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Feeling in the Public Sphere: A study of emotion, public discourse, and the law in the murders of James Byrd Jr. and Matthew Shepard

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**Feeling in the Public Sphere: A study of emotion, public discourse, and
the law in the murders of James Byrd Jr. and Matthew Shepard**

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**Feeling in the Public Sphere: A study of emotion, public discourse, and
the law in the murders of James Byrd Jr. and Matthew Shepard**

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The dissertation examines the role of affect within the spaces and institutions of democratic politics in the cases of two highly publicized moments of personal and collective trauma: the murders of Matthew Shepard and James Byrd Jr. Drawing on the work of Sara Ahmed, Barbara Koziak and Lauren Berlant as well as scholarship on discourse ethics, feminist political theory, public memory and commemoration, the dissertation traces and analyzes the role of affective discourse in the mediated discussion of each murder. It then analyzes how this affective discourse circulated into legislative publics and processes, looking at the way public feelings became a factor in legislating hate crime measures in the city of Laramie, Wyo. and in the state of Texas. The public mourning surrounding these men is analyzed as a site of political opinion formation and as a factor in the enactments of law. The work seeks to contribute to the tradition of media studies that emphasizes the role of community and ethics in communication, following scholars such as James Carey and John Durham Peters. Through analysis of the discourse and law-making surrounding the two murders, the dissertation argues for a

critical analysis of affective discourse as a public, political phenomenon (rather than as an intrusion of the personal and private into the public realm). It seeks to question traditional uses of Habermas' normative theory of the public sphere within media and communication studies, and to open questions about how normative ideas of democratic communication might better account for the impact of affect in politics.

Table of Contents

Chapter 1 Introduction: Murder, the Media, and the Politics of Affect.....	1
Political Feelings in Legal and Cultural Realms	8
Background: The History of Hate Crimes as a Legal Problem	10
Implications: Re-Thinking Normative Theories of Democratic Communication	14
The Ethics of Writing About Other People's Trauma	20
Conclusion	24
Chapter 2 Placing Affect in the Public Sphere: Theory and Method	26
Arguing for Affect: From Liberal Publics to Affective Economies	32
The Limitations of the Rational-Critical Ideal	33
Why Feelings Matter: Addressing Public Affect	40
Methodology: Analyzing the Productivity of Affect.....	45
Research Design	49
Discourse Analysis.....	51
Legal Analysis	58
Conclusion	61
Chapter 3 The Murder of Matthew Shepard as Liberal Trauma.....	63
Development and Circulation of Matthew Shepard's Story.....	64
Mourning Matt Shepard: The Boy Next Door and the Construction of a Liberal-Tolerant Public.....	72
The Construction of a National Public.....	76
Rhetorics of Proximity and Distance: The National Public in Raced, Classed, and Gendered Terms	80
Shame Before the National Public: Citizenship, Belonging, and Shame in Laramie	91
The Expression of Shame	94
The Politics of Shame	102
Conclusion	111

Chapter 4 "Hate is not a Laramie Value": Articulating Civic Identity Through the Law.....	113
The Law as Document, the Law as Memory: Positioning Legal Analysis.....	116
Background: Proposal and Passage of the Ordinance.....	118
A "Feel-Good Law": The Cultural Workings of Law	120
Representing Laramie Through the Law: The Debate over the Bias Crimes Ordinance.....	123
Making a Statement	124
"Special Classes," Vulnerability, and Legislating the Boundary of Community	134
The "Work" of the Ordinance: Progress, Tolerance and Limited Liability	141
Crafting an "Appropriate" Response	142
Performing Care and Liberal-Tolerant Identity	147
The Activists' Views: Creating a Conversation	152
Conclusion: Articulations of Civic Improvement	155
Chapter 5 The Murder of James Byrd Jr.: Public Discourse in the Melodramatic Mode	159
Development and Circulation of James Byrd Jr.'s Story	161
Redemption and the Law	166
Redemption Imagined through Racial Melodrama.....	167
Whiteness, Liberalism, and the Law as Sites of Failure and Hope....	173
Stock Characters and Affective Attachment	178
The Victim	179
The Villian(s)	183
The Heroes	189
Conclusion: Feelings as the Basis for Social Justice	192
Social Justice and Structures of Feeling	194
Virtuous Whiteness	196
Chapter 6 Suffering, Visibility, and the Frameworks of Injustice in the James Byrd Jr. Hate Crimes Act.....	199
The James Byrd Jr. Hate Crimes Act and its History	202
Grief and Victim Testimony	208

The Visibility of Victimhood.....	209
The Moral Claims of Victimhood.....	217
The Melodramatic Narrative of Race and Legitimate Feelings.....	227
(Divergent) Arguments of Racial Justice.....	228
Melodramatic Resolution and the Articulation of Justice	236
Conclusion: Ambivalent Outcomes	239
Chapter 7 Conclusion: Affective Politics and the Paradoxes of Liberalism.....	244
The Circulation of Affect.....	245
The Publics Enabled by Affective Discourse	249
The Law: Affective Discourse and Institutional Change	251
Implications: Affect and Democratic Communication	254
Conclusion: Limitations and Areas for Further Study.....	258
Appendix A: Laramie Interview Guide	261
Appendix B: Texas Interview Guide	262
References.....	263
Vita	282

Chapter 1

Introduction: Murder, the Media, and the Politics of Affect

In May of 2001, the city of Laramie, Wyoming, passed an ordinance requiring the collection and publication of yearly statistics on bias crimes and mandating police training in the detection and handling of these crimes. The ordinance was in response to the much-publicized murder of Matthew Shepard, a young, gay man, in the fall of 1998. The murder brought national attention via the media and with it questions about the “tolerance” of the straight community in Laramie and the safety of gay and lesbian residents.¹ The contentious debate on the city ordinance raged around the expected issues of sexual, gender, and community norms that currently come into debate when laws explicitly recognize non-hetero sexualities. It also, centrally, raged around the issue of Laramie’s image before the world—even after so much time had passed, and all the cameras and reporters had gone home. Still, the idea that the measure might erase some of the stigma associated with the crime was a powerful and repeated argument in the passage of the ordinance.

The emotional investment in removing what was perceived as a stigma of homophobia and intolerance was here channeled into the law. This incident highlights the way in which expressions of feeling are not only individual but can be social, entwined in relations of power and persuasion. The expression of feeling can operate not only as personal catharsis but also as performance of the norms of citizenship. Public expressions

¹ The public discussion focused on lesbian and gay residents, never mentioning bisexual or transgender residents or concerns.

of feeling can, in fact, be important factors in mobilizing people into political action and perform not only cultural but also political and legal “work.”

Media scholars, especially those concerned with the public sphere and democratic politics and theory, have viewed the presence of emotion in political discourse with suspicion. Democratic communication is often characterized normatively as a process of consensus-building via informed, rational dialogue.² Emotion, seen as the opposite of rational deliberation, is to be avoided or suppressed. However, emotion is part and parcel of political discourse, especially at moments of trauma. Traumatic events in public can mobilize affective publics and political action (or, conversely, immobilize publics). Given these different political potentials, it is important to examine the role emotion plays in democratic communication and to account for the role of feelings in models of democratic communication. In this dissertation, I seek to challenge an easy dismissal of affect or association of affect with conservative political projects and to begin to think through how we might better evaluate and include emotion in prescriptive visions of democratic communication. I start with two traumatic events in recent political memory that evoked broad public responses: the murders of James Byrd, Jr., a black man, in Jasper, Texas, and of Matthew Shepard, a gay man, in Laramie, Wyoming.

James Byrd Jr. was dragged to death behind a truck in June of 1998 by three white men, at least two of whom had ties to white supremacist groups. Four months later, Matthew Shepard was beaten to disfigurement and left tied to a fence in the cold of Laramie, WY, eventually to die, by two straight (white) men who later explained their actions as reactions to Shepard’s homosexuality. Each murder received extensive press coverage both nationally and internationally. Each was followed by both public

² For example, the classic works of Jürgen Habermas, Hannah Arendt, John Stuart Mill. Also see the more recent work of James Fishkin, John Keane, Robert McChesney, and Nicholas Garnham, among others.

expressions of grief and outrage and sporadic copycat attacks and publicized incidents of homophobic and racist speech or threats.

Whatever the individual social and psychological motivations that drove the different attackers, racism and homophobia provided the lenses through which the nation came to discuss the crimes. The murders were publicized through the lens of hate crimes and galvanized a public debate about rural America, racism, homophobia, and the idea of the nation as a tolerant, pluralist society. The public response to each murder was deeply entwined in discourses on race, class, and sexuality. In this way, the deaths of these two men became both personal tragedies for their families and friends and moments of crisis for the self-identity for the political communities implicated—Jasper, Laramie, or the nation. In each case, it was the trauma to hegemonic communities (whether those communities were figured as Jasper or Laramie or the nation, they implicitly referred to heteronormative, white, middle-class citizenship³) that ultimately mattered most in the public discourse.

As is the case with many moments of public trauma, especially violent trauma, the discussion of the murders was full of affect. This affect was apparent in the energy that went into the various ways the murders were documented, explained, and re-imagined in multiple fora and modes of discourse: in classic news and documentary coverage concerned with (epistemic) explications of what had happened and docudramatic representation concerned with (ethical and emotional) connection or proximity to the events, catharsis, and the question of how it happened.⁴ While re-imagining and remembering such as this is often conceptually aligned with conservative political projects (Barthes 1972, Silverman 1992; Sturken 1997), this is a case in which

³ By middle-class, I mean the broad ideological construct.

⁴ David Edgar suggests that while documentaries and news are particularly good at telling us what happened and where, docudramas are particularly good at showing *how* an event happened, “the how recognizable human beings rule, fight, judge, meet, negotiate, suppress, and overthrow” (1999, p. 182).

not all of the responses to trauma can be easily categorized as conservative. The events were re-imagined, repeated, and institutionalized in ways that marked the physical layout of the communities, the law, and everyday cultural practices (and sets of relations). These outcomes have their own specific and material political and social impacts. The outcomes, and their relation to emotional discourse/publics, should therefore be evaluated in terms of their ethics and politics.

These tragedies and the public attention and discussion around them galvanized a number of responses, including citizen protests and marches, community organizing, and hate crime legislation proposals at the state and national levels. The hate crime legislation passed in Texas as state law; in Wyoming, the state-level law failed, but the city of Laramie passed its own, local hate crimes ordinance. In addition, foundations dedicated to reconciliatory (cultural) projects of education and understanding survive each man. The Byrd Foundation for Racial Healing oversees the James Byrd Jr. Racism Oral History Project, which archives interviews on race and racism to instigate dialogue about race in the U.S. and provide an archive on racism for scholars. The Matthew Shepard Foundation is likewise dedicated to documenting and educating on issues of diversity and discrimination based on sexuality. The Rainbow Connection Network instituted a scholarship for gay, lesbian, bisexual and transgender students and their allies to attend the University of Wyoming (UW). UW holds the Shepard Symposium on Social Justice each year in Matthew Shepard's memory. Individual family members and friends of each man have gone on to become activists in gay rights, anti-racism, and anti-death penalty campaigns.

These responses provide the background and impetus for my analysis of emotion in the public and political discourse surrounding these two murders. In this dissertation, I analyze the expression and workings of public feelings in the media discourse

surrounding each murder and then look at what role these feelings played in the legal responses to the murders. In looking through the media and legal discourse, I ask:

- How did affective discourses circulate in public after the murders of Byrd and Shepard?
- What sort of publics did these discourses address or enable (whose feelings were addressed)?
- What was the relationship between affective discourses and structural change, in the forms of legislative decisions?
- How might normative frameworks for democratic communication better account for affect in public communication?

In answering these questions, I seek to explore how the crimes were made sense of and how they were made available for public understanding and reaction, looking at the media discourse not merely as dissemination of information, but also as a process of constructing publics (human and political relationships). In evaluating the legal projects that grew out of the public discourse on the crimes, I also seek to explore the political consequences of emotive public discourses. I focus particularly here on the publics rhetorically invoked in media discourse and the sites of legislative decisions. While there were multiple political responses to the crimes, in this project I focus on the legal responses because legal decisions are central to democratic theory, and particularly to ideas about legitimate democratic communication. Thus, the process of legal discussion and decision-making is, theoretically, an important site for analyzing the actual workings of communication in democracy. It is important to inquire into the workings of emotion within legal publics and decisions, as central (symbolic and functional) sites of democratic communication.

The public discourse following these crimes illustrates the way in which bonds of affiliation and need enter into public discourse: in each, various community members’⁵ senses of self were injured, and the public discussions that followed served as ways of repairing these injuries. I hope to examine the discussions following the murders of Byrd and Shepard provide examples of how deeply issues of affect and emotion enter into public discourse and policy-making. The public discussions surrounding both murders provide extreme cases of this relationship, examples of public discourse where affective issues such as community membership and trauma to group identity were particularly important, and evident. These cases, and my approach to them, question instrumental conceptions of the role of public communication in political and legal processes and suggest that more affective sides of communication should be taken into account in prescriptions about political communication.

Rather than seeing the role of emotion in public discourse and policy decisions as pollutants, it is more realistic to look at them as sociological facts and seek to work with them. If emotional these forms of address and relationship are part and parcel of public life (not only private life), and that we would do better to devise norms that include and account for it rather than banish or deny it.⁶ In addition, the practice of favoring critical distance over proximity, immersion and emotion has a particularly gendered genealogy and implications. While I do not doubt the benefits of reflection and critical distance

⁵ The primary community affiliations involved include membership in the geographic communities of Laramie and Jasper, membership in the gay and African-American communities, and even membership in the national “community” (the nation being too large to fit most definitions of community, yet at times invoking feelings of communality, shared fate, values, etc.).

⁶ Somewhat similarly, Jodi Dean (2000) critiques mainstream public sphere theory for failing to account for culture and “weird” politics such as conspiracy cultures. Such weird politics, she argues, are attempts to ground alternative, action-oriented political communities, outside the stultifying media public sphere discussion of politics (in which the possibilities appear to be exhausted by the two parties). Like Dean, I’m interested in how we produce public “spaces” (or forms) of discussion and how delegitimated cultural forms actually do function politically—and in trying to come up with political norms that allow us to evaluate how these forms function (progressively, regressively, or otherwise).

(especially as articulated by critical theory from the Frankfurt School on), I am suspicious of the wholesale denigration of proximity and feeling (as the opposite of critical reflection). The bifurcation of rationality and emotionality is deeply entwined with that of masculine and feminine. And the connection of emotion with a passive public echoes the alignment of emotion/ femininity/ the private sphere/ passivity. The contributions of feminist political and moral theory and those strains of queer theory and politics that place sexuality, the body, and feeling as ways of being publicly political in particular suggest the importance of thinking through public feelings as a valid part of political action and communication. The very privileging of distance both favors masculine and heteronormative ways of performing publicity, but also is at deep odds with the ethical (and political) project of being alive to the connections between people.

In other words, the need to think critically about emotion in political life is important for both sociological and political-ethical reasons. We need theories of democratic communication that account for the importance desire and physicality in communication (Peters 1999) and that allow us to think through whose interests are served by emotional appeals.⁷ This should not be seen as a conflict; an increasing body of literature in feminist political theory, philosophy, and neuroscience reminds that emotion and reason are not opposites.⁸ There are very real reasons to be concerned about, even suspicious of, emotion in political discourse. It is true that much emotion in contemporary public discourse is aligned with reactionary politics (Cloud 2003), but given the passion of the recent anti-war protests and the last election, I am not convinced that emotion is primarily in the service of conservative issues in U.S. political life. That

⁷ In looking at emotion in political life, the issue of whose emotions are justified and whose are not – or whose are helpful and whose are dangerous – is a tricky question (Cloud 2003).

⁸ See, for example, Hirschmann (1996), Nussbaum (2001), Solomon (1993), and Damasio (1994).

these were failed efforts does not invalidate the role that affect played in getting the left to the polls, and to the streets.

POLITICAL FEELINGS IN LEGAL AND CULTURAL REALMS

The dissertation rests at the intersection of work on the role of media in public formation and democratic politics and the emerging work on public feelings. The former has often focused on institutional sites, thinking through the role of mass communication in the mediations between citizens and political institutions and the state. The latter has addressed the cultural work of feelings and responses to trauma, especially mourning, grief, compassion and empathy at various political and cultural sites, but for the most part has not focused on the work these feelings do at institutional sites. This dissertation seeks to bring these together, looking at the production of public feelings in response to the murders of James Byrd Jr. and Matthew Shepard as well as at the ways these feelings bore upon the legal responses to the murders (the hate crimes measures). In this, I am investigating the way that affective discourses circulate from mediated public spheres to legal publics and even into the institutional texts of the law.

My investigation focuses on the ways in which public articulations of feeling mobilized action, and in particular public, legal action. The law is not necessarily where the biggest effects of public sentiment were felt, but it is indisputably public. Much literature on public feelings worries about whether the articulation of politics through sentimental narratives or feelings privatizes political issues. This study focuses in on cases where the effects of feeling are clearly public action, where feelings leave their footprint in the law. Unlike the affective politics in the wake of 9/11, those surrounding these murders were linked to public mobilization on a variety of fronts—and to efforts to create structural remedies. The point of this dissertation is not so much that the responses

were utopian or unequivocally progressive, but that affective politics mobilized projects aimed at recognizing and redressing homophobia and racism. In this, it is more of a process-oriented than ends-oriented critique. However, it is important to my analysis that the structural responses—the hate crimes measures—were projects aimed at social justice, even as the pragmatic legal measures passed reflected both regressive and progressive impulses.

Public attention to cases of anti-gay and racist murder tends to make racism and homophobia visible only in moments of extreme violence (Cvetkovich 2003). This selective visibility risks suggesting that (individual) violence is *the* site of racism and violence, obscuring the more pervasive and everyday forms of discrimination as well as the role of the state and the law in constructing and authorizing discrimination and violence. A key consequence of this selective visibility is maintaining a fantastic separation between the institutions and everyday practices and privileges of dominant U.S. cultures (in which most people participate in some aspects of their lives) and homophobia and racism, figured as extreme violence. The public discussion of and grief over the murders of Matthew Shepard and James Byrd Jr. were complicit in this both in the very focus on murder and in the content of the texts that described and explained the murders. However, there was something else going on as well in the discussion of these murders; this something else is a large part of what drew me to discuss them (along with a more personal connection, discussed below). Even as the murders were discussed as sensational moments of violence, they were also in many texts linked to more everyday forms of homophobia and racism. This was evident in the national discussions of societal responsibility for the crimes as well as in the focus on the communities in which they happened. For many members of the communities of Jasper and Laramie much of the trauma came from the relation between the everyday and the murders: the trauma of

whether everyday exclusions might turn into personal harm, and the trauma of trying to ascertain personal and communal responsibility for the violence.

The ways and extent to which these traumas were made visible in public discourse is a question of whose feelings matter, but also a question of how the public visibility of trauma and affective discourse enabled or disabled connections among people. In my analyses, I focus in on the ways that the public discussion brought to the fore everyday forms of racism and homophobia, particularly those embedded in community norms. I don't want to diminish the power of the exceptionalist and sensationalist tendency in the discussion of the murders, but to elaborate another impulse that in these cases operated along side this tendency. If I do not give as much space to the ways in which the discourses work to confine homophobia and racism to acts of interpersonal violence, it is only because other people have already done so, so well.⁹

Background: The History of Hate Crimes as a Social Problem

While the category of “hate crimes” is not the object of my analysis, it is a central issue in the dissertation that merits consideration, as background for my cases studies. The category of hate crime is a recent arrival on the social and legal scene—even while the various forms of violence and intimidation it describes have been around for a long time. The emergence of a label for violence and intimidation directed at individuals due to their perceived membership in a “class” of people came about through the work of social movements such as the Civil Rights Movement, the Women’s Movement, the Gay and Lesbian Rights Movement, the Anti-Defamation League, and the Victims’ Rights Movement (Jenness and Broad 1997). These movements brought together progressive rhetorics of inclusive politics and the recognition of structural and historical inequality

⁹ See in particular Judith Halberstam (2005), Ott and Aoki (2002), and Williamson (2002).

and more conservative rhetorics focused on punishing criminals (Perry 2001). These groups/social movements engaged in various projects to educate members of target groups and the general public about the specificity of violence directed at members of marginalized groups due to their status. Importantly, this education worked to define the violence as distinct from random violence or (private) interpersonal violence, making this violence (and its victims) visible as a social problem rather than an individual one. The category of hate crime transformed violence against members of various minority groups linked to their membership in these groups and attendant social status from private offenses to public ones (Jenness and Broad 1997).

These efforts were instrumental in the growing visibility of hate crimes in the 1990s, evidenced in laws at the federal and state level as well as an increase in the reporting of violence as hate crimes. The Hate Crimes Statistics Act (HCSA) was passed as a federal law in 1990, at least in part in response to pressure from social movements (Jenness and Broad 1997). The HCSA mandates that the Attorney General collect and publicly report statistics on crimes motivated by bias against people based on race, religion, sexual orientation, or ethnicity.¹⁰ The crimes for which data are collected are murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, and arson, as well as property damage and vandalism. The act also spells out specifically that it does not create the right to bring a legal complaint of discrimination based on sexual orientation (United States Congress 1990). Hate crimes data were added to the regular reporting that local law enforcement agencies provide to the FBI as part of the Unified Crime Report. The collection of data is complicated by variability in local law enforcement agencies' compliance¹¹ and in state definitions of

¹⁰ Disability was added in 1994 (Perry 2001).

¹¹ Bern Haggerty (2001) details the tenuous history of hate crimes statistics reporting in Wyoming, noting that many districts do not participate in the statistics collection at all, and that the reports appear to vary with political circumstances.

hate crimes (Perry 2001). Despite potential issues with accuracy, advocates have been pleased with the outcome, as a visible recognition and documentation of hate crimes as a special category of crime, and as the basis for future, more substantial governmental response (Jenness and Broad 1997).

The creation of the category of hate crime has been criticized by many as either a limitation of free speech (on the grounds that the category criminalizes bias or intent) or as the creation of special protections for some citizens over others. Hence, much of the legal discussions (in the cases examined here as well as more broadly) around the implementation of hate crimes laws have to do with the first and fourteenth amendments (free speech and equal protection). Those opposed to the laws say they violate the equal protection clause of the fourteenth amendment (giving some groups greater protection under the law than others), while supporters say the laws are modeled on the fourteenth amendment and its use of the law to extend the enfranchisement of black citizens. Mobilizations for hate crime laws have also been criticized for taking attention away from the ways in which the law is invested in hierarchies of race, gender, and sexuality and potentially functioning more as appeasement than as broad social change (Cvetkovich 2003; Perry 2001). Scholars and activists have expressed doubt and concern that the police and justice systems that have historically been so instrumental in discrimination against minority communities are capable of addressing discriminatory violence (Perry 2001).

While these are important cautions and criticisms, my own position is that they are not grounds to dismiss or abandon hate crimes laws. The laws, and efforts to pass them, seek an ambivalent and pragmatic end: for the law to recognize and treat with seriousness violence and threats of violence that draw their power from broad social hierarchies. In this, they officially recognize one of the five mechanisms of oppression

(violence, the easiest of the mechanisms to admit within liberalism) Iris Marion Young (1990) identifies in describing how minority populations continue to be oppressed and disenfranchised within a liberal democratic society.¹² They do so within the dominant logic of the law, with both its strengths and its flaws. These laws are often steeped in a reactionary rhetoric of penalties and criminality that creates strong divisions between the perpetrators and the rest of society, often within a reductive model of motive. These problems, however, are not specific to hate crime legislation but are deeply engrained in criminal lawmaking. In this, hate crimes legislation is not a tactic of dramatic social change, or building a better world or legal system. They are, arguably, important in the way that they force recognition of the social, public side of the crimes marked as hate crimes. They are progressively-aimed political projects to the extent that they recognize racism, sexism, and homophobia as social factors that do not accrue solely to individuals, but are widely dispersed in society.

In addition, while the punitive aspect of hate crimes legislation (extension of sentences for crimes designated as hate crimes) is the most publicized, in the cases I examined, often other aspects of the law were considered more important to its supporters. Providing avenues for treating hate-related acts of vandalism as intimidation (and not just property damage), providing civil remedies for targets of violence (such as injunctions and the ability to sue to recover costs involved in hate-related property crime), and mandating police training in recognizing hate-related crimes and processing them were some of the ends cited by the supporters and drafters of the hate crimes measures in Laramie and Texas.¹³

¹² Sarah Ahmed (2004) also suggests that the term “hate crime” does the rhetorical work of highlighting the affective dimension of animus against minorities and investments in privilege.

Implications: Re-thinking Normative Theories of Democratic Communication

My analysis looks at the ways in which hate crimes laws were posed as remedies and responses to the murders of Matthew Shepard and James Byrd, Jr. I am interested in the way that the laws were articulated through desires to repudiate acts of racism and homophobia as illiberal violence (often also as a way to repudiate the past) and in order to better inhabit liberal ideals. Although my research is deeply entwined in issues of sexuality and race, my contribution is not to shed light on the lived experience of blackness or queer sexualities, nor the discursive construction of black and queer identities or communities. The claims on justice made in each case, on behalf of queer and racially minoritized communities, were presented to a public that was often implicitly defined in terms of heteronormativity, whiteness, and class privilege.¹⁴ The project looks rather at how dominant publics (not subaltern ones) and legal publics were constructed around these events, as examples of anti-gay and racist violence.

Within the realm of communication and media studies it remains to ask: How does an inquiry into emotional discourse impact how we see the relationship between mass communication and democratic politics/projects? Communication and media studies have a tradition of looking at the ritual and communal aspect of communication as well as the rational and instrumental (Carey 1989). However, this tradition has not been adequately integrated into normative political analyses of communication (Alexander and Jacobs 1998; Peters 1999; DeLuca and Peebles 2002). The paradigm for political communication remains rational deliberation, often imagined as face-to-face dialogue

¹³ Bern Haggerty (2001) lays out a rationale for hate crime legislation that is focused on providing remedies for victims outside of the confines of the criminal court. Likewise, many of those who testified before the Criminal Justice committee in the Texas Senate focused on these outcomes.

¹⁴ This is not to say that the publics were addressed always as white or upper class, but that they were often asked to identify in those terms. In terms of class, the ways in which the communities of Jasper and Laramie were pejoratively described position readers in a “superior” class position.

(Schudson 1997; Peters 1999). Recently, scholars in the field have called for a rethinking of this ideal. John Durham Peters (1999) has called for more thinking about affective elements of communication in scholarship on mass communication in democracy: a better integration of eros into our thinking on democratic communication. Thinking about eros in communication, he suggests, brings to the fore the distance of other people, the imperfection of communication, and the role of desire in human communications. This makes questions of presence central to communications and media studies: questions of relations to other people (imaginary, desired, and actual relations). This study seeks to answer these calls, to provide an empirical investigation into one site of clearly affective political communication, which also clearly had structural effects. In looking at what emotions were prevalent in the public discourse following the murders, who they were attached to, and at the type of political relations and projects they enabled, I hope to advance some suggestions for normative discussions of the public sphere (as the theoretical ground where political theory and media studies meet). Normative theories of democratic communication and the public sphere—that is, those that lay out how we should communicate in a well-functioning democracy—can be improved by taking into account the affective dimension of public communication (and the productivity of this dimension). Critical tools attuned to both power and the social dimension of public feelings can offer a way to explore when affect is conservative and when it produces political critique.

The category of affect is a slippery one and requires some specification. While many approaches to affect treat affect and reason as dichotomous, I attempt to avoid this strong separation. I treat affect as distinct from but not the opposite of rationality. Recent work in philosophy and cognitive psychology suggests that in actual practice, reason and affect are impossible to separate; that is, affective processes are required for the making

of rational decisions and the judgment of (material) interests (Damasio 1994; Nussbaum 2001; Marcus 2002). Separations between reason and affect are useful heuristics, but not adequate descriptions of actual experience or practice. My own treatment of affect treats it as distinct from reason, though I want to avoid reifying the separation. Affect here is a social and discursive category, not a private, psychological one (as elaborated further below). In discussing affect, I am interested in the social and discursive processes by which feelings and attachments (desire for and commitment to others as well as aversion to and rejection of others) circulate in public. The term affect is broad enough to include the expression of emotions (categorizable feelings with labels such as happy, sad, and frustrated) and the more amorphous category of attachments; for this reason it is useful to my analysis. This is different from approaches that distinguish affect from emotions, treating affect as the more libidinal and bodily expression and emotion as a more cognitive and social category (see Probyn 2005); I am interested in the social and discursive elements of affect (and hence use the term to include emotion).¹⁵ Given this, I'm interested in the ways that texts structure relationships among social actors, and the patterns of when and how emotional vocabulary such as grief, mourning, desire, and disgust are deployed.

The project traces the discourse on these two murder stories through media texts and legal argumentation, with attention to the way these patterns of emotion and connection are deployed in different settings. I am interested in what types of relationships are constructed and in the way that some feelings were presented as normal, expected, and (particularly in the case of the legal discussions) persuasive. Such a

¹⁵ This also distinguishes my approach from much work on affect based in Brian Massumi's work. This body of work is interested in affect as a category of experience outside language and discourse, whereas I am explicitly interested in the way in which this most ephemeral category is experienced through power and discourse. I am not denying the libidinal or biological aspects of affective experience. I am just interested in the role of the social, the way affect is used in public (and the way that use shapes personal expression and political action).

specific investigation offers suggestive findings about the political effectiveness of melodramatic and emotive representations of real-world events and issues. Incorporating these suggestions into how we conceptualize communication in the public sphere has important implications for the normative models of media communication and democracy that guide inquiry, policy, and activism.

This is not merely a question of abstract theory. Any theory is a form of representation, and as such has political and ethical implications, in how it favors certain norms over others and contributes to the construction of knowledge and power (LaCapra 1994). Theories provide bases or models for political action, especially for institutional knowledge and action, and ensconce and enact some knowledge and values over others in law and other institutions. I would add that theories about the role of media communication and democracy are particularly materially pertinent. Theories about how media functions in democracy are, by and large, normative theories that provide the models upon which we do politics and build political institutions. They are key to our ideas of political legitimacy. Media professionals, politicians, pollsters, and lawmakers all act upon certain theoretical assumptions about the public sphere as an arena of democratic decision-making. How they see this sphere functioning shapes the way the media are governed, as well as the way that different interest groups and communities attempt to use the media to effect political change.

I hope that my research will further understandings of how public discourse is constituted and how the media work as part of public discourse. In tracing how public ideas (dominant discourses, that is) about charged issues such as hate crime legislation are formed and used, I hope to empirically show affective public discourse at work. I hope this type of exploration will be useful to anyone who is interested in entering into political action or public debate as well as those interested in studying the intersection of

media and politics. Looking at affective aspects of public discourse may suggest new approaches for groups attempting to use the media in order to set or inform public discussion on an issue. In addition, through a limited comparison of these two different cases, I also hope to gain some insight into how and why the public discourses were different and had different degrees of political effectivity,¹⁶ insight that may prove useful for those interested in mobilizing communities to lobby policy decisions.

I begin this analysis with an overview of the theoretical debates that inform and locate the project. Chapter 2 reviews the traditional body of literature from which media scholars enter into discussions of democratic communication—the literature on publics and the public sphere—and its critics. The political and theoretical critiques of the rationalist conception of communication and politics in public sphere literature provides a strong case that rationalist approaches do not adequately explain communication and collective action, particularly when social categories of race, gender, and sexuality come into play. Based on these critiques, I argue that critical analyses of affect as a political category are both possible and useful (especially in investigating the politics of race, sexism, heteronormativity, and class). I utilize the emerging literature on public feelings to describe the ways in which affect is linked to power and discourse and to construct a methodology for critically analyzing the role of affect in opinion-formation and political-legal decision-making. The chapter concludes with a description of the specific methods of analysis I use to select and analyze texts.

Chapter 3 introduces the case of Matthew Shepard's murder. I discuss the discourse surrounding his death through the media texts reporting on and explaining it. The chapter looks both at the way Matthew Shepard and his murder were represented in

¹⁶ Reactions to the Jasper case were much more effective in terms of hate crimes legislation, playing a significant role in getting state hate crimes legislation passed in Texas. In Wyoming, the state decided not to pass hate crime legislation, though the city of Laramie did pass a hate crime ordinance. On the other hand, Matthew Shepherd's murder precipitated much extra-legal political organizing and action.

media texts, and at how these texts constructed the public attending to and mourning the murder in terms of race, class, and masculinity. The chapter also investigates the local responses to the media coverage, examining local responses to being the object of public analysis (rather than being part of the public) and the way this dynamic produced expressions of shame as a dominant public sentiment on the murder.

The way these sentiments were positioned as normative in efforts to pass a city hate crimes measure is the subject of Chapter 4. Here, I examine the records of public debate over the city hate crimes measure and interview key players to trace the way that the feelings (especially of shame) sketched out in the previous chapter mobilized activism and shaped the text of the law. I link the debate over the law to desires to bring Laramie in line with the perceived norms of the national public.

My second case, the murder of James Byrd Jr. is introduced in Chapter 5. In this chapter, I analyze the media texts representing James Byrd and his murder. I look at the role of region (the place of East Texas in the national imaginary) and melodrama in the narration of the murder and its investigation. The melodramatic references and logic used in the narration produced a heavy emphasis on redemption for past wrongs and racism, in which white feelings are prioritized and a narrow range of political responses enabled.

In 1999, legislation seeking to create a definition of hate crimes and define responses to them was given the name of the James Byrd Jr. Hate Crimes Act. This is the subject of Chapter 6. In this chapter, I look at how James Byrd's death and the public displays of grief over it worked within a long history of lobbying for and against hate crimes legislation in Texas. The chapter examines the complicated relationship of race and sexuality in the debates over the Act, and examines the different ways that the visibility of anti-gay and racist violence was used to mobilize support for the Act.

Chapter 7 articulates the conclusions I draw from these case studies. I compare and evaluate the affective discourses surrounding the two men's murders, with attention to the different feelings about race and sexuality in each case. The chapter also contains my analysis of how affective discourses were in these cases tied to ideas about and action toward social justice, and the extent to which they enabled social change. This analysis illustrates how the social requirements of desirability are deeply invested in social norms, ideologies, and hierarchies. Yet, the contradictions among social norms, ideologies, and hierarchies mean that this is not a closed system and that unexpected attachments do arise, especially at moments of social contradiction. Based upon my findings, I suggest some ways in which affect might be included in normative theories of democratic communication. I conclude with suggestions for further research.

THE ETHICS OF WRITING ABOUT OTHER PEOPLE'S TRAUMA

I came to this project from a set of theoretical discussions and questions about communication, ethics, and emotion. In deciding on these cases as the site to think more deeply about and through these questions, a number of different, more rooted, issues of ethics arose. The various people involved in my research—the murdered men at the center of the project and their survivors, the communities of Laramie and Jasper, the gay and lesbian and black communities represented in the discourse, and the people who became my interview subjects have become over the course of the project, more compelling constituencies. They have raised a number of ethical issues and claims, which I have struggled to live up to. First is the centrality of the deaths of two men to my research. The recognition of their deaths on a human scale is often at odds with the task of analyzing the discourse around their deaths; the men always are in danger of being made solely into texts. Second is my own positionality as both insider and outsider in the

various communities represented in my data and research. Third is the more standard set of professional ethics regarding research with human subjects, though here this is complicated by my own positionality.

Choosing to look at the public mediation of the murders of Matthew Shepard and James Byrd as my case studies has brought with it some ethical obligations to which I hope I have done justice. In the publicization of their deaths, the memories of James Byrd Jr. and Matthew Shepard as people were (perhaps inevitably) flattened into iconic images and shortcut descriptions: James Byrd Jr. was described as a 49-year-old black man (or, often a disabled 49-year-old black man) and Matthew Shepard as a gay college student. These descriptions took away the specificity of each man and his life, allowing them to stand for larger groups of people. This process, while it reduced the complexity of the men and often remembered them more as icons than human beings, also was part of what allowed for the public mourning, outrage, and mobilizations that I trace as affective politics in this project.

I tried not to re-inscribe a reduction of the men themselves to one dimension. While academic writing about the dead may inevitably participate in their “textualization,” I have tried to make a clear distinction in my analysis that what I am examining is not these men or their deaths, but the public discourse on them. The knowledge that I construct will not add to an understanding (or, hopefully, misunderstanding) of these men, their lives, or their survivors. While the deaths of these men are central to my project, they themselves are mainly absent. In the public discourse on their deaths, even the family testimony, we do not get to know these men. My analysis does build knowledge about the public response to their deaths and the very processes and discourses by which the men were made symbolic. Patricia Yaeger (2002) warns academics writing about the dead/trauma to others’ bodies against both writing too

distantly or clinically (to where the individual disappears) or too closely (where the academic falsely identifies with the suffering of another). In writing about the murders of these men, I have tried to find language that gives voice to the details and violence of their deaths without tipping into hyperbole and cliché.

While the recognition of the people, dead and living, at the center of my cases has become increasingly important, my first efforts at defining the dissertation revolved around a series of theoretical debates and questions. It was a while before I put those interests together with my own reactions and connections to the deaths of Matthew Shepard and James Byrd. These proximities and distances are mainly concentrated around the death of Matthew Shepard, which was literally and figuratively close to home—or at least the home of my teen years. Like many of the former Laramie residents who wrote into the local paper after his death, I have ambivalent feelings about Laramie as “home.” I was not fully at home there when I lived there, and have since distanced myself in many ways. I read about the attack on Matthew Shepard in the front page of the *New York Times* along with thousands of other people and most likely reacted in a similar tone.

I had just moved to Texas when James Byrd was killed, although I was not in Texas when it happened. Rather, I was doing an internship at CNN’s Washington D.C. bureau. When the news of the murder broke, coverage of Jasper began to loop repeatedly on the closed-circuit TV screens that sat next to each employee. The images I remember repeating over and over were the orange circles marking where evidence had been found along the road on which James Byrd was dragged and the then-suspects in their orange jumpsuits. As a researcher, in Patricia Hill-Collins’ (1991) terms, these accidents of geography position me in terms of both an outsider and an insider. I am a true outsider to Jasper and have little grasp on the social, historical, economic, and regional specificities

of the town and its inhabitants other than what has been filtered to me through the accounts of journalists and other researchers. I am now (though not at the time) enough of an insider to Texas to at least be skeptical of the narrow stereotypes used in some news coverage to make easy sense of the murder of James Byrd. While I do have some familiarity with the social, economic, and cultural specifics of Laramie (and hence better grounding for analyzing the press coverage), my own perspective is far from complete and some aspects of contemporary Laramie are very different from when I left, in 1988. In a limited sense, to manipulate Hill-Collins' term, I am an insider without in respect to Laramie.

As in any work with human subjects, I strive throughout to treat all my research subjects with respect. In quoting my subjects, I do my best to represent their comments within the context of their utterance and to allow their interpretations of the issues and situation at stake to come through—as well as to provide a critical lens for this commentary. The different relationships I establish with each subject inevitably influence our conversation, and my data: some interviews are more intimate than others (Esterberg 2002). The data are also always influenced by the identity and politics the interviewees wish to impart—and by their assumptions about me. The ethical issues of rapport (the manipulative potential) are at a minimum in this study, as my interview subjects have similar or greater relations to power than me. Because of this, and because none of my subjects indicated that they wished to use a pseudonym, I use actual names throughout.

Not only the interviews but all the knowledge I produce in this dissertation is situated, both influenced by and reflexive on my social identities and experiences (Haraway 1991). As a former resident of Laramie, I am located as an insider in my analysis of the descriptions and explanations of Laramie and its sexual-gender politics—and in my interviews. As a (currently) urban/cosmopolitan, upper-middle-class, white,

heterosexual woman, I am also in each case a member of the (outsider) publics addressed by the dominant discourses utilized in both news and political-legal debate. Hence, while I write in an analytical mode that demands some separation from the object of my analysis, I do not hold my self outside of or above the discourses I critique in these pages. The politics and intentions that shape this analysis are feminist, queer, and anti-racist. All of these factors influence the conception, shape, and tenor of the analysis contained in these pages.

CONCLUSION

The mediated discourse surrounding the murders of Matthew Shepard and James Byrd Jr. illustrates many of the pitfalls and limitations of affective political discourse. Yet, at the same time, each case illustrated as well ways in which affect furthered democratic discourse and practice. Affect is central to politics and to the experience of being a citizen (on the right, left, an in between). Given this, theorizing democracy through reason alone will always miss an important part of the experience of it. As a corrective to the tendency within media studies (and political theory) to dismiss affect as apolitical, this project explores the pervasive role that affect played in the discursive and legal responses to these two highly publicized and brutal killings. In the following chapters I will show that affect was everywhere in the way media, politicians, and citizens made sense of the awful killings. I will show that affect was part of the discourses used to describe the killings, central to the identity of the publics invested, and closely tied to discussions about legal remedies.

I conclude by noting that my investigation is indebted to feminist theory, queer studies, and critical race theory. The interventions of feminist epistemology in political and moral theory provide the foundation and backbone of the project. The additions to

thinking on the public sphere from queer and critical race theory are also central to the theoretical foundations of this project, as well as to my analyses of the responses to the murders.

Chapter 2

Placing Affect in the Public Sphere: Theory and Method

Communication sometimes masquerades as the great solution to human ills, yet most troubles in human relationships do not come from a failure to match signs and meanings....Communication, again, is more basically a political and ethical problem than a semantic or psychological one. As thinkers such as Hegel and Marx, Dewey and Mead, Adorno and Habermas all argue, just communication is an index of the good society. We ought to be less worried about how signs arouse divergent meanings than the conditions that keep us from attending to our neighbors and other beings different from ourselves.

-John Durham Peters¹⁷

The murders of James Byrd, Jr. and Matthew Shepard are, I argue, cases that pose important questions about the politics of commitment and community, and the possibility of democratic communication. The actual murders of these two men were moments (though hardly isolated ones) of political and ethical failings in U.S. national and local cultures. As a scholar of media and communication, I will be focusing on how these murders became the topics of public discourse, the way they were talked about, and what the implications of the way we talked about the murders have for how we think about the conditions for democratic communication, and the role of the media within such communication. The discussions of these murders are not easily reduced to the exchange of information, and the circulation of representations. The media discourse was also a construction and demarcation of the different publics imagined to be affected by the crimes and an invitation to “feel” in a certain way as the disposition proper to citizenship (or participation in the polity). These, I argue, were affectively driven political processes.

¹⁷ Peters (1999, p. 269).

In the discourse surrounding their deaths, people were invited and exhorted to feel in particular ways about Shepard and Byrd as a sort of performance of membership in a liberal-tolerant political community. People in Laramie flocked to vigils and benefit concerts as part of their personal mourning, but also to show themselves and others that they cared. In Jasper, road signs asked for America's prayers and reiterated that the whole town was mourning, enacting community leaders' exhortations to present a unified face to reporters and to demonstrate that Jasper was not a racist town. In each town, dissenting voices complained of the compulsion to care and injunctions against criticizing the deceased. The need to demonstrate caring about the two men's deaths was a need to repudiate not only the murders but also homophobic and racist violence. Public discussions and the legal interventions that took place after their deaths were often invested in these proper modes of caring as public and concerted efforts to embody the goals of liberal (the political theory, not the partisan moniker) tolerance.

The presence of emotion in political discourse has long been a point of concern for scholars of politics, culture, and media. For instance, the journalistic and dramatic representation of real-world political events in visual media has long been a subject of political concern, as a site of potential factual distortion and emotional excitement to unreason. Democratic communication, or the processes of communication required in order to have a well-functioning and inclusive democracy, is often characterized normatively as a process of consensus-building via informed, rational dialogue.¹⁸ The typical approaches to democratic communication in political theory hinge on the ideal of a more informed public, and the majority of efforts to improve the democratic nature of communication focus on different strategies for improving the reasoning capacity and informational resources of citizens (Marcus 2002). The typical approach to democratic

¹⁸ For example, the classic works of Jürgen Habermas, Hannah Arendt, and John Stuart Mill. Also see the more recent work of James Fishkin, John Keane, Robert McChesney, and Nicholas Garnham.

media/mass communication focuses on questions of the abilities of citizens to speak or participate in media messages and questions of whether the media fulfill an educative role for citizenship (Stein 1997). These have in common a focus on rationality and on the quantity and quality of information as the sites of analysis of the political function of the media. They also tend to forward programs of action based on the idea that more democratic media means more or better information and/or a diversity of voices (including better citizen access to media).

In these approaches, emotion is figured as the opposite of rational deliberation, and hence either outside the realm of political deliberation or something to be suppressed in the political realm, as antithetical to rational critique. This concern about affect stems in part from the associations of affect with manipulation in political rhetoric, especially in Nazi Germany (Peters, 1993), but also with a general stigma of affect being the provenance of manipulative advertising and marketing. Using emotional language to discuss public issues can, of course, work to privatize issues, turn politics in to personal pathology or purely personal responsibility (Cloud 1998). A focus on feelings and/or personal trauma can take attention away from ongoing struggles over racial, class, gender, and sexual exclusions, focusing instead on identity and feelings of self. And there is a danger that emotions such as compassion may produce a feeling for rather than a doing for, a replacement of action (siding and working with or for others) with sentiment (Berlant 1997; 2004) a separation of ethics from politics into the purely personal. Feeling for others is potentially a replacement of action (siding and working with or for others) and a separation of ethics from politics into the purely pseudo action, pseudo ethics.

The cases I examine—the public discussion of James Byrd, Jr. and Matthew Shepard—however, trouble a uniform dismissal of affect as anti-democratic or always conservative. Trauma and affective discourse may often be immobilizing forces,

obscuring politics and quashing critique, but that is not always the case. The murders of these two men became, through the form and magnitude of public attention, moments of community and national trauma in addition to moments of personal loss. I am focusing in on these cases in part because of their very dramatic and traumatic character, and in part because they were each deeply enmeshed in discussions of racism and homophobia, two of the ongoing sites of inequality and social contradiction within the current moment. The ways in which the murders of these two men entered into public discourse as national trauma have much to do with how they were connected to larger issues of race, sexuality, and liberal ideals. In this, they were explicitly political discussions. In the violence of the attacks and in the fact that they raised questions about the extent of racism and homophobia (and in doing so, challenged ideals of “tolerance,” equity, and progress) in mainstream culture and normative ideals, they were traumatic.¹⁹ The heightened affectivity expected around violent traumatic moments such as these²⁰ makes them particularly acute examples for tracing the workings of emotional discourse.

As John Durham Peters suggests in the epigraph above, the most pressing issues for communication (and communication theory) are not those of epistemology, interpretation, meaning, but those of commitment to one another. Most breakdowns in communication, he argues, are not due to insufficiencies of information (or even interpretation) but of commitment (or, I would add, of feeling). Failures of commitment, especially across divisions of class and race (but also across divisions of gender and sexuality), haunt the democratic ideals and institutions of the U.S. (Castronovo and Nelson 2002). Such commitments are not matters of information alone, but involve

¹⁹ Traumatic social events are ones that threaten or break stability, bodily boundaries, or narratives of identity and which resist easy and immediate explanation. This discussion works off of a cultural rather than a medical or psychoanalytic definition of trauma.

²⁰ Witnessing, mourning, and healing are all common and highly affectively charged communicative “therapies” for trauma (Edkins 2003; LaCapra 1994; Cvetkovich 2003).

proximities, distances, desires, disgust, and disconnections—sets of feelings that Peters evocatively terms “erotics.” The erotics of communication Peters elucidates are essentially the affective aspects of communication.²¹ The recognition that affect impacts not only relations among people but also the workings of justice and the distribution of goods (core concerns in evaluating democratic politics and policy) suggests a paradox of communication within democratic societies. The partialities, attractions, and disconnections of affect/feelings work by a logic that does not fit easily with democratic visions of equitability, disembodiment, and impartiality. In terms of media studies, and in particular, questions of mediated communication and democratic relations, this uneasy tension recommends supplementing rationalist approaches to democratic communication. Rationalist scholarship (largely constructed on some version of the public sphere framework) and reform projects focus on the worthy goals of allowing more voices/people to speak and making marginal arguments heard. This leaves out issues of commitment. An approach that tended to affect would focus on what allows some things to be heard, some bodies and feelings visible (and others invisible), some losses grievable.

Such considerations impinge upon any attempt to evaluate communication in terms of democratic politics and goals. The goals of democracy, in its participatory versions, are described as a collective struggle toward inclusion, equity, reasonableness (the willingness to engage with one another) and publicity (making public discussion available and accountable to all other members) (Young 2000). Given this, any normative conception of democratic communication needs to take into account all of the conditions and relations of communication that enable or constrain all of these goals. As I will argue

²¹ I use the terms affect and feelings rather interchangeably. While some of the authors I rely on here similarly use affect and emotion interchangeably, I use emotions to refer to specific easily namable feelings or dispositions (happiness, sadness, anger, etc.) and affect more broadly to include emotions and felt connections or intimacies.

below, an approach to democratic communication that allows only for rational-critical debate covers a fraction of the factors that impact the viability of these goals, especially goals of inclusion, equity, and reasonableness. Emotions and attachments, understood as social processes rather than private psychology,²² provide the foundations for political participation and community: they define the contours and limits of relationships among people (membership) in public as well as private. It follows that affect (emotions and attachments) is a key concern in thinking about inclusion and equity. Read as sociological categories rather than individual psychological traits, the different forms and expressions of affect that show up in public discourse are constitutive elements of the forms and character of the publics they address.

In support of this case, I begin with a brief discussion of the rational-critical norm as a basis for analyses of democratic communication, and the ethical and political problems associated with this approach. Ethically and politically speaking, rationalist communicative norms need to be interrogated for whom and what they overlook and marginalize. Rationalist norms of communication, in their exclusion of affect (and anything else associated with too much embodiment) from the public processes of democracy, have excluded as invalid forms of communication associated with femininity, sexuality, non-white ethnicity,²³ and class – and the speakers who use them. These observations provide the grounding for arguments about the importance of addressing the productive role(s) affect plays in democratic processes and institutions, as well as the need to try to work toward ways of thinking about and (normatively) evaluating

²² I am interested in the social aspects of emotion and affect, their public dimension (that feelings are at least in part shaped in public discourse and power relations). This is not to suggest that there is no biological or physical aspect to affect, just that I am interested in the social, public side of things.

²³ Following the historical variations in the construction of whiteness, in the U.S. this exclusion has included Irish, Eastern European and Southern European immigrants. Each of these groups was considered too emotional to have the reasoning faculties required of citizens (and for the classification of “white”) upon their arrival to the United States. (King 2000).

democratic communication that incorporate affect. I conclude this chapter by situating my case studies within the literature on affect and public discourse, and suggesting a methodology for analyzing how affect is situated within (and/or produces) relations of power in the cultural realm and within democratic institutions such as the law. I propose this as a method of critical analysis, to help evaluate when and how affective discourse is part of political critique and when it confounds such critique.

ARGUING FOR AFFECT: FROM LIBERAL PUBLICS TO AFFECTIVE ECONOMIES

In *The Structural Transformation of the Public Sphere*, Jürgen Habermas (1991) sets forth an eloquent discussion of the concept of the public sphere within liberal political theory and systems. He discusses the roots and work of the concept of a public sphere, separate from the state, in which individuals come together and through interaction and rational-critical debate come to form opinions that are not merely private ones based on personal and material interests, but critically public opinion. This ideal forms the legitimating scenario for the establishment and governance of liberal democracies, as the vehicle by which self-governance occurs and by which the people can press political figures and state institutions to address their (common) concerns and needs. Habermas is clear that this ideal has not been met in modernity and has always contained contradictions (the conflation of property-owners with citizens, for example). However, he sees in it a useful utopian ideal that can improve the lot of actually existing democracies.

