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## Queer (In)Justice: The Criminalization of LGBT People in the United States

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**QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES by Joey L. Mogul, Andrea J. Ritchie & Kay Whitlock. Boston, Massachusetts: Beacon Press, 2012. 216 pp. \$15.91 paperback.**

*In 2009, a police officer stopped me after I, a white transgender man, used a single-stall men's bathroom in a Whole Foods in Pittsburgh, Pennsylvania. The officer told me that he "should" arrest me for using the men's room. When I explained to him that I identify as male, he informed me that if he arrested me, I would have to "get a note from [my] surgeon, saying that [I am] whatever the hell [I] say [I am]." Though I was ultimately not arrested, the incident left me shaken and disturbed.*

#### INTRODUCTION

In January of 2014, CeCe McDonald, an African-American transgender woman, was interviewed on the Melissa Harris-Perry show, just days after her release from a men's prison in St. Cloud, Minnesota.<sup>1</sup> She was joined by three other guests: Laverne Cox, an African-American transgender woman; Katie Burgess, a white transgender woman, a famous actress and the executive director of the Trans Youth Support Network (TYSN) in Minneapolis, Minnesota; and Rea Carey, a white cisgender queer woman and the executive director of the National Gay and Lesbian Taskforce.<sup>2</sup>

They spoke, in part, about conditions of confinement for incarcerated transgender people and discussed what should be done about the uniquely harsh conditions faced by queer and trans people in prison.<sup>3</sup> Carey emphasized the importance of prison reform efforts and noted some recent achievements, including Los Angeles's creation of a separate "safe" correctional facility for transgender people and a First Circuit ruling mandating access to gender-affirming healthcare for incarcerated transgender people.<sup>4</sup> In contrast to Carey's push for reform, Burgess took a strong prison abolitionist stance, referencing a position that McDonald had previously expressed to her support team that

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1. *Melissa Harris-Perry* (MSNBC television broadcast Jan. 19, 2014).

2. *See id.*

3. *See id.*

4. *See id.*

“prisons aren’t safe for people, period.”<sup>5</sup> McDonald’s support team was poised to advocate for McDonald to be housed wherever she felt *most* safe, including a women’s prison, while also acknowledging the importance and validity of McDonald’s position that no prison was going to be safe, for her or anyone else.<sup>6</sup>

In *Queer (In)justice: The Criminalization of LGBT People in the United States*,<sup>7</sup> authors Andrea Ritchie, Joey Mogul, and Kay Whitlock express McDonald’s, Burgess’s and others’ radical, transformative opposition to reformist approaches like Rea Carey’s. The book critiques approaches that promote mere tolerance of queer and transgender people and calls instead for a more meaningful and structural transformation of the systems that deeply marginalize and oppress queer communities.

Since the Stonewall Riots in 1969, mainstream society has moved increasingly toward acceptance of certain kinds of queerness.<sup>8</sup> As a result, there are members of the queer community who feel that the work for queer liberation is almost done.<sup>9</sup> But nothing could be further from the truth. Instead, mainstream acceptance has been achieved at the cost of the continued, and often exacerbated, marginalization of groups within the LGBTQ community that society deems particularly deviant.<sup>10</sup> White, cisgender, rich and middle class gays and lesbians have bought acceptance by distancing themselves from the poor, from people of color, and from transgender folk—by throwing those groups under the proverbial bus.<sup>11</sup>

*Queer (In)Justice* centers around the lives and stories of queer people in marginal spaces who face increasing marginalization as more mainstream queer people and movements find acceptance in the dominant culture. The book highlights the criminalization of these individuals on the basis of race, class, gender/gender identity, and sexuality. In addition, *Queer (In)Justice* provides a framework for understanding queer and trans history by drawing connections between queer and trans liberation, the struggle for racial and economic justice, and efforts to combat the prison-industrial complex and a flawed criminal justice

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5. *See id.*

6. *See id.*

7. *See* JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (Michael Bronski ed., 2011).

8. *See* Dave Singleton, *40 Years Later: A Look Back at the Turning Point for Gay Rights*, AARP BULLETIN, June 2009, available at [http://www.aarp.org/politics-society/rights/info-06-2009/stonewall\\_riots\\_40\\_years\\_later\\_.html](http://www.aarp.org/politics-society/rights/info-06-2009/stonewall_riots_40_years_later_.html).

9. *See id.*

10. *See, e.g.*, Aaron Talley, *Gay Pride is for White People*, MUSED MAG. ONLINE (June 23, 2014), <http://www.musedmagonline.com/2014/06/gay-pride-white-people/> (discussing how “pride festivals are curated by white gay men for white gay men”); Rebecca Juro, *Even After All These Years, HRC Still Doesn’t Get It*, HUFFINGTON POST (Apr. 1, 2013, 7:55 PM), [http://www.huffingtonpost.com/rebecca-juro/even-after-all-these-years-hrc-still-doesnt-get-it\\_b\\_2989826.html](http://www.huffingtonpost.com/rebecca-juro/even-after-all-these-years-hrc-still-doesnt-get-it_b_2989826.html) (criticizing the Human Rights Campaign for its failure to be inclusive and supportive of the trans community).

