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Journal

UCLA Women's Law Journal, 21(1)

Author

Bruce, Teresa M.

Publication Date

2014

DOI

10.5070/L3211023878

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ARTICLES

TERRORISM DU JOUR

How the Trayvon Martin Case Exposes an Endemic Regime of Fear that Keeps Black Males and Females of All Colors in a State of Subjugation

Teresa M. Bruce*

INTRODUCTION

I have tried to imagine my father as a little boy, playing on the typewriter in Bernice Worden's Plainfield, Wisconsin hardware store. He could probably smell motor oil and leather gloves, the musty pages of books stored too long on shelves, and the earthy dust that would have permeated a small-town family business in the days before big-box stores. I can picture him leaving the typewriter to explore the marvels of Worden's Hardware, to touch the gloves dangling from wire racks in various shades of brown, to play imaginary games among the nails, hammers, paint cans, and other paraphernalia of adult travail.

I am certain, however, that my father never imagined, in the midst of his explorations, that Worden's Hardware would host a murder. And I am certain that he never imagined the grisly discoveries that would follow that event. But the death of Bernice Worden must haunt his memories. It must color his picture of those gloves and hammers and paint cans. Like millions of black men, and women of all colors,¹ who painfully recognize their vulnerability to

* Assistant Professor of Legal Writing, University of Denver, Sturm College of Law. This article is dedicated to the memories of Bernice Worden and Trayvon Martin.

¹ This Article tries to be sensitive in its use of language. In particular, it tries to avoid making black women invisible, or ignoring their intersectionality, by subsuming them in the terms "blacks" or "women." It also uses the phrases "black men *and boys*" and "women *and girls*" to indicate that the violence faced by females and black males is not always directed at adults; children often suffer from this sort of violence, as well, as in Trayvon Martin's case. Finally, the

unprovoked aggression, my father, a white man, must now view the world as, in some measure, malignant.²

This Article examines violence as directed against black men and boys and women and girls of all colors. Part I recounts stories about this sort of violence. It tells the stories of Bernice Worden and Trayvon Martin; it does so in order to communicate the depth of suffering caused by unprovoked, racially or sexually motivated, aggression. Part II uses the work of Carole J. Sheffield, a political science and women's studies professor, to analogize this sort of aggression to terrorism. It discusses indiscriminate violence, white supremacy, and patriarchal ideology, and explains how racist and misogynistic propaganda promote a certain world view. It also explains how victims of oppressive ideologies tend to conform, more or less voluntarily, to those ideologies. Part III argues that white and male hegemonies belie the American ideals of self-governance, security, liberty, and personal fulfillment, affecting the lives of black men and boys, and of women and girls of all races, in a very real, and a very negative, way. The Article ends by offering some suggestions for positive change.

I. STORIES ABOUT VIOLENCE MOTIVATED BY RACE AND SEX

This Part recounts two stories, that of Bernice Worden and that of Trayvon Martin. Bernice³ was targeted by an aggressor because of her sex; Trayvon was targeted by an aggressor because of his race. Both were killed. And both cases can give us insight into a system of violence that shapes the lives of black males, and females

Article uses both "black" and "African American," rather than one or the other because both terms have their pros and cons. The former term has the advantage of being, perhaps, easier on the tongue, albeit the detriment of, among other things, being abstract and associated with a color that is sometimes viewed in a negative light. The latter term has the advantage of, perhaps, being more descriptive and accurate, and of using a capital letter (which is the norm, after all, for ethnicities, e.g., "Greek" or "Irish"), but the detriment of being a little more of a mouthful. If there are times when the Article errs in its use of language, I apologize.

² Ed Gein, who murdered Bernice Worden and other women and girls, did not prey on men or boys. Thus, my father probably would not have seen himself as a potential victim in the same way that many black men and women of all colors do. Nevertheless, he experienced the death of an adult to whom he looked for his own safety and security, and that must have had a profound effect on his world view.

³ I will at times call Ms. Worden and Mr. Martin by their first names—not as a sign of disrespect but, rather, as a sign of tenderness and kinship, to embrace them as someone representative of everywoman (or girl) and everyman (or boy): friend, relative, co-worker, or acquaintance.

of all colors, in ways that render us less-than-full participants in civic life.

A. Bernice's Story

This Part tells Bernice C. Worden's story.⁴ It does so—despite the fact that Bernice's death and its aftermath were uniquely horrifying and do not in some ways represent the typical scenario for violent sexual crimes—because the man who murdered Bernice had a very problematic view of women, a view that sheds light on society's mistreatment of women, and because the manner in which Bernice died (by gunshot wound) was, itself, was not so different from how many women die. It does so, also, because Bernice's death has special significance for me: Bernice was married to my father's cousin. When my father was a child, he played in Worden's Hardware store. He poked boyish fingers at an old-fashioned typewriter that may well have rested on the counter behind which Bernice breathed her last breath. When I found out that I was related to Ed Gein's last victim, I was stunned. I have seen *Psycho*.⁵ I have seen *Silence of the Lambs*.⁶ I have seen the public's strange fascination with the story of "America's most bizarre murderer."⁷ My connection to Bernice gave life to the secret fear I share with all women: it could happen to me.⁸ If death by a serial killer, something so out of the norm, can come so close, how can one feel safe from the more routine types of violence endured daily by women?

In 1957, Plainfield, Wisconsin had a population of just over 600 people.⁹ Bernice Worden, a fifty-eight-year-old widow, ran the local hardware store. Her son, Frank, was deputy sheriff. Ed Gein, a fifty-one-year-old bachelor, lived the life of a hermit on an unworked, 160-acre farm a few miles south of town.¹⁰ His father, mother, and brother had all predeceased him.

⁴ Actually, this Part only tells the story of Bernice's death, as the next Part only tells the story of Trayvon's death; perhaps someone will someday tell the stories of their lives, as well.

⁵ Ed Gein inspired the novel *Psycho*, by Robert Bloch. MICHAEL KURLAND, A GALLERY OF ROGUES 143 (1994).

⁶ Ed Gein inspired the novel *Silence of the Lambs*, by Thomas Harris. *Id.*

⁷ I am referring, here, to the title of the book Judge Robert H. Gollmar wrote about Gein's crimes. See ROBERT H. GOLLMAR, EDWARD GEIN: AMERICA'S MOST BIZARRE MURDERER (2d printing 1982).

⁸ Or, for women who have experienced rape; it could happen to me—again.

⁹ *Id.* at xix.

¹⁰ *Id.* "Gein" is pronounced "Geen."

Saturday, November 16 was opening day of deer hunting season.¹¹ Frank prepared his rifle and gear and, like many of the men and women of Plainfield, set out for a day of hunting. Bernice saw to the store. She had served two customers when Ed Gein arrived at about 9:00 a.m., asking to purchase some antifreeze.¹² He handed over a glass jug and she filled it from a steel barrel located in her office. After paying, Gein placed the merchandise on the floor in the back seat of his car and returned to Worden's Hardware in order to inspect a rifle. He wanted to trade his own rifle for a weapon that would take three different types of twenty-two caliber bullets.

As he stood in front of the gun rack next to Mrs. Worden, Gein pointed to a particular model, asking her whether he could remove it from the rack. "Sure," she said, "It's my favorite type of rifle."¹³ As Gein inspected the weapon, Mrs. Worden walked away. She did not see Gein take a bullet from his pocket, load it into the chamber, and—either intentionally or accidentally—discharge the weapon in her direction. She died almost instantly after the bullet entered the back of her head.¹⁴ Gein walked around the counter to where Mrs. Worden lay, slit her throat,¹⁵ and dragged her body out the back door to the red Chevrolet pickup truck belonging to the Worden business. He drove the truck out of town, walked back to retrieve his own car, transferred the body, and went home.

Frank Worden returned from hunting at about 5:00 p.m. The store looked dark and deserted. When he walked inside, he found a trail of blood, originating in a pool behind the counter and extending out the back door. The truck was missing. He alerted local law enforcement personnel and told them he suspected Ed Gein.¹⁶ Police arrived at Gein's farmhouse at about 8:00 p.m. and there witnessed "a scene that has seldom been equaled for grotesque horror."¹⁷ They found Mrs. Worden's nude and headless body suspended, upside down, from the rafters in a woodshed attached to

¹¹ *Id.* at xix, 21.

¹² *Id.* at 21.

¹³ *Id.* at 128.

¹⁴ The pathologist said that Mrs. Worden died within seconds or minutes of the bullet's entry. *Id.* at 63. Gein testified that the shot was fired accidentally. *Id.* at 132.

¹⁵ *Id.* at 63-64.

¹⁶ Frank remembered that Gein had asked his mother to go roller skating. Gein had also mentioned his need for antifreeze and had asked whether Frank was planning to go hunting on opening day. Frank told Gein that he planned to hunt all day. Mrs. Worden made three sales on the day of her murder. Police checked the receipts and discovered that one of the sales had been for antifreeze. *Id.* at 24-26.

¹⁷ KURLAND, *supra* note 6, at 142.

the house. She had been “dressed out like a deer.”¹⁸ Her hands had been tied to the sides of her body with twine. Her torso had been sliced open from the throat to just above the mons veneris. Her intestines and other internal organs had been removed. Her genitalia had been excised, resulting in “the complete removal of the vulva, lower vagina, and the anus with the lowest portion of the rectum.”¹⁹

Unfortunately, the macabre discoveries continued as police moved their investigation to other parts of the homestead. Inside Gein’s house, officers found numerous items fashioned from human body parts. Over the years, Gein had dismembered at least fifteen women and girls.²⁰ He had created a knife handle from human bone and bowls and drinking cups from human skulls. He had embellished a belt with women’s nipples. He had decorated his bedposts with human skulls. He had used human skin to upholster furniture and to make clothing, bracelets, and lamp shades. He had created a waistcoat from a woman’s torso with the breasts still attached.²¹ He had preserved the faces of nine women by peeling the flesh from their skulls. In addition to all of this, officers found a shoe box containing the vulvas of seven women and two girls. They found Mrs. Worden’s heart in a saucepan on Gein’s stove.²²

Gein was arrested, indicted, found incompetent to stand trial and committed to the Central State Hospital in Waupun, Wisconsin, where he lived until his death in 1984.²³ He was clearly insane. But why would Gein’s mental illness²⁴ take this particular form? Why would it focus on women? Part II might shed light on these questions. In a world in which patriarchal ideology vilifies women, sexual terrorism flourishes. Individuals like Ed Gein and Bernice Worden become pawns in a game of male domination.

¹⁸ GOLLMAR, *supra* note 8, at 32.

¹⁹ *Id.* at 61-62.

²⁰ KURLAND, *supra* note 6, at 143. Some of the body parts came from graves Gein had robbed. Others, involved live victims. Authorities estimate that Gein killed five women. *Id.* at 143. GOLLMAR, *supra* note 8, at 9-11, 58.

²¹ KURLAND, *supra* note 6, at 142.

²² Gein denied cannibalism, but may have caused others to unknowingly ingest human flesh. He told investigators that he never hunted deer, but townspeople later remembered receiving packages of “venison” from Gein. GOLLMAR, *supra* note 8, at 52.

²³ *See id.* at 81-84, 171-80; *see also* KURLAND, *supra* note 6, at 143. Actually, the State did eventually try Gein. His competency hearing and commitment occurred in 1958. Ten years later, state hospital workers found Gein competent to stand trial (albeit still insane), and the State of Wisconsin tried Gein, finding him guilty of murder, but insane at the time of the crime, and once again committing him. GOLLMAR, *supra* note 8, at 171-80.

²⁴ According to Dr. Milton Miller, Gein suffered from schizophrenia. *Id.* at 83.

B. Trayvon's Story

This Part tells Trayvon Martin's story. It is a story that illustrates how violence against men and boys can be different than, and yet still parallel to, violence against women and girls. For example, there is evidence of mutual combat in Trayvon's case, unlike in Bernice's case and, in that regard, the two stories are different. But Trayvon's story is still a visceral reminder for many of the specter of violence that black men and boys regularly confront and, in that regard, the two stories are similar: both stories remind a person hearing them that "it could have been me."

Trayvon Martin was a black, seventeen-year-old high-school student. He stood five-feet-eleven-inches tall and weighed 158 pounds.²⁵ In early 2012, he was visiting his father in a predominantly-white, gated community in Sanford, Florida, a small city north of Orlando.²⁶ He had just been suspended from school.²⁷ One Sunday evening, shortly after 7:00 p.m., he was walking back from the local 7-Eleven store.²⁸ It was rainy and dark.²⁹ He had the hood of his sweatshirt over his head.³⁰ He was carrying \$40.15 in cash, some Skittles, an iced tea, a cigarette lighter, a cell phone, and headphones.³¹ He was talking to a friend, Rachel Jeantel, on

²⁵ Medical Examiner's Report, March 15, 2012, by Shiping Bao, M.D., available at <http://ionenewsonline.files.wordpress.com/2013/09/trayvon-martin-autopsy.pdf>.

²⁶ Lizette Alvarez, *Justice Department Investigation Is Sought in Florida Teenager's Shooting Death*, N.Y. TIMES, March 16, 2012, http://www.nytimes.com/2012/03/17/us/justice-department-investigation-is-sought-in-florida-teenagers-shooting-death.html?_r=0; Charles M. Blow, *The Curious Case of Trayvon Martin*, N.Y. TIMES, March 16, 2012, <http://www.nytimes.com/2012/03/17/opinion/blow-the-curious-case-of-trayvon-martin.html>.

²⁷ Lizette Alvarez, *Defense in Trayvon Martin Case Raises Questions About the Victim's Character*, N.Y. TIMES, May 24, 2013, <http://www.nytimes.com/2013/05/24/us/zimmermans-lawyers-release-text-messages-of-trayvon-martin.html>.

²⁸ Alvarez, *Justice Department Investigation*, *supra* note 27; Blow, *The Curious Case*, *supra* note 27; Lizette Alvarez, *Running, a Fight and Then a Shot, a Witness Testifies in Zimmerman's Trial*, N.Y. TIMES, June 25, 2013, http://www.nytimes.com/2013/06/26/us/witness-portrays-zimmerman-as-neighborhoods-eyes-and-ears.html?_r=0. Trayvon Martin was killed on February 26, 2012. Alvarez, *Justice Department Investigation*, *supra* note 27.

²⁹ Lizette Alvarez, *Clash of Styles in Court Opens Trial in Trayvon Martin's Death*, N.Y. TIMES, June 24, 2013, <http://www.nytimes.com/2013/06/25/us/zimmerman-trial.html>.

³⁰ Alvarez, *Justice Department Investigation*, *supra* note 27.

³¹ See Serge F. Kovalski & Campbell Robertson, *New Details Are Released in Shooting of Trayvon Martin*, N.Y. TIMES, May 17, 2012, <http://www.nytimes.com/2012/05/18/us/new-details-are-released-in-shooting-of-teenager.html> (listing some of these items); see also Alvarez, *Justice Department Investigation*,

the phone.³² And he was being followed.³³ Trayvon did not know it, but the man who was stalking him, a man who Trayvon himself described as “a creepy-ass cracker,”³⁴ was George Zimmerman, age twenty-eight. Zimmerman,³⁵ who is half Peruvian (despite his Germanic-sounding surname),³⁶ five-feet-seven-inches tall,³⁷ and light skinned,³⁸ was a 204-pound³⁹ neighborhood watch volunteer; he was policing the neighborhood, as he frequently did, in his SUV, armed with a nine-millimeter handgun.⁴⁰ Over the previous eight years, he had called the police forty-six times, reporting, among other things, “suspicious” people,⁴¹ several of whom were black.⁴² That night was no different. He called the police to report that Trayvon looked “real suspicious,”⁴³ and, using some expletives,⁴⁴ expressed his opinions about “punks” who “always get away.”⁴⁵ Eventually,

supra note 27.

³² Alvarez, *Clash of Styles*, *supra* note 30.

³³ *Key Disputes in the Zimmerman Trial*, N.Y. TIMES (July 8, 2013), <http://www.nytimes.com/interactive/2013/07/05/us/zimmerman-trial.html>.

³⁴ Alvarez, *Running*, *supra* note 29.

³⁵ I want to reiterate that I mean Mr. Martin no disrespect by calling him by his first name, even though I am calling Mr. Zimmerman by his surname. I am doing so because, in addition to reasons already given, Trayvon was a child and Mr. Zimmerman an adult.

³⁶ Lizette Alvarez, *In Zimmerman Trial, Prosecution Witnesses Bolster Self-Defense Claims*, N.Y. TIMES, June 30, 2013, <http://www.nytimes.com/2013/07/01/us/in-zimmerman-trial-prosecution-witnesses-bolster-self-defense-claims.html>.

³⁷ Lizette Alvarez, *Neighbor Describes Witnessing Confrontation in Florida Murder Case*, N.Y. TIMES, June 28, 2013, <http://www.nytimes.com/2013/06/29/us/neighbor-describes-glimpse-of-fight-in-zimmerman-case.html>. According to Zimmerman, himself, he is 5’8”. *Transcripts, Nancy Grace- George Zimmerman Trial; The Zimmerman Police Tapes*, CNN (July 18, 2013), <http://transcripts.cnn.com/TRANSCRIPTS/130718/ng.01.html>.

