

# Pedophiles and Cyber-predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation

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*As a distinct class of criminals, sex offenders stand out as being particularly subject to the new "risk management" penal strategies that, according to a number of scholars, have come to dominate punishment rhetoric and practices in recent years. Nonetheless, the criminal justice policymaking that targets sex offenders appears to have a more emotionally based underside. In this paper, I examine the emotional drive that appears to undergird contemporary sex offender lawmaking, suggesting that a significant force propelling the current panoply of sex offender containment strategies is a constellation of emotional expressions of disgust, fear of contagion, and pollution avoidance, manifested in a legislative concern about boundary vulnerabilities between social spheres of the pure and the dangerous. To do so, I analyze the lawmaking discourse of U.S. legislators as they debated four proposed legislative bills directed at sex offenders during the late 1990s.*

Sex offenders emerged as the ultimate dangerous criminal class in the 1990s: They appeared to be the criminal justice "issue of the year" every year in that decade (Lynch 1998), and as a category of offenders, they were (and continue to be) among the highest priority for the criminal justice system to manage and contain (Hebenton and Thomas 1996a, b; Logan

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2000; Simon 1998). Thus, they stand out as being particularly subject to the new "risk management" penal strategies that, according to a number of scholars, have come to dominate punishment rhetoric and practices in recent years (see, e.g., Bottoms 1983; Cohen 1985; Feeley and Simon 1992, 1994; Kempf-Leonard and Peterson 2000; O'Malley 1992; Reichman 1986; Simon 1993; Simon and Feeley 1995).<sup>1</sup> Indeed, sex offenders have been targeted with a variety of interventions aimed at identifying, monitoring, and mitigating the risk they pose to the communities in which they reside.

Yet while the contemporary treatment of sex offenders by the criminal justice machinery at all stages and levels would seem to make the best case for the ascendancy of the new non-emotive risk managerial paradigm in crime fighting and punishment, several recent scholarly pieces have suggested that the policymaking on "sex offending" has a more emotionally based underside. For example, historian Philip Jenkins (1998) illustrates the role of "moral panic" surrounding the problem of child molesting in the social and political realms, and Moreno (1997) describes the use of images of the sex offender as a demonic sexual monster for political and media gain. Jonathan Simon has suggested that the two strains—the new managerial penal paradigm and the more emotional populist and political fervor—converge into the development of a uniquely harsh set of policies:

The new generation of sex offender laws represents a shift toward the new penology combined with a strong appeal to populist punitiveness. This takes the form of managerialism (i.e., the divorce of institutional objectives from public goals) combined with gestures of identification with populist sentiments evoked by sex crimes. The new penology is generally agnostic toward treatment. The goal is waste management. Populist punitiveness is exceedingly hostile toward medicalization. The result is an important transformation of the sex offender from the most obvious example of crime as disease back to an earlier conception of crime as monstrosity. Sex offenders are our modern-day monsters, producing tidal waves of public demand. (1998, 456)

More fundamentally, Richard Sparks (2001), who draws upon Douglas's (1992) cultural theory of risk, argues that risk-based penological dis-

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1. According to this set of perspectives, penal goals and attendant practical interventions have moved away from a rehabilitative stance that aimed to "fix" the individual criminal actor; and in its place, actuarial-based risk prediction, efficient management of the criminal class, and containment/incapacitation have risen as dominant aims and strategies at the explicit criminal justice policy level. On a deeper level, this shift has meant that emotional elements of crime fighting and punishment are denied, even more so than in the rehabilitative era, when dominant cultural sensibilities about deviance informed punishment practices (Garland 1990). In this new actuarial justice world, those subject to criminal justice sanctioning are mere units to be identified, contained, and managed; values attached by criminal justice administrators to the criminal's "dangerous" acts ideally do not extend beyond some objective risk ranking that serves as an indicator for level of intervention required.

course and practices should not be understood as purely rational and nonemotive, nor as objective constants that are only subject to change through advancing risk identification and assessment technology. Rather, the very definitions and assessments of "risk" in criminal justice settings (among other social and institutional sites) include moral, emotive, and political strands along with the calculative. Thus, in this analysis, the contemporary "war on drugs," the proliferation of "three strikes" policies, and the rash of sex offender legislation, to name a few recent U.S. trends, must all be understood in terms of the specific temporal, cultural, political, and moralistic settings in which they occur (see also, Scheingold 1998). Indeed, a growing body of theoretical work critiques the risk-based theories for their failure account for the less rationalized, more affectively based elements that seem to be a central component to criminal regulation and punishment (e.g., Hallsworth 2000; Pratt 2000).

More generally, according to Bandes, "emotions pervade the law" (1999, 1), so a central consideration in analyzing legal practices ought to concern the quality and degree of influence of emotions in any given context. And to the extent that emotional responses are culturally shaped, particular cultural influences on the law must simultaneously be examined. Thus, as Garland points out

Penal laws and institutions are always proposed, discussed, legislated, and operated within definite cultural codes. They are framed in languages, discourses, and sign systems which embody specific cultural meanings, distinctions, and sentiments, and which must be interpreted and understood if the social meaning and motivations of punishment are to become intelligible. (1990, 198)

The contention that contemporary penalty continues to be a mixed (and often contradictory) enterprise (O'Malley 1999) is also supported by empirical work in a variety of penal and legal settings, particularly where risk-based policy is put into practice at the "frontlines" of criminal justice. For instance, the collision of risk management ideals with often competing affective forces have been illuminated in a number of venues, including parole (Lynch 1998, 2000a), police and probation multiagency partnerships (Kemshall and Maguire 2001), the boot camp (Simon 1995), and on death row (Lynch 2000b). Similarly, public support for what appear to be risk-based policies (i.e., three strikes laws) has been demonstrated to be generated more by emotional and moral sentiments than by assessments of crime-reduction potential (Tyler and Boeckman 1997; generally, see also Freiburg 2001; Scheingold 1984). While there are fewer empirical examinations of the "mixed discourses" in criminal justice policymaking (Sparks 2001, 169), the "moral panic" and the racialized "threat of the other" sets of discourse that have underpinned much of the felony drug lawmaking, particularly at

the federal level, over the past two decades have been well documented (i.e., Beckett 1997; Chiricos 1998; Dvorak 2000; Reinerman and Levine 1995, 1997; Steiner 2001).<sup>2</sup>

In this paper, I will more closely examine the emotional drive that appears to undergird contemporary sex offender lawmaking. Specifically, through a case study of recent federal sex offender legislative activity, I hope to reveal the discourse of disgust used by U.S. lawmakers to rhetorically sell proposed new federal restrictions and sanctions directed at sex offenders. I suggest that the policymaking is not simply motivated by a rational drive to manage the risk posed by this class of offenders, but rather it is seeped in a constellation of emotional expressions of disgust, fear of contagion, and pollution avoidance, manifested in a legislative concern about boundary vulnerabilities between social spheres of the pure and the dangerous (Douglas 1966).

While such an analysis could be applied to a range of legislative discourse, especially related to criminal lawmaking, I focus my examination on the recent spate of federal legislative activity that deals with sex offenders for a couple of reasons. First, although looking at sex offender legislation and its relation to disgust may be a "classic softball,"<sup>3</sup> it allows for a clear explication of the dynamics of the language of disgust in the law, providing numerous illustrative moments to draw on in my effort to describe and categorize this language as I aim to do. Second, there is a rather rich body of work on the history and subtext of sex offender (and more generally sexual) regulation upon which I hope to build with this work. Thus, while my overriding goal of demonstrating that sex offenders are conceptualized as disgusting figures, at least in one political arena, may seem so obvious and in the realm of common sense that it needs no examination,<sup>4</sup> I hope to reveal a more complicated sociocultural portrait of our recent concern with sex offenders, which at least contextualizes the seemingly obvious and raises questions about the state of law derived from this emotional expression.

Nonetheless, my tight focus should not be taken to mean that I assume the language of disgust is only relevant to sex offender lawmaking. To the contrary, I would expect (and some existing work suggests) that disgust may play a role in many forms and stages of legal regulation—from making legal

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2. More broadly, Blomberg, Yeisley, and Lucken (1998) illuminate the "words versus deeds" disparity in U.S. penal policymaking, in which the rhetorical power of reformatory language that promises new answers to the problem of crime consistently adds up to more of the same in practice.

3. As one reviewer of an earlier draft of this paper put it.

4. Indeed, in Dan Kahan's recent review of William Ian Miller's (1997) book on disgust, he unproblematically suggests the universality of a certain class of sex offenders as obvious objects of disgust: "Even egalitarians hold pedophiles and sadists in low esteem, for example, not just because such persons threaten physical harm, but because their values reveal them to be despicable" (1998, 1652–53). Kahan repeats this assertion verbatim in his essay on disgust in *The Passions of Law* (1999, 70).

rules to applying them. The past century's history of U.S. narcotics regulation in particular provides a body of evidence that elements of disgust and fear of contagion pervade the process. Dvorak (2000), for instance, has documented the way in which the 1986 federal crack cocaine legislative debates continue a century-long tradition of narcotics criminal lawmaking that uses threats of racial contamination to garner support for harsh antinarcotics laws<sup>5</sup> (see also Kahan 1999 and Nussbaum 1999 for other examples).

