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ELIMINATING INEQUALITY" (PART II)

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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, like Volume 11, focuses primarily on presenting peer-reviewed scholarly articles developed from the selected proceedings of the 3rd 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 12, in particular, shines primary attention on two time-honored areas within Hate Studies, as well as emerging contexts of consideration as the field of Hate Studies becomes increasingly transdisciplinary and globally engaged.

The first area is hate crimes—specifically, who perpetrates them and why, how target populations in the U.S., Canada, and elsewhere experience them, and how these harms might be better addressed and prevented at structural levels. The second area is the ongoing reality of organized hate groups in the U.S. today—including the historic and ideological roots of organized hatred, the psychological and politico-cultural influences behind organized hate group membership and activity today, and the contemporary salience of hate groups in shaping the U.S. immigration debate.

While the disciplines of sociology and criminology are most strongly represented in this volume, they are complimented by contributions from archival historians, global feminists, postcolonial and critical race theorists, and others who bridge the roles of scholar and activist as they draw our attention to matters of structural, cultural, and discursive violence (in some cases physical violence, too) against the women, newcomer populations, and “outsiders within” in nations and regions that struggle, or have recently struggled, with intergroup conflict. Especially valuable in this volume are those articles which present critical perspectives, policy recommendations,

and multifaceted justice strategies as articulated by the targets of hatred, intolerance, and inequality.

About the Present Volume

Volume 12 begins with the conference opening address by Barbara Perry, entitled, “What Communities Want: Recognizing the Needs of Hate Crime Targets.” Perry, who is Professor and Associate Dean of Social Sciences and Humanities at the University of Ontario Institute of Technology, is an internationally recognized expert in hate crimes and ‘critical criminology.’ Perry co-chairs the Advisory Board of the newly-founded International Network for Hate Studies, a group of criminologists, victimologists, legal scholars, and other hate crimes experts located in the United Kingdom, European Union, and Commonwealth Countries. In this article, Perry brings forth representative voices of those individuals-within-communities whom she has engaged over the past 15 years of her field work, conducted primarily in Canada, in order to highlight experience-based concerns and recommendations among the diverse targets of hate crimes. Perry’s contention, which is consistent with both standpoint-based and feminist empiricist theories of knowledge, is that communities themselves, and the individuals who are part of those communities, “know best” not only as to their own experiences but also as to what they want, need, and deserve from the social institutions within a political community that exist to protect to serve interests in health, safety, human rights, and justice. Thus, a hate crimes framework that does not understand the experiences and respond to the concerns of hate crime targets does not adequately serve those individuals and communities, nor indeed the wider multicultural society. In synthesizing the data from countless field interviews and interventions, Perry identifies what she calls “the harms of hate.” She also discusses why political communities must do more to combat hate and stand in solidarity with the targets of hate, and what this means and looks like in practice as informed by the perspectives of those most affected. Perry presents, through their own voices, the intangible needs of hate crimes targets—for recognition, respect, safety, and voice—and several concrete strategies for improvement via community awareness, community empowerment, victim services, and criminal justice reform.

Our next article is also written about and from within the Canadian context. In “Addressing Racial and Hate-Based Discrimination as Experienced by African Immigrants and Refugees in Waterloo Region, Canada,” co-authors Alicja K. Muszynski and Sadia Gassim situate the contemporary experiences of these recent newcomer populations within larger the historic, cultural, and institutional conditions that made Waterloo Region, and much

of Canada, a predominantly White nation that is in the midst of major demographic and social change. National policy measures, including official multiculturalism, formal recognitions of Canada's First Nations, and a pro-immigration agenda, have helped to drive changes in Canada's racial and ethnic demographics. Especially in major metropolitan areas like Toronto and Vancouver but also in smaller cities and nearby regions where the cost of living may be more affordable or where jobs may be more plentiful, formerly predominantly White areas are, in some sense, becoming microcosms of the wider world. Waterloo Region—a tri-cities area of more than 500,00 people that is situated approximately 75 miles southwest of Toronto and 110 northwest of Buffalo—is one such area. However, Muszynski, who is an Associate Professor Emerita and Co-Op Advisor in the University of Waterloo's Department of Sociology and Legal Studies, and Gassim, who is a Ph.D. Candidate in Social Work at Wilfrid Laurier University and the founder of the not-for-profit organization called World Wide Opportunities for Women ("WWOW"), argue that "the public view that multiculturalism is entrenched within Canadian society is not reflected in the experiences of African newcomers." They contend that African immigrants and refugees in Waterloo Region must "face considerable problems and barriers in adjusting to their country of residence" and are "forced to deal with racism in various manifestations as well as hate based discrimination as recurring patterns in their daily lives." Muszynski and Gassim document these problems via firsthand accounts gathered through two research projects and also chronicle how African immigrant community activists and leaders, in particular, are working with social service agencies and providers, public schools, law enforcement, municipal councils, community agencies, and the legal system to combat the problems. Similar to the previous article, Muszynski and Gassim present the voices of the targets of hate (here at a regional level but in ways that implicate wider conditions), some of whom speak critically of apparent limitations in Canada's official definitions of "hate" and "hate crime" and call for revised legal definitions and institutional practices.

Just as we must note that the targets of hate experience hate within a context of institutional, social, and cultural conditions, we must also note that there are various influences and motivations behind the manifestations, and perpetration, of hate such as hate crime, hate speech, hate-based discrimination, organized hate groups, and hate activity. Our next four articles focus on advancing our understanding of these influences and motivations in the contemporary U.S. context—including who commits hate crimes and why, the political and ideological roots of influence to which many American white racist groups may be traced, the contemporary psychological and sociocultural conditions that inform white supremacism,

and the mainstream political activities and influence of some white racist groups today.

At the Third International Conference on Hate Studies, Jack Levin, the Irving and Betty Brudnick Professor of Sociology and Criminology at Northeastern University delivered a keynote lecture entitled “From Thrill to Defensive Hate Crimes: The Impact of September 11, 2001,” which he developed into a brief article for this volume. Professor Levin is a leading authority on how to understand and address hate crimes, as well as domestic terrorism, mass murder, serial killing, and other violence. He has authored or co-authored 30-plus books and more than 150 articles, and he appears frequently in *The New York Times*, *The Boston Globe*, *The Chicago Tribune*, *The Washington Post*, *USA Today*, *The Huffington Post*, and on major television news programs. Here Levin employs the hate crime offender typology he developed with Jack McDevitt (1988) and expanded with McDevitt and Susan Bennett (2002). Levin argues that the motivations and associated factors behind assaultive hate crime fall into four basic types: thrill (e.g., recreation), defense (e.g., protection against a perceived threat), mission (i.e., as driven by psychosis), and retaliation (i.e., retribution or reprisal). Levin finds that assaultive hate crimes committed within the U.S. after September 11, 2001 indicate prominent shifts in motivations and demographics. Namely, whereas before the September 11 attacks most hate crimes were committed by younger white males (either by “dabblers” who were looking for a “thrill” or by members of organized hate groups acting “defensively”), today those who commit such crimes are more likely to be older offenders and the incident is more likely to come “following some threatening event that involved a victim’s group.” In addition, such crimes have been “less likely to be committed by multiple offenders and more likely to occur on the East Coast,” with a motivation that is traceable to “racial, ethnic, linguistic, religious, and sexual minority status and major political or legal events that were supportive of such minority status.” Levin situates his findings within a wider sociopolitical and cultural climate of xenophobia, religious intolerance, anti-immigrant animus, backlash against the election of President Barack Obama, advances in LGBT equality rights, and a kind of “culture of meanness” that revels in humiliation and shaming. Like other authors in this volume and in Volume 11 too, Levin sees such behaviors within the context of social change. White anti-government backlash and political organizing to combat perceived losses of socio-economic status, cultural identity, and political power can be seen as examples.

Our next article comes to us from Alon Milwicki, a Doctoral Candidate in History at American University who received a Graduate Student Research Award from the Gonzaga Institute for Hate Studies in 2012-13.

In “Baptizing Nazism: An Analysis of the Religious Roots of American Neo-Nazism.” Milwicki seeks to provide a corrective to the existing literature on American Neo-Nazism by tracing the theological and religious-organizational influence of the Reverend Dr. Wesley Albert Swift, whom he contends “was central to the coalition of religious and militant white nationalist organizations that spread nationwide in the post-World War II period.” Drawing on declassified FBI records, Swift’s writings and sermons, the writings of Swift’s followers and predecessors, and the secondary literature on the evolution of America’s radical racist Right, Milwicki contends that there were “darker, conflictual and even violent strains of religious revival” in the post-War era, and that Swift’s influence upon American Neo-Nazism was not solely political and ideological; it was ultimately theological. Swift’s influence in the development of Christian Identity provided a “ready-made system of values and organizational tenets to the various white power and neo-Nazi organizations” in the post-War era as this belief system “emerged in direct opposition to the Judeo-Christian tradition.” Milwicki argues that Swift gave the movement a theological basis that is “starkly different from and considerably more malleable than modern American Nazism.” Although chief manifestations of Swift’s influence, such as the Church of Jesus Christ Christian and the Aryan Nations (which were led by the deceased Richard Girnt Butler) have been defunct for more than a decade, Milwicki concludes that it remains important to the field of Hate Studies to better understand Swift’s influence on American Neo-Nazism toward understanding how widespread and influential the movement once was, why it continues to exist today, and why it has been so adaptable.

Of course, white supremacy as an ideology and worldview need not be expressed or supported through theological appeals and religiously-presented manifestations. It can also be expressed or supported through secular modes and mechanisms, in ways that similarly involve psychological, normative, political, and cultural factors and appeal narratively to notions of ancestry, genealogy, place, tradition, identity, power, and authority. Our next two pieces, both of which are co-authored, take closer looks at such aspects of organized white racism.

In “Fighting for the Right to Be White: A Case Study in White Racial Identity” Dianne Dentice and David Bugg discuss their findings and recommendations for further research as based on their engagement with a sample of people who are all affiliated with the white supremacist movement. Dentice and Bugg look at how these individuals assign meaning and normative significance to “whiteness,” white culture, and white ethnicity—specifically as pointing to things that are biologically and culturally real, intrinsically good, under attack, and needing protection and preservation from specifi-

cally racial threats (both internal and external). Drawing upon three sources—interviews with members of “White Revolution,” a neo-Nazi organization once led by Billy Roper that has since disbanded, participation in an online survey with discussants on the white nationalist website *Stormfront.org*, and field interviews conducted with affiliates of an Arkansas-based Christian Identity ministry and the Knights Party Klan—this article provides insights into the worldviews and mindsets of a marginal and in some ways stigmatized population in an increasingly diverse, multicultural society. Dentice is an Associate Professor of Sociology at Stephen F. Austin State University, and Bugg is an Associate Professor of Sociology and Director of Learning Communities at SUNY Potsdam.

Whereas Dentice and Bugg seek to understand the more specifically psychological workings of white supremacy, the co-authors of our next piece look to how some white supremacists—via organized and politically-active white racist groups—seek to engage in the political sphere on public matters and otherwise exercise rights and liberties guaranteed under the First Amendment arguably in order to legitimate their beliefs, worldviews, and organizations. In “Uniting the Right: Anti-Immigration, Organizing, and the Legitimation of Extreme Racist Organizations,” Stanislav Vysotsky and Eric Madfis analyze the use of anti-immigration rhetoric and organizing efforts by extreme right wing white racist groups to present themselves as “legitimate” political actors. In brief, the co-authors find evidence which suggests that although these actors are engaging in lawful exercise of civil liberties like freedom of speech, freedom of assembly, and free exercise of religion, they are in fact doing so for the purpose of “legitimization”—that is, utilizing their engagement with mainstream political actors on issues of public concern, and via accepted political forms and fora, in order not only to influence mainstream political platforms and stances but also to gain “legitimacy” for their organizations and their ideologies. One result, the co-authors note, is that discourse and thinking on thorny issues like the immigration debate continues to be pulled further toward extreme right wing racist stances among those on the right and indeed as regards any effort to strike a more “centrist” stance, as “extreme groups often present themselves to a more mainstream audience as non-violent organizations working merely to uphold immigration law.” Vysotsky is an Assistant Professor in the Department of Sociology, Criminology, and Anthropology at the University of Wisconsin-Whitewater. His co-author Madfis is an Assistant Professor in the Department of Social Work at the University of Washington-Tacoma.

Leaving behind the explicitly North American context and concern with hate crimes, hate groups, and hate activity, the next two articles take our focus to parts of the world that have struggled, or continued to struggle,

with intergroup conflict as saliently informed by race, religion, nationality, and/or ethnicity. Erin Tunney, a Lecturer in Women's Studies and Sociology at Carlow University, discusses the findings of her field research in Northern Ireland and South Africa in an article entitled "Misogyny and Marginalization in Criminal Justice Systems: Women's Experiences in Two Post-Conflict Societies." Tunney notes that these two seemingly distinctive post-conflict countries actually have much in common—namely, the dynamics of gender-based violence, both at interpersonal and systemic levels, and structurally- and attitudinally-inadequate responses to it from their law enforcement systems. Indeed, based on her field interviews with 90 women between the years 1999 and 2007, Tunney contends "the respective criminal justice systems provide venues through which the hatred of women intersects with the secular politics of nation-building." Based in respondents' insights and experiences, Tunney provides numerous systems-level recommendations on combating misogyny in these nations, many of which may be transferable to other post-conflict and transitional justice contexts.

Then, in a wide-ranging, groundbreaking piece which the author has also presented to a UN Working Group, Yifat Bitton, an Associate Professor at the College of Management School of Law (COMAS), Israel employs theoretical and analytical tools from Critical Race Theory, Critical Legal Studies, Postcolonial Theory, Feminist Legal Studies and Theory, and Palestinian- and Mizrahi-oriented critical perspectives. Entitled "*Discrimination based on "Sameness," Not "Difference": Re-Defining the Limits of Equality through an Israeli Case for Discrimination.*" Bitton alleges that Mizrahi Jews occupy a social station in Israel closer to that of Palestinians than of Ashkenazi Jews. Like Palestinians, she contends, Mizrahis suffer from legal discrimination. Yet unlike Palestinians, Mizrahis experiences of discrimination are not recognized as such because Israeli law conceptualizes Mizrahim as the "same" as Ashkenazim vis à vis Jewishness, not as "different" like Palestinians due to their Arabic "otherness." Bitton utilizes an interdisciplinary methodology, at the heart of which is the theory of Orientalism (most associated with Edward Said), in order to expose what she identifies as experiences of *de facto* discrimination and to begin to reconstruct the legal and sociocultural identities of Mizrahim as "Arab," standing in solidarity with Palestinians via shared experiences of discrimination and shared aspirations for justice. Bitton initiates a call for a new discursive "third space" for both Palestinians and Mizrahis. "in which they may collaborate in articulating and contesting both shared and uniquely encountered forms of discrimination" toward "achieving a better more just society inside Israel."

As an accompaniment to Professor Bitton's extensive article, we are

pleased to include a brief review of Israeli scholar Niza Yanay's *The Ideology of Hatred: The Psychic Power of Discourse*, as penned by Damon T. Berry, a Visiting Assistant Professor at Saint Lawrence University. Berry argues that the Continentalist Yanay, whose engagement in this text spans the likes of Slavoj Žižek, Michel Foucault, Judith Butler, and Jacques Derrida, makes her own extremely "important contribution to the conversation about what constitutes the study of hate: *How we understand hate must not be regarded as the same across subjects differentially established in stratified social contexts.*" Berry highlights how Yanay's distinction drawn between what she calls "objective hatred" and "ideological hatred" is not only important to the work of her project but also to the field of Hate Studies as "demonstrative of the kind of exercise that perhaps ought to be involved in describing our object (of study)," yet he also raises important questions about relationality and positionality with respect to Yanay's "objective/ideological" distinction. Thanks go Arkansas State University Professor Rebecca Barrett-Fox, our Book Review Editor, for her excellent work, as well.

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)

What Communities Want: Recognizing the Needs of Hate Crime Targets

Barbara Perry
University of Ontario Institute of Technology

INTRODUCTION

The theme of the Third International Conference on Hate Studies, “The Pursuit of Justice: Understanding Hatred, Confronting Intolerance, Eliminating Inequality,” took me immediately to the subject matter of this article: Who is meant to be served by the subthemes of this conference, if not the targets or potential targets of hate crime? An equally important set of questions would ask: What justice looks like from the perspectives of those individuals and groups? What do hate crime victims want, and what do they need? And, what do vulnerable communities want and need?

These have been consistent objects of inquiry in much of the hate crime fieldwork I have conducted over in the past decade. There comes a point in virtually every survey, interview, or focus group when I ask my participants what they would like to see done to minimize the risk and impact of hate crime. In asking for suggested policy initiatives or intervention programs that might ameliorate the damage to community harmony and mitigate future hate crime occurrences, I generally hope to avoid the usual pitfall of assuming that I know “what the victim wants” (Garland & Chakraborti, 2002). My intent in this article is to overcome the historical arrogance of state or even local initiatives, however well-meaning they might be, that are not grounded in the expressed needs and wants of affected communities. I see this article as an opportunity to give targeted individuals and communities a voice and to remind scholars and practitioners who work in the field that hate crime victims and their communities are a primary reason that many of us are engaged in this emerging, evolving field of Hate Studies.

All targets of crime deserve services that help them cope with and, ideally, prevent their own victimization. However, different communities may experience the trauma of violence in different ways. An Office for Victims of Crime report (1998) observes that:

Different concepts of suffering and healing influence how victims experience the effects of victimization and the process of recovery Methods for reaching culturally diverse victims must include resources that are specific to their needs. (p. 157).

The array of services that are currently available, however, tends only to serve the general needs of victims, regardless of their identities. Those who are targeted because of their race or religion, those who experience crime differently because of their sexual orientation or gender identity, and those who are uncomfortable with the criminal justice system because of their disability or ethnicity do often require culturally-specific services. The Council on American-Islamic Relations (“CAIR”), for example, serves the needs and interests of Muslims through advocacy, education, and victim support. Yet in most countries, these kinds of dedicated, culturally-specific services are in short supply.

Based in my own research and observance of best practices, I argue that sensitivity to the cultural needs of affected communities, in a way that empowers those who are targeted by such violence, is key to effective delivery of victim services. Such services should acknowledge that the targets of hate crime have unique needs, and furthermore that the affected community knows best what these needs are. Alas, current practice does not generally recognize either of these points. Aside from umbrella anti-violence organizations like the Anti-Defamation League (“ADL”) or the Council on American-Islamic Relations-Canada (“CAIR-CAN”), and the work of Canadian victims’ services providers (McDonald & Hogue, 2007), very few agencies or organizations specifically address the unique, often culturally-specific needs of hate crime victims.

Unfortunately, even where hate crime interventions have emerged, the services offered typically have not reflected the expressed needs of vulnerable communities. This situation represents a failure to provide what the *European Monitoring Centre on Racism and Xenophobia* (“EUMC”) (as cited in Iganski, 2008, p. 96) calls an “ethical” response to hate crime victims, in which attention is to be given to the “experiences, feelings and opinion of victims.” To be sure, this “ethical” response has not been the norm. In spite of the fact that a diverse coalition of organizations representing marginalized groups initially put hate crime on the public agenda (Jenness & Grattet, 2001), subsequent policies and programs have often been imposed from the top-down, and have excluded the voices of those most affected by hate crime.

Victim services clinician Jim Hill (2009) urges service providers to keep in mind that “it is important that you not try to impose your personal view of what (hate crime victims) should do. Allow your clients to lead you in how much, or how little, they want to use group identity to shape their personal identity” (p.106). In a similar manner, this article attempts to recognize and bring forth many unheard voices of hate crime, as based in a practice of asking a community and its various members what they want and need, listening to those answers, and then striving to respond appropri-

ately and effectively. Consequently, the article is not an exhaustive list of what can be done, or what currently exists, in the realm of hate crime prevention and support services. Nor is this article a systematic analysis of any single research project. Rather, it is a reflection of the cumulative wisdom of myriad diverse participants, themselves representing similarly varied communities (and sub-communities), including those within Lesbian, Gay, Bisexual Transgender, Queer (“LGBTQ”), Muslim, Asian, Aboriginal, Jewish, South Asian, and black communities.

The observations provided herein are derived from 15 years of scholarly work focused directly on hate crime. My theoretical suppositions have been reinforced by more than 700 interviews, focus groups, and survey responses from an array of projects in which I have been involved. The individual respondents came from all walks of life: unemployed, underemployed, blue-collar workers, and white-collar workers. Some were considered leaders within their cultural communities because of their roles within the group, such as an Imam or as the head of a community based organization. Participants ranged in age from teenagers to octogenarians. While none of the samples were representative, they nonetheless reflected a wide cross-section of the respective cultural groups.

I do not claim here that these participants “speak for” their entire communities. Rather, I see these people as constitutive and from the communities of which they are a part (Code, 2008). To borrow a phrase, they are *individuals-in-community* (Grasswick, 2004, 2011), a model that “conceptualizes knowers as individuals situated within communities, who know primarily through their active engagement with other individuals-in-communities” (Grasswick, 2004, p. 110). Individuals “know” on the basis of their own experiences, but also from interaction with others within the communities they share. They are able to read the perspectives of others—individually and collectively—and integrate it into their own understandings. In this sense, knowers are situated and interactive. Furthermore, with Alcoff (1991-1992), I reject the proposition that it is *inherently* oppressive to “speak for” others; this proposition has the counterproductive potential of weakening “political effectivity” (p. 17). The positions of the many speakers in my research are diverse and wide-ranging, reflecting both privilege and disadvantage. Some were accustomed to “speaking for” their communities because of their leadership roles; others were not, but nonetheless “spoke for” themselves, reflecting their own “truths.”

Moreover, any individual is situated in multiple and intersecting communities—as a woman, and a Latina, and a Catholic, for example. This is also the case for communities, whether locally or globally; these communities themselves are diverse. It is, of course, insufficient (and in some ways incorrect) to talk about *the* Jewish community, or *the* LGBTQ community,

or *the* black community. The general public, policy makers, even scholars too often homogenize communities and assume, stereotypically, a sameness of experience within them. There can be dramatic variations within all such groups—and similarities across them too. Furthermore, each of these groups is in fact constituted by multiple communities, and by individuals who move within and across multiple communities, which may or may not share experiences, perspectives, or place. Indeed, differences are themselves overlapping and intersecting.

That said, remarkable themes do recur regularly within and across cultural groups in the studies I have conducted. I have closely read respondents' narratives countless times, seeking identifiable patterns in how individuals and communities experience and respond to hate crime. In preparing this article, I revisited those stories with an eye toward identifying common expressions of "needs" and "wants" in terms of anti-hate initiatives. In what follows, I preface these observations by defining hate crime, and identifying the array of harms associated with this form of violence. I then lay out four "intangibles" as demanded by community members: *recognition, respect, safety, and voice*. I follow this discussion with a related one of presenting concrete strategies, as proposed by respondents themselves, to achieve those intangibles: *community awareness, community empowerment, victim services, and criminal justice reform*. In this article, I typically offer only scant comments to express a point. Meanwhile, quotations from surveys, focus groups, and interviews are used liberally not only to illustrate and provide support to the analysis, but also to give the participants opportunities to speak for themselves as *individuals-in-community*.

I. THE HARMS OF HATE

In order to understand what a community needs, specifically in regards to hate crime, it is important first to appreciate the nature of the harms associated with this distinct form of violence. The following definition has long framed my understanding of hate crime in this context:

[Hate crime] involves acts of violence and intimidation, usually directed toward already stigmatized and marginalized groups. As such, it is a mechanism of power, intended to reaffirm the precarious hierarchies that characterize a given social order. It attempts to recreate simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the "appropriate" subordinate identity of the victim's group (Perry, 2001, p. 10)

This definition is especially useful because it draws attention to two of the key distinctions between bias-motivated violence and other forms of

violence. First, bias-motivated violence is not random; it targets particular people solely because of an identity, usually a minority identity, with which they affiliate or which the offender (sometimes erroneously) ascribes to them. Second and clearly related to the first reason, this form of violence targets a group and not simply an individual. Indeed, in examining hate crime literature, policy debates, and relevant court decisions, there is an assumption that such offences are, for that same reason, qualitatively different in their effects, as compared to non-bias-motivated offences. Specifically, Weinstein (1992) identifies three potential levels of harm. While he speaks of racially-motivated crime, the same could be said for other categories of hate crime:

[T]hat racial violence causes injury to the victim above and beyond physical damage, that racial violence causes injury not only to the immediate victim but also to the victim's racial or ethnic group, and that racial violence has particularly pernicious ramifications for society as a whole. (p. 8)

The latter two harms are characterized by Weinstein as *in terrorem* effects; these are akin to what Iganski (2001, p. 629) characterizes as the extended harm to the victim's group, harm to other targeted communities, and harm to societal norms and values. In short, these are the distal community impacts of hate crime.

The first of these types of harm—to the individual target—has been the subject of considerable scholarly attention. Research suggests that bias-motivated crimes are often characterized by extreme brutality (Levin & McDevitt, 1992). Additionally, the empirical findings in studies of the emotional, psychological, and behavioural impacts of hate crime have established a solid pattern of more severe impact on bias crime victims, as compared to non-bias victims (see, e.g., Herek et al., 2002; McDevitt et al., 2001). The key difference here, as referred to above, is that hate crimes are very often directed toward one's core identity. Targets are chosen on the basis of highly salient physical or cultural characteristics that may be ascribed to the individual or, alternatively, that may be at the core of individual self-identity. In the latter case, in particular, hate crime victimization often results in the individual's decreased sense of self-worth:

Whether they were directly or indirectly made towards me, in my opinion, these were hate crimes as they left me feeling lesser than the other person, as they were directed attacks on my self-esteem and confidence (Lesbian).

Another related effect is a prolonged fear that the victimization may be

repeated. For people who cannot or will not alter the provocation for the attack—their presumed or actual social identity—it is clear to them that they remain subject to violence at any moment; the sense of vulnerability and risk remains at a heightened state. Silver et al. (2004) suggest that hate crime victims are nearly three times more likely to fear revictimization than victims of non-bias-motivated crimes.

In moving beyond the experiences of the immediate target to the broader *in terrorem* effects, we generally enter the realm of speculation. Many scholars point to the “fact” that hate crimes are “message crimes” that emit a distinct warning to all members of the victim’s community: step out of line or cross invisible boundaries, and you too could be lying on the ground, beaten and bloodied (Iganski, 2001). Consequently, this individual fear is thought to be accompanied by the collective fear of the victim’s cultural group, possibly even of other minority groups likely to be targeted.

Few studies have explicitly addressed the veracity of this presumptive migrating fear (Lim, 2009; Noelle, 2002; Perry & Alvi, 2011). However, in several of my recent projects I have explored this topic and found that across affected communities, participants indicate that awareness of the potential for hate crime enhances the sense of vulnerability and the fearfulness within those communities. This effect, after all, is the intent of hate crime: to intimidate and instill fear in the whole of the targeted community, not just the immediate victim. Interestingly, when asked to define hate crime, many participants specifically acknowledge the “message” nature of these crimes. For example,

[a] “hate crime” is the act of causing personal or property damage with intent to intimidate because of a person’s religious or sexual beliefs. It is meant to send a message of intolerance against the “selected” group and to leave a message of fear. It is also meant to send a message that those targeted are not safe because of their belief (Muslim female).

Many individuals receive these “messages” loud and clear; they feel equally vulnerable to victimization, and thus, are fearful. Upon reading a scenario describing a hypothetical hate crime, a Jewish male observed “When it happens to someone else (who) identifies themselves the same way as you do, it might as well be happening to me too. If they hate Jim, if they are willing to assault Jim, they are certainly capable and willing to assault me too.” This example highlights one of the key characteristics of hate crime—the apparent randomness—that makes such violence so terrifying. As many hate crime scholars have observed, victims are often interchangeable (Lim, 2009; Levin & McDevitt, 1998). The chosen target simply represents an “other” in generic terms. When he or she is a member of a hated or demonized group, that membership is enough to leave the person vulnerable to

attack. Further knowledge of the individual's identity, personality, or status is unnecessary.

Unfortunately, another *in terrorem* harm—the adverse impact of hate crimes on perceptions of national ideals—has also received scant attention in the relevant literature. Hate crimes are direct threats to the basic principles of inclusion and tolerance that are said to underlie Western societies. Writing specifically about Native Americans more than fifty years ago, legal scholar Felix Cohen (1952) noted that the legal and extralegal mistreatment of minorities “reflects the rise and fall of our democratic faith” (p. 17). More recently, in *Regina v. Keegstra* (1990), Canadian Chief Justice Dickson concluded that “Hate propaganda contributes little to the aspirations of Canadians or Canada in either the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged.” In other words, it is possible that the persistence of hate crime presents a distinct harm to democratic ideals and institutions, insofar as it reveals the dehumanizing fissures that characterize the societies in which hate crime occurs and lays bare the bigotry that is endemic within each (Matsuda, 1993; Waldron, 2012). As such, it may very well be the case that bias-motivated violence is not just a precursor to greater intergroup tension, but is also an indicator of underlying social and cultural tensions. In this interpretation, hate crime is but one indicator that the enshrined ideals of freedom and equality for all are in fact illusory.

Hate crimes researchers and victims alike know that the widely proclaimed ethos of inclusion and belonging is not necessarily the daily reality for vulnerable communities, who both experience and fear violence as motivated by ideals that directly contrast with those norms embedded in the national mantra. The cultural, social, and political mood in Australia, Canada, and many other Western nations, in particular, uneasily supports a simultaneously disabling and enabling environment for hate. The messages of inclusion, participation, and engagement are contradicted by acts of violence that are inspired by racism, heterosexism and other related “isms.” Writing of the Australian paradox, for example, Chris Cunneen (1997) highlights the irony wherein “a liberal democracy, with its commitment to anti-discrimination, simultaneously functions within an institutional framework which can be described as having pervasive racism” (p. 138).

Hate crime challenges the sense of belonging that would seem to be so crucial to inclusive societies (Waldron, 2012). Such crimes can also be a key point of contact in the negotiation of place and belonging in society. Indeed, I have long argued that hate crime is a crucial mechanism for the dance of power. As hate crime victims keenly understand, such violence represents an unequal exchange, whereby the intent of hate crime is to dom-

inate and exclude by transmitting a key message that its victims are not worthy of belonging:

The message is clear. I don't belong. We don't belong. Muslims are made to feel inferior and like they don't belong, are unwelcomed. Non-Muslims see Muslims as aliens and a community of people to blame and their frustrations out on (Muslim male).

The lack-of-belonging message is not just implicit. Often, the language that constitutes or accompanies targeted assaults is blunt in its intent:

I was just, um, this thing happened to me before. I was once in a library like few years back in, a Saturday, you know, just reading some books. And this man just like comes in and looks really close, like he kind of invaded my personal space and started staring at me and saying things like "Get back to where you come from. You don't belong here." And very, very hurtful things. I didn't want to stay there. He was getting ready to physically like, hit me and I didn't wanna be in that situation. So I just like run away. (Muslim female).

A sense of belonging is crucial to social inclusion. Yet people of colour, members of religious minority groups, and members of the LGBTQ communities, for example, are frequently reminded by harassment and violence that they do not warrant the same recognition as their straight, white, Christian counterparts. The sense of alienation emanating from this exclusion can be debilitating as it has the potential to inhibit engagement with the broader society since "persons who do not feel valued in society cannot contribute or participate to their full potential" (OHRC, 2003, p. 34).

Although hate crimes clearly have these detrimental impacts, it is interesting to note that these crimes can also provide a catalyst for positive change. Patterns of persistent violence, or highly publicized cases like those of Matthew Shepard and James Byrd, can have the unintended effect of mobilizing victim communities and their allies. Indeed, across multiple studies that I have conducted, the targets of hate violence can and often do develop constructive alternatives to the prejudice and violence that confronts them. For example, one Canadian First Nations male indicated his belief that hate can be unlearned, based on the role of social institutions in inculcating hate. "I think it is learned. It is learned partly in our educational system, it is learned in the home and is learned through the media culture. I would suggest that the only good news is that hate can be unlearned."

Whether done individually or collectively among targeted populations, challenging hate crime and the biases that inform it are often valuable

processes for those populations. Across my studies, many participants have been optimistic about the potential for change and suggested progressive strategies for harnessing the energy of vibrant communities to counteract both the potential for and the impact of hate crime. For example, “[t]his story makes me want to help educate people so that future generations will be more accepting and less afraid. Education is the key to eliminating irrational fears” (Jewish male). Many other participants also noted the constructive impact of feeling inspired to react at an individual and/or collective level:

This kind of story fills me with a lot of emotions. Mainly, reading a story like this further motivates me to confront discrimination and heterosexism. I do not have any ideas for action on a grand scale, however I would discuss the incident with as many people as possible to get them thinking about the issues facing the gay community (Lesbian).

These and other personal narratives, which so many people have generously shared with me, demonstrate how the anger and frustration that such violence evokes can also motivate individuals and communities to action.

I preface the following discussion of desired actions, which includes a lengthy list of strategies for countering the deleterious effects, as offered by a Canadian First Nations participant in one of my studies:

More information sharing is needed. In all communities. Networking. Speaking out. Affirmative action. Being proactive. The province of Ontario and federal gov’t (sic) need to enforce all human rights issues. More participation of the business community/corporations need (sic) to finance advertising/meetings/seminars/conferences to show support. Pharmaceutical companies need to get involved. The law/police/courts must be participants municipal, provincially and federally. Education. Education. Education. We need to upgrade and go electronic to get our message out. U.N. Declaration of Human Rights need (sic) to reinforce its effectiveness. Churches need to get involved. Aboriginal communities need to become (sic) invited to participate. Wherever people gather in a public place, these human rights and regulations need more advocacy and transparency and action.

While few participants were as proscriptive as this one, most did share their thoughts and recommendations about what they would like to see done to mitigate the risk and impact of hate crime. Their responses tended to cluster around two broad sets of interests as outlined below: intangibles and concrete strategies for cultural, institutional, and structural change.

II. INTANGIBLES

Recognition: The failure to recognize hate crime for what it is presents a significant barrier to effective responses. Across Western cultures, there is a tendency to downplay or in fact deny the reality of racism, homophobia, and other marginalizing structures. This is particularly the case in the context of bias-motivated violence, which is too often disregarded by police, courts, and politicians alike. Police, for example, may diminish if not deny the danger faced by individuals or the community at large. Consider the dismissive words of a police officer in Minnesota, referring to violence against Native Americans:

I think in the social aspect there's no conflict, no discrimination; there's really nothing. Sometimes people will talk about it, but I don't think they, uh, I think they often make it up. I don't see it, and nobody comes directly to the station to complain. So, no, if they complain about it, I think they are wrong (White male).

Such declarations fly in the face of the experiences described so candidly by people I interviewed across communities. The indifference of law enforcement to the needs and realities of people whom they are intended to serve speaks volumes about how police view vulnerable communities. Where there is "no violence," there can be no reason for action:

You don't want to call the police or make an issue of it. They play down how serious the violence is, how much there is—unless it's Indians hurting whites. They see the cases one at a time if at all, so they won't make the connections. The cases aren't related; it's not about discrimination, they say. They won't admit that Indians get hurt more (Native American male).

This observation resonates with Gail Mason's (2012) assessment of the public response to a series of racist attacks against Indian students in Australia. There, too, racist motivations were minimized by politicians and the media in favour of evasions and euphemisms that framed the violence as isolated, opportunistic, or symptomatic of broader crime patterns. Repeatedly, political leaders, in particular, were at pains to avoid even using the term "racism."

In light of this neutralization, it is not surprising that hate crimes victims and their communities seek recognition and acknowledgement of identity:

A person can and should be able to be proud and say that, "Yes, I'm a Canadian, but I also identify as this." So I want to walk through the

streets and not be indistinguishable from everyone else. I want to be distinguishable, I want to, I want people to recognize me as what I want them to recognize me as. So I want to be able to walk in the street and somebody say, “Yes this person is a Muslim and a Canadian” (Muslim male).

Equally important, however, is that these individuals and communities also seek recognition of the violence perpetrated against them *as hate crime*. Justice Canada researchers Susan McDonald and Andrea Hogue (2007, p. 30) concur on this point, stating that “victims need the hatred behind these crimes identified and acknowledged by the criminal justice system.” Likewise, a gay male whom I interviewed offered this assessment:

They’re not exactly there to protect me. But at the same token, all I expect them to do is maintain the law and pursue the case. If they do it objectively and impartially and they observe my civil rights, I’m not going to complain about them.

Respect: Acknowledgment of the bias motivation behind such violence would also go a long way toward bringing victims another key “intangible”—respect. First and foremost, vulnerable communities crave respect from other people and from the state. Simply put, “I look forward to, I guess, everyone accepting and respecting me” (Gay man). A young Muslim woman expressed this hope almost poetically:

I would like to see all of humanity to hold hands! Unite! And love and respect one another as we are all human and at the end of the day! This is done by simply demonstrating to people that we all cry, feel, bleed, and sleep. We are all equal!

Targeted communities, and their individual members, simply want to be treated with the justness and esteem which is their due. The sort of denial noted above sends the message that these communities are not valued or deemed worthy of the same protections as those in the mainstream. But it is the violence itself that most strongly underscores the lack of respect that racialized, gendered, and other marginalized communities experience:

It’s like we are still being alienated even though we have so many rights to practice our religion freely. It’s just that we feel like we still feel cannot fit in society. And I think that’s a main issue for a lot of Muslims because we want to be accepted; we want to be respected, but because of certain practices or beliefs that people do not understand, we feel like, okay, we have to hide that or conceal that in order to just have like a harmonious relationship maybe in the workplace, or in the school, or any realm in life for that matter. Just to be respected (Muslim female).

Obviously, the intent of the violence referred to here is to express to these groups that they are not welcome, they do not have anything to contribute to the nation, and they in fact somehow represent a diminution of the national culture.

In the face of this hostility, the following perspective is illustrative of the preferred alternative:

We need to honour the essence of what each individual brings; their strengths, their talents, their challenges That we honour the essence of who you are be it Muslim, be it Ukrainian, be it gay, be it lesbian, be it transgender (Gay man).

Until this respectful vision is realized, communities will continue to be fearful.

Safety: As a means of managing this fear in the interim, community members will strive to “create a safe place and to start to let people know that it is a safe place” (Lesbian). The theme of identifying or creating safe spaces is very common among and within targeted communities, as the risk of victimization is pervasive in many settings and for some, there is, to their mind, no safe space. One transgender woman spoke at length about her perceptions of safety and what that entailed for her:

I think one of the real problems with safety, I don't know where it is safe in Toronto, when I started my transition people could easily identify that I was trans all the time and I faced constant harassment and people staring at me, giving me dirty looks, talking to each other ridiculing and mocking me. I had to adapt to the experiences of nearly being physically assaulted and my feeling was that I was never safe anywhere and that lead to being very reclusive, isolating, which then tied in with severe depression and suicide attempts. So there's the practical issue of safety, but then there's the subjective experience of safety that is radically altered by those experiences you have and without the involved balance, even just harassment, bullying, ridiculing and mocking takes a tremendous toll on us.

This sense of safety/unsafety is an inevitable outcome of a vulnerability that is experienced as normative and ubiquitous. Regardless of context, there is a constant fear of assault among members of frequently targeted communities. The violence and threat of violence that permeates their lives is one of the key factors that continue to remind marginalized communities of their liminal status. Some manage this threat by ignoring it as much as possible:

I've gotten to a point in my life where I kind of just put blinders on to

everyone around me, but when I'm walking downtown with friends, my friends will catch people looking or whatever and "What are you looking at?" and stuff like that. Or they'll say "Hey. Did you see that?" I mean I'm aware of what's going on around me but I don't focus on it because if I did, I'd probably be hanging from a rope. I mean it would just, like you said that constant oppressions, discrimination, harassment. I can't, can't have that (Transgender woman).

Faced with the normativity and ubiquity of fear-inducing violence, members of vulnerable communities learn to negotiate their safety, to create "safety maps" (Mason, 2009). They adopt an array of strategies for managing their vulnerability, often through changes in behavioural patterns. Participants have expressed the necessity to alter their performance of identity in accordance with what they recognized as the socially established rules for "doing difference." They report changing routine activities, habits, and ways of being in the world:

Even if you ran to escape they still chased after you. I then knew to travel/move in packs with friends. Never walk alone, bring reinforcements/witnesses and cell phone (Gay male).

In this respect, the potential for bias-motivated violence serves its intended purpose of enforcing appropriate public performances of identity at the very least. It is in this context that communities and individuals long for places—cultural, physical, psychic—where they can feel safe:

We need more spaces like that for people who don't know where they belong, who yearn for a sense of belonging. 'Cause I yearn for a sense of belonging. I think I'm getting to find my place now (Lesbian).

Voice: The inclusion of affected groups into relevant conversations on community security is key to the creation of these safe spaces and to effective community and victim services more generally. In short, communities and their members want to be heard, to have a voice in policies, practices, and initiatives that affect them. Rather than the paternalistic imposition of programming by a "benevolent" state, anti-hate initiatives must also be informed by those in the best position to understand what is needed—members of targeted communities themselves, including those who have actually experienced hate crime. Otherwise, policymakers run the risk of developing counter-productive initiatives. For instance,

Some in the OHRC created their trans definition some ten years ago . . . there are actually some, some very discriminatory items they have in the,

their definitions, I could pretty much guarantee they did not consult trans people on that (Transgender woman).

This example is a powerful reminder of the downside of excluding the expressed needs and indeed the voices of affected groups from policymaking. Doing so runs the risk of creating strategies that are far removed from the experiences and informed insights of targeted individuals and communities. As in this case, exclusion can result in policy that reinforces rather than mitigates the marginality of these groups.

This article is one attempt to overcome the omission of the voices of targeted groups. Following these participants' identification of the "intangibles" noted here—including voice—I turn now to explore the participants' suggestions for concrete strategies by which to mitigate the risk of hate crime.

III. CONCRETE STRATEGIES

In part, the elusive goals noted above—recognition, respect, safety, and voice—require concrete action, whether among the targeted communities themselves, the broader community, or the state. Those goals will not, and therefore cannot be counted on to emerge organically from what is an inherently racist, homophobic, and otherwise bigoted culture. Concentrated efforts are necessary to ensure their development and sustainability. Affected communities are very clear on what they see as the building blocks needed to move beyond hate toward inclusion and respect as part of what I have referred to elsewhere as a "positive politics of difference" (Perry, 2001). Such an approach would require more than mere efforts to assimilate "others," or merely "tolerate" their presence. Rather, a "positive politics of difference" challenges us actually to celebrate our differences. Of course, doing so requires that much of our current way of ordering the world be radically altered (Perry, 2001, p. 236). A positive politics of difference, by necessity, operates at multiple levels and in multiple sites simultaneously, something that people within affected communities fully understand. Participants across research projects have specifically identified several key forms of intervention: community awareness, community empowerment, victim services, and criminal justice reform.

Community Awareness: Based on an extensive series of oral and written submissions on hate crime, the Ontario Hate Crime Community Working Group (2006, p. 32) came to the profound conclusion that:

. . . hate is so commonplace and institutionalized that is it almost impossible for those outside the vulnerable communities to fully appreciate its magnitude or to recognize it as a scourge on our society as a whole . . .

when the public lacks cultural awareness and understanding of difference, this contributes to exclusion, victimization, fear and tolerance of hate crime.

This sentiment has arisen often in my interactions with community members. There is a strong consensus that the public lacks awareness and understanding about diverse communities and the impacts of their victimization:

Well there is no real awareness. People, I mean I think that just lately they've had a couple of documentaries and done some stuff on mainstream television that people have become a little bit aware of (Transgender woman).

The lack of public awareness and understanding is unsurprising, as people rely too much on stereotypical representations of marginal groups. The realm of popular images is fraught with stereotypes which both underlie and justify the differential treatment of subordinate groups. In line with an essentialist understanding of difference, the overriding theme is that of inscribed traits, wherein "the stereotypes confine them to a nature which is often attached in some way to their bodies, and which thus cannot easily be denied" (Young, 1990, p. 59). They help to distance white from not white; male from female; Christian from non-Christian; able-bodied from disabled. Almost invariably, the stereotypes are loaded with disparaging associations that, for example, suggest inferiority, irresponsibility, immorality, and non-humanness. Consequently, they provide both motive and rationale for existing social hierarchies and, often, violence.

It is at these points of representation that community members frequently insist that policy must be developed in order to minimize the risk of hate crime. Enhancing awareness and understanding begins to break down these hate-enabling images. Generally, participants envision this intervention as ideally occurring on two levels: informal public awareness campaigns and formal education initiatives in the schools.

Awareness campaigns represent one medium for effectively influencing people's attitudes on an array of social issues, ranging from drunk driving to improving the environment. An assessment of public media campaigns in the United Kingdom suggests the mechanisms by which such awareness building initiatives might work:

Once a media initiative is published or projected, consumers 'read' that product. They may react as conscious, analytical learners, pondering the media's treatment of race and other aspects of diversity. They may try to integrate thoughtfully and critically this learning into their own personal

ideational frameworks, attitudinal structures, and value systems. On the other hand, they may uncritically absorb or reject different multicultural lessons. They may react and learn by unconsciously relating these new ideas into their existing knowledge, perceptions, attitudes, values and behaviour (Sutton, Perry, Parke, & John-Baptiste, 2007, p. 21).

Affected communities seem to value the potential inherent in such initiatives. More than any other strategy, participants across my studies stressed the importance of building awareness through challenging prejudice and its attendant violence:

The stories need to be told—our stories, our histories, from our perspective. They forgot about the residential schools here in America. They forgot about Indian children that were stolen from Indian reservations and that didn't come home and are dead out there or were killed out there. We need to remind that Indians came first, that they have a history, stories (Native American male).

Likewise, a Muslim woman shared her thoughts on how awareness-raising on violence can render meaningful to others those terrible practices and painful experiences:

And you can have public educational campaigns and videos created sort of looking at these scenarios: some visible girl walking down the street and a stupid guy in a car throwing something at her. People are gonna see and be like "Oh my God I've done that" or "I know somebody who's done that." They think about it and they say it's really stupid. We have to maybe do public education around it but that has to be rooted in talking to the people who are actually having things happening to them, not necessarily the people who are concerned and haven't had stuff happened to them.

However, most participants emphasized the need for more focused attention on formal education and on the failure of public schools to adequately address the historic and contemporary place of diverse communities. The standard model of education was described as a one-way street that reflects the paradigms of cultural imperialism. Western youth learn white, Christian, straight culture, history, and beliefs, but rarely do they learn a great deal about the parallel and intersecting dimensions of the life-ways of others. One participant suggested that "there needs to be unlearning. Like our public education is part of the problem" (Lesbian).

Recognizing this problem, many participants spoke in favour of a re-invented educational system. Here are two sets of voices, from two different communities:

They need to listen to us, hear us. We know our culture best; we know how to tell our stories. I get so angry when they bring in all these people to teach *our* children about *ourselves*. Why can't our teachers do that? Let us decide what to teach, how to teach it (Native American female).

A. I think education in the school. If they start in schools, when the kids grow up, they will know that human beings are human beings, it does not matter what they look like, where they come from.

Q. So what is your suggestion?

A. They should be telling the kids in schools that they should not discriminate against somebody because of the different skin colour, they eat different food, or they pray differently. When the kids are young when they learn when they grow up they will remember these things (Muslim male).

There was, in fact, widespread consensus across the individuals and groups in my studies on the importance of transformed and transformative education. As highlighted by the above statements, there must be an expanded scope for including the voices, histories, and experiences of marginalized groups within public schools if the prejudices underlying hate crime are to be disrupted in the long term.

Community Empowerment: It is not only the dominant culture that must be challenged to prevent hate crime. Targeted communities also recognize the roles that they must play, both in confronting hostility and in working to protect and empower themselves. Indeed, the marginalized groups who bear the brunt of hate-motivated crime have not been passive victims of the varied forms of violence they experience. On the contrary, in recent years many of them have become very active in asserting the legitimacy of their identities, challenging hatreds like heterosexism, patriarchy, racism, and bigotry, and resisting the cultural and individual forms of violence to which they are subject.

For some, this process begins with an awareness of the rights to which they are entitled—legal, political, and social—and then extends to an exercise of those rights. In short, in order to become more self-aware, all communities should receive education on the nature and use of the rights to which they have access:

I guess something that I think is really important is, ah, getting the community to be more confident in itself. Because, I think people, I think we should see ourselves as any other minority that has rights, ah, and that should advocate for them. The francophone community, for example, in Ontario doesn't shy away from that at all. I mean they make themselves

heard, which is good. It's great. Um, but I feel like Muslims are, like, sometimes apologetic, sometimes we're, I mean we see, a lot of, a lot of the time, I mean, we see, the opportunities that are given to us are like our rights as something like, something like, charity. . . . But I think that will come with also, you know, with time because I feel that second or third generation Muslims, ah, are more confident about that; whereas our parents would be like, no. Thank god they let us come here, you know (Muslim female).

The importance of rights-education connects to a point made earlier in this article, on the potential for hate crime itself to serve as a catalyst for positive change. For example, the racially motivated murders of Michael Griffith (Howard Beach, 1996) and Yusuf Hawkins (Bensonhurst, 1989) inspired widespread demonstrations condemning the racism of the perpetrators' communities, as well as the racist culture of New York City generally. On a smaller scale, the Asian community in central Ontario, Canada, responded to alleged incidents of hate crime against Asian anglers north of Toronto in the summer and fall of 2007. Indeed, community outcry resulted in the establishment of an inquiry into those events, which in turn resulted in more responsive law enforcement efforts (Ontario Human Rights Commission, 2007, 2008).

Another example is the remarkable strength and resilience of Native Americans in the face of the everyday violence described in my interviews with them. As Frideres (1993, p. 508) puts it, "with the emergence of Native identity, the sense of alienation experienced by many Natives has been dispelled by a new sense of significance and purpose." In fact, Native Americans currently enjoy resurgence in numbers, as well as growth in nationalist identity. The frequently violent "anti-Indian" activism that has emerged in areas like the Great Lakes and the Pacific Northwest (Shuford, 2012) has engendered a renewed pride in American Indian identity, and with it, recognition of the need to pursue that which is theirs by right (Perry, 2008). In short, Native Americans have mobilized around their cultural identities, as well as their legal and political sovereignty. Clearly, these examples of oppressive violence stimulated rather than disabled the communities. From the observations of participants in these studies, there is ample evidence to suggest that targeted violence can have the unintended effect of inspiring similar mobilization across communities. Isolated as well as ongoing patterns of discrimination and related violence can and, in many cases, do trigger community-based reactions in the interests of social justice.

Interestingly, some community members in my studies have identified internal barriers to their ability to realize similar solidarity, and thus respond to discrimination and hate crime. At the outset, I noted the hetero-

geneity within cultural groups. In line with this reality, then, hate crime must also be seen as a multiethnic and multicultural problem, not just a black/white issue. Hate, violence, and other conflicts within and across communities may present challenges. For example, a transgender woman complains that there is “a lot of transphobia within the gay and lesbian community as well—that needs to be addressed.” She went on to say that:

(post-Stonewall) however almost immediately the people got involved to sanitize what being gay, lesbian, queer meant. And so that meant that gay men had to be straight acting and gay women had to be straight acting and the trans women had to be invisible, because they don't exist and so in terms of our rights today, we do not have the same queer rights as other queer people (Transgender woman).

Similarly, a Muslim woman challenges her community to:

. . . see who is not in the room? If you're in a room and it's completely made of the Muslim community and there's no one there who is Shia and you know there's a sizable Shia population in your city. . . But they are not there. And there's also no one from the Somali community and we have a large Somali community here. You should be like: where's the Somali community because that's a huge voice that you don't understand that you need to have at the table. But we really don't do that. That's a serious challenge.

Ultimately, community members who noted these contradictory positions emphasized the need to build solidarity and strength within a community. In the words of one lesbian, “[w]hat I would like to see is a real showing of solidarity. It's becoming so cliquey, you know, but a lot of that is because our community became incestuous; 'cause it was so small.” Likewise, a Muslim male speaks of his involvement in a Muslim coordinating council meant to bring together Muslims with non-Muslims, but also Muslims with Muslims:

This is the first time that we've tried to get all the Muslims together to uplift the most vulnerable in the community who now have to depend on the government or they cease to help like the, battered wives, or youth in detention, or people with disabilities or mentally ill, or refugees and so on. And our second objective is to reach out to fellow Canadians of other faiths to try to promote human rights, and dignity and equality for all Canadians, including aboriginal people in particular. And this is the first time that we've brought Shias and Sunnis together in Ottawa.

Initiatives like these suggest the potential of developing community supports organically, within or across ethnic, racial, religious, or gender

lines. In short, such intercultural projects recognize the value of community building through coalitions. Only by acknowledging and overcoming the “fragmentation” of community can collective action be an effective brake against hate crime.

Moreover, despite the heterogeneity within and across social groups, the groups most likely to be targeted have often experienced similar (if not the same) types of oppression. In other words, blacks, Jews, Asians, homosexuals and others, as groups, all have suffered various degrees of discrimination and victimization; so too have many of their members and others assumed to be members. Yet, rather than acknowledging these commonalities and histories and forming coalitions for social change, subordinated social groups have often resorted to intergroup and intra-group conflict. While the causes of such conflict are surely complicated and warrant more careful research, it appears as if they have so internalized the dominant aspects of white masculine supremacy that this is the primary lens through which they can view one another. Intercultural coalitions must challenge essentialist assumptions, both within and across groups, about identity that insist on irreconcilable differences between races, religions, genders, forms of sexual orientation, and so on. Perhaps by transcending the artificial boundaries we use to divide ourselves, we might transcend oppression and violence accomplished through them.

Marsiglia (1998) explicitly argues that this kind of integration of identities can provide the foundation for a politics of resistance and confrontation, as lesbians of color, for example, struggle against their simultaneous racial and sexual marginalization. Likewise, Jenness and Broad (1998) argue that existing anti-violence projects themselves represent the convergence of four social justice movements around a shared problematic, insofar as the civil rights movement, the women’s movement, the gay and lesbian movement, and the victim’s rights movement share a commitment to countering discrimination and its related forms of violence. The anti-violence projects, of which Jenness and Broad (1998) write, reflect not only localized social movements but also the power of collective action that consciously crosses boundaries. Despite their diverse interests, perspectives, tactics, and strategies, these projects nonetheless coalesced around shared experiences of “violence, victimization, civil rights, and compensation in light of symbolic and material discrimination” (Jenness & Broad, 1998, p. 174). Such coalitions do not force their members to “pluck out” one part of their identities; they resist the fragmentation which otherwise alienates people from their multiple communities, and from the rich variation of their own identities.

Victim Services: In light of the layered foundations and impacts of hate crime and the diversity within and across the affected communities,

effective responses are grounded in victim-centred approaches (Iganski, 2008) that understand and acknowledge the impact of hate-motivated crimes on individuals and on the targeted community as a whole (McDonald & Hogue, 2007, p. 32). Awareness and knowledge of how hate crimes affect “others” in our midst allows service providers to implement services that are appropriate to localized dynamics. For example, programs serving undocumented workers who are targets of hate violence might include an “anonymity” guarantee, whereby their immigration status would not be reported to authorities. Ultimately, the key to effective delivery of victim services is sensitivity to the cultural needs of the victim’s community, in a way that empowers targets and potential targets.

From the perspective of community members with whom I have spent time, the paramount need in this context is for someone to listen and call upon when in crisis:

And trying to help kids my age. Because I’ve seen too many kids commit suicide over this because people aren’t accepting over it. Because they don’t know how to talk and they don’t have anyone to talk to. So I think more programs out there to help at-risk youth to come into the programs and to help them (Gay male).

There’s more concerted effort to make spaces for queer youth and to have it so there is something that people can look for. There are people they can find as mentors. And to talk about what’s going on. Or just find someone to help them get through the few years before they leave their town. Or find someone they can share their experiences with (Lesbian).

These comments link back to earlier points about the importance of recognition, respect, safety, and voice. Here, communities and their members are simply asking that they have access to service providers who will listen and acknowledge the pain of ongoing targeting. For many victims, this attention provides the opportunity they need to have their experiences validated and also eases their anxieties by encouraging them to speak about their experiences. Jim Hill’s (2009) widely used manual for Canadian victim services providers includes explicit reference to this kind of validation:

NGOs involved in interviewing victims should take into account that one of the victim’s biggest fears is that he or she will not be believed . . . NGO staff—as well as police officers and others—can respond to victim accounts by saying that they are sorry about what happened. This validates the victim’s feelings without pre-judging the results of further investigation and reassures the victim that he or she is valued as a person. (p. 47)

Such an approach can go a long way in making victims feel respected.

Moreover, being able to talk through their experiences can be empowering, or at least cathartic, as victims have the opportunity to reflect on and thus understand their experiences.

Perhaps, then, it is not surprising that another suggested approach that emerged on several occasions revolved around some form of restorative justice. A lesbian spoke highly of her own experiences with restorative justice processes:

Well, my experiences with community accountability have been sort of groups of people who know someone who's been a perpetrator of violence and a survivor of violence and work out a plan to hold that person accountable. I'm very new to this concept of—and it mostly only works if you know the person who's a perpetrator and have an interest in changing—but it's based on the belief that everyone can change their behaviours and their actions through a communal process of education and communication. Which is a really neat idea. And I think that would be really awesome to see more dialogue going in Kingston going on about that.

