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# Misogyny and Murder

ANN C. MCGINLEY<sup>1</sup>

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#### ABSTRACT

*The Atlanta-area shootings of six Asian women in massage parlors in March 2021 raised awareness about anti-Asian discrimination and violence in the United States. When the perpetrator, Robert Aaron Long, shot the Atlanta-area spa victims, public speculation arose about whether he was motivated by hatred for the Asian victims because of their race. Many wondered whether the shooter would be charged and convicted of hate crimes against the victims. When asked by police about his motives, the perpetrator stated that he had a “sex addiction,” meaning that the spas created intolerable sexual temptations that he was unable to resist. Considering this comment, a captain at the Cherokee County Sheriff’s Office announced that the shooter had a “bad day,” and that it could not yet be determined whether the violence constituted hate crimes.*

*The captain’s minimization of the tragedy created an outcry; many protested, arguing that the perpetrator’s targeting of Asian massage parlors demonstrated that his intent was race-based. But few voiced what also seemed obvious: the shooter’s comments about his “sex addiction” were admissions that the sex of the female victims also motivated his crimes.*

*Many commentators have overlooked sex or gender as a motive for potential hate crimes. Moreover, despite the longstanding theory of intersectionality introduced by Professor Kimberlé Crenshaw, only a few progressive online opinion pieces by Asian women raised the issue of the intersectional causes of the rampage. Few acknowledged that the most likely motivation was bias against the female victims due to their sex, race, and/or national origin. Masculinities, feminist, and intersectionality theories and familiarity with the dark Internet pages of groups such as “incels,” reveal that overlooking sex or gender as a motive is a mistake.*

*“Incel” is short for “involuntary celibate.” The incels comprise a group of young men in the United States and abroad who communicate online about their hatred of women because of their failure to have sex with them. In their posts and those of other similar groups, incels invoke racism, white supremacy, and misogyny. Inspired by their “hero,” Elliot Rodger, who committed suicide after murdering female and male students at the University of California, Santa Barbara, the more radical incels advocate the killing and torturing of women.*

*Long and Rodger seem to represent opposite ends of the spectrum of young men living in the United States—Long appears to be a “normal” but ill-fated frustrated young man who went astray, and Rodger appears to be the leader of a band of evil criminals—but things are not that simple. There is an important link between Long’s and Rodger’s crimes. Both are the result of misogyny. Misogyny, as defined by feminist philosopher Kate Manne in Down Girl: The Logic of Misogyny, is systemic. It includes individual or group action, societal norms, and expectations that harm its victims and support the existence of patriarchy. Misogyny is not defined by the individual psychology of the perpetrator, but rather by its effect on the victims. Using this definition, murder because women do not provide the services and care that are expected of them (or because women are “evil” for tempting men) is misogynistic because it supports the superiority of men over women and punishes women for their failure to abide by the expectations of men and society.*

*Nonetheless, only two-thirds of the states include gender or sex as protected statuses in their hate crime laws. In fact, some states’ hate crime laws protect victims based on their sexual orientation and gender identity but fail to do so based on sex or gender. While prosecutors may charge suspects with hate crimes caused by bias against more than one group, none of the statutes explicitly reference intersectional hate crimes.*

*This article examines, through the lens of the Atlanta spa shootings and the incels’ movement, mass sex-based crimes that could be characterized as hate crimes or even domestic terrorism. Involuntary celibates (or incels) are a group of radicalized young men, many of whom advocate violence toward women on Internet forums. Some, who are considered heroes by the incel community, have carried out their threats by engaging mass murder. This article employs masculinities, feminist, and intersectionality theories to analyze incels and other similar groups and the dangers they present to society. But it does more than that. It demonstrates, through reference to the Atlanta spa shooter’s situation, that misogyny is endemic to the United States and found not only in terrorist movements but also in our institutions such as schools and churches.*

*This is the first law review article to analyze the intersection of misogyny, public mass murders, and hate crime legislation. In general, legal scholarship has undertheorized the incel phenomenon and has underappreciated the effects of misogyny, whether it be present in “normal” institutions or in terrorist movements. Moreover, many policymakers have omitted gender from hate crime legislation, an omission that suggests that women’s lives and properties are not as valuable as men’s. This article fills these gaps.*

*This article analyzes the failure to recognize gender as a common motivator for hate crimes despite the increase of violence against women by groups and individuals who are motivated by misogyny. It argues that due to misogyny’s ubiquity in society, we often fail to recognize or acknowledge it.*

*Only through an understanding of misogyny and the violence it causes and public education and recognition of the link between systemic misogyny and violence can we hope to ameliorate the failure of the general public to recognize gender, specifically misogyny, as a cause of violence against women. To educate the public to recognize the importance of gender and misogyny in violent acts, this article recommends that all states include gender as well as intersectional identities as potential motives for hate crimes. Enacting hate crime legislation has a symbolic and expressive purpose. In this instance, it would serve as a public recognition of the dangers of misogyny and a warning to those who seek to engage in misogynistic violence. Besides adding gender and intersectional identities to state hate crime legislation, this article encourages further research into misogyny as a source of domestic and international terrorism. In addition, based on research findings, this article recommends the implementation of future legislative changes that protect all people whether they be male, female, or nonbinary.*

#### INTRODUCTION: MASS MURDER AND INVISIBLE MISOGYNY<sup>2</sup>

The Atlanta-area shootings of six Asian women, one Caucasian woman, and one Caucasian man<sup>3</sup> in massage parlors in March 2021 led to serious concerns about the perpetrator, Robert Aaron Long's motives and raised awareness about anti-Asian discrimination and violence in the United States. Much of this violence has been linked to the coronavirus pandemic and the former President's insistence on calling COVID-19 the "Chinese virus."<sup>4</sup>

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<sup>2</sup> For purposes of this article, "misogyny" is not a narrow definition of hatred of all women or most women. Instead, misogyny is a system that upholds patriarchy and is how women experience sexism. It is the "legal" enforcement of patriarchy. See Sean Illing, *What We Get Wrong About Misogyny*, Vox (Mar. 7, 2020), <https://www.vox.com/identities/2017/12/5/16705284/elizabeth-warren-loss-2020-sexism-misogyny-kate-manne> [<https://perma.cc/XB9K-78BB>]. Because this is an article on misogyny, I focus on the need for protection of women, whether assigned at birth or not, but of course, any hate crime or other law that protects individuals from discrimination based on sex or gender should also protect men, and non-binary and intersex individuals. See KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* (2018). For a more complete discussion of misogyny, see *infra* Part III.

<sup>3</sup> Giulia McDonnell Nieto del Rio & Edgar Sandoval, *Women of Asian Descent Were 6 of the 8 Victims in Atlanta Shootings*, N.Y. TIMES (July 27, 2021), <https://www.nytimes.com/2021/03/17/us/asian-women-victims-atlanta-shootings.html> [<https://perma.cc/A5F7-KUX2>]. The victims were: Soon Chung Park, age 74, Hyun Jung Grant, age 51, Suncha Kim, age 69, Yong Yue, age 63, Delaina Ashley Yaun, age 33, Paul Andre Michels, age 54, Xiaojie Tan, age 49, and Daoyou Feng, age 44. See Guardian staff and agencies, *Authorities Name All Eight Victims in Atlanta Spa Shootings*, THE GUARDIAN (Mar. 9, 2021), <https://www.theguardian.com/us-news/2021/mar/19/atlanta-spa-shootings-victims-named> [<https://perma.cc/2JE5-5HN4>].

<sup>4</sup> Kate Brumback, *Georgia Massage Parlor Shootings Leave 8 Dead; Man Captured*, AP NEWS (Mar. 16, 2021), <https://apnews.com/article/georgia-massage-parlor-shooting-8-dead-9e39706c523c733a6d83d9baf4866154> [<https://perma.cc/XB9K-78BB>]; Robert Hart, *Trump's 'Chinese Virus' Tweet Helped Fuel Anti-Asian Hate on Twitter, Study Finds*, FORBES (Mar. 19, 2021), <https://www.forbes.com/sites/roberthart/2021/03/19/trumps-chinese-virus-tweet-helped-fuel-anti-asian-hate-on-twitter-study-finds/>

Soon after the Atlanta shootings, news stories demonstrated that Asian-Americans suffer ever-increasing discrimination and physical abuse at the hands of others. One particularly noteworthy video showed a large man brutally attacking an elderly Asian woman outside of a New York City apartment building, from which two doormen watched without helping the victim.<sup>5</sup>

When Long shot the Atlanta-area spa victims, public speculation arose about his state of mind; specifically, whether he was motivated by hatred for the Asian victims because of their race. Many wondered whether the shooter would be charged and convicted of hate crimes against Asians.<sup>6</sup> When asked by police about his motives, Long stated he had a “sex addiction,” meaning that the spas created intolerable sexual temptations that he was unable to resist.<sup>7</sup> In light of this comment, a Captain at the Cherokee County Sheriff’s

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?sh=4a656a9a1a7c [https://perma.cc/W9VY-D3JZ]. The perpetrator pleaded guilty to the four murders that took place in Cherokee County and received four life sentences. Christian Boone & Chelsea Prince, ‘Swift Justice’: Spa Shooter Gets 4 Consecutive Life Sentences in Cherokee Plea Deal, ATLANTA J.-CONST. (July 27, 2021), https://www.ajc.com/news/crime/breaking-chokeee-prosecutor-announces-plea-deal-in-spa-shootings/R5JEDHK5KRFFJRGO4KP5D3WEFI/ [https://perma.cc/UT9G-8Q9Y].

<sup>5</sup> 2 Doormen Fired for Not Acting in Brutal NYC Beating of 65-Year-Old Asian Woman, NBC N.Y. (Apr. 7, 2021), https://www.nbcnewyork.com/news/local/2-doormen-fired-for-not-acting-in-brutal-nyc-beating-of-65-year-old-asian-woman/2983812/ [https://perma.cc/NU8K-KDPB]. Within two months, Congress passed, and President Biden signed into law, a bill that seeks to remedy anti-Asian violence. *US Congress Passes Bill to Fight Anti-Asian Hate Crimes*, DEUTSCHE WELLE (May 19, 2021), https://www.dw.com/en/us-congress-passes-bill-to-fight-anti-asian-hate-crimes/a-57576222 [https://perma.cc/LDZ8-JZJS].

<sup>6</sup> Georgia has a new hate crimes law, which imposes a mandatory additional sentence to a defendant who has committed a felony or a “designated misdemeanor” and requires the sentencing judge to indicate the part of the sentence attributable to the hate crime. The finder of fact must find that a hate crime has been committed beyond a reasonable doubt; the law requires enhanced sentencing when the defendant’s motivation is the “victim’s or group of victims’ actual or perceived race, color, religion, national origin, sex, sexual orientation, gender, mental disability, or physical disability.” H.B. 426, 155th Gen. Assemb., Reg. Sess. (Ga. 2020), https://www.legis.ga.gov/api/legislation/document/20192020/194575 [https://perma.cc/NWG2-K253]. At the time the Georgia law passed, there were only three remaining states that did not have hate crime laws: Arkansas, South Carolina, and Wyoming. Long was ultimately charged with hate crimes. Dov Wilker, *Why Are Arkansas, South Carolina, Wyoming Holding Back on Adopting Hate Crime Laws?*, THE HILL (Aug. 3, 2020), https://thehill.com/blogs/congress-blog/civil-rights/510251-why-are-arkansas-south-carolina-wyoming-holding-back-on [https://perma.cc/SBT9-UGDW]. See Hannah Knowles & Haisten Willis, *Prosecutor to Seek Hate-Crime Charges Against White Man Accused in Atlanta-Area Spa Killings*, WASH. POST (May 11, 2021), https://www.washingtonpost.com/nation/2021/05/11/atlanta-shooter-hate-crime/ [https://perma.cc/8KFE-35DM].

<sup>7</sup> Chris Moody, *Why Hate Crime Convictions Are so Difficult to Secure in US*, AL JAZEERA (Mar. 27, 2021) https://www.aljazeera.com/news/2021/3/27/why-hate-crime-convictions-are-difficult-to-secure-us [https://perma.cc/M9RE-5TCX]. See also *Atlanta Spa Shootings: Suspect Charged With Murder After Eight People Killed - As it Happened*, THE GUARDIAN, https://www.theguardian.com/us-news/live/2021/mar/17/atlanta-spa-shootings-live-updates-asian-women-suspect-arrested-latest [https://perma.cc/E79Q-JZW3] (demonstrating social media posts that criticized the failure to name the shootings as biased based on race given the fetishization and sexualization of Asian women in our culture). Because there is debate as to whether “sex addictions” actually exist, the term

Office announced that the shooter had a “bad day,” and stated that it could not yet be determined whether the violence constituted hate crimes.<sup>8</sup> The Captain’s minimization of the tragedy created an outcry; many protested, arguing that Long’s targeting of Asian massage parlors demonstrated that his intent was race-based.<sup>9</sup> But few voiced what also seemed obvious: the shooter’s comments about his “sex addiction” were admissions that the sex of the female victims motivated his crimes. In other words, in jurisdictions where hate crime legislation creates additional penalties for crimes moti-

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appears throughout the article in quotation marks. The American Psychological Association does not recognize pornography addiction as a psychological disorder. Many psychologists believe that the emotional pain suffered by a person who claims to have a “sex addiction” is evidence of a conflict between the use of pornography and the individual’s values, or of some other psychological illness rather than an addiction to sex. See Sanjana Gupta, *Pornography Addiction is Not Real According to Leading Psychologists — Here’s When Porn Can Be Unhealthy*, INSIDER (May 7, 2021), <https://www.insider.com/porn-addiction> [<https://perma.cc/FFN4-HZBQ>] (noting that the DSM-5, the world’s authoritative guide on mental disorders, does not include sex or porn addiction as a diagnosable illness). This failure to categorize sex or porn addiction as a research-based diagnosable disorder does not, however, mean that the individual shooter in the case was lying about the turmoil that he was suffering. In fact, a roommate at Maverick Recovery, a twelve-step recovery center where Long lived for a time, told reporters that Long suffered because his behavior—watching porn and going to massage parlors—was considered sinful by his church. Although Long had been encouraged to get psychological or psychiatric counseling when he threatened suicide, Long refused, stating that he wanted spiritual counseling only. After leaving Maverick Recovery, Long spent time at HopeQuest Ministry Group, an intensive inpatient facility, which treats porn and sex addictions by integrating its treatment with “Christian principles.” Mark Berman et al., *The Atlanta Spa Shooting Suspect’s Life Before Attacks*, WASH. POST (Mar. 19, 2021), [https://www.washingtonpost.com/national/atlanta-shooting-suspect-robert-aaron-long/2021/03/19/9397cdca-87fe-11eb-8a8b-5cf82c3dffe4\\_story.html](https://www.washingtonpost.com/national/atlanta-shooting-suspect-robert-aaron-long/2021/03/19/9397cdca-87fe-11eb-8a8b-5cf82c3dffe4_story.html) [<https://perma.cc/NNT3-J74Z>]. For a description of HopeQuest Ministry Group’s treatment for sex addiction, see *Sex Addiction*, HOPE QUEST MINISTRY, <https://hopequestgroup.org/sex-addiction/> [<https://perma.cc/HP5S-JYYC>].

<sup>8</sup> Meryl Kornfield & Hannah Knowles, *Captain Who Said Spa Shootings Suspect Had ‘Bad Day’ No Longer a Spokesman on Case, Official Says*, WASH. POST (Mar. 18, 2021), <https://www.washingtonpost.com/nation/2021/03/17/jay-baker-bad-day/> [<https://perma.cc/32CG-52UP>].

<sup>9</sup> See, e.g., Emily Alford, *Why Does the Murderer Get to Tell the Story?*, JEZEBEL (Mar. 18, 2021), <https://jezebel.com/why-does-the-murderer-get-to-tell-the-story-1846506454> [<https://perma.cc/FD7E-E5E2>].

vated by sex or gender,<sup>10</sup> this case should have been charged as a hate crime based on the victims' race, national origin, *and* sex.<sup>11</sup>

Under a new Georgia hate crime law, there are penalties for hate crimes in addition to the penalties for a finding of guilt in the underlying offense.<sup>12</sup> If the facts as reported are correct, this was a clear case of an intersectional hate crime. The Fulton County prosecutor in the case seemed to agree. She ultimately charged the perpetrator with murder and hate crimes based on national origin, gender, and race, as well as domestic terrorism and aggra-

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<sup>10</sup> Courts and legislators continue to use the terms “gender” and “sex” to denote what at one time was called “biological sex”—to indicate the sex assigned at birth. For this reason, throughout this article, I use “gender” and “sex,” but there is a complicated debate about these terms. “Biological sex” is offensive to many because it presumes that there is no variety in biology and that there are only two sexes. I do not take that position, and I believe that all persons, regardless of the sex assigned at birth, should be protected from hate crimes. I have written about people who are intersex or whose sex is ambiguous. *See generally* Ann C. McGinley, *Erasing Boundaries: Masculinities, Sexual Minorities, and Employment Discrimination*, 43 U. MICH. J. LAW. REFORM 713 (2009) (analyzing the application of employment discrimination law to sexual minorities—lesbians, gays, bisexuals, transgender, and intersex individuals). *See also* Kim Elsesser, *The Myth of Biological Sex*, FORBES (June 15, 2020), <https://www.forbes.com/sites/kimelsesser/2020/06/15/the-myth-of-biological-sex/?sh=149ce24d76b9> [<https://perma.cc/65VP-7RPU>].

At this point, however, the law has not yet caught up. Title VII, for example, uses the term “sex” to denote men or women (and most recently, the Court linked sex discrimination to discrimination based on sexual orientation or trans status. *See Bostock v. Clayton County, Georgia*, 140 S.Ct 1731, 1747 (2020). *See also* discussion *infra*, Part IV. Additionally, many of the courts do not distinguish in their opinions between the meaning of “gender” and “sex,” and have not done so for a long time. *See, e.g.* *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (concluding that discriminating based on gender stereotyping is sex discrimination). My concern here is that categories such as sexual orientation, gender identity, and gender expression may not protect a straight cisgender woman who suffers from discrimination. There are hate crime statutes that afford protection to gender identity, sexual orientation, and gender expression but do not do so for “sex” or “gender.” *See, e.g., Nev. Rev. Stat. § 193.1675, infra* note 25. For these reasons, I continue to use the terms “sex” or “gender” when referring to legislation to denote a category that means man or woman. I would dispute the idea that “sex” or “gender” is so narrow that it would not include gender identity or expression or sexual orientation. I believe that “sex” or “gender” could include other categories in addition to men and women and would expect that these terms in legislation would provide protection for these individuals in the future. I am merely concerned with the situation where courts would conclude that individuals are protected based on sexual orientation, gender identity, and gender expression but not based on “sex” or “gender.” While “sex” and “gender” may be socially constructed, labeling is materially consequential to people who are assigned—either at birth or later—as women and men. My article takes the position that all people need protection of the law.

<sup>11</sup> Of course, some did recognize that this violence likely resulted both from the race and the sex of the victims. *See Atlanta Spa Shootings, supra* note 7.

<sup>12</sup> Knowles & Willis, *supra* note 6.



vated assault.<sup>13</sup> In contrast, Cherokee County charged the perpetrator with murder but did not charge him with hate crimes.<sup>14</sup>

Commentators and members of the public overlooked sex or gender as a motive for potential hate crimes. Even in the face of the perpetrator's admission that he targeted the women because of their sex, commentators seemed to put sex in a different category than race. Some apparently believed that if it was a perceived "sex addiction" that caused the rampage—desire or attraction to women—that motivation could not fulfill the requirement of showing bias or hatred toward women. Or, perhaps, commentators did not even think about sex because this motive was so normalized that it was invisible to them.

Moreover, despite the longstanding theory of intersectionality introduced by Professor Kimberlé Crenshaw,<sup>15</sup> only a few progressive online opinion pieces by Asian women raised the issue of the intersectional causes of the rampage.<sup>16</sup> Few acknowledged that the most likely motivation was bias against the female victims due to their sex and race and/or national origin. The faulty logic may have been: because he lusted after women, the shooter cannot be prejudiced toward or "hate" women; because his motivation was unfulfilled desire of women, race cannot be a motivator. In effect, even though the perpetrator apparently admitted that he killed the women because they were women, the public and most commentators did not see gender as a potential cause for a hate crime likely because, as we shall see, misogyny is so common as to be considered ordinary in our society. Masculinities, feminist, and intersectionality theories,<sup>17</sup> and familiarity with the dark Internet pages of groups such as "incels," debunk the idea that gender was not a cause in the spa murders.

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<sup>13</sup> See Linda So, *Georgia Prosecutor to Seek Death Penalty in Spa Killings*, REUTERS (May 11, 2021), <https://www.reuters.com/world/us/prosecutor-says-suspect-georgia-spa-shootings-committed-hate-crimes-ny-times-2021-05-11/> [<https://perma.cc/4Z7M-ZMBH>]; see also, Knowles & Willis, *supra* note 6; an earlier indictment in neighboring Cherokee County charged the defendant with four counts of murder for spa killing that occurred there on the same day. See So, *supra* note 13.

<sup>14</sup> Marlene Lenthag, *Murder Suspect in Atlanta-area Spa Shootings to Be Arraigned*, ABC NEWS (July 23, 2021), <https://abcnews.go.com/US/murder-suspect-atlanta-area-spa-shootings-arraigned/story?id=79013075> [<https://perma.cc/8V8L-J736>] (stating that Cherokee County did not determine the perpetrator's motive).

<sup>15</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1243 (1994).

<sup>16</sup> See, e.g., Li Zhou, *The Atlanta Shootings Can't Be Divorced from Racism and Misogyny*, VOX (Mar. 18, 2021), <https://www.vox.com/22336317/atlanta-georgia-shootings-racism-misogyny-targeting-asian-women> [<https://perma.cc/H5MQ-BHNZ>]; Nancy Wang Yuen, *Atlanta Spa Shooting Suspect's 'Bad Day' Defense, and America's Sexualized Racism Problem*, NBC NEWS (Mar. 18, 2021), <https://www.nbcnews.com/think/opinion/atlanta-spa-shooting-suspect-s-bad-day-defense-america-s-ncna1261362> [<https://perma.cc/675S-JDF3>].

<sup>17</sup> See *infra* Part III for an extended discussion of these theories and how they support an understanding that hate crimes should include not only sex or gender but also an understanding that identities are intersectional in nature.

"Incel" is short for "involuntary celibate."<sup>18</sup> The incels are young men in the United States and abroad who communicate online about their hatred of women because of their failure to have sex with them. In incels' posts and those of other similar groups, racism and white supremacy as well as misogyny ring loud. Inspired by their "hero," Elliot Rodger, who committed suicide after murdering female and male students and injuring many others at the University of California, Santa Barbara, the more radical incels advocate killing and torturing of women.<sup>19</sup> On the day of the murders, Rodger published "My Twisted World" ("manifesto"), his long memoir and explanation for his rampage.<sup>20</sup> Rodger's manifesto detailed that he would murder all of the "hot" women in revenge for their ignoring him and thereby prove his own superiority to women and other men.<sup>21</sup> Since Rodger's murderous rampage, other men have followed his lead: committing or attempting to commit mass murders, mostly of women, because of their incel ideologies.<sup>22</sup>

Although there is no evidence that the Atlanta spa-shooter participated on incel forums or considered himself an incel, there is an important link between Long's crimes and those committed by the incels. Both Rodger's and Long's crimes are the result of misogyny. Misogyny, as defined by feminist philosopher Kate Manne in *Down Girl: The Logic of Misogyny*,<sup>23</sup> is systemic. It includes individual or group action and societal norms and expectations that harm its victims and support the existence of patriarchy. Misogyny is not defined by the individual psychology of perpetrators, but rather by its effect on the victims. Using this definition, murdering women because they do not provide the services and care expected of them (or because women are "evil" for tempting men) is misogynistic because it supports the superiority of men over women and punishes women for their failure to abide by men and society's expectations. In essence, misogyny is common and even "normal" in U.S. society, resulting at times from traditional views about the family and the relations between women and men as well as from the ugly hatred that is the basis of the incel movement. It is through this contrast—between the everyday beliefs and actions furthering traditional beliefs about women's place in our society and the shocking views of incel ideology and actions furthering it—that I hope to demonstrate one common element: misogyny. It is real. It is systemic. It kills.

