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# QUEER OPPRESSION AND PACIFISM

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This chapter argues that considerations arising from queer oppression can furnish support for pacifist positions. The first consideration concerns the nature and strength of the moral presumption against violence. Violence undermines a victim's agency, coercing them to betray their identities, not unlike "reparative therapy." The second consideration concerns the moral presumption against conscription. Current conscription policies are cisgender-normative, threaten to coerce queer citizens to fight for unjust states that oppose their basic rights, and coerce queer citizens to risk their lives and welfare on behalf of queerphobic citizens. These considerations serve to deepen criticisms of violence.

## **The Pink Pistols, Equal Defensive Rights, and Pacifism**

*We teach queers to shoot. Then we teach others that we have done so. Armed queers don't get bashed. . . . The Pink Pistols are the ones who have decided to no longer be safe targets. They have teeth. They will use them.*<sup>1</sup>

This blurb from the website of the Pink Pistols provides a direct and fascinating introduction to the topic of queer oppression and pacifism. According to the website:

*We are dedicated to the legal, safe, and responsible use of firearms for self-defense of the sexual-minority community. We no longer believe it is the right of those who hate and fear gay, lesbian, bi, trans, or polyamorous persons to use us as targets for their rage. Self-defense is our *right*.*<sup>2</sup>

As the quote indicates, members of the LGBTQ—or, in brief, *queer*—community are frequently oppressed by violent means. The Federal Bureau of Investigation in the United States estimates, in their 2015 Hate Crime Statistics findings, that 1,263 individuals were targeted because of their sexual orientation and 122 individuals were targeted because of their non-cisgender gender identity.<sup>3</sup> Brandon Teena was murdered with a gun in Nebraska in 1993, and Matthew Shepard suffered torture and was beaten to death with a gun in Wyoming in 1998. In a more recent case from California in 2013, Sasha Fleischman was set aflame on a school bus as a demonstration of opposition to Sasha's gender identity.<sup>4</sup>

The Pink Pistols link the right to own and use firearms to the pervasive violence against queer persons. In a word, they maintain that this right is grounded in the right to *self-defense*. In a recent paper, C'Zar Bernstein, Timothy Hsiao, and Matt Palumbo use this strategy. Their argument, in brief, is that because “firearms are a reasonable means to self-defense” and because “people have a *prima facie* right to be allowed to own” things that provide them such a reasonable means, persons have a right to own firearms.<sup>5</sup> Concerns such as these motivate not only the view that queer persons should have reasonable access to firearms and firearm training, but that the exercise of that training against unjust aggressors is morally permissible in an array of cases.

Indeed, given the pervasiveness of violence against queer persons, it might be that queer persons have an even *stronger* moral right to own and use firearms in self-defense.<sup>6</sup> For example, suppose Ariam will be attacked by an unjust aggressor with a loaded firearm and Bill will be attacked with a fist and that you can provide a loaded firearm to exactly one of these individuals. It seems obvious that Ariam has the stronger claim to use of the firearm, since without it her odds of successfully self-defending are compromised. Said another way, persons have a right to reasonable means of self-defense, and part of what determines whether a means is reasonable is the degree or frequency of risk faced by the person acting in (legitimate) self-defense.

The point can be pressed more strongly from the angle of other-defense. Whereas the right to self-defense is generally characterized in terms of a Hohfeldian *liberty* (that is, persons with a right to self-defense are permitted but not obligated to self-defend), the defense of others, or *other-defense*, is often characterized as a *duty* (see Rodin 2010: 17–34 or Frowe 2016: 26).

Firearms and other weapons can be used not only in defense of oneself but also in defense of others, and it's the latter sort of cases that arguably provide the strongest case for the conclusion that groups like the Pink Pistols are right to encourage firearm ownership and defensive training. In a paper defending the moral permissibility of drone usage, Bradley Strawser argues that such usage is a duty, other things being equal. The reason, in short, is that

it is wrong to command someone to take on *unnecessary* potentially lethal risks in an effort to carry out a just action for some good; any potentially lethal risk must be justified by some strong countervailing reason.