The paper will proceed in five sections as follows: (1) I briefly outline the recent social history of criminal lawmaking and penal policy developments concerning sex-related offenses, and describe the specific nature of the interventions currently directed at those labeled "sex offenders"; (2) I set out a framework for understanding the social/cultural/structural nature of disgust, pollution, and the contaminating forces of disgusting and polluting substances; (3) I describe the specific materials examined and my method of analysis, and I outline the relevant characteristics of disgust and contamination that I apply in the analysis; (4) I analyze the language of recent federal legislative debates on several proposed sex offender bills in an effort to illustrate how sex offenders are represented as powerfully polluting and contagious social forces who must be identified and contained through the protection and reinforcement of boundaries between them and the "purity" of the social body; and (5) I discuss the theoretical implications of the findings and hypothesize about the social and cultural forces that may have prompted the most recent concern with sex offenders. Within that discussion, I examine the impact that disgust has when it plays a role in criminal lawmaking and penal policy, given its amorphous, symbolically imprecise, and powerfully condemning nature.

## I. RECENT HISTORY OF SEX OFFENDER INTERVENTIONS IN THE UNITED STATES

The sociocultural frenzy over sex-related criminality is not isolated to our contemporary period; it has been an episodic feature of our social, moral, and legal landscapes for more than a century. As Philip Jenkins's (1998) account of the past hundred years of U.S. policy responses to sex-related crime reveals, a cyclical pattern characterized by several major peaks of panic and subsequent legal action has shaped our recent history.

Toward the end of the nineteenth century, the so-called sexual pervert was first "identified" in medical-professional and legal realms; those who had a proclivity toward sex acts that did not lead to procreation ran the risk

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5. In earlier decades, this racist rhetoric was explicit; however, in the post-civil rights period, its racial content has become "coded," according to Dvorak (2000).

of being labeled a pervert,<sup>6</sup> a label that was meant to describe the whole of the person, rather than the specific non-normative behaviors. Because "perverts" were seen as fundamentally deviant and dangerous, a number of interventions were developed around the turn of the century to contain their social and moral threat. Sexual perversion was considered to be in the same category as defectiveness and degeneracy; therefore, those deemed perverts could be subject to sterilization to prevent their deficient genes from being reproduced (Friedman 1993; Jenkins 1998). Such eugenics policies for sexual degenerates were widely applied into the 1930s. Additionally, in the early 1900s, a number of laws that look like early precursors to the class of contemporary preventive detention statutes recently upheld in *Kansas v. Hendricks* (1997) were implemented. These statutes mixed criminal and civil elements, and had the potential to keep all form of "defectives" locked up in special institutions for unlimited periods of time (Jenkins 1998).

A second wave of laws aimed at sexual offenders was passed in jurisdictions across the country beginning in the late 1930s, through to the early 1950s. Emerging psychiatric conceptions about deviancy, rather than the more biological assumptions underlying the earlier set of laws, informed these "sex psychopath" statutes. These laws again mandated indefinite confinement of those deemed sexual psychopaths; those convicted of sex-related crimes were often evaluated and "treated" by psychiatrists in locked mental institutions until such time that they were determined to no longer be a sexual danger (Jenkins 1998). During this period, acts considered deviant enough to warrant some kind of legal intervention ranged from adult homosexuality and bisexuality (see, e.g., Karpman 1954) and excessive masturbation or use of obscenities among boys (see, e.g., Doshay 1943), to sex-related murder and other acts of sexual violence. In the view of many medical experts and policymakers alike, any sign of sexual deviance (by their contemporary standards) demonstrated by an individual, even behavior as nonthreatening as transvestitism or consensual oral sex, indicated the potential for escalation to sexual violence (e.g., Karpman 1954; Pollens 1938; Whitman 1951). Noted criminologist Edwin Sutherland (1950a, b), who in the midst of this panic critiqued the sexual psychopath laws for their fallacious basis and uselessness as policy, identified several features that corresponded to the adoption of such statutes. Specifically, he argued that the laws tended to result from community agitation on the heels of well-publicized and serious sex crimes. This swell of fear and panic was typically followed by the establishment of official "committees," which often included psychiatric experts to deal with the issue, preferably through development of

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6. This included everything from pedophilia to consensual adult homosexuality. According to medical experts at the time, sexual perversion in any form had the potential to lead to sexual murder and mutilation, thereby requiring intervention for those who demonstrated any sign of perversion (Jenkins 1998).

new policy. The particular form of policy response that called for isolation and treatment was consistent with the broader trend of medicalizing criminal justice at the time.

Sutherland's critiques almost seemed to foreshadow the changes to come in how sex offenders were viewed and treated in the criminal justice, medical-psychological, and even popular realms. Beginning in the late 1950s and continuing for nearly two decades, there was an ebb in the panic over sex crimes, sexual deviance, and sexual behavior generally. This was accompanied by the easing of some of the restrictive and invasive intervention measures that had been previously adopted (Alexander 1995; Allyn 1996; Jenkins 1998). Some experts—psychiatrists and academics—advocated for fewer criminal laws aimed at sexual deviants as the understanding of what even constituted sexual deviance entered a state of upheaval. Formal legal intervention was seen as counterproductive for offenders and even victims in some situations.<sup>7</sup> There was also a growing sensitivity in the courts and in academic circles about the racial disproportionality in sex crime prosecutions and punishments (see, e.g., Wolfgang and Riedel 1975), and about the procedural rights of those suspected of, charged with, and punished for all kinds of criminal offenses (e.g., *Gideon v. Wainwright* 1963; *Miranda v. Arizona* 1966; *Morrissey v. Brewer* 1972). Thus, during this “liberal era” (Jenkins 1998, 94), both the definition of sexual deviance and the appropriateness of criminalizing deviant sexual acts were pointedly questioned.

By the 1980s, though social and legal concern with sex offenses resurged, with some reshaping of early incarnations of panic. The initial thrust was due in part to feminist activism and scholarship that brought the issue of rape and, later, pornography, as uniquely damaging and subjugating for women and children, to the forefront in political, legal, and media realms (Archard 1998; Dean 1996; Jenkins 1998). Rather rapidly, though, these issues and concerns were co-opted by the emerging politically powerful Right.<sup>8</sup> Concern expressed by feminists and humanists about the devaluation of women and children as victims of violence was transformed in the emerging “tough on crime” political atmosphere by increasingly conservative lawmakers and policymakers to a general escalation of punishment for sex offenders, among other felons. Further, particularly in the case of child

7. See, for example, sex researchers Gagnon and Simon, who argue that “Utilization of the police should be done with caution and be dependent on the capacity of the local agencies of criminal justice to do their job without damaging the child. . . . All individuals involved in the drama [of adult-child sexual contact] can be scarred by it, but except in rare instances where violence is involved, the scarring is more likely to come from the various adult reactions to the event itself” (1970, 22–23).

8. Embodied in one instance by Edwin Meese, long-time Reagan right-hand man and 1980s anti-pornography activist/government agent. See Dean 1996 and Brown 1995 for excellent discussions on the ironic, if not perverse, alliances forged over the issue of pornography in the 1980s.

victimization, a more socially conservative power base, heavily influenced by increasing political activism among Christian fundamentalists, was able to relink such things as homosexuality, nontraditional sexual relationships, and even family reliance on day care centers to brutal sexual violations of children (Jenkins, 1998). By the 1990s, the public, lawmakers, and the mass media expressed an ongoing sense of crisis about the particularly venal threat now dubbed "sex offender" and his more violent counterpart, the "sexual predator," posed to innocent women and children (Hebenton and Thomas 1996a; Jenkins 1998; Moreno 1997).

The criminal justice responses to this latest wave of concern ranged from traditional crime-control legislative reactions—increased prison sentences for those convicted of specified sex crimes—to relatively new strategies that physiologically alter the convicted offender, most notably, through the use of "chemical castration."<sup>9</sup> California's recent legislative efforts offer a good example of these trends. The state legislature enacted a "one strike" law in 1994, which mandates a 25-year sentence, with 15 years minimum served before parole eligibility, for those convicted of specified sex crimes, including rape, forcible spousal rape, and lewd and lascivious conduct with a child under the age of 14, among others (Cal. Penal Code § 667.61 [1999]; Zamoyski 1995). In addition, California was the first state to enact, in 1996, a nonvoluntary chemical castration punishment for child molesters, required after the second conviction, and by judicial discretion for a first offense if it meets certain risk/seriousness criteria (Cal. Penal Code § 645 [2000]; Comment 1997).<sup>10</sup>

Upon completion of prison sentences, convicted sex offenders are now also subject to a range of recently enacted identification and surveillance strategies in the majority of U.S. jurisdictions. Perhaps the best-known of these are what are referred to as "Megan's Laws." Although variously articulated in different jurisdictions, the Megan's Law statutes require specified sex offenders to register identifying information, including current address, with local law enforcement for periods ranging from several years to a lifetime (Bedarf 1995).<sup>11</sup> Certain offenders are also subject to a notification clause under these statutes that allows authorities to supply offenders' iden-

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9. Chemical castration entails administering periodic hormonal injections of medroxyprogesterone acetate (Depo-Provera), which lowers the testosterone level, ideally suppressing the sex drive, in the injectees.

10. Other states, including Florida, Montana, Georgia, and Louisiana, have since enacted varieties of chemical castration bills, which allow for convicted sex offenders to be given the medroxyprogesterone acetate treatment, generally at the discretion of the judge. See, generally, Bund 1997 and Henderson 1998 for discussions of the use of chemical castration in jurisdictions across the country.

11. Again, California leads in this innovation: They established a broad registration requirement for sex offenders in 1947, nearly a half century earlier than most other states (Jacobson 1999).



tifying information and addresses to certain community groups and members of the public (i.e., neighbors and nearby schools and childcare facilities).

