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Americans Under Attack: 
The Need for Federal Hate Crime Legislation in Light of Post-September 11 Attacks on Arab Americans and Muslims

Jason A. Abel†

What we need in the United States is not division; what we need in the United States is not hatred; what we need in the United States is not violence or lawlessness; but love and wisdom, and compassion toward one another, and a feeling of justice toward those who still suffer within our country....
—Robert F. Kennedy

[B]ear witness to the reality that our many cultures can be remade, that this nation can be transformed, that we can resist racism and in the act of resistance recover ourselves and be renewed.
—bell hooks

I. INTRODUCTION

The vision of America that Robert F. Kennedy and bell hooks share is one of compassion and hope for a more just future. It is a vision that many of us share and work for everyday. The terrifying events of September 11, 2001, however, brought a different vision to the forefront of America: not of cooperation and acceptance, but a reactionary vision of fear and antagonism that excludes any person who does not fit within a certain profile. It is a vision that associates all Arab Americans and Muslims with terrorists, excluding them from American society through hatred and

† Associate, O'Melveny & Myers LLP, Washington D.C. J.D., 2003, University of Pennsylvania Law School; B.A., 2000, University of Illinois. I would like to thank David Cheng and the Asian Law Journal for their time and devotion to this Article. Also, I would like to thank Professor Seth Kreimer for his help and guidance, and Senator Edward Kennedy who took the time to meet with me and who received a copy of this paper. Finally, I would like to thank Courtney and my family for their unwavering support and love.
Each of these forms of discrimination are deemed acceptable in large part by American society. Discrimination against perceived “terrorists” is acceptable. Yet, in reality, such discrimination is one more example of racism and prejudice in America—the same impulses
violence. This thinking is nothing new in America, for there is "an American propensity to react against 'foreigners' in the United States during times of external crisis, especially when those 'foreigners' have dark skins." One clear example of this was the internment of American citizens of Japanese descent during World War II.

Reaction against perceived foreigners in this country led to over 1,700 incidents of discrimination against Arab Americans and Muslims following the September 11 attacks. Also attacked were those of South Asian descent, whom the attackers mistakenly believed to be either Arab Americans or Muslim. Some of the incidents described in these figures reflect serious crimes, such as assault, arson, vandalism, and murder. Nearly forty percent of these incidents occurred in the week immediately following the attacks.

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4. See, e.g., BARBARA PERRY, IN THE NAME OF HATE: UNDERSTANDING HATE CRIMES 57 (2001) ("Throughout most of the history of the United States, there was little question of who 'the American' was. He was undoubtedly [sic] and unquestionably white.").


7. See id. at 1235. For anti-Arab hate crime reports, the 2001 data is eighteen times greater than the 2000 numbers (71 to 1231). Id. at 1237.

There may be those that say that the numbers are skewed, that this is a result of increased reporting after September 11. See id. at 1242. However, after adjusting the numbers above to take into account the population size of these groups, there was a distinct difference in the numbers between Arab Americans and Muslims and other groups that go far beyond normal rates or even with high incident rates. Looking at the population-adjusted reporting rates, Arab Americans and Muslims combined had a reporting rate of 79.89. See id. at 1239. This number is almost four times the amount of the next group: gays and lesbians at 20.71, with Jews at 18.04, and the remaining racial and ethnic groups each in single digits. See id. What is even more staggering is that "these crimes took place in only about three months..." Id. at 1239.
I argue that the proper response to these hate crimes, or any hate crime, for that matter, should be to expand current federal hate crime legislation, specifically with the enactment of the Local Law Enforcement Enhancement Act (LLEEA). Due to the nature and severity of hate crimes, their impact on the victim, and their equal, if not greater impact on the larger ethnic community and American society in general, this article argues that Congress should pass such legislation. Sociologically, I will deal with the need for federal hate crime legislation—specifically, the LLEEA—in light of the post-September 11 attacks of violence against those perceived to be Arab American or Muslim. Furthermore, while most of the statistical data that I introduce is post-September 11, there will be some evidence of pre-September 11 conditions in America as well. It is important to note that this article uses the post-September 11 attacks as a case study for why such legislation is vital. Federal hate crime legislation is necessary not only because of these attacks, but because of all the hate crimes that occur everyday.

This article will address federalism concerns with, and the constitutionality of federal hate crime legislation, and in particular, the first part of Section 7(a) of the LLEEA, which pertains to race, religion, and ethnicity. This article will not discuss the constitutionality and the need for the second part of Section 7(a) of the LLEEA, which criminalizes attacks based on gender, sexual orientation, or disability. Despite federalism concerns, this article contends that based on an analysis of harms associated with the attacks on perceived Arab Americans and Muslims following September 11, federal hate crime legislation would be constitutionally valid under the Commerce Clause and the Thirteenth Amendment. Yet, even without such attacks, federal hate crime legislation would be constitutional. My focus, however, is on confirming its constitutionality based on the evidence of the post-September 11 attacks alone.

Part II of this article explores the background and historical development of federal hate crime legislation in the United States, first describing how a hate crime is defined, and what the federal government has done thus far to deal with hate crimes. Part II also provides an explanation of hate crime legislation in the form of the LLEEA and its components. Part III addresses the constitutional validity of hate crime legislation; specifically, whether legislation as far-reaching as the LLEEA

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10. Hate crimes are also called bias violence crimes. See Frederick M. Lawrence, Punishing Hate: Bias Crimes Under American Law 2 (1999).


12. For a look at the constitutionality and need for federal hate crime legislation related to the second part of Section 7(a) of the LLEEA, see generally Lawrence, supra note 10; Perry, supra note 4; Marcellene Elizabeth Hearn, Comment, A Thirteenth Amendment Defense of the Violence Against Women Act, 146 U. Pa. L. Rev. 1097 (1998); and Troy A. Scotting, Comment, Hate Crimes and the Need for Stronger Federal Legislation, 34 Akron L. Rev. 853 (2001).
can justifiably remain within the federal government’s jurisdiction, either under the Commerce Clause or under the encompassing nature of the Thirteenth Amendment. As noted in that Part, the Thirteenth Amendment does not just apply to slavery, but is much broader. Federal statutes promulgated under the Thirteenth Amendment apply to discriminatory acts against all racial and religious minority communities. Subsequently, this Part articulates the standards that need to be satisfied in order for hate crime legislation to pass constitutional muster. Part IV will reveal the unique nature of hate crimes and discuss how the LLEEA meets the constitutional standards explored in Part III. This Part will provide the sociological evidence needed to convey the special harms of a hate crime: the increased violence and stigmatization associated with the crime, the harm against the targeted community, and the harm against American society as a whole. Furthermore, an analysis of the effects of post-September 11 attacks will link the specific hate behind these attacks with the greater plague of racism in our society.

II. THE TUMULTUOUS HISTORY AND NEED FOR FEDERAL HATE CRIMES LEGISLATION

A. Aren’t All Crimes Based on Hate?

Hate crimes are different from other crimes, in that they are mechanisms of power intended to sustain somewhat precarious hierarchies—through violence or threats of violence—and are directed generally toward those who have been traditionally stigmatized and marginalized in our society. Scholars have argued that hate crimes are distinct because of the harms they cause and the larger number of victims they impact. For example, Professor Frederick Lawrence observes that hate crimes cause greater harm because of “the nature of the injury sustained by the immediate victim of a bias crime; the palpable harm inflicted on the broader target community of the crime; and the harm to society at large.”