(Strawser 2010: 344)

Strawser calls this the Principle of Unnecessary Risk. He utilizes the principle to show that since drones reduce the risk that just combatants would otherwise face in modern warfare, their use is obligatory, other things being equal. Fundamentally, the Principle of Unnecessary Risk aims to protect the rights of just combatants. Although Strawser is concerned with minimizing the risk to just combatants in warfare by restricting the commands military leaders are permitted to give, it is not difficult to see how similar considerations apply to more domestic cases of other-defense. Consider, for example, the following case:

Josh and Corbin are two gay neighbors living in a suburb of Atlanta. The area is known to be highly unsafe for gay men. One day while jogging, Josh sees two men assault Corbin. Josh knows that he can intervene at very little risk to himself, and he sees a gun nearby that he might use, but he refuses to use it to help Corbin.

Did Josh act wrongly in failing to assist Corbin? It might seem so, at least if we accept the view that other-defense is morally required. To do otherwise is to expose them to unnecessary risk, or at least to fail to take seriously their right to defensive assistance. What the case of Josh and



Corbin shows is that queer persons have reason to arm themselves in order to protect each other, as the Pink Pistols claim.

What goes for self-defense and other-defense in domestic cases goes similarly for *national* defense.<sup>7</sup> Until 1994, when “Don’t Ask, Don’t Tell” was instituted by the Clinton administration, queer persons were forbidden from serving in the United States military. Afterwards, queer persons were permitted to serve, but not openly. Finally, in 2011, “Don’t Ask, Don’t Tell” was repealed by the Obama administration and replaced with a policy that permitted queer persons to serve openly in the armed forces. What is intriguing about the former two policies—the outright ban of queer persons and the mitigated, closeted ban—is that they forbade queer persons from engaging in national defense. The more contemporary consensus, of course, is that such bans were reflective of a broadly queerphobic culture unwilling to accept the full inclusion of queer persons in modern society. What’s somewhat surprising is that such policies ever managed to get off the ground given their counterintuitive implications. Consider, for example, the following scenario:

Genevieve and Hamdi are lesbian partners living in a rural neighborhood during the Third World War. The Russians have invaded the United States and President Putin commands the Russian military. Without him, the Russians would be forced to retreat. It just so happens that Putin is near the home of Genevieve and Hamdi, and they are given an opportunity to kill him during a battle.

In such a scenario, few Americans would object to Genevieve and Hamdi killing Putin. But if Genevieve and Hamdi did so, they would be acting as *de facto* combatants on the side of the United States.<sup>8</sup>

Or consider a variation on this example in which Genevieve and Hamdi are *already* members of the United States military fighting against the Russians, and are attacked in their home by Russian operatives and threatened with rape—a war crime. Plausibly, no one would object to Genevieve and Hamdi defending themselves against rape, but then why object to them serving more generally as members of the military? Perhaps the objection is that when Genevieve and Hamdi defend themselves against rape, they are not defending themselves *qua* combatants. But that implies that if their intentions were not simply to defend *themselves* against rape, but also to do so *as a means of achieving military victory over the Russians*, then they would be acting *qua* combatants and thus acting impermissibly. Such a conclusion can hardly be believed.

What, then, was the central objection to persons like Genevieve and Hamdi serving more generally as members of the military? The worry at the time was that partial or full inclusion of queer persons in the military would be disruptive to military cohesion and would threaten national defense. Thus, it was thought that the rights of American citizens (including queer American citizens) would be *undermined* by permitting queer persons to fight for them. The argument for bans, then, went something like this:

- (1) American citizens have a right to defense against their enemies.
- (2) If American citizens have a right to defense against their enemies, then they have a claim against those who would undermine American chances of success in defending against their enemies.
- (3) The partial or full inclusion of queer persons in the American military would undermine American chances of success in defending against their enemies.
- (4) Therefore, American citizens have a claim against the partial or full inclusion of queer persons in the American military.



The centrally controversial premise is (3). The initial, speculative psychological basis for belief in the premise has long been discredited (see MacCoun et al. 1996; Moradi and Miller 2010). The motivating moral premises, however, again appeal to rights to reasonable means to successful defense: in the same way that it's impermissible to take away someone's gun when they are being lethally attacked, so also it's impermissible to permit people to join the military if they will do little more than undermine the defensive capacities of that military (the gun example comes from Huemer 2003: 307).

