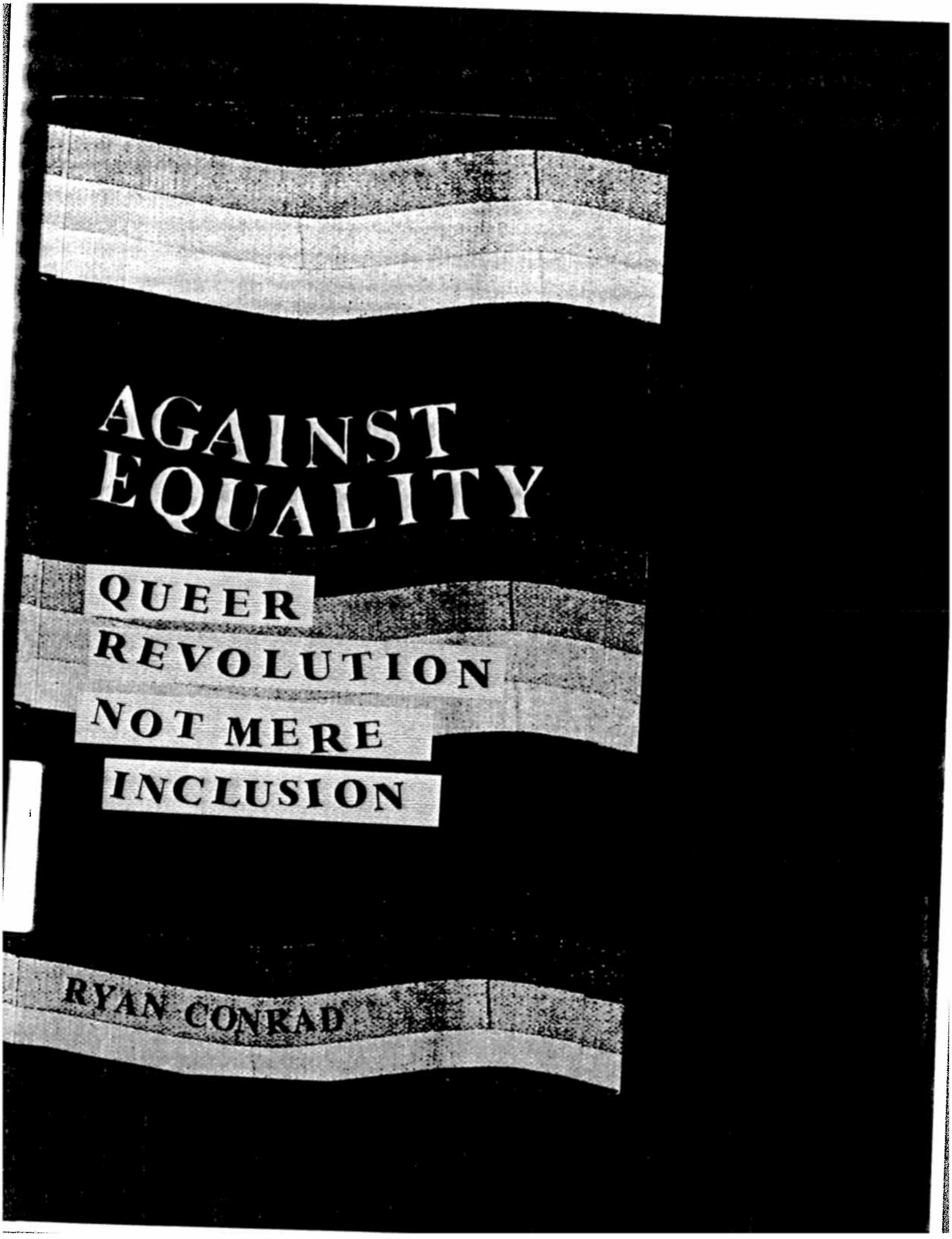
AGAINST EQUALITY
QUEER REVOLUTION NOT MERE INCLUSION
RYAN CONRAD

ANTI-CAPITALISM EQUALS ANARCHISM

PRISONS WILL NOT PROTECT YOU

EDITED BY RYAN CONRAD
INTRODUCTION BY DEAN SPADE

Do Hate Crime Laws Do Any Good?

LILIANA SEGURA

"We have seen a man dragged to death in Texas simply because he was black. A young man murdered in Wyoming simply because he was gay. In the last year alone, we've seen the shootings of African-Americans, Asian Americans, and Jewish children simply because of who they were. This is not the American way. We must draw the line."

—President Bill Clinton, final State of the Union Address, January 27, 2000.

IT WAS A YEAR-AND-A-HALF after the horrific torture-murder of James Byrd Jr., the African-American man who was assaulted, chained to a pickup truck and dragged for three miles by three white men in Jasper, Texas, a crime that the *New York Times* called "one of the grisliest racial killings in recent American history."

A few months later came the similarly brutal killing of Matthew Shepard, a twenty-one-year-old gay man who was savagely beaten and left to die in Laramie, Wyoming.

This piece first appeared on alternet.org on August 3rd, 2009.

The perpetrators in both cases were slapped with severe punishments—life sentences for Shepard's killers, and two death sentences and one life sentence for Byrd's. Nonetheless, in the emotional public upheaval that followed, both cases became rallying cries for the passage of state laws to toughen the sentences for hate-motivated crimes.

On the federal level, laws were already on the books defining race-motivated violence as hate crimes, but the same was not true of crimes against the LGBT community. The Matthew Shepard case would set the stage for a ten-year fight to pass federal hate crime legislation to protect LGBT people. Leading the charge were such influential groups as the Human Rights Campaign, the country's largest gay-rights organization.

Despite the fact that when it came to other issues—"Don't Ask, Don't Tell" or marriage equality—the Clinton administration was no friend of gay rights, the White House and congressional Democrats threw their weight behind hate crime legislation. And no wonder: with Clinton presiding over some of the most expansive criminal justice reforms in U.S. history, anyone lobbying for tougher sentencing in the 1990s was in good company. In Congress, supporting hate-crime laws gave Democrats a chance to look tough on crime while also throwing a bone to the LGBT community.

"We hope Congress will heed this call and put aside politics to protect our nation's citizens from the brutal hate crimes that claimed the lives of Matthew Shepard and James Byrd Jr.," Elizabeth Birch, executive director of the Human Rights Campaign, said in November 1999.

Almost ten years later, on July 16, 2009, the U.S. Senate finally passed the Local Law Enforcement Hate Crimes Prevention Act, otherwise known as the Matthew Shepard Act, as an amendment to the 2010 National Defense Authorization bill, by a strong bipartisan vote of 63–28. The amendment extends federal hate crime laws to include crimes that target a victim based on his or her "actual or perceived" gender, sexual orientation, gender identity, or disability.