Habermas' critical analysis of the public sphere within liberal politics is a nodal point in discussions of liberal political systems, democratic communications, and discourse ethics. His articulation of the ideal of rational-critical publics has formed a central model for liberal political practice and reform-oriented politics as well as a

flashpoint of critique.²⁴ This section outlines some of the limitations and blind spots of the rational-critical model and argues for thinking about the role of affective communication in constituting publics and forming political positions and affiliations.

The Limitations of the Rational-Critical Ideal

Discussions of the public sphere, formation of publics, and the discourse ethics proper to those publics are some of the places where communication and media scholarship most directly engage with concerns about political institutions and processes. As I will describe below, this engagement has largely taken place through a rational-critical lens (based on normative liberal visions of democracy) that has been very useful at highlighting mass communication as a site of political work and struggle, as well as a site for radical/liberatory politics. At the same time, to the extent that these discussions are based on rational norms of communication, they have excluded certain speakers and modes of communication. To the extent that this limits investigations into the politics of public communication, a supplement to these approaches is required.

Public sphere theory outlines a normative model for the role of the media in the process of opinion formation as well as in the formation of “publics,” those self-organized bodies of citizens brought together by common engagement in politically oriented discourse so important to the legitimacy of democratic governance. In a sense, it has helped scholars analyze media institutions as part of the infrastructure of citizenship. Concepts of the public sphere and publics have also provided language for policy-minded interventions aimed at media reform and defense of public service broadcasting

²⁴ While Habermas’ scholarship and critical analysis leans heavily on Marxism, he is a scholar of liberal systems. As such, his work becomes both commentary on and central to liberal political projects (see Benhabib 1992).

(Garnham 1992; Dahlgren 1995) and for talking about what the media's role *should* be in participatory democracy. Many media analyses have looked at media channels as an important aspect of the public sphere, as the forum for communication between state and private realms. They have evaluated how well the media both inform citizens and facilitate autonomous communication among citizens. In these analyses and in policy discussions and reform movements, rationality defines (and often exhausts) the standard for desirable (participatory and critical) political communication. According to all of these different perspectives, the measure of democratic achievement (or the way to further realization of democratic goals) is for citizens to be more rational, more informed, and more engaged (Marcus 2002).²⁵

The concept of publics has also been very useful in highlighting the political implications of mass communication. The formal ability of publics to make demands upon the state is key to the legitimacy of democratic governments. As such, the ways in which publics form (often through discursive and textual means) and communicate are central to the functioning of democratic governments. Hence, political and moral theorists as well as communication scholars have also been concerned with how the media fit into and/or form discursive norms for public discussion.²⁶ The concept of the public provides a heuristic for thinking about receipt of media messages, providing an evaluative language that differentiates between individualized (more "passive") viewing

²⁵ Marcus discusses argues that most efforts to reform media are oriented around one of three options: greater reliance on professional and reasoning elites and experts (to counter the ill-informed and ill-reasoning tendencies of citizens); reforms or laws to promote the dissemination of more and better information to citizens (to allow and encourage them to be engaged and reason better); and the expansion of participatory democratic procedures to more arenas of life, such as work, home, school (to appeal to an inherent desire for consensus-building, deliberation) (2002; p. 3-5).

²⁶ The former concerns are associated with structural analyses of the public sphere. The latter concerns are often discussed in terms of what discursive/communicative ethics are most appropriate to the goals of (multicultural) democracy. The two discussions are closely conceptually linked to one another.

of media as a dispersed audience and social engagement with and discussion of issues in the media (more “active”) as publics (Dahlgren 1995).²⁷

While the critical lens of the public sphere has been very useful in elaborating the links between political institutions and communication discussed above, its rationalist focus means that it does not account for some modes of communication—and their politics. It tends to reduce the function of mass communication to that of information-sharing, ignoring the more poetic and constructive elements of communication (and their political implications). The rationalist bend of public sphere theory has also led much scholarship dealing with the politics of public communication to avoid or eschew affect as apolitical or anti-democratic. It is taken for granted by much media scholarship, policy, and reform movements that good citizenship should be defined in terms of rationality, education, and engagement (Marcus 2002). This is, in part, based upon the liberal interest in rational, civil ideals of citizenship and democracy: the deliberating public over the rowdy crowd. The articulation of citizenship through norms of rationality tends to position reason and impartiality as the ultimate route to universality and equality: bodies, needs, and emotions are the location of particularity, which pulls us apart whereas reason (as the opposite of all of these) can bring divergent people together, (Young 1998; Marcus 2002). Rationality and impartiality allow for critical distance and reciprocal turn taking. Too much emotion, or too much attachment gets in the way of deliberation, as the proper mode of communication and reasoning among citizens.

The ideal of rational communication and citizenship is admirable (and useful) in its egalitarian and utopian impulses; however, it also fails to recognize, and make space

²⁷ While many of these analyses have focused on journalism and nonfiction communication, Newcomb and Hirsh (1994) used the concept to argue that entertainment TV could be seen as a sort of “public forum” presenting commentary on topics of public importance (for debate within viewing circles) through fictionalized plots and themes.

for,²⁸ the ways in which other modes of communication (and power differences among speakers [Young 1997; Schudson 1997]) might work within democratic politics. Iris Marion Young (1998) notes how normative conceptions of politics (and rational-critical discourse) expel affect (and the body), framed as the opposite of reason (rather than a component or compliment) and as a private, personal consideration. This has the result of repressing some of the factors (desire, need) most important to moral decision-making in empirical situations. This is, in Young's terms both a philosophical mistake (in deconstructionist mode, she points to the subtle ways in which affect and desire reside within the very practices of rationality) and an ethical one. By making affect and the body suspect, those people whose political presence has historically and ideologically been constructed through physicality, sexuality, labor and other forms of embodiment are sidelined from political participation. Cultural definitions of race, gender and sexuality in terms of embodiment and particularity have effectively sidelined women and people of color, and queer and classed modes of speech, from full participation in the public sphere. This has meant that some speakers (namely, white, masculine) have been more able than others to convince that they are able to divorce their arguments from their particular ideological and material interests, as well as from their bodies (Warner 1992, Landes 1998).

Disinterest is a performance as much as any theatrical display of emotion, yet cultural definitions of emotion and reason have constructed disinterest as lack of emotion and performativity. Impartiality and political reasoning are defined in terms of rhetorics associated with the performance of hegemonic masculinity (while the performance of femininity is associated with "a language of private feeling") (Warner 2001, p. 24). Critiques from feminism, queer theory, and critical race theory have nicely pointed out

²⁸ These norms provide the basis for general prescriptions on how to make communication more democratic (as well as for specific institutional practices and policies).

how the construction of issues such as embodiment, gender, labor, and sexuality as private has maintained relations of heteronormativity, racism, and patriarchy. These critiques have also pointed out how important it is to pay attention to divisions between public and private and social constructions of difference—especially in how they relate to power relations. I would add that it is important as well to note and examine the affective investments in constructing and maintaining identities (especially national, gender, sexual, and racial identities) and structures of difference.

In addition the above critiques of the political and ethical exclusions of the public sphere, others have pointed out the limitations such an ideal places on the forms and venues of political speech and critique. Marcus (2002) is concerned that too strong a commitment to rationality as the standard for proper political communication risks stultifying actual political practice: by setting the ideals too far from our daily practices, we may end up making “legitimate” democratic communication impossible and turning attention away from issues of the actual struggles and inequalities that riddle contemporary life toward efforts to improve our (rational) citizenship.²⁹ Communication scholars and political theorists have pointed out that the rational norm is indifferent to the clashes of meaning, irony, and to the presence of the body in speech and interpretation (Benhabib 1992; Peters 1993; Landes 1998; Young 1998; Warner 2002). Yet, vocal intonation, body language, and plays upon words are all important aspects of the meaning and impact of communication. Some would go so far as to add that acts of violence, disruption (West 1990; DeLuca and Peeples 2002), and mass demonstration (Peters 2003), in that they carry political messages, must also be considered forms of democratic

²⁹ Similarly, John Durham Peters (1999) points out that ideals of communication that are too perfect (in their romanticism or rationalism) tend to get in the way of the messy processes of trying to live together: the search for more perfect communication (in matters ranging from marital to geopolitical) all too often assumes that all our antagonisms would melt away, and perfect consensus reached, if only we could truly understand each other.

communication. At the heart of such critiques is a clash between understandings of communication: Habermas' prescriptions and ideals are based on a compelling view of communication as essentially cooperative and integrative (Calhoun 1992; Lee 1992), whereas his critics see agonistics, erotics, and poetics as playing a much more pervasive and basic role in communication (this divide is explored further in the next section).

The norm of rational talk, further, excludes these more disruptive and expressive modes of communication from consideration as venues/vehicles for democratic participation. Yet poetics and partiality, embodied theatricality and display, among other "less rational" forms of communication, are recognized elements of counterpublics (those subaltern or minoritized publics that form in the shadow of dominant political discourse). Affective publicity that emphasizes identity and partiality has long been a hallmark of marginalized political groups (Landes 1998) and alternative media (Curran 1991), and is particularly important component of many 20th century ("new") social movements (Warner 2002; DeLuca and Peeples 2002). The existence of these alternative spheres highlights the fact that the dominant rules of discourse and participation in the dominant public sphere(s) are not neutral. Particularly in new social movements, the idioms, venues, and political practices of the dominant public sphere are supplemented by various alternative idioms and venues of (counter)public activity (Baker 1995; Fraser 1992). Alternative sites and practices of communication allow for the articulation of non-normative identities for marginalized groups, and for alternative expressions of what constitutes "the good life" and therefore should be included in political discussions. These forms of counter publicity go beyond including "less rational" forms of communication as part of their messages; their communication often goes beyond the merely informational. George Yúdice's (1993) analysis of AIDS activist art as communicating a group ethos or way of life is a case in point: what is communicated is

not easily reduced to functional information, and its political impact is not easily analyzed by approaches that define political participation in terms of rational discourse. While many of the practices of publicity used by counterpublics would be considered outside the realm of acceptable political discourse by the standards of rationality (by virtue of too much emotion, too much body, or too much of some other form of “interest”), counterpublics continue to be major sites of political organizing for their participants. They are not the only form of effective political organization. And counterpublicity and performative critique are not necessarily effective for all social movements or all goals for social change.³⁰ Still, they continue to reshape the boundaries and substance of national political discourse.

It is perhaps telling that where affect is most recognized in politics is at the margins, especially those margins traditionally associated with too much affect (the feminine, the laboring and poor classes, the non-white). Rather than focus on affect as a non-normative idiom (present in counter publics but not hegemonic ones), I wish to look at affect within mainstream mass communication, as a force in the formation of dominant publics. In other words, I want to know the affective makeup of the bourgeois public sphere: how and when its mood swings, and what are the consequences. Work contrasting counter publics and dominant publics argues for recognition of: 1.) the force of imagination and feeling in the formation and maintenance of publics and 2.) the relationship between public feelings and power.

³⁰ While performative publicity is historically associated with identity-oriented politics of new social movements (it has been effective in arguing for identity- and recognition-based social change), it has also been an effective mode of protest and publicity in anti-war protests and in recent international critique of the WTO.

Why Feelings Matter: Addressing Public Affect

In addition to the political exclusions that have been so deeply embedded in definitions of rational communication, there are other reasons to broaden our understanding of political, and specifically democratic, communication. Too great a focus on rationality and deliberation (as benchmarks for “good” communication) can blind us to other important modes and functions of communication. Mass communication, especially via the popular media, is not merely the sharing of messages but also the central “place” where an image of the national public is projected to the individuals who make up this public (Warner 1992; Peters 1993). (Analogously, alternative media project images of alternative counterpublics to those opposed or excluded from the dominant images of national public.) The types of public projected are of consequence: How we imagine the structure of our political action shapes our policies and personal politics. Imagining a public sphere in terms of interpersonal deliberation favors particular rules of evidence and argumentation in both opinion-formation and policy-making (Warner 2001; DeLuca and Peeples 2002).³¹

The deliberative model, quite simply, fails to account for much of what goes on in “mainstream,” so-called rational communication. By reducing communication to its most instrumental components of coordination and deliberation, the rational model strips out much of what goes on when we speak to one another and divorces these more affective elements from politics.³² Communication is rarely just the exchange of information that (liberal) normative definitions of publics would draw. Communication is as often bound

³¹ Warner in particular highlights how public address (via the media or other channels) not only instantiates a group of interested/aware people with an imaginary relationship to one another (a public) but also shapes the character of that interest or interaction (defines the norms and imagined character of the public).

³² The deliberative model creates a dichotomous division between rationality as the proper public mode of communication, and affective communication as a private mode of communication.

up in establishing a sense of community (Carey 1989), enjoying the pleasures of spectacle, or desiring recognition and love (Young 1998) as in evaluating the legitimacy and utility of arguments and positions:

Communication is not only motivated by the aim to reach consensus, a shared understanding of the world, but also and even more basically by a desire to love and be loved....People do not merely hear, take in, and argue about the validity of utterances. Rather we are affected, in an immediate and felt fashion, by the other's expression and its manner of being addressed to us.

(Young 1998, p. 439)

Connections, attachments, disconnections and aversions to the bodies or presence of those around us (erotics) play a more central role in how we speak to one another and what we say, how we come together in the “public sphere,” than rational-critical approaches will allow.³³ By discussing the erotics of public communication, I mean to highlight the complex negotiations and struggles over affective identification and over the proper objects of identification and aversion. While the erotics of communication may be in tension with the democratic goal of equality, achieving something closer to equality requires a more careful analysis of connections and disconnections, desire and disgust. We need a better evaluative language to discuss these erotics as politics.

Rational-critical approaches, too, do little to explain hate, violence, or grief—all of which are central to my study. Rational-critical norms would banish acts of violence and acts of hatred (and other sites of trauma)³⁴ to beyond the pale of what can be seen/heard in public. Such acts, and their aftermath, become private pathologies, and sites of private grieving. Yet, in cases of public trauma, the pathologies and the grieving may

³³ I find Habermas' move toward a universal conception of communicative rationality, in which rationality resides in intersubjective engagement, truly compelling. But the conception of intersubjectivity seems too homogeneous and functional to me; the idea of erotics evokes the multiple and often contradictory forces at work in intersubjective exchange.

³⁴ I do not want to suggest that acts of violence are the only or the most important sites of trauma. Ann Cvetkovich (2003) has aptly documented how everyday practices and routines may be full of trauma.

be articulated as having public roots and implications (Sturken 1997; Butler 2003). These affects as well may be the site of or impetus for political discussion, public formation, and political action. The normative idea of the public sphere does not allow for anger or for grieving as political responses to traumatic events.

The difference between approaches to communication that focus on erotics and those that focus on deliberation reveals a divide in the philosophical approaches to and definitions of communication. An attention to the erotics of (both public and private) communication is attentive to affective elements of communication: rather than just focus on the messages or information exchanged in communication, it recognizes desire for connection with others, the presence or absence of bodies³⁵, and the conveyance of feeling (in addition to messages) as aspects of communication. Deliberative models of communication tell us that information exchange is at the heart of communication (and constitute the social good of communication), affective approaches suggest erotics are at the heart of communication.³⁶ While communication is obviously a matter of both information and erotics, which of these we prioritize as the ideal of public, political communication shapes our political community and visions of democracy, who and what is given equal footing within the polity (Peters 1999).

Instrumental approaches may help explain how compromises are reached, and how things get done, but they fail to explain how and when we come together, enter into the public sphere. Approaches more open to affect in the public sphere are needed in

³⁵ Both in face-to-face communication and mediated communication. In mediated communication, bodies figure as both speakers and addressees. The audience's relation to the content of media speech may be affected by the relation to the body of the speaker, both in a sense of whether or not the audience can understand the speaker's body as representative of their community (Warner 1992) but also in terms of whether that body is understood to be real. Bill Nichols (1991) and John Durham Peters (2001) argue that this relationship is key to how people view and assess the truth of documentary. In addition, bodies may be implicitly invoked as the ideal or preferred listeners/audience in a rhetorical address (Warner 2002).

³⁶ As suggested by James Carey's (1989) discussion of the etymological and historical link between community and communication and the influence of Heidegger's and Levinas' phenomenology on communication theory.

order to better understand the ways in which publics form or not, and how they do or do not hold together, mobilize. Scholars working from this perspective have suggested different ways of talking about political communication: ones that center on ethics, care, even love (Young 1997, Benhabib 1992, Peters 1999, West 1993, hooks 2000, Dussel 2004). These scholars would have us examine our public life not just for the messages (or semiotics) it contains, but for the relationships suggested, even established, in communication. In attempting to retrieve the much sentimentalized (and privatized) concept of love as a political and public category, scholars such as West, Young, and hooks are trying to forward the idea that the connections between people are important political issues. They forward the concept of love not as a simplistic greeting card sentiment or lofty utopian ideal, but as a messy category that questions the ethical distance and proximity between people in public and private life. The thin language of liberalism and the public sphere is insufficient to describe the experience of racism (among other exclusions) and the elements of identity, community, and violence in political life in the U.S.³⁷ In the present moment questions of who is “lovable” to whom—or who/what bodies can mobilize public compassion (Berlant 2004) and public grief (Koziak 2000; Butler 2002)³⁸—are public rather than private questions (and key public questions, at that). In other words, scholarship invested in the connections (even love) among actors in public life suggests that concerns about how affective attachments are forged are as important political concerns as those about how informed the public is.

Taking love, erotics, or affect in general as central to political life and democratic communication requires some retooling of common theoretical assumptions and

³⁷ For a discussion on the limitations of liberal language of tolerance in the face of racial and ethnic injustice, see Enrique Dussel (2004).

³⁸ These are also questions of what types of relationships are imaginable within the polis, or the question of what strangers with whom we will enter into/invite into publics. For an evaluation of love as an ethical category of inclusion and exclusion, see Diane Davis (1999).

prescriptions. A number of feminist and queer scholars join those noted above in troubling the traditional liberal distinctions between public and private, so that emotion may be seen as a public effect rather than just a private, interior state (Hirschmann 1996; Nussbaum 2001). Some feminist scholars have suggested an ethic of care should properly be central to ideals of democratic communication. This political vision (care feminism) would prioritize listening, a recognition of the bonds of obligation between people, and the co-existence of different sets of community and communicative norms (Benhabib 1992; Young 1997). This vision builds on and adds to the recognition of affect in participatory democratic theory. Participatory democratic theory acknowledges that talk and listening are good for democracy not just as cognitive deliberation, but also as the building block of community and the empathy needed to pull people out of private interests into public concerns (Barber 1984).³⁹ Care feminism would add a central assertion that political thinking needs to start from the idea that bonds of obligation exist between citizens (Hirschmann 1996).

The feminist attention to care and the call for a love ethic in our political life have in common a sensitivity to the relations between power and affect. They both suggest a more affective, even erotic (in its attention to bodies in the public sphere) conception of democracy and democratic communication (Young 1990, 1997; West 1993; Barber 1984; Peters 1999). They both critique classic liberal distinctions between public and private as obscuring important elements of public life. Recognizing that the public sphere is saturated with affect (especially affect that is mobilized in maintaining the privileged status of dominant norms and in furthering projects of racialization) requires an attention to affect not as psychological and internal, but as social and political. Our imagined and

³⁹ His normative politics have much in common with the later Habermas in his emphasis on talk and intersubjective exchange as the primary site of politics and ethics but Barber focuses much less on procedure and more upon empathy and attachment, as the affective elements of talk. And Barber has the welcome inclusion of listening as a key political activity.

desired relations to one another, to the strangers who make up the publics in which we participate—what Sarah Ahmed (2004) terms “affective economies”—provide the engine of politics. The term affective economies uses the metaphor of economics to argue that feelings circulate socially and only appear to reside in people and objects through an effacement of the social work that goes into defining some people as lovable and others as dangerous (as only one example of affective relations). Investments in certain markers of identity (for example, whiteness) or political publics (that is, publics defined in terms of abstract political maps) help define who we relate to as proximate and who is distant. These investments can, as my analysis suggests, lead to surprising relationships of proximity (in which people are brought into unpredictable relations of proximity) as well as hegemonic ones.

Attention to affective relations, or the ways in which connection is enabled or disabled via public discourse, suggests that a focus solely on the messages or formal structures (processes, ownership, access) of media communication will not shed light on our commitments to others: how we form them, who those others are, and how this changes. Analyses of structure and textual content (messages) are necessary, but do not describe the range of ingredients in democratic communication. The productive and ethically charged work of affect needs to be accounted for in order to better describe (and make prescriptive evaluations) the actual uses or abuses of communication. If just communication is a measure of democratic society, the evaluation of affective communication in terms of justice is a key political project.

METHODOLOGY: ANALYZING THE PRODUCTIVITY OF FEELING

The above scholarship and argumentation suggests attention to affect and emotional discourse in the public sphere as sites of analysis. This suggests both taking

more affective (often theatrical and dramatic or physical) communication seriously and looking at the workings of affect within supposedly serious and rational discourse (such as news, law, political rhetoric). It also suggests evaluation of emotional discourse in regard to normative democratic theory. This includes critical attention to “affective economies,” or how emotion is deployed and circulates in the public sphere and selectively attached to different people and objects. To this critical analysis of the circulation of affect in discourse, an attention to how this discourse (and its attachments) are politically productive is key if we are to incorporate affect into prescriptive models of democratic communication and political action (or if we are to revise our normative theories, approaches). The concept of affect as a “technology of belonging” (Berlant 2004, p. 5) is useful here. The concept argues that affect is one of the techniques we use to perform belonging in a polity, draw the lines of inclusion and exclusion, and define the substantive character and norms of publics. Looking at how affect circulates and acts as such a “technology”—whose emotions become visible and important in both public discourse and in public institutions (whose feelings and injuries are redressed by the law, whose stories are memorialized by public/state institutions) and how they construct categories of “us” and “them”—draws attention to the normative/ normalizing power of affect.

While no full-fledged evaluative framework for analyzing and critiquing the politics of public emotions exists, recent work on social trauma and emotional discourse provides an outline for such a framework. Scholarship on trauma and the affective discourses and practices that surround it have pointed to some ways in which affect may have publicizing and politicizing effects. Trauma can disrupt the present and the normal in a way that includes confrontation with social contradictions or disavowed histories (La Capra 1994; Žižek 2000). This lends itself to exploration of the intersection between

affect and larger-scale historical and political events. One way in which this expressed is in the propensity for trauma to blur distinctions between public and private, forging links between private experiences and feelings and public, otherwise distant, events. In this, the affective responses to trauma may be the foundation for the formation of publics (Cvetkovich 2003). In events such as the murders of Byrd and Shepard, a private loss becomes also a public event, the site of national trauma. The practices of commemoration for the men who died are also part of a conversation about the nature and identity of local and national communities, about the role of racism and homophobia in contemporary life in the U.S.

Work detailing the ways in which emotion performs political “work” also offer observations useful for thinking about evaluating trauma and affective discourses. This work suggests “positive” emotions such as love and compassion may have oppressive effects on the recipients (Berlant 2004; Ahmed 2004), or be used to genocidal ends (as in the Nazi and neo Nazi discourse of Aryan love; see Ahmed 2004). Emotion and affect-laden discourse may effectively depoliticize economic and military decisions by linking them to morality and personal characteristics (Žižek 2000). It may choke critical reflection on nationalism and military actions out of public discourse (Cloud 2001), as examples of improper political affect (in that critical discourse does not perform mourning in the “right” way). Alternately, affect may help energize alternative politics and spur progressive policy. Public mourning and empathy for victims of AIDS made the disease visible, those who died from AIDS legitimate objects of national grief, and mobilized activism that eventually directed policy and money toward treatment and prevention (Sturken 1997; Cvetkovich 2003).⁴⁰ Emotions impel ongoing works of mourning that encourage continuing reflection on past tragedies such as the Holocaust

⁴⁰ Similarly, emotion played a strong role in forming and mobilizing the women’s movement (Ahmed 2004).

(Koziak 2003) and vigilance against future ones. The public training of shame and disgust on histories of slavery, genocide, and forced assimilation is part of reforming the political community to better approximate the ideals of democratic inclusion.⁴¹

One conclusion that can be drawn from this work is that evaluations of the productivity of affect need to come out of specific investigations of emotional discourse and embodied communication, but these investigations need some framework upon which to justify and base their judgments. Hence, the politics of emotion do not necessarily hinge on whether the emotions circulating in public are “positive” ones (love, empathy, compassion) or “negative” ones (despair, mourning, even hate). Such a focus would end up emphasizing the intent of the discreet “feelers” of emotion. Rather, the central political issue is in whose emotions are visible/legible in public, and how these emotions are selectively associated with/attached to some bodies and not others (and to a lesser extent, with some issues and not others). This type of approach illuminates the outcomes of discursive attachments. They shape the social identities of both the speakers (the assumed audience of public discourse) those spoken about (as object of public discourse) (Ahmed 2004). And they have “[powerful] material and personal consequences” (Berlant 2004, p. 11) for both feelers and those felt for, among other things shaping access to informal and formal social safety nets and shaping the ability to make claims on justice.

The way in which institutions of the state selectively make public space for or respond to (and thereby sanction) trauma and emotion is an ethical and political issue (Koziak 2000; Minow 2002; Butler 2003). Barbara Koziak argues that the cultivation of “proper” feelings is an important part of political work in a democratic society, as

⁴¹ Although, in evaluating the politics of public shame it is important to consider whether such expressions of shame are acts of facing up to responsibility for the past, or function to sidestep that responsibility (Ahmed 2004).

“questions about how any regime is to be just, well arranged, and sociable require deeper answers that those posed in terms of the right distributive principles, the best relations of production, or the traditions we should emphasize.” (2000, p. 131). She suggests that learned emotional responses and affective attachments are in fact an important aspect of the legitimation of social relations as well as political institutions and decisions. Given this, it is the task of the political theorist (or the critical communication and media scholar) to evaluate what role affect has in the political oratory, narratives, institutions (and “institutional activities of citizenship”), and political theories that legitimate political and other relationships. Unmooring emotion from individual psychology allows us to look at questions of feeling as ones of structure. For example, we can evaluate how, when and for whom our political institutions and public discourse encourage and make space for public grief (2000, p.173). We can evaluate as well the type(s) of political formations or publics that these deployments of/ spaces for emotion enable, and the political actions (or remedies) that they further. In this, noting which emotions and attachments circulate in our public discourse and which emotions are incorporated into public institutions (such as state memorials, museums, legal tribunals) and law is an important description of the ethical landscape of public life. The way affect is “educated” is deeply embedded in power relations and ideology (Koziak 2000; Ahmed 2004; Berlant 2004).

Research Design

In my study, I hope to accomplish something of what I have outlined above. The public aftermaths of the murders of Byrd and Shepard contained both emotional discourse and legal decisions (enactment of hate crimes laws). Each killing was the subject of multiple modes of media discourse (from “sober” news reports to emotionally charged dramas) and each was the subject of both city and state efforts at reconciliation,

in the form of hate crime policy proposals and citizen committees for healing and reconciliation. Here it is possible to see an example of the intersection of media, public discourse, and the law in action. This intersection provides two particularly visible or legible cases for examining the circulation of emotion and its effectivity in (structural) legal decisions. Based on the priorities and positions on examining emotion as a political force, outlined above, I look at the ways in which emotional discourse circulated and how it was implicated in the passage of the different hate crimes measures in each case. While there were multiple outcomes (actions to redress or memorialize the two men's deaths and their impacts on friends, family, and various communities), I focus here on the legal outcomes not as the most important but as the most clear site of the institutional effectivity of affect. The way that affect is productive in law and policy is also clearly important for evaluating the role and politics of emotion and attachment in public life. In the cases of both Shepard's and Byrd's murders and their discussion, the publics that formed around feelings were also the judicially oriented publics of normative democratic theory. In this, these cases are also examples of how affective attachments are also present and productive in the formation of law and policy.

Habermasian and other normative theories on the role of public communication in democratic polities place great stock in the law as a rational mediator between the state and citizenry (as well as between individuals and the common good, and among competing interests) (Habermas 1996; Benhabib 1992). This is important for my research design. Because the law figures so prominently as both an exemplar of rational communication and as a source of legitimacy in democratic theory, I am particularly interested in evaluating the way that affective discourse and its publics figure in legal deliberations. Emotion and affect are a fluid and ephemeral category, making it easy to

localize their effects or relevance to the arena of culture.⁴² Looking for the relation between affect and legal or policy decisions is then, important in arguing the effectivity of affect in public, political life.⁴³

In order to trace the role of affect in discourse and in legal-political institutions, in each case study, I first do an analysis of the public discourse on the murder and then analyze the legal decision-making. The analysis of the public discourse traces what affective discourses are in use and how. The legal analysis looks for whether and where these affective discourses show up in the reasoning and justification for the hate crimes measures (as legal-political actions) enacted in each case. The chapters are intended to work together. The discourse analysis chapters evidence that affect was a factor in public discourse and the legal chapters trace the effectivity of the emotions and affect within that public discourse at institutional sites. This is significant, in part, because so few analyses of affective discourse have traced its circulation into and effects within institutional contexts.

Discourse Analysis

In the chapters dealing with media discourse, I seek to answer questions about how affective discourses circulated and how they worked to invoke publics (and what sort of public). In other words, how did affective discourse work to invite people to form publics—and to whom was that invitation addressed? I look in these chapters at how the

⁴² Explorations of affect and trauma in particular tend to focus on how trauma remains outside the boundaries of normal citizenship, and particularly institutional practices such as law. While trauma and affective responses to trauma may exceed legal categories and logic, they also form part of legal practices and decision-making (Osiel 1997; Minow 2002).

⁴³ Cvetkovich (2003) argues that focusing only on institutionally oriented politics is to automatically exclude many practices and cultural formations from analysis. Her project is one of recovery of an officially overlooked archive. My project is to re-read the “mainstream” public discourse to highlight its affective elements.

media discourse assumed sites of interest and connection between the events and their public—what idioms and norms of affect were employed—as evidence of how an (affective) image of ideal publics was constructed in the media. In this, I look at the media discourse not merely as dissemination of information, but also as a process of constructing publics (human and political relationships). As I am interested in the ethical and not just the epistemological products of media communication in these cases, I do not restrict my analysis to journalistic discourse. News coverage makes up the majority of my sample, as it was the dominant form of communication on the murders, but I also include dramatizations (docudramas, magazines, and books).

Michael Warner (2002) defines publics as strangers relating to one another through a body of public texts. Texts mediate the relationships among people as members of a public. While this is not the only type of public, it does describe an important mode of public-formation in mass mediated society. In the wake of each man's death, many people related to the texts describing the murder, forming imaginary connections to other people (strangers) relating to these same public texts. They used the same lexicon and vocabulary in publicly-oriented discussion and they addressed/related to the other members of this public through style. All of these are hallmarks of publics as Warner defines them. My analysis of the discourse around the murders looks at how people were invited to form (imaginary) relationships with the events and with other people watching. One way of measuring this is through analysis of the texts that, through repetition and circulation, address a public (Warner 2002). By looking at multiple instances of publicly oriented discourse, it is possible to trace how a public addressed not just by one institution or author, but cumulatively. This address, however, is only socially meaningful if people respond, to actually populate a public. This process is productive and exists as a relationship between socially and materially situated people and the texts

that mediate their relations to other people and abstractions such as the nation.⁴⁴ Many public addresses fail to constitute a public, falling on deaf ears, failing to resonate with some existing identity, discourse, or concern.⁴⁵ In each of these cases, there was something effective in the invitation. People wrote letters to the editor engaging with the events surrounding the murders and engaged in protests, vigils, and memorials. My analysis will look to what role affect played in these invitations and to the differences in the way publics were imagined and invoked in each case.

The murders of Shepard and Byrd generated a huge number and variety of texts. In selecting which texts to include in my analysis I sought to represent both the most widely circulated and to capture some of the variety of different discursive genres. My sample focuses on print and television news, as the most widely circulated texts about each event. It included as well magazine articles, books, and movies, as more affectively-focused texts. News has long been understood to fulfill the function of mediating common membership with distant strangers (Anderson 1991); entertainment media have more recently been recognized as playing a similar role (Newcomb and Hirsch 1994; Paget 1998). As I am interested in not only the discussion of fact in the news coverage, but in how the crimes were remembered and in how this in turn structured relationships, I will be looking at dramatic representations of the killings: the made-for-cable movies *The Laramie Project* (2002) and *Jasper, Texas* (2002). The news texts are purely nonfiction discourse, claiming to offer a representation of what really happened, when, where, how, to whom, and perhaps even why. The dramatic—or docudramatic—texts, in contrast, are

⁴⁴ It is foundational to my approach that this address is not simply reflective of already existing demographics and institutional concerns but importantly a productive circulation of discourse that engaged with and was influential in how a subset of Americans understood their political identities at a specific moment.

⁴⁵ Or, alternately, public address may encourage or constitute a passive or apathetic public. Lauren Berlant (1997) suggests that the privatizing rhetoric of the Reagan revolution, which constructs citizenship within a grammar and logic of domestic and private actions, has been key in constituting an inward-leaning, passive public.

semi-fictional representations of reality. They claim to represent something that really happened and also to offer interpretation and/or a possible version of events, above and beyond the facts of the case (Lipkin 2002; Woodhead 1999). These dramatic texts can, then, easily be seen as part of the process by which the crimes were related to specific communities, cultural practices and institutions and by which they were made available to the public as sites of self-knowledge, or of intervention. They also, due to their later dates of circulation, provide a reference in how the murders and their significance were remembered over time. In analyzing the docudramas as part of the overall discourse, therefore, I will follow a similar logic as with the news discourse.

In order to construct my sample of national news discourse, I used Lexis-Nexis and the Vanderbilt archive. The newspaper articles that formed the bulk of my data were collected from the Lexis-Nexis database of major U.S. papers. In order to limit the results to the most relevant articles, my search was limited by the following criteria: the articles must have a main focus on the murder, be more than 300 words long, and be printed within one month of each man's death (the most intense coverage occurred in this period, based on Lexis-Nexis searches). In addition to print news, I also collected primetime television news coverage from the three major networks (from the Vanderbilt Archive). I limited my sample of TV news clips to those over 30 seconds, in an effort to collect only more in-depth produced news stories. In order to get a better sample of how each event was being explained and narrated in longer, more in-depth genres, I supplemented these texts with a sampling of magazine and book-length descriptions. I selected all magazine stories within the Lexis-Nexis magazine database within one year of the deaths of each man (due to the longer production cycles of magazines and also to gauge how the stories were evolving over time). In the case of James Byrd's murder, I also looked at the books

written by journalists who had covered the story: *Hate Crime* by Joyce King (2002) and *A Death in Texas* by Dina Temple-Ralston (2002).

While my sampling of the national media texts was the same in each case, due to differences in the specifics of each case, my approach to the texts and treatment of local discourse in each case differs. Because the legal-political response took place at the local level in Laramie, in my analysis of the discourse surrounding Matthew Shepard's death, I include local discourse. For my texts, I use letters to the editor and articles in the Laramie paper, *The Laramie Boomerang*, and the Cheyenne paper, the *Wyoming Tribune-Eagle* (texts collected from archives at the University of Wyoming library and at the American Heritage Center).⁴⁶ In the case of the murder of James Byrd, the political response took place at the state level, in Austin. Because of this, and because there was not a significant difference between national news and that in Texas papers (the Houston, Austin, and San Antonio papers are represented in Lexis-Nexis), regional discourse was not a major factor in my analysis of the discourse on Byrd's death. For my references to local conditions, I used secondary sources (academic research on the impact of the murder on Jasper and on the local news coverage). In addition, the public discourse on James Byrd's murder was more infused with intertextuality and dramatic references than that surrounding the murder of Matthew Shepard. As such, my writing and analysis of the texts dealing with Byrd's death is different, following a more narrative style.

My analysis of all of these texts (as well as of the legal discourse described below) follows Sarah Ahmed's (2004) discursive approach to affect, in which emotions and other public expressions of affect are understood not as the psychic property of individuals but as social goods, structured by power, history, and social relations. As such, the training of affect describes relationships between individuals and institutions,

⁴⁶ Except for the *Wyoming Tribune-Eagle*, which was available through Lexis-Nexis.

ideas or ideology, and social structures (affect here working as the “technology of belonging” described by Berlant [2004]). In keeping with this definition of affect, affective discourse is identifiable in ways relationships are structured within texts, as well as explicit references to emotions and feelings in these texts. In analyzing my sample, I pay particular attention to language of grief, mourning, injury, and healing/resolution. Sara Ahmed discusses the ways that emotions are mobilized in texts:

Naming emotions often involves differentiating between the subject and object of feeling. When we name an emotion we are not simply naming something that exists ‘in here.’ So a text may claim, ‘the nation mourns.’*What does it mean to say the nation ‘mourns’?* This is a claim both that the nation has a feeling (the nation is the subject of feeling), but also that generates the nation as the object of ‘our feeling’ (we might mourn on behalf of the nation). The feeling does not simply exist before the utterance, but becomes ‘real’ as an effect, shaping different kinds of actions and orientations.

(Ahmed 2004, p. 13)

In addition to highlighting the productivity (and normative force) of invocations of collective feeling, this quote points to the organizing effect of emotion/affective discourse. Ahmed discusses the way in which the use of collective emotion both conjures a social body and attributes feeling to it.

In each of my cases, I look for vocabulary of emotion or feeling that is repeated, and that is used to structure relationships between people represented in the texts themselves, and between the texts and their audiences. The former is discernable through narrative and rhetorical analysis on the surface of the texts. The latter I analyze through the rhetoric of identification, or the ways in which a common identification is explicitly or implicitly invoked between text and audience. Kenneth Burke’s (1972, 1950) work on identification as a major force within persuasion identifies as the main vehicles for identification the posing of common ground or principles, the construction of common enemies or agents (against which speaker and audience may collaboratively define

themselves), and the subtle and uncontested invocation of “we” (this last form is at work in Ahmed’s example of the ‘the nation mourns’). In analyzing the rhetoric of identification, I focus on the first two of these vehicles. Regarding the first, I look at how common ground is posited between the reader and the deceased men and among readers. For example, what terms were used to locate and describe each deceased man as an object of mourning and how shared textual references (notably, in the discourse surrounding Byrd’s death, *To Kill a Mockingbird*) work to signal ‘common values.’ In terms of the second, the construction of common enemies, I look at the ways in which the killers were vilified, and defined against the (collective) public. The attributes and vocabulary with which the men were distanced from text and audience (the invoked public) provide the terms of dis-identification with them, and coherence in a public (affectively defined against them).

One of the more interesting things discourse analysis points to is how language comes to legitimate some understandings (or here feelings) over others—to make some experiences or methods of relating to experience part of valid knowledge and social reality and some methods of understanding as invalid (Brown and Pujol 1998; Gergen 1998; Fairclough 1995, 2001; Krippendorf 1995). My method of analysis seeks to trace the circulation of emotion regarding the murders of Byrd and Shepard, and to highlight which emotions (and whose emotions) are legitimated as valid and how this selection suggest particular relations toward the murdered men and the murders themselves as political events. In looking at the language of resolution or response, I pay attention to what relationships and attachments are prioritized as requiring healing: what and who is presented as broken or injured and how these injuries are made available to remedies. These different, emotional elements of the public discourse surrounding the murders will help illuminate issues of whose feelings were legitimized, what discursive work was done

in the process of attaching emotions of grief to the two men, and the way in which the language of healing constructed the crimes and suggested relations of causality and remedy.

Legal Analysis

If my first question investigates public feelings (what people said they felt, what feelings became proper or normative) about these murders, the second question seeks to elaborate on the products of these feelings in the arena of the law. My investigation of the legal outcomes focuses on how hate crimes laws were articulated as a resolution for the crimes. I am interested in how the legal measures became implicated in constructing collective memory and the political landscape of the present that collective memory upholds. Such an approach to the role of law might seem to contradict courts' traditional role, and the source of their authority, as finders of fact/discovery of legal principles that support existing norms, but I do not mean to suggest that the memorial aspects of law trump its more traditional aims and duties to deliver justice. As Mark Osiel (1997) and similar legal theorists argue, the roles of historian and memorial are not foreign to the law's traditional aims and duties: per the tradition of legal realism, the courts have always been involved in interpretive process, of continually reformulating historical documents to create new ways of remembering past principles (242).⁴⁷ Indeed, a social constructivist perspective leads to the conclusion that law is based upon—and requires—the artful construction of memory and evidence around normative feelings, beliefs, and desires (Sherwin 2000, p. 231).

⁴⁷ For more on the law as memorial, as well as the law as a vehicle for repeating and publicizing trauma, navigating cultural debates, and defining community identity see Osiel (1997), Sarat and Kearns (1999), Minow (2002), and Felman (2002).

In order to analyze the workings of affect within the law, I look at the arguments used to push for the laws: how the laws were articulated as needed, how the laws were positioned in terms of the public (and especially media) discourse on the murders. Some evidence for the arguments comes from news accounts and the public records of the meetings of the deliberating bodies (the Laramie City Council and the Texas Legislature). To supplement this sometimes cryptic and incomplete record, I interview individuals who were closely involved with the passage of the measures. My choice of interview subjects was dictated by their roles in the process, using a combination of deductive and snowball sampling: contacting people whose names figured prominently in the public records as well as other individuals my interviewees identified as instrumental in the debates.

These interviews and the public records comprise the texts in the legal analysis chapters. I analyze these texts as discourse using many of the same tenets about affective discourse outlined above, with attention to the relationships and identifications explicit and implicit in the texts and to the way in which injury and grief were deployed. The interviews help me understand how the articulations in the law and in the media were and were not rhetorically effective. In the interviews, I ask decision-makers about how they conceptualize hate crime legislation, how the murders of James Byrd and Matthew Shepard prompted the need for hate crimes legislation proposals, and the reasons for the success or defeat of the hate crimes proposal. The interviews are designed as fairly open-ended.⁴⁸ Open-ended interviews allow subjects to be more reflective and hence are most useful for providing information on subjective experiences and processes of interpretation (Esterberg, 2002; Morgan, 1996), which is key to my analysis. In this questioning, I look for evidence of what elements of the public discourse on hate crimes in general and on the murders as instances of hate crimes the political decisions incorporated or sought to

⁴⁸ For interview guides, see Appendices A and B.

address and what elements of the public discourse the decision-makers rejected or ignored.

The questions I seek to answer through this analysis have to do with the relationship between affective discourse and structural change—or, in the language employed in this chapter, the productivity of affective discourse at sites of legal deliberation. To accomplish this, I look for affective discourse (as defined above) in the presentation of the need for the hate crimes measures, in the justifications for the laws and their content, and in claims about what each measure accomplished. In these propositions about the law, I look at the logics by which the laws were posed as responses to the crimes: what/whose injuries were redressed in this logic and how the measures were positioned as responses to the murders and/or the media discourse on them.

These logics are visible in the ways that the laws were narrated in the interviews and public records. The way in which the laws were posed as necessary relied upon an articulation of the murders as social problems. These articulations in each case used affective claims as justification for the laws. In this, the laws are visible and analyzable as the structural products of affective discourse. How these affective claims act as justification is the site of my critical analyses in the legal discourse chapters. Barbara Koziak (2000) and Judith Butler (2003), in somewhat different terms, both call for an analysis of the ways in which institutions make space for or otherwise structure public grief and mourning. These laws are examples of institutional responses to loss. The question is what forms of memory and mourning are enabled and constrained in these responses (both the discussions of the laws and the laws themselves).

CONCLUSION

The murders of James Byrd, Jr. and Matthew Shepard, as moments of public trauma, were important sites of affective political experience and communication. Yet, the affective elements of this experience and communication are at least sidelined and often formally excluded from analysis by the rational-critical frameworks that dominate theoretical engagements with democratic communication (within the disciplines of media studies, communication studies, and political theory). By reviewing the rational-critical framework that expresses the normative views about media communication, citizenship, and democracy and several sets of literature critiquing the exclusions and inadequacy of a rational-critical approach to communication and democracy, I hope to have convincingly argued for the need to include emotion in thinking about media and politics.

In investigating two separate, semi-contemporaneous cases, I propose a critical juxtaposition of the way affect worked in these two cases. The cases are not completely comparable, but were and are politically and discursively tied to one another, meaning that while it is not possible to draw strong causal arguments from these comparisons, there are points of connection and comparability. Finding these points and examining similarities and differences in the sites and work of affect is important for both evidentiary and political reasons. In terms of evidence, the examples of how affect worked in two different cases of public and legal discourse is more convincing than one. In terms of politics, these two cases were publicly located within discourses on racism and homophobia, two key contemporary socio-political issues in tension with liberal ideas of tolerance. Differences in the way affect circulated in discussions of the crimes may offer insights into the affective construction of racial and sexual norms and differences (within media and local governmental institutions) at a particular historical moment. A concern for the socio-political significance of these two men's murders and

the debates that coalesced around them anchors my evaluation. In attempting an evaluation of the productivity of emotion in these cases, I hope to foreground the ethical and political implications of the production, circulation, and outcomes of the discourses I locate as emotional discourse.

In what follows, I argue that the murders of James Byrd, Jr. and Matthew Shepard were traumatic in a public as well as private way, that grief and shock were the grounds for collective responses and public discussion. The public responses to these traumatic murders are particularly important in that they revolved around issues of racism and homophobia, important public problems in American political life. These moments of trauma had the potential to draw attention to connections between the everyday injustices and exclusions of racism and homophobia and the violent deaths of two men. By looking at what role emotion played in these two traumatic moments of political life, I hope to illustrate and analyze the productive side of public affect. This is not to discount that affect and affective (particularly therapeutic) discourse can immobilize publics, but rather to critically evaluate what happens when they do not immobilize. I am interested in what the products of these cases are, and, following the calls from Peters (1999), West (1993), hooks (2000), and Young (1997; 1998) how they speak to the ethical possibilities that reside in contemporary public life and discourse.

In the next chapter, I begin my investigation by exploring how affect entered into and circulated in the discussion of Matthew Shepard's murder. I look at how this circulation is situated within and productive of social relations and divisions around sexuality and liberal-democratic ideals of tolerance and inclusion.

Chapter 3

The Murder of Matthew Shepard as Liberal Trauma

...we have to mourn this and we have to be sad we live in a town, a state, a country where shit like this happens. And I'm not going to step away from that and say, "We need to show the world this didn't happen." I mean these people are trying to distance themselves from this crime. And we need to own this crime. I feel. Everyone needs to own it. We are like this. We ARE like this. WE are LIKE this.

-Zubaida⁴⁹

News reports initially described the details of Matthew Shepard's murder, his life, and sexual identity. As the story wore on, the coverage turned from the details of the crime to its context: to elaborations on what kind of a place Laramie was, that such a thing could happen. This was, for national audiences, a distancing tactic. For Laramie residents, it was experienced as a second trauma. The brutal facts of his attack traumatized not only Shepard's friends and family, but the strangers who made up Laramie. I argue that the clash between the national coverage and local self-image of (some) residents produced a discourse of shame within the localized public formed around Matthew Shepard's murder in Laramie.

This analysis, then, involves looking at two different locations of public discourse and the rhetorical invocation of two different publics: the local public of strangers related to one another via civic boundaries, by being residents in common of Laramie, and the national public as imagined and addressed by mainstream media. In the first half of the chapter, I examine the construction of a national public through the process of mourning Shepard's death. I pay attention to what I identified in my theory chapter as the affective

⁴⁹ Laramie resident quoted in *The Laramie Project* (Kaufman 2001).

politics of identification: how Shepard came to matter to so many people, as a process of identifications and attachments. I find evidence of affective identifications and attachments in the way Shepard was made a “mournable body” within the media discourse: the media discourse suggested proposed common ground between Shepard and the public along the lines of upper-class attributes, masculinity, and whiteness. Along side the construction of similarity between Shepard and the national public, Laramie was cast as “other” to the tolerant and caring national public. Presenting the crime as an outgrowth of local culture, while it did acknowledge the social aspects of hate crime, made national self-reflection unnecessary. At the local level, however, it produced a strong reaction.

The second half of this chapter examines this local reaction. I look at how the (classed and raced) image of the national public that emerged in media discourse on Shepard’s death produced a discourse of shame in Laramie. I look at the way the most outspoken residents responded to depictions of Laramie, at how (and which) residents expressed shame before the national public, as constructed in news and media texts. I suggest this had to do in part with a desire to inhabit the classed and raced image of a tolerant public constructed in national media discourse.

Development and Circulation of Matthew Shepard’s Story

Matthew Shepard was found tied to a fence and beaten close to death on the evening of Oct. 7th. In just a little over 24 hours, his attack was a full-blown national news story, the subject of considerable public discourse and, for many, a full-blown national trauma. The attack took hold of the headlines quickly. Within days, all the major TV networks and CNN had news crews on-site to cover the attack. Correspondents from regional papers as well as most of the national (reporters for the *New York Times*,

Washington Post, and AP were in Laramie by the 8th, while the *LA Times* correspondent arrived the next week⁵⁰) In the month after Shepard was discovered, there were 89 stories meeting my selection criteria (300 words or more, national paper, and a primary focus on the attack and reactions) in the Lexis-Nexis database of major papers,⁵¹ 139 stories meeting the same selection criteria in regional newspapers (Denver papers *Rocky Mountain News* and *Denver Post*, Cheyenne's *Wyoming Tribune-Eagle*, Laramie's daily *Boomerang*, and Associated Press' State and Local Wire),⁵² and 13 newscasts on national network evening news,⁵³ and featured segments on network news magazines *20/20* and *Nightline*.

In the days after Shepard was found, a fairly unified story emerged about what had happened to Shepard that night—and to a lesser extent, the actions of his attackers, Aaron McKinney and Russell Henderson (both young men raised in Laramie). The initial reports, based on witnesses and the initial police report, detailed how on the evening of October 6 McKinney and Henderson lured Shepard away from a local bar where he was having a drink alone by convincing him that they were gay. McKinney's girlfriend challenged this most widely reported version of the evening's events on ABC's new magazine *20/20*. She explained her boyfriend's actions, saying that Shepard had tried to come onto him and that he had retaliated with violence to “teach [Shepard] a lesson.”⁵⁴

⁵⁰ *USA Today* alone of the national papers examined here did not send a correspondent to Laramie; all of its stories on the attack and aftermath were filed from Denver, Colorado.

⁵¹ Results for Denver papers (included in this database) were included in this number, as I grouped them with the regional sources.

⁵² The Denver and Cheyenne papers and the AP wire reports were retrieved through the Lexis-Nexis regional papers database for Wyoming and Colorado. The Laramie *Boomerang* articles were retrieved from microfiche at the University of Wyoming library.

⁵³ According to the Vanderbilt News Archive. In addition to the evening news, *20/20* and *Nightline* news magazines dedicated entire broadcasts to the crime.