Unlike Georgia, many jurisdictions have inadequate laws to deal with hate crimes caused by the gender or sex of the victim. Only approximately two thirds of the states include gender or sex as protected statuses in their

<sup>18</sup> See *infra* Part I for a more complete description of this group.

<sup>19</sup> See *infra* Part I for a more complete description of incels' hero-worship of Rodger.

<sup>20</sup> See *infra* Part I for a description of Rodger's manifesto. See also, Rodger, *infra* note 43.

<sup>21</sup> See *infra* Part I for a more complete description of this group.

<sup>22</sup> See, e.g., *infra* notes 86–97.

<sup>23</sup> See MANNE, *supra* note 2.

hate crime laws<sup>24</sup>—a fact demonstrating misbelief that violence toward women nearly always occurs for reasons other than misogyny. In fact, some states' hate crimes laws protect victims based on their sexual orientation and gender identity but fail to do so based on their sex or gender,<sup>25</sup> an apparent attempt to punish crimes caused by hatred of certain sexual/gender minorities but not violence against cisgender heterosexual women and men.

Moreover, while scholars have recently demonstrated the link between incels and other men's rights groups on the Internet and alt-right organizations whose members commit crimes that could potentially be categorized as domestic terrorism, prosecutors have generally avoided charging crimes such as the Atlanta spa shootings as domestic terrorism.<sup>26</sup> Because legal scholarship has undertheorized misogyny and its effects, we have been blind to the role gender plays in mass killings. But the evidence is there: a vast majority of mass killers are male, and misogyny is a key cause of their violent behavior. For example, in a study of active shooters in 160 incidents from 2000–2013, only 3.8% involved female shooters compared to 96.2% male shooters.<sup>27</sup> Sociologists Kalish and Kimmel have demonstrated a link between hegemonic masculinity, the most powerful form of masculinity that upholds the patriarchy, which Kimmel says results in "aggrieved entitlement," and school shootings.<sup>28</sup> Understanding that misogyny, invisible because of its normalization, often results from our society's emphasis on masculinity is crucial to comprehending this phenomenon. Committing suicide after the rampage becomes a means of proving one's dominance and masculinity.<sup>29</sup> In essence, hate crimes based on sex or gender are not only

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<sup>24</sup> See ADL Hate Crime Map, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/adl-hate-crime-map> [<https://perma.cc/35AW-W9JU>].

<sup>25</sup> See, e.g., Nev. Rev. Stat. § 193.1675, which makes it a hate crime to commit a felony and some misdemeanors "because of the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or group of persons . . ." but not "sex" or "gender".

<sup>26</sup> See Francesca Laguardia, *Considering a Domestic Terrorism Statute and Its Alternatives*, 114 NW. UNIV. L. REV. ONLINE 1061, 1063–64, 1097–99 (2020) (explaining that there is really no federal domestic terrorism statute because, although federal law defines domestic terrorism, it does not include penalties for it; moreover, the definition of terrorism would not likely cover mass shootings; and arguing that there may be better approaches than creating a federal domestic terrorism law to attain equity between those punished under federal law for international terrorism and those punished under federal law for equivalently egregious hate crimes on the home front); Michael Molstad, *Our Inner Demons: Prosecuting Domestic Terrorism*, 61 B.C. L. REV. 339, 379–82 (2020) (arguing for a new statute of domestic terrorism that punishes acts rather than identities); see also Stewart Chang, *Our National Psychosis: Guns, Terror, and Hegemonic Masculinity*, 53 HARV. C.R.-C.L. L. REV. 495, 498–99 (2018) (discussing terrorism explanations and investigating hegemonic masculinity as a potential cause for mass public shootings).

<sup>27</sup> Christopher Vito et al., *Masculinity, Aggrieved Entitlement, and Violence: Considering the Isla Vista Mass Shooting*, 13 INT'L J. MASC. STUDIES 86, 87 (2018).

<sup>28</sup> Rachel Kalish & Michael Kimmel, *Suicide by Mass Murder: Masculinity, Aggrieved Entitlement, and Rampage School Shootings*, 19 HEALTH SOCIO. REV. 451, 459 (2010).

<sup>29</sup> Vito et al., *supra* note 27, at 91 (citing to Kalish & Kimmel, *supra* note 28).

about the sex of the victims but also about the perceived failed masculine gender of the perpetrators as they react to their inability to take advantage of patriarchal power. And, as we shall see below, many of these crimes are intersectional, caused not only by misogyny, but also by racism.

This article examines, through the lens of the Atlanta spa shootings and the incels' movement, mass sex-based crimes that could be characterized as hate crimes or even domestic terrorism. Involuntary celibates (or incels) are radicalized young men many of whom advocate violence toward women on Internet forums. Some, who are considered heroes by the incel community, have carried out their threats by engaging in mass murders of mostly women.<sup>30</sup> I use masculinities, feminist, and intersectionality theories to analyze incels and other similar groups and the dangers they present to society.

This is the first law review article to analyze the intersection of misogyny, public mass murders, and hate crime legislation.<sup>31</sup> In general, legal scholarship has undertheorized the incel phenomenon, and it has failed to rely on the considerable social science literature examining incel posts on the Internet. It has also underappreciated and undertheorized the effect of misogyny as well as its (often) intersectional nature. While a few legal scholars have mentioned Kate Manne's definition of misogyny, none have analyzed systemic misogyny with reference to hate crimes. Moreover, many policymakers have omitted gender from hate crime legislation, a failure that may prove the point that misogyny is a hidden, often invisible phenomenon that, despite feminist progress made in dismantling patriarchy, continues to affect girls and women of all races and classes throughout society.

This article analyzes the failure to recognize gender as a common motivator for hate crimes despite the increase of violence against women by groups and individuals who are motivated by misogyny. It argues that we often fail to recognize or acknowledge misogyny due to its ubiquity in society. Only through public education leading to an understanding of the link between misogyny and violence can we hope to ameliorate the problem of extreme and increasing violence against women. In an effort to educate the public to recognize this problem, this article recommends that all states include gender as well as intersectional identities as potential motives for hate crimes. Enacting hate crime legislation has a symbolic and expressive purpose. In this instance, it would serve as a public recognition of the dangers of misogyny and a warning to those who seek to engage in misogynistic

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<sup>30</sup> See *infra* notes 86–97 (listing most violent crimes and attempted crimes by men declaring themselves to be incels).

<sup>31</sup> In fact, there are only a handful of law review articles that even mention incels; none of those articles deal with the intersection of misogyny and hate crimes. See Lynne Tirrell, *Toxic Misogyny and the Limits of Counterspeech*, 87 *FORDHAM L. REV.* 2433, 2440 (2019) (mentioning incels as outliers because of the extreme nature of their speech but focusing on misogynist speech patterns, and how they harm women); Gretchen Liljeberg Casey, *Ending the Incel Rebellion: The Tragic Impacts of an Online Hate Group*, 21 *LOY. J. PUB. INT. L.* 71, 75 (arguing that law should police threatening online posts to prevent mass violence).

violence. By adding intersectional motives to hate crime laws, state legislatures also educate the public about the special harms that women of color suffer from racist misogyny or misogynistic racism. Besides adding gender and intersectional identities to state hate crime legislation, this article encourages further research into misogyny as a source of domestic and international terrorism and, based on the research findings, the implementation of future legislative changes that protect all people whether they be male, female, or nonbinary.

Part I of this article studies the social science and journalistic research into incels and describes how the incel movement counters the public perception that sexual frustration or desire, or mere hatred based on it, is an unlikely motivator of hate crimes (e.g., the police officer's attribution of "he had a bad day," demonstrates his ignorance that the spa murders were likely motivated by the women's sex). Part II discusses the links between groups like incels and alt-right white supremacists, and the emerging conclusions of international and domestic security researchers that masculinity and misogyny strongly correlate with and may be a cause of domestic and international terrorism. Part III elaborates on the definition of misogyny and explains how masculinities, feminist, and intersectionality theories help interpret the mindset and behavior of incels and other related groups. This Part demonstrates that misogyny is a key motivator not only for groups such as incels but also for alt-right white supremacist groups. It explains that the views of individuals belonging to those radical groups may differ in intensity from the views of the Atlanta spa shooter but that both sets of beliefs are grounded in the same ideology. And, that ideology—misogyny—can lead to murder. The point is that misogyny (often combined with racism) is often hidden but deadly. Part IV analyzes hate crime laws, explaining the history and purpose of hate crime legislation and the problems relating to reporting and prosecutions of hate crimes. It recommends hate crime legislation in all states that at a minimum protects statuses including race, color, religion, national origin, disability, sex or gender, sexual orientation, gender identity, and expression. Moreover, it recommends that this legislation explicitly recognize hate crimes that occur at the intersection of two or more of these statuses.

The article concludes that, besides amending state hate crime legislation to include gender or sex as protected characteristics, policymakers and scholars should recognize that the systemic nature of misogyny is an important causal factor in many hate crimes. The article encourages further research into links between radical groups professing hatred in the online "manosphere" and alt-right white supremacist groups, and the role that misogyny plays in domestic and international terrorism. It is only with this research that security experts can determine whether and/or how to revise both state and federal laws dealing with domestic terrorism and federal law prohibiting international terrorism.

# I. INVOLUNTARY CELIBATES (INCELS): IDENTITY, IDEOLOGY, AND BEHAVIOR

## A. *Incels: Who and Where are They?*

The term “involuntary celibate” (“incel”) was coined by a young Canadian woman in 1997, who established a website as a support group for women and men who had trouble dating and finding someone with whom to have sexual intimacy.<sup>32</sup> By the end of the first decade of the 21st century, however, the group calling itself “incels” had changed significantly. In the early 2000s, there were two different types of platforms catering to incels, one that continued its support function for lonely and frustrated persons, and the other that became increasingly militant, hostile, and pro-violence.<sup>33</sup> This latter group, which is nearly exclusively male, largely from North America and other Western countries, and whose posts are angry, and frequently pro-violence, now dominates and represents the current definition of “incels.”<sup>34</sup> As incel forums proliferated, they became more extreme with a militant identity, often registering a belief that incels must exact revenge for their treatment by others.<sup>35</sup> As sociologist Bruce Hoffman and his co-authors explain, Reddit attracted militant incels, and a subreddit, r/incels, hosted incels’ especially hostile posts; eventually, Reddit banned the subreddit for violating its rules and engaging in incitement to violence.<sup>36</sup> But incels were not deterred; they “have spread across Reddit and 4chan, have migrated to on-line community gaming forums like Discord, and also have dedicated websites like incels.co and incels.net. Although Reddit has reduced the ability to congregate *en masse* online, extremist threads regularly surface before getting banned.”<sup>37</sup>

To place the incels into context, they comprise a subgroup of what is known as the online “manosphere,” which includes forums of older groups such as Men’s Rights Activists (MRAs), and Pick Up Artists (PUAs) and newer groups such as Men Going Their Own Way (MGTOW), and Involuntary Celibates.<sup>38</sup> The forums of the older groups have become less popular, and many of their online supporters have begun to migrate to the newer

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<sup>32</sup> Bruce Hoffman et al., *Assessing the Threat of Incel Violence*, 43 STUDS. CONFLICT & TERRORISM 565, 566 (2020).

<sup>33</sup> *Id.* at 566.

<sup>34</sup> *Id.* at 566–67.

<sup>35</sup> *Id.* at 566.

<sup>36</sup> *Id.* at 566–67.

<sup>37</sup> *Id.* at 567.

<sup>38</sup> *Id.*, citing Manoel Horta Ribeiro et al., *From Pick-Up Artists to Incels: A Data-Driven Sketch of the Manosphere*, (15th International AAAI Conference on Web and Social Media, 2021), <https://arxiv.org/pdf/2001.07600.pdf> [<https://perma.cc/S36K-W9QP>], which later became *The Evolution of the Manosphere Across the Web* (Apr. 8, 2021). Ribeiro’s online study analyzed 14 years of communications online, which included millions of conversations.

forums like incels.is, which have become much more “toxic and misogynist” than earlier forums.<sup>39</sup> A team of researchers studied more than 28 million posts on six forums and 51 subreddits to gain an understanding of the manosphere, of which incels play an increasing role. They describe incels.is as a:

Forum created hours after the ban of /r/Incels. It is the largest Incel forum in activity, allowing speech that would likely be censored in platforms like Reddit. It does not allow women to join as they would disrupt discussion.<sup>40</sup>

### B. Identity and Ideology

Because incels’ discussions occur almost exclusively online, knowledge of incels comes primarily from studies by social scientists, criminologists, experts in national and international security, and journalists of online sites where incels discuss their views and their lives.<sup>41</sup> There are a few first-person descriptions by former incels as well as interviews of former incels.<sup>42</sup> Moreover, we have Elliot Rodger’s YouTube videos, which he posted online before the mass murders he committed in Santa Barbara, California in 2014, and his 147-page manifesto, which he posted right before murdering six people and injuring many others and turning the gun on himself.<sup>43</sup> Rodger’s manifesto sets out a long description of his childhood, perceived slights he suffered as a teenager and young adult, and his inability to attract women,

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<sup>39</sup> Ribeiro, *supra* note 38, at 1.

<sup>40</sup> *Id.* at 3 (citations omitted).

<sup>41</sup> See generally Hoffman et al., *supra* note 32, at 566–67; Ribeiro et al., *supra* note 38; Stephane J. Baele et al., *From “Incel” to “Saint”: Analyzing the Violent Worldview Behind the 2018 Toronto Attack*, 33(8) TERRORISM & POL. VIOLENCE 1667 (2019); Simon Cottee, *Incel (E)motives: Resentment, Shame and Revenge*, 44 STUDS. CONFLICT & TERRORISM 93 (2021); Lauren Menzie, *Stacys, Beckys, and Chads: The Construction of Femininity and Hegemonic Masculinity within Incel Rhetoric*, 13 PSYCH. & SEXUALITY 69 (2020), <https://doi.org/10.1080/19419899.2020.1806915> [<https://perma.cc/UF3X-R4WS>].

<sup>42</sup> See, e.g., “I Used to Be an Incel,” BBC THREE (July 15, 2019), <https://www.bbc.co.uk/bbcthree/article/45bdcd7a-1cb1-4ad1-a3e0-ebc2a05243ac> [<https://perma.cc/H2B5-N8W7>]; Zack Beauchamp, *Our Incel Problem*, VOX (Apr. 23, 2019), <https://www.vox.com/the-highlight/2019/4/16/18287446/incele-definition-reddit> [<https://perma.cc/9SWH-4L6K>] (describing interviews of former incels).

<sup>43</sup> Elliot Rodger, *My Twisted World*, found in Anthony Bond, *California Shooting: Read the Full Transcript of Elliot Rodger’s Chilling Manifesto*, MIRROR (UK) (May 26, 2014), <https://www.mirror.co.uk/news/world-news/california-shooting-read-full-transcript-3610387> [<https://perma.cc/Q98H-UPXT>]; *Elliot Rodger: His Biographical Manifesto*, YOUTUBE, <https://www.youtube.com/watch?v=XMGxxRRtmHc> [<https://perma.cc/LGU2-5RSK>] (describing Rodger’s transcript); ABC News, *Friend of Alleged Santa Barbara Shooter Discusses Warning Signs*, YOUTUBE <https://www.youtube.com/watch?v=I2qBBBvYQOA> [<https://perma.cc/YGA2-DCDF>]; ABC News, *Elliot Rodger: Inside the Mind of a Killer*, YOUTUBE, <https://www.youtube.com/watch?v=QJc234jkJ2w> [<https://perma.cc/2DM6-SR66>].

which led to his decision to engage in a “Day of Retribution.”<sup>44</sup> Rodger’s mass murders and his manifesto have been extolled repeatedly in incel forums; he is considered the founder and a hero of the incel movement.<sup>45</sup> In fact, his name is synonymous with the term “hero”—incels spell “hERo,” with Rodger’s initials in capital letters.<sup>46</sup>

Incels are majority middle-class, white, male, and fairly young; most incels still live with their parents.<sup>47</sup> Seventy percent of incels state that they have depression, while over one-quarter of them self-identify as autistic.<sup>48</sup> The most common experience described by incels is that they desire sex and a relationship with a woman, but they have been unable to attract women or have sex with them.<sup>49</sup> Most incels are still virgins, but even if they have had sexual experiences in the past, it has been very limited, and they have no hope for any future relationships with women. Incels see the world of sexual commerce as dominated by attractiveness and lookism, and, even though they sometimes acknowledge that they themselves are not attractive, they blame women for not being attracted to them.<sup>50</sup> There exists on incel forums a strong belief in evolutionary psychology (which is criticized and marginalized within the social sciences)<sup>51</sup> and genetic determinism: they agree that women seek the best-looking men with whom to reproduce because they are protecting the future of their offspring.<sup>52</sup> Despite this belief, incels cast blame on women for being superficial for pursuing the best-looking men.<sup>53</sup>

Categorization is important to the incel worldview, and these categories are for the most part immutable.<sup>54</sup> Incels see society as operating in layers.

<sup>44</sup> Rodger, *supra* note 43, at 1–101.

<sup>45</sup> See Baele et al., *supra* note 41, at 1683.

<sup>46</sup> *Id.*

<sup>47</sup> Hoffman et al., *supra* note 32, at 568.

<sup>48</sup> *Id.* These numbers are startling. Johns Hopkins estimates that in the general community the prevalence of autism is 1.85%. For men, the percentage is higher—See *U.S. Autism Rates Up 10 Percent in New CDC Report*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Mar. 26, 2020), <https://www.jhsph.edu/news/news-releases/2020/us-autism-rates-up-10-percent-in-new-cdc-report.html> [<https://perma.cc/YH4H-Y3SR>]. The most recent statistics (2020) state that the percentage of individuals having a major depressive episode in the past year, for the 18–25 year age group is 17.0%. See *Major Depression*, NAT’L INST. MENTAL HEALTH <https://www.nimh.nih.gov/health/statistics/major-depression> [<https://perma.cc/GS9W-NWC4>]. While it is true the incels’ claims are self-reports and not diagnoses, the numbers the incels present are much higher than those of the general population. Even if incels who engage in crimes against women have mental health and neuro disabilities, that diagnosis does not preclude a finding that they acted out of misogyny or require a finding that they acted alone.

<sup>49</sup> Cottee, *supra* note 41, at 94.

<sup>50</sup> Baele et al., *supra* note 41, at 1676.

<sup>51</sup> Shawn P. Van Valkenburgh, *Digesting the Red Pill: Masculinity and Neoliberalism in the Manosphere*, 24 *MEN & MASculINITIES* 84, 91–92 (2021) (explaining that evolutionary psychology is accepted in the manosphere and the manosphere presumes that women seek to reproduce with Alphas, but to raise children with Betas on whom the women cheat).

<sup>52</sup> Hoffman et al., *supra* note 32, at 568.

<sup>53</sup> *Id.* at 568–69.

<sup>54</sup> See Baele et al., *supra* note 41, at 1674–75.



The top and elite layer is made up of “Stacys” and “Chads,” the most attractive women and men; the middle layer comprises “Beckys” and “Betas” (“Normies”), the mid-level females and males in attractiveness; the incels occupy the bottom layer. Incels concede that they may be physically unattractive, but they argue that they are superior to the Chads because incels are deeper, more loyal, and more intellectual than the Chads. The 80% rule dominates their discussions; they believe that 80% of women select from merely 20% of the male dating pool, preferring the most attractive or the wealthiest men.<sup>55</sup> Incels believe that many white men date women who are inferior to them; Indian incels, they believe, have the most difficult time getting women to date them, whereas women never “date down.”<sup>56</sup> This dating pattern deprives incels, who occupy the lowest category, of women with whom to have sex.

Incels revile “Cucks” and “Faggots.” “Cucks” are males who are subordinate to women and incels see them as weak and unmanly; “faggots” are (surprisingly) heterosexual men who are considered traitors to the male sex because they see women as equal to men.<sup>57</sup>

Incels use the “pill” vocabulary and metaphor that predominates throughout the manosphere and comes from the *The Matrix*, a popular movie from 1999.<sup>58</sup> In *The Matrix*, the hero could take a blue pill that would allow him to see the world with optimism, or a red pill that would make him aware of the realities of the world. Incels have added the “black pill.” If a person metaphorically swallows the black pill, he will be aware of the immutability of the most negative reality.<sup>59</sup> Those incels who swallow the black pill believe that it is impossible to escape the social reality that they inhabit—incels will never find female partners. Those who ingest the blue or red pill still believe that there is something they can do to improve their situation, such as plastic surgery, exercise, or learning how to pick up women.<sup>60</sup>

Incel ideology, like other extremist worldviews, sees the world in a dual structure—radical dualism—of ingroups (the incels) and the outgroups (everyone else, chiefly women); they see their own group as superior and attach derogatory labels to women, using terms such as “femoids,” “foids,” or “roasties.”<sup>61</sup> As one group of researchers explained:

Women are also dehumanized through their presentation as only capable of simple emotions (such as sexual desire) and guided by antisocial values (cheating their husbands, “leeching” the welfare state, manipulating romantic men for sex or money, etc.). For instance, one member observes that women “are disgust-

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<sup>55</sup> See Cottee, *supra* note 41, at 96.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 95–96.

<sup>58</sup> THE MATRIX, (Warner Bros. 1999) [perma.cc/F64X-DXZA](http://perma.cc/F64X-DXZA)].

<sup>59</sup> See Baele et al., *supra* note 41, at 1675.

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

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

ing parasites whose only purpose is to leech as much as possible and get pleasure,” while another alleges that “these cunts don’t even acknowledge different personality traits, they only want good looking chads.”<sup>62</sup>

These researchers also observe that there are subcategories existing in the outgroups, largely based on ethnicity, and debates about which racial or ethnic group of women is the worst are common on incel forums. For example, a discussion that appeared on one forum went as follows:

- “I hate all females, but I think I hate Egyptian females the most”
- “Curry women are just as bad but uglier”
- “All Asian females should be aborted”
- “Both noodle and curry whores are self-hating scum”<sup>63</sup>

Stéphane Baele and his co-authors’ study found that race and racism were salient considerations on the incel forums. Use of the terms “curry” for Indian people and “noodle” for Asians was frequent.<sup>64</sup> Moreover, a reference to “leeching the welfare state” reproduces Reagan-era mythology about single black mothers—“welfare queens”—who were “leeching the system.”<sup>65</sup>

Incels focus mostly on white women and men as at the top of the dating scale. Although they hate and resent women of color, use of the obviously Anglo names “Stacey” and “Chad” demonstrates that incels see white women as the ideal. Yet, that makes white women the enemy. Chads are stereotypical white males who benefits from hegemonic masculinity. His whiteness and his traditional good looks (and often money) are the key to his ability to attract women. In fact, as we shall see in Elliot Rodger’s writings, he considered blonde, white women the “hottest,” and he was infuriated when men of color dated white women, especially because he did not have access to “hot” white women, and he considered himself (he was half-white and a descendant of British Aristocracy) superior to the men of color who were dating the women he desired.<sup>66</sup>

Incels believe that feminism and free sex have caused their dilemma, so they save their greatest hatred for women, especially those who espouse

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

<sup>63</sup> *Id.* (quoting a discussion on incel.me, an incel forum).

