

# In a Time of Broken Bones

A Call to Dialogue on Hate  
Violence and the Limitations  
of Hate Crimes Legislation

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*By Katherine Whitlock*

A JUSTICE VISIONS WORKING PAPER

American Friends Service Committee



2001

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**A**s long as we are on earth, the love that unites us will bring us suffering by our very contact with one another, because this love is the resetting of broken bones. Even saints cannot live with saints upon this earth without some anguish, without some pain at the differences that come between them . . . Hatred recoils from the sacrifice and the sorrow that are the price of this resetting of broken bones. It refuses the pain of reunion.

— Thomas Merton, “A Body of Broken Bones,”  
*New Seeds of Contemplation*

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*The American Friends Service Committee, founded in 1917, is a Quaker organization whose work for social justice, peace, and humanitarian service is carried forward by people of many religious and spiritual traditions. We seek to give practical expression to the belief that there is that of God, or sacred spirit, in every person and in all peoples. Our programs are rooted in the radical faith that the power of love, given tangible expression in our social, economic, and spiritual struggles, can overcome violence and injustice.*



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— *Kay Whitlock*  
*Missoula, Montana*

## EXECUTIVE SUMMARY

# In a Time of Broken Bones:

## A Call to Dialogue on Hate Violence And the Limitations of Hate Crimes Legislation

The first hate crimes laws established race, national origin, and religion as protected categories. Today, LGBT people, women, and people with disabilities are also calling for attacks against them to be recognized and condemned as hate crimes. Partly in response to such calls, many civil rights, progressive, and faith-based organizations have come together to work for passage of new federal and state hate crimes legislation, as well as expansion of existing laws. In recent years, in the wake of a series of horrific slayings, these efforts have gained a special sense of urgency.

Hate crimes include not only murder but many other forms of harassment, intimidation, and violence. In the United States, attacks are directed most often against people of color; lesbian, gay, bisexual, and transgender (LGBT) people; immigrants; Jews; women; and people with disabilities. Such violence is widespread and demands a powerful public response.

When the possibility of peaceful and compassionate relationships among different groups in our society is shattered by hate violence, we are right to call for the healing presence of justice. *But what is justice in a time of broken bones?*

AFSC believes it is necessary to ask some difficult questions about hate crimes legislation. If our goal is to confront hate violence effectively, what forms of law and accountability can help us to do so? What types of legal mechanisms can encourage us to work together, across our differences, to end these violent expressions of racism,

sexism, homophobia, anti-Semitism, and other forms of oppression? What approaches will ultimately work against these ends?

*In a Time of Broken Bones* presents a loving and provocative challenge to friends and allies to consider the limitations and probable unintended harmful consequences of many hate crimes laws as they are currently formulated — consequences that compound rather than counteract the systemic violence of racism, misogyny, homophobia, poverty, and economic exploitation. This AFSC working paper examines key elements of hate crimes laws, particularly the central role of penalty enhancements. *In a Time* goes far beyond a simple critique of hate crimes laws, however, lifting up a new — and admittedly still evolving and incomplete — vision of “healing justice,” rooted in an ethic of interdependence, nonviolence, radical generosity, and openheartedness.

The call to love and justice is a joyous call to resistance and transformation. We are called to resist unjust beliefs, structures, and practices in ourselves, our communities, and our society. We are called to transform by example the corrupt ethic of dominance and supremacy that declares some categories of people superior or subordinate to others — and in so doing justifies the evils of racism, sexism, and heterosexism.

The ideas presented in this working paper have grown out of a series of internal discussions at AFSC, in which we have struggled to clarify our concerns and consider how best to raise them. In so doing we have drawn on our long-term pro-

grammatic experience in such areas as criminal justice, economic justice, immigrants' rights, youth action, indigenous peoples' struggles for sovereignty and human rights, and LGBT movements seeking rights and recognition. Our understanding, we recognize, is unfinished and evolving. Our hope is to initiate a constructive dialogue among a broad community of friends and allies who are concerned with the pressing problems of hate violence and its links to the structural violence of our society.

*In a Time of Broken Bones* argues that hate violence must be understood within a larger context of social and economic changes, uncertainties, and anxieties. Key features of this larger context include the shift of public spending away from investment in human needs and civic infrastructure to prisons, policing, and militarization; the increasing transfer of public resources into the hands of private interests with little or no accountability to the communities they serve; and the increasing institutionalization of social and economic inequality.

Also noted is the right's strategic use of scapegoating and "wedge politics," particularly homophobia and attacks on women's rights, to obscure a broader assault upon the entire legal framework of civil rights. Similarly, attacks on due process rights and other constitutional protections target communities of color, both immigrant and U.S.-born, utilizing the coded imagery of "illegals" or the "war on drugs." These larger trends threaten individuals, communities, cultures, and the very possibility of democracy.

*In a Time* argues that creative forms of multi-issue, cross-constituency organizing are necessary to uproot hate violence at its source, mount an effective community-based response when it does occur, counter the lethal efficacy of the politics of polarization, and strengthen movements for social and economic justice at their community base. Hopeful examples of these emergent approaches, in AFSC and beyond, are lifted up.

Three main themes are explored in this working paper:

### 1. AFSC believes that most hate crimes laws

**are seriously flawed by their emphasis on penalty enhancements, which produce consequences antithetical to the good intentions of their proponents.** In every area of criminal justice policy, penalty enhancements, like mandatory minimum sentences, three-strikes laws, and similar measures, are applied in an unjust and disproportionate way against people of color and poor people. As a result, over the past thirty years they have fueled a broad social process of mass incarceration, which falls most heavily on communities of color, particularly youth. Further, law-enforcement authorities such as police or prison guards are themselves frequent perpetrators of hate crimes, a systemic reality that is neither acknowledged nor addressed by current hate crimes legislation.

We believe that ignoring the deep-seated structural violence of the criminal justice system is a shortsighted and misguided strategy. We agree with proponents of hate crimes legislation that hate violence must be named and that perpetrators must be held accountable for their actions. Our work gives us a keen appreciation for the importance of law in holding both individuals and institutions accountable to baseline standards of humane, just, and democratic conduct. We also affirm the role of the federal government in protecting civil and human rights where state governments are unwilling or unable to do so or are themselves violating those rights.

Nonetheless, AFSC's engagement with the U.S. criminal justice system over the past fifty years leads us to the inescapable conclusion that this system is itself a key institutional perpetrator of violence and hatred and is responsible for massive abuses of civil and human rights. We believe that attempting to address hate violence in ways that reinforce the structural violence of this system will only fuel the cycle of violence, hatred, and polarization.

Finally, we note that many, if not most, perpetrators of hate violence are young men under the age of thirty, a great many under the age of twenty-five. AFSC believes that our society's response to hate violence must be based on an attempt to reclaim youth and young adults, not "throw them away" into a system permeated by violence and corruption. Long, harsh periods of



incarceration, in which maintenance of meaningful family and community ties is rendered difficult or impossible, offer youthful perpetrators of hate violence little opportunity to rebuild their lives.

**2. AFSC understands justice as the resetting of broken bones.** Any approach to justice must be judged by the integrity of its means and ends. Do the justice practices with which we respond to hate violence create an environment for healing from the harm caused by violence and redeeming the lives of those affected by it? Do they recognize the rights, dignity, and sacred worth of all parties? Do they further the creation of loving, just, and sustaining community?

The existing criminal justice system relies on isolation, breaking of community ties, and violent abuse to dehumanize and destroy those who fall under its control. An authentic commitment to justice, by contrast, should call us to a new, proactively nonviolent vision of mutual accountability and engaged relationship. AFSC understands justice in the wake of hate violence as a call to do the sustained work over time necessary to foster, where possible, the creation of “right relationships” among the victims, the perpetrators, and the larger community.

Such a vision of justice would require us to:

- Openly identify the harm and dissolve any atmosphere of threat that keeps it from being named and confronted. Similarly, to help dissolve any atmosphere of guilt, shame, or self-accusation felt by victims who mistakenly believe they brought on the attacks themselves.
- Protect victims from immediate danger and provide sustained emotional, physical, and economic support and assistance.
- Hold accountable the individuals, public and private institutions, and appointed and elected officials who may be implicated — whether because they directly caused the harm, contributed to a climate of hate, or failed to take appropriate steps to prevent acts of violence.
- Create a community environment in which those sectors of the community that are most directly affected by hate violence can live in peace and dignity, without intimidation or the threat of

violence or economic reprisals. AFSC believes that community recognition and affirmation of the civil and human rights of each person and all peoples is an essential part of creating such an environment.

- Support people who have committed acts of violence to understand the physical, emotional, cultural, spiritual, and economic consequences of the harm they have caused; to accept responsibility for their actions; and to rebuild their lives in ways that create strong and positive ties to the larger community, whether or not they are incarcerated.
- Support people who commit acts of violence to take steps to repair or atone for the harm they have caused, with such steps being determined in a way that includes the input of the victim, the offender, and the larger community. Such acts of repair should cause no further harm or destruction, psychologically or otherwise, to offenders or anyone else.
- Create opportunities for dialogue, direct or indirect, between victims and offenders and foster the establishment of right relationships between them in the wake of the harm.
- Strengthen the ability of the larger community to address underlying social, economic, and spiritual conditions that encourage acts of violence, including the complicity of the community in creating such conditions.
- Strengthen the capacity of the larger community to identify and rectify any unintended harmful consequences of its justice practices.

This evolving vision of justice by no means discounts the power of law to serve as an instrument for the protection of human rights and dignity, but neither do we place all of our hopes in the law. Justice practices that do not have the confidence, support, and active participation of the communities they serve can never bring about the “healing justice” that we are calling for. We seek to challenge communities to take greater responsibility for the creation of law and justice so that the dialogue between community and government is engaged, mutual, creative, and ongoing.

The existing criminal justice system, based on a vision of justice as punishment and retribution, is an essential part of a broader culture of domination that requires the perpetuation of inequality

and violence. In the end, this constricted vision has nothing more to offer us than a world consumed by policing: a world in which the semblance of security rests on exclusion. In such a world, while we do not even know our neighbors, we are deeply suspicious and resentful of them nonetheless. We will do anything, permit anything, in exchange for the promise of protection: for ourselves, our value systems, and our possessions. We will willingly sacrifice the human rights and even the lives of others, if we are led to believe that is what it takes.

A different understanding of the meaning of justice, based on a culture of love and inclusion, is urgently needed. To that end, *In a Time of Broken Bones* explores with particular care the vision of restorative justice (also known as distributive justice, transformative justice, or under various other names). Such a vision, we believe, contains immense promise, and many of its basic concepts help point the way to healing justice. Too often, however, the initial positive vision is overtaken by “pragmatic” compromises that leave the violent and coercive foundation of the criminal justice system intact. The proliferation of reform efforts that reduce restorative justice concepts to a mere embellishment has provoked deep-seated skepticism and mistrust among those who suffer the greatest violence and abuse at the hands of the criminal justice system. We do not offer an “answer” to this dilemma, but pose it as a contradiction that demands further exploration and dialogue before it can be resolved.

We stand on trembling ground as we lift up our hopes and concerns for this transformed approach to justice. The contradictions are apparent. The system as it exists is corrupt and founded in violence. Healing justice practices have not yet come into being in a sustained way. AFSC cannot accept the premises of the current system of retributive justice, but neither can we refuse to engage with it.

### **3. The AFSC believes that redemptive and healing justice practices must be rooted in the**

**communities in which we live.** Hate violence calls the question on the ideal of inclusive community, because it sheds light on how the dominant or majority segment of a community acts toward less powerful groups. Hate crimes are committed by specific individuals, but they target those within a community who are seen as expendable or unworthy. In this sense, not only the individual who commits an act of violence but the entire community is implicated in hate violence — and so the community must also help to heal it. *In a Time* seeks to offer a more nuanced exploration of the dynamics of hate violence, including its role in the displacement of class, gender, and racial anxieties and antagonisms.

*Only by shouldering one another's burdens of injustice along with our own can we transform the curse of fear, hatred, and human brokenness that afflicts our society into the blessing of just, generous, and compassionate community.* Organizing “anti-hate” rallies or creating programs promoting tolerance and appreciation for diversity is not enough, so long as power and privilege continue to be inequitably distributed and used to deny rights and recognition. *In a Time* speaks to the transforming possibilities of love, generosity, and justice in a community context, possibilities that arise when suffering is not ignored, but is met with spiritual as well as political solidarity and sustained community action.

*AFSC believes that God calls us not only to seek justice, but to be justice, and we understand justice to be the societal expression of love.* We believe that love and justice must come to replace fear and insularity. We are called to work in partnership with many others to replace the corrosive politics of fear, greed, and resentment — which seem so firmly in the ascendant — with compassionate and emancipatory practices rooted in the moral vision and ethical integrity of spiritually centered nonviolence. This is how we are called in our own day to follow the ancient practice, found in every major spiritual and ethical tradition, of transforming adversity into compassion, compassion into love, and love into justice.

— — — — — *Introduction* — — — — —

# The Call to Love and Justice

To think of hate violence is to think of James W. Byrd, Jr., an African American from Jasper, Texas, dragged behind a pickup truck to an agonizing death by dismemberment in 1998. Or Matthew Shepard, a young gay man, brutally pistol-whipped and left to die on a fence outside of Laramie, Wyoming that same year.

Other hate-motivated killings are less widely known, but equally horrific: Jessy Santiago, a gay cross-dresser from the South Bronx, beaten with a tire iron and stabbed to death with a box cutter, screwdriver, and knife, by a man who had earlier threatened to “kill that fag.” Ly Yung Cheung, nineteen years old and pregnant, decapitated when pushed in front of an oncoming subway train by a public school teacher with a “phobia toward Asians.” A shy and unpopular fifteen-year-old girl with a learning disability, eager to make friends, tricked by some classmates into letting them place a noose around her neck, hanged, then beaten to death with a rock in Pennsylvania. A “nameless” Mexican worker found dead in the Arizona desert, his neck deeply scarred by rope burns, during an outburst of anti-immigrant violence by self-proclaimed vigilantes.

Hate violence includes not only murder, but many other forms of harassment, intimidation, and assault. In the United States, such attacks are mainly directed against people of color; lesbian, gay, bisexual, and transgender (LGBT) people; immigrants; Jewish people; women; and people with disabilities. Over the years, community activists and law-enforcement officials have docu-

mented countless incidents affecting many vulnerable communities (*see box page 12*).

When the possibility of peaceful and compassionate relationships among different groups in our society is shattered by hate violence, we are right to call for the healing presence of justice. *But what is justice in a time of broken bones?*

Since the 1980s, many civil rights, progressive, and faith-based organizations have come together to work for the passage of hate crimes laws. The first such laws established race, national origin, and religion as protected status categories. Today, LGBT people, women, and people with disabilities are demanding that attacks against them also be recognized and condemned as hate crimes. In recent years, in the wake of a series of widely publicized slayings, campaigns to pass new laws and strengthen existing ones have gained a special sense of urgency.

The American Friends Service Committee (AFSC) believes that it is necessary to ask some difficult questions about hate crimes legislation. We who struggle against hate violence must be clear about what we are asking for — and what we are getting — when we demand justice. Real safety can never be purchased at the expense of human rights and human dignity.

In this working paper, AFSC urges our friends and allies to consider the broader social, political, and economic context from which hate crimes legislation emerges. If our goal is to confront hate violence effectively, what forms of law and accountability will help us to do so? What

types of legal mechanisms can encourage us to work together, across our differences, to end the violence of poverty, racism, sexism, homophobia, and other forms of oppression? What approaches will ultimately work against these ends? (For a summary of hate crimes laws, see Appendix A, “Key Elements of State Hate Crimes Legislation,” and Appendix B, “Existing and Proposed Federal Hate Crimes Legislation.”)

In opening this discussion, we emphasize from the outset that we believe hate violence must be named and confronted, and that those who commit acts of violence must be held accountable. Our work gives us a keen appreciation for the importance of law in helping to hold everyone in

our society accountable, including public officials and institutions as well as private individuals. Nor do we see police officers and other law-enforcement officials as enemies; they, too, are part of our communities. We likewise affirm the role of the federal government in protecting civil and human rights where state and local governments are unwilling or unable to do so.

Nonetheless, our extensive engagement with the U.S. criminal justice system over the past fifty years prevents us from closing our eyes to the pervasive violence of this system. Rhetorical calls to “get tough on crime,” enshrined in policies such as penalty enhancements, mandatory sentences, and the like, have not led to greater public safety

## The Tip of the Iceberg: Incidence of Hate Crimes

The real incidence of hate-motivated violence is unknown. It is our experience, however, confirmed by community-based activists who help collect hate violence data, that the reported violence is only the tip of a very large iceberg.