⁵⁴ In 2004, the same girlfriend again appeared on *20/20*. This time, she said that she had made up the story that McKinney had attacked Shepard because of his sexual identity because she thought that the story would make people go easier on McKinney. In the 2004 interview, she said sexual identity had nothing to do with the crime, that McKinney (and herself) had nothing against homosexuality, and that the whole thing had been the outcome of a crystal methamphetamine binge. The *20/20* episode coincided with local

News reports described the rest of the details in uniform tone. Henderson and McKinney drove Shepard out of town where they took his wallet and shoes, tied him to fence, and beat him until he was unconscious, caving in the side of his skull badly enough to damage his brain stem. His attackers, quickly apprehended and identified in the news reports, were described as high school dropouts with records of petty crime. They left Shepard tied to the fence in the cold, though not yet freezing, October weather. A mountain-biker found Shepard 18 hours later, after initially mistaking Shepard's form for a scarecrow, seemingly lifeless and collapsed on the ground. The comparison to a scarecrow, and the (erroneous) image of Shepard tied in spread-eagle fashion, would be much cited in the coverage and cultural imagery of Shepard's murder. His death and display were frequently termed a "lynching" or a "crucifixion," calling to mind both the common image of how he was left and cultural markers of violence and martyrdom.

Shepard died on the 12th of October and newspapers around the nation and all the major network news outfits ran stories about his death and the many reactions. Outside of media institutions, the national attention to Shepard's attack and his family's feelings manifested itself in the many emails, flowers, and monetary donations strangers sent to the hospital that was caring for him and to his family. Individuals and groups around the nation organized memorial services for Shepard. In Laramie, the local university's homecoming parade held the weekend after the attack on Shepard doubled as a protest parade against anti-gay violence, and the University of Wyoming sports teams adopted the green and yellow protest banners being hung by the campus lesbian, gay, bisexual and transgendered (LGBT) and multicultural groups (Loffreda 2000). In New York, more than 4,000 people attended the "political funeral" organized by activists. In Washington,

politician Cal Rerucha's campaign to pass stricter drug laws to control what he characterized as a crystal methamphetamine problem.

D.C., Ellen Degeneres and Barbara Streisand addressed crowds of thousands rallying on the capitol steps in favor of national hate crimes legislation.

On the other hand, a different type of sentiment was evidenced in other places. In Ft. Collins, Colorado, an hour and a half south of Laramie, a fraternity float in the homecoming parade featured a giant scarecrow with the words “I’m gay” spray painted across its head (reminiscent of a New York incident in which a police officer in blackface appeared to reenact James Byrd’s dragging) and a local LGBT resource center received electronic hate mail cheering the attack on Shepard. And in Madison, Wisconsin, and St. Cloud, Minnesota, a cross-dressing man and a gay student were attacked and beaten after vigils/memorials for Shepard. At Shepard’s funeral, anti-gay activist Fred Phelps led picketers in protesting the funeral with signs suggesting Shepard had been damned; they appeared to be fighting the memorialization of Shepard in general. There were, as well, subdued grumblings in Laramie about the media attention as an example of the “liberal media” or the influence of “homosexual activists” on the media. However, these responses were outside the mainstream of public discourse, which tended more towards mournful and outraged tones.

The national news coverage of Shepard’s death very quickly adopted the framework of hate crime. The national news coverage was defined by the proposition that Shepard had been attacked because he was gay—as were many of the reactions of protest, mourning, and memorialization. One third of the network news stories in the week after the attack segued from the report on Shepard’s attack to reports on hate crime statistics and laws; half the stories and all three major networks mentioned that Wyoming did not have a hate crimes law. From day one, NBC ran the story under a “Hate Crime” banner. *Time* magazine ran a special issue, “The War Over Gays” with a cover photo of the fence where Shepard had been tied; national magazines *Newsweek* and *U.S. News &*

World Report covered the attack as a hate crime, focusing their reporting on the conditions that might have led to the crime and the debate over hate crimes laws. The broad outlines of this coverage included positing the primacy of homophobia as a motivating factor, outlining the explicit and complicit homophobia of small-town life, and tying the attack in to larger trends in anti-gay violence and politics. A narrative emerged as hegemonic within the major media outlets in which two local boys who grew up in an environment of “don’t ask don’t tell” viciously attacked the urbane outsider (Shepard) either because they feared he had besmirched their image or used Shepard’s homosexuality as an excuse after the fact, as a sort of rationalization. While in all of this there was interesting debate over the extent of community responsibility, the character of the town, and the character and motive of the killers, there was little variation in the characterization of Shepard (or of his killers). The details and level of symbolism and hyperbole vary from publication to publication, but the basic outlines of his description vary little. Notably, few conservative voices contradicted these outlines. Rather than demonize Shepard or his sexuality, both the coverage in the *National Review* and an Oct. 23 letter to the editor of the *New York Times* from president of the Family Research Council Gary Bauer downplayed the role of Shepard’s sexual identity. The *American Spectator* was the only conservative voice speculating that the crime was more about money than sexuality. One of the only other departures from the dominant narrative came from *San Francisco Chronicle* columnist Debra Saunders who, arguing against hate crimes laws, speculated that class rage was a stronger motivation in Shepard’s attack than homophobia.

While the national media clearly and unfalteringly described the crime as related to Shepard’s sexual identity as motivations in the attack, opinions about how and why Shepard was attacked were more divergent within Laramie. An anonymous police source

told a *San Francisco Chronicle* columnist (Saunders 1998) that the police considered the crime primarily a robbery, media discussion of hate crimes aside. Locals who talked to magazine reporters, academics, the members of the Manhattan-based Tectonic Theater Project documenting the attack wondered about the role of drugs (whether it was a drug deal gone wrong), why Shepard had gone with his two assailants that night, and wondered whether the media (or “gay activists”) were blowing the story out of proportion.⁵⁵ The divergence between the national media discourse on the attack and local question and interpretations of what happened only served to strengthen the feeling of some locals that the media outlets were twisting the story to meet their own agendas, economic or political.

In addition to the news coverage, a number of more in-depth analyses have furthered and added layers to the dominant narrative of Shepard’s attack (e.g., *Vanity Fair*) or questioned some part of it (e.g., *Harper’s*, *20/20*): *Vanity Fair*, *Harper’s*, and *The Advocate*, among others all ran in-depth reports. Shepard’s death was the topic of several televised docudramatic narratives (on NBC, HBO, and MTV). One of these, before it was an HBO narrative, had been a much performed and acclaimed ethnographically based play: *The Laramie Project*. The *Project* told a slightly different story, less about why the attack happened and more about what happened afterwards. The narrative, based on interviews with residents, focused on the way that people questioned themselves and their community after the attack, and the conversations about sexuality/sexual identity that took place. Beyond these detailed narratives, images and stories alluding more generally to Shepard’s life—and, more often, his death—have circulated in popular culture. Shepard’s battering is alluded to in the recurring nightmare vision that spurs one character on the HBO series *Six Feet Under* to come out in his

⁵⁵ See Wypijewski (1999), Thernstrom (1999), Loffreda (2000), and Kaufman (2001).

religious community. Melissa Etheridge and Elton John were some of the most famous musicians to compose songs memorializing and protesting Shepard's death.⁵⁶ Many other, less direct allusions to his death circulated through popular culture and media texts as well. There are too many memorial web sites to count. Shepard's attack and death made an impression on many strangers.

The texts I analyze in this chapter try to capture the most dominant narrative, in print and TV news discourse and more narrative analysis and dramatizations. My sample includes the news paper stories and TV news segments from the first month after the attack (detailed above), as well as the 24 articles in national magazines (per the Lexis-Nexis database of national magazines) and the HBO production of *The Laramie Project*. In order to better define the contours of the national public and the localized public of Laramie (often conflated with Wyoming), I supplemented this sample with letters to the editor from the most widely distributed national publications (*New York Times*, *Washington Post*, *USA Today*, *Time*, *Newsweek*, and *US News & World Report*) and from the Laramie and Cheyenne papers. The modes of address in these letters offer evidence of how members of the national public defined their membership in opposition to Laramie/Wyoming. Since my analysis of the national discourse focuses on the dominant discourse on Shepard, most of my evidence comes from those news outlets that constituted the dominant media voices: the national news magazines, the television networks, and national news papers (*The New York Times*, *Washington Post*, and *USA Today*). These publications, much like the coverage itself, show something of an East Coast bias. Shepard's death received less coverage on the West Coast: A Lexis-Nexis database search found an over-abundance of coverage in Boston, New York, Washington D.C., St. Louis, Minneapolis, and Cleveland and a dearth of coverage in some major markets (such

⁵⁶ For a comprehensive listing of the various different songs referencing Matthew Shepard and his murder, see the website <http://www.queermusicheritage.com/matthew.html>.

as Atlanta, with only one story on the immediate aftermath of the attack in the archive). The *Los Angeles Times* initially relied on wire reports, only dispatching a correspondent after Shepard died; the *San Francisco Chronicle* never sent a correspondent. Within the *Los Angeles Times*, Shepard's attack was given greater prominence (earlier in the front section, more front page space) in the national version than in the local.⁵⁷ Even so, the *Los Angeles Times* ran only two news stories of more than 300 words and two editorials on Shepard's death and attack in the month of October, compared to eight news stories and four editorials in the *New York Times*. While the discussion may have been shaped and edited predominantly by institutions with East Coast affiliations, it was produced to speak to (and sell to) a national audience.

In the next section, I look at the way this audience is constructed through cultural and ideological assumptions. The economics of the national news outlets that comprise my sample offer useful background for the construction of the audience. All of the major news publications aim at an affluent audience. The *Post* and the *Times* position themselves as speaking to a very elite audience; *Time*, *Newsweek* and *USA Today* position themselves as speaking to a professional-managerial upper-middle class audience. *Time* and *Newsweek* report a professional-managerial upper-middle class readership with an average household income of \$65,000-75,000 (over half of whom hold a college degree) (Time Media Kit 2005; Newsweek Media Kit 2005).⁵⁸ *USA Today*'s reader profile is similar, except that (unlike the other publications), it has many more male than female readers (USA Today 2004). The *New York Times* boasts the "most educated, affluent and influential readers anywhere," with an average income of over

⁵⁷ There was a coastal division in left-leaning media outlets as well: *The Nation* ran several articles on the attack, but the more West Coast publication *Mother Jones* did not cover the attack; *Utne Reader* also did not cover the murder.

⁵⁸ *Time* boasts that its brand is at the top of the list in "desirable characteristics as: Up-to-Date, Intelligent, Straightforward, Leader and Socially Responsible" (time.com 2005: B.A.V. Audience Research).

\$100,000 (70% have college degrees) (New York Times Advertising 2005). The *Washington Post*'s readership is not only affluent, but the paper prides itself in being one of the major sources of information for the nation's political leaders (Washington Post 2005).⁵⁹

MOURNING MATT SHEPARD: THE BOY NEXT DOOR AND THE CONSTRUCTION OF A LIBERAL-TOLERANT PUBLIC

I have argued that public and especially institutionalized practices of emotion are telling of a political culture; that what feelings and whose feelings we provide a platform for and how we do this is revealing of the ethical and political connections prioritized at a particular historical moment. This is perhaps most clear with grief and public grieving. We make public space for grieving and memorializing some losses and not others. Citizens lost in war or in attacks upon the nation are memorialized by the state in various forms: dedicated spaces, holidays and rituals of remembrance, museums and the repetition of official narratives. Other losses make the national stage in a less official manner, as the subjects of national attention and grieving through media coverage. Every once in a while, a local tragedy becomes a national one; one community's loss becomes iconic for national narratives or debates. From Emmett Till to Lacey Peterson, these moments of national mourning are part of the circulation of emotion, a debate and process of cultivation of whom we should mourn and how. It is not an accident that Shepard's murder was compared to those of Emmett Till and James Byrd by activists and others framing sexual identity as a civil rights issue; in comparing Shepard's death to famous casualties of racism and the civil rights struggle these comparisons argue for a particular set of public feelings and dispositions that include a sense of responsibility

⁵⁹ The figures listed here refer to print readership. The Internet readership of each paper broadens its national scope (a majority of Internet readers are from outside the metropolitan regions the papers serve).

linked to ideals of citizenship and the jurisdiction of the state. An inventory of who is mourned as a public, national death is telling of contemporaneous ideals of citizenship, and exclusions. This imaginary provides flesh and blood descriptions of who the strangers are who make up the national “political community.” The changing description of who can and cannot be mourned publicly (within institutional spaces of the nation) tells a story about shifting political climates, and the limits of inclusion. Judith Butler’s (2003) essay on mourning and violence in post 9/11 America does a nice job of outlining the ways in which Iraqi citizens and Palestinians are currently un-mournable in public culture—and the ways in which vacating grief for the losses of these people (and more generally, constructing their bodies as inappropriate subjects of grief or mourning) from the public sphere furthers the politics and policy of war.⁶⁰ Similarly, Muneer Ahmad (2002) argues that while media and political institutions represented the murders of Byrd and Shepard as “incomprehensible,” these same institutions treated the murders of five Arab and South Asian men following 9/11 as inappropriate response to a fully comprehensible, shared, and in fact “socially appropriate emotion” (2002, p.108).⁶¹ Such implicit public norms on whom and how to mourn illustrate not only whose bodies and feelings matter more than others, but also constitute explicit lessons on how cultural institutions weigh in on what are proper, or even allowable, emotional dispositions for their “publics.”

⁶⁰ One of the examples she gives is of how the main daily newspaper in the Bay Area would not print memorials for two Palestinian families killed by Israeli soldiers. When a man attempted to submit obituaries for the families, the paper said it could not print them without proof of death. When a memorial piece was submitted (remembering each family member and how and when they were killed), the paper refused to print it because it feared such a memorial (show of grief for Palestinian deaths) would offend readers (Butler 2003).

⁶¹ In fact, the murders are completely comprehensible within widespread discourses of racism and homophobia. However, the pervasiveness and violence of these discourses is disavowed in the treatment of the murders as incomprehensible.

The mourning of Shepard is instructive in this regard. He made a compelling victim, one that many people felt for. Politicians and the cultural institutions of media (both entertainment media and news media) deemed him a proper (and bankable) object of public sympathy and mourning. He was one of, if not the, most publicly mourned gay victims of a hate crime, an issue notable for both the numbers of mourners and the fact that the many vigils and protests that followed his murder had engaged people who identified as gay and as straight (GLAAD 2003). The quantity of coverage was an aberration; in general even sensational murders targeting lesbian, gay, bisexual, and transgendered (LGBT) people often go without much media coverage, and rarely make the content of national debate (Bull 1998; Gillis and Gaines 1998). These losses are often not afforded public space for grief, falling into the categories of those bodies and individuals that matter less in dominant public spheres (Butler 2003; GLAAD 2003).⁶² Shepard's murder was an exception to this observation in the way his murder held the center of national discussion for some time (and continues to be a relevant story⁶³) and in the way he was mourned so publicly by so many people. Because of this, and because many news outlets pegged stories about past local hate crimes that they had previously ignored, The Gay and Lesbian Alliance Against Defamation (GLAAD) cited the news coverage of Shepard's murder as generally positive (GLAAD 1998).

Despite this, there were some down sides to the coverage. The focus in this publicity around a violent attack against an individual carries the danger that homophobia (and, indeed, other forms of division and oppression) may be publicly identified primarily through moments of violence between individuals. A better understanding of

⁶² At the same time, it is unfortunately too often only in the cases of death (namely gay-bashing murders) that the issue of homophobia makes it into public discussion at all.

⁶³ As evidenced by the fact that almost six years after Shepard's murder, *20/20* produced an hour-long program on the murder investigation and the killers, questioning the relevance of Shepard's sexuality to his murder.

homophobia would include a larger network of fears, discriminations, identities, and policies based in a hostility toward same-sex desire as upsetting sexual and gender norms. These norms, of course, are deeply embedded in laws, institutions, sexual identities, and much of what goes on in everyday life making homophobia a pervasive category (Fone 2000; Sedgwick 1993). A focus on “gay bashing” incidents to discuss homophobia and anti-gay discrimination in general constructs instead an image of homophobia as located primarily an interpersonal (individualized) relations gone awry, rather than pointing to the more pervasive expression of homophobia (in law, social norms, etc.).⁶⁴ When these exceptional moments of homophobia constitute the primary discussion of homophobia in the public sphere, there is the danger that the exceptionalizing logic will drown out connections between the event and history (Harad 2003) or unrecognized oppressions of the present. Brian Ott and Kevin Aoki (2002) have in fact argued that the national discourse on Matthew Shepard’s death followed much of this pattern, exonerating the national public through a focus on individualism and exceptionalism. They argue that the very vilification of Shepard’s murderers (and the resolution offered by their convictions) deflected the potential for a more critical national discourse on gay and lesbian rights, the normalization of homophobia, and the implication of the status quo within anti-gay discrimination.

The discourse on Matthew Shepard’s death was invested in these sorts of exceptionalizing and individualizing logics on many levels. The distancing rhetoric that I describe below in regard to both the killers and Laramie as a community follows this politics of national exoneration quite dramatically. Yet, focusing on this alone overlooks the texture of how Matthew Shepard became the center of national mourning and a

⁶⁴ Ann Cvetkovich (2003) eloquently notes this problem specifically in regard to cases such as the highly covered death of Matthew Shepard and more generally, in directing her research toward more intangible, less physically violent, and less publicized locations.

subject of identification for many. I also suggest that the way Matthew Shepard's death became a visible site of homophobia was not purely depoliticizing or exonerating. The figure of Matthew Shepard as a subject of national mourning continues to perform political work: even though that work may be limited by the very way his death made homophobia visible through violence. The effects of national discourse are as well, unpredictable. It was in a sense the very effort to exonerate the nation (and distance the national norm from Laramie) that had a galvanizing and sometimes transformative impact at the local level.

The Construction of a National Public

Mourning Shepard's death, strangers in cities across the nation took to the streets; attended vigils; wrote letters to the editor; wrote poems; sent money, flowers, and letters to the family; and followed the news on Shepard and his killers. In this outpouring of grief, rage, and activism, a public was formed: strangers related to one another (in solidarity and in antagonism) through a common relation to the texts that described Shepard. The repetition of public texts (news, memorials, dramatizations), the proliferation of discourse on Shepard, offered a cumulative address to a particular public. Further, there was something effective (and affective) in this address: the discussion of his death engaged an angry, sad, and often outspoken public. While the crime itself was compelling in its brutality and tragedy, the fact that there were at least 11 other murders of gay men and women in 1998 and several particularly sensational murders of gay men in the previous years (Gillis and Gaines 1998; Alter 1998; Tigner 2002) that did not galvanize publics so well suggests there was something particularly effective in the way the crime and Shepard himself were discussed that engaged people, made them feel and actively mourn Shepard's loss. One factor in this effectivity may have been the way

media discourse on Shepard revolved around similarities between Shepard and the public/audience. Descriptions of Shepard as a victim were the central point in the formation of a mourning public; he was positioned in terms of similarity to a national public, albeit terms of similarity that, as I will discuss below, implicitly addressed a white, upper-class, liberal public.

The mainstream national media discourse may have been organized around similarity (to one another, to Shepard), but it was positioned as a public united in the name of liberal tolerance. Liberal tolerance—liberalism as the political philosophy placing protection of individual rights, autonomy, and property as the primary end of politics rather than liberal as a left vs. right partisan label—is the term I use to define the ways in which assumed common grounds of decency, opinion, and ethics were expressed. Editorials across the board addressed a public outraged by the crime. All of the editorials in some way engaged the debate over the origins and solutions to hate (e.g., the arguments for and against hate crimes laws, the role of the Christian right in anti-gay violence), and all addressed a presumably “tolerant” public. The public addressed was defined by liberal tolerance, and defined against homophobia (exemplified as extreme violence rather than as the more insidious, everyday distances and discriminations), as well as against the cultural backwardness symbolized by Wyoming in much of the public discourse.

The construction of a mainstream, liberal public under the banner of tolerance is clear in the way letters to the editor addressed the national public and the way people from outside Wyoming addressed letters to Wyoming residents as a separate and antagonistic public. While the letters published in editorial pages are not transparent representations of opinion, but a meld of public expression and the institutional logic of the newspapers, they trace and propose broad outlines of relationships. The address in

editorials and letters to the editor in national publications (*New York Times*, *USA Today*, *Time*, *Newsweek* and *US News & World Report*) is largely one of common inhabitance of liberal tolerance. In contrast, many letters in the Wyoming press address Wyoming residents through distance, even hostility and disdain.

The majority of writers in the editorial pages of the *New York Times*, *US News & World Report*, *USA Today*, and *Time* used the inclusive “we” to address implicitly like-minded publics defined by sexuality (addresses to gay/queer readers) and by political values (addresses to “Americans” who ought to fight homophobia). The letters to the Laramie and Cheyenne papers from out of town included offers of sympathy and condolences but also condemnations that explicitly addressed the Wyoming public as other and opposite to the writers’ political and national identities. The Cheyenne paper devoted two days of its editorial pages (Oct 14 and 15) to letters from out of state. The majority of these letters were composed as pleas for a heavy penalty for the killers and for acceptance of gay neighbors. Three stood out in their rhetorical address, using second person address to address Wyoming in accusatory tones. A letter writer from Salt Lake City opined that the people of Wyoming had no conscience and ended with an admonition to Wyoming; a letter writer from Austin, Texas, challenged Wyoming to show what it was “made of,” asking “Are you a bunch of back-water hicks with a tribal form of government?”; another writer from Austin addressed “Wyoming” in second person to rest responsibility with voters who elected what the writer termed homophobic representatives.

Letters from out of state to the local daily, the Laramie *Boomerang*, urged residents not to view the murder as an isolated incident, to punish the killers, to pass a hate crimes law, and to express, as an Oct. 25 letter writer put it, “shock and disgust with the politicians and people of the state of Wyoming” (Blakeney 1998). Similarly, days

after Shepard was found, pop star Madonna personally called the president of the university and, speaking to him as a representative of a public she defined herself in opposition to, “harangued” him for 45 minutes about the failings of Wyoming and the university (Dubois 2001). The different ways people addressed the national public and Wyoming residents illustrate the way that the national public was constructed to the exclusion of Wyoming (as a non-tolerant locale). The hostile letters to Wyoming residents addressed them as a sort of illiberal counter-public, a group of people defined by place, but only as a shorthand for ascribed political and social dispositions (against which the letter writers defined themselves).

At the heart of the national public addressed in the editorial pages and letters to the editor of national papers and magazines was the figure of Matthew Shepard. He and his family were the objects not only of sympathy but also of attachment and identification. Letters from gay and lesbian readers in the *New York Times* (but also to a lesser extent in *Time* magazine) recounted stories of violence experienced and violence feared, organized around the theme of it could have been me. Local reports on vigils in Minneapolis and New Orleans emphasized statements by members of gay and lesbian⁶⁵ student groups that described a feeling of intimacy with and proximity to Shepard, calling him by first name and noting how similar he was to each of them.⁶⁶ He was, according to *The Advocate*, “the lost brother of gay men and lesbians across the country who were suddenly united in a devastating grief for a man they had not heard of just a week before” (Barrett 1998). The construction of intimate ties extended beyond the gay and lesbian

⁶⁵ The politics of naming sexualities is complex. Throughout, the texts in this dissertation use the term gay and lesbian to discuss non-heterosexual sexualities/sexual identities, which is reflected in my use of the term. Transgender individuals, bisexuality, and a broad concept of queer sexualities do not appear in these texts.

⁶⁶ “Many say Shepard symbolizes struggle of gays and lesbians” by Rosalind Bentley in the Oct. 14 edition of the *Minneapolis Star Tribune* (p. 1-A); “Slain Student Honored” by Petula Dvorak in the Oct. 16 edition of the *New Orleans Times-Picayune* (p. B-1).

community. Mourners called Shepard by his first name, “Matthew,” or even more intimately, “Matt,” (Bentley 1998; Thernstrom 1999). Strangers talked about having “met” him (posthumously), expressing a felt association and identification with Shepard.⁶⁷ The president of the University of Wyoming, speaking at the first anniversary of Shepard’s death, urged those present to remember him as a brother and a son. In the news coverage, friends and strangers described him as being like “any person’s son” (Kenworthy 1998), as an “all-American nice kid next door” who you’d trust to take care of your grandma (Gillis and Gaines 1998), and as having an “open American sweetness” (Rich 1998). He was rhetorically substituted for various different loved ones, constructing strong affective (proxy) relations to Shepard and making his loss circulate broadly in a highly personal and close to home manner.

Rhetorics of Proximity and Distance: The National Public in Racial, Classed, and Gendered Terms

Such close identifications were in many ways encouraged by the structuring of media discourse. Shepard was, in the various proxy relations and identifications invited in the mainstream media discourse, aligned with the public, if not made an icon of that public. President Clinton’s remarks after Shepard’s death (also a plug for his proposed federal anti-hate crimes bill) said that Shepard’s attack “[struck] at the very heart of what it means to be an American and at the values that define us as a nation” (Clinton 1998). The repeated details of Shepard’s life and person that made him so compelling to so many people were linked to those that made him symbolic of the boy next door, like “any person’s son” (Kenworthy 1998).

⁶⁷ People in Laramie spoke this way to the Tectonic Theater Project and to *Vanity Fair* reporter Melanie Thernstrom, referring to having “met” Matthew after his death (*The Laramie Project* 2002; Thernstrom 1999). These “meetings” took place in part through media discourse.

If, in rhetoric, common ground is sought in order to convince and to cooperate (Woodward 2003), invocations of Shepard formed that ground. Descriptions and details in the mainstream national media encouraged identification with Shepard; his figure (as an individual and as a symbol) formed the center of a rhetorical address to a group of strangers. Yet, race and class and, for lack of a better term, the culture wars (particularly changing gender and sexuality norms), were important grounds of commonality in the way he was made available and compelling for mass mourning. Shepard may have been positioned through similarity, as the boy next door, in this discourse, but this designation applied much more to some neighborhoods than others. Many details about Shepard were publicized in interviews with friends and family, but a few stuck out and were repeated in the descriptions of the crimes and the memorials for him, becoming particularly salient descriptors. These bits of information offered points of connection between Shepard and the public of strangers mourning, protesting, and discussing his murder and its implications. These connections were sketched in terms of his masculinity (less often his sexual identity), his class and race, implicitly constructing the liberal-tolerant public outraged at Shepard's fate in racialized and classed terms. These invitations to identification are akin to persuasion: persuasion to a set of proper dispositions and to a common idea of collective (here, national) identity.⁶⁸

Shepard first appeared on the public stage in the news, introduced as a slight, unassuming, openly gay man. One of the most repeated details about Shepard was of his slight physical stature (5' 2" and 105 lb.); almost every initial story noted this detail (whereas reports of his age varied or were often absent). He was described in terms that emphasized his youthful innocence and potential: cherubic (Gillis and Gaines 1998), fresh of face (*New York Times* 1998a), and as having exceptional promise in life (*New*

⁶⁸ This follows the work of Kenneth Burke (1950) on identification in rhetoric.

York Times 1998b; Saunders 1998). On the TV news, he was represented by a very youthful head shot, a clean-cut smiling boyish man with short blond hair and tidy button-up shirt. His physical stature suggested that he was unthreatening, unable to fight back and confirmed his status as innocent victim.⁶⁹ In many ways, his small stature emphasized the brutality of his murder. It also marked him as vulnerable⁷⁰ and contrasted his person to cultural expectations of tough, Western masculinity (through contrasts between Shepard as genteel and his killers as “toughs” or “thugs”).

The first *New York Times* story on the murder contrasted Shepard’s enrollment in boarding school in Switzerland to his time in Laramie, where the article noted, typical pursuits tended more toward football (Brooke 1998). Similarly, a later *Time* magazine piece reported:

...he was a freshman at the University of Wyoming in the Cowboy State, a campus where real men were supposed to love football and all-night parties. Shepard, barely 5-ft. 2-in. tall and on a good day 105 lbs., preferred political debate and languages (German and Arabic) to the stereotypical masculine pursuits of his father's alma mater.

(Chua-Eoan 1998)

His small stature, his gentle nature, his interest in intellectual pursuits were all contrasted to the macho masculinity of “real men.” *USA Today*’s editorial page described Shepard’s attackers as “two young Wyoming toughs” (*USA Today* 1998). Within popular discourse, Shepard was soft, while the men around him were hard and tough. Later in the same *Time* article quoted above, the author engaged in an interesting piece of mis-reporting, describing how Shepard met the two “tall, muscular men...both high school dropouts”

⁶⁹ He was at times described in almost childlike terms; he was frequently referenced as a son and more than once described as cherubic. This not only heightened his vulnerability, but also in some ways desexualized him.

⁷⁰ The prosecution sought to add Shepard’s “disability” to the aggravating circumstances of the crime. The judge (who threw out the claim to a disability) said he had assumed the disability referred to Shepard’s size (Wypijewski 1999).

that would murder him. Neither Henderson nor McKinney are particularly tall⁷¹; most descriptions state they were wiry or scrawny (one respondent in a September 1999 article in *Harper's* magazine described McKinney as having “no definition in his body”[Wypijewski 1999]). This error of detail is interesting in that it suggests the murder, and the figure of Shepard, touched upon cultural conflicts over masculinity. The contrasts in the discourse are stark—tall vs. short, brutal vs. gentle, football vs. debate—to the extent that the *Time* author could assume the physical description of the men enacting the “hard” masculinity of the perpetrators (associated with aggression, physical labor, and strength). The description of the perpetrators hinged on their status as manual laborers (emphasized in the network TV coverage), brute strength (they were termed “toughs” or “thugs” in 9 out of the 89 national newspaper stories), and high-school dropouts. On the other hand, Shepard is described in terms of intellectual strength, finding his own way in life, and as caring for others – all “soft” traits associated with gay masculinity as well as with white-collar straight masculinity (Hanke 1992; Connell 1995)—as in the “sensitive man” of the 1990s, or the “metrosexual” of the 2000s.

Ironically, while his sexual identity was central to the discussion of the crime, Shepard's sexuality was frequently vacated from the discussion. In descriptions that emphasized his child-like or cherubic image, his adult sexuality was in some ways downplayed (Thernstrom 1999). The mainstream media discourse did not dwell on potential sexual undertones to the attack (though some news outlets reported that the three left the bar on sexual premises).⁷² This de-sexualization of Shepard's sexual identity meant that his physical size and “soft” personality traits (rather than sexuality) often

⁷¹ McKinney was 5'6" and 145 lb. at the time of his arrest (Wypijewski 1999). Henderson's height and weight are not mentioned.

⁷² There were meditations on and controversies over Shepard's decision to leave the bar with his killers, and the possibility that the decision was in some part sexual, in alternative publications *The Advocate* and *Z* magazine.

operated as the significant differentiations between him and the straight “real man” masculinity he was contrasted with. This emphasis on attributes of his masculinity that fit some cultural expectations of both gay and straight masculinities constructed attachments along the lines of shared sexual identity but also along the lines of a shared “metrosexual”⁷³ gender identity. MTV in a sense relied on the idea that young straight men would identify with Shepard when they produced an anti-hate crimes drama focusing on Shepard; the producers said Shepard was a powerful figure because he could have been a neighbor to their audience members (Black 2001). In all of this, Shepard is marked as being similar or familiar to the public(s) addressed. He is part of an “us” constructed in this discourse—part of a group of people close to the public addressed, either in demographic terms or in terms of affinity and identification. He is either your neighbor or who you want your neighbor to be. The language of inclusion is clearly evidenced in the way that Shepard is contrasted to his killers, and often to Laramie in general. Shepard is part of an “us” composed of well-off, tolerant citizens with cosmopolitan attitudes (and more flexible sexualities), contrasted against a “them” characterized by the rigid excesses of alternately tough (often framed as working-class) masculinity and rural small-town America conservatism. Shepard’s killers and any like them (at times, this category was explicitly expanded to Wyoming, at times to the religious right) were positioned as the “other” against which the liberal American public could identify itself.

The descriptions of Shepard clearly spoke to a classed and racialized public. The description of Shepard’s masculinity aligned him with bourgeois/elite ideals of white masculinity. These ideals are part of the representational aspect of class and race

⁷³ While the term metrosexual (coined as a marketing term to refer to straight men who dress stylishly and buy grooming products once thought the sole provenance of gay men but become a cultural term encompassing a sensibility as much as consumption patterns) was not in circulation at the time of Shepard’s death, the “soft” forms of masculinity that the term traces were a reality and subject of debate.

formations: the concept of race and class formations describes the ways that representational and discursive categories of race and class provide the logic and common sense enabling structural and distributive distinctions (Omi and Winant 1994). One place this is neatly evidenced is in discussions of Shepard's education and travels. He went to boarding school in Switzerland and had traveled in Europe and the Middle East. His ability to speak multiple languages⁷⁴ and his education overseas identified him as educated, affluent, and as having a particular worldly sensibility defined as desirable through discourses of whiteness and class. In particular, his education in Switzerland (sometimes, more generally described as in Europe) took on a prominent role in news reports, placing Shepard within various social and cultural categories and in the narration of his life, adding for many a cosmopolitan counter-note to his Wyoming roots:

He was shy and gentle in a place where it wasn't common for a young man to be either: in Casper, a rough-and-tumble oil town, in Wyoming, a state that features a bronco buster on its license plate. When his family moved to Saudi Arabia for business, they plunked Matthew down at the American School in Lugarno, Switzerland. He learned Italian and German and to accept the truth about himself: he was gay. After graduation, he wandered in search of a life. ... This fall, at the age of 21, he finally found his way. He moved to Laramie and enrolled at the University of Wyoming—his father's alma mater. He'd chosen to study international politics, he told his friends, and to fight for human rights.

(Fineman et al. 1998, p. 42)

Descriptions such as this—prominent in publications from urban centers like New York and Washington D.C. and in *Time* and *Newsweek* (as well as AP)—worked to place him in cultural proximity to readers. This proximity is notably articulated through race and class. His education and interest in a highly professional white-collar career aligned Shepard with the readership of elite publications through assumed commonalities of race

⁷⁴ According the family's memorial website (<http://www.matthewsplace.com/mattslife.htm>), these languages were English, German, and Italian, though it was widely reported that he spoke German, Arabic, and English.

and class. The salience of Shepard's European education as a marker of class and cosmopolitanism was based upon cultural systems of value which draw upon hegemonic whiteness, in which high culture traces its roots through European history and culture (Dyer 1997; Morrison 1992). This hegemonic whiteness is articulated through race and class privilege, as cultured, productive, law-abiding, and in mastery of body and sexuality (Winant 2004). The way his masculinity was described in relation to that of his killers emphasized his temperance, tidiness, contained physicality (he was more interested in debating than in football), refinement, and understated sexuality (he was described as sexually innocent or as someone looking for love, not a one night stand in ways that de-emphasized sexual desire and actual sexual activity⁷⁵). This articulation of masculinity emphasized characteristics associated with upper-class whiteness. Race was not an explicit category for discussing Shepard's life or death; however the ways in which he was discursively connected to a broad public were shaped by cultural constructions of whiteness that define whiteness in terms of tidiness, control, transcendence, and moderation. Indeed, the very fact that his race was not expressly remarked upon is one of the hallmarks of how whiteness works within culture and politics: whiteness is constructed as the absence of race in dominant discourse. Within dominant discourse, whiteness is not named, but works to define "the normal" (Dyer 1997).

Class, however, was an explicit category for discussing the crime, and these discussions of class were implicitly racialized. That is, the descriptions of middle-to-upper class ideals of education, well-traveled worldliness, and smart appearance (Shepard's grooming as well as fashion sense) were at times clearly class ideals defined as well by cultural definitions of whiteness. News reports and magazine features described Laramie in terms of class and culture clashes in which high class comforts

⁷⁵ See Simpson (1998), Chua-Eoan (1998).

familiar to cosmopolitan city dwellers sat side by side with trailer parks and ranchers scraping out a living. An AP article on the economic context, and possible motivations, of Shepard's murder depicted Laramie as economically depressed and marked by clear class distinctions, contrasting the life of college students with those eking out a living in service jobs—and suggested that there were few of the latter among Shepard's local mourners. The article, reprinted in the local paper, enraged locals as much for its depiction of Laramie as economically depressed as for its technical inaccuracies. But perhaps the most explicit discussion of class, Shepard, and identification came in a commentary in *The Nation*. In an article on Shepard's death, Donna Minkowitz compared the affluent side of Laramie to the trendy neighborhood of Park Slope, Brooklyn:

[Laramie] is full to bursting with scrumptious consumer goods. If I weren't here to write about an antigay torture-murder, I would be buying pottery at Earth, Wind and Fire, pricing silver at Green Gold, acquiring delicate, feathery pastries at Jeffrey's Too. Matthew did. He spent money for fun, the way I often do; he bought fabulous clothes; he shelled out money for delightful items to improve his physical appearance in a way that straight men rarely feel entitled to do.

(Minkowitz 1999, p. 18)

The article goes on to contrast “Matthew's Laramie” to the Laramie of the killers and other manual laborers, in which city services are scanty at best and where the city “doesn't even pave the streets.”⁷⁶ In this passage, the author's connection to Shepard is drawn as a communion of shopping and class—he spent money the same way she does, he lived in a Laramie that resembled her home of Park Slope.⁷⁷ Here, the author's identification (and her assumptions about her readership's identifications) relies on

⁷⁶ Several news articles placed great significance on the unpaved streets in West Laramie, a reporting fact that greatly upset many locals as a misreading.

⁷⁷ In her study of the aftermath of Shepard's murder in Laramie, Beth Loffreda commented on this comparison as “bizarre” in its equation of the uber-wealth of NYC to the more modest, and at times precarious, affluence found in Laramie (Loffreda 2000, p. 38). The different characterizations of the local economy cited here were part of an ongoing discussion of the role of class and economics in the murder.

shopping: an activity described in terms of femininity and high class taste as well as privilege. While this is a more explicit example than most of the discourse, it is similar to the way descriptions of Shepard that highlight his class repeat throughout the popular discourse, aligning him as being like, or being a member in, particular classed (but also raced and gendered) groups of people. These ways of talking about him trace imagined identifications and affinities, and suggest the contours of a public connected to and concerned with Shepard's traumatic death. They also flatten out some very material distinctions between the gentrification of Park Slope and that of downtown Laramie, as well as the differences in workings of class and race distinctions in the two places.

Shepard's status as a college kid, his nice clothes, and clean hands, were contrasted to the killers' work as roofers and dirty hands. In this, the texts I examine engage in a process of constructing commonalities through antagonisms, building sets of formal distinctions that double as delineations between us and them: what Kenneth Burke termed "collaborative expectancies" (Woodward 2003). Such delineations of identification (the assumption of common identity and aims) are persuasive through relationships rather than arguments (Burke 1950). The ways in which the killers (and those close to them) were treated as outsiders to the audience, furthered the formation of a discursive we around Shepard. In retelling the story of Shepard's fateful encounter with his killers, the bartender who served them both recounted first to journalists from *20/20* and then to the playwrights of *The Laramie Project* the contrast between Shepard, polite and clean and a good tipper and his killers, counting out change with dirty fingers to pay for their pitcher. These details told a story of the different backgrounds and prospects of Shepard and his killers. In contrast to the stress on Shepard's bright future, news magazine layouts in *Vanity Fair* focused in on peeling paint and dilapidated furniture in attacker McKinney's former trailer home. NBC nightly news interviewed McKinney's

neighbor in a back yard filled with discarded machinery and other debris. In a commentary typical of newspaper depictions of the killers, the *San Francisco Chronicle's* Debra Saunders noted that while Shepard's future showed promise, his assailants' did not.

Beyond descriptions of the killers themselves, the grammar and circulation of statements attributed to their families and girlfriends made it clear that they were spoken about rather than spoken to. One of the killers' girlfriends appeared to be trying to soft-pedal the attack when she argued that it was not a hate crime, but that her boyfriend had been humiliated and things had "just gotten out of hand" (Hughes and Olinger 1998; Quinones 1998). Similarly, McKinney's father told the *Denver Post* that while there was "no excuse" for what his son had done, if Shepard had been straight, the murder would never have made the national news (Hughes and Olinger 1998). The statements of both McKinney and Price stand out in the way they both normalized the violence of robbery and assault and the way at least the latter assumed that stating Shepard had flirted with her boyfriend would be taken as a mitigating circumstance. McKinney's statement was taken up and reprinted by the *Times*, *Washington Post*, and *USA Today* (as well as by smaller papers) as an attention-catching quote, but also as evidence of local character and attitudes. In *Time* magazine, an article stated:

Laramie, along with the rest of the nation, found itself wondering what dark hole this kind of ugliness bubbles up out of. But some of that mystery was cleared up when McKinney's father Bill opened his mouth. The media, he said in an interview with the *Denver Post*, "blew it totally out of proportion because it involved a homosexual"

(Lopez et al. 1998)

McKinney's quote was presented and circulated as a vehicle for distancing and despising: he became an iconic representation for a backward culture of intolerance that well-meaning readers might define themselves against. There was scant information or

encouragement of compassion. The public addressed by these publications was defined to some extent by proper feeling: sympathy and attachment to Shepard and distance from the McKinneys and others like them in “backward” places. McKinney was made an inappropriate subject for compassion, much less identification. The training of proper feeling was a key part of being able to see oneself as a member of the tolerant public. This is not to celebrate or excuse, but to note how feelings toward strangers became ways of publicly performing political membership and identity.

The rhetorics of proximity and distance (the construction of a “we” and a “them”) that surrounded Shepard’s death addressed a public of readers/viewers through assumed relations of similarity to Shepard. The ways in which commentators expressed their connections to Shepard or their distance from Laramie assumed a sympathetic audience (and judging from the public reaction and letters to the editor, often received one). The ways in which the reports initially described Laramie and Shepard’s killers in particular created an address not to everyone, but to a specific and somewhat elite public that shared an appreciation of pursuits such as debate. The narrative that evolved in the initial press coverage evoked a cultured, urban, tolerant public against a vilified redneck culture (epitomized by the killers and their families, but evident elsewhere) of violently physical masculinity and lack of cultivation (as well as lack of opportunity). While the public was addressed as a liberal-tolerant public, in that it was invoked through outrage at a breach of the liberal vision of tolerance, it was also implicitly addressed through class and racial attachments. Understanding the way that the public affinities and identification with Shepard were shaped through assumed commonalities of race and class is important for understanding the affective-political responses in Laramie; it will also be an important point of comparison with the public discussion of (and feelings about) James Byrd’s murder.

SHAME BEFORE THE NATIONAL PUBLIC: CITIZENSHIP, BELONGING, AND SHAME IN LARAMIE

Shame was an organizing emotion in the discussion of Matthew Shepard's death. People expressed shame that such a crime had happened in our midst, about what it said about America as a nation—or Laramie as a community. Whereas Clinton (and one *Washington Post* editorial) described the murder as an attack against American values, carefully defining the attack as symbolically and sentimentally outside of “America,” other political discussions focused on what the crime said about America, and just who or what should feel outrage and/or shame. The *Houston Chronicle* editorial headline on Oct. 14 argued “INHUMANE: Death of gay man should outrage us all”; the article went on to say that the death of Shepard, just like the death of Byrd, made no sense and should outrage all “right-thinking Americans” (*Houston Chronicle* 1998). An editorial-page debate over the role of the Christian right in Shepard's death took prominence in the East Coast dailies (the *New York Times*, *Boston Globe*, *Boston Herald*, and the *Washington Post*) and in *Newsweek's* editorial comment. Columnists, editorial contributors, and letter-writers demanded shame from right-wing Christian groups or defended against it.

While there was a national (though largely partisan-political) debate about who should express shame and hence responsibility, the place where it stuck most was in discussions of Laramie and Wyoming. This is where the ongoing discourse in magazines and drama focused. And, to the extent that this discourse followed a logic of “shame on them” more than “shame on us”—that is, looked for a localized or outside focal point of blame—the them that the shame and blame pointed to was alternately Laramie, Wyoming, or a more abstract notion of Western cowboy culture and masculinity. Rather than question issues of equal protection under the law and the insidious effects of marginalization and homophobia in American life in general, these reports offered up a

conveniently localized origin and pathology to the attack. The editor's introduction to an extended *Vanity Fair* article ("The Crucifixion of Matthew Shepard") teased: "the town of Laramie...stands revealed as an American paradox: a God-fearing, friendly place that harbors deep and lingering prejudice" (Thernstrom 1999, p 209). *Time's* "To Be Young and Gay in Wyoming" argued the problem with Wyoming was mainly that it was hard for anyone who is "anything other than prairie stock"—especially a young, gay man—to blend in (Lopez et al. 1998). *U.S. News & World Report's* main article on Shepard's death ran the sub-head "a town's shame" across a color photo of the inside of the bar where Shepard and his attackers met; the subhead noted that residents called the crime an aberration (Streisand et al. 1998, p. 21). The suggestion in the national press (and from some outside letter-writers, noted above) that the town should feel shame was perhaps part of why so many Laramie residents objected so strongly and felt so betrayed by the media coverage. The reflection of Laramie in the national press was the second source of conflict for many Laramie residents, already reeling from the shock of Shepard's death. And this reflection was, as I will outline below, the source of shame for many residents. Laramie had been placed outside the purview of the tolerant, urbane American public addressed by the national media discourse. Its residents were not addressed as members of this public, but set up as those against which this public might define itself.

Shame was also not the only public affect displayed or the only expression of emotion that organized public discourse in Laramie after Shepard's attack, but it was a dominant discourse through which some residents engaged national discourse—a discourse I argue was particularly productive. There were other modes of expression, protest, and conversation—many of them deftly narrated by Beth Loffreda (2000) in her study of the impact of the murder on the people of Laramie, especially gay and minority residents. For some, the attack was the eruption (and incontrovertible proof) of long-felt

prejudice, linked not only to gays and lesbians but people of color and of other nationalities living in Laramie. For others, it was a chance to speak out and transform aspects of local culture they found wrong, or just suffocating. For still others, it was a creation of the media and gay activists. This list of course does not do justice to all the actual human responses people had, but is meant simply to give some idea of the many different public conversations that took place after the murder.

Writing about the way shame functioned within Laramie is tricky and fraught with various analytic and ethical issues. In writing about the circulation of shame in public and the way that expressions of shame functioned as claims on the whiteness and class of the public sphere, I do not mean to negate the very personal feelings of shame people had about Shepard's murder and about their own prior ignorance of the existence and experiences of gay and lesbian neighbors. I am not suggesting that people in Laramie behaved in any more shameful a manner than anywhere else. I am, rather, interested in looking at how the national discourse produced expressions of shame as a response. I think it is important to examine the production of such public expressions of feeling. It is important as well to look critically at how deployments of caring and the expression of shame function as technologies of belonging (and to what). I take as granted that all of the speakers whose letters I analyze were engaging in an authentic practice of caring for Shepard's family. As granted, this is not the object of my focus. I look instead to the less obvious ways in which the expressions of shame are simultaneously invested in relations of power and in defining the parameters and rules of political discussion, ideals, and critique.

The Expression of Shame

In the case of Laramie, shame was expressed in terms of failed commitment to neighbors but also in terms of how the world was viewing Laramie. This latter expression of shame was the dominant one in public spaces, where the images of Laramie expressed in the national media were a major topic of conversation. In order to examine how shame functioned, it is necessary to look at the clash in civic identity between locals and national media. I've already discussed some of the ways that national media characterized Laramie as a dangerous relic of the Old West, as home to violent and homophobic masculinity, and as economically desperate. This was not how locals depicted themselves.

The police chief reportedly told a reporter for *Vanity Fair* that Laramie was a trusting and traditional community: "We are what America used to be. And we want to stay that way" (Thernstrom 1999, 212). As reporters for the *Denver Post* (Olinger and Hughes 1998) noted, the chamber of commerce boasted a local murder rate of 0.0. Responding to the attack, county judge Robert Castor told *Denver Post* reporters, "Obviously, I'm shocked, Laramie usually is a very quiet town. We don't have any violent crime. No gang activity, very little drug activity. ... It's a nice little community to raise your children in" (Olinger and Hughes 1998, A-11). The article contrasted his view of Laramie with statements from members of the campus LGBT group, who noted gay and lesbian couples did not feel safe holding hands in Laramie. City Councilman Jim Rose also defined Laramie in terms of safety, telling the *Rocky Mountain News* that:

...he and others have felt insulated from the violence of crime in America's urban area. "What makes this sobering is that it does not recognize geographic boundaries," he said. "If it can happen here, it can happen anywhere."

(McCullen 1999, 7-A)

The claims of safety were perhaps inflated as part of civic image construction. Drugs, murder, and violence do happen in Laramie. Wyoming, even at the time, had a higher rate of youth crystal methamphetamine use than the nation as a whole.⁷⁸ While the advertised murder rate was 0, another notorious murder had taken place in 1997, when 15-year-old Daphne Sulk was stabbed 17 times by her older boyfriend. He was charged with manslaughter in the crime, an issue that would surface many times in discussions of Shepard's death. And the rate of domestic violence is quite high: in 1997, Wyoming was ranked 8th in the nation in terms of the most domestic violence murders (Loffreda 2001, p. 41).⁷⁹ Statements such as Castor's and Rose's posit Laramie as safe through its difference from big cities (no gangs, few drug problems, no street crime), implicitly framing the assault as a type of crime (mugging, robbery) associated with urban crime (also probably racialized as black, not white crime) rather than a crime associated with the relative intimacy, knowledge about the neighbors, associated with small towns. By focusing solely on urban drug use and crime, they are able to ignore issues of domestic violence and crystal methamphetamine use (a drug that is constructed as rural and white rather than as urban and black) as safety issues.

Ironically, as prominent Laramie residents were defining danger in terms of the urban, outside world, that outside world was defining Laramie as a dangerous, hate-filled place; defining danger in terms of masculinity and class. In the national press, Laramie was becoming the other against which the national public of tolerant citizens was defined. Articles with titles such as "The Road to Laramie" in the *New York Times*, "To Be Young and Gay In Wyoming" in *Time*, or "The Lessons of Laramie" in the *Boston Globe*

⁷⁸ The U.S. Dept. of Justice reported that in 1998, Wyoming youth used more crystal methamphetamine at younger ages than the national average (BJA 2001).

⁷⁹ According to Wypijewski (1999), the state of Wyoming reported 163 incidents of domestic violence in Laramie in 1997, over 100 of which included serious physical harm; SAFE (Stop Abuse for Everyone) reported fielding almost 4,000 calls from Laramie involving some form of domestic violence that same year.

focused in on the question of whether such a crime could have happened anywhere or whether there was something particularly wrong with the city, or state.

In all this, the way locals saw themselves was contrasted sharply with the way Laramie was portrayed in the national media. Formerly invisible or ignored gay and lesbian residents had platforms to speak in local and national media, at times providing a different (and less friendly and secure) vision of life in Laramie. And out-of-town journalists came in with preconceived ideas about Wyoming culture, expectations of class and culture based on urban and often East Coast standards, or just the imperative to put together an attention-catching story. The clash of civic visions started to surface in the local media discourse when the *Boomerang* editors ran the October 18 AP story on class divisions within Laramie (noted above), as an indicator of what the rest of the nation was reading about Laramie. The errors of (mostly minor) fact⁸⁰ and exaggerations in the story served as a flash point for complaints about journalists' sloppiness and use of stereotypes. In the days after the AP story ran, the *Boomerang* published five letters rebutting the article, one upset that it "bash[ed] many of the good people of Laramie in an attempt to place them in a lower social class" (Brady 1998). Almost all of the letter writers' complaints focused on the portrayal of Laramie as poor or low class; one writer complained as well of the portrayal of students as affluent.⁸¹ Concern with the national media continued in the following weeks, as the national news began to turn elsewhere. On October 29, an article ran in the *Boomerang* ("A Media Tale: Businessman, reporter tell versions of national broadcast") in which the owner of a local bar complained of

⁸⁰ Interestingly, one of the biggest complaints was that the writers had characterized the university as oak-and ivy-lined when oak trees simply do not grow in Laramie and there is little ivy to be found on campus. The authors appeared to be using images of privileged university life that applied to different geographic and cultural contexts.