³⁸ Alvarez, *Neighbor*, *supra* note 38; It is important to note, due to certain testimony at trial, that Martin’s complexion was discernibly darker than Zimmerman’s.

³⁹ *Id.* According to Zimmerman himself, he weighed 184 pounds at the time of the shooting. *Transcripts*, *supra* note 38.

⁴⁰ Blow, *The Curious Case*, *supra* note 27.

⁴¹ Alvarez, *Justice Department Investigation*, *supra* note 27.

⁴² Alvarez, *Running*, *supra* note 29.

⁴³ Blow, *The Curious Case*, *supra* note 27.

⁴⁴ *Id.*

⁴⁵ Lizette Alvarez, *Trayvon Martin’s Father Says Screams on 911 Call Were His Son’s*, N.Y. TIMES, July 8, 2013, <http://www.nytimes.com/2013/07/09/us/friends-testify-that-zimmerman-is-the-one-screaming-for-help-on-911-call.html>.

despite police admonishments to the contrary, Zimmerman began to pursue Trayvon on foot.⁴⁶

Trayvon could see this man, following behind him in an SUV,⁴⁷ and, later, on foot, and he began to get nervous. So, he tried talking to Zimmerman, asking “What are you following me for?”⁴⁸ But Zimmerman responded in a hostile, accusatory manner, asking “What are you doing around here?”⁴⁹ He may have even used a racial slur.⁵⁰ At that point, Rachel, who was still on the phone, told Trayvon to run, but Trayvon decided “to walk fast” instead.⁵¹

Eventually, though, he did decide to run,⁵² towards his father's place,⁵³ but Zimmerman gave chase⁵⁴ and there was an altercation. The evidence is conflicting at this point, but, according to Zimmerman, Trayvon knocked him to the ground with one well-placed punch,⁵⁵ pinned him down, and started hitting him. Part of this account is corroborated by a witness who saw someone wearing clothes similar to Trayvon's clothes straddling and beating a light-skinned man who was wearing clothes similar to Zimmerman's.⁵⁶

⁴⁶ Alvarez, *Justice Department Investigation*, *supra* note 27.

⁴⁷ *Id.*

⁴⁸ Alvarez, *Clash of Styles*, *supra* note 30.

⁴⁹ Lizette Alvarez, *At Zimmerman Trial, Victim's Friend Is Pressed on Her Story*, N.Y. TIMES, June 27, 2013, http://www.nytimes.com/2013/06/28/us/at-zimmerman-trial-victims-friend-is-pressed-on-her-story.html?_r=0.

⁵⁰ Kovaleski & Robertson, *supra* note 32.

⁵¹ *Key Disputes*, *supra* note 34.

⁵² Alvarez, *Victim's Friend Is Pressed*, *supra* note 50. Zimmerman himself says that Trayvon was running. *George Zimmerman's 911 Call*, YOUTUBE (March 28, 2012), <http://www.youtube.com/watch?v=zj7qEcD8R-8>.

⁵³ Alvarez, *Running*, *supra* note 29 (describing testimony from Selene Bahadoor).

⁵⁴ Alvarez, *Victim's Friend Is Pressed*, *supra* note 50.

⁵⁵ *George Zimmerman's Written Statement*, N.Y. TIMES 2-3, <http://www.nytimes.com/interactive/2012/06/22/us/21george-zimmerman-transcript.html>.

⁵⁶ Alvarez, *Clash of Styles*, *supra* note 30; Alvarez, *Neighbor Describes Witnessing Confrontation*, *supra* note 38. There was, however, some testimony that suggested that Zimmerman was on top of Martin: two witnesses testified that, after the gunshot, the person on top stood up and walked away. *Id.* But at least one of them viewed the scene only after hearing the gunshot; in other words, she did not see the fight itself. Alvarez, *Victim's Friend Is Pressed*, *supra* note 50. So her testimony does not contradict Zimmerman's claim that, after he fired his weapon, he got out from underneath Martin by flipping him onto his back. Alvarez, *Neighbor Describes Witnessing Confrontation*, *supra* note 38. Moreover, Officer Timothy Smith testified that Zimmerman's clothes were wet in the back, and covered with bits of grass. *Id.* Martin's pants were, in contrast, stained at the knees. Cara Buckley, *2 Mothers Testify, Each Saying That Screams on the Phone Were Her Son's*, N.Y. TIMES, July 5, 2013, <http://www.nytimes.com/2013/07/06/us/martins-hands-were-almost-free-of-wounds-medical-examiner-says.html>. In addition, the forensics of the bullet trajectory suggest that Martin was on top of

One or both of the combatants were screaming for help.⁵⁷ Ultimately, Zimmerman shot Trayvon through the heart at point-blank range.⁵⁸ The shot was fatal, but Trayvon may have lived for ten minutes afterward.⁵⁹ According to the medical examiner, “[h]is heart was still beating,” and “[h]e was still alive, still in pain, still suffering.”⁶⁰

Zimmerman, in contrast, walked away from the scene with a few cuts, bumps and bruises, and a bloody, perhaps broken, nose.⁶¹ He was not arrested until six weeks after the shooting, after a public outcry forced the governor of Florida to appoint a special prosecutor.⁶² Over a year later, he went to trial,⁶³ arguing self-defense. He was acquitted.⁶⁴ He had clearly killed Trayvon, but the jury thought he was reasonably in fear for his life at the time. But why was he so afraid? What struck him as “suspicious” and “punk”-like about Trayvon? Why did he feel that Trayvon did not belong in his neighborhood? Why did he think that a seventeen-year-old boy, who he had been stalking, who he had arguably provoked into a fight, was going to go further than some well-deserved,⁶⁵ it would seem, fisticuffs?

and leaning over Zimmerman when Zimmerman fired his gun. Lizette Alvarez, *Martin Was Shot as He Leaned Over Zimmerman, Court Is Told*, N.Y. TIMES, July 10, 2013, <http://www.nytimes.com/2013/07/10/us/teenager-was-over-zimmerman-as-he-was-shot-expert-says.html>. Jeantel testified that the last thing she heard Martin say was “Get off, get off,” Alvarez, *Running*, *supra* note 29, suggesting that Zimmerman was on top, but, by Jeantel’s own account, it was difficult to hear the speaker, Alvarez, *Victim’s Friend Is Pressed*, *supra* note 50.

⁵⁷ There is a dispute as to which of the two combatants was screaming for help. Kovaleski & Robertson, *supra* note 32.

A police officer testified at trial that Zimmerman twice told him that he had been yelling for help but nobody came to assist him. Alvarez, *Neighbor Describes Witnessing Confrontation*, *supra* note 38. Several witnesses identified a voice on a 911 call as Zimmerman’s. Buckley, *2 Mothers*, *supra* note 57. But several other witnesses identified the voice as Martin’s. *Id.*

⁵⁸ Kovaleski & Robertson, *supra* note 32.

⁵⁹ *Id.*; Buckley, *2 Mothers*, *supra* note 57.

⁶⁰ Buckley, *2 Mothers*, *supra* note 57.

⁶¹ Alvarez, *Neighbor Describes Witnessing Confrontation*, *supra* note 38; Alvarez, *Justice Department Investigation*, *supra* note 27.

⁶² Alvarez, *Prosecution Witnesses Bolster Self-Defense Claims*, *supra* note 37.

⁶³ Alvarez, *Clash of Styles*, *supra* note 30.

⁶⁴ Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 13, 2013, <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>.

⁶⁵ Lizette Alvarez, *Zimmerman Case Has Race as a Backdrop, but You Won’t Hear It in Court*, N.Y. TIMES, July 7, 2013, <http://www.nytimes.com/2013/07/08/us/zimmerman-case-has-race-as-a-backdrop-but-you-wont-hear-it-in-court.html> (quoting Al Jackson, a pastor in Richmond Heights, a predominantly black

Part II might shed light on these questions. In a world in which racist ideology equates African American men (and boys) with crime, violence, and super-human strength, a sort of terrorism directed at black males flourishes. Individuals like George Zimmerman and Trayvon Martin become pawns in a larger game geared toward domination and control.

II. RACISM, MALE HEGEMONY & THE TERROR THEY BREED

Some commentators argue that the ongoing fear that both females and males of color endure as a result of racism, sexism, and the unprovoked violence they can elicit amounts to a type of routine, day-to-day terrorism. This Article does not adopt that view wholesale, due to the negative impact a more authoritarian approach to this sort of violence would likely have on civil liberties.⁶⁶ But it does use this literature, particularly the work of Carole J. Sheffield, a political science and women's studies professor, as a way of framing a discussion of the Trayvon Martin case and reflecting on the case's significance to those who oppose racist, sexist hegemonies.

In defining *terrorism*, scholars and other experts often focus on international political activity, sometimes expressly excluding violence against women from their discussions.⁶⁷ The U.S. government has, for example, defined terrorism in an arguably narrow manner, as violence motivated by support for or opposition to "established governmental authority."⁶⁸ The concern is that an overly broad definition of *terrorism* would embrace both nonpolitical criminal activity, such as ordinary murders and assaults, as well as classically

community in Miami-Dade County, expressing frustration over the case and how it is unfolding at trial: "The law doesn't care how this started, but we do. You are punishing this boy for defending himself, even though it wasn't his fault.").

⁶⁶ See *infra* Part III.A.

⁶⁷ See, e.g., Claudia Card, *Rape as a Terrorist Institution*, in *VIOLENCE, TERRORISM, AND JUSTICE* 296, 296-297 (R.G. Frey & Christopher W. Morris, eds., 1991) (observing that "many [scholars] do not . . . apply the concept of 'terrorism' to rape").

⁶⁸ One definition from the U.S. Government describes terrorism as: [T]he threat or use of violence for political purposes by individuals or groups, whether acting for or in opposition to established governmental authority, when such actions are intended to shock, stun, or intimidate a target group wider than the immediate victims. Terrorism has involved groups seeking to overthrow specific regimes, to rectify perceived national or group grievances, or to undermine international political order as an end in itself.

DAVID E. LONG, *THE ANATOMY OF TERRORISM* 3 (1990).

terrorist activities, such as the 1988 bombing of Pan Am flight 103 over Lockerbie, Scotland or the events of September 11, 2001.⁶⁹

Some feminist theorists, in contrast, argue that the traditional focus on territorial politics “ignores the terrorism of *sexual* politics.”⁷⁰ They criticize traditionalists for excluding from their discussions of terrorism the violence that women experience routinely, suggesting that traditionalists have defined *terrorism* arbitrarily, irresponsibly and in a way that contributes to female invisibility and subordination.⁷¹ These feminists are willing to broadly define *terrorism*, so that rape and other forms of violence against women are included.⁷² Sheffield, for example, defines *sexual terrorism* as follows:

Sexual terrorism is the system by which males frighten, and by frightening, dominate and control females. It is manifested through actual and implied violence. All females are potential victims—at any age, any time, or any place, and through a variety of means: rape, battery, incest, sexual abuse of children, sexual harassment,

⁶⁹ *Id.* at 4. As one author put it, “[t]he core premise is that political violence, or violence done for some other public-oriented reason (such as religion, ideology, or race/ethnicity) is conceptually and morally different than violence perpetrated for private ends (such as profit, greed, jealousy, animosity, hatred, revenge, personal or family disputes and so on).” Ben Saul, *Civilising the Exception: Universally Defining Terrorism*, 14 *IUS GENTIUM* 79, 88 (2012). This author recognizes a need to “differentiate terrorism from other kinds of serious violence which may also generate fear (such as common assault, armed robbery, rape, or murder).” *Id.* And this seems sensible. On the other hand, though, why is it that scholars like this one are willing to recognize terrorism motivated by animus toward a certain race or ethnicity, *id.*, but not motivated by animus toward women?

⁷⁰ Card, *supra* note 68, at 296, 298. The earliest feminists Card identifies as connecting rape with terrorism are Susan Griffin, Barbara Mehrohof and Pamela Kearon. *Id.* at 316 n.4.

⁷¹ *Id.* at 296.

⁷² *E.g., id.*; see also Jane Caputi & Diana E. H. Russell, *Femicide: Sexist Terrorism Against Women*, in *FEMICIDE: THE POLITICS OF WOMAN KILLING* 13, 15 (Jill Russell & Diana E. H. Russell eds., 1992) (discussing “femicide,” i.e., the strategic murder of women in order to perpetuate patriarchy); Angela Davis, *Reflections on the Black Woman’s Role in the Community of Slaves*, 13 *MASS. REV.* 81, 96 (1972) (discussing rape as a form of terrorism directed at female slaves); Andrea Dworkin, *Pornography: The New Terrorism*, in *LETTERS FROM A WAR ZONE: WRITINGS 1976-1989*, 197, 200 (1988) (“Rape is terrorism. Wife-beating is terrorism. . . . Sexual abuse in its hundred million forms is terrorism.”); Catharine A. MacKinnon, *Women’s September 11th: Rethinking the International Law of Conflict*, 47 *HARV. INT’L L.J.* 1, 14, 18-19 (2006) (noting that those in power view violence against women as non-political and stopping it, therefore, as less of a priority than stopping terrorism, traditionally defined).

prostitution, and sexual slavery. The subordination of women in all other spheres of the society rests on the power of men to intimidate and to punish women sexually.⁷³

She identifies four components of sexual terrorism: (1) indiscriminate violence; (2) ideology; (3) propaganda; and (4) voluntary compliance.⁷⁴ The following subsections use Sheffield's four criteria as a framework for considering the magnitude and implications of the everyday violence experienced by black males and all females.

A. Sheffield's First Criterion: Indiscriminate Violence

Sheffield's first criterion for terrorism is *indiscriminate violence*, and a case can certainly be made that black men and boys, and all women and girls, are essentially always at risk of indiscriminate violence. There is a panoply of behaviors—ranging from racial epithets and sexually suggestive cat-calls⁷⁵ on the street, to race and sex-based harassment in the workplace, to rape and murder—

⁷³ Carole J. Sheffield, *Sexual Terrorism: The Social Control of Women*, in ANALYZING GENDER: A HANDBOOK OF SOCIAL SCIENCE RESEARCH 171, 171 (Beth B. Hess & Myra Marx Ferree eds., 1987).

⁷⁴ *Id.* at 172. Actually, she identifies five criteria, the last one being "perceptions of victim and oppressor characteristics," and she presents them in a different order than I do here. *Id.* Long similarly identifies four defining characteristics of terrorist activity, narrowly-defined: (1) political goals; (2) publicizing strategies; (3) methods of operation that include the premeditated use of a threat of violence; and (4) organizations that bring together groups of individuals. LONG, *supra* note 69, at 4-13. Violence against women would certainly satisfy Long's second requirement (publicizing strategies, essentially the *propaganda* component of Professor Sheffield's list). Compare *id.* at 5-6 with *infra* Part II.C (discussing the media). It would also easily satisfy the third requirement (premeditated violence, essentially the *indiscriminate violence* component of Professor Sheffield's list). Studies indicate, for example, that most rapists plan their attacks. Card, *supra* note 68, at 305. It would fit more poorly into the first and fourth requirements (political goals and organizations). But for an example of a rapist who at least purported to have raped with political goals in mind, see ELDRIGE CLEAVER, SOUL ON ICE 72 (1968) (claiming to have raped African American women as practice for his rapes of white women and claiming, tautologically, to have raped white women in order to get revenge on white men for their treatment of African American women). Moreover, Long's *political goals* criterion is similar to Professor Sheffield's *ideology* criterion. And for an argument that might place rape, and other sexual violence, into Long's fourth requirement (organizations), see *infra* Part II.B note 133 (using an analogy to the criminal law to show that individual intent is irrelevant to actual outcomes).

⁷⁵ See generally Deirdre Davis, *The Harm that Has No Name: Street Harassment, Embodiment, and African American Women*, 4 UCLA WOMEN'S L.J. 133, 138 (1994); Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517 (1993).

through which certain people torment black males and females of all colors.

Trayvon Martin's case is a tragic example. Trayvon, a seemingly typical teenager, got into some trouble at school and was sent by his mother to stay temporarily with his father in a neighborhood in which he was not well known.⁷⁶ Thus ensconced, Trayvon, probably bored, decided one rainy evening to walk to the 7-Eleven. Despite the rain, he did not wear a raincoat, use an umbrella, or walk particularly quickly, because he was a seventeen-year-old kid and who cares, at that age, about a little rain? Walking home, drinking an Arizona Iced Tea, maybe sneaking in a smoke, he noticed that someone was driving along slowly behind him. He tried walking fast. He tried talking to the driver. He even tried running away. But nothing worked. No matter what Trayvon did, that creepy white man continued to stalk him. At this point, Trayvon may have been fearing for his life, or at least for his safety. It certainly would have been reasonable to do so; many women faced with the same scenario would have been. So, he decided to do what we have all been told to do when talking and walking away does not work: to confront the aggressor and maybe even to fight fire with fire. He stopped and got in that creepy man's face. He may have even thrown a punch. And it may have been the first punch. But it engendered a physical altercation that ended with Trayvon dead—most would say unnecessarily—from a bullet to the heart.

