations “marked with uncertainty, thanklessness, and danger, without the assurance, however false that might be, of a gun in their hands” (p. 207).

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