Pulse: Finding the Meaning in a Massacre Through Gay Latino Intersectional Justice

Judith E. Koons
Barry University

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I. Introduction ........................................................................................................ 2

II. Finding Meaning: The Roots of Violence in Enlightenment Thinking ........................................... 8
   A. The Social Construction of Homophobia and Border Anxiety: A Critical Review ................. 12
   B. Hate Crime Against Latina/os: More Border Anxiety .......................................................... 14
   C. Intersectional Oppression: LGBTQ People of Color ............................................................ 18

III. Making Meaning: Ways to Heal ........................................................................ 26
   A. They Were Dancing: Intersectional Justice ................................................................. 26
   B. They Were Dancing: Intersectional Justice Through Political Action ....................... 32
      i. Legal Protections for the LGBTQ Community ..................................................... 33
      ii. Immigration: Redressing Racist Rhetoric and Fortified Borders ........................... 43

IV. Conclusion: Binaries, Borders, and Shared Responsibility ...................................... 50

* Professor of Law, Barry University School of Law, Orlando, Florida. B.A., J.D., University of Florida; M.T.S., Harvard Divinity School. Copyright Judith E. Koons, 2016. I am indebted to Rebecca Norman for her excellent research assistance, to my spouse Ellen Tetlow for her generous heart and many talents, to Nancy Chi Cantalupo and Julia Grimke Young for their helpful comments, and to Dean Leticia Diaz and Barry University School of Law for their ongoing support. This article is dedicated to the victims, survivors, first responders, medical staff, and all those whose lives have been deeply touched by the massacre at Pulse nightclub.
I. INTRODUCTION

In the early morning hours of June 12, 2016, a hate-filled man calmly opened fire on the patrons of the Pulse nightclub in downtown Orlando, Florida. Over the next three hours, he killed forty-nine men and women who had been celebrating Latin Night at the gay club. Fifty-three persons were wounded. When police finally entered the club and killed the murderer, nothing could be heard but the sounds of cell phones ringing. One officer who entered that ghastly scene said it felt like all of the people on the floor were “playing dead.”

We mourned. We mourned another mass shooting of innocents. We went to vigils and held up candles of hope. We held up photos of those slain. We built memorials with flowers, flags, photographs, banners, can-

7. See Andrew Gibson & Charles Minshew, Orlando Nightclub Shooting: Read About the Victims, ORLANDO SENTINEL (June 14, 2016, 4:29 PM), http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/victims/os-pulse-nightclub-orlando-shooting-victims-hnlstory.html [https://perma.cc/3ZEL-D3NU] (providing photographs of the victims). The forty-nine people who were killed at Pulse nightclub were: Stanley Almodovar III (23); Amanda Alvear (25); Oscar A. Aracena-Montero (26); Rodolfo Ayala-Ayala (33); Antonio Davon Brown (29); Darryl Roman Burt II (29); Angel L. Candelario-Padro (28); Juan Chevez-Martinez (25); Luis Daniel Conde (39); Cory James Connell (21); Tevin Eugene Crosby (25); Deonka Deidra Drayton (32); Leroy Valentin Fernandez (25); Simon Adrian Carrillo Fernandez (31); Mercedez Marisol Flores (26); Peter O. Gonzalez-Cruz (22); Juan Ramon Guerrero (22); Paul Terrell Henry (41); Frank Hernandez (27); Miguel Angel Honorato (30); Javier Jorge-Reyes (40); Jason Benjamin Josaphat (19); Eddie Jamoldroy Justice (30); Anthony Luis Laureano Disla (25); Christopher Andrew Leinonen (32); Alejandro Barrios Martinez (21); Brenda Lee Marquez McCool (49); Gilberto Ramon Silva Menendez (25); Kimberly Morris (37); Akyra Monet Murray (18); Luis Omar Ocasio-Capo (20); Geraldo A. Ortiz-Jimenez (25); Eric Ivan Ortiz-Rivera (36); Joel Rayon Paniagua (31); Jean Carlos Mendez Perez (35); Enrique L. Rios Jr. (25); Jean Carlos
We went to funerals. Too many funerals. At those funerals, we donned giant angel wings to block grieving families from those who spewed more homophobic hatred. We volunteered and contributed money to families of those who died, to those hospitalized, to first responders. We posted messages of hope on social media and passed along stories of heroism and sacrifice. We talked about the victims, said each name, and cushioned it with a prayer. Mostly, we cried and began to search for meaning.


Many roads in our nation's history converge in the Pulse massacre.\textsuperscript{12} In the tragedy are the deep roots of the struggle for LGBTQ equality and the rutted tracks of immigration for people all over Latin America to make a home in central Florida.\textsuperscript{14} The massacre also reaches into the bowels of terrorism, with the shooter attributing his acts to the Islamic state.\textsuperscript{15} Further, the massacre raises significant questions of domestic security, the availability of assault weapons, and the immovability of gun control at the state and federal levels.\textsuperscript{16}

\begin{itemize}
  \item \textsuperscript{12} Massacre is defined as "the act or an instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty." \textit{Massacre}, \textsc{Merriam-Webster}, http://www.merriam-webster.com/dictionary/massacre [https://perma.cc/4UCA-63AZ] (last visited Nov. 7, 2016).
  \item \textsuperscript{14} Ninety percent of the victims were of Hispanic descent. Lizette Alvarez & Nick Madigan, \textit{In the Dead in Orlando, Puerto Ricans Hear a Roll Call of Their Kin}, \textsc{N.Y. Times} (June 14, 2016), http://www.nytimes.com/2016/06/15/us/in-orlando-victims-puerto-ricans-hear-a-roll-call-of-their-kin.html [https://perma.cc/8DTC-LTEJ].
  \item \textsuperscript{15} The Associated Press, \textit{Why Did [The Shooter] Attack Pulse?: Orlando Shooter May Have Struggled with Sexuality}, \textsc{AL.com} (June 14, 2016, 7:36 AM), http://www.al.com/news/index.ssf/2016/06/why_did_[TheShooter]_attack_pul.html [https://perma.cc/FZ6G-MP9F] (name omitted from hyperlink). As an ethical matter, the author has decided not to publish the name of the shooter. This article approaches the massacre as a massive hate crime, not necessarily as an act of terrorism, although it is understandable that it is viewed from that perspective. "[T]errorism is generally understood as premeditated violence perpetrated by a nonstate actor against noncombatants (civilians or off-duty soldiers) in pursuit of a political, religious, or social goal, designed to coerce a government or to intimidate or convey a message to a larger audience." \textsc{Steven Pinker, The Better Angels of Our Nature: Why Violence Has Declined} (Penguin Group 2011). Two key components of terrorism are "dread" and "unfathomability." \textsc{Id.} at 345–46. While the massacre certainly triggered a sense of dread in many, the article will show that hate crimes are common occurrences in the United States; from this perspective, hate crimes are unfathomable in a broad social sense. At the same time, the scale of the Pulse massacre is of such enormity that it reaches into the realm of the unfathomable. For additional discussion of hate crimes, see infra Sections II.B., II.C., and III.A. For additional discussion of terrorism, see infra Section IV.
  \item \textsuperscript{16} Bart Jansen, \textit{Weapons Gunman Used in Orlando Shooting Are High-Capacity, Common}, \textsc{USA TODAY} (June 15, 2016, 8:48 AM), http://www.usatoday.com/story/news/2016/06/14/guns-used-kill-49-orlando-high-capacity-common-weapons/85887260 [https://perma.cc/6Z7E-VF8W]. The shooter used a Sig Sauer MCX semiautomatic rifle and a 9mm Glock semiautomatic model handgun that had been purchased about a week before the massacre. \textit{Id}. The weapons and ammunition caused complex and severe injuries. Richard Luscombe & Jessica Glenza, \textit{'Trying to Deal with the Pain': Orlando Survivors Face Long Road to Recovery}, \textsc{Guardian} (July 3, 2016 6:00 AM), https://www.theguardian
As the "worst mass shooting" in the United States, the massacre stands as another exclamation point behind a pedigree of violence that seems to be escalating in our country and the world. The tragedy gives us pause to ask about home, community, connection, risk, and safety. It prompts us to ask about the world our children will inherit. Will they be able to play outdoors, go to a concert, or dance at a nightclub? Finally, it asks us to name our responsibility. How ought I respond to the very pointed challenges that have erupted at this pivotal time in our nation's history?

As its point of departure, this article shines its light on the violence at Pulse and, by way of a political, ethical, and philosophical inquiry, seeks to expose the history and forms of oppression that lurk in its underlay-ment. To begin its interrogation of this act of seemingly senseless violence, the article asks two questions: why a gay nightclub and why "Latin Night"? This article proposes that these facts are not happenstance, but are the keys to unlocking this underworld of massive violence.

To set the framework that critiques the violence underlying the massacre at Pulse, Part II.A first looks to the philosophical history of modern
Western thought and the Enlightenment era. In following this historical thread, Part II.B proposes that the acts of violence reflected in Pulse were not random, but were the product of socially constructed systems of oppression that make hate crimes toward gay and Latino communities not only imaginable but also possible and even inevitable. Drawing this point forward, Part II.C argues that the forms of sexuality-, gender identity-, race-, and ethnicity-based oppression underlying the massacre at Pulse also intersect in ways that animate one another.

This article then lifts its vision to its constructive side in Part III.A. With intersectionality as its springboard, this article suggests that, just as forms of oppression are related, so are forms of justice. At the inter-
section of the gay and Latinx communities is the unfinished business of
remedying historic subordination and dismantling divisions constructed
of fear, hatred, and privilege. The Pulse massacre pierced the conscience
of the community and pointed toward ways relationships of respect can
form in a heterogeneous public. Drawing its inspiration from the vic-
tims and survivors of the massacre, Part III.B suggests forms of political
action—legal protections for the LGBTQ community and respectful ap-
proaches to immigration reform—that are predicates to intersectional
justice. There is much to be learned from the patrons of Pulse. They were
dancing. They were celebrating sexual, spiritual, aesthetic, cultural, and
political connections in an inclusive and diverse community with a rich
array of local and international identities. This article urges such a spirit of interconnecting and liberatory joy to be part of the memories of
the 49. To embark on this endeavor, this article will first examine the
philosophical underpinnings in Western thought of violence against sub-
ordinated people.

24. According to Huffington Post, “Latinx is the gender-neutral alternative to Latino, Latina and even Latin@.” Tanisha Love Ramirez & Zeba Blay, Why People Are Using the Term “Latinx,” HUFFINGTON POST (July 5, 2016, 5:33 PM), http://www.huffingtonpost.com/entry/why-people-are-using-the-term-latinx_us_57753328e4b0cc0fa136a159 [https://perma .cc/LPB7-M4F9]. The term is used by “scholars, activists and an increasing number of journalists.” Id. Further, “Latinx is quickly gaining popularity among the general public . . . [It] is inclusive of the intersecting identities of Latin American descendants.” Id. For additional discussion on intersectionality and people who identify as Latinx, see infra Section II.C.

25. Iris Marion Young posits this view of democracy: “To promote a politics of inclusion, then, participatory democrats must promote the ideal of a heterogeneous public, in which persons stand forth with their differences acknowledged and respected, though perhaps not completely understood, by others.” YOUNG, supra note 21, at 119.

26. For a discussion of recommended political action regarding LGBTQ civil rights and immigration policy and discourse, see infra Sections III.B.1. & 2.


28. See generally id. (focusing on the “commitment to a broad and inclusive emancipatory project” of the Queer and LatCrit movements). “The 49” refers to the forty-nine people who were murdered at Pulse nightclub.
II. FINDING MEANING: THE ROOTS OF VIOLENCE IN ENLIGHTENMENT THINKING

To critique the violence that undergirded the massacre at Pulse, this article first looks to the Enlightenment era, which produced patterns of thinking that shape modern Western law, philosophy, ethics, and everyday consciousness.29 Beginning in the sixteenth century, Enlightenment philosophers turned from the authority of religious dogma to embrace Reason.30 Dualistic structures of thought were the foundation of this fresh turn to rationality.31 Philosophers organized their thinking around binaries such as reason/passion,32 public/private,33 and mind/body,34 which became silently insinuated as prevailing structures of thought.35 Western legal thinking reflects this dualistic pattern: judge/jury, plaintiff/defendant, law/facts, and direct/cross. Being true to its philosophical heritage, modern consciousness is also shot through with binaries: good/bad,

29. According to Issak Dore:
The major figures of the Enlightenment period, or Age of Reason (roughly from Hobbes to Kant), were aware that they were participants in a broad intellectual project that had two important and related goals, namely, to reject past claims to knowledge based on authority and to construct an edifice of knowledge based not on authority but on reason and science.


30. See, e.g., GENEVIEVE LLOYD, THE MAN OF REASON: "MALE" AND "FEMALE" IN WESTERN PHILOSOPHY xviii (Univ. of Minn. Press 2d ed. 1993) (advising that the aspiration to Reason "lies at the very heart of our philosophical heritage"); see also DORE, supra note 29, at 295–96 (tracing intellectual movements from the decline of classical Greek thought with a "rationalist epistemology," to the "modern philosophers" in the Enlightenment period, which "dominated Western epistemology well into the twentieth century, when new [postmodern] philosophical currents began to challenge its premises"); Iglesias, LatCrit Theory, supra note 27, at 7–31 (sketching a "genealogical narrative" of postmodern legal theory to situate LatCrit theory in "seven strains of critical legal discourse": Critical Legal Studies (CLS), Critical Race Theory (CRT), Feminist Legal Theory (FemCrit), Critical Race Feminism, Asian Pacific American Critical Legal Scholarship (APACrit), Chicana/o Studies, and Queer Legal Theory (QueerCrit)).

31. LLOYD, supra note 30, at 78.

32. See YOUNG, supra note 21, at 111 (observing that Rousseau and Hegel envisioned a society in which "the idea of normative reason . . . stands opposed to desire and affectivity").


34. See LLOYD, supra note 30, at 44–45 (analyzing the method of philosopher René Descartes in the context of his doctrine of "the radical separateness of mind and body," while acknowledging the egalitarian impulse that animated his method).

