

## INTRODUCTION

## Memory, Law, and Repair

NANCY L. ROSENBLUM

You ask me to renew  
A grief so desperate that the very thought  
Of speaking of it tears my heart in two.

But if my words may be a seed that bears  
The fruit of infamy for him I gnaw,  
I shall weep, but tell my story through my tears.

—COUNT UGOLINO IN DANTE,  
*The Inferno*, Canto XXXIII

Every injustice arouses anger, or should. A capacity to understand and feel injustice is the mark of moral maturity; a taste for oppression is the mark of moral deformation. “To have no idea of what it means to be treated unjustly is to have no moral knowledge, no moral life.”<sup>1</sup> But of the many faces of injustice, violent hatred stands out. These crimes betray exceptional viciousness and inflict exceptional pain. They evoke especially strong feelings because they exhibit none of the randomness or misfortune of many forms of injury. The intent to terrorize, injure, and degrade is intensely personal. The perpetrator believes the individual deserves to suffer, even though the reason for inflicting suffering is not always tied to the victim’s own acts but often to his or her group membership or some ascriptive trait. The deliberate cruelty of the attack is unmistakable. As a result, the injuries suffered on account of one’s color or ethnicity, sex or sexual orientation provoke enduring bitterness. The response of victims of hateful violence is a particularly deep resentment—a moral anger. Victims want more than to hold the perpetrators responsible; they want to cause them and their supporters suffering in turn. An unruly longing for revenge is validated by the vindictiveness of the crime. Certain crimes usher in that destructive dynamic: a cycle of hatred.

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In *Breaking the Cycles of Hatred: Memory, Law, and Repair*, Martha Minow and the other authors of these essays bring within one compass the universe of hatred and violence—from mass atrocities to local hate crimes to domestic violence.

No subject is grimmer or more morally compelling than crimes of hate. They stand out among acts of injustice. Their viciousness instills horror. They are extraordinary, not ordinary crimes. But this does not mean that they are rare. The darkest, most dehumanizing human actions, from genocide to child abuse, are recurrent. Hate crimes and group-based violence and domestic cruelty are elements of everyday life for many people. There are innumerable perpetrators and victims. Their experience is captured best in memoirs and fiction; it takes eloquence and literary imagination to make these crimes vivid. But their experience is also available to us in sketchy form in almost daily news reports, if only we pay attention.

Martha Minow delivered the Gilbane Fund Lectures at Brown University in 1999. I introduced each lecture by reading from a *New York Times* story from that week. There was an unceasing string of stories. I had no difficulty finding awful, timely introductions to the lecture themes.

To introduce “Memory and Hate: Are There Lessons from Around the World?,” this report from Bazarak, Afghanistan:<sup>2</sup>

Those who only had their houses burned or crops destroyed often apologize because their story is not bad enough. They are sheepish about complaining.

And so they lead the way to the worse off, the irretrievably broken or unbearably sorrowful—the children of parents who were killed as they watched or the men whose wives were carried off screaming or the old woman whose story no one is sure of, but she has been sobbing for two months now, fingering a red flower embroidered on a pink cloth.

Afghanistan’s ruling Taliban militia, along with thousands of Pakistanis lit with the fervor of jihad, went on a destructive spree this summer, killing wantonly, emptying entire towns, machine-gunning livestock, sawing down fruit trees, blasting apart irrigation canals. It was a binge of blood lust and mayhem described in consistent detail by witnesses.

To introduce “Regulating Hatred: Whose Speech, Whose Crimes, Whose Power?” I read from a report about empaneling a jury in Wyoming for the trial of Russell Henderson, the young man charged with

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torturing Matthew Shepard, a gay University of Wyoming student, and leaving him to die tied to a fence in a winter field.<sup>3</sup>

And to introduce “Between Nations and Between Intimates: Can Law Stop the Violence?” there was the article on parents whose children had been shot at school by a classmate who went on to kill himself. This is a story of violence by and against children. It is also about the pain of survivors. Without a criminal trial, the families had no official forum in which to tell their story, and there was no one to hold directly accountable. The victims’ parents brought a civil suit against the killer’s parents, their neighbors, thinking that something at home—some family failure, some intimate horror—must have caused the hatred, and looking to hold the parents responsible. “I prayed and prayed and I’ve forgiven them,” one father says. “But I still have medical bills to pay and it was their kids who did this. Forgiveness doesn’t mean there aren’t consequences.”<sup>4</sup>

