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CONFRONTING THE LIMITS OF GAY† HATE CRIMES ACTIVISM: A RADICAL CRITIQUE

JANE SPADE & CRAIG WILLSE‡

Throughout the last decade, hate crimes committed against gay, lesbian and transgender individuals have come to the forefront of gay political organizing efforts. Likewise, especially within the last year and a half, local and national governments and the mainstream press have struggled to determine the appropriate forms and levels of protection necessary for sexual and gender minorities. Questioning the emancipatory potential of hate crimes activism for sexual and gender non-normative people, this paper outlines the limits of criminal justice remedies to problems of gender, race, economic and sexual subordination.

The first section considers some of the positive impacts of hate crimes activism, focusing on the benefits of legal “naming” for disenfranchised constituencies seeking political recognition. In the next section we outline the political shortcomings and troubling consequences of hate crimes activism. First, we examine how hate crimes activism is situated within a “mainstream gay agenda,” a term we use to designate the set of projects priori-

† We use the word “gay” to describe the hate crimes activism for a number of reasons. First, the primary hate crimes legislation sought for and achieved by mainstream gay organizations has not specifically included transgender people. Many gains in hate crimes legislation covering gender variance have been made in separate campaigns waged by transgender people and their allies, and most states with hate crimes laws covering sexual orientation do not have protections against hate crimes motivated by transphobia. Second, we choose the generic term “gay” over the terms “queer” or “gay/lesbian/bi” because we see, as will be described in the paper, that this activism does not routinely engage a struggle for liberation for a broader spectrum of sexual and gender variation implied by the term “queer.” Additionally, the narrow activist agenda of which gay hate crimes activism is a part privileges a gay male perspective at the expense of feminist perspectives and women’s perspectives, and rarely if ever incorporates the experiences and concerns of bisexuals.

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tized by large, national gay rights organizations. We question the assimilationist drive of mainstream gay activism, and illustrate how such activism fails to reflect commitments to anti-racism, feminism, and economic redistribution. Second, we critique how the rhetoric of hate crimes activism isolates specific instances of violence against queer and transgender people, categorizing these as acts of individual prejudice, and obscures an understanding of the systemic, institutional nature of gender and sexuality subordination. Finally in this section, we interrogate hate crimes statutes as a practice of "identity politics" that, despite accomplishing certain goals, nonetheless dangerously reifies constructs of homosexual identity. In the third and final section, we look at how work on hate crimes occupies a place of "legitimacy" in the world of lesbian and gay activism. Preserving a sense of what hate crimes activism hopes to accomplish, we suggest other political strategies that pursue broader work for social and economic justice and build coalitions across identity categories.

I. ORGANIZING AGAINST VIOLENCE

Anti-violence projects in cities like New York and Los Angeles provide vital services and support to victims of gender and sexuality-based hate crimes. At the local level, these programs attend to desperate community needs not met by other service agencies or government offices, services that include, as AnnJanette Rosga has written, "increasing research on the causes and consequences of hate crime, promoting public awareness of the ongoing effects of cultural and socioeconomic subordination, and crafting legal efforts to treat hate crime victims as seriously as otherwise similar crime victims from majority social groups."¹

Hate crimes activism can broadly be understood to accomplish two specific goals: 1) increasing public consciousness about violence committed against individual members of subordinated groups, and 2) providing specific legal protection to these subordinated groups, groups often positioned only on the "bad side" of the law, i.e. as targets of formal criminal penalty, police brutality, or private violence unfettered by public intervention. Two illustrations prove helpful. In recent years, transgender activists have worked hard to gain greater recognition of the extreme violence regularly targeted at gender deviant, transsexual, and transgender people. Hate crimes activism and legislation have increased public recognition of the unfairness of such treatment and have allowed transgender individuals to be explicitly

1. AnnJanette Rosaga, *Policing the State*, GEO. J. GENDER & LAW 145, 153 (1999).

named within the law in the context of protection from violence. This constitutes an important step in moving away from categorizing transgender people as mentally ill, criminally deviant, dangerous individuals and towards recognizing that gender deviant people require protection from prejudice in order to participate safely in society.