35. See, e.g., YOUNG, supra note 21, at 97 (critiquing the Enlightenment-based ideal of impartiality, which "generates a dichotomy between universal and particular, public and private, reason and passion").
tall/short, fast/slow, up/down, succeed/fail . . . .

Significantly, modern binarism is not neutral. Linguists have proposed that, in binary thinking, each pair has a favored and disfavored pole. That is, tall is preferred over short; fast is favored over slow; early is better than late.

A key construct in Enlightenment thinking that effectively legitimizes violence is the subject/object binary. The dominant subject stands in the knowing, normative position. In binarism, everything else is an object. When an individual is defined as different from the subject (and is therefore an object), violence is justified. What is being attacked is not a thinking, feeling, and hurting human being, but an object that is devoid of family, feelings, hopes, and dreams.

Related to the subject/object binary is the early feminist idea of the "Other." As a "fundamental category of philosophical thought" in modernist thinking, otherness is defined by the dominant subject as that which is incidental and inessential to itself. More perniciously, subject groups set up others in inferior and excluded positions. According to Simone de Beauvoir, who first articulated the concept of the Other in 1949:

In small-town eyes all persons not belonging to the village are 'strangers' and suspect; to the native of a country all who inhabit other countries are 'foreigners'; Jews are 'different' for the anti-Semite, Negroes are 'inferior' for American racists, aborigines are 'natives' for colonists, proletarians are the 'lower class' for the privileged.

36. See id. at 99 ("In the history of Western thought this logic of identity has created a vast number of mutually exclusive oppositions that structure whole philosophies: subject/object, mind/body, nature/culture.").

37. Id. at 114-16; see also MARY FIELD BELENKY ET AL., A TRADITION THAT HAS NO NAME: NURTURING THE DEVELOPMENT OF PEOPLE, FAMILIES, AND COMMUNITIES 21 (Basic Books 1997) (highlighting the work of psychologists and linguists regarding the gendered nature of binaries that structure our language).

38. BELENKY ET AL., supra note 37.

39. Id.

40. E.g., DORE, supra note 29, at 846.

41. YOUNG, supra note 21, at 125-27.

42. See John Kavanaugh, Challenging a Commodity Culture, 111 COMMONWEAL 606, 608 (1984) ("Underlying all violence is a human being that has been reduced to the status of an object.").

43. See SIMONE DE BEAUVOIR, THE SECOND SEX at xvi (H.M. Parshley ed. & trans., 1989) (1949) ("Thus humanity is male and man defines woman not in herself but as relative to him . . . . she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute—she is the Other.").

44. Id. at xvii.

45. Id.
Binarism and its progeny—oppression—are at the root of violence.\textsuperscript{46} As described by a postmodern scholar, violence is “a phenomenon of social injustice” that is systemic: “it is directed at members of a group simply because they are members of that group.”\textsuperscript{47} Indeed, violence against gays, Latinos, and other groups that are marked as subordinated is “motivated by fear or hatred of those groups.”\textsuperscript{48}

Considerable scholarship has deconstructed and demonstrated the dangers of binarism.\textsuperscript{49} However, just as subordination stubbornly plagues postmodern society, so its sad engine of pathetic and tired binaries keeps the fires of intra- and intergroup oppression going.\textsuperscript{50} Stepping into the sticky web of binarism is but a beginning point toward critiquing violence directed toward subordinated groups and imagining social remedies.

From a binarist position, the patrons of Pulse were predominately comprised of two outsider groups historically constructed as Others—gays and Latinos.\textsuperscript{51} To further critique how these constructed identities often are the targets of violence, the next sections will discuss the social con-
struction of homophobia,\textsuperscript{52} hate crimes against people who are seen as non-white,\textsuperscript{53} and intersections among these positionalities.\textsuperscript{54}
A. The Social Construction of Homophobia and Border Anxiety: A Critical Review

The language of sexuality arose in the late eighteenth century. In the United States, the terms "heterosexual" and "homosexual" made their appearances in late nineteenth century medical texts. Sigmund Freud had a significant impact on the social instantiation of a heterosexual/homosexual binary. The category of normative heterosexuality was introduced by Freud, who considered heterosexuality as dominant, but also dependent on subordinate homosexuality. As a result, "[h]eterosexual and homosexual appeared in public as Siamese twins, the first good, the second bad, bound together for life in unalterable, antagonistic symbiosis."

From the onset of the Gay Liberation Movement to Queer theory and the marriage equality cases, American society has been in the grip of contestations to systems of subordination based on sexuality. The increas-
ing visibility of transgender people has also stood as an embodied representation of ambiguities in gender identity as well as the inadequacy of utilizing binarism to explain complex social phenomena. At the same time, such ambiguities are the very source of fear and perceived threats to groups that are clinging to their position of constructed dominance and enacting historic patterns of othering.

In Freudian thought, the ambiguity of the dependency of heterosexuality on homosexuality points to a "border anxiety" between the two categories. With some social constructs, such as race, the perceived differences may be visible. However, the markers differentiating homosexuals from heterosexuals have become increasingly muted. As a consequence, "[h]omophobia is one of the deepest fears of difference precisely because the border between gay and straight is constructed as

the mainstream forces and institutions it meant to resist." Id. (citing Teresa de Lauretis, Introduction to Queer Theory: Lesbian and Gay Sexualities, 3 Differences: Am. J. Feminist Cultural Stud., Special Issue 2, 1991, i, iii, xviii (1991)). There is no formulaic definition of Queer theory; however, it has been characterized as part of postmodern thought, honoring inclusiveness, embracing indeterminacy, focusing on the silent normative privilege of heterosexuality, and promoting social change. Id. at 281–84. The marriage equality cases are: Obergefell v. Hodges, holding that the Due Process and Equal Protection Clauses of the Fourteenth Amendment require states to issue marriage licenses to couples of the same sex and to recognize out-of-state marriages of same-sex couples; and United States v. Windsor, holding that the federal Defense of Marriage Act violates due process and equal protection guarantees of the Fifth Amendment. Obergefell v. Hodges, 576 U.S. __, 135 S. Ct. 2584, 2588 (2015); United States v. Windsor, 570 U.S. __, 133 S. Ct. 2675, 2706 (2013).

61. See e.g., Kepros, supra note 60, at 285 (asserting that the "tidy binary" of heterosexual/homosexual "inaccurately describes the multiplicity of individual sexual behaviors" and also creates a hierarchy that "presupposes a fixed sexual identity"). According to the American Psychological Association:

Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person’s internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.


62. Young, supra note 21, at 146.

63. See e.g., Sagri Dhairyam, Racing the Lesbian, Dodging White Critics, in THE LESBIAN POSTMODERN 31–32 (Laura Doan ed., Columbia Univ. Press 1994) (comparing "the uncontested invisibility of racial difference, incessantly inscribed on the colored body" with the "oft-evoked contrast between the visibility of race and the invisibility of queer sexuality [which] hierarchizes queer sexuality over race by ignoring the cultural terrorism that maintains race as a stable category").

64. See Young, supra note 21, at 146.
the most permeable; anyone at all can become gay, especially me, so the only way to defend my identity is to turn away with irrational disgust." 65

Turning away is done with abjection, a reaction of disgust toward an “abject” who is “just on the other side of the border” and “too close for comfort.” 66 The continuum of homophobia not only includes passive forms of abjection and intolerance born of fear, but also forms of loathing in which the abject must be expelled or eliminated to maintain the border of a perceived secure self. 67 These forms of homophobia may generate violent hate crimes such as the massacre at Pulse. 68

B. Hate Crime Against Latina/os: More Border Anxiety

In American political discourse, another form of border anxiety has surfaced, exemplified by the calls to build a wall between the United States and Mexico. 69 Laden with oppressive images of Mexican immigrants, the anti-immigration discourse has generated hate crimes against members of diverse Latin communities living in the United States. 70

A critique of this violence calls up Enlightenment thinking. In the historic gaze of the Enlightenment subject, 71 the world is racially organized according to a white/black binary, which clearly divides people into classes with preordained sets of stratified societal rules and statuses. 72 When
people do not fit into that neat dualism, the Enlightenment subject becomes nervous, causing him to ask, “Where do you come from?” to tidy up his categorical world. More recently, the Enlightenment subject divides everyone into white and non-white racial categories. Although Latina/os comprise a multiplicity of racial, ethnic, and national origin identities, the Enlightenment subject attempts to reduce them to a binarist unity and seeks to exclude them from realms of protection, including citizenship.

Feeding on this division is American political rhetoric, which in many political corners has become virulently anti-immigrant and, as a corollary, anti-Latin. The anti-immigrant/anti-Latin discourse correlates with a dramatic increase in hate crimes targeting Hispanics. A report by the Bureau of Justice Statistics denotes the tripling of anti-Hispanic crimes in 2012. Moreover, hate crimes perpetrated against Latina/os have be-

much more than valorize whiteness and demonize Blackness: it also occludes all other nonwhite/non-Anglo positions in the construction and operation of racial hierarchy within and across groups or cultures”).

73. See generally Nadra Kareem Nittle, Myths and Stereotypes About Hispanics and Immigration, ABOUT.COM, http://racerelations.about.com/od/diversitymatters/a/Four-Myths-About-Latinos-And-Immigration.htm (last updated Aug. 1, 2016) (noting that whites and blacks are not perceived to be newcomers, but that “Asians and Latinos routinely field questions about where they’re ‘really from’”).

74. Valdes, Afterword, supra note 72.

75. See Raquel Reichard, 9 Things Latinos Are Tired of Explaining to Everyone Else, MIC.COM (Mar. 4, 2015), https://mic.com/articles/111648/9-things-latinos-are-tired-of-explaining-to-everyone-else#ZvxWr8fmi (§La [Latinas/os] are one of the most racially diverse ethnic groups in the world . . . . Despite media portrayals of olive-skinned Latinas with curly hair and curly bodies, Latinos can be black, with Afro-textured hair, brown, Indigenous, Asian, light-skinned and straight-up ethnically ambiguous.”). Reichard also stated:

[I]t bears repeating that people in Latin America neither refer to themselves as Latino nor Hispanic. These, again, are words placed on them soon after their arrival in the U.S. For many people in Latin America, they are just Cuban, Ecuadorian, Bolivian or whichever country or indigenous population they belong to . . . . Wrapping everything of Latin American descent into one category, Latino, erases the major political, economic, racial and cultural differences of each country.

Id.; accord Young, supra note 21, at 97–99 (arguing that the ideal of impartiality in modern thought congeals difference into the binary opposition of subject/object and results in expelling the other).

76. Leadership Conf., Confronting, supra note 70, at 16.

77. See id. at 14–17 (correlating the role of “high profile national media personalities” with “the increase in hate crimes against Hispanics” and giving examples of the mainstream media’s being infiltrated by extremist anti-immigration groups and their hate speech).

come increasingly violent. In case after case, Latina/os have been kicked, beaten, stabbed, shot, and urinated upon. One particularly disturbing case is the murder of nine-year-old Brisenia Flores, who was shot in the face at point-blank range as she was pleading for her life after her father was murdered by members of a Minuteman vigilante group.

According to a hate crime report for the National Institute of Justice, that many of the targeted victims are not actually immigrants is "not relevant" to offenders, who rely on their perceptions of the victims as immigrants. One implication of this finding is that hate-filled perceptions of others who appear different from the subject percolate at the bottom of hate crimes. Related to this phenomenon is the notion of "implicit assumptions." A project by a consortium of psychologists has been gathering data on the prevalence of implicit assumptions about race, gender, religion, and other sites of constructed difference. The project distinguishes between conscious and implicit attitudes: "Conscious experience provides an immediate, compelling, and incomplete account of the mind. Much of perception, thinking, and action occurs outside of conscious awareness or conscious control. Because of that, judgment and action can be unintentionally influenced by factors that we do not recognize.

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84. According to Project Implicit, Project Implicit is a non-profit organization and international collaborative network of researchers investigating implicit social cognition—thoughts and feelings outside of conscious awareness and control. Project Implicit is the product of a team of scientists whose research produced new ways of understanding attitudes, stereotypes and other hidden biases that influence perception, judgment, and action.

Id.
and may not value.\textsuperscript{85} Those who attack Hispanic people because they perceive them to be immigrants may be manifesting implicit bias—assuming that people who "appear" Hispanic are also (illegal or undocumented) immigrants.

Negative evaluations of subordinated groups occur both on conscious and unconscious levels. To elaborate, Iris Marion Young catalogues three levels of consciousness: discursive, practical, and basic security.\textsuperscript{86} At the level of discursive consciousness, actions and interactions are verbalized, grounded on explicit verbal foundation, or can be verbalized easily.\textsuperscript{87} In practical consciousness, actions and interactions are not verbalized, but are founded on "habitual, routinized background awareness" of the environment while the person is engaged in actions such as driving to the grocery store.\textsuperscript{88} The basic security area includes matters of identity and autonomy, along with unconscious motivations.\textsuperscript{89}

Young suggests that bias against historically subordinated groups has receded from discursive consciousness and now takes place at the levels of practical consciousness and the unconscious.\textsuperscript{90} A significant reason for the shift of bias into habitual and unconscious levels is the articulated public commitment in the United States to formal equality.\textsuperscript{91} Not only is outright discrimination prohibited, but many segments of the public also embrace formal equality as part of their belief systems and demonstrate that commitment in forms of public etiquette.\textsuperscript{92}

However, the anti-immigrant discourse illustrates a troubling trajectory in bias toward Latina/os. Bias against Hispanics has not simply dropped into the realms of the habitual and unconscious. Anti-Hispanic bias is also being widely expressed, and reproduced, in print and social images across many forms of media.\textsuperscript{93} By some accounts, American society is no


\textsuperscript{87} Id.

\textsuperscript{88} Id.

\textsuperscript{89} Id. at 131–32.

\textsuperscript{90} See id. at 133 (giving the example of a black man walking into a large room at a business convention and finding the noise level dropping).

\textsuperscript{91} Id. at 132.