B. Federal Hate Crime Legislation’s Bumpy Road

The LLEEA was not the first attempt at federal hate crime legislation. The Act follows a series of attempts to provide federal jurisdiction over these crimes. In 1990, Congress passed the Hate Crime Statistics Act (HCSA), which called for record-keeping of hate crimes. The HCSA has

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13. PERRY, supra note 4, at 3; see also LAWRENCE, supra note 10, at 1 (“Crimes that are motivated by racial hatred have a special and compelling call on our conscience.”).
14. LAWRENCE, supra note 10, at 4. This issue is discussed in greater detail later in the article. See discussion infra Part III.
provided details about specific crimes and has recorded an increase in the number of hate crimes over the past decade. Following the HCSA, Congress enacted the Hate Crime Sentencing Enhancement Act (HCSEA), which increased a person’s sentence if it was shown that the underlying crime was committed on account of the victim’s race, religion, or ethnicity. The sentencing enhancement’s applicability is restricted, however, to crimes involving “federally protected activities”; that is, the parallel crime—the underlying criminal activity—must have been a federal crime for the HCSEA to apply.

The next major Congressional push was the Hate Crime Prevention Act (HCPA) of 1999. Although it had a promising start, the Act was not included in the final appropriations package sent to the President. The HCPA would have amended current federal hate crime legislation in two ways: first, it would have eliminated the “federally protected activities” requirement; second, it would have added sexual orientation, gender, and disability to the list of classes protected against hate crimes. Despite bipartisan support, the HCPA never passed into law.

It is this “federally protected activities” requirement that makes current federal hate crime legislation addressing race, religion, and ethnicity completely unworkable. In essence, a victim must have been participating in such an activity while being attacked in order for the law to be applicable. Such a requirement “severely limits” the scope of the law, rendering current federal hate crime legislation useless.

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16. See LAWRENCE, supra note 10, at 22.
18. A parallel crime is a crime that lacks bias motivation. See LAWRENCE, supra note 10, at 4. In other words, if a mosque is burnt, it would be a hate crime, and the parallel crime would be arson.
19. Id. at 157.
21. The HCPA passed both the House and the Senate and was then attached to a Department of Defense appropriations bill. See Dan Hasenstab, Comment, Is Hate a Form of Commerce? The Questionable Constitutionality of Federal ‘Hate Crime’ Legislation, 45 ST. LOUIS U. L.J. 973, 975 (2001). However, it was later rejected in conference. See id.; see also Scotting, supra note 12, at 855-56.
22. Scotting, supra note 12, at 879-80.
23. The HCPA also received strong support from civil rights and other public interest groups. See ADL Statement, supra note 15, at 75-77.
24. It is important to note that numerous states had passed their own hate crime legislation. See Anti-Defamation League, Hate Crimes Laws, at http://www.adl.org/99hatecrime/intro.html (last visited Dec. 20, 2004). The constitutionality of these laws was upheld under Wisconsin v. Mitchell, 508 U.S. 476 (1993). However, since free speech and enhanced punishment were at issue in that case, and not federalism issues (it was a Wisconsin state law), it is not directly relevant to the issue in this article.
The LLEEA is the latest attempt to expand current federal hate crime legislation. First introduced in March of 2001 by Senator Ted Kennedy, along with fifty-one co-sponsors,26 the LLEEA failed a cloture vote in 2002 and lingered in the Senate. A year later, the Senate tried again with the LLEEA of 2003,27 which failed in October of 2004. While the measure was approved as an amendment to the Defense Department Authorization Bill by the Senate (65-33), and the House of Representatives (213-186), House Republican leadership decided to strip the LLEEA from the Bill.28 This was, in part, due to the Republican leadership's desire not to include sexual orientation as a class protected by the federal hate crime legislation.29 It is likely that there will be a renewed attempt to pass the LLEEA in 2005; it will be exactly the same as the 2003 version, just like the 2003 version was a replica of the 2001 version. In fact, Senator Kennedy stated, “We will be back again and again, and we will continue to bring this legislation up every opportunity we can until it is signed into law."30

Section 7 of the LLEEA presents the most significant change to current federal hate crime legislation, in that it makes any hate crime subject to federal prosecution.31 The first part of Section 7(a) deals with “[o]ffenses involving actual or perceived race, color, religion, or national origin,”32 while the second part criminalizes, under federal law, “[o]ffenses involving actual or perceived religion, national origin, gender, sexual orientation, or disability.”33 Because this article contemplates the motives of the post-September 11 attacks, this article will primarily focus on the first part.34

It is important to note the language implemented in typical hate crime legislation that defines how crimes are prosecuted.35 The LLEEA uses the

31. See S.966 § 7.
32. Id. at § 7(a) (“Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin. . .".
33. Id. (“Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person . . .”).
34. By not including the second part of Section 7(a), I am not making a statement on its lack of constitutionality. By contrast, I believe it is constitutional. See supra note 12.
35. See LAWRENCE, supra note 10, at 30-34.
term "because of," which "is more typically found in civil statutes than in criminal proscriptions and, in the civil rights context, looks to an actor's actual discriminatory choice rather than to his reasons for making that choice." This is an attempt to satisfy First Amendment concerns, which is a problem with some state hate crimes laws. In general (and as explained below), the LLEEA attempts to address some of the deficiencies that current state hate crime laws leave unfilled, most notably in the inclusion of certain communities based on ethnicity, religion, or national origin, and in the amount of training and funding devoted to pursuing and prosecuting these crimes.

C. An American Crisis: The Legal and Societal Need for the LLEEA

Scholars and professionals in favor of the LLEEA agree that society needs this legislation to address current weaknesses in the law and to make a strong statement against crimes based on hate. Currently, there are severe deficiencies in federal laws regarding hate crimes. Professor Lawrence states, "[e]xisting federal criminal civil rights legislation is inadequate to address bias crimes fully." Furthermore, the United States would strongly denounce hate crimes by adding them to the list of federal crimes. Not only would the weight of federal law be applied, but there is also a "symbolic value" to such laws as well, as it enforces a tolerant society. The post-September 11 attacks have

36. Id. at 36.
37. For instance, the Georgia Supreme Court invalidated an overly broad state hate crimes law which was not similar at all to the LLEEA model. See Botts v. State, 604 S.E.2d 512 (Ga. 2004).
38. In addition, many states do not include sexual orientation as a protected class, and protection of this class is a valid and important objective that federal hate crime legislation attempts to achieve. For a more detailed look at the potential impacts that the LLEEA could have on current state and federal hate crime legislation, see Sara Sun Beale, Federalizing Hate Crimes: Symbolic Politics, Expressive Law, or Tool for Criminal Enforcement?, 80 B.U. L. REV. 1227, 1233–47 (2000).
40. LAWRENCE, supra note 10, at 157; see also PERRY, supra note 4, at 207 ("The recent spate of hate crime legislation, for example, is remarkable for its silences"); Scotting, supra note 12, at 854 (concurring that deficiencies currently exist in federal legislation).
41. PERRY, supra note 4, at 229 ("Coincident with the elimination of discriminatory legislation, then, is the need for inclusive legislation addressing hate crime specifically. . . . And there may be some symbolic value to opting for legislation as a means of responding to ethnoviolence. Just as hate crime is an expressive act, so too is hate crime legislation. It sends a message to its intended audience(s) about what is to be tolerated."); see also LAWRENCE, supra note 10, at 167 (calling hate crime legislation a
exposed the deficiencies of current state and federal hate crime legislation; thus, there is now an evident need for federal hate crime legislation. In its post-September 11 report, South Asian American Leaders of Tomorrow (SAALT) stated that "Americans have inconsistent protection with regards to hate crimes. They are often at the mercy of state laws as there are many obstacles to federal intervention. Stronger hate crime laws which remove federal barriers would insure that all Americans have equal protection regardless of which state [sic] they reside." 

