CRIMINOLOGY

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This text was compiled on 05/07/2026

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CHAPTER OVERVIEW

1: The History and Purpose of Criminology

1.1: Problems of Definition and Fear of Crime
1.2: The Nature and Nurture of Violence

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1.1: Problems of Definition and Fear of Crime

1.1 The meaning of crime

Activity 1

What is a crime? Good question, but how to go about answering it? For most of us, most of the time, crime is something other people do. So why not check that against personal experience? Have a go at the questionnaire below, private and confidential we assure you. Estimate the total fines and prison sentences you might have under gone had you been caught, charged and convicted of these offences.

Table 1

	Incident	Offence	Maximum Penalty
1	Have you ever bought goods knowing or believing they may have been stolen?	Handling stolen property	£5,000 and/or 6 months imprisonment
2	Have you taken stationery or anything else from your office/work?	Theft	£5,000 and/or 6 months imprisonment
3	Have you ever used the firm's telephone for personal calls?	Dishonestly abstracting electricity	£5,000 and/or 6 months imprisonment
4	Have you ever kept money if you received too much in change?	Theft	£5,000 and/or 6 months imprisonment
5	Have you kept money found in the street?	Theft	£5,000 and/or 6 months imprisonment
6	Have you taken 'souvenirs' from a pub/hotel?	Theft	£5,000 and/or 6 months imprisonment
7	Have you ever left a shop without paying in full for your purchases?	Making off without payment	£5,000 and/or 6 months imprisonment
8	Have you used a television without buying a licence?	Using a television without a licence	£1,000 fine
9	Have you ever fiddled your expenses?	Theft	£5,000 and/or 6 months imprisonment
10	Have you ever been in possession of cannabis?	Misuse of drugs	£2,500 and/or 3 months imprisonment
Total			Fine =
			Prison Sentence =

(Source: Muncie and McLaughlin, 1996, p. 37)

Reveal discussion

How can these different senses of crime be reconciled with each other? Have another look at the questionnaire. Does it assume a particular way of thinking about crime? The Maximum Penalty column is the give-away. All of the offences carry fines or the possibility of imprisonment. So there is an assumption that crimes are acts that are codified in law; in this case a law that has been

created, policed and enforced by the UK state (the police, the criminal justice system, parliament, the Home Office, etc.). Crimes are acts which break the law of the land. Think of this as the legal definition of crime.

Another place to start answering a question like *What is a crime?* is a dictionary. And even the Oxford English Dictionary sees things in a more complex light than the legal definition of crime. The OED defines crime as:

An act punishable by law, as being forbidden by statute or injurious to the public welfare … An evil or injurious act; an offence, sin; esp. of a grave character.

But this definition begs a whole host of questions. Ones that come immediately to mind are: Does the law cover all acts that are injurious to public welfare? Does that include disastrous economic decisions taken by the government? Does the law forbid all the sins of this world? Is it against the law to fail to honour one's mother or father? For an orthodox Muslim consuming alcohol is a sin, but it is hardly a crime codified by UK law. Is it always against the law to take another life? What about conduct in wartime or assisting euthanasia?

The reason that the OED's definition raises more questions than it answers is that the definition combines at least two ways of thinking about crime which are often in practical conflict with each other. On the one hand, crimes can be thought of as acts which break the law – the legal definition of crime. On the other hand, crimes are acts which can offend against a set of norms like a moral code – the normative definition of crime. So, the two meanings of crime cannot be reconciled because a great deal of legally-defined crime is not considered to be normatively-defined crime.

However, norms come in different forms. Potentially criminal acts can be judged against formal moral systems, like religious beliefs. Quakers and pacifists, for example, would not accept that refusal to fight in a war was a normative crime, whatever the state might say. Alternatively, some legally-defined crimes might not be unacceptable when judged against the norms, codes and conventions of socially-acceptable behaviour. Many personal telephone calls from work are routinely considered a reasonable perk of the job. Keeping money we find in the street, in small amounts, is just good luck – who's going to ask at lost property anyway? Most office cultures assume that employees service some of their private stationery needs from the office cupboard.

We all want to crack down on crime

We all want to crack down on crime

Looking again over the questionnaire, we wondered what someone reading it a hundred years ago might have made of it. For a start they might have wondered what a television or a telephone is. Can there be a crime of not paying your licence fee before there are televisions? Even on a narrow legal definition of crime, what is a crime varies over time. They might also have been surprised that possession of cannabis is a crime. It certainly wasn't when cannabis tincture was routinely available from Victorian pharmacies as a painkiller. It isn't a crime now in parts of the Netherlands.

So what a crime is depends on whether you view it from a legal or a normative perspective; what formal and informal normative codes and conventions you are guided by; what moment in history you are considering; and which particular society you are looking at. There is no simple, fixed, unassailable, objective definition of crime. The meaning of crime cannot be separated from the many and varied uses of the term in a particular society. Social scientists would describe this by saying the meaning of crime is a *social construction*.

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1.2: The Nature and Nurture of Violence

The nature of violence

54 Violence is the most recognizable form of disrespect, a very public indicator that respect and understanding have broken down. It takes many forms but it is useful to make two sorts of distinction:

- First, between violence carried out in the course of ordinary crime for personal gain (robbery and the like) and political violence. Our concern is with the second, but the first is also important as robbery itself shows intense disrespect to the person whose property is looted or stolen or whose person is harmed. Nor are ordinary crime and political violence necessarily distinct, the two can merge: the overall cause of the leaders may be political but their supporters and followers may act with a mix of personal motives (looting can be for monetary advantage, acts of atrocity or honour can be carried out to enhance personal status, and organized crime pursued as a way to finance an illegal insurgency or terrorist campaign).
- The second necessary distinction is between violence that is primarily physical and violence that involves no physical contact but can have deep psychological effects. Violence of this sort can manifest itself as a form of intense yet unspoken disregard. The poorest people, those marginalized by their poverty, social status, gender, age or disability, tend to experience this form of 'violent disrespect' most intensely. It is communicated simply through passive rejection of their existence – by being treated as invisible or irrelevant in everyday life. It is often evident where inequalities are endemic and have become institutionalized; unfair treatment then becomes part of the social structure.[1]
- Physical and psychological violence are often combined. Violence is rarely 'just' a physical attack aimed at causing hurt or pain. It is also an attack on personhood, on the human-ness of others, on an individual, community or institution's sense of self-worth, on identity.
- The rape of women in war is an extreme example of an attack on personhood. Whilst it is a physical act that aims to cause individual women physical and mental pain, it is also a symbolic act that reflects the notion of women as embodiments of national and cultural identity that can be violated through their bodies. Violence against women is, therefore, aimed at destroying the honour and self-respect of the whole group, not alone in the present, but because of the special role of women in bearing the next generation, a destruction of the hopes for the future.

55 Violence of these types, although important in many contexts, and as we have noted frequently symbolic in various respects, has to be distinguished from the violence associated with terrorism. The victims of terrorist attacks may be the terrorist's own community or even his or her own body but the target is authority. Terrorist forms of violence intentionally break basic human codes of conduct, so that by violating all social norms it provokes outrage and cannot be ignored. The motives can be complex: through his or her actions, a terrorist may be trying to force concessions, affect public opinion, or bring attention to their cause. It may even be an act of desperation. But in some cases, there is undeniably a much stronger symbolic aspect: the organizationally 'weak' terrorist group aims, in addition to drawing attention to their own injustice, to provoke the 'strong' authorities into a substantial overreaction that will damage their standing and moral authority both domestically and internationally.

56 Those who are most disadvantaged may even internalize their disadvantage and feel a sense of worthlessness; whilst acutely aware of their position they may be profoundly disempowered by it, particularly if previous attempts to change their status came to nothing. They may endure their situation without protest in case their demand for justice incites worse repression. This form of violence is rarely heralded by loud protest. It is endured by millions the world over as part of the 'normal' order of things.

57 Some of the most entrenched social, economic, political and cultural injustices are endured by women, half the world's population. Young people may also be ignored as they also tend not to be the leaders of their communities or to have a voice in their institutions. They therefore lack the power to shape agendas. Even when their voices are heard they are not always systematically mainstreamed into national debates. Women and young people have to struggle particularly hard to command respect in countries where principles of patriarchy and seniority determine who holds power, and the damage suffered is transmitted inter-generationally. Again, this exclusion is not violence in a physical sense but a violation of their right to be heard and respected, which supplements the iniquity and barbarity of actual physical and sexual violence and abuse against women and young people by men. This is a priority issue in making the world a more just place.

The nurture of violence

58 Political violence is nurtured by psychological as well as physical factors. For violence to be sustained the ‘other side’ must be seen as not only different but also associated with beliefs or actions felt to be inimical to a way of life or dearly held values. In short, the other side must be seen as a threat. Violence against the other can then be presented as protecting one’s own way of life. If violence is seen as a form of self-defence ordinary people are more likely to accept it as morally justified.

59 A first and concerning step on the road to violence is, therefore, the truncating of identities down to a single category. It is not hard to see how this helps to draw potential battle lines. One of the most frequently used means of creating in-group solidarity comes from framing the out-group as threatening, parasitic or worse (a form of ‘scapegoating’). Such sentiments take hold by denying the commonality of experience and interest that lies across and between groups. In the case of systematic, organized sectarian violence, this element becomes central to the ability of leaders to rally supporters and target a single common foe.

60 Two observations stand out when contemplating this problem in its severest form:

- The first is that extreme circumstances are hallmarked by a politics that rejects negotiation. That is to say, one side’s willingness to discuss and negotiate the shape of the grievance or concern of the other side is completely undermined by their inability to see the other side in terms that are recognizable or have inherent value. The most extreme version, of course, is to portray the other side in non-human terms, thus obviating the need to justify hatred or violence.
- The second observation is that one-dimensional identity is fundamentally flattening in its purpose and in its outcomes. It is designed to deliver an all-powerful lens through which the world is seen, though not required to be understood. Wearers of the lens are provided with a world-view that is sufficiently all encompassing to relegate individual choice to the margins. In extreme conditions, it supplies a plentiful source of nourishment to build and sustain hatred. The odds against mutuality, or interlocking lines of empathy and solidarity, are heavy stacked as a consequence.

Identity politics and its distortion

61 The rise of identity politics of this kind is far from new. Even in modern times, there are no shortages of vivid illustrations of powerful, exclusionary hate-driven identity politics and movements that have denied even the most minimal value to others. National Socialism in Germany in the mid-twentieth century is arguably the most well-documented example. The partition of India in the 1940s was characterized by the same elements, most notably the sudden evaporation – and denial, in many cases – of cross-community links and bonds. And the chapter of African slavery in the New World (to say nothing of the related chapter of indentured labour throughout the European imperial world) from the sixteenth to nineteenth centuries, is a compelling example of the assignment of one racial identity as a means of creating political and cultural dominance.

62 But, even putting these large examples to one side, it is equally important to note a general trend towards the growth of one-dimensional identity politics and fundamentalism. This has been observed both in the developed and developing worlds. As a partial result of (a negative reaction to) globalization, it has meant that particular kinds of identity-based conflict are now much more rapidly projected in a range of otherwise quite dissimilar societies. For instance, contentious and campaigning forms of collective identity have emerged in recent years that centre on opposition to the potentially ‘homogenizing forces of globalization’. These identities have found it relatively easy to fuse or find common cause with related concerns about the economic domination of global corporations, threats of environmental degradation and failure to tackle perceived regional injustices. Campaigns of opposition to all of these things often converge, and people with very different views campaign together against the authorities who they regard as being ‘to blame’, though often for quite opposite reasons.

63 One-dimensional identities are particularly nurtured where an overarching value system is put forward to justify the basis for being against each and all of these forces. The narrative of anti-globalization movements is a simple, ready-made way of supplying such a narrative, and this has had remarkably powerful effects in shaping a sense of common understanding. Given that the dynamics of a globalized economy are far from being perfectly understood, it is clear that this reaction is actually an emotional rather than an intellectual response, with fear being the dominant emotion involved. Nevertheless, a form of single dimension of identity has emerged that has been impressive in appealing to the multiple identities that underpin concern and opposition to various aspects of globalization. It is striking that a number of anti-globalization movements have been effective in doing just this.

Faith and identity

64 Faith has always been a particularly powerful force in the construction of identity. Faith is often a force for good; the values of all of the main faiths of the world promote love and understanding, respect and hope, care by the strong for the weak, and societies based on justice, fairness, co-existence and harmony.[2]

65 The Commonwealth Foundation has recently launched an innovative project examining faith, development and social cohesion. It aims to:

- encourage debate and advance learning about collaboration between faith-based groupings in addressing development and social issues, and
- investigate the value and relevance of inter-religious co-operation, and particularly the roles this can play in helping to address development and social issues.

66 This initiative centres on perspectives (mainly drawn from a nongovernmental background) on inter-religious co-operation. These are used to stimulate further debate on the scope and potential for inter-religious co-operation for greater social cohesion. It represents a basic building block of mutual respect and understanding across traditional boundaries.

67 However, faith has also been used throughout history to promote the interests of those with destructive aims. As a legitimising discourse for violence, faith has an advantage over purely political ideologies because of its ability to justify, inspire, empower – and not be proved wrong. This is due to the transcendental nature of belief ('fighting injustice is God's will'), the inspiration of religious hope ('God will fulfil His promises') and the centrality of faith ('no matter how bad things get, this is the Right Way'). Fearful believers may come to accept, if only inadvertently, a 'politically activist theology of violence', which usually means reconciling 'a single, simultaneously loving and violent God'.

68 Convinced by their leaders that their way of life or their belief system is both superior to others and is allegedly 'supported by God', they can be easily persuaded that their fundamental values and way of life is under threat. Once this threat has been internalized and a powerful sense of fear generated, it is a small step to believing that violence is justified and that a war must be waged to preserve the way of life that has been pre-ordained for them. As several authors observe, secular ideas can also be held religiously – extreme nationalism, communism and fascism have functioned religiously insofar as adherents are passionate in their conviction and motivation and are prepared to die, but also to kill, for their beliefs.

69 This is particularly pertinent today as leaders use single identity categorizations of the world to garner support for wider missions that have to do with their own bid for political and economic power, nationally and internationally. Leaders for whom their own political positioning is a primary goal will inevitably play down the identities and interests that 'their' group shares with others. They well know that it is when people come together on the basis of identities outside constructed dualisms – when they meet and act as women, as young people, as citizens of a state or as people who share a regional identity, a political outlook or an artistic interest – that relationships based on mutual understanding develop, that violence is eschewed, and respect comes to characterise their interactions. Violence cannot be maintained between those who understand and respect each other. It can only be sustained with a breakdown of respect and understanding.

70 It is these multiple identities and this sort of connectedness that the Commonwealth represents and that it tries to support through its different activities. From the Commonwealth perspective, each nation is first and foremost a society of individuals that have multiple sources of affiliation and many bases of relating to each other.

71 The aim in future must be to strive even harder to recognize and nurture connections between groups on the basis of their multiple identities in order to avoid the pressure of being coalesced into polarized worlds. Efforts can be made at many levels. The starting point is personal awareness. Each of us can resist the tendency of identity politics to ignore the complexity and multiplicity of our identities through broadening our understanding of the richness of human identity. A Hutu who is roused to hostility against a Tutsi can be reminded that they are both Rwandans, both Africans, perhaps even both Kigalians. He should be asked to recognize, too, that they share a human identity. Even though the British, French and Germans tore each other apart in 1914–1918, they now recognize each other, with little difficulty, as fellow Europeans.

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CHAPTER OVERVIEW

2: Theories of Criminology In Practice and Policy

2.1: Girls, Women, Criminality, and Activism
2.2: Culture, Subculture, and Crime
2.3: War on Terror
2.4: Surveillance and Control
2.5: Corporate Crimes

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2.1: Girls, Women, Criminality, and Activism

“AIN’T NO JUSTICE … IT’S JUST US”

Girls Organizing against Sexual and Carceral Violence

Lena Palacios

This chapter seeks to interrogate normative notions of at-risk girlhood and violence, offering a roadmap for a broader terminology and reconceptualization of gender in girlhood studies. I argue that studying the knowledge produced by girl-driven activist organizations enables activist-scholars to rethink what constitutes girlhood from a perspective critical of how criminalized, homeless and street-involved, and incarcerated girls and gender non-conforming youth1 have been disciplined, managed, corrected, and punished as prisoners, patients, mothers, and victims of multiple, interconnected forms of violence through imprisonment, medicalization, and secure care. By showcasing case studies of anti-violence and abolitionist activism that contest sexual violence, colonial state control, and carceral state violence undertaken by girls whose identities stretch far beyond normative gender and racial binaries, I aim to frame a transnational discussion of girls’ community activism within and against exclusionary notions of what constitutes girlhood and girls’ social justice activism.

Specifically, I showcase how girls organizing to represent the communities on whom interlocking forms of interpersonal and state violence in Canada and the United States have the most impact are at the forefront of developing transformative justice models that conceptualize what it means to bridge social movements organizing against racial, sexual, and gender violence—both at the individual and institutional levels. The Young Women’s Empowerment Project, Chicago (YWEP) and Sista II Sista, Brooklyn (SIIS) are autonomous community organizations that seek not only to take power but to make power by building community accountability structures that are not reliant on criminal legal and punishment systems, state funding, private foundations, or professionalized social services.2 Transformative justice is an umbrella term used to define “any strategy to address violence, abuse or harm that creates safety, justice, reparations, and healing without relying on police, prisons … or any other state systems” (Chen, Dulani, and Piepzna-Samarasinha 2011: xxiii). A er highlighting two of these girl-driven collectives’ transformative justice work, I focus briefly on how girls are mentored and trained to become “radical bridge builders” (Sudbury 2003: 134) who engage in intersectional, inter-movement praxis in their organizational contexts.

These aims necessitate an interdisciplinary analysis and methodology to interrogate the social constructs of girls and girlhood since social science research centered on girls assumes that gendered developmental categories are fixed and neutral, rather than invented and elastic signifiers. My primary approach was the collection and textual analysis of various organizational and movement documents produced by the YWEP and the SIIS collectives. I obtained these materials largely through my participation at movement building conferences where these organizations and their participants led workshops and presented on panels.3 I analyzed these texts to examine the organizations’ agendas and used them to provide background and context for the girls’ political engagements and practices. Both collectives have co-authored and published critiques of their own organizational dynamics and transformative justice processes, incorporating this process into their documentation (see Sista II Sista 2006; Burrowes et al. 2007; Russo and Spatz 2007). I also use their own critiques of their work to address the conflicts that occur in organizing. In this way, I read their documentation as authentic co-publications, rather than emblematic or tokenistic forms of activist knowledge production. I also approach their documented critiques as forms of truth telling that they engage in the context of their activist work.

By describing some of the concrete pedagogical activities girl activists develop and the questions of politics and process with which they grapple, this chapter amplifies the dynamic process whereby girls learn how to maneuver strategically within their own organizations and between and among different anti-violence movements. To this end, I pose the following questions: How do girls who face as much interpersonal violence as they do institutional and structural violence understand and represent where the carceral state ends and the so-called benevolent community begins? How do intimate, interpersonal forms of violence interlock with structural and state forms of violence in the girls’ own understanding of their daily lives? How do they strategize to disentangle themselves from the expanding prison regime and other systems of state-sponsored control when pa erns of dependency, medicalization, and infantilization persist in the surveillance of girls labeled at risk? What places are le for them to go to?

For criminalized Indigenous and racialized girls who have spent the majority of their lives under some form of state control, the boundaries that separate intimate partner violence, sexual assault, and mass incarceration are porous at best, and nonexistent at worst. I approach violence against girls and their organized resistance to it from multiple intersections: as a queer mixed-race Chicana from an urban, working-class background; as a survivor of sexual violence and incarceration; and with an anti-violence activist and prison abolitionist perspective. I aim to denaturalize intimate and interpersonal violence and its state-supported structures by refusing any neat distinctions between personal and state forms of violence, proposing instead a more layered analysis of intersecting structures of oppression and privilege and the social relations they foster.

By drawing on frameworks developed by critical race feminists, my analysis of girls' activism interrogates how they represent the raced-gendered logics through which sexual and structural violence operate, and the role violence plays in producing differently gendered, raced, and classed subjects. Girls' activism demonstrates how prison abolitionist and anti-sexual violence movement participation requires us to move outside of the geographical and psychological boundaries set by the carceral state and its affective economies. The courts, federal and state legislation, therapeutic models, and even some domestic violence shelters presume that violence against women is synonymous with domestic violence and that it affects all girls and women equally and in the same ways (Richie 2012). In order to understand violence against girls as a fundamentally heterogeneous phenomenon that requires a heterogeneity of interventions, it is essential to go beyond such universalizing constructs of interpersonal partner violence to consider how sexual, institutional, and structural violence work together.

Additionally, heteronormative, Euro-Western white perspectives of girlhood constitute another form of violent confinement from which criminalized girl activists must free themselves. The transformative justice processes and community accountability strategies generated by girl activists to disrupt interlocking forms of violence under the carceral state alert us to their complex and contradictory relationship to what constitutes girlhood and what it means to be a girl, potentially offering a means of rejecting exclusionary notions of girlhood in order to escape the category's analytic limitations.

Spaces of Subjectivity and Subjection

Barbara Cruikshank argues that we must not separate "subjectivity from subjection in order to imagine political resistance" (1999: 120).

The interpersonal, sexual, and state violence targeting Indigenous and racialized girls is located within the geographical and political boundaries of white se ler societies. In her influential paper on the brutal murder of Pamela George, a young Indigenous woman in Canada, Sherene Razack (2002) argues that gendered and sexualized violence against racialized others and specifically against Indigenous girls and women is a defining hallmark of all white se ler societies.

In North America, Indigenous and racialized girls have historically been the primary targets of law enforcement violence and are overrepresented in the adult prison and juvenile detention systems. Since the late 1990s in Canada, Indigenous girls' and women's rates of imprisonment have doubled; they are five times more likely to be victims of femicide than are non-Indigenous girls and women, and many experience sexual victimization at the hands of police (see Human Rights Watch 2013). Not only has the carceral state historically criminalized girls' sexual behavior, it has widened the net to include criminalizing non-heteronormative and racially marginalized girls as violent predators (Richie 2005; Schaffner 2006). Even so-called benevolent alternatives to punishment such as gender responsive training, educational and therapeutic programs inside girls' facilities, and healing lodges for incarcerated Indigenous women (see Hayman 2006) expand and deepen the intrusive reach of punitive carceral controls into the everyday lives and onto the marked bodies of criminalized girls. Anke Allspach (2010) argues that these controls are transcarceral, forming beyond the permeable walls of prisons and constituting a reconfinement of women a er their release. Dominique Moran (2013) furthers this analysis by arguing that transcarceral spaces exist alongside an embodied sense of the carceral that similarly moves beyond prison walls through the corporeal reinscription of formerly incarcerated women. The transcarceral continuum manifests itself primarily under the guise of localized mental health agencies, welfare and child protective services, professionalized social services, as well as in individualizing, pathologizing, and self-responsibilizing educational and therapeutic projects. This continuum blurs the boundary between the prison's outside and inside, extending its control through stigmatization and the embodied markers of imprisonment of criminalized girls who have spent the majority of their lives under some form of state control.

As targets of state regulation and containment, the girls I discuss in this chapter are deemed deserving of discipline and punishment but not worthy of legal protection. These girls would be, as Lisa Cacho argues, "ineligible for personhood—as populations

subjected to laws but refused the legal means to contest those laws as well as denied both the political legitimacy and moral credibility necessary to question them" (2012: 6). Because they are subjected to laws based on their illegal status, these girls are unable to comply with the rule of law since, as Cacho explains, the North American legal system targets their very being— but not their behavior—for legal elimination and social death (2012: 6). Given that the law neither protects nor defends these girls, they experience enforcement violence by local and state police and immigrant detention systems. While the discourse around police violence excludes the girls' experiences, Andrea Ritchie argues that radicalized girls in particular "are sexually assaulted, raped, brutally strip-searched, beaten, shot, and killed by law enforcement with alarming frequency, experiencing many of the same forms of law enforcement violence as men of color, as well as gender and race-specific forms of police misconduct and abuse" (2006: 139). As Canadian organizations like the youth-led Native Youth Sexual Health Network and the intergenerational Families of Sisters in Spirit have recently documented in their "Police (In) Justice" collaborative statement and resource guide (2013), violence by state bodies extends far beyond police and border enforcement (Bhattacharjee 2002). These youth-led and intergenerational Indigenous collectives underscore how transcarceration and enforcement violence have historically permeated the culture of many institutions in white settler societies.

Throughout this chapter, in addition to the concepts discussed above, I use the terms carceral state and prison regime interchangeably. I use the term carceral state to highlight the multiple intersecting state agencies and institutions that punish and effectively regulate poor communities. In order to discuss how the carceral state emerges, functions, and reproduces itself, the concept of the prison regime, as that which "possesses and constitutes the state," rather than the other way around, is also useful here (Rodriguez 2006: 43). Both concepts point to how the logic of punishment itself shapes civil society and the State. This framework brings attention to how the cultural and institutional site of the prison is no longer a place "outside and apart from our everyday lives, but [is] instead [one that] shape[s] and deform[s] our identities, communities, and modes of social interaction" (Rodriguez 2010: 9), uncovering the affective economies set by the prison regime. Emotions are an economy in that they do not just affect individuals; they actually bind people and drive interactions that serve to either bolster or dismantle the prison regime.

Because this regime is an increasingly integrated system, prison abolition is a necessarily expansive project that articulates with the holistic anti-violence agendas engendered most centrally by Indigenous and race-radical women of color feminists (Sudbury 2003). An abolitionist project is a positive rather than a negative project (Davis 2003). As panelist Andrea Smith argued, prison abolition is "not simply about tearing down prison walls, but it's about building alternative formations that actually protect people from violence, that crowd out the criminalization regime" (Critical Resistance 2008a: 5). In short, it is a political vision with the goal of eliminating imprisonment, policing, and surveillance—and the ideological structures of white supremacist capitalist hetero-patriarchy that shape institutional violence—and creating lasting alternatives to the carceral state. One such alternative is transformative justice, which seeks to develop strategies to address intimate, interpersonal, community, and structural violence from a political organizing perspective in order to move beyond state-imposed, institutionalized criminal legal and punishment systems. Within our current carceral landscape, abolition and transformative justice praxis emerge as essential epistemic and organizing tools utilized by girl-led feminist of color collectives.

Resisting Enforcement Violence: YWEP

INCITE! Women of Color Against Violence has been instrumental in identifying and challenging multiple intersecting forms of violence. INCITE! was founded as "a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue, and grassroots organizing" (2006: 3). Instead of establishing a hierarchical structure that might lead toward co-optation by the nonprofit sector, members of INCITE! conceptualize it as a movement that emerges out of grassroots struggle. In 1998 and again in 2001, members of INCITE! and Critical Resistance—a national organization dedicated to abolishing the prison regime and building genuine and durable forms of justice and security—came together to write an action statement challenging both gender violence and carceral state violence (Critical Resistance 2008b). The statement was a bold articulation of critical race feminist politics about the intersections of gendered and racialized violence against Indigenous and racialized girls, women, queer, and trans people. Moreover, it has helped anti-violence activists and advocates move beyond concerns regarding overreliance on the prison regime.

According to Mimi Kim (2010b) of Oakland's Generation FIVE and Creative Interventions, the INCITE! and Critical Resistance collectives have inspired other organizations to move beyond the language of reliance to challenge the liberal notion of the State as a viable partner in the struggle against violence against women and children. In particular, the statement calls on social justice movements concerned with ending violence to develop community accountability models that respond to intimate violence without

ceding girls' ability to hold their abusers accountable to the prison regime. The possibility for engagement with the perpetrator of violence is by no means a necessary component of this organizing model; it is considered just one of many possible options for individuals or communities that have been harmed. Many collectives like Creative Interventions, SIIS, and the YWEP also challenge the primacy of individualistic and state-based remedies, noting that, for the girls on whom interlocking forms of violence have the most impact, the possibility of individual safety is a myth or a luxury afforded to the privileged few (Creative Interventions 2008; Kim 2010a). Their work is anchored in the belief that resistance to intimate and community-based violence, sexual assault, and enforcement violence are inseparable.

At a workshop held at the 2011 Allied Media Conference in Detroit, one sixteen-year-old sex worker, single parent, and lead organizer for the Chicago-based YWEP, who has been in and out of child protective services and juvenile facilities for most of her life, bluntly stated, "Cops, teachers, and social workers have hurt me worse than any pimp has." The workshop identified enforcement and transcarceral state violence as a problem for girls of color and encouraged them to broaden their definitions of violence and to mobilize their peers in a community-driven resistance movement against it.

Chicago's YWEP is a youth leadership organization grounded in harm reduction and social justice organized by and for girls and trans youth of color (aged twelve to twenty-three) who self-identify as sex workers—"people doing what we have to do to survive"—and those who have been trafficked into sex work and other forms of labor in the street economy. As experts in their own lives, YWEP organizers are at the forefront of developing a harm reduction approach for girls in the sex trade at the same time as they create collective community-driven strategies to hold accountable both people and institutions that have done harm. Promoting a movement and capacity-building approach, YWEP's current campaign is based on the findings from their youth-led participatory action research project entitled "Girls Do What They Have to Do to Survive: Illuminating Methods Used by Girls in the Sex Trade and Street Economy to Fight Back and Heal: A Participatory Action Research Study of Resilience and Resistance" (Iman et al. 2009). The project found that the individual violence that girls experience at the hands of boyfriends, johns, pimps, family members, and foster care families is exacerbated by the institutional violence that they experience from systems and services. Enforcement violence carried out by doctors, government officials, social workers, therapists, and foster care workers included emotional, verbal, physical, and sexual abuse, as well as exclusion from access to services.

On the heels of this report, YWEP members created a "Street Youth Rise Up!" campaign that focused on building the autonomy, self-determination, and resilience of street-involved girls. Their campaign includes an anonymous "Bad Encounter Line" for girls to fill out if they have been denied help from a social service worker, doctor, or police officer (a follow-up to their "Bad Date Line" created by sex workers to share incident reports on violent clients) and a "Street Youth Bill of Rights" aimed at training professionalized service providers and educating street-involved youth about their legal rights when interacting with schools, health and social service providers, and the police.

In addition, through their long-term "Healing in Action" program, YWEP embraces a radical harm reduction and reproductive justice approach that does not presume how street-involved girls should live, but provides tips on how they can ensure their own safety, however defined. For example, in their zine, Toolkit to Owning Your Own Life, collective members provide information on how to conduct self-examinations including pap smears and breast exams, how to stitch oneself up a er a bad date without going to the hospital, and how to self-cut, squat, turn tricks, panhandle, inject drugs, and smoke crack in safer ways.

Lastly, collective members feel that many of the decriminalization or legalization strategies proffered by sex worker rights organizations presume that these workers are adults without considering the particular vulnerabilities faced by youths. When girls are forced to call the police, the la er never actually arrest traffickers or pimps; they simply criminalize girls and trans youth of color, making it more difficult for them (and their children) to survive. As Emi Koyama (2013) explains in her essay "Rescue is for Kiens," anti-trafficking policies that "rescue" youth in the sex trade actually translate into involuntary detainment of minor victims by the police. Although some jurisdictions in the United States have passed safe harbor laws that abolish prostitution charges against minors, young people are still o en arrested under some other criminal charge, then forcibly sent back to the families or institutions that they had run away from in the first place (see also INCITE! Women of Color Against Violence 2011).

YWEP offers a more complex analysis than the dangerously simplistic framing of child sex trafficking, which paints all girls as victims in need of rescue by the State. YWEP members understand that the decriminalization of prostitution will not end transcarceral state violence against them. Instead, it has been sex workers organizing among themselves who have challenged and transformed exploitative and abusive working conditions, not police officers, social service providers, or politicians. Given the reality of enforcement violence in street youths' lives and the fact that many youths in the sex trade are pimped by family, friends,

partners, and community members, YWEP members develop sustainable transformative justice strategies to hold social service providers, family members, and loved ones accountable for the harm inflicted upon girls.

For many currently or formerly incarcerated and street-involved girls struggling with enforcement, domestic, interpersonal, and sexual violence, support centers and shelters are also complicit in this transcarceral continuum. Organizations like YWEP expose the abuse of genderqueer and trans, racialized, poor, and working-class survivors within the domestic violence shelter system. In many communities, lack of access is embedded into program practices and policies, such as screening processes designed to exclude clients who are deemed difficult or nonconforming (Kim 2010a). Because they are not recognized by the State as either rights-bearing citizens or as good or innocent (read multiply normative) girls, street-involved girls are not protected by the paternalistic enforcement agencies and domestic violence support services that speak and act on their behalf. While the anti-sexual/domestic violence movements have been vital in disrupting the silence around intimate and interpersonal violence against girls, these movements have been co-opted by the State and are reluctant to address sexual and domestic violence within the larger context of the carceral and enforcement violence. Unlike these organizations, YWEP advocates alternative community accountability and radical harm reduction approaches that would not require survivors to act like model citizens in order to receive support, but would recognize, interrogate, and work within the conditions in which girls actually live.

Transformative Justice: SIIS and Sistas Liberated Ground (SLG)

Instead of legitimizing a liberal, rights-based politics of recognition, girl-driven organizations are inspired by militant, race-radical, and Indigenous movements for sovereignty and by various women of color– led prison abolitionist movements. Their organizations reimagine what it would mean to turn their gaze away from the carceral state and focus their reflection inward in order to build what Glen Coulthard calls a politics “fashioned toward our own on-the-ground practices of freedom” (2007: 456). Instead of framing overresearched girls as belonging to deficit, depleted, and damaged communities ravaged by intimate and institutional violence, these collectives counter “damage-centered” (Tuck 2009: 409) narratives and research by showcasing how girls can become organizers rather than merely passive academic research subjects or the clientele of social services. Unlike the mainstream anti-violence movement, this movement demands and expects accountability.

Located in Brooklyn, New York, SLG is a community-based accountability and transformative justice project of the SIIS collective aimed at creating violence and harm-free zones for girls in their community without relying on the State, cops, or courts. Early on in their organizing work, SIIS asked the following questions: “What if we said a section of Bushwick, Brooklyn, was a no-go zone for rape and partner abuse? What if we sat on the stoop, talked to folks on the block where our office was, and began weaving a web of folks who agreed to try something other than calling the police when it came to violence?” (Chen, Dulani, and Piepzna-Samarasinha 2011: xxv). This intergenerational collective of working-class black and Latina women wanted their own community to stand up against racialized and gendered violence in ways that no longer depended on the police. Sparked by the sexual assault and murder of two teen girls of color in Bushwick by two police officers, young women identified both interpersonal and law enforcement violence against girls in Bushwick as their main area of organizing work. They created SLG as a local alternative to the police. Since then, they have declared their territorial zone as a space where violence and harm against girls, women, and gender non-conforming people are not tolerated, where girls and women can turn to each other for help. As a part of the SLG project, Sista Circles were created to serve as transformative justice support and intervention networks among groups of girls who are friends, neighbors, and coworkers. SIIS members learn transformative justice strategies as they go and experiment with sustainable community accountability strategies to address community members’ abusive behavior, creating a process for them to account for their actions and transform their behavior. In addition to providing immediate safety, shelter, and support to people who have been harmed, SIIS members are also commi ed to the ongoing development of the community itself in order to transform oppressive conditions and violent structures. These girls learn about and train new members in the principles of transformative justice as a long-term process.