\textsuperscript{92} Id.

\textsuperscript{93} See e.g., LEADERSHIP CONC., CONFRONTING, supra note 70, at 14–17 (providing examples of extremist anti-immigrant groups being given legitimacy by mainstream media); see also Moreno, supra note 80.
longer publicly committed to even discursive equality for Hispanics. As a frightening consequence, discursive bias is feeding habitual and implicit bias, leaving Latina/os in positions of increased vulnerability.

C. Intersectional Oppression: LBGTQ People of Color

The confluence of discursive and non-discursive oppression of Latina/os leads to another point of the hate crime study for the National Institute of Justice. According to the report, many victims perceived to be immigrants are also members of other protected groups. This finding underscores the claim that forms of oppression experienced by subordinated people are interstructured by race, color, ethnicity, class, sexual orientation, gender identity, and religion, to name a few of the predominant group identities claimed by and imposed on people. Recognizing oppression as intersectional is a framework reflecting the lived reality of a person’s constructed identities at the confluence of “intersecting and mutually reliant systems of oppression” and privilege. Furthermore, the

94. Cf. Iglesias, LatCrit Theory, supra note 27, at 22 (critiquing the norm of formal equality and advising that “LatCrit theory grounds its commitment to anti-essentialist intergroup justice on a respect for difference, rather than a requirement of sameness”).

95. See generally LEADERSHIP CONF., CONFRONTING, supra note 70, at 14–17, 26–27 (reporting an escalation in crimes directed toward Hispanics and the frequent appearance of extremist groups in the mainstream media); see also Costantini, supra note 81 (reporting that the number of radical right groups, including hate groups and nativist groups, increased in 2010).

96. See SHIVELY ET AL., supra note 82 (noting that victims “may be targeted based on their race, ethnicity or religion, but also perceived by perpetrators as an immigrant, further enhancing the bias motivation”).

97. The notion of interstructured oppression has been used by Womanist theologians to analyze the relationship of race, gender, and class to the liberation struggle of black people. Marcia Y. Riggs, The Logic of Interstructured Oppression: A Black Womanist Perspective, in REDEFINING SEXUAL ETHICS: A SOURCEBOOK OF ESSAYS, STORIES, AND POEMS 97 (Susan E. Davies & Eleanor H. Haney eds., Pilgrim Press 1991). Developing “an alternative theological pedagogy” that challenged the prevailing norms in seminaries, black women theologians adopted the name “Womanist” as defined by Alice Walker: “From womanish (Opp. of ’girlish,’ i.e., frivolous, irresponsible, not serious). A black feminist or feminist of color.” KATIE GENEVA CANNON, KATIE’S CANON: WOMANISM AND THE SOUL OF THE BLACK COMMUNITY 136–37 (Continuum 1995); ALICE WALKER, IN SEARCH OF OUR MOTHERS’ GARDENS: WOMANIST PROSE xi (Harcourt 1983). The concept of intersectionality, which is employed by legal scholars, includes “structural, political, and representational” dimensions of subordination. E.g., Crenshaw, Mapping, supra note 23. A helpful construct that reflects the dynamics of multilayered subordination is symbiotic systems of oppression, in which “subordinating systems mutually sustain each other in complex symbiotic ways.” Ehrenreich, supra note 49, at 258, 277.

intersection of oppressions is dynamic; the effects of forms of subordina-
tion on each other are symbiotic and magnifying.99

However, the law (as well as popular imagination) tends to view bias as
located on a single axis.100 To give a classic example, some courts have
required black women to choose between sex and race as the basis for
employment discrimination claims.101 By failing to recognize the inter-
sectional subordination of women of color in employment, those courts
have required black women to disaggregate the integrity of their experi-
ence from aspects of constructed identity.102 Similarly, single mothers
often experience the convergence of sex, class, and sometimes racial sub-

99. Each person may be considered to be positioned at intersecting sites of multiple
identities of privilege and subordination that are fluid and magnifying, with the promi-
nence of particular identities ebbing and flowing, depending on the fields of power that are
at play. See Stephanie Wildman & Adrienne Davis, Making Systems of Privilege Visible, in
Privilege Revealed: How Invisible Preference Undermines America 23 (Stepha-
nie Wildman et al. eds., 1996) (describing systems of privilege and subordination as “dy-
namic”); Dorothy E. Roberts, BlackCrit Theory and the Problem of Essentialism, 53 U.
MIAMI L. REV. 855, 862 (1999) (discussing “fluid identities that shift according to con-
text”). Through a similar lens focused on identity groups, they can be seen as “fluid, over-
lapping and coconstitutive entities,” which “problematises the notion of inter-group

100. See e.g., Crenshaw, Demarginalizing, supra note 23, at 140 (critiquing “how domi-
inant conceptions of discrimination condition us to think about subordination as disadvan-
tage occurring along a single categorical axis” of race or sex, for example).

101. Id. at 141–43, 148 (evaluating DeGraffenreid et al. v. General Motors, 413 F.
Supp. 142 (E.D. Mo. 1976) and proffering that the court did not consider compound dis-
crimination against Black women). Compare Bradley Allan Areheart, Intersectionality and
(criticizing courts and the EEOC for not providing clarity in cases involving intersectional
claims and concluding that Congress should “clarify the ‘race, color, religion, sex, or na-
tional origin’ language of the 1964 Civil Rights Act by adding the phrase ‘or any combina-
tion thereof’”), with Serena Mayeri, Intersectionality and Title VII: A Brief (Pre-)History,
95 B.U. L. REV. 713, 714, 730 (2015) (illustrating “what we now call intersectionality cru-
cially shaped Title VII from its inception” but that “[t]wenty years later, judicial opinions
containing thoughtful analysis of intersectional claims remain few and far between; legal
theory and scholarship on intersectionality continue to vastly outpace actual Title VII
doctrine”).

102. Crenshaw, Demarginalizing, supra note 23, at 148; see also Areheart, supra note
101 (concluding “the only way for a multiply–burdened person to obtain legal relief is to
isolate and disaggregate the legally–protected characteristics that form the basis of her
claim”). Ninety years ago, Zora Neal Hurston proposed:

[I]n the main, I feel like a brown bag of miscellany propped against a wall. Against a
wall in company with other bags, white, red and yellow. Pour out the contents, and
there is discovered a jumble of small things priceless and worthless . . . . Perhaps that
is how the Great Stuffer of Bags filled them in the first place—who knows?
HURSTON, supra note 52, at paras. 15–17.
ordination in the context of conflicts with work and family.\textsuperscript{103} Considering the intersection of axes of subordination and their societal context also exposes the work/family nexus as a unique site of subordination “that reappears across many systems of oppression.”\textsuperscript{104}

A fluid model proposes that systems of subordination interact in symbiotic ways to support each other.\textsuperscript{105} One example of the workings of symbiotic systems of subordination is reflected in the interactions of class, gender, and sexuality manifested in higher levels of domestic violence in the marriages of lower class heterosexual men.\textsuperscript{106} Illustrating the contrasting ways systems of subordination can interact, another study finds that interactions of class and sexuality produce “multiple jeopardy” for poor gay men who experience multiplicative aggravating effects on health care.\textsuperscript{107}

A single axis focus was apparent in the immediate aftermath of the Pulse massacre. Despite a large majority of the victims being Latino, the initial media portrayal was largely as “an attack on the gay community.”\textsuperscript{108} While a single axis identity approach can stir up identity politics and other forms of intra-group and inter-group contestations, in Orlando a Latina leader advised: “Yes, we stand in solidarity with the LGBT com-

\textsuperscript{103} Patricia Hill Collins advises that women of color “never fit” the binarist model of work (public) and family (private); Collins employs an intersectional model that challenges “the very constructs of work and family themselves.” Patricia Hill Collins, \textit{Gender, Black Feminism, and Black Political Economy}, 568 \textit{Annals Am. Acad. Pol. & Soc. Sci.} 41, 47 (2000).

\textsuperscript{104} \textit{Id.} at 48.

\textsuperscript{105} Ehrenreich, \textit{supra} note 49, at 277.


\textsuperscript{107} See Gerry Veenstra, \textit{Race, Gender, Class, and Sexual Orientation: Intersecting Axes of Inequality and Self-Rated Health in Canada}, 10 \textit{Int'l J. Equity Health} 1, 3 (2011) (applying intersectionality in a health study to illustrate that “multiple jeopardy pertained to poor homosexuals and (possibly) South Asian women who were at unexpectedly high risk of fair/poor self-rated health,” but not for other groups).

munity and are not here to point figures. But the fact that it’s not stressed and not emphasized in central Florida . . . [is] really difficult."

Other Latino/a activists have insisted that recognizing the multiplicative axes of oppression based on sexuality, gender identity, ethnicity, national origin, and race is at the heart of coming to terms with the massacre. One commentator, who self-identifies as “an Afro-Latino gender-non-conforming immigrant,” noted that many layers of identity are implicated in the Pulse massacre: “As a Black body in Mexico, my worth and value as a human being has always been questioned. I cannot detach my Blackness, my femininity, my queerness, or my mental health from an analysis of what happened in Orlando.”

To express the intersecting nature of these constructed identities, some activists, scholars, and journalists have embraced the term “Latinx,” which is “a gender-inclusive term to acknowledge people of Latin American heritage or descent.” According to several journalists:

[Latinx is] part of a ‘linguistic revolution’ that aims to move beyond gender binaries and is inclusive of the intersecting identities of Latin American descendants. In addition to men and women from all racial backgrounds, Latinx also makes room for people who are trans, queer, agender, non-binary, gender non-conforming or gender fluid.

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112. Jenson, supra note 110; see also Ramirez & Blay, supra note 24. In academia, an emerging group of scholars has been forming around Queer and Latina/o positionalities; a Queer LatCrit orientation illustrates multiplicative interstructured oppression as well as opportunities for intersectional justice and liberatory projects. See Iglesias, LatCrit Theory, supra note 27, at 29 (noting the shared “commitment to a broad and inclusive emancipatory project”).

“Latinx” jolts the gender, racial, and sexuality binaries that are constitutive of oppression.

The intersection of sexuality and family is fraught with a number of tensions relating to religion, tradition, and national origin. For some Pulse victims and survivors, the massacre resulted in their being suddenly, involuntarily, and very publicly “outed.” As described by one commentator:

Some victims may not have been out to their families; others may have been out and shamed, or shunned, by their families of origin for being their beautiful, true selves. If they were not committed to another by marriage or other legal union, these individuals’ bodies will be returned to people who may be related by blood but do not recognize and validate their true memories—instead of to their queer chosen families or partners. Some may be buried under names they stopped using long ago, under false gender designations, in masculine or feminine dress clothes they never would have worn anywhere on this earth.

Many in the Latinx community understand the massacre as an act of hate violence that specifically targeted LGBTQ people of Latin heritage. The Pulse massacre was sexualized and racialized; it reverberates at the intersections of race, sexual orientation, national origin, gender identity, ethnicity, immigration status, class, gender, religion, and family. The effects of the massacre careen through and affect families, faith tradi-
tions, physical and mental health systems, public and private workplaces, public accommodations, educational institutions, government policies and institutions, territories and countries, and a plethora of groups in civil society, including small and large LGBTQ, Latinx, and Muslim communities.\textsuperscript{118}

Simply pulling the thread of immigration status reveals a tangled web of intersecting local, national, and transnational issues for Pulse victims and survivors. Many of the victims may have been gay, but over 90% were Latina/o.\textsuperscript{119} The countries of origin of the victims include the Dominican Republic, Ecuador, Mexico, and Venezuela.\textsuperscript{120} In the immediate aftermath of the massacre, local lawyers from the Hispanic and Orange County Bar Associations assisted 350 survivors and family members, some of whom were from El Salvador, Honduras, Mexico, and Venezuela.\textsuperscript{121}

Four of the persons murdered in the attack—Luis Sergio Vielma Astudillo, Juan Chávez Martínez, Miguel Ángel Honorato, and Joel Rayón Paniagua—were citizens of Mexico, at least two of whom were undocumented immigrants.\textsuperscript{122} An enormous array of challenges accompanied

\textsuperscript{118} For example, a number of U.S. citizens are queer Muslims and live at the intersections of sexuality and religion, where they confront homophobia and Islamophobia, among other oppressions. Leah Donnella, What Queer Muslims Are Saying About the Orlando Shooting, NPR (June 13, 2016, 3:54 PM), http://www.npr.org/sections/codeswitch/2016/06/13/481853353/what-queer-muslims-are-saying-about-the-orlando-shooting [https://perma.cc/6846-SRDH]. A representative of the National Queer Asian Pacific Islander Alliance advised, “For those of us who are LGBTQ and Muslim, we wait to see which of our identities we will be more fearful of disclosing in a world that questions our existence and intentions daily.” Then, too, “there are many Latino Muslims,” some of whom also identify as queer. Guevarra, supra note 111. After the massacre, many commentators cautioned against blaming Islam for the shooting. Id.; see also Sullivan & Hernandez, supra note 109 (reporting that local Hispanic leaders were collaborating on “an event to demonstrate solidarity between central Florida’s Latino and Muslim communities”).

\textsuperscript{119} Alvarez & Madigan, supra note 14.

\textsuperscript{120} Lives Remembered, supra note 7.


\textsuperscript{122} David Agren, Orlando Shooting: At Least Four Mexicans Among the Dead, GUARDIAN (June 14, 2016, 12:37 AM), https://www.theguardian.com/us-news/2016/jun/14/orlando-shooting-pulse-attack-four-mexicans-among-the-dead [https://perma.cc/K2PP-6NQ6]. Luis Vielma worked on the Harry Potter ride at Universal Studios; Juan Chávez Martínez was a 25-year-old housekeeping supervisor who sent money to support his family in Mexico; Miguel Ángel Honorato came to the United States at the age of four, was married with three children, and managed his parents’ hospitality businesses; Joel Rayón Paniagua was a native of the Mexican state of Veracruz, worked in construction, and loved going to church, tacos de pollo, and dancing to cumbia music. Id.; Laura Bult, Undocu-
the murders, including the costs and logistics of repatriating the bodies, funeral arrangements, visa and other immigration issues, and impacts on families and loved ones. Surviving undocumented immigrants faced a separate host of difficulties, including deportation possibilities, workplace statuses, availability of physical and psychological health care for multi-layered trauma, access to assistance programs, as well as financial, emotional, and religious issues affecting families and communities in their home countries.

