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Gabriel Arkles
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Gabriel Arkles *

Killings, even mass killings of children and youth, are terribly common. Over 50,000 Iraqi children and over 15,000 Afghani children have been killed through U.S. military intervention in recent years.¹ U.S. drone strikes have killed 178 children in Afghanistan and Pakistan as of December 2012.² In just one week in the Bronx in 2012, the NYPD shot three young Black men to death.³ At least eight Palestinian children were killed by Israeli forces within the first six days of the Gaza Strip offensive beginning November 2012.⁴ At least thirteen trans⁵ women of color, most of them young, were murdered in 2012 throughout the U.S.⁶ Adam Lanza murdered twenty children and seven adults in Newtown in December 2012.⁷ These are just a few of many horrific examples.

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⁵ Trans or transgender refers to people with a gender identity or expression not traditionally associated with the sex they were assigned at birth. People who were identified as male when they were born and who now identify as women are trans women. People who were identified as female when they were born and who now identify as men are trans men. Not all trans people identify as men or women.


Media outlets, policymakers, and much of the public blame differently depending on what type of incident causes violent deaths. When it is a U.S., Canadian, Israeli, or European institution killing large numbers of Black or Brown people, it seems like often no one gets blamed. If anyone does, it is often the victims. The dead people—even the children—are perceived as disposable rather than fully human. They are all actual or potential terrorists and gang members, deserving of death. If blame does come to the government or other institutions, it is usually in sanitized and abstract terms. After killings perpetrated by individual people of color or Muslims, the person’s race or religion is often blamed for their actions. However, after mass killings by white civilian men, the blame tends to get placed differently: on guns and mental illness. The fallout from Newtown has followed this model.

Newtown and its aftermath may not seem to have much to do with trans people of color and queer women of color. After all, as far as we know Adam Lanza was not trans, queer, or a person of color and did not

8. See Prashad, supra note 2.
9. Id.
10. Id.
12. Alex Kane, Boston Marathon Bombings Unleash a New Wave of Islamophobia, MONDOWEISS (APR. 19, 2013), http://mondoweiss.net/2013/04/marathon-bombings-islamophobia.html.
14. Id.
15. I have struggled with what terminology to use for people perceived or diagnosed as mentally ill. I have settled on mental illness for this piece because it is such a commonly used term in this context; I would rather interrogate and reclaim it than avoid it. I wish to acknowledge, however, that mental illness has problematic medical connotations and that some people reject its use. People have claimed many important other terms, such as mad, consumer, survivor, and person with a psychosocial disability. Personally, I am more likely to use crazy or psychiatric disability to describe my own experience with what has been labeled as mental illness. For a thoughtful discussion of such language choices, see MARGARET PRICE, MAD AT SCHOOL: Rhetorics of Mental Disability and Academic Life 9-20 (2011).
16. By formulating the groups I am discussing in this way, I do not intend to imply—as some assume—that trans people and women are mutually exclusive groups. In fact, some women are trans and many trans people are women. The groups I wish to discuss include cisgender women, trans women, trans men, genderqueers, A.G.s, and other people who experience gender oppression because they are perceived to be gender nonconforming, female, and/or feminine.
target trans people of color or queer women of color.\textsuperscript{17} Most acts of violence that do target trans people of color and queer women of color don’t tend to attract nearly as much media attention as Newtown. However, the debates about violence, guns, and mental illness that have surrounded this and other school shootings have significant implications for trans people of color and queer women of color. Current gun control laws and proposals for expansions of gun control laws harm trans people of color and queer women of color without addressing the sources of most violence against these communities. The demonization of mental illness and push to increase the commitment of people labeled mentally ill also contributes to greater racial, gender, and sexual—as well as disability-based—violence. In this article, I consider these implications, with particular attention to issues of survival for Black trans people and Black lesbians.

First, I address issues of guns and gun control. Queer women of color and trans people of color are among those most vulnerable to severe forms of interpersonal and institutional violence. The police do not protect queer women of color or trans people of color from this violence, but perpetrate much of it. When queer women of color and trans people of color seek to defend themselves, they are often criminalized.

Gun control laws are a mechanism of this criminalization. Rather than preventing violence, most existing and proposed gun control laws increase violence through creating more mechanisms for the search, arrest, prosecution, and incarceration of marginalized communities, particularly communities of color. Laws purportedly about reducing guns and gun violence serve to justify greater use of guns on the part of law enforcement and corrections officers to enforce those laws. I propose an alternative approach to gun control, that would focus on eliminating the most destructive weapons that do the most harm to the most people—those in the control of military, law enforcement, and other institutions.

I then turn to the controversies over mental illness. Mental illness itself is a contested and socially constructed category. Queer women of color and trans people of color have often been pathologized because of gender, sexuality, race, and class. Traumatic violence and systemic discrimination can also contribute to high rates of emotional distress and psychological injury among trans people of color and queer women of color. While mentally ill people are often suspected of being violent, in fact these suspicions are often tied more to scapegoating or to anxieties about changing social hierarchies than to reality. Mentally ill people, however,

\textsuperscript{17} See Sandy Hook, supra note 7.
experience very high rates of both interpersonal and institutional violence, including violence perpetuated in the name of “treatment.” Queer women of color and trans people of color have been particularly targeted for various forms of psychiatric abuse, yet have often been denied access to quality, consensual mental health services. I propose an alternative approach to improving services and support to people who are perceived to be mentally ill; rather than commitment, control, and coercion, I suggest honoring the self-determination of mentally ill people, including trans people of color and queer women of color.

I. GUNS

“A war between the races would help nobody and free nobody and should be avoided at all costs. But a one-sided race war with Black people as the targets and white people shooting the guns is worse.”

– Assata Shakur

“If we don’t have the right to self-defense, how are we supposed to survive?”

– Bran Fenner

A. The Politics Of Self Defense

A few years ago, I did an intake with John, a Black trans man who had just been released from prison. He had finished serving the mandatory minimum sentence in New York for possession of a firearm: three and a half years in prison.

John had never used the gun. He had never threatened anyone, robbed anyone, or shot anyone. He got the gun for self-defense, and then got caught with it during a stop and frisk. When explaining why he felt he

20. Not his real name.
21. N.Y. PENAL LAW § 265.03 (McKinney 2008) (defining criminal possession of a weapon as a class C felony); N.Y. PENAL LAW § 70.02 (McKinney Supp. 2013) (setting forth mandatory minimum for certain class C felonies).
needed the gun, he asked me, “Do you have any idea what it’s like to be a black lesbian on the street?”

As a white trans man, I don’t. Sakia Gunn came quickly to my mind when John asked me the question. Sakia, a 15-year-old masculine-appearing Black lesbian, was murdered after she and her friends refused a man’s sexual advance on the street. Sakia’s killer stabbed her to death just a couple of years before and a couple of miles away from John’s arrest.

John alluded to living in an environment of pervasive threat. Most studies of violence do not look at intersections of race, gender, sexuality, class, and disability, but evidence shows that violence, including sexual violence, is more commonly perpetrated against groups marginalized based on those factors. Women are more likely to be sexually assaulted than men. Trans people are more likely to be sexually assaulted than cisgender people. Black women are more likely to be sexually assaulted than white women. Poor women are more likely to be sexually assaulted than rich women. Lesbian and bisexual women are more likely to be sexually assaulted than straight women. Disabled people are more likely to be sexually assaulted than able-bodied people.

22. John lived and identified as a lesbian at the time he got arrested. He came out as trans in prison, which was when he first met other trans people. Many people incorrectly conflate trans men and lesbians; in fact, trans men are men, and may have any sexual orientation. Some trans men, like John, have spent some portion of their lives identifying and living as lesbians.

23. “It’s a Shame that you Have to Walk Down the Street not Knowing What’s Going to Happen to Us”: The Sakia Gunn Murder, DEMOCRACY NOW! (July 14, 2003), http://www.democracynow.org/2003/7/14/its_a_shame_that_you_have.

24. Id.


30. See Emily F. Rothman, Deinera Exner & Allyson L. Baughman, The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A
A national survey of transgender people found that transgender people of color were much more likely than white transgender people to experience virtually every category of violence, including transphobic family violence, violence in schools and places of public accommodation, and police and prison violence.\textsuperscript{32} For example, 22% of Black trans and gender nonconforming people had been physically assaulted in a place of public accommodation, as compared to 6% of white trans and gender nonconforming people.\textsuperscript{33} 29% of Asian trans and gender nonconforming people and 38% of Black trans and gender nonconforming people had been harassed by police, as compared to 18% of white transgender and gender nonconforming people.\textsuperscript{34}

A different report, which examined hate violence against lesbian, gay, bisexual, transgender, queer, and HIV-affected (LGBTQH) people in 2011, found that certain groups within LGBTQH communities experienced more violence than others.\textsuperscript{35} For example, LGBTQH undocumented immigrants were 2.31 times as likely to experience physical violence and transgender people of color were 2.38 times as likely to experience police violence as compared to LGBTQH people overall.\textsuperscript{36}

Violence is much more than a moment when one person rapes, strikes, or shoots another person. Institutional mechanisms that distribute resources and death based on hierarchies of race, gender, sexuality, disability, and class are also forms of violence.\textsuperscript{37} These types of violence can be even more damaging than interpersonal violence.\textsuperscript{38} Job discrimination, welfare policy, lack of affordable housing, immigration policy, and other systemic issues


\textsuperscript{33} Id. at 127.