<sup>64</sup> Note that Asian women, who are stereotyped by white men as the most attractive, and whom the Atlanta-area shooter selected for violent retribution, may be reviled because their desirability makes the rejection of incels even more problematic. But incel behavior may be contradictory because the prototypical “Stacy” appears to be a white woman.

<sup>65</sup> See Carly Hayden Foster, *The Welfare Queen: Race, Gender, Class and Public Opinion*, 15 *RACE, GENDER, & CLASS* 162, 162 (2008) (demonstrating the importance of analyzing the “Welfare Queen” with an intersectional lens, looking at race, class, and gender, and noting that most look at it as if it is about race or about gender and do not understand the intersectional nature of the term).

<sup>66</sup> Rodger, *supra* note 43, at 84–132.

feminist beliefs.<sup>67</sup> The Betas (normies), who are complicit with feminism, are also disparaged.<sup>68</sup> Incels desire a patriarchal society “where monogamy is the rule, traditional gender roles are accepted and followed, women and men marry early, and adultery is prohibited.”<sup>69</sup> This patriarchal society would give all men access to women, and men’s sexual entitlement would not be denied by women.<sup>70</sup> Expressed in the starkest of terms and representative of comments on the forums, incels argue:

[F]emoids are nothing but sexual objects and thus should be second-class citizens; [W]omen are for fucking and raising families, not for having ‘rights’;<sup>71</sup>

. . . all women are, or should be is slaves to men, cook, clean, and spreading legs when they’re told to. Letting women get educated and have careers was a HUGE mistake.<sup>72</sup>

Female “hypergamy”—the practice of women choosing men who are superior to them—means that all women seek “Alpha” men, which increases competition among men; the Betas make it worse by trying to look fit to attract the women who are most attracted to the Chads. This behavior further marginalizes the incels, who conclude that women are nothing but “sluts.”<sup>73</sup> To many incels who participate online, the situation has reached the breaking point—and violence is the only solution.<sup>74</sup>

Incels believe that internet dating worsens their situation because women are overvalued on dating sites, which leads them to insist on “dating up” and to reject nearly all men but Chads.<sup>75</sup> Moreover, the Beta males surround women on dating sites in an effort to get dates, and women then believe that they have higher value than they actually do.<sup>76</sup> Thus, because technology affords Chads the opportunity to date many women, they have the vast majority of the women.<sup>77</sup> The Betas have some women, but women often cheat on them with the Chads. This leaves a distortion at the top, and no women for the incels at the bottom.<sup>78</sup>

Some may question why incels do not relieve their sexual frustrations by paying sex workers to do so.<sup>79</sup> Incels do not advocate going to prostitutes

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<sup>67</sup> See Baele et al., *supra* note 41, at 1679.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* (quoting different incels in their study).

<sup>72</sup> *Id.* at 1680.

<sup>73</sup> *Id.* at 1680–81.

<sup>74</sup> *Id.* at 1681.

<sup>75</sup> See Kayla Preston et al., *The Black Pill: New Technology and the Male Supremacy of Involuntarily Celibate Men*, 24 MEN & MASCULINITIES 823, 835 (2021).

<sup>76</sup> *Id.*

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

<sup>78</sup> *Id.*

<sup>79</sup> See Gaby Del Valle, *Don’t Ask Sex Workers to Solve the Problem of Violently Angry Men*, THE OUTLINE (May 3, 2018), <https://theoutline.com/post/4407/sex-workers->

for sex, it appears, because they see it as demeaning and emphasizing that they cannot attract a woman to have sex with them without paying for it.<sup>80</sup> Moreover, when incels focus on their entitlement to sex, they include entitlement to a wife.<sup>81</sup> Many argue that while incels say their problem is a lack of sex, they are actually angry because of their inability to control women.<sup>82</sup> Imposing on prostitutes the responsibility to solve the problems of these violence-prone men would endanger prostitutes and would establish sex workers as sexual slaves rather than persons who have the right to refuse consent.<sup>83</sup> At this point, we see a convergence between incel ideology and that of Robert Aaron Long—a view that they deserve sex and a deep dislike for sex workers. In fact, although he was not an incel, Robert Aaron Long's spa massacres emphasize this point: he took out his need for sex against the women who were allegedly supplying it to him.

### C. Private and Public Violence

Incels have been responsible for approximately 50 deaths or more (in North America), and a significant number of injuries and attempted murders since 2014.<sup>84</sup> The most well-publicized murders (and planned attempts) attributed to incels or those who follow incel ideology include:

- 2014, Elliot Rodger, considered the hero and saint of the incels, killed six people and himself in Santa Barbara, California. He had previously posted YouTube videos as well as his manifesto, "My Twisted World," which declares his intention to murder.<sup>85</sup> In the last video Rodger posted, he stated: "Tomorrow is the day of retribution — a day of which I will have my revenge against all of humanity." In another video, Rodger stated, "I will slaughter every single spoiled stuck-up blonde slut . . . You will finally see I'm the superior one. The true alpha male."<sup>86</sup>
- 2015, Chris Harper-Mercer shot and killed nine people and injured eight others at the Umpqua Community College campus in Roseburg, Ore.,

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won-t-solve-the-incel-problem [https://perma.cc/NFF5-PSM3], citing Ross Douhat, *The Redistribution of Sex*, N.Y. TIMES (May 2, 2018), <https://www.nytimes.com/2018/05/02/opinion/incels-sex-robots-redistribution.html> [https://perma.cc/ZJ7V-LDFU]. Douhat later clarified that he did not see sex workers as a solution to the problem of violent men's behavior. Ross Douhat (@DouthatNYT), TWITTER (May 3, 2018), <https://twitter.com/DouthatNYT/status/992047486318579712> [https://perma.cc/4ZCR-3QD9].

<sup>80</sup> See Rodger, *supra* note 43, at 120–21.

<sup>81</sup> *Id.*

<sup>82</sup> Gaby Del Valle, *supra* note 79.

<sup>83</sup> *Id.*

<sup>84</sup> Hoffman et al., *supra* note 32, at 569.

<sup>85</sup> See generally Rodger, *supra* note 43.

<sup>86</sup> *Why Incels are a 'Real and Present Threat' for Canadians*, CBC NEWS (Jan. 27, 2019), <https://www.cbc.ca/news/canada/incel-threat-canadians-fifth-estate-1.4992184> [https://perma.cc/4W9U-GFYB].

and then killed himself. Before the murders, Harper-Mercer had posted online that he was an incel.<sup>87</sup>

- 2017, William Atchison killed two people and himself at a high school in Aztec, N.M. Before his death, he had used the pseudonym “Elliot Rodger” on online forums and had praised Rodger as “the supreme gentleman.”<sup>88</sup>

- 2018, Alek Minassian rammed a van into a crowd of pedestrians in Toronto, killing 10 and injuring 16 people. Eight of his murder victims were women.<sup>89</sup> Minassian told the police that he had been in touch with Elliot Rodger before Rodger’s suicide. Before the attack, Minassian announced on Facebook the arrival of an “incel rebellion;” he later told police that he thought he would inspire future masses to join him in the uprising.<sup>90</sup>

- 2018, Scott Beierle shot six women in a yoga studio in Tallahassee, FL., killing two of them. Research subsequently found that Beierle had visited incel posts online and had made posts that blamed women for his lack of success in his sexual and romantic life.<sup>91</sup>

- 2018, Nikolas Cruz killed 17 people and attempted to kill 17 others at Marjory Stoneman Douglas High School in Parkland, FL. Cruz had praised Elliot Rodger online, stating, “Elliot Rodger will not be forgotten.”<sup>92</sup>

- 2019, Christopher Wayne Cleary was arrested for stating on Facebook that he planned to kill as many women as he could at a women’s march in Utah because he was a virgin.<sup>93</sup>

- 2020, a minor was charged with stabbing two women in an erotic massage parlor in Toronto, and police concluded that the suspect’s behavior

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Cottee, *supra* note 41, at 94.

<sup>90</sup> See *Canadian Incel Found Guilty in Van Attack that Killed 10 People, Mostly Women, in Toronto*, USA TODAY (Mar. 3, 2021) <https://www.usatoday.com/story/news/world/2021/03/03/incel-alek-minassian-found-guilty-van-attack-killed-10/6906716002/> [<https://perma.cc/YTE4-74HG>] (judge found Minassian guilty despite his lawyer’s argument that his client had autism and therefore did not know right from wrong); Cottee, *supra* note 41, at 44.

<sup>91</sup> See Chantelle Navarro, *Researchers: Tallahassee Hot Yoga Shooting Was Driven by “Incel” Subculture*, WTXL TALLAHASSEE (Mar. 3, 2020) <https://www.wtxl.com/news/local-news/researchers-tallahassee-hot-yoga-shooting-was-driven-by-incel-subculture> [<https://perma.cc/WMT2-CLWB>].

<sup>92</sup> See *Why Incels are a ‘Real and Present Threat’ for Canadians*, *supra* note 86.

<sup>93</sup> Kirk Mitchell, *Denver Man, Frustrated by His Virginity, Arrested over Alleged Threat to Kill “As Many Girls As I See,”* DENVER POST (Jan. 23, 2019), <https://www.denverpost.com/2019/01/21/denver-virgin-arrested-mass-shooting-threats/> [<https://perma.cc/6SRX-V66B>].

was attributed to his membership in a terrorist group – the incels.<sup>94</sup> This was the first time that North American authorities named the incels as terrorists.<sup>95</sup>

- 2021, Tres Genco, a 21-year-old Ohio man who identified as an incel, was arrested for attempting a federal hate crime, in his efforts to kill many women on college campuses. His manifesto, “A Hideous Symphony,” revealed that he planned to “slaughter” women out of “hatred, jealousy, and revenge.” He hoped to kill up to 3,000 people.<sup>96</sup>

- 2021, Jake Davison, a 22-year-old Plymouth (UK) man who had visited incel sites and self-identified as an incel, murdered his mother and a number of others before turning the gun on himself.<sup>97</sup>

While the incels are not a typical terrorist group that recruits and trains individuals to engage in terrorist acts, incels repeatedly link their ideology to violence on their forums. Experts recognize that incels’ discussions “demonstrate clear traits of an extremist worldview whereby violence is not only seen as acceptable but also as the only possible way to solve the crisis endpoint in which society is supposedly stuck.”<sup>98</sup> But some say there is a difference between incels’ purpose in advocating and engaging in violence and that of other groups characterized as terrorist groups. Terrorist groups like Islamic terrorists, for example, believe that the only way they can improve the current situation is to engage in violence; incels, in contrast, especially the most radical group of incels that advocate violence, believe in the “black pill” – that there is no solution to the current situation. Their purpose in carrying out violence appears to be to send a message, create a cathartic release, and to seek revenge.<sup>99</sup> But this distinction may not be as clear cut as some think: there is an inherent contradiction in some of the incels’ philosophy. While many say that their purpose in promoting violence is merely cathartic or to make a statement, this purpose is somewhat contradicted by

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<sup>94</sup> Toronto police charged this suspect with terrorism, the first time a terrorism charge has been lodged at persons other than Islamic terrorists. See Stewart Bell et al., *Deadly Attack at Toronto Erotic Spa Was Incel Terrorism, Police Allege*, GLOBAL NEWS (May 20, 2020), <https://globalnews.ca/news/6910670/toronto-spa-terrorism-incel/> [https://perma.cc/BE3Y-5TGY]. Canadian experts also conclude that a killing of 14 women at École Polytechnique in Montreal in 1989 by Marc Lepine was the first incel mass murder. See *Why Incels are a ‘Real and Present Threat’ for Canadians*, *supra* note 86.

<sup>95</sup> See Bell et al., *supra* note 94.

<sup>96</sup> Jaclyn Diaz, *Police Foiled an Ohio Incel’s Plot to Kill Women in a Mass Shooting, Prosecutors Say*, NPR (July 22, 2021, 6:13 AM), <https://www.npr.org/2021/07/22/1019089834/police-foiled-an-ohio-incels-plot-to-kill-women-in-a-mass-shooting-prosecutors-s> [https://perma.cc/9Q4T-E8JW]; Adam Ferrise, *Notes Found in Ohio Home of Self-Described “Incel” Referenced Possible Mass Shooting at OSU Court Records Say*, CLEVELAND, <https://www.cleveland.com/news/2021/07/notes-found-in-ohio-home-of-self-described-incel-referenced-possible-mass-shooting-at-osu-court-records-say.html> [https://perma.cc/DB65-EB7N] (updated July 21, 2021).

<sup>97</sup> Gareth Bryon, *Mass Shooting in the UK Spotlights the Danger of Incel “Terrorism,”* CRIME REPORT (Aug. 25, 2021), <https://thecrimereport.org/2021/08/25/mass-shooting-in-the-uk-spotlights-the-danger-of-incel-terrorism/> [https://perma.cc/E4X4-XQ3E].

<sup>98</sup> Baele et al., *supra* note 41, at 1683.

<sup>99</sup> *Id.* at 1683–84.

their statements. The best example is Minaïsson's claim that he was starting an incel rebellion, which appears to be a future-oriented goal to change the world.

Incels rejoice when women suffer, and they argue for torture as well as murder of female victims. For example, one member argued online that he liked the death count (of a recent incel attack) but that next time, "How bout (sic) a rape count or an acid-in-her-fucking-face count?"<sup>100</sup>

Incels normalize hatred of and violence toward their targets; they justify violence because of what they perceive as suicides of incels caused by their targets' failure to have sex with them.<sup>101</sup> Moreover, incels lionize those who follow through with mass murders, calling them "saints."<sup>102</sup> As noted above, Elliot Rodger, who killed six people in Santa Barbara, recorded YouTube videos and wrote his manifesto explaining the reasons for killing his victims and committing suicide; he is the most revered of the "saints."<sup>103</sup> And, after Toronto mass murderer Minassian rammed his van, killing ten people, eight of whom were women, incels praised him, changed their avatars to Minassian's picture, and proclaimed that he might be their next patron saint.<sup>104</sup> Even more concerning are the posts after Minassian's attacks that encourage new ways of harming victims of attacks by incels (other than shooting), ranging from mass rapes to acid attacks.<sup>105</sup>

#### D. *Relationship to the Atlanta-area Killings: Violence and Misogyny*

It is unclear whether Robert Aaron Long, the perpetrator in the Atlanta-area shootings, self-identified as an incel or frequented the incel forums, but we do know that Long admitted to police that he frequented the spas where he took his violent rampage and that he feared that he had a "sex addiction."<sup>106</sup> He told police that he was removing the temptations by engaging in the killings. The story that Long told was that he struggled to remain celibate, unlike the incels, who were involuntarily celibate because of their inability to attract women. His struggle, he said, emanated from his extremely conservative religious beliefs that it was sinful to engage in sexual activity

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<sup>100</sup> *Id.* at 1684.

<sup>101</sup> *Id.*

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

<sup>103</sup> *Id.*

<sup>104</sup> See *For Incels, It's Not About Sex; It's About Women*, SPL CENTER (May 4, 2018), <https://www.splcenter.org/news/2018/05/04/weekend-read-incels-its-not-about-sex-its-about-women> [<https://perma.cc/QW6Q-B2G5>] (explaining why male supremacy was added as a cause of terrorism); David Futrelle, *Incels Hail Toronto Van Driver who Killed 10 as a New Elliot Rodger, Talk of Future Acid Attacks and Mass Rapes*, WE HUNTED THE MAMMOTH (Apr. 24, 2018), <http://wehuntedthemammoth.com/2018/04/24/incels-hail-toronto-van-driver-who-killed-10-as-a-new-elliott-rodger-talk-of-future-acid-attacks-and-mass-rapes/> [<https://perma.cc/R7FN-55S7>].

<sup>105</sup> See Futrelle, *supra* note 104.

<sup>106</sup> See Moody, *supra* note 7.

before marriage.<sup>107</sup> Like many evangelical churches, Long's church considered "adultery, fornication, homosexuality, bisexual conduct, bestiality, incest, polygamy, pedophilia, pornography, or any attempt to change one's sex, or disagreement with one's biological sex" as "sinful and offensive to God."<sup>108</sup> These teachings seem to accord with a recent movement in evangelical protestant churches to demand purity, especially of young women, before marriage.<sup>109</sup> Although they might not be held by a majority of Americans, these teachings are common and normalized in our society.<sup>110</sup>

Although Long's church condemned the murders, Long's distorted read of church doctrine resulted in blaming women for tempting him. Consequently, he confessed to the police that his violence was a means of removing temptation. According to sources interviewed after the attacks, Long had attended religious-based therapy but had continued to struggle with his attraction to pornography and to frequent the spas where the massacres took place. Using pornography and going to the spas were behaviors that he considered sinful.<sup>111</sup>

While Long was struggling to stay away from having sex outside of marriage and incels self-identify as not having the option of engaging in sexual activity with women,<sup>112</sup> it appears that to some extent Long's view of women is consistent with that of the incels. Like Long, incels appear to be repulsed by paying for sex.<sup>113</sup> Both Long and incels blame women for their hold over men; both Long and incels experience a hatred of women for the power they possess over them. In Long's view, women's sexual power over him deprived him of his willpower. While incels do not seem to have the same religious reservations about sex before marriage, they advocate monogamy and not permitting sex outside of marriage as a means of controlling

<sup>107</sup> *Id.*

<sup>108</sup> See Berman et al., *supra* note 7.

<sup>109</sup> See Julie Ingersoll, *How the "Extreme Abstinence" of the Purity Movement Created a Sense of Shame in Evangelical Women*, THE CONVERSATION (Dec. 10, 2019), <https://theconversation.com/how-the-extreme-abstinence-of-the-purity-movement-created-a-sense-of-shame-in-evangelical-women-127589> [<https://perma.cc/M3LS-A5CW>] (explaining the purity movement in which daughters make vows to their fathers to remain pure before marriage).

<sup>110</sup> Long's church clearly condemned Long's criminal behavior and stated that it is not the women's fault, but rather that of the shooter, even if his attacks resulted from his sexual frustrations. See Shamar Walters and Corky Siemaszko, *With Motive Disputed, Some Point to Shooting Suspect's Religion, Shame*, NBC NEWS (updated Mar. 19, 2021), <https://www.nbcnews.com/news/us-news/motive-still-disputed-some-point-shooting-suspect-s-religion-shame-n1261399> [<https://perma.cc/58SA-UD7Z>] (stating "Each person is responsible for his or her own sin. In this case, the shooter is solely responsible for his heinous actions, not the victims who were targeted.").

<sup>111</sup> Berman et al, *supra* note 7.

<sup>112</sup> Long's roommate at Maverick Recovery told reporters that Long had a girlfriend who broke up with him when she discovered that he was engaged in pornography and attending massage parlors. See Berman, *supra* note 7.

<sup>113</sup> See Rodger, *supra* note 43, at 120–21 (stating that going to sex workers is not the solution because afterwards one feels like a loser).



women and making sex accessible to all men.<sup>114</sup> While the church to which Long belonged did not advocate his violent actions, it appears that some of the more conservative views of the church regarding love, sex, and marriage may be consistent with those of the incels. These views, when distorted by a troubled church member, can reflect misogyny and blame of women for men's sins.

Even if Robert Aaron Long's behavior cannot be specifically linked to the incels, an examination of the similarity of the troubles experienced by some incels and the Atlanta spa shooter helps us understand why Long's behavior occurred not only because of the race and national origin of the women involved but also because of their sex. In fact, it is clearly an intersectional hate crime that should be recognized by all hate crime legislation. Moreover, the established link between misogyny and violence engaged in by white supremacists that we shall see below further supports an understanding of hate crimes and of domestic terrorism that occur as a result of an intersectional mix of misogyny and racism.

The next Part links both hate crimes and domestic terrorism to misogyny, masculinity, and racism. This witches' brew of hate and resulting violence spurred on by an online presence of like-minded (nearly all-male) individuals should concern society. No longer can we afford to consider violence because of sex or gender (or even attributed to a failure to be successful in love or a fear of sin) as having causes apart from the other "isms" that lead to harm. Part II demonstrates that misogyny often predates or accompanies many of the philosophies of hatred behind both hate crimes and domestic terrorism. While it is beyond the scope of this article to propose new state and federal domestic terrorism laws, this information is crucial to assure prevention and punishment of terrorist acts. It also, with further research, may encourage security experts to consider rewriting the state and federal domestic terrorism laws.

## II. MISOGYNY, WHITE SUPREMACY, DOMESTIC AND INTERNATIONAL TERRORISM

### A. *Incel Links to Alt-Right White Supremacy*

While their forums do not reveal incels as engaged in partisan politics, the beliefs espoused by incels often fit with those heralded on men's rights, racist, and alt-right<sup>115</sup> white supremacist forums.<sup>116</sup> Scholars, terrorism ex-

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<sup>114</sup> See Hoffman et al., *supra* note 32, at 573.

<sup>115</sup> The Southern Poverty Law Center defines the "alt-right" as:

[A] set of far-right ideologies, groups and individuals whose core belief is that 'white identity' is under attack by multicultural forces using 'political correctness' and 'social justice' to undermine white people and 'their' civilization.

perts, and civil rights advocates have begun to recognize a clear link between misogyny and racist extremism. According to Hoffman et al.:

Admittedly, the incel worldview is not obviously political. But because its core ethos revolves around the subjugation and repression of a group and its violence is designed to have far-reaching societal effects, incel violence arguably conforms to an emergent trend in terrorism with a more salient hate crime dimension. As a January 2020 Texas law enforcement assessment notes, “what begins as a personal grievance due to perceived rejection by women may morph into allegiance to, and attempts to further, an Incel Rebellion.”<sup>117</sup>

In *When Women Are the Enemy: The Intersection of Misogyny and White Supremacy*, the Anti-Defamation League’s Center on Extremism concludes that there is an important link between misogyny voiced by groups such as the incels, Men’s Rights, PUAs (Pick up artists) and the racism of white supremacist groups.<sup>118</sup> The report states:

There is a robust symbiosis between misogyny and white supremacy; the two ideologies are powerfully intertwined. While not all misogynists are racists, and not every white supremacist is a misogynist, a deep-seated loathing of women acts as a connective tissue between many white supremacists, especially those in the alt right, and their lesser-known brothers in hate like incels (involuntary celibates), MRAs (Men’s Rights Activists) and PUAs (Pick Up Artists). This cross-pollination means the largely anonymous outrage of the men’s rights arena acts as a bridge to the white supremacist and anti-Semitic ideology of the alt right . . . It also means that to fully comprehend either white supremacy or misogyny, we have to attempt to understand both . . . [M]isogyny [is] a dangerous and underestimated component of extremism . . . .<sup>119</sup>

The ADL report notes that anti-feminist sentiments are central to alt-right white supremacist groups, as they are to groups such as incels and MRAs. In fact, alt-right white supremacist groups’ views are almost exactly the same as the misogynist views voiced on the incel and Men’s Rights orga-

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SOUTHERN POVERTY LAW CENTER, *Alt Right*, splcenter.org, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/alt-right> [<https://perma.cc/T7GC-WUU4>].