Similarly, recent efforts have been made to develop legislation classifying crimes against the homeless as hate crimes. Such work has great value in the current context of welfare reform and "personal responsibility" rhetoric that has excused and even promoted open hostility toward the poor. Because of their lack of access to proper medical care and legal services, and because of their overexposure to the criminal justice system and police harassment, homeless individuals often have few options when they become victims of violence. A statute that specifically names the problem of violence against homeless people and that demands legal protection for the homeless opposes both subordinating understanding of the homeless and the negative dynamics of police interaction with homeless populations.

These examples of opposition to violence against homeless or transgender individuals demonstrate the most valuable work of hate crimes activism. These projects create public awareness about the violence faced by a subordinated group and a push for state recognition that such acts of violence are impermissible. For groups who have traditionally occupied only an "acted-upon" relationship to law enforcement, hate crimes legislation can suggest a new "acted-on-behalf-of" position. Though the widespread failure of criminal punishment to act as a deterrent to crime² calls into question the extent to which hate crimes legislation actually reduces violence against a particular group, it is apparent that the process of social and legal naming of such activism does offer an opportunity to produce new popular and

2. The "war on drugs" is a particularly poignant example of the failure of "punish to deter" criminal justice approaches to complex social problems. The government spends more than \$18 billion on the drug war annually, with 65% of that money going toward criminal justice approaches such as incarceration and interdiction. Less than 35% is spent on treatment and prevention. Michael Massing, *It's Time for Realism*, THE NATION, Sept. 20, 1999, at 14. Critics argue that the war on drugs has not decreased drug use over time, and has instead only created more harmful results. The American Society of Criminology, when it undertook to study drug policy in order to find "feasible crime control options," found that "[e]nforcement strategies have consumed resources, aggravated health risks associated with drugs, . . . increased the levels of violence surrounding drug markets. . . [and] increased profits for drug dealers." American Society of Criminology, *Task Force Reports from the ASC to Attorney General Janet Reno*, reprinted in THE CRIMINOLOGIST 20 (1995) cited in Craig Reinerman and Harry G. Levine, *Real Opposition, Real Alternatives: Reducing the Harms of Drug Use and Drug Policy*, in CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE 345, 348-9 (Craig Reinerman & Harry G. Levine eds., 1997).

legal understandings of “outsider” groups that can positively affect their status in society.

While positing a critique of hate crimes activism, it is vital to keep in mind the gains made possible by such work. Beyond the direct services offered to victims of hate crimes, activism at the legislative level helps form a consensus about the rights of stigmatized groups to be protected from hateful speech and physical violence. When most popular rhetoric about “homosexuals” condemns us as immoral individuals and threats to public health, hate crimes activism can produce a counter-discourse asserting that homosexuals in fact deserve the status of protected minorities. In this sense, hate crimes activism seeks out a positive premise about a group that most people can agree with despite their distaste for the group, and capitalizes on that consensus to create a public space for speaking in favor of equality for that group. In the next section, we explore the limits of this strategy, suggesting that starting from such a narrow premise may indeed foreclose opportunities for broader remedial actions.

II. DECONSTRUCTING THE POLITICS OF GAY HATE CRIMES ACTIVISM

In this section we describe three areas in which current gay hate crimes activism falls short of broad political efforts for social justice: the failure to adequately address anti-racist, feminist, and socialist concerns; the inability to challenge the structural basis of social inequalities; and the reification of gay identity to the exclusion of equal protection for all gender and sexual variance.

