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Don't Say Gay: How Laws are Tools for Hate, Discrimination, and Violence

Christina Hartman

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DON'T SAY GAY:
HOW LAWS ARE TOOLS FOR HATE, DISCRIMINATION, AND VIOLENCE

A Project
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Social Sciences and Globalization

by
Christina Hartman
May 2023

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ABSTRACT

American society teaches the narrative that the law is preeminently fair and just. The law is not now and never has been a bulwark for the rights of the marginalized, voiceless, or those who remain powerless. Instead, states effectively wield law to alter the social meaning behind thought patterns and behavior—whether through the writing of new laws, passing of new laws, or the disregarding of current laws—to mobilize a large population to accept a group as different or other. Florida’s 2022 “Don’t Say Gay” law is an example of that method aimed at the LGBTQ+ community and part of a larger, recent trend. Legislation that inhibits the rights of a group of people tell a society that this now marginalized group is outside of societal norms; effectively stipulating that this group is different and thus is deserving of different treatment which leads to increased hate, discrimination, and violence. I worked to find and catalog authored state bills from 2016 to 2021 which would negatively impact and restrict the rights and lives of LGBTQ+ individuals and found that states created at least 940. In the same period there has been an escalation in violence perpetuated against this community, which suggests these laws are establishing that equality for, tolerance of, or acceptance for the LGBTQ+ community are unpopular opinions. Law is productive, assigning legitimacy and authority to values with the goal of teaching mainstream America what is morally acceptable—and these laws clearly state that is not the LGBTQ+ community.

ACKNOWLEDGEMENTS

Thank you to my committee for supporting me on this journey.

DEDICATION

I dedicate this to my daughter. Evelyn, education is always possible and should always be sought after.

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CHAPTER ONE

INTRODUCTION

On March 28, 2002, Florida Governor Ron DeSantis signed into law HB 1557 or the Parental Rights in Education Bill or as it is colloquially known the “Don’t Say Gay” law. The law states that “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”¹ The idea of these laws is not new, but prior to Florida’s law only one other state had come close, South Carolina, to creating a bill “that explicitly prohibits teachers from discussing homosexuality at all.”² HB 1557 illustrates that state legislatures are employing law in reaction to federal policies. U.S. states that disagree with federal policies that seek to amplify the acceptance and protection of LGBTQ+ communities are writing legislation to limit, and in some cases eliminate, that acceptance and protection. Where federal policy enabled and outlined this discrimination, state legislation echoed those policies and wrote legislation seeking to accelerate and magnify those beliefs. In short, state legislatures are working law to produce a tiered system of citizenship; these legislators are filing bills that enable and encourage hate, discrimination and

¹ “House Bill 1557”. Florida House of Representatives (2022), <https://www.flsenate.gov/Session/Bill/2022/1557/BillText/er/PDF>

² Rosky, Clifford. “Anti-Gay Curriculum Laws.” *Columbia Law Review* 117, no. 6 (2017): 1469.

violence against the LGBTQ+ communities through disparagement and vilification of those communities.

American society teaches the narrative that the law is preeminently fair and just. Many Americans like to believe the U.S. legal system reflects a progressive society and commitment to equality for all. The law is not now and never has been a bulwark for the rights of the marginalized, voiceless, or those who remain powerless. Instead, states effectively wield law to alter the social meaning behind thought patterns and behavior—whether through the writing of new laws, passing of new laws, or the disregarding of current laws—to mobilize a large population to accept a group as different or other. Legislation that inhibits the rights of a group of people tell a society that this now marginalized group is outside of societal norms; effectively stipulating that this group is different and thus is deserving of different treatment which leads to increased hate, discrimination, and violence. While the 2022 “Don’t Say Gay” law from Florida is gaining visibility in the current conversation, it is far from a new tactic. In what follows, I will discuss the themes and strategies behind the negative LGBTQ+ bills filed in state legislatures between 2016 and 2021. State Legislatures introduced at least 940 bills that would negatively impact and restrict the rights and lives of LGBTQ+ individuals; these bills were intentionally created to deteriorate the acceptance of the LGBTQ+ community and increase hate, discrimination and even violence towards that community. To show that violence, I present victimization and crime statistics from the FBI and many other sources;

which stipulate the higher amount of violence that the LGBTQ+ populace in America experiences. The increased violence that faces LGBTQ+ individuals correlates with state responses to craft and file bills that encourage the isolation and second-class citizenship of the LGBTQ+ community from American society.

CHAPTER TWO

METHODOLOGY

In order to frame the conversation surrounding discriminatory law, I first had to find current legislation. I had originally thought that cataloging the total number of negative bills aimed at the LGBTQ community was out of my ability and thought just to focus on one or two laws. Thanks to the many organizations that have tracked discriminatory bills, I was able to gather and catalog most of the discriminatory bills introduced to individual U.S. State legislatures from 2016-2021. If law is a vehicle to restrict rights and steer the public consciousness, the very presentation, reading, and discussing of these ideas influences public thought and normalizes the marginalization of a group; thus, all the negative LGBTQ+ bills introduced were vital to catalog.

Acquiring records of previously read bills presented a challenge for many reasons. First, records are incomplete. Only two organizations attempted to list all State filed bills, the American Civil Liberties Union (ACLU) and the Human Rights Campaign (HRC). Both of these organizations did not maintain complete records throughout 2016-2021. The ACLU was missing data from the year 2017 and the HRC only reported on 2016-2018. I was able to cross reference many bills between their reports, yet both organizations included bills the other did not. Additionally, each organization used different standards to label a bill “negatively” impactful for the LGBTQ community. Laws that had a religious exemption for

granting a service to an LGBTQ citizen were sometimes marked as neutral by the HRC, while the ACLU marked this as harmful. For my catalog, I used the ACLU standard and marked any exemptions for rights or services as negative. I was also able to find a few smaller organizations that tracked legislation for their individual states like Equality Texas and One Iowa Action. These were helpful to cross reference and verify laws, but these too often listed laws not in the HRC or ACLU's reports.

The second issue comes from misleading language. Legislation intentionally uses neutral language making searches ineffective. Each individual bill needs to be read and judged. This means that even with the best of intentions and a great deal of hours spent reading and searching, it is likely both the ACLU and HRC missed legislation.

A third consideration is the reuse of the bill name/number. What I found is that many media sources might cite a bill, but they did not include a bill name or number, which made it unethical to catalog. Many of the bills submitted to each state legislature were extremely similar or eerily the same with just slight language differences—one imagines this was in hopes of finding language that would ultimately enable the same idea to pass but also illustrates the ways those who write policy speak to and learn from one another. I only included bills that I could find and verify the name or number. However, an added complication to finding the bill name is that quite a few states delete online history of dead bills

and reuse the numbers of previous bills. Thus, entering the bill name into the state's records site or a national bill tracker would render a different result.

In conclusion, due to all of these issues in tracking and cataloguing bills, my final annual totals differ from various media sources. For instance, multiple media sources state that in the year 2021, 250 negative bills were presented throughout American state legislatures, yet through all my searching, I was only able to explicitly track down 177. The HRC's 2021 State Equality Report states 268 negative bills were introduced and 27 passed (I cataloged 19 passed for 2021) but does not have a catalog of those bills. My final conclusion is that at least 940 negative LGBTQ bills were introduced in America from 2016-2021.