<sup>116</sup> See Baele et al., *supra* note 41, at 20.

<sup>117</sup> See Hoffman et al, *supra* note 32, at 568, quoting *Texas Domestic Terrorism Threat Assessment*, TEXAS DEPT OF PUB. SAFETY (Jan. 2020), [https://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/2020/txTerrorThreatAssessment.pdf](https://www.dps.texas.gov/director_staff/media_and_communications/2020/txTerrorThreatAssessment.pdf), [<https://perma.cc/PU4R-YP2C>].

<sup>118</sup> *When Women Are the Enemy: The Intersection of Misogyny and White Supremacy*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/media/11707/download>, [<https://perma.cc/BF9W-HYNT>].

<sup>119</sup> *Id.*

nizations' forums.<sup>120</sup> Incels speak of women with derision, denounce equal rights and feminism, and argue that women should be grateful to men for having relationships with them.<sup>121</sup> Men who are active on the alt-right white supremacist forums spew hatred of women on the incel or other men's rights' forums.<sup>122</sup> Well-known cases of men crossing over between these forums include the incel Toronto van killer, Alek Minassian, and neo-Nazi, Andrew Anglin.<sup>123</sup> The ADL report also mentions F. Roger Devlin, a white nationalist "academic," who links misogyny and racism directly in his philosophy.<sup>124</sup> Devlin argues that women have been ruined by feminism because it gives them too many reproductive choices, that, when operationalized, harm the interests of men.<sup>125</sup> Devlin appears to be the source of the incels' argument about hypergamy—that women will not have sex with men who are not superior specimens. He states that once a society becomes what he calls "polygamous," women "desperately" throw "themselves at a very few exceptionally attractive men."<sup>126</sup>

Devlin also argues that he has a number of solutions to counter feminism: first, women who claim that they have been date-raped should be forced to marry the accused,<sup>127</sup> and, second, that women should not be permitted to make decisions about their sexual and married lives, a concept that is very similar to arguments appearing in incel Elliot Rodger's manifesto.<sup>128</sup>

<sup>120</sup> *Id.* (quoting Andrew Anglin of DailyStormer.com: "Even if you become the ultimate alpha male, some stupid bitch will still ruin your life.")

<sup>121</sup> *Id.* at 6–7.

<sup>122</sup> *Id.* at 6.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 7.

<sup>125</sup> F. Roger Devlin, *Sexual Utopia in Power*, 6 OCCIDENTAL QUART. 9, 22 (2006).

<sup>126</sup> *Id.*

<sup>127</sup> Devlin states:

The date rape issue can be solved overnight by restoring shotgun marriage—but with the shotgun at the woman's back. The "victim" should be told to get into the kitchen and fix supper for her new lord and master. . . . Motherhood has always been the best remedy for female narcissism.

*Id.* at 34.

<sup>128</sup> Devlin states:

Sex is too important a matter to be left to the independent judgment of young women, because young women rarely possess good judgment. The overwhelming majority of women will be happier in the long run by marrying an ordinary man and having children than by seeking sexual thrills, ascending the corporate heights, or grinding out turgid tracts on gender theory.

*Id.* at 35.

Elliot Rodger states in the Epilogue:

Women should not have the right to choose who to mate and breed with. That decision should be made for them by rational men of intelligence. If women continue to have rights, they will only hinder the advancement of the human race by breeding with degenerate men and creating stupid, degenerate offspring. This will cause humanity to become even more depraved with each generation. Women have more power in human society than they deserve, all because of sex. There is no creature more evil and depraved than the human female.

Although Devlin purports to be an academic, his arguments, which seem illogical, are made without any research or evidence, empirical or otherwise, and appear in articles that are not peer-reviewed by objective academics.<sup>129</sup>

The ADL Report also demonstrates the close link between racist and anti-semitic alt-right white supremacists who advocate domestic violence against women.<sup>130</sup> The report explains that neo-Nazi and founder of the *Daily Stormer*, Andrew Anglin, has been romancing the Men's Rights Advocates "crossover support" for white supremacist causes for years.<sup>131</sup> In 2015, Anglin announced that he would change his website into a "boys' club," and would no longer post women's writing or radio shows on the site.<sup>132</sup> He made this decision because of the large number of men whom he met on the Men's Rights Advocates' forums and their need for a "male-focused" ideology.<sup>133</sup> Anglin also began to employ the language used in the manosphere, arguing that women attach to men in power and that women are not capable of controlling their own behavior.<sup>134</sup> In 2018, Anglin wrote that women "'deserve to be beaten, raped and locked in cages.'" <sup>135</sup>

Other alt-right figures argue that women's role is to produce (white) children for men who are working on alt-right issues.<sup>136</sup> Some, like Richard Spencer, even question whether women should have the right to vote.<sup>137</sup> White women in the alt-right movement who are friends with or date men of color are derided, and even worse.<sup>138</sup> In fact, according to the ADL, Andrew Anglin told a white female alt-right supporter that she should commit suicide for allegedly sleeping with a Black man.<sup>139</sup> Alt-right message boards ridicule women for sleeping with men who have "criminal bastard genes, and then

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Women are like a plague. They don't deserve to have any rights. Their wickedness must be contained in order prevent future generations from falling to degeneracy. Women are vicious, evil, barbaric animals, and they need to be treated as such.

Rodger, *supra* note 43, at 136.

<sup>129</sup> The OCCIDENTAL QUARTERLY (TOQ) is described by the Southern Poverty Law Center (SPLC) as "a racist journal devoted to the idea that as whites become a minority 'the civilization and free governments that whites have created' will be jeopardized." TOC published an article that linked the negative effects of feminist sexual liberation to weakening of white power. According to the SPLC, "The recent triumph of feminism in America and other Western societies, added to the drive for racial amalgamation, has created a dual threat not simply to the common wealth of whites and their societies, but to their continued survival." *Alt Right*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/occidental-quarterly>, [<https://perma.cc/N9UR-URLB>] (referencing TOQ Editors, *Sexual Liberation, Dorian Gray, and Racial Suicide*, OCCIDENTAL QUART. (Summer 2006)).

<sup>130</sup> See *When Women Are the Enemy*, *supra* note 118, at 8.

<sup>131</sup> *Id.* at 8.

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

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

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 7 (quoting Anglin).

<sup>136</sup> *Id.* at 9–10.

<sup>137</sup> *Id.* at 9.

<sup>138</sup> *Id.* at 11.

<sup>139</sup> *Id.*

pretend to have a career, instead of going for a breadwinner and breeding 6 warriors while being a happy hausfrau.”<sup>140</sup>

According to the ADL report, one of the most virulent calls to violence across all of these misogynist forums relies on the narrative that “white men are victims who are falling prey to feminism, changing social norms, progressive thought and politics.”<sup>141</sup> The ADL points out that alt-right groups share the same narratives and that the election of former President Trump, who openly made misogynist statements and served as a vindication of misogynist and alt-right philosophies.<sup>142</sup> These groups see justice as a “zero-sum game;”<sup>143</sup> the Charlottesville Unite the Right rally in 2017 showed strong support among these groups to air their grievances and to refuse to be “replaced.”<sup>144</sup> The report notes that the alt-right “trumpeted a new era of ‘white civil rights’” and that “similar paranoia” supports the MRA claims that feminism threatens to “render men irrelevant.”<sup>145</sup> These threats are used as recruiting tools “for the unholy alliance of incels, MRAs, PUAs and white supremacists,” and this rhetoric also “serves as a combustible prologue to violence—against Jewish, Muslim and black communities, and against women.”<sup>146</sup>

Acknowledging the links between incels and other misogynistic groups and the alt-right in the United States is crucial to understanding the rise of these groups, some of whom advocate violence and a return to a society that they believe should continue existing in the United States. As we shall see in the next subpart, domestic and international terrorism specialists have begun to recognize the links between misogyny and extremist behavior, an understanding that is crucial to avoiding violent extremism.

### *B. Domestic and International Terrorism: The Role of Misogyny and Online Groups in Furthering Violence*

Referring to research by sociologists and feminists, experts in domestic and international extremism have begun to acknowledge that important links exist between groups on the manosphere such as incels and violent behavior that could be characterized as domestic terrorism.<sup>147</sup> These academics argue

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<sup>140</sup> *Id.* at 13.

<sup>141</sup> *Id.* at 14.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 15.

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

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> See generally Baele et al., *supra* note 41. The United States code establishes that:

(1) the term “international terrorism” means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

that we can no longer deny the importance of both misogynistic causes and the Internet in fomenting violence by what some used to believe were “lone wolves.” These “lone wolves” may not be attending camps to learn ideology and how to murder, but they are self-radicalizing through online forums and supporting others with similar ideologies. A complete analysis of domestic and international terrorism law is beyond the scope of this article, but there is no question that we need to rethink the role of misogyny and masculinity in analyzing whether these online hate groups pose risks of terrorist extremism, originating from both inside and outside of the United States.<sup>148</sup> Recognizing these groups’ misogyny as creating serious potential risks to women and assiduous enforcement of federal and state hate crime legislation

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(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum . . .

(5) the term “domestic terrorism” means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States . . .

18 U.S.C. § 2331. Meanwhile, Georgia law defines “domestic terrorism” as follows:

(2) “Domestic terrorism” means any felony violation of, or attempt to commit a felony violation of the laws of this state which, as part of a single unlawful act or a series of unlawful acts which are interrelated by distinguishing characteristics, is intended to cause serious bodily harm, kill any individual or group of individuals, or disable or destroy critical infrastructure, a state or government facility, or a public transportation system when such disability or destruction results in major economic loss, and is intended to:

(A) Intimidate the civilian population of this state or any of its political subdivisions;

(B) Alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; ?or

(C) Affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.

Ga. Code. Ann. § 16-11-220 (West 2022).

<sup>148</sup> Law Professor Stewart Chang makes a powerful argument that hegemonic masculinity is responsible for many public mass murders in the United States and that Dylan Roof (the Emanuel AME Church in Charleston, South Carolina mass murderer), Elliot Rodger (had he survived), and Omar Mateen (the Pulse Nightclub mass murderer), all of whom committed mass murder to promote hegemonic masculinity, should be treated equally: charged as domestic terrorists. Law enforcement tends to treat white perpetrators as sole actors who have mental health conditions and those of color, such as Mateen, as terrorists determined to further an ideology. See Stewart Chang, *Our National Psychosis: Guns, Terror, and Hegemonic Masculinity*, 53 HARV. C.R.-C.L. L. REV. 495, 497–508, 500–01 (2018).

that includes gender or sex as a protected status are the first steps toward eliminating violent extremism.

With reference to masculinity and Elliot Rodger, sociologist Christopher Vito and his colleagues explained that ignoring the power of incels as a group could be dangerous because Elliot Rodger was not acting alone. Considering comments on incel forums after Rodger's death designating him as a hero and advocating killing all those "ugly whores," Vito concludes that Rodger is not an anomaly:

Therefore, we must consider the importance of masculine norms and discourses in the study of mass shootings. And as 'masculinity is the single greatest risk factor in school violence,' we must recognize that the continued dissemination of hegemonic masculine ideals to the younger generations put[s] us all at risk for violence.<sup>149</sup>

A political scientist with expertise in extremism, communications, terrorism, and international relations, Stephane Baele focuses on the role of the Internet in radicalizing the incel community and in creating a group with a narrow, self-replicating worldview.<sup>150</sup> He emphasizes the danger of the incel online community because it "occupies a very specific, extreme position" in the misogynistic ideological landscape: its "blackpill" view may drive some incels to carry out cathartic violent actions.<sup>151</sup> Moreover, he notes that "the very narrow lexical field [of the incels online] . . . produces a very one-sided, obsessive perception of the social environment . . . and hence narrow[s] the lens through which the world is understood and presented."<sup>152</sup>

Other experts specializing in international terrorism express serious concern about the link between misogyny and terrorist activity. Pablo Castillo Díaz, a former professor of international politics and current Policy Analyst for UN Women, and Nahla Valji, the Senior Gender Advisor of the United Nations' Executive Office of the Secretary General, warn that experts in international extremism must seriously consider misogyny as a cause of, or at least a predicate to, international terrorism. They conclude in *Symbiosis of Misogyny and Violent Extremism*:

[T]here is an underexplored correlation between misogyny and acts of violent extremism across the world in recent years. This is illustrated by two examples: the explicit ideology of today's most prominent terrorist groups in conflict-affected settings and the individual personal histories of domestic abuse or documented mis-

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<sup>149</sup> Vito et al., *supra* note 27, at 99.

<sup>150</sup> Baele et al., *supra* note 41, at 1686.

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

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

ogyny in the majority of perpetrators of acts of violent extremism in Western countries[.]<sup>153</sup>

Castillo and Valji explain that masculinities studies have been utilized to analyze violent extremism because they focus on the relationship between “the realities of conflict and the social, cultural, or political expectations placed on men, and in particular their inability to perform the traditional gender roles as family providers, protectors of their community or fathers and procreators.”<sup>154</sup> They note that masculinities theory points to social and economic pressures, rather than ideology, as sources of male violence. While in their view masculinities theory is valuable, the authors prefer to focus on misogyny itself rather than on the social pressure on men.<sup>155</sup>

They further argue that although the international community concentrates on political ideology as the cause of terrorist attacks, the most important terrorist and extremist violence attacks in the West have been perpetrated by men who have a history of domestic violence and misogyny.<sup>156</sup> They cite to a study finding that support for violence against women and hostile sexism are “stronger predictors of support for violent extremism than religiosity . . .”<sup>157</sup>

Describing “nearly every prominent terrorist attack in recent times in Western countries,” they note that many of the perpetrators did not belong to known terrorist groups but were considered to be “lone wolves, perpetrating random acts.”<sup>158</sup> But although the acts were perpetrated by men acting alone, they were supported by a vigorous online community with misogynist messages, “ideologies, tactics, and targets.”<sup>159</sup> In fact, these and other international anti-terrorism experts conclude that misogyny and domestic vio-

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<sup>153</sup> Pablo Castillo Díaz & Nahla Valji, *Symbiosis of Misogyny and Violent Extremism*, 72 J. OF INT'L AFFAIRS 37, 38 (2019).

<sup>154</sup> *Id.* at 40.

<sup>155</sup> *Id.* at 40–41.

<sup>156</sup> Castillo and Valji demonstrate the link between misogynist crimes and terrorist acts or mass shooting through their analysis of nearly all the mass killings on record:

Once individuals from the dominant group internalize this notion of victimization where feminism and women are to blame, it is easier for them to apply that ideological framing to other categories of “others,” and why sexism, racism, homophobia, and other forms of bigotry and intolerance frequently go together.

In fact, one can find examples of expressed misogyny or domestic violence in the personal histories of nearly all the perpetrators of the worst terrorist incidents and mass killings in Western countries in recent years, which is remarkable because neither misogynist acts or expressions nor violence against women are typically reported and exhaustively documented. It is not just the several mass killings attributed to incels and mentioned above.

*Id.* at 43–45.

<sup>157</sup> *Id.* at 39 (citing *Monash Gender, Peace & Security Center* (MONASH UNIVERSITY), <https://www.monash.edu/arts/gender-peace-security> (citations omitted)).

<sup>158</sup> *Id.* at 46.

<sup>159</sup> *Id.*



lence and other violence caused by misogyny are often precursors to public mass crimes.

Castillo and Valji conclude that domestic abusers harbor a deep misogyny that attracts them to extremist groups with misogynist beliefs that engage in more public extremist violence.<sup>160</sup> In support of this view, Castillo and Valji recite a litany of nearly all the public violent attacks and their link to misogyny and domestic abuse.<sup>161</sup>

While Sian Tomkinson, an Australian researcher in game studies, communications, and gender, and her colleagues may disagree that all terrorism has misogyny at its roots, they specifically identify incels' violent wing as belonging to the "'ideological violence' genre of violent extremism."<sup>162</sup> They argue for "securitisation" of incels, meaning that we should treat incels as violent extremists and security threats. "Securitisation refers to the act, carried out by a speaker in a position of authority, of labelling something a security threat to a referent object."<sup>163</sup> Although for traditionalists, securitisation includes the use of force, the authors do not advocate the use of force against incels. Securitisation, they argue, opens the possibility of more government action. Without it, violence against women based on misogyny becomes converted into a private affair and often, is considered the fault of the woman.<sup>164</sup>

They conclude that because incels target both men and women with violence that is inspired by misogyny, there is an opportunity "to advance an understanding of gendered violence as a security threat which is more difficult to minimise or depict as 'business as usual'."<sup>165</sup> In essence, misogynist-inspired violence endangers the entire population, not only women, and they advocate "a 'trojan horse' approach, whereby the clear threat of Incel as a manifest example of violent extremism provides access to the policy tools to deal with gendered violence more generally."<sup>166</sup>

These researchers, both domestic and international, recognize that incels and others like them pose serious threats of violent public acts. It makes no sense to ignore them or to continue to consider incels "lone wolves." Clearly, these groups should be investigated and monitored, consistent with civil liberties that all Americans possess. The links that the ADL and others have established between these groups in the manosphere and white suprem-

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<sup>160</sup> *Id.* at 43 (citing Hadley Freeman, *What Do Many Lone Attackers Have in Common? Domestic Violence*, THE GUARDIAN (Mar. 28, 2017)).

<sup>161</sup> For those in the United States, see *supra* notes 153, 156–158. For those terrorists outside of the West, the authors note that they have as their core ideology a belief in the subordination of women. *Id.* at 46–47. The authors suggest there is a link here and that the U.N. researchers and other researchers should pay attention to it.

<sup>162</sup> Sian Tomkinson et al., *Confronting Incel: Exploring Possible Policy Responses to Misogynistic Violent Extremism*, 55 AUSTRALIAN J. POL. SCI. 152, 154 (2020).

<sup>163</sup> *Id.* at 156.

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

<sup>165</sup> *Id.* at 157.

<sup>166</sup> *Id.*

acist alt-right groups are important. International experts have learned in part by following the manosphere to consider the importance of misogyny as a worldview as a predicate to international and domestic extremism.

Federal law defines domestic terrorism, but it does not establish penalties for engaging in domestic terrorism.<sup>167</sup> A number of state laws, in contrast, actually make it a crime to engage in domestic terrorism.<sup>168</sup> Whether there should be a federal law penalizing domestic terrorism and what that law would look like has been the subject of intense and important discussions among security experts and is beyond the scope of this article.<sup>169</sup> The same is true for state laws on domestic terrorism. But I urge policymakers and others considering the issues of domestic terrorism to take seriously the role that misogyny plays in extremism and public violence in the United States.

Parts I and II have established who the incels are and how their type of extremism has been fomented on the Internet, the misogynist character of their worldview, and the overlap between the incels and other groups that are already recognized as fomenting violent extremism: namely, the alt-right white supremacists. The next Part explains the relationship among society's concept of masculinity and misogyny, and how concerns about their failed masculinity and inability to control women lead to a murderous tendency among the incels.

### III. THEORY: MISOGYNY'S RELATIONSHIP TO CRIMINAL AND EXTREME ACTS

This Part discusses various theories that help explain why incels and members of other similar misogynist groups engage in violent criminal and terrorist acts. Feminist, masculinities, intersectionality, and other theories support an understanding of violent acts stemming from misogyny (often combined with racism and other "isms"); greater understanding of the causes can suggest potential solutions. Unless we recognize the danger of how misogyny and racism combined cause both private and public violence and acknowledge that many individuals considered to be "lone wolves" who commit violence are not acting alone in the sense that they are supported and encouraged by toxic communities on the web to engage in violence, we will merely touch the surface of existing and growing problems.

Likewise, we need to understand that misogyny played an important role in the Atlanta spa shootings. While Robert Aaron Long may not have engaged on Internet forums, he appears to have been influenced by his religious community's attitudes and teachings about women, sex, and feminism.

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<sup>167</sup> See Laguardia, *supra* note 26.

<sup>168</sup> In fact, Robert Aaron Long was charged with domestic terrorism under Georgia law by Fulton County prosecutors. See So, *supra* note 13.

<sup>169</sup> See Laguardia, *supra* note 26.

The women that Long murdered were "bad" women because they allegedly engaged in selling sexual pleasure. This type of woman, as we shall see, poses a threat to the patriarchal order. To understand these points, let's discuss the definition of misogyny that I am using here.

### A. *Defining Misogyny*

In *Down Girl: The Logic of Misogyny*, feminist philosopher Kate Manne articulates a new theory of misogyny.<sup>170</sup> Manne explains that misogyny should not be approached as a psychological state of a person, but rather from the perspective of the woman or girl who experiences the misogyny.<sup>171</sup> Manne explains that misogyny is systemic, and it exists to uphold the patriarchal order.<sup>172</sup> It is, as Manne explains,

[O]ne strand among various similar systems of domination (including racisms, xenophobia, classism, ageism, ableism, homophobia, transphobia, and so on). Misogyny does this by visiting hostile or adverse social consequences on a certain . . . class of girls or women to enforce and police social norms that are gendered either in theory (i.e. content) or in practice (i.e. norm enforcement).<sup>173</sup>

Thus, Manne concludes that misogyny polices women and girls via hostile treatment by an individual or a group of actors, or by "purely structural mechanisms" that create a hostile social environment.<sup>174</sup> Moreover, misogyny can vary in intensity from "stony silence" to "pointed indifference" to "sheer nastiness" and "aggression,"<sup>175</sup> and, presumably, to norms and expectations that uphold the superiority of men over women. According to Manne, sexism is the set of beliefs or attitudes that justify the patriarchal order, whereas misogyny is the means by which the patriarchal order is enforced.<sup>176</sup> Sexism may be less malign and is frequently associated with the naturalization of sex differences; it is supported by stereotypes such as the belief that it is a biological truth that women are more caring than men.<sup>177</sup> Misogyny is the coercive enforcement of sexist attitudes, beliefs, and norms, the "law enforcement branch of patriarchy that polices and enforces the governing norms and expectations."<sup>178</sup> As Manne sees it, "sexism is . . . to bad

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<sup>170</sup> See generally MANNE, *supra* note 2.

<sup>171</sup> *Id.* at 59.

<sup>172</sup> *Id.* at 13.

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

<sup>174</sup> *Id.* at 84.

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

<sup>176</sup> *Id.* at 79.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 78.

science as misogyny is to moralism. Sexism wears a lab coat; misogyny goes on witch hunts.”<sup>179</sup>

Misogyny is directed at women who violate or challenge the patriarchal order.<sup>180</sup> While sexism distinguishes between men and women, Manne explains, misogyny “will typically differentiate between good women and *bad* ones,” and typically will punish the latter.<sup>181</sup> Moreover, misogyny is often aimed at women who misogynists believe *represent* a group or type of women whose actions or beliefs threaten the patriarchal order.<sup>182</sup>

Manne argues that patriarchy gives men certain privileges. One of the most important is the right to care, services, love, pleasure, attention, deference, respect, etc. from women.<sup>183</sup> When certain women refuse to serve men’s needs for care, men, who feel entitled to these services, feel anger and resentment, and often engage in misogynistic behaviors.<sup>184</sup> We can see this clearly in the Elliot Rodger case. As Sociologist Michael Kimmel coined the phrase, Rodger had a sense of “aggrieved entitlement,” a right to the sexual and loving services of women he desired.<sup>185</sup> When he did not get what he needed, he erupted in anger and resentment. It is important, however, as we shall see below, to recognize the intersectional nature here of Rodger’s behavior. He was not only privileged because he was male; he was also privileged because he belonged to a wealthy class, and, unlike many of his male victims whom he disparaged, he was at least half white (“Eurasian” as he defined himself), considered himself superior to men of color, and felt entitled to the “hottest” blondes on the University of California Santa Barbara campus.<sup>186</sup>

It is also important to understand what misogyny is not. Manne refutes what she calls the “naïve conception” of misogyny, which is the view that rather than being a result of patriarchy and systemic inequality, misogyny is dealt out by individuals who hate women as women either universally or very generally.<sup>187</sup> Those who adhere to this “naïve conception” conclude that misogyny results from a particular, narrow psychological profile of the perpetrator and is not systemic but individual and personal.<sup>188</sup> Extreme examples of these views appeared after Elliot Rodger murdered women (and

<sup>179</sup> *Id.* at 80.

