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Call for Papers and Submission Guidelines

The Institute for Action Against Hate is soliciting submissions for the seventh volume of the peer-reviewed, interdisciplinary Journal of Hate Studies.

We are interested in papers from various disciplines that address "The Science of Hate." This may include research and knowledge about hate's origins and manifestations seen through the lenses of empirical sciences that rely on experimental, quantifiable data or the scientific method and emphasize reliability and validity. We are also interested in papers that explore solutions and strategies for addressing hate from an empirical perspective, as well as methods and content that may combat the manifestation of hate.

A special invitation is extended to scholars from disciplines such as biology, medicine, chemistry, economics, genetics, cybernetic evolution, and the neurosciences.

Submissions are due by February 1, 2009, and should be between 5000-10,000 words. Submissions should include one hard copy and an electronic copy in MS Word format. Please do not submit PDF files. Submissions should be presented in APA format and contain endnotes rather than footnotes.

Address submissions and questions to the Gonzaga University Institute for Action Against Hate, AD Box 43, 502 E. Boone Avenue, Spokane WA 99258-0043; email address: againsthate@gonzaga.edu; phone: (509) 323-3665.
Preface

You may write me down in history
With your bitter, twisted lies,
You may trod me in the very dirt
But still, like dust, I'll rise.

Does my sassiness upset you?
Why are you beset with gloom?
'Cause I walk like I've got oil wells
Pumping in my living room.

Just like moons and like suns,
With the certainty of tides,
Just like hopes springing high,
Still I'll rise.

Did you want to see me broken?
Bowed head and lowered eyes?
Shoulders falling down like teardrops.
Weakened by my soulful cries.

Does my haughtiness offend you?
Don't you take it awful hard
'Cause I laugh like I've got gold mines
Diggin' in my own back yard.

You may shoot me with your words,
You may cut me with your eyes,
You may kill me with your hatefulness,
But still, like air, I'll rise.

Does my sexiness upset you?
Does it come as a surprise
That I dance like I've got diamonds
At the meeting of my thighs?

Out of the husks of history's shame
I rise
Up from a past that's rooted in pain
I rise.

I'm a black ocean, leaping and wide,
Welling and swelling I bear in the tide.
Leaving behind nights of terror and fear
I rise.
Into a daybreak that's wondrously clear
I rise.
Bringing the gifts that my ancestors gave,
I am the dream and the hope of the slave.
I rise.
I rise.
I rise.
This is the voice of Maya Angelou in "Still I Rise," which fits well with this year's theme of "Hate and Gender" in the Journal of Hate Studies. Angelou speaks for all people who have to overcome the past and present to speak well of themselves and their sisters and brothers.

Equity and access are certainly not present for all people in all cultures. Although the Western world claims to be light years ahead of many undeveloped countries in terms of gender equity, women, let alone Gay, Lesbian, Bisexual, Transgender, and Transsexual (GLBT) individuals, will beg to differ. Our culture defines us. In a culture that values men and women in certain defined roles, often little tolerance exists for difference.

This summer, while in Kenya, I [Jerri] visited an elementary school in the Masai Mara. I was struck by a large poster with a picture of a young girl, with the caption, "You don't have to be cut to be a woman." This poster speaks to the educational and human rights campaigns to combat the age-old "purification" practice of female genital mutilation, still held sacred in many parts of Africa and the Middle East.

Most Westerners are horrified by the very idea of circumcising young girls, if, for no other reason, because of the considerable health risks. Yet in some cultures, girls are not seen as marriageable if they have not undergone the procedure. Female genital mutilation is considered a religious necessity that ensures a woman's "cleanliness" and fidelity. Where this is practiced, girls are shamed and shunned if they do not undergo this procedure.

Communities practice what is taught as sacred, especially when this is reinforced by family and culture. People do what they think is right, according to tradition. Breaking tradition can result in harsh punishment—sometimes death. Confusion often results when tradition is questioned and different world views are seen as options. Where gender roles are strictly prescribed, there is little room for difference.

Identity is a deeply felt, personal sense of who we are as individuals. One's gender identity is shaped by the feelings one has about oneself, the culturally prescribed gender roles, and one's perception of how one is accepted by the community. In the United States, roles are still clearly identified for men and women; this can be difficult for both genders. Many gay, lesbian, bisexual, transgender, and transsexual individuals struggle to embrace their identities. They are often misunderstood and typecast, challenged by voicing their opinions and claiming their identities. Many report that they have always had a sense of being different, and too often these feelings are kept secret for fear of discrimination, rejection, and stigmatization by families, friends, and community members. Clearly, rising up to be heard, as Angelou notes, takes great courage and strength.

This edition of the Journal represents the voices of authors who present challenging ways to understand the many aspects of gender.
Robert Castro, assistant professor of Chicana and Chicano Studies at California State University at Fullerton, is the author of “Busting the Bandito Boyz: Militarism, Masculinity, and the Hunting of Undocumented Persons in the U.S.-Mexico Borderlands.” This paper explores ways in which protean masculinities become inextricably linked to ideas that foster racial domination in the U.S.-Mexico borderlands. Specifically, the author analyzes how the Minuteman group ritualizes its own masculinity through racially-motivated violence aimed at undocumented persons. Like modern-day banditos, Minuteman “volunteers” revel in their use of lawless tactics to further their anti-immigrant agenda: the tracking and capture of undocumented entrants in borderland areas. Castro concludes that the Minuteman group uses these activities to buttress the asymmetrical alignment of white masculinity relative to the alien culture of undocumented entrants.

Hate crimes perpetrated against LGBT (lesbian, gay, bisexual, transgender) persons is the topic of a paper by two authors from Virginia Commonwealth University, Tarynn Witten and Jeremy Kidd: “Transgender and Transsexual Identities: The Next Strange Fruit—Hate Crimes, Violence and Genocide Against the Global Trans-Communities.” The authors argue that hate crimes committed against the trans-communities constitute a serious public health problem both in the U.S. and abroad. They suggest that the growing frequency of such acts of violence, coupled with the nature and consequences of such acts, should allow them to be categorized as crimes of genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide.

With “Hate Studies Through a Constructivist and Critical Pedagogical Approach,” by Institute for Action Against Hate Assistant Director James Mohr, the Journal continues its publication of papers related to the establishment of an academic field of Hate Studies. Moore notes that proponents of an academic discipline focusing on hate are interested in “developing a deeper understanding of the acts of hate that are weakening the social bonds that form the foundations of a pluralistic society.” He suggests that a Hate Studies curriculum should bridge academic disciplines to be effective. Furthermore, it should be based on constructivist theory in order to incorporate the knowledge students already have, thereby allowing them to gain self-awareness and meaning as well as scholarly knowledge. Mohr unites theory with practicality in describing both key principles and specific classes that could prove beneficial in a Hate Studies curriculum.

Themes addressed by Witten and Kidd are also spoken to in UCLA School of Law student Jordan Blair Woods’ Student Voices paper, “Reconceptualizing Anti-GLBT Hate Crimes as Burdening Expression and Association: A Case for Expanding Federal Hate Crime Legislation to Include Gender Identity and Sexual Orientation.” Wood too is interested in hate
crime law and its effect on the LGBT community. Like Witten and Kidd, Wood notes that victims of anti-LGBT hate crimes often remain silent due to fear of re-victimization by law enforcement officials, something too many of them have experienced; this is just one example of the many ways in which this population is marginalized and denied basic legal rights. Wood critiques the current framing of anti-LGBT hate crimes in scholarship and empirical research and reconceptualizes these crimes as systemic inhibitors to expressive and associative opportunities on the basis of gender identity and sexual orientation. He argues that the federal government should expand federal hate crime laws to include gender identity and sexual orientation in order to address the current inadequacies in state and local hate crime laws that fail to account for these inequitable expressive and associative opportunities. He explains how specifically reconceptualizing anti-LGBT hate crimes as burdening LGBT expression and association increases the federal government’s constitutional justification for expanding federal hate crime law to include gender identity and expression by means of its commerce power. He further contends that it is politically desirable for the federal government to become involved in rectifying inequitable expressive and associative opportunities created by anti-LGBT hate crimes because expression and association are vital democratic tools of self-governance, truth discovery, and autonomy.

Self-governance is also a theme in both of this year’s interviews, conducted by Journal Editor Joanie Eppinga with two strong advocates for human rights. Jane Elliott, known primarily for her work toward racial equality through the well-known Blue Eyes, Brown Eyes exercise, is an equally passionate proponent of rights for women. In the interview, entitled “Divided by Gender,” Elliott minces no words in describing her beliefs about the ways in which women are viewed and treated as second-class citizens in our culture, and what women need to do about it.

Nonie Darwish provided the second interview, called “Gender Across Cultures.” Darwish is an Egypt-born daughter of a high-ranking Egyptian military officer; she now lives in California, where she leads the group Arabs for Israel and works to provide understanding of Arab cultures to people in Western cultures. Here she concentrates on explaining her understanding of Sharia (Islamic law and tradition) as it relates to women, how it affects men and women in her native culture, and differences in how women are viewed in the Middle East and in the West.

Maggi Eastwood of the Department of Law and Criminology, Edge Hill University, Ormskirk, UK, provided our first book review. She explains that Martin Shaw’s What Is Genocide? is valuable in that it does a thorough job of examining earlier definitions of genocide, such as those offered by Raphael Lemkin and the Geneva Convention, and of outlining
the sociological implications of genocide. The definition of genocide that Shaw comes up with himself, however, is, according to Eastwood, too broad to be applicable within a legal framework.

Book Editor Steven K. Baum provided two reviews for this issue. The first analyzes Jacques Semelin’s *Purify and Destroy: The Political Uses of Massacre and Genocide*, and the second offers Baum’s assessment of Neil Kressel’s *Bad Faith: The Dangers of Religious Extremism*. Baum explains that Semelin puts forth the idea that we kill on a large scale in order to preserve our collective unconscious fantasy about who we are, a notion that Baum asserts is new in genocide studies. According to Baum, Semelin presents a compelling argument for the human need to kill others being centered in our need to preserve the purity of our unconscious sense of self. Baum concludes with high praise: This volume is, he claims, the “most comprehensive book available on the psychology of genocide and is well worth the read.”

Baum also admires Kressel’s work, calling it “a thinking person’s guide to a religious life devoid of violence.” According to Baum, Kressel condemns not religion, but extremist thinking within it. Baum reports that Kressel calls on religious leaders to rein in their followers when they start supporting thinking and behavior that leads to divisiveness rather than unity, and that the author praises moderates who find the balance between rejecting religion and viewing religion as the only truth and the most justified weapon.

The Institute for Action Against Hate is thankful to our authors for contributing to this issue on Hate and Gender. We are hopeful that readers will be informed by these writings and inspired to share their messages.

The Institute continues to work to establish an academic field of hate studies. Jim Mohr, Assistant Director for the Institute, is spearheading the development of a course at Gonzaga that will address hate from a multidisciplinary perspective. As we continue our work, we are collecting course syllabi that address the topic of hate. If you have a syllabus that relates to this topic, please send it to us. Information on our work can be obtained at our website, www.gonzaga.edu.againsthate.

We continue to move toward a global community, full of diversity and difference; a united effort is required to make it work. The Institute for Action Against Hate, the *Journal of Hate Studies*, and the website for the Institute are venues for confronting hate, and ultimately, preventing it through education, research, and advocacy in collaboration with professionals of like mind. This is no small task in a world of competing cultures and ideologies, dwindling resources, and widespread poverty. It is the responsibility of educators, professionals, and people of good will everywhere to collaborate in the effort to combat hate with unyielding determination.
We can never stop questioning acts of hatred, which are often initially expressed as bias, discrimination, and stigmatization of marginalized peoples. Our work offers us challenge in creating community and inclusion of people in all cultures.

We are pleased to offer the sixth volume of the *Journal of Hate Studies*. As ever, it is our hope that you will find this edition of the *Journal of Hate Studies* an edifying and a stimulating resource.

Jerri Shepard, Director
Joanie Eppinga, Editor
Gonzaga University’s Institute for Action Against Hate
Busting the Bandito Boyz: 
Militarism, Masculinity, and the Hunting of Undocumented Persons in the U.S.-Mexico Borderlands

Robert F. Castro

“Bandito heroes flourish in many cultures because they symbolize a virtually universal belief: that at times it’s necessary to break the law in order to obtain justice,” writes historian Paul Vanderwood (1992, p. xix). The idea of justice does seem to animate many of the stories associated with the borderlands’ most famous outlaws. For example, retaliatory justice appears to be at the heart of the literal violence that Joaquin Murrieta inflicted on California Anglos during the nineteenth century. Joaquin Murrieta became famous for his lightning-fast robberies and bloody assaults in California during the 1850s Gold Rush. Reportedly, Murrieta was set on his fiery path as the result of racially-tinged violence aimed at him years earlier by white residents (Irwin, 2007).

Justice also figures prominently in the reverence which the poor hold for the altars built to memorialize the righteous bandito Jesus Malverde of Sinoloa, Mexico. Jesus Malverde was a Robin Hood figure in Northern Mexico during the late nineteenth century. It is rumored that he “stole gold coins from the rich hacienda owners . . . and threw them in the doorways of the poor at night” (Price, 2005, pp. 175, 197). Murrieta and Malverde share the distinction of being embraced by alienated and disaffected masses.

Scholars have noted, however, that despite the prototypical role that banditos have played in western history and folklore, the bandito concept is actually quite porous—it can be used to symbolize and justify almost any kind of movement or cause (Price, 2005). In our post-9/11 world, bandito imagery has been appropriated by those whose sense of justice turns on their ability to confront and objectify immigrant populations.

Recently, groups like the Minuteman organization have gained significant notoriety nationally. Principally civilian, these “militias” have transformed what was formerly only nativist rhetoric into action through the interdiction of undocumented persons attempting to cross the border into the United States. Like modern-day banditos, Minuteman “volunteers” revel in using lawless tactics to further their anti-immigrant agendas. Armed with technology and firearms, they systematically track undocumented persons across borderland regions.

Despite the controversial nature of their activities, these militias have
been able to marshal support from a worried American public (BDT/CNC, 2006). In many ways, these groups have been successful because they have been able to skillfully distance their opposition to illegal immigration from crude racialized ideas regarding the immigrant crossers themselves (p. 4). These groups have substituted more benign language that emphasizes the “incompatibility” of third-world alienage with American traditions, heritage, and culture (Gilroy cited in Chavez, 2001, p. 128; Ross & Maury, 1997, p. 552).

Minuteman leaders, in particular, have artfully melded public concerns involving terrorism and borderland crime into their anti-immigrant discourse. But regardless of its form, such heated opposition still stigmatizes undocumented persons in ways that are consistent with racially driven animus (Johnson, 1997). Dark-skinned immigrants seem to fuel the scorching racial ideologies and stereotypes that serve to “demarcate the boundaries of national culture and belonging to place, and to exclude those that do not fit” (Elder, Wolch, & Emel, 1998, p. 73). Moreover, branding immigrants as intruders, aliens, criminal trespassers, or potential terrorists seamlessly strips them of “rights and personhood . . . making violence against them not only legitimate but required” (Coutin, 2003, p. 46). It may well be the case that these anti-immigrant groups are employing less offensive language as moral subterfuge to obfuscate deleterious behavior clearly aimed at undocumented persons.

In this particular context, Minuteman recruits are also ritualizing their own masculinity while tracking and capturing undocumented persons. This article explores how protean masculinities become inextricably linked to ideas like racial domination in the U.S.-Mexico borderlands (Stern, 2004). In section I, I demonstrate how protean masculinities become linked to racial domination through Minuteman ideologies. In section II, I discuss how protean masculinities become linked to racial domination by Minuteman activities. In section III, I describe how protean masculinities become linked to racial domination through the fraternal bonding which Minuteman ideologies and activities encourage. Alchemized, these components are expansive and porous enough to include non-white and non-male individuals in Minuteman culture; but these members are incorporated in ways that require them to buttress the asymmetrical alignment of white masculinity relative to the alien culture of illegal entrants.

I. PROTEAN MASCULINITIES AND RACIALIZED IDEOLOGIES IN THE U.S.-MEXICO BORDERLANDS

Like other fraternal organizations, the Minuteman alliance has become a virtual “testing ground” for differing conceptions of manhood (Stern,
2004, p. 300). Manhood is informed by protean masculinities, which are gendered sensibilities whose content is continually shaped through male rituals and activities (Bederman, 1996). In the context of this paper, the concept of protean masculinities is used to track and describe the fusion of masculinity, militarism, and racism within a vigilante group operating along the U.S.-Mexico border. Militarism, writes Cynthia Enloe (2000), has a way of privileging masculinity by continually encoding it within the corpus of military regimes not only through the infusion of longstanding cultural beliefs, but also through deliberate decisions that prioritize masculine values. Clearly, in the case of Minuteman organizations, there also is a strong racial component to the development of their masculine ideals. For them, masculinity becomes synonymous with “white manhood,” and white manhood is reified through racism and domination (pp. 23, 26; ADL, www.adl.org/main_Extremism/immigration_extremists.htm; BAN, 2002). Evaluating racially motivated groups like the Minuteman provides a unique opportunity to analyze how racism and masculinity help structure ideas involving crime, nation, and community as these subjects pertain to embattled issues such as undocumented immigration. Groups like the Minuteman provide an extraordinarily rich environment for the study of ways in which malicious ideologies (e.g. racial domination) can take root and flourish within the evolution of conceptions of manhood. Moreover, the U.S.-Mexico borderlands represent fertile ground for Minuteman groups to expound malicious ideologies like racial domination, for several reasons.

First, the borderlands are the sine qua non for malicious ideologies because they are a wellspring of racialized symbolism. For example, the border itself is emblematic of the stark differences that distinguish the U.S. from Mexico; serving as both a material and figurative boundary, it demarcates the first world from the third, affluence from poverty, and white from non-white races. In this particular instance, the international boundary also separates legal citizens from non-citizens. Perhaps, like mythic frontier heroes, the members of the Minuteman group see themselves as standing “between the opposing worlds of savagery and civilization” (Slotkin, 1998, p. 17). To them, it is the colored bodies of immigrants that makes immigrants more primitive and brings them in closer proximity to the “unbridled biological urges and passions of animals” (Elder et al., p. 83). As white men, they believe their racial pedigree obligates them to protect the nation from mixed-blood hordes attempting to invade their domain, with the southern border representing the key threshold they must defend.

Second, the borderlands are ideal places to forge malicious ideologies
because their tortured histories collectively lend themselves to such ritualized activities. Historically, the borderlands had their genesis in a confrontational war which emphasized American colonial power in the southwest (Perea, 2003). The 1846 Mexican-American War punched a geopolitical hole through a hostile region that had been subject to several years of chronic violence between competing ethnic groups. U.S. colonial officials, in an attempt to suppress borderland conflict, superimposed American legal and military institutions onto populations resentful of each other and also of the U.S. occupation. But rather than promoting equanimity, these colonial activities further degraded already destabilized situations, or, taken together, achieved only incremental successes over time. The difficulties associated with controlling the borderlands would continually resurface as an important theme and the nation would become increasingly concerned about protecting its own borders from rogue elements.

One historical example is particularly instructive on two key points of the aforementioned border protection theme: First, this period will demonstrate that race and race relations would play an increasingly significant role in gritty border politics; second, and perhaps most sobering, it also reveals that material efforts to physically police the expansive borderlands would remain as futile contemporaneously as they proved historically.

In 1848, at the end of the Mexican-American War, a peace treaty was signed; that document was named the Treaty of Guadalupe Hidalgo. In Article XI of that treaty, the U.S. legally obligated itself to subdue transnational raiding by American Indians into northern Mexico. For several decades, Indian raiders had devastated northern settlements by pillaging livestock and taking native Mexicans captive. For example, in 1835, Rancho de las Animus, which was located in Parral, Mexico, was put to the torch and burned by Comanches who also took thirty-nine captives (Brooks, 2002, p. 265). Five years later, on October 6, 1840, officials in San Francisco de Canas reported that roving Indian bands had murdered four persons and taken a Mexican family of five captive in Puerto de Arco (Canales, 1968, p. 108). Such hard-scrabble booty would subsequently be transported back across the international boundary and sold in American markets. At war’s end, there may have been as many as 160,000 Indians living in the southwest (Report of Commissioner of Indian Affairs, 1853). U.S. Army Colonel William Gilpin estimated that Comanche bands held approximately 600 Mexican origin captives and Apaches had about 800 Mexican prisoners (U.S. House Exec. Doc., 1848-1849). Yet, given the fluid and embryonic nature of intelligence operations at the time, these initial estimates might have reflected a dramatic undercount of the actual captive population. In fact, field reports from Mexico indicate the potential for far more captives due to the extensive number of Indian raids into northern Mexico.
examples illustrate the expansive nature of captive-taking raids. First, in 1840-1841, hundreds of Comanche raiders had taken more than one hundred Mexican captives from haciendas and pueblos near Saltillo, Mexico (Brooks, 2002). Second, by 1848, Apache bands had effectively “depopulated” or obstructed approximately 150 dwellings and settlements in Sonora, Mexico alone (Rippy, 1919).

Prevailing post-war racial sentiments led American leaders to erroneously believe that the dominant Anglo-Saxon culture could quickly vanquish Indian raiding parties then targeting northern Mexico. But American attempts to successfully interdict these raids ended five years later when the U.S. unceremoniously negotiated its way out of that obligation vis-à-vis additional treaty negotiations and monetary compensation (DeLay, 2007, p. 67). A lack of manpower and resources, coupled with highly elusive Indian raiders and a two-thousand-mile area along the border, repeatedly frustrated all attempts by the U.S. to abolish Indian raids flowing from the U.S. southward. It is unclear whether, in 1853, U.S. officials internalized the stinging logistical challenges they would face in attempting to police the borderlands. But they likely took note that it was local ethnic populations that were resisting their colonial rule. After that time, policing the borderlands began to evolve as a racialized project. However, the aim shifted from policing internal threats radiating outward, to repelling external threats transgressing inward. The movement of mixed-blood persons across the border became a growing concern for the American public, who had long since embraced the myth that the U.S. was principally a white nation (Gomez, 2007; Horseman, 1981; Feagin, 2001). The concepts of annexation and border protection became integral to the maintenance and continuation of that myth: that the southwest was a barren area ripe for the expansion of American economic ingenuity (Rebert, 2001, pp. 196-197).

In the twentieth century, widespread concern over illegal immigration from Mexico became imbricated with emerging criminal justice protocols. Undocumented persons, formerly categorized as Mexican “wetbacks,” were seamlessly transformed into “criminal aliens” (Lytle, 2003). This distinction was important because it shifted immigration from being a labor-management issue, to being a law enforcement problem. Powerful new solutions could then be aggressively implemented to deal with looming threats caused by newly minted “criminal alien activity.” In practice, harsh immigration policies—like arrest, detention, and deportation—that targeted Mexicans as criminal aliens, crystallized the close relationship that illegality and race had in the public’s collective mind (Ngai, 2004). Hostile legislation aimed at relieving states from the alleged economic burdens generated by criminal aliens also created harsh portrayals of immigrant
threats to the livelihood and well-being of the U.S. (Nesbert & Sellgren, 1995).

In the 1990s, race, immigration, and crime became densely interwoven as weapons and drug-trafficking were talked about within the general framework of immigration reform. For instance, James Bowen, a senior tactical coordinator with Operation Alliance—a joint border task force of military and civilian authorities—stated, “Operation Alliance was established to interdict the flow of drugs, weapons, aliens, currency, and other contraband across the southwestern border” (Dunn, 1995, p. 113). Tactical interpretations like this conflated terrorism, drug-trafficking, and illegal immigration into a unified threat to national security. It also elevated illegal immigration from being principally a criminal justice issue, to being a problem with national security implications. As a result, policy-makers and military leaders attempted to find comprehensive solutions to bundled national security problems like border protection and illegal immigration. Officials would find their remedy in the militarization of the U.S.-Mexico borderlands. Military and defense officials, concerned about the possible ramifications of a porous southern border, began to militarize border zones by infusing military technology, munitions, and strategies into civilian enforcement paradigms (p. 20). This not only further criminalized Mexican entrants, but also branded them as potential enemy combatants.

Thus, despite the fact that undocumented entrants are overwhelmingly from the ranks of civilian non-combatant populations, the militarization of the southern border has exposed them to increasing levels of violence as if they were enemy combatants. In this particular instance, borderland violence is also racially animated because there is a pattern or practice of violent activity or conditions that routinely subjects a racially cognizable class, like undocumented persons (e.g. mixed blood persons), to material harms (Kil & Menjivar, 2006; Rosas, 2006). Well-authenticated shootings, rapes, and beatings by U.S. border agents against immigrant crossers, as well as skyrocketing deaths triggered by unforgiving desert conditions, have made migrant deaths and injuries in the borderlands almost routine (Vargas, 2001). For instance, U.S. Border Patrol Agent Nicholas Corbett was recently ordered to stand trial on charges of second-degree murder, manslaughter, and negligent homicide in the January 12, 2007 shooting of Mexican national Francisco Rivera (McCombs, 2007). Moreover, the number of deceased undocumented persons brought to Arizona’s Pima County Medical Examiner’s Office has soared. The number of recovered bodies of unauthorized border crossers has risen from 125 (1990-1999) to 802 (2000-2005), with deaths principally due to exposure, automobile accidents, and undetermined causes (BMI, 2006, p. 41). To a war-weary American public, the periodic “known” deaths and injuries of migrant crossers might be of
little concern. In fact, it may well be that widespread anti-immigrant sentiment has made these incidents seem justified as the risk that alien intruders assume for transgressing illegally across American borders.

In this militarized context, private groups emerged from the shadowy world of hate to indulge themselves in the tortured world of borderland politics. Perhaps intoxicated by the racialized myth of the western frontier, these groups began to hunt and track undocumented persons. In 1997, Klan Border Watch (KBW), a group whose lineage extends directly from the infamous Ku Klux Klan, began patrolling the border for Mexican immigrants. Though short-lived, KBW sought to frame their activities in stark terms: They were fighting a “battle to halt the flow of illegal aliens streaming across the border from Mexico” (BDT/CNC, 2006, p. 3).

Other loosely-knit groups also began to materialize and develop their own anti-immigrant agendas. In California, self-appointed citizen groups trolled local airports in San Diego for “suspicious” looking individuals (Yoxall, 2006, p. 526). Organized campaigns gathered to “light up the border” by stationing a line of cars adjacent to the Mexican border at night and turning on their headlights to illuminate “alien intruders” (p. 526). Moreover, individuals who acted alone but were caught up in the general mayhem of borderland violence increasingly resorted to deadly force against undocumented persons without provocation. In May 2000, Samuel Blackwood was arrested after shooting and killing Eusebio de Haro when Haro and his traveling companion stopped at Blackwood’s ranch to ask for some water (Martinez, 2004).

Perhaps encouraged by the aforementioned developments, but aware of the need for more robust organization, southeast Arizona rancher Roger Barnett spearheaded a local drive to mobilize ranchers against the influx of undocumented persons traveling through the area. Local ranchers quickly established home arsenals and militarized their properties against alien trespassers. In the late 1990s, Ranch Rescue (RR) emerged as the capstone organization for the new vigilante movement in the southwest. RR’s mission was to protect the property rights of local ranchers via the armed interdiction and detention of individuals they suspected were in the nation illegally (Castro, 2002). Several publicized “citizens arrests” by RR members took place, including highly suspicious incidents involving the armed pirating of private vehicles on public highways and the use of hunting dogs to track and attack migrant detainees (pp. 207-208).

Perhaps emboldened by the prospect of hunting human beings for sport publicly, allied individuals began to organize parallel groups. Raw and earthy, these groups embraced a more expansive anti-immigrant agenda that included patrolling public spaces. Quickly, the solicitation of like-minded persons sparked splinter cells whose new organizational firebrand
was defense of family, nation, and culture. This ideological manifesto fit seamlessly with the borderland militarism that had been taking root since the 1980s.

In October 2004, the Minuteman Project was organized to track and apprehend persons its members suspected were unlawfully in the nation. Typically, this meant undocumented persons from places like Mexico. But the borderlands are a complicated place; cultural taxonomies like ancestry and national origin are not always easily discernible. Yet the apparent risk of detaining lawful residents, such as Mexican Americans, did not seem to pose any ethical issues for Minuteman officials (Kil, 2006; Stern, 2004). In the group’s initial stages, the Minuteman members were racially homogenous, comprised mostly of retired white men (BDT/CNC, 2006).