The crisis of hate crimes in the United States is getting worse. In the aftermath of September 11, the need for the federal hate crime legislation has taken on a completely new sense of urgency. Unfortunately, the pattern of increased hate crimes after a national crisis is nothing new. After the bombing of the Murrah Federal Building in Oklahoma City, the government received more than 200 reports of harassment; threats and assaults against Arab Americans and Muslims were reported, notwithstanding the fact that a white Caucasian committed the bombing. Essentially, this high number of complaints demonstrated a predisposition by society against Arab Americans and Muslims when there are incidents of terrorist attacks—for in their shortsighted and prejudiced mind-set, who else could have committed such atrocities? Furthermore, the demographics concerning the identities of the attackers have changed. In the past, hate crimes were committed mainly by white males against

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42. SAALT, supra note 9, at 10.
43. See, e.g., LAWRENCE, supra note 10, at 22 (stating that the hate crime problem is getting worse). This is in spite of the fact that it is very difficult to compile complete statistics on hate crimes. See ADL Statement, supra note 15, at 54 (noting that "thousands of hate crimes do not make national headlines"); Scotting, supra note 12, at 858–59 (displaying that statistics are incomplete and that many crimes go unreported); APA, supra note 39 (professing that there are obstacles to getting accurate numbers). Sometimes this inaccuracy is due to a failure to report. See, e.g., APA, supra note 39 (pointing out that "some people do not report hate crimes because of fear that the criminal justice system is biased against the group to which the victim belongs and, consequently, that law enforcement authorities will not be responsive. The National Council of La Raza holds, for example, that Hispanics often do not report hate crimes because of mistrust of police.").
44. See discussion infra Part III.
Following September 11, however, the perpetrators of hate crimes have begun to include all races. It is also interesting to note that, after September 11, attitudes that were once commonly and only publicly expressed by hate groups are now displayed by the mainstream public.

America was already experiencing a hate crimes crisis before September 11; following the September 11 attacks, the crisis has exploded. Scholars have pointed to a need for hate crime legislation in order to counter this crisis, looking to the LLEEA as a strong response and an effective remedial measure.

III. CONSTITUTIONAL STANDARDS AND HISTORY: THE HURDLE OF FEDERALISM

One of the main arguments against federal hate crime legislation is that it violates principles of federalism and infringes on the rights of the states. However, legal history and case precedent show that the Commerce Clause and the Thirteenth Amendment are viable mechanisms for adopting the LLEEA. The federal government has had a strong role in civil rights since the end of the American Civil War, and addressing the issue of racially motivated violence due to race would be nothing new. However, with the American public quietly watching, we have seen a trend in which the attackers proclaiming themselves as Americans, while their victims as foreigners or terrorists. See discussion infra Part III.B.2. This trend can be attributed to the widespread racism, sexism, and homophobia that pervades United States culture.

As hate groups would have it, the tide of immigration must be turned to minimize and reverse the flood of 'mud people' onto United States shores. Violence is perceived to be a legitimate strategy by which to eradicate that which has been constructed as evil and sinister.) with SAALT, supra note 9, at 12-49 (documenting hate incidents committed by citizens and not hate groups).

Whether federalizing 'hate crime' or any other ordinary crime, Congress' exercise of police powers over state and local crime erodes the ability of local groups to use local police powers to shape and enforce their own view of good community life.). However, there are those who would argue, as this article does, that "good community life" is incapable of addressing the problem of hate crimes. See Donald P. Green, Causes of Hate Crime: Economics versus Demographics, at http://www.apa.org/ppi/issues/pgreen.html (last visited Dec. 20, 2004) ("[Suburban communities and law enforcement agencies have traditionally shown less determination in the fight against hate crime. It is essential that this pattern is reversed to meet the next wave of hate crime in the United States."). Others would argue that it is the proper duty of the federal government to protect the civil rights of its citizens. Cf. ROBERT F. KENNEDY, supra note 4, at 41 ("The federal government has no moral choice but to take the initiative. How can we say to a Negro in Jackson, 'When a war comes you will be an American citizen, but in the meantime, you're a citizen of Mississippi and we can't help you?"").

A review of the development of federal civil rights crimes since the Civil War demonstrates that the federal government has a significant role to play in the investigation, prosecution, and punishment of bias crimes.

The public probably has no sophisticated understanding of federalism, but there seems to be a popular sense that federal law is distinctive and important,
more conservative Supreme Court place limits on this federal role, thereby threatening the LLEEA’s passage. A detailed analysis of constitutional history, however, shows that the LLEEA is consistent with past federal legislation that passed the scrutiny of the Supreme Court, and that it is constitutional under the Commerce Clause and the Thirteenth Amendment.

A. The Commerce Clause

The Commerce Clause has long been a mechanism for federal power. Since the New Deal Era, through the 1960s and the Warren Court, the Supreme Court broadly interpreted the Commerce Clause, and regularly deferred to Congress in their ability to enact legislation. The Supreme Court’s deference, however, ended in 1995, when the Rehnquist Court narrowly interpreted the Commerce Clause to strike down the Federal Gun-Free Zones Act in United States v. Lopez. The majority held 5-4 that “because the act neither regulated a commercial activity nor contained a requirement that the possession [of a gun] be connected to interstate commerce, it exceeded Congress’s authority under the Commerce Clause.” In its holding, Chief Justice Rehnquist set forth a test to determine whether a federal statute fell within the rubric of the Commerce Clause. Congress’s power under the commerce clause was limited to three narrow areas: regulating the channels of interstate commerce; regulating and protecting the instrumentalities of interstate commerce (being persons or things that travel in interstate commerce); and regulating activities that, when taken in the aggregate, have a substantial effect on interstate commerce. In evaluating the third prong, four factors are weighed: the nature of the conduct; whether there is a jurisdictional

perhaps more important than state law.”)

54. See Laurence H. Tribe, Constitutional Choices 63 (1985) [hereinafter Tribe, Choices] (“Supreme Court’s precedents come along to melt the ice and replace it with a churning chaos—of fifty states moving in fifty different directions in their understanding and extension of governing constitutional norms. That would, in turn, destroy the uniformity that is so crucial on matters supposedly governed not by fifty distinct bodies of state law but a single constitutional rule.”).


56. See 514 U.S. 549 (1995); see also Lawrence, supra note 10, at 116-17 (stating that the Federal Gun-Free Zones Act “prohibited the possession of a firearm ‘at a place that the individual knows, or has reasonable cause to believe, is a school zone.’”) (citing 18 U.S.C. § 922(q)(1)(A) (Supp. V 1993)).