<sup>180</sup> *Id.* at 50–51 (explaining that this can happen in myriad ways from failing to serve the man to being “wayward” sexually to competing with men and having power over them).

<sup>181</sup> *Id.* at 79–80.

<sup>182</sup> *Id.* at 58.

<sup>183</sup> *Id.* at 106–13.

<sup>184</sup> *Id.* at 106–07.

<sup>185</sup> J. Oliver Conroy, ‘Angry White Men’: the Sociologist who Studied Trump’s Base Before Trump, THE GUARDIAN (Feb. 27, 2017), <https://www.theguardian.com/world/2017/feb/27/michael-kimmel-masculinity-far-right-angry-white-men> [https://perma.cc/CF7X-LZZD].

<sup>186</sup> Rodger, *supra* note 43, at 121–32.

<sup>187</sup> MANNE, *supra* note 2, at 18.

<sup>188</sup> *Id.* at 18–19.

men) at the University of California Santa Barbara. Even though Rodger's manifesto specified that he hated the women at the Alpha Phi Sorority and that he planned to kill them for rejecting him, and even though he did kill a number of women in his rampage, some commentators argued that his murders were not misogynist acts because Rodger killed both men and women.<sup>189</sup> They also argued that Rodger's acts could not be misogynistic because he didn't hate all women—he loved his mother.<sup>190</sup> Moreover, commentators argued that Rodger's actions were solely the result of mental illness, not at all related to his misogynist ideology or to the group of incels on the Internet who encouraged his behavior.<sup>191</sup> It is not these commentators' vision of misogyny that I develop here, but rather the broader definition ascribed to the term by Kate Manne, which is consistent with how feminists seem to address the term.

Moreover, two things can be true at the same time. While it appears that Rodger may have had a mental health or neuro disability, that illness would not exclude misogyny as a causal factor in the murder of the women (and even the men) in Santa Barbara.

Robert Aaron Long, too, engaged in misogynist behavior. His faith and his pastor condemned feminism and believed that sex outside of marriage is sinful. Long absorbed the message that women are to blame for tempting men; this is evident from his admission that he killed the women working in the spa because they were temptations. Thus, the murdered massage therapists were *bad* women whom he had to vanquish. Although he did not hate all women, Long's act was misogynistic because it supported the patriarchal order. Good women must stay in their place and give respect, care, attention, and pleasure to the men who love them. But *bad* women are threatening because of the superior power they exert over men like Long.

### B. Masculinities and Feminist Theories

To understand what prompts misogyny in a world where many women are advancing, we must also consider masculinities theory. Masculinities theory explains that society places pressures on boys and men to live up to our idea of what a man is and how a man should act. In essence, masculinities theory points out the often invisible (or at least normalized) behaviors of men and boys who have grown up in a patriarchy and how the patriarchy has affected them, given their position in the hierarchy of men. Masculinities

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<sup>189</sup> *Id.* at 36–41 (describing conservative reactions to feminists' views that Rodger acted out of misogyny).

<sup>190</sup> *Id.*

<sup>191</sup> See, e.g., Tatiana Barnes, *Isla Vista: Everything but the Truth*, VARSITY (June 21, 2014), <https://www.varsity.co.uk/comment/7369> [<https://perma.cc/NR5Y-TGV6>] (criticizing the press and commentators for not talking about the misogynist nature of Elliot Rodger's manifesto and other communications and for blaming exclusively mental health issues as causing his rampage).

theory emerged in the 1970's as a response to feminist theory.<sup>192</sup> Masculinities theorists considered themselves feminists, but they also believed that early feminist explanations did not recognize how the gender order also harms (at least some) men and that men, depending on their multiple identities, are differently positioned vis-à-vis one another.<sup>193</sup> In essence, masculinities theorists explained that men as a group have superior power in a patriarchy but that individual men often feel powerless because of their locations within the hierarchy of men.<sup>194</sup> Because there is an ideal of how a man should express or perform his masculinity, those who do not comport with the expected behaviors and appearances are often rejected or even bullied.<sup>195</sup> Men compete among themselves to prove their masculinity to each other, and in that competitive battle, often women and girls are the pawns.<sup>196</sup> For example, "real men" are expected to be heterosexual and to have successful sexual lives with the most high-value (best-looking) women and girls; men often engage in these sexual behaviors more to impress other men and to attain status among men than to enjoy the behaviors themselves.<sup>197</sup> Describing young men of approximately Rodger's and Long's age ("guys"), sociologist Michael Kimmel states, "Hooking up is a way that guys communicate with other guys—it's about homosociality. It's a way that guys compete with each other, establish a pecking order of cool studliness, and attempt to move up in their rankings."<sup>198</sup> It is not primarily about sexual pleasure.

Christopher Vito and his co-authors further explain the importance of sexual relationships to proving one's heterosexuality and masculinity:

Heterosexuality is another fundamental ideal of hegemonic masculinity. Scholars largely agree that the presumed entitlement to women as sexual objects is a key ingredient of hegemonic masculinity. As heterosexual sex is associated with the 'achievement of compelling gendered [. . .] identity,' having sex with women ushers men into 'manhood.' Failure to have heterosexual sex signals not only sexual incompetency or virginity, but also raises suspicion of homosexuality. Publicizing one's sexual activity with women, especially in male-dominated spaces, functions to claim

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<sup>192</sup> See NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* 17–18 (2010).

<sup>193</sup> *Id.* at 58–59.

<sup>194</sup> *Id.* at 63.

<sup>195</sup> Ann C. McGinley & Frank Rudy Cooper, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L. J. 326, 331–32 (2013).

<sup>196</sup> See Ann C. McGinley & Frank Rudy Cooper, *Masculinities, Multidimensionality, and the Law: Why They Need One Another*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 1, 3–4 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) (explaining that masculinities are social constructs that encourage men to compete with each other and that women function as pawns in the competition).

<sup>197</sup> MICHAEL KIMMEL, *GUYLAND: THE PERILOUS WORLD WHERE BOYS BECOME MEN* 205–07 (2008).

<sup>198</sup> *Id.* at 207.

one's heterosexual orientation, but perhaps more importantly, establishes and enhances one's masculine status among other men. That is, one's position in the social hierarchy hinges on his success with women where the sexual marketplace confers higher status to men who have frequent heterosexual sex, rendering women as sexual objects to validate men's sense of manhood. These ritualized performances of sexual objectification serve to socially ostracize men unable to meet this expectation of masculinity.<sup>199</sup>

Like feminist theorists, masculinities theorists see gender as a social construction. To masculinities theorists, gender is not a biological reality that governs human behavior but rather a social response to what biology renders. For example, society dictates that women and girls, who are presumed to have a set of biologically determined physical traits, do and should act a particular way. Men and boys, who are presumed to have a set of biologically determined physical traits, do and should act in a particular way.<sup>200</sup> Thus, society creates expectations of certain bodies that are both descriptive and prescriptive. Masculinities theory explains that these expectations are not founded in biology but rather in society and that gender itself is an identity performance.<sup>201</sup> Unfortunately, when individuals' identity performances do not conform with societal expectations, they are often considered outcasts. Enter the incels and other groups on the manosphere who find it difficult to compete with other men in the male hierarchy.

Masculinities theorists explain that there are many different ways of performing masculinity, but there continues to remain one performance of masculinity that tends to dominate in prestige and power in the United States. This masculinity is known as hegemonic masculinity. "Hegemonic masculinity constitutes the singular vision of masculinity that symbolizes authority over other forms of masculinity (i.e. marginalized and subordinated masculinities) as well as a collective privilege over women."<sup>202</sup>

In the United States, hegemonic masculinity describes generally an upper-middle-class white, straight, professional man who is relatively young or middle-aged. For those men who do not fit within this identity or are unable to do so, there are multiple other identities, including subordinated and marginalized masculinities, some of which are expressed in a more aggressive, exaggerated, hostile manner and others that may disregard the traditional performances of masculinities. Social psychologist Alyssa Glace and her co-authors explain that hegemonic masculinities ordinarily include many traits that dominant men do or should possess—aggressiveness, violence and

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<sup>199</sup> Vito et al., *supra* note 27, at 89.

<sup>200</sup> I want to clarify here that even what we used to call "biological sex" is not necessarily pre-determined because many bodies do not conform to our definitions. *See supra* note 10.

<sup>201</sup> *See* MCGINLEY, *infra* note 252, at 15–16.

<sup>202</sup> Vito et al, *supra* note 27, at 88.

competitiveness—and that hegemonic masculinities reproduce white hegemony.<sup>203</sup> Sociologists Tristan Bridges and C.J. Pascoe observe what they call “hybrid masculinities,” a type of performance that condemns hegemonic masculinity but at the same time appropriates behaviors associated with white hegemonic masculinity.<sup>204</sup> According to Glace, men who perform hybrid masculinities engage in three behaviors: discursive distancing, strategic borrowing, and fortifying boundaries.<sup>205</sup> Glace found all three behaviors prevalent in incel online forums.

Discursive distancing occurs when incels describe themselves as not conforming with the hegemonic ideal. In an empirical study of incel posts, Glace found that incels frequently engage in discursive distancing by describing themselves as in opposition to the Chads, noting that the incels are short or ugly or have small genitalia.<sup>206</sup>

Strategic borrowing occurs when incels use the language of victimization to apply to their own situation. Incels claim their own victimhood throughout their posts using the language of the left. Glace found, for example, that incels in her sample used social justice language to call for violence and the reinstatement of patriarchal power.<sup>207</sup>

Fortifying boundaries occurs when men strengthen hegemonic masculinity. Incels, even though they admit that they do not meet the rigors of hegemonic masculinity, police the boundaries of hegemonic masculinity by ridiculing other men (non-incels) for being feminine or not sufficiently masculine.<sup>208</sup> For example, Glace found that incels label other men who are not stereotypically masculine as “soyboys,” a pejorative term that describes feminine men who are considered to be “politically correct.”<sup>209</sup> They also label men who are either cheated on by women or whom women control as “cucks,” a derogatory term.<sup>210</sup>

In fact, “hybrid masculinities” appear to be a strategic response of incels to reinforce hegemonic masculinity. Referring to online chats of incels, Gender and Communications expert Debbie Ging states:

Their extreme expressions of misogyny and racism and frequent engagement in hacking and doxing are clearly indicative of a desire to establish male hegemony in the online spaces they inhabit, even if they may lack such claims to power in off-line contexts. It seems more accurate, therefore, to describe them as hybrid

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<sup>203</sup> Alyssa M. Glace et al., *Taking the Black Pill: An Empirical Analysis of the Incel*, 22 PSYCH. MEN & MASCULINITIES, 288, 289 (2021), (citing Bridges T. & Pascoe, C.J., *Hybrid Masculinities*, 8 SOC. COMPASS 246, 246–58 (2014)).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 293.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*



masculinities whose self-positioning as victims of feminists and political correctness enables themselves to strategically distance themselves from hegemonic masculinity, while simultaneously compounding existing hierarchies of power and inequality online.<sup>211</sup>

The online community of incels illustrates much of what masculinities scholars predict: incels consider themselves to be low-value men, not “real men” because they do not have access to sexual relationships with women, much less with the most high-value women.<sup>212</sup> The response to this situation for some is to feel sad and to resort to online conversations to ameliorate those feelings of inadequacy and sadness, but, increasingly, incel forums host posts of men with marginalized masculinities who respond with anger and a vow to retaliate. While only a few of the up to 100,000 men<sup>213</sup> who participate on the incel forums commit violent crimes as a result, the forums are replete with hatred and anger. Elliot Rodger and Alek Minaissian are lionized as having the courage to retaliate for their grievances. Given this focus, especially on Rodger as a hero, it is important to consider Rodger’s manifesto closely.

The epilogue of Elliot Rodger’s manifesto, which appears to have been written immediately before or on his “Day of Retribution,” when he killed seven people in Santa Barbara, states:

The ultimate evil behind sexuality is the human female. They are the main instigators of sex. They control which men get it and which men don’t. Women are flawed creatures, and my mistreatment at their hands has made me realize this sad truth. There is something very twisted and wrong with the way their brains are wired. They think like beasts, and in truth, they are beasts. Women are incapable of having morals or thinking rationally. They are completely controlled by their depraved emotions and vile sexual impulses. Because of this, the men who do get to experience the pleasures of sex and the privilege of breeding are the men who women are sexually attracted to. . . the stupid, degenerate, obnoxious men. I have observed this all my life. The most beautiful of

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<sup>211</sup> Debbie Ging, *Alphas, Betas, and Incels: Theorizing the Masculinities of the Masculine*, 22 *MEN & MASCULINITIES*, 638, 651 (2017).

<sup>212</sup> While it is true that many incels ordinarily assume that they are physically inferior—too short, not good looking, too small a penis, etc., this type of admission does not appear in Rodger’s Manifesto where he calls himself “supreme” and “the closest thing there is to a living god” and emphasizes that he is superior to many of the “Chads” that women are attracted to. See Rodger, *supra* note 43, at 135.

<sup>213</sup> See *Online Poll Results Provide New Insights Into Incel Community*, ANTI-DEFAMATION LEAGUE (Sept. 10, 2020), <https://www.adl.org/blog/online-poll-results-provide-new-insights-into-incel-community> [<https://perma.cc/HM6Q-6VHV>] (this number is merely an estimate).

women choose to mate with the most brutal of men, instead of magnificent gentlemen like myself.

Women should not have the right to choose who (sic) to mate and breed with. That decision should be made for them by rational men of intelligence. If women continue to have rights, they will only hinder the advancement of the human race by breeding with degenerate men and creating stupid, degenerate offspring. This will cause humanity to become even more depraved with each generation. Women have more power in human society than they deserve, all because of sex. There is no creature more evil and depraved than the human female.

Women are like a plague. They don't deserve to have any rights. Their wickedness must be contained in order (to) prevent future generations from falling to degeneracy. Women are vicious, evil, barbaric animals, and they need to be treated as such.<sup>214</sup>

The Epilogue continues and concludes:

My orchestration of the Day of Retribution is my attempt to do everything, in my power, to destroy everything I cannot have. All of those beautiful girls I've desired so much in my life, but can never have because they despise and loathe me, I will destroy. All of those popular people who live hedonistic lives of pleasure, I will destroy, because they never accepted me as one of them. I will kill them all and make them suffer, just as they have made me suffer. It is only fair . . .

All I ever wanted was to love women, and in turn to be loved by them back. Their behavior towards me has only earned my hatred, and rightfully so! I am the true victim in all of this. I am the good guy. Humanity struck at me first by condemning me to experience so much suffering. I didn't ask for this. I didn't want this. I didn't start this war . . . I wasn't the one who struck first . . . But I will finish it by striking back. I will punish everyone. And it will be beautiful. Finally, at long last, I can show the world my true worth.<sup>215</sup>

The ideas expressed by incels online and in Rodger's manifesto demonstrate that men seek out women to prove their worth to other men and move up in the hierarchy of men. Throughout his manifesto, while Rodger speaks of his loneliness and sexual frustration, he emphasizes his shame at how others perceive him as a loser because women are not attracted to him. He assumes that others are judging him as unworthy because of his failure to attract women, and he blames women for this failure. Throughout the mani-

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<sup>214</sup> See Rodger, *supra* note 43, at 136.

<sup>215</sup> *Id.* at 137.

festo, Rodger argues that a sexual relationship with a beautiful, sexy, blonde woman is his right that has been denied wrongfully by women. In essence, in Rodger's thinking, women's purpose is to gratify not only men's sexual needs, but also their social needs to acquire status among the hierarchy of men. So, from Rodger's perspective, women have no independent purpose; their existence is to support and gratify men. Rodger's need to "show the world my true worth" is a demonstration of his power and masculinity through violence, destruction of others, and suicide.

Rodger's view, like those expressed by others on incel forums, is totally self-oriented (some might say, "narcissistic") and seems not to consider that a relationship between two persons should be an equal give and take. His inability to empathize with others and his focus on money and status, as symbols of individuals' superiority and the prevalence of the idea that he deserves money and status that he has not worked for demonstrate a concentration on self and a failure to focus on the needs of others. Examples of these tendencies in the manifesto include:

- His belief that his mother should marry a rich man so that Rodger can live in a rich family and his conclusions that his mother is selfish for not doing so;<sup>216</sup>
- His failure to hold a job throughout his life even when he is not in school;
- His frequent dropping out of courses in which he is enrolled because he cannot tolerate the repartee between Chads and Stacys in his classes;
- His sense that when couples are near him they are intentionally ruining his enjoyment of life;
- His belief that women would be attracted to him if he were rich;
- His spending of significant amounts of money to purchase lottery tickets so that he can become rich and attract women; his faith that he will win the lottery if he purchases tickets;
- His view that even though his parents are having financial difficulties they owe him trips (first class) and cars and a lifestyle that is upper middle-class;
- His embarrassment at living in a poor neighborhood with his mother;
- His belief that he is superior to other men because they drive cars that are inferior to his BMW.

Rodger's manifesto also demonstrates classist and racist tendencies in his judgment of others, valuing white men (and white, blonde women) over those of other races. As we shall see below when we discuss intersectionality, race, class, and gender are traveling companions. They mutually con-

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<sup>216</sup> Rodger stated, "I tried to pretend as if I was part of a wealthy family. I should be. That was the life I was meant to live. I WOULD BE! If only my damnable mother had married into wealth instead of being selfish. If only my failure of a father had made better decisions with his directing career instead wasting his money on that stupid documentary." Rodger, *supra* note 43, at 102.

struct the individual's performance within a social context at a particular time.

Although Rodger himself was half-white and half-Asian, he commented with disapproval on his Latino, "low class" roommates, a blonde girl dating a Mexican guy that was an insult to his dignity, and an "ugly" Black boy named Chance who had lost his virginity at age thirteen. Rodger believed that Chance was inferior to Rodger because Rodger was descended from the British Aristocracy while Chance was a descendent of enslaved peoples. He also mocked an Indonesian boy, the son of a friend's housemaid who had relationships with girls, saying that he was an "insolent little worm."<sup>217</sup>

An understanding of intersectionality theory, which is examined below, further illustrates that Rodger and Long both act out of misogyny and racism.

### C. *Intersectionality, Essentialism, and Multidimensional Masculinities Theories*

In *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, Kimberlé Crenshaw, the founder of intersectionality theory, criticized antidiscrimination law as well as feminist theory and antiracist politics for seeing racism and sexism along only one axis.<sup>218</sup> Using this one-axis lens, those who suffered from racism were Black men while those suffering from sexism were white women.<sup>219</sup> Consequently, the experiences of Black women disappeared because they were rooted both in racism and sexism and created a separate harm that the law ignored.<sup>220</sup> Crenshaw argued for a more realistic portrayal: one that recognized multiple harms caused by the different categories of race and sex, each alone and combined.<sup>221</sup> Black women experience their identities in ways that differ not only from white women, she explained, but also from Black men.<sup>222</sup> Law and policy, if they are to effectively remedy the discrimination experienced by real human beings living within different identities, must recognize the complexities of our identities and of discrimination based on them.<sup>223</sup>

In *Race and Essentialism in Feminist Legal Theory*, Professor Angela Harris criticizes feminist theorists for essentialism in assuming that all women have the same experiences, valorizing the experiences of upper middle-

<sup>217</sup> See *id.* at 80–84.

<sup>218</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEG. FORUM 139, 139.

<sup>219</sup> *Id.* at 142–43.

<sup>220</sup> See *id.* at 148.

<sup>221</sup> See *id.* at 140.

<sup>222</sup> *Id.* at 149–50.

<sup>223</sup> See *id.* at 166.

class white women, and ignoring the experiences of Black women.<sup>224</sup> Harris argues that the voices of Black women and other women of color are silenced by feminist essentialism and that feminist theory should focus more on lived experiences of women from all backgrounds.<sup>225</sup>

In *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*,<sup>226</sup> Crenshaw analyzes an example of Harris's essentialist argument. Crenshaw explains that white society's portrayal of violence against women is problematic because white society sees rape as primarily occurring to a white woman by a Black man. She demonstrates that, historically, Black women have been regarded as hyper-sexual and therefore the rapes of Black women either are not considered rapes or don't matter.<sup>227</sup> Moreover, when Black men are accused of raping Black women, Crenshaw observes the anti-racist critique is used to support Black men, but there is no support for Black women.<sup>228</sup> In fact, recent empirical research demonstrates that both Black men and Black women who endorse the Jezebel stereotype of the promiscuous Black woman justify interpersonal violence more than those who do not endorse the stereotype.<sup>229</sup> There is, however, a difference between the reactions of Black men and Black women. Black men who endorse the Jezebel stereotype show greater justification of interpersonal violence toward Black women than those who do not endorse the Jezebel stereotype.<sup>230</sup> Black women who endorse the Jezebel stereotype, on the other hand, show greater justification of interpersonal violence toward other Black women only when the victims of the violence behave in ways that are consistent with the Jezebel stereotype.<sup>231</sup>

After the initial critiques, Crenshaw and many other scholars expounded on intersectionality theory, which ultimately came to dominate feminist and critical race theories, to include many other categories of identity.<sup>232</sup> Their most important observation is that essentialism is both ex-

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<sup>224</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

<sup>225</sup> *Id.*

<sup>226</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1271 (1991).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at 1273–74.

<sup>229</sup> Thekia Cheeseborough, Nicole Overstreet & L. Monique Ward, *Interpersonal Sexual Objectification, Jezebel Stereotype Endorsement, and Justification of Interpersonal Violence Toward Women*, 44 PSYCH. WOMEN QUART. 203, 209–10 (2020). For a discussion of the Jezebel stereotype, see Austin, *infra* note 273.

<sup>230</sup> Cheeseborough et al., *supra* note 229, at 209.

<sup>231</sup> *Id.* at 210.

<sup>232</sup> Intersectionality is currently understood by some conservatives to require a new hierarchy, with those who belong to various underrepresented groups moving to the top of the hierarchy and straight, white men at the bottom, but this definition was never Crenshaw's intention. Her aim is to dismantle the hierarchy altogether. See Jane Coaston, *The Intersectionality Wars*, VOX (May 20, 2019), <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination> [<https://perma.cc/C9Y7-X3E7>].

tremely misleading and destructive and a theory that is based on a single (or even a dual) identity cannot evaluate the life experiences of all individuals; consequently, it harms those who do not share the attributes considered to be “the norm.”

Others, in particular Darren Hutchinson, began to articulate multidimensionality theory, an offshoot of intersectionality theory, which focuses on sexual orientation and gender identity issues combined with other identities such as race and sex.<sup>233</sup> Frank Rudy Cooper and I spoke of multidimensional masculinities theory to depict how masculinities theory must consider the race, class, sexual orientation, gender identity, and other identities along with the situational and social context in order to evaluate both the performance of the individuals and others’ expectations of them.<sup>234</sup> Our purpose was not to debate the value of intersectionality theory, but we preferred the term “multidimensionality” in the context of discussing masculinities to signal consideration of many identities simultaneously, within context.