Minuteman leaders have taken great care to describe themselves and their intentions in non-menacing terms. One prong of the Minuteman movement, the Minuteman Civil Defense Corps (MCDC), describes its mission accordingly: “to see the borders and coastal boundaries of the United States secured against the unlawful and unauthorized entry of all individuals, contraband, and foreign military. We will employ all means of civil protest, demonstration, and political lobbying to accomplish this goal” (www.minutemanhq.com/hq/aboutus.php).

Ostensibly, this MCDC mission statement appears benign because there is an absence of overtly racist language and the stated objectives are relatively non-confrontational. On its face, the mission statement describes mainstream political activities that have become widely accepted practices which American citizens routinely utilize to promote peaceful social change. In this instance, the change sought is stronger border enforcement and the exclusion of alien cultures. In practice, the MCDC has embraced unconventional definitions of “civil protest” and “demonstration.” To the Minuteman, these terms include the clandestine surveillance and armed apprehension of migrant crossers (Castro, 2002, pp. 203-205). MCDC tactical renditions also incorporate the use of high-tech weaponry and paramilitary strategies to aid in the capture of undocumented persons.

Publicly, MCDC leaders are media-savvy individuals who consciously avoid using racial epithets when referring to undocumented persons, as can be seen in, for example, the Minuteman Pledge and the preface thereto (http://www.minutemanhq.com/hq/mmpledge.php). Rather, they have chosen to promulgate the label “illegal alien.” As noted earlier, the term “illegal alien” collectively transforms undocumented persons into a de-humanized and racially-coded entity. To the Minuteman, undocumented persons are a threatening menace bent on inflicting ruin on an unsuspecting American nation. Despite this alarming scenario, MCDC officials continue to insist that their activities are intended only to assist law enforcement and
strengthen national security at the border (www.minutemanhq.com). Invoking a law-and-order mantra, peppered with paranoid imagery, Minuteman websites proclaim, “Our nation was founded as a nation governed by the ‘rule of law’, not by the whims of mobs of ILLEGAL aliens who endlessly stream across U.S. borders” (Walker, 2007, p. 148). Minuteman leaders have skillfully sought to play on the fears of the American public. For example, MCDC founder Chris Simcox revels in stoking the flames of nativism—routinely raising the specter of the 9/11 attacks: “It is well known that terrorists are seeking to exploit the vulnerability of our open borders. They see the millions upon millions of aliens that have been able to sneak into this country—illegally under our federal laws, yet virtually unchecked” (Seper, 2006a, para. 8).1

Blustery dictum notwithstanding, these aforementioned statements convey two important ideas that reveal a ritualized and racially charged agenda within the Minuteman movement. First, MCDC and other Minutemen outfits religiously underscore the criminal dimension of the act of crossing the border without proper documentation. Their almost exclusive focus on the U.S.-Mexico border is misleading because illegal entry can also take place along the Canadian border, and coastal port security remains uncertain (GAO Report, 2007; Haveman, Schatz, & Vilchis, 2005). Moreover, oftentimes undocumented persons materialize within the U.S. due to expired student and business visas (Pew Hispanic Center Report, 2006). In truth, there are gradations to law-breaking, and highlighting unauthorized entry at the U.S.-Mexico border as a criminal act unfairly imbues undocumented persons with a scorching diabolical hue. Second, the fact that the Minuteman members have taken it upon themselves to patrol the U.S.-Mexico borderlands is quite illuminating. Generally speaking, their behavior presupposes that they are the ones best suited to supplement the work of immigration authorities and defend the nation against alien intruders. This charts an adversarial course in which white is juxtaposed with non-white asymmetrically.

These Minuteman “axioms” meld racism and masculinity in ways both provocative and troubling. Militarism, having evolved in the violent context of the borderlands, has harshly criminalized undocumented entrants (e.g. criminal aliens). In the borderlands, undocumented entrants are principally of Mexican ancestry; hence, they are non-white mixed blood persons (e.g. Mestiza/o). Ergo, non-white mixed blood immigrants have become synonymous with criminal aliens, and criminal aliens have been interpreted to be a threat to the U.S. “Alien terminology helps ritualize the harsh treatment of persons from other countries,” writes Professor Kevin Johnson, and all too often, “alien” is used as a proxy to justify racism and racially motivated acts
by those who feel threatened by the presence of undocumented persons (Johnson, 1997, pp. 267-270).

Within the Minuteman context, I suspect that many of the white male members harbor exaggerated fears of immigrants because they believe that immigrants will disrupt age-old ascriptive hierarchies that have ruled American society from its earliest days. According to the Southern Poverty Law Center’s 2007 Intelligence Report entitled “Getting Immigration Fallacies Straight,” from the perspectives of those white males, immigrants bring crime, mongrel languages, disease, overpopulation, and probably a drain on societal resources. Conversely, white males believe they are the architects of advanced civilizations—bringing wealth, promoting liberty, and cultivating important intellectual endeavors. To permit Mestizo immigrants to amass within the U.S. would be to invite the destruction of American culture, and, ultimately, of white men.

But the only way in which white males—or, mythically speaking, American culture—can survive alongside criminal castes like Mestizo immigrants, is to enforce boundaries. Thus, at all costs, white males, acting through official or unofficial organizations like the Minuteman, must police the geographic and legal boundaries of the nation. This scrutiny is achieved in part by hunting and capturing immigrants at the border using military equipment and tactical strategies. Operational paradigms like this effectively ritualize the racial domination of white males over mixed-blood persons within the borderlands. The thrill of pursuit and capture reinvigorates male notions of power, protection, and control. In the end, Minuteman ideologies provide white males with the opportunity to reaffirm white masculinities by exposing Mestizo immigrants to unacceptable levels of literal and figurative violence because Mestizo immigrants are a “criminal alien caste.”

The connection between racism and Minuteman culture might not be obvious to laypersons engaging Minuteman rhetoric for the first time. In fact, they expressly disavow such associations and trumpet the assertion that Minuteman outfits are multi-ethnic groups with several members married to immigrants (Walker, 2007). But the malicious ideologies harbored by the Minuteman members lie just beneath the surface of the public image they project. Bill Straus, Regional Director for the Arizona-ADL, summarizes the connection between racism and the Minuteman in the article “ADL Says Armed Anti-Immigration Groups in Arizona Share Ties to White Supremacists”:

Anti-immigration groups are engaged in a campaign of vigilantism and intimidation, and their ideology has all the hallmarks of the hateful rhetoric promoted by anti-semites and racists. We are greatly concerned that
the collusion of anti-immigration groups and their extremist sympathizers
is contributing to the growing climate of intolerance, lawlessness and vio-

lence along the Arizona-Mexico border. (ADL Report, 2005)

If statements and actions by Minuteman members are any indication,
the collusion between Minuteman volunteers and known racist elements
seems to be quite significant. Malicious ideologies, integral to the reifica-
tion of white manhood, are typically expounded in Minuteman operational
settings. Planning, patrol, and recruitment activities all reflect sentiments
that intimately meld racism with masculinity. For instance, on April 2,
2005, members of the neo-nazi National Alliance (Phoenix, Arizona Chap-
ter) joined the ranks of a Minuteman group protesting at a local border
patrol station (SPLC Intelligence Report, 2005b). The fact that neo-nazis
attended and participated in this Minuteman event suggests that these neo-

nazis identified closely with the rally’s anti-immigrant agenda. Just days
before, the National Alliance had handed out flyers in Tombstone, Arizona.
These flyers read, “Non-Whites are turning America into a Third World
slum . . . they come for welfare and take our jobs” (quoted in “Nazis, racists
join Minuteman Project,” SPLC Intelligence Report, 2005a). Further, on
April 3, 2005, an armed Minuteman volunteer who went by the name of
Carl was overheard at a Minuteman watch station stating the following: “It
should be legal to kill illegals . . . just shoot ‘em on sight. That’s my immi-

gration policy recommendation. You break into my country, you die”
(SPLC Intelligence Report, 2005b, para. 4). Minuteman Joe McCutchen,
on the other hand, might not expressly advocate the killing of undocu-
mented persons, but he arms himself with a .38 caliber revolver and flak
jacket on his Bisbee, Arizona patrols (SPLC Intelligence Report, 2005a).
McCutchen, a longtime affiliate of the white supremacist group the Council
of Conservative Citizens, believes that the undocumented are an invasive
people: “We’re losing our language to them, losing our culture. They’re
taking over, and if we don’t stop [immigration], our society will not sur-
vive. That’s why I am here” (para. 13). These incidental statements illus-

trate the racially animated motivations that drive the involvement of many
Minuteman volunteers. The fact that members of this group arm themselves
and gather to hunt undocumented persons reflects a “pack mentality” that
fuels a convergent litany of malicious aggressions against those persons
whom they suspect of being undocumented.

Recruitment activities inspired by the Minuteman groups also have the
unmistakable etchings of masculinity and racism. For example, white
supremacist Kalen Riddle leads the recruitment drive in Arizona for the
border watch group the Arizona Guard (AG). According to the American
Defense League, Riddle uses the AG website to encourage recruits to arm
themselves for border missions “to help local ranchers and citizens defend property rights from illegal alien activity” (ADL Report, 2004a). Quixotic plans to defend the border via armed patrols appeal to the allegorical role that white males have historically played as protectors and champions of Anglo nation and family.

Laine Lawless, former collaborator with Minuteman founder Chris Simcox, now runs an anti-immigrant group known as the Border Guardians. Lawless has made a name for herself within extremist and anti-immigrant circles by doing outrageous stunts like burning the Mexican flag in front of the Mexican consulate in Phoenix, Arizona (Lemons, 2007). An Intelligence Report from the Southern Poverty Law Center recently reported on an email written by Lawless that had been sent to Mark Martin, commander of the nation’s largest group of white supremacist Nazis (Norrell, 2006). Lawless suggested in that email that Martin’s Nazi organization “harass and terrorize” undocumented persons (Norrell, 2006; Lemons, 2007). Specifically, Lawless suggested robbing undocumented persons leaving banks, discouraging Spanish-speaking children from attending schools, and even sabotaging the food and drink of immigrant persons. The Lawless email represents an ironic and interesting twist on the nexus between white masculinity and racism because Laine Lawless is a woman.

Her involvement demonstrates that white women will sometimes aid and abet a gendered project aimed at constructing and reifying white manhood. Her support of this project, through her solicitation of violence against undocumented persons, underscores her complicity along two lines. First, her nefarious plot furthers not only the subordination of Mestizo immigrants, but her own subordination as well. Her malevolent solicitation entrenches the asymmetrical alignment of white males relative to mixed blood immigrants. It conveys the idea that white males are uniquely situated to punish the unlawful transgressions of alien intruders. Yet in many ways, she is also conceding her own position to white males, by encouraging them to carry out the material violence that she cannot or will not undertake herself. This strengthens the position of white males within the supremacist movement. It is supremacist men, rather than supremacist women, that get to claim the symbolic trophy of assaulting undocumented persons. Group ideologies that encourage and justify racially motivated aggressions against undocumented persons reify and ritualize the dominant status of white males relative to non-white others. It is through the violent context of this ideological evolution that protean masculinities become inextricably linked to racial domination in the U.S.-Mexico borderlands.
II. Protean Masculinities and Racialized Activities in the U.S.-Mexico Borderlands

Peter Kraska writes, “The interwoven scripts of militarism and masculinity provide the cultural foundations for organized forms of violence by militaries and police, and their taken-for-granted scripts furnish a more diffuse, but still pervasive social network of threatened and real violence among individual men” (Kraska, 2001, p. 154). The Minuteman group provides perhaps the most interesting portrayal of scripted organizational violence in the borderlands. Minuteman violence takes place in both a figurative and literal sense: it is signified in the clothes the group members wear, the firearms they carry, and the language they use. Moreover, it becomes manifest in the activities they undertake on the front lines of the U.S.-Mexico border. Outwardly, they invoke a law-and-order mantra, but privately, they act like frontier banditos—skirting law whenever and wherever possible.

In fact, despite Minuteman protestations that they are not a paramilitary group, the *MCDC Volunteer Training Manual* is a virtual lexicon of war-related symbols, icons, and metaphors, all organized toward tracking and capturing undocumented persons. The manual’s index partitions the guide into several subsections, including communications, line watch, field survival, sector orientation, and the MCDC chain of command (*MCDC Volunteer Training Manual*, n.d.). Each component reflects an adversarial theme that encourages volunteers to view undocumented persons as the “enemy” and themselves as cultural warriors.

For instance, in the communications section, the *MCDC Volunteer Training Manual* advises volunteers to utilize an ear-bud and lapel microphone for their field radios so as not to compromise their positions during night-time operations (*MCDC Volunteer Training Manual*, p. 7). Ostensibly, compromising their position would rob volunteers of the ability to surprise (e.g. ambush) migrants moving across their watch line. The guide also recommends that volunteers utilize a personal call sign during mission communications to avoid divulging their true identities publicly (p. 7). Finally, this section contains a phonetic alphabet so volunteers can encrypt their communications with each other in covert fashion.

Further, the training guide provides advice on tactical surveillance methods in its section on line watch (*MCDC Volunteer Training Manual*, p. 10). The manual underscores the importance of light and noise discipline when volunteers man a surveillance post: “Too much noise or light can cause illegal aliens to choose a different route where they may have better luck getting through, which is obviously counter-productive to our objective” (p. 10). In a nod to its clandestine heritage, the guide teaches volun-
teers how to maintain their cover at night by employing small lights with red or blue lenses that do not give away their location or impair their night vision (p. 10). It also alerts volunteers to listen for differences in desert noises—the sound of a twig snapping or gravel crunching underfoot is an indication that a person is moving through their sector. Finally, this section advises volunteers to use their radios sparingly and only in short bursts, so as not to reveal themselves or other hidden volunteers. The ambush protocols in the MCDC manual raise troubling issues. It may be the case that anti-government militias, racist organizations that are deeply imbedded in paramilitary cultures have been training border vigilante groups like the Minuteman (ADL Report, 2004b; Dees, 1996; Snow, 1999; Neiwert, 1999; Dyer, 1998). If true, MCDC and other Minuteman outfits bring with them a new potential to unleash lethal operations against undocumented persons.

In any event, the MCDC manual orients volunteers to border watch duties as if they were in an actual combat setting. For instance, it splices the desert geography utilizing military nomenclature. The guide explains that a sector is a 2 or 3 mile long area known for high illegal alien traffic. Further, it notes that each section contains 10-15 watch stations placed a few hundred yards apart (MCDC Volunteer Training Manual, p. 14). Each volunteer will be assigned to man a watch station by a sector supervisor. Once at the assigned station, volunteers are advised to study the surrounding area to identify possible routes through which illegal aliens might try to escape (p. 14). Routine briefings, tactical strategies, and a military regimen further augment Minuteman activities.

The MCDC manual also provides a detailed listing of what well-equipped Minuteman volunteers should bring to the front lines, including boots, gloves, binoculars, FRS radios, cell phones, video cameras, and flashlights (MCDC Volunteer Training Manual, p. 21). Perhaps in an attempt to recreate the cold, mechanistic look of a techno-warrior, volunteers are also encouraged to bring spotting scopes, night vision equipment, re-hydration fluids, thermo cameras, infrared detection devices, motion sensors, and a trail counter (Kraska, 2001, pp. 144-145).

Moreover, the training guide provides a military flow chart that outlines the MCDC chain of command. The MCDC leadership hierarchy consists of a chapter head, operations officer, media coordinator, communications center, sector chiefs, shift leaders, and volunteers. As in the military, power flows downward and channels outward to different tactical branches. Interestingly, the manual contains the following policy regarding volunteer dress: “We will not accept anyone dressing in full military or special-ops garb; it sends an image to the public that we don’t want sent” (MCDC Volunteer Training Manual, p. 16). Officially, the MCDC also allows volunteers to carry only sidearms as opposed to long
rifles (p. 14). Yet despite these prohibitions, field operations sometimes depart radically from these rules, particularly within the smoldering environment of racism, masculinity, and militarism that frequently punctuates Minutemen settings.

In fact, activities like patrolling, tracking, and apprehension that Minuteman volunteers typically undertake appeal strongly to the predatory instincts that often earmark the clandestine operations of organized hate groups. Like modern-day banditos, the Minuteman members routinely take risks and frequently transgress both criminal law and their own written protocols in order to capture and punish persons they believe are undocumented. For instance, MCDC official Chris Simcox was convicted in 2004 for illegally carrying a sidearm in a federal forest while tracking undocumented crossers (Buchanon & Holthouse, 2005). He is now prohibited from carrying a firearm personally, but he travels with others who are armed. Further, Casey Nethercott, who worked closely with Arizona-based vigilante groups, was arrested on a Texas warrant in March 2004 (ADL, 2004a). He has also been criminally charged for pistol-whipping an undocumented person (para. 5). Generally speaking, Minuteman operations lack a substantial supervisory component because reckless behavior by volunteers in the field abounds. For example, despite the fact that MCDC rules expressly forbid the use of assault weapons, Minuteman volunteers still sometimes conceal them in their personal belongings. In fact, on one 2006 mission, two volunteers brought assault weapons and extra clips with them in the event that “anything” went down during their watch (SPLC Intelligence Report, 2005b). Thus, with a wink and a nod, Minuteman rules are blatantly disregarded. Complicating matters is that the Minuteman command and control structure does not appear to diligently inventory or account for the kinds of firearms that their volunteers carry with them. This lawless behavior demonstrates a cavalier disregard for basic gun safety and for the personal safety of volunteers and immigrants alike. Ironically, some Minuteman outfits make volunteers sign a “Waiver of Liability and Assumption of the Risk” agreement to protect themselves and the Minuteman organization against lawsuits relating to their patrols (www.minutemanproject.com/WAIVER-OF-LIABILITY). In the end, military symbolism and actions are collectively structured by racism and masculinity. In this way, protean masculinities become inextricably linked to racial domination through Minutemen activities.

III. PROTEAN MASCULINITIES AND RACIALIZED BONDING IN THE U.S.-MEXICO BORDERLANDS

Fraternal bonding alchemizes the malicious ideologies and activities of
the Minuteman members through masculine rituals that seduce volunteers into believing they are part of a majestic overarching project aimed at protecting American families, the nation, and American culture (www.minutemanhq.com/hq/borderops_pledge.php). Esprit de corps idolatry pervades almost every aspect of volunteerism as candidates are inducted into Minutemen culture. From recruitment, to rallies, and ultimately, to line watch, volunteers are continually peppered with propaganda and male bravado that glorify the collective ambition of the Minuteman to conquer the Mestizo aliens in a “savage war.”

In his book Gunfighter Nation, Richard Slotkin artfully describes the symbolism behind the savage war trope: “The premise of the ‘savage war’ is that ineluctable political and social differences—rooted in some combination of ‘blood’ and culture make coexistence between primitive natives and civilized Europeans impossible on any basis other than that of subjugation” (Slotkin, 1998, p. 12). In this instance, co-existence is operationalized by the racial exclusion of Mestizo immigrants at the border by armed Minuteman patrols (Anthias & Yuval-Davis, 1992). This asymmetrical co-existence is also enforced by denying those immigrants already in the U.S. full recognition in American society because of their undocumented status.

“Yes! I want to stop the occupying army and secure America,” states the Minuteman Project’s recruitment webpage (www.minutemanproject.com/organization/join/asp). To this group, America’s health care and educational systems are at stake in the immigration wars. According to the same Minuteman webpage, these institutions are under continual assault by insatiable “Illegal Alien Armies” that refuse to assimilate into American culture. Recent scholarship, however, casts doubt on many of these claims. For example, the Pew Hispanic Center has just released a study on English usage among U.S. Hispanics. In that report, Pew documented that 88% of the U.S.-born children of first generation immigrants speak English fluently (Hakimzadeh & Cohn, 2007). According to Hakimzadeh and Cohn (2007), that percentage rises to 94% by the third generation. Thus, if language fluency is a significant barometer of assimilation, the children of immigrants seem to be assimilating into American society at an impressive rate. Moreover, the evidence to support allegations by Minuteman officials regarding the ways in which undocumented persons exploit the U.S. healthcare system appears dubious. Recently, UCLA researchers published an article that studied the use of the U.S. health care system by undocumented Mexicans and other Latino groups. In short, analysts found that undocumented Mexicans utilized fewer health care services than did their U.S.-born counterparts (Ortega, Fang, Perez, Rizzo, Carter-Pokras, Wallace, & Gelberg, 2007). Specifically, the team concluded, “Low rates of use of health care services by Mexican immigrants and similar trends among other Latinos do
not support public concern about immigrants’ overuse of the healthcare system” (p. 2359).

Despite such persuasive evidence, Minuteman groups persist in spreading untruths about undocumented persons to further their agenda. “The Minuteman Project is dedicated to protecting America against invaders. We can’t do it alone,” their website exhorts (www.minutemanproject.com/organization/join/asp). Such alarmist rhetoric interweaves patriotism and race-related panic, as America is understood to be fighting for survival against Mestizo alien invaders.

In its idealized form, such an alert also stands as a challenge to the integrity of white manhood: True men stand watch vigilantly to protect the nation. Like other paramilitary outfits, the Minuteman organization operates as if a man’s actual worth is measured by his ability to be a warrior for the cause (Kraska, 2001, p. 155). Paradoxically, this warrior status can be had for a discount from MCDC, which will waive their $50 registration fee for applicants who can demonstrate that they hold a current license to carry a concealed weapon (https://secure.responseenterprises.com/minutemanhq/registration.php?a=100).

New volunteers are typically given the opportunity to immerse themselves in Minuteman festivities that celebrate the tracking and capture of undocumented persons. Patriotism and militarism simultaneously lace the public rallies and private gatherings that occur during Minuteman border operations. Perhaps it’s the Minuteman compounds that best exemplify the kind of forces shaping fraternal bonds within the Minuteman movement. The Southern Poverty Law Center’s article titled “Neo Nazi Leads Recruitment Drive for New Border Militia” described a compound thus:

The desolate compound was saturated with paranoia, military fetishism, and machismo . . . By day two of the Minuteman project, volunteers had taken to calling the college’s cafeteria the “mess hall,” the dormitories “barracks,” and the boundaries of the campus the “perimeter,” observed first hand witnesses. (SPLC Intelligence Report, 2005b, p. 2)

These shared understandings of place and space within Minuteman vocabulary bespeak surprising levels of intimacy between and among volunteers. Communicating in a militarized vernacular emulsifies fraternal ties and also underscores the romantic fatalism that punctuates much of Minuteman culture.

Blood and glory notwithstanding, romantic fatalism within the Minuteman movement can be dangerous in the hands of hair-trigger volunteers. For example, armed security teams placed trip flares randomly around the Minuteman compound so night-time intruders could be detected (SPLC
Intelligence Report, 2005b, p. 2). Perhaps akin to mass panic attacks, rumors often spark safety alerts, which in turn provoke compound-wide armed responses from disoriented volunteers. Although these alerts almost always turn out to be false alarms, the fact that volunteers face these phantom threats collectively binds them together powerfully. It may be the case that volunteers see their service in the Minuteman corps as a kind of sacrificial struggle that will eventually add purpose and meaning to their status as white men in a racially changing nation (Rotundo, 1993).

Interestingly, inasmuch as military fetishism reciprocally structures the sexism and racism that animate much of Minuteman culture, non-white and non-male individuals are often aggressively recruited into Minuteman outfits. For the Minuteman group, having non-white members helps them to deflect charges of organized racism. The participation of non-white volunteers allows them to achieve a greater personal profile than they otherwise would have had if left to their own merits (SPLC Intelligence Report, 2006). In other instances, participation permits a collegial bonding with white males that might not otherwise take place, but for their support of the Minuteman’s overarching racialized agenda.

Latina/o volunteers might rationalize their own involvement by embracing an unforgiving law-and-order ethos that rejects the plight of undocumented immigrants in favor of law-abiding immigrants that enter the U.S. through conventional means. Alternatively, native-born Latinas/os may also be participating with Minuteman groups because they privately harbor malicious will against the ancestry or national origin of foreign-born Mestizos. More succinctly, involvement is a way for Latinas/os insecure in their own cultural skins to make important allies in white male communities. Interestingly, women are also welcomed into the Minuteman movement, but they are often relegated to supporting roles such as registering new volunteer applicants or cooking meals at Minuteman encampments.

The involvement of non-white and women volunteers in Minuteman militias does not signify newfound egalitarian principles. Rather, these “non-standard” volunteers must commit themselves to fulfilling the agenda of the Minuteman. Internally and externally, Minuteman activities are intended to safeguard and reify the dominant position of white males relative to non-whites—citizens and non-citizens alike. Within themselves, non-standard volunteers also must be able to reconcile glaring inconsistencies within the Minuteman movement.

Perhaps the most egregious offense is publicly advocating a law-and-order mantra, while privately reveling in racism, lawlessness, and reckless behavior. For example, several recent news stories have documented financial irregularities plaguing the Minuteman leadership. In fact, MCDC president Chris Simcox terminated numerous MCDC leaders because they had
requested a meeting with him to discuss their concerns over his handling of MCDC funds (Seper, 2007a). Further, a 1.2 million dollar breach of contract lawsuit against Chris Simcox was filed in May 2007 in Maricopa County Superior Court (Phoenix, Arizona). A retired home builder named James Campbell had donated $100,000 to assist MCDC in constructing a one-mile-long Israel-style fence along the U.S.-Mexico border to prohibit undocumented crossings (Seper, 2007b). To date, however, only a standard five-strand barbed wire fence has been erected, with no explanation being given for, or obvious progress being made on, a permanent structure (p. A03). Apparently, Mr. Campbell felt compelled to sue MCDC because he believed that its leadership had intentionally misled him regarding the fence project. Additionally, an MCDC Political Action Committee (PAC) that had raised more than $300,000 gave less than 3% of it to political campaigns (Seper, 2007c). FEC reports indicate that the lion’s share of cash went into operating expenses or cash-on-hand reserves (p. A04). Finally, MCDC has long-time organizational ties with suspect charitable organizations like the Declaration Foundation (DF). In December 2006, the DF was fined for and prohibited from soliciting donations by the Pennsylvania Bureau of Charitable Organizations for, among other things, making false statements to solicit donations and withholding documents from an investigative subpoena (Seper, 2006).

Non-standard volunteers likely come to terms with these ethical shortcomings by adopting an unquestioning attitude and rock-solid allegiance to the Minuteman leadership. Relatedly, the involvement of non-standard volunteers is welcomed so long as those volunteers demand no real power or say within the organization. If they are given some organizational authority, it is with the understanding that white males will oversee their decisions. Thus, their work is permanently etched with supremacist rhetoric that glorifies white manhood. Ultimately, much of what the Minuteman is about concerns racism and domination. For members of this group, policing the border is oddly therapeutic: It reassures these white men that they are still important and still in charge. Exposing this malicious canon might help curb the pervasive racism and violence that make these boyz such banditos.

NOTES
1. My use of journalistic references is intended only to frame broader issues involving race, masculinity, and militarism—the main elements upon which this article focuses. I have tried to rely principally on Minuteman documents as much as possible to ensure an authentic organizational voice.
2. On file with author.
3. The Minuteman Pledge can be found at http://www.minutemanhq.com/hq/borderops_pledge.php
4. Since this article was written the registration link has been changed. Also, the site no longer offers a membership fee waiver for demonstrable concealed weapons permits.


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Transgender and Transsexual Identities: The Next Strange Fruit—Hate Crimes, Violence and Genocide Against the Global Trans-Communities

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ABSTRACT

In this paper, we review the literature on global transgender hate crimes, violence, and abuse. We point out that it is possible to infer that this problem is not localized to the United States but rather, represents a global pandemic of focused prejudice. We point out that it can be viewed not only as an extremely serious and immediate public health problem, but also as genocide against a consistently invisibilized minority population. We provide concrete examples from the researchers’ field studies as well as from the published literature.

I. INTRODUCTION

A. Overview

1. Normative Understandings

Typically, “gender-based violence” or “gender violence” is understood to mean any form of violence against women (WHO, 2007). However, the implicit definition of “woman” is based upon reproductive (gonadal) genitalia and the social construction of personhood/identity via the binary social edifice resulting from the gonadal status of the individual. Thus, it is rare for gender-based violence research to include non-normative (i.e., non-Western) or non-traditional gender identities (androgeny, agendered, gender-benders, gender-blending, etc.; see Witten & Eyler, 1999; 2007abc) and their resultant sexualities, pair-bonding, or socioeconomic and demographic status.

It follows that little is known about violence against these communities. Moreover, what is known is gathered either through anecdotal evi-
dence or through a few (though growing number of) surveys and indicates that the violence against these communities is significant, increasing, and constitutes a serious public health problem in the U.S. (Witten & Eyler, 1997). Moreover, the treatment of the transgender population, with respect to violence and abuse, could be viewed, under the Convention on the Prevention and Punishment of the Crime of Genocide (1951, article 2, items a, b, & c), as crimes of genocide against the transgender-community members in the U.S. and other countries. We begin with a brief discussion of “hate” as it applies to this population, followed by a short overview of the transgender-identified community.