To understand the first point, hate crimes activism should be situated in the current context of Lesbian, Gay, Bisexual, Transgender (“LGBT”) activism in the United States. Hate crimes activism currently holds a prominent place in the mainstream gay agenda. Hate crimes, military inclusion, and freedom to marry form the triumvirate of goals that dominate anti-homophobic policy discussions. These issues constituted the primary agenda items in the 1990’s of the most well-known “gay rights” organizations—including the Human Rights Campaign, the National Gay and Lesbian Task Force and Lambda Legal Defense and Education Fund. Critics of this agenda have argued that it disproportionately serves the interests of upper-class and white gays and lesbians, particularly gay men, and fails to articulate any real commitment to anti-racism, feminism, or economic redistribution.³ Each of the primary agenda items seeks inclusion in insti-

3. See Ian Barnard *Fuck Community, or Why I Support Gay-Bashing in STATES OF RAGE: EMOTIONAL ERUPTION, VIOLENCE, AND SOCIAL CHANGE* 74, 76 (Renee R. Curry and Terry L. Allison eds., 1996) (“Since middle-class gay white

tutions that reinforce inequality and subordination, thereby failing to challenge systems of domination of people of color, women, poor people, or sexual deviants outside of heteronormative homosexuals.

The struggle for the recognition of same-sex marriage supports a state regulation of sexuality that privileges certain expressions of sexuality at the expense of others. In her 1984 essay "Thinking Sex," Gayle Rubin describes these privileged expressions as a "charmed circle" of sexual practices.⁴ Practices within the circle include monogamy, sex within marriage, procreative sex, heterosexual sex, sex without sadomasochistic practices, non-commercial sex, and same-generational sex. Outside the charmed circle lie practices such as prostitution, pornography, sadomasochism, group sex, public sex, cross-generational sex, and homosexuality.⁵ Rubin describes how certain sexual practices sometimes move from the outside into the charmed circle, citing the emergence of social acceptability for unmarried couples to have sex and co-habitate.⁶ Rather than seeking to dissipate systems of privilege connected to a limited set of sexual expressions and family formations, the fight for gay marriage seeks only to broaden the circle of privilege just enough to include homosexual couples. The quest for same-sex marriage, therefore, is a quest for inclusion in a subordinating system of sexual regulation rather than a confrontation of that system.

Additionally, the gay marriage struggle embraces a system by which the state and private business reward individuals for engaging in favored sexual behavior with important benefits, such as health care coverage, tax breaks, and immigration exceptions. This struggle fails to question the premise that these benefits, and hundreds of others like them, should be tied to

men control and dominate most institutionalized lesbian and gay organizations in this country, these organizations inevitably have infused the category gay with a middle-class white male content."); FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY (Michael Warner, ed., 1993); ANANDA LA VITA, ET AL. SWALLOW YOUR PRIDE: A HANDS-ON GUIDE TO DO-IT-YOURSELF ACTIVISM (1998).

4. Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY 267, 281 (Carol S. Vance, ed. 1984).

5. *Id.*

6. *Id.* at 282- 283. Rubin states:

As a result of the sex conflicts of the last decade, some behavior near the border is inching across it. Unmarried couples living together, masturbation, and some forms of homosexuality are moving in the direction of respectability. Most homosexuality is still on the bad side of the line. But if it is coupled and monogamous, the society is beginning to recognize that it includes the full range of human interaction. Promiscuous homosexuality, sadomasochism, fetishism, transsexuality, and cross-generational encounters are still viewed as unmodulated horrors incapable of involving affection, love, free choice, kindness, or transcendence.

performance of sexual-familial norms. The choice to seek inclusion in this system of exclusion, rather than to seek broader rights such as universal health care or an end to racist and imperialist immigration policies, represents the narrow and assimilationist thrust of the mainstream gay agenda and its failure to incorporate broader social justice views.

The struggle for the rights of gays and lesbians to serve openly in the U.S. military has been criticized in similar terms.⁷ Given the racial politics of militarization and the disproportion of the violence enacted by the U.S. military against poor people and people of color, both within the U.S. and abroad, seeking inclusion in such an institution represents a commitment to an extremely narrow anti-homophobic agenda that excludes people of color. The gays-in-the-military crusade poses no challenge to the interconnections of the homophobic, racist, sexist, and imperialist operations of the U.S. military-industrial complex. The endorsement of militarism represents a commitment to white and assimilationist values and a disavowal of universal emancipation from all forms of subordination for a broader population of queers.