At the individual level, Mark Walters, in his on-going work (e.g., Walters & Hoyle, 2012), suggests that a restorative justice model can have positive outcomes for victims in some contexts. In particular, many of the harms suggested at the outset of this article might be mitigated by engaging the victim and offender in a safe, mediated conversation. Levels of fear, anxiety, and anger, for example, have been found to decrease after these interventions (Walters & Hoyle, 2012). However, the restorative justice model goes beyond victim-offender mediation to promote involvement of the victim, the offender, *and* the communities of which they are a part in the justice process. Restorative justice interventions help to restore victims' and communities' losses by holding offenders accountable for their actions, and by making them repair the physical and emotional harm they have caused. Such interventions also focus on changing the behavioural patterns of offenders so that they become productive and responsible members of society. The restorative justice model places emphasis on everyone whom the crime affects—including the general community, the victim and offenders' communities, as well as the victim and the offender—to ensure that each gains tangible benefits from their interaction with the criminal justice system.

Umbreit, Lewis, and Burns (2003) highlight two elements associated with restorative justice initiatives that have particular relevance to the community impacts of hate crime:

The entire community is engaged in holding the offender accountable and

promoting a healing response to the needs of victims, offenders, and the community as a whole (p. 3)

and

[w]hile it is important to address the immediate needs of crime victims and offenders, involving community members in the process of doing justice helps to build stronger, more connected, caring communities. (p. 4)

This alternative, then, specifically addresses the community impacts of hate crime, allowing any affected party a place at the table. Moreover, who comes to the table is variable, and depends on the incident in question. Ordinarily, the dialogue begins with victims, offenders, and significant support persons whom each may bring with them. Additionally, however, the process is as likely to include representatives of the neighbourhood, the larger community or the targeted community, who can speak precisely to the nature and intensity of how the violence affected them as well. According to many of those with whom I have spoken, few if any of the benefits associated with restorative justice are to be found within the traditional criminal justice system.

IV. CRIMINAL JUSTICE REFORM

The law is not a friend to trans women, no part of, no interaction with the law on any level can be considered safe, it's inherently dangerous (Transgender woman).

Like this transgender woman, affected communities are particularly concerned with the real or perceived capacity of state agencies—especially law enforcement—to deliver “justice” to victims and their communities. State practices, policy, and rhetoric have often provided the formal framework within which hate crime—as an informal mechanism of control—emerges. State actions and inactions that, at individual and institutional levels, stigmatize, demonize or marginalize traditionally oppressed groups, legitimize the mistreatment of these same groups on the streets, as well. Community members’ experiences bear out their fears that their victimization is not taken seriously. An Ontario study by the Hate Crime Community Working Group (HCCWG, 2006, p. 29) supports this observation:

The working group heard repeatedly from vulnerable communities, particularly Aboriginal and African Canadian communities, of their lack of trust of the police, the futility of reporting, and their fear of re-victimiza-

tion by the police and the courts system They consistently spoke of their experience of police abuse and racial profiling.

It is perhaps telling that very few participants in my studies have mentioned criminal justice initiatives as a key means by which to intervene in hate crime. Indeed, one participant noted that extensive protective legislation exists—rights law and hate crime statutes, for instance—but that this legislation has not served affected groups well thus far. In fact, legislative measures have been effective in the displacement, assimilation, and deculturation of many groups. Thus, the study participant quoted below questions the value of criminal justice initiatives:

You know, the disease of racism is one that, you know, public policy can only go so far in terms of correcting it, I mean, you can only legislate and enforce up to a certain point, and I think we're, in terms of the existing civil rights law, are we all the way there, no, maybe not in terms of the law itself, okay, but I think that on the enforcement end of it, more could be done . . . it's almost like somebody has to get killed before they take a serious interest, you know, somebody dies and then they'll really prosecute to its fullest extent, but short of that . . . (Native American male).

In short, within my studies, the common failure to suggest legal responses to hate crime is no doubt a reflection of the lack of trust in the criminal justice system. It also accurately reflects the historical lack of sensitivity with which the criminal justice system has responded to minority victims of crime generally. Inevitably, the experiences of marginalized communities shape their perceptions as to the brand of justice they expect to receive. Cumulatively, perceptions of over- and under-policing reinforce the antipathy, if not outright hostility, toward police and compound the historically strained relationships between affected groups and the criminal justice system. Consequently, community members often raise these kinds of concerns about police, specifically, when talking about hate crime:

I guess when talking about distrust and the authorities, I think it precedes even, like, I mean for me, I've always been allergic to the cops. I think it's like a general distrust and the whole system, like, I don't want to be part of the system kind of thing (Muslim female).

Some of my friends were having a party. The police showed up. Once they realized most of the men were gay the police began telling they should do pushups and other "manly" things along those lines. They also started referring to my transgendered friend as "it." When I heard about this I was furious. My friends did nothing because they were afraid (Gay male).

To lessen the impact I think the crimes have to be taken seriously. Once

we see that if a mosque is vandalized and people take it seriously and it's reported and they make a real effort to bring the perpetrator to justice as they do for vandalism of a church, synagogue. When they start treating those crimes equally, then you'll see that Muslims will probably start to see that they are taking our concerns seriously and they'll feel like they are a legitimate member of this society (Muslim female).

The last of these three statements is especially significant in that it refers back to previous discussion of community needs for recognition, respect, and safety. Recognition, in particular, must come not just from fellow community members or other members of society, but clearly also from those who are entrusted with protecting the rights and safety of all. As first responders, very often police have a key role in giving recognition to all victims.

Currently, this concern for achieving recognition has particular resonance within Muslim communities. Indeed, Muslims have been among the most critical of police, especially in terms of their tendency to over-surveil those perceived to be Muslim or middle-Eastern (CAIR-CAN, 2006). Many Muslim participants have spoken about both police failure to treat seriously their victimization while simultaneously engaging in heightened surveillance of their community. Ultimately, across participating groups there was significant mistrust of law enforcement and both implicit and explicit calls for changes in how police interact with affected groups.

Of course, police officers work within a specific legislative context. Victims recognize this, and indeed, find fault with that structure as well. "Even if they (perpetrators) were arrested," complained a Jewish male, "they probably avoided being convicted and sentenced for the 'hate' aspect of the crime as the current legislation makes it too difficult to prove!" As this comment makes clear, many victims recognize that there are limitations in the law that must be addressed, including the possibility that the "hate crime" threshold is too high.

The transgender community, in general, is even more critical of a legislative framework that in many jurisdictions does not explicitly recognize gender identity as a protected category. Several transgender participants shared their disdain for weak statutory provisions, as illustrated by the comments of this transgender woman:

Well for me, it's actually like being like everybody else and getting a human rights bill passed; and a bill that has some teeth in it. Right now there's no teeth in the bill and there's no, there's really nothing, I mean, they say there is and, yeah, different provinces have it and companies have it, but there's not something that's all inclusive that are protecting us right now (Transgender woman).

As is the case for transgender people, law can by its silences exclude groups from the protections that are afforded to others, such as in the failure to include particular groups in hate crime or civil rights legislation. The way forward in such cases is to lobby for legislative reform. Canada, for example, is on the verge of including gender identity in its federal human rights framework as it has been passed by the House of Commons. The hope is that the Senate will follow suit.

Exclusionary legislation, or the failure to enforce protective legislation, raises questions about the particular group's legitimacy and place in society; in some cases, such legislation and inaction explicitly defines a group's "outsider" status. As I have argued elsewhere, "law is a dramatic form of political and cultural expression which . . . is implicated in the shaping and valuing of difference" (Perry, 2001, p. 228). But law is not an immutable behemoth; rather, "it is vulnerable to the impact of ongoing struggles It is itself a site at which raced and gendered relations of power are enacted" (Perry, 2001, p. 229). Ultimately, law continues to have value in material and symbolic terms, and it must be addressed at those levels in the name of pursuing justice for all.

CONCLUSION

Although this article reflects a broad level of analysis, it presents and examines many voices from numerous communities who identify with race, ethnicity, faith, gender expression, and sexuality. Common to all of these communities is the need for those intangibles to which I referred: recognition, respect, safety, and, of course, voice. Yet as I have also suggested and tried to show, diverse communities, and the individuals within those communities, have diverse needs, wants, and experiences. Thus, the ways that these core values of recognition, respect, safety, and voice will be ensured, through concrete initiatives, can and likely will vary according to context. The next step is to engage in determinate conversations with affected communities in order to extract, in more detail, their preferred means of intervention and service. This article should be seen as a call to action among scholars and practitioners to expand and specify those community-specific strategies.

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Addressing Racial and Hate-Based Discrimination as Experienced by African Immigrants and Refugees in Waterloo Region, Canada*

Alicja K. Muszynski
University of Waterloo

Sadia Gassim
Wilfrid Laurier University

ABSTRACT

Since the early 1990s, the demographics of Waterloo Region (Ontario, Canada) have changed dramatically. Early settlement patterns reflected “chain migrations” of Mennonite farm families moving to the region from Pennsylvania. Subsequent establishment of three urban clusters with German and British roots resulted in a predominantly White regional and Canadian population. A relaxation of Canadian immigration legislation, together with political unrest in many African countries, led to African immigrants and refugees choosing to settle in the Tri-Cities of Waterloo, Kitchener, and Cambridge. Canada has an international reputation as a welcoming country that celebrates diversity. However, the public view that multiculturalism is entrenched within Canadian society is not reflected in the experiences of African newcomers. New immigrants and refugees continue to face considerable problems and barriers in adjusting to their new country of residence. They are forced to deal with various manifestations of racism, including race-based hatred, as recurring patterns in their daily lives. Using firsthand accounts gathered over the course of two projects, this article explores the problems that African immigrants and refugees face in adjusting to life in Waterloo Region. Community activists and leaders are working together with police, the legal system, social service agencies, and schools to combat racism and hate-based discrimination. The article provides information on new African communities emerging in a predominantly White region. It discusses the challenges and the initiatives being taken by African community leaders and residents working together with institutions including the police, schools, municipal councils, social service providers, and community agencies to address racism and hate-based discrimination. The article also presents the general conclusion drawn by African community member participants within the two projects discussed herein: that “hate” is a pervasive problem, especially as experienced by African immigrant and refugee populations in Canada, and that the Criminal Code of Canada §§ 318 and

319 fail to address due to the restrictive definition and prosecution of hate crimes. The participants' call for a redefined legal concept of "hate" and an accompanying revision of the Criminal Code seems to align with the aims and insights of critical or radical multiculturalism. These include the need to acknowledge, address, and identify ongoing issues of racial hatred and discrimination, in their multiple manifestations and as continuing structural problems within Canadian society.

Keywords: Waterloo Region (Ontario Canada), African Immigrants and Refugees, Polite Racism, Everyday Racism, Hate-based Discrimination, Hate Crimes, Anti-racism, Racial Bullying, Multiculturalism

INTRODUCTION

During the 1990s, many African nations, including Somalia, Uganda, Sudan, Ethiopia, Libya, Congo, Angola, Ivory Coast, Liberia, and Sierra Leone, experienced both natural and human-made disasters. Political unrest and civil wars forced civilians to flee and seek safe haven in other countries, whether elsewhere in Africa or other parts of the world, including Canada. Since Canada's largest city, Toronto, already had well-established African communities, many African newcomers initially moved there upon coming to Canada. However, the high cost of living led some immigrants and refugees to look for cities that were more affordable.

Many new immigrants moved to the Region of Waterloo because the mid-sized overlapping cities of Kitchener, Cambridge, and Waterloo appeared to be physically safe spaces, especially for raising children.¹ Toronto, an hour's drive by car, is easily accessible. The region's two universities, University of Waterloo and Wilfrid Laurier University, and Conestoga College were an additional attraction for those immigrants seeking to pursue postsecondary education. For those who were unable to find suitable employment, upgrading their educational qualifications was one route new immigrants and refugees chose in their efforts to adapt to life in a new country. Although many of these newcomers were already highly educated when they entered the country, they were unable to find employment in their professions; this circumstance led them to pursue other postsecondary degrees.

From the 1990s onward, the Region of Waterloo has become increasingly ethnically and religiously diverse. Prior to this era, the populations of the Tri-Cities of Waterloo, Kitchener, and Cambridge, were predominantly of European origin (German and British). With the relaxation of immigration laws and reduced migration from preferred "White" source countries, immigrants from many ethnic and religious backgrounds began to settle in

Canada in growing numbers. Today, Toronto is one of the most ethnically diverse cities in the world. Canada also has a reputation for racial, ethnic, and religious tolerance, with a Canadian Multiculturalism Act (1988) which contains equality clauses that forbid discrimination based on gender, race, ethnicity, and religion.

While official government policy espouses equality, multiculturalism, and ethnic diversity, this does not mean that racial discrimination has disappeared. Until the 1960s, Canada's immigration laws were racist, giving preference to White immigrants from selected countries (Kelley & Trebilcock, 2010). This article explores the experiences of African immigrants and refugees in Waterloo Region with racial discrimination and hatred. The article begins with a historical overview of the creation of a White community in Waterloo Region to illustrate that the geographical area underwent several waves of settlement, beginning with the First Nations and including an important Black settlement in the 19th century.

The Region of Waterloo has a historic legacy that foregrounds its European heritage; for example, the names of the region and the three cities of Waterloo, Cambridge, and Kitchener all derive from European geographic locations or historical figures. For this reason, it is important to provide at least some historical background on non-European settlements, especially the prior settlements of the First Nations as well as early Black settlement. The following two sections provide some of this historical detail because it provides an important backdrop to the creation of a "White" Canada and the racist legislation put in place after Confederation in 1867. The argument presented here, which is developed from applying an anti-racist perspective, is that the concepts of race and racism are interrelated and have changed over time, but have not disappeared. While official government legislation and discourse emphasize diversity and multiculturalism, African newcomers to the region paint a different picture in retelling their own experiences (and those of their children) with both racism and hatred.

I. FROM FIRST NATIONS TO MENNONITE SETTLEMENTS

First Nations in Canada claim ancestry going back 500 generations, with settlement beginning after the last Ice Age (approximately 10,000 to 13,000 years ago).² Although First Nations people were originally hunters and gatherers, by about one thousand years ago they began to settle in semi-permanent farming communities and establish longhouse villages. They were called the Haudenosaunee, or "people of the longhouse." However, by the mid-17th century few of these people remained in the area, having

been decimated by diseases and wars (Bloomfield, 2006, p. 9). Indigenous tribes continued to use the area on a seasonal basis.

Great Britain rewarded the Six Nations living in what is now upper New York State for their allegiance during the revolutionary wars of the 1770s and 1780s with a land grant comprising 674,910 acres that stretched six miles on either side of the Grand River from Lake Erie to the upper reaches of the river (Uttley, 1975, p. 7; Bloomfield, 2006, p. 19). White settlers began to pressure the First Nations to sell parts of their land to them. Blocks of land were sold and from these purchases the community that was to become the City of Kitchener emerged. The area upon which the city was built was originally called Sand Hills and the community became Ebytown, reflecting the importance of the pioneering Mennonite Eby family in settling the area. "The city was grounded on a Pennsylvania-German settlement. The pioneers were a branch of the Mennonite colonists who forsook their homelands in Europe to shun military service and gain religious freedom in Penn's Woods, Pennsylvania" (Uttley, 1975, p. 7). Following the American Revolution, the Mennonites who had settled in Pennsylvania feared further warfare and thus began to seek settlements outside the United States. Between the years 1796 and 1798, the Six Nations sold 38,000 hectares to a Loyalist, Colonel Richard Beasley, who was a land speculator. Eventually, Mennonites from Pennsylvania purchased all of his unsold land and created 160 farm tracts in the area then known as Sand Hills. Building began in 1800 and the migration continued until 1825, before coming to a close around 1835³ (Uttley, 1975; Bloomfield, 2006).

To summarize, Bloomfield (2006, p. 53) categorizes the immigration of German-speaking populations into the area as "chain migrations," which refers both to the early re-locations of Pennsylvania Mennonites described above as well as the later immigration of European Germans over the course of the 20th century. The German heritage remains evident in the contemporary period. According to the 2011 Census, German (at three percent) is second behind English (at 76 percent) as the mother tongue spoken by Waterloo Region residents. The prevalence of German as the second mother tongue in Waterloo is "a reflection of the region's German heritage and on immigration shortly after the Second World War" (Outhit, 2012, p. A1). The 2011 Census also attests to the increasing diversity of the region, especially in the cities, reflected in the large proportion of people who speak two or more languages at home (17.5 percent), up from 14.2 percent in the 2006 Census. The majority of multilingual speakers list English alongside a "migrant" language such as Punjabi or Mandarin (Outhit, 2012, p. A2).

II. THE LEGACY OF SLAVERY AND EARLY BLACK SETTLEMENT IN THE REGION

Black settlement in what is now Canada dates back some 400 years (Cooper, 2007).⁴ While there is a long history of Black settlement in the province of Ontario, the population of the region remained predominantly White until the 1990s, except for the Queen's Bush Settlement, discussed below.⁵ Much of the early history of African American migration into what was then Upper Canada was connected to the practice of slavery in the American colonies.

While slavery was practiced in Canada for nearly two centuries, because the climate was not conducive to plantation style agriculture, its practice was far more limited in scope than it was in the United States (Pentland, 1981, p. 1). Both the French and the British enslaved indigenous peoples. White settlers moving to the area brought African slaves from the West Indies as well as from the American colonies. Some indigenous tribes also practiced slavery and sold slaves to the French fur traders when Canada was still the French colony known as New France. The first known slave in what is now Canada was a young African boy brought by the English in 1628 and sold to David Kirke, who baptized him the following year and named him Olivier Le Jeune. He died in 1654 and it is possible that by then he had been emancipated (Brown-Kubisch, 2004, p.1). While the governor of New France began to encourage the importation of slaves in the late 17th Century, King Louis XIV ordained that slaves be used mainly in agricultural production, which was not economically profitable in the French colony.⁶ Thus, very few African slaves were imported into the territory. By 1759, approximately 3604 slaves resided in New France but only 1132 of these were Black (Brown-Kubisch, 2004, p. 3). According to Brown-Kubisch, under the Code Noir of French law, these slaves had possessed some rights that were abolished when, in 1763, the Treaty of Paris gave the British control of New France. Under British law, slaves were regarded as a form of chattel (property without any personal rights or liberties).

During the American Revolutionary War, the British offered freedom to those slaves who would desert their owners and fight on their side as Loyalists. However, "unscrupulous behaviour actually contributed to the expansion of slavery" (Brown-Kubisch, 2004, p. 4). An imperial statute in 1790 allowed White Loyalists to enter from the United States without having to pay duty on their slaves. Meanwhile, between 1780 and 1793 an estimated five to eight thousand Black Loyalists moved to Upper Canada (the area that is now the province of Ontario). "Both freed and enslaved Blacks were therefore living in the province concurrently in the late 18th

century” (Ontario Heritage Trust, n.d.). However, while Britain promised one hundred acres of free land to every Loyalist household head, Black Loyalists who had been attracted to Upper Canada with the promise of free land either received land of very poor quality or no land at all. As a result very few remained in Upper Canada and many of those “were owned by their military masters” (Black Loyalists, n.d.).

Black slaves in Upper Canada at this time are known to have resisted the conditions of their enslavement. The case of Chloe Cooley represented a major event leading to the abolishment of slavery. Cooley was forcibly transported from Queenston in Upper Canada to a new slave owner across the river in the United States, which led to a protest that included a free Black veteran, Peter Martin, and a neighbor and witness, William Grisly. Together they petitioned Lieutenant Governor Simcoe who, in 1793, promulgated an act to prohibit the importation of slaves into Upper Canada. “Any slaves already living in the province at the time of this law’s enactment, however, remained the property of their owners, as did their children until they reached the age of 25. This act set the stage for the abolition of the transatlantic slave trade by Britain in 1807 and the outright abolition of slavery across the British Empire on August 1, 1834” (Ontario Heritage Trust, n.d.).

Another major migration of African Americans to Upper Canada occurred in the 1850s and 1860s, as approximately 30,000 people came to Canada using the “Underground Railway. . . a loosely constructed network of escape routes that originated in the southern United States, wound its way to the less restricted North and eventually stretched to Canada” (Ontario Heritage Trust, n.d.). Places of Black settlement included Amherstburg, Chatham, London, Oro, Woolwich (in Waterloo Region), and Windsor, as well as Owen Sound and Toronto. Unfortunately, not much is known about these first Black settlers in Waterloo Region.⁷ Most of these first families were poor and illiterate, since law forbid former fugitive slaves from receiving any type of formal education. For these and other reasons, this group of migrants did not leave behind legal documents like property deeds or official birth and marriage records. “A bit is known about Levi Carroll, an ex-slave with one leg who lived in Waterloo’s first building from 1843 to about 1882. He died in what was then known as a ‘poorhouse’ in 1897” (Parkhill, 2012). During the same period, there is some information about Robert Sutherland, the first Black Canadian lawyer, who lived in Berlin (later Kitchener). “And yet, just outside of town, sat one of the largest settlements of Black people in Canada. Escaped slaves started the Queen’s Bush Settlement in the Glen Allen, Hawksville and Wallenstein areas in the 1820s” (Parkhill, 2012).

In 1848, the Queen’s Bush Settlement had a population of approxi-

mately 1500 free and former slaves (Brown-Kubisch, 2004, p. 113). To provide some perspective, in 1852 the population of Berlin (later Kitchener) numbered only about 700 people. However, by 1861, only 177 African Canadians remained in the Queen's Bush and their numbers declined further in the following years (Brown-Kubisch, 2004). Most of these pioneers settled and farmed the land as "squatters" since the land had not yet been officially surveyed and allocated. When the land was surveyed, it was offered to these settlers at prices they could not afford, which forced the majority of them to leave the area. White settlers with more means purchased the rich farmland, some of which had been developed by Black families who had established farms out of wilderness. "Moving into the Queen's Bush as squatters had been a gamble, one that, in the end, most Black farmers lost" (Brown-Kubisch, 2004, p.179). It is important to note that Black settlers did not leave without a struggle; for example, a number of petitions were sent to the Governor General but without effect. "While most Canadians generally opposed slavery, they were not in favor of a massive immigration of Blacks" (Brown-Kubisch, 2004, p. 9). The press in particular aired editorials and articles that were blatantly racist towards African Americans and African Canadians. Black activists fought back, establishing their own newspapers like the *Voice of the Fugitive* (1851-1853) and the *Provincial Freeman* (1853-1857), co-founded by Mary Ann Shadd, a strong advocate for the rights of African Canadians in Upper Canada. With the end of slavery, many people returned to the United States:

Canada, therefore, was not the haven mythologized in the southern slave quarters or in the free northern states, but neither was it an institutionalized oppressive society as was the United States. At least in principle, Blacks were guaranteed the same rights and privileges as white Canadian citizens and as a result, Canada retained its symbol as a safe haven until slavery ended in the United States. (Brown-Kubisch, 2004, p. 23)

In conclusion, while many slaves in the United States regarded Canada as a safe haven, and despite the formal abolition of slavery, Blacks living in the province faced discrimination, both overtly racist as well as a more hidden, insidious form (what has come to be known as "polite racism"). In the end, the White population in Waterloo Region did not offer the type of assistance necessary for Blacks: people who had barely escaped with their lives, who sought to establish productive farm communities, and who offered many skills and trades. As the land was surveyed and offered for sale, Blacks and the First Nations suffered similar fates, as the White population moved in and settled the region.

III. NATION-BUILDING: A WHITE CANADA

From Confederation in 1867 until 1967 when major changes were made to immigration policies resulting in a new Immigration Act, the African Canadian population remained very small.⁸ As immigration from preferred European nations, the United States, and White settler colonies like New Zealand and Australia decreased, immigration officers began to look to other source countries. Until 1991, most Black immigrants were born in the Caribbean, Central America, and South America,⁹ but the proportion of African-born immigrants began to increase from 1981 onwards.¹⁰ Milan and Tran (2004) reported that while the overall Canadian population increased by 10 percent between 1991 and 2001, the Black population increased by 58 percent in that decade.¹¹ By 2001, Blacks formed the third largest visible minority group in Canada, with almost all (97 percent) living in Canada's urban areas and 47 percent alone living in the Toronto metropolitan area. The 2001 Census also reported that 45 percent of Black Canadians were born in Canada. In 2001, the City of Kitchener had a population of 7,300 Blacks (1.8 percent of the total Canadian population) and 46 percent of whom were born in Canada (Milan & Tran, 2004). In the 2006 Census, the Region of Waterloo Planning, Housing and Community Services, reported a total of 9,510 visible minority people self-identifying as "Black" living in the Region of Waterloo.

"Europe remains the home country for most immigrants in the Region due to historic immigration trends" (Region of Waterloo, 2006). Nevertheless, the most common countries of birth for immigrants to the region today are those in Asia and the Middle East. Between 2001 and 2006 there was a 50 percent increase in the number of immigrants coming from South America, Africa, and the United States compared to the preceding five-year period. Overall, the numbers of European immigrants to the region have been declining. Between 2001 and 2006, Waterloo Region was one of the top ten destinations for immigrants to Canada and one of the top five in Ontario.¹² Still, most residents of Waterloo Region (94 percent) are Canadian citizens.

Immigration patterns compiled from the 2011 Census resulted in a government publication detailing patterns that have emerged since 2006 (Chui & Flanders, 2013). In this five-year period, there was an increase in newcomers arriving from Africa to Canada (from 10.3 percent to 12.5 percent), yet the largest group of newcomers came from Asia. While Ontario remained the province with the largest share of people born outside Canada, there was a decline of newcomers coming to the province in the latest five-year period (43.1 percent compared to 52.3 percent in the period 2001 to 2006). The Tri-Cities (Waterloo, Kitchener, and Cambridge) also lost

ground over this latest period, attracting 1.3 percent of new immigrants, including a decline in newcomers from African countries. A main reason is that the western and prairie provinces have proven to be more attractive, with more employment opportunities available for new immigrants in primary resource extraction industries like oil and potash mining. For the first time, the 2011 Census recorded that Canadian was the most frequently reported ethnic origin in Kitchener, followed by German and English (CBC News, 2013).

To summarize, the creation of a “White” Canada required conscious political planning and legislation that included preferred country status to encourage White immigration. The Region of Waterloo was no exception. Land originally granted to the First Nations was sold to enable the creation and re-settlement of Mennonites moving from Pennsylvania. The Queen’s Bush Settlement, which originally included a significant population of Black farming families, became predominantly White once the land was officially surveyed and sold. The Tri-Cities still bear the imprints of a British and German heritage. This does not mean that there have not been settlements representing more diverse groups in the region, including notably a significant community of people emigrating from the Caribbean countries going back to the 1960s. However, significant immigration to the region from the African countries is a recent phenomenon, roughly dating to the early 1990s.

The theoretical argument contained in this article is that racism, as well as anti-immigrant hatred, still exists, especially when we listen to the experiences provided by African immigrants and refugees. Racism is a socially and historically created phenomenon that changes over the course of time, adapting to new economic, cultural, and political circumstances (Anderson, 1992; Miles & Brown, 2003). Racism can take on a variety of different forms, and, according to the politics of state formation in a given historical period, may or may not be encoded in legislation. One of its more insidious manifestations is “polite racism” which we can trace back to the Queen’s Bush Settlement. As evident from the earlier discussion here, while Canada had a reputation for its tolerance and aversion to slavery at a time when slavery was still practiced in the United States, many African Americans found another level of intolerance once they arrived in what became the province of Ontario. Existing laws were used to push them out of lucrative employment and from the land that they had taken up and cultivated. In other words, there was dissonance between the official language of tolerance and the unofficial treatment of African Canadians that made them aware of their status as “other.” This status was also reflected in immigration policies, which, while they did not technically ban immigration

from African countries, nevertheless made it very difficult for people to apply for admission and be accepted.¹³

The legacies of racism and anti-immigrant intolerance persist today, although their variations have adapted to reflect contemporary political, cultural, and social conditions. For example, many African Canadians told the authors that overt forms of racism were much easier to confront than its more “polite” version. Another element in the theoretical analysis is locating the concept of “hate” (as defined in Canadian legislation) within the discourse of racism. In Canada, hate crimes legislation became law in 1970, under what was formerly § 281.2(2) of the Criminal Code of Canada, and was amended in 1985 to become what are now §§ 318, 319, and 320 of the Criminal Code of Canada. Some provinces also enacted their own hate crimes legislation in the decades that followed. Canadian legislation that criminalizes and prosecutes hate crimes falls in line with developments in other Western nations, but departs specifically from the United States on the matter of criminalizing hate speech. The Supreme Court of Canada defined “hatred” in the landmark hate propaganda case, *Regina v. Keegstra* (1990). In *Keegstra*, Chief Justice Dickson noted that “‘hatred’ connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation” and that “to promote hatred is to instill detestation, enmity, ill-will and malevolence in another.” Thus,

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation (1990).

Supported by this definition, the Criminal Code of Canada includes specified hate crimes (within the Hate Propaganda laws, generally) of Advocating Genocide (§ 318(1)), Public Incitement of Hatred (§ 319(1)), and Willful Promotion of Hatred (§ 319(2)), as well as provisions for the Forfeiture and Seizure of Hate Propaganda (§§ 319(4), 320, & 320(1)) (1985). During the community workshops discussed in the next section of this article, a Police Sergeant presented to the workshop participants condensed and simplified versions of Criminal Code §§ 318 and 319, and an additional provision, “Hate Motivation as an Aggravating Factor,” in Code § 718.2 (a)(i).

IV. “COMMUNITIES WORKING TOGETHER AGAINST HATE CRIMES” PROJECT¹⁴

In May 2005, the Attorney General (Ontario) and the Minister of Community and Correctional Services announced that they were planning on establishing a Hate Crimes Community Working Group “whose function would be to advise the government on sensible ways of preventing, reducing and redressing hate crime and of meeting the needs of hate crime victims.” The Working Group was established due to the steady rise of hate crimes and hate incidents in the 1990s “and an unprecedented increase immediately following September 11, 2001.” This action came “[i]n the wake of a documented 93 percent increase in the number of hate crimes in Ontario in the past decade, (and) the Government promised support for dedicated hate crime police units across the province and strong victims’ rights legislation to ensure victims have access to information and services” (Hate Crimes Community Working Group [“Working Group”], 2006, p. 7).

From January to July 2006, the Working Group heard testimony from over 600 community members and stakeholders, including representatives from Aboriginal, racialized, religious, Lesbian/Gay/Bisexual/Transgendered/Two-Spirited/Intersexed (LGBTI)¹⁵ and other marginalized communities in Ontario. The Executive Summary concludes with the following quote from an African Canadian woman living in Toronto (“Victim of racist graffiti”):

When I tell the story, everyone says that I should have reported it. But to who? What effect would it have had? I just wanted to forget about it . . . I didn’t know the right person to go to. The police are overworked and don’t have time – I didn’t think it was a ‘heinous crime’. And what if I got the wrong police constable? I don’t want to add to my pain and victimization. I’d rather put up with it. I’d rather protect myself. And I don’t want to risk having it trivialized.

This quote is followed by one from a “South Asian Male, Victim of racial harassment and assault, Toronto,” who testified that he was less angry with the individuals who committed the offenses, whom he saw as acting from a basis of ignorance, than with the police and witnesses who stood by and did nothing (2006, p. 6). The authors of this article heard similar testimonials during the course of the 2008 project.

The Ontario government initiated the Hate-Crimes Response Grants program following the recommendations of the Hate Crimes Community Working Group. In July 2007, the Ministry of the Attorney General announced that \$1.35 million would be available to 21 community organizations to support victims of hate crimes. In 2006-2007, the Hate Crimes

and Extremism Investigative Team, representing ten police services across Ontario, received \$200,000 to continue its work. In their letter to the ministers, the Working Group made the following statement:

The most important messages in our report are that not only are members of vulnerable communities across Ontario victimized by hate crime extensively and differently, thereby requiring enhanced victim services, but that hate crime occurs within a historical and social context of systemic bias and prejudice such that, over time, incidents of hate and hate crime are permissible (2006).

The University of Waterloo, along with World Wide Opportunities for Women (“WWOW”) and African Women’s Alliance of Waterloo Region (“AWA”),¹⁶ applied for and received funding in 2008 to bring together African community leaders, interested residents, and social service providers to tackle the issue of hate crimes in Waterloo Region. An undercover investigator who was assigned to the Hate Crimes Investigation Unit of the Waterloo Regional Police Service facilitated two workshops, which included video presentations and an explanation of what constitutes a hate crime (§ 318, “Advocating Genocide,” § 319 (1), “Public Incitement of Hatred,” and “Hate Motivation as an Aggravating Factor,” § 718.2 (a)(i)).

In 2006, Statistics Canada, the Government of Canada’s national statistical agency, began collecting annual data on hate crimes. Waterloo Region had one of the highest rates of police-reported hate crimes in Canada. The majority of victims were targeted because of their race; in particular, being Black. In 2011, Statistics Canada (based on statistics from 2009), reported the following increases in the numbers of police-reported hate crimes in four large metropolitan areas: Ottawa (+83), Toronto (+79), Kitchener/Cambridge/Waterloo (+62) and Montréal (+61). Police-reported hate crimes rose by 42 percent from 2008 to 2009, with over half (54 percent) motivated by race or ethnicity, 29 percent by religion and 13 percent by sexual orientation. Since the project discussed below took place in 2008, the increase in hate crime reporting in 2009 could be partially attributed to the success of the project in encouraging African Canadian residents to come forward and to report to police what these residents perceived to be hate crimes. The number of police-reported hate crimes in Kitchener/Cambridge/Waterloo rose from 31 in 2008 to 93 in 2009. One of the chief findings from the project was the discrepancy between what African Canadians considered to be a hate crime and the prosecution of hate crimes as laid out in Criminal Code §§ 318 and 319. The overwhelming consensus among the project participants was that the official definition of “hate crime” is far too narrow and that the legislation must be changed. In this sense, the legal concept of “hate” would incorporate various forms of

racism more comprehensively and would match and authenticate people's daily experiences with racism. A broader definition along the lines advocated by African Canadians would also more closely match the broader definition provided by the Supreme Court of Canada provided above.

Following is a brief description of the work of the Hate Crimes Investigation Unit, whose officers confront, target, and prosecute hate crimes as these occur on the ground. In 2008,¹⁷ the Hate Crimes Investigation Unit was heavily involved with undercover investigation of organized hate groups who attempted to infiltrate the area (for example, by recruiting high school students into hate group membership). The Hate Crime Unit monitored Hate Groups including: Canadian Heritage Alliance, Heritage Front, Tri-City Skins, Canadian Ethnic Cleansing Team, Citizens for Foreign Aid Reform ("C-Far") and Canadian Association for Free Expression ("Café") (Khanna, 1999). Kitchener-Waterloo was a hub for these groups in the province. The Unit kept track of the activities of these hate groups and tried to expel them from the region. The Police Sergeant assigned to work on the 2008 project reported that over the preceding five years in Waterloo Region, over 254 incidents took place that had a "hate" component.¹⁸ He admitted that not one of these incidents was brought to trial using hate crime legislation. In addition, the Canadian Association of Police Chiefs (1996, p. 8) noted that while police often target organized hate groups, in Canada "most of our hate crimes are being committed by youth and by people who are not connected to the hate organized groups. . . Hate organized groups are responsible for 5 percent of the overall hate criminal activity." This conclusion was borne out by the testimony and stories told by participants in the 2008 project.

The Hate Crimes Investigation Unit also monitored over 600 internet sites and worked closely with American police agencies. Presentations made to the workshop participants, a group which included leaders and members from the region's recently established African Canadian communities, clarified how difficult it was to prosecute anyone using hate crimes legislation. The common practice was to charge individuals using other legislation; for example, with physical assault, even when it was clear that the assault was motivated by racial hatred. This practice was followed in the case of a young Sudanese man who suffers from polio, who was severely beaten with his own crutch by a group of young white men in Victoria Park in Kitchener. He made a victim impact statement at the forum that concluded the project in September 2008, and testified for the need to institute better means of prosecuting and charging offenders with hate crimes, rather than using other criminal legislation.

Breakout sessions followed the Sergeant's explanation of hate crime legislation at two workshops held in Kitchener and Cambridge. Participants

were provided with scenarios like the following one, as based on an actual incident. This particular session covered the topic of “justice issues.” The scenario read as follows:

In my work as a Child Protection Worker, a mother once spat in my face and called me a “black bitch” because I had to remove her children from her care after unsuccessfully working with her to stop the abuse of her children by her partner. I anticipated that it was not going to be an amicable task removing the children so I went to the home with two police officers. When the officers removed the children the mother followed us into the parking lot screaming and yelling and then spat in my face. She was promptly arrested and charged by the police.

While workshop participants identified a component of racial hatred in this incident, the woman was not charged with a hate crime.

The sessions ended with the group meeting together with the Sergeant. A lively debate and heated discussion ensued because the participants disagreed with the definition of a hate crime as found in Criminal Code §§ 318 and 319. The federal legislation was provided to the participants at the beginning of each workshop. Participants provided example after example, particularly in the breakout sessions, only to be told that the incidents they reported would not be considered hate crimes under the legislation. While the scenarios resonated with the African Canadian participants as mirroring their own experiences, the participants were shocked to discover that these could not be prosecuted as hate crimes. Many African Canadian participants reported that such incidents occurred within their lives on a daily basis. Because the police were reluctant and/or unable to prosecute such incidents using hate crime legislation, workshop participants acknowledged that they and their communities were reluctant to report such incidents to the police. They also expressed frustration with the legal system, which they identified as being part of the problem. Participants recounted stories of police officers assuming that African Canadian families were the guilty parties without bothering to investigate the incidents in question.¹⁹

Workshop participants were asked to complete a short survey; 36 people completed it. Fifty-three percent of the respondents replied that they had been harassed because of their skin color, and 19 percent replied that they had been harassed because of their religious background. Many African Canadians are of Muslim faith. When asked if they knew of anyone who had been harassed, 86 percent answered in the affirmative based on skin color and 67 percent answered yes on the basis of religion. When questioned about their children’s experiences, 36 percent answered that their children had suffered harassment due to the color of their skin and 14 percent were harassed because of their religion. When asked how they

responded to these incidents, 28 percent replied that they had done “nothing” and only one person replied that they had contacted the police. One person answered that their response was to move to a different country.

Summarizing their firsthand experiences, African Canadian community residents reached the following conclusions. First and foremost, hate crimes are not one-time offenses. African Canadians who experience these assaults (verbal and physical) wanted to make it clear that these incidents must be seen as part of a general climate within which individual acts of hatred are enabled. Thus, much more needs to be done than simply implementing criminal legislation that treats hate crimes as individual criminal acts. The entire community needs to work together to change the overall climate within Waterloo Region to render such acts unthinkable. Second, hate crimes do not only affect the targeted individuals, but also affect their families and their communities. Hate crimes target families and communities and communicate the message to them, through violence, that they do not belong. Third, the vast majority of reported hate crimes are raced and gendered. Specifically, it is White youth and men who target Black youth and men. This is why the Victoria Park incident mentioned above resonated so forcefully for participants; the victim was left lying unconscious and taken to the hospital, and the young men were charged with assault but not under hate crime legislation.

The issues brought forward during the two workshops were developed further over the course of the summer and brought to the forum that took place in September 2008. The forum included a panel with representatives from the Hate Crimes Investigation Unit, the Waterloo Public School Board, the regional council of Waterloo Region, AWA, the African Canadian Legal Clinic (established in 1997) and an eleven-year old boy who spoke about school bullying. He began with a dictionary definition of bullying, which identified various types of bullying: physical, emotional, and cyber bullying. He then added another component to the dictionary definition—bullying motivated by hatred—which he used to speak about his brother’s experiences and his own. The boy’s brother became a target for bullying (physical and verbal) since they were the only two Black boys in their Montréal elementary school. When the older brother came to his younger brother’s defense, a physical confrontation in the schoolyard ensued; the two brothers were the only ones who received suspensions from school. The boys’ father, who was present in the audience, cited this incident as the major reason why they decided to move to Waterloo. Unfortunately, instances of bullying based in racial hatred are also occurring in the region’s schools. Mothers gave examples of their children being called “monkeys” and “(n-words),” and of being told to “go back to Africa.” Children, especially boys, were also beaten by groups of White boys in the

schoolyard because of their skin color. The issue of racial bullying thus became a central component of the second project begun in 2011 and is discussed below.

Following the morning keynote addresses and the panel, the afternoon was devoted to breakout sessions on six topics: youth, education, media, interfaith, justice, and community issues. The breakout sessions included participation of police officers alongside community leaders and social service agency workers. In the general session that concluded the forum, African Canadian community leaders expressed much frustration and anger that so little was being done to address what African Canadian participants clearly experienced as racial hatred and discrimination.

Alongside the conclusions from the workshops, the consensus stemming from the forum was that Criminal Code §§ 318 and 319 are fundamentally flawed and need to be rewritten. There was a recommendation for workshops for police where African Canadian community members could come and speak about their experiences with hate crimes. Rather than police, prominent and well-known members of the African Canadian communities (like Gassim) are the ones who tend to be called when a racist event occurs, sometimes in the middle of the night.²⁰ Community members do not know where else to take these complaints, since there is no organized channel to communicate with authorities.

In November 2012, a public forum was held at Kitchener City Hall to launch “Celebrating Diversity in Waterloo Region.” The Chief of Police for Waterloo Region and the Mayor of Waterloo were keynote speakers. The Chief of Police noted the very high rate of hate crimes in the region, listed some years in the top four nationally, as discussed above. He said that the high incidence of hate crimes in Waterloo Region might be due to the success of the 2008 project, when participants were encouraged to come forward and report what they understood to be “hate crimes,” placed in quotes here because they would define hate crimes in a broader sense than that found in the Criminal Code. Statistics Canada reported that in 2010 there was a decline of 20 percent in the rate of police-reported hate crimes motivated by race or ethnicity and a decline of 18 percent in the overall rate (2012). Blacks continued to be the most highly targeted race or ethnic group and Ontario was the province with the highest rate of police-reported hate crimes. While the Tri-Cities were listed as fourth highest in the Census metropolitan areas in the province of Ontario, Waterloo Region witnessed a decrease along with Toronto and Vancouver.

V. CELEBRATING DIVERSITY IN WATERLOO REGION

Citizenship and Immigration Canada provided project funding for

“Celebrating Diversity in Waterloo Region” for three years (2011-2014) as part of its “Inter-action Multiculturalism Grants and Contributions” program designed to address gaps in communication between public government agencies and local communities. The University of Waterloo, in partnership with WWOW and AWA, continued their work with new African immigrants and refugees in the Region of Waterloo. While “Celebrating Diversity in Waterloo Region” did not focus on hate crimes, an important issue identified in the previous project which has been developed in this second project is the issue of racial bullying in schools. Mayor Brenda Halloran identified bullying as a major problem during the course of her keynote address in 2012 at the forum that introduced the project to the community as mentioned above. While the afternoon session was to be devoted to breakout sessions, it was decided to keep the group together due to the lively debate that ensued, especially around the topic of bullying. One mother provided the example of her child being denied access to the play area in her junior kindergarten class when a White child informed her that no “Brown” children were allowed. Fortunately, the teacher intervened immediately to address the problem. This was not always the case as other parents came forward to report incidents of racial bullying involving their children. The examples provided by the participants included instances of bullying from junior kindergarten all the way through university. Indeed, a university student elicited tears from participants as she recounted her own experiences with racial slurs and bullying over the course of her university career, which led her to experience feelings of isolation, low self-esteem, and poor body image.

Musyznski conducted interviews with African residents in the region during 2012 and 2013, and included a number of questions dealing with experiences with racial discrimination. A number of parents identified the issue of the racism their children experience in the schools as a major problem. For example, several parents reported that their children were called “(n-words)” by other children. Often the children did not even know what this word meant. When a child who was repeatedly called racist names finally reacted to this treatment, teachers and the principal blamed the targeted child, who was then suspended from school. As reported by several parents, part of the problem is that often the White children know how the system works and know when and how to attack children who are newcomers by isolating them so that there are no other witnesses present. As newcomers, African children often do not know who to turn to or what to do and thus become a further target for schoolteachers and principals who side with the White children. Parents who are familiar with English and who find out what is happening to their children have reacted by having their children change schools; some have even sent their children out of the

country. The problem is far worse for newcomers who do not know the language, the way the school system operates, or even what rights they as parents have. Children may also be reluctant to talk about these issues at home. Such reticence can lead to high levels of stress and even mental breakdowns.²¹

One of the project outcomes was development and dissemination of a tool kit on bullying for elementary and junior high schools, including a discussion of racially based bullying. In May 2013, a toolkit launch was held to introduce “Bullying: Let’s Do Something about It” to the community and to social service providers; the school boards plan to distribute a copy of the tool kit to every elementary and high school in the region. A second initiative, a series of lunch learning sessions, was introduced in 2012. The learning lessons were for new immigrants and refugees enrolled in English as a Second Language courses in two of the region’s schools. This series proved so successful that it was expanded to four schools and continued into 2014. The series of eight sessions included one on “The Impacts of Bullying on Your Child,” as well as “Raising Children in Two Cultures,” “The Influence of Peer Relationships,” “Self-Esteem and Mental Health Issues,” “Parental Stress Management and Coping Techniques,” and concluded with a session that provided information on community resources.

As participants in the 2008 forum expressed so eloquently, African Canadians experience hate within a context that involves racial discrimination as an ongoing phenomenon, one that affects the individual, the entire family, and the community. A focus group held in 2013 included African Canadian youth. One of the major topics that they discussed was the recruitment of African newcomers into gangs as taking place within their schools. While this is a new topic in the context of this article, it is yet another factor that must be taken into account in understanding the experiences of African immigrants and refugees. Another dimension involves inter-generational differences in the experiences of newcomer parents compared with those of their children. Children face problems at school, like racial bullying and gang recruitment, problems that may remain unknown to their parents. These issues were addressed in the aforementioned lunchtime series for ESL participants, as a response to the call from the 2008 forum for the need to make newcomers aware of available services and to offer assistance in helping them adjust to a life in a new country.

CONCLUSION: HATE OR RACISM?

The information and testimony gathered to date show a need to address the issues raised here as complex and interrelated, and as including hate

crimes, racial bullying, and experiences with racial discrimination and racism on a daily basis. This article concludes with a theoretical discussion that can aid in understanding the nature of the experiences that African immigrants and refugees face, as well as possible solutions.

From the testimony provided by African Canadian community residents, it is clear that they deal with what they defined as hate crimes on a daily basis. Essed's concept of everyday racism applies in this context. Essed connects the macro dimension of racism as embedded in structures and ideology with the micro experiences of those groups of people who are its targets and who must develop what Dorothy Smith (1991) terms a "bifurcated consciousness." While African newcomers embrace the view that Canada is a multicultural society that promulgates justice and fairness, their own daily experiences contradict this principle of inclusion. From the testimony the co-authors heard, Black people are not made to feel that they are welcome. Everyday racism "links ideological dimensions of racism with daily attitudes and interprets the reproduction of racism in terms of the experience of it in everyday life" (Essed, 1991, p. 2).

Henry, Tator, Mattis, and Rees (2010, p. 6) argue that the concept of democratic racism is "the most appropriate model for understanding how and why racism continues in Canada." Henry et al. define democratic racism as "the justification of the inherent conflict between the egalitarian values of liberalism, justice and fairness, and the racist ideologies reflected in the collective mass belief system as well as the racist attitudes, perceptions, and assumptions of individuals." Henry et al. also identify a number of discourses connected to the concept of democratic racism. These include the "discourse of law and order," the "discourse of multiculturalism" and the "discourse of neoliberalism and neoliberal racism."

All three discourses implicate the Canadian state. For example, the "discourse of multiculturalism" includes "official" multiculturalism (as enacted under federal and provincial legislation) and, in contrast, "critical" or "radical" multiculturalism. Official multiculturalism is defined as "[a]n ideology that holds that racial, cultural, religious, and linguistic diversity is an integral, beneficial, and necessary part of Canadian society and identity. It is an official policy operating in various social institutions and levels of government, including the federal government" (Henry et al., 2010, p. 382). However, "critical (radical) multiculturalism" is defined as

A form of multiculturalism that calls for a radical restructuring of the power relations between ethno-racial communities, and that challenges the hierarchical structure of society. Critical/radical multiculturalism focuses on empowering communities and transforming systems of representation, institutional and structural centres of power, and discourses.

Multiculturalism in this context suggests that diversity can be meaningful only within the construct of social justice and equity (Henry et al., 2010, p. 380).

The general conclusion from the workshops and forum discussed in this article is that “hate” (in the way that participants discussed it as a feature of their everyday lives) is a pervasive problem that the Criminal Code §§ 318 and 319 fail to address due to restrictive definition and prosecution of hate crimes. While participants did not use the same language, their recommendations seem to align with the call from Henry et al. for a critical or radical multiculturalism. A policy developed along the lines of a critical multiculturalism would acknowledge, address, and identify ongoing issues of racial discrimination, including racial hatred. Such a policy would include concrete measures to address both racism and racial hatred in their multiple manifestations and as continuing structural problems within Canadian society.

NOTES

1. Waterloo Region contains four townships (Wellesley, Woolwich, Wilmot, and North Dumfries) and three mid-sized cities (the Tri-Cities) with overlapping boundaries: Kitchener, Waterloo, and Cambridge. According to the 2011 Census Bulletin, the population of the entire region in 2011 was 507,096, an increase of 6.1 percent from 2006. The population of Kitchener was 219,153 (an increase of 7.1 percent compared to 2006), the population of Cambridge was 126,748 (an increase of 5.3 percent over 2006) and the population of the City of Waterloo was 98,780 (or an increase of 1.3 percent compared to the 2006 Census) (Region of Waterloo, 2006).

2. According to the 2006 Census, 4,810 people living in Waterloo Region reported having an Aboriginal identity (First Nations) (Region of Waterloo, 2006).

3. The City of Kitchener was called the Town of Berlin from 1854 to 1912 and then the City of Berlin from 1912 to 1916. Because of Canada's allegiance to Great Britain during the First World War, the decision was made to change the name to Kitchener in 1916, the year that Herbert Kitchener died while serving as Secretary of State for War in the United Kingdom. (*About Kitchener-City of Kitchener* <http://www.kitchener.ca>) Cambridge became a city in 1973, the product of an amalgamation of the City of Galt, the towns of Preston and Hespeler, and the hamlet of Blair. The City of Galt was created from a land grant given by the British Crown in 1784 to the Six Nations who had the land surveyed in 1791 and then sold

some of it to developers. Galt was a Scottish novelist and Commissioner of the Canada Company. Galt was the largest town in the area until the beginning of the 20th century when it was overtaken by Kitchener. The histories of Preston, Hespeler, and Blair date back to the early 1800s when German-speaking Mennonites from Pennsylvania acquired land from Richard Beasley, who purchased the land from the Six Nations. (Bloomfield, 2006). Finally, the City of Waterloo, the smallest of the Tri-Cities, was also built on land originally granted in 1784 to the Six Nations. Pennsylvania Mennonites began to buy up the deeds from Beasley and began moving into the area in 1804. “Waterloo was settled in 1806 by Abraham Erb, a Mennonite from Pennsylvania. . . Erb named his settlement Waterloo Township after the famous Napoleonic battle won by the British allies in Belgium” (City of Waterloo, 2012).

4. The term “Black” is placed in quotation marks to indicate the use of a problematic term to encompass a large and diverse population with varied histories. The reason for using the term is its continued use in academic work and because it continues to signify a racialized “other” juxtaposed to “White.” Since the geographic area under investigation in this article was a predominantly “White” area for much of the 20th century, the use of the terms “Black” and “White” make sense in terms of distinctions that highlight different perceptions of people based on race. In the remainder of this article, the terms White and Black will be used without the quotation marks.

5. Immigration from the Caribbean and Bermuda occurred in the 1960s and peaked in the following decade. Immigrants from African countries began to arrive in the 1970s with a large increase beginning in the 1990s and continuing through the first decade of the 21st century. (Statistics Canada, 2006) From 2001 to 2006, there was a 50 percent increase of people arriving from South America, Africa and the United States compared to the period 1996-2000. Since 2001, the proportion of European immigrants dropped significantly over the period 2001 to 2006.

6. Fur traders were interested in prosecuting the burgeoning trade in furs rather than creating agricultural settlements; for this, they relied heavily on First Nations men and women as guides in hunting and trading as well as basic survival skills.

7. Many Canadians like to pride themselves on their record of tolerance in relation to the topic of slavery and its deep historical trajectory in the United States. A corrective is offered by George Elliott Clarke (2008) in his introduction to *The Refugee: Narratives of Fugitive Slaves in Canada* by Benjamin Drew, first published in 1856. Drew, an American, conducted nine oral interviews with fugitive slaves. The first paragraph of Clarke’s introduction reads: “ Proudly, we Canadians blame the practice of African

slavery in North America on two faced Americans: those who preached hatred for monarchy and love of freedom, but only for citizens touting white skin, male genitals, and a Bible. . . These half-truths still compel our allegiance, thus inspiring a hint of anti-Americanism in our public dialogues and justifying, painlessly, our ignorance about slavery in colonial Canada and about the persistence of racism in our 'post-modern, multicultural' nation." Clarke refers to Drew's interviews as "propaganda," condemning the savagery of slavery in the States and touting Victorian Ontario as a "paradise."

8. In 1871, the Black population living in present-day Ontario, Québec, Nova Scotia and New Brunswick numbered 21,500 people or 0.6 percent of the overall population of the newly formed nation of Canada. (Milan & Tran, 2004) From 1881 to 1941, the population declined further and in the 1931 Census was listed at only 0.2 percent of the overall population. While there was a bit of growth after 1941, in the 1971 Census the Black population remained at 0.2 percent (or 34,400 people), having declined to 0.1 percent in the 1951 Census data. A major increase was recorded in the 1981 Census when the Black population rose to 1.0 percent of the total population. Growth continued thereafter, with the 1991 Census enumerating 504,300 African Canadians (1.9 percent of the population), reaching 2.2 percent in the 2001 Census (Milan & Tran, 2004).

9. Seventy-two percent of African Canadians before 1961 and 88 percent in the decade 1971 to 1980 were born in these areas.

10. Census data indicate that 48 percent of African Canadians reported an African country as their place of birth compared to 47 percent reporting the Caribbean, Central America, and South America.

11. According to the 2001 Census, 20 percent were from Jamaica, 12 percent from Haiti, 10 percent from Somalia, 8 percent from Ghana and 5 percent from Ethiopia.

12. The City of Waterloo received the bulk of these new immigrants in this five year period (4,485 people or 20.4 percent of the total immigrant population to Waterloo Region) with another 17.4 percent settling in Kitchener and 11.6 percent in Cambridge. Another 16 percent settled in Wellesley, which is proximate to the Queen's Bush area discussed above.

13. An example provided by Kelley and Trebilcock (2010) refers to the lack of Canadian immigration officers stationed in non-preferred countries, especially important in the decades before the prevalence of internet and computer communication.

14. The authors wish to thank the Ministry of the Attorney General (Ontario) and Citizenship and Immigration Canada for funding the two projects discussed in this article. The opinions expressed here are those of

the authors and do not necessarily reflect those of the Ministry of the Attorney General (Ontario) or Citizenship and Immigration Canada.

15. The Working Group utilized the words “Transgendered” and “Intersexed” within its LGBTI grouping. Note that GLAAD designates “Transgender” as its term of preference and considers “Transgendered” to be “problematic” because the addition of –ed is “extraneous” and adds “unnecessary length to the word and can cause confusion and grammatical errors” (GLAAD Media Reference Guide, 2010, p.10). While GLAAD appears not to have issued a similar statement regarding the word “Intersex,” it is the term that GLAAD itself uses (p.9) and similar concerns of confusion and grammatical error would likely pertain.

16. In 1994, Sadia Gassim and with three other people founded the not-for-profit organization World Wide Opportunities for Women (“WWOW”), a grassroots organization founded by and for immigrants in Waterloo Region. African Women’s Alliance (“AWA”) is a grass-roots organization that celebrates African culture in Waterloo Region, hosting an annual Afro Festival in Waterloo Park.

17. The Hate Crimes Investigation Unit is funded on a yearly basis. The amount of funding in any one year thus determines the scope of activities that the unit can undertake. There are frequent changes in personnel and reallocation of duties from one year to the next. For example, the Police Sergeant Detective who worked with the 2008 project was soon after assigned to other duties.

18. Only an estimated 1 percent of hate crimes in Canada are reported to the police. Out of an estimated 892 hate crimes reported, 6 out of 10 were motivated by race or ethnicity and half of racially-motivated crimes were targeted towards Black Canadians (Statistics Canada, 2008).

19. Another example highlights the nature of the problem. An African Canadian little boy was playing in the family’s front yard when a group of White boys came and scratched the neighbor’s expensive car. When the neighbor asked who had done this, the boys claimed it was the African Canadian boy. The police came to the boy’s mother and accused her son of having done the damage, telling her she would have to pay for repairs to the car. The small child was not tall enough to have marked the car. In addition, a White neighbor who lived across the street witnessed the entire incident but refused to come forward. The mother, who had a degree in social work and knew her rights, told the police officers she needed to consult a lawyer, at which point the police officers withdrew their verbal complaint. The neighbor whose car was damaged was apparently so upset by what had transpired, and that the White boys were never charged with mischief, that he moved out of the neighborhood.

20. For example, a pregnant young mother phoned Sadia Gassim in

tears, expressing her desire to move from the region. She was waiting to cross the street with her young children when a group of boys threw a balloon filled with urine at her. Another example provided by one of the workshop participants was the story of an old man riding a bicycle, and who was pelted with eggs by a group of young men. A third example involved an irate neighbor with issues about a fence who shouted racial slurs at her neighbor. Many examples were provided. These incidents occurred in public spaces and also in neighborhoods and the workplace. In other words, these incidents become endemic and constant reminders of being “Black,” different and “other.”