The Trayvon Martin case has reminded Americans, or, for some perhaps, informed them for the first time, that black men (and boys) have a burden that most males do not have: to worry about how other people might interpret and react to innocuous, everyday behaviors, like wearing a hoodie,⁷⁷ walking slowly in the rain,⁷⁸ or

⁷⁶ Trayvon had been suspended from school for suspected marijuana possession. See Kovaleski & Campbell, *supra* note 32. According to Trayvon himself, his mom had sent him to stay with his dad. Richard Luscombe, *George Zimmerman Lawyers Release Data from Trayvon Martin's Cellphone*, THE GUARDIAN (May 23, 2013 4:29 PM), <http://www.theguardian.com/world/2013/may/23/zimmerman-lawyers-trayvon-martin-texts>.

⁷⁷ The hoodie that Trayvon Martin was wearing the night he was killed was a garment that many people apparently find to be suspicious—at least when worn by a black man or boy. See, e.g., Susan Milligan, *Is the Hoodie the New Miniskirt?*, U.S. NEWS & WORLD REPORTS (July 17, 2013), <http://www.usnews.com/opinion/blogs/susan-milligan/2013/07/17/trayvon-martins-hoodie-just-the-latest-piece-of-clothing-used-to-explain-away-violence>. The analogy to women who are blamed for rapes because they were wearing revealing clothing is hard to overlook. See, e.g., *id.*

⁷⁸ George Zimmerman commented repeatedly on the fact that Martin was walking unperturbed in the rain, and how this was, in Zimmerman's view, suspicious. See George Zimmerman, police interview, CNN, Transcripts, Nancy

putting one's hands in one's pockets.⁷⁹ President Barack Obama, himself, has experienced hostility and fear⁸⁰ from people who stereotyped him because of his race, as his comments after George Zimmerman's acquittal make clear:

There are very few African American men in this country who haven't had the experience of being followed when they were shopping in a department store. That includes me. There are very few African American men who haven't had the experience of walking across the street and hearing the locks click on the doors of cars. That happens to me—at least before I was a senator. There are very few African Americans who haven't had the experience of getting on an elevator and a woman clutching her purse nervously and holding her breath until she had a chance to get off. That happens often.⁸¹

In fact, the poignant stories from parents of black boys that came pouring out after Zimmerman's acquittal paint a picture of the black-male experience that is nothing short of heartbreaking, as this commentary from Charles Blow shows:

Grace Show, available at <http://transcripts.cnn.com/TRANSCRIPTS/1307/18/ng.01.html>.

⁷⁹ Zimmerman commented on how his suspicions were aroused by, among other things, Trayvon both being black and having his hands in or near his pockets: "He's got his hand in his waistband. And he's a black male," George Zimmerman, 911 call, CNN, Transcripts, Nancy Grace Show, available at <http://transcripts.cnn.com/TRANSCRIPTS/1307/18/ng.01.html>, "The only thing was, when he walked up to my car, he reached in his waistband and held his hand there," George Zimmerman, Police Interview, CNN, Transcripts, Nancy Grace Show, available at <http://transcripts.cnn.com/TRANSCRIPTS/1307/18/ng.01.html>, "Something is wrong with him. Yes, he's coming to check me out. He's got something in his hands. I don't know what his deal is. These (EXPLETIVE DELETED), they always get away," *id.*

⁸⁰ George Zimmerman was afraid (or at least claims to have been afraid) of Trayvon Martin, an unarmed seventeen-year-old kid. He stated in police interviews, repeatedly, that he was: A policewoman asked, "You were afraid of him?" and he answered "Yes, ma'am." *Id.* She also said, "But you kind of did have a problem. That's why you were following . . . right?" and he said "I was scared." *Id.* She asked "You were scared to tell him you were neighborhood watch? You were afraid to tell him that?" and he said "Yes, ma'am." *Id.* When an officer said "I'm not trying to put you on the spot. But the[se] are the questions people are going to ask us, so we're going to have to give them an answer," Zimmerman replied "No, I understand. I was scared." *Id.*

⁸¹ President Barack Obama, Remarks On Trayvon Martin Ruling (July 19, 2013) (transcript available at <http://www.npr.org/2013/07/19/203679977/transcript-obamas-remarks-on-trayvon-martin-ruling>).

As the father of two black teenage boys, this case hits close to home. This is the fear that seizes me whenever my boys are out in the world: that a man with a gun and an itchy finger will find them “suspicious.” That passions may run hot and blood run cold. That it might all end with a hole in their chest and hole in my heart. That the law might prove insufficient to salve my loss.

That is the burden of black boys in America and the people that love them: running the risk of being descended upon in the dark and caught in the cross-hairs of someone who crosses the line.⁸²

As one mother put it, “I’ve worried about my [son] Drew dying like that since a few days after giving birth to him 13 years ago.”⁸³ Drew repeats a sad mantra his mother taught him: “I know. I know, mom. I can’t run because I’m black.”⁸⁴ A father talked about the “Black Male Code,” which emanates from a time when “an errant remark could easily cost black people their job, their freedom, or sometimes their life.”⁸⁵ Another father said simply, referring to the self-control that black men and boys must exercise, worrying about how others might perceive them, that “[i]t requires a sixth sense that not everyone needs to have.”⁸⁶

Regarding women and indiscriminate violence, the statistics paint a bleak picture.⁸⁷ Sexual violation is, to put it bluntly, a com-

⁸² Blow, *The Curious Case*, *supra* note 27.

⁸³ Christy Oglesby, *My Son Knows He Could Be Trayvon*, CNN (Mar. 20, 2012, 1:22PM), <http://inamerica.blogs.cnn.com/2012/03/20/my-12-year-old-son-knows-he-could-be-trayvon/>.

⁸⁴ *Id.*

⁸⁵ Jesse Washington, *Trayvon Martin, My Son, and the Black Male Code*, THE HUFFINGTON POST (March 24, 2013, 9:21 PM), http://www.huffingtonpost.com/2012/03/24/trayvon-martin-my-son-and_1_n_1377003.html.

⁸⁶ *Id.*

⁸⁷ This Article makes the case that females are subject to indiscriminate violence by, among other things, reviewing the relevant statistics. It makes the case that black males are subject to such violence, in contrast, by reviewing personal anecdotes and stories. This is because the personal stories are so powerful, and also because it is somewhat difficult to gather information about violent crimes inflicted deliberately on black men and boys because of their race. The FBI collects statistics on hate crimes, but it is a complicated process, and difficult to sort out, say, hate crimes directed at blacks, regardless of gender, versus hate crimes directed at black men and boys in particular. That said, in 2011, there were just under 2500 crimes motivated by an anti-black sentiments. FBI, UNIFORM CRIME REPORTS, tbl.4 (2011), *available at* <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/tables/table-4>. Of those crimes, one was a murder (or non-negligent manslaughter), one was a rape, 347 were aggravated assaults, 500 were simple assaults, and 897 were acts of intimidation. *Id.* Moreover, when

one looks at young black males, specifically, the statistics show that they are “particularly at risk.” U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, YOUNG MALE BLACK VICTIMS (Dec. 1, 1994), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4167>. The violent victimization rate for black males between sixteen and nineteen years of age, for example, was almost double the rate for white males, and three times the rate for white females, of the same age. *Id.* As another example, in 1992, black males between twelve and twenty-four accounted for 172% of single-victim homicides, even though black males aged sixteen to twenty-four comprised only about one percent of the population age twelve and over. *Id.* These are sobering numbers. The 2011 data indicates that there were nearly seven violent incidents, based on anti-black biases, per day. And one has to assume that hate crimes, like rapes, are underreported. See FBI, UNIFORM CRIME REPORTS: GENERAL FAQs (2011), available at http://www.fbi.gov/about-us/cjis/ucr/frequently-asked-questions/ucr_faqs. Moreover, the numbers do not include other sorts of violence that black men and boys are particularly vulnerable to, like violence that occurs in correctional facilities. See Ahmed A. White, *The Concept of “Less Eligibility” and the Social Function of Prison Violence in Class Society*, 56 BUFF. L. REV. 737, 746-47, 753-54, 756, 762, 765-66, 768-70 (2008) (discussing the proportion of blacks in prison and its relationship to escalating violence in prisons, statistics on prison rapes and assaults, and data on violence by guards and violence with racial overtones); James E. Robertson, *A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison*, 81 N.C. L. REV. 433, 438-48 (2003) (discussing problem of prison rapes). Likewise, the numbers do not include violence that takes the form of police brutality, to which black males are particularly vulnerable. See RUDOLPH ALEXANDER JR., RACISM, AFRICAN AMERICANS, AND SOCIAL JUSTICE 49-59 (2005). See also generally, e.g., Susan Bandes, *Tracing the Pattern of No Pattern: Stories of Police Brutality*, 34 LOY. L.A. L. REV. 665 (2001) (discussing several infamous cases of police brutality). Thus, statistics show that African Americans, generally, and African American men and boys in particular, are subject to indiscriminate violence on a regular basis by police and vigilantes. In fact, one study asserts that a black person is killed in this manner in the United States every thirty-six hours. *Every 36 Hours: Report on the Extrajudicial Killing of 120 Black People*, MALCOLM X GRASSROOTS MOVEMENT (July 9, 2012), <http://mxgm.org/report-on-the-extrajudicial-killings-of-120-black-people/>.

Historically, too, the violence directed at black men and boys has been particularly pernicious. During slavery, for example, black males were often punished in a sexually violent or humiliating manner, regardless of their infraction. A black male could, for example, face castration for the “crime” of learning to read. Manning Marable, *The Black Male: Searching Beyond Stereotypes*, in *THE AMERICAN BLACK MALE: HIS PRESENT STATUS AND HIS FUTURE* 71 (Richard G. Majors & Jacob U. Gordon eds., 1994). And this sort of sexualized violence against black males persists today. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 779, 798-99 (2000). In addition, for approximately one-hundred years, from roughly 1860 to 1960, lynching—which often involved torture and mutilation in addition to execution—was “pervasive.” Jon M. Sands, *At the Hands of Persons Unknown: The Lynching of Black America by Philip Dray*, 49 FED. LAW. 51, 51 (Aug. 2002) (book review). Thousands of African American men and boys perished in this manner. See *id.* Of course, lynching victims were not just males or blacks. Females and whites

mon event. According to the FBI's Uniform Crime Report, 83,425 rapes occurred in 2011.⁸⁸ On average, then, 229 rapes occurred each day. Ten rapes occurred each hour. Two rapes occurred every fifteen minutes. There was one rape every six minutes.⁸⁹ Taking into account underreporting, the numbers would be higher.⁹⁰ Over a million American women have survived rape.⁹¹ “[N]early 10 percent of the current female population of . . . [this country] ha[s] been raped.”⁹² And poor women, some of the most vulnerable members of society, bear the brunt of these statistics.⁹³

The following passage by Robin Morgan, a poet, scholar, and women's rights activist, provides a compelling picture of the price women (and men) pay for sexual violence.

died in this manner, too. *Id.* at 52 (describing the horrific lynching of a pregnant African American woman); *see also* AFRICAN AMERICANS AND POLITICAL PARTICIPATION: A REFERENCE HANDBOOK 29 (Minion K. C. Morrison ed., 2003) (indicating that ninety-two of the 846 victims of lynching who perished between 1901 and 1910 were non-black). Still, the overwhelming majority of lynching victims were black males. *See* MICHAEL J. PFEIFER, THE ROOTS OF ROUGH JUSTICE: ORIGINS OF AMERICAN LYNCHING 93-108 (2011) (tabulating confirmed lynchings between approximately 1840 and 1877, and identifying, among other things, location of lynching and race and sex of victims).

⁸⁸ FBI, UNIFORM CRIME REPORTS: FORCIBLE RAPE (2011), available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/violent-crime/forcible-rape>.

⁸⁹ FBI, UNIFORM CRIME REPORTS: 2011 CRIME CLOCK STATISTICS (2011), available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offenses-known-to-law-enforcement/standard-links/national-data>.

⁹⁰ For example, in 1991, correcting for under-reporting, the FBI calculated that one rape actually occurred every two (not five) minutes. SHEFFIELD, *supra* note 74, at 183.

⁹¹ *Id.*

⁹² *Id.* at 9.

⁹³ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 3, 3 tbl.1 (March 2013), available at <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>. Although Native American women seemed to be more likely to be rape victims, the sample numbers were so small that it is impossible to draw that inference from the data. *See id.* In general, the statistics show “few differences . . . in the rates of sexual violence across racial and ethnic groups.” *Id.* at 3-4, 3 tbl.1. Notably, however, conviction rates and sentences are significantly lower when an alleged rape victim is black or Hispanic. *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1269, 1277 (1991) (indicating that the indiscriminate sexual violence faced by women of color is compounded when the legal system charged to protect them fails to do so.)

Look closely at her.

She crosses a city street, juggling her briefcase and her sack of groceries. Or she walks down a dirt road, balancing a basket on her head. Or she hurries toward her locked car, pulling a small child along with her. Or she trudges home from the fields, the baby strapped to her back.

Suddenly, there are footsteps behind her. Heavy, rapid. A man's footsteps. She knows this immediately, just as she knows that she must not look around. She quickens her pace in time to the quickening of her pulse. She is afraid. He could be a rapist. He could be a soldier, a harasser, a robber, a killer. He could be none of these. He could be a man in a hurry. He could be a man merely walking at his normal pace. But she fears him. She fears him because he is a man. She has reason to fear.

She does not feel the same way—on city street or dirt road, in parking lot or field—if she hears a woman's footsteps behind her.

It is the footstep of a man she fears. This moment she shares with every human being who is female.

This is the democratization of fear.⁹⁴

As this passage makes clear, any woman, regardless of her race or ethnicity, is vulnerable to sexual violence.⁹⁵ She may live in the city or she may, like Bernice Worden, live in the country. She may be a professional or a laborer. But in the words of the Boston Strangler, "[s]he [is] a woman."⁹⁶ Nothing else matters. Every woman understands this fact.⁹⁷ For some of us, it occupies our consciousness. For others, "it is like a nagging background noise, coming to the forefront of awareness only when they sense danger."⁹⁸ But from university students to inner city mothers to professionals to prostitutes, all of us—African American, Asian American, Latina,

⁹⁴ ROBIN MORGAN, *THE DEMON LOVER: ON THE SEXUALITY OF TERRORISM* 23 (1989).

⁹⁵ In addition, an ideology of white supremacy, in combination with patriarchy, means that women of color, and perhaps especially African American women, must contend with multiple layers of denigration. See SHEFFIELD, *supra* note 74, at 174.

⁹⁶ SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 204 (1993).

⁹⁷ MARGARET T. GORDON & STEPHANIE RIGER, *THE FEMALE FEAR* 3 (1989).

⁹⁸ *Id.*

Native American or white—whether we are middle-class or poor, recognize this threat to our safety.⁹⁹

B. *Sheffield's Second Criterion: Ideology*

Sheffield's second criterion for terrorism is *ideology*; some theory, philosophy, or doctrine—either crude or sophisticated—must exist in order to justify terrorism.¹⁰⁰ And a case can certainly be made under this criterion, as it can under the *indiscriminate violence* criterion, that black people, and females regardless of color, are the subjects of racist and sexist ideologies. In fact, it goes without saying that this country, and, indeed, most of the developed world, has been driven, historically, by racist ideologies that elevate people of white, European descent over others.¹⁰¹ It also goes without saying that the world has been driven historically by sexist ideologies that elevate males over females.¹⁰² That said, it is beyond this Article's scope to present a fully developed argument about

⁹⁹ It is important to note, however, that the concept of rape engenders mixed emotions in African American women. After all, "rape accusations historically have provided a justification for white terrorism against the Black community," i.e., the lynching of black males. Crenshaw, *Mapping the Margins*, *supra* note 94, at 1272. In fact, the crime of rape still has racist dimensions today. Lara Aryani, *Toward (a Real) Feminism*, 2 CRITICAL STUD. J. 48, 51-52 (Winter 2009) (presenting statistics showing that blacks who are accused of rape are punished more severely than whites accused of the same crime). (This is so even though "rape was not even alleged in most [lynching] cases." Crenshaw, *Mapping the Margins*, *supra* note 94, at 1272. This does not make the act of lynching anymore justified, however; in fact, sometimes the reason for a lynching was officially listed as "nothing." PHILIP DRAY, *AT THE HANDS OF PERSONS UNKNOWN: THE LYNCHING OF BLACK AMERICA X* (2002)). That said, the narrative of the black, male lynching victim can sometimes harm African American women, obscuring their plight when they are raped by black men; black women can be viewed as race traitors when they allege that a black man has raped them. *See generally* Lisa A. Crooms, *Speaking Partial Truths and Preserving Power: Deconstructing White Supremacy, Patriarchy, and the Rape Corroboration Rule in the Interest of Black Liberation*, 40 HOW. L.J. 459 (1997); *see also* Crenshaw, *Mapping the Margins*, *supra* note 94, at 1269 ("The primary beneficiaries of policies supported by feminists and others concerned about rape tend to be white women; the primary beneficiaries of the Black community's concern over racism and rape, Black men."). So, when it comes to rape, black women are subject to indiscriminate violence in a number of ways: they are, like all women, always potential victims of rape, they are at risk of serious emotional and other harm when false accusations of rape are used to justify abuses against their fathers, husbands, brothers, sons, and other intimates, and they are sometimes disbelieved when they are raped by black men, and seen as seeking only to "lynch" the accused.

