

THE PEDAGOGY OF VIOLENCE

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I. INTRODUCTION

Legal scholars are enamored with characterizing violence as an “infection” or “contagion.”¹ The metaphor has seductive appeal, particularly when used to focus political attention on the goal of reducing

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¹ See e.g., Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001, 1022 (2005) (noting in a federal court review of Louisiana juvenile justice issues that “three of the four [reviewed] juvenile prisons—Bridge City, Jetson, and Swanson—[were] infected with violence, abuse, and neglect in 1981”); Leroy D. Baca, Paul Jendrucko & Daniel Scott, “*Silent Screams*”—*One Law Enforcement Agency’s Response to Improving the Management of Child Abuse Reporting and Investigations*, 22 J. JUV. L. 29, 45 (2001) (“When dangerous sexual predators are on the loose, when a father is accused of chronic incest with his daughter, or severe family violence has infected a family, every child protection agency involved must be adequately trained to perform their specific roles.”); Nancee Alexa Barth, “*I’d Grab At Anything. And I’d Forget.*” *Domestic Violence Victim Testimony after Davis v. Washington*, 41 J. MARSHALL L. REV. 937, 937 n.2 (2008) (“[V]ictim statements shed light on the day-to-day experience of living in a home infected with violence.”); Daniel J. French, Note, *Biting the Bullet: Shifting the Paradigm from Law Enforcement to Epidemiology: A Public Health Approach to Firearm Violence in America*, 45 SYRACUSE L. REV. 1073, 1086 (1995) (“By their nature, epidemics affect health, require warnings, restrict behavior, and curtail movement in the infected area. Gun violence in America has all these characteristics.”); Janet Gilbert, Richard Grimm & John Parnham, *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153, 1153–54 (2001) (“Over the past decade, juvenile violence has spread like an epidemic. ‘By the early 1990’s, rates of criminal violence, including youth violence, reached unparalleled levels in American society. Compared to adolescents in other countries, American teenagers exhibit alarmingly high rates of violence. For example, an American seventeen-year-old is ten times more likely to commit murder than his or her Canadian counterpart.”); Sharon S. Harzenski, *Redefining Violence: Some Thoughts about Justice, Power, Peace, Respect, and the Fabric of Our Social Experience*, 9 AM. U.J. GENDER SOC. POL’Y & L. 305, 315–16 (2001) (discussing “violence that taints, infects, irreparably corrupts or disturbs a developing situation. . . . In the daily lives of ordinary people, how much undue intensity, restraint or constraint, coercion, duress, compulsion or force is tolerated before the distorted pattern is internalized and replicated, like a virus, spreading itself through individuals across the population?”); Gerald Leonard, *Towards a Legal History of American Criminal Theory: Culture and Doctrine from Blackstone to the Model Penal Code*, 6 BUFF. CRIM. L. REV. 691, 777 (2003) (describing “homes [that] were infected with drunkenness, violence, and rape”); Linda G. Mills, Commentary, *Killing her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 582–83 (1999) (“Violence is contagious. It permeates every relationship that it governs or touches, especially, as we have seen, the survivor’s relationship with her clinician. Vigilance in recognizing its infectious character enables therapists to resist the negative counter transferences that intrude into the healing relationship and that so often prevent an empowering response to the survivor of trauma.”); Martha Minow, *Between Intimates and Between Nations: Can Law Stop the Violence*, 50 CASE W. RES. L. REV. 851, 860 (2000) (“Societies with chronic conditions of war and intergroup conflict also witness increases in family violence. This phenomenon might reflect how people bring societal stress into the home, tempers flare, and people displace onto those in their intimate sphere frustration with loss of control elsewhere. Or it could reflect a more basic contagion theory of violence; people surrounded by violence pick it up and pass it on.”); Lynn Murtha & Suzanne L. Smiths, Note, “*An Ounce of Prevention . . .*”: *Restriction versus Proaction in American Gun Violence Policies*, 10 ST. JOHN’S J.L. COMMENT. 205, 205 n.4 (explaining that “[o]ne approach to the gun violence problem is to view it as a public health issue,” citing *Reducing Gun Violence: Hearings on S. 1882 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 103d Cong., 1st Sess. (1994) (statement of Dr. Timothy Wheeler, M.D., Chairman, Doctors for Responsible Gun Ownership) (calling gun violence an “infectious disease.”)); Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL’Y 463, 479 (1996) (“Gender-based violence has similarly infected society, making feminists and women continued targets of violence.”); Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer’s Responsibility*, 16 LAW & INEQ. J. 633, 659 (1998) (“The malignancy of domestic violence, infecting all aspects of society, inflicts pain on many friends, relatives and neighbors.”); Carlos M. Vilas, *By Their Own Hands: Mass Lynchings in Contemporary Mexico*, 8 SW. J.L. & TRADE AM. 311, 312 (2001) (“Lynching is a distinctive form of collective violence that infects many societies.”).