Labeling and organizing these bills based on discrimination factors was an important element to my catalog. The HRC used six categories to organize "Bad Bills Introduced": Relationship Recognition, Parenting, Non-discrimination, Hate Crimes, Youth-Related, and Health and Safety. The ACLU used a variety of descriptions: Religious Freedom Restoration Acts (RFRAs), First Amendment Defense Acts (FADAs), Bills Pre-Empting Local Protections, Anti-Transgender Bills, Single-Sex Facility Restrictions, Health Care Access, Adoption & Foster Care, Marriage-Related Exemptions, Marriage-related Religious Exemption Laws, FADA and Other Religious Exemptions, Government Employees, Commercial Wedding Services, Pastor Protection Acts, Other Marriage Exemption Bills, College & University Student Groups and Schools and Student Organizations. In order to synthesize the catalog of bills introduced, yet establish

finer details, I created two different bill “types” in the catalog; a simple type in order to streamline and present data and a key words category in order to narrow into various specificities outlined/contained in the bill. I created 12 “simple types” of bills: Adoption, Education, Facilities, First Amendment, Health and Safety, Healthcare, Identification Documents, Incomplete Protection, Marriage, Other Exemption, Pre-Empting Local Protections, and Religious. Many of these categories have thematic overlaps and similarities, for instance a bill aimed at preventing same sex marriage and a different bill aimed at equal funding for student groups have different end results but both cite religious exemptions. Maintaining the end result is important but so is the religious aspect of each bill; thus, by including additional keywords, I was able to maintain crucial information gathered. These keywords add another layer of information as well as the ability to look for more patterns. For example, with the key words comes the ability to sort and catalog every bill that included any religious or marriage element or connotation and establish greater patterns and commonalities.

Thus, the catalog manages to do something not yet found; it attempts to list every negative LGBTQ introduced, by bill name, for five consecutive years and contains detailed information regarding the type of discrimination/exemption attempted. Each bill also maintains a source and/or link and when possible, a secondary source and/or link.

I present this information in the website that accompanies this project: againtlegalLGBTQhate.com. The idea was to make the catalogue public so that

others could use this data set and ideally build upon it. As noted earlier, I had difficulties finding the bills that media sources numbered and I hope other individuals and organizations might be able to bridge those number gaps. Additionally, I sought to provide visualizations of this data in maps and charts because this topic is going overlooked or possibly dismissed as a “small” or nonexistent problem, but anyone who can see the numbers of bills I have located will ascertain this problem is neither small nor nonexistent. Basically, I aim to make this issue more well-known and accessible. In order to achieve this, the website also contains the numerous sources, summaries of violence and a copy of this paper.

CHAPTER THREE

LAW AS A TOOL FOR HATE, DISCRIMINATION, AND VIOLENCE

One important and often overlooked method of building acceptance towards the exclusion of a community and thus encouraging a state or populace to endorse hate, discrimination and even violence is law. Law is often the first official step to challenging and changing “social normatives,” because law is effective at “changing attitudes about the regulated behaviors...particularly if the regulation changes attitudes about the underlying morality of the behaviors.”³ Thus when these new “norms” go ignored or are contradicted, law can increasingly become harsher, promote discrimination, and later encourage violence.

According to the United Nations Educational, Scientific and Cultural Organization, “Violent extremism refers to the beliefs and actions of people who support or use ideologically-motivated violence to achieve radical ideological, religious or political views. Violent extremist views can be exhibited along a range of issues, including politics, religion and gender relations. No society, religious community or worldview is immune to such violent extremism.”⁴ Put more succinctly, violent Extremism is “when you do not allow for a different point of

³ Bilz, Kenworthy and Nadler, Janice. “Law, Moral Attitudes, and Behavioral Change.” Essay. In *The Oxford Handbook of Behavioral Economics and the Law*, Eyal Zamir & Doron Teichman (eds.), Oxford, UK: Oxford University Press, (2014), 243.

⁴ United Nations. “A Teacher's Guide on the Prevention of Violent Extremism.” United Nations Educational, Scientific and Cultural Organization, 2016, 11.

view; when you hold your own views as being quite exclusive, when you don't allow for the possibility of difference and when you want to impose this view on others using violence if necessary."⁵ While this study does not exclusively seek to connect violent extremism to bills researched, violence and hate towards a singular group coincides and correlates to philosophies of violent extremism in notions of religion, politics, marginalization, discrimination, inequality, membership/social inclusion, and much more. Thus, the potential of violent extremism should be understood and included in this discussion.

Experts seem to agree that there is no singular pathway or pattern to violent extremism, but acknowledge "there are socio-economic, psychological and institutional factors that lead to violent extremism."⁶ There are two categories of factors:

Push factors drive individuals to violent extremism, such as: marginalization, inequality, discrimination, persecution or the perception thereof; limited access to quality and relevant education; the denial of rights and civil liberties; and other environmental, historical and socio-economic grievances.⁷

The United States Agency for International Development (US AID) also includes frustrated expectations and relative deprivation, social exclusion, and importantly "real or perceived discrimination towards an individual or community".⁸ It is this perception or perhaps the manipulation of this

⁵ Davies, Lynn. "Educating Against Extremism: Towards a Critical Politicisation of Young People." *International Review of Education* 55, no. 2-3 (2009), 1.

⁶ United Nations. "A Teacher's Guide on the Prevention of Violent Extremism," 12.

⁷ Ibid., 12.

⁸ USAID, Summary of Factors Affecting Violent Extremism.

http://pdf.usaid.gov/pdf_docs/PBAAA929.pdf; Zeiger, S. and Aly, A. 2015, 3.

perception that law can manipulate. Many groups feel as though their cultural identity and/or way of life is being challenged or disapproved; this will push them to find likeminded people with which to find solidarity. Often these groups turn to violent tactics to “protect” or regain their “rightful” place in society.

Pull Factors nurture the appeal of violent extremism, for example: the existence of well-organized violent extremist groups with compelling discourses and effective programmes that are providing services, revenue and/or employment in exchange for membership. Groups can also lure new members by providing outlets for grievances and promise of adventure and freedom. Furthermore, these groups appear to offer spiritual comfort, “a place to belong” and a supportive social network.⁹

US AID stipulates that providing services and responding to unmet expectations and needs is also an important factor in pulling someone into the mentality of violent extremism.¹⁰ This perceived loss of cultural identity or challenge to lifestyles exemplifies the push behind discriminatory laws—these laws seek to “correct” this perceived threat by imposing the preferred social normatives, values, and lifestyles of the “threatened” group. Thus, this group is reestablished as the “head of society” or the preferred/ideal segment of society and the “challengers” relegated to a diminished status.

A law delineating a group to a marginalized position, inhibiting a groups’ rights and civil liberties while simultaneously catapulting another group to a

⁹ United Nations. “A Teacher’s Guide on the Prevention of Violent Extremism,” 12.

¹⁰ USAID. “Summary of Factors Affecting Violent Extremism,” 1.

higher social position through added benefits and opportunities effectively creates both the push and pull factors required to create an atmosphere of violent extremism and radicalization. By formulating laws that open up opportunities for a favored group and bestowing upon these citizens a new central place within the state—a sense of belonging and home—law represents the very mechanism poised to alter a population’s belief systems.

Many of the bills presented and passed throughout 2016-2021 aimed to place certain “beliefs” above people. For example, bills exempting medical professionals, county clerks, religious officials, and more from doing their jobs or duties because working with certain individuals would go against “strongly held beliefs” or “religious beliefs” released these individuals from liability. More importantly these bills in effect allow and even encourage individuals to discriminate against members of the LGBTQ+ community because they can so with impunity. When a law states that someone’s beliefs are greater than the medical care or legal rights of a community than that law has stipulated that one group (in this case members of a certain religious sect) is the favored and superior group, while the group being refused to be served is the other, marginalized group that practices outside of society’s norms and thus does not have to be served, included or cared for.

Law without question “attempts to shape citizens’ moral beliefs”.¹¹ Many states have wielded lawmaking in order to narrow the possibilities available for how to think about a topic and thus, change attitudes and control behaviors. Using fear of punishment or desire for rewards, regulations can influence behaviors and change attitudes surrounding the underlying morality of behaviors.¹² Legal decrees “[n]ormalize behavior, recharacterize behavior that the public thinks is bad or objectionable into a behavior that is inoffensive or even good.”¹³ By fundamentally altering the public understanding of an action as morally acceptable or even good, law can enable a populace, society, and States to endorse hate, discrimination and violence.

