

Let me give an example. There is reason to believe that gay-bashing is the most common and most rapidly increasing among what are becoming legally known as bias-related or hate-related crimes in the United States. There is no question that the threat of this violent, degrading, and often fatal extrajudicial sanction works even more powerfully than, and in intimately enforcing concert with, more respectably institutionalized sanctions against gay choice, expression, and being. The endemic intimacy of the link between extrajudicial and judicial punishment of homosexuality is clear, for instance, from the argument of legislators who, in state after state, have fought to exclude antigay violence from coverage under bills that would specifically criminalize bias-related crime—on the grounds that to specify a condemnation of *individual* violence against persons perceived as gay would vitiate the *state's* condemnation of homosexuality. These arguments have so far been successful in most of the states where the question has arisen; in fact, in some states (such as New York) where coverage of antigay violence was not dropped from hate-crimes bills, apparently solid racial/ethnic coalitions have fractured so badly over the issue that otherwise overwhelmingly popular bills have been repeatedly defeated. The state's treatment of nonstate antigay violence,

then, is an increasingly contested definitional interface of terms that impact critically but nonexclusively on gay people.

In this highly charged context, the treatment of gay-bashers who do wind up in court is also very likely to involve a plunge into a thicket of difficult and contested definitions. One of the thorniest of these has to do with "homosexual panic," a defense strategy that is commonly used to prevent conviction or to lighten sentencing of gay-bashers—a term, as well, that names a key analytic tool in the present study. Judicially, a "homosexual panic" defense for a person (typically a man) accused of antigay violence implies that his responsibility for the crime was diminished by a pathological psychological condition, perhaps brought on by an unwanted sexual advance from the man whom he then attacked. In addition to the unwarranted assumptions that all gay men may plausibly be accused of making sexual advances to strangers and, worse, that violence, often to the point of homicide, is a legitimate response to any sexual advance whether welcome or not, the "homosexual panic" defense rests on the falsely individualizing and pathologizing assumption that hatred of homosexuals is so private and so atypical a phenomenon in this culture as to be classifiable as an accountability-reducing illness. The

widespread acceptance of this defense really seems to show, to the contrary, that hatred of homosexuals is even more public, more typical, hence harder to find any leverage against than hatred of other disadvantaged groups. "Race panic" or "gender panic," for instance, is not accepted as a defense for violence against people of color or against women; as for "heterosexual panic," David Wertheimer, executive director of the New York City Gay and Lesbian Anti-Violence Project, remarks, "If every heterosexual woman who had a sexual advance made to her by a male had the right to murder the man, the streets of this city would be littered with the bodies of heterosexual men."²¹ A lawyer for the National Gay Rights Advocates makes explicit the contrast with legal treatment of other bias-related crimes: "There is no factual or legal justification for the use of this [homosexual panic] defense. Just as our society will not allow a defendant to use racial or gender-based prejudices as an excuse for his violent acts, a defendant's homophobia is no defense to a violent crime."²²

21. Peter Freiberg, "Blaming the Victim: New Life for the 'Gay Panic' Defense," *The Advocate*, May 24, 1988, p. 12. For a more thorough discussion of the homosexual panic defense, see "Burdens on Gay Litigants and Bias in the Court System: Homosexual Panic, Child Custody, and Anonymous Parties," *Harvard Civil Rights-Civil Liberties Law Review* 19 (1984): 498-515.

22. Quoted from Joyce Norcini, in "NGRA Discredits 'Homosexual Panic' Defense," *New York Native*, no. 322 (June 19, 1989): 12.