Hate-motivated violence goes unreported for many reasons. Many victims do not trust law-enforcement authorities to help them, fearing that the police will respond with insensitivity, indifference, or outright hostility. Reports of hate violence data collected by community-based organizations indicate that police or prison guards are often the perpetrators of harassment, intimidation, and violence.

Victims often fear that reporting the crime will trigger a repeat attack or that prosecution will expose the victim to a

second round of legal assault in the courtroom. Many people say that they don't believe the offenders will actually be prosecuted, or that a conviction will result if they are. They fear the court is stacked against them.

Most chilling is the sense of too many victims — especially women and children — that they somehow invited or deserved the attack, or that threats, intimidation, or assault are so normal in their lives that they do not understand it as a crime.

Regardless of the limitations of the available data, it is sobering to review data from the Federal Bureau of Investigation (FBI) for 1999, the most recent year for which information is available. Drawing its data from voluntary reports by 12,122 law-enforcement agencies in 48 states and the District of Columbia, the FBI reported that more than half the 7,876 hate

crimes committed in 1999 were motivated by racial prejudice. People of African descent were most likely to be targeted for these crimes; almost two-thirds of such crimes were committed by white people.

Religious bias accounted for 1,411 crimes, with anti-Jewish bias accounting for more than 1,000 of them. Crimes motivated by bias on the basis of sexual orientation accounted for the third highest incidence in 1999. Data on disability-related hate violence is fairly new: it was first collected in 1997. In 1999, 19 such crimes were reported.

Of the total number of reports, intimidation was the most frequently reported hate crime (35 percent). Vandalism and destruction of property accounted for 29 percent. Simple assault accounted for 19 percent, and aggravated assault

or more effective redress for victims of crime. Rather, such policies have brought about a massive increase in incarceration, falling most heavily on communities of color and poor communities, and especially on young people in these communities.

Hate violence exposes our society's failure to create inclusive communities, because it sheds light on how the dominant or majority segment of any given community behaves toward less powerful groups. Hate crimes are committed by specific individuals, but they target those within a community who are seen as unworthy or expendable. In this sense, it is not only the individual who commits an act of violence who is implicated in hate violence — the community

itself must also claim its measure of responsibility.

As currently formulated, hate crimes laws assume unquestioningly that vulnerable populations victimized by hate violence should look to the U.S. criminal justice system for protection and redress. We propose something entirely different: the rooting of redemptive and healing justice practices in the communities where we live, work, and worship.

AFSC believes that all of us must stop locating the problem of hate violence outside of ourselves. Each and every one of us is implicated (although seldom intentionally) in the violence of the reducing people to the "other": the violence of "us and them."

accounted for 12 percent. Seventeen persons were reported murdered as a result of hate-motivated violence in 1999, with racial bias motivating nine of those killings; religious bias, two; sexual orientation bias, three; and ethnicity/national origin bias, three.

Data from community-based anti-violence advocacy groups may differ somewhat from FBI statistics, usually indicating a higher incidence of hate violence. In 1999, for example, the National Coalition of Anti-Violence Projects (NCAVP) reported 1,965 anti-LGBT incidents in just 13 cities, states, or regions across the United States. Further, NCAVP has noted that the ferocity of anti-gay and anti-transgender attacks has been increasing, pointing to a 13 percent increase in murder victims (from 26 to 29) between 1998 and 1999.

The Anti-Defamation League (ADL) and some of its local affiliates document anti-Jewish harassment and violence in much greater detail, including the kind of degrading and demeaning harassment that is not necessarily criminal in nature.

GenderPac documents violence against transgender persons; data on such violence is not collected or reported by the FBI. The National Asian Pacific American Legal Consortium reports on bias-motivated violence directed against people of Asian or Pacific Islander descent, noting that law enforcement's failure to collect data adds to the perception that they are apathetic towards hate violence and insensitive to the concerns of minority communities.\* The American-Arab Anti-Discrimination Committee documents the hate violence, discrimination, and harassment (often by law en-

forcement authorities) experienced by Arab immigrants and Arab Americans, while the Uniform Crime Report does not, thereby rendering the experiences of this population invisible.

However incomplete, hate crimes statistics are useful in helping to break through widespread public denial that hate-motivated violence exists and that it constitutes a threat to the well-being of individuals and entire communities. AFSC strongly supports continuing efforts to hold law-enforcement authorities accountable for documenting and responding quickly and appropriately to hate violence.

\* See *Audit of Violence Against Asian Pacific Americans*, Fifth Annual Report, National Asian Pacific American Legal Consortium, Washington, DC, 1997.

The discussion in these pages seeks to clarify AFSC's critique of hate crimes legislation and to offer our vision of an alternative. Part I focuses on hate violence in the contemporary United States, situating it within its broader social, political, economic, and spiritual context and reviewing the strengths and limitations of current hate crimes laws. Part II takes a closer look at the U.S. criminal justice system, examining how it works to reinforce rather than counter hate violence.

In Part III, we seek to lift up an alternative (and admittedly incomplete) vision of justice that offers the possibility of deep healing for all who are affected by hate violence. Finally, in Part IV, we speak to the transforming possibilities of love, justice, and generosity in a community context, possibilities that arise when suffering is not ignored but is met with spiritual as well as political solidarity and sustained community action.

This working paper has grown out of a series of internal discussions at the Service Committee over more than a year, in which we have struggled to clarify our concerns and determine how best to raise them. In so doing, we have drawn on our programmatic experience in such areas as criminal justice, economic justice, immigrants' rights, youth action, indigenous peoples' struggles for sover-

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The call to love and justice is a joyous call to resistance and transformation. We are called to resist unjust beliefs, structures, and practices in ourselves, our communities, and our society. We are called to transform by example the corrupt ethic of domination and supremacy that declares some categories of people superior or subordinate to others — and in so doing justifies the evils of racism, sexism, and heterosexism.

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eignty and human rights, and LGBT movements seeking rights and recognition.

Our understanding, we recognize, is unfinished and evolving. We expect to be challenged; we expect to learn. We most certainly do not pretend to have all the answers. The just and beloved community we seek to create is one that builds, not burns, bridges — including bridges to those with whom we disagree.

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AFSC believes that God calls us not only to seek justice, but to be justice, and we understand justice to be the societal expression of love.

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In countless ways, contemporary society urges us to draw sharper and sharper lines to separate “good” (worthy) people from “bad” (unworthy) ones; to make distinctions between those who are entitled to basic rights and recognition and those who are expendable. Implicit in the politics of polarization and resentment is the fraudulent message that there isn't enough to go around: not enough civil and human rights; not enough social and economic well-being; not enough dignity; not even enough room in our churches, meeting houses, synagogues, sanghas, and mosques. We practice endless forms of human quality control, letting this one in, shutting that one out.

We believe that the central challenge of our times is to replace this climate of fear and insularity with a vision of love and justice. We are called to work in partnership with many others to replace the corrosive politics of fear, greed, and resentment — which seem so firmly in the ascendant — with compassionate and emancipatory practices rooted in the moral vision of spiritually centered nonviolence.

————— *Part I* —————

# “Us and Them”: Hate Violence and Injustice

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Until those heifers came,  
this was a peaceable kingdom.

— Toni Morrison, *Paradise*

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**H**ate violence touches all of us, whether or not we acknowledge it. It permeates the environments in which we live, raise families, work, and seek spiritual sustenance. To the extent that it is tolerated, denied, or ignored, it leads to the spiritual and moral corrosion of individuals, families, institutions, communities, and governments.

Some have suggested that all crime is terrible, and therefore all crimes are hate crimes; this formulation, we believe, obscures the fundamental nature of hate violence. Hate violence is not an expression of personal prejudice or a volatile temper; it involves the use of threats and force to keep oppressed, vulnerable, or marginalized groups “in their place.” It doesn’t arise in a vacuum, but is an inevitable, if extreme, expression of the kind of “ordinary” violence that surrounds us: the structural violence of institutionalized racism, sexism, homophobia, and other forms of oppression.

Groups at the far right of the political spectrum, such as the Family Research Council (FRC), have vigorously opposed all hate crimes legislation, claiming that hate crimes are “a manufactured crisis.”<sup>1</sup> Most hate crimes, in FRC’s words, “are not violent crimes but rather ‘simple assault’ or

‘intimidation.’ Simple assault means no serious injury occurred, and no weapon was used.” Such arguments use pointedly casual language to trivialize human suffering and dismiss the complicated history of hate violence. In reality, the violence of hatred takes many forms, surging at different times in response to complex social, cultural, economic, political, and religious forces.

Hate violence seeks to terrorize, hurt, or destroy that which it despises or fears; it seeks to crush that which it cannot control. It has been part of U.S. culture since the arrival of the first European colonists. Anyone who enters AFSC’s national office in Philadelphia passes by a sculpture of Mary Dyer on the way in. She seems a perfect image of spiritual serenity: a seventeenth century Quaker woman sitting in silent conversation with God, her eyes downcast, her hands folded neatly in her lap. But Mary Dyer was hanged on Boston Common by the prevailing religious authorities of her day, because she insisted on remaining true to the leadings of God as she experienced them. She was only one of many people, Quakers and others, who suffered this fate during the European colonization of North America — because their religious views and practices did not conform to the dominant faith of their day.

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<sup>1</sup> See “Talking Points: ‘Hate Crime’ Laws Mean Unequal Protection,” on the Family Research Council website ([www.frc.org/papers/infocus/](http://www.frc.org/papers/infocus/); paper No. 1F99I1 in the archives, dated Oct. 1999).

On a nineteenth century Denver stage, hate violence was a public exhibit of “trophies” taken from “vermin” — that is, the severed heads of Arapaho and Cheyenne people massacred by U.S. soldiers at Sand Creek. At another moment, in another place, it was the “strange fruit” of white supremacy: African American bodies hanging from trees, while white crowds gathered around, enjoying refreshments and buying postcards, when lynchings were a very public form of entertainment.

Hate violence intensifies during periods of significant social, demographic, or economic change. It may be sparked when new groups — immigrants, people of color, “out” LGBT people, or people with disabilities — become more visible within a previously homogeneous community. It may erupt during moments of geopolitical conflict; harassment and hate violence against Arab immigrants and Arab Americans, for example, surged during the Gulf War.

## Civil Rights and Hate Violence: A Complex History

The Civil Rights Movement represented a historic challenge to the evils of segregation and the Jim Crow laws that enforced it. The movement brought to light the massive violence employed by public and private interests to keep African Americans in their place, denying them the right to vote and other civil rights. Throughout the 1960s and 1970s, this movement served as a model and inspiration for other communities of color and other liberation movements, as well as inspiring many white people to stand against racism.

During the Civil Rights Movement, countless African Americans in urban and rural communities throughout the South risked their livelihoods and their lives to assert their humanity in the face of overwhelming opposition. Their courage, and their achievements, transformed not only their own communities but also the political, cultural, and legal structures of our entire society.

Today, the brutal realities

of that time are often revised into a hazy tale of how individual prejudice and ignorance ultimately gave way to a more egalitarian, colorblind society. This story is sentimental, comforting, and false.

The true story of the Civil Rights Movement is a story written in blood: a story of children, youth, and adults braving the violence of lynching, assassination, rape, bombs, economic retaliation, and unrelenting harassment in order to exercise their most basic rights. Of ordinary women and men coming together to resist the systemic violence of white supremacy by lifting up a new vision of justice. The opposition they faced was certainly reflected in individual bigotry, but it was ultimately rooted in unjust power relations.

Among the fruits of this movement are the civil rights laws emerging from that era, laws that helped to overturn Jim Crow. The struggle is far from over, however, and efforts to undermine civil rights laws continue today.\*

It is important to remind ourselves of this history: of how the law was used first to oppose and later to advance the freedom struggle of African Americans and others seeking basic rights and recognition. Those in power not only tolerated but often perpetrated crimes against Black people. As the movement grew in power, the law became an important tool in holding those who had committed such crimes accountable.

In 1968, the first federal law was enacted that addressed crimes directed at individuals because of their race, color,

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\* See, for example, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*, U.S. Commission on Civil Rights, Washington, DC, Feb. 2001. This report documents in detail uneven enforcement of civil rights laws, including voting rights laws; entrenched patterns of residential and school segregation; and inequitable treatment of African Americans by banks, other lending institutions, county Farm Service offices, and the U.S. Department of Agriculture.



While murder is the most wrenching expression of hate violence, death or injury need not be present to cause great harm. Some of the effects of hate violence may not be visible at all, as survivors struggle with self-loathing, depression, paralyzing anxiety, and sustained rage. Psychologists confirm that it often takes victims longer to recover from hate crimes than from other types of assaults, since the violence goes to the heart of “who I am.”

## Mixed Blessings: The Promises of Hate Crimes Legislation

Most supporters of hate crimes laws assume that they will solidify and expand the gains of the Civil Rights Movement of the 1950s and 1960s, helping to strengthen both the legal framework of civil rights law and the vision of beloved community that stood at the heart of the movement. The history of hate crimes legislation, however, is far

religion, or national origin (18 U.S.C. §245). The purpose of this law was to prohibit interference in such activities as voting, attending public school, using federal or state services, using carriers in interstate commerce (buses, trains, and airplanes), or enjoying goods, services, or facilities offered as public accommodations.

More than a decade later, in 1979, the state of Massachusetts passed a law addressing bias-motivated violence committed on the basis of race, ethnicity, and religion, with provisions for civil and criminal penalties, data collection, and training for law enforcement.

Two years later, in 1981, the Anti-Defamation League (ADL) created model hate crimes legislation emphasizing penalty enhancements. With various modifications, additions, and deletions, the ADL's model has served as the basic template for many state hate crimes laws. Federal law now also authorizes penalty enhancements for hate crimes.

Throughout the 1980s, the push for hate crimes laws gained momentum; additional status categories such as gender, mental or physical disability, ethnicity, or sexual orientation were added to some state bills. During this period, as the feminist movement grew increasingly mainstream, community-based programs started by grassroots womens groups evolved into agencies providing supportive services for victims of rape, sexual assault, and domestic violence. A vibrant movement for LGBT rights and recognition was coming of age. The movement for disability rights was gaining momentum.

Each of these communities was struggling for social and political equality. In the legislative arena, each was advocating for protection of their basic rights through civil and criminal law. Each knew the devastating terror of hate violence and had experienced the indifference of law-enforcement authorities to the violence and discrimination they suffered. Hate crimes laws

seemed tailor-made to help send a message that “our lives matter, too.” Increasingly, less powerful and marginalized groups began looking to crime bills to support their claims to civil and human rights.

In 1990, the federal Hate Crimes Statistics Act was passed; a year later, the state of Wisconsin adopted a hate crimes law incorporating the penalty enhancement concept. In 1994, the federal Hate Crimes Sentencing Enhancement Act was incorporated as a section of the Violent Crime Control and Law Enforcement Act. The Violence Against Women Act, also first enacted as part of the 1994 crime bill, also provided for certain criminal penalties. Efforts to strengthen state laws by expanding protected status categories and adding penalty enhancements, to pass new state laws where none exist, and to strengthen federal hate crimes legislation have continued through the present day.

from simple, and hate crimes laws are no substitute for legal protections for civil and human rights (*see box page 6*).

On the positive side, hate crimes laws push communities and established authorities toward acknowledging the reality of hate violence and reinforcing a common social expectation that it will not be tolerated. In this sense, such laws represent an attempt to bring the law to bear on the side of oppressed people.

At the same time, many aspects of these laws deserve careful scrutiny, as they have significant potential to lead to unintended harmful consequences. Some of the dangers we see are detailed further in the paragraphs below, along with certain positive aspects that we believe deserve greater emphasis.

***Penalty enhancements*** — In almost every instance, the underlying offense of a hate crime — whether threat, malicious intimidation, assault, or murder — is already subject to criminal penalties. Penalty enhancements, which almost invariably involve longer sentences, have been widely favored as the best way to signal the seriousness of hate violence and to recognize the harm it does to the larger community as well as the individual victim.

In an ideal world, such an approach might be defensible. In the real world of the U.S. criminal justice system, however, whenever penalty enhancements have been enacted to underline the seriousness of certain types of offenses, they are not applied against those responsible for causing the greatest harm. Instead, they are overwhelmingly applied to defendants with the fewest resources: the least access to counsel, the least sophistication about the system, and, not coincidentally, the least social status (that is, the least human value) in the eyes of prosecutors, judges, and juries. In other words, poor people, people of color, and youth.