The wanton Taliban destruction, the torturous murder of Matthew Shepard, and the terrifying school shootings are not isolated events. They are moments in cycles of hatred. Each is part of an identifiable social history or life history of conflict and revenge that does not end with the latest round. We see the cycle of hatred at work at every level of violence. It is a factor in intergroup violence. It stokes bias crimes. Perpetrators of domestic violence and sexual abuse were often victims themselves, who experienced as children the dehumanization they inflict in turn. Crimes of hate have a past; sadly, they have a future, too, as each contributes to the climate of demonization and the desire for revenge. Perpetrators become victims; victims avengers. The cycle extends across generations. It can appear to be almost a force of nature. There is a seemingly implacable logic to anger and vengeance that is barely interrupted by revulsion at violent death, by attempts at forgiveness, or by sheer exhaustion. We can be brought to despair by doomed efforts to find a response adequate to break the cycle; Milton gave voice to this despair in *Paradise Lost* (IV): “Reconciliation is now a fallacious dream.”

This volume is distinguished by our effort, set in motion by Martha Minow’s essays, to consider the universe of hatred and violence—between racial, ethnic, and religious groups and within families, between intimates and strangers. In many respects, “ethnic cleansing,” forced disappearances, hate speech, wife beating, and child abuse are radically dissimilar. Responses to them appear to have little in common. These acts of violence arise in different social and institutional contexts, and the justice sought for mass crimes plainly differs from criminal prosecution

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of domestic abuse. Each type of crime has generated its own exhaustive literature. Interethnic conflict and intrafamily violence are not commonly viewed together.

Here, we bring a wide range of aggression and suffering together within the framework of cycles of hatred. Our essays employ history, psychology, social science, and law to reflect on three themes. One is the double-edged role of memory: memory fuels cycles of hatred but it is also essential to personal integrity and for bearing witness to injustice. The strengths and limitations of formal legal proceedings against perpetrators of violence, including their adequacy in the eyes of victims, is a second theme. We discuss the relationship between law and repair, and we survey the range of actual and proposed alternative responses—truth commissions and reparations, public apologies, memorials and commemorations, educational programs, the collective efforts of private organizations and voluntary associations, and the beneficent acts of individuals. Our third theme is what characteristics are shared by crimes motivated by hate, and whether responses from one sphere can be useful in others.

#### Memory, Law, and Repair

In the overview that follows I separate out the theme of memory from the theme of law and repair. This analytic division is useful for the purpose of introduction but it is unfaithful to both the richness of these essays and to the real inseparability of the themes. For memory of hateful violence and responses to it stand in dynamic relation to one another. The influence of one on the other is mutual, and operates in both directions.

Memories are created and fluid, not fixed and given. The choice is rarely between memory and oblivion but among shifting and competing remembrances. The social structures and institutions within which we tell and hear accounts of hatred and violence affect what we recall and record. The grievances that spur us to action and that become resources for expressing and correcting injustice are given name and character in specific social contexts. Public and private settings, among them religious groups, political associations, and courts, are not just arenas in which memory is expressed; they are formative. They play a part in constituting what we recall and how, defining what is a salient fact, what counts as an injury, what comprises legal and historical evidence.

The dynamic interaction between memory and response works in the opposite direction, too. What we remember and feel compelled to relate

affects our judgment of existing structures of public witnessing and recollection, our judgment of the adequacy of public responses to hateful violence. The experience of injustice and our explanations of it influence our expectations about what constitutes justice. We try, where possible, to conform these experiences to established institutional definitions of injury and crime, to formal notions of criminal responsibility, and to rules of evidence. When that is impossible, we try to reform legal requirements. We design new collective responses and institutional innovations to cope with these memories of the experience of injustice.

Experience and memory belong to individuals, and at some level they are incommunicable. But once hate crimes are brought into public view, neither remembrance nor understanding is purely personal. Together, we construct (sometimes conflicting) accounts of injustice and theories of responsibility. The process is one of constant reciprocal interaction between memory and law and repair. Thus the truth of Minow's observation in "Memory and Hate," "We each may not have control over what we come to remember, but we each can play a role in shaping what we work to recall." The dynamic of memory, law, and repair occurs at every level of hateful violence and is at the heart of the essays in this volume. I will introduce them by sorting out three main themes.