57. Lawrence, supra note 10, at 117.

58. Lopez, 514 U.S. at 558-59.

59. Id.; see also Hasenstab, supra note 21, at 983 (summarizing the Rehnquist test in a similar fashion).
element in the legislation; Congressional findings (in the form of legislative history); and the attenuation of the link to interstate commerce.\(^60\)

The Court held that the Federal Gun-Free Zones Act did not satisfy the third prong of the test because all four factors militated against it: gun possession was not an economic activity;\(^61\) there was no jurisdictional element;\(^62\) there were no Congressional findings that there would be substantial economic effects;\(^63\) and the link was too attenuated between the possession of a gun and economic effects.\(^64\)

The Court later applied the same rationale in 2000 when it struck down the civil remedies provision of the Violence Against Women Act (VAWA) in *United States v. Morrison.*\(^65\) Applying the test used in *Lopez,* the Court ruled that the VAWA provision exceeded Congress's authority under the Commerce Clause.\(^66\) *Morrison* currently stands as a high hurdle for any federal legislation that is being effectuated through the Commerce Clause. However, as Part III will show,\(^67\) the growing number of hate crimes—especially those committed against those perceived to be Arab Americans and Muslims after September 11—strikes directly at the very nature of mobility and community, and therefore hate crime legislation such as the LLEEA would meet the Commerce Clause standards set forth by the Court.\(^68\)

**B. The Thirteenth Amendment**

The Thirteenth Amendment is another way for the LLEEA to pass constitutional scrutiny. Although the general conception of the Thirteenth Amendment is that it serves only to abolish the institution of slavery in the United States, both the Court and scholars agree that the amendment can and should be read broadly.\(^69\)

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60. See Hasenstab, *supra* note 21, at 983–84.
62. *Id.* at 561–62.
63. *Id.* at 562–63.
64. *Id.* at 563–67.
66. *Id.* at 620. The Court also ruled that the VAWA provision exceeded the § 5 powers of the Fourteenth Amendment. *Id.* at 624.
67. See infra Part III.B (arguing, in part, that hate crimes directly implicate interstate commerce).
68. See Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* 48–49 (1992) (portraying the horrors of traveling throughout the country in the midst of racism and threatening communities); Lawrence, *supra* note 10, at 115 (discussing the simultaneous rise of federal Commerce Clause power with the increase in the mobility of the American people); Perry, *supra* note 4, at 174–78 (explaining how new hate-related incidents can transcend all state borders through cyberspace).
69. See, e.g., Lawrence, *supra* note 10, at 154 ("[T]he Thirteenth Amendment is now more consonant with a positive guarantee of freedom and equal participation in civil society. Violence, directed against an individual out of motive of group bias, violates this concept of freedom.").
The Court first fully examined the Thirteenth Amendment in the *Civil Rights Cases* of 1883. Through these cases, the Court found that, unlike the Fourteenth Amendment, the Thirteenth Amendment applied to private citizens. The Court continues, "the power vested in Congress to enforce the article by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States. . . ." Notwithstanding its findings, the Court limited the Thirteenth Amendment's scope, holding that the Thirteenth Amendment operated only as a means to abolish slavery in the United States.

The Court, however, began to broaden its interpretation of the Thirteenth Amendment when it held Sections 1981 and 1982—which outlawed discrimination in contracts and property transfers, respectively—as valid pronouncements under the constitutional authority of the Thirteenth Amendment because they sought to eradicate the "badges or incidents of slavery." Confirming the Thirteenth Amendment's intent to apply not only to private persons as well as governments, the Court began to identify the Thirteenth Amendment beyond its abolitionary principles. For example, in *Griffin v. Breckinridge*, the Court stated:

Not only may Congress impose such liability, but the varieties of private conduct that it may make criminally punishable or civilly remediable extend far beyond the actual imposition of slavery or involuntary servitude. By the Thirteenth Amendment, we committed ourselves as a Nation to the proposition that the former slaves and their descendents

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70. 109 U.S. 3 (1883); see also NOWAK & ROTUNDA, supra note 55, at 1038 ("The Supreme Court first examined comprehensively the scope of the Thirteenth Amendment in the *Civil Rights Cases* in 1883.").

71. *Civil Rights Cases*, 109 U.S. at 23 ("Under the Thirteenth Amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not; under the Fourteenth as we have already shown, it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against State regulations or proceedings.").

72. *Id.* at 20.

73. *Id.* at 24.

74. 42 U.S.C. § 1981(a) (2000) ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.").

75. 42 U.S.C. § 1982 (2000) ("All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.").


78. *See Griffin*, 403 U.S. at 105 (opining that "there has never been any doubt of the power of Congress to impose liability on private persons under § 2 of [the Thirteenth A]mendment. . . .").
should be forever free. To keep that promise, "Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation."  

*Jones v. Alfred H. Mayer Company* represented the seminal case in which the Court applied its broader interpretation of the Thirteenth Amendment, consequently giving the "antislavery Amendment new force." There, the Court dealt with the issue of private racial housing discrimination and the constitutional validity of Section 1982, which proscribed such conduct. Not only did the Court reiterate the Thirteenth Amendment's applicability to private individuals, but the Court sustained Section 1982 as a valid enactment under the Thirteenth Amendment that reached private discrimination in the sale of property.  

Underlying the Court's rationale was that the Thirteenth Amendment would be a "mere paper guarantee" if minorities did not have the "freedom to buy whatever a white man can buy," or "the right to live wherever a white man can live." Moreover, it was up to Congress to identify "badges of slavery" and to pass necessary and proper legislation to eliminate them.  

The Court was willing to extend the coverage under Section 1982 to the rental of property, and to discrimination against those of any racial group, not just African Americans. This is extremely important, for it shows that, in addition to interactions between private citizens, the Thirteenth Amendment can be applied to situations in which any minority is stricken with "badges or incidents of slavery." The Court has applied Section 1982, for example, to religious minorities before when it held that Jews can use Section 1982 to sue others (in this case, white Caucasians) who allegedly desecrated their synagogue.

79. *Id.* (quoting *Jones*, 392 U.S. at 440).

80. See *Jones*, 392 U.S. 409; *Lawrence*, *supra* note 10, at 153; see also *Nowak & Rotunda*, *supra* note 55, at 1040 ("What had been described as 'an unserviceable antique' now became the basis for a broad Congressional protection of civil rights without a 'state-action' limitation.") (citation omitted).


82. *Id.*

83. See *Jones*, 392 U.S. at 440–41; see also *Nowak & Rotunda*, *supra* note 55, at 1039–40 (citing Section IV of Justice Stewart's opinion in *Jones*) (stating that the Court looked to legislative history to prove that "the drafters intended the act to apply to private as well as public acts of discrimination").


85. *Id.* at 1040.

86. *Jones*, 392 U.S. at 443.

87. *Id.* at 439–40.


89. See *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273 (1976); see also *Nowak & Rotunda*, *supra* note 55, at 1041 (stating that it is "only necessary that the defendants' actions be motivated by racial animus and that such animus was directed towards the kind of animus that Congress ... intended to protect when it passed section 1982").

The Court interpreted Section 1981 similarly in *Runyon v. McCrary* and *Johnson v. Railway Express Agency, Inc.*, holding in both cases that Section 1981 was a valid enactment under the Thirteenth Amendment. The Court found that Section 1981 "prohibited private racial discrimination in any contractual agreements." Furthermore, in *Saint Francis College v. Al-Khazraji*, the Court found that Section 1981 protected Arab Americans who claimed discrimination based on "their ancestry or ethnic characteristics."