Further, in an effort to deal with the seemingly ubiquitous threat posed by lurking sex offenders, states across the nation have been investing in more technologically advanced surveillance methods—large-scale DNA identification databases, the construction of minutely detailed sex offender identification and tracking systems, the development of database linkages between jurisdictions—where the outcome goal is to maximally control the risk level through surveillance and monitoring. Thus, specified sex offenders are required in some jurisdictions to provide blood specimens and saliva samples, just as they routinely provide fingerprints, prior to parole discharge or institutional release.

Those in the especially dangerous subclass of sex offenders, usually labeled “sexually violent predators,” currently have a set of even more restrictive incapacitative methods aimed at them, most dramatically in the form of post-sentence detention. Policies authorizing post-sentence detainment in “mental” or other locked facilities for indefinite lengths of time, subject to periodic review, are being adopted by states throughout the nation on the heels of the approval of such practices by the U.S. Supreme Court in 1997 (*Kansas v. Hendricks* 1997, *Moreno* 1997). The key to this practice’s constitutionality is that it is statutorily distinguished from criminal punishment and is instead labeled civil commitment, even where the commitment looks identical to a state’s punishment (*Seling v. Young* 2001).

The most extreme sex offender legislation to be adopted in this period has been the authorization of capital punishment as a possible sentence for specified child molesters. Louisiana was the first jurisdiction to make “aggravated rape of anyone under 12” a capital offense, which in that state is defined as any vaginal or anal intercourse with a person under 12 years of age. The Louisiana Supreme Court, in *State v. Wilson* (1996), upheld the constitutionality of the statute, distinguishing from the U.S. Supreme Court’s decision in *Coker v. Georgia* (1977), which ruled that capital punishment for rapists was excessive, and thus unconstitutional, by describing children as a “class of people that need special protection” (*State v. Wilson* 1996, 1067). The U.S. Supreme Court chose not to review the issue until it is presented with condemned molester-appellant attached to a contested case (*Bethley v. Louisiana* 1997). Following Louisiana’s lead, Mississippi (Miss. Code Ann. § 97-3-65 (1) [2001]), Florida (Fla. Stat. § 794.011 [2001]), and Montana (Mont. Code Ann. § 45-5-503 [2001]) have since adopted statutes that make specified sex crimes death-eligible, although no jurisdiction has yet sentenced a nonmurdering sex offender to death under these new statutes.

Perhaps the most significant development in this era, however, has been the expanding level of involvement by the federal government in di-

recting state approaches to the sex offender problem, an effort that began in earnest in 1994. At that time, a provision entitled the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was included in the omnibus 1994 crime bill and required that federal crime-fighting dollars (Byrne grants) be withheld from states that did not have sex offender registration systems in place. As a result of this provision, 49 states had established such programs by 1996 (Deems 1996; Cong. Rec. 1996a). The Wetterling Act also quickly spawned a set of proposed amendments and new legislation that both deepened the federal government's involvement in states' regulation of sex offenders (primarily through similar threats of fiscal withholding), and that increased direct federal involvement in the prosecution and punishment of sex offenders. It is this flurry of legislative action which I focus upon in my forthcoming analysis.

## II. DISGUST, FEAR OF CONTAGION, AND THE SOCIAL ORDER

Disgust is considered one of a number of distinct human emotions, and while scholars continue to disagree over whether emotions like disgust are universal and/or basic human elements (Miller 1997; Rozin, Haidt, and McCauley 1993), there is a consensus that in its more elaborated, abstract forms, the kinds of things that inspire a disgust reaction in people are intimately tied to culture. Elias (1978, 1982) links the heightening of cultural rules about disgust and the rise of disgust sensitivity over time to the "civilizing process" in his sociocultural evolutionary analysis; however, the process is not necessarily a linear one (i.e., the more easily disgusted a society is does not necessarily indicate that it is more "civilized"; see Miller 1997).

Psychologist Paul Rozin and his colleagues (1989, 1993) have distinguished five levels of expansion of disgust and disgust elicitors,<sup>12</sup> which become increasingly concerned with violations of the social order in the more elaborated forms. It is also at the higher levels that disgust elicitors are especially shaped by cultural particulars and idiosyncrasies, and it is these cultural elements that make disgust interesting—how it is shaped temporally and locally by various sociocultural forces. Thus, rules about food and food combination prohibitions to maintain purity; interpersonal taboos about how categories of people can interact (e.g., castes, untouchables); rules governing the contaminating forces associated with sexual behavior, menstruation, and other bodily functions; moral codes and certain legal prohibitions

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12. The stages of disgust and their elicitors are distaste (elicited by bad tastes experienced orally), core (elicited by certain foods, body products, animals), animal origin (elicited by sexual experiences, death, poor hygiene, body envelope violations), interpersonal contamination (elicited by contact with undesirable people), and moral (elicited by culturally defined immoral acts, such as murder and incest).

all speak loudly about the time and place in which the particular rules dominate.

Because of the emotional power of disgust—it is strongly felt both physically and psychologically—its influence on the social order can be dramatic. Mary Douglas's (1966) groundbreaking work that analyzed cultural practices surrounding various types of defilement, as well as the larger meaning for the social structure in which the behaviors are situated, clearly illustrates the role of disgust and pollution in social life.<sup>13</sup> Her structural theory about purity and pollutants asserts that "dirt," or contaminants, are not part of a universal category, but rather are contextually defined. A major characteristic of pollutants is that they are anomalous, and therefore have the potential to throw into disarray the proper order of things if they are allowed to remain in the domain. For Douglas, a social system creates rules about contaminating forces, attributes both power and danger to the pollutant, then creates remedies to protect the social order from becoming polluted. These remedies may be formalized as laws, or incorporated in the form of norms and informal social rules. Nonetheless, they dictate whole sets of social practices for the given culture or community.

William Ian Miller elaborates on the power of disgust to shape social and cultural life. For him, disgust not only shapes the social experience, it also has "intensely political significance. [It] work[s] to hierarchize our political order. . . . The world is a dangerous place where the polluting powers of the 'low' are usually stronger than the purifying powers of the high" (1997, 8–9). Thus, as a motivating force, disgust has the power to inspire extreme measures to protect against contamination: "[d]isgust can . . . lead to disproportionate responses; it often seeks removal, even eradication of the disgusting source of threat" (Miller 1997, 251). And it *demand*s action: "Disgust is more than just a motivator of good taste; it marks out moral matters for which we can have no compromise" (Miller 1997, 194). Indeed, Rozin and his colleagues (Haidt et al. 1997; Rozin 1999; Rozin and Singh 1999) have demonstrated a link between disgust and the process of moralization, in that the cultural attachment of disgust to a given object, set of behaviors, or class of people is often related to the process by which a stigmatizing moral value is developed around the disgust elicitor. And, according to this line of research, where violations of individual rights may inspire anger and communal code violations inspire contempt, it is violations of culturally shaped purity/sanctity rules that inspire disgust (Rozin et al. 1999). Rozin (1999) argues that this process is therefore relevant to law and policy, in that mor-

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13. While she does not specifically refer to pollutants as disgust elicitors, subsequent work on disgust by other scholars frequently refers back to her insights for understanding the social mechanisms of disgust (see, e.g., Jones 2000; Miller 1997; Nemeroff and Rozin 1994; Rozin, Haidt, and McCauley 1993).

alized entities are likely to attract significant attention from governmental institutions in an effort to address the immoral threat.

From the perspective of social interaction, when individuals or classes of people come to be viewed as disgusting, then all those who fall in the category of the disgusting will be subject to measures that seek to quarantine, separate, or even destroy them to defuse their powerfully contaminating forces. And the process by which disgust gets linked to an entity at the cultural level is often through language and the use of metaphor. Thus, both Kemper (1997) and Kristeva (1990) have argued that disgust played a role in Nazi anti-Semitism and its ultimate manifestation—the extermination of millions of Jews—through the rhetorical construction of Jews as disgusting in popular and political discourse (see also Nussbaum 1999). Both Kemper (1997) and Nussbaum (1999) point out the linguistic linking of Jews to the emotion of disgust through the Nazi metaphor of Jews as vermin and as parasitic.

Similarly, as Darian-Smith points out in her work on the building of the English Channel tunnel that directly links France to England, much of the British anxiety about the potential influx of “foreigners” facilitated by the tunnel construction was metaphorically manifested through hysteria about the potential for a rabies invasion of Britain through this newly created connection (or boundary invasion). The policy response—the erection of multiple physical barriers and constant surveillance of the tunnel entrances—was characterized by Darian-Smith as an attempt to forestall “the invasion of a contagious, anomalous and lawless force” (1995, 80): Third-World migration, disguised in a metaphoric concern about the disease of rabies.

The rhetorical link between criminality specifically, and legal regulation generally, and features related to disgust has also been made by several observers. Martha Grace Duncan (1994, 1996), for instance, has examined the origins of the metaphoric link between criminals and filth in an analysis of literature and case studies of legal history. She points out the metaphor’s contribution to a prevailing view of criminals as contaminated and contagious, leading to an emphasis on “pollution-avoidance measures, such as segregation and banishment of the criminal” (1994, 798). Dean (1996) also notes the literal linkages made in the 1830s by French public health expert Alexandre Parent-Duchatelet between prostitutes and sewage in his multi-volume “scientific” report on the problem of prostitution. In Dean’s (1996) analysis, women’s sexuality has consistently been treated in modern Western culture as a potentially contaminating force, and the criminal regulation of prostitution, homosexuality, and pornography are all underpinned by a concern with contamination of the social body by gendered sexual deviance. Nussbaum (1999) illustrates how disgust has played a prominent role in the law with regard to male homosexuality in a variety of contexts, from

the proponent campaign and subsequent state legal defense of Amendment 2 in Colorado, which removed protections from discrimination for gays in the state to Oscar Wilde's trials. Goldberg-Hiller has similarly argued that political campaigns like Colorado's Amendment 2 and the movement against same-sex marriages in Hawaii represent a form of "purification politics" (1998, 518).