#### MEMORY

One theme is memory. More specifically the moral psychology of remembrance and its role in sustaining or interrupting cycles of hatred. When is forgetting fatal—an obstacle to personal sanity? What sort of public remembrances and commemorations are aids to repairing community and comforting survivors? And on the other side, when is remembrance fatal—an obstacle to reconciliation and repair? We may want to temper memory enough to permit reconciliation between warring groups who must emerge from violence to share a society and a government. But we are less certain that we want a battered woman to repress recollections of the fury directed against her—if she does, she may be unwilling to serve as witness against her aggressor and may be willingly reunited with her violent partner.

Martha Minow writes in her first essay in chapter 1, "How those who survive understand and remember what happened can have real consequences for the chances of renewed violence." One of her themes is the twin perils of memory: the consequences of memory are equally perilous when it leads to vengeance and when it is expected to lead to

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saintly forgiveness. Minow points out that memory is collective and public as well as personal and individual, and points out the many ways in which public forms of remembrance—from the testimony produced and preserved in trial records to public education and ceremonial commemoration—can correct error, offer neglected perspectives on events, and move people toward reconciliation.

In “Collective Memory, Collective Action, and Black Activism in the 1960s” Fredrick Harris examines the connection between collective memory and political participation. Harris argues that social theory overlooks the “micro-resources” of mobilization, chief among them narratives of past injustices. He demonstrates the independent influence of collective memories among African Americans bound up with four events: the Scottsboro trial, the *Brown* decision by the U.S. Supreme Court, the Emmett Till murder, and the Montgomery bus boycott. These memories and the retellings they inspire have been crucial resources for both electoral and protest activity by blacks in the South and nationwide.

Ross Cheit and Carey Jaros discuss memory in the context of legal redress for victims of child sexual abuse. In “Beyond Memory: Child Sexual Abuse and the Statute of Limitations,” they consider two obstacles to criminal and civil remedies that prevent children from taking action and from serving as reliable witnesses against the perpetrators. One is the possibility of “repressed memory” recovered only long after the event; the other, more common, is cognitive distortions rooted in the victim’s shame, fear, and confusion.

The use individuals put memories to—the stories they tell themselves and others about the violence they inflict or endure—is the subject of Austin Sarat’s essay “When Memory Speaks: Remembrance and Revenge in *Unforgiven*.” Using the film as a template, Sarat shows that memory of a hateful crime can be mythologized and used to stoke dreams of noble causes and heroic revenge. But for those who focus on the grim finality and universality of death, and are thus able to separate death from dessert, the memory of violence can be a force for self-restraint. Not all ghosts demand bloody vengeance.

### LAW AND REPAIR

Our book’s second overarching theme is public responses to violence that work to break the cycles of hate. As Minow observes, contemporary moral and political life is distinguished less by its crimes, ghastly as they

are and perpetrated as they are on a massive scale, than by our efforts to respond to them. Great evils past and present, even the most demonic, are nothing new. But “waves of objections and calls for collective responses” *are* new—widespread efforts to unsettle fatalistic views of cycles of hatred and complacent views of the adequacy of existing legal institutions to deal with iniquity. There are official and unofficial efforts to expose the ways in which even fair proceedings thwart victims’ search for justice and inhibit the possibilities for personal and collective repair. As Minow poses the question in “Memory and Hate,” “Can collective efforts create armatures for pain and structure paths for individuals to move from grief and pain to renewal and hope?”

Many of these essays underscore Minow’s conclusion that despite the limitations of criminal trials as a response to hateful violence, inaction is worse. Hate-motivated violence poses distinctive challenges to institutions of justice, and the authors propose legal reforms and innovations, including new legal venues and new remedies for the victims of crimes of hate. There have been, and remain, important gaps in the law when it comes to violence. One development has been the designation of crimes such as sexual enslavement as a war crime, and the empaneling of international and national tribunals to prosecute them. In domestic law the special designation of an act as a “hate crime” is designed to acknowledge the distinctive harms inflicted when unlawful actions are motivated by the desire to injure people on account of their color or ethnic group or sexual orientation. Certain injuries became legally cognizable crimes only recently—marital rape, for example. Judith Lewis Herman reminds us that marital rape, battering, stalking, and sexual harassment are all recent terms made familiar by the women’s movement to describe calculated harms to women.