Despite the positive work of hate crimes activism discussed above, it is nonetheless similarly problematic for its investment in the criminal justice system and that system's punitive measures. Knowing that the criminal justice system disproportionately targets and punishes people of color and poor people, does it make sense from an anti-racist perspective to consider seeking remedies for homophobia within the criminal justice system? Lisa Crooms writes that

... hate crimes statutes, passed for the ostensible protection of disempowered minorities, are administered by a society rooted in the ideology of white supremacy and within a criminal justice system committed to the continuing oppression of [racial] minorities. This leads to the ironic, if unsurprising,

7. Ian Barnard articulates his dissatisfaction with the agenda of marriage and military inclusion, stating:

I am repulsed by lesbian and gay efforts to become legally married; I am less than euphoric about the wave of domestic partnership policies currently being adopted by some business enterprises and academic institutions in this country; and I am enraged that many lesbian and gay activists are begging for admission into a U.S. military apparatus that executes genocidal, cultural, economic, and political imperialisms all over the world. Should we celebrate the day it becomes legal for queers to kill? The placards I like read "cruise queers, not missiles," "extend the ban to heterosexuals," "demilitarize masculinity," and "ban the military."

Barnard, *supra* note 3, at 78-9.

conclusion that the very laws intended to combat oppression instead serve to punish those struggling against oppression.⁸

An uncritical campaign to increase the reach of the criminal justice system, even to punish homophobia, can only represent a blindness to anti-racist critiques of the system of punishment.

What is the real emancipatory value of a gay rights agenda that seeks recognition by and entrance into subordinating systems of inequality? By opting for anti-homophobic projects that discount anti-racist, feminist, anti-imperialist, and redistributionist perspectives, the emancipation that is sought yields benefits disproportionately, and sometimes exclusively, for white people, men, sexually normative homosexuals, and people with money. In a sense, the strategy says: "give those of us who are most like you ('virtually normal', in Andrew Sullivan's words⁹) a piece of the pie." It doesn't question the distribution of privilege on a larger level. The quest is to enable propertied homosexuals to leave their partners an inheritance, not to redistribute wealth. The quest is for those whites who report crimes to access the criminal justice system without regard to the fact that people of color are disproportionately punished. By focusing strictly on homosexual identity, and ignoring racism, sexism, and economic inequality, the mainstream gay agenda chooses a false "neutrality" that accepts the status quo and asks for inclusion without regard to the fact that "neutrality," or non-opposition to issues of subordination, always reinforces the current set of social circumstances as natural and normal.¹⁰

Thus, our starting point for a critique of hate crimes legislation as an emancipatory strategy is that hate crimes legislation is part of, and reflects the weaknesses of, the overall assimilationist, inclusion-focused mainstream gay agenda. Just as the fight for military inclusion disappears international solidarities and anti-imperialism, and just as the struggle for marriage rights disappears the work of feminism and struggles for economic justice, hate crimes activism disappears the interests of poor and non-white communities.

A second troublesome aspect of hate crimes activism is how the focus on violent crimes committed against members of subordinated identity categories constructs hate crimes as indi-

8. Lisa A. Crooms, "Everywhere There's War": A Racial Realist's Reconsideration of Hate Crimes Statutes, Inaugural Issue *GEO. J. GENDER & LAW* 41, 44 (1999).

9. See ANDREW SULLIVAN, *VIRTUALLY NORMAL: AN ARGUMENT ABOUT HOMOSEXUALITY* (1996).

10. Cheryl I. Harris, *Whiteness as Property*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 276 (Crenshaw, et al, eds., 1995). Harris describes the "dominant conception" of the construct of "neutrality," noting that "neutrality means the existing distribution, which is [presumed] natural." *Id.* at 288.