In 2001, SIIS focused their youth-led participatory action research project on girls’ experiences of violence in Brooklyn. They conducted a community survey of four hundred girls and produced a video documentary entitled You Have the Right to Break the Silence. Out of the four hundred young women surveyed, 57 percent had been raped or knew someone who had been. In 90 percent of those cases, the girls were not helped by the police or by service agencies. The video project included interviews with young women from the community about physical violence and sexual harassment by the police. SIIS screened the documentary at a community speak-out to transform the survey data into a tool for building coalitions with community activists and neighborhood youth, as well as regularly performed skits about sexual harassment throughout New York. SIIS argued that documenting the

experiences of racialized girls victimized by law enforcement was just as important as monitoring police brutality against young men of color. On Action Day, they organized a well-publicized street fair at which girls performed spoken word and guerilla theater about police harassment, surveillance, and brutality, and projected the video on a large wall across the street from the local police precinct. Their political organizing work against enforcement violence made them and their allies a target for heightened police surveillance in the wake of 9/11.

SIIS members were undeterred, however, and continued recruiting new members through their daily organizing work and by creating freedom schools. These girl-led popular educational programs provided political education from an integrated mind-body-spirit framework that trains girls and transgender youth to become activists on their own behalf. Like their sista circles, freedom schools focus on building leadership capacity by collectively engaging in transformative justice. Through their dedication to community accountability processes, SIIS remains process-oriented rather than result-driven, practicing ongoing critical reflection rather than assuming that there is a moment of finishing or arriving. By rooting itself in the principle of self-determination and remaining a volunteer-run collective, SIIS has resisted becoming co-opted like other anti-violence organizations beholden to the criminal injustice system (Sista II Sista 2005, 2006; Burrowes et al. 2007; INCITE! Women of Color Against Violence 2009; Smith 2010). Organizations like SIIS engage in "a kind of seemingly impossible political project that is not only a ainable but has deeply transformative potential" (Spade 2011: 197). They continue to engage in the interconnected processes of knowledge production and informal learning in the everyday world of abolitionist movement-building in order to address harm while resisting exile as a solution.

Reconceptualizing Girlhood and Girlhood Studies in Carceral Societies

By centering case studies of anti-violence and abolitionist activism that contest colonial state control and surveillance undertaken by girls, I trouble the very notion of girl and girlhood as a colonial legacy that privileges white, upper-/middle-class, heterosexual, able bodies via EuroWestern theories of normative child development that were and continue to be violently imposed upon Indigenous and racialized girls. Girlhood studies scholars assert that girlhood is an invented construct that has everything to do with race, class, ability, sexuality, and settler society contexts (Jiwani, Steenbergen, and Mitchell 2006). As Erica Meiners argues, within our current carceral landscape, constructions of "the child can get us all into trouble, including those bodies that qualify as children." Inspired by Meiners's influential analysis of how the "influx artifact" (2013: 3) of the child gets invoked in political work across the carceral landscape—both by proponents and opponents of carceral state expansion—I am interested in how deconstructing normative constructions of the girl-child can work in the service of abolitionist, decarceral praxis.

To contribute to a more politicized and inclusive girlhood studies in an era of increasing carceral state violence, we must be er account for and conceptualize the work that girls who are criminalized, incarcerated, and street-involved do; the risks of not doing so are high. Normative constructions of girlhood bolster the broader racialized logic that drives the transcarceral continuum. In the contemporary carceral state, very few Indigenous and racialized girls have privileged access to the racialized and hetero-gendered production of innocence, sentience, respectability, personhood, and full humanity. Making a case for the centrality of girls and girlhood to North American racial formations starting in the nineteenth century, Robin Bernstein argues that "childhood innocence—itself raced white, itself characterized by the ability to retain racial meanings but hide them under claims of holy obliviousness—secured the unmarked status of whiteness, and the power derived from that status" (2011: 8). In stark contrast to the "angelic white girl," black girls were defined "out of innocence and therefore out of childhood itself" (16).

Not only are (white) innocence, consent, and protection at the center of discussions about girls, they are also the foundation of our criminal legal and punishment systems. Throughout North America, the carceral state is at the forefront of reshaping the boundaries of girlhood; it has historically appropriated and channeled the idea of girls in need of protection. This protection of the girl centers sexual violence, while obscuring state violence and the ties that suture these together. For Indigenous girls—deemed by the white colonial welfare State as primitive, unreachable, and beyond reform—protection has historically meant increased rates of incarceration in residential boarding schools and prisons (see Ross 1998; Smith 2005).

In an expanding prison regime in which racially marginalized and gender non-conforming girls are still targeted for containment and sexual surveillance, it matters, urgently, who is viewed as valuable or disposable. Girlhood studies scholars need to continue to deconstruct the normative, universalizing category of girlhood in white settler societies in order to promote thought about the necessity of engaging in radical structural and systematic change in solidarity with the girls whose activism is showcased here.

Instead of organizing collectively to become be er democratic subjects or “citizens in the making” (Gordon 2010: 8), criminalized Indigenous and racialized girls at the forefront of anti-sexual violence and prison abolitionist movement-building proudly embody what Soo Ah Kwon calls “uncivil youth” (2013: 130). Because of their identity as “uncivil subjects” and their “ineligibility for personhood”, SIIS and YWEP organizers possess an acute understanding that “legal recognition is not and cannot be a viable solution for racialized exploitation, violence, and poverty” (Cacho 2012: 8). Their collective movement work proposes a model of mutual responsibility and accountability not based in calls for recognition from the State as the perpetrator of violence, a stance that challenges the politics of visibility and recognition upon which so many se ler-identified and State-centered political models depend. Their activism necessitates a reconceptualization in girlhood studies of what constitutes the political when girls organize resistance.

The groups profiled here do not arrive at the forefront of transformative justice activism by choice but out of necessity. Marked as devalued and unworthy subjects of care, these girls participate in transformative justice praxis because there is no other viable option available to them to confront intersecting forms of violence without being subject to further criminalization and surveillance. Their empowerment is not contingent on taking political power, securing small legal victories, or winning the next big private foundation grant. As Cacho argues, “in the spaces of social death, empowerment … comes from deciding that the outcome of struggle doesn’t ma er as much as the decision to struggle” (2012: 32). For these young activists, the stakes couldn’t get much higher.

Lena Palacios, as a Postdoctoral Researcher/Visiting Scholar (2014– 2015) conducted participatory action research with the Third Eye Collective, a Montreal-based transformative justice and community accountability collective, led by female-identified people of Black/African origins, dedicated to healing from and organizing against sexual and state violence. As an Assistant Professor in the Departments of Gender, Women & Sexuality Studies and Chicano & Latino Studies (University of Minnesota–Twin Cities), her research and teaching focuses on transnational feminist prison studies; Indigenous, Black, Chicana and Latina feminisms; critical race feminisms; girls’ and girlhood studies; transformative justice and community accountability; media justice; and research justice. She is also an experimental and documentary filmmaker.

Notes

1. This chapter focuses specifically on Indigenous girls and racialized girls of color who self-identify as women, queer, Two-Spirit, lesbian, bisexual, genderqueer, or gender non-conforming. My research works to purposefully disrupt white heteronormative scripts that erase the identities and bodies of non-normative raced and gendered subjects.
2. Both SIIS and YWEP share certain key principles for structuring their work to be participatory and centered in racial and economic justice, and to resist many of the tropes of non-profitization. Dylan Rodríguez defines the nonprofit industrial complex (NPIC) as a “set of symbiotic relationships that link political and financial technologies of state and owning class control with surveillance over public political ideology, including and especially emergent progressive and le ist social movements, since about the mid-1970s” (2007: 21–22). Rodríguez argues that the NPIC is symbiotic with the policing of multiply marginalized communities. SIIS became aware of this symbiotic relationship between the NPIC and the carceral state when their foundation funding was slashed a er their collective started the SLG project, which directly challenged carceral and imperialist state violence at home and abroad. SIIS was able to transition from being a non-profit organization chasing a er foundation grants back to being a volunteer-run, non-hierarchal collective in the wake of 9/11 (see Burrowes et al. 2007).
3. I participated in workshops led by SIIS and YWEP organizers from 2007 onwards at the Allied Media Conference (Detroit), the Critical Ethnic Studies Association Conference (Chicago), and the United States Social Forum (Atlanta and Detroit), and community-based activist trainings throughout Canada and the United States.

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Filmography

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2.2: Culture, Subculture, and Crime

In recent years the media has shown increasing interest in defendants who use a “cultural defense” to excuse, justify, or mitigate their criminal conduct. What is a cultural defense? Simply stated, it is the use of social customs and beliefs to explain the behavior of a defendant. It is sometimes called social framework or social context evidence. It is very similar to the black rage defense in its use of social, economic, and psychological evidence, but there are significant differences. The black rage defense is an explanation of how American racism impacts on African Americans. It has a powerful political message because it exposes the oppressive structure of American economic and social life. On the other hand, some cultural defenses offer an explanation of how a foreign culture affects a person, usually an immigrant, who currently resides in America, comparing that culture’s mores and legal standards with those of the United States. To a less frequent but significant extent, this defense is also used by America’s indigenous peoples and by those who are immersed in the country’s non-dominant cultures.

Just as the black rage defense has been used since the 1800s, the cultural defense is not new to American courts. For example, in 1888 Native American defendants were allowed to put their customs into evidence to show the absence of malice in their killing of a tribal doctor after having been instructed to do so by the tribal council. In the 1920s Italian immigrants used cultural evidence to defend themselves against statutory rape charges when they abducted for marriage Italian American women under the age of consent whose parents had not agreed to the marriages.

Like the black rage defense, use of the cultural defense increased in the 1970s and 1980s, for a number of reasons. First, the development of the battered woman syndrome, used to explain the actions of women who have defended themselves against physically assaultive men, has educated the legal community about the appropriateness of and need for social context evidence. The significant increase in minority and women lawyers, law professors, and judges has also opened the legal system to claims of racial, gender, and cultural bias. The result of this consciousness-raising is that the courts are more amenable to the introduction of social framework evidence.

Another reason for the rapid growth of the cultural defense is the influx of Asian immigrants who come from countries with cultural norms and beliefs dissimilar to America’s. Many of the cases discussed in the anthropological and legal literature involve people from Vietnam, Laos, and Cambodia. Much of this immigration is a consequence of the United States’ interference in and destruction of those countries during what the Vietnamese call “the American war.” A number of cases reported by the media and analyzed in the literature involve the Hmong people. The Hmong were tribal mountain people who were specifically recruited by the CIA and the U.S. military to fight against the Vietnamese National Liberation Front. After America lost the war, thousands of the Hmong who became at risk in their country had to relocate to this country, where at times the two different cultures have clashed. Although most of the attention has been on cases involving Asians, the cultural defense has also been used in cases involving Salvadorans, Nigerians, Puerto Ricans, Cubans, Mixtecs, Jamaicans, Ethiopians, Arabs, Alaska Natives, and Native Americans.

There is a good deal of misinterpretation of culture defenses, both inside and outside the legal system. A clear light piercing this veil of confusion is a brilliant law review article entitled “Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?”[1] by Holly Maguigan, professor of the criminal law clinic at New York University Law School. Maguigan was a public defender and then a criminal lawyer in private practice in Philadelphia, and she brings that real-life litigation experience and insight to her article.

Maguigan explains that the cultural defense is not an independent, “freestanding” defense. Some judges and many commentators have made the mistake of thinking that both black rage and cultural defenses are separate from conventionally recognized defenses. Working from that incorrect assumption, they posit horror stories of the law being abused by separate standards of conduct based solely on race or culture. In fact, both defenses must be part of a recognized rule, such as insanity, self-defense, mistake of fact, or diminished capacity. The cultural evidence must be relevant to the defendant’s state of mind when committing the crime. An example of a case in which a cultural defense was used as a persuasive part of a conventional legal rule involved a young man named Kong Moua. Moua was one of approximately thirty thousand Hmong people relocated to the San Joaquin Valley of California. In 1985 Moua was a student at Fresno City College. He abducted a Hmong woman whom he believed was to be his bride, took her to his cousin’s house and, in spite of her protests, had sexual relations with her. The woman reported the incident to the police, and the surprised Moua was charged with kidnap and rape. During plea negotiations between the district attorney and defense counsel, the explanation given by Moua was that he was fulfilling the custom of *zij poj niam*, the traditional Hmong

marriage ritual. According to the cultural norms among the Hmong in their former homeland, the mountains of Laos, a man abducts his intended bride after informing her parents. Before the marriage a courtship takes place, including the exchange of small gifts and chaperoned dates. On the chosen day, the man captures the woman, takes her to a family home, and consummates the union. The woman protests to show her virtuousness. The man, to display the strength necessary to be her husband, persists in face of the protests. Moua said he believed that his bride-to-be's protests represented the customary resistance, and that he did not intend to have sexual intercourse with her against her will.

If there was an independent cultural defense, a judge would instruct a jury that if they agreed that Moua honestly believed the woman was voluntarily engaging in the ritual of *zij poj naim*, they should find him not guilty. But since no freestanding cultural defense exists, Moua's attorney argued the conventional defense of mistake of fact. That is, Moua, because of his cultural beliefs, mistook the woman's protest to be part of the ritual and assumed she was actually consenting. The district attorney was convinced of Moua's sincerity but was unwilling to drop the charges because of the need to show the Hmong community that in America they must abide by American laws and customs. However, he reduced the charges to a misdemeanor of false imprisonment. Moua pled guilty. Before the sentencing, the judge educated himself as to the ritual of marriage-by-capture and consulted the elders of the victim's and the defendant's families. He sentenced Moua to ninety days in jail and one thousand dollars restitution. During the sentencing, the judge made it clear that his decision was not based on a cultural defense per se, but that the cultural beliefs of Moua and the Hmong community had influenced his lenient sentence.

Some commentators have criticized the disposition in Kong Moua's case as an example of the legal system treating crimes of violence against women less seriously than other crimes. Maguigan agrees with this criticism. But she does not agree that abolition of the cultural defense is the answer. She shows that cultural evidence often works in favor of women defendants.

The murder trial of Kathryn Charliaga is a good example of the positive aspects of social framework evidence, both in educating the public to women's oppression and in winning a favorable disposition for women defendants. Kathryn Charliaga is an Alaska Native (the phrase used by Alaska's indigenous peoples to describe themselves). At the time of her case, she was a thirty-five-year-old preschool teacher living in the small Aleut community of Larsen Bay. She began dating Simeon Charliaga when she was just fifteen years old, and they were married when she was nineteen. After the wedding her husband began to beat her. For Kathryn it brought back memories of her father beating her mother and hitting and sexually abusing Kathryn when she was a small child. During the sixteen years of their marriage, Kathryn's husband had choked her, chased her with a knife and with a gun, and beaten her in public.

On New Year's Eve in 1990, Kathyrn and Simeon were at home. They drank some brandy and began to quarrel. He locked the door and blocked it with a freezer chest so she couldn't run out of the house as she had done many times before. Kathryn testified at her trial that his eyes had the look of "a devil." Faced with his fury and his known potential for violence, she grabbed a knife and stabbed him repeatedly. Kathryn was indicted for second-degree murder and two lesser counts of homicide. She pled not guilty and went to trial arguing self-defense.

The legal problem Kathryn and most women face when they use a weapon to defend themselves against husbands or boyfriends is that the man is often unarmed. The law of self-defense requires that a person be in imminent danger of serious injury or death. It also requires that a "reasonable person" would have perceived the threat as imminent and would have reacted in the same way as the defendant. In order to help the jury understand a defendant's reaction, prior threats by the victim against the defendant are admissible. In battered women defenses, it is proper to admit "context" evidence. By explaining the prior instances of violence, and how the man tended to behave as he built up to the actual attack, the defense enables a jury to understand why it is reasonable for a previously battered woman to perceive that her life is in danger when the man is "just" yelling at her and has not yet physically attacked her.

The law of self-defense mandates that the force used be proportionate to the threat. One is allowed to use a weapon against an unarmed aggressor, but one's reasons must be very persuasive. Most juries convict women who have killed an unarmed man. Therefore, lawyers have used the battered woman syndrome to supplement conventional self-defense arguments. This allows the jurors to see how a woman may reasonably believe that she will be badly injured or killed and must use a weapon to defend herself against the man's usually superior physical strength and fighting experience. The battered woman syndrome also enlightens the jury as to why women do not leave their battering husbands, thereby negating the common feeling that the woman is at fault because she had the alternative of ending the relationship.

In Kathryn Charliaga's case, public defender Michael Karnavas called as a cultural expert Rena Merculieff, executive director of the Native Nonprofit Health Corporation. Merculieff testified that in Aleut villages a woman's role is one of subservience: "It's as if they [the men] own their wife and have a right to do whatever they want to them." One result of this philosophy is that battering is a common occurrence. Help is very difficult to find. In small, isolated villages, intervention is highly unusual and escape virtually impossible. People "expect a woman to do whatever the husband tells her."

The cultural evidence was persuasive in negating the jurors' feelings that Kathyrn could have received help or gotten away from her husband in the years preceding the killing. The jury of seven men and five women deliberated for two days and reached a verdict of not guilty on all counts.

As more cases involving cultural defenses reach the appellate courts, we can expect more decisions favoring the admissibility of such evidence. This should also, by inference, allow evidence of African American culture as well.[2] Any lawyer planning to use a cultural defense should read the California Court of Appeals decision in *People v. Wu*.[3] Helen Wu, a native Chinese woman, strangled her eight-year-old son and then unsuccessfully tried to commit suicide after she found out that her Chinese American husband was unfaithful and had been treating their child badly. The defense argued that the humiliation and shame felt by Helen Wu and her belief that she would be reunited with her child after death were strongly influenced by her cultural background. In an attempt to strengthen his contention that Wu was guilty of manslaughter and not murder, the defense lawyer offered a jury instruction that read as follows: "You have received evidence of defendant's cultural background and the relationship of her culture to her mental state. You may, but are not required to, consider that evidence in determining the presence or absence of the essential mental states of the crimes defined in these instructions." The judge refused to give this instruction to the jury, stating that he did not want to put the "stamp of approval on [the defendant's] actions in the United States, which would have been acceptable in China." The Court of Appeals reversed the trial judge, explaining in detail how the cultural evidence was legally *relevant* to the charges. The court pointed out that in a murder case one's mental state is an issue. The cultural evidence was relevant to motive, intent, and what kind of mental state Helen was in leading up to and during the homicide. It was also admissible to prove that she acted in the heat of passion, which, if accepted by the jury, would reduce first-or second-degree murder to voluntary manslaughter. The Court of Appeals concluded that "upon retrial defendant is entitled to have the jury instructed that it may consider evidence of defendant's cultural background in determining the existence or nonexistence of the relevant mental states."

At the first trial Helen Wu had been convicted of second-degree murder. At the retrial she was convicted of the lesser charge of manslaughter. She received a sentence of eleven years in prison. The decision in *People v. Wu* is an affirmation of the use of cultural evidence and persuasive precedent, which can also be used by judges and lawyers in black rage cases.

Some cultural defenses have the same potential as the black rage defense to educate us about racism. A profound example of the constructive use of cultural evidence is the high-profile case of Patrick Hooty Croy. His case is a journey that begins with the Native American people of northern California in the 1800s, erupts in bloodshed in Siskiyou County in 1978, continues on Death Row at San Quentin Prison, and ends in a San Francisco courtroom in 1990. We start the journey in a small town named Yreka.

Yreka, California, is nestled in the Shasta Valley, 320 miles north of San Francisco. It is situated near the Oregon border and the beautiful Klamath River, where the U.S. government and Native Americans have fought for years over salmon fishing. Yreka prides itself in being "a city that exemplifies all that is grand about a 'small' town, U.S.A."[4] The town was born in 1851 when gold was discovered in Black Gulch. Six weeks after the discovery, two thousand miners arrived and the life of the Tolowa, Yurok, Karuk, and Shasta Indians was forever changed. Reading the pamphlets and brochures from the Yreka Chamber of Commerce, you would hardly know of the history or the present-day existence of Siskiyou County's original peoples. There are only two references to Indians. The first is one line stating that the name "Yreka" is a Shasta Indian word for Mt. Shasta. The second reference is a description of "Indian Peggy" as one of the town's "famous personalities" who "is considered the savior of Yreka for warning the whites of an impending Indian attack in the '50's." It is not surprising that the Chamber of Commerce literature would leave out the fact that between 1850 and 1870 80 percent of the Native Americans in the county were killed. It is also no surprise that Indians in Siskiyou County still feel the same discrimination and prejudice their ancestors suffered.

Patrick Hooty Croy was born in Yreka in 1955. His parents were Native American, descendants of the Karuk and Shasta tribes that had lived there for centuries. His life was typical of an Indian boy in that county. He felt out of place in school, was harassed by the police, and was turned down for good jobs. He vividly recalled the police barging into his family's house and taking "poached" deer out of their freezer. He remembered seeing relatives coming out of the local jail with bruises from police beatings. Although he did fine in school, very little was expected of Indian kids, and he dropped out by the tenth grade. He got into minor troubles and

was sent to the California Youth Authority for six months. He returned to Yreka, worked various jobs such as logging, and participated in the local Native American community. But essentially he was an alien in his own homeland.

There is an old saying: “If you want to understand someone, walk a mile in their shoes.” Let us step into Hooty’s shoes, go back in time to July 16, 1978, and begin to walk his path. On that Sunday evening, twenty-two-year-old Hooty decided to go to a party at the Pine Garden Apartments in Yreka. It was a typical party—there was some drinking and some marijuana. After a while Hooty went to sleep in one of the apartments. A small fight broke out between two people in the parking lot. The police were called by some white neighbors because of the loud noise, but soon things quieted down and the police left. Hooty woke up, and he, his sister Norma Jean, and his cousins Jasper, Darrell, and Carol talked about going deer hunting; deer meat was one way Indian people in northern California supplemented their diet. Hooty went to his girlfriend’s house and picked up his .22 caliber rifle. On their way out of town the group stopped at the Sports and Spirits liquor store in downtown Yreka. There, a scene was played out that occurs almost daily somewhere in America.

The white store clerk and Hooty’s sister and cousin got into a verbal altercation. The clerk shoved Norma Jean, and she picked up a can opener and brandished it toward the clerk. Jumping to the conclusion that they were going to rob him, the clerk ran out of the store. Hooty was standing by the car and the clerk ran up to him and said, “I think they are going to rob me.” Hooty tried to calm him down. “They are not going to rob you,” he said. Then he went into the store to get his sister and cousin. But by now the historical burden of dysfunctional race relations had taken hold. A police car was driving by and the officer saw the clerk yelling that the store had been robbed. He was pointing at Hooty’s car and shouting “get them!” One thing Hooty and his sister knew was that the police would never believe their side of the story. Hooty rapidly drove the car away, trying to get to the safety of their grandmother’s cabin in the hills outside of town. Two police cars began a chase that would end in blood.

During the five-mile chase, Darrell leaned out the car window and fired one shot in a failed attempt to hit the police car’s tire. After arriving at Rocky Gulch, Hooty and Norma Jean started running up a hill into the woods. Darrell grabbed the rifle and followed them. The police arrived and began shooting. Seventeen-year-old Jasper and eighteen-year-old Carol had not run into the hills; they surrendered and were handcuffed to some bushes. The police called for help, and soon there were twelve to fourteen cars with law enforcement personnel: California Highway Patrol, deputy sheriffs, and off-duty police. One of those off-duty policemen was Jesse “Bo” Hittson. He had won a stock car race earlier that evening and had gone to a barbecue where he had a few drinks. Hearing the police radio call, he rushed to the scene and jumped out of his vehicle, forgetting his bulletproof vest on the seat. He had his .357 magnum loaded with hollow-tipped bullets, which explode inside the body.

Hooty, Darrell, and Norma Jean were pinned down by the gunfire. Headlights and searchlights from the police cars were pointed at them as they crouched behind the same trees that had failed to offer adequate protection to their ancestors. Bullets from M-i6s, AR-15S, shotguns, and revolvers were smashing into the trees. They had one small-caliber rifle. Darrell and Hooty passed the hunting rifle between them and fired five to ten shots. A few bullets hit the police cars; one policeman got shot in the hand. The police had no command center; there was no supervision. They just kept firing into the woods. Between 75 and 150 shots were fired at the three Indians. Darrell stood up, trying to surrender, and was shot in the groin. Norma Jean tried to run and was shot in the back.

Darrell yelled out, “I’m wounded and Norma Jean is dying!” The police yelled back, “We’ll give you a half-hour to surrender!” There was no more shooting. Hooty, now with the rifle, started making his way back to his grandmother’s cabin to see if she and his elderly aunt were still alive. At the same time, Hittson and another officer began moving toward the cabin, although other police were yelling at them “get away, stay down.”

Hooty made it to the cabin and started to climb in through the window. At that instant, Bo Hittson came running around the side of the cabin. Hittson opened fire at Hooty’s back. One bullet smashed into Hooty’s buttocks and traveled into the spinal area. The other hollow-tip bullet exploded in the back of his arm, tearing a hole through it. Hooty whirled around and fired one bullet. It hit the officer directly in the heart, killing him.

The other policeman arrived at the scene, but all he saw was Hittson falling backwards. Hooty managed to crawl behind a building, where he lay in his own blood. Hearing the gunfire, other police ran up to the area and began firing at Hooty’s position. He tried to yell out, “I’m wounded, I’m wounded!” The police fired another barrage, but by some miracle he was not hit. A few minutes later they dragged him out, and Hooty, either in shock or unconscious, was taken by ambulance to a hospital. Norma Jean was arrested with Darrell and was given medical treatment.

Four days after the shootings, a funeral service was held for Jesse Hittson. Over a thousand people attended, including approximately three hundred uniformed law enforcement officers from all over northern California. Flags were flown at half-mast, and city offices were closed from ten in the morning until two in the afternoon.

Hooty and the four other Indians were charged with conspiracy to commit murder, first-degree murder, four counts of attempted murder, four counts of assault with a deadly weapon, and robbery. Under an aiding and abetting theory and a conspiracy theory, all five could be tried for actions the others took. Hooty, Norma Jean, and their cousin Jasper were to be tried in one group. Darrell and Carol were to be tried in another proceeding.

Six weeks after the incident, Hooty still had to be brought to court in a wheelchair due to the gunshot wounds. The defense lawyers had hired a sociologist from a nearby college to survey the community for potential bias. He testified that more than 25 percent of those questioned believed that the defendants were guilty. He also concluded that the "drunk Indian stereotype is still quite strong in the county." Based on his testimony and the pretrial publicity, the case was transferred to nearby Placer County.

Other than the public defender no lawyers from Yreka would defend Hooty, so a lawyer from another county was appointed. He was a former prosecutor who had a caseload mainly of civil cases and had never defended an Indian. He and Hooty had little or no communication. Hooty was sure the white man's court would offer him no justice. Fatalistically, he accepted what history had taught him—Indians are killed. He assumed he would be executed by the State of California.

At Hooty's trial two very damaging, but untrue, pieces of evidence were presented. First, white neighbors from the Pine Garden Apartments testified that they heard some Indians say, "Let's get a gun and shoot some sheriff." Legally, this testimony is considered hearsay because it is one person reporting on what another person said and therefore is susceptible to misinterpretation or outright falsehood. But it was allowed into evidence because there is an exception to the hearsay rule called a "declaration against penal interest." This means that a statement overheard by another person can be testified to if it admits to a criminal act or intention. Although the words were not said by Hooty, they were admitted as evidence against him because a conspiracy to murder was charged. In a conspiracy case, the words of one conspirator can be used against a coconspirator even if the coconspirator was not present at the time the statement was made.

The second erroneous piece of evidence was the testimony of a police officer who was present at the hospital. He testified that when the doctor asked Hooty what happened, Hooty replied, "I got shot robbing the liquor store." This hearsay statement was also allowed into evidence under the exception rule. Of course, Hooty did not rob the store, nor was he shot at the store, but that would make no difference to the jury.

The lawyers did not view this trial as a political case. Hooty's attorney did not attempt to expose the racism or misconduct of the police, nor did he want to explore the social conditions that Native Americans lived under in Siskiyou County. Hooty was not advised that a powerful self-defense argument was possible. Instead, his lawyer presented a weak "diminished capacity" defense.

Hooty, resigned to what he believed was his historical fate, offered no real defense. When he took the stand, he said he had been drinking and did not remember what happened. Why did he testify in that manner? Probably to help Darrell, who was the one who actually brought the rifle from the car. Probably because he knew he was going to receive the death penalty and there was nothing he could do to stop it.

Hooty and Norma Jean were convicted of every charge except two attempted murders. Jasper was convicted of second-degree murder and sentenced to seven years. Hooty's cousin Darrell was convicted of second-degree murder and sentenced to six years and six months. His cousin Carol was also convicted of second-degree murder and sent to a California Youth Authority prison for four years. Norma Jean was sentenced to life imprisonment. Hooty was sentenced to death.

Norma Jean appealed her conviction, but the California Court of Appeals ruled against her and her lawyer did not proceed any further in her behalf. Meanwhile, Hooty had been shipped to death row at San Quentin Prison. The prison was built on Punta de San Quentin, which was named after an Indian warrior who had led the Lacatvit Indians to their final defeat at the hands of the Mexicans. Fortunately for Hooty, the law provided that if a convicted person received the death penalty, there was an automatic appeal directly to the California Supreme Court. In 1985, the year of his appeal, the California Supreme Court, led by Chief Justice Rose Bird, gave meticulous care to each death penalty case and reversed a number of death verdicts, including Croy's. In his case the conviction was reversed on the grounds that the trial judge's instructions to the jury regarding the law of aiding and abetting were incorrect and prejudicial to Hooty's right to a fair trial. In 1986, Chief Justice Bird, Justice Cruz Rey-noso, and Justice Joseph

Grodin were recalled in an election rife with law-and-order rhetoric reminiscent of Reverend A. B. Winfield's vitriolic preaching against judges sympathetic to defendants 150 years earlier during William Freeman's case. Since that recall election the California Supreme Court has had one of the lowest rates of reversing death penalty verdicts in the country. Before the reversal of his conviction, Hooty had spent seven years on death row. Now the County of Siskiyou decided to put him on trial again. Norma Jean, meanwhile, was still serving her life sentence.[5]

The retrial would be a completely different political, legal, and human experience for Patrick Hooty Croy. Members of his family had been able to obtain the services of well-known attorney Tony Serra. Serra had grown up in San Francisco and attended Stanford, where he was on the football, baseball, and boxing teams while majoring in epistemology. In 1971, he had run for mayor of San Francisco on the Platypus party platform. His programs included terminating the draft, decriminalizing victimless crimes, returning police policies to the citizens, self-determination for communities, city-sponsored art activities, and other ideas that represented the politically aware segment of the flowering counterculture. He lost the election, but his charismatic personality, creative ideas, and colorful trials made him one of the most recognizable, and one of the best, criminal lawyers in America. In 1976 he went to trial as a defendant himself for refusing to pay income taxes as a protest against U.S. military aggression in Vietnam. He was convicted and spent six months in prison. Perhaps that experience strengthened his empathy for those facing the power of the criminal legal system.

Hooty's case reminded Serra of Choi Soo Lee, who had been given the death penalty for a shooting in Chinatown, based on mistaken identification of Lee by white tourists. Lee's cause had won the support of the Asian community, and eventually his conviction had been reversed. When the state decided to retry Lee, Serra defended him. In a high-profile trial, Lee was found not guilty and went from death row to freedom. Serra hoped he could do the same for Hooty.

Serra headed a defense team of several lawyers, experts on Native American culture, legal workers, and investigators. They immersed themselves in the facts of the case and in the history of Hooty's tribe in California. They understood that to win the trial they would have to get a venue change, and to do so they would have to break the image of colorblindness to which our legal system is wedded. In the hearing on the motion to move the trial to an unbiased venue, eight witnesses, including six Native Americans, testified. Their testimony exposed the historic oppression of Native Americans in Placer and Siskiyou Counties, as well as the racism that still permeated these counties. An interview following the first trial revealed that one juror stated during deliberations that "this is exactly what happens when an Indian gets liquored up or has too much to drink." The judge ruled in favor of the change of venue motion, stating, "The potential for residual bias against the defendant in the context of traditionally preconceived notions [regarding Indian people] raises a risk that prejudice will arise during the presentation of the evidence unrelated to the facts."

After another venue hearing showing anti-Indian feelings in the other northern California rural counties the case was transferred to San Francisco. Though the venue problem had been solved, Hooty still faced not only the robbery charge, but also the charges of assault on police and murdering a policeman. Even in a liberal city like San Francisco, jurors do not look sympathetically on killers.

The defense team realized it needed to explain why Hooty had fled from the scene of the alleged robbery, and why he and Darrell had fired at the police instead of giving up. With regard to fleeing the scene, the law provides that the prosecution can put forth such evidence as "consciousness of guilt"—that is, the defendant's act of running away from the scene of an alleged crime implies that the defendant is guilty of that crime. The judge can then instruct the jurors that they can infer guilt from an act of flight. However, this jury instruction is a two-edged sword that can also be used by the defense to cut away at the prosecution by showing innocent reasons for fleeing. In Hooty's case, this was a means by which the history of Indian-police relations could be placed before the jury. Such evidence would show that Hooty feared the police and did not think they would listen to the Indian side of the story. He fled, not because there had been a robbery, but rather because of his mistrust of the police.

Since the law of self-defense allows for testimony regarding the defendant's state of mind, the defense team hoped to be able to put forth a cultural defense. They made a motion to offer expert testimony on the historical and present relations between whites and Indians in northern California generally and Siskiyou County specifically. This testimony was relevant to Hooty's state of mind, that is, to the reasonableness of his belief that he was in imminent danger of death or serious injury. The defense filed a state-of-the-art brief that tied together the law of self-defense and the law regarding expert testimony with the black rage case of Stephen Robinson, more recent cultural defense cases, and battered women cases.[6]The motion was granted, although the judge limited the number of experts—only five of the nine requested experts would testify.

The defense desired a jury made up of a cross-section of San Franciscans. Although there were no Native Americans on the jury, the jury selection process resulted in a good mix in terms of age, gender, and race. There were five whites, three African Americans, two Latinos, and two Asians. After eleven years in prison, Hooty was getting one last chance to win his freedom.

On November 30, 1989, opening statements began. The district attorney, who had been brought in from Stockton, California, to try the case, presented his opening statement. Then Tony Serra took his place before the jury box. In his late forties, with his cowboy boots and his graying hair tied back into a ponytail, Serra looked a bit like an aging San Francisco hippy. One of the reasons for Serra's success is that he looks different from the straight-arrow, mass-produced lawyer most juries expect to see. His oratorical skills rival any attorney in the country. His forceful and unique personality comes through to a jury, which creates the potential for real communication. Your ideas, your logic, and your sincerity have an impact. Jurors react favorably to skilled verbal advocacy; they react even more positively to authentic human interaction.

Serra understood the overwhelming alienation and impotence a defendant feels in court. The accused sits there for days, sometimes for weeks, without being able to raise his own voice in his defense. You can find expression of this alienation in literature—think of the defendants in Albert Camus's *The Stranger* or Franz Kafka's *The Trial* Recently a nationally known and respected lawyer, Patrick Hallinan, was prosecuted for conspiring with a former client to import and distribute tons of marijuana. After his acquittal, he wrote an article in which he described how it felt to sit in the defendant's chair: "The hardest part of the six-week trial was sitting quietly at the defense table while I was being vilified by the prosecutor. In my mind I responded to every smear and allegation…. No amount of seasoning in the federal criminal courts prepared me for the level of raw and constant anxiety I experienced as a defendant." [7]

Aware that a defendant's voice is silenced, except when he testifies, Serra began his opening statement trying to give expression to Hooty's voice:

Ladies and gentlemen, a lawyer speaks with many voices in a case like this. And you'l hear I presume throughout the trial the voice of anger, perhaps, voices of sadness. But in opening statement and throughout the course of the trial the main voice that we lawyers speak, from that table, is the voice of Patrick Hooty Croy.