### III. THE LANGUAGE OF DISGUST AND CONTAGION IN CONTEMPORARY SEX OFFENDER LEGISLATION

#### A. The Materials

In order to examine whether and how the language of disgust and contagion is expressed in relation to the social problem of sex offenders, I conducted a contextual analysis of four debates among U.S. lawmakers that took place in Congress during the mid- to late-1990s. These debates, published in the Congressional Record of the House (1996a, b; 1997; 1998) and Senate (1996c), provide a rich source of lawmakers' public, yet not fully prepared, discourse on the topic.

Each of the first three pieces of proposed legislation aimed to strengthen the Jacob Wetterling Crimes Against Children and Sexually Violent Registration Act, which was a component of the Violent Crime Control and Law Enforcement Act, passed into law in 1994. As mentioned above, the Wetterling Act essentially coerced individual states into setting up sex offender registration systems, through the threat of withholding criminal justice funding to states without registration systems in place by 1997. The act also encouraged states to set up community notification policies, in part by providing immunity to local law enforcement for any liability claims resulting from such notification (Boland 1995).<sup>14</sup>

The fourth debated bill did not directly amend the Wetterling Act, although it was also primarily concerned with a similar population of offenders—those who commit various sex-related acts involving children. It also expanded the category of criminal acts through outlawing certain forms of internet communication.

The first debate I examined took place in the House on what is referred to as "Megan's Law,"<sup>15</sup> an amendment to the Violent Crime Control and

14. I do not include the debate from the underlying piece of legislation—the Wetterling Act—because that piece was just a small segment of the 1994 Crime Control Act, and was only briefly addressed in those debates.

15. Not very originally titled, given the many state-level registration acts by the same name. Megan's Law originated in New Jersey as a response to young victim Megan Kanka's sexual assault and murder by a neighbor who was a previously convicted sex offender.

Law Enforcement Act of 1994, requiring states to release information about certain sex offenders when it is necessary "to protect the public" (Cong. Rec. 1996a, H4452). So where the Wetterling Act had encouraged states to implement notification procedures in cases where local law enforcement found it beneficial to protect individuals, this amendment made notification procedures a *requirement* for states in order to receive full federal crime-fighting funding. This bill became law in May 1996 and, as passed, removed local discretion about notification procedures and policies in relation to registered sex offenders.

The second set of debates, occurring in the House and the Senate, concerned the Pam Lychner Sexual Offender Tracking and Identification Acts of 1996 (in the Senate, they were simply called the Sexual Offender Tracking and Identification Acts of 1996). This legislation aimed to strengthen the Wetterling Act by providing for the nationwide tracking of convicted sexual predators through a database at the Federal Bureau of Investigation. The act was meant to supplement the individual state registries, by providing for more stringent registration requirements for eligible sex offenders who move across state lines, and by requiring lifetime registration for specified offenders at the national level, even if not required at the state level (Cong. Rec. 1996b, 1996). This legislation became public law in October 1996.

The third debate took place in the House on a piece of legislation entitled Jacob Wetterling Crimes against Children and Sexually Violent Offenders Registration Improvements Act of 1997. As proposed, its aim was also to strengthen the 1994 Wetterling Act, in this case by requiring *federally* (civilian and military) convicted sex offenders to register in the state where they reside and/or work, even though they were not convicted at the state level. It also mandated multiple state registrations for those who cross state lines for work and school, and it encouraged states to create criminal laws against "child stalking" (Cong. Rec. 1997). This legislation passed the House by a roll call vote of 415 to 2 but was never passed into law as written.

The most recent debate I examined took place in the House of Representatives in June 1998, and it concerned a bill entitled the Child Protection and Sexual Predator Punishment Act of 1998. Briefly, as proposed, it increased federal punishments for those who engage in child victim sex offenses, and it criminalized (at the federal level) a range of Internet communications that include providing access to materials with sexual content (obscene matter) to minors. It also added subpoena powers for federal investigators in certain child victim crimes, barred unsupervised access to the Internet by federal prisoners, and created a "three strikes" provision that allows for federal prosecution and punishment of specified convicted sex offenders, even if the offenses and prior convictions are in a state/local juris-

diction (Cong. Rec. 1998). The final version of this bill was enacted as federal law in October 1998.

## B. Characteristics of Disgust and Analytical Method

I examine two major characteristics of disgust and disgust elicitors in this analysis. The first has to do with the highly polluting or contaminating nature of disgust elicitors. According to disgust theorists, the disgusting is resistant to purification; rather, the things it contaminates are brought down to its level (Miller 1997; Nemeroff and Rozin 1994). According to the magical law of contagion, once an object of purity is touched by a contaminating source, even in some cases secondarily, the contamination lingers, perhaps forever (Nemeroff and Rozin 1994). Thus, the contaminated object/person may become indelibly soiled or impure, often as sullied as the original polluter. Mary Douglas (1966), for instance, describes the rules about indirect contact with pollutants that Havic Brahmins must obey to maintain their purity, including avoiding the conductive powers of cotton cloth, metal cookware, and straw when interacting with lower castes. Nemeroff and Rozin (1994) found evidence of contagion beliefs among North American research subjects about the transferability of the negative characteristics of unappealing people through contact with their clothes or other personal effects (see also, Rozin et al. 1989). And the contaminating forces of these disgusting people were not ameliorated through washing or sterilizing the transmitting object in the minds of many research participants. Particularly in the case of contact with *negative* "interpersonal-moral contagious entities" (Nemeroff and Rozin, 1994, 178), a defiled entity's contamination is only minimally reduced by either physical or symbolic purification procedures, short of destruction of the contaminated object.

The second major characteristic I explored in these debates concerns the sphere of purity that must be protected from contamination. Disgust works as a dichotomy, rather than as a continuum, so that the distinct categories of the disgusting and the pure (or nondisgusting) must not be blurred. Miller distinguishes disgust from its close emotional relative, contempt, in just these sorts of terms: "Contempt marks social distinctions that are graded ever so finely, whereas disgust marks boundaries in the large cultural and moral categories that separate pure and impure, good and evil, good taste and bad taste" (1997, 220). Because of this dichotomy, clear boundaries between the two that must be protected to maintain purity. Boundaries between pure and impure need to be diligently maintained because of the highly polluting nature of disgust elicitors. Further, that which disgusts, according to Miller, "is marvelously promiscuous and ubiquitous" (1997, 89), so it will tend to be more amorphous and will generally disregard spatial boundaries. In order to maintain purity, then, extreme measures are neces-

sary to segregate and contain the disgusting. In the case of contested areas for control, where boundaries are in flux or have not been set, this boundary vulnerability is likely to inspire efforts to erect or resurrect clear lines between the pure and the disgusting. And as a result, boundary building may play a functional role as a communalizing force. According to Miller, disgust "is especially useful and necessary as a builder of moral and social community. It performs this function obviously by helping define and locate the boundary separating our group from their group, purity from pollution, the violable from the inviolable" (1997, 194).

In order to explore these characteristics, I used latent content analytic methods to sort and categorize the debate discourse (Berg, 1989). I began the analysis of the debates by coding for the general themes reflected in the data, then proceeded to develop five distinct categories of disgust/contagion language that emerged from the data, and a sixth category that represents a counterstory to the emotional language in the lawmaking. Those categories are (1) sex offenders as contaminators; (2) tools of contamination; (3) the sphere of purity; (4) the notion of boundaries/boundary violations; (5) the magical law of contagion; and (6) the dangers of emotional lawmaking. The first and second categories illustrate the highly contaminating nature of disgust elicitors described above and demonstrate how the "sex offender" and his actions are discursively linked to notions of disgust and contamination. The third and fourth categories illustrate the centrality of boundary maintenance and the zone of purity to be protected in the legislative discourse. The fifth category illustrates the way in which the speakers implicitly endorse the laws of contagion, which in turn suggests the very kinds of remedies proposed in response to the sex offender problem. The final category illustrates a minority (and unpersuasive) discourse that sought to rein in the emotional pitch underlying the lawmaking and reassert both "rationality" and constitutionality into the process.

#### IV. FEDERAL SEX OFFENSE LAWMAKING AS MANIFESTATIONS OF DISGUST

##### A. Sex Offenders as Contaminators

Across the materials, sex offenders were both implicitly and explicitly conceptualized as dangerous contaminators of what is pure in America. Thus, they were referred to as, variously, "a horrifying threat," a "blight on our country," a "scourge," "sick," and "twisted." That these "predators" are amorphous and insidious in how they spread their polluting qualities was



also made known in the debates. They intrude, disrespect boundaries, creep, and invade the social spheres of purity:

The sickness of child predators is prevalent. It is growing. So many . . . jurisdictions have tried themselves to track these sexual predators and work, if you will, to fight against this siege upon our community. . . . We must act to protect our young people from the scourge of child predators seeking to harm them through internet communication, and we must act now. (Jackson-Lee, Cong. Rec. 1998, H4493)

Despite [states'] efforts, some child sex offenders are slipping through the cracks. . . . It is well recognized that sexual predators are remarkably clever and persistently transient. The offenders are not confined within state lines, and neither should our efforts to keep track of them. (McCollum, Cong. Rec. 1996b, H11132)

And while they were slippery, shapeless, pervasive, yet transient, the contaminators were gendered. In these debates, *every* gender-specific reference to the offender was masculine. Despite a growing recognition in popular, medical, and academic venues that women commit sex offenses with some frequency (Elliott 1994; Peluso and Putnam 1996; Travin, Cullen, and Protter 1990; Wilkins 1990), the prototypical contaminator driving the passage of these legislative acts was male. And this male predator was never described as a family member, neighbor, or friend of potential victims. Rather, his threat came from outside the realm of the pure and innocent. The prototypical offender/perpetrator was always characterized as a stranger and an outsider, even though only about 3% of sexual abuse against children is committed by strangers (Gomes-Schwartz, Horowitz, and Cardarelli 1990), and just about 6% of child murders are committed by strangers (Jenkins 1998). Indeed, the majority of children who are sexually abused, physically abused, neglected, and killed in this country have suffered the harm from someone in the family (Finkelhor 1994). Nonetheless, the imagery in these debates projected an outsider who creeps and seeps with an incredible knack for invading the pure space of his prey.