21. One of the major issues arising from the second project is the need to address mental health issues. Many families, including children, arrive in Canada traumatized by their experiences in war-torn countries, including witnessing murder of loved ones, and separation from family members as a result of war, migration and/or placement in refugee camps. In Canada, there is often a long wait of several years before family members can be reunited. Adapting to a new country and a new climate poses further challenges. Therefore, racial bullying is an added factor that can lead to mental health problems.

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From Thrill to Defensive Hate Crimes: The Impact of September 11, 2001

Jack Levin
Northeastern University

INTRODUCTION

For a period of time following the original usage of the term “hate crimes” in the late 1980s, there existed a gap in the literature of criminology and social science generally regarding important factors underlying the motivation of hate crime offenders. Researchers recognized that certain criminal behavior had its basis in hostility toward people who were different in socially significant ways from the perpetrator. Yet little was systematically articulated to connect various hate crimes with relevant sociological and social psychological explanatory variables. As a result, those practitioners who deal with hate crimes on a daily basis—for example, prosecutors and law enforcement personnel—were at a loss to identify the distinguishing characteristics of hate-motivated offenses. Recognizing this gap in the literature, my colleague Jack McDevitt and I sought to establish an exhaustive typology of offender motivations and to elucidate the range of factors associated with these motives.

I. A TYPOLOGY OF OFFENDER MOTIVATION

More than twenty years ago, Jack McDevitt and I developed a typology of hate crimes that has since been much used by law enforcement, legal practitioners, and social scientists. This hate crime typology has also become part of the National Hate Crime Training Curriculum and is taught at the Federal Bureau of Investigation (“FBI”) Training Academy in Quantico, Virginia.

Our objective for the typology development was to examine the motives that underlie various kinds of hate attacks based on race, religion, national origin, sexual orientation, ethnicity, and disability status. In our book *Hate Crimes: The Rising Tide of Bigotry and Bloodshed* (1993), we identified three major types of hate crime motives: 1) *thrill* attacks, which could be characterized as “recreational” in nature and are typically committed by groups of teenagers or young adults who seek excitement as well as “bragging rights” amongst their friends; 2) *defensive* attacks, which are designed to “protect” an individual’s neighborhood, workplace, school, or women from those who are considered to be a “threat,” and 3) *mission*

attacks, which are rare and usually committed by the members of an organized hate group or an offender who suffers from a severe mental illness (e.g., psychosis). Almost a decade later, we included an additional category of hate crime motivation known as *retaliatory* attacks, which are driven by an individual's need for retribution or revenge against a hate attack that was directed against that individual's own group members (McDevitt, Levin, & Bennett, 2002).

Research suggests that most hate crimes are committed by what we might think of as "dabblers," those who attack on an occasional basis and without affiliation with any organized hate groups. "Dabblers" also tend to fall into the first two categories of motivation, *thrill* and *defensive*. For example, "dabblers" might go out with their friends on a Saturday night to look for someone to assault. "Dabblers" might send a threatening message to a new resident of their neighborhood informing them that "their kind" is not welcome. In reality, organized hate groups like the Ku Klux Klan ("KKK"), Aryan Nations, or the Hammerskins commit very few hate crimes nationally. However, organized hate groups do utilize the internet to recruit, incite, and support a large number of non-organized hate group members (who may be looking to feel important and have a sense of belonging but lack sophistication with respect to the ideology of hate) to commit violent offenses. Organized hate groups regularly facilitate internet chat room and bulletin board discussions to spread propaganda, promote a sense of belonging, and encourage angry and isolated youth to join the ranks of hatemongers. Not only do organized hate groups provide angry and isolated youngsters with effective propaganda; these internet-facilitated chat rooms and discussion boards allow recruits to develop newfound friendships with like-minded persons, including hatemongers.

II. THE IMPACT OF THE SEPTEMBER 11, 2001 TERRORIST ATTACKS

Although internet-generated hate crimes are difficult to track, we recognize that hate crime statistics dramatically shifted following the September 11, 2001 terrorist attacks ("September 11"). Prior to September 11, a large number of hate-motivated incidents—as many as half to possibly two-thirds—could be characterized as *thrill* hate crimes or those committed by groups of young people who are looking for some excitement at the expense of harming others. These perpetrators would typically go out in a group with the intent to vandalize or assault someone who is "different." Thrill hate crime perpetrators typically did not focus their attacks on a specific group. For example, these individuals may randomly decide to attack someone who is gay. If they are unable to find someone who is gay, they

might choose to assault someone who is Muslim, Black, or Jewish (Levin & Nolan, 2011).

Thrill hate crime perpetrators tend to express generalized hostility toward a broad range of potential victims. This unspecified preference highlights an important psychological phenomenon underlying these attacks. Specifically, a victim's characteristics seem to be less relevant when compared to the perpetrator's motivation, which is to gain a sense of importance amongst peers and power over others.

Several psychological theories have been developed regarding generalized hostility and are utilized to explain inter-group discrimination and violence. Taking a psychoanalytic perspective, Adorno, Frenkel-Brunswick, Levinson, and Sanford (1950) developed the *authoritarian personality theory*, which purports to demonstrate that deep-rooted personality traits predispose certain individuals to be highly sensitive to antidemocratic ideas including extreme prejudice. Beginning after World War II and continuing through the 1970s, proponents of the authoritarian personality theory suggested that such individuals express their prejudice against a range of subordinate groups as result of childhood experiences involving parents who employed harsh and threatening childrearing practices. Because these individuals developed with a sense of powerlessness, authoritarian individuals grew up to identify with powerful figures (*e.g.*, Adolph Hitler) and to become obsessed with securing power and control (Adorno et al., 1950). More recently, *social dominance theory* has taken a similar position with respect to the genesis of hate, albeit in the absence of a psychoanalytic framework (Sidanius & Pratto, 2001).

Prior to September 11, thrill hate crimes seemed to predominate. For example, in 1999, there were nearly 50 attacks on homeless individuals across the country. The offenders were typically teenagers, some of whom videotaped the attacks and could be heard laughing in the background as their victims were being beaten senseless with baseball bats or by fists. By the year 2003, however, the number of assaultive incidents against homeless individuals had dropped to only 10 (National Coalition for the Homeless, 2012).

Thrill hate crimes typically generate minimal public attention, being widely seen as childish pranks rather than harmful offenses against vulnerable victims. Many Americans immediately presume, often erroneously, that whenever the media relays stories of an assault or vandalism based on race, religion, sexual orientation, or ethnicity, an organized hate group was involved in the attack. However, FBI statistics demonstrate that fewer than five percent of all hate crimes can be directly attributed to the members of organized hate groups (Levin & McDevitt, 1993).

Similarly, early reports of church burnings in the South during the

1990s almost invariably attempted to implicate the KKK in some sort of far-reaching conspiratorial plan to destroy the fabric of life for Black Americans, especially those who resided in rural areas of the South. However, after careful study the situation appeared much more complex. Although a limited number of cases did involve the KKK, most of the racially-inspired church burnings had little, if anything, to do with white supremacist groups. In South Carolina, for example, two-thirds of the racially-charged church burnings were actually instigated by teenagers and young adults looking for a little excitement. Some of the young perpetrators had only tenuous links with the KKK, and developed these links simply because they were drawn toward the KKK's powerful symbols. Most of the youth offenders, however, operated on their own, without the direction of the KKK or any other organized hate group.

In actuality, the number of hate crimes committed by teenagers and young adults tends to rise and fall not according to the prevalence of organized hate groups, but rather as coinciding fluctuations in the rate of general violent crime. For example, both anti-Semitic hate crime acts and homicides committed by individuals aged 18-24 increased from the mid-1980s through the mid-1990s and then fell into the early 2000s (Levin & Nolan, 2011).

It is important to note that thrill hate crimes share a common theme with many other criminal acts committed by young people: both types of criminal acts are often perpetrated for similar reasons, albeit not on the same victims. For example, teenagers may seek excitement by invading an unknown residence not to burglarize but instead for the simple purpose of terrifying its occupants (Fox, Levin & Quinet, 2010). Thrill hate crimes similarly yield two psychological benefits for youth perpetrators. First, in committing an offense in a group, young offenders inevitably form a bond of friendship and create an impression that hate crimes are "cool." Second, these perpetrators feel a lasting sense of power and control over their victims, which is something they do not feel when they behave themselves.

III. PURPOSE AND METHOD

The study addressed in this article has a two-fold purpose. First, this study attempted to fill a gap in hate crime literature by specifically focusing on serious acts of violence inspired by hate or bias. Secondly, this study examined the change in the character of hate crimes after September 11. Specifically, the study sought to determine whether the thrill motivation remained the most prevalent motive behind hate crimes committed in the United States after this pivotal moment in American history. To this end, the author's research team conducted a content analysis of accounts from

the Lexis Nexis database of major newspapers, reports from the Southern Poverty Law Center, and articles from local newspapers. Our method yielded a sample of 653 assault incidents from 1991-2010, 197 occurring before September 11 and 456 occurring after September 11.¹

Following the September 11 terrorist attacks, many Americans have felt profoundly insecure in their personal safety. Prior to September 11, 24 percent of all Americans were worried about becoming a victim of a terrorist attack. After September 11, that insecurity soared to approximately 58 percent (Back, Kufner, & Egloff, 2010).

In addition to the increase in anxiety post-September 11, sadism—meaning the deriving of pleasure from the pain and suffering of others—began to find its way into popular culture. Fromm (2011) argued that sadistic urges develop when individual members of society feel a profound inability to control their own destiny and seek to regain that lost sense of power and control. After September 11, sadism increasingly found its way into American popular culture. A growing number of television quiz programs showed contestants being shamed, mocked, humiliated, physically tormented, and terrified. For example, in 2001, *Fear Factor* (a nationally-televised show in which contestants performed daring tasks such as devouring worms and being surrounded by snakes) and *The Weakest Link* (also a nationally-televised show in which losers exited after the show's host bluntly stated "You are the weakest link—Goodbye!") became popular forms of prime-time television entertainment. In 2002, *American Idol* joined the list of popular prime-time programs, in which performers were subjected to harsh criticisms—in this case, from a panel of experts in front of a large studio audience and a viewership of millions who were eager to laugh at any mistake or perceived shortcoming. In 2004, Donald Trump, at the end of weekly episodes of *The Apprentice*, informed losing contestants, in the most insensitive and dispassionate manner, "You're Fired!!!!" *Superstar USA*, which aired on the WB Network (now CW), provided an even crueler version of a singing competition by falsely informing the audience that contestants, who had less than idyllic singing voices, had won the competition as a result of their supposed "fabulous" voices. Hence, that show's slogan was "Only the BAD survive."

The tendency to fight back against "intruders" also increased in the aftermath of September 11. Defending against group threat became a dominant source of inspiration for hate crimes against a broad range of "outsiders." Any groups outside of the mainstream—Muslims, Jews, immigrants, gays, or Blacks—were more likely to be treated with suspicion and mistrust. Beginning with the threat of terrorism, more and more Americans were convinced that they had to defend themselves against actual or potential harm to their life, liberty, property, and even economic survival from

the supposed threats posed by an influx of immigrants, the election of an African-American as President of the United States, a Jewish threat coming from Israel, and so on. Overall, group threat seemed to take a prominent position with respect to determining increases and decreases in hate crimes against particular “others.” (Blumer, 1958; Bobo, 1983; Quillian, 1994).

IV. RESULTS

Our findings indicate that assaultive hate crimes that occurred after September 11 were more likely to be committed by older offenders following some threatening event that involved a victim’s group. These crimes were less likely to be committed by multiple offenders and more likely to occur on the East Coast (in proximity to the September 11 attacks). Overall, there were apparently fewer thrill-motivated attacks and far more defensive assaults, in which the offender believed to be directly or indirectly threatened by individuals of different racial or religious backgrounds. These incidents were traceable to racial, ethnic, linguistic, religious, and sexual minority status and major political or legal events that were supportive of such minority status.

For example, the percentage of hate-motivated assaults against Arab and Muslim-Americans soared immediately after September 11. In 2000, there had been virtually no assaultive hate crimes targeting Arab or Muslim-Americans. After September 11, by contrast, 60 percent of all hate crime assaults were anti-Islamic. The FBI reported an increase of 1600 percent in anti-Muslim hate crimes (Federal Bureau of Investigation, 2002). Hate-motivated assaults committed against African-Americans peaked from 2007-2009, during the campaign, election, and inauguration of America’s first African-American President. On the evening of President Obama’s election victory, for example, three white supremacists burned down a predominantly African-American church in Springfield, Massachusetts. Five hours after President Obama was inaugurated in January 2009, a 22-year-old white supremacist fatally shot two dark-skinned Cape Verdean men and raped a Cape Verdean woman in his Brockton, Massachusetts neighborhood.

In 2004, after Massachusetts became the first of many states to legalize gay marriage, hate-motivated assaults against gays and lesbians peaked and then declined after several years. In 2004, the FBI reported that 15.6 percent of hate crimes reported to police were founded on the victim’s perceived sexual orientation (Federal Bureau of Investigation, 2005)

Two significant events in Israel led to the rise of hate-motivated assaults on Jewish-Americans. First, in 2006, Hamas shot rockets into Israeli cities and Israel retaliated by invading the Gaza Strip. In 2008, Israel

and Hezbollah fought their war on the border of Lebanon. During this period, the percentage of hate-motivated assaults targeting Jewish-Americans escalated. Despite the increase in attacks, the total number of assaults was relatively small—only six in 2008—when compared to the larger quantity of hate crimes, both to property and to person, reported by the FBI (Federal Bureau of Investigation, 2009). Apparently, groups whose shared salient social identity cannot be easily confirmed by appearance alone are more likely than other more visible groups to suffer attacks to their property (Levin & Nolan, 2011).

Hate-motivated assaults targeting Latinos increased from 2001 to 2010 over the same period of time that the number of immigrants living in the United States also increased (from 31.8 million in 2001 to 37.6 million in 2010) and the amount of state and local-level legislation focused on immigrants and immigration skyrocketed (Camarota, 2010). Social scientists have long suggested that discrimination increases as the relative size of the minority population increases (Quillian, 1994). Not coincidentally, the unemployment rate soared over the same period, reaching almost ten percent in the years 2009-2010.

CONCLUSION

Since thrill hate crimes have a psychological basis, there exists an opportunity to introduce tactics and strategies designed to modify an offender's psychology. For example, first-time offenders who are arrested and placed on probation may benefit from educational resources, community services, and restorative justice measures. Young first-time offenders may also benefit from individual psychotherapy in order to change their thought processes that are directly related to their behavior (Dozier, 2002).

By contrast, perceived threat seems to be a major determinant of hate crimes against particular groups post-September 11. For such offenses, modifying an individual offender's personality may be much less effective, and more difficult to accomplish, than providing structured opportunities for groups to come together in a spirit of cooperation and interdependence. Regardless of the predispositions of the individuals involved, the perception of threat can be reduced to the extent that various groups perceive a benefit to their collaborative efforts toward achieving important shared objectives (Levin & Rabrenovic, 2004).

NOTES

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Baptizing Nazism: An Analysis of the Religious Roots of American Neo-Nazism

Alon Milwicki
American University¹

ABSTRACT

The years following the Second World War saw American religious leaders making fervent attempts to bridge the denominational gap and encourage peaceful cooperation among America's three leading faiths: Protestantism, Catholicism, and Judaism. While the religious revival movement was largely successful, it was not as complete as historians have previously suggested. Scholars of the postwar religious awakening have neglected the darker, conflictual, and even violent strains of religious revival which developed alongside the optimistic, cooperative, and harmonious efforts that have taken center stage. Simply put, the development and propagation of Christian Identity, as propelled by Dr. Wesley Albert Swift, provided a ready-made system of values and organizational tenets to the various white power and neo-Nazi organizations that emerged across America after World War II ended. This article seeks to bring scholarly attention to this national movement that emerged in direct opposition to the Judeo-Christian tradition, and in so doing, highlight the evolution of the American Neo-Nazi movement as a theologically-based movement that is starkly different from and considerably more malleable than modern American Nazism (which is often referred to as neo-Nazism, albeit, incorrectly).

INTRODUCTION

Reverend David Ostendorf of the United Church of Christ wrote "Christian Identity is a belief system so strange, indeed bizarre, that most Americans who know anything about it dismiss it outright and relegate those who believe it to the quaint and quirky fringes of the nation's subcultures" (Ostendorf, 2002, p. 24). Ostendorf's claim notwithstanding, Christian Identity has been widely influential in specific American subcultures and social movements, thus it is important from a scholarly perspective—for those who are concerned to understand these subcultures and movements—to examine the role of the Reverend Dr. Wesley Albert Swift, who was the chief ideologue of this vehemently racist sect of Christianity. While historians of the radical racist Right acknowledge Swift's significance as the man behind Christian Identity, for the most part they either

ignore or fail to engage Swift beyond this role. There are several potential explanations for the lack of attention. It may be due to a lack of interest and/or scholarly materials, or perhaps a reluctance to attribute greater import to Swift. After all, analysis of both Swift and his followers reveals them to have been self-interested, self-aggrandizing people who had no qualms with falsifying or misappropriating information to improve their respective circumstances. Likewise, historians may have overlooked Swift's wider significance because ascertaining the "truth" about his actions, claims, plans, and programs would also prove to be exceedingly difficult.

Yet in order to better understand how the radical racist Right continues to exist today, it is necessary to understand how it evolved, whom its chief architects were, how it spread, and why it has been so adaptable. The research and analysis presented in this article—of U.S. government intelligence documents, Swift's own writings and sermons, the writings and sermons of Swift's predecessors and followers, and various secondary sources on the evolution of the radical racist Right—suggests that Swift was central to the coalition of religious and militant white nationalist organizations that spread nationwide in the post-World War II period. Indeed, an examination of Swift's role outside the ministry reveals his centrality to the proliferation of an American white power network. From the myriad of organizations that Swift created, figured in prominently as a member, or with which he developed affiliations, it is evident that his rhetoric and teachings helped to develop a network of social action that remains a powerful force on the racist fringe of American society to this day. From his time as a Ku Klux Klan recruiter, Swift was described as a "prolific organizer" with "bombastic oratorical style." It is arguable that Swift utilized these skills to create, lead, and support a number of informal groups, socio-political organizations, and religious institutions that reached across the United States after the Second World War (Levitas, 2002, p. 25).

I. EXISTING SCHOLARSHIP

Historians of the religious racist Right have recognized that Wesley Swift played a vital role in the proliferation of this white racist Christian theology. In *Religion and the Racist Right*, political scientist Michael Barkun states that "more than anyone else Wesley Swift was responsible for popularizing Christian Identity in right wing circles by combining British Israelism, a demonic anti-Semitism and political extremism" (Barkun, 1997, p. 60). Historian Charles H. Roberts agrees that the Christian Identity movement and its theology are "inconceivable without Wesley Swift" (Roberts, 2003, p. 12). Jeffrey Kaplan, head of the Institute of Religion,

Violence, and Memory, notes that anti-racist non-governmental organizations like the Anti-Defamation League also treat Swift “as the personification of Christian Identity” (Kaplan, 1997, p. 147). In this regard, the historiography about Swift is consistent: he molded Christian Identity into the rabidly anti-Semitic, racist, and nativist dogma that remains a core doctrine among the religious racist Right, and he was the man most directly responsible for crafting its major theological tenets.

However, historians have failed to engage how Swift figured in the creation of a variety of different organizations, and how the dissemination of his theology connected these organizations and their members not only to him, but to each other and to other like-minded organizations as well. This oversight may be entirely due to the fact that crucial FBI documents remained classified until recently. Whatever the reason for this oversight may be, it is important to recognize that Christian Identity—as led by Swift—emerged as a darker, more conflictual movement in opposition to the Judeo-Christian and religious revivalism that was burgeoning in mid-century America (Marty, 1996, p. 4).

The years following the Second World War are often seen as an age of remarkable religious enthusiasm. One of the distinguishing characteristics of this particular “Great Awakening” in the United States was the cooperative spirit that it evinced, a spirit that diminished long-standing theological and racial divides and helped to secure an era of social harmony (Silk, 1989, p. 38). This cooperative spirit further heightened the appeal of religion for many Americans, who by midcentury sought relief from the seemingly endless rounds of social turbulence and wartime violence (Wuthnow, 1988, p. 11). The revelation of Nazi death camps in 1945 broke down religious antagonisms and prejudices, thereby undergirding the growth of popular belief in a common Judeo-Christian heritage shared by all Americans; the use of a phrase like “our Christian civilization” as synonymous with the United States began to seem ominously exclusionary (Silk, 1989, p. 44).

Evidence of the revival’s success is clear in Gallup polls taken shortly after the War’s end. Because a reported 94 percent of Americans “believed in God,” citizens overall were becoming more animated about their faith, particularly with the fear of spreading secularization and anti-religious Communism inspired by the Cold War (Wuthnow, 1988, p. 19). As Silk notes, “having proved itself against the Nazis, the Judeo-Christian tradition now did duty among the watch fires of the Cold War” (1989, p. 44). In the face of what was perceived as the rising Communist threat, American religious leaders urged their congregations to see religion as the foremost means of defending against godless Communist infringement upon American freedoms and, indeed, upon civilization itself. Thus, according to historians of

the postwar religious revival, the emergent American Judeo-Christian tradition became the front line of defense against Communism.

Anti-Communism would also become a central tenet and attractive facet of Swift's unique theology. However, unlike the wider, more conciliatory aspects of the era's religious revivalism, Swift claimed that Judaism and Communism were not only linked, but indeed synonymous. Swift's claims found some receptive ears because, despite the objective horrors of the Holocaust, many Americans in the immediate postwar period "found it hard to believe that the reports from the Nazi concentration camps could be true," perhaps in part because reports on the number of Holocaust victims varied widely (Marty, 1996, p. 63). During the rise of the radical Christian Right, the idea of a "Holo-Hoax"—a belief that the Holocaust had been manufactured by Zionist leaders and Communists—would become a prominent and lasting tenet among Identists (Swift, 1962).

Furthermore, although the strides toward religious toleration and inter-faith unity may have been strong among religious leaders, opinion polls indicate popular sentiment may not have been quite as harmonious. For example, Wuthnow notes that anti-Semitism was still strong among Americans (1988, p. 78).² Persistent anti-Semitic attitudes, American racism and nativism, growing anti-Communist fervor, the conflation of Judaism and Communism information about the fact pattern of the Holocaust, and (mis)information about the fact pattern of the Holocaust combined for an ideal atmosphere for Christian Identity to emerge and also provided Swift with an atmosphere appropriate to crafting an ideology that connected, influenced, and guided the emergence of a white power network which crisscrossed the nation.

The Christian Identity theology popularized by Swift emerged as a counter to the harmonious postwar religious revival. This new strain of religious racism did not form in a void; its origins are traceable to the explosion of religious faith that began in roughly 1940 and continued through the 1950s. Yet Swift's own brand of religious racism was distinctive in that purported to provide theological "proof" that Nazi anti-Semitism, racism, and American nativism were biblically justified. Within a climate in which the peaceful goals of religious revival and the success of the Judeo-Christian tradition were not as comprehensive as many historians have suggested, Christian Identity presented itself as a spiritually-inspired endeavor to which an individual could dedicate his life.

II. PREDECESSORS—FROM FORD TO SMITH TO SWIFT

The fact that American religious leaders had already been on an anti-Communist crusade for years by the time the Second World War ended

provided a mainstream point of reference from which Swift could broker a radical turn. However, unlike his right wing predecessors—Henry Ford, Howard Rand, William Dudley Pelley, and most notably, Gerald L.K. Smith—Swift remained firmly a religious figure as a preacher and minister. True, his organizations and affiliations were politically oriented, and he himself wanted to affect political change, but Swift always did so from the pulpit. Furthermore, there is no record that he aspired to attain political office.

The author's research indicates that Swift was likely involved in existing White Power circles by the early 1930s. Yet Swift's name was not well known as it would be in later years. Before Swift became a "household name" among postwar American Neo-Nazis, Gerald L.K. Smith was the face of white nationalism—as a political ideology—and the "true America." Smith would later become Swift's mentor and benefactor in the late 1940s. Like Swift, Smith was a preacher. He began his career as an ordained Disciples of Christ minister in Shreveport, Louisiana. Smith continually used Christianity as a tool and constantly referred to the importance of creating a "Christian America" in both his speeches and writings, but his contribution to the racist Right was not primarily religious. When Philip Lieber, a banker with Jewish roots, foreclosed upon Smith's church in 1933, it confirmed for Smith that the Jews were in control of international finance and were attempting to collectivize the global economy. Thus, Smith became a rabid anti-Semite promoting the conflation of Communism with Judaism, and he became obsessed with the notions that Jews manipulated or initiated wars, were determined to Communize and destroy the United States, and were in fact the source of all the world's ills. In order to ensure this did not happen, Smith "left the ministry permanently for politics" (Jeansonne, 1997, p. 31). According to his biographer, Smith remained more of a political entity rather than a religious figure because "the taste of political power," for Smith, "was irresistible" (Jeansonne, 1997, p. 30). Smith was driven, above all, by his hatred of Jews; a hatred that would become more emphatic as the 1930s and 1940s progressed. His political ambitions and the political orientation of his movements, organizations, and rhetoric truly differentiated Smith from his protégé Swift.

The man who taught Smith that Judaism and Communism were intrinsically linked was one of the men he considered a "superman": the industrial tycoon, Henry Ford. After what Smith described as a "long conversation" with Ford in 1937, Smith came to understand and recognize the connection Ford had forged between Communism and Judaism, and he integrated Ford's analysis of this link into his own ideology (Jeansonne, 1997, p. 75). Ford's four-part "study," entitled *The International Jew* (1922), became a powerful source not only for Smith's views but also for

American anti-Semitism more generally (Kaplan, 1997, p. 290). Army intelligence documents reveal that Ford was even suspected of having left money to Swift in his will (Federal Bureau of Investigation [FBI], 2012). As a protégé of Smith, it is possible (though unconfirmed) that Swift was introduced to Ford, as the American industrialist died a year after Smith and Swift had met. Regardless, the influence of Ford's work on Swift's notions of Jewish conspiracy and sedition is evident, and the *International Jew* served as a primary reference point for both Christian Identity rhetoric and the white nationalist anti-Semitic organizations that it spawned nationwide.

For his own part, Smith believed Ford's work to be "thoroughly objective," claiming that "the book does not contain one sentence of hate." Smith concluded that he would "defy any honest well-meaning citizen, courageous enough to believe the truth when they see it to read this report and not be concerned with the plans, purposes and programs of the international Jew" (Smith, 2008, pp. 111-19). He also praised the founder of Ford Motor Company as the genius who "discovered what the Jew was up to," and, raising the specter of Jewish conspiracy, Smith claimed that "the organized Jew" sought to suppress publication of Ford's work. That Ford was able to publish and circulate his book in spite of "the arm twisting persecuting pressures of the organized Jew" would be a primary reason why Smith considered him a "superman" and a patriot loyal to the "true" America (Smith, 1978).

To Smith, the most profound element of Ford's work was the supposedly definitive identification of Jews and Communism, effectively collapsing any distinction between Jews and America's greatest ideological enemy. In a chapter from *The International Jew* entitled "Bolshevism and Zionism," Ford asserted that "Communism works in the United States through precisely the same channels as it used in Russia and through the same agents" particularly, "Jewish agitators" (Ford, [ca. 1955]). Ford claimed "there are more Communists in the United States than there are in Soviet Russia," and that "Russian Bolshevism came out of the East Side of New York where it was fostered by the encouragement—the religious, moral and financial encouragement—of Jewish leaders." The alleged centrality of New York to Judeo-Communism was something that Smith would latch onto, as he would not only echo Ford's statements throughout his career, but also take it a step further. "New York City was also the center of world communism," Smith claimed, and "the Soviet government was really established by Jews from the lower east side of New York City" (Smith, 1978). Smith proclaimed that, when he embraced Ford's research, he "became courageous enough and honest enough and informed enough to use the words, Communism is Jewish" (Jeansonne, 1997, p. 76).

As already discussed, Smith was deeply anti-Semitic even before he

accepted Ford's contention about an intrinsic connection between Jews and Communism. In the same year that his church was foreclosed, he became involved in the proto-fascist Silver Legion, or Silver Shirts, led by American Nazi and Hitler supporter William Dudley Pelley (Jeansonne, 1997, p. 27). On January 30, 1933, the day that Hitler rose to power, Pelley founded his political group and mirrored it after National Socialism. His followers wore Nazi-esque uniforms in silver, and the Legion's emblem was a scarlet letter 'L' that stood for "loyalty to the American republic, liberation from materialists, and, of course, the Silver Legion itself" (Jeansonne, 1997, p. 31).

From the 1930s onward, Smith's own rhetoric encompassed Pelley's ideas and statements, indicating that his association with the Silver Shirts would exercise an enduring influence. Throughout his organization's brief prominence in 1933 and 1934, Pelley boasted that his group had about 15,000 members and that chapters existed in multiple states. Additionally, he published and sponsored several periodicals, including *The Liberation*, *The Galilean*, *The New Liberator*, and *Silver Shirts Weekly*. Like Pelley, Smith would go on to found a variety of publications, although the latter's would be more successful than the former's (Werly, 1972).

Pelley's political ideology essentially consisted of extreme forms of anti-Communism, anti-Semitism, racism, nationalism, and isolationism—all of which would be influential to Smith.³ After the bombing of Pearl Harbor in 1941, Pelley officially disbanded the Silver Shirts—though they were essentially nonexistent after 1934—but continued to publicly denounce Roosevelt. In 1942, the President authorized the Silver Shirt leader's arrest under the Sedition Law, and Pelley was sentenced to fifteen years in federal prison. Although Pelley was paroled in February 1950, he did not pursue the same goals as before his arrest, and he died in relative obscurity in 1965 (Beekman, 2005, p. 143). However, his veneration of the Third Reich would survive as a common theme among future American National Socialist groups, as well as within the religious racist Right, including Swift's own Christian Identity Movement.

Meanwhile, at the close of the Second World War, Smith reorganized his first political party, The America First Party, into the more religious themed and named Christian Nationalist Crusade. Through this organization, Smith "sought out young fundamentalist Christians who were militant about their cause," and that "he was less concerned with what they believed in than with their commitment to following orders" (Jeansonne, 1997, p. 97). As head of the Christian Nationalists, Smith espoused the same notions about the Judeo-Communist threat to America that he had previously asserted, but calculated that restructuring the organization to include the word "Christian" would attract more people who were committed to

opposing the godless Soviet regime. Smith provided his apprentice Swift with the opportunity to deploy his organizational skills and made him his West Coast Representative of the Christian Nationalist Crusade. This position allotted Swift a modicum of power and influence, but it mainly served as a vehicle and opportunity for Swift to begin spreading to the public the vitriol of Christian Identity. Due to Smith's genuine affection for the younger preacher, and Swift's obvious oratorical skill of the younger preacher, Smith would often allow Swift to precede him to the podium (Boylan, 1997).

In the postwar world, the lines of division were clear for the ideologues of Christian Identity: Communists and Zionists on one side; "true Americans," like Smith and Swift, on the other (Jeansonne, 1997, pp. 98-100). In time, the persistently adaptive term "true Americans" would become central to the self-conception of Christian Identists. To them, the only "true American" was a white Protestant with ancestry in Western Europe, preferably the British Isles. These were the men and women whom Smith, and later Swift, believed would be victorious over their Jewish adversaries in both the Cold War and the larger threat of the Zionist Occupation Government, thus enabling them to claim the United States as their own (Jeansonne, 1997, p. 64).

Smith's political agenda lacked the cohesion and consistency to affect political change after the Second World War. His inability to marshal evidence for wild assertions and wanton accusations clashed with postwar America's newfound sense of Judeo-Christian harmony. Despite the significant reach he gained utilizing mass media—including newspaper, radio, and public speaking—it was clear that he would not be able to successfully mount a political campaign driven so blatantly by anti-Semitism.

Yet white nationalism grew almost immediately in stature when Smith took on a new lieutenant in Swift, who firmly grounded his mentor's anti-Semitism and racialized vision of American Identity within the fruitful soil of Christian theology (Quarles, 2004, p. 137). Most self-professed crusaders against supposed Jewish power had failed to find footing within the American political arena after World War II. However, the conflation of Jews and Communism, Smith's diatribes about Jews as the source of the world's problems, his notions of Jewish plans for world domination, and his innumerable conspiracy theories would find fertile ground in the theology of Swift, who would pull away from Fundamentalism into a more particular strain of racist Christianity.

Despite his abandonment of the ministry, Smith professed to dedicate himself to the precepts of "British Israelism" or ("Anglo-Israelism"), an obscure biblically-inspired ideology developed in 19th-century England. As the precursor to the Christian Identity theology, the primary doctrines of

British Israelism are worth noting. Moreover, along with Smith, both Henry Ford and his editor, William James Cameron, followed this doctrine.

British Israelism began conceptually in the late 17th century in the work of John Sadler, who professed the Israelite origin of the British people in *The Rights of the Kingdom*, published in 1649. However, it was not until the 19th century when that idea would gain a modicum of popularity and truly become a doctrine of faith (Parfitt, 2003, p. 42). In 1840, Scottish Reverend John Wilson gave a lecture, which was later published, entitled “Our Israelitish Origins.” Wilson’s lecture has been credited as a key moment in the growth of British Israelism into a religious social movement. For in this document, Wilson asserted that the “ten lost tribes of Israel migrated over time onto the European continent and eventually to Great Britain“ (Ostendorf, 2002, p. 27).

It is due in no small part to Wilson’s influence that British Israelites came to teach the belief that the peoples of Western Europe, especially those in the British Isles, were the direct descendants of the lost tribes of Israel, and also to embraced the notion that the British Royal family was the direct descendants of King David (Ostendorf, p. 37). “Through an analysis of English and Hebrew language similarities, and the proximity of social institutions like the monarchy to the British form of government,” Ostendorf notes, “Wilson concluded that Anglo-Saxon peoples were indeed the lost tribes, and thereby inherited the promise given by God to the northern kingdom of Israel.” Through Wilson’s work and that of his follower, Edward Hine, British Israelism became “foundational to an explicitly racial understanding of the superiority of the Anglo-Saxon peoples,” an “understanding firmly grounding the mainstream of racist notions of white supremacy” (Ostendorf, p. 37)

Although British Israelism was not particularly anti-Semitic when in the context of Europe during the 19th century, British Israelites were chiefly responsible for fervently supporting and publicizing—in certain circles—the Khazar theory of explanation on the origins of the Jewish people, a belief that would have profoundly anti-Semitic consequences in later years. Ironically, this theory of Jewish ancestry was first proposed by Russian Jewish anthropologist named Samuel Weissenberg in the 1920s. It was later appropriated and twisted by Swift and his predecessors as further proof of the conflation of Communism and Judaism (Smith, 2002). Indeed, Swift treated the fact that this theory was proposed by a Jew as tantamount to an admission that Judaism and Communism were indistinguishable (Barkun, 1997, p. 5).

In the 1930s, as the Khazar theory became popular in religious right wing circles, Christian Identity founder Howard Rand crafted his new theology, primarily by copying British Israelite beliefs on the divine heritage of

white Anglo-Saxons while ramping up anti-Semitism and Jewish wickedness. In *Religion and the Racist Right: The Origins of the Christian Identity Movement*, Barkun contends “the suggestion that the Jews were Asiatic rather than Europeans made it possible to include them within an existing category of inadmissible foreigners” (1997, p. 137). Rand utilized the Khazar theory to ensure the damning of the Jewish people as foreigners and invaders, but he did not as successfully equate them with the quintessence of evil as Swift, his devotee and follower, would later accomplish (Quarles, 2004, p. 54).

III. SWIFT’S WHITE RACIST THEOLOGY

Not much is known about Wesley Swift’s early life other than this: He was born in New Jersey in 1913, was ordained as a minister in 1930, and was involved with the Anglo-Saxon Federation in 1931 (Dobratz, 1997, p. 75). The Federation was an American continuation of British Israelite principles, with the exception that America, not Great Britain, represented “true Israel,” and its main organizers were Cameron, Rand, and the young Swift (Barkun, 1997). The significance of this Federation is that it represents the context in which Swift started to make a name for himself, likely due to his probable early involvement with the Ku Klux Klan (“KKK” or “Klan”), with whom he had a continued affiliation throughout his life. Swift’s association with the Federation also brought him into the orbit of Ford, one of his future mentor’s “supermen” and the author of one of the most influential documents to white nationalists (Jeansonne, 1997, pp. 39, 76). Cameron, who was Ford’s second-in-command and editor of the *International Jew*, was a British Israelite and one of the organizers of the Anglo-Saxon Federation of America in 1931. Cameron and Swift had likely interacted through the Federation, and although it is unknown whether Swift and Ford had any direct contact, it is more plausible to suggest that, rather than Swift introducing his protégé to the ailing industrial tycoon, it was the connection to Cameron which brought Swift onto Ford’s radar.

There is as yet no information available on Swift’s activities between the founding of the Anglo-Saxon Federation and 1939. However, according to FBI declassified dossiers, by 1939 Swift was living in Lancaster, California (FBI, 2012). Lacking a congregation of his own, he worked odd jobs, including as an auto supply salesman (Levitas, 2002, p. 24). Despite the banality of his occupation, it is highly likely that Swift was an active, key member of the KKK; the FBI was tracking him as early as 1942, and the Bureau noted that he left Lancaster for several months. Indeed, FBI sources refer to rumors that he may have gone north to Oregon or Washington (FBI, 2012). The documents then note that Swift returned to Southern

California in 1944; within a year, Swift was able to establish his first church, the Anglo-Saxon Christian Congregation (Levitas, 2002, p. 25).

Moreover, FBI intelligence suggests that by this time, Swift had attained the Klan rank of Kleagle, or recruiter (FBI, 2012), yet it is arguable that Swift was already among the rank of Kleagles before his sojourn north. From what experts know about the inner workings of the Klan, Kleagles were sent out to recruit people who would be interested in joining the Klan. Kleagles would move to whatever region they were investigating, for long periods of time, in order to get to know the area and profile likely individuals. Thus, the fact that when Swift returned to Southern California he had enough cash and status to create his first church dedicated to the principles of Christian Identity—the Anglo-Saxon Christian Congregation—suggests that he had some earning potential through the Klan, and likely made a decent amount of money Kluxing (the Klan term for recruiting). This scenario seems far more likely than Ford leaving Swift a bequest; the Klan position of Kleagle was fairly lucrative (Shotwell, 1974, p. 20).

Within a year of opening his church, however, Swift would meet his mentor and benefactor Smith, and his rise to the prominence within the religious racist Right would begin in earnest. According to Smith, his first meeting with Swift solidified the younger Reverend's place in both Smith's organizations and Smith's own personal life. A hostile crowd picketed one of Smith's speaking engagements at the Fort Worth, Texas Polytechnic High School auditorium. Police were unable to gain control of the situation and get Smith and his wife to safety. Smith claimed to have been terrified of being attacked by the picketers until he "turned to the right and there sat a young man about 30 years old," who turned to Swift, and said "'Don't be afraid Mr. Smith. Anyone who comes toward you will be sorry.'" He then lifted his coat and held a black automatic pistol" (Smith, 1978, p. 238). Thereafter, Swift would be employed as Smith's lieutenant and bodyguard, and he became involved in many of Smith's anti-Communist crusades. Smith stated that this "young preacher and great student of the Bible" would influence his life in a "very unique way," and his presence at every one of his speaking engagements in Los Angeles, gave Smith "a sense of security." Indeed, Smith allowed Swift to promote Christian Identity in his publication, *The Cross and the Flag*, "gave Swift thousands of dollars" and told the younger preacher, "that he thought of him as a son" (Smith, 1978, p. 238). Swift's involvement with Smith in the Christian Nationalist Crusade and California anti-Communist League (which Swift created) would follow a similar pattern of anti-Communist rhetoric as the primary focus until the 1950s. FBI intelligence on Swift in the late 1940s and early 1950s emphasizes his rabid anti-Communist views more than anything else (FBI, 2012).

Yet while Communism would remain a focus for Swift throughout his life, promoting his gospel of Christian Identity took priority, and it would be Smith who provided him with ample opportunity to do so. In his autobiography, *Besieged Patriot*, Smith described a conversation between Swift and himself in which Swift explained Identity theology to him. In the essay entitled “Courageous Protector and Helper,” which is specifically about his protégé, Smith states that “one day [Swift] said to me: ‘Mr. Smith, I would like to bring my Bible up to your hotel room and talk to you.’ He did, and he made one of the greatest contributions to my life that any man ever made. He opened the Bible and demonstrated with proper texts that Christ’s worst enemies were not God’s chosen people. He identified the “true Israel” which gave us the Messiah, and demonstrated to me that we were the heirs to the covenant that God made with Abraham, and we were indeed Israelites.” Smith continues, stating that Swift showed him that “the Crucifiers of Christ were the apostates of Satan, and the seed of Cain. He proved by scriptures that Jesus Christ was not a Jew as we now know Jews, and that God is going to give His Kingdom to those who have accepted Jesus Christ, and not to those who caused His crucifixion and still justify it.” This, Smith would claim, was Swift’s “greatest contribution” to his life (Smith, 1978, p. 239). After this discussion, Smith was seemingly converted to Christian Identity (at least nominally).

Moreover, with Smith’s endorsement, Swift’s brand of Christianity began to draw more attention in right wing circles. Swift’s Identity theology differed from British Israelism and even Rand’s version by going further than both had and by conclusively “proving”—theologically—that the Jewish people were the embodiment of evil. Swift took issue with the Khazar theory because it stopped at proving that Jews were foreigners and non-white, but went no further toward a theologically based condemnation of Jewish Origin. Initially, Swift embraced a notably more anti-Semitic biblical revision of Jewish origins: Jews were descended from Jacob’s brother Esau, “whose descendants had rejected traditional Judaism in favor of atheism, embraced violence and revolution, and favored Zionism” (Barkun, 1997, p. 129). Esau’s progeny were interchangeably referred to as Amelek, Canaanite, or Edomite, the last of which had significant implications that would explain the contemporary conflation of Judaism and Communism. “We are all aware that [the Communists’ favored color of] red and Edom are interrelated,” Swift would argue, “and that the Amelek Seed line, the Canaanite Seed line, merging with the Edomite Seed line is the house of Red Jewry Communism today” (Barkun, 1997, pp. 127-130). The distinguishing of Esau’s descendants as “Edomites” suggests that notions of Jewish Communistic tendencies even predated the seventh-century beginnings of Khazar domination in the Caucasus region. According to Identity and

British Israelist scholars alike, “edom” in Hebrew means “red.” Therefore, in the very name of Esau’s ancestors, there is an apparent allusion to Communism.

A fundamental flaw of this position is that the literal translation of the word “red” in Hebrew is “adom” not “edom,” a fact that members of the Christian Identity Church glossed over. Notwithstanding this basic error, this version of Jewish origin also failed in Swift’s mind because of one vital and unacceptable aspect: whether they were the ancestors of Khazars or Edomites, such theories still enabled Jews to remain classified as human. Swift would revise this theory accordingly by creating a theological justification that not only declassified Jews as members of the human race, but also explained why they had become the cause of such suffering and hardship for white Christian America—the “true Israel” (Swift, ca. 1955-1965).

With Swift applying this new set of biblical proof to the cause, many of his predecessor’s inconsistent accusations against Jews could now seemingly be substantiated. To support his predecessor’s contentions that Jews had tricked the United States into joining the Second World War, as well as his position regarding the “Holo-Hoax,” for example, Swift readily explained that this was all possible and true for one simple reason: the Jewish people were the descendants of Satan (Barkun, 1997, p. 49).

The theological evidence that Swift provided for this claim rested on his interpretation of Jewish origins through the “Dual Seedline Theory,” a theory by which he both revised biblical history and furnished a new perspective on the Jews’ place in contemporary America. According to this miscegenation-based theory, the serpent in the Garden of Eden seduced and mated with Eve, thereby producing a hybrid creature, Cain, who is known in biblical history as the world’s first murderer. Whereas the descendants of Adam and Eve would be the true “chosen people,” the Jews were the descendants of Eve and the serpent; consequently, Swift’s view was that Jews were not simply an “unassimilable or evil force, but rather the quintessence of evil, the literal offspring of Satan” (Barkun, 1997, p. 63).

By locating the origin of modern Judaism in the Garden of Eden, all of Smith’s disparate beliefs about Jewish wickedness and deceptiveness—beliefs that Swift himself would also adopt—acquired a new biblical foundation. At the same time, Swift furnished a “believable” rationale for how the Jews could accomplish such fantastic feats, including manipulating the United States into allying with the Soviets during World War II to, fight against Germany, who he regarded as a fellow white Christian nation, and all the while strengthening the power of “Organized Jewry” (Swift, [ca.1955-1965]).

According to Swift, the man created on the sixth day within the Genesis narrative was not, in fact, the white man made in God’s image. Instead,

he was the seed from which came the inferior races of “yellow” and “black” people (Swift, ca.1955-1965). Only on the eighth day did God create Adam, whom Swift asserted was the culmination of all creation: a white man and the original Christian. At the same time, Swift warned, due to their common parentage in Eve, Jews retained the outward appearance of full humanity and whiteness, despite their hybrid serpent-human nature. The persistent place of Jews as “outsiders” in Western society, Swift contended, stemmed from these origins. As offspring of Eve, the Jews could pass as humans; as children of Satan, they would always find themselves as the cast-offs of human civilization (Barkun, 1997, p. 171).

In Swift’s account, Cain’s legacy in contemporary history was the “ongoing plot against God” evident within the battle between good and evil in the Cold War. “Cain had institutionalized his plot against God and the [white] Adamic race,” Swift declared, “in a secret organization to which his descendants belonged and gave loyalty.” That organization which Cain founded, Swift said, was “Organized Jewry.” Consequently, because the descendants of Eve and Satan “were superficially indistinguishable from those whose father was Adam,” it was necessary for “informed” men like Swift to reveal the history, the plans, and the characteristics of “God’s adversaries on earth.” Commenting on Swift’s appointment of himself as a crucial agent working on God’s behalf, Barkun argues that the “incorporation of satanic paternity into already existing theories of a world Jewish conspiracy gave [Christian Identity] ultimate parsimony,” substantiating the claim that “everything that was or is undesirable in the world has come from a single source. If that source is destroyed, the world will be perfected and the millennium will begin” (1997, p. 181). Swift’s affirmation of satanic origin explained why previous right wing anti-Semites, including Smith, were continually accused of being contradictory and lacking proof. Simply put, these allegations of incongruity were “fabricated by the conspirators themselves” in order to dissuade investigations into true Jewish origins and intentions (Barkun, 1997, p. 186).

As Swift’s ideas gained a hearing in southern California’s right wing fundamentalist enclaves during the 1950s, the emerging Christian Identity church promoted the notion that Jews, as with Communists, were naturally predisposed to evil, conspiracy, and world domination. The Jesus Christ Christian Church was the most important and influential organization for which Swift was directly responsible. In 1957, Swift reorganized the Anglo-Saxon church more openly toward the anti-Semitic principles of Christian Identity; this is arguably the pivotal moment in the establishment of the fringe Christian Identity movement (Quarles, 2004, p. 88). From his pulpit, Swift would recruit and screen others for membership in more militant organizations, spread the gospel of racism, and attract a number of

despicable characters. In turn, Swift's devotees would create their own churches and start their own organizations, thus reinforcing the Swift's gospel as a staple theological creed and providing a means to connect the members and groups of this growing network on the religious racist Right.

While the name of this church, Jesus Christ Christian, might seem innocuous, its true meanings have decidedly sinister implication, for the name bluntly asserts that Jesus Christ was a *Christian*. The name was chosen to reinforce Swift's interpretation of Scripture revealed, which meant the removal of all Jewish influence upon Christianity and scriptural interpretation, and the recasting of theological and literal history as a Christian history all the way back to Adam, with Jews now located as the center of all things evil. Furthermore, Swift proclaimed that Identists represent "true Americans" as well as "God's chosen few" who are destined to stand against International Jewry (Swift, ca.1955-1965).

This conflation of Nazi anti-Semitism, American racism, and Christian Identity's fundamentalist-style principles ultimately proved fluid enough to be able to remain attractive and plausible to multiple generations of white supremacists. Swift was able to locate a "definitive" theological explanation that made not only traditional American prejudices but also Hitler's Nazism justifiable and, more significantly, ordained by God. The significance of Swift's theological turn is profound, as Swift's church was arguably the initial organization that sparked the creation of a nationwide network of white power and neo-Nazi organizations. Moreover, FBI intelligence agents note that Swift used his church not simply to recruit parishioners, but also to screen and assess potential members for the more militant organizations in which he was involved (FBI, 2012). From his pulpit, Swift "inspired" followers to accept Christian Identity and enlisted potential soldiers in the coming conflict he believed that Americans would soon be facing, a battle that would be fought over the "soul of America" (Swift, ca.1955-1965).⁴

IV. SWIFT'S NETWORK

Analysis of FBI intelligence documents reveals how entrenched Swift's theology and teachings were among the various white power groups that materialized in the late 1950s. Such an analysis also indicates the intricacy of Swift's personal involvement therein. Not only was Swift the founder of the Church of Jesus Christ Christian, but he was also the silent leader of the Christian Defense League, the Christians Knights of the Invisible Empire—Swift's own reinvention of the KKK—and the California Rangers. In addition, Swift served as the West Coast Representative of the National States Rights Party, a position that offered a great deal of influence

over operations both in California and nationwide. He was intricately associated with Robert DePugh's Minutemen, as well; Identity bled into the ranks of this militant organization, because many of Swift's most devout followers were also members of this group. Additionally, almost all of Swift's trained and trusted Rangers were swallowed up in DePugh's group and were arguably instrumental in ensuring that the Gospel of Swift spread across America. Furthermore, FBI intelligence reveals that Swift was suspected of involvement, in some capacity, with nearly every white power, nativist, and segregationist organization that existed in this period, including the American Nazi Party, the White Citizens Council, and the John Birch Society (FBI, 2012).

Swift's white power résumé notwithstanding, his involvement with the myriad of organizations further illustrates why Swift's role and influence in establishing Christian Identity as a staple religious option is necessary to study. Despite the future of fragmentation both within and between Identity and larger white power movements, Swift's ideology remains influential and his legacy provides a anchoring resource from which current adherents still draw, whether they know it or not. Perhaps just as misunderstood, if recognized at all, is how close these movements came to potentially altering the course of American history. To see this, it is necessary to examine the background and influence of Swift's most devoted followers.

Charles Conley "Connie" Lynch was "simultaneously a minister of the Jesus Christ Christian Church, a state organizer for the National States' Rights Party, a member of the Minutemen, and a member of the Christian Defense League" (Boylan, 1997). During the Civil Rights Era, Lynch expanded the maliciousness of Christian Identity and never lost an opportunity to incite a riot (FBI, 2012). Indeed, as the "official policy speaker" for the National States' Rights Party, Lynch's career, as well as his abhorrence, arguably reached its peak at the St. Augustine white nationalist response to the Civil Rights protests that had succeeded in integrating area schools in 1963. Within a year, Lynch had arrived on the scene and was recorded to have proclaimed loudly to a crowd of 800 young white men present—including a mixture of Klansmen, Minutemen, and National States' Rights Party member—that "I represent God, the white race, and the constitutional government, and everyone who doesn't like it can go straight to hell. I'm not inciting you to riot—I'm inciting you to victory!" Almost immediately after this pronouncement, the racist demonstrators attacked the Civil Rights advocates, injuring forty of whom and causing the Governor to call in the National Guard to quell the riot. State investigations show that Lynch, a disciple of Swift, was instrumental in causing the St. Augustine riot—one of the bloodiest and most violent riots during the Civil Rights period (Armbrister, 1964, p. 80).

Lynch was a particularly violent and repugnant man. Perhaps the most descriptive piece of evidence about how vicious and vile a person Lynch was, however, came from the Founder of the National States' Rights Party himself, Dr. Edward Fields. In an article published in the *Saturday Evening Post* in August of 1964, Fields stated that he had kicked Lynch out of the party because he was too extreme; he “scared away the more substantial elements of the community” (Boylan, 1997).

FBI intelligence documents detail that the Reverend Oren Fenton Potito—another Swift zealot—was reported to be the southeastern director of the Church of Jesus Christ Christian, which was comprised of fourteen states (FBI, 2012). In addition to being Swift's Southern minister, the documents reveal that Potito, unsurprisingly, also became involved with the National States' Rights Party. Potito's position grew and he became the National Organizer of the States' Rights Party. He would also frequently invite and host Swift at events at his own Identity Church in St. Petersburg, Florida. Potito was detained and arrested at the riot against the integration of James Meredith to the University of Mississippi in 1962. Potito was found to have a “trunk full of firearms,” and upon his arrest Potito admitted that he was a participant in Identity Church led “guerilla warfare units.” It is plausible to assume that Potito had every intention of using or distributing them in the effort to stop the integration of the University. It should also be noted that over 200 Minutemen, of whom Lynch was a member, were reportedly present and active at this integration riot (Turner, 1967, p. 72).

William Potter Gale was perhaps the most well-known or public of Swift's devotees. Gale was the nominal leader of several of the organizations but which Swift truly controlled, as FBI documents reveal, including the Christian Knights of the Invisible Empire, Christian Defense League, and the California Rangers (FBI, 2012). Gale proved to be an asset to Swift in several different capacities. Through his military service, as a Colonel under General Douglas MacArthur, Gale seems to have spread Swift's teaching into the United States Military, at least in one reported case thus far: Admiral John G. Crommelin, who had fought in the Second World War and had achieved the rank of Rear Admiral in the United States Navy. When he returned from the conflict, at some point Crommelin was in contact with Gale, who in turn brought him to Swift. After hearing the Swift speak, and being personally introduced to him, Crommelin discovered the “truths” of postwar America. Crommelin went on to represent the National States' Rights Party in their bid for the presidency in 1968, as the vice presidential candidate for governor Orval Faubus. Through it all, Crommelin made his ideological alignment with Swift clear; in a speech where

Swift preceded him to the podium, Crommelin stated he “subscribe(s) 100% basically to exactly what Dr. Swift” preaches.

The intelligence reports reveal that Gale acted, in numerous capacities, as Swift’s proxy. As good as Swift was at organizing, Gale seems to have been just as good at recruiting. Several members who were brought into Swift’s fold—including the future Aryan Nations founder, Richard Girnt Butler—were done so through Gale. Several of these same men would later be under suspicion, or even indicted, for assassination attempts, acts of terrorism, and criminal activity. However, Gale’s influence goes beyond recruiting and connections to important public figures; there are also rumors within the intelligence documents of a close personal friendship with Alabama Governor George Wallace. At the time, Gale was under suspicion for, and openly involved in, several violent acts, particularly against the Civil Rights Movement. In particular, Gale was allegedly responsible for the bombings of several churches and was reportedly active in both Mobile and Birmingham throughout 1963, two cities that were hotspots for the Freedom Struggle. Historians and intelligence documents alike reveal Gale to have been a violent, militant man, devoted to one of Swift’s arguably-favorite ideas: that the American government, people, and dream had been corrupted by the influence of “undesirables,” and that it was essential to do what was “necessary” to ensure the future of the United States (Boylan, 1997).

FBI intelligence also suggests that Swift had a significant role in providing financial assistance to George Lincoln Rockwell’s American Nazi party, despite the fact that Rockwell did not share Swift’s religious ideology. The report from an agent who interviewed Swift also notes that Swift claimed to have differed from Rockwell on the topic of violence; the former claiming himself to be nonviolent. Yet one year after Rockwell organized the American Nazi Party, FBI agents observed a meeting between the two in which Swift was seen handing Rockwell large amounts of money. The two men also united in trying to influence Southern senators to their racist, anti-Semitic, white supremacy agenda. Intelligence agents report a meeting of Swift and Rockwell attempting to gain an audience with Southern senators, particularly Senator James Eastland whom, because of his opposition to civil rights and support of state rights, they believed would be an asset to their cause. Furthermore, despite their supposed differences, Rockwell and Swift convened again in 1964 to discuss a potential merger of the American Nazi party with the Christian Defense League (FBI, 2012). The documents do not reveal a further coalition beyond this supposed merger, but this cooperative spirit suggests that the American Nazi Party and Swift’s various organizations at least enjoyed a professional or cordial relationship.

Adding to the mystical appeal of Swift’s religiously-based organiza-

tion was his propensity to make prophecies and his claim to have predicted major events in America (albeit after they had already happened). Swift dedicated a large amount of time in his sermons to relate to his parishioners that President John F. Kennedy was unworthy of governing the United States. One year prior to JFK's assassination, Swift claimed to have predicted the President's death, and that it had been ordained by God. Swift stated that President Kennedy, through his "fraternizing" with Communists (and, by extension, Jews), had let down the Cubans, Hungarians, and all (Christian) people behind the Iron Curtain. This, as far as Swift was concerned, was unforgivable, and would have serious repercussions. During a church service attended by FBI intelligence, Swift alleged that, one year prior, he had asserted that the assassination of Kennedy was part of a prophecy having to do with Uranus, and that those were the same conditions as a century ago when Lincoln was assassinated. He further claimed that Jews had either installed Kennedy, placed him under hypnosis, or had lobotomized him (FBI, 2012).

Swift's rhetoric and sermons about President Kennedy—both his attacks on the President prior to his assassination and his proclaimed prophecy afterwards—brought Identity adherents, and most particularly Swift, under deeper observation of the FBI and J. Edgar Hoover himself. Hoover sent several inquiries to field officers about Swift, Identity followers, and their activities (FBI, 2012). However, Swift's anti-Kennedy rhetoric was not the only reason Identists were being watched. George King, Jr., a man who was recruited by Gale was under observation from both the FBI and the Secret Service, was arrested for being overheard planning the assassination of Kennedy and being in possession of illegal firearms capable of carrying out the deed. After King's arrest, it was confirmed that not only was King a member of the National States' Rights Party, but also of the American Nazi party, the John Birch Society, and Swift's own Christian Defense League (Boylan, 1997).