Proponents of hate crimes legislation argue that lengthier sentences will “send a message” that hate violence will not be tolerated, thereby producing safer communities. Similar arguments have fueled the dramatic expansion of prison sentences for a multitude of other offenses, bringing about the current massive increase in the incarcerated population. Numerous empirical studies, however,

have demonstrated that longer sentences do not result in safer streets.<sup>2</sup> There is no reason to assume that this finding would vary in the case of hate crimes. Penalty enhancements are equally if not more likely to make our communities more dangerous, given that current conditions in U.S. prisons are so violent and dehumanizing that many people return to the community more filled with uncontrollable rage than when they entered the system.

Those who favor penalty enhancements have suggested that the effect of such provisions will be to incarcerate white supremacists for longer periods of time. The picture is not so simple, however. For hate crimes, no empirical data is available that correlates sentencing outcomes with the race and economic status of victims or perpetrators. In other areas of criminal justice policy, however, a great deal of data is available — and it demonstrates that racial and class bias by police, prosecutors, and courts is the most important factor in determining who receives the longest prison sentences. Again, we see no reason to assume that the system will operate differently when it comes to hate violence.

For all of these reasons, AFSC believes that penalty enhancements are a dangerously misguided response to the problem of hate violence, and we find ourselves unable to support legislation that utilizes such an approach.

***“Neutral” language*** — In civil rights and anti-discrimination law, neutral wording serves a powerful purpose: it affirms that no one’s rights may be denied on account of race, religion, disability, gender, gender identity, sexual orientation, and so on. Such language is unambiguous and helps to correct historical wrongs. Hate crimes laws, however, do not affirm rights for people whose rights have been denied; rather, they expand the scope of the criminal justice system.

In hate crimes laws, the neutral wording of protected status categories ostensibly sends a strong message that hate-motivated violence should not be tolerated in a pluralistic society. Supporters of

<sup>2</sup> See, for example, “Diminishing Returns: Crime and Incarceration in the 1990s,” Jenni Gainsborough and Marc Mauer, The Sentencing Project, Washington, DC, Sept. 2000.

## Who Commits Hate Crimes?

Data on perpetrators of hate crimes is relatively scarce and has only been superficially analyzed. Existing data mainly indicates who is most likely to be arrested and charged with crimes which is to say, it overstates the involvement of those who have the fewest resources for good legal counsel and are least able to successfully maneuver within the criminal justice system. Current hate crimes data focuses on the violence of individuals; it sheds no light on acts of hate violence committed by officials of public or private institutions.

The little we know is based on inconsistent data, collected according to different methods in varying jurisdictions, with differing definitions of hate violence. Most of the information is drawn from arrest or conviction records and from small studies of convicted, incarcerated offenders.

Bearing these limitations in mind, the available data indicates that most hate crimes are committed by white men, a majority of them 30 years old or younger. Many are 25 years old or younger. Most are

not members of organized hate groups.

Limited information is available to correlate the race and ethnicity of offenders and victims: more whites commit hate crimes against people of color, for example, than the reverse. Existing data, however, does not permit evaluation of the impact of race, class, age, gender, gender identity, or sexual orientation of those against whom complaints are made on rates of arrest, prosecution, conviction, and sentencing.

these laws argue that their intent is to penalize violence by those who have more power against those who have less. In this case, however, neutral language works to erase the way in which centuries of oppression are embedded in the very nature of hate violence. Concepts like “bias” tend to reinforce a psychological explanation for hate violence, implying that all forms of bias have the same social and economic impact. In the eyes of the law, “bias-motivated” violence is no longer a reflection of unjust power relationships, but rather an extreme expression of individual prejudice.

AFSC does not believe that bias or prejudice can ever justify acts of violence; all those who harm others must be held accountable. We also recognize, however, a qualitative difference between individual acts of violence that reflect systemic, institutionalized forms of violence and oppression, and those that do not. The neutral wording of hate crimes laws implies a false equivalence between white people and people of color, between women and men, between queer people and heterosexuals. The situation of these groups is not equivalent, however, and the erasure of this reality in the language of the law should be of profound concern

to those who historically have faced violence, subordination, and exclusion in their relationship with the state, particularly with law-enforcement authorities. One activist put the matter succinctly when she noted that such laws “may be anti-prejudice and anti-violence in intent, but they are not necessarily anti-oppression in terms of how they are applied.”

In recent years, right-wing organizations have successfully used the “colorblind” language of pioneering civil rights laws to defeat the very purpose of those laws — for example, by attacking affirmative action programs and other policies intended to remedy the effects of past discrimination. Hate crimes laws will inevitably be used in ways that were not intended by many of their supporters. Already, the constitutionality of penalty enhancements for hate crimes was unanimously upheld by the U.S. Supreme Court in a case involving not a white supremacist but a young African American man who incited a group of others to assault a young white man following a showing of the movie *Mississippi Burning*.<sup>3</sup>

<sup>3</sup> *Wisconsin v. Mitchell* (508 U.S. 476, 1993).

***Selective law enforcement*** — Proponents of hate crimes legislation argue that these laws will make law-enforcement authorities take crimes committed against members of marginalized groups more seriously. Nothing in existing or proposed legislation, however, holds law-enforcement agencies accountable for taking reports of hate crimes seriously or for taking systematic steps to protect the safety of vulnerable and marginalized communities. Even where hate crimes laws exist, selective law enforcement often continues to be a significant problem.

AFSC believes that law-enforcement officials have an essential role to play in responding to hate violence. At the same time, we see a danger in relying too heavily on the state to be a friend and advocate to vulnerable groups. Federal and state law-enforcement officials are themselves often perpetrators of hate violence. Further, the political shift to the right has produced a climate in which systematic violations of civil and human rights by law-enforcement authorities are widely tolerated. Laws enacted with the best of intentions may be ignored or even twisted to unintended purposes.

***Institutional accountability*** — Few hate crimes laws address the question of institutional accountability. Some statutes provide for civil remedies to address hate violence; that is, they permit private individuals to sue for injunctive relief and damages (as distinct from criminal charges, which may be brought only by prosecutors). Even when state laws do not include such provisions, their absence does not necessarily rule out civil actions against institutional perpetrators of hate violence. Civil actions offer the possibility of applying more creative sanctions to organizations whose representatives instigate or encourage hate violence. Rather than focusing exclusively on “foot soldiers,” such sanctions can hold organizational leaders accountable for harm done on their watch and with their knowledge.

In some notable instances, civil suits have brought about a necessary reckoning, such as when the Southern Poverty Law Center succeeded in holding factions of the Ku Klux Klan, the Aryan Nations, and other white-supremacist groups accountable for violence committed by their members. Similarly, some gay students have won

civil suits against school districts for failing to halt anti-gay harassment and violence. Likewise, the parents of a gay soldier who was brutally murdered are pursuing a civil suit against military authorities for failing to halt patterns of homophobic harassment and violence that were known to them.

Hate violence results not only from the actions of rogue individuals, but also from the actions of public and private institutions. Institutional accountability is a critically important principle, which AFSC believes should be applied more widely.

***Support for victims of hate violence*** — Most hate crimes laws provide little or no support for the physical, psychological, and economic needs of those victimized by hate crimes. (One notable exception, the Violence Against Women Act, is described in Appendix B.) We believe that our society can and must do better. Policy initiatives addressing victims’ needs should provide substantial resources for assuring the safety of victims and their families and tending to the immediate and long lasting harms of hate violence.

Similarly, few hate crimes laws support communities to increase their own capacity to respond to hate violence or prevent its occurrence. We believe this is a key shortcoming of existing laws. Meanwhile, billions of dollars are being spent to build more prisons, incarcerate more people, increase the number of police, and equip those police with better riot gear, weapons, and surveillance technology.

***Hate crimes and the death penalty*** — Existing hate crimes laws do not include the death penalty as a form of penalty enhancement. In practice, however, prosecutors may seek the death penalty as a sort of de facto penalty enhancement for hate crimes that involve homicide. This is particularly likely in high-profile cases, such as the murder of James W. Byrd, Jr., where once again a harsher penalty is taken as the proper expression of community outrage.

AFSC opposes the death penalty in all cases, based on our deepest spiritual convictions. We do not seek to reform the way the death penalty is applied, but to abolish it completely, and we work

actively throughout the country to that end. While many proponents of hate crimes legislation do not share this view, a steadily growing number have spoken out against the death penalty, citing the racial and class bias that effectively determines who is put to death and who is not.

## Neighbor Against Neighbor: Wedge Politics and the Assault on Civil Rights

No social movement exists in a vacuum. Advocates of hate crimes laws are pressing their case at a moment when the political right is aggressively (and effectively) promoting a social and economic agenda that rejects the very notion that there is such a thing as a truly inclusive “common good.” Also under sustained attack is the belief that government should bear responsibility for ensuring equal rights and recognition for all, fostering a more equitable and humane distribution of social and economic resources, or helping people come together constructively across their differences.

Various constituencies affected by hate violence have successfully advocated for legislation expanding the definition of protected status categories. In response, right-wing opponents of such measures have sought to play off each constituency against the others. The right has effectively used the political wedge of homophobia to

help fracture some potentially powerful alliances, the wedge of racism and xenophobia to fracture others, and the wedge of sexism against still others.

We believe that such attacks are best understood as part of a systematic effort to dismantle the entire legal framework of civil rights protections at both the state and national levels. Such protections are perhaps the most important legacy of the social movements of the 1960s and 1970s. Attacks on the civil rights framework have included a broad array of assaults on welfare, immigrants’ rights, and LGBT rights and recognition, as well as a host of measures that undermine the notion of “due process of law” or protections against “unreasonable search and seizure.”

One particularly unfortunate victim of this tendency has been the Violence Against Women Act (VAWA), which originally included provisions addressing the economic subordination that makes it difficult for many women to leave violent relationships. VAWA’s “civil rights remedy” emphasized that the ability of women to fully exercise their civil rights is directly related to their economic independence. This provision allowed women to sue their assailants for monetary damages, including medical expenses and lost wages, in federal court, a right not previously granted in cases of gender-based violence. This remedy was struck down by the U.S. Supreme Court in May

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**M**ost likely a majority of gay men and lesbians continue to favor the death penalty. Some I’ve spoken to even get a fevered gleam in their eyes, talking about how they’d pull the switch themselves if anyone hurt someone in their family. We know, however, just how feelings of hate poison the heart of a country. Just as we are all diminished by homophobia, I believe we all suffer in one way or

another from our collective desire to take the lives of those who have taken lives.

Inside the California Assembly’s Public Safety Committee, on which I served for several years, we always heard about the “law-abiding citizens” and “the criminals.” Criminals were the “other.” They had forfeited their right to be treated as human beings, and therefore it was acceptable not to protect them. It was acceptable to kill

them, if necessary. I began to realize that the language used in these instances was very similar to the language I’d heard about the inhuman nature of homosexuality.

— Sheila Kuehl

Sheila Kuehl is a member of the California State Assembly who has served as chair of that body’s Judiciary Committee. The extract presented here appeared originally in “Till the Death Penalty Do Us Part,” *The Advocate*, Aug. 20, 2000.

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2000, on the grounds that only the states, and not Congress, have the authority to enact such a law.

Traditional civil rights constituencies have sometimes been slow to respond to attacks on the legal framework of civil rights guarantees when they are couched in the language of gender and sexuality. Within the broader movement for social justice, issues of women's rights, sexual assault, and domestic violence are often dismissed as "personal" issues. LGBT rights and recognition are similarly trivialized as questions of "lifestyle."

By the same token, many feminist and LGBT organizations have failed to speak out against attacks on civil rights that mainly affect communities of color, such as attempts to undermine voting rights laws, the draconian "war on drugs," or the growing denial of access to the courts for immigrants, prisoners, and other disenfranchised populations. Some women-of-color organizations have challenged the domestic violence movement for uncritically allying itself with law-enforcement agencies, while failing to address violence against women of color committed by agents of the state (such as police, prison guards, or INS agents).<sup>4</sup>

The right, however, finds no difficulty in advancing an integrated multi-issue agenda, reflecting a coherent social, political, religious, and economic vision. In times of rapid social change, this right-wing vision, with its promise of certainty, familiarity, and safety, is compelling to many people. This vision, however, relies on a false security created by excluding anyone defined as the "other."

The organized backlash against hate crimes laws and gay rights is linked to the backlash against affirmative action, voting rights, immigrants' rights, the rights of indigenous peoples, reproductive rights, the domestic violence movement, welfare and human services, funding for public schools, and environmental protections. Tactical coordination on these issues among an energetic, right-of-center constellation of think tanks, foundations, faith-based organizations, and political

action groups is based on a clear strategic understanding of the ways in which struggles for reproductive and sexual self-determination pose a major threat to patriarchal and authoritarian modes of social and economic control.

Such campaigns are not spontaneous reactions to a series of unrelated issues, but rather constitute a well-coordinated and well-funded effort to roll back or block legislation that offers even a minimal redistribution of social and economic resources. Among ordinary people worried about their own future, the message that we can best protect "our" rights by resisting the efforts of those who threaten us — the threat of "them," however "they" are understood — often resonates deeply. Group by group, the most vulnerable among us are losing ground because we are not standing together to insist on a just set of public priorities.

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While there is a growing awareness of the connections among various social justice issues, too many times activists continue to address those issues in a singular, focused, and isolationist manner. The current atmosphere in progressive circles pays much lip service to working collaboratively and inclusively. But in reality, the women's movement often has little to do with the environmental movement, the environmental movement has little to do with the economic justice movement, the economic justice movement has little to do with educational issues, and so on . . .

Despite all the rhetoric, activists continue to prioritize "their" issue at the expense of the larger social justice struggle. Given this failure to see the broader picture, comprehensive, long-range social justice strategies are virtually nonexistent; effective collaborative efforts are few and far between; and divide-and-conquer strategies are often employed so that groups that should be working as allies often become adversaries.

— Justine Smith

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<sup>4</sup> See "Whose Safety? Women of Color and the Violence of Law Enforcement," a Justice Visions Working Paper by Anannya Bhattacharjee, AFSC and the Committee on Women, Population, and the Environment, Philadelphia, May 2001. (See back cover for ordering information.)

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From "Native Sovereignty and Social Justice: Moving Toward an Inclusive Social Justice Framework," in *Dangerous Intersections: Feminist Perspectives on Population, Environment and Development* (Boston: South End Press, 1999).

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The growing strategic successes of the right, such as the dismantling of welfare, have caused seismic shifts in the political terrain. The political center of gravity has shifted from the federal government to the states, while the continuum of political discourse itself has been pushed far to the right. The rallying cry of “states’ rights” has returned to further strengthen the assault on the concept of federally protected civil rights. It is as if a wrecking ball of entrenched privilege were set loose among our most decent public impulses. The effects on already vulnerable communities are devastating.

While the attacks of the right continue to escalate, causing social justice activists to use precious resources to defend against them, the push for “privatization” of public services — prisons, schools, health care, social services, national parks, even Social Security — goes relentlessly forward. The right seeks to withdraw more and more public resources from public institutions, which are, at least potentially, accountable to the public. Programs that are not eliminated outright are shifted into private institutions, some of which have a particular theocratic agenda, while others are driven exclusively by profit. In either case, privatized institutions cannot effectively be held accountable. We are witnessing the transfer not only of public funds, but also of public lands and civic infrastructure to private interests.

All of these attacks on “big government” seek to discredit government initiatives geared toward socially beneficial ends. Those who call for “downsizing” government, however, advocate unceasingly for more and more public resources to be allocated to the administration of state violence, through functions like policing, incarceration, border control, and the military.

We believe that proponents of hate crimes legislation must measure carefully how their efforts enter into these larger debates — and how their strategies may be shaped by them, consciously or unconsciously. How did it come about that so many of the most prominent voices speaking out against hate violence today offer harsher punishments and longer prison terms as their primary public policy initiative? How is it that so many dedicated social justice advocates have come to equate safety and justice with the expansion of police authority?

A world view based on “us and them,” on the construction of “enemies,” is a distorting, fear-based perspective that threatens to color even the efforts of progressive social justice advocates. When we describe the harmful effects of initiatives promoted by the political right, for example, we must remind ourselves that the just, beloved, and generous community we seek to create must include everyone, even those with whom we strenuously disagree on matters of public policy and private morality. If our vision is limited to “defeating the right” and we see as enemies all those who are drawn to the right’s solutions, then the just, beloved, and generous community we long for will never come into being.