\textsuperscript{34} Id. at 160.


\textsuperscript{36} Id. at 9.


\textsuperscript{38} See SPADE, supra note 37, at 24.
make trans people of color and queer women of color highly vulnerable to poverty, homelessness, incarceration, and early death.\textsuperscript{39}

John, for example, had been poor his whole life. Employers were not eager to hire him. He got welfare for a while, but in the era of welfare reform had to enroll in a job training program to continue getting benefits. When the job training program kicked him out for refusing to wear a skirt, he no longer got his meager welfare payments. These mechanisms—the punishment for not conforming to femininity, the surveillance and coercion built into welfare, and the economic structures producing poverty—can also be understood as forms of violence.

Trans people of color and queer women of color cannot rely on police to defend them from any of these forms of violence. In fact, police are often the perpetrators of violence, including sexual violence.\textsuperscript{40} For example, a Native American trans woman described: “The police are not here to serve, they are here to get served... Every night I am taken into an alley and given the choice between having sex and going to jail.”\textsuperscript{41} A trans man reported a security guard and police threatening to rape him: “The security guard said, ‘The trouble is that this fucking lesbian needs to know what it’s like to be with a man.’ They all started to laugh. ‘I could show her,’ one police officer said.”\textsuperscript{42}

Because they are overwhelmingly targeted for violence and do not receive institutional protection from this violence, trans people of color and queer women of color are likely to genuinely need to defend themselves and their communities from violence. However, while according to law and public perception self-defense is justified,\textsuperscript{43} in practice the self-defense justification works more effectively for those accused of crimes against people with less privilege than they have. This dynamic explains why women are punished for fighting back against men who abuse them\textsuperscript{44} and

\textsuperscript{39} Id. at 114.


\textsuperscript{42} GRANT, supra note 32, at 161.

\textsuperscript{43} See, e.g., 18 PA. CONS. STAT. § 505 (2007); DEL. CODE ANN. tit. 11, § 464 (2007).

\textsuperscript{44} See KRISTIN BUMILLER, \textit{IN AN ABUSIVE STATE} 11 (2008) (describing how mandatory arrest policies for domestic violence have left many poor women of color worse off); ELIZABETH DER MODY LEANORD, \textit{CONVICTED SURVIVORS} 27 (2002) (“The same criminal justice system that
why hate crime laws are used against the groups they are purported to benefit.\textsuperscript{45} Certain bodies are considered more worthy defense of than others.\textsuperscript{46}

Famously, Bernhard Goetz, a white man, shot four young Black men he perceived as trying to rob him in a NYC subway.\textsuperscript{47} While many expressed outrage at Goetz’ racism, others acclaimed him as a hero.\textsuperscript{48} A mostly white jury acquitted him of murder.\textsuperscript{49} More recently, George Zimmerman, a mixed race Latino man who was widely perceived as white, shot Trayvon Martin, a young, unarmed Black man, and claimed he acted in self-defense. Zimmerman’s ability to claim self-defense was bolstered by the Blackness of his victim and his own perceived whiteness. Police accepted his account of Martin’s killing as true. Only after widespread


\textsuperscript{46} A study of African American women survivors of domestic violence in Nebraska found that a number of them were incarcerated for fighting back against the men who abused them and believed that there was no self-defense law in the state of Nebraska. Venita Kelley, What is it About Walls? in SHOUT OUT: WOMEN OF COLOR RESPOND TO VIOLENCE 4, 8 (María Ochoa & Barbara K. Ige, eds., 2007). Nebraska does in fact have a self-defense law, but the widespread belief that it did not exist among women who had gone through the criminal legal system demonstrates just how inaccessible that defense was to them. Neb. Rev. Stat. § 28-1409 (1975).


\textsuperscript{48} Id.

\textsuperscript{49} Id.
A public outcry did they question his story, ultimately arresting him for the murder. A jury acquitted him.

Less famously, in the Jersey Seven case, young Black lesbians who defended themselves against an adult Black straight male attacker were promptly arrested and prosecuted. The young women were walking along a New York City street when Dwayne Buckle propositioned Patreese Johnson. When Johnson said no, Buckle became violent. Johnson’s friends came to her aid and they struggled. A couple of male bystanders joined the melee, trying to help the women. Buckle ended up getting stabbed. He recovered after emergency treatment. Mainstream media outlets depicted the young women in dehumanizing terms as a “gang of angry lesbians” and “wolf-pack” and reported Buckle’s self-depiction as a victim of a “hate crime” against a straight man. The women were the only ones arrested or charged. While a number of grassroots groups led by queer and/or trans people of color organized against the prosecution, widespread mainstream public outrage about the case never emerged. Johnson served almost eight years for her conviction arising from the incident.

Similarly, CeCe McDonald, a Black trans woman, was attacked on the street in Minnesota where she was walking with a group of friends. A number of white, straight, cisgender people started calling them “niggers,”

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52. Henry, supra note 19.
53. See id.
54. Id.
55. Id.
56. Id.
57. Id.
58. Id.
59. Id.
60. Id.
61. Id.
“faggots,” and “chicks with dicks.”

McDonald told them to stop and in response got smashed in the face with a glass, causing injuries that needed eleven stitches. She and her friends fought back and one of the attackers, a man who had a swastika tattoo, got fatally stabbed. McDonald was promptly arrested and charged with second degree murder. She accepted a plea for second degree manslaughter and is currently serving time in prison. Again, while grassroots groups rallied to support her, the prosecution was unconvinced by her narrative of self-defense and the mainstream media did not pick up the story.

As these incidents graphically illustrate, when Black queer women and/or trans people fight back against racist, sexist, homophobic, and transphobic violence, it is not perceived as legitimate self-defense. As INCITE! Women of Color Against Violence articulates, “The question of why there is so much silence surrounding the NJ7 case and similar instances of criminalization of women of color and queers of color lays bare the ways in which queer folks of color and women of color do not fit the racialized and gendered mold of who gets to be perceived as legitimately victimized or legitimately resisting oppression.”

B. Gun Control Laws

Since the Newtown shooting, demands for increased gun control measures have sharply increased. State legislatures and the Obama administration have responded. However, none of the laws passed or

64. Id.
65. Id.
67. SUPPORCeCe, supra note 63.
68. Id.
69. Id.
70. INCITE! WOMEN OF COLOR AGAINST VIOLENCE & FIERCE!, CRITICAL LESSONS FROM THE NEW JERSEY 7, 65 (Sep. 2008), available at http://www.incite-national.org/media/docs/9908_toolkitrev-nj7.pdf; see also RICHIE, supra note 44, at 124 (describing the ways that criminal legal systems work against Black women who “do not fit into the traditional image of an innocent victim”).
proposed since Newtown could plausibly have prevented the incident.\footnote{73} At most, if they were followed, they could have reduced the size of the magazines Lanza was using to kill people.\footnote{74} However, most of the measures that have been passed since Newtown—increasing sentences for actions that are already illegal, such as carrying an unloaded gun while trafficking drugs; imposing obligations on mental health providers to report their patients whom they suspect of being dangerous to the government so that their licenses for firearms may be revoked; increasing use of criminal background checks prior to gun sales; expanding prohibitions on gun licenses and gun sales to people with serious mental illness, etc.—are completely irrelevant to what happened in Newtown.\footnote{75} Moreover, in a system with millions of people behind bars, most of them people of color, anyone concerned with racial justice should greet proposals to expand criminal sanctions with extreme skepticism.

Gun control laws have been around for centuries and have maintained hierarchies of race, gender, disability, nationality, class, and sexuality. As others have documented extensively, most gun control laws implemented throughout US history have either explicitly or implicitly supported white supremacy.\footnote{76} Early gun control laws primarily focused on preventing Black people (enslaved or free) and Native Americans from arming themselves.\footnote{77} Later, new gun control laws focused on disarming immigrants and working


\footnote{77} Riley, supra note 76, at 1677; Cottrol, supra note 76.
class people. In the 1960s lawmakers passed gun control laws in reaction to Black Panther organizing, a move which armed women and men from the Black Panthers protested.

White men seem to be the most common gun owners in the U.S. However, it is mostly people of color and often trans people of color and queer women of color who get targeted through gun control laws. Partly, this is because most gun control laws are criminal laws and the criminal legal system targets people of color, trans people, and poor people. The disproportionate arrest, prosecution, sentencing, and punishment of communities of color is well-documented.