The Matthew Shepard Act is likely to be signed by President Obama, marking a major victory for HRC and other groups that have fought hard for it over the past ten years. But even as many see this is a cause for celebration, nearly a decade after Clinton's final state-of-the-union

address urged Congress to "draw the line" on hate crimes, the practical value of hate crime legislation remains dubious.

Despite supporters' contention that they will make vulnerable communities safer, there is little proof that the tougher sentencing that comes with hate crime legislation prevents violent crimes against minority groups. Meanwhile, the U.S. prison system continues to swallow up more and more Americans at a record pace. With 1 in 100 Americans behind bars, is a fight for tougher sentencing really a fight worth waging?

WILL TOUGHER SENTENCES DETER HATE CRIMES?

In 2007, the *Dallas Morning News* ran an editorial titled "The Myth of Deterrence," which took on the canard that maximum penalties would protect people from violent crime.

In theory, the death penalty saves lives by staying the hand of would-be killers. The idea is simple cost-benefit analysis: if a man tempted by homicide knew that he would face death if caught, he would reconsider.

But that's not the real world. The South executes far more convicted murderers than any other region, yet has a homicide rate far above the national average. Texas's murder rate is slightly above average, despite the state's peerless deployment of the death penalty. If capital punishment were an effective deterrent to homicide, shouldn't we expect the opposite result? What's going on here?

"The devil really is in the lack of details," the paper concluded. "At best, evidence for a deterrent effect is inconclusive, and shouldn't officials be able to prove that the taking of one life will undoubtedly save others? They simply have not met that burden of proof, and it's difficult to see how they could."

The arguments for enhanced sentencing in hate crime legislation takes a similar tack, arguing that tougher sentencing will protect LGBT communities by putting "would-be perpetrators on notice," in the words of the HRC.

But will a white supremacist really refrain from harming another person whom he or she believes to be fundamentally inferior over the

distant chance it might mean more jail time? Would Byrd's or Shepard's killers have stopped to rethink their violent, hate-fueled crimes?

"Even as national lesbian-and-gay organizations pursue hate crime laws with single-minded fervor, concentrating precious resources and energy on these campaigns, there is no evidence that such laws actually prevent hate crimes," Richard Kim wrote in *The Nation* in 1999. Ten years later, there still doesn't seem to be a lot of data to support this claim.

In 1999, some twenty-one states and the District of Columbia had hate crime laws on the books. Today, forty-five states have enacted hate-crime laws in some form or other. Yet the trend has not been a lowering of hate crimes. In 2006, 7,722 hate-crime incidents were reported to the Federal Bureau of Investigation—an 8 percent increase from 2005.

The data: 2,640 were anti-black (up from 2,630 in 2005); 967 were anti-Jewish (up from 848 in 2005); 890 were anti-white (up from 828 in 2005); 747 were anti-male homosexual (up from 621 in 2005); 576 were anti-Hispanic (up from 522 in 2005); 156 were anti-Islamic (up from 128 in 2005).

Hate groups also appear to be on the rise. According to the Alabama-based Southern Poverty Law Center, the number of hate groups has increased by 54 percent since 2000.

Speaking before the Senate vote on July 16, Sen. Patrick Leahy, D-Vt., declared, "this legislation will help to address the serious and growing problem of hate crimes." But as one *San Francisco Chronicle* columnist recently asked, bluntly: "If hate crime laws prevent hate crimes, shouldn't hate crimes be shrinking, not growing?"

Whether hate crimes are on the rise because more crimes are being classified as such is another question. But the data leave the question of deterrence unanswered.

Regardless, the deterrence argument has been embraced by Democratic politicians. Speaking in favor of the Matthew Shepard Act, Rep. Jan Schakowsky, D-Ill., cited the crimes of Benjamin Nathaniel Smith, a white supremacist who killed two people and wounded nine others in a violent "spree" in 1999, apparently targeting Jews and African Americans. California Democrat Rep. Mike Honda cited the case of Angie Zapata, an eighteen-year-old transgender woman who was beaten to death in Greeley, Colorado, last year [2008].

But, as with the Clinton administration, the real political value of this recent round of votes was that it gave politicians a chance to appear tough on crime while also appearing to support gay rights. A number of those Democrats who supported the Matthew Shepard Act have been slow to back measures that would actually bestow equal rights on LGBT people. Sens. Max Baucus of Montana, Kent Conrad of North Dakota, and Herb Kohl of Wisconsin, to name a few, all oppose same-sex marriage, yet voted in favor of the Shepard Act.

What's more, a number of Democratic senators who voted for the Shepard Act voted in favor of the Defense of Marriage Act in 1996. Even Nebraska Democrat Ben Nelson, who in 2004 was one of two Democrats to vote in favor of amending the Constitution to limit marriage to heterosexual couples—along with then-Georgia Democrat, and certifiable lunatic, Zell Miller—voted for the Matthew Shepard Act.

Given the years of ad campaigns and political lobbying it has taken to get this legislation through Congress, it seems worth considering whether this is the best use of resources by influential LGBT groups, especially given that, as the Shepard case demonstrated, it is already possible to fully prosecute brutal crimes driven by hate or bigotry.

One expert on hate crimes and deterrence, James B. Jacobs, wrote as far back as 1993: "The horrendous crimes that provide the imagery and emotion for the passage of hate-crime legislation are already so heavily punished under American law that any talk of 'sentence enhancement' must be primarily symbolic."

Many LGBT activists agree. As one blogger argued on *Feministing* recently: "Putting our energy toward promoting harsher sentencing takes it away from the more difficult and more important work of changing our culture so that no one wants to kill another person because of their perceived membership in a marginalized identity group."

TOUGH ON CRIME FOR PROGRESSIVES?

In a country that leads the world in incarceration—2.3 million people are lodged in the nation's prisons or jails, a 500 percent increase over the past thirty years—the U.S. criminal justice system most brutally

affects those very communities that hate-crime laws, historically, have ostensibly sought to protect.

An example: this summer, a new study found that 1 in 11 prisoners are serving life sentences in this country, 6,807 of whom were juveniles at the time of their crimes. According to the Sentencing Project, its findings "reveal overwhelming racial and ethnic disparities in the allocation of life sentences: 66 percent of all persons sentenced to life are nonwhite, and 77 percent of juveniles serving life sentences are nonwhite."

When it comes to LGBT communities, it is only recently that the "homosexual lifestyle" didn't itself amount to criminal activity in the eyes of the law. (The Supreme Court only overturned laws banning sodomy in 2003.) And the history of police brutality against gays, lesbians, and transgender people is hardly history.