Suppose, however, that we *accept* (3). That is, suppose we accepted the (false) view that the partial or full inclusion of queer persons in the American military would result in others failing to defend themselves successfully. Does it follow from this that such inclusion is impermissible? Not obviously. Consider the following example:

Adolf, who has an axe, is lethally and unjustly threatening Mikhail, Vlad, and Joseph. Mikhail is Adolf's first and current target, after which he will move on to Vlad and Joseph. As the axe swings towards his head, Mikhail evaluates his defensive options: He could duck, but then the axe would strike (and kill) Vlad. He could punch Adolf, but that would only further anger Adolf, resulting in the deaths of Mikhail, Vlad, and Joseph. Or, lastly, he could permit the axe to strike his head, killing him.

In such a case, it is not obvious that Mikhail is *obligated* to choose the third option. That is, it is not obvious that he is obligated to permit himself to be killed.<sup>9</sup> After all, Adolf's attacks against him are just as unjust as they are against the others, and thus he has an equal right to defend himself against unjust aggression. It is difficult to see how Mikhail has an *equal* right to self-defense if, in choosing between his life and others' lives, he is obliged to prioritize *their* lives over his own life.<sup>10</sup> But then perhaps the claim American citizens have against others described in (2) is not always overriding: there *can* be cases in which persons are permitted to defend themselves even if doing so undermines the self-defending efforts of others. Or, alternatively, perhaps (2) is false. Either way, it seems that (3), even if it were true, is not obviously sufficient to render impermissible the partial or full inclusion of queer persons in the military.<sup>11</sup>

Against the Pink Pistols and defenders of the moral permissibility of violence in defense of individuals, principles, or property, *pacifists* of virtually all varieties maintain the violence is less often permissible than is typically believed. For example, the species of contingent pacifism defended by Robert Holmes maintains that a modern war is permissible only if the number of non-combatants killed in that war is zero (See Holmes 1989: 181; see also Bazargan 2014). This is a high bar that virtually no modern war will meet, and thus virtually no modern war is permissible—a conclusion at odds with the widespread view that *some* modern wars, such as the one waged defensively by the Allied powers against the Axis powers in the Second World War, were permissible. Other pacifists, such as absolute pacifists, hold that the wrongness of violence is *necessarily* wrong (see Ryan 1983; Reader 2000; Hereth *forthcoming*). But in all its forms, pacifism maintains that violence is less often permissible than is typically believed.

We have seen that there are reasons to believe that the use of violence is permissible, and perhaps sometimes even obligatory, for queer persons. What I shall explore in the remainder of this paper is whether there are considerations arising from queer oppression that lend credence to some version of pacifism. I defend the view that there *are* such considerations. First, I shall explore the moral presumption against violence, arguing that the wrong-making properties of violence are shared by other coercive activities, such as “reparative therapy.” This illustrates that what makes violence wrong is also what makes “reparative therapy” wrong, and vice versa.

Second, I address military conscription and the ways in which it wrongs queer persons *qua* queer persons. In particular, I argue that the highly cisgender-normative procedures for selecting persons for the draft contribute to the oppression of queer persons, and that there are strong moral concerns with coercing queer persons to fight either for nations or citizens who don't defend (or, worse, *oppose*) their interests. What this shows is that military conscription can be morally objectionable for reasons beyond those traditionally given—reasons that, while perhaps not unique to queer oppression, are nonetheless grounded in the realities of that oppression.

### The Presumption against Violence

There is a moral presumption against violence, at least when it is directed at individuals with a particular kind of moral status. One sort of moral status that guarantees such presumptive protection against violence is being a *rights-bearer*, and a commonplace right is the right not to be subjected to unjust violence.

Of course, that construal might make it seem as if there is no moral presumption against violence, but only a presumption against *unjust* violence. But there is a sense in which violence itself is presumptively unjust: namely, it is a pro tanto welfare diminishment and thus requires sufficiently good reason to inflict. In cases where causing such welfare diminishment is done for sufficiently good reason, violence is permissible, but otherwise not. Thus, there is a presumptive *badness* to violence, one that must be overcome by the right sort of moral considerations.