¹⁰⁰ SHEFFIELD, *supra* note 74, at 172.

¹⁰¹ *See, e.g.*, Ken Lawrence, *Klansmen, Nazis, and Skinheads: Vigilante Repression*, in *THE AMERICAN BLACK MALE, HIS PRESENT STATUS AND HIS FUTURE* 22 (Richard G. Majors & Jacob U. Gordon eds., 1994).

¹⁰² *See, e.g.*, KATE MILLETT, *SEXUAL POLITICS* 32-35 (1969).

white hegemony and patriarchy and how those phenomena subordinate African Americans and women. The Article will leave that argument to other scholars, past and future, who specialize in those areas, and instead present only a brief discussion of racism and sexism, contextualizing them to Sheffield's *ideology* criterion.

Racism has played a central role in American life since Europeans came to these shores—first in terms of justifying every sort of crime against Native Americans, including theft, murder, and rape, and afterward in terms of justifying slavery, a system that not only produced the same sorts of crimes against African Americans that were perpetrated against Native Americans, but also utterly deprived African Americans of their basic human rights.¹⁰³ In the United States, then, an ideology of white supremacy has, for hundreds of years, justified discrimination and violence, including the most brutal violence imaginable, against people of African descent. And that discrimination and violence did not end with emancipation. For some fifty-eight years, from approximately 1896 to 1954, African Americans were subject to Jim Crow laws, which codified and facilitated their subordinate status and endorsed segregation.¹⁰⁴ Eventually, those laws were abolished, but the discrimination and violence endured: whites continued to deny blacks education,¹⁰⁵ housing,¹⁰⁶ and jobs,¹⁰⁷ to interfere with their right to vote,¹⁰⁸ to deprive them the full protection of the laws,¹⁰⁹ to stereotype them as ugly, dirty, immoral, lazy, and stupid,¹¹⁰ and to generally undermine them as agents of their own lives. Black males were thought to be “only a step above . . . animals”: dumb, dangerous, abnormally

¹⁰³ See AUDREY SMEDLEY & BRIAN D. SMEDLEY, RACE IN NORTH AMERICA: ORIGIN AND EVOLUTION OF A WORLDVIEW 126 (4th ed. 2012) (describing an essential quality of slavery as defining a human being, legally, as a “thing, a piece of property owned by another” and stating that “physical force or some other form of coercion is the chief mechanism for maintaining” the master-slave arrangement).

¹⁰⁴ Tsahai Tafari, *The Rise and Fall of Jim Crow – A National Struggle*, PBS, http://www.pbs.org/wnet/jimcrow/struggle_court.html (last visited Nov. 6, 2013). There was a period just after the Civil War, the Reconstruction period, in which the status of blacks improved, but it was short-lived. *Id.*

¹⁰⁵ RUDOLPH, *supra* note 88, at 21-36; BLACK LIBERATION AND THE AMERICAN DREAM: THE STRUGGLE FOR RACIAL AND ECONOMIC JUSTICE: ANALYSIS, STRATEGY, READINGS 35 (Paul Le Blanc ed., 2003).

¹⁰⁶ RUDOLPH, *supra* note 88, at 75-90; Le Blanc, *supra* note 106, at 35.

¹⁰⁷ RUDOLPH, *supra* note 88, at 16-17; Le Blanc, *supra* note 106, at 35.

¹⁰⁸ *E.g.*, RUDOLPH, *supra* note 88, at 8 (discussing Mississippi's attempts to disenfranchise African Americans).

¹⁰⁹ *E.g.*, *id.* at 10-15, 20 (discussing discriminatory aspects of the criminal justice system).

¹¹⁰ See *infra* Part II.C.

strong, and possessing an unusual degree of sexual potency.¹¹¹ In 1857, Roger B. Tawney, Chief Justice of the U.S. Supreme Court, unwittingly summarized an ideology of white supremacy that has for so long colonized the American consciousness: “Negroes [are] beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they have no rights which the white man [is] bound to respect.”¹¹²

Sexism occupies a similarly central role in American life: “In the case of sexual terrorism, the ideological underpinnings of patriarch[y] . . . serve as ample justification for violence against women.”¹¹³ Men occupy a superordinate status as compared to women.¹¹⁴ Historically, they have denied women access to education and jobs,¹¹⁵ interfered with women’s ability to participate in the political process,¹¹⁶ refused to extend various legal protections to women,¹¹⁷ undermined women’s individuality, and circumscribed women’s autonomy and freedom. Sexist stereotypes depict women

¹¹¹ Marable, *supra* note 88, at 71.

¹¹² *Id.*

¹¹³ SHEFFIELD, *supra* note 74, at 172.

¹¹⁴ *Id.* There are “long[standing] and deep-rooted social traditions in which males have dominated nearly all important political and economic activities.” JULIE A. ALLISON & LAWRENCE S. WRIGHTSMAN, RAPE: THE MISUNDERSTOOD CRIME 16 (1993) (quoting L. Ellis).

¹¹⁵ For a discussion of women’s denial of access to educational opportunities, see generally Women’s Educational Equity Act of 2001, 20 U.S.C. § 7283 (2002) (noting that “teaching and learning practices in the United States are frequently inequitable as such practices relate to women and girls.”); Title IX, 20 U.S.C. § 1681(a) (1994) (prohibiting sex discrimination in education, but not until 1972); MYRA SADKER & DAVID SADKER, FAILING AT FAIRNESS: HOW OUR SCHOOLS CHEAT GIRLS (Touchstone 1995); DAVID B. TYACK & ELISABETH HANSOT, LEARNING TOGETHER: A HISTORY OF COEDUCATION IN AMERICAN SCHOOLS (Yale University Press 1990); PHYLLIS STOCK, BETTER THAN RUBIES: A HISTORY OF WOMEN’S EDUCATION (G.P. Putnam & Sons 1978). For a discussion of historical perceptions of women in the workplace, see, for example, *Bradwell v. Illinois*, 83 U.S. 130, 139 (1873) (affirming Illinois Supreme Court’s holding that women were unfit to practice law); *id.* at 141 (Bradley, J. concurring) (“The natural timidity and delicacy of the female sex evidently unfits it for many of the occupations of civil life.”).

¹¹⁶ *See, e.g.*, U.S. CONST. amend. XIX (giving women the right to vote, but not until 1920).

¹¹⁷ *See, e.g.*, David P. Weber, *Restricting the Freedom of Contract: A Fundamental Prohibition*, 16 YALE HUM. RTS. & DEV. L.J. 51, 74-76 (2013) (discussing historical limitations on women’s ability to contract, inherit, and make decisions concerning real property).

as deceitful,¹¹⁸ “dependent, . . . emotional and [even] evil.”¹¹⁹ They depict black women as Amazons,¹²⁰ Mammies,¹²¹ and welfare queens,¹²² Asian American women as obedient and compliant,¹²³ or as unpleasant, bossy Dragon Ladies,¹²⁴ and Hispanic women as “passionate and promiscuous” or “religious and passive.”¹²⁵

Male-dominated institutions, like those related to religion, law, and medicine, continue to describe female sexuality, especially black female sexuality,¹²⁶ as uncontrollable, unclean and dangerous. In fact, in one study of rape trials, conducted in the 1980s, the jurors stereotyped black women and girls so completely and automatically as “whores” (based on both their race and their sex) that they were, essentially, rendered “unrapeable”: these victims, whether raped by black or white men, were seen as promiscuous by nature and, thus, as liars when they claimed non-consent.¹²⁷ In fact, in one case involving a young girl, a juror explained that the victim came from the “kind of neighborhood” where girls her age were not virgins and therefore presumably believed, in arguing for the defendant’s acquittal, that the girl was not harmed in the way that a virgin might have been by the rape.¹²⁸

Ultimately, sexist ideologies give to women the opposite of every characteristic attributed to men, ascribing to femininity the less desirable characteristics overall.¹²⁹ Men are thus strong, intelligent and rational, whereas women are stupid, weak, and emotional. As a result of this dualism, men distance themselves from those

¹¹⁸ E.g., Crooms, *supra* note 100, at 475 (stating that women regardless of race are seen as liars when it comes to rape allegations leveled against white men).

¹¹⁹ SHEFFIELD, *supra* note 74, at 173.

¹²⁰ E.g., Crooms, *supra* note 100, at 486.

¹²¹ Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in the Courtroom*, 5 S. CAL. REV. L. & WOMEN’S STUD. 387, 458 (1996).

¹²² *Id.*

¹²³ LeeAnn O’Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, 3 MOD. AM. 7, 9 (2007).

¹²⁴ Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 102 (1999).

¹²⁵ *Id.*

¹²⁶ E.g., Taslitz, *supra* note 122, at 458 (discussing the stereotype of black women as “whores”); Davis, *supra* note 76, at 166-74 (describing “Jezebel” stereotype).

¹²⁷ See Crenshaw, *Mapping the Margins*, *supra* note 94, at 1278-79 (citing GARY LAFREE, RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT 219 (1989)).

¹²⁸ GARY LAFREE, RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT 219-20 (1989).

¹²⁹ Sheffield, *supra* note 74, at 173.

traits ascribed to women and experience some degree of contempt and fear of those things associated with femininity.¹³⁰

Stated plainly, racist and sexist ideologies justify discrimination and violence. Interestingly, though, the reverse is also true: discrimination and violence help to perpetuate white hegemony and patriarchy. Rape is one example. According to one scholar, rape, whether perpetrated against males or females, instills self-protective behaviors that bolster racist and sexist ideologies: “[T]his tendency to colonize existence with fear, anxiety, and a consuming urge to embrace self-protective behavior is what gives rape its power to define social structure.”¹³¹ Moreover, even though many men do not commit sexually violent crimes, and many whites do not commit racially motivated crimes, they nevertheless enjoy a position of privilege, characterized by immense social, political and economic power, accorded them by racist and patriarchal institutions. They therefore reap the benefits of race terrorism, sexual terrorism, or both, whether or not they themselves commit individual acts of aggression.¹³²

¹³⁰ *Id.*

¹³¹ White, *supra* note 88, at 761 (discussing rapes where the victims, prisoners, were men); *see also infra* Part II.D. (discussing Sheffield’s *voluntary compliance* criterion).

¹³² *See* ALLISON & WRIGHTSMAN, *supra* note 115, at 16 (quoting Andrea Dworkin as saying, “[a]ll men benefit from rape, because all men benefit from the fact that women are not free in this society.”); LLOYD VOGELMAN, *THE SEXUAL FACE OF VIOLENCE: RAPISTS ON RAPE* 33 (1990). (“Socialist feminists argue that although many men may assert that they do not engage in rape or other forms of violence, they nevertheless enjoy privileges, power and control - social, sexual, political and economic - through rape and violence or the threat thereof.”); Derrick Bell, *Getting Beyond a Property in Race*, 1 WASH. U. J.L. & POL’Y 27, 33-34 (1999) (“racism is a system of advantage that benefits all whites whether or not they seek it.”). In her groundbreaking book, *AGAINST OUR WILL*, Susan Brownmiller uses Greek mythology to explain the function of rapists in a patriarchal society. According to legend, Achilles commanded a swarm of anonymous ant-men, called the *Myrmidons*. These ant-men did Achilles’ bidding, creating a climate of terror. BROWNMILLER, *supra* note 97, at 209. In a patriarchal society, according to Brownmiller, rapists become Myrmidon: “[c]loaked in myths that obscure their identity, they, too, function as anonymous agents of terror.” *Id.* Although rapists perform the dirty work, the benefits of their actions accrue to all men. “Rather than society’s aberrants or ‘spoilers of purity,’ men who commit rape have served in effect as front-line masculine shock troops, terrorist guerrillas in the longest sustained battle the world has ever known.” *Id.* Brownmiller in fact believes that “men deliberately and knowingly use rape as a control mechanism . . .” VOGELMAN, *supra* note 133, at 28 (quoting Brownmiller). She posits a direct connection between individual acts of sexual violence and the political and economic subordination of women. In her view, rape is not merely an individual pathology. It is a cultural pathology.

Some scholars argue, however, that Brownmiller’s characterization of rape

C. *Sheffield's Third Criterion: Propaganda*

Sheffield's third criterion for terrorism is *propaganda*, defined as the "the methodical dissemination of information promoting [the terrorist] . . . ideology."¹³³ This propaganda is fallacious and one-sided and seeks to discredit contradictory messages.¹³⁴ As with the previous two criteria, a case can easily be made that racist and sexist propaganda, promoting the subordinate status of African Americans, as well as non-black women and girls, abound. Indeed,

actually disempowers women. *E.g.*, Holly Henderson, *Feminism, Foucault, and Rape: A Theory and Politics of Rape Prevention*, 22 BERKELEY J. GENDER L. & JUST. 225, 239-43 (2007). And some question Brownmiller's characterization outright. *E.g.*, Anne Edwards, *Male Violence in Feminist Theory, an Analysis of the Changing Conceptions of Sex-Gender Violence and Male Dominance*, in WOMEN, VIOLENCE AND SOCIAL CONTROL 19 (Jalna Hammer & Mary Maynard eds., 1987); VOGELMAN, *supra* note 133 at 28; David P. Bryden & Maren M. Grier, *The Search for Rapists' "Real" Motives*, 101 J. CRIM. L. & CRIMINOLOGY 171, 189 (2011) ("There is no credible evidence that rapists, however strongly they believe in male supremacy, are trying by their rapes to maintain a general patriarchal system in which women lack political and economic power.").

But Brownmiller's critics have their own critics. Feminist theorist Claudia Card confronts the criticism about Brownmiller's characterization of rape with an analogy grounded in the criminal law. Criminal punishment, she explains, exists at least in part in order to deter would-be criminals. Assuming that punishment does indeed deter criminal behavior, then it does so whether or not those who administer the punishment believe or intend that deterrence will result from their actions. Card, *supra* note 68, at 299. Imagine, for example, a scientific experiment in which electrical shocks are used in order to train dogs to avoid barking. A red light illuminates each time the dog barks, and a woman sitting in a room far away from the dog's cell pushes a button. When she pushes the button, the dog receives a painful electrical shock. Eventually, the dog stops barking. This result occurs even though the woman believes that the red light indicates activity in the animal's salivary glands, and that her depression of the button provides the dog with access to water. The woman does not intend, in other words, to cause the dog any pain. Nevertheless, the dog is deterred from barking. Sexual violence, like criminal punishment, begets certain results. Many feminists argue that "a major task of rape is the subordination and subservience of women to men." *Id.* This result occurs whether or not individual aggressors realize the consequences of their actions. In Professor Card's words, "[t]hose who . . . commit rape may have private motives of their own." *Id.* They may not "have the aims or consequences of the practice [of patriarchy] 'in mind'" as they commit their isolated acts of aggression. *Id.* But broader consequences nevertheless result. Rape and other forms of sexual violence are, therefore, more than just one-on-one crimes. They are "hate crime[s], the logical outcome of an ancient social bias against women . . . supported by a system of language, law, and custom." Peggy Miller & Nancy Biele, *Twenty Years Later: The Unfinished Revolution*, in TRANSFORMING A RAPE CULTURE 52 (Emilie Buchwald, Pamela R. Fletcher, and Martha Roth eds., 1993).

¹³³ SHEFFIELD, *supra* note 74, at 174.

¹³⁴ *Id.*

it seems relatively uncontroversial to suggest that the ideologies of white and male supremacy are maintained and spread, at least in part, by the entertainment, news, advertising, and pornographic media.¹³⁵

African Americans, male and female, are often depicted in movies and on television, and even in the news, in a discriminatory manner. In news stories, journalists often stereotype African Americans as poor, despite the fact that they account for less than one-third of the poor people in this country.¹³⁶ Journalists also stereotype blacks as “violent and menacing” criminals, to a degree inconsistent with their actual commission of crime.¹³⁷ In a particularly memorable example, Time Magazine artificially darkened O.J. Simpson’s complexion¹³⁸—making a connection in a very literal way between criminality and blackness.

In movies and television, directors often cast African Americans in the roles of criminals, and they often play poor or low-income characters.¹³⁹ They do not typically occupy the role of the main character or protagonist. Instead, they play bit parts, side-kicks, or, sometimes, the antagonist.¹⁴⁰ Often, their characters are violent.¹⁴¹ And, sometimes, they are subject to violence. In fact, it is a running joke among cynics that if a character is black, he or she will die, often very early on in the story.¹⁴² African American

¹³⁵ Scholarly subjects, like anthropology, law, psychology, and sociology also serve as forms of racist and sexist propaganda, but this Article focuses on advertising, entertainment, and news because those media have a more obvious presence in American life.

¹³⁶ Paula M. Poindexter, *African-American Images in the News: Understanding the Past to Improve Future Portrayals*, in *IMAGES THAT INJURE: PICTORIAL STEREOTYPES IN THE MEDIA 110* (Susan Dente Ross & Paul Martin Lester eds., 3d ed. 2011).

¹³⁷ *Id.* at 110-11.