¹¹ Bilz, Kenworthy and Nadler, Janice. “Law, Moral Attitudes, and Behavioral Change.” Essay. In *The Oxford Handbook of Behavioral Economics and the Law*, Eyal Zamir & Doron Teichman (eds.), Oxford, UK: Oxford University Press, (2014), 245.

¹² *Ibid.*, 241.

¹³ *Ibid.*, 241-42.

CHAPTER FOUR

ANTI-LGBTQ+ LEGISLATION FROM 2016-2021

Currently State legislatures are authoring numerous bills aimed at degrading the image and national acceptance of the LGBTQ+ community. These filed bills, while not all passed, aim to create “privileged” and “non-privileged” segments of society using a variety of strategies and themes: religious exemptions, Religious Freedom Restoration Acts, preemptive bills, and the regulation of public facilities, athletic programs and school curriculums.

A profound example is religious exemptions. Religion was one of the largest factors in bill creation. In all, bills citing or involving religious exemptions totaled at least 281 or about 30% between 2016 and 2021. These religious exemptions explicitly state that a religious belief is of higher value and consideration than certain individuals’ rights and access to services—sometimes vital, life sustaining services. Below are some examples:

(2016) TENNESSEE SENATE BILL 1556 (passed)

This bill would allow counselors and therapists to refuse to counsel or serve a client as to goals, outcomes, or behaviors that conflict with the sincerely held principles of the counselor or therapist. The bill requires the counselor to refer the client to another therapist; however the counselor or therapist is immune from any civil or criminal action. This bill would not apply when the individual seeking or undergoing treatment is in imminent danger of harming themselves or others.¹⁴

(2016) ILLINOIS SENATE BILL 2164

This bill prohibits the State and local governments from taking discriminatory action against a person if the person believes or acts

¹⁴ Human Rights Campaign. “2016 LGBTQ-Related Bills Considered” (2016), 37.

under a religious belief or moral conviction that marriage is only between one man and one woman, or that sexual relations are properly reserved to such a marriage.¹⁵

(2017) MINNESOTA HOUSE BILL 43

This bill would prohibit civil or criminal charges brought against an organization and individuals who refuse services and access to facilities for any activity that conflicts with the organization's or individual's sincerely held religious belief.¹⁶

(2018) HB 3486 (OKLAHOMA)

This bill would allow private child-placing agencies to deny services based on religious or moral convictions. If passed, licenses or funding cannot be denied to these agencies.¹⁷

(2018) SB 284 (KANSAS) (Passed)

As passed, this bill allows private child-placing agencies to deny services based on religious or moral convictions. Licenses or funding cannot be denied to these agencies.¹⁸

These different bills cover services from marriage and medical help to adoption which illustrates that religion is being used in a broad capacity to limit the availability of life functions and possibilities to the LGBTQ+ community.

According to the Fenway Institute, "...these "religious exemption" laws cause real harm to third parties—i.e. LGBT people, same-sex couples, and others who do not conform to particular religious orthodoxies. As a result, these laws inflict both material harm and dignity harm—harms that exacerbate stigma and marginalization, and reduce social status—on other citizens."¹⁹ When one religion takes precedence over the LGBTQ+ community, laws denoting this brand the

¹⁵ Human Rights Campaign. "2016 LGBTQ-Related Bills Considered" (2016), 38.

¹⁶ Human Rights Campaign. "2017 LGBTQ- Related Bills Considered" (2017), 3.

¹⁷ Human Rights Campaign. "2018 LGBTQ- Related Bills Considered" (2018), 13.

¹⁸ *Ibid.*, 11.

¹⁹ Cahill, Sean, Geffen, Sophia, and Timothy Wang. "The Current Wave of Anti-LGBT Legislation." The Fenway Institute, June 2016, 1.

LGBTQ+ community as a less a valuable section of American society, thus one less deserving of rights, services and equal treatment. The lesson taught by these laws is that the “privileged” or “ideal” group of American residents at best need not treat the LGBTQ+ community as equals and at worst that it is morally acceptable to hate and discriminate against the LGBTQ+ populace.

Perhaps one of the most prominent examples of a religious exemption bill is Mississippi’s HB 1523, passed in 2016:

MISSISSIPPI HOUSE BILL 1523

This bill creates the “protecting freedom of conscience from government discrimination act.” The bill defines marriage as between one man and one woman, as defined by immutable biological traits. The bill provides certain protections regarding a sincerely held religious belief or moral conviction for persons, religious organizations and private associations in employment, housing, and public accommodation decisions. The bill allows for a person to assert a violation of this act as a claim against the government, providing certain remedies.²⁰

This bill permits “discrimination based on three specific religious beliefs or moral convictions: that “marriage is or should be recognized as the union of one man and one woman; sexual relations are properly reserved to such a marriage; and male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.”²¹ However, this bill goes even further and denies services and opportunities to gender

²⁰ Human Rights Campaign. “2016 LGBTQ-Related Bills Considered” (2016), 36.

²¹ Cahill, Sean, Geffen, Sophia, and Timothy Wang. “The Current Wave of Anti-LGBT Legislation,” 4.

nonconforming individuals, again based upon the notion that HB 1523 is protecting religious beliefs but only those of a favored sector:

According to analysis by Lambda Legal, HB 1523 permits individuals and businesses to discriminate against LGBT people in a variety of ways, such as: Refusing foster care and adoption services. Banning transgender students and workers from using bathrooms in accordance with their gender identity. Denying housing and employment from religious organizations. Denying medically necessary gender transition related treatments, counseling, or services to transgender people. Denying psychological services, counseling, or fertility treatments to LGBT individuals, same-sex couples, or unmarried couples.²²

In fact, a group of 10 law professors from Columbia University School of Law declared the bill unconstitutional and violated the Establishment Clause in a signed report.²³ Additionally, the 1985 Supreme Court Case of *Estate of Thornton v. Caldor* established “that the Establishment Clause restricts accommodations for religious beliefs if those accommodations would create meaningful harm for others.”²⁴ HB 1523 shows that some of these bills are written in direct reaction to federal policy, strategically created to sway the public to view the LGBTQ+ community as dangerous to American social structure and therefore less worthy of full citizenship. This Mississippi law is ironic given that the U.S. government portrays itself as secular. Under this notion the law should be protecting against advancing one religion over another individual’s rights and yet these new laws seem to have established preferred groups, with recognized rights and priorities

²² Cahill, Sean, Geffen, Sophia, and Timothy Wang. “The Current Wave of Anti-LGBT Legislation,” 4.

²³ *Ibid.*, 4.

²⁴ *Ibid.*, 4.

and “abnormal” and deviant groups who are outside of acceptable American society and thus outside of full protection. These laws encourage discriminatory treatment and the potential for radicalization of our society.

Many states employ Religious Freedom Restoration Acts (RFRA) to ensure “religious freedoms are protected,” but these acts are used to infringe upon the rights of LGBTQ+ individuals. These RFRA stem from Clinton’s 1993 Religious Freedom Restoration Act which “was enacted after two Native Americans were fired from their jobs because they used peyote in their religious ceremonies.”²⁵ Interestingly, the Supreme Court then nullified the RFRA’s power in individual states. In 1997, “...in *City of Boerne v. Flores*, the Supreme Court ruled that RFRA was an unconstitutional intrusion into state authority, and was invalid as applied to state law”,²⁶ thus states have created their own RFRA. At least 50 RFRA were proposed between the years 2016 and 2021:

(2016) MICHIGAN SENATE BILL 4

This bill would establish the “Michigan religious freedom restoration act.” The bill would restrict the government’s ability to enforce laws of general applicability that substantially burden a person’s religious liberty. It establishes a claim of action against governmental actors who burden the free exercise of religion.²⁷

(2017) GEORGIA SENATE BILL 233

This bill would require the federal Religious Freedom Restoration Act apply to the State and its political subdivisions.²⁸

²⁵ Cahill, Sean, Geffen, Sophia, and Timothy Wang. “The Current Wave of Anti-LGBT Legislation,” 2.