Whatever term we use, our sense of personal identities, how others treat us, and how we react to that treatment depend on the different categories of race, class, gender, sexual orientation, gender identity, dis/ability or ability, color, religion, national origin, etc. But even more, these identities are co-constituted, and how we perform them (or others expect us to perform them) depends on the context of the situation in which we act. This describes a living process, not a static identity or way of being because our performances are fluid and affected by those around us and the social location. For example, a gay male lawyer might perform his identity differently depending on where he finds himself: in a gay bar or in front of a judge in a court hearing. Those observing his behavior would expect different identity performances based on the context of the situation as well.<sup>235</sup>

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<sup>233</sup> See Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 316 (2001) (stating “[m]ultidimensionality argues for the inclusion of sexual identity within civil rights jurisprudence and theory not because gays and lesbians are ‘like’ persons of color but because racism and sexuality hierarchies sustain one another. Under a multidimensional approach, a progressive sexual politics becomes critical to the advancement of persons of color because heterosexism contributes to the subordinate status of racially oppressed communities.”)

<sup>234</sup> See McGinley & Cooper, *supra* note 195, at 332.

<sup>235</sup> Identity performances are not limited to men, nor are they limited to gender: Professors Devon Carbado and Mitu Gulati explained how individuals must perform their racial identities more conservatively in many employment contexts, and because business has been dominated by middle class white men, it is their identities that set the standards and the norm for most men; moreover, white women, who also take cues from white men’s norms, will set the standard for most women. DEVON CARBADO & MITU GULATI, *ACTING WHITE?: RETHINKING RACE IN “POST-RACIAL” AMERICA* 1–4 (2013). A straight Black woman who works in a law firm must deal with the double bind: she cannot act or appear “too black,” but she also must be “black enough.” *Id.* Professor Wendy Greene and the CROWN Act movement demonstrate this concept. See Natalie Runyon, *The CROWN Act and Transforming the Rules of Professionalism Around Black Hair*, THOMAS REUTERS (Feb. 17, 2021), <https://www.thomsonreuters.com/en-us/posts/legal/crown-act-legal-professionalism/> [https://perma.cc/MP9Z-KD87]. The U.S. courts have been ex-

Frank Rudy Cooper, in the context of discussing policing and intersectionality, further explained that distinct identities such as race, gender, and class mutually construct one another.<sup>236</sup> Cooper argued that different categories of identity correspond to systems of oppression such as racism, sexism, and classism.<sup>237</sup> In turn, these systems—racism, sexism, and classism—interact and mutually construct one another, resulting in hierarchies of identities.<sup>238</sup> Finally, the social location of individuals within those hierarchies interacts with social institutions (such as policing). These interactions can exacerbate or minimize oppression.<sup>239</sup>

Understanding incels requires an intersectional analysis of race, class, gender, and other characteristics of individuals as well as an understanding of masculinities and intersectionality/multidimensionality theories and of the systems and social institutions and contexts in which they find themselves. Take Elliot Rodger whose manifesto reveals his inner thoughts and motivations. Rodger was half-white, half-Asian, male, and economically privileged, from an upper-middle class family. These identities intersected with one another to create a person who had a sense of entitlement and expectations that seem to go well beyond the effort that he expended. He apparently believed that he had a right to be wealthy, to not work, and to have a beautiful blonde woman at his side. He never considered how he should contribute to his family, to his economic future, or to a relationship with a woman. In fact, he argued that his mother was selfish for failing to marry a rich man so that Rodger could live in a rich family;<sup>240</sup> he refused to work at a job that he

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tremely reluctant to hold that hair codes that are rooted in the recognition of white hairstyles as “the norm” discriminate against black employees. Courts have regularly upheld as non-discriminatory rules prohibiting natural hair styles such as twists, braids, or locs, and applicants and employees have been denied employment opportunities as a result. See e.g., *EEOC v. Catastrophe Mgt. Solutions*, 852 F.3d 1018 (11th Cir. 2016) (denying an applicant the job because she refused to cut her “curlicocks”); see also Jasbir (Jesse) Kaur Bawa, *Commentary on Equal Employment Opportunity Commission v. Catastrophe Management Solutions* in *FEMINIST JUDGMENTS: REWRITTEN EMPLOYMENT DISCRIMINATION OPINIONS* 146, (eds. Ann C. McGinley & Nicole Buonocore Porter, 2020); D. Wendy Greene, *Equal Employment Opportunity Commission v. Catastrophe Management Solutions*, in *FEMINIST JUDGMENTS: REWRITTEN EMPLOYMENT DISCRIMINATION OPINIONS* 157, (eds. Ann C. McGinley & Nicole Buonocore Porter, 2020) (rewriting the opinion from a feminist perspective and recognizing that hair discrimination is racial discrimination in this context). (Many use the term “dreadlocks,” but that term has negative racial connotations, so I choose to use the term “locs.”) See AYANA D. BYRD & LORI L. THARPS, *HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA* 121 (2d ed. 2014) (explaining that “dreadlock” was derived during the slave trade when enslaved people emerged from the ships with matted hair that looked “dreadful,” according to whites). Considering white hairstyles (generally straight or wavy) to be the norm places an excessive burden on Black people, especially Black women, who are criticized and lose employment and other opportunities because they cannot conform to a concept of white beauty. See Greene, *supra* note 235.

<sup>236</sup> Frank Rudy Cooper, *Intersectionality, Police Excessive Force, and Class*, 89 GEO. WASH. L. REV. 1452, 1457–58 (2021).

<sup>237</sup> *Id.* at 1458.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> See Rodger, *supra* note 43, at 102.

considered below him, even though he did not contribute financially to his family or to his own living;<sup>241</sup> he dropped out of multiple courses in community colleges because he was offended by the “Stacys” and “Chads” in his classes, even though an education might have prepared him to support himself financially;<sup>242</sup> he expected to get rich by winning the lottery;<sup>243</sup> he believed that he deserved a beautiful blonde young woman, but he seemed not to believe he should expend energy to get to know women;<sup>244</sup> he expected young women to approach him to show interest in him and was angry when they did not;<sup>245</sup> and he was angry and resentful when he learned that men of other races to whom he considered himself superior had girlfriends.

While it appears that Rodger may have had a disability, he mentioned neither mental health issues nor autism in his manifesto, and I do not pretend to diagnose him as an individual.<sup>246</sup> Nonetheless, Rodger had evidently been in therapy for years before his death and had been treated for Pervasive Development Disorder and autism.<sup>247</sup> But, as Professor Stewart Chang so well explains, it is important not to limit our focus to mental health issues in situations like Rodger’s.<sup>248</sup> Two things can be true at the same time: Rodger could have had mental health or neurological disabilities *and* have been influenced by a group of radical incels.

What we do know is that Rodger was not acting as a “lone wolf.” Well before his murderous acts, Rodger engaged with a community that goaded on his worst instincts. After his death, Rodger’s manifesto, combined with his violent acts and YouTube videos, touched a nerve in the online forums of the incels, a reaction that demonstrates that a large group of young men related, and still relate, to his story. These young men saw, and continue to see, a “saint,” a “hero” in Rodger. It is this reaction to the manifesto that should concern us. Granted, many, if not most, incels are privileged, white males, but they do not acknowledge their privilege, and they see themselves as harmed by women who pay no attention to them.<sup>249</sup> Their class and race privilege most certainly affects their sense of entitlement as does their gender privilege.

Masculinities theory asks us to consider how the gender order, and more specifically, expectations of masculinity, may have harmed these men,

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<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> After his death, it was discovered that Elliot had been going to therapy for many years. See Arthur Hunter, *Elliot Rodger and Therapy Saturation: When Therapy Fails. The Psychology of a Killer*, THERVIVE, <https://www.theravive.com/research/elliott-rodger-and-therapy-saturation:-when-therapy-fails.-the-psychology-of-a-killer> [https://perma.cc/YM9F-YSE6].

<sup>247</sup> See Chang, *supra* note 26, at 510 (citing ISLA VISTA MASS MURDER, MAY 23, 2014: INVESTIGATIVE SUMMARY 8–9 (2015)).

<sup>248</sup> *Id.* at 510–16.

<sup>249</sup> *Online Poll Results Provide New Insights Into Incel Community*, *supra* note 213.



and, in Rodger's case, indirectly caused his death. One observation that masculinities theory makes is that men engage in relentless competition with other men to prove themselves; for straight men, one way of doing so is by dating women whom the group finds desirable. Rodger was hyperaware of this incapacity on his part: he repeatedly stated that others would judge him for being a virgin, for not having a beautiful woman at his side. While at times he mentioned that he desired a relationship with a woman, his focus was not predominately on a mutual loving relationship but rather on meeting his own sexual needs, and even more, demonstrating his worth (his masculinity) to other men by dating a beautiful woman. On the scale of privileged straight men, the only scale that mattered to him, Rodger was a loser. He, and the other incels who revere him, can never reach the ideal of the hegemonic male—white, upper middle class, handsome, popular, etc. In response to this perceived deficit, Rodger vowed (and others respected him for it) to get even with the women who rejected him. But the premise of this vow is mistaken because it is not women or even feminism that caused Rodger's deep anxiety, but his failure to prove his masculinity in the most obvious way possible for a straight man: in the love and sex derby. Masculinities theory demonstrates that it is the gender requirement that men prove their masculinity to others that causes Rodger's injury, and his failed masculinity meant he was not even a "real man." Finally, one important means of reinforcing or claiming one's masculinity is to engage in violent behavior.<sup>250</sup>

As Christopher Vito and his co-authors state:

When [Rodger] does not receive societal confirmation of his masculinity, he experiences a crisis of masculinity and feelings of aggrieved entitlement wherein he directs his anger at racial minorities and women. He eventually adopts a violent masculinity and executes a violent retribution when his experiences do not live up to culturally defined gender expectations.<sup>251</sup>

Masculinities theory recognizes that while white, middle-class men are privileged, they often do not experience their reality as privileged because of the gender expectations that they constantly prove their manly worth.<sup>252</sup> Of course, this is no excuse for Rodger's behavior, but this observation allows us to more realistically evaluate what happened, and to prevent Rodger's brand of violence from reoccurring. An intersectional approach permits us also to understand that Rodger's behavior, although steeped in privilege, was influenced by his race and class as well as his gender. Rodger valued deeply his Caucasian British heritage, noting that he was the descendant of the British Aristocracy, but he said little about his Asian background other than to discount and ignore it. Asian men are stereotyped in our culture as less mas-

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<sup>250</sup> Vito et al., *supra* note 27, at 91 (citations omitted).

<sup>251</sup> *Id.* at 87.

<sup>252</sup> See ANN C. MCGINLEY, *MASCULINITY AT WORK*, 23 (2016).

culine and less desirable in the heterosexual dating market than white, Black, or Latino men.<sup>253</sup> Racial archetypes of Asian men portray them as emasculated and feminized<sup>254</sup> and may harm the ability of Asian men to attract non-Asian women in U.S. society. Although Rodger does not discuss this topic directly, he may have suffered from this phenomenon or at least feared that he did, which in turn, may have affected his gender and racial performances. There is no question that he saw white, blonde women as superior to women of color; he never considered women of color as desirable; and he repeatedly expressed disdain for Asian American men. Note that the first people he killed in his rampage were his three roommates, all of whom were Asian, and all of whom he considered ugly and inferior “nerds.”<sup>255</sup>

In contrast to Asian American men, Asian American women are stereotyped as highly desirable (although that was not Rodger’s ideal) because they are considered very feminine, sexy, submissive, and exotic.<sup>256</sup> Robert Aaron Long’s frequenting of Asian massage therapists likely was a response to these stereotypes, and his murder of mostly female Asian massage therapists whom he identified as his temptation demonstrates the importance of intersectional analysis in determining whether to indict on a hate crime. It seems clear that it was not only one axis, race or gender, that we should examine here. Their combined race and gender—Asian women—made them victims of Long’s rampage.

Women of color are more subject to stereotyping than white women and are victims of sexual harassment and abuse more than white women. Intersectionality theory demonstrates that discrimination or harassment suffered by women of color is not merely race discrimination plus sex discrimination added together. Instead, it is a whole different type of harassment, and it often presents in ways that are different from the harassment of white

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<sup>253</sup> See Yue Qian, *Asian Guys Stereotyped and Excluded in Online Dating*, THE CONVERSATION (Feb. 9, 2020), <https://theconversation.com/asian-guys-stereotyped-and-excluded-in-online-dating-130855> [<https://perma.cc/3D67-WWQ2>] (explaining that because of stereotypes, Asian men have far fewer online dating responses than their female counterparts and that Asian men’s rate of heterosexual relationships is only half that of Asian women); see also Vito et al., *supra* note 27, at 89–90 (explaining that Asian men are feminized in the U.S.).

<sup>254</sup> See Robert Chang, *Rescue Me*, in *MASCULINITIES AND THE LAW: A MULTI-DIMENSIONAL APPROACH* 119, 122–23 (Frank Rudy Cooper & Ann C. McGinley eds., 2012).

<sup>255</sup> See Rodger, *supra* note 43, at 128; see also Chang, *supra* note 26, at 517–21 (analyzing racism in Rodger’s manifesto and explaining that masculinities always presume that white men are superior to men of color).

<sup>256</sup> See, e.g., Noreen O’Donnell & Zijia Eleanor Song, ‘Stereotypes, Fetishes and Fantasies:’ *Asian American Women Link Sexualization and Racism*, NBC BAY AREA (Mar. 19, 2021), <https://www.nbcbayarea.com/news/national-international/stereotypes-fetishes-and-fantasies-asian-american-women-link-sexualization-and-racism/2497859/> [<https://perma.cc/B4XL-2MF7>]; Harmeet Kaur, *Fetishized, Sexualized and Marginalized, Asian Women are Uniquely Vulnerable to Violence*, CNN (Mar. 17, 2021), <https://www.cnn.com/2021/03/17/us/asian-women-misogyny-spa-shootings-trnd/index.html> [<https://perma.cc/KCQ7-5RDA>].

women.<sup>257</sup> Of the six Asian women murdered by Robert Long, four were of Korean descent and two were of Chinese descent.<sup>258</sup> Their deaths followed the centuries-long history of U.S. stereotyping of Asian women as exotic and submissive.<sup>259</sup> These stereotypes, scholars note, are reflected in the Page Act of 1875, the first U.S. immigration law that was based on race, which banned Chinese women from emigrating to the United States.<sup>260</sup> Although many of the women seeking entry into the United States were married and seeking to reunite with their husbands in the United States, legislators assumed that Chinese women were prostitutes who would lower the moral standard of the United States, if admitted.<sup>261</sup> At about the same time, Chinese women in San Francisco were treated as scapegoats because of officials' fear that they would spread venereal diseases to white men.<sup>262</sup>

The stereotypes of Asian women were reinforced in the middle of the 20th century when U.S. servicemen in China, Japan, the Philippines, Korea, and Vietnam became acquainted with Asian women who worked on military bases or in war zones as maids or cooks where the servicemen were stationed, or worked as prostitutes in the surrounding areas.<sup>263</sup> Some American servicemen married Asian women they met and returned home with them.<sup>264</sup> The women's roles of cook, maid, and prostitute reinforced the stereotypes of Asian women as both submissive and exotic.<sup>265</sup> Even today, Asian women suffer from these stereotypes, as Long's admission that he killed the women in order to eliminate temptation demonstrates. Asian American women are more likely to be sexually assaulted by men of a different ethnicity, whereas the opposite is true of white and Black women.<sup>266</sup> Movies in popular culture further these stereotypes, and digital pornography disproportionately represents Asian women as victims of rape in comparison with their non-Asian counterparts.<sup>267</sup>

Stop AAPI Hate has collected data since March 2020 on reports of victims of anti-Asian hate incidents, and it has also published the results of a Fall 2021 survey that recorded hate events.<sup>268</sup> The National Report undercounts the number of events because it relies on self-reporting, but even

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<sup>257</sup> See generally Rosenthal, *infra* note 272 (examining the unique forms of discrimination and harassment faced by Black and Latinx women).

<sup>258</sup> See Karen Leong & Karen Kuo, *US Has a Long History of Violence Against Asian Women*, THE CONVERSATION (Mar. 22, 2021), <https://theconversation.com/us-has-a-long-history-of-violence-against-asian-women-157533> [<https://perma.cc/V5UV-6E7W>].

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> Aggie J. Yellow Horse et al., STOP AAPI HATE NATIONAL REPORT: MARCH 20, 2020 – SEPTEMBER 20, 2021, <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf> [<https://perma.cc/W9P5-LJDL>].

given this limitation, the number of hate incidents is significant. The organization stated that 10,370 hate events aimed at Asian Americans and Pacific Islanders were reported between March 2020 and September 2021.<sup>269</sup> The study revealed that one in five Asian Americans reported hate incidents in the last year.<sup>270</sup> Women represented 62% of the reports, while men represented 31%, gender non-binary people, 3%, and those who preferred not to specify, 4%.<sup>271</sup>

As noted above, Black women also experience intersectional stereotypes, many of which are rooted in the history of slavery, and which continue to oppress not only Black women but also Black men. Intersectionality theory, however, teaches us that looking merely at the intersection of race and gender is insufficient. We must also consider how social systems of oppression reinforce the power of the oppressors and powerlessness of the oppressed, and how those systems employ intersectional stereotypes to continue to oppress individuals and groups that are powerless.<sup>272</sup> For Black women, common stereotypes include Sapphire, the aggressive “Black bitch,”<sup>273</sup> Jezebel, the sexually promiscuous Black woman,<sup>274</sup> and Mammy, the saintly, asexual motherly Black woman who cared for the children of white families.<sup>275</sup> These stereotypes affect not only how individuals treat and judge Black women, but also how systems continue to oppress Black women and other women of color.<sup>276</sup> Latinx women, like Black women, also suffer from sexual stereotypes that operate to oppress them as a group, particularly with reference to their bodies, promiscuousness, and tendency to mother many children with different fathers.<sup>277</sup>

Let us return to the masculinities theorists and the men’s rights activists. Ironically, the masculinities theorists and the men’s rights activists appear to be operating in totally opposite ways: one placing the blame on the social construction of gender (the masculinities theorists) and the other blaming women and feminism (the men’s rights advocates), but both groups have a common history. Early masculinities scholars saw themselves as feminists who agreed that gender was socially constructed, not biologically required,

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<sup>269</sup> *Id.* at 1.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 10.

<sup>272</sup> See Lisa Rosenthal et al., *Content of, Sources of, and Responses to Sexual Stereotypes of Black and Latinx Women and Men in the United States: A Qualitative Intersectional Exploration*, 76 J. SOC. ISSUES, 921, 923–26 (2020).

<sup>273</sup> See Regina Austin, *Sapphire Bound!* 1989 WIS. L. REV. 539, 539–40; see also Kersti Myles, *Jezebels and Jungle Bunnies: How the Stereotypes of Black Women Shape Legislation, the Legal Profession and Feminist Jurisprudence*, 10 MOD. AM. 3, at 5–6 (2017).

<sup>274</sup> Austin, *supra* note 273, at 569–72; Myles, *supra* note 273, at 5–6.

<sup>275</sup> Austin, *supra* note 273, at 569–72; Myles, *supra* note 273, at 3–4.

<sup>276</sup> See, e.g., Rosenthal et al., *supra* note 272, at 940–41.

<sup>277</sup> *Id.* at 928–31 (describing interviews of Latinx and Black women who detailed the racialized, sexualized, and gendered stereotypes they experienced and the difficulties those stereotypes caused).

but they also believed that feminists had a unidimensional view of men and did not focus on the social differences among men and how those differences caused competition and harm to men. They engaged in the study of men as gender subjects rather than considering men “the norm” from which women differed and against whom women should be judged.<sup>278</sup> But soon thereafter, the men’s rights advocates emerged and began to blame women and feminism for the harms suffered by men. As Bethany Coston and Michael Kimmel describe the break between men’s rights advocates and men’s studies (masculinities) scholars, they try to explain what happened to the men’s rights advocates: “Somewhere along the way, the critique of the oppressive male sex role, and the desire to free men from it, morphed into a celebration of all things masculine, and a near-infatuation with the traditional masculine role itself.”<sup>279</sup> Even those who started out condemning gender and restrictive masculinity ended up with stereotypically misogynist views, demonstrating how powerful misogyny is.

This research on intersectionality, masculinities, race, gender, and other identity categories attempts to capture the complicated nature of human behavior. It demonstrates that individual reactions are often based on implicit biases and stereotypes, which themselves are grounded in systemic causes. Racism and misogyny are built into our history and our laws and continue to reinforce hierarchy and power in society. Moreover, discrimination toward another individual often occurs not because of a single identity that the victim occupies but results from a combination or intersection of the individual’s identities. For example, it is likely that Robert Allen Long targeted most of his victims because they were both Asian and women. As currently written, hate crime laws attempt to punish individuals committing identity-based crimes, but are, as we shall see below, limited to only one identity. Given the complexity of human behavior, as demonstrated by the theories described above, the law needs to expand to recognize intersectional hate crimes.

The next Part discusses the relationship among misogyny and hate crimes. It explains the historical background of federal and state law of hate crimes and notes a very real problem: only about half of the states include “gender” or “sex” as a protected status in their hate crime legislation. Many others include only race, color, religion, and national origin. And, others

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<sup>278</sup> See, e.g., Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men’s Rights Movement*, 13 NEV. L. J. 368, 369–70 (2013).

<sup>279</sup> *Id.* at 372. Perhaps in part as a reaction to the Men’s Rights Advocates, masculinities scholar Jeff Hearn began to question the concept of hegemonic masculinity, focusing instead on “the hegemony of men,” which describes the power of men as a group rather than focusing on individual male harms. See Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49, 50 (2004). This latter concept is closer to that described by feminists, with which I agree, but I also believe that the better approach is to understand male hegemony and hegemonic masculinity as separate concepts that can survive side by side.

include race, color, religion, national origin, disability, gender identity, sexual orientation, and gender expression but do not include “gender” or “sex.” The concern is that, in the first group of statutes, gay and trans individuals and women (and men) will not be protected if they are victims of hate crimes. The second group of statutes protect gay and trans individuals but do not protect straight women harmed due to misogyny. While enhancing criminal sanctions for crimes committed based on the “gender identity” of the victims theoretically should protect straight women, there is a serious question whether courts would agree. Finally, none of these states include intersectional hate crimes in their prohibitions, a failure that sorely underestimates and misgauges the causes, types, and degrees of harms suffered.

#### IV. MISOGYNY AND HATE CRIMES: AWAKENING A PUBLIC UNDERSTANDING

Hate crimes (and potentially acts of domestic and international terrorism) are the result of the misogyny expressed online by incels and many other overlapping groups. Elliot Rodger, Alek Minassian, and a number of other incels openly admitted that they intended to kill women in retaliation for their sexual rejection.<sup>280</sup> Although it is unclear how many of the derogatory statements that women should suffer are “shitposting,”<sup>281</sup>—a satirical practice of posting the most egregious opinions, which makes it difficult to ascertain when the threats are serious—we do know that the most respected members of the incel community have followed through with their threats to kill and maim or have attempted to do so.<sup>282</sup>

Even Robert Aaron Long, whose ideology appears to result not from incel forums but from his strict religious beliefs (which evidently include a denunciation of feminists as furthering Satan’s aims),<sup>283</sup> apparently acted out of misogyny when he sought to destroy women whom he saw as temptations, blaming them for his own perceived weaknesses. Manne explains that misogyny distinguishes between “good” and “bad” or “wayward” women, victimizing the latter and supporting the former. The “bad” or “wayward” women are problematic because they challenge the patriarchy by daring to upset the established order, competing with men, or withholding their presumed burden to care, respect, and bolster men’s egos and superior positions in society.<sup>284</sup>

Moreover, alt-right extremists in the United States demonstrate a remarkable overlap in ideology and personnel with the men’s rights activists

<sup>280</sup> See *supra* notes 85–97.