What framework is large enough to hold all of us in these difficult, polarizing, and dangerous times? How can we invite many diverse “others” across the great divides of race, culture, class, gender, sexuality, and belief to risk joining together to create something new, something that is not yet here but is struggling to come into being? What will refresh and sustain us along the way? Before addressing this question directly, we explore how the violence of “us and them” has corrupted the very notion of justice in our society.





————— *Part II* —————

# The Broken Bones of Justice

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Even when they call us mad  
when they call us subversives and communists  
and all the epithets they put on us,  
we know that we only preach  
the subversive witness of the Beatitudes,  
which have turned everything upside down  
to proclaim blessed the poor,  
blessed the thirsting for justice,  
blessed the suffering.

— Archbishop Oscar Romero

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**T**o speak of justice is to speak of bread: of that which sustains and nourishes us so that we may one day realize our most beautiful hopes and dreams.

The Vietnamese Buddhist monk Thich Nhat Hanh reminds us that the entire world, with its intricate interconnections, is contained in all things. John Woolman, an eighteenth century Quaker abolitionist and advocate for the poor, spoke similarly of his own experience of “the connection of things,” which is to say, connections among spiritual leadings, economic practices, and the treatment of one’s fellow human beings.

If, for example, we looked deeply enough into a single piece of bread, we would see everything.

We would find not only wheat, yeast, and salt, but also the sunshine, rain, and rich earth that nurtured the wheat. We would find the sea that produced the salt.

In this single piece of bread are also the farmer who grows the wheat and the farm workers who harvest it, and all of their histories. If these farm workers are decently paid and treated with respect, their well-being is included in this piece of bread; if they are poorly paid and degraded, we consume their misery, the hardship of their families, and the violence of this unjust relationship.

The banks are also in this piece of bread, along with every family farm that has ever faced foreclosure, the rise of agribusiness, and the ripple effects of hard times on the larger community.

If we look more closely still, we also find ourselves in this bread and the ways in which we are related to the farm workers, the farmer, the wheat, the earth, the sky, the bank, and the history and fate of the land itself.

When we look deeply enough, we begin to see all the ways in which justice and nonviolence — like injustice, hatred, and violence — arise within an ever-fluid fabric of relationship. All of our various struggles for social, economic, spiritual, and environmental justice are not parallel and unrelated, but essential, interrelated components of one evolving story — a story about human rights, dignity, liberation, justice, and community. The challenge that faces us is to open our hearts sufficiently to see the connections and to act in the light of this understanding.

In the United States, we have come to accept the idea that armed force and coercive power are necessary for the protection of public safety, and we have learned to call this “justice.” The central institution of the present justice system in the United States is the prison — and the prison in turn is the mirror image of the gated residential community. We have accepted that safety can be achieved only by locking some people in and others out, by creating chasms that can never be crossed between the privileged and the despised.

The scope of this document does not permit a detailed analysis of the violence embedded within the criminal justice system; in the discussion that follows we can present only the broadest outlines of our understanding and experience. As noted in the introduction, these reflections are based in AFSC’s more than fifty years of practical experience in working with current and former prisoners, criminal justice policy issues, and communities affected by every sort of violence, including the violence stemming from the abuse of authority by local, state, and federal law enforcement.

Once again, we affirm that we do not seek to demonize police officers, prosecutors, judges, and other law-enforcement officials; these men and women are also members of our communities. Many are fighting against institutionalized racism, sexism, and homophobia within their workplaces and professions. In AFSC’s work on criminal justice issues, we seek to foster trustworthy and accountable relationships between law-enforcement authorities and the larger community. We

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Things do not produce each other or make each other happen, as in linear causality; they help each other happen by providing occasion or locus or context, and in so doing, they in turn are affected. There is a mutuality here, a reciprocal dynamic. Power inheres not in any entity, but in the relationship between entities.

— Joanna Macy,  
*World as Lover, World as Self*

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A criminal justice system reflects the values of those who hold power in society.

— *Struggle for Justice*, AFSC, 1971

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know of instances in which individuals and units within this system have made substantive efforts to build good relationships with the communities targeted for hate violence, and we acknowledge and affirm these efforts.

Nonetheless, our experiences with the criminal justice system as a whole lead us to believe it is impossible to evaluate hate crimes laws without considering the institutional violence and moral bankruptcy of this system. We ask our friends and colleagues to consider the long-term impacts of the system we describe on individuals, their families, and their communities, and whether such a system can ever produce healing justice.

## The Prison-Industrial Complex

The most cursory glance at the criminal justice system reveals persistent and entrenched patterns of racism, class bias, misogyny, and homophobia. The erosion of the constitutional rights of people caught up within the system is unceasing. Amnesty International, Human Rights Watch, AFSC, and others have documented human rights abuses that are so common as to be endemic.

The statistics tracing the expansion of the system over the past generation are unnerving. In 1972, the total number of prisoners in local, state, and federal institutions stood at 326,000. By 2001, the prison population had risen well past the two million mark. As of the end of 1999, an additional 4.1 million people were on probation or parole — for a total of more than six million people living under the direct control of criminal justice authorities.

In a single generation, between 1973 and 1999, the rate of incarceration in the United States increased by more than 600 percent, rising from 110 to 690 prisoners per 100,000 inhabitants. Previously, this rate had held steady for more than

fifty years. In the year 2000, the U.S. incarceration rate surpassed that of Russia, becoming the highest in the world.<sup>5</sup>

Most of the increase in the U.S. prison population is due to the failed “war on drugs.” The declaration of this “war” produced a host of new laws and new penalty enhancements. Best known among these is the imposition of sentences literally a hundred times more severe for users of crack cocaine, for which mainly African Americans are arrested, than for users of powder cocaine, for which mainly whites are arrested.

This period has also seen the introduction of so-called “three-strikes laws,” which have been shown to dramatically increase prison sentences without in any way increasing public safety.<sup>6</sup> More recent developments include the prosecution of minors as adults for a growing array of offenses; the reclassification of a growing number of crimes as felonies; and, under the rubric of “gang control,” the creation of entirely new circumstances under which both adults and youth can be charged with criminal gang activity, whether or not evidence of gang membership is presented.

While the U.S. criminal justice system has never dispensed equal justice to people of color, its contemporary expansion has brought about dramatic increases in racial disparities at every level, including arrests, court processing, sentencing, conditions of imprisonment, and eventual release. One consequence is that more than two-thirds of prisoners are people of color, with African Americans, who make up just under 13 percent of the U.S. population, accounting for fully half the prison population. A widely cited statistic is that on any given day, one out of three young Black men is either in prison, on parole, or on probation. A staggering number of African Americans cannot vote due to felony convictions, constituting permanent disenfranchisement on a massive scale. According to The Sentencing Project, “The scale of felony voting disenfranchisement in the U.S. is far greater than in any other nation and has serious implications for democratic processes and racial inclusion.”<sup>7</sup> Many observers have argued that the disenfranchisement of African American voters (many of whom were purged from Florida’s voting rolls after being incorrectly tagged as “felons” by a

private data management firm) had a decisive impact on the outcome of the U.S. presidential election in the year 2000.

Women represent one of the fastest growing populations in the prison system. The percentage of women in state prisons has more than doubled in less than twenty years, growing from 3 percent in 1978 to 6.4 percent in 1997. Most of this increase is accounted for by skyrocketing rates of incarceration among African American women and other women of color.

The introduction of “gang control” measures in correctional institutions has legalized blatant abuses of prisoners’ constitutional rights. Indefensible restrictions on mail, use of the telephone, and prisoner visitation, combined with the introduction of new forms of prisoner surveillance, are commonplace. These policies, which serve no legitimate purpose, often fracture any existing positive ties that prisoners may have to family and community. Such measures are applied not only against those labeled as gang members, but also against “jailhouse lawyers” and others advocating for legal redress or more humane conditions inside prison walls. In the meantime, social dynamics inside prison walls, among both prisoners and authorities, continue to support the violent expression of white supremacy, misogyny, and homophobia. In the words of one AFSC criminal justice staff member, “I know prisoners who say they learned their racism inside. Prisons are schools for the poor, schools you can’t drop out of.”

The expansion of the prison system has been accompanied by the wholesale abandonment of any type of rehabilitative programming intended to assist prisoners to rebuild their lives. Access to substance abuse treatment has been severely

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<sup>5</sup> “US Surpasses Russia as World Leader in Rate of Incarceration,” Briefing Sheet 1072, The Sentencing Project, Washington, DC, 2001.

<sup>6</sup> Various empirical studies have shown the absence of a correlation between longer sentences and reductions in the incidence of crime. See, for example, “Diminishing Returns,” *op. cit.*

<sup>7</sup> “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,” Jamie Fellner and Marc Mauer, The Sentencing Project and Human Rights Watch, Washington, DC, 1998.

limited. Funding for secondary and post-secondary educational programs has been eliminated in some institutions, slashed in others. Even where educational opportunities are theoretically available, prisoners often cannot gain ready access to them.

Profound changes in U.S. immigration policy have also redefined increasing numbers of immigrants as “criminals,” while massive budget increases have been appropriated for enforcement operations by the Immigration and Naturalization Service (INS), both at the U.S.-Mexico border and in many interior areas. At the border, INS “blockades” of more populated areas cause hundreds of deaths each year among border crossers. Legally documented immigrants are now subject to arrest and deportation for relatively minor offenses committed (and paid for) decades ago. Immigrants in detention — many of them refugees seeking political asylum — are one of the fastest growing incarcerated populations. Immigration law enforcement has also been marked by increasing coordination among federal, state, and local law-enforcement agencies, including a steadily growing role for the U.S. military, which had been barred for well over a hundred years from participation in domestic law-enforcement operations.

In recent years, the civil rights of immigrants, particularly from the Arab world, have been increasingly threatened by law-enforcement practices that sanction official persecution. For example, the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) allows for the use of secret evidence against noncitizens accused of supporting “terrorist” organizations, a term that is nowhere defined. What meaning does the very notion of fairness have, when immigrants are denied the basic right to confront their accusers and examine the evidence against them in a criminal proceeding or deportation hearing? When free speech rights are canceled as soon as the label of “terrorism” is invoked?

In addition:

- The use of extended isolation in U.S. prisons and the use of such devices as stun guns, stun belts, and restraint chairs has grown increasingly routine. Such practices violate international human rights norms as well as the U.S. constitution.

- Local police forces are relying increasingly on aggressive “zero tolerance” strategies of policing, provoking a sharp increase in complaints of police brutality, particularly in communities of color.

- Capital punishment has escalated rapidly in this time of vindictiveness, while access to the courts has been steadily restricted for death row prisoners through AEDPA and other measures. Racial and class disparities in sentencing and administration of the death penalty are well documented. The United States is one of only five nations that execute people for crimes they committed as juveniles (and it executes more people in this category than the other four combined). Many mentally ill and developmentally disabled prisoners have also been executed. Both instances directly violate international human rights norms.<sup>8</sup>

We note, finally, the trend toward privatization of prisons. Private financial interests have increasingly penetrated every aspect of the system, from prison health and food services, to prison construction and operation, to the utilization of “contract labor” by private firms — itself a sobering echo of the “convict leasing” system of the post-Civil War era (one of the many ways the criminal justice system of the late nineteenth century was used to overturn Reconstruction and re-establish white supremacy).

Many prisoners wish to work, but the work available to them is seldom meaningful or just in any sense of the word. From the minimum wage that is paid by private contractors, many jurisdictions deduct “expenses” for rent, food, and health care. This leaves prisoners with a “take home” pay ranging between 15 cents and \$1.50 per hour. Such a system, to our mind, is indistinguishable from slavery.

Private firms now construct and operate many juvenile correctional facilities, county jails, prisons, and immigration detention centers. Continued profits require a dependable and expanding popula-

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<sup>8</sup> At this writing, after several years of rapid increases in the numbers of executions, the tide of public opinion has begun to turn against the death penalty. Several major studies in recent years have documented high rates of procedural errors in capital cases, and 96 people in 22 states have been released from death row after their convictions were overturned.

tion of incarcerated people. Such businesses routinely try to enhance their bottom line through the denial of services such as health care and educational programming. The training of guards in private prisons has been widely criticized as inadequate, leading to more than one entirely avoidable fatality. Privatization has led not only to increasingly violent and brutal conditions of imprisonment, but also to repeated scandals involving conflicts of interest and other forms of corruption. Growing community disillusionment is beginning to greet many of these “dungeons for dollars,” and at least one state has terminated its contract with a for-profit prison company.

In the name of public safety, our society administers misery, hardship, and violent abuse, often allowing private interests to reap a handsome profit in the process. What does it mean for those of us who know the anguish of hate violence firsthand to support this system, if only by our silence? Will we respond to the violent hatred that has been directed against us by unleashing the massive institutional violence of the state, and calling that “justice?”

## Young People, Hate Violence, and the Criminal Justice System

As we have noted, youth and young adults are clearly implicated in the commission of many reported hate crimes. They have learned hatred and violence from adults — but rather than face this terrible truth, most of us choose denial. Our society seems far more willing to imprison our young people than to care for them.

In a just society, the enormous resources being devoted to expanding juvenile incarceration would go to preventive efforts like reducing poverty, improving schools, gun control, job training, and universal health care for children and their families. We would create flourishing communities with resources to foster the physical, educational, emotional, and spiritual well-being of all young people.

Instead, highly charged media images of youth violence permeate our environment, even though the juvenile crime rate has been dropping for years, for violent as well as nonviolent offenses.

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One of the reasons I fear what I call spirit murder — disregard for others whose lives qualitatively depend upon our regard — is that it produces a system of formalized distortions of thought. It produces social structures centered on fear and hate, a timorous outlet for feelings elsewhere unexpressed.

—Patricia J. Williams,  
*The Alchemy of Race and Rights*

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Today, for example, the percentage of arrests for violent crimes attributed to juveniles is lower than it was in 1975. It is worth noting that the declining rate of juvenile crime was apparent well before the introduction of harsh new state and federal juvenile crime bills.

The juvenile justice system in the United States was introduced a hundred years ago, in an attempt to emphasize individualized treatment and rehabilitation, while shielding young people from rampant abuses in the adult prison system. Over the past decade, punishment, retribution, and incarceration have once again become society’s prescription for troubled youth. Since 1993, forty-three states have changed their laws to make it easier to send youth into the adult criminal justice system.

According to the Justice Policy Institute, “several recent studies suggest that minority youth are over-represented at every stage of the justice system.” One such study tracked 7,000 young people transferred to adult court in Florida.<sup>9</sup> The overwhelming majority had committed nonviolent offenses, mostly property offenses. Although young people of color represent only 24 percent of the 10–17 age bracket in Florida, they represent 74

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<sup>9</sup> “The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to Try Juveniles as Adults,” Vincent Schiraldi and Jason Ziedenberg, Justice Policy Institute, Washington, DC, July 1999 (<http://www.cjci.org/jpi>).

percent of the same age bracket in the state's prison system. In Ohio, youth of color accounted for 30 percent of all juveniles arrested and 43 percent of those placed in secure facilities, but only 14.3 percent of the statewide youth population. Similar disparities were observed in Texas and California.<sup>10</sup>

The escalating incarceration of youth is accompanied by an increasing erosion of young people's basic civil rights and even minimal standards of due process. Minors receive little or no legal representation in juvenile courts, even though in many states, those same courts now mete out adult sentences. Funding for public defenders has been slashed over the past two decades, and lawyers trained in juvenile law are few and sorely underpaid. Children's records and court hearings have been opened to the public, and children's fingerprints and photos are being entered more frequently into police databases. Incarcerated youth are easy targets for many different kinds of abuse, including sexual and physical abuse by

guards and other staff. Even in juvenile facilities, minors are often given inadequate health care and subjected to forms of "discipline" that range from prolonged restraint to use of stun guns and pepper spray.

The juvenile justice system as it has existed in the United States is far from adequate, but what is emerging now is considerably worse. Young people incarcerated with adults commit suicide eight times more frequently than those in juvenile facilities. Minors incarcerated with adults have a much higher rate of re-arrest after release. Given these realities, do we really believe that criminal processing is the most appropriate and effective societal response to disaffected young people who have learned to hate? Is this the best we can do?

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<sup>10</sup> "The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California," Mike Males and Dan Macallair, Justice Policy Institute, Washington, DC, Jan. 2000 (<http://www.cjcj.org/jpi>).