violence in our communities. It adds a panicky punch to scholars' arguments (in its warning that violence could spread like a deadly illness) and distances readers emotionally from the disturbing processes by which we encourage one another to act violently: suddenly, "disease" transmits violence, like any other plague; "we" do not. The imagery of illness thus energizes antiviolence agendas without emphasizing offenders' blame or tangling with other moral problems created by violent human relationships. The metaphor's effects encourage us to address violence clinically, as a matter of public health, rather than solely as one of criminal justice. Though this morally aloof characterization of violence has its upsides, this Article will show that the contagion metaphor has other, more deleterious consequences: its dangerous characterization of offenders and its invitation to perform an inexact analysis of the root causes of violence. I will argue, more precisely, that the contagion metaphor obscures the pedagogy of violence—that is, the ways that we teach each other to be violent.

The "violence as contagion" metaphor appears to have found its genesis as an extension of the argument that violence is a "learned behavior," a theory that scholars such as Psychologist Albert Bandura, a professor at Stanford University, and Psychologist Lenore Walker, a professor at Nova Southeastern University Center for Psychological Studies, began to advance in the 1970s and mid-1980s and that has a great deal of scientific proof to back it up.² At first glance, then, the contagion metaphor may be seen as a hyperbolic expression of the well-supported thesis that human beings transfer violent behaviors between themselves, just as they teach each other customs, fashions, tastes, and languages. The contagion metaphor, however, has taken on a life of its own, giving vigor to an entirely different theory expounded by scholars, such as criminologist Colin Loftin and Columbia Law Professor Jeffrey Fagan.³ These scholars advocate that we address violence using the "epidemiological" approach—in other words, using the same techniques to combat violence that public health officials use to fight disease. The public health approach offers some very useful strategies to address violence, mainly in its depoliticizing or demoralizing of the antiviolence agenda,⁴ focusing on prevention as much as after-the-fact solutions,⁵ and promoting the accessing of data on violence gathered by public health organizations.⁶ Nevertheless, the epidemiological approach has been inextricably paired with the contagion metaphor, and this creates at least two serious hazards: 1) the metaphor dehumanizes

² See *infra* text accompanying notes 12–19.

³ See *infra* Part II.B.

⁴ See French, *supra* note 1, at 1088–89.

⁵ See James C. Howell & J. David Hawkins, *Prevention of Youth Violence*, 24 CRIME & JUST. 263, 302 (1998).

⁶ See *infra* note 32 (setting forth a four-pronged approach).

offenders as “vectors” of pestilence, so that we may be more likely to treat them unjustly as a matter of criminal justice or other social strategies; 2) it obscures the pedagogy of violence, meaning the specific behaviors by which we educate each other in violence; it also obfuscates the emotions, desires, and personal histories that help the lessons of violence “stick.” This obscurantism may seriously hamper our development of social and legal strategies to prevent and otherwise address such pedagogies.