There are a number of accounts as to what makes violence presumptively wrong, and I shall not here attempt to summarize them. Instead, I shall examine accounts of the wrongness of violence that are morally intertwined with particular wrongs committed against queer persons. To see this, consider first Sissela Bok's comparison of violence with deceit:

Deceit and violence—these are the two forms of deliberate assault on human beings. Both can coerce people into acting against their will. Most harm that can befall victims through violence can come to them also through deceit. But deceit controls more subtly, for it works on belief as well as action.

(Bok 1999: 18)

Here, Bok maintains that deceit and violence share a common wrong-making feature: coercion. She rightly notes that deceit controls more subtly than violence, since it is easier to see how violence is coercive. One transparently coercive kind of violence is torture. Arguing against the moral permissibility of torture, Bob Brecher makes the following remarks:

This is exactly what torturers aim for: to break a person, to make them into only a body. It is worth pausing here to emphasize that this is why interrogational torture—as contrasted with torture used to intimidate, terrorize, punish or dehumanize—has to require extraordinary skill. The torturer has to get the person they are torturing to “pour out their guts,” but to do so in that precise moment just before the response to “any request the torturer might make” becomes just that, an unthought response, rather than an action. Otherwise they are no longer *able* to give the torturer what they want, namely a truthful answer to the question, “Where's the bomb?” What could be a more complete negation of a person than to break them, to make simply an object of them?

(Brecher 2014: 268–269)

The central wrong-making feature of torture, according to Brecher, is that it reduces persons to mere objects (see Kellenberger 1987: 135–140).

In this respect, it's coercive since it opposes the autonomy of the tortured individual—usually by means of capture, restraint, and the infliction of profound pain—to the extent that it has an eliminative effect on their autonomy. The concerns about autonomy, moreover, do not end here, as David Sussman observes:

Torture does not merely insult or damage its victim's agency, but rather turns such agency against itself, forcing the victim to experience herself as helpless yet complicit in her own violation. That is not just an assault on or violation of the victim's autonomy but also a perversion of it, a kind of systematic mockery of the basic relations that an individual bears both to others and to herself.

(Sussman 2005: 30)

Sussman's characterization of the tortured individual's agency (or autonomy) as turning against itself is distinct from Brecher, who characterizes the agency as disappeared. Nevertheless it is clear that, for Sussman, these persons are coerced and that violence is the coercive tool. (For a critique of Sussman's views on the distinctive wrongness of torture, see Kamm 2013: 9–12.)

Of particular interest with Sussman's account is the notion of agents being coerced to turn against themselves in some fundamental sense. Frances Kamm considers a case in which torturing an agent will violate that agent's values.

But what if A would prefer to be killed rather than (predictably) act to betray his important mission of killing B just to stop the torture, when it does not directly incapacitate him? Betraying his cause to stop the torture may be a fate that, given his values, he would regard as worse than death. Given his values and assuming he will give in, it does not seem that he could reasonably share the purpose of torturing rather than killing him.

(Kamm 2013: 20)

Kamm raises this case in order to deepen the apparent impermissibility of torture. However, she ultimately concludes:

The interest of his that he has a claim on us to consider is his survival, whose value does not depend on his personal conception of it, rather than the protection of his honor whose value, like the value of a monument to one's god, depends on his conception of it.

(Kamm 2013: 21)

Thus, since A's cause has value that depends on A's conception of it, it lacks the kind of value that would confer a claim on us to act differently so as to respect its value. Kamm therefore maintains, as many do, that because certain individuals are morally liable to be harmed (including tortured) and lack special claims on us that we not harm them in particular ways (such as torture), it's permissible to torture them.

But what of individuals who are *not* morally liable to be harmed but are nonetheless harmed in part because of valuable facts about them—facts whose values *don't* depend on their personal conception of them? Consider one such example:

David is a teenager whose parents learn that he's gay. They disapprove and want him to change, so they send him to “reparative therapy,” where specialists work day after day to



get David to deny his sexual orientation and to adopt another one. David is devastated by this, as he loves being gay and values his relationship with John, his partner.

David is coerced into betraying himself and what he values. Unlike the tortured individuals described by Brecher, Sussman, and Kamm, David is not morally liable to such harm and there is no justification for it. He is therefore wronged by everyone whose aim it is to change his orientation coercively. The same is true of Alan Turing, who was subjected to chemical castration in order to “cure” his sexual orientation.