Swift himself was no stranger to conspiracy theories, and at some point in his career he seems to have subscribed to the notion that the United States government was being controlled three hundred public officials—or the Committee of Three Hundred.⁵ A statement from a redacted informant on November 26, 1963 reveals that Swift was the suspected mastermind behind a plot to assassinate these officials, who held high positions in both government and industry (FBI, 2012). In 1963, George Harding, Jr., an associate and follower of Swift, was arrested and brought in for questioning by the FBI, where it was revealed that Harding had been recruited by Swift to "become part of an eight man team" whose goal was to "assassinate three hundred public officials." Harding further reported that Swift was the leader of this coalition of assassins. Although it is unclear why

Harding was arrested, his admission reveals that despite Swift's claims of being nonviolent, he was not opposed to committing murder in defense of "true America" (FBI, 2012).

When Martin Luther King, Jr. began to organize nonviolent protests and campaign for civil and equal rights for black Americans, Swift took to the pulpit to immediately vilify and dehumanize his fellow preacher. He referred to Dr. King as "a fat headed Demagogue of the Negroes who likes attention." In a sermon entitled *Why You Cannot Turn Your Back*, Swift also referred to Dr. King as a "Negro educated in Communist schools" who "was chosen as the Negro leader for the Communist Party uprising in America" (Swift, 1965). Swift believed that the African American community wanted to overthrow white Christian civilization in the name of Communism and the Soviet Union. Intelligence reveals that during the Civil Rights era, Swift made periodic appearances and gave speeches at events hosted by the White Citizens Council, whose primary concern was halting integration and emphasizing Black inferiority (Citizens' Council, 1965). Swift's sermons would also emphasize the inferiority of African-Americans, specifically their savagery and depravity; he consistently linked them to animals. Swift claimed the "beasts of the field," that were created on the sixth day of the Genesis narrative included the "black and yellow" races, and otherwise echoed the sentiments of his white supremacists and segregationist predecessors (Swift, ca.1955-1965).

Swift himself never took any immediate and personal action against Dr. King beyond word issues from his own pulpit, but his disciples and followers certainly tried. Keith Gilbert, a member of the Minutemen, a confirmed Identist known to have attended Swift's Sermons, was arrested for stealing 1,400 pounds of Trinitrotoluene (TNT), with the admitted intent of blowing up Dr. King. Upon questioning, Gilbert admitted to being a follower of Swift's church (Aho, 1990, p. 57). Gilbert was sent to San Quentin Prison in California in 1964, the very same prison from which the Aryan Brotherhood would emerge within a year (Aho, 1990, p. 60).⁶

CONCLUSION

During periods of confusion, upheaval, and crisis, many Americans have been drawn to, or at least become more tolerant of, the rhetoric of white nationalism and its demagogues like Swift. After the First World War, America began a new era of fearfulness and mistrust toward immigrants and the outside world. The violently anti-Semitic, anti-Catholic, anti-Black, anti-foreigner, and anti-immigration rhetoric that entranced the nation in the first five years of the 1920s came from William Joseph Simmons, the Imperial Wizard of the Second Incarnation of the KKK

(MacLean, 1994, p. 6). So appealing were Simmons's words in this time of social disarray that by 1924 not only had Klan membership reached well into the millions and leadership developed strongholds in state and local governments nationwide, but also the Johnson-Reed Anti-Immigration Act had effectively stemmed the flow of immigrants to American shores (Steffoff, 2007, p. 10).

During the Great Depression, many Americans were drawn to the populist diatribes of Huey Long and his "Share the Wealth" program. Because of the economic crisis, people were willing to overlook the Kingfish's criminal activities and general thuggery. Indeed, the support for this onetime Louisiana Governor and U.S. Senator was so great that, had he not been killed, it is possible that he may have been able to seriously challenge President Franklin D. Roosevelt in the 1936 election (Hair, 1991, p. 307). Likewise, after the *Brown vs. Board of Education* decisions in 1954 and 1955 to desegregate public schools, many white Americans, particularly in the South, were drawn to Governor George Wallace, whose hardlined segregationist and anti-anarchist positions hit close to home for many whites nationwide. Wallace garnered support for his bid to the presidency in 1968 on a third-party ticket.

Now in the second decade of the 21st century, similar dynamics are once again on display. The Southern Poverty Law Center estimates a 700-plus percent national increase in hate group membership. In the summer of 2012, the Aryan Nations marched in Washington, DC; this was the first Aryan Nations gathering to have gained national attention outside of those held in the Inland Northwest (Potok, 2012).⁷ As the Aryan Nations was the vehicle of Richard Girnt Butler, Swift's self-appointed "spiritual heir," this and other recent activity demonstrates that Swift's influence has arguably endured.

Perhaps the reason why historians tend to downplay Swift's influence is that the modern movement pays greater homage to Butler as the Aryan Nations founder rather than to the Swift as his teacher. Furthermore, Butler's organization served as a base for the Order and many other splinter groups that emerged in the late 1970s and into the 1980s, which were responsible for numerous racist hate crimes and arguably placed the focus squarely on this white power conglomerate. Potentially, this means that many white nationalists and Neo-Nazis who either follow the modern incarnation of Christian Identity, known as Kingdom Identity, or support some of the tenets of Swift's creed, do so unaware of Swift's influence, thus also causing Swift's organizational and theological impact to be overlooked, ignored, or diminished by historians. For the most part, however, more publicly-visible organizations like Butler's Aryan Nations, the National States' Rights Party, the Minutemen, the Order, Rockwell's American Nazi

Party, or even prison gangs like the Aryan Brotherhood, the Aryan Brotherhood of Texas, and the Aryan Circle, all bear some of Swift's influence—organizationally, ideologically, or even financially.

Upon examining the intelligence documents that focus on Swift, and investigating the groups, followers, disciples, and others with whom he was associated in some capacity, it becomes clear that Swift and his theology served as both a connecting bridge and a central influence in white supremacist and religious right wing circles. Furthermore, it is nearly impossible to find an organization that existed during Swift's heyday that did not reflect his involvement in at least some capacity. Each one of these groups, organizations, or individuals would help to create the network of white power and neo-Nazi organizations that would spread across the nation; a network that had Christian Identity as a core principle.

Moreover, Swift's home and ranch served as a meeting place and training ground for these people. For example, the FBI suspected that Swift's ranch served as the training ground for the white power militias like the Rangers and the Minutemen. Five years after Swift's death, this suspicion was confirmed, and it was also discovered that Swift had housed a small arsenal in an underground bunker holding tons of munitions and weapons (Kendall, 1976).

Many might still argue that Swift was merely circumstantial to these events because a large amount of the criminal activity potentially happened without Swift's direct knowledge or say-so. Others might continue to believe that Swift was not as influential politically as his predecessor Smith or his successor Butler, especially because each of Swift's own groups were failures. However, it is undeniable that Swift played an influential role in the proliferation of white power organizations—whether ideologically, financially, organizationally, militarily, or theologically—and that, through them, his Christian Identity became established as indispensable to these organizations and future white racist movements. The fact that each of these organizations and individuals—and several more who were not listed in this article—are linked to other likeminded people through Swift's network, and through the theology Swift developed (which they have utilized as justification for their violent and militant racism,) it is arguable that Swift was influential in these cases, if indirectly. Likewise, criticizing Swift for a lack of political impact is moot, for he sought to be influential as a religious figure, and arguably never showed any direct political aspirations. So, whether or not his organizations endured is not entirely the point. These organizations and the network he created were the vehicle for him to spread his theology nationwide. By so doing, he positioned Christian Identity as a strong influence on the religious racist Right fringe of American society.

NOTES

1. Recipient, Gonzaga Institute for Hate Studies Graduate Student Research Award, 2012-13.

2. Polls taken between 1938-1946 indicate that when asked if they thought that “Jews had too much power in the US,” 47 percent of Americans said yes, 20 percent felt Jews were a menace to the United States, 30 percent would not support a Jewish candidate, 43 percent said they would not hire Jewish employees, and 57 percent related that they would not marry a Jew.

3. Pelley’s organization also appears as a precursor to George Lincoln Rockwell’s 1959 American Nazi Party. While neither Pelley nor Rockwell were self-avowedly Christian or religiously inspired, they did share several tenets with Swift’s Identity theology; indeed, there were documented occasions on which Rockwell and Swift would put aside their ideological differences and work together for the greater good of American “safety” and white racial purity (FBI, 2012).

4. Swift states that the “soul of America must rise” and that although “both political parties” and “the armed forces” were being controlled by organized Jewry, the West (America) “has a higher resolve to win.” He claimed that it was the American “destiny” that could never be broken, and that “those in its service,” namely Christian Identists, would be the ones who would be on the frontlines of the coming battle and free the American people from their Jewish oppressors. Essentially, this can be viewed as a call to arms against the Jewish “infected” United States government. Such a call would undoubtedly attract individuals to his faith, but also enlist and inspire a militant response in defense of America’s Soul.

5. Details as to who the members of the Committee were are not revealed in the intelligence documents, and my own research was equally inconclusive. The information available reveals that the committee could have been comprised of politicians, public officials, businessmen, bankers, insurance salesman, or real estate brokers.

6. My own research has revealed that in the 21st century one of the primary religious choices for modern members of the Aryan Brotherhood of Texas is Christian Identity. As the Texas branch is an extension of the California branch, it becomes a question of how the theology of Swift got into the prison system. With the arrest and sentencing of Gilbert, an admitted Identist, the first tangible link between the Christian Identity theology and the Aryan Brotherhood prison gang is evident and indeed, will be a focus of my future studies.

7. From my experience attending this rally, it was clear that the marchers – who professed to be there campaigning for white South African

rights – were citing Christian Identity tenets, or at least a modern version of it, in their chants, slogans, and signs.

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Fighting for the Right to Be White: A Case Study in White Racial Identity

Dianne Dentice
Stephen F. Austin State University

David Bugg
State University of New York, Potsdam

ABSTRACT

Membership in extremist groups, such as White Revolution and the Ku Klux Klan, embody specific behavioral attributes. These attributes include practicing endogamy and exhibiting racial pride. There is general consensus among members as to what it means to be part of a socially constructed extremist group. There are also strong motivational factors that support maintaining in-group solidarity and dominant status. By adhering to the rules dictated by group membership, both the self and the group are uplifted based on white racial identity. The process of self-categorization for white racial activists accentuates their own physical similarities along with perceived negative physical differences among racial and ethnic groups. The result is a reinforcement of norms that favor the in-group over the out-group. Subjective belief structures, such as the superiority of whiteness and heterosexuality, legitimize the existence of a universal higher status in-group (at least in the white supremacist worldview). This project is based on ongoing field research that began in July 2009, survey data collected in May 2010, and discussion topics posted on the hate site, *Stormfront.org* in 2013 and 2014. These findings, among others, contribute to literature about why some people join extremist groups, adhere to racist ideology, and believe that whites are superior to all other groups.

Keywords: white nationalism; white racial identity; white racial activism; white supremacy

INTRODUCTION

White extremist racial identity ideology is fixated on “whiteness” and its importance as an in-group signifier. A segment of the white population, which is profiled in this study, is overtly racist and has opinions about immigration, black-on-white crime, and white genocide which permeate racist discourse within organized groups and on the Internet. This article

focuses on the importance of “whiteness,” white culture, and white ethnicity from the perspectives of a sample of people all of whom affiliate with the white supremacist movement. The data used in this article come from three sources: a) a now defunct neo-Nazi group called White Revolution; b) discussants on *Stormfront.org*, a website for white nationalists; and c) interviews with people who are affiliated with the Knights Party Klan group and a Christian Identity ministry in Zinc, Arkansas. This article provides insights into a segment of an openly racist white population and its place in an increasingly diverse American society. Scrutiny of extremist groups continues to be important as our society experiences demographic shifts and as more minority populations demand equal rights and representation.

Most researchers agree that the white nationalist movement is home to a confusing array of ideologies and loosely organized groups (Barkun, 1990; Dobratz & Shanks-Meile, 1997; Ezekiel, 1995; Futrell & Simi, 2004).¹ The persistence of the movement following President Barack Obama’s two terms of election suggests that fragmentation, a lack of centralized core leadership, and unpopular racialist ideology have not resulted in a decline in white racial activism, but rather resurgence among some groups across the country (Terry, 2014). With advancements in technology and social media, white racial activist mobilization continues with rhetoric that is directly connected to “whiteness” and a collective concern about the perceived fragility of white culture.

This study presents information to increase the general understanding of how overtly-racist individuals create social solidarity through white racial identity formation. The study’s sample includes responses to and discussions about the importance of identity and culture that, in turn, provide insight into the mindset of white racial activists who are opposed to ideas of social justice and who position themselves against progressive ideals and politics in favor of extreme social isolationism based solely on race. The article proceeds as follows: Section I offers a brief review of literature surrounding identity construction and race; Section II presents a discussion about whiteness theories; Section III describes the data and methods utilized in this study; Section IV provides information from the findings; Section V analyzes those findings. In closing, the article offers conclusions and recommendations for further research.

I. WHITE RACIAL IDENTITY: “A WHITER SHADE OF PALE”

Prior to the Civil War, “whites” were defined as individuals from Northern Europe primarily of British, Scottish, and German descent (Warren & Twine, 1997). The boundaries of whiteness eventually expanded to include the Irish and Italians, both groups who were once labeled as their

own distinct races (Feagin & Feagin, 2012, pp. 87, 99). Often segregated from other Northern Europeans and living in black neighborhoods, Irish immigrants were referred to as “niggers turned inside out” (Ignatiev, 1995, p. 41) and the “missing link” between apes and humans (Feagin et al., 2012, p. 87). The “white” category continued to expand following World War II, when Jewish people were included after having been labeled a distinct race similar to Irish and Italian immigrants (Brodkin, 1999). Historically, segregation and miscegenation laws, discriminatory immigration and naturalization policies, and other tools of exclusion and subordination provided a framework for determining who characteristically was “white” (Haney López, 1996).

Individuals whom immigration officials determined were “white” became citizens despite hostile reception by White Anglo-Saxon Protestants (“WASPs”). They eventually had the opportunity to acculturate, assimilate, and achieve “whiteness” especially through intermarriage. Other immigrants applying for citizenship under the white category, but who were classified as non-white, lost the right to become naturalized citizens and were denied equal chances to assimilate. The label non-white carried with it implications of degeneracy, bad morals, lack of self-restraint, and political immaturity (Haney López, 1996). Notably, many of the White Revolution survey respondents and Arkansas interview subjects under the study that is the focus of the present article assert pride in their Irish and Italian ancestries, despite the fact that in the past these group affiliations carried negative “non-white” connotations.

Critical studies of “whiteness” have drawn on the literature and scholarship from areas like Critical Race Theory and Latino Critical Legal Studies (or LatCrit) to elucidate why some people think it is important to be white. Roediger (2002) argues that even though race is a social construction, studies focusing on white identity minimize accompanying elements of power and privilege. Martinez (2000) cites several influential case decisions that resulted in the legal construction of Mexican Americans as “white,” yet he also notes that Mexican citizens remained unable to escape the racialized “other” stigma as established through discourses and violent encounters during colonization processes in the 19th century. Neil Foley (as cited in Blanton, 2006, p. 574) takes a different approach by investigating the internalization of “whiteness” by Mexican Americans in the Southwest during the 1940s and 1950s. Mexican citizens signed a deal with the devil, Foley claims, by combining their own Latin American racialism with Anglo racism in an attempt to avoid discriminatory practices and hasten the assimilation process. In the end, they lost an opportunity to partner with African American civil rights activists in the early days of the Civil Rights

Movement, which, according to Foley, would have been in their long-term best interests.

Authors including W. E. B. Du Bois (1920, 1935, 1940/1968), Frantz Fanon (1952/1986, 1963), bell hooks (1992), and more recently Paul Gilroy (2004) insist that white identity is ideological and derived from and maintained by domination, which is itself legitimized by such diverse sources as law, politics, economics, aesthetics, and ways of knowing. Critical legal studies (“CLS”), which emerged during the 1970s, attempted to challenge and overturn accepted norms and standards in legal theory and practice that benefit wealthy and powerful members of societies such as the United States. However, CLS did not yet have an analytic framework specifically attuned to the conditions of racial domination. Beginning around the same time as CLS and influenced by it, Critical Race Theory (“CRT”) developed in response to perception that the powerful civil rights coalition of the 1960s and reform measures like affirmative action in 1970s had stalled. CRT developed into an interdisciplinary scholarship movement that transformed understandings of the relationship between race, racism, and official power. CRT has remained influential on its own, provided inspiration, and served as a conversation partner in other critical interdisciplinary movements such as the work on “whiteness” within other areas of scholarship. A large volume of interdisciplinary work on “whiteness” has developed over the years, including Critical White Studies (“CWS”), with important contributions by Delgado and Stefancic (2012, 2013), Frankenburg (1993, 1997, 2001), Gallagher (2000), Harris (1993), Matsuda (1987/1995), Shuford (2001, 2012), and countless others.²

In colonial and even post-colonial contexts, “whiteness” has been represented as orderliness, rationality, and self-control (Kincheloe & Steinberg, 1998). For white racial activists, these connections with “whiteness” persist along with perceptions of goodness, morality, and overall superiority. Today, some of the core tenets of critical “whiteness” studies include the following: white culture and identity is taken-for-granted; white privilege is ignored; and most Americans’ adherence to colorblind, individualist ideas obscures white identity and privilege. However, it should be noted that people who identify as white nationalist never take their race for granted, they claim to have no privilege based on their race, and assert that white identity has nothing to do with privilege because of what they perceive as a concentrated effort to destroy white culture and ultimately the white race. In other words, white nationalists do not recognize themselves in the mirror which critical theories of race and whiteness attempt to hold up, and in fact see themselves and their situation as just the opposite. A detailed discussion of racialist framing of “whiteness” follows.

The key distinguishing factor between whites who belong to racist

groups, such as White Revolution, the Knights Party, and *Stormfront.org*, from whites who do not is the development of racial pride. Blazak (2001), Blee (2002), Dobratz et al. (1997), Ferber (1999, 2004), and Simi and Futrell (2010) focus on collective action and identity formation within white supremacist movements that include various ideologies such as neo-Nazi, Ku Klux Klan (“KKK”), and Christian Identity. Their findings have shed light on some of the structural issues that precipitate white racial activism in contemporary American society and reveal individual attitudes about race, white identity, and white superiority specifically.

For white racial activists, the “white” experience is paramount to their existence and group solidarity of these likeminded individuals is reinforced by opportunities to socialize both online and through group activities (Brown, 2009; Daniels, 2009; De Koster & Houtman, 2008; Simi et al., 2006, 2010). Racially tolerant whites are not part of the inner circle (in-group of whites) and are considered to be part of the problem (Dobratz et al., 1997). White racial activists create their identities based on a perception that they occupy a lower status ranking in the existing social hierarchy because of their race (Dentice, 2008, p. 45; Dobratz et al., 2006, 1997). According to Dobratz (2001), Dobratz et al. (1997), White (1989) and Zeskind (2009), racial consciousness, buttressed by racially oriented religious perspectives such as Christian Identity, is important as a means to unify the movement and solidify their collective identity. The concept of racial superiority is embedded in a collective nationalist psyche that strives to strengthen white identity, fix the problem of a rapidly diversifying society, and empower disenfranchised whites to stand up for their rights before it is too late.

II. THEORETICAL DISCUSSION: SOCIAL STRAIN, SOCIAL IDENTITY, AND WHITE NATIONALIST IDEOLOGY

Scholarly inquiry into “whiteness” does not represent a single methodology or theoretical claim but has instead established transdisciplinary approaches across the academic milieu. The Critical Whiteness Studies Bibliography (2006), for example, offers a broadly based taxonomy that includes philosophy, history, literature, psychology, education, oral histories, international/comparative perspectives, media studies, and qualitative inquiries, and engages with ideologies of white supremacy, if not necessarily all the research conducted about white supremacists. For our investigation into identity formation among white racial activists, we focused specifically on sources of strain, inflation of self-worth based on exaggerated racial pride, and the creation of privileged in-group status. Strain theory was initially developed by Durkheim (1897/1951) with his theory of

anomie. The microside of anomie or strain theory represents the sense of despair or aggravation that some individuals experience when they feel their needs are not being met. We also turned to a psychological perspective to address the ways in which white privileging mechanisms find a home in relationships, awareness of self, and generally agreed upon assumptions about morality and decency. The authors employed Robert Agnew's strain theory (1994, 2001) and Henri Tajfel's identity theory (1974) in order to examine white nationalist ideology. Both will be discussed below.

Agnew (2001) suggests that anomie and strain result when identities significant to an individual become threatened. He explores social strain from a perspective that accounts for personal goals beyond the acquisition of money and other material resources. Although his research focuses on individual dispensation toward delinquency and crime, Agnew's theory can help explain negative attitudes about and responses to diversity among white racial activists who join stigmatized groups such as White Revolution and the KKK, and those who post messages on websites such as *Stormfront.org*. Specifically, because white nationalists believe that their collective identity is threatened by unfair social relationships that block them from achieving desirable societal goals (Blazak, 2001; Dobratz et al., 1997; Ezekiel, 1995), white nationalists in our study identified several strains, including: immigration processes that result in undesirable demographic changes; forced integration and social interaction with undesirable groups that is reinforced by government policy; perceived infringement on free speech and gun rights; and both the media's and government's assault on white culture (Dobratz et al., 1997; Simi et al., 2010; Swain, 2002). Likewise, affirmative action, deindustrialization, and the increase in multiculturalism are seen as attacks against white identity and white culture. As a result, white nationalists feel that whites themselves are the victims, and not the perpetrators, of racial prejudice (Ferber, 1999).

Additionally, white nationalist movement activists feel threatened by the perceived loss of personal autonomy and their implicitly deserved superior status (Blazak, 2001; Dobratz et al., 1997). Collectively, these individuals believe that social policy now primarily benefits minorities and that the American Dream is no longer attainable by native-born whites. There is also a generalized belief among people in the movement that African Americans are contributing to a moral degeneration in the United States that is exemplified by hip hop culture, language variations (e.g., Ebonics), and distinct styles of dress (Potok, 2010). As a reaction to these types of social and cultural changes, individuals may opt to engage in behaviors which they believe may lead to the re-establishment of more equitable conditions for whites. For example, some of the people in this study joined white nation-

alist groups and became active in the broader white supremacist movement. Others, such as discussants on *Stormfront.org*, engaged in rhetoric that inflates the value of “whiteness” and white cultural contributions throughout history. They may also be affiliated with groups such as the KKK, Blood & Honour, and the Council of Conservative Citizens, among others.³

Berlet and Vysotsky (2006), Dobratz et al. (1997), Swain (2002), and Swain and Niele (2003) have enumerated three social categories of utmost importance to white racial activists: race, ethnicity, and nationality. These categories define who the individual is within the context of self, group, and society. For that reason, the authors of the present study believe that social identity theory also helps explain how white nationalists inflate their self-worth based on the concept of “whiteness.” Social identity refers to an individual’s knowledge of belonging to certain desired social groups. In the case of white racial activists, they believe that whites are superior to other groups, so race trumps all social categories. Specific behavioral attributes such as practicing endogamy, exhibiting racial pride, and maintenance of in-group solidarity are requirements for white racial activists. By adhering to the rules dictated by group membership, the self is uplifted along with the group based on white racial identity.

A white nationalists’ understanding of the world rests on racial classification. They also denigrate “other” behaviors based on distinct racial identities and culture. Their own self-aggrandizement reinforces in-group norms and creates stereotypes that favor the in-group (whites) over the out-group (other races/ethnicities). Some of these stereotypes include the notions that whites are the creators of advanced civilizations, have higher moral values than other groups, and are more intelligent than other groups (Dobratz et al., 1997; Simi et al., 2010). Important to note is that the authors and scholarly movements on race and “whiteness” outlined in Section I have previously exposed all of these stereotypes as false ideologies; yet white nationalists continue to adhere to, and identify with them as true. Indeed, each of these stereotypes was articulated in some manner by the participants in our survey, the discussants in the *Stormfront.org* forums, and during interview sessions in Arkansas. Subjective belief structures, such as the superiority of whites over all others and heterosexual behavior as “normal,” legitimize (for white racial activists) the existence of a universal higher status in-group. Group membership is conceived of collectively as “we” and “us” versus “them.” Interestingly, the “them” may also be applied to whites who are antiracists or other unenlightened whites who support policies that benefit non-white, non-European groups or may have voted for Barack Obama for President.

III. DATA AND METHODS

The data for this study come from three sources: A) a survey of White Revolution, a defunct neo-Nazi group; B) five recent discussion forums posted on *Stormfront.org*, an Internet site for white nationalists; C) and ongoing field research in Zinc, Arkansas with a KKK group and Christian Identity sect headed by Pastor Thom Robb. Each source will be discussed below and well as the recognized limitations of the study.

A. *White Revolution*

Billy Roper, former leader of White Revolution, has a long association with white supremacy. Both his father and paternal and maternal grandfathers were Klansmen. Upon graduating from college in Arkansas, Roper was recruited by the late William Pierce to be the youth recruiter for his neo-Nazi group, National Alliance, which was active during the 1980s and 1990s. Following Pierce's death, Roper left the National Alliance compound in West Virginia and moved back to Arkansas. In 2002, he formed White Revolution, a group that was anchored by an Internet website of the same name. Roper used his group to launch a fledgling political campaign and mobilize a political party called the Nationalist Party of America. He ran as a write-in candidate for governor of Arkansas in November 2010 and had plans to run for President on the Nationalist ticket in 2012; however, in August 2011, Roper disbanded White Revolution and shut down the Internet site. Our survey was conducted in May 2010, prior to the site being shut down.

According to Roper, approximately 1,100 individuals were affiliated with White Revolution during the time of the survey. A total of 148 responses (13 percent) were received. The survey was developed, in part, to gather information from White Revolution members as to their collective social identity. Questions for the bulk of the survey were adapted from the General Social Survey ("GSS").⁴ The questionnaire consisted of three sections: 1) Race and social policy; 2) White identity and religious perspectives; and 3) Demographic questions relating to region of residence, age, and education.

This article utilizes the following open-ended questions about white identity that appeared in Section 2 of the survey:

- a) What does it mean to be "white"?
- b) How do you define "white culture"? Do you think most whites feel that they have a distinct culture? Why or why not?

c) What is your ethnic heritage?

Additionally, we include demographic information from Section 3 of the survey. We recoded the education variable into a three category ordinal variable: 1) high school diploma or lower; 2) bachelor's degree or some college; and 3) some graduate school or higher. Thirty of the 148 respondents did not answer all of the demographic questions. This low response rate may be due in part to the members' general distrust and dislike of academic researchers. There were missing responses to some of the other questions as well. Refer to Table 1.

TABLE 1: WHITE REVOLUTION DEMOGRAPHICS

	Female	Male	Missing			
Sex	19 (12.8)	97 (65.5)	32 (21.6)*			
	18-30	31-45	45-60	61+	Missing	
Age	30 (20.2)	43 (29)	28 (18.9)	6 (4.1)	41 (27.7)*	
	HS or less	BA or some college	Grad school or higher	Missing		
Education	32 (21.6)	61 (41.2)	23 (15.5)	32 (21.6)*		
	South	West	Midwest	Northeast	International	Missing
Region at time of Survey**	39 (26.4)	25 (16.9)	8 (5.4)	18 (12.2)	8 (5.4)	50 (33.8)*
Region at age 16	35 (23.6)	23 (15.5)	12 (8.1)	23 (15.5)	6 (4.1)	49 (33.1)*

N = 148; Data is written as Raw Number (Percentage), e.g., 19 (12.8)

*Rounding error

**Regions defined according to U. S. Census categories

B. *Stormfront.org*

Stormfront, an online community for white racial activists, was initially a private dial-in bulletin board developed by former Klansman Don Black to accommodate supporters and staff of the David Duke for Louisiana Senate Campaign in the early 1990s. In March 1995, *Stormfront.org* became the first fully online white nationalist Internet website. According to site statistics, an average of 40,000 people visit the site in a 24-hour period. Users can become members at different levels and those who want to gain access to private polls and discussions are encouraged to pay a small

fee. According to archived profiles, some users have been members since 1995, the year *Stormfront.org* officially started online.

The second source of data for this article is contained in five blogs posted on *Stormfront.org*. These blogs were selected based on content that mirrored questions posed in White Revolution about white culture and white identity including the following:

- a) Southern White Identity (<http://www.stormfront.org/forum/t962164/>);
- b) What happened to WASP America? (<http://www.stormfront.org/forum/t971419/>);
- c) Debunking the “White is Not an Identity” Myth (<http://www.stormfront.org/forum/51004587/>);
- d) What the heck does “white culture” mean? (<http://www.stormfront.org/forum/t1015643/>);
- e) Can we really deny that whites are superior? (<http://www.stormfront.org/forum/t1019411/>).

A total of 147 posts by 97 discussants contained in the five blogs began on April 22, 2013 and ended on January 29, 2014. On the day of access, January 31, 2014, the site documented 804,965 threads, 10,367,065 posts, and 281,157 members (<http://www.stormfront.org>). Demographic data used in this article comes from a list posted under “Community” where information such as age, gender, and state or nation of residence is archived. Due to the racist nature of this website, many users only share minimal data and it is difficult to get a sense of where they live; however, some users give adequate demographic information to create a profile of typical discussants/bloggers. Refer to Table 2.

TABLE 2: *STORMFRONT.ORG* DEMOGRAPHICS

	Female	Male	Unknown			
Sex	8 (8.2)	75 (77)	14 (14.4)*			
	South	West	Midwest	Northeast	International	Unknown
Region At time of Discussion	16 (16.4)	3 (3)	1 (1)	5 (5)	20 (20.6)	52(53.6)*

N = 97; 5 discussions; 147 posts; Data is written as Raw Number (Percentage), e.g., 19 (12.8)

*Rounding error

**Regions defined according to U. S. Census categories

C. *The Knights Party*

Located in the remote Ozark region of Arkansas, the Knights Party is a Klan group headed by Christian Identity minister, Pastor Thom Robb. The socially isolated enclave community sits on 300 acres and houses a racist church called the Christian Revival Center and a training institute for white racial activists led by Pastor Robb, some of his family members, and Billy Roper. Pastor Robb has lived in Arkansas since 1980 when he moved with his family from Detroit, where he ran a printing company. When asked what prompted his move to Zinc, he had this to say:

I left Michigan to escape the “moral depravity and social decline” caused by Blacks and other non-white groups who were taking over the city. My goal was to raise my family in a crime free white community (personal communication, December 11, 2011).

The third source of data comes from ongoing field research in Arkansas that began in July 2009. Interview data comes from individuals who live and work in Arkansas and have ties to both Roper and Pastor Robb.⁵ Even though interviews encompassed more than individual attitudes about white identity issues, individuals who participated in the study were unified in opinions about race, culture, and the intrinsic superiority of whites. Some of those opinions are included in our findings. Refer to Table 3.

TABLE 3: FIELD RESEARCH DEMOGRAPHICS

Name	Age	Education
Carla	27	High School Diploma
Anna	30	Associate's Degree
Melissa	45	High School/some college
Elsie	67	High School Diploma
Gary	45	College Degree (BA)
Billy*	42	College Degree (Master's)
Adam	38	College Degree (BS)
Darrell	40	College Degree (BA)
Kyle	42	High School Diploma
Khalil	45	College Degree (BS)
Ryan	46	Trade School
Glenn	68	High School Diploma

N = 12

*Billy Roper is well known in the movement and has signed a release form allowing his name to be used in publications associated with this study. All of the other names are pseudonyms.

D. *Limitations*

It should be noted that the data from White Revolution, *Stormfront.org*, and field research in Arkansas is limited in its focus due to the nature of convenience sampling. Additionally, because of the small sample size and the inability to verify the identity of some of those who responded to the survey and *Stormfront.org* blogs, these findings cannot necessarily be generalized or considered directly representative of the broader population of people who identify in some way with the American white nationalist movement. However, as the findings demonstrate there are consistent overlaps in racial attitudes and beliefs in the superiority of whites throughout all three data sets.

IV. FINDINGS⁶

A. *White Revolution Survey Responses*

“Being White – A Thankless Job”—Response to Question #1: What does it mean to be white?

Whiteness is not a fluid, socially constructed category for white nationalists; rather, it is a static, naturally occurring physical characteristic associated with purity (Ferber, 1999). The boundary of whiteness is established in order to preserve white identity because should the boundary collapse, the identity it protects falls along with it. Out of 104 total responses to this question, 56 respondents (54 percent) specifically referenced European ancestry. Samples of responses include the following:

Highly identifiable DNA of the people of Europe/Eurasia (considered by some anthropologists to have evolved from both Cro-Magnon and Neanderthal)

To be of European or Caucasian ancestry

To be white means to come from a European background and to be a part of the culture that has founded civilizations

Other respondents stressed racial superiority. For example:

To be white is to be part of a small group possessing talents, conscience and beauty that cannot be found in any other creatures on the planet.

We are civilization builders.

SMART MANNERED CULTURED

“NO PIMPS NO HOE’S NO RAP!!!”—Response to Question #2: How do you define ‘white culture’? Do you think most whites feel that they have a distinct culture? Why or why not?

There were 97 responses to the two-part question about white culture. The first question asked respondents to define “white culture.” The second part of the question asked if respondents think most whites feel they have a distinct culture. Most respondents only offered their own personal definition without addressing the second part of the question. A total of 24 respondents (25 percent) made some reference to European heritage forming the basis of white culture. For example, some specific comments include:

Culture created by people of European ancestry

I define White culture as all of the things that have been typical of European Whites, including lifestyle, mores, art, architecture, fashion, music, literature, inventions, achievements in science, etc. that have made White civilization as great as it has been. Besides all of those things that comprise and represent White culture, White culture is also the requisite environment for Whites to thrive.

White culture is European culture. Most whites are ignorant and have forgotten their ancestors.

Twenty-one respondents (22 percent) referred to cultural and/or religious values that they feel sets white culture apart from other cultures:

White culture is best defined by shows like Leave it to Beaver, or the Andy Griffith Show. It is wholesome working class culture.

. . . whites brought civilization and education here to the US of A.

Whites do have a distinct culture, just like any other racial group. They have created nearly every major technological, social, and scientific breakthrough in the modern world. I do not believe that most whites truly appreciate their ancestors and what they meant for this country.

Twenty-two respondents (23 percent) believe that white culture is slowly being destroyed so they lamented the fact that some whites feel persecuted for having pride in their race:

I can’t explain what “white culture” is because white people are not allowed to have their own culture without being considered racist.

Most American whites today are ignorant of their culture and are being actively taught to be ashamed of its history and accomplishments.

The remaining 30 respondents (30 percent) in this section of the survey submitted random answers regarding white culture and are illustrated by the following:

DIP BEER MASHED POTATOES AND STEAK

White culture is the same as Western Civilization.

Most American whites still think of themselves as Americans first, whites second. Therefore, in America, most white folks do not yet consider themselves a distinct culture. Although, if one were to point out the various Mexican and militant Black groups active today (see La Raza, MS-13, and the “New Black Panther Party”) most whites, when pressed, would recall their European heritage. This is more of a defense mechanism, vs. any sort of active racial identification or conscious desire to segregate themselves from others.

White people have suppressed who they are as a race because of shame and fear, to the point where many Whites today don’t even know their ancestral history, roots, where they came from, or how they even got to America.

“Mostly English and a little Irish”— Response to Question #3: What is your ethnic heritage?

Ethnic pride is paramount for the white nationalist community. “Whiteness” carries with it impressions of superiority among white racial activists who align with groups such as White Revolution and the KKK. We received 134 responses to our question about ancestry/heritage. A total of 41 respondents (31 percent) referenced German ancestry followed by 24 respondents (18 percent) who mentioned English ancestry. Most of the posts, 68 respondents (51 percent) mentioned combinations of various ethnic identities such as Italian, Irish, Swedish, Scottish, and French. Others contained references to skin color (white) and region (Northern European). Samples of responses to the question about ethnicity follow:

Anglo- Norse

English, Norwegian, and French

Caucasian-N. European type

WHITE CONFEDERATE AMERICAN

TEXAN (100%)

My ancestors came to America from Prussia (What is now called Ger-

many) in 1849. I suspect they had to flee because of the failed liberal revolution of 1848.

B. *Stormfront.org Discussion Forums/Blogs*

The Internet is a rich source of data for social research, and *Stormfront.org* is one the most highly developed and stable sites for discussions and blogs among people who are affiliated with the white nationalist movement. All of the selected blogs dealt with some aspect of white racial identity. The statements and questions that started each blog were followed by a sample of responses. The *Southern White Identity* forum, initiated by a discussant named Fortress Europe, opened on April 22, 2013 at 10:52 AM. Fortress Europe asked the following question:

I would like to know which are the main characteristics of the American White South and how it differs from the North culturally, religiously and racially. Where it's geographical boundaries are drawn [sic]? Is there a Southern White nationalism?

I would like also the White Southerners here to explain me, a European, what is the composition of the ethnic makeup of the Southern White population? Mainly WASP, maybe? What makes a Southerner? Can I become one, if I choose to?

Responses to the question include:

Generally, much of the South still remains pro-Confederate (pro-white), or at least many are proud of coming from the rebel side of history, even if they aren't racist, and will still fly the rebel flag. Of course, Southern cities are some of the most negro infested (gang infested) streets in all of America. The city where I live is in the west, but flew under the Confederate flag for about five days (Nationalsozialismus 04-22-2013 01:55 PM).

Northerners, it seems to me, have a predominantly modern/post-modern ethic while the Southerners have a mixture of all three. In the "new" South, which is more urban and suburban, the modern/post-modern ethic is more pronounced. The "old" South, which is more town and country, is more traditional. The continued presence of the honor/shame system in the South, both old and new, is pretty distinctive. Also, there is a strong historical awareness among Southerners of the antebellum era, the civil war, and reconstruction. Northerners don't have this, and for the most part don't understand the obsession Southerners continue to have with it (knight404 04-22-2013 02:13 PM).

The second forum titled *What Happened to WASP America?* began with a question posted by Revilo on June 3, 2013 at 10:41 PM:

Thus, last summer, the Christian Science Monitor carried a portentous article on America's founding stock (of which Christian Scientists are of course an offshoot): US Government and Politics No Longer Run by WASPs, Do It Matter? By Brad Knickerbocker, August 19, 2012. It declared White Anglo-Saxon Protestantism moribund and bereft of social and political weight.

If true, this constitutes a sociological seismic shift—and it bodes ill for America's future. Will WASP a.k.a. American values continue without WASPs?

Samples of responses to this question include:

Well, being a WAS myself (dropped the P a long time ago). I would say they gave up their identity. I personally have never heard a single person talk about themselves in public as a WASP in my entire life in the U.S. even though the media constantly keeps talking about these WASPs. Who and where are these people? How can you even exist as a group if you have no identity? (bioprof 06-04-2013 12:02 AM).

They used to be a very prideful group with a strong focus on their English roots. So prideful, that they even looked down on most other Whites as sub-human. My Catholic German ancestors were certainly not well received when they came here. Now people of English descent in this country just consider themselves generic Americans on the whole (Lucillus 06-04-2013 12:06 AM).

A *Stormfront.org* member, flugelrod, began a forum titled *Debunking The "White is Not an Identity" Myth* with the following statement:

White is an ethnic identity. The idea white is not an ethnic identity comes from two perspectives. One perspective states that white is not an identity but rather people of euro heritage should identify with national identities like english, irish, german, etc. Sometimes people of this perspective imply that the white identity is an inferior form of identification by cultureless colonials. The other perspective states that white is not an identity because race itself is a social construct. What does everyone think?

Responses from discussants include:

Guilt which then transforms into negation of own identity, which is what is required to erase someone. People with no identity sooner or later cease to exist. Proper answer to them is to hit them back as hard as

possible. Stop arguing with them, debating with them. Anything passive won't work, only action works (Alpha Tauri 11-10-2013 04:18 PM).

We are facing something we've never faced before, under circumstances the world has never seen. We are living in a world in which there is a concerted and conscious attempt to destroy the White race. Not the jews, not the Armenians, not the Ukrainians, not the Boers, not the Hutu or the Tutsi, not the. . . you get the picture. These are all tribes. When we drop the phrase "White Genocide," we are talking about the obliteration if a whole family of tribes. I'm not a historian but I do not believe there has ever been a project for organized destruction of a segment of the human population on this scale before (Tin Omen 11-10-2013 07:09 PM).

On January 4, 2014 at 9:27 PM, Joe Rogers, a guest on the *Stormfront.org* site, posed the question *What the heck does "white culture" mean?* Among the responses to this question:

White culture is that derived from white born civilizations. A common culture where thievery and rape is not tolerated. A culture that encourages personal growth, independence, and liberty. A culture where excellence is celebrated and sloth is not. A culture that values personal property and where family values takes precedent over personal indulgences. Until recently, one where personal honor did not require the strong arm of the law to enforce, but was something each white person strove to project willingly (Lord Jim 01-04-2014 10:14 PM).

White culture means "state of the art '1st world civilised cultures'." All created by white man (alyy foxx 01-04-2014 10:59 PM).

It means I don't have to deal with dirty foreigners messing with my German heritage. All I see is brown and black corruption in my community. . .makes me sick (ryanjoe1008 01-04-2014 11:07 PM).

On January 24, 2014, a *Stormfront.org* member called European Crusader posed the question *Can we really deny that whites are superior?* The following responses appeared in the ensuing discussion:

We may know Whites are superior, but we shouldn't fall into the trap of claiming this and then being forced to defend what is ultimately an untenable position. "Superiority" is such a broad claim that it is impossible to conclusively prove to an adversary in a typical debate setting. They will run you in circles for hours and then claim victory when you finally realize they will never listen to logic and give up. Have some class. Talking about "White superiority" or "supremacy" or whatever makes us look like those brain-dead Hollywood "Neo-Nazis" that our enemies keep trying to paint us as. Lets not give them any more ammunition (UnmarkedGrave 01-24-2014 05:26 AM).

One thing I would like to add is that if we are going to focus on the idea of “superiority,” we should focus on the superiority of racially homogeneous societies, rather than the superiority of our particular race. We’re never going to win if we’re pitting ourselves against other races. We need to make the argument that white nationalism is the part of a larger strategy which benefits humankind as a whole (StopZionism 01-24-2014 06:50 AM).

The White Race truly is THE Master Race. That’s what Adolf Hitler preached, and I most sincerely believe it. We ARE at the top of the food chain, and when the day comes that we ALL start thinking that way again, this time the world will truly be OURS (Hoffmann1987 01-28-2014 09:28 PM).

C. *Field Data from Arkansas*

Interviews and observations of rallies, church services, and other events were conducted by the lead investigator over a three year period beginning in July 2009 and ending in May 2012. People who participated in this portion of the research were affiliated with groups led by Roper and Pastor Robb. Interview subjects were asked a variety of questions about ideology and generalized belief systems—including the importance of white racial identity. Many of their responses to interview questions support the essentialist beliefs thesis regarding group membership (Haslam, Rothschild, & Ernest 2002). In some cases, as with the individuals in this study, perceptions support the idea that a racial category is fixed and specific surface characteristics such as skin color have special meaning. Among the people whom the lead investigator interviewed there is distaste for diversity and a clear preference for racial homogeneity in their social interactions, living spaces, and work environments.

Question #1: Why do you think whites are at risk in contemporary American society?

Baby boomers have focused on basic civil rights for everyone and that is a real problem. When they all finally die off civil rights won’t really matter all that much anymore. Once demographics finally gets out of control, Black and Mexican overlords are not going to give a damn about whites and their rights and unenlightened whites just don’t want to recognize this inconvenient fact (Adam).

You know that the majority of whites are in this baby boomer population bubble and when that happens whites will become a super minority. What white people need to realize is that it doesn’t matter if they are racist or not but the majority of blacks and Hispanics are racist against

whites and they don't care what your political beliefs are or whether you voted for Obama or not (Ryan).

Question #2: Why do you believe that whites are superior to other races?

First of all, let me say that sometimes it is hard to hold these white power groups together especially if there are internal and external conflicts. When I was growing up in the skinhead culture, I knew about fights and violence. That was the way it was. Some people who come into the movement don't know anything because they have never experienced the culture firsthand. So there is this idea about white unity and it is not always that easy. There are different factions and sometimes we don't all get along. We might all be racialisists but we don't all get along. So basically to answer the question I would say that generally speaking whites are the people with strong morals and good values. In Pastor Robb's group there is a strong family orientation and I like that. Now that I'm reading more about founders of our movement I'm realizing that it has been an uphill struggle but white people will ultimately prevail because we are the best of all the races and the most suited to be leaders (Anna).

I think when whites find themselves surrounded by blacks they suddenly understand they are really superior to them. That is one of the reasons we have so many guys join up with groups like Blood and Honour when they get out of prison. But those guys are really not what we need in this movement to help the white race. We need the average hard working white guy. But that doesn't happen because they are all brainwashed by the liberal media into staying away from groups like ours (Kyle).

Question #3: What are your thoughts about the value and importance of white culture?

. . . . Sometimes an unforeseen future is more important than what you can predict. I think that America is in for a bunch of unforeseen realities. You know, I voted for Reagan and I remember when he was elected everyone thought he was going to cut out welfare and food stamps and stop immigration and everything was going to be perfect. Well, he didn't do any of that. He just sort of held down the fort. That's all he could do. I place a high value on civilization that was created by white people. . . . unfortunately a great president like Reagan couldn't really do anything to protect our people and our culture. We are still in a state of flux and I don't know where we are actually going but if we can re-establish some of the moral imperatives that made this country great, I think activists in this movement will have done their job. Instilling white culture in our children is also really important work for the ladies (Gary).

When you take a small white community and everybody pulls together when times are tough, then that is a superior culture. Let me give you an example - a few years ago when some tornadoes came through this part

of Arkansas there was a lot of damage. The day after the storms struck, white folks were out there with their tractors and other equipment cleaning up property and helping everybody out. Not a single Mexican came out to help. They all left and went to stay with relatives somewhere else until the cleanup was done. Their idea of culture is Cinco de Mayo and tacos. African Americans are going to tell you that their idea of culture is government housing, subsidies, and rap music. White culture is totally different and without a doubt, superior (Darrell).

Demographic analysis indicates that White Revolution was male dominated. It also appears that *Stormfront.org* has a similar gender balance among respondents who participated in the sample discussion posts with eight females (8.2 percent) and 75 males (77 percent) with 14 unknown (14.4 percent). The lead investigator has documented similar findings regarding gender during fieldwork in Arkansas. Consequently, the interview sample from Arkansas selected for this study included four women (33.3 percent) and eight men (66.6 percent). The median age of White Revolution survey respondents was 36 years old and 39 respondents (26.5 percent) live in the southern region of the country. The average age for the Arkansas interview subjects was 44 years of age, slightly older than the White Revolution sample. If the White Revolution survey responses are true regarding education, 84 respondents (56.8 percent) have completed some college or hold a BA or higher. The sample of interview participants in the Arkansas field study was also educated, with five individuals holding college degrees, one holding an associate degree, and six others with high school equivalencies. Ten of the 12 interview subjects from the Arkansas field sample were born in the South. Even though the demographic information regarding region of residence for *Stormfront.org* discussants was difficult to determine for 52 bloggers (53 percent), it appears that 16 bloggers (16.4 percent) live in the South and 20 bloggers (20.6 percent) live outside of the United States.

V. DISCUSSION

The social construction of white racial identity among the individuals cited in these samples is a result of unquestioned beliefs about white identity and culture, as well as and perceived threats to that identity and culture, specifically by forces exterior to the movement. Various responses to the White Revolution survey, posts on *Stormfront.org* discussion blogs, and recorded interviews with 12 white racial activists in Arkansas illustrate many of the concerns that activists in the white supremacist movement have about the future of the white race, preservation of their European-derived ethnic heritage, and reinforcement of traditional gender roles. Whether it is

due to the increase of multiculturalism in American society, sluggish national and regional economies, or fierce competition for scarce jobs, the segment of the white population represented in this study interprets sources of social conflict as an assault on white culture and their way of life.

Believed to be under attack from unenlightened whites, antiracist activists, and non-white out-groups, respondents in these studies have crafted a definition of “whiteness” that protects their identity from more mainstream whites who support diversity and display tolerant attitudes toward social issues such as gay rights. According to the white racist worldview expressed in the survey, *Stormfront.org* blog posts, and interviews, liberalism and racial tolerance makes a mockery of pure white culture. The following response posted in the White Revolution survey reveals the opinion that mainstream whites have no cultural pride:

. . . most whites today identify w/alien cultures (african, american-indian) instead of their own. It is not acceptable to be proud of your European heritage, so a lot of people have let cultural pride fall by the way side.

Roper, now a member of Pastor Robb’s Knights Party Klan group, also articulated some of his views with the following comment in an interview with the lead investigator on May 5, 2010:

Those of us who are part of the movement are hyper-aware that our race and culture is on the verge of genocide. We also know that some of our enemies are feminism and unenlightened whites – both men and women. White nationalist women want their men to be real men. They are biologically wired to be attracted to men who can take care of them and their offspring. Most American white men have abdicated their responsibility as leaders of race and nation and as protectors of their families. They are so brainwashed about being racist or homophobic that they will physically step off the sidewalk just to avoid offending all the minority groups out there demanding their rights. To be blunt about it, white men have been emasculated. White nationalist men are the last of the alpha males because we are not afraid to stand up for our race and our women and our rights even it offends people.

Many of the responses from all three data sources echo Agnew’s (2001) discussion about how individuals cope with perceived strain in the broader society. Face-to-face associations within groups such as White Revolution and in online communities such as *Stormfront.org* enable socially-marginalized racist individuals to establish networks with other likeminded individuals who, in turn, reinforce their attitudes about race and diversity. When asked about the importance of white culture, respondents indicate a general feeling of loss and fear of the future, especially for their

children and grandchildren. This perception of cultural loss results in anger toward social institutions that have failed to maintain dominant, Anglo-Saxon core values. Agnew and Broidy (1997) differentiate between how males and females react emotionally to strain. They found that males are more likely to respond to strain with anger followed by moral outrage. Males are also quicker to blame others for their troubles than are females. The demographic profile represented in this research study indicates that males outnumber females in all three samples, which may help explain some of the rancor exhibited in many responses and posts.

Survey responses, discussion forum posts, and face-to-face interview data reinforce Tajfel's (1974) assumptions outlined in his social identity theory. A sense of group position based on race and cultural relativism gives this sample of white racial activists a collective sense of pride and self-esteem. Survey responses, *Stormfront.org* posts, and interview data reveal a tendency for people who self-identify as white nationalist to inflate their self-worth (great civilization builders; wholesome working class culture) by pointing out the ascribed shortcomings of other groups (less talented; more troublesome) thus creating true in-group versus out-group status through social categorization. Social identity theory states that the in-group will likely discriminate against the designated out-group(s) in response to perceived cultural/racial differences. Group membership is not something that is external but rather a real and vital part of the individual persona that is bound by race and sealed by perceptions of cultural superiority.

CONCLUSION

Organized American racial extremism began in 1866 in Pulaski, Tennessee with formation of the first KKK group. Eventually the emergence of anti-immigrant and anti-Jewish sentiments during the 1930s and 1940s resulted in the formation of other extremist groups such as the Silver Shirts, a pro-Hitler group originating in California⁷ and the Church of Jesus Christ Christian, a racist church founded by Klansman Wesley Swift (Milwicki, 2015). With advancements in technology such as the Internet, broader social networks have evolved making it easier for racist ideologies to spread and white racial activists to connect and form new groups. People who participate in and support extremist causes consciously assess their own in-group status based on physical and cultural characteristics, which indicates that the focus on "whiteness" and white culture persists. White racial activist mobilization continues with the proliferation of rhetoric that is directly connected to the importance of "whiteness." One of the ways that overtly racist individuals create social solidarity is through white racial

identity formation, which results in individual affiliation with White Revolution, the KKK, and other groups that are part of the white supremacist movement in the United States. Entrenched racial attitudes exhibited by the people represented in our study are echoed in the words of George Lincoln Rockwell, founder of the American Nazi Party:

White man, let us stand together to secure the survival of your people and my people, for they are one and the same – they are our beloved, miraculous, wonderful, blessed and masterful white race!

Future research should include more investigation of emergent technologies and mobilization efforts for extremist groups in the United States. Researchers should also try to examine demographic characteristics of activists in the movement in order to get a sense about who activists are, where they live, and what they do for a living. Work in the field is difficult; however, in our opinion one of the best ways to learn what drives individuals to join extremist groups, such as the KKK, is to question activists about their beliefs and lives, observe events, and document findings. While hate may never be eradicated from American society, sources of conflict should continue to be explored in an effort to identify why some people become disenchanted enough to join groups ideologically opposed to social justice and equal opportunity for all persons.

NOTES

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1. Even though we use the terms white supremacy/white nationalist and white supremacist movement/white nationalist movement interchangeably, we use the label “white nationalist” as a universal descriptor of the movement (Swain, 2002; Swain & Niele, 2003; Zeskind, 2009).

2. See Critical Whiteness Studies Group, *Towards a Bibliography of Critical Whiteness Studies*, available at <http://facweb.northseattle.edu/jreis/White%20Privilege/WhitenessBibliography%5b1%5d.pdf>.

3. Blood & Honour is a neo-Nazi skinhead group that is composed of young white power activists and other white nationalists. The Council of Conservative Citizens is an American political organization that supports a

large variety of right wing causes that include white nationalism and white separatism.

4. The General Social Survey is an annual survey of a representative sample of American adults conducted by the National Opinion Research Center (“NORC”).

5. The twelve individuals profiled in this study were taken from a larger interview sample collected beginning in July 2009 and ending in December 2012. The interviews selected include specific discussions about the importance of “whiteness” as well as fears the respondents have about the sustainability of white culture in a multicultural society.

6. All survey responses, *Stormfront.org* posts, and interview quotes from fieldwork in Arkansas are direct quotations that include misspellings and other grammatical errors.

7. For a chart documenting connections between racist groups from 1930 to 1990 see *Blood in the Face* by James Ridgeway.

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Uniting the Right: Anti-Immigration, Organizing, and the Legitimation of Extreme Racist Organizations

Stanislav Vysotsky
University of Wisconsin-Whitewater

Eric Madfis
University of Washington-Tacoma

ABSTRACT

This article analyzes the use of anti-immigration rhetoric and organizing efforts by extreme rightwing racist groups to present themselves as political actors. The authors analyze this process through a case study of the Keystone State Skinheads/Keystone United, a Pennsylvania-based hate group. The authors identify the manner in which this countercultural group uses anti-immigrant rhetoric to frame itself as a political organization. White racist organizations utilize issues such as the opposition to immigration to minimize stigma associated with their beliefs. This strategy has allowed them to participate at the forefront of anti-immigration organizing over the course of the last decade. By engaging in such organizing activity, extreme groups often present themselves to a more mainstream audience as non-violent organizations working merely to uphold immigration law. Additionally, the participation of white supremacists in the immigration debate shifts rhetoric further to the right and legitimizes expressions of racist sentiment by mainstream political actors.

Keywords: white supremacist movement, anti-immigration, legitimation, stigma management, neo-Nazi skinhead

INTRODUCTION

Recent political activity and discourse that opposes immigrant rights and immigration reform in the United States has frequently faced accusations of racism and xenophobia, particularly with regard to discussions around immigration from Mexico. Movement leaders and spokespeople deny such accusations as ad hominem attacks by their opponents. However, activists, politicians, academics, and many others have noted the consistent involvement of white supremacists in the anti-immigration movement. White supremacists not only find common political ground

within this movement, but also use it as a means of trying to legitimize their ideology in a public forum, in part to potentially recruit new members. The opposition to immigration allows white supremacists to mobilize a number of macro- and micro-level stigma management strategies in order to portray themselves as legitimate political actors¹ in the immigration debate.

Even racist skinhead groups, often associated with criminality and violence (Simi & Futrell, 2009; Simi, Smith, & Reeser, 2008), have mobilized in the anti-immigration movement in order to present themselves as a political movement rather than a countercultural gang. Using a case study of a Pennsylvania-based white supremacist organization known as the Keystone State Skinheads (KSS), this article outlines the key strategies and actions employed by white supremacist groups in order to legitimize their ideology in public discourse. In order to build a holistic understanding of the way in which KSS engaged with the issue of immigration, the authors analyzed the organization's (and affiliate organization's) website, materials produced by anti-racist watchdog groups and individual activists, as well as media coverage of the group. The data indicate the manner in which white supremacist group participation in the anti-immigrant movement demonstrates a number of stigma management strategies designed to garner legitimacy in a larger social climate that is hostile toward overt displays of racism.

Section I of this article provides an outline of the key sectors of the white supremacist movement—Political, Religious, and Countercultural—and explains each sector's relationship with mainstream and conventional political actions and actors. Section II discusses the concepts of stigma and legitimation in relation to the white supremacist movement, its members, and its activities. This section highlights the major macro- and micro-level strategies utilized by white supremacists to legitimize their movement and ideology as well as negotiate a stigmatized political identity even when they engage in everyday activities and lawful forms of political participation. Section III presents a case study of the KSS in order to demonstrate the processes of legitimation used by stigmatized Counterculture white supremacists to present themselves as mainstream political actors categorized within the Political sector of the movement. Section IV applies the macro- and micro-level strategies employed by KSS in the process described in Section III. Section V explains how the processes of legitimation described in this article impact mainstream political discourse by allowing political actors affiliated with major parties, political organization, and media to express racist and white supremacist sentiments. Such sentiments are considered normative because it is claimed that they reflect the position of a political base or lack the overtly racist language of stigmatized, hardcore white supremacists. Finally, the authors summarize the impact of the legitimation strategies of the white supremacist movement by

describing the dynamic between such strategies and shifts in political discourse.