11. *See, e.g.*, Talley, *supra* note 10; Juro, *supra* note 10.

system.

This book review will begin with a brief summary of the main arguments contained in *Queer (In)Justice*. It will then dive into three of the book's central arguments: 1) the existence of a feedback loop between the criminalization of queer people and societal homophobia and transphobia; 2) the inadequacy of hate crime laws that embody a reformist approach to violence against queer people; and 3) the need for a slow dismantlement of the criminal legal system by those most affected by it. Not only do I agree with *Queer (In)Justice* in its analysis and conclusion, but I also argue that *Queer (In)Justice* provides an excellent framework and jumping-off point for further research and scholarship.

### BOOK SUMMARY

*Queer (In)Justice* begins by discussing how the modern-day criminalization of queer people, particularly queer people of color, is deeply rooted in the colonization of the Americas (p. 1). The authors explain how European colonizers used narratives about sexual and gender deviance to legitimate their violent conquests of indigenous populations (p. 3). These same narratives were further embodied in the use of anti-sodomy laws to police poor people and people of color (p. 14).

This section not only situates its readers in U.S. colonial history, it also previews the book's discussion of the "archetypes" used to criminalize queer people, allowing readers to see how far back these criminalizing archetypes really go. Broad themes connect the archetypes: queers as mentally unstable, queers as inherently violent, and queers as deceptive and dishonest (pp. 43-44). *Queer (In)Justice* deals primarily with the ways in which these archetypes have shaped the legal treatment of LGBTQ people. However, the book also explains how these archetypes and the transphobia in broader society reinforce one another (p. 25). Lurid media coverage of a crime, for example, both informs and is informed by these archetypes (p. 25). *Queer (In)Justice* focuses its discussion on the archetypes of the "queer killer," the "sexually degraded predator," the "disease spreader," the "queer security threat," and the "young, queer criminal intruder" (pp. 20-44).

These archetypes inform the ways in which sexuality and gender deviance are policed, prosecuted, and punished. Following a discussion of the archetypes, *Queer (In)Justice* walks its readers through the various stages of the criminal legal system, from arrest through incarceration, beginning with an exploration of the ways in which both sexuality and gender identity are policed in the United States. Using both quantitative and qualitative data, the authors of *Queer (In)Justice* show how queers, and particularly transgender women of color, continue to be disproportionately targeted for unwanted attention, harassment, arrest, and brutality by the police (pp. 47-50). According to the authors, this phenomenon can be explained by the role and social position of the police "as lawmakers in their own right," with enormous discretion over "which laws to

enforce, how to enforce them, and which people to target for enforcement” (p. 48).

Queer people face injustice not only at the hands of the police, but also in the courtroom. The book explains how queers within the criminal justice system are presumed to be guilty of whatever crime they are charged with, particularly if that crime is sexual in nature, due to societal discrimination against them, (p. 76). Additionally, criminal archetypes casting queers as inherently deceptive cause judges, prosecutors, and juries to treat them with suspicion (p. 76). As *Queer (In)Justice* points out, the perception of transgender people as inherently “deceptive” stems from the notion that they are “impersonating” someone of the “opposite sex” (pp. 31, 75-76). Judges and juries—themselves products of a discriminatory system—are often receptive to these narratives, built on criminalizing archetypes, when they are employed as part of a prosecutorial strategy (p. 71). As a result, queer people often face higher conviction rates and harsher sentences with collateral consequences in immigration, housing, and employment that can negatively impact and shape their lives (pp. 77-78).

Oftentimes, it is not only prosecutors who perpetuate injustice against queer people within the criminal justice system. *Queer (In)Justice* boldly confronts the ways in which sub-par legal assistance from public defenders and legal aid attorneys contributes to the disadvantage of queer and transgender people in the legal system. The authors quote law professor, Dean Spade, who notes that queer and transgender people “consistently report experiencing extreme disrespect when attempting to access legal services, having their cases rejected or ignored by the agencies to which they turn, and feeling so unwelcome and humiliated that they often do not return for services” (p. 75). Even legal service providers with the best intentions “are often unprepared to skillfully represent LGBT people because they have limited knowledge of their clients’ lived realities” (p. 75). This is especially true for transgender people, given that many legal aid providers lack competence in transgender issues (p. 75). To highlight this problem, *Queer (In)Justice* tells the story of a defense attorney, assigned to the representation of two transgender women, who actively prevented a judge from sentencing her clients to a women’s drug treatment facility because she mistakenly believed it would be “improper” (p. 75).

*Queer (In)Justice* next highlights the ways in which these criminalizing archetypes and narratives, present in the courtroom context, continue to shape the experiences of queer people after incarceration. The book explains that queer and transgender people often face enormous amounts of sexual violence within prisons (p. 100). As the authors point out, this pattern of sexual violence perpetuated by and/or encouraged by prison staff, is a necessary aspect of prison life that “serves the dual purpose of simultaneously queering prisons and punishing queerness and gender deviance” (p. 103). The book also notes other ways, besides sexual violence, in which queer people are subjected to particularly harsh conditions of confinement, including lack of access to adequate healthcare and being singled out for solitary confinement (pp. 107-108,

111-116).