¹³⁸ James Barron, *Dueling Magazine Covers: A Police Photo vs. a ‘Photo-Illustration,’* N.Y. TIMES (June 21, 1994), <http://www.nytimes.com/1994/06/21/nyregion/dueling-magazine-covers-a-police-photo-vs-a-photo-illustration.html>; *See also Falsification of History: Today*, UNIV. OF MINN.: TWIN CITIES, http://www.tc.umn.edu/~hick0088/classes/csci_2101/false.html (showing the original and altered images).

¹³⁹ Leonard M. Baynes, *White Out: The Absence and Stereotyping of People of Color by the Broadcast Networks in Prime Time Entertainment Programming*, 45 ARIZ. L. REV. 293, 301, 318 (2003).

¹⁴⁰ STEPHANIE GRECO LARSON, *MEDIA & MINORITIES: THE POLITICS OF RACE IN NEWS AND ENTERTAINMENT* 24-26 (2006); *see* Sherri Burr, *Television and Societal Effects: An Analysis of Media Images of African-Americans in Historical Context*, 4 J. GENDER RACE & JUST. 159, 173 (2001) (discussing lack of starring roles for blacks).

¹⁴¹ LARSON, *supra* note 141, at 30.

¹⁴² In fact, if you type “scary movies where” into a Google search box, the

women are not typically cast, outside of all-black productions, in the leading role.¹⁴³ Moreover, ideals of beauty tend to exclude them,¹⁴⁴ so they are not depicted as universally attractive or as “marriage material.” The stereotypes discussed above, in the section exploring Sheffield’s *ideology* criterion, also apply: African Americans are presented as ugly, dirty, lazy, immoral, and stupid.¹⁴⁵

These unflattering depictions of African Americans have the effect of promoting white hegemony: “Racial stereotypes serve to justify white control and authority.”¹⁴⁶ Black children, deprived of positive role models in the media, can internalize negative stereotypes.¹⁴⁷ And so can non-blacks, perceiving African Americans as a threat from the get-go, without any particular behaviors on the part of the black person himself or herself to elicit such feelings. One study, for example, evidenced significant stereotyping of blacks by whites:

61% of whites believe most blacks on welfare could get a job if they really tried, 43% believe blacks are worse off than whites primarily because blacks do not try hard enough to better themselves, 42% agree that blacks do not take care of their own property, 36% believe that blacks have a chip on their shoulder, and 22% believe that blacks are more violent than whites.¹⁴⁸

According to Philip Dray, an expert on the history of lynching, “the presumption of black criminality is still very much alive.”¹⁴⁹

second result to pop up is “scary movies where the black guy lives,” indicating that the black character surviving is an anomaly.

¹⁴³ Kerry Washington, for example, made headlines when, in 2013, she became the first black female lead in network drama in almost forty years. Tazmina Vega, *A Show Makes Friends and History: ‘Scandal’ on ABC Is Breaking Barriers*, N.Y. TIMES, January 17, 2013, at C6, available at <http://www.nytimes.com/2013/01/17/arts/television/scandal-on-abc-is-breaking-barriers.html?page-wanted=all>. Before that, one has to go back to 1974 and *Get Christie Love!*, which starred Teresa Graves as an undercover police officer. *Id.*

¹⁴⁴ Maxine Leeds, *Young African-American Women and the Language of Beauty*, in IDEALS OF FEMININE BEAUTY: PHILOSOPHICAL, SOCIAL, AND CULTURAL DIMENSIONS 147-158 (Karen A. Callaghan ed., 1994).

¹⁴⁵ Of course, there are positive depictions of blacks in movies, television, and the news, as well, and things have gotten much better over the past sixty years, but, even as late as 1999, the four major networks, CBS, NBC, ABC, and Fox, announced twenty-six new prime-time shows for their fall line-ups and not one of them starred an African American or other person of color. Burr, *supra* note 141, at 173. Moreover, nearly all the cast regulars were white. *Id.*

¹⁴⁶ LARSON, *supra* note 141, at 16.

¹⁴⁷ *Id.* at 181.

¹⁴⁸ Taslitz, *supra* note 122, at 466.

¹⁴⁹ Dray, *supra* note 100, at 459.

It would seem, furthermore, that this presumption has detrimental real-world consequences: African Americans “are incarcerated at seven times the rate that whites are, serve longer sentences, and have higher arrest and conviction rates.”¹⁵⁰ Police profile blacks whether they are pedestrians or drivers, and sometimes brutalize them.¹⁵¹ These are the sorts of effects that an ideology of white supremacy and black inferiority, promoted by various propaganda, can have.

The same types of problems emanate from propaganda that promote sexism. The entertainment, news, and pornographic media essentially *advertise* patriarchy, encouraging the consumption of its products.¹⁵² Thus, women are seen as sexual objects, and not as smart, rational, strong agents of their own lives. And, beyond these stereotypes, more pernicious and violent images of women are also common. Depictions of rape and femicide in the entertainment media and advertising are rampant.¹⁵³ We see them in print and in video, in pitches for clothes and cars, in crime dramas and horror shows, in highbrow films and B-rate movies, in messages geared toward adults and in those geared toward children. They are everywhere. I have personally seen graphic portrayals of women shot, stabbed, strangled, beaten, and killed. I have seen women’s throats slashed. I have seen women’s bodies thrown on trash heaps. I have seen female corpses, swollen and rotting. I have seen women’s skin turned blue with bruises and carved bloody with expletives. I have seen women raped by fathers, husbands, boyfriends, strangers, aliens, and even Satan. A particularly gruesome scene, one that stands out in my mind, depicted the murder of a woman, dressed in revealing lingerie, at the hands of a male attacker who, among other things, lifted and placed her bare bottom onto the red-hot burners of a stovetop. Other feminists have noticed this phenomenon as well. Sheffield notes that “[m]oviemakers . . . outdo one another in finding ever more gory ways to mutilate female bodies (a recent one being with a power saw).”¹⁵⁴ And Peggy Miller and Nancy

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See VOGELMAN, *supra* note 133, at 33 (discussing capitalism and advertising).

¹⁵³ GORDON & RIGER, *supra* note 98, at 67 (describing “frequent portrayals of violence against women” in the media). This violence permeates into the world of music, as well, and has racial dimensions. In a famous rap song, for example, “we hear about ‘cunts’ being ‘fucked’ until backbones are cracked, ‘asses’ being ‘busted,’ ‘dicks’ rammed down throats, and semen splattered across faces. Black women are ‘cunts,’ ‘bitches,’ and all-purpose ‘hos.’” Crenshaw, *Mapping the Margins*, *supra* note 94, at 1284-85.

¹⁵⁴ SHEFFIELD, *supra* note 74, at 178.

Biele observe that “[m]uch of the entertainment that people pay to view while eating their popcorn concerns the stalking . . . [and] sexy murder of women.”¹⁵⁵ Some of these violent episodes, created for their entertainment value, owe their existence to real events. Ed Gein, for example, inspired several writers and film-makers. His 1957 murder of Bernice Worden and his mutilation of the bodies of at least fourteen other women and girls inspired Robert Bloch’s novel *Psycho*, memorialized in film by Alfred Hitchcock. He also formed the basis for the killer in Thomas Harris’ novel, *Silence of the Lambs*, likewise adapted to the screen.¹⁵⁶

Titillating descriptions of violent sexual acts also appear frequently in media dedicated to news and information. According to Sheffield, “[b]attered women appear nightly on television (and even the programs presumably devoted to ‘educating the public’ have a high titillation factor). . . . [E]ducational programs, designed to raise consciousness about violence against women, contain an element of voyeurism.”¹⁵⁷ Sheffield’s observations apply equally to the print media. Police take more interest in rape-murders, especially those involving young, beautiful victims or grotesque violence, than they do in more typical sexual assaults.¹⁵⁸ Such crimes therefore receive heightened media attention. Editors in fact use these stories to increase sales,¹⁵⁹ “favor[ing those with] . . . the most lurid” details.¹⁶⁰ As of 1989, police received three times more reports of rape than they did of murder. Yet newspapers published only one account of rape for every eleven accounts of murder.¹⁶¹ In addition, even though the number of attempted rapes is far higher than the number of completed rapes, newspapers covered completed rapes more often.¹⁶² As a result, published rape accounts did not reflect typical sexual assaults. When an attempted rape is reported, for example, it often has “bizarre” or unusual characteristics.¹⁶³

¹⁵⁵ Miller & Biele, *supra* note 133, at 51.

¹⁵⁶ KURLAND, *supra* note 6, at 143. Ed Gein appears in the character of Norman Bates insofar as both kept their deceased mothers’ rooms as shrines and both were subjected to harsh discipline by their mothers (at least allegedly, in the case of Gein). *See id.* at 142.

¹⁵⁷ SHEFFIELD, *supra* note 74, at 178.

¹⁵⁸ *See* BROWNMILLER, *supra* note 97, at 197. One story that received much media coverage, for example, concerned the rape-murder of an African American teenager. Her killer placed a hot dog in her vagina and covered her body with potato chips. GORDON & RIGER, *supra* note 98, at 78.

¹⁵⁹ GORDON & RIGER, *supra* note 98, at 67.

¹⁶⁰ *Id.* at 69.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 69-70.

Some of the most blatant examples of sexualized violence, however, appear in pornographic publications. Such publications frequently depict women as the “appropriate objects for rape, bondage, mutilation, and even murder.”¹⁶⁴ Feminists like Catharine MacKinnon and Andrea Dworkin have argued, some would say compellingly, for the suppression of certain pornographic images on the theory that eroticized images of sexual violence encourage crimes against women and girls.¹⁶⁵ Their arguments have met with pronounced resistance, and some of it, I believe, is justified. But even those of us who would protect pornography have to consider, in the face of mounting evidence, that there may be some truth in this idea that certain types of pornography harm women.¹⁶⁶ As one book puts it, given the prevalence of sexual violence, it is ironic that “it is bad speech to yell ‘Fire!’ in a movie theater, but it is good

¹⁶⁴ SHEFFIELD, *supra* note 74, at 175. These publications also promote racial stereotypes. In a study involving cartoons in *Hustler* magazine, for example, “black males were dehumanized as sexual predators. Drawings exaggerated their muscles, lips, and penises, while making their heads small and ape-like.” LARSON, *supra* note 141, at 30 (citing Gail Dines, *King Kong and the White woman: Hustler Magazine and the Demonization of Black Masculinity*, in *GENDER, RACE, AND CLASS IN MEDIA: A TEXT-READER*, 451-61 (Gail Dines & Jean M. Humez eds., 2d ed, 2003)).

¹⁶⁵ See, e.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 127-215 (1987).

¹⁶⁶ At least some studies show that “distribution of violent pornography is positively correlated to an increased rape rate.” Katharine K. Baker, *Once A Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 *HARV. L. REV.* 563, 601 (1997) (citing LARRY BARON & MURRAY A. STRAUS, *FOUR THEORIES OF RAPE IN AMERICAN SOCIETY: A STATE-LEVEL ANALYSIS* (1989)). Professor Kimberle Crenshaw has wondered aloud, and I think reasonably so, whether violent music lyrics (e.g., “‘cunts’ being ‘fucked’ until backbones are cracked, ‘asses’ being ‘busted,’ [and] ‘dicks’ rammed down throats”) increase listeners’ tolerance of violence against women and girls, especially when those listeners are young and in the process of forming their world views:

Those who are concerned about high rates of gender violence in our communities must be troubled by the possible connections between these images and the tolerance for violence against women. Children and teenagers are listening to this music, and one cannot but be concerned that the range of acceptable behavior is being broadened by the constant propagation of misogynistic imagery. One must worry as well about young Black women who, like young men, are learning that their value lies between their legs.

Crenshaw, *Mapping the Margins*, *supra* note 94, at 1284-85. On the other hand, nonviolent pornography, even if it is extremely graphic, seems to decrease aggression against women, and rapes have not increased in areas where there has been increased circulation of pornographic materials due to legalization. Baker, *supra* note 167, at 601. Of course, that is not to say that nonviolent pornography is completely benevolent; there are still the arguments that it degrades, exploits, and objectifies women.

and protected speech to portray a woman hanging from a meat hook for sexually violent fantasies and ejaculatory enjoyment.”¹⁶⁷ Sheffield, for one, sees a direct link between sexual terrorism and pornography:

The ultimate power of pornography is terrorization. Pornography embodies acts of sexual terrorism (rape, battery, incestuous assault, bondage, torture), symbols of sexual terrorism (gun, knife, fist, whip, etc.), and the legend of sexual terrorism (the male as dangerous . . .). The extreme manifestations of physical violence found in much of contemporary pornography are considered by many people, feminist and antifeminist alike, to pose a threat to the safety of women and girls insofar as these images normalize sexual abuse and raise the level of tolerance for such behavior.¹⁶⁸

Ultimately, the frequent appearance of eroticized sexual violence, in the entertainment, news, and pornographic media, contributes to a climate of fear among women.¹⁶⁹ Social attitudes are shaped, in part, by the media. Since most people have not experienced a serious assault, sexual or otherwise, the media influence the public perception of the frequency, the targets of, and the content of sexual violence.¹⁷⁰ One might argue that individual depictions of women's victimization cannot, in and of themselves, affect women's well-being. But the cumulated viewing of these bizarre and grotesque stories day after day does have a psychological impact.¹⁷¹ People become desensitized to violence, human life (especially female human life) appears less valuable, and misogynistic ideas are nourished: “[t]he expressions of popular culture—literature, films, television, music, advertising, and so on—are vehicles for the transmission of patriarchal myths and attitudes.”¹⁷²

D. *Sheffield's Fourth Criterion: Voluntary Compliance*

Sheffield's final (and possibly most depressing) criterion for terrorism is *voluntary compliance*: The subjects of oppression must voluntarily comply with the system of beliefs responsible for their

¹⁶⁷ Miller & Biele, *supra* note 133, at 51.

¹⁶⁸ SHEFFIELD, *supra* note 74, at 175.

¹⁶⁹ *E.g.*, GORDON & RIGER, *supra* note 98, at 67 (arguing that sexual violence in the media teaches women to fear for their safety). Women's fear of rape “evokes visions of . . . women portrayed on TV and movie screens and in the newspapers.” *Id.* at 2.

¹⁷⁰ *Id.* at 67.

¹⁷¹ *Id.* at 85.

¹⁷² SHEFFIELD, *supra* note 74, at 186.

subjugation. In his analysis of fascist domination, Italian neo-Marxist scholar Antonio Gramsci came to the same conclusion, observing that subordinated classes lend considerable support to hegemonic ideologies.¹⁷³ In order to subordinate a group, one must, according to Gramsci, secure spontaneous consent for the subordinating ideology from the great mass of the target population. One must also use coercive and potentially violent power¹⁷⁴ in order to discipline those group members who fail to give such consent.¹⁷⁵ The constant threats of sexual violation and of indiscriminate, racially motivated violence, directed at blacks and females, detailed above, do both. First, they encourage conformity to traditional notions of race-and-gender-appropriate behaviors. Second, they punish people who seemingly fail to limit their behavior in keeping with racist and sexist norms.¹⁷⁶ In the aftermath of Trayvon Martin's death and George Zimmerman's acquittal, stories of voluntary compliance with racist behavioral expectations poured forth. One journalist, Jesse Washington, wrote about the "Black Male Code," and how he tells his boys to conform their behavior to white prejudices:

Always pay close attention to your surroundings . . . especially if you are in an affluent neighborhood where black folks are few. Understand that even though you are not a criminal, some people might assume you are, especially if you are wearing certain clothes.

Never argue with police . . . and take pride in humility. When confronted by someone with a badge or a gun, do not flee, fight, or put your hands anywhere other than up.

¹⁷³ Kimberle' Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1350, n.73 (1988).

¹⁷⁴ Gramsci's comments about the use of violence are consistent with Sheffield's *indiscriminate-violence* criterion. See *supra* Part II.A.

¹⁷⁵ Crenshaw, *Race, Reform, and Retrenchment*, *supra* note 174, at 1360. Gramsci's theory does not necessarily work well, however, in the context of racial oppression. African Americans, for example, do not, in large part, accept the legitimacy of their subordination. See *id.* at 1357.

¹⁷⁶ Actually, they merely give the impression of punishing women and blacks who resist traditional roles. In reality, any woman and any black person is susceptible to ideology-based violence because that violence is, as discussed above, by its very nature, indiscriminate. This is key to these ideologies' ability to control the target populations, as partial reinforcement is instrumental in influencing behavior; behaviors that are reinforced continuously are less likely to endure than behaviors that are reinforced at random intervals. *E.g.*, FRANK J. BRUNO, *PSYCHOLOGY: A SELF-TEACHING GUIDE* 80 (2002).