vidual expressions of personal prejudice and therefore eclipses the understanding of the systemic nature of inequality. In her article, "Asian Americans: The 'Reticent' Minority and Their Paradoxes,"¹¹ Pat Chew employs a combination of personal narratives and statistical analysis about violent hate crimes against Asian-Americans to argue that, despite stereotypes of Asian assimilation, Asian-Americans still suffer from pervasive discrimination. Chew's use of personal narrative includes stories of everyday occurrences, such as a white person questioning her ethnicity by asking "Where are you from?" to men on the street harassing her by calling "Chi-na Chi-na,"¹² or non-Asian people complimenting her un-accented English.¹³ These stories of non-physical racist interactions that are familiar to many people, both Asian and non-Asian, produce rich descriptions of the persistence of stereotypes about Asian "foreignness" and of the discrimination that Asian-Americans face. Her personal stories pose a challenge to the reader that statistics about violent anti-Asian hate crimes do not—while the majority of readers are not implicated in such crimes, and probably think them abhorrent, most will undoubtedly find resonance with the instances of casual conversation in which racist dynamics play out in a socially acceptable manner. Chew's interplay between stories of "casual" racism and reports of violent incidents bring the reader to an understanding of racism and discrimination against Asian-Americans that challenges not only the most extreme or violent manifestations of racism, but also the everyday, systemic forms of racism in which all people are complicit.

Traditional hate crimes activism fails to present the type of challenge that Chew's technique succeeds in posing. This activism demands only that people should not be killed or beaten for being queer or a person of color. Beyond that, it does not issue a broader challenge to systemic inequality. In "A Critique of 'Our Constitution Is Color-Blind,'" Neil Gotanda describes the judiciary's use of a view of "formal race" in grappling with problems of racial subordination.¹⁴ He describes that under the "formal race" view, "[r]ace. . . is seen as an attribute of individuality unrelated to social relations."¹⁵ In turn, "racists" are those "individuals who maintain irrational personal prejudices against persons

11. Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994).

12. *Id.* at 18.

13. *Id.* at 33.

14. Neil Gotanda, *A Critique of "Our Constitution is Colorblind,"* in *Critical Race Theory: The Key Writings That Formed the Movement* 257, 265 (Crenshaw, et al, eds., 1995).

15. *Id.*

who 'happen' to be in the racial category black."¹⁶ This view, Gotanda explains, focuses the remedies for racism on individuals rather than systems. Because institutional dimensions of racial inequality and racism are ignored, structural and redistributionist remedies such as affirmative action seem senseless.¹⁷ The focus of courts remains on isolating individual racists, determining their racist intent and punishing them, while disregarding manifestations of systemic racial subordination such as substandard housing, education, and employment and the widespread incarceration of people of color.

Hate crimes statutes achieve results similar to the "formal race" jurisprudence. The focus of hate crimes legislation is the punishment of individuals whose racism (or homophobia, transphobia, xenophobia, etc.) results in violent crime against members of a subordinated group. A message of hate crimes activism is that these people are the real problem, and putting hate crimes activism high on an anti-homophobic or anti-racist agenda says that, even if there are other people or institutions who subordinate, it is these violent individuals with whom we are most concerned. Such a focus constructs a world in which the racist/not racist or homophobic/not homophobic line is drawn at the point of violence and excuses an ignorance of the myriad systemic and institutional manifestations of subordination that do not rise to the level of physical violence.

The third and final aspect of hate crimes legislation that is troubling is how the process of detailing and specifying what constitutes a hate crime and, more importantly, who can be positioned within the law as the object of a hate crime, necessitates a reification and legislation of sexual identity. Describing her own experiences as a hate crimes activist, AnnJanette Rosga writes that advocating for new criminal laws around anti-gay violence "allowed the very identity categories enforced by hate violence to be written into law, and thereby reinforced hegemonic notions of mutually exclusive, internally undifferentiated, bio-social groups."¹⁸ In other words, the legal discourse of hate crimes denies the multiple and shifting characteristics of identity in favor of a simplistic notion that, for example, homosexuality is the same in all people and is not produced in relation to other social variables like language and economic class.

A concern with the limits of political work based on immutable identities is not merely abstract and theoretical. Working from this misconception of identity has real, material conse-

16. *Id.*

17. *Id.* at 266.