Just this month, a gay couple was detained by police in Salt Lake City merely for kissing. A similar incident in El Paso, Texas led to five gay men being kicked out of a restaurant because the restaurant did not tolerate "the faggot stuff." "Particularly troubling for the El Paso case is that the security officers actually tried to cite laws against sodomy that were thrown out by the U.S. Supreme Court more than five years ago," pointed out one blogger at Change.org.

The criminal justice system has proved to be particularly brutal when it comes to those who are already behind bars, with violence and segregation regularly targeting gays, lesbians, and transgender people.

This summer, news broke that prisoners in a Virginia women's prison were being segregated for not looking "feminine" enough, being thrown into a "butch wing" by prison guards. According to the *Washington Blade*, the Bureau of Justice Statistics "has identified sexual orientation to be the single-highest risk factor for becoming the victim of sexual assault in men's facilities."

Although well-established groups like the HRC, the National Gay and Lesbian Task Force, and Parents, Families and Friends of Lesbians and Gays have poured much energy into hate crime legislation, other, smaller LGBT organizations have opposed them on the grounds that toughening the criminal justice system will do little to further tolerance or equality for LGBT people, particularly given the fact that they continue to be targeted by the very same system.

Many more radical LGBT groups reject hate crime legislation on the grounds that the any further expansion of the criminal justice system is at odds with their fight for human rights.

In a letter this spring to supporters of New York's Gender Employment Non-Discrimination Act (GENDA)—which includes a provision that would enhance sentences for existing hate crimes—a coalition of local advocacy groups wrote: "It pains us that we cannot support the current GENDA bill, because we cannot, and will not, support hate crime legislation."

Rather than serving as protection for oppressed people, the hate crime portion of this law may expose our communities to more danger—from prejudiced institutions far more powerful and pervasive than individual bigots. Trans people, people of color, and other marginalized groups are disproportionately incarcerated to an overwhelming degree.

Trans and gender non-conforming people, particularly transwomen of color, are regularly profiled and falsely arrested for doing nothing more than walking down the street. Almost 95 percent of the people locked up on Riker's Island are black or Latino/a. Many of us have been arrested ourselves or seen our friends, members, clients, colleagues, and lovers arrested, often when they themselves were the victims of a violent attack.

Once arrested, the degree of violence, abuse, humiliation, rape, and denial of needed medical care that our communities confront behind bars is truly shocking, and at times fatal.

The Human Rights Campaign argued that passage of the Shepard Act would "put would-be perpetrators on notice that our society does not tolerate bias-motivated, violent crime." But what happens when the perpetrators are those whose duty it is to supposedly enforce the law?

WHEN TOUGH ON CRIME MEETS HUMAN RIGHTS

Just before the vote on the Shepard Act on July 16, Alabama Republican Senator Jeff Sessions—an opponent of the legislation who could hardly be less tolerant of LGBT rights—pulled a cynical maneuver: he introduced three last-minute additions to the amendment, which was widely decried as a transparent ploy to derail the legislation.

One of them would make the federal death penalty available for prosecutions of hate crimes, an idea that alarmed the legislation's supporters. "This amendment is unnecessary and is a poison pill designed to kill the bill," reported *HRC Backstory* (the blog of the Human Rights Campaign).

There's no question Sessions has zero interest in bolstering the hate crime bill. But nor does it seem particularly likely that his maneuver would "kill the bill." After all, as previously discussed, it has been a long time since Democrats had a problem supporting tough-on-crime legislation.

Regardless of its actual strategic value, many of the groups that fought hard for the hate crime bill have sent messages asking Congress to oppose the Sessions amendment.

"The death penalty is irreversible and highly controversial—with significant doubts about its deterrent effect and clear evidence of disproportionate application against poor people," read a letter signed by a long list of advocacy groups, from the Anti-Defamation League to the HRC to the NAACP, which reminded legislators that "no version of the bill has ever included the death penalty."

The National Gay and Lesbian Task Force, for example, called the death penalty a "state-sponsored brutality that perpetuates violence rather than ending it," saying, "It is long past time to send a clear and unequivocal message that hate violence against lesbian, gay, bisexual and transgender people will no longer be tolerated—but it must be done in a way that saves lives, not ends them."

But in a country with the largest prison system in the world and the toughest sentences on the books, this discomfiting run-in between supporters of tougher hate crime legislation and the "ultimate punishment" seemed almost inevitable.

Indeed, it is emblematic of a fundamental flaw at the heart of hate crime legislation: human rights groups that lobby for tougher sentencing may believe that, despite all its ugly dimensions, the criminal justice system can be used for more noble ends, to force bigoted elements within society to change and to protect vulnerable communities. But at the end of the day, it amounts to the same classic "tough on crime" canard, just tailored to more liberal sensibilities.

Sanesha Stewart, Lawrence King, and Why Hate Crime Legislation Won't Help

JACK APONTE

I'VE BEEN OUT OF TOWN and subsequently out of touch for a while now, visiting El Paso with my partner to meet her incomprehensibly adorable two-week-old nephew. But in the midst of the happiness that babies and family and vacation bring, two pieces of tragic news have weighed heavily on my mind. Both of them demonstrate how dangerous and hostile a world this is for people who are trans and gender non-conforming.

On February 10, Sanesha Stewart, a young trans woman of color, was brutally murdered in her apartment in the Bronx. This is tragic and deeply saddening in and of itself, and part of a frightening and enduring pattern of violence against trans people. But because of this woman's identities—trans, woman, person of color, low income—the tragedy doesn't end with her death and the grief of those who knew

This piece first appeared online at angrybrownbutch.com on February 20, 2008.

Why Hate Crime Legislation is Still Not a Solution

YASMIN NAIR

THE MATTHEW SHEPARD AND JAMES Byrd Act (H.R. 1592) expands the 1969 United States federal hate crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. The bill also requires "the FBI to track statistics on hate crimes" against transgender people.

When I first began writing against hate crime legislation (HCL) in the early 2000s, public opinion appeared to be overwhelmingly in favor of it. It was largely determined, in public discourse, that those against HCL were ogres who hated minorities and that those for it were saviors of the same.

Yet, even with the battle lines drawn so carefully, there have been several ruptures in the public's general attitude towards hate crime legislation, the most significant of which was around the trial of Dharun Ravi for the 2010 suicide of Tyler Clementi. Clementi's suicide prompted the

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This piece originally appeared online at The Bilerico Project *(bilerico.com) as two separate articles in 2009 and 2011, which have been edited and updated into one.*

gay community to engage in its usual orgy of demonizing and hatred. It set about portraying Dharun Ravi as a cold-blooded killer who committed a "hate crime" against a gay student.