What these cases suggest is that what’s wrong with violence is also what’s wrong with rejecting queer identities by means of “reparative therapy” and other coercive measures aimed either at *changing* those identities or *repressing* them. Thus, Judith Butler appears to be right in her concern that cisgender-heteronormativity shares in the wrongness of violence by sharing (some of) the same wrong-making features of violence:

[Violence against queer persons] emerges from a profound desire to keep the order of binary gender natural or necessary, to make of it a structure, either natural or cultural, or both, that no human can oppose, and still remain human. . . . The violent response is the one that does not ask, and does not seek to know. It wants to shore up what it knows, to expunge what threatens it with not-knowing, what forces it to reconsider the presuppositions of its world, their contingency, their malleability.

(Butler 2004: 35)

Butler maintains that coercing persons to change or repress their identities is itself an instance of violence, but it’s not necessary to share that view in order to see that one of the central wrong-making features of violence is coercion. There are therefore at least two possible views here. The first view is that cisgender-heteronormativity, when acted out (e.g., in David’s case), is *necessarily* another instance of violence. The second view is more modest and maintains only that cisgender-heteronormativity, when acted out, shares a common property with violence that contributes to the wrongness of both.

### The Draft and Protected Identities

In the United States and many other countries, military service can be conscripted. Persons, often men, are forced to leave their homes or families, don a uniform (effectively painting themselves as targets), travel to another country, and fight for causes with which they may not agree. The methods of identifying men/males are not only profoundly cisgender-normative,<sup>12</sup> but also profoundly *essentialist*. Men/males are drafted and women/females are not because it is believed that, on some deep level, violence is an appropriate activity for men/males in a way that it isn’t appropriate for women/females.<sup>13</sup> Thus, the selective nature of the draft furthers essentialist attitudes and, with it, features of the gender binary that, as discussed in the last section, share some of the same wrong-making properties that make violence wrong.

That drafts tend to select only males for service (“Selective Service”) makes them something of an easy moral target. Were the draft to select only persons of color for service, it would provoke rightful outrage on the grounds that it arbitrarily exposes persons of color to greater risks than white persons—that is, it is racist. Since the draft chooses only males for service, it is sexist.

However, the draft might be executed differently than it is in many contemporary states. A draft might, for example, choose persons irrespective of their sex or gender, thereby avoiding singling only males for military service. In doing so, it might evade the charge of sexism.



Such a move might open the draft to other charges, however, such as coercing certain groups of persons to fight (or fill positions that, in principle, could require them to fight if certain conditions are met) who are oppressed by the state. Queer persons are one such group, at least relative to the United States, where state and federal protections for sexual orientation and gender identity are few and far between. As of 2016, most states in the United States do not include non-discrimination protections for gender identity. Because these non-discrimination protections safeguard fundamental interests such as equal opportunity in employment and housing, queer individuals forced to fight for their nation or home state would often be (and in the past, were *always*) forced to fight for a nation or state in which they are not equals. This is one of many reasons why, during the American Civil War, it was impermissible for Confederate states to coerce slaves into fighting for the Confederacy: because the Confederacy failed to represent the fundamental moral interests of the slaves.<sup>14</sup>

As with the charge of sexism, however, it might be thought that this objection to the draft is an objection to how it is *contingently* designed. We might either design a draft that does not select members of state-oppressed or state-unprotected groups, or design a draft that does draft its citizens equally but only when the citizens enjoy full political and social equality.

But these suggestions are problematic. The former option has the moral upshot of avoiding further burdening members of oppressed or unprotected groups, but the burdens associated with warfare are steep—arguably far steeper than the burdens unfairly placed on queer persons in contemporary society. Lacking equal opportunities to legally adopt children, for instance, is an unjust burden that many queer persons are forced to face, but that burden seems considerably far less severe than the burden faced by combatants in contemporary warfare. Thus, requiring only members of unoppressed or protected groups to serve as combatants during wartime seems to shift the burden to an unjust extent. However, it might be argued that some of the burdens placed on queer persons—for example, lacking equal opportunity to housing—can (and sometimes does) surely place queer persons, and particularly minors, in dire straits, as is the case with the risks of homelessness, which include serious health risks and death.