Having familiarized its readers with the staggering amount of violence that societal homophobia, transphobia, and criminalization have inflicted upon queer people, *Queer (In)Justice* explores two solutions that have been proposed to address this problem: the enactment of hate crimes legislation and the complete dismantlement of the criminal legal system (pp. 118-158).

*Queer (In)Justice* is not an exhaustive quantitative or qualitative study. It is, instead, a broad overview that provides a perspective and a framework from which to understand the ways in which queer people are treated within the criminal legal system. More importantly, it illustrates why mere reform of this system—born of colonialism, racism, and violence—will never be enough to eradicate the injustice inflicted on queer people, particularly queer and transgender people of color. This book review will evaluate three central themes of *Queer (In)Justice*. First, I will explore the “feedback loop” between the criminalization of queer people and broader societal discrimination, with a particular focus on using the framework provided by *Queer (In)Justice* to understand the ways in which this mutually-reinforcing relationship permeates even queer and feminist movements. Second, I will explain and evaluate *Queer (In)Justice*'s critique of “reformist” approaches to violence against queer people, which rely heavily on the enactment of hate crimes legislation. Lastly, I will consider *Queer (In)Justice*'s proposed solution—dismantling the whole system entirely.

### FEEDBACK LOOPS

Throughout the book, but particularly in its groundbreaking section on queer criminal archetypes, *Queer (In)Justice* describes the positive feedback loop<sup>12</sup> that exists between the criminalization of transgender people in the criminal legal context and the homophobia and transphobia in broader society (p. 23-25). The positive feedback loop serves as a model to describe how the criminalization of queer people both stems from and reinforces societal homophobia and transphobia (pp. 23-25).

Importantly, the framework provided by the authors of *Queer (In)Justice* has broad applicability. For example, it can be used to elucidate the mutually reinforcing relationship between queer criminalization and societal transphobia in the context of certain feminist discourses. Such a discussion is particularly pertinent to the current sociolegal context, in which certain “feminist” activists and scholars, who refer to themselves as “trans-exclusive radical feminists” or “TERFS,” are actively speaking out against transgender rights, and particularly

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12. john a. powell and Caitlin Watt describe positive feedback loops as “self-reinforcing; the more [they] work[], the more [they] will continue to work.” john a. powell & Caitlin Watt, *Negotiating the New Political and Racial Environment*, 11 J.L. SOC'Y 31, 62 (2009/2010).

the rights of transgender women.<sup>13</sup> The TERF movement has become increasingly visible in recent years, at the same time that people have gained greater awareness of the over-criminalization and high mortality rates of transgender women of color.<sup>14</sup> For example, in the National Coalition of Anti-Violence Project's (NCAVP) report on LGBTQ and HIV-affected hate violence in 2013, transgender women made up seventy-two percent of reported hate violence homicide victims.<sup>15</sup> Sixty-seven percent of reported hate violence homicide victims were transgender women of color.<sup>16</sup> Although a discussion of TERF discourse falls outside the scope of *Queer (In)Justice*, the framework provided by the book allows us to understand the ways in which TERF vitriol informs and is informed by the criminalization of transfeminine bodies.

To demonstrate *Queer (In)Justice*'s broad applicability and its usefulness as a jumping-off point for additional scholarship, particularly scholarship which is critical of our own queer and feminist movements, I will look more closely at three of the criminalizing archetypes discussed in the book: the "queer killer," the "sexually degraded predator," and "the young, queer criminal intruder." I chose to focus my discussion on these archetypes because of the ways in which they have been utilized by mainstream media and certain radical feminist groups to demonize and criminalize transgender women. I will explain how the feedback loop between criminalization and societal homophobia and transphobia informs and is informed by TERF vitriol towards transfeminine bodies.

### The Queer Killer

In its section on "Queer Criminal Archetypes," *Queer (In)Justice* explains how queers accused or convicted of homicide-related offenses embody the archetype of the "Queer Killer," which inextricably links the perpetrators' homicidality with their queerness (p. 27). Transgender women who kill are seen as "lethal gender benders," an archetype that "emphasizes male gender anguish, deception, disguise, and the homicidal destruction of normal others as essential

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13. See Michelle Goldberg, *What is a Woman? The Dispute Between Radical Feminism and Transgenderism*, NEW YORKER, Aug. 4, 2014, at 24; Samantha Allen, *The Hate Group Masquerading as Feminists*, SALON (July 11, 2013), [http://www.salon.com/2013/07/11/the\\_hate\\_group\\_masquerading\\_as\\_inclusive\\_feminists\\_partner](http://www.salon.com/2013/07/11/the_hate_group_masquerading_as_inclusive_feminists_partner) (originally published as Samantha Allen, *CounterPunch and the War on Transgender People*, JACOBIN (July 10, 2013), <https://www.jacobinmag.com/2013/07/counterpunch-and-the-war-on-the-transgendered/>).
  14. See, e.g., NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, 2013 REPORT ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE (2014), available at [http://www.avp.org/storage/documents/2013\\_ncavp\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/2013_ncavp_hvreport_final.pdf); *The Trans Women's Anti-Violence Project: About*, THE TRANS WOMEN'S ANTI-VIOLENCE PROJECT, [http://transfeminism.tumblr.com/on\\_violence\\_against\\_trans\\_women](http://transfeminism.tumblr.com/on_violence_against_trans_women) (last visited Feb. 6, 2015).
  15. NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 14, at 8.
  16. *Id.*

to a twisted gender transgression” (p. 30). The book traces the roots of this archetype to Ed Gein, “an unassuming farmhand and handyman [who] lived alone in the family home” (pp. 29-30). After the disappearance of two women, three years apart, Gein’s property was searched, resulting in the discovery of one woman’s body, “shot to death, decapitated, and butchered,” as well as:

[A] nightmarish collection of skulls and items made from human skin and body parts, including female vulvae that had been salted and oiled to prevent cracking[,] . . . items made from human skin that were clearly meant to be worn, including leggings and a vest[,] . . . a collection of masks made from the facial skin of middle-aged women, lips intact, with hair still attached to the scalps . . . . Gein acknowledged that he enjoyed wearing these things from time to time . . . [and] said that he had, on occasion, considered having a sex change operation (p. 30).

Pointing to characters such as Buffalo Bill in *The Silence of the Lambs* and Norman Bates in *Psycho*, *Queer (In)Justice* illustrates how this archetype has shaped popular consciousness (pp. 29-30). However, the book is silent on the ways in which this archetype also operates in the discourses of trans-exclusive radical feminists (p. 30). Mary Daly, a self-described “radical lesbian feminist”<sup>17</sup> characterizes transsexualism as a “necrophilic invasion” that “invades the female world with substitutes,”<sup>18</sup> a gruesome image evocative of Gein’s collection of female body parts. Janice Raymond, a protégé of Mary Daly’s, also seems to draw on the popular mythos of Gein when she writes: “[M]en are socialized to fetishize and objectify. . . . [f]emale body parts, specifically the female genitalia, are ‘things’ to be acquired. . . . Transsexualism is thus the ultimate . . . conclusion of male possession of women in a patriarchal society.”<sup>19</sup> These TERF scholars wield the mythology of Gein’s horrible crime as a weapon against transgender women. By linking Gein with other transfeminine people on the basis of their shared gender identity, these scholars turn the act of transition into an act of objectification and violence against cisgender women. Every transgender woman becomes a potential violent killer.

### The Sexually Degraded Predator

The queer killer is not the only archetype that highlights the feedback loop between the criminalization of queer people and societal queer/transphobia. *Queer (In)Justice* also describes the mutually reinforcing relationship between

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17. Margalit Fox, *Mary Daly, A Leader in Feminist Theology, Dies at 81*, N.Y. TIMES, Jan. 7, 2010, at B20.

18. MARY DALY, GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM 71 (2d ed. 1990).

19. JANICE G. RAYMOND, THE TRANSSEXUAL EMPIRE: THE MAKING OF THE SHE-MALE 29-30 (Teachers College Press 1994) (1979).

the characterization of queers as “sexually degraded predators” in the criminal legal system and perceptions of queers as sexual predators in broader society (pp. 31-36).

The particular stigma faced by transgender women as a result of this archetype is made evident in the book’s discussion of the ways in which non-normative sex is policed in the United States (pp. 52-64). More specifically, the book points out that the criminalization of prostitution has had a particularly significant impact on transgender women of color (p. 61). Queer people involved in the sex industry, and particularly transgender women of color, are singled out for a disproportionate number of prostitution-related arrests (p. 61). The police practice of profiling transgender women of color as sex workers and arresting them for prostitution-related offenses is so pervasive that queer communities have coined the phrase “walking while trans” to describe the experience of being targeted because of their gender and racial identities (p. 61).

The explicit connection between the characterization of transgender women as sexually degraded predators and the criminalization of prostitution surfaces explicitly in a news story by the Pittsburgh, Pennsylvania news station WPXI. The station ran a story in 2011 about Tamika Jones and Nakala Jackson, two transgender women who the station described as “men posing as female prostitutes.”<sup>20</sup> In both the print article and the televised news segment, WPXI repeatedly misgendered both women, and emphasized their efforts to deceive unwitting johns.<sup>21</sup> During the televised portion, a reporter even showed photographs of the two women to a random man on the street, asking him if he could believe that the two people were “really men” as the man viewed the pictures with disgust and horror.<sup>22</sup>

Additionally, *Queer (In)Justice* explores the role of this archetype within discussions about prison. The notion of queers as “sexually deviant” has helped to reinforce the dominant perception of prisons as “queer” spaces, which has informed larger policy discussions around sexuality and sexual violence within prisons (pp. 103-106). It is thus no surprise that dominant discourses tend to focus on prisoner-on-prisoner rape, which is associated with homosexual conduct (pp. 105-106). This focus “fuels and magnifies the mythology that prisons are filled with homosexuals who voraciously and violently rape other prisoners, infecting them with all manner of disease and degradation” (p. 104). This idea of queer prisoners as sexual predators is further reproduced in mass media, including television shows like *Law and Order: Special Victim’s Unit* and films like *The Siege* (p. 105). The book points out that even prison reform

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20. *Police Bust Men Posing as Female Prostitutes in Strip District*, WPXI.COM (Feb. 4, 2011, 5:37 PM), <http://www.wpxi.com/news/news/police-bust-men-posing-as-female-prostitutes-in-strip-district>.