<sup>281</sup> See Hoffman et al., *supra* note 32, at 577.

<sup>282</sup> The most obvious example is Elliott Rodger. See generally Elliot Rodger, *supra* note 43.

<sup>283</sup> See *supra* notes 109–112.

<sup>284</sup> See MANNE, *supra* note 2, at 51–53.

and other groups in the manosphere (including the incels). Specialists in international terrorism, as we have seen,<sup>285</sup> are beginning to focus on misogyny, an underlying principle of nearly all terrorist groups, as a cause of or predicate for extremist behavior. While this article cannot attempt to find the solution for all crimes resulting from misogyny, both domestic and international, it can offer suggestions for changes to some of the laws. This Part reviews federal and state hate crime legislation and concludes that, at the very least, there should be consistent 50-state hate crime legislation that grants sentence enhancement for underlying crimes committed because of the victim's gender or sex as well as gender identity, sexual orientation, color, race, disability, religion and national origin. Moreover, this legislation should apply equally to intersectional hate crimes, committed because the victim belongs to more than one protected category.

Robert Aaron Long's admission that he killed most of his victims because they were temptations, and that he was a "sex addict" was jarring. But perhaps even more surprising than the admission were the official and popular responses to that admission. A number of police authorities stated that it could not yet be determined whether Long had committed hate crimes.<sup>286</sup> In making these comments, the police apparently meant that it wasn't clear whether Long killed the victims because they were Asian. Almost no one noted (perhaps other than female Asian bloggers who recognized what happened in light of their own experiences<sup>287</sup>) that Long's stark admission—that he killed the women because he was a sex addict—demonstrates that he committed the crime, at least in part, because of the gender of the victims. This raises the question of the justification for ignoring an admission that, basically, "their gender made me do it." Is it that Long's attraction did not equal hate or even misogyny? Should hate crimes require a subjective hatred of or animus towards women, people of color, etc. or should proof that gender is a substantial motivation be sufficient? Has anger at women become so normalized that it is understandable in our society to kill women?

Let's shift our perspective to analyze these questions. Assume that Long's fetishes were for white women and those he killed fell into this demographic. Many jurisdictions do not include "gender" or "sex" as a protected status in their hate crime legislation. In other words, in those jurisdictions Long's behavior would likely not constitute hate crimes if the targets were white women. We can understand the issue even better by looking at the murders committed by Elliot Rodger. He announced before he killed a number of women that he would kill them because they were women.<sup>288</sup> His plan was to attack "blondes," and he was clearly most attracted to white women.<sup>289</sup> He marched up to the door at the Alpha Phi sorority,

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<sup>285</sup> See, e.g. Castillo & Valji, *supra* notes 153–161.

<sup>286</sup> See, e.g. Kornfield & Knowles, *supra* note 8.

<sup>287</sup> But see Yuen, *supra* note 16.

<sup>288</sup> See generally Rodger, *supra* note 43.

<sup>289</sup> *Id.*

where the “hottest” girls lived and, fortunately, could not get inside.<sup>290</sup> He then murdered two white women on the street.<sup>291</sup> Had his murders of white women taken place in one of the nearly 50% of states without hate crime protection for sex or gender, and had he survived his crimes, he could not have been charged with hate crimes in those jurisdictions unless the victims belonged to another protected category that caused his behavior. Police could have charged Rodger with a hate crime based on race—his victims were white—but it would be difficult to prove unless the statute recognized intersectional identities (race and gender) as protected categories. Only misogyny (in the sense of patriarchal norms) can justify this legal failure.

#### A. HATE CRIME LEGISLATION: JURISDICTIONAL LIMITATIONS, VARIATIONS IN MOTIVES, LEGITIMACY, PURPOSES, AND EFFICACY

Hate crime legislation is a patchwork of federal and state laws designed to recognize that the defendant’s motive in committing a crime may harm the victim and society more if the crime occurs because of the victim’s protected identity or status.<sup>292</sup> Most federal and state hate crime laws enhance the sentence of a defendant convicted of an underlying offense when that offense is committed because of the identities or perceived identities of the victim.<sup>293</sup> Some states, however, do have stand-alone hate crime laws.<sup>294</sup>

##### 1. *Jurisdictional Limitations: Federal and State Hate Crime Laws*

Because most criminal law falls within state jurisdiction, the states are the dominant actors when it comes to prosecution of hate crimes.<sup>295</sup> The federal laws provide support, training, grants to police departments, and penal-

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<sup>290</sup> Philip Rucker, *Elliot Rodger’s Killing Spree: What Happened*, WASH. POST (May 24, 2014), [https://www.washingtonpost.com/politics/elliott-rodders-killing-spree-what-happened/2014/05/24/207778ec-e3b2-11e3-810f-764fe508b82d\\_story.html](https://www.washingtonpost.com/politics/elliott-rodders-killing-spree-what-happened/2014/05/24/207778ec-e3b2-11e3-810f-764fe508b82d_story.html) [https://perma.cc/B2CQ-3MJ7].

<sup>291</sup> *Id.*

<sup>292</sup> See *Hate Crime Regulation and Challenges*, 17 GEO. J. GENDER & L. 303, 304 (ed. Sara Ainsworth & Nadia Bryan, 2016). Ainsworth and Bryan place federal hate crime legislation into four categories: (1) Specific acts; (2) Sentence enhancement; (3) Civil suits and remedies; and (4) Collection of statistics. *Id.* at 307. This article focuses on the second category, sentence-enhancing legislation, which is common in state law as well.

<sup>293</sup> *Id.* at 321. Opponents of hate crime legislation argue that punishing motive is punishing thoughts of the individual, a violation of the perpetrator’s constitutional rights. *Id.* at 304–05. The U.S. Supreme Court has upheld a hate crime statute, however, that enhances penalties for an underlying offense based on the motive of the perpetrator. See *Wisconsin v. Mitchell*, 508 U.S. 476, 488 (1993) (upholding the law because it was directed at conduct, not speech, and concluding that “bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.”)

<sup>294</sup> See Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 871, 921–25 (2014) (listing categories covered and types of state statutes in chart).

<sup>295</sup> See Bell, *infra* note 304, at 31.



ties for hate crimes occurring in interstate commerce or in violation of the 14th Amendment to the U.S. Constitution.<sup>296</sup> One consequence of shared responsibilities for hate crimes between the states and the federal government is that “protection” from hate crimes for particular identities varies among the states, and many states do not recognize all of the categories of protected statuses recognized by the federal law.<sup>297</sup> Where hate crime laws enhance the sentence of a defendant who is found guilty of a felony or specified misdemeanor, the factfinder must find the defendant guilty of the underlying crime *and* conclude that the defendant acted based on a prohibited motive beyond a reasonable doubt.<sup>298</sup>

Moreover, hate crime laws vary with reference to the motivations that are necessary to commit a hate crime. Some jurisdictions’ laws specifically require a showing of animus against the protected groups, while others merely require targeting a person based on that individual’s membership in a protected group—in essence a causation requirement.<sup>299</sup> To understand the difference between these two motivations, contrast the mindset of a perpetrator who assaults a person because he harbors animus towards victims of a particular race and that of a perpetrator who selects older persons to defraud because they are easy targets.<sup>300</sup> Law Professor Avlana Eisenberg identifies these two types of hate crimes as archetypical and nonarchetypal, respectively.<sup>301</sup> For a crime to be an archetypical hate crime, Eisenberg explains, there must be prejudice or animus based on a protected characteristic, inter-group targeting, and symbolic victimization.<sup>302</sup> A nonarchetypical case, however, “may appear less like a hate crime and more like a crime of opportunity.”<sup>303</sup>

In 1990, the federal government passed legislation that required reporting of hate crime statistics to the federal government.<sup>304</sup> The purpose was to gather data; it did not make crimes committed because of individuals’ identi-

<sup>296</sup> *Id.* at 31–33.

<sup>297</sup> *Id.* at 31.

<sup>298</sup> See, e.g., *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”). State jury instructions reflect this standard. See, e.g., Hawaii Criminal Jury Instruction 19.3.6A, Hate Crime Offender: H.R.S. § 706-662(6), (“The prosecution has alleged that the Defendant, (defendant’s name), is a hate crime offender and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt.”).

<sup>299</sup> See Eisenberg, *supra* note 294, at 871.

<sup>300</sup> See *id.* at 870–74.

<sup>301</sup> *Id.* at 882.

<sup>302</sup> *Id.* at 871–72.

<sup>303</sup> *Id.* at 872.

<sup>304</sup> See Jeannine Bell, *Lack of Punishment Doesn’t Fit the Crime: America’s Tepid Response to Bias-Motivated Crime*, 31–32 in *STUDIES IN LAW, POLITICS, AND SOCIETY* (Austin Sarat ed., 2021) (noting that the Hate Crime Statistics Act of 1990 requires the Attorney General to collect data based on hate crimes committed because of the race, religion, sexual orientation or ethnicity of the victims and that in 1994, Congress added disability to the list of potential hate crime causes; the FBI eventually passed on the

ties federal crimes. But, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which mandated that the U.S. Sentencing Commission create guidelines for enhancing the penalties of existing offenses if they are committed as hate crimes.<sup>305</sup> Before these guidelines were promulgated, federal law protected against a defendant's interference in a victim's civil rights activities, but the new Sentencing Guidelines permitted the punishment of bias-motivated crimes under many circumstances beyond interference with the victim's civil rights.<sup>306</sup> Since then, a number of federal hate crime laws have been enacted, most notably, The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, whose expanded categories of protected statuses prohibit crimes committed because of an individual's actual or perceived race, color, religion, national origin, disability, gender,<sup>307</sup> gender identity, and sexual orientation.<sup>308</sup> Most recently, President Biden signed into law the COVID-19 Hate Crimes Act, which was passed in

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responsibility for collecting the statistics to the Uniform Crime Reporting Program (UCR)).

<sup>305</sup> *Id.* at 32. The Sentencing Guidelines, §3A1.1 (a) permits the judge to increase the penalty by three levels beyond the guidelines established for the underlying crime. It states in pertinent part:

if the finder of fact at trial or in the case of a plea of guilty or nolo contendere, the court in sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person, increase by three levels.

State jury instructions reflect this standard. *See, e.g.,* Hawaii Criminal Jury Instruction 19.3.6A, Hate Crime Offender: H.R.S. § 706-662(6), ("The prosecution has alleged that the Defendant, (defendant's name), is a hate crime offender and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt.").

<sup>306</sup> *Id.* For a description of the history of federal hate crime legislation going back to after the Civil War, *see* Ainsworth & Bryan, *supra* note 292, at 308–16.

<sup>307</sup> The Violence Against Women Act, which was originally passed in 1994 as part of the Violent Crime Control and Reinforcement Act, prohibits domestic violence and stalking throughout the country and provides for funding for prevention and victim services. The civil remedy for violations of the Act, however, was struck down as unconstitutional in *U.S. v. Morrison*, 529 U.S. 598 (2000). The Court held that Congress did not have the power to grant a civil remedy because there was insufficient evidence of the effects on commerce, and, therefore, the Commerce Clause did not support the congressional mandate. Moreover, Congress did not have the power to pass the legislation under Section Five of the 14th Amendment to the U.S. Constitution because the remedy was not limited to actions by the states. *See History of VAWA, LEGAL MOMENTUM*, <https://www.legalmomentum.org/history-vaawa> [<https://perma.cc/WKY9-DCCY>].

<sup>308</sup> The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (listing the federal hate crime laws and giving information about laws, federal resources, reporting, etc.). 18 U.S.C. § 249 (a)(1) makes it illegal to cause bodily injury or through use of a firearm attempt to cause bodily harm because of the victim's race, color, religion or national origin and punishes the perpetrator for up to 10 years in prison or for up to life if certain conditions exist. Subsection (a)(2) makes it illegal to cause bodily injury or through use of a firearm attempt to cause bodily harm because of the victim's actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability and punishes the perpetrator so long as there is evidence that the act occurred in interstate commerce or with a weapon shipped in interstate commerce.

large part due to concerns about increasing attacks against Asian victims during the pandemic.<sup>309</sup> This Act provides for federal grants to local and state agencies for training and data collection concerning hate crimes and seeks to make reporting more accessible to persons with disabilities and to those whose first language is not English.<sup>310</sup>

For enforcement of federal hate crime laws, the FBI investigates cases that are reported to federal authorities by federal agencies and federal/state task forces, often in conjunction with state and local officials.<sup>311</sup> From 2005-2019, 1,864 suspects were referred to federal authorities from all 50 states.<sup>312</sup> While the number of hate crime investigations declined during the latter half of this period, the conviction rate for these hate crimes referred by the states rose from 83% to 94%.<sup>313</sup>

The U.S. Department of Justice compiles statistics of the state agency reports of hate crimes against persons, property, and society.<sup>314</sup> The Justice Department divides the statistics into “bias motivation categories.”<sup>315</sup> The categories include: race/ethnicity/ancestry, religion, sexual orientation, disability, gender, and gender identity.<sup>316</sup> The numbers of hate crimes reported to the federal government by state agencies are surprisingly low.<sup>317</sup> In contrast, the National Crime Victimization Survey, which is compiled by the U.S. Department of Justice by surveying households, estimated an average of 210,000 hate crime victims, based on victim reports.<sup>318</sup>

But even taking the state agency reports at face value, the percentage of hate crimes reported whose bias motivation is gender is infinitesimal. For example, the most recent statistics on the website for the years 2017, 2018, and 2019 indicate that California, one of the most populous states, reported 1,095 hate crimes for *all* bias motivation categories in 2017, 1,065 in 2018, and 1,017 in 2019. The reports of *gender-based* hate crimes in California

<sup>309</sup> Barbara Sprunt, *Here's What the New Hate Crimes Law Aims to Do as Attacks on Asian Americans Rise*, NPR (May 20, 2021), <https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise> [https://perma.cc/DXT8-VRQW] .

<sup>310</sup> Beatrice Jin, *Biden Signed a New Hate Crimes Law—But There's a Big Flaw*, POLITICO (May 20, 2021), <https://www.politico.com/interactives/2021/state-hate-crime-laws/> [https://perma.cc/JE4E-DK3F]; See Sprunt, *supra* note 309, S937 § 4(a).

<sup>311</sup> Mark Motivans, *Federal Hate Crime Prosecutions 2005-19*, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., NCJ 300952, 4 (July 2021).

<sup>312</sup> *Id.* at 1.

<sup>313</sup> *Id.*

<sup>314</sup> See, e.g., *2020 Hate Crime Statistics for California*, U.S. DEP'T OF JUST., <https://www.justice.gov/hatecrimes/state-specific-information/california> [https://perma.cc/K3M3-GUG2].

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> See Eisenberg, *supra* note 294, at 883 (reporting that 80% of reporting agencies regularly reported that there were no hate crimes in their jurisdictions. As Eisenberg notes, in 2010, for example, Miami, Newark, N.J. and New Orleans all reported no hate crimes. Other large cities such as Louisville, Toledo and Honolulu did not even make any reports).

<sup>318</sup> *Id.* at 884.

comprised only 0.2% of all hate crimes reported, a total number of 14 hate crimes based on gender over the three-year period.<sup>319</sup> There were 30 states that reported 0.0% hate crimes motivated by gender, and most states that reported hate crimes based on gender reported single digits of hate crimes per year.<sup>320</sup>

There is no question that the reports of hate crimes from the states to the federal government underestimate by a large number the hate crimes that occur in the states.<sup>321</sup> But even given this disparity, the numbers of reports of *gender-based* hate crimes are exceedingly low, demonstrating a failure to recognize, report, and investigate hate crimes occurring because of a person's gender. This reporting failure, which is likely due not only to witness hesitancy but also to law officers' reluctance and inexperience in investigating all types of hate crimes is particularly pronounced in gender-based hate crimes. To some extent, this is likely because misogyny is so ubiquitous as to be invisible. Just as the Captain in the Atlanta spa shootings seemed to discount Long's actions as resulting from a "bad day," murder that occurs because of misogyny is often interpreted as resulting from an overreaction or jealousy, not misogyny, even though jealousy may result from an individual's view that the perpetrator is superior to the female victim and that she owes him her undivided attention.

Most hate crimes are charged and prosecuted at the state level. Forty-seven states and the District of Columbia have hate crime laws. Only Arkansas, South Carolina, and Wyoming do not.<sup>322</sup> There are significant differences, however, among the states as to what identity categories are protected under state hate crime legislation.<sup>323</sup> A large majority of states' hate crime legislation includes race, color, religion, and national origin as protected statuses.<sup>324</sup> Many include sexual orientation, but few include gender identity.<sup>325</sup> And, only two-thirds include gender or sex.<sup>326</sup> Moreover, while there seem to be no state statutes that explicitly cover intersectional hate crimes, reactions to the Atlanta spa shootings demonstrate that it is important for them to do so or at least for state officials and courts to interpret their statutes to reach intersectional hate crimes.

<sup>319</sup> See, e.g., 2020 Hate Crime Statistics for California, *supra* note 314.

<sup>320</sup> See *State Specific Information*, U.S. DEP'T OF JUST., <https://www.justice.gov/hatecrimes/state-specific-information> [https://perma.cc/5GG4-F8ZJ].

<sup>321</sup> Bell, *supra* note 304, at 33–35.

<sup>322</sup> Chandler Watkins, *Arkansas Among 3 States that Lack Hate Crime Law*, KSLA (Apr. 7, 2021), <https://www.ksla.com/2021/04/07/arkansas-one-three-states-that-does-not-have-hate-crime-legislation/> [https://perma.cc/NUE4-AQXA].

<sup>323</sup> Jin, *supra* note 310; Ainsworth & Bryan, *supra* note 292, at 317–21.

<sup>324</sup> See Bell, *supra* note 304, at 31–33.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

## 2. *Purposes and Efficacy of Hate Crime Laws*

There is some controversy about the efficacy of hate crime legislation. While 70% of Americans polled approve of such legislation generally, there are very few hate crime prosecutions on the state level and even fewer guilty verdicts.<sup>327</sup> Nonetheless, many academics and lawmakers see hate crime legislation as having an expressive purpose—to communicate to the public and members of protected classes that the protected classes are equally valued in society.<sup>328</sup>

Major reasons for what some believe is limited success include: the reluctance of certain groups to report hate crimes, the unwillingness of police to investigate or a lack of understanding of how to investigate hate crimes, the absence of special police units that are trained and experienced in investigating hate crimes, and the difficulty of proving an individual's bias, which often leads to prosecutors' decisions to decline to charge a hate crime.<sup>329</sup> Charging hate crimes, prosecutors fear, may divide the jury when the proof of the underlying crime is strong. Where there is, however, an experienced police unit dedicated to hate crime investigation, many more hate crimes are charged, and many more defendants are convicted of hate crimes.<sup>330</sup>

### a. *The Expressive Purpose of Law: Hate Crime Legislation*

Many scholars have written about the expressive purpose of law, a purpose that is particularly relevant to hate crime laws.<sup>331</sup> Professor Cass Sunstein argues that law may influence social norms and direct them in a positive direction.<sup>332</sup> Sunstein also explains that law serves an expressive function that is unrelated to social norms.<sup>333</sup> The second expressive function is to further our interest in integrity.<sup>334</sup> For example, Professor Sunstein argues, a society might enact antidiscrimination law for expressive reasons of communicating its values even if the society does not know whether the law will help those protected by the law.<sup>335</sup>

In *The Expressive Powers of Law*, Professor Richard McAdams describes two functions of law that go beyond deterrence and legal coercion:

<sup>327</sup> *Id.* at 43.

<sup>328</sup> See Shirin Sinnar & Beth A. Colgan, *Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration*, 95 N.Y.U. L. REV. ONLINE 149, 150 (2020); Eisenberg, *supra* note 294, at 868–70, 878–79.

<sup>329</sup> Bell, *supra* note 304, at 37–41.

<sup>330</sup> *Id.*

<sup>331</sup> See, e.g., *infra* notes 339–363.

<sup>332</sup> Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2026 (1996).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.* at 2027–28.

the coordination and information functions of law.<sup>336</sup> The coordination function allows us to predict what another person is going to do (a stop sign at an intersection allows us to predict the driver will stop); the information function conveys what experts or lawmakers view the risks to be (a double line on a road indicates that it is too dangerous to pass, and a broken line communicates that passing is relatively safe).<sup>337</sup> Adherence to these laws occurs even without coercion because the individual relies on others' compliance (coordination) to eliminate the risk and, because the individual knows how experts designing the road signals, evaluate the risk (information). McAdams argues that expressive law affects beliefs, which, in turn, affect behavior.<sup>338</sup> Thus, hate crime laws should, if McAdams is correct, not only convey society's attitudes toward crimes engaged with a discriminatory motive, but also affect the beliefs that hate crimes are wrong, and, in turn, reduce hate crimes.

Professor Janice Nadler agrees in large part with McAdams and argues that law functions as a signal of people's attitudes of approval or disapproval of a particular behavior, and it also can provide information about what behavior is considered risky.<sup>339</sup> But she believes that McAdams' model is too simple because "the motivation to reduce. . . risks sometimes competes with several other motivations, some of which can crowd out self-protective attitudes and behaviors."<sup>340</sup> For example, Nadler explains that some restrictive laws fail because people believe that the state should not regulate a particular behavior.<sup>341</sup> Thus, she argues, law has an informational influence on attitudes and behavior only if people are open to influence.<sup>342</sup> In fact, Nadler argues, "the very prospect of expressive law can lead to backlash when the topic of law or regulation is deeply embedded in cultural beliefs and practices."<sup>343</sup> McAdams' account, she argues, appears to judge individual response and not to consider how individuals are influenced by opinions of their social groups.<sup>344</sup> In essence, Nadler argues that law and social norms mutually influence one another and urges further research on the interaction of law and social groups.<sup>345</sup>

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<sup>336</sup> See generally RICHARD H. McADAMS, *THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS* (2015).

<sup>337</sup> *Id.* at 5–7.

<sup>338</sup> *Id.* at 13.

<sup>339</sup> Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42 *LAW & SOC. INQ.* 60, 68 (2017).

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 69.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.* at 70. A perfect example of this phenomenon is the differing public reactions to mask and vaccine mandates in the COVID-19 era. See, e.g., Alana Wise, *The Political Fight Over Vaccine Mandates Deepens Despite Their Effectiveness*, NPR (Oct. 17, 2021), <https://www.npr.org/2021/10/17/1046598351/the-political-fight-over-vaccine-mandates-deepens-despite-their-effectiveness> [<https://perma.cc/JKB2-7ZYC>].

<sup>344</sup> Nadler, *supra*, note 339, at 71.

<sup>345</sup> *Id.* at 72–73.