Moreover, it's not obvious that every member of an unoppressed or protected group is morally liable to shoulder the burdens associated with being a combatant in contemporary warfare. Consider reliable allies: persons who are cisgender and straight who advocate daily for the full political and social equality of queer persons, sometimes sacrificing their own interests for equality. It appears implausible to suppose that persons such as these would be drafted as a morally preferable alternative to drafting queer persons.<sup>15</sup> And it's not clear how the state would go about reliably distinguishing these persons from persons who are not reliable allies.

The alternative—designing a draft that drafts its citizens equally but only when they enjoy full political and social equality—has problems of its own. A seemingly basic requirement of full political and social equality is that the state provides protections and opportunities in ways that aren't merely formal. For example, in San Francisco during the 1960s and 1970s, queer persons were afforded a number of basic legal protections in the formal sense, like the right not to be subjected to extrajudicial killing. But these rights often went unenforced by the city's law enforcement. In cases like these, queer persons are *de facto* unequals even if they are *de jure* equals. Thus, for a draft to be permissibly instituted on this view, queer persons must be the *de facto* equals of non-queer persons. Again, as a contingent matter, this standard seems very difficult to achieve, and it's not obvious that any contemporary state meets it.

Furthermore, the draft requires a person to fight not only for the state but also for all the *members* of the state. Presumably, while it's contingently true that some citizens of the state generally fail to respect the rights and dignity of queer persons, it is highly likely that any state will always have at least *some* such citizens. We might inquire, then, whether it's permissible to coerce



any queer person to fight for citizens who fail (whether personally or in principle) to respect their rights and dignity.

One might think that the answer is no, but that this is not due to the discriminatory nature of the queerphobic citizen. Rather, it's due to the fact that it's impermissible to coerce anyone to fight for someone else when doing so would put the coerced person at serious risk of harm.<sup>16</sup>

What this position entails, however, is that the queerphobic citizen's claim on the queer citizen to defensively assist them is *not substantially weakened* by their queerphobia. Consider the following case:

Nolan is a neo-Nazi who would kill Michael, a Jew, if he had an opportunity to do so, and Michael knows this. Fortunately, Nolan is unlikely ever to meet Michael. One day, Nolan runs into trouble: he slips by the side of a pool, hitting his head and knocking him unconscious, and falls into the pool. From a great distance, Michael can save Nolan by hitting a button that drains the pool. But hitting the button is very dangerous, since it often electrocutes people who touch it.

In this scenario, is Michael obligated to push the button in Nolan's defense? It seems not, and for two related reasons. The first is that Michael isn't obligated to risk his own life.<sup>17</sup> The second reason is related to the first: by saving Nolan, Michael would be putting himself at *greater* risk of unjust harm than if he failed to save Nolan. This is because although Nolan does not represent a *likely* threat to Michael, he does represent a *non-zero* threat to him. Thus, if Michael is not obligated to risk his own life at the level of pushing the button, he is even less obligated to risk his own life at the level of pushing the button *for Nolan*.<sup>18</sup> Said another way, it would be morally *worse* to coerce Michael to do the latter than the former. By implication, it's on balance worse to coerce queer persons to expose themselves to great risk on behalf of queerphobic citizens than it is to coerce persons to expose themselves to great risk.

There are two further reasons not directly related to the first two. The first concerns the likely event of coercing queer persons to fight for causes in which they do not believe or, worse, causes that oppose their fundamental interests as queer persons. We are already familiar with conscientious objectors who for religious or philosophical reasons object to participating in warfare either full stop or as combatants. In the United States, these individuals are sometimes allowed to avoid military service altogether or at least avoid particular kinds of military service (e.g., as a combatant). However, "a man's reasons for not wanting to participate in a war must not be based on politics, expediency, or self-interest."<sup>19</sup> Suppose now that a gay man were drafted into the United States military prior to the federal legalization of same-sex marriage and other federal protections for gay individuals, and that he applied for conscientious objector status on the grounds that he objected to risking his life for a state in which he was a second-class citizen in important respects. This man's objection is plausibly a *political* one, and thus its invocation disqualifies him for status as a conscientious objector. Or suppose that the same gay man, after 40 years of waiting for the federal legalization of same-sex marriage, was finally able to marry his lifetime partner, but was then conscripted and objected on grounds of *self-interest*, citing his long-term desire to marry his partner and not die tragically in warfare. In both of these cases, the interests at stake are fundamental to these men in ways central to their identities as gay men. Indeed, in some ways, they are fundamentally *bound up in* their identities as gay men. Thus, to require them to fight for a homophobic state or to risk losing their spouses is to force them to act in ways that violate their identities. In this way, the draft seems in some morally serious respects comparable to "reparative therapy," forcing queer persons to risk serious harm to themselves and turn against interests central to their identities.