————— *Part III* —————

# Toward a Vision of Healing Justice

**A** beloved and respected colleague from another national organization expressed concern to AFSC when she learned of our reservations about certain elements of hate crimes legislation. “Why can’t you just support the bills and work for reform within the criminal justice system?” she asked. “You sound like you have more sympathy for the perpetrators of hate violence than the victims.”

We understand our colleague’s concerns. She rightly calls us to take responsibility for standing with the victims of hate violence. We have always done so and believe we must strengthen our efforts. Yet we must also be faithful to our spiritual leadings. The culture of violence and exclusion will be transformed only when we ourselves refuse to be a part of it.

Every spiritual tradition calls on us to love our neighbor as ourselves. We cannot truly live this teaching until we understand that it applies alike to both victim and perpetrator: both are our neighbor, and, in the end, both are ourselves.

## Toward an Integrity of Means and Ends

AFSC’s understanding of justice is rooted in the same spiritual principles that govern both the Service Committee and the larger community of Friends (Quakers): responsibility, mutuality, and love; the rejection of violence, domination, and exploitation.

These principles guide our understanding of the practical administration of justice. Do the

justice practices we rely on create an environment for healing the hurts of violence and redeeming the lives it has broken? Do they affirm the human dignity and sacred worth of every person and all peoples (a vision that we believe includes but is larger than the concept of “human rights”)? Do they further the creation of loving, just, life-affirming, and sustaining community?

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AFSC envisions justice, in part, as the profound courtesy of acting as if the emotional, spiritual, economic, and physical welfare of everyone else matters as much as our own.

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In the face of hate violence, AFSC understands justice as a call to do the sustained work over time necessary to foster, where possible, the creation of “right relationships” among victims, perpetrators, and the larger community. Our concept of right relationship includes affirmation of the human dignity and civil and human rights of all people; concern for the well-being of the entire community, not only oneself or one’s own group; and active efforts to live in ways that contribute to the well-being of the whole community and do no harm to oneself or others.

Where the ethic of right relationship has been violated by acts of violence, we believe that justice requires us to:

- Openly identify the harm and dissolve any atmosphere of threat that keeps it from being named and confronted. Similarly, help dissolve any atmosphere of guilt, shame, or self-accusation felt by victims who mistakenly believe they brought on the attacks themselves.

- Protect victims from immediate danger and provide sustained emotional, physical, and economic support and assistance.

- Hold accountable the individuals, public and private institutions, and appointed and elected officials who may be implicated — whether because they directly caused the harm, contributed to a climate of hate, or failed to take appropriate steps to prevent acts of violence.

- Create a community environment in which those sectors of the community that are most directly affected by hate violence can live in peace and dignity, without intimidation or the threat of violence or economic reprisals. AFSC believes that community recognition and affirmation of the civil and human rights of each person and all peoples is an essential part of creating such an environment.

- Support people who have committed acts of violence to understand the physical, emotional, cultural, spiritual, and economic consequences of the harm they have caused; to accept responsibility for their actions; and to rebuild their lives in ways that create strong and positive ties to the larger community, whether or not they are incarcerated.

- Support people who commit acts of violence to take steps to repair or atone for the harm they have caused, with such steps being determined in a way that includes the input of the victim, the offender, and the larger community. Such acts of repair should cause no further harm or destruction, psychologically or otherwise, to offenders or anyone else.

- Create opportunities for dialogue, direct or indirect, between victims and offenders and foster the establishment of right relationships between them in the wake of the harm.

- Strengthen the ability of the larger community to address underlying social, economic, and spiritual conditions that encourage acts of violence, including the complicity of the community in creating such conditions.

- Strengthen the capacity of the larger community to identify and rectify any unintended harmful consequences of its justice practices.

This evolving vision of justice by no means discounts the power of law to serve as an instrument for the protection of community safety and human rights and dignity, but neither do we place all of our hopes in the law. Justice practices that do not have the confidence, support, and active participation of the communities they serve can never bring about the “healing justice” that we are calling for. We seek to challenge communities to take greater responsibility for the creation of law and justice, so that the dialogue between community and government is engaged, mutual, creative, and ongoing.

We stand on trembling ground as we lift up our hopes and concerns for this transformed approach to justice. The contradictions are apparent. The system as it exists is corrupt and founded in violence. Healing justice practices have not yet come into being in a sustained or reliable way. AFSC cannot accept the premises of the current retributive justice system, but neither can we refuse to engage with it.

We know from long and sad experience that we cannot create justice by attempting to reform the system while leaving its brutal foundations intact. Two hundred years ago, Friends were prominent among those advocating for a more humane approach to justice, as an alternative to the cruelties of corporal punishment and indiscriminate execution. Their reform movement advanced the concept of the penitentiary as a healing environment in which transgressors could reflect on their wrongful actions in a spirit of solitude, humility, and repentance. The intentions of these reformers were good, but the unrelenting isolation they imagined as meditative solitude drove many prisoners insane, and the grim reality of the penitentiary never reflected their original vision of a dignified house of healing.

Just thirty years ago, responding to the inequities of indeterminate sentencing, AFSC joined with others to advocate for fixed sentences that would no longer leave prisoners at the mercy of well-documented bias in courtrooms and parole



boards. In the late 1970s and 1980s, this call for reform was misappropriated to support the drive for substantially lengthier prison terms, mandatory sentences for a growing array of offenses, the virtual abolition of the parole system, and three-strikes laws. Today, indeterminate sentencing has been substantially eliminated — only to be replaced with the mass incarceration of poor people and people of color.

We have cited two examples of particular criminal justice reforms in which AFSC or Friends played a role. We could cite dozens more in which plausible reforms, adopted in response to pressing problems, have mutated into new ways to tighten the chains of punishment and control, while bringing more and more people into the system.

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Out of the best intentions in the world  
can grow an increase in human misery.

— *Struggle for Justice*, AFSC, 1971

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Because of these experiences, AFSC cannot support proposals for criminal justice reform that leave the distribution of social power unchanged. Neither can we support any reform that leaves the administration of justice entirely in the hands of the state. In our criminal justice work, we search for strategies that promote the active involvement and ownership of those who are most affected: victims of violence, prisoners, ex-prisoners, their families, and their communities. In the case of hate violence, we seek to encourage entire communities to take greater responsibility for the problem and its solution. In partnership with many others, we would hope to develop innovative, community-centered, and community-determined approaches to hate violence that open the way for a deeper and more authentic healing and reconciliation.

## Justice as Healing

It is AFSC's experience that the adversarial nature of the present criminal justice system and its emphasis on retribution do not serve anyone well, including the victims of violence. Concern for victims too often is construed only within a framework of vengeance. In the policy arena, "victims' rights" have mainly been raised as a banner by those seeking to undermine the rights of the accused, particularly the constitutionally protected right to due process of law. The vengeance framework argues that justice is a zero-sum game, in which the rights of victim and accused are antithetical to one another.

To the extent that we accept the premises of this framework, we are caught in an insurmountable double-bind. Those of us committed to challenging the innumerable abuses of the criminal justice system sometimes sidestep or downplay the pain and unmet needs of the victims of violent crime. At the same time, those of us committed to ensuring that the voices of victims are heard are often willing to overlook the violence, dehumanization, and severe abuses of civil and constitutional rights so endemic to that system.

Over the past twenty-five years, a range of initiatives have sought to replace "retributive" (punishment-centered) justice with what has variously been called "restorative," "transformative," "relational," "community-centered," or "distributive" justice, or simply "justice as healing." Such efforts draw on many sources: Native Americans and other indigenous peoples who are reclaiming traditional justice practices; rehabilitative programming organized by former prisoners; the movement against apartheid in South Africa; "truth commissions" in Latin American societies emerging from military dictatorships; and U.S. peace and justice activists from Mennonite, Quaker, Brethren, Catholic, Buddhist, Jewish, and many other faith and spiritual traditions.

The methods are varied, each responding to particular needs, circumstances, cultures, and communities. All, however, seek to replace retributive justice with a healing vision of justice rooted in community relationships. An act of violence or other offense is understood as a violation of

relationship, not only between individuals but with an entire community. When offenses are understood in this way, the proper question is not “how can we punish enough?” but “how can we heal the harm that has occurred?”

“Restorative,” when this term is used, refers not only to redress for victims but also to the restoration of constructive relationships within the larger community — or the creation of such relationships where they may never have existed. The emphasis is not on punishment, but on creating an environment in which those who commit acts of violence — and those who encour-

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**H**ealing is really about being able to care for yourself, your family and all your relations... Healing is also about taking responsibility. It is about re-learning how we are supposed to be. Without knowing what traditional responsibilities are, then the right to self-determination really means nothing. Healing is about learning to act in a good way...

Healing is the solution. Healing means that we are able to “turn off the tap.” We will be able to stop our young people from running into conflict with the law. When we have healed, we will also begin to understand how to accept back and forgive those individuals who are currently serving sentences in Canada’s prisons. That is the biggest challenge ahead. Many of our people know how to do “time.” Jail “junkies” like myself know how to get them out. What we do not know is how to stop that revolving door of justice from re-capturing them. We need to know how to keep people out of institutions. That step requires healing our communities as well as providing healing opportunities for those who now fill Canada’s criminal justice system.

—Patricia A. Monture-Okanee

From “Justice as Healing: Thinking About Change,” from *Justice as Healing: A Newsletter on Aboriginal Concepts of Justice*, Native Law Centre, University of Saskatchewan, Summer 1995.

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age such acts, directly or indirectly — can recognize the consequences of their actions, take responsibility for them, and make direct amends to the victim and the larger community.

Within this construct, restitution is seen as a necessary step toward accepting responsibility and creating right relationship, not as a form of punishment; nor is it necessarily seen in monetary terms. Restitution is rather a process through which the offender demonstrates empathy for the victim in tangible ways.

A healing framework for justice asks us to keep the humanity of all parties at the center of our vision. This is far from easy, from any vantage point. Providing sustained support for victims of violence brings us into intimate relationship with their profound grief, rage, and fear. Little in our society encourages us to stay present with people through such painful experiences. It is easy for us to become frightened ourselves, if for no other reason than the intensity of the victim’s emotions. Too often we respond only by offering a sort of superficial caring that deepens the experience of abandonment for victims of violence.

Healing justice demands that we always see and reflect back to those who have been harmed by hate violence their own humanity, dignity, strength, and infinite worth. When human beings are reduced to the status of victims, then vengeance is the only route available for ensuring that the harm done to them is taken seriously.

What might constitute healing justice for victims of hate violence? That must be determined situation by situation, in community contexts. To the extent possible, the harm should be repaired, the wounds healed, the wrong righted.

No complete repair can be possible, of course, when a life is lost; this may also be true of the trauma of violence. Even so, a life-affirming and redemptive response may be possible. AFSC is aware of instances in which the families of murder victims have reconciled with those who committed the murders, within a context of acknowledgement, responsibility, and atonement.

Perpetrators of violence are also in need of healing. The very real violence of poverty and exclusion is part of the background to many acts of violence, including hate violence. Huge numbers

of those who fall into the net of the criminal justice system — by some estimates, as many as half of all prisoners — are mentally ill, developmentally disabled, illiterate, or learning-disabled. For such people, incarceration is often the only type of “intervention” contemporary society is willing to offer.

To acknowledge these realities is not a way of excusing violent acts or suggesting that those who commit them should not be held accountable for their behavior. It does, however, remind us that the roots of violence generally reach far deeper than a specific act or a specific individual. It is for this reason that our vision of healing justice affirms that the larger community is always a party, even if indirectly, to acts of violence.

The situation is further complicated by the ways in which only certain types of actions are socially defined as “violence.” Toxic waste, to take just one example, may cause incurable illness and untimely death to untold numbers of people, yet it is seldom included in our understanding of “violence.” Incidents of hate violence such as vandalism or intimidation, and even assault, may be shrugged off as youthful “high spirits” or “poor judgment” when committed by the children of prosperous members of the community, but labeled a “crime” if the perpetrators are less cushioned by privilege.

With hate violence in particular, community norms — often unspoken — create a context that fosters and legitimates violence. Prejudice and hatred are created and sustained by social groupings, not isolated individuals, and so authentic healing must necessarily take place at the community as well as the individual level.

Retributive justice emphasizes removing offenders from the community and stigmatizing them, perhaps for the rest of their lives. It does not support, and in many ways actively inhibits, the eventual reintegration of offenders into the community. It tells us that those who society has cast out must never be allowed back in.

Healing justice emphasizes working at a deeper level to create new, healthy relationships. Contemporary justice practices inspired by this philosophy include victim-offender mediation and reconciliation programs, family conferencing,

community sentencing circles, community-supervised alternatives to incarceration, and offender restitution initiatives.

The most visionary approaches also seek to transform the underlying conditions that produce violence and crime. For example, Native American justice activists recount the story of an incident involving rape and battery. Healing justice processes helped reveal that this one case was actually reflective of a much larger community-wide problem of sexual assault and domestic violence. This larger problem, too, became a focus of healing justice.

## Along the Way

As calls for a new model of justice gain momentum, elements of “restorative justice” have been adopted by an increasing number of academic criminal justice programs, policy analysts, and law-enforcement authorities. Several hundred communities have created some form of victim-offender reconciliation program. A few state criminal justice systems have integrated some aspects of restorative justice into their work, and modest amounts of federal funding are available to support projects in selected states. The National Institute of Justice and the National Institute of Corrections have sponsored publications and conferences, and a growing number of universities have sponsored conferences and institutes and have begun to incorporate restorative justice elements into their curricula.

Such efforts are often contradictory, and we believe they must be evaluated case by case and with great caution. In too many cases, restorative justice concepts, including practices revived by Native Americans and other indigenous peoples, have been grafted onto federal and state criminal justice systems essentially as an embellishment, while failing to alter the system’s foundation of violence, coercion, and retribution. In such cases — and they are not infrequent — victim-offender mediation programs may open the door to new types of humiliation and psychic battering. Restitution programs are often added onto long periods of incarceration as an additional form of punishment and may leave offenders with a crushing burden of debt. “Alternatives to incarceration” may

become a backdoor approach to penalty enhancements when criminal justice authorities utilize them as an add-on rather than a true alternative.

Within indigenous communities, most justice activists believe their efforts can succeed only if they are completely free of institutional entanglement with the state, maintaining their integrity as sovereign practices. Efforts grounded in the dominant culture face the challenge of sustaining their vision through a complex negotiation of governmental and community partnerships. Some activists question whether healing justice practices can function at all in “communities” marked by social fragmentation and economic abandonment.

Many of the most prominent advocates of restorative or transformative justice are economically secure, largely white reformers. Usually, poor communities and communities of color are not full partners, if they are present at all, in defining the meaning of restorative justice or in framing attempts to put this vision into practice. Yet most victims of violent acts, as well as most incarcerated people, come precisely from such communities.

In the world of social advocacy, privilege, including economic privilege and white skin privilege, are very real barriers that limit the vision

and distort the discussion of any initiative that does not fully reflect the experience, the felt needs, the voice, and the leadership of those who must live with the results. When professional advocates substitute for the affected constituency, the vision of reform they work toward is most often overtaken by the inexorable logic of injustice, exclusion, and retribution.

We do not offer an “answer,” but rather a contradiction that demands deeper exploration and dialogue before it can be resolved. We believe that a vision of healing justice is an indispensable guide to efforts to respond to hate violence. Without the active ownership of a much broader constituency, however, such a vision is reduced to an empty husk, a new garment to cloak the intact structures of injustice.

## Justice as Nonviolence

In our society, we are so often invested in seeing perpetrators of hate violence as inhuman monsters not worthy of our regard that we forget what we know about cycles of violence: that violence begets only more violence.

The violence of hatred harms the psyche and

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**P**aradoxically, restorative justice is moving from a peripheral grassroots movement to center stage, its ideas migrating to the mainstream at a time when society has reached unprecedented levels of vindictiveness...

Genuine dangers lie in this new acceptance. I worry the movement may be peaking too soon, before sufficient groundwork has been done...

Innovations in entrenched systems such as criminal justice are often co-opted and diverted from their original visions. Terms are watered down; old approaches are justified with

new concepts; programs are instituted without the necessary value base, with the result that they do not work or have unintended harmful consequences. ...

Alterations are already visible within restorative justice: the term is being used for some approaches that seem diametrically opposed to restorative values, for example, and victim/offender mediation has on occasion been used to punish offenders rather than provide opportunities for healing and resolution to both victims and offenders...

Given these factors, the danger is great that the movement may be discredited. Communities may experiment with approaches not truly restorative or grounded in good practice, then say, “We tried that; it doesn’t work.” That, too, has already been heard.

However, the dangers must not obscure the promise...