²⁶ Jonathan Griffin. “Religious Freedom Restoration Acts.” Religious Freedom Restoration Acts – LB.

²⁷ Human Rights Campaign. “2016 LGBTQ-Related Bills Considered,” 41.

²⁸ Human Rights Campaign. “2017 LGBTQ-Related Bills Considered,” 3.

These RFRA's "[can] potentially allow individuals and businesses to discriminate against same-sex couples and LGBT people based on religious objections."²⁹

What was created to protect individuals' unpopular and nonmainstream religious activities, has changed to catapult religion to a place of priority in American society and the LGBTQ+ people to a place of lower status. These laws imply that the "lifestyle" and behaviors of the LGBTQ+ community is at best abnormal and at worse dangerous to "mainstream" American life and religious values. This acts as a push factor; making this group abnormal allows for the moral acceptance of discrimination and hate towards them.

RFRA's respond to federal policies but also to the claims of religious groups who perceive that their rights are being overlooked or diminished. They feel their identity and way of life is being threatened; they are in fact feeling and perceiving the "push" factors that that lead to violent extremism. They might perceive that they are somehow being pushed out of mainstream society and thus must protect their place in it and these RFRA's and religious exemption laws accomplish that. By scapegoating the LGBTQ+ community, these religious groups can see their values take precedence through the law; they and their beliefs are propelled to a more advantageous position in American society which solidifies to them that their discrimination and disregard for the rights of LGBTQ+

²⁹ Cahill, Sean, Geffen, Sophia, and Timothy Wang. "The Current Wave of Anti-LGBT Legislation," 3.

Americans is morally right and legally justified. The law gives them approval and authority to discriminate and hate.

Another important tactic is the preemptive bill. Between 2016 and 2021 there were at least 19 preemptive bills filed. “These bills prevent cities and other local government entities from passing nondiscrimination protections that are more expansive than the protections offered at the state level, including protections for LGBT people.”³⁰ Basically, a city, organization or institution cannot exceed the protections of its state. Thus, in North Carolina where gender identity and sexual orientation are not protected classes, HB 2, passed in 2016, nullifies any ordinance that would seek to make them protected classes. In fact, HB 2 was passed in an emergency session—in one day—in response to the City of Charlotte passing a nondiscrimination ordinance that included gender identity as a protected class in public accommodations:³¹

(2016) NORTH CAROLINA HB 2 (passed)

This bill was passed and signed into law. The law bars people in North Carolina from using multiple-occupancy bathrooms, lockers rooms, and other such facilities that do not match their biological sex. Furthermore, the law declares that the provisions of this law and other State laws supersede all other municipal ordinances, regulations, resolutions, and policies regarding discriminatory practices in places of public accommodation.³²

³⁰ “Past Legislation Affecting LGBT Rights across the Country (2018).” American Civil Liberties Union.

³¹ Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. “Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms.” *Sexuality Research & Social Policy* 16, no. 1 (2019), 70.

³² Human Rights Campaign. “2016 LGBTQ-Related Bills Considered,” 36.

Romer v. Evans, in 1996, established that these types of preemptive bills are in violation of the Equal Protection Clause of the Fourteenth Amendment, which provides that no state can deny any person equal protection under the law.³³ Knowing that any bill that directly references LGBTQ+ individuals would be fiercely and legally contested, the authors of these preemptive bills are strategic with their language and do not implicitly reference LGBTQ+. This only proves the direct intention of these laws and the extraordinary amount of effort these legislators are undertaking in order to proliferate the discrimination and hate of the LGBTQ+ community. These particular laws work to stop any legal protective layer from forming; they essentially tell the public that it is wrong to protect or hold the LGBTQ+ community as equals or a segment of society worthy of protection. If not worthy of protection, the inherent next step is seeing hate, discrimination, and violence towards the LGBTQ+ community as morally justified. Restricting the LGBTQ+ presence in public life is a key element of this.

In order to restrict access to public life, in the years 2016-2021, at least 85 bills regulating access to public facilities were filed. Bills regulating facilities, most commonly bathrooms but other spaces as well, by the “sex on a person’s birth certificate,” “consistent with an individual’s sex assigned at birth,” or “biological sex at birth” allow outsiders to define a very core and personal aspect of identity for someone else. Members of the LGBTQ+ community are being effectively

³³ Cahill, Sean, Geffen, Sophia, and Timothy Wang. “The Current Wave of Anti-LGBT Legislation,” 7.

deprived of the ability to define themselves; stripping the population of intimate power while labeling them as outside mainstream or acceptable society and even deviant. These bills also promote discrimination and hate in the form of segregation and social isolation. Many of these bills pertain to schools. In fact, “[i]n 2016, the Civil Rights Divisions of the Department of Education and the Department of Justice issued guidance that students should have access to restrooms that correspond to students’ self-identified gender identity.”³⁴ In response to this guidance, 13 states filed lawsuits against the federal government³⁵ here again we see states wielding law in reaction to and to reject federal policy. The “District Court granted a preliminary injunction against implementation of the guidance in 2016, and in 2017, the federal government withdrew its initial appeal.”³⁶ Enabling States to file bills like these:

(2016) MASSACHUSETTS HOUSE BILL 1320

This bill would require public buildings and businesses to control use of gender-segregated facilities based on anatomical sex, thus preventing transgender individuals from using the appropriate facility based on their gender identity.³⁷

(2016) NEW YORK ASSEMBLY BILL 10127

This bill would require schools and public buildings to prevent individuals from using gender-segregated facilities not in accordance with their sex at birth.³⁸

(2017) NORTH CAROLINA HOUSE BILL 142

This bill prohibits state agencies, boards, offices, departments, institutions, branches of government, including The University of

³⁴ Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. “Gender Identity Nondiscrimination Laws in Public Accommodations,” 71.

³⁵ *Ibid.*, 72.

³⁶ *Ibid.*, 72.

³⁷ Human Rights Campaign. “2016 LGBTQ-Related Bills Considered,” 38.

³⁸ *Ibid.*, 44.

North Carolina and the North Carolina Community College System, and political subdivisions of the State, including local boards of education, from enacting regulations or laws addressing gender-segregated facilities.³⁹

(2017) ARKANSAS SENATE BILL 774

This bill states that access to public facilities (such as restrooms and locker rooms) are determined by an individual's biological sex.⁴⁰

(2018) HB 2171 (KANSAS)

This bill would require that public school restrooms, locker rooms, and shower rooms be designated male or female only, and would restrict access to these facilities to those who were assigned the designated gender at birth.⁴¹

These bills and the conversations and issues generated by them had their intended impact and “[b]y February of 2018, a Department of Education spokesperson asserted that the department would no longer accept discrimination complaints from transgender students who are blocked access to restrooms in accordance with their gender identity”.⁴² Trans and gender nonconforming students lost the support of the Department of Education. Thus, these bills managed to implement a shift in acceptance of gender inclusive facilities—government agencies once in favor of students selecting bathrooms based upon the students’ self-identified gender identity withdrew its favor in light of the societal shift—a shift caused by law. Laws, and in this case the very legal system, provided authority that rejecting self-identifying gender for restroom purposes was both right and the correct direction for society; thus, trans and

³⁹ Human Rights Campaign. “2017 LGBTQ-Related Bills Considered,” 15.

⁴⁰ *Ibid.*, 21.

⁴¹ Human Rights Campaign. “2018 LGBTQ-Related Bills Considered,” 13.

⁴² Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. “Gender Identity Nondiscrimination Laws in Public Accommodations,” 71.

gender nonconforming individuals were both wrong and undesired for societal advancement.