I. SECTORS OF THE WHITE SUPREMACIST MOVEMENT—POLITICAL, RELIGIOUS, AND COUNTERCULTURAL

In order to understand the process of legitimation employed by white supremacist groups, one must first be familiar with the ideological and action positions of the variety of organizations within the movement. The white supremacist movement consists of three distinct sectors—political, religious, and countercultural groups—defined by the basis of each sector's ideology and forms of activism (Berlet & Vysotsky, 2006). White supremacist political organizations address social and political issues from a white supremacist analytic framework. In this way, they often frame the world through a racist view and advocate a neo-Nazi/fascist solution based on racial hierarchy to rid the world of its social problems (Arena & Arrigo, 2000; Berbrier, 1998a; Berbrier, 1998b; Berbrier, 1999; Daniels, 1997; Dobratz, 2000; Dobratz & Shanks-Meile, 2000; Ezekiel, 1995; Ferber, 1999; Hamm, 1993; Ridgeway, 1995). In contrast, white supremacist religious organizations often rely on a spiritual foundation for white superiority. Regardless of the specific type of white racist religion, there is a consistent theme that white superiority and social control are the desire of god(s) or creator(s). This spiritual basis distinguishes religious white supremacist organizations from their more secular, political counterparts and has at times been the cause of distinct rifts in the movement (Dobratz, 2000). Countercultural² groups, made up of predominantly teenage and young adult members, are less ideologically coherent than political or religious groups. While such non-normative youth-oriented groups share similar musical tastes, aesthetic styles, and argot (Clarke et al., 2006; Roberts, 1978; Smith, 1976), it is not uncommon to find a variety of ideals regarding the nature of white supremacy among members of countercultures. The skinhead scene incorporates members of neo-Nazi organizations, members of the Creativity Movement, Odinists, and Christian Identity followers. In the Black Metal and industrial/Goth scenes, there exists a variety of both secular and religious beliefs. For example, some members of the National Socialist Black Metal scene reject religion entirely, while others embrace Satanism or neo-Pagan Odinism (Burghart, 1999). The prominence of one ideological stance over another among white supremacist countercultures is often the result of targeted recruitment and support on the part of other specifically political or religious supremacist organizations or influences (Berlet & Vysotsky, 2006).

It is in the realm of activities that one truly begins to see the distinc-

tions between the three categories. Groups and organizations in all three sectors share a common white supremacist ideology that is translated into the unique representations described above; however, these distinct interpretations of the ideology result in unique forms of activity for each sector. Even though all white supremacists often engage in forms of political activism, religious and countercultural white supremacists blend ideologically motivated political activity with “sacred” and subcultural activities, respectively. This marks each type of supremacist sector as having a unique “action repertoire” distinct from other segments (Tarrow, 1994; Tilly, 2006).

The most consistent activity across all three categories appears to be a belief in and preparation for a coming race war. This is consistent with the ideology of both political and religious groups as well as the lifestyle of youth countercultures. Political supremacist organizations are motivated by the politics of neo-Nazi or fascist ideology, and fascist movements are essentially revolutionary movements (Berlet, 1992; Lyons, 1995; Passmore, 2002). Participants in these organizations seek to make social change through a radical transformation of the political system. This revolutionary fascist philosophy entails a notion of conflict that is based on a struggle for the supremacy of one nation or race over others. The justification underlying this conflict philosophy within fascism is victory of the powerful over the weak and the understanding of power as the ultimate goal, in and of itself. For the fascist, power can only be achieved through violence, and the ultimate form of power is control of the state. The fascist method of violence as a means of control becomes the justification for war, and likewise, fascists must engage in war for domination to prove their philosophy. In this respect, the fascist vision of the world is one of total war until total control has been achieved (Berlet, 1992; Lyons, 1995; Passmore, 2002). Therefore, the advocacy of a race war as a means of establishing their ideal social system can be directly linked to the fascist ideology of political supremacist organizations.

Religious white supremacists put a theological spin on the fascist/neo-Nazi justification for racial violence. However, the religious orientation of these groups adds an element of zealotry to their call for armed resistance. Whereas political organizations are engaging in a struggle for social control, religious groups are preparing for an inevitable holy war. For the Christian Identity religious belief system, it is the duty of white Christians to engage in conflict against Jews and other non-white “mud people” as part of a struggle to ensure the second coming of Christ and the redemption of all white Christians as the true children of Israel (Aho, [1990] 1995; Bushart, Craig, & Barnes, 2000). Furthermore, according to what many Christian Identity adherents believe, there is a constant battle on Earth

between the children of Satan (Jews) and the children of Adam (white, "Israelite," Christians) (Bushart, Craig, & Barnes, 2000). The Creativity Movement stresses the importance of racial-based conflict in its theology, encompassed by the frequently used term "RaHoWa" (which stands for "Racial Holy War"). According to Creativity's former highest priest, Matthew Hale, "Creativity adamantly proclaims that the White race must survive. It must expand" (Dobratz, 2000, p. 290). Additionally, many religious supremacists interpret Odinism's focus on Nordic myths of war and conflict to encourage engaging in fierce struggle for people of their own race.

The clearest distinction between the three categories comes in the form of activity that goes beyond a commitment to violent racial struggle. Political groups are much more likely to engage in what are generally deemed as traditional political activities such as lobbying or running for political office (Berlet & Vysotsky, 2006). This may reflect a trend within the extreme right of attempting to appeal to the political mainstream. This process has taken the form of running candidates for office, lobbying for legislation, and other participation in mainstream politics (Dobratz & Shanks-Meile, 1995; Ezekiel, 1995). Political groups are also more likely to engage in other forms of political activity such as debates, conferences, political rallies, and prisoner support. These types of activities most appropriately designate such groups as political.

Religious white supremacist groups incorporate religious ritual and hierarchy into their ideological practices. Members of such groups often meet in formal and informal settings to discuss the contents of texts which they consider holy and to derive from them a spiritual significance for their own racist beliefs (Berlet & Vysotsky, 2006; Simi & Futrell, 2004). For example, Christian Identity is organized around concepts of fellowship and members often meet in makeshift churches, religious compounds, or at retreats where Christian theology is actively linked to white supremacy (Aho, [1990] 1995; Bushart, Craig, & Barnes, 2000; Dobratz, 2000). Both Christian Identity and the Creativity Movement are hierarchically structured with reverends in leadership positions. These individuals' status is derived from their advanced knowledge of their organizations' religious texts and principles, and rank-and-file members defer to them in matters of ideological importance and movement action. By engaging in religious practice and maintaining a hierarchy rooted in their own theological understandings of their religious texts, the actions of these supremacist religious organizations are distinct from the other two sectors.

Countercultural groups are unique in terms of activity in that they are often more oriented around maintaining their subculture, while still encouraging the politics of racial superiority. While there are a number of differ-

ent countercultural styles and aesthetics represented in this sector of the white supremacist movement, a key number of activities are shared by all groups in this category. The first and most obvious is the intentional display of neo-Nazi, racist, and white supremacist imagery as part of the distinct countercultural aesthetic (Berlet & Vysotsky, 2006; Futrell & Simi, 2004). This mobilization of aesthetics is designed to distinguish white supremacists from non-racist or actively anti-racist members of various countercultures and to promote racist ideology (Berlet & Vysotsky, 2006; Sarabia & Shriver, 2004; Wood, 1999). Members of white supremacist countercultures have in the past communicated via fanzines that combine “elements of specific youth subcultures and the politics of white supremacy,” which “inextricably links white supremacy to the subculture in a way that forces youth involved to adopt the ideology as a condition of membership” (Berlet & Vysotsky, 2006, p. 31). Contemporary countercultural groups have moved to the blog format to produce similar content. Finally, such groups often gather in social settings such as rock concerts, “crash pad” houses, or hangouts such as record and clothing stores where young “dabblers” can meet older “hatemongers” (Levin, 2002, pp. 30-38) who often have the respect of all members of the counterculture and learn the ideals and norms of the movement. Bonds in the counterculture are often solidified and reinforced through violence, which is used as a boundary maintenance activity within the subculture through attacks on people of color and anti-racist activists (Blazak, 2001; Vysotsky, 2009). This dynamic constructs the counterculture as a “prefigurative space” that gives members a sense of community and belonging (Berlet & Vysotsky, 2006; Blazak, 2001; Ezekiel, 1995; Futrell & Simi, 2004).

While each sector represents a unique type of approach to ideology and action, organizations often represent overlaps in categories. This has been especially true in the case of the countercultural category. The association of white supremacy with skinhead and other countercultures has allowed white supremacist ideology to spread to a much wider and younger audience. Countercultures often represent the largest and fastest growing elements of the movement (Blazak, 2001; Burghart, 1999; Futrell & Simi, 2004). It is for this reason that many of the most successful political and religious organizations have courted countercultures as primary recruiting grounds for their membership (Burghart, 1999; Langer, 2003; Ridgeway, 1995). These alliances and overlaps, coupled with a number of high profile media representations, have led to a public association of white supremacy and the skinhead subculture. Such an association has greatly contributed the growing stigma associated with open expressions of white supremacy.

Racist skinheads are often perceived as the most violent and stigmatized of all white supremacist groups. The subculture’s commitment to

destructive violence coupled with an ideological commitment to white supremacy creates a perception of the skinhead as a violent thug or “storm-trooper” in the race war (Blazak, 2001; Bowen, 2009; Hamm, 1993; Sarabia & Shriver, 2004; Simi & Futrell, 2009; Simi, Smith, & Reeser, 2008; Wood, 1999). This stigmatized identity is further complicated by the skinheads’ countercultural focus – they are largely focused on their status as outsiders from the mainstream and as participants in a subculture instead of being primarily concerned with mainstream acceptance or legitimation. Unlike political or religious groups, which often seek to build a mass movement and gain widespread support through various “legitimation techniques” (Sykes & Matza, 1957) that rationalize violence or other deviant actions as what is best for the nation or as the will of God, racist skinheads seek status within the subculture or local scene. They are, therefore, largely unconcerned with the opinions of the public in general and relish a stigmatized identity (Berlet & Vysotsky, 2006; Blazak, 2001; Hamm, 1993; Simi, Smith, & Reeser, 2008). By constructing a subcultural identity based on being a hooligan, thug, or criminal, racist skinheads are significantly more subject to stigma (Simi & Futrell, 2009; Simi, Smith & Reeser, 2008).

II. WHITE SUPREMACIST IDENTITY, STIGMA, AND STIGMA MANAGEMENT

In an era when overt racism is largely taboo, active membership in a white supremacist organization is a highly stigmatized social identity. While scholars generally agree that racism persists as a structural and systemic force, public and even private expressions of such sentiments are generally considered unacceptable, and people tend to distance themselves from individuals who express such sentiments (Bonilla-Silva, 2006; Feagin & Vera, 1995; Simi & Futrell, 2009). Mitch Berbrier summarizes the attitude most people hold toward white supremacists by stating “[the] stigma of white supremacist racism evokes impressions of hatred, boorish irrationality, and violence or violent intent” (1999, p. 411). This stigma is increased for racist skinheads who are often primarily identified with violence and criminality in addition to white supremacist stigma (Simi & Futrell, 2009; Simi, Smith, & Reeser, 2008; Sarabia & Shriver, 2004; Wood, 1999). In order to adapt to these stigmas, white supremacists develop a number of macro- and micro-level strategies to minimize the stigma associated with their ideology and political involvement which serve to legitimize their participation in broader social movements.

The ascription of stigma to an individual or group creates a social distance between them and “normal” society. Stigmatic labeling often serves as a means of delegitimizing unpopular, radical, or marginalized political positions (Berbrier, 1999, 2002; Goffman, 1963). In the case of political

and social movements, stigmatization is a direct strategy employed as a means of delegitimizing movements by denying them access to resources, alliances, and means of cultural framing (Berbrier, 1999, 2002; Boykoff, 2006; Buechler, 2000; Corrigall-Brown & Wilkes, 2011; Jasper, 1997; McAdam, 1992; Rauch, et al., 2007; Simi & Futrell, 2009; Snow & Benford, 1988; Tilly, 1978). Cultural, economic, and political elites engage in deliberate social distancing in order to draw distinct boundaries around what types of actions and ideologies are considered legitimate and acceptable as part of the mainstream political process. This strategy serves to marginalize and exclude political actors on both the left and right. It therefore becomes crucial for social movement members to develop a series of counter-strategies to build effective stigma management in order to achieve movement success through the acceptance of policy goals or incorporation into mainstream, and by extension, legitimate political activity (Gamson, 1990).

Mitch Berbrier (1998a, 1998b, 1999) has identified two key macro-level strategies used by white supremacists to reframe stigmatized identity: ethnic claims-making and intellectualization. The process of ethnic claims-making involves the effort to portray white supremacist ideology as representing that of an ethnic group, arguing, among other things, that the label “racist” is applied to them simply for having a healthy pride in their heritage and culture. Moreover, racists argue that if, “according to the values of *cultural pluralism* and *diversity*, ethnic or racial pride is legitimate for (other) ethnic or racial minority groups. . .then it is also legitimate for whites” (Berbrier, 1998b, p. 499, italics in original). With this logic, the members of a white supremacist group can feel comfortable in their racist ideas because they are no different from other ethnic groups in American society that express pride in their heritage. Conversely, there is a belief that minority groups who exhibit pride in their ethnicity are likely to be as bigoted as members of their own organizations (Berbrier, 1998b).

A. *Macro-Level Strategies*

Berbrier’s other macro-level stigma management strategy, intellectualization, involves a process of legitimizing and rationalizing white supremacist ideology through academic and scholarly references. Such intellectual legitimation is achieved through a series of scientific arguments which serve to buttress racist world views. White supremacists point to the work of controversial educational psychologist Arthur Jensen and, more recently, Murray and Herrnstein ([1994] 1996) in discussing the correlations between IQ levels and race, specifically that African Americans score lower on IQ tests than whites (Dobratz & Shanks-Meile, 2000). Others point to the

research of somewhat marginal academics. As Dobratz & Shanks-Meile (2000) point out, many white supremacists “discussed a number of scientists who support the ‘new’ scientific racist work, such as J. Philippe Rushton who maintained that whites and Asians were typically more family-oriented and intelligent than blacks and anthropologist Roger Pearson who advanced the idea that the white race is threatened by inferior genetic stock” (p. 95). These strategies of ethnic claims-making and intellectualization allow white supremacists to position themselves as members of just another advocacy group in a pluralist political and social climate.

B. *Micro-Level Strategies*

The micro-level strategies of stigma management deployed by white supremacists are much more complex and varied than the macro-level strategies. Pete Simi and Robert Futrell (2009) outline a number of these strategies that they believe allow white supremacists to maintain their ideology and movement affiliations in a society that is largely hostile toward them.

The first of these strategies involves an actual physical *distancing* of white supremacist political activity from other life activities. White supremacists create “free spaces” such as music events, parties, camping events, and intentional communities that allow them to openly express their beliefs and build the movement free of resistance (Futrell & Simi, 2004; Simi & Futrell, 2009).

A second strategy involves the strategic *silencing, avoidance, or hiding* of white supremacist political identity from family, friends, and coworkers. This process involves avoiding discussion or debate of issues with others who may disagree, hiding symbols and markers of white supremacy from public display, and wearing clothing that covers racist and inflammatory tattoos.

The processes of silence, avoidance, and hiding often inform the third strategy of *civility/avoiding conflict*. Simi and Futrell (2009) note that white supremacists, in order to avoid conflict, rarely engage in political discussions with people who do not share their beliefs. More surprisingly, they also found that white supremacists often treat people of color with whom they work or interact in daily activities with civility and, at times, even respect. This strategy allows them to maintain employment and generally navigate through an increasingly multiracial and multicultural world.

The fourth strategy involves attempts at *mainstreaming* through the avoidance of the use of racial slurs and the presentation of their ideals in alignment with conservative positions. Mainstreaming often involves the framing processes discussed above wherein white supremacists present their position as a legitimate political position in opposition to liberal values

or attitudes espoused by others. Disagreements or arguments between supremacists and those who do not share their views often end with a statement to “agree to disagree” (Simi & Futrell, 2009).

Finally, white supremacists engage in *passive expression* of their belief through displays of their political position on clothing and other symbolic displays. Simi and Futrell (2009) contend that such displays are a way for movement members to enact their political ideology without being directly confrontational with others. This passive expression approach often works effectively because such displays typically involve symbols that are only recognizable to other racists or individuals well versed in the ideology. Thus, the impetus for action falls upon those individuals able to recognize such symbols, rather than the white supremacist him or herself (Vysotsky, 2009). By utilizing this dynamic of passive expression, white supremacists may conveniently understand potential conflicts to arise via a victimization lens wherein they are merely the victim of a confrontation initiated by others while innocently going about their everyday activities, including legally-protected expressions of speech and dissent. In the case study to follow, we address the manner in which the KSS use many of the aforementioned stigma management strategies in their attempt to gain legitimacy through the strategic adoption of anti-immigration political discourses and activities.

III. FROM COUNTERCULTURAL TO POLITICAL—THE EVOLUTION OF KEYSTONE UNITED AND THE EUROPEAN AMERICAN ACTION COALITION

The Keystone State Skinheads were reportedly founded in 2001 in response to a violent confrontation between white supremacists, primarily skinheads, and anti-racist, anarchist, and community protesters at a rally organized by the racist religious group, the Creativity Movement, in York, Pennsylvania (Anti-Defamation League [ADL], 2009). The Southern Poverty Law Center (SPLC) (n.d.) identifies the KSS as one of the largest racist skinhead groups in the country with chapters in most major cities across the state of Pennsylvania. Typical of countercultural groups, KSS activity was initially based around subcultural events like music concerts and festivals, such as the annual Hammerfest (2003 with the Hammerskin Nation) and its own annual festival, “Uprise” (ADL, 2009; SPLC, n.d.). Like many other skinhead groups, KSS strikes a precarious balance between operating as a political organization and criminal gang (Simi, Smith, & Reeser, 2008). While the group presents itself as “wish[ing] to break the stereotypes of skinheads being alcoholic thugs and violent drug-addicted criminals. . .[by] offering education and guidance” (KSS website cited in SPLC, n.d.), the

group's members and leadership have consistently been convicted of violent attacks against people of color and anti-racists (see ADL, 2009; SPLC, n.d.). With such an infamous record, KSS, like many of its white supremacist counterparts, struggles to present a more palatable public image by shifting its presentation from that of a countercultural group to political organization by focusing on political and social issues such as immigration.

As KSS attempts to make this transition, it faces the greater challenge of appealing to a broader population. To that end, the group officially promoted a name change to Keystone United and added leafleting, public protests, and media appearances to its action repertoire. A significant portion of this public campaign involved the promotion of the group's opposition to immigration, especially the immigration of those from Latin America. KSS members staged various anti-immigration leafleting campaigns with fliers stating "American Jobs for American Workers" (Byrne & Sinclair, 2007) and others that linked crime to changing racial demographics in Northeast Pennsylvania (Bello, 2008). Such campaigns are designed to not only educate the public on the group's positions, but also to present them as a political interest group, rather than a skinhead gang. KSS members have also participated in rallies opposed to "illegal-immigration" on the state capitol steps in Harrisburg (Isis, 2007), in support of the acquittal of individuals accused of hate crime charges for the murder of a Mexican immigrant in Shenandoah (Bello, 2008; Holthouse, 2009), and in support of the introduction of a bill modeled on Arizona's Senate Bill 1070 in the Pennsylvania legislature (NoPawn, 2010). These rallies put KSS in the same political context as more mainstream political actors, such as Ron Paul supporters and numerous elected officials³ (Denvir, 2011; Isis, 2007).

In addition, KSS leader and spokesman Steve Smith formed the European American Action Coalition (EAAC) in 2011 as "an organization that advocates on behalf of White Americans" (EAAC, n.d.). The EAAC is designed as a strictly political organization advocating for "white people's rights" (Krawczeniuk, 2012) rather than the countercultural, skinhead organization with which Smith has been previously affiliated. This repositioning allowed Smith to move into mainstream politics by being elected to the Luzerne County Republican Committee with one write in vote, likely his own (Krawczeniuk, 2012). By distancing itself from the name and activities typically associated with skinheads, KSS has increasingly moved toward becoming a political white supremacist group.

The public attention created by such appearances and activities gives KSS leaders and spokesmen (as a patriarchal organization, these are exclusively male) a unique opportunity to appear in media outlets to promote their organization. Longtime members Keith Carney and Steve Smith have become regulars in the Pennsylvania and national press as "Kinder, Gentler

Skinheads” and “white people’s rights activists” (e.g. Harte, 2009; Krawczeniuk, 2012). Such appearances allow interested parties to seek out Keystone United or Smith’s EAAC via their most public forums: their respective blogs and websites. These blogs feature a number of “news” items that attempt to present a more mainstream version of white supremacist ideology. Included in these are references to their position on immigration. The KSS blog features the transcripts of an address by Mark Weber, director of the Institute for Historical Review,⁴ which focuses primarily on the effects of immigration from Mexico and Latin America as understood by white supremacists—economic, intellectual, and political decline (keystonestate, 2011a). In a combination of the political and countercultural sectors, an interview with KSS member “Felix” for a Croatian white supremacist website features a question directly addressing the organization’s position on immigration:

The illegal immigration problem is out of control here. Not only do they have the same rights, they have MORE rights. Our people have been cast aside as second-class citizens to make way for this cheap, unchecked-capitalistic dream world, where all the laborers work for next to nothing, they don’t want benefits of any kind, and there’s lots of them! The business owners and farmers and politicians allow these invaders to enter our country and take all the jobs because it allows them to make a greater profit to be able to pay off one another, when you have liberals, and Marxist-leftovers from the 1960’s as your politicians, you get their doctrines and decrees pushing you aside in the name of the “labor struggle”. . . When the politics make laws enabling the migrants to work and stay here, the farmer and businessman are happy – so they say nothing about paying the taxes on profits made, because there’s more where it came from to them (keystonestate, 2011b).

The EAAC’s website presents an overlap between media appearances and blog posts with a collection of its members’ letters to the editor, including a graph of predicted population demographics highlighting the increase in the Hispanic population and decline in the proportion of the population represented by whites. Such representations seek to prey on fears related to immigration and to bring individuals into the organization based on such comparatively mainstream concerns.

IV. IMMIGRATION CONCERNS AND LEGITIMATION STRATEGIES

The public debate on immigration provides a unique opportunity for stigmatized and politically marginalized white supremacists to participate in mainstream political discourse. The racialized rhetoric in opposition to immigration gives supremacists an opportunity to marshal stigma transfor-

mation strategies in order for their movement to be an influential political participant on public matters—namely, the immigration debate—and therefore to present their movement as a political actor like any other, which is crucial to their efforts to pursue legitimation of their ideology. The KSS present an ideal case study of the process utilized by a number of white supremacist groups. By engaging the immigration issue, KSS is able to engage in both macro- and micro-level stigma management strategies in order to build relationships with more mainstream actors on the right.

With contemporary anti-immigration rhetoric focused primarily on non-white Hispanic and Latino immigrants, the racialization of the “illegal” immigrant serves to validate the ethnic claims-making strategies of white supremacists (Berbrier, 1998a, 1998b). Groups like the KSS can portray themselves not as racist bigots, but as advocates for a deindustrialized white working class. This was evident in the slogan used by KSS on their leaflet on immigration: “American Jobs for American Workers.” By utilizing such a slogan, KSS points away from its racism and claims to be advocating for “American” workers. Charges of racism can be deflected by noting that KSS supports native-born and naturalized citizen workers, while using a language that fellow racists understand as code for whiteness. Despite this patriotic or nationalist veneer, the racist politics of KSS and other white supremacists only genuinely recognize white Americans as true citizens with full rights. Further, by advocating against immigration, groups like KSS and EAAC construct themselves as ethnic advocacy organizations defending the interests of white American citizens against perceived threats of economic loss and increased criminal activity stereotypically associated with non-white Hispanic and Latino immigration. They are able to claim a position of ethnic advocacy rather than overt white supremacy (e.g. KeystoneUnitedOfNEPA, 2010). Such ethnic claims-making activities allow white supremacists to deny allegations of racism as they engage in anti-immigrant activism.

Intellectualization processes further allow white supremacists like KSS to legitimize their opposition to immigration behind the facade of rational reaction to empirical evidence. The use of pseudo-scientific claims, such as the correlation of racial demographic changes with economic decline and increased crime noted above, gives an empirical rationale to the emotional components of white supremacist discourse. The ideological position of racial exclusion in response to immigration taken by KSS and EAAC is portrayed not as the product of an emotional aversion to non-white Hispanics and Latinos, but as a response to “legitimate” economic, social, and political concerns. Citation of statistical data and projections, as made by the U.S. Census Bureau and other official or reputable institutions, regarding predicted demographic shifts in American society is also designed to

substantiate supremacist claims about the loss of power experienced by whites. The predicted growth of the proportion of the U.S. population who identify as non-white Hispanic and Latino, as well as “two or more races,” and the projected decline in proportion of the U.S. population who identify as white, provide what white supremacists believe is clear empirical evidence for their political position. By drawing on empirical support for their claims, KSS and EAAC are able to present their ideological and political positions as the products of intellectual engagement with the world rather than as the result of ignorance or emotion (Berbrier, 1999).

The strategy of distancing is the most evident micro-level product of ethnic claims-making and intellectualization for the KSS. As the group has attempted to move from operating as a countercultural group to a political one, it has faced the obvious stigma associated with the skinhead subculture. This stigma has made it almost impossible for the group to engage in mainstream political discourse, especially on issues such as immigration. Byrne and Sinclair’s (2007) portrayal of KSS’s anti-immigration leafleting campaign indicates that they received little support from the public as many individuals tore apart the literature which the group distributed. In order to present itself for the purposes of political participation as tied to its pursuit of group legitimation, KSS officially changed its name to Keystone United in 2009 (SPLC, n.d.). Additionally, KSS leader and spokesman Steve Smith founded the EAAC in order to further distance him from the skinhead stigma and present himself as just another political participant lawfully exercising his civil liberties within the context of the immigration debate (Denvir, 2011, 2012b). By distancing themselves from the skinhead label and the countercultural stigma of criminality that comes with it, KSS has utilized the mechanisms and forms of legitimate political participation in order to portray itself as just another actor in policy debates, yet doing so precisely to advance the group’s legitimation (Berbrier, 1999; Simi & Futrell, 2009; Simi, Smith, & Reeser, 2008).

In order to properly distance itself from the skinhead stigma, KSS relies heavily on the strategy of avoidance, hiding, and mainstream displays (Simi & Futrell, 2009). This is primarily achieved through their public presentation. When engaging the public or media, KSS members avoid using overt racist and neo-Nazi symbolism or wearing the attire of the traditional skinhead aesthetic. At the leafleting event discussed above, KSS members dressed in jeans and hoodies—some with the KSS logo which itself is only an indirect racist symbol because it does not contain any overt imagery (Byrne & Sinclair, 2007). This type of aesthetic allows them to present themselves as “concerned” members of the working class, rather than as a group of countercultural racists. As referenced above, the KSS members at the anti-immigration rally on the Pennsylvania Capitol steps

were only recognizable by the coded imagery on their clothing, such as the number 88 which stands for “heil Hitler,” or the number 14, a reference to a central ideological slogan for the white supremacist movement,⁵ in the url of the website featured on their picket signs (Isis, 2007). This is a conscious choice on the part of the white supremacists at such protests because it allows them to participate as part of the broader anti-immigration movement without the stigma associated with their ideology. Most protesters or citizens would not be able to readily identify these individuals as members of a racist skinhead group, thus allowing the white supremacists to blend in with other anti-immigration protesters and make connections with other activists in the movement.

V. STIGMA MANAGEMENT, LEGITIMATION, AND THE DYNAMICS OF POLITICAL DISCOURSE

In the cases of legitimation and stigma management outlined above, KSS have participated in the larger anti-immigration movement with little concern expressed by other participants because they are able to engage in conventional, legal political activity as overt white supremacists. The danger of this lack of vocal opposition to white supremacist participation in the anti-immigration movement is not that such a strategic dynamic will bring white supremacists such as the KSS fully into the mainstream; it is that this type of relationship may pull anti-immigration groups, indeed even more mainstream political participants and platforms, toward more extreme and bigoted stances. Chip Berlet and Matthew Lyons (2000) point out that the rightwing populist focus on issues such as immigration creates a link between white supremacist groups and legitimate political actors on the right, such as elected officials. The participation of the KSS members in anti-immigration activism largely served as an embarrassment for other activists in the movement as they tried to distance themselves from accusations of racism (Piggott, 2010). White supremacists like the KSS, however, benefit greatly from the increased media attention that political issues campaigns provide by receiving media exposure, which in turn allows them to present their message to a wider audience and compliments their recruiting campaigns. Such attention serves to reinforce many of their efforts at legitimation and stigma management, and therefore, these strategic tactics warrant serious concern and consideration by political activists as well as social movement scholars. Activists on the left and right of the political spectrum should recognize legitimation strategies of white supremacists as a unique social danger which shifts political discourse in a more racist and authoritarian direction. Scholars may be able to apply the model above to understand the processes used by extremist actors in order to legitimately

participate in wider political processes, and to under the influence such movements have on mainstream discourse and policy.

In addition to legitimating and mainstreaming white supremacist activity, the participation of groups like KSS represents a shift to the right for the anti-immigration movement.⁶ Populist and conservative social movements, such as the anti-immigration cause, provide a common ground where a variety of actors across the right of the political spectrum can interact with one another (Berlet & Lyons, 2000). By deploying the legitimation and stigma management strategies discussed above, white supremacists are able to participate politically in such movements and come in contact with other activists and political leaders, especially those on the right. Professional politicians and other political actors who would not typically associate with open white supremacists for fear of a backlash from constituents are able to espouse hard-right, even overtly racist, positions because these become the norms in the movement. Activists and politicians on the right who take more moderate positions on immigration may find themselves losing the support of a base that is increasingly nativist as the anti-immigration movement incorporates individuals and groups with overt white supremacist positions (e.g. Denvir, 2011).

What is more, the rightward shift in the anti-immigration movement ultimately allows mainstream politicians and pundits, especially but not only on the right, to express overtly white supremacist and racist sentiments under the guise of opposition to immigration. As white supremacists engage with and support the anti-immigration movement, nationalist and nativist rhetorical framing has become increasingly infused with explicitly racist sentiment. Mainstream advocates against immigration can then use coded, and occasionally overt, racist statements while still distancing themselves from the more extreme positions taken by white supremacists. For example, prominent television hosts such as Lou Dobbs, Bill O'Reilly, and Glenn Beck have linked Latino immigration to crime, economic recession, loss of sovereignty, and even leprosy (Media Matters for America, 2008). The 2012 Republican presidential candidate Mitt Romney's "joking" comments on the campaign trail that "had he [George Romney, Mitt's father] been born of Mexican parents, [Mitt would] have a better shot of winning th[e] [election]" evokes similar white supremacist sentiments of racial resentment, white victimhood, and loss of sovereignty (Fabian, 2012). Such claims mirror white supremacist thinking about widespread anti-white discrimination and the evils of immigration, yet mainstream pundits and politicians can distance themselves from direct associations because supremacists are assumed to be virulent racists whose statements and other presentations of message are unsophisticated and are limited to direct

expressions of hate through the use of racial slurs and incitement to violence.

Likewise, white supremacists also use statements from mainstream actors as part of their strategies of distancing, mainstreaming, and intellectualization. They may more easily claim that their positions on immigration are not racist when they are similar to those of widely known and popular television commentators and politicians. This dynamic creates a feedback loop where the reactionary and bigoted positions of white supremacists allow mainstream politicians to make racialized statements while still presenting themselves as less extreme by comparison, and white supremacists can claim not to be extremist racists because their position on issues such as immigration is similar to mainstream politicians. Through this interplay, the ideology and rhetoric of the right becomes more extreme, overtly racist, and potentially violent.⁷

CONCLUSION

The processes described above allow white supremacists to present themselves as ordinary political actors in the immigration debate. By engaging in macro-level strategies of ethnic claims-making and intellectualization, groups like KSS present their opposition to immigration as an advocacy position born of empirical data, instead of the product of a racist ideology. Utilizing micro-level strategies of distancing, avoidance, hiding, and mainstream displays, groups like KSS attempt to present themselves as “ordinary” citizens protesting against immigration rather than as extreme racists, violent criminals, or countercultural deviants. Leaders such as Keith Carney and Steve Smith remove many of the subcultural trappings of the skinhead identity when interacting with the public in general. By changing the organization’s name and focusing on issues of public concern such as immigration, these groups are able to present themselves as ordinary political actors on the right, perhaps different from others as to viewpoint but no different from others insofar as they seek to lawfully exercise their participatory civil liberties. These strategies place white supremacists in greater contact with other types of activists in more mainstreamed political movements, some with similar affinities and stances on major political issues (Berlet & Lyons, 2000).

Therefore, white supremacist involvement in anti-immigration political activity has distinct and significant functions for their members. It allows white supremacists to engage in mainstream political conversations where they might otherwise be far too stigmatized to be included, especially were they to present themselves through statements and messages that are more directly expressive or evocative of hate, including racial slurs and incite-

ments to violence. This enables them to create the perception of being ordinary political advocates like others rather than ones who are racial agitators, violent criminals, or domestic terrorists. Their participation in the larger anti-immigration movement pulls the acceptable discourse and goals of that movement toward more extreme and bigoted positions, especially those on the right, and ultimately forces the entire debate to occur within parameters as influenced by actors on the right's most extreme fringe. The adoption of more extremist stances on immigration occasionally serves to highlight the often implicit and covert biases of anti-immigration activists in general, however, such statements are frequently rebranded and reframed as conventional anti-immigration policy concerns when, in fact, the rightward shift reflects a strategic and deliberate advancement of the white supremacist agenda (Berbrier, 1998a, 1999; Berlet & Lyons, 2000). It is for these reasons, as regrettable as they might be, that we must appreciate the significant role of white supremacist activists, and their hateful ideology more generally, if we wish to fully comprehend the state of the American immigration debate in the 21st century.

NOTES

1. The concept of legitimation presented in this article derives from political sociology in reference to the distinction made between which political actors and actions are designated as normative. This concept differs from its legal counterpart, which more closely resembles political sociological concepts of conventional and unconventional political action. Using the sociological concept described herein, an individual, group, or action may be considered illegitimate if it is considered outside of the bounds of normative politics as defined by individuals and groups in positions of power or pluralities of actors and organizations operating in the public sphere. Therefore, even legal and socially acceptable forms of protest and political action may be considered illegitimate if they are carried out by individuals or groups who fall outside of the bounds of normative political categories. For a more detailed discussion of this concept, see section II.

2. Scholars have used a number of terms, including subculture and contraculture (Yinger, 1960), counterculture (Roberts, 1978), and youth culture (Clarke, Hall, Jefferson, & Roberts, [1975] 2006; Smith, 1976), to refer to non-normative, youth-oriented groupings that share similar musical tastes, aesthetic style, argot, and beliefs. As members of supremacist youth groups and academics alike distinguish these terms inconsistently and such

distinctions go beyond the scope of this article, they will henceforth be used interchangeably.

3. Clear evidence exists that both mainstream and “extremist” actors benefit from mutual associations and shared positions on political issues. Politicians and commentators build a support base, while reactionary organizations gain legitimacy by associating with individuals and organizations that are considered mainstream (Berlet & Lyons, 2000).

4. The Institute for Historical review is a think tank famous for producing “scholarly” evidence in support of the claims made by several white supremacists that the Holocaust was either a fabrication or an exaggeration of a Jewish conspiracy. For a detailed overview of this phenomenon, see Lipstadt (1994).

5. The 14-word slogan, “We must secure the existence of our people and a future for white children” is credited to the late David Lane, a member of the white supremacist terrorist group The Order (Dobratz & Shanks-Meile, 2000, p. 17).

6. Contrary to popular belief, opposition to immigration as a populist issue has historically not been an exclusively right-wing position. Left-wing oriented individuals and organizations in the labor and environmental movements also have long histories of arguing in favor of restricted immigration policies in order to further their own political ends (Beirich, 2010; Briggs, 2001; Foreman, 1987; LeMay, 2006).

7. While there are examples of these dynamics at play in the case study presented above, further empirical research is needed in order to fully develop the interplay described here. Additional research should focus on the rhetorical and framing overlaps between mainstream and “extremist” actors within rightwing movements and/or the development of violence by rank-and-file members in relation to increasingly xenophobic and racist framing by leadership with particular focus on the ideological positions of individuals who are willing to engage in violence and militancy.

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Misogyny and Marginalization in Criminal Justice Systems: Women's Experiences in Two Post-Conflict Societies

Erin Tunney
Carlow University

INTRODUCTION

In Northern Ireland and South Africa, two countries that are attempting to rebuild their societies after extended periods of armed conflict, women who seek redress from gender-based violence through the criminal justice system encounter barriers to justice. Such barriers emerge from misogynistic attitudes toward women that prevent police from appropriately responding to reports of sexual and domestic violence, diminish the capacity of police and court officials to empathize with rather than blame victims, and impede judges from sentencing convicted perpetrators in proportion to their crimes. Despite the striking differences between these two countries, in each society women face similar patterns of obstacle when confronting the criminal justice system. Indeed, the respective criminal justice systems provide venues through which the hatred of women intersects with the secular politics of nation-building.

The present study¹ involved conducting field interviews with 90 women in South Africa and Northern Ireland between the years 1999 and 2007 as to their post-conflict experiences in the two nations. It found that almost all of these women—88 out of 90—indicated that, due to fear of gender-based violence, they actually feel less safe since the end of political conflict within their respective nations.

Men who are insecure in their own social status and who are jealous of women demonstrate animosity towards women that culminates in violence in the public, private, and social systems. Although peace processes have been in place in South Africa since 1990 (beginning with Nelson Mandela's release from prison) and Northern Ireland since 1994 (beginning with the first ceasefires), women continue to experience public violence from paramilitaries and gangs. Such violence occurs when men want to prove their masculinity in front of other men (Dairmer, 1999; Dorothea, 2006; Hamber, 2010; Joyce, 2007; Julianne, 2006; Megan, 2006; Naomi, 2007; Shirlow, 1997; Vetton, 2000; Xaba, 2001; Yonela, 2007). These men utilize physical and sexual violence, or the threat thereof, in order to intimidate and silence women so that they can retain power and control within their communities. In the private sphere, women experience domestic violence

from (male) intimate partners as well as sexual violence from (male) intimate partners, acquaintances, family members, and strangers. Unlike the previously-described public violence, interpersonal violence tends to be hidden, and perpetrators often behave in front of others as though they have never perpetuated such violence. Finally, women experience structural violence from the healthcare, criminal justice, governmental agency, and other social systems. Such systems are ostensibly designed to help women. Yet not only do they routinely fail to do so; they may also even bring women additional harm and distress.

I. BACKGROUND OF VIOLENCE

The present study on post-conflict gender violence in South Africa and Northern Ireland illustrates that the period of rebuilding a nation after civil unrest can be a time when hostilities toward women are prominent. As governing bodies draft new legislation² to protect women's human rights, men's hostility toward women may actually escalate.

Literature in Northern Ireland and South Africa indicates that men in both countries feel that new protections toward women allow women to benefit unfairly (Geisler, 2004; Ginwala, 1998/2005; Northern Ireland Office of Statistics and Research Branch, 2006; OFMDFM, 2012). Despite evidence to the contrary (Antonopolous, 2007; ISS, 1999; Unterhalter, 2005; Vetten, 2002; Vogelmann, 2000; Women's Aid, 2011; Women's Net, 2012), men tend to feel that women surpass them educationally and in employment (Bairner, 1999; Hamber, 2010; Shirlow, 1997; Xaba, 2000; Vetton 2000; Hamber et al, 2006; Harland 2011).

Moreover, men often feel that legislation designed to equalize women's position within society and protect women from gender-based violence will unfairly punish men (Mpho, 2007; Police Officer Franklin, 2007; Police Service of Northern Ireland, 2011). Hamber (2006) found that men in South Africa fear women's new liberties. Tunney (2014) confirms that such resentment exists in South Africa and in Northern Ireland, too. Although the governments of both nations want to align themselves with countries that preserve and protect human rights, many men do not want to relinquish gender privilege in order to achieve equality and justice for all.

Furthermore, when men feel they are losing control, they tend to utilize violence against women to regain their power. For example, when women gain political power, male colleagues at times react through harassing and bullying female politicians, and husbands react through reasserting their control in the household. Although the African National Congress ("ANC") in South Africa instilled quotas to ensure that women constituted at least thirty-three percent of all ANC representatives, some female politi-

cians report experiencing harassment once in office (Pumla, 2007; Norma, 2005). Other government officials report that their increased professional status fails to improve their status within the home. One ANC parliamentarian revealed that her husband said, “You may be a member of parliament, but, when you walk through that gate, you are my wife” (ANC Parliamentarian, 2003). These examples illustrate the insecurity many men may feel when women have improved status, as well as men’s perceived need to assert authority over women.

II. WOMEN AND THE CRIMINAL JUSTICE SYSTEM

Northern Ireland and South Africa are part of a global community of women continue to have negative experiences with the criminal justice system. Women in these countries encounter structural violence from criminal justice systems that often deter them from reporting to police incidents of sexual or domestic violence.³

Shame, guilt, fear of reprisal, and fear of the community placing the woman on trial all contribute to a woman’s sense that reporting such crimes will not help her. Moreover, low conviction rates and light sentences contribute to the sense among women that the legal system will not deliver justice. Women in Northern Ireland reported seeing some improvements with policing, but such improvements are not systemic. In addition, they do not see any improvements with sentencing when court cases happen to reach a conviction. Women in South Africa generally reported negative experiences with police and courts, too.

As described below, courts remain heavily backlogged, difficult for victims to navigate, and dismissive toward victims during sentencing. Hence, the criminal justice system in each country hinders women from achieving justice and security.

A. *Policing in Northern Ireland*

One would imagine that, with improved legislation and greater awareness of domestic violence and rape since 1994, criminal justice interventions would have improved. Yet research participants indicated that although some improvements with policing have been realized, policing remains inconsistent. The participants, including shelter workers and women who experienced intimate partner abuse, believed that police are more likely than they were before the transition to charge perpetrators in domestic violence cases. During a focus group of nine shelter workers, the participants reached consensus that police have begun to take domestic violence more seriously. However, the responses of individual police officers

remain uneven, as the treatment of complainants continues to depend on individual officer's level of skill and overall effectiveness. One shelter worker who accompanied women to court indicated that the police are being more proactive in charging people, and a senior shelter worker commented that in some cases women praised police for their help while in other cases women felt police treated them badly (Women's Shelter Focus Group, 2006). Such uneven results indicate that, even with improvements, women cannot count on receiving consistently helpful policing.

For many women, non-responsiveness or other improper inaction by police resulted in failures to improve women's security in multiple ways. First, women expressed a lack of trust toward police and were, therefore, less inclined to call police for help. Second, police do not always treat incidents of rape or domestic violence seriously. Third, police sometimes treat domestic violence cases as mutual abuse and so charge both the victim and the perpetrator. Fourth, police do not work to gather evidence to the fullest because they expect that victims will ultimately drop charges. Finally, the legacies of political conflict that facilitated distrust toward police in these communities ultimately deterred women from calling the police and, likewise, limited police responsiveness when women did happen to call.

Similar to Crenshaw's (1994) finding that black women in the United States lack faith in police due to racial discrimination and so are less likely to contact police to report domestic violence incidents, women's distrust of police in Northern Ireland may also affect their decisions whether to report incidence of domestic violence. The conflict- and post-conflict communities of Northern Ireland are working-class and overwhelmingly religiously-affiliated, both Catholic and Protestant. While Catholics are most commonly associated with anti-police sentiment, women within highly politicized working-class areas—and regardless of religious affiliation—reported feeling that they could not trust the police to respond to a domestic violence or rape call, since the police lacked presence within the community. For example, Sylvia (2006), who lived in a working-class Protestant area with significant paramilitary activity, believed the police neglected her community: "We have no police in this area. They drive past in their Land Rovers. You'd be lucky if you see them driving by." Sylvia argued that women were less likely to report sexual or domestic violence incidents to the police because the police lacked a community presence. In addition, another Protestant woman, Sheila, said that she wanted to be able to go to the police but felt unable to do so due to police neglect, as well as paramilitary intimidation not to speak to police (Sheila, 2006). Hence, in some areas, distrust of police, lack of police presence, and paramilitary intimidation all work to limit women's access to police and policing services.

Other, less overt forms of intimidation also limit women's access in this area. One Northern Irish reproductive health organization, which has been harassed by right wing religious activists, determined that seeking the help of police would do more harm to their clients than good: "We made a decision as an organization about a year ago not to involve the police anymore because the presence of the police was also intimidating to the women" (Sylvia, personal communication, 2006). This service provider indicated that women, no matter their religious affiliation, could feel intimidation from police presence. Sara, a Catholic woman who divorced her abuser, revealed that she would never report an incident to the police: "I look forward to the day when a police service can come onto this street that I can trust" (Sara, personal communication, 2006). These women, from Catholic and Protestant backgrounds alike and largely working-class communities, express a desire to have a police force on which they can count, but report continuing to feel intimidated and neglected by police.

In addition, police are not effective in supporting the laws they are trying to uphold. Patricia, who works with rape victims, observed that very few women report incidents of rape to police because these law enforcement officials do not seem to be effective in handling such cases (Patricia, personal communication, 2006). Megan, a Protestant woman in her late-twenties with four children, experienced abuse in multiple relationships. Although the police did respond to her calls, they did not take action to improve her safety. During one domestic violence incident

the police took him away to his mum's house, which was a five minute walk from my house. . .and told him to stay at his mum's that night. Ten minutes later, he's back at my door. By this stage, I found the police very pathetic. I had no faith at this stage. (Megan, personal communication, 2006)

Had the police actually made an arrest here, Megan may have been safer. In another incident, Megan wound up in the hospital with injuries after her ex-boyfriend and some of his friends, who were associated with a paramilitary, attempted to murder her. Although Megan's ex-boyfriend was ultimately arrested for attempted murder in this case, he received bail and violated her protection order against him. Even though he violated the order, the police refused to arrest him and said that Megan would need to wait on further legal action until he went to court.

Police also often label women and men as co-perpetrators in incidents without understanding the history or other context of abusive patterns within a relationship. Considering an incident to be a case of "mutual abuse" may be particularly pronounced in Northern Ireland due to Equality

Legislation written during the peace process. In an attempt to treat men and women equally, police attempt to be gender-blind when making domestic violence arrests. Equality Legislation, put in place to promote non-discrimination, requires that police do not refer to “him” as the perpetrator or “her” as the victim. Rather than equalizing the playing field, the government presumes an equal playing field to exist between the genders. Equality Legislation has also resulted in an increase in services for male victims of violence.

However, Equality Legislation does not recognize the gender-bias in domestic and sexual violence or correct the misogyny that promotes such violence. Consequently, police can mistakenly label women as perpetrators when they use self-defense, either at the time of an attack or later on when the partner is more vulnerable. The Director of Domestic Violence at Police Service in Northern Ireland stated that police statistics are misleading because they only track the number of incidents; they do not acknowledge the context. The Director also stated a belief that such statistics create an artificially elevated perception as to the frequency of women perpetrating domestic violence (Patricia, personal communication, 2006). Of all domestic violence criminal charges published in a 2011 report, for example, prosecutors identified females over the age of 18 as victims of domestic violence in 69 percent of cases and males over 18 constituted 21 percent of victims of domestic violence (Police Service of Northern Ireland, 2011). Such a high proportion of male victimization is at odds with established research findings, which indicate that females constitute between five to fifteen percent of perpetrators, and in most cases the female perpetrators acted out of self-defense (Healy, 1998). Indeed, the Director of Domestic Violence reported that, during her career, she had found only one case in which she believes that the woman was actually an unprovoked perpetrator.

Moreover, police tend to blame women for the abuse that they experience. One women’s shelter worker, after evaluating numerous police reports, noticed that police reports tend to label the woman as argumentative:

Looking back at reports, I never see argumentative comments attributed to the perpetrator. I never see any of those; it’s always to the woman. I’m looking at this case thinking he threw her out in the night when she was 8 months pregnant because she was argumentative. (Lisa, personal communication, 2006)

Indeed, a woman may be labeled as argumentative or even hysterical if she experiences a crisis, because society in general is less likely to recognize the seriousness of an incident or to acknowledge the trauma that a woman experiences. Because gender roles dictate that a woman is not sup-

posed to fight for her rights, police may see her behavior as out of line. Consequently, as Lisa said, “The police are going to endorse the behavior of the perpetrator” (personal communication, 2006).

Finally, police often expect women to drop charges against perpetrators, and consequently might not exercise due diligence in gathering evidence to the fullest. Police officers interviewed under this study expressed frustration over those women who initially pressed charges but later change their minds when the couple had reconciled. Officers reported that such experiences made them less likely to gather evidence to the fullest. In fact, lack of evidence could result in the failure of the Office of Public Prosecution to prosecute cases. Of the 23,059 domestic violence incidents reported to the police in the years 2005-06, for example, police and prosecutors only classified 10,768 as offenses, or prosecutable crimes. Assaults constituted 58 percent of the crimes, criminal damage constituted 15 percent, and breach of protection orders constituted only 13 percent (Bollen, Artz, Vetten and Louw, 1999). More than half of the time that police initiated domestic violence charges, the Public Prosecution service considered those incidents to be domestic violence but did not consider the incidents serious enough to count as crimes.

B. *Policing in South Africa*

Women in South Africa often do not report rape or abuse cases to the police because they believe that law enforcement officers will not help them. Even though a staggering 25.4 percent of all women in South Africa were raped in 2011, only 3.9 percent called the police and only 2.1 percent reported intimate partner rape (Department of Social Development, 2012). As well, one 2010 Gender Links survey indicated that 29 percent of South African women experienced physical or emotional abuse but did not indicate how many had reported the abuse to police (Machisa, 2011). Other factors that shape women’s reasons for not reporting rape and abuse cases include reluctance to discuss personal problems with strangers and even self-blame; many women in this study stated beliefs that they were responsible for the incident and that they should have predicted it.

Changes since apartheid also make it difficult for women to receive police support. Previously, black women would not have reported rape or abuse under apartheid, since the police repressed black communities. Yet even now that the police force has been overhauled, the new police service suffers from insufficient resources, including human resources, needed to effectively tackle the problem of violence against women, and morale is also low (Simpson & Kraak, 1998, 1). While police are beginning to receive training on new domestic violence and rape legislation, not enough

officers have received this training and some police also fail to act according to the training they receive. Those who work in the field of domestic violence express concern that, without sufficient training and attitudinal changes on behalf of law enforcement officers, victims will continue to doubt the police (and may even be right to do so). Study participant Kristina said, "Our new laws are wonderful, but when it comes to the implementation, they haven't thought that through." Kristina also noted that police often resort to calming an immediate crisis rather than filing charges against an abuser: "They are just trying to resolve the dispute and calm the couple down and file a complaint" (personal communication, 2007).

Participants in this study who have called the police report that officers often fail to respond to calls or, when they do, to respond only after a significant delay. Bonolo, who was living in a shelter at the time of the interview, explained that waiting for the police compromised her safety: "You call and call the police and they come or they don't come. Then they want us to wait for them in the house in the time that we can get out. And then they don't even come" (personal communication, 2007). Likewise, another study participant waited for the police for an excessive amount of time: "When the police are called, it can take up to an hour, an hour and a half" (Nozizwe, personal communication, 2007). Such a poor response time can compromise victims' safety.

Similar to the conditions in Northern Ireland, in South Africa police still might not arrest the perpetrator even after a victim reports domestic violence. According to South Africa's Independent Complaints Directorate, police refused to lay a charge in 53 percent of cases of victim abuse. As well, in many cases the officer incorrectly informed the victim that the law did not allow them to file charges (Barnard, 2011). In addition, Democratic Alliance found that police failed to inform an astounding 96 percent of victims of their rights, including the right to apply for a protection order. The directorate concludes that 65 percent of police stations in South Africa do not comply with the new domestic violence law (Barnard, 2011).

As in Northern Ireland, one reason why police in South Africa may choose a course of inaction is that women who are domestic violence victims often do return to their abusive partners: "Two days later the woman comes back and withdraws the case. There is a lot of time there being wasted. People are not aware of the options" (Kristina, personal communication, 2007). Yet one common reason that a woman may take back her abusive partner is that she cannot risk the loss of income if her spouse is arrested:

The support system is very, very sparse in South Africa. There's nowhere; you can't go if you're not paid or have no working income, you

can't go. Many women, after they've calmed down and the anger is gone and the hurt is gone, they go back to their partners. (Carol, personal communication, 2007)

Hence, a woman might not find it practical to contact the police or follow through with charges if she depends on her husband's income for survival. Obviously, confronting the economic reasons that may be behind a woman's decision not to follow through with charges may result in more victims being willing to press charges, which would be a better approach to criminal justice and policing than if police officers simply choose not to arrest perpetrators due to the anticipation that a women victim is likely to change her mind, for whatever reason.

Rural living conditions in South Africa can also make it difficult for women to access police services. The police are likely to be of little help to those women who live in isolated areas during their experiences of abuse, for as one service provider explained:

There's a woman whose village is 65 kilometers from the nearest police station. There are no phones in her village. She must travel 67 kilometers to the nearest court to get her a protection order. A protection order means nothing in rural areas because it cannot be implemented. (Kristina, personal communication, 2007)

Those who work with victims of domestic violence and rape in South Africa also expressed concern over police response time. A person who works in the courts declared, "One of the other obstacles that we are encountering is the reluctance of the police to assist." Police intervention in rape is especially crucial, because in order for a woman to access the local rape crisis center or receive medical attention, she must first open a case (Mr. Makabe, 2007). Yet as Eileen, a government department worker, revealed, it often takes hours before a woman who was raped sees a detective. This means that while she is waiting for the police, a rape victim is not able to shower (which cannot happen until after all the evidence is collected). It also means that unless the victim accesses the police and the police agree to open a case, she will receive no medical treatment, anti-retroviral drugs, or counseling. Research participants from this study who were raped or who experienced attempted rape did not go through this protocol because they either did not report the offense at all or reported it days after the incident. Unfortunately, not reporting right away can weaken one's case, deprive an individual of access to medicine needed to prevent spread of HIV, and prevent one from receiving counseling.

The incidence of spousal rape of women also presents many challenges. For instance, if a woman experiences spousal rape, the wider socie-

tal perception that “rape” cannot occur within marriage may cause her to doubt her perception of the incident and the police’s willingness to respond. Philippa explained that she struggled with whether she was really raped: “I didn’t feel comfortable reporting it as rape, even though he did force himself.” After it happened a second time, she decided to take action:

It happened again two nights later. Then I did call the police. It happened during a period when there was a campaign against abuse of women and children. I had to go to the rape crisis center; I had to be put on antiretroviral drugs. I opened a case with the police, but the police did not arrest him. I was forced to carry on living in the same house, sleeping in the same bed with this man. The police were getting fed up with me. (Philippa, personal communication, 2007)

In this situation, the police did not press charges, even though Philippa went through the appropriate procedure. Philippa reported feeling that the police failed to treat her with respect and that they did not want to bother with her case. In incidents of marital or intimate partner rape, police may choose against arresting an alleged perpetrator because they do not feel confident that they will be able to gather sufficient evidence to ensure a conviction. One court officer said, “Evidence is often not sufficient because the information is very vague. Also, it is not always completed in the manner that we need for court” (Mr. Makabe, 2007).

Multiple women reported futile attempts at convincing police to open cases for rape and attempted rape. For instance, Yonela, a former gang member who was raped multiple times when she tried to escape the gang, said that she tried to report cases in multiple venues. In all instances, police refused to open cases and arrest the alleged perpetrators. She said, “I reported cases everywhere—where I was, you name it. Nothing has been done” (Yonela, personal communication, 2007).

Likewise, Ntombe reported an attempted rape to the police. Although her clothes were ripped and she had bruises, the police refused to open a case because she still had her underwear on. She said she feels as though rapists have more rights than the women who are raped because the former roam freely around society. Ntombe also questioned whether victims of gender violence would have to die before the police opened a case (Ntombe, personal communication, 2007).

Regarding her own case, Bonolo explained that the police brought her to a shelter rather than arrest the perpetrator. She said, “The only good thing the police have done for me was bring me to the shelter” (Bonolo, personal communication, 2007). Although she was glad to be taken to a refuge to improve her safety, Bonolo might have been safer if her perpetrator was behind bars.

Nomsa, another rape survivor who is part of this study, said she does not feel safe because the police refuse to help her. “The police, they also do crime. I am not safe. Because of the father of my son, I nearly died. I praise the Lord that I am alive today” (Nomsa, personal communication, 2007). Nomsa recalled another incident where the police failed to charge an abusive neighbor, which led to a murder-suicide. “The police sent the husband home. After he went home, a neighbor heard shots from their house. They were found both dead” (Nomsa, personal communication, 2007).

Evidence from this study indicates that some research participants do not seek help from the police because they lack faith in the police’s response. Tandiwe chose not to call the police after either of her two attempted rapes because she did not believe the police would help (Tandiwe, personal communication, 2007). Likewise, Nomsa declared, “We did not call police we had just said we need no police to come and guard us. We thought that it will cause more trouble for us” (Nomsa, 2007). One research participant expressed the concern that police were more interested in prosecuting gang and drug activity than gender violence. For instance, although police refused to prosecute Yonela’s rapists, they asked her to become an informant about the gang to which she had previously belonged. She refused to become an informant because she felt doing so would put her in too much danger (Yonela, personal communication, 2007).