18. Rosga, *supra* note 1, at 153-54.

quences. As Judith Butler has pointed out, any project of organizing around an identity is always a project of exclusion that establishes who does *not* belong.¹⁹ The danger of gay and transgender hate crimes legislation is the lack of protection provided those bodies falling outside a legislated rubric of “gay.”²⁰ Other persons who face violence based on deviance from sexual and gender norms, and are criminalized for their sexual practices, such as sex workers and s/m practitioners, find no protection under such laws. Sexism, homophobia, and the policing of sex place these people in the way of violence, often at the hands of law enforcement officers themselves, thus making them natural allies to victims of “gay-bashing.” However, gay hate crime statutes fail to name that violence, thereby erasing the connections between the domination of different kinds of sexual and gender outlaws. The move to name a narrow class of individuals for protection from violence, rather than to reject an exclusive identity-based approach, thus leaves other victims of similar subordinating systems without protection and forecloses the opportunity for productive political alliance.

Furthermore, as other critics of hate crimes laws have written, the legal deployment of identity categories effectively erases the historical and cultural specificity of racial categories, rendering “race” a neutral signifier. In this formation, a racially motivated crime committed by a black person against a white person carries the same meaning as a crime committed by a white person against a black person. Thus, “all transgressors must be treated equally, without any appreciation for the history in which the harms against which the ordinance guards are situated.”²¹ Gender and sexuality hate crimes laws developing out of this legal

19. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 14 (1990).

20. This may be true in a very narrow and literal sense in certain states that base hate crimes protection on sexual orientation status. Of the twenty-one states with hate crimes statutes that include sexual orientation for purposes beyond simply data collection, eight (Delaware, Florida, Iowa, Kentucky, Maine, Massachusetts, Nebraska, and New Hampshire) passed hate crimes legislation that does not include language offering protection to people “perceived as” gay or lesbian. The National Gay and Lesbian Task Force Policy Institute writes that this may require that the victim “actually” be gay or lesbian for the statute to be enforced, despite the homophobic motivation of the perpetrator. The identity categories that these statutes are based on may exclude from protection, for example, a married straight man who cross-dresses or a gender non-normative woman who “looks” like a lesbian but is not identified as one. Though a bashing of either of these individuals would concern their deviance from social norms of gender presentation, their unclassifiable identities leave them exposed to violence, without any specific remedy, despite the existence of hate crimes legislation. *See generally*, WAYNE VAN DER MEIDE, *POLICY INST. OF THE NATIONAL GAY AND LESBIAN TASK FORCE, LEGISLATING EQUALITY: A REVIEW OF LAWS AFFECTING GAY, LESBIAN, BISEXUAL, AND TRANSGENDERED PEOPLE IN THE UNITED STATES* (1999).

21. Crooms, *supra* note 9, at 59.

doctrine of "race neutrality" inherit this dangerous formation of identity. Robert Chang and Jerome Culp point out that hate crimes laws protecting gays and lesbians recognize sexuality only insofar as these laws erase sexuality; protection is provided to queers "not because of their sexuality, but, rather, despite it."²² The neutrality of identity in hate crimes laws treats heterosexuals and homosexuals as equivalent, thereby leaving untouched the material subordinated status of homosexuals and other sex deviants in social organization.

Earlier in this article, we discussed how hate crimes legislation operates on a narrow anti-homophobic agenda that does not consider racism, sexism and poverty and how it constructs homophobia as personal prejudice and not a structural force. Given these two functions, it is no accident hate crimes laws reify and neutralize homosexual identity. The limits of identity politics actually facilitate the narrow mainstream gay agenda and a non-systemic view of oppression. The homosexual identity that hate crimes statutes write into law leaves out all sorts of sexual and gender deviants, only providing protections for those same privileged people who the mainstream gay and lesbian movement perpetually serves. Neutral constructions of gender and sexuality compromise people of color and poor people by refusing to acknowledge the interlocking forces of subordination at work in their lives. When the mainstream gay rights movement accepts identity on these terms, it accepts as well the marginalization of working classes and people of color within its agenda. Therefore, no real challenges are posed to systems of gender and sexual regulation, but rather a safer place within the current social organization is created for a narrow population of white, upper-class gay citizens.

