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# Our National Psychosis: Guns, Terror, and Hegemonic Masculinity

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# Our National Psychosis: Guns, Terror, and Hegemonic Masculinity

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Stewart Chang\*

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## INTRODUCTION

The deadliest mass shooting<sup>1</sup> in United States history occurred on October 1, 2017, when Stephen Paddock opened fire on a crowd at an outdoor country music festival in Las Vegas, Nevada. Paddock’s shooting rampage left 59 people dead, 527 injured, and an entire nation searching for reasons and explanations for the tragedy. Whenever a mass shooting occurs, the public wants to know the motivations for such a crime. In the recent past, public discussion following such tragedies has turned to mental health and terrorism. Immediately following the Las Vegas shootings, the Islamic State (“ISIS”) claimed Paddock had been radicalized and acted as their “soldier.”<sup>2</sup> Yet when asked about possible terrorist motivations for the crime, Sheriff Joseph Lombardo of the Las Vegas police quickly told reporters that there was no sign of a connection between Paddock and any terrorist group.<sup>3</sup> In the same interview, however, Lombardo instead suggested a mental health issue by saying “I can’t get into the mind of a psychopath.”<sup>4</sup> In the end, the Federal Bureau of Investigation (“FBI”) found no connection be-

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<sup>1</sup> This article defines “mass shootings” as a mass killing involving a firearm with three or more victims. See Investigative Assistance for Violent Crimes Act of 2012, P.L. 112-265 (defining “mass killings” as crimes involving “3 or more killings in a single incident”).

<sup>2</sup> Jared Malsin, *ISIS Claimed the Las Vegas Shooter as a ‘Soldier.’ Experts Are Skeptical*, TIME (Oct. 2, 2017), <http://time.com/4965449/isis-las-vegas-shooter-stephen-paddock/> [<https://perma.cc/7MBE-MFKD>].

<sup>3</sup> *Id.*

<sup>4</sup> Lynh Bui, Matt Zapotosky, Devlin Barrett & Mark Berman, *At Least 59 Killed in Las Vegas Shooting Rampage, More Than 500 Others Injured*, WASH. POST (Oct. 2, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/10/02/police-shut-down-part-of-las-vegas-strip-due-to-shooting> [<https://perma.cc/AN8J-QQ6Q>].

tween Paddock and any terrorist group,<sup>5</sup> and the issue has not resurfaced. On the other hand, though Paddock also did not have any record of significant mental health issues,<sup>6</sup> there has been a preoccupation by law enforcement with his mental health, to the point that his brain was sent to Stanford University for a neuropathological examination,<sup>7</sup> though it ultimately yielded no answers.<sup>8</sup>

Prior to the Las Vegas shooting, the deadliest mass shooting in United States history was committed by Omar Mateen, who killed 50 and wounded 53 people at Pulse nightclub in Orlando, Florida on June 12, 2016. Public thoughts similarly turned to terrorism and mental health. Mateen claimed to have been acting on behalf of ISIS, and his ex-wife, Sitora Yusufiy, claimed during a press interview that Mateen was “mentally unstable and mentally ill.”<sup>9</sup> There was no evidence that Mateen was diagnosed with any mental illness.<sup>10</sup> Also, the Central Intelligence Agency (“CIA”) debunked Mateen’s claim and found no connection between Mateen and any terrorist group.<sup>11</sup> Unlike Paddock, discourse over his terrorist links has persisted. Law enforcement efforts have continued to tie Mateen to foreign terrorist groups, even posthumously. Recently, Mateen’s wife, Noor Salman, was indicted and tried on two federal charges, including aiding and abetting the attempted provision and provision of material support to a foreign terrorist organization.<sup>12</sup> Prosecutors pursued the case based on her testimony that she had accompanied Mateen when he visited potential target sites and feared that he

<sup>5</sup> Benjamin Wallace-Wells, *The Las Vegas Shooting and the Search for Meaning*, NEW YORKER (Oct. 3, 2017), <https://www.newyorker.com/news/benjamin-wallace-wells/the-las-vegas-shooting-and-the-search-for-meaning> [https://perma.cc/XUW6-YUTT].

<sup>6</sup> Benedict Carrey, *Are Mass Murderers Insane? Usually Not, Researchers Say*, N. Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/08/health/mass-murderers-mental-illness.html>

<sup>7</sup> Joseph Frankel, *Las Vegas Shooting: Will Slicing Open Stephen Paddock’s Brain Explain Why He Gunned Down 59 People?*, NEWSWEEK (Nov. 2, 2017), <http://www.newsweek.com/why-are-researchers-examining-las-vegas-shooters-brain-697809> [https://perma.cc/Z42Q-7RL5].

<sup>8</sup> Sheri Fink, *Las Vegas Gunman’s Brain Exam Only Deepens Mystery of His Actions*, N. Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/us/las-vegas-attack-paddock-brain-autopsy.html>.

<sup>9</sup> Autumn Parry, *Orlando Shooter’s Ex-Wife Says He Was Mentally Ill*, WALL ST. J. (June 13, 2016), <http://www.wsj.com/video/orlando-shooter-ex-wife-says-he-was-mentally-ill/6A6E3D7F-2DFE-4FE3-96F5-F5D918B835A9.html>.

<sup>10</sup> Maryam Hosseini, Christina Girgis & Faiza Khan-Pastula, *Was Shooter’s Ex-Wife Right to Call Him ‘Bipolar’?*, CNN (June 15, 2016), <https://www.cnn.com/2016/06/15/opinions/is-bipolar-misnomer-in-florida-shooting-hosseini-girgis-khan-pastula/index.html> [https://perma.cc/9SF4-Q6CW].

<sup>11</sup> Bernie Woodall & Julia Harte, *CIA Chief: No ‘Direct Link’ Found Between Orlando Shooter and Foreign Terrorist Group*, REUTERS (June 16, 2016), <http://www.businessinsider.com/cia-says-no-link-found-between-orlando-shooter-and-terror-group-2016-6> [https://perma.cc/Y5FN-AELE].

<sup>12</sup> United States v. Noor Zahi Salman, Case No. 6:17-cr-18-Orl-40KRS, indictment at 1 (N.D. Cal.), available at [http://www.cand.uscourts.gov/filelibrary/2938/CR17-70058\\_Indictment.pdf](http://www.cand.uscourts.gov/filelibrary/2938/CR17-70058_Indictment.pdf).

was going to do something bad.<sup>13</sup> The aiding and abetting charge against Salman indicates that Mateen, had he survived, would have been the principal defendant in a federal terrorism case.

Though Mateen's crime was similar to many other mass shootings in recent memory, most of those other perpetrators, if they survive, are not prosecuted as terrorists.<sup>14</sup> When it comes to white perpetrators, there is almost always another explanation other than terrorism. Notably, Dylann Storm Roof, who had almost exactly one year before the Pulse shooting killed nine parishioners at the Emanuel AME Church in Charleston, South Carolina in a racially-motivated mass shooting, was not charged as a terrorist.<sup>15</sup> Rather, he was charged for engaging in an individualized hate crime.<sup>16</sup> Even then, the immediate impulse by the media, legislators, and even his own legal team was to classify his actions as an isolated incident perpetuated by "a deeply disturbed delusionist" who was mentally ill.<sup>17</sup> Indeed, media and legislators often attribute mass murders committed by white men like Paddock and Roof to mental illness,<sup>18</sup> casting such incidents of violence as the exception rather than the norm. People of color are more likely to be labeled terrorists when engaging in similar, and sometimes even less serious, conduct.<sup>19</sup> While Mateen continues to be linked with radical Islam even after his death, Roof is typically characterized as a "lone wolf" representing

<sup>13</sup> Eric Levenson and Daniel Shepherd, *Pulse Shooter's Wife To FBI: 'I Wish I Had Been More Truthful'*, CNN, (Mr. 19, 2018), <https://www.cnn.com/2018/03/19/us/noor-salman-trial/index.html>. See also Erin Marie-Daly, Richard Pérez-Peña & Adam Goldman, *Wife of Orlando Gunman Is Charged Under Antiterrorism Laws*, N.Y. TIMES (Jan. 17, 2017), <https://www.nytimes.com/2017/01/17/us/wife-of-orlando-gunman-faces-antiterrorism-charge.html>.

<sup>14</sup> See e.g. Moustafa Bayoumi, *What's a 'Lone Wolf'? It's the Special Name We Give White Terrorists*, GUARDIAN, (Oct. 4, 2017), <https://www.theguardian.com/commentisfree/2017/oct/04/lone-wolf-white-terrorist-las-vegas>.

<sup>15</sup> Dustin Waters & Kevin Sullivan, *Dylann Roof Guilty on 33 Counts of Federal Hate Crimes for Charleston Church Shooting*, WASH. POST (Dec. 15, 2016), [https://www.washingtonpost.com/national/dylann-roof-guilty-on-33-counts-of-federal-hate-crimes-for-charleston-church-shooting/2016/12/15/0bfad9e4-c2ea-11e6-9578-0054287507db\\_story.html](https://www.washingtonpost.com/national/dylann-roof-guilty-on-33-counts-of-federal-hate-crimes-for-charleston-church-shooting/2016/12/15/0bfad9e4-c2ea-11e6-9578-0054287507db_story.html) [https://perma.cc/6P59-486P].

<sup>16</sup> *Id.*

<sup>17</sup> Alan Blinder & Kevin Sack, *Dylann Roof Is Sentenced to Death in Charleston Church Massacre*, N.Y. TIMES (Jan. 10, 2017), <https://www.nytimes.com/2017/01/10/us/dylann-roof-trial-charleston.html>.

<sup>18</sup> Michael H. Stone, *Mass Murder, Mental Illness, and Men*, 2 *Violence and Gender* 51, 51 (2015); see also Anthea Butler, *Shooters of Color Are Called 'Terrorists' and 'Thugs.' Why Are White Shooters Called 'Mentally Ill'?*, WASH. POST: EVERYTHING (June 18, 2015), <http://www.washingtonpost.com/posteverything/wp/2015/06/18/call-the-charleston-church-shooting-what-it-is-terrorism/> [https://perma.cc/6KT6-9KV3].

<sup>19</sup> See, e.g., *People v. Lewis*, 39 N.Y.S.3d 733 (N.Y. Co. Ct. 2016) (involving an African American woman who was charged under a New York State terrorism statute for using the analogy "if you cared about this community . . . you would not try to put me in a position that Dylann Roof felt that he was in . . . I may find a white church and set up in there for service and kill a bunch of white people" during her dispute with the Housing Authority.).

only himself and his personal viewpoints rather than an entire culture,<sup>20</sup>—despite the fact that both were raised in the United States.<sup>21</sup>

Whenever a mass shooting receives national attention, public discourse immediately turns to terrorism and mental health. Yet the overwhelming focus on these two explanations appears to ignore several significant facts. The vast majority of mass shootings in the United States are committed by men, regardless of national, ethnic, or religious background.<sup>22</sup> Furthermore, mass public shootings like those committed by Paddock and Mateen make up the minority of mass shootings.<sup>23</sup> A study conducted by the Congressional Research Service found that the majority of mass shootings committed between 1999 and 2013 were either familicides or other felony mass shootings attributable to underlying circumstances, such as criminal activity.<sup>24</sup> Familicide mass shootings “occurred twice as frequently as mass public shootings,”<sup>25</sup> yet mass public shootings receive by far the most public attention and become catalysts for discussions about gun control, mental health, and terrorism. That familicide, the most extreme form of domestic violence, represents the largest category of mass shootings suggests that another power is at work beyond terrorism and mental health.

This Article investigates a potential cause for mass public shootings that often remains overlooked: hegemonic masculinity. Hegemonic masculinity can be broadly defined as patterns or practices that promote the dominant social position of men and the subordinate social position of women and other gender identities.<sup>26</sup> By policing culturally constructed, racialized norms of gender and sexuality, hegemonic masculinity not only affirms a hierarchy of men over women, but also asserts the dominance of white mas-

<sup>20</sup> See Jeannine Bell, *There Are No Racists Here: The Rise of Racial Extremism, When No One Is Racist*, 20 MICH. J. RACE & L. 349, 376 (2015).

<sup>21</sup> Justin Ray, *Florida Gay Nightclub Gunman Was Born in New York: Law Enforcement Sources*, NBC N.Y. (June 12, 2016), <https://www.nbcnewyork.com/news/local/New-York-Born-Omar-Mateen-Orlando-Gay-Nightclub-Shooting-382611851.html> [https://perma.cc/VD2R-HBRN].

<sup>22</sup> See, e.g., Mark Follman, Gavin Aronsen & Deanna Pan, *US Mass Shootings, 1982–2017: Data From Mother Jones’ Investigation*, MOTHER JONES (Nov. 15, 2017), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> [https://perma.cc/Y8YZ-YRYC].

<sup>23</sup> See WILLIAM J. KROUSE & DANIEL J. RICHARDSON, CONG. RESEARCH SERV., R44126, MASS MURDER WITH FIREARMS: INCIDENTS AND VICTIMS, 1999–2013 2 (2015) (“Of those mass murders with firearms [between 1999 and 2013], 4.4 per year on average were mass public shootings that occurred in one or more public locations, such as a workplace, school, restaurant, house of worship, neighborhood, or other public setting.”).

<sup>24</sup> *Id.* (finding that between 1999 and 2013 “the United States has seen about 8.5 familicide mass shootings per year on average, in which offenders typically murdered their domestic partners and children in private residences or secluded, sparsely populated settings, and 8.3 other felony mass shootings per year on average, in which offenders committed murders as part of some other underlying criminal activity (robbery, insurance fraud, or criminal competition) or commonplace circumstance (argument).”).

<sup>25</sup> *Id.* at 14; see also *id.* at 2

<sup>26</sup> R.W. CONNELL, MASCULINITIES 77 (1995).

culinity, particularly over marginalized forms of masculinity embodied by racial and sexual minorities.<sup>27</sup>

This Article proposes that mass shootings driven by hegemonic masculinity should be classified and addressed as acts of terrorism. Under federal law, violent acts are prosecuted as terrorism when the underlying crime was committed in furtherance of an ideology for the purposes of “coercing or intimidating a population.”<sup>28</sup> Typically ideologies stemming from foreign organizations and sources, such as radical Islam, are seen as the drivers of terrorism, while ideologies historically perpetuated by Americans, such as racism, misogyny, or homophobia, are not. This Article proposes, however, that hegemonic masculinity is a multi-national ideology chiefly intended to terrorize and control women and other marginalized groups. As with other forms of violence, perpetrators of mass shootings often further the ideology of hegemonic masculinity by using gun violence to subordinate women and members of other historically marginalized communities. Therefore, mass shootings motivated by hegemonic masculinity constitute acts of terrorism committed for the purposes of violently policing gender and sexuality. Classifying such shootings as individualized hate crimes or the senseless acts of those with mental illness allows the underlying ideology of hegemonic masculinity to become mainstream and flourish unchecked.