During the development of the contagion thesis, the learned behavior model for describing violence has flourished on a parallel scholarly track. It possesses many virtues, as it acknowledges the human rituals by which we train each other in violent behaviors, and the sensations that make us such very good students of violence. The learned behavior model proves such a well-honed and well-supported thesis for violence that I submit we should expand upon it, developing deeper jurisprudential accounts of the teacher-student relationship, as well as the needs and feelings that energize the instruction and learning of violence. Simultaneously, I also recognize the benefits of the public health approach to the problem of violence, even while maintaining that it is marred by its advocates’ use of the contagion metaphor.

Consequently, in this Article I will advocate that we abandon the violence as contagion metaphor in our jurisprudential analyses of violence, but retain the data-collecting strategies advocated by the epidemiological approach to which the metaphor has been heretofore fixed. I also will argue for an enriched learned-behavior approach, employing a legal-literary analysis to enlarge upon the previous work in this area, which has primarily been done by psychologists and social scientists. In the end, I will advocate a synthesis of the epidemiological and the expanded learned-behavior approaches, the latter of which may also be called the “pedagogy of violence” approach.

In Part II, I will set forth the history of the contagion metaphor and make my case against it, while advocating the retention of the data-gathering methods that accompany the epidemiological approach. In Part III, I will demonstrate the virtues of the violence as a learned behavior model, lauding it for its emphasis on the performances and emotions involved in the transfer of violent behavior from one person to another, which the contagion model obscures. I will then recommend that we deepen our understanding of this learning process and advise that in our studies of learned violence, we employ interdisciplinary approaches that extend beyond social science. Here, I will advance a legal-literary analysis, using Nobel Laureate Elfriede Jelinek’s novel *The Piano Teacher* to illustrate the dynamics of teaching and learning violence. Specifically, I will examine how Jelinek’s characters use certain techniques—

surveillance, control, and trampling—to teach each other violence. I will also study how Jelinek’s characters learn violence in a particular emotional state: the state of desire. In this discussion of violence and desire, I will make a brief foray into classical philosophy, showing how Jelinek’s work exists in a long literary tradition connecting desire and moral education, a lineage that can be traced back to Plato’s *Phaedrus*. Last, in Part IV, I will analyze *NAACP v. AcuSport, Inc.*, a 2003 opinion addressing a nuisance claim against a gun manufacturer, in which a court accepted the contagion thesis while denying relief to the NAACP.⁷ I will show how data gathering informed by the pedagogy of violence—that is, informed by an awareness of the specific strategies of teachers and the desires of students—would have led to a better analysis of gun violence in New York and might have garnered the NAACP deserved relief.

II. HOW WE ARRIVED HERE: THE MOVE FROM “VIOLENCE AS SOCIAL LEARNING” TO “VIOLENCE AS CONTAGION”

A. THE HISTORY OF THE SOCIAL LEARNING THESIS, THE EPIDEMIOLOGICAL APPROACH, AND THE DEVELOPMENT OF THE CONTAGION METAPHOR

Scholars have long noticed that human beings act violently—that is, that they act with the intent to physically or mentally harm one another⁸—in large part because they come into contact with other violent actors and model their behavior on them. The concept of teaching or inheriting violence is as old as the cycle of revenge murders found in Greek tragedy, the history of the French Revolution, and the aftermath of World War II.⁹ Indeed, early theorists of the role of education and the development of man’s character are Plato¹⁰ and Jean-Jacques Rousseau,¹¹ who each acknowledged that education could shape men to be good or ill.

⁷ *NAACP v. Acusport Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

⁸ It must be noted here that there are many definitions of violence. For example, in my previous article on law and nonviolence, I posited a many-faceted test to determine whether conduct was violent. *See generally* Yxta Maya Murray, *A Jurisprudence of Nonviolence*, 9 CONN. PUB. INT. L.J. 65 (2009). Scholars, however, tend to use the “violence as contagion” metaphor in connection with gun violence or other forms of physical violence, particularly domestic violence. *See infra* text accompanying notes 46–81. Thus, I am using a definition of violence that coheres to the forms of violence attended to in those articles. In the future, I may expand upon a theory of the pedagogy of violence that encompasses teachings that extend beyond intentional physical and mental harms, but for now, I am containing my definition.