For many immigrants at Pulse, documented and undocumented, a common theme running through each case is fear of deportation or fear of exposing undocumented family members who could be deported. For this reason, many may be living in "the shadows" and fear interaction with authorities. It is anathema to lose a loved one or to survive the deadliest shooting in the United States and be faced with fear regarding individual or family members' immigration status. For example, immediately after the massacre, one surviving Latinx sought services at a community center and, in the process, revealed lack of immigration

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123. See Jorge Rivas & Rafa Fernandez De Castro, Undocumented Victims of Orlando Shooting Face Unique Challenges and Fears, FUSION (June 14, 2016, 2:52 PM), http://fusion.net/story/314007/undocumented-victims-pulse-orlando-shooting [https://perma.cc/B7TL-JKNS] (discussing funeral, repatriation, visa, language, legal, mental health, financial, and work issues facing families of undocumented victims and survivors); see also Burnett, supra note 122 (identifying resources that have been made available for the family of Joel Rayn Panigua).

124. See, e.g., Rivas & Fernandez De Castro, supra note 123 (detailing the issues facing undocumented survivors). Yesica Ramirez of the Farmworker Association of Florida stated, "For the family to be watching this back in their countries and not be able to help their sons is painful; this all hurts the family back home too." Id.; see also Alvarez, What Will Happen, supra note 121 (exploring the possibility of obtaining U Visas for victims suffering from "substantial mental and physical abuse" who are willing to cooperate in investigations).

125. See Bult, supra note 122. A representative of the Florida and Southeast Operations for the Hispanic Federation advised, "The city of Orlando is saying that no one is going to be deported. Some of the families are afraid to come forward." Id.; see also Cauterucci, supra note 115 ("[H]ow many other victims had undocumented family members forced to risk deportation, profiling, and violence by interacting with police officials?").

126. Cauterucci, supra note 115; see also Rivas & Fernandez De Castro, supra note 123 (noting that uncertainty of immigrants' legal status puts them at additional risk of being forced out of the shadows).
documentation to the team of workers. Not knowing where to refer the person, the workers contacted the U.S. Department of Immigration and Customs Enforcement. As a result, the person who sought services "now risks deportation because of the team’s failure to understand the real safety concerns of LGBTQ Latinx communities." 

Continuing to pull the thread connecting gay and Latinx identities exposes other alarming issues. Community leaders are concerned about the effects of the Pulse massacre on transgender youth of color, who occupy particularly vulnerable spaces in interlocking systems of subordination. One such concern is that the Pulse massacre will prompt more "self-harm and suicide [to transgender-of-color youth] as the dominant narrative reveals that being LGBTQ is essentially unsafe." In another case, a transgender woman of color stated that the continuing trauma of the Pulse massacre creates a "constant state of emergency, looking behind our backs and being on alert."

A report from the National Coalition of Anti-Violence Programs supports the legitimacy of these concerns. According to data collected in 2015, LGBTQ people of color, transgender, and people with non-conforming genders experience more hate violence than other survivors. In reflecting on the massacre, perhaps the best question is that posed by a community activist: "[W]e must ask our Latinx brothers and sisters: What will help you heal?" In the next section, this article suggests remedial approaches to forms of interstructured oppression that are manifest in the Pulse massacre. The recommendations include predicates for social healing, necessary political action on the state and federal levels, and forms of remembrance that celebrate intersectional justice.

127. Jenson, supra note 110.
128. Id.
129. Id.
130. Id.
131. See id. (referring to the rise of “a trans youth suicide contagion”).
132. Id.; see also Romm, supra note 11 (discussing the likelihood that the Pulse survivors will face post-traumatic stress disorder, among other challenges, in the wake of the attack).
134. See id. (relaying data from 1,253 survivors of hate violence in 2015, including an increase of 11% in undocumented survivors from the previous year).
135. Jenson, supra note 110.
III. MAKING MEANING: WAYS TO HEAL

To honor the forty-nine who were murdered and the fifty-three who were physically injured, this section offers ways to redress intersecting forms of oppression as well as ways to remember their lives by engaging in purposeful political action. This article takes its cue from the Latin Night of dancing at Pulse. The patrons had engaged in an evening of sexual, cultural, aesthetic, and spiritual celebration; they were not passive victims of oppression. They were dancing.

A. They Were Dancing: Intersectional Justice

Just as forms of oppression and systems of subordination are interstructured, so are forms of justice. Just as racial justice is connected to and animates gender justice, these forms of justice are connected to and energize justice for persons and groups of all subordinated identities. A single axis approach to liberation is insufficient. No member of a subordinated group can be free if our LGBTQ and Latinx brothers and sisters are not free. With Pulse as the focal point, the importance of connecting LGBTQ liberation with racial justice cannot be overstated.

There are a number of ways to enliven intersectional justice. The first is simply to bring it to a discursive level. Talk about justice—its significance, ways it is alive in a community, and ways that are anathema to justice. Because oppression has a foothold in discursive consciousness

136. See, e.g., Iglesias, LatCrit Theory, supra note 27, at 29 (discussing “the human capacity for sexual/spiritual interconnection”); see also Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 612 (1990) (recognizing “that wholeness of the self and commonality with others are asserted (if never completely achieved) through creative action, not realized in shared victimization”).
137. See Francisco Valdes, Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy, 71 UMKC L. REV. 377, 398 (2002) [hereinafter Valdes, Identity] (arguing that “because oppressions are symbiotic, so must be the struggles for liberation”).
138. See e.g., Zeba Blay, Here’s How Queer Latinx People Are Reacting to the Orlando Shooting, HUFFINGTON POST (June 13, 2016, 1:47 PM), http://www.huffingtonpost.com/entry/heres-how-queer-latinx-people-are-reacting-to-the-orlando-shooting_us_57eaacde4b0ced23ca883a1 [https://perma.cc/H9GZ-KM4X]. A member of the Trans Queer Liberation Movement asserted, “We as queer and trans Latinx people need to see what happened in Orlando as a reminder that our human dignity, our lives, are connected to the liberation of black people, Muslim people, of women, of trans people.” Id.; see also Koons, Tipping Point, supra note 19 (recognizing the interplay of social and ecological justice).
140. Young, supra note 21, at 152.
and lurks in practical consciousness as well as in the unconscious, it is important that the values of and commitments to justice be embraced in all areas of human consciousness.\textsuperscript{141} To be committed to justice means to confront forms of oppression that are internalized as well as those that are part of interpersonal interactions and public discourse.\textsuperscript{142}

Constructing justice means to first make systems of oppression visible.\textsuperscript{143} The scaffolding of systems of oppression includes discrimination, subordination, and privilege.\textsuperscript{144} While discrimination is acknowledged in the law, and subordination is recognized among activists, the presence or role of privilege is rarely examined. Yet, privilege—normalized benefits that invisibly flow to those favored by race, gender, sexuality, or class—is the engine that keeps the roiling systems of oppression going.\textsuperscript{145} White privilege, for example, has been called "an invisible package of unearned assets" that a white person counts on cashing each day, while remaining oblivious of its existence.\textsuperscript{146}

Privilege plays an important role in discursive, intersectional justice because it allows the bearers of privilege to "opt out of struggles against oppression if they choose."\textsuperscript{147} Opting out of liberatory struggles is often done with silence.\textsuperscript{148} A white person can say nothing when a racist "joke" is uttered. A heterosexual does not need to intervene when someone snickers about the way a gay man, lesbian, or transgender person presents him- or herself.\textsuperscript{149} A businessman may choose to remain silent when a male colleague calls a woman "dear" or other infantilizing term.\textsuperscript{150} Moreover, people of class privilege may choose to stay out of

\begin{thebibliography}{99}
\bibitem{141} Id. at 131–33.
\bibitem{142} See generally Iglesias, \textit{Identity}, supra note 109, at 608–17 (mapping "the dynamics of internal and external oppression within Latina/o communities").
\bibitem{143} Wildman & Davis, \textit{supra} note 99, at 23–24.
\bibitem{144} See \textit{id.} at 19 (arguing that anti-discrimination focuses only on one part of the power system, the characteristic that is subordinated, "rather than seeing the essential links between domination, subordination, and the resulting privilege").
\bibitem{145} \textit{Id.} at 8, 14; see also Elizabeth Schussler Fiorenza, \textit{Wisdom Ways} 118–22 (Orbis Books 2001) (articulating the heuristic concept of kyriarchy, which "in classical antiquity was the rule of the lord, slave master, husband, elite freeborn, propertied, educated gentleman" that is "best theorized as a complex pyramidal system of intersecting multipli- cative social structures of superordination and subordination, of ruling and oppression").
\bibitem{146} Wildman & Davis, \textit{supra} note 99, at 17–18.
\bibitem{147} \textit{id.} at 16.
\bibitem{148} \textit{id.}
\bibitem{149} See \textit{id.} at 16–17 (describing the nature of privilege that allows an individual to select "the types of struggles in which to engage").
the discussion about “welfare queens.”151 In each of these examples, silence is a gift in which the holder of a privilege does not have to confront the uncomfortable realities of forms and ideologies of injustice. Yet, to begin to dismantle systems of oppression requires that they be revealed and confronted.152

One step requires the actor to recognize how sites of privilege and subordination work in the particularities of her or his life.153 Depending on which site of power is dominant, a person may be privileged in some contexts yet subordinated in another.154 For example: “A very poor person might have been the oldest child in the family and exercised power over her siblings. The wealthiest African American woman, who could be a federal judge, might still have racial, sexist epithets hurled at her as she walks down the street.”155 Apprehending the particularities of a person’s points of privilege and subordination, and how they operate in different social spaces, is the beginning of developing the practice of self-reflection that enables collaboration for justice across coalitions with others of diverse communities.156

An important predicate to participating in discursive justice is to recognize the phenomenon of internalized oppression, in which an oppressed person has “internalized the image of the oppressor and adopted his guidelines[.]”157 A related concept is self-colonization, which has been defined as “the psychosocial processes by which humans embrace or reject, from within, the ideologies that are culturally instilled and structur-

women lawyers experience “infantilizing terms of address as sweetheart, dear, and Miss Girl Lawyer”).

151. See Nancy Fraser & Linda Gordon, A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State, 19 SIGNS 309, 327 (1994) (tracing the racialization of the discourse of dependency, leading to the iconic demonization of the black, unmarried, teen-aged mother as a “powerful ideological trope” that serves to organize diffuse social anxieties).

152. See Young, supra note 21, at 152 (issuing a call “to bring these phenomena of practical consciousness and unconsciousness under discussion, that is, to politicize them”); cf. Wildman & Davis, supra note 99, at 28 (highlighting the lack of awareness of privilege that perpetuates hierarchal oppression).

153. See generally Wildman & Davis, supra note 99, at 21–22 (asserting that people occupy differing sites of privilege and oppression).

154. Id. at 21–23.

155. Id. at 22.

156. Cf. Iglesias, Identity, supra note 109, at 617 (proposing that anti-subordination theory and praxis require, in part, valuing self and Others in ways that avoid reinforcing the oppressive attitudes and hierarchies that are sought to be transformed).

ally maintained through societal institutions ranging from education, to mass media, religion, the family and other similar constructs.158

The classic approach to rooting out internalized oppression refers to a process of “conscientization” in which specific situations of injustice are recognized as internalized and political action taken.159 Under the classic model, freedom requires the ejection of the image of the oppressor and its replacement with responsibility and autonomy.160 Similarly, critical theorists issue this charge to those participating in liberatory movements:

[T]hink critically and self-critically about the ways in which individuals, including us, may or may not contribute to the recycling of ‘traditional’ and prevailing social inequalities; this call beckons self scrutiny to critique in structural as well as personal terms how we do, or do not, resist the institutionalized oppression both of ourselves and of those with whom we identify, as well as of ‘others’ around us, in active and proactive ways.161

Subordinated groups have embraced forms of conscientization in various civil rights movements.162 To be partners in the quest for justice, socially conscious civic and religious groups continue to invoke similar processes.163 The process of reflection and action is educational—it leads to “learning to value Others, who are at the bottom or on the outside of their particular contexts” as well as learning “to value ourselves in a different way—in a way that does not reproduce the prejudices and hierarchies of the various supremacies we seek to transform.”164

As a minimum, allowing internalized oppression to remain undisturbed can cause members of subordinated groups to undermine individual, in-

158. Valdes, Identity, supra note 137, at 395 n.68.
159. See Freire, supra note 157, at 35, 47, 87–88 (introducing the concept of conscientization); see also Paulo Freire & Donald P. Macedor, A Dialogue: Culture, Language, and Race, in Breaking Free: The Transformative Power of Critical Pedagogy 199 (Pepi Leistyna et al., eds., 999) (defining conscientization, or critical consciousness, as “the ability to analyze, problematize (pose questions), and affect the sociopolitical, economic, and cultural realities that shape our lives”).
160. Freire, supra note 157.
161. Valdes, Identity, supra note 137, at 397 (referring to Ehrenreich, supra note 49).
162. See Young, supra note 21, at 153–54 (discussing consciousness-raising groups, including those of second wave feminists and the Black Liberation Movement); see also Evelyn Brooks Higginbotham, Righteous Discontent: The Women’s Movement in the Black Baptist Church 186–88 (Harvard Univ. Press 1993) (characterizing the women’s movement of the Black Baptist church as employing a subversive “politics of respectability” to contest social structures and symbols of white supremacy in the early twentieth century).
164. Iglesias, Identity, supra note 109, at 616–17.
tragroup, and coalitional quests for justice. More specifically, self-colonization prompts members of outsider groups to engage in activities “that pit outgroups against each other, thus helping to keep in place the existing ‘structures and ideologies’ that subordinate all outgroups in ‘different’ yet common ways.”