This Article examines three recent mass shootings—Orlando, Charleston, and Isla Vista—to argue that such shootings further hegemonic masculinity through fear and terror. These three incidents were chosen because they additionally illustrate the ways in which racism is often an integral aspect of hegemonic masculinity. Indeed, the combination of racism and patriarchy is one common pattern that binds not only these three shooters, but many other mass shooters in the recent past.<sup>29</sup> Hegemonic masculinity has evolved to justify and legitimate acts of terror as a means of subordination against minority groups in addition to women. Mass media and government responses to Orlando, Charleston, and Isla Vista illustrate how mass shootings and our responses to them reinforce racism and hegemonic masculinity.

Part I critiques how the prosecution of Charleston shooter Dylann Roof, one of few mass shooters who was actually captured alive, demonstrates the flaws in existing terrorism laws as they are currently applied. While Roof’s

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<sup>27</sup> See R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 832–44 (2005).

<sup>28</sup> U.S. Sentencing Guidelines Manual § 3A1.4 (1995); 18 U.S.C. § 2331(5)(B)(i) (2012).

<sup>29</sup> See Andres Oppenheimer, *Mass Shooting Coincides with a Rise in Racism, Homophobia and Anti-Semitism*, MIAMI HERALD (Feb. 23, 2018), <http://www.miamiherald.com/news/local/news-columns-blogs/andres-oppenheimer/article201803929.html> [<https://perma.cc/ZDC5-52TR>]; Sally Kohn, *To Stop Mass Shootings, Fix Culture of Hate*, CNN (Feb. 20, 2018), <https://www.cnn.com/2018/02/20/opinions/hate-parkland-shooting-opinion-kohn/index.html> [<https://perma.cc/HKN2-8449>]; EVERYTOWN FOR GUN SAFETY, GUNS AND VIOLENCE AGAINST WOMEN: AMERICA’S UNIQUELY LETHAL DOMESTIC VIOLENCE PROBLEM (2015), available at <https://everytownresearch.org/documents/2015/04/guns-and-violence-against-women.pdf> [<https://perma.cc/YR6Q-ANZY>].

animus was deemed individualized and exceptional, the prosecution ignored the relevance of broader, structural ideologies animating Roof's act: white supremacy and hegemonic masculinity. Roof sought to restore white supremacist hierarchies by terrorizing the black community through violence. The specific justification that Roof claimed comes from a patriarchal tradition that ostensibly seeks to "protect" women, but in reality demonstrates the propensity of white mainstream masculinity to control and dominate the sexuality of white women. This enforced hierarchy vaunts white masculinity by not only portraying women as weak and in need of protection from white masculinity, but also by disciplining the perceived hypermasculinity of the black male into subordination.

By analyzing the Isla Vista shooting committed by Elliot Rodger, Part II further considers how treating mass shootings as isolated incidents rather than as a part of a larger mainstream ideology leads to misdirected policies that draw attention away from the more fundamental problems of structural racism tied to patriarchy. Rodger's highly publicized mental health issues spurred narrow reforms in gun laws insofar as they related to mental health. However, like Roof, Rodger was also policing the sexuality of white women, specifically by punishing white women for refusing to have sex with him. Rodger's actions, as detailed in his 137-page manifesto which he entitled "My Twisted World," were motivated by his belief that white masculinity, as juxtaposed against not only black masculinity but also effeminized Asian masculinity, created an entitlement to sexual access to white women. By ignoring the ways Rodger evinced mainstream views of structural patriarchy, responses to the Isla Vista shooting failed to address the motivating role of hegemonic masculinity in American gun violence.

Part III revisits the classification of Orlando shooter Omar Mateen as a terrorist and assesses his motivations as roughly identical to the Isla Vista and Charleston shooters: he engaged in the sexual policing of a non-conforming, queer community of color. All three shootings share the common thread of sexual policing that affirms hegemonic male superiority by using violence to marginalize women and other masculinities deemed a threat. However, labeling Mateen as the only terrorist of the three and the others as individuals suffering from mental pathologies externalizes the responsibility for gun violence and promotes an inaccurate American exceptionalist narrative of the United States as a society that has overcome the ills of racism and sexism.

The Charleston, Isla Vista, and Orlando shootings are rooted in an ongoing tradition of terrorism against historically marginalized communities. Yet when we focus the blame—and thus, the responsive policy proposals—on factors perceived as external to American culture, such as mental illness and foreign religion, the existing structure of law preserves and propagates hegemonic masculinity. Labeling shooters with histories of misogynistic violence as aberrations to the norm creates the illusion that violence against women is not as pervasive a threat as it really is. Furthermore, the

impetus to call Mateen a terrorist who was influenced by a foreign ideology not only marginalizes foreign individuals but also masks the likely motivation for his actions: to target members of a gay community of color for their sexual and racial identities rather than their national identity.<sup>30</sup> Immediate media attention attributed Mateen's violence to an ideology that is branded as a foreign, rather than as one of many homophobic and racist hate crimes perpetrated by Americans on other Americans. Mateen's perceived foreignness represents an alternative form of masculinity that is repudiated as un-American. Yet his behavior actually illustrates his absolute assimilation to hegemonic masculine ideals that pervade American culture—ideals implicit in our responses to Roof, Rodger, and many other mass shooters in the modern era. Classifying these types of mass shootings as acts of terrorism that are motivated by and further the broader ideology of hegemonic masculinity would draw greater attention to a significant underlying root of these crimes, and could help our country reframe its response around subverting subordination as a more effective way of preventing mass shootings.

## I. CHARLESTON

On the evening of Wednesday, June 17, 2015, 21-year-old Dylann Roof entered the Emanuel African Methodist Episcopal (“AME”) Church in downtown Charleston, South Carolina, the oldest AME Church in the South.<sup>31</sup> Roof was welcomed in by the pastor, Clementa C. Pinckney, and joined the other congregants in a Bible study for approximately an hour before standing up, drawing his gun, and opening fire.<sup>32</sup> Roof uttered racial epithets as he shot the victims, killing nine people and leaving another wounded before fleeing the scene.<sup>33</sup> He was apprehended the next morning.<sup>34</sup> Roof's actions, by his own admission, were racially motivated.<sup>35</sup> Following

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<sup>30</sup> Harriet Ryan, Del Quentin Wilber & Jenny Jarvie, *Orlando Nightclub Gunman Remembered as Abusive, Homophobic and Racist*, L.A. TIMES (June 12, 2016), <http://www.latimes.com/nation/la-na-orlando-nightclub-shooter-20160612-snap-story.html> [https://perma.cc/XFD8-7N4N].

<sup>31</sup> Nick Corasaniti, Richard Pérez-Peña & Lizette Alvarez, *Church Massacre Suspect Held as Charleston Grieves*, N.Y. TIMES (June 18, 2015), <http://www.nytimes.com/2015/06/19/us/charleston-church-shooting.html>.

<sup>32</sup> Erik Ortiz & F. Brinley Bruton, *Charleston Church Shooting: Suspect Dylann Roof Captured in North Carolina* (June 18, 2015), NBC NEWS, <http://www.nbcnews.com/storyline/charleston-church-shooting/charleston-church-shooting-suspect-dylann-roof-captured-north-carolina-n377546> [https://perma.cc/XWS9-KY6W].

<sup>33</sup> Dan Kedmey, *Church Shooter Made Racial Comment Before Fleeing, Document Says*, TIME (June 19, 2015), <http://time.com/3929008/dylann-roof-charleston-church-shooting/> [https://perma.cc/KXU5-4XGT].

<sup>34</sup> Robert Costa, Lindsey Bever, J. Freedom du Lac & Sari Horwitz, *Church Shooting Suspect Dylann Roof Captured Amid Hate Crime Investigation*, WASH. POST (June 18, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/06/17/white-gunman-sought-in-shooting-at-historic-charleston-african-ame-church/> [https://perma.cc/QHB9-RG4L].

<sup>35</sup> Polly Mosendz, *Dylann Roof Confesses: Says He Wanted to Start ‘Race War.’* NEWSWEEK (June 19, 2015), <http://www.newsweek.com/dylann-roof-confesses-church-shooting-says-he-wanted-start-race-war-344797> [https://perma.cc/7PKR-BD6M].



his arrest, Roof confessed and confirmed his racist motivations, stating that he intended to start a “race war.”<sup>36</sup> Shortly into their investigation, authorities uncovered a website registered to Roof’s name containing a manifesto where Roof complains about African Americans and calls for white supremacist action as well as photographs depicting Roof proudly holding the Confederate battle flag.<sup>37</sup>

In the aftermath of the Charleston shootings, some debate ensued as to whether the shootings should be classified as a hate crime or an act of terrorism.<sup>38</sup> At first blush, Roof’s actions appear to fit within the federal definition of “terrorism,” which includes actions that “appear to be intended to intimidate or coerce a civilian population.”<sup>39</sup> On July 22, 2015, Roof was indicted by a federal grand jury on 33 federal criminal charges, including 9 firearms charges, 12 hate crime charges, and 12 charges for obstructing exercise of religion.<sup>40</sup> On December 15, 2016, Roof was convicted in federal court of all 33 counts, and on January 10, 2017 he was sentenced to death for his crimes.<sup>41</sup> However, he was never charged with the specific crime of terrorism.<sup>42</sup> When questioned as to why Roof was not charged with terrorism, Attorney General Loretta Lynch responded, “as you know, there is no specific domestic terrorism statute. However, hate crimes, as I have stated before, are the original domestic terrorism.”<sup>43</sup> Lynch was technically correct—there is not a specific crime for terrorism, but rather a terrorism enhancement that accompanies other criminal charges.<sup>44</sup> The enhancement applies when “the offense is a felony that involved, or was intended to promote, a federal crime of terrorism.”<sup>45</sup>

<sup>36</sup> *Id.*

<sup>37</sup> Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, N.Y. TIMES (June 20, 2015), <http://www.nytimes.com/2015/06/21/us/dylann-storm-roof-photos-website-charleston-church-shooting.html>.

<sup>38</sup> Rick Gladstone, *Many Ask, Why Not Call Church Shooting Terrorism?*, N.Y. TIMES (June 18, 2015), <http://www.nytimes.com/2015/06/19/us/charleston-shooting-terrorism-or-hate-crime.html>; see also Philip Bump, *Why We Shouldn't Call Dylann Roof a Terrorist*, WASH. POST: THE FIX (June 19, 2015), <http://www.washingtonpost.com/blogs/the-fix/wp/2015/06/19/why-we-shouldnt-call-dylann-roof-a-terrorist/> [<https://perma.cc/FN4L-DYZH>]; Gabrielle Canon, *Should the Charleston Attack Be Called Terrorism?*, MOTHER JONES (June 19, 2015), <http://www.motherjones.com/politics/2015/06/charleston-shooting-terrorism-american-extremism> [<https://perma.cc/CZ3D-UCQT>].

<sup>39</sup> 18 U.S.C. § 2331(5)(B)(i) (2012).

<sup>40</sup> United States v. Dylann Storm Roof, No. 2:15-cr-00472, 2015 WL 4461565, indictment at 4–9 (D.S.C. Jul. 22, 2015), available at <https://www.courtlistener.com/recap/gov.uscourts.scd.221947.2.0.pdf> [<https://perma.cc/MJ5S-VZNU>].

<sup>41</sup> Rebecca Hersher, *Dylann Roof Sentenced to Death*, NPR (Jan. 10, 2017), <https://www.npr.org/sections/thetwo-way/2017/01/10/509166866/jury-sentences-dylann-roof-to-die>.

<sup>42</sup> See Jenna McLaughlin, *Charging Crimes as “Terrorism,”* 6 U. MIAMI NAT’L SEC. & ARMED CONFLICT L. REV. 101, 102 (2016).

<sup>43</sup> Attorney General Loretta Lynch News Conference, C-SPAN (July 22, 2015), <https://www.c-span.org/video/?327281-1/attorney-general-loretta-lynch-news-conference> [<https://perma.cc/YDR7-DM8S>].

<sup>44</sup> See Wadie E. Said, *Sentencing Terrorist Crimes*, 75 OHIO ST. L.J. 477, 499–516 (2014).

<sup>45</sup> U.S. Sentencing Guidelines Manual § 3A1.4 (1995).

Lynch did not explain why the enhancement was not applied to Roof's sentence. As Jenna McLaughlin has commented, Roof's actions may not fit the technical aspects of the terrorism enhancement,<sup>46</sup> especially after its significant amendments following the USA Patriot Act of 2001. The Patriot Act amended and expanded the definition of terrorism to include both "international terrorism" and "domestic terrorism" and defined both as crimes that intended to intimidate or coerce a civilian population, to influence the policy of the government, or to affect the conduct of the government by mass destruction, assassination, or kidnapping. Yet in order to qualify for the terrorism sentence enhancement, a perpetrator must have used a specific instrument enumerated in the enhancement statute.<sup>47</sup> As Faiza Patel explains, "federal law specifies a wide array of crimes as terrorism-related offenses, regardless of intent, including hijacking an airplane, assassinating a government official, detonating certain kinds of explosives or chemical weapons, or bombing a government facility."<sup>48</sup> Thus, Dzhokhar Tsarnaev and Tamerlan Tsarnaev, who perpetrated the Boston marathon bombing, could be charged as terrorists because they utilized bombs that are considered "weapons of mass destruction," devices included on the list of instruments that qualify for the terrorism enhancement. This list, however, does not include guns.<sup>49</sup> Much of the reason for excluding guns from the list is fear of over-inclusion, since it would make an overwhelming number of crimes eligible for the terrorism enhancement.<sup>50</sup>

In addition to utilizing one of the instruments listed in the statute, qualifying crimes for the terrorism enhancement must involve the furtherance of a larger ideology and cannot be an act of individualized hate.<sup>51</sup> Terrorism, rather than another category of criminal activity such as hate crime, involves the specificity in the reason for the act—whether a broader ideology, rather than narrower personal malice, motivated the perpetrator to commit the crime.<sup>52</sup> Even when the instruments of the crime fit the definitions of terrorism, racist motivations are often reclassified as acts of individual animus. For example, Kevin Harpham, who attempted to use a shrapnel bomb at the 2011 Martin Luther King Day parade in Spokane, Washington, was originally described by law enforcement as a terrorist: the FBI initially classified Harpham's crime among "several recent domestic terrorism incidents."<sup>53</sup> However, Harpham was eventually convicted only of a hate crime, and law

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<sup>46</sup> McLaughlin, *supra* note 42, at 104.

<sup>47</sup> U.S. Sentencing Guidelines Manual § 3A1.4 (1995).

<sup>48</sup> Faiza Patel and Adrienne Tierney, *The Reasons Why Dylann Roof Wasn't Charged With Terrorism*, JUST. SEC. BLOG (July 30, 2015), <https://www.justsecurity.org/25071/reason-dylann-roof-charged-terrorism/> [<https://perma.cc/C3PN-LMDP>].