⁸¹ The article had suggested that the service jobs went to the residents of west Laramie; the letter writer pointed out that many of the university students represented in the article as "strolling" around campus in fact worked service jobs to pay for tuition.

harassment (phone calls, being yelled at by strangers, having a beer bottle thrown at him) since an NBC broadcast featuring an interview in his bar (local rumor had mis-attributed the quote to the bar owner). An Oct. 9 NBC Nightly News segment contained a brief interview with a young bar patron, who was quoted as saying that being gay in Wyoming was asking for trouble; this was taken as a disturbing display of anti-gay sentiment by locals and journalists alike (Kenworthy 1998b; Edwards 1998; Rasberry 1998). The bar owner accused NBC of knowingly painting a one-sided and negative portrait of the town. He was not alone in this. The feeling that Wyoming (and Laramie in particular) had come under unfair attack was also circulated in an October 22 community forum, "Hostility Bites." Participants debated about the media coverage of Shepard's murder, some finding the effect favorable in that it turned attention to the experiences of gay and lesbian residents while others focused on stereotypes and insults circulated by national media (Edwards 1998).

The discursive construction of Wyoming as outside of the national (right-thinking) public helped to construct a local public at times defined as Wyoming residents and at times as Laramie residents. Surprised and unhappy about the image of themselves in the national media, residents publicly addressed each other as the subjects of national media attention, even mistreatment. In the news, public memorials, town meetings, and letters to the editor, people addressed a public of strangers commonly defined by some level of assigned responsibility for Shepard's murder. There were community forums, campus rallies and meetings, city council meetings, and articles in the newspaper about local discrimination against gays and lesbians. Shame and indignation ran through these forums. Banners from windows and business marquees held slogans such as "Hate is not a Laramie value" and "No Hate in Our State" for camera crews and community alike. Protesters and vigil keepers also held signs such as "Wake up, Wyo., hate happens here"

as interventions within the local struggle to understand the crime, and what it meant about the community.

Some of this effort was an effort to disown the crime, to distance Laramie residents from the killers: in essence, a repetition of the way the national press distanced Laramie from the image of the nation. At the same time, something else interesting happened with the shaming discourse. Some people used it as a form of self-reflection and political critique, attempting to open up a space for conversation, self-examination, and even change. Different ways in which this shaming discourse was articulated locally is evident in the letters to the editor of the *Boomerang* in the weeks after Shepard's murder:

What a dire portrait this incident paints of this town and indeed the entire state.

(Seward 1998)

[Our feelings] have grown to revulsion at the savagery and futility of the crime, sadness for the victim and the families of all involved, and embarrassment that it happened here in our hometown. It is truly a sad commentary on us (We The People) that such an act of violence could even occur.

(Gaddis 1998)

Many people feel the tragic event of Shepard's death gives Wyoming a bad name. However, there is one grand way to cure that impression. If our legislature will pass a hate crime bill, we'll be able to show the nation that we in Wyoming are just and good people. Evidence of that is the statewide expression of shock and grief in recent days.

(Wedel 1998)

We who allowed this dreadful deed to happen must share the guilt, in the shame of it. For we did not recognize in the aggressors the potential for violent, unprovoked and repeated aggression...Out of neglect and indifference, we of Laramie and Wyoming have allowed young twisted, damaged children to take the life of another.

(Mueller 1998)

With great sadness I realize Laramie apparently raised two children who, as men, committed a horrible murder and two other willing to hide the murder.

(Dalrymple 1998)

These snippets of public communication, from individuals to the other community members similarly engaged in concern about Shepard's attack and death, parse out responsibility to the community. Some take the opportunity to distance themselves from the community and others engage in a critical self-reflection. Some express these failures in terms of private, domestic lapses while others more expressly focus on public mores and legal structures. They all address neighbors and strangers as a public defined by common attention to and concern about Shepard's murder and the national media discourse surrounding it.

Such local expressions of shame perhaps explain the eagerness to address a broader public and to clear the community's name. While local attempts to speak to a broader public took place in letters to the editor, calls to national radio, and media interviews of all sorts, perhaps the most pervasive and interesting was *The Laramie Project*. The *Project* was a sort of ethnographic drama put together by members of the Tectonic Theater Project. The troupe, several of whom were gay, had an interest in the way dramatic events could encapsulate a broad range of social attitudes about sexuality: their previous project had dramatized the trials of Oscar Wilde with a focus on the articulation of homosexuality and contemporary sexual mores. The media coverage attracted the attention of director Moisés Kaufman, who saw in the events unfolding in Laramie a similar flash point which might illuminate contemporary attitudes about sexuality, class, violence, and privilege (Kaufman 2001). Such was the project he and members of his theater troupe undertook when they traveled to Laramie a month after Shepard's murder. They returned several times in 1998 and 1999, collecting over 200

hours of interviews, which they then worked into a narrative. The story the *Project* told focused not on what happened to Matthew Shepard on the night of October 6, but what happened to Laramie afterwards. The result was one of the most-performed plays of 2000, and eventually an HBO movie and component of a nationally distributed tolerance curriculum.⁸² By focusing on people in Laramie who were not necessarily close to Shepard—some of the key interviewee/characters had never met him—the writers chronicled the trauma of the attack, and of the media attention. The narrative arc into which the playwrights placed the interviews was one in which the trauma of Shepard’s murder and the attention it brought led to introspection about the town’s (the West’s) “live and let live” ethos of tolerance and self-reliance and about what counts as homophobia. The climax of the narrative comes not so much from the eventual trials of the killers but from the transformation of several key individuals who confront and reject their prior attitudes of willed ignorance, disapproval and disparagement toward homosexuality.

The *Project* merits extended consideration both for the way it was discussed and received within Laramie as a chance to redeem the community and erase the mark of shame that had defined it. In talking to representatives of local media outlets, locals discussed the *Project* as a potential chance to set the record straight, for the town to represent itself in a better light. One of the criticisms of the *Project* (as a play, and again as an HBO movie) was that the respondents were not authentic, that their voices were too pat and polished (Pochoda 2000). The criticism that the subjects’ statements were too rehearsed means that the statements were too premeditated: that the subjects were thinking of an audience beyond the interpersonal space of the interview. In a sense, the

⁸² The curriculum was put together as a joint effort between the Southern Poverty Law Center and Time-Warner. In a textbook example of synergy, Time-Warner provided content from its subsidiaries HBO and *Time* magazine.

complaint is that the interviewees were self-consciously addressing a public. The way in which the respondents were addressing a larger public as well as the playwrights is part of what makes the dramatization so interesting for this project. The way that many of the residents addressed the public through *The Laramie Project* was an effort to clear the town's name, to point out that Laramie was like the outside world.

The address to a larger public was accomplished in part through the narrative form of the *Project*. The form also had political implications. The narrative used a self-reflexive documentary form, each character in the performance being either an interviewer or an interviewee. While documentary is the most obvious narrative form, the narrative also owes much to the Western, focusing on the "education" of strangers from the east (Tigner 2002).⁸³ Both the structuring of the Western and the documentary form ask the viewer to identify with (and enter the narrative as) the playwrights. In documentary, the form of exposition and narration invites the audience into the position of the interviewer/documentarian: the position of learning from the subject(s) as well as the position of direct address by the subject(s) (Nichols 1991; Paget 1998). In the Western the viewer is asked to identify with the interloper from the east (Tigner 2002). The lead playwright and director of the HBO movie, Kauffman, said of the *Project* that he hoped that it would help people reflect on their own communities, and consider that any town could be Laramie. Nonetheless, formally the audience is asked to identify with the interviewees, as the ones who have something to learn from the Laramie residents. In the HBO version, the playwrights are vehicles for a conversation between a public and the residents of Laramie. They also serve as vehicles for coming to empathize with the residents of Laramie. The playwrights arrive suspicious and afraid of Laramie and its residents. The playwrights' initial stereotypes and their growing comfort in the town are

⁸³ The news discourse was similarly influenced by the Western genre.

played up in the HBO version. In one early scene, this fear is displayed as a gay male troupe member stiffens when another male member puts his arm around his shoulders, telling him not to touch him in public while they are in Laramie. As the interviews progress, revealing bits about Shepard, his attack, and the impact on the town, the interviewer-characters' worst fears appear to dissipate and they begin to form relationships with some of the interviewee-characters. Different residents at different times repeat the plea to show that Laramie (and its residents) is more than a crime, that it is not filled with hate or bigotry—to lessen the distance between Laramie and “the world.”

The Politics of Shame

The politics of affect have to do with its various products. Within the case of Laramie and shame, the cultural products were diffuse and difficult to catalog. Certain cultural products stand out: the reputed personal and linguistic transformations, events such as conferences and reading groups in which straight neighbors expressed curiosity about and an attempt to better understand their gay neighbors, efforts to raise money to support local gay and lesbian resource and community groups, multiple public performances of self-examination, including *The Laramie Project*. As the most textual outcomes, I have focused on the latter here.

The way that Laramie residents addressed one another via media texts, as members of a public defined by a national discourse of shaming, and the way they addressed the larger national public, showed traces of shame and attempts to recover from it. The way in which community members felt marked or shamed in the national media coverage was tied up within the affinities of race and class with which the “we” of the national public was imagined, and argued. Hence, the expressions of shame were also

complexly tied up in relations of national belonging informed by racial and class affiliation. In order to untangle the politics of shame within the local participation and reception of *The Laramie Project*, it is necessary to think about the relationships within which shame was expressed.

Scholars working from very different traditions have argued that shame is by definition social or interactive: one is always shamed before something or someone else (Ahmed 2004; Nussbaum 2004; Probyn 2005). Shame is described as an interruption of interest (Probyn 2005), a felt defect or imperfection of self (Nussbaum 2004), or the exposure of a failing or incompleteness (Ahmed 2004). It is deeper than embarrassment, which is contextual; in other words, embarrassment is a feeling that something is out of place while shame is a feeling of being bad (Nussbaum 2004; Ahmed 2004). It is more pervasive than guilt, which is tied to specific actions (and therefore can be remedied by reparation); guilt does not imply the same sense of imperfection or finitude of self as does shame (Nussbaum 2004; Probyn 2005). Shame is particularly tied to, and revealing of, interdependence. In this, shame is very social. It is also very political. Ahmed's analysis of national expressions of shame does a nice job of looking at the politics of public (official) expressions of shame. She, like Probyn, is interested in the transformative power of shame: that when people (or even institutions) who exist within hegemonic social positions experience shame for failing to live up to ideals of justice, the intensity and reflexiveness of shame may goad action toward self-transformation. In the case of national shame, the potential is that shame at failing to live up to guiding principles of justice and equity may prompt real change toward those goals. While Ahmed is interested in this potential, she is also wary of the potential for expressions of shame to be a way of feeling good without making change. She argues that when "what is shameful is passed over through the enactment of shame" (2005, p.120) responsibility for what is shameful

is brushed under the carpet by the expression of shame. (Just as saying sorry can “pass over” taking responsibility and go directly to regret and its abstention from responsibility.) While Ahmed is looking at cases of official shame and apology for past atrocities (Australian policy toward Aboriginal peoples, American institutions of slavery, and European practices of colonialism), a number of issues she raises about the expression of collective shame will guide my analysis.

The sociality of shame presumes it is manifest in relationships: Ahmed uses the phrase “shame before others” to express this relational characteristic. In addition, shame, all the authors surveyed here suggest, only makes sense in relation to an object of desire or admiration. People feel shame about failing to meet a desired standard, but not about failure to meet a despised one. The first question about the politics of shame, therefore, is who or what this object is. In the cases Ahmed cites above, this other is the national ideal (founded on principles of equity, justice).⁸⁴ The second question is of the political products of shame. What cultural or structural implications does a given public expression of shame have? For Ahmed, shame becomes interesting as a public emotion when it becomes a normative or culturally expected response associated with an event or issue. Such exhortations to feel shame have more politically productive (transformative) potential, according to Ahmed, when they keep a mindful and living relation with the reason for that shame. Ahmed is wary of public expressions of shame that become fixated on the expression of shame, suggesting that the political product is one of feeling good for hegemonic populations more than reflection and change.

The way in which shame was expressed as before the rest of the world, or the outside world, can also be read as an expression of desire for the classed, raced and gendered public constructed in the national media. The display of the nation offered in

⁸⁴ This produces a bit of a narcissistic turn in the national expression of shame.

the national media, as I argued in the first section, was not necessarily representative, but invoked a public defined through proximities of class, race, gender and sexual identity. The national media coverage had addressed a public of tolerant, white, upper-class citizens. It had addressed them as good, right-thinking citizens. Some of the national media, and a number of individual letter-writers, had contrasted the right-thinking citizens of the national public with the backward citizens of Laramie.

The media coverage asked residents to see the crime as a barometer of local political values and civic identity. Shepard's attack and death came to speak about the community in a way that other recent murders had not. The nature and extent of the public displays of mourning for Shepard had to do with shock and horror at the crime, but also with the national spotlight. The shame residents expressed in public was not simply shame before other community members, but also before a national public. As many disgruntled residents noted, similar articulations and displays had not been made for other recent, brutal killings which received much less media attention. One year earlier, Daphne Sulk, 15, had been stabbed 17 times and her body dumped in the snow and Christian Lamb's 7-year-old body was found in a dumpster in Powell, WY, in July; she had been sexually assaulted before she was killed. These murders were, as the disgruntled pointed out, also brutal and sensational. People cared about these killings, and the victims. For many, these murders (especially Sulk's), their investigations and outcomes spoke disappointingly about gender and the politics of class and influence in Wyoming. Yet people did not protest, mourn, or express shame as publicly or as loudly as they did for Shepard.⁸⁵ These murders did not instigate the same public expressions of shame, and

⁸⁵ Sulk's murder did not occasion as much public discourse at the time of her death. The more private and informal discussion of her murder that I have been privy to has not focused on shame as much as outrage. In these conversations, the outraged parties do not bear the burden of membership or responsibility for what could be shameful about her death (the responsibility is more often at the feet of opportunistic or sexist officials).

soul-searching about the rates of and attitudes toward violence against women or about the local justice system's ability to serve citizens with less means. Sulk's case was hardly covered even in the local paper (Trebay 1998). Neither Sulk nor Lamb was affluent; Sulk was described as a runaway from her run-down (and reportedly unheated) trailer home and as sleeping with several older men before her murder; her killer was convicted of voluntary manslaughter (*Robinson v. State* 2000). There were no organized expressions of public outrage at the time of her killing or the conviction of her boyfriend/killer.

In the case of Shepard's death, Laramie and Wyoming were in a way publicly shamed. No one publicly and from a position of power blamed Laramie or Powell for the deaths of Sulk and Lamb.⁸⁶ In Shepard's murder, however, Laramie was held up as a lesson, as a cultural oddity or throwback, the subject of talk and speculation on the nightly news. The local culture had been stereotyped and used as a foil for defining the tolerant (right-thinking) public, positioned as outside the ideal or even norm of citizenship. This ideal, however, is shared by many Laramie residents. Hence, the expressions of shame that focus on how Laramie failed to live up to these ideals: to raise good citizens, to embody the ideals of liberal tolerance. The latter was particularly fraught, as the "live and let live" form of liberal tolerance is key to regional identity, as well as national identity. I noted earlier that shame is particularly social, and manifests itself in relation to others. The way in which people spoke to one another in letters to the editor, and to a larger public through *The Laramie Project*, speaks of a shame before the nation, or, as so many people put it, before "the outside world." While the conversations in the *Project* may have enabled relationships or at least conversations between gay community members and hostile straight community members, much of its local

⁸⁶ Though since, right-wing religious and anti-abortion groups have blamed pro-choice liberalism for Sulk's murder. See, for example <http://www.pregnantpause.org/abort/hostet.htm> and <http://www.afterabortion.info/PAR/V8/n1/coercedabortions.html>.

importance was not in any internal relationships sketched by the *Project*, but in the relationships between Laramie and a national public at least partly defined in terms of class and race.

The relation between local identity and a larger public can be seen in some local reactions to the *Project*. The positive public reaction to the *Project* in Laramie revolved around restored civic pride, before a national audience. The news coverage had left many people feeling that they had been portrayed as “rednecks” or “hicks” and the MTV movie about the murder was met with local dismay for its unfavorable depiction of Laramie and mis-representations of the investigation (Edwards 2001). But local reaction to the *Project* was more often one of pride. The local paper printed excerpts of reviews of the Denver premiere of the play written by Laramie high school journalism students; the students noted that the play restored dignity to Laramie and made them feel proud to live there. One noted favorably that the *Project* portrayed Laramie as a “normal” small town just like any other; another was happy to see Laramie portrayed as a community in which people felt safe (*Boomerang* 2000). Expressions of pride had to do with the way that Laramie was being represented to others: socially speaking, pride is available through a public alignment of the self with a collective ideal (Ahmed 2004). What this collective ideal was is suggested by the role of normalcy in the reception. The interest in being normal is an interest in being like the America Laramie had symbolically been separated from in the mainstream media discourse. At least some of the positive local reception of the *Project* had to do with the desire to be able to be like (or be a member of) the public addressed by the national media: not only “right-thinking” Americans but also to be able to fully inhabit discourses of whiteness, class, and culture/education.

Perhaps part of the reason that *The Laramie Project* was well-received was the way that the distribution of the project addressed a broad public of right-thinking people

and allowed local residents to show that they, too, were decent, thoughtful people. As a play, it was performed before audiences in cities across the U.S. (and beyond, in Japan, the UK, and Australia). As an HBO movie, it was exhibited as part of the network's upscale "quality TV" programming, and out to schools across the nation as part of a tolerance curriculum put together by tolerance.org and Time-Warner. Expressions of pride at the representation have to do with the content of the *Project* (how Laramie residents were positioned as "normal") but also its address and circulation. It was directed at the same public that the earlier discourse locating shame and responsibility in Laramie had been (one imagined as upscale, white, cosmopolitan, and largely straight), but rather than engaging in shaming and othering, the invitation was to understand (if not to identify with) Laramie residents, to see their trauma. In this, Laramie residents were represented as traumatized rather than traumatizers—the experiences of people in Laramie were positioned as the vehicle for broader entry into and discussion of the crime and its trauma.

In the *Project*, Laramie was positioned as a "microcosm" of the U.S. (the term used by multiple reviews of the play, and by the HBO marketing department). But even within the population of Laramie, the interviewees featured in the narrative represented some parts of the community more than others. Speakers from the poorer, rural, and conservative members of the community received less prominent places than did professionals, university students and professors. A young Muslim woman of Middle-Eastern descent stood in for the ethnic diversity of Laramie; her words on the difficulty of facing some of the implications of Shepard's murder provide the epitaph to this chapter. No residents of poor, predominantly Latino neighborhoods were included. In Laramie, the crime instigated improved coordination and cooperation between the campus LGBT and multicultural groups and opened up a number of conversations about local patterns of

ethnic and class prejudice and discrimination, at least within university circles (Loffreda 2001; Trebay 1998), though this was not a focal point of the narrative. Given the exclusion of segments of the Laramie population, the “microcosm” presented is somewhat limited, both in terms of Laramie and in terms of the larger nation it is supposed to stand in for. The *Project* was addressed to a similar sub-set of the nation as the mainstream news coverage had been: what might be termed an elite audience. The Tectonic Theater members came to Laramie from Manhattan and composed a narrative for audiences in Manhattan and other major cities. In a sense, the interviewees spoke to an imagined construct of “the nation” via Manhattan.⁸⁷ While some residents jumped at the chance to speak back to this nation, not all felt interested in or addressed by the *Project*. One of the most vocal conservative local voices, speaking out frequently in the *Boomerang*’s editorial pages against those who wanted to make the community a more gay-friendly place, bragged that he had refused to be interviewed for the *Project*. The playwrights may have had a hard time getting access to other conservatives who reject liberal pluralist visions of the nation. Perhaps an indication of the demographics of interest within Laramie, when the exteriors for the HBO movie were filmed in Laramie, the crew found a plethora of young people (especially students) interested in being extras, but found ranchers, older extras, and others in short supply.

HBO banked on the assumption that those who felt interested in and addressed by the *Project* overlapped with the audience of their own “quality” programming when it contracted Tectonic director Moisés Kaufman to direct the movie version and to employ a full house of Hollywood stars in the leading roles. The stars lined up for the show for the most part shared an alignment with arty and independent film (and high-end TV such

⁸⁷ The play debuted in Denver, not Laramie, and then traveled to New York and other urban centers. It in fact took some time and an explicit invitation for the play to come to Laramie.

as *The Practice*), and consequent appeal to a particular (highbrow) audience.⁸⁸ HBO carefully positioned the debut of the movie, pre-screening it at four university campuses: UT Austin, NYU, University of South Florida at Tampa, and UCLA. The different screening locations cut a broad geographical swath, arguing the national scope/interest of the HBO movie. The screenings, at which HBO tried to organize (and film) discussions of diversity, doubled as political encounters/discussions and promotional material for the *Project* as, in the words of actress Clea Duvall, “important work” (*The Laramie Project* 2002). The importance of the work was not only measured by public involvement in the immediate political issues of gay rights and anti-gay discrimination in America, but also in the economic logic of the movie’s appeal to liberal upper-class audiences.

Ahmed warns against the possibility that feeling good may replace concerns with justice in public expressions of shame. The local engagement with *The Laramie Project*, particularly the way some locals felt it offered pat closure on the episode, seems to suggest a feel-good redemption, conservative in its ability to let things stand through and after such trauma.⁸⁹ At the same time, both the narrative and local reactions also kept alive a relation to Shepard’s murder and the civic soul-searching it initiated. The conclusion of the narrative juxtaposes a scene from a locally staged production of *Angles in America* (a soliloquy in which a main character asserts gay citizenship) with the commentary of a gay rancher who judges that the town has not really changed through the ordeal, noting that no discriminatory laws or policies have changed and that no anti-discrimination laws have been passed. Similarly, a Catholic priest interviewed in the local paper spoke of the *Project* as a reminder of work in progress.

⁸⁸ Peter Fonda, Janeane Garofalo, Steve Buscemi, Christina Ricci, Dylan Baker, Laura Linney, Camryn Manheim, and Clea Duvall are among the stars who appear in the movie.

⁸⁹ Baglia and Foster (2002) argue a similar reaction in more geographically distant audiences, expressing concern that the *Project’s* ethnodramatic claim on the real and the very employment of the narrative may do more to congratulate audiences on their liberalism and tolerance than to ask the hard questions about the very “normalcy” of homophobia.

CONCLUSION

The ways that shame circulated as shame before the nation did result in individual reflection, transformation for some straight residents for whom liberal-democratic ideals of pluralism were an object of desire or identification. Straight residents who had not previously been aware of (or, for some, particularly interested in) Laramie's gay community reported feeling moved to monitor their modes of expression to avoid anti-gay pejoratives, initiating cultural activities to bring together gay and straight community members, cutting off some friendships, and initiating new ones (Loffreda 2000; *Advocate* 2003). Not all of these changes can be directly attributed to feelings of shame, but many of the cultural changes that took place in Laramie were difficult ones that generally do not take place without peer consensus and pressure. The strong current of public shame, both internal expressions and the shaming discourse from people outside Laramie looking in, produced spaces for (even at times the expectation of) intense evaluation of how well individual and communal habits lived up to regional, national, and cultural ideals of civic membership. Particularly for residents who considered themselves as tolerant and as like the America addressed by the national news media, expressions revolving around shame (and attempts to recover lost civic pride) were ways of belonging to this American public. In arguing that shame was a way of expressing civic virtue, repentance, and investment in common civic values (cosmopolitanism, tolerance), it is important to note that this was not the case for the entire community. Not everyone wanted to be considered part of the public addressed by national media. For some, Wyoming was what America should be and the discourse in the national media was unappealing, wrong-headed left-wing thinking. Religious, cultural, and moral convictions about the rightness of normative heterosexuality and the wrongness of homosexuality and other departures from this norm trumped any appeals to liberalism and tolerance as core American values for this group.

The argument that for those who identified with the national public, and were discursively excluded from this public through Shepard's murder, shame worked as a way of performing a particular political identity and membership defined in part by cultural capital, race, and class is not to say that this process was cynical or opportunistic. I have tried to trace some of the promising indices of cultural change that at the local level (the murder and its affective aftermath have left a much stronger mark on local culture than on national culture, though Shepard's name and image still echo through national discourse), though such changes are difficult to pin down and catalog. The desire for membership, problematic as the boundaries on that membership were, spurred critique and reform on the personal and cultural level. In the next chapter, I look to the institutional and political level of this struggle. I look at how public feelings/performances of shame worked in relationship to political and policy decisions regarding the adoption of a local "bias crime" ordinance.

Chapter 4

***“Hate is not a Laramie Value”*: Articulating Civic Identity Through Law**

...we had this intense national lens on Laramie, this hate crime. And here's this very innocuous ordinance for which we had already made a compromise. If you can't pass it all this language about being a caring community, all of this “this isn't us” stuff simply becomes sort of hypocritical. You know, wait a minute, I mean if this really isn't us how come you couldn't pull off something as simple and as innocuous as this small element of penalty enhancement.

-Jeff Lockwood⁹⁰

In the last chapter, I traced the circulation/workings of attachment, identification, and shame in a slice of the national and local discourse about the beating and death of Matthew Shepard. In this chapter, I take this one step forward: to look at the structural products of this discourse. While there were many reactions to Shepard's death and the national press—and shaming—that followed, from the football team's participation in rituals of mourning to the founding of a community diversity task force, perhaps the most easily recognizable as structural change was the passage of a bias crimes ordinance by the Laramie City Council. It was certainly the most publicly debated, documented, and fractious of these responses, and the central concern of this chapter. In this chapter I locate the story of the bias crimes measure in the context of national political discourse and in the context of memory and shame.

The final version of the Bias Crimes Reporting Ordinance debated in the City Council was primarily concerned with data collection and police training. The story of the public debate over, and current memories of, the passage of the ordinance show that

⁹⁰ Interview with author; see reference for Lockwood (2005).

this ordinance was deeply enmeshed in the discourse of shame traced in the last chapter. To this effect, I show how the debate was concerned not only with the letter of the law, but with what the law might say about Laramie, both to outsiders and to residents. As a response to the national discourse and to disruptions in civic self-image, I argue the city ordinance was a structural product of shame. This means that the law was as concerned with the affective relationships of desire and aversion that pull people together and apart, constitute them in agonistic community, as with the jurisdiction and content of the actual ordinance. It means as well that the law was a continuing response to the national discourse surrounding Matthew Shepard's death, which I documented in the last chapter. The way the ordinance was discussed, both in the immediate discourse and later, reconstructed in the memories of those involved, suggested the law functioned locally as a referendum on the memory of Matthew Shepard's death and on the character of the community, a response to what I described as the dynamics of shame in the last chapter.

In researching this chapter, I use as evidence letters to the editor of the *Laramie Boomerang*, the minutes of City Council meetings at which the ordinance was discussed, and interviews with some of the actors most involved in the discussion and passage of the ordinance. I interviewed six out of the nine Council members at the time of the measure—of the missing three, one former Councilman had died, one had left town (and I could not track him down), and one did not return my phone calls—as well as four of the most prominent advocates for the measure. Three advocates, Jeff Lockwood, Jeanne Hurd, and Bern Haggerty, were central to the proposal of the hate crimes measure: Haggerty authored the measure and Lockwood and Hurd were instrumental in organizing and strategizing to pass the measure. The other, Rev. Sally Palmer, was a strong advocate of the measure in City Council meetings. Upon the suggestion of several of my interviewees, I also did a short interview with Dave O'Malley, a police officer at the time

of Matthew Shepard's death, a former police chief, and currently a City Council member and sometimes Human Rights Campaign lobbyist, about the impact of the ordinance upon local procedure and politics. The responses of these individuals, selected for their central roles in the process and their impact on the passage of the ordinance, comprise my interview data.

Analysis of these documents shows both that the work of the law was deeply involved in debates over the nature and future of the community and the place of sexuality (hetero and homo) in it. It was also part of an attempt to speak to and perform belonging in a national public, to refute the label of rednecks and inhabit more desirable class and cultural position. As such, the law was as much about defining an official memory of a disputed event (the murder of Matthew Shepard) and performing civic/political identity as about the procedures and principles involved—or what actually happened. In the last chapter, I suggested that, among other things, the violent death of Matthew Shepard and the national public discourse on it was traumatic in the way it challenged local ideas of safety and tolerance. In particular, the national discourse on Laramie as a site of regressive (anti-modern) social mores and inequality—as “other” to the modern national liberal tolerant public—produced what I termed a local discourse of shame. There were many responses that attempted to respond to this, reconstitute Laramie as a good place, or as a better place, having learned from the violent encounter. The bias crimes ordinance was one of these responses, an attempt to re-vision the community as a decent and normal place.

In what follows I first examine the public records of the debate, sketching the way in which the law was discussed as a form of community representation. The prevalence of concerns about what kind of public message the law sent about Laramie highlights the fact that the discussion over the law was a referendum on the boundaries and norms of

the community. In the second section, I look at how the law was remembered by those closely involved in its passage. Here, I focus on how the meaning and significance the law took on after its passage, how it was constructed as in terms of civic progress.

THE LAW AS DOCUMENT, THE LAW AS MEMORY: POSITIONING LEGAL ANALYSIS

The move to the law as a site of response and reparation was both located at a very particular moment in politics and history and deeply entwined in the need to exorcise the shadow cast by Matthew Shepard's death. Before I address the latter, some attention to the historical moment is relevant: it provides part of the context of the rush to legislate. The proposal of the law was a direct response to the national discussion of the murder as a hate crime. The murder was immediately and repeatedly framed as a hate crime in the nightly news and, less explicitly, in the daily papers.⁹¹ The nightly TV news covered the story under giant banners denoting "Hate Crime;" the stories segued from Matthew Shepard's story into statistics on which states had hate crimes laws, describing a rise in anti-gay hate crimes in the 90s, and defining hate crimes. The print news was less attached to the label of hate crime, but the attack was from day one figured as motivated by homophobia, simply understood. In all the news coverage, the question of whether a hate crimes law would have prevented the attack, or provided a better response to the attack was central. Particularly the TV news discourse, in its juxtaposition of the coverage of the murder with the fact that Wyoming had no hate crimes law, placed the attack within a context of legal causality and remedy. Just as many locals wanted to

⁹¹ This news label was, in fact, how most of my interviewees (at least the ones who accepted the designation) reported knowing that the murder was a hate crime.

understand the crime as simply a “robbery gone wrong” many news outlets wanted to document the attack as an anonymous gay bashing motivated by murderous rage.⁹²

This designation was located at a particular historical and political moment. Not only was Shepard attacked almost four months to the day after James Byrd, Jr.’s murder ignited a national discussion on hate crimes, but at a moment of national political discussions on sexuality and hate crimes. Conservative leaders had been vocally promoting anti-gay politics and policy the summer and fall before Matthew Shepard was killed. The preceding June, then- Senate majority leader Trent Lott prominently called homosexuality a “sickness” akin to alcoholism, sex addiction, and kleptomania in its pathology and curability; this comment was defended by then-House leader Dick Armey. The month Matthew Shepard was attacked, a national ad campaign denouncing homosexuality through “ex-gay” spokespeople debuted on TV.⁹³ On the other side of the aisle, then-president Bill Clinton had, in 1997, backed a call to expand federal hate crimes laws to cover attacks based on sexual orientation (in the form of the proposed “Hate Crimes Prevention Act”); immediately after Matthew Shepard’s death, Clinton linked the murder to the need to pass the legislation (Clinton 1998).

These national political debates were influential in shaping the national news coverage and discourse surrounding the murder of Matthew Shepard. Within this context, the discussion of the murder as a hate crime in national discourse placed it within a legal

⁹² It seems a more nuanced story can be told about the crime as a hate crime in looking at how the killers seemed to assume either impunity or leniency would stem from Shepard’s sexuality: whether they chose to beat him because he was gay, they thought the fact that he was gay would keep them from getting in too much trouble.

⁹³ The campaign followed a similar national print ad campaign over the summer. Both campaigns were sponsored by a consortium of conservative groups including: Alliance for Traditional Marriage - Hawaii, American Family Association, Americans for Truth About Homosexuality, Center for Reclaiming America, Christian Family Network, Christian Coalition, Citizens for Community Values, Colorado for Family Values, Concerned Women for America, Coral Ridge Ministries, Exodus International, Family First, Family Research Council, Focus on the Family, Kerusso Ministries, Liberty Counsel, Mission America, and National Legal Foundation (OCRT 2002).

framework from day one. This discourse both articulated the attack as a failure of liberal (and civil rights) goals and shaped the possible responses. The move to a legal response was embedded in the labeling of hate crime, with its connection to legal remedies, as well as in the broader national political discourse on hate crimes laws going on at the time.

Background: The Proposal and Passage of the Ordinance

In the months after Shepard's discovery and death, there was much talk about the extent of bias in the community and the safety of the community for its minority residents (while the focus was often on gay residents, the discussion spilled over quite frequently into issues of racial and ethnic minorities). The impulse to show that Laramie was just like the rest of the world, as discussed in the previous chapter, was accompanied by an impulse to recognize that something was wrong and that there was a need to respond in some way. Some of the immediate responses were calls for a state and/or a local hate crimes law.

At the state level, advocates for hate crimes laws pressed the Wyoming Legislature to consider a hate crimes bill. Similar hate crimes bills had been proposed in the legislature and hastily defeated in the years before Matthew Shepard's death. In the wake of the murder, supporters hoped the national attention the murder had garnered might push the legislature to pass a similar bill in the 1999 session. The hate crimes bill introduced that session did receive more support and discussion than had earlier proposals of similar bills, but was ultimately defeated.

At the local level, as well, suggestions that the city might pass a hate crimes bill emerged soon after Matthew Shepard's death, though a long and contentious time passed before it was passed. The day after Shepard's death, in what was at least perceived

locally to have been a closed session,⁹⁴ the Laramie City Council endorsed a non-binding “Resolution of Sympathy for the Death of Matthew Shepard and Declaring Support for the Laramie Community.” A small group of community members were upset by what they saw as an attempt to dodge public discussion and scrutiny on the part of the Council and began to attend meetings, requesting a public forum on how city government ought to respond to the murder and requesting that the city propose a local hate crimes ordinance – or take a position on the proposed state law. The Council continued to defer discussion of hate crimes measures and, tired of waiting for action, in early 1999 a collection of local activists drew up their own proposed ordinance, labeled a bias crimes ordinance. The ordinance would have 1.) defined bias crimes, created stiffer penalties for crimes defined as bias crimes as a manifestation of prejudice based on perceptions of race, religion, national origin, age, ancestry, gender, sexual orientation, or disability; 2.) established provisions for increasing penalties for crimes motivated by bias; 3.) created opportunities to file civil cases in bias crimes; 4.) allowed the city or an individual to file an injunction to stop an ongoing bias crime; and 5.) required the police train officers on how to handle bias crimes as well as track and publicly report the number of bias crimes each year (City Manager’s Office 1999). Bias crimes ordinance advocates sat in on Council meetings to repeatedly demand the issue be considered, taking up an hour of the Council meeting on several occasions (Laramie Coalition 1999) until a Council member agreed to work with the group to place the ordinance on the Council agenda—with the caveat that it would be after the trials of Henderson and McKinney (and the attendant media coverage) were concluded.

⁹⁴ The meeting had been announced as a working session shortly before it was held (Haggerty 2001). There were numerous angry letters to the local paper protesting the “closed session” and the exclusion of public contributions to the resolution—or discussion on implementing something more than a resolution.

In this year-long wait, the measure went through a series of compromises. In order to get it on the agenda, all but the reporting and training requirements were removed from the proposal (Haggerty 2001). The bias crimes ordinance (city ordinance #1506) that was placed upon the agenda for a first reading at the March 21, 2001, City Council meeting contained only two of the original provisions: mandatory training for police officers in dealing with and investigating bias crimes and mandatory compilation and public reporting of bias crime statistics. The ordinance was read three times over the course of the next three months eventually passing each reading by a narrow margin. The ordinance was read and passionately discussed at City Council meetings on March 21, April 4, and became law by a 5-4 vote on May 2.⁹⁵ During this time, a debate raged in the City Council, the editorial pages of the Boomerang, as well as in more private, interpersonal spaces (Lockwood 2005).

A “Feel-Good Law”: The Cultural Workings of Law

There were, as mentioned above, other forms of response to the murder, and the shadow its designation as a hate crime cast. Yet the legal response was the one that people turned to as really “doing something,” noting concrete change.⁹⁶ At the same time, the law was characterized as largely a “feel-good” law: in both the discussions at the time of the ordinance’s passage and in my interviews, people emphasized how little the law did (how little it required of the city). This central contradiction between the recognition that the law did not do much in legal terms and the way in which my interviewees

⁹⁵ The ordinance was discussed briefly on April 18, and a third reading postponed due to the absence of several Council members (who represented swing votes).

⁹⁶ Even the ending of *The Laramie Project* forwarded this notion: in the final scenes, the question of whether Laramie has “really” changed is posed through a gay rancher’s musings that the city had not passed “one law” to deal with anti-gay discrimination. This ending replaced an earlier, more optimistic one at the urging of local residents working with the playwrights (Lockwood 2005).

returned again and again to the ordinance as having really “done something” to make Laramie a better, stronger community is perhaps the most compelling evidence that the main work of the law in this case was not strictly juridical. The heat in the debate did not come from the letter of the law, but from the way the law spoke about what had happened to Matthew Shepard (confirming or denying the national discourse) and how Laramie should view itself normatively in the future (how the community would be defined, who were the citizens to which the city owed duty).

In this, the law was associated with cultural politics and memory. While the ordinance did not carry the literal aspect of memorialization written into its text that the James Byrd Jr. Anti-Hate Crime Act did—in fact, the City Council was careful to keep such overt connections to Matthew Shepard, and by proxy homosexuality, out of the text and framing of the law—for many of its advocates it was a memorial of sorts. And for the lawmakers and activists that I interviewed, remembering the law was also bound up in projections and constructions of self and civic identity. The recollections of the discussion that surrounded the law and its passage converged in their use of the law as evidence of what kind of place Laramie was, and of the respondent’s political identity.

Some of the most interesting moments that arose in my interviews with those who were on City Council at the time the ordinance was discussed and passed were the places where personal memory jarred with historical record, either expressing a knowledge resistant to national discourse on and framing of the murder (the respondents who told me how the crime “really” was a robbery) or illuminating a personal interpretation (for example, the respondent who remembered the vote for the ordinance as being unanimous). While I am focusing on the way the legal debates and passage struggled over collective and the “official” memory of both the crime and the city, such individual memories will come into play. My interview data are constructions of the events from

memory, and as such, provide both extra information about what happened and information about the interpretations of past events. Accordingly, the interview statements I use here provide evidence of past events and relationships, and often also evidence of current constructions of political and civic identity.

I want to locate these interviews within an understanding of the purview of law as broader than simple crime and punishment. The social and cultural functions of the law were famously explored by Emile Durkheim. Durkheim (1984) identified two types of social solidarity: mechanical and organic. Mechanical cohesion, associated with traditional society (and criminal law), is identifiable when legal punishment works as a collective exercise of expulsion and the re-assertion of common moral sentiment (this is associated with traditional society because of its reliance on common sentiment, which is attenuated in modern society). Organic cohesion, associated with modern society (and civil law), is identifiable when punishment is aimed at restoring the norm or putting things back to what they were before the offense. The mechanical cohesion of highly emotional responses to criminal offenses (such as murder) is, in Durkheim's model, a sign of pre-existing shared sentiment—a set of social relationships based upon a strong sense of collective identity and similarity with neighbors. What happened in Laramie after Matthew Shepard's death illuminates both the continuing importance of the law in constituting social solidarity in something like the mechanical mode posited by Durkheim. Yet, the very agonistics and debate over the bias crimes ordinance troubles the idea that such solidarity only arises out of homogeneous social and ideological bodies. Laramie was, in the wake of Matthew Shepard's murder, a fractured community. People and institutions split over whether to condemn the crime as a hate crime or to condemn the imposition of outside labels upon a local crime by the "liberal media."⁹⁷ In what

⁹⁷ As well, in demographic and symbolic terms, Laramie is not a particularly cohesive or homogeneous small town. The town-and-gown divide is manifest in Laramie as an outsider-insider divide between long-

follows, I trace how the strong emotional reaction to Matthew Shepard's murder and the ensuing media attention prompted reflection on and a debate about community norms and definition.

REPRESENTING LARAMIE THROUGH THE LAW: THE DEBATE OVER THE BIAS CRIMES ORDINANCE

The ordinance may have functioned in many ways as a memorialization of Matthew Shepard's death and the discourse around it; the very move to memorialize was a response to what I have termed the shaming discourse. The debate that surrounded the ordinance was a debate over which (that is to say, whose) memory of Matthew Shepard's death would be the official local memory, and along with this how the boundaries of the community would be drawn, what performances of feeling would be considered evidence of good citizenship. The argumentations on each side were wrapped up in differing reactions to the media coverage (shame or indifference or rejection) as well as in different ideas about the character and boundaries of the community. The way the law was discussed in terms of making a statement or otherwise intervening in Laramie's image were part of a debate on where Laramie should be on the national cultural and political landscape. The fears opponents expressed about the creation of "special classes" of people and special treatment demonstrate a concern over shifting boundaries and images of community and community norms. Both themes in the discussion were, at least in part, reactions to the national discourse of exclusion and shaming.

While the debate over the ordinance was clearly part of a discussion of how Laramie would continue to respond to the national discourse, it was also in some ways

time residents (often born in Wyoming) and University faculty and staff, often recruited from out of state. The insider long-term residents profess to traditionalism, while University faculty often profess more cosmopolitan identifications and lifestyles. This distinction is often messier than the idea of a town-gown divide suggests.

simply politics as usual. I don't want to suggest that the only things going on in the debate were reactions to media coverage and attitudes about homosexuality (and, as discussed below, race and ethnicity). These were present at every moment, but so was the background of Laramie—and, more broadly, Wyoming—politics. Much of the debate followed well-worn patterns of libertarian arguments against state intervention versus progressive arguments for support of the public good. Some of the major arguments against the bias crimes ordinance were the same as those used against other contentious local issues, such as proposed leash law and the (recently passed) smoking ordinance in Laramie: concerns that the ordinance went beyond the jurisdiction of the city or were the first step down a “slippery slope” into an Orwellian nightmare of thought policing. One of my interview respondents gave as a typical example of this form of reasoning: “You know, you guys up there in this Council pass this, then the next thing you know you want to put a leash on my horse, you know, so on and so on. They argue against anything on the basis that, you know, it'll snowball and so on” (Meyer 2005). This general libertarian sentiment was a factor in the state decision not to pass a state hate crime ordinance. In my interviews, several progressive activists reminded me that Wyoming politics tended to be even-handedly libertarian: that even though there was a fair amount of overt homophobia in the legislature, lawmakers' libertarianism kept them from being trying to pass overtly anti-gay laws, such as laws that outlaw same-sex sex and marriage.⁹⁸

Making a Statement

The issue of how the ordinance and its discussion represented Laramie was a central issue from the start. When local activists, calling themselves the Laramie

⁹⁸ Wyoming repealed its sodomy laws (laws which are often used, or interpreted, as a way of criminalizing same-sex sexual activity) in 1977.

Coalition, sent a letter to the editor and Council in January 1999 outlining why the city should consider a bias crimes ordinance, they laid out what they considered the most compelling arguments for doing so. Issues of Laramie's reputation and image were prominent in these arguments. The letter (which advocated the original, more ambitious proposed bias ordinance) argued first the need to have city measures to deal with misdemeanor bias crimes not covered by state law.⁹⁹ The letter used as example what had become a piece of notorious anti-gay graffiti. In 1993, a sign by the highway inviting tourists to "Shoot a Day or Two" in Laramie¹⁰⁰ had been altered with spray paint to read "Shoot a Gay or Two." A gay former resident complained about this and, after there was no official action, took up a can of spray paint to blot out the word "gay." Shortly after Matt Shepard's death, this story was circulated nationally by *The New York Times*, a part of the discourse that residents thought painted a picture of Laramie as a homophobic, illiberal cowboy heaven. The Coalition argued that the ordinance would, in the future, provide tools to treat misdemeanors like this seriously. Second, they argued that bias crimes tended to manifest in attacks by groups on individuals and tended to beget violence in return, using the beating of Rodney King and "retaliatory" beating of white truck driver Reginald Denny as illustration. Finally, they argued that the ordinance gave Laramie a chance to refute its reputation as a "hateful, inhospitable" place and a chance to make life in Laramie more livable for all.

⁹⁹ As I'll discuss further below, one of the most common negative or dismissive comments by former City Council members regarding the ordinance was that it was inconsequential because the city did not have jurisdiction over the sort of crimes they associated with bias crimes.

¹⁰⁰ The sign intended to encourage people to stop by at the recently revamped historical Territorial Prison, which plays up the Wild West image with exhibits on some of its more famous former residents, such as Butch Cassidy and Calamity Jane, as well as exhibits on everyday life in the prison and West circa the 1880s. The restoration of the penitentiary was part of an attempt by Laramie to increase the city's share of state tourism funds by creating local tourist destinations. (Tourism is the top industry in Wyoming, over coal and natural gas.)

The letter is interesting in the rhetorical strategies it uses to present the ordinance, relying implicitly quite heavily on appeals to concern over public image and to comparisons with issues of racial tension and struggles for equality. While the first reason given has to do with the need for a mechanism to treat hate- or bias-related misdemeanors more seriously than other misdemeanors, the example given was of a graffito that had been referenced (in three different *New York Times* articles) as a smoking gun pointing to the violently homophobic character of Laramie. While the public image of Laramie was listed as the last reason, it was in fact invoked in the first. And the use of recent examples of black and white racial tensions and violence in the King and Denny beatings not only (oddly) suggested the possibility of retaliatory violence if no action was taken but also invoked the legitimacy of civil rights social action and laws in forwarding the local bias crimes measure. The construction of a parallel between civil rights struggles and gay rights struggles was also present in the national discourse (in the comparisons of Matthew Shepard to Emmett Till and James Byrd and in the use of the term “lynching” mentioned in the last chapter). Here, the rhetorical effect is to argue that Matthew Shepard’s beating was in fact a civil rights issue—and, in turn, to refuse to discuss and pass the bias crimes ordinance was a refutation of civil rights goals and politics. Both Laramie’s image and the connection of the bias crimes measure (if not Matthew Shepard’s beating) to racial inequities and bias became focal nodes for the public discussion that surrounded the measure.

This appeal referenced the various ideas about Laramie in the national discourse and implicitly referenced the undesired reputation of bigotry. This was true of the discussion that followed over whether or not to adopt a city bias crimes ordinance. The letters to the editor and the minutes of the City Council meetings are full of talk about what sort of message Laramie was sending “the world” and whether or not this was

important. Continuing expressions of shame were linked up with proposals for atonement, self-reflection, and improvement in these exchanges. One letter to the editor, bemoaning the inadequacy of the bias crimes ordinance, expressed this in a particularly evocative way:

If we had passed a timely misdemeanor law, we would have become a “city on a hill.” Now, thanks to the usual guile and inertia, we look like one of those devil towns featured on *Twilight Zone*. We missed the brass ring because we were blinded by right-wing notions and religious bigotry.

(Hanks 2000, p.4)

More is at stake here than the content of the bias crimes reporting ordinance. The connection between Laramie and a *Twilight Zone* “devil town” is a statement about Laramie’s place in the national culture and imagination. It suggests marginalization, a sort of freak-show status, which the author accuses local politicians of bringing upon the community. However, in the letter’s concern with the relation of Laramie to the rest of the nation (as a freak show for the spectatorial nation or as a shining example), it is also a response to the national discourse. In endorsing the need to change, the author accepts the label of hate crime and the shame that attended this. The failure to meet liberal ideals (those foundational political ideals that define both left and right political visions in the U.S.) was shameful enough, and now the author suggests there is a greater shame in local politicians’ reticence to take action, or even consider a more robust bias crimes ordinance.

In examples similar to this letter, the ordinance was discussed in terms of connection to or disconnection from the broader national culture. If Laramie had been in some ways excluded from the (virtuous, liberal) national public formed around Matthew Shepard’s death in the press coverage, the ordinance appeared to some to be a way of reconnecting with that national culture. In a way, concern for and investment in the bias

crimes measure appeared as a way of “mainstreaming” Laramie, linking local politics to current debates in the larger public sphere.

In other statements, the discussion of the ordinance linked Laramie to the broader public of Matthew Shepard’s death through proving caring, showing that Laramie was mourning with the nation. Laramie had been represented as out of synch, out of time, out of feeling with the nation, and in particular with the liberal public that formed around Matthew Shepard’s death. Discussion of the law as a statement of caring was a way of connecting Laramie with what were seen as nationally normative responses to Shepard’s death. Caring was a central term for connection, from the exhortation of Rev. Palmer (and similar appeals from a Catholic priest) for the Council to take the “opportunity to show that Laramie notices and cares about everyone” (Laramie City Council 2000b, p.10, p.10) to the urging from UW president Phil Dubois for the Council to pass the ordinance in order to “affirm, in the wake of the murder of Matthew Shepard, that this community cares about what happened here and that we are committed in the most profound way to preventing similar crimes from happening again.” (Dubois 2000, p.3). Each invocation of caring was articulated as a display, in Palmer’s case to “show” the good character of the community and, in Dubois’ case, to show potential students and faculty recruits that Laramie was not a bad place. The issue of the university’s public image recurred through the Council sessions, as a sort of barometer of civic reputation. Two different citizens argued that Matthew Shepard’s death had decreased university enrollment, and that the ordinance could help improve the university’s image and appeal, linking up the ordinance to a point of civic pride and economy. (This argument was one of the only ones Councilman Bell responded to directly, asserting that enrollment at UW had been up and down over the past 50 years and had nothing to do with the Shepard case [Laramie City Council 2000a, p. 10].)

These desires to cleanse the image of Laramie are not necessarily simply or shallowly about image; they were also about the meaning of membership in the community of Laramie, and the way that meaning had been challenged by the national discourse on Matthew Shepard's death:

I hope this could be the beginning of a safer environment for all Laramie citizens. I hope it could be a reversal in public opinion—global public opinion—about the connection between Laramie and hate (think Jasper, TX and Coeur d'Alene, ID). I hope it could be our opportunity to set the record straight. Let's say to the world "yes, his hideous crime happened here and we are not willing to let our differences and doctrine alter the fact that a human being was brutally murdered on our soil."

(Coburn 2000, p. 4)

The discussion of "showing the world" was often wrapped up in showing other members of the community. Supporters stressed the importance of a public annual report as a tool for the community to discuss with itself and "the world" issues of equality and bias within the community:

We have a strong suspicion that there are relatively few bias crimes in Laramie, compared to most other places, and that would be good for the rest of the world to know. An annual report would at least provide some figures for a starting point on a discussion about bias crimes. If the figures indicate Laramie does have a problem with bias crimes, that would be good to know as well. That would indicate the changes this community had gone through since the death of Matthew Shepard are not enough, that more needs to be done. This is a sensible starting place on the whole discussion about bias crimes.

(RCR 2000)

While there were numerous references to "the world" and "global public opinion" it seemed often that the most important audience was in fact the community itself: the cameras were gone, there was no national press coverage. The audience was primarily the community, and to some extent, the rest of Wyoming. The language of global public opinion and Laramie's image in the eyes of the world may have been at times a short-cut

for talking about residents' feelings of cultural membership—as well as a strategic attempt to try to force action on the part of Council members perceived to be either bigoted or hopelessly parochial.