While much of the writing and activism about the racism of the criminal legal system has focused on cisgender men of color, who do experience extremely high rates of incarceration and police violence, women of color and (other) trans people of color also face severe and pervasive criminalization and punishment, as well as gender-related harms within these systems.

Beyond the concerns that could apply to any criminal law, gun control laws are particularly bad for trans people of color and queer women of color, for a few reasons. First, as described above, trans people of color and queer women of color are heavily targeted for both interpersonal and institutional violence and they are also particularly unlikely to be able to rely on police or other government or corporate entities for protection. Those who choose to have guns for self-defense, under these circumstances, should not be punished.

Further, the text of most gun laws requires discrimination. For example, existing federal law prohibits certain people from having a gun.

82. E.g., San Francisco Dep’t of Health, The Transgender Community Health Project (Feb. 18, 1999), available at http://hivsite.ucsf.edu/InSite?page=cfg-02-02 (finding that sixty-five percent of transgender women and twenty-nine percent of transgender men had a history of incarceration); Grant, supra note 32, at 163 (noting that sixteen percent of trans people had been incarcerated in jail or prison); Richie, supra note 44, at 123 (noting Black women who experience male violence are likely to be criminalized).
The categories of people prohibited from possessing a firearm include people with certain types of criminal history; people who are addicted to controlled substances; undocumented immigrants and people present in the U.S. as visitors; people dishonorably discharged from the military; and people who have had certain types of mental health treatment. All of these restrictions disproportionately impact marginalized communities.

The prohibition on people with criminal histories possessing guns has a highly discriminatory impact on people of color, and trans people and queer youth of color in particular, because of the high rates of criminal legal system targeting of these communities. The prohibition on addiction also has a disparate impact. While most studies indicate no racial differences in rates of illicit drug use, people of color are far more likely to be identified as addicted to controlled substances because they are disproportionately targeted for enforcement of drug laws. They are also less likely to have access to high-quality, voluntary, confidential treatment for addiction or to licit medications for reducing chronic pain or symptoms of anxiety or depression. Also, some studies have shown high rates of drug abuse in LGBT communities, which many theorize results from high rates of stress from homophobia and transphobia.

The provisions preventing undocumented immigrants and certain other immigrants from lawfully obtaining guns also have profound implications in terms of race, class, gender, sexuality, and disability. People of color

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84. Id.
85. See e.g., SAN FRANCISCO, supra note 82 (finding that sixty-five percent of transgender women and twenty-nine percent of transgender men had a history of incarceration); GRANT, supra note 32, at 163 (noting that sixteen percent of trans people had been incarcerated in jail or prison); SILJA J.A. TALVI, WOMEN BEHIND BARS: THE CRISIS OF WOMEN IN THE U.S. PRISON SYSTEM 47 (2007) (discussing the disproportionate incarceration rates of Native and Latin@ men and women in various states); Peter Wagner, Incarceration Is Not an Equal Opportunity Punishment, PRISON POLICY INITIATIVE (June 28, 2005), http://www.prisonpolicy.org/articles/notequal.html (stating that as of 2004, there were 393 White people incarcerated per 100,000 members of the population, compared to 957 Latin@ people and 2,531 Black people); Omar C. Jadwat, International Civil Liberties Report, The Arbitrary Detention of Immigrants After September 11, 1, available at http://www.aclu.org/files/iclr/jadwat.pdf (last visited Aug. 12, 2012) (stating that petitioners in an action before the U.N. Working Group on Arbitrary Detention argued that their “post-September 11 detentions were arbitrary because arrests...disproportionately affected Muslim men from South Asian and Middle Eastern countries”).
87. See infra Part II.
from other countries may be more likely to immigrate to the United States, if they can, because of economic colonialism and military occupation that has devastated much of the global South, Middle East and parts of Asia.  

Trans people of color and queer women of color also may have particular incentives to leave their home countries because of transphobic, sexist, and homophobic violence in home countries (which can also be related to colonial legacies).

While the explicit ban on immigration of people living with HIV was lifted in 2009 and the ban on immigration of people perceived as “sexually deviant” was lifted in 1990, trans people and queer women are still even less likely than other immigrants to be able to get access to lawful immigration status in the U.S. The two primary routes to immigration to the US are less likely to be open to trans people and queer women. Poverty and employment discrimination make it unlikely they will be able to access employment-based routes to immigration status. Family-based immigration status is less likely to be available to queer women and trans people because immediate biological family members sometimes reject their trans, queer, or lesbian family and U.S. immigration law refuses to acknowledge chosen family networks that trans people of color and queer women of color often create. Also, the extensive criminalization of trans immigrants of color creates further barriers to immigration status. Bias and sexual exploitation on the part of immigration officers also create greater barriers to immigration.

Dishonorable discharges from the military may also be a result of racism, sexism, homophobia, and/or transphobia. For example, Black women were disproportionately likely to be discharged under Don’t Ask

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94. Struggles from the Margins, supra note 93, at 319; Gendered (In)security, supra note 93, at 362-63; EITHNE LUIBHÉID, ENTRY DENIED: CONTROLLING SEXUALITY AT THE BORDER 104 (2002).
Don’t Tell. Cross-dressing has been found to be conduct unbecoming an officer. Trans people of color and queer women of color may also be disproportionately labeled as mentally ill and subjected to involuntary treatment, as explained further below, which means that prohibitions on gun possession for people with certain histories of mental health treatment discriminate not just on the basis of disability but also have a discriminatory impact on the basis of race, gender, and sexuality.

Further, criminal gun control laws are not neutrally applied. In New York City, people charged with unlawful possession of a firearm are almost all people of color. Less than 4% of people charged with this crime are white, while nearly 70% are Black. Like illicit drugs, illicit guns can easily be detected through searches—lawful or otherwise. Because of racial profiling, people of color are overwhelmingly the targets for “stop and frisks” and other such searches.

Gender nonconformity, as well as race, can incite suspicion and lead to searches. Not long after the Virginia Tech shooting, a parent reported seeing a white man wearing women’s clothing walking near a school. In response, school officials locked down the school, contacted the authorities, and conducted a search for the “suspicious” person. A Black trans woman in Oklahoma recently sued after people reported her for walking in the park while wearing women’s clothing and the police arrested her for disorderly conduct. A Black trans man whose power wheelchair got stuck in the snow described how the only help any passerby would offer

97. See infra Part II(A).
99. Id. at 12.
101. Id.
103. Id.
was calling the police, rather than offering to take a minute to help him with a push.\textsuperscript{105} Trans women of color are routinely stopped and arrested as presumed sex workers, simply because of their gender expression and race.\textsuperscript{106} Poverty and homelessness also dramatically increase vulnerability to police surveillance and are more prevalent among queer women of color and trans people of color.\textsuperscript{107} This increased surveillance and suspicion can make queer women of color and trans people of color far more likely to get caught with guns than identically armed white, straight, cisgender men.

Gun licensing laws also have been and still are applied discriminatorily. In fact, in many cases, they were originally established specifically for the purpose of depriving Black people of guns.\textsuperscript{108} According to the amicus brief filed by the Congress on Racial Equality, in St. Louis people perceived as gay, as well as women without the permission of a husband, are routinely denied licenses for guns.\textsuperscript{109}

Gun laws also make guns more expensive. Many gun control laws have prohibited the selling of handguns or other cheaper guns specifically to make them less accessible to communities of color.\textsuperscript{110} The cost of running background checks and other requirements of and restrictions on manufacturers and retailers can also be passed on to consumers, again making guns less accessible to poor people and to the groups who are more likely to be poor (such as disabled people, people of color, women, trans people, and immigrants).\textsuperscript{111}

Government policy does not universally prevent communities of color from getting guns. In fact, people of color are heavily recruited for military

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\textsuperscript{107} Id. at 11.

\textsuperscript{108} Cottrol, supra note 76, at 1317.


\textsuperscript{110} Cottrol, supra note 76, at 1333.

participation. People of color and trans people from low-income communities are more likely than white people and cisgender people to be in the armed forces, particularly in dangerous combat positions. Apparently these communities can be trusted with guns, but only when someone else says where to point them.

In the last several years, a conservative majority of the Supreme Court has struck down some criminal gun control laws as violating the Second Amendment, first in *Heller* and then in *McDonald*. While I believe that these laws are bad for trans people of color and queer women of color, these decisions are not triumphs for racial, gender, or sexual justice. While I suspect both laws were disproportionately enforced against people of color, trans people, immigrants, and other marginalized groups, the text of the laws do not facially require such discrimination to the extent that other laws focused on history of criminal convictions, immigration status, and treatment for mental illness do. The laws were broad enough to affect white, cisgender, straight, US citizen able-bodied men—the core group Scalia identified as deserving access to these weapons. In fact, in *Heller* the Court cautioned: “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” Also, *Heller* and *McDonald* do nothing to address the deeper problems around violence, the politics of self-defense, and differential valuing of lives based on race, class, gender, sexuality, and disability. They certainly do nothing to grapple with the extent of state and institutional violence against marginalized communities.