<sup>49</sup> McLaughlin, *supra* note 42, at 105.

<sup>50</sup> *Id.*

<sup>51</sup> JEROME P. BJELOPERA, CONG. RESEARCH SERV., R42536, THE DOMESTIC TERRORIST THREAT: BACKGROUND AND ISSUES FOR CONGRESS 6 (2013).

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 7.

enforcement officials dropped the terrorism language. Because prosecuting a hate crime focuses on individual animus, it allows the greater ideology that drives the individual crime to remain largely unchecked. As Jerome Bjelopera from the Congressional Research Service explains, “Thereafter, the Bureau described the case as the successful prevention of a ‘horrific hate crime.’”<sup>54</sup> More recently, in the case of James Alex Fields Jr., a self-proclaimed neo-Nazi who used his car to plow into a group of counter-protesters at a white nationalist rally in Charlottesville, Virginia, Attorney General Jeff Sessions originally declared that the act “does meet the definition of domestic terrorism in our statute.”<sup>55</sup> However, Fields was actually charged with one count of murder and eight counts of aggravated malicious wounding<sup>56</sup>—and the terrorism enhancement was not applied.

These inconsistencies suggest terrorism has become racially coded. Whereas individuals who are coded as foreign like Mateen and the Tsarnaev brothers are regarded as terrorists driven by foreign ideologies—despite the fact that they are United States citizens raised largely in the United States—individuals like Roof, Harpham, and Fields are not considered terrorists. In this respect, Mateen and the Tsarnaevs are viewed as perpetually foreign regardless of their domestic ties to the United States,<sup>57</sup> and their extreme religious ideology merely confirms that designation. Islamic extremism is mistaken for the cultural norm of mainstream Islam, whereas white supremacy is seen as an extreme distortion of white cultural identity. Accordingly, the ideological motivation of Mateen and the Tsarnaevs—linked to Islam—is regarded as foreign and monolithic, while that of Roof, Harpham, and Fields—linked to white supremacy—is not. This is a distortion of the reality. Though the ideology of white supremacy is not just a domestic issue, we fail to acknowledge it. As Morris Dees and Richard Cohen of the Southern Poverty Law Center note, even though the websites that Roof cited as influencing him represent “signs of the growing globalization of white nationalism,” they also observe “when we think of the Islamist terrorism of groups like Al Qaeda and the Islamic State, we recognize their international dimension. When it comes to far-right domestic terrorism, we don’t.”<sup>58</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> Greg Myre, *Why the Government Can't Bring Terrorism Charges in Charlottesville*, NPR (Aug. 14, 2017), <https://www.npr.org/2017/08/14/543462676/why-the-govt-cant-bring-terrorism-charges-in-charlottesville>.

<sup>56</sup> Paul Duggan, *Charge Upgraded to First-Degree Murder for Driver Accused of Ramming Charlottesville Crowd*, WASH. POST (Dec. 14, 2017), [https://www.washingtonpost.com/local/crime/driver-accused-of-plowing-into-charlottesville-crowd-killing-heather-heyer-due-in-court/2017/12/13/6cbb4ce8-e029-11e7-89e8-edec16379010\\_story.html](https://www.washingtonpost.com/local/crime/driver-accused-of-plowing-into-charlottesville-crowd-killing-heather-heyer-due-in-court/2017/12/13/6cbb4ce8-e029-11e7-89e8-edec16379010_story.html) [https://perma.cc/6T52-7JH2].

<sup>57</sup> See FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 79–129 (2002) (describing the “perpetual foreigner syndrome” as it pertains to Asian Americans).

<sup>58</sup> Morris Dees & J. Richard Cohen, *White Supremacists Without Borders*, N.Y. TIMES: OPINION (June 22, 2015), <https://www.nytimes.com/2015/06/22/opinion/white-supremacists-without-borders.html>.

In his four-page manifesto, Roof describes how his views were shaped by external ideological sources.<sup>59</sup> Like Mateen, Roof had consulted websites of extremist groups.<sup>60</sup> In his manifesto, Roof describes how visiting the website for the white supremacy organization Council of Conservative Citizens following the George Zimmerman trial was revelatory for him: “There were pages upon pages of these brutal black on White murders. I was in disbelief. At this moment I realized that something was very wrong.”<sup>61</sup> Roof goes on to reveal how the global white supremacy movement inspired him further, noting that “from this point I researched deeper and found out what was happening in Europe. I saw that the same things were happening in England and France, and in all the other Western European countries.”<sup>62</sup> Roof adopted symbols of an international white supremacy movement—pictures on his website show with him wearing a jacket bearing the flags of apartheid-era South Africa and Rhodesia, both white supremacist governmental regimes whose flags have become emblems of the greater global white supremacy cause.<sup>63</sup> Like Mateen, Roof was motivated by and acting in accord with a greater, global ideological movement, and like Mateen, Roof had no formal connection to any of these groups.<sup>64</sup> Yet Mateen was viewed as being part of a foreign movement, while Roof was not. Roof was labeled merely as an individual racist, rather than a person acting in concert with a larger entity or culture. Mateen was tied to terrorism while Roof was perceived as a lone wolf. By labeling individuals like Roof as fringe extremists, mainstream Americans are allowed to forget that we are barely half a century removed from formal structural racism premised on the same white supremacy that Roof espouses.<sup>65</sup>

Although ultimately classified as an individualized hate crime, when Roof’s actions are analyzed within the history of racism in the South, there is little doubt that he intended to commit an act of terrorism for the advancement of a larger, structural ideology of white supremacy. Because a hate crime concerns individual animus rather than collective ideological attitudes, redress is limited to the prosecution of the individual. But focusing on Roof

<sup>59</sup> Dylann Roof, *Untitled*, *republished at Dylann Roof’s Manifesto*, N.Y. TIMES (Dec. 13, 2016), <https://www.nytimes.com/interactive/2016/12/13/universal/document-Dylann-Roof-manifesto.html>.

<sup>60</sup> *Id.* at 1.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Nick Baumann, *Dylann Roof Had a Rhodesian Flag on His Jacket—Here’s What That Tells Us*, HUFFINGTON POST (Jun. 18, 2015), [https://www.huffingtonpost.com/2015/06/18/dylann-roof-rhodesian-flag\\_n\\_7616752.html](https://www.huffingtonpost.com/2015/06/18/dylann-roof-rhodesian-flag_n_7616752.html) [<https://perma.cc/FSD8-T7GD>].

<sup>64</sup> Josh Sanburn, *Inside the White Supremacist Group that Influenced Charleston Shooting Suspect*, TIME (June 22, 2015), <http://time.com/3930993/dylann-roof-council-of-conservative-citizens-charleston/> [<https://perma.cc/3C3T-EP59>] (“Taylor says that CCC [Council of Conservative Citizens] members had never heard of Roof and that he never attended a meeting. The group has condemned the shooting, but they stand behind Roof’s ideology”).

<sup>65</sup> See Nancy A. Heitzeg, *On the Occasion of the 50th Anniversary of the Civil Rights Act of 1964: Persistent White Supremacy, Relentless Anti-Blackness, and the Limits of the Law*, 36 HAMLINE J. PUB. L. & POL’Y 54, 55 (2015).

as an individual ignores the fact that white supremacists have historically and collectively attacked black churches to terrorize and oppress the African American community. Perhaps most famously, the Sixteenth Street Baptist Church bombing during the height of the Civil Rights Movement was intended to deter African Americans from the fight for civil rights.<sup>66</sup> Roof's actions are merely a reflection of a historically dominant ideology, still held by many in the United States,<sup>67</sup> yet made invisible when he is dismissed as mentally ill and his crime is seen as an aberration to the norm.

Specifically, Roof's crime illustrates the intersection of white supremacy with patriarchy and misogyny that played an integral part in the history of structural racism in the United States. When one of the congregants, Tywanza Sanders, tried to intervene in the shooting, Roof said, "I have to do it. You rape our women and you're taking over our country and you have to go."<sup>68</sup> Furthermore, in his manifesto Roof closes his section on African Americans with the statement, "I have noticed a great disdain for race mixing White women within the White nationalists community, bordering on insanity it [*sic*]. These women are victims, and they can be saved. Stop."<sup>69</sup> Roof sees himself as the protector of white racial purity through the restriction of sexual access to white women. His viewpoint aligns with anti-miscegenation statutes specifically instituted to promote white supremacy and dispensed with only 50 years ago.<sup>70</sup> In an era where institutionalized prohibitions on interracial sexual relationships no longer exist, Roof resorts to vigilantism to preserve what he believes to be the correct moral structures of the past that he believes should have never been done away with.

Roof's paternalistic justification for his crime thus fits within a long tradition of citing the protection of white female sexuality as a justification for violence against minority communities. Violence and terror were deployed by white supremacists against the black community not only to prevent sexual access to white women in order to protect genetic purity, but

<sup>66</sup> S. Willoughby Anderson, *The Past on Trial: Birmingham, the Bombing and Restorative Justice*, 96 CAL. L. REV. 471, 478–79 (2008) ("The Sixteenth Street Baptist Church bombing capped a year of escalating white resistance to desegregation").

<sup>67</sup> See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987)

<sup>68</sup> ; Raf Sanchez & Peter Foster, 'You Rape Our Women and Are Taking Over Our Country,' *Charleston Church Gunman Told Black Victims*, TELEGRAPH (June 18, 2015), <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11684957/You-rape-our-women-and-are-taking-over-our-country-Charleston-church-gunman-told-black-victims.html>; see also Corasaniti et al., *supra* note 31.

<sup>69</sup> Roof, *supra* note 59, at 3–4.

<sup>70</sup> See, e.g., *Loving v. Virginia*, 388 U.S. 1, 4 (1967); see also Julie Novkov, *The Miscegenation/Same-Sex Marriage Analogy: What Can We Learn from Legal History?*, 33 L. & Soc. INQUIRY 345, 357–58 (2008); Essie Mae Washington-Williams & William Stadiem, *The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance*, 84 TEX. L. REV. 739, 755–56. See generally ESSIE MAE WASHINGTON-WILLIAMS & WILLIAM STADIEM, *DEAR SENATOR: A MEMOIR BY THE DAUGHTER OF STROM THURMOND* (2005).

also to maintain the social hierarchy.<sup>71</sup> As Amii Larkin Barnard explains, white supremacists feared that social and political equality for African Americans would “lead inevitably to intermarriage and biracial generations of offspring” and “the demise of America and the white race.”<sup>72</sup> Roof’s violent vigilantism recalls the history of mob lynchings in the South during the late nineteenth and early twentieth centuries, performed in the name of protecting white women from alleged rape by black men.<sup>73</sup> Between 1882 and 1946, approximately 3,500 black men were lynched under the suspicion of raping white women.<sup>74</sup> Records demonstrate that official prosecutions for rape also disproportionately affected black men, particularly when the victims were white women.<sup>75</sup>

Barbara Holden-Smith describes how “[t]he execution of black men for allegedly raping white women is a defining characteristic of the history of race relations in the South. In the years between the Civil War and the early 1930s, these executions often took the form of extra-legal lynchings in which black men were burned, shot, or hung by mobs of whites. Lynching served primarily as a means to control black people in a white supremacist culture.”<sup>76</sup> Though, as Holden-Smith’s research shows, the number of black men raping white women was never significant, the apprehension over interracial rape exemplified white anxieties regarding threats to the existing racial hierarchy, and “Southern apologists for lynching argued that the mob acted in order to protect the virtue of white Southern womanhood from black men who were incapable of controlling their desire for white women.”<sup>77</sup> As Susan Brownmiller similarly recounts, “In the slaveholding South, revolt and rape by dehumanized black hordes was the classic white male nightmare.”<sup>78</sup> The myth of interracial rape developed into apologist rhetoric for white violence against black bodies to morally justify white supremacy.<sup>79</sup>

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<sup>71</sup> See Reginald Oh, *Regulating White Desire*, 2007 WIS. L. REV. 463, 473 (2007) (“Thus, during Jim Crow, because whites justified their superior position in the racial hierarchy solely on their whiteness, they strictly enforced endogamy. Whiteness has both physical and social components, and endogamy helped to preserve both aspects by operating as the ‘genetic mechanism’ for preserving the biological identity of its members, and as the ‘institutional mechanism’ for regulating membership and inculcating white racial consciousness.”)

<sup>72</sup> Amii Larkin Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women’s Fight Against Race and Gender Ideology, 1829–1920*, 3 UCLA WOMEN’S L.J. 1, 8 (1993).

<sup>73</sup> Henry E. Barber, *The Association of Southern Women for the Prevention of Lynching, 1930–1942*, 34 PHYLON 378, 378 (1973) (“The most commonly used excuse to justify this extra-legal punishment in the South was ‘in defense of southern white women.’”).

<sup>74</sup> See Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN’S L.J. 103, 107 (1983).

<sup>75</sup> See I. Bennett Capers, *The Unintentional Rapist*, 87 WASH. U. L. REV. 1345, 1358–61 (2010).

<sup>76</sup> Barbara Holden-Smith, *Inherently Unequal Justice: Interracial Rape and the Death Penalty*, 86 J. CRIM. L. & CRIMINOLOGY 1571, 1571 (1996).

<sup>77</sup> *Id.*

<sup>78</sup> SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 217 (1975).

<sup>79</sup> Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J. OF L. & FEMINISM 31, 48 (1996).

In this way, white women became a significant weapon in the cause of white supremacy; Brownmiller supplies a fitting analogy of comparing the protection of white women to a whip, which became “as critical a touchstone of white masculinity as the system of slaveholding itself.”<sup>80</sup>

Sexual access to white women was a hallowed boundary that people of color were not to transgress. Vigilante violence reinforced the understanding that only white men held rights to sexual access over white women.<sup>81</sup> Thus, Roof sought to preserve old societal rules for sexual stratification, where “[t]he sexual assault of a white by a black threatens both the white man’s ‘property rights’ and his dominant social position. This dual threat accounts for the strength of the taboo attached to interracial sexual assault.”<sup>82</sup> The spectacle of lynching and other murders of black men by whites was specifically intended to terrorize black society, and sought to reaffirm white supremacy through the control of women.<sup>83</sup> This fear of transgressive black sexuality, Kimberlé Crenshaw observes, became a moral justification for whites to disenfranchise and terrorize the black community.<sup>84</sup> Roof’s justification links his actions to the same tradition of vigilante justice based on sexualized stereotypes of black men as rapists.<sup>85</sup> His actions, according to him, were intended to remind the black community of the proper racial and sexual hierarchy through violence and terror. As such, his actions fit squarely within the definition of terrorism, where his crimes are intended to intimidate and coerce a civilian population.