... [A]s a black male, you must go above and beyond to show strangers what type of person you really are.¹⁷⁷

Jeanne Amber, another journalist, has a different word for the "Black Male Code," calling it, simply, the "Talk." It is a conversation she has with her sons, and it goes something like this:

If you are stopped by a cop, do what he says, even if he's harassing you, even if you didn't do anything wrong. Let him arrest you, memorize his badge number, and call me as soon as you get to the precinct. Keep your hands where he can see them. Do not reach for your wallet. Do not grab your phone. Do not raise your voice. Do not talk back.¹⁷⁸

And this didactic has been going on for generations. A lawyer, now fifty-one years old, remembers his grandparents telling him to "make it clear," when "dealing with authority figures, [that] . . . you are no threat at all," and his parents telling him to "respect [authority figures] and not be combative."¹⁷⁹ In other words, black boys' caretakers are teaching them attitudes that, in Washington's words, "verg[e] on submissive."¹⁸⁰

The same, of course, is true for women and girls. Families, churches, schools, and workplaces inculcate everyone, including females, with a belief in the appropriateness and inevitability of male hegemony. These institutions encourage girls and women to respect authority and to submit to those who wield it. Christianity, for example, teaches the twin values of forgiveness and suffering. Those values, and similar values espoused by other religions, have special appeal to women because they mirror women's roles and experiences. Humility, generosity, self-sacrifice and service to those in need fit with women's traditional roles as nurturers.¹⁸¹ But, as Professor Mary E. Becker points out, "forgiving and valuing suffering are not effective strategies for an oppressed group to force

¹⁷⁷ Washington, *supra* note 86.

¹⁷⁸ Jeannine Amber, *The Talk, How Parents Raising Black Boys Try to Keep Their Sons Safe*, TIME (July 29, 2013), <http://www.time.com/time/magazine/article/0,9171,2147710,00.html>.

¹⁷⁹ Washington, *supra* note 86.

¹⁸⁰ *Id.* Of course, many black males do not take on submissive behaviors in response to an ideology of white supremacy. *E.g.*, Kimberle Crenshaw, *Mapping the Margins*, *supra* note 94, at 1289 (discussing "gangsta" rap); M.R. Langley, *The Cool Pose: An Africentric Analysis*, in *THE AMERICAN BLACK MALE* 231-44 (Richard G. Majors & Jacob U. Gordon eds., 1994).

¹⁸¹ Mary E. Becker, *The Politics of Women's Wrongs and the Bill of 'Rights': A Bicentennial Perspective*, 59 U. CHI. L. REV. 453, 465 (1992).

social change.”¹⁸² Abiding by such values in fact reinforces existing distributions of power, encouraging disempowered groups to accept their subordination as a spiritual advantage.¹⁸³

The constant threat of male aggression reinforces male hegemony, too. Women limit their life opportunities and conform to traditional gender roles in response to that threat.¹⁸⁴ They choose their jobs, their leisure-time activities, their friends and acquaintances, and make myriad other decisions with the threat of sexual assault in mind.¹⁸⁵ They decide where to live based on their perceptions of their physical safety in a given location. They decide when to exercise, when to travel, when to stay home, and even what to wear based on those perceptions.¹⁸⁶ But women do not merely appreciate their unique vulnerability to sexually-motivated attacks. They fear it. “This fear is more than a fear of being mugged or robbed; it is the fear of being sexually violated.”¹⁸⁷ It is also the fear of death.¹⁸⁸ When asked how she would respond to an attempted rape, one woman said that she would ask her attacker not to kill her.¹⁸⁹ She considered the worst aspect of rape to be the possibility of death.¹⁹⁰ Her response was not unusual. According to researchers, “[m]ost women . . . fear rape because they know [that] some

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ VOGELMAN, *supra* note 133, at 23; Taslitz, *supra* note 122, at 397 (discussing a study on coping strategies women have adopted to deal with their fear of rape).

¹⁸⁵ *See, e.g.*, GORDON & RIGER, *supra* note 98, at 3 (describing the ways in which women circumscribe their behaviors based on the threat of sexual violence).

¹⁸⁶ Apparently, black men and boys must now worry about their clothing, too (if they did not before). In the aftermath of George Zimmerman’s acquittal, many people made the analogy between Trayvon’s hoodie and a rape victim’s clothing (Trayvon was a target for murder because the hoodie suggested that he was a hoodlum in the way that a woman in a mini-skirt is a target of rape because the short skirt suggests that she is promiscuous). *E.g.*, Eve Ensler, *Boys With Tender Hearts and Big Dreams in Their Hoodies*, THE HUFFINGTON POST (July 17, 2013), http://www.huffingtonpost.com/eve-ensler/boys-with-tender-hearts-a_b_3613218.html.

¹⁸⁷ GORDON & RIGER, *supra* note 98, at 2.

¹⁸⁸ *Id.* at 8. Women quite reasonably fear dying, mutilation, and pain, but the act of rape itself resembles death. The terror it inevitably engenders, the fear for one’s life and health, is similar to the fear a death-row inmate must experience when, time and again, his execution is stayed. According to Gordon and Riger, “some women say they would *rather* die than be raped and live. For many women, to be raped is, in essence, to die.” *Id.* at 9.

¹⁸⁹ *Id.* at 107.

¹⁹⁰ *Id.*

victims get killed during an attack"¹⁹¹ Rape victims, themselves, fear for their lives during an attack.¹⁹²

In fact, a poignant example of women's internalization of patriarchal ideals occurs in the aftermath of rape. Women who experience rape and other sexual assaults often feel shame, guilt and responsibility for the attack. Some women even consciously and expressly blame themselves.¹⁹³ Behaviors like these demonstrate the power of sexist ideologies. The subjects of such ideologies believe, in significant numbers, that male domination is the natural, scientifically verifiable order of the universe. They continue to believe the myths¹⁹⁴ surrounding rape and other sexual violence even in the face of their own contradictory experiences.

But do the submissive, self-protective behaviors adopted by black men and boys, and women and girls of all races, actually protect them? Unfortunately not. As an initial matter, many females become victims of sexual violence in their own homes or at the hands of individuals known to them.¹⁹⁵ Strategies for preventing sexual assault provide minimal protection in such cases. Beyond that, according to Lloyd Vogelmann, "[w]omen's caution about leaving the vicinity of their homes and about evincing certain kinds of behavior is . . . insufficient to protect them from rape."¹⁹⁶ In fact, one study found that, in those instances where women successfully extricated themselves from a sexual assault, "environmental intervention" was likely the reason.¹⁹⁷ In other words, "someone or something in the surroundings . . . intruded on the scene and . . . caused the assailant to stop the assault and/or gave the woman an

¹⁹¹ *Id.* at 41. Women's beliefs about the number of rape victims who die during their attacks do not reflect the actual numbers. In fact, the number is many times lower than women believe it to be. *Id.* at 9.

¹⁹² *Id.* at 41.

¹⁹³ SHEFFIELD, *supra* note 74, at 182.

¹⁹⁴ See generally Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013 (1991).

¹⁹⁵ VOGELMAN, *supra* note 133, at 29.

¹⁹⁶ *Id.*

¹⁹⁷ Pauline B. Bart & Patricia H. O'Brien, *Stopping Rape: Successful Survival Strategies*, in CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 251, 252 (1994). These researches also observed that "women who avoided being raped were more likely than raped women to mention a woman they knew personally rather than a woman in public life when asked which women in public or private life they admired and why." *Id.* at 254. Hence, it seems that a woman's upbringing and other socialization, in addition to luck, may have some impact on whether or not she is susceptible to rape.

opportunity to escape.”¹⁹⁸ A principal hope for women (and girls) under attack would thus appear to be divine intervention.

The same is presumably true for black men and boys, as demonstrated by the Trayvon Martin case. Trayvon tried everything: he tried to talk, he tried to walk, he tried to run, and he tried to fight.¹⁹⁹ But despite his efforts, he still wound up dead. Would things have been different if he had been wearing something other than a hoodie? If he had been using an umbrella? If he had kept his hands away from his waistband? These are the sorts of questions that, regrettably, black boys and their parents must ask. As one mother put it,

How do we protect against [what happened to Trayvon]? Do we tell our children to run if they are being followed? Or should they stop and turn around? Do we tell them to defend themselves as Trayvon appears to have done or to get on the ground like Oscar Grant?²⁰⁰

In the end, women and girls, and black men and boys, can take only limited steps to protect themselves. We cannot predict what will or will not make us vulnerable to violence. We could stand up for ourselves, and refuse to comply with racist and sexist ideologies,²⁰¹ but that entails risks. According to socialist feminists, and in keeping with Gramsci’s analysis of subordination, nonconformists receive various sorts of recrimination for their actions. Those in power might, for example, use subtle forms of repression, like ostracism and scapegoating, which translate into more meager educa-

¹⁹⁸ *Id.* at 252.

¹⁹⁹ Of course, Trayvon is not here to tell his story, so I am assuming some of these behaviors based on the evidence that is available, which may be inaccurate, especially to the extent it came from Zimmerman.

²⁰⁰ Amber, *supra* note 179. Oscar Grant was a twenty-two year old, unarmed black man who was lying on his stomach on the ground when a transit officer fatally shot him in the back. Jesse McKinley, *In California, Protests After Man Dies at Hands of Transit Police*, N.Y. TIMES, January 9, 2009, at A10, available at http://www.nytimes.com/2009/01/09/us/09oakland.html?_r=0.

²⁰¹ And many of us do. Washington, for example, tells his sons, in the course of communicating the “Black Male Code” to them, to “protect [their] dignity.” Washington, *supra* note 86. And Amber’s “Talk” includes an admonition to get bad cops’ badge numbers and to promptly telephone one’s parent, who can presumably bring some more assertive behaviors to bear on the situation. Amber, *supra* note 179. In other words, despite the sobering facts in this Part, women, girls, and black males do not have to be mere objects and victims, instead of agents of their own lives. Many of us do in fact defy racist and sexist expectations without suffering violent consequences for so doing. It is important to recognize this agency, “constrained” as it may be by oppressive ideologies. See Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 610, 623 (2009).

tional, professional, and other opportunities. Or they might use “direct repression through the police, army or male violence to bring into line the rebellious and the non-conforming—including strikers, lesbians and independent women,”²⁰² and assertive black males. A police officer or a vigilante might decide to shoot a black man regardless whether he stands up for or surrenders himself. A male aggressor might choose his victim because she treats him badly or because she treats him well. In 1957, in a series of interviews, serial killer Ed Gein gave voice to this predicament. He described Bernice Worden, his final victim, alternately as “nice,” saying “I liked her,” and as “inconsiderate, and brusque. . . .”²⁰³ His indecisiveness implies that it mattered little how Worden treated Gein in reality. Perhaps Winston Mosely, who famously murdered Kitty Genovese on March 13, 1964, described the mindset of all sexually violent killers when he said “I just set out to find any girl that was unattended and I was going to kill her.”²⁰⁴

III. THE DISTURBING IMPLICATIONS OF A RACIST, SEXIST MOBOCRACY

The previous Part attempted to demonstrate two things. First, it attempted to demonstrate that indiscriminate violence and hostility directed at black men and boys emanates from an ideology of white supremacy, that images of black males in the media tend to justify their mistreatment, and that black males consciously adjust their behavior to cope with the situation. Second, it attempted to demonstrate that violence against women and girls occurs in a parallel context of a patriarchal ideology based on the inferiority of females, that images of sexual violence in the entertainment, news, and pornographic media tend to promote that ideology and justify the domination of women and girls, and that many females submit “voluntarily” to the male hegemony responsible for their subordination. It attempted, in short, to demonstrate that racially and sexually motivated violence comports with Sheffield’s definition of *terrorism*.

But I use the phrase *attempted to demonstrate* on purpose because my argument was bolstered by Sheffield’s intent to create a definition of *terrorism* that would embrace sexual violence. In other words, it is not surprising that Part II could make a plausible argument that violence against females and black males satisfies

²⁰² VOGELMAN, *supra* note 133, at 33.

²⁰³ GOLLMAR, *supra* note 8, at 50, 68.

²⁰⁴ BROWNMILLER, *supra* note 97, at 199. Mosely raped Kitty Genovese as she lay dying after he had repeatedly stabbed her. *Id.*

Sheffield's criteria for *terrorism* because Sheffield designed those criteria with at least one of those arguments in mind.²⁰⁵ Likewise, given my experience as a litigator and law professor, it is not surprising that I can employ IRAC, using Sheffield's theoretical framework for my *R*, and make a case that the everyday violence, hostility, and discrimination experienced by black men and boys and all women and girls is a form of terrorism. Finally, I chose the word *attempted* because I do not want the crimes discussed in this Article to be categorized, in a formal, legal manner as *terrorism*. In an era in which the term *terrorism* is used to justify abuses by those who wield power—people who, in many instances, are the beneficiaries and promoters of white and male hegemonies—it would be reckless, indeed, to argue for a paradigm in which those very people are given yet another excuse for their violent, authoritarian excesses.²⁰⁶ It would also be naïve to expect those in power to use such a paradigm for the benefit of females and men and boys of color.

This Part discusses that problem, the problem of the militarization of America and of a feminist, anti-subordination movement that seeks to effect change through the criminal law. It also discusses American democracy and, in particular, its promises of safety, liberty, and the facilitation of opportunities for happiness. It then contrasts those promises to the lived experiences of black men and boys and all females, arguing that the discrimination and violence we face on a daily basis erodes our very ability to participate in the *polis*. It ends by offering some thoughts for the future, ideas about how we as teachers and lawyers, as activists and scholars, as *citizens*, can address racism and sexism.

A. *The Militarization of America: Why Anti-Subordination Movements Should Rely Less on the Criminal Law to Effect Their Goals*

Over the last several decades, Americans have lived through the Cold War,²⁰⁷ several wars on crime,²⁰⁸ and, now, a war on terror. The government has used each succeeding crisis to curtail civil

²⁰⁵ That said, a good case could be made under Long's traditional definition of terrorism, as well. See LONG, *supra* note 69 & surrounding text.

²⁰⁶ Cf. Phyllis L. Crocker, *Crossing the Line: Rape-Murder and the Death Penalty*, 26 OHIO N.U. L. REV. 689, 693 (2000) (arguing that the existence of statutes that allow for the death penalty for rape-murders does not signify greater concern about rape victims, but merely acts as a convenient way to expand the death penalty's reach).

²⁰⁷ Jules Lobel, *The War on Terrorism and Civil Liberties*, 63 U. PITT. L. REV. 767, 771 (2002).

²⁰⁸ Gruber, *supra* note 202, at 618.

liberties and to punish crimes more harshly. The courts have largely acquiesced in the government's actions at least in part because judges have viewed each individual crisis as anomalous: an emergency requiring unusual actions to be taken.²⁰⁹ The result is that America has become "one of the most punitive nations on earth,"²¹⁰ driven by "vengeance."²¹¹ We imprison 750 people out of every 100,000, between 3.75 and 7.5 times the rate of European countries.²¹² Moreover, since 9/11, the government has changed its focus from punishing crimes that have already occurred to "preventive justice," i.e., identifying suspicious people and incapacitating them before they engage in wrongdoing.²¹³ As a result, there has been an unprecedented expansion of executive power,²¹⁴ an attrition of checks and balances,²¹⁵ and an increase in government secrecy.²¹⁶ There have been revelations of secret courts and trials,²¹⁷ brazen extrajudicial detentions,²¹⁸ and massive surveillance of virtually all domestic telephone conversations and internet searches.²¹⁹ Former Defense Secretary Donald H. Rumsfeld indicated that the war on terror will be lengthy and that there is no definite end in sight; thus, America is engaged in "a long-term, virtually permanent war."²²⁰ Superimposed over all of this is a feminist rape-reform movement that has,

²⁰⁹ Lobel, *supra* note 208, at 768-69. But even if heightened punitive measures are viewed as temporary in nature, to be discarded when women achieve full equality, there is no guarantee that they actually will be discarded so that "society [can] . . . revert back to normalcy." *Id.* at 771.

²¹⁰ Gruber, *supra* note 202, at 583 (citing Ric Simmons, *Private Criminal Justice*, 42 WAKE FOREST L. REV. 911, 913 (2007)).

²¹¹ *Id.* at 626.

²¹² See Simmons, *supra* note 211, at 913.

²¹³ Eric S. Janus, *The Preventive State, Terrorists and Sexual Predators: Countering the Threat of a New Outsider Jurisprudence*, 40 CRIM. L. BULL. 576, 576 (Issue 6, Fall 2004).

²¹⁴ Lobel, *supra* note 208, at 770.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 771 (discussing secret trials); see also Eric Lichtblau, *In Secret, Court Vastly Broadens Powers of N.S.A.*, N.Y. TIMES, July 7, 2013, at A1, available at <http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html> (discussing secret court).

²¹⁸ See Lobel, *supra* note 208, at 771; see also *Outlawed: Extraordinary Rendition, Torture and Disappearances in the "War on Terror,"* DOTSUB (Jan. 9, 2007), <https://dotsub.com/view/002dcc66-0e04-492a-9ec2-c9a14fc101b0> (telling the stories of Khaled El-Masri and Binyam Mohamed, two men who were subjected to "extraordinary rendition" by the United States).

²¹⁹ See Charlie Savage and David E. Sanger, *Senate Panel Presses N.S.A. on Phone Logs*, N.Y. TIMES, August 1, 2013, at A1, available at <http://www.nytimes.com/2013/08/01/us/nsa-surveillance.html>.