Further, while the speakers relied on (inaccurate) actuarial/risk-based discourse to play up the sex offender's dangerousness, their ultimate goal seemed aimed at constructing the sex offender as uniquely threatening even in comparison to the run-of-the-mill felon. Thus, in each debate, at least one speaker pointed to unspecified "scientific studies" which confirm that "those who commit acts of sexual violence against children have the highest rate of recidivism among all criminals and crimes." (Lampson, Cong. Rec. 1997, H7630). Congressman McCollum described the recidivism rate of registerable sex offenders at, "10 times greater than other criminals" (Cong. Rec. 1996b, H11132), and Congresswoman Jackson-Lee argued that "it is a known fact that the scientific community has concluded that most

pedophiles cannot control themselves" (Cong. Rec. 1996b, H11134).<sup>16</sup> Senator Gramm cited the same 10-fold recidivism rate, here compared to convicted robbers and again without indicating where this figure originates, as he notes that "sexual predators have a recidivism rate that is higher than any other known class of criminal activity" (Cong. Rec. 1996c, S3423).

And the sex offender's pollution infects not only the unfortunate, innocent victim, but the entire social body. Therefore, the law must work to prevent contamination of all that is good in this country. Thus, Congressman McCollum suggested that "sexual offenders not only victimize the women and children upon which they prey, they victimize society as a whole." (Cong. Rec. 1996b, H4455). Congresswoman Lofgren expounded on the crucial role that the law plays in protecting that larger body from the contamination of the sex offender: "When I think about the damage that abuse of children does, not only to that individual child, but to our entire fabric of society, I am even more enthused about Megan's Law" (Cong. Rec. 1996b, H4455).

## B. Tools for Contamination

In the case of the 1998 act, which specifically aimed to control Internet pornography in one of its provisions, the lawmakers were also explicit about what they saw as the major tool used by molesters for spreading pollution and facilitating contamination, and that was through the transmission of child pornography via the internet. Like the conductive, pollution-spreading powers attributed to cotton cloth, cookware, and straw by Havic Brahmins (Douglas 1966), pornographic images were represented as a form of conduit used by the polluted predator to facilitate contamination of his innocent prey:

Child pornography is a horrible tool for child molesters to recruit new victims. Often used to break down inhibitions and validate specific sex acts as normal to a child, pedophiles frequently send pictures to young people to gauge a child's interest in a relationship. (McCollum, Cong. Rec. 1998, H4491)

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16. The published empirical research on sex offenders does not concur with these blanket assessments of sexual offenders' risk of recidivism. In fact, the category of sex offender with the highest documented recidivism rate (rearrest, reconviction or return to prison) across international studies is arguably the least threatening: exhibitionists, with a rate of 41–71%. The second highest is child molesters of boy victims, at 13–40% (Glazer 1996). See also, Baker (1997) who cites Bureau of Justice data which demonstrated that rapists' and other sexual offenders' rearrest and reconviction rates for felonies or serious misdemeanors are considerably lower than those of robbers, larcenists, burglars, drug offenders, and numerous other felons over a three-year period following prison release. Of course, all these crimes are likely to have relatively low, although varying, rates of detection, so rearrest and reconviction rates will only reflect so much in terms of actual criminal activity among the sample.

[Most people] are surprised when they learn that child pornography is the tool of choice used by child molesters and pedophiles to entice young children into sexual activities. . . . Bottom line, let us remember that child pornography is used in every community in America to lure children into this child abuse. (Bachus, Cong. Rec. 1998, H4497)

And although the 1998 bill is relatively broad in targeting offenders, the legislators did not distinguish qualitatively between someone who might sell adult-oriented pornography to 17 year olds for the financial profit, and someone who ultimately assaults a younger child, after disinhibiting her with child pornography. The threat of contamination appeared to be equally regarded if a youth was exposed to any form of sexual content on the Internet. Indeed, when the speakers specifically articulated an image of the perpetrator behind the pornographic material that exists on the World Wide Web, they described the most offensive and dangerous prototype of all—the child sexual predator—as the generic threat who must be controlled by the proposed bill. Those who would expose minors to pornography are “cyber-predators” who “stalk children on the Internet” (McCollum, Cong. Rec. 1998, H4491), and they were presented as highly likely to kidnap, rape, and photograph, even murder, those children at the other end of the Internet connection. So while the bill itself casts an extremely wide net by criminalizing the transfer of ANY “obscene material” (which is not necessarily child pornography) to persons believed by the sender to be under the age of 18 through any means,<sup>17</sup> the speakers constructed the targeted offender as a pedophile who uses child pornography to lure on-line children into sexual acts, and worse.

And while this wide-reaching bill was sold in the debates through the specific imagery of pornography peddler/pedophile/murderer as the targeted offender,<sup>18</sup> paradoxically, all things sexual on the net were explicitly constructed by several speakers as contaminating forces. Because many Internet users search for erotic materials on the World Wide Web, the Internet as a whole was treated as tainted by this amorphous, contaminating threat. For instance, Congresswoman Dunn, in her comments in support of the 1998 legislation, cited poll data of psychologists:

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17. H.R. 3494, § 102 amends chap. 71 of title 18, U.S. Code, as follows: “§1470. Transfer of obscene material to minors. Whoever, using the mail or any facility or means of interstate or foreign commerce—(1) knowingly transfers obscene matter to an individual who has not attained the age of 18 years, or attempts to do so; or (2) knowingly transfers obscene matter to an individual who has been represented to the transferor as not having attained the age of 18 years; shall be fined under this title or imprisoned not more than 5 years, or both” (Cong. Rec. 1998, H4500).

18. For instance, in this debate, of the seven specifically named child victims of some kind of sex-related abuse that were offered up as emblems for which this bill should be passed, five were cases where the child was sexually assaulted and murdered, one involved a child rape, and one was a case of “cyber-stalking.”

"Erotic pursuits are among the most frequent uses of the internet" and . . . sex is the most searched word on-line. So while our children may experience all the wonders of the world with one click of the button, the sad truth is that they may also eventually fall victim to the most horrifying of sex crimes. (Dunn, Cong. Rec. 1998, H4492)

Congresswoman Jackson-Lee related a personal experience to her colleagues in support of the 1998 provision expanding criminal liability and sanctions for Internet pornography activities directed at minors. She described receiving a waiver form from her 12-year-old child's school:

One of the items I would be signing is that the school would not be responsible for any obscenity or pornographic images that this 12 year old might access in the course of using the Internet for school. How many of us can counter and fathom any kind of horrible situation where our children, in a learning environment, are subject to these heinous and ugly type episodes? (Jackson-Lee, Cong. Rec. 1998, H4493)

She concluded her personal anecdote by imploring her colleagues to increase penalties for those enticing children with pornography over the Internet, through the passage of the proposed bill. She also proposed an amendment to the bill that would have restricted or blocked certain kinds of "obscene matter" from being available to minors on-line in a further blurring of the actual threat posed by sex offenders with all things sexual on the internet. She justified this amendment, which raised a number of censorship issues because of its potentially expansive reach, again by equating the existence of generic, albeit frequently raunchy, sexual material on the Internet with a pervasive threat of lurking, sexually exploitive predators:

I believe our children are our future and must be nurtured, protected, and guided. How can we protect them? By making sure those people who are out to harm them and exploit them are restricted from their access to our children. . . . I introduced an additional amendment to this legislation that would further protect our children from the types of predator who may be currently lurking behind our family computer screens. (Jackson-Lee, Cong. Rec. 1998, H-4493)

### C. The Sphere of Purity That Must Be Protected from Contamination

While these ill-defined, yet ubiquitous sex offenders appeared to represent the source of contamination in these narratives, the realm of purity

and innocence that must be protected by the passage of the proposed legislation was made up of "the children," who are "the most innocent victims of all" (Jackson-Lee, Cong. Rec. 1996a, H4455), sometimes joined by women, families, and even the elderly (Cunningham, Cong. Rec. 1998, H4494). The debates conveyed a sense that the very fiber of traditional family units is under siege by sex offenders, and that the only way to save the sanctity of the traditional family is through passage of these bills:

[This bill] is for families throughout the country who are doing everything they can to keep their children safe and innocent, but may not be aware of the pedophiles who are cruising the internet. (Dunn, Cong. Rec. 1998, H4492)

We hear much today about family values, but I ask do we really value families? The bill I am proud to support today is one which values our families by protecting our children. . . . Let us help create the world our children deserve, our future demands, and our values dictate. Let us pass the Child Protection Sexual Predator Punishment Act for our children, for our families, and for our future. (Granger, Cong. Rec. 1998, H4497)

I applaud this legislation. I celebrate it for what it does for the children of America, for it protects our children . . . from these malicious, inherently vicious child predators. (Jackson-Lee, Cong. Rec. 1997, H7629)