21. *See id.*; *see also Police Bust Men Posing as Female Prostitutes in Strip District*, *supra* note 20.

22. *See Police Bust Men Posing as Female Prostitutes in Strip District*, *supra* note 20.

groups have fallen prey to the mythology that prisoners mainly need protection from sexual violence perpetrated by other prisoners (p. 105). For example, the Prison Rape Elimination Act, initially an effort to stop sexual violence against prisoners by guards, had to be “repackaged” to encompass sexual violence committed by prisoners against other prisoners in order to gain wider support (p. 105). However, as documented by *Queer (In)Justice*, queer and transgender people are often the victims rather than the perpetrators of sexual violence within prisons (p. 100).

Though *Queer (In)Justice* documents the portrayal of prisons as queer spaces in the mainstream media and in prison reform groups, it is silent on how the characterization of queer people as sexual predators has affected even feminist and queer imaginings of prison. Even *The L Word*, an explicitly queer TV show, sexualizes prison as a queer space. After being incarcerated, one of the main characters is harassed and threatened with sexual violence by the other prisoners until her cellmate comes to her rescue by laying claim to her.<sup>23</sup> This culminates in their (consensual) sex against the wall of the cell.<sup>24</sup> Disturbingly, a recap posted on Autostraddle, a queer feminist website, contains a joke about rape in men’s prisons:

When Helena drops the soap, Jackie & her girl head over, intoning: “Guess no one warned her about dropping the soap.” Here’s the thing—that soap thing is for dudes. ‘Cause then the other dudes can ram you up the ass, etc. So this is totally lame. But whatevs. It’s also kinda awesome, like, hardcore.<sup>25</sup>

The levity with which this recap treats rape within men’s prisons not only demonstrates a lack of understanding of the reality and dynamics of prison rape discussed in *Queer (In)Justice* and this book review, but it also speaks to the callousness with which prisoners’ lives are treated by those on the outside. Additionally, by characterizing rape, and especially anal rape, within male prisons as “for dudes,” the recap heartlessly glosses over the experiences of transgender women housed in men’s prisons, who are particularly vulnerable to sexual violence and rape. This flippant joke on a queer feminist website is yet another example of the ways in which even progressive feminist movements can fall prey to these insidious archetypes and reinforce the criminalizing feedback loop.

Notions of transgender women as “sexually degraded predators” also persist outside the context of the criminal legal system, even informing TERF activism against gender-inclusive bathrooms and rules permitting transgender

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23. See *The L Word: Look Out, Here They Come!* (Showtime television broadcast Jan. 13, 2008).

24. See *id.*

25. Riese, *The L Word Episode 502 Recap: Look Out, Here They Come!*, AUTOSTRADDE (Mar. 1, 2009, 9:00 PM), <http://www.autostraddle.com/the-l-word-season-five-episode-two-502-recap-look-out-here-they-come/>.

people to use the bathroom of their choice. In her oft-cited text, Janice Raymond argues that it is transgender women's identification with the female or feminine gender and/or with the female body itself that is an act of rape.<sup>26</sup> She boldly states: "All transsexuals rape women's bodies by reducing the real female form to an artifact, appropriating this body for themselves."<sup>27</sup> Similarly, in a letter responding to the UN's call for communications regarding human rights violations against women, Cathy Brennan and Elizabeth Hungerford, lesbian activists and attorneys, justified their opposition to gender identity non-discrimination laws on the grounds that such laws would allow transsexual and transgender women and other "males" to enter women-only spaces, such as public restrooms.<sup>28</sup> They suggested that allowing transgender women to use female facilities would enhance cisgender women's reproductive vulnerability, noting "that males as a class have a demonstrated history of harming females as a class by exploiting female biology" through rape and other forms of sexual violence.<sup>29</sup> Specifically, Brennan and Hungerford expressed their concern that "male" sex offenders and domestic abusers would be able to gain access to women-only spaces by claiming a transgender status.<sup>30</sup> However, Brennan and Hungerford's concerns are not substantiated by significant evidence of women being victimized by men in female-only spaces.<sup>31</sup>

The characterization of queer and transgender people as "sexually degraded predators" ignores the reality that, overwhelmingly, queer and transgender people are themselves the victims of sexual violence.<sup>32</sup> While this glaring oversight is highlighted in *Queer (In)Justice's* section on prison rape, it has serious implications for all queer people, inside and outside of prison. As a result of criminalizing archetypes, queer people are subject to enormous amounts

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26. RAYMOND, *supra* note 19, at 104.

27. *Id.*

28. Letter from Cathy Brennan and Elizabeth Hungerford to the United Nations Entity for Gender Equality and the Empowerment of Women (Aug. 1, 2011), *available at* [http://static1.firedoglake.com/48/files/2011/09/Communication\\_CSW\\_UN\\_BrennanHungerford\\_08012011\\_.pdf](http://static1.firedoglake.com/48/files/2011/09/Communication_CSW_UN_BrennanHungerford_08012011_.pdf).