²²⁰ Lobel, *supra* note 208, at 771 & n.48.

for decades, been pushing, often successfully, for more and harsher punishment of sex crimes.²²¹ In fact, the preventive policing described above has flourished in two principal areas: the war on terror (of course) and the fight against sexual violence.²²² If, however, feminists are seeking to create a more egalitarian, fair, non-violent society, then it is at least unseemly, if not unwise, to use the criminal justice system, which “historically enforced and entrenched racial, gender, and socio-economic hierarchies,”²²³ to do so.²²⁴ This is true for two main reasons.

First, using police powers in this manner is inconsistent with feminism’s goals.²²⁵ Those of us who want to dismantle racism and patriarchy should not use coercive state institutions to do so: “Liberation must not, as a matter of principle, accept as legitimate the privileging of the institutions of oppression, and this principle should guide the politics of opposition to both patriarchy and white supremacy.”²²⁶ Criminal law, because it is designed to punish individual acts of wrongdoing, and not to address larger, social issues, can never eliminate racism or sexism:

[V]iolence is inextricably linked to all acts of violence in this society that occur between the powerful and the powerless, the dominant and the dominated. While male supremacy encourages the use of abusive force to maintain male domination of women, it is the Western philosophical notion of hierarchical rule and coercive authority that is the root cause of violence against women, of adult violence against children, of all violence between those who dominate and those who are dominated. It is this belief system that is the foundation on which sexist ideology and other ideologies of group oppression are

²²¹ Gruber, *supra* note 202, at 607, 626.

²²² Janus, *supra* note 214, at 578.

²²³ Gruber, *supra* note 202, at 605.

²²⁴ Cf. *id.* at 625 (“As a consequence, even if it is theoretically possible for feminists to use the threat and execution of criminal punishment to positively affect women’s equality, it does not follow that they should do it now.”).

²²⁵ Initially, as a theoretical matter, using the criminal law to advance a feminist agenda is in tension with feminism’s position on women’s agency: the law’s “assumptions about female passivity and objectified status are at odds with the feminist goal of securing agency.” *Id.* Reliance on the criminal justice system reinforces patriarchy because “women are cast as requiring protection from the world of male violence while the superior status of men is secured by their supposed ability to offer such protection.” *Id.* at 655.

²²⁶ Crooms, *supra* note 100, at 467.

based; they can be eliminated only when this foundation is eliminated.²²⁷

In other words, taking a law-and-order approach to the problems discussed in this Article leaves the sociological underpinnings for crimes like those committed against Bernice Worden and Trayvon Martin unaddressed.

Second, using punitive measures to promote anti-racist and anti-sexist agendas may backfire. Criminal law has a long history of racism and sexism. In fact, the original purpose of rape laws was to control female sexuality, bolster male domination, and promote white supremacy.²²⁸ Preventive policing has, likewise, been used in an overtly racist manner, one famous example being the internment of Japanese Americans during World War II.²²⁹ Racist penal policies have had a detrimental impact on African Americans, as well: as recently as 1997, blacks, regardless of sex, received harsher sentences than whites and were convicted more often for the same offenses.²³⁰ As of 2009, African American women accounted for 32.6% of the female prison population²³¹ even though only 13% of American women are black.²³² And, in a perversion of laws designed to assist domestic-violence victims, such victims have been arrested and prosecuted as mutual combatants.²³³

All of this makes clear that expanding the reach of criminal laws, by casting racist and sexist violence as *terrorism*, would probably do little to improve conditions for African Americans, male or female, or for females of whatever race; it would, rather, mean harsher treatment for those accused and convicted of crimes, as well as fortification of racist, sexist institutions. Thus, it would be likely to hurt—not help—the populations with which this Article is concerned. But where does that leave us? Why highlight Sheffield's scholarship if not to argue for a war on racist and sexist violence that mimics the war on terror? The answer is simple: subjecting white, male hegemonies to Sheffield's test for terrorism,

²²⁷ BELL HOOKS, *FEMINIST THEORY FROM MARGIN TO CENTER* 118 (1984).

²²⁸ Gruber, *supra* note 202, at 587.

²²⁹ Janus, *supra* note 214, at 586.

²³⁰ Crooms, *supra* note 100, at 464.

²³¹ *Quick Facts: Women & Criminal Justice – 2009*, INST. ON WOMEN AND CRIMINAL JUSTICE, <http://www.wpaonline.org/pdf/Quick%20Facts%20Women%20and%20CJ%202009.pdf>.

²³² *The Black Alone Population in the United States: 2011*, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, 2011 CENSUS, available at <http://www.census.gov/population/race/data/ppl-ba11.html>. This is considering only the civilian, non-institutionalized population. See *id.*

²³³ Gruber, *supra* note 202, at 649-50.

and showing that those hegemonies pass the test, underscores the stakes. When a novelist creates a character, she needs to give him a quest with stakes; otherwise, readers will not care about the character, will not engage in his quest, and will not buy the novelist's book. The same is true here: if we in the progressive community want our ideas to permeate outside our own circles, we need to make the larger community aware of the stakes.

B. American Democracy: Its Promise of Safety, Liberty, and Happiness

The stakes here are quite high. For Trayvon and Bernice, they were as high as they could get—literally, a matter of life and death. The sort of violence they experienced analogizes well to the sorts of violence that we as a society are willing to deem *terrorism*. This violence turns America into a simmering *mobocracy*, a society ruled at least in part by a lawless, violent coterie bent on maintaining white supremacy and patriarchy.

And this mobocracy threatens the very heart of American democracy. It threatens the ideals that we Americans, regardless of political philosophy, hold dear: equality,²³⁴ independence,²³⁵ individuality,²³⁶ self-governance,²³⁷ the right to life and liberty,²³⁸ and the ability to freely express ourselves without fear of reprisal.²³⁹ It stands in opposition to the ideas that “all citizens are equal before the law”²⁴⁰ and that power should not be used arbitrarily.²⁴¹ It defies our commitments to fairness²⁴² and non-discrimination.²⁴³ Its goals are, in short, antithetical to America's promise to protect the common good.²⁴⁴

²³⁴ See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

²³⁵ THE MAKING OF AMERICA: LIFE, LIBERTY AND THE PURSUIT OF A NATION 13 (Kelly Knauer ed., 2005).

²³⁶ JOHN STUART MILL, ON LIBERTY: ANNOTATED TEXT SOURCES AND BACKGROUND CRITICISM 61 (David Spitz ed., 1975).

²³⁷ STEPHEN P. KIERNAN, AUTHENTIC PATRIOTISM: RESTORING AMERICA'S FOUNDING IDEALS THROUGH SELFLESS ACTION 39 (2010).

²³⁸ MAKING OF AMERICA, *supra* note 236, at 23.

²³⁹ *Id.* at 6; JAMES LAXER, DEMOCRACY 7, 10 (2009).

²⁴⁰ POCKET PATRIOT: QUOTES FROM AMERICAN HEROES 42 (Kelly Nickell ed., 2005) (quoting U.S. Supreme Court Justice John Marshall Harlan).

²⁴¹ MAKING OF AMERICA, *supra* note 236, at 6.

²⁴² POCKET PATRIOT, *supra* note 241, at 5 (quoting General Douglas MacArthur).

²⁴³ LAXER, *supra* note 240, at 14.

²⁴⁴ See MAKING OF AMERICA, *supra* note 236, at 6 (discussing the common good); KIERNAN, *supra* note 238, at 44 (same); POCKET PATRIOT, *supra* note 241, at 114 (quoting President Theodore Roosevelt).

We Americans believe certain things about ourselves and about our country. The words “[w]e hold these Truths to be self-evident, that all Men are created equal, . . . endowed by their Creator with certain unalienable Rights,”²⁴⁵ in the Declaration of Independence, “are probably the most important words in American history—and possibly all of modern history.”²⁴⁶ They shaped this country’s birth, and they continue to inspire and guide us today. They owe their existence, though, to Enlightenment philosophy from the seventeenth and eighteenth centuries (and, even, to Greek and Roman thought²⁴⁷), which had a profound impact on America’s Founding Fathers.²⁴⁸ In fact, there are three Enlightenment ideas that propelled the Founding Fathers, and that propel American political discourse, still, today, which are worth highlighting here.

First, the Enlightenment thinkers believed in self-governance. Thus, American democracy, as the Greek roots of the word *democracy* would indicate, means, first and foremost, rule by the people.²⁴⁹ In fact, some would rank self-governance as America’s penultimate ideal: “If she [America] stands for one thing more than another, it is for the sovereignty of self-governing people.”²⁵⁰ An American citizen has the right to “direct participation, as an equal, in the determination of common affairs.”²⁵¹ He has the right to “influence . . . the allocation of public resources.”²⁵²

Second, the Enlightenment thinkers believed that government exists in order to keep the peace.²⁵³ This is a Hobbesian idea, that “the state . . . through its monopoly of force guarantees each citizen basic security.”²⁵⁴ It is an idea that is closely connected to the concepts of *liberty* and *freedom*: John Locke identified security—the freedom from others’ violence—as the defining charac-

²⁴⁵ See DECLARATION OF INDEPENDENCE, *supra* note 235.

²⁴⁶ MAKING OF AMERICA, *supra* note 236, at 57 (quoting Joseph Ellis, FOUNDING BROTHERS).

²⁴⁷ DON NARDO, THE DECLARATION OF INDEPENDENCE: A MODEL FOR INDIVIDUAL RIGHTS 46 (1999).

²⁴⁸ *Id.*

²⁴⁹ LAXER, *supra* note 240, at 7.

²⁵⁰ POCKET PATRIOT, *supra* note 241, at 1 (quoting President Woodrow Wilson).

²⁵¹ Brande Stelling, *The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship*, 28 HARV. C.R.-C.L. L. REV. 185, 208 (1993) (citing Frank Michelman, *The Supreme Court, 1985 Term: Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4, 27 (1986)).

²⁵² See AFRICAN AMERICANS AND POLITICAL PARTICIPATION: A REFERENCE HANDBOOK 309 (Minion K. C. Morrison ed., 2003).

²⁵³ See FRANCIS FUKUYAMA, THE ORIGINS OF POLITICAL ORDER: FROM PREHUMAN TIMES TO THE FRENCH REVOLUTION 27 (1st ed, 2011).

²⁵⁴ *Id.* at 82.

teristic of liberty.²⁵⁵ Security, thus, operates as a necessary precursor to liberty. But it is not liberty's *only* characteristic. According to John Stuart Mill, *liberty* means being able to think and feel, to form opinions, to express oneself, to develop one's own tastes and pursuits, to "fram[e] the plan of [one's] . . . life to suit [one's] . . . own character," to do as one likes, and to associate with whoever one pleases.²⁵⁶ In fact, according to Mill, "[n]o society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government."²⁵⁷

Finally, the Enlightenment thinkers believed that government should assist citizens in maximizing happiness and in seeking "individual personal fulfillment."²⁵⁸ The Declaration of Independence adopted this credo, stating, first, that all men had the unalienable right to "the Pursuit of Happiness"²⁵⁹ and, second, that, "*to secure [this] . . . Right[], Governments are instituted.*"²⁶⁰ John Adams called *happiness* "the sole end of government"²⁶¹ and Thomas Jefferson said that it was "the first and only legitimate object of good government."²⁶²

C. *America's Broken Promise: How Black Males and Women of All Colors are Prevented from Fully Participating in the Political Process*

Racial and sexual violence, however, belie America's ideals. In particular, they belie America's promise that every citizen is entitled to self-governance, security and liberty, and an opportunity for happiness. If self-governance means anything, it means that citizens should be able to participate directly, as equals with other citizens, in making decisions about public affairs, and in having a say about the allocation of public resources. But women, who all carry the "scar tissue of rape," whether or not they have actually experienced a sexual assault,²⁶³ are hindered by the shackles of fear, and immobilized by legal and cultural barriers, so that they limit their contributions to the public discourse and curtail their participation in the political process.²⁶⁴ The same is true for African American

²⁵⁵ Bowman, *supra* note 76, at 517, 520, 520 n.11 (quoting John Locke discussing "that tranquillity [sic] of spirit which comes from . . . security . . .").

²⁵⁶ MILL, *supra* note 237, at 13-14.

²⁵⁷ *Id.* at 14.

²⁵⁸ NARDO, *supra* note 248, at 46.

²⁵⁹ DECLARATION OF INDEPENDENCE, *supra* note 235.

²⁶⁰ *Id.* (emphasis added).

²⁶¹ POCKET PATRIOT, *supra* note 241, at 123.

²⁶² *Id.*

²⁶³ Miller & Biele, *supra* note 133, at 53.

²⁶⁴ *Id.*

men; regardless whether they have actually been the victim of race-based violence, they nevertheless grow up with the constant fear that they might *become* a victim of such violence. They worry that their words or actions will be misread, that this misreading will lead to a violent confrontation, and that this confrontation will leave them injured, wrongly imprisoned, or even dead. They have to contend with a legacy of slavery and the prejudice that comes with that legacy, and with a criminal justice system that too often persecutes rather than protects them. Consequently, they, like their sisters, limit their engagement in public affairs.

African Americans have fought long and hard for this country to deliver on its promises of liberty and equality for all. Historically, they were enslaved, reduced to the status of property, and denied all rights to political participation.²⁶⁵ This state of affairs—in which blacks had no real ability to engage in the political process—persisted until the 1960s.²⁶⁶ Even today, although African Americans have witnessed spectacular successes in electoral politics, including the election of an African American president, blacks do not hold elected office in proportion to their population.²⁶⁷ And black male voting patterns reveal some unsettling numbers: between 1996 and 2009, black women voted at higher rates than black men by between seven and nine percentage points.²⁶⁸ This gender disparity was six percent higher than that reported for other racial groups.²⁶⁹ Moreover, African Americans, male and female, still struggle with various, more-subtle forms of exclusion, including discrimination “while shopping, dining out, encountering the police, at work, and using public transportation.”²⁷⁰ They reap less social good than whites in terms of housing, education, economics, criminal justice, and health.²⁷¹ As of 2009, the average black household had assets worth a mere five percent of those of the average white household.²⁷²

²⁶⁵ AFRICAN AMERICANS AND POLITICAL PARTICIPATION, *supra* note 253, at 302.

²⁶⁶ *Id.* at 309.

²⁶⁷ *Id.* at 312.

²⁶⁸ THOM FILE, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, THE DIVERSIFYING ELECTORATE—VOTING RATES BY RACE AND HISPANIC ORIGIN IN 2012 (AND OTHER RECENT ELECTIONS 6, May 2013, available at <http://www.census.gov/prod/2013pubs/p20-568.pdf>.

²⁶⁹ *Id.*

²⁷⁰ RUDOLPH, *supra* note 88, at 1.

²⁷¹ AFRICAN AMERICANS AND POLITICAL PARTICIPATION, *supra* note 253, at 310.

²⁷² Rakesh Kochhar, Richard Fry and Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics: Twenty to One*, PEW RESEARCH, SOCIAL & DEMOGRAPHIC TRENDS (July 26, 2011), <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>.

Clearly, although African Americans and their allies have succeeded in demolishing most formal barriers to black participation in the political process, blacks have not been able to exercise self-governance in one important respect: they have not been able influence the allocation of public resources in ways that would meaningfully benefit their community as a whole. In fact, one of the few books dedicated to an analysis of black political participation concludes that, although African Americans have, since the time of slavery, made significant gains in terms of full, authentic citizenship, there is still more work to be done:

African Americans have a different reality from the dominant population. . . . In the first place[,] they are a minority group in a majoritarian system, and are unable to control most political outcomes. But they are also a racialized minority, whose status is determined by negative assessments of the racial group. The political consequence is that Blacks are ranked lower in the allocation of political resources, including the very right to participate.²⁷³

Women, especially white women, do better in many respects. Although we did not get the right to vote until 1920,²⁷⁴ fifty-one years after the franchise was universally extended to men,²⁷⁵ we do vote. In fact, in “every presidential election since 1996, women have voted at higher rates than men.”²⁷⁶ On the other hand, women are 50.9% of the U.S. population,²⁷⁷ and comprise only 18% of the U.S. Congress²⁷⁸ and 33% of the U.S. Supreme Court,²⁷⁹ and a woman has never occupied the top executive office. In addition, women do not do as well as men in terms of (among other things) work,²⁸⁰ health, and

²⁷³ AFRICAN AMERICANS AND POLITICAL PARTICIPATION, *supra* note 253, at 310.

²⁷⁴ U.S. CONST. amend. XIX.

²⁷⁵ U.S. CONST. amend. XV.

²⁷⁶ FILE, *supra*, note 269, at 6.

²⁷⁷ U.S. DEP’T OF COMMERCE, U.S. CENSUS BUREAU, *2010 Census Briefs, Age and Sex Composition: 2010* tbl. 1, May 2011, available at <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>.

²⁷⁸ Catalina Camia, *Record Number of Women in Congress Out to Change Tone*, U.S.A. TODAY (Jan. 3, 2013), <http://www.usatoday.com/story/news/politics/2013/01/03/women-congress-senate-record/1807657/>.

²⁷⁹ See *Biographies of Current Justices of the Supreme Court*, SUPREME COURT OF THE UNITED STATES, <http://www.supremecourt.gov/about/biographies.aspx> (last visited December 1, 2013).