C. Uncontrolled Guns

John pointed out to me how I might have overlooked the necessity of guns. Another former client from the Sylvia Rivera Law Project pointed out to me how I might have overlooked their dangerousness in the hands of law.

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117. *Id.* at 626.
enforcement. Tiffany\textsuperscript{118} called me distressed that a law enforcement officer was carrying a sidearm in a public place where children were playing. Tiffany was a white trans woman with mental illness and learning disabilities, whom I was working with because she had been raped by an officer from that same law enforcement agency. On the phone, she cried, “He’s carrying a gun around children! This has to be stopped!” My first thought was that I would have to try to explain to her that her demand was not reasonable—that of course law enforcement officers can carry guns, whether there are children around, or not. My second thought was that her demand was completely reasonable; I wondered why I wasn’t immediately outraged that this man had a gun at his side, especially given the violence Tiffany had experienced and the presence of children.

Discourse around gun control often fails to acknowledge that most guns, as well as more highly destructive weaponry, are actually in the hands of government organizations (military, law enforcement, corrections, and intelligence) as well as some business organizations (security and mercenary). These organizations also cause far more violent deaths and injuries than people acting as individuals do. These guns, which disproportionately threaten trans people of color and queer women of color domestically and internationally,\textsuperscript{119} would not be restrained at all by current gun control laws and proposals.

The overwhelming armaments of many government and corporate entities also make it easier for them to trample the lives and liberties of millions of people without fear of serious reprisal. That, of course, is exactly the point, and has been for a long time.\textsuperscript{120} While some among the founders may have spoken eloquently about the need for the people to have arms to keep government excesses in check,\textsuperscript{121} they were no more eager to allow Black people to have weapons they might use to rise up against white supremacy than it seems many in positions of power now are.

A serious approach to reducing violence with guns and other weapons would need to \textit{start} with plans for massive disarmament of government and corporate entities. Some within the UN have been pushing for disarmament

\textsuperscript{118}. Not her real name.
\textsuperscript{120}. Leslie Feinberg, \textit{In defense of peoples’ power}, WORKERS WORLD (Jan. 3, 2012), http://www.workers.org/2013/01/03/in-defense-of-peoples-power/.
\textsuperscript{121}. \textit{Heller}, 554 U.S. at 598.
for many years, noting also the potential for reducing the violence of poverty through reinvestment in other areas.\textsuperscript{122}

In contrast, grotesquely, some of the recent suggestions and changes made in the name of reducing gun violence would actually increase armed police presence around children. In the wake of Newtown, the NRA suggested armed police in schools as a way to prevent further mass shootings.\textsuperscript{123} Armed police are already present in many schools in low-income communities of color, which has led to violence and criminalization against children of color, particularly disabled children of color.\textsuperscript{124} Scaling up these efforts would not help reduce gun violence.

Somewhat surprisingly given his political differences with the NRA, some of Obama’s initial actions carry out this plan of increased guns.\textsuperscript{125} His proposal includes significant funding for more police in schools, a plan that some LGBT youth of color have already organized to oppose.\textsuperscript{126} As one of the organizers of a protest in Chicago said, "The whole reason we work on this issue is because there are so many brilliant amazing young people who are getting suspended and arrested or fined and pushed out of school and it’s not right."\textsuperscript{127} Prioritizing funding for police in schools is particularly alarming in an era when so many public schools are closing for lack of funds.\textsuperscript{128}


\textsuperscript{126} Jack Reese, LGBT youth, advocates oppose more cops in Chicago public schools, CHICAGO PHOENIX (Jan. 21, 2013), http://chicagophoenix.com/2013/01/21/lgbts-youth-safe-schools-alliance-oppose-more-cops-in-chicago-schools/.

\textsuperscript{127} Id.

\textsuperscript{128} Kathy Matheson, 4 Philadelphia Schools Saved, 23 Closing After SRC Vote, ABC ACTION NEWS (March 7, 2013), http://abclocal.go.com/wpvi/story?section=news/local&id =9018966 (reporting closing of 23 Philadelphia schools); Protests Against School Closings
Gun violence is a serious issue, including when it is a form of state violence. Rather than building up more guns to perpetrate the violence of incarceration against more people of color, especially trans people of color and queer women of color, our communities deserve an approach that will prioritize control of state and other institutional violence and more meaningful ways to prevent and respond to interpersonal violence.

II. PSYCHIATRY, DISABILITY, AND CONTROL

*I have noticed that the mental illness that affects white men is often characterized... as genius...White women who suffer from mental illness are depicted as... hysterical. Black men are demonized and pathologized... When a black woman suffers from a mental disorder, the overwhelming opinion is that she is weak. And weakness in black women is intolerable.*

—Meri Nana-Ama Danquah

“They say you’re crazy cause you not crazy enough to kneel when told to kneel.”

—Assata Shakur

“I may be crazy, but that don’t make me wrong.”

—Marsha P. Johnson

Aside from a lack of gun control, the other primary culprit that has been identified in the wake of Newtown is mental illness. Rumors and speculation have circulated that Adam Lanza might have had Asperger’s Syndrome, a personality disorder, schizophrenia, depression, anxiety, or...
some other diagnosable psychiatric condition. In the aftermath of the shooting, doctors looked for (but did not find) abnormalities in his brain. Many people have insisted that something be done about mental illness. Legislative proposals reacting to Newtown could increase outpatient commitment of mentally ill people, funding for psychiatric treatment, and screening for mental illness among schoolchildren.

Mental illness itself is a contested and controversial concept. Any pattern of thought, belief, perception, emotion, or behavior that deviates from a psychiatric conception of “normal” may be pathologized as mental illness. Which variations are pathologized, as well as how they are pathologized, shifts over time in response to political, cultural, scientific, economic, and other developments.

To say that concepts of mental illness are socially and politically constructed is not to say that mental illness is not “real.” Variations in thought, mood, belief, perception, and behavior exist. Some of these variations produce real suffering and impose real limitations. The concept

133. See, e.g., Dr. Jamie Turndorf, Was Adam Lanza an Undiagnosed Schizophrenic, PSYCHOLOGY TODAY (Dec. 20, 2012), http://www.psychologytoday.com/blog/we-can-work-it-out/201212/was-adam-lanza-undiagnosed-schizophrenic.


138. See CONRAD & SCHNEIDER, supra note 136, at 14; see also METZL, THE PROTEST PSYCHOSIS, supra note 137, at 30.

139. ASAN explains, “Of course, there are real challenges associated with autism and other neurological differences. . . . In advocating recognition of the civil rights and dignity of Autistics and others with disabilities, we are not overlooking the existence of such challenges. Rather, we are seeking to create a world in which all people can benefit from whatever supports, services, therapies, educational tools, and assistive technologies may be necessary to empower them to
of mental illness also has very real political, cultural, social, and physical consequences.

Many people who have been labeled as mentally ill have organized to push back against mistreatment and narrow medical or legal definitions of their experience. Disability justice, mad pride, radical mental health, antipsychiatry, recovery, self-advocacy, and consumer/survivor/ex-patient movements are just some of the forms that this resistance has taken over the years.\(^\text{140}\) The construction of mental illness is deeply interwoven with constructions of race, gender, sexuality, and class.

**A. Race, Gender, Sexuality and Class in the Construction of Mental Illness**

1. Pathologization

Race, gender, sexuality, and class have always been central to conceptions of mental illness. White psychiatrists developed diagnoses specific to Black people prior to the Civil War, such as *Drapetomania* (described as a mental disease causing slaves to run away that should be treated with whipping) and *Dysaethesia Aethiopica* (described as “rascality” and failure to respect the property rights of white owners that should also be treated with whipping).\(^\text{141}\) Some psychiatrists claimed that emancipation was disastrous for the mental health of Black people because they were “mentally unfit” for the pressures of freedom.\(^\text{142}\) Schizophrenia came to be seen as a Black disease during the 60s and 70s, when Black power movements were pathologized as symptoms of diseased Black brains in participate fully in society, with respect and self-determination as the guiding principles.” *Position Statements, AUTISTIC SELF ADVOC. NETWORK*, http://www.autisticadvocacy.org/policy-advocacy/position-statements/ (last visited Apr. 3, 2013).


need of treatment and control. A belief in white racism was described as a pathological sense of persecution. Black people are still diagnosed as schizophrenic much more often than white people, even with identical symptoms.