Three other research participants, two former sex workers and one woman who shelters former sex workers, suspected that women lack the protection of law enforcement due to corruption on the police force and collusion between gangs and police: “Unfortunately a lot of our police are corrupt, as well. Since ’94, the police have allowed brothels and escort places and relations on the streets everywhere. The police receive money or favors in return” (Beatrice, personal communication, 2007). Joyce, a former sex worker who is married to her abusive pimp said:

There’s basically nothing the police can do, that’s my opinion. I’ve been on the streets now for 10 years and I know the only thing they can do for your own protection is pick you up for loitering and put you in the cell overnight, so they can protect you for that one night so nothing happens to you. They don’t really bother to respond or they don’t take it seriously when a prostitute is in trouble. I don’t think is fair. A girl can get beaten by a pimp and, if she lays the report, the pimp gives a police officer a few hundred rand and it is let go. (Joyce, personal communication, 2007)

Hence, occurrences such as lack of response, lack of arrests, and even pos-

sible acceptance of bribery provided evidence to study participants that the police would not redress gender violence.

C. *Courts in Northern Ireland*

Courts in Northern Ireland generally administer very light sentences to convicted perpetrators of domestic violence and rape. The sentencing guidelines for domestic violence include fines, community service, and suspended sentences. While guidelines indicate that custodial sentencing may be used, they do not propose the length of time for various forms of domestic violence (Magistrate's Court Sentencing Guidelines, 2014). During one 2009 government debate, members of the legislative assembly recognized that perpetrators seem to receive more lenient sentences than perpetrators of non-domestic related assaults (Kerr et. al., 2006). "The Magistrate's Sentencing Guidelines" for domestic violence includes the following guidelines, presented in order of increasing severity: "Absolute or Conditional Discharge, Fine, Community Order, Suspended [Sentence], or Custodial Sentence." Fines, probation, or new court ordered programs for perpetrators are the most common non-custodial sentencing offenses for offenders (End Violence Against Women Coalition, 2007).

Female participants in this study indicated that, due to these light sentences, they had not achieved justice or safety. Megan's perpetrator, who was originally charged with attempted murder, was ultimately convicted of occasional acts of bodily harm with intent to kill, as well as acts of criminal damage on her home; he was sentenced to sixty hours of community service. Megan continued to feel unsafe, and eventually asked a local paramilitary group to protect her from him (Megan, personal communication, 2006).

Dorothea also discussed the weak sentence given to her daughter's perpetrator of sexual violence. She said that her daughter "had the courage to take this man to court and he got a suspended sentence." Dorothea described the strength and resolve on the part of survivors to challenge perpetrators in court but questioned whether a court case is worth enduring if perpetrators will not receive custodial sentences.

Julianne said, "When that judge slammed his hammer on that piece of wood he handed me a life sentence and him seven months. . .the judicial system stinks for its sentencing" (personal communication, 2007). Julianne equated experiencing sexual violence and the ongoing threat that a perpetrator may present with receiving a life sentence; one must live with those traumas for the rest of one's life.

Similarly, one shelter worker discussed a case in which a woman in a shelter was almost killed. Zoe said, "One man was sentenced to ten years

and got two, even though he nearly killed her. I think if perpetrators of domestic violence do to strangers what they do to partners and wives, the response would be totally different than what these women are facing on a daily basis” (personal communication, 2006).

Light sentencing for incidents of rape and domestic violence sends the message that courts do not take these crimes seriously. Moreover, light sentences become a public health and safety issue, not simply a justice issue. With perpetrators on the street, women live in fear. They often leave their communities, hide from perpetrators, or seek protection by paramilitaries in order to survive. Sentences neither account for the repeated pattern of abuse that perpetrators inflict on their victims, nor reflect the reality that victims often feel the threat is so substantial that they choose to go into hiding when courts fail to imprison perpetrators.

Data for conviction and sentencing on rape and sexual assault seem to indicate that judges do not treat sexual violence with sufficient seriousness. The rate of conviction for rape, after trial, decreased from 28.2 percent in 1994 to just 19 percent in 2005 (Northern Ireland Office Statistics and Research Branch, 2006). In 2003, 108 defendants were convicted of sexual crimes, but only 56 of those criminals received custodial sentences (Northern Ireland Office Statistics and Research Branch, 2006). Two individuals received sentences of less than six months in prison, while six individuals received sentences of nine years or longer. The average custodial sentence was three years, and the average sentence for rape was seven years and seven months. Hence, judges do not automatically put perpetrators of sexual offenses in jail, and those who are convicted of committing sexual offenses might receive only short sentences. These sentencing results show that not much has changed since McWilliams and Spence (1990) found that efforts to improve the criminal justice system had focused on policing rather than adjudication and sentencing. Such light sentencing, specifically for rape, sexual assault, and domestic violence convictions, indicates that misogyny is embedded within the criminal justice system.

The failure to treat women with dignity is another pervasive way that the criminal justice system exercises and reflects misogyny. One complainant took her case to the court with the help of shelter workers, and requested that she be allowed testify in a room separate from her perpetrator due to the intimidation she experienced from him. However, the court told her “that she was being really immature, and she felt really bad about it. She was told that she would be in the same room because they were not wasting time again” (Meredith, personal communication, 2006). This incident illustrates the lack of sensitivity and understanding within the courts regarding the power that an abuser may have over a victim, including intimidation from simply being in the same courtroom as the abuser. In addition, the

incident reflects improper, even inappropriate judgment directed by courts toward witnesses. Specifically, characterizing the victim as “immature” demeans the victim’s status as a competent woman, and considering her request to be a “waste of time” undermines the validity of her emotions and concerns as these bear on her in-court testimony.

Given that some service providers do judge women, then it appears that women make rational choices when they are hesitant to press charges against perpetrators. Appearing in court opens the already-victimized woman to public scrutiny. The woman’s actions are then questioned and she must relive her experience in a potentially hostile environment. If she is already overwhelmed and lacking energy for any endeavor beyond basic survival, a court appearance could simply be too much to handle immediately after such an incident.

D. *Courts in South Africa*

Only one case out of fourteen that South African participants in this study brought to the police actually made it to the courts. The one case involved an attempted rape of Precious’s daughter, age 15, by a neighbor man who, at the time of the interview, remained out on bail while he awaited trial. He lived down the street from Precious, a circumstance which continued to compromise her daughter’s safety. She and her daughter awaited a court date, but courts were backlogged and cases were not processed promptly. Such delays can give witnesses time to question whether they will take the stand; they also can give community members an opportunity to question victims’ behavior. In addition, after the incident Precious’s daughter cried frequently, had trouble concentrating on her studies, and acted carelessly. Precious worried about the ongoing effects of the incident on her daughter, and the delay in the trial compounded their stress (Precious, personal communication, 2007).

Since so few research participants had success in getting a case to court, domestic violence officers provided valuable first-hand information about the kinds of cases that do reach the courts. One officer of the court outlined the obstacles to women within the court system, as he believed the courts require substantial improvements in order to meet the needs of victims of sexual and domestic violence. First, the waiting areas are not victim-friendly because perpetrators and victims must wait in the same area, a factor which can produce intimidation. Second, not enough judges process emergency orders. Since no judge is dedicated to domestic violence cases, magistrates must examine cases after hours in addition to their already-full caseloads. Providing additional funding for magistrates to process protection orders and to adjudicate domestic and sexual violence cases could

reduce waiting time (Mr. Makabe, 2007). Furthermore, Kristina, whose work with a non-governmental organization has brought her intimate knowledge of the judicial system, argued “There isn’t a magistrate that is fulfilling the administrative duty of rubber-stamping all these applications” (Kristina, personal communication, 2007). All of these difficulties inhibit women from getting protection orders or taking a perpetrator to court.

Two research participants who contemplated getting protection orders against abusers described how difficult getting to the courts from their residence would be, and how intimidating they imagine the process would be once they arrived. Even if a woman could afford and locate transportation to get to the courts, she might not be sufficiently literate to understand the paperwork involved in applying for a protection order or opening a case, and in any case might feel intimidated by the prospect of telling a judge her personal story of abuse. Hence, poverty, illiteracy, and lack of community support can also impede women from accessing courts.

E. *Counseling Perpetrators in South Africa*

Common interventions in domestic violence include shelter services for women; for men, they include court-mandated counseling, probation, suspended sentence, or jail time. Non-custodial options are considered preferable to custodial ones due to prison overcrowding. These interventions do little to transform the gender role hierarchies that facilitate male privilege and provide context for such abuse. While in shelter, counseling, or a support group, women may learn about the ways that gender role stereotypes contribute to their abuse, but such information helps them only after they have already experienced such abuse. Likewise, programs that work with men, which are still in early stages of development and implementations, largely work with men who have already perpetrated abuse. As such, these programs do little to prevent the formation of attitudinal misogyny.

This research study focused on only one batterer intervention program, called NICRO, which South African courts commonly mandate. NICRO bases their program on the world-famous Duluth Model and adapts it for South Africa’s cultural conditions. Kristina said, “Men and women hold different cultural perspectives when it comes to their roles. We challenge that because women do not believe that men are entitled to punish their wives” (Kristina, 2007). Kristina stated that NICRO has a 60 percent success rate in working with voluntary clients. However, Kristina did not reveal how many clients NICRO included in this statistic. Voluntary and long-term participation (one and one-half years) are necessary to the pro-

gram's success, and Kristina indicated that she sees less success with shorter programs and court-mandated participants.

Unfortunately, due to prison overcrowding concerns, courts that are eager to find non-custodial sentencing options often mandate perpetrators to participate in NICRO. Yet if courts fail to sentence perpetrators, then partners will continue to live in fear. Kristina suggested that courts spend few resources on domestic violence because they believe that complainants will withdraw charges. Perhaps, with greater resources, fewer victims would withdraw charges because they would feel more confident that their abusers would receive a custodial sentence.

An additional adverse consequence, Kristina observed, is that few court-mandated participants take NICRO as seriously as the voluntary participants do. For example, court-mandated participants often fail to complete the program once the couple enters the "honeymoon phase" of the cycle of violence. Walker (1979) developed the cycle of violence in order to describe the pattern that commonly emerges within a domestic violence relationship. The cycle involves three phases: 1) the tension-building phase; 2) the violent episode, after which police and courts generally become involved; and 3) the honeymoon phase, when the perpetrator successfully reconciles with the victim. During the latter phase, the plaintiff often withdraws the charges because she believes the perpetrator will change. The couple reconciles as the perpetrator apologizes, promises he will never again harm her, and blames her for the violence. As a result, court-mandated NICRO participants may stop attending counseling; the perpetrator partner no longer must prove to the victim partner that the former will change and, likewise, the former is no longer required to serve a sentence.

NICRO also finds it challenging to keep in contact with either party after the violent incident calms. "We usually meet the women when they are in crisis, just after the abuse has happened and unfortunately only a few of them enter counseling. They go into the honeymoon phase and we don't see them again until another incident occurs" (Kristina, personal communication, 2007). Finding ways to keep women and men connected to NICRO or FAMSA, an organization that helps families and counsels many victims of abuse even after the violent incident appears to be resolved, continues to be a major challenge for both organizations.

Hence, programs for perpetrators are not likely to be successful if 1) the offender's attendance of the program is court-mandated rather than voluntary; 2) courts use these programs as substitute for custodial sentencing; or 3) wider society focuses only on rehabilitating prior offenders rather than on prevention through changing community attitudes on gender role stereotypes. Programs for offenders can always be an option for perpetrators in

prison once they are serving their custodial sentence. However, treating these programs as replacement for incarceration too often sends a message to perpetrators that they can get away with crime so long as their intimate partners are the victims.

Programs for perpetrators also differ greatly from couples counseling, the latter of which is generally contraindicated in the field of domestic violence (Walker, 1979; Walker, 1994; Bancroft, 2002). While academics and activists worldwide often discount mediation and restorative justice approaches in the domestic violence context (due to unequal power status between victims and perpetrators, as well as victim safety concerns), South Africa has experimented with and even institutionalized mediation and other forms of restorative justice processes (Dissel & Dgubeni, 2003). African traditions often rely on mediation of extended family members to resolve family disputes, and this author argues that families can play a role in supporting the victim and shaming the perpetrator. Community work to educate families on domestic violence can help in this matter. In addition, extreme financial concerns of participants may deter women from even seeking custodial sentences; community processes can meliorate some effects of such financial hardships.

It is possible to improve the legal system simultaneously while working within the community to deter domestic violence. Given the frequency with which perpetrators violate protection orders, it would be prudent to implement some legal consequence should the parties to these mediated agreements violate the terms. Furthermore, if the concern is to ensure that women pursue custodial sentencing of perpetrators rather than avoid these processes and thus stay in abusive relationships for financial reasons, then the provision of government welfare programs, not mediation, may be a better long-term strategy. Finally, one major concern with mediation is the same concern with court-mandated counseling as a replacement for custodial sentencing: it often sends the perpetrator a message that crimes against intimate partners are not as serious as the crimes of assault, property destruction, or attempted murder of another person.

Similar problems arise in the case of couples counseling for domestic violence. Practitioners argue that the power differential between the parties can actually exacerbate abuse if counseling takes place (Walker, 1979; Bancroft, 2002). Mpho, who works for FAMSA, is open to joint counseling in domestic violence situations. Part of the reason that FAMSA works with men is that men simply are unaware of the new legislation that punishes perpetrators of domestic violence. With such a rapid transition, education is necessary to make individuals aware of the laws. FAMSA's divergence from current conventional wisdom in Western nations makes one ask whether special circumstances, such as the need to educate the masses about

the changes in legislation, should affect conventional best practices. However, Mpho did not seem satisfied with the results, as she reported that only two men admitted that they had a problem and wanted to change their behavior (personal communication, 2007).

Some programs that seek to work with young men do attempt to challenge traditional notions of masculinity, but they might not prioritize working on gender-based violence. Youth Action Northern Ireland's Young Men's Project, which also works closely with the Young Women's Project, attempts to challenge conventional conceptions of masculinity. This project has researched and worked with youth on linkages between economic alienation, social alienation, violence, and masculinity (Harland, 2011). However, it appears that this project does not prompt young men to consider how their behavior can degrade young women or explore more generally their privilege relative to young women. Similarly, Dissel & Dgubeni (2003) argues that South African society neglects boys and how young men face a crisis of their masculine identity. Such examples confirm that work on masculinity does not always take place in women-centered environments or in conjunction with work on femininity (Ní Aoláin, Haynes, & Chan, 2011).

Appropriate intervention would involve working with male populations on how they construct masculinity as well as with women on constructions of femininity. Cole and Guy-Sheftall (2003), for example, have voiced concern that the U.S. African-American community overemphasizes the plight of the black male rather than examine the intersections of race and gender within African-American communities. This critique could arguably be applied to Northern Ireland and South Africa, as well, for although class, religious, and racial/ethnic hierarchies work to the detriment of certain male populations in each society, gender roles still privilege most men above most women. Identifying and dialoguing about the ways that men can exploit this privilege to perpetuate violence against women can begin to change this dynamic.

Massive preventive education that challenges the gender role socializations that privilege men and degrade women is a necessary step toward ending misogyny and marginalization in the criminal justice systems of both countries. Such education can take place through media forms that challenge gender role stereotypes, and through dialogue in the schools about gender roles as well as domestic and sexual violence. Youth programs that teach cooperation between the genders rather than facilitate gender segregation could help young people to learn equal attitudes and behaviors. Cooperation between local men's projects and women's centers would also help ensure that men's programs do not replicate gender hierarchies. In addition, politicians and civil servants can begin gender sensitivity

training, and community leaders—ministers, traditional leaders, and local activists—can serve as role models and mentors.

CONCLUSION

Women experience structural violence from the criminal justice systems in both Northern Ireland and South Africa because patriarchal values and misogynistic practices remain embedded in the respective systems. Women generally do not expect to heal through the criminal justice system. Rather, victims of violence lack trust that police will deliver unbiased and fair protections. Women in Northern Ireland do not always feel comfortable calling the police, and women in South Africa do not find police stations to be victim-friendly. Such a lack of comfort also illustrates the ways that race/ethnicity, class, and other salient social factors may intersect with gender to contribute to women's intimidation. In addition, police in both countries continue to diminish incidents of domestic or sexual violence, and may even arrest both parties for mutual abuse. Furthermore, South African women find that police might take a long time to respond to calls or might not respond at all. Such police behavior illustrates a lack of sensitivity to the power dynamics within domestic and sexual violence, to which police are insufficiently attuned. Police are also reluctant to gather evidence in such cases because they suspect that women will drop charges; this reluctance illustrates a victim-blaming climate among police.

Courts in both countries tend to blame women victims of abuse, and the courts also take a long time to resolve cases. Most importantly, when courts do find a perpetrator guilty, judges tend to issue light sentences that compromise victim safety and send a social message that such offenses are not serious crimes. Hence, the criminal justice systems in both countries convey messages to perpetrators that gender violence is tolerated and that women victims will have no redress. Though many women victims want to take action to achieve justice, in many instances they find the process to be ineffective. Women weigh the likely consequences of seeking justice and many ultimately decide against pressing charges.

For these reasons, interventions toward improving women's experiences with the criminal justice systems in both countries must recognize the wider societal patterns of gender-based violence, as well as the patterns of intimate partner violence within specific relationships. For instance, police and courts need training on the dynamics of domestic violence and how to provide victim-friendly facilities. Police must also be trained and otherwise encouraged to document all forms of abuse and harassment, so that they can help courts determine whether a pattern of intimate partner abuse is present. If police and courts determine a pattern of abuse, then

perpetrators need to be jailed and rehabilitated from jail. Sentences must also reflect the detrimental impact that rape and domestic violence can have on women. In addition, screening for abuse or histories of sexual violence should become routine within hospitals. Those conducting the screenings should be trained for greater proficiency in how to ask women to disclose abuse and how to identify signs of domestic violence. Communities can also offer support to women in various ways. These include not questioning a victim's behavior, intervening if they suspect or observe violence, and promoting healthy relationships between men and women.

NOTES

1. The researcher conducted semi-structured interviews with over fifty women who identified as victims of gender-based violence or helped victims of gender-based violence. The researcher largely interviewed participants through a snowball sample based on prior contact with a women's center or women's shelter. However, the researcher also attempted to ensure that participants included women from diverse racial/ethnic, religious, economic, and geographic (suburban/urban/rural/township) backgrounds.

2. In the UK, The Domestic Violence, Crime and Victims Act (2004) improved upon the 1998 law. Sexual Offenses Act came into effect in 2003. In Northern Ireland, The Equality Commission, established after the Good Friday Agreement in 1998, has established legislation to promote social and economic equality for nine identified interest groups. Such legislation includes The Disability Discrimination Act (1995), Race Relations Order (1997), Fair Employment and Treatment Order Northern Ireland (Equality, Disability, etc.) (1998), Northern Ireland Order (2000), Employment Equality (Sexual Orientation) (2003), Special Education Needs and Disability (2005), Disability Discrimination Order (2006), Employment Equality (Age) Regulations (2006), and The Equality Act Regulations Northern Ireland (Sexual Orientation) (2006). In South Africa, The Termination of Pregnancy Act of 1997 gave women the right to have safe and legal abortions. The Domestic Violence Act of 1998, arguably the most progressive act of its kind, applied to same-sex partners, non-married partners, and non-cohabitating partners. One could be arrested for any form of abuse, even verbal or mental abuse. A plaintiff could get a protection order from the courts, and a police officer could arrest a perpetrator of abuse without a warrant (Domestic Violence Act, 1998). The Maintenance Act of 1998 requires that both parents of a child contribute financially toward that child's financial well-being. If only one parent financially

provides for a child, it provides that parent with the opportunity to seek remuneration from the court. The Victims' Charter of Rights of 2003 set out a minimum standard of requirements for the criminal justice system to ensure the victims receive information, protection, assistance, and restitution (Victim's Charter 2003). See also the Government of South Africa's Sexual Offenses Act (2007).

3. The problem also extends around the world. Globally, only 10 percent of people report rape or domestic violence (UN Women 2011, p.4).

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Discrimination Based on “Sameness,” Not “Difference”: Re-Defining the Limits of Equality through an Israeli Case for Discrimination

Yifat Bitton¹

College of Management School of Law (COMAS) Israel

ABSTRACT

This article points to a general weakness in liberal rights discourse, and specifically in the antidiscrimination stratagem. It argues that this stratagem is of limited effectiveness due to its perception of “difference” as constituting the heart of the notion of discrimination. Reliance on “difference” in formatting discrimination fails to acknowledge discrimination held against a group within settings characterized by “sameness,” thereby rendering the antidiscrimination principle too narrow to protect some discriminated-against groups. This point is exemplified by analyzing the case of the *de facto* discrimination against Mizrahi Jews in Israel, or Jews of Arab/Muslim descent, who are conceptualized under a notion of “sameness” rather than “difference” within Israeli hegemony vis-à-vis the Palestinians, who figure as the ultimate “others.” Employing an interdisciplinary methodology, the argument relies on the theory of Orientalism, developed in the fields of postmodern cultural studies, and on its implementation to address Israel’s social stratifications. Fortified with this richer, contextual concept of Orientalism, the article turns to the legal sphere to attain better understanding of the constituents of discrimination as a whole and of that practiced against Mizrahim, in particular. Specifically, the analysis targets the antidiscrimination stratagem and stresses its limited effectiveness when applied from within its traditionally ahistorical, de-politicized framework. In a radical move, the article argues that to cross into the antidiscrimination discourse in an effective way, Mizrahi Jews should also embrace the “Arab” component of their own identity. This move entails two reconstructive undertakings: one in which Mizrahis’ legal identity may be re-identified as “Arab,” and a second in which discrimination against Palestinians may be reconsidered as rooted in anti-ethnic rather than in anti-national sentiments. Consequently, a new discursive “third space” will be opened for both Palestinians and Mizrahis, in which they may collaborate in articulating and contesting both shared and uniquely encountered forms of discrimination. This two-pronged critical approach to challenging discrimination in Israeli sys-

tems can benefit both groups and enrich the antidiscrimination discourse in a manner crucial to achieving a better, more just society inside Israel.

INTRODUCTION

This article targets the over-simplicity of the antidiscrimination stratagem vis-à-vis the complexity of discriminatory practices and identity constructions. Specifically, it objects to the rudimentary account of “difference” that sits at the heart of antidiscrimination, which ignores the harmful impact that discrimination based on “sameness” bears for disadvantaged communities. This discrepancy characterizes the antidiscrimination stratagem that is rooted in both liberal and conservative conceptions of equal treatment. Challenging the de-contextualized nature of currently dominant antidiscrimination discourse, this article demonstrates this contention by considering the test case of the Mizrahi minority in Israel and its quest for equality. In doing so, the article provides an analysis of Israel’s intra-Jewish, yet-to-be-legally-revealed discriminatory practices and power relations. Intra-Jewish power relations are presented here as affecting Israeli-Palestinian relations and as reflecting the role the legal system plays in shaping Israel’s broader sociopolitical structure. The claim this article wishes to advance is that the notion of discrimination as “difference”-based is too limited and misses other forms of discrimination that are shaped and practiced within a “sameness”-based socio-legal environment. More generally, this article advances the view that, by its posing as the “antidote” to discrimination, antidiscrimination discourse is trapped by “poisons” that are carried by the same drug.

Discrimination is traditionally perceived as a practice of domination by the hegemonic group against differentiated minority groups. This practice comprises three stages: 1) identifying alleged differences between the two groups; 2) using these differences to establish distinctiveness; and 3) using the distinctive features to draw the lines of negatively-differential treatment toward minority groups. This discrimination format, however, does not apply to all disadvantaged groups. The intra-Jewish Israeli discrimination setting, for example, is rooted in the opposite notion of “sameness” rather than “difference.” The discrimination from which Mizrahi Jews—or Jews of Muslim/Arab descent—suffer is defined by a twofold similarity that the group members carry: to Israeli Jews on the one hand and to Arab Palestinians on the other. Their unique twofold basis for discrimination, therefore, calls for a special, contextually tailored analysis that rejects current antidiscrimination law analysis, which is based on “difference,” to find the appropriate remedial tools. Using an additional, sociological lens, I address the discrimination patterns to which Mizrahim are subject in the Israeli

legal context, as well as their absence from the Israeli antidiscrimination discourse due to the contextual standpoint of "sameness."

Drawing on the work of cultural studies in this field, most notably Edward Said's *Orientalism*² and its intellectual progeny, I argue that Mizrahim are in fact an invented group that, to a significant extent, serves as the "Orient" of a Eurocentric Israel. With this notion at hand, I suggest that the most effective way for Mizrahim to combat discrimination would be to stress their "difference" from conventional notions of Israeli identity while aligning themselves more closely with elements of Arab identity. In effect, this move means creating a new discursive "third space," in which both Mizrahis and Palestinians might work to advance their shared and unique discrimination claims in the Israeli legal context.

My hypothesis is that this seemingly counter-intuitive suggestion will prove much more effective for both groups' struggle. Mizrahis are currently compelled to bring their discrimination claims under the "sameness-difference" dichotomy dominating the Israeli antidiscrimination legal regime and its formal acknowledgement of Palestinians' right to remedial relief. The relatively well-developed Israeli antidiscrimination legal regime has long since identified "Arabness" as a suspect classification, under which many governmental as well as private practices in Israel have been adjudged illegal and unconstitutional.³ Yet, under the current antidiscrimination legal stratagem, Mizrahi claims for antidiscrimination redress and other forms of relief have gained no recognition. Thus, Mizrahis invoking the identity component of "Arabness" with respect to discriminatory practices against Mizrahis will benefit Mizrahim, despite their official "sameness" as Israeli Jews. Palestinians will also be able to use the "third space" to reconstruct their discrimination as rooted in anti-ethnic (namely anti-Arab) rather than anti-national sentiments, which allows for some of their claims to receive more favorable Jewish review insofar as it clarifies that these claims are civilian-based rather than "political" in nature.

I use critical notions of Orientalism, as the fear of "Arabness," to reconceptualize the discrimination held against Mizrahis in Israel as based in fear that tightly relates to their perceived "Arabness." Doing so, I argue that discrimination against Mizrahis deserves to be addressed by the legal system. Relocating Said's Orientalism analysis into the Israeli legal context serves the Mizrahi struggle in two ways. Firstly, it expands conventional notions of Israel's social and political stratifications beyond the lines dictated by the Arab-Jew dichotomy, in a manner that illuminates and problematizes the limits of the antidiscrimination discourse. This move provides the basis for the possible recognition of Mizrahis as a "suspect group" (or at least as a group at all) for remedial purposes. Secondly, this analysis challenges the traditional view that there are no systematic or insti-

tutional elements to Mizrahis' discriminated status—which is a view that ordinarily negates Mizrahi entitlement to remedial antidiscrimination relief.

In sum, this critical sociological framework facilitates the reorientation of the Israeli antidiscrimination discourse so that it can encompass the case of a “same” social group alongside other “different” groups, thereby perhaps enabling the former to attain the same tangible remedies as the latter. However, my project also has a broader implication: it suggests that Mizrahis and Palestinians who are Israeli citizens⁴ can—and should—collaborate in their respective struggles for equality. Pinpointing the “Arabness” that underlies the discrimination against Mizrahis exposes this discrimination as primarily ethnicity-based and calls for Mizrahis to collaborate with the other so-defined group of Palestinians. Combining allegations of anti-Mizrahi discrimination with those of anti-Palestinian discrimination will mutually benefit these groups. Mizrahis will be able to better articulate the discrimination against them as stemming from their “Arabness,” whereas Palestinians will be able to stress their fight for equality within the framework of ethnicity rather than nationality, rendering it more “social” than “political.”⁵ The article calls for Mizrahis and Palestinians alike to disrupt the identities set for them by the Arab-Jew binary, and to reconstruct them more fluidly and realistically. Once the identities are reconceptualized in what is known in cultural studies as a “third space,” some barriers between the two groups, and between them and the attainment of justice, will be demolished.

This article proceeds in five parts: I begin by sketching out the notion of “sameness”-based discrimination, including its discrepancy and absence from traditional antidiscrimination discourse. In the second part, I familiarize the reader with the general details of Israel's most significant intra-Jewish rift,⁶ between Mizrahim and Ashkenazim,⁷ and its discriminatory effects, which are invisible to the Israeli legal system. In the third part, I point to commonalities between this rift and the better-known Israeli national rift between the Jews and the Palestinians. Drawing on Said's Orientalism and subsequent work that Said's critical theory influence, I offer a unique and neglected Mizrahi perspective on the Jewish-Palestinian rift, one that bears major implications for both groups, Mizrahis and Palestinians, in their quests for equality in Israel under a new conceptual “third space.” In the fourth part, I demonstrate how the combined forces of Mizrahis and Palestinians can reshape these groups' legal battles for equality, including potentially large doctrinal implications and ramifications within the field of antidiscrimination law, in Israel and perhaps beyond. In the last part, I briefly address some of the foreseeable objections my project is likely to encounter, especially when considering the prevailing Israeli political structure.

Before I proceed further, however, I wish to voice my concern, as a legal scholar who is a Mizrahi woman, that non-Israeli readers might perceive my writing to be “Israeli.” Indeed, in the minds of many non-Israelis, there is not any definition of *who* is an “Israeli”; there is only the presence of an Ashkenazi figure, which encompasses the “white public space”⁸ of consciousness of who “Israelis” are. This is especially so when it comes to Israeli academics, who also are predominantly Ashkenazis.⁹ My writing, on the other hand, is an articulation from a member of the minority intelligentsia, and thus it is a product of self-knowledge born of felt oppression.¹⁰ My hope is that readers of this article will acknowledge that the Mizrahi discourse that I engage and present offers a valuable, competing narrative from which a different, distinctive vision of “Israeli” can be defined.

I: INTRODUCING THE CONCEPT OF “SAMENESS” WITHIN
ANTIDISCRIMINATION DISCOURSE AND ITS
ISRAELI-PALESTINIAN CHALLENGE

A. *“Difference” as Constitutive of Discrimination*

Understanding the concept of discrimination as working within a “sameness-difference” dichotomy scheme is intuitive, because differences are sought to generate and justify discriminatory differential treatment.¹¹ Yet I find it important to revisit these roots, even if only briefly, so to better understand these organizing principles and assumptions of “sameness” and “difference” and, consequently, their paradoxical implications, as they delimit the antidiscrimination principle.

Consider two conventional definitions of “discrimination” which typically diverge into formal and substantive inquiries. First, discrimination is the making of distinctions.¹² Accordingly, on the methodological level, distinction requires noticing “difference,” be it real or imagined.¹³ On the substantive level, definitions of discrimination require that these differences either be the motivation behind differential treatment or be demonstrably correlated to differential treatment in terms of material results (e.g., disproportionate adverse impact on members of a minority group). This definition of discrimination is embodied, for example, in the formal paradigm traditionally identified with the U.S. Supreme Court’s antidiscrimination discourse, which focuses on “anti-classification” or “anti-differentiation.” The second conventional definition of discrimination is the “disadvantaging of a group.”¹⁴ This more squarely substantive definition, while offering a broader conception of discrimination, still stresses the pivotal role that “difference” plays; that is, it still requires that an identifiable, “different” group be subject to subordination.¹⁵

These fundamental perceptions of discrimination also construct the limits of what counts as “discrimination,” who counts as having experienced it, and what counts as its basis or form. The limits of the discrimination discourse involve primarily its rhetorical adherence to the “sameness-difference” dichotomy, which guarantees legal and social inclusion, as well as entitlement to equal rights, only to those people who are “similarly situated” and so are to be treated alike under law.¹⁶ The “sameness-difference” dichotomy relies on the concept of unity, which necessarily inhibits discussion about the kind of discrimination that imposes different materially significant yet legally invisible outcomes among sub-groups of supposedly “similar” people.¹⁷ By proposing to be the “antidote” to discrimination, the definition of “difference” within antidiscrimination discourse is itself dictated by its functional value as a tool of discrimination. Put differently, an identified group trait becomes a “difference” when, through a process of “meaningfulness,” it is subjected to prohibited discrimination. Moreover, a group may be characterized by multiple traits that make it vulnerable to different kinds of discriminatory practices. For example, the group of “black women” is exposed to gender-based discrimination as well as to race-based discrimination, with both traits creating a whole of discrimination that is simultaneously bigger than yet different from the sum of its parts.¹⁸ Attention to only one aspect of basis for discrimination is therefore insufficient.

This structuring of the concepts of discrimination and antidiscrimination has drawn substantial critique.¹⁹ Owen Fiss’s objection to “difference” constitutes one of the most prominent and influential juristic criticisms of the antidiscrimination principle.²⁰ By approaching discrimination as a means for subordination rather than mere forbidden, irrational classification, Fiss has offered a fuller, more meaningful account of social reality to this institutional hallmark.²¹ Though focusing primarily on the antidiscrimination principle as a mediating principle for applying the Equal Protection Clause, Fiss’s writing shows obvious concern with the discrimination-antidiscrimination nexus. Fiss criticizes the objective of countering “discrimination,” which is central to the “antidiscrimination principle,” as too narrowly and too technically defined under the traditional “ill fit” scrutiny.²² Fiss’s seminal work looks at “difference” as a constitutive notion that characterizes discrimination as a disgraceful social institution. While “difference” has since become a criterion for subordination, Fiss resists a reductionist limiting of “difference” to a criterion for “wrong” classifications.²³ By introducing the “group disadvantaging principle” as a preferred account of the discrimination principle,²⁴ Fiss approaches “difference” as a concept that pertains to enforcement and maintenance of power relations rather than one of irrational arbitrariness.

My critique of the legal discursive and conceptual notion of “sameness” takes inspiration from Fiss’s line of theorization. For Fiss’s critique of “difference” also bears on conceptualizing “sameness” as its dyad. Paraphrasing Fiss’s work, one might say that “sameness,” which renders irrelevant the application of the antidiscrimination principle, should be evaluated in light of its contribution to the reinforcement of power relations rather than its contribution to modes of classification of groups as “same.”

Similar theoretical inspiration can be found in Catherine MacKinnon’s work, which has been even more critical of the “sameness-difference” dichotomy, claiming that “sameness” is a structural barrier for gender equality. Through her “dominance approach,” MacKinnon has associated “difference” with the state of power relations between genders, thereby introducing its immutability into what she calls the “oxymoronic Aristotelian equation of justice.”²⁵ The need to reduce “difference” translates into a battle against women’s subordination to men. Therefore, MacKinnon objects to “sameness” as being unattainable within settings of subordination. MacKinnon’s objection can also be read as treating “sameness” as a conceptual and discursive impediment to equality, rather than as the criterion or principle by which to promote it; my critique of “sameness” draws insights from this perspective.

To sum up, one can distinguish between two contradictory moves within the notion of “difference”: the increasingly varied and sophisticated accounts of what “difference” means to group-based discrimination, and the almost paradoxical judicial response to it by increasing resistance to and evasion of “difference.”²⁶ Indeed, “difference” is a paradoxical concept: it requires legal recognition of the traits that it seeks to dismantle as unreal (arbitrary). That these traits are not merely negative is indicated in the fact that the judiciary, for diverse reasons, is unable to overcome their influence through the application of “rational” legal rethinking.²⁷ Yet since these legal concepts “have not been suppressed dialectically, and there are no other, entirely different concepts with which to replace them, there is nothing to do but to continue to think with them—albeit now in their detotalized or deconstructed forms.”²⁸ This article proceeds in in this light and manner.

B. “Sameness” as the New “Difference”

Unlike the “difference” concept, “sameness” has drawn much less critical attention within discrimination scholarship. Within the traditional liberal jurisprudence, which reflects the Aristotelian equality principle of “treating like cases alike,” sameness is deemed a positive force. Those who are the “same” or “similarly situated” as the dominant group are entitled to the same benefits as enjoyed by the dominant group. Feminist and Critical

Race analyses, in particular, have condemned the implied ideology of admired assimilation to the heterosexual-white-male norm that this formulation of the Aristotelian sameness maxim required and conferred.²⁹ Nevertheless, the elusiveness of “difference” is intertwined with that of “sameness.” Paradoxically, “sameness” has taken a tautological turn by being both the target of equality measures and the reason for them. It has become the signifier and the signified as to who is eligible to bring a legal claim for equal treatment (those who are “different”) and who is not (those who are already the “same”). “Sameness,” in this respect, is as problematic as “difference” by way of its dominating, oppressive nature and because labeling groups as similar bars them from crossing into the antidiscrimination discourse and its benefiting antidiscrimination protection.

A prominent example of the destructive power that “sameness” entails is the refusal to recognize economically-based classification, namely “poverty,” as grounds for entitlement to non-discriminatory practices based on economic status.³⁰ In other cases, it seems as if the wish to label a group “same” reflects a belief that it is indeed the “same.” Yet extending or imposing this belief renders the discriminated-against group altogether ineligible to make discrimination claims or be considered for antidiscrimination relief. The early refusal by U.S. courts to recognize Mexican-Americans as discriminated-against “non-whites”³¹ exemplifies these dynamics. Here again, “sameness” is ensnared by the same deficiency that characterizes “difference”: bound by the ideology of “sameness,” both concepts refrain from acknowledging relevant differences and thereby fail to function remedially.

This structural difficulty is closely related to what Martha Minow refers to as “the dilemma of difference,” where the legal system’s reluctance to recognize differences is rooted in its rejection of the destructive force of stigmatization attached to “difference.”³² This dilemma leads to the malfunction of the equality principle, since “refusing to acknowledge these differences may make them continue to matter in a world constructed with some groups, but not others, in mind.”³³ Minow, who is mainly concerned with the way that “difference” is made, claims:

The attribution of difference hides the power of those who classify and of the institutional arrangements that enshrine one type of person as the norm, and then treat classifications of difference as inherent and natural while debasing those defined as different.³⁴

In this respect, my interest lays in the similar considerations as Minow’s regarding “difference,” as applies to the process of constructing “sameness.”

Likewise, Iris Marion Young's perception of "difference" as a leading force for just democracy seconds Minow's perceptions of the need to acknowledge "difference" where it is ignored.³⁵ Young rejects objections raised against perceiving "difference" as "identity politics" which frustrates common-good discourse.³⁶ Young posits that group differences that amount to structural differentiations—namely, relations of power, resource allocation, and wrongful deprivation—must be included in the democratic process. Such inclusions should not be limited to formal application but rather should also encourage taking into account these group's interests, as well as their social knowledge and unique experiences.³⁷

By considering "difference" to be an obstacle to equality, liberal and conservative thought alike have, in their respective ways, advocated embracing "colorblindness" as a means to overcome it.³⁸ This tactic seems to conceal rather than to resolve the dilemmas embedded in the reality of difference, as experienced in the lives of those who bear the burdens of that reality and who, on the basis of "difference," are turned into a subordinate "other." Nancy Fraser's leftist deconstructionist critique has proposed to transcend "difference" by reducing the complex phenomena of subordination.³⁹ Fraser characterizes the dichotomous framework of political economy and culture as mutually exclusive, thereby endorsing a focus on the former at the expense of the latter. Although I disagree with Fraser's analysis of the structure of justice as dichotomous and non-contextual,⁴⁰ I nevertheless appreciate her initiative to break free of fixed identity conceptions. Accordingly, my work aims to facilitate a means of breaking free from the identity fixation of both "difference" and "sameness" toward a reconstruction of both in a new, constantly changing "third space."

Drawing critically upon on these notions of "difference" and "sameness," my claim is that the legal conceptual and discursive statement of "sameness," like "difference," distributes power and fixes identities. However, unlike "difference," it does so in ways that prevent pursuit of remediation and equality. Though generally speaking, being identified as "same" protects a group against discrimination, the attribution of "sameness" in circumstances where "difference" is denied or ignored renders the group and its members ineligible for the protection of antidiscrimination law. Within this conceptual framework, "sameness" emerges where "difference" sinks. The two concepts are positioned as a zero-sum game, in a multifaceted reality that allows the subordination of the "sames," simply because they are not "different." This failure to recognize, capture, and dismantle diverse and manifold modes of discrimination, which would require deeper and broader understandings of their functionality, further manifests the poisonous limits embedded in antidiscrimination when it is used as an antidote to

discrimination.⁴¹ The “dynamic of denial” practiced by the Israeli legal system against Mizrahim constitutes a perfect test case of this phenomenon.

C. *“Difference” and “Sameness” in Israeli Antidiscrimination Discourse*

Descended from common law tradition and inspired by American antidiscrimination law, the Israeli legal system is grounded in the conceptions of discrimination and antidiscrimination discussed in the previous section. Adopting the Aristotelian equality equation, the Israeli Supreme Court embraced the idea of “discrimination as classification” in its founding case law that conceptualizes what constitutes “discrimination.”⁴² Consequently, it has also adopted, with mild adaptations, the “antidiscrimination principle” as its mediating device to counter discrimination within a legal system that is constitutionally committed to equality.

The right to equality has always been a pillar of the Israeli legal system and a main characteristic of the system’s democratic nature, despite the fact that this right has only recently gained recognition as constitutional and therefore as enjoying superior legal status.⁴³ Moreover, even at its non-constitutional stages, this notion of the right to equality enjoyed a great deal of acknowledgement and advancement. Its elaborate and progressive development, coming mainly through the hands of former Chief Justice Aharon Barak, armed Israel with a relatively impressive antidiscrimination law apparatus. Israeli law protects against any kind of discrimination regardless of its basis⁴⁴ and acknowledges the right for affirmative action.⁴⁵ As regards what constitutes prohibited discrimination, Israeli antidiscrimination law is also open to according disparate impact the same legal significance as it accords to disparate treatment.⁴⁶ Thus, the Israeli antidiscrimination apparatus is robust for those groups whom it recognizes. However, its limitations lay in its scope of recognition of groups subject to suspect classification, specifically as based on the notion of “sameness” as embedded in the “sameness-difference” dichotomy. The plight of Mizrahim starkly illustrates these limits of the Israeli antidiscrimination discourse.

By self-identifying as a Jewish state, Israel constituted itself through a notion of “difference” in a manner unprecedented in democratic states, thereby enhancing “difference” as a main identity theme both legally and politically.⁴⁷ Mizrahim, who are in a way both Jewish and Arabic, enter this conceptually limited construct from a unique position of “sameness,” which, as I will detail later, is twofold. Firstly, they share an illusory “sameness” with the Jewish Ashkenazi hegemony; specifically, Ashkenazim and Mizrahim share the fact that they are both “fundamentally differ-

ent” from the ultimately defined “others”—the Palestinians—by virtue of nationality and religion. Secondly, and concurrent with being perceived as part of Israel’s Jewish hegemony, Mizrahis share with Palestinians (by virtue of their mutual Arab descent) similarities that are at best not acknowledged and at worst are tabooed and denied. When analyzed from the vantage point of Orientalism, these relatively immutable similarities can be re-identified as significant generators of Mizrahis’ discrimination. Indeed, the myth of all-encompassing commonalities, accompanied by disregard of Mizrahi similarities with Palestinians, is so deeply rooted that it prevents Mizrahim, who experience high levels of *de facto* discrimination, from being identified as a distinct discriminated-against group who are endowed with relevant legal standing within the equal rights discourse.⁴⁸

Clearly, discrimination against groups that resemble the dominant group must be administered as based on hidden or denied “differences” from the dominant group but in a manner that does not render the discrimination noticeable or relevant to the naked eye of antidiscrimination law. Mizrahis suffer from discrimination which has been, and remains, defined by their “sameness” as simultaneously the ultimate dominant group and the ultimate “others” in Israeli society. Therefore, the basis of Mizrahi discrimination is “sameness” rather than “difference.” This “sameness” deprives Mizrahim of their right to enter the garden of antidiscrimination discourse and consequentially enjoy its fruits, albeit unripe.⁴⁹ The situation described is not an accidental outcome. Instead, in a most profound manner, the hegemonic power in Israel developed by relying on the Mizrahis’ consent, affirmation, and consensus, rather than on overt submission and emphasis on “differences.”⁵⁰ Mizrahim were treated as “brothers” who came from the Arab Diaspora to the land promised to all Jews, yet designated as the family’s “black sheep” rather than as beloved siblings.

II. THE INVENTED AND DENIED CATEGORY OF MIZRAHIM

A. *Mizrahim as a Distinctive Discriminated Group*

In some ways, Israel can be described as an ethnocratic settler society. Mizrahim and Ashkenazim comprise roughly equal shares of Israel’s veteran Jewish population, while Palestinians comprise 20 percent of its overall citizenry.⁵¹ From its establishment forward, the Israeli regime has been based on space segregation and differential ethnic mechanisms towards Palestinians and Mizrahis.⁵² Although rarely documented or institutionally revealed, the existence of discriminatory policies against Mizrahim are both observationally evident and corroborated by academic research.⁵³ While their fellow Ashkenazi immigrants were given preferences in public ser-

vices, for example, Mizrahi immigrants were subject to economic and cultural oppression.⁵⁴ Mizrahis also suffered from differential and discriminatory land distribution mechanisms, especially with regard to public housing policies. They were sent to distant parts of Israel, mostly to desolate “development towns”⁵⁵ in order “to save the land” from the Palestinians by Judaizing it.⁵⁶ Moreover, treated as the main device by which Israel could defy the demographic leverage of its Arabic population, the Mizrahim in a sense stood as substitute for the Arabs and gradually became subject to the same discriminatory mechanisms from which the Palestinians had suffered.

Many oppressive mechanisms against Mizrahis persist today, although in a subtler manner.⁵⁷ Mizrahim, as a general matter, are a disempowered group who suffer from the kinds of social inferiority traits typical of marginalized groups.⁵⁸ For example, statistical data indicate that Mizrahis’ access to the education system, and their representation in it, is poor. Although students are not formally segregated from one another based on ethnic origin, a study held in “integrative” schools revealed a clear ethnic division by which Ashkenazi students are overrepresented in prestigious science programs while Mizrahis are overrepresented in the lower and middle tracks of education that offer limited potential for social mobility.⁵⁹ This may explain how, upon finishing high school, Ashkenazis are almost 100 percent more likely to be found eligible for matriculation certificates.⁶⁰

These discriminatory patterns permeate into higher education, where 31 percent of eligible Ashkenazi students gain admission to universities while only 22 percent of equally-qualified Mizrahis are admitted. This stratification spreads to the highest levels of academia, including the academic university faculty, and thus creates particularly substantial gaps. There, the representation of Mizrahis is as low as nine percent, and the Mizrahi women (like the author) amount to only 0.5 percent of all faculty members⁶¹ and only three percent of the female professors in Israeli universities.⁶² This evidently low representation decreases further in more-prestigious science faculty positions.⁶³ The Israeli legal faculty, for example, consists of only six percent Mizrahi.⁶⁴

Meanwhile, Mizrahis’ inferior status in the job market directly reflects enduring patterns of job-market disadvantage.⁶⁵ In addition to the general correlation between Mizrahi origin and low economic status,⁶⁶ Mizrahis are characterized by patterns of underrepresentation in the management job market (29 percent Mizrahi compared to 59 percent Ashkenazi) and overrepresentation in the blue-collar job market (40 percent Mizrahi versus 22 percent Ashkenazi).⁶⁷ Accordingly, the poverty rate among Mizrahis is nearly three times greater than it is among Ashkenazim.⁶⁸ Adding to these discrepancies is the fact that Mizrahis are unemployed at a rate five times

higher than that of Ashkenazis.⁶⁹ Even the military service, traditionally considered a main channel for "social fusion," was recently accused of having contributed to the creation and perpetuation of patterns of inequality between Mizrahim and Ashkenazim.⁷⁰

Moving on to the cultural arena, Mizrahi cultural institutions likewise suffer from manifestly unequal allocation in governmental budgeting.⁷¹ This is not surprising given that Mizrahis are believed to foster inferior cultural values, as depicted in popular culture imagery whereby Mizrahis are reduced to negative and ridiculed stereotypes.⁷² Mizrahis' cultural marginalism stems also from the geographic periphery and spatial segregation that characterizes their lives in Israel.⁷³ Mizrahis' minimal share in private capital ownership, generated by institutionalized discrimination in housing policies, further demonstrates the conditions of their systematic inferiority.⁷⁴ The strong nexus between ethnicity and capital was recently more clearly recognized when a governmental appraiser discovered that living in proximity of Mizrahis is a contributing factor to lowered property value, while living in proximity of Ashkenazim contributes to raising its value.⁷⁵

This is just a snapshot of Israel's wider social disparities as of the early 21st century.⁷⁶ However improved from the past, these conditions are still worrying. Mizrahis' slow progress up the social ladder has primarily reflected the development of Israeli society as a whole rather than some process that signifies the neutralization of the power struggle between Mizrahim and Ashkenazim.⁷⁷ More importantly, the socioeconomic gap between the groups is significant, with some studies indicating its growth over the last decades.⁷⁸ As of today, Ashkenazis sit atop the power structures in Israeli society and constitute "the Archimedean point, from which all the cultures, groups and forces in Israel develop."⁷⁹ Notwithstanding the clear ethnic stratification it contains, Israeli society denies that Mizrahi oppression and discrimination exists.⁸⁰ The ill situation of Mizrahim is often rationalized as resulting from differences in merit or on immigration difficulties.⁸¹ The most institutionalized rationalization is the "crisis of modernization," from which the Mizrahim allegedly suffered ever since they moved from what was perceived as a barbarian-like Arab culture into the "modern" European culture and State of Israel. Thus, the Ashkenazim supposedly needed to adopt transitional measures to "modernize" the Mizrahim, such as special segregated education and low quality employment.⁸² These measures ended up creating an informal but still present *de facto* system of segregation and discrimination between Israel's Mizrahim and Ashkenazim. Despite many strong indicators of a discriminatory social structure, however, no substantial measures have been adopted toward dis-

mantling it. As I shall work to show in the rest of this article, the denial of this structural reality contributes to its very existence.

B. *Dynamics of Denial*

Despite these indicators of structural social inequalities, Israeli society continues to debate, downplay, doubt, and even deny the existence of Mizrahi discrimination and oppression.⁸³ A body of sociological scholarship points to Israel's institutional denials of Mizrahim as a distinct demographic and legal group and of the existence of anti-Mizrahi discrimination.⁸⁴ Drawing on the discussion in the first section of this article, I refer to this situation as an example of the "dynamic of denial." Israel refuses to admit unjust practices against the Mizrahim, which ultimately leads to stability in the group's sociopolitical and economic inferiority and leaves the Mizrahim with no venue wherein they can address the enduring injustices to which they are being subject. Moreover, this "dynamic of denial" dictates the three manners by which the Mizrahi category in Israel is generally perceived: 1) nonexistent,⁸⁵ 2) an essentialist category that signifies a "cultural" group of people who share some background similarities, and 3) the Israeli home-grown new lower-class who suffers from structural divisions in education, geographic residence, employment, and related areas and factors.⁸⁶ All of these perceptions are of course reductionist, in the sense that they exclude considerations of historical, political, and other salient contexts. The group of "Mizrahim" to which this article alludes, however, exists at least in the sense that it bears and endures distributional effects, and thus the categorization invites—and requires—being utilized for *strategic* reasons, which involves acknowledging the necessary evil of positivist essentialisms, at least to some extent, in order to fight discrimination.⁸⁷

Yehouda Shenhav, an influential Mizrahi sociologist, further establishes the notion of institutional "denial" through his critique of Zionism. Rejecting the idea that Zionism was constituted on Jewish nationalism alone, Shenhav identifies multiple ideologies as lying at the heart of the Zionist project. He points to the inseparability of Zionism from the triad of nationalism, religion, and ethnicity. The components of this triad worked not only as a conceptual framework, but also as what he calls "categories of practice." Put simply, Shenhav's argument is that Zionism excluded Palestinians, as a national practice; excluded Mizrahis (and Arabs) as an ethnic practice; and excluded non-Jews as a religious practice.⁸⁸ Interestingly, in all three exclusionary respects, Zionism also used inclusion practices vis-à-vis Mizrahis as part of its genuine attempt to realize the dream of the Jewish state. Shenhav's articulation of the conceptual-practical triangle, which he

argues underlies Zionism, not only challenges the traditional perception of Zionism as a purely national project but also provides the analytic framework for establishing a “dynamic of denial.” The hidden premise of ethnicity, specifically, nourishes this dynamic with regard to the ethnic division within Israel.

I see my contribution to the development of the “dynamic of denial” concept as adding to it the analysis of the Israeli legal context, illustrated through the experiences and concerns of Mizrahim. It is my assertion that while the sociopolitical and economic spheres have refused to recognize how Mizrahis’ inferior position emanates from institutionalized discriminatory practices, the legal system has also reinforced this interplay of discriminatory practices and group inferiority both generally by not recognizing “Mizrahim” as a group, and specifically for antidiscrimination purposes. In other words, while Israeli sociologists have focused their concern on the fact that Mizrahim were denied recognition as a discriminated group within Israeli public opinion and consciousness, I now focus attention on their neglect within the legal sphere. My account of this “dynamic of denial” raises an even more disturbing concern: Mizrahim lack any legal venue or status by which they can seek not only recognition but also distributive redress to repair their inferior position.⁸⁹ At a later stage, this article will focus on breaking these walls of silence and reconstructing the legal system as an arena of recognition for Mizrahim and, more importantly, an arena for redressing the wrongs from which they suffer. Before I turn there, I will first introduce the structure of the law’s “dynamics of denial” with regard to Mizrahim.

C. *Denial in the Legal Sphere: Mizrahim as Non-Category*

The legal system is one of Israel’s main “public spaces” through which actors deny and de-legitimize the discrimination against Mizrahim. Almost no legal literature that hinges on Mizrahis’ status, claims, problems, or interests exists.⁹⁰ Furthermore, the Israeli legal system reveals no traces of acknowledging anti-Mizrahi discrimination, either in its discrimination or antidiscrimination discourses. Although subject to *de facto* discrimination, since Mizrahim were never legally categorized and thus never subject to *de jure* discrimination, Mizrahim have no recognition under Israeli antidiscrimination discourse. This legal invisibility thereby renders the existing antidiscrimination literature, case law, and statutes relatively irrelevant to the Mizrahi situation.⁹¹

The Israeli legal system has formally adopted the sociopolitical “melting pot” ideology, under which the Zionist ethos proposed a unifying, “sameness”-based, “all-Jew encompassing” *de jure* rhetoric. Exemplary of

this ethos is the Israeli Law of Return (1950),⁹² which declared the right of every Jew to immigrate to Israel, as supplemented by a provision in the Nationality Law (1952) that grants automatic Israeli citizenship to every immigrant Jew.⁹³ Motivated by a wish to ensure the demographic superiority of Jews in Israel, the Law of Return functioned as a political signifier of Israel as an arena for combating “outside” social threats, thereby excluding from serious consideration such “internal” social problems as hierarchies and power relations.⁹⁴ Differential treatment statutes are also often administered upon Jewish exclusiveness, as demonstrated, for instance, by Israel’s ban through a constitutional basic-law of any non-Jewish ownership of lands.⁹⁵ This mechanism proposed a unifying, “sameness”-based, “all-Jew-encompassing” *de jure* rhetoric. Its rhetoric has largely hidden Mizrahi suffering from the lens of a *de facto* discrimination analysis and has made the legal sphere both structurally and symbolically irrelevant to the Mizrahi struggle for equality. Intra-Jewish distinctions became irrelevant under such dichotomous “privileged-Jews versus underprivileged-Palestinians” legal proposition.⁹⁶ The Mizrahi experience is distinct from cases of “recognized groups” such as Palestinians and women, for example, where explicit legal norms discriminated against them or at least recognized their legal differences and revealed the ill behavior against them. As one commentator has put the point, “With regard to the Mizrahim, Israeli law appears to have been blind. Formally they have been treated as equal. . .”⁹⁷

My analysis goes against these existing legal categories as dictating the scope of criticism. Notwithstanding the absence of Mizrahis from the surface of the legal system, I identify five focal points along Israeli legal history, whereby the legal system made implicit reference to Mizrahim. These points, which chart the emergence as well as the burial of the Mizrahi legal category, problematize as unnatural, political, and changeable the absence of the Mizrahim from the Israeli legal discourse.