II. Differentiating Anti-Trans Violence From Other Types of Violence

Before we can truly understand what differentiates a hate crime from any other crime, we must first understand what is meant by the term “hate” and how that understanding applies to the trans-identified population. Academicians, politicians, activists, the media, and the general public do not always use the word “hate” with uniformity (Perry, 2005, 2006). Recently, critics of hate crimes laws have adopted an emotive, individualized conception of “hate,” saying that to prosecute a hate crime is to criminalize “thought” and “belief” (Rosebury, 2003, p. 37). This interpretation misguidedly conflates the phrase “hate crime” with any crime “motivated by dislike of another person.” Perry points out that hate crimes are not about emotive responses only, but also are about power and asserting one’s own identity over the identity of another. She also demonstrates that reducing a hate crime to an emotional dislike of another narrowly pathologizes the perpetrator as an unstable individual acting out irrationally when, in reality, “racist or gendered violence, for example, is not aberrant. It is not unusual or abnormal in cultures like ours, that is, in cultures which are permeated by bigotry and prejudice” (p. 125).

In the song “Strange Fruit,” written by Lewis Allen and published in 1937, the writer expresses his horror at the 1930 lynchings of two black men named Thomas Shipp and Abraham Smith. While there are no “bodies swinging in the southern breeze” and we don’t see the “bulging eyes and the twisted mouths” of the trans-community members murdered over time, the following examples of violence against some community members, as well as those listed on the Remembering our Dead website (2007), document the degree of similarity between these lynchings and modern day violence against the transgender-identified community. In order to initiate our discussion, consider the following examples of actual anti-transgender hate crimes:
—August 12, 2002: Two male-to-female transgender teens were shot ten times as they sat in the front seat of their vehicle in a Washington, D.C. neighborhood. This was the third transgender shooting in Washington, D.C. that week (Fahrenthold, 2002).

—October 4, 2002: A 15-year-old male-to-female transgender woman named Gwen Araujo was beaten, tied up, and strangled by four men in Newark, California after her biological sex was revealed. Two of the convicted perpetrators had sex with Araujo during the summer of 2002 (Locke, 2006).

—December 6, 2003: A female-to-male transgender man, Lucas McCauley, left a Largo, Florida night club with William McHenry. Later, while at McCauley’s home, McHenry stabbed the transgender man to death. Authorities did investigate this as a hate crime (Johnson, 2006).

—September 13, 2007: “A transgender person was thrown through a plate-glass window” in Washington, D.C. (Schrank, 2007). No other information was found to have been reported in the mainstream local or regional media.

—Summer 2005: Three transgender people were sexually assaulted at gunpoint in San Diego, California. The Associated Press (2006) reports that prosecutors felt the perpetrator “preyed on people who were less likely to report crimes and threatened to kill some.”

—October 29, 2006: After leaving a Washington, D.C. nightclub with a man, a transgender woman was punched by her companion. The assailant also wrapped his belt around the victim’s neck and took her purse. All of this occurred after he discovered the victim’s biological sex (The Washington Post, 2006).

One 50-year-old male-to-female postoperative transsexual reported (in Wave 1 of the TranScience Longitudinal Aging Research Survey), “Every time I leave the house I leave with three strikes against me. I can be raped for being a woman. I can be raped and murdered because I am perceived as ‘gay’ (a drag queen) or I can be violently murdered because I am read as trans.” From these examples (along with the upcoming examples) and the many other cases of anti-transgender hate violence reported in the United States, two basic trends seem to emerge. These trends appear to differentiate anti-transgender hate violence from other types of crime.

First, the motive behind each of these above crimes lies, first and foremost, in the transgender identity of the victim coupled with the perpetrator’s sense of betrayal and disgust when the victim’s natal genital sex is revealed. Consider the October 2006 crime cited above, in which perpetrators took money or other belongings from their victims. Based on the
Washington Post’s (2006) report of the crime, theft was a secondary crime committed only after addressing the perpetrator’s feelings of betrayal and disgust upon discovering that his female-identified companion was biologically male.

Secondly, the goal of these attacks is not principally to harm or even to simply murder the victim. Instead, the actions of many perpetrators in anti-transgender hate crimes point to a desire to eradicate the transgender-identified individual in order to alleviate the perpetrator’s disgust and to avenge the sense of betrayal that precipitated the attack in the first place.

Two pieces of evidence support this conclusion. The first is the level of violence used in the murders and assaults of transgender victims, the intensity of which is striking. Actual examples include throwing the victim through a window, strangulation with a belt, and group-rape. These methods are to be seen as indicators of a desire to deface and mutilate the bodies of transgender people because they challenge the normative world-view of the perpetrator with respect to gender. While non-transgender identified individuals are sometimes subjected to similar treatment, and while it is epidemiologically not possible to prove that the trans rates are significantly higher than the non-trans rates, due to the general invisibility of the trans-identified population and the lack of reporting of transgender-related hate crimes (Witten, 2003, 2004; Witten & Eyler, 1997; Lombardi, Wilchins, Priesing, & Malouf, 2001), it is generally understood within the trans-population that transgendered individuals can enrage others by their mere existence... The extent of this violence should not be under-estimated. In my five years in Atlanta, there have been no fewer than 10 violent deaths of transgendered persons reported in the press. Six of these were the apparent work of a serial killer (victims were shot and dumped in various locations)... The extent to which transgendered persons are devalued by our society becomes apparent when one considers that the last time such a large number of persons were serially murdered in Atlanta, the entire nation was in an uproar about the Atlanta child killings. (Denny, 2007, para. 12)

Witten and Eyler (1997) point out that

Perpetrators often believe that a person who transgresses the norms of gendered sexuality, either by engaging in sexual relationships with members of the “non-opposite” gender, or by behaving “as” the other gender, is deviant or morally defective, and thus a deserving victim of violence and aggression. Xenophobic elements, such as the persecution of transgenders [sic] by neo-Nazis, have also been reported, as has a preference by assailants, in some cases, for attacking male-to-female transgenders
[sic] or transsexuals who are members of racial minorities. The degree to which these elements (gender, sexuality, and race/ethnicity) converge in the decision by assailants to attack transgendered persons is presently unknown. (p. 3)

The second piece of evidence for this goal of annihilation is the visceral disgust described by many perpetrators. Such a psychosomatic response is best exemplified by Jose Merel, convicted of manslaughter in the killing of transgender teenager Gwen Araujo. Merel was reported to have “vomited and wept when he discovered Araujo’s biological identity, slapping her and hitting her with a glancing blow with a pan” (Locke, 2006). The desire to remove from society that group of people which provokes such disgust is what appears to motivate perpetrators to carry out acts of such uncharacteristic brutality. Sadly, it is not possible to interview most of the perpetrators of such crimes, as the crimes are frequently not reported or, if reported, are not reported as transgender-related crimes (Witten & Eyler, 1997; Witten, 2007b). Thus, we can only conjecture that a visceral disgust is a principal component of the violence.

The high degree of perceived/actual violence and abuse against the trans-community suggests that the hypothesis is not without grounds. For example, in Wave 1 of the TLARS survey, 66% of the respondents indicated that they had suffered some form of abuse, mistreatment, and/or violence perpetrated against them in social settings and of those, 70% indicated that they felt it was hate crime-related. We will return to this discussion in a moment, broadening it to include other examples of violence and abuse. However, in the next section, we provide a brief overview of the variety of non-traditional (non-Western) identities that are included in the broad interpretation of the transgender community as a whole.

### III. Overview of Transgender Identities

The traditional Western biomedical construction of identity routinely conflates sexuality, gender, and birth body or “birth sex/reproductive sex” (Basu, 2000; Doyal, 2001; Greenberg, 1998; Grant, 2001; Pesquerra, 1999; Pryzgoda & Chrisler, 2000; Witten, 2004, 2005; Witten & Eyler, 1999). A trivial example is the conflation of sex and gender on numerous medical forms worldwide that routinely ask for “gender” when they obviously mean “birth sex/birth body” (Witten, 2005). Furthermore, even if they ask for birth sex, they provide only the two choices of male and female, thereby ignoring the existence of the world-wide intersex population (ISNA, 2007).

*Transgender* is a term used broadly “to describe people who transcend the conventional boundaries of gender, irrespective of physical status or
sexual orientation” (Feldman & Bockting, 2003). The term is used to refer to groups such as transsexuals, cross-dressers, drag queens, drag kings, and gender queers, as well as myriad other members of the “gender community” (a phrase found in Kidd & Witten, 2007; Sims, 2007; Witten & Eyler, 1999; Witten & Eyler, 2007; Witten, 2003). However, it is important to understand that these terms are dynamic in location, cultural interpretation and context, in time, and in personal/political meaning, and therefore must always be carefully applied. The construct of an essential gender, gender identity, or gender self-perception becomes seemingly absurd when one considers the breadth and diversity of gender constructions in this community. A normative, binary conceptualization of essentialized gender duality espouses that each person falls neatly into either a male or female gender/sex category. Under this system, each category also carries with it a set of innate rules that govern every facet of an individual’s life from dress to mannerisms, from sexual orientation to social roles. Furthermore, this paradigm holds that one’s gender is inherently immutable. There is no blending or overlap either between the male-female categories themselves or among the various constituent socio-political roles associated with each gendered/sexed identity. Such a system falls exceedingly short when attempting to categorize the material existences of transgender and gender-variant people. For example, how would one apply a binary gender system to a biologically XY-male individual who identifies as a gay but who performs fulltime as a drag queen and has undergone surgery to acquire breasts and more feminine facial features? Like most binary systems, the rigid male-female conceptualization of gender proves reductionist when applied to the more complex “gray areas” of Western culture. Moreover, when one includes non-Western identities such as the Hijra of India/Pakistan, the Fa’afafine and Fa’afatama of Tonga/Samoa, or the Mak Nyah of Malaysia, it is easy to see that gender constructs span a broad variety of body form, sex, and sexual identities. A larger discussion may be found in Witten (2007).


In order to obtain accurate hate crime statistics concerning people who identify as transgender, it is essential not only to be able to identify who those people are, but also to be able to count them (Nolan, Akiyama & Berhanu, 2002). Because of the breadth of gender constructs and the stigma associated with outwardly identifying as a member of the trans-community, the exact number of transgender-identified individuals is difficult to estimate (Witten & Eyler, 1999; Witten, 2003). An international survey administered by Witten and Eyler (1999) found that 8% of the TranScience
Longitudinal Aging Research Study (TLAR) survey respondents identified their gender identity as something other than completely feminine or masculine. Based upon these estimates, Witten (2003) projected a range of 4.1-12.3 million elder transgender-identified persons (65 years and older) worldwide. Her work did not include the various cultural conceptualizations of the term “transgender” discussed in Witten and Eyler (2007ab) and is therefore likely to underestimate the actual size of the global elder transgender-identified population. Moreover, the overall transgender-identified population, worldwide, may exceed 20 million when all cultural definitions are included.

C. Violence, Abuse and Hate Crimes

A hate crime is defined by Black’s Law Dictionary (Garner, 1999) as “a crime motivated by the victim’s race, color, ethnicity, religion or national origin.” In recent decades, states such as California, Connecticut, Hawaii, Minnesota, Missouori, New Mexico, Pennsylvania, Iowa, Oregon, Vermont, and New Jersey have expanded hate crimes legislation to include gender identity, gender expression, sex, disability, and/or sexual orientation (Transgender Law and Policy Institute, 2006; National Center for Transgender Equality, 2007). In addition, the Local Law Enforcement Hate Crimes Prevention Act of 2007 has cleared the U.S. House of Representatives and, if passed, would add “gender identity,” and thereby transgender people, to the list of protected classes of people protected by the federal hate crimes statute. However, the recent exclusion of the transgender category from the federal Employment Nondiscrimination Act indicates that there are still significant obstacles to federal inclusion of transgender identities.

D. Anti-Lesbian, Gay, & Bisexual Hate Crimes — A Bridge to Analyzing Anti-Transgender Violence

Hate speech and hate violence are frequently experienced by members of the gay and lesbian community. In an early study of 125 lesbians and gay men, nearly three-fourths (75%) of the study respondents had experienced hate speech (D’Augelli, 1989). Another study (Comstock, 1989) found that half of the lesbians and gay men surveyed had experienced physical violence. The frequency of incidents among the study’s participants was also found to be higher for lesbians and gay men of color as compared with white individuals.

Frequently, the overt actions and speech of perpetrators of anti-gay and anti-lesbian hate violence resemble those of anti-transgender offenders
(Witten & Eyler, 1999). This similarity is rooted in the commonality of the two groups’ transgression of traditional gender norms, whether this takes the form of sexual intimacy with a person of the “non-opposite” gender or whether one’s own gender identity is considered non-normative under the binary gender system. Minter (2007) proposes that this similarity is rooted in the perpetrators’ ignorance concerning transgender identities and experiences. In addition, reporting rates of hate crimes against sexual and gender minority individuals may differ from those regarding other types of hate crimes because LGBT victims must essentially “come out” before reporting an anti-LGBT hate crime (Rubenstein, 2002, p. 72). Despite these similarities, Witten and Eyler (1999) concluded, from both anecdotal and survey evidence, that transgender people were simultaneously more likely to be victimized and less likely to have access to consequent medical care and legal services.

E. Prevalence of Anti-Transgender Hate Crimes

Hate crimes, violence, and abuse are facts of life for a great number of transgender-identified individuals. Witten and Eyler (1999) state that in a snowball sample of 213 transgender-identified individuals from the TLAR survey (sample age range 20-85 years, \( m = 39.6 \) years, \( s = 11.1 \) years, primarily Caucasian, middle-to-upper class, male-to-female transgender-identified persons), there was a high degree of perceived and actual violence and abuse suffered (91% of the respondents, Table 1). Sadly, much of this abuse and violence is suffered prior to the age of eighteen years, and is of both multiple category and multiple occurrence. Of the 86 respondents answering the question on abuse before the age of 18, 60 of the respondents (69.76%) stated that they had suffered some sort of violence or abuse (multiple choices of form of violence/abuse could be checked) prior to age 18. Furthermore, the top perpetrators of this violence/abuse were—in order of importance—the father, another adult, a relative, the mother, or a peer.

Within the overall trans-community, there are many sub-populations. One of the least visible has been the female-to-male transgender-identified individuals. Female-to-male (FTM) transgender individuals typically respond well to hormonal treatment, masculinizing relatively quickly and effectively. Other than typically being short in stature, they “pass” very well. However, this does not protect them from the abuse and violence associated with being transgender-identified. In a recent study by Kidd and Witten (2007) that investigated violence in the FTM population, 33 surveys were distributed to members of two FTM support groups in Virginia, of which 13 were returned (a 39% response rate, mail survey). While this sample size is small and possibly non-representative, it merits consideration.
for its possible heuristic value, being one of the first studies of its kind to investigate specifically the experiences of FTMs with regard to hate violence.

Nine of the thirteen respondents (69.23%) reported some form of social mistreatment, ranging from verbal abuse to sexual violence (including rape) to physical violence (multiple choices of form of violence/abuse could be checked). Collectively, these nine respondents reported experiencing at least 439 violent incidents (Table 2). The phrase “at least” is used because some of the respondents gave ranges as to the number of times they experienced a particular type of mistreatment. The number 439 represents the total frequency of violent incidents using the lower number of the ranges provided by respondents. Respondents were given 11 categories of violence from which to choose, including the categories of verbal abuse, following, stalking, individual and gang mugging, threatening, beating, sexual harassment, sexual abuse, attempted rape, and rape. All eleven of these categories were represented in the incidents collectively reported by the respondents. Consider the following quotations from both the TLAR and the FTM survey (spelling and grammar preserved as written):

—When I was about 14, a boy (stranger) asked me if I were a boy or a girl. When I didn’t answer, he threatened to shove his hand in my pants, “to see if there is a hole there.” I punched him and ran.

—Once arrested and had police physically assault, sexual abuse (inappropriate touching, removing my clothing in front of other inmates) and repeatedly threaten to rape me, due to my ambiguous gender presentation.

—The abuse was exploitation by a brother. I was defrauded of money (approx. $2000) and though I would not have taken action to recover it, he assured my silence by threatening to present a letter to my employer and “outing” me. I would call it extortion. It was several yrs ago. Not reported to authorities. Family members voiced their disapproval.


Other researchers have corroborated what these two studies show. Lombardi, Wilchins, Priesing, and Malouf (2001) reported overall transgender violence rates where 59.5% of the sample experienced either violence or harassment (26.6% experienced a violent incident, 14% reported rape or attempted rape, 19.4% reported assault without a weapon, 17.4% reported having items thrown at them, and 10.2% reported assault with a weapon) and 37.1% reported some form of economic discrimination. The
National Coalition of Anti-Violence Programs (2005) found that 10% of the crimes tracked by the organization in 2004 had transgender victims. While this number represents a 3% decline from the 2003 report, the researchers noted that the decline may actually be a result of many transgender people attempting to remain undetected (go stealth) rather than of an actual decrease in anti-transgender attitudes. This conclusion is not surprising, given the perceptions and experiences illustrated in the following cross-sectional sample of quotations from both the longitudinal TLAR survey and from this FTM survey (grammar and spelling retained as written):

—I live in the worst neighborhood in Vancouver the only way I will ever be safe is to get off welfare and move away from the East Side. I have been a target all my life and don’t know how to avoid or deflect the unreasoning hatred that permeates all levels of society.

—Mugged in NYC by a gang of black people who took all my cash. Brutally sexually mutilated in what the police said was a “drug related” hit on the wrong person. Police didn’t consider it serious enough to follow up on even though my penis was bisected several centimeters with a knife or razorblade. Numerous assaults while growing up.

—Was sexually harassed at work place, employer and employees found out that I was a transsexual, and co-workers tried to find out if I was really a man or woman by grabbing at my chest and hair and other body parts.

The organization Gender Education and Advocacy (2005) reports another sobering statistic: “Over the last decade, more than one person per month has died due to transgender-based hate or prejudice, regardless of any other factors in their lives” (About the Day of Remembrance, para. 3).

F. Statistics on the Characteristics of Anti-Transgender Hate Violence

While each person’s experience of anti-transgender hate violence is unique, research has provided insight into similarities among and predictors of these violent acts. Four primary themes emerged after a review of the literature.

The first theme that became apparent was that the majority of anti-transgender hate crimes studied took place in social settings. According to the findings of the TLAR, such acts take place in the workplace, on the street, in bars, or in any other public, interpersonal scene. Religious institutions, educational settings, other public environments, organizations, and institutions were also included as options in this section. When asked whether the respondents had had any acts of mistreatment, abuse, or vio-
Table 1a. Prevalence of Violence Types Among Respondents to the TLAR Survey

<table>
<thead>
<tr>
<th>Violence Type</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical</td>
<td>62</td>
<td>25%</td>
</tr>
<tr>
<td>Emotional</td>
<td>91</td>
<td>37%</td>
</tr>
<tr>
<td>Sexual</td>
<td>26</td>
<td>11%</td>
</tr>
<tr>
<td>Neglect</td>
<td>35</td>
<td>4%</td>
</tr>
<tr>
<td>Exploitation</td>
<td>11</td>
<td>5%</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>22</td>
<td>9%</td>
</tr>
</tbody>
</table>

Table 1b. Prevalence of Respondents Citing Violence as Hate Crime Related (TLARS Study)

<table>
<thead>
<tr>
<th>Violence Type</th>
<th>Percentage of TLARS Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Harassment</td>
<td>48%</td>
</tr>
<tr>
<td>Followed/Stalked</td>
<td>41%</td>
</tr>
<tr>
<td>Mugged</td>
<td>29%</td>
</tr>
<tr>
<td>Beaten</td>
<td>39%</td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>23%</td>
</tr>
<tr>
<td>Sex Abuse/Attempt</td>
<td>15%</td>
</tr>
<tr>
<td>Rape</td>
<td>6%</td>
</tr>
</tbody>
</table>

Of violence perpetrated against them in social settings, survey participants responded as follows: Yes (n = 89; 66%), No (n = 42; 31%), and Not Applicable (n = 4; 3%; total n = 135). Consider the following statements from the FTM survey (grammar and spelling retained as written):

Police verbal: paraded around police station for amusement - “This guy is really a woman.” Police also informed my employer of my transsexualism. I had been stopped and asked for ID - There had been no crime nor suspicion of crime, just a request for I.D. I had a female drivers license, so I was taken into custody for proof of identity. Released without charges.

Verbally: told directly and through others that I should be killed (murdered).

Beaten/Hit: Once during physical endurance (job) training an instructor was disgusted with me for working out with the men and punched me in the face.

The second theme emerged in a report by Lombardi et al. (2001), who
concluded that socioeconomic status was among the best predictors of a transgender person’s experiencing violence. Among the factors noted as contributing to this trend were homelessness as a result of parental disapproval of the youth’s gender identity and the resultant survival crimes such as sex work which may be undertaken, along with all of the associated health and personal risks (Denny, 2007; Lombardi et al., 2001; Witten & Eyler, 1999).

The third theme to emerge was the lifelong occurrence of hate violence in the biographies of many transgender individuals (Witten & Eyler, 1999; Witten, 2004). Because transgender people often exhibit non-normative gender behavior in childhood, many are victimized by parents, relatives, and others (see previous discussion of abuse and violence before the age of 18). On the other end of the spectrum, elderly transgender people were also noted as victims of abuse and/or violence as their access to medical and mental health services is often reduced because of their transgender status (Bradley, 1996; Cahill, South, & Spade, 2000; Cooke-Daniels, 1995; Witten, 2002, 2003, 2004, 2005ab; Witten & Whittle, 2004). Consider the following examples drawn from the work of Witten & Whittle (2004) and discussed more extensively therein:

Case 1: UK — James, a trans-man of 71 who had undergone chest reconstruction but not genital surgery, was in the stages of early Alzheimer’s. He was placed within a local authority care home where every other client was female. The staff at the care home was very uncomfortable with meeting his bodily needs and was very unhappy with
his constant removal of his incontinence pads. They had also taken to not passing on his post which included a support group magazine, deciding that he was not able to read and understand it. A local volunteer visitor contacted a support group after discovering James very distressed.

**Case 2: US** — laughed at by emergency staff — treated unnecessarily roughly and ignored during hospitalization. (63-year-old Male-to-Female trans-person)

The fourth theme was the level of underreporting that accompanied victimization of transgender people. Respondents of the TLAR survey were asked to identify whether they had ever told another individual about the violence, abuse, or mistreatment that they had experienced and to whom these events had been reported. Of the \( n = 121 \) participants who answered this question, \( n = 93 \) (77%) indicated that they had told others of their abuse experiences, and \( n = 28 \) (23%) stated that they had not. With respect to reasons for non-reporting (total \( n = 132 \); multiple responses permitted), \( n = 28 \) (21%) indicated that they were afraid to report for fear of reprisal by the perpetrator, \( n = 14 \) (11%) feared abuse by the medical/legal system, \( n = 5 \) (4%) were unable to report, \( n = 38 \) (29%) felt that it would not make a difference if they had reported the incident or incidents, \( n = 10 \) (8%) wanted to protect the perpetrator, and \( n = 22 \) (17%) indicated that there had been reasons other than those listed.

The FTM survey of Kidd and Witten (2007) further confirmed this underreporting. Of the nine FTM respondents (69.23%) who reported social mistreatment of some sort, nearly all (8 of 9, 88.89%) said their experiences matched the following operational definition of a hate crime given to them in the survey: “abuse, harassment based on bigotry or bias with respect to one’s actual or perceived race, religion, ethnicity, disability, sexual orientation or gender identity or expression. This can take a physical, verbal, emotional, or sexual form.” Nonetheless, not one of the 9 victimized respondents reported their collectively 439 violent victimizations to law enforcement. These statistics illustrate the existence of a description or perception incongruence among respondents with regard to violent incidents. Despite being able to provide very graphic descriptions of highly traumatic events, none of the respondents felt their victimization warranted reporting. Some respondents also indicated that these incidents, which appear very serious, were in fact nearly inconsequential, and therefore did not merit reporting. Table [3] lists the reasons given by the FTM survey respondents for not reporting the hate violence they experienced. Fear of reprisal and fear of abuse from the police and legal systems were frequently mentioned in both the TLAR and the FTM survey comments:
—Arrested a few yrs ago for possession of cocaine—I was verbally harassed by police (“you mean you have a pussy and not a dick?”) and forced to pull my pants down in front of 4-5 cops to prove my gender status. 4 yrs ago at a demonstration cops began beating on me with clubs.

—[re a lawyer] He took my $600 and failed to take any action on my behalf.

Rubenstein (2002) also highlights the underreporting of anti-LGBT hate crimes. He points out that, unlike victims of hate crimes based on race or sex, LGBT victims must essentially “come out” to law enforcement in order to report victimization. This public openness with regard to one’s transgression of heternormative, binary sexual and gender norms can itself carry risks and actually increase the likelihood of future hate crime victimization (Kidd & Witten, 2007; Witten & Eyler, 1999).

Table 3. Respondents’ Comments About Their Reasons for Not Reporting Social Mistreatments

<table>
<thead>
<tr>
<th>Reason for Not Reporting</th>
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<tbody>
<tr>
<td>“Did not consider the actions to be criminal—either due to nature, or age of parties involved. Mine included.”</td>
</tr>
<tr>
<td>“It was my own situation to deal with, and no two of those situations were ever alike.”</td>
</tr>
<tr>
<td>“didn’t want to make the situations worse, unsure of how sensitive the law would be to my situation or if it would help @ all” [sic]</td>
</tr>
<tr>
<td>“It felt pointless. I don’t think they could’ve really done anything except make me feel worse about it.”</td>
</tr>
<tr>
<td>“nothing would have been done about it” [sic]</td>
</tr>
<tr>
<td>“Minor offenses—name calling, etc. not worth reporting”</td>
</tr>
<tr>
<td>“For street harassment—did not think police would take it seriously or do anything about it. Did not report the assault or threats to the police because I did not think I would be believed, or treated with respect and, was too emotionally disturbed by the incident to talk about it for some time afterwards.” [sic]</td>
</tr>
<tr>
<td>“Either I was not physically injured, I could not have identified the perpetrators, or I did not feel I was under threat of harm. Also the incidents were usually mild enough that it did not seem worth the risk to expose myself to secondary victimization.”</td>
</tr>
<tr>
<td>“I was trying to forget that my partner hit me”</td>
</tr>
</tbody>
</table>

IV. GLOBAL ANALYSIS OF ANTI-TRANS VIOLENCE

Transgender violence is not just an epidemic confined to the United States. It is, in fact, a pandemic which spans the globe, cutting across continents, cultures, and languages. The following are a few examples of the
extent to which hate violence affects the lives of transgender-identified people around the world.

A report on the plight of transgender people in Argentina summarized by the Valente (2006) identified 420 transgender deaths in the Buenos Aires metropolitan region “in recent years.” Of these 420, “62 percent of the total died of AIDS, 17% were murdered, and the rest either committed suicide or died in car accidents, of drug overdoses, as a result of medical malpractice during plastic surgery or other procedures to change their physical appearance, or of cirrhosis of the liver, cancer, and other diseases.” The report also notes that 70% of these deaths occurred between the ages of 22 and 41, much younger than the country’s overall healthy life expectancy of 66.7 years (The World Health Organization, 2000). The tremendous scope of anti-transgender violence and discrimination in Argentina is corroborated by a similar study conducted by the International Gay and Lesbian Human Rights Commission (2005).

According to an article by the Indo-Asian News Service (2007), activists in Chennai, Tamil Nadu, India are also working to raise awareness about violence against the Aravani community, a category denoting people of a third sex in the Indian state. In this article, the non-governmental organization Tamil Nadu AIDS Initiative (TAI) describes the case of Aahilya and Nathan. The two Aravanis were beaten and abused by a shopkeeper when they attempted to buy “trinkets and asked for a 50 paisa [regional currency] concession.” TAI has also started a fund to assist Aravani victims of violence. So far, the organization has enrolled 10,000 Aravani victims.

Another example of the global scope of anti-transgender hate violence is the Nepalese “sexual cleansing” reported by the New York-based organization Human Rights Watch (HRW) (2006). In Nepal, transgender people are commonly referred to as metis. This word specifically refers to individuals who are biologically male but who present a more feminine gender expression. HRW reports that Nepalese police are involved in a systematic campaign to target and arrest metis. On March 14, 2006, 26 metis were arrested, detained, and denied legal counsel. In the end, they were charged with “public nuisance.” The report also details a 2004 incident in which police “rounded up” 39 metis and arrested them. Several of these individuals told reporters stories of the abuse they endured during their two-week detention. Many of the metis arrested during this campaign were also HIV prevention outreach workers. In light of this, the HRW report warns, “By jailing outreach workers campaigning against the spread of HIV/AIDS, the police threaten public health as well as civil liberties.”