The Pulse massacre takes the dynamics of oppression to another dimension by exposing the ugly truth of the dynamics of inner and outer homophobia and racism at their worst. According to some reports, the shooter seemed to have manifested extreme and contradictory forms of hatred based on sexuality and race. One message of the massacre may be that the symbiotic effect of internalized homophobia and racial hatred with interlocking cultural systems of oppression can be a deadly combination that supports violence toward those who bear the demonized identities. Consequently, it is imperative to meet this massacre with thorough-going exposure of the inner and outer workings of intersecting systems of oppression, combined with meaningful remedial political action.

The catastrophic nature of the Pulse massacre seems to have struck the consciences of a number of people who formerly were opposed or indif-

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165. See generally id. at 581–82 (introducing essays that make “questions of intra-group hierarchy and inter-group justice of special salience in any LatCrit gathering”).

166. Valdes, Identity, supra note 137, at 395 n.68.

167. See e.g., David Shariatmadari, [The Shooter’s] Interest in Gay Men Makes This No Ordinary Act of Terrorism, GUARDIAN (June 14, 2016), https://www.theguardian.com/commentisfrec/2016/jun/14/omar-mateen-gay-men-terrorism-pulse-jackd-sexuality [https://perma.cc/84Z6-N5VT] (relaying information about the shooter’s prior involvement with Pulse and gay dating websites and posing the complexities of possible internalized homophobia); see also Jenson, supra note 110 (noting that the shooter “was asking the hostages: ‘Are you guys black? I don’t have an issue with the blacks’”); Karen Ocamb, Orlando Massacre and Gay Identity, PRIDE (June 15, 2016), http://theprideela.com/2016/06/orlando-massacre-and-gay-identity [https://perma.cc/3T4S-YSXC] (questioning whether the shooter was “self-hating” who took “internalized homophobic rage” out on objects of his obsession). The shooter “may not have had issues with them for being black, but it seems that he had issues with them being Latinx.” Jenson, supra note 110.

168. See generally YOUNG, supra note 21, at 61–63, 147–48 (discussing systemic violence as a social practice that may be aimed at members of culturally imperialized groups and the fear and loathing that members of those groups may have toward oppressed people). Compare Nico Lang, Coming Out Saves Lives: The Deadly Potential of Internalized Homophobia is All Too Real, SALON (June 16, 2016, 5:59 PM), http://www.salon.com/2016/06/16/coming_out_saves_lives_the_deadly_potential_of_internalized_homophobia_is_all_too_real [https://perma.cc/QY5S-BMN5] (asserting that “[i]nternalized homophobia” has violent and deadly consequences for the LGBTQIA community), with Andrew Lawler, Why the Orlando Shooter Fired, SCI. MAG. (June 21, 2016, 6:00 AM), http://www.sciencemag.org/news/2016/06/why-orlando-shooter-fired [https://perma.cc/GC7E-RC5U] (proposing that no study has yet made “a direct link between internalized homophobia and violence toward others”).
ferten to the struggles of the LGBTQ community. Two powerful examples of remorse occurred in the wake of the massacre. In the first example, the Rev. Dr. Joel Hunter, senior pastor of the 20,000-member Northland Church in Orlando and an international leader of conservative evangelicals, advised the Religion News Service that “Evangelicals must repent of LGBT oppression.” Reverend Hunter explained that “institutional forms of white Christianity” must recognize their complicity in the subordination of the LGBT community and promised that he would begin by examining his own heart. Reverend Hunter also stated: “I’ve got to confess to my congregation that if there’s anything I’ve said that could have ever led to anything—the dismissal or denigration of any other population—God, I am so sorry for that.”

Equally powerful is the statement of Teresa Jacobs, Mayor of Orange County, Florida, who had been an opponent of early efforts to pass an Orange County Domestic Partner Registry in 2012. In addressing the 50,000 people who gathered for a vigil for the Pulse victims, Mayor Jacobs said of the forty-nine who were murdered:

Each had dreams waiting to come true, each had aspirations left unfulfilled. And we, my generation and all of those that preceded us, we, failed our brothers and our sisters, our sons and our daughters. We failed them when we were indifferent. We failed them when we were insensitive. And perhaps most of all, we failed them when we knew it was wrong, and we did nothing. If we’ve learned one thing, it’s that when hate is met with indifference, hate always wins. In many ways, my generation and the generations before were indoctrinated with beliefs and messages that fostered and perpetuated hate and prejudice, sometimes intentionally, but more often than not, without even realizing it. But today, enough is enough is enough! We cannot sit by and lose any more lives to senseless acts of violence. We cannot allow the deaths of 49 of our brothers and sisters to be in vain. We cannot let any more of our children grow up

169. Florence Taylor, Megachurch Pastor Joel Hunter: “Evangelicals Must Repent of LGBT Oppression,” Christian Today (June 15, 2016), http://www.christiantoday.com/article/megachurch.pastor.joel.hunter.evangelicals.must.repent.of.gbt.oppression/88394.html[https://perma.cc/4LYK-DA56]. Reverend Hunter also affirmed his hope that LGBT people can be “treated with respect—that they’re given every opportunity to live their full lives, that they’re as precious in the eyes of God as anyone who has ever been made.” Id.
170. Id.
171. Id.

172. See Email from Jeffrey Newton, Orange Co. Att’y, to Michael Slaymaker, Founder of Orlando Anti-Discrimination Ordinance Comm. (Feb. 10, 2012, 17:26 EST) (on file with author) (stating that Mayor Jacobs had questions regarding the constitutionality of an Orange County Domestic Partner Registry).
fearful—fearful of telling their parents, telling their pastors, telling 
their friends what is in their hearts. And we cannot let our children 
continue to grow up and lead secret lives—or even worse, lead 
hollow lives, all in an effort to be accepted and loved by the people 
around them. To our LGBTQ community, I tell you today, that you 
are not alone. You are not alone in your sorrow, and you are not 
alone in this fight. I am calling on every member of our straight 
community to open their hearts to acceptance, to embrace diversity, 
and to cherish our differences.173

The Pulse massacre may have finally brought home to the hearts of 
many the important message that subscribing to or tolerating oppression, 
even silently and passively, creates a culture of enduring pain for so many 
others as well as a context that makes hate massacres like Pulse possible. 
Indeed, enough is enough!

B. They Were Dancing: Intersectional Justice Through Political Action

In the aftermath of terrible tragedies such as occurred in Orlando, 
expressions of remorse and unity across many traditional divisions often 
arise.174 But some question whether they prompt lasting transformation.175 To ensure that our community does not return to a “business as 
usual” tacit endorsement of oppression, actions must be taken by subor-
dinated groups, allies, and government leaders. Their consciences must 
move them into political action. In particular, the massacre at Pulse 
raises two interlocking areas for political action: LGBTQ legal protec-
tions and immigration reform.176

173. J. Bryan Lowder, At Orlando Vigil, Teresa Jacobs Called Out Passive 
Homophobia for the Killer It Is, SLATE (June 22, 2016, 5:36 PM), http://www.slate.com/
blogs/outward/2016/06/22/teresa_jacobs_speaks_at_orlando_pulse_vigil_on_homophobia_ 
we_failed_them.html [https://perma.cc/CR94-LW7N].
174. See e.g., Taylor, supra note 169 (discussing the crisis of conscience the Pulse mas-
sacre posed for an evangelical Pastor).
175. See, e.g., Barack Obama, Remarks by the President at Memorial Service for 
Fallen Dallas Police Officers (July 12, 2016), https://www.whitehouse.gov/the-press-office/
2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers [https://perma 
.cc/6AR8-2BQF] (stating, “I’ve seen how a spirit of unity, born of tragedy, can gradually 
dissipate, overtaken by the return to business as usual, by inertia and old habits and 
expediency”).
176. See Alvarez, What Will Happen, supra note 121 (suggesting that immigration re-
form is needed to remedy the challenges the Latino community is facing after the Pulse 
shooting); see also Melanie Hunter, Gay Rights Group Calls for End to ‘Anti-LGBT Laws’ 
in Wake of Orlando Mass Shooting, CNS News (June 13, 2016, 12:02 PM), http://www 
cnsnews.com/news/article/melanie-hunter-gay-rights-group-calls-end-anti-lgbt-laws-wake-
orlando-mass-shooting [https://perma.cc/6XL4-52QQ] (referring to the Pulse massacre as a 
basis for stopping anti-LGBT legislation).
i. Legal Protections for the LGBTQ Community

With marriage equality the law of the land, and many people sporting rainbow ribbons, it may seem that the struggle for LGBTQ liberation is over.\(^\text{177}\) Consider, then, the firestorm of anti-gay bills that were filed in the wake of the marriage equality cases.\(^\text{178}\) Since 2013, 254 bills were filed in state legislatures; in 2016, 200 bills were pending in thirty-four states to legalize forms of discrimination against LGBTQ people.\(^\text{179}\) The tripartite focus of these bills is: (1) refusal of goods and services on religious grounds; (2) restrictions on the use of public bathrooms by transgender people; and (3) preemption by states of municipal ordinances protecting LGBTQ rights.\(^\text{180}\) Although many of these hate bills were beaten back, twenty bills were passed by eleven states.\(^\text{181}\)

First, most of the bills permit the invocation of “faith” or “conscience” as a basis to refuse to provide goods and services to LGBT persons.\(^\text{182}\) These bills, which are sometimes called Religious Freedom Restoration Acts,\(^\text{183}\) allow a panoply of religious refusals, exemptions, accommoda-

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181. Mason et al., supra note 178; HRC Staff, supra note 179.

182. HUM. RTS. CAMPAIGN, PREVIEW 2016, supra note 180.

183. See Jennifer Bendery & Michelangelo Signorile, Everything You Need to Know About the Wave of 100+ Anti-LGBT Bills Pending in States, HUFFINGTON POST (Apr. 15, 2016, 4:17 PM), http://www.huffingtonpost.com/entry/lgbt-state-bills-discrimination_us_570ff4fe4b0060cda2a7a9 [https://perma.cc/6RX3-VS2P] (discussing bills that allow any person or business to deny services to same-sex couples based on religious objections). En-
tions, and complicity-based conscience claims to be used against LGBT persons. The bills cover a wide range of goods and services. Some bills would allow judges and court clerks to refuse to perform weddings or issue marriage licenses. Others provide exemptions to government officials and private parties in the areas of adoption, foster care, facility rentals, wedding services, mental health counseling, and health care services.

These “religious freedom” bills allow religion to be misused as a smoke screen for discrimination. Four arguments have been posed to reject the bills in 1993, the federal Religious Freedom Restoration Act, 42 U.S.C.A. §§ 2000bb-bb-4, has recently been applied to bar the federal government from requiring closely held for-profit corporations to comply with the Affordable Care Act by providing contraception insurance coverage to employees over the religious objection of the owners of the corporations. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. ___, 134 S. Ct. 2751, 2759 (2014). The Court left open applying the Religious Freedom Restoration Act in other contexts. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. ___, 134 S. Ct. 2751, 2783-85 (2014).

See Hum. Rts. Campaign, Preview 2016, supra note 180, at 2 (reporting that the “largest number of anti-LGBT bills introduced in 2015 were religious refusal bills”); see also Douglas NeJaime & Reva B. Siegel, Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics, 124 Yale L.J. 2516, 2519-20 (2015) (defining “complicity-based conscience claims” as “religious objections to being made complicit in the assertedly sinful conduct of others”).

In 2016, Mississippi enacted a sweeping “religious freedom” bill that included court clerks, foster care, school administration, counseling, facility rentals, and wedding services; the bill was declared unconstitutional just before it was to take effect. Barber v. Bryant, No. 3:16-CV-417-CWR-LRA, 2016 WL 3562647, LEXIS 86120 at *18-20 (S.D. Miss. June 30, 2016).

See Mason et al., supra note 178 (reporting bills relating to “college and university groups, health services, pre-emptive protections, and adoption and foster care”); see also Campbell Robertson, Mississippi Law Protecting Opponents of Gay Marriage Is Blocked, N.Y. Times (July 1, 2016), http://www.nytimes.com/2016/07/02/us/mississippi-law-protecting-opponents-of-gay-marriage-is-blocked.html?smid=pl-share [https://perma.cc/T84T-MEVH] (reporting the judicial orders striking a Mississippi law that would have shielded court clerks and others acting according to “religious beliefs” about sexuality and gender identity in the areas of “foster care, counseling, school administration, facility rentals and wedding services”).

demands for such religious accommodations. The first invokes history and recognizes that similar attempts were made and resisted when the Civil Rights Act was adopted in 1964. The second defrocks the argument that accommodations would help to ease conflicts in a period of social transition. Two scholars note that conscience claims “can provide an avenue to extend, rather than settle, conflict about social norms in democratic contest.” The third argument insists that harms must be considered to persons who are denied goods or services in the public arena. The depth and breadth of material and dignitary harms that are inflicted in the name of presumed conscience claims are untenable. The final argument against religious accommodations proposes that they are at odds with the underlying purpose of anti-discrimination laws, “which is to change norms.”