Some cases clearly involve racial issues. Henry Sweet's trial was one of those cases, and therefore Clarence Darrow could hammer home the racial themes. Stephen Robinson's bank robbery was not obviously related to race, and therefore I had to be careful in arguing the racial context to the jury. Hooty's crime, like Henry Sweet's, involved a person of color shooting a white person in self-defense. The racial issues involved in the case jump out at a lawyer, although it is important to note that Hooty's first lawyer either was unaware of or denied the racial reality of the case. Serra did not deny this reality, but rather made it the cornerstone of the defense. Within the first two minutes of his opening statement, he confronted the jurors with the theme of racism:

> This is what the evidence will be. A white police officer shot an Indian twice in the back. This is what the evidence will be. A white police officer shot an Indian twice in the back during a cease fire, a de facto cease fire. That's what the evidence will be. A white police officer shot an Indian twice in the back during a cease fire, while he the officer was under the influence of alcohol. That's why we're here, and that's why, in essence, there are other people who aren't present. Perhaps, who are present symbolically, whose voices will resound during the course of the trial, much more than a trial for an alleged homicide. This will be a trial that will have profound issues regarding racial relations.

The defense team decided to put all five experts on the stand to testify to the history of Native Americans and to the continuing environment of discrimination that Indians face in the northern counties of California. The team felt it was important to use experts who were Native American, in order to break through the stereotype of the uneducated, simple Indian, and to let jurors experience authentic (i.e., not Hollywood) Indians. The public is aware of Crazy Horse and Sitting Bull. Paratroopers in World War II would yell "Geronimo" as they jumped out of their planes. The large reservations of the Lakota and the Navajo have had an impact on the public's consciousness of Indian culture and history in the Dakotas and the Southwest. But most people do not know that there are more Native Americans in California than in any other state. Because the California Indian population consists of many small tribes, and because of the state's failure to take responsibility for the history of genocidal attacks on its indigenous peoples, Indians are almost invisible to the public and to political institutions. The expert testimony made the life of Indians visible and created a framework for Hooty's contention that mistrust and fear of the police caused him to flee and fail to surrender.

An Indian historian, Jack Norton, testified how California's Indian population in the 1800s was reduced from two hundred thousand to only twenty thousand through massacres of tribes by gold miners, citizen volunteers, and the U.S. Army. He testified to

historical incidents that live on in the memory and folklore of the northern California Indians. He told of a time when members of the Shasta tribe were invited to a feast to celebrate a new land allotment, but their food was poisoned and only a few survived. He told of how the coastal Indians in northwestern California were told they were to be relocated to a new reservation on the Klamath River. They boarded ships for the journey down the coast, but they were taken out to sea and dumped overboard. Treachery, betrayal, and murder marked the history of the white man's relations with the original inhabitants of California. This history had not been forgotten by Hooty's tribes, the Shasta and Karuks.

Other Indians, such as Susan Davenport, a former high school teacher who was head of the Tri-County Indian Agency, testified to the discrimination Indian children face in the school districts and in the criminal justice system. Ed Bronson, a non-Indian professor of political science, analyzed the image of Indians in the Yreka newspaper from 1970 to 1978 and explained to the jurors the negative stereotypes of the media coverage.

The jury seemed attentive and responsive to the expert witnesses. The blend of historical oppression and present-day discrimination made the testimony seem alive instead of a dead history lesson about times long ago.

The final piece of the cultural defense was to tie the generalities to Hooty's individual experience. As the Steven Robinson case showed, the life experiences of the defendant can come into evidence through the psychologist and through the defendant, if he takes the stand. In Hooty's case, a Native American psychologist named Art Martinez was allowed to testify even though a psychiatric defense was not being used. Under the self-defense theory, Martinez was able to testify to Hooty's state of mind when the shootout took place. He was able to describe Hooty's experiences and perceptions of racism and how they influenced his behavior. Martinez was perceived as a professional with integrity and dignity, and his testimony helped give the jury a complete picture of Hooty as a human being, not a stereotyped Indian or a rhetorical symbol of Indian oppression.

Hooty then took the stand. He testified about how his father had gone to Washington, D.C., to obtain original copies of the treaty of 1851, which was supposed to have protected the Shasta Indians. Like almost all such treaties, it had been violated by the U.S. government. His father had gone to court to argue that the treaty should be respected and enforced. Hooty remembered that the case had been lost.

One experience Hooty described was particularly moving and relevant. Often the police in Yreka would follow Indian kids. When Hooty was twelve or thirteen years old, the police began to chase him. He hadn't done anything, but he was so afraid he ran into the woods. It was winter, and he ran through the snow and jumped into a river that was frozen. Serra described the experience in closing: "He was there hiding. Think of that, he was a little Indian child hiding and his father is a leader, a wise man, a fighter. He has a right to be proud and be strong, and yet here he is, hiding as a child in the frozen river. He's wet and he's in pain. He hasn't done anything." Hooty was pulled out of the river by the police, who handcuffed him and took him to jail. He spent the night in juvenile detention and was released the next day. It turned out that the police had been looking for a different Indian boy.

The most dramatic moment of an otherwise relatively unemotional direct examination was when Croy described what he was thinking as the police were firing at him. "I realized that all the things my grandmother and father had told us were coming true, that they were going to kill us all."

Unlike his first trial, at the retrial Hooty was well prepared to testify. The cross-examination focused on his testimony at the earlier trial, in which he had said he could not remember what happened because he had been drinking. Hooty's explanation of that testimony was that he had not trusted his lawyer and felt he would not get a fair trial. It did not sound like a lie, but rather an understandable reaction of a young Indian man to hostile and dangerous circumstances. This was a theme that Serra would underscore in his closing. Hooty left the stand with his dignity intact. The defense team felt that the jury would be able to empathize with Hooty and understand why he had lied at the first trial.

Serra's closing argument was an example of his oratorical skills. He told parables, referred to philosophy, and discussed history. But he also kept in mind the facts and mixed his rhetorical flourishes with the relevant law. He began by confronting the negative racial stereotyping used by the prosecution.

Similarly, when the prosecutor elicited testimony about the party at the Pine Garden apartments he tried to leave the impression that it was a wild, drunken brawl. The image of the "drunken Indian" had a potent effect in the first trial, influencing the jurors against the defendants. Serra knew he would have to counter that potential influence in the second trial. He met the issue head on and turned it around to Hooty's benefit:

Has one witness come forward and said to you, “I saw Hooty shoot from the hill?” … There’s not one shred of evidence that says he shot. And all the Indians say he did not shoot, so the prosecutor has to say, “Don’t believe the Indians; don’t believe the drunk Indians; don’t believe the dirty Indians.” That’s the bottom line Do you understand the real hoax, the real fabrication is on the side of the prosecution. If this case stands for anything, it stands for a proposition that everyone has to be treated equal. And that means in court too.

You must reach across racial lines when constructing a black rage or cultural defense. One way of doing this is to speak to shared experiences. The voir dire process in Hooty’s case had produced a multiracial jury, more so than in the usual San Francisco trial. Facing this type of jury, Serra felt that some jurors had shared the experience of what he termed “institutional genocide.”

> The Indians were all exposed to institutional genocide. It’s not just Indians, it’s common to all sub-cultures; they’re exploited, harassed, discriminated against, acts of brutality, acts of indifference. All sub-cultures have been exposed to that in this country. You mistrust authority. So if the white kids were beating you up, does the Indian call the police? No. The police take the whites’ point of view; the police would arrest you. You don’t go up to the police. You have to avoid—to run, so Hooty had instilled in him two things, avoid confrontation, and the instinct of flight. You can’t win at any level of confrontation…. So there was no trust. No trust was engendered in Hooty or any young Indian.

Another means of reaching across racial lines is to let the jury know that people of the defendant’s race are hoping that the jurors will over come their stereotypes and do justice. This is a delicate proposition. You do not want to beat up the jurors for being of a different race or culture. You do not want to offend people by challenging them to prove they are not racist by deciding in your client’s favor. Serra walked a tightrope as he referred three different times to the Indian community and how it was looking to the jurors for justice, implying that a not guilty verdict would help heal the wounds of a racist past:

You heard the history of the Indian people. Their mistrust of authority. The fact that they have never, ever trusted the court system. They have never trusted lawyers; they have never trusted judges. For them, it is an extension of the early settlers, the military, the whites who have always perpetrated a form of genocide of them. They have never cooperated, they distrust, they disdain the judiciary. In this trial it has been reversed. They have come here with open hearts and open hands. They have told you the truth. They have once again placed their faith in white man’s law and he, the prosecutor, says they have perpetrated, these Indians have perpetrated a hoax. He said that because he has no evidence!

Most juries take their responsibility seriously. If you invited twelve people to a dinner party and gave them the facts of a typical criminal case they would vote for conviction almost every time. But if you put those same twelve people in a jury box, approximately 10 to 15 percent of the time they will vote for acquittal or come to a divided verdict. One crucial difference between a dinner party and a jury trial is that jurors realize their decision has real consequences for another human being. Most jurors believe in the concept of reasonable doubt, and they will sometimes give a defendant the benefit of the doubt when analyzing the evidence. The democratic tradition in America is founded on the right of the individual against the power and encroachment of the government. In criminal trials, jurors are torn between their fear of crime and their duty to judge each person as an individual. Prosecutors often will speak to the jurors’ fears by equating the defendant with the general violence and crime in society. Defense attorneys will focus on the individuality of the defendant and speak to the jurors’ desire to give every person a chance before condemning him or her.

A key method of helping the jurors get in touch with their desire to do justice is to remind them of the grave responsibility they carry. Even in a misdemeanor case, the lawyer can convey a feeling of seriousness, of moral weight, of the need to consider the evidence carefully and to respect the rule of reasonable doubt. Once in a great while a case comes along that screams out for righteousness. The Hooty Croy trial was such a case. The facts of self-defense were powerful, and the symbolism of the case was apparent. In this context, Serra was able to tap into the jurors’ need to be part of something bigger than themselves:

> We will never forget this case. In a certain way, maybe it will be one of the most meaningful things, the most meaningful decisions, profound decisions, decisions fraught with social and political content—the opportunity to do justice. You might never have another opportunity like this again. It might be one of the more meaningful events that you are going to participate in during your life.

Lawyers often get caught up in their own egos. They have an image of themselves as Spencer Tracy playing Clarence Darrow in *Inherit the Wind*, or Tom Cruise destroying Jack Nicholson during cross-examination in *A Few Good Men*. Caught up in their

fantasies, they shout at neutral witnesses as if they were criminal conspirators. They wax eloquent about the American way of justice, when the facts point to a brutal act by an obviously guilty client.

Serra, on the other hand, was in an enviable position. His client actually was innocent and had been mistreated. Hooty had been a victim of a police force that had acted like Custer and the U.S. cavalry. Shot, arrested, and charged, he was then denied effective representation at his murder trial. Sentenced to death, he had been given another chance by a California Supreme Court that in 1985 had at its philosophical core a respect for individual liberty. The reality of the case allowed Serra to end his argument with an emotion and passion that was felt and understood by the jurors.

Hittson had to be crouched down; and he shoots, bang, bang, bang—at least three times, two of them going into Hooty, and one going up against the wall…. Hooty turned and there was this confrontation face to face and there was this shot. And then Hooty collapsed like he said, and he fell and then he started crawling…. That is the honest truth of what occurred. That's a truth that wasn't previously told. That was the truth that wasn't told because Hooty had no faith at that time in the system. So Hooty took the responsibility upon himself. There's no reason now to hide any of the truth. He's told everything exactly the way it was: From the bottom collectively of our team's heart, we urge you to do justice in this case. It is, in closing, reasonable doubt. It is a case that cries out singularly for justice. There have been long delays. Hooty deserves to be set free. This is a wonderful, wonderful case for justice—for you to administer justice It's your almost sacred duty to find "Not Guilty on these charges." Thank you very much.

The jury deliberated for a full week, and then a second week. An optimistic defense team had expected a quick verdict. Some of the reporters covering the trial began to say that the times were too conservative to allow an acquittal for the killing of a policeman. On May 1, the jury filed back into the courtroom to deliver its verdict. Patrick Hooty Croy was found not guilty on all charges. After years locked away on San Quentin's death row, he was free.

Hooty is now a full-time student at San Francisco State University. He has continued to develop his artistic talents and is studying computer graphics.

After the trial, Karen Jo Koonan of the National Jury Project conducted intensive interviews with several members of the jury. There was no doubt that the cultural defense had created a context for the jurors to react favorably to the defense's presentation of evidence. One juror said that when he heard the charges they sounded "so damming" that he wondered how the defendant could respond. But as the testimony developed he felt that "the main issue was racism."

The interviews showed that the jurors had been influenced by the content of the testimony presented by the cultural defense witnesses. Even more than the content, they were impressed by the expert witnesses themselves. Clearly, the fact that most of these educated and articulate witnesses were Native American added to the impact of their words. The cultural defense succeeded in putting the jurors in Hooty's shoes. They were able to understand that any reasonable person in his situation would have responded in the same way. He would have run from the police even though he had not robbed the store. He would have been afraid to surrender to law enforcement once the shooting had begun. They comprehended the legal rule that if a policeman uses excessive force a person is entitled to respond with force to defend himself. They believed Hooty had acted in self-defense when he shot Hittson.

Hooty's case is an excellent example of taking the offensive when faced with damning evidence. In order to do so effectively, the defense team had to perceive the social conditions under which Hooty lived. They needed to feel those conditions, to grasp Hooty's life experience. The lawyer in the first trial failed to do this because he was blinded by his own prejudices.

The defense team approached the case politically. They consciously uncovered the historical, economic, and social roots of a conflict that led to one dead policeman, one wounded policeman, and three wounded Indians. With this perspective they were able to construct a persuasive cultural defense.

A few words of caution should be noted before lawyers leap into similar cultural defenses. Hooty's acquittal was won in San Francisco, where Indians are not highly visible, are not considered a social problem, and are not threatening to jurors of other ethnic backgrounds. Whether such a defense would have been as persuasive in Albuquerque, New Mexico, or Rapid City, South Dakota, must be left to lawyers, clients, and jury consultants who understand those specific environments.

The United States is a multiracial, multicultural society that is growing more diverse each year. Cultural defenses will be an expanding area of legal activity in both criminal and civil law. Like black rage cases, these cases will send a political message. Lawyers, always intent on winning, should recognize the content of the message they send. This awareness should inform their

strategy, the types of experts they call, and how they frame the issues to the public. Sometimes there will be abuses of the cultural defense, but we cannot shy away from this potentially enlightening form of social reality evidence.

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2.3: War on Terror

The United States of America has always been a torturing state, but it has professionally institutionalized the practice only recently. Its political leaders offer denials, but blatant practices and tortuous legal arguments make the denials oxymoronic. The history of torture by the United States supports a more general theoretical proposition: the more states legislate against terrorism, the more likely they will use torture as an instrument of terror. Other examples of this proposition include Britain in Northern Ireland, Russia in Chechnya, and of course Nazi Germany. Terror legislation and torture can accompany an imperialist effort or internal national security regimes to suppress dissent. Both motives apply in the case of the United States.

The recent development of torture falls into three stages. After the Second World War, the United States assembled torture expertise and apparatus in line with a national security ideology springing from the anti-Communist crusade. In a backlash against liberation and equality movements of the 1950s and 1960s, crime hysteria led to criminal justice restructuring beginning in the mid-1970s and continuing into the twenty-first century. Often described as a turn toward punitiveness, crime hysteria and control prepared the United States institutionally and its people ideologically to embark on its current course of terror law and torture.

The U.S. torture regime depends on basic structural characteristics of American society, especially its racism and competitive and individualistic capitalism. These in turn give a particular character to its imperial expansion and assertions of world hegemony. Imperialism is central, so is racism. They are intertwined in the Anglophone history of colonialism, but imperialism and racism so often go together, especially since the advent of European imperialism in the late fifteenth century, as to make their pairing a general rule. At the same time, the United States has countervailing institutions: most prominently, its historical commitment to democracy, equality, and protection of laws.

Expansion of U.S. hegemony after the Second World War, and again after the fall of the USSR and Eastern Bloc, put special demands on the U.S. polity. Ruling classes and power elites faced a pressing need. As recognized at least since the time of Metternich and Talleyrand (Kissinger 1964), expansion of influence and control beyond state borders requires a compliant, if not docile, domestic populace. Dangerous classes must be controlled, especially when, as seemed imminent in 1968, they threaten the status quo of wealth, privilege, and power. The United States used the criminal justice system to control the domestic dangerous classes and counterinsurgency tactics including torture to control foreigners.

The History of U.S. Torture

It was not that state agents did not torture before the end of the Second World War, but the torturers were agents of local governments and the several states of the union. There was no national policy of torture. Settlers and soldiers routinely tortured Native Americans (Churchill 1997; Slotkin 1985). Slave owners tortured slaves, and after 1865, racial lynching often included torture before the coup de grace (Waldrep 2002). Police regularly used the third degree to extract confessions and information. They also punished miscreants by physical abuse, either in lieu of arrest or prior to it. Convicts in state penitentiaries often suffered abuse. Federal police and correctional agencies, if they did employ the use of torture, did so covertly. Beginning in 1936 with the U.S. Supreme Court decision in Brown v. Mississippi (1936), federal courts increasingly intervened in state criminal justice systems to curtail official torture. During the Second World War, in the Pacific theater, but rarely in the European theater, units of the U.S. military used torture against Japanese soldiers as part of the overall brutalization of what both sides viewed as a racial war (Horne 2005). Nonetheless, torture was not national policy, even covertly.

As the war in Europe wound down, overtures between Nazi leaders and U.S. intelligence operatives such as Allen Dulles in the OSS (Office of Strategic Services) set the stage for acquiring German expertise; operations Overcast and Paperclip resulted. The Joint Chiefs of Staff authorized Operation Overcast 6 July, 1945, to bring German scientists to the United States, despite possible past membership in the Nazi Party and the SS. In September 1946 President Truman directed bringing various desired specialists to the United States in an operation called Paperclip. Some of the experts were accused of participating in murderous medical experiments on human subjects at concentration camps and brutalizing slave laborers (Simpson 1988:36). Between 1945 and 1955, the United States welcomed 765 German specialists, of whom perhaps 80 percent were Nazi Party members or SS veterans (Lasby 1975). Some became well known. Werner von Braun appeared on the Walt Disney TV program in the 1950s, for example. Others remained in shadow; among them were those employed in mind control and interrogation techniques.

In April 1950, the CIA launched Operation Bluebird to discover more effective interrogation techniques. Boris Pash—an anticommunist since the 1917 Bolshevik Revolution, counterintelligence chief for the Manhattan Project, and recruiter of German

specialists in Operation Paperclip—reviewed Nazi techniques for use in the Cold War (McCoy 2006:26–7; Simpson 1988). By April 1953, the CIA unified various mind control and interrogation researches into MKUltra under the direction of Sidney Gottlieb of its Technical Services Division. Gottlieb reported directly to Chief of Operations Richard Helms, who later became CIA director. The sensory deprivation experiments by Donald O. Hebb, a Canadian psychological researcher, caught the eye of Gottlieb. A few years later, more research at Harvard found that sensory deprivation causes unbearable stress, which progressively leads to hallucinations and delusions (Wexler et al. 1958). Next, a Princeton psychologist, Jack A. Vernon, received lavish funding from the Army and National Science Foundation to pursue this line of research with the view to applying it to interrogation. Vernon noted that physical violence is often counterproductive, but sensory deprivation could be an effective tool for extracting compliance, dependence, and information (Vernon 1963). Whereas Vernon's stated intentions seem benign—he ends his book on sensory deprivation by recommending everyone try it to better appreciate the small things in life—the CIA had applications that were more dubious.

In 1963, the same year Vernon published his book on sensory deprivation, the CIA wrote the Kubark Counterintelligence manual. Originally secret, leaks and successful FOIA (Freedom of Information Act) struggles have made it readily available on the Internet. The Web site post, "Prisoner Abuse: Patterns from the Past," by the National Security Archive links to a wealth of information on the topic and related matters.

Kubark defined CIA interrogation methods for the next forty years, until the photographs from Abu Ghraib forced worldwide exposure. Kubark premises its techniques for interrogation on inducing regression. Interrogators create existential chaos from the moment of arrest (McCoy 2006:51). The essence of effective interrogation—civil police questioning, military field interrogation of POWs, and even for clandestine work—is to make the subject want to tell the interrogator the desired information. That objective is best reached by creating dependence on the interrogator. While it can be achieved by physical violence, resistance or false compliance is also possible. False compliance occurs when the subject says whatever seems necessary to stop the pain. Psychological torture is more likely to produce reliable, if not always accurate, information. Of course, reliable information comes from a sincere but not necessarily well-informed subject. McCoy (2006:53) points out another advantage to psychological torture. It leaves none of the usual signs, and thus eludes the strictest human rights protections.

Having given up on drugs such as LSD, electroshock, psychosurgery, and similar invasive techniques, Kubark reflects the distillation of research since the end of the Second World War. Once set down in the Kubark manual, the CIA lost no time in exporting the expertise to Cold War allies. Britain used some of them against Northern Ireland guerrillas. Among them are what came to be called the five techniques. They are as follows.

1. Wall standing: forcing detainees to remain in stress positions;
2. Hooding: keeping a light-resistant bag or hood over the detainees'

   heads;

3. Noise:subjectiontocontinuousloudnoises;
4. Sleepdeprivation;
5. Reduced diet (Ireland v. United Kingdom 1978:96, pp. 35–36)

These are the same techniques applied to Jose Padilla, who also avers that he was given mind-altering drugs, possibly LSD or PCP (Gerstein 2006; Hegarty 2007). Ireland complained to the European Human Rights Commission against British use of such tactics. The Commission issued its 8,400-page report finding that the five techniques were torture. When the complaint proceeded to the European Court of Human Rights, the British Attorney General assured the Court that "The Government of the United Kingdom . . . now give[s] this unqualified undertaking, that the "five techniques" will not in any circumstances be reintroduced as an aid to interrogation" (Ireland v. United Kingdom 102, p. 36). This became, in effect, a consent decree. Britain promised not to do it again, and the Court found Britain not guilty of torture by a vote of thirteen to four, but only inhuman treatment, unanimously (Ireland v. United Kingdom, Holdings of the Court on Article 3, p. 86). The court later repudiated the principle in Selmouni v. France (Application no. 25803/94) July 28, 1999, where it found similar treatment to constitute torture. Although it may seem a distinction without a difference, the Ireland ruling looms large in current U.S. policies and practices of torture. It opened the door to making torture an ambiguous term. Its claimed ambiguity allows U.S. officials to aver that the United States does not torture. At the same time, the U.S. regime sought and got legislation that permits torture by assuring its secrecy and lack of legal recourse under the Military Commissions Act of 2006.

The United States did not export the techniques outlined in Kubark only to its special ally and former world colonial power—Britain. It also disseminated them to countries that became the battlefield of the Cold War—that is, the Third World. Nowhere is this better documented than in Latin America (Chomsky and Herman 1979).

The Cuban Revolution of January 1959 and Khrushchev's avowed support for wars of national liberation in January 1961 led the United States to view Latin America as the new battleground of the Cold War (Loveman and Davies 1997:20; Hilsman 1961; Rostow 1962). Soon after Khrushchev's declaration, President Kennedy announced the Alliance for Progress as the U.S. response. The idea was to fight communism in two ways: counterinsurgency and social support programs for the poor to make communism less attractive to them. The second method ensured the first. The Alliance for Progress raised expectations and threatened the local elites (Loveman and Davies 1997:23). Agitation by the masses led to crackdowns by Latin American governments. It also prompted large landowners and industrialists to hire private militias. Both the masses and the elites began to believe that governments could no longer govern. These trends culminated in a series of right-wing coups typically led by elements of the military. The age of the junta was the fruit of the liberal program of anti-Communism in Latin America.

Brazil, in 1964, was the first (Archdiocese of São Paulo 1986). Others followed. Soon, military dictatorships ruled most of South America. They used torture freely to come to and keep power. Many of the torturers learned their trade at the School of the Americas run by the U.S. Army in Panama. Now known as the Western Hemisphere Institute for Security Cooperation, it moved to Fort Benning, Georgia, in 1984. Prior to the U.S. Army taking over in 1963, it was the Latin American Ground School. Its purpose under all its names was to ensure U.S. influence among cadres of Latin American military, police, and state security officials. Kubark, its 1983 update, Human Resource Exploitation Training Manual, and subsequent editions put out by the Army were standard textbooks for students at the School of the Americas. They were withdrawn in 1991 because of adverse publicity (Haugaard 1997). Under actual conditions, Latin American officials augmented the psychological techniques favored by the CIA with physical violence. One reason for the addition was that torture did not serve a purely interrogatory function. It was part of regimes of terror. The juntas used assassinations, death squads, disappearances, and even genocide to rule the masses. These police state regimes made sure people knew they could expect torture if they came to the attention of the authorities.

Torture serves several purposes. Christopher Tindale (1996) identified a torture typology. Interrogational torture is used to extract information. Deterrent torture discourages (or encourages) a population regarding certain activities. Dehumanizing torture changes the victim's self-conception. For this last type—dehumanizing torture—Tindale adverts to Bruno Bettleheim (1979) and Primo Levi (1989), and their descriptions of the Nazi camps during the Second World War. Tindale explained that the purpose of dehumanizing torture is to "break people as individuals and change them into docile masses" (Tindale 1996: 351). His conception brings to mind the torture described in George Orwell's 1984. Elaine Scarry noted that torture's goal is betrayal as the torturer has "a covert disdain for confession." Therefore, confession is not the goal, as "[t]he nature of confession is falsified . . . one betrays oneself and all those aspects of the world— friend, family, country, cause—that the self is made up of " (1985: 29).

Perhaps a fourth type, or possibly a combinatory category, is what Daniel Rothenberg calls "public presentational torture," which he says is a form of state terrorism (Rothenberg 2003). His illustrative case is Guatemala, where a thirty-six-year history of internal armed conflict is called La Violencia. He couches the history in the Cold War and severe domestic inequity. Guatemala is one of the better-known targets of CIA intervention beginning with the regime change of President Arbenz in 1954. Jacobo Arbenz Guzman (1913–1971) served as president 1951–1954 through Guatemala's first ever universal suffrage election. United Fruit enlisted the assistance of the CIA, which initiated Operation PBFORTUNE. Later, the United States supported a line of dictators by, inter alia, training police in counterinsurgency and torture techniques at the School of the Americas. A tactic of state forces was to leave mutilated corpses in public places.

Counter-insurgency strategies, including the "the appearance of corpses bearing signs of torture" defined a situation of brutal intimidation and overwhelming violence: "the horror was so massive and so flagrant that it defied the imagination." The Guatemalan state's reliance on institutionalized human rights violations became the central mechanism of daily rule.

…

[T]orture defines the most primary component of an individual—his or her body—as a site for state action. This is done against the will of the individual and in a manner that deprives him/her of the most basic respect for autonomy, freedom, and self-protection. . . . [T]orture turns responsible government on its head . . . the state is transformed from being the key guarantor of social stability to an agent of intimate brutality.

(Rothenberg 2003:482)

What these displays left ambiguous was whether the person had been tortured or the body mutilated after death to suggest torture. In cases of actual torture, the torturers might have sought information from the victim, but not necessarily. As Elizabeth Stanley (2004:13) says regarding another regime supported by the United States, Chile under Pinochet. Despite the common idea that torture is used solely as a means to extract information, Chilean torturers often knew all about their victims' lives and used torture as a way to demonstrate the 'all-seeing-eye' and the power of the state. Officials engaged in torture to demonstrate to the victim and associates that they are watching, that they are in charge and can act at will.

This seems to have been the purpose at Abu Ghraib, because the torture revealed in the U.S. media in spring 2004 (Hersh 2004) was not part of interrogations. Erroll Morris' documentary movie, Standard Operating Procedure (2008) shows the main objective was domination and humiliation.

The Domestic Groundwork for Abu Ghraib

Torture regimes do not fall from the sky. Modern mass societies do not allow their state apparatuses to do just any old thing, including torture. The political system need not be democratic. The Nazi regime, even in wartime, had to bow to public opinion when it stopped its euthanasia campaign (Friedlander 1995) and released Jewish husbands of "Aryan" wives (Stoltzfus 1996).

The people have to be prepared. During the Cold War, the United States exported torture. It relied on proxy regimes to use the torture techniques they had learned from the United States. It tried to keep secret the pedagogical relation. In the last decades of the twentieth century, American public sensibilities changed. Mass incarceration, a policy of incapacitation, and increasingly punitive penal systems produced a public ready to consider, if not fully countenance, torture. As Ronald Crelinsten explained, "the torture regime must endeavor to ensure that it is reflected in all aspects of social and political life. . . . [T]he techniques used to train torturers . . . are but a reflection of a much wider process: the transformation of society" (2003:295).

An important part of transforming societies is transforming how people in those societies perceive them. How do Americans perceive America? How do they perceive one another? How do they perceive its main institutions? Before getting knee-deep in social-construction-of reality diversions (Berger and Luckmann 1966), it is useful to recall how Americans thought about the world—in say, 1945—and compare it to how they thought about it in 1950–1955. In a few years, and it took longer for some than others, the people Americans wanted to slaughter in 1945—Germans and Japanese—became bosom buddies (or at least confederates in the case of Japanese). At the same time, those Russian pals, Chinese innocents, and Korean victims were out to get Americans. This did not occur as part of some inchoate groundswell, a mystical sea change in the conscience collectif. Deliberate public policies brought it about. There is an essential ingredient. "A central feature of this reality construction is the creation of a dangerous enemy that threatens the social fabric. Laws are directed against this enemy" (Crelinsten 2003:296).

Beginning in 1933, Franklin Delano Roosevelt's presidency resonated with reassurance. He began his four terms in office with an inaugural address assuring Americans that we have nothing to fear but fear itself. After the Second World War, the preferred theme of political discourse shifted to inducing fear. The first project was the Cold War and Red Scare. Richard Nixon cobbled together the next project in his run for the presidency in 1968. He made crime in the streets a campaign slogan. The slogan coded racial antagonisms, political dissent against the Vietnam War, and a raft of lifestyle images roughly conveyed by sex, drugs, and rock-n-roll. Although the drug war and crime control measures leveled off during the Carter administration, they came back with a vengeance under Reagan. During the entire period beginning in the late 1960s, a backlash militated against social changes connected to the extension of civil rights as a broadly construed concept. These include antidiscrimination laws and policies based on race, gender, age, and disabilities along with exposure and eventual reduction of repressive government tactics such as surveillance and interference with political dissent. The backlash was a reaction that increasingly took the form of criminalizing deviant behavior.

David Altheide (2002) said fear is cumulatively integrated over time and in the process becomes associated with certain topics. Those topics are then associated with terms, as if there were an invisible hyphen. Eventually, the fear becomes implied and unstated. Altheide went on to link fear of crime with fear about major events, such as the 9/11 attacks. Especially since the mid 1960s, a growing fear linked outsiders and deviants to challenges to, and eventual loosening of formerly rock solid values and norms about, sex and gender, race, and America as the land of opportunity. A main part of the fear concerned crime. Specific discourses and public policies focused the unease arising from social change.

Over roughly the last thirty years, a discourse of fear in the United States has focused on crime. Such discourses trickle down from the top levels of ivory towers to popular culture outlets. They culminated in several books. Harvard academics such as James Q. Wilson and Richard J. Herrenstein (1985), revived a thinly disguised racist criminology rooted in a nineteenth century vulgar Darwinism of Cesare Lombroso. Michael Gottfredson and Travis Hirschi (1990) tiptoe around a biological argument opting for parent blaming instead. They asserted that parents are to blame for delinquent children, because they fail to instill self-control. The lack of self-control does not just manifest as law breaking. It includes other acts they say are equivalent to crimes such as smoking, drinking, and out-of-wedlock sex and pregnancy. The resemblance to culture of poverty ideas of Oscar Lewis (1961 and 1966) and Daniel Patrick Moynihan (1965) is not happenstance.

Paralleling these pseudoscholarly discourses, public policy poured resources into policing, crime (especially drug control) proliferating criminal laws (especially federal crimes) (American Bar Association 1998), and incarceration (Mauer 2006). All the while, popular media kept pumping up fear of criminals who were inevitably portrayed as impoverished minorities—the dangerous classes (Beckett and Sasson 2000; Best 1999; Glassner 1999; and Kappeler and Potter 2005). Two results follow that are essential for a regime of torture: first, acquiescent public opinion, and second, a supply of potential torturers. Physician and medical ethicist Steven Miles noted, “a torturing nation uses fear, persuasion, and propaganda to secure the assent to torture from society in general and from members of its legal, academic, journalistic, and medical professions” (Miles 2006: xii). He went on to observe that “[m]oral responsibility in a torturing society is broadly shared” (p. 6).

In her critique of the ticking-time-bomb excuse for torture, Jessica Wolfendale (2006) pointed out that most torturers are soldiers or military police trained in elite units. Among Western imperialist states, she cites the British and Australian Special Air Services (SAS) and the U.S. Army’s Delta Force and Green Berets as illustrative. She explains that the basic training for such units includes brutalization, which inures the soldiers to their own suffering, and by the same token, that of others. Further, their training involves interrogation, survival, and resistance. Citing the Web site for the British SAS, http://geocities.com/sascenter/train.htm, Wolfendale explained that the training includes blindfolding, sleep deprivation, stress positions, reduced food and water, and noise, matching the “five techniques” that the European Court of Human Rights found “inhuman.” Consequences for trainees are stressful and can produce mental disruption such as dissociation. Wolfendale cited the John F. Kennedy Special Warfare Center at Fort Bragg, http://training.sfahq.com.com/survival_ training.htm.

Torture also needs routinization, as Herbert Kelman (1993) called it. Torturers have to be socialized in the profession beyond learning particular torture techniques (Conroy 2000; Huggins et al 2002). Torture requires institutionalization, a network of organizations cooperating to share information, methods, and personnel (Arrigo 2004). Cold War counter insurgency prepared the national military and intelligence apparatuses. Crime hysteria and the rise of a network of criminal justice apparatuses prepared public opinion. Both lead to social control of the nonmarginal parts of the populace as they prepare people to accept control and put control apparatuses in place (Chevigny 2003). Finally, the expansive criminal justice apparatuses created a pool of potential torturers. The crime control industry began growing by leaps and bounds in the 1970s (Chambliss 1994; Christie 1993; Gordon 1990). The growth spurt had a reciprocal relation to political racial polarization (Beckett 1997; Edsall and Edsall 1991) Its model was Nixon’s Southern strategy engineered by Kevin Philipps (1969). It also managed to control a burgeoning pool of redundant workers (Davey 1995; Parenti 1999). As the welfare apparatus shrank, crime control replaced informal social controls or capillary control mechanisms as Foucault put it (1975). Crime control drew down potentially dangerous concentrations of minority youths in central cities, removing them to prisons in rural areas (Wacquant 2000). Perhaps the main contribution to constructing the professional institution of torture in the United States was the production of a supply of personnel trained and socialized to use force to control others. Most were relatively unskilled workers, the common laborers in the vineyards of torture, such as Corporal Graner of Abu Ghraib infamy who had been a prison guard in civilian life (Williams 2006).