The above cases stand for the proposition that discrimination in contracts and property sales are remnants of slavery, and therefore laws enacted to prohibit such discriminatory conduct are consequently constitutional under the Thirteenth Amendment. Likewise, if discrimination in contracts and property transfers are badges or incidents of slavery, then it seems obvious that a hate crime—being a mechanism of social control that seeks to use violence or threats of violence to achieve its objective—may also be seen as a badge or incident of slavery. Violence based on race is another remnant of slavery and because of this country's troubled history of race relations, laws enacted to prohibit such conduct would also be constitutional under the Thirteenth Amendment.

IV. HATE CRIMES, THEIR VICTIMS, AND THEIR PLAGUE ON AMERICA

The previous Part sets out the hurdles that federal hate crime legislation must overcome to be constitutionally valid. This Part analyzes the far-reaching and direct impact of hate crimes that transcend all state borders. It also demonstrates that hate-motivated violent acts in general should be considered "badges and incidents of slavery." The post-September 11 hate crimes further provide a relevant example of the horrors of hate crimes and the pressing need for the LLEEA.

92. 421 U.S. 454 (1975) (holding that Section 1981 provided African Americans in employment contracts a federal remedy against racial discrimination).
93. LAWRENCE, supra note 10, at 154.
95. NOWAK & ROTUNDA, supra note 55, at 1041 n.26 (summarizing the holding in *Saint Francis College*).
96. It is important to reiterate that the Thirteenth Amendment, in attempting to rid the country of badges and incidents of slavery, applies not just to the descendants of those who were actually enslaved, but rather to all racial, religious, and ethnic minorities, irrespective of whether their ancestors were enslaved or not.
A. The Extensive Harms of Hate Crimes

Hate crimes tend to be more violent than other crimes and tend to produce stigmatization and marginalization of the victim. But the severity of hate crimes far surpasses that of other crimes, in that hate crimes do not stop at the direct victim; they instead extend to the targeted community and American society in general. As Professor Barbara Perry notes, in cases involving hate-motivated crime, there is "excessively brutal violence. To the extent that hate crime perpetrators are motivated by fear, hatred, mistrust, or resentment of their victims, for example, they are more likely to engage in extreme violence—violence which is beyond that necessary to subdue the victim."99

1. The Link Between Violence and Slavery

Cicero said, "To be ignorant of the past is to remain as a child."100 To overlook the deep racial hatred that existed in the form of slavery, that continued through the Jim Crow era, and that manifested itself in the form of hate crimes today, is to overlook a racial divide that still exists in contemporary America.101 This factor needs to be taken into account when new laws are shaped, and not conveniently ignored for those in search of a

98. See infra pp. 23-26; see also LAWRENCE, supra note 10, at 44 ("Bias crimes implicate a social history of prejudice, discrimination, and even oppression. As such, they cause a greater harm than parallel crimes to the immediate victim of the crime, the target community of the crime, and the general society.").

99. See Scotting, supra note 12, at 861 ("Hate crimes are typically more violent than regular offenses. A Boston study found that one of every two hate crimes was an assault, as compared to only seven percent of all crimes being assault nationally. Overall, the victim of a hate crime assault is four times more likely to require hospital treatment than the victim of a parallel assault. As one commentator noted, hate crime victims are 'not merely beaten, but are also severely tortured... the extreme cruelty and severe depravity... commonly evidenced by multiple stab wounds, skull fractures, mutilation, and dismemberments.’"); see also LEADERSHIP CONFERENCE ON CIVIL RIGHTS, CAUSE FOR CONCERN: HATE CRIMES IN AMERICA 5 (1997) [hereinafter LCCR], available at http://www.empowermentzone.com/hate_rpt.txt (last visited Jan. 3, 2005) ("Hate Crimes are much more likely than other crimes to be acts of brutal violence. In comparison to other crimes, targets of hate violence are singled out because of their membership in a social group... Because the intention is to hurt, maim, or kill, hate-motivated crimes are five times as likely as other crimes to involve assault. And these assaults are twice as likely as other assaults to cause injury and to result in hospitalization. Thus, the individual victim of a hate crime is more likely to be severely injured in body, and in spirit as well, than the victim of an ordinary offense."); see also PERRY, supra note 4, at 29.

100. ROBERT F. KENNEDY, supra note 1, at 95 (quoting Cicero).

101. See RICHARD DELGADO & JEAN STEFANCIC, MUST WE DEFEND NAZIS?: HATE SPEECH, PORNOGRAPHY, AND THE NEW FIRST AMENDMENT 4 (1997) ("American society remains deeply afflicted by racism. Long before slavery became the mainstay of the plantation society of antebellum South, Anglo-Saxon attitudes of racial superiority left their stamp on the developing culture of colonial America. Today, over a century after the abolition of slavery, many citizens suffer from discriminatory attitudes and practices infecting our economic system, cultural and political institutions, and the daily interactions of individuals. The idea that color is a badge of inferiority and a justification for the denial of opportunity and equal treatment is deeply ingrained.").
“color blind” constitution. With that said, one cannot ignore the intrinsic link between slavery and the violence associated with hate crimes.

In addition to the direct physical harm inflicted upon the primary victim, hate crimes also cause stigmatization and marginalization of the victim that can only be described as badges of slavery. The harms of racial stigmatization are much greater than mere stereotyping, and this stigmatization, in association with hate crimes, can cause greater damage to the primary victim than a parallel crime. Hate crimes can also bring on “[i]ntense feelings of vulnerability, anger, and depression, physical ailments and learning problems, and difficult interpersonal relations—all symptoms of posttraumatic stress disorder.”

The very nature of the bias motivation, when directed against minority victims, triggers the historical and social context of prejudice and prejudicial violence against the victim and his group. Professor Lawrence states, “Violence was an integral part of the institution of slavery, and post-Thirteenth Amendment racial violence was designed to continue de facto what was constitutionally no longer permitted de jure.” Hate crimes, a lingering effect of the attitudes that existed in this country during slavery, thus may be seen as instruments of intimidation and control, and additionally, as expressions of the biases that are diffused throughout American culture and history. Moreover, these biases need not be expressed simply against African Americans, as “[w]hile not subject to slavery, most other racial minority groups nonetheless have suffered a similar lack of access to citizenship resources.”

The effect on the target community is another aspect of this stigmatization and marginalization. Hate crimes are not only attacks on

102. See Tribe, Choices, supra note 54, at 221 (“It has long been recognized that the Constitution is not ‘color-blind.’ Indeed, to eliminate the persistent effects of racial prejudice and oppression, courts must often take race explicitly into account both in assessing constitutional violations and in formulating adequate remedies [sic].”).

103. See Delgado & Stefancic, supra note 101, at 5 (“The psychological harms of racial stigmatization are often much more severe than those created by other stereotyping actions.”).

104. See APA, supra note 39 (“[Psychologists have] found that some hate crime victims have needed as much as 5 years to overcome their ordeal. By contrast, victims of nonbias crimes experienced a decrease in crime-related psychological problems within 2 years of the crime.”).

105. Id.; cf. Timothy C. Shill, Campus Hate Speech on Trial 2 (1998) (“Study after study has shown that hate speech can cause fear in the gut, difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, even psychosis and suicide. As Richard Delgado and Mari Matsuda have so aptly put it, hate speech can be ‘words that wound.’ These words (often combined with illegal actions such as vandalism, theft, battery, etc.) have caused people to quit jobs, leave school, move to a new neighborhood, and avoid public places.”).