189. See id. at 185 (proposing that discrimination “rooted in religion should be rejected today, just as [it was] fifty years ago”).
190. See id. at 188 (advising that “following the Supreme Court’s decision in [Burwell v. Hobby Lobby], any accommodation in an anti-discrimination law will almost surely fan, not calm, conflict”).
191. Nejaime & Siegel, supra note 184, at 2520. The authors also note “[r]eligious accommodation claims of this kind may continue democratic conflict in new forms, or so at least some advocates hope.” Id. at 2521.
192. See Melling, supra note 188 (contending “[t]hat harm, which is often given little voice in the current debates, should weigh heavily because it damages a person’s sense of dignity and frustrates the promise of equality”).
193. See id. at 190 (arguing, for example, that it “takes but one metaphorical ‘Heterosexuals Only’ sign to make an LGBT person question whether society is in fact embracing her and her kind”). Another example of the harm that religious accommodations pose to the LGBTQ community is the Michigan pediatrician who refused to give a wellness exam to six-day old baby of lesbian mothers. Ed Mazza, Pediatrician Refuses to Care for Baby with Lesbian Mothers in Michigan, HUFFINGTON POST (Feb. 19, 2016, 12:35 PM), http://www.huffingtonpost.com/2015/02/18/pediatrician-refuses-lesbian-mothers_n_6710128.html [https://perma.cc/F4CY-XG2V]. According to one of the mothers, “It was embarrassing, it was humiliating and here we are, new parents trying to protect her. And we know this happens in the world and we’re completely prepared for this to happen other places. But not at our 6-day-old’s wellness appointment.” Id.; see also Fact Sheet, Health Care Refusals Harm Patients: The Threat to LGBT People and Individuals Living with HIV/AIDS, NAT’L WOMEN’S L. CTR. (May 2014), http://www.nwlc.org/sites/default/files/pdfs/lgbt_refusals_factsheet_05-09-14.pdf [https://perma.cc/95V3-YY88] (stating that disparities in health care experienced by LGBT people are worsened when health care providers refuse to provide needed care due to personal or religious beliefs).
194. Melling, supra note 188. To allow the law to absorb and replicate discriminatory social norms would be to undermine the legitimacy of the law. See Judith E. Koons, Gun-smoke and Legal Mirrors: Women Surviving Intimate Battery and Deadly Legal Doctrines, 14 J.L. & Pol’y 617, 648–49 (2006) (critiquing Florida’s Stand Your Ground Act and illus-
tive toe-hold in the law must be rejected, while forward-looking proposals for intersectional justice must be encouraged.

Second, many of the bills are part of the latest generation of “bathroom wars,” restricting people from using facilities that are designated for another biological sex. Targeting transgender people, the bills restrict, ban, and even criminalize the use of a public restroom that does not correspond to the sex noted on a person’s birth certificate. Strong policy and privacy arguments have been made on behalf of transgender people. In addition to failing to recognize the difference between sex and gender identity, the bills denigrate and pose enormous harm to members of the transgender community. That men will pose as transgender persons to gain access to women’s bathrooms has been thoroughly debunked by experts in law enforcement and advocates for victims of sexual as-

trating the silent absorption of social norms—“pernicious ideas of gender hierarchy”—into criminal law).

195. See Mason et al., supra note 178 (stating that four “bathroom bills” were introduced in 2015 and thirty were introduced in the first months of 2016). One article notes: “For more than 100 years, Americans have projected their most profound fears about social change onto public restrooms.” Neil J. Young, How the Bathroom Wars Shaped America, POLITICO MAG. (May 18, 2016), http://www.politico.com/magazine/story/2016/05/2016-bathroom-bills-politics-north-carolina-lgbt-transgender-history-restrooms-era-civil-rights-213902#ixzz4IFrNU00 [https://perma.cc/VST3-DN28]. The article also observes that bathrooms have been a surprisingly powerful political lever: “They’ve been pivotal in many political arguments—and, in perhaps the most masterful harnessing of bathroom anxiety in American history, a largely invented controversy over unisex bathrooms in the 1970s ultimately killed off the almost-enacted Equal Rights Amendment to the Constitution.” Id.

196. E.g., Scott Skinner-Thompson, Anti-Transgender Bathroom Bills Are Unconstitutional, SLATE (Feb. 11, 2016, 12:53 PM), http://www.slate.com/blogs/outward/2016/02/11/anti_transgender_bathroom_bills_are_clearly_unconstitutional.html [https://perma.cc/2QCT-BPNK] (providing an example of a Virginia bill imposing a fine on a student who does not use the bathroom corresponding to the sex designated on the birth certificate).


198. See Olga Khazan, The True Harm of Bathroom Bills, ATLANTIC (May 19, 2016), http://www.theatlantic.com/health/archive/2016/05/transgender-bathrooms-suicide/483351 [https://perma.cc/2YYS-2ZME] (reporting results of a Georgia State study that “being denied bathroom access is correlated with increased risk of suicide among trans people,” with a suicide-attempt rate of 47%, compared to 4% for the U.S. population at large); see also Kristie L. Seelman, Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality, 63 J. OF HOMOSEXUALITY 1378, 1379 (2016) (noting the heightened level of prejudice and discrimination faced by transgendered individuals). Gender identity “means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.” Equality Act, H.R. 3185, 114th Congress § 1101(a)(2) (2015).
The proper approach to recognize transgender people in a pluralistic society is education, not exclusion.

Finally, the newest category of anti-gay bills includes those that preempt local government protections for members of the LGBT community. As of early 2016, eight states had introduced intrastate preemption bills, with two states adopting the provisions. Municipal preemption is a tool of special interest groups and has primarily been used by business and industry groups to oppose local ordinances that impose costs or other regulatory burdens. In the current anti-gay climate prevalent in some states, these bills are another species of an attempted “hostile takeover of human rights.” Some scholars warn that preemption laws may be “disguised as watered down and exemption-rife antidiscrimination laws.” Conversely, proponents argue that such bills are an attempt to ensure consistency and reduce unnecessary administrative costs on statewide businesses. However, these diluted civil rights bills are actually “back-door methods” of imposing the homophobic beliefs of

199. See Carlos Maza, The Question Every Reporter Should Be Asking About Transgender Bathroom Bans, MEDIA MATTERS (Mar. 24, 2016, 2:48 PM), http://mediamatters.org/blog/2016/03/24/the-question-every-reporter-should-be-asking-ab/209527 [https://perma.cc/N8PK-EDQB] (“[H]ow is the government supposed to figure out a person’s biological sex?”). Some examples of the harmful and insensitive inquiries that the bathroom bills have unleashed were reported by Maza as follows: First, “a Louisiana woman who underwent chemotherapy and a bi-lateral mastectomy after a stage 2 cancer diagnosis was accused of being a man while standing in line to use a Walmart restroom”; Second, “a lesbian in Michigan was kicked out of a restaurant bathroom because she was mistaken for a man”; Third, “a Republican politician in Fayetteville, AR, questioned a cisgender [non-transgender] restaurant employee and asked her to prove that she was a biological woman.” Id. The term “cisgender” refers to “a person whose self-identity conforms with the gender that corresponds to their biological sex.” Cisgender, OXFORD LIVING DICTIONARIES, https://en.oxforddictionaries.com/definition/cisgender [https://perma.cc/NKK2-7HL3] (last visited Nov. 18, 2016); Sunnivie Brydum, The True Meaning of the Word “Cisgender,” ADVOCATE (July 31, 2015, 6:00 AM), http://www.advocate.com/transgender/2015/07/31/true-meaning-word-cisgender [https://perma.cc/5UNS-EANA].


201. Mason et al., supra note 178.

202. Platt, supra note 187. Intrastate preemption is a basis for arguing “that a city’s authority in a particular area has been supplanted by state law.” Paul Diller, Intrastate Preemption, 87 B.U.L. REV. 1113, 1114 (2007).


205. Platt, supra note 187.

206. Id.
the religious far right and will likely be used as the basis to block more welcoming ordinances from local governments.\textsuperscript{207}

These anti-gay bills are part of a coordinated nationwide backlash by “Enemies of Equality” against decisions of the Supreme Court that opened marriage to same-sex couples.\textsuperscript{208} While some backlash was anticipated, the scale, extremist nature of some of the bills, and extent of national coordination were startling. The first wave of religious freedom bills was contemporaneous with the \textit{Windsor} decision in 2013.\textsuperscript{209} In 2014, at the ultra-conservative Values Voter Summit, a strategy was engaged of “incrementally eroding LGBT rights” and “test-driving” anti-gay measures at the state and local levels.\textsuperscript{210} Religious refusal bills were test-driven in twenty-eight states in 2015.\textsuperscript{211} When the Houston Equal Rights Amendment was defeated on the strength of an ad campaign demonizing transgender women and suggesting they were sexual predators who would be able to enter women’s bathrooms, another strategy was born.\textsuperscript{212} Anti-transgender bathroom bills appeared in twelve states in 2015.\textsuperscript{213} The third strategy of municipal preemption was test-driven in six states in 2015.\textsuperscript{214}

Florida has typified the anti-gay response of many states. Four pieces of recent legislation demonstrate the lack of commitment—if not animus—of Florida politicians toward equal civil rights for people identifying as LGBTQ. First, despite having borne a long and destructive history of discrimination, members of the LGBTQ community are not included in the 1992 Florida Civil Rights Act.\textsuperscript{215} Efforts to remedy such an enor-

\textsuperscript{207} Id.
\textsuperscript{208} See Jonathan Capehart, \textit{Here They Are, the ‘Enemies of Equality’ for LGBT Americans}, WASH. POST (July 7, 2016), https://www.washingtonpost.com/blogs/post-partisan/wp/2016/07/07/herethey-are-the-enemies-of-equality-for-lgbt-americans/?utm_term=.ba1828136b67 [https://perma.cc/P562-M9DL] (reporting that LGBT advocates observed an “emerging coordination” of resistance to marriage equality across the nation and citing Matt McTighe, Executive Director of Freedom for All Americans, for the example that “17 bills in 14 states that target transgender Americans” used almost identical language).
\textsuperscript{209} Mason et al., \textit{supra} note 178.
\textsuperscript{210} Bendery & Signorile, \textit{supra} note 183.
\textsuperscript{212} See Bendery & Signorile, \textit{supra} note 183.
\textsuperscript{214} Id.
\textsuperscript{215} \textit{See Fla. Stat.} § 760.01(2) (2016) (providing protection against discrimination based on “race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status” and not on sexual orientation or gender identity).
mous omission have been sidelined by the Florida legislature.216 Most recently, the 2016 Florida Competitive Workforce Act, which would have amended the state Civil Rights Act to extend protections in employment, housing, and public accommodations to subgroups of the LGBT community was introduced, but failed to make it out of a Senate committee.217 The rationale that was expressed by opponents was consistent with the strategy adopted at the Values Voter Summit.218 Opponents argued that equal civil rights should not be given to members of the LGBT community because doing so would open access to women’s restrooms by transgender persons.219 Also, in lock-step with anti-gay jurisdictions, Florida legislators included broad language in the bill that invites religious accommodation arguments, rendering the “protections” granted to LGBTQ people tenuous if not illusory.220

Second, Florida politicians continue to introduce discriminatory measures against members of the LGBTQ community. For example, a “religious freedom” bill was recently introduced in Florida’s House of Representatives.221 While the bill died in committee, it provided wide-ranging immunity from liability for persons, closely held organizations, religious institutions, businesses owned or operated by a religious institution, health care facilities, health care providers, and private child-placing agencies that refuse to perform activities “that would be contrary to religious or moral convictions or policies.”222


218. See Behind Closed Doors: Fighting for Safety and Privacy After Government Bathroom Directives, VALUES VOTER SUMMIT, http://www.valuesvotersummit.org/breakout [https://perma.cc/65TG-P2FN] (last visited Nov. 18, 2016) (providing a description of a session on the “bathroom directives” at the 2016 Summit, including the argument that the Obama administration’s “radical interpretation of ‘sex’ to include ‘gender identity’” creates a “perfect predatory environment”).


220. See S.B. 120, 118th Leg., Reg. Sess. § 760.10(9)(c) (2016) (stating that sections addressing unlawful employment practices and public accommodations “do not limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution”).


222. Id. § 761.06(2)–(4).
Third, Florida joined the “bathroom wars” by considering the Single-Sex Public Facilities Bill in 2015. Among other provisions, the bill criminalized the use of public restrooms by transgender people by making it a second-degree misdemeanor to enter a restroom designated for another biological sex. In addition, the bill preempted local government enactments that would permit the gender-appropriate use of bathrooms by transgender people. While the bill eventually died in a committee, it received a favorable vote by another House committee.

Fourth, in addition to failing to protect LGBTQ people from employment, housing, and public accommodations discrimination, the Florida legislature enacted a bill to protect Florida’s clergy from the task of marrying same-sex couples. A type of religious refusal bill, the legislation has been described as degrading, unnecessary, and reflective of the anti-LGBTQ animus harbored by many Florida politicians. The Pastor Protection Act went into effect eighteen days after the Pulse massacre.

After the massacre at Pulse, politicians across Florida came forward to express condolences to the LGBTQ community in Orlando. Mean-
while, the civil rights bill that provided some protections to lesbians, bisexuals, and gays could not make it out of legislative committee.\textsuperscript{231} One commentator noted that LGBTQ people who were able to survive the Pulse massacre on Sunday could be fired or refused service in public lodgings or restaurants on Monday without legal recourse under state law.\textsuperscript{232} Furthermore, transgender people have no protection from ridicule and rejection when attempting to use a gender-appropriate bathroom.\textsuperscript{233} In addition, Florida’s ongoing political determination to undermine marriage equality is demonstrated by the Pastor Protection Act and the introduction of other measures to diminish the social recognition, security, dignity, and sanctity of marriages between same-sex couples.\textsuperscript{234}

A few expressions of hollow condolences to the LGBTQ community of Orlando are not enough. Florida politicians must act to begin to undo the legal architecture of oppression that supports hate crime.\textsuperscript{235} That begins with including the LGBTQ community in the state’s Civil Rights Act. These protections must be provided without demeaning “potty protections” and without condoning harmful discrimination to appease right-wing political beliefs masquerading as religion. It is the task of subordinated groups to hold Florida’s politicians accountable. Let them never forget the faces of the 49.