The Vietnam War ended in 1975, just about the time the crime control industry took off. The volunteer military replaced the draft, resulting in a self-selected cohort of youths who favored employment in total institutions (Goffman 1961). The military, police, and corrections establishments crossrecruited, and their personnel entered revolving-door employment among the various uniformed organizations. A number of anecdotal accounts link employment in U.S. prisons with personnel assigned to prisons in Iraq and Afghanistan (Gordon 2006; Finkel and Davenport 2004; Bastian et al. 2004). As yet, there is no systematic study of brutal practices in U.S. civilian law enforcement and corrections with torture in overseas operations. Nonetheless, Peter Kraska and Victor Kappeler (1997) have studied one part of the obverse—the militarization of police. The central point is that police, prisons, and the

military are all armed control organizations. Their personnel are schooled in obedience. When their commanders expect or allow for brutality, they will produce it (Cornwell 2006).

Imperialism and Torture

The populism of fear is an enormously successful policy because it serves to intimidate and demonize some, and at the same time to discipline the rest who are taught to be afraid of those demons. Since 11 September 2001, the focus has shifted toward international crime. It is easy to demonize foreign terrorists as criminals, to combine the fear of crime with the fear of the foreign invader.

(Chevigny 2003:81)

Paul Chevigny's analysis in the preceding quotation needs elaboration. The U.S. government mobilized popular fear against external and internal communists during the Cold War. The Nixon political machine mobilized and focused fear of crime by linking it to traditions of American racism and Puritanism. Ronald Reagan's political ploy directed that racism and religious intolerance outward, toward so-called international terrorism in Iran and Lebanon, but he linked it to his determination to destroy the Soviet Union as the ultimate source of all terrorism (Evans and Novak 1981; Wills 2003). The collapse of the Soviet Union created a crisis in the U.S. national security state with its massive military and related industries. During the 1990s, the United States pursued a policy of gradualism in extending its hegemony. No one enemy could give it focus. For a while, international crime was a contender—as John Kerry argued in his 1997 book, The New War: The Web of Crime That Threatens America's Security. Four years later, attacks on the World Trade Center and Pentagon rescued the U.S. security state from its doldrums.

Terrorism combines all the elements tapped by preceding governments. It has foreign and domestic enemies who are racially and religiously set off. The war on terrorism is both a military and internal security endeavor. The crime control apparatus can be folded into a Homeland Security Department to extend control over Chevigny's demons and the mass of Americans. Anyone who has traveled by air since 9/11, has experienced the control firsthand. All this security tumult blurs the extension of U.S. imperialism. The target of that expansion has been central Asia. U.S. military bases now dot southeastern Europe, which had been Soviet satellites, and new states surrounding the Caspian and Aral Seas, which had been part of the Soviet Union. Of course, the best known are the U.S. invasions of Afghanistan and Iraq. All of these imperialist forays are justified by the Global War on Terrorism.

The U.S. terror laws are linchpins articulating this global war on terrorism. Imperialism is what connects them. The Global War on Terrorism was not inevitable. Without the attacks of 9/11, torture would still be covert and limited to a few selected individuals, the lumpen masses would still be fodder for the domestic crime control industry, U.S. imperialism would still be extending global hegemony through neoliberal economic institutions and collaborative but contained military intrusions such as in the former Yugoslavia. But 9/11 did occur. The United States seconded by Britain and Australia—other countries participated because of arm-twisting and opportunism—embarked on a twenty-first century imperial expansion. Led by the United States, those countries generated mountains of terror legislation. U.S. terror legislation has added laws every year since the USA Patriot Act in November 2001. At the same time, the United States used torture immediately with almost punctilious attention to legal justifications—for example the Yoo memoranda of September 25, 2001, January 9, 2002, and August 1, 2002; the Bybee memoranda of January 22, 7 February, and August 1, 2002; the Gonzales memorandum of January 25, 2002; and the Ashcroft memorandum of February 1, 2002 (Greenberg and Dratel 2005). U.S. forces tortured prisoners in Afghanistan and then Iraq, but covertly until the revelations of the Abu Ghraib photographs. Nonetheless, the news accounts of John Walker Lindh's capture contained enough information to lead attentive people to learn about the torture. A video showed a CIA officer questioning him, threatening his life, making medical attention contingent on confession and information, and news accounts said he had been transported naked in a freezing plane to the United States (Doran 2002; Stanley 2001).

Torture is a form of what Mark Brown (2002) called penal excess. Brown used the British Empire in nineteenth-century India as his case in point. Two examples illustrate: execution by cannon of the Sepoy mutineers/revolutionaries of 1857 and a law of the Indian Penal Code of 1871 criminalizing certain tribes without proof of particular criminal acts.

The execution by cannon was terrorism. It was a spectacle and terrifying retribution to any who would defy British authority. Brown described it. One British officer, Sir John Lawrence, wrote "Our object is to make an example to terrify others" (Brown 2002:408). Citing Malleson (1897: 367–368), Brown gave the following quotation of Sir John: "I think sufficient example will then be made. . . . The Sipahis will see that we punish to deter, and not for vengeance. . . . [O]therwise they will fight desperately to the last" (Brown 2002:409). Brown's point is to show the modern state using penal excess as exemplary punishment. Deterrence relies

on terrifying spectacle much as modern deterrence uses long prison terms, capital punishment, three strikes laws, sexual predator laws, and so on— a far cry from Cesare Beccaria's (1764) minimalist brand of punishment: to punish only enough to deter.

The next example fits better as analogy with current terror laws, which criminalize membership and association along with intention, rather than illegal acts. The Criminal Tribes Act of 1871 targeted traditional, seminomadic tribes that fit Hobsbawm's (1981) definition of bandits—groups

opposing central authorities and fitting with social structures to keep traditional values and norms. The 1871 Act required tribal registration, and confined them to their home villages or forcibly settled them in special areas. It resembled the reservation system for American Indians. Three time violation of the Act carried a mandatory seven-year prison sentence or penal transportation. It precluded the state having to prove guilt for a particular criminal act.

Brown makes an explicit comparison. "The members of the USA's underclass represent a contemporary analogue of the 'suspect' groups brought under the criminal tribes policy in 19th-century India: groups who stood outside and in opposition to the new extractive colonial economy" (Brown 2002:417). He went on to cite a campaign platform of George W. Bush as the governor "of the killing state, Texas" (418). A more precise analogy, however, is with U.S. treatment of its native inhabitants in the nineteenth century and also with current treatment of outsiders associated with terrorism. The latter group includes ethnic-religious minorities within the United States who are Muslim, Near or Middle Eastern, or otherwise associated in collective imagery with such social categories. The foregoing description is cumbersome and even vague, because it captures a sensibility and set of images and icons instead of discursively defined categories. In addition, the 1871 Act and British policy resemble U.S. laws and policies about those groups and individuals outside the United States who are also associated with terrorism under law. It includes "Al Qaeda," questionably any sort of organization, perhaps a network, but most likely merely a movement. The U.S. terror laws target people who fall into these categories. Within the United States, they are liable to prosecution and imprisonment. Outside U.S. borders, they are subject to assassination or imprisonment and torture.

Another example of imperial policy is that of the British designation of the Mau Mau as a terrorist organization in 1950s Kenya. "To define 'terrorism' or 'terrorist acts' as crimes creates a process of reification which may produce undesired and unanticipated consequences. . . . The a priori definition of 'terrorism' as evil assumes . . . that terrorism is a zero sum game" (Anderson-Sherman 1982:87). Arnold Anderson-Sherman traced British imperial policy and the Kikuyu's response, resistance, and adaptations to it. He argued that it was the terror laws themselves that portrayed these Kikuyu responses as terrorism, and brought about violent conflict in 1950s Kenya. He concluded by observing that the British-Kikuyu conflict might have been resolved otherwise "what is needed is less reification of particularistic self-interest and more adequate diagnosis of the alternative possibilities contained within particular historical contexts" (Anderson-Sherman 1982:99).

The reification of terrorism and terrorists is analogous to the reification of criminality. The U.S. criminal justice system reifies and recursively defines crime as something criminals do. Criminals are members of subordinate social categories who are redundant to the production and profit-making political economy. Criminals, according to these definitions, are also statistically associated with racial minorities. The infamous Willie Horton television ads during the 1988 presidential campaign capture in iconic form these reifying processes. Criminalization processes in the 1970s aimed at controlling insurgent masses in the United States who threatened the structural stability and social hierarchy. Part of the criminalization process molded and manipulated public opinion to redirect fears toward a criminal class and support expansion of state control, especially police and corrections. Criminalization of terrorism beginning in the 1980s mirrored the criminalization process begun ten years before. Terrorism laws built on fertile ground. They combined a well-established public fear of the internal-external enemy of communism with a colonialist racism deeply embedded in America's history. After the attacks of 9/11, terror laws and terror fears coincided with a U.S. imperialist thrust into central Asia. Those in the way became subject to the terror laws.

Torture had largely disappeared from the U.S. criminal justice system by the 1970s, mainly because of U.S. Supreme Court decisions extending Bill of Rights restrictions to state governments. Another part of the U.S. state went in the other direction. The U.S. military and intelligence apparatuses had been building a covert torture capability since the end of the Second World War. First developing modern torture techniques, they then exported and taught them as part of Cold War imperialism in the Third World. Coming full circle, the CIA has used extraordinary rendition to countries practicing torture, often learned from the United States (Grey 2006). By the beginning of the twenty-first century, the United States had techniques and a leadership cadre of torturers in place.

Imperial expansion and invasions brought about a convergence of organizations, personnel, knowledge, and law to produce the torture regime in the United States. It included a public prepared for compliance, personnel in police and corrections for deployment in conquered territories, and terror laws that, arguably, legitimized torture procedures.

Public Opinion and Torture

The American public may have been prepared for compliance with a regime of torture, but the relation between the public and government is not a one-way street. In mass societies the relation between public opinion and the government is dialectic. The originator of public relations,

Edward L. Bernays, recognized and exploited the phenomenon. According to Bernays, shaping public opinion requires constant monitoring, and it is always a matter of shaping, not creating (1934, 1955). With the advent of universal White suffrage in the United States after the First World War and Nineteenth Amendment, racial minorities remained largely excluded until the 1965 Voting Rights Act, when managing and measuring public opinion took on crucial political importance. Polling became a new profession and grew increasingly scientific. While never completely capturing what people believe, modern poll results reveal a public that interacts with government policies and practices.

In her column in The Nation, Patricia Williams (2001 cited in Welch 2006) referred to a CNN poll taken shortly after 9/11, which showed that 45 percent of Americans would not object to torture if it provided information about terrorism. Public opinion has changed little subsequently. In contrast, more than 80 percent of people in Western Europe reject torture under any circumstances (Pew 2007:25; World Public Opinion 2008). Revelations of torture—including graphic imagery from Abu Ghraib, televised on 60 Minutes II April 28, 2004—became public in the intervening years. Nonetheless, the stability of sentiment suggests a deep-seated viewpoint. These data raise several questions. First, why do so many Americans accept torture? Second, how do such sentiments fit with democratic values? Third, what has been the dynamic between the sentiment and the practice of torture by military and intelligence apparatuses?

October 7, 2001, Karl Rove, President George W. Bush's political guide, conveyed a message to him from Roger Ailes. Ailes had been the political adviser of the senior Bush, George H. W., and was at the time head of FOX News. He told the president that the American public expected their president to use "the harshest measures possible. Support would dissipate if the public did not see Bush acting harshly" (Woodward 2002: 207). The incident reveals a crucial third actor, articulating the relation between the government and the people—mass media. The media are more than a simple conduit. The media shape and channel public opinion. The government relies on the media to build and sustain compliance.

The media designated the attacks of 9/11 on the World Trade Center and Pentagon as an "attack on America." The government designed a war on terror as its reaction.

The war on terror . . . is a violent rejection of the unthinkable and intolerable. It is a disgusting revulsion against something (that America calls 'terror' or 'evil') that does not make sense, that was/is still horrifying, that allegedly comes from 'elsewhere' (although it was and may still be within 'us'), that cannot be identified as a traditional object of geopolitics. . . . As media pundits and intellectuals of statecraft have reminded Americans, the war on terror is a different war, with no really distinguishable home and away fronts.)

(Debrix 2008:75)

With erasure of a distinction between home and away fronts, an irrational revulsion, free-floating fear, and pervasive rage, the government embarked on a war against evil. The "attack on America" represented a mystical evil. The government called on the people to support a messianic crusade (Welch 2006:8). The post-9/11 war on terror resonated with, and built on, fear of and war against crime. Just as the crime wars of the preceding decades shifted the focus from crime to criminals (Welch 2006:41), so the war on terror shifted from the problem of terrorism to evildoers employing terrorist tactics. "[T]he war on terror is a sustained illusion and mythic cleansing—of terrorists, of evil, of our own fear" (Welch 2006:61 citing Lifton 2003). In this media-fueled and government-orchestrated crusade, mass psychology turns away from focused, rational anger against a threatening enemy—such as the mass anger against Japan following Pearl Harbor. Instead, the mass psychology in the age of terror has become narcissistic rage. The government and media turned the attacks of 9/11 into attacks against the collective self.

Aggression, when employed in the pursuit of maturely experienced causes, is not limitless. However vigorously this aggression is mobilized, its aim is limited and definite: the defeat of the enemy who blocks the way to a cherished goal. As soon as the aim is

reached, the rage is gone.

The narcissistically injured on the other hand, cannot rest until he has blotted out a vaguely experienced offender who dared to oppose him, to disagree with him, or to outshine him. It can never find rest because it can never wipe out the evidence that has contradicted its conviction it is unique and perfect. This archaic rage goes on and on and on. Furthermore, the enemy who calls forth the archaic rage of the narcissistically vulnerable is seen by him not as an autonomous source of impulsions, but as a flaw in a narcissistically perceived reality. The enemy is experienced as a recalcitrant part of an expanded self over which the narcissistically vulnerable person had expected to exercise full control.

(Wolf 2001:2)

Consider how the mass media might otherwise have designated the 9/11 attacks. Instead of an "attack on America," it could have been an attack on the command and control center of world capitalism or international business and corporations and an attack on the command and control center of global militarism or the central U.S. military headquarters.

Such constructions would militate against narcissistic rage, and encourage reasoned and focused aggressive action. In contrast, the war on terror has become endless and global in which any means, including torture, are justified.

Darius Rejali identified three uses of torture in democracies: national security, civic discipline, and judicial. These uses correspond to the three main purposes for governments' torture: intimidation, coercion, and interrogation (2007:22–23). Rejali argued that democracies rely on stealthy torture that does not leave marks to hide the torture or at least make it deniable. Most techniques used by U.S. military and intelligence personnel in the war on terror favor the stealthy type of torture. Stress positions, water boarding, and sensory deprivation, for instance, leave no marks. There are no images of mangled bodies, and no disfigured torture victims to accuse their torturers.

Americans can accept torture—and even those who reject it are not trying to overthrow the government to stop it—because U.S. government officials keep assuring the public that America does not torture. "The gloves are off," but the bruises are invisible. The public can know that the government is using the "harshest measures possible" without having to confront their reality. Mass narcissistic rage can be vented without shame or guilt.

Securing Fear through Torture

Torture and terror (and counterterrorism) go together. Historically, terror legislation and torture have coincided, as in Latin America in the 1970s and 1980s. Countries that have used torture as part of their justice systems—for example Turkey, Syria, China, and so on—also have fairly extensive terror laws. In contrast, those countries and political confederations, such as the European Union, that have eschewed reified terror legislation, have not employed torture.

The relationship between terror laws and torture is not a simple causal relation. One does not cause the other. Both are indicators of state control. Moreover, in mass societies such as the United States, communications media play a crucial role. Government, public consciousness, and media produce state policies. Recent U.S. history shows how this dialectic resulted in a moral panic (Cohen 2002) about crime in the late twentieth century, which overlapped and blended into a moral panic about terrorism.

Expansion of state control is a definitive part of imperialism. When states embark on imperialist projects, they employ terror legislation and torture. Security states, built in response to perceived threats against the social and political order, often use both terror laws and torture. Nonetheless, the history of Latin America links antiterrorism crusades and torture to U.S. imperialism. The imperialist effect may not include the government using torture but the result of imperialist influence by an outside force. Racism is also a common, though perhaps not necessary, factor. Racism helps to mark social categories as potential terrorists. It also promotes the dehumanization and distancing that is so much a part of the social psychology of torture. Of course, it is especially central to the U.S. case as part of the long history of torture of African Americans and Native Americans.

Writing in 1946 in an editorial entitled "The Century of Fear" in the once underground newspaper, Combat, Camus explained.

Our twentieth century is the century of fear. . . . My view, however, is that rather than blame our fear, we should regard it as a basic element of the situation and try to remedy it.

In order to come to terms with fear, we need to understand what it signifies and what it rejects. It signifies and rejects the same fact: a world in which murder is legitimate and human life is considered futile. . . . Before we can build anything, we need to ask two

questions: “Yes or no, directly or indirectly, do you want to be killed or assaulted? Yes or no, directly or indirectly, do you want to kill or assault.

(Camus 1946:257–259)

In The Origins of Totalitarianism (1958), Hannah Arendt proffered the thesis that aggressive warfare against external foes coincides with totalitarian regimes’ treatment of their domestic population—that is, the regimes carry out warfare against both. Michael Stohl, in part, building from Arendt’s idea, carried out a historical study comparing domestic violence in the United States with states of war in which it participated. He found an unmistakable pattern: increased political violence at home accompanies warfare abroad (1976). Repressive political violence against dissenters and rebels played handmaiden in the United States during the Vietnam War. The U.S. military and intelligence apparatuses used torture and facilitated its use by allied South Vietnamese. Police used torture against dissident racial minorities in the United States. The case of the Black Panthers—accused of a 1973 bank robbery in San Francisco—is but one example. Convicted by tortured confessions, a federal court reversed the convictions (Algeria et al. 2007). The police surveilled, harassed, and jailed White dissidents. They tortured and murdered Black dissidents, as in the Cook County State Attorney’s Office murder of Fred Hampton and Mark Clark in Chicago, December 4, 1969 (Alk 1971, Eyes on the Prize II:13). Torture marks minorities and secures the fear of majorities.
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2.4: Surveillance and Control

It's not easy to believe in the government. But we have to believe in something. We need to come together to make the government better, to trust it more. I have to take on my responsibility independent of whether I believe in the government or not. We have to meet our responsibility. So, I see this program independently of whether the authorities do what they're supposed to. We as citizens should fulfill our obligation. At the end of the day, we have to think of the future, in our welfare, independent of the difficulties. And that means acting with values, involving ourselves in social activities and programs. Without participation, it would be worse for everyone.

—Zacatecas resident registering with the REPUVE

6.1 THE MORE THINGS CHANGE…

Having left office at the end of 2012, Felipe Calderón and his crusade against insecurity have passed from the public stage in Mexico. But the problem of insecurity has not. During his campaign and first years in office, Enrique Peña Nieto sought to shift the public's attention away from security issues and toward economic and social policy. The hallmark of this effort was the Pact for Mexico, an accord signed by the president and leaders of the three major political parties to put aside political differences and move the country forward through cooperation in five key areas. These included agreements for (1) "a society of rights and liberties," which "achieves the inclusion of all social sectors and reduces the high levels of inequality that exist today between the people and regions of our country"; (2) "economic growth, employment, and competitiveness," whereby the "state should generate the conditions that permit for economic growth that results in the creation of stable and well-paying jobs"; (3) "security and justice," whose "principal objective… will be the recovery of peace and liberty to diminish violence"; (4) "transparency, accountability, and combatting corruption," which recognizes that "transparency and accountability are two tools of democratic states to elevate the confidence of citizens in their government"; and (5) "democratic governability," in which "the political plurality of the country is a undeniable reality derived from a long and incomplete process of democratic transition."[1]

While the pact was criticized as an antidemocratic measure bypassing the authority of the Congress,[2] it did help set a different tone for the new government. And the Peña Nieto administration built upon the pact by passing education reform aimed at increasing assessment of student learning and teacher training; telecommunications reform seeking to break media monopolies; and energy reforms designed to modernize the oil sector by privatizing Mexican Petroleums (PEMEX), the state-owned oil company that is a symbol of national identity dating back to Lázaro Cárdenas's nationalization of the country's oil reserves in 1938.[3]

Reality, however, has not followed the president's script. According to federal crime statistics, homicides have supposedly decreased since Peña Nieto took office. But independent reporting has found the rate consistent with the Calderón era, with over fifty-seven thousand deaths recorded in the first twenty months of the Peña Nieto administration.[4] And if the Pact for Mexico succeeded in capturing the public's attention during this time, the disappearance of forty-three students from the Raúl Isidro Burgos Rural Teachers' College of Ayotzinapa in September 2014 dramatically disrupted the federal government's efforts to manage the public's perception of insecurity. The kidnapping and presumed assassination of the young men who had dedicated themselves to careers in teaching, carried out by the local mayor in conjunction with police forces and a local crime syndicate, rekindled the wrath of a public fed up with the state's complicity in crime. The crimes, together with the inability of state authorities to locate the students' bodies, fueled demonstrations across the country under the banner of "Fue el Estado!" (It was the State!). In response, Peña Nieto did what Felipe Calderón and Vicente Fox had done before him: he announced the creation of a new federal police force—the National Gendarmerie—styled after France's and Chile's militarized national police forces, which would regain territory lost to organized crime through the increased use of cutting-edge technology and intelligence gathering.[5]

Outside Mexico, meanwhile, adoption of surveillance technologies to combat insecurity continues apace. Regionally, the problems of violence and organized crime plaguing Mexico exist in other Latin American countries, and national governments have turned to anonymized mobile device reporting, vehicle control systems, integrated telecommunications networks, video surveillance cameras, and the like in response.[6] In the United States, the killing of innocent people by drone strikes in the Middle East, ongoing revelations about the National Security Agency's massive domestic and international spying operations, and the use of excessive force by local police forces have drawn criticism. This criticism has prompted the federal government to define the use of drones for targeted killings,[7] limit domestic data collection,[8] and reduce the transfer of used military equipment to domestic police forces.[9] But reliance on surveillance technologies against insecurity remains. Globally, national governments use surveillance

technologies in many of the same applications described in this book, and authoritarian regimes buy wares from US, Canadian, and European companies to monitor and punish dissenters who are defined as security threats.10

With these trends as a backdrop, what lessons does this examination of the Calderón administration's RENAUT, CEDI, and REPUVE programs hold? This concluding chapter attempts to answer this question by reviewing four thematic binaries central to understanding surveillance technologies and the state: visibility/tactility, strength/weakness, determinism/emergence, and fatalism/engagement. These ideas, taken together, underscore that while surveillance technologies might envision a future of tighter governmental control through grabbing hold of the materiality of society, the structure of society that has taken shape over the course of modernity ensures that a space for political action remains, which opens up opportunities for the citizenry to shape the fate of surveillance technologies and governance in the future.

6.2 VISIBILITY AND TACTILITY

Thinking on surveillance tends to privilege sight as a human sense. This is understandable. A fairly recent term dating back to the French Revolution's Reign of Terror, when surveillance committees were formed to monitor suspicious people and political dissidents, "surveillance" derives from the French prefix sur (over) and root veiller (to watch) and means "to watch over."11 It was in this sense that Michel Foucault used the word in Discipline and Punish (whose French title is Surveiller et punir), the seminal work that helped popularize the term in the academy.

The emphasis on visibility and sight has endured in our imaginations. Recent scholarship in surveillance studies has shifted this understanding, however, by describing how information technologies such as radio-frequency identification (RFID) tags, biometric cards, mobile devices, personal computers, and the networks that link these devices have transformed surveillance into "dataveillance."12 The histories of the mobile telephone registry, personal identity card, and automobile registry in Mexico provide detailed case studies of the technical and administrative procedures required to collect data on communications, personal identity, and mobility. And what these cases show is that surveillance technologies operate not only through visibility and watching over people, but also through tactility and taking hold of and remaining in touch with the materiality of both people and things. Creating a national identity card based on biometric data requires that the human body be probed and contacted in different ways. Fingers need to be touched and recorded. Irises need to be scanned. These data are then encoded into bar codes and other formats that are stored both in the card and the digital databases of the government. Those databases of the state must then be integrated to eliminate redundancies. Creating a national automobile registry requires that the body of the car be examined, inspected, and touched in order to record three instances of a vehicle identification number inscribed on it. That information is then scanned into government databases and inscribed into RFID tags that are applied directly to vehicles' windshields. The public and private databases related to automobility are then merged to ensure "legal certainty."

This emphasis on touch and adhesion is why it is meaningful to speak of prohesion rather than surveillance. If surveillance is understood as "watching over people" for the sake of affecting their behavior, the histories of surveillance technologies in Mexico reveal an operation in which authorities use technological means to manipulate the stickiness or viscosity of the things that energize social life so as to better order society. With these technologies, authorities in Mexico continue an effort dating back to the founding of the nation to manage the materiality of communications, identification, and mobility.

The distinction between visibility and tactility is important for understanding the logic of governmental power today. For the state authorities of the eighteenth and nineteenth centuries studied by Foucault, surveillance and the constant monitoring of people allowed behaviors to be observed, comparisons between individuals to be made, ranks to be assigned, and knowledge to be generated that formed the basis of diverse disciplines or fields of social-scientific expertise. "In short," Foucault noted on surveillance, "it normalizes."13 Through this operation, surveillance provided the basis for discipline, for ordering the chaotic masses of the natural and social worlds into individualized subjects and units. For federal authorities in Mexico who sought to realize the National Registry of Mobile Telephone Users (RENAUT), Citizen Identity Card (CEDI), and Public Registry of Vehicles (REPUVE), prohesion enabled registers of the objects and subjects circulating in society to be generated, evidence of their existence to be recorded, a connection to their materiality to be established, and comparisons between those things and officials records to be made. This is not a power interested in individualizing and normalizing the masses, as those individuations have already been made. It is rather a power seeking to match those objects and subjects that circulate in society with the data that exists about them and to localize them or ascertain their presence at a particular time and place. Prohesion, then, allows for the

authentication of both people and things. And by this operation, prohesion provides the basis for security, for holding onto or preserving the order of subjects and objects in the world as it is.

The distinction between discipline and security has been drawn before, if not in these terms. Foucault already in 1978 described security as a third form of power distinct from sovereign and disciplinary power.a What Foucault termed security can be equated to what Gilles Deleuze referred to as "societies of control," where "we no longer find ourselves dealing with the mass/individual pair" present in the disciplinary society—"individuals have become 'dividuals,' and masses, samples, data, markets, or 'banks.'"14 The dataveillance technologies of the control society are used to "social sort"15 individuals in countless social settings: safe/legitimate and dangerous/illegitimate travelers at borders,16 desirable and undesirable citizens on the streets,17automobility and pedestrian mobility at urban intersections,18good risks and bad risks for criminal rehabilitation in courts and prisons,19 and so on. In Mexico, the phone registry, personal identity card, and automobile registry were launched with security as the explicit goal. Authorities wanted to sort between legitimate phones and stolen devices, suspicious and reputable individuals, and dubious and trustworthy motor vehicles.

But if this has been said before, examination of the Mexican government's attempts to implement prohesive technologies raises additional points. Significantly, discipline and security exhibit different concerns on the part of authorities relative to the worlds they look to govern. Discipline entails a missionary logic of transforming and ordering an external world thought to be defined by chaos, disorder, and danger. In the face of the plague, the healthy individual can be created. Out of the unimpressive military recruit, the efficient soldier can be crafted. From the untrained child, the educated student can be molded. From the common criminal, the reformed citizen can be made. Through the artful application of disciplinary techniques—enclosure, partitioning, functional sites, ranks, examinations, time tables—whatever mass of social or natural material can be broken down and remade into individual, productive units. Security, in contrast, carries a custodial logic of preserving that order or advantage that has been won over the world. In the face of terrorist or criminal risk that would disrupt the social order, the terrorist can be sorted out to preserve the status quo. In the face of environmental risk that would threaten the natural conditions necessary to maintain the population, the pollutant can be identified and neutralized to protect the natural order. In the face of disease risks, the infected person can be isolated to maintain the health of the population as a whole. Through the artful application of security techniques—the recording of identities, the tagging of bodies, the monitoring of information, the analysis of statistics—whatever collection of ordered elements can be preserved from risks and threats.

A conservativism is present with security, a fear or anxiety of loss, that is absent with discipline. Discipline is oriented outward and toward the future; it sets out into the world to colonize and conquer. Security is oriented inward and toward the present;20 it sets up apparatuses to keep the world as it is. In contemporary society, a culture of insecurity reigns, which produces "the insecurity subject" who "is afraid but can effectively sublimate these fears by engaging in preparedness activities."21 In Mexico, the context of insecurity breeds a fear that automobiles can easily be stolen, that mobile telephones can be taken and used to extort money, and that family members can be kidnapped. Security measures are intended to provide the confidence that individuals will be able to maintain their hold on these valued items and their place in this valued social order.

More importantly, the distinction between surveillance and prohesion illustrates how discipline and security differ with relation to subjects. At its core, discipline involves subjectification—creating enclosures, partitioning people, and erecting functional sites where constant surveillance provides the means for shaping the human soul and creating the subject. Mexican authorities in the early twentieth century pursued roadway safety by responsibilizing motorists, by requiring them to pass driving tests, mark registration numbers on their vehicles, and carry infraction booklets to enable monitoring by police officers. But security is largely indifferent to human subjectivity. At its core, security involves conservation—creating inventories of things, tagging each one, and keeping them monitored through prohesion to protect the social order that modernity has brought forth. Mexican authorities today pursue automotive security by certifying motor vehicles, inspecting their vehicle identification numbers, and tagging them with RFID chips to automate monitoring by electronic scanners.

In contrast to discipline and surveillance, security through prohesion casts its focus beyond the human subject and its soul to the materiality of things that underlie collective agency in society. To stop the terrorist or criminal, security through prohesion would disable the automobiles, phones, and weapons that enable wrongdoing. Such a strategy matches what has been termed "targeted governance,"22 where problems such as alcoholism are managed through drug interventions that target specific aspects of the person's biological being rather than more holistic (and complicated) interventions that seek to discipline the self. Prohesion

combats crime through the targeted governance of telephones and cars rather than more holistic interventions against the norms and conduct of persons.

A certain distrust of the human subject is detected here—individuals cannot be trusted to preserve the social order themselves. As Benjamin Goold has noted, “The increased use of surveillance technologies might send a particularly negative message to members of the public about how the state views them and the extent to which they can expect the state to trust them.”23If everyone is a suspect, the simplest way to secure society is to connect the circuits of control directly to the materiality of collective agency.

As the case studies of monitoring programs in Mexico demonstrate, this distrust extends to the state itself. In addition to adhering sentinels to the materiality of collective agencies, prohesion also attempts to integrate the state agencies that have emerged over the course of modernity to govern society. State authorities in charge of telecommunications, tax rolls, automobile licenses and registrations, voter rolls, population rolls, and so forth are made to cohere to one another to improve the state’s hold on collective agency. But whereas the “interoperability” and “integration” of monitoring systems24 are often perceived as an indication of the potency of dataveillance, they here speak to the lack of trust in authorities by authorities.25 In Mexico, this lack of trust is pronounced. State officials openly say that police officers and other state employees cannot be trusted to carry out the law and protect the social order.26 The telephone registry, personal identity card, and vehicle registry are ways in which the governance of telecommunications, personal identity, and automobility can be streamlined to increase efficacy. In a sense, then, prohesion evidences a belief that humans, be they the governed or the governors, simply cannot be entrusted with that which security aims to preserve.

As Foucault noted on multiple occasions, the presence of security as a new mode of power does not signify the passing of discipline or sovereign power. They coexist. Nevertheless, the shift to security with prohesion as the means for carrying it out would have serious consequences. Operating by attaching to the substance of our daily lives, prohesion can be particularly invasive. Personal privacy is under assault in various ways under the new surveillance, as the details of our lives get collected by private companies specializing in data management, are traded between public and private entities, or are hacked by digital criminals. Security can also be unjust. The poorest and most vulnerable in society are surveilled the most.27 As a consequence, the divisions between the haves and have-nots are reinforced, an outcome that aligns with the conservative logic of security to preserve the social order.

In addition to invasions of privacy and the deepening of social inequalities, prohesion reveals a further, more worrisome dimension of security. In its aversion to human subjectivity, prohesion threatens the individual subject. Discipline sought to mold human subjectivity through constant attention to the minute details of people’s lives. It represented a culmination of sorts in a “great tradition of the eminence of detail, [in which] all the minutiae of Christian education, of scholastic or military pedagogy, all forms of ‘training’ found their place easily enough” in the disciplinary society.28 Security, however, disregards the toilsome, costly, mundane work of keeping watch over people in favor of simply attaching to the materiality of society. As a result, the formation of the subject is no longer a priority. Others have noted an analogous dynamic in speaking of the “data doubles” and “doppelgangers”29 that dataveillance creates and acts upon in place of physical, autonomous subjects.30 As Charlotte Epstein has put it, “When the human body is no longer so clearly upheld as the recipient of rights, as the subject of politics, it is not so clear that it is anything more than just a living object, or indeed an animal-to-be-managed.”31 In security, people are reduced from political subjects to physical bodies to be administered.

Beyond this, basic elements of the liberal political order designed to promote subjectivity find themselves under assault in security. In attempting to secure the social order through materiality rather than subjectivity, prohesion alters the individual’s grip on the world in subtle but fundamental ways. For one, choice is moderated by mandatory actions that are required in the security society. The REPUVE requires motorists in Mexico to enroll in the automobile registry and adhere RFID tags to their vehicles. The CEDI requires citizens in Mexico to possess personal identification cards. And the RENAUT requires mobile telephone users in Mexico to register their phone numbers with the government. The cost of not doing so is the risk of not being able to access key services central to daily life in contemporary society. Drivers who do not register their vehicles could be restricted from accessing roadways activated by RFID stickers. People without identification cards could be denied social services. And callers who do not register their phones could be threatened with cessation of their cellular service. In the same way, air travelers throughout the world have little choice but to comply with nebulous requirements to publicly disrobe at security checkpoints and even less power to remove their personal communications and data from governmental and private-sector databases.

Second, property rights are slowly chipped away as the state seeks to attach itself to the things of daily life. Drivers in Mexico are mandated to have state-issued RFID devices adhered to their windshields, with little choice as to where the admittedly unsightly sticker is placed. The stickers are present and registered with the state at the point of sale, they cannot be legally removed, and they must be replaced if the windshield is replaced. The windshield ceases to belong to vehicle owners in the way it once did. Consequently, while drivers have never possessed their vehicles entirely (the plate that legally identifies the car belongs to the state and laws commonly proscribe tinted windows and other modifications), the state's placement of RFID stickers colonizes a new portion of the automobile—the windshield—which further limits ownership. Similarly, mobile telephones that are not registered with the state or do not comply with protocol requirements are denied access and operability, thus requiring the purchase of a new device that is already connected to networks of control. Vehicles and telephones still belong to their rightful owners, but in attempting to secure these objects, users are required to surrender aspects of ownership to the state and programs that would protect them.