White anxiety over interracial rape involves the policing not only of the black subject, but also of white women. As Brownmiller observes, “from slavery onward the black man’s fortune was inextricably and historically linked to the white woman’s reputation for chastity, a terrifying imbroglio that the black man and the white woman neither created nor controlled.”<sup>86</sup> Rather, this duality was constructed entirely by white men to keep white men at the top of the racial and sexual hierarchy. Roof’s insistence on restricting the access of minority men to white women recollects another massacre that happened over a year prior, the Isla Vista shootings. Though his views were rooted in racist misogyny, Roof did not blame white women for interracial relationships, and so he directed his violence against the black community as the perceived perpetrators. The Isla Vista shooter, on the other hand, directed his anger and violence specifically against women in interracial relationships, which he found offensive.

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<sup>80</sup> BROWNMILLER, *supra* note 78, at 217.

<sup>81</sup> Barnard, *supra* note 72, at 2.

<sup>82</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1276 n. 118 (1991).

<sup>83</sup> See DORA APEL, *IMAGERY OF LYNCHING: BLACK MEN, WHITE WOMEN, AND THE MOB* 44–45 (Rutgers University Press, 2004).

<sup>84</sup> Crenshaw, *supra* note 82, at 1272.

<sup>85</sup> Barnard, *supra* note 72, at 9.

<sup>86</sup> BROWNMILLER, *supra* note 78, at 221.

## II. ISLA VISTA

On May 23, 2014, 22-year-old Elliot Rodger went on a premeditated attack in Isla Vista, California, an area next to University of California, Santa Barbara. Rodger began his massacre in his Isla Vista apartment, where he stabbed his two roommates and their friend to death. He then drove to the Alpha Phi sorority house with the intention of killing the residents there.<sup>87</sup> Rodger knocked on the door for several minutes, but no one answered.<sup>88</sup> Rodger got back into his car and immediately committed a drive-by shooting of three women who were walking near the entrance of the sorority, killing two and wounding the other.<sup>89</sup> He then continued driving in the area, committing additional drive-by shootings and intentionally striking several people with his car, killing one additional victim.<sup>90</sup> During his rampage, Rodger engaged in two gunfights with law enforcement and was wounded in the leg before ultimately committing suicide by a gunshot wound to the head. Rodger's attack left six people dead and fourteen wounded.<sup>91</sup> Prior to engaging in his shooting spree, Rodger uploaded a video entitled "Retribution" onto YouTube and sent an email to friends and loved ones containing a 137-page autobiographical manifesto entitled "My Twisted World: The Story of Elliot Rodger."<sup>92</sup> In his videos and manifesto, Rodger laments his inability to find a girlfriend or lose his virginity, and promises retribution.<sup>93</sup> His attack has been attributed largely to his psychological issues.<sup>94</sup>

In response to the Isla Vista shootings, public policy changes focused on gun control and mental health.<sup>95</sup> Whenever there is a mass shooting, especially when the perpetrator is perceived to be white,<sup>96</sup> attention from the media and government officials tends to focus on the relationship between

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<sup>87</sup> Elliot Rodger, *My Twisted World: The Story of Elliot Rodger* 73, <https://assets.documentcloud.org/documents/1173808/elliott-rodger-manifesto.pdf>.

<sup>88</sup> SANTA BARBARA COUNTY SHERIFF'S OFFICE, ISLA VISTA MASS MURDER: MAY 23, 2014, INVESTIGATIVE SUMMARY, 8–9 (2015) [hereinafter INVESTIGATIVE SUMMARY].

<sup>89</sup> *Id.* at 10.

<sup>90</sup> *Id.* at 2.

<sup>91</sup> *Id.* at 1–2.

<sup>92</sup> *Id.* at 1.

<sup>93</sup> Rodger, *supra* note 87, at 101.

<sup>94</sup> INVESTIGATIVE SUMMARY, *supra* note 88, at Introduction ("What is unusual in this case is the extent of the written and video-taped record of thoughts, feelings and intentions left by a suspect who, in retrospect, clearly suffered from significant mental illness that ultimately resulted in homicidal and suicidal rage. It is our hope that a thorough review of these materials by mental health professionals and the F.B.I.'s Behavioral Research and Instruction Unit (BRIU), in essence the conducting of a psychological autopsy, will result in findings that will assist in the development of new and improved intervention techniques and practices related to the cause, identification and treatment of such pathologies.")

<sup>95</sup> *Id.* ("In California, we have some of the strongest gun control laws in the nation, yet in this case the suspect was still able to legally purchase and possess three handguns and hundreds of rounds of ammunition. Many suspects in mass murder incidents suffer from severe mental illness that is untreated or under-treated, yet in this instance the suspect was receiving treatment and had been since childhood.")

<sup>96</sup> Rodger was biracial Chinese/English. INVESTIGATIVE SUMMARY, *supra* note 87, at 48.



gun control and mental illness.<sup>97</sup> Again, the first impulse by the media and political figures following the Charleston shootings was to label Roof as disturbed and delusional.<sup>98</sup> There was a similar obsession with Stephen Paddock's mental health history following the Las Vegas shooting. Immediately after the Sutherland Springs church shooting, President Donald Trump stated that the matter was a mental health issue rather than a gun control problem,<sup>99</sup> thus creating a narrow false dichotomy of possible motivations and solutions for the crime. In the Rodger case, the California legislature quickly reacted and passed a bill that created new gun violence restraining orders,<sup>100</sup> and implemented protocols pertaining to law enforcement "welfare checks" on individuals believed to pose a danger to themselves or others.<sup>101</sup> Rodger had in fact displayed many warning signs of violent tendencies along with mental health issues. He was diagnosed and under treatment for Pervasive Development Disorder and autism, and taking medication on and off for several years.<sup>102</sup> The Investigative Summary of the Santa Barbara County Sheriff's Office into the Isla Vista Shooting references his antisocial behavior,<sup>103</sup> as well as his extreme jealousy and anger issues.<sup>104</sup> In the months leading up to the shooting, Rodger began posting videos on YouTube containing angry commentary on how he felt his life was unfair because of his inability to find acceptance and to find a girlfriend.<sup>105</sup>

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<sup>97</sup> Tom Weihl, *The Presumption of Dangerousness: How New York's SAFE Act Reflects Our Irrational Fear of Mental Illness*, 38 SETON HALL LEGIS. J. 35, 42 (2014) ("An aggregation of horrific mass shootings in the United States has ignited intense debate about gun violence and its association with mental illness, and has accordingly inspired proposals for new gun control legislation."); see also Chris Ferguson, *Misogyny Didn't Turn Elliot Rodger Into a Murderer*, TIME, May 25, 2014, <http://time.com/114354/elliott-rodger-ucsb-misogyny/> [<https://perma.cc/XXE2-54CV>] (suggesting a causal link between mental illness and mass shootings).

<sup>98</sup> Blinder and Sack, *supra* note 17.

<sup>99</sup> Ashley Parker, *Trump Says Texas Shooting Is a Problem of Mental Health, Not Guns*, WASH. POST (Nov. 6, 2017), [https://www.washingtonpost.com/news/post-politics/wp/2017/11/06/trump-says-texas-shooting-is-a-problem-of-mental-health-not-guns/?utm\\_term=.04d6ded444ec](https://www.washingtonpost.com/news/post-politics/wp/2017/11/06/trump-says-texas-shooting-is-a-problem-of-mental-health-not-guns/?utm_term=.04d6ded444ec) [<https://perma.cc/CB9Q-BAPS>].

<sup>100</sup> AB 1014, 2013–2014 1st Ex. Sess., ch. 872 (Cal. 2014), available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1014](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1014) [<https://perma.cc/GY54-52YU>]; see also Patrick McGreevy, *Senate Panel Approves Bills Responding to Isla Vista Massacre*, L.A. TIMES (June 24, 2014), <http://www.latimes.com/local/political/la-me-pc-senate-panel-approves-bill-responding-to-isla-vista-massacre-20140624-story.html> [<https://perma.cc/2WKK-9ZQY>].

<sup>101</sup> SB 505, 2013–2014 1st Ex. Sess., ch. 918 (Cal. 2014), [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB505](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB505) [<https://perma.cc/KC69-23UT>].

<sup>102</sup> INVESTIGATIVE SUMMARY, *supra* note 87, at 52–53.

<sup>103</sup> *Id.* at 52 ("A resounding concern regarding the suspect was his inability to establish and maintain new friendships. He preferred to stay at home and not go to places with his family.").

<sup>104</sup> *Id.* at 53 ("Because of the suspect's continued anger toward couples and inability to socially integrate with his peers, it was recommended he enter a residential treatment facility with daily therapy, group therapy and social skills development.").

<sup>105</sup> Kashmir Hill, *Elliot Rodger's Videos Were Removed from YouTube, But Only Temporarily*, FORBES (May 27, 2014), <https://www.forbes.com/sites/kashmirhill/2014/05/27/youtube-finally-takes-down-all-of-elliott-rodgers-videos/#31966d58779a> [<https://perma.cc/7VFJ-F635>].

However, despite the warning signs, California laws as they existed at the time limited the amount of intervention that could have prevented the tragedy. Although just a few weeks prior to the incident Rodger's mother had called law enforcement to conduct a "welfare check" on her son after watching his YouTube videos, the police were unable to establish grounds to issue an involuntary mental health hold or conduct a search of the residence.<sup>106</sup> As the investigative summary details, "[t]here was nothing during the contact with the suspect that gave deputies reason to believe he was a danger to himself or others. Such risk factors are required in order to place someone on an involuntary mental health hold, or to legally search their residence," as provided in California Welfare & Institutions Code §5150(a).<sup>107</sup> In his manifesto, Rodger admits about the incident, "[i]f they had demanded to search my room. . . That would have ended everything. For a few horrible seconds I thought it was all over."<sup>108</sup>

The California legislature attempted to close this perceived legal gap with Assembly Bill 1014, which allows law enforcement or immediate family members to obtain a Gun Violence Restraining Order against persons whom they believe to be at risk for violence in order to prevent the person from owning, possessing, purchasing, or receiving firearms or ammunition for 21 days,<sup>109</sup> or longer if the court deems it appropriate.<sup>110</sup> In conjunction

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<sup>106</sup> INVESTIGATIVE SUMMARY, *supra* note 87, at 35.

<sup>107</sup> Cal. Welfare & Inst. Code §5150(a).

When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

*Id.*

<sup>108</sup> Rodger, *supra* note 87, at 134.

<sup>109</sup> The court may issue a Temporary Emergency Gun Violence Restraining Order when it finds reasonable cause that "(1) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm" and "(2) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition." AB 1014, 2013–2014 1st Ex. Sess., ch. 872 (Cal. 2014). In order to obtain an order, a law enforcement officer or an immediate family member must submit evidence that the person has exhibited risk factors such as recent threats or acts of violence, reckless use or display of firearms, and history of use, attempted use, or threat of force against others. *Id.*

with Assembly Bill 505, the California Senate enacted Senate Bill 505 which mandates law enforcement agencies to implement “welfare check” protocols to determine whether a person may be a danger to himself or herself or to others, and to conduct a search of the Department of Justice Automated Firearms System via the California Law Enforcement Telecommunications System to determine whether the person is the registered owner of a firearm.<sup>111</sup> The Senate Bill was intended to provide local law enforcement with a broader array of preventative tools. Legislators believed that having such procedures in place would likely have allowed police to detect Rodger’s possession of firearms and issue a Gun Violence Restraining Order against him.<sup>112</sup> The problem, however, with these preventative restraining orders is that they may look to the wrong warning signs.

Much attention has focused on Rodger’s mental health issues, and they were indeed significant. Yet comparatively little has been said about aspects of his background that are at least as relevant. For instance, a history of violence is a more accurate indicator than mental illness for propensity to commit gun violence.<sup>113</sup> Rodger exhibited violent behavior that was not necessarily related to his mental health issues. As James Jacobs and Zoe Fuhr argue, gun legislation that targets the mentally ill merely further stigmatizes mental illness by linking it with violence, even though statistics demonstrate that people with mental illness are not more dangerous than the general population.<sup>114</sup> Indeed, the American Psychiatric Association conducted a study that found only 4 to 5 percent of all violent acts committed throughout the United States are committed by individuals with documented mental illnesses.<sup>115</sup> The National Institute of Mental Health estimates that 18.3% of

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<sup>110</sup> The court may also issue an Ex Parte Gun Violence Restraining Order for 21 days, by the end of which the court will conduct a hearing and issue a longer-lasting permanent restraining order if it finds by clear and convincing evidence that “(1) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition” and “(2) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable.” AB 1014, 2013–2014 1st Ex. Sess., ch. 872 (Cal. 2014). The restraining order may last up to one year and is renewable.

<sup>111</sup> Cal. Pen. Code 11106.4.

<sup>112</sup> Times Editorial Board, *A Reasonable Gun Measure Prompted by Isla Vista Rampage*, L.A. TIMES (Sept. 2, 2014), [www.latimes.com/opinion/editorials/la-ed-0903-guns-20140903-story.html](http://www.latimes.com/opinion/editorials/la-ed-0903-guns-20140903-story.html) [<https://perma.cc/Z7LF-FEWR>].

<sup>113</sup> James B. Jacobs & Zoe Fuhr, *Preventing Dangerous Mentally Ill Individuals from Obtaining and Retaining Guns: New York’s SAFE Act*, 14 GEO. J. L. & PUB. POL’Y 77, 90–91 (2016).

<sup>114</sup> *Id.*

<sup>115</sup> AM. PSYCHIATRIC ASS’N, ACCESS TO FIREARMS BY PEOPLE WITH MENTAL ILLNESS 1 (2009).

adults in the United States are diagnosed with some sort of mental illness,<sup>116</sup> with 4.2% diagnosed with severe mental illness.<sup>117</sup> Jacobs and Fuhr go on to cite a number of other characteristics more correlated with violent crime than mental illness, including drug and alcohol abusers, gang members, perpetrators of domestic violence, and those convicted of violent misdemeanors or felonies before the age of 18.<sup>118</sup> Even studies that do show a correlation between mental illness and violence find that substance abuse and a history of violence are more significant indicators.<sup>119</sup>

An important characteristic that ties many mass shooters together is a history of not just violence, but specifically domestic violence. Mateen, for example, had a history of domestic violence with his first wife.<sup>120</sup> Rape Crisis Counselor and Victim Advocate Jessica Klein notes, “Mateen would not be the first DV perpetrator to move onto stranger killings. Ismaaiyl Brinsley, who executed two police officers in Brooklyn in December 2014, shot his ex-girlfriend earlier that same day. Cedric Ford, who shot 17 people (killing three) in Kansas in February, was served an order of protection the day of the shootings by his ex-girlfriend. Virginia Tech shooter Seung-Hui Cho had been accused of stalking two women on campus prior to his deadly shooting spree in 2007”<sup>121</sup> Also, Charles Whitman, the perpetrator of the first mass campus murder in the United States on the grounds of the University of Texas at Austin, was reported to be abusive to his wife and murdered her and his mother shortly before his rampage.<sup>122</sup> More recently, Devin Patrick Kelley, the perpetrator in the church shooting in Sutherland Springs, Texas, had

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<sup>116</sup> NATIONAL INSTITUTE OF MENTAL HEALTH, ANY MENTAL ILLNESS (AMI) AMONG U.S. ADULTS, available at <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml> [https://perma.cc/Y4JE-853L].