Bills regulating facilities result in increased hostility, harassment, and policing of gender nonconforming individuals. This type of violence is not limited to law enforcement, it encourages social regulation, the idea that citizens would be involved, responsible and morally correct for enforcing this segregation. The language arguing for the necessity of these bills teach that trans and gender nonconforming individuals pose a real threat to our society, that society at large needs to be on guard and protected from what the law is depicting as their abnormal and immoral tendencies. Importantly, evidence shows that the passing of nondiscrimination gender inclusive public accommodation ordinances and laws (laws that allow one to select a facility based upon their self-identification) does not lead to increased criminal incidents in restrooms,⁴³ despite legislators arguing that gender inclusive restrooms are “a real public safety risk...[that] would allow men into the locker rooms and the bathrooms of females.”⁴⁴ Thus these bills serve only one purpose and that is to vilify and label trans and gender nonconforming individuals as deviant and degenerate. It is not hard to see the legal strategy—using law to mark a group—in this case certain members of the LGBTQ+ community—as alien and dangerous to the progression of the state.

⁴³ Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. “Gender Identity Nondiscrimination Laws in Public Accommodations,” 77.

⁴⁴ *Ibid.*, 71

This vilification that necessitates segregation goes beyond restrooms and locker rooms to school curriculum and extracurricular activities. One area of focus is athletics:

(2016) SOUTH CAROLINA HOUSE BILL 4761

This bill would require schools to determine the gender of students seeking to participate in athletics sanctioned by the high school league before the student may participate in those athletics. This gender determination must be the gender of the student at birth as indicated on the certified birth certificate of the student. The bill prevents schools from permitting students to try out for or participate in high school league-sanctioned athletic teams or Positions designated for the opposite sex.⁴⁵

(2016) MINNESOTA HOUSE BILL 1546/ SENATE BILL 1543

This bill forbids persons not born genetically female from participating on girls athletic school teams. HB 1546 additionally provides that student restrooms, locker rooms, and shower rooms that are accessible by multiple students at one time shall be designed for the exclusive use by students of students that are male or female.⁴⁶

(2017) TEXAS SENATE BILL 2095

This bill would amend the safe harbor provision of the University of Intercollegiate League allowing transgender students to participate in sports consistent with their gender identity, by allowing officials to disqualify students because of steroid use, or medically necessary hormone therapy.⁴⁷

(2018) MASSACHUSETTS H 2281

This bill would restrict access to sex-segregated facilities and educational and athletic programs by an individual's "anatomical sex," regardless of the individual's gender identity.⁴⁸

⁴⁵ Human Rights Campaign. "2016 LGBTQ-Related Bills Considered," 62.

⁴⁶ *Ibid.*, 90.

⁴⁷ Human Rights Campaign. "2017 LGBTQ-Related Bills Considered," 45.

⁴⁸ Human Rights Campaign. "2018 LGBTQ-Related Bills Considered," 13.

At least 90 bills filed from 2016 through 2021 dealt with athletics, other sources say 110 bills were filed between 2020 and 2021 alone.⁴⁹ “As of July 2021, ten such bills have become state law.”⁵⁰ Idaho was the first state to sign a law banning transgender girls from participating in athletics. In 2020, Idaho passed HB 500 which “effectively precludes transgender girls and women (from kindergarten through college) from joining female athletic teams.”⁵¹ Idaho titled this bill Fairness in Women’s Sports Act suggesting that it would be unfair to cisgender women to compete against and with transgender women. An Attorney for Idaho defending the bill stated that the legislation “protects the rights of “real women”,⁵² which implies that transgender women are not in fact real women and also do not have rights that need or are worthy of protecting. Idaho could have continued to follow the “National Collegiate Athletic Association (NCAA), which governs intercollegiate competition, [and states] transgender women who receive hormone treatments for a year may play on women’s sports teams.”⁵³ Or Idaho could have followed the International Olympic Committee guidelines which “allow[s] transgender women athletes to play on women’s teams if they have identified as female for at least 4 years and if their testosterone level has been less than 10 nmol per liter for at least a year. That level is considered the lower

⁴⁹ Sharrow, Elizabeth A. “Sports, Transgender Rights and the Bodily Politics of Cisgender Supremacy.” *Laws* 10, no. 3 (2021), 1.

⁵⁰ Sharrow, Elizabeth A. “Sports, Transgender Rights and the Bodily Politics of Cisgender Supremacy,” 1.

⁵¹ Dolgin, Janet. “Transgender Women on College Athletic Teams — The Case of Lindsay Hecox.” *The New England Journal of Medicine* 383, no. 21 (2020), 2000.

⁵² Dolgin, Janet. “Transgender Women on College Athletic Teams,” 2000.

⁵³ *Ibid.*, 2001.

limit for cisgender men by the IOC commission that recommended the standard.”⁵⁴ Instead Idaho created its own criteria: the student’s reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.”⁵⁵ Interestingly enough, in order to measure endogenously produced testosterone levels, not just testosterone levels, requires a transgender individual to pause hormone treatments making this measurement precarious to the transgender individual. Suggesting that Idaho’s law not only seeks to isolate and segregate transgender students but also advocates ending hormone treatments. Yet despite the legal challenges Idaho’s law faces—a transgender woman at Boise State and the ACLU are challenging this law—“ Alabama, Arkansas, Florida, Mississippi, Montana, Tennessee, and West Virginia followed Idaho to pass their own versions of transgender sports participation bans that year; South Dakota’s governor issued two Executive Orders, which in effect implemented a similar prohibition.”⁵⁶ These laws are less about fairness and more about promoting the idea that transgender athletes—and in particular trans women—and their very identities pose a threat to society. Inherent in these laws is the very real and uncomfortable notion that transgender individuals are outside of societal norms because trans individuals seek to redefine themselves by their own terms. The legal response in these negative LGBTQ+ bills is to create a hierarchy of citizenship, opportunities and protections. These bills, like the bills

⁵⁴ Ibid., 2001.

⁵⁵ Ibid., 2001.

⁵⁶ Sharrow, Elizabeth A. “Sports, Transgender Rights and the Bodily Politics of Cisgender Supremacy,” 1.

that regulate restrooms, aim to spread the idea that certain members of the LGBTQ+ community have nefarious purposes that society at large needs to be protected from. If these individuals are dangerous and pose a threat, then it is only right that the “privileged” mainstream American society be wary of them—thus these laws are tools to radicalize and encourage hate.

Even more filed bills dealt with education curriculum. At least 183 bills were proposed from 2016 to 2021 that discussed sex education, curriculum, religious student groups and speakers, and more. “[A] comprehensive survey shows that anti-gay curriculum laws actually exist in twenty states. More than 25 million children—nearly half of all school-aged children in the United States—are attending public schools in these twenty states. In nine of these states, teachers are affirmatively required to teach anti-gay curricula in all public schools.”⁵⁷ One of the most popular ways to legally accomplish this is through the regulation of sexual education. Through sex education, States can control conversations on marriage and sex; specifically what is and is not appropriate within these concepts. In most programs ““homosexuality” is too shameful, immoral, or unlawful to be discussed on the same terms that heterosexuality is discussed.”⁵⁸ Thus in many states same sex relations is not allowed to be included in the discussion. “In seventeen states, curriculum laws require emphasis on “abstinence from sexual activity until marriage,” while still defining the term

⁵⁷ Rosky, Clifford. “Anti-Gay Curriculum Laws.” *Columbia Law Review* 117, no. 6 (2017), 1466.

⁵⁸ Rosky, Clifford. “Anti-Gay Curriculum Laws,” 1520.

“marriage” in a way that excludes same-sex unions.”⁵⁹ Legally mandating that defining marriage as only occurring between heterosexual couples accomplishes the erasure of LGBTQ+ existence in society and for those students who are aware of the LGBTQ+ presence that this erasure is ethically right. Still other programs promote homosexual conduct as immoral, which is literally teaching students that the LGBTQ+ community is unnatural and that it is morally, and legally, correct to discriminate against them.