Third, self-determination is restricted by biometric identification. Electronic identity cards that identify individuals according to their biological material rather than their names result in a diminished space for individuals to define themselves before authorities. This can be seen as an extension of a long trend in Mexican history. Indigenous peoples of Mexico were forced to identify themselves within the naming practices and structure of Hispanic society. But under security, even that diminished capacity to name oneself is removed. With biometric information, one's biology "anchors" identity.32

Thus, security by prohesion—by diminishing choice, private property, and self-determination—threatens those fundamental elements of liberal society that ensure subjectivity. And the modern liberal subject is left at risk. Paradoxically, then, if the disciplinary society and visibility carried the goal of subjectifying society, then the tools being used to defend that social order, that subject, and the material things by which it defines itself serve to slowly extinguish the subject.b

6.3 STRENGTH AND WEAKNESS

If security through prohesion offers a troubling vision of the power at work in security surveillance technologies, solace can be found in the fact that this power encounters such difficulty in taking root. Of the three programs examined in this book, one was abolished by the Mexican Senate because of its failings, one is stuck in limbo awaiting action from the Peña Nieto administration, and one is operating in a weakened form that fails to fulfill the vision of automobile security intended in its design. In this sense, weakness is a central aspect of security and prohesion in Mexico.

Failure is a topic that surveillance scholars have treated in the past. The surveillant state has been referred to as the Big Bungler rather than Big Brother, an authority "driven mad by too much power and too much speed."33 Errors are common in the data that public and private entities gather about us, which "can lead to death in hospitals, stolen elections, and wrongful arrests."34The substance of life itself can throw security technologies off. Facial-recognition technologies are doomed to fail "since identity is inherently a hybrid and unstable construct—at the very least, individuals age, take different jobs, acquire and lose credentials, marry and divorce, etc.—it can never be completely and absolutely stabilized."35 And multiple standards for the recording and storage of information can spoil government attempts to implement a national identity card.36,c

But if failure has been recognized in the literature, perhaps it has not received the emphasis it deserves. Within society, we feel either trepidation or relief, depending on our political affiliation, when government designs for surveillance are announced or leaked to the public. And this reveals the confidence we have in these plans. Militarized drones unsettle us because they illustrate how the conduct of warfare and killing is escaping human control and becoming automated. The unimaginably vast snooping activities of the US National Security Agency (NSA) revealed by Edward Snowden, Glenn Greenwald, and Laura Poitras concern the critical minded of us because they imply that the minutiae of our daily phone and electronic communications are open to inspection. The adoption of national identity cards disturbs us because it signifies the erection of new walls and boundaries that will break our contact with the Other and endanger our free society. In short, our fears about the negative consequences that accompany surveillance technologies rest on the assumption that these technologies have the strength they claim to have. And in the face of this power, as the move to adopt the legal concept of the "right to be forgotten" in the European Union demonstrates, all we as concerned individuals and groups can do is ask that this power be fallible, that it forget.

It is beyond debate that technologies in contemporary society carry a capacity for tracking and oversight unlike anything that has come before. Militarized drones are certainly unleveling the playing field for the conduct of war. NSA surveillance over personal communication, Big Data or otherwise, is an affront to the notion of a free society. Biometric identity cards are a technological step

in the direction of increased control over personal identification. And these technologies do sometimes succeed in assassinating suspected terrorists at a distance, scooping up critical pieces of information to stop a crime, or achieving access control. But the continued insecurity of our world speaks to a fundamental weakness or fallibility of security systems.

Perhaps the most telling example in this regard is the Boston Marathon bombings, where the brothers Tamerlan and Dzhokhar Tsarnaev exploded two homemade bombs at the finish line of the foot race on April 15, 2013, killing three and injuring scores of others. Lost in the tragedy of the event and the drama of the subsequent manhunt is the fact that the multiple surveillance programs and various layers of surveillance technologies instituted since the September 11, 2001, terrorist attacks failed to identify the two brothers as threats. This despite the fact that they were born in the conflict-torn Caucasus region of the Soviet Union, self-identified as Chechen, had previous encounters with the police for violent behavior, and learned bomb making from an online magazine published by al-Qaida. What is more, following the attacks, Senators Saxby Chambliss and Richard Burr reported that Russian intelligence officials had warned both the FBI and CIA about the brothers, including recordings of Tamerlan discussing attacks with his mother over the phone.37 So, then, not only did the "surveillant assemblage" fail to capture these terrorists, but, to invoke a Marxist argument, it might be argued that these technologies have "deskilled" traditional intelligence work to the point where information provided by another country's intelligence service was not acted upon in the manner one might expect.

Similarly, the brothers Cherif and Said Kouachi, who killed twelve and injured eleven during an attack on the offices of the satirical magazine Charlie Hebdo in Paris in January 2015, had been under surveillance by French authorities; Cherif had even been arrested and tried on terror charges in 2005 as he was heading to Iraq to fight US forces. Thus, authorities in France, who possess some of most sweeping powers to surveil the public and regularly deport alleged extremists without the procedural protections of the US legal system, were unable to prevent this attack.38 Zarrar Shah, the technology chief of Lashkar-e-Taiba, the Pakistani terror group that carried out a series of coordinated attacks in Mumbai over the course of three days in November 2008 that left 164 dead and 308 injured, used Google Earth to plot the attacks and was being monitored by British, Indian, and US authorities. Yet, the surveillant assemblage proved too weak to stop these attacks.39 Ismaaiyl Brinsley, the gunman who ambushed two New York City police officers in December 2014, had earlier in the day shot his girlfriend in Baltimore. Baltimore police, using pinging technology to locate Brinsley's mobile phone, notified New York City police that he was in Brooklyn and was posting messages on his girlfriend's Twitter account saying that he would kill two New York City officers.40 But this, too, failed to stop the attack. And the events that bookend the birth of the massive US homeland security state—both the September 11, 2001, terrorist attacks and Edward Snowden's whistleblowing about NSA domestic spying—speak to the failure of surveillance. Multiple agencies had information about the September 11 attackers, but this information was not acted upon. And Snowden's revelations demonstrate the permeability of a surveillant assemblage that relies on private firms to provide public security.

Mexico, meanwhile, was rocked in 2014 by the disappearance of the forty-three Rural Teachers' College students in Iguala, Guerrero. A federal investigation implicated the mayor of Iguala and local police. The investigation found that the police had apprehended the students and turned them over to a local crime syndicate, Guerreros Unidos (United Warriors), which then presumably murdered them. Incredibly, despite the immense investment of technology and resources in the fight against crime, the federal government was unable to locate all but one of the students' bodies.

The legality and desirability of intrusive surveillance technologies in our lives will continue to be debated. But if these technologies are already operating, they might be expected to work at least at modest levels. As these examples show, however, security surveillance and prohesion not only sometimes fail but are fundamentally weak forms of protection.

The Registry of Mobile Telephone Users, Citizen Identity Card, and Public Registry of Vehicles pursued by the Calderón administration provide insight into the forces that account for the weakness of the weapons of the security state. First, apart from the technologies themselves, the turn to surveillance technologies speaks to a distinct weakness of government. In Mexico, the state simply cannot govern the way it once did. The elevated levels of ordinary crime, the immense numbers of homicides, the underreported number of femicides, the common kidnappings, and the arms and drugs trafficking all illustrate the inability of the state at both the federal and state levels to provide security.

Chapter 2 discussed the reasons for the weakening of the state and strengthening of criminal elements in Mexico. The dictatorial, single-party rule of the Institutional Revolutionary Party (PRI), whatever its shortcomings as a democratic form of government, provided a centralization of political power that proved able to manage drug trafficking and the violence that can accompany it. Democratization has brought about free, competitive elections at different levels of government and increased civilian control over the political process. But this progress has changed political dynamics in the country, decentralizing power and weakening the

clientelist relationships that historically corralled drug violence.41 At the same time, the death of Amado Carrillo Fuentes, leader of the Juárez cartel, the original jefe de los jefes (boss of the bosses), precipitated the current and ongoing wave of violence because it created a power vacuum that various regional cartels and criminal organizations sought to fill. The lack of a monopoly over criminal activities in Mexico by either the state or crime bosses has resulted in a rise of formerly unauthorized forms of violence, such as kidnappings, extortions, and street robberies.42

These transformations in Mexico's political landscape were accompanied by changes in the country's economy. The shift from a statist, protectionist economy controlled by the PRI to a neoliberal political economy governed by free-market policies has expanded the gross domestic product and enriched Mexico's upper and upper-middle classes as well as regions along the northern border.43 But this wealth has not been shared equally; the poverty rate (as measured by income required for basic living expenses) has remained stuck at 50 percent of the population,44indicating increasing income inequality. Crime, then, has become one way for people living at the margins of society to pursue economic gain.

Thrown into this social mix is the transformation of Mexican cultural life through exposure to global media, which simultaneously weakens certain forms of traditional national identity while strengthening others—pulquerías and siestasgradually disappear as tastes and times change in concert with global norms, while narcocorridos that glamorize and romanticize the fatalist pursuit of drug wealth rise in popularity as a distinctly Mexican form of cultural expression. Together with an active feminist movement45 pushing for reproductive rights and other protections, as well as other forms of global consciousness, these changes weaken the legitimacy of traditional authorities and ways of doing things. Thus, over the past decades, the Mexican state has contracted in accordance with the precepts of neoliberal governance, which has reduced its ability to govern, while the society it oversees has continued to expand, evolve, and transform as it absorbs new technologies and means of expression and it experiments with new freedoms presented by democratic governance. With less ability to govern, and an unreliable police force with which such governance could not be entrusted, the Mexican government turned to surveillance technologies as a way to reform itself to govern in a global world.

Second, the national government's failure to fully implement surveillance technologies has shown that it is prone to weakness. Resistance has been central in this regard. Resistance meets authorities' efforts to create the security state at various points. Mobile phone users suspicious of the federal government's registry refused to register their lines honestly. And the poor design of the registry left it unclear how users' phone lines could be verified and who would even have the responsibility for doing so. Drivers unaware or uninterested in the federal government's automobile registry in the states where it was being offered failed to register their vehicles. And many states refused to participate in the program altogether, their reluctance motivated by politics and a fear of wasting precious security resources on a flailing federal program. The Citizen Identity Card failed to launch due to opposition from the government office responsible for issuing a rival identity card.

Resistance is an established topic within surveillance studies. John Gilliom, for instance, in his examination of an electronic payments system that monitors public assistance in Ohio, demonstrates how poor women's defiance of welfare rules constituted an everyday form of resistance that opposed the power of the state as "overseers of the poor."46 And Gary T. Marx has provided an authoritative accounting of the myriad ways in which people resist everyday forms of monitoring, such as drug testing in the workplace, a list that includes "refusal" (to take a test), "discovery" (of the date of a random test), "avoidance" (not going to work on testing day), "switching" (a clean drug sample for a tainted one), "distorting" (consuming substances to neutralize the drug test), "masking" (one's identity to testers), and "countersurveillance" (testing on oneself to ensure success)." Marx observes that such strategies "should serve as humbling reminder of need for skepticism in the face of unreflective paranoia and oversold technical surveillance fixes introduced into heterogeneous social contexts."47

Supporting Marx's conclusion, the histories of security surveillance in Mexico encourage a broader definition of resistance—any force, whether human or not, that has the effect of obstructing the intended plans and intentions or established relational patterns of authorities (see chapter 4)—to take fuller account of the variety of difficulties inherent in establishing new modes of oversight and governance in society. It is not only that people, whether private citizens, CEOs, or elected officials, oppose these tactics and authorities. But time, space, and the technologies themselves intervene as well. Given these diverse forces, prohesion fails to acquire the power that it was designed to possess.

Implicit in this definition of resistance and central to understanding the weakness of surveillance technologies are the concepts of "distributed agency"48 and "assemblages"49introduced earlier in this work. A car is not simply a car, a phone is not simply a phone, and a person is not simply a person. They are rather elements situated in a larger network of associations between people,

organizations, things, and ideas that enliven them. This is "vibrant matter."[50] And having authorities take hold of those things—phones, people, automobiles—in turn means engaging with the range of associations that give them agency. The RENAUT, CEDI, and REPUVE largely failed to take hold of mobile telephony, personal identification, and automobility in Mexico because these collective agencies are distributed across a wide network of users, providers, regulatory agencies, and material things that enables their activity. To get a grasp on mobile telephony, it is not enough to simply have users register their numbers with the appropriate authority. Mobile service providers, the governmental agencies regulating telecommunications, the designers of phones, the placement of cellular towers, and so forth must be integrated into the program as well. To take control of the wheel of automobility, the government must ensure not only that car companies provide records of sales to the government's database and adhere RFID stickers to windshields, but also that state governments and customs officials do the same with vehicles circulating in the country or crossing national borders.

Daniel Neyland, in an innovative examination of governmental efforts to control "everyday objects of terror"—letter bombs, sharp objects and liquids on airplanes, and so on—makes a similar point about the inherent difficulty of securitizing things. "The example of objects in airports," Neyland notes, "suggests that successive actions to build networks of governance around categories of objects (such as liquid containers and sharps), connecting various people (airport managers, passengers, security and check-in staff) and things (boards, plasma screen TVs, leaflets) in order to reorient actions around the object in focus and establish its new ontological status as a matter of concern are messy in practice." Quite simply, he concludes, "it seems that ontologies are stubborn and routinized."[51]

What is most interesting about the ontological stubbornness of things is the manner in which older structures of governance get in the way of newer ones. The principal opposition to the Citizen Identity Card came from the Federal Electoral Institute (IFE). The main challenge to the Public Registry of Vehicles was the opposition or lack of participation of the states. Both the IFE and the federated states of Mexico are bodies that govern in Mexico. Historically, they emerged as authorities worked to solve particular problems of governance that faced the nation. The IFE was created to provide legitimacy to a fledgling democratic electoral system that did not have the trust of the public following the dubious presidential elections of 1988. The states came into existence as a means for governing Mexico's outer territories of that could not be effectively ruled by centralized authorities, giving birth to "the negotiated state."[52] These are state forms that were "co-produced"[53] over time in conjunction with those things and phenomena they were designed to govern. However, the security state encounters them as obstacles that prevent the implementation of prohesion. These thoughts cast in sharper contrast the weakness of weapons whose strength authorities are always assuring us of.

6.4 DETERMINISM AND EMERGENCE

But to say that surveillance technologies are fundamentally weak is not to say that the state in Mexico lacks power. Through these programs, federal authorities can require sujetos obligados(obligated subjects) like automobile manufacturers and entidades federativas (federated entities) to deliver data about the production, sales, and registration of vehicles to the REPUVE database; local, state, and federal law enforcement use the database to search for and identify stolen vehicles; states such as Sonora are able to employ RFID technology as a tolling solution or the basis for tax collection; and this progress provides the federal government a basis for further extending this surveillant assemblage into other states and state agencies in the future. The federal government has also been able to distribute four million personal identity cards to schoolchildren in several states throughout Mexico. Even with the failed mobile telephone registry, the state was able to register nearly eighty-three million mobile phone numbers, or 90 percent of all numbers in Mexico; and when the registry was ultimately terminated, the federal government succeeded in quickly transferring responsibility for monitoring telecommunications to service providers.

These outcomes and this arrangement of power, however, are not what the state had planned. This is not the secure future that prohesion as a novel form of governmentality promised. It is rather the unexpected result of authorities negotiating with the people, organizations, rules and laws, things, and concepts that had resisted the programs. This arrangement of power is, as noted in the last chapter, the product of statecraft.

The improvisational character of social life has been highlighted by several influential works in the social sciences. The best-known version of this idea is "bricolage," which Claude Lévi-Strauss used to denote tinkering or "someone who works with his hands and uses devious means compared to those of a craftsman"[54] in order to distinguish premodern forms of knowledge from their modern, scientific counterparts.[d] In a similar vein, Andrew Pickering describes scientific and engineering work as "a mangle of practice," a "practical, goal-oriented and goal-revising dialectic of resistance and accommodation" by which scientific

knowledge and technological artifacts emerge in time.55 And most closely related to the current book, James Scott's research on the state argues that state-initiated social-engineering programs, like the collectivization of Soviet farms or the construction of high-modernist cities like Brasilia, are doomed to fail and that human societies would be better served by governance based on "metis," that is, "folk wisdom" or "knowledge that can only come from practical experience."56

Recognizing the presence of tinkering and improvisation in the deployment of surveillance technologies has important consequences for understanding the power of the state. Most importantly, it identifies a skill-based, human component of state formation that cannot be reduced to larger structural forces, be they the authority of rulers, the composition of state power, the accumulation of capital, the culture of a society, or the design of technologies. Such forces clearly mattered in the outcomes of the RENAUT, CEDI, and REPUVE. But the successes and failures these programs experienced had as much to do with the skill of state officials and administrators, like Samuel Gallo, in recognizing an opportunity to connect, for example, the REPUVE to an existing state program and negotiate with those authorities to "make things stick."

And to develop the point further, there is nothing—not the skill of the state practitioner, the authority of the lawmaker, the design of the program, the beliefs of the population, the wealth of the company, or anything else—that can guarantee that a particular modification will actually take. In the case of the REPUVE, some improvisations worked. In the case of the RENAUT, most did not, which left monitoring of mobile telephony in Mexico outside the organizational structure of the federal government. The outcomes of the state's adoption of surveillance technologies to fight insecurity are thus decided in good measure through trial and error.

Over the past two decades, there has been increasing acceptance of the idea that social phenomena do not have singular causes but are "co-produced" through the interaction of various elements. The social order is, in other words, emergent. The concept of "emergence," which is central to science and technology studies and "assemblage thinking," offers a needed exit out of the disabling "structure versus agency" debate in the social sciences.57 Applied to politics, the concept of emergence avoids having to explain the formation of the state as resulting directly from either the plans of great statesmen or the structure of capital, coercion, or culture.58 As the second chapter illustrated, central dimensions of the Mexican state took shape over time through authorities' evolving efforts to maintain control over communication, identification, and mobility in society. And as the last chapter recounted, even when plans for reforming the state are known in advance, the shape that reform ultimately takes can only be settled in practice.

These ideas are relevant to surveillance studies. Regularly, works on surveillance give the impression that these technologies are transforming the world in line with their technical design. Security as a mode of governance based on the social sort has arisen because electronic identity cards allow biometric data to be stored simultaneously in the cards and government databases. Security is marked by a diminution of democracy because private corporations are intimately involved in the planning, development, and deployment of surveillance systems, and these companies are not accountable to the public as elected officials are. Personal privacy has already passed into history in the surveillance society, because the bits of information that we are constantly generating through our electronic communications, online searches, plastic-card purchases, and so on are scooped up by public agencies and private-sector actors that use the data without our consent. Statements such as these, simplified perhaps but not uncommon, reveal a determinist mode of thinking where direct lines are drawn between particular social phenomena and surveillance technologies, or where the social consequences of surveillance technologies are predicted in advance. This thinking is not technological determinism. It is technology, in conjunction with multinational corporations or secretive state security agencies, that determines outcomes.

It was this tendency toward determinism that prompted thinking about society in terms of emergence in the first place.eAnd remaining sensitive to emergence is vital, since it can reveal processes of social change and state reformation that surveillance technologies may be creating. With this in mind, a few points on the emergent nature of surveillance technologies are in order.

First, we should expect the unexpected. Surveillance technologies might sometimes function according to design. But they should be expected to morph as the practices of statecraft fit them into particular settings. The REPUVE and the CEDI took root in Mexico, but they did so in forms and with functions distinct from those planned by authorities.

Second, the relevance of things is relative. Certain elements of social arrangements that were once unimportant or nonexistent can become central to the governance of society, while others that were once central can become inconsequential. Programs such as the RENAUT, CEDI, and REPUVE are intended to insert new elements—computer software, biometric identity cards, RFID tags—

into existing distributions of collective agency to increase the government's hold over communications, personal identification, and mobility. But statecraft can involve unexpectedly giving new purpose to old elements. State planners used the toll plazas already constructed in Sonora to their advantage in order to install RFID readers to serve the REPUVE program, just as they used public schools throughout the country to register schoolchildren for the CEDI. Statecraft can also involve getting rid of old elements that were once central to the social order. Old laminated cards that people once used for tolls in Sonora are slowly passing out of use. And old elements that were never part of an assemblage to begin with, such as the constitutional right to free transit, which was not being respected in Sonora, can gain new life through the alignment of forces that statecraft and surveillance technologies bring about.

Third, problems can sometimes become solutions. It is interesting to consider how the shape of a particular assemblage can have consequences for its governability. All of the surveillance programs described in this work failed to meet their designs. In the case of the CEDI and REPUVE, the main point of resistance that dogged the programs came from the state itself, from the extant political structure for governing personal identity and automobility in Mexico. The RENAUT, however, encountered no such opposition. A structure of state agencies never coalesced around the mobile phone—a more recent technology that appeared when neoliberal political economy had already made regulation a mostly private affair—as it had around personal identity or the automobile or the land-line phone. Counterintuitively, however, the very political structure that inhibited the implementation of the REPUVE could, because of its permanence, later be recrafted by program administrators to make the program stick. The RENAUT, by contrast, having no existing state structure for program administrators to graft onto, was simply terminated, the responsibility for governance turned over to those in possession of the necessary infrastructure: private service providers.

Finally, as emergent phenomena, security surveillance technologies will take different meanings based on the context into which they are fit. In Sonora, the REPUVE is valued nearly universally as a means for establishing and respecting the right to free transit that was fought for and established in the Mexican Revolution. In Zacatecas, the REPUVE is understood and approached more cautiously as another government program promising security. At border crossings, meanwhile, the REPUVE is viewed negatively as another scheme to squeeze tax revenue out of individuals who import their vehicles from abroad. In sum, what surveillance technologies do and what they mean emerge in time and practice. This is how the power of surveillance technologies forms.

6.5 FATALISM AND ENGAGEMENT

Emergence has surprising political consequences. Thinking about surveillance is often tinged with a dystopian outlook that minimizes the potential of individual and collective action to influence a surveillant assemblage composed of national governments, transnational corporations, and advanced technologies.59 This skepticism is matched by popular reactions to controversies such as the NSA spying programs, reactions that vary from support (belief that surveillance technologies keep society safe), to indifference (belief that people should have nothing to hide), to impotence (belief that surveillance technologies are invasive but nothing can be done about it).

But the emergent nature of surveillance technologies means that individuals, despite the design of prohesion as a mode of governance that would control society by bypassing people altogether, still influence government in meaningful ways. The lowly bureaucrat plays a key role in tailoring surveillance technologies to fit existing assemblages of collective agency. And ordinary citizens, through organized efforts to resist a phone registry, parental expressions of uneasiness about the collection of schoolchildren's biometric data, or mere gossiping about state surveillance, help determine whether and how these efforts stick.

If ordinary people remain central to the outcomes of surveillance technologies in society, what are we to do? Which types of actions might influence the presence of surveillance technologies in our lives? How might "participatory democracy [be] enacted through work in and on material objects" such as surveillance technologies?60

A sensible place to begin answering these questions is with the efforts activists are already making to engage the surveillant assemblage. Here, it is appropriate to mention the whistleblowers in the employ of the national security state—Chelsea Manning and Edward Snowden—who brought attention to the operation and scale of state security surveillance by releasing classified information about their work. The actions of these individuals, undertaken with the assumption that their lives would be destroyed, were brave and daring. And they resulted in public awareness about the abuses of the US national security state, an essential first step to broader action.f Increasing awareness about the workings of surveillance in the world today is the goal of a wider network of activists as well, including the more academically minded Surveillance Studies Centre housed at Queen's University in Canada and civil liberties organizations such as the Electronic Frontier Foundation and the Electronic Privacy Information Center. These

groups have organized to pass key legislation or support litigation establishing individual rights against state surveillance. Representative of this collective labor is the “right to be forgotten” established by the European Court of Justice. The court’s ruling in Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González provides all individuals in Europe the right to prohibit Google and other search engines from linking to items that are “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed.”61

Efforts such as these concern the encroachment of surveillance on fundamental civil liberties. Generally, the surveillance in question is undertaken in the name of national security or by companies involved in information commerce. Such efforts, then, resemble the organized resistance to state surveillance described in this book, such as the digital mobilization of phone users in Mexico against the RENAUT and the subsequent campaigns against Peña Nieto’s telecommunications reform, which activists saw as a threat to net neutrality. Taken together, individuals in these instances can be seen working to ensure freedom—to preserve a free space in society unfettered by surveillance technologies, which is a condition for democracy.

These efforts, though, assume that surveillance is unsuitable to any civic purpose. This might seem like a trivial qualification, since the massive sweep of information that takes place under the NSA’s domestic surveillance program so clearly violates our sense of basic decency and liberty. But there are many examples in which activists have worked to extend the surveillant power of the state to areas of social life often kept in the dark. A clear example is gender violence, such as intimate partner abuse and sexual assaults, where offenders are enabled by the deference the state has historically paid to family privacy and by the stigma of being a victim of such crimes. While legal measures have been passed to protect women from physical and sexual abuse, the power of such laws often proves ineffective against assailants unafraid of criminal sanction. In response, antiviolence advocates across the United States, for instance, have campaigned for legislation that would establish monitoring programs featuring GPS technology to track abusers who repeatedly violate restraining orders and would alert victims when they are nearby.62 Using surveillance technology to confront gender violence is relevant to Mexico too, where femicides are a prominent form of crime. To combat them, activists have advocated for the use of information technology and mobile devices to publicize the problem and give potential victims the ability to access help.63

As these examples illustrate, the situations where activists might campaign for more state surveillance often involve crime rather than national security or data commercialization. In these instances, people look to extend the surveillant power of the state to provide the protection of the law to individuals who are not receiving it. But like the examples of national security and data commercialization, it is assumed that a rule of law exists in society and that authorities have an interest in extending surveillance.g

FIGURE 26. Values at stake in surveillance politics.

These considerations help mark out a pair of axes—civic interest in surveillance and state interest in surveillance—against which a politics of surveillance can be measured. Where civic interest in surveillance is low but state interest high, as in the cases of national security and data commerce, activism can be thought to concern freedom. Where civic interest in surveillance is high and state interest is too, as in the case of gender violence, activism can be thought to concern equality. Those working to end gender violence are interested in ensuring women equal protection before the law (fig. 26).

Campaigns centered around equality reflect what David Lyon has referred to as the “care” dimension of surveillance technologies, at work in hospitals and schools, that accompanies the more discussed “control” dimension. Such campaigns also embody his call for surveillance governed “by an ontology of peace rather than of violence” and “an ethic of care rather than control.”64 They also relate to the “conviviality” of technology that Torin Monahan has called for, describing technologies that “not only afford but also invite modification on the part of users, support diverse modes of expression, and enable power equalization among people.”65

In contrast to the scenarios involving national security and crime, where state interest in surveillance is a constant, there are others where it is not. In New York City, for instance, public outcry over the conduct of its police force, including the disproportionate use of stop-and-frisk tactics on poor and racial and ethnic minorities, pushed Mayor Bill de Blasio and Police Commissioner William Bratton to implement a pilot program in which police officers wear body cameras to monitor their interactions with the public.66 While unpopular with the officers, who contend that the cameras will deter people from wanting to talk to them and violate their privacy,67 police use of such body cameras is expanding in the United States. At the national security level, the US War on Terror has been conducted in a shadowy realm—involving extralegal tactics such as extraordinary rendition, black sites, and secret intelligence court rulings—that activists seek to bring to light.

In these instances, authorities engage in violence—police use of excessive or illegitimate force, the CIA abduction of terror suspects—that they wish to keep from public view. Against these machinations of power, activists use surveillance technologies—body cameras, flight records, maps—to document the illicit actions of the state. In contrast to subjects concerned with freedom, who use the rule of law to oppose the state's expansion of surveillance, and subjects concerned with equality, who use the rule of law to support the state's expansion of surveillance, individuals here find themselves without a true rule of law. In these settings, they use surveillance technologies to foster accountability and legality.

This politically progressive use of surveillance technologies has been pursued by activists in Mexico to document and publicize the assassination of journalists. The map and accompanying database assembled through the Mi México Transparente (My Transparent Mexico) project provides a register of the number and type of attacks suffered by journalists.68 This register functions as an ongoing surveillant document that announces the threat faced by journalists to members of the state and criminal community who might prefer to silence reporting.

Another innovative use of surveillance technology involved the Yo Soy 132 (I Am 132) movement that captured international attention in 2012 during Enrique Peña Nieto's presidential campaign. In May 2012, the then PRI candidate presented his political platform at the prestigious Ibero-American University, in the prosperous Santa Fe area of Mexico City. During the question and answer session, Peña Nieto angered students when he aggressively defended his actions as governor of the state of Mexico in the 2006 Atenco case, in which hundreds of state police were sent to break up a protest against the planned construction of a new airport. During the police action, two hundred activists were arrested, two were killed, and twenty-six women were sexually assaulted.69 Following the candidate's response, students broke out with chants of "Assassin!" and "Get out!"

Media coverage of the event downplayed the protest by attributing it to elements outside the university rather than Ibero students, members of one of the more respected institutions in Mexico. Responding to what they saw as the media's attempt to appease the popular candidate's political camp, 131 Ibero students produced a YouTube video showing them with their identity cards as a way of documenting their status as Ibero students and their opposition to Peña Nieto. The video went viral. And supporters of the students responded on Twitter by announcing "Yo Soy 132," or "I am 132," adding themselves to the list of young people against the candidate. Thus, against a media and political establishment that dismissed dissenting voices as disreputable malcontents not worthy of society's respect, the Ibero students and their supporters used the tools of surveillance to announce their presence and opposition to authorities.

Finally, in addition to activists who oppose the state's support of surveillance in pursuit of freedom, activists who endorse the state's support of surveillance to fight for equality, and activists who support surveillance against the state for accountability, it stands to reason that there are contexts in which neither the public nor the state have an interest in surveillance, or at least an interest that would support democratic ideals. This raises what can be called a true sphere of personal privacy, where the details of the nonpublic lives of both governors and governed would be respected and not subject to surveillance. The sexual liaisons of public officials (US president Bill Clinton or French president François Hollande come to mind, assuming no crimes were involved) or other details of public leaders' personal lives could be imagined as of no significance for the welfare of the country. And the same assumptions could be made of the intimate personal details of citizens' lives. The fact that there is knowledge about public officials' personal lives or that the state surveils personal aspects of citizen's lives indicates a certain perversion of democratic ideals that has come to masquerade as political controversy.

Nowhere is this more apparent than in the political battles over reproductive rights. The steady push to criminalize abortion in those countries where it is protected under law functions as an effort to increase control over the private lives of women, serving in turn to diminish their capacity to be full subjects in society. And surveillance plays a central role in this contest. The US state of Indiana, for instance, recently considered, although ultimately did not pass, a measure that would have required doctors to partner with and

publicize the names of other medical professionals—"backup doctors"—who might treat any complications or emergencies related to an abortion in a nearby hospital. Through such legislation, antiabortion activists sought to publicize the names of doctors who perform abortions, which would presumably expose them to intimidation.70

Surveillance over people's personal lives works to the detriment of democratic governance. In these contexts, then, efforts to protect women's right to control their own bodies or to establish that right where it does not exist count as political actions in support of subjecthood. In this regard, the movement to decriminalize abortions in Mexico can be understood as not only an extension of women's rights but also the creation of a social and legal notion of personal privacy that is critical to democracy.

This description of the differing relationships between subjects and surveillance in democratic society is surely too neat. The categories overlap in practice. Many citizens express no concern that surveillance in the name of national security infringes on basic liberties and freedoms. Others would be opposed to the expansion of surveillance in the name of crime fighting, even to combat gender violence, since it would invariably encroach on a sphere of life thought private. Many people consider government secrecy in policing, intelligence, and warfare critical to security. And others believe that freedom of speech provides the legal justification for peering into the private details of people's lives. Quite simply, not all people are the same, nor are all governments the same when it comes to surveillance.71 But the purpose of this thought exercise is not to close the door to thinking about surveillance technologies, but to open it in order to think about them differently in the hope that they might effect a wider change in how we interact with authorities.

With this in mind, we might return to El Bunker and consider again the architectures of authority found around Mexico City's Chapultepec Park. The subterranean Federal Police Intelligence Center serves as an apt symbol for contemporary approaches to security governance. It operates out of view of ordinary citizens while attempting to remain in contact with them through its array of advanced surveillance technologies. And its technical struggles prove equally emblematic of the failings of this strategy. Historical data are unmanageable, interagency communications are unreliable, state agencies are reluctant to share data, and manual processes of information management at the local level slow data processing and accuracy. It is doubtful that constructing more bunkers will prove decisive in Mexico's War on Crime. If building edifices like Chapultepec Castle above the people bore little fruit in terms of achieving a better society, it should not be surprising that constructing fortresses like El Bunker below them should prove disappointing as well. Only by building structures that require those in positions of power to see eye to eye with those in whose name they govern can a more just and secure future be brought into view.

a. "Baldly," Foucault writes, "we could say that sovereignty is exercised within the borders of a territory, discipline is exercised on the bodies of individuals, and security is exercised over a whole population," where population "will be considered as a set of processes to be managed at the level and on the basis of what is natural in these processes." Put more plainly, security for Foucault is liberal governance, where the state intervenes in social relations so as to create "natural" relations that will provide the conditions for the organic growth of the economy, health, and so forth (Foucault, Security, Territory, Population, 11).

b. This concern resonates with arguments that critical theorists of a generation ago made concerning technology. The "Megamachine" of modern industrial society, cautioned Lewis Mumford, would eventually "reduce all forms of life and culture to those that can be translated into the current system of scientific abstractions, and transferred on a mass basis to machines and electronic apparatus" (Mumford, "Technics and the Nature of Man," 315). But an important distinction can be made. While the Megamachine and Technique (Ellul, "Technological Order") reduced the subject to one dimension (Marcuse, One-Dimensional Man), they still required a substantial investment of human action and oversight in order to cultivate that dimension. With security, the subject is bypassed altogether and the conditions under which she or he would develop, even along a single trajectory of technical specialization and market consumption, are restricted.

c. These failures have not, however, turned governments off of surveillance technologies. As Clive Norris has noted, "nothing succeeds like failure" when it comes to using technology in the pursuit of security (Norris, "Success of Failure").

d. "The bricoleur is adept at performing a large number of diverse tasks," Lévi-Strauss claims, "but, unlike the engineer, he does not subordinate each of them to the availability of raw materials and tools conceived and procured for the purpose of the project. His universe of instruments is closed and the rules of his game are always to make do with 'whatever is at hand'" (Lévi-Strauss, Savage Mind, 17). This notion of making do with whatever is at hand has been adapted to a variety of works in the social sciences, perhaps most apropos to the topics discussed here by Claudio Ciborra, an organizational theorist, who in describing the successes and failures of strategic information systems within organizations, comments that "in order to achieve a new SIS (strategic

information system) design the issue is neither to try to generate the most creative application idea, nor to realize the design through a careful planning and implementation method. The real issue is being able to overcome those cognitive and institutional barriers that prevent users and designers [from] seeing, appreciating, and utilizing all those potential applications already surrounding the members of an organization" (Ciborra, Labyrinths of Information, 44).

e. Before "emergence," explanations for the creation of scientific knowledge, technological objects, and their impact on the social world were told in the language of the sociology of scientific knowledge or the social construction of technology. These social constructivist perspectives viewed facts, such as those resulting Robert Boyle's pneumatic experiments (Shapin, "Pump and Circumstance"), and artifacts (Pinch and Bijker, "Social Construction of Facts and Artefacts"), such as the design of bicycles, as the result of cultural forces (the interests of scientists, the creation of dissemination outlets with which to publicize research and widen the witnessing of science, the replication of experiments before influential public figures who could lend increased legitimacy to science, the formation of a particular vocabulary for describing science and demarcating it from other fields of engagement with the natural world believed less rigorous, social mores dictating the propriety of dress for men and women, and so on).

f. Indeed, in the wake of the Snowden disclosures, the US Congress decided to phase out the NSA's bulk collection of phone records, and allies of the United States subject to its surveillance have drafted resolutions in the United Nations calling for a cessation of such surveillance.

g. It should be noted that in Mexico, women's advocates have often accused the government of apathy toward victims of femicides.