The first focal point is also the first time the Israeli Supreme Court encountered the intra-Jewish ethnic rift as carrying “legal” meaning. *Kremer v. Municipality of Jerusalem*,⁹⁸ was the first education integration case to be decided by the Israeli Supreme Court, in circumstances where Ashkenazi petitioners refused to send their children to an integrated school as mandated by the national Integration in Education Plan.⁹⁹ The case was heard on May 1971. Three weeks earlier, a group of thousands of young Mizrahis, who were second-generation Mizrahi immigrants born in the 1950s, lead a famous yet highly uncommon protest march (which devolved into riots) against the discrimination and oppression Mizrahim experienced in Israel.¹⁰⁰ Although Israeli society was profoundly shaken by this protest, the majority of the Supreme Court justices ignored the social context in which their ruling was made.¹⁰¹ In their decision, the justices used neutral-

izing discourse in referring to the Integration Plan as an effort to overcome “gaps” between “different ethnicities and classes”¹⁰² rather than explicitly naming Ashkenazim and Mizrahim. Only one Justice noted in his concurrence the integration plan’s focus on Mizrahim. This concurrence was the *first* and *last* time the Court made a direct judicial reference to Mizrahis regarding education in Israel. From this case onward, the Israeli educational desegregation discourse has proceeded in a non-contextual, non-naming, “invisibilizing” manner, not even once mentioning Mizrahim.¹⁰³

The second focal point is one of the rare cases to manifest some form of legal recognition of Mizrahi existence, albeit in a very limited and limiting manner. In *Shiran v. Israel’s Broadcast Authority*,¹⁰⁴ the Supreme Court confronted a straightforward Mizrahi discourse as employed by the activist Mizrahi plaintiff. Alleging that Mizrahis’ contribution to the establishment of Israel and to the Zionist movement has been erased from the set of representations offered by a state-produced-and-financed iconic television series, the plaintiff asked that the Court declare this national project illegitimate unless modified.¹⁰⁵ Rejecting this demand, the Court found it impossible to avoid using Mizrahi wording but still set a pattern of reasoning which adhered to a language of diversity rather than of subordination. Its overall rhetoric for analyzing the claim before it was mostly “technical” in the rare places it engaged in substantive discussion, the Court was not sympathetic to the plaintiffs’ supposedly separatist allegations, and invoked the discourse of unification by referring to all “Jewish people” as an entirety.¹⁰⁶ Rather than addressing the substantive discrimination claim raised by the plaintiff, the Court used the legal platform to promote “Jewish unification.” Ironically, a few years ago, in a journalist report celebrating the 30th anniversary of the iconic series that motivated this legal case, the series director admitted that the exclusion of Mizrahis from it stemmed from what he perceived as their marginal contribution to the nation’s establishment.¹⁰⁷

The third focal point comes 21 years later and demonstrates how the absence of legal recognition for Mizrahim as a discriminated-against group has made much more difficult any activist legal work on the group’s behalf. In *New Discourse Movement v. Minister of National Infrastructure*,¹⁰⁸ the Court dealt with a challenge that Mizrahis raised to the allocation of lands in Israel among its Jewish population. Israel’s Lands Administration decided to allocate extremely valuable state lands to private citizens by changing its designation from “agrarian” to “urban.” This allocation would have provided enormous compensation to the predominantly-Ashkenazi agrarian sector. However, the allocated lands were mostly state lands leased to the agrarian sector without ownership rights, meaning that the agrarian sector was about to unjustly benefit from the reallocation of public

property. In this case, the Court again used various de-contextualizing techniques that rendered the case irrelevant to the Mizrahi-Ashkenazi division. The Court's description of the petitioners, a Mizrahi association and Mizrahi individual activists, narrowly circumscribed the group. When introducing the case, the Court defined the petitioners as striving to "fight for the implementation of political, cultural social and economic individual rights of all the citizens of Israeli society. . . insisting on just and inclusive wealth distribution to all social groups in Israel."¹⁰⁹ Rereading the original petition, Claris Harbon, a Mizrahi legal scholar, proved that the ellipses in the Court's opinion omitted the association's more contextualized and sharp self-description, which stated that "[t]he association was initiated by women and men, second and third generation offspring of Jews of Arab origin." Moreover, as an act of solidarity, a group of distinguished Mizrahi activists filed a co-petition. However, the Court described these co-petitioners somewhat laconically as "scholars. . . concerned with Israel's land allocation policy."¹¹⁰ As this case proves, the Israel Supreme Court, for whatever reason, has treated Mizrahi identity as not worthy of mention or inclusion in its jurisprudence.

The fourth focal moment in the "dynamic of denial" of Mizrahim in the Israeli legal system relates to the enactment of the Israeli Civil Rights Act in the marketplace in 2000.¹¹¹ Following its predecessors worldwide, the Act forbids discrimination in public and quasi-public social arenas based on multiple factors, such as race, religion, and gender. It does not, however, relate to ethnicity in a respect relevant and effective to Mizrahim.¹¹² The law's prohibition of discrimination based on "country of origin," which might seem at first glance to be useful for anti-Mizrahi discrimination cases, is actually unsuitable to contemporary Mizrahi victims of discrimination, for most are Israel-born and thus are not discriminated-against on the basis of their identification as related to some "country." Simply put, the Act neither relates nor applies to Mizrahis. This absence is particularly interesting, given the fact that this statute was enacted as a response to the ongoing discrimination against Mizrahis in these social arenas, as its legislative history reveals.¹¹³ This is how far the "dynamic of denial" of Mizrahis goes: the very same act that was intended to target the discrimination practices to which Mizrahim are subject still is unable to "name the un-nameable." In the rare cases that law has yielded the imposition of liability in favor of discriminated-against Mizrahis, the courts have either stated that the circumstances amounted to forbidden discrimination (but provided no further reasoning) or opined that the plaintiff's "dark skin color" was the reason for their discrimination. Notice, however, that the latter reasoning, while more convincing in the case of many Mizrahis, is even more problematic than the former: the dark skin categorization is

neither relevant to all Mizrahim¹¹⁴ nor is it stipulated by the Act itself as a forbidden basis for discrimination. This seems, therefore, like the courts' way of trying to work around the very apparent limitations of the law in order to address a painful reality.

Notwithstanding these legal denials, Mizrahi identity bears substantial relevance to the legal discourse. Though irrelevant to the legal system's explicit order, Mizrahis are very much present in its implicit, sub-textual order.¹¹⁵ Clearly enough, Mizrahis comprise most of the criminal defendants, most of the prison population, and almost none of the judiciary. To emphasize this point, I share what is both a hilarious and sad story out of my own experience. Being a first-year student at a most distinguished law school in Israel, I remember feeling "at home" when entering Criminal Law classes, because my professor's syllabus was filled with references to criminal cases titled with names, like mine, of Mizrahi descent. Contract law class, on the other hand, offered a syllabus filled with cases involving litigants with names of Ashkenazi descent. Under this division, it was clear who were the criminals and who were the good people trying to peacefully execute their rights to contract with one another. However, upon walking into my Contracts class late one day, I heard to my endless surprise the professor analyzing a Mizrahi-parties case. A moment later, I realized that it was the class session discussing "illegal contracts."

III. ESTABLISHING THE ISRAELI-PALESTINIAN "THIRD SPACE" OF ARAB ETHNICITY

"For Middle Easterners, the operating distinction had always been 'Muslim,' 'Jew,' and 'Christian,' not 'Arab' versus 'Jew.' The assumption was that 'Arabness' referred to a common shared culture and language, albeit with religious differences."¹¹⁶

The deeply rooted "dynamic of denial" of Mizrahi discrimination calls for a Mizrahi-Palestinian collaboration for the establishment of a new conceptual and discursive "third space," whereby both parties will be provided with richer and more effective means to litigate their rightful claims of discrimination. Establishing such a new space requires re-conceptualizing the common threads between Mizrahis and Palestinians. The new space can afford us a window into understanding not only the plight of Mizrahim, but also the complexity of the relations between Israelis and Palestinians more generally. These relations are normally perceived as quintessential manifestation of the Arab-Jew national dialectic of "difference," which is the traditional rhetoric for addressing it. Instead, this "third space" theorization

addresses these relations as having a significant ethnocultural dimension that is rooted in a particularly Eurocentric Zionism, which distinguishes Palestinians from Jews. Working to establish this new “third space” also rebuilds the categories of “Jew” and “Arab” as relational and interconnected, as opposed to dichotomous and mutually exclusive.¹¹⁷

In this article, this repositioning will be done using the notion of Orientalism as fashioned in Edward Said’s intellectual work and as developed within the Israeli context by his successor, Ella Shohat. Shenhav’s analysis of Zionism, as having an ethnic dimension (as discussed in the previous section), will also serve to help open this “third space.”¹¹⁸ Using these groundbreaking works and applying them to the legal field brings critical cultural analysis into the heart of legal reasoning in antidiscrimination law, a field where culture plays a pivotal role. More to the point, cultural studies, as a non-legal discipline, bears much creativity and flexibility that opposes the legal system’s rigid traits and underlying conceptions. Interdisciplinary analysis of what seems to be unquestionably “legal” can and should be challenged through the mirroring that this non-legal discipline has to offer. More specifically, Said’s work points to the structural problem of “thin” categorizations—such as “Jews” and “Arabs”—offered by the antidiscrimination legal system to dissolve problems emerging from what in reality are “thick” narratives of “Arabness” as having unique bearing on both Jews and Arabs.

A. *Said’s Orientalism*

A core assumption of any study that aspires to meliorate ethnic conflict is that understanding the sources and patterns of the conflict must precede the study.¹¹⁹ In the Israeli case, the sources and patterns of conflict can be tracked, at least in part, to the sociocultural phenomenon of “Orientalism.” My interest in Orientalism, as a body of knowledge, is rooted in my resistance toward perceiving “difference” as intrinsic and natural and my desire toward reshaping it as a socially constructed concept. Let us thus gain some familiarity with the theoretical framework of Orientalism toward understanding Mizrahi’s “difference” vis-à-vis Ashkenazi hegemony in Israel.¹²⁰

Edward Said, a Palestinian-Egyptian-American literary philosopher, developed the concept of Orientalism in his most established intellectual project.¹²¹ Said identified Orientalism as praxis of representation used by the colonial West to achieve domination over the East and over the “Orient,” by what he perceived as a constellation of false assumptions underlying Western attitudes toward the East. Namely, that a long tradition of romanticized, false images of Asia and the Middle East in Western culture

has served, implicitly, as a justification for Western (and specifically American) colonialism. Criticizing the literature relating to Asia and the Middle East by using poststructuralist epistemology,¹²² Said concluded that Western writings about the Orient depicted it as an irrational, weak, feminized "other," contrasted with the rational, strong, masculine West.¹²³ These contrasting categories, he suggested, derived from the need of the Orientalists, who authored these texts,¹²⁴ to create "difference" between West and East attributable to immutable "essences" in the Oriental structure. Said contended that these descriptions are a mere reflection of an entire canonical arsenal of representations of "the Oriental mind" created by the colonizers. These representations were shaped by the myths or stereotypes attributed to the Orient by the Western observer, who was himself confined in his identifications by Westernized epistemology. By coining the term Orientalism, Said's most significant contribution was not in dismantling the myths that had masqueraded as facts, but rather in re-conceptualizing them as a powerful domination discourse.¹²⁵

On an even more radical note, Said argued that the body of research within colonial Orientalism was not only intentional but indeed structurally targeted: the magistrates' reports were used to capitalize on colonial administration. Essentially, these seemingly ethnographic accounts and illustrative narratives constituted a set of manual aids, which assisted in expanding the colonial interests. Ultimately, Said identified the Orientalist discourse as still occupying sociocultural discourses. Its contemporary manifestations, however, are distinct from that of its traditional Orientalist predecessor. He asserted that a similar repertoire of the Orient is being created consistently within a discourse of cultural subordination, which itself is built upon the convenient stereotyping of Middle Easterners.¹²⁶ Though heavily criticized for some of its constituting elements,¹²⁷ Said's post-colonialist conceptualization of Orientalism had been immensely influential, specifically, on cultural studies.

B. *"Translating" Said's Orientalism into the Israeli Context: An Intra-Jewish Version of Orientalism*¹²⁸

Ella Shohat, Said's student and successor, was the first and most significant scholar to "translate" or "transform" Said's work into the Israeli context.¹²⁹ In her landmark book, *FORBIDDEN REMINISCENCES*, Shohat explores the images of Mizrahis in the Israeli cinema and film industry as canonical texts and narratives that reflect the ways in which Zionism has addressed Mizrahis, eventually, as Orientals.¹³⁰ Shohat introduced the framework of Orientalism in the Mizrahi case, thereby conceptualizing their status within the broader Palestinian context and indicating the intercon-

nectedness of these groups through the notion of “Arabness,” which has been portrayed hegemonically through an Orientalist process of myths and false representations. The “Arab” narrative borne by Mizrahis “endangered” the “Western” and “civilized” foundations of Zionist ethos, and was therefore excluded from Zionist collective memory and narrative. The solution to this “threat” was the imaginary, though official, “melting pot” ideology, whereby the Mizrahis had to deconstruct their “barbaric” identities, deny their “folkloric” past, repress any “Arab” cultural aspects of their heritage from “the old world” and “melt” into the new Israeli society alongside other “Jews.” That society was in fact a meltdown into Eurocentrism.¹³¹

One real consequence of this melting-down is the erosion of Mizrahi culture and dignity.¹³² According to Shohat’s analysis, although Zionism is primarily perceived as a nationalist project, it was, in fact, founded upon deep Eurocentric ethnic sentiments. Within this additional aspect of Zionism, this project has shaped Mizrahi identity, as is too often the case, through stereotyping the “other:”¹³³ the Mizrahis who by being mostly of traditional and religious background and of Arab/Muslim descent, represented ultimate otherness. Mizrahis, who were seen as primitive and decadent Jews “one grade above the Arabs,”¹³⁴ as some Zionist founders described them, were thus forced to deny, forget, or repress their own Arab culture and language in order to assimilate.¹³⁵ Shohat therefore claimed that Zionism was, roughly applied, a particular case study of Orientalism, saturated in fears of Islam and “Arabness.” With time, Shohat’s reading of Zionism through the prism of colonialism has made substantial contribution to understanding it in non-traditional ways.¹³⁶

C. Zionism’s Multidimensional Characteristic and Its Ambivalence Toward Mizrahis’ Otherness

In his seminal work *THE ARAB JEWS*, Yehouda Shenhav also offers great usefulness to my own socio-legal analysis. As elaborated earlier, Shenhav claims that ethnicity has played and still plays a central, though hidden, role in shaping the Israeli state and its stratifications. Shenhav stresses that by emphasizing nationalism as its formative notion, Zionism has marked the Mizrahi identity as separate from that of the Palestinians, while in reality seeing those two groups as closely related. Within this scheme, the “Arabness” of *both* Mizrahis and the Palestinians worked as a negative trait even if for different reasons; one that the Mizrahim should have suppressed, and more so, one by which the Palestinians were doomed to be primordially subordinated. The sophistication of the “othering” of Palestinians is manifested by channeling it through the category of “Arabness.” A closer look, however, reveals that this “othering” goes hand in

hand with the de-politicization of the Mizrahi category, which was achieved through the artificial detachment of their case from the Palestinian case. This “othering” enabled separating the two into “different” discourses: the intra-Jewish ethnic one and the inter-Jewish national one.¹³⁷

Shenhav encourages Mizrahis to reshape their own identity through the process of colonial analysis. Though maintaining their Jewish identity, Mizrahis should, Shenhav suggests, add to it the seemingly contradictory trait of “Arabness,” from which to reconstruct their identity as “Arab-Jews.” This category has already been in use in the past for different purposes, ranging from Orientalism to critical analysis. It has, therefore, a hybrid nature that renders it less consistent or coherent¹³⁸ than expected as an antidiscrimination categorization. I find this category, which is oxymoronic by design, to be extremely useful and intriguing as a way to problematize the traditional distribution of Israeli identities and powers.

IV. THE LEGAL ASPECTS OF ISRAELI ORIENTALISM

A. *Turning Sociocultural “Third Space” into Legal “Difference”*

The sociopolitical structure of Zionism, to which Shenhav alluded, is reinforced through the legal system. To reiterate, although the Israeli legal system bares no formally explicit discriminatory rules against Mizrahim, it ignores the discrimination practiced against them, even while entertaining claims of institutional discrimination against the Palestinians. Thus, this legal system forms, facilitates, and maintains the “Arab-Jew” dialectic as founded on a “national-Zionist” basis rather than on an ethnic-anti-Arab one. Once defined as “nation-based,” the dialectic positions “Jews” on one side of the scale and “Arabs” on the other one, (who are not confined to Palestinians, but who constitute the immediate and only relevant group of reference in this respect). This positioning also makes it impossible for Mizrahis to somehow cross this “national line” and situate themselves at its Arab bank.

Within the socio-legal Jewish-Arab dialectic, Palestinians also find themselves in a bewildering position, for while suffering *de jure* discrimination, they also enjoy at least some benefit through numerous antidiscrimination laws that work in their favor. After decades of subjugating Palestinians through special discriminatory treatment, in the past twenty-five years the Israeli executive branch, the legislature, and predominantly the Supreme Court have demonstrated a gradual willingness to apply antidiscrimination rules and affirmative action plans to benefit Palestinians.¹³⁹ Notwithstanding this remedial atmosphere, Palestinians still face significant *de jure* and *de facto* discrimination, mainly through implied laws whereby the Israeli

legal system discriminates against all of its non-Jewish citizens; within the Israeli social context, this discrimination primarily harms its Arab citizens.¹⁴⁰ In addition, Palestinians remain by far the most underprivileged community of citizens in Israel today: they are almost completely segregated from Jews; they endure the highest rates of unemployment and earn the least; they are deprived of meaningful political participation in national decision-making; they receive minimal governmental support for socioeconomic sustainability; and they suffer from the lowest community infrastructures in Israel, whereby their health, physical wellbeing, and lives are seriously endangered.¹⁴¹

Caught within this nationalist rift even while being Israeli citizens, the Palestinians' allegations of discrimination are generally mitigated within what can be aptly described as "social" as well as "civil" contexts, rather than "political" ones.¹⁴² Namely, they bring their discrimination claims as predominantly based on civil rights violations and state interference with their civil life experiences. However, these socio-civil pleas are often evaluated in light of "political" considerations, thereby burdening their civil claims with political concerns.¹⁴³ A close analysis reveals that courts and the legislature limit the rights of Israeli-Arabs in collective, "social" arenas, where a "political" threat to the Jewish characteristics of Israel is allegedly posed. For example, in the years 2000 and 2001, the Knesset rejected initiatives to statutorily declare the full equality of the Arab minority citizens in Israel. On another occasion, the Supreme Court declined to give Arabic a formal and institutional linguistic status alongside Hebrew.¹⁴⁴ And, just recently, the Israel Supreme Court declared constitutional a statute that bans non-citizen Palestinians who married Israeli-Palestinians from joining their spouses inside Israel, stating rather explicitly that this "right to family life" threatens Israel's demographic Jewish leverage.¹⁴⁵ Using a "third space," whereby Mizrahi Jews and Arabs join in shared concerns, would possibly frustrate such contamination of civil claims as political/national.

Adapting this new category of Palestinians and Mizrahis shared "Arabness" to the legal sphere has never before been proposed. In a sense, one might say that Mizrahi intellectuals failed exactly where criticism should shine: in the legal system. Instead, they misinterpreted the legal system's silence regarding Mizrahis as irrelevant to their case. No Mizrahi scholars have heretofore specifically addressed the role of the legal sphere in constituting Mizrahim as a category. It is therefore crucial to push this analysis further and explore the feasibility of "Arab-Jewish" unity/communion with a strong sense of "Arabness" as a legal category. I adhere to this new category intuitively since it offers, as a first step, a replacement of the old "Mizrahi" category, which is trapped in the "dynamic of denial," where it has proved incapable of producing any legal merits. Secondly, and no less

importantly, doctrinally, this category encompasses the Arab trait, which prominently serves as a “suspect classification” within Israeli discrimination discourse.

My analysis, though, does not settle for the new categorization of Mizrahim as an end in itself. Rather, it strives to achieve an integrative and contra-dialectical objective, as it relates to shaping Mizrahi identity while having a close dialogue with the Palestinian one. Both Palestinians and Mizrahis seek a conceptual space where they can mediate their allegations and disputes vis-à-vis Ashkenazi dominance, and perhaps work together to alleviate the power imbalance of the latter over the former. The analysis of Orientalism enables them this “third space,” whereby they meet on an old-new platform of “Arabness.”¹⁴⁶ This platform, however, does not have an essentialist ancestry or a mere sociopolitical lineage. Mizrahis are not “Arab” in the sense that Palestinians are, for Palestinians are not integrated into Israeli society the way Mizrahis are. This new platform is thus a match point of the unmatched: it is composed of both Arab-Palestinian and Arab-Jews identities, yet it re-forms as another, hybrid identity, which is tailored more closely to their antidiscrimination needs as shaped through these groups’ shared traits and, sometimes, experiences of discrimination.

In Shenhav’s work, the hidden dimension of ethnicity brings Mizrahis and Palestinians back together, on the conceptual level. My work complements this idea by arguing that ethnicity brings them together as a legal and practical matter, as well. Understanding the connectedness of these two groups entails enormous influence for shaping their possible effective actions to fight against the subordination from which both groups suffer, sometimes separately and sometimes jointly; this newly conceptualized cooperation shall be presented hereby.

B. *Hybrid “Arab” Group Identity and the Israeli Antidiscrimination Legal System*

An introduction to the Israeli antidiscrimination legal system should be made in order to evaluate the sustainability of my suggestion. Going back to my earlier remarks, note that Israel’s antidiscrimination rules resemble in many aspects those of the American legal system, by which it has been most influenced.¹⁴⁷ The Israeli antidiscrimination redress mechanism offers two main venues of advocacy: the constitutional-administrative one and the tort-like one. This bifurcation also resembles the division in the American system, between Fourteenth Amendment constitutional claims and Title IV tort-like claims. As opposed to the American system, however, both claims’ formats perceive notions of affirmative action as integral to them and both apply to facially neutral, disparate impact policies, as well

as to disparate treatment policies. These mechanisms also allow burden-shifting once group-based differential treatment is proved before the court.¹⁴⁸ Another important departure of the Israeli system from its American counterpart relates to the former's adherence to a group-based perception of antidiscrimination tools.¹⁴⁹ As opposed to the Equal Protection Clause's individualistic form and choice of words as focused on "any person," the Israeli antidiscrimination principle is shaped to prohibit discrimination based on group traits such as race, religion, nationality, sex and so on.¹⁵⁰ Consequentially, the Israel Supreme Court would normally apply its ruling to sectors rather than to specific plaintiffs.¹⁵¹

According to Fiss's analysis of antidiscrimination principles, reference to these "natural classes" is the best indicator of the Court's adherence to addressing group discrimination and its concern with group stratifications.¹⁵² Additional indication lies in the sort of relief that petitioners in Israel seek. Though most antidiscrimination claims seek individual justice, such as the right of a Palestinian family to live in a Jewish town¹⁵³ or the rights of a woman to be summoned to the army's pilot training course,¹⁵⁴ many other claims have more communal aspirations.¹⁵⁵ Recently, a growing number of claims for antidiscrimination relief relate to group rights, most prominently, the right of equal share in budget allocations.¹⁵⁶ All these characteristics of Israeli antidiscrimination law demonstrate its openness to group-based equality advocacy.

Underlined by the "sameness/difference" dichotomy as previously described, Israeli antidiscrimination law holds a three-stage test to detect and identify forbidden discrimination. It first seeks to identify differential treatment, whether intended or consequential. Second, the Court determines the basis upon which the relevant state action has been administered. At this stage, the Court would usually seek the category by which the disadvantaged group has been classified. In the third stage, the Court would scrutinize the state action to determine its constitutionality, mainly in terms of its legitimate end and its proportionality.¹⁵⁷ Within this framework, the second stage would usually set the major barrier to Mizrahis, as currently they are not legally considered to be an "identifiable" group subject to discrimination. A similar framework is set for affirmative action claims. Here, a group that seeks recognition and redress under affirmative action plans needs to first substantiate itself as suffering from discrimination that justifies an active endorsement of its interests. Here again, Mizrahis are not expected to encounter such difficulties as rising to the point of discrimination. Despite having statistical evidence of their subordinate status, Mizrahis' greatest barrier from being considered eligible for affirmative action is, again, their lack of recognition as a group.

Read against this background, it can be concluded that the legal use of

the new hybrid category "Arab-Jew" has great potential for bettering the position of the Mizrahi and Palestinian groups, to the extent that they use antidiscrimination mechanisms. In light of the Israeli Court's adherence to group-based equality and its solid tradition of assigning to the "Arabness" categorization the greatest suspecting attention, this move makes tremendous strategic sense.¹⁵⁸

C. "Third Space" Battlefields

"The same historical process that dispossessed Palestinians of their property, lands and national-political rights, was linked to the dispossession of Middle Eastern and North African Jews of their property, lands, and rootedness in Muslim countries."¹⁵⁹

Once the common threads between the oppression of the two groups are recognized, it becomes easier to detect the similarities in the discrimination methods imposed upon both Mizrahis and Palestinians, which can then lead to joint resistance against those methods. Accordingly, the far-reaching objective of my article is to encourage Mizrahis and Palestinians to initiate shared battles, based on the shared components of their identity and their discrimination alike.

This is not some "theoretical experiment" for Mizrahis and Palestinians. Rather, what is envisioned is a real and meaningful path already being pursued by these two groups, at times separately and at times jointly, yet done so more systematically and more frequently. As my analysis thus far has demonstrated, the bright-line distinctions held in the formal legal-political arena between Mizrahis (as part of the Jewish population) and Palestinians (as part of the Arabic population) is far less relevant for Israeli real-life experience.

Indeed, in many respects Palestinians and Mizrahis have more in common than appears to the naked eye. It is crucial to both groups' interests that this commonality be better understood and maximized strategically. In terms of spatial and cultural geography, the two groups are known to comprise Israel's wilderness and periphery. They also comprise the typical population of "mixed cities" such as Akko, Jaffa, Lod, and Ramle, all of which are notorious for their ultra-underprivileged status. Related to their geographic marginality, the two groups share the unhappy burden of being Israel's least empowered communities. In terms of social wealth, they are at the bottom of statistical indicators, structurally barred from social mobility, and lacking useful political power.¹⁶⁰

That both groups suffer from related discriminatory mechanisms is apparent also in the fact that it would be more likely to find Mizrahi-Pales-

tinian shared battles for correlative interests, rather than Ashkenazi-Palestinian ones. With both great care and confidence, I assert that there has not yet been a common battle waged by Ashkenazis and Palestinians that was not built upon philanthropic foundations on the Ashkenazi side rather than on some sense of shared destiny and real common cause.¹⁶¹ Yet, these similarities in their point of departure may allow Mizrahis and Palestinians opportunity to engage in common battles and avail themselves of common strategies toward common interests. I shall now turn to pointing out some specific doctrinal implications and ramifications that my analysis bears.

1) *Discrimination Based on Identity*: Arab and Arab-related identity signify inferiority in various Israeli contexts. The most prominent example is discrimination that prevents the entrance of Mizrahis and Palestinians into clubs and amusement facilities and from enjoying fair access to services. It is very common to confuse Palestinians with Mizrahis, in terms of physical appearance, names, and sometimes even accents. Interestingly, Palestinian plaintiffs have at times claimed that it was their Mizrahi look-alike physical characteristics that ignited racist behavior against them.¹⁶² This identity “confusion” goes both ways: for example, my Iraq-born friend, Dr. Hani Zubida, who possesses an Arab name, is in fact a Mizrahi Jew who is engaged in human rights political activity. Each time his published column appears on national websites, his writing is met with racist backlash that assumes and then focuses on his seeming “Arabness,” such as this poster’s comment: “This Palestinian person will not teach us the rules of democracy.” The deep irony is that the only way to prosecute such commentators is to claim that they have discriminated against Hani because of (his supposed) “Arabness,” and not because of anything else.¹⁶³

2) *The “Danger Zone” of “Arabness”*: Mizrahis and Palestinians can engage one another’s identity as a means for better revealing the hidden ethnic dimensions of the discrimination each faces, and for articulating how this discrimination is disguised in the veneer of security concerns. For Mizrahim, such articulation would make it easier to stress the reality of their discrimination as ethnicity-based and as specifically associated with anti-“Arabness.” For Palestinians, this conceptual change would be helpful in removing the political dimension (e.g., as embodied in the concern regarding the safety of Israelis that is frequently raised against Palestinians as posing an alleged security threat) from their quest for social equality. Unveiling anti-Palestinian discriminatory practices as stemming from their Arab ethnicity, rather than their nationality, would nullify the relevance of security issues and concerns normally used to justify such practices. A sharp example of this reconstructionist potential is shown through litigation pertaining to the Israeli Civil Rights Act.¹⁶⁴ Although the Act forbids discriminatory practices against people based on their nationality,¹⁶⁵ it allows

the alleged discriminator to assert a defense claim premised on the security risk the plaintiff posed either to the public or to the specific public accommodation place that the defendant was not permitted to enter. This excuse can easily be associated with the "security" excuse traditionally invoked against the inclusion of Palestinians in Israeli public life. Prominent examples of which are special security checks (these are particularly harmful and degrading measures taken against Palestinians in Ben-Gurion, Israel's only international airport) or the refusal to allow entry to entertainment facilities.¹⁶⁶ Security considerations also affect Palestinians' most private aspects of living. As previously discussed, the Family Unification Act forbids, as a general matter, *all* family unification of spouses from outside of Israel with their Israeli citizen Palestinian spouses, who are, in turn, invited to unify with their loved ones in the occupied territories or any other country outside of Israel.¹⁶⁷ The Israeli Supreme Court has twice upheld this law based on the issue of security reasons.¹⁶⁸

The "security" excuse meandered into the Mizrahi discrimination sphere, albeit in a more subtle, non-nationalized manner: it began being raised against Mizrahim, who are regularly subject to bans from nightclubs in Israel. Here, the club owners usually raise their concern for personal security of the clubbers as a defense, claiming that the Mizrahi plaintiff, who normally possesses an "Arab" appearance, looked like "Arss," which is the derogatory Hebrew word for a dangerous, degenerate person (though, in fact, it comes from an Arabic word, meaning "pimp").¹⁶⁹ Tracing the common thread of these claims can help to weaken their validity and authenticity as excuses. Their sheer usage is by itself discriminatory in nature, since they perpetuate the Orientalist disgust and fear of "Arabness" as "invading" upon the imagined Eurocentric Israeli Jewish space.

3) *Discrimination in Budget Allocations*: The Israeli Supreme Court has long ago ruled in favor of the right of Palestinians to have an equal share in Israel's annual budget allocation plan and funded programs.¹⁷⁰ The Court's calculus of Palestinians' entitled share was derived from their relative percentage in Israel's overall population. A shared Mizrahi-Palestinian "Arabness-oriented" argument regarding budget allocation could thus transform how the Court estimates this share if it were quantified based on the aggregate of both the Palestinian and Mizrahi populations to whom the allocation may apply: together, the groups encompass a majority of more than 65 percent of Israel's population. For example, a demand based on the National Broadcasting Law of 1976 to allocate some share of its budget to developing the Arabic tradition, language, cultural assets, and so forth through national television broadcastings could be supported by a similar Mizrahi-based plea. Such supportive pleas would dramatically increase (from 20 percent up to 65 percent) the population entitled to cultural recog-

nitition, strengthen the demand, and compel the national broadcasting office to invest proper means for introducing Arab culture to the Israeli Jewish public and familiarizing the latter with the former's virtues.

4) *Economic and Geographic Periphery Based Discrimination*: In many respects, Mizrahis and Palestinians share the faith of the bordered subalterns. This faith is stated not only in a symbolic fashion, but also as a realistic matter. Israel's peripheral population is comprised mainly of both groups. Mizrahis, therefore, border the Israeli geographic center and the Palestinian urban and (mainly) rural areas. Sociological literature has explored the role of the margins as gatekeeper subjects, as well as dynamic objects of agency that are undergoing a process of hybridization.¹⁷¹ Though controlled by the state's geopolitical demarcations, the subalterns are communicating through daily practices, where identity traits (e.g., language, culture, and aspirations) and obstacles are being shared. Through this process, the subaltern border positions function more "as a hyphenated rather than as a fixed entity, thereby refusing to settle down in one (tubicolous) world or another."¹⁷²

Israeli Mizrahi sociologist Galit Saada-Ophir has explored Mizrahis and Palestinians subaltern border positions from a cultural perspective. Reflecting on their dynamics at a mutual "borderland," Saada-Ophir explored the role of Mizrahi popular music as a site for recreating their hybrid identity.¹⁷³ Like Saada-Ophir, in my project I seek to explore the possibilities of new dynamics at the borders of the law. However, I differ from Saada-Ophir in my view of the hybridization process's functional merits. Specifically, Saada-Ophir concludes her research by stressing that Mizrahis' movement across musical borders has not yet "actualized its potential to become a creative presence in the Middle East that could challenge state policies by presenting a space in which Arabs and Jews do not exist in endless conflict."¹⁷⁴ Yet the practices of crossing the borders of legal categories and discourses that I advocate aspires to such an Arab-Jew actualization.

4.1) *Land Allocation and Housing Rights*: In the domain of land ownership and allocations, Palestinians undoubtedly suffer most from deep and grave deprivations.¹⁷⁵ Yet some of the practices held against them in this regard are very close to those held against Mizrahis, too. Harbon shows, for example, how the Israeli land regime and housing policies deprive both communities of their land rights, as well as benefit those who, as a group, comprise the main of property ownership in Israel today. It is therefore the mission of both communities to challenge this unfair distribution.¹⁷⁶ In a recent semi-legal "Popular Court" event, (primarily) Mizrahi and Palestinian petitioners presented their stories of the oppression and other suffering

each incurs, indeed in very similar ways, due to the harmful and abusive policies held against them as public housing tenants.¹⁷⁷

4.2) *Local-Central Governance Relations*: Israel’s poor is comprised mainly of Palestinians and Mizrahis who suffer from very low economic status.¹⁷⁸ Combining the struggles of both groups can illuminate the systematic yet traditionally concealed contribution of the State to their socio-economic status. For example, a group of Mizrahis, including myself, initiated a petition to the Israeli Supreme Court, which sought to sue the government for non-payment of local authorities’ employee salaries in both Mizrahi and Palestinian municipalities. Although there was at that time a nationwide financial crisis, it should be noted that not even one Ashkenazi municipality faced a similar fate as the Mizrahi- and Palestinian-dominant municipalities. Israel’s customary way of rationalizing this crisis in the Palestinian municipalities was by attributing its occurrence to “Arab-style” corruption and irresponsible policies, coupled with their population’s “Arab” nature of tax avoidance, which led to the demolition of their municipal budget.¹⁷⁹ These allegations became easier to overcome and dismiss once it was possible to point to the fact that Mizrahi communities, as Jewish communities, suffered from the same crisis, which resulted from the two groups’ shared oppression in being positioned on Israel’s cultural, political, and financial periphery. The petitioners then argued that government had a duty to cease its lingering, disempowering ill-behavior and to order the payment of these employees’ salaries. The Court, now faced with the petitioners’ joint power, handled the two groups as one, and deliberated on mutual rights (to governmental support) rather than their separate obligations (to pay local taxes).¹⁸⁰

4.3) *The Right to Equality in Public Services*: Living mostly in the geographic periphery of Israel, Mizrahis and Palestinians suffer from similar deprivations of public services that both groups could, and should, challenge. For example, the founding of governmental hospitals requires a governmental/executive decision. Most of Israel’s hospitals are “naturally” located in the center of Israel, whereas its geographic peripheries—and the populations who live there—suffer from life-threatening lack of satisfactory medical services. Mizrahis and Palestinians should file mutual petitions that seek to compel government to activate its authority and vote in favor of placing government hospitals where they are needed.¹⁸¹

D. *Implications and Ramifications*

1) *Immigration and Naturalization Laws*: Naturalization rules, which are tightly related to the Law of Return, present another arena where the new, jointly-advanced struggle can take shape. The Law of Return statute

is particularly harmful for Palestinians because it is designated for Jews alone, thereby not allowing Palestinians to return to their homeland (note: I do not refer here to the Palestinians' right of return to their pre-war villages, but rather of letting them enter Israel and unite with their families).¹⁸² This statute was designed to promote the "Jewishness" of the Israeli state and maintain a Zionist aspiration of having a Jewish demographic majority.¹⁸³ In reality, however, the statute has been used in ways that may have actually, and ironically, contributed to a growing, disturbing phenomenon of immigrant youth who engage in anti-Jewish "neo-Nazi" activities inside of Israel itself.¹⁸⁴ Indeed, application of the Law of Return seems to have contributed to the unintended consequence of "old European style" anti-Semitism against Jews within a Jewish state.

2) *Regarding Non-Israeli Palestinians:* The Mizrahi-Palestinian "third space" analysis and its promise as a politico-legal strategy bares relevance mostly with regard to the fight against discrimination of Palestinians who hold Israeli citizenship.¹⁸⁵ The potential legal effect of such a "third space" should be further explored in an effort to expand its scope of influence. Here, I point briefly to a recent statutory demand that women be a part of the negotiation teams toward a permanent settlement with the Palestinians.¹⁸⁶ One can envision a parallel demand regarding Mizrahis as guaranteeing that a mutual Arab-sensitive characteristic will be inserted to any future peace settlement.¹⁸⁷

3) *The Basic-Laws' Paradox—The "Jewish and Democratic State" Dyad:* The main obstacle that every Palestinian legal battle encounters and must overcome is the one relating to the nature of the Israeli state as democratic as well as Jewish, the latter being a means of justifying many courts' refusals of, or hesitations to find for, Palestinian petitioners' claims.¹⁸⁸ Reconstructing Palestinian-Israeli relations from a Mizrahi point of view can alter the disposition of the petitioners on this dichotomy and thus force the courts to consider a more creative, innovative reasoning style. Considered under the "third space" conceptual framework, a Palestinian quest would not be read anymore as challenging the "Jewish" trait of Israel's constitutional paradigm, but rather its "Democratic" one. Similarly, an ethnic-based challenge, rather than a nationality-based one, will compel reconsideration of the deepest causes that generate discrimination against Palestinians and Mizrahis in disallowing their equality rights.

The debate over Israeli constitutionalism's two counterintuitive institutional commitments, to maintaining a "Jewish and Democratic" state, has been profuse and unending, yet also quite limited. Taking the distinctiveness of these two characteristics as given, scholars have contemplated their relations vis-à-vis one another as opposites, complements, parts of a hierarchical order, and so on.¹⁸⁹ By contrast, my reflection on this dyadic nexus

considers these two concepts to be much less separate and different from one another than might be seen at first glance. Re-reading these characteristics as open and interactive ideas, I contend that the "Jewish and Democratic" components in this dyad share an ethnic dimension that therefore brings them into close relation to each other. This dyad is self-evidently rooted in the Zionist idea of the state as Jewish yet European insofar as it is democratically secular and not religious. Still following Shenhav's line of thought, the dyad is expected to employ ethnic consciousness, yet again albeit in hidden fashion.

Articulating the "Jewish and Democratic" dyad anew has obvious ramifications. As introduced earlier, Israeli courts and the legislature limit rights of Palestinians in "social" arenas, where there is a supposed threat to the Jewish characteristic of Israel. Under this epistemology, the Supreme Court has, for example, declined to give Arabic a formal and institutional linguistic status alongside Hebrew. It did, however, allow the use of Arabic alongside Hebrew, thereby keeping its secondary status and preventing it from having any significant effect on the Jewish characteristic of Israel. A more interesting claim could be that the Jewish characteristic of Israel comprises the Arabic language as it serves as an integral part of Jewish tradition for Israelis of Arab descent, as opposed to the threatening manner in which it is traditionally perceived.¹⁹⁰ This claim is consistent with the possible call for revised broadcasting budget processes and allocations in order to promote understanding and appreciation of Palestinian and Mizrahi culture, social contributions, perspectives, and the like. Mizrahis, in particular, can offer this option of being "Jews" and also adhering to Arabic. On the same note, maintaining the democratic characteristic of Israel requires that Palestinians be immune from the confusion of their political struggle with the much simpler demand for recognition of their cultural rights as civil rights.

My analysis of this dyad's categories, therefore, invites complexity into the interpretation, which also broadens the scope of interpretation beyond what current reading of the issues and dynamics permits. To summarize, introducing a conceptual and discursive "third space" as a legal notion will create bridges towards social fraternity in Israeli society, as well as practical usages that will facilitate both Mizrahi and Palestinian quests for equality. Important questions remain as to whether and, if so, how this conceptual notion can turn into a practical reality.

V. POSSIBLE RESERVATIONS

Notwithstanding its enormous potential for destabilizing and dismantling existing power relations in Israeli society, I anticipate that the proposed analysis will encounter skepticism, mainly as a practical matter,

though perhaps also conceptually and theoretically. Here I consider a few probable objections to my project and offer some initial lines of counterargument.

A. *Jewish-Arab “Shared” Interests—Oxymoronic?*

My analysis may raise concerns that in the current Israeli sociopolitical structure, Palestinians and Mizrahis are positioned in a zero-sum; their demands are hence expected to be read as mutually exclusive, as often happens with minorities who must compete with one another during their quests for equal living and budget allocations.¹⁹¹ The case of the *Arab High Observance Committee*¹⁹² illustrates this point squarely. There the Court upheld a Palestinian plea to declare void a governmental rehabilitative plan that set out to improve education services in Israel’s periphery but excluded most Palestinian peripheral settlements from its scope of application. As a result, the whole plan was declared voidable and its positive mission was substantially threatened.¹⁹³ Nevertheless, in most cases, the interests of both groups when brought together will overcome a “divide and conquer” strategy and zero-sum anxieties. For example, a quest for any other similar periphery-based governmental plan that may be brought jointly or in unity before the Court will be discussed as “compelling” by virtue of its being brought forth indiscriminately by all peripheral communities in Israel—namely, mainly Mizrahis and Palestinians.

B. *Mizrahis and Israeli Political Divisions*

This author contends that Zionism has managed to conceal the dialectic through which discrimination against Mizrahis and Palestinians is at least partially administered,¹⁹⁴ and also, importantly, to turn the two minorities against one another. In today’s Israel, right-sided political parties (like the Likud) who stress Jewish-nationalist agendas enjoy wide support from Mizrahim, while the left side (Labor, Meretz), which stress a pluralistic democratic account of the state of Israel, enjoys support mostly from Ashkenazim.¹⁹⁵ The fact that the Mizrahim were forced to live in Israel’s frontiers in times of armed conflict also sharpens the feeling of animosity.¹⁹⁶ Under such a political structure, it seems unlikely to expect any significant Mizrahi-Palestinian cooperation.

Yet several lines of responses can be offered to this particular objection. One is that, prior to Ashkenazi occupation of the peace camp, Mizrahis were actually the first people to resist going to the army back in 1949. A second is that, nowadays, Mizrahi personalities such as Mordechai Vanunu and Tali Fahima stand at the forefront of the battle for peace,

despite being marginalized as “whores” (where female) and traitors (where male) while their Ashkenazi equivalents are often perceived as hero leftists.¹⁹⁷ A third response is that understanding the Mizrahi/Palestinian rift as belonging to the colonialization context, whereby Mizrahis were expected and taught to treat their “Arabness” as an extinguishable trait of their identity (rather than as integral to their being), brings new possibility of meliorating this hatred. Fourth, in the search for social passing toward establishing social mobility for the group, “Arabness” has become to Mizrahis a source of shame, blame, and humiliation.¹⁹⁸ Through this “third space” reconceptualization, however, “Arabness” can now serve as a source for positive social mobilization.

It is also important to ponder and then respond to a consideration which faces Palestinians alone: are they willing to associate themselves with Mizrahis in such a project of intergroup solidarity? Some Palestinian scholarly work, such as that of Azmi Bishara, indicates a likely refusal to see solidarity.¹⁹⁹ Ironically, such works ultimately derive influence from Said’s and they usually want to preserve some kind of distance from Jewish-Arab initiatives, albeit done within post-Zionist discourse. While such reluctance, on both sides, is to be expected, I contend that it can be countered through the constantly growing alliances that have recently sprung up in Israel. Intellectual discourse on this topic, conducted mainly by Mizrahis, has generated, and in some cases regenerated, Mizrahi-Palestinian alliances of grassroots groups who work together on shared interests and common battles. Activist groups are already working together to fight the discrimination that Palestinians and Mizrahis face—mainly in the fields of housing, workers’ rights, and land allocation. These efforts prove that joint Mizrahi-Palestinian potential exists and indeed has already taken effect. Moreover, in contrast to political actions, which by their nature must involve large numbers, the personalized nature of legal fights enables a handful of individuals to initiate large-scale change for the betterment of whole communities. Mizrahim, as other scholars have envisioned them, have a strategic role to play in building bridges between Palestinians and Israeli Jews.²⁰⁰

VII. CONCLUSION

Until now, sociocultural Mizrahi critiques of Mizrahis’ status and conditions in Israel, and in relation to those of Ashkenazis and Palestinians, has focused on discursive analyses rather than practical solutions to the unjust social stratification in Israel.²⁰¹ My own account of this criticism is that Mizrahi critiques have been locked in a zero-sum position between theoretically conceptualizing the problematic and working for remediation. This,

of course, is a false dichotomy, because discourse—including scholarly, cultural, and legal discourse—plays important roles in the construction of reality.²⁰² There is, nonetheless, much worth in having practical implications to any critique, and this article aims at enabling it here, as well.

On a methodological note, I would conclude by pointing out that Orientalism discourse has not yet been effectively and widely implemented in legal scholarship in general.²⁰³ Likewise, in Israel, though it has been embraced by a handful of disciplines, it has not yet managed to break through the legal system's positivist walls of de-politicization. My article, therefore, tries to make at least one break in these walls of disciplinary separation by exemplifying the potential embedded in colonial/post-colonial theories for enriching the meager style by which the discrimination/antidiscrimination legal discourse is fashioned. This article also shows that the 18th through 20th century power of colonial dominance over the "Orient" has not shifted into a solely-symbolic power (maintained by popular media misrepresentations, as Said argued), but rather that it also pervades the legal sphere, where it has substantial distributive effects. However, I argue that, along the lines of the general move into a more liberal, equality-striving society, this power has changed the configuration of Orientalism from being a manifestation of domination/subordination to being one that offers only limited remediation to its Orient victims.

My argument therefore takes Orientalism to be the starting point but not an ending one. Rather, Orientalism provides a fundamental context from which we should begin our reconstruction of "narratives of discrimination," which can result in a change in the "structures of antidiscrimination laws" and destabilization of the "dynamic of denial." Understanding how these structures are limited to the very-constrained and minimally-liberating power that the "sameness-difference" dichotomy, Orientalism offers the flexibility required to turn the dichotomy into a continuum for recognizing and addressing complex forms of discrimination. However, the reconstruction process of the Aristotelian equality principle should also be further attuned to the changing forms of Orientalist dominance, as well as the effects that other narratives of Orientalism lay down atop or next to post-colonialist critiques, projects, and struggles. I believe that Orientalist critique, coupled with its succeeding contemporary thoughts, still offers a productive tool for the sharpening of legal understandings and approaches to complex social situations and relations. My belief is embodied by choosing to concentrate on the most significant, and most denied, configurative narrative of Orientalism in the Mizrahi identity.

Finally, my work should not be read as to imply that Mizrahim are now the same Arab-Jews as they (perhaps) used to be. As Albert Memmi warned, "It is far too late to become Jewish Arabs again." In a way, this

stipulation admits the relative weakness of my own argument. However, as equality-targeted means, I consider the approach that I have worked to outline and advocate here as the best means by which Mizrahim can regain "difference" and realize their right to equality, in essence by trapping the legal system in its own definitional creations in order to encompass Mizrahis' and Palestinians' contextualized complexities. Doing so will broaden the concept of "difference" to new legal and other discursive spaces, where it can be read more substantively rather than formally, and as working within and against denied "difference," including through the imposition of "sameness."

NOTES

1. Associate Professor, College of Management School of Law (COMAS) Israel. Ph.D., The Hebrew University of Jerusalem and L.L.M., Yale University Law School. Co-founder and chair of Tmura, The Israeli Anti-Discrimination Legal Centre, which serves as the only civil society legal organization in Israel focusing on the rights of Mizrahis as a discriminated community. I wish to thank Peter Schuck for his useful and thoughtful comments on early versions of this article and to the participants of the Forum on Multidisciplinary Research at Yale University Law School (2008). Also, I thank Duncan Kennedy for his initial thoughts on this project. This article was made possible due to the generous support of the Émile Zola Chair for Interdisciplinary Human Rights Dialogue at the College of Management Academic Studies (COMAS). The general ideas presented in this article, and some specific discussions herein, also appear in my presentation to the UN International Meeting in Support of Israeli-Palestinian Peace, held June 18-19, 2013 in Beijing. *United Nations International Meeting in Support of Israeli-Palestinian Peace*, UNITED NATIONS INFORMATION SYSTEM ON THE QUESTION OF PALESTINE (UNISPAL) (June 19, 2013), <http://unispal.un.org/unispal.nsf/1ce874ab1832a53e852570bb006dfaf6/e47aa890f806ee1885257bd3004e0c32?OpenDocument>. See Yifat Bitton, *Discrimination Due to Arabness and the New Bridge for Peace for Israel and Palestine*, UNITED NATIONS INFORMATION SYSTEM ON THE QUESTION OF PALESTINE (UNISPAL) <http://www.un.org/depts/dpa/qpal/docs/2013Beijing/P3%20Yifat%20Bitton%20E%20LONG%20-%20FOR%20WEBSITE.pdf> (last visited April 12, 2014).

2. EDWARD W. SAID, *ORIENTALISM* (1979) [hereinafter Said, *Orientalism*].

3. See Robert Nicholson, *Legal Intifada: Palestinian NGOs and*

Resistance Litigation in Israeli Courts, 39 SYRACUSE J. INT'L L. & COM. 381, 403 (2012).

4. Using the term “Israeli citizen Palestinians,” I wish to distinguish those Palestinians who reside in Israel from those Palestinians who reside in the Occupied Territories, Gaza Strip, and in the Diaspora. I separate the groups for the limited strategic purpose of this article only, since the civil—as opposed to militarist—Israeli legal system applies to the formers alone.

5. Alliance between these two groups will require overcoming substantial difficulties, which I believe can be solved. *See infra* Parts V-VI.

6. ISSACHAR ROSEN-ZVI, *TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL* 10 (2003). Forty-six percent of Jewish Israelis are Mizrahis and 41 percent are Ashkenazis. The remaining 13 percent are newly arrived immigrants, which are not categorized through this traditional division. Although it is true that some of the newly arrived Jewish immigrants, many of whom come from Russia, suffer economic hardship, their hardship does not reach the same extent as that suffered by the poorest Mizrahim. Moreover, as opposed to the Mizrahim’s static position, the transitional position of Russian immigrants in Israel suggests that they have a high prospect of acquiring a satisfactory status in Israeli society. *See* Michael Schulz, *Israel between Conflict and Accommodation: the Transformation of Collective Identities* (1996) (Diss. Thesis, Gothenburg University). Russian immigrants enjoy Ashkenazi networking, and their transitional position in Israel is part of the usual, well-known immigration absorption difficulties that all immigrants usually suffer. In contrast to the impression shared by many, this group became fairly well-integrated in Israeli society and is relatively better integrated than are the Mizrahim or Ethiopian Jews. *Id.* at 157.

7. The term “Ashkenazim” relates mostly to Jews of European descent. This term is used in Israeli sociology to include American and Russian Jews, as well. It is easier, in this respect, to relate to a more broadly defined categorization than the definition offered by geographically based characteristics. For example, Ethiopian Jews are not considered Mizrahim, let alone Ashkenazim, but are by far one of the most discriminated-against groups among Jewish society in Israel.

8. Helán Page & R. Brooke Thomas, *White Public Space and the Construction of White Privilege in U.S. Health Care: Fresh Concepts and a New Model of Analysis*, 8 MED. ANTHROPOLOGY Q. 109, 111 (1994) (“ . . . [W]hite public space is comprised of all the places where racism is reproduced by the professional class. That space may entail particular or generalized locations, sites, patterns, configurations, tactics, or devices that routinely, discursively, and sometimes coercively privilege Euro-Americans over nonwhites.”).

9. Recent research reveals that Mizrahis amount to only nine percent of all Israeli academics. Israel Blechman, *The Ethnic Composition of Research Universities in Israel*, 33 *THEORY & CRITICISM* 191 (2008) (in Hebrew). In the legal field, this number drops to as little as six percent. Yifat Bitton, *Mizrahis and the Law: Absence as Existence*, 41 *MISHPATIM* 455, 474–85 (2011) [hereinafter Bitton, *Absence as Existence*].

10. Duncan Kennedy, *Frontier of Legal Thought III: A Cultural Pluralist Case for Affirmative Action in Legal Academia*, *DUKE L. J.* 705, 713 (1990).

11. Jane Flax, *Beyond Equality: Gender, Justice, and Difference*, in *BEYOND EQUALITY AND DIFFERENCE*, 193-210, 193 (Gisela Bock & Susan James, eds., 1992).

12. *Compare* *AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 517 (4th ed. 2006) (“the ability or power to see or make fine distinctions”) [hereinafter *AMERICAN HERITAGE*], *and* *MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY* 358 (11th ed. 2005) (“the quality or power of finely distinguishing”), *and* *RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY* 564 (2d ed. 2001) (“the power of making fine distinctions”) [hereinafter *WEBSTER’S UNABRIDGED*]. *See* Owen Fiss, *Groups and the Equal Protection Clause*, 5 *PHIL. & PUB. AFF.* 107, 157 (1976) (using the term “antidiscrimination principle” to refer to a principle against distinction-making). The flipside of this notion of discrimination lays in Western law’s view of equality as stemming from Aristotle’s notions of sameness and difference, according to which equality is guaranteed only to those who are “similarly situated,” meaning “alike.”

13. This notion is compatible with Foucault’s perception of discrimination as an instrument for proactively establishing identities and differences. *See* CHRIS HORROCKS & ZORAN JEVTIC, *INTRODUCING FOUCAULT*, 64 (1999).

14. *Accord* *AMERICAN HERITAGE*, *supra* note 12, at 3184; *WEBSTER’S UNABRIDGED*, *supra* note 12, at 1525.

15. *See supra* note 1220. However, even broadest notions of “antidiscrimination as antistatutory subordination” still acknowledge that subordination pertains to “different” and “identifiable” groups. Both of these notions are briefly and effectively reviewed in Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antistatutory Subordination?* 58 *U. MIAMI L. REV.* 9 (2003).

16. Martha Minow describes this as the failure of rights analysis to escape the dilemma of difference. *See* MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW*, 147 (1990).

17. I borrow this idea from Raef Zreik’s analysis of the non-Israeli-Palestinians as being located outside a frame of belonging to the Zionist

vision. Non-Israeli-Palestinians were described externally (e.g. “outside the frame”) rather than internally (or as a “missing part” that has to be built into the framework of Israeli society). Being situated in externally results in legal analysis devoid of a common normative ground on which their conflict can be adjudicated. Raef Zreik, *Palestine, Apartheid, and the Rights Discourse*, 34 J. PALESTINE STUD. 68, 72-73 (2004).

18. For the difficulties embedded in intersectionality, see, e.g., Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in U. CHI. LEGAL F. (1989) 139 (1989).

19. Most notably, feminists have objected to the notion of “difference” when exposing patterns of prejudice against women that the legal system has masked by ideas about difference and justified differential treatment. See Luce Irigaray, *‘Frenchwomen,’ Stop Trying, in THIS SEX WHICH IS NOT ONE* 189 (1985).

20. See Fiss, *supra* note 12.

21. *Id.* at 108.

22. The “ill fit” account of the antidiscrimination principle refers to scrutinizing discriminatory acts for whether they are arbitrary or justified, based on fitting the purpose of the discrimination with the act or aim in question. In the case that the discriminatory criterion applied results in an over-inclusive or under-inclusive result, the discrimination will be considered wrong and prohibited. *Id.* at 110-111.

23. “Difference” has been associated with prejudice rather than “distinction” in other fields as well. See Martha T. McCluskey, *Rethinking Equality and Difference: Disability Discrimination in Public Transportation*, 97 YALE L. J. 863 (1988).

24. Fiss, *supra* note 12, at 147-157.

25. CATHERINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSE ON LIFE AND LAW*, 32-45 (1987). See also Ann Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L. J. 1373, 1378 (1986) (claiming that in sex discrimination doctrine, “the ‘relevant’ differences have been and always will be those which keep women in their place”).

26. Kathryn Abrams, *Symposium: Discrimination and Inequality Emerging Issues Afterword: Critical Strategy and the Judicial Evasion of Difference*, 85 CORNELL L. REV. 1426 (2000). RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS*, 142 (1993).

27. Abrams, *supra* note 26, at 1439-1442 (pointing to a set of reasons for judicial difference evasion, including psychological, philosophical and jurisprudential, and the ways to ameliorate their effect).

28. Stuart Hall, *Who Needs Identity?*, in *IDENTITY: A READER* 15-30, 15 (Paul De Gay et al., eds., 2000).

29. MINOW, *supra* note 16, at 51.

30. *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).

31. See Yifat Bitton, *The Limits of Equality and the Virtues of Discrimination*, 2006 MICH. ST. L. REV. 59 (2006) [hereinafter Bitton, *Limits of Equality*].

32. MINOW, *supra* note 16, at 20.

33. *Id.* at 47. Minow raises the further questions “How can historical discrimination on the basis of race and gender be overcome if the remedies themselves use the forbidden categories of race and gender? Yet without such remedies, how can historical discrimination and its legacies of segregation and exclusion be transcended?”

34. *Id.* at 111.

35. IRIS M. YOUNG, *INCLUSION AND DEMOCRACY* (2002); *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990).

36. MINOW, *supra* note 16, 83-120.

37. YOUNG, *INCLUSION AND DEMOCRACY* *supra* note 35, at 82-83.

38. See Fiss, *supra* note 12, at 129-130.

39. NANCY FRASER, *JUSTICE INTERRUPTUS: CRITICAL REFLECTIONS ON THE ‘POSTSOCIALIST’ CONDITION* (1997).

40. See the elaborate criticism in Iris M. Young, *Unruly Categories: A Critique of Nancy Fraser’s Dual Systems Theory*, 222 *NEW LEFT REV.* 147 (1997).

41. I draw this conclusion in a previous paper, in which I show that antidiscrimination discourse proves much more effective for groups who suffer from *de jure* discrimination and far less so for groups who suffer from *de facto* discrimination, as the *de jure* discrimination is a more recognized and structured form of “discrimination” than is *de facto* discrimination. See Bitton, *Limits of Equality*, *supra* note 31.

42. HCJ 528/88 Avitan v. Israeli Land Authority 43(4) PD 297 [1989] (Isr.); HCJ 153/87 Shakdiel v. Minister of Religious Affairs 42(2) PD 221 [1988] (Isr.); HCJ 4541/94 Miller v. Minister of Defense, 49(4) PD 94 [1995] (Isr.); HCJ 678/88 Kfar Vradim v. Minister of Treasury, 43(2) PD 501, 507 [1989] (Isr.); HCJ 1703/92 C.A.L. Airlines v. Israel Prime-minister 52(4) PD 193, 235 [1998] (Isr.) (“discrimination is different treatment of equals and equal treatment of different”).