When we think of the cycle of hatred, we think first of intergroup violence, of genocide and crimes against humanity. Minow’s first essay, “Memory and Hate: Are There Lessons from Around the World?” focuses on developments over the past fifty years in the theory and practice of international criminal prosecution of perpetrators of mass violence. Punishment is only one, and perhaps not the most important outcome of these tribunals, and Minow emphasizes the additional moral and political benefits of public proceedings: the production of official records, the publicizing of crimes, and the public acknowledgment of their utter wrongfulness. Sensitive to the limitations of formal judicial proceedings, Minow explores the contributions of nonlegal responses to crimes of

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hateful violence: truth commissions get the most attention in her piece but also reparations and the actions of nongovernmental agencies dedicated to assisting victims and seeking reconciliation.

Two essays are concerned with reparations as a response to cycles of hatred among groups. In “Righting Old Wrongs,” Marc Galanter examines the justifications for reparations and the difficulty of settling on appropriate distributions. Reparation to the Maori for the unjust taking of lands in New Zealand took the form of returning territory, for example. This illustrates that “remedial justice inevitably disturbs existing expectations” and imposes real costs. That is one reason why, in many cases, justice has to be rationed, Galanter advises, and why compensation is often token or symbolic. He offers a sophisticated, analytic matrix for assessing remedies for old wrongs with categories for the contours of the wrong, of wrongdoers and their surrogates, of victims and claimants.

Eric K. Yamamoto provides the further caution that, like any form of justice, reparations must be consistent and fair. In “Reluctant Redress,” he draws attention to the little-known fact that legislation mandating U.S. government compensation to Japanese Americans did not extend to Japanese Latin Americans, on grounds that they were neither American citizens nor legal residents but rather illegal aliens. Yet these people were kidnapped from their homes, transported to the United States in military ships, imprisoned in internment camps during the war, and often refused the right to return to their homes and families—solely on account of their race. Denied official reparations, these victims were forced to pursue compensation by means of a class action suit against the U.S. government. Yamamoto asks whether the patent *realpolitik* of the government’s grudging, unapologetic settlement did as much to perpetuate the cycle of hatred (“empty gestures,” “compromise injustice”) as to interrupt it.

Another area of legal development concerns laws against domestic hate crimes and their prosecution. These crimes arouse anger, alarm, and resentment; they create fear, silencing and intimidating victims; ultimately, they may cause victims to internalize the message of inferiority, damaging self-esteem. Moreover, hate crimes are more likely to provoke a retaliatory response, a cycle of hatred, than similar actions that do not involve intentional selection of a victim on account of some ascriptive trait or group affiliation.

Minow’s second essay, “Regulating Hatred: Whose Speech, Whose Crimes, Whose Power?” focuses on this subject. Crimes against individ-

uals as members of a despised group are bad in themselves, she argues; beyond that, they contribute to the climate of hate that permits mass atrocities. Minow provides a nuanced discussion of hate speech in particular, reflecting on both the harms hate speech produces and the potentially harmful consequences of regulation and selective enforcement.

In “Memory, Hate, and the Criminalization of Bias-Motivated Violence,” Frederick M. Lawrence discusses dramatic legal changes in American and British bias crime law. One rationale for the special designation of crimes as hate crimes and of enhanced penalties is the thought that bias-inspired conduct inflicts greater harm on individuals. That said, the definition of hate crime and the designation of protected groups vary according to social context, and in Britain the impetus has been the rapid growth of a multicultural society. Lawrence’s essay demonstrates the importance of comparative studies, and how developments in one society can become a model for responses in others.