— *Howard Zehr*

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Director of the Office on Crime and Justice, Mennonite Central Committee—U.S., and professor of sociology and restorative justice at Eastern Mennonite University.

spirit of those who hate as surely as it harms those whom it seeks to vanquish. In our rage and pain, few of us can acknowledge this. Such complexities blur the lines of our certainty and blunt the razor-sharp edges of our own hatreds.

Many perpetrators of hate crimes — particularly those who end up in prison — are disaffected, angry poor and working class youth and young adults, employed marginally if at all, predominantly but not exclusively white, who have led lives of economic deprivation. They feel discarded, worthless, and invisible in a rapidly changing social and economic environment. Hate violence provides the perfect theater in which, for once, they feel powerful. They are the very people most likely to be seduced by the spiritually bankrupt promises of white supremacist, anti-gay, and anti-Semitic hate groups. AFSC believes that we ignore these interrelationships at our own peril.

Sometimes hate crimes are themselves a distorted response to violence and hatred. The experience of many queer activists strongly suggests that some gay bashers, for example, are reacting to their inability to come to grips with their own complex and tangled queer desires. Many others who have brutally murdered gay men justify their actions by employing a “homosexual panic” defense, speaking with fear and loathing of their “need” to protect themselves from supposed unwanted sexual advances. On other occasions, hate crimes reflect a broad social process of scapegoating, as when entirely legitimate anger over economic dislocation is redirected against immigrants, Asians, or Jews.

We believe that society has a moral and spiritual obligation to offer offenders authentic opportunities to break the cycle of violence. We know transformation is possible; many of us who formerly held biased views of one kind or other have experienced change in ourselves as well as in our families and communities. A growing number of former skinheads and neo-Nazis offer the evidence of their own changed lives, often noting that the turning point came when someone they were “supposed to” hate did not return the violence, but treated them with dignity. AFSC’s criminal justice staff work with many prisoners and ex-prisoners who have rebuilt their lives in

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It’s hard to know the right thing to do when you’ve got no education, no vocational training and you’ve got small support. I grew up in a predominantly white area. My grandfather was involved with the KKK in the thirties. That’s when I first experienced any white supremacist activities, when I visited my grandfather in Galveston, Texas, when they were having all the problems with the fishermen, the Vietnamese . . . I think if someone had come and told me, tried to teach me some things about people, I might have felt differently. I wouldn’t have been so angry, but no one ever did.

— *Clinton Sipes, former white supremacist*

Quoted in the documentary *Not in Our Town*, first in a three-part PBS series exploring community-based responses to hate violence.

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ways that benefit the larger community. In some cases, this is true of people who remain incarcerated, including prisoners on death row.

Our idealism does not mean we are not realists. Some offenders may, for whatever reason, be unwilling or unable to participate in an authentic process of redemptive justice. Some people represent a danger to the community for whom involuntary confinement may be necessary. Even so, AFSC believes that it is not only possible but morally necessary to provide such confinement in just, humane, and potentially redemptive ways, while preserving the safety of the victim and the community.

People who hold to the vision of redemptive justice know that there are no blueprints. We need to study more deeply the experience of community-based models of restorative justice and to initiate community dialogues about how new justice practices might be put into place. We need to support communities in addressing the underlying conditions that produce hate violence, even as we educate more widely about state-sanctioned violence and the brutal results of our current criminal justice system.

We need to strengthen the capacity of our communities to respond to outbreaks of hate violence in ways that initiate processes of healing for all who are affected. We must also strengthen community-based efforts to hold institutions and public officials accountable for hate violence. Our understanding of hate violence must expand to include its institutional forms, such as police brutality; the use of racial, sexual, and gang profiling; institutional abuses of the civil and human rights of all vulnerable and marginalized groups;

and police harassment of sex workers and LGBT people. Religious institutions should also be held accountable for the spiritual violence that they regularly direct against lesbian, gay, bisexual, and transgender people.

Finally, we need to hold ourselves accountable for hate violence. How far do we go in working constructively within our own communities to expose the “ordinary” smiling faces of racism, xenophobia, sexism, homophobia, and anti-Semitism? Timidity will not serve us well in these dangerous times.

————— *Part IV* —————

# Creating Just, Beloved, and Generous Community

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Wade in the water, children.  
God's gonna trouble the water.

— African American spiritual

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All of us hunger for authentic community, in which we can be celebrated for being all of who we are — for being, in the words of activist and writer Mab Segrest, “our own peculiar selves.” We hunger for personal, civic, and spiritual meaning. For ourselves and our families (however we understand that term), we seek good schools, decent housing, healthy food to eat, appropriate and affordable medical care, meaningful work for reasonable wages, safe neighborhoods, freedom from violence, clean air and water, and simple human kindness. We want to know our neighbors and be able to depend on them. We need to feel a sense of belonging to something that is greater than ourselves.

Although community is universally valued, we usually talk about it in abstract and sentimental terms. We make casual use of the word “community” as a reflection of our emotional and spiritual longings: community is wherever we are cared for, respected, valued, encouraged, supported, and loved. “The community,” which often is a way of referring to people who are “like me,” is taken to be intrinsically just and liberating.

Actual communities, whether they are geographical, spiritual, or based on other identities

or values, usually nurture and support some of their members while stigmatizing, marginalizing, silencing, casting out, and even destroying others. Formal and informal practices within every community create “insiders” and “outsiders”: those who are worthy and those who are expendable.

To achieve a deeper understanding of hate violence, we must engage with the paradoxical nature of community. Since insider/outsider dynamics ultimately reinforce the unjust distribution of power and privilege in the larger society, effective strategies to reduce hate violence must also confront the systemic nature of social and economic inequality in the United States.

How do our communities respond to the strangers in our midst, the ones who “aren't like us,” the ones we don't know, have never particularly cared about, and perhaps fear, resent, or despise? How do we understand our civic and spiritual responsibility to those who are most vulnerable and marginalized?

In this discussion, we consider community in two ways, each of which serves to locate individuals and groups within the larger society. First, we understand a community to be the people living in a particular geographic locale, all of whom are affected, though not always in the same ways, by the actions of public and private institutions.

Second, we also define community as a group of people who share a common identity — ethnic, racial, religious, sexual, political, and so on. Within this second type of community, members are also likely to be treated differently — rendered

visible or invisible, important or unimportant, worthy or expendable.

Many of us speak about ending hate violence as if it were primarily a matter of jailing enough hateful people, educating away “bad attitudes,” and making people who “don’t care” wake up to the injustice of it all. Ironically, we seldom speak to the radical possibilities of confronting the culture of hatred with a culture of love. Like our society as a whole, many of us tend to view the power of hatred as real, substantive, and strong, while the power of love is presumed to be illusory, sentimental, and weak.

Because public images of hate violence focus on brutal murders and vicious, life-threatening assaults, most of us cannot imagine ourselves as being implicated in such crimes in any way, so we rush to fix easy blame. Hate violence cannot be reduced, however, to the pathological “bad attitudes” of isolated individuals. How many of us are drawn to the false dualism of the righteous and the damned: of those who may be imperfect but nonetheless are good at heart, and those who are evil and beyond redemption?

Does this mean AFSC believes there is no such thing as evil? We make no such argument. It is our experience that evil does exist, in many terrible forms. We believe that apartheid, racism, slavery, genocide, and colonialism are evil. We believe that the impoverishment of the many while unimaginable wealth concentrates in fewer and fewer hands is evil. We believe that profiting from the destruction of the earth is evil, as is every social arrangement that subjects some people to the violent whims of others.

Individual human beings, however, are rarely, if ever, completely good or completely evil; most of us have the capacity to be both constructive and destructive. We are kind and generous to some; indifferent or hostile to others. Because we tend to cultivate a comforting self-image, we seldom come to an honest reckoning with our own capacity for violence, or with the ways that we recreate the dualism of us and them, insiders and outsiders, dominance and subordination in our own lives.

Almost nowhere are we encouraged to examine our actions in the light of an ethic of love and interdependence: the complicated but essential

discipline of paying attention to the social, cultural, political, spiritual, and economic consequences of our words and actions on ourselves and others, most particularly on those of us who are most vulnerable.

Many justice advocates come to our work because we are victims of hatred and injustice, or because we identify with those who are. It is painful to face the reality that, to varying degrees and in different ways, we ourselves are also implicated in the oppression of others, regardless of how much oppression or abuse we may have suffered. Our willingness to face this possibility is an essential tool for dismantling hate violence at its root, because it represents a fundamental break with the mindset that seeks to categorize people as either worthy or unworthy, “us” or “them.”

What is the meaning of community at a time when the gap between the rich and the poor is widening and calcifying? When so much poverty is concentrated among women and children? When communities of color face the triple threat of racial profiling, discrimination, and poverty? When every type of institution is corrupted and compromised by the influence of wealth and greed?

What is community when people in our society feel more and more isolated from one another? When so many civic and religious leaders promote the politics of polarization and resentment? When the theology of dominion as advanced by some fundamentalist Christians calls for the application of “biblical principles” in every sphere of life, public and private, paving the way for the triumph of theocracy over pluralism?

What is community when so many religious bodies not only deny the spiritual equality of queer people but call for their spiritual annihilation, through practices of shunning, exclusion, or coercive conversion to heterosexuality? When a disproportionate percentage of teen suicides are committed by queer youth who believe that no one, not their parents, friends, teachers, or even God, will ever love or accept them in their wholeness?

What is community when murders of transgendered people continue to escalate, while almost nobody except the transgender community itself notices or cares? When sexual and physical violence against women and children remains



routine? When children with physical and mental disabilities are cruelly taunted and harassed in schools, often with little or no intervention by their school officials?

What is community when immigrant-bashing is not only expressed in hate crimes, but encoded in public policy? When the theft of indigenous lands and cultures continues unabated? When racial power and systems of racial ordering<sup>11</sup> sustain white supremacy in innumerable ways, not least by fostering internalized racism?

What is community in an era when we respond to complex social and economic problems by endlessly inflating the lists of “crimes” that are punishable with imprisonment? By instituting punitive and counterproductive “zero tolerance” policies in public schools that are disproportionately applied to students of color and students with disabilities, sometimes in shockingly absurd ways?<sup>12</sup> By encouraging gun ownership, building prisons for profit, and expanding military arsenals while slashing public expenditures for education, housing, health care, job training, and family support?

What is community, finally, when progressive groups too often speak mainly to those who already agree with us, failing to risk engagement beyond our own self-referential circles? When we have so little capacity to move beyond a “laundry-list” approach to inclusiveness?

## Tolerance or Transformation?

Campaigns to name the reality of hate violence and organize a community response are essential. Likewise, tolerance education and diversity appreciation programs can serve an important purposes, especially for young children, particularly if they are part of a multifaceted community effort to prevent hate violence by addressing the underlying social and economic conditions that produce it.

At the same time, focusing exclusively on tolerance, diversity, and “Stopping Hate” is seriously limited. Ultimately, such efforts will fail if they do not address systemic inequality in the distribution of power and privilege in our society.

When hate violence is removed from its broader social and economic context, it is reduced to an aberrant, irrational, and extreme behavior by pathological individuals who fear and hate difference. While such pathology is often part of the truth, it is also only the tip of the iceberg. Hate violence also has a particular social function: to sustain and reinforce existing systems of privilege and exclusion.

Each group targeted for hate violence has a specific social, cultural, political, and economic history, including a history of struggle and survival within the prevailing systems of power and privilege in the United States. We cannot dismantle hate violence without understanding how and why different groups are marginalized, excluded, disenfranchised, exploited, scapegoated, and, ultimately, targeted for violence.

Each group that is subject to hate violence knows its own history of exclusion and resistance. Often, however, we do not know each other’s histories — especially how we ourselves may be implicated in them. This lack of understanding has a profound effect on how progressive social movements frame their issues and the strategic choices they make. Most “organizing models” do not equip us to deal with the dynamic interaction of race, ethnicity, immigration status, culture, gender, sexuality, religion, age, disability, and class, both within each group and across constituencies.

A “whole justice” vision affirms the sacred worth of every person and all peoples. It recognizes the interrelatedness of all forms of oppression and of all struggles for peace and demilitarization, social and economic justice, human rights, and ecological integrity. Such a vision is inherently

*(Continued on page 44)*

<sup>11</sup> “Racial ordering” refers to “the cumulative and interactive political, social, cultural, and economic processes that jointly reproduce racial categories and distributions and perpetuate a system of white dominance.” See *Bitter Fruit: The Politics of Black-Korean Conflict in New York City*, Claire Jean Kim (New Haven: Yale University Press, 2000).

<sup>12</sup> For a critique of “zero-tolerance” policies, see “Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies,” The Civil Rights Project at Harvard University and the Advancement Project, Cambridge, MA, June 2000.

## Hate Violence and the American Friends Service Committee

The issue of hate violence is not abstract to the hundreds of men and women, youth and adults, who serve as staff and volunteers of the American Friends Service Committee (AFSC), working for peace, social and economic justice, and humanitarian service in thirty-three U.S. states and twenty-three other countries.

Within our organization are many people who have been on the receiving end of many forms of such violence; all of us are involved in efforts to end it.

We of AFSC are members of the Religious Society of Friends (Quakers) and of many other faith and spiritual traditions who share a commitment to the vision of spiritually centered nonviolence.

We are lesbian, gay, bisexual, and transgender people, youth and adults, across a spectrum of race, class and culture, who have experienced homophobic and transphobic harassment and violence. Since 1976, AFSC has lifted up a spiritual voice for LGBT rights and recognition. In 1988 we published *Bridges of Respect: Creating Support for Lesbian and Gay Youth*, the first national resource guide for adults working with lesbian and gay youth. We have helped give birth to a number of LGBT-affirming organizations and projects that now stand on their own; our programs have played key roles in mobilizing faith communities to help defeat anti-gay initiatives.

We are women with intimate knowledge of the violence of battering, rape, and sexual assault, whether inside our families or at the hands of state authorities, and we are feminist activists who work for gender justice, paying particular attention to issues of economic justice for low-income women.

We are people with disabilities whose efforts and perspectives help shape the whole of AFSC's work and witness. The AFSC works in war-torn countries, assisting those whose disabilities are the result of war and torture. We seek to live more fully our commitment to people with physical and mental disabilities by strengthening our own internal policies and practices.

We are volunteers and professionals who advocate for the rights of prisoners. We are people who have been incarcerated for violent crimes, including homicide, and now work for nonviolent social and economic change. Some of us know the loss of a child by murder, and some of us are parents of children who have committed murder. At least one among us knows the sorrow of having a son on death row.

We are Japanese Americans who were interned during World War II; AFSC spoke out clearly against that injustice and assisted many interned families. We are Jewish people who barely escaped the Nazi concentration camps and whose families and

communities were exterminated in the Holocaust; we are Jewish Americans whose families immigrated decades earlier, refugees from violent pogroms. Today we continue to confront widespread anti-Semitism. AFSC assisted many Jews and others who were persecuted by the Nazis to escape to safety.

We are Friends who were conscientious objectors during this war; we remember well the anger and contempt that was sometimes directed against us by our fellow citizens as we took up civilian public service duties or went to prison. In the aftermath of World War II, we participated in relief and reconstruction efforts in Europe, providing food aid to Germans of every ideological stripe. In 1947, we received the Nobel Peace Prize for these efforts, alongside our sister organization in England, the British Friends Service Council (now Quaker Peace and Social Witness).

We are Kanaka Maoli (Native Hawaiians) and Native Americans from many North American nations; we are indigenous people from around the globe whose communities carry the scars of cultural devastation, theft of lands, colonialism, military invasion, and genocide. For decades, AFSC has stood with indigenous peoples in struggles for sovereignty, human rights, and cultural integrity.

We are Vietnamese and Vietnamese American. We are

Vietnam veterans and we are draft resisters who went to prison for our beliefs, performed alternative service, or sought sanctuary in other countries. AFSC opposed the war in Vietnam, which the Vietnamese call “the American War,” and provided humanitarian assistance to civilians in both North and South Vietnam, regardless of their political sympathies. During this period, one of our regional offices was firebombed. We continue to maintain a presence in Vietnam today and, among other endeavors, have helped to bring together American and Vietnamese poets, novelists, writers, and filmmakers who once were soldiers fighting against each other.

We are Palestinians and other Arab immigrants and Arab Americans from a variety of countries. AFSC has operated programs in the occupied West Bank and Gaza Strip for more than fifty years and has long recognized the right of both Israelis and Palestinians to a homeland. We work with Palestinian children in schools, help care for victims of torture, and work with people whose homes have been bulldozed by Israeli military authorities. We support young draft resisters in Israel.