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2.5: Corporate Crimes

Over the last century, workers in the United States have come to enjoy an expanding array of workplace protections. The minimum wage has continued to increase, albeit sporadically, and several state and city regulations now outpace stagnant federal protections. Workplace safety standards cover more workers than ever, and our modern ability to track occupational injuries, illnesses, and fatalities has helped to inform crucial policy change. Owing to the long struggles waged by civil rights and feminist leaders, employers can no longer fire workers solely on the basis of their race, gender, or religious preference without running the risk of the government holding them accountable. Organized labor has enormous influence in progressive political circles, and key union victories have gone a long way to change industry standards. In short, the fruits of decades of labor organizing are undeniable.

The government apparatus that has sprung up to enforce these protections is also impressive. The Department of Labor enforces 180 federal laws covering 10 million employers and 125 million workers (US Department of Labor 2015a). One of President Barack Obama's goals was to grow the agency by more than 4 percent (Miller and Dinan 2015). Moreover, the Equal Employment Opportunity Commission's strategic plan has yielded some of the highest settlements in history, with the largest verdict to date in 2013 awarding $240 million to thirty-two men in the meat processing industry who suffered horrific discrimination and abuse at the hands of their employer (US Equal Employment Opportunity Commission 2013). As these and other examples demonstrate, workers have made significant strides.

And yet, despite the proliferation of protections, expanding enforcement bureaucracies, and high-profile victories, there has nonetheless been a "rise in polarized and precarious employment systems" over the last four decades (Kalleberg 2011). These so-called "bad jobs," Arne L. Kalleberg argues, are characterized by poor job quality in both economic and non-economic terms, including pay, benefits, and worker power (9–10). Many of these bad jobs have little effective government oversight (Bernhardt et al. 2008), are rarely unionized, have unpredictable schedules, and offer little upward mobility. These characteristics encompass what Marc Doussard (2013) refers to as "degraded work," an employment trend fueled in large part by small and local businesses who are fighting to compete in tough economic environments. "Degraded" workers become disposable bodies as well as indispensable assets that allow companies to compete in the global economy (Uchitelle 2007). The precarious position of US workers is also tied inextricably to the even more egregious disposability of workers across the world, who stand waiting in the wings as industries relocate to find the cheapest and least protected labor source in a race to the bottom (Bales 2012).

Several categories of these "marginal workers" (Garcia 2012a), to use another term for them (for example undocumented immigrants, women, and racial and sexual minorities), face particular challenges in realizing their rights under US labor and employment law. Undocumented workers have limited remedies for injustices under the law and live under the constant threat of deportation. Women not only experience a higher incidence of pay inequity, discrimination, and sexual harassment but also shoulder a substantial burden of reproductive labor responsibilities that impact—and are impacted by—their work lives. Underrepresented racial minorities, including some immigrants, have poorer economic outcomes, are more likely to be in unprotected job categories, and face distinct challenges during the workplace grievance claims process. LGBT workers also continue to lack complete federal protection against discrimination at work. Each of these populations is subject to discriminatory practices that are the result of long-standing institutional inequalities.

Previous studies have examined this widespread workplace inequality, but they have tended to focus on what goes wrong at work or on why aggrieved workers never come forward. This emphasis reflects the undeniable reality that few workers actually manage to claw their way up what William L. F. Felstiner, Richard L. Abel, and Austin Sarat (1980) call the dispute pyramid: the three-part process of "naming, blaming, and claiming." And when social scientists do look at the cases where workers engage in a sustained fight, we tend to highlight the valiant efforts of collective worker mobilizations or dramatic individual litigation sagas. However, the vast majority of employment laws offer worker protections through mundane administrative bureaucracies. This machinery predictably receives less attention, in part because it is less rousing, though no less important, than the chants coming from picket lines or the pleas of eloquent attorneys.

Although the vast majority of workplace violations never materialize into a formal claim, this book offers a unique perspective on the experiences of the choice few who do come forward. Their stories provide insight into power relations at the workplace and within the rights bureaucracies intended to regulate them. I pose a series of questions in this study from the outset: What propels a worker to come forward and file a claim, given all we know about the barriers to claims-making? What is the role of social networks in educating workers about their rights? How do they learn lessons about when to come forward, how far to push, and

when to back down? I then examine the bureaucracies of labor standards enforcement from the perspective of workers on the ground. When does the system work for these courageous claimants? And, alternatively, why, even in the best of circumstances, do workers sometimes lose out in spite of the law's good intentions?

This book is not an ethnography of the system from the perspective of the key actors who run it. Unlike numerous other scholars, I don't interrogate the decisions that judges, bureaucrats, and attorneys make to adjudicate cases. I don't cull data from hours of administrative hearings (though I did spend time in several such sessions), nor are my claims based on interviews with those stakeholders and experts who shape the claims-making process. There are, to be sure, many works covering these important perspectives (see for example Cooper and Fisk [2005], Cummings [2012], and Epp [2010], to name a few). Rather, this is a story, told from the perspectives of individual workers themselves, about how they experience the journey to justice: their plodding path through multiple agencies, appointments, medical visits, and reams of paperwork. Rather than asking how and why the labor standards bureaucracy operates as it does, I focus on how workers navigate its seas. What makes them decide to see their journey through, or, conversely, abandon ship?

PRECARITY AND POWER IN A GLOBAL ECONOMY

We live in a new global economy marked by innovation, ever-evolving technologies, and exponential concentrations of wealth accumulation. Global firms such as Apple, Facebook, Google, and Twitter have become the household names that GM and Chrysler once were. Yet apart from the multiplying tech campuses and the explosion of high-end real estate, this new economy has also given rise to a low-wage workforce producing the goods and services that we have all come to expect—indeed, demand—cheaply and quickly. Industries such as construction, domestic work, food service, and retail are the pillars of the postindustrial societies; pay is low, conditions are often dangerous, and workplace violations run rampant. Therefore, while low-wage workers enjoy some of the most expansive formal rights in history, they also toil in a state of extreme precarity.

This is not to say that precarity is a novel phenomenon. Historically, the basic concessions of food stamps and cash assistance, and the promise of a modest income and access to health care in old age, were beyond the scope of imagination in the United States (Cohen 1991). There were important developments, most notably with the dawn of equal opportunity legislation during the civil rights and feminist movements. But these new laws did not, and could not, single-handedly erase centuries of racial and gendered subjugation of precarious workers (Lucas 2008).

While hailed as a unique marker of the modern economy, globalization—including the export of capital and the import of goods and labor—has cast a long historical shadow. For centuries, migrant workers have crossed oceans to reach the United States and elsewhere only to earn pitiful wages and endure conditions that are akin to, and in some cases are actually, indentured servitude. The informal economy, including what we refer to now as day labor, was once even more widespread than it is today, a means of economic survival for workers (both immigrant and native-born) as well as their employers (Higbie 2003; Valenzuela 2003).

The modern era also does not have a monopoly on exclusionary immigration policies rooted in racial and class-based xenophobia. Long before the emergence of post-9/11 nativism, the early twentieth century ushered in racist immigration rubrics. Former leader of the Knights of Labor Terence Powderly served as the first US commissioner general of immigration from 1898 to 1902. Despite the relatively progressive agenda of the Knights of Labor, his vision was squarely on the path of exclusion. Later, some of this early labor organization's most revered leaders, such as Samuel Gompers, president of the American Federation of Labor from 1886 to 1924, also became champions of Asian exclusion and other restrictionist policies (E. Lee 2003). The Immigration Act of 1965, which proponents initially thought would increase predominantly European migration, horrified many labor leaders as Latinos and Asians came streaming in. Furthermore, labor advocates stridently opposed guest worker programs and would later support employer sanctions under the 1986 Immigration Reform and Control Act (Fine and Tichenor 2012).

Has nothing changed, then, after more than a century of such exclusionary sentiments and weak to nonexistent workplace protections? To be sure, we are decades removed from a time when there was no minimum wage or occupational safety and health standards, and when workers lacked any formal right to organize. Tragedies such as the 1911 Triangle Shirtwaist disaster in New York and the 1914 massacre of striking miners in Ludlow, Colorado, are seemingly behind us. But the pace and the reach of globalization have multiplied exponentially, as has the gap between capital and workers, and the gains of the New Deal and Progressive Era have been steadily disappearing. Such conditions have produced lived realities for today's workers that resemble the exploitative nature of earlier eras, while involving new forms of repression. New consumer markets have come to expect quick

and constant product adaptation; industry, in turn, demands a flexible workforce. Transportation and communications technologies now provide the means to create, and perpetuate, a low-wage workforce under constant threat.

For those industries that rely on a domestic workforce, the decimation of union representation and new forms of "flexible" employment that effectively evade employer liability give rise to a situation in which a worker's rights are often theoretical. The illusory nature of workers' rights, a fortified police state in an era when immigration enforcement budgets far exceed those of any other federal law enforcement agency (Meissner 2009), and relatively meager labor standards enforcement budgets combine to create a perfect storm of precarity that deters effective attempts to empower and mobilize immigrant workers. In sum, despite the proliferation of new laws and protections, the political will and practical ability to enforce them is often insufficient to address the rampant abuses the most vulnerable workers must confront.

The political sociologist Saskia Sassen has written an invaluable study for understanding the nature and impact of the current economic and political era in which we live. In Expulsions: Brutality and Complexity in the Global Economy (2014), she details a series of predatory systems that disadvantage low-wage workers and that define the "brutal" logic of contemporary capitalism (4). What makes this system work so well is the illusion, and practical reality, that within the system there is no one at the helm and thus no one to be held accountable. As a result, even fair and well-meaning employers may engage in labor practices that, while firmly within the bounds of labor and employment law, are nevertheless exploitative. Moreover, as she shows, these practices then become the industry standard for any business owner hoping to turn a profit and stay competitive. While labor advocates have rallied for "high-road employment" that eschews such tactics, and there is ample evidence that worker-friendly practices can enhance productivity and coexist with profitable enterprise, it is also true that success stories are atypical (Milkman 2002). Unfortunately, low-road practices are the norm.

There has been much debate regarding the state of precarity in the modern era and what Guy Standing (2011, 2014) has labeled the "precariat," a social class whose employment is marked by informality and increased insecurity.1 This state of precarity can be explained by several factors. In the United States, union membership has precipitously declined since the late 1970s, eroding worker protections. More recently, an economic recession sent unemployment rates soaring to 10 percent and triggered a housing crisis that disproportionately impacted communities of color. The US Bureau of Labor Statistics finds that one in ten workers in 2014 was jobless for ninety-nine weeks or longer, with African Americans being the hardest hit (Kosanovich and Theodossiou 2015).

While the United States has begun to emerge from the recession, research on the "under-employed" casts doubt on even cautious descriptions of an economic recovery, especially for part-time workers of color (Shierholz 2013). Beyond the added income, full-time employment often provides important benefits that a subset of low-wage workers have come to rely on, such as health insurance and retirement accounts. Public benefits provide the only alternative for the rest of these low-wage workers. However, the last two decades have also ushered in a dismantling of the welfare state, which also largely excludes noncitizens (Park 2011) as well as other categories of "undeserving" workers, such as certain ex-prisoners (Travis 2005). The current reality therefore is that if one were to lose his or her job, even an undesirable one, there are few support systems on which to rely.2

Nonstandard employment relationships (Kalleberg 2000) and the continued erosion of the social contract (Katz 2010; Quinn Mills 1996) have dovetailed with a perceived explosion of foreign-born workers in the US labor force. While immigrants represented only 4.7 percent of the US population in 1970, this number rose to 13.1 percent in 2013 (Zong and Batalova 2015). However, looking back at the history of US immigration reveals an even higher proportion of foreign-born people at the turn of the twentieth century: 13.6 percent in 1900 versus 12.9 percent in 2010 (Migration Policy Institute 2015). Nevertheless, the recent increase has fueled the perception of an immigrant invasion, with a particular preoccupation with the southern border and a fear that immigrants are "stealing American jobs." Ample research has debated the merits of this claim, with a focus on the complementarity versus substitutionality of immigrant workers. Restrictionists argue that any economic gains from immigration are limited and overstated (Borjas 2013), while recent evidence suggests that the inflow of foreign-born workers actually modestly increases wages for native-born workers (Greenstone and Looney 2012, 2010). In the legal arena, the courts continue to contemplate the rights of undocumented immigrants (Brownell 2011), and immigration debates have become increasingly inflammatory during the 2016 presidential campaign.

But if we shift our focus from the economy and immigration policies to the well-being of these individual workers, another set of key questions emerges. Rather than ask whether low-wage workers have contributed to the degradation of work in the United States—a question that Ruth Milkman (2006) has shown is much more complex than most histories allow—it seems more timely to

ask how the exploitation of undocumented workers in particular is the canary in the coal mine for a global system built on precarity. Immigrant workers face particular challenges in the United States and across the world (Costello and Freedland 2014; Garcia 2012a). Immigrant labor is a symptom, not a cause, of domestic and global inequality.

To be sure, many foreign-born workers are engineers and doctors in the "high-skilled" workforce. But the contemporary US immigration flow is characterized by a "split personality" (Waldinger and Lichter 2003, 4); that is, although there are some high-skilled workers coming in, many more immigrants possess low levels of human capital, have limited proficiency in English, and are concentrated in low-wage service and production industries. Undocumented workers, who represent 5.4 percent of the national civilian workforce, are especially concentrated in precarious positions: a quarter of all workers in food processing, a third of all those in construction, and, depending on whose estimates you believe, anywhere from 50 to 80 percent of all farm labor in the United States (Passel 2006). These low-wage and conventionally "unskilled" immigrant workers possess key assets that employers in the secondary labor market covet, namely pliability. As Roger D. Waldinger and Michael I. Lichter (2003) write, "The best subordinates are those who know their place…. And where employers understand jobs to be demeaning… they have reasons to assign the task to a worker already unrespected…. Thus, jobs that require willing subordinates motivate employers to have recourse to immigrants" (40).

Undocumented workers occupy a paradoxical position in the US labor market. On the one hand, they are deportable "aliens," and employers who hire them are subject to fines and criminal prosecution. On the other hand, they are a critical part of the workforce, and as easy targets for abuse, they also are an important outreach priority for labor standards enforcement agencies and advocates (Gleeson 2012a). The government then is at once responsible for policing and aiding undocumented workers. Yet increased immigration enforcement both at the worksite and in local communities fuels employer abuse (Menjívar and Abrego 2012). Along with at-will employment relationships, the threat of deportation creates a pliable workforce and discourages undocumented workers from speaking up. Immigrant workers are in a sense victims twice over. In a cruelly ironic twist, they are often blamed for the "spiraling crisis of global capitalism" that necessitates them leaving their communities of origin in the first place, then subsequently criminalized in their often hostile receiving communities (Robinson and Santos 2014; Milkman 2011). Nevertheless, as the data in this book reiterates, these workers are also agentic actors who are able and willing to mobilize their rights under the right conditions.

Precarious Claims examines how immigration enforcement efforts and at-will employment relationships jointly fuel the disposability of undocumented workers. I argue that, as with rosy presumptions about the post–civil rights era of workplace discrimination, legal equality for undocumented workers often veils deep-seated institutional inequalities. As such, I contend that undocumented status is a "precarity multiplier" that worsens workplace conditions (occupational segregation, pay differentials, lack of workplace safety); affects claimants' experiences in the legal bureaucracy (lack of access to legal counsel, linguistic and cultural barriers, limited remedies); and limits access to a social safety net that already largely excludes undocumented immigrants.

THE REGIME OF INDIVIDUAL WORKERS' RIGHTS

The system that shapes workplace protections in the United States dates back decades. Federal laws and agencies such as the National Labor Relations Act (1935), the Fair Labor Standards Act (1938), Title VII of the Civil Rights Act (1964), and the Occupational Safety and Health Administration (1970) were all products of intense worker mobilizations and legislative debates. These arenas of protection—collective bargaining, wages and work hours, discrimination, and health and safety—compose a confusing matrix of bureaucracies that cover various statutes and geographic jurisdictions. For example, Alabama has no state minimum wage statute, while workers in Washington are currently entitled to $9.47 per hour, a rate that rises with inflation each year and is more than $2 more than the federal minimum. Meanwhile, cities across the country have instituted their own standards; take San Francisco, where wage rates are set to rise to $15 per hour by 2018.

However, neither the presence of workplace protection laws nor, indeed, active efforts to improve and strengthen them ensures that they are respected or that abusers will be held accountable. Moreover, these laws only regulate a narrow set of workplace behaviors, and there are many employer practices that, while perfectly legal, workers may nonetheless find unfair, exploitative, or otherwise harmful. Even within the realm of legal workplace violations, labor standards enforcement agencies face a wide range of challenges, from insufficient resources to short-staffed investigative units and, in some cases, lack of political will (Bernhardt et al. 2008; Government Accountability Office 2009; Kerwin and McCabe 2011). Furthermore, the claims-based system requires that workers know their rights and be willing to exercise them. In an increasingly de-unionized labor market where employers need

little or no reason to fire a worker, filing a claim is a gamble most deem not worth taking. Even when workers do successfully pursue charges against an employer, their victories can ring hollow, as often they must then fight the employer to comply with a judge's order (Cho, Koonse, and Mischel 2013).

This book goes beyond the simple story of employers seeking to maximize profit on the backs of their workers. Rather, it emphasizes the inequities that persist throughout the system of workplace justice and details workers' experiences with a wide array of institutional gatekeepers. I home in on the cracks in these bureaucratic systems. Where does the system fall apart for aggrieved workers, and why, even in the best of circumstances, do workers often remain unprotected? The answer lies partly in the claims process. Beyond confronting their employers, workers must also learn to navigate complex management hierarchies, multifaceted government agencies, insurance companies, doctors, and language interpreters. Legal brokers, while essential to this process, encounter their own challenges, including a limited capacity to take on complex cases, fluctuating budgets, and staff turnover.

Employers have recently taken steps to make the claims-making process even more daunting. Despite the protections ensconced in federal and state law, firms have increasingly established a range of internal mechanisms to manage conflict between workers and management, often to the former's disadvantage. Labor scholars and advocates have been critical of these internal processes, which are executed by sophisticated, some might say cunning, human resources departments. Discussing civil rights legislation, Lauren B. Edelman (1992) demonstrates how the ambiguity of antidiscrimination laws grants organizations "wide latitude" to comply in a way that gives the impression of earnest compliance while also meeting management's interests. In the sexual harassment arena, Anna-Maria Marshall (2005) argues that company grievance procedures create obstacles to women's efforts to assert their rights while shielding firms from legal liabilities. My findings highlight how logics of compliance and mediation can reduce the opportunities for restitution under the guise of procedural justice.[3]

Though we like to imagine it as such, the law is not a neutral institution; similarly, the process of claims-making is fraught with bias. Kitty Calavita and Valerie Jenness's (2014) expert analysis of the prison grievance system reveals how the cards are stacked against many claimants from the beginning. Though they focus on a "total" institution that represents the full force of the state, the experiences of incarcerated individuals provide an important lens through which to observe how claims-making bureaucracies unfold. To begin, the grievance process, which the authors describe as "byzantine," is designed for a closed environment where prisoners have few rights and fewer resources to exercise them. Despite the landmark creation of the Prison Litigation Reform Act (1996) and the inmate grievance system it created, these new rights have not ensured an easily accessible and efficient system. In fact, as the authors show through interviews with prison staff, the grievance system serves almost as a pressure valve for prisoner discontent—that is, to release pent-up frustrations without really addressing injustices. In a similar fashion, the creation of the individualized system of workers' rights was, according to labor historians, an attempt to quell the discord prompted by the now-dying breed of social movement unionism (Fantasia and Voss 2004; Lichtenstein 2002). Again, such reforms are ultimately more concerned with avoiding conflict than establishing solid workplace protections.

Calavita and Jenness's description of how the prisoner rights system was originally perceived sounds eerily familiar to the common critical perspective of labor rights activism. While most of the state agents they spoke to believed prisoners should have the rights outlined in the act, many also felt that the system had "gone too far" by being excessively generous toward the prisoners (Calavita and Jenness 2014, 110). Similarly, turn on a mainstream news channel today and you will hear voices warning against the dangers of granting a higher minimum wage, expanding overtime benefits, or adding discrimination protections and health and safety standards: decreased business innovation, trampled consumer rights, and curtailed corporate free speech. Like the prisoner grievance system, which is steeped in the logic of individual rights and carceral control, the labor standards enforcement bureaucracy must be understood within the logic of capitalism, which naturally limits workers' rights even as it forms well-meaning, rational bureaucracies intended to enforce them.

These logics, the one exploitative and the other protective, often clash, and as such it should not be assumed that the predominant model of legal protection can ultimately eliminate economic and social inequality (Calavita and Jenness 2014, 3). Workers may create their own logics for defining harm that differ from those standards laid out under formal law. Marshall (2003), for example, highlights the deeply personal or extrajudicial agency that women invoke when deciding whether to pursue a legal claim against sexual harassment; these claimants may draw not on formal law but rather on notions of labor market productivity and feminist interpretations of power at the workplace. Similarly variable interpretations of workplace injustice can emerge in other violations,

ranging from wage theft to workers' compensation. This variability hinges in part on how workers learn about, interpret, and decide to mobilize the law as they develop their distinct legal consciousness.

LEGAL CONSCIOUSNESS AND DEPORTABILITY

My previous work examined how workers develop a legal consciousness about their rights and identified what factors keep them from coming forward with a claim (Gleeson 2010). The concept of legal consciousness has become somewhat shopworn in the field of law and society, but it is still useful for understanding how laws sustain their institutional power and how individuals understand their rights under the law and make decisions as to whether and how to exercise them (Silbey 2005, 2008). One's position in the social and economic order can influence legal consciousness; for instance, poorer individuals (including nonwhites, who tend to be less affluent) engage lawyers and the courts less often. The negative effects of this imbalance are compounded because those with past experience in the system do better than first-timers (Galanter 1974; Curran 1977).4

In the arena of immigration, undocumented individuals (who are overwhelmingly Latino) are by definition excluded from full citizenship and actively pursued for expulsion by an ever-growing immigration enforcement apparatus. And yet undocumented workers have formed the core of many worker struggles (Milkman 2006) and will be crucial to any revitalization of labor unions. Therefore my claim is not that undocumented workers do not mobilize their rights, or that those who do cannot be successful. A quick scan of the press releases proudly disseminated by enforcement agencies and worker advocates reveals many high-profile, as well as more modest, victories. For example, Olivia Tamayo, an undocumented farm worker who was awarded more than $1 million after being repeatedly sexually assaulted by her employer, became an icon in the struggle against the impunity with which growers often operate in California's Central Valley and across the nation (US Equal Employment Opportunity Commission 2008). More recently, five female farmworkers in Florida were awarded more than $17 million after a federal jury found supervisors guilty of having forced them into "coerced sex, groping and verbal abuse, then fired them for objecting" (US Equal Employment Opportunity Commission 2015h). Beyond the discrimination arena, the Department of Labor Wage and Hour Division's EMPLEO program targets outreach to immigrant workers in the western region, many of whom are undocumented, and has helped ten thousand workers recover more than $15 million in back wages over the last ten years (Wage and Hour Division 2014b). Even the National Labor Relations Board, which is constrained by a Supreme Court ruling that prevents the reinstatement of undocumented workers, has certified union representation for many of those engaged in organizing (Jobs with Justice 2014).

It has been demonstrated across various institutional contexts, however, that despite certain protections and occasional victories, an immigrant's relationship to the law is determined in large part by legal status, especially in the current uncertain policy environment. Migrant illegality represents a form of "legal violence" (Menjívar and Abrego 2012) against undocumented workers, even if the specific impacts may vary across age and institutional setting (Gleeson and Gonzales 2012; Abrego and Gonzales 2010), generation and family formation (Abrego 2014; Dreby 2010; Menjívar and Abrego 2009; Zatz and Rodriguez 2015), and the specifics of national origin and homeland politics (Coutin 2000; Golash-Boza 2015).5 The immigration enforcement apparatus, working in conjunction with a broad network of law enforcement at the state and local levels, implements a racialized dragnet of detention and removal that targets Latinos disproportionately (Golash-Boza and Hondagneu-Sotelo 2013; Armenta 2015). Within the workplace context, the deportability of undocumented workers, despite expansive worker protection reforms at the federal, state, and local levels, is a looming reality for those engaged in claims-making.

Moreover, undocumented workers are not randomly distributed across the labor market; they are concentrated in certain areas whose risk factors can complicate their ability to seek and gain restitution. For example, undocumented workers are overrepresented in industries (e.g., certain agricultural fields, domestic labor) that are not covered by key government protections. Furthermore, undocumented workers are more likely to be misclassified as independent contractors (Carré 2015). Employers who classify them as such not only avoid paying taxes and other worker benefits but can also avoid adhering to many of the workplace standards afforded to employees. Undocumented workers are also generally more likely to work in dangerous occupations and don't receive the concomitant wage differential to account for this risk (Hall and Greenman 2015). In addition to this labor force distribution, undocumented workers are more likely to have low levels of human capital and face English language limitations that pose instrumental barriers to filing a claim. Finally, as they are predominantly Latino, undocumented workers also face social discrimination that reflects and reinforces their racialized exclusion (De Genova 2005).

These structural barriers do not negate the strong efforts of worker advocates. Immigrant rights organizations, unions and worker centers, and both the pro bono and private bars have played an important role in improving the rights of low-wage workers by

pushing for new laws and protections (such as raising the minimum wage and legislating rights for LGBT workers). These intermediaries are also crucial in helping these workers access these rights (Gordon 2007; Cummings 2009; Fine 2006; Zlolniski 2006). Existing research confirms that engaging with legal advocates can have a transformative impact on how marginalized individuals perceive, experience, and interact with the law (Hernández 2010). Yet, as this book reveals, the heroic efforts of these advocates are hampered by the shoestring budgets with which they operate, the limited remedies under the law, and the practical challenges posed by the behemoth bureaucracies that enforce the law and the quotidian struggles of low-wage workers' lives.

DEFYING THE ODDS AND MAKING WORKERS' RIGHTS REAL

There is a deep disjuncture between rights in theory and rights in practice, and the process of "making rights real" is fraught with challenges (Epp 2010). Consider one of the most common workplace violations: nonpayment, or underpayment, of wages. Let's assume the violation occurred in California. In this case, California workers are covered at the federal level by the Fair Labor Standards Act, at the state level by the California Labor Code, and at the local level by an increasing number of municipalities that have enacted minimum wage ordinances of their own. Finding that their employer has not paid them what they are owed, and that their attempt to recoup their missing wages falls on deaf ears (or garners retaliation), workers may turn to the law to demand restitution. The first step in this process requires knowing enough about the law to know that they have been wronged. Next, workers must determine what to do with this knowledge. Perhaps they have learned where to go for help and which agency has jurisdiction—through a workers' rights poster, conversations with coworkers, or a local organization's outreach. Workers may then decide to visit a local labor organization, or some may even go to the government agency directly if they feel comfortable doing so. There, they will be asked to provide evidence that they worked the hours they claimed to have worked and any other documentation for the pay they received. If the employer did not keep records and paid in cash, and the workers cannot recall the specifics, they will be asked to provide their best estimate. Their legal advocate may also help them gather this information and attempt to contact the employer first to remedy the situation without having to file a formal claim. In some cases, a call from an attorney does the trick. In others, indignant (and occasionally cash-strapped) employers continue to evade and avoid.

Generally, an aggrieved worker will next decide if they have the energy and resources to file a formal claim at the labor commission, to which they would send the paperwork and await a settlement conference, which could take another six months. At that conference, the employer will ideally show up—they often do not—and with a neutral agent of the state present, sort out the facts of the claim. The employer may make an offer to make the issue go away, and the worker may counter (or the other way around). Either party may walk away. If nothing is settled, the parties are calendared for a formal hearing, which could be scheduled for up to a year later, and where, assuming all goes as planned, both parties and their advocates would again be present. At this point, the presiding officer or administrative law judge hears the evidence and renders a verdict. If at any point in the process either party requires translation, it will be provided. If the losing party disagrees with the decision, they may choose to appeal at superior court. If not, the decision is binding. If the worker wins the claim, the employer is expected to pay up. Lawyers, while not required, can give parties a crucial advantage at navigating the ins and outs of this process.

The details of a claims scenario certainly differ from statute to statute and agency to agency, but generally claims share the following qualities: 1) there are several places along the way where workers could ostensibly resolve their issue without ultimately pursuing a formal claim, even after initiating said claim; 2) workers may choose to proceed with or without the help of a legal advocate, a decision that hinges on social networks and resources available to the worker and could prove enormously consequential, especially for those who lack linguistic skills and experience with the legal process; 3) initiating a formal claim by no means precludes workers from dropping their claim at any point along the process and moving on with their lives.

We have limited data on when and how often workers initiate and complete a workplace claim. One difficulty is that the labor standards enforcement system is really a series of splintered bureaucracies that span federal, state, and (increasingly) local jurisdictions. Agencies enforce different statutes, rely on different data tracking systems, and sometimes don't even define claims in the same way. To further complicate matters, these public agencies fiercely guard the confidentiality of their claimants, and rightly so. But as a result, it is nearly impossible to comprehensively measure all workplace violation claims at once, much less connect multiple claims that a worker may have, by relying on administrative data alone. Beyond these government agencies, the rise in internal dispute resolution systems and mandatory arbitration, even for nonunion workers, means that many claims may never get past a company's human resources department.

However, some revealing data do exist that, at a minimum, help illustrate the challenges workers face in filing a claim. Several researchers have done the impressive work of tracking these claims through the "dispute pyramid," and what they have found is alarming, though perhaps not surprising. Gary Blasi and Joseph W. Doherty (2010), for example, focused on administrative data from the Department of Fair Employment and Housing. To begin, they state a basic fact: for every one million employees in California, about 1,000 employment discrimination complaints are filed every year. Of these, 250 are filed with the federal Equal Employment Opportunity Commission; the other 750 go to the California Department of Fair Employment and Housing (DFEH). Of these latter claims, 375 are granted a Notice of Right to Sue letter, where the claimant then has to rely on a private attorney. Continuing on, 165 of these cases will end up in court, but only 2 will receive a verdict. Another 375 (of the 750 DFEH cases) are pursued administratively by the agency.

The fates of these cases vary tremendously, but it is most important to note that of the 375 cases pursued by the agency, approximately 73 will be outright rejected for investigation, 33 will be dismissed for reasons unrelated to the merits of the case, 34 will request a Notice of Right to Sue letter to pursue claims outside the agency process, 20 will be dismissed due to insufficient evidence, 165 will be dismissed due to insufficient probable cause, and only 46 will be settled or resolved during the administrative process. In other words, claims can take many different paths and end in very different outcomes. In fact, according to Blasi and Doherty's research, the odds of a complainant receiving a monetary award are one in fourteen, with a median award in the range of $3,000 to $4,000 when working through the administrative system. Those who proceed to the courts garner a median payout of $205,000 (with significant variation according to the basis of the claim, with race claims only garnering a median of $105,000) (Blasi and Doherty 2010).

These dynamics can be explained in part by what we already know from Max Weber about the function of bureaucracies, which can quickly harden into inflexible iron cages even as they purport to operate with objectivity, rationality, and fairness (Weber 2009, 1978). These hierarchical structures execute well-oiled systems governed by set rules meant to combat the biased and subjective approaches of an older, more nepotistic tradition. Yet despite this seemingly transparent system, and as the stories in this book reveal, not all workers are equally equipped to navigate these bureaucracies, even with help from advocates and state workers.6

Given the factors that keep workers from standing up for their rights, the workers in this study have already defied the odds and won a victory of sorts by coming forward in the first place. However, to expect the average worker to be "successful" in her claim proves fanciful given the reality revealed by these data. Of the 89 workers who completed a follow-up interview, only 43 reported filing a claim directly with a labor standards enforcement agency. Among those who chose not to, some happily reported that they were able to resolve the issue without a formal claim, but others cited reasons such as lacking the money to pay an attorney, the perception that the claim would lead to a "dead end," the desire to get back to work and their normal lives, or simply the fact that they did not have a case that their legal advocate felt was worth pursuing. One respondent explained her rationale for dropping a claim despite feeling strongly about it: "I became discouraged, even though I know it was unjust." Overall, when asked whether they had ultimately received what they wanted from their claim, only 16 of the 89 follow-up survey interviews provided an affirmative "yes."

In part, such dissatisfaction motivates my study. The central goal of this book is to provide an account, from the ground up, of the context of worker precarity that leads to workplace violations, how workers weigh the costs and benefits of pursuing a claim, what resources they draw on to navigate the complex workers' rights bureaucracies, and what impact these acts of legal mobilization ultimately have on their everyday lives.

THE COSTS OF PURSUING WORKERS' JUSTICE

A unifying theme of this study is that engaging the law comes with costs, such that those with more capital (economic, social, cultural) have an easier time navigating and are more successful when they do. In this book I examine what actually happens once workers come forward. What propels a worker to file a claim given all the evidence we have about the barriers to claims-making? And once a worker has filed a formal claim, what challenges lie ahead? In short, filing a claim is a psychologically taxing process. Workers exercise agency to decide which violations to prioritize or disregard, how far to carry the fight, and when to settle and for what amount. To be sure, these decisions are structured by economic forces (attorney fees, financial situation, et cetera), but as life continues past the initial excitement of courageously coming forward to file a claim, everyday pressures continue to mount. Rent comes due, cars break down, children need care. The time commitment and opportunity costs of persisting in a claim can become just as burdensome as the financial costs. The truth is that it takes tenacity to pursue a claim to the end.

During the claims process, workers may also change their purpose and their goals for achieving justice. They may originally initiate a claim out of an affective stance rooted in general convictions of right and wrong, even if they do not really understand how the law protects them. Over time, they may turn to a more rational approach that weighs the costs and benefits of continuing to fight. Their engagement in the administrative process can lead claimants to "reformulate and reinterpret these problems, meanings, and consequences" (Merry 1990, 3). In my research, I found that one to three years after their initial claims were filed, workers had generally lost their initial reverence for the law, and along with it the hope of success via the formal system. Not every claimant persisted, and many sought alternative routes for justice (Ewick and Silbey 1998). Others came to reinterpret what they had previously understood to be a just outcome. Ellen Berrey, Steve G. Hoffman, and Laura Beth Nielsen (2012) refer to this contextual effect as "situated justice," which depends a great deal on claimants' economic circumstances and social context (legal status, job, age, and other factors).

This study asked workers to reflect on their claims-making experience on the heels of its conclusion, seeking to discover what claimants felt was gained and lost in the process. Many of the low-wage workers I spoke with had no desire to return to their original job, to which they generally had no allegiance. Yet many were also frustrated by their inability to find new employment in a recessionary (and even post-recessionary) environment. Those employed in industries with strong social networks were especially cognizant of the power their previous employer had to refuse a positive reference and essentially blacklist them. Workers had to engage with government bureaucrats and the many ancillary players in the system, including insurers, doctors, and interpreters. Finally, as I focused on claimants who had sought legal help in this process, I also investigated the role that attorneys play in shaping their experience. Complaints of perceived attorney incompetence, problems communicating with legal staff, prohibitive fees, and the challenges of pro se (unrepresented) litigation abounded. Just as important, workers repeatedly emphasized their expectations of respect from the system, their frustration in how the "objective" expertise of technocrats was elevated above their own experience, and ultimately the toll the claims process took on their personal lives.