Organized campaigns of violence against transgender people are not confined to Nepal; in fact, they are present even in countries commonly
thought of as socially progressive on issues of gender identity. In Liver-
pool, England, a 51-year-old transgender woman named Penelope Bassi
was attacked on numerous occasions. In addition to these attacks, her home
windows were smashed with bricks and her car was set on fire. “She was
hit, laughed at and ridiculed—not only by her neighbours and their children,
but also by police officers whose job it was to protect her” (Mansey, 2006,
p. 5). Fortunately, this violence did not escalate to murder. Instead, the
victim was able to forge a relationship with the police authority to assist in
developing new guidelines for officers responding to anti-transgender hate
crimes. Similar reports have been made by members of military organiza-
tions, worldwide, who have come out as trans-identified after or during
their military service; many of these individuals are decorated war heroes
(Witten, 2007c).

These case studies, as well as numerous others not reported here, illus-
trate the global pandemic of anti-transgender violence. This widely preva-
lent hate violence, as pointed out by Human Rights Watch, not only
threatens the safety of transgender people, but also detrimentally affects the
greater pursuit of universal civil liberties, public health, and democratic
governance. Denny (2007) summarizes the challenge well:

Violence against transgendered persons is not an Atlanta problem, how-
ever, or even a national problem; it is an international one. Death squads
in South American countries have executed transsexual persons and
crossdressers in larger numbers, and police in other countries (especially
in the Middle East) harass, torture, and murder transgendered persons
with little fear of reprisal. (para. 14)

G. Violence, Abuse, and the Healthcare System

The institution of healthcare is not immune from participation in trans-
gender abuse and violence. In fact, as the Gay and Lesbian Medical Associ-
ation (2000) clearly points out, the federal government routinely
invisibilizes the LGBT population and in doing so silently sanctions anti-
LGBT behaviors (Belongia & Witten, 2006). This neglect is also evident in
the recent failure to include transgender identities in the federal ENDA bill.

Many transgender-identified individuals have experienced various
forms of both subtle and overt abuse and violence at the hands of healthcare
workers. TLAR respondents indicated that 5.2% were placed in a psychi-
atric hospital (n=210), 15.7% were forced to see a counselor or therapist who
tried to change them (n=210), and 2.4% (n=210) were forced to have sur-
gery (intersex identification, Greenberg, 1998; ISNA, 2007). Consider the
following comment from “B” (an FTM-identified respondent in the TLAR study):

It is always important to realize that, within the trans-population, different sub-populations will have different healthcare related problems. For example, female-to-male transsexuals who have had mastectomy will always have the problem of secrecy . . . Either his chest scars are obvious, or his genitals give him away. Thus, accessing normatively sexed and gendered healthcare services is nearly impossible. Add to this the difficulty of FTMs who have taken only hormones but could not afford or do not want surgeries. Billy Tipton comes to mind as one who never accessed healthcare in his lifetime and probably died prematurely because of it. There are scads of FTMs who suffer in isolation because they refuse to subject themselves to medical scrutiny, possible mistreatment and ridicule. Also, there is Robert Eades who recently died of medical neglect, after seeking help from at least 20 doctors who refused to treat him for ovarian cancer.

Consider the following example from the TLAR (grammar and punctuation retained as written):

When I lived as a woman and was out as gay I’ve been spat on, hit raped, fired, evicted from house and refused treatment for healthcare.

Among the most famous healthcare abuse stories is that of Tyra Hunter, a Washington, D.C. hit-and-run victim, who was allowed to bleed to death by an EMT team when they discovered that she was a pre-operative male-to-female transsexual. The EMT team argued that they thought she was gay and had AIDS (Fernandez, 1998).

Belongia and Witten (2006) also report the invisibilization of transgender elders in eldercare facilities (see also Shankle, Maxwell, Katzman, & Landers, 2003; Watt, 2001; Witten, 2002, 2003; Witten, Eyler & Weigel, 2000). In a study of 29 regional eldercare facilities, 80% of the facilities contacted stated that participation in a one-hour lunchtime training in transgender eldercare was not relevant to their patient population and/or staff. Again, it is important to understand that violence and abuse against transgender persons and against elderly transgender persons is not just a U.S. problem. Rather, it is a worldwide problem (Witten & Whittle, 2004).

H. Possible Roots of Anti-Transgender Violence and Hate

Upon surveying the available literature, and considering the data from the qualitative and quantitative parts of multiple surveys, five possible causes of anti-transgender violence began to emerge.
The first emerging cause is the ignorance of the general public about transgender identities (Denny, 2007; Minter, 2007). Minter points out that many perpetrators of anti-transgender hate violence in the Los Angeles area used homophobic language (e.g., fag, dyke, faggot, cocksucker) during violent incidents. “It is possible that perpetrators knew that these victims were not exhibiting ‘proper’ gender normative behaviors, but had no words other than homosexual slurs to express themselves” (Witten and Eyler, 1997). Television shows such as The Maury Povich Show seek to perpetrate and to make use of this homophobic and “freak” perception by bringing on transgender-identified individuals that are not representative of the population and allowing audiences to heckle and make fun of them in front of international audiences. Transgendered victims appeared to have been targeted because of their gender differences, but the perpetrators were not necessarily able to label their actions anti-transgender as they themselves did not possess the vocabulary and knowledge to do so. This, of course, complicates the perceived mutual exclusivity of the categories “gender identity” and “sexual orientation” in many hate crimes statutes.

Linked to the first idea, the second emerging theme of causality is the problem of institutionalized bias and terminology conflation with respect to gender and sex (Basu, 2000; Doyal, 2001; Gannon, Luchetta, Rhodes, Pardee, & Segrist, 1992; Grant, 2001; Pryzgoda & Chrisler, 2000; Velkoff & Kinsella, 1998; Witten, 2003, 2005a, 2007), which can be demonstrated early on in healthcare students. Witten (2004) describes a recent study in which over 2000 anonymous response surveys were sent out to all of the students in the five colleges (Medicine, Nursing, Dentistry, Allied Health Professions, and Biomedical Sciences) of a major southwestern university medical center (IRB approved). Respondents were asked, among other questions, to rate their perception of their gender using the Eyler-Wright gender continuum measurement instrument (Eyler & Wright, 1997). Qualitative comments were also collected. Of the 271 individuals who responded, approximately 10% of them expressed vehement emotions concerning the concepts of gender and sexuality (Witten, 2007c). A 22-year-old, self-identified biological male medical student wrote:

Biology teaches us that men are XY and women are XX. There are no other possibilities, anything else is sick!

It is important to understand that this type of reaction is frequently the normative response experienced by members of the transgender-identified communities (Witten, 2004; Witten & Eyler, 1999).

Third, we have already established that transgender-identified persons frequently suffer a spectrum of abuse and violence (Witten, 2004). Further,
we have seen how these individuals are further marginalized by the health-care system as they age (Yagoda, 2005; Willging, Salvador & Kano, 2006ab; Witten, 2007b). However, these effects can be further exacerbated and confounded by additional life factors. An excellent overview of some of the relevant issues can be found in Cahill, South, and Spade (2000).

Fourth, hate crimes serve the function of preserving and reinforcing the gender binary system. Contemporary Western society reifies male-female gendered duality through popular culture, the media, employment practices, and fashion, as well as in many other ways. Hate violence punishes those individuals who transcend and/or subvert this binary because they are then “othered,” and thereby considered inferior to their normatively gendered counterparts. It is particularly important to note that violence against transgender people strengthens adherence to this false gender dichotomy in the general population as well as within the transgender community (Herek et al., 2002). This effect is further contextualized later in this article.

The fifth factor behind anti-transgender violence is proposed by Minter (2007). Minter concludes that transgender people are targeted not only for their violation of the social norm of gender dualism, but because they are stereotypically perceived as easy targets, much in same way elderly people may be singled out for muggings or home invasions. For hate crimes advocates, this conclusion may appear to add legal complexity when attempting to create hate crimes policy. However, Minter’s analysis is somewhat superficial, as the targeting of transgender people because of perceived weakness still represents a stereotyped powerlessness of the group as a minority category. Therefore, this hypothetical motivation for victimization continues to fit within the framework of a “hate crime”: an assertion of one person’s identity (i.e., powerful gender-normative person) over another (i.e., weaker transgender person) because the perpetrator views the victim’s identity as inferior.

I. Consequences of Anti-Transgender Hate Violence

A hate crime against a transgender (LGBT) person has both short-term and long-term psychological effects for the victim(s), as well as for society as a whole. The fear and trauma engendered by a hate crime can impede an individual’s ability to carry out normal day-to-day activities (Bradford, Ryan, & Rothblum, 1994). Moreover, it can have longer-term, later-life effects (Witten, 2004). Furthermore, hate crimes also have far-reaching implications for all LGBT as well as heterosexual people as a form of “terrorism” (Herek et al., 2002). Studies have shown that anti-gay and lesbian hate crimes reinforce adherence to normative gender behaviors (Witten &
Eyler, 1999) in people across the sexual orientation and gender identity spectra because of fear of being perceived as gay or lesbian (i.e., non-gender normative). According to Herek (1989), “men might not touch other men; women might not excel at tasks that require physical exertion.” Thus, hate violence is able to affect groups of people far beyond the individual(s) initially targeted by the perpetrators. Witten and Eyler (1999) further point out that hate crimes and hate violence are public health problems that need significant international attention.

In-depth implications of this multiple violence and abuse for health services practice are discussed in both Witten and Eyler (1999) and Witten (2004, 2007b). These violence and abuse results are supported by the work of Lombardi et al. (2001) and the Washington Transgender Needs Assessment Survey (Xavier & Simmons, 2001). Data is illustrated in Table 4. We close with a discussion of transgender hate crimes within the construct of societal/institutional genocide.

Table 4. Prevalence Percentages of Category of Violence or Crime Motive, as Perceived by the Victim, in Respondents to the WTNAS.

<table>
<thead>
<tr>
<th>Category of Motive for Crime as Applied to WTNAS Respondent Experience</th>
<th>Percentage of WTNAS Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homophobia</td>
<td>41.3%</td>
</tr>
<tr>
<td>Transphobia</td>
<td>33.9%</td>
</tr>
<tr>
<td>Don’t know motive</td>
<td>27.5%</td>
</tr>
<tr>
<td>Economic gain</td>
<td>20.2%</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>10.1%</td>
</tr>
<tr>
<td>Racism</td>
<td>8.3%</td>
</tr>
<tr>
<td>Other motive not listed</td>
<td>4.6%</td>
</tr>
</tbody>
</table>

V. TRANSGENDER HATE CRIMES AS GENOCIDE

As mentioned earlier, the treatment of the transgender population with respect to violence and abuse, both in the U.S. and globally, should be viewed through the lens of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1951), specifically Article 2, Sections A-C. Article 2, in its entirety, explains:

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
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- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group

While the United Nations resolution does not specifically include groups of people defined by either sexual orientation or gender identity, the hypothetical inclusion of these two terms would have profound implications for a conceptualization of anti-transgender violence as genocide under Article 2. It should be noted that any one of the actions specified in Article 2, alone or in combination with other items in the list, is considered sufficient for classifying a situation as “genocide.”

Upon inspection, the material existences of transgender people as described throughout this article bear tremendous resemblance to the acts outlined in the Genocide Convention. (More evidence of this can be found in the reference section at the end of this article.) For instance, it has been demonstrated that transgender people are being targeted for violence and murder based solely on their transgression of traditional gender norms. This is exemplified most profoundly in the aforementioned state-sponsored “sexual cleansing” of transgender metis taking place in Nepal (Human Rights Watch, 2006). Additionally, this article has sought to demonstrate that even in the U.S., acts of anti-transgender violence are not isolated incidents of random violence, but instead share the common impetus of the perpetrators’ desiring to eradicate a group of people who violate a widely held and popularly reinforced norm of binary gender with a connection to heteronormative sexuality. The net effect of these crimes is to evoke a sense of fear that percolates throughout the transgender community, encouraging transgender people to renounce open expressions of their gender identity lest they face similar violence. Additionally, it is posited that the common motive of eradication/annihilation is also transmitted socio-culturally to other potential perpetrators through media and film representations of anti-transgender violence, which potentiates the fear of victimization described by transgender people, including those quoted in this article. In summation, this “killing” and “serious bodily or mental harm” certainly satisfies the conditions set forth in Article 2, Sections A and B of the Genocide Convention.

As if this were not enough to classify anti-transgender violence as genocide, it has also been presented that transgender people are targeted for employment, housing, and healthcare discrimination. In addition, transgender people experience severe violence and abuse across social institutions such as the legal system, the penal system, and the military. This
constellation of systemic oppressions makes it nearly impossible for transgender people to attain basic life necessities while asserting a transgender gender identity. Article 2, Section C of the Genocide Convention allows for the possibility that acts of genocide may adopt a form other than physical violence and killing. Such “conditions of life” that might bring about transgender people’s “destruction in whole or in part” would certainly include the denial of vital services and resources based on their identification as transgender.

Complicating matters is that while thirteen U.S. states and the District of Columbia have employment nondiscrimination laws that include transgender people, there is currently no federal law prohibiting any type of anti-transgender discrimination (Transgender Law and Policy Institute, 2006). Consequently, transgender people are left with no explicit method of legal recourse following such abuses. This puts openly transgender people in the precarious position of either living openly as transgender or facing the very real possibility of being unemployed, homeless, and unable to access healthcare. These dire conditions have been shown to increase the risk of a transgender person’s experiencing violence (Lombardi et al., 2001) and have been demonstrated to increase the risk of higher mortality and morbidity among later-life trans-persons (Witten, 2007abc). In this way, a cycle of systemic discrimination and violence characterizes the lives of many transgender people.

Of course, one must acknowledge the complexities which arise out of the restriction of the Genocide Convention to “a national, ethnical, racial, or religious group” (1951, Article 2). Each of these group signifiers (with the possible exception of religion) contains an extrinsic component of construction and application. For example, in the late 20th-century Rwandan genocide, it was the Rwandan government, through the issuing of identification documents, that determined who was Hutu or Tutsi for the purposes of extermination. The tension between the two groups was, of course, predicated on a racial hierarchy established years earlier by colonial powers (Destexhe & Daley, 1995). Similarly, the genocide committed against Native Americans in colonial America as described by Howard Zinn (2005) depended upon the colonists’ ability to “other” and label the indigenous people as “Indians.” If the determination of group membership used in the commission of genocide were universally perceived, constructed, and applied externally, the current Genocide Convention would be sufficient. However, sexual and gender identity do not operate via this extrinsic labeling. Individuals are not labeled by dominant culture as transgender (or, for that matter, as gay, lesbian or bisexual) against their will. In fact, there exists in society a “compulsory heterosexuality” (Rich, 1994) and an endemic re/enforcement of “heteronormativity” (Warner, 1993) that seeks
to discourage even the mere acknowledgment of transgressive sexual and gender identities. Instead of being labeled “transgender” by the dominant culture, transgender people must actively assert their gender identity in order to self-identify as such. While it is clear that perpetrators of anti-transgender violence choose their victims based on a perceived violation of the binary gender norm (the very definition of “transgender”), it is not clear that these same perpetrators fully understand their victims to be “transgender,” as such. This difference from the mechanics of traditionally-conceived genocide indicates the need for a reexamination of how we define genocide.

Given the breadth of discrimination, abuse, violence, and hate crimes, and the clear-cut absence of policy designed to regulate it, it is within reason to conclude that absence of policy is, in fact, policy. As one of the TLAR survey respondents stated:

> Condoned social institutions that foster hate and intolerance should be looked at. They cause as much psychological damage as anything. Prevailing attitudes by society need to be changed so that all people can fit in without fear of violence, loss of job/family etc. There is room enough for everybody to live peaceable lives as they see fit.

VI. CLOSING THOUGHTS

Based on a review of the literature available regarding anti-transgender hate violence, several conclusions can be drawn.

First of all, transgender-identified persons undergo lifelong exposure to multiple forms of abuse and violence that are frequently repeated across the life course and are relatively unreported to authorities for fear of reprisal. Furthermore, victims feel that they will be abused, humiliated or not believed by the very authorities who are supposed to protect them.

Secondly, socioeconomic status was found to be a predictor of violence, as low-income individuals have reduced access to healthcare and other support services (Lombardi et al., 2001). In addition, these individuals are more likely to engage in “survival crimes,” such as drug dealing, sex work, and panhandling, which place them at an increased risk for victimization by individuals both affiliated and unaffiliated with the law enforcement system (Lombardi et al., 2001; Xavier & Simmons, 2000).

Anti-transgender hate violence also has profound consequences, not only for transgender people, but for society as a whole. This violence reinforces the male-female gender binary and engenders fear in those who even consider venturing beyond its confines. This applies to transgender people
who wish to cosmetically, surgically, or hormonally alter their gender presentation, but also, for example, to non-transgender men who wish to enter traditionally female occupations or non-transgender women who enjoy wearing their hair short (Herek, 1989; Herek et al., 2000).

Hate violence also decreases the likelihood that transgender people will obtain health and support services after violent incidents, as they fear revictimization by hospital staff or law enforcement (Witten, 2008). A negative cycle is established in which victims of violence endure their pain in silence, putting them at risk for depression and other mental illnesses as well as making them even more likely to experience a second victimization during their lifetime.

The degree of severity of the violence meets the definition of hate crime and, as such, warrants classification of much of trans-violence as hate-crime related. The large number of such crimes warrants the inclusion of trans-violence as part of the hate crimes statutes throughout the United States and the rest of the world. Moreover, accurate hate crime statistics should be collected for trans-related crimes.

These findings point to the need for further research into the causes and consequences of anti-transgender hate violence, as well as a need for a re-examination of how support services can be made more accessible to transgender hate violence victims. Furthermore, socioeconomic status, race/ethnicity, differing ability, and other further marginalizing factors need to be given greater attention in studies involving transgender people in order to capture more representative images of the gender community.

In addition, the persistent and ongoing lack of political, legal, and social attention to the hate crime violence against the global transgender-identified populations appears to meet the definition of genocide under the Convention on Prevention and Punishment of the Crime of Genocide (Article II, items a & b), thereby warranting increased global attention to this issue through the world court, WHO, the United Nations, and other international agencies dealing with “gender violence.”

Based on this evidence, there is also a need for a radical reconsideration of how the international community conceptualizes a group’s eligibility as a potential target of genocide. The current definition of genocide is predicated on the heterosexist and heteronormative belief that subgroups of humans are always able to be extrinsically labeled before being systematically targeted for extermination. Currently, transgender people, who self-identify as such, are targeted in ways that clearly qualify as genocide under the criteria set forth in Article 2 of the U.N. Genocide Convention. Unfortunately, their victimization cannot be regarded as such under current international law, both because “gender identity” is not included in the Genocide Convention and because the perpetrators of such acts of genocide do not
have a single label by which they collectively identify their victims due to the presence of a dominant culture which normatively limits gender to only male and female.

CONTACTING THE PROJECT

To find out more about the TranScience Research Institute, the research being sponsored and conducted, and/or to participate in any of its projects, you may visit the TSRI website at http://www.transcience.org/ or you may reach Dr. Tarynn M. Witten at either of the following email addresses: transcience@earthlink.net or transcience@transcience.org.

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Hate Studies Through a Constructivist and Critical Pedagogical Approach

James M. Mohr

Most of us are probably familiar with the child’s lament made during dinner: “I hate vegetables.” If you are a teacher, you may have heard students announce with conviction, “I hate homework.” It seems that everyone hates someone, something, or some action; so what value is there in a field of hate studies? Hate, when discussed as a strong feeling toward something one dislikes, appears simply as an emotion that does not deserve the special recognition of having an entire field committed to its research. However, this narrow focus on this one aspect of hate leaves ignored the very real impact of hateful attitudes and actions on local, national, and international communities. In fact, hate is a common experience of people throughout the world (Bayley, 2002; Waller, 2004).

Hate as an inspiration for individual and collective action related to murdering, terrorizing, or oppressing another individual or group is neither a unique nor a new phenomenon in today’s world. Throughout history, acts of hate have been perpetrated by one group against another group based on a perceived element of difference in the “other,” whether it was be culture, race, religion, gender, sexuality, or another characteristic (Bayley, 2002; Sternberg, 2003). Though hate and the acts associated with it are not new, what has changed is that our society has become less tolerant of such acts. This new attitude toward hate has led society to seek ways to confront hate in a manner that lessens its impact and permits everyone to develop to his or her fullest potential without fear of reprisal.

Establishing a field of hate studies has been proposed as one means of analyzing hate and developing effective methods of understanding, combating, and controlling it (Blitzer, 2006; Stern, 2004). If we understand the growth and consequences of hatred, we will be better able to develop effective remedies and strategies to counter it (Sternberg, 2003; Yanay, 2002). Proponents of the field are not interested in studying why people hate vegetables, but rather, in developing a deeper understanding of the acts of hate that are weakening the social bonds that form the foundations of a pluralistic society. Specifically, Stern (2004) defined hate studies as “inquiries into the human capacity to define, and then dehumanize or demonize an ‘other,’ and the processes which inform and give expression to, or can curtail, control, or combat, that capacity” (p. 11). This definition focuses the field of hate studies on the very real issues of hate and its effect on individuals and society.
This paper examines the purpose of a field of hate studies and the development of a curriculum using constructivist theories and critical pedagogy. A comprehensive curriculum is needed to give the field structure and to meet the task set out by Stern (2004) of integrating multiple conceptions of hate as represented in different academic disciplines to better “understand this phenomenon [of hate], and to identify testable rather than gut-instinct and ‘feel-good’ remedies” (p. 7). A curriculum will also help provide research methods, strategies, and focus for examining hate.

**THE NEED FOR HATE STUDIES**

External and internal forces have historically influenced the development of higher education curricula (Stark & Lattuca, 1997). “The curricula of American colleges reflect the concerns of the general society and of the institutions that shape them” (Carnegie Foundation, 1977, p. 30). Government and foundations have exerted enormous influence on the development of higher education (Coleman, 1973; Seymour, 1988). Issues of hate, domestically and internationally, have become a major concern for society, government, and foundations. All three spheres are seeking ways to lessen the impact of hate and improve the ability of people to relate to a broad spectrum of humanity, as can be seen by the increase in diversity and cultural programs in K-12 schools, diversity courses in higher education, diversity training in businesses, and the passing of hate crime legislation. As society is seeking solutions to hate, institutions of higher learning have the opportunity to test theories and develop explanations and strategies related to limiting hate’s impact on society. In essence, just as higher education is influenced by general society, it likewise has the opportunity to influence society.

By creating a field of hate studies, higher education is able to positively affect society. This field is concerned with the lack of shared information and insights among different academic disciplines studying hate, which makes it difficult to develop a coherent set of responses to hate as it is socially and culturally exhibited. This isolation of the disciplines allows only a narrow understanding of hate, and therefore generates limited methods for challenging and overcoming it. Stern (2004) briefly explained how the different disciplines of history, psychology, sociology, religious studies, political science, law, journalism, and education would enhance our understanding of and responses to hate. By connecting these disciplines, the field “represents a synergistic whole that encompasses more than a mere sum of its academic parts” (Blitzer, 2006, p. 139) and provides a comprehensive understanding of hate, allowing us to develop practical benefits from the theories, knowledge, and insights found within these disciplines.
When connections are made between disciplines, students gain a deeper knowledge of hate theories, ideas, and models, giving them the skills to engage in broader, deeper, and more holistic thinking about hate and how it impacts individuals, groups, and society. Such integrative learning experiences are of great value in educating students (Carnegie Foundation, 1977; Davis, 1995) and expose them to cultural diversity, initiate personal development, and help students discover, analyze, produce, and use new information (Davis, 1995).

Another reason for creating a field of hate studies is the harm hate inflicts on individuals, communities, and societies. Acts of hate generate serious friction between cultural groups, leading to further conflict. This conflict increases tension, fear, and violence in these communities and is responsible for weakening the bonds that bind a culturally diverse society, causing a breakdown of social cohesion (Weiss & Ephross, 1986).

An intensive interdisciplinary study of hate can provide answers and remedies for domestic and international expressions of hate. In the United States, according to the National Uniform Crime Reports (FBI, 2004), in 2002 over 7,462 hate crime incidents were committed, accounting for 8,825 offenses and involving 9,222 victims. Of these offenses, 49.8% were racially motivated, 17.9% were religiously motivated, 16.6% were related to sexual orientation, 15.2% were due to ethnic or national origin bias, and .5% were due to disability bias. Over 67.5% of the crimes were committed against persons, while 32% of the crimes were against property and .5% were against society. As hate crimes continue to threaten individuals, the number of hate groups recorded in the United States also continues to grow (Southern Poverty Law Center, 2005). A strong hate studies curriculum can provide the research needed to develop effective programs to counter this increase in actions motivated by hate.

Internationally, acts of terrorism, genocide, and massacres are rooted in hate (Sternberg, 2003). Throughout the twentieth century, terrorist attacks have increased (Glasser, 2005) and genocidal acts are considered a defining characteristic of the century (Bartrop, 2002; Verdeja, 2002). Though defining hate is difficult, just as defining terrorism (Maskalunaite, 2002) and genocide (Rubinstein, 2004) is problematic, a hate studies curriculum can bring disparate views on hate together to expand our understanding not just of hate, but also of terrorism and genocide so that we can develop holistic and effective methods to combat them.

Expressions of hate, whether expressed through hate crimes, terrorism, genocide, or propaganda designed to humiliate others, need to be researched so effective programs and responses can be designed to counter such expressions. Blitzer (2006) explained that a field of hate studies facilitates "sustained and concentrated interest in studying hate—i.e., gathering case
studies, in thinking abstractly and theoretically about hate (its causes and effects), and in solidifying definitions of hate that are useful and up to date” (p. 140). By encouraging the study of hate, researchers can create theoretically grounded responses to acts of hate that assist individuals, activists, and governments in their work to limit the spread of hate to a new generation of people.

Stern and Blitzer have begun the process of establishing a field of hate studies through presenting the rationale for it, creating a framework, and providing questions for the field to research. However, there is another component needed for the field to be incorporated by universities, and that is an explanation of the type of course work and research that practitioners and students in the field will be conducting.

Through the creation of a hate studies curriculum, the field offers the opportunity for much more than a simple uniting of different disciplines. The hate studies curriculum encourages students to challenge injustice and oppressive tendencies within themselves, others, and the community. It prepares students to be active participants in democratic processes. A hate studies curriculum engages in “educational practices that help students look at issues in broad social contexts, hone their abilities for deep and critical inquiry, constructively consider multiple viewpoints and perspectives in dialogue with others, and engage in socially just actions” (Nagda, Gurin, & Lopez, 2003, p. 166). Through such practices, students will be prepared as citizens who understand, appreciate, and acknowledge their role as social change agents. For if students do not become change agents through the study of hate, then such study is irrelevant and meaningless.

To create a curriculum that rises to the challenge of creating socially aware and active students who are willing to challenge hate, it is necessary to use theories of learning and education that are based on how students learn and are concerned with providing students with the skills and abilities to question the underlying assumptions and biases of what they have learned or are currently learning. By focusing on students, it is possible to create an effective and holistic curriculum. Constructivism and critical pedagogy, as explained below, provide the guidance, rationale, and structure for the teaching strategies and class structure of the curriculum, as well as giving the study of hate a justice-oriented, socially transformative, and oppression-challenging focus.

**Constructivism and Critical Pedagogy**

A. *Constructivism*

Constructivist learning theory explains how students learn (Brooks &
Brooks, 1993) and assists with determining how best to teach students the interdisciplinary ideas of a hate studies program. Constructivism is concerned with guiding students in developing concepts and coming to a deep understanding of the material, rather than focusing only on skills and behaviors (Fosnot, 1996, p. 10). Given an understanding of the how of learning, it becomes possible to implement dynamic learning opportunities in the classroom that will challenge students to think more holistically and systematically about the issue of hate.

Constructivism is not a method of teaching; rather, it is an explanation of how people learn. Through the understanding of this process, new and different teaching strategies can be applied that will allow the learner to develop concepts and understanding. Through its focus on the process of learning, constructivism can serve as a guide for curriculum development because it does not make sense to think about a curriculum without considering the learners (Tobin & Tippins, 1993, p. 9).

Constructivist pedagogy informs the teacher that instruction must begin with the knowledge, attitude, and interests that students bring to the classroom, and that instructional strategies must provide activities and experiences that bridge these prior attitudes and beliefs with the new ideas introduced in the classroom (Howe & Berv, 2000). A deeper understanding of new knowledge can be formed only when learners are able to bridge their former knowledge with newly introduced concepts, and this bridging is considered one of education’s primary roles.