Other theorists write about the symbolic function of hate crime laws specifically. Professor Gail Mason argues that hate crime laws are engaged in “a process of re-moralization that seeks to challenge the norms and moral boundaries that sustain racial, religious, sexual and other hierarchies of difference.”<sup>346</sup> She notes that her argument depends not only on the punishment of offenders but also on the “image of the ideal victim of hate crime law”<sup>347</sup> and the ability of victims to counter the public perception of them as “inferior, illegitimate or dangerous Others.”<sup>348</sup> She explains that the symbolic function of criminal law is linked to emotion, understood as “emotional thinking,” as defined by Professor Martha Nussbaum.<sup>349</sup> “Emotional thinking” signifies that emotion has a cognitive element and that we draw upon our emotional reactions as tools to judge how to respond in certain situations.<sup>350</sup>

Mason argues that the symbolic function of hate crime laws depends on emotional thinking that challenges negative attitudes and discourses about members of protected classes.<sup>351</sup> She explains that members of the public must experience compassion for the victim group before changing their minds about the group.<sup>352</sup> Mason, referring to Professor Nussbaum’s theory, explains that there are three factors that should be present for the public to feel compassion for the victims: sufficient severity of the group’s treatment; the victim group’s failure to have caused the bad treatment; and significance of the group’s bad treatment as compared to others’ treatment.<sup>353</sup>

Mason explains that gender is considered a second-tier category for hate crimes, and much hate crime legislation does not protect against crimes based on gender.<sup>354</sup> She posits the reason for this is that although it seems contradictory to the severity requirement, research demonstrates that if the wrong visited upon the victim group is too widespread, it is more difficult to engender compassion for that group.<sup>355</sup> Moreover, because of the ubiquity of gender-based crimes, there is concern among other groups that hate crime legislation protecting women would swamp the system and reduce the protection of the law for other groups.<sup>356</sup> In *Gendered Hate*, Professor Jessica Hodge analyzed the results of her qualitative study of New Jersey’s gender-

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<sup>346</sup> Gail Mason, *The Symbolic Purpose of Hate Crime Law: Ideal Victims and Emotion*, 18 THEORETICAL CRIMINOLOGY 75, 76 (2014).

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*, citing MARTHA NUSSBAUM, UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTION at 74 (2001).

<sup>350</sup> Mason, *supra* note 346.

<sup>351</sup> *Id.*

<sup>352</sup> *Id.* at 80.

<sup>353</sup> *Id.* at 83–85.

<sup>354</sup> *Id.* at 83–84.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.* at 84.

based hate crime provision.<sup>357</sup> The legislature had excluded sexual assaults from the gender-based hate crimes statute.<sup>358</sup> The prosecutors interviewed seemed to believe that sexual assaults were exempted from the hate crime statute because they believed that sexual assaults and bias crimes had different motivations.<sup>359</sup> Hodge noted:

[B]y exempting gender-bias sexual assaults from the hate crime law, the New Jersey legislature not only dismissed the idea that men rape women in order to prove their masculinity and to reinforce a social hierarchy, but they also ignored research showing that many rapists express hatred toward women as a group, not just hatred toward a specific victim.<sup>360</sup>

Hodge found that prosecutors, investigators, and interest group members had difficulty envisioning gender-based hate crimes and prosecutors regularly failed to prosecute them. Her interviewees noted the difficulty of proving gender bias, the effect the society at large had on their decisions not to prosecute and concluded that gender-based cases should be civil rather than criminal in nature.<sup>361</sup> Even though domestic violence was not exempted from the statute, prosecutors saw domestic violence (like sexual assaults) as different, and not related to anti-women animus.<sup>362</sup>

Even though the prosecutors interviewed regularly did not prosecute gender-based crimes, they concluded that the law was effective, and they argued against removing gender from the protection of the statute. These five prosecutors wanted gender in the hate crime statute in case a situation arose that would fit the required motivations, and they saw the presence of gender as a means of educating the public and deterring crime against women.<sup>363</sup> The prosecutors' seeming misunderstanding of hate crime legislation may actually be a reason to include gender rather than to exclude it. Their lack of understanding of hate crime legislation demonstrates the ubiquity of gender-based crimes and their failure to understand it as something other than normal or natural. Including gender and intersectional hate crimes, along with a concerted effort to educate both the public and prosecutors about society's normalization of misogyny and the frequency of violence perpetrated against victims with intersectional identities is important. Doing so may further an understanding that gender-based hate crimes are a serious

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<sup>357</sup> See generally, JESSICA P. HODGE, *GENDERED HATE: EXPLORING GENDER IN HATE CRIME LAW* (2011) (discussing the results of interviews of prosecutors and investigators about the enforcement of gender-based hate crime law).

<sup>358</sup> *Id.* at 45.

<sup>359</sup> *Id.* at 59.

<sup>360</sup> *Id.* at 63.

<sup>361</sup> *Id.* at 67.

<sup>362</sup> *Id.* at 71, 75.

<sup>363</sup> *Id.* at 91–93.



problem, and that hate crimes based on intersectional identities are frequent and cannot be ignored.

*b. Efficacy: Meeting the Expressive Purpose?*

A recent multi-state empirical study of prosecutors' decisions concerning enforcement also raises questions about a divergence between the message intended to be sent by legislators and how prosecutors enforce the law.<sup>364</sup> The author, Professor Avlana Eisenberg, conducted fifty-two interviews of prosecutors in urban metropolitan districts with at least a population of 200,000 in twenty-four jurisdictions.<sup>365</sup> Eisenberg discovered that the most common reasons for failure to prosecute alleged perpetrators for hate crimes were police underreporting, statutory language, and the prosecutors' concerns about jury reactions.<sup>366</sup> She also found that in jurisdictions where there were police units dedicated solely to hate crimes or where the police were required to check a box on their reports identifying the alleged motive for the crime, the percentage of hate crimes charged rose.<sup>367</sup> But even in those jurisdictions, hate crimes were underreported and under-prosecuted.<sup>368</sup>

Moreover, she found that prosecutors often refuse to charge hate crimes where there is no sentencing enhancement or sentencing benefit from the charge.<sup>369</sup> In other words, in what she calls the archetypical cases where the underlying crime commands a long sentence, prosecutors declined to charge hate crimes because, as they saw it, there was no benefit to and some risk of charging hate crimes because there were additional proof requirements, and charging a hate crime can affect jury selection adversely.<sup>370</sup> Consequently, prosecutors were more likely to charge hate crimes in the nonarchetypical cases, where motive was only a causation requirement and where the hate crime charge can be used as leverage in plea bargaining.<sup>371</sup> Her conclusion was that expressive purpose of hate crime legislation is undermined by enforcement decisions that prosecutors are making.<sup>372</sup>

*B. Pros and Cons of Adding Gender and Intersectional Motives to Hate Crime Legislation*

As is obvious from the research described above, the merits of hate crime legislation have engendered significant disagreement among scholars and practitioners. Some see it as deterring further crimes against individuals

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<sup>364</sup> See Eisenberg, *supra* note 294.

<sup>365</sup> *Id.* at 881–82.

<sup>366</sup> *Id.* at 882–83.

<sup>367</sup> *Id.* at 885–86.

<sup>368</sup> *Id.* at 885–87.

<sup>369</sup> *Id.* at 888.

<sup>370</sup> *Id.* at 889–95.

<sup>371</sup> *Id.* at 895–96.

<sup>372</sup> *Id.* at 899–901.

because of their membership in groups that have suffered historical discrimination. Others see it as valuable for punishing those who target protected oppressed groups. However, there appears to be little empirical evidence demonstrating that hate crime laws deter crimes motivated by bias or even that the goal of punishment has been realized by hate crime legislation.<sup>373</sup> Moreover, the uneven prosecution of hate crimes as documented by Professors Hodge and Eisenberg, demonstrates that punishment is not necessarily achieved through enactment of hate crime laws.

Nonetheless, more important is the expressive purpose of enactment and enforcement of hate crime laws. Enacting hate crime laws serves as a public declaration that society values equality and that certain groups deserve protection because of historical mistreatment of their members. This comports with the expressive purpose of law as theorized by Professor Sunstein. Enforcing hate crime laws through prosecution, even if uneven, can result in public “morality plays,” especially if the case is decided in a well-publicized trial.<sup>374</sup> Hate crime laws, even absent many public prosecutions, not only provide information to the public about the public’s disapproval of bias but also speak to the emotions of members of the public who belong to the victim’s group or who feel empathy for the victims.

In accordance with McAdams’ theory of the expressive purpose of law, hate crime laws can educate and inform the public about the continuing suffering of groups that are deemed to have been treated historically as inferior. This information, when supported by the emotional thinking that Professor Mason discusses, can have the effect of changing attitudes and behaviors toward protected group members so long as those observing the enactment and enforcement of hate crimes can empathize with the victims.<sup>375</sup>

Adding gender and intersectional categories to hate crime legislation in conjunction with public education campaigns about the invisibility of misogyny and intersectional harms would signal to the public that our society recognizes the harms caused by misogyny and intersectional motives. This education would inform the public that experts consider many invisible forms of misogyny to be harmful to women and to society in general. By

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<sup>373</sup> Mollimichelle K. Cabeldue et al., *Measuring Attitudes About Hate: Development of the Hate Crime Beliefs Scale*, 33 J. INTERPERSONAL VIOLENCE 3656, 3660 (2018) (“[A]dvocates of hate-crime legislation are supportive of its role in deterrence. It has been argued that this communicates a powerful message about the values of society; however, no data exist to date establishing the effectiveness of such deterrence.” (citations omitted)); Briana Alongi, *The Negative Ramifications of Hate Crime Legislation: It’s Time to Reevaluate Whether Hate Crime Laws are Beneficial to Society*, 37 PACE L. REV. 326, 340 (2017) (“Unfortunately, data to support the theory that hate crime legislation deters violence is considered to be inconclusive”).

<sup>374</sup> Although they were not prosecuted as hate crimes, a few recent public prosecutions, such as those connected to the deaths of George Floyd and Ahmaud Arbery demonstrate the power of public prosecutions of defendants who deny others their civil rights because of their race.

<sup>375</sup> See Mason, *supra* note 346, at 75–84.

adding intersectionality as a motive, the legislation would communicate the specific harms caused by racist misogyny and gendered racism.

Besides the practical problem of selecting the criminal provisions that would send the proper message and evoke the maximum amount of compassion, there are significant reasons why hate crime legislation can pose problems. First, there is the concern of possible backlash if the polity does not support the bills.<sup>376</sup> Second, at least one scholar argues that irregular prosecutions may send a message to the general public and to members of protected classes that there is a lack of seriousness in those who support hate crime legislation.<sup>377</sup> Third, given Eisenberg's study, prosecutors may tend not to charge hate crimes in the most egregious cases because the underlying crime already has a significant penalty.<sup>378</sup>

While all of these are reasons to hesitate before enacting hate crime legislation, the most important is a concern that prison sentences in the United States are already too long and have a disparate effect on the same communities of color who are protected by hate crime legislation. There is no question that lengthy sentences in the United States create a disparate effect on poor people of color. Professor Aya Gruber demonstrates that white feminists who, when faced with various choices, focused on criminal penalties for domestic violence, a move that seriously harmed men of color (and to some extent, their families as well).<sup>379</sup> Any law that increases those penalties with disparate effects on communities of color is problematic.

My view, however, is that so long as we have hate crime legislation, gender and intersectional motives must be added to the list of protected victim categories because, if done properly, adding gender and intersectional motives communicates a message that influences social norms. At the very least, the inclusion of gender and intersectional motives in hate crime legislation makes the public statement that our society values women as women and signals the ubiquity and dangerous nature of misogyny. If gender is absent from hate crime legislation, as it is in many jurisdictions, its absence sends a message that society does not value women or acknowledge the danger to women that misogyny presents. Of course, our laws and approaches to the statutory language can be improved so that the laws realize their maximum expressive effect.<sup>380</sup>

While I am concerned about increased penalties and longer sentences, that concern may support a decision to eliminate hate crimes altogether or to reconsider the penalties for hate crimes, not to omit an important cause of

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<sup>376</sup> See *id.* at 86.

<sup>377</sup> See Eisenberg, *supra* note 294, at 899–901.

<sup>378</sup> *Id.* at 907.

<sup>379</sup> AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* 6 (2020).

<sup>380</sup> See, e.g., Eisenberg, *supra* note 294, at 901–17 (analyzing potential reforms to maximize the expressive effect of hate crime laws); Hodge, *supra* note 357, at 103–10 (making recommendations for acceptance and effectiveness of gender-based hate crime legislation).

violence to a group that has been victimized. I would prefer we reduce the sentences of the underlying crimes rather than eliminate hate crime legislation altogether.

An alternative to this solution would be to use reformed victim compensation programs and/or restorative justice to create more community-oriented penalties for hate crimes that would require the perpetrator to make amends with the victims, their families, and their communities.<sup>381</sup> Professors Shirin Sinnar and Beth Colgan analyze the potential use of these alternative remedies, with suggestions for reform that would make these remedies more likely to succeed.<sup>382</sup>

One more question remains: does inclusion of gender identity and sexual orientation but not gender or sex suffice to protect against all gender-related hate crimes? An argument can be made that sex or gender is necessarily included as a protected category in states whose laws protect against hate crimes caused by sexual orientation, gender identity, and gender expression, but not explicitly against sex or gender. This argument would be based on *Bostock v. Clayton County, Georgia*,<sup>383</sup> where the U.S. Supreme Court held that the prohibition of employment discrimination because of sex under Title VII of the 1964 Civil Rights Act necessarily makes discrimination based on sexual orientation and gender identity illegal in covered workplaces.<sup>384</sup> *Bostock's* reasoning, however, is likely not to apply in reverse. In *Bostock*, the Court used a textualist approach, concluding that if an employer discriminates based on sexual orientation or gender identity it must necessarily take the individual's sex into account in determining whether to discriminate.<sup>385</sup> For example, if an employer discriminates against its employee, Sara, because she brings a female date to the office party and does not discriminate against its employee, John, because he brings a female date to the office party, the employer must take into consideration Sara's and John's sex (as well as that of their dates) in order to discriminate against Sara for her sexual orientation. Thus, according to the Court's reasoning in this situation

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<sup>381</sup> See Shirin Sinnar & Beth Colgan, *Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration*, 95 N.Y.U. L. REV. ONLINE 149, 155–63, 163–68 (2020) (proposing the potential use of reformed victim compensation funds and/or restorative justice in lieu of sentence enhancements for hate crimes). Given Professor Eisenberg's findings that prosecutors are less likely to charge a suspect with hate crimes if they do not increase the penalties, more research into the potential effect of educating prosecutors and judges and the use of other penalties such as victim compensation and participation in restorative justice as a condition of parole would be warranted.

<sup>382</sup> See *id.*

<sup>383</sup> 140 S.Ct 1731 (2020).

<sup>384</sup> *Id.* Title VII makes it an unlawful employment practice for an employer to "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a)(1).

<sup>385</sup> *Bostock*, 140 S.Ct at 1737, 1746–47.

there are two “but for” causes of discrimination: Sara’s sex and Sara’s sexual orientation.<sup>386</sup>

But the reverse may not be true. A law that expressly prohibits discrimination based on sexual orientation and gender identity but not discrimination based on sex (or gender) might not necessarily prohibit discrimination based on sex in the absence of sexual orientation or gender identity discrimination. For example, let’s assume that Katie, a cisgender, straight woman, claims that she was assaulted because of her sex (or gender). Katie might not be protected by a hate crime law that does not include sex (or gender) as protected statuses but does include sexual orientation and gender identity. The perpetrator’s defense would be that he assaulted Katie simply because she is a woman, not because of her sexual orientation or gender identity. In committing a crime against a woman, the perpetrator does not necessarily need to consider the individual’s sexual orientation or gender identity when he decides to target women. Robert Aaron Long, for example, did not know or need to know the sexual orientation or gender identities of the women he murdered even though he admitted intentionally targeting them because (at least he believed) they were women.

Especially in states like Nevada, where the law in areas other than hate crimes, such as employment discrimination, includes “sex” as well as sexual orientation, gender identity and expression as protected classes, but omits the term “sex” or “gender” in hate crime legislation, lawyers will argue that the legislature that enacted the hate crime law did not intend to protect individuals targeted because they are women unless the perpetrator targeted them because of their sexual orientation, gender identity, or gender expression. While there is an argument that in both Rodger’s and Long’s cases, for example, the men selected women because they perceived them to be heterosexual (a protected status), the omission of sex in a statute governing their cases may present issues of coverage.

Therefore, to assure that straight, cisgender women are protected against misogyny, and to send the message that crimes committed because of misogyny are more serious because of their effect on the social fabric, hate crime statutes should include gender or sex as a protected status as well as gender identity and expression and sexual orientation. And, of course, it goes without saying that these jurisdictions’ hate crime laws should protect against hate crimes based on the color, race, religion, national origin, and disability of the victim. Finally, all jurisdictions should recognize intersectional hate crimes where the victim belongs to two or more protected statuses and the crime occurs because of the victim’s intersectional identity.

Although hate crime protections based on a single strand of identity such as race, color, national origin, or gender might provide sufficient protection for many hate crimes, adding intersectional status specifically reaches hate crimes that, for example, are visited upon Black, Latinx, or

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<sup>386</sup> *Id.* at 1748–49.

Asian women or others with intersectional identities that might not be otherwise cognizable. Because the sexual stereotypes attributed to women of color differ from those of white women and because those stereotypes are employed to maintain the power of dominant groups such as white men and white women over those who are powerless, it is important to recognize that hate crimes against women of color may differ from those against white women. The addition of intersectional status would allow recognition of the additional and different harms that women of color suffer and would educate the public about intersectional causes of violence and how they potentially differ from violence based on one axis of identity alone.

For example, the Asian women whom Long murdered had numerous identities that made them even more vulnerable to Long's murderous behavior. These identities merged to create a situation that increased their vulnerability to Long's anger. They were of low economic status, immigrants, racialized as Asian, and sexualized as women.<sup>387</sup> To fully protect these women and to send the message that our society protects the most vulnerable among us, permitting courts to consider all of these vulnerability factors and how they combine to create greater harm is useful.

I am not advocating increased sentencing for each vulnerable identity of the victim, but rather legislation that allows judges to consider the different identities of an individual victim in determining whether the sentence is to be increased as well as whether combined identities of the victim motivated the perpetrator. The law would make it a hate crime to engage in a crime whose motivation is the race, gender, sexual orientation, gender identity or expression, national origin, or religion of the victim, or whose motivation is a combination or intersection of two or more protected identities of the victim. Adding the intersection of multiple protected identities as a separate illegal motivation expressly fills in the gaps in protection that people with multiple vulnerable identities suffer. Kimberlé Crenshaw explained that without an intersectional analysis Black men are those protected under race discrimination laws and white women are protected under gender discrimination laws. This leaves Black women (and other women of color) unprotected by the law. Thus, adding intersectional identities provides space for protecting women of color and others who are on the margins of at least two specific identity groups.

For example, it is likely that Robert Aaron Long would not have found white women or Asian men to be sexually provocative, but he did find Asian

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<sup>387</sup> See Alice Y. Hom, *Why We Turn to Intersectionality to Confront Anti-Asian Violence*, NORTHERN CALIFORNIA GRANTMAKER, <https://ncg.org/news/why-we-turn-intersectionality-confront-anti-asian-violence>, [<https://perma.cc/A26C-79RL>] (Mar. 19, 2021); see also Jane Healy, *Thinking Outside the Box, Intersectionality as a Hate Crime Research Framework*, 19 PAPERS FROM THE BRITISH CRIMINOLOGY CONFERENCE 60, 60 (2019) (advocating hate crimes against persons with disabilities are intersectional because single strand analysis does not adequately represent the vulnerability of many people with disabilities).

women to be so, and it appears that he murdered the Asian women in the spas to eliminate that sexual temptation. It is likely, however, that a sentencing judge (or jury) would conclude that he was not motivated by the women's race or gender, standing alone. Given the sexual stereotyping of Asian women in our society, it should be easier to prove, especially with the help of expert testimony, that Long's motivation was the combined gender and race of the victims. It is important to understand, as well, that "hate" crimes should not require proof that the perpetrator had animus or hatred of the victim based on their race or gender or other protected characteristic, or a combination of protected characteristics. Rather, causation should be the touchstone. That is, the perpetrator committed the offense because of the victim's protected characteristic or combination of protected characteristics. This definition would include both archetypal and non-archetypal cases.

Moreover, in the potential situation where states adopt victim compensation reforms or restorative justice as remedies, an intersectional focus should lead to fairer results because it would allow for women of color and others with multiple marginalized identities to receive compensation or other remedies that might be absent if a single identity model is used.

While I have little hope that these changes in hate crime legislation will defeat misogyny, adding gender or sex as well as intersectional identities to state hate crime legislation sends the message that misogyny is harmful and that crimes against women and those with multiple marginal identities matter. By carefully selecting the statutory language and by educating police, prosecutors, and the public about intersectional and gender-based hate crimes and the harm they cause, legislators and community leaders can take an important step toward lessening the harms caused by misogyny.

#### CONCLUSION: SYSTEMIC PROBLEMS; SYSTEMIC SOLUTIONS

At first glance, Robert Aaron Long and Elliot Rodger have nothing in common. One is a white, religious young man who struggled to keep his sexual urges under control, and the other is an angry bi-racial young man who hates women because he has not been successful with them. But Robert Aaron Long and Elliot Rodger have much in common. Both have been characterized as mentally unstable. Both committed heinous public mass murders because they placed the blame for their sexual problems on women rather than on their own failings. Both acts demonstrated extreme misogyny—Long because he did not value Asian women who worked in the massage parlor industry and saw them as causing his "sin;" Rodger because he hated all women due to his inability to have an intimate relationship with them. Both were influenced by others in carrying out their murderous rampages: Rodger engaged with others in online forums, such as PUAhate and ForeverAlone, describing himself as an incel and engaging with others in hostile, misogynist messaging. Although it does not appear that Long dealt

directly with others regarding hatred for women, he apparently was influenced by his pastor and his church's teaching about the evils of sex before marriage—teachings that indirectly led to Long's spa shootings.

Some may argue that Robert Allen Long was a "lone wolf." We don't know whether he radicalized through the Internet. There is no evidence that he did. But there is evidence that his strict Christian worldview that premarital sex is sinful, and that he was a "sex addict,"<sup>388</sup> led him to believe that he had to eliminate the temptation.<sup>389</sup> At least one witness reported that a 2020 church sermon included rhetoric that labeled feminism as evil and a cause of sin.<sup>390</sup> This message places blame on women for men's sins, as did Long's confession, and as do the incels' posts. The teaching that Long absorbed was misogynistic. According to Long's confession, that teaching, combined with a young man's distorted thinking, led to eight deaths.

While I have advocated monitoring and investigating incels and other groups in the manosphere to the limits of the law, such an investigation of church practice would not be legal. The only solution for the law is to assure that federal and state law consistently recognize that crimes committed against women because they are women are hate crimes. We can only hope that charging Long's crimes as hate crimes and encouraging all states to include sex or gender in their hate crime legislation, combined with race, will raise the importance of the issue publicly. While hate crimes may be considered symbolic, promoting the message that misogyny can kill is crucial to the community's understanding and belief that all individuals should be treated equally.

Furthermore, we should encourage domestic and international terrorism experts to continue working on establishing links among masculinity, misogyny, and extreme violence and we can only hope that the recognition of these links will lead to further legal and policy changes regarding domestic and international terrorism that will help reduce violent extremism in the United States and throughout the world.

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<sup>388</sup> See Moody, *supra* note 7.

<sup>389</sup> See Berman et al., *supra* note 7.

<sup>390</sup> Khaleda Rahman, *Who Is Robert Aaron Long: Atlanta Shootings Suspect in Custody*, NEWSWEEK (Mar. 17, 2021), <https://www.newsweek.com/who-robert-aaron-long-atlanta-shootings-suspect-1576712> [<https://perma.cc/V69D-MWG4>].