Other popular nineteenth century psychiatric diagnoses included pauper lunacy, masturbatory insanity, and old maid’s insanity, all linked with class, sexuality, and gender as implied from the names. Women have historically been seen as prone to emotional disturbance because of their gender—both embodying mental illness and causing mental illness in others. Maintaining white people assigned female at birth in conventional white feminine gender norms has been an explicit goal of much of psychiatry. Defiance of patriarchal authority and gender stereotypes has been characterized as evidence of mental illness. Formal diagnoses (gender dysphoria, formerly known as gender identity disorder, and transvestic disorder, formerly known as transvestic fetishism) currently

143. “In the late 1960s, Vernon Mark, William Sweet and Frank Ervin suggested that urban violence, which most African-Americans perceived as a reaction to oppression, poverty and state-sponsored economic and physical violence against us, was actually due to ‘brain dysfunction,’ and recommended the use of psychosurgery to prevent outbreaks of violence . . . . The issue of brain dysfunction as a cause of poor social conditions in African-American and Latino communities continues to crop up in the federally funded Violence Initiatives of the 1990s and current calls for psychiatric screening for all children entering juvenile justice facilities.” Vanessa Jackson, In Our Own Voice: African-American Stories of Oppression, Survival and Recovery in Mental Health Systems 5, HEALING CIRCLES, http://www.healingcircles.org/uploads/INOVweb.pdf (last visited Apr. 3, 2013) (internal citations omitted).

144. METZL, THE PROTEST PSYCHOSIS, supra note 136, at 152-53.


146. METZL, THE PROTEST PSYCHOSIS, supra note 137, at 27.


148. People assigned female at birth include cisgender women, trans men, genderqueers, AGs, and others identified as girls at or before birth, usually based on genital appearance.

149. See generally JONATHAN M. METZL, PROZAC ON THE COUCH: PRESCRIBING GENDER IN THE ERA OF WONDER DRUGS 74 (2003) (explaining marketing of pharmaceuticals to cure women who fail to properly fill their roles as wives and mothers).

apply to many trans people and cross-dressers. A variety of deviant sexual practices and desires has also been and is still pathologized. Homosexuality was once classified as a mental illness. While that has changed, asexuals can still receive a diagnosis of “sexual arousal disorder.” People who participate in consensual BDSM or other consensual kinky sexual activities may also find themselves diagnosed with any of a number of conditions.

Trans people of color and queer women of color often experience pathologization of their identities and resistance. This pathologization is not always discretely about one identity rather than another. As one trans person of color stated: “We’re seen as freaks or sick either mentally or physically or both. I know this to be true from sitting back and simply living day to day the dangerous life of a Puerto Rican pre-op transsexual locked up behind bars.”

2. Trauma and Harm

Racial, gender, and sexual marginalization has a more complex relationship with mental illness than simply leading to the labeling or (mis)identification of people as mentally ill. Social conditions, discrimination, and violence can cause serious psychological and emotional harm (as well as physical harm) that may be experienced as mental illness.

151. While I am listing Gender Identity Disorder (GID) in the extremely dubious company of diagnoses such as drapetomania and homosexuality, some trans people do feel that GID is good fit to describe their experience and even more use GID in ways that are critical to their survival. See supra notes 108-12 and accompanying text.
152. GRANT, supra note 32, at 78.
154. CONRAD & SCHNEIDER, supra note 137 at 183.
156. BDSM refers to bondage/discipline/dominance/submission/sadism/masochism.
157. SYLVIA RIVERA LAW PROJECT, supra note 106, at 17.
158. Id.
159. See, e.g., Beth Ribet, Naming Prison Rape As Disablement: A Critical Analysis of the Prison Litigation Reform Act, the Americans with Disabilities Act, and the Imperatives of Survivor-Oriented Advocacy, 17 VA. J. SOC. POL’Y & L. 281, 285 (2010) (“I reference disablement as the process by which some disabilities are socially produced, and more specifically are produced by violence, inequity and subordination.”); Valire Carr Copeland & James Butler, Reconceptualizing Access: A Cultural Competence Approach to Improving the Mental Health of
A couple of examples illustrate how social conditions can lead to mental illness. Rates of HIV are exceptionally high among trans women of color. A number of social factors contribute to these high rates, including sexual assault and survival sex. Also, gender affirming healthcare is largely inaccessible to trans women of color through licit medical channels, leading some trans women of color to use hormones or silicone injections under conditions where needles could be shared. Drug treatment programs, syringe exchange programs, and healthcare providers also frequently discriminate against trans women of color who might otherwise seek services.

HIV in turn can lead to mental illness. For example, some people with HIV become depressed because of their experience with the illness and the stigma and discrimination associated with it. Insomnia, depression, and anxiety are all common side-effects of some HIV medications. Some people with HIV develop AIDS-related dementia. The criminal legal system also targets HIV positive people for incarceration and isolation within carceral settings, which can lead to psychological breakdown.

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African American Women, 23 SOC. WORK IN PUB. HEALTH 35, 37 (2007), available at http://dx.doi.org/10.1080/19371910802148263 (“The prolonged negative impact of racism and discrimination, poverty, substandard housing, neighborhood conditions, lack of health insurance, difficulty obtaining healthcare, and fewer choices with which to receive care have all been linked to poor mental health status among African American women.” (citation omitted)). This reality is not inconsistent with the view that many mental illnesses may also have a biological basis.


163. See infra Part II.B.2. (discussing in greater detail the discrimination by healthcare providers against queer women of color and trans people of color).


168. See id. at 107.

169. See In re Medley, 134 U.S. 160, 168 (1890) (“A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed
The violence of incarceration can produce mental illness through a number of means. The relationship of incarceration to mental illness and other forms of disability is complex, as Beth Ribet explains.\textsuperscript{170} Ableism can make disabled people, including mentally ill people, more likely to be incarcerated and more likely to be targeted for violence such as prison rape once incarcerated.\textsuperscript{171} At the same time, disability, including mental illness, can be a consequence of getting raped in prison.\textsuperscript{172}

Trans people of color and queer women of color are particularly vulnerable to prison rape. The rates of sexual assault for trans women in men’s prisons is thirteen times higher than the overall rates of sexual assault in men’s prisons.\textsuperscript{173} Rates of sexual assault are substantially higher in women’s prisons—where most trans men and cisgender queer women are incarcerated—than in men’s prisons.\textsuperscript{174} People of color are not only disproportionately incarcerated as compared to white people, but also may

\textsuperscript{170} Ribet, supra note 159, at 295 (“The relationship between disability and prison rape actually entails a tri-part dynamic, as it may be first a precursor to incarceration, then a basis for the sexual assault, and then again the additional or compounded consequence of experiencing rape.”).

\textsuperscript{171} Id.

\textsuperscript{172} Id.


\textsuperscript{174} See, e.g., Paul Guerino & Allen J. Beck, SEXUAL VICTIMIZATION REPORTED BY CORRECTIONAL AUTHORITIES, 2007 - 2008 at 6 (2011), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/svrcr0708.pdf (“Females represent 7% of sentenced prison inmates but accounted for 21% of all victims of inmate-on-inmate sexual victimization in federal and state prisons. Similarly, females account for 13% of inmates in local jails but 32% of all victims.”).
be targeted for sexual assault while in prison on the basis of their race. Post-traumatic stress disorder is only one of the psychiatric conditions that can result or intensify from rape. The continuation of the conditions that caused the problem in the first place and the lack of quality, consensual mental health care in carceral settings severely impedes recovery. Trans and queer people of color are also highly likely to be placed in isolation in carceral settings, with potentially catastrophic mental health consequences. One trans woman who had been beaten by a guard wrote to the Office of Mental Health: “I’m having a nervous [sic] breakdown, because my facial hair is growing, and I was deprived a shower and razor, all cause a officer smashes a woman’s [my] face into a wall.”

In fact, a number of studies have found that depression, anxiety, and other mental illnesses are more common among trans people of color and queer women of color than others. A New York study of LGBT people found that half of Native American respondents had probable depression. In Pennsylvania, 34% of incarcerated trans people reported living with a serious mental illness. A study found that 18% of lesbians had attempted suicide. Another study found that 41% of trans and gender nonconforming people had attempted suicide. Those who had survived

176. Ribet, supra note 159, at 289.
177. See Aranoff, supra note 153.
178. SYLVIA RIVERA LAW PROJECT, supra note 106, at 20.
180. Id. at 13.
183. See GRANT, supra note 32, at 1.
physical or sexual violence were much more likely to have attempted suicide than those who had not.\textsuperscript{184}

Thus it may be not only that trans people of color and queer women of color are more likely to be labeled as having mental illness because of institutional and interpersonal biases in the process of diagnosis, but also that trans people of color and queer women of color are more likely than others to acquire certain mental illnesses because of social conditions and violence. Treatment for mental illness is also different based on race, gender, class, and sexuality, as explained further below.\textsuperscript{185}

\textbf{B. Mental Illness and Violence}

In response to the Newtown shooting, some have advocated for more mental health screening and services. Others have advocated for lower barriers to civil commitment, chafing at the Constitutional restriction that someone who is not suspected of a crime must at least be demonstrably dangerous to oneself or others before being incarcerated. The risk in these proposals is that they could create more violence than they would prevent, particularly violence against trans people of color and queer women of color labeled mentally ill.