The discussion of what kind of a statement the bias crimes ordinance made about Laramie, and revisiting at various moments in the debate of what kind of a statement Matthew Shepard's murder made about Laramie (not so much to the world, but rather to residents), in many ways framed the debate and eventual passage of the measure. To what extent these invocations of civic representation and global opinion were heartfelt responses to the shaming discourse and to what extent they were premeditated strategies is not my central concern. The very fact that these arguments are repeated so frequently (and, at least in the case of the arguments over university enrollment, responded to by the opposition) suggest that the sense that Laramie's image needed to be cleansed, that the city was subject to shame, was current. That these arguments may have been in part strategic, attempts to win over those invested in civic reputation rather than civic reflection and reform, does not mean they are not affective. Rather, to the extent that they were strategic, the very strategies of argumentation were based upon and supported by affective responses to the murder.

The opposition to the ordinance was as well a response to the national discourse (in this case, a refusal) and an issue of what kind of statement the ordinance would make. Many opponents opposed the ordinance as making the wrong kind of statement about Laramie, one that wrongly endorsed community culpability:

We have had the national media, fringe groups, all kinds of therapy from various professional persons to mold us into politically correct citizens. Our local City Council is now going to pass an ordinance to make us look better in the eyes of the world.

I would like to suggest that as parents, grandparents, pastors, school administrators, teachers, friends, politicians and the community at large we begin to educate our children as well as the adult community on values, morality and choices that result in personal accountability and safety.

(Romsa 2000, p.4)

These sorts of responses evidence a different relationship to the national discourse, as an imposition from outsiders. It was an attempt to impose an unwanted image upon Laramie. Much of this reaction was linked to fear about changing norms discussed in the next section.

These different reactions to the national discourse included, or were predicated on, different understandings of what kind of crime Shepard's death was: one motivated or furthered in some way by prejudice or simply a one-off crime perpetrated by two mal-adjusted individuals. Those who wanted to use the ordinance to prove Laramie was an okay place did so in response to the label of hate crime in the national discourse. Others did not accept the label, or the need to respond. These speakers said the label of hate crime was an imposition by ignorant outsiders who wanted to make Laramie seem backwards. Accordingly, there was no need to respond, or to rehabilitate Laramie in the eyes of a corrupt cosmopolitan culture, a liberal press, gay activists, or whomever they saw as originating the scrutiny and labeling visited upon Laramie.

One example of such a rejection comes from local businessman Steve Westfahl, who became the mouthpiece of a certain faction of the local religious right. He decried both the press coverage and the efforts to pass the bias crimes reporting measure as disguised attempts to promote a "homosexual agenda":

I grieve for our town. It continues to be the whipping boy for homosexual activists, used as a bully pulpit to the world. ...No one is in favor of murder. Matthew Shepard's death was utterly heinous. But this interminable propaganda by the activists is only for the purpose of legitimating sodomy.

(Westfahl 2000, p. 4)

Westfahl attempted to re-train grief from Matthew Shepard and the grieving public organized around his death toward the straight (and particularly the straight Christian) community in Laramie. Along with some other conservative Christian opponents, he suggested that the politics of mourning were in error, that the legitimate object of mourning is the waning of a set of conservative Christian values.

Westfahl was not the only one who objected to all the press and local attention that Matthew Shepard's death received. The locally circulating explanations of the crime included the idea that Matthew Shepard had been living too risky a lifestyle and that with this risk, he had somehow brought his death upon himself and, as well, the allegation that Henderson and McKinney attacked him over a drug debt (Shumway 2005; McCracken 2005; Kaufman 2001). These factors were offered by interviewees as background for their reservations regarding the hate crimes ordinance. Council member McCracken was concerned to let me know that Matthew Shepard's murder was not a hate crime (that the media had distorted the facts), but that the Council had needed to pass the bill anyway to show that they cared about what had happened to him (McCracken 2005). And similarly, Council member Williams was doubtful about whether Matthew Shepard's death was a "bias crime," noting that there were "other factors involved" such as drugs (Williams 2005). As in the letter quoted in the previous section, the implication of these explanations was that the bias crimes ordinance, while not a bad thing, had arisen out of a mis-understanding of the nature of the crime—and of the need for reflection or change. Council member Bell argued this line, that the police were already doing a good job, the current system was "right" and "fair," and so there was no need for change (Laramie City Council 2000b, p. 11); the ordinance was nothing more than "pandering," though he did not specify to whom (Laramie City Council 2000a, p. 7). These sentiments were refutations to and refusals of the rhetoric of shame I discussed in the last chapter and

which continued to play an important role in the discussion. They suggest that to pass the ordinance is to adopt a vision of liberal politics and a version of Matthew Shepard's death that was imposed by outside interests (often described as undesirable "liberal media" or "homosexual activists").

The different relationships to the national discourse on Matthew Shepard's death was apparent even in the language my interviewees used to discuss the murder: while most used "tragedy" or a similar term, several people discussed his murder as "the Shepard incident" and one of the advocates used the term "atrocitiy." There is a sharp contrast between incident and atrocitiy, the one distancing Shepard's death from some of its affective baggage (as well as sidestep issues of agency and culpability that language such as murder evokes) and the other invoking language frequently associated with genocide and war crimes. While one utilizes the affective response to atrocitiy both to make it exceptional and to suggest a moral responsibility to respond to Matthew Shepard's death, the other removes all linguistic traces of violence, culpability, and specificity of the attack.

The discussion of what kind of a statement the bias crimes ordinance made about Laramie, and the revisiting at various moments in the debate of what kind of a statement Matthew Shepard's murder made about Laramie (not so much to the world, but rather to residents), in many ways framed the debate and eventual passage of the measure. The meat of the debate of what the law would "do" focused on the way in which the law endorsed a particular version of the events surrounding Shepard's death and on the way the law articulated Laramie as a community. Passage of the ordinance signaled the Council's acceptance of the hate crime designation and of the murder as a homophobic (and illiberal) attack against an innocent victim. The implications of this acceptance for civic or community identity was the topic of much concern.

“Special Classes,” Vulnerability, and Legislating the Boundaries of Community

The question of how the law as a statement defined—or re-defined—membership within and the boundaries of the community animated much discussion of the ordinance. The dynamics of membership in the discussion were complex. However, the themes of racial exclusion and the designation of some people as more vulnerable than others emerged clearly as important lines of discussion. As with most discussions of public memory, it was at least as much about the future as the past. The concerns expressed about vulnerability and the creation of “special classes” of citizens exposed sets of fears about who would define the normative vision of Laramie, the old-time “insiders” or cultural “interlopers.” In particular, as outlined below, concerns about creating “special classes” of citizens showed a fear that white, heterosexual men (and women)—especially Christian ones—might be victimized by the law.

The testimony of those objecting to the ordinance relied heavily on concerns about the constitutionality of the ordinance: whether it created a special class of citizens, and whether this violated the equal protection clause of the Constitution. The language of special classes, however, was loaded. It often bled over into what might be termed more moral-religious objections to the measure, in which the special class of concern was gay and lesbian. The language of special classes and equal protection were utilized in a politics of fear and attachment: fear of being left out of visions of the community seen as imposed from outside and a politics of what larger public Laramie would be attached to.

The question of whose interests were being served in the proposed ordinance circled around issues of who the “real” or central members of the community were, and often an apparent fear that what was considered “normal” for white, heterosexual Christians (the concern surface most intensely, though not exclusively, in regard to men) might be criminalized, or at very least marginalized. Objections articulated in terms of

insiders and outsiders expressed a fear that foreign norms were being forced upon the community. Council member Bell frequently and rhetorically claimed that the measure had been proposed by outside “interlopers” (Hurd 2005). The rhetorical suggestion that the ordinance had been proposed from outside the bounds of the real community marked a point of contention in the discussions over whose interests the city had a duty to protect, as its citizens. Many of those who opposed the ordinance did so because they thought the ordinance was “pro-gay.”¹⁰¹ Much of this opposition was based on the idea that homosexuality was a sin and that the law normalized homosexuality, forcing adherents to this objection into community and (recognized) proximity with gay and lesbian residents. Many were angry to have to recognize homosexualities in their midst, wishing, as Council member Williams (2005), to keep sexuality “within the walls of your own home” and out of the community.

The Council worked hard to stress that the ordinance was not just about Matthew Shepard or just about protecting gay residents, but about protecting everyone – and indeed, often to shift the focus away from sexuality and homophobia. Some Council members and members of the public did this through a focus on race and ethnicity as an axis of discrimination, which was an important and under-reported part of the local discussion and reaction to the murder (Loffreda 2001).¹⁰² The argument about racial discrimination was offered as an important reason to pass the ordinance (and as a way to be pro-ordinance without necessarily being “pro-gay”). Council member McCracken,

¹⁰¹ The churches in Laramie were split over a proper response to Shepard’s murder. All condemned the murder, but some wanted to move on to preach inclusion and tolerance or acceptance of gay neighbors while others wanted to condemn homosexuality and the killers equally. In the debate over the bias crimes ordinance, Unitarian Fellowship and United Church of Christ leaders were strong advocates for the measure while at least one of the local Baptist churches was a strong source of opposition (some of my respondents pointed to the Mormon church as also voicing strong opposition to the measure based on a perceived “pro-gay” agenda).

¹⁰² All of the activists I spoke to who were involved in drafting the ordinance had previously been active in projects of racial and economic justice.

who was a member of a church that strenuously opposed the ordinance as “pro-gay,” is a good example of this. She told me that what finally convinced her to vote for the ordinance was a plea from a Japanese-American man,¹⁰³ who told of a family history of discrimination and pled for the (white, mostly male) Council members to pass the ordinance (McCracken 2005). Other supporters downplayed the issue of sexual orientation through an insistence that the law protected white (straight) men. Three different supporters of the bill, in different statements, assured opponents that the measure recognized that hate/bias crimes could be targeted at white men (Laramie City Council 2000a, p. 9; Laramie City Council 2000b, p. 10-11). These statements were often made in response to expressed fears that the law would penalize or otherwise be unfair to white heterosexuals—or to criminalize conservative religious views or speech.

Those concerned about the law as normalizing homosexuality expressed concern that it would give gay and lesbian residents “special rights” not available to heterosexual residents. Opponents Steve Westfahl and Council member Shumway viewed the ordinance as the first step toward creating special classes or privileges for gays and lesbians: Westfahl spoke up at one City Council meeting to suggest that “the activists have a five-point plan to force approval of the homosexual lifestyle” and “when homosexuals’ rights are overprotected, those who hold moral or religious objections to homosexuality are discriminated against” (Laramie City Council 2000b, p. 11). The idea that the law would discriminate against heterosexual and white citizens was pervasive. This idea was evident in statements like that of Carol Jensen, who was quoted in the minutes as saying: “bias crime legislation could result in people being persecuted for sharing their beliefs....homosexuals are already protected under present laws and there is no need to waste time with labeling.” (Laramie City Council 2000b, p. 10). Another

¹⁰³ There were Japanese-American internment camps in Southern Wyoming during WWII. This history was stressed in Laramie schools as a source of shame.

opponent, Tim Hale, expressed concerns Laramie might become more like Laguna Beach, CA, where he asserted “local police were instructed to keep records on the political views of city residents who voice disapproval of government-designated protected groups such as homosexuals” (Laramie City Council 2000d, p. 5).

In these statements there is a fear that their understanding of what they considered normal and permissible might be moving into the territory of the illegal. Council member Bell’s repeated warnings about “thought police” might have traction amidst such fears. Each of these comments suggests a fear that (white) conservative/Christian heterosexual men and women may be under attack in the measure. When I spoke with Council member Williams (who was mayor at the time of the vote), he went into greater detail about the understanding of bias in discussions of the ordinance. His definitions and use of the term were similar to those quoted in the minutes: he too wondered whether he, as an Anglo-Saxon man, could be considered a victim of bias, or only a perpetrator. When discussing how he understood the impact of the ordinance (and his misgivings about it), Williams referred to a scenario in which a gay and a straight man get into a drunken brawl and the straight man is arrested for (unwittingly) committing a bias crime.¹⁰⁴ While this scenario could not happen within the provisions of the bias ordinance, this statement illustrates the concern over “special protections” in many statements of opponents: that simply being white and heterosexual might make them perpetrators under the law. His concern about the “normal” masculine behavior of drunken brawling becoming criminalized dovetails with the concern of Christians that anti-gay sermons and sentiments would be criminalized at the point that they both center on the possibility of the law interfering with behaviors considered normal.

¹⁰⁴ Interestingly, Williams had previously complained about the way Laramie was portrayed as all bars and brawls. His own examples did not help: they were all about men out drinking and getting into trouble.

Given the relatively modest purview of the law (it was after all, concerned only with police training and record keeping, not with creating new penalties or infractions), these fears can be understood as less about the provisions of the law than about what support of the law would mean. The expression of fears that the law would criminalize “normal” masculine behavior or conservative Christianity is difficult to connect up to the stated intent of the law. The fears, rather, were about change. The City Council’s support of the bill would not only signal an acceptance of the story that the murder was fueled at least in part by homophobia (still rejected by many in favor of a story about a drug deal gone wrong), but a consensus that homophobia was wrong, outside the bounds of normal or acceptable behavior. The worries about fighting and anti-gay religious views were perhaps more a fear that these “normal” behaviors would be recast as wrong, even deviant. The idea of homophobia as a social problem had been introduced to and clashed with circles that wished to portray their anti-gay rhetoric as righteous. Passage of the ordinance was associated with a fear that the new cultural norms would make white heterosexuals (often implicitly male, and often explicitly Christian¹⁰⁵) more vulnerable—a fear expressed in terms of becoming more like places such as California, of being mainstreamed into what was perceived as a left-leaning national culture not desired by many residents.

While opponents feared the social change represented by the ordinance, they also avoided discussion of power and structural injustice by casting bias crimes as a question of interpersonal disagreement or hurt feelings. Martha Killion noted that she had heard bias against people who disagree with the measure, in that they were called right-wing fundamentalists, implicitly defining bias as difference of opinion. She asked whether the

¹⁰⁵ While not all the people who expressed concern about the creation of special classes did so in religious terms, a subset of religious opponents of the ordinance forwarded the idea that white Christians were the true victims of discrimination in the nation, or locally.

measure would allow her to take people who showed such bias against her to court (Laramie City Council 2000d, p.6). This is notable not only in the way she talks about the measure, which in fact contained no provisions that allowed anyone to take anyone to court, but in her understanding of bias as disagreement. When asked to define a bias crime, Council member Williams used a similar type of language. He said that a bias crime was something done to degrade another, and went on to say that they were statements or coercions directed against people of color and women, or something that made another person feel uncomfortable. This shows some slippage between structural and interpersonal relations: he references race and gender as categories of bias, yet seems to associate these categories more with hurt feelings than with historical injustice or systemic oppression. His discussion went on to further reduce bias to an attribute of interpersonal relations, noting “You’ve got red hair. Maybe I don’t like red hair. Can that be considered a bias crime? It could, couldn’t it?” (Williams 2005). This discussion was of his memory of the debate, and as such, was implicated in his desire to make himself, his position seem more reasonable. He argued bias was too broad a term, something that could be invoked in any interpersonal altercation. He repeated this line of thinking when talking about racial tensions within the city. He noted that “We have a large Hispanic community and there are all kinds of things that, that can go on” but, in the same answer, dismissed stories of racial discrimination as “opinions” that didn’t “necessarily match what’s going on within the community” (Williams 2005). Again, a structural complaint is rearticulated in interpersonal terms. His framework of interpersonal interactions repeated the avoidance of structural issues, and his examples and specific concerns exhibited a focused concern with the ordinance’s impact on heterosexual, white Laramie residents.

Given this understanding of bias in terms of feelings and personal relations, allegations of bias might seem bewildering and arbitrary. The fear that the bias crimes

ordinance would make white, heterosexual men perpetrators in a sense follows from the understanding that the designation of bias crime depends solely upon interpersonal interactions and the identities of the victim and perpetrator. This perception makes the fear of the bias crimes ordinance more understandable. To say it is understandable is not to say it is right or inconsequential, but to say it is more easily and precisely located within relations to privilege—specifically, within the disavowal of structural privilege and of the differences in access to institutions, cultural capital, and types of power among individuals that flow from those structural privileges.

The discussion of who the ordinance would protect, and by extension, who the law (or the City Council) *ought* to protect was a discussion of the boundaries of the community (and how legitimacy of membership would be defined). While advocates for the ordinance wanted to use the law to redefine the community to include more members, or to attempt to make marginalized members less marginal, objections to the ordinance based on the fear that it signaled special treatment for gay and lesbian residents essentially turned upon the desire to maintain a community organized around the needs of straight, white, male residents. Within this context, passage of the ordinance meant more than new police training and record-keeping requirements. It meant that something was askew in the organization and norms of the community, that something *should be* changed. Based upon the expressed fears of Council members and citizen testimony in the minutes, this fear centered on who would be the central subject of the law, in whose terms protection under the law would be written. The comments excerpted above all have in common a fear that gay and lesbian subjects would become too central to the law, their rights too protected,¹⁰⁶ and that the very definition of the safety of the community would be re-cast (away from protecting normative members of the community from the fringes

¹⁰⁶ There may also have been a fear that racial and ethnic minorities might become over-central to the law, though this was not openly expressed.

and outsiders) to protecting those members who had previously been assumed to be on the fringe (even to protect gay and lesbian residents from the very Church-going “good citizens” who opposed the bill). The idea that the ordinance might make Laramie more like Laguna Beach, CA (and the similar fears noted above) encapsulates the way in which the discussion of the law went far beyond its jurisdiction, becoming a debate on how the law might threaten or even redraw community norms and boundaries. The law itself, in its modest requirements, had no such formal legal or jurisdictional power. These concerns rather highlight other aspects of the law: the stakes of the ordinance’s passage were in how it would represent Laramie, and how it would respond to the national discourse on Matthew Shepard’s death (accepting or rejecting the shaming discourse).

THE “WORK” OF THE ORDINANCE: PROGRESS, TOLERANCE, AND LIMITED LIABILITY

The proposal and discussion of the ordinance were, as outlined above, fueled by affective investments in different memories of Matthew Shepard’s death and different attachments to national politics and publics. The ordinance that was passed was, then, a structural product of affective politics. What remains to be discussed is what sort of product the ordinance was, just what sort of political work it performed. The law in a sense did very little, yet the discourse around it insists that the passage of the law was an important marker in the life of the community. I want to suggest that the different ways people talked about the impact of the ordinance signal that its importance lay in defining a normative affective response to Matthew Shepard’s death and, more broadly, to questions of sexuality and community membership.

When I spoke with my interview subjects about the impact and importance of the law, almost all of them (all but two) reported that it had made Laramie a stronger or

better community. Responses regarding how the ordinance had done this were a bit more vague, and varied. It may not be surprising that politicians forwarded issues passed on their watch as groundbreaking, but this pattern of response repeated the paradoxical assertion that a law that, by all accounts, covered very little was remembered to have such overwhelming impacts. Part of this has to do with the importance of the discussion of the ordinance, which for many was a very important moment in Laramie politics. And part of this has to do with the way the law functioned outside the letter of its provisions as a work of cultural memory. The latter, memory, was not just an issue of creating a historical record, but was a discussion of which interpretation of the crime would be the dominant one, what constituted a proper response, and how this response might define or change the civic identity of Laramie, Wyoming.

The different interpretations of the attack on Matthew Shepard, and the way they link up to different arguments about what the law memorialized (or proposed for the future), are touched on in the previous sections. In this section, I look at how the law constituted a sort of proof that the city had responded properly to the national discourse and offered a structural form for what had become normative dispositions toward the crime—a way of performing liberal identity and inclusion in cosmopolitan American discourse.

Crafting an “Appropriate” Response

In discussing the passage of the ordinance, those most involved in the drafting and proposal of the measure all mentioned the need to “do something,” both on their part and on the part of the City Council. This was at least in part a response to the national discourse. There was a sense that the shaming effect of the discourse required some evidence of reflection and transformation; to do otherwise would be to further this shame.

Activists Lockwood and Haggerty, as well as Council members McCracken and Meyer all mentioned that there had been a sense that the Council “had” to pass the bill. To do otherwise would have presented Laramie in too negative a light, considering the national attention and calls for a response. Council members reported pressure to respond to the crime from state politicians and in letters to the Council from across the country (McCracken 2005; Meyers 2005; Shumway 2005). In discussion with the activists who proposed the ordinance and the City Council members who voted on it, the idea of “doing something” appears differently as an imperative to public engagement and organization and as a way of putting an end to “the Shepard incident” and moving on. At this point, there had, in fact, been many responses to Matthew Shepard’s death and the national discourse on it. Yet the activists and politicians spoke of the need to “do something” as if nothing had been done. This expression was linked to the sense that there had to be some institutional structural response – the need to “do something” was explicitly or implicitly the need to do something specifically structural and concrete. A law, as a governmental response, was the most logical avenue: one of the most official expressions of (local) collective will. Activists/draftors Jeff Lockwood and Bern Haggerty were particularly explicit about this: Lockwood noted that he wanted something concrete to point to that had come out of Matthew Shepard’s death and Haggerty repeatedly stressed the importance of having a documented discussion and referendum on how the city government would respond to the crime (Lockwood 2005; Haggerty 2005).

This impulse for a structural response was tempered by the notion of an “appropriate” response. City council officials who objected to and who supported the measure both used the terminology of appropriateness to refer to the bounds of city authority, and more interestingly, to limit civic responsibility (and liability). In looking at national expressions of shame and apology, Sara Ahmed (2004) observes that in general

governments faced with the need to repudiate acts of state violence or repression are careful to chose vocabularies of regret over vocabularies of apology or shame. Expressions of regret admit no responsibility whatsoever. Expressions of shame and apology, on the other hand, open up the possibility of responsibility and may legitimate claims for restitution. The concept of an “appropriate” response was, in the lawmakers’ statements, closely tied to this sort of limitation of liability. They hoped to offer an admission of repentance and sorrow that did not imply too great a responsibility, require too much change.

Lawmakers opposed to the bill claimed it was inappropriate on the ground that it exceeded the city’s authority. Council member Bell said that it went beyond the limited scope of city government (which he characterized as dealing with basic property-related services like water and sewage). He argued that the Council had “gotten caught up in the emotion” of Matthew Shepard’s death and that they had acted on their sense of obligation to do something (Bell 2005). Shumway (2005) offered similar reservations. And Williams opposed the law as unnecessary: “a biased intent doesn’t change the crime at all, it just puts another label on there; I didn’t think we needed that” (Williams 2005).

For the lawmakers who supported the ordinance, this limited jurisdiction was an important part of what made the ordinance “appropriate.” The final ordinance, which did not over-reach the authority of the Council and that did not single out certain “classes” of people, was lauded as an appropriate response and law for Laramie (Furphy 2005; Meyer 2005; Shumway 2005; McCracken 2005). Council members Furphy (2005), Shumway (2005), and Meyer (2005) stressed that the city couldn’t really do anything about hate crime, as they only had jurisdiction over misdemeanors (and therefore the penalty enhancement provisions in the original draft would not have been useful). What they had passed, they implied, was as much as City Council could really do. Furphy explained that

the law they had passed was appropriate because the Council could not do what a “real” hate crimes law would do (increase penalties). It was unrealistic:

...to create extraordinary penalties for hate crimes when all you can deal with is misdemeanors. So to come up with something there didn't make any sense. But to completely ignore the issue and say that just because we can't implement effective penalties, we did not want to ignore the issue, so that's why we came up with the compromise.

(Furphy 2005)

Similarly, for Meyer (2005) one of the reasons he thought the city had done a good job was that the bill was so limited in scope (and not just focused on sexuality or Matthew Shepard). Part of what made the ordinance appropriate appears to be that it didn't do much. All it was, according to these Council members, was a “records-keeping ordinance” (Shumway 2005; Meyer 2005; Williams 2005). It would take the temperature of Laramie and show residents and/or the world whether Laramie had a problem. (The presumption was, by many, that it would show that Laramie did not have a problem and that everyone could “get on” with their lives.)¹⁰⁷ While there are limits to the city's jurisdiction, the way in which the Council members focused on the limited scope of the ordinance as what made it a good law suggests that they were concerned with discursively limiting the responsibility of the people of Laramie (who many felt had been wrongly implicated in the murder).

The statements by council members that the city was unable to do more rest upon the idea that bias crimes are only felonious physical assaults. The very emphasis on the city's helplessness (that really it was the responsibility of the state or the federal government to make such decisions, as Shumway and McCracken suggested) was based upon the fact that the city only has jurisdiction over misdemeanors. This completely

¹⁰⁷ The first report, in 2001, showed three reported bias crimes (all misdemeanors): two were directed against residents of Arab descent and one was directed at a gay man.

elides the fact that the original, more robust proposed ordinance was intended to provide measures for treating “biased” misdemeanors more seriously than others: say, to treat a homophobic, anti-Semitic, or racist act of vandalism more seriously than tagging (and named different axes of discrimination or bias). The Council, whether ingenuously or disingenuously, continued to speak as if the only crimes that might be considered bias crimes were violent ones. This is important in the way that the discussion (and it might be argued the approved version of the ordinance itself) continued to construct an idea of “bias” (homophobia, racism, and xenophobia) as manifest only in violent physical attacks rather than in everyday life, comments, law and institutional policy.

Utilizing these dramatic definitions of homophobia (and racism) as exceptional events and focusing on the limited scope of city law allowed Council members to approve of the final ordinance as an “appropriate” act: one that responded to this limited vision of hate crimes and prejudice within the bounds of city power. In order to get the ordinance on the Council agenda, the citizen-activists worked with sympathetic Council member Tom Gaddis to craft a compromise: a version of the ordinance in which everything about increased penalties and the definitions of who might be the target of a bias crime was removed (Lockwood 2005). As well, the compromise took out the provisions on civil damages and city injunctions. The definition of what was possible was what many people called essentially a book-keeping ordinance. The measure that went before the Council was stripped down to its least controversial elements; it was in many ways the least that they could do and still say that they had “done something.” Gaddis (and the activists) said they hoped this stripped-down version would be the first step, and that they could use the data gathered under the compromise version of the ordinance to discuss further legal steps that might be necessary in the future (Roten 2000).¹⁰⁸

¹⁰⁸ No further steps have been taken.

The sense of satisfaction in an appropriate response exhibited by the Council members who voted for the ordinance may have been partly that the ordinance was able to provide evidence of having responded to the national discourse, and having taken a hard look at the community, while also, in the limited provisions of the ordinance, suggesting that there was little need for reflection or reform. The linkage between an ordinance with a very limited scope and definition of hate crimes and the idea of an appropriate response suggests that part of what the politicians found compelling was that the ordinance did not require recrimination or reform. At the same time, passing the ordinance allowed them to say they had responded in a serious and concrete way. They could, in the words of more than one Councilman, “move on” (to what they deemed more important matters of city governance). Within this perspective, perhaps one of the most important things that the ordinance did was define and structure a normative disposition and response to the murder and the discourse of shame that attended it.

Performing Care and Liberal-Tolerant Identity

The city ordinance exists in the memories of those involved not only as a rational response to a need, but also as a piece of hard evidence used to show “good” feelings and/or to perform political identity. It internalized and institutionalized the proper display of feeling about the crime; that is, it created an institutional structure that reflected normative feelings on the crime. This evidence of proper feeling was a way of performing inclusion in the larger public. In speaking with those involved, the ordinance was remembered/referred to as a tangible piece of evidence that Laramie really was a part of a broader liberal public and national trajectory.

One of the more interesting examples of this was manifest was in how the Council members took greater credit for the ordinance than technically they should have. Whether

they supported the ordinance or not, all the Council members erroneously remembered that the ordinance originated in the Council. They all reported that the ordinance was proposed by a Council member (the one who put the citizen-drafted ordinance on the agenda) and some remembered that the Council had asked the city attorney to draft a bias crimes ordinance. Not one mentioned the citizen pressure or “filibuster.” Each of these rhetorical moves functioned as attempts to “own” the symbolic effect of the measure after the fact. The concern with outside image manifested itself in attempts to put forth what might be termed a tolerant face. What is most interesting in this attempt is the way that ownership of the ordinance was used to articulate and perform tolerance, modernity, and moderation. They spoke to me as an outsider, repeatedly informing me that Laramie was a good community, and that it was better and stronger than before. All but one (Council member Bell) were invested in showing me how the Council had “done something,” shown that Laramie was not an uncaring redneck holdout, but a caring (liberal) community. This last point had to do with trying to cast off the redneck image many felt the media, especially the media that addressed an elite audience (which had been such a prolific site of reporting on the murder), placed upon Laramie. Passing the law was, for some supporters, a way of showing that Laramie was more like “liberal” (and, since I’m talking about Western stereotypes, “civilized”) coastal cities (where the elite media discourse originated and circulated) than like the Old West.¹⁰⁹

The national discourse had cast some doubt that the city (and its officials) cared enough about Matthew Shepard’s death and about potential issues of inequality and prejudice within the local culture. Several Council members discussed the law as a way of offering proof that they did indeed care, and by doing so, moving Laramie closer to the

¹⁰⁹ While a preponderance of the coverage circulated in the Northeast (furthering the Western drama), many locals spoke about the media through sexual and political stereotypes, remembering reporters flocking from San Francisco (Loffreda 2001).

national image of liberalism. Council member McCracken (who was a swing vote who sided with the measure in the end) most explicitly tied the ordinance to feeling, a tie she attributed to gender. While she was careful to explain that the murder had not really been a hate crime, she wanted to acknowledge the perception that it was:

if you're sitting there saying it's a robbery gone wrong but 99% of people think it's a bias crime, it doesn't matter what you do or don't do. The less we did, the more we were seen as accepting, it just being okay....That's where it hurts. It never was okay. How could you say it was okay? You'd have to be like that Reverend from Missouri.¹¹⁰

(McCracken 2005)

The need to do something was for her a need to show official recognition and care. Whether or not the crime was a bias crime, the measure was necessary to recognize the pain of the victims, and to show that it was not okay, that Laramie did not tolerate such crimes. The importance of demonstrating this caring also appeared in her concern that the slowness with which the Council took up the issue had made it look as if they did not care (McCracken 2005). Similarly, Council members Shumway (2005) and Meyer (2005) endorsed the idea that the ordinance had been an important demonstration of the city's "sensitivity" to all its residents. Council member Meyer recalled that he thought "the bias crimes ordinance was an attempt to indicate to the world that the city of Laramie was sensitive to these issues and to broaden them sufficiently so that it included other kinds of hate crimes" (Meyer 2005).

Shumway, still an active Council member, was interesting in the way he used the ordinance to perform his politics and his reasonability. According to the minutes of the Council meetings where the ordinance was discussed, he was a strong opponent. Yet, when he spoke to me he spoke supportively of the measure's aims, and of how the

¹¹⁰ I understood her to be referring to Reverend Fred Phelps, from Kansas.

ordinance was a necessary step forward for Laramie.¹¹¹ He strove to distance himself from what he seemed to classify as the illiberal aspects of the ordinance discussion, and to align himself with the progressive goals of the ordinance. He distanced himself from the insensitivity of other Council members, noting that “the Council didn’t say much, but those that did, usually said the wrong thing. I thought insensitive comments were being made” (Shumway 2005). (According to the Council minutes, Shumway was the second most vocal opponent to the ordinance on the Council).

Sensitivity was, in this interview, closely linked to performance of a liberal and modern politics—a politics that would be palatable if not sympathetic to outsiders. These moments of insensitivity were embarrassing in the way they made the Council look like “they wanted to stay back in the rough and tumble frontier days of Laramie” rather than move into the modern era of “acceptance” (Shumway 2005). Key to this bad image was the figure of Council member Bell, who Shumway felt embarrassed the Council every time he spoke. Shumway felt that the presence of Bell, locally infamous for his right-libertarian politics and self-assurance, on the Council sent a message that the Council was “not current on what needed to be done to make our community more tolerant.” Shumway was not the only one who was concerned about the image of Laramie Bell conveyed. Council member McCracken, in characterizing the dissent, said:

They didn’t give a rat’s pitoot—you can put that any way you want to—how anybody perceived it. We had one example, [Bell]; he was notorious as the main advocate against it. But bless his right-wing republican heart...he could never, he never took the time to feel how people felt. It was pure black and white. And that tended to get into our way.

(McCracken 2005)

¹¹¹ I had the impression that at all times in our interview he was attempting to represent Laramie to the outside world, using the progressive aims of the ordinance as proof of the reasonableness and decency of the community.

Similarly, Haggerty reported that someone on City Council had told him that:

there were those on the Council that just didn't want to hear about it and that there were those on the Council who wanted to make sure it never got on the agenda because they didn't want the community to be embarrassed by—you know the members of the Council?

(Haggerty 2005)

The consensus that Council member Bell's words were embarrassing to the community had to do with the way my interviewees thought he furthered the image of backwardness and uncaring they saw in the national press coverage. He was used as a local example of intemperance, illiberalism: paradigmatic of the illiberal identity that these (often fiscally-minded) politicians wished to shed.¹¹²

While Shumway's interview was the most pronounced in its references to progress, all of the Council members I spoke with except Bell seemed to feel that they needed to show support for at least the idea of the ordinance in order to represent Laramie as a modern and reasonable city (the benchmark of reasonability being the proper display of sensitivity, caring, and mourning). This is despite the fact that two of them (not counting Bell) had spoken and voted against the ordinance. Shumway, who during the debates had been adamantly against any move toward recognizing bias toward gay and lesbian residents, spoke sympathetically with me about the challenges faced by lesbian and gay residents. Council member Williams said he might have voted for the ordinance if it had been labeled a "hate crime" law, as that was a more specific terminology and would have had a more limited scope. He also stressed how the Council had tried, in the wake of the murder, to counter the image of Laramie as less than modern, a place characterized by:

¹¹² In talking to people around town to try to set up my interviews (and in my other interviews), I got the impression that Bob Bell was something of a local character. He seemed the political figure people loved to hate: several people wrinkled their noses when I asked where I might get in touch with him and others told me he would be an "interesting" interview if I could get him to talk to me.

...the he-man and everybody's got guns and all this type of thing. We tried to present that we are also people, with our own feelings, we love our community, and we're going to go through and get by with this.

(Williams 2005)

The ordinance, he said, was an effort by some people to show that Laramie was sensitive to and embraced diversity. Council member Bell, as I've noted, felt no need to perform sensitivity: while he was not alone in chalking the whole episode up to the "liberal [leftist] media" he was the only one who was happy to stand outside what he condemned as the hegemonic politics surrounding Matthew Shepard's death.

The very limited nature of the ordinance helped make it a vehicle for performing mainstream (not radical) politics, or proving that Laramie was like the rest of the world (and not one of those "*Twilight Zone* devil towns" after all). In the way that the decision to pass the ordinance was couched within an acknowledged need to respond to the injustices symbolized by Matthew Shepard's murder and in the way that some of my interviewees offered up the ordinance as proof that Laramie really wasn't such a bad, redneck/biased place after all, it was an important support for the construction and performance of personal and civic political identity in Laramie.

The Activists' Views: Creating a Conversation

I have suggested that some of the work of the law was to construct a set of expected or normative memories and feelings regarding Matthew Shepard's death. This process was not an act of privatizing or individualizing the response, but was linked to political action. People came together (as a public) around the discourse of shame in the national press, and utilized this affective discourse as a node for organizing and arguing for (local) governmental action and institutional change. In fact, Lockwood cited the sense of a sort of incipient community of activists as one of the most important things to

come out of the ordinance, along with the important conversations that took place (Lockwood 2005). He described the response of residents as a 20-60-20 split: 20% thought the attention given to Matthew Shepard was overblown from the beginning and dismissed it, and at the other end 20% felt an ethical obligation to respond somehow, while the 60% in the middle were sort of bemused or undecided onlookers. Organizing to get the bias crimes measure on the city council agenda, and then to get it passed, made him aware of this subcommunity (the activist “20%”): what he termed a “community in waiting” that could be coalesced around another political issue in the future. Similarly, Haggerty noted that one of the most important things to come out of the whole process of proposing and passing the measure was the process of people “coming out” whether in terms of sexuality or “as human beings and activists”:

There probably were individuals who experienced a transformative, empowering episode when they got to go become an advocate or activist in their young life or for the first time or their old life. And, you know, that’s not to be taken for granted in America today, there’s so much mind-numbing shit and we’re not given much of a chance to actually be human beings—really practice democracy.

(Haggerty 2005)

The experience of the process was powerful for those who were involved. And it was as divisive and mobilizing as anything in local politics has been in recent memory (except, perhaps, the passage of a smoking ban in 2004).¹¹³ For at least those involved, the debate over and passage of the ordinance was an important site of memory and identity.

For Haggerty, who was more involved in the content of the law, the specifics of what were discussed and passed were important for another reason. The reporting ordinance, he said, established sites for organizing and legal responses that did not focus solely on the courtroom, on labeling criminals. Even though some of the other venues for

¹¹³ According to Lockwood (2005), the discussion of the smoking ban ran remarkably parallel to the bias crimes ordinance in political tenor.

action he had attempted in the first draft were taken out of the final measure, he said it was important that there had been a conversation and that there were recognized places in the law outside of the courtroom for testing issues of equality and for documenting violations of equality. Such places outside the courtroom, he argued, are important sites for citizen organizing and discourse. And the existence of a public record is an important yearly reminder of the continuing existence of discrimination within the community (Haggerty 2005).

For most of those involved, the fact that there had been a public discussion was a point of major importance. Lockwood and Hurd characterized the city as having been in a bit of denial in general about inequality and violence within its limits at the time of Matthew Shepard's death. Within this context, the convening of the discussion itself was an important step (Lockwood 2005; Hurd 2005). Lockwood remembered that before Matthew Shepard's murder, local news and politicians refused to even discuss the problems of violence and inequality in the community.¹¹⁴ This had changed in the aftermath of the murder; now the newspaper almost went too far the other way, dwelling exclusively on violence and problems. This was not an outcome of the ordinance itself, but of the larger conversations and series of responses in which the ordinance was located. But, in signaling acceptance of the national discourse, the ordinance also institutionalized the sense that Laramie needed to, if not take active steps toward reform, monitor local culture and politics. In this, the passage of the ordinance marked some of the changes that had taken place in Laramie since the murder, as well as (for many) the changes that had not happened.

¹¹⁴ As I noted last chapter, the city's website had, at the time of Shepard's death, advertised a peaceful community with a murder rate of 0, despite a nasty murder the year before and a serious domestic violence problem.

CONCLUSION: ARTICULATIONS OF CIVIC IMPROVEMENT

In our interview, Council member Williams spoke about another recent crime that received less attention, noting that in that case people felt that after the killer had been sentenced “justice was served and so we went on with our lives.” This type of sentiment, that once justice was served it was time to forget and move on, epitomizes the problems with many official responses to public tragedy: once an official memory has been agreed upon, the statues erected, any nagging questions about what happened, what it might say about the justice and nature of the political community, can be put to rest. The ordinance, by virtue of doing little, may be seen as a largely symbolic gesture, something to point to when questions of homophobia and other questions of equality arise. In the stripping out of language explicitly addressing issues of sexuality and the amount of discursive effort expended in casting the measure as broadly aimed (read: not just about sexuality), the final outcome failed to redefine the vision of the community in a way that explicitly included openly gay and lesbian citizens. In this, the process surrounding the ordinance failed the expectations of many of its proponents (Hurd 2005). Based on the testimonies before the Council, letters to the editor, my interviews and informal conversations with people while I was there doing research, there appear to be plenty of people in Laramie who are eager to forget Matthew Shepard’s murder and all that it has meant locally and nationally.

Yet, many of the people I spoke to felt that the ordinance had somehow made a difference. The way in which the passage of the law was posed as doing “something” for Laramie, or for gay and minority residents of Laramie, was linked to the vague assertion that the ordinance and its discussion had made Laramie a better place. In speaking with the Council members, often the “something” they remembered the law as performing was making a statement that Laramie would not tolerate intolerance, that it was a good,

modern, liberal-tolerant community in line with the rest of the U.S. (or at least in line with the political imaginary of the U.S. reflected in the news coverage of Matthew Shepard's death). These outcomes place the law as part of a process of reconstruction of civic identity, and a re-alignment of the community within national norms (at least as these norms were perceived locally). While the City Council's efforts to tone down the ordinance's more controversial content and to mitigate claims of responsibility, the very heat and fear of the opposition and the fact of the debate were significant.

The ultimate version of the ordinance was a compromise: It was both an attempt to avoid self-scrutiny, assert that Laramie was purely and simply a good place and an important (and unresolved) conversation about community norms, homophobia, racism, and the possibility of equality under the law. In this, the law might be called therapeutic. It is aligned with the therapeutic discourse of healing and normalization in an unusual way: the discussion of the law was part of the re-construction of political and civic identity that had been shaken by both the murder of Matthew Shepard itself and by the national attention and discourse on the murder (especially in the way that discourse located and characterized Laramie as outside the national norm). Whereas the Durkheimian model of the law as an instrument of social cohesion noted at the outset of the chapter suggests that reactions to infractions against the law are re-assertions of prior solidarity, this was not the case in Laramie. While residents came together to express shock, outrage, and grief in the face of the murder and the often unflattering media attention, there was a lot of internal division in how the murder was understood (as demonstrated by the statements of City Council members in this chapter). In this case, the felt need to offer a cohesive collective response to the broader public that had observed and commented upon the city in the days and weeks after the murder of Matthew Shepard

was the impetus to reflect and debate critically upon community norms and the sufficiency of the law to protect all of Laramie's citizens.

The politics of the ordinance were, as I have suggested, ambivalent. The shortcomings of the (therapeutic) project that was the ordinance are perhaps more noticeable than its impacts. I do not want to over-stress the outcomes, but to direct attention to some less obvious ways in which the therapeutics of the ordinance impacted local politics. There was a powerful temptation to think of the crime, the victim, and the perpetrators as "outside" the community (Lockwood 2005), but the decision that something did need to be done, an ordinance passed, was an acknowledgement that reflection and work on the community were appropriate responses to the crime. The common statement that something needed to be done signaled an acceptance, at least in outward behavior, that issues of justice and exclusion needed to be addressed.

The ordinance was part of a public conversation and moment of activism that left profound impacts on many people and on local politics. By institutionalizing a set of dispositions as normative (as the way of performing citizenship properly), the ordinance did offer some real, though somewhat intangible, transformation in the culture of and expectations for politics in Laramie. Most politicians watch what they say, at least perform openness toward gay and lesbian residents, and desire to avoid any appearance of bias. This may not be ideal, but the recognition of public expectations of "sensitivity" or "acceptance" can be a motivator toward more inclusive political behavior. Against the common disposition that one's true feelings are interior and the unchangeable property of the individual (and therefore it is better to know someone's prejudice than for them to hide it), attention to the social elements of affect suggests that behaviors are what is important (that is, the products of affect). Within this perspective, the institutionalization of a set of dispositions and norms for expression concerned not only with Matthew

Shepard's death but with broader issues of sexuality and homophobia is a notable political outcome.

Chapter 5

The Murder of James Byrd Jr.: Public Discourse in the Melodramatic Mode

In the South, the past isn't dead, it isn't even past

-William Faulkner

We had to satisfy them that this was not 1920

-Jasper DA Guy James Gray¹¹⁵

In reading through the texts concerning James Byrd's death, this quote from Faulkner repeats itself at various points. The idea that Byrd's murder was an emanation from the past propelled much of the discourse on his death. Headlines of editorials and news items ran "Our sad history rears its ugly head" (Murray 1998), "Texas killing recalls racism's past" (McWhorter 1998), "Thought those days had gone" (*The Economist* 1999), "List suggests nation is stuck in the '50s" (*San Antonio Express-News* 1998). The killing, which echoed historical lynchings, recalled the nation's traumatic racial history. In addition to the immediate trauma of Byrd's death, it was a reminder of the continuing presence of the "old-fashioned" racism of violent physical segregation and oppression.

The idea that the murder was a repetition of a traumatic past was just one way, though a particularly telling one, in which Byrd's death was publicized through sentiment and attachment. From the moment reports of James Byrd Jr.'s grisly death reached national news outlets, it was placed within a framework of historical trauma, guilt, and redemption. The details, and the vast majority of news reports, hearkened back to what one reporter called the "bad old days" of segregation and blatant discrimination (held in

¹¹⁵ Quoted in Ainslie (2004, p. 118).

place with threats of physical violence). The traumatic repetition in question was a scene of violent racial oppression, emblematic of some of the worst violations of justice and liberalism in national memory—as another reporter put it, the murder “tore at this nation's oldest wounds” (Robbins 1998, A10).

While the initial shock of the murder brought as response an interesting and wide-ranging discussion of racism in contemporary America, it fairly quickly moved into a narrative of redemption familiar from multiple literary and cinematic sources. These literary and filmic allusions were built into the news narration of Byrd’s murder, and brought with them particular sets of expectations and feelings. Following the lead of many (fictional or dramatic as well as non-fictional) texts that had come before, the narratives that emerged in political speeches and news discourse revolved heavily around the notion of redemption. The organization of discourse around redemption, and the feelings of hope and transcendence, as well as villainy and expulsion, that attended this narrative of redemption, I argue, revealed the ways in which whiteness and class privilege structured the discourses and practices of mourning within the dominant public.

In what follows, I use newspaper articles, TV news stories, magazine articles, and dramatizations (three books and a docudrama) to examine the patterns of discourse on James Byrd’s murder. I look at how these texts were shaped by a cultural context infused with narratives of racism that focus heavily on redemption (and on the South). These narratives (the semiotic context) connote relationships of region and racism, whiteness, and the law that were used to explain and remember James Byrd and his death. I then link this rhetoric of redemption to a set of affective relationships, between the public and Byrd, the killers, and the law men investigating the case. News texts invited a public to view and mourn Byrd’s death through the lens of charity. The individualized and localized discursive frameworks within which his murder was located constructed an

image of racism that was safely distant from contemporary life—and re-iterated the trope of the redeemed white lawman (through whom the long-withheld promises of liberal democracy might be dispensed). Ultimately, I argue, the narrative of redemption surrounding the murder of James Byrd works most insistently to heal the trauma done to post-Civil Rights whiteness: it redeems in the end an image of whiteness as virtuous, outside relationships of racism.

Development and Circulation of James Byrd Jr.'s Story

By all accounts, James Byrd Jr. was picked up by three white men in a primer gray pickup truck while walking home from his niece's bridal shower late Saturday night, June 6, 1998. He accepted the ride, shared beers and cigarettes with the three men. At some point, they drove down a small logging road and stopped the car. There, they beat James Byrd and tied him by the feet to the back of the pickup truck. They then dragged him behind the truck for 2 ½ miles before leaving his by then decapitated and badly mutilated body by the side of the road, near a black church. According to forensic evidence that would become important to officials seeking capital punishment for his killers, Byrd was alive and conscious for part of this ride. The manner of Byrd's death and the placement of his body in a poor black neighborhood, so near the church, led the police investigating to very quickly treat the murder as a hate crime (calling in the FBI for additional investigators, expertise, and equipment beyond the capacity/budget of small-town facilities).

The manner of Byrd's death also attracted national attention. By the 9th (two days after the discovery of his body), Byrd's murder was a prominent story on the nightly news on all three major networks (by the 10th, it was a major print news story in papers across the country). In the week between the discovery of Byrd's body and the funeral,

Russell Brewer, Bill King, and Shawn Berry were quickly arrested for his murder, and evidence compiled for their prosecution. Interactions with the three men, the content of their tattoos and the white supremacist literature in their possession convinced the police that the motivation was racial. The press stayed in town, to report on the progress and tactics in the case (largely, the question of whether the murder could or would be tried under federal hate crimes law—it could not because the murder had not involved a violation of federally protected activity such as voting) and to ask what kind of a town Jasper was, filing stories on race relations and suspicions in the wake of the murder.

The media and national attention culminated on the 13th, with Byrd's funeral, which was paid for by basketball star and Texas native Dennis Rodman.¹¹⁶ The church overflowed with local and national mourners. The ceremony was attended by political names including Jesse Jackson, Al Sharpton, NAACP president Kweisi Mfume, California Representative and Chairwoman of the Black Caucus Maxine Waters, and Texas Representative Kay Bailey Hutchinson. Bill Clinton, who had made a national conversation on race a cornerstone of his presidency (the year-long series of town hall conversations on racial relations were just coming to an end when Byrd was killed), sent Transportation Secretary Rodney Slater as an administration envoy and called Byrd's mother to offer his personal condolences. Outside his funeral, a small group of black men in paramilitary garb, carrying rifles and calling themselves the New Black Panthers marched, ostensibly to protect and “wake up” local black residents. Much to locals' dismay, the KKK responded by calling a rally two weeks later. The New Black Panthers and the Black Muslims arranged counter-protests for the same day, all three groups promising to be armed. The media re-appeared for the tense turf fight between white

¹¹⁶ Rodman was reported to have also donated \$25,000 to Byrd's children (aged 16, 20, and 27 at the time of his death).

supremacist and black militant groups (the rhetoric on all sides rang of claims about who owned Texas, or the future, and about governmental wrongs).

While the mourning activity was heavily focused around Jasper, with few public gatherings or protests outside of the town, there were outbreaks of vitriol clearly tied to the murder in various national locales. Days after Byrd's death, a young man in rural Illinois was dragged behind a car driven by young white men for several blocks, sustaining relatively minor injuries. Several months later, just after the first of Byrd's attackers was convicted, a morning disk jockey in Washington D.C. commented on a Lauryn Hill song that had just won a Grammy: "No wonder they drag them behind trucks." He later apologized but told the TV news magazine *20/20* that he did not deserve to lose his job over the comment. And, in New York City, two firefighters and one policeman were fired after entering a float in a Labor Day parade which protested neighborhood integration and parodied Byrd's death. In the float, the off-duty police and firefighters donned blackface and Afro wigs and performed eating fried chicken and watermelon on the back of a pickup truck, while one of them intermittently mimed being dragged behind the truck.¹¹⁷ This float would be oddly echoed a few months later in Ft. Collins, CO, where a sorority-fraternity float in a homecoming parade mockingly referenced Matthew Shepard's death with a giant scarecrow figure, with "I'm Gay" spray-painted across its head.

As with Matthew Shepard's murder, discursive attention waned shortly after Byrd's funeral, to return during the trials. This attention is manifest in a variety of public, media texts. Here, I examine the news reports and political statements made in the month immediately following Byrd's death: 79 relevant regional newspaper stories, 73 national

¹¹⁷ In 2003, a district court judge found the city had violated the men's First Amendment rights in firing them. See *Locurto v. Giuliani* (2003).

ones, and 14¹¹⁸ significant (over 1 minute long, with an on-site reporter) TV news stories on the three major networks' national nightly news reports.¹¹⁹ The discourse on Byrd proliferated in 22 in-depth articles in the pages of national magazines, political speeches, three book-length accounts and one made-for-cable docudrama (Showtime's *Jasper, Texas*). These texts/sites of discourse comprise the evidence for this chapter.

Even though my sample of news texts, taken from the first month after the murder,¹²⁰ does not cover the period of the trials, they were a focal point of discussion in the texts I collected. Both the centrality of the law and its moral role in the discourse are far more pronounced in the discourse surrounding the death of James Byrd than in that surrounding the death of Matthew Shepard. From the days immediately after the discovery of Byrd's body, there was a high level of discursive attention on the investigation and prosecution of King, Brewer and Berry—in part, I will argue, due to cultural memories that located resistance to civil rights laws in the South. Much of the news coverage focused on whether the case would be tried as a federal hate crimes case, and then on whether the DA's office would be able to try the case as a capitol murder case and thereby seek the death penalty¹²¹ (evidence that Byrd had been conscious while being dragged was used successfully to argue that Byrd had been kidnapped before he was killed).