43. See Carmit Yefet, *Unchaining the Agunot: Enlisting the Israeli Constitution in the Service of Women’s Marital Freedom*, 20 *YALE J.L. & FEMINISM* 441 (2009) (providing extensive exploration of the shift in the status of the right for equality in Israel).

44. Until recently, all discrimination pleas were judged by a unified test,

regardless of the basis for discrimination. This practice seems to have changed a bit, now that the Supreme Court has stated that some categorizations are more particularly troubling than are others.

45. HCJ 453/94 Women's Lobby v. Israeli Government, 48(5) PD 501[1994] (Isr.) [hereinafter Women's Lobby]; HCJ 1113/99 *Adala v. Minister of Religions*, 54(2) PD 164, 182 [2000] (Isr.); 10026/01 *Adala v. Israel Prime-minister*, 57(3) PD 31[2003] (Isr.).

46. Women's Lobby, at 565; HCJ 104/87 Nevo v. High Labor Court, 44(4) PD 749, 759 [1990] (Israel). In America, courts developed the disparate impact doctrine to interpret title VII of the Civil Rights Act of 1964. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The U.S. Supreme Court has rejected the disparate impact approach for equal protection claims. See *Washington v. Davis*, 426 U.S. 229 (1976).

47. See Edward Said, *An Ideology of Difference*, 12 CRITICAL INQUIRY 38 (1985) [hereinafter Said, *Ideology of Difference*].

48. Mexican-Americans, as a group, provide a good reference point for American readers of this article, as that group has suffered from *de facto* rather than proven *de jure* discrimination. See Bitton, *Limits of Equality*, *supra* note 31, at 594. At this crucial point however, Mizrahim still differ from Mexican-Americans, insofar as the Mizrahim have no point of departure from the Ashkenazim due to the two groups being linked legally by Jewish identity and Israeli citizenship. Additionally, the practice of creating a symbolic "other," namely, the Arab natives, has more strongly affected Mizrahis' sense of sameness as sharing with Ashkenazis, a united hegemony over Arabs. By comparison, in the United States, the beneficiaries of the African-American "otherness" were not Mexican-Americans or other racial, ethnic, linguistic, or nationally-identified groups, but rather poor whites and eventually white women. See Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1381-1382 (1988); Sally Kohn, *Affirmative Action Has Helped White Women More than Anyone*, TIME (Jun. 17, 2013) <http://ideas.time.com/2013/06/17/affirmative-action-has-helped-white-women-more-than-anyone/> (last visited April 4, 2014).

49. I adhere to antidiscrimination laws as the best available legal tool to combat discrimination given the inherent limitations of the law as a means to achieve social, and more particularly, racial justice. See generally Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); *Violence and the Word*, 95 YALE L.J. 1601 (1986).

50. YEHOUDA SHENHAV, THE ARAB JEWS: POSTCOLONIAL READING OF

NATIONALISM, RELIGION, AND ETHNICITY 17 (2006) [hereinafter SHENHAV, THE ARAB JEWS].

51. Yifat Bitton, *Finally, Our Own Brown! (?)*, 45(2) ISRAEL L. REV. 267, 269 (2012) [hereinafter Bitton, *Our Own Brown!*].

52. Ethnocracy is a political regime that, in contrast to democracy, is instituted on the basis of *qualified* rights to citizenship, and with ethnic affiliation (defined in terms of race, descent, religion, or language) as the distinguishing principle for citizenship/noncitizenship. The *raison d'être* of the ethnocracy is to secure that the most important instruments of state power are controlled by a specific ethnic collectivity. All other considerations concerning the distribution of power are ultimately subordinate to this basic intention. Ethnocracies are characterised by their control system – the legal, institutional, and physical instruments of power deemed necessary to secure ethnic dominance. See Oren Yiftachel, *Nation-Building and National Land: Social and Legal Dimensions*, 21 IYUNEI MISHPAT 637 (1998); *Nation-Building or Ethnic Fragmentation? Ashkenazim, Mizrahis and Arabs in the Israeli Frontier*, 1 SPACE & POLITY 149 (1997); *Israeli Society and Jewish-Palestinian Reconciliation: Ethnocracy and Its Territorial Contradictions*, 51 MIDDLE EAST J. 505 (1997); Alexander (Sandy) Kedar, *The Jewish State and the Arab Possessor, 1948-1967*, in THE HISTORY OF LAW IN A MULTICULTURAL SOCIETY - ISRAEL 1917-1967 311 (Ron Harris, Alexander Kedar, Pnina Lahav & Asaf Likhovski, eds., 2002).

53. Adva Center, a non-partisan, action-oriented Israeli policy analysis center, is one of the rare reliable sources for collecting and analyzing data regarding Mizrahis in society. Most of the data presented here is taken from the Adva Center website. See Shlomo Swirsky, Eti Conon-Atias, Hala Abu-Chala, *Annual Information on Equality & Social Justice in Israel 2008/2009*, ADVA CENTER, <http://www.adva.org/uploaded/tmunat%20mazav%202009%20final.pdf> (last visited April 4, 2014). The data relate to indisputable differences in education and employment between Ashkenazis (“A”), Mizrahis (“M”), and Palestinians (“P”), as revealed in percentages. In terms of eligibility for high school diploma, out of every group’s potential students: 67 A/46 M/32 P. For entry to universities: 31 A/ 22 M/ not reported P. See also Iris Zarini, *Academic Periphery, Social Periphery: Mizrahi Professors in Israel*, in TO MY SISTER, FEMINIST, MIZRAHI POLITICS 143, 144 (Shlomit Lir, ed., 2007). In employment contexts, Ashkenazis earn 39 percent more than Mizrahis and 69 percent more than do Palestinians. Ashkenazis hold 54 percent of academic, managerial, and professional positions, compared with 29 percent by Mizrahis. Mizrahis statistically dominate Ashkenazis in the areas of clerical, sales, and service employment (30 M/ 23 A) and blue-collar labor (40 M/22 A). As to

unemployment rates, of out each group's total population: 1.5 A/7.5 M/10 P.

54. In the words of the head of the Jewish Agency who allocated housing to the coming immigrants, "preference should be twofold: a. the Polish Jews should be given a higher priority for housing. b. (. . .) better benefits in the camps. . ." See TOM SEGEV, 1949—THE FIRST ISRAELIS 173 (1984).

55. Hubert Lu-Yon & Rachel Kalush, *Housing in Israel: Policy and Inequality*, ADVA CENTER (September 1994) [hereinafter Lu-Yon & Kalush, *Housing in Israel*].

56. Erez Tzfadia & Oren Yiftachel, *Between urban and national: Political mobilization among Mizrahim in Israel's 'development towns,'* 21(1) CITIES 41, 44-45 (2004).

57. See Oren Yiftachel, *Nation-Building or Ethnic Fragmentation? Ashkenazim, Mizrahim and Arabs in the Israeli Frontier*, 1 SPACE & POLITY 2, 149-169 (1997) [hereinafter Yiftachel, *Nation-Building or Ethnic Fragmentation?*]; Lu-Yon & Kalush, *Housing in Israel* *supra* note 55.

58. In light of the numerical proportions of Israeli society as discussed in note 53 *supra*, the word choice of "minority" to describe Mizrahis signifies political powerlessness rather than numerical disadvantage. The dominance of a hegemonic group in society derives from its possession of power to dictate to other groups the basic rules and structures upon which that society is founded and through which it operates. Being a "minority," therefore, signifies a process of disempowerment. I use the terminology of "minority" to describe other disempowered groups throughout this article, as customary in Critical Race Theory.

59. A study led by Dr. Nissim Mizrahi of Tel Aviv University examined three randomly-chosen "integrative schools" in Netanya, a city known for its cultural diversity. The study's conclusion can serve to demonstrate the probable situation on segregated schools. See Nissim Mizrahi, et al., *"I don't want to see it": Decoupling Ethnicity and Class from Social Structure in Jewish Israeli High Schools*, 32 ETHNIC & RACIAL STUD. 1203 (2009).

60. Such as desolate development towns, which are under-developed cities built in the wilderness of Israeli periphery. Oren Yiftachel & Erez Tzfadi, *State, Space, and Capital: Immigrants in Israel and Sociospatial Stratification*, in THE POWER OF PROPERTY: ISRAELI SOCIETY IN THE GLOBAL AGE 197 (Dani Filk & Uri Ram, eds., 2004).

61. Israel Blechman, *The Ethnic Composition of Research Universities in Israel*, 33 THEORY & CRITICISM 191 (2008).

62. See Zarini, *supra* note 53. I extracted statistics regarding the following universities: Hebrew University, Tel Aviv, Haifa, Bar Ilan, Ben-Gurion and the Technion.

63. Interestingly, the law faculty is considered the most prestigious of academic schools. This fact is reflected in the ethnic breakdown of the law faculty, where there the percentage of Mizrahi academics is the lowest. By contrast, the faculty of social sciences, which is considered by most as the least prestigious, has the highest percentage of Mizrahis in its academic staff. See Gad Yair & Didi Shamas, *Ethnic Bias or Academic Neutrality at the University: Consequences for Affirmative Action*, in AFFIRMATIVE ACTION AND EQUAL REPRESENTATION IN ISRAEL 495 (2004).

64. The data drawn comes from my own research. See Bitton, *Absence as Existence*, *supra* note 9, at 460. I examined the staffing of 12 of Israel's law faculties. I excluded Sapir College, whose staff seemed to be in its formative stages, and therefore no accurate portrayal can be given. I also excluded from the review six staff members whose ethnic origins were unclear. However, even assuming that all six are of Mizrahi origin would only raise the percentage of Mizrahis to 7.5 percent. The percentage of Arab staff is even more disturbing – a mere 2.5 percent, with only one woman. Due to a lack of cooperation on the part of the staff, I could not examine the ethnic composition of all the different faculties. This lack of cooperation is indicative of an overall social phenomenon characterizing studies in this field. Similar difficulties occurred in studies conducted by Yair & Shamas *supra* note 63, and Mizrahi, *supra* note 59, as those researchers report.

65. Yinon Cohen, *Socioeconomic Gaps Between Mizrahim and Ashkenazim, 1975-1995*, A(1) ISRAELI SOC. 115 (1998). For a structural analysis of the Israeli job market as based on ethnicity-status, see Shlomo Swirski & Deborah Bernstein, *Who Worked Where, for Whom and for What: Economic Development in Israel and the Emergence of an Ethnic Division of Labor*, in NOTEBOOKS FOR RESEARCH AND CRITIQUE (1980).

66. For a Marxist analysis of the status of Mizrahis, see SHLOMO SWIRSKI, *ORIENTALS AND ASHKENAZIM IN ISRAEL: ETHNIC DIVISION OF LABOR* (1981).

67. See *supra* note 53. For a more concise portrayal of social realities in Israel, see Iris Garby & Gal Levy, *The Socio-Economic Gap in Israel*, in THE ISRAELI DEMOCRACY INSTITUTE POSITION PAPER SERIES (2000).

68. See Garby & Levy, *supra* note 67, and SWIRSKI, *supra* note 66.

69. See also *supra* note 53.

70. Yagil Levy, *Militarizing Inequality: A Conceptual Framework*, 27 THEORY & SOCIETY 873, 890 (1998) [hereinafter Levy, *Militarizing Inequality*] (indicating that the army is a mechanism of the establishment, which "reproduces" the inequality in Israeli society). For a more extensive description of the relationship between the army and Mizrahis, see YAGIL

LEVY, FROM THE “PEOPLE’S ARMY” TO THE “ARMY OF THE PERIPHERIES” (2007).

71. Mizrahi cultural institutions receive minimal shares of the total official budget allocated to cultural expenditures and support. For example, of the total Israeli orchestra budget, Mizrahi orchestras were granted seven percent in 2008 and four percent in 2009. *See* DATA REPORT: CULTURE BUDGET ALLOCATION IN ISRAEL, 2009 (a report submitted by the “My Heart is in the East” coalition of human rights NGOs to Israel’s Minister of Culture; the coalition did not publish this report, or anything else, in English).

72. For Mizrahi representation in satire and pop-culture, *see* Galit Saada-Ophir, *Borderland Pop: Arab Jewish Musicians and the Politics of Performance*, 21 *CULTURAL ANTHROPOLOGY* 205 (2006). For the stereotypical representation of Mizrahis in Israeli cinema, *see* ELLA SHOHAT, *ISRAELI CINEMA: HISTORY AND IDEOLOGY* (1991) [hereinafter SHOHAT, *ISRAELI CINEMA*] and Dorit Dayan, *The Representation of Mizrahis in Short Commercial Films in Israel Between 1950-2000* (2003) (unpublished M.A. thesis, Bar Ilan University), available at http://sifria2012.lnx.biu.ac.il/F/TYMB5JQ3I5G3SUKF6BH2NE22HTUEGVNAKMMJ8B45YXVKURKQQ9-55568?func=find-acc&acc_sequence=003137933. For the distortion of the Mizrahi figures in pop-culture, *see* Yifat Ben-Hay-Segev, *Mizrahim in Israel Talk About Prime-Time Television Shows* (2007) (Ph.D. dissertation, Bar Ilan University), available at http://sifria2012.lnx.biu.ac.il/F/LQYVC6KVJYQYQ2D4SABE41DPKMLRFVGGQJ5HRDK4JM8569FMAJL-57679?func=find-acc&acc_sequence=000744888. For the distortion of the Mizrahi figure in literature, *see* DROR MISHANI, *THE ETHNIC UNCONSCIOUS: THE EMERGENCE OF ‘MIZRAHIYUT’ IN HEBREW LITERATURE* (2006) (analyzing the Mizrahi stereotypes presented in the Israeli literary masterpieces *Black Box* by Amos Oz, *Individual Infiltration* by Yehoshua Kenaz, and *Five Seasons* by A. B. Yehoshua). *See also* Hanan Hever, *Color and Race in Israeli Fiction*, in *RACISM IN ISRAEL* 119 (2008).

73. Erez Tzfadia, *Immigrants in Peripheral Settlements in Jewish Settler Society* (2003) (Ph.D. dissertation, Ben-Gurion University), available at https://lib20.bgu.ac.il/F/HHDSK8B37DPUGEYC2YXRKK5GTCDRF2SYA7L97GMCBHLG2JJ2A1-46927?func=full-set-set&set_number=000617&set_entry=000006&format=999 (examining Israel’s immigration and settlement policies for Mizrahi immigrants to Israel as a basis for their inferior status and as distancing them from cultural, political, and economic power sources); Adriana Kemp, *Borders, Space and National Identity in Israel*, 16 *THEORY & CRITICISM* 13 (2000); Benny Nuriely, *Strangers in a*

National Space: Arab-Jews in the Palestinian Ghetto in Lod, 26 THEORY & CRITICISM 332 (2005).

74. For systematic and historical analysis of the discrimination of Mizrahis in housing and property policies, see Claris Harbon, *Law, Society and Politics* (2008) (M.A. thesis, Tel Aviv University), available at (http://alephprd.tau.ac.il/F/S9S9CHNIX5JR49APUQDMAJ79K6X847CM5I18CDFGYB4RD6TUI6-04408?func=find-acc&acc_sequence=011585696).

For a more concise analysis, See Garby & Levy, *supra* note 67, at 29-52.

75. See the study results, as published in the Ministry of Justice's website: ISRAEL MINISTRY OF JUSTICE, (July 2010), <http://www.justice.gov.il/NR/rdonlyres/309D5062-8CAF-4540-8C30-78030C50DB4F/21292/se.pdf>.

76. Although the situation reported on seems more "consequential" than "normative," despite the widespread belief that the racism and discrimination of the 1950's are no longer as prominent, it is not uncommon that key Israeli public figures speak in a racist manner toward Mizrahis. For example, Haim Hefer, a well-known poet, noted the "lack of culture" in the Moroccan ethnic group. Natan Zach, yet another respected poet, has also spoken similarly (in a TV interview, recently describing Mizrahis as "cavemen" who appreciate violence).

77. See Levy, *Militarizing Inequality*, *supra* note 70, at 898 (describing the Mizrahis progress in Israel: "As privileged and subordinated groups alike attain upward mobility, their positions might be changed, but not the power relations between them as long as that mobility occurs within the previously constructed confines and point of departure of each group. Here is the genesis of the syndrome in which subordinated groups find themselves 'going up a downward escalator'.")

78. Momi Dahan, Eyal Dvir, Natalie Mironichev & Samuel Shye, *Have the Gaps in Education Narrowed*, 1(2) ISRAEL ECON. REV. 37 (2003) (documenting increase in the education gap in Israel).

79. BARUCH KIMMERLING, *THE END OF ASHKENAZI HEGEMONY* (2001).

80. It was not until the late 1990s that Ehud Barak, then leader of the traditional Ashkenazi hegemony party Ma'arach, asked for the Mizrahim's forgiveness for all their suffering. Mizrahim generally considered this action to be a pre-election strategy rather than a sincere request, since his apology was general and ambiguous and did not admit guilt or suggest correction. Rather, Barak's apology was an attempt to ask the Mizrahim to join Ma'arach. Meanwhile, this apology, although partial and minimal, resulted in angry responses from Ashkenazim who considered it an admission of something that they believed had never happened. Another interesting example of the political blurring of the discrimination is evident in the analysis of the political platform of the Knesset parties in 1996.

None of the Knesset explicitly addressed the Mizrahi issue, except for vaguely mentioning the “ethnic” equality by one party on the political left. The only party that overtly addressed the issue was “Shas,” a Mizrahi-based party that called for the revival of Mizrahi pride. For a discussion of the unique phenomenon that Shas constitutes in Israeli politics, see GAD BARZILAI, *COMMUNITIES AND LAW – POLITICS AND CULTURES OF LEGAL IDENTITIES* 260-278 (2003).

81. Pnina Lahav, *Assessing the Field. New Departures in Israel Legal History, Part Three: A “Jewish State . . . to Be Known as the State of Israel:” Notes on Israeli Legal Historiography*, 19 *LAW & HIST. REV.* 387, 414 (2001). See also Uri Ben Eliezer, “*Negro, Pegro, Bili-Bili Pegro: How a Jew becomes Black in the Promised Land*, in *RACISM IN ISRAEL* 130 (2008) (on the Eurocentric foundations formatting immigration to Israel); Schulz, *supra* note 6, at 157.

82. This myth had, of course, no support. For example, many of the Moroccan Jews, who were considered the most inferior of the Mizrahim, were shocked to find how underdeveloped Israel was when they immigrated. Another example are the Yemenis, almost all of whom came from a very strict educational culture and were “Torah”- and “Talmud”-learned persons. See Ella Shohat, *Reflections by an Arab Jew*, Bint Jbeil, http://www.bintjbeil.com/E/occupation/arab_jew.html (last visited April 4, 2014) [hereinafter Shohat, *Reflections by an Arab Jew*].

83. BARZILAI, *supra* note 80.

84. Dahan-Kalev, *Ethnicity in Israel*, *infra* note 132, at 94, describes how the erasure of Mizrahi knowledge and cultural expression, through silencing and removing it from the Israeli textbooks and consciousness, created a second generation with dependent and frustrated identity characteristics. See also SHENHAV, *THE ARAB JEWS*, *supra* note 50.

85. This perception is usually accompanied with some sense of nostalgia, acknowledging the existence of Mizrahis as a category relevant to Israel’s past, even at times shameful history, namely the years of the significant immigration to Israel, mainly through the 1950s.

86. See SHENHAV, *THE ARAB JEWS*, *supra* note 50, 11-12. However, Shenhav does not present the first perception of nonexistence that I introduce. This is, in my opinion, missing the most simple and casual mode of denial practiced by everyday interactions I have with Israeli people, Ashkenazis and Mizrahis alike.

87. Gayatri Chakravorty Spivak, *Subaltern Studies: Deconstructing Historiography*, in *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* 197, 205 (1987) (“I would read [the Subaltern Studies Group’s text] then, as a *strategic* use of positivist essentialism in a scrupulously visible political interest [. . .] This would allow them to use the critical force of anti-

humanism [. . .] even as they share its constitutive paradox: that the essentializing moment, the object of their criticism, is irreducible.”).

88. SHENHAV, *THE ARAB JEWS*, *supra* note 50, 12-16.

89. The notion of recognition and distribution demands as distinct from each other is embedded in theoretical analysis of justice structures. *See* FRASER, *supra* note 39, 13-15.

90. Unfortunately, I am one of only two legal scholars involved with this exploration as a main research concern. Claris Harbon, who is currently a Ph.D. candidate at McGill University Law School is, to my knowledge, the only other Mizrahi legal scholar who critically analyzes the legal status of Mizrahim. Harbon focuses mostly on property rights, land distribution, and public housing issues.

91. Elsewhere, I have set a discrimination typology that sheds light on the processes that shape this phenomenon, namely the use of *de facto* discrimination alone to discriminate against a group in a legal system whereby antidiscrimination adjudication and remedy is synchronically administered by *de jure* venues. *See* Yifat Bitton, *Wishing for Discrimination? A Comparative Gaze on Categorization, Racism and the Law*, 2 SORTUZ: ONATI J. OF EMERGENT SOCIO-LEGAL STUD. 39 (2008) [hereinafter Bitton, *Wishing for Discrimination?*].

92. Law of Return, 5710-1950 SH No.51 at 159 (1950) (Isr.) (also known as the law of “Shevut”).

93. Nationality Law, 5712-1952 SH No.95 at 146 (1952) (Isr.). *See also* THE DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL, May 14, 1948 (“In the state of Israel the Jewish people have raised.”).

94. Yossi Yonah, *Israel’s Immigration Policies: The Twofold Face of the “Demographic Threat,”* 10 SOCIAL IDENTITIES 195 (2004).

95. For the legislative history of the Jewish land ownership principle, *see* DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL*, 49-76 (1990).

96. Studies on identity perception reveal an interesting dissonance through which Mizrahis identify more with being a part of the Jewish people than with being Israeli citizens, whereas Ashkenazis identify themselves primarily as Israeli citizens. Schulz, *supra* note 6, 253-56. One shocking datum indicates that Israeli Arabs are more likely than are Mizrarim to identify as Israelis.

97. Lahav, *supra* note 81.

98. HCJ 152/71 Kremer v. Municipality of Jerusalem 25(1) PD 767 [1971] [Isr.].

99. The plan’s adoption, which occurred in a non-legislative manner, allowed for the continuing dynamic of Mizrahis remaining unmentioned. *See* Michael Chen & Audrey Addi, *Community Politics: School Reform and*

Educational Achievement, in EDUCATIONAL ADVANCEMENT AND DISTRIBUTIVE JUSTICE: BETWEEN EQUALITY AND EQUITY 341 (Reuven Kahana ed., 1995).

100. SAMI SHALOM CHETRIT, THE MIZRAHI STRUGGLE IN ISRAEL: BETWEEN OPPRESSION AND LIBERATION IDENTIFICATION AND ALTERNATIVE 1948-2003 (2004) [hereinafter CHETRIT, THE MIZRAHI STRUGGLE]. For more information about this second-generation Mizrahi social movement and the 1971 demonstration, see A. Kramer, *On the 30th Anniversary of the Black Panthers Movement in Israel* (Aug. 20, 2002), <http://www.marxist.com/israel-black-panthers200802.htm> (last visited April 16, 2014).

101. I thank Claris Harbon for acknowledging this point.

102. See *Kremer v. Municipality of Jerusalem*, *supra* note 98, at 771.

103. For detailed analysis of the cases following *Kremer* up to the present, see Bitton, *Wishing for Discrimination?*, *supra* note 91, 36-40.

104. HJC 1/81 Shiran v. Israel's Broadcast Authority 35(3) PD 365 [1981] [Israel].

105. *Id.* at 20. For historical context, at the time Israel had only one national regulated television network, which enjoyed a complete monopoly over this Israeli entertainment space. Israeli citizens were also compelled to pay for the services this network supplied, regardless of its content. The network's voice, therefore, was in fact "the voice of the nation." This fact has been fully acknowledged by the Court.

106. *Id.* at 21.

107. The interview was held in Hebrew and can be found at, Interview with Sarah Leibowitz, "*Eastern Jewry*" had no role in the establishment of the state, (October 10, 2010), <http://www.nrg.co.il/online/47/ART2/294/414.html> (last visited Apr. 16, 2014).

108. HCJ 244/00 The New Discourse Movement v. Minister of National Infrastructure PD 56(6) PD 25 [2002] [Isr.].

109. *Id.* at 47.

110. *Id.*

111. Prohibition of Discrimination in Products, Services and Entry to Amusement Facilities and Public Places Law, 5761-2000, SH No.1765 p.58 (Isr.), as amended by SH No. 1995 p. 332, and SH No. 2293 p. 784 [hereinafter Israeli Civil Rights Act].

112. In specific, the statute relates, as *numerus clausus*, to: ". . .race, religion or religious group, nationality, country of origin, sex, sexual orientation, view, political association, personal status or parenthood." Art. 3(a). The basis of "country of origin" can be used to fight against discrimination of Mizrahis born abroad. However, most of the Mizrahi population would find this basis useless, given that they are of the second

and third generation of Mizrahi people born in Israel. Three years ago, "disability" was added to the statute's list. Disabled People's Rights Act, 5765-2005, SH No.5, p.332, adding art. 3(e) (Isr.).

113. The statute, its history of origin, and its usage can be found in Bitton, *Absence as Existence*, *supra* note 8, at 486-507.

114. Many Mizrahim, mainly those of Moroccan origin, who comprise the majority of Mizrahim, have light skin tones but will still be identified as Mizrahis. In this respect, therefore, using the skin-tone criterion as discriminatory is problematic since it shapes the discrimination from which Mizrahis suffer as anchored in individualistic, rather than collective perceptions of "otherness."

115. See CHETRIT, *THE MIZRAHI STRUGGLE*, *supra* note 100, at 105. Chetrit documents a rare yet brutal case in which a judge mentions, pejoratively, a Mizrahi defendant's identity, albeit in a court protocol (which is not considered an important legal source and which no person is normally allowed access): "A Moroccan person will get twice the punishment in my court. . . you divide our unified nation."

116. Shohat, *Reflections by an Arab Jew*, *supra* note 82 (explaining why it was so hard for her Baghdadi grandmother to understand the distinction held in Israel between "we" (the Jews) and "them" (The Arabs)).

117. This reconstruction of difference is attributed to the social relations approach that followed the rights approach; it treats difference as resulting of comparison rather than from intrinsic identity traits.

118. Though Shenhav is considered to be opposing Said's work as rigid and binary (See SHOHAT, *FORBIDDEN REMINISCENCES*, *infra* note 130, 14-16), he states openly in his book that Said and his account of colonialism have been influential source of his work (SHENHAV, *THE ARAB JEWS*, *supra* note 50, at 11).

119. DONALD HOROWITZ, *ETHNIC GROUPS IN CONFLICT*, 564 (2000).

120. Due to space limitations, here I can only sketch a brief, unavoidably oversimplified description of Said's Orientalism.

121. SAID, *ORIENTALISM*, *supra* note 2.

122. For an exploration and explication of the primary notions behind Said's scholarship, see Adel Iskandar, *On Orientalism: Edward Said, Representation, and the Post-Structural Epistemology of Power* (2008), http://www.allacademic.com/meta/p14802_index.html (presented at the International Communication Association annual meeting) (last visited April 16, 2014).

123. SAID, *ORIENTALISM*, *supra* note 2, at 47.

124. Although Said did not coin the term "Orientalist," he redefined it so that it no longer referred to erudite master of difficult languages, but rather to an ideologue of the colonialist empire. Mark F. Proudman, *Disraeli as*

an Orientalist: The Polemical Errors of Edward Said, 5(4) J. OF THE HIST. SOC'Y 547, 547-548 (2005).

125. Iskandar, *supra* note 122, at 3.

126. SAID, ORIENTALISM, *supra* note 2. For example, looking at the more current media genre, Said stated that over 100 movies filmed in the last three decades of the past century revolved around a storyline in which Middle Easterners were depicted as terrorists.

127. See, e.g., Ernest Gellner, *The Mightier Pen? Edward Said and the Double Standards of Inside-out Colonialism*, rev. of *Culture and Imperialism*, by Edward Said, TLS 19 February 1993; CHRISTOPHER A. BAYLY, EMPIRE AND INFORMATION: INTELLIGENCE GATHERING AND SOCIAL COMMUNICATION IN INDIA, 1780-1870 25, 143, 282 (1997); ROBERT IRWIN, FOR LUST OF KNOWING: THE ORIENTALISTS AND THEIR ENEMIES 159-60, 281-2 (2006).

128. I have borrowed the inspiration for the title from the work Ella Shohat, *The "Postcolonial" in Translation: Reading Said in Hebrew*, 34 JOURNAL OF PALESTINIAN STUDIES 55 (2004). For an account of Orientalism as irrelevant to Mizrahis in the way Shohat conceptualizes it, see Ehud Ein-Gil & Moshe Machover, *Zionism and Oriental Jews: A Dialectic of Exploitation and Co-optation*, 50 RACE & CLASS 62 (2009).

129. See SHOHAT, ISRAELI CINEMA, *supra* note 72; *Reflections by an Arab Jew*, *supra* note 82; FORBIDDEN REMINISCENCES, *infra* note 130.

130. SHOHAT, FORBIDDEN REMINISCENCES (2001). See also SHOHAT, ISRAELI CINEMA, *supra* note 72.

131. Orna Sasson-Levi & Avi Shoshana, "Passing" as (non)Ethnic: *The Israeli Version of Acting White*, 83 SOCIOLOGICAL INQUIRY, 448, 449-50 (2013).

132. Henriette Dahan-Kalev, *Ethnicity in Israel: A Post-Modernism Approach*, in EDUCATION AND SOCIETY: MODERNITY, POST-MODERNITY AND EDUCATION 197, 212 (Ilan Gur-Ze'ev, ed., 1999) [hereinafter Dahan-Kalev, *Ethnicity in Israel*].

133. Irene Browne & Ivy Kennelly, *Stereotypes and Realities: Images of Black Women in the Labor Market*, in LATIN AND AFRICAN AMERICAN WOMEN AT WORK: RACE, GENDER, AND ECONOMIC INEQUALITY 302, 306 (Irene Brown, ed., 1999).

134. See CHETRIT, THE MIZRAHI STRUGGLE, *supra* note 100, at 53-54.

135. For further discussion on the subject, see *Id.*; SHENHAV, THE ARAB – JEWS, *supra* note 50.

136. It is worth noting here the important contribution of two more Mizrahi women scholars who are engaged with Said's work. The first is Aziza Khazzoom, who questions the Mizrahi identity as invented as well as real. See AZIZA KHAZZOOM, THE ORIGINS OF ETHNIC INEQUALITY AMONG

JEWES IN ISRAEL (1998). The second is Henriette Dahan-Kalev, who in *Ethnicity in Israel*, *supra* note 132, identified the 'othering' of Mizrahis along the lines of Orientalism. Said's intellectual influences are vastly spread in Israel today. To name just a few, *see* Smadar Lavie's ironic look at Israeli anthropology of the Bedouins in SMADAR LAVIE, *THE POETICS OF MILITARY OCCUPATION: MZEINA ALLEGORIES OF BEDOUIN IDENTITY UNDER ISRAELI AND EGYPTIAN RULE* (1991); Ammiel Alcalay's historical reflection on Mizrahi writers as intimately embedded in Arab culture in *KEYS TO THE GARDEN: NEW ISRAELI WRITING* (Ammiel Alcalay, ed., 1996); Yerach Gover's critique of Zionist literary assumptions and the images of Arabs in Hebrew literature in YERACH GOVER, *ZIONISM; THE LIMITS OF MORAL DISCOURSE IN HEBREW FICTION* (1994); Azmi Bishara's invocation of Orientalism to address racist discourses about "educated Arabs" within Israel in a context where Bishara's very writing in Hebrew challenges the limits of Israeli citizenship in Azmi Bishara, *On the Question of the Palestinian Minority in Israel*, 3 *THEORY AND CRITICISM* 7 (1993); Sami Shalom Chetrit's historical account of Mizrahi struggle within anti-Zionist paradigms (CHETRIT, *THE MIZRAHI STRUGGLE*, *supra* note 100); Sarah Chinski's look at Orientalist underpinnings of Israeli art history; Gabriel Piterberg's examination of Orientalist foundations in Israeli history books; Shoshana Madmoni's account of racist media representation of the kidnapping of Yemeni/Mizrahi babies in Israel in SHOSHANA MADMONI-GERBER, *ISRAELI MEDIA AND THE FRAMING OF INTERNAL CONFLICT: THE YEMENITE BABIES AFFAIR* (2014); and Oren Yiftachel's discussion of ethnocracy in land development and Palestinian dislocation within Israel in Oren Yiftachel, *Israeli Society and Jewish-Palestinian Reconciliation: Ethnocracy and Its Territorial Contradictions*, 51 *MIDDLE EAST J.* 505 (1997). Amnon Raz-Krakotzkin also makes significant use of Said's critique of Orientalism to address the Zionist negation of Jewish exile in Amnon Raz-Krakotzkin, *Exile Within Sovereignty: Toward a Critique of the 'Nation of Exile' in Israeli Culture*, (part 1) 4 *THEORY & CRITICISM* 23 (1993); (part two) 5 *THEORY & CRITICISM* 113 (1994).

137. SHENHAV, *THE ARAB JEWS*, *supra* note 50, at 11.

138. *Id.* at 9.

139. *See, e.g.*, HCJ 6924/93 *The Association for Human Rights in Israel v. Israeli Government*, 55(5) PD 15 [2001](demanding affirmative action in favor of Arab-Israelis in all governmental and quasi-governmental entities); HCJ 240/98 *Adalah Organization v. the Minister of Religious Affairs*, 52(5) PD 167 [1998] [Isr.] (ordering the Ministry of Religions to reallocate its budget more equally between Jews and Arab-Israelis).

140. Yousef Jabareen, *Constitution Building and Equality in Deeply-Divided Societies: The Case of the Arab Minority in Israel*, 26 *WIS. INT'L*

L.J. 345 (2008). The case of non-Israeli Palestinians is quite different. The expulsion of the majority of Palestinians in the occupied territories made it unnecessary for Israel to invest in the textual means of *de jure* discrimination against that group. Zreik, *supra* note 17, at 72-73.

141. Yousef Jabareen, *Law and Education: Critical Perspectives on Arab Palestinian Education in Israel*, 49 AM. BEHAV. SCI. 1052 (2006) (providing general review of the discriminated-against position of Palestinians, with specific focus on education).

142. See Reva Siegel, *Recuperating First Amendment Doctrine*, 47 STAN. L. REV. 1249 (1995) (describing the civil sphere as pertaining to the matters of making business contracts, suing in the courts, giving evidence, acquiring property and in the protection of person and property).

143. Bishara, *supra* note 136, at 16, long ago identified the manner in which “civilian” claims of Palestinians are being read as inseparably “political” (“In the case of Arabs in Israel, the civilian issue challenged never stands alone, but is being perceived as part of the broader national debate.”).

144. See H CJ 105/92 Reem Engineers Constructors LTD v. Nazareth Local Authority, 47(5) PD 189 [1993] [Isr.], and H CJ 4112/99 Adalla, v. Tel-Aviv-Jaffa City Council, 56(5) PD 393 [2002] [Israel]. This experience resembles that of African-Americans in America. See Reva Siegel, *The Critical Use of History: Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (claiming that antidiscrimination laws were aimed at bettering the civil and political rights of African-Americans but not their social ones).

145. H CJ 466/07 Galeon v. Legal Consultant to the Government (Nov. 11, 2012) Nevo Legal Database (by subscription) (Isr.).

146. This conceptual “space” is most associated with Homi Bhabha’s work in the field of colonialism/postcolonialism. HOMI K. BHABHA, *THE LOCATION OF CULTURE* 37 (1994). I refrain, however, from adopting his specific notion of a “third space” position as pertaining more to the dyad of colonized-colonizer. My notion is more of a “third space” without the third parties. It has less to do with being a space of constant dynamics and creativity of identity and more with being a political, action-intended place. I do adhere, though, to Bhabha’s emphasis on the agency of the colonized in this respect. See Ilan Kapoor, *Acting in a Tight Spot: Homi Bhabha’s Postcolonial Politics*, 25 NEW POL. SCI. 561 (2003) (interpreting Bhabha’s perceptions of agency).

147. See *supra* note 42 and its accompanying text.

148. See *supra* note 111, Art.6. See also *The Law for Equal Opportunity at the Workplace, 5748-1988 SH No.1240 p.38 (Isr.)*, Art. 9.

149. On the individualistic framework of the Equal Protection Clause, see

Kevin D. Brown, *The Dilemma of Legal Discourse for Public Educational Responses to the "Crisis" Facing African-American Males*, 23 CAP. U. L. REV. 63, 71-87 (1994). However, this individualistic framework does not preclude the role of the Clause as protecting groups. See Fiss, *supra* note 12, 123-27. Similarly, Title IV rights are by definition designed to target particular discrimination patterns, normally practiced against individuals.

150. HCJ 6698/95 Ka'adan v. Israeli Land Administration, 54(1) PD 258, 258, 280-281 [2000] [Israel]; HCJ 11956/05 Bishara et. al., v. The Ministry of Construction and Housing (Dec. 13, 2006) Nevo Legal Database (by subscription) (Israel) sec. 7; HCJ 5304/02 Accident Victims Organization v. Israel, 59(2) PD 135, 141 [2004] [Israel]; HCJ 721/94 Danilowitz v. El-Al Airlines, 48(5) PD 749, 761 [1994] [Isr.] ("distinction between groups based on a relevant difference is not discriminatory *per se*"); HCJ 6924/93 Association for Citizen Rights in Israel v. Israeli Government, 55(5) PD 15, 27-28 [2001] [Isr.] ("society's best interest. . . requires fostering the equality principle between Jews and Arabs").

151. The Court would refer in its judgment to a "Migzar" (sector): HCJ 727/00 *infra* note 157, at 94-95 (referring to Arab sector); HJC 4805/07 Center for Jewish Pluralism v. Ministry of Education, 62(4) PD 571 [2008] [Isr.] (referring to intra-Jewish religious sectors).

152. This is a major test that Fiss sets for identifying the relevance of groups to the antidiscrimination principle. See Fiss, *supra* note 202, 123-126.

153. See 6698/95 Ka'adan v. Israeli Land Administration, *supra* note 150.

154. 4541/94 Miller v. Minister of Defense, *supra* note 42.

155. The nature of right-seeking is also indicative of the scope of individualization in regard to the antidiscrimination principle at hand. See Fiss, *supra* note 202, at 127.

156. See, e.g., HCJ 727/00 Arab Israeli Municipalities Association v. Minister of Housing, 56(2) PD 79 [2001] [Isr.] (budget allocations for rebuilding impoverished neighborhoods project); HCJ 1113/99 Adala v. Minister of Religions, (budget allocations for religious burial services); HCJ 2814/97 Arab Educational Affairs Supervision Committee v. Ministry of Education, 54(3) PD 233 [2000] [Isr.] (budget allocations for special nurturing programs for disadvantaged communities).

157. See, e.g., 528/88 Avitan v. Israeli Land Administration, the opinion of Justice Or, ¶ 4; 153/87 Shakdiel v. Minister of Religious Affairs and Others; 4541/94 Miller v. Minister of Defense, *supra* note 42; 678/88 Kfar Vradim v. Minister of Treasury, opinion of Justice Or, ¶ 8; 1703/92 C.A.L. Airlines v. Israel Prime-minister, opinion of Chief Justice Barak, ¶ 15 (discrimination is different treatment of equals and equal treatment of those who are different).

158. However, I qualify my optimistic stance in light of the fact that judges enter their own preferences into the antidiscrimination discourse; therefore, they are able to frustrate or facilitate any group's effort to access the antidiscrimination principle. *See* Fiss, *supra* note 12, at 121.

159. SHOHAT, FORBIDDEN REMINISCENCES, *supra* note 130.

160. By "useful political power," I refer to the exercise of political power for the benefit of the elected representative's group, as opposed to the use of such power in a manner that suits well, or at least does not challenge, the hegemony's power. Most Mizrahis who have been politically significant are considered to have served the ideologies of the parties who "accepted" them, both right and left; none of them have dared to raise the issues of "Mizrahis in Israel." In sociological terms, this is considered a classic adaptive manner of behavior of the underprivileged class representative. *See* CHETRIT, THE MIZRAHI STRUGGLE, *supra* note 100, 111-127. The only political party that has raised the "Mizrahis in Israel" issue loudly and clearly has been Shas, which advocated ultra-religious politics, and therefore was more confined in its political maneuvering. At least at its starting days, Shas enjoyed support of mainly Mizrahi voters and some Palestinian supporters and voters, who shared the party's social welfare concerns; in this context, these dynamics are unsurprising.

161. I mitigate this assertion by pointing to the general aspiration for peace, which all communities share.

162. *See, e.g.*, CC (Haifa) 23991/06 Algani v. Goovi Dance Bar (published in Nevo, 2010).

163. *See, e.g.*, the comments made in talkbacks (or reader responses) to his publication in the following: Hani Zubida, *Democratic security*, Israel News, (Jan. 11, 2007) <http://www.nrg.co.il/online/1/ART1/653/503.html> (last visited April 16, 2014). In this specific column, Zubida indicated that he served in the Israeli Defense Forces, where most Arabs are not allowed to serve, yet he was still perceived as an Arab, due to the "Arab" sound of his name.

164. *See* Israeli Civil Rights Act, *supra* note 111.

165. *Id.* at section 3(a).

166. *See* CC (Tel-Aviv-Jaffa) 11258/93 Na'amna v. Kalia (Sept. 1, 1996), Nevo Legal Database (by subscription) (Isr.).

167. Naturalization and Entrance to Israel Act (Emergency Ordinance) 5763-2000, SH No.1901 p.544 (Isr.), sec. 2. For a discussion of how this law targets the demographic superiority of Palestinians in Israel, *see* Yoav Peled, *Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime*, 8 THEO. INQ. L. 603, 617 (2007).

168. First in H CJ 7052/03 Adallah v. Minister of Interior Affairs, 61(2) 202 PD [2006] [Isr.] and second in H CJ 466/07 Galeon v. Legal Consultant

to the Government (Nov. 11, 2012) Nevo Legal Database (by subscription) (Isr.).

169. I use the male form here specifically to indicate that men comprise the majority of people who are not allowed to enter amusement clubs in Israel. However, it seems that this gendered phenomenon can be attributed to the eroticization of colored women, whereby these women are portrayed as sexually available to white men. See WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, *SEXUALITY, GENDER AND THE LAW* 567 (2nd ed. 2004).

170. See generally HCJ 727/00, *supra* note 156.

171. See Saada-Ophir, *Borderland Pop*, *supra* note 72, at 206-207.

172. TRINH T. MINH-HA, *WHEN THE MOON WAXES RED: REPRESENTATION, GENDER AND CULTURAL POLITICS* 159 (1991).

173. See Saada-Ophir, *Borderland Pop*, *supra* note 72.

174. *Id.* at 225.

175. See Yiftachel, *Nation-Building or Ethnic Fragmentation?* *supra* note 57.

176. It should be noted that there are groups of Palestinian and Mizrahi activists who already collaborate on these matters. See ARAB JEWISH MOVEMENT FOR SOCIAL & POLITICAL CHANGE, <http://www.tarabut.info/he/home> (last visited March 27, 2014).

177. The event was held on October 2012, in Bat-Yam, Israel, and the author served as one of the judges on this popular tribunal.

178. See *supra* notes 53, 58, and accompanying text. The ultra-religious community also comprises a great share of Israel's poor, but they are not included in this counting because most members of this community are separatists and therefore are not willing to work collaboratively for social change.

179. See generally MUNICIPAL GOVERNANCE LOCAL GOVERNMENT IN PALESTINIAN SOCIETY IN ISRAEL: POLITICAL MANAGEMENT AND LEGAL ASPECTS (Yousef T. Jabareen & Mohanad Mustafa, eds., 2013).

180. Notwithstanding this alteration in the Court's manner of addressing the petition, the plaintiffs lost the case. See HCJ 962/04 Abutbul v. Ministry of Welfare (Aug. 12, 2004), Nevo Legal Database (by subscription) (Isr.).

181. The shared interest of Israeli periphery community is discussed in the mission statement of the Public Network for Health Equity in Israel. See *10 Principles in Equality in Health*, THE PUBLIC NETWORK FOR HEALTH EQUITY IN ISRAEL, (July 2011) <http://www.equalhealth.org.il/10-principles-of-equality-in-health> (last visited April 16, 2014).

182. See ISAAC ROSEN-ZVI *TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL* 3 (2003).

183. In reality, however, many members of this immigrant group had very

little to do with traditional religious Judaism. See YAIR SHELEG, *JEWISH, BUT NOT BY RELIGION* 5-13 (2004).

184. The Knesset held emergency discussion on this matter on May 5, 2008. For a journalistic report on this discussion, see http://pogrom.org.il/heb_articles.php?art_id=61 (covering the Israeli Parliament's Immigration Committee's emergency discussion pursuant to the police's declaration that "an Israeli home-grown Neo-Nazi organization established by immigrant youth has been revealed by the police. Police further submitted that the youth perpetrated hate crimes in Israel during 2006-2007.").

185. This is also one of the caveats of Mizrahi criticism in general, as not bearing any potential of a political action to end the occupation. See Henriette Dahan-Kalev, *Zionism, post Zionism and fear of Arabness* (2005) (unpublished manuscript, prepared for the Conference on Fear of the Other and the Israeli Palestinian Conflict, London) [hereinafter Dahan-Kalev, *Zionism*].

186. Woman's Rights Equating Act, § 6C(1), 5711-1951 SH No. 82 p.248 (Isr.).

187. Ironically, only recently has the Israeli parliament enacted a law relating to non-Israeli Palestinians and Mizrahis. This law demands that any future peace settlement will include a section on settling property disputes that some Mizrahi Jews have with their Arab states of origin, regarding property left behind and that subsequently expropriated by their states of origin. The Law Securing the Right for Compensation of Jewish Refugees of Arab and Iranian Descent, 5770-2010 SH No.2232 p.406 (Isr.).

188. See, e.g., 105/92 Reem Engineers Constructors LTD v. Nazareth Local Authority, 4112/99 Adalla, v. Tel-Aviv-Jaffa City Council; and 466/07 Galeon v. Legal Consultant to the Government.

189. See generally *THE STATE OF ISRAEL: BETWEEN JUDAISM AND DEMOCRACY* (Joseph E. David, ed., 2003); Menachem Elon, *The Values of a Jewish and Democratic State: The Task of Reaching a Synthesis*, 3 HUM. RTS. REV. 36 (2002).

190. See Bishara, *supra* note 136.

191. See, e.g., HCJ 727/00, *supra* note 156 (Palestinians contended that the National Neighborhood Reconstruction plan was to be reallocated between the Mizrahi community, who received it in Jewish underdeveloped towns, and themselves; the Court agreed that for the most part, the plan was indeed discriminatorily fashioned).

192. HCJ 11163/03 Arab High Observance Committee v. Israeli Prime minister (Feb. 27, 2006), Nevo Legal Database (by subscription) (Isr.).

193. *Id.* at 21 (¶ 29 to Chief Justice Barak's decision). Eventually, the Court ordered that the plan be annulled, with a 12-month suspension period for the government to restructure it more equally.

194. Part of the Israeli-Palestinian hostility can be attributed to the national conflict related to several incidents of warfare and bloodshed that both parties have sustained.

195. Hani Zubida, *The Change in the Israeli Governmental System: What (If at All) Can Be Learned from the Past Experience* in *DIVIDING THE LAND* 233 (Erez Casif, ed., 2008).

196. The case of the Gaza Strip and the Development Towns in southern Israel exemplifies this relation, and Cloud Pole Operation exemplifies this conflict, wherein Mizrahis suffered most from Palestinian bombing and, therefore, grew more alienated from Palestinians' interests.

197. An excellent example is the comparison of the experiences of Tali Fahima, a Mizrahi woman who decided to be the human shield of a wanted Palestinian, and the experience of Neta Golan, an Ashkenazi woman who lived in Ramallah and stood against the IDF's breaking-in to the city. The former was convicted of treason, while the latter wasn't even tried for her actions. Vered Lovitch, *The Court Decided: Tali Fahima will remain under arrest* (July 28, 2005), available at <http://www.ynet.co.il/Ext/App/TalkBack/CdaViewOpenTalkBack/0,11382,L-3119244-2,00.html> (last visited April 4, 2014).

198. See Shoshana & Sasson-Levi, *supra* note 131.

199. Bishara, *supra* note 136, 16-20. Bishara warns against depoliticization of Palestinians' struggle against Israel, by over-cooperation with Israelis.

200. Franklin H. Adler, *Israel's Mizrahim: "Other" Victims of Zionism or a Bridge to Regional Reconciliation?*, 23 *MACALESTER INT'L* 161, 170 (2011).

201. See Uri Yizhar, *Mizrahis in Israel: A Problem, a Victim or an Independent Voice?* 39 *MIPHNE* (2002).

202. See generally RICHARD BANDLER & JOHN GRINDER, *THE STRUCTURE OF MAGIC: A BOOK ABOUT LANGUAGE AND THERAPY* 21-22 (1975) (stating that humans use language to represent and model experience); WENDELL JOHNSON, *PEOPLE IN QUANDARIES: THE SEMANTICS OF PERSONAL ADJUSTMENT* 112-42 (1946) (noting "the relationship between language and reality is a structural relationship").

203. A search for this term in article titles across worldwide library electronic databases yielded three articles published in the U.S. Normally, any other one-term search would yield hundreds or even thousands of relevant articles. For the most general use of Orientalism in legal context, see Teemu Ruskola, *Legal Orientalism*, 101 *MICH. L. REV.* 179 (2002).

BOOK REVIEW

Niza Yanay's *The Ideology of Hatred: The Psychic Power of Discourse*
[New York, NY: Fordham University Press,
2013. 168 pp. \$22.00]

Damon T. Berry
Saint Lawrence University

Niza Yanay, a Professor in the Department of Sociology and Anthropology at Ben Gurion University, has written a book that is both a serious contribution to the discussion of nationalist discourses on hate since September 11, 2001 and a demonstration of the kind of theoretical complexity required to help shape the emerging, evolving field of Hate Studies. The stated purpose of this work is “to provide a critique of hatred that focuses on the relations between the unconscious and state politics, between imaginary fears and technologies of control” (p. ix). To do this, Yanay develops a reading of these discourses through what she describes as the “political unconscious” in extended engagement with the works of Slavoj Žižek, Michel Foucault, and Judith Butler. This term is, however, primarily her extrapolation of Freudian language about the unconscious taken into the realm of the social. In this way, she hopes to “study how a national discourse institutes a politics of desire manifested as the symptom of hatred” (p. 52).

This work is important to those concerned with nationalist discourses of hatred and exclusion, as well as for those interested in thinking about how to heuristically define “hate” in a given project. But Yanay does not merely diagnose the nationalist symptom. She also attempts to theorize, especially in the final chapter, what she sees as “the possibility of transforming hatred to friendship,” the “raison d’être of this book” (p. 19). In this final chapter, titled “From Justice to Political Friendship,” she argues for the “potential for peace in spite of hatred, without veiling or hiding ambivalence and difficulties” (p. 104). Yanay addresses this through a deep reading of Derrida’s *Politiques de l’amitié* (1994/ *The Politics of Friendship* trans. 1997). She concludes that “addressing the enemy as a friend can transform language into closeness” and that this “opens a transitional space for peace” in which “dependency and anxiety can be psychically and socially acknowledged” and “where hatred (which is not erased) can sustain the love of the other within the self in newly imagined forms other than hatred—political responsibility for the other, for example” (p. 124).

This work may then be seen as an attempt to contribute to an understanding of hatred that is politically interested and one that seeks to intervene in specific debates—in particular, the dialogues for peace between Israelis and Palestinians. Therefore, Yanay's text cannot be understood as general theorization of hatred as a feeling or a response but as a work that seeks to define hate post-September 11 as a discourse that functions in the subconscious set within a field of power relations that cannot be flattened out by simply noticing anger or rage at a given circumstance or subject. This points to the most important contextualization in the book and, I argue, an important contribution to the conversation about what constitutes the study of hate: *How we understand hate must not be regarded as the same across subjects differentially established in stratified social contexts.*

Yanay discusses this point thoroughly in her first chapter, in which she posits a difference between what she calls "objective hatred," as a response to oppression and "ideological hatred," which she defines as "a response to fear" (p. 24). This distinction is important for the project in this book because this is how Yanay identifies the *ideology* of hatred that she seeks to explicate. Also, she argues that if we diverge from this identification of hate within fields of power, we will mistakenly offer "state power a neutral meaning of truth" by leveling all reactions to oppression as "hate" (p. 24-25). I will return to this foundational distinction in a moment, but to understand the heuristics of this distinction we must further understand how the author contextualizes her work.

In the introduction of the book, Yanay describes her first engagement with theorizing hatred in 1989. While conducting research, she found several letters of what she describes as hate mail sent to the Knesset by "Jewish Fundamentalists" (p. 1). This compelled her to begin thinking about "hatred as a political force," especially in Israeli/Palestinian relations (p. 1). In these inquiries, she initially saw hatred as an "ambivalent mode of knowledge" that requires the "need" for contact and dependency, as well as separation and exclusion, but after September 11 she says that her thinking about hatred changed (p. 1). At that point, she shifted from thinking about hate as "a mere by-product of nationalism, racism, anti-Semitism, prejudice, or other evils" as she came to recognize that "questions of meaning will not lead [her] far enough in understanding how hatred operates ambivalently or what makes hatred so repulsive and pleasurable" (p. 1-2). For this reason, Yanay does not describe her book as a study on hatred in its meaning or effects *per se* but one that aims at showing "how invisible mechanisms of power operate when the word 'hatred' is used as a defense strategy in a national and political strategy" and how hatred "became" after September 11, 2001, particularly in the Bush Administration, "a political concept to signify danger, insecurity, and the need for control" (p. 2).

There is also at least one other major contextualizing factor for this study: Yanay's subject position. She is an Israeli and the daughter of a Holocaust survivor. Her father's experiences and his reactions to his treatment by Germans inform not only her diagnosis of the ideology of hatred but also her turn to theorizing love and hate in the fourth chapter and her approach to Derrida's *The Politics of Friendship* in the last one. This is relevant for understanding how Yanay's arguments are located and their applicability for the study of hate in general. Understandably, Yanay's arguments, even when discussing the Bush Administration's deployment of hate discourse, are developed around her experiences as an Israeli scholar who is interested in peace as a prospect and a process without eclipsing the complex psychoanalytic dynamics of what she describes as "hate in love/love in hate" in which dependency and revulsion are linked (p. 84).

Very soon into Chapter Four, Yanay begins to explore the workings of dependency in the "social field" and the ways in which "the language of hatred" comes to "signify that dependency" by her father's reactions to his experiences as a survivor, as related to her in stories (p. 71-72). This personal note comprises the starting point and the conclusion for the discussion in this chapter where she engages her father's refusal to "enjoy" hating his tormentors, as well as his "distance from hatred," which she also finds in the work of Primo Levi and the testimony of other survivors. This refusal reveals for her a possible "Derridean truth about hate by refusing to hate"—that the "phantasmal idea of hatred as a separation maintains dependency and attachment as fears, imprisoning the subject in a knotted relation of revenge 'whitening' (blinding) all other possible affects and memories of love and life that constitute that surplus of subjection, the democratic subject" (pp. 101, 102). This then directs us to her discussion of the "relation" between "hatred and friendship" in the final chapter, which as I said, brings her to conclude that a turn to Derrida's notion of friendship can open those spaces of possibility for peace (p. 103).

The Ideology of Hatred is a significant contribution to the study of hate in nationalist contexts in general, and in particular with the Israeli-Palestinian conflict and America's "Global War on Terror." The heuristics of her distinction drawn between "objective hatred" and "ideological hatred" is at once important for the focus of the book and demonstrative of the kind of exercise that perhaps ought to be involved in describing our object in Hate Studies. I contend that we do well to be careful not to presume that the signifier "hate" carries the same meaning in all cases with the same consequences. To borrow from my own field of Religious Studies, the word *hate* may constitute a horizon of inquiry for Hate Studies in the same way that *religion* does for Religious Studies, *society* does for Sociology, or *culture* does for Anthropology (Smith, 2004, p. 194). Yanay therefore demon-

strates the kind of writing that could advance the study of hate by being precise and purposeful in defining hate as it particularly matters in her study.

I however have some questions that perhaps trouble Yanay's distinction between what she calls "objective hatred" and "ideological hatred, as responses to oppression and fear, respectively. I wonder how we may see this distinction at play in other complex social circumstances—for example, in the current debates in the United States over gay marriage and discourses of homophobia. It seems here that discourses of fear and victimization are more diffuse across various subjects situated in the debate. People on both sides often appeal to fear of the consequences to the nation if the opposition wins the debate and offer competing historical narratives to claim victimization at the hands of the other. Though we may be able to say that one may have a more substantiated claim than the other, both nevertheless use discourses of fear and victimization that Yanay situates as mutually exclusive in her two kinds of hatred. Further, in the context of post-September 11 discourses of hatred, if we consider Bruce Lincoln's (2002) comparison of the rhetoric of the Bush Administration and the non-state actors Osama bin Laden and the September 11 hijackers, we can see perhaps again the diffusion of fear and victimization discourses. In other words, where can we see "objective hatred" as "a response to oppression" adopt the characteristics of "ideological hatred" as "a response of fear" (Yanay, p. 24)? Conversely, where can we see "ideological hatred" understand and position itself as "objective hatred"?

The questions mentioned above are not meant to diminish the contributions of Yanay's book. Rather, that these questions developed from reading her text further demonstrate the potential value of her work for the emerging field of Hate Studies. This text also stands on its own as a valuable discussion not only of hatred but of ways to think about peace with hatred, as well.

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