Lost in the quest to declare this a classic case of "bullying" was a more complex and nuanced understanding of how such a thing had come to be, and lost also were the complicated intersections of class and ethnicity that surrounded the case. As reported by the *The New Yorker*'s Ian Parker, Ravi faced charges that could have increase his sentencing: "...shortly before Molly Wei [co-defendant] made a deal with prosecutors, Ravi was indicted on charges of invasion of privacy (sex crimes), bias intimidation (hate crimes), witness tampering, and evidence tampering. Bias intimidation is a sentence-booster that attaches itself to an underlying crime—usually, a violent one."

HCL is a panacea embraced by the left, which seeks easy solutions to the complicated problems facing societies broken by the violence of neoliberalism. Several pieces in this anthology have pointed out the problems with HCL and its furthering of the prison industrial complex. HCL can seem to be the only solution when racial and ethnic minorities and the transgender community confront cases of harassment and/or murder. Yet in reducing deaths to the result of "hatred," we tend to forget that vulnerable communities are not vulnerable solely on account of their perceived identity, but because of a host of intersecting factors, including economic vulnerability. In Chicago, Sex Workers Outreach Project has shown that sex workers on the street have to worry more about harassment and violence from cops than from clients, and they are likely to be targeted precisely because they are seen as undeserving of protection. In other words, they are seen as people whose lives simply don't matter. No amount of sentence-enhancement, like the kind advocated for in the trial of Ravi, is going to help with the multiple vulnerabilities faced by so many. All it does is funnel more people into the prison industrial complex.

In the end, Ravi was sentenced to thirty days, on charges of "invasion of privacy, bias intimidation, witness tampering and hindering arrest, stemming from his role in activating the webcam to peek at Clementi's date with a man in the dorm room on Sept. 19, 2010" and of "encouraging

others to spy during a second date, on Sept. 21, 2010, and intimidating Clementi for being gay," as reported by ABC news at the time.

Without the spurious attachment of "invasion of privacy" and "bias intimidation," there would have been no conviction at all. Even several gay commentators wrote against the push for sentencing Ravi, pointing out that this would allow everyone to forget about, for instance, what Clementi had already discussed as his parents' discomfort with his sexuality. In other words, what emerged from the Ravi trial was a disruption in the causality model evoked by HCL, and an evoking of the larger contexts and nuances of the harm done to queers.

No one can deny that particular groups are in fact treated with discrimination and even violence. But rather than ask how about how to combat such discrimination and violence, we've taken the easy route out and decided to hand over the solution to a prison industrial complex that already benefits massively from the incarceration of mostly poor people and mostly people of color. It's also worth considering the class dynamics of hate crime legislation, given that the system of law and order is already skewed against those without the resources to combat unfair and overly punitive punishment and incarceration.

Let's be honest: we already think that bigots and "haters" are just "low-class punks and thugs" anyway. It's easy to put a twenty-year-old Latino from Chicago's Pilsen neighborhood in jail for six to ten years because he yelled "fag" while stealing a gay man's wallet. Does that solve the problem of homophobia and bigotry in the boardroom? Do we even have ways to discern and address the latter?

What do we do when the violence is committed by the system itself? What do we do with the case of Victoria Arellano, a transgender undocumented immigrant who died shackled to her bed in Immigration and Customs Enforcement detention in 2007 after being denied her AIDS medication? Does the system that brought about her death have a way of accounting for its own "hate crime?"

Hate crime legislation has a murky history already detailed by other writers. But it's worth remembering that one reason it's so popular today is that it's often the only way for some marginalized groups to claim recognition as groups, and to seek redress for the very real violence their members experience in everyday life.

At this point, for instance, the issue of violence against the transgender community is seen as a real threat. Indeed, the only way for trangender people to gain recourse from the criminal legal system is to invoke the language of HCL; in effect, transgender identities are brought into being only through narratives of their erasure. But do we address that violence by helping the state to perpetrate more violence against the most marginal who already fill our jails? Or do we think of better ways to address the consequences of bigotry and prejudice? How do those of us struggling to make sense of what often seems like the overwhelming violence surrounding queer and trans bodies in particular work with the seeming contradictions of wanting that violence to end while faced with the criminal legal system as the only option?

Eric A. Stanley writes, in "Near Life, Queer Death: Overkill and Ontological Capture" in the journal *Social Text*, about the conceptual and material ruptures that occur when queer bodies are mutilated and dismembered far beyond the point of death. Yet, even while noting that such deaths are often not entered into the litany of "hate crimes," Stanley points out that HCL is itself a function of the same liberal democratic principles that claim to provide redress:

> "Reports" on antiqueer violence, such as the "Hate Crime Statistics," reproduce the same kinds of rhetorical loss along with the actual loss of people that *cannot be counted*. The quantitative limits of what gets to count as anti-queer violence cannot begin to apprehend the numbers of trans and queer bodies that are collected off cold pavement and highway underpasses, nameless flesh whose stories of brutality never find their way into an official account beyond a few scant notes in a police report of a body of a "man in a dress" discovered.

Herein lies our dilemma: our dead are uncounted and unmourned and the only system that exists to help us comprehend the extent of their numbers is the one that exerts that violence upon us in the first place. But surely there is a way out of all this. As Stanley goes on to write, "What I am after then is not a new set of data or a more complete set of numbers. What I hope to do here is to re-situate the ways we conceptualize the very categories of 'queer' and 'violence' as to remake them both."

That is exactly what we must do as we are met with new reports of violence against trans and queer bodies. As I write, the newspapers report yet another murder of a gender-variant person, this one of a Chicago nineteen-year-old who went by "Tiffany," and who was also identified as Donta Gooden. Immediate responses already echo the same narratives and language: that Tiffany was killed because of her desire to live an "authentic" life and for "who she was." Already, several organizations are calling for this to be classified as a "hate crime."

But as with so many other such murders, we have no proof that Tiffany was actually killed for exercising a "right" to be an "authentic self." Even if gender presentation had been a reason, Tiffany was made far more vulnerable by a system that refused him or her [at this point, it's unclear whether Tiffany actually preferred female pronouns] resources to the most basic needs, like health care.

This will be the easy route out: claim without ever having to prove that Tiffany was murdered because she was being herself, and you get to ignore the vast complexity of the issues that put him or her in danger in the first place.

To be trans usually means being shut out of housing and employment opportunities, and to be denied medical resources. When we decide, erroneously and on a gut level, that someone was killed for their identity, we are ignoring the greater systemic problems that put trans people in danger in the first place. When we place the burden on an individual's identity, we are in effect personalizing greater systemic and societal problems.

In making the claim that people are killed because they are targeted as transgender, the entire HCL industrial complex, including several trans organizations, is reproducing the erasure of the state's violence towards them.

The violence against queers and trans people is comprised of hateful, vicious, and brutal crimes for which there can be no excuse. But there are already legal remedies in place for such crimes: there are punishments for brutality and for murder.