Thus, a lot of the popularity of the "homosexual panic" defense seems to come simply from its ability to permit and "place," by pathologizing, the enactment of a socially sanctioned prejudice against one stigmatized minority, a particularly demeaned one among many. Its special plausibility, however, seems also to depend on a difference between antigay crime and other bias-related antiminority crime: the difference of how much less clear, perhaps finally how impossible, is the boundary circum-

scription of a minoritizing gay identity. After all, the reason why this defense borrows the name of the (formerly rather obscure and little-diagnosed) psychiatric classification “*homosexual panic*” is that it refers to the supposed uncertainty about his own sexual identity of the perpetrator of the antigay violence. That this should be the typifying scenario of defenses of gay-bashers (as uncertainty about one’s own race, religion, ethnicity, or gender is not in other cases of bias-related violence) shows once again how the overlapping aegises of minoritizing and universalizing understandings of male homo/heterosexual definition can tend to redouble the victimization of gay people. In effect, the homosexual panic defense performs a double act of minoritizing taxonomy: there is, it asserts, one distinct minority of gay people, and a second minority, equally distinguishable from the population at large, of “latent homosexuals” whose “insecurity about their own masculinity” is so anomalous as to permit a plea based on diminution of normal moral responsibility. At the same time, the efficacy of the plea depends on its universalizing force, on whether, as Wertheimer says, it can “create a climate in which the jurors are able to identify with the perpetrator by saying, ‘My goodness, maybe *I* would have reacted the same way.’”²³ The reliance of the homosexual panic plea on the fact that this male definitional crisis is systemic and endemic is enabled only, and precisely, by its denial of the same fact.

When in my work on *Between Men*, knowing nothing about this judicial use of “homosexual panic” (at that time a less common and publicized defense), I needed a name for “a structural residue of terrorist potential, of *blackmailability*, of Western maleness through the leverage of homophobia,” I found myself attracted to just the same phrase, borrowed from the same relatively rare psychiatric diagnosis. Through a linguistic theft whose violence I trusted would be legible in every usage of the phrase, I tried to turn what had been a taxonomic, minoritizing medical

23. Freiberg, “Blaming the Victim,” p. 11.

category into a structural principle applicable to the definitional work of an entire gender, hence of an entire culture. I used it to denominate “the most private, psychologized form in which many twentieth-century Western men experience their vulnerability to the social pressure of homophobic blackmail”—as, specifically, “only one path of control, complementary to public sanctions through the institutions described by Foucault and others as defining and regulating the amorphous territory of ‘the sexual.’”²⁴

The forensic use of the “homosexual panic” defense for gay-bashers depends on the medically mediated ability of the phrase to obscure an overlap between individual pathology and systemic function. The reason I found the phrase attractive for my purposes was quite the opposite: I thought it could dramatize, render visible, even render scandalous the same space of overlap. The set of perceptions condensed in that usage of “male homosexual panic” proved, I think, a productive feature of *Between Men* for other critics, especially those doing gay theory, and I have continued my explorations of the same phrase, used in the same sense, in *Epistemology of the Closet*. Yet I feel, as well, with increasing dismay, in the increasingly homophobic atmosphere of public discourse since 1985, that work done to accentuate and clarify the explanatory power of this difficult nexus may not be able to be reliably insulated from uses that ought to be diametrically opposed to it. For instance, it would not require a willfully homophobic reader to understand these discussions of the centrality and power of male homosexual panic as actually contributing to the credibility of the pathologizing “homosexual panic” legal defense of gay-bashers. All it would require would be a failure or refusal to understand how necessarily the discussions are embedded within their context—the context, that is, of an analysis based on systemwide skepticism about the positivist taxonomic neutrality of psychiatry, about the classificatory coherence (e.g., concerning “individual responsibility”) of the law. If, foreseeing the possibility of this particular misuse, I have, as I hope, been able to take the explanatory measures necessary to guard against it, still there may be too many others unforeseen.

Of course, silence on these issues performs the enforcing work of the status quo more predictably and inexorably than any attempt at analysis. Yet the tensions and pleasures that, even ideally, make it possible for a

24. Sedgwick, *Between Men*, p. 89.

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writer to invest such a project with her best thought may be so different from those that might enable a given reader to.

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**Eve Kosofsky Sedgwick. *Epistemology of the Closet*.
Berkeley: University of California Press, 1990.**

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