1. Myths About Mental Illness as Cause of Violence

Some believe that anyone who kills children for no obvious reason must be crazy—not because they have received any particular diagnosis or meet any particular diagnostic criteria for a mental illness, not because a court has determined they meet a legal definition of insane or incompetent, and not because they have expressed a social or political identity as a mad person or mental health consumer, but simply because anyone who would do such a thing cannot, by definition, be “sane” or “normal.”

Accepting the assumption that someone who does bad, violent things—or at least \textit{really} bad, violent things, things like killing a lot of white children—is crazy because it just \textit{is} crazy to do those things, though, doesn’t get us very far. It doesn’t tell us anything about why violence happens, how to prevent it, or how to respond once it has happened. It also doesn’t tell us anything about the proclivities of people labeled as mentally

\textsuperscript{184} “Those who had survived violence perpetrated against them because they were transgender or gender non-conforming were at very high risk; 61\% of physical assault survivors reported a suicide attempt, while sexual assault survivors reported an attempt rate of 64\%.” \textit{Id.} at 16.

\textsuperscript{185} \textit{See infra} Part II.B.2.
ill (to say it is a tiny minority of people who are labeled as mentally ill because they have killed children would be a drastic overstatement of the numbers).

For example, while some people make much of the fact that the Virginia Tech shooter had been diagnosed with an anxiety disorder, he is in the company of more than 18% of Americans, most of whom do not open fire on their classmates.

This assumption does, however, stigmatize and scapegoat mentally ill people. It allows “normal” people to disavow any role in or potential for violence. After the Holocaust, one reaction was to blame it on Hitler’s insanity. Whether or not Hitler was crazy, though, he was not the only person responsible for the murder of eleven million Jews, Roma, disabled people, and queer people. As a scapegoating technique, this link need not be logical. It sacrifices a marginalized group for the comfort of others. A press release about a recent New York gun law, for example, proclaims that the legislation will keep guns out of the hands of “potentially dangerous mental health patients.”

This proclamation succeeds in painting a picture of who is responsible for gun violence while sidestepping the reality that everyone, whether they have received mental health treatment or not, is potentially dangerous.

This focus also neatly evades challenges to the status quo and deflects attention from racial and gender privilege. An alternative approach to

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190. Id. See also PRICE, supra note 15 at 145.

191. VIJAY PRASHAD, THE DARKER NATIONS: A PEOPLE’S HISTORY OF THE THIRD WORLD 6 (2007) (discussing how Europe tried to blame the Holocaust on Hitler as an insane individual, eclipse the everyday violence of white people, and attribute violence only to people of color).

Newtown, for example, might interrogate the ways that society leads white men to believe that they are entitled to control the bodies and lives of women and children; that they own public spaces, and that rage, lust and aggression are the only acceptable feelings for them.\textsuperscript{193} In fact, mental illness is not linked to violence more strongly than gender is; it would make at least as much sense to lock up all men as a preventive measure as it would to lock up all mentally ill people.\textsuperscript{194} I am not suggesting that racism and sexism are the whole reason for Newtown, at least in a direct and simple way; most white men do not kill as Adam Lanza did. When we focus on mental illness, though, we are making a choice to focus negative attention on a marginalized characteristic, rather than a privileged one, with even less justification for doing so.

A number of scientists have investigated the presumed link between mental illness and violence. Some studies have shown no correlation between mental illness and violence.\textsuperscript{195} Others have shown a significant correlation, but still concluded that mental illness does not usually make people violent and that when mentally ill people are violent, they are much more likely to be violent toward themselves than toward others.\textsuperscript{196} Some of the “violence” attributed to mentally ill people in both empirical studies and popular perception may be self-defense, resistance to subordination, or unusual but harmless behavior.

Fighting back against being restrained and forcibly administered unwanted treatment is perceived as a form of violence, but from the perspective of the person about to be drugged or shocked against their will it could easily seem like a totally justifiable form of self-defense.\textsuperscript{197} Given

\begin{itemize}
  \item \textsuperscript{194} Bruce G. Link et. al, Real in Their Consequences: A Sociological Approach to Understanding the Association Between Psychotic Symptoms and Violence, 64 AM. SOC. REV. 316, 330 (1999).
  \item \textsuperscript{195} See, e.g., Schizophrenia does not increase risk of violent crime, Phys.org (May 20, 2009), http://phys.org/news162047519.html.
  \item \textsuperscript{197} See generally, Ann Jennings, On Being Invisible in the Mental Health System, 21 J. Mental Health Admin. 374, 374 (1994) (describing experience of woman in mental health system labeled as noncompliant who experienced forced treatment as retraumatization after sexual abuse); Behavioral Emergencies: Approach to the Patient With Mental Symptoms, Merck Manual For
the high rates of violence against mentally ill people, they also often have cause to exercise self-defense.

As I have already noted, involvement in Black nationalism was often perceived as a form of violence emerging from mental illness.198 Within prisons, people organizing other prisoners to protest conditions have been committed for psychiatric treatment as “criminally insane.”199 A woman prisoner who reported that a guard raped her was immediately transferred to a psychiatric hospital for prisoners, where she was harassed.200 When she attempted suicide, three male guards stripped her naked and tied her spread eagle to a bed, where she was forced to stay for nine hours. She was then kept on suicide watch for 29 days, which one staff person said was to “bring her down a few rungs,” but she received no counseling or other treatment.201

At times, an action might be perceived as violent despite the fact that it could not have harmed anyone (aside from perhaps surprising them or making them uncomfortable). The Icarus Project cautions supporters to consider what behavior is really threatening. Standing in a kitchen, holding a knife, and talking about UFOs, for example, does not indicate that a person is about to stab someone.202

Finally, when we shift our attention to massive or institutional violence, we find that mentally ill people are less likely to be primary perpetrators of these forms of violence than people without mental illness are. However, we also find that people may become mentally ill in part because of experiencing, perpetrating, or witnessing this violence, indicating a more complex relationship between violence and mental illness than commonly assumed.

While some individual people with mental illnesses may be in positions of relatively high social and political power, as a group the mentally ill do

198. See METZL, supra note 137, at 121.
199. See, e.g., Victoria Law, Resistance Behind Bars: The Struggles of Incarcerated Women 11 (2009) (describing the transfer of 24 women prisoners to a facility for the criminally insane without hearings after they protested the beating of another woman who had sued the prison); Shakur, supra note 18, at 62 (describing how a Black woman was taken to a “hospital” for the criminally insane after Assata refused to stay in her cell).
200. Law, supra note 199 at 67.
201. Id.
not have social and institutional power sufficient to subordinate others. Moreover, there are barriers to entry and retention of the mentally ill in entities responsible for large-scale violence. For example, the military uses mental illness as a basis to discharge people and turn them away from enlisting. 203 Similarly, police forces disqualify people with many mental illnesses from joining. 204

While professional fields may be less associated with violence than the military or police in many people’s minds, doctors and lawyers also bear responsibility for significant violence, both through maintaining, perpetuating, and benefiting from institutional systems of domination and through orchestrating major atrocities (consider, for example, the role of lawyers in approving the use of torture on detainees and the role of doctors in infecting Guatemalans with syphilis in order to experiment upon them). 205 Some state bar associations screen for mental illness before admitting attorneys, 206 and some state licensing authorities do not authorize doctors with mental illness to practice medicine. 207

However, at the same time, participation in these fields can cause or trigger mental illness. Military service seems to lead to high rates of mental illness, including but not limited to post-traumatic stress disorder. 208

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army buys benzodiazepines in bulk. Statistics also show that lawyers are likely to experience depression.

Thus, the relationship between violence and mental illness is not straightforward. Buying into the myth that people with mental illness are likely to become violent “results in a culture of hatred and fear in which persons with mental disabilities are stripped of their rights and further stigmatized, and the very real violence—both personal and institutional—that they face is ignored.” To really tackle the problem of violence in relation to mental illness, we must turn to the violence perpetrated against people who are mentally ill.

2. Violence Against People With Mental Illness

As numerous commentators have noted, mentally ill people are much more likely to be victims of violence than to be perpetrators of violence. In fact, people without mental illness perpetrate phenomenal amounts of violence against one another and, particularly, against the mentally ill. Neurotypical parents, for example, seem horrifyingly inclined to murder their autistic children.