From a national perspective, Congress must move into action to redress burgeoning anti-LGBTQ state legislation, the ongoing harm to LGBTQ people, and the destructive societal effects of discrimination. In 2015, one bill was introduced that would turn the tide and begin the normalization of justice.\textsuperscript{236} Introduced by more than 200 cosponsors, the Equality Act is a comprehensive amendment of civil rights laws to prohibit discrimination on the basis of sexual orientation and gender identity.\textsuperscript{237} Discrimination is proscribed in public accommodations, public facilities, public education, programs and activities receiving federal funding, em-

\textsuperscript{231} Rice, supra note 228.
\textsuperscript{232} Covert, supra note 230.
\textsuperscript{234} See, e.g., Merod, supra note 177 (noting “a year after the Supreme Court legalized same-sex marriage nationwide, lesbian, gay, bisexual and transgender people still face systemic discrimination in Florida and around the country”).
\textsuperscript{235} See generally Valdes, Identity, supra note 137, at 395 n.68 (discussing the “architecture of symbiotic structures of subordination,” in reference to Ehrenreich, supra note 49).
\textsuperscript{236} Equality Act, H.R. 3185, 114th Congress (2015).
ployment, housing, equal credit opportunity, and jury selection standards.\footnote{238}

The Act includes three noteworthy sections. One section provides that the federal Religious Freedom Restoration Act shall not be the basis for a claim or defense concerning a matter covered by the Act or otherwise “provide a basis for challenging the application or enforcement of a covered title.”\footnote{239} The second provision ensures a person will not be denied access to a restroom that comports with the person’s gender identity.\footnote{240} The third provision states the following finding:

A single instance of discrimination may have more than 1 basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the 2 individuals in the couple, or both. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.\footnote{241}

This finding lays the basis for claims of intersectional discrimination.\footnote{242} The Equality Act is a comprehensive amendment of the Civil Rights Act that addresses key questions of religious freedom, access to bathrooms based on gender identity, and intersectional justice.\footnote{243} Consequently, the Equality Act is a necessary step to stop the latest wave of legislative homophobia in the United States.\footnote{244}

\footnote{238. Equality Act, H.R. 3185, 114th Congress §§ 3–7, 10–12 (2015). In addition, several sections expand the realm of public accommodations. \textit{Id.} § 3(a)(2)(C)(4).}

\footnote{239. \textit{Id.} § 1107.}

\footnote{240. \textit{See id.} § 1101(b)(2) (“[A]n individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”).}

\footnote{241. \textit{Id.} § 2.}

\footnote{242. \textit{See Areheart, supra note 101} (recommending that Congress amend Title VII by adding the phrase “or any combination thereof” to the list of protected categories).}


\footnote{244. This article recognizes the extended critique that has been lodged toward the rights discourse and concurs with a number of the premises of that critique. \textit{See, e.g.,} Iglesias, \textit{LatCrit Theory, supra} note 27, at 10–18 (tracing the evolution of the critique and support of rights discourse in critical theory); Judith E. Koons, \textit{What is Earth Jurisprudence: Key Principles to Transform Law for the Health of the Planet}, 18 \textit{Penn St. Envtl. L. Rev.} 47, 58 (2009) (distinguishing legal and moral consideration from rights). At the same time, it is necessary for subordinated groups to have a basic floor of civil liberties that is recognized by the government—and certainly not to be legislated against—particularly}
ii. Immigration: Redressing Racist Rhetoric and Fortified Borders

The faces of the Pulse massacre are gay and Latinx.\textsuperscript{245} Of the forty-nine who were killed in the Pulse massacre, twenty-three were Puerto Rican.\textsuperscript{246} Latin Night at Pulse took place during Gay Pride Month; the next day was National Puerto Rican Day.\textsuperscript{247} Since the economic downturn in Puerto Rico that began in 2006, thousands of Puerto Ricans have settled in the United States.\textsuperscript{248} Puerto Ricans—who are U.S. citizens of an unincorporated territory of the United States—have encountered systemic oppression stemming from colonization as well as race and class subordination.\textsuperscript{249}

Many Puerto Ricans have chosen to live in Orlando, which has built a vibrant Puerto Rican community where “Spanish flows freely; the smells of Mallorca pastries and mofongo waft from bakeries and restaurants.”\textsuperscript{250} An estimated 400,000 Puerto Ricans have settled in Orlando, making it one of the “havens” for people of Puerto Rican descent in the United States.\textsuperscript{251}

Franky Jimmy DeJesus Velazquez, who was one of the 49, came to Orlando in 2010 “for the same reasons that have driven tens of thousands of Puerto Ricans in recent years: better jobs, health care, housing, friends,

where the groups are embedded in a history of demonization and in a cultural context of pervasive hate crimes.

\textsuperscript{245} Guevarra, supra note 111; Gibson & Minshew, supra note 7.

\textsuperscript{246} Alvarez & Madigan, supra note 14.

\textsuperscript{247} See Brian Latimer, \textit{LGBT Pride Mixes with Deep Sorrow Over Orlando at Puerto Rican Day Parade}, NBC NEWS (June 12, 2016, 5:49 PM), http://www.nbcnews.com/news/latino/lgbt-pride-mixes-deep-sorrow-orlando-puerto-rican-day-n590596 [https://perma.cc/LZ9C-XR3Y] (noting, for the first time in its 59-year history, the National Puerto Rican Day Parade honored LGBT Puerto Ricans). The Muslim Alliance for Sexual and Gender Diversity also observed another temporal intersection: the massacre “occurred during LGBTQ Pride month, which this year coincides with the Muslim holy month of Ramadan, typically a period of peace and intense self-reflection.” Donnella, supra note 118.


\textsuperscript{250} Alvarez & Madigan, supra note 14.

relatives and, in his case, greater acceptance of his sexual identity.\textsuperscript{252} The “Puerto Rican diaspora,” propelled by a decade of deepening economic contraction, brought thousands of newcomers to the central Florida area.\textsuperscript{253} Many new residents have struggled, and some have returned to the island.\textsuperscript{254} However, the successive waves of migration from Puerto Rico are “transforming a corridor of Central Florida that is increasingly viewed as economically powerful, culturally diverse and politically pivotal.”\textsuperscript{255} Demonstrating one of the tensions reflected in the massacre, one Latina mused whether some of the Puerto Rican victims would still be alive if poverty had not forced them to leave Puerto Rico.\textsuperscript{256}

A number of the victims and survivors of the Pulse massacre were documented and undocumented immigrants.\textsuperscript{257} Yet, due to the workings of implicit bias, all of the victims and survivors were likely perceived to be undocumented immigrants.\textsuperscript{258} Consequently, they were victims not only of this horrific hate crime, but their lives had likely been affected by anti-immigrant rhetoric infused with racism and xenophobia.\textsuperscript{259} As one noteworthy example, during the recent campaign, the candidate elected President of the United States called Latino immigrants “criminals” and “rapists.”\textsuperscript{260} In fact, the violent crime rate of immigrants—documented and undocumented—is significantly lower than the violent crime rates of people born in the United States.\textsuperscript{261}

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\textsuperscript{252} Alvarez & Madigan, supra note 14. The news article describes Franky as “a proud Puerto Rican—a jibarito, a professional dancer on the island with a fierce devotion to jíbaro, a folkloric dance created long ago by workers on coffee plantations and inland farms. Latin Night at the club was a natural fit for him.” Id.
\textsuperscript{254} Alvarez & Madigan, supra note 14.
\textsuperscript{255} Alvarez, Puerto Ricans, supra note 251.
\textsuperscript{256} Jenson, supra note 110.
\textsuperscript{257} See Agren, supra note 122 (recognizing at least four victims as Mexican immigrants).
\textsuperscript{258} See Nittle, supra note 73; Reichard, supra note 75.
\textsuperscript{259} See Kevin R. Johnson, It’s the Economy, Stupid: The Hijacking of the Debate Over Immigration Reform by Monsters, Ghosts, and Goblins (or the War on Drugs, War on Terror, Narcoterrorists, Etc.), 13 Chap. L. Rev. 583, 608 (2010) [hereinafter Johnson, It’s the Economy] (proffering that “racism and xenophobia often infect the dialogue over immigration in the United States”).
\textsuperscript{260} Moreno, supra note 80.
\end{flushright}
The rhetoric of immigration has been examined through the lens of metaphor.\footnote{Johnson, *It's the Economy*, supra note 259, at 587; Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 Fordham L. Rev. 1545, 1156–57 (2011).} Kevin R. Johnson observed that the national discourse on immigration has been captured by restrictionist politicians who have created inflammatory and contrapuntal “metaphorical wars” on drugs and terror, blaming immigrants for both categories of social ills.\footnote{See Johnson, *It's the Economy*, supra note 259, at 600 (noting that the “dual wars” hide the true issues behind immigration, especially labor migration in a global economy).} In the discourse of immigration law, three metaphors are dominant: “IMMIGRANTS ARE ALIENS, IMMIGRATION IS A FLOOD, and IMMIGRATION IS AN INVASION.”\footnote{Cunningham-Parmeter, *supra* note 262, at 1568 (emphasis in original).} Of these, the dominant legal metaphor is “alien,” which conveys three qualities: otherness, ethnicity, and illegality.\footnote{Id. at 1568–69 (observing that “lawyers and judges refer to ‘aliens’ so frequently that few would identify the word as a metaphor”).}

Fear of the “Other” fuels anti-immigrant sentiment and discourse.\footnote{See id. at 1570–73 (reasoning that presenting immigrants as animals, diseases, and inanimate objects, together with widespread use of the “alien” metaphor “conceals immigrants’ personhood and potential for social contribution”).} To carry the critique further, the Other is considered to be “the foreigner,” who serves as the subordinating role in a native/alien binary.\footnote{Katherine L. Vaughns, *Fixation: An Obsessive or Unhealthy Preoccupation or Attachment*, 27 J. Civ. Rts. & Econ. Dev. 588, 610 (2014) (posthumous publication); Kevin R. Johnson, *Possible Reforms of the U.S. Immigration Laws*, 18 Chap. L. Rev. 315, 320 (2015) [hereinafter Johnson, *Possible Reforms*].} The role of the alien is distinctly racial; immigrants occupy “a racial caste of workers relegated to a secondary labor market.”\footnote{Id.} In addition, the character of the alien has been distinctly criminalized; the history of immigration law is one of “crimmigration” that targets specific groups deemed undesirable due to race, national origin, or ethnicity.\footnote{Mary Fan, *The Case for Crimmigration Reform*, 92 N.C.L. Rev. 75, 82 (2013).}

As discussed earlier, the surge in violent hate crimes toward Latina/os is linked to hateful anti-immigrant rhetoric.\footnote{See supra Section II.B.} Some perpetrators of hate crimes against Latinos have directly attributed their violence to anti-immigrant speech.\footnote{See Jonathan Greenblatt, *When Hateful Speech Leads to Hate Crimes: Taking Bigotry Out of the Immigration Debate*, Huffington Post (Aug. 21, 2016, 5:18 PM), http://www.huffingtonpost.com/jonathan-greenblatt/when-hateful-speech-leads_b_8022966.html [https://perma.cc/3NXW-W7G3] (relaying details of the assault on a Latino man in Boston, 2016)]. In addition, some public figures have specifically
called for killing immigrants. In 2011, an Alabama state senator advised that the solution to illegal immigration was to "empty the clip." In the 2012 Presidential campaign, a candidate proposed building an electrified fence on the border that would kill those attempting to cross.

The "discourse of the wall" has pandered to anti-immigrant sentiment in disturbing and revelatory ways. Proposals to build a wall along the border between the United States and Mexico have both substantive and symbolic dimensions. Closing the border by building a wall (and policing the wall with enhanced criminalization policies) is advanced as a substantive "solution" to unauthorized entry from Mexico. Yet, it is only the southern border that is proposed to be closed. No proposal has been made to bar Canadians from entering the country. In the political discourse of the (Mexican) wall, "optics seem to take precedence over reality and domestic politics over foreign policy and diplomacy: the image of a fortified border becomes more important than its actual effectiveness."

The border between the United States and Mexico occupies a special place in geopolitical history. At 1,951 miles, it is the longest border in

including the assailant's statement that "Donald Trump was right—all these illegals need to be deported").


273. See id. at 18-19 (discussing a 2011 speech in Tennessee by Herman Cain).

274. Preston et al., supra note 69; see also ROMÁN, supra note 272, at 18-19 (detailing an instance in which Presidential candidate Herman Cain proposed creating an electrified border fence).

275. See Elisabeth Vallet & Charles-Philippe David, Walls of Money: Securitization of Border Discourse and Militarization of Markets, in BORDERS, FENCES AND WALLS: STATE OF INSECURITY? 146 (Elisabeth Vallet ed., 2014) ("A wall is not just a piece of masonry; it is at once a 'process of differentiation,' which . . . amalgamates all the discursive elements opposing the identity of the wall-building state (the Self/us/here) to that of its neighbor (the Other/their/there.").

276. Preston et al., supra note 69.

277. See id. (explaining that the wall proposed by Trump would encompass the length of the southern border).

278. Id.

279. Elisabeth Vallet, Introduction, in BORDERS, FENCES AND WALLS: STATE OF INSECURITY 3 (Elisabeth Vallet ed., 2014); see also Preston et al., supra note 69 (reporting the warning of experts that the proposed wall would come at an astronomical expense and would defy the "logic of science, engineering, and law").

280. See Chris Nwachukwu Okeke & James A.R. Nafziger, United States Migration Law: Essentials for Comparison, 54 AM. J. COMP. L. 531, 549 (2006) (recognizing the U.S.–Mexican border as the focus of immigration control and the longest, if not the only, major border between a developed and developing country).
the world between a developed and developing country. After Mexico gained independence from Spain in 1821, about half of its territory was acquired by the United States through military action as well as purchase. However, for most of the nineteenth and late twentieth centuries, migration from Mexico to the United States was welcomed. Commentators have observed that the shift to increased border enforcement and criminalization of (Mexican) immigrants occurred in the wake of the Oklahoma City bombing and the terrorist attack on the World Trade Center. Over a twenty-year period, Mexican migrants became the scapegoat for domestic and international terrorism.