METHODOLOGICAL APPROACH

This research draws on the experiences of workers in the San Francisco Bay Area and Silicon Valley, one of the most affluent regions in the country. That region is also home to millions of low-wage workers who serve the needs of the postindustrial information economy. Northern California has a long history of immigrant labor, a vibrant civil society for immigrant and low-wage workers, and some of the most progressive policy environments in the country. Of the 8.4 million residents in the San Jose–San Francisco–Oakland CSA (combined statistical area), 44 percent do not identify as white, 26 percent identify as Hispanic or Latino, and 29 percent are foreign born.[7] These immigrant workers are often concentrated in nonunion, low-pay, no-benefit jobs. Temporary and seasonal work is increasingly common, both in service work and in agriculture. An hour south of Silicon Valley along the Central Coast, the laborers in the fields of Watsonville and Salinas are almost entirely Latino immigrant workers, many of them undocumented. Whereas 5 percent of US workers are estimated to be undocumented, 7.8 percent of California workers have no authorization (Passel and Cohn 2009). These figures for undocumented workers vary widely throughout the state: only 3.7 percent in dense and expensive San Francisco, 8.4 percent in the East Bay (Alameda County), and 10.2 percent in Silicon Valley (Santa Clara County) (Hill and Johnson 2011).

My findings are based on three primary sources of data. In the first, I surveyed workers attending one of six workers' rights clinics in the San Francisco Bay Area and Central Coast region. My team attended 93 separate clinic events and collected 469 surveys from June 2010 through April 2012. Of these, 385 workers agreed to a follow-up interview. Ultimately, we were able to contact 89 of them, who then participated in an in-depth interview 12 to 36 months after their initial survey. I supplement these data with a second sample: interviews with injured workers engaged in the process of filing a workers' compensation claim. I recruited these claimants by attending 29 workshops (14 in English and 15 in Spanish) provided by the California Division of Workers' Compensation in Oakland, Salinas, and San Jose between December 2008 and December 2013. In sum, I conducted formal interviews with 24 of these attendees. Lastly, my conclusions are based on my observations as a volunteer for a small legal aid clinic in a rural farmworker community on the Central Coast. From November 2010 to June 2014 I attended 40 clinics in total (25 dedicated to workers' compensation, 14 dedicated to wage claims) where I interviewed workers (mostly in Spanish), consulted with attorneys, and offered advice to clients. Furthermore, I draw on formal interviews with agency staff, attorneys, and clinic volunteers across the San Francisco Bay Area, as well as my occasional visits with clients to their settlement conferences and hearings.

The nonprofit legal aid organizations I worked with were run mostly by law students and volunteers and staff attorneys. The organizations relied on support from local universities, foundations, and a wide variety of grants.[8] They ran workers' rights clinics

on a regular basis, typically on weekday evenings. While the particular focus and capacity of each legal clinic varied, each saw cases involving wage theft, discrimination, sexual harassment, and workers' compensation. The clinics also frequently helped workers who were appealing an unemployment claim denial or who had problems with their pensions. These clinics lasted several hours, and depending on capacity, anywhere from 5 to 20 workers would be scheduled to meet with a staff member (often a law student or other volunteer), who conducted an initial intake consultation. They then consulted with a supervising attorney who supplied advice, determined whether the clinic was in a position to provide follow-up assistance, and, if necessary, provided an outside referral.

Each clinic lasted between two and three hours. Our team approached workers while they waited for their initial consultation, in between their initial meeting and their follow-up advice session, or as they left their appointment. Workers were assured that they were free to opt out of our study and that their participation would in no way positively or negatively impact their ability to receive services from the center. The survey lasted approximately twenty to thirty minutes and included questions regarding workers' employment history, the conditions that gave rise to their claim, and the resources and referrals they relied on prior to coming to the legal aid clinic. Each survey was conducted on site, and each respondent received a $15 gift card for their time. All but four interviews took place in person, and they lasted on average one hour. Interviewees were again incentivized with a $15 gift card, and, when appropriate, provided a beverage or meal (depending on the meeting place). Sixty interviews were conducted in Spanish, and one in Mandarin.9 During these interviews, respondents were asked to elaborate on the circumstances that led them to file a formal claim, what challenges they encountered, and whether they were satisfied with the final outcome. Pseudonyms are used for all references to respondent data.

TABLE 1A: Key Survey Characteristics (Means)

	All Survey (N = 453)	Survey Follow-up Interview (N = 89)
Survey Conducted in Spanish	.58	.67
US Born	.27	.26
Age	43.3	44.2
Male	.52	.48
Married	.53	.47
Has Children in School	.52	.49
Did Not Complete High School	.27	.28
Does Not Speak English	.12	.16
Currently Employed	.56	.58
Union Member	.14	.21
Industry		
Construction	.07	.09
Restaurant	.19	.09
Janitorial	.08	.08
Still Employed at Claim Firm	.21	.25
Has Filed Claim Before	.17	.24
Claim Type		
Wage	.39	.43
Discrimination	.24	.27
Sexual Harassment	.04	.06
Unemployment	.07	.06
Workers' Compensation	.04	.03
Other	.26	.22

Survey respondents represent the diverse communities that these legal aid organizations assist. Seventy-three percent of respondents are foreign born, two-thirds are Latino, and a small minority of workers identify as African American (9 percent), Asian/Pacific Islander (11 percent), and white (10 percent). I estimate that 37 percent of respondents are undocumented;10 of these, all but one identify as Latino. Nonetheless, the interviewed workers constitute an established immigrant population, with the average time in the United States being 17.6 years for documented and 12.3 years for undocumented respondents. Surveys were conducted mostly in English (186) and Spanish (262), but also in some cases in Mandarin (5). The respondents are low-wage workers with generally low levels of education—60 percent reporting a high school degree or less—and only half speak English. They are concentrated in the retail, day labor, and food service sectors, though some respondents were unemployed throughout the recession years. The distribution of these interviews is consistent with the original sample of survey respondents.

TABLE 1B: Distribution of Interviews and Follow-up Interviews by Nativity and Legal Status

	Survey	Follow-up Interviews
All	453	89
Native Born	122 (.27)	23 (.26)
Foreign Born	331 (.73)	66 (.74)
Foreign Born, Citizens	89 (.27)	15 (.23)
Foreign Born, Noncitizens, Legal Permanent Residents	72 (.22)	16 (.24)
Foreign Born, Noncitizens, Non–Legal Permanent Residents	170 (.51)	35 (.53)

TABLE 1C: Distribution of Claimant Characteristics Across Clinics (%)

		N	Wage/ Hour	Discrimination	Sexual Harassment	Unemployment	Workers' Comp	OTHER
San Jose	SU	237	96	77	10	12	7	14
	IN	14	21	10	3	2	2	10
Oakland	SU	61	37	7	0	0	2	18
	IN	10	4	2	0	0	0	2
San Francisco	SU	97	19	13	6	13	3	30
	IN	13	4	4	1	2	0	4
Berkeley	SU	38	19	8	1	0	2	20
	IN	9	2	0	1	1	1	4
TOTAL	SU	413	176	107	17	15	14	121
	IN	46	27	24	6	5	5	20

	Latino	Black	Asian or Pacific Islander	White	Native Born	Undocumented Immigrant
San Jose	.61	.02	.08	.05	.18	.43
Oakland	1.00	.00	.00	.00	.00	.09
San Francisco	.31	.21	.22	.21	.47	.09
Berkeley	.34	.28	.32	.21	.32	.21

NOTES:

• Race categories are not mutually exclusive.

• Claim categories are also not mutually exclusive. Percentages do not sum to 100; the residual category is “other” and includes allegations of wrongful termination.

• These claim categories reflect a worker’s initial declaration of their issue, but not necessarily what their claim evolved into, which could include, or be replaced by, other claim categories.

•SU = initial survey, IN = follow-up interview

• Totals do not include additional interviews with injured workers (workers’ compensation claim) who did not participate in the original survey, nor one follow-up interview with a survey respondent from a smaller clinic who participated in the pilot phase of the project.

This research was designed to examine the challenges that workers who have already ventured into the labor standards enforcement process continue to face. Therefore, the sample is not representative of the general low-wage worker population. By design, this survey sample represents those workers who are generally aware of their rights and who have begun the process of filing a formal claim. These are workers who, relative to their counterparts who have not come forward, likely possess more information and resources to make their claim successful. By returning to examine the experiences of workers beyond the initial stage of claims-making, my findings highlight the important but limited role of the labor standards enforcement bureaucracy for improving the conditions of low-wage workers.

Lastly, it is crucial to note that throughout the process I relied on the kindness and generosity of those willing to tell their stories. There were some challenges. I simply could not get hold of some claimants. One to three years is a long time in the life of a low-wage worker. People move, cell phone bills go unpaid, numbers change. Sometimes family members would agree to pass my message along, but rarely did I receive a call back. This is understandable, given that the prospect of sharing one’s story of struggle with a stranger defies logic. I am conscious that the time I took from workers—meeting in local coffee shops or in their homes—took away from time they could otherwise be spending with their families, sleeping, or tending to the demands of everyday life. To say that the opportunity to speak with me represented a welcome cathartic valve would be presumptuous and likely untrue for many of the workers. Moreover, I doubt that the modest honorarium I offered was a major incitement to come forward.

Several of the workers I was initially able to get on the phone explained the reasons why they could not speak with me. A few feared that the settlements they had negotiated would be at risk, despite all my assurances of confidentiality. Others, especially injured workers, were so traumatized by the long series of depositions, medical appointments, and bullying calls by insurers that they simply were wary of me and reluctant to engage further. Typically I attempted to reach individuals at least twice, erring on the side of respect for those not interested even though I realized that by doing so I would likely miss a few who needed some persistence. After two tries, I would mark the record closed and move on.

Usually people were firm but friendly, though on occasion my follow-up calls would be met with hostility and distrust. Not every worker I surveyed at the legal aid clinic was actually able to get help, depending on the merits of their case or the clinic’s inability to take on complex cases that really required private counsel. Facing a situation where help was unavailable, workers were sometimes resentful and declined to say more to me. A few workers were still in the thick of their cases, in a holding pattern with little to report. In some of those instances, I was able to follow up later on down the road.

The most common responses I received from workers who declined a follow-up interview, despite having originally consented, were that they were tired and ready to move on or had no time. In some cases, workers were too busy with their jobs or families to speak with me. Some immigrants had returned to their countries of origin, either for an extended stay or for good. In a handful of

cases, I would show up for an interview and the respondent would never arrive. Oftentimes a sick family member, a last-minute work schedule change, or unreliable transportation was the culprit.

In sum, it is important to understand that the workers I ultimately was able to speak with were those who had the time, ability, and willingness to share their stories. Though I cannot be sure, my impression is that these cases were positively selected from the claims I did not get to explore. Our conversations focused primarily on the claim at hand, but often veered into broader discussions about the challenges associated with being a low-wage worker in one of the most expensive housing markets in the country. Because my data are based on retrospective discussions with workers, it is very possible, indeed probable, that the nonexpert claimants I spoke with had a poor understanding of the legal minutiae associated with their cases. In fact, the answer to even the simplest question—With which agency did you file your claim?—was not always apparent to the respondent. Was it with the federal or the state government? Did you go to superior court or just a settlement conference at the agency? In many cases, workers did not know. To the extent possible, I triangulated these data with interviews with attorneys and other advocates who deal with these types of cases on a regular basis. However, due to confidentiality concerns, I never discussed a specific case with an attorney at the clinic where the worker sought assistance, nor did I disclose enough information to reveal the identity of the claimant.

The strengths of these interviews are twofold: what they reveal about the claimants' lay understanding of a complex system, and what they reveal about the impact that pursuing their case had on their everyday lives. While 60 percent of respondents had a high school degree or less, they were well-versed in the systems that governed their workplaces and gained a keen understanding of the biases inherent in the legal bureaucracies in which they had put their trust. It is their perspectives that I lean on the heaviest, with the hope that their insights will help illuminate the limits of formal labor law and how we must do better to address inequalities.

CHAPTER OVERVIEW

The remainder of the book proceeds as follows. Chapter 2 begins by discussing the state of worker precarity today, and highlights the key differences from eras past. I then provide a brief overview of the current system of workers' rights in the United States, as it also interacts with the immigration enforcement regime. Labor standards enforcement provides a useful case study for understanding how rights are implemented, the factors that shape legal consciousness, and the conditions required for workers to realize their rights. Successful claims are few and far between, and I preview how the long-term impacts of pursuing them can weigh heavily on a low-wage worker and his or her family. I end with a description of the data for this study, which includes survey data, interviews, and ethnographic observations.

Chapter 2 opens with the story of five workers engaged in the labor standards enforcement process whose experiences illuminate the range of challenges low-wage workers face, such as accessing benefits, negotiating autonomy on the shop floor, fomenting collective power, addressing harassment and abuse, and avoiding deportation. At-will employment also fuels worker precarity, as do nonstandard worker arrangements such as subcontracted and temporary positions. I describe how employers discipline workers via explicit and implicit threats, and a variety of administrative tools such as performance standards, periodic evaluations, and warnings that can quickly lead to dismissal. Social relationships, which may involve complicated management hierarchies, coworkers, and well-meaning but sometimes powerless unions, also shape workers' experiences on the job.

Chapter 3 reviews the legal framework for enforcing the rights of low-wage workers in the United States. I critically examine the logics and the fissures plaguing the bureaucratic apparatus. I focus especially on employment law, including wage and hour standards, discrimination protections, workers' compensation, and unemployment and state disability. I also briefly review the system of collective bargaining and the union grievance process. I emphasize the limits of statutory protections, as much of the exploitative practices that workers endure fall outside their purview. As such, the line blurs between legally prohibited employer abuses and accepted or overlooked coercive practices. I end with a brief overview of the negative impact of employer sanctions and immigration enforcement efforts on undocumented workers.

Chapter 4 follows the experiences of workers as they make their way through the bureaucracy. I begin by examining the logics that create a successful claim and how workers learn about the rights they do and do not have. I discuss the factors that ultimately shape a worker's decision to come forward, and challenge the limited focus typically placed on rights education. I next unpack the various gatekeepers and brokers who manage the labor standards enforcement system, including government agents, private insurers and medical experts, language brokers, and attorneys. As workers navigate the bureaucracy, they must weigh the financial considerations, time and opportunity costs, and stress of the process in deciding whether to continue fighting and when to stop.

Chapter 5 focuses on the aftermath of workplace exploitation and legal mobilization, which can amplify existing precarity. I highlight three sets of consequences workers must cope with, including reinventing their professional identity and managing financial devastation, the impact on their physical and mental health, and the burden on their families here and abroad. I reflect too on those undocumented workers who grow tired of enduring abuse with no hope for immigration reform, and eventually return to their home countries. The chapter concludes by considering how workers take stock of their experiences as precarious workers navigating the claims bureaucracy. Some walk away enlightened and empowered, whereas many more find themselves resigned to the injustice and regretful for what they have lost in the process.

The book concludes by reflecting on how the current system of workers' rights institutionalizes workplace precarity, and the deep divide between laws on the books and laws in practice. I highlight the importance of institutional intermediaries and increasing access to justice, and the limits of claims-driven enforcement approaches. As we march toward expanding the legal rights of individual workers, I call on us to consider also the many challenges workers face in realizing these protections. Immigration reform, while absolutely necessary, I caution is also insufficient to address worker precarity alone, as both undocumented and documented workers have much in common. I end by considering what this bottom-up perspective on rights mobilization reveals about precarity, agency, and the pursuit of justice.

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CHAPTER OVERVIEW

3: Theories That Characterize Criminology

3.1: Chicago School and Differential Association
3.2: Masculinities and Crime
3.3: Poverty, Anomie, and Strain
3.4: Supplemental- Culture, Subculture, and Crime

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3.1: Chicago School and Differential Association

Abstract

Understanding of the psychology of tyranny is dominated by classic studies from the 1960s and 1970s: Milgram's research on obedience to authority and Zimbardo's Stanford Prison Experiment. Supporting popular notions of the banality of evil, this research has been taken to show that people conform passively and unthinkingly to both the instructions and the roles that authorities provide, however malevolent these may be. Recently, though, this consensus has been challenged by empirical work informed by social identity theorizing. This suggests that individuals' willingness to follow authorities is conditional on identification with the authority in question and an associated belief that the authority is right.

Citation: Haslam SA, Reicher SD (2012) Contesting the "Nature" Of Conformity: What Milgram and Zimbardo's Studies Really Show. PLoS Biol 10(11): e1001426. https://doi.org/10.1371/journal.pbio.1001426

Published: November 20, 2012

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Funding: The authors received no specific funding for this work.

Competing interests: The authors have declared that no competing interests exist.

Introduction

If men make war in slavish obedience to rules, they will fail.

Ulysses S. Grant [1]

Conformity is often criticized on grounds of morality. Many, if not all, of the greatest human atrocities have been described as "crimes of obedience" [2]. However, as the victorious American Civil War General and later President Grant makes clear, conformity is equally problematic on grounds of efficacy. Success requires leaders and followers who do not adhere rigidly to a pre-determined script. Rigidity cannot steel them for the challenges of their task or for the creativity of their opponents.

Given these problems, it would seem even more unfortunate if human beings were somehow programmed for conformity. Yet this is a view that has become dominant over the last half-century. Its influence can be traced to two landmark empirical programs led by social psychologists in the 1960s and early 1970s: Milgram's Obedience to Authority research and Zimbardo's Stanford Prison Experiment. These studies have not only had influence in academic spheres. They have spilled over into our general culture and shaped popular understanding, such that "everyone knows" that people inevitably succumb to the demands of authority, however immoral the consequences [3],[4]. As Parker puts it, "the hopeless moral of the [studies'] story is that resistance is futile" [5]. What is more, this work has shaped our understanding not only of conformity but of human nature more broadly [6].

Building on an established body of theorizing in the social identity tradition—which sees group-based influence as meaningful and conditional [7],[8]—we argue, however, that these understandings are mistaken. Moreover, we contend that evidence from the studies themselves (as well as from subsequent research) supports a very different analysis of the psychology of conformity.

The Classic Studies: Conformity, Obedience, and the Banality Of Evil

In Milgram's work [9],[10] members of the general public (predominantly men) volunteered to take part in a scientific study of memory. They found themselves cast in the role of a "Teacher" with the task of administering shocks of increasing magnitude (from 15 V to 450 V in 15-V increments) to another man (the "Learner") every time he failed to recall the correct word in a previously learned pair. Unbeknown to the Teacher, the Learner was Milgram's confederate, and the shocks were not real. Moreover, rather than being interested in memory, Milgram was actually interested in seeing how far the men would go in carrying out the task. To his—and everyone else's [11]—shock, the answer was "very far." In what came to be termed the "baseline" study [12] all participants proved willing to administer shocks of 300 V and 65% went all the way to 450 V. This appeared to provide compelling evidence that normal well-adjusted men would be willing to kill a complete stranger simply because they were ordered to do so by an authority.

Zimbardo's Stanford Prison Experiment took these ideas further by exploring the destructive behaviour of groups of men over an extended period [13],[14]. Students were randomly assigned to be either guards or prisoners within a mock prison that had been constructed in the Stanford Psychology Department. In contrast to Milgram's studies, the objective was to observe the interaction within and between the two groups in the absence of an obviously malevolent authority. Here, again, the results proved shocking. Such was the abuse meted out to the prisoners by the guards that the study had to be terminated after just 6 days. Zimbardo's conclusion from this was even more alarming than Milgram's. People descend into tyranny, he suggested, because they conform unthinkingly to the toxic roles that authorities prescribe without the need for specific orders: brutality was "a 'natural' consequence of being in the uniform of a 'guard' and asserting the power inherent in that role" [15].

Within psychology, Milgram and Zimbardo helped consolidate a growing "conformity bias" [16]in which the focus on compliance is so strong as to obscure evidence of resistance and disobedience [17]. However their arguments proved particularly potent because they seemed to mesh with real-world examples—particularly evidence of the "banality of evil." This term was coined in Hannah Arendt's account of the trial of Adolf Eichmann [18], a chief architect of the Nazis' "final solution to the Jewish question" [19]. Despite being responsible for the transportation of millions of people to their death, Arendt suggested that Eichmann was no psychopathic monster. Instead his trial revealed him to be a diligent and efficient bureaucrat—a man more concerned with following orders than with asking deep questions about their morality or consequence.

Much of the power of Milgram and Zimbardo's research derives from the fact that it appears to give empirical substance to this claim that evil is banal [3]. It seems to show that tyranny is a natural and unavoidable consequence of humans' inherent motivation to bend to the wishes of those in authority—whoever they may be and whatever it is that they want us to do. Put slightly differently, it operationalizes an apparent tragedy of the human condition: our desire to be good subjects is stronger than our desire to be subjects who do good.

Questioning the Consensus: Conformity Isn't Natural and It Doesn't Explain Tyranny

The banality of evil thesis appears to be a truth almost universally acknowledged. Not only is it given prominence in social psychology textbooks [20], but so too it informs the thinking of historians [21],[22], political scientists [23], economists [24], and neuroscientists [25]. Indeed, via a range of social commentators, it has shaped the public consciousness much more broadly [26], and, in this respect, can lay claim to being the most influential data-driven thesis in the whole of psychology [27],[28].

Yet despite the breadth of this consensus, in recent years, we and others have reinterrogated its two principal underpinnings—the archival evidence pertaining to Eichmann and his ilk, and the specifics of Milgram and Zimbardo's empirical demonstrations—in ways that tell a very different story [29].

First, a series of thoroughgoing historical examinations have challenged the idea that Nazi bureaucrats were ever simply following orders [19],[26],[30]. This may have been the defense they relied upon when seeking to minimize their culpability [31], but evidence suggests that functionaries like Eichmann had a very good understanding of what they were doing and took pride in the energy and application that they brought to their work. Typically too, roles and orders were vague, and hence for those who wanted to advance the Nazi cause (and not all did), creativity and imagination were required in order to work towards the regime's assumed goals and to overcome the challenges associated with any given task [32]. Emblematic of this, the practical details of "the final solution" were not handed down from on high, but had to be elaborated by Eichmann himself. He then felt compelled to confront and disobey his superiors—most particularly Himmler—when he believed that they were not sufficiently faithful to eliminationist Nazi principles [19].

Second, much the same analysis can be used to account for behavior in the Stanford Prison Experiment. So while it may be true that Zimbardo gave his guards no direct orders, he certainly gave them a general sense of how he expected them to behave [33]. During the orientation session he told them, amongst other things, "You can create in the prisoners feelings of boredom, a sense of fear to some degree, you can create a notion of arbitrariness that their life is totally controlled by us, by the system, you, me… We're going to take away their individuality in various ways. In general what all this leads to is a sense of powerlessness" [34]. This contradicts Zimbardo's assertion that "behavioral scripts associated with the oppositional roles of prisoner and guard [were] the sole source of guidance" [35] and leads us to question the claim that conformity to these role-related scripts was the primary cause of guard brutality.

But even with such guidance, not all guards acted brutally. And those who did used ingenuity and initiative in responding to Zimbardo's brief. Accordingly, after the experiment was over, one prisoner confronted his chief tormentor with the observation that "If I had been a guard I don't think it would have been such a masterpiece" [34]. Contrary to the banality of evil thesis, the Zimbardo-inspired tyranny was made possible by the active engagement of enthusiasts rather than the leaden conformity of automatons.

Turning, third, to the specifics of Milgram's studies, the first point to note is that the primary dependent measure (flicking a switch) offers few opportunities for creativity in carrying out the task. Nevertheless, several of Milgram's findings typically escape standard reviews in which the paradigm is portrayed as only yielding up evidence of obedience. Initially, it is clear that the "baseline study" is not especially typical of the 30 or so variants of the paradigm that Milgram conducted. Here the percentage of participants going to 450 V varied from 0% to nearly 100%, but across the studies as a whole, a majority of participants chose not to go this far [10],[36],[37].

Furthermore, close analysis of the experimental sessions shows that participants are attentive to the demands made on them by the Learner as well as the Experimenter [38]. They are torn between two voices confronting them with irreconcilable moral imperatives, and the fact that they have to choose between them is a source of considerable anguish. They sweat, they laugh, they try to talk and argue their way out of the situation. But the experimental set-up does not allow them to do so. Ultimately, they tend to go along with the Experimenter if he justifies their actions in terms of the scientific benefits of the study (as he does with the prod "The experiment requires that you continue") [39]. But if he gives them a direct order ("You have no other choice, you must go on") participants typically refuse. Once again, received wisdom proves questionable. The Milgram studies seem to be less about people blindly conforming to orders than about getting people to believe in the importance of what they are doing [40].

Tyranny as a Product of Identification-Based Followership

Our suspicions about the plausibility of the banality of evil thesis and its various empirical substrates were first raised through our work on the BBC Prison Study (BPS [41]). Like the Stanford study, this study randomly assigned men to groups as guards and prisoners and examined their behaviour with a specially created "prison." Unlike Zimbardo, however, we took no leadership role in the study. Without this, would participants conform to a hierarchical script or resist it?

The study generated three clear findings. First, participants did not conform automatically to their assigned role. Second, they only acted in terms of group membership to the extent that they actively identified with the group (such that they took on a social identification) [42]. Third, group identity did not mean that people simply accepted their assigned position; instead, it empowered them to resist it. Early in the study, the Prisoners' identification as a group allowed them successfully to challenge the authority of the Guards and create a more egalitarian system. Later on, though, a highly committed group emerged out of dissatisfaction with this system and conspired to create a new hierarchy that was far more draconian.

Ultimately, then, the BBC Prison Study came close to recreating the tyranny of the Stanford Prison Experiment. However it was neither passive conformity to roles nor blind obedience to rules that brought the study to this point. On the contrary, it was only when they had internalized roles and rules as aspects of a system with which they identified that participants used them as a guide to action. Moreover, on the basis of this shared identification, the hallmark of the tyrannical regime was not conformity but creative leadership and engaged followership within a group of true believers (see also [43],[44]). As we have seen, this analysis mirrors recent conclusions about the Nazi tyranny. To complete the argument, we suggest that it is also applicable to Milgram's paradigm.

The evidence, noted above, about the efficacy of different "prods" already points to the fact that compliance is bound up with a sense of commitment to the experiment and the experimenter over and above commitment to the learner (S. Haslam, SD Reicher, M. Birney, unpublished data) [39]. This use of prods is but one aspect of Milgram's careful management of the paradigm [13] that is aimed at securing participants' identification with the scientific enterprise.

Significantly, though, the degree of identification is not constant across all variants of the study. For instance, when the study is conducted in commercial premises as opposed to prestigious Yale University labs one might expect the identification to diminish and (as our argument implies) compliance to decrease. It does. More systematically, we have examined variations in participants' identification with the Experimenter and the science that he represents as opposed to their identification with the Learner and the general community. They always identify with both to some degree—hence the drama and the tension of the paradigm. But the

degree matters, and greater identification with the Experimenter is highly predictive of a greater willingness among Milgram's participants to administer the maximum shock across the paradigm's many variants [37].

However, some of the most compelling evidence that participants' administration of shocks results from their identification with Milgram's scientific goals comes from what happened after the study had ended. In his debriefing, Milgram praised participants for their commitment to the advancement of science, especially as it had come at the cost of personal discomfort. This inoculated them against doubts concerning their own punitive actions, but it also it led them to support more of such actions in the future. "I am happy to have been of service," one typical participant responded, "Continue your experiments by all means as long as good can come of them. In this crazy mixed up world of ours, every bit of goodness is needed" (S. Haslam, SD Reicher, K Millward, R MacDonald, unpublished data).

Conclusion

The banality of evil thesis shocks us by claiming that decent people can be transformed into oppressors as a result of their "natural" conformity to the roles and rules handed down by authorities. More particularly, the inclination to conform is thought to suppress oppressors' ability to engage intellectually with the fact that what they are doing is wrong.

Although it remains highly influential, this thesis loses credibility under close empirical scrutiny. On the one hand, it ignores copious evidence of resistance even in studies held up as demonstrating that conformity is inevitable [17]. On the other hand, it ignores the evidence that those who do heed authority in doing evil do so knowingly not blindly, actively not passively, creatively not automatically. They do so out of belief not by nature, out of choice not by necessity. In short, they should be seen—and judged—as engaged followers not as blind conformists [45].

What was truly frightening about Eichmann was not that he was unaware of what he was doing, but rather that he knew what he was doing and believed it to be right. Indeed, his one regret, expressed prior to his trial, was that he had not killed more Jews [19]. Equally, what is shocking about Milgram's experiments is that rather than being distressed by their actions [46], participants could be led to construe them as "service" in the cause of "goodness."

To understand tyranny, then, we need to transcend the prevailing orthodoxy that this derives from something for which humans have a natural inclination—a "Lucifer effect" to which they succumb thoughtlessly and helplessly (and for which, therefore, they cannot be held accountable). Instead, we need to understand two sets of inter-related processes: those by which authorities advocate oppression of others and those that lead followers to identify with these authorities. How did Milgram and Zimbardo justify the harmful acts they required of their participants and why did participants identify with them—some more than others?

These questions are complex and full answers fall beyond the scope of this essay. Yet, regarding advocacy, it is striking how destructive acts were presented as constructive, particularly in Milgram's case, where scientific progress was the warrant for abuse. Regarding identification, this reflects several elements: the personal histories of individuals that render some group memberships more plausible than others as a source of self-definition; the relationship between the identities on offer in the immediate context and other identities that are held and valued in other contexts; and the structure of the local context that makes certain ways of orienting oneself to the social world seem more "fitting" than others [41],[47],[48].

At root, the fundamental point is that tyranny does not flourish because perpetrators are helpless and ignorant of their actions. It flourishes because they actively identify with those who promote vicious acts as virtuous [49]. It is this conviction that steels participants to do their dirty work and that makes them work energetically and creatively to ensure its success. Moreover, this work is something for which they actively wish to be held accountable—so long as it secures the approbation of those in power.

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3.2: Masculinities and Crime

A Brotherhood of Violence and Mutilation

The next three chapters describe the perspectives and experiences of Canadian football players, coaches, and administrators. As such, they include numerous quotes and paraphrases to capture the voices of the participants. I make an attempt throughout to reveal the dissenting voices and varying realities of the embodied knowledge of individual players and administrators. However, I also try to reveal larger trends and themes that can contribute to our shared understanding of violence, hazing, and performance-enhancing drug use in Canadian football.

Perceptions and Experiences of Violence

Many football players in Canada do not perceive their sport to be violent. In fact, nearly half of the interview participants in this study reported that violence is unacceptable in football. This assertion reveals a shared belief among football players that the collision of bodies routinely occurring during each play on the eld is not violent. While every player interviewed indicated concern over acts that happened under these conditions, a substantial minority suggested that in-game contact should not be labelled violence. For example, one junior player stated that “football is a contact sport, not a violent sport.” A player at the professional level reported that football is not violent but is rather “a game of constant collisions.” A CFL quarterback pointed out, “physicality and collisions are happening all of the time. I am not sure I would call that violence.” Likewise, a university player stated, “I wouldn’t declare football as being violent. Some teams are, but the sport isn’t. A good game of football played until the whistle every play and without cheap shots is not violent.” According to these players, violence on the eld only takes place when it is outside the rules of play, and occurs a er a play has been whistled down, or well away from the action of the game. On field violence only occurs when an act goes beyond the routine, sanctioned collisions involved in the sport.

In contrast to the limited de nition of violence that many players and coaches hold, some perceive the routine body contact that occurs on the eld as violence. For example, a university kicker stated, “violence on the eld is an acceptable part of football to the extent that it is exerted in order to tackle or block a player legally.” Likewise, a junior linebacker noted, “I think it could just about be the most violent sport of all of the major sports around today.”

Players do not have a uniform opinion of how violence on the eld should be de ned. Many do not see routine body contact as violence, while others do. All players do, however, report that they perceive contact that occurs a er the whistle, outside of the rules of play, away from the action, or with intent to injure as violence.

Three distinct types of violence emerged from players’ description of the force and collisions of Canadian football: routine contact, immoderate violence, and ultraviolence. Routine contact, such as an ordinary tackle, is commonplace, authorized by the rules of the sport, deemed consensual by the majority of athletes, and causes minimal injury. Immoderate violence, such as tackling a player from behind, is unauthorized in sport, intended to cause short-term injury, and non-consensual, but it is not so extreme that the legal system becomes involved. Ultra-violence is an extreme form of violence that is unauthorized, non-consensual, and causes severe, sometimes permanent injury. If, for instance, a player uses the spikes on his cleats to stomp on the head of a helmetless player, that is ultra-violence.

A CFL running back used the term “game-day gangsters” to denote players who deliberately in ict pain and injury on their opponents.1 In his description, these players were perpetrators of either immoderate or ultra-violence. When they step out onto the eld, they do so with the aim of intimidating the opposing team by using excessive violence and taking certain opponents out of the game with injuries to better their own team’s chances of winning. The violence these players engage in is not the

1 In this book, the term “game-day gangsters” has been broadened to refer to athletes, coaches, administrators, and owners who engage in quasi-criminal acts in the context of sport.

result of an aring temper or emotional response; it is a premeditated act of violent aggression. This behaviour is not considered to be the norm, and most players perceive the perpetrators in a negative way. While every athlete I interviewed during the course of my research knew of a player who could be labelled as a game-day gangster, none reported they had ever taken on this role or engaged in any activity that would encourage this title.

So-called game-day gangsters do not always limit their violent acts to the opposing team; at times, they attempt to in ict pain upon and injure their teammates. For example, it has been reported that several violent altercations broke out in the practices of the

CFL's Edmonton Eskimos during the 2008 season. At one point, there were six ghts reported within a ve-day stretch during the Eskimos' training camp (Bennett, 2008). All of the players I interviewed indicated that they would never deliberately injure a player on their own team and feel a responsibility to protect their teammates in the informal economy of football. But such occurrences of teammate violence do exist.

Nearly all of the football players interviewed in this study expressed negative sentiments toward players who attempt to injure others on the eld. The majority of them reported that a shared understanding exists in Canadian football, where players respect one another and do not want to see anyone seriously injured. This does not mean that players are not violent and do not try to hit each other as hard as they can on every play, but rather that they try to stay within the rules and are concerned about the well-being of those who they are playing with and against.

Elaborating on this sentiment, a CFL centre explained, there is kind of a gentleman's pact in football. . . . We want to hurt each other, but generally we don't want to see anybody's career ended. That is why you see everybody is concerned about it when a guy goes down and an ambulance has to come out on the eld.

Along similar lines, a CFL quarterback said,

In a sport like football it is up to the players to police it and have respect for each other out on the eld, and [to] know that you have the ability to take away the person's livelihood; as a player you would hate to have somebody do that to you, so you have to use that same sensibility and not go a er another player.

Describing the importance of respectability on the eld, a university player stated, "You have got to have some class." In some instances, even though an act is allowed within the rules of play, football players will o en avoid it out of concern for the safety of their opponents. For example, a CFL o ensive lineman claimed, "pile tipping is technically within the rules, but you don't want to do that to a guy. You don't want to take food out of families' mouths by injuring a guy on purpose, regardless of the rules." The term "pile tipping" refers to hitting a player who is standing by a pile-up of other players. The risks of pile tipping are that the player could easily get ipped over, seriously injuring his head and/or neck, or he could land on the pile and injure those beneath him.