That "our children" are in need of protection from contamination is also evident in the naming of sex offender bills: Often, a dead or missing child's name is attached to the containment measures, as a memorial to their shattered innocence and subsequent victimhood, as in Megan's Law, named after Megan Kanka, who was the victim of convicted sex offender Jesse Timmequedas's sexual assault and homicide in New Jersey; the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, in honor of 11-year-old Jacob Wetterling from Minnesota, who disappeared on his way home from a video store and has never been found; Joan's Law, a provision of the 1998 act, named after a 7-year-old New Jersey girl who was molested and murdered while selling Girl Scout cookies; and the Amber Hagerman Protection Act. Amber was a 9-year-old Texas girl kidnapped, apparently sexually assaulted, and murdered while riding her bike, and the killer has yet to be found.<sup>19</sup>

The space where the innocents dwell—a sphere of purity that deserves protection from intrusion—was also defined in these debates. It includes the

19. At the state level, the same kind of memorial to innocent children is found: the "Jimmy Ryce Involuntary Commitment and Care Act" in Florida; Ashley's Laws in Texas, the title of that state's registration and notification laws; and the Jennifer Act in Florida severely penalizing "child stalking," which serves as the model for the "child stalking" provision in the Jacob Wetterling Crimes against Children and Sexually Violent Offenders Registration Improvements Act of 1997.

traditional, idealized havens of family homes, schools, communities, and neighborhoods:

So many of us can recount the tragedies of children in our community being dragged away from the safety and sanctity of their home and school and as a vicious sexual attack is perpetrated upon them, We certainly stand in support of moving forward to assist in creating an atmosphere where not one tree leaf or not one cover can keep us away from spotting a malicious child molester or sexual predator. . . . Sexual predators must be targeted and must be eliminated from our communities and made never to perpetrate their violent act upon innocent children and citizens in this country. (Jackson-Lee, Cong. Rec. 1997, H7631)

We are going to now say to the children of our country that they will no longer have to be fearful in their neighborhoods or in their shopping centers . . . the bill's purpose is to strongly punish the obscene behavior of sexual predators who prey upon children. (Roukema, Cong. Rec. 1998, H4496)

And it should include, according to some who spoke, the new terrain of "cyberspace." With the expanding world of the "information superhighway," the range of domains to be kept safe and pure now extends beyond home, school, and neighborhood. Both Congresswoman Bono and Congressman Poshard specifically articulated this concern about the need to make safe the new and contested territory through the enactment of law, thus claiming it on the pure side:

We must make sure cyberspace is a safe place . . . this bill will help make the internet a safer environment for family and legitimate users. (Bono, Cong. Rec. 1998, H4496).

This measure provides the tools we need to keep our children safe while allowing them to take advantage of all the benefits of the information highway. (Poshard, Cong. Rec. 1998, H4498)

#### **D. The Importance of Strengthening Vulnerable Boundaries**

Indeed, while each of these pieces of legislation can be viewed as efforts toward fortifying the boundaries between the pure and the contaminated through added law enforcement, prosecutorial, and punishment powers, this purpose was most explicit in the debate over the Child Protection and Sexual Predator Punishment Act of 1998. It is here that the contested terrain—so-called cyberspace—was identified and the goal of claiming it for the "good" side was made clear. The Internet, for many who

spoke in the 1998 debate, is at once a technological marvel and a danger zone:

For our children [the Internet] represents a wonderful opportunity to gain knowledge and enhance their educational experiences. Unfortunately, it also represents a terrifying new way for some in our society to prey on innocent children. Increasingly, pedophiles and sexual predators are using the anonymity of the Internet to lure children into dangerous situations. (Poshard, Cong. Rec. 1998, H4498)

Computer technologies and Internet innovations have unveiled a world of information that is just a mouse click away. Unfortunately, individuals who seek children to sexually exploit and victimize them also use the mouse click. (McCollum, Cong. Rec. 1998, H4491)

Although the internet is by and large used for well-intentioned purposes, we have to be mindful of those twisted individuals who want to use it as a vehicle to threaten our children and their families. (Hastert, Cong. Rec. 1998, H4499)

Especially in this most recent legislation, the boundaries are threatened by technological advances with which the law has not kept pace; thus, new law must be enacted and enforced to fortify those boundaries. As Congresswoman Dunn pointed out to her colleagues, "Congress must continue to enact laws that are one step ahead of the criminals in a changing, constantly changing environment" (Cong. Rec. 1998, H4492).

And cyberspace not only represents contested terrain; it also has created new breaches in the traditionally solid boundaries, such as between the family home and the larger world. Congressman McCollum warned his audience that with the Internet innovations, "perfect strangers can reach into the home and befriend a child" (Cong. Rec. 1998, H4491). In Congresswoman Jackson-Lee's imagery, this stranger is a "predator who may currently be lurking behind our family computer screens" (Cong. Rec. 1998, H4493), thus presenting an all-too-nearby threat to the sanctity of the family home. They and others elaborated on this threat of boundary violation and penetration into the spheres of purity in their narratives of support for the 1998 bill:

"Cyber-predators" often "cruise" the internet in search of lonely, curious or trusting young people. Sex offenders who prey on children no longer need to hang in the parks or malls or school yards. Instead they can roam from Web site to chat room seeking victims with no risk of detection. (McCollum, Cong. Rec. 1998, H4491)

The internet is quickly causing community boundaries to disappear, and we have learned that it is no longer enough to focus our efforts on the local level. We must ensure that children are safe not only at home and at school, but also as they continue to explore the exciting new world of cyber-space. (Poshard, Cong. Rec. 1998, H4499)

The information superhighway . . . is a two-way street. Children can explore the world, and criminals unfortunately can get right inside your house. (Dunn, Cong. Rec. 1998, H4492)

Crime on the internet is an especially invasive and terrifying crime. Our children can be terrorized while they are seemingly safe inside our homes and in our living rooms, in our schools and in front of our family computer. (Jackson-Lee, Cong. Rec. 1998, H4493)

This information superhighway must not be allowed to be used by sexual predators as a gateway to their prey. . . . Why is this strong legislation needed? Because cyberpedophiles have discovered that the information superhighway can be a path to a new victim. . . . Even scarier still, many of these predators use cyberspace to meet children and ask them out. (Granger, Cong. Rec. 1998, H4497)

We are sensitive to the new perils of the internet and the phone lines. Modern technology is now making this a place for predators to try to get young children involved in conduct that we consider reprehensible. (Conyers, Cong. Rec. 1998, H4492)

And the measures required to protect and fortify the boundaries between the contaminator and the pure may well be extreme, but they are called for due to the gravity of the threat. In Senator Gramm's words, "if you do commit this kind of terrible crime, part of our response will be to take extraordinary procedures to protect society" (Cong. Rec. 1996c, S3423). Gramm did not specify the particular "terrible crime"; but left it to the imagination of his audience. Similarly, in Congressman Bachus's plea for more extreme (and potentially unconstitutional, overreaching, and intrusive) measures aimed at sex offenders, he expressed his willingness to forgo the requirements of law in the name of protection of the innocent and pure:

Present federal law . . . was said to be the result of a compromise with civil libertarians, but I would say that it was an insane compromise with the devil, a compromise which exposes every American child to pedophiles and child predators who lurk in every American community, armed with items of child pornography. Let us also say that any item of child pornography, one item, is the ultimate example and evidence of the ultimate child abuse. (Bachus, Cong. Rec. 1998, H4504)

And Congressman Cunningham, in reference to Megan's Law, dared his peers to even raise the constitutional issues that might be voiced about the act:

Would my colleagues want that individual [convicted sex offender Larry Quay] to move in next door to their family without knowing about it, that perhaps a sexual predator's life should be just a little more



toxic than someone else in the American citizenry, that an individual that preys upon children, that maybe their rights should be secondary to children's and families? (Cunningham, Cong. Rec. 1996a, H4454)<sup>20</sup>

Thus, the creation of new law and the expansion of existing law was sold as the major weapon in the effort to win the battle against the contaminating forces of the sex offender in neighborhoods, communities, and especially, cyberspace. The law was viewed as a potential tool to fortify boundaries in this new terrain, where moral, social, and legal rules have yet to be clearly set. And, as is clear in the debate over the Child Protection and Sexual Predator Punishment Act of 1998 in Congress, new crime legislation is necessary if there is any hope in this frontier land:

The McCollum-Dunn bill tells cyber-predators that the information super-highway is not a detour for deviant behavior, but, rather, a dead end. Our message is clear. We will not stop until every mother and father has the peace of mind that their children are safe from sexual predators. (Dunn, Cong. Rec. 1998, H4493)

The Child Protection Sexual Predator Punishment Act does two important things. It protects our children, and it punishes their predators. The goal of the bill is simple, to keep pornography out of sight of children, and to keep children out of the reach of sexual predators. (Granger, Cong. Rec. 1998, H4497)

[This legislation is] designed to protect children from the weirdoes, the wackos, and the slimeballs who use the latest technology to prey on children and their families. (Weller, Cong. Rec. 1998, H4494)

The notion that the law is a crucial component in the artillery to combat the threat of sex offenders was not limited to the 1998 legislation, either. As Senator Gramm, who introduced the Sexual Offender Tracking and Identification Act of 1996 in the Senate, and Senator Biden argued, the law, combined with a marshaling of the very technological advances that have raised the risks, can be part of the solution to the boundary and containment problem:

If any states fail to act [to establish registration systems], we cannot allow there to be a black hole where sexual predators can hide—and are lost to all states. . . . We now seek to build a system where all movements of sexually violent and child offenders can be tracked and we will go a long way toward the day when none of these predators will fall between the cracks. (Biden, Cong. Rec. 1996c, S3423)

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20. Two years later, Cunningham added that, "life imprisonment is not enough for these sexual predators" (Cong. Rec. 1998, H4494), which seemed to imply his support for the ultimate incapacitation strategy—the death penalty for sex offenders.