¹¹⁸ One of these, a 27 June CBS broadcast, might be counted as two stories: the first piece, on the competing and clashing KKK and New Black Panther protests in Jasper, segued into another story (with a different reporter) on how federal hate crimes laws related to the investigation of James Byrd's death, and political efforts to strengthen hate crimes law at the federal level.

¹¹⁹ These stories were retrieved on tape from the Vanderbilt News Archive.

¹²⁰ This follows my methodology, and for consistency with the analysis of the news coverage of Matthew Shepard's murder.

¹²¹ In order to levy the death penalty, the court must prove that the defendant is guilty of murder and an additional felony charge: kidnapping was the additional charge the Jasper DA's office used in order to press for the death penalty. The court needed to prove that Byrd was conscious when dragged to prove kidnapping.

All of this took place against a very particular discursive and political background. While anti-racist activism was not a prominent feature of the 1990s political landscape, black-and-white racial discourse was in the foreground in a number of highly mediated political and legal “spectacles” (Lott 2005). The O.J. Simpson trial, the police beating of Rodney King and the ensuing acquittal, the debate over Clarence Thomas and Anita Hill, mounting attacks on affirmative-action in college admissions, the media hype over “welfare queens” and the policy of welfare reform, the controversies over Clinton appointees Lani Guinier and Joycelyn Elders, and then-president Clinton’s attempts to engage in a national “conversation on race.”¹²² These discussions of race were paralleled in popular cultural articulations of black and white relations (black and white melodrama and the buddy film are two notable forms).¹²³ Such representations, and the texts in which they are found, were important markers in the ongoing construction of racial (here, black and white) categories.¹²⁴ Attention to all these sites of racial representation were bound up in ongoing articulations and contestations of what scholars have termed the “new racism,” a way of talking about race that is often tied to the rise of neo-liberal politics in the 1980s. This racial discourse is one that explains away patterns of social and economic inequality between racialized groups in terms of (private) personal choice rather than (public) history, policy, and structure (Reeves 1996; Omi and Winant 1986). This discourse supports the ideal of “colorblindness” articulated as a core liberal ideal and as a support for the legitimacy and fair functioning of politics and institutions as they are. As

¹²² These conversations on race, in the form of traveling town-hall meetings, were scheduled to commence with a summative statement about the state of contemporary race relations when James Byrd was killed. There were, in fact, suggestions that one of the conversations should take place in Jasper, a suggestion that was politely declined.

¹²³ For more on racial representation in mass media in the 1990s, see Lee Artz (1998), Jennifer Fuller (2004), and Linda Williams (2001).

¹²⁴ This follows Omi and Winant (1986) and their theory of racial formations, in which the category of race is an ongoing discursive construction, but one that provides the foundation for and legitimating logic of identity categories, public policy, institutions, and social structures. For more on the historical vagaries of race as an analytic and cultural category, see also Collette Guillaumin (1995).

such, it negates suggestions that structural and cultural changes are (still) urgently needed.

REDEMPTION AND THE LAW

The courtroom was on the second floor. It was an ample room, with exceedingly high ceilings from which six fans, attached to long metal extensions, whirred silently in 'To Kill a Mockingbird' style.
-Ainslie 2004, p. 157

I think Jasper is being labeled as a typical 'To Kill a Mockingbird,' Atticus Finch town...It's not like that at all.
-Jasper resident¹²⁵

In his description of the trial of Bill King, Ricardo Ainslie described the courtroom in terms of similarity to that in *To Kill a Mockingbird*. The reference is evocative and recurred at other sites. The courtroom, in *To Kill a Mockingbird*, was supposed to be a great leveler, in which black and white citizens were treated the same. Atticus Finch was a man ahead of his time, at the height of Jim Crow embodying a liberal tolerance that would become the espoused norm 30-odd years later. Or so the story goes. The figure of Atticus Finch provides a vision of what white liberalism should be to many people, of the better sort of color-blindness (a white man who dreamed the same dream as Martin Luther King, Jr.)—a fictional character who is presented as something of a hero in many U.S. classrooms.¹²⁶

Given the positioning of the crime as a repetition of historical trauma, a “good” outcome in the Jasper courtroom made real the promise offered in *To Kill a Mockingbird*. The convictions in Jasper provide the outcome the fictional town of Maycomb, AL, was unable to produce: justice for a wronged black man. The young man’s evocative statement that Jasper is not Maycomb is echoed and “proven” by the verdicts against the

¹²⁵ Quoted in a St. Louis *Post-Dispatch* article (Shlachter 1998).

¹²⁶ This claim is based upon the number of teaching guides (and the content of those I examined) served up on a Google search for *To Kill a Mockingbird*.

three white men. This “success” was posited as proof of progress, evidence that even the cultural locales most associated with racism in the historical imagination could redeem themselves. The comparisons were made despite distinctions of reality and fiction, and despite the vast differences in the immediate wrongs (a black man wrongly accused of raping a white woman vs. a black man dragged to death by three white men). That they were made across this divide suggests the ways in which Byrd’s murder, its investigation and subsequent trials, was conscripted into narratives about the nation’s—and especially the South’s—racial past and present. These narratives (traced below through reference to popular cinematic texts) structured the way in which redemption was invoked in discussions of Byrd’s murder and the response of Jasper, TX. In doing so, they also structured the affective politics that followed from this narrative of redemption.

Redemption Imagined through Racial Melodrama

Several scholars have written about the media discourse surrounding James Byrd’s death. Ricardo Ainslie and his research group analyzed the way that Jasper residents came together to refute these stereotypes and maintain community cohesion and identity in the face of potentially fractious questions about race and hierarchy raised by the murder and press coverage. The murder, and its evocation of a history of racial violence that many wanted to forget, created a crisis of community-racial identity (Brabeck et al. n.d.; Ainslie and Brabeck 2004). Residents, or more precisely those residents in positions of access and power to represent Jasper (both to Jasper and to the outside), made a concerted effort to present the community in terms of cohesion and relative racial harmony (Brabeck et al. n.d.; Ainslie and Brabeck 2004). Similarly, Jack Glascock (2004) analyzed the local paper, the *Jasper Newsboy*, in terms of crisis

communication, arguing that the local news successfully managed the community crisis that was James Byrd's murder by distancing the community from the killers and the extremist groups demonstrating in Jasper, bolstering civic identity and history, and acting as mediator between the community and the outside media (in particular, offering advice on how to present a united and racially harmonious face to the outside media and world). These analyses focus on how the community managed its own image to minimize internal conflict and maximize community cohesion. Closer to my own analysis, Larry Williamson (2002) examined the national newspaper coverage of the trial of Bill King (the first of Byrd's killers to be tried) in terms of a rhetoric of perfected redemption,¹²⁷ which demanded perfectly drawn villains and saviors, with no room for ambiguity. Using Kenneth Burke's description of the redemption cycle, he suggests that the trope of redemption in the trial coverage located all racism in the scapegoat figures of the killers and located the court, and local jury, as the saviors. In this rhetorical construction, East Texans and Jasperites were able to redeem themselves as not all being racist, refuting stereotypes of persistent Southern racism (2002, p. 253).

My own analysis locates this rhetoric of redemption within broader historical and narrative frameworks, and traces the affective politics that are marshaled by the redemptive framework. Redemption as an organizing principle is fundamentally different from the shame I analyzed in Chapter 3. Shame is a feeling, while redemption is a narrative, albeit one that marshals certain feelings and attachments. I analyze the particular feelings and attachments mobilized by the redemption narrative that shaped discussion of James Byrd's death in the next sections of this chapter. But first, a brief rehearsal of the redemption narrative itself is necessary. The narrative structure of redemption requires a failure or fault, which produces guilt. In order to purge the guilt

¹²⁷ The rhetoric of perfected redemption is based on the work of Kenneth Burke.

and redeem oneself in the face of the original fault, some action is required (Williamson 2002; Bobbitt 2004). In the case of the discourse on Byrd, the heavy emphasis on the crime as a repetition suggests the failure is of liberal ideals of progress, in particular, the progressive enfranchisement of black citizens. Statements such as the following frame the crime as casting doubt on post-Civil Rights racial equity:

Just when we get to the point of thinking it can't happen here, it happens again. We're not that far removed—a mere 30 years—from a time when racism was our way of life, passed along from one generation to another. And it's among us yet—now and maybe forever.

(Murray 1998, p. 11-A)

And the *New York Times*, in commenting on assumptions that the thuggish barbarity of “old racism” was a thing of the past noted that murder was “as stupid, as barbaric, as any that horrified the nation more than 30 years ago” (*New York Times* 1998c, p. A-14). Contemporary political discourse is full of assertions that white and black citizens now receive full and equal protection under the law (Bonilla-Silva 2003). The murder was discussed as a threat to such assertions, summoning a time when white citizens were given legal and social impunity to kill black citizens, in what is now seen as a flagrant violation of the nation’s founding liberal political principles. The murder repeated this site of failing in legal and political institutions, and in white society; it called into question the notions of progress and color-blind equity that legitimate contemporary institutions.

If this was the failing that the murder highlighted, the move toward redemption (of liberal institutions and contemporary, especially white, society) was heavily influenced by cultural images of white redemption provided in ready-to-hand cinematic and literary representations of the South and melodramatic narratives of race (the two categories frequently intersect). These narratives provided the frameworks that shaped

how news and other texts represented both Jasper and the murder, and which quotes from locals were selected and circulated. The news discourse on James Byrd's murder relentlessly located the murder in the South. One early *New York Times* article noted Jasper "with its hills and lush vegetation looks more like the Deep South than the Texas of flat prairies that typify much of the state" (Cropper 1998, p. A-16). *Newsweek* called Jasper "more Deep South than Lone Star"; *Time* followed suit with "East Texas, with its dusty small towns and cotton fields, is more Dixie than Lone Star" (Cohen et al. 1999, p. 28). The descriptions are striking in the similarity of their prose, separating Jasper from Western imagery of Texas. The descriptions of geography used to locate Jasper in the South, moreover, call up a very particular idea of the South that is more iconic than geographic: it is a rural and pre-industrial South. Tara McPherson elaborates the way that certain iconic images of the South function to "condense" narratives about place, race, and gender (2003, p. 18). These images of the South are invested not in representing the actual geographic region (and its more complicated realities) but in narratives of race and racism in America. Cinematic representations of the South in particular have worked through national racial crises, even as they rhetorically contained the history of racism in the U.S. to the South (rather than implicating the North, or the nation in general, in histories and contemporary practices of racial inequity) (Graham 2001). The images of the South used to locate Jasper posit the South as illiberal (and pre- or anti-modern)—and as the site of resistance to integration and racial equality projects—in contrast to the liberal and racially progressive North/rest of the nation (Gerstle 1995).

Allison Graham's work traces the stories that movies (and political discourse) tell and retell about the South and race: the white woman as the location of racial purity (or impurity), the tale of racial reconciliation and redemption, especially of the white lawman; the story of the dangerous Southern white man or "cracker" as the source of

violence, including racial violence. These themes appear and reappear in classic texts from *A Streetcar Named Desire* to *In the Heat of the Night* to *Cape Fear*. The location of white redemption for the past wrongs of slavery and racism in the U.S. through the law, and heroic white lawmen, has been a common theme of cinematic texts and political discourse since the Civil Rights era (Graham 2001; Williams 2001). These melodramatic narratives of redemption are among those that Linda Williams (2001) argues have provided much of our sentimental/moral education on race in the U.S. Melodramas take deep moral paradoxes and offer narrative resolution, often simplistically, with clear cut villains, heroes, and outcomes. Williams argues that these narratives' strategies of casting villains and victims in racialized terms (racialized in black and white) have been some of the most prolific and effective forces in the ongoing construction of racialized identity and racial politics within dominant public spheres. The collection of melodramas of race and redemption that have circulated in the public sphere for much of the latter half of the 20th century formed the semiotic context from which journalists, politicians, and other writers drew in discussing Byrd's death.

This semiotic context appears in the news coverage, especially the figure of the redeemed white sheriff (a la Bill Gillespie of *In the Heat of the Night*) and the monstrous "white trash" criminality of the killers (a la the "cracker"¹²⁸ villains in *In the Heat of the Night*, *Cape Fear*, and *To Kill a Mockingbird*). The influence of such narratives on the way Byrd's murder was understood, grieved, and remembered becomes explicit in moments where researchers and residents reference these texts in order to explain what was happening, as in the quote I began this section with (in which a resident rejects the notion that Jasper was a *To Kill a Mockingbird* sort of town) and as in the resident who

¹²⁸ "Cracker" is a derogatory term applied to poor whites (especially in the South) similar to "white trash."

told CBS news that “This isn’t *Mississippi Burning*, but it is Jasper having a lot of trouble” (Axelrod 1998).

These narratives, which emphasize how the failures of the law can be overcome, are echoed in the discussion of the murder investigation and prosecution of the killers. Stories such as “This Time, Old Story Gets New Ending” in the *Washington Post* (Milloy 1998, p. B-1) located progress in law enforcement. Likewise, an editorial in the *Tampa Tribune*, which expressed regret that “hateful attitudes” remained the same and encouragement that law enforcement at least had changed (Brown 1998, p. 6).¹²⁹ The levying of the full force of the law against white men for killing a black one in a deep East Texas town (which we are frequently reminded is only 70 miles from the Klan outpost of Vidor) was discussed as a cultural counterpoint to—or a redemption from—the region’s if not the nation’s racial past. The verdict was discussed as proof that the law could live up to its promise (incidentally upholding the legitimacy of liberal institutions).

One reporter, writing on the death penalty outcome of Bill King’s trial, captured this sentiment and some of the assumptions upon which it was based:

It was a more satisfying resolution than many blacks had dared expect. East Texas, with its dusty small towns and cotton fields, is more Dixie than Lone Star. And the South hasn’t been a place where blacks always found justice in the courtroom. In towns like Jasper, not long ago, blacks—even black lawyers—were routinely called by their first name in court, often excluded as jurors, their testimony discounted again and again. Black life was so cheap that whites almost never got the death penalty for killing blacks. After Byrd’s murder, King gloated to an accomplice that “we have made history.” He may just be right. If his death penalty is carried out, he will be the first white Texan executed for killing a black since slavery ended.

(Cohen et al. 1999, p. 28)

¹²⁹In another similar editorial, the *New York Times* lauded Mississippi and Jasper for “equal law enforcement:” in Mississippi the law enforcement in question was the recent conviction of a white man for a 1966 murder of a black activist (*New York Times* 1998c, p. A-14).

The fact that a largely white jury in deep East Texas was willing to put a white man to death for killing a black man was celebrated in various venues as a sign of progress (some texts were more critical, and less celebratory, than others). This quote, from *Time* magazine, mobilized several stock ideas/phrases that mark the influence of melodramas of race and redemption: that Jasper was “more Dixie than Lone Star” to firmly anchor the crime within cultural images of the South, that King was the first white man to be sentenced to death for killing a black man since the Civil War. This latter observation was repeated in various venues (such as the movie *Jasper, Texas*; the magazines *Time* and *Jet*) and given great moral import. While technically true, this statement stretches the truth for melodramatic/cathartic effect: a white man was sentenced to death for killing a black woman in Texas in 1978, but died while on death row (Rushdy 2000). The discrepancy in numbers of black and white men on death row—or simply in prison—is shocking enough without embellishment. The overstatement works, however, to create a more dramatic and cathartic moment of redemption—that, as Lance Morrow (1999) put it, the trial marked at long last the alignment of black and white social contracts.

Whiteness, Liberalism, and the Law as Sites of Failure and Hope

This redemption was, primarily, constructed through a lens on the past that focused on white experiences and actors. This comes through clearly in accounts of the way the murder offered several white investigators a chance to repeat and make right on moments of family shame. *U.S. News & World Report* (McGraw 1999) and both Temple-Ralston’s (2002) and Ainslie’s (2004) book-length accounts repeat these investigators’ family stories of guilt, in which their fathers failed to stand up against civil rights infractions. Each describes the deep mark their fathers’ encounters with racial violence

and the abdication of the law left on them, as well as the sense of guilt and shame their fathers had for not intervening. District Attorney Guy James Gray repeated a story his father told him about a lynching in Jasper in the 20s (or 30s—the date varies in different accounts), in which a black man was dragged from the back of a truck through the middle of town. The men driving the truck, though seen by a number of people, were never arrested—something for which Gray told the reporter his father had always felt guilt and shame (McGraw 1999). In his promise to show “them” (the black community) that “this was not 1920,” he intended to show that the white community, and civic institutions, would not look the other way this time (Ainslie 2004, p. 118). Sheriff Billy Rowles told of his father’s presence at the 1943 riots in Beaumont, in which hundreds of white men attacked black residents and pillaged their property in response to a rumor that a black man had raped a white woman in the “good” part of town and that “the blacks were coming to town to take it over.” While Rowles describes his father as returning home rather than participating in the riots, he said his father had been haunted by the memory (Temple-Ralston 2002, pp. 92-93).

The men describe these moments of suspended conscience as a haunting presence in their lives, one that impelled them to do their utmost when confronted with James Byrd’s murder. This language was quite explicit in a *U.S. News & World Report* description of Gray:

In one sense, prosecutor Gray represents a bridge between the past and the present in this part of East Texas deep in the piney woods. His family has held office in Jasper County for four generations, and he feels he owes something to blacks here for past injustices. "We never have answered for our history. . . . If we don't face our old ghosts, they'll never go away," says Gray, who has tried only one capital murder case in his career. "If this case turns out all right, we put it behind us a little more. You can't ever erase your history, but the memories won't be as strong."

(McGraw 1999, p. 28)

In these moments, the representatives of the law are quite literally positioned as making up for the sins (discussed as sins of omission or inaction) of their fathers. Performing an airtight and impeccable investigation and (notably) prosecution is discursively positioned as a way of re-visiting, even re-writing, the past in the present—and “doing it right” this time. The title of the article, “Justice Delayed,” furthers the point. The investigation promises not only for the sons to embody liberal ideals their fathers failed to fully embody, but also to offer some sense of future-oriented reparation to the community—in particular, the black community—for past failures.

These stories of revisiting the past through the murder and its investigation are most frequently told through the lens of white guilt and shame over the past. There are exceptions in the newspaper coverage, notably editorials that situated the crime as referencing a black archive of anger and injustice. One other notable exception is the film *Jasper, Texas*, in which the past that is repeated through flashbacks is the experience of a young black boy witnessing his cousin’s beating at the hands of white police (in a move that echoes the many comparisons made between Byrd’s death and that of Emmett Till, the beating was for courting a white girl). The past that must be overcome in this case belongs to the black mayor, RC Horn, who is portrayed as initially nervous about confronting the (mainly white) power structure. In the movie script, the moral requirements of Byrd’s demise and his own representative role enable him to overcome this past and engage in direct confrontation about issues of racial equality and hierarchy with the white sheriff. The movie in general focused much more on Horn than did the news discourse, in which Horn was a relatively minor player in news accounts. Many reporters noted that Jasper had a black mayor; fewer noted his name or provided details on his background. The past imputed to Horn in the movie echoed the comments made by black Jasper residents to reporters in the days immediately following Byrd’s death: many

of the comments circulated in newspapers noted that Byrd's death brought back memories of family or acquaintances, or just anonymous subjects of rumor, who had been killed or gone missing while in police custody much more recently than either the Civil Rights or Jim Crow era. (Their stories often referenced similar incidents in the 70s and 80s, a more recent past, in contrast to news stories that placed the murder in relation to similar attacks in the 60s and 30s.)

In both the personal narratives of repetition of the white investigators and the overlay of the narrative of *To Kill a Mockingbird* and the figure of Atticus Finch, who has taken on a cultural status of emblematic white tolerance, the law offers the site of promises of redemption. In a sense, the story became a public debate on the ability of the law, and importantly, white enforcers of the law, to live up to the promises of liberalism. In this, the law is intimately tied to whiteness. The failures of the law are failures of whiteness: that is, both the white men and women who make, interpret, and enforce the law, but also with the abstract category of whiteness. This category, which defines the racial identity of white, emerged as a category under which to unify the different European Americans into a common racial formation (Nelson 1998). It performed this unification under the banner of abstraction: European Americans are no longer defined by their particular ethnic identities but are white (that is, not Irish, not black, etc.): a category that is defined in terms of objectivity and abstraction (Nelson 1998; Guillaumin 1995; Dyer 1997). This objectivity has been the very prerequisite for citizenship and legal recognition of any kind: that is, the notion of objectivity in the law is one that is grounded in whiteness (Nelson 1998). The sense of whiteness, and white racial identities as sites of neutrality, is implicated in the failures of the law.

Ultimately, within the discourse on Byrd's murder and Jasper, the law and its objectivity is redeemed through the prosecution of the three killers, and through their

sentencing. Much was made of the fact that largely white juries convicted these men to two death and one life sentences. The importance of sentencing these men, ideally with the death penalty, was noted by both investigators and national commentators. Sheriff Rowles noted the importance of trying (and convicting) the men in Jasper, in terms of repairing the town's image and in terms of proving that the law protected black residents as well as white (Ainslie 2004). An *Atlanta Journal Constitution* editorial urged quick punishment as a message:

While people across the nation grapple with painful issues of racial differences, we are shocked by a murder reminiscent of the lynchings in the South before the civil rights movement. To send the message that America is not moving back on racial progress, justice should be swift, fair and severe.

(Murray 1998, 11A)

The importance of a conviction was expressed in explicitly racial terms: the town needed to show that it was willing to use the full force of the law to punish white men in racial crimes. In these quotes, the possibility that the law might be used to an equal extent (in both its investigative and its punitive aspects) is equated with the possibility of healing and redemption.

This healing and redemption was, by and large, traced in the discourse through the ability of the white community to recognize and respond to the black community's claims, experiences, and complaints. The fact that small-town Texas law enforcement officers promptly found, arrested and mounted a capitol murder case against three white men became the focal point of some redemptive rhetoric. While a number of reporters noted that their expectations (Southern stereotypes) about racial hierarchies and the white power structure were shaken by their experiences in Jasper, other expectations were not – in particular, that of the black victim and of the “redneck” killers. The way in which these

expectations worked to construct certain sets of attachments and relationships in the news discourse is the subject of the next section.

STOCK CHARACTERS AND AFFECTIVE ATTACHMENT

In Chapter 3, I discussed the connections between public mourning and inclusion in the national imaginary. The creation of public discursive space, just as with the allocation of physical space for monuments, for mourning some subjects over others is a way of envisioning an idealized national public, a normative symbolization of citizenship. The character and shape of this mourning bespeaks the norms it seeks to instantiate or bolster. In other words, people become publicly mournable through the lens of political and ethical hopes, desires and fears. The particular way in which James Byrd, Jr., was mourned in national media did not always center on proximity to or identification with the victim. Rather, it relied upon compassion for an innocent, and as I will discuss below, docile, victim in James Byrd and the repudiation of the killers, made easy through their association with reviled white supremacist groups and with cultural images of “rednecks.” In the discussion and mourning of James Byrd’s death, the training of outrage upon some subjects and circumstances over others was key to what was a highly racialized politics of mourning/memory, informed by ongoing discourses and melodramatic understandings of white-black relationships in the U.S. and the nature of racism.

I have repeatedly turned to Barbara Koziak’s (2000) notion of legitimating emotional scenarios, or the way that our feelings are trained to respond to certain situations and objects and the political work this training does. We learn emotional scenarios, in which certain feelings are linked to proper objects, through narratives circulated in spectatorship, reading, and the building up or re-training of habit (among

other sites of sentimental and moral education). The designation of proper (or legitimate) emotional scenarios performs the political work of predisposing us to find some people closer to us, some further away; some relationships legitimate, some not; and some worthy of remembrance, some forgettable. One might add, it helps to predispose us to see some people as villains, and some as heroes, as implied in Williams' (2001) discussion of the deeply structuring influence of melodramatic narratives on American understandings of race in black and white. The way in which Byrd was made a mournable victim, Bill King discussed as virulently villainous, and Guy James Gray and Billy Rowles treated as heroes follows emotional scenarios performed repeatedly in racial melodramas (melodramatic narratives in fictional, journalistic, and legal texts¹³⁰). The logics by which they were located in these roles at times borrowed character-types from melodramatic narratives. Taken together, the distinctions made among these men, the way they were made available for pity, revulsion and attachment/admiration constituted a particular progress-oriented story about race and racism—and virtuous whiteness.

The Victim

Byrd was made available—for sympathy, for outrage, for care, and identification—through descriptions that emphasized his economic position and his vaguely referenced “disability.” The mainstream news emphasized his harmlessness, affability, and vulnerable economic state. As with the memorialization of Matthew Shepard, this emotional transaction was highly mediated, as few of those who formed the outraged public of his killing had ever met the man. The connections forged between Byrd and this public were via mediated image and description. The image that emerged

¹³⁰ Williams (2002) traces the influence of racial melodramas on the popular discourse on the O.J. Simpson and Rodney King trials; Graham (2001) discusses how (generally melodramatic) representations of Southern racism influenced reporting on school desegregation.

of the living man, James Byrd, was defined by news images. TV news displayed a grainy photo of Byrd, showing him standing, unsmiling, against a wood-paneled interior background, clad in a black baseball cap and beard and mustache. Both print and TV news quoted his family's descriptions of his personality in terms of musical talent and good humor.¹³¹

The public attending to Byrd's death was formed through the media texts describing the murder. These texts invited people to care, mourn, and feel outrage through the spectacular dimensions of his killing, the repeated images (in graphic words and the literal images of the TV screen) of the scene of his death, and the damage done to his body. This was particularly true in the Showtime movie, which inundates the viewer with repeated images of Byrd's tortured body. The terrifying damage to his body became a central point of the discourse surrounding his death, emphasizing both his suffering and the limits of the law and modern social structure to protect actual bodies (especially black bodies) from harm.

The ways the public was invited to feel proximity to Byrd the person followed lines of compassion more than identification. While a logic of identification was more prominent in the black press, where Byrd was identified through kinship structures and where the possible substitution of the reader's body for Byrd's was highlighted (this could happen to any of us), the "mainstream" or "general interest" press (here, referred to as the dominant press) utilized a logic of sympathy. A sampling of coverage in black-oriented newspapers¹³² was consistent in describing Byrd primarily as a father of three,

¹³¹ One extended piece in the *New York Times* ("A Life Marked by Troubles, but not by Hatred") included more details from his family, on his academic success in high school and later "aimlessness." These details, or ways of remembering Byrd were not circulated broadly in other media texts, as were references to his harmlessness ("He never harmed anyone but himself" being one quote that was cited in several news accounts).

¹³² This sample was defined by the newspapers targeting African-American audiences in ProQuest's Ethnic News Watch database.

emphasizing his role as father as a point of commonality with readers. In contrast, the dominant press and TV outlets more frequently described Byrd primarily as disabled, helpless, and economically disadvantaged. Twenty-two out of a total of 134 print articles and five out of 22 magazine articles referred to Byrd as disabled (the more economical medium of TV tended to describe him simply as a 49-year-old black man).¹³³ At times this is a vague category with no explanations, at others he is described as having a debilitating injury to one hand and/or having a seizure disorder. No other form of description is as common in the national press.

Disability is used in these descriptions to emphasize vulnerability/helplessness and underscore Byrd's victim status. The list of terms used to describe Byrd included affable, happy-go-lucky, joyful, aimless, innocent, underdog, and defenseless. In the tradition of dichotomous representations of black men as docile victims or dangerous threats to white property and power (Williams 2001), this characterization follows the convention of docile victim. This characterization was foregrounded in initial descriptions of Byrd while other details were placed at the bottom of news stories, as addendums, when they were included in the description: he had a (petty) criminal record, had spent time in jail, and was described by some as an alcoholic and/or drug user. These attributes, which were downplayed, are often ones used to construct black masculinity as threatening (hooks 1992; Bogle 1973). They were in fact the attributes some locals used to complain about the way Byrd was being represented in the press (*The Economist* 1999) and memorialized locally (Glascock 2004; Brabeck et al. n.d.).

In contrast to the discourse of thwarted possibility that surrounded Matthew Shepard's death and directed mourning in a particular direction (for loss of his implied future achievements), the discussion of Byrd's death focused on his lack of opportunities.

¹³³ Interestingly, only two stories from Texas news sources use this language. National publications may have imagined a greater need to make Byrd sympathetic due to greater geographical distance.

This lack, and descriptions of Byrd as a drifter, does not encourage identification within normative public discourse, in which success, productivity, and direction are valorized (Winant 2004). The ways in which the two men were constructed were similar, though, in their innocence. Each set of texts presents the men as innocent victims through downplaying agency: Shepard was mourned through his unrealized potential and Byrd through his lack of options. The journalistic characterization of Byrd echoed stock figures of black men as victims: Uncle Tom and Uncle Remus stereotypes (Williams 2001; Bogle 1973).¹³⁴ As in these cultural representations of black male suffering, innocence is signified through limitation of options and physical ability. This articulation of innocence is a rhetorical move used to evoke pity or compassion.

Compassion and sympathy are feelings that are structurally bound up in relations of privilege and charity: the one who feels compassion or sympathy for the other must be in a position of greater power or privilege (Berlant 2004).¹³⁵ Not only does sympathy tend to hold out for deserving victims (the logic by which the homeless person looking for a job is said to deserve our sympathy more than one looking for a drink), but it also adamantly maintains the distance between the giver of sympathy and its recipient (Berlant 2004; Žižek 2001). In the case of the public invited to mourn the loss of James Byrd, the dominant press' extension of this invitation through the distancing logics of spectatorship and sympathy failed to invite close identifications between the public and Byrd. In black-oriented newspapers, and in Joyce King's (2003) book-length description of her experience as a black journalist covering the trials of Byrd's killers, different logics circulated: that "he could have easily been my own 49-year-old brother" (King

¹³⁴ *To Kill a Mockingbird's* Tom Robinson, the black man wrongly accused of rape, is also arguably such a figure. His undeniable (though denied) innocence is signaled through his disabled arm.

¹³⁵ To return to *To Kill A Mockingbird* for illustration: when Atticus Finch suggests that Tom Robinson, the accused black man, felt pity for the poor (and abused) white woman he was accused of raping, the jurors and prosecutor react with outrage for the inversion of racial hierarchy implied by Tom's pity.

2003, pg 64) or that the crime was a wake-up call to “every African-American” (*Bay State Banner* 1998). In dominant news, there were few invocations of identification. In general, the journalistic discourse of dominant news outlets preferred the distance of a sympathetic relation, the reification of racial and class distance. Rather than inviting a public through identification, this discursive construction of Byrd invites a public through the hierarchical relation of compassion (the privileged observer and the “deserving” or “sympathetic” victim).

The Villain(s)

The three men who killed James Byrd were all young, white, poor, and had criminal records. While the initial reaction of many locals was to assume that the killers were from elsewhere or otherwise try to distance them from the community (Glascok 2004), Bill King and Shawn Berry were from Jasper. Russell Brewer was from the nearby community of Sulphur Springs; he and King met while serving time in prison. The criminal records of the three men were emphasized in the initial news coverage, as well as their ties to white supremacist groups. They were further described as monsters, psychopaths, losers, backwoods felons, twisted, and ignorant. One report noted that Jasper residents, in contrast, described the young men as both “good boys” and “small-time criminals” (Bragg 1998, p. A-12). The TV news looped images of the three white men, unshaven and disheveled in their orange prison jumpsuits and handcuffs, being walked up to the Jasper courthouse (or, alternately, their mug shots). As time wore on, and especially in the magazine reports, books, and the movies (both documentary and docudrama), the killers were increasingly differentiated. Bill King attracted the most attention, being the one who appeared to have led the attack, and as the easiest to see as simply monstrous. Berry emerged as a troubling figure, a man described as well-liked

and well-known by many residents. He was harder for many to see as a monster—or, within the limited definition of the term in use, a racist. He was someone many people in Jasper, and the rest of the country, could identify with (King 2002). All three men were found guilty, but King and Brewer were sentenced to death, while Berry was sentenced to life in prison.

In this section, I focus mainly on King. He was the object of the most discursive effort, and the most vilified. From the days immediately after the arrests, the most salient factor about King (and Brewer) was the tattoos; 22 of the 73 national news stories from my sample talk about these tattoos. Both King and Brewer had multiple tattoos on their arms and torsos, collected while in prison, and full of racist imagery. King's tattoos reportedly included the image of a black man hanging from a tree, the words Aryan Pride, a pentagram, a baby Jesus with horns (these were the most remarked upon tattoos, listed in news coverage). From the beginning, these tattoos were evidence that the men were what the *New York Times* would later term “real racists” (*New York Times* 1998c, p. A-14), allied to white supremacist groups. As more details were printed about the men and the crime, the papers reported that King and Brewer had been, or had tried to become, members of the Aryan Brotherhood prison gang (a particularly violent and widespread gang, which uses white supremacist rhetoric as a recruiting tool as well as an intimidation tactic).¹³⁶ Even after this was reported, some papers continued to refer to the men's connections to the KKK, which appeared to act as a sort of shortcut for white supremacist organizations (and perhaps “old fashioned” racism) in general. The image of back-country “redneck” KKK members dragging a black man fit in with the overall

¹³⁶ One account I read (King 2002) located the birth of the Aryan Brotherhood in the de-segregation of prisons in the '60s. Prior to desegregation, white, black, and Latino prisoners had been housed separately and treated with distinct sets of rules and privileges. When the prisons were desegregated, not only did white prisoners lose their position of relative privilege, they became a minority. The formation of the Aryan Brotherhood was an effort to regain power and position through solidarity, intimidation, and violence.

discussion of the crime in terms of images from history, and historical fiction (modern white supremacist groups such as the Aryan Brotherhood, after all, were not around in 1930).

The tattoos were an object of fascination for many, perhaps for the way they differentiated the men in terms of both class and ideology. Within a broader social context of conflicts over what constitutes racial bias that included the trials of OJ Simpson and the police who beat Rodney King, affirmative action disputes (in all of which, the racial biases in dispute were more indirect actions and inactions), the tattoos provided evidence of racism that seemed difficult to contest. The linkage of the men to white supremacist groups made a comfortable space for most white Americans to vilify them as racist from a distance (had the men been more like them, the distinction of racist would have been more fraught—as it was in the case of Berry). The tattoos in question were not the pieces of art seen on the young and affluent, but amateur prison tattoos scratched in monochromatically and at times crudely, denoting class and masculinity (more than an “alternative” lifestyle). The classed description of the killers is particularly evident in a couple of news descriptions:

...no one in this trio of backwoods felons comes off as particularly enlightened, even by the standards of today's low-rent Ku Klux Klan.

(Norman 1998, p. E-1)

...the three men arrested in the killing of Mr. Byrd in east Texas are not university graduates. They are prison graduates—mean, poorly educated and culturally impoverished.

(*New York Times* 1998c, p. A-14)

The equation of the Klan with economic disadvantage was disputed by a *San Antonio Express-News* article that interviewed central Texas Klan members, noting their middle-class to affluent positions in society (Bragg 1998). Still, the equation of Southern rural

poverty with violent racism was present in the modes of vilification used to describe King and Brewer.

Graham (2001) notes the cinematic ubiquity of locating villainy (especially racist villainy) in the classed figure of the “redneck”— a poor, poorly educated, rural and anti-cosmopolitan white man (though a white man who lacks many of the traditional trappings of whiteness: he is not able to abstract himself from his body or his particular interests, his physicality and sexuality are marked by excess rather than moderation and control). She attributes the popularity of this causal logic to the lack of cultural vocabulary and narrative frameworks for dramatizing racism as an institutional problem (2001, p. 12-13). The codes of melodrama suggest an individual as villain. However, there are larger issues of policing and purging whiteness at play in the location of racism within stereotypes of “rednecks.” It allows for a distancing between virtuous, non-racist whites and racist rednecks. Such articulations construct racism as a personal, psychological possession rather than as a broad discursive and structural project, even as they rely on markers of class to perform their distancing.

As Williamson (2002) puts it, King creates a perfect villain, who can absorb all the responsibility for not only the murder but racism in general, leaving the community and country off the hook. In the discussion of Bill King and James Byrd, this externalization was blatant. The descriptions of the killers as poorly educated, unenlightened, and culturally impoverished presumes a readership that shares none of these attributes, and indeed who will marshal disgust or aversion toward them. A critical *Newsweek* reporter cautioned against confusion this aversion with the absence of racism:

Since most Americans cannot imagine being anything like King, and cannot imagine their friends being anything like him either, there is a certain comfort in castigating him. In condemning him, we celebrate our own relative enlightenment, our obvious moral superiority. We celebrate, in short, our own

innocence. And in the process, we perhaps forget that morally outranking an evil lunatic is not a particularly exalted achievement.

(Cose, 1999, p. 24)

While he is critical of the way in which distancing oneself from King may substitute for actually tackling problems of racism, his designation of King as an “evil lunatic” is a prime example of vehement distancing.¹³⁷ Even while critiquing this move, the reporter engages in the process of proclaiming membership in a community of good, tolerant citizens through articulating aversion toward King. This is not to deny that King is a reprehensible figure (and here I clarify my membership as well). He certainly was, for his actions, intent (he allegedly desired to use the killing for publicity/recruitment to start a white supremacist group in Jasper) and demeanor. He showed little to no remorse for torturing and killing James Byrd and in fact, responded to a question about whether he had anything to say to the Byrd family with a decidedly non-repentant “Suck my cock.” Still, descriptions of King in terms of redneck stereotypes serve to locate the disruption of the killing—the questions about lingering racism—in a geographic and cultural location far from the liberal, affluent public addressed by the media coverage. In doing so, it also sidesteps any questions the murder raised about the adequacy of liberal reforms and cultural change in addressing issues of racial justice.

For all the claims that Jasper was “turning its back on hate” (as a *People* magazine headline put it) or embracing tolerance, hating King appeared a ritual of membership not only for the national commentators but for locals as well.¹³⁸ *Time* magazine described the celebrations upon the deliverance of the death penalty as black

¹³⁷ In response to those who labeled King a monster and lunatic, Ricardo Ainslie sets out in his book *Long Dark Road* to show King as an intelligent, manipulative man who is not all that different from the rest of us.

¹³⁸ The exceptions to this were the subset of articles that suggested that the prison system produced the racial ideologies espoused by King. Some of these were rather simplistic (suggesting that the prison system of racial gangs had no relation to the outside world) or homophobic (suggesting that prison rape produced Bill King’s racism, and somehow mitigated his responsibility).

and white residents coming together in celebration of the ability of the court to deliver justice for the murder of a black man. One of the stories in this issue of *Time* noted:

The early signs from the courtroom were encouraging. The government put on a powerful case--a far cry from the days when Southern prosecutors found ways to lose--or not to bring--race cases like this one. The defense presented only three witnesses; its entire case lasted less than an hour.

(Cohen et al. 1999, p. 28)

The celebration of what reads like a paltry (or even, within the context of the Texas justice system, a negligent one) defense as an encouraging sign is an odd moment. The training of so much hate upon King seems to legitimate the idea that he does not need or deserve a vigorous defense. This may appear as poetic justice, but it, too, troubles the definition of justice for all integral to the legitimacy of the law, as well as the promises of democratic governance.

The training of revulsion on King, whatever basis it had in his actions against James Byrd and his overall ideology, also functioned as a statement of membership in a nominally non-racist community. There is a decidedly Durkheimian sound to this: the community comes together to reject the wrongs of one of its members and in doing so, solidifies the social body.¹³⁹ There is, however, something more evasive going on in this as well. By embodying racism in King and his actions—and by extension, in white supremacy in general rather than in the everyday practices of law and institutions—most people can appear decidedly innocent and removed from racism. Stating that “each year there are fewer” of the old-guard haters (Lowery 1999, p. A-13) suggests that nothing needs to be done, that a more just and equitable social organism is the natural outcome of the current moment, defined as a progressive social path. The old guard will soon die out, or so the thinking goes. This line of thinking is belied by the existence and growth of

¹³⁹ See Emile Durkheim (1984).

white supremacist groups, the prevalence of neo-conservative racial projects in mainstream political discourse (discussed further in the next chapter), and the multitude of ways in which race is essentialized and racial hierarchies enforced in daily life, law, and business.

The Heroes

If the killers were figured as stereotypical rednecks, the police and prosecutors were the opposite, offering the vision of virtue that could redeem Southern white masculinity and the neutrality of the law. As noted above, one of the common statements running throughout the coverage was that Jasper defied “easy stereotypes” (Shlachter 1998) and expectations of a “redneck refuge” (Graczyk 1998). One Dallas reporter, reprinted in the *Seattle Times*, commented on this at length, beginning his report with the following scenario:

To hear the locals tell it, the world came here in search of the all-too-familiar tale of a racist killing in a backward town with redneck lawmen unwilling or unable to solve the crime. But that's not Jasper's story.

(Hancock 1998, p. A-6)

He went on to quote DA Guy James Gray as saying that it was obvious reporters had shown up expecting the “Southern town syndrome” of clear racial segregation, with whites in all positions of authority and blacks economically and politically marginalized (as noted by many reporters, a number of the town’s positions of authority were held by black residents). Hancock ascribed much of the success Jasper had had in confounding those expectations to the efforts of the Byrd family and local black and white church leaders to bring the town together (to the point that the town was “praised by editorial writers and politicians around the country as a model for healing hate”). While Hancock

and some others locate success in “healing hate” in the black and white communities themselves, many located it in the law, as in this quote from a Denver columnist:

Two hundred years ago the killing of a black man by three whites would have been cheered in the United States. And 100 years ago it wouldn't have been considered unusual. And 50 years ago it wouldn't have seemed, in Texas at least, newsworthy.

And just 30 years ago, in many parts of the United States, it wouldn't have resulted in an immediate arrest and - particularly in Texas - described by a sheriff as a despicable racial crime.

That is progress.

(Green 1998, p. B-1)

This type of commentary repeats many contemporary narratives about the Civil Rights era, in which small Southern towns depicted as steeped in generations of division and racism are prodded into a new era by enlightened or tolerant law men. Racism, in such narratives, is often contained in “redneck” figures, which are villainized and offered up to viewers for aversion (people to define oneself against) (Graham 2001). The ideological implication of this narrative is evidenced in Green’s conclusion. He goes on to finish his column with the sentence “My God, we're making progress—more progress than anywhere else on Earth, where there appears to be no hope that the killing and the hating will stop.” The successful prosecution of three white men for killing a black man seems odd evidence that the U.S. is a more peaceable and tolerant nations than all others. Green’s commentary makes more sense when it is understood as a celebration of the American legal system in general, and the ability of formal procedure to overcome personal hatred and prejudice. This relationship to the law and its formal procedures as a way out of the historical morass of race and racism in the U.S. has a particular appeal.

Graham suggests that in the 90s, cinematic narratives about racism and the South created a hero out of the man of law, building on figures from classics such as *In the Heat*

of the Night and *To Kill a Mockingbird* to create the legal heroes of *Mississippi Burning*, *Ghosts of Mississippi*, and *A Time to Kill*. The creation of these white legal heroes of the Civil Rights era she argues, have performed the cultural work of displaying emotional bonds with black victims of racial injustice, providing historical explication and closure (2001, p. 189). It would seem as well that they offer white heroes of the Civil Rights era, models of virtuous whiteness to offset “white guilt.” While turning all attention to virtuous whiteness has problematic outcomes in this case, which I address in the next section, I don’t intend to belittle the actual actions of Rowles or Gray but to point to the roles that they played within the national news drama.

Still, the way these men’s actions were used to chronicle the murder and its aftermath suggests an overriding concern with white actors and perspectives in the narrative of redemption. Underscoring this is the fact that these men were singled out more than others, even when there were several other local black and white figures available for heroism. This is made evident, among other places, in the prominent roles of two black residents in *Jasper, Texas*’s reconstruction of events. Mayor RC Horn (played by Louis Gossett Jr., one of the two “name” stars of the production)¹⁴⁰ was one of the movie’s heroes and Walter Diggles, the director of the Deep East Texas Council of Governments, was also central.

Part of the fascination with the prosecution and with the white law men associated with it may have been a reaction to contemporaneous expressions of doubt about the ability of the law to meet its obligations to both black and white citizens. The riots in response to the acquittal of the police in the Rodney King trial highlighted again a sense that the legal system did not serve black and white Americans equally (an argument that had been forwarded in an alternative genealogy of 1990s melodramas, including

¹⁴⁰ Jon Voight, playing sheriff Rowles, was the second.

Rosewood, 4 Little Girls, Boyz in the Hood or *Dead Presidents*). One of the reasons Jasper, Guy James Gray, and Billy Rowles may have been so compelling for so many chroniclers is that they offered a counterpoint to these doubts about the neutrality of the law. Ironically, seeing how important race was in both of the men's presentation of the investigation in media interviews, the *New York Times* lauded the "sheriff bent on color-blind prosecution of this lynching" (*New York Times* 1998c, p. A-14).

The narratives of heroism, villainy, and victimization that define much of the discourse on James Byrd's death frequently relied on cultural narratives that link helplessness with righteous black suffering, working class and poor whiteness with racism, and virtuous whiteness with the law. In the end, the narrative of redemption offers up Rowles and Gray as images of not only virtuous whiteness but also the ability of the law to live up to the promises of liberal democracy. In this, the narrative reinforces the overall idea of liberal progress that was in some ways initially shaken by Byrd's murder.

CONCLUSION: FEELINGS AS THE BASIS FOR SOCIAL JUSTICE

We need to recognize that it is in ever-modernizing forms of melodrama—not epic drama, not 'classical realism'—that American democratic culture has most powerfully articulated the moral structure of feeling animating its goals of social justice

-Williams 2001, p. 26

Melodramatic texts, and the melodramatic imagination that they further, are for Williams a very ambivalent and politically charged site. They flatten and offer stereotypes of easy victims and villains. Yet, at the same time she notes that even though democratic politics trade in abstract articulations of rights, the most compelling claims on rights are not formal enunciations of how those rights have been denied, but in melodramatic claims of suffering and victimization (2001, p. 9). The language of

melodrama, with its powerful evocation of affect, provides a powerful tool in “educating” political emotions: reinforcing ever-shifting notions what is socially reprehensible, performing community and catharsis through invitations to hate the racial bigots and love the suffering victims of racism. The political emotions educated are, however, implicitly defined in racialized and limited terms. The grammar of recognition in Williams’ formation suggests that the success of melodramatic claims is primarily in white recognition of claims on racial justice.

The questions raised by the melodramatic discourse around James Byrd are ones of what types of claims on social justice are enabled by the structure of feeling evoked. What are the avenues and limitations for social justice claims based upon the invitations to hate racial bigots, pity the victim of racism, and admire the men who made sure the letter of the law was observed? On the one hand, the melodramatic discourse on the murder of James Byrd did galvanize deep feelings of outrage and injustice (certainly a moral structure of feeling often associated with social justice). The murder of James Byrd galvanized much discussion of the failings of liberal institutions, policies, and people in the U.S. in redressing racism. On the other hand, the particular narrative of redemption that shaped so much of the discourse worked against these feelings. To the extent that the narrative of redemption (and the attachments they invited) localized these failings to the South and uncritically cheered on the ability of the law (as it stands) and its white interpreters and enforcers, it contained and minimized the potential for social justice. It enabled a limited framework for defining, understanding, and pursuing racial justice—limited by a structural focus on eliciting white sympathy.

Social Justice and Structures of Feeling

While I do suggest that the circulation of a narrative of redemption in many ways invited an inactive public, I don't want to overlook the invitations to outrage and a sense of urgency at odds with discourses of color-blindness and formal equality so common in the "new racism" arguments prevalent in much public discourse in the 1990s. The demands for social justice, discussion of contemporary social and economic racial disparities, and overall outrage at the murder were something notable in a discursive landscape that would soon become all too dominated by the new right and language of "compassionate conservatism." The focus of attention on the community and history of Jasper destabilize individualist rhetoric and understanding of racism in individualist terms (even though in doing so, some of the texts positioned racism as a uniquely Southern attribute).

Recognizing the continuing relevance of history, especially a racial history that most Americans arguably desire to disavow or overcome, undermines the neo-conservative celebratory rhetoric of the level playing field and a color-blind society. The framing of Byrd's murder as a repetition of U.S. racial history brought this legacy into the moment, at least discursively speaking, making visible for a moment the violence that has historically defended and defined national borders (Cvetkovich 2003, p. 36). Ann Cvetkovich (2003) is hopeful that attention to this violence and the feelings they provoke can be helpful in practicing what she describes as a "critical American studies," which deconstructs celebratory stories of the nation and national heritage.

To some extent, the public discourse on the murder of James Byrd performed such a critical project, drawing attention to the continuing economic, social, and physical violence which sustain systems of racial hierarchy and white privilege. The duration and intensity of media coverage focused attention on the crime. The brutality of the crime and

the discursive emphasis on this brutality encouraged outrage and discussion of race and politics within the U.S. Scattered commentary framed the murder within a larger context in which the forms of black disenfranchisement were less interpersonal: discrimination in housing policies, economics, medical treatment, and education funding.¹⁴¹ These reports and those that framed the murder in more simplistic contexts worked together to suggest certain feelings toward the crime, those involved, and racism in general as the norm of national belonging. This reaction to the killing reiterated a common aversion to overt and especially physical forms of racism. The semiotic context into which the victim, villains, and heroes were written “educated” readers—often, implicitly, readers defined through whiteness—in the proper objects of pity, revulsion, and admiration/identification. These feelings (focused on their proper objects) took on a discursive position as normative in their frequency and in their association with a virtuous subject position. They were, in sum, offered up as the feelings or attachments of a “good” (non-racist) bystander. The following observations on the conviction of Bill King in *Time* magazine offer a relevant example:

Whatever misgivings arise from the fact of execution itself, the jury's decision declared a happy change in the social organism. One white juror made the argument that King required the death sentence because the community had to show that the murder was "something we cannot accept." If there was encouragement to be taken from Jasper, it lay in her use of the word we.

(Morrow 1999, p. 92)

The author lauds the change in the social organism (or, as he also puts it, the social contract), but notably it is the adjustment in the white community’s social contract with itself that is amended. The positive encouragement is in the white juror’s comment that the community norms cannot accept white violence against black members: the sentiment educated is that of the white community to recognize a wrong against a black neighbor, to

¹⁴¹ See *St. Louis Dispatch* (1998), McWhorter (1998), Cose (1999), White (1999).

more fully understand black neighbors as full community members. The writer notes that this is encouraging, an important political moment, yet it is important also to note the limitations implicit in this moment. The terms of social, or racial, justice in this moment are defined first through the white social contract: this contract and the community which it serves is the gatekeeper determining what counts as a claim on social justice and what does not.

This training of feeling was a major impetus for the anti-hate crimes and anti-discrimination activism that followed Byrd's murder. It was in part the sense of public outrage, that something needed to be done that coalesced around Byrd's death that then-head of the Lesbian and Gay Rights Lobby Diane Hardy-Garcia cited as key to mobilizing the campaign to enact hate crime legislation in Texas (Hardy-Garcia 2006). This process, and its relation to the melodramatic discourse traced here, is the subject of the next chapter.

In some ways, then, these are structures of feeling that forward the potential for social justice. In their broadest strokes, the feelings recognize the imperative to address racial history and wrongs. Yet, at the same time, these feelings were "educated" through rubrics of classism and whiteness that may essentially limit what is considered a legitimate claim on racial or social justice.