Players describe a number of reasons for having this shared understanding of acceptable contact in football. First, most do not want to end anyone's career because they recognize the vulnerability of their own employment. They expressed some empathy for injured players, drawing on their own experiences of injuries to identify with them. Second, athletes o en see plays on the eld that are intended to injure as an unnecessary addition to an already violent game. As one CFL player stated, "it is a violent enough sport as it is; it is a shame when guys take it on top of that. . . . I don't get that." Third, players are given the opportunity to be aggressive within the rules in ways that are meant to hurt, but not injure, opposing players. A coach and former player described this approach:

If you want to get him back, just hit him really hard next play. You've got a whole bunch of opportunities. You run 60 or 70 o ensive plays, so the o ence and defence is on that amount of time, plus your special teams, I mean you are going to nd that guy at some other point in time.

Fourth, for a minority of players, superstition dissuades violent acts. One player claimed, "I do not want to end your career because the football gods shine on you, and if you do something dirty it is going to come back and get you." A h deterrent is that players view guys who are out on the eld trying to injure others as "hotheads" who "can't control themselves" and as such are exploitable because they are not concentrating on the game. Sixth, acts intended to injure opposing players can ultimately hurt one's own team with penalties that can lead to rst downs, a better eld position, and the ejection of key players from the game.

Although Canadian football players articulate this shared understanding that it is inappropriate to deliberately injure one another, they openly report a desire to hurt their opponents within the rules of the game. Nearly two-thirds of players di erentiate between injuries that take players out of the game, and those that only cause physical pain but do not limit their ability to keep playing. While the line between these two types of injuries appears to be clear in the minds of many players, they could not explain how they kept themselves from crossing it. The only explanations o ered were that they had a "feel for the game" based on experience, and held a belief that the rules exist to ensure safety on the eld. In other words, if an action is within the rules, then it is perceived as being unlikely to result in injury.

Illustrating this division between hurting an opponent and injuring him, a university linebacker reported:

As a defender, I do everything in my power to stop whoever has the ball. The goal is to make the play. The goal is to hurt the person. However, the goal is not to injure him. That is the clearest distinction I can make. I would never intentionally try and injure someone else, or end their career. However, I want them to fear me, to remember my hits, to try and avoid me, to think about me. Violence is a part of the game. The key is to keep it on the eld. Hurt versus injury is the most important di erence to keep in mind. (emphasis added)

Another university linebacker claimed, “I love seeing big hits, dishing out big hits, and even getting crushed myself. But there is a line between a big hit and a dangerous hit that could cause a serious injury.”

Athletes are most attuned to this di erence between hurting and injuring when tackles are made on players in vulnerable positions. For instance, in the pile tipping example, opponents see the player standing by the pile as someone in a vulnerable position, and so they will not hit him as hard, or at all, because the likelihood of injury exceeds the likelihood that he and the other players involved would be hurt. Similarly, most players report that they take extra care when tackling receivers who are attempting to catch the ball, because their bodies are in a vulnerable position as they concentrate on making the catch, rather than taking a hit. In CIS football, you can tackle a receiver even if the ball has been overthrown and is nearly impossible to catch. However, such a tackle would be perceived negatively. As one university defensive lineman stated, “you should never try to injure someone in a vulnerable position, like a receiver who is stretched out trying to catch the ball. You want to punish a guy, but you don’t want to injure him.”

Although players typically do not intend to injure one another on the eld, nearly all of them acknowledged that getting injured is a part of the sport of football. One CFL player said, “you always have the thought that you might get hurt in the back of your mind every time you step out onto the eld.” A junior coach reminiscing about his playing days explained, “everything just hurt so bad that it kind of blended into one big hurt.” He described the injuries he sustained during his playing career at the junior, university, and professional levels:

I don’t regret anything and I would do it all over in a heartbeat, but I have a steel plate, four pins and two screws in my le ankle, tore my MCL in my right knee, a stress fracture in my right femur, I’ve broken both ankles, all of my ngers, ribs, slipped a disc, separated my le shoulder, bruised my tailbone ridiculously bad and it still bothers me to this day, and that was six years ago, and have badly dislocated my elbow. Your body hates you a er.

His list is a typical one of the injuries described by many players who have been involved in the sport for several years.

Most players not only expect to receive minor injuries (such as sprained ankles and jammed ngers) but also know they could experience catastrophic ones that would end their playing careers and result in health repercussions later in life. A junior player indicated that, people want to hit you as hard as they can and then move on, but we are all aware of the potential that your career could be over [with] the next snap because some guy rolls up on you from behind and you blow every ligament in your knee.

While players acknowledge and accept the possibility that they might be seriously injured during play, they do not perceive injuries resulting from violent acts that are outside the rules as a voluntary part of the game. A university cornerback conformed this: “when guys are going at each other as hard as they can there is going to be some injuries, and accidents do happen. It is expected. As long as it is not a cheap shot, it is expected.” As one player who had just retired from professional football due to an injury sustained from an illegal hit on the eld stated, “If my injury had occurred during a play, or had been an accident, I would be okay with it. I have been injured pretty badly before, but the way my last injury went down was not like that.”

Several players suggested that technological developments in equipment have decreased the general concern about injuries. For example, a CFL player claimed that it is “difficult to injure a player nowadays because of all of the padding.” Football equipment is now being developed that can absorb and distribute the impact of full-body contact. With these developments has come an increased faith in new medical technologies and procedures to get players back on the eld faster, enabling them to recover from injuries that most likely would have ended their careers several years ago.

Some players expressed great confidence in new equipment and medical technologies to prevent and heal injuries, while others were less sure about the bene ts of these advances. The modern medical establishment has developed new treatments for injuries sustained on the eld, but it has also revealed the damaging effects that football can have on young men, particularly in the form of concussions. Many players reported a real concern about the possibility of long-term damage resulting from head injuries sustained on the eld. University players noted that they experienced difficulty concentrating on schoolwork as a result of head injuries from football. While new equipment helps to absorb impact, a helmet can only do so much; the player’s brain still crashes into his skull

with every tackle, causing swelling and tissue damage. Former CFL quarterback Matt Dunigan (2007) revealed his continuing struggle with the long-term consequences of head injuries that he sustained during his career. He reports that he once ew to another city to visit his family without notifying anyone, a trip that he could not recall taking a er the fact.

One university player expressed concern that new medical procedures are actually more harmful to players because they "give the illusion that the body is ne and well" before it has a chance to fully recover. He described an incident involving another player who had undergone surgery to repair an injury to his knee. During the procedure, the surgeon placed screws behind the knee to reconnect a torn anterior cruciate ligament. The player was able to walk out of the hospital shortly a er the surgery and began rehabilitating the knee, gearing up to return to football. However, while the knee felt and appeared to be healed externally, internally the tissue was still damaged. The wound inside the knee became infected, requiring emergency surgery to save the player's leg. Now in his early twenties, the young man is on a waiting list for knee replacement surgery, and he will never play football again.

New equipment and training technologies are also factors that change perceptions of the level of violence in Canadian football. A clear contention exists over whether the game has become any more or less violent in recent years. One university referee, re ecting back on his experience, remarked that the amount of violence had remained constant since he began o ciating twenty-six years ago; however, he also stated he has noticed a change in the type of violence that is occurring. "More players seem to use their head as a point of attack. I think this is due to better helmets and the same aura of invincibility that teenagers had for decades, and still have."

Matt Dunigan (2007) suggested that new equipment technologies have contributed to more contact in the game:

We are talking here about a game constantly being altered by the laws of physics: bigger, stronger, swi er, more muscular people wearing lighter, stronger equipment that allows them to move faster and hit harder and thus collide with greater force and impact than ever. (Dunigan, 2007, p. 21)

Likewise, a university administrator pointed out,

players now are bigger, stronger, faster, at a younger age than they used to be. I think this is due to better nutrition, and better training than there used to be. The result is a lot more violence at younger playing levels.

Others, however, suggest that immoderate and ultra-violence in Canadian football has lessened in recent years with the development of new social norms governing coaching techniques. A former CFL player who is now a university coach agreed.

I think the game has become less violent. When I played, coaches used to say "Rip their heads o ," "Take them out," and that kind of thing. You never see that anymore. Coaches now teach skills and techniques. They evaluate their players based on technique, which could mean a hard tackle or block. But poor sportsmanship and dirty plays are generally perceived more negatively today.

Despite the disagreement about whether or not football has become more violent within the rules of the game, the individuals I interviewed revealed that less tolerance exists for violent acts outside the rules. Where coaches once encouraged their players to go out and injure athletes on the opposing team, both now perceive this type of behaviour more negatively.

The "Bounty Program" scandal in the National Football League is a controversial case highlighting the acceptability and promotion of immoderate violence in football. In the Bounty Program, players from the New Orleans Saints were paid additional wages to deliberately injure players on the opposing team. A er a lengthy investigation and review, many players and coaches received suspensions ranging from several games to expulsion for an indeterminate amount of time from league activities. The existence of such a program suggests that some coaches and players continue to promote acts of immoderate and ultra-violence, but the sti penalties handed to those found guilty indicate that levels of tolerance are shi ing. Interestingly, however, the acts of violence that led to injuries of opposing players were not punished by the league when they occurred. The suspensions given were for paying "bounties" to players who in icted injuries on their opponents, forcing them to leave the game. It was the existence of an explicit bounty program that was deemed unacceptable by league administrators, rather than the acts of extreme, injurious violence.

Drawing the Line of Consent

The players I interviewed identi ed a number of criteria for what they considered consensual violence on the eld. While not every player identi ed all of the criteria, each described at least one, if not more. The most common response from players was that any contact that occurs within the rules of the game is consensual. Another common response was that for on field contact to be consensual, it must occur between whistles. That is, it must take place while the play is live, rather than a er a referee has blown the

whistle to signal the end of a play. A third common conception of consensual violence was that the act must occur as part of the play. That is, even if a hit is within the rules and occurs between whistles, it must be part of the play to either move or stop the ball from being moved forward; players suggest that tackles should not be made twenty yards away from the action, regardless of the rules. In keeping with this sentiment, the CFL has recently instituted a “tourist” rule that now bars players from hitting others away from the play.

These three criteria form the most common understanding of the limits of consent pertaining to on field contact: (1) it must be within the rules, (2) it must occur during active play, and (3) it must occur as part of the play. There are three other criteria reported by several players: (4) the hit or tackle must occur within the connes of the playing area, and not out of bounds or in the end zone, (5) the player must use only bare hands to hit or tackle, not his helmets or cleats with the intent to injure, and (6) a player must know that a tackle is coming, and not be blindsided or hit from behind. These six criteria form a broad, comprehensive list of the limits to which the players interviewed in this study consider violence on the eld to be consensual.

Most players consider any acts that go beyond the limits described here as non-consensual. The Canadian football players who participated in the interviews provided speci c examples of plays in football that they do not consider to be consensual:

- taking a shot after the whistle
- hitting players invulnerable positions
- hitting someone who is already down
- teaming up to hit a single player
- hitting a player who just scored a touchdown
- tackling a player who has run or caught a ball out of bounds
- hitting a player twenty yards away from the play
- attempting to deliberately injure a player
- hitting from behind
- stomping on a player when he is down
- hitting a player whose attention is elsewhere
- ripping someone’s helmet off
- throwing helmets
- punching or kicking
- low shots at or below the knees
- shots to the groin
- poking an opponent in the eye
- a shot to a known injured spot

While game o cials commonly penalize players for some of these infractions, for many they do not. There appears to be a set of informal rules in football that extend beyond the o cial regulations dictating what is and is not considered consensual violence on the eld.

Disciplinary Perspectives on Violence

None of the junior players interviewed expressed any concern over how their conference review boards handled matters pertaining to violence on the eld. Some suggested that the on field o ciating could be improved with increased consistency on rulings, but overall the players perceived disciplinary reviews to be fair and e ective. No players reported that the conference rulings on violent acts were either too harsh or too forgiving.

At the university level, players had a different view of disciplinary rulings; the majority reported that the CIS review process is inadequate and ineffective. In one example, a university player reported that he had been violently tackled outside of the rules of play. His coach lodged a complaint against the player who made the tackle, informing the athletic director of his university. The athletic director ruled that the incident was not serious enough to warrant a report to the regional level, and as a result no penalties were imposed on the player. The injured player expressed concern that he had no recourse to address violence committed against him on the eld.

Other university players suggested that the officials ignore too many cheap shots, especially hits a er the whistle. One university wide receiver stated, “I think officials need to throw a lot more unnecessary roughness ags for late hits.” A university quarterback

expressed similar concern over rules and officiating decisions that ignore violence on the eld. He explained:

There are twenty-seven teams, with let's say an average of seventy players on every team, so about 1,900 CIS football student athletes. Out of these, a maximum of about 250 will ever play football a er university. So there is no reason for these athletes to have to su er major injuries that will plague them the rest of their lives because their league didn't protect them. Accidents will happen, but playing the sport you love should be about playing the sport you love, not about having to deal with the consequences of loosely enforced rules. Any intent to injure should be more strongly [punished] than it is now.

A large number of university players expressed similar concern over "loosely enforced rules" in CIS football, and the lack of severe penalties for incidents of excessive violence on the eld. This suggests that in CIS football, a disjuncture exists between the players' concern with violence on the eld and the organization's typical disciplinary responses to these acts.

Players at the professional level had similar concerns about the apparent tolerance of league o cials for acts of excessive violence on the eld. Several players expressed anger over a particular incident, where a BC Lions lineman, Jason Jimenez, broke the leg of a Calgary Stampeders' player, Anthony Gargiulo, in a tackle that was perceived by most as illegal. Gargiulo was unable to see the hit coming, was pulling up because the play was ending, and the hit occurred well away from the game action. Jason Jimenez was suspended for a game, appealed, and had his suspension revoked. Commenting on this incident, a CFL quarterback said, "There was a situation last year where a BC lineman hit a Calgary player in the back of the knees and blew his knee out; that type of thing has no place in football." A CFL fullback criticized the league's response, stating, "I think the league has done a poor job of handling incidents like Jason Jimenez's away-from-the-play hit on Anthony Gargiulo last year that ended his career. We need more suspensions for players that act out violently on another player. Miniscule nes are insu cient and not a good deterrent." Similarly, an o ensive lineman in the league claimed,

In the CFL they have just brutal policies on that. There is a recent incident with Jimenez from BC. He took a shot at a Calgary d-lineman way behind the play and ended his career, pretty much. He will probably never come back. It kept getting sent to arbitrators, and now he didn't even get suspended because there was no good evidence. It was just ridiculous. That is a situation where it had no e ect on the play and the guy is taking a cheap shot. Yeah, there should be serious repercussions there.

Expressing similar sentiments, another player added, "situations occurred this past season where a player was ned less for a very illegal hit [than] another player who publicly criticized the o ciating [at that game]. Suspensions should be handed out."

A CFL o ensive lineman raised the concern that the lack of disciplinary punishment for acts of violence on the eld encourages some players to deliberately injure others:

I think they should change the way they penalize guys. Suspending someone for one game is ridiculous. In a league like the CFL, where your hopes ride extremely high on one player like a quarterback, if a team could pretty much guarantee their spot in the Grey Cup by injuring that quarterback, if their only punishment is a one-game suspension, there are guys out there that would do it, because you get a lot more money for playing in the Grey Cup than you do for one random game. The reward-to-risk ratio is pretty good for intentionally injuring players in the CFL.

Under the current collective bargaining agreement, CFL players are paid $20,000 by the league, in addition to their contract salary,2 if they are on the active roster of the team that wins the Grey Cup. This is a substantial sum considering the salaries of most players, so it may be an incentive for some to deliberately injure those who are important on the opposing team. The nancial compensation of winning far outweighs the light penalty imposed for inappropriate violence by the league.

The majority of players I interviewed suggested that the police and legal system should only become involved in certain circumstances of violence on the eld. Only two players thought that legal o cials should never become

2 According to one CFL player agent interviewed for this book, the average contract salary among CFL players is just over $40,000 a year.

involved in matters pertaining to football, regardless of the infraction. One of them stated, "What happens on a football eld should stay on the eld. Police should never be involved." The other player, a university kicker, said, "no matter how violent something is in a game, I think it should only be punishable by the o cials or by the league, nothing on the football eld should be punishable by law." Among the players who thought there should be legal intervention for incidents of ultra-violence in the game, ideas of when this should occur di ered.

Most players stated that criminal charges should only be considered for acts not directly related to playing football. That is, while the act might have occurred on the eld, it must have little to do with the game to be deemed criminal. One professional offensive lineman describes this sentiment:

Just because it is a football eld does not mean that anything can go. I'll give you an extreme case: if I conceal a knife on the eld and stab a guy in the neck that would be illegal. It doesn't matter that it is on the football eld. Even if I were to punch a guy in a huddle, then that is assault and I should be charged because it isn't part of the game.

Along similar lines, a junior wide receiver stated, "as soon as the player's actions don't resemble one of a football player, then yes. If he has no intentions of playing football, and is more concerned [with] assaulting another player then yes, he isn't playing football anymore."

Some players argued that criminal sanction should only be considered when equipment and tools are used to harm an opposing player. Some examples of this were stepping on a player with cleats, hitting a player with a helmet, or carrying illegal equipment with the intent to cause harm, such as wearing brass knuckles concealed under a glove. A junior player described such a scenario: "Ripping a guy's helmet o and stomping on his head with a cleat has nothing to do with a football game. In that kind of circumstance, a crime has absolutely occurred and should be prosecuted." Similarly, a CFL quarterback claimed: "If I saw a case where a guy was stomping on a helmetless person or something like that, then I would think that would be a case." A CFL fullback noted, you can't assault people with a potentially dangerous weapon at work and not be held accountable. Athletes should be held to the same standards. The football eld is a workplace. Having said that, I can't think of any recent events in the CFL that warrant[ed] criminal prosecution.

Like the fullback, while most players suggested that legal sanction should be used for incidents of on field violence, few reported having ever witnessed or being involved in an act that warranted such attention.

During the interviews, players and administrators named four groups of individuals who could be held legally liable for incidents related to on field violence: opponents, coaches, offcials, and teammates. Most of the players suggested that if an opponent engages in deliberate, injurious violence, he should be held legally liable for his actions in either a criminal or civil court. Most also reported that the coach should be held liable if he instigated the player's actions, instructed the player to commit the act, or allowed his team to get out of control. A university cornerback asserted, "Yeah, I think coaches should be [charged]; if they are telling the players to hurt people, then they are de nitely liable." Likewise, a professional o ensive lineman stated, "there is going out and playing hard and doing little things to try to take shots at guys, but if a coach tells you to take shots at guys a er the play, then that is garbage and he should be penalized." A junior coach said,

I never played dirty, and I don't accept dirty. I don't coach guys like that. I never have and never will. Coaches have a responsibility to ensure that their players are not playing dirty. If I saw a guy repeatedly trying to do something dirty, I would bench him or pull him. Allowing that stu is unacceptable.

The majority of players and administrators agreed that referees should be held liable if poor o ciating leads to a catastrophic injury from on field violence; however, only one administrator thought this could go as far as criminal liability. The university administrator commented that if a referee ever attacked a player on the eld and caused serious bodily harm, he should be held criminally liable. Otherwise, most interviewees suggested that referees should be liable, but only to the extent that they receive a ne or lose their officiating credentials. As one university running back claimed, "even though I don't always like their calls, the refs are doing the best they can to enforce the rules. You can't see everything." Agreeing with this point, a university linebacker argued, "referees are certainly liable, but as far as criminally liable, I don't think so. Their jobs are on the line, and that should be enough." Every referee I interviewed reported that he would stop officiating if a precedent was set in Canada that game officials could be held legally liable for incidents of on field violence. A referee at the professional level explained,

we do the best job that we can, but at the end of the day, this is a hobby for us. It doesn't pay the bills; it's not our main profession. If we start to be held legally liable because of alleged poor game control, I think many of us would quit and it would deter others from entering officiating.

Likewise, a university referee claimed, "if [o cials] face legal liability, you would not have any referees." He later commented, "It is my job to make sure the eld goal posts are wrapped, not to keep violence from happening on the eld. It is my job to penalize; it is the coach's to keep violence from escalating."

Several players noted that a responsibility of teammates on the eld is to keep each other safe. While few players thought teammates should be held legally liable for on field violence, one player provided an interesting example. In football, players o en block for the player who has the ball; the ball carrier is protected by teammates as much as possible. Players can, however, deliberately slip up or stumble when blocking to ensure that their teammate is hit hard. A similar example is what one professional player termed a "club rush," where the o ensive linemen deliberately allow the defence to rush by and sack the quarterback at full speed. This is done as a penalty, of sorts, to the quarterback for something that happened o the eld, or because the players are not content with the quarterback's passing selection.

Despite players' agreement that criminal liability has a place in the game, there are no real legal penalties for on field violence at the professional level of football in Canada. As a player who was injured in a game from a hit outside of the rules stated,

As a member of the Canadian Football League Players' Association I have no right to le any kind of suit against the opposing player, coach, o cial or the league. Players who injure others have a right to appeal nes or suspensions, but the guy who is injured basically has no rights, is what it comes down to, unfortunately. When you sign a CFL contract you sign away the right to hold the CFL, its coaches, or other players liable for any injury that might occur during play.

A er this player was injured, he received no compensation from the CFL for his injuries, and had no legal grounds to hold anyone liable for the injuries he sustained from an illegal hit.

Players' perceptions of consent with regards to contact and violence on the eld do not relate directly to their beliefs about when the law should become involved. The majority of players I interviewed suggested that legal investigations should only take place for acts of ultra-violence that have nothing to do with football, or where a weapon is used. Despite this, players stated they do not consent to acts that take place outside of the rules and active play, away from the play, o the eld, involving more than bare hands, or acts that are initiated from behind or outside the line of sight. Such violence is perceived as unreasonable and deserving of league penalty, but not criminal prosecution.

Legal cases involving violence on the eld of play typically rest on discerning consent. Yet contrary to many legal arguments, the players I spoke to stated that they do not give their consent to be injured simply by stepping onto a eld and agreeing to play football. A disjuncture therefore exists between player perceptions of violence on the eld and Canadian legal discourse. In the interviews, players listed six main reasons for why they do not consent to violence on the eld. However, for players, the issue of consent is not a factor that determines whether a crime has occurred on the eld. Instead, players examine the intent of the accused, and the manner in which he carried out the violent act.

In relation to other aspects of Canadian legal discourse on violence in sport, the majority of players enter the eld with the knowledge that they could be seriously injured. However, they do not expect that such an injury will occur from a deliberate act of injurious violence. The notion that athletes give voluntary consent by virtue of stepping on the eld does not resonate with the players I interviewed.

summAry

Contrary to current Canadian legal opinion, the consent defence is an invalid excuse for on field violence from the perspective of the athletes themselves. The Canadian football players I interviewed outlined six conditions necessary to consider violence on the eld consensual: the act must (1) be within the rules; (2) occur during active play; (3) be part of the play, not separate from it; (4) occur within the con nes of the playing eld; (5) use only the body and bare hands; and (6) occur in the line of sight of the player involved. Players do not consent to acts of violence that fail to meet any of these provisions. Opposing players who engage in these acts are labelled "dirty" or "cheap" or as "game-day gangsters." Even so, while players might not consent to acts of violence that do not include these provisions, they do not perceive all such acts as criminal. For the majority of players, an o ence must be extreme, over-the-top, ultra-violence before legal o cials should become involved.

The majority of players want league administrations to give more severe penalties to players engaging in immoderate violence on the eld. According to them, administrators are not doing enough to prevent and penalize excessive violence. The majority of players do not, however, suggest that this should be the responsibility of the police and legal system, except in extreme circumstances that have little to do with the game of football.

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3.3: Poverty, Anomie, and Strain

Poverty and inequality – links to violence

72 There has been a great deal of debate about the linkages between disadvantage and discord. Various causal relationships have been suggested and explored in respect of a wide variety of conflicts. Some are more persuasive than others, but none, we believe, are compelling. The fundamental point is that, since even extreme poverty by itself does not necessarily lead to violence, where violence does occur other further factors must be in play.

73 Poverty needs to be addressed in its own right and on the basis of commitments made by individual countries and the international community to achieve the Millennium Development Goals. But poverty alone does not automatically make people violent nor, in particular, does it lead to terrorism.

74 To illustrate that poverty is rarely single-handedly responsible for group violence it is instructive to consider the connections between these phenomena in Northern Ireland, Britain and Calcutta (Kolkata), India. Successful efforts to reduce economic inequalities in Northern Ireland during the 1970s and 1980s did not greatly impact in the short term on the course of the Troubles. Although they helped to assuage some Catholic grievances on the economic and social fronts, these policies did little to address the essentially political grievances of the Catholic/Nationalists, which were about the very legitimacy of the state itself. At the same time they antagonized Loyalist/Protestants (some of whom were also disadvantaged) who felt themselves being surreptitiously betrayed by the British.

75 In Britain, for example, opening up new economic opportunities in economically disadvantaged areas will not necessarily assuage feelings of alienation and grievance amongst black young people in inner urban areas who do not have access to good schools and employment-related networks. They are five times more likely to be stopped and searched by the police in London than are white young people.[1] Here, the actual problem is the perception of discrimination and disrespect in policing policy which cannot be overcome without a real partnership being established between the community and those who police the community.

76 Kolkata is one of the poorest cities in India –in the world, even. However, it also has a very low crime rate – the lowest crime rate of any Indian city. This applies to the incidence of murder as well as to all other crimes. It also applies to crime against women, the incidence of which is very substantially lower than in any other Indian city.[2]

77 Crime is not an easy subject to explain with empirical generalizations, but there are some possible connections. One is that Kolkata has benefited from the fact that it has a long history of being a thoroughly mixed city where neighbourhoods have not been separated on ethnic or religious lines, as has occurred elsewhere. There are also other social influences, such as the huge role of shared cultural activities in the city, which mobilize the residents in co-operative directions.

78 The politics of the city may also play a part. The focus of left-leaning politics in Kolkata and West Bengal on deprivation related to class, and more recently gender, has made it harder to exploit religious differences to instigate riots against minorities, as has happened elsewhere – for example against Muslims and Sikhs in Bombay and Ahmedabad. Cultural and social factors (and sometimes the absence of such factors), as well as features of political economy, are therefore important in understanding violence in the world today; they demand integrated attention as they are rarely separable.

79 More direct than the relationship between poverty and violence are the links between inequality, particularly economic inequality, and violence. There are a number of reasons why socio-economic marginalization or disadvantage can be linked to patterns of violent conflict. These will normally relate to both subjectively perceived and objectively measured material inequalities, and a sense of injustice about those inequalities, as well as to a combination of other factors that are specific to the situation.

80 Objective as well as perceived disadvantage can interplay with one another. Thus, one group has, or is perceived to have, the land, the well-paid jobs, the best services, and the other has very limited access to these. In other words we need to assess the evenness or unevenness of the opportunity structures that exist and to take a long look at how far access and outcomes are, or can become, open to weaker groups. Patterns of disadvantage may be to do with discrimination (in jobs, housing), long-institutionalized cultural attitudes and structural inequalities (racism, the legacy of migration, lack of citizenship status), the apparent lack of government moves to put in place policies and laws to redress these inequalities, or other causes.

Rationales for intervention

81 What matters from the perspective of public policy is the degree to which inequality, particularly where it is deeply ingrained over time, can be tackled by extending opportunity structures.

82 In these circumstances the state should intervene to, in effect, represent and sponsor the interests of the powerless.

83 When socio-economic inequality is widely evident, acknowledged, and linked to opportunity structures, interventions can aim to correct economic distortions or deliver a fairer outcome. For example, the exclusion of a specific group from particular labour market opportunities may be experienced in daily terms as discrimination. Enlightened public policy can correct the current poor use of labour, which disadvantages both those who experience discrimination and the society as a whole, which is damaged by structural inequality and unfairness.

84 The public interest, crudely speaking, lies in bearing down on discriminatory and exclusionary practices in order to deliver benefits for the excluded or oppressed group (arguably helpful to the group) and all groups (compelling in the interests of all). The short-run loss of benefits for advantaged groups is something that must be managed in the meantime, perhaps through cushioning devices and open explanation and dialogue, if an adverse reaction is not to occur.

85 The first task in tackling inequality is to acknowledge that it exists. There must be a common, shared understanding of the problem.

Embedded inequality can be harder to tackle

86 Inequalities are more consequential when they are clearly perceived and linked with other divisions. Purely economic measures of inequality, such as the degree of disparity between the wealthiest and poorest groups in a society, are aggravated when minorities are disproportionately represented at the lower end of the economic scale. For example, when the people in the bottom groups in terms of income have different non-economic characteristics, in terms of race (such as being black rather than white), or immigration status (such as being recent arrivals rather than older residents), then the significance of the economic inequality is substantially magnified by its coupling with other divisions.

87 Unrest often reflects the strong effects of such coupling (for example, in the turmoil in the periphery of Paris, France and other cities in the autumn of 2005). The same degree of economic inequality may be much more explosive in one case than in another, when it occurs in combination with disparities in other social characteristics. In a global context, the proliferation of satellite television means that people in many poorer nations have a window into the lives of those in richer countries, and see the difference.

88 Violence, when it erupts, can seem mis-targeted when it is not directed at the obvious suspects (the government, large global corporations such as mining and oil companies), but instead at other groups in the area – those who are poor too but are seen to be benefiting in a local context and even if only marginally – from the presence of global corporations. Battles for ‘crumbs from the table’ may also have historical roots – the unequal distribution today of mineral wealth reignites the memory of previous imbalances. Where people of particular sub-groups have greater access to these ‘crumbs’, this inequality must be diluted through opening up educational and vocational opportunities.

89 Perceptions of inequality can, paradoxically, also be felt by the relatively powerful, not just the relatively powerless. In this case the issue is generally a fear of losing control of a resource to which they have previously had access or about which they have a sense of entitlement.

90 This accounts for the antipathy of existing residents towards newly arrived migrants in the same economic class (‘they are after our jobs’), to say nothing of existing settled migrants who face new competition for scarce resources. Not surprisingly, this antipathy is greater if the existing residents are poor themselves and have had to struggle to get a foothold in the job market. The last thing they want is to give up this tenuous position to people who will accept even lower wages. Their own loss is seen as directly caused by the gain of others.

91 Violence is therefore often occasioned by a fear of losing out on something. State violence also falls into this category. When the police or army are ordered to fire on crowds of demonstrators it is often because the government is already on the back foot. The violence is instrumental – it is used to suppress opposition but also to inspire fear, all in the name of regaining or maintaining political control.

92 Yet inequality, even severe inequality, does not inevitably lead to violence or, necessarily, even to protest. Huge inequalities exist between groups that live together without incident. This may be because the inequality has been internalized and the minority group feels its position is 'natural'. It may also be because they are aware of the inequality but do not make an issue of it – perhaps they are recent migrants and are prepared to put up with hardship because they hope for betterment in the future and for the sake of their children (which can store up problems which arise in the second and third generation of immigrant families).

93 Lack of protest may also be for pragmatic reasons; if protest has been tried before and met with a violent response then putting up with inequality may be a choice. Perhaps the growth of the economy and the prospect of educational advancement inspire hope. If the minority group can appeal to existing mechanisms for complaint and redress – if the political process allows for voice and the courts work well – inequality may be countenanced in the belief that their voice will be heard and their situation improved in the longer term. The Commission is keen to stress that objective material inequality does not mean people automatically protest, let alone choose violence.

Triggers for violence will vary

94 So what additional factors are normally present when violent conflict occurs? And how is violence sustained, given its enormously destructive impacts – for individuals, for communities, for nations? We have already alluded to one often missed element: the way in which various identities are truncated to one dimension which is then understood and presented as a fundamental clash of values, civilisations or belief systems.

95 In short, it is only with instigation that a grievance (for example over the unequal distribution of a resource) comes to be interpreted as an attack on the identity of a group. The message that must be conveyed and take root is: (a) 'This is happening because you are Kurds or Shias, Catholics or Protestants, Kosovars' – or whoever – and (b) 'There is no way of defending what is ours (and our self-respect) other than through violence'.

96 One of the legacies of colonialism is that it left in place populations already demarcated in terms of single identities and therefore potentially open to this sort of message. In many post-colonial countries racial, ethnic, and religious identities became politically and legally institutionalized through deliberate and planned processes of decolonization and nation-building, resulting in clearly differentiated populations within bounded categories of identity, as well as simple distinctions of majority and minority.

97 In many of these countries, group privilege and rights were and continue to be officially entrenched in the institutions, processes, and practices of the nation-state, thereby reproducing multiple disparities among groups who have been classified and administered as distinct and unequal. In such circumstances group mobilization can easily take place along the fault-lines of identity.

But humiliation can also have links to disrespect and violence

98 Feelings of humiliation can also be powerful contributors to a sense of disrespect and grievance. Humiliation is born from current or remembered ill-treatment, often over decades and even centuries, so that after some time people's energy and self-esteem ebbs away. Their sense of what is right is no longer taken into account and they are left with a sense of acute injustice. Violence that is underlain by feelings of humiliation and shaming can be experienced as a form of retaliation, a fighting back for self-esteem and a statement of self-worth.

99 There are many examples of how humiliation has been imposed on peoples and communities and on how it has (though not always) lead to retaliatory action.

100 The Independent Commission on Africa led by Albert Tevoedjre argued in their 2003 report that Africa is a 'continent of humiliation'. They considered the factors that have made for its subjugation and denigration over the last millennium. These include the transatlantic slave trade, the colonization process and the fragmentation of the continent before and during the colonial period, the systematic devaluation of Africa's natural and human resources through an unjust exchange system and the portrayal of Africa as a continent of poverty in the media. While addressing underlying causes is essential, the Tevoedjre Report also sees winning the 'war against humiliation' as the primary task for Africa in this millennium, through institution – and capacity-building and empowerment.[3]

101 The narrative of humiliation that is articulated and received in many Muslim societies is an important theme amongst commentators analysing the root causes of growing Islamist fervour. Some have gone further and sought to explain today's tensions in terms of a sense of collective humiliation felt by declining Islamic empires from the sixteenth century onwards. Even the most

casual observer acknowledges the contemporary dynamics of global Islam in which the sense of the honour or dignity of Muslims is under attack. A perception of humiliation at the hands of western, secularly-minded governments and publics is a core element of the narrative.

102 In a similar vein the Palestinian readiness to be recruited for violent 'retaliation' against Israel is made possible by the sense of humiliation which has been caused by displacement, and a sense of oppression and statelessness.

103 Migrant populations, those that have moved from their place of origin either through their own volition, through forceful removal or through their vulnerability to poverty and unequal treatment may also feel a sense of individual or group humiliation. This can occur however short the journey. Migrants who are not afforded the rights of citizens and who have an identity as 'non-persons', who feel their energy and enthusiasm and skills are consistently ignored when they try to find work or housing, or who are forced through trafficking into degrading work like prostitution, are likely to feel humiliated as a group but also at a personal level. Such humiliation may never manifest itself in a public way – there may be little chance to do this without reprisal. In other situations humiliation can fuel feelings of grievance at a very basic level and, if other circumstances are present, result in violent retaliation in subsequent generations.

104 Like poverty and inequality, feelings of humiliation can be eased and sometimes even healed over time. None of these things is immutable. One of the ways this has historically happened in the case of humiliation is through programmes of 'reconciliation' and inclusion after prolonged periods of conflict. This is discussed below in the context of breaking down historical narratives of grievance and rebuilding relationships on a different footing.

1 Stewart, 2005: 7.

2 National Crime Records Bureau, Government of India 2006: 53 (table 1.8).

3 Tevoedjre, 2002.

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3.4: Supplemental- Culture, Subculture, and Crime

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