29. *Id.* at 3.

30. *See id.*

31. *See id.*; *see also* Laurel Ramseyer, *Cathy Brennan & Elizabeth Hungerford Take Their Anti-Trans Activism to the UN*, PAM'S HOUSE BLEND (Aug. 10, 2011, 11:49 AM), <http://pamshouseblend.firedoglake.com/2011/08/10/cathy-brennan-elizabeth-hungerford-take-their-anti-trans-activism-to-the-un/> (criticizing Brennan and Hungerford's letter for failing support claim that "non-trans women will be harmed if trans women's right to access public accommodations is protected by law"). In their letter, Brennan and Hungerford cite to an Internet article "cataloguing the presence of males in female-only space." Letter from Cathy Brennan and Elizabeth Hungerford to the United Nations Entity for Gender Equality and the Empowerment of Women, *supra* note 28, at 3 n.xxi. At the time this book review was published, that article was no longer accessible via the link provided. Ramseyer notes, however, that the website merely "list[ed] uncorroborated newspaper accounts of men allegedly transgressing the boundaries [sic] of decency or the law in women's bathrooms." Ramseyer, *supra*.

32. NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 14, at 9-11.

of sexual violence, yet continue to be characterized as sexual predators.<sup>33</sup>

### Young, Queer, Criminal Intruder

The young, queer, criminal intruder archetype “embodies the presumption that groups of queer youth of color are predatory, dangerous, and determined to enter and occupy areas where they are not wanted and do not belong” (p. 41). Many of the youth criminalized in this way are poor or working class, homeless, working in black or gray market economies, and gender nonconforming and/or transgender (p. 41). Their mere presence in public spaces raises suspicion: “[T]hey are always framed as ‘up to no good’” (p. 41).

The queer criminal intruder archetype has been used to justify violence against young queer and trans people of color because their very *presence* is seen as criminal behavior that invites or necessitates vigilante action (p. 41). Though the implications of this archetype for transgender women are not explicitly discussed in *Queer (In)Justice*, CeCe McDonald’s story illustrates how the archetype can play out in the lives of transgender women of color, whose dual stigmatization on the basis of race and gender identity makes them disproportionately the targets of violence directed at the LGBTQ community.<sup>34</sup>

On June 5, 2011, in Minneapolis, Minnesota, CeCe McDonald, a young, African-American transgender woman was walking home with other black queer and trans youth when she and her friends were verbally harassed by a group of intoxicated, older white people:<sup>35</sup> “They called CeCe and her friends ‘faggots,’ ‘niggers,’ and ‘chicks with dicks,’ and suggested that CeCe was ‘dressed as a woman’ in order to ‘rape’ Dean Schmitz, one of the attackers.”<sup>36</sup> CeCe and her friends responded with words, and the strangers became more aggressive.<sup>37</sup> A woman “smashed her glass into CeCe’s face . . . punctur[ing] CeCe’s cheek all the way through, lacerating her salivary gland.”<sup>38</sup> There was an ensuing fight, “during which one of the attackers, Dean Schmitz, was fatally stabbed.”<sup>39</sup> CeCe was charged with second-degree murder.<sup>40</sup> Despite widespread opposition from the queer and trans community in Minneapolis and across the country, CeCe’s prosecution went forward.<sup>41</sup> She ultimately accepted a plea bargain for second-

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33. *See id.*

34. *See The Trans Women’s Anti-Violence Project: About*, *supra* note 14; NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 14, at 9-11 (providing statistics on violence perpetrated against queer and transgender people, broken down by race, gender, and HIV-status).

35. CeCe McDonald Support Committee, *Free CeCe McDonald*, YOUTUBE (May 25, 2012), <https://www.youtube.com/watch?v=jksQkUI9y8c>.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Support CeCe McDonald!*, <http://supportcece.wordpress.com> (last visited Nov. 2, 2014).

41. *See id.*

degree manslaughter<sup>42</sup> and served nineteen months in a men's prison in St. Cloud, Minnesota.<sup>43</sup>

CeCe asserted that she had been “demonized” by the mainstream media: She said the media had “made it seem like [she] was on a rampage . . . just, like, attacking people.”<sup>44</sup> CeCe's act of self-defense was further framed as “inner rage” that “exploded” during an “argument” where Schmitz was stabbed.<sup>45</sup> One article, published in the *Star Tribune* upon CeCe's release from prison, appeared to juxtapose a photograph of CeCe, post-release, smiling, alongside the grief experienced by Schmitz's family.<sup>46</sup>

Not only did the mainstream media respond in a way that dismissed CeCe's allegations of self-defense and painted her as a criminal intruder, the little that the trans-exclusive radical feminist community had to say about her case was telling. Bloggers at GenderTrender, a well-known TERF blog, referred to CeCe as a “convicted transgender murderer.”<sup>47</sup> Another TERF blogger reblogged a piece announcing CeCe's imminent release from prison, writing in response: “That MAN does not deserve to be let out of prison. AND HE IS A MAN . . .”<sup>48</sup> Instead of speaking out against the violence against CeCe, first by Dean Schmitz and then by the criminal legal system, the TERF community portrayed her as an out-of-control murderer because of her transgender status, and took the side of the white man with a swastika tattoo who attacked her.