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Alyssa Dale O’Donnell, *Monsters, Myths, and Mental Illness: A Two-Step Approach to Reducing Gun Violence in the United States*, 25 S. CAL. INTERDISC. L.J. 475, 485 (2016) (“Analysis showed that, while rates of violence were higher for individuals with severe mental illness, they were significantly higher if substance abuse or dependence was also present.”); see also Eric B. Elbogen & Sally C. Johnson, *The Intricate Link Between Violence and Mental Disorder: Results from the National Epidemiologic Survey on Alcohol and Related Conditions*, 66 ARCHIVES GEN. PSYCHIATRY 152, 152–53 (2009).

<sup>120</sup> Margaret Talbot, *Terror Begins at Home*, NEW YORKER (June 16, 2016), <http://www.newyorker.com/news/daily-comment/terror-begins-at-home> [https://perma.cc/HC5V-RB7P].

<sup>121</sup> Jessica Klein, *The Link between “Intimate Terrorism” and Mass Terrorism*, 22 NAT’L BULLETIN ON DOMESTIC VIOLENCE PREVENTION 1, 3 (2016).

<sup>122</sup> Jo Scott-Coe, *Listening to Kathy*, CATAPULT (Mar. 30, 2016), <https://catapult.co/stories/listening-to-kathy#> [https://perma.cc/HQ9J-6MX9] (“FBI records reveal that Charlie likely abused Kathy—at least twice, according to admissions he made to a psychiatrist about “assaulting” her. But though she openly feared his temper, Kathy never reported physical violence to anyone, and no one in her family had witnessed it”).

a record of domestic violence and sexual assault.<sup>123</sup> Las Vegas shooter Stephen Paddock was reportedly verbally abusive to his girlfriend.<sup>124</sup>

Barbara Hart asserts that “[m]ost ‘mass murderers’ (persons killing four or more persons in a single episode, typically in a single location) engaged in family or intimate partner violence/abuse prior to the ‘mass killing.’”<sup>125</sup> Indeed, a recent study of mass shootings perpetrated in the United States between 2003 and 2016 indicates that 54% of the cases were related to domestic or family violence.<sup>126</sup> In 42% of these cases, the perpetrators exhibited warning signs such as threats of violence toward oneself or others, violations of protective orders, or evidence of ongoing substance abuse.<sup>127</sup> The statistics indicate that domestic violence not only represents a significant share of mass killings involving firearms but also figures as a possible common indicator between mass shooters. Yet very little public attention has been paid to the issue.

More than the correlation between mental illness and gun violence, there exist significant correlations between gun possession, misogyny, and gun violence. Jacquelyn Campbell’s study of risk factors for homicide in intimate partner relationships finds a significant spike in likelihood of intimate partner femicide when the perpetrators own guns, which leads her to conclude “that abusers who possess guns tend to inflict the most severe abuse.”<sup>128</sup> Legislators of the new gun control measures in California following the Isla Vista shootings were aware of this correlation.<sup>129</sup> Although its public focus was on the mentally ill, Assembly Bill 1014 also references an

<sup>123</sup> Emanuella Grinberg & Elliott C. McLaughlin, *Texas Church Shooter Devin Patrick Kelley’s Troubled Past Emerges*, CNN (Nov. 8, 2017), <http://www.cnn.com/2017/11/06/us/devin-kelley-texas-church-shooting-suspect/index.html> [https://perma.cc/US7T-ZPJ3].

<sup>124</sup> Melissa Jeltsen, *Las Vegas Shooter Was Known to Verbally Abuse His Girlfriend in Public*, HUFFINGTON POST (Oct. 3, 2017), [https://www.huffingtonpost.com/entry/stephen-paddock-abuse-girlfriend\\_us\\_59d40429e4b0218923e60bcc](https://www.huffingtonpost.com/entry/stephen-paddock-abuse-girlfriend_us_59d40429e4b0218923e60bcc) [https://perma.cc/58N3-HYMA]; Louis Sahagun, *At His Local Starbucks, Las Vegas Shooter Remembered for Berating His Girlfriend*, L.A. TIMES (Oct. 3, 2017), <http://www.latimes.com/nation/la-las-vegas-shooting-live-updates-at-his-local-starbucks-vegas-shooter-1507060195-htmistory.html> [https://perma.cc/ZKL5-6X9E].

<sup>125</sup> Barbara Hart, *DV and the Law*, 23.11 NAT’L BULL. ON DOMESTIC VIOLENCE PREVENTION NL 3 (2017).

<sup>126</sup> EVERYTOWN, GUNS AND VIOLENCE AGAINST WOMEN: AMERICA’S UNIQUELY LETHAL DOMESTIC VIOLENCE PROBLEM 4 (2017), <https://everytownresearch.org/documents/2015/04/guns-and-violence-against-women.pdf>.

<sup>127</sup> *Id.* at 5.

<sup>128</sup> Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003) (finding an “8-fold increase in intimate partner femicide risk associated with abusers’ access to firearms attenuated to a 5-fold increase when characteristics of the abuse were considered, including previous threats with a weapon on the part of the abuser.”).

<sup>129</sup> “This bill would incorporate additional changes in Section 18250 of the Penal Code, proposed by SB 1154, to be operative only if SB 1154 and this bill are chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.” AB 1057, LEGISLATIVE COUNSEL’S DIGEST, at 3.

earlier Senate Bill 1154, which further amended existing domestic violence law to include additional firearms considerations and safeguards.<sup>130</sup>

Following the Isla Vista shootings, however, no public policy changes were made to address structural misogyny and racism, though they are often intertwined. The labeling of Roof and Rodger as isolated exceptions to the norm only perpetuates the structural problems of racism and misogyny beneath. The United States is barely a half-century removed from legalized racism and segregation in Jim Crow. The recognition of the right of women to be free from violence and discrimination is an even newer phenomenon.<sup>131</sup> Though some would like to think the United States has advanced beyond racism and sexism, old structural attitudes persist, often unconsciously.<sup>132</sup> Incidents such as Charleston and Isla Vista would be stark reminders of these continuing attitudes, but they are dismissed as aberrations by exclusively labeling the perpetrators as mentally ill.<sup>133</sup> The preoccupation with a mental illness justification for Las Vegas shooter Stephen Paddock's actions similarly overlooks his misogynistic tendencies as a potentially significant contributing factor in not only his case, but also countless other mass shootings.<sup>134</sup> Though Rodger's violence was attributed to his mental illness, he was motivated by his views on women that were informed by societal norms. Rodger's anger stemmed at least in part from his sense of entitlement regarding women, and the belief that he was wronged because of his inability to access them sexually.<sup>135</sup>

<sup>130</sup> *Id.*

<sup>131</sup> Thomas L. Hafemeister, *If All You Have Is A Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 928 (2011) ("Spousal abuse was rarely discussed during the twentieth century until a second feminist wave revived the issue in the 1970s. Until this revival, society generally continued to embrace traditional notions of familial privacy, which resulted in what has been characterized as the 'Age of Denial' regarding I[intimate] P[artner] V[iolence].").

<sup>132</sup> See, e.g., Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006) (suggesting that racism is unconscious, pervasive, and may not align with our explicit stated beliefs due to historical conditioning); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) (analogizing how implicit bias in the media pervades our subconscious like a Trojan Horse virus).

<sup>133</sup> INVESTIGATIVE SUMMARY, *supra* note 88, Introduction (summarizing the goal of the Investigative Summary: "It is our hope that a thorough review of these materials by mental health professionals and the F.B.I.'s Behavioral Research and Instruction Unit (BRIU), in essence the conducting of a psychological autopsy, will result in findings that will assist in the development of new and improved intervention techniques and practices related to the cause, identification and treatment of such pathologies.").

<sup>134</sup> See, e.g., Sady Doyle, *If You Don't Think Stephen Paddock "Fits the Mass Shooter Profile," You Haven't Been Paying Attention*, ELLE (Oct. 3, 2017), <http://www.elle.com/culture/career-politics/a12772832/stephen-paddock-las-vegas-mass-shooter-profile/> [<https://perma.cc/ANV3-8SDL>].

<sup>135</sup> See, e.g., Rodger, *supra* note 87, at 84 ("Females truly have something mentally wrong with them. Their minds are flawed, and at this point in my life I was beginning to see it. The more I explored my college town of Isla Vista, the more ridiculousness I witnessed. All of the hot, beautiful girls walked around with obnoxious, tough jock-type men who partied all the time and acted crazy. They should be going for intelligent gentlemen such as myself. Women are sexually attracted to the wrong type of man. This is a major flaw in the very foundation of humanity. It is completely and utterly wrong, in every sense of the word. As these truths fully

Attributing Rodger's crime to his mental illness suggests he lacked agency, but Rodger's actions were carefully premeditated and deliberate. According to James Alan Fox and Jack Levin, "a majority of mass killers have clear-cut motives—especially revenge—and their victims are chosen because of what they have done or what they represent."<sup>136</sup> Rodger, like Roof, premeditated his crime and specifically targeted his victims as an act of retribution. Fox and Levin note that "the more specific and focused the element of revenge, the more likely that the outburst is planned and methodical rather than spontaneous and random"<sup>137</sup> Although Rodger may have struggled with mental health issues, his violence was less of a random outburst of violence than a carefully calculated act of retaliation against groups whom he believed had wronged him—women who had rejected him and the men whom they were attracted to.<sup>138</sup>

Some journalists did link the Isla Vista massacre to misogyny.<sup>139</sup> Yet they did not note that Rodger exhibited a particular type of misogyny linked to racism and white racial privilege. Rodger's misogynist worldview contained white supremacy blended with his own conflicted feelings about being a mixed-race child.<sup>140</sup> Though not well-publicized, Rodger also seems to have been influenced by the white supremacy movement. Law enforcement discovered that Rodger had searched the Internet extensively about Nazis, Adolf Hitler, and Heinrich Himmler, as well as the terms "Holocaust of black people."<sup>141</sup> Although law enforcement saw fit to flag that Rodger had conducted these searches on the Internet, they did not note any link between Rodger's interest in Nazism and white supremacy with his actions. Nor did

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dawned on me, I became deeply disturbed by them. Deeply disturbed, offended, and traumatized.").

<sup>136</sup> James Alan Fox & Jack Levin, *Multiple Homicide: Patterns of Serial and Mass Murder*, 23 CRIME & JUSTICE 407, 437–38 (1998).

<sup>137</sup> *Id.* at 438.

<sup>138</sup> Rodger, *supra* note 87, at 101 ("I named it the Day of Retribution. It would be a day in which I exact my ultimate retribution and revenge on all of the hedonistic scum who enjoyed lives of pleasure that they don't deserve. I will destroy all women because I can never have them. I will make them all suffer for rejecting me. I will arm myself with deadly weapons and wage a war against all women and the men they are attracted to.").

<sup>139</sup> Soraya Nadia McDonald, *In Covering Elliot Rodger, Writers Aren't Shy About Blaming Misogyny and the Groups That Perpetuate It*, WASH. POST (May 27, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/05/27/in-covering-elliott-rodger-writers-arent-shy-about-blaming-misogyny-entitlement-and-the-groups-who-perpetuate-it/> [https://perma.cc/G4X5-CFR5]; see also Caitlin Dewey, *Inside the 'Manosphere' that Inspired Santa Barbara Shooter Elliot Rodger*, WASH. POST, May 27, 2014, <http://www.washingtonpost.com/news/the-intersect/wp/2014/05/27/inside-the-manosphere-that-inspired-santa-barbara-shooter-elliott-rodger/> [https://perma.cc/86BZ-4SPU].

<sup>140</sup> Rodger, *supra* note 87, at 17 ("On top of this was the feeling that I was different because I am of mixed race. I am half White, half Asian, and this made me different from the normal fully-white kids that I was trying to fit in with."). See also John M. Kang, *Deconstructing the Ideology of White Aesthetics*, 2 MICH. J. RACE & L. 283, 301 (1997).

<sup>141</sup> INVESTIGATIVE SUMMARY, *supra* note 88, at 40–41.

they seek to frame his actions within a broader ideology rather than categorize it as a completely individualistic action.<sup>142</sup>

More attention has focused on Rodger's individual mental health issues and how he was not normal, particularly due to his anti-socialism and extreme shyness. On the one hand, he thought of himself as a superior being, a "magnificent gentleman" worthy of women's attention.<sup>143</sup> Yet on the other, he was paralyzed by the certainty that he was inadequate and not sexually desirable.<sup>144</sup> What is overlooked is the racial component to this inner conflict. Rodger was mixed race.<sup>145</sup> His father, Peter Rodger, is Caucasian, and his mother, Chin Rodger, is ethnically Chinese Malaysian.<sup>146</sup> In his manifesto he discusses his early insecurity in "the feeling that I was different because I am of mixed race. I am half White, half Asian, and this made me different from the normal fully-white kids that I was trying to fit in with."<sup>147</sup> Even at age nine, he goes so far as to attempt to alter his appearance to be more white; he writes, "[m]y first act was to ask my parents to allow me to bleach my hair blonde. I always envied and admired blonde-haired people, they always seemed so much more beautiful."<sup>148</sup> He equates looking white to physical beauty, not only in his desire to self-project his appearance, but also his attraction to women, as he repeatedly notes how he is only attracted to white women, particularly blondes.<sup>149</sup>

Rodger's most explicit expression of racial hatred for Asians surfaces as he reflects on his own half-Asian identity. In his manifesto he discusses an episode where he "came across this Asian guy who was talking to a white girl. The sight of that filled me with rage. I always felt as if white girls thought less of me because I was half-Asian."<sup>150</sup> Rodger is shocked and envious when he sees a white woman with an Asian man. As he continues, "but then I see this white girl at the party talking to a full-blooded Asian. I never had that kind of attention from a white girl! And white girls are the only girls I'm attracted to, especially the blondes."<sup>151</sup> Yet he immediately redirects his attention away from his Asian identity to emphasize the superiority of the white side of his identity. He continues, "How could an ugly Asian attract the attention of a white girl, while a beautiful Eurasian like myself never had any attention from them? I thought with rage."<sup>152</sup> He classifies Asian as ugly and white as beautiful. John M. Kang identifies the rhet-

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<sup>142</sup> *Id.* at 63 ("The evidence indicates that the suspect acted alone in the planning and execution of these heinous crimes.").