III. THE PRACTICAL POLITICS OF ANTI-SUBORDINATION

The current national focus on the topic of gay hate crimes was certainly initiated by the 1998 murder of Matthew Shephard in Wyoming. Though the impact of this murder on organizing efforts and policy is real, like the Stonewall Inn riots of 1969, "Matthew Shephard" became a mythic moment in a narrative of gay struggle such that the historical specificities of geography, nationality, race and class were obscured. Frequent occurrences of acts of violence against queer and trans people of color, including the murder of a black trans woman in Baltimore just months before Matthew Shephard's death, never garner the media atten-

22. Robert S. Chang & Jerome McCristal Culp, Jr., *Nothing and Everything: Race, Romer and Gay, Lesbian and Bisexual Rights*, 6 WM. & MARY BILL OF RTS. J. 229 (1997), cited in Crooms, *supra* note 9, at 60.

tion or nationwide incitement to activism generated by the brutalities enacted against a white, educated male in America's "heartland." The newsworthiness of "Matthew Shepard" is testament to value placed on white life—even gay white life—and the disposability of people of color in the United States.

The activism that arose out of the Matthew Shepard killing was particularly notable for its mass mobilization of both straight and gay people all across the country.²³ Straight and gay celebrities spoke out against the violence, and thousands of people across the country participated in rallies and acts of civil disobedience in order to draw further attention to the tragedy. It seems that people from almost all parts of the political spectrum can agree that this act of violence was wrong. Gay movement leaders rejoiced in this victory of visibility and mass anti-homophobic sentiment. The question is, what is the content of that sentiment? How limited did the scope of that anti-homophobia have to be in order for so many to sign on to it? What did the people who usually fail to articulate an overt anti-homophobic position get out of doing so in this instance?

Activism like that which occurred around the death of Matthew Shepard is both inspiring and suspicious in its breadth. The gain that many get out of making statements against the killing is a firm belief that, in a world divided between homophobes and non-homophobes, they land on the side of non-homophobes. They don't kill gay people. But what is lost when the line is drawn there? The space to articulate larger challenges to systemic regulation of sexuality and gender is foreclosed when activists and media machines choose such a limited and easily evaded definition of homophobia and focus on victims so sympathetic that almost anyone could agree to the senselessness of their suffering. Additionally, as Gotanda demonstrates, when subordination is narrowed to entail only individual prejudice, remedial measures will reflect such narrowness.²⁴ If homophobes are those who kill people like Matthew Shepard, the remedy is simply criminal punishment of such individuals. Challenges to systemic regulations of gender and sexuality, such as the subordination of women, the criminalization of many kinds of sexual expression, the inaccessibility of birth control and abortion, the legal privileging of married heterosexual families, and much more become lost in this framing of homophobia and anti-homophobia. On a personal level, people are made to feel com-

23. Jennifer Flynn of the New York AIDS Housing Network estimates that 9,000 people attended the New York City Matthew Shepard Political Funeral, and over 200 were arrested in protest of homophobic violence. *Telephone Interview with Jennifer Flynn, Director, New York City AIDS Housing Network (Feb. 4, 2000)*.

24. Gotanda, *supra* note 15, at 266.

fortable that they are not engaging in the named “hate,” and their ignorance to their own complicity in subordinating systems is cultivated. On a policy level, the remedies sought match the narrowness of the problem defined.

That Matthew Shephard became the posthumous poster child for the gay rights movement speaks both to the supposed “neutrality” of the white male subject—it is in his face “we” are to find our own lives and struggles reflected—and to the assimilationist drive of hate crimes work within large, national gay organizations. The version of hate crimes represented in the murder of a young, white midwestern college boy plays easily to audiences that might not rally so quickly around trans people of color or homeless sex workers in decaying urban centers. Again, the concern is not only symbolic—events like “Matthew Shephard” are moments of political organization and consolidation, of establishing agendas and closing ranks. Despite the mobilization and productivity that followed Matthew Shephard’s killing, a movement built on this uncomplicated version of homophobia and the narrow conception of who needs protection does not at all serve a broad spectrum of gender and sexual outlaws.