The mainstream media and even certain progressive movements have thus participated in the criminalization of queer and transgender people. They have helped to reinforce and perpetuate the positive feedback loop between criminalization and societal discrimination by buying into the archetypes that criminalize queer and transgender people, archetypes that are created by societal

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42. *Id.*

43. “*Black Trans Bodies Are Under Attack*”: *Freed Activist CeCe McDonald, Actress Laverne Cox Speak Out*, DEMOCRACY NOW! (Feb. 19, 2014), [http://www.democracynow.org/2014/2/19/black\\_trans\\_bodies\\_are\\_under\\_attack](http://www.democracynow.org/2014/2/19/black_trans_bodies_are_under_attack).

44. Jacqueline Gares, *Promotional Trailer for FREE CeCe Documentary*, YOUTUBE (Mar. 1, 2014), <https://www.youtube.com/watch?v=-pW8oHJ7zqg>.

45. Abby Simons & Paul Walsh, *Transgender Defendant Gets 3 Years for Killing Bar Patron*, STAR TRIBUNE, June 5, 2012, <http://www.startribune.com/local/minneapolis/157000805.html>.

46. See Paul Walsh, ‘CeCe’ McDonald Freed After 19 Months in Prison for Killing Mpls. Bar Patron, STAR TRIBUNE, Jan. 13, 2014, <http://www.startribune.com/local/minneapolis/239960331.html>.

47. See Kelly Cogswell & Gabrielle Korn, *NYC Dyke March 2012: Cathy Brennan Targeted, Attacked by Transgender Activists*, GENDERTRENDER (June 25, 2012), <https://gendertrender.wordpress.com/2012/06/25/nyc-dyke-march-2012-cathy-brennan-targeted-attacked-by-transgender-activists/>. This information is, of course, incorrect, as CeCe was never convicted of murder. See *Support CeCe McDonald!*, *supra* note 40 (noting that CeCe accepted a plea bargain for second-degree manslaughter).

48. *Comment on CeCe Support Committee's Letter to CeCe McDonald Supporters*, DAS FRAU (Jan. 14, 2014), <http://hitchedupkid.tumblr.com/post/73288792118/freececemcdonald-dear-cece-mcdonald-supporters>.

homophobia and transphobia. These archetypes serve to strengthen, in turn, the very forces of intolerance that created them.

*Queer (In)Justice* does not, and could not, describe all of the contexts in which queer criminal archetypes reinforce and are reinforced by societal transphobia. However, the book does offer a framework with which to gain greater insight into the way this feedback loop operates in both society and our own progressive social movements. This is an important project if we are to promote accountability in our social movements, build more inclusive and intersectional queer communities, and nourish inter-movement solidarity.

### HATE CRIMES LEGISLATION

The authors note that “[t]he predominant response to violence against LGBT people over the past decade has focused on enactment of legislation against hate crimes” (p. 123). Penalty enhancement is at the core of the hate crime model. Quoting the Anti-Defamation League, the authors of *Queer (In)Justice* explain: “[C]riminal activity motivated by hate is subject to a stiffer sentence’ on the grounds that the harm extends beyond the individual, affecting the entire community” (p. 124). Hate crime laws have gained traction in most, if not all, states (p. 125). In addition, a significant number of these laws apply to crimes perpetrated against individuals based on their sexual orientation and/or gender identity (p. 125).

The authors argue that by focusing on individual crimes, hate crime legislation reflects a misunderstanding of violence against marginalized groups as “individualized, ignorant, and aberrant” rather than as part of a larger system or pattern (pp. 126-127). Additionally, the authors point out that the “neutral wording” of these laws might harm the very people they seek to protect by not making an adequate distinction between marginalized and privileged groups (p. 127). This argument, though lacking in empirical support, is illustrated by the example of a 1951 South Carolina anti-lynching law, passed to protect black people against white mobs, which defined mobs “as two or more persons, without reference to race” (p. 127). Fifty years later, black people make up only about thirty percent of the population in South Carolina but comprise sixty-three percent of those charged under the anti-lynching law (p. 127). Though readers may want more evidence to support the argument that minorities are disproportionately charged with hate crimes, the authors explain that empirical research on this topic does not exist (p. 128). In doing so, they highlight a critical gap in the research regarding the actual impact of hate crime legislation on certain groups (p. 128).

The use of hate crime laws to target the very groups those laws were intended to protect is not the only adverse consequence of this approach. *Queer (In)Justice* also points out the negative implications of a framework that places

the protection of queer people in the very hands of individuals who are often the perpetrators of anti-queer violence—the police (p. 129).<sup>49</sup> Police have been known to launch physical attacks on queer people (pp. 130-131). In addition, they are often responsible for blaming the victims, making disparaging statements, and otherwise humiliating and harassing the queer people who come to them as victims of crime (pp. 130-131).