⁹ Consider, for example, Albert Camus’s excoriation of the purge in France, post WWII: “To the hatred of their persecutors, the victims responded with their own hatred. And the persecutors having departed, the French remain on their soil with their hatred in need of an object. They still look at one another with the remains of their anger.” Susan Dunn, *Albert Camus and the Dubious Politics of Mercy*, in *IDEAS MATTER: ESSAYS IN HONOR OF CONOR CRUISE O’BRIEN* 350, 345 (Richard English & Joseph Morrison Skelly eds., 1998).

¹⁰ PLATO, *REPUBLIC* 51, 54 (G.M.A. Grube & C.D.C. Reeve trans., 1992) (“Then, we may confidently assume in the case of a human being, too, that if he is to be gentle toward his own and those he knows, he must be a lover of learning and wisdom?”). *See also id.* (“If we’re to persuade our people that no

In the twentieth century, Bandura connected pedagogy and violence in his famous theory that aggression is a product of “social learning,” which was based on an experiment that involved children watching films of adults attacking plastic dolls, known as “Bobo dolls.”¹² The children later exhibited “modeling” behavior, similarly attacking the dolls.¹³ Bandura concluded in 1976 that “aggression in children is influenced by the reinforcement of family members, the media, and the environment.”¹⁴ In 1986, Walker also theorized about social learning and violence, in this case, suggesting that domestic violence may be a product of social modeling.¹⁵ Richard Gelles, dean of the Department of Child Welfare and Family Violence at the University of Pennsylvania, Suzanne Steinmetz, director of the Family Research Center at Indiana University, and Murray Straus, a sociology professor at the University of New Hampshire, similarly promoted the learned behavior model, positing the now-famous “cycle of violence” theory, which depicts violence as being taught by parent to child.¹⁶ Psychologist Donald G. Dutton, a professor at the University of British Columbia, expanded on this theory in 1995, noting that, “painful experiences of shame, rejection, and abusiveness from family members are manifested in adulthood as delusional jealousy, inability to trust, and violent mood cycles.”¹⁷ A 2001 study by Craig A. Anderson, dean of the Psychology Department at Iowa State University, and Brad J. Bushman,

citizen has ever hated another and that it's impious to do so, then *that's* what should be told to children from the beginning by old men and women.”).

¹¹ See generally JEAN JACQUES ROUSSEAU, EMILE, OR ON EDUCATION 7 (Echo Library 2007), (“[w]e are born sensitive and from our birth onwards are affected in various ways by our environment.”). Rousseau objected to the ways in which civilization trained individuals to be “citizens” in lieu of “natural men.” *Id.* (“Good social institutions are those best fitted to make a man unnatural, to exchange his independence for dependence, to merge the unit in the group, so that he no longer regards himself as one, but as a part of the whole, and is only conscious of the common life.”) *Id.* at 8. What Rousseau preferred was the natural man, who could be made by resisting his training solely to be a citizen: “[t]o be something, to be himself, and always at one with himself, a man must act as he speaks, must know what course he ought to take, and must follow that course with vigour and persistence.” *Id.* at 9.

¹² ALBERT BANDURA, AGGRESSION: A SOCIAL LEARNING ANALYSIS 6, 73–77 (1973).

¹³ *Id.* at 73–77.

¹⁴ EMILIO RIBES-INESTA & ALBERT BANDURA, ANALYSIS OF DELINQUENCY AND AGGRESSION 206–08 (1976).

¹⁵ LENORE E. A. WALKER, THE BATTERED WOMAN SYNDROME 16 (3d ed. 2009) (setting forth the stages of battered woman syndrome). In Walker's 1984 study, she hypothesized, “The impact of the strict, punitive, and violent father is better known today—exposure to him creates the greatest risk for a boy to use violence as an adult.” *Id.* See also Brian J. Orrio, Comment, *Ending the Domestic Violence Cycle Through Victim Education in Oregon's Restraining Order Process*, 33 WILLAMETTE L. REV. 971, 984 (1997) (“Reports from battered women's shelters support the theory that aggression is a learned behavior: male and female children, as young as two years old, model ‘daddy hitting mommy’ to get what they want. Not only do children suffer more physical abuse when their parents are in violent relationships, Walker's study suggests they learn that such violence is appropriate.”).