Virtuous Whiteness

While the murder may have mobilized an outraged sense that something ought to be done, the location of villains and heroes and the focus on the redeeming potential of the law and white figures of authority re-inscribes many of the tenets of the new racism, described above. The affective investments invited by the media texts are in the idea of a virtuous (rather than guilty) whiteness as well as in a construction of racism in terms of

the “old racism.” The archive of melodramas that provided the semiotic context for discussion of the murder was not the only possible collection of American stories about race. The narratives collected in this archive focus on the role of whites in civil rights projects, rather than on the role of blacks (as in, for example, *Mississippi Burning*). They also place discussion of race, racism, and struggles for equality in the past, in the Civil Rights Movement (presented as a completed project). They are invested in redeeming a neutral or even good moral and political ground for whiteness and legal institutions. The (not fully realized) claims of the Civil Rights Movement challenged both whiteness and legal institutions by recognizing white privilege and that supposedly neutral institutions are in fact biased (that is, that racism originates not only in individuals but in the very laws and processes that are supposed to guarantee equality.) This challenge undermined the assumption of whiteness and dominant institutions as neutral and, Howard Winant (2004) argues, produced anxiety if not schizophrenia in white identity projects. The undermining of the liberal principles of procedural and institutional neutrality was a blow to the legitimacy of democratic politics and institutions. As such, this challenge has spurred various attempts to re-validate, re-normalize, or re-construct white identity (Winant 2004).

The narrative frame of redemption traced here can be understood in terms of a desire to find a virtuous whiteness, to heal the wounds to white racial and political identity. This healing is not just one where white actions can be the source of pride, and not guilt, but also and importantly, one in which institutions such as law (and educational systems) can be re-confirmed as neutral. Whiteness here is closely linked to the functioning and legitimacy of liberal institutions, which have also been called into question by new social movements (those focused on racial justice as well as those focused on feminism and other social justice projects) and, at least in some circles,

critical theoretical projects such as feminism, critical race theory, and critical legal theory. Indeed, Ann Cheng describes white identity in the U.S. in terms of a melancholic attachment to the inclusive liberal ideals that racialized exclusion reveals (2001). The centrality of liberalism in this formulation is useful in articulating the stakes of this narrative. At issue is a faith in the actuality of formal equalities promised by law and liberal political discourse. The desire for a virtuous whiteness exceeds the impulse to have pride or positive self-esteem in a category of racial identity, to encompass as well a reassurance that current institutions and policies are fair and that the subjects of white privilege do not need to give anything up to make good on promises of equity.

This is evident in the construction of victims, villains, and heroes. These roles functioned in the discourse to narrowly define racism as an ideology of the far right (and articulate new right, neoconservative, and liberal politics as outside the purview of racism) at the same time as they reinscribed social hierarchies based in categories of race and class. It is also evident in the curious fact that the semiotic context drawn upon was one that located and limited claims on racial justice in the Civil Rights Movement, as a historical and finished project (rather than an ongoing struggle). The particular movies cited in the discussion of James Byrd's death focused not only on white heroes of racial integration and justice, but also on the 30s and the 60s as eras of political struggle for legal and political equity. Drawing upon the past in this way has the effect of both limiting the definition of racial justice and suggesting that this justice has already been achieved. Such an assertion undermines contemporary claims for racial justice as unnecessary and more broadly supports the idea that post-Civil Rights America is marked by upward mobility and personal choice for all.

Chapter 6

Suffering, Visibility and the Frameworks of Injustice in the James Byrd Jr. Hate Crimes Act

[The murder of James Byrd Jr.] is disturbing, but government can't make people love one another....

I think the way to get rid of hate in people's hearts, the best course I know is religion. The truth of the matter is hate and evil exist, and something much larger than government will help (heal) the hearts of man

-Texas Gov. George Bush¹⁴²

It may be true that the law cannot make a man love me, but it can stop him from lynching me, and I think that's pretty important.

-Martin Luther King Jr.¹⁴³

The role of state institutions in struggles to overcome racism (among other isms) is a fraught subject. The proposal of and debate over the James Byrd Jr. Hate Crimes Act in the Texas legislature was couched in terms of justice and mourning, equal protection under the law, and hate. Whereas discussion of the Bias Crimes Reporting Ordinance in Laramie showed a concern with eradicating the shame surrounding a single event, the discussion of the James Byrd Jr. Hate Crimes Act was enmeshed in a longer history of public deliberation over the role of the state in redressing racism; the bill itself was part of a decade-long effort by politicians and activists to pass (effective) hate crimes

¹⁴² Quoted in a June 11 article in the *Houston Chronicle* (Robison 1998). Bush's take on government's role in fighting evil has presumably changed since this utterance.

¹⁴³ Original quote from the *Wall Street Journal* November 13, 1962; retrieved from Martin Luther King Online <<http://www.mlkonline.net/quotes.html>> on May 10, 2006.

legislation in Texas. Advocacy for the bill was carried out through public expressions of grief and vulnerability.

In this chapter, I analyze the ways that public displays of grief, claims of vulnerability and victimhood, and the racial melodrama traced in the previous chapter propelled the debate on the bill, and contributed to its passage. Public testimony focused on making visible the effects of anti-gay and racist violence in terms of affect and of liberal ideals of justice. While the Act finally passed in 2001, in this chapter, I primarily examine the records and recollections of the 1999 legislative session. This was when, my interviewees told me, the biggest hurdle was overcome, after years of defeat in the House (traditionally, opposition to the bill had centered in the House). As described below, this was the moment where the bill gained the momentum, support, and legitimacy it needed in order to pass in 2001. By all accounts, the bill was suppressed in 1999 by then-Governor Bush's presidential aspirations. Sponsoring legislators returned to the capitol in 2001 eager to finish what they had started in 1999. Because 1999 was defined as the turning point in my interviews, and because it was the session immediately after the highly publicized murder of James Byrd, it is the focus of this analysis.

To piece together the history and discourse around the bill, I used news reports, the legislative archive, and ethnographic interviews. A Lexis-Nexis search for news articles on the legislation resulted in 24 articles in Texas newspapers in 1999 and 2001. The Committee on Judicial Affairs (2000) published an interim report containing a summary of consideration of the James Byrd Jr. Hate Crimes Act and the House Research Organization published both a focus report and bill analysis of the Act (1999a; 1999b). These texts offered me background information on the content, legal issues, and procedural issues surrounding the Act. The primary data for my discourse analysis comes from ethnographic interviews and audio tapes of the public hearings and debates on the

bill in the 1999 legislature (all of the records available from the Texas Legislature). The audio tapes cover the public hearing before the House Committee on Judicial Affairs (Texas House 1999a; 1999b; 1999c), the House floor debates (Texas House 1999d; 1999e; 1999f) and the public hearing before the Senate Criminal Justice Committee (Texas Senate 1999a; 1999b; 1999c). The 10 interviews I conducted were selected to represent figures that played important roles in 1999 decision. As I am interested in how the bill passed and the ways that affective argumentation influenced its passage, I focused my interviews on the bill's authors and supporters. Lesbian and Gay Rights Lobby of Texas (LGRL) head Diane Hardy-Garcia, Sen. Rodney Ellis and Rep. Senfronia Thompson were key authors of the bill: I interviewed Hardy-Garcia, Rep. Thompson and two of her legislative aides (at the time of the bill), Patrick Johnson and Brete Anderson. I was not able to get on Sen. Ellis' schedule, but did interview Deece Eckstein, who was his chief of staff at the time. I interviewed lawmakers identified as pivot votes in the debate: Rep. Paul Sadler (described as a key "moral voice" and moderate supporter), Rep. Warren Chisum (long-time opponent who in 1999 made the decision to support the bill), and Rep. Pat Haggerty (Republican co-author). One "key vote" I was not able to schedule an interview with is Rep. Tommy Merritt, who several of my interviewees identified as an important "cross over" vote. In addition, I interviewed Rep. Wayne Christian, as both the representative of Jasper in the House and as one of the more vocal opponents of the bill. And finally, I interviewed Rev. Jim Rigby, as a community activist who worked closely with Hardy-Garcia and with the families of several hate crimes victims (including the Byrd family) during efforts to pass the bill.

This chapter first places the James Byrd Jr. Hate Crimes Act within historical and political context, tracing the history of hate crime legislation and the role of anti-gay social conservative politics in blocking hate crimes legislation in Texas politics.

Considering the complicated way that categories of race and sexual orientation were deployed in the debates over the bill (though almost always as distinct, non-intersecting categories), the second section look at how the testimony of victims sought to make anti-gay discrimination and violence legible within the framework of the moral claims of victimhood. The concern with visibility here countered conservative doubts about anti-gay discrimination based on the private status of sexuality. The third section examines how claims of racial discrimination and claims of injustice superseded those based on sexuality in the House floor debate, analyzing the different ways in which the normative impulse not to appear racist worked through conservative and liberal political discourses.

The James Byrd Jr. Hate Crimes Act and its History

Supporters who advocated for the James Byrd Jr. Hate Crimes Act remembered the consideration of the legislation in 1999 and 2001 as moments of pride and as a shining example of solidarity and coalition politics. Several discussed the Act's passage in the Texas House of Representatives in 1999 and its progress through both House and Senate and into law in 2001 as high points in their political careers. The way in which the passage in the House, which presaged a defeat in the Senate in 1999, was (emotionally) remembered as an example of successful coalition politics requires an explanation of the background and history of the Act and its relation to the rising social conservatism of the Texas Legislature in the 1990s.

The Act that bore Byrd's name had a long history. Lobbyists and a subset of politicians had been trying to pass hate crimes legislation for many years. The Lesbian and Gay Rights Lobby of Texas (LGRL) made hate crimes legislation one of its priorities from its earliest days.¹⁴⁴ Some of the other organizations involved in lobbying for the bill

¹⁴⁴ LGRL became a formal lobbying body in 1989; it represented the joining of the Lesbian/Gay Democrats of Texas and the Texas Gay Taskforce, which had both worked to represent lesbian and gay

in 1999 and 2001 were the American Civil Liberties Union, the Texas Freedom Network, the Texas Civil Rights Project, and the American Jewish Congress.¹⁴⁵ Within the legislature, a subset of politicians had been introducing and supporting hate crimes legislation for much of the 90s. These attempts coincide with the efforts of various social movements to make hate crimes visible as a social issue, as argued by Jenness and Broad (1997). Efforts to pass hate crime legislation had been countered by social conservatives, often (openly and covertly) due to objections to the recognition of sexual orientation in the bills (Hardy-Garcia 2006; Sponge 2001; Gott 2001). Legislators were lobbied heavily in both 1999 and 2001 by the Texas Eagle Forum and other conservative groups to vote against the bill.

Texas passed its first hate crime legislation in 1993. The bill, which then-Governor Ann Richards signed into law in a symbolically laden Juneteenth celebration,¹⁴⁶ increased penalties for crimes motivated by bias and explicitly prohibited probation as a sentence for a murder motivated by bias or prejudice. This latter provision was discussed at the time in terms of a reaction to the public outcry when one of three young white supremacists convicted of murder in the case was given probation for killing Donald Thomas, a black man, at a bus stop in Arlington in 1991.¹⁴⁷ The bill had a contentious passage through the legislature, and the final version reflected a compromise between

interests in the Texas Legislature during the 80s. The LGRL has since become Equality Texas (<http://www.volunteersolutions.org/ut/org/223632.html>).

¹⁴⁵ Representatives for the NAACP testified for the bill in 2001, but not in 1999. In 2001, as well, several anti-affirmative action student groups testified against the bill, while in 1999, testimony against the bill in public hearings came only from conservative religious groups and libertarian groups.

¹⁴⁶ Juneteenth marks the emancipation of slaves in Texas, as the date that news of emancipation reached black Texans, two years after the end of the Civil War. The location of the signing on this day was full of racial and liberal symbolism.

¹⁴⁷ The murder of young, gay Houstonian Paul Broussard in 1991 was also cited as background for the bill by Dianne Hardy-Garcia (Hardy-Garcia 2006); Broussard died after a group of 10 young men beat him and his friends in a gay district of Houston. The crime, and the fact that five of his assailants received probation (albeit for 10 years), outraged many people and was instrumental in instigating police training and aggressive “sting” operations aimed at would-be gay-bashers.

bill-backers and conservatives—namely, the removal of any language defining prejudice or what groups might be the target of prejudice. Conservative members of the House insisted on the removal of the language in order to pass the bill. At the same time and as part of the same overhaul of the penal code, the legislature was considering removing sodomy laws from the books; the Senate voted to remove the laws, but the House voted to retain them.¹⁴⁸ In the compromise outcome, the hate crimes bill was passed with vague language and the sodomy law upheld (Robison and Ramsey 1993). In the 1999 Senate Criminal Justice committee hearing on the James Byrd Jr. Hate Crimes Act, Sen. Ellis remembered the vague language in the 1993 statute as the result of objections to including protections for gays, lesbians, and bisexuals (Texas Senate 1999a).

This 1993 hate crimes bill was much criticized as being too vague to actually be used¹⁴⁹ and various attempts to add specificity—namely, to specify what types of prejudice would be included, or what groups would be protected—failed in the mid-90s (Sen. Ellis attempted to pass a revised bill in 1995, which was defeated).¹⁵⁰ Before James Byrd was killed, the LGRL and Sen. Ellis were working on pulling together the various pieces of legislation that had been proposed over the previous decade into one, larger Act. When his murder became the center of a national spotlight, and discussions on racism, they saw an opportunity to both personalize the bill and tap into the moral outrage over the murder (Hardy-Garcia 2006). With the support of the Byrd family, the LGRL worked with Sen. Ellis and Rep. Senfronia Thompson to draft the bill that would bear James

¹⁴⁸ An amusing insight into these debates can be seen in the documentary *The Dildo Diaries* (2002).

¹⁴⁹ Between the debates in the legislature and the governor's signature in 1993, the U.S. Supreme Court upheld the constitutionality of a Wisconsin hate crimes law in *Wisconsin v. Mitchell* (508 U.S. 476). The decision defined hate crimes statutes that were specific and content-neutral (that is, with provisions punishing crimes based on racial animus in general rather than targeting violence aimed at any one racial group) as constitutional.

¹⁵⁰ In 1995, an amendment to the state constitution which would have banned affirmative action was defeated, but the neo-conservative rhetoric of getting rid of "special protections" became common wisdom among many Republicans, according to Deece Eckstein (2006).

Byrd's name. The James Byrd Jr. Hate Crimes Act (HB 938) was introduced to the House in 1999. The version of the bill that was debated on the house floor proposed to:

- define hate crimes as those committed against people or property for reasons of bias or prejudice against a person's "race, color, disability, religion, national origin or ancestry or sexual orientation,"¹⁵¹ and increase penalties for those crimes (with the exception of first degree felonies);
- grant money to small counties prosecuting hate crimes;
- declare a "right to be free from hateful acts" (defined as above);
- create protective orders and other civil remedies for infringement of this right; and
- require police training to include training on recognizing and handling hate crimes. (Texas Legislature 1999; House Research Organization 1999b).

While the 90s had seen some backlash against legislation aimed at redressing racial injustice (Eckstein 2006), it was widely accepted that sexual orientation was again the main point of objection.¹⁵² News articles from 2001 (when the bill was re-introduced) describing the history of the James Byrd Jr. Hate Crimes Act uniformly noted that the bill died in Senate because of the controversy over sexual orientation (by then, the language had been changed to "sexual preference") and George W. Bush's wish to avoid having to consider signing legislation that explicitly recognized and offered legal protection to the gay and lesbian community.

The bill was considered before the House Judicial Affairs committee, which heard a long list of testimony from interested parties, and passed the bill to the floor, where it also passed in an 83-61 vote on April 27, 1999. Activists and news reporters described the Act's passage in the House, where hate crimes legislation had previously been

¹⁵¹ Age and status as "a pregnant person" were added in during negotiations in the House.

¹⁵² Going on in the background of this debate, whether lawmakers were aware of it or not, was the beginnings of *Lawrence v. Texas*, the Supreme court case that would strike down Texas sodomy laws. John Lawrence and Tyron Garner were arrested on sodomy charges in 1998. Their challenge to the constitutionality of the Texas law (on grounds that it violated due process) was heard by the Texas Fourteenth Court of Appeals on Nov. 4, 1999 (Brewer 1999, p. A-29).

roundly defeated, as an emotional moment. The supporters of the bill had been able to line up some of the heaviest hitters and most respected speakers to present the bill on the floor of the House (Anderson 2006), and at the last minute, Rep. Thompson had been able to convince conservative Representative Warren Chisum to back the bill and bring several other conservatives with him, in exchange for changing “sexual orientation” to “sexual preference” (Hardy-Garcia 2006; Thompson 2006).¹⁵³ The bill progressed to the Senate, where it was debated in the Criminal Justice committee, and where it died. The press and the supporters of the bill speculated that its defeat was due to political pressure to keep the bill from coming before George Bush, forcing him to either sign a law that would alienate social conservatives or refuse to sign it and alienate more moderate voters.

In 2001, Rep. Thompson and Sen. Ellis re-introduced the bill as HB 587. This time, it passed the Senate and the House and made it to the governor’s desk. While most of the legislators remained the same,¹⁵⁴ there were several important differences in 2001. First and foremost, there had been a change in governors, from Bush to Perry—and Perry, while he had gone on record as opposing the bill in the past, was not running for president. Second, Sen. Ellis was chair of the finance committee in the Senate and therefore wielded more clout (Anderson 2006). While the Act easily passed the House again, Sen. Ellis’ clout helped get it out of committee and onto the Senate Floor. It looked like it might be killed in committee again in the Senate, but a highly publicized act of vandalism against a prominent black church in Dallas increased pressure to pass the Act and Sen. Ellis was able to use his clout to get the needed votes to bring it to the Senate Floor for debate (Eckstein 2006). The Act passed in a closely-watched 20-10 vote in the

¹⁵³ During the same legislative session, Chisum introduced HB 838, a bill prohibiting the recognition of same-sex marriages performed in other states. The bill died in committee in the House 1999 session (it did not make it to a floor debate).

¹⁵⁴ All but one of the Republican senators who had opposed the bill in 1999 returned to the capitol in 2001.

Senate (Gott 2001) and Gov. Rick Perry signed the Act into law on May 10. The Act, as passed, contained a similar set of provisions as the 1999 version. Among these, it:

- increased penalties for hate crimes, defined as crimes committed against a person or property based on the person/owner's "race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference"¹⁵⁵;
- provided monetary aid for small counties prosecuting hate murders;
- declared a "right to be free from hateful acts" (defined as above)¹⁵⁶;
- created avenues for targets of hate crimes to get protective orders and other civil remedies based on interference with this right;
- defined reporting procedures for hate crime convictions;
- assigned a prosecutor in the Attorney General's office to act as a statewide coordinator in hate crimes prosecution;
- provided training to prosecutors in implementing the new law; and
- required the creation of educational curriculum on hate crimes to be created and made available to Texas schools and communities. (Texas Legislature 2001; House Research Organization 2001).

The dominant story told by those reporting on and involved in the bill's passage was that on multiple occasions, critics of the bill said they would pass the bill if the authors would only take out the language on sexual orientation. My interviewees recounted a number of behind closed doors talks about such a compromise and Senator Royce West, speaking in HB 938's public hearing in the Senate Criminal Justice committee (in 1999), remembered that the vague language of the 1993 statute was the result of conflicts over the inclusion of sexual orientation. What emerges from this history is that, while the bill was debated and framed in terms of racial justice, many of the objections to and negotiations over the bill centered on the legal recognition of gay and lesbian citizens. There was a complicated set of relationships between race and

¹⁵⁵ The Act explicitly defined "sexual preference" as "only" meaning "a preference for heterosexuality, for homosexuality, or for bisexuality." This language was inserted into the Texas penal code.

¹⁵⁶ Though, the text of HB 587 later states explicitly that the law does "not create any legal status or right not already existent in statute or common law" for any of the groups listed.

sexuality, with race (and debates over the proper role of the state in recognizing and/or redressing racial wrongs) often taking the front role in public discussions and sexual orientation often being the explicit or implicit subject of behind-the-scenes discussions and lobbying.

What happened in 1999, according to Hardy-Garcia (2006), was an example of solidarity between black and Latino lawmakers and gay and lesbian interest groups. The authors and persuasive voices behind the bill were primarily black lawmakers; when offered the opportunity to compromise and get a bill passed that would recognize racially-motivated violence as prejudice, but not violence based on perceived sexuality, the lawmakers refused. The momentum the law gained through coalitional politics and through the invocation of normative moral frames of victimization (and melodramatic articulations of injustice) even added the support of lawmakers who traditionally opposed hate crimes legislation.

GRIEF AND VICTIM TESTIMONY

While the passage of the 1993 hate crimes legislation was celebrated on Juneteenth, the signing of the 2001 Act was associated with another, different holiday: Mother's Day. While the signing was not officially aligned with the holiday, James Byrd's mother, Stella Byrd, was quoted in multiple news reports as saying the signing was the best Mother's Day present she had ever received. The association was in some ways apt. The grief and pain of the families of hate crimes victims¹⁵⁷ played a very important part in the debate and progress of the Act, in both 1999 and 2001. This grief, in

¹⁵⁷ Throughout I use the term victim to refer to the targets of hate crime. This is not to insist that victimhood is a primary social identity for those who testified, but to highlight the rhetorical and political use of victim status.

testimony before committees and in the press coverage, worked to humanize the bill and put a political and moral pressure on lawmakers.

The status of victimhood was mobilized in various ways to exert emotional pressure. The workings of this mobilization evidence the ways in which emotional expectations work, the way that certain emotions were defined as the normal or proper response. These responses were tied to various levels of social membership, whether it was the most broad (seeming “human”) or more specific (the Civil Rights generation). The use of testimonials from “ordinary” people worked to argue for the visibility of discrimination, especially against gays and lesbians—and to make this victimhood more proximate to the lawmakers. And, the emotional and moral arguments demanded a response from the state, and in less abstract terms, from lawmakers as both political figures and individuals.

The Visibility of Victimhood

The decision to name the 1999 Act after James Byrd Jr. originated as a political strategy to personalize the issue: high-profile crimes had been important catalysts for discussions of previous hate crime bill proposals. Adding James Byrd’s name was intended to put a face on the Act and to draw upon the public outrage that had followed Byrd’s murder (Hardy-Garcia 2006; Anderson 2006). Byrd was, as outlined in the previous chapter, a sympathetic victim. The brutality of the murder and the way it evoked a history of racism and racial violence for many people spoke to a need to do something: to sit back seemed to accept the crime, and the racism it bespoke. Dianne Hardy-Garcia remembered the public response to Byrd’s murder as not only anger but mobilized outrage. In the news, the murder was discussed broadly as a hate crime, which Hardy-

Garcia attributed to years of publicity and public education efforts by activist groups.¹⁵⁸ When Byrd was killed, she noted, the public “had a name for it,” a name that she hoped would coalesce the public outrage and cries for a response around hate crimes legislation.

James Byrd’s death was particularly visible as a hate crime, and the brutality of his death made racism (under most all definitions of the term) a particularly visible part of his death. While a number of gay men had been killed in Texas in the 90s (Hardy-Garcia put the number at 30) and high profile murders like that of Paul Broussard helped galvanize the effort to pass hate crimes laws, it was not a gay man’s name on the bill. These murders were not as visible nationally and did not have the same normative call upon the legislators as did Byrd’s murder, through both its national publicity and through its association with histories of racism. The arguments before the committees and on the House floor in 1999 referenced the history of racism in Texas and the pain of the families of those killed in anti-gay violence. This testimony explicitly asked for recognition in the law that this violence was discriminatory and not just interpersonal. The murder of James Byrd was repeatedly referenced as an example of the way that hate crimes terrorized the entire targeted community (in the case of Byrd’s murder, the black community in general). The arguments emphasized the patterned nature of the violence, and personal experiences of discrimination.

These patterns of violence provided the frame for the introduction of the Act. Rep. Thompson opened the public hearing in the House Judicial Affairs Committee with a speech and a slide show featuring images of victims: James Byrd Jr. and her own legislative aide, who had been the target of anti-gay violence several times. She closed

¹⁵⁸ Patrick Johnson (2006) told me that attempts to pass the hate crimes legislation had, in the past, used gay victims of hate crimes less successfully to personalize the bill. When I asked him about why Byrd was more successful in terms of putting a face on the bill, he responded simply that Byrd wasn’t gay.

her remarks with a set of rhetorical questions addressed to the committee members. She asked:

Will your church be targeted because the congregation is primarily black? Will your daughter be called names at school as she is assaulted because skin is brown and she speaks with an accent? Will your house be spray-painted because you do not worship Jesus? Will you be raped, tortured, and stabbed because your skin is white and you stumble across a Latino gang in a field? Will you be enticed for a ride with an anti-immigrant assaultive robber? Will you be chased and pummeled by skinheads with baseball bats because your sexual orientation is different? Will you be beaten by a group of ignorant, macho suburban teenagers waiting outside a bar to use a 2x4 with nails sticking out to beat you to death because your sexual orientation is different? Will you be kidnapped, chained and dragged to your death by ignorant, hateful racists until your skin rips off, until you are dismembered, just because you are an African-American?

(Texas House 1999a)

The list of questions referenced the stories of the different victims whose stories would be invoked in testimony before the committee. It also highlighted some of the primary axes of difference between the committee members (primarily, though not exclusively, white, Christian males) and the victims.¹⁵⁹ The interrogative element focuses attention to the relative safety of committee members in their bodies and social positions. The majority of Thompson's questions echoed a common response of supporters to the special protections accusation: that they were only asking for the most basic of human rights. It was ridiculous to claim that asking for basic safety was asking for special protections or rights. Rev. Rigby, who worked closely with the LGRL and Thompson's office in lobbying for the bill, remembered Thompson arguing: 'All you white people don't think you have race. All you men don't think you have gender. All you straight people think you don't have an orientation. So you think these are special rights.' This

¹⁵⁹ This came just after she emphasized that hate crimes can happen to anyone, even white, male legislators. The arguments that the Act covered everyone (that everyone has a race, gender, and sexual orientation) often sat uneasily next to the argument that the bill would redress systematic discrimination against racial and sexual minorities in everyday life, law enforcement, the courts, and the media.

makes sense in two different ways: first, to underscore that these are not special rights, just the rights that those in the majority enjoy and second, to highlight the neutrality of the Act's language, which offered protection against crimes based on race (rather than crimes against racial minorities). The latter meaning was used, as in the example of the attack against the white woman, in arguments to underscore the vulnerability of people like the lawmakers. While most of the stories emphasize the patterns of violence against people marked in some way as socially violable, the story of the white woman goes against this. The Act at this point did not include violence based on gender as a category of hate crime; in the logic of the bill and the phrasing of the story, it is the woman's whiteness and not her gender that marked her for attack. Examples like this and statistics were repeated by supporters to emphasize white vulnerability to hate crime.

The set of arguments about the law protecting white victims was no doubt an attempt to head off claims that the legislation created "special protections" for some groups over others. The rhetoric of "special protections" was a leftover from the anti-affirmative action politics of the earlier 90s, in which the Civil Rights-type legislation was attacked for abridging the equal protection clause of the 14th Amendment (Eckstein 2006).¹⁶⁰ In light of this concern over "special protections," supporters worked to convince the committee members that they could be the victims of hate crimes. Emphasizing hate crimes, and the law, as only affecting minorities would have been open to criticism that the law was unfair because it gave some citizens "special protections." Pat Haggerty, in our interview, remembered trying to persuade other representatives to support the bill using the shift in racial demographics in Texas. He reminded lawmakers, he said, that in the not-too-distant future, whites might be a minority in Texas, and therefore they might want to think differently about who the victims of hate crimes are

¹⁶⁰ In both the Laramie City Council and Texas Legislature debates, the 14th Amendment is interpreted radically differently by the opposing sides, and invoked by both as justification repeatedly.

(conflating demographic minorities with less access to power with hate crime victims) (Haggerty 2006). In committee testimony, majority Latino and black regions were invoked to make a similar point. In his testimony before the House committee, Jim Harrington, director of the Texas Civil Rights Project responded to questions about equal protections by noting that that the Act would penalize a Latino for assaulting a white man based on race. He gave the example of such an attack in the Valley, where whites are a minority (Texas House 1999a). Similarly, Rep. Thompson's opening remarks had included a somewhat ominously-toned reminder that the Act would even protect the white committee members "if they ever ran out of gas on a lonely street in Oak Lawn, a lonely bayou in the 5th Ward" (Texas House 1999a). Others emphasized that the Wisconsin law the Act was modeled upon was famous for its use to prosecute several young black men for attacking white men after watching *Mississippi Burning*.

These examples were employed to remind the audience of the neutral language which could include anyone. This emphasis on neutrality, that the law recognized the targeting of whites as well as racial minorities, seems to posit racial violence as an equal-opportunity social problem that affects white, black, and Latino populations similarly, denying the very unequal historical patterns of violence and access to justice in this violence. This points to a fundamental problem in attempts to draft legal remedies for structural inequality: that the existing law and legal language refuses to admit inequality. The rhetoric used in these arguments also draws upon the emerging discourse of ascendant minorities: that what in the past have been minority groups will one day be the racial majority. This type of argument, while it avoids issues of power on its face, attempts to play upon white fears of racial revenge which implicitly acknowledge power and the historical contingency of racial categories and meanings.

While the rhetoric of “special protections” and “reverse discrimination” (Texas Senate 1999b)¹⁶¹ was prevalent in the debate, there appeared to be consensus that race was not the sticking point. Newspapers and Senate testimony, rather, pinpointed sexuality as the sticking point. Several of my interviewees even recounted stories of opponents approaching black lawmakers who supported the bill offering their support if the category of sexual identity was removed (Rigby 2006; Hardy-Garcia 2006; Sadler 2006; Anderson 2006). While the presence of the arguments above suggests that there was not consensus on the need to recognize and redress racist violence (and that there was definitely no consensus on the recognition of white privilege), there was, according to several interviewees, a reticence to be seen as racist. Race-based hate crimes were visible, due to the publicization of critical histories and due to the details of James Byrd’s death. Jim Harrington’s testimony could call upon public memory of the terrorism of the KKK against black communities and of the Texas Rangers against Latinos (Texas House 1999b). Texas’ public history of racial discrimination and violence, as well as the intensely public murder of James Byrd made these crimes—and their victims—visible and therefore legitimate.¹⁶² Much of the testimony was aimed at making discrimination and harassment based on sexual identity similarly visible and legible to the committee members.¹⁶³

¹⁶¹ As well, a representative for a libertarian group argued passionately that racism was an ideology and as such deserved active protection from the state (Texas House 1999c).

¹⁶² Brete Anderson, who was chief Legislative Director for Rep. Thompson during these sessions, noted that this visibility lent his work more legitimacy with his in-laws and relatives, people who had previously not understood or seen the importance of the issues he was involved with through his work: “That time I don’t think I heard anybody say ‘what are you trying to do down there’ but more ‘yeah, that needs to be done’” (Anderson 2006).

¹⁶³ The juxtaposition of testimony about anti-gay and racist violence may also be part of a discursive attempt to liken anti-gay violence and discrimination to racist violence and discrimination (which has been successfully legally recognized). Janet Halley (2000) has famously cautioned that these types of arguments have the danger of entrenching rigid gay-straight binarisms, and hence diverge from queer political projects.

The visibility of race and gender as axes of discrimination (and targeting) was highlighted by those who did not see gay and lesbian victims as legitimate. In the Judicial Affairs Committee hearing, during Jim Harrington's testimony, one (unidentified) representative asked whether some victims were more visible than others—and how it was possible to tell if someone had been targeted for an “invisible” reason. Here, the idea of invisibility works to deligitimate the idea that discrimination based on sexual orientation is a valid public and political concern. Similarly, Rep. Sadler recounted a personal conversation with then-Gov. Bush about the legislation, in which Bush said his main reservation about the Act was: “How do you know if they're gay?” (Sadler 2006). In the words of Bush and the anonymous Representative, the idea that sexuality is not visible performs both a denial of the prevalence of performances of heterosexuality in the public sphere and a rigid sense of identity categories. That is, he refused to recognize the ways in which the “invisibility” of queer sexualities is a function of the enforcement of heteronormativity. In her defense of the category of hate crimes, Sara Ahmed (2004) notes that the category itself does not necessarily reproduce hierarchies between different identity categories (e.g., the subordination of black subjects to white ones). Rather, she suggests that it is the crimes, or the actions, themselves that enforce these categories: that part of the violence of hate crimes is the way in which an attack based upon race, gender, or sexual orientation enforces that identity category upon the person attacked, reducing them to the category alone. In fact, the idea of invisibility, as employed by Bush, performs a similar reduction. His comments reify identity categories, in the idea that the reason for the attack is located in the victim (in the form of his or her identity) rather than in the social perceptions of those surrounding the victim and/or those doing the attacking.

The question of the visibility of sexuality worked differently in the hands of supporters of the Act. Supporters suggested that the behind-the-scenes reason some

conservatives “crossed the aisle” to vote for the legislation (or absented themselves from the vote in collusion with supporters) was that they had secret or hidden gay relatives (Thompson 2006; Eckstein 2006; Johnson 2006). Patrick Johnson recounted a story of one conservative lawmaker’s conversion to a supporter of the Act as a conversion via being mis-read as gay. The representative in the story was waiting outside the Cloak Room, the bar at the capitol where lawmakers gather informally (and reportedly, where many deals and negotiations are made). The Cloak Room happens to be next to a landmark Austin gay bar, Charlie’s:

One of the reps from East Texas—I’m not going to tell you who—was standing out on the corner, waiting for his driver and somebody yelled “faggot” at him and threw something at him. At that point, he became a supporter.

(Johnson 2006)

In this story, the ability of the signs of homosexuality to accrue to any body worked here to place the lawmaker temporarily in the position of victim, as articulated in the legislation. In this story, experience spoke for itself: the experience of victimization was sufficient to argue for passing the Act.¹⁶⁴ These stories emphasized the “randomness” of attacks against innocent targets. This emphasis on randomness may have been intended to counter any sense that the victims had somehow “brought it on themselves,” but it also has the effect of evoking or legitimating the idea that all people are equally likely to be targeted by hate crime, again denying the existence of inequality. They also, as did the victim testimony, argue for the “ordinariness” of those affected by hate crimes; this

¹⁶⁴ Houston City Council member and gay activist Annise Parker told a similar story about the Houston Police Department in her testimony before the Committee. After the murder of Paul Broussard, the police organized a sting operation to try to catch Broussard’s assailants. When police went undercover as gay men, they were shocked to experience the number and magnitude of harassment and violence they faced: several police officers were injured in the first week. The experience made evident a problem the police had not taken seriously before, leading the police to perform specialized training, outreach to gay and lesbian communities, and the creation of a special hate crimes unit (Texas House 1999a).

ordinariness and the authenticity it signaled, claimed sort of moral authority in the discussion of the Act.

The Moral Claims of Victimhood

The public testimony in the House and the Senate committees was packed with people who had been victims of hate crimes and family members of those killed in hate crimes.¹⁶⁵ This testimony emphasized the families' losses, and the injuries done to victims of hate crimes. The very form of testimony places speakers in a relation of witness with their audience: there is pressure to do justice to the loss or pain, to convey it to others. It places speech within a juridical and/or therapeutic framework. Within its current cultural (and legal) set of meanings, testimony crosses the boundaries between the juridical and the therapeutic, often in the same court room (Wood 2003). Testifying before a legislative body about personal loss has both the potential to illustrate and publicize an experience and to provide a space of public mourning, to publicly argue the value of what, or who, is lost. The logic of public mourning is also, of course, a logic about who matters to the polity (or, who is recognizable as part of the political body) (Butler 2003). We have publicly defined forms and norms for grieving the deaths of those proximate to us; conferring these forms of public mourning on an individual is a powerful form of political recognition (Butler 2003; Koziak 2000).

The norms of mourning demand respect for the losses of others'—a respect that bestows on the experiences and feelings of the victims and their families a high level of moral authority and legitimacy. The ways in which different political actors invoked the wishes of the Byrd family in order to confer legitimacy on their diverging legislative

¹⁶⁵ A vast majority of the testimony from victims and victims' families revolved around anti-gay and anti-Semitic attacks.

intents and arguments offers some insight into this. The wishes of the Byrd family were an important justification for the bill, and opposition to it. Dianne Hardy-Garcia remembered recognizing the formation of a public around the murder and the centrality of outrage in this public shortly after Byrd's murder. She and Sen. Ellis sought to use Byrd's name in order to tap into this outrage, marshal this public toward legislative action. Hardy-Garcia, along with Rev. Rigby, went to Jasper to speak with the Byrd family to seek permission to use Byrd's name. She said that she had worked with families of victims and "thought that many times families do want to do something beyond, you know, just the criminal side of what happens in these types of cases" (2006). Rev. Rigby remembered this trip as well, and the interest of the Byrd family in becoming involved. He described the Byrd house, filled with mementos that people had sent in the wake of James Jr.'s death (from a pink Cadillac to the special direct phone on which then-President Clinton had called to offer his condolences). And Rigby remembered that Stella Byrd had stressed that her son's murder had not been all that unusual, that the only thing unusual was the public attention to it. The visit impressed upon Rigby a sense of "the terror they live with—there may not be as much violence, but it doesn't take as much when the system is that strong" (2006).

The blessing of the Byrds, and particularly Stella Byrd, became an important part of the argumentation over the James Byrd Jr. Hate Crimes Act. She wrote a letter to the legislature on behalf of her family, asking them "to pass the act in the name of our son" to prevent future hate crimes and to prevent other families from going through the pain the Byrd family had faced. The support of the Byrd family was key to Rep. Thompson's and Sen. Ellis' efforts to pass the Act. Each referenced the wishes of the Byrd family in their arguments for the bill, and each responded to the opposition's claim to be upholding the wishes of the Byrd family. Rep. Wayne Christian, in his opposition to the bill on the

House Floor, justified his opposition in terms of the family's and community's wishes. He said that Jasper had done a good job responding to the crime, and that the proposed Act suggested otherwise. He argued that the Act would create distinctions, treat some victims as more valuable than others (like the system of lords and ladies from the past).¹⁶⁶ The Byrd family had been heroic, he stressed, in trying to discourage public spectacle; they did not want their sons name used to further publicity for the Hate Crimes Act. He asked the legislature to respect the Byrd family's wishes and leave the law, and the murder, alone (Texas House 1999e).

Christian was immediately countered by Rep. Hochberg (a long-time proponent of hate crimes legislation), who asked whether Christians would respect the wishes of the Byrd family to pass the bill (Texas House 1999e). Rep. Thompson, in her closing comments in the Floor debate, also came back to Christian's invocation of the family, to remind that Stella Byrd had addressed a letter to the legislature asking for passage of the act (Texas House 1999f). As well, Thompson and then-Ellis chief of staff Deece Eckstein told me a behind the scenes story about a confrontation over Christian's reference to the family's wishes. Prior to the floor debate, Christian said he had spoken to a family member who said she did not support the bill. He identified the family member as Stella Byrd. Thompson called Mrs. Byrd and asked whether she had spoken to Christian (to which, Thompson told me, Mrs. Byrd replied that she didn't even know Christian was her Representative). With this response, Thompson and Ellis tracked down Christian and in a tense confrontation, told him what Mrs. Byrd had told them and got him to backtrack on

¹⁶⁶ He also explained the murders with a similar logic. He argued that King and the others had killed Byrd because they were angry because "for some purpose, somewhere down the line, some legal authority drew a line and said your bunch is going to be treated different from this bunch" (Texas House 1999e). The argument references the idea that affirmative action and other reparative laws conferred "special privileges" on African-Americans (a very similar rhetoric to that used by the KKK when they visited Jasper). His use of this argument to explain the murder comes off a bit like the "gay panic" defense, in its suggestion that they were angry as a legitimate mitigating factor.

his claim to have spoken with the immediate family (Eckstein 2006; Thompson 2006). His conversation, Thompson told me, was with a distant cousin (Thompson 2006). The issue of the support of immediate family was key. When I spoke to Christian, he praised Stella Byrd's comportment and actions in Jasper, noting that he had passed a resolution in the House honoring Mr. and Mrs. Byrd. He remembered the involvement of the family as quiet, stressing that those who had testified were "not the immediate family":

There was one family member, a niece or something that came to Austin, but the actual family from Jasper mostly, I don't remember them ever being in a press conference or leadership position, or visible places. They just played on the back row. I was not closely involved with them, so I can't testify exactly what they did.

(Christian 2006)

In fact, Byrd's daughter, sister, and nephew testified before the House and Senate committees. The energy that went into defining what the immediate family wanted (and who, if anybody, was using the family)¹⁶⁷ testifies to concerns over adequacy of electoral representation, but also and more immediately to the way that the family's wishes worked as a source of legitimacy, even conferring a tone of moral authority to those who were able to successfully argue to speak on behalf of the family.

The moral authority associated with the Byrd family's wishes was tied to the visibility of the pain of the Byrd family. The highly mediated and graphic descriptions of James Jr.'s murder, the way it became a focal point of public concern and confrontations between black militia groups and the KKK, and the desecration of Byrd's grave (it was spray-painted with a swastika) highlighted the specificity of the suffering of the Byrd family. The very spectacular elements of the murder and its aftermath were particularly

¹⁶⁷ Christian told me that he opposed the bill in part because it was an effort to use a tragedy that had happened in his district to pass "failed legislation"—a piece of legislation that had failed on its own merits in previous sessions (2006).

effective in drawing attention to the crime, and even to the differences between a hate crime and a “regular” crime.

The way that some crimes are more capable of garnering attention, generating and holding a public, was illustrated by the preponderance of murder victims in the victim testimony. While the bill was presented by multiple supporters to be aimed more at enhancing penalties for and providing protections to victims of less fatal attacks, the families and stories of murder victims had center stage. While several victims of intimidation and vandalism spoke compellingly of their (mostly failed) attempts to find legal protection from harassment based on their sexual identities, the testimony of families was singled out as the most effective. Such attacks do not as frequently coalesce publicly as more dramatic and violent cases of murder.

Family members of murder victims, more than victims (of non-fatal attacks) themselves, bring mourning into the testimony. And with it, bringing the ethical and moral claims of loss. The testimony that several of my interviewees cited as most effective were testimonies of family members of murdered gay men (and not the testimony of live gay men and women who had personally faced intimidation). Patrick Johnson and Rev. Rigby both pointed to the testimony of one family member as important: the brother of a Latino gay man killed in Austin in a homophobic attack. Johnson spoke of how his “macho Hispanic cowboy” persona made him effective, as an “ordinary” (read: heteronormatively masculine) guy testifying for the passage of the act and the inclusion of protection for gays and lesbians in the act (Johnson 2006). While this may have to do with the way that straight family members of gay victims could be read as similar to the lawmakers, there are also clearly normative emotions in response to death. That is, certain emotional responses (e.g., sympathy, solemnity, respect) are expected as a “decent” response to death.

My interviewees noted these expectations in discussing how difficult it was to look at the faces of the families and oppose the bill. In discussing his co-authorship of the bill, Rep. Pat Haggerty noted that the testimony of the victims, the visibility of Byrd's murder (and he noted as well the visibility of Matthew Shepard's murder) made it difficult to think of going home (for him, El Paso) to "face the folks at the Rotary Club or Kiwanis Club and tell them I voted against it, I think it's okay to hang a gay kid on the side of a fence or drag a guy down the street. It got to a point where it became apparent that this is not something that we should be allowing. And that if you are a homophobe or you do have racial feelings, you better overcome it" (Haggerty 2006). The importance is not that the murders convinced him to support the bill (he had supported similar legislation in the past) but the way that the testimony framed the issue in moral and political frames that were difficult to refuse. Though, the suggestion that the murders were what made it apparent that homophobic and racist violence should not be allowed does seem a bit odd (one would hope that was evident to lawmakers before these events). Hardy-Garcia noted the import of having "droves" of victims and families of victims testifying:

I think it made it hard for them to reject the legislation. But you know lawmakers hear our sob stories all the time so the, I think there was another level, that many of these victims went to personally ask [lawmakers to pass the legislation]...I mean how can you justify not supporting this legislation when you're looking at Ms. Byrd's face or James Byrd's daughter.

(Hardy-Garcia 2006)

Similarly, Rev. Rigby noted that it was difficult to distance oneself from the testimony of families. He talked about how it is much easier to deal with the issues at stake in the debate over hate crimes legislation when you are talking at the abstract level, but that "when a kid is sitting there talking or, you know this woman sitting in a wheelchair

talking about her son being drug to death, you know...that's when they couldn't push back" (Rigby 2006).

Hardy-Garcia also noted that a lot of "the bad behavior that used to happen" didn't happen any more after the floor debates started being televised (on closed-circuit TV and local cable access). The publicity of the television heightened the pressure to display proper feeling for the victims: the pressure to display proper feeling is after all a social pressure, a way of enacting belonging in a community or public. Rep. Christian noted the difficulties he faced in opposing the bill. Race and sexual identity were probably two of the most volatile social issues in the U.S., he said, and because of this the debate was very difficult to navigate:

I think people were most careful of what they said and indeed those of us that are Caucasian were most aware that anything that you try to say in opposition was taken as anti-minority. And we had to be very careful to say, 'No, that is not the situation here. The situation is that the legislation is not what the people of Texas want.'

(Christian 2006)

He was clearly concerned at the danger of appearing racist, as he returned to this danger several times. He noted that he had received hate mail for his opposition to the bill and had been accused of being a Klansman himself. He also defended opposition to the language recognizing sexual orientation/preference in terms of religious freedom, a move that was repeated by many socially conservative opponents. He argued that in Texas, if you bring up issues with such moral overtones such as race and sexual orientation, that it is legitimate for lawmakers to bring religion into the debate, and vote based on their (and/or their constituents') religious beliefs.

The concern with not appearing racist is in part a concern with affiliation and performing belonging in the proper community via feeling. The concern Christian expressed about being very careful with his words, and his example of the consequences,

have to do with being affiliated with disavowed communities of white supremacists. The fear of being aligned with the KKK is not only a fear of being associated with an extreme ideology: the speech of the Klan members in Jasper focused on resentment over affirmative action and anti-immigration arguments that are not far from those of conservatives in the Texas Legislature (and, indeed) the U.S. Congress. The desire not to be associated with the Klan has much to do with a desire not to be in forced community with a group with a history of violent racial oppression, widely known for its illiberalism, extremism, and violence. A different (opposing) way in which support for the bill was expressed in terms of community affiliation came from Rep. Pat Haggerty. He talked about the bill as a way to distance the state, and his constituency, from stereotypes of the South, as a place where “everybody carries a gun and they all shoot squirrels and eat them—that’s the image of the South and Texas needs to dissociate from that.”¹⁶⁸ His concerns centered on being affiliated with a modern economy: skilled workers would not be interested in moving to Texas if they had to “live with people like that” (Haggerty 2006). The normative expectations of mourning were, in Haggerty’s arguments, not only proof that you were not a “racist pig,” mourning and taking action were also ways of articulating affiliation away from the Old South and to the (dominant) modern national culture and economy.

The normative expectations of mourning were tied to a more basic form of membership in descriptions of then-Gov. Bush’s interaction with the Byrd family. The story of the family’s meeting with Bush was circulated at many sites, including the Internet, during the run-up to the 2000 presidential election, and recounted to me by both Hardy-Garcia and Rigby. Byrd’s daughter and several other family members wanted to

¹⁶⁸ This description came in a discussion of how the media covers crimes in the South differently from other places. He suggested that the coverage of the shooting in Columbine had been attributed to bad individuals, while the school shooting in Arkansas was attributed to the redneck culture, the image of which he describes in the quote.

personally appeal to the governor to get the bill passed and, after many attempts, finally got a brief appointment at which they appealed to Bush to pass the bill. Rev. Rigby recounted the visit to me in terms of Bush's inappropriate affect. Bush was impatient and told them he hadn't even read the bill, and refused to read it when asked, dismissing them. "And they were just sitting there like they'd been shot...all he had to do was say 'Thank you very much for coming. You know, I'm on the other side of this, but, you know, I respect you for what you're doing and I'm sorry about your dad. Or anything human whatsoever'" (Rigby 2006). Bush's response is not only impolitic, it is inhuman. He fails to perform the most basic affective cues of belonging. Whatever the reasons, the effect is not only to question his membership in the community of decent people, but to cast doubt upon his "humanity." In contrast, Rigby remembered that Perry, who had initially expressed opposition to the Act, had tears in his eyes when he signed the Act into law and spoke with Stella Byrd. Despite his politics, he performed proper feeling and was remembered as more human.

The visibility and moral claim of victimhood here is an important part of the affective economy of victimization. Visibility of suffering is aligned with the legitimacy of claims on discrimination, and upon the law to act as remedy to this discrimination; as well, visibility in general has played an important historical role in creating the conditions of possibility for gay and lesbian/queer politics (Gross 2001). The mobilization of victimhood was in this case a key way of making visible both personal stories of pain and public claims on justice. The predominance of testimony from victims and families of victims of anti-gay violence (from harassment to murder) suggests that the visibility of gay and lesbian vulnerability and victimization was particularly important. The testimony of both families of victims of anti-gay violence and the gay and lesbian speakers who recounted personal histories of vulnerability emphasized the desire to be recognized and

explicitly protected within the law. This was the overt message of one man who got up to testify at the very end of the House committee hearing, to say that the only place that he, as a gay man, was recognized in Texas law was in the penal code, where same-sex sex was criminalized (Texas House 1999c). Others testified to the law's inability to hear or adequately respond to their complaints, due to institutionalized homophobia and/or the simple inability of the law to recognize anti-gay violence as a violation of civil liberties and rights (Texas House 1999a; 1999b).

The circulation of victimhood, as attached to the specific hazards of life as a sexual or racial minority and as attached to the lawmakers (in the repeated argument that everybody in the room was "protected" under the law) rhetorically placed the lawmakers and the victims of hate crimes in proximity to one another. The circulation of victimization in the testimony repeatedly assigned innocence and "ordinariness" to those killed, further pulling them into proximity with the lawmakers. The deployment of the details of loss and victimization brought both bodies (of those killed or endangered, of the families of victims) and feelings into the testimony, relying on the socially expected response of empathy. The expectation of empathy is illustrated in the central story of its failure: that of Bush's response to the family. The lack of proper compassion in Bush's response painted him as at the very least an insensitive ideologue and even to some less human. What was problematic in his response was not his refusal to support the bill (everyone expected that) but his refusal to show sympathy (Rigby 2006; Thompson 2006). The mobilization of victimhood made it difficult for opponents to say no, in front of a local and national audience (Hardy-Garcia 2006).

This is a strategy with a long pedigree; subaltern politics often assumes that pain is one of the easiest forms of "readability" across social hierarchies (Berlant 2002; Brown 1995). The common experience of vulnerability to pain or suffering has throughout U.S.

history been an effective way of arguing common humanity and demanding rights. Berlant suggests that these arguments do not lead to true solidarity, but to narcissistic identification with suffering that simply produce a feeling for justice more than actual, concrete steps toward justice—and ultimately reproduce hegemonic forms of public culture and political life (2002). While it is an excellent caution not to assume that becoming aware of another’s pain will lead to solidarity (or that removing that pain is the same thing as justice), there is no guarantee that it will not. Her formulation assumes a public positioned as fairly passive spectators. And while publics are often spectatorial, they are not always so.¹⁶⁹ In the victim testimony, the required response of empathy was not a substitute for political action or an end to itself, but a tactical goad into a particular action. The required response was legal action, articulated as a claim on social justice, in the form of the James Byrd Jr. Hate Crimes Act. The questions about the visibility of suffering raised by the passage of the act are slightly different from those Berlant asks. Rather than questions about whether suffering can promote solidarity and action, the selective references to victimization and suffering in the House Floor debate raise questions about whose suffering (and perhaps what form of suffering) is considered an effective and legitimate spur to action.