Perhaps most disturbingly, *Queer (In)Justice* points to research and statistics that suggest that hate crimes laws are ineffective at doing the very project that they set out to do—protecting queer people from violence. Citing to statistics collected by the National Coalition of Anti-Violence Projects (NCAVP), which show that violence against queer people remains a significant problem, *Queer (In)Justice* explains that even though more than twenty years have passed since members of the LGBT movement began to advocate for hate crime legislation, “the hate crime statutes currently in place in thirty states and the District of Columbia do not appear to deter much, if any, harassment and violence” (p. 127).

Though many “LGBT people . . . respond as if any challenge to these laws is an active betrayal of wounded gay people,” the authors of *Queer (In)Justice* make a compelling argument against hate crime legislation. Given my own experiences with the police as a transgender person, the criminalizing archetypes that are constantly being reinforced by the criminal legal system and the media, and the stories of queer and transgender people who have faced retribution for defending themselves against violence motivated by homophobia, transphobia, and racism,<sup>50</sup> it seems clear that neither the police nor the criminal legal system can be trusted to protect the very people whom they have been taught to criminalize. Additionally, statistics from NCAVP reveal that the incidence of hate crime actually increased from 2012 to 2013.<sup>51</sup> These data strongly suggest that current approaches, such as hate crime legislation, have not succeeded in ending violence against queer people, and that a different approach is necessary.<sup>52</sup> This is especially true given concerns that these laws could, in fact, allow for further criminalization of transgender bodies (pp. 127-128). We cannot trust an approach that advocates for reform within the criminal legal system but

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49. Police violence against queer people is discussed in depth in Chapter 3, “The Ghosts of Stonewall: Policing Gender, Policing Sex” (pp. 45-68).

50. See, e.g., Addison Rose Vincent, *State of Emergency for Transgender Women of Color*, HUFFINGTON POST (Sept. 16, 2014, 10:42 AM), [http://www.huffingtonpost.com/addison-rose-vincent/state-of-emergency-for-tr\\_b\\_5792722.html](http://www.huffingtonpost.com/addison-rose-vincent/state-of-emergency-for-tr_b_5792722.html) (recounting the story of Eisha, a transgender woman who was arrested for attempted murder after defending herself from a group of attackers); *Luke’s Story*, LET LUKE GO: THE SUPPORT LUKE DEFENSE COMMITTEE, <http://letlukego.wordpress.com> (last visited Nov. 2, 2014) (recounting the story of Luke, a queer man, who was imprisoned and charged with attempted murder after being insulted with homophobic slurs and attacked by a group of men).

51. See NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 14, at 8.

52. See *id.*

fails to address the root causes of injustice against queer people. Such approaches only perpetuate a racist, classist, and homophobic system.

### DISMANTLING, REBUILDING

*Queer (In)Justice* would not fulfill its mission if it did not propose its own solution to the dual problems of queer criminalization and societal discrimination. The authors argue that these issues not only require us to “tackle the punishment of sexual and gender deviance through the criminal legal system, but also to call into question and challenge the multiple and interlocking systems of inequality that remain, even as formal forms of discrimination begin to fall” (pp. 157-158). Far from a “pie in the sky” vision calling for the immediate eradication of the criminal legal system, the book argues for its slow dismantlement through the use of a diverse set of grassroots approaches by coalitions of organizations that are already working to combat anti-queer/trans violence, the prison-industrial complex, the police state, and other mechanisms of the criminal legal system (p. 157). The book provides examples of groups that do this type of work. For example, Transaction, a partnership between Community United Against Violence and the Ella Baker Center’s Bay Area Police Watch Project, works to combat the police abuse of transgender people in San Francisco (p. 147). As part of its strategy, Transaction also strives to build solidarity with other groups engaged in anti-police violence work as well as communities of color who face race-based policing (p. 147). The book also identifies prisoner solidarity groups (pp. 151-152), death penalty resistance groups (pp. 152-154), and groups organizing to promote safe communities and spaces without “assistance” or interference from the police (pp. 149-151).

Throughout the book, and by providing this list of organizations and coalitions, *Queer (In)Justice* helps to point us toward the work that needs to be done to transform a broken system. By describing coalitions and projects working on issues surrounding violence against queer people and the dismantling of the criminal legal system, and by offering a long list of further reading on related topics,<sup>53</sup> the authors give us concrete ways to get out there, do the work, and find each other.

### CONCLUSION

*Queer (In)Justice* is the spine of critical radical queer scholarship. By weaving together stories and scholarship by radical queer scholars, practitioners, and activists, *Queer (In)Justice* provides a context and a framework for those of us seeking to begin or continue our work as members of radical movements,

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53. See pp. 164-166 for suggested further reading on topics related to violence against queer people; the intersection of race, gender, sexual orientation, and violence; and the dismantling of the criminal legal system.

## BOOK REVIEW

197

critical of the criminal legal system. It is a book to read and re-read, to use as a resource, a framework, and a jumping-off point. It describes, at various junctures, the feedback loop between criminalization and societal stigmatization of queer and transgender people. It also guides readers through the experiences of queer and transgender people at each stage of the criminal justice process. Finally, *Queer (In)Justice* offers two approaches for addressing the problems faced by queer and transgender people—reform or revolution—and shows, in a way that is logical, accessible, and doable, the endless opportunities for systemic change.

*Asher Waite-Jones*