Judith Lewis Herman in “Peace on Earth Begins at Home: Reflections from the Women’s Liberation Movement” and Minow in her third essay, “Between Nations and Between Intimates: Can Law Stop the Violence?” assess legal developments in the area of domestic violence. Among these are restraining orders and judicial rulings that order men to vacate premises and do not constitute an impermissible violation of property rights. They both caution that legal recognition of the oppression of women and children has come slowly, and that even in the United States “Crimes of violence against women are still, for the most part, crimes of impunity.” Minow explains: “Society makes it clear that the costs of using violence in the home are low; social controls like police intervention are ineffective; the household is typically secluded from view; many adults think there are circumstances when a man can hit his wife and most adults think young people need ‘strong’ discipline.” Herman emphasizes the relative economic and physical powerlessness of women and children subjected to intimate violence, and prescribes institutional supports for victims of domestic abuse that would enhance their safety, demonstrate social support, and improve the likelihood that they will seek justice.

Cheit and Jaros propose criminal and tort law reform in cases of child sexual abuse. One feature of this form of violence is the secrecy that surrounds the crime, which most often occurs within families and is sustained by threats, keeping victims intensely isolated. Another is the problem of memory and comprehension that plague young victims. Finally,

there is the seriousness of the violence, which produces lifelong harms. All militate in favor of exceptions to statutes of limitations in state law that would allow victims to seek justice when they reach adulthood.

In “Justice and the Experience of Injustice,” I bring together the range of hateful violence and argue that in every case there is a potential disjunction between the public requirements of justice and the victims’ experience of injustice. From the point of view of legal proceedings and due process for the accused, justice does not always correspond to, indeed is often in conflict with, the victims’ sense of what is owed them and what conditions are necessary for repair. The conflict—and the tension it generates—pulls in the opposite direction as well: responding adequately to victims may conflict with wider societal needs for fairness and formal justice. I survey the strengths and limitations of responses to hateful violence from the perspective of victims. The common element of any adequate response, I argue, is to listen to survivors’ accounts of injustice. The injured must have an opportunity to make their stories public, even if the justice meted out to perpetrators does not, in the end, fully satisfy them. The disjunction between the outcome of fair trials and the relief awarded victims supports the search for other ways to recognize, relieve, and commemorate their suffering.

### The Universe of Hateful Violence: Common Elements

These essays explore the value of reflecting on intergroup atrocities, hate crimes and hate speech, and domestic abuse as aspects of a whole. Of course, acts of hateful violence often accompany one another in practice. As Minow points out, societies with chronic intergroup violence also experience increased family violence. And violence and humiliation in the home prepare people to debase and harm others. The parallels we draw provide insight into common elements of cycles of hatred and their common effects on society and on victims. Judith Lewis Herman studies the characteristics of trauma suffered by victims of many kinds of hateful violence, including the harms shared by abused women and victims of war crimes. She identifies patterns of personal devastation: an inability to preserve connections with others, anger, losing the desire to live.

Parallels between domestic violence and hate crimes, and between hate crimes and large-scale intergroup violence also encourage us to consider whether hateful violence has common roots, and whether effective ways of combating cycles of hatred and providing solace to victims are transferable from one domain to another. The authors offer var-

ious accounts of commonalities among the roots of hateful violence and responses to it. Assessments of the most important shared roots and responses vary, but they are not mutually exclusive.

Several authors focus on the ways in which boundaries inhibit recognition and response to hateful violence: the family as a sacrosanct private sphere, state sovereignty and the norm of nonintervention, the autonomy of religious or cultural communities. All these boundaries contribute to the perpetrators' ability to keep their crimes from public view and to further intimidate victims who suffer in isolation. As Minow puts it in "Between Nations and Between Intimates," "A conception of inviolable boundaries is used to shield both intimate violence and intergroup violence from public scrutiny and intervention."

Boundaries is the subject of Ayelet Shachar's argument that the arbitrary basis of ascriptive groupings is a principal root of cycles of hatred. "The Thin Line between Imposition and Consent: A Critique of Birthright Membership Regimes and their Implications" draws parallels between ascriptive membership in religious or ethnic subcommunities and birthright citizenship. For both, assignments of membership are nonconsensual and based on parentage or birthplace. For both, membership determines individuals' legal status, rights, and opportunities. These morally arbitrary boundaries entrench inequalities within and between groups and create the potential conditions for stigmatization, heightened vulnerability to victimization, and ultimately dehumanization and violence against "outsiders."