One example is South Carolina which introduced a health education program in 2016 under SECTION 59-32-5⁶⁰ and filed an almost identical version in the state legislature, H3467, in 2021, which includes in the bill language: “The program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases.”⁶¹ In fact many states have codes or bills that mandate that sex education present ““homosexuality” in a negative manner—as an unacceptable lifestyle, a criminal offense, or a cause of sexually transmitted infections”.⁶² Several states, including Arizona, Louisiana, Texas, Alabama, Mississippi and Oklahoma, have education programs that suggest or explicitly state that sex-education instruction include “that homosexuality is not a

⁵⁹ Ibid., 1466.

⁶⁰ Code of laws - title 59 - chapter 32 - Comprehensive Health Education Program.

⁶¹ “2021-2022 Bill 3467: Comprehensive Health Education Act - South Carolina Legislature Online.” South Carolina General Assembly 124th Session, 2021-2022, January 26, 2021.

⁶² Rosky, Clifford. “Anti-Gay Curriculum Laws,” 1470.

lifestyle acceptable to the general public.”⁶³ If a state legislature is ineffective at passing a bill with this language, an alternative way to achieve this is, again, to stipulate that marriage is only between a man and a woman and promote heterosexual relations. While this study was only able to track down 17 sex education bills filed between 2016 and 2021, many of these codes, programs and laws were made law long before 2016. According to Rosky, in 2017, 18 states still had sexual education “curriculum guidelines [that] exclude or demean LGBT identities”.⁶⁴ These curriculum laws teach that equality for, tolerance of, or acceptance for different marriages, gender identities and sexual orientations are unpopular opinions. If unpopular, the mainstream ideal is to denounce them and treat them as unnatural, immoral, and dangerous. In this case laws are in fact teaching discrimination and hate.

⁶³ Ibid., 1470.

⁶⁴ Rosky, Clifford. “Anti-Gay Curriculum Laws,” 1508.

CHAPTER FIVE

VIOLENCE PERPETRATED AGAINST THE LGBTQ+ COMMUNITY

It is clear by the language of the bills filed from 2016 to 2021, that law has been a productive tool in the derogation of image of the LGBTQ+ community. That disparagement has led to hate, discrimination and violence. “In *Romer*, *Lawrence*, *Windsor*, and *Obergefell*, the [Supreme] Court specifically found that anti-gay laws “injure” and “stigmatize” lesbian, gay, and bisexual people.”⁶⁵ The Supreme Court has said these types of laws classify “homosexuals” as “unequal to everyone else”, that these laws are made to humiliate, disparage, demean and that these laws invited both public and private discrimination.⁶⁶

A U.S. Department of Justice’s June 2022 report, *Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020*, found:

- The rate of violent victimization of lesbian or gay persons (43.5 victimizations per 1,000 persons age 16 or older) was more than two times the rate for straight persons (19.0 per 1,000).⁶⁷
- The rate of violent victimization against transgender persons (51.5 victimizations per 1,000 persons age 16 or older) was 2.5 times the rate among cisgender persons (20.5 per 1,000).⁶⁸
- Violent victimizations of bisexual persons (31%) were less likely to be reported to police than violent victimizations of straight persons (45%).⁶⁹

⁶⁵ Rosky, Clifford. “Anti-Gay Curriculum Laws,” 1519.

⁶⁶ *Ibid.*, 1519

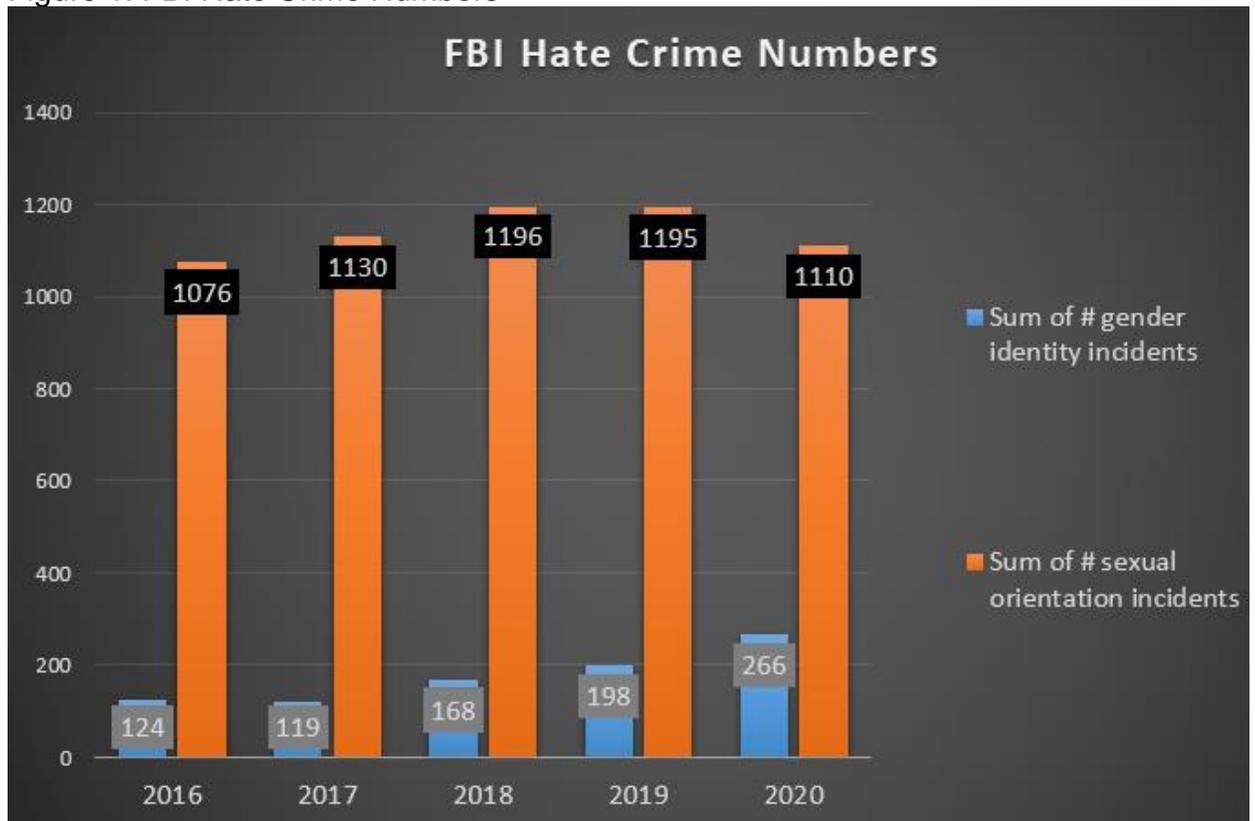
⁶⁷ Morgan, Rachel E., Jennifer L. Truman, and BJS Statisticians. “Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020.” U.S. Department of Justice, June 2022, 1.

⁶⁸ Morgan, Rachel E., Jennifer L. Truman, and BJS Statisticians. “Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020,” 1.

⁶⁹ *Ibid.*, 1

Hate crime statistics provide further evidence. The FBI Uniform Crime Reporting Program defines hate crime “as a committed criminal offense which is motivated, in whole or in part, by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”⁷⁰ Hate crime data show the violence perpetuated on the LGBTQ+ community:

Figure 1: FBI Hate Crime Numbers



These numbers come directly from the annual published charts⁷¹ as well as the FBI interactive hate crime tool.⁷²

⁷⁰ “Federal Bureau of Investigation Crime Data Reporter.” Crime Data Reporter. Federal Bureau of Investigation.

⁷¹ FBI: UCR. “Incidents and Offenses.” 2016 Hate Crime Statistics. Criminal Justice Information Services Division, October 30, 2017.

⁷² “Federal Bureau of Investigation Crime Data Reporter.” Crime Data Reporter.