¹⁶ MURRAY A. STRAUS & RICHARD J. GELLES, PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES 404–06 (1990). See, e.g., Carolyn Puzella, *Domestic Violence: Social Scientists' Perspectives on the Causes of Spousal Abuse*, 11 J. CONTEMP. LEGAL ISSUES 37, 40 (2000).

¹⁷ Puzella, *supra* note 16, at 40. See also DONALD G. DUTTON WITH SUSAN K. GOLANT, THE BATTERER: A PSYCHOLOGICAL PROFILE 83, 101, 103 (1995). For a curious mixture of the “learned behavior” and “contagion” metaphors, see Beverly Merz, *Wheel of Misfortune; A Family's Risk Factors Can Increase Its Chance of Developing the “Cancer” of Violence*, 35 AM. MED. NEWS 1 (1992).

chair of mass communication at Ohio State University,¹⁸ and a 2000 study by Robert H. DuRant, professor of pediatrics at Wake Forest University, also reveal that adolescents' exposure to violence increases the probability that they will harm other people: "When children are disciplined with severe corporal punishment or verbal abuse or when they are physically or sexually abused, it is not surprising that they behave aggressively or violently toward others."¹⁹

Legal scholars, such as Jane Rutherford, a professor of law at DePaul College of Law, have also advanced the "violence as a learned behavior" model. Rutherford argues that there may be a genetic link to aggressive behavior, which is enhanced by a person's childhood exposure to violence.²⁰ Scholars ranging from Catherine F. Klein, a law professor at Catholic University's Columbus School of Law,²¹ to Judge Ronald Adrine, a judge in Cleveland Municipal Court,²² to the authors of the 1996 American Psychological Task Force on Domestic Violence,²³ and the authors of the United States Department of Justice Final Report²⁴ agree that people learn violent behavior from others.²⁵

¹⁸ Craig A. Anderson & Brad J. Bushman, *Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature*, 12 n.5 PSYCHOL. SCI. 353, 357 (Sept. 2001).

¹⁹ *Violence Is a Learned Behavior, Say Researchers At Wake Forest University*, SCIENCE DAILY, (Nov. 9, 2000), <http://www.sciencedaily.com/releases/2000/11/001106061128.htm>; *Research by Wake Forest University, U.S., Advances Understanding of Human Health*, PHARMA LAW WEEKLY (Aug. 7, 2007) (conducting a study finding that adolescent viewing of televised wrestling can increase violence, specifically "date fighting."); See generally Robert H. DuRant et al., *Intentions to Use Violence Among Adolescents*, 98 n.6 AM. ACAD. PEDIATRICS 1104 (Dec. 1996).

²⁰ Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 979 (2007).

²¹ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 970 n. 1077 (1993) ("Since violence is a learned behavior, witnessing violence in the home as a child can have profound effects on the child's adult life.") (citing WALKER *supra* note 15).

²² Ronald Adrine & Michael W. Runner, *Perspective: Engaging Men and Boys in Domestic Violence Prevention Strategies: An Invitation to the Courts*, 6 J. CENTER FOR FAM. CHILD. & CT. 175, 181-82 (2005) ("Much of the work to address domestic violence during the past three decades has been predicated on the belief that *violence is a learned behavior* that can be unlearned. Similarly, innovative prevention efforts employing public-education strategies have been based on the conviction that social norms condoning violence can be shifted. Indeed, educational efforts aimed at changing social norms have had considerable success in addressing alcohol, tobacco, and drug use and abuse in high school, college, and community settings. Within the field of domestic violence, experts agree that current, predominant social norms play a significant role in sanctioning and perpetuating inappropriate male behavior. Thus, men can play a powerful role in promoting more positive attitudes and behavior with regard to violence against women and children." (emphasis added)).