Fosnot (1996, pp. 29-30) provided five principles to keep in mind when connecting constructivist thought to education. She stressed that learning is development and that the learner is an active participant in the process through organizing prior and new ideas. As such, learner errors are not something to be avoided, since they represent the learner's conceptions. If we understand and utilize these ideas and provide a space where the learner can engage in open-ended investigations in a meaningful context, we can produce new knowledge and a deeper understanding.

To truly learn new information, the learner needs to engage in reflection. Each learner is perceived as a meaning-maker and must be given the time to reflect on his or her experiences. Though reflection is important, learning is a social process in which the classroom is a community that provides learners with the opportunity to dialogue. Learners in such a community are “responsible for defending, proving, justifying, and communicating their ideas to the classroom community” (Fosnot, 1996, p. 30). Finally, Fosnot stated that the new ideas and structures developed by the students are learner-constructed and come out of their attempts to organize and reorganize new and prior information.

Constructivist ideas have successfully been incorporated into college
classes in science (Leonard, 2000), math (Inch, 2002; Morrone, Harkness, D’Ambrosio, & Caulfield, 2004), biology (Lord, 1994), and history (Henry, 2002). Teachers of classes committed to bridging the interdisciplinary nature of a hate studies curriculum can learn from these uses of constructivist theories in the classroom. Students must be given the opportunity to connect their beliefs, attitudes, and knowledge with the information they are learning in the class. These opportunities allow the students to engage in personal growth as well as to increase their knowledge base concerning hate.

From a constructivist viewpoint, a curriculum is a set of all learning experiences in which knowledge is recognized as being embedded in the learner and in the culture in which learning occurs (Tobin & Tippins, 1993). Practitioners of a hate studies curriculum will honor students as knowers and not see them as empty vessels to be filled. Yet in the process of this honoring, there is an understanding that students are bound by their personal identity, and by cultural, historical, and political forces which they may not recognize. These forces may prevent the student from seeing the oppressive attitudes and structures that maintain and promote hate. Critical pedagogy provides a framework for addressing these blind spots.

B. Critical Pedagogy

Along with understanding the way in which students learn, it is necessary for students and teachers to recognize and to question the system and process regarding what is being and what has been taught. A critical pedagogical approach, which is rooted in the liberation of the student, in challenging oppressive structures, and in developing critical thinking skills, is the underlying theory that provides students and teachers with the guidance to think about their intentions, to challenge and question their own practices, and to understand themselves as participatory agents responsible for the construction of societal ideals, values, and structures. Constructivism challenges teachers to provide experiential methods of learning, while critical pedagogy provides the critical thinking skills to ask challenging questions that deepen the students’ investigation of self, knowledge, and the world.

Equality, justice, freedom, and democracy are innately connected to the study of hate; therefore it should be expected that the teaching style reflect the same characteristics as the subject matter. A critical pedagogical approach to learning meets this need. It heightens students’ consciousness and exposes them to the historical, political, social, and economic realities of their lives, their communities, and the world (Freire, 2000).

Freire (2000) described two types of education, the “banking method”
and the “dialogic method.” Practitioners of the banking method believe that teachers are the repositories of all knowledge and that students are empty vessels waiting to be filled. This method is not compatible with a hate studies curriculum. It is the dialogical method, as outlined by Freire, which provides the principles underlying the curriculum and the teaching methodology. This pedagogy recognizes and honors the experiences, knowledge, perspectives, and values of the students and teachers. Both students and teachers are considered central to the learning process.

Critical pedagogical practices espouse a commitment to “citizenship, affirmation, possibility, and hope” (Kanpol, 1994, p. 134). Through the democratic processes that exist within a hate studies curriculum, students have “the right to express appropriate anger against injustice, against disloyalty, against the negation of love, against exploitation, and against violence” (Freire, 1998, p. 45). These appropriate expressions of anger reflect the aforementioned commitments when transformed into just action against the oppressive forces in society.

This transformation of anger into action happens when students make connections between their classroom learning and their out-of-class experiences, between their past actions and their newly developing consciousness, and between their position in society and the position of others. If the opportunity to make these connections is denied, students cannot develop the critical consciousness necessary to challenge the norms that permit hate to continue. The hate studies curriculum, if it is truly to be just, democratic, and caring, must provide the opportunities to make these essential connections, for it is through these connections that students can expose the problems within society and create new ways of living together that are free of false constraints such as racism, sexism, homophobia, ableism, or ageism.

Critical pedagogy helps students to uncover connections between apparently disparate areas that may not be immediately discerned. Reflection and dialogue are processes central to the educational endeavor (Nagda et al., 2003). When reflection and dialogue are used within the classroom, the learning process changes so “control shifts from me, the teacher, the arbiter of knowing, to the interactions of students and myself with the subject matter” (Tetreault, as cited in Sleeter & Grant, 1993, p. 152). By shifting the process to the interactions among the student, the teacher, and the subject matter, the idea of teaching as the simple transfer of knowledge is removed, so as “to create the possibilities for the production or construction of knowledge” (Freire, 1998, p. 30). Knowledge is no longer given from the teacher to the student, but is uncovered through jointly conducted reflective and dialogical practices.
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Through constructivist approaches to learning and critical pedagogy, the core principles and outcomes of a hate studies curriculum are revealed.

PRINCIPLES OF A HATE STUDIES CURRICULUM

Shapiro stated that advocates of critical pedagogy adhere to the ideals of “democracy and human empowerment, the validation of human dignity and human worth, the vision of a society and a world that’s based on people helping each other and not trying to beat each other” (as cited in Kanpol, 1994, p. 164). These ideals are connected to the purposes and vision of a hate studies curriculum. Through constructivist and critical pedagogical thought, it is possible to discern a few key principles essential to establishing and implementing a hate studies curriculum.

A holistic approach adds texture. The student is seen as a complete entity and not just as an intellect anxiously waiting for knowledge to satiate its appetite. It is understood that the student and the teacher will both bring their background, experiences, and knowledge to the learning process and that these variables will impact the learning process.

Interdisciplinarity provides depth. Those studying hate consider the research from all the disciplines investigating this phenomenon to provide a deeper understanding of the issue. The separation of hate into multiple disciplines is an artificial construction and one in need of revision. By removing this artificial division, hate studies can assist individuals and communities in effectively challenging and combating hate. Students are encouraged to question, investigate, and research all aspects not only of hate, but also of societal structures that maintain oppressive forces.

Change comes from within. This principle reflects the notion that educators will not change the students; rather, students will take responsibility for their own change and growth. The students will create their own understandings, develop their principles, set their priorities, and change their values as they see fit as they jointly construct and produce new knowledge with the teacher and peers. Transformation is possible if the teacher and the students engage in difficult, emotional, personal work (Lewis, 1992, p. 172). Change is a joint venture and not something to be imposed.

Dialogue leads to wisdom. Burbules commented that dialogue represents a “continuous, developmental communicative interchange through which we stand to gain a fuller apprehension of the world, ourselves, and one another” (as cited in Boys, 1999, p. 132). Dialogue is an important teaching strategy, as it involves listening to persons and not just to words. It can lead to wisdom in ways that argument cannot (Boys, 1999), and the movement toward wisdom is an inherent piece of the hate studies curriculum. Wisdom involves “balancing the intrapersonal, interpersonal, and
extrapersonal interests to attain a common good, a good that transcends the group or groups of which one is a member” (Sternberg, 2003). The wisdom needed to work through issues of hate comes from the interdisciplinary nature of this study and through the recognition that the individual has a responsibility to the larger society of which he or she is a part.

Learning and teaching are relationship-centered. Learning takes place through a focus on the process of the interaction between the teacher and the students, and how the background of each impacts individual meaning-making and the development and incorporation of new knowledge. It goes beyond being student-centered and considers all of the participants in the educational process—teacher, student, peers, school, community, and culture. “The practice of education revolves around the teacher-student relationship, as an interchange, a bringing together of particular subjects, and on a wider scope, an encounter of the educator or educators with a community” (Guevara-Niebla, 1994, p. 28).

Critically Reflective Teaching provides credibility. Reflecting on one’s experiences, assumptions, and attitudes is an important component of presenting a hate studies curriculum, but the reflective process must go beyond this reflection so it can be considered critical. Brookfield (1995) explained that there are two distinct purposes that make reflection critical. First, the teacher must “understand how considerations of power undergird, frame, and distort educational process and interactions” (p. 8). By understanding the power dynamics in the classroom, teachers can recognize unintentional, oppressive characteristics of their teaching style or of student-to-student interaction and take the appropriate steps to make their classrooms more empowering and democratic.

The second purpose of critically reflective teaching is to question hegemonic assumptions about teaching that work against the long-term interests of the teachers (Brookfield, 1995, p. 8). Having once accepted these assumptions, teachers may be less likely to challenge oppressive structures at a university or college because those structures are assumed to be part of good teaching, even when they are detrimental to the teachers and potentially to the students.

These six principles can guide the development of a hate studies curriculum and the formation of the individual classes that rise from the curriculum. The principles also serve as the core values of the program and act as guides for teacher-student and student-student interactions. From these principles, four main curricular outcomes as informed through constructivism and critical pedagogy are determined.
OUTCOMES OF HATE STUDIES

Through their involvement in a hate studies curriculum, students will experience these four major outcomes related to personal, knowledge, and skill development. Students will experience the personal development of a critical curiosity and a critical consciousness that permit them to learn more about who they are, how they interact with the world, and how they exist as political, social, and ethical beings. They will experience a sense of empowerment rooted in the formation of a deep knowledge of hate and its processes. Finally, they will learn new ways of acting to challenge the status quo and to serve as social change agents.

Through studying hate, students are infused with a critical curiosity that is bold, adventurous, and ceaselessly questioning (Freire, 1998, pp. 37-38), causing them to feel a moral imperative to improve the world. By achieving this first outcome of developing a critical curiosity, students will become emboldened and enlivened in their search for understanding about not only the expression of hate, but also the strategies and remedies that can be applied to it. Without critical curiosity, creative innovations become impossible and society becomes stagnant, unable to dream, change, or be transformed.

The second outcome is for students to develop a critical consciousness in evaluating and understanding the world. Shapiro described this critical consciousness as meaning focusing our critical capacities, our questioning capacity, on the everyday world in which we find ourselves with a purpose. And that purpose is rooted in a moral vision. It has to do with looking at the world, questioning the world as to whether, in fact, it treats people with dignity and respect; whether the world is one in which certain groups of people or individuals are limited or dominated, or whether the world that we live in, in fact, lives up to its democratic and humanistic promises. (as cited in Kanpol, 1994, pp.167-168)

A hate studies curriculum shifts critical consciousness from an abstraction to the concrete engagement of working to solve the very real problems of hate. At this level, theory meets and guides practice, and students are empowered to critically question cultural assumptions and social structures.

A third outcome is the development of students who have a deep and rich understanding of the human capacity for hatred, its development, and the processes to reduce, control, or oppose it. Students are empowered by this understanding to engage in transformative actions to build a world without cultural degradation, exploitation, enslavement, and oppression.

Finally, students will integrate their personal development and knowl-
edge acquisition to create new ways of being and interacting with society and the world. Students will perceive themselves and act as social change agents who have a responsibility to challenge the established order when such order is founded on oppressive and hateful principles.

Courses in a Hate Studies Curriculum

The principles and outcomes of a hate studies curriculum can now guide us into the development of meaningful courses and research efforts for students. The following discussion is only a brief overview of courses that could be offered through this new curriculum. Some of the courses mentioned already exist at various institutions, while others are suggested courses that need to be developed and taught.

Foundations of Hate – A review of historical, psychological, and sociological theories of hate. The class involves the examination of the ways in which these theories overlap and the ways in which they are different. Students will review case studies, literature, and documentaries to explore how hate develops, is perpetuated, and harms the individual who hates, the group being hated, and the community.

Hate in Cross-Cultural Perspectives – This anthropology course examines hate as a cultural practice around the globe, in the United States, and within the state of Pennsylvania. This class challenges students to examine hate from a social scientific perspective, through readings, research, and discussion. Guest speakers, documentaries, and fiction films are used to further understanding of the cultural underpinnings of hate (Schlegel, 2006).

Communicative and Social Cognitive Foundations of Hate - The purpose of this class is to expose students to the nature of hate in American life. As students attempt to understand the essential quality of hate, they will learn that hate is made possible through communication (sometimes in the form of hate speech) and human perception (sometimes in the forms of stereotypes and bias). Students will also learn that hate may be resisted through communication. In this course, students will learn how communication may serve to teach respect and tolerance, rather than hate. Through the development of the knowledge of the essence of hate, students will be in a position to fight hate when they encounter it in their own lives (Waltman, 2006).

Psychology of Hate - The primary objective of this course is to further understanding of hate. Students will study the leading and most recent theories of hate, as well as examine both the utility and futility of hate. The course will cover such topics as in-group/out-group bias, self-esteem, aggression, history of hate groups, hate on the internet and in the media,
pop culture’s representations of hate, hate-crime legislation, First vs. Fourteenth Amendment issues, hate speech, implications for victims, and motivations of perpetrators of hate-motivated crimes. Additionally, students will debate controversial topics in the areas of race, sexual orientation, gender, gender identity or expression, and religion. Students will also examine one man’s transformation from a hater to a teacher (Bisconti, 2005).

Sociology of Prejudice and Violence – This course examines the sociological underpinnings of hate. It explores hate crimes and their types, as well as the roots of prejudice, hate, and violence, and responses to hate. Individual and group work is used to help students understand the concepts presented in class (Levin, 2004).

Ethics of Power and Racism – This theologically-based course explores how the articulation of ethical norms within a field of power constructs a moral/immoral binary which marginalizes individuals and generates categories of behavioral and moral “deviance” and abnormality, effectively constructing morality’s “other.” Students will examine the numerous ways in which white northern Europeans in particular managed to create and sustain norms that resulted in various forms of colonization and enslavement of those who were defined as “other,” thereby forming, shaping, and sustaining racism. Recognizing that racism is manifest in spatial, individual, institutional, and internalized forms, this course will also explore some of the personal dynamics that sustain racism in our day. By examining moral and doctrinal themes, students will locate the contributions of our institutions and traditions that undergird racism, and their potential for uprooting racism (Nothwehr, 2006).

Leadership for Social Change – Students will explore ways in which leaders can initiate social change. Guest speakers involved with social change organizations will be invited to speak to the class. The following questions are examined: How do you determine what needs to be changed? How do you start a process of change? How do you lead an organization concerned about change? Students will explore their own leadership styles and ways in which they can be most effective in leading positive social change.

Hate Crimes - This course focuses on hate crime as a specific type of violent conduct and criminal activity, as well as on social control efforts designed to curb such violence. Students will examine the causes, manifestations, and consequences of hate crimes, as well as the larger social context within which they occur, are reacted to, and seem to be proliferating. Throughout the course students will treat the study of hate crimes as a window through which a variety of social structures and processes can be rendered visible and amenable to examination, especially those related to social stability, social change, and social control. Specifically, this course
addresses a timely set of interrelated questions about the politics and 
dynamics of intergroup violence born of bigotry and manifesting as dis-

The eight classes provided as examples demonstrate only a few of the 
possibilities of knowledge that students can attain through a hate studies 
curriculum. Classes on overcoming racism, hate and literature, govern-
ment-sanctioned hate, and internships connecting students with social jus-
tice organizations would also expand the knowledge and awareness students 
have about how hate permeates a culture and drives laws, acts, and societal 
structures to oppress groups classified as the “other.” Pilcher and 
Whelahan (2005) commented that in the early days of Women’s Studies, 
courses began to be taught spontaneously without prior organization at 
many colleges and universities. The subject of hate is inspiring a similar 
phenomenon. Courses are being developed at colleges and universities 
across the country. The field of hate studies can help to organize the devel-
oment of these courses, connect practitioners to one another, and ensure 
that research related to hate is rigorous in its methods.

CONCLUSION

This paper has examined the need for a field of hate studies and the 
ways in which constructivist theories and critical pedagogy can help 
develop the outcomes and curricular content of the field. Research and edu-
cation concerning hate is taking place on a national scale at multiple univer-
sities, but in a way that is unconnected and fragmented. These divisions 
prevent a deeper understanding of hate, isolate researchers, and keep theory 
from being connected to practice. When theory and practice are kept sepa-
rate, theory does not go as deep as it could, and practice is left without any 
guide to help it grow in effectiveness.

The hate studies curriculum unites theory with practice and will be 
implemented under the premise that knowledge acquisition builds on per-
sonal development and that both types of development lead to behavioral 
changes and the development of skills. These interdependent elements of 
development contribute to the emergence of the student as a social change 
agent having the knowledge, skills, and drive to engage in positive action 
leading to personal and societal transformation. Due to the curriculum’s 
focus and its university origin, “it must have a vision that is not content 
with adapting individuals to a world of oppressive social relations but is 
dedicated to transforming the very conditions that promote such conditions” 
(McLaren, 1994, p. xxxii). Those involved in hate studies will not just
examine hate or how persons are oppressed, but will also reflect on each student’s process of meaning-making and how that process has been informed by societal influences. Through understanding how they make meaning, students can more critically question hegemonic structures and work toward personal and societal transformation.

When the research, study, and understanding of hate are categorized as belonging exclusively to different disciplines, the connections needed to create meaningful and effective practices to combat hate are severed. Creating a hate studies curriculum emphasizes the importance of interdisciplinary study bringing together the disparate methods by which the topic is researched and understood. Students engaged in this curriculum will undergo personal, knowledge, and skill development. To achieve these developments, this article provided a framework for learning and teaching strategies, principles, outcomes, and suggested course work for a hate studies curriculum.

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STUDENT VOICES

Reconceptualizing Anti-LGBT Hate Crimes as Burdening Expression and Association: A Case for Expanding Federal Hate Crime Legislation to Include Gender Identity and Sexual Orientation

Jordan Blair Woods

INTRODUCTION

In 1968, Congress enacted Title 18 U.S.C. § 245, the first piece of federal hate crime legislation. This bill granted federal officers the authority to investigate and prosecute crimes motivated by race, color, religion, or national origin if the victims were engaging in certain federally protected activities when the crime was committed. The legislative history of 18 U.S.C. § 245 supports that the purpose of the bill was to combat violence intended to prevent racial and ethnic minorities from exercising their constitutional and federal statutory rights, and more specifically their civil rights. Title 18 U.S.C. § 245 did not grant the U.S. federal government the authority to investigate or prosecute crimes motivated by sexual orientation or gender identity (S. Rep. No. 90-721, 1967).

During the 1980s, states began to enact their own legislation to address hate-motivated violence. Today, virtually every state has a law addressing hate-motivated violence (Levin & McDevitt, 1993, p. 186). However, the National Gay and Lesbian Task Force (2008) and other prominent gay, lesbian, bisexual, and transgender (LGBT) advocacy groups stress that many of these laws exclude sexual orientation and gender identity as protected characteristics. Due to hate crime law exclusions, many LGBT hate crime victims are often unable to obtain legal compensation after being victimized on the basis of sexual orientation or gender identity. Their assailants also receive more lenient sentences than other hate crime perpetrators receive for committing crimes targeting other characteristics that are regularly included in federal, state, and local hate crime laws, such as race, religion, and national origin.

In reaction to the prevalence and seriousness of hate crimes against lesbian, gay, bisexual, and transgender (LGBT) individuals and communities, citizens and advocacy groups have placed pressure on the federal gov-
ernment, as well as state and local governments, to view violence motivated by sexual orientation and gender identity as a social pandemic that warrants a legislative response. Despite numerous previous unsuccessful attempts to expand federal hate crime legislation, the U.S. House of Representatives and U.S. Senate recently passed the Local Law Enforcement Hate Crimes Prevention Act of 2007 ("The Matthew Shepard Act"). The Act modifies 18 U.S.C. § 245 by expanding the protected characteristics of federal hate crimes law to include sexual orientation, gender identity, gender, and disability. The Act also allows the federal government to assist local and state authorities in investigating and prosecuting hate crimes regardless of whether the victims were engaging in federally protected activities when the crimes occurred.

The Matthew Shepard Act was the first piece of legislation which aimed to expand the definition of hate crime to include sexual orientation and gender identity to pass through both the U.S. House of Representatives and U.S. Senate. Despite this great feat, on December 6, 2007, Congressional Democrats unexpectedly dropped the Act from the Department of Defense authorization bill (365Gay.com news center staff, "Shepard Hate Crime Bill to Be Dropped," http://www.365gay.com, 2007). However, prior statements from President Bush indicated that he would have likely vetoed the Act anyway (Human Rights Campaign, 2007). After announcing that the Matthew Shepard Act had been dropped, House Speaker Nancy Pelosi publicly affirmed that she was "strongly committed" to the Act (Flaherty, 2007). Consequently, the Act will likely be reintroduced during a subsequent congressional session, giving politicians and advocates a new opportunity to consider the justifications for expanding federal hate crime legislation to include sexual orientation and gender identity.

The purpose of this article is to bring to the attention of researchers, scholars, and politicians an important point about the harms to LGBT victims resulting from hate crimes—one that, in my view, is ignored and is critical to the justifications for allowing bias crime victims to obtain legal compensation for being victimized on the basis of sexual orientation and gender identity. More specifically, this article critiques the current framing of anti-LGBT hate crimes in scholarship and empirical research and reinterprets these crimes as systemic inhibitors to expressive and associative opportunities on the basis of gender identity and sexual orientation (this argument will be developed in Part IV). Although my position may be useful to efforts to expand hate crimes protection to include gender identity and sexual orientation at all levels of government, this essay focuses specifically on the U.S. federal government. In it, I argue that federal government should expand hate crime laws to include gender identity and sexual orientation in order to address current inadequacies in state and local hate
It is undeniably difficult to justify legally a federal remedy based on inequitable expressive and associative opportunities. The First Amendment to the U.S. Constitution only prevents government and state actors from curtailing expression and association; there is no affirmative constitutional or federal statutory right to expression or association. Regardless of whether hate crimes perpetrated on the basis of sexual orientation and gender identity burden a constitutional or federal right, the expressive and associative harms created by hate crimes are salient harms that the law should address. In fact, I contend that specifically reconceptualizing anti-LGBT hate crimes as burdening LGBT expression and association increases the federal government’s support for invoking its power under the Commerce Clause of the U.S. Constitution to expand federal hate crime law to include gender identity and expression. I argue that it is politically desirable for the federal government to be involved in rectifying the inequitable expressive and associative opportunities created by anti-LGBT hate crimes because expression and association are vital democratic tools of self-governance, truth-discovery, and autonomy.

Before engaging in this analysis, I feel compelled to contextualize my argument. The difficulty in legally accounting for inequitable expressive and associative opportunities created by anti-LGBT hate crimes highlights a few problems. It illustrates the complexity of ensuring that the law responds adequately, or responds at all, to the salient harms of anti-LGBT hate crimes. It also highlights the broader and more systemic problem of the law’s current inability to address fully the needs and concerns of LGBT individuals and communities. Therefore, the difficulty in making this article’s legal argument should not be quickly dismissed; the failure of current legal parameters to include or recognize LGBT needs and concerns warrants critical discussion.

Part II provides the history and legal background of hate crime legislation within the United States. Part III discusses the how hate crime consequences, and in particular anti-LGBT hate crime consequences, have been framed in scholarly and empirical research. Part IV conceptualizes anti-LGBT hate crimes as inhibitors to associative and expressive opportunities on the basis of gender identity and sexual orientation. Part V argues that the federal government has the constitutional authority under the Commerce Clause of the U.S. Constitution to expand federal hate crime laws to cover gender identity and expression. I focus specifically on the locations of anti-LGBT hate crimes and posit that a significant proportion of anti-LGBT hate crimes occur in or near public travel spaces and LGBT-identified commercial establishments. Part VI illustrates that expanding federal hate crime
legislation to include gender identity and sexual orientation is politically desirable because expression and association are vital instruments for democratic self-governance, truth-discovery, and autonomy.

II. HISTORICAL AND LEGAL BACKGROUND OF U.S. HATE CRIME LEGISLATION


Even though hate crimes are not recent phenomena, it was not until the second half of the twentieth century that legislation was created to address them. (A significant majority of hate crime legislation was enacted during and after the 1980s. Part II subsection B will develop this point in more detail.) In 1968, Congress passed 18 U.S.C. § 245, the first piece of federal hate crime legislation. With the enactment of this piece of legislation, federal officers were granted the authority to investigate and prosecute crimes motivated by race, religion, color, and national origin if the victims were engaged in certain federally protected activities (see note 2) when the crimes were committed.

This legislation emerged from three waves of hate-motivated violence that served to prevent racial and ethnic minorities from exercising their constitutional and federal statutory rights during the Reconstruction Era, World War I, and the 1960s Civil Rights Movement respectively. After the Civil War ended in April 1865, Congress enacted the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, granting new rights to former slaves.9 These amendments explicitly affirmed the federal government’s commitment to combat racial discrimination in the Constitution and inspired a violent backlash which served to prevent African-Americans from exercising their constitutional rights.10 The most prominent group that committed such violence was the Ku Klux Klan (KKK) (Jacobs & Potter, 1998, p. 6).

During the Reconstruction Era, many local law enforcement agencies in the South refused to prosecute whites who committed crimes against African-Americans (Jacobs & Potter, 1998). Many local law enforcement and government officials also directly inhibited newly freed slaves from exercising their constitutional rights (18 U.S.C. §§ 241-242). In response to incidents of racial and ethnic violence and constitutional deprivations, Congress enacted Title 18 U.S.C. § 241 and § 242. These early federal statutes punished private individuals and governmental officials who threatened to deprive, or actually deprived, citizens from exercising their constitutional
However, decisions from the Supreme Court and lower courts undercut the potential for 18 U.S.C. § 241 and § 242 to adequately address failures to prosecute perpetrators who committed racial and ethnic violence (Levin, 2002). For example, in *Blyew v. United States*, the Supreme Court restricted the federal government’s ability to assert jurisdiction in cases involving racial and ethnic violence (80 U.S. 581 [1871]; Levin, 2002, p. 138). Other court decisions undercut the full equalizing potential of the Thirteenth, Fourteenth, and Fifteenth Amendments (Levin, 2002). As Leon Higginbotham (1973) puts it, “Tragically by the 1880s it was apparent that the ‘original understanding’ of these amendments was being steadily emasculated by a hostile Supreme Court” (p. 16). For example, in *Plessy v. Ferguson* (163 U.S. 537 [1896]), the Supreme Court upheld the constitutionality of “separate but equal” facilities, “solidifying de jure discrimination as a part of the American experience for decades to come” (Levin, 2002, p. 140). Although the Supreme Court’s endorsement of “separate but equal” facilities influenced white supremacist groups to disband in the early 1870s, thousands of African-Americans continued to be brutally victimized by mob lynchings (p. 141).

The second wave of hate-motivated violence was inspired by an immigration surge during World War I. During this period, white supremacist groups, including the KKK, were at their organizational peaks (Schaefer, 1971, p. 149). For example, from 1915-1925, approximately three to six million Americans, including many local, state, and national politicians, joined the KKK (McVeigh, 1999; see also Goldberg, 1981). Many people, including an unprecedented number of women, joined white supremacist organizations to maintain their social and political dominance, fearing the rise of free market capitalism and the need for unskilled labor (Blee, 1991). White supremacist organizations not only targeted African-Americans, but also violently targeted Catholics, Jews, and new immigrants (Levin, 2002, p. 142). However, African-Americans were still disproportionately brutalized by lynchings (p. 142).

In response to the lynching pandemic, sixteen states passed anti-lynching laws from the 1890s to the 1930s (Levin, 2002, pp. 141-142). These state statutes were the earliest criminal laws to address a specific mode of hate-motivated violence. Unfortunately, they were rarely enforced because all-white juries were hesitant to convict white perpetrators (p. 142). The National Association for the Advancement of Colored People (NAACP) led the fight to outlaw lynching through federal prohibition and argued that the adoption of a federal law was necessary given that the local enforcement authorities from many Southern states refused to prosecute lynching crimes (p. 142). The Constitutional Rights Foundation’s article “‘At the Hands of Persons Unknown’: Lynching in America” (http://www.crf-usa.org/bria/
bria10_3.html#lynching, 2008) notes that although a federal lynching law never passed, the NAACP’s efforts raised awareness about the need to address specific modes of hate-motivated violence through federal legislation.