It makes more sense to come to terms with a difficult fact: that the hatred against queer and gender-non-conforming people which incites such brutality is about a deep-seated hatred of the overturning of codes

and performances to which people are strangely and deeply cathected, and it's a hatred that flares up without meaning or the comfort of narrative and deep-seated intention. It's true that kind of hatred sometimes becomes an excuse for violence: "I was so deeply disturbed that I couldn't help but beat/kill him/her."

But HCL only presents a way for us to forget that the senseless violence of which we are constantly made aware is exactly that: senseless and brutal. In the end, HCL grants us nothing more than the cold comfort of extended prison sentences or death—in effect, extending the very violence that we claim to abhor.

Is jailing people for their prejudice really going to curtail bigotry and ignorance? Or will it just end up policing thought and filling the coffers of the prison industrial complex?

Lesbians Sentenced for Self-Defense

All-White Jury Convicts Black Women

IMANI KEITH HENRY

ON JUNE 14, FOUR AFRICAN-AMERICAN women—Venice Brown (19), Terrain Dandridge (20), Patreese Johnson (20) and Renata Hill (24)—received sentences ranging from three-and-a-half to eleven years in prison. None of them had previous criminal records. Two of them are parents of small children.

Their crime? Defending themselves from a physical attack by a man who held them down and choked them, ripped hair from their scalps, spat on them, and threatened to sexually assault them—all because they are lesbians.

The mere fact that any victim of a bigoted attack would be arrested, jailed and then convicted for self-defense is an outrage. But the length of prison time given further demonstrates the highly political nature of this case and just how racist, misogynistic, anti-gay, anti-youth, and anti-worker the so-called U.S. justice system truly is.

This piece was first published Jun 21, 2007 in the Worker's World Paper *(workers.org) and was subsequently reprinted by the Bay Area NJ4 Solidarity Committee.*

"Worst of the Worst"?

Queer Investments in Challenging Sex Offender Registries

ERICA R. MEINERS, LIAM MICHAUD, JOSH PAVAN, AND BRIDGET SIMPSON

POINTS OF DEPARTURE

OVER THE PAST THIRTY YEARS, Canada and the United States have afforded select gays and lesbians more rights, both symbolic and substantial. Simultaneously, most mainstream gay and lesbian organizations have disengaged from the issues of prisons and policing. Resisting police brutality, pushing back against the criminalization of non-heteronormative sexualities, and fighting carceral expansion have each disappeared from queer rights organization's ostensible agendas. Given that most queers are no longer viewed as the "worst of the worst sexual offenders," mainstream gay and lesbian organizations have disengaged from questions of criminalization in order to "move on"

This piece first appeared in issue thirteen of the Canadian journal Upping the Anti *(uppingtheanti.org) in 2011.*

to other issues like marriage and military inclusion. Meanwhile, sex workers, the HIV positive, barebackers, and other sexually marginalized groups have become increasingly isolated. With carceral expansion becoming an important priority for Canada's governments, and with "sex offenders" increasingly being used to legitimate "tough on crime" policies and prison growth, intersectional interventions on prison issues that include a queer analysis are needed now more than ever.

Federal and provincial governments in Canada are currently set to expend massive amounts of capital to enlarge the carceral apparatus by constructing new prisons and expanding existing ones. This development is accompanied by increased policing, new surveillance technologies, post-release reporting and registration requirements, and other punitive tools that activists and academics have described as a "soft extension" of the prison industrial complex into everyday life. "Sex offenders" and public notification systems have played a pivotal role in bolstering demands for increased surveillance of public places, extensive post-release requirements, and—at times—community notification. The anxieties propagated by "sex offenders" increase the policing of sexually marginalized people, increase the number of charges and convictions, and lengthen prison terms. These fears also spur electoral campaign promises, moral panics that collude with racialized and heteronormative agendas, and persistent punitive requirements that require various levels of government to appear "tough on crime." In turn, these responses lead to demands for new prisons. As notification technologies shift from print to online databases, offender information has begun to circulate increasingly rapidly and widely. Activists attempting to counter misinformation are often shut out from these platforms and potential roles for a critical independent media are circumvented. The potential for broader based community mobilizations is thus limited.

Although there has been some opposition to tough-on-crime social policy in Canada over the past few years, the organized left has been largely silent on this particular front; even activists traditionally critical of crime-and-punishment approaches have allowed themselves to be seduced by the state's ideas about the "sex offender."

Linking the targeting of homosexuals in the past to contemporary sex offender registries should not be mistaken for a romantic appeal to

celebrate outlaw sexualities. Nor do queer peoples' histories of being labeled "sex offenders" guarantee an automatic political affinity with those who are currently being criminalized.[1] However, these histories are intertwined with contemporary carceral growth. While select queers are no longer explicitly targeted by public policies, new "sexual offender" legislation does increase queer vulnerability and queer exposure to imprisonment. Meanwhile, the most significant forms of sexual violence (intimate and familial violence) become obscured by the state's focus on "stranger danger" and "dangerous sexual offenders." Equally obscured are the endemic rates of sexual (and other forms of) violence that incarcerated people—overwhelmingly poor, indigenous, and people of colour—are subjected to within prisons. Most importantly, the state's response to "sex offenders" does not address persistent interpersonal sexual violence, which is perpetrated largely by men, and which largely harms women and children.

As justice organizers, educators, advocates, abolitionists, and (in some cases) as survivors of violence, we engage in an analysis of the state's response to sexual and gendered violence with care. We view this moment of carceral expansion as an opportunity to map overlaps between queer and abolitionist politics and to support community-based responses to state and interpersonal sexual violence.

SEX OFFENDER REGISTRIES AND CARCERAL EXPANSION

Over 2.3 million people are now incarcerated in prisons and jails across the United States. This works out to one in every 99.1 adults. Compared to all other nations, the U.S. has the highest rate of imprisonment and the largest number of people locked behind bars. Disproportionately, they are people of color and poor people. Since the 1970s, incarceration rates have increased—not because of rising levels of violence or crime but because of (among other things) "three strikes" laws, mandatory minimum sentencing, and the war on drugs.

Canadian prison expansion has followed a similar trajectory. In 1986—just days after a similar announcement by Ronald Reagan—Prime Minister Brian Mulroney announced Canada's own war on

drugs. Prison populations exploded, necessitating the construction of new penal institutions across the country. Decades of overcrowding in the provincial and territorial systems also led to the construction of new prisons and additions to existing facilities. The criminalization of the survival economy accounts for an ever-growing proportion of the offenses for which individuals are incarcerated: in 2008–2009, over 90% of incarcerated women were serving time for prostitution, small theft (valued under $5,000), or fraud. Under the federal Conservatives, the Correctional Service of Canada's (CSC) annual budget has increased by $1.385 billion (86.7%), almost doubling since 2005–2006. As of June 2011, various provincial and territorial correctional authorities have announced plans for additions to existing facilities and the construction of twenty-two new prisons.[2]

Prison expansion in the U.S. and Canada is increasingly marketed as a response to the "worst of the worst"—those who commit acts of violence (generally sexual) against the "most innocent," white children. Over the last two decades, sex offender registries (SORs) and community notification laws have been one of the most visible fronts in the expansion of the U.S. carceral state. Public fears about "sex offenders" (SOs) during the 1990s coincided with the construction of supermax, or control-unit, prisons.[3] Although there is no evidence that these registries and notification systems reduce persistent sexual violence against children and women, the policing of public spaces like parks and school grounds have increased along with people's anxieties.