We are in the process of building a massive criminal data base which is expected to be on line by the year 2000. This system will be the most comprehensive data base on criminals in the history of mankind . . . [A]lthough we do not have enough data yet to show this conclusively, I think it is increasingly clear that the interstate migration of convicted sexual predators has exploded as these convicts try to exploit the weakness of the current system. . . . I see this bill as being the first step toward using the power of the information age to deny criminals the one thing they need, and that is a dark corner to hide in. . . . I think [this has] the power . . . to give us the safest society we have had in over half a century. (Gramm, Cong. Rec. 1996c, S3422)

### E. Magical Law of Contagion

It is also clear from these debates that, in conformity with the laws of contagion, the legislative efforts must focus on maintaining boundaries. As is implied in the following excerpts, once touched by the pollutant, the victim is lost to the contaminating forces, and there is no going back:

The skyrocketing on-line presence of children, the proliferation of child pornography on the internet, and the presence of sexual predators trolling for unsupervised contact with children, has resulted in a chilling mix which has resulted in far too many tragedies that steal the innocence from our children and create scars for life. (McCollum, Cong. Rec. 1998, H4491)

[Child pornography] is a horrible crime and an irreparable crime against children. It robs them of their innocence and shatters their trust. (Rivers, Cong. Rec. 1998, H4503)

Both Ms. Jackson-Lee and Mr. Schumer, in two different settings, also articulated the perceived strength of the contamination's grip on the offenders. The image that they both conjure in these passages speaks to the insistent and indelible nature of the sex offender's polluted state:

This bill is part of a continuing fight against the relentless predators who target our children, the most vulnerable members of our society. I think that what people have to understand is . . . that sexual offenders are different. . . . Long prison terms do not deter them. All too often, special rehabilitation programs do not cure them. No matter what we do, the minute they get back on the street, many of them resume their hunt for victims, beginning a restless and unrelenting prowl for children, innocent children to molest, abuse, and in the worst cases, to kill. So we need to do all we can to stop these predators. (Schumer, Cong. Rec. 1996a, H4453)

It is a known fact that the scientific community has concluded that most pedophiles cannot control themselves. . . . It is more tragic for an innocent community to be preyed upon by this individual who cannot control their vicious desires [than the privacy violation of registration]. . . . If this individual is in fact someone who has made amends, someone who has sought forgiveness and repentance, someone who is born again, then that person will live in peace in this community. But if they are not, if this sickness still preys upon their mind and they pose a threat, with this legislation I would simply say thank God that the local law enforcement is not left hapless and helpless, without any way to find this predator that now is in the community. (Jackson-Lee, Cong. Rec. 1996b, H11134)

Because it is too late to save those who have fallen to the side of contamination, the bulk of the solutions provided by these measures aims to ensure that sex offenders are contained and regulated. Indeed, despite the historical failure of aggressive law enforcement and incapacitative strategies directed at offenders to reduce the harms of their acts, all the provisions in these various bills called for more of the same, and none provided for restorative or therapeutic interventions for the very victims who so deserve protection in the legislators' own rhetoric. Nor are any of the provisions directed toward rehabilitation or therapeutic intervention for the perpetrators, since the accepted wisdom among the speaking lawmakers was that they are indelibly contaminated and beyond redemption.<sup>21</sup>

## F. Dangers of Emotional Lawmaking

While the overwhelming majority of speakers expressed unadulterated support for all of these proposed measures,<sup>22</sup> two voices of complete opposition appeared to remind the legislative body of the dangers of such emotional lawmaking. Although each of these legislators articulated his personal abhorrence toward sex crime, each also sought to raise the issue that the law's scope must always be circumscribed by the Constitution and other important considerations. For instance, Congressman Watt brought up the "troubling aspects" of Megan's Law, which for him included the trampling of individual constitutional rights and the infringement upon states' rights to decide on their own criminal laws. While he admitted that he had considered not speaking up due to "the difficulty of the issue," he

21. As has been the trend throughout this latest phase of anxiety over sex offenders: As the measures to deal with sex offenders have become more punitive, comprehensive sex offender treatment/therapy programs within the criminal justice system have been dismantled, and little to no resources are allocated for the true protection and remediation of the child victims (Levesque 1995).

22. Indeed, the transcripts read less like contested debates than like pep rallies, with each speaker trying to top the last with enthusiastic support for the bill at issue.

decided to publicly encourage his colleagues to "stand up for the Constitution and stand up for States rights and oppose this bill" (Cong. Rec. 1996a, H4456). Despite this singular and uncharacteristic dissent on the bill, not a single one of his colleagues even acknowledged his argument.

The strongest statement of opposition, though, came from Senator Paul in reference to the 1998 Child Protection and Sexual Predator Punishment Act, where he set out to remind his peers of the values inherent in the Constitution, which ultimately serve to protect us all from tyranny:

[T]oday the Congress will collectively move our nation yet another step closer to a national police state by further expanding the notion of federal crimes and paving the way for a deluge of federal criminal justice activity. Of course, it is much easier to ride the current wave of federally "criminalizing" all human malfeasance in the name of saving the world from some evil than to uphold a Constitutional oath which prescribes a process by which the nation is protected from what is perhaps the worst evil, totalitarianism. (Paul, Cong. Rec. 1998, H4499)

He acknowledged the danger for each of them to be "portrayed as soft on child-related sexual crime" (Cong. Rec. 1998, H4499), especially in an election year, if they did not support the bill, then chided them for their hypocrisy on their stances on federalism when the issue was not so politically explosive. He also raised the issue of goals and consequences of the legislation, pointing out his peers' willingness to support drastic measures even though they have no realistic hope of solving the serious problem of child sexual violence: "It seems to no longer even matter whether governmental programs actually accomplish their intended goals. . . . Should we cease to concern ourselves about the Constitution in all that we do and moved by emotion speak only of vague theoretical outcomes?" (Cong. Rec. 1998, H4499). As in the case of Watt's opposition to Megan's Law, not a single subsequent speaker even responded to Congressman Paul's concerns.

In the 1997 debate that sought to strengthen the registration laws, even Congresswoman Jackson-Lee, who was generally a strong supporter of all the legislation including the proposed one at issue here, raised concerns about states that used their new registration laws to monitor and control consensual, yet statutorily criminal sex acts between same-sex adults:

In at least four states, Kansas, Louisiana, Mississippi, and South Carolina, people with convictions for consensual adult sex which form thereof violates state laws, are being forced to register with the police as sex offenders. . . . States that require this are lumping homosexuals together with rapists and child molesters. That is offensive . . . and certainly not what this Congress intended to do with the Wetterling program. (Jackson-Lee, Cong. Rec. 1997, H7629)

She pointed out that some members of the Committee on the Judiciary had opposed a bill provision to prohibit states from having registration requirements for consensual adult "offenses" on the grounds that the federal government would be injecting itself into state business, and argued that "that is a ludicrous argument, primarily because we are injecting ourselves already, and I am happy to inject us when it comes to protecting children, women and others" (Jackson-Lee, Cong. Rec. 1997, H7629). Nonetheless, Jackson-Lee's colleagues did not address her concerns in the remainder of the debate about whether they should mandate any restrictions on the scope of registerable crimes, even though they had been willing to set *minimum* requirements for states as to which crimes must be deemed registerable offenses at the time of the original Wetterling Act.<sup>23</sup>

So while these few voices attempted to reframe the task—from the prevailing frame that there was an urgent imperative to stop insidious predators at all costs, to one that balanced the need for control and containment with the requirements of existing law—they had no impact on the subsequent discourse, nor on the outcome of the legislation.

## V. THEORETICAL AND PRACTICAL IMPLICATIONS OF DISGUST'S INFLUENCE ON LAW

The overriding goals of all the measures addressed in these debates do indeed fit with the kind of actuarial justice that is said to predominate today (Feeley and Simon 1992, 1994). First, the measures in no way aim to rehabilitate or transform the criminal subject of interest—the "sex offender"—and, second, the lawmakers are explicit about their desire to confine, manage, and monitor the risk posed by this dangerous population through the enactment of the various proposed laws. Still, the language and tone of these debates also powerfully convey the presence of an emotional drive behind the lawmaking. The legislators' discourse in large part reveals an almost visceral repulsion and disgust reaction to an imagined toxic threat, rather than an articulated concern based on rational, dispassionate assessment of a known social risk.

Specifically, an underlying theme to the narratives offered by the bulk of the federal legislators in all these debates seems to be that the sex offender is essentially supernaturally dangerous and contaminating to the idealized social body. The prototypical sex offender constructed by the speakers

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23. The law requires that the states register those convicted of the following offenses to be eligible for the full crime-fighting funding: kidnapping of a minor, except by a parent; false imprisonment of a minor, except by a parent; criminal sexual conduct toward a minor; solicitation of a minor to engage in sexual conduct; use of a minor in a sexual performance; solicitation of a minor to practice prostitution; any conduct that by its nature is a sexual offense against a minor. But it does not limit registration to these offenses, so states are free to add whatever other offenses they want (Jacobson 1999).

was consistently the most despicable of the lot—an outsider predator who relentlessly lusts after the innocent and pure, and who will both psychically and physically destroy his victim if left to his own devices. And while this kind of offender, though quite horrible, is statistically anomalous, therefore not the kind of pervasive threat to the well-being of the nation's children that is imagined here, the speakers held him up as the prime, if not sole, target of the new laws.