The 1960s Civil Rights Movement inspired a third wave of racial and ethnic violence, which influenced Congress to take additional action to address racial violence through legislation. After the Great Depression, the Supreme Court took on a leading role in the movement for African-Americans to obtain equal civil rights by affirming the unconstitutionality of segregation in numerous contexts, including voting, serving on juries, and going to public school. Despite these decisions, the lack of enforcement at the state level prevented African-Americans from fully exercising their civil rights. In the 1960s, demonstrators led by Martin Luther King, Jr. and other legendary leaders and groups protested segregation in the United States through boycotts, rallies, black voter registrations, and marches (Meier & Bracey, 1993). Many demonstrators were subjected to violence for openly advocating for equal civil rights (Levin, 2002, p. 143). However, the demonstrations were critical in influencing Congress to pass new legislation to ensure equal civil rights (Burstein, 1979).

Violence serving to prevent African-Americans from exercising their civil rights prompted Congress to enact Title 18 U.S.C. § 245, the first piece of federal hate crime legislation, in 1968. The legislative history of Title 18 U.S.C. § 245 supports that Congress intended to counteract racial and ethnic violence, which had often gone unpunished and deterred citizens from freely exercising their constitutional and statutory rights (S. Rep. No. 90-721, 1837). In explaining the need for the bill, the Senate Committee on the Judiciary posited that many local and state law enforcement agencies were unable or simply unwilling to address violence serving to prevent racial and ethnic minorities from exercising their civil rights (S. Rep. No. 90-721, 1837). The Committee also proclaimed that it was the federal government’s obligation to address criminal acts that burdened affirmative federal rights:

Federal legislation against racial violence is not required solely because of the sometimes inadequate workings of State or local criminal processes. Too often, in recent years, racial violence has been used to deny affirmative Federal rights; this action reflects a purpose to flout the clearly expressed will of the Congress . . . Such lawless acts are distinctly Federal crimes and it is, therefore, appropriate that responsibility for vindication of the rights infringed should be committed to the Federal courts. (S. Rep. No. 90-721 [1840])

The federal government’s authority to address constitutional and federal
statutory rights deprivations stands as the current basis for the federal government’s involvement in the prosecution and investigation of hate crimes (see S. Rep. No. 90-721 [1841-1843]).

B. Summary of Current Legislation Addressing Hate Crimes Motivated by Sexual Orientation and Gender Identity

1. Enacted State Hate Crime Legislation

In the 1980s, state and local legislatures responded to hate-motivated violence by enacting hate crime penalty-enhancement statutes, which increase sentences for underlying offenses if they are motivated by hate (Jacobs & Potter, 1998). California was the first state to criminalize hate-motivated intimidation and violence (Cogan, 2002, p. 173). Besides enhancing the punishment for those who commit hate crimes, many state laws also allocate resources to collect hate crime data and train law enforcement personnel to properly handle hate-motivated violence (Cogan, p. 176; Anti-Defamation League, “Map: State Hate Crime Statutory Provisions,” www.adl.org/99hatecrime/provisions.asp). Today, according to PartnersAgainstHate, nearly every state has a hate crime law that either enhances punishment for hate crimes or allocates resources for data and statistical gathering (“Hate Crime Laws Around the Country,” www.partnersagainsthate.org/hate_response_database/laws.html).

LGBT advocacy organizations, such as the National Gay and Lesbian Task Force (NGLTF), had central roles in pressuring states and localities to include sexual orientation and gender identity in state and local hate crime laws. As of May 2007, eleven states—California, Colorado, Connecticut, Hawaii, Maryland, Minnesota, Missouri, New Mexico, Oregon, Pennsylvania, and Vermont—included both sexual orientation and gender identity in their hate crime statutes. Twenty-one states and the District of Columbia include only sexual orientation in their hate crime statutes (Michigan and Indiana’s data collection laws include sexual orientation, but their hate crime penalty-enhancement statutes do not). Of the states that have hate crime laws, thirteen do not include sexual orientation or gender identity as protected characteristics (one state, Utah, has hate crime law that addresses only offenses committed with the intent to “intimidate or terrorize” and with the intent to interfere with a state, federal, or constitutional right) (National Gay and Lesbian Task Force, http://thetaskforce.org/downloads/reports/issue_maps/hate_crimes_5_07.pdf, 2007). LGBT exclusion from state and local hate crime laws and resource constraints that prevent state and local authorities from prosecuting hate crimes are common reasons posited by proponents for the necessity of the federal government’s
involvement in the prosecution and investigation of anti-LGBT hate crimes.14

2. Enacted Federal Hate Crime Legislation

The Hate Crime Statistics Act of 1990 (HCSA) was the first piece of federal hate crime legislation enacted after Title 18 U.S.C. § 245. The Act mandated the Attorney General to gather data about hate crimes on the basis of race, religion, sexual orientation, and religion.15 The bill also required the Attorney General to “establish guidelines for the collection of such data, including the necessary evidence and criteria for a finding of manifest prejudice.”16 Since its enactment in 1990, the U.S. Federal Bureau of Investigation has gathered and published hate crime statistics every year (Rubenstein, 2004). Despite embracing Congress’s intentions for passing HCSA, some scholars have highlighted the Act’s limitations. Cogan (2002), supported by Rubenstein (2004), notes:

Although this law was highly important in that it helped recognize hate crimes as a phenomenon that needs federal attention, to date, it has been imperfect in providing meaningful data. This is partly because police agencies were not required to report hate crime data for their jurisdictions but rather did so voluntarily. As a result, many police departments did not offer any hate crime data for the first few years and have pressed for more comprehensive hate crime statistical gathering requirements. (p. 174)

Congress also enacted the Hate Crimes Sentencing Enhancement Act in 1994 (HCSEA).17 The HCSEA requires the United States Commission to increase the penalties for crimes committed on the basis of actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation. However, the HCSEA applies only to cases tried in federal courts where federal jurisdiction is proper. This jurisdictional requirement raises difficulties because 18 U.S.C. § 245 does not grant jurisdiction for the federal government to prosecute crimes motivated by a victim’s gender identity or sexual orientation (Gilbert & Marchand, 1999). Therefore, the HCSEA has not applied to anti-LGBT hate crime victims in a meaningful way.

C. The Supreme Court’s Constitutional Assessments of Hate Crime Statutes

specifically assess the constitutionality of hate crime penalty-enhancement statutes. In *R.A.V.*, the Supreme Court invalidated a local hate crime ordinance which prohibited specific modes of expression. The statute provided:

> Whoever places on public or private property, a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor. (St. Paul Bias-Motivated Crime Ordinance, St. Paul, Minn. Legis. Code §292.02, [1990])

In *R.A.V.*, the Court held that hate crime ordinances criminalizing particular expressive acts unconstitutionally infringe upon the First Amendment (p. 391). However, in *Mitchell*, the Court reached the opposite conclusion and upheld the constitutionality of Wisconsin’s hate crime penalty-enhancement statute (pp. 482-483). The Court argued that unlike the ordinance at issue in *R.A.V.* that criminalized expressive acts, the Wisconsin statute targeted violent conduct, which is not afforded First Amendment protection (508 U.S., p. 484). *Mitchell* remains the last substantive insight by the Supreme Court into the constitutionality of hate crime penalty-enhancement statutes under the First Amendment (Lawrence, 1999).

Since *R.A.V.* and *Mitchell* involved a local hate crime ordinance and a state hate crime law, the Supreme Court did not address the federal government’s authority to become involved in hate crime investigations and prosecutions by means of federal legislation. However, some of the analysis in *Mitchell* is instructive on this issue. Although the Supreme Court in *Mitchell* never linked hate crime consequences to the expression and association of victims or their respective communities, the Court emphasized the relationship between hate crime consequences and the purpose of the Wisconsin penalty-enhancement statute. The Court stated that the “Wisconsin statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. . . [and is] more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims and incite community unrest” (*Mitchell*, 1993, pp. 478-479). The Court further reasoned that “the State’s desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with the offenders’ biases and beliefs” (*Mitchell*, pp. 478-479). Although short, this discussion is important because it illustrates the Court’s recognition that hate crime consequences are relevant to the underlying justifications of hate crime laws. This perspective is particularly useful when assessing why federal
hate crime laws should be expanded in light of the consequences that hate crimes have upon LGBT victims and communities.

III. Treatments of Anti-LGBT Hate Crimes in Scholarship and Empirical Research

Generally, legal scholars and empirical researchers have focused on three types of hate crime consequences which distinguish hate crimes from parallel crimes. These proponents of hate crime laws posit that (1) hate crimes are more likely to produce greater physical injury to their victims; (2) hate crimes are more likely to produce greater psychological harm to their victims; and (3) hate crimes are more likely to produce greater harm to targeted communities. Scholars and researchers have reached similar conclusions regarding the effects of hate crimes on LGBT victims and communities. The application of these categories to LGBT victims and communities will be discussed within each subsection.

A. Greater Physical Injury

Proponents of hate crime laws posit that hate crimes can be distinguished from parallel crimes because they are more likely to cause greater physical injury to their victims. Frederick Lawrence, a prominent advocate of hate crime legislation, has stated that “crimes committed with bias motivation are dramatically more likely to involve an assault than is a parallel crime” and such assaults are “between two to three times more likely than other assaults to cause physical injury to the victim” (Lawrence, 1994). Sociologists Jack Levin and Jack McDevitt (1993) found that based on a sample of 452 hate crimes recorded by the Boston police from 1983 to 1987, half of the reported crimes were assaults. From this finding, Levin and McDevitt concluded that hate crimes tend to be “excessively brutal” (p. 100). Later studies concluded that hate crimes are four times more likely to involve assaultive behavior than are crimes generally (Levin, 1992), twice as likely to involve injury to the victim, and four times as likely to require hospitalization (McDevitt, 1989).

Although there is a need for further studies on the topic, researchers have reached similar conclusions regarding the violent nature of hate crimes against LGBT victims. For instance, researchers have found that crimes motivated by sexual orientation are more likely to be committed by two or more perpetrators (46%) compared with non-bias crimes (17%) (Herek, Cogan, & Gillis, 2001, pp. 89-90). In another study focusing on transgender experiences of violence and discrimination, over half of the subjects endured some form of harassment or violence within their lifetime, with a
quarter experiencing a violent incident (Lombardi, Wilchins, Priesing, & Malouf, 2001). In another study, the National Coalition of Anti-Violence Programs (NCAVP) found that while transgender individuals made up only 2% of the entire sample, they constituted 16% of murder victims (p. 91).

Notable critics, such as James B. Jacobs and Kimberly Potter (1998), have challenged the empirical support of the claim that hate crimes result in greater physical injury to their victims (p. 82). Some proponents of hate crime legislation, for example Harel and Parchomovsky (1999), also doubt the greater physical injury claim, and have argued that justifications for hate crime laws cannot be based solely on these questionably greater physical injuries. Critics have also conceptually challenged whether greater physical injury associated with a crime justifies increasing the punishment for individuals who commit them. They argue that if hate crimes produce greater physical injuries, then such injuries should be addressed within the framework of aggravated assault; the defendant’s motive is an improper proxy for a victim’s greater physical injury (Hurd & Moore, 2004, p. 1086).

B. Greater Psychological Injury

Scholars and researchers have also argued that hate crimes can be distinguished from parallel crimes because they are more likely to cause greater psychological injury to immediate victims. Studies support the claim that hate crime victims suffer greater psychological distress than do victims of parallel crimes. In a 2001 study, McDevitt, Balboni, Garcia, and Gu found that hate crime victims feel significantly less safe after their attack than do victims of non-bias crimes. They also concluded that hate crime victims have greater fears about being subjected to similar violence in the future and are more likely to feel unsafe returning to the area of the incident and to their homes alone at night (p. 710). Lawrence explains that hate crimes result in increased psychological trauma because of their personal nature:

[T]he bias crime victim cannot reasonably minimize the risks of future attacks because he is unable to change the characteristic that made him a victim. Bias crimes thus not only attack the victim physically, but also strike at the very core of his identity. It is an attack from which there is no escape. It is one thing to avoid the park at night because it is not safe. It is quite another to avoid certain neighborhoods because of . . . one’s race or religion. (1999, pp. 150-151.)

Scholars have also concluded that the psychological effects of hate crimes influence victims to change their behavior to avoid future violence (Wang, 1997; Butler, 2004; Lawrence, 2007). For instance, studies confirm that
hate crime victims adopt greater defensive behavioral strategies to avoid further victimization (Barnes & Ephross, 1994). This view will be developed in LGBT-specific contexts in Part IV.

Studies also support the claim that greater psychological injury is prominent among LGBT victims of hate crimes. For instance, one study compared the psychological trauma suffered by gays and lesbians after being victims of hate crimes with the distress that other gays and lesbians suffered after being victimized by non-bias crimes with comparable violence (Herek & Cogan, 1999). The study concluded that after 5 years, gays and lesbians who had experienced a hate crime assault reported significantly greater levels of depression, anger, anxiety, and posttraumatic stress than did subjects who experienced non-bias motivated assaults (Herek & Cogan; D’Augelli & Grossman, 2001). Consequently, hate crimes can cause a person’s sexual orientation to “be experienced as a source of pain and punishment rather than intimacy, love, and community. Internalized homophobia may reappear or be intensified. . . Such characterological self-blame can lead to feelings of depression and helplessness, even in individuals who are comfortable with their sexual orientation” (Garnets, Herek, & Levy, 1999, p. 370). Studies also confirm that gay men who are subjected to violence based on their sexual orientation are two times as likely to report suicidal ideation as those who aren’t (Huebner, Rebchook, & Kegeles, 2004). These findings support the claim that “experiencing a hate crime links the victim’s post-crime feelings of vulnerability and powerlessness with his or her sexual orientation and personal identity” (Herek, Gilles, & Cogan, 1999, p. 950). Although the current research on the psychological effects that hate crimes have on transgender victims is sparse, researchers posit that transgender individuals also experience greater psychological trauma when they are victimized based on their gender identity or expression (Wilchins, Priesing, & Malouf, 2001).

Similar to the greater physical injury claim, critics of hate crime laws have dismissed the greater psychological injury claim as empirically unsound. Some critics (e.g. Jacobs & Potter, 1998) have also dismissed the empirical evidence offered as support for this claim as inconclusive. Other studies have found that hate crime victims suffer from the same psychological consequences as do non-hate crime victims. For example, Barnes, Arnold, and Ephross (1994) reported:

In comparing the emotional and behavioral responses of victims of hate violence with those of victims of personal crimes such as assault and rape, several similarities were identified. Investigators have reported intense rage or anger; fear of injury, death, and future victimization; and depression as elements of victims’ potential reactions to crime. Thus, to some extent, the predominant emotional responses of hate violence vic-
tims appear similar to those of victims of other types of personal crime. (p. 250; internal citations omitted)

Critics have also rejected the conceptual legitimacy of enhancing the punishment for hate crimes because they result in greater psychological injury. For instance, Heidi Hurd and Michael Moore (2004) argue that the defendant’s hateful motive in committing a hate crime is an improper proxy for a victim’s psychological trauma because the psychological effects derive from the victim’s perceptions rather than the defendant’s motives.

C. Additional Harm to Targeted Communities

Scholars and researchers have also distinguished hate crimes from parallel crimes based on the additional harm that targeted communities suffer after an individual member of their community is attacked. In a 2007 statement regarding the Matthew Shepard Act, Frederick Lawrence and Robert Kramer explained how hate crimes affect targeted communities:

Members of the target community of a bias crime perceive that crime as an attack on themselves directly and individually. . . Members of these targeted communities may experience reactions of actual threat and attack. . . Bias crimes may spread fear and intimidation beyond the immediate victims and their friends and families to those who share only racial characteristics with victims. This additional harm of a personalized threat felt by persons other than the immediate victims of the bias crimes differentiates a bias crime from a parallel crime and makes the former more harmful to society.22

In Undoing Gender, Judith Butler explains that the constant fear of victimization shapes individual subjectivities of LGBT people and communities:

We are, as a community, subjected to violence, even if some of us individually have not been. And this means that we are constituted politically in part by virtue of the social vulnerabilities of our bodies; we are constituted as fields of desire and physical vulnerability, at once publicly assertive and vulnerable. (2004, p. 18)

Therefore, the widespread terror created by hate crimes affects how people within targeted communities view themselves.

Scholars also posit that hate crimes have inter-communal effects which generate strife between members of targeted communities. For instance, sociologists Linda Garnets, Gregory Herek, and Barrie Levy explain how this works in regard to sexual orientation: “Needing to reduce their own feelings of vulnerability, some members of the community are likely to
blame the victims of violence, often focusing on ‘obvious’ behavior, gestures, or clothing’ (1990, p. 374). Proponents therefore argue that in addition to creating widespread feelings of vulnerability and fear, hate crimes affect how members of targeted communities interact with one another.

Opponents of hate crime laws have attacked the claim that targeted communities suffer additional injury from hate crimes by arguing that current data is inconclusive. Critics have also questioned whether the alleged additional communal injury is legally relevant. For instance, Jacobs and Potter claim, “Many crimes, whatever their motivation, have repercussions beyond the immediate victim and his or her family and friends” (1998, p. 87). These critics claim that because the alleged communal harm resulting from hate crimes is indistinguishable from communal harms caused by other crimes, it is unjust to increase the punishment for hate crimes on these grounds.

IV. RECONCEPTUALIZING ANTI-LGBT VIOLENCE AS INHIBITING EXPRESSION AND ASSOCIATION ON THE BASIS OF GENDER IDENTITY AND SEXUAL ORIENTATION

Few legal scholars and researchers have connected hate crime consequences with the expression and association of LGBT victims and communities. However, two research findings support the concept that hate crimes against LGBT people directly target expression and association on the basis of sexual orientation and gender identity. It is important to preface these findings by noting that hate crimes are severely underreported (Rubenstein, 2004) and that many LGBT victims decide not to report hate crimes in fear of secondary victimization by law enforcement (Nolan & Akiyama, 1999).

First, a significant proportion of anti-LGBT hate crimes occur near or in LGBT-identified settings, such as bars or establishments (Herek, Cogan & Gillis, 2002; Comstock, 1991). Herek et al. note that often such crimes are committed by strangers who have no personal connections to their victims. Studies confirm that 9-12% percent of hate crimes perpetrated on the basis of sexual orientation occur near or inside LGBT-identified locations and establishments (Herek et al; Herek, Gillis, Cogan, & Glunt, 1997). Another study found that as much as 27% of anti-LGBT violence occurs outside lesbian or gay bars or establishments (Comstock, 1991). Statistics also indicate that over one-third (36.4%) of hate crimes reported to the U.S. Federal Bureau of Investigation that occur at bars or nightclubs involve attacks against individuals who are gay or lesbian (McDevitt & Williamson, 2003). These findings demonstrate that LGBT victims are being specifically targeted when they associate with others in LGBT-identified establishments, venues, and locations.
Second, research supports that a significant proportion of LGBT hate crimes occur after victims personally make their sexual orientation or gender identity known to perpetrators. Therefore, there is a direct relationship between LGBT expression and hate crime victimization (see Garnets, Herek, & Levy, 1990; and D’Augelli & Grossman, 2001). For instance, one study found that 15% of gay and lesbian victims of hate crimes found that the attack occurred immediately after the person (or others with the individual) had behaved in ways that made his or her sexual orientation known (Herek et al., 1997). Another study confirmed that over 10% of hate crimes perpetrated on the basis of sexual orientation occurred after the victim made his or her sexual orientation visible (Herek, Cogan, & Gillis, 2002). The same study found that common visible cues that influenced victimization were holding hands with a same-sex partner, affixing a gay bumper sticker to a vehicle, and displaying a rainbow flag outside the home (p. 331). These empirical findings support the notion that there is a direct relationship between LGBT expression and hate crime victimization (Garnets, Herek, & Levy, 1999; D’Augelli & Grossman, 2001).

Consequently, anti-LGBT hate crimes should be conceptualized as direct attacks upon LGBT expression and association. Some characteristics, such as race, often have an involuntary visible component that makes it virtually impossible for individuals possessing those characteristics to hide them from others (Lawrence, 1999). Other characteristics, such as sexual orientation, do not have as great of an involuntary visible component, allowing individuals to choose when and when not to reveal these characteristics to others (Yoshino, 2002). Jack McDevitt and Jennifer Williamson explain how sexual orientation’s greater involuntary visible component influences the commission of anti-LGBT hate crimes:

One reason for this concentration of attacks around bars and nightclubs involves the offender’s ability to target potential victims. If the offender or group of offenders are looking to attack a black man they could drive around until they encounter a potential victim, however if these offenders are intending to attack a gay man, they have no way of identifying who on the street is gay. They can, however, wait outside a bar or nightclub and assume that all who enter or leave the establishment are gay. (2003, pp. 805-806)

Consequently, perpetrators seeking to commit anti-LGBT hate crimes must look for expressive and associative cues to determine that their victims are LGBT. These visual cues include dressing or acting in non-stereotypically-gendered ways or inhabiting establishments known to cater to LGBT individuals and communities.

Perpetrators’ increased likelihood to target the expression and associa-
tion of LGBT individuals provides a stronger imperative to take expressive and associative consequences that arise from anti-LGBT hate crimes more seriously.

Critical theorists posit that systemic cultural violence is one of the vehicles through which individuals may be inhibited from privately or publicly communicating their feelings and perspectives on social life in democracy (Young, 1990; Herek, 1992). One way in which hate crimes inhibit expression or communication is by influencing individuals to modify their own behaviors to avoid violence:

[T]he fear of crime motivated by group identity leads these nonvictims to engage in defensive behavior similar to that seen in crime victims, including withdrawing from or avoiding particular activities or otherwise adjusting their lives in an effort to avoid drawing attention to themselves. Persons who consider themselves potential targets will take into consideration the potential for unprovoked violence against them in making important life decisions. (Wang, 1997, p. 121)

Research on the hate crimes committed against LGBT people support the concept that hate crimes influence LGBT victims to modify their behavior to adhere to rigid gender and sexual norms. In one study, sociologists Linda Garnets, Gregory M. Herek, and Barry Levy found that

hate crimes create a climate of fear that pressures gays and lesbians to hide their sexual orientation. Needing to reduce their own feelings of vulnerability, some members of the community are likely to blame the victims of violence, often focusing on “obvious” behavior, gestures, or clothing. Such victim blaming reinforces key aspects of the cultural ideology of heterosexism, such as the prescription that men and women should conform to highly restrictive norms of gender-appropriate behavior and the belief that being gay is wrong and deserves punishment. (1999, p. 374)

LGBT people may refrain from certain behaviors or gestures, or avoid certain clothing styles, in fear of being victimized and labeled as LGBT (Herek, 1989; Von Schulthess, 1992). Fearing violence, LGBT individuals may never reveal their sexual orientations or gender identities at all. The invisible aspect of sexual orientation makes these findings especially troublesome because the visible presence of nonconforming sexual orientations and gender identities is contingent upon the open association and expression of LGBT individuals and communities (Part V will develop this point in more detail).
V. THE FEDERAL GOVERNMENT’S ROLE IN COMBATING ANTI-LGBT VIOLENCE BURDENING EXPRESSION AND ASSOCIATION

The First Amendment to the U.S. Constitution only prevents governmental and state actors from curtailing expression and association; it does not provide individuals with an affirmative constitutional right to express or associate. Since 18 U.S.C. § 245 was enacted to redress civil rights violations, proponents must develop alternative justifications to defend a federal remedy to redress the inequitable expressive and associative opportunities created by hate crimes on the basis of sexual orientation and gender identity. Regardless of whether hate crimes perpetrated on the basis of sexual orientation or gender identity implicate a constitutional or a federal statutory right, I argue that Congress should have the ability to assist in investigating and prosecuting hate crimes on the basis of sexual orientation and gender identity by invoking its power under the Commerce Clause. Moreover, since expression and association are vital to democratic self governance, truth-discovery, and autonomy, I contend that it is politically desirable for the federal government to have a role in rectifying social conditions that inhibit LGBT individuals from expressing themselves or associating with others on the basis of sexual orientation or gender identity.

A. Distinguishing the Matthew Shepard Act from the Violence Against Women Act (VAWA): Invoking the Commerce Clause to Address Anti-LGBT Violence

Article I, Section 8 of the U.S. Constitution provides that “Congress shall have the power. . . to regulate Commerce with respect to foreign Nations, and among the several States, and within the Indian Tribes.” Congress has historically invoked this constitutional provision to enact federal legislation ranging from criminal to environmental laws (Levinson, 2006; Posner & Reif, 2000). The Supreme Court’s treatment of the limits of Congress’s commerce power has evolved over time. However, the current judicial treatment of Congress’s commerce power is shaped predominantly by the Supreme Court’s decision in United States v. Lopez (514 U.S. 549 [1995]). In Lopez, the Supreme Court limited the scope of permissible regulated activities under the Commerce Clause by declaring the Gun-Free School Zones Act of 1990 unconstitutional (514 U.S. 549 [1995]; see also Chemerinsky, 2006, p. 1361). In its analysis, the Court articulated three categories of activities that Congress can permissibly regulate under its commerce power. First, Congress can “regulate the use of the channels of interstate commerce” (Lopez, 514 U.S., p. 558). Second, Congress may legislate “to regulate and protect the instrumentalities of interstate com-
merce” (p. 558). Third, Congress may legislate to “regulate those activities having a substantial relation to interstate commerce” (pp. 558-559).

In *United States v. Morrison*, the Supreme Court addressed whether a federal civil remedy for victims of gender-motivated violence under the Violence Against Women Act (VAWA) was constitutional (42 U.S.C. § 13981). The plaintiff defended the law under the third category of activities as announced in *Lopez*, and argued that violence against women had a substantial effect on the U.S. national economy (*Morrison*, 529 U.S., p. 598). Congress presented congressional findings supporting that gender-motivated violence costs the American economy billions of dollars a year and is a substantial constraint to freedom of travel by women throughout the country. Despite these congressional findings, the Court rejected the federal government’s authority to regulate non-economic violent criminal conduct based on cumulative effects on interstate commerce (*Morrison*, 529 U.S., p. 617). The Court maintained that to rule otherwise would eliminate boundaries between truly local and federal affairs (p. 617). Therefore, *Morrison* restricted what activities Congress could regulate in the third category under *Lopez*.26

In adopting the Matthew Shepard Act, the House of Representatives explicitly stated that the Act was drafted “to comport with Supreme Court guidance in *Lopez* and U.S. v. *Morrison*” (H.R. Conf. Rep., pp. 110-113). However, in light of the similarities between the Violence Against Women Act (VAWA) and the Matthew Shepard Act, critics have posited that federal hate crime laws may exceed the bounds of legitimate commerce power after *Morrison* (Varona & Layton, 2001; Baker, 2000). More specifically, they emphasize that the Supreme Court invalidated VAWA’s federal civil remedy because it addressed gender-motivated violence, which the Court characterized as purely private, non-economic activity (*Morrison*, 529 U.S. pp. 598, 613 [2000]). They contend that similar to VAWA’s federal civil remedy, the Matthew Shepard Act contains a provision that enhances the punishment of bias crimes motivated by sexual orientation, gender identity, gender, and disability. They characterize these categories of violence as purely private, non-economic activity, similar to the gender-motivated violence illegitimately targeted by the federal government in passing VAWA.

It is unquestionable that domestic violence and sexual assaults against women are deplorable. However, whether VAWA can be meaningfully distinguished from the Matthew Shepard Act remains an unsettled legal question. I contend that reconceptualizing anti-LGBT hate crimes as threats to expression and association may highlight some of these key differences to defend the Matthew Shepard Act against constitutional defeat. One approach highlights the differences between the nature of the regulated activity in *Morrison* and anti-LGBT hate crimes. As mentioned in Part III,
empirical research supports the contention that a disproportionate number of anti-LGBT hate crimes occur near or within LGBT-identified establishments and venues (Herek et al., 2002; Herek et al., 1997). For instance, some studies report that as many as 27% of attacks against LGBT individuals occur outside a lesbian or gay bar or establishment (Comstock, 1991, p. 49). Other findings support the claim that over one-third (36.4%) of hate crimes reported to the FBI that occurred at bars or nightclubs involved attacks on individuals who were gay or lesbian (McDevitt & Williamson, 2003, p. 805). In a 2005 statistical summary report entitled “Hate Crime Statistics 2005,” the U.S. Federal Bureau of Investigation found that of the 1,017 hate crime incidents stemming from sexual orientation-bias in 2005, 25% occurred on highways, roads, alleys, or streets, and 6.8% occurred in parking lots or garages (www.fbi.gov/ucr/hc2005/index.html). In “Hate Crime Statistics 2004,” the Federal Bureau of Investigation similarly found that out of the 1,197 bias incidents motivated by sexual orientation in 2004, 24.9% happened on highways, roads, alleys, or streets (www.fbi.gov/ucr/hc2005/index.html). These conceptualizations of anti-LGBT violence make it possible to characterize them as affecting instrumentalities or channels of interstate commerce (Haggerty, 2001; Willis, 2004)—the first two categories of violence that Congress may regulate after *Lopez*.