Throughout the 1990s, the U.S. federal government passed laws requiring states to develop SO registries, to increase community notification systems, and to integrate and standardize processes for tracking and identifying those convicted of sexual offenses. In 1996, in response to the abduction and murder of twelve-year-old Polly Klaas (1992) and seven-year-old Megan Kanka (1994) by two men with prior convictions for violent sexual crimes, the federal government passed Megan's Law. The law established a publicly accessible national sex offender registry that circulated information about known "sex offenders" across the nation. It also coordinated the then-emergent state registry systems.

SORs restrict employment, housing, and mobility—particularly in public and private spaces where children congregate. These laws have

been tested in and supported by the courts, and more punitive measures continue to be introduced; upheld by the U.S. Supreme Court in a 2005 decision, civil commitment laws have given law enforcement the power to incarcerate those convicted—even after the completion of their formal sentence. Encouraged by media coverage of child abductions, restrictions on convicted sex offenders increase despite the fact that most perpetrators of sexual and other forms of violence against children are family members.

Over the past ten years, there has been a steady push for a more aggressive national sex offender registry in Canada. Initially introduced as a provincial initiative in 2001[4] by the Harris Conservatives in Ontario, Christopher's Law was the political response to the rape and murder of an eleven-year-old boy by a man on statutory release. Under pressure from the provinces, the federal government followed suit in 2004 by establishing the National Sex Offender Registry. In 2007, a 62,000-signature petition was presented to the National Assembly in Québec demanding a province-wide and publicly accessible database. Tied to broader "tough on crime" policy shifts, the Conservatives introduced Bill S-2 (Protecting Victims from Sex Offenders Act) in the spring of 2010. The bill includes provisions that would make registration mandatory, give police preventative access, and require those recently-registered to provide DNA samples. The stated purpose of Bill S-2 is to "strengthen the National Sex Offender Registry and the National DNA Data Bank by enabling police in Canada to more effectively prevent and investigate crimes of a sexual nature." A federal attempt to coordinate emerging provincial registries, The National Sex Offender Registry has yet to solve a single crime.[5]

Despite a thirty-year low in Canadian crime rates[6] and little to no evidence of any rise in violence in Canada, the federal Conservatives introduced a schedule of reforms in 2010 that mirrors failed U.S. criminal justice policies: mandatory minimum sentencing, further criminalization of drug offenses, the elimination of pretrial "two-for-one" credits, and new prison construction. Child "protection" against alleged sexual predators is a central component of current criminal justice reforms in Canada. Bill S-2 and Bill C-22 (Protecting Children from Online Sexual Exploitation Act, which passed first reading in May 2010) are offered to

allegedly protect select children. Meanwhile, proposed changes to the Youth Criminal Justice Act will punish more young people. As always, the state's "protection" measures constitute after-the-fact responses and afford no prevention measures. We are thus compelled to question the intent and design of this kind of social policy.

As in the U.S., public fears of the "sex offender" have been leveraged to build the Canadian carceral state. After the Bloc Québécois voted *en masse* against Bill C-268 (which would impose a mandatory minimum sentence for those convicted of child trafficking) in 2009, the federal Conservatives mailed flyers to every resident in each Bloc Québécois riding. Under the headline "Your Bloc MP voted against the protection of children" (in French), the flyer depicted a dark, shadowy man leading a white child from a playground. Concurrently, other print advertisements suggested the Bloc was "soft on pedophiles." In the spring of 2011, the Ontario Progressive Conservatives promised that—if elected—they would make sex offenders wear GPS trackers and make the entire Ontario registry publicly accessible online. Alberta has already implemented a similar GPS tracking pilot project. These moves demonstrate the extent to which public opinion is amenable to highly punitive surveillance and policing where "sex offenders" are concerned. Campaigns for increased criminalization and prison expansion continue to succeed by framing the opposition as "soft" on crime, insensitive to the safety of children, and indifferent to the realities of sexual violence.

In the U.S., opposition to publicly accessible SORs (limited though it is) has been sparked by instances of vigilante violence against accused or convicted sex offenders, targeted harassment and outings, cases of mistaken identity, and limited but detailed investigative journalism that has chronicled the explicitly punitive restrictions on SO movement post-release. In Canada, notable opposition from either the institutional or grassroots left has yet to materialize. This is in large part due to the non-public nature of the Canadian registry, which has allowed it to enact much of the everyday surveillance and restriction of the American registry while avoiding public debates and opposition. By monopolizing mobilizations of disgust and pity, the Canadian state has effectively regulated and managed opposition to how sex offenses are criminalized and administrated.

QUEER INVESTMENTS

The push for the public registration of "sex offenders" evokes familiar queer histories. Many of the frameworks and strategies currently being used to detain, surveil, and punish "sex offenders" are well known by queer activists who have spent decades battling the policing and surveillance of street sex workers, bars and clubs, and bathhouses and other public sexual cultures. Policing in Canada has historically targeted queer people and continues to target sexually marginal and marginalized groups. When select white and affluent gays and lesbians ceased to be the overt targets of policing, and queer organizations moved on to other issues, anti-prison communities lost a formidable ally. As public memory of queer resistances to criminalization evaporated, our communities lost their critical assessment of what constitutes "dangerous sexual behavior." How are these designations made? And who is all this "protection" for?

Gay, lesbian, bisexual, and especially transgender, transsexual, and gender nonconforming communities continue to be overrepresented in the Canadian and U.S. criminal justice system, though this vulnerability is no longer (or rarely) the result of explicitly homophobic state violence. Today, prison justice and abolition activists—and queer organizers—struggle with both the implications of relentless prison growth and our diminished capacity to name, identify, and resist the social processes that underwrite this expansion. Because gay and lesbian community organizations have widely disengaged from criminalization, queers are less equipped to contend with shifting patterns of state violence and new articulations of "sex offenses."