We are South Africans who know all too well the brutalities, small and large, of apartheid. AFSC’s long-standing witness against apartheid continues to evolve, as we lend support to the

building of a new, democratic South Africa.

We are African Americans and white people who worked in the rural South during the civil rights movement. AFSC’s efforts helped make it possible for African American community leaders to remain in their homes when campaigns of harassment, including threats and economic reprisals, sought to silence them or drive them out. AFSC was honored to serve as the original publisher of the Rev. Dr. Martin Luther King, Jr.’s historic “Letter from the Birmingham City Jail,” at Dr. King’s request.

We are women and men of different races, nationalities, and cultures who have struggled for decent wages and working conditions throughout the United States and around the world. Our first economic justice work began in the 1920s, when we stood with coal miners in North Carolina engaged in a desperate strike. Since that time, we have joined in partnership with farm workers, immigrants employed in meatpacking and poultry plants, and women in the *maquiladoras* along the Mexico-U.S. border.

We are organizers in Latin America who have faced state terror, torture, and violence. For many years, AFSC has worked in partnership with communities in Chile, Brazil, Guatemala, Ecuador, Honduras, and other Latin American countries to bring an end to massively unjust and

violent social, political, and economic conditions. We are Central American refugees across the United States who have never been legally recognized as refugees and are still living in legal limbo more than twenty years after U.S.-funded violence caused us to flee our homelands.

We are immigrants and allies who advocate for the dignity and human rights of people coming across the U.S.-Mexico border. AFSC’s long-standing witness for the rights and dignity of people in migration and our spiritual commitments have led us to respectfully refuse to comply with the data collection requirements of the 1986 Immigration Reform and Control Act in our own employment practices.

We do not claim that our truth is the only truth, or that our opinions and leadings are the only valid ones. Nor do we speak for all Friends. We believe only that we must speak from our experience and heed our spiritual leadings. The discipline of working from the best and most generous in ourselves and others is neither simple nor easy. It is, however, what permits us to act in the face of widespread hardship and suffering with open hearts, a sense of hope, and an ever-deepening vision of just and beloved community.

(Continued from page 41)

transgressive, messy, complicated, and risky. It doesn't mean that every group must do everything alike, but rather that we are committed to thinking through the interrelationships, the meaning of justice for others as well as ourselves.

The pursuit of this vision is uncertain, yet filled nonetheless with life and possibility. A "whole justice" vision calls us to create new structures and relationships that embody justice, socially, economically, and spiritually. We not only demand justice from governments or the powerful; we are transformed in the light of these new relationships so that we *live* justice. Faced with the insistence that safety and security are created only by excluding "others," those who are unworthy and dangerous, we respond by embracing all people as our neighbors, in the process dismantling the inherent violence of "us and them."

Like most organizations, AFSC works on particular issues with particular constituencies. Over the years, as we have faced challenges in various arenas to develop a more integrative vision of social transformation, we have sometimes grown defensive, feeling that we are being asked to add on "their" concerns to "our" already burdensome load. At times we have been concerned that we will weaken the focus of our particular initiatives or undermine consensus within them.

We have come to realize, however, that the "add-on" vision of social action is itself flawed. The challenge is not to add more issues or constituencies, but to pay close attention in whatever we do to the interactions of every form of identity and every form of exclusion. These interrelationships already exist; we are merely challenging ourselves to notice them and work in the light of that understanding.

Our efforts are in their infancy, and we have experienced our fair share of tension, conflict, and blunders along the way. Our resources are limited and thinly stretched already. We also find, however, that we are invigorated as we begin to learn from one another more deeply. We find ourselves taking new risks as new life comes into our work.

How could it be otherwise? Our experience constantly reaffirms the basic Quaker belief that God's revelation is not static, but dynamic and

continual — and that it is often carried to us by the inconvenient visitor who knocks on our door at the midnight hour, seeking the nourishing bread of love and justice.<sup>13</sup>

## The Long Shadow of Class

One of the most glaring absences in most discussions of hate violence is the consistent erasure of class. This omission reflects the inability of our society as a whole, including most progressive social movements, to take class into account in a meaningful way.

The current conversation about hate violence is based on a dangerously simplistic narrative, in which the figure of the "perpetrator" is coded with stereotypical images of working class people, while perpetrators with greater social and economic power are edited out of the picture. Although the pervasive class bias of the U.S. criminal justice system has been amply documented, proponents of hate crimes laws cast this very system as the protector of vulnerable and less powerful groups. Mainstream discussions of hate violence, particularly in middle-class white circles, almost never recognize the complex dynamics of class in communities where such violence occurs. Such dynamics encompass the ways in which white hate groups are constructed, how class is frequently coded in terms of sex and gender, or how class antagonisms may be displaced onto African Americans, Jews, Asians, queers, and other groups.

Class interests and class antagonisms play a complex role in the generation of hate violence. Historically, for example, the business, government, and religious elites of certain white communities have deliberately nurtured the Ku Klux Klan, using the Klan as an agent to foment racial strife and violence in order to defeat union organizing efforts and reinforce white supremacy.<sup>14</sup> Klan

<sup>13</sup> See *A Knock At Midnight: Inspiration from the Great Sermons of Reverend Martin Luther King, Jr.*, Clayborne Carson and Peter Holloran, eds. (New York: Warner Books, 1998).

<sup>14</sup> See *Carry Me Home: Birmingham, Alabama — The Climactic Battle of the Civil Rights Revolution*, Diane McWhorter (New York: Simon & Schuster, 2001).

members have never been predominantly poor or working class; prominent individuals, including public officials, founded the Klan and have always been included among its members. Not every white supremacist group is directed by elites, of course, and neither is every Klan initiative. It is important to recognize this history, however, because it counters the notion that hate violence is committed by ignorant thugs whose behavior is intolerable to “respectable” members of the community.

AFSC believes that a great deal of hate violence with overt manifestations of racism, homophobia, or anti-Semitism represents a complex displacement of class antagonism. We say this not to “explain away” hatred and prejudice, but to argue for the necessity of a deeper understanding of the origins of hate violence.

People who are anxious and uncertain about their future often look for somebody to blame. Few fears are more potent than fear of poverty; few forms of resentment are as volatile as the sense that “somebody else” is getting what is rightfully “mine.” The emotional stakes — and the likelihood of violence and organized unrest — are raised even higher when people feel helpless and powerless to change the situation. In recent decades, the economic security of working class and most middle class people in the United States has declined sharply, while their standard of living has come under great pressure, with most households needing two wage earners to survive. For decades, U.S. society has proffered economic security and even affluence as the birthright of white sectors of the population. As social and economic changes on a global scale have undermined that promise, many forces combine to refocus anger and anxiety on any ready scapegoat.

Both historically and in the present day, the figure of the “middle minority” has been a magnet for hatred and resentment. For centuries, anti-Semitism functioned within European culture to offer the impoverished peasantry a scapegoat for the harsh conditions of their lives. The historical stereotype of “the Jew” emphasizes the characteristics of the newly emerging capitalist economy itself: greedy, manipulative, opportunistic, exploitative, dedicated to “conspicuous consumption.” The scapegoat embodies the injustices created by

the dominant group. Such stereotypes live on today not only in Europe but in the United States, where Jewish people have often been concentrated in specific economic niches where they function as “middlemen” between economic elites and the poor.

More recently, beginning in the 1980s, “middleman” theory has been applied by scholars to the study of Korean immigrant merchants in the postindustrial U.S. economy. An essential feature of this social dynamic is recurring conflict between middle minorities and the poor communities they work in. In the contemporary United States, systems of racial power and racial ordering position white people on top and people of African descent on the bottom. Asian immigrants and Asian Americans of various ethnic origins frequently occupy the “middleman” position, where they figure as “model minorities,” embodying the virtues of hard work, thrift, and upward mobility.

When conflicts have erupted in major cities between Korean merchants and low-income African American communities, politicians and the media have rushed to denounce Black hostility toward Korean immigrants as an expression of racial bias. Rejecting such explanations as overly simplistic, scholar Claire Jean Kim has analyzed these episodes as a response to the racial ordering of white-dominated U.S. society and the ways it fosters conflict among different communities of color. Such conflicts reflect not only racial and ethnic tensions but racialized class antagonisms as well. Kim also critically examines the role of white people who have responded to such conflicts by casting themselves as “neutral enforcers of color-blind justice.”<sup>15</sup>

Similarly, class antagonisms are frequently displaced onto lesbian and gay people. As a group, LGBT people are no wealthier than heterosexuals, and poverty is distributed within the LGBT community in the same ways it is distributed in the larger society. Nonetheless, in the words of activist Urvashi Vaid, “the notion that gay, lesbian, bisexual, and transgender Americans form an economic elite, insulated from discrimination by their enormous personal wealth and disconnected from the nation’s social fabric through their single,

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<sup>15</sup> See *Bitter Fruit*, *op. cit.*

unaccountable family units [is] an urban legend, as it were, that has served many agendas on all sides of the political spectrum for many years.”<sup>16</sup>

These images have certainly helped intensify anti-gay hatred, increasing the effectiveness of homophobia as a political wedge for the right. The men who killed Billy Jack Gaither and Matthew Shepard unquestionably held homophobic views. The shadow of class resentment, however, also falls over these murders. Such resentments also frequently find their way into volatile and polarizing public debates over freedom to marry and domestic partner benefits for same-sex couples.

## Fueling Fascism

Although it is seldom acknowledged, poor and working class white men are oppressed, and they are oppressed by the same dominant power structure that oppresses people of color, women, and LGBT people. While they have undeniable access to the benefits of white and male privilege, they are economically isolated and disenfranchised. Their lives have generally been filled with hardship and deprivation; their options are extremely narrow.

They have legitimate grievances, but nobody, least of all the “mainstream,” is willing to hear them. The lives of poor and working class white people are all but invisible in a media environment built around images of disposable income. In such a situation, some men may redirect their rage and resentment against vulnerable “others,” in the process helping to reinforce the same social and economic order that is playing havoc with their lives.

Angry, disaffected young white males — the very people many anti-hate activists lift up as the embodiment of the monster we are fighting against — represent a potential social base for fascism in this country. They can be organized into a powerful, reactionary political force by politicians who appeal to their resentments, hardships, and fears by offering ready scapegoats. This is no secret to anyone who has studied the rise of fascist movements. Because such concerns are never discussed in polite company, however, we tend to push them out of sight, out of mind.

Anti-hate strategies that ignore the economic victimization of these young men and focus exclusively on how they victimize others only cement their

isolation. Ultimately, such approaches are not only ineffective, they also risk fueling the flames of hate and social polarization on a much broader scale, with potentially disastrous consequences. AFSC does not suggest that these young men should be seen only as victims; we believe that they must be held accountable for any harm that they cause. Among many liberal and progressive activists, however, there is a strong tendency to blame working class white men for most, if not all, of the hate violence in our society. This blame is just as misplaced as the rage these young men have redirected onto Jewish people, queers, and people of color.

AFSC seeks to anchor our work for social and economic justice in an understanding of both the dynamics of specific communities and the larger social and economic realities that form their backdrop. We reject simplistic formulations that focus on one aspect of a complicated social and economic situation while discounting others. We disagree with those who suggest that fighting racism, homophobia, or sexism is a luxury for already privileged people; we just as strongly disagree with those who leave class out of the picture all together, insisting that hate violence is simply “prejudice” run amok.

All of us can fight hate violence most effectively, we believe, by understanding how each outbreak is grounded in the complex interplay of race, ethnicity, class, gender, and sexuality. Hate violence does not have a single, straightforward meaning, and we cannot heal or prevent it by refusing to recognize its complexity.<sup>17</sup>

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<sup>16</sup> See Vaid’s preface to “Income Inflation: The Myth of Affluence Among Gay, Lesbian, and Bisexual Americans,” by M. V. Lee Badgett, a joint publication of the Policy Institute of the National Gay and Lesbian Task Force and the Institute for Gay and Lesbian Strategic Studies, New York, Dec. 1998.

<sup>17</sup> “Love and Hate in Laramie” by Donna Minkowitz (*The Nation*, July 12, 1999; archived at [www.thenation.com](http://www.thenation.com)) offers an in-depth exploration of such issues in the 1998 killing of Matthew Shepard.

## Transforming Adversity

In the end, the culture of domination has nothing more to offer us than a world consumed by policing: a world in which the semblance of security rests on exclusion. In such a world, while we do not even know our neighbors, we are deeply suspicious and resentful of them nonetheless. We will permit anything in exchange for the promise of protection: for ourselves, our value systems, and our possessions. We will willingly sacrifice the human rights and even the lives of others, if we are led to believe that is what it takes.

AFSC believes that we must reject this constricted vision, not piecemeal, but altogether. Through our words and deeds, we seek to base our lives in a larger, more generous, and ultimately more joyous vision of wholeness. We believe that wholeness comes, in part, from understanding — and living — the interrelatedness of all struggles for peace and for social and economic justice.

We cannot reach for wholeness alone; nor can we pretend that we do so only for the sake of poor, suffering others. Our own struggles are part of what we must affirm. “The illusion of inclusion,” in which we create token representations of diversity without changing the distribution of power and access, will not take us forward.

Within our various communities, many activists have responded to exclusion and injustice by creating spaces and strategies for survival within the dominant culture: freedom schools, anti-violence projects, advocacy networks, crisis centers and shelters, health centers, mentoring programs, restoration of sacred ceremonies and spiritual traditions, prison-based programs, legal education and defense funds, human rights watchdog organizations, social services, and more.

No matter who we are — people of color, women, queers, people with disabilities — when the dominant culture told us our lives did not

The LGBT movement does not belong to today’s leaders alone; it belongs to tomorrow’s as well. The next generation of LGBT activists will be left to either sustain or undo the work done today — work that affects how LGBT people are thought of in American society and how we think of ourselves. Thus, we must be guided by a vision that continues to advance our values and enrich our legacy...

Each one of us grew up in a homophobic society that taught us to feel alone and isolated. From this isolation, we reach out to each other to build community and act together to build a movement. We are our friends’ found families, the

creators of new traditions and ethics. We are reinventing gender. We act up and kiss in. We build community centers and other social service programs everywhere. When the nation was in homophobic denial, together we launched an unprecedented response to the AIDS epidemic, and we created the most poetic monument in the country, the Quilt.

From these experiences the core values of our movement emerge: compassion, belief and commitment to the common good, nondiscrimination, political freedom, freedom from violence and harassment, control over our own bodies, and equal opportunity...

If the LGBT movement acts in isolation it [will fail to see] the

ways in which it reinforces inequality.

If the LGBT movement acts in isolation it [ignores]... the crisis eroding the very foundation of civil rights in this country. Increasingly there are no rights apart from those that are bought and secured in the marketplace. The wielding of private power and political access based on wealth undermines democracy for all people. If this remains the context, gains made around “sexual orientation” are meaningless.

“From Isolation to Justice: A Letter to the LGBT Movement from the Next Generation” (excerpts), signed by more than 900 people from 34 states and the District of Columbia.

matter, we resisted erasure and responded by loving ourselves enough to try to save our own lives. Sometimes we succeeded; sometimes we did not. We must never forget, however, that we know how to build sanctuary upon a foundation of love, a love that is expressed in part as our relentless determination to survive. Within these sanctuaries we have shared stories, laughter, rage, and tears; held each other through dark nights; bound one another's wounds; drawn on one another's creativity; gathered strength; and emerged together to mount even more powerful public challenges to injustice and the violence directed against us.

We have not always known, however, how to create sanctuary for one another. We have often failed to appreciate and address the intertwining effects of class, race, gender, culture, and sexuality within our own communities, much less in the larger society. If we are honest about our own weaknesses and our own fears, however, we can create intentional ways of learning from one another through cross-constituency dialogue.

We see evidence in many settings of a hopeful and inspiring insistence on wholeness. Prophetic voices, many of them from young people, call us to a new understanding. Single-issue approaches to organizing are giving way to a more integrated vision that refuses to shortchange the complex realities of human lives.

New strategies are emerging from the struggles of women of color to fight intimate violence while simultaneously confronting the structural violence of the state. (In a companion Justice Visions working paper, researcher/activist Anannya Bhattacharjee offers examples of such initiatives.<sup>18</sup>)

Within AFSC, the Cambridge-based Criminal Justice Program works to advance restorative justice principles within a community-determined and community-controlled context, through workshops, advocacy, and coalition building. The work requires careful, patient attention to building engaged relationships among diverse constituencies, some of which have not worked together before, in developing common values, establishing mutual respect, and exploring the meaning of community, safety, and justice.