Another approach reconceptualizes anti-LGBT hate crimes as having a substantial effect on interstate commerce, justifying the Matthew Shepard Act as a permissible exercise of Congress’ commerce power under the third category of activities Congress may regulate after *Lopez*. In *Morrison*, the Supreme Court considered three factors to determine whether gender-motivated violence had a substantial effect on interstate commerce. First, the Court considered whether the activity was economic in nature (*Morrison*, 529 U.S., p. 613). The Court held that “gender-motivated crimes of violence are not, in any sense of the phrase, economic activity” (p. 613). Second, the Court considered whether the text of the statute contained a jurisdictional element establishing that the statute was enacted in pursuance of Congress’ power to regulate interstate commerce (p. 613). The federal civil remedy contained no such jurisdictional element, which the Court viewed as granting Congress the authority to regulate too broad a range of criminal activity that was traditionally regulated by the States (p. 613). Third, the Court considered whether Congress presented findings indicating that gender-motivated violence had a substantial effect on interstate commerce (p. 613). Although the Court agreed Congress’s findings were more than extensive, it held that “the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation” (p. 614).

Reconceptualizing anti-LGBT hate crimes as burdening expression
and association helps to distinguish the relevant differences between the Matthew Shepard Act and the federal civil remedy of the Violence Against Women Act in terms of regulating activity that has a substantial effect on interstate commerce. First, studies support the contention that a substantial proportion of anti-LGBT hate crimes occur when perpetrators target LGBT individuals who choose to inhabit LGBT-identified establishments, venues, and locations. These findings dispel the notion that anti-LGBT hate crimes are purely non-economic in nature. Rather, they support the contention that there is a strong connection between anti-LGBT hate crimes and economic activity.

Second, unlike VAWA’s federal civil remedy, an entire subsection of the Matthew Shepard Act contains jurisdictional language referencing the connection between anti-LGBT hate crimes and interstate commerce.29 The Act also contains a certification requirement that substantially limits the federal government’s authority to investigate and prosecute anti-LGBT hate crimes (Section 249(b), Matthew Shepard Act, 2007). The certification requirement forces the Federal government to communicate with the state and local authorities to determine whether its involvement is warranted. The federal government may become involved in hate crime investigation and prosecution only if (1) the state does not have or intend to exercise jurisdiction; (2) the state has requested or does not object to the federal government to assuming jurisdiction; or (3) the verdict or sentence obtained by state charges leaves the federal government’s interest in eradicating bias-motivated violence demonstratively unaddressed (Section 249(b)). To further quell federalism concerns upon enacting the Matthew Shepard Act, Congress conceded that “[s]tate and local authorities currently investigate and prosecute the overwhelming majority of hate crimes and will continue to do so under this legislation” (H.R. Rep., pp. 110-113).

Finally, Congress presented sufficient findings demonstrating that anti-LGBT hate crimes have a substantial effect on interstate commerce (H.R. Rep. 110-113). Congress noted that such crimes impede the movement of targeted groups, and even force them to move across state lines to escape being subjected to violence (H.R. Rep. 110-113). Congress also concluded that perpetrators move across state lines to commit such violence and that channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence (H.R. Rep. 110-113). Moreover, members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activities (H.R. Rep. 110-113). Given that a substantial proportion of anti-LGBT hate crimes target individuals who choose to inhabit LGBT-identified establishments and locations, such violence negatively affects LGBT-businesses nationwide. In light of these differences, Morrison does
not invalidate the constitutional authority of the federal government to address anti-LGBT violence through federal legislation.\textsuperscript{30}

\section*{B. Reaffirming the Democratic Importance of Expression and Association}

Concluding that the U.S. federal government has the authority to prosecute and investigate anti-LGBT hate crimes does not explain why it is politically desirable for it to do so. I contend that since expression and association are vital tools to ensure democratic self-governance, truth-discovery, and autonomy, the federal government should have a role in rectifying social conditions that inhibit LGBT communities from having equal opportunities to express or associate on the basis of sexual orientation or gender identity. Even though a universally accepted theory regarding the necessity of protecting expression and association does not exist, scholars have put forth varying justifications for their being essential in democracy. Three common justifications are that expression and association foster (1) self-governance, (2) truth discovery, and (3) autonomy. A deeper exploration of these perspectives provides insight into the policy justifications regarding the desirability of LGBT individuals and communities’ having equal expressive and associative opportunities on the basis of sexual orientation and gender identity.

1. Expression and Association as Means of Self-Governance

Many legal scholars and social theorists posit that expression and association are essential for democratic self-governance (Meiklejohn, 2001; Guttman, 1998). In \textit{Justice and the Politics of Difference}, Iris Marion Young claims that justice obligates governments to create social arrangements that provide the necessary tools for individuals to pursue their conceptions of the good (Young, 1990). In her view, having the ability to develop and exercise one’s capacities and express experiences is one of the institutional conditions that enables people to pursue their conceptions of the good (p. 37). Other scholars also emphasize the importance of expression and association in regard to participatory inclusion in political decision-making processes. For instance, social theorist Nancy Fraser (1998) argues through her concept of “participatory parity” that democratic inclusion requires social arrangements to enable adult members to interact with one another as peers. Fraser believes that sexual subordination, which results from cultural violence and diminished expressive and associative opportunities, prevents LGBT individuals from interacting with others as peers in democracy.\textsuperscript{31} She explains:
The effect [of sexual normalization] is to construct gays and lesbians as despised sexually, subject to sexually specific forms of status subordination. The latter include shaming and assault, exclusion from the rights and privileges of marriage and parenthood, curbs on rights of expression and association, demeaning stereotypical depictions in the media, harassment and disparagement in everyday life, and denial of the full rights of equal protections of citizenship. These harms are injustices of misrecognition. (p. 18)

Therefore, expression and association foster democratic self-governance by enabling individuals to express their perspectives in policy-making processes.

Legal scholars have also posited that expression and association foster self-governance by allowing individuals to directly criticize governing institutions and decisions (Blasi, 1977). Early framers of the U.S. Constitution, including James Madison and Thomas Jefferson, recognized the value that free press, assembly, and expression had in maintaining governmental accountability (p. 535). The U.S. Supreme Court has also sympathized with this view. In *New York Times v. Sullivan*, the Court has stated that the ability to criticize the government and its affairs is “the central meaning of the First Amendment.” Therefore, expression and association as vital means of self-government have transcended modern conceptions of democratic legitimacy (Lefort, 1988).

Reconceptualizing anti-LGBT hate crimes as inhibitors of expression and association on the basis of sexual orientation and gender identity exposes how such crimes threaten LGBT self-governance. First, violence that inhibits LGBT individuals from expressing their sexual orientations or gender identities eliminates LGBT-positive perspectives from the political marketplace. Two possibilities result. First, it is possible, although unlikely, that silencing issues of gender identity or sexual orientation in the political marketplace creates the perception that issues related to gender identity or sexual orientation are unworthy of any political attention or accountability. However, given the history of U.S. laws that discriminate against LGBT individuals, such as same-sex marriage amendments, underinclusive health insurance for transgender people, and criminal sodomy laws, it is evident that issues relating to gender identity and sexual orientation are present in the U.S. political arena. Silencing LGBT-positive viewpoints in the political marketplace allows homophobic and transphobic views to continue to dominate the U.S. political marketplace. Such dominance fosters the continuous creation of unjust laws that inhibit LGBT individuals from obtaining the full equal rights and privileges afforded other citizens.

Violence that deters LGBT individuals from associating on the basis of
their gender identity and sexual orientation also negatively affects LGBT self-governance. On the most basic level, LGBT individuals are prevented from forming alliances or lobbyist initiatives. For example, an LGBT individual who fears violence may be less likely to participate in LGBT political rallies, or to actively volunteer or become affiliated with LGBT advocacy organizations. Such collective formations carry great weight in influencing not only political, but also social and cultural, change.

2. Expression and Association as Means of Truth Discovery

Legal scholars have argued that free expression and association are necessary for democratic truth-discovering purposes. Justice Brandeis affirmed this view in his Whitney v. California concurrence: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence” (274 U.S., 375, 377). This perspective is rooted in John Stuart Mill’s defense of free speech in his famous essay On Liberty (Greenawalt, 1989). In this essay, Mill (1859) claims that suppressing speech is harmful because it may suppress ideas that are true or partly true. In his view, even if an idea is false, challenging it reinforces what is true.

Modern social theorists have also upheld this defense of free speech. For instance, through his concept of communicative rationality, 33 Jurgen Habermas (1981) argues that expression allows people to state claims that they believe to be true and then to reach agreement through deliberation and compromise: “Argumentation insures that all concerned in principle, take part, freely and equally, in a cooperative search for the truth, where nothing coerces anyone except the force of the better argument” (p. 93). According to Habermas, the rationality of a stated claim increases as it undergoes public criticism because it is the product of multiple perspectives and deliberative consensus produces a claim that all discursive participants can consent to and use as a principle of common good rather than private bias interests.

The basic tenet of these scholarly perspectives is that the rational validity of a claim increases after being subjected to a variety of perspectives. Thus, violence that deters LGBT individuals from expressing or associating on the basis of gender identity and sexual orientation negatively affects how society assesses the validity of particular viewpoints on issues relating to gender and sexual orientation. First, by deterring LGBT expression, such violence prevents these perspectives from being introduced in social discussion. Second, by deterring LGBT association, individuals are inhibited from being active participants in social discussion on matters pertaining to gender and sexual orientation. The overall effect of violence that deters LGBT expression and association is that it skews the social percep-
tion of the validity of particular positions on LGBT issues, such as same-sex marriage, restrictions on sex and gender designations on identifying documentation, and LGBT protection from employment discrimination.

3. Expression and Association As Means of Autonomy

Scholars have also defended expression and association on the grounds that they foster democratic self-development and autonomy (Brison, 1998). Law professor Vincent Blasi explains, “The basic idea here is not that speech leads to truth or a stable society or some other social value, but rather that certain speech activities are valuable because they are integral to the process by which persons consciously choose from among alternatives, a process which is regarded as valuable in and of itself because it figures prominently in our vague notions of what it means to be human” (Blasi, 1977, p. 544). The legal notion that free expression and association are important for autonomy is also rooted in early philosophical thought. John Stuart Mill explained that through expressing and associating with others, individuals have a greater understanding of themselves, their opinions, and challenging opinions: “He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons of the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion” (1869, pp. 98-99). Based on this notion, full self-understanding necessitates that people engage with opposite perspectives and use their rational capacities to choose their opinions from conflicting sets of beliefs. As Sadurski (1999) puts it: “[Communication] is crucial for self-fulfillment because the exercise of our capacities is only made possible through self-definition, and the determination of who we really are is impossible without open communication with our fellow human beings” (p. 17). Through dialogue, we communicate our preferences, which are based on informed autonomous judgments (p. 17).

Studies also confirm the importance of expressing one’s sexual orientation or gender identity to LGBT identity formation (Carrion & Lock; Gavne, Tewksbury, & McGaughey, 1997). Fear of violence can complicate or deter an LGBT individual’s decision to publicly reveal their sexual orientations or gender identities. For example, studies confirm the contention that violent reactions to publicly revealing transgender identity has driven some transgender people to repress and conceal their true gender identities (Gavne, Tewksbury, & McGaughey, 1997, p. 498). Carrion & Lock (1997, p. 372) explain:

Delay in recognition of sexual orientation can increase the likelihood of a
poor self-image. This may increase the risk for the development of conditions such as depression, suicidality, addictive disorders, promiscuity, substance abuse, anxiety disorders, sexual dysfunction and post-traumatic stress disorder (PTSD) (internal citations omitted).

Studies similarly confirm the importance of LGBT association on LGBT self-development. For instance, research confirms that many LGBT individuals inhabit LGBT-identified establishments to embrace their LGBT identities and receive validation from their LGBT peers (Cox & Gallois, 1996; Carrion & Lock, 1997). Violence that deters LGBT individuals from inhabiting these venues inhibits LGBT individuals from receiving such recognition.

VI. CONCLUSION

The Matthew Shepard Act emphasizes the need for the federal government to become involved in prosecuting and investigating anti-LGBT hate crimes when local and state hate crime laws are ineffective or nonexistent. However, the Act will not go politically and legally unchallenged when it is reintroduced in a subsequent congressional session. Given the relevant differences between hate crimes addressed under 18 U.S.C. § 245 and the Matthew Shepard Act, LGBT advocates and researchers should offer new justifications for hate crime laws that increase the law’s responsiveness to the harms that such crimes specifically create for lesbian, gay, bisexual, and transgender individuals and communities. I advocate for empirical researchers and legal scholars to comprehensively re-examine anti-LGBT hate crime consequences, and more specifically, to conceptualize anti-LGBT hate crimes as inhibiting expression and association on the basis of sexual orientation and gender identity. The inequitable burden that anti-LGBT violence places on LGBT expressive and associative opportunities makes it obligatory and desirable for the federal government to become involved in the investigation and prosecution of anti-LGBT hate crimes when local and state hate crime laws are ineffective. This inequitable burden not only jeopardizes the self-governance and autonomy of LGBT individuals, but also decreases dialogue challenging dominant heterosexist conceptions of gender and sexuality. The law’s current inability to address these inequitable expressive and associative opportunities jeopardizes vital democratic instruments that lie at the heart of modern conceptions of democratic justice.
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McDevitt, J., Balboni, J., Garcia, L., & Gu, J. (2001). Consequences for victims: A


*Plessy v. Ferguson*, 163 U.S. 537 [1896].


*United States v. Morrison*, 529 U.S. 598 [2000].


**BILLS AND STATUTES**


U.S. Constitution, Amend. I, XIII, XIV, XV.


Violence Against Women Act (VAWA, Title 42 U.S.C. § 13981.


NOTES

1. UCLA School of Law, J.D. expected 2010; University of Cambridge, M.Phil. expected 2009, Harvard University, A.B. 2006. I would like to thank Professor Douglas NeJaime for his guidance and insightful comments on this article.

2. Title 18 U.S.C. § 245 (2006). The six federally protected activities are (1) applying or enrolling for admission to a public school or college; (2) participating in benefit or service programs and facilities administered by state and local governments; (3) applying for private or state employment; (4) serving in a jury; (5) traveling in or using a facility of interstate commerce or common carrier; (6) using a public accommodation or place of exhibition or entertainment, including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters, concert halls, sports arenas or stadiums.

3. S. Rep. No. 90-721 reprinted in 1968 U.S.C.C.A.N. 1837, 1839 (1967) (“The great majority of Americans have either welcomed or peacefully accepted the movement of Negroes toward full employment of equal rights. Unfortunately, however, a small minority of lawbreakers has resorted to violence in an effort to bar Negroes from exercising their lawful rights. . .Acts of racial terrorism have sometimes gone unpunished and have too often deterred the free exercise of constitutional and statutory rights”).


5. The Hate Crimes Prevention Act (HCPA) of 1999 and the Local Law Enforcement
Hate Crime Prevention Acts of 2001, 2004, and 2005 were never successfully enacted into law. All of these Acts attempted to expand the scope of federal hate crime law.

6. Previous to the proposal of the Matthew Shepard Act, Congressional representatives have tried to expand federal hate crime law to include sexual orientation and gender identity. However, these attempts were unsuccessful. See Derrick Z. Jackson, “Optimism in the Hate Crimes Debate,” The Boston Globe, May 26, 2007, p. 11A (“Hate crimes expansion has been proposed since 1998, the year Matthew Shepard, a gay college student, died after he was beaten and tied to a fence in Wyoming. The Senate passed it 65 to 33 in 2004. The House passed it 223 to 199 in 2005. But the Republican-controlled Congress squashed the bill in negotiations”).

7. U.S. Const. amend I; see also Hudgens v. NLRB, 424 U.S. 507, 513 (1976) (noting that the First Amendment does not protect against actions taken by private entities. Rather, it is “a guarantee only against abridgment by government, federal or state”).

8. This power derives from the Article I, Section 8 of the U.S. Constitution which provides that “Congress shall have the power. . .to regulate Commerce with respect to foreign Nations, and among the several States, and within the Indian tribes.” U.S. Const. Art. I, § 8.

9. The Thirteenth Amendment, passed in December 1865, abolished the institution of slavery. See U.S. Const. amend. XIII. The next major initiative was the Civil Rights Act of 1866, which secured citizenship to males who were enslaved and granted the same rights to all “without distinction of race or color, or previous condition of slavery or involuntary servitude.” Civil Rights Act of 1866, 42 U.S.C. § 1981 et. seq. (2006). The Civil Rights Act of 1866 also permitted citizens to enforce contracts, inherit, and sue. See id. There were serious flaws with this piece of legislation since it did not prevent discrimination in areas solely within state jurisdiction. Therefore, in 1868, the scope of the Civil Rights Act of 1866 was extended through the ratification of the Fourteenth Amendment, which prohibited any state from denying guarantees under the Civil Rights Ct of 1866 and forced states to grant equal protection under its laws. U.S. Const. amend. XIV. Finally, the Fifteenth Amendment was ratified in 1870; it prohibited denying or abridging the right to vote on the basis of “race, color, or previous condition or servitude.” U.S. Const. amend. XV.


11. 18 U.S.C. §§ 241-242. Jacobs and Potter argue that these laws are substantially different from modern hate crime laws because the two post-Civil War statutes applied equally to all victims. Unlike modern hate crime laws, they did limit protection to specific groups. See Jacobs and Potter (1998), p. 37.

12. Characteristics included in hate crime penalty-enhancement statutes vary among localities and states. For a comprehensive list of characteristics included in state statues see Anti-Defamation League, “Map: State Hate Crime Statutory Provisions,” http://www.adl.org/combatinghate/; see also Cogan, Jeanine C. (2002). Hate crime as a category worthy of policy attention. American Behavioral Scientist, 46(1), 173-185, 173-74 (describing how hate crimes became institutionalized as a legal category during the 1980s). Federal, state, and local hate crime laws not only protect different characteristics, but they also sometimes adopt different definitions of the term “hate.” For instance, New Hampshire’s hate crime statute authorizes a penalty enhancement if the perpetrator was “substantially motivated to commit the crime because of hostility towards the victim’s
religion, race, creed, sexual orientation, national origin, or sex.” N.H. Rev. Stat. Ann. § 651:6(1)(g) (emphasis added). However, Wisconsin’s hate crime law enhances the penalty for crimes where the offender intentionally selects a victim based on a “belief or perception regarding the [victim’s] race, religion, color, disability, sexual orientation, national origin or ancestry.” Wis. Stat. Ann. § 939.645.

13. For instance, in 1982, the National Gay and Lesbian Task Force (NGLTF) launched its first ever national anti-violence organizing project. For a description of this project as well as the influence that NGLTF had in mobilizing efforts to pass hate crime legislation to protect LGBT people, see NGLTF, “Overview: Task Force’s long history of working to secure hate crimes protections for LGBT people,” http://thetaskforce.org/issues/hate_crimes-main_page/overview.

14. For instance, after the brutal murder of Matthew Shepard, advocates focused on the need for federal hate crime legislation in light of the fact that Wyoming was one of the states that did not have a hate crimes law. See Senators Torricelli, Robert; Kennedy, Edward; Boxer, Barbara, & Wyden, Ron. (1998). Why America needs federal legislation against hate crimes. The Austin American-Statesman, Oct. 26, 1998, p. A11; see also Cogan (2002), p. 176 (“Over the years, it became clear that certain hate crimes were not properly addressed by local police agencies, and the federal government had no authority to intervene”). For a description of how a federal hate crime law would affect state jurisdiction in prosecuting crimes, see Human Rights Campaign, “Questions and Answers: The Local Law Enforcement Hate Crimes Prevention Act,” 1, 4, http://www.matthewshepard.org/site/DocServer/HRC-LLEHCPA-FAQ1-17-07.pdf?docID=463.


16. Id.


18. Since Wisconsin v. Mitchell, the Supreme Court has ruled only on the constitutionality of procedural aspects of hate crime penalty-enhancement statutes. See Apprendi v. New Jersey, 530 U.S. 466 (2000) (holding that it is unconstitutional to deny facts that increase the penalty for a crime beyond the prescribed statutory maximum from being submitted to a jury).

19. The Wisconsin hate crime penalty-enhancement statute enhances the penalty for an offense if the perpetrator “intentionally selects the person against whom the crime . . . is committed. . .in whole or in part because of the actor’s belief or perception regarding race, religion, color, disability, sexual orientation, national origin, or ancestry of that person.” Wis. Statute § 939.645(1)(b). Under § 939.645, the maximum sentence for the perpetrator’s offense was raised from two to seven years. See Mitchell, 508 U.S. at 480.


22. Summary of Statement by Frederick M. Lawrence, Dean and Robert Kramer Research Professor of Law, George Washington University Law School, Committee on the Judiciary House of Representatives Subcommittee on Crime, Terrorism, and Homeland

23. One recent anti-gay hate crime that reached the national spotlight involved an anti-gay hate crime which occurred inside a gay bar located in New Bedford, Massachusetts. See Elllement, John R., & Mishra, Raja. (2006). Attack at gay bar leaves 3 injured. The Boston Globe, February 3, 2006, p. A1 (“After asking a bartender ‘Is this a gay bar?,’ the 18-year-old New Bedford man, dressed entirely in black, allegedly began chopping at a patron with a hatchet, triggering a melee that ended with [the perpetrator] . . . wildly firing a handgun, according to court documents”).

24. The complete ghettoization of non-heterosexual orientations into the private sphere was especially extreme during the 1950s, when modern gay bathhouses appeared within the United States. Underground gay bathhouses became queer cultural centers of art, literature and music. See Chisholm, Dianne. (2005). Queer constellations: Subcultural space in the wake of the city, 72 (“Gay bathhouses opened their doors to the culture industry and the culture industry entered gay bathhouses, reproducing gay society for mainstream consumption. . . some bathhouses exhibited local art to encourage sexual community”). Bathhouses also served as spaces for gay males to be open about their sexual orientation without risking violence. See p. 66.


26. The petitioners in Morrison did not contend that the Violence Against Women Act regulated a channel or instrumentality of interstate commerce. 529 U.S., p. 609.

27. Before Morrison, scholars also criticized previous attempts to expand federal hate crime legislation to include sexual orientation, gender, and disability as an improper exercise of Congress’s commerce power. See e.g., Combating Hate Crimes: Promoting a Responsive and Responsible Role for the Federal government; Hearing on S. 622 Before the Senate Comm. on the Judiciary, 106th Cong. 49 (1999) (statement of Akhil Reed Amar); see also Hate Crimes Prevention Act of 1998, Testimony on H.R. 3081 Before the House Comm. on the Judiciary, 105th Cong. (1998) (testimony of John C. Harrison); But see id. (statement of Cass Sunstein) (“The first—and most secure—possibility is that the commerce clause could be used, with appropriate findings, to support this assertion of national power. It is obvious that private violence may well interfere with interstate movement of both people and goods. The current findings are quite good in this regard”).

28. Although the issue is outside the scope of this paper, I believe that Morrison was an unfortunate reading of Congress’s commerce power and that the federal government should be enabled to specifically address gender-motivated violence.

29. Section 249 (a)(B), Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007, S. 1105 (2007) provides:

(B) CIRCUMSTANCES DESCRIBED- For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—
interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

30. The petitioner in *Morrison* did not allege that the violence at hand regulated an instrumentality or channel of interstate commerce. Only the third category of permissibly regulated activities under *Lopez* was at issue. This further supports there is room after *Morrison* to characterize anti-LGBT violence differently from the gendered-violence at hand in *Morrison*. *United States v. Morrison*, 529 U.S. 598, 609 (2000) (“Petitioners do not contend that these cases fall within either of the first two of these categories of Commerce Clause regulation. They seek to sustain § 13981 as a regulation of activity that substantially affects interstate commerce. Given § 13981’s focus on gender-motivated violence wherever it occurs (rather than violence directed at the instrumentalities of interstate commerce, interstate markets, or things or persons in interstate commerce), we agree that this is the proper inquiry”).

31. *Id.* at 18. (“The effect [of sexual normalization] is to construct gays and lesbians as *despised sexually*, subject to sexually specific forms of *status subordination*. The latter include shaming and assault, exclusion from the rights and privileges of marriage and parenthood, curbs on rights of expression and association, demeaning stereotypical depictions in the media, harassment and disparagement in everyday life, and denial of the full rights of equal protections of citizenship. These harms are injustices of misrecognition”).

32. 376 U.S. 254, 273 (1964). Additionally, in *New York Times v. United States*, the Court reached the same conclusion when explaining the importance of free press. 403 U.S. 713, 717 (1971) (“In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people”).

33. In explaining the concept of “communicative rationality,” Habermas writes, “the actors seek to reach an understanding about the action situation and their plans of action in order to coordinate their actions by way of agreement.” Habermas, Jurgen. (1981). *Volume One: The Theory of Communicative Action*, 86.
INTERVIEWS

Divided by Gender:
An Interview with Jane Elliott

Joanie Eppinga

On the day after Martin Luther King, Jr. was assassinated in 1968, a third-grade teacher in Riceville, Iowa felt impelled to give her students a visceral experience of discrimination that they would never forget. She divided them into two groups and told them one was genetically inferior to the other. The next day, she reversed the hierarchy. It was a powerful exercise the children never forgot, and one which propelled teacher Jane Elliott to national attention. Our editor interviewed Elliott 40 years later, on February 4, 2008, just before the Democratic nomination process, on the topic of “Hate and Gender.”

*Editor’s note: Any opinions expressed by the interviewee are hers alone and are not necessarily those of the Institute for Action Against Hate.

EPPINGA: In 1968, you conducted your famous Blue Eyes/Brown Eyes exercise, in which you told your third-graders that children of one eye color were superior in intelligence and were not to play with children of the other eye color, resulting in the supposedly superior group’s tormenting of the “inferior” group. Do you see sexism as having the same sort of divisive quality as racism?

ELLIOTT: Oh yes. It’s not something we’ve been able to grow out of. I live in a retirement community now, and it’s just as prevalent there among the older people.

EPPINGA: You’ve been traveling around the world for decades now doing these discrimination exercises with educators. At what point did your topic segue from racism to sexism?

ELLIOTT: I started segueing into it on the second day. Actually it was first. I started with sexism. I was teaching boys and girls in a farming community, where women were seen as adjuncts—add-ons. If you saw a commercial for machinery, males were pictured with it—never women. Women were maidservants of the Lord. My father was a Baptist, so—his outlook on that was different, but not on who was the more valuable in our family: it was obvi-
Proudly the males. That’s the way it was with the students who came into my classroom. So I fought sexism from day one in my classroom.

EPPINGA: How do you see sexism expressed most frequently in the 21st century?

ELLIOTT: In promotions. In expectations. In the anger now that is being generated by the fact that there are too many women on college campuses—there aren’t enough men going to school today, into college today.

EPPINGA: Whom do you see expressing that anger?

ELLIOTT: College administrators. I talked to a college president who said, “We’ve got to do something about the imbalance between men and women on this campus.” I said, “We’ve worked for years to get into higher education, and now you’re telling us there are too many of us?” He said, “There aren’t too many women, there are just too few males.” Females who get into higher education are then going to be in positions of power in corporations, and that’s very threatening for males. We’re scaring them to death right now!

EPPINGA: And how do you feel about that?

ELLIOTT: They should be scared to death! (laughter) After we do the exercise, the first thing that happens is, some male says, “If women get power they’re going to want to treat us the way we’ve treated them”—which says very plainly they know how they’ve treated us, and they don’t want to be on the receiving end of that. They underestimate the intelligence of women. We are not going to do to men what men have done to us. We know what that does to productivity. We know what that does to relationships. We know what that does to a person’s self-esteem. We are not going to do that to men—but that’s their major fear.

EPPINGA: Are you saying that you believe that people who have been oppressed learn enough from the experience that they are not going to become oppressors?

ELLIOTT: Yes, I do. I really believe that. Look at South Africa—it’s quite different. . . Look at this present election. I think it is really going to tell us whether we really believe in equity between males and females. If Clinton doesn’t win, I’m going to take that as a sign that we haven’t come very far where sexism is concerned. Because we’re still going to have a wealthy, young, likeable, macho male in the White House—or an older male in the White House. It’s still going to be a male.
EPPINGA: But how can you separate out whether people are voting on the basis of gender or because of the candidate’s stance on the issues?

ELLIOTT: This one, the Democratic thing, is going to look like it’s on the basis of race. And then if Hillary gets the nomination, it’s going to look like it’s about gender. It’s so unfortunate that these two minorities came into trying for this position at the same time. Bing Crosby said, “Frank Sinatra has a voice that you’ll hear once in a lifetime, but why’d he have to come up in my lifetime?” and that’s exactly the situation Hillary and Obama are in. They’re both very positive individuals. We’re going to have to choose between those two minorities.