QUEER HISTORIES

Historically, queers have been the targets of criminal persecution and registration. In many jurisdictions, non-reproductive homosexual sexual acts were *by definition* sex offenses and used to restrict access to employment, social benefits, parenting, immigration, and citizenship. Queer historian William Eskridge has reported how, in 1947, the California legislature "unanimously passed a law to require convicted sex offenders to register with the police in their home jurisdictions." Chief

Justice Warren requested that this law be extended to include those convicted of "lewd vagrancy" to ensure that as many homosexuals as possible were included. In 1950, the Federal Bureau of Investigation collected information—including fingerprints—for those charged with sodomy, oral copulation, and lewd vagrancy to create a "national bank of sex offenders and known homosexuals."[7]

However, homosexuals and other "sex offenders" were not uniformly targeted. As Eskridge reports, "in the 1930s, when only 6% of its adult male population was non-white, twenty percent of New York City's sex offenders were black," revealing who was—and continues to be—most vulnerable to policing and sexual surveillance.[8] In a 1965 case that received national attention in Canada, a Northwest Territories man named Everett George Klippert was charged and convicted on several counts of gross indecency for having consensual sex with several men. In his sentencing, he was deemed to be "an incurable homosexual" and therefore a "dangerous sexual offender" to be placed in indefinite preventative detention.[9]

These historical practices have become central to SORs and are also apparent in contemporary policing of marginal or marginalized sexual cultures. This is especially evident when considering how public notification and shaming—often under the guise of public (and, particularly, childhood) "safety"—are used to target and police sexually marginal social spaces and public sexual cultures. Throughout the early 1980s, hundreds of men in Canada and the U.S. were publicly outed after being caught having sex in public bathrooms, bathhouses, and other sites. Following the Toronto bathhouse raids of 1981, the names of men present during the raid were published in *The Toronto Sun* while police contacted their employers. After targeting a group of underage sex workers and their clients in 1994, police in London, Ontario held press conferences to expose a "sex ring" that "passed around boys." In response, the Homophile Association of London, Ontario accused the police of unfairly accusing men, engaging in double standards for gay sex, and promoting exaggerations, distortions, and fear-mongering.[10] Bar and bathhouse raids during the early 2000s (of which there were many) played out similarly.

Public notification and shaming are often legitimated by claims that they protect youth from sexual violence. Nevertheless, for youth

engaging in sex work and often for queer youth, protection is negated by the very mechanisms that purport to "protect" youth from sexual exploitation. In 2003, forty Montréal police officers raided Taboo, a gay club featuring stripping and frequented by sex workers and those interested in purchasing non-heterosexual sex. Police arrested and laid indecency charges against four customers and twenty-three young male strippers (including one seventeen year old). Raids of bars frequented by sex workers or that provide space for public sexual cultures are not exceptional in Canada; however the raid at Taboo is significant because it constitutes what Maria-Belén Ordóñez, a Toronto-based anthropologist, has called a "homophobic response that is mainly tied to young sex workers catering to older gay men."[11] The raids, their rationale, and the court proceedings that followed demonstrate how legal enforcement mobilized to protect youth in fact criminalized young people.[12]

FLEXIBILITY OF THE "SEX OFFENDER" CATEGORY

Under Canadian law, the formal "sex offender" designation has gradually been dropped from many sexual practices associated with queers; however, other non-normative sexual practices continue to designated in this way. Sexually deviant archetypes that represent "predatory" or "irresponsible" sexuality—often non-hetero-patriarchal and always deeply racialized—continue to be targeted for state regulation. These include the "welfare queen," the teenaged mom, the HIV+ person who "willfully infects" others, and the sex worker. While "homosexuals" may no longer be the central targets of social policies enforcing sexual normativity, the effects of this policing continue to be felt by many, including queers.

In the U.S., the criminal "sex offender" category is applied inconsistently. In 2010, sex workers in New Orleans were charged under a state-wide law that makes it a crime against nature to engage in "unnatural copulation" (committing acts of oral or anal sex). Conviction meant registration as an SO and having the words "sex offender" stamped on one's driver's license. Meanwhile, out of concern for the futures of the young people, the 3rd U.S. District Court of Appeals in Philadelphia ruled that "sexting" (distribution of pornography) did

not warrant felony charges, which would require registration as a sex offender if convicted.[13]

The increasing criminalization of HIV non-disclosure in Canada[14] also demonstrates the uneven and violent application of the "sex offender" classifications. From 1998 to 2011, a slate of charges—ranging from sexual assault to first-degree murder—were brought against HIV+ individuals for having failed to disclose their HIV status. These charges were overwhelmingly laid against immigrants, men of colour, sex workers, and (increasingly) gay men. Their names and photographs have routinely been published in newspapers, even prior to conviction. In 2008, Vancouver police blanketed the downtown core with posters featuring the picture of a sex worker who was merely suspected of having transmitted HIV. In Winnipeg in August 2010, police published a Canada-wide arrest warrant for a Sudanese man *suspected* of transmitting HIV to two women. And in Ottawa in May 2010, police issued a public warning about a gay man accused of non-disclosure during consensual sex and explicitly labeled him a "sexual predator." Many of the charges brought against HIV+ individuals for not disclosing their status during a sexual encounter—sexual assault, aggravated sexual assault, etc.—are grounds for registration on the Canadian SOR. While it remains to be seen to what extent individuals criminalized for non-disclosure will actually be added to the registry (as many of the cases are in progress), recently proposed reforms threaten to add almost all of those facing conviction under HIV-related prosecutions.

The trajectory of HIV criminalization—and, in particular, the tactics of public notification and shaming—reveals how recent legal shifts are firmly rooted in broader historical constructions of the "sexual predator." HIV criminalization exacerbates what geographer Ruth Wilson Gilmore has called "group-differentiated vulnerabilities" to criminalization and imprisonment and premature death.[15] In this way, it mirrors prior public panics about sex offenders and homosexuals, which were characterized by public naming, scapegoating, and widespread social vilification.[16]

Designation and registration of sex workers as "sex offenders," criminalization of sexual non-disclosure of HIV status, and appeals to highly punitive surveillance technologies to contain, monitor, and track

known "sex offenders" all resemble the ways in which queer sexuality has been policed and managed historically. While gay and lesbian communities may no longer be targeted explicitly, these communities continue to be subject to state violence and "sex offender" panic *as* sex workers, *as* HIV-positive people, and *as* those to whom the "sex offender" designation has been applied.

ERASURE

Registries function to obscure the real sources and sites of sexual violence. Overwhelmingly, the perpetrators of sexual violence against women and children are not strangers. The focus on "stranger danger" functions to displace attention from the real harms: poverty, colonialism, and heteropatriarchy. As anthropologist Roger Lancaster summarizes, "a child's risk of being killed by a sexually predatory stranger is comparable to his or her chance of getting struck by lightning (1 in 1,000,000 versus 1 in 1,200,000)."[17] Despite this reality, U.S. legal scholar Rose Corrigan points out that feminist organizers were largely silent during the implementation of national registries in the U.S. and Canada. In her estimation, "the most threatening aspects of feminist rape law reform—its criticisms of violence, sexuality, family, and repressive institutions—are those that supporters of Megan's Law erase in rhetoric and practice."[18] The "worst of the worst," if there is such a thing, is to be found in our own patriarchal families and neighbourhoods.