<sup>143</sup> Rodger, *supra* note 87, at 90.

<sup>144</sup> *Id.* at 133.

<sup>145</sup> INVESTIGATIVE SUMMARY, *supra* note 88, at 48.

<sup>146</sup> *Id.*; Rodger, *supra* note 87, at 1.

<sup>147</sup> Rodger, *supra* note 87, at 17.

<sup>148</sup> *Id.* at 17.

<sup>149</sup> *Id.* at 121.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*



oric of beauty and ugliness as the historical precursor to structural racism in the United States, where “conceptions of racial beauty would come to justify an ideology of White supremacy intended to physically exclude people of color and legally disenfranchise those already present.”<sup>153</sup>

Rodger’s encounter with the Asian man with a white woman at a party culminates in a physical confrontation, as Rodger continues to relate how “I glared at them for a bit, and then decided I had been insulted enough. I angrily walked toward them and bumped the Asian guy aside, trying to act cocky and arrogant to both the boy and the girl.”<sup>154</sup> His immediate response to a perceived slight on his own masculinity is to exhibit behaviors of hegemonic masculinity—he attempts to be physically and verbally aggressive. Afterwards, Rodger discloses that “[r]age fumed inside me as I realized that I just walked away from that confrontation, so I rushed back into the house and spitefully insulted the Asian before walking outside again.”<sup>155</sup> Rodger sees himself in competition with the Asian man, with disgust yet also a simultaneous sense of envy. In this respect, he views himself in rivalry with Asian men for the affections of white women, even though he is himself part Asian. As Bergner writes in her analysis of Franz Fanon concerning the tendency of men of color to police each other in respect to access to white women: “heterosexual interracial desire becomes an act of both identification with and resistance to the white man. Manifestly interracial heterosexual desire here masks interracial homosocial fear and desire.”<sup>156</sup> Fanon elaborates that white men articulate a fear of racial difference through concern about the influence of minority men over white women’s bodies.<sup>157</sup>

Masculinity has always been historically tied to whiteness, and this was enshrined in law. Lisa Lowe writes that “[w]hereas the ‘masculinity’ of the citizen was first inseparable from his ‘whiteness,’ as the state extended citizenship to nonwhite male persons, it formally designated these subjects as ‘male,’ as well.”<sup>158</sup> Through restrictive immigration policies like the Page Act that excluded Chinese women from entering, and anti-miscegenation statutes that prevented intermarriage with women in the United States, Asian American men were legally shut out of normative heterosexual relationships defined by the idealized, white, nuclear family from the mid-nineteenth to the mid-twentieth century.<sup>159</sup> These regulations, moreover, were ostensibly put in place to protect white families from pollution and corruption from

<sup>153</sup> Kang, *supra* note 140, at 300–01.

<sup>154</sup> Rodger, *supra* note 87, at 121.

<sup>155</sup> *Id.*

<sup>156</sup> Gwen Bergner, *Who Is That Masked Woman? Or, the Role of Gender in Fanon’s Black Skin, White Masks*, 110 PMLA 75, 80 (1994).

<sup>157</sup> *Id.*

<sup>158</sup> LISA LOWE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 11 (1996).

<sup>159</sup> See Stewart Chang, *Is Gay the New Asian?: Marriage Equality and the Dawn of A New Model Minority*, 23 ASIAN AM. L.J. 5, 14 (2016).

foreign and thus deviant sexual bodies.<sup>160</sup> The restrictions resulted in a bachelor society for the male Chinese laborers that largely made up the early Asian American community, resulting in their further marginalization from mainstream masculinity. As Nayan Shah observes, “Chinese bachelor sexuality is represented as deviant because the presumed sexual relations of these men living in San Francisco were considered nonproductive and nonconjugal.”<sup>161</sup> David Eng further proposes “the particular historical configuration of the bachelor society insists that we extend our theoretical study of the intersectionality of race and gender for Asian American male subjects into the domain of homosexuality.”<sup>162</sup>

Rodger internalized this societal sense of Asian sexual inadequacy. Throughout his life, Rodger believed his masculinity was constantly challenged. At an early age, Rodger recounts how he was called a “faggot” for being awkward with women.<sup>163</sup> This is repeated during his confrontation with the Asian man and white woman at the party, where he relates how “[t]he people in this house must have been friends with the ones I previously fought with, for they greeted me with vicious hostility. They called me names like ‘faggot’ and ‘pussy,’ typical things those types of scumbags would say.”<sup>164</sup> Interpreting Judith Butler’s thesis that “compulsory heterosexuality works in the service of maintaining hegemonic forms of racial purity,” Eng suggests that Asian American men must manage their masculinities in light of the “threat of homosexuality” constantly applied to them.<sup>165</sup> Rodger resorts to violence, first in his attack on the couple at the party and later in his mass attack on Isla Vista, in order to reaffirm his masculinity and to overcome perceptions of femininity and homosexuality.

Elsewhere in his manifesto, Rodger is particularly incensed by the thought of blonde white women being sexually accessible to people of color. Rodger relates his white supremacist views most explicitly when speaking of a black classmate who reveals that he slept with a white woman during adolescence. In his tirade, Rodger again emphasizes his belief that people of color were physically ugly, inferior, and therefore unfit for the attention of white women.<sup>166</sup> Again, he sees himself as entitled to white women because of white racial superiority. He writes, “How could an inferior, ugly black

<sup>160</sup> See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 648 (2005) (discussing how the “regulation of sexuality, morality, and marriage was a pervasive regulatory force in the development of immigration law”).

<sup>161</sup> NAYAN SHAH, *CONTAGIOUS DIVIDES* 78 (2001).

<sup>162</sup> DAVID ENG, *RACIAL CASTRATION* 17–18 (2001).

<sup>163</sup> Rodger, *supra* note 87, at 46.

<sup>164</sup> *Id.* at 122.

<sup>165</sup> ENG, *supra* note 162, at 13–14 (“If Asian American male subjectivity is psychically and materially constrained by a crossing of racial difference with homosexuality—what [Richard] Fung describes as the conflation of “Asian” with “anus”—then its relation to these dominant social norms and prohibitions takes on a distinctive critical cast and an urgent critical dissonance.”).

<sup>166</sup> Rodger, *supra* note 87, at 84.

boy be able to get a white girl and not me? I am beautiful, and I am half white myself. I am descended from British aristocracy. He is descended from slaves. I deserve it more.”<sup>167</sup> Rodger again evokes the ideology of white supremacy to justify his sense of sexual entitlement.

Rodger attempts to recover his lost masculinity as a man of mixed heritage, by attempting to claim whiteness through possession of the white woman. As Fanon suggests, the archetypal vehicle for claiming white masculinity by the racial subject is the possession of the white woman: “who better than the white woman to bring this about? By loving me, she proves to me that I am worthy of white love. I am loved like a white man.”<sup>168</sup> When unable to find a white girlfriend, Rodger reacts with violence to his sense of deep emasculation. Through the vehicle of physical violence, first directed at the interracial couple he sees at the party and then in his mass shooting rampage, Rodger seeks to reinforce and reify hegemonic regimes of compulsory white heterosexuality, misogyny, and homophobia that facilitate full membership into the white community.

Rodger’s final fit of violence, accordingly, begins with the symbolic effacing of his Asian identity, which he perceives to be non-masculine. Rodger’s first victims were his roommates, who were Asian men. Rodger describes them with the same level of disdain and inferiority as the Asian man he sees with a white woman at the party:

Two new housemates moved into my apartment for the Autumn semester. They were two foreign Asian students who attended UCSB. These were the biggest nerds I had ever seen, and they were both very ugly with annoying voices . . . These two new ones were utterly repulsive, and one of them had a very rebellious demeanor about him.<sup>169</sup>

Rodger utilizes the rhetoric of physical ugliness to find these Asian men unworthy of life. In order to justify his vigilantism, he also imputes rebelliousness on his foreign roommates—he sees himself as the righter of wrong things. Thus, he reasons to himself, “due to their behavior I now had no regrets about such a prospect. In fact, I’d even enjoy stabbing them both to death while they slept.”<sup>170</sup>

Yet unlike Roof, who directed his aversion to miscegenation against a community of color, Rodger extends his anger to women generally. He regards the ability of his black classmate to sleep with a white woman as a personal injustice, saying:

<sup>167</sup> *Id.*

<sup>168</sup> FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 45 (Richard Philcox trans., Grove Press 2008) (1952).

<sup>169</sup> Rodger, *supra* note 87, at 128.

<sup>170</sup> *Id.*

[I]f this ugly black filth was able to have sex with a blonde white girl at the age of thirteen while I've had to suffer virginity all my life, then this just proves how ridiculous the female gender is. They would give themselves to this filthy scum, but they reject *ME*? The injustice!<sup>171</sup>

During his encounter with the Asian man with the white woman at the party, Rodger similarly shifts his indignation from insulting the men to physically assaulting the women. He relates how:

“A dark, hate-fueled rage overcame my entire being, and I tried to push as many of them as I could from the 10-foot ledge. My main target was [*sic*] the girls. I wanted to punish them for talking to the obnoxious boys instead of me. It was one of the most foolish and rash things I ever did, and I almost risked everything in doing it, but I was so drunk with rage that I didn't care.”<sup>172</sup>

Rodger ultimately places himself in the position of policing sexual access to white women. Yet unlike Roof, his violence is not focused directly on people of color as perpetrators, but on women as willing accomplices.

Like Roof, Rodger's perception of interracial miscegenation leads him to a revelation of what he perceives as injustice in the world: “Women are sexually attracted to the wrong type of man. This is a major flaw in the very foundation of humanity. It is completely and utterly wrong, in every sense of the word . . . I became deeply disturbed by them. Deeply disturbed, offended, and traumatized.”<sup>173</sup> After murdering his roommates, Rodger targets a sorority house. As he details in his manifesto, “I will attack the very girls who represent everything I hate in the female gender: The hottest sorority of UCSB. After doing a lot of extensive research within the last year, I found out that the sorority with the most beautiful girls is Alpha Phi Sorority. I know exactly where their house is, and I've sat outside it in my car to stalk them many times. Alpha Phi sorority is full of hot, beautiful blonde girls; the kind of girls I've always desired but was never able to have because they all look down on me.”<sup>174</sup>

Yet Rodger does not act simply out of hate directed at women. Rodger speaks of his crime using the language of retribution and punishment. He refers to his planned attack as the “Day of Retribution.” He writes, “Women must be punished for their crimes of rejecting such a magnificent gentleman as myself,”<sup>175</sup> and “I wanted to punish them all. I imagined how sweet it would be to slaughter all of those evil, slutty bitches who rejected me.”<sup>176</sup>

<sup>171</sup> *Id.* at 84.

<sup>172</sup> *Id.* at 122.

<sup>173</sup> *Id.* at 84.

<sup>174</sup> *Id.* at 132.

<sup>175</sup> *Id.* at 118.

<sup>176</sup> *Id.* at 110.

He thus turns to gun violence to recover his lost sense of masculinity. Possession and use of firearms allows disempowered men to identify with hegemonic masculinity through fantasies of violence and self-defense.<sup>177</sup> In Fox and Levin's critique of linking violence to mental illness, they find that "the more specific the targets of revenge, the less likely it is that the killer's rage stems from extreme mental illness."<sup>178</sup> Thus, even though Rodger did have mental health issues, his actions more likely stem from his deeply rooted sense of vengeance. Like Roof, Rodger used gun violence as a form of vigilante justice to restore his desired racial and sexual hierarchy.

Following their investigation, the Santa Barbara County Sheriff's Office came to the conclusion that Rodger "acted alone on May 23, 2014 and that he was solely responsible for his criminal actions that day."<sup>179</sup> In the end, despite the extensive documentation that Rodger left behind, the authorities deemed Rodger's crime a senseless act of a troubled individual, without logic or reason.<sup>180</sup> In this respect, his worldview—which he even references in the title of his manifesto, "My Twisted World"—is deemed to be an individual psychosis that should be treated on a case-by-case basis rather than as a national problem. Law enforcement concluded simply: "It is hoped that a thorough review of these materials by both law enforcement and mental health professionals will lead to the development of some new techniques and practices in identifying and treating such troubled persons."<sup>181</sup> Rodger's manifesto, however, reveals that he was motivated by a worldview that is not as unusual as he and others might think. As Matthew Fleischer writes in an opinion piece:

Rodger's story reads like a cautionary tale—of a young man who swallowed every poison pill our culture could throw at him and was outraged when he became sick . . . It's easy to dismiss someone like Rodger as a monster, but the reality is more troubling. There are likely millions more out there like him—lonely, angry and uncritical. Rodger's memoir should serve as a living reminder of how not to navigate the land mines of American culture.<sup>182</sup>

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<sup>177</sup> Angela Stroud, *Good Guys With Guns: Hegemonic Masculinity and Concealed Handguns*, 26 GENDER & SOC. 216, 219 (2012).

<sup>178</sup> Fox & Levin, *supra* note 141, at 438.

<sup>179</sup> INVESTIGATIVE SUMMARY, *supra* note 90, at 5.

<sup>180</sup> *Id.* at 6 ("The obvious question that remains is: "Why did the suspect murder six people and attempt to murder 14 others?" Unfortunately, that question may never be answered conclusively, despite the collection of extensive background information on the suspect through a multitude of interviews and from other sources").

<sup>181</sup> *Id.*

<sup>182</sup> Matthew Fleischer, *What We Should Learn from Elliot Rodger's 'Twisted World'*, L.A. TIMES (June 6, 2014), <http://www.latimes.com/opinion/opinion-la/la-ol-elliott-rodger-my-twisted-world-20140605-story.html> [https://perma.cc/6WMD-XVJ9].

Rodger may have had significant mental health issues, yet his crime reflects a deeper pathology that is less an individual malaise as it is a sickness of the culture in which he inhabits.

Labeling individuals like Rodger and Roof as delusional and disturbed, as isolated aberrations to the norm, masks the underlying structural motivations to their crimes, a point brought up by Franz Fanon in his critique of Octave Mannoni. Drawing from his experiences as an administrator in colonial Madagascar, Mannoni identified racism as a pathology deriving from an inferiority complex.<sup>183</sup> Employing an analogy from Shakespeare's *The Tempest*, Mannoni suggests that colonizers suffer from a Prospero complex, where the racism of the colonizer derives from a "grave lack of sociability combined with a pathological urge to dominate."<sup>184</sup> European colonizers, especially those who suffer low self-esteem and feelings of inadequacy while in the presence of their racial peers, seek out situations where they are able to dominate those that have already been placed in a socially inferior position.