THE MELODRAMATIC NARRATIVE OF RACE AND LEGITIMATE FEELINGS

While the testimony before the committees sought (among other things) to make visible both homophobic violence and the continuing impact of racism, and while those involved said most objections to the Act centered on the inclusion of sexual orientation,

¹⁶⁹ Berlant (2002) discusses an always passive public. It’s important, though, to remember that not all forms of watching are passive. Witnessing is a form of watching that appears passive, but that makes a strong ethical and sometimes political claim on the observer (Peters 2001).

sexuality was notably absent from the House floor debate. Sexual orientation was only mentioned obliquely and infrequently at that (the most open reference came in an appeal to the effect that you never know who your children will turn out to be), in the floor debate. The floor debate was almost entirely articulated in terms of race. This is not to say that the discussion was only *about* race—it was also always centrally about sexuality. It is simply to say that it was expressed in terms of race and the perhaps more established (though still contradictory) public framework or archive of racial injustice. I suggest that this is in part because of the existence of stronger framework for articulating racism as injustice— and the strong normative injunction not to appear racist. The idea of discrimination based on sexual orientation was a newer concept (Gross 2001) and carried less of a normative injunction. As both Hardy-Garcia and Rep. Thompson told me, while lawmakers were far more afraid of being called racist than being called homophobic. The emphasis on victims’ testimony and the visibility of suffering repeated the melodramatic narrative of the hegemonic press, with injustice posed in large part as a moral dilemma, clear victims (and generally, though not always, clear individuals as villains),¹⁷⁰ and a resolution, in the form of the law. The moral problem of racial injustice, melodramatic narratives of resolution, and the historical and political discourses on race and racism all shaped the floor debates.

(Divergent) Arguments of Racial Justice

The floor debate played out largely in moral terms. The calls to pass the Act referenced experience and victims’ suffering as evidence of injustice and proposed the Act, as the morally right thing to do, as a remedy to this injustice. Representatives

¹⁷⁰ The villains of many victims’ testimonies were individual killers. However, in expert testimony and in the debate on the House floor, the state of Texas (in history and in the present) and white discrimination were also framed in the villain role.

speaking on behalf of the bill urged the House to “stand up to hate” or to “do the right thing.” While these moral calls to action were repeated by various speakers, the moral framework was perhaps most eloquently put by Rep. Paul Sadler, who supporters had at long last convinced to sign on to this (1999) version of the hate crimes legislation. During the floor debate, Rep. Sadler stood up to explain that he did not usually co-sponsor other legislators’ bills, but that this bill was an exception:

There are defining moments in your legislative career. There are defining moments in every legislative session. There are votes and bills that tell the world who we are, what we value, what we cherish, what we believe. And this bill is one of them.... And so I join my friends who say I have been such a victim, I have experienced this lifestyle, I have seen the hatred, I have been ridiculed, I have been the butt of conduct that was inappropriate. We can’t end hatred and violence, but it is our duty to punish conduct. Conduct that we find reprehensible. Conduct that we believe is wrong. And who of you will stand and tell me that conduct based on hatred and bias and prejudice is anything but wrong? I’m proud to support this bill.

(Texas House 1999f)

Like many of the supporters, Sadler framed the bill in moral terms. The values and beliefs Sadler urged the House to endorse in signing the bill were tied to disavowing prejudice in general and also a history tinged with racism and the continued presence of racial violence. The bill was presented within a compelling narrative of sympathy and progress, in which straight white (and presumably largely Protestant) lawmakers could express sympathy and solidarity with their peers who had more intimate experience with discrimination.¹⁷¹

This moral framing, and the injunction to do the right thing, called upon racial injustice as a recognizable form of injustice with a strong (melodramatic, social, and juridical) normative pull. Racial injustice has been publicly recognized as a breach of

¹⁷¹ The personal experiences of discrimination recalled by lawmakers all centered on racial discrimination and anti-Semitism.

liberal democratic goals and mainstream political discourse; the left and right (all but the far right) are joined in at least nominally repudiating racism and racial injustice. However, the complex history of discourses on race in U.S. culture make expressions of normative feelings around race very complicated. While most if not all the actors in the debate were invested in not appearing “racist,” the form of this performance varied drastically (and was often able to contain regressive racial politics).

There were multiple and contradictory definitions of racism, which were embedded in larger discursive-structural racial politics. The way in which the claims of racial injustice were recognized as legitimate political claims, conferring legitimacy on a controversial decision is nicely illustrated in Rep. Warren Chisum’s explanation of his decision to support the Act. His explanation shows how the normative expectation to appear free of racism could be and was linked to conservative (regressive) racial politics. Rep. Chisum had long been an opponent of efforts to pass hate crimes legislation, as part of his socially conservative and anti-gay politics. His decision to support the Act in 1999, bringing with him several other conservative votes, was instrumental in passing the Act in the House (Hardy-Garcia 2006). In our interview, he emphasized that he had changed his mind due to the inclusion of race and other categories in the Act. In describing his change of heart in terms of race (and equal protection), he mis-remembered the development of the James Byrd Jr. Hate Crimes Act. He described that the first draft of the Act defined hate crimes only in terms of gays and lesbians. He supported the bill, he said, after he (and the governor’s office) convinced the authors of the bill to include the categories of race, ethnicity, and religion:

That was after many years of voting against it. I always voted against it because they were just trying to do it for one specific group. They were trying to hold them up as one specific group that you could not do hate crimes against. But if you put it only for the homosexual group, then you’re saying its okay to discriminate against Christians or Jews or child molesters or something like that

but you can't do it to this group. I think that laws ought to be equal. That's the U.S. Constitution: equal protection under the law.

(Chisum 2006)

His error in memory no doubt had much to do with the time that had passed between 1999 and our interview. Even taking this into account, the variances between his memory and the record evidence his perception of the legislation as well as how he justified his support. He emphasizes his role in downplaying sexual orientation in the bill (he was the person who negotiated the change in language to sexual preference) in favor of recognizing discrimination based on race and religion; his reference to child molesters was most likely meant to define child molestation as discrimination against children.

In his attempt to present his support of the bill as consistent with his socially conservative politics and base, he does not so much make a coherent argument as call upon a couple of different conservative discourses. He frames the Act as a piece of tough-on-crime legislation (notably, he emphasizes the crimes of church vandalism and child molestation). He also invokes the equal protection argument to suggest that the bill protects everybody equally. What I want to highlight in this difficult to parse set of statements is the way that he references racial discrimination to justify his support of the bill. He casts his support as part of an effort to deal with the problem of racism, which he was careful to specify, is a problem in East Texas, far from his own panhandle district. In this he simultaneously casts his support in terms of an "anti-racism" (racism here defined in terms of white supremacist politics) and claims that "racism" is not a problem in his district, but exists elsewhere. Supporting a piece of legislation aimed at combating (others') "racism" is offered up as a more legitimate course of action than giving in to support a bill that includes protection for crimes based on sexual orientation.¹⁷² This has

¹⁷² Several supporters had in fact offered sympathetic readings of Chisum's change of heart: that the mounting number of murdered gay men was beginning to get to him and that he supported the bill out of a

more to do with the affective politics of race than with Chisum's actual ideology, whatever that may be. Even while lawmakers currently strive to avoid appearing racist, the perverse discourse of "special privileges," itself deeply invested in protecting privilege in the hands of those who have it, is pervasive in Texas politics.

The imperative not to appear racist in many ways structured the House debate, whether through the discourse of historical and structural racial hierarchy or that of "special privileges" and "reverse racism." The ways in which the performative disavowal of racism was accomplished through a variety of different politics (some of which were deeply invested in maintaining white privilege and essentializing racial categories) is part of the larger cultural ambivalence over race, and the various competing and conflicting discourses about race and racism. Here, the discussion of different types of "racial project" in the work of Omi and Winant is useful in disentangling the different assumptions about and attachments to ideas and policy programs on race. Omi and Winant use the term racial project to refer to the work of connecting "what race means in a particular discursive practice and the ways in which both social structures and everyday experiences are racially organized, based on that meaning" (1994, p. 56). Different projects connect different discourses on race with policy programs. The supporters of the Act largely framed their arguments in terms of a liberal racial project: an explanation of race in terms of institutional opportunities that sustains governmental policies aimed at generating more egalitarian social structures (Omi and Winant 1994; p. 58).¹⁷³ Justice is

humanitarian impulse. However, this is not how he represented himself to me. The divergences here are telling. That supporters ascribed a sympathetic rationale through humanitarian feeling and that Chisum presented a politic justification to me in terms of taking care of the problem with racism some other parts of Texas (not Austin and not his own panhandle district) had with racism offer insight into the ways in which the different speakers defined proper or just feelings in this case.

¹⁷³ In contrast, a "radical democratic" racial project defines race through the lens of historically contingent difference and weds this definition to egalitarian politics and action (Omi and Winant 1994, p. 58). I would also think that coalitional, participatory policies and politics that emphasize empowerment (of groups and individuals) would be an important element of this definition.

here defined primarily in terms of remedial state actions, as the primary mode of addressing past racial wrongs and contemporary claims of racial injustice. The victim testimony and examples of racial injustice from both personal experience and the historical record were geared toward such a liberal interpretation of justice – of yoking the sense of outrage and injustice to a liberal judicial remedy.

The meat of the debate over the bill, or the most protracted exchange between supporters and opposition, in fact circulated around different questions of justice, racial and otherwise. This was expressed in exchanges debating whether the legislation served justice by recognizing and redressing racial discrimination or whether it contravened justice by conferring “special privileges” on some (and not others). This clash was evidenced most clearly in the exchange between Rep. Wayne Christian and Reps. Paul Moreno and Pat Haggerty.

Rep. Christian was one of the two main speakers against the bill.¹⁷⁴ Christian is of interest because he spoke in an extended fashion on the idea of “special privileges” and because he represented the district in which James Byrd was killed. In his arguments against the bill, Christian intimated that the killers acted out of anger at seeing preferential treatment given to racial minorities and that the Act itself sought to create divisions that did not exist in Jasper. He said that while Jasper had taken down its fence (the fence dividing the black from white graves, which was removed by townspeople with much media attention after James Byrd’s burial), the legislature was seeking to erect fences (Texas House 1999e). Christian’s entire speech rested on the discourse of special privileges, and the way hate crimes laws created social division. He did his own historical argument, suggesting that the legislation of “special privileges” returned the nation to the

¹⁷⁴ The other main opponent speaking, Rep. Nixon, also referenced special privileges in the form of “disproportionate protection” of some and the exclusion of others. A third spoke briefly about First Amendment concerns. Other lawmakers expressed opposition in less formal terms, through adding on amendments meant to undercut the Act, and by questioning.

day of “lords and ladies” who had rights above and beyond other citizens. Rhetorically, of course, this is to suggest that black, Latino, and gay citizens were being legally turned into aristocracy, with greater rights and privileges than the white and straight citizens of Texas. The coherence of such a statement relies on the denial of past and present racial hierarchies.

At the end of Rep. Christian’s speech, Rep. Paul Moreno got up to point out just this point. He responded that “One of the things wrong in America is that the white folk that have discriminated against us (for race, sex, disability) deny, deny, deny that it is done.” Speaking back to Christian, he noted that racial discrimination was not visible to people like Christian who had no first-hand experience being the targets of discrimination. He went on to counter Christian’s lords and ladies narrative with his own story: of being denied housing in Austin during college because he was Mexican, of being repeatedly stopped by border patrol “even though” he drove an expensive car. While Moreno urged the House to recognize the experiences of Latino and black citizens¹⁷⁵ and the existence of white discrimination, using a discourse of liberal racial justice, the next argument went in a different direction.

Speaking next, Haggerty made his argument (directed at Christian) that the bill even protected white, male Republicans. He used not a liberal but a neo-conservative discourse to ground his support, arguing that the Act “was not a civil rights issue, not a gay rights issue, but a bipartisan issue: an attack on random acts of violence” that covered everyone (Texas House 1999e). Haggerty was not alone in using the conservative rhetoric on “equal protection” to argue for the Act. As noted in the previous section, Rep. Thompson’s opening remarks to the House Committee touched several times on the notion of white vulnerability to racist attack (and therefore the protection offered whites).

¹⁷⁵ Even though Texas has large Asian communities, no one mentioned discrimination against these communities in the debates.

A similar pattern took place in the Senate committee, where Sen. Royce West stressed that the bill did not “just benefit blacks or Hispanics,” but was aimed at everyone and Sen. Rodney Ellis assured that the bill offered “equal protection” to whites (Texas Senate 1999a).

The emphasis on the potentials of white victimhood is telling in terms of whose feelings mattered in the debate and in terms of representation. The references to white victimization were of course persuasive appeals aimed at convincing reluctant lawmakers to support the legislation. The rhetoric of white victimhood can be seen as an effort to meld the melodramatic narrative of racism, suffering, and redemptive progress to the (backlash) neoconservative racial discourse of equal protection in which any formal recognition of structural bias (against women, racial minorities, or sexual minorities, but especially the latter two) was rearticulated as conferring “special privileges” upon members of that group. The narrative of melodramatic victimization and redemption was a powerful motivator, but required the recognition of victims of white racism. Supporters feared that, within the anti-Affirmative Action climate of “special privileges” this recognition might not be forthcoming. Hence the efforts to argue the potential of white victimization, either through reference to areas in the state where racial “minorities” are majorities and the repeated use of statistics detailing the number of anti-white hate crimes.

The rhetoric of white victimhood and “special privileges” is best understood in the context of the backlash against affirmative action. This backlash was articulated as what Omi and Winant would term a “neo-conservative” racial project, in which the goals of the Civil Rights Movement are re-articulated to gut policies and programs aimed at redressing structural inequality in the name of “equal protection” (Omi and Winant 1994). The idea that legislation such as affirmative action violated Constitutional equal

protection by conferring “special privileges” on some had become popular (as Sen. Ellis’ former chief of staff, Deece Eckstien put it, the “Republican idea du jour”) in Texas in the 90s, as evidenced in the Hopwood decision, and in the 1995 attempt to create an amendment to the state Constitution banning affirmative action (Eckstein 2006). In the case of the James Byrd Hate Crime Act, the sincerity of questions about “equal protection” is particularly suspect. While numerous questions were raised about the Constitutionality of the legislation (in terms of “equal protection”), these questions had been resolved in the Supreme Court in the 1993 *Wisconsin v. Mitchell* decision, which found the Wisconsin hate crimes law Constitutional. The language of the James Byrd Act was modeled after that of the Wisconsin law.¹⁷⁶ Perhaps more than anything else, this points to the way that the concerns expressed in terms of “equal protection” were not so much concerns about the law, as battles over structural vs. individualist definitions of racism and over the role of the state in redressing racial wrongs. Given this, it might be fair to say concerns about equal protection also signaled fears about loss of property and privilege.

Melodramatic Resolution and the Articulation of Justice

Within the melodramatic narrative traced in the previous chapter, racial injustice was simultaneously recognized in the present (at least in the murder) and rhetorically isolated in the past. This temporal tension carried over into the legislative debate. Yet, even with the partial framing of racial injustice in the past tense, it circulated as an effective argument for structural change, such as it was in the James Byrd Jr. Hate Crimes Act. Texas Civil Rights Project director Jim Harrington argued in the committee

¹⁷⁶ In fact, many supporters and legal experts testified, the existing Texas hate crimes statute was unconstitutional without the addition of the groups defined in the James Byrd Act.

hearings, the murder of James Byrd was “an anomaly in a sense in that it was so brutal and violent. What it did was lay bare so we could all see racism still exists, hate crime still goes on, in that low-level violence in our society” (Texas House 1999e). The violence exposed an existing moral dilemma, which the law offered to resolve, within the terms of melodrama.

The melodramatic narrative offers resolution for deep moral dilemmas and social paradoxes through producing sympathy for clear victims, and producing heroes or heroic actions that are able to resolve (usually quite tidily) these moral dilemmas (Williams 2002). The national visibility of the murder of James Byrd and the testimony of victims and their families provided evidence of suffering (often, as described by Harrington, suffering that went beyond instances of violence). The experiences of discrimination offered by lawmakers, as well as the victim testimony worked to articulate a sense of injustice through, in part, reference to the multiple texts of racial melodrama described in the last chapter. In particular, the image of James Byrd evoked a long line of images of wronged black men, as victims of (white) power structures. This suffering, as in Harrington’s quote, makes evident a moral dilemma that demands response. The gulf between democratic ideals of equity and the experience of discrimination defined a moral conflict that demands resolution (in order to save the democratic ideals). Legislation, in the form of the James Byrd Jr. Hate Crimes Act, is offered as a legitimate and effective response to and resolution of the victims’ suffering.

The melodramatic narrative and images of minority suffering were effective in producing a broad sentiment of injustice. This sentiment mobilized many of the supporters of the bill and individuals who testified before the committees. While in much of the news media coverage of the murder, the criminal trial was presented as the resolution and restoration of justice (as is often the case in popular narratives of racial

melodrama [Williams 2002]), this pattern was repeated at the legislative level with the James Byrd Jr. Hate Crimes Act posited as the proper remedy to the visibility of suffering. The melodramatic sense of injustice (and recognition of discrimination against racial and sexual minorities) produced by the images and narrative of James Byrd's murder and his family's pain was articulated as a moral and ethical sense of injustice. In the discursive positioning of first the criminal trials and then the hate crimes legislation as remedy to this injustice (and the family's suffering), the law was framed as justice. That is, the positioning of law as a sufficient and proper response produced the law as *the* site of justice, perhaps even exhausting the possibilities of justice. There are of course, other sites for articulating justice (institutional policies, governmental practices, and expressive culture, for instance). The heavy emphasis on the law in this case (while in Laramie, one of the key responses to the murder of Matthew Shepard was a law, it was not positioned as *the* site of justice in local discourse) follows a particularly liberal view of justice. In this narration, legislators, and activists (including those who testified as victims) take on heroic roles. The passage of the Act through the House, even though it failed later that year, becomes a moment of triumphant memory due to the caliber of discussion on the bill.

This is particularly apparent in Rev. Rigby's discussion of how passing the Act was a redemptive move:

it's the truth and reconciliation thing, like, from South Africa. You can't have reconciliation if you don't face truth, but the truth is unbearable if you're not trying to make reconciliation....So this was the chance to say we're not there yet. This won't get us there, but we can turn the page and head in the direction where it's obvious to everybody that there are no targets in Texas. To say that hate isn't accepted in Texas, and yet, leave people unprotected from hate crimes doesn't make sense. So, I mean, I saw it as an opportunity for conservatives to do the right thing.

(Rigby 2006)

Rigby articulated redemption in terms of the whole society, but his statements in fact focus on redeeming dominant cultures: those that are most implicated in repression and furthering systems of privilege and hierarchy. While cognizant of the limitations of the Act, he argued it was an important step away from the Texas he grew up in, in which overt racism and anti-Semitism were open and accepted. In his commentary, the Act offers both a partial resolution and a way to “do the right thing.” These are intimately connected, in the sense that the resolution is not complete, but that people can’t “face truth” (our own complicities and investments in systems of privilege and oppression) without a path or possibility of envisioning reconciliation or reparation. The Act offers, then, in his terms, a way for those in positions of privilege to be good (including feeling better about oneself) while also doing some good (actually moving toward embodying more liberal-egalitarian political and social principles). This is not to say that feeling good is equal to justice, but to suggest that the law offered some measure of justice, and in deciding to support that measure, people might feel good through their connection to this move toward justice.

CONCLUSION: AMBIVALENT OUTCOMES

The melodramatic narrative present in the presentation and argumentation for the bill’s passage produces the law (and its supporters) as the resolution to deep moral dilemmas. That this melodrama and its resolution were most frequently framed as racial melodrama and racial justice has ambivalent implications. The use of the frame of racial melodrama in this context appears at least in part a conscious strategy, based on the assumption that there were more social and political injunctions against appearing racist than against appearing homophobic. This points to an unpleasant perspective on the use of personal pain to argue for justice. While pain may be, as Berlant (2002) and Brown

(1995) point out, often assumed as the easiest way to make common humanity and demands for rights legible, the reasoning here suggests that (in this case) the pain of some was perceived as more readily or predictably legible than that of others. I argued at the end of the section “Grief and Victim Testimony” that the visibility of suffering goaded a response; however, supporters’ emphasis on racial melodrama suggests that they were not optimistic about the effectivity of the visibility of pain, without a narrative form to make it legible. In other words, they were concerned that pain might not speak the right message and so chose to focus in on stories of pain that resonated with other stories of pain and pointed to a resolution through the law: pain that was narrated through racial melodrama.

Judith Butler (2003) discusses the obituary as an “instrument by which grievability is publicly distributed” (23). In this she means not only that some losses of life are made public and visible but also the way in which the content of obituaries argues what made life valuable, and death a (public or private) loss. The inability to fit some deaths (Iraqis and Palestinians killed in state-sponsored violence are some of her key examples) into the format of the obituary exemplifies for her the way that nationalism and other ideological commitments make imagined connections between (many) Americans and Iraqis impossible. In forming the debate so closely around racial violence and discrimination, the architects of the debate seem to assume that racial (specifically, black and Latino) suffering might more easily be read in terms of injustice and justice—or perhaps, been more easily read in terms of melodrama, with its demand for a resolution (a resolution that can be positioned via its narrative position alone as justice).

The very fact that James Byrd and, less explicitly, the many other victims of hate crimes, were memorialized in the Act publicly recognizes those deaths as losses, as grievable. But the form of the response does not so much encourage public grief as

convert that grief to punitive action. While the law itself offered more than penalty enhancements and punitive language (it focused as well on public and police education and civil remedies), it was overwhelmingly publicized as a penalty enhancement law. Rather than encouraging a collective identification with the victims and their families—or across group identity to others identified as vulnerable in the debates—the symbolic aspects of the law invite identification against perpetrators. This is not to say that the feelings of the individuals that supported the bill changed from solidarity to punishment, but to say that the very legal forms of recognition and grieving have their own (internal) limitations. If the formal conventions of the obituary limit who may be publicly grieved, seeking recognition within the law limits the ways in which people may be publicly recognized and grieved. In this case, the way in which the institution of the legislature made public space for the recognition, if not grieving, of loss speaks both to politics of public feelings and to the constraints of the institution. This limitation was evident, among other places, in how the discussion framed different axes of identity in either/or terms: race or sexual orientation or gender.¹⁷⁷

The very terms of the act articulated hate crime as a social problem largely (though not entirely) of individual actions. The forms of discrimination targeted were mostly interpersonal violence; these were certainly the elements of the bill that were the most widely publicized. The provisions dealing with education treated hate crimes as a collective social problem, but these were by far the least referenced and well-known provisions. Much of the debate on the House floor and much of the testimony before the House and Senate committees had focused on the existence (and historical effects of) structural discrimination, especially in terms of racism. And so, for supporters, the bill

¹⁷⁷ The one exception was the representative of the National Organization of Women: when asked by a representative whether she supported the bill even though it did not protect women, she responded that the bill in fact protected women of color and lesbian women (Texas House 1999b).

signified beyond its provisions an initial acknowledgement and step toward reparations for injustices perpetrated by, or with the complicity of, the law (as in Rev. Rigby's comments, above). Yet, the very individualistic terms of the hate crime legislation (a problem perhaps inherent to hate crime initiatives) and in the neo-conservative discourse on racism meant that the bill just as easily could be read as an official tract on discrimination as primarily an individual problem. This was particularly so due to the centrality of arguments about and examples of interpersonal violence.

Liberal and neo-conservative racial projects coincided in the definitions of interpersonal violence as racism—and as a proper focus for criminal punishment. While for supporters, the bill was often described as a foot in the door that might be wedged wider (especially for legislation offering more rights to gays and lesbians), for conservatives it could easily be a reinforcement for individualist constructions of racism and anti-gay discrimination. That the bill was not necessarily the first step in a line of linear progress (in the Texas legislature or in Texas in general) is all-too-well illustrated by the 2005 passage of an amendment to the state constitution to effectively ban recognition of same-sex marriage or civil unions.¹⁷⁸ Indeed, several of my interviewees speculated that the Act would never pass in today's political climate, and that in truth 2001 had probably been the last opportunity to pass it.¹⁷⁹ Whether or not the Act could pass in the Texas Legislature in 2006, the focus on violence and interpersonal definitions of discrimination in the bill made it easier for people to define the bill within both conservative and liberal political projects—and affective economies. Support for the bill

¹⁷⁸ Rep. Chisum, who supported the hate crimes bill, was one of the chief architects of the marriage amendment.

¹⁷⁹ Due to the Republican takeover and to what was described an increasingly socially conservative and partisan atmosphere in the Legislature. Haggerty (along with several others) suggested that the increasingly uncivil and socially conservative trend at the current time (which he thought would be short-lived) was due to the decampment of Bush and Rove, who had he said kept the economically conservative but socially moderate conservatives in power, while drawing on the social conservatives for numbers and mobilization. After their departure, the balance was upset and the social conservatives had taken over, Haggerty argued.

was, for some politicians, a way of showing disgust and revulsion for criminals (those “bad apples” who commit acts of racism, anti-gay, and anti-Semitic violence) and for others was a way of performing their connection with black, brown, queer, and Jewish communities.

Chapter 7

Conclusion: *Affective Politics and the Paradoxes of Liberalism*

Each of the cases I have examined in this dissertation exposed the existence of violence codified as primitive, racist, illiberal when it happens in other nations (especially non-Western ones) within the boundaries of the nation. In this, the murders and their public discussion opened up a space of questioning, dialogue, politics and protest around the failures of our own liberalism—and a discussion of what less extreme and spectacular forms of everyday violence and harassment provided the context and background for the murders. In each case, this was relatively short-lived. Within national media discourse, the ability of each event to represent something about the political climate of the nation was quickly undercut by a turn toward regional explanations. The national media texts soon began to explain the violence and intolerance of each murder by reference to the illiberal and not-quite modern culture of the place where it happened: the West in the case of Matthew Shepard and the Old South in the case of James Byrd Jr.

These cases were sites of productive affective politics precisely because they exposed contradictions between liberal values and social mores that rest upon systems of inequality, in the form of homophobia and racism, and because quick remedies were offered to cover up these contradictions. These remedies came in the form of geographical, temporal, and cultural distancing within national discourse: the crimes happened in locales that were labeled as backwards, in some ways marginal to the national imaginary. (While the South has long been cast as the nation's primitive other, the West has been more central to ideologies and fantasies of the nation; still, the West as

portrayed in these narratives must remain in the past, in order to measure the progress we have made.) This containment insisted that homophobia and racism were social problems, but problems at the margins of national life, rather than at the center. The focus on the murders as evidence of homophobia and racism avoids recognition of the deeper investments in homophobia and racism (as well as classism and sexism) at multiple levels of social life and political institutions.

In this dissertation, I set out to explore the way in which affect circulated in public discourse, the role of this affective discourse in the formation of publics, and the institutional impact of affective discourse in order to better understand how affective discourse might be accounted for within democratic communication theory. In what follows, I review how my finding shed light on these questions.

THE CIRCULATION OF AFFECT

The murders of Matthew Shepard and James Byrd Jr. were publicized in texts that had complex affective politics. In each event, the man and his death was positioned within relationships to other texts, narratives, and genres. While these cases showed an ambivalent politics, with many limitations, they suggest interesting points for thinking through affective politics. The texts documenting and commenting on each man's murder invoked feelings of loss, outrage, and a more ambiguous attachment to or pride in national progress and tolerance. These texts cited feelings of grief and outrage as normal, if not normative, in each case. The texts publicized and circulated grief differently in the wake of each murder, through the different relationships they constructed between each man and their audiences.

The news media (in particular print media targeting affluent and culturally elite audiences) used rhetorics of kinship and similarity to define Shepard, referring to him in the diminutive and stressing his ordinariness, notably in descriptions of his “boy next door” quality and of his interchangeability with readers’ family members. In contrast, James Byrd was described much less through similarity and much more through sympathy. In part, this may have to do with the sites of circulation. The differences were most notable in the newspaper and magazine coverage—and the murders were covered most heavily in different publications. Whereas Matthew Shepard’s murder was heavily covered in the New York, Boston, and Washington D.C. papers, James Byrd’s murder received most of its national coverage in *USA Today*, and was much more heavily covered in major Southern papers. The differences may as well, however, have to do with the different ways each man’s embodiment positioned him within the national imaginary. The two were marked very differently by race, class, and gender/sexuality. It is telling that Matthew Shepard’s race and class made him an object of similarity while James Byrd Jr.’s race and class made him an object of sympathy within dominant journalistic discourse. I have argued this had to do with intertextual references (which offered some explanatory and narrative frameworks for the murders), with the negative affective politics of racism and classism (and in a more complicated way, as discussed in Chapter 3, homophobia and gender norms), and with the demographic and economic definition of the newspaper audiences.

While there were deep differences in how each man was discussed and presented to the public, there were also some similarities. Each man was, in different ways, presented as a victim. There are obvious limitations to the affective politics of victimization. There are limits on what types of victimization can be cast as public, objects of national mourning: For example, victims of domestic violence do not have the

same potentials for publicity, to become national objects of mourning (the violence in these cases being much more strongly cast as private). Further, the narratives of victimization themselves can be constraining. As I noted in Chapter 5, the repeated invocation of *To Kill a Mockingbird* was appropriate to the discursive construction of the victim. As Atticus Finch explains to his daughter in the film, it is a sin to kill a mockingbird because a mockingbird never hurts anyone; all it does is sing for us. However, as Atticus instructs his children, it is not a sin to kill a crow. *Mockingbird*'s metaphor extends into contemporary political discourse. Matthew Shepard and James Byrd were mourned as mockingbirds: harmless, pleasant, innocent men. This logic allows for mass mourning only of those people who can fit within the role of "mockingbird." The fact that men whose identities fell within categories frequently vilified in political discourse (gay men, black men on government assistance, black ex-cons) were also able to fit within the role of the harmless, pleasant and innocent requirements of tragic victimhood is politically notable.

Yet, there are limits to how expansively this category can be stretched: as Butler notes (2003), no matter the tragedy of their circumstances, it is very difficult to place Palestinian or Iraqi fighters as tragic victims within mainstream U.S. political discourse. And there are costs of constraining the deceased within what can be a straightjacket of innocence. The complexities of the person, and indeed the political issues surrounding bias/hate crimes are easily lost when victims are too simply constructed. Matthew Shepard's mother, Judy, was vocally aware of this, repeatedly requesting that her son be remembered not as innocent, but as imperfectly human. Ultimately, public discourse that "educates"—in Koziak's (2000) terms—the emotions to grieve and mourn only for those who can be made wholly innocent, harmless and pleasant is not an ethical outcome. It too

easily avoids difficult ethical and political questions about how we treat “less lovable” victims—as well as perpetrators or offenders.

The contradiction that the crimes, and the logic of the perpetrators, made clear was that some lives were seen as less valuable than others. The men who attacked Matthew Shepard used his homosexuality and their heterosexuality as a rationale for why they attacked and abandoned him. Shepard’s homosexuality signaled his attackability: that he made a good victim and/or that his homosexuality would be a mitigating factor in their guilt (that they would get a lesser punishment because the man they had attacked was “deviant” and so would receive lesser protection under the law). The men who attacked James Byrd (or at least the leader of these men, Bill King) did so in order to assert superiority, perhaps in an attempt to prove their worthiness to gain belonging to a white supremacist group or to start their own white supremacy group. In either case, the assertion of supremacy was articulated through the devaluing of black life in general. If the contradictions between liberal political principles and the murders were not evident to the communities themselves immediately, the national press highlighted the contradictions.

At the same time, the national discourse on each refused to locate these contradictions within the mainstream of national culture and politics, rhetorically locating them in fringe or marginal cultures of the West and the South. This temporal and cultural distancing and containment performed by the national media discourse focused local or regional politics on liberal ideals and their failures. This containment directed attention away from the many other sites and ways in which homophobia and racism are manifest in daily life and in law. In doing so, the national discourse reconstituted liberal national politics as complete and intact (not contradicted and in need of political work). This

reconstitution can also be read as a reconstitution of innocence (of liberalism, whiteness, and sexual/gender norms) in the face of violence and inequity.

THE PUBLICS ENABLED BY AFFECTIVE DISCOURSE

I have argued that the affective discourse noted above traded heavily in relations of proximity. The way that the news texts referenced Matthew Shepard through similarity and James Byrd through sympathy was also the way the texts addressed their publics. Matthew Shepard was made proximate to readers through references to similarity that were often steeped in racial and class assumptions about the public being addressed. That is, the texts invited a public to identify with Matthew Shepard as kin through similarities of race and class. On the other hand, the texts covering the murder of James Byrd Jr. invited readers to feel sympathy for him: that is, the texts presented him as a sympathetic other. The publics that these texts addressed were, therefore, addressed in heavily raced and classed terms—a factor that no doubt has much to do with the economics of circulation of the texts as with ideology. That is, they addressed a public defined through class privilege (which could identify with or feel sympathy for others through this privilege) and in terms of race, where whiteness was a key point of identification. The latter is not to say that the people addressed were necessarily white, but that that the publics that these people formed were addressed through a rhetoric of whiteness (where whiteness was if not the norm, at least a primary concern).

The national media texts also, over time, addressed a public defined through opposition or exclusion to Jasper and Laramie, as the outposts of illiberal violence and exclusion. The national reaction to each murder was one of outrage and mobilization. The effectivity and longevity of these mobilized publics may have been curtailed by the national discourse of denial and distancing. However, on the local level, the national

shock and disavowal shook affective identifications with the nation and liberal tolerance—these identifications were, importantly, linked to economic interests in being part of a broader economy—in a way that spurred discussions of the sufficiency of existing laws and institutions to live up to liberal ideals, as well as over what those ideals were. In the case of Laramie, a local public formed in reaction to the national texts, speaking back through the pages of the local newspaper, and in activism. In my interviews, a deep concern to shed the image of the frontier days emerged. For some, this concern translated to a willingness to entertain the idea that the status quo was not okay and that the current set of laws and practices were not sufficient to create an “open” and “tolerant” community. The desire to be modern articulated itself through some of liberalism’s better moments: inclusion and formal equality (which are, within liberalism, deeply linked to legitimacy of governance).

What I want to point out here is that even though the national public was addressed through whiteness and class privilege, the desire to be counted as a member of a liberal-tolerant public had progressive outcomes in the way it stimulated critical reflection and debate. Indeed, the public was formed in part around an affective response to the contradiction between self-image and the media representation of local character. The concern may have been in part a performance or display of modern/progressive/liberal identity, but it was not mere affectation. Similarly, in Texas, the desire to not be perceived as racist and backwards led to the passage of a state hate crimes law that recognized discrimination based on race, sexual orientation, gender, nationality, age, and disability. The way that publics formed around shared feelings of rejection of homophobia and racism is, while not a solution to these problems, significant in and of itself. I have suggested that these feelings were not always easy for those implicated by the discourse on the murders, but at times spurred difficult discussions about equality

under the law and within existing social life. I want to also suggest that, even when these feelings were easy, or were not tied to critical reflection, they are significant political factors, for good or for ill (as discussed below, in considering the impact of “feelings for” justice). The coalescing of outraged and grieving publics around events understood in terms of homophobia and racism is evidence of a sentiment of rejection of homophobia and racism that are useful bases for many different political projects.

THE LAW: AFFECTIVE DISCOURSE AND INSTITUTIONAL CHANGE

The passage of hate crimes measures in Laramie and Texas shows the persuasiveness of mourning and grief as forms of affective politics. The legal arguments in each case included a need for the law to reflect the grief of the citizenry, to show that Laramie and Texas “cared.” In this, affect was an important component of persuasive argumentation. These cases illustrate the point that affect is at work (that is, is productive) at all sites of politics, even in the law. The effectivity of affect in legislative argumentation, and in legislation, I have argued, was in part a need to live up to liberal ideals that were challenged or shown to be lacking in reality. The claims for justice that emerged in each case were fueled by affect.

Support for each hate crimes measure was argued as a way to show progress and as a way to performatively disavow racism and homophobia. The hate crimes measures were bound up in narratives of and desires for the law as a vehicle of progress. This was often expressed through reference to Civil Rights Movement, employed as proof of progress in racial equity, and in more hyperbolic moments, as proof of the nation’s ability to overcome the past (where violence, oppression, and lapses of liberalism are rhetorically located). In order for this to make sense, the Civil Rights Movement must be seen as a historical triumph, done and settled, rather than an unfinished project. In the

case of Laramie, the ordinance was a way of moving forward for many, proving the modern and tolerant character of Laramie. Implicitly, the past contained lapses of intolerance and violence. In much of the local discourse, people expressed a desire to be like the rest of the nation that can be read in temporal (the desire to be modern) as well as ideological and economic terms. In my interviews, a deep concern to shed the image of the frontier days emerged. The desire to be modern articulated itself through some of liberalism's better moments: inclusion and formal equality (which are, within liberalism, deeply linked to legitimacy of governance). In Texas (in the state legislature) the notion of progress also worked its way through the discussions of legal action. Though, in the Texas legislature references to ideas of progress and the past were tied more prominently to a politics of denial, by which lawmakers were able to argue that racial violence was a thing of the past, and James Byrd's murder was a rare aberration. While invocations of the past as undesirable were also used to urge reflection, the existence of entrenched neo-conservative discourses on racism as a thing of the past helped to make the past as much or more a tool of avoidance than of reflection. In contrasting these outcomes, it is important to remember that the discussion surrounding James Byrd's death and the Hate Crimes Act that bore his name in Texas took place at a distance from Jasper, with the considerations of professional, state-level politics mediating between the proximity of the murder and the enactment of the law.

In each case, a feeling for or desire for justice was produced through affective politics of identification, sympathy and other attachments. I note the limitations of the politics of identification and pity above. The feeling for justice—or in the terms of Linda Williams (2002), the structure of feeling that calls for justice—produced in each case was complex. One question that remains in the background in these chapters is to what extent a feeling for justice is effective and productive, and to which extent it is a substitution for

actual justice or concrete efforts to achieve it. This dissertation does not offer strong conclusions to this question, but suggests that while this feeling for justice may be a substitution for some, it is the grounds of action for others (and perhaps the grounds of support or acceptance for those who do not act). In either case, the feeling for justice is an important ground for politics, arguably necessary for political engagement and projects of social justice (as well as for other, less progressive political projects). In these cases, the fact that publics were mobilized, and public sentiment tied to projects of institutional change, in the name of rejection of homophobia and racism is significant. The long, slow, and non-linear history of the politics of race and racism in America is ample enough evidence that a sentiment of anti-racism is not equal to anti-racist policies or the erasure of racism from social life. At the same time, the commonly expressed feeling for racial justice is a factor that must be accounted for in politics—and which can be a powerful resource in politics (in racist as well as anti-racist politics; there are no guarantees here).

I have used the hate crimes measures as evidence of legal change to show that affective politics produce institutional change. The laws were, in an important way, recognitions of discrimination and the imperfections of legal justice (though I would not place this recognition within a line of linear progress). At the same time, to the extent that they were able to support a denial of the basic contradictions between liberal ideals and actual practices (in the idea that hate crimes measures were adequate responses to the deeper social problems at hand), the passage of the laws provide limited examples of change. Looking to the law as remedy is an oddly paradoxical position, in that the law is invested in and a vehicle for systems of racism and homophobia (among other exclusionary systems) as well as in compensating for and overcoming these systems.¹⁸⁰

¹⁸⁰ Positioning the law as remedy for these systems carries the risk of positioning the law as exempt from participation in the systems in the first place.

Whether the limitations of the legal outcomes were an effect of affective politics, the discourse on hate crimes, or simply the legal language and contexts within which justice was articulated (that is, a limitation inherent liberal legal reform), is difficult to say. The evidence I gathered and analyzed here does not provide a clear answer to this question.

IMPLICATIONS: AFFECT AND DEMOCRATIC COMMUNICATION

In my theory chapter, I set up this inquiry against the Habermasian emphasis on rationality to the exclusion of the affective elements of communication and politics. In conclusion, I contrast my findings to another critical tradition, associated with the work of Michel Foucault. Following the work of Foucault (and Nietzsche), this line of scholarship has focused the limitations of the humanitarian, caring impulse in politics—and in liberal ideals in general. This line of scholarship is prominent in political theory dealing with affect and has been useful to my study for its critical angle; however, my aims and findings diverge from this line.

Thinkers such as Wendy Brown (1995) and Lauren Berlant (1997; 2002), influenced by the Foucaultian interest in interrogating the oppressive within the seemingly enlightened, have pointed to the ways in which caring and sympathy can become patronizing, if not oppressive, and in which tolerance can become a practice of exclusion and marginalization (counter to the formal goals of liberalism). Foucault pointed out how even the most enlightened policies of liberalism rely on the internalization of policing and authoritarian governance that had previously been imposed by the state: in liberalism, much of the work of subjection is placed on individuals. In a parallel fashion, these thinkers highlight the ways in which affects that seem the most ethical and generous (sympathy, caring) can further oppressive power relations, ideology, and hierarchical relationships. Such critical analyses are important and admirable work.

They remind of the internal contradictions in many of the political projects dear to American politics, and especially the left. They offer valuable critique, and importantly place illiberal practices of oppression and authoritarianism squarely within the historical and philosophical purview of liberalism (in direct contradiction to mainstream discourse which would locate violence and oppression as exceptions to or otherwise outside of liberalism).

At the same time, these critiques do not offer the whole picture. These critiques offer a rather static view of the social world, and political change. By focusing on liberalism as a homogeneous and static object, they miss the contradictory impulses and norms within liberalism as practiced (in specific national and temporal contexts). They do not particularly help to see changes within the systems of liberalism, as they take as the object of their critique liberalism in toto (treated as a rather homogeneous and monolithic construction). By critiquing normative discourse in general, they overlook the paradoxes within it, as well as the potential for normative discourse to expand the purview of liberal personhood. Alongside these Foucaultian critiques, more textured analyses of the changing ways publics define and inhabit liberal democracy are needed. This, of course, is not particularly new; Raymond Williams in particular has pointed to the complex and often contradictory weave of culture and politics.¹⁸¹ To acknowledge the “dark side” of liberalism does not mean that all liberal goals should be discarded altogether. Likewise, seeing the darker side of the politics of caring does not mean that it should be abandoned wholesale. In this dissertation, I have tried to acknowledge conservative, progressive, and ambiguous elements of public grief, as a form of the politics of caring. My analyses of the politics of affect in the murders of Matthew Shepard and James Byrd contain, in their positive moments, recognition of the egalitarian and expansive elements within liberal

¹⁸¹ See in particular, *Marxism and Literature*.

ideals, which can be powerful motivators to progressive political sentiment and action. Affective responses may rely upon existing social circumstances, ideology, and ideas. These responses, then, can be quite conservative. But they can also operate as a sort of immanent critique, similar to that employed by Marxist critical theory. It depends upon what attachments are most dearly held: the more oppressive or the more egalitarian impulses in political and social life.

There are of course limitations to this form of immanent critique. As it works within American liberalism and liberal institutions, this critique works within a system that is constructed through stratifications of race, class, gender, and sexuality. This is tricky ground for analysis, which troubles clear labels of progressive and regressive. The difficulty is in saying that there are coexisting impulses to maintain hierarchies and to change them, often within the same institution (such as the law). That some changes happened in the law (and perhaps in local cultural norms) should not negate or overshadow the fact that racism and homophobia continue to be pervasive structuring factors in social life and in the law.

My analysis of the cases shows that a desire for modernity and liberal ideals can have what might be termed progressive outcomes, as well as oppressive and distancing ones. In the case of Laramie, the desire for and identification with modernity and a more cosmopolitan public spurred self-reflection and critique at points on the local level. It provided a lens through which elements of local culture appeared illiberal. The national news texts functioned as “educative” in training feelings against local departures from liberal ideals. This education is based upon prior feelings and commitments. In this, it follows the logic of immanent critique, in which contradictions between lived reality and political ideals can help illuminate instances of inequality within liberal democracy.

An acknowledgement of the unpredictable potentials of affective discourse and identification within politics would mean first and foremost, acknowledging the importance of ethics within the political. The relationships, real and imagined between people/strangers in the polity are key to the formation of publics around human loss. The form of (or lack of) commitments to strangers explains how and why some lives are mourned more fully than others. In each case, a feeling for or desire for justice was produced through affective politics of identification, sympathy and other attachments. This type of political sentiment is an important element of public opinion, which circulates within the public sphere and, as illustrated in the preceding chapters, places pressure upon the state (namely, the institutional bodies—or, per Nancy Fraser (1992), publics—charged with deciding law and policy).

From this, I argue (with others) that attention to the affective dynamics of public, political communication should be an important part of the work of scholars of media, communication, and politics. Affect, understood as social and political (that is, implicated in power relations and struggles), is central to how and with whom we enter into community and imaginary relationships. It goes a long way in defining the logics and practices of both exclusion and inclusion: who I will avoid associating with, resist comparison to (and who I will resist distributing the full material and social benefits of community membership to) as well as with whom I feel and act in solidarity. Ideology, dominant discourses, and social experience are complex enough that these attachments are not always predictable or pre-determined.

What this means for normative theories of democratic communication and the public sphere is a different take on communication. Or, more precisely, room for more than one model of communication. The Habermasian model relies on a notion of rational, methodical, reciprocal, and procedural exchange that echoes the communicative norms of

an idealized court room. Along side this, as scholars such as Iris Marion Young (1997) and Michael Schudson (1997) have suggested, we need a model of political communication that accounts for the community-minded (and by community I intend to evoke both inclusion and exclusion) aspects of communication. These scholars are, importantly, deeply concerned with defining political models and norms that account for imbalances in power and the often shaky or missing common ground for multicultural/multiperspectival communication.

This means asking different questions as well. In addition to whether there is a sustainable public sphere, where it is located/what are its channels, how is access distributed, and how healthy is debate within that sphere, we might add a whole arena of questions about who is deemed lovable within that sphere (and how this affects the distribution of rights as well as material goods) and how. Answers to these questions would provide a critical lens on the most visceral ways in which we do politics, in both its ugliness and its promise. These answers might also suggest ways of making claims on justice as well as draw attention to the many ways in which justice is neither blind nor impartial.

CONCLUSION: LIMITATIONS AND AREAS FOR FURTHER STUDY

I conclude by noting the limitations of this study and noting the areas of further research suggested by the study. This study has been concerned only with two historically situated cases and so cannot offer strong causalities or generalities in conclusion. It does not offer a conclusive model of affective democratic communication, but rather offers an attempt in that direction, by studying cases of political affect through a critical lens (in which affect is connected to power and politics).

The comparative elements of the cases, while attenuated, offer promising areas for further research. The differences between the legal responses to each crime and the affective discourse that surrounded each trouble the grounds for comparison of dominant affective discourses on homosexuality and race. In each case, sketches of the complex relationship between calls for recognition of sexual discrimination and gay and lesbian rights utilized racial comparisons to invoke affective intensity as well as legitimacy (through similarity with the historically celebrated Civil Rights Movement). This relationship deserves a deeper investigation. My analysis of the discourse surrounding James Byrd's death also focuses mainly at the national level, relying on secondary and tertiary reports of local discourse. Accordingly, I have not been able to compare the local effectivity of the national media discourse; the study would benefit from attention to Jasper and local reactions there.

Theoretically, the study has focused on the discursive level of politics. While I employ a focus on affect as socially, politically, and materially grounded this study has not investigated the material origins of affect in a sustained manner. Future investigations of affective politics might tie different identifications and attachments more closely to economics and material interests. A historical material analysis of affective discourse that seeks to define the connections between various affective discourses and material circumstances would prove, I think, very useful in thinking through the varied political potentials and outcomes of affect. Finally, this project suggests the complex relationship of national and local politics as a further area for communications and media research. As this study suggests, the local reactions to national discourse can be very different from those at the national level; analyses that focus on dominant national politics miss the sometimes unpredictable impacts of these politics at the regional and local level (much as in the relationship between dominant and subaltern and subcultural politics).

Limitations aside, the complex affective and institutional responses to the murders of Matthew Shepard and James Byrd make a strong case for further critical analyses of affect as part of political communication and as a component of the public (not private) sphere. While affect is not equal to critique, neither is it inimical to critique. As a valid and varied form of civic activity, public affect is shot through with ideology and power: that is, public affect is difficultly and deeply political. Critical analyses of public affect can add to understandings of the types of publics convened by different forms of communication and their implications for the ethical texture of political life.

Appendix A: Laramie Interview Guide

1. Tell me a little bit about your role in the bias crimes ordinance.
 - Prompt 1: When did you decide that a legal response was required/ appropriate?
 - Prompt 2: When did you first know that the murder was a hate crime?
2. What was/were the goals of the resolution?
 - Prompt: Explain how it was supposed to achieve these goals.
3. When did you decide to use the term “bias crime” over hate crime measure?
 - Prompt: Other compromises and their reasons
4. Tell me a little bit about the discussion of the bias crimes ordinance.
 - Prompt: Elicit specifics and examples.
5. There were a number of references to the bill as a way of communicating with the rest of the world about Laramie. Was this a part of the bill’s logic?
 - Prompt 1: How did it communicate?
 - Prompt 2: Why the desire to communicate with the rest of the world?
6. One thing I noticed in the letters to the editor and other media coverage was a lot of what seemed to be expressions of civic pride and shame surrounding the discussion. Is this accurate?
 - Prompt: Can you recall any examples of this type of argument?
7. When did the Council decide to pass the ordinance?
 - Prompt 1: What did you hope to achieve?
 - Prompt 2: What most influenced the council’s decision to pass the ordinance?
8. What has been the impact of the debate and passage of the ordinance?
 - Prompt: How so? How do they know? Give examples.
9. How/Has Laramie changed overall since the murder and media attention?
 - Prompt: Elicit concrete examples.
10. Is there anything else about the discussion of and decision on the ordinance that you think was particularly important or unusual? Or anything else you want to add?

Appendix B: Texas Interview Guide

1. Tell me a little bit about the bill that bears Byrd's name.
 - Prompt 1: Who named the bill? How did they decide to use Byrd's name?
 - Prompt 2: What was the purpose of the bill?
2. When did you first hear about the murder of James Byrd? When did you first hear it discussed as a hate crime?
3. Tell me about what happened in the House and the Senate during the 76th legislature (1999).
4. There have been other attempts to beef up the language in the hate crimes law to include specific groups in the past. What happened in 1999 to make this attempt to pass the hate crimes bill more successful than previous ones?
5. How did you decide what your major arguments would be?
 - Follow-up: Which arguments were most effective (for and against)?
6. Families of victims testified at various points. Can you tell me about any testimony that stood out?
 - Prompt: Why did that testimony stand out (how did it impact you//the debate)?
7. How did you get republican opponents to support the bill?/When did you decide to support the bill?
8. The name of the bill refers to a racial murder and the histories of the bill and objections seem to focus on sexual orientation. Can you tell me a bit about the roles of race and sexuality in the debate?
9. When did you know that the bill would pass in 2001?
10. What has been the biggest/most important impact of the bill's passage?
 - Prompt: How do you know this?/Examples.
11. Is there anything else about the discussion of and decision on the ordinance that you think was particularly important or unusual? Or anything else you want to add?

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