In addition to the reality that perpetrators of violence targeting children are rarely strangers, there is no evidence that registries and community notification systems protect children. In Canada, where SORs are non-public and used overwhelmingly to investigate crimes that have already been committed, they cannot—by their own logic—prevent any crime. Criminologists who study these registries have argued that there is no evidence that they have been successful and that their expansion has been "based on a mere verisimilitude of empirical justification."[19] Creating safer and strong communities requires that we challenge the expansion of these registries. By challenging mythic and manufactured sources of sexual violence, we are forced to confront sexual violence in its most widespread, everyday, and intimate forms.

THE CARCERAL STATE

An increase in criminalization means that those most vulnerable—including queers and those involved in survival economies like the sex and drug trade, people living with HIV, and those that challenge age of consent laws—will be caught up in the criminal justice system. More people in the system means more people subjected to racist, gendered, and homophobic judicial proceedings. Conviction means detention and confinement in institutions predicated on gender normativity, compulsory heteronormativity, and colonial and racial oppression. More people will become isolated from communities of affinity and origin and more will be exposed to epidemic rates of HIV and Hepatitis C in prisons that withhold the resources necessary for survival. Expansion of the carceral state also means increased exposure to state and structural violence through interlocking punitive systems like child protection services, immigration enforcement, psychiatric intervention, and related medical violence.

This deepened exposure to state violence also increases vulnerability to sexual violence. According to one U.S. study, 20 percent of inmates in men's prisons are sexually abused at least once while serving their sentence.[20] Among women at some U.S. prisons, the rate is as high as 25 percent. Violence also occurs in ineffective sexual offender "treatment" programs.[21] Not only does the state's claim to offer protection fall terribly short, it actively produces an array of new possibilities for gender and sexual violence.

MYTHIC CHILDREN

SORs are part of the carceral state's push toward a culture of child protection almost wholly focused on sexual innocence. Across the U.S., as select brown and black boys are moved into juvenile detention centers at age eleven, as queer youth are denied meaningful sexual health education, and as pregnant teenagers are pushed out of school, it's clear that "protection" is unevenly accessed. The laws across the U.S. that protect young children from sexual violence—Megan's Law, Jessica's Law, The Adam Walsh Act, the Amber Alert—almost uniformly refer to white children. Almost by definition, constructions of mythic sexual innocence make queers into threats (even in contexts where individual

lesbians and gays may be protected). Poll after poll demonstrates that the public perceives pedophilia to be the greatest threat to childhood safety. This perception is intimately linked to fear of the queer. As queer theorist Lee Edelman put it, "the sacralization of the child thus necessitates the sacrifice of the queer."[22] In a heteronormative culture that valorizes sexual innocence, non-normative sexualities are suspect, contagious, and thought to pose risks.

QUEER FUTURES/ABOLITION FUTURES

SORs and the moral and political anxieties they foster are central pathways enabling carceral expansion. The Harper government's recent "tough on crime" legislative changes focused on sex offenses provide yet another example of carceral expansion being enabled by "sex offender" anxieties. Coalitions between queers and prison abolitionists are needed now more than ever as lesbian and gay mainstream organizations restrict their focus to marriage and the military (in the U.S.) and sentencing enhancements for those convicted of hate crimes against gays and lesbians (in Canada). The state's focus on "sex offenders" opens a new front in the regulation of sexual deviance. Proceeding under a banner that effectively inspires loathing and fear, they obscure the historical links between current objectives and homophobic social policy and state violence. Elaborating these links is particularly urgent in the face of current efforts to expand the Canadian carceral state. Most centrally, prison expansion that includes U.S.-style SORs does nothing to make our communities stronger or to reduce or eliminate sexual violence.

Resistance to carceral expansion and SORs must come from a variety of institutional, community, and organizational forces. Organizing against prison expansion requires that we identify how queers are still being harmed by "sex offender" panics and analyze how sexually-related offenses are still being mobilized in the service of the carceral state. Organizing must also support the self-determination of survivors of violence and build accountability for perpetrators without encouraging carceral expansion. Below, we highlight three themes around which to organize these struggles. We believe they offer clear sites for organizing a broader and more effective movement

against sexual and state violence. There is other work happening; this list is neither representative nor comprehensive but comprises an assemblage of different models. We learn from a number of organizations doing pieces of this work, and we argue that linking these pieces together can provide a framework for transforming bankrupt notions of state '"protection."

1. *Direct support for youth (and others) doing sex work.* This work is currently being done by groups like Projet d'Intervention auprès des Mineurs-res Prostués-ées (PIAMP)[23] in Montréal and the Young Women's Empowerment Project in Chicago. These organizations support sexual and other forms of self-determination and autonomy, interrupt multiple violences faced by youth criminalized or otherwise marginalized, and challenge the ideas of "predatory sexuality" and childhood innocence that fuel prison expansion. Recognition of youth as potential sexual actors and broader support for sexual self-determination for youth disrupts the state's mobilization of childhood innocence to legitimize further violence and sexual regulation in the name of "protection."
2. *Engagement with sexual violence without turning to the state.* This work is currently being done by groups like Generation Five and the Storytelling and Organizing Project in Oakland and the Challenging Male Supremacy Project in New York. These organizations are working to build community-based reconciliation and develop mechanisms and practices of accountability for those that perpetrate harm. Specifically, they strive to build collective responses to harm that are rooted in queer, anti-racist feminism and that don't create or reproduce vulnerability to state and sexual violence. By examining the sites and sources of sexual violence, these projects offer tools for survivors, elaborate frameworks that connect interpersonal violence to state violence, and develop responses outside of the frameworks of state punishment. These responses are intended to be transformative for survivors, "bystanders," and those that perpetrate harm.

3. *Case support, individual advocacy, and direct support for individuals convicted under SO provisions.* This work is currently being one by groups like the National Center for Reason and Justice in Boston and the Prisoner Correspondence Project in Montréal. The advocacy of these organizations challenges the myth that criminalization actually functions to "catch" the "worst of the worst." Work of this nature exposes how the punitive structures of the carceral state do little to address persistent sexual and gender-based violence. It also shows how socially sanctioned practices of vilification and scapegoating often increase sexual and gender violence through overexposure to imprisonment.

These organizations offer us models for imagining and building a cross-community coalitional politics to confront claims that imprisonment is an effective response to sexual violence. They build processes that contend with sexual and intimate violence while rejecting how the state "sees" and responds to violence and conceives of sexual "crimes." Together, they offer us various points of departure from which to imagine and build abolition futures.

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