To address issues of people caught up in the

criminal justice system, AFSC, together with Boston City Counselor Chuck Turner's District 7 Criminal Justice Committee, has supported development of a new coalition of individuals and agencies with experience in domestic violence, legal aid, health care, substance abuse, and community organizing. Focusing on the needs of women and youth, this coalition is exploring ways of reconceptualizing "crime" as "harm," in order to respond to and heal the harm caused to all parties: victims, offenders, and the communities they come from. From the outset, the coalition has included former prisoners and families and friends of prisoners. A major challenge for both the program and the coalition is to maintain the integrity of the original vision, keeping the work free from distortion by the penal system.

Similarly, a modest but steadily growing number of progressive LGBT groups, primarily but not exclusively people-of-color organizations, are addressing the intersections of hate violence, structural violence, and the interrelationships of race, culture, class, sexuality, and gender. The New York-based Audre Lorde Project has done so consistently. Southerners on New Ground (SONG), a progressive, multiracial LGBT organization, seeks to develop transformative models of organizing that connect race, class, gender, and sexual orientation, integrating work against racism, sexism, and economic injustice into LGBT organizing and bringing anti-homophobia work into other freedom struggles in the South.

Within AFSC, the multiracial Hawai'i Gay Liberation Program was born out of cultural, racial, and class tensions that surfaced around the effort to legalize marriage for same-sex couples. Since its inception, the program has addressed multiple levels of violence and explored different strategies for creating safe and just communities, linking organizing around hate violence and safe schools to organizing that confronts structural violence against Kanaka Maoli (Native Hawaiians), other people of color, youth, and LGBT people. All of these organizing efforts are organically

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<sup>18</sup> See "Whose Safety?," *op. cit.*



linked to anticolonial struggles for Kanaka Maoli sovereignty and human rights, as well as to the campaign to remove the U.S. military presence from Hawai'i. The program seeks to illuminate the ways in which both LGBT and Kanaka Maoli movements are part of broader movements for social, economic, and cultural justice. This experience has afforded important opportunities to speak to the ethics of relationship and alliance between white people and people of color, as well as indigenous and non-indigenous people, in the larger LGBT and progressive movements.

Community building and coalition efforts designed to withstand turbulent storms of adversity must be rooted in mutually supportive, engaged, consistent, and trustworthy relationships that extend into the spiritual, cultural, social, political and economic realm. Only from such relationships can just, beloved, generous, and inclusive community truly emerge. In AFSC's experience, relationships among people who are racially, ethnically, culturally, sexually, and spiritually diverse must be

built on a foundation of respect, understanding, and integrity. They must be supported by consistent, visible efforts to shoulder one another's burdens of injustice. Such relationships across constituencies and movements must be rooted in something far deeper than a political marriage of convenience forged in crisis, in reaction to the initiatives of the secular and religious right.

After decades of fragmentation in progressive movements, we believe the moment has arrived to explore the relationship between hate violence and structural violence. We believe it is necessary to connect our discussions and our work across constituencies. Community capacity does not yet exist in most places to begin experimenting with new justice practices, and we must not be naive about how challenging creating such a capacity will be. Even so, we can begin to establish a foundation for the work that is yet to come.

The leadership for such efforts must come from those most affected by every form of violence. Regardless of who we are, however, we can

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**A**s persons of color and diverse ethnic backgrounds, we can never forget our long history of struggling not to be erased by a beloved church where silence and spiritual dismemberment were theologically institutionalized. Scripture is the Word of Life, but we intuitively know the history of its use as the Word of Death, to support the sins of colonialism, slavery, racism, and sexism.

We all know Gay, Lesbian, Bisexual and Transgender people. Seen or unseen, they are vital members of our communities. For many of us, they have been our invisible neigh-

bors, sons and daughters, brothers and sisters, cherished members in the community of life. Indeed, we recognize that throughout history, our church and our communities have benefited from the gifts of Gay, Lesbian, Bisexual, and Transgender people. But in return for their gifts, we have given these brothers and sisters silence or scorn. When they have asked for their name and acknowledgement of their place as worthy members in the family of God, they have been answered with continued overt or subtle forms of spiritual and physical violence . . .

Remembering the voices who have told us to wait on

justice, we dispute the notion that issues of race and nationality are so overwhelming that to fight for another issue of injustice is to water down the movement. For the storehouses of God's justice do not run low, and we must recognize the interconnectedness of all forms of oppression if we are ever to achieve the Kingdom. The realm of God is at hand.

We acknowledge that there may be differences of opinion among us, but this does not require that we wait on justice.

— Statement of  
United Methodists of Color  
for a Fully Inclusive Church,  
April 2000

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encourage, support, and sustain one another along the way. In doing so, it is essential that we begin to formulate and lift up a coherent moral, social, and economic vision that reflects the values of love and healing justice.

We cannot cease to lift up our voices against injustice wherever we find it. At the same time, to work in ways that are simply reactive to the injustices around us is dispiriting and exhausting, and will lead us ultimately into fanaticism. Intolerance, whether from the right or the left, is a strange glue, binding the hater to that which is hated. When we fail to keep the values of love, justice, and interdependence at the center of our work, we risk becoming a mirror image of that which we oppose.

With the values of love and justice at the center of our work, all things are possible. Imagine, for example, community organizing around funding for public education that links the struggles of LGBT and questioning youth, people-of-color communities, criminal justice activists, and others. Imagine linking the work of many

different anti-violence and criminal justice activists together at the community level, in ways that finally dissolve the distinction between “public” and “private” violence, that link hate violence to the violence of the state, and that pay close attention to the interaction of gender, sexuality, race, and class. Imagine community-based organizing around the theme of “creating just, safe, caring, and sustainable community.” Imagine the prophetic voice that religious and spiritual communities could bring to work carried forward within this framework of interdependence. Imagine the vision of justice that could arise when we refuse to cast anyone, including one another, aside.

Claiming the value of interdependence permits us to tear down the citadel of privilege, establishing in its place a life-giving foundation of love and healing justice. This is how we are called in our own day to follow the ancient practice, found in every major spiritual and ethical tradition, of transforming adversity into compassion, compassion into love, and love into justice.

# Key Elements of State Hate Crimes Legislation

**A**s this publication goes to press, at least forty-five states and the District of Columbia include some form of hate crimes law in their criminal codes. These laws vary widely from state to state. The list below covers some of the most common or significant features of hate crimes legislation, existing and proposed.

**Definition of hate crimes:** Most state laws require motivation of bias against particular groups of people, based on specified characteristics, although Texas and Georgia require only a motivation of any kind of prejudice. A hate crime is usually described as an underlying criminal offense (states vary on which criminal offenses are covered) motivated by bias or hostility toward the victims. For example, aggravated assault, simple assault, or malicious intimidation might all be considered “underlying criminal offenses.”

The status categories may include the victim’s race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, or disability. (Some laws add the words “actual or perceived” to the status categories.) Almost all laws include race, color, religion, and perhaps national origin and ethnicity. Twenty-two states and the District of Columbia include sexual orientation as a protected status and almost as many include gender and disability. Very few include gender identity or actual or perceived gender.

The definitions in most hate-crimes legislation are “neutral.” They focus on protected status categories (i.e., “race,” not “people of color,” and

“sexual orientation,” not “lesbian and gay people”). Thus they are not specific to groups that have historically suffered violence, injustice, and exclusion at the hands of a dominant majority in the United States. As a result, white supremacist violence against people of color is considered to be equivalent to a violent act by a person of color who attacks a white person motivated by racial hostility.

Statutes vary on the degree of bias motivation required to constitute a hate crime. Some say the motivation must be primary or “substantial”; others say “in any degree.”

**Penalty enhancements:** Once a person is convicted of a hate crime, many states have some sort of “enhanced penalty” provision, which may be either mandatory or discretionary. Enhanced penalties add longer periods of incarceration to the sentence and may also impose additional fines. The death penalty is not a penalty enhancement in existing or proposed hate crimes legislation; its relationship to hate crimes is indirect. Different states have varying formulas for calculating the enhancements.

**Sentencing:** In some laws, hate motivation may be considered as an aggravating factor at the time of sentencing. Generally, a judge or sentencing jury has a certain amount of discretion in weighing aggravating factors against mitigating factors.

**Data collection and reporting:** Typically, data collection provisions require that local law-enforcement agencies gather data on hate crimes and

report them to an appropriate state agency. The state agency, in turn, is required to provide periodic reports to the governor, the state legislature, and so on. Some state and federal laws also provide for special training for law-enforcement personnel in taking hate crimes reports and collecting and reporting data. Federal law requires reporting of national data, but reporting by local agencies to the FBI is voluntary.

**Civil actions:** Some laws provide a civil cause of action for harm related specifically to hate crimes — that is, they permit the victims to sue for damages, instead of or in addition to criminal charges filed by state or federal prosecutors. Alternatively, in some jurisdictions, civil damages may be recovered under other statutes not specifically related to hate crimes. Injunctions or restraining orders against the offenders may be requested in some jurisdictions.

**Training and education for law-enforcement officials:** Some laws provide resources, usually quite limited, to support hate crimes-related training and education for police officers, prosecutors, and other law-enforcement personnel.

**Institutional vandalism:** Some laws add “institutional vandalism” as a category of hate-motivated crime that is punishable either as a misdemeanor or a felony, depending on circumstances. Institutional vandalism occurs when a person knowingly vandalizes, defaces, or otherwise damages houses of worship or places used for other religious purposes, cemeteries, schools, or community centers, including their grounds and personal property in such facilities.

# Summary of Federal Hate Crimes Legislation

## **Pending\***

**Local Law Enforcement Enhancement Act of 2001 (LLEEA)** — Formerly known as the Hate Crimes Prevention Act, this legislation would enhance the ability of the federal government to prosecute violent crimes involving bodily injury if motivated by race, color, religion, or national origin, actual or perceived. It would also authorize federal prosecution of crimes motivated by the actual or perceived sexual orientation, gender, or disability, based on a finding that such hate crimes substantially affect interstate commerce, therefore bringing them under the jurisdiction of federal authorities. The bill would remove restrictions on federal involvement by permitting prosecutions without requiring proof that the victim was involved in a federally protected activity, such as voting, attending school, or serving on a jury. The bill also acknowledges that “eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude,” though it defines protected status categories in neutral terms. It amends the Hate Crimes Statistics Act (HCSA) to include gender.

This legislation recognizes that state, local, and Indian tribal authorities still have primary responsibility for investigating and prosecuting hate crimes. In general, LLEEA states that under certain circumstances, and at the request of state, local, or tribal law-enforcement officials, the U.S. Attorney General may provide technical, forensic, prosecutorial, or other forms of assistance in

criminal investigations or prosecutions of hate crimes. The legislation authorizes an appropriation of \$5 million, which the Attorney General may award as grants to help state, local, and tribal law-enforcement agencies “with the extraordinary expenses associated with the investigation and prosecution of hate crimes.” The law requires state, local, or tribal law-enforcement authorities to coordinate and consult with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes. The Office of Justice Programs, charged with administering the grant program, is called upon to work closely with funded jurisdictions “to ensure that the concerns and needs of all affected parties” are addressed through the local infrastructure developed under the grants. The disbursement of funds and the type of community consultation to be undertaken is left entirely to the discretion of the U.S. Department of Justice and other law-enforcement agencies.

Authorization of appropriations for and authority to make grants is made for grants “to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law-enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.” These grants are to be made with the approval of the Attorney General, in accordance with regulations prescribed by him or

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\* As of May 2001.

her, and administered by the Office of Justice Programs.

This legislation addresses federal sentencing for those who commit and are convicted of hate crimes in several ways: by setting fines “in accordance with this title”; by establishing maximum terms for those who commit or attempt to commit violent crimes involving bodily injury; and by increasing sentences if the offense results in death or if it includes kidnapping, aggravated sexual abuse, or attempts at any of these. The legislation directs the U.S. Sentencing Commission to study the issue of adult recruitment of juveniles to commit hate crimes. It grants the authority to amend federal sentencing guidelines to provide sentencing enhancements, in addition to a penalty enhancement provided for the use of a minor during the commission of an offense, for adult defendants who recruit juveniles to assist in the commission of hate crimes. Finally, the legislation requires the U.S. Sentencing Commission to ensure that there is reasonable consistency with other federal sentencing guidelines. This language links this bill directly to the Violent Crime Control and Enforcement Act of 1994 (see Hate Crimes Sentencing Enhancement Act below).

Finally, the LLEEA authorizes the appropriation of additional sums for the Department of the Treasury and the Department of Justice, including the Community Relations Service, for the purpose of increasing the number of personnel needed to respond to alleged hate crimes. If implemented in exactly the way many progressive proponents of hate crimes laws intend, this provision could expand the mandate of the Community Relations Service and increase staffing commensurately. Whether such appropriations are made, however, is a political matter, and granting authority to expand the mandate of certain agencies in no way guarantees that such expansions would effectively serve the interests of vulnerable and marginalized groups.

**Native American Hate Crimes and Criminal Justice Grant Program Act** — Introduced in the U.S. House of Representatives in March 2001, this law would amend the Omnibus Crime Control and Safe Streets Act of 1968 to dedicate not less

than \$100 million for reducing violence and hate crimes against Native Americans, reducing the incidence of crime on reservations, and other purposes. These monies would be available for grants to Indian tribal governments or tribal law-enforcement agencies and could be used for direct law-enforcement expenditures or for purposes such as counseling and social services related to domestic violence and spousal abuse and programs to reduce hate violence against Native Americans.

## Existing

**The Hate Crimes Statistics Act** — Enacted in 1990, HCSA requires the FBI to collect data on crimes that manifest prejudice based on race, religion, sexual orientation, or ethnicity from law-enforcement agencies across the country and to publish an annual summary of the findings. In the Violent Crime Control and Law Enforcement Act of 1994, Congress expanded coverage to include disability. The proposed Local Law Enforcement Enhancement Act of 2001 would require the FBI to collect data from states on gender-based hate crimes in the same manner that it currently collects data for race, religion, sexual orientation, disability, and ethnicity.

**The Hate Crimes Sentencing Enhancement Act** — Originally proposed as separate legislation, this measure became law as part of the Violent Crime Control and Law Enforcement Act of 1994. It required the U.S. Sentencing Commission to provide a sentencing enhancement of “not less than three offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes.”

**The Violence Against Women Act (VAWA)** — VAWA, a somewhat more innovative measure focusing on the escalating problem of violence against women, was originally passed by Congress in 1994 and reauthorized in the fall of 2000. In May 2000, prior to the law’s reauthorization, the U.S. Supreme Court struck down VAWA’s federal civil rights remedy for victims of gender-based violent crimes, which provided them with the right

to compensatory and punitive damages as well as injunctive relief.

In the language of VAWA, “(a)ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.” It is an unusual example of legislation that addresses violence against a protected group — women — which has historically been subordinated to male dominance, in that it does not use neutral language and begins to directly address a broader spectrum of victim and community needs. In addition to providing authority for education and training programs for law-enforcement officers and prosecutors, VAWA provides support to thousands of domestic violence programs and rape crisis shelters by funding a broad range of supportive services. It expands the ability of undocumented women to file immigration papers without the cooperation of their husbands and protects battered immigrant women from deportation in certain circumstances.

“Whose Safety,” AFSC’s companion Justice Visions working paper, notes that VAWA, which is widely hailed as a signal achievement for the women’s anti-violence movement, resulted in significant funding for reform of how domestic violence cases are processed. Such funding, however, was channeled directly to the criminal justice system, often without any input from domestic

violence organizations. The resultant reforms have led to such practices as police threatening a woman to force her to testify against her batterer.

“At the same time, VAWA is also a good example of grassroots involvement as well as cross-issue collaboration between immigrants’ rights groups and domestic violence groups, through the National Network on Behalf of Immigrant Battered Women. Through this coalition, small community organizations were involved in collecting stories of undocumented women in order to make the case for the inclusion of the self-petitioning measure in the act . . . Some of the women who participated in this grassroots process have gone on to take leadership around the issue of domestic violence in their communities.”\*

**The Church Arsons Prevention Act** — This measure, passed by Congress in 1996, broadened existing federal criminal jurisdiction over attacks against places of worship. It increased penalties for such crimes, created a loan guarantee recovery fund for rebuilding, and authorized additional personnel in various federal law-enforcement divisions to investigate, prevent, and respond to arsons and other crimes.

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\* “Whose Safety?,” *op. cit.*