While statistics mostly tell the tale of unlawful interpersonal violence, for which the mentally ill are disproportionately targeted, these are by no means the only forms of violence to which

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211. PRICE, supra note 15 at 174-75.


mentally ill people are subjected. Commitment and forced medication, for example, are violent acts, even when they are lawful.215

People labeled as mentally ill have been subject to a variety of nonconsensual and often harmful interventions, including incarceration, electrocution, sterilization, deportation, restraint, and lobotomy.216 While white, wealthy, straight, cisgender, male, U.S. citizen mentally ill people have not escaped from all of these practices, the most horrific of them have been used most pervasively on the mentally ill who are also marginalized on other bases. For example, nonconsensual sterilizations for the “feeble-minded” were most often performed on people assigned female at birth who were poor, people of color, rape survivors, sexually active outside of marriage, and/or unfeminine.217 Some indigenous people incarcerated as mentally ill were simply kept locked up until they died rather than sterilized.218

The Supreme Court has held that the Constitutional right to due process prior to deprivation of one’s liberty prevents the commitment of mentally ill people not accused of crimes, unless the government proves by clear and convincing evidence that the person is a danger to themselves or others because of mental illness.219 These rulings came about in the wake of activism of psychiatric survivors, media exposés of the nightmarish conditions in psychiatric institutions, and years of litigation.220


Even though these cases proclaimed greater procedural protections for people threatened with involuntary commitment, they have significant limitations. In practice, these constitutional rights are addressed through extremely brief hearings in which judges may simply rubber stamp the judgment of doctors.\textsuperscript{221} Periods of unambiguously involuntary commitment also remain permissible for days prior to a hearing.\textsuperscript{222} Youth under eighteen generally do not have a right to a hearing; if a parent or guardian consents on their behalf, the commitment is considered voluntary no matter how much the patient objects.\textsuperscript{223} In the wake of Newtown, people have advocated and in some cases succeeded in creating even more ways of getting around Constitutional protections. For example, the state of New York has expanded state power to forcibly treat people on an outpatient basis.\textsuperscript{224}

African Americans are subjected to involuntary psychiatric hospitalization more often than white people.\textsuperscript{225} Police are also particularly likely to use excessive force—including deadly force—against mentally ill people of color.\textsuperscript{226} For example, in 1998, Detroit police shot Cora Jones, a 79-year-old Black woman with Alzheimer’s disease, to death in her wheelchair.\textsuperscript{227} In 2003 police pepper sprayed and handcuffed Rosie Banks, a thirteen-year-old Black autistic girl who was “acting out” in class.\textsuperscript{228} Class, gender, and sexuality can also make mentally ill people more vulnerable to police violence, as brutally demonstrated in 2011 when police

\begin{itemize}
\item \textsuperscript{222} \textit{See}, e.g., \textit{IND. CODE ANN.} § 12-25-5-1 (West 2012) (permitting detention of mentally ill people against their will for 72 hours); \textit{N.Y. MENTAL HYG. LAW} § 9.39 (McKinney 2013) (providing for emergency commitment for 15 days without consent or a hearing).
\item \textsuperscript{226} Camille A. Nelson, \textit{Racializing Disability, Disabling Race: Policing Race and Mental Status}, 15 \textit{BERKELEY J. CRIM. L.} 1, 3 (2010).
\item \textsuperscript{227} \textit{See} \textit{RITCHIE}, supra note 40, at 147.
\item \textsuperscript{228} \textit{Banks ex rel. Banks v. Modesto City Sch. Dist.}, No. CVF046284RECSMS, 2005 WL 2233213, at *1 (E.D. Cal. Sept. 9, 2005).
\end{itemize}
shot to death Yvonne McNeal, a homeless lesbian, in front of her shelter, which was designated for people with mental illness.229

Queer and trans youth have been committed by police, parents, and foster care agencies to “cure” their sexual orientation and/or gender nonconformity.230 Psychiatrists have obligingly used electroshock, lobotomy, hysterectomy, counseling, drugs, hypnotism, and other forms of “treatment” to attempt to change the gender identity, gender expression, and sexual orientation of trans, gender nonconforming, and queer people.231 While reparative therapy has largely been condemned today, some continue to practice it.232

Perceived sexual and gender deviance continues to be used to keep people—often youth of color—locked up, as the next few cases I discuss demonstrate.233 In People v. Martinez, Richard Martinez was committed as a sexually violent person after finishing a criminal sentence.234 Martinez was diagnosed with various conditions, including paraphilia not otherwise specified, sexual identity disorder, and anti-social personality disorder that experts concluded made Martinez likely to reoffend. Among other evidence that Martinez should be committed, the trial court considered a past incident of cross-dressing, prior suicide attempts, and medication Martinez had received while incarcerated to help with anxiety and


230. DYLAN SCHOLINSKI, THE LAST TIME I WORE A DRESS (1997) (memoir by white trans man discussing repeated contact with police during adolescence and long-term psychiatric confinement including forced compliance with feminine gender norms).


233. The identities of the people I am about to discuss are not clear from the cases. They are all people assigned male at birth perceived as breaking norms of masculine gender and heterosexuality and also perceived as mentally ill.

sleeplessness. Similarly, another court relied in part on evidence of gender identity disorder and anti-social personality disorder in upholding the commitment of James Dillbeck as a sexual predator.

Lamont T., a juvenile placed on probation at age 15 for attempting sexual contact with someone under 15, was sentenced to six months in juvenile detention at a probation violation hearing. An appellate court affirmed the sentence, construing the fact that T. had received treatment for bipolar disorder, gender identity disorder, and sexual abuse as both an offender and victim to be evidence that T. had already received “help” and “support” and now needed and deserved more punitive measures. In other words, T. could not escape culpability simply because T. had psychiatric conditions—T. had gotten help and still misbehaved. This misbehavior involved unspecified infractions of rules of the placement and T.’s admission to a counselor of having “sexual interactions” with peers. The court did not entertain the possibility that sexual interactions with peers could be anything other than deviant, pathological, or dangerous.

In a decision affirming a two year extension of the commitment of another young person, the court described the youth, D.W., as engaging in a host of sexually deviant behaviors prior to commitment. In this list, transvestism is listed directly following rape, implying that wearing clothing that does not conform to gender stereotypes is comparable to raping someone, or at least further incriminating. One basis for an expert recommendation that D.W. be committed was that D.W. “had engaged in a homosexual act with another male inmate in a garbage dumpster,” even though the other resident was described as “the aggressor.” It is unclear what “the aggressor” means in this context—was D.W. raped? Or did D.W. and this other young person have consensual, perhaps even joyful sex, at the other young person’s initiation? Without considering these or other questions, the court treated the fact as evidence that D.W. required further incarceration.

Some queer women of color and trans people of color do want and need mental health services. However, they frequently cannot access

235. Id. ("The evidence of ... sexual identity disorder also raised concerns concerning the level of defendant’s sexual deviation.").
quality, consensual, non-discriminatory services. The denial of needed mental health care itself is also a form of violence. A New York study of LGBT health needs noted: “Youth, transgender and gender non-conforming people and Black and Hispanic LGBT people were the more likely to be depressed and less likely to have adequate access to mental healthcare.”

One factor contributing to lack of access to mental healthcare is inability to afford it. Many trans people of color and queer women of color are poor and lack insurance.

Providers also often discriminate against trans people of color and queer women of color. Some researchers have noted that while Black people are over-diagnosed with certain conditions like schizophrenia, they may be under-diagnosed with conditions like depression and thus never offered treatment for them. 19% of Latin@ trans people reported unequal treatment in mental health clinics. As one trans person reported, “When I tried to kill myself and was taken to a suicide center, I was made fun of by staff and treated roughly.” Many trans people report holding off on seeking health care because they fear discrimination. When one of my clients, a trans woman of color in a New York prison, spoke to a

240. Frazer, supra note 179, at 1.
241. Joshua Goldberg, Recommended Framework for Training Mental Health Clinicians in Transgender Care, VANCOUVER COSTAL HEALTH TRANSGENDER HEALTH PROGRAM 18 (Jan. 2006), http://transhealth.vch.ca/resources/library/tcpdocs/training-mentalhealth.pdf; GRANT, MOTTET & TANNIS, supra note 32, at 77 (“Transgender respondents, overall, reported private insurance at 60%, public insurance at 20% and 20% had no insurance.”). Black transgender people were least likely among racial groups to have insurance. Id. See also, All of the Above: LGBT People of Color, NATIONAL COALITION FOR LGBT HEALTH, http://lgbthealth.webolutionary.com/sites/default/files/LGBT%20POC.pdf (last visited Apr. 1, 2013).
242. See generally, David Pittman, Mental Health Parity Coming, President Says, MEDPAGE TODAY (Jan. 16, 2013), http://www.medpagetoday.com/Psychiatry/GeneralPsychiatry/36883.
245. See GRANT, supra note 32, at 73.
246. Id.
247. Id.
psychiatrist about her need for hormones, he told her that what she needed was to find Jesus.

Some trans people object to receiving diagnoses related to their gender identities. Others, however, urgently seek out these diagnoses despite significant opposition, frequently in order to get access to care that they need. Trans people of color face particularly serious barriers to accessing gender affirming care, which can be vital for mental health. As one person described, “I cannot afford gender reassignment surgery which is crucial to my mental well being and thoughts of suicide are always present.” Another described needing emergency care because of a lack of access to gender affirming treatment: “I have also have [sic] had several bouts with depression and anxiety disorders and once ended up in the emergency room for depression. I still bounce in and out of depression due to not being able to get the appropriate surgical procedures.”