Thus, the lawmakers, in voting for these four bills, committed considerable resources and massively expanded the reach of federal criminal law in response to an unrealistic, emotionally drawn monstrous figure. In the articulated view of almost all the speakers, the pernicious nature of the sex offender's contaminating powers demanded that as a legislative body, they enact whatever "extraordinary measures" are necessary to monitor and contain him, even if it means sacrificing the very foundational rules of federal lawmaking. Nonetheless, the pieces of legislation generally created a pool of targeted offenders that extends well beyond this relentless predator/psychopath prototype. Perhaps because of the shapelessness of disgust—just as disgust elicitors seem to seep and ooze across boundaries—the disgust reaction here appears indiscriminant rather than distinguishing between subtypes of sex offenders by true level of threat. Thus, these lawmakers (at least verbally) imagined the most vile example and generalized from that by legislating punitive responses that affect huge classes of criminal actors.<sup>24</sup>

These findings suggest that the "new penological," risk-based set of theories may have only little explanatory power for the contemporary policymaking stage of the penal process at least at the federal level. As Scheingold (1991) has demonstrated, state- and especially federal-level crime control policies tend to be considerably more punitive than local-level ones, which tend to be more instrumental in orientation; therefore, the policy outcomes at this level of lawmaking are less concerned with efficiency than with making emotion-filled statements. More fundamentally, the findings suggest that the dichotomy which is sometimes drawn between the "old" and "new" modes of criminal regulation is too simple to capture our contemporary practices, at least in regard to sex offenders.

Sparks's (2001) admonition about the nature of risk-based penal discourse in particular seems to ring true here. The language of risk, and the articulated goals of risk management in these sex offender legislative efforts are both driven by and mediated by strong culturally shaped emotional forces rather than purely "rational" and calculative ones. Indeed, it would be

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24. For instance, the registration requirements authorized under Megan's Law allowed for acts between consenting adults to be subject to the requirements, among other relatively innocuous sex-related offenses, should jurisdictions choose to do so, and the 1998 Child Protection and Sexual Predator Punishment Act encompasses an incredibly wide range of possible scenarios under its "transfer of obscene material to minors" provision, most of which do not entail a pedophile enticing children into sex acts with lewd material.

hard to argue that these legislative efforts are simply an appropriate response to a well-documented threat. The policies developed here are clearly *not* based on a careful assessment of the most effective interventions to enhance children's safety and well-being. Further, while it could be argued that the legislators' general response may be purely cynical—that political expediency demands this kind of tough lawmaking to satisfy public demand in the view of the proponents—the level of emotional response, coupled with the breadth and associated costs of the enacted laws, suggest that the lawmakers are not only looking for the easy vote, but also expressing a more deeply felt discomfort about the pervasive threat of “sex offenders.”

There is also the theoretically interesting question of timing: Why this level of social and legal concern over sex offenders at this point in time? Emotional reactions to sex offenders, like the ones expressed here, tend to reflect deeper sociocultural anxieties and discomforts surrounding sexuality, family, gender roles. That it is the “sex offender,” rather than some other dangerous force, who has taken on such a powerfully threatening place at this point is significant. Jenkins (1998) makes a strong case for the role of underlying social anxieties over gender roles and norms of sexuality in the ascension of periodic sex offender social panics over the past 100 years. For instance, he convincingly linked the panic of the post–World War II era to explicit social efforts aimed at getting American women back into the home to restore the balance of the nuclear family. He further argues that the more recent panic of the 1980s, particularly the rise of accusations of systemic ritual abuse in child care centers, was a form of backlash to the 1970s feminist movement and its attendant impact on the “traditional” family structure.

These themes appear to play a role in the debates of the 1990s as well. The debates consistently raise the theme that the measures are necessary to protect an idealized version of the family from harm. Sex offenders armed with child pornography are the external contaminating threat that jeopardizes the innocence of our children and the sanctity of families by working to invade the boundaries of their uncorrupted homes, neighborhoods, communities, and shopping centers. Further, by rhetorically linking “sex offenders” as a generic category to the components of disgust, these lawmakers help shape political discourse about a number of related social realms—gender roles, family, sexuality and sexual morality, purity, and decadence. Thus, it is not surprising that these efforts also coincide with national political, social, and legislative activity aimed at prohibiting gay marriage and restricting rights and protections for gays and lesbians generally; the rise in antiabortion social action (including violence) and state-level restrictions on abortion;<sup>25</sup> and widespread social and political backlash to feminism,

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25. Indeed, one of the best-known and extreme antiabortion activists in the United States, Randall Terry, is also an activist against child pornography, and has been involved in

among other trends (see, e.g., Goldberg-Hiller 1998; Gould 1990; Patton 1996/97). In all these arenas, the underlying goal appears to be the reassertion of a traditional patriarchal model of society, and these debates in particular reveal a gendered rhetoric about protecting women and children through these legislative efforts.

It is men lurking outside the home who are the danger, who will harm these innocents if the legislators don't diligently reassert the protective strong arm of the law *and* if women and children move beyond the traditional boundaries that mark zones of safety and purity. Conversely, in these debates, women, "the children," and even the elderly are not at all conceived of as being capable of such contaminating power, nor of the power to protect themselves from contagious and corrupting forces in the larger world. This may explain why the threat was uniformly portrayed as coming from somewhere beyond the boundaries. Disregarding statistics indicating that children face much greater risks and dangers within their homes at the hands of family and friends (Gomes-Schwartz, Horowitz, and Cardarelli 1990; Jenkins 1998), the prototypical offender/perpetrator in these debates lives outside the homes and neighborhoods of innocent children.

Finally, in the particular instances I have examined, the lawmakers appear to be overwhelmed by a drive to eradicate the contaminating force of sex offenders without evaluating exactly who needs to be targeted for further restriction, with what specific measures to achieve the desired goals, and at what legal, fiscal, and social costs. As a result, those who are identified as needing protection from social harm are left behind, since the resources and efforts are singularly aimed at eradication rather than remediation, and constitutional rights are chipped away in the process. Of course, once constitutional protections are eroded for this extreme threat, they will likely not be resurrected. Rather, we should expect the new principles to be applied more broadly to other crimes du jour. As Simon notes in his analysis of various courts' acceptance of post-sentence detention and Megan's laws for sex offenders, "Recent cases upholding these laws against a variety of constitutional challenges provide little real scrutiny of this transformation. Instead, the U.S. Supreme Court has begun to redefine downward constitutional expectations of state penal strategies" (1998, 467). While I recognize that fundamental legal principles and rights can and have been eroded under more purely risk-based (Feeley and Simon 1994) and even disciplinary-based (Pisciotta 1994; Simon 1993) approaches, disgust is particularly likely to inspire extreme and far-reaching policies.

First, as Nussbaum (1999) very effectively argues, this particular emotion is problematic in the context of the law in ways that other emotions are not. Because of the power of disgust as an emotion—its highly economi-

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demonstrations where activists enter mainstream bookstores and destroy art books that feature images of nude children (Jenkins 2001).



cal nature in marshaling a strong aversive reaction, the amorphous and imprecise interpretation of disgust elicitors, and its ability to demand "disproportionate responses" (Miller 1997, 251)—it has the strong potential for purely irrational and cruel actions and reactions (see also Massaro 1999 on this issue). At its worst, in Nussbaum's words, disgust, "collaborates with evil [and] offers nothing to keep our political hearts warm" (1999, 55). Further, Nussbaum argues, disgust has "been used as a powerful weapon in social efforts to exclude certain groups and persons" including Jews, women, the poor, and homosexuals, so it cannot be analyzed outside the context of group dominance/subordination within social-structural relations (1999, 29). This point is echoed by Sutherland, who critiques the role of disgust in criminalizing consensual sexual behavior: Disgust is "deployed to fortify boundaries that oppress marginalized actors and communities. In this context, we cannot allow expressions of disgust to prematurely shut down analyses. . . . If disgust is operating through law as a mechanism to abject oppressed communities, we have to make that link and attempt its transformation" (2000, 144). So in practice, as in nearly all criminal law, these laws will be applied in such a manner that the powerless will disproportionately feel the brunt of them.

It is this point in particular that makes the position taken by Kahan (1998, 1653), that disgust can have an appropriate, even functionally positive, place in law if used to condemn and punish "what is genuinely low" very problematic. There is no such thing as an objectively *genuine* disgust elicitor when it comes to the linkages between disgust and human behavior at this elaborated stage. Rather the process will always be imbued with hegemonic cultural norms in such a way that the condemnation will hardest hit those with the least social standing in any given setting, including in the prosecution of hate crimes—one of his examples for the "proper" use of disgust. Therefore, while the Durkheimian notion that affective condemnation rituals imbued with expressions of disgust (among other emotions) may well "work" to further social and moral solidarity among a majority group in society, the object of disgust will invariably be culturally defined in a manner that correlates with general social and political disenfranchisement.

And ultimately, disgust elicitors do change over time, but we will be left with the artifacts of the initial disgust reaction in the form of far-reaching laws and accepted penal practices that are both extreme and constitutionally suspect. As we have seen with the federal mandatory minimum sentencing legislation that stemmed from the 1980s drug panic (arguably a racialized disgust reaction in itself) a decade earlier, the outrageous becomes the norm in the wake of the emotional wave, and criminal law is fundamentally changed as a result. Indeed, rather than ceasing these practices after the current sex offender hysteria runs its course, it is more conceivable that preventive post-sentence detention, registration, and notification will be

applied to the next dangerous and/or disgusting class of offender to emerge in the national consciousness.

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