The number of incidents targeting sexual orientation and gender identity are increasing. From “2017 to 2020, the rates of violent victimization were significantly higher for persons age 16 or older who self-identified as lesbian, gay, or bisexual than for those who identified as straight, according to the National Crime Victimization Survey (NCVS).”⁷³ One of the deadliest years for the LGBTQ+ community was 2016 with a 17% increase in homicides with LGBTQ+ people of color, transgender, and gender non-conforming individuals making up the majority of these homicides.⁷⁴ Additionally, in 2019 the percentage of violent hate crime victimizations did increase to 4.4%, which is an increase of 2.9% from 2005.⁷⁵ With about 1 in 5 or 20% of violent hate crime victimizations being motivated by a bias against sexual orientation and gender identity,⁷⁶ and with the rate of violent victimization of an LGBTQ+ individual more than double that of a heterosexual, cisgender individual,⁷⁷ the 941 negative LGBTQ+ state bills filed between 2016 and 2021 offers strong evidence of the power and sway of State legislatures to adversely impact the acceptance of LGBTQ+ individuals and to derogate their image and place in society to encourage hate and violence.

⁷³ Morgan, Rachel E., Jennifer L. Truman, and BJS Statisticians. “Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020,” 1.

⁷⁴ “National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities Released Today,” June 12, 2017. National Coalition of Anti-Violence Programs.

⁷⁵ Kena, Grace and Alexandra Thompson. Rep. *Hate Crime Victimization, 2005-2019*. U.S. Department of Justice, September 2021, 3.

⁷⁶ Kena, Grace and Alexandra Thompson. Rep. *Hate Crime Victimization, 2005-2019*, 5.

⁷⁷ Morgan, Rachel E., Jennifer L. Truman, and BJS Statisticians. “Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020,” 1.

While these statistics tell a powerful story, there are issues with the data collection of hate crimes. First, not all law enforcement agencies report hate crimes. For example, in 2016, the FBI reported that 15,254 agencies added to the Uniform Crime Reporting (UCR) Program, but only 1,776 agencies reported any hate crimes. This means over 88% of the agencies reported zero hate crimes,⁷⁸ which means they are not actually reporting.⁷⁹ The FBI acknowledges these issues and through their National Crime Victimization Survey (NCVS) recognizes that a large proportion of hate crimes go unreported. They estimate that between 2015 and 2019, approximately 42% of violent hate crime victimizations were not reported to police. For example, in 2020 the FBI reported 11,975 hate crime victims, but the NCVS estimates that the national average for hate crime victimizations is about 246,900.⁸⁰ There are also simple errors in reporting by local police, meaning that crimes against homosexual victims have been mistakenly labeled as heterosexual by marking the wrong box.⁸¹ Thus, States like Florida publish reports with annual decreasing hate crime numbers, but statistics and evidence suggest an increase in hate crime. This means that even though the FBI numbers show a small increase in hate crimes towards the

⁷⁸ FBI: UCR. "Incidents and Offenses." 2016 Hate Crime Statistics.

⁷⁹ Interesting and frustrating is that reports beyond 2016 do not detail how many agencies reported zero crimes.

⁸⁰ Rep. *Office of Justice Programs Fact Sheet Research, Programs, and Initiatives that Address Hate Crimes*. U.S. Department of Justice, April 07, 2022.

⁸¹ Glickhouse, Rachel, and Rahima Nasa. "Police Are Mislabeled Anti-LGBTQ and Other Crimes as Anti-Heterosexual." ProPublica, May 15, 2018.

LGBTQ+ community, the reality is that these numbers are probably much, much higher.

A final way to measure hate is through hate speech. The Center for Countering Digital Hate and the Human Rights Campaign issued a joint report on Digital Hate in looking at tweets between January and July of 2022, in the months after Florida's "Don't Say Gay" Bill was signed. They found that an increase of 406% in hateful speech and conversations labeling LGBTQ+ members as 'groomers' or 'pedophiles'. People in support of LGBTQ+ rights and therefore against the Florida bill were often met with the response "Ok Groomer" implying that LGBTQ+ rights were wrong and those in support of them were also a danger to our society. The report evidence shows that Negative LGBTQ+ Legislation opens negative conversations and connotations of the LGBTQ+ community and increases space for discrimination, hate and violence.

CHAPTER SIX

HISTORIC CONNECTIONS

When turning to history many successful implementations of this strategy exist for review: Jim Crow America, Apartheid in South Africa, and perhaps the most infamous, the Nazi Regime. The Nazi regime executed over 400 laws and regulations from 1933-1939 which slowly stripped the Jewish people not only of their citizenship, rights, and civil liberties, but left them dehumanized, degraded and destitute.⁸² While many historians argue what happened under the Nazi regime is unique, their use of law to shift what the public found morally unacceptable into acceptable is altogether less unique. Nazi policies achieved what the negative LGBTQ+ bills seek to achieve: the erosion of a robust idea of citizenship that allows for one community to express themselves and their identities fully through the removal of that community from the mainstream, social normative.

The prosocial aspect of law is vital to understanding why the Nazis were successful in wielding law to shape moral attitudes and thought patterns. If an individual perceives that others are engaging in the prescribed (legally sanctioned) behavior, then the individual is more likely to perceive the behavior as an act of cooperation that is expected by other members within the

⁸² Holocaust Memorial Museum. "Anti-Jewish Legislation in Prewar Germany." Holocaust Encyclopedia, 2.

community.⁸³ Nazi laws both encouraged and signaled approval for citizens—not just governmental officials—to engage in discrimination and violence. Many negative LGBTQ+ bills during 2016-2021 seek to give approval to citizens as well—through laws that remove legal liability and encourage policing of spaces (facilities, schools, organizations, etc.). The conversations surrounding these bills, both online and in person, provide support and approval for more citizens to adopt these discriminatory actions as well as the negative perceptions of the LGBTQ+ community that these laws promote.

Like the current wave of negative LGBTQ+ legislation, Nazi laws were working to drive a division between the populations and alter societal perceptions. For example in December 1933, an “Aryan” man filed for an “annulment from his Jewess wife “because ‘racial extraction constituted the decisive personal qualification in an individual.’”⁸⁴ Despite the wife’s objections, the court sided with the husband stating, “It is self-evident that an Aryan would not have contracted marriage with a member of an alien and anti-German race had he been thoroughly conscious of the facts in the situation”.⁸⁵ It cannot be coincidence that just earlier that spring the Reich had segregated and removed Jews from public life, attempting to establish all Jews as alien and anti-German. Nor is it coincidence that this civilian sought the authority of the law to end what

⁸³ Bilz, Kenworthy and Nadler, Janice. “Law, Moral Attitudes, and Behavioral Change,” 252.

⁸⁴ “Nazi Court Annuls A Mixed Marriage: Sustains ‘Aryan’ Husband on the Ground that it Violates the Dogma of Blood Kinship”... Wireless to THE NEW YORK TIMES. New York Times (1923-Current file); Dec 18, 1933; ProQuest Historical Newspapers: The New York Times with Index pg. 15

⁸⁵ Ibid.

he now saw as a deviant marriage. The laws began setting a precedence—not just legally—but socially. This separation is eerily similar to the separation that is taught and encouraged not only in sex education bills but also in bills that would segregate the trans community out of athletic organizations and facilities. The notion that sexual relations between homosexuals is deviant, illegal and should not even be mentioned as well as the labeling of opening spaces to trans individuals as dangerous for the population at large is all too similar to the social separation the Nazi party was advocating to achieve.