106. Lawrence, supra note 10, at 41.

107. Id. at 154.

108. Perry, supra note 4, at 2.

109. Id. at 37.

110. Id. at 70.

111. See Lawrence, supra note 10, at 41 (“The impact of bias crimes reaches far beyond the harm done to the immediate victim or victims. There is a more widespread impact on the ‘target
random victims, but also attacks on racial, religious, or ethnic communities.\(^{112}\) In order to fully understand the harm on the targeted community, one must attempt to view the situation through the eyes of a member of that community:

Crimes of hate transcend their immediate victims and cast a shadow of fear and terror throughout entire communities... we are not talking about the obvious physical damage inflicted during a hate motivated attack. We are referring to the fear, the terror, that one experiences when faced with a passionate rejection because of what one is. An absolute stranger looks at you and hates you.\(^{113}\)

This hatred is more harmful than discrimination in contracts or in property, both of which directly invoke the Thirteenth Amendment. Hate crimes closely resemble the physical suppression of African Americans, actions that this amendment aimed to abolish. It should be the role of the federal government to address this plague because it affects entire communities.\(^{114}\)

Because of a deep history of inequality\(^{115}\) and discrimination,\(^{116}\) in which "slavery refuses to fade,"\(^{117}\) and the fact that hate crimes have been ever-present in American society,\(^{118}\) the federal government has the power

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112. Once again, this Article is just limited to these categories, which are not exclusive. Hate crimes are also attacks on the homosexual, disability, and gender-based communities.

113. Scotting, supra note 12, at 856; see also STEVEN H. SHIFFRIN, DISSENT, INJUSTICE, AND THE MEANINGS OF AMERICA 83 (1999) (discussing that a victimized group should have input as to what a legal remedy should be). For a sociological application of this ideal in everyday life, see HARPER LEE, TO KILL A MOCKINGBIRD 33 (40th Anniversary ed. 1999) ("You never really understand a person until you consider things from his point of view ...[That is,] until you climb into his skin and walk around in it.").

114. See Anti-Defamation League, ADL Urges FBI to Expand Hate Crime Training Initiatives and Reform Reporting Process, available at http://www.adl.org/combatting_hate/letter_CJIS.asp (last visited Jan. 8, 2005) ("All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or dollars and cents. By making members of minority communities fearful, angry, and suspicious of other groups—and of the power structure that is supposed to protect them—these incidents can damage the fabric of our society and fragment communities.").

115. See, e.g., Whidden, supra note 3, at 2833 ("Despite the ever-present theme of equality, inequality has existed throughout American history for many visible minorities and foreign-born residents and citizens.").

116. See, e.g., PERRY, supra note 4, at 183 ("The United States is itself a legacy of centuries of persecution of minorities, whether they be Native Americans, immigrants, women, or 'sexual deviants.' Such a history normalizes mistreatment of those who do not conform appropriately to the preconceived hierarchies. That leaves us with a culture reflected in bitter letters to the editor, opinion polls that seem to tap deep divisions and resentments, and, ultimately, hate-motivated violence.").

117. DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 3 (1992) ("But the fact of slavery refuses to fade, along with the deeply embedded personal attitudes and public policy assumptions that supported it for so long. Indeed, the racism that made slavery feasible is far from dead in the last decade of twentieth-century America; and the civil rights gains, so hard won, are being steadily eroded.").

118. See APA, supra note 39 ("Hate Crimes—violent acts against people, property, or
to enact the LLEEA by way of the Thirteenth Amendment. A deeper analysis of the impact of the post-September 11 hate crimes on its victims, which includes American society in general, conveys the uniqueness of these crimes and highlight the need for federal intervention.

2. The Effect Upon Interstate Commerce

Because the nature of hate crimes are less about any one victim and more about the cultural communities that the victim represents, hate crimes further effect all members of those communities, regardless of state borders. According to a statement issued by the American Psychological Association, "Hate Crimes are message crimes.... They are different from other crimes in that the offender is sending a message to members of a certain group that they are unwelcome in a particular neighborhood, community, school, or workplace." In effect, hate crimes send a message so powerful that they "have the potential to throw an entire community into paralysis, forcing it to withdraw further into itself. The victimized group redefines itself as powerless in the face of the racist onslaught." Thus, the impact on the targeted community has the devastating effect of preventing interstate travel, thereby creating substantial economic effects.

More so than just the targeted community, hate crimes attack American society as a whole by severely disrupting race relations in a country that has attempted to move past its racial divides:

[Hate] crimes cause an even broader injury to the general community. Such crimes violate not only society's general concern for the security of its members and their property but also the shared value of equality among its citizens and racial and religious harmony in a heterogeneous society. A [hate] crime is therefore a profound violation of the egalitarian ideal and the anti-discrimination principle that have become fundamental not only to the American legal system but to American culture as well.

organizations because of the group to which they belong or identify with—are a tragic part of American History."); see also Howard P. BERKOWITZ & Abraham H. FOXCRAFT, Counteracting Hate Crimes: A National Priority, at http://www.adl.org/opinion/counter_hatecrimes.asp (Oct. 1997) (concluding that "forms of bias-related criminal conduct are a sad but very real part of American history and of the contemporary American landscape").

119. See LAWRENCE, supra note 10, at 154–55 ("Whereas a state or local entity may find a social fissure line on a local level, Congress may act only on a national level. Indeed, the Supreme Court did just that, albeit implicitly, in determining the scope of sections 1981 and 1982. In enacting a federal bias crime law, Congress would do so explicitly.").

120. PERRY, supra note 4, at 1.

121. APA, supra note 39. This also implicates the Thirteenth Amendment argument; that a particular group is unwelcome in a community can be attributed to racial attitudes based on slavery and the proper place of certain groups.

122. PERRY, supra note 4, at 72; see also LCCR, supra note 99 ("As for the communities hit by hate crimes, these incidents make targeted individuals feel even more angry and alienated, increasing intergroup tensions of all kinds.").

123. LAWRENCE, supra note 10, at 43.
Hate crimes are acts that use violence to maintain a homogenous, yet falsely imagined American identity while attempting to purge any manifestation of a "foreign presence." The explosive increase in the number of hate crimes following September 11 serve to clearly illustrate this point. In the section that follows, I will examine this particular aspect of hate crimes within the context of the wave of post-September 11 attacks on Arab-Americans.

B. The Second American Tragedy: The Post-September 11 Hate Crimes

Continued examination of racism's prevalence in American society is necessary to further the Commerce Clause and Thirteenth Amendment rationales, and to reveal that the effects of hate go beyond state boundaries and cannot be considered ordinary violence. When the connection is made between racism and hate crimes, one can better grasp the need for federal intervention and the LLEEA. By analyzing the racial conditions of pre- and post-September 11 America, I demonstrate that racism on a national level was prominent against Arab Americans before September 11, and that the hate crimes occurring afterwards are directly connected to these long-held notions.