A second worry concerns hate crimes. What is a hate crime? Claudia Card's account is helpful here. She characterizes criminal offenders who commit hate crimes as individuals "who intentionally select as their victims members of certain groups who are especially vulnerable to oppression on the basis of their race, color, sexual orientation, disability, or other deviance, or perceived deviance, from social norms" (Card 2001: 196).

Thus, as Marcia Baron comments, on this account "X counts as a hate crime only if the victim is a member of a group that is especially vulnerable to oppression," and "X does not count as a hate crime if the offender selects as a victim a member of such a group . . . *without regard* to the fact that the victim is a member of that group" (Baron 2016: 505). Leaving aside questions about whether hate crimes are worse than, or ought to be punished more than, non-hate-crimes of a similar nature, it's generally agreed that hate crimes are very serious wrongs.<sup>20</sup>

Imagine that a queerphobic citizen desires the eradication of queer persons in their country and sees a dangerous war as an opportunity to achieve this. This citizen knows that not all queer persons will voluntarily sign up to serve as combatants in the war, and that some further measure will therefore be required. To accomplish their evil intentions, this citizen goes about drumming up popular support for a draft—but leaves their own reasons a secret. The draft is instituted and would have been instituted even *without* this particular citizen's efforts. Many queer (and many non-queer) citizens are then drafted as combatants and subsequently die in warfare.

Are these queer persons victims of a hate crime? Perhaps the answer is yes since they are selected and victimized by the queerphobic citizen on the basis of their queer identities. But there are two potential problems with this view. The first is that since hate crimes require certain *intentions* and it's *not* the queerphobic person who drafts queer citizens, it remains possible that the state drafts queer persons for reasons that are not queerphobic. The second is related. The state might draft queer persons for morally good reasons: for example, because the state and its citizens have been subjected to unjust aggression from another state and a larger military force is needed to defend the state and its citizens. These reasons suggest, at the very least, that if these queer persons are victims of a hate crime, they are not victims of a *paradigmatic* hate crime.

Might they nonetheless be victims of a hate crime in some non-paradigmatic way? Certainly it seems true that the queerphobic citizen *intends* something that is very much like a hate crime. If the queer citizen is permissibly drafted and forced to risk their life on behalf of the queerphobic citizen, they will be morally *forbidden* to act in opposition to the intention of the queerphobic citizen. Said another way: they will be effectively *obligated* to fight for the queerphobic citizen even if doing so will result in giving the queerphobic citizen exactly what they want, namely, the death of the queer citizen.

## Notes

- 1 From "About the Pink Pistols," emphasis mine. Link: [www.pinkpistols.org/about-the-pink-pistols/](http://www.pinkpistols.org/about-the-pink-pistols/).
- 2 From "About the Pink Pistols," emphasis mine. Link: [www.pinkpistols.org/about-the-pink-pistols/](http://www.pinkpistols.org/about-the-pink-pistols/).
- 3 See U.S. Department of Justice, Federal Bureau of Investigation, 2015 Hate Crime Statistics at the following link: [https://ucr.fbi.gov/hate-crime/2015/topic-pages/victims\\_final](https://ucr.fbi.gov/hate-crime/2015/topic-pages/victims_final).
- 4 As the *New York Times* reports, Fleischman's case was, like Teena's and Shepard's, tried as a hate crime. Link: [www.nytimes.com/2015/02/01/magazine/the-fire-on-the-57-bus-in-oakland.html](http://www.nytimes.com/2015/02/01/magazine/the-fire-on-the-57-bus-in-oakland.html).
- 5 Bernstein, Hsiao, and Palumbo (2015: 345). Cf. David Rodin's account of permissible self-defense in Rodin (2010: 37). Rodin does not explicitly appeal to a right to own firearms, but it isn't difficult to see how his more basic, correlative account of rights is similar to the one utilized by Bernstein, Hsiao, and Palumbo.
- 6 This is not to say that the queer community *uniquely* possesses this stronger right. Other communities, such as communities of color, are also at greater risk of unjust violence. There is evidence that the