In 1935, the Nazi regime announced two new constitutional laws, issued by a special session of the Reichstag on September 15, 1935, which would further intensify the vilification of the Jewish people. “The first, the Reich Citizenship Law, stated that only Germans or those related by blood could be citizens of Germany, thus excluding Jews from citizenship and in so doing further defining Aryans, Jews, and Mischlinge (that is, persons of “mixed race”).”⁸⁶ The Nuremberg laws “affected some 450,000 ‘full Jews’ (defined as those with three or four Jewish grandparents and belonging to the Jewish religion), and 250,000 others (including converted Jews and Mischlinge, those with some Jewish parentage).”⁸⁷ This allowed outsiders, non-Jews, to define what it meant to be Jewish, stripping the Jewish population of power and labeling them as outside the mainstream or wanted society. Additionally, Jewish people were not allowed

⁸⁶ Bartrop, Paul Robert, and Eve E. Grimm. “Primary Source Documents.” Essay. In *Perpetrating the Holocaust: Leaders, Enablers, and Collaborators*. Santa Barbara, CA: ABC-CLIO (2019), 326.

⁸⁷ Holocaust Memorial Museum. “Defining the Enemy.” Holocaust Encyclopedia, 5.

basic rights, like the right to their own names: “Like everyone in Germany, Jews were required to carry identity cards, but the government added special identifying marks to theirs: a red "J" stamped on them and new middle names for all those Jews who did not possess recognizably "Jewish" first names—"Israel" for males, "Sara" for females.”⁸⁸ Defining and naming oneself is a profound element to personhood and citizenship. These very ideas are attacked and limited in negative LGBTQ+ bills as many bills strip the ability or seek to make changing names and gender very difficult on identification documents. While identification document restrictions were a relatively small number, 11, of the total bills filed, these bills seek to deprive LGBTQ+ individuals of the ability to define their own identities. Within the LGBTQ+ community many gender and sexual identities are defiant of singular or fixed definitions, so imposing the definition of “mainstream” American viewpoints upon their self-identification is law denoting one population’s preference and comfort over another—marginalizing the LGBTQ+ community.

This removal of citizenship rights was a clear message to the population that Jews had no rights that needed to be acknowledged, but the Nuremberg laws went further and also outlined harsher segregation. “Jewish patients were no longer admitted to municipal hospitals in Düsseldorf, German court judges could not cite legal commentaries or opinions written by Jewish authors, Jewish officers were expelled from the army, and Jewish university students were not

⁸⁸ Holocaust Memorial Museum. “The Nuremberg Race Laws.” Holocaust Encyclopedia, 2.

allowed to sit for doctoral exams.”⁸⁹ Further delineating the Jews from mainstream society, which helped to change the ethical assessment of their treatment to normal and morally acceptable. In my analysis of religious exemption bills, many services and opportunities are restricted from LGBTQ+ individuals due to the perception that associating with them, serving them, or medically treating them would somehow compromise or tarnish some sect’s beliefs. While seemingly protective, these bills actually work to segregate and encourage second-class treatment of the LGBTQ+ population through legal sanctions.

The laws had their intended consequences; social relations on every level were disturbed, beyond what the laws dictated. Lotte Freiburger, whose family was categorized as “non-privileged” remembers:

“...distinctly how these girls [previously her non-Jewish best friends] suddenly made a point of ignoring her. She was subsequently excluded from high school and started taking occupational classes at the Jewish community, where she not only learned how to sew gloves, but also found new friends who were of similar background.”⁹⁰

Gerhard Baader, labeled Geltungsjuden was still able to attend high school until 1942, but in “his case, this privilege had a distinct disadvantage, because he was known as the only “non-Aryan” at his school and had to endure daily discrimination.”⁹¹ These laws not only

⁸⁹ Holocaust Memorial Museum. “Anti-Jewish Legislation in Prewar Germany,” 4.

⁹⁰ Raggam-Blesch, Michaela. “‘Privileged’ under Nazi-Rule: The Fate of Three Intermarried Families in Vienna,” 386.

⁹¹ *Ibid.*, 387.

forced many Jews to face discrimination, it forced them to endure social isolation as well. Designated “Aryan” zones were established where Jews could not enter. “Jews were barred from all public schools and universities, as well as from cinemas, theaters, and sports facilities.”⁹² The very fact that these were civilians and not government officials advocating for and participating in Jewish discrimination demonstrates the effectiveness of these various laws to sway public opinion and behavior. In the policies I analyze LGBTQ+ people are, too, constructed as deviant and abnormal through policies that seek to separate and remove LGBTQ+ individuals as valued members of US society.

Law afforded the Nazi state an authoritative and legitimate avenue to have the general public adopt and endorse its ideologies, to indisputably agree with the belief that Jews were utterly different from the rest of the German population and later to ensure that the violent tactics taken against the Jewish community were morally justified. The Nazi regime’s success in utterly changing a culture was profound and the current state of US society is not a congruent comparison because the U.S. is still seeing the majority of anti LGBTQ+ bills not passed into official law and a large amount of the American population remain against the idea of negative LGBTQ+ legislation. That said, these bills, like many historical laws before them, strategically aim to indoctrinate the majority population to accept and believe the LGBTQ+ community is fundamentally different and

⁹² Holocaust Memorial Museum. “Anti-Jewish Legislation in Prewar Germany,” 6.

deserving of second-class citizenship. Thus, while the Nazi Regime may not be a congruent comparison, it is a historic warning of the power and patterns of law that fundamentally change social norms.

CHAPTER SEVEN

CONCLUSION

According to Stewart, queer theory and politics celebrates being visibly different from the “norm” and works to establish that these differences are in fact normal. Gender and sexual identities within this context are defiant of singular or fixed definitions. “Queer was (and is) a calling for a working together to overthrow ‘mainstream’ thinking and articulate ‘alternative’ lifestyles.”⁹³ Perhaps the notions within queer theory have worked as push factors for some groups or individuals to feel their identity and way of life is being threatened; perhaps celebrating alternative lifestyles intimidate some. Regardless, when groups do not allow for alternative points of view or the possibility of differences, when groups hold their views as exclusive and rightfully applied—imposed—on all of all society, then that segment of society is radicalizing and learning to accept violence as a possible solution.⁹⁴ The imposition of their views has been ascertained through state legislatures, by filing discriminatory bills aimed at the LGBTQ+ community. Law is productive, assigning legitimacy and authority to values with the goal of teaching mainstream America what is morally acceptable—and these laws clearly state that is not the LGBTQ+ community.

⁹³ Stewart, Jay. “Academic Theory.” Essay. In *GenderQueer and Non-Binary Genders*, 53–72. Critical and Applied Approaches in Sexuality, Gender and Identity. Nottingham, UK: Palgrave Macmillan, (2017), 62.

⁹⁴ Davies, Lynn. “Educating Against Extremism: Towards a Critical Politicisation of Young People.” *International Review of Education* 55, no. 2-3 (2009), 1.

Ironically, the remedy suggested by many is in fact law, positive laws that expand the rights and protections of LGBTQ+ individuals. Hasenbush, Flores and Herman recommend positive laws but also add that incidents of complaints and crimes with expanded facility access decrease.⁹⁵ The United Nations states that discriminatory laws fuel stigma, legitimize prejudice “that foster a climate where hate speech, violence and discrimination are condoned and perpetrated with impunity” and recommends effective anti-discriminatory measures and the decriminalization of consensual same-sex relations and of gender identity and expression.⁹⁶ These conclusions are not that surprising, if law changes morals, beliefs and behaviors than certainly laws can be used to foster goodwill for the LGBTQ+ community. Change needs to be implemented quickly because “so far in 2022 Legislators in state houses across the country [have] introduced 344 anti-LGBTQ+ bills this session, and 25 of them [have] passed.”⁹⁷

⁹⁵ Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. “Gender Identity Nondiscrimination Laws in Public Accommodations,” 77.

⁹⁶ United Nations. “Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.” United Nations Human Rights Council, May 11, 2018, 12.

⁹⁷ Rep. *Digital Hate: Social Media’s Role In Amplifying Dangerous Lies About LGBTQ+ People*. Center for Countering Digital Hate and Human Rights Campaign, August 10, 2022, 6-7.

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