In activist circles, demands for complicated and theoretical strategies of action are often dismissed as unwieldy and impractical. However, a critical perspective on hate crimes laws does not at all result in a place of stasis and inaction. As Cathy Cohen writes, “We must . . . start our political work from the recognition that multiple systems of oppression are in operation and that these systems use institutionalized categories and identities to regulate and socialize.”²⁵ Therefore, we must continue to question the value of gay activism that is invested in a criminal justice system that disparately impacts poor people and people of color and that starts from identity categories that do not challenge systems of domination but fit neatly within them. A broader, systemic approach to problems of violence and oppression could involve cross-community coalitions opposing police brutality; local commitments to resist the processes of gentrification that criminalize homelessness and drive out poor, immigrant families; coalition work between sex deviants who frequently face criminal justice consequences, such as sex workers and people who engage in public sex, and those who face such consequences less often.²⁶ Localized activism that takes into account the context in

25. Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GLQ 437, 458 (1997).

26. In November 1999, at the Berkeley Performing Unnatural Acts Conference, Christina B. Hanard told a story of hate crimes activism which illustrates the necessity to combine race and economic analyses with anti-homophobia to create helpful rather than harmful responses to violence. According to Hanard, in 1998 a lesbian

which violence of many kinds occurs, including gay-bashing, police brutality, race violence, and rape, can lead to localized solutions that actually reduce violence and produce anti-subordinating sentiment that exceeds the bounds of white anti-homophobia. Such activism can arrive at solutions more complex than just bringing the criminal justice system more strongly into a community or situation by including voices of people for whom the police pose great threats of violence in addition to people who find the police to be a protective force.

These kinds of political projects do not seek to advance the cause of a stable identity that benefits white and propertied people only, but rather they wrestle with the actual distribution of economic and cultural capital and the structures of inequality. Cohen points out that “[o]nly through recognizing the many manifestations of power, across and within categories, can we truly begin to build a movement based on one’s politics and not exclusively on one’s identity.”²⁷ We must not let our sense of urgency about the violence committed against gay and trans people bring us to a place in which we uncritically reproduce the

employee of the Rising Cafe in Park Slope, Brooklyn, a lesbian community gathering place, was attacked in Park Slope by an assailant who both physically injured her and addressed her with homophobic slurs. Local lesbians gathered together to formulate a response to the attack. As Hanard describes, the gathered lesbians were primarily white and upper class, part of a gentrifying population who have been displacing poorer people of color in Park Slope over the last few years. In Hanard’s description of the meetings, the women frequently collapsed their fear of homophobic violence with their more generalized fear of the men of color in the neighborhood. Many complained about men of color hanging out on street corners and in front of stores. Such an open discussion of the generalized white fear of people of color became excusable because of the experience of the attack made these fears somehow justified. These lesbians organized a march through the neighborhood at which they chanted slogans about homophobia as well as “Whose streets? Our streets?” In the context of gentrification, and the persistent role of white gay people as gentrifiers, the events in Park Slope cannot be seen as being strictly about homophobia.

To demonstrate an alternative construction of the events, the Audre Lorde Project, a non-profit organization focused on the needs and concerns of queer people of color, held a march sparked by the same event which focused on the need to eliminate all kinds of violence in the community. The effect of this approach is that rather than setting up the dynamic of the white lesbian victims versus the rest of the neighborhood (people of color with lower income levels), all of whom are perceived to be potentially violent and potentially homophobic because of racial stereotypes, it constructs the problem of homophobic violence as part of a problem of community violence. This leaves room for discussion of displacement and gentrification, and the complex and unpleasant dynamics that these phenomena produce. Under ALP’s approach, a possibility of dialogue between the various divided constituencies of the community regarding the changes in population and the clashes between populations might be made possible, and would much more likely lead to reduced violence rather than a race-laden generalized anti-homophobia sentiment about who owns the streets. Christina B. Hanard, Remarks at Performing Unnatural Acts Conference (Nov. 5, 1999).

27. Cohen, *supra* note 26, at 459.

marginalization of the most disenfranchised among us and create anti-homophobic positions that cultivate ignorance of systemic subordination.