EPPINGA: Would you like to see Clinton get the nomination?

ELLIOTT: Absol—Yeah! I’d like Obama to wait for eight years until he has enough experience for that job. It isn’t about the color of his skin—it’s about the depth of his knowledge.

EPPINGA: How do you see the subjugation of women affecting women, and society as a whole?

ELLIOTT: I see it being tremendously expensive as far as productivity is concerned. And creativity. And commitment. And being willing to persevere. We teach young girls at an early age that they aren’t “as much as,” and so many of them continue to believe that—for a lifetime! Think of all that they could have done if they had been told, as young men are, “The world is your oyster.” But women aren’t told that, and so we lose a tremendous amount of really good stuff. It was only a few years ago that they even put an entry for “Women” in the encyclopedia. Television—in the advertising on television, some woman is asked to clean the stool, and a man’s voice comes out of the wall and tells her how to do it. That kind of thing. People in positions of power that you see, even in commercials, are male, and generally white males.

EPPINGA: You’re making me aware of things I had never consciously noticed.

ELLIOTT: Nobody really notices until they start thinking about, “Well wait a minute, why did that little girl just say ‘Sugar and spice and everything nice.’ That’s what Hillary’s supposed to be made of. . . and ‘Along came a spider and sat down beside her, and frightened Miss Muffett away’? I told my third graders, “No no no —’and she stomped on it!’” (laughter)
EPPINGA: *Do you see any ways in which males suffer from the subjugation of women in our society?*

ELLIOTT: Sure—they die young. We have elevated males to a position of such power, and we are quite certain that they are so brilliant, that they have to live up to an image that is quite unreal. They spend their lives trying to be superior to 50% of the population, and they aren’t—and we make them responsible for everything. So women don’t have to be responsible! Unless they choose to be. Now many, many women whose men leave them at an early age have to then be responsible, but men die young! And it’s because we put all the responsibility on them. If we reinstate the draft, as we very well could do, women won’t have to register. They don’t have to register now. But I go to college campuses all the time, and when I ask, “How many of you have registered for the draft?” only young men stand up. But when I ask women in the audience if they want the Equal Rights Amendment, they all want that! But they don’t want equal responsibility. And that’s killing our men at an early age. When a young woman gets killed or wounded in Iraq, there’s a big to-do over it. Young men, particularly Hispanic/Latino young men, come home in body bags, and you scarcely notice that their names are in the paper. This is all so racist and so sexist and so unfair.

EPPINGA: *You’ve said that racism is not human nature—it’s a learned response. Do you believe the same thing is true of gender prejudice?*

ELLIOTT: Yes.

EPPINGA: *How are we taught that women are inferior?*

ELLIOTT: Well, for instance, when our second child was born, the doctor came out into the waiting room (men used to wait in the waiting room instead of into the delivery room) and said to my husband, “Well, it only took you two to get a good one. It took me four before I got a good one.” My husband said, “What do you mean?” He said, “Well you got a boy! You got a good one the second time!”

My daughter is now 51 and she’s trying to get a job. Try to get a job as a 51-year-old woman. It’s a very interesting experience. If she were a 51-year-old male and were slightly graying at the temples, she would be seen as distinguished. Women are seen as extinguished. It’s still going on. It’s bad for all of us.

EPPINGA: *Do you think we’ve made any progress in this realm?*

ELLIOTT: Oh... (sigh). As long as the biggest news on television is Britney Spears’ hair, we haven’t made a whole lot of progress. As long as we judge
people by their measurements—you never see the measurements of a man on television! No, I don’t think we’ve made a lot of progress.

EPPINGA: You once told an attractive young woman to “Get over cute—get competent!” What did you mean by that?

ELLIOTT: I got older, and I realized that, even though I was cute when I was younger, that doesn’t last. I think it’s Judge Judy who says, “Beauty fades. Stupid lasts forever.” And I think she’s absolutely right about that. If you trade on cute for long enough, you can get by on cute until you’re about 45. And then you look around, and there are a whole lot of younger, cuter people vying for the position that you want, and you go to ask for it, you try to get it, and somebody’s going to say to you, “Well you see, I see you as cute, I don’t see you really as competent.” Because you’ve been cute all your life! You can’t use cute forever. As my dad used to say, “What you put inside your head they can’t take away from you.” Get smart! Get educated! Get trained! Get qualified! Eventually looks won’t matter anyway. Eventually you’re going to have to know more than you look.

EPPINGA: You’ve said that you hate doing the discrimination exercise, that you hate the necessity of it, but also that actually doing it is draining and gives you migraines. I’m wondering how doing the exercise all these years has changed you internally.

ELLIOTT: It has totally changed the way I see the world. I used to think that it was okay just to be what I am. What I am isn’t good enough. Because what I am is a white, Christian woman, raised in a so-called Christian household, who was quite certain that I was okay. I’d read the book I’m Okay, You’re Okay, but I didn’t realize the title should’ve been I’m Okay, You’re Okay—As Long As You’re As Much Like Me As You Can Possibly Be.

I’m serious about that. I’ve had to leave a whole lot of ugly stuff that I believed behind in order to understand other human beings. For a long time that wasn’t necessary. As a white female in the United States of America, my number one freedom is the freedom to be totally ignorant about those who are different from myself. My number two freedom is to deny that I’m ignorant. And my number three freedom is the freedom to say to people of color who accuse me of being racist, “Well, you took it wrong.” They’re expected to understand that their perception is wrong and that my perception of reality is the only one that is real. If you haven’t read Women’s Reality by Anne Wilson Shaef, go read it. The whole book is about the fact that we live in different realities. You’ll make a suggestion to a man and he’ll say, “What’s the matter, you crazy?” because his reality isn’t the same
as yours. I don’t live in the same reality that women of color live in. Our
realities are different. They’re equally valid, but they are totally different.

I didn’t realize that. I thought, “Well everybody thinks the way I do,
because obviously I’m a good Christian woman, so I must be right.” No.
I’ll never, ever say to a group of students again—and that was a real big
mistake in that film [Frontline’s A Class Divided]—to treat others the way
they want to be treated. No, no, no. I don’t have the right to treat others the
way I want to be treated—I have the responsibility to treat others the way
they want to be treated. Big difference. But see that’s the Golden Rule. I
believe in the Platinum Rule—Do unto others as others would have you do
unto them. And in order to do that you have to ask them how they want to
be treated, you have to listen to the response, and then you have to do what
they ask you to do. Big difference. Ultimately, it’s all about power: who has
it, how they got it, what they’re going to do to maintain it, and what others
have to do to get a chunk of the action.
Gender Across Cultures:
An Interview with Nonie Darwish

Joanie Eppinga

Nonie Darwish grew up in Gaza and Cairo. When she was 8 years old her father, a high-ranking military officer, was killed in an act of terrorism, making him a shahid, or martyr for jihad. Darwish came to America when she was 30 and was struck by the freedoms enjoyed in her new country; she has felt compelled to speak out for tolerance since 9/11. She is the author of Now They Call Me Infidel: Why I Renounced Jihad for America, Israel, and the War on Terror and the originator of the group Arabs for Israel (www.arabsforisrael.com). Darwish’s second book, Cruel and Usual Punishment, about the conditions of Muslim women under Sharia (Islamic law), will be published in 2008. Darwish spoke with our editor on February 29, 2008.

*Editor’s note: Any opinions expressed by the interviewee are hers alone and are not necessarily those of the Institute for Action Against Hate.

EPPINGA: In your first book you wrote, “In the world of the Muslim man, the female in his family is the one object over which he may have power.” Can you say more about that?

DARWISH: Islam gives men so much power over women. In some instances some of the hadith [religious teachings] ask a woman to almost worship him. Total obedience is expected. He has the right to beat a rebellious wife, and “rebellious” could be anything; he can interpret that. At the same time, he does not, according to Sharia, Islamic law, he does not have to give a reason why he beats his wife. Beating is allowed for a rebellious woman, but “rebellious” is not defined. And then if it happens, he doesn’t have to give a reason. A man doesn’t have to give a reason for divorcing his wife, for beating his wife, or for having a second or third or fourth wife. It’s within his right, as he interprets his right. Islamic law is based on the Qur’an, but also on sources written hundreds of years after Mohammed died about what he supposedly had said, and also his example in his life. So Muslims have to live—even if you are not a Muslim born in the Arabian Peninsula culture—that culture has been codified into laws for all Muslims to live by through Sharia wherever you live, wherever you are. So if the Arabian Peninsula environment, because of the desert sandstorms, made people wear head garments to protect their faces from the sandstorms, they codified it into Islamic law.
EPPINGA: How does the subjugation of women in the Arab culture affect the men in that culture?

DARWISH: It affects them, in my opinion, when you smother someone with too many laws for his own pleasure, which is what Islam did—Islamic law has given so many privileges to men: sexual privileges, authority privileges, power privileges—over his women, that it has corrupted many of them. It doesn’t mean that every Muslim man is bad; but it’s really tempting to be corrupted by all these laws. Especially in a time of trouble in a marriage, instead of going to counseling, or trying to improve the marriage, get a second wife! Or beat her up! Unfortunately, a Muslim man who wants to be corrupted can be easily corrupted under Islamic law.

Islamic Sharia law has created a very hostile relationship between men and women. The relationship is not based on love. A woman doesn’t become an intellectual partner. I have lived in the Middle East for 30 years, and I have never seen a couple just having fun together! The roles are so defined.

EPPINGA: Do you see couples being affectionate at all?

DARWISH: No, it’s prohibited.

EPPINGA: I mean not just in a physical way—

DARWISH: Oh yes, of course. There are love stories. But dating is not allowed, so if affection happens, it has to be in secret. You can’t hug your girlfriend if you meet her on the street. You just can’t. I was just reading a book by an Egyptian [Mark Gabriel] called Islam and the Jews, and he mentioned that after the peace treaty when the Israelis started coming to visit Egypt, in a tourist area an Israeli man hugged his Egyptian girlfriend, or gave her a kiss or something, and he was actually stabbed to death. It’s so unacceptable that you can attract hostility if you do that.

EPPINGA: How do these conditions affect relationships among women in Arab cultures?

DARWISH: Because women are limited by Sharia from doing a lot of things on their own, like traveling—they don’t even go to mosques—you don’t have areas of congregation for women to really get to know each other and compare notes. Women are mostly in the home, and lately, in the last few decades, they do work in Egypt, of course, but even when they work, they’re supposed to go to work and come home and that’s it. Friendships between women are not close friendships. It’s very superficial. There’s a
lot of jealousy and envy. There’s a lot of manipulation. There’s a lot of fear from each other. And all of this, in my opinion, goes back to polygamy. Because when a woman feels that any other woman could be a rival, it makes her look at her own sex in a different way, not as somebody to support or feel like you have mutual interests that you have to help each other with. The attitude is not like that. There is a lot of hostility and jealousy between women. Women in Islam don’t support each other.

For my second book I’m doing so much more research; I really delved into this and found so much material as to why women in Islam don’t support each other. The women of Afghanistan are so oppressed. In Iran right now, there are about seven women who are awaiting being stoned to death. Where are the Muslim women who say, “We are moderates”? Where are they? Why aren’t they demonstrating? These are questions the West has to ask, and they’re not asking. Why do we have to wait for Westerners, Christians and Jews, to stand up and say, “It’s not a good idea”? We have to stand against, for example, the death penalty for apostasy, or stoning women for having extramarital affairs, or killing women who have sex outside of marriage. Where are the moderate Muslim women? The West doesn’t even ask these questions.

When I spoke about the oppression of Muslim women at Wellesley College a few months ago, I was attacked by a large number of Muslim girls. This is an all-girls college, and because it’s an all-girls college it’s a little bit attractive for many Muslim girls to go there. There was a huge number of Muslim covered-up girls in the audience. Not that all Muslim girls disagree with me. There are always at least one or two Muslim girls who come up to me and hug me, buy my book, and say, “Thank you so much, you opened our eyes” and stuff like that. But there was a Muslim student union on campus headed by a chaplain, a Muslim chaplain hired by the college. She congregated this large number of Muslim girls. As I was speaking about oppression of women, I was saying, “Where are the Muslim moderates? In the name of Islam, we have to stand by those Muslim sisters of ours,” and they were making faces at me as I was saying that. They couldn’t care less. They acted like they couldn’t care less about the tragedy I’m exposing. They looked at me as though I’m a liar, I’m exaggerating; and when I spoke about the Jews being called apes and pigs in mosques—which I grew up with, Jews being called apes and pigs from the pulpits of the mosques—when I said that (and it’s documented, it’s not like I’m inventing it), one of the girls in the audience screamed, “You’re a liar!” She left the Arab world when she was three. She never heard it in a mosque, so she doesn’t judge by people who lived there all their lives.
EPPINGA: What, in your opinion, would be the attitude of a truly moderate Muslim man toward women?

DARWISH: I know lovely Muslim men who treat women well. But they do that despite what the Qur’an tells them, not because they are good Muslims. It is because their humanity rises above their religious education. It’s out of their own human nature that they treat women right, and also by emulating the West. They see how Western men treat women and use that as an example.

EPPINGA: Tell me more about the differences in the way women are perceived in Arab culture and Western culture.

DARWISH: Women in Arab culture are given a lot of messages of shaming. Shaming of their bodies, shaming that they should cover up. The word *ourah* means the genitals of a woman. In Muslim religious teaching, the whole body of a woman is *ourah*. It’s as erotic as the genitals, and that’s why every part of her body has to be covered. People say, “Even her face is *ourah*. Even her hands are *ourah*.” It’s so erotic for a man to see it that it’s her responsibility to hide it, not the man’s. So a man, at the same time, is flattered by and boasts about his sexuality and his sexual appetite; he’s proud of it, and it’s the problem of the woman to cover up. I have never seen a nationality on earth that gets aroused so much by women! It’s unbelievable! A woman in the West is respected if she wears a bikini in the summer heat; men learned how to respect the choices of clothes for women. I could walk half naked in the summer heat and it might be that nobody would look; but in the Arab world a woman’s business and her body comfort is everyone’s business. It is the right of men to look and criticize and even attack women who do not abide by Islamic law. In Turkey, lately, two schoolgirls were attacked by having some chemical acid thrown on their legs when they wore knee-length skirts!

EPPINGA: So would it be accurate to say that in your opinion women are perceived primarily and almost exclusively as sexual objects?

DARWISH: Oh, absolutely. The Muslim marriage contract itself has three spaces in it for other women. I have a chapter in my new book called “The Muslim Marriage Contract.” Marriage itself is, “Here’s your dowry, now give me your sexual organs for my pleasure.” It’s a contract. It’s a contract for sex.

Not all Muslim countries are the same. It’s a huge world with a lot of variations.
EPPINGA: Is female genital mutilation still widely practiced in Arab cultures?

DARWISH: The religious law changes depending on the sect of Islam. For example in Syria they don’t practice it; in Egypt they practice it. It depends where you’re located in the Muslim world. In Egypt they follow a tradition, an Islamic Sharia tradition that allows it; however, lately the Egyptian government has denounced it. But it still happens because deep down people believe this is a religious order, even though the government and some Muslim leaders have denounced it officially.

EPPINGA: What is it supposed to accomplish?

DARWISH: It’s supposed to make the woman not behave sexually, so she will not be easily aroused and men can trust her more. It’s a barbaric thing. It happened to my mother and all her generation. Ninety-six percent of the Egyptian women in her generation have undergone that.

EPPINGA: Did they just accept it?

DARWISH: Yes. Women took their daughters to have it done. Recently an Egyptian girl died from an infection after it, and that’s why they spoke against it, but until today probably eighty percent of Egyptian girls have undergone it. After World War II the government was speaking against it, but only the educated class stopped doing it. And the educated class in Egypt is about ten percent, twenty percent.

EPPINGA: What has been the response to your book among Arabs?

DARWISH: My book will probably never be sold in the Muslim world. There is a lot of censorship in the Muslim world. Mostly nobody’s reading it there, but I have a few people there who have read it and admire it a lot—more Christians than Muslims. I received one email from an Egyptian Muslim, an intellectual, who read it and admired it very much; however, most of the Arab world is very angry about this book.

EPPINGA: Do you feel threatened?

DARWISH: Absolutely, yes. I haven’t had direct death threats, but I do get emails arguing about the book and telling me, “You know what happens to people who write this and that?”

EPPINGA: I wonder if the fact that women are seen as inferior might protect
you in an odd way, because people might think, “Well, she’s a woman; she’s not worth listening to anyway.”

DARWISH: Oh no, that’s a bigger violation! The rebellious woman has to be punished under Islam. Actually it’s like, “She’s a woman, she’s supposed to be quiet.” A man can speak out more. If a woman speaks out that’s even worse. It doesn’t protect you, being a woman.
BOOK REVIEW

What Is Genocide?
[Martin Shaw, 2007, Malden MA: Polity, 222 pp., $26 (Paper)]

Maggi Eastwood

This volume offers an answer to a question that has been debated within academia since the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. More recently, the same question has arisen within the field of genocide studies. Martin Shaw, a professor of International Relations and Politics at the University of Sussex, fashions an answer, but it is not a likeable response. He has no real answer. Instead Shaw walks the reader through a series of definitions, opinions, and arguments that are systematically rejected in his search for an answer. Shaw compares these arguments against the backdrop of the earlier concept of genocide initially introduced by Raphael Lemkin and the definition given in the Genocide Convention.

Setting the tone in his Introduction, Shaw identifies the historical contexts in order to explicate the very idea of genocide. This delineation, he argues, will be conducted in a conceptual way and will constitute a contribution by the social sciences, which have previously added little to the growth of genocide studies. Shaw also suggests that legal constraints of the definition of genocide within the Genocide Convention have restricted its understanding and offers a sociological and political concept to buttress that definition.

Noting that prosecutors often prefer to use easier charges than those of genocide, Shaw tries to outline the sociological importance of the crime of genocide. Unfortunately, he overlooks the fact that without a legal component—perpetrator intention—there is no crime to prosecute. He then goes on to misinterpret William Schabas, author of Genocide in International Law, who clearly does not argue for a narrower interpretation of genocide’s remit. Rather, Schabas suggests that crimes that do not fit the strict definition of genocide are to be prosecuted under the broader “crimes against humanity” category (p. 8).

The main body of this book uses a collection of thought-provoking arguments and comments that have previously been used to define and provide answers to questions about the nature of genocide. Using extracts from Schabas, Marx, Lemkin, Weber, and Fein, Shaw discusses the problems associated with the meaning of the “group” that can be offered protection under the Genocide Convention.
In chapter eight Shaw considers that “the concept of ‘civilian’ is central to understanding genocide” (p. 117). When he examines The Hague and Geneva Conventions, he does so in order to demonstrate that they offer protection for “combatants” while excluding “civilians.” During this discussion Shaw argues that his interest lies in “the extent to which combatants and civilians are informally produced in the social relations of irregular conflict” (p. 123). Here, French genocide scholar Jacques Semelin is quoted at length to highlight the “interdependence of the two forms of struggle”; he concluded that “civilian resistance is not always a simple complement to armed struggle” (p. 123).

Chapter nine contrasts this idea by recognizing that genocide is closely connected with war or conflict. Shaw proceeds throughout this chapter to examine the extent to which the notions of modernity, culture and psychology, economy, and politics are linked with war and genocide. He reaches this conclusion: “War and genocide are often woven together in the same campaign, so that, to describe it as a whole, it is inadequate to talk only of ‘war’ or of ‘genocide’” (p. 148).

The arguments raised throughout book regarding the lack of a workable definition of genocide provide Shaw with sufficient ammunition to present his own: “a form of violent social conflict, or war, between armed power organizations that aim to destroy civilian social groups and those groups and other actors who resist this destruction” (p. 154).

While Shaw’s definition is worthy of consideration, it can never be used in a legal context. A definition so broadly framed is too loose; it is applicable to almost all civilian social groups. Shaw should have kept to the narrower definition of “group” given in the Genocide Convention. Resisting the perpetrator’s intention, he offers genocide acts as “action in which armed power organisations treat civilian social groups as enemies and aim to destroy their real or putative social power, by means of killing, violence and coercion against individuals whom they regard as members of the group” (p. 154). The author claims that his definition provides a number of important changes—that in particular, “It restores Lemkin’s original aim” (p. 155).

In conclusion, Shaw’s book provides a conceptual understanding of the many conflicting opinions surrounding the legal definition of genocide within the Genocide Convention, and raises the reader’s awareness of the possibility of studying genocide in a sociological context. For that reason, it makes a valuable contribution to the ongoing genocide debate. What Shaw does not do is provide a definitive answer to the question he intended to answer: What is genocide?
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BOOK REVIEW

Bad Faith: The Danger of Religious Extremism

Steven K. Baum

Finally someone has it right—that someone is Neil Kressel. Kressel is not entirely unknown in the field of hate studies. The William Paterson University professor authored Mass Hate (Plenum, 1996), which, along with Ervin Staub’s Roots of Evil (University of Massachusetts, 1989), began the social psychological conceptualization of why we hate.

Kressel now offers answers to the question of why we hate in the context of religion—a phenomenon most people in a post-9/11 world are well aware exists. But instead of blaming the obvious problems in Islam, Kressel makes the case that extremist thinking, rather than religion per se, is the culprit.

Against a current backdrop which includes several atheists getting a lot of press (Richard Dawkins, The God Delusion; Sam Harris, The End of Faith; Christopher Hitchens, God is Not Great: How Religion Poisons Everything), Kressel provides a fairly compelling argument for not giving up on religion. By the same token, he has little sympathy for those on the Religious Right who teeter toward extremist thinking on a good day. He listens to and respects those in the middle. For Kressel, the moderates are those who are able to negotiate the Left’s atheism and intellectual bravado and the Right’s fundamentalism. The moderates steer the vehicle just fine and avoid both extremes.

A similar argument was advanced by genocide scholar Israel Charny (Fascism and Democracy in the Human Mind, University of Nebraska Press, 2006). A clinical psychologist, Charny indicted fascistic thinking as being the root of all evil—especially crimes that are committed in the name of the Father. While Kressel does not rely on Charny, the social psychologist and the clinical psychologist reach the same understanding regarding the pathology of extremist thought.

Strange as it sounds, warnings regarding the seduction of fascistic thinking have been around since the end of World War II, beginning with the 1949 work The Authoritarian Personality (Adorno, Frankel-Brunswik, & Levinson). Yet somehow, when fascistic thinking hid behind religion, it got a pass. “We remain deeply divided and confused about the nature of religious extremism, how it differs from more traditional forms of piety,
where it originates, and how we might best control its adverse effects,” notes Kressel (p. 18). Who can argue? The difficulty lies in identifying the psychological mechanisms that produce violence and harm to others.

In an attempt to do this, Kressel walks the reader through three sections. Part One, entitled “The Unexpected Battle of the 21st Century,” consists of three chapters which mostly define and expand Kressel’s examples of extremists in Christianity, Islam, and Judaism, and explain why Islam’s lack of reform makes it vulnerable to extremists. Part Two, “The Causes of Militant Faith,” contains the much needed examination of susceptibility to Dangerous Books (Chapter 4) and Sick Societies (Chapter 5). Kressel shines here, but he would have had an easier task if he had focused on the suppression of personal identity in the service of social identity, and on politics, and on the politicized religion that occurs in the life of the mind.

Part Three (“Fighting Extremism Sensibly”) is always the shortest section in any book of this nature. Here Kressel expresses the hope that religious leaders can call for peace. He explains, “What is needed is not the abandonment of religion, but rather a social, psychological, theological and political system of checks and balances, a way to shout ‘whoa!’ when faith starts galloping down the wrong path” (p. 29).

Some statements are debatable. “Society need not respect dysfunctional and destructive beliefs, but it must tolerate them,” Kressel concludes (p. 265). Tolerate the 450 antisemitic statements in the New Testament or 30 antisemitic statements in the Koran and wonder as to the origins of antisemitic beliefs? Tolerate the hate speech from an English imam and wonder why 7/7/05 later occurs in London’s subways? Tolerate the intolerant? –Why?

Kressel stops short of seeing religion as an opiate and the key to dangerous beliefs. He stops short of lamenting that people are not mentally healthier. He knows that religious leaders have the power to contain the masses and that only they can persuade their flocks to be less violent and healthier. But while one group is singing Kum Ba Yah, the underdeveloped one is convinced of conspiracy, planning to wipe whole nations off the earth, and rationalizing their actions via beliefs about the afterlife and rewards they will receive in Heaven.

This is an important and well researched book—a thinking person’s guide to a religious life devoid of violence. But religion has some serious explaining to do. By definition, religion asks people to defer logic and accept ideas based on faith. Police it well, as Kressel wishes, and you have less in the way of politics—but politics nonetheless. Invariably it is religion’s politics which fuses fact with fiction, blends church with state politics, and waits for the certainty of fundamentalism to strengthen and embolden
those beliefs. What Kressel really wants is mentally healthier religions and believers—and that is something worth praying for in these most dangerous of times.
BOOK REVIEW

Purify and Destroy:
The Political Uses of Massacre and Genocide


Steven K. Baum

There is a popular movement in genocide research to portray genocide as arising from anything other than hate (e.g. Moshman, 2005). From a top-down perspective, this makes sense. After all, the case has been made that there are instrumental (e.g. land grabs) and social psychological considerations—careerism, social bonding—as well as ideological and contextual considerations that all contribute to the genocide recipe and have little to do with hate per se. Yet the current trend makes it seem as if hate crimes and old ethnic enmities do not exist.

There is another approach—one which gets short shrift and may be equally important. Part of the reason for the less-recognized approach may be that it is psychological in nature and not well understood, even thought it has been hinted at time and again since Helen Fein (1979) found a statistical relationship between public opinion and the number of Jews killed in the Holocaust.

Enter political scientist Jacques Semelin of the Centre d'Etudes et de Recherches Internationales and his views of genocide from the bottom up—the latest contribution to furthering an understanding of the relationship between social fantasy and genocide.

Semelin’s tenet is simple. Genocide has to do with identity fostered through fantasy, and the maintenance of a sense of identity via a sense of purity and security. The idea that political conflict has its basis in shared beliefs is not new. The notion that we kill en masse in order to maintain our collective unconscious fantasy is new—at least in genocide studies.

If Semelin sounds somewhat psychoanalytic, that is because he is. The book offers additional background in psychology, though the author seems to spend a little too much time reviewing key aspects of Freudian literature, invariably settling on the wrong analyst. He would have been better off focusing directly on the writings of British pediatrician Donald W. Winnicott (1971), whose ideas of transition experience lend themselves to a better concept of the unconscious-fantasy-to-social-reality bridge. As well, too little time is spent addressing Tajfel’s social identity theory, and one
wonders why the decision was made not to explore it more thoroughly, given that Tajfel’s theory is the most widely accepted in the field.

On the other hand, nobody but Semelin is addressing genocide psychology with this depth. To wit,

When a person has experienced severe shock or stress a post-traumatic state can often be diagnosed. By extension we can speak of a “collective trauma” for a nation or a community whose identity seems profoundly altered by the crisis or crises assailing it. This community’s basic point of reference, which causes its members to say “we Germans” or “we Hutus” seems destabilized. It is these imaginary foundations of their institutions, to use Cornelius Castoriais’ terminology, that is in crisis. These imaginary constructs, which give meaning to those who share them and to what brings them together, are situated far out of reach from technical regulations. But suddenly they no longer seem to operate. That which allowed people to say “us” is not there. The “us” becomes a grievance, a wound, an affliction. (p. 15)

There are other noteworthy aspects to Semelin’s theory. He is at present the only one to address the social transmission of hate beliefs, how susceptible we are to the cultural or social narrative, and how a good demagogue then can sway the collective imagination. Hatred is viewed as a socially “constructed passion” and the product of its promoters, traveling by the circumstances which encourage it to spread. Semelin doesn’t address exactly those circumstances since they vary from culture to culture, but social network analysts know what they are—the same mechanisms that make rumors flow and foster beliefs in the boogey man also make us hate (Baum, 2008).

Semelin doesn’t broach that subject. He is more concerned about the bigger picture and implicating the pathology of the collective unconscious, as well as how we kill en masse and why. He has chosen to focus on purification and is bang on in terms of the conclusions he draws. He says that there is no real hope of changing humankind’s psyche. We are neither killer apes nor easily influenced peaceful hippies, so we have to create the social mechanisms to forestall, minimize, and effectively handcuff ourselves to forestall our tendency to kill others. That there is no happy ending makes Semelin’s case all the more poignant. In the end, Purify and Destroy is simply the most comprehensive book available on the psychology of genocide and is well worth the read.
REFERENCES