Herman focuses on relations of domination and subjugation at the root of both political violence and violence against women. Violence against women is not impulsive or incidental but a necessary and effective way of establishing and maintaining regular dominance. It is part of a system of coercive patriarchal control. Like perpetrators of political violence, Herman argues, batterers believe that they deserve their power, and rarely regret their crimes. To break the cycles of hatred, it is necessary to address the system of coercion, not just isolated acts.

Sarat's reflections on the uses of memory offer another perspective on the roots of cycles of hatred. Monumental history is the enemy of forgiveness and reconciliation. It fuels dreams of revenge. But it is also possible for the finality of death to take precedence. The point is to cultivate personal and cultural resources that demythologize violence.

In "Power, Violence, and Legality: A Reading of Hannah Arendt in an Age of Police Brutality and Humanitarian Intervention," Iris Marion Young draws attention to government's role in normalizing and perpetu-

ating violence. For Arendt, power is a collective act of will that rests primarily on speech and has its basis and stability in consent. Violence is power's antithesis; it is the imposition of will by threat or use of destruction. The conclusion Young draws from this interpretation is that state-sponsored violence—both coercive intervention in other countries on humanitarian grounds and police action at home—may be morally justified in particular cases but is never principled or legally authorized. It is always irregular and discretionary. Even justifiable strategies of “humanitarian intervention” to protect human rights may have the predictable effect of targeting civilians, crippling economies, and loosing police brutality on neighborhoods. Official violence fails to defuse the sources of hostility, and fails to produce legitimate institutions or lasting cooperation.

Minow returns repeatedly to the background conditions that create an atmosphere of support for cycles of hatred: socially approved violence, tacit permission to discriminate, and pervasive violence in mass culture. There is a difference between violent talk and images and actual aggression, of course, but the prevalence of prejudice and incivility can certainly inhibit the effectiveness of public policies to assist vulnerable groups, counter official condemnations of hatred, and subvert widespread support for victims. So can the indirect messages communicated by government's own conduct if police practices are brutal or punishment severe. Our essays reinforce these points.

Focused on memory, law, and repair, our essays do not take up social intervention via public policy to address the underlying social conditions of hate crimes. Economic and social deprivations, by themselves, cannot explain hateful violence. Most people who suffer even the worst deprivation do not hold specific groups responsible for their adversity, and do not retaliate against them even if they do. (Resistance and social revolution are distinguishable from the violence that characterizes cycles of hatred.) Despite common assumptions, evidence relating hate crimes to economic downturns, unemployment rates, or economic competition between groups is sparse and tenuous. The sources of hate crimes and intergroup violence are more complex than the “frustration-aggression-displacement” hypothesis, say, suggests. Like domestic abuse, many forms of vengeance against those blamed for personal suffering are triggered in vulnerable individuals by an unpredictable constellation of social and personal stresses.

Nonetheless, the common roots and responses to cycles of hatred ultimately point to the question of social justice. Reasonable provisions of

fair opportunity—and reasonable background conditions of housing and work, child care, health care and nutrition that make opportunities real—can help mitigate attitudes of supremacy and stigmatization on the one side and vulnerability and angry victimization on the other.

These essays can be described overall as contributions to the moral psychology and political theory of violence. The authors begin where moral and political philosophers leave off. The philosophical literature explores concepts like harms to dignity or analyzes justifications for universal rights, and operates mainly at the level of ideal theory. Here, the essays are closer to the ground, and arguments are directly tied to actual events and public responses to them. True, the authors' concerns are aspirational and the essays reflect a spirit of reform, but prescriptions are drawn, as Minow recommends in "Memory and Hate," "in light of what we think are realistic options." The authors take their bearings from social science, psychology, and law. They are attuned to power and its abuses, to vulnerability and its refuges. This ground, we argue, is a starting point for recognizing and breaking cycles of hatred.

#### Notes

1. Judith N. Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990), p. 87.
2. Barry Bearak, "Onslaught by Taliban Leaves Afghans Dead or Homeless," *The New York Times* (October 18, 1999): A1.
3. Michael Janofsky, "A Defense to Avoid Execution," *The New York Times* (October 26, 1999): A18.
4. Lisa Belkin, "Parents Blaming Parents," *New York Times Magazine* (October 31, 1999): 60ff.