This racial hierarchy is preserved through a hierarchy of sexual access. For Mannoni, the Prospero complex combines the desire to dominate with racism, and the discourse of interracial rape is central to its resolution. On the one hand, colonial power allows an outlet for "the paternalistic colonial, with his pride, his neurotic impatience, and his desire to dominate."<sup>185</sup> Yet to morally justify the oppressive tactics involved with colonial power, the colonizer must also assume the role of "the racist whose daughter has suffered an attempted rape at the hands of an inferior being."<sup>186</sup> According to Mannoni, the moral justification for racial domination is an irrational one. Analogizing again from *The Tempest*, Mannoni writes "the argument: you tried to violate Miranda, *therefore* you shall chop wood, belongs to a non-rational mode of thinking. In spite of the various forms this attitude may take (it includes, for instance, working for the father-in-law, a common practice in patriarchal communities), it is primarily a justification of hatred on grounds of sexual guilt, and it is at the root of colonial racialism."<sup>187</sup> Thus for Mannoni, racism is an irrational mental pathology.

In his analysis of colonial racism, Franz Fanon cites Mannoni to discuss how the anxiety over sexual access to white women plays into colonial domination.<sup>188</sup> Fanon, however, denounces Mannoni's assessment as potentially excusing racism as a neurological complex. Attributing racist domination to

<sup>183</sup> OCTAVE MANNONI, PROSPERO AND CALIBAN: THE PSYCHOLOGY OF COLONIZATION 39–41 (1964).

<sup>184</sup> *Id.* at 102.

<sup>185</sup> *Id.* at 110.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 106.

<sup>188</sup> FANON, *supra* note 168, at 87 (quoting MANNONI, *supra* note 183, at 110) (describing the Prospero complex "as the sum of those unconscious neurotic tendencies that delineate at the same time 'the picture of colonial paternalism' and 'the portrait of the racist whose daughter has suffered an [imaginary] attempted rape at the hands of an inferior being.'").

a psychological pathology suffered by individuals masks the structural motivations of colonialism, which are a desire for profit and exploitation. Racism, for Fanon, has a specific and deliberate goal and end. It does not operate in isolation at the individual level, but is a part of a social structure that supports an economic hierarchy.<sup>189</sup> As he argues in *The Wretched of the Earth*, Fanon theorizes “capitalism therefore objectively colludes with the forces of violence that erupt in colonial territories.”<sup>190</sup> Fanon recognizes a similar justification in the American South, which used the same rhetoric of rape.<sup>191</sup>

In this respect, white women have historically become symbols of the capitalist hierarchy in the United States. Roof cites economic disempowerment as a motivating factor for his actions.<sup>192</sup> Rodger’s aspirations to obtain a white girlfriend are not merely the ranting of a deluded mind; they are also of a piece with a very mainstream view of the American dream that links capitalist success with control over women. As Rodger relates, “I kept dreaming of the life I would have once I won; the beautiful blonde girlfriend, the luxurious mansion with a magnificent view, all of the exotic cars I would drive to impress girls. It gave me hope. It gave me something to live for.”<sup>193</sup> As he continues elsewhere, “My ultimate dream was to experience the pleasures of love and sex with girls once I become rich enough to be worthy of them, and then I would settle down with a beautiful girlfriend and have beautiful children with her, whom I would raise up to live a much better life than the one I’ve had to suffer through.”<sup>194</sup> Rodger sees women as commodities, and the pathway to economic mobility.

American citizenship has long revolved around the relationship between capitalism and the patriarchal household.<sup>195</sup> Part of attaining the American dream involves repressing the non-masculine and establishing the correct gender hierarchy. As R.W. Connell writes regarding the role of hegemonic masculinity in capitalist enterprise, “the ruling class through the state might seek social order by repressing homosexuality, or bolster profit by maintaining a low wage structure for women, or solve employment crises by

<sup>189</sup> FANON, *supra* note 168, at 88 (“If one adds that many Europeans go to the colonies because it is possible for them to grow rich quickly there, that with rare exceptions the colonial is a merchant, or rather trafficker, one will have grasped the psychology of the man who arouses in the autochthonous population ‘the feeling of inferiority.’”).

<sup>190</sup> FRANTZ FANON, *THE WRETCHED OF THE EARTH* 27 (Richard Philcox trans., Grove Press 2004) (1961).

<sup>191</sup> FANON, *supra* note 168, at 87 (“Prospero adopts an attitude toward Caliban that the Americans in the South know only too well. . . Don’t they say that the n[\*\*\*\*\*] are just waiting for the chance to jump on a white woman?”).

<sup>192</sup> Roof, *supra* note 59, at 2 (“[W]ho is fighting for these white people forced by economic circumstances to live among negroes? No one, but someone has to.”).

<sup>193</sup> Rodger, *supra* note 87, at 115.

<sup>194</sup> *Id.* at 106.

<sup>195</sup> R.W. Connell, *The State, Gender, and Sexual Politics: Theory and Appraisal*, 19 *THEORY & SOC.* 507, 511 (1990) (“The model of bourgeois citizenship depends on the ‘citizen’ being supported by a functioning patriarchal household”).

shunting female labor between home and factory.”<sup>196</sup> Although Rodger is regarded as the aberration to the norm, his viewpoint is consistent with this larger structural worldview.<sup>197</sup> Rodger’s manifesto is riddled with repeated references to justice, and rather than be dismissed as the delusions of one disturbed individual, his views are consistent with a very mainstream ideology of structural patriarchy. Instead of relying upon formal structures of the law, however, Rodger and Roof engage in forms of vigilante justice.

In this respect, both Rodger and Roof engage in terrorism to control and maintain a sexual hierarchy that places white men at the top. Whereas Roof’s actions were meant to terrorize and deter racial groups from transgressing racial sexual boundaries, Rodger’s crimes were meant to discipline women into conformity to this sexual and racial hierarchy through punishment. Though they directed their violence at different groups, Roof and Rodger engaged in mass shootings to preserve the dominant position of white men, as symbolically figured in their access to white women.

### III. ORLANDO

In the early morning of Sunday, June 12, 2016, 29-year old Omar Mateen opened fire at Pulse, a gay nightclub in Orlando, killing 50 and wounding another 53. At the time, it was the deadliest mass shooting in the United States<sup>198</sup> The immediate political response to the Orlando shootings was to label Mateen’s crime as an act of terrorism, largely in response to Mateen’s ethnic background and his statements to police negotiators during the shootings about the Islamic State.<sup>199</sup> Even the short-lived push by Democrats in the Senate and House of Representatives to force a vote by Congress

<sup>196</sup> *Id.* at 514.

<sup>197</sup> *Id.* (“[M]en’s overall social supremacy is embedded in face-to-face settings such as the family and the workplace, generated by the functioning of the economy, reproduced over time by the normal operation of schools, media, and churches. Prejudice is part of this institutionalization, but only a small part of the whole.”).

<sup>198</sup> Julie Shapiro & Sam Frizell, *Orlando Nightclub Attack Was Deadliest Mass Shooting in U.S. History*, Time (June 12, 2016), <http://time.com/4365325/orlando-shooting-pulse-nightclub-deadliest-history> [https://perma.cc/C79J-BHX5]. *But see* Matt Vasilogambros, *Was Orlando the Deadliest Mass Shooting in U.S. History?*, THE ATLANTIC (June 15, 2016), <http://www.theatlantic.com/news/archive/2016/06/orlando-deadliest-mass-shooting/487058> [https://perma.cc/7RLM-5ZA3] (suggesting that military operations such as Antietam or Wounded Knee Massacre were deadlier). Since that time, Stephen Paddock’s rampage in Las Vegas on October 1, 2017 has become the deadliest mass shooting in modern history. Doug Criss, *The Las Vegas Attack Is the Deadliest Mass Shooting in Modern US History*, CNN (Oct. 2, 2017), <http://www.cnn.com/2017/10/02/us/las-vegas-attack-deadliest-us-mass-shooting-trnd/index.html> [https://perma.cc/WCE5-QKWL].

<sup>199</sup> Steve Visser & John Couwels, *Orlando Killer Repeatedly Referenced ISIS, Transcript Shows*, CNN (Sept. 24, 2016), <http://www.cnn.com/2016/09/23/us/orlando-shooter-hostage-negotiator-call/> [https://perma.cc/ZR4V-8APP]; *Transcript of calls with suspect 6-12-16*, CITY OF ORLANDO, <http://www.cityoforlando.net/cityclerk/pulse-tragedy-public-records/> [https://perma.cc/7JZT-2P86]. *See also* Evan Perez, Shimon Prokupecz, Catherine E. Shoichet & Tim Hume, *Omar Mateen: Angry, Violent ‘Bigot’ Who Pledged Allegiance to ISIS*, CNN (June 14, 2016), <http://www.cnn.com/2016/06/13/us/orlando-shooter-omar-mateen/> [https://perma.cc/D5KT-SQGA].



on gun control amendments capitalized on portraying Mateen as a terrorist.<sup>200</sup> Specifically, the Democrats wished to renew an effort to prohibit individuals on the FBI watch list or no-fly list from purchasing guns,<sup>201</sup> a gap which President Barack Obama had highlighted only two weeks prior to the Orlando shooting.<sup>202</sup> Media reports and legislators suggested that Mateen had fallen through the cracks, as the FBI had flagged Mateen twice for suspected terrorist links,<sup>203</sup> but he encountered no barriers in purchasing the semi-automatic rifle and handgun he used in the massacre.<sup>204</sup> Public dialogue immediately after the shooting focused on keeping guns out of the hands of suspected terrorists.

But Mateen had no terrorist links. Prior to the shooting, the FBI extensively investigated Mateen for 10 months, but found no actual ties between

<sup>200</sup> Karoun Demirjian, *Senate Close to Votes on Gun-Control Measures but No Bipartisan Agreement in Sight*, WASH. POST (June 16, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/06/15/sen-toomey-and-bloomberg-discussing-gun-control-measure-to-close-the-terror-gap> [https://perma.cc/PC9U-7F3R]. Richard Cowan & Susan Cornwell, *Latest Gun Control Bid Falters in Congress, Democrat Sit-in Ends*, REUTERS (June 24, 2016), <http://www.reuters.com/article/us-florida-shooting-guns-sitin-idUSKCN0Z91ZS> [https://perma.cc/Y4F9-CJRP].

<sup>201</sup> Karoun Demirjian, *Senate Democrats End Marathon Filibuster, Announce Republicans Agree to Gun Control Vote*, THE GAZETTE (June 16, 2016), <http://www.thegazette.com/subject/news/nation-and-world/senate-democrats-end-marathon-filibuster-announce-republicans-agree-to-gun-control-vote-20160616> [https://perma.cc/LKK5-GG4P] (“Sen. Chris Murphy (D-Conn.) ended a blockade of the Senate floor after nearly 15 hours Thursday, announcing that Republican leaders agreed to hold votes on Democrat-backed measures to expand background checks and prevent suspected terrorists from acquiring guns. Democrats were angling for votes on the two gun-control measures, which they are presenting as amendments to a pending spending bill and demanding that it was the least the Senate could do to respond to the Orlando massacre that killed 49 over the weekend.”).

<sup>202</sup> *Obama to Gunowners – I’m Not Looking to Disarm You*, PBS NEWSHOUR (June 2, 2016), <http://www.pbs.org/newshour/bb/obama-to-gun-owners-im-not-looking-to-disarm-you> [https://perma.cc/DW39-PUE3] (“I just came from a meeting today in the Situation Room in which I got people who we know have been on ISIL Web sites, living here in the United States, U.S. citizens, and we’re allowed to put them on the no-fly list when it comes to airlines, but because of the National Rifle Association, I cannot prohibit those people from buying a gun. This is somebody who is a known ISIL sympathizer. And if he wants to walk in to a gun store or a gun show right now and buy as much — as many weapons and ammo as he can, nothing’s prohibiting him from doing that, even though the FBI knows who that person is.”); see also Khorri Atkinson, *GOP Blocks Bill to Stop Terrorists from Buying Guns*, MSNBC (Dec. 4, 2015), <http://www.msnbc.com/msnbc/gop-blocks-bill-stop-terrorists-buying-guns> [https://perma.cc/5877-9MR4].

<sup>203</sup> Evan Perez, Shimon Prokupecz, Catherine E. Shoichet & Amy La Porte, *Omar Mateen pledged allegiance to ISIS, official says*, CNN (June 12, 2016), <http://www.cnn.com/2016/06/12/us/orlando-shooter-omar-mateen/> [https://perma.cc/Q5Y5-QPV2].

<sup>204</sup> Meghan Keneally, *Orlando Shooter Legally Bought Guns Despite Previous Flags by FBI*, ABC NEWS (June 12, 2016), <http://abcnews.go.com/US/orlando-shooter-bought-guns-previous-flags-fbi/story?id=39799861> [https://perma.cc/6UFC-2T57] (“Law enforcement sources confirmed that Mateen was on the FBI’s radar but not necessarily on a watch list. But even appearing on the list wouldn’t have necessarily prevented him from obtaining weapons.”); see also Michael Luo, *Orlando Aftermath: Red Flags, Yet Legally Able to Buy a Gun*, N.Y. TIMES (June 13, 2016), <http://www.nytimes.com/2016/06/14/us/orlando-aftermath-red-flags-yet-legally-able-to-buy-a-gun.html>.

Mateen and any terrorist group.<sup>205</sup> An investigation conducted by the Central Intelligence Agency (“CIA”) following the shooting reached a similar conclusion.<sup>206</sup> Though he claimed his act was done in response to United States airstrikes in Iraq,<sup>207</sup> he had no actual contact with the Islamic State or any other terrorist organization.<sup>208</sup>

Similarly, though she did not fire any of the shots and had no known links to any terrorist organizations, Mateen’s widow Noor Salman was formally charged under federal terrorism law for aiding and abetting the provision of material support to a foreign terrorist organization.<sup>209</sup> The provision under which Salman was prosecuted was part of the reforms to terrorism law created under the USA Patriot Act of 2001 following the 9/11 terrorist attacks.<sup>210</sup> These changes allowed law enforcement to rigorously investigate and pursue suspected terrorists who had contacts with entities that are typically foreign, either directly or through material support.<sup>211</sup> Salman was prosecuted under this provision since she was with Mateen when he was plotting his crime.<sup>212</sup> Prosecutors alleged that Salman knew about the attack, and was with Mateen when he visited the site prior to the attack and when he purchased ammunition.<sup>213</sup> The aiding and abetting charge against Salman indicates that had he survived, Mateen would have been prosecuted as the chief defendant for directly providing material support to a foreign terrorist organization. This occurred despite the lack of evidence after two separate FBI investigations, that Mateen had any actual contact with the Islamic State or any other terrorist organization apart from empty boasts of affiliations.<sup>214</sup> Salman, moreover, was even further removed, since not only did she not have any links or contacts with any terrorist organizations, but she had publicly denounced ISIS and terrorism.<sup>215</sup> Yet public ire erupted against her

<sup>205</sup> Del Quentin Wilber, *The FBI Investigated the Orlando Mass Shooter for 10 Months — and Found Nothing. Here’s Why*, L.A. TIMES (Jul. 14, 2016), <http://www.latimes.com/nation/la-na-fbi-investigation-mateen-20160712-snap-story.html> [<https://perma.cc/JG6D-QCEZ>].