²⁸⁰ U.S. BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, *Highlights of Women’s Earnings in 2011* 1, Oct. 2012, available at <http://www.bls.gov/cps/cpswom2011.pdf>.

net worth.²⁸¹ Households run by single women fifty-five years old and younger have only 36% of the assets of households run by single men in the same age group.²⁸² Moreover, as demonstrated elsewhere, women do not possess the security—the freedom from others' violence—that John Locke identified as the defining characteristic of liberty. Pervasive violence, directed against women as sexual beings, creates a climate of terror in which women, as a group, limit the sphere of their own freedom. We cannot, to borrow from John Stuart Mill, freely and safely express ourselves, go where we choose,²⁸³ associate with whoever we want, or pursue our own particular interests; we cannot “frame a plan” for our lives as we see fit. Our “most immediate identity rests in [our] bod[ies]”²⁸⁴ and yet we are not secure in those bodies.

Fear for our personal safety interferes with our daily choices. This may seem a mundane point, but as Ralph Nadar has observed, “[t]here can be no daily democracy without daily citizenship.”²⁸⁵ Daily choices form the backdrop for women's lived experiences. Choices made day after day, like strands of thread laid next to each other, create the warp and weft in life's fabric. They form the basic structure on which we weave our personal stories. For girls and women, the threat of sexual violence rearranges and sometimes tears that structure, making the tapestry of women's lives depict a very different scene than it otherwise would. Without our basic need for safety in place, it is difficult to reach our full potentials for happiness, fulfillment, and productivity.²⁸⁶ In essence, we are not the citizens we could otherwise be.

²⁸¹ *E.g.*, Leslie Laurence, *Do Doctors Treat Women Differently?*, ORLANDO SENTINEL (Aug. 10, 2013), available at http://articles.orlandosentinel.com/1993-08-31/lifestyle/9308280471_1_doctor-visit-visit-your-doctor-commonwealth-fund; Monica Dybuncio, *Women Lag Behind Men in Life Expectancy Gains: Study*, CBS NEWS (Apr. 20, 2012), http://www.cbsnews.com/8301-504763_162-57418059-10391704/women-lag-behind-men-in-life-expectancy-gains-study/.

²⁸² *Wealth and Asset Ownership*, CENSUS.GOV (July 12, 2013), <http://www.census.gov/people/wealth/> (follow link from *Net Worth and Asset Ownership of Households: 2011 [XLSX - 99k]*).

²⁸³ Access to the public sphere enables association, assembly, and the petition of the government for redress of grievances. It is therefore essential to equal participation in the political process. Bowman, *supra* note 76, at 517, 520.

²⁸⁴ *Id.* at 520 n.13 (citing Cheryl Benard & Edit Schlaffer, *The Man in the Street: Why He Harasses*, in *FEMINIST FRAMEWORKS: ALTERNATIVE THEORETICAL ACCOUNTS OF THE RELATIONS BETWEEN WOMEN AND MEN* 70 (Alison M. Jagger & Paula S. Rothenberg eds., 2d ed. 1984) (quoting G.W.F. HEGEL, *TEXTE ZUR PHILOSOPHISCHEN PROPÄDEUTIK* (1840)) (internal quotation marks omitted)).

²⁸⁵ POCKET PATRIOT, *supra* note 241, at 30.

²⁸⁶ Miller & Biele, *supra* note 133m34567765/.mb, at 46 (discussing

Ultimately, vigilantes and rapists function as foot soldiers for white supremacists and for patriarchy. Their activities benefit whites as a class, and men as a class, by keeping African Americans and non-black women in a subordinate position, preventing us from participating fully in the political, economic, and social lives of our communities. And the government's failure to protect us from this dispersed and covert mobocracy deprives us of one of the primary goods for which government exists: safety and security, leaving us "in an Hobbesian wilderness" in which the more privileged segments of society need not dwell.²⁸⁷ In this sense, American society is not truly free.

D. *Thoughts on Going Forward: Ideas for Countermanding the Mobocracy*

So, how do we countermand the mobocracy and help America become a truly free nation? A lot of work has already been done with reforming the positive laws to eliminate the affirmative biases that disadvantaged African Americans and females. Now, it seems to me, the lion's share of the work needs to be done elsewhere. Now, we need to capture the hearts and minds of the American people.

The task will not be an easy one. This nation was born out of a revolutionary change in the way people perceived the nature of humanity. It took hundreds of years for white men to see themselves as equal to one another, to reject the idea that some people were better by birth, and to throw off the aristocracy.²⁸⁸ This "relationship of lordship and bondage could not be upended without a change in . . . consciousness."²⁸⁹ And that, I think, is what is required again. As others have observed, the battles against white hegemony and patriarchy will not be won until we "eradicate the underlying cultural basis and causes of sexism and other forms of group oppression. Without challenging and changing these philosophical structures, no feminist [or other anti-subordination] reforms will have a long range impact."²⁹⁰

Of course, we do not want this next revolution to take hundreds of years. For one thing, blacks and non-black women have

productivity); MILL, *supra* note 237, at 61 ("[i]n order to have [persons of genius], it is necessary to preserve the soil in which they grow. Genius can only breathe freely in an *atmosphere* of freedom.").

²⁸⁷ Bowman, *supra* note 76, at 517, 521. "Hobbesian wilderness" refers to a state of nature that Thomas Hobbes envisioned as pre-dating the establishment of an authoritarian sovereign who kept the peace and prevented individualistic and clan warring through the threat of force. *See id.* at 521 n.17.

²⁸⁸ FUKUYAMA, *supra* note 254, at 323.

²⁸⁹ *Id.*

²⁹⁰ HOOKS, *supra* note 228, at 31.

already been thinking about and writing on and advocating for an end to racism and sexism; we have already spent hundreds of years working and waiting for true equality. Unfortunately, though, hearts and minds are not captured as easily as borders and booty. They transform with time, sometimes over generations. And in an epoch like ours, where the media do everything *but* focus thoughtfully on topics of lasting significance, the challenge of reaching people, of stirring their souls, is even harder.

Indeed, we are, in this day and age, barraged all day, every day, with information, much of it trivial, small-minded, and mean-spirited. We do not have the solitude—the time for careful reflection and introspection—that Enlightenment thinkers enjoyed. They were able to study problems, perform historical research on them, develop their own perspectives, and craft their findings into beautiful, poignant writings that would reach similarly situated people, people who could slowly and carefully consider an author's point of view²⁹¹. We do not have that luxury. We live in an era of unrestrained, unabashed capitalism, where every moral question is converted to a question of monetary costs, and the idea of right and wrong is lost. We live in a society that is drunk with consumption, that rewards aggression and stridency, where the loudest and most brazen are the darlings. We have become a plutocracy, where the wealthy, the ones that control the capital, also control the government, universities, churches and synagogues, corporations, industry, and journalism. Money wins elections. All of this, in combination with America's increasingly militaristic and authoritarian atmosphere, means that our nation resembles an Orwellian dystopia as much as it does the bastion of freedom that the Founders envisioned.

Nevertheless, we need to speak. We need to tell our stories. We need to show people the toll that racism and sexism take. We need to point out discrimination when we see it. We may feel like we are rehashing old ideas. But that should not deter us: The Enlightenment philosophers rehashed Greek and Roman ideas and the Founding Fathers rehashed Enlightenment ideas. In fact, Massachusetts legislator Timothy Pickering famously accused Thomas Jefferson of crafting a Declaration of Independence that “contained no new ideas” and that was “a common-place” and “hacknied [sic]” compilation.²⁹² And, in a sense, he was right.²⁹³ Jefferson, like his contemporaries,

²⁹¹ See, e.g., generally MILL, *supra* note 237 (exemplifying a carefully-written book that was both influenced by others, i.e., classical thinkers, and influential, e.g., to the Founding Fathers).

²⁹² NARDO, *supra* note 248, at 41.

²⁹³ *Id.*

was well-versed in European Enlightenment philosophy.²⁹⁴ The ideas in the Declaration were “‘deeply imbedded’”²⁹⁵ in the minds of the Founding Fathers such that “‘they came to mind unbidden.’”²⁹⁶ These ideas were “‘part of the climate of opinion, and they passed as coin of the realm among American patriots in 1776.’”²⁹⁷

This is what we need now in America. We need to change the climate of opinion, so that an anti-violence philosophy becomes the coin of the realm. We need to use “‘the moral coercion of public opinion’”²⁹⁸ to convince our compatriots that America can do better. We need to enter the marketplace of ideas and sell our intellectual goods there, but we need to do so with the dignity of the purchasers in mind, and with truth and accuracy as our guideposts. There are problems with that marketplace, of course; in particular, we do not all have equal access to it, and this is especially true for African Americans and non-black women and girls. And the marketplace has been coopted, as I mentioned above, by the wealthy, and seems largely occupied with dumbing down and domesticating the American mind. Regardless, we must counter bad speech with good. I would like to hope that the good speech, the truth, will eventually prevail, as it did in 1776 when the Founding Fathers declared independence from tyranny.

We will not win this battle alone. We need whites and men on our side. And we must convince them to stand with us even though dismantling patriarchy and white hegemony will mean a loss of privileges for them. It has been done before. Many Founding Fathers were wealthy property owners who sacrificed their birthrights for the sake of democracy.²⁹⁹ I am not sure why they willingly gave up their privileges, but I suspect it was because it was the right thing to do, they recognized the historical imperative, and they knew that, in doing something that fueled the common good, even at a cost to themselves, they would eventually reap the communal benefits of their actions.

One place we should focus our efforts is education. Education is the only factor that “‘significantly reduces the likelihood of white stereotyping of blacks.’”³⁰⁰ This is true in a modest way for

²⁹⁴ *Id.* at 42.

²⁹⁵ *Id.* (quoting Harvard professor Carl Friedrich).

²⁹⁶ *Id.* (quoting Harvard professor Carl Friedrich).

²⁹⁷ *Id.* (quoting Jefferson biographer Merrill Peterson).

²⁹⁸ MILL, *supra* note 237, at 10-11.

²⁹⁹ FRAMERS OF THE CONSTITUTION 119-20 (James H. Charleton, Robert G. Ferris & Mary C. Ryan eds., 1986); BILL MOYERS, MOYERS ON DEMOCRACY 64-65 (2008).

³⁰⁰ Taslitz, *supra* note 122, at 467.

whites who hold conservative attitudes, but it is true in a dramatic way for whites who hold liberal attitudes.³⁰¹ An educated electorate is, therefore, critical to battling modern racism,³⁰² and, I would imagine, sexism as well. That means we should support initiatives that improve educational quality, discourage attrition, and ensure the fair treatment of all students regardless of demographics like sex, race, ethnicity, religion, or sexual orientation. We should do what we can to keep higher education affordable and to keep student bodies at colleges and universities diverse. We should also continue to use the ballot box, even though most outcomes these days are, it seems, determined as much by money as by merit. We should make violence an election issue. John Stoltenberg, who co-founded Men Against Pornography, agrees:

Rape is a crises of national security. . . . Living in fear of forced and violent sex is much like living in a state of siege in occupied territory. Yet one candidate after another will declaim about defending this country's interests against *foreign* aggressors. Why doesn't local, homegrown, day-in-and-day-out *sexual violence against women* make it even to the bottom of their list of major social-policy questions?³⁰³

We should pool our resources, whether they be time, treasure, or talents, and support or form new progressive coalitions. We should cultivate spokespersons for our causes, lobby legislatures, hold protests, and call for boycotts.³⁰⁴ We should not be afraid to ask government—federal, state, and local—to support our efforts; after all, government has an interest in raising the public's awareness about discrimination and violence in the same way it has an interest in raising the public's awareness about obesity, smoking, or carbon monoxide poisoning. If some hope can be wrested from the tragedy of Trayvon Martin's death, it is, for me, the hope that those of us who want to see black

³⁰¹ *Id.* at 468.

³⁰² *Id.*

³⁰³ John Stoltenberg, *Making Rape an Election Issue*, in *TRANSFORMING A RAPE CULTURE* 216 (Emilie Buchwald, Pamela R. Fletcher, and Martha Roth eds., 1993).

³⁰⁴ Regarding the latter, bell hooks observed some thirty years ago that boycotts by women, in particular, due to our proportion in the population, could have a dramatic impact:

If women all around the United States turned off their television sets for an extended period of time and purchased no products other than very basic necessities to protest exploitation or women (e.g. increasing representation of violence against women on tv), these actions would have significant political and economic consequences.

HOOKS, *supra* note 228, at 92.

boys enjoying the sort of liberty that John Stuart Mill envisioned will consider the events of this past year to be an intellectual call to arms, that we will renew our efforts to convince our compatriots that racism and sexism have no place in American civic life.

CONCLUSION

After 9/11, Americans were told to pay attention to their surroundings, to be wary of strange behaviors, and to notice unusual things like unattended baggage. It struck me, though, that these precautions were not unlike those that women practice daily. It was a “Welcome to our world” moment. I began to think about how the threat of sexual violence is so integrated into the lives of American women that it is a sort of *terrorism du jour*, part of our daily menu. Then, this summer, when Trayvon Martin lost his life, I began to think about the topic again. If I learned anything from Trayvon, it was this: black men and boys do not need a welcome-to-our world moment. They already live with their own brand of terrorism du jour.

This Article is about racist, sexist violence. Part I told the stories of Bernice Worden and Trayvon Martin, two individuals who died at the hands of their neighbors, two individuals whose deaths had political ramifications. Part II showed that the constant threat of violence that black men and boys, and women and girls of all colors, must live with on a daily basis, due to their race and sex, satisfies Professor Carole Sheffield’s definition of *terrorism*. Part III modified that finding. It argued against a war on racist, sexist terror that would mimic the global war on terrorism, explaining that such a war would likely have pernicious effects on the populations with which this Article is concerned. It began using the term *mobocracy* in place of the term *terrorism*, as a more descriptive and less militaristic encapsulation of the simmering, subliminal terrorism that white and male hegemonies have foisted on black men and boys and on all women and girls. It then discussed the American ideals of self-governance, security and liberty, and the opportunity for personal fulfillment, concluding that the government’s failure to secure the safety of African Americans and of non-black women and girls causes these constituencies to suffer a poverty of citizenship that undermines American democracy. It went on to suggest that the progressive community should, despite certain hurdles, sell its message of non-violence in the marketplace of ideas, with truth, accuracy, and dignity as its guideposts. It urged progressives to focus on education, electoral politics, and coalition-building, and to engage in lobbying, protests, and boycotts.

If Bernice Worden had grown up in a world that valued and respected women, she might have lived out her natural life, tending

the hardware store, looking after Frank, and eventually celebrating the births of her grandchildren. Maybe my father would have introduced me to her on one of our trips up North. Ed Gein's life might have been different, too. His psychosis may not have manifested itself in the mutilation of female bodies or, if it did, his acquaintances may have taken note of the warning signs, providing him with medical supervision far before Bernice's death.³⁰⁵ Trayvon's story is similar. If Trayvon had grown up in a world that loved and trusted black boys, he may have grown up, gone to college, gotten married, had children and grandchildren, and cultivated a career. But these two individuals instead grew up in a world where racial and sexual terrorism reigns, and they both paid the price for it.

The Reverend Martin Luther King, Jr. once asked "How long will prejudice blind the visions of men, darken their understanding, and drive bright-eyed wisdom from her sacred throne? . . . How long will justice be crucified, and truth bear it?"³⁰⁶ He then answered the question, saying "Not long because no lie can live forever, . . . Not long because you shall reap what you sow, and . . . Not long because the arc of the moral universe is long, but it bends toward justice."³⁰⁷ Forty-eight years later, his words echo in my mind and I hope that he was right. I hope that it will not be long, because we are tired of being afraid. I hope that it will not be long, because we are tired of worrying about where we can go, what we can say, and how we can dress. I hope that it will not be long, because we are tired of wondering whether we should stay and fight or run for our lives. I hope it will not be long, because we cannot bury any more children.

³⁰⁵ Although Judge Gollmar suggests that Gein's crimes took Plainfield by surprise, there were, in fact, plenty of warning signals. After the disappearance of Mary Hogan, for example, Gein told a group of men that "I took my truck and went up there and got her and brought her home to my place." Everybody laughed, thinking it was a joke. GOLLMAR, *supra* note 8, at 202. In addition, Gein's brother died in a marsh fire, leaving Gein the sole heir to his mother's estate. *Id.* at 89-90. Gein found the body. *Id.* at 90. Moreover, items belonging to two men who had disappeared were found near Gein's property, and shortly thereafter a neighbor complained of a strong odor coming from the Gein garden. *Id.* Finally, in "two other unsolved disappearances . . . clues lead[] directly to Gein." *Id.* First, a young baby-sitter named Evelyn Hartley disappeared from LaCrosse, Wisconsin on the same day that Gein paid a visit to his aunt in LaCrosse. *Id.* at 90-91. Second, a girl named Mary Jane Weckler disappeared from Jefferson, Wisconsin. Witnesses saw a white Ford around the girl's last known location. Police searched all of Waushara County, looking for vehicles that matched the description. They found only two—one of them at Gein's place. *Id.* at 91.

³⁰⁶ Reverend Martin Luther King, Jr., Address at the Conclusion of the Selma to Montgomery March (March 25, 1965).

³⁰⁷ *Id.*