- intersectional nature of hate crimes is sometimes overlooked by the queer community at large. See, for example, Meyer (2012).
- 7 Here, I pass over the controversy between reductive individualists (who maintain that the moral rules governing domestic self-defense and international warfare are fundamentally the same) and collectivists (who maintain that the moral rules are fundamentally different) about war. For an overview of the debate, see Frowe (2016: 31–41).
  - 8 This assumption is controversial. However, the example can be tailored to fit different conceptions of what constitutes a “combatant.” For example, perhaps the United States armed forces maintain a policy during the Third World War that anyone willing to fight against the Russians is automatically deemed a combatant, or perhaps Genevieve and Hamdi are already combatants serving in the armed forces.
  - 9 Cf. Whitley Kaufman’s (2010) similar argument that because a duty of martyrdom is implausible, so too is the position that it’s impermissible to kill innocent aggressors.
  - 10 Indeed, the logical coherence of such a suggestion is dubious. If Mikhail has such an obligation, then so do Vlad and Joseph. But then they are obligated to prioritize Mikhail’s live over theirs, and thus lack a claim on Mikhail that Mikhail prioritize their lives over his own.
  - 11 It might be objected that the case of Mikhail is not really a counterexample to (2), since (2) is concerned with cases in which the defensive actions of someone like Mikhail undermine *everyone’s* defensive rights. For example, suppose that Adolf will kill Mikhail no matter what Mikhail does, but that either Vlad or Joseph will be spared if Mikhail intentionally sacrifices himself. Here again, however, it is not obvious that Mikhail is obligated to do so.
  - 12 The methods are cisgender-normative insofar as they promote or rely upon cisgender-normative assumptions about whether someone is male or female. For example, persons are drafted if their official state documents identify them as male, and it tends strongly to be the case that those documents identify someone as male only if medical professionals determined around the time of birth that someone was male on the basis that the individual had a penis, testes, and the like.
  - 13 Cf. Sjoberg’s (2006: 10–11) claim that the identification of women with pacifism “denies women’s agency in choosing political alternatives,” since it relies on misogynistic conceptions about what is appropriate for women to do during warfare.
  - 14 None of this is meant to suggest that the condition of slaves in the nineteenth-century United States is on a moral par with queer persons in the twenty-first-century United States, only that they share one significant wrong-making property.
  - 15 Alternatively: it is morally preferable since they are less oppressed and more protected, but not *sufficiently* morally preferable to justify exposing them to the horrors of war.
  - 16 This might not be true in cases where the person coerced to put herself at risk of harm is morally responsible for the fact that someone else stands in need of assistance.
  - 17 This is why non-queerphobic citizens lack a general right to coerce queer persons to defensively assist them in warfare. Moreover, even if non-queerphobic citizens had a claim on queer persons to fight on their behalf (thus making it permissible to draft them), queer persons would have *the same claim* on non-queerphobic citizens.
  - 18 This is true even if we assume that the risk Nolan *alone* poses to Michael would be insufficiently strong to permit Michael not to save Nolan. Recall that the issue here is whether it’s permissible to require queer persons to wage war on behalf of queerphobic citizens *on top of* the risks already imposed by fighting in warfare.
  - 19 U.S. Selective Service System. Link: [www.sss.gov/consobj](http://www.sss.gov/consobj).
  - 20 For worries about hate crime legislation, see Hurd (2001). For a positive view, see Wellman (2006).

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### Further Reading

- Conrad, R. (ed.) (2014). *Against Equality: Queer Revolution, Not Mere Inclusion*. Oakland, CA: AK Press, Part 2. (An anthology of work focused on gay and lesbian concerns.)