The vectors of pathologization, disablement, and violence can converge in complicated ways in the lives of trans people of color and queer women of color with mental illness. I met Ian, a Black transgender man I represented, when he was being held against his will for psychiatric treatment. When visiting New York and walking down the street, he saw police approaching him. A few months earlier, police officers who had perceived him as a Black cisgender man had beaten him severely because of his race. This time, he panicked and started yelling. The police perceived him as an emotionally disturbed Black butch lesbian, cuffed him, and took him to a psychiatric emergency room. Once committed, he experienced pathologization, in that his gender identity was treated like a delusion and his fear and distrust of police was treated like paranoia. He also experienced violence and disablement, in that he was held against his will, constantly told he was not really a man, belittled, asked invasive questions about his body and sex life, and criticized for deviations from norms of white femininity (for example, having short hair). All of these actions harmed his mental health. Not only was he locked up against his will in circumstances where a white cisgender person probably would not have been, he was also

249. See Gehi and Arkles, supra note 160.
250. See GRANT, supra note 32, at 79.
251. Id.
prevented from returning home and getting outpatient therapy and support services—which he actually wanted and found helpful.

C. Services

Services that rely on methods such as involuntary commitment, forced treatment, or advice to convert to Christianity do not support or protect mentally ill people. Instead they perpetuate violence. Self-determination and peer leadership are critical in making the necessary changes to mental health services.

Some of the proposals generated for increased access to mental health care in the wake of Newtown could actually be helpful, but only if groups organized by and for mentally ill people guide the programs. Such groups have identified what needs to happen for support and services to be effective. Treatment must be free or genuinely affordable.252 Racism, classism, transphobia, homophobia, sexism, and ableism in services must be consistently resisted, identified, and uprooted.253 A variety of options for treatment and support should be offered, including psychiatric medications among many other possibilities from a range of traditions.254

To support people’s mental health, treatment alone is not enough. Broader social change is a critical component of supporting mentally ill people and increasing mental health, particularly in queer women and trans communities of color.255 For example, transformative justice offers promise as a means of preventing violence and supporting survivors, which can have benefits for mental health.256 Many of mentally ill people’s problems aren’t

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253. See generally National People of Color, supra note 250.


255. See, e.g., LAW, supra note 199 at 75 (recounting that woman prisoner found that “fighting back against the prevalent sexual abuse pulled her out of her suicidal funk”); PRICE, supra note 15 at 164-65 (“If we are seriously concerned with public safety as it pertains to persons with mental disabilities, it would make more sense to provide adequate support services, and to work to reduce bullying, hate speech, and other forms of stigmatization—for difference of all kinds, including disability, sexuality, race, gender, and class.”).

because of mental illness per se, but because of prejudice; institutions that are built around the needs of people without mental illness; and systematic privilege for people with certain types of perceptions, beliefs, feelings, thoughts, and behaviors over others. Creating a world that is more accessible to, and less violent toward, people with mental illness is critical.

All of people’s basic needs must also be met. One staff member of an urban program for LGBT homeless youth said, “For us, [the most pressing health and human service need] is housing... housing is healthcare.” A national organization notes the importance of plans that go beyond narrow medical ideas of treatment to provide a variety of means of support, including “health care, education, housing, rehabilitation services, and community support services.”

Treatment must maximize self-determination through deemphasizing “normalization,” minimizing or eliminating nonconsensual interventions, supporting people in identifying what they want and need, and centralizing peer support and leadership. Mentally ill people, including trans people of color and queer women of color, should have central roles directing and providing services.

Trans and queer women of color communities have an incredible history of leadership in this area. After the Compton Cafeteria riots, trans women created the National Transsexual Counseling Unit, which has been credited as the first peer-run support and advocacy organization in the

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257. See Aranoff, supra note 153; AUTISTIC SELF ADVOC. NETWORK, supra note 139.

258. FRAZER, supra note 179, at 10.


260. See Welcome to Choice in Mental Health Care Campaign, MINDFREEDOM.ORG, http://www.mindfreedom.org/campaign/choice (last visited Mar. 21, 2013) (offering a number of directives for how mental health treatment should work, including self-directed approaches and peer-run support); National People of Color Consumer/Survivor Summit Meeting - Consumer/Survivor, SAMHSA.GOV, http://www.samhsa.gov/ConsumerSurvivor/meetingreport.asp (last visited Mar. 21, 2013); AUTISTIC SELF ADVOC. NETWORK, supra note 139.

After Stonewall, Sylvia Rivera, who was a homeless Puerto Rican trans woman, and Marsha P. Johnson, who was a homeless Black trans woman in and out of Bellevue for psychiatric treatment, formed Street Transvestite Action Revolutionaries (STAR). STAR provided food and housing for homeless trans youth. STAR also participated in a protest of Bellevue. Photos show Rivera holding up a sign demanding “Community Control of Bellevue” while Johnson’s sign proclaims “Power to the People.”

A number of groups have also come together around related issues more recently. For example, after an African American trans man activist died by suicide while hospitalized for psychiatric treatment, trans and gender variant community members in Tucson created the Alexander John Goodrum Transgender Mental Health Advocacy Project, which “offers individual support, general guidance, and peer-based advocacy for any gender-variant person involved with the public mental health system as a consumer” and “provides transgender awareness education to staff and service providers.”

UBUNTU, a group of women and gender nonconforming people of color, queers, and survivors that came together in response to sexual assault against Black sex workers in Durham, has developed means of building community and supporting one another in the wake of violence. In an interview, one of the leaders described their model for balancing individual healing work and long-term community-building:

The fact that we have built informal mechanisms to offer childcare, trade massages, do aromatherapy work, share personal fitness training, cook for each other, grow food together, help with homework, borrow cars, and offer a space to crash, means that as each of us takes seriously the work of responding to violence in our scattered community (for me this often means responding to violence that my students are experiencing and immigration violence that my family experiences), we also have a support...

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network to help us, feed us, hug us, massage us, or create a healing oil for us when we need it. 266

Southern organizers and healers including queer women of color have formed a healing justice collective called Kindred. Kindred has prioritized strategies including building a network of organizers and healers, creating “collective models of wellness that connect principles and practices of organizing to uses of body and energy work... and the healing arts for balance,” exposing and ending eugenic practices in the South, documenting healing traditions in the South, and building sustainable leadership models. 267

Queer women of color and trans people of color have found many ways to care for themselves and each other in a hostile world. A report on low-income LGBT people in New York asked how the respondents healed from discrimination and violence. “They talk to others about what happened (61%) and talk to them about other things (54%), they write in journals (40%) and have fun (35%), they exercise (30%) and meditate (31%), they make art (25%) and they pray (58%).” 268 A report on Chicago girls (including trans girls) in the sex trade shared many strategies of resilience and healing. One girl said, “They think we don’t take care of us, but girls use baths, showers, aromatherapy, and journal writing as ways to soothe.” 269 The report also noted that girls “are learning alternative medicine, and how to take care of their bodies without the aid of medical practitioners.” 270 A transgender woman in prison described poetry as a way to maintain hope. 271

With these examples, I do not mean to dismiss the importance of psychiatric medications to some. I do mean to challenge the authority of psychiatrists, police, and people who are not mentally ill over people who


270. Id. at 32.

are. Sasha Scatter, one of the founders of a radical mental health organization called the Icarus Project, writes:

“If we are going to do anything to change the mental health system we need to begin by simply acknowledging how fundamentally flawed the current model is – how little room it leaves for alternate views of health and wellness, how it privileges the knowledge of scientists and experts, and belittles the resources of local communities, families and alternative health care practitioners. We need to draw a clearer distinction between the usefulness of some modern psychiatric medications, and the reductionist biopsychiatric paradigm that reduces our emotions and behavior to chemicals and neurotransmitters.”

Mentally ill people—and particularly those mentally ill people with the most at stake, including trans people of color and queer women of color—should be in the center and at the leadership of any national dialogue that emerges about mental health. Truly high quality services would not impose greater control and coercion, but would provide support and follow the direction of mentally ill people themselves.

CONCLUSION

Those of us concerned with racial, gender, sexual, economic, or disability justice should be concerned about the direction and focus of national conversations in the wake of Newtown. Controversies over gun control and mental health treatment have a profound impact on those marginalized based on race, gender, sexuality, class, and disability.

Gun control laws so far have been disastrous for trans people of color and queer women of color, as well as those labeled mentally ill, failing to reduce interpersonal violence but increasing the violence of the criminal legal system. Instead of focusing on greater incarceration of people in marginalized communities who choose to carry guns, we should consider true disarmament. This disarmament would involve demilitarizing police, decreasing incarceration, keeping cops out of schools, disinvesting in the armed forces, and instead investing in communities.

Expanded power to commit people based on mental illness, whether on an outpatient or inpatient basis, would also be deeply harmful, especially to queer women of color and trans people of color who are already highly vulnerable to pathologization, disablement, institutionalization, and abuse.

Instead, we should consider investing more deeply in holistic, community-directed services for mentally ill people that support self-determination and social change, including fighting state and interpersonal violence against people with mental illness.

In seeking to prevent violence, we must take care to ensure we are not actually perpetrating it.