<sup>206</sup> Woodall & Harte, *supra* note 11.

<sup>207</sup> Dan Frosh & Nicole Hong, *Transcripts Show ISIS Influence on Orlando Gunman*, WALL STREET J. (Sept. 27, 2016), <https://www.wsj.com/articles/transcripts-show-isis-influence-on-orlando-gunman-1475023090>.

<sup>208</sup> Woodall & Harte, *supra* note 11.

<sup>209</sup> 18 U.S.C. 2339A, 2339B; *see also* Marie-Daly et al., *supra* note 13.

<sup>210</sup> 18 U.S.C. §§ 2339B(a)(1)–(2). *See generally* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001, Pub. L. No. 107-56, 115 Stat. 272.

<sup>211</sup> *See* 18 U.S.C. § 2339A.

<sup>212</sup> Marie-Daly et al, *supra* note 13.

<sup>213</sup> *Id.*

<sup>214</sup> James B. Comey, *Update on Orlando Terrorism Investigation*, FBI PRESS BRIEFING (June 13, 2016) <https://www.fbi.gov/news/speeches/update-on-orlando-terrorism-investigation> [<https://perma.cc/A793-NFBR>] (“[H]e claimed family connections to al Qaeda. He also said that he was a member of Hezbollah, which is a Shia terrorist organization that is bitter enemy of the so called Islamic State, ISIL.”).

<sup>215</sup> Christal Hayes, *Pulse Shooter’s Wife Noor Salman Denounced ISIS and Terrorism on Facebook a Year Before Orlando Attack*, NEWSWEEK (Nov. 9, 2017), <http://www.newsweek>

once it became known that she had confessed that she knew than Mateen was going to commit the attacks as he left their home before the shootings.<sup>216</sup>

From released transcripts of her FBI interview, it appears that even though Salman may have known that her husband was about “to do something bad” and suspected that he was going to target the Pulse nightclub,<sup>217</sup> it is unclear whether she endorsed his actions or the reasons for his actions. Even if she knew and suspected that Mateen was going to commit a crime, she may have felt powerless and afraid to report her suspicions. Mateen had abused his previous wife,<sup>218</sup> and Salman contended that Mateen had also abused her.<sup>219</sup> Salman reported that Mateen had become angry when she asked him about the firearm, and told her “not to say anything to anybody.”<sup>220</sup> The decision of law enforcement to prosecute Noor Salaman as a terrorist, rather than see her as yet another victim of Omar Mateen, demonstrates the propensity of the government and the media to focus on the issue of foreign terrorism rather than hegemonic masculinity when it comes to people who look foreign. Whereas her story actually illustrates how hegemonic masculinity was deployed to intimidate and terrorize her as a woman, it was subsumed by the public narrative of her complicity in an attack precipitated by foreign terrorist ideology.

Though Mateen claimed his ideology was aligned with Islamic extremism, his actions indicate that he, like Roof and Rodger, subscribed to an ideology of hegemonic masculinity. He was abusive to women, but he was also homophobic. He directed his violence against forms of masculinity that he deemed threatening, as a part of a larger structural worldview. Victim advocate Jessica Klein compares the pathology of his mass shooting to the same pathology of misogyny and domestic violence, summarizing “these perpetrators have the ability to blame all of their wrongdoings entirely on someone else or some other group of people, as Mateen did with the LGBTQ community at Pulse nightclub, justifying it because his belief system frames being gay as wrong.”<sup>221</sup> There was little question that Mateen’s violence against the gay community was not simply a random act, but premeditated and deliberate crime against the gay community. He was vocal in

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.com/orlando-mass-shooters-wife-noor-salman-denounced-isis-attacks-facebook-and-was-707559 [https://perma.cc/8QL3-SB3A].

<sup>216</sup> Jennie Jarvie & Rong-Gong Lin II, *Here’s What We Know About Noor Salman, the Widow of the Orlando Gunman*, L.A. TIMES (June 15, 2016), <http://www.latimes.com/nation/la-na-orlando-noor-salman-20160615-snap-story.html> [https://perma.cc/8SSB-GD7V].

<sup>217</sup> Krista Torralava, *Widow of Pulse Nightclub Shooter Said She Knew ‘He Was Going to Do Something Bad.’* L.A. TIMES (Jan. 6, 2018), <http://www.latimes.com/nation/la-na-orlando-shooting-wife-20180106-story.html> [https://perma.cc/J6QS-ZZBS].

<sup>218</sup> Jack Healy, *Sitora Yusufiy, Ex-Wife of Orlando Suspect, Describes Abusive Marriage*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/14/us/sitora-yusufiy-omar-mateen-orlando-shooting.html>.

<sup>219</sup> Hayes, *supra* note 215.

<sup>220</sup> Torralava, *supra* note 217.

<sup>221</sup> Klein, *supra* note 121, at 1.

his disdain for homosexuality,<sup>222</sup> and he had investigated multiple sites in Orlando as potential targets months beforehand.<sup>223</sup> In this way, his crime was not different than Roof in targeting a minority population whom he personally hated.

Unlike Roof and Rodger, there was almost no attribution of Mateen's actions to his mental health. Whereas mental health becomes a central talking point in mass shootings involving domestic gunmen, very little attention is generally paid to the mental health of individuals suspected of foreign terrorism. Furthermore, sociologist Clark McCauley denies any link between mental illness and terrorist acts. He writes, "A common suggestion is that there must be something wrong with terrorists. Terrorists must be crazy, or suicidal, or psychopaths without moral feelings or feelings for others. Thirty years ago this suggestion was taken very seriously, but thirty years of research has found psychopathology and personality disorder no more likely among terrorists than among non-terrorists from the same background."<sup>224</sup> Instead, McCauley suggests that terrorists are not loners but identify with a group, and they commit terrorist activities when they feel that their group is being threatened or persecuted. Under this definition, all three men could be considered terrorists. Roof, for example, felt that whites were being threatened by African Americans, and Rodger felt that men like him were being persecuted by women.

However, in the case of Mateen alone out of the three, it is not only his individual motivations, but his entire belief system that comes under scrutiny. The terrorism label allows Islam, whether extreme or not, to be treated monolithically. Mateen's extreme actions were interpreted as reflections of his extreme fundamentalist religious beliefs, which were cast as distinctly foreign and un-American. In this way, the Orlando massacre became a further example of the homonationalism that Jasbir Puar has critiqued in her work.<sup>225</sup> Homonationalism is a justification for a "gay friendly" state to take action against another state, often through military or economic sanctions, on the premise that it does not respect the rights of LGBT individuals. Mateen comes to stand monolithically for a culture completely intolerant of gays, to the point of violence, which allows the United States to appear comparatively progressive and tolerant.

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<sup>222</sup> Ryan et al., *supra* note 30 ("Mateen's father told NBC News that he believed homophobia, not religion, led his son to kill. The father recalled a visit to Miami earlier this year where his son became angry with displays of affection by gay men.").

<sup>223</sup> Pamela Brown, Evan Perez & Adam Levine, *Widow of Orlando Nightclub Shooter Omar Mateen Arrested*, CNN (Jan. 17, 2017), <http://www.cnn.com/2017/01/16/us/omar-mateen-wife-arrested/> [<https://perma.cc/3C2W-6YXK>] ("In April, he visited Disney World with his wife, and Disney security officials believe he was conducting surveillance").

<sup>224</sup> Clark R. McCauley, *The Psychology of Terrorism*, Soc. Sci. Res. Council (2002), <http://essays.ssrc.org/sept11/essays/mccauley.htm> [<https://perma.cc/KXK9-LBAF>].

<sup>225</sup> JASBIR PUAR, TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES 2–3 (2007).

Yet homonationalism can be deployed in order to justify further oppression of ethnic bodies. Puar argues that the protection and “celebration of the queer liberal subject as bearer of privacy rights and economic freedom sanctions a regime of racialized surveillance, detention, and deportation”<sup>226</sup> against those from countries that do not recognize such protections. Immediately following the Orlando attacks, legislative attention centered on linking gun control measures to already existing methods of surveillance. The rhetoric was that the Orlando tragedy could have been avoided had there been stricter surveillance of Mateen. The debate over gun control legitimized rather than challenged the underlying use of surveillance by state authorities against foreign looking bodies, even when they are citizens—despite the fact that similar tactics have been used to oppress communities of color historically.<sup>227</sup> The debate also cast the United States as a country that looks to the interests of protecting its gay population, even though gay sexuality had been criminal only twenty years prior and sexual orientation remains a largely unprotected class at the federal level.<sup>228</sup> Puar critiques how the discourse of gay rights in the West is used to “produce narratives of progress and modernity that continue to accord some populations access to citizenship—cultural and legal—at the expense of the delimitation and expulsion of other populations.”<sup>229</sup> By attributing Mateen’s intolerance to his ethnic identity which is coded as foreign, the United States is portrayed as much more tolerant and accepting of the gay community than it really is; rather, Mateen’s views may instead reflect views still held by a good number of Americans. As Puar continues, “[t]he narrative of progress for gay rights is thus built on the back of racialized others.”<sup>230</sup>

There has been some speculation as to whether Mateen was himself gay and if he was acting in retaliation stemming from possible self-hatred.<sup>231</sup> Following his shooting, several gay men alleged to have had encounters with Mateen on gay dating applications.<sup>232</sup> Authorities have been unable to substantiate these claims, but what is clear is that Mateen harbored “above-average hate” towards gay individuals, according to his first wife and his

<sup>226</sup> Jasbir Puar, *Rethinking Homonationalism*, 45 INT. J. MIDDLE EAST STUD. 336, 336 (2013).

<sup>227</sup> See, e.g., SAUL CORNELL, *A WELL-REGULATED MILITIA: THE FOUNDING FATHERS AND THE ORIGIN OF GUN CONTROL IN AMERICA 190–197* (2006) (describing how disarmament statutes were used to acquit the mass murder of over a hundred African Americans on the premise that the perpetrators were lawfully disarming them).

<sup>228</sup> To date, sexual orientation is not recognized at the federal level as a separately protected class, but is protected insofar as it is a subset of sex discrimination. See e.g. William N. Eskridge Jr., *Title VII’s Statutory History and the Sex Discrimination Argument for LGBT Workplace Protections*, 127 YALE L.J. 322 (2017).

<sup>229</sup> Puar, *supra* note 226, at 337.

<sup>230</sup> *Id.*

<sup>231</sup> Frances Robles & Julie Turkewitz, *Was the Orlando Gunman Gay? The Answer Continues to Elude the F.B.I.*, N.Y. TIMES (June 25, 2016), <https://www.nytimes.com/2016/06/26/us/was-the-orlando-gunman-gay-the-answer-continues-to-elude-the-fbi.html>.

<sup>232</sup> *Id.*

father.<sup>233</sup> Mateen's animus towards gay individuals sustains another aspect of hegemonic masculinity in reestablishing what Judith Butler calls the heterosexual matrix, a "grid of cultural intelligibility through which bodies, genders, and desires are naturalized . . . [that] there must be a stable sex expressed through a stable gender . . . that is oppositionally and hierarchically defined through the compulsory practice of heterosexuality."<sup>234</sup> In this regard, gay identity is the antitype and threat to hegemonic masculinity as "the culturally idealized form of the masculine character that emphasizes the connection between masculinity, toughness, and orientation toward competition and subservience of women."<sup>235</sup>

Mateen held views that were roughly equivalent to Roof and Rodger concerning minorities and women. As acquaintances shared, "He didn't talk about his faith . . . but was outspoken in his disdain for African Americans, gays and women, frequently using slurs and sometimes talking about committing violence against them. Once, when he saw an African American man driving past. . . Mateen said he wished he could 'kill all' blacks, referring to them with the N-word."<sup>236</sup> It is likely that Mateen's views had little to do with his religion, but rather his personal prejudices. His attack on Pulse nightclub was not only an attack on the gay community generally, but a specific racial segment of the gay community—it was Latin night at Pulse on the night of the shooting.<sup>237</sup> Judith Butler notes, "at those junctures in which a compulsory heterosexuality works in the service of maintaining hegemonic forms of racial purity, the 'threat' of homosexuality takes on a distinctive complexity."<sup>238</sup> In this respect, Mateen's crime was likely informed and motivated by the same racist and misogynist worldview of Roof and Rodger, not in furtherance of any foreign religious ideology.

In this respect, Roof and Rodger did not engage in senseless crimes. Their actions rather deliberately supported a political superstructure that maintains a hierarchy of white men at the top with women, racial minorities, and sexual minorities beneath them. Mateen also contributes to this paradigm, though as an outsider. Although he claimed sympathy and identification with radical Islam, his attitudes were informed by a culture of structural racism and hegemonic masculinity that caused him to hate racial and sexual minorities with as much passion as Roof and Rodger. Public designation of him as a foreign terrorist rather than a domestic perpetrator of hate, however,

<sup>233</sup> *Id.*; Ryan et al., *supra* note 30.

<sup>234</sup> JUDITH BUTLER, GENDER TROUBLE 194 n.6 (1990).

<sup>235</sup> R.W. CONNELL, GENDER AND POWER: SOCIETY, THE PERSON AND SEXUAL POLITICS 250 (1987).

<sup>236</sup> Ryan et al., *supra* note 30.

<sup>237</sup> Brian Latimer, Suzanne Gamboa & Sandra Lilley, *Latino Community Hit Hard in Orlando Shootings, Most Victims Were Hispanic*, NBC (June 13, 2016), <http://www.nbcnews.com/news/latino/latino-community-hit-hard-orlando-shootings-most-victims-were-hispanic-n590976> [<https://perma.cc/55QL-UQ2K>].

<sup>238</sup> JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX" xxvi (1993).

shifts the blame onto his ethnic and religious identity as the source of toxic masculinity that further marginalizes him as foreign. In the case of Mateen, it is not hegemonic masculinity that is held responsible for violence against the gay community, but radical Islam. The response to the Pulse tragedy, then, was to engage in increased scrutiny, surveillance, and discipline over foreign bodies and Islam, which further legitimizes hegemonic masculinity—the use of force and oppression against a threatening foreign version of masculinity—as a necessary end.

#### CONCLUSION

Dylann Roof, Elliot Rodger, and Omar Mateen all engaged in acts of terrorism. They sought to control women, sexual minorities, and people of color through terror and violence. Despite the efforts of American exceptionalism to claim otherwise, the ideology that motivated these men is far from foreign. Rather, the ideology of hegemonic masculinity is deeply rooted in American history. To label any of these acts as isolated and senseless crimes of madmen forgets this history, and assures that this history—and the mass shootings that are merely a symptom of hegemonic masculinity—will repeat and perpetuate.