1. The Racial and Religious Conditions of Pre-September 11 America

Racism and its effects cannot be confined to one state; rather, its effects send shockwaves throughout the entire country. It haunts this country and cuts at the very heart of American ideals that formed this nation. The propensity for racism in the United States exists in numerous forms, one of which is white supremacy. The belief that other races are inferior to whites is the impetus behind some forms of racism and hate crimes. It is this racism and white supremacy that produce xenophobia and backlash against those individuals who are perceived as foreigners. These attitudes provide the background to the post-September 11 hate crimes, and additionally further the proposition that such acts of racism are

124. See PERRY, supra note 4, at 62.
125. See HACKER, supra note 68, at 19–20 ("Something called racism obviously exists. As a complex of ideas and attitudes, which translate into action, it has taken a tragic toll on the lives of all Americans. . . . [R]acism is real, an incubus that has haunted this country since Europeans first set foot on the continent. It goes beyond prejudice and discrimination, and even transcends bigotry, largely because it arises from outlooks and assumptions of which we are largely unaware.").
126. See DELGADO & STEFANCIC, supra note 101, at 7 ("Racism and racial stigmatization harm not only victim and perpetrator but society as a whole. Racism is a breach of the ideal of egalitarianism, that 'all men are created equal' and each person is an equal moral agent, an ideal that is a cornerstone of the American moral and legal system.").
127. See HOOKS, supra note 2, at 22 (stating how white supremacy "promotes, encourages, and condones all manner of violence").
128. See PERRY, supra note 4, at 148-51 (analyzing how white supremacy "vilifies" other races and cultures).
129. See id. at 151.
constructive badges of inferiority with national effects. Professors Delgado and Stefancic note that "racism injures the career prospects, social mobility, and interracial contacts of minority group members. This, in turn, impedes assimilation into the economic, social, and political mainstream of society and ensures that the victims of racism are seen and see themselves as outsiders."

Racism and white supremacist views have been directed towards Arab Americans with horrifying results. Anti-Arab and Anti-Muslim sentiment was high in America before September 11, as bigots consistently targeted these groups with ridicule, threats, and even violence following the Gulf War of 1991 and other crises in the Middle East. This racism is no different from the racism that strikes at the heart of America, as discussed earlier. It is based on the belief that, for example, "immigrants—with their dark skin, their odd ways, and their foreign cultures and languages—will hasten the demise of the true, white Christian identity."

The attempt to maintain this racist philosophy for America is no different from the ideas held by slaveowners during the 18th and 19th centuries. In the year before the September 11 attacks, statistics indicated a fifteen percent increase in the number of complaints reported by Arab Americans over the previous year. Records show that in the year 2000, there were a total of 322 incidents involving discrimination against Arab Americans. The incidents reported varied in nature from non-violent forms of discrimination, to more serious incidents that could have been classified as hate crimes under the LLEEA, such as arson, assault, and attempted murder.

130. Professor Shiffrin takes this argument one step further and states that "our country is racist to the core. . . ." SHIFFRIN, supra note 113, at xiii; see also HOOKS, supra note 2, at 116–17 ("Even though many white Americans do not overtly express racist thinking, it does not mean that their underlying belief structures have not been saturated with an ideology of difference that says white is always, in every way, superior . . .").

131. DELGADO & STEFANCIC, supra note 101, at 7.

132. PERRY, supra note 4, at 21.

133. Id.

134. See id. at 152.

135. In no way am I attempting to lessen the horrors of slavery by comparing it to discrimination today. The argument, however, is that the ideals and philosophy of enslaving and segregating African Americans are similar to ideals for exclusion of Arab Americans. They are for the common goal of keeping America "white" and free from other cultural influence that the perpetrators feel is a threat to their way of life.

136. CAIR Report, supra note 46, at v.

137. See id. at 2.


139. See id. at 26 (describing a September 21, 2000 attack at Harvard University in Boston Massachusetts: "The Harvard Crimson reported a student was attacked . . . after leaving the Islamic prayer room on campus. He was grabbed from behind by two men, who punched him and knocked him to the ground injuring his head and continued to kick him.").

140. See id. at 4 ("Last year’s incidents also included a hate crime attack at a mosque in Memphis, Tennessee, in June of last year. The attacker shot at worshippers inside the mosque, wounding one person and causing damage to the mosque’s property.").
Those within the American public who object to Arab American and Islamic culture fear the Arab world and Islam as an evil empire, characterizing its people as violent, barbaric, sex maniacs who are constantly plotting a violent takeover of the United States. Indeed, the misconception of Arab Americans and Muslims as terrorists existed long before September 11. Moreover, this presumption has been the basis for numerous hate crimes against Arab Americans and Muslims, as people see the need to protect America against the enemy. The rush to judgment and the extreme violence that occurs as a consequence demonstrate a deep-rooted racism driving the attackers.

In sum, racist attitudes existed and violent actions were committed against Arab Americans prior to September 11. This situation was consistent with the discrimination that was held to be unlawful under the Thirteenth Amendment, and implicated substantial economic effects on the country. In the aftermath of September 11, any pre-existing racist attitudes and actions arising therefrom have increased exponentially, creating a national crisis that needed to be addressed by leaders of this country including the President.

2. The Post-September 11 Hate Crimes

On September 11, 2001, Americans, along with the rest of the world, were shocked and horrified by the tragedies that took place at the World Trade Center, the Pentagon, and in Western Pennsylvania. Unfortunately, the attacks also led some, under the guise of patriotism, to racism, violence, vengeance, and a desire to rid America of anybody they perceived to be Arab American or Muslim. This reaction occurred on a national level and the resulting hate crimes directly implicated national interests:

[I]n the first week after the terrorist attack (Sept. 12th through September 17th), newspapers and other media serving major cities . . . reported 645 bias incidents directed towards Americans perceived to be of Middle Eastern descent. At the end of the week, three more innocent lives would

141. PERRY, supra note 4, at 63-64.
142. See CAIR Report, supra note 46, at 25, 27 (chronicling reports of harassment based on the stereotype that Arab Americans are terrorists).
143. This is ever more evident in the context of the September 11 attacks. See SAALT, supra note 9, at 20 (quoting a threat: “Get the hell out of the country. You ruined the country, and you will all die.”) (internal punctuation omitted).
144. See APA, supra note 39 (“Muslims were also victims of harassment in the period immediately following the bombing of the Murrah federal building in Oklahoma City; an Iraqi refugee in her mid-20’s miscarried her near-term baby after an attack on her home in which unknown assailants screaming anti-Islamic epithets broke the windows and pounded on her door . . . .”).
145. See generally SAALT, supra note 9.
146. Self-defense based on racial perceptions is not a valid claim. See, e.g., RANDALL KENNEDY, RACE, CRIME, AND THE LAW 165 (1997) (“Racially discriminatory self-protective action by private persons reinforces existing mistrusts and resentments and circulates them throughout the various spheres of society, public as well as private.”).
be added to the death toll exacted by this national tragedy. . . . America became less free.  

The incidents were not merely cases of harassment, but also assault, property damage and violence at places of worship, and tragically, the deaths of several individuals. According to the SAALT Report, twenty-seven cases involved weapons and five cases involved vehicular assault.

The discrimination and attacks continued well beyond the week immediately following September 11. A study conducted by the Council of American-Islamic Relations (CAIR) listed a total of 1717 reported incidents following September 11, 2001. Of these incidents, there were 289 cases of physical assault/property damage, 56 death threats, 16 sixteen bomb threats, and 11 deaths.

These hate crimes—as they were committed because of the perceived or actual ethnicity of its victims—could have been subject to federal prosecution under provision 7(a) of the LLEEA. It is important to note that under the LLEEA, the victim need not be of the actual race or ethnicity that the perpetrator thinks he or she is, and “[p]erception played a major role in determining backlash victims, as evidenced by many cases in which victims included Sikhs, Hispanics, a Greek American and others.” The race of the victim did not matter to some attackers, just as long as the person did not look white.

Not only do these attacks invoke the very racism that this country attempted to eradicate with the Thirteenth Amendment, but it has also had a direct effect on the movements of entire religious, racial, and ethnic communities. For example, “[CAIR] took the extraordinary step of warning those wearing Islamic attire to stay out of public areas and also requested additional police patrols near mosques.”