Yet, crime, drugs, and terrorism cannot be laid at the feet of Mexican migrants. Furthermore, fencing is rhetorically nothing more than "an easy and simple answer" that obscures "the underlying political, social, and economic factors at play on the border and between the United States and Mexico." Through these lenses, immigration may be seen largely as a matter of the push and pull of labor needs and opportunities in a world that has "gone global" with porous national borders and increasingly integrated economies. The lure of jobs has pulled Mexican immigrants across the border, at great risk:

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283. Id. at 7–8.
285. See JORGE A. BUSTAMANTE ET AL., Introduction, in U.S.-MEXICO RELATIONS: LABOR MARKET INTERDEPENDENCE 4–5 (Jorge A. Bustamante et al., eds. 1992) ("While scientific accounts view migration as simply part of a broad, bilateral dynamic between Mexico and the United States, U.S. politicians have made Mexican immigrants ideological scapegoats and have blamed them for unemployment, criminal activities, epidemics, communist and terrorist aggression, threats to national sovereignty, and, most recently, narcotics trade.").
286. Johnson, It's the Economy, supra note 259, at 600; see also Vaughns, supra note 267, at 613–14 (stating there is no credible evidence of terrorist infiltration along the Southwest border); Heyman, supra note 261 (reporting that immigrants have significantly lower violent crime rates than native-born populations).
287. Vaughns, supra note 267, at 598.
Undocumented migrants have trekked through the California and Arizona deserts in oppressive heat, rubbed garlic on their skin to ward off rattlesnakes, swum across the All-American Canal and Rio Grande River, or spent days hiking over the mountain ranges in frigid weather. They have suffocated in the airless trucks of smugglers, died in vehicle crashes, been struck by lightning, or drowned. Too often migrants have been preyed upon by their Mexican handlers (often called “coyotes”), U.S.-based contractors (frequently non-citizens), and criminals who assault, rob, and kill them.  

In one year, deaths of Mexicans in attempted border crossings exceeded the entire death toll of East Berliners attempting to cross the Berlin wall in its 28-year history.  

A more nuanced look at American border policy reveals that it has very little to do Mexican immigration. Instead, the politics and discourse of the border have everything to do “with America’s view of itself and its place in the world.” The U.S.–Mexico border has become “a symbolic stage upon which the nation’s insecurities and fears, hopes and dreams, are projected.” The border is a site of political contestation in which differing accounts of America’s global identity are mapped onto interlocking systems of discrimination, subordination, and privilege. One system pulls the levers of white privilege, where fears of job insecurity and a growing population of people of color move public policy forward. An interlocking, symbiotic system grinds the gears of racial and cultural mix of immigrant receiving societies. Depending on the speed and magnitude of change, the resident population reacts in different degrees of nativism and intensity towards the increased heterogeneity brought about by immigration.


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Notes:

290. Vaughns, supra note 267, at 600.
291. Id. at 607.
292. Id. at 600.
293. Id. at 592.
294. See Vallet & David, supra note 275, at 143 (discussing the functions of border walls: “protection, pacification, separation, and even segregation” as well as security mechanisms and reflecting an orientation of domination).
295. See Johnson, It’s the Economy, supra note 259, at 600, 602, 604, 608 (contending that immigration is at heart about labor migration, including impacts of immigration on citizens, exploitation of undocumented workers, a “new Jim Crow” of undocumented workers, largely of-color, and a discourse infected by racist nativism). One observation is that:

As international migration continues from less developed to more developed regions of the world, the growing nascent migrant population is likely to change the racial and cultural mix of immigrant receiving societies. Depending on the speed and magnitude of change, the resident population reacts in different degrees of nativism and intensity towards the increased heterogeneity brought about by immigration.
class subordination, in which criminalized immigrants are demonized in public discourse and punished by policies ensuring they are detected, detained, and deported.\(^{296}\) The wall symbolizes this contestation in a classic closed-door embodiment of “Us versus Them.”\(^{297}\)

The antidote to anti-immigration rhetoric and the “pro-wall” border policy is to recognize that there are two parties to the border—the United States and Mexico. Our nation has a special relationship with Mexico that should be reflected in a border policy of respect and shared responsibility.\(^{298}\) According to the late Professor Katherine L. Vaughns, “[i]nstead of building another physical barrier, the resumption of regional partners in border and migration management seems like a logical, realistic alternative choice.”\(^{299}\) Mexico already has a cooperative relationship with the United States in trade and security matters.\(^{300}\) To meet national security concerns, policies that focus on the indicia of risk of migrants seeking to enter the country, as well as better identification and tracking of entrants, would be far more effective than engaging in the futile, expensive, and discriminatory theatrics of trying to exclude people of color.\(^{301}\) The United States must meet the pressing forces of globalization from an ethical stance that reflects our commitment to “building multi-stakeholder responses” to the complex phenomena of immigration.\(^{302}\)

Constructively examining our nation’s immigration policies and boundaries, it is apparent that we created those borders and policies and can remake them to reflect the values, diversity, and vibrancy of an America in the twenty-first century. The proper role of the United States of America is to be a partner to our territories and other countries in the world. This

\(^{296}\) Shirley Lin, “And Ain’t I a Woman?”: Feminism, Immigrant Caregivers, and New Frontiers for Equality, 39 HARV. J.L. & GENDER 67, 99, 113–14 (2016); see also Johnson, It’s the Economy, supra note 259 (describing the discourse on immigration “as nothing less than hateful and frightening”); Schroth & Foster, supra note 282, at 1 (noting the focus of immigration law on “stigmatizing and criminalizing Mexicans in particular”).

\(^{297}\) Vallet & David, supra note 275.

\(^{298}\) Vaughns, supra note 267, at 613.

\(^{299}\) Id.

\(^{300}\) Id.

\(^{301}\) Id.

is an imperative not only of intersectional justice, but also of the demands of an interconnected world.

Similarly, from this perspective, the binaries, borders, and divisions that are the grounds of race, gender, sexuality, and national origin subordination come into better relief. These divisions are also of our own making, and we can unmake and recreate relationships, not only with other countries, but also within our body politic. A commitment to intersectional justice requires political action that exposes and dismantles the hurtful ways in which we have categorized ourselves and others. With shared responsibility and respect for perceived differences, we can make a new heterogeneous public for the twenty-first century. That response is worthy of the 49.

IV. Conclusion: Binaries, Borders, and Shared Responsibility

They were dancing. They were doing the salsa, bachata, reggaeton, jibara, and other forms of Latin and club dancing. They were celebrating sexuality, culture, inclusion, and liberation in a space where a Latino can take the hand of another man and dance. They were dancing in a site of safety—a sacred space—constructed out of decades of struggle and infused with political meaning.

303. See Young, supra note 21, at 119 (discussing “the ideal of a heterogeneous public, in which persons stand forth with their differences acknowledged and respected, though perhaps not completely understood, by others”); Iglesias, LatCrit Theory, supra note 27, at 71 (grounding a “commitment to anti-essentialist intergroup justice on a respect for difference, rather than a requirement of sameness”); Lin, supra note 296, at 71 (analyzing the organization “of immigrant and minority caregivers nationwide for ‘rights, respect, and recognition’”).

304. See generally Malavet, Puerto Rico, supra note 249, at 263 (discussing the role of music, including the jibaro seis—"the music of the true jibaro, the poor peasant farmer of Puerto Rico"—as an integral part of the culture that makes “the Puerto Rican nation”); Reichard, supra note 75 (discussing the diversity of Latin culture and dancing, including bachata and cumbia).

305. Guevarra, supra note 111.

To honor the victims and survivors of the massacre at Pulse, this article has critiqued the systems of subordination, particularly those at the intersections of sexuality and ethnicity, that underlie hate crime. This article proposes that ideologies and structures of privilege and subordination must be dismantled by acknowledging the false binarist divisions that we have created and by taking action to create systems of intersectional justice.

The predicates for intersectional justice lie within individual consciences as well as in the values, norms, and laws expressed by a society.307 Individuals should pledge to root out internalized forms of oppression and form coalitions across traditional divisions to face and undo systems of subordination.308 Commitments to intersectional justice must flow from the discursive arena of our pluralistic civil society and into political action.309

To open the door to LGBTQ intersectional justice, Congress must adopt the Equality Act and set a clear national policy of nondiscrimination against members of the LGBTQ community in all of the protected civil rights areas.310 Florida politicians must put their condolences into action by including the LGBTQ community in the state’s Civil Rights Act.311 The Florida legislature must do its job of making amends to the LGBTQ community without including bathroom provisions that demean transgender people or “religious freedom” exemptions that are a pretext for discrimination. Finally, to orient toward Latinx intersectional justice, the nation must eschew immigration policies that run counter to constitutional values as well as those that undermine an ethical and pragmatic engagement with the rest of our increasingly interconnected world. Policies must be engaged that responsibly focus on an accurate assessment of the risk posed by those seeking entry while emphasizing respect and shared responsibility with neighboring countries.

In the aftermath of the massacre, a wide variety of groups stepped forward to express diverse commitments to justice. First, concerned citizens

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307. See text and accompanying notes supra Section III.A.
308. See text and accompanying notes supra Section III.A.
309. E.g., Young, supra note 21, at 152.
from Latino, immigrant, LGBTQ, African-American, labor, reproductive rights, and faith communities came together across traditional boundaries to advocate for gun control.\textsuperscript{312} On the eve of the one-month anniversary of the massacre, sixty protestors participated in a "sit-in for the 49" in the lobby outside a U.S. senator's office in downtown Orlando.\textsuperscript{313} Singing protest songs and creating a memorial of forty-nine roses and slips of paper with the names of the dead, the protestors planned to occupy the space for forty-nine hours.\textsuperscript{314} The protestors presented the Senator's staff with demands, including rejecting financial contributions from the National Rifle Association, imposing universal background checks, and adopting legislation to prohibit semiautomatic assault weapons and large-capacity ammunition feeding devices.\textsuperscript{315} The peaceful sit-in ended after nine-and-one-half hours when police officers were summoned by the owners of the building; ten of the protesters were arrested.\textsuperscript{316} According to several activists, the Pulse massacre represented "a tipping point," mandating political action by communities that are disproportionately affected by gun violence.\textsuperscript{317} The sit-in can also be seen as part of a broader "intertwining" of groups that are coming together to advocate for community services and substantive justice.\textsuperscript{318} For example, over thirty organizations joined together after the massacre to form Somos Orlando, focusing on providing culturally competent mental health services and

\begin{footnotes}
\item[314.] Id.; see also Cordeiro, supra note 312 (showing video of the protesters singing "#SomosOrlando, esta noche tenemos que ganar").
\item[315.] Santich & Lotan, supra note 313.
\item[316.] Id.
\item[318.] See PAUL HAWKEN, \textit{BLESSED UNREST} 11–12 (Viking 2007) (describing the "intertwining" and "coalescence" of "hundreds of thousands of organizations" across the world that are converging around "environmental activism, social justice initiatives, and indigenous cultures' resistance to globalization").
\end{footnotes}
meeting other needs of the Hispanic community. At the state level, eighty-five organization—"a wide swath" of concerned civic groups—recently signed on to the Florida Coalition to Prevent Gun Violence that was launched by Florida's League of Women Voters.

Second, Orange County Mayor Teresa Jacobs, who made a moving statement of penitence to the LGBTQ community at a vigil three days after the massacre, propelled her words into action six weeks later. Jacobs spearheaded a resolution, signed by twenty other central Florida Republicans, to support legislation banning discrimination against the LGBTQ community. The resolution states: "We the undersigned do hereby resolve that all Americans should be treated with equality, dignity and respect, and support efforts of Florida businesses and individuals to pass legislation banning discrimination based on sexual orientation or gender identification."

Reaction was mixed. Nadine Smith, the CEO of Equality Florida, advised:

Mayor Teresa Jacobs has made good on her promise to be a voice for equality and to challenge others in her party to stand on the side of equal protection for LGBT people. This is a moment when the state of Florida can become a beacon in the South and make amends for the state's long, dark history of state sanction[ed] persecution and legalized discrimination.


320. See Manes, In the Wake, supra note 312 (noting that members of the coalition are "from all walks of life: faith-based groups, health, education, LGBTQ, Hispanic, African-American and civic organizations").

321. Lowder, supra note 173.


325. Id.
Others were more restrained, noting that “[t]here’s much more to the story . . . especially when you consider that there are many federal Republicans actively trying to roll back something as benign as marriage equality in coming years.” However, as one activist stated, “. . . a good start is a good start.”

Third, in the days following the massacre, a video was anonymously posted on social media under the name of Keep Dancing Orlando; the video includes central Florida businesses, firemen, police officers, school employees, theater groups, and ordinary citizens dancing to an upbeat, popular song. The video invites others to upload their own videos on social media. An avalanche of videos has since been posted on Facebook by groups ranging from the Zebra Coalition to the Orange County Comptroller’s Office, and from the University of Central Florida College of Medicine to the First Unitarian Church of Orlando. The Orange County’s Sheriff’s Department posted its video on July 1st; within five days, it had been viewed 2.9 million times.

The video demonstrates the way to face down terrorism and hate crime. In terrorism, the central focus is to leverage “the psychology of fear” by hitting the mental buttons of unfathomability and dread. In
hate crimes, fear creates loathing and objectification of others who are perceived to be different. Yet, the Keep Dancing Orlando movement sings out not to let the Pulse massacre set up stations of fear in individual and community psyches. The video is an anthem: it refuses to let the massacre immobilize us, to push LGBTQ and Latinx people back into spaces of hiding, or to rob us of the joy of living. It calls to the human spirit to celebrate every day of life and points the way to remember the 49. After all, they were dancing.

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333. See text and accompanying notes supra Section II.
334. Keep Dancing Orlando, supra note 328.
335. See Thompson, supra note 116. A second-generation immigrant and gay man who grew up in Orlando advised, “I will never be safe, but I will forever be proud—of myself, of the family that brought me here, of anyone who can dance in the face of hate, and love in the face of anger.” Id.
336. See Alvarez & Madigan, supra note 14 (telling the story of one of the 49 victims, Franky Jimmy DeJesus Velazquez, who was a professional dancer devoted to the folkloric dance of jibara); see also Christal Hayes, Pulse Survivor Dances for First Time After Being Shot Six Times, ORLANDO SENTINEL (July 30, 2016, 11:15 PM), http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/survivors/os-angel-colon-zumba-orlando-20160730-story.html (discussing Pulse nightclub survivor Angel Colon’s appearance at an Orlando Zumba convention, where he danced for the first time since the shooting).