147. SAALT, supra note 9, at 3. The report was compiled using over 400 media services, Lexis-Nexis, and manual research. Id. at 5. It also does not include smaller communities and includes incidents only reported in the press. Id. “The reality, however, was that bias incidents were far more widespread than were reported.” Id. at 4.
148. Id. at 3.
149. Id. at 6.
150. CAIR Graph, supra note 6.
151. Id. The other categories included: discrimination in the workplace (166 incidents), airport profiling (191), INS/FBI/police intimidation (224), discrimination in school (74), hate mail (315), and public harassment (372). Id.
153. SAALT, supra note 9, at 9, 44.
154. See Tolerance.org, Hate in the News: Violence Against Arab and Muslim Americans: Michigan to Wisconsin, at http://www.tolerance.org/news/article_hate.jsp?id=412 (last modified June 27, 2002) [hereinafter Tolerance, Violence] (“On September 18th Kimberly Lowe, a 21-year-old full-blooded Creek Native American, and several Native American friends were followed and harassed by a vehicle of white males in Tulsa. The men threw items at the car any yelled ‘Go back to your own country!’ When Lowe stopped the car and went to confront the men, the attackers drove into her, pinned her against another vehicle, then backed up and ran over her again. Lowe was killed.”).
155. Tolerance, Americans, supra note 45.
Arab Americans, South Asians, Sikhs, and Muslims are just a few of the groups who are prevented from going on with their everyday lives. Victims of other races, ethnicities, and religious groups were assaulted and shot while they worked and left their homes to pray. In committing these attacks, many attackers believed they were acting for the benefit of America. In reality, however, they were only committing unspeakable acts of violence against innocent Americans.

These attacks also fit the hate crime mold in that the targeted communities as a whole became victims as well. The attacks were aimed more explicitly at the targeted community than other hate crimes, for these were attempts by attackers to rid the country of a particular community in its entirety. For example, one attacker bluntly exclaimed, "You Islamic mosquitoes should be killed." Local leaders responded by addressing their communities and calling for strength:

"As a community committed to inclusion and the rule of law, we must fight those bigots who wish to target members of the Arab or Muslim communities, simply for being Arab or Muslim," said Juan Rangel of the Dallas National Conference for Community and Justice. "We must not let racists exploit our fear and rage or allow silence to empower their intolerance."

The targeted community was not just limited to Arab Americans and Muslims, but also included Indian-Americans, Pakistani-Americans, and Sikhs. A website established shortly after September 11 to specifically monitor attacks on the Sikh community, compiled more than two hundred "additional hate crimes or harassment incidents against Sikhs." These attacks affected the Sikh and Muslim communities in ways that seemed to threaten the communities' existence in this country.

American society in general has also suffered as a result of these hate crimes. At a time when people should have come together as a nation for strength and hope, these attacks re-established old fault lines based on race and ethnicity, deeply affecting the unity of American society. President

156. See SAALT, supra note 9, at 12-23.
157. See id. at 33-40.
158. See id. at 35 ("Police turned back 300 marchers—some waving American flags and shouting 'USA! USA!'—as they tried to march on a mosque in Bridgeview, a southwest Chicago suburb.... Three demonstrators were arrested. 'I'm proud to be American and I hate Arabs and I always have,' said the teenaged protestor."); see also id. at 47 (describing a "pro-American" incident of harassment against Arab Americans).
159. See id. at 12 (describing the murder of a Indian-immigrant gas station owner who was shot and killed, and quoting the murder suspect as saying, "'I stand for America all the way,' as he was handcuffed. . . .").
161. Tolerance, Americans, supra note 45.
163. Id.
George W. Bush pleaded with Americans to treat their fellow citizens with kindness: "Our nation must be mindful that there are thousands of Arab Americans who live in New York City, who love their flag . . . and we must be mindful that as we seek to win the war that we treat Arab Americans and Muslims with the respect they deserve." The Department of Justice addressed expressed similar sentiments, reminding "all Americans that Americans of Arab or South Asian decent [sic] and people of the Muslim faith were also injured and killed in [the September 11] attacks . . ." At a time when the country was in a state of war, the American government still felt the need to address the nation about the crisis of hate crimes against perceived Arab Americans and Muslims. In other words, our national leaders believed it was in their duty and authority to send a clear message about the matter, for it was a national problem. The same logic applies to the adoption of federal hate crime legislation, as what it addresses is a national problem, and thus within the scope of duty and responsibility of the federal government. If there is anything that resembles a badge or incident of slavery, it is the systematic and ruthless violence against particular targeted minority groups; and, if there is any violence that prevents movement across borders or profitable commerce for victims, it is this violence—these hate crimes—against perceived Arab Americans and Muslims.

V. CONCLUSION

Few people could have imagined the attacks that occurred on September 11 at the time the LLEEA was first introduced in March of 2001. A violent reaction to these attacks occurred in the form of deadly hate crimes committed against innocent Americans. September 11 altered the nation’s perspective and forever changed all of our lives; yet the dramatic increase in hate crimes carried out in its aftermath unfortunately reinforced the fact that violence based on race remains a sad and ongoing chapter in our nation’s history.

The LLEEA, reintroduced in 2003, was the latest in a series of attempts by the federal government to enact federal hate crime legislation. Despite others’ concerns that such legislation violates principles of federalism, it should be clear that federal hate crime legislation is valid under the Commerce Clause and the Thirteenth Amendment. The need for federal hate crime legislation existed even before September 11, the increasing crisis of hate crime attacks following the aftermath of September 11 only highlights the deficiencies in current state and federal hate crime laws.

164. Tolerance, Americans, supra note 45 (internal quotation marks omitted).
165. Id. (internal punctuation omitted).
Historically, the ability to address civil rights issues with national ramifications has been within the federal government’s jurisdiction, and therefore principles of federalism cannot stand as a bar to such legislation. In spite of the Supreme Court’s Commerce Clause test, federal hate crime legislation would meet this burden because of the direct link between hate crimes and interstate commerce. Hate crimes, as seen by the post-September 11 case study, create harms that go above and beyond that of a parallel crime, affecting a community’s ability to function in American society.

These harms also directly descend from the attitudes that produced slavery and internment, and therefore should be regulated under the authority of the Thirteenth Amendment. If discrimination in contracts and property transfers are considered badges or incidents of slavery, so must violence based on the color of one’s skin or the place of one’s birth. This was exactly the mentality that produced one of the greatest hate crimes in American history—slavery.

Racism is a plague on this entire country, not just one particular state or region. It knows no boundaries, and affects communities which exist across all fifty states. Hate crime, as an extension of this racism, also will not limit its harms to one particular victim, but rather will produce shockwaves that the country feels as a whole.

Dr. Martin Luther King Jr. once said, “Now, in order to answer the question, ‘Where do we go from here?’ . . . we must first honestly recognize where we are now.”166 Where we are now is in a place this country has never been before, yet we cannot repeat mistakes made in our past. We must do all we can to make our country stronger and safer, yet at the same time, preserve the freedoms and equality that all of us, as Americans, desire. Enacting federal hate crime legislation is one of these actions, for it sends a message to all of America that violence based on race is a horrific crime and will not be tolerated. In order to move forward as Americans—as one community—we must work to protect our differences from intimidation and destruction. Then, and only then, can we move forward as one America.