²³ AM. PSYCHOLOGICAL ASS'N, *VIOLENCE AND THE FAMILY*, REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 17 (1996) [hereinafter APA PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY].

²⁴ William L. Hart et. al., *Attorney General's Task Force on Family Violence* 5 (Sept. 3, 1984), <http://www.eric.ed.gov:80/PDFS/ED251762.pdf> ("[Battering] is learned behavior. To tolerate family violence is to allow the seeds of violence to be sown into the next generation.")

²⁵ See Videtta A. Brown, *Gang Member Perpetrated Domestic Violence: A New Conversation*, 7 UNIV. OF MD. L.J. RACE, RELIGION, GEND. & CLASS 395, 408 (2007) ("Male domination and female victimization are also often a part of the gang culture. Female and girlfriend abuse among gang members is, in part, a product of the gender ideologies found within the gang. Physical and sexual violence toward young women, although not considered *violence* by the gang, becomes a *learned behavior*." (emphasis added)); Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 9

The contagion thesis, which characterizes violence as an illness that we catch from one another, seems to have developed out of, or at least in tandem with, the social learning argument. This may be best illustrated by the following quote from Walker's study on battered women. Though she was an early adopter of the learned behavior model, she readily began to use the metaphors of disease to describe violence:

Once it was established that family violence and violence against women was at epidemic or even pandemic proportions by U.S. Surgeon General Everette Koop (1986), violence began to be conceptualized as a public health problem that would be best understood through epidemiological community standards One of the most interesting analogies comes from the public health initiative to eradicate malaria.

(1999) ("A recent national study . . . showed that juvenile delinquents are four times more likely to have come from violent homes.") (citing Bureau of Juvenile Justice, *Violence by and Against America's Children*, DIGEST XVII (12), at 6, and Donna M. Welch, *Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?*, 43 DEPAUL L. REV. 1133, 1136–37 & n.31 (1994)); Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 249 (1999) ("Disturbed emotional and behavioral development is typical in children who witness [family violence], although the damage varies with the age and the gender of the child. For example, boys are thought generally to become more aggressive and girls more passive as a result of witnessing [violence], although there is some evidence that as they age, girls too display aggressive tendencies. Children who become aggressive may be reacting to the stress of witnessing violence or modeling behavior that they have learned through witnessing."); Caroline Harris Johnson, *Familicide and Family Law: A Study of Filicide-Suicide Following Separation*, 44 FAM. CT. REV. 448, 459–60 (2006) (noting that family courts should pay special attention to "the safety of children who are having access with a parent who has been violent toward his spouse, even though there may be no apparent evidence of the children having been previously harmed. It should not be assumed that the family members of a parent with a history of violence and/or child abuse will be suitable supervisors of access. It is more likely that the parent learned those behaviors in their family of origin and that violence and abuse will be minimized, ignored, or denied in that family."); G. Kristian Miccio, *Male Violence—State Silence: These and Other Tragedies of the 20th Century*, 5 J. GENDER RACE & JUST. 339, 351 n.67 (2002) ("There is little basis for ascribing biology to the different moral voices of boys and girls. The current psychological literature suggests that violence is learned behavior and not a consequence of testosterone."); Wendy Perlmutter, *An Application of Refugee Law to Child Soldiers*, 6 GEO. PUBLIC POL'Y REV. 137, 146–47 (2001) (noting that violence is a learned behavior among child soldiers, but that it can be unlearned); Sean D. Thueson, *Civil Domestic Violence Protection Orders in Wyoming: Do they Protect Victims of Domestic Violence?*, 4 WYO. L. REV. 271, 271–75 (2004) ("Domestic violence is usually a learned behavior. Nevertheless, domestic violence is not only learned from one's own family, but also learned from society. Those who care can make a difference, perhaps not with the current abuser, but at least with generations to come. Domestic violence is not caused by alcohol, drugs, 'out of control behavior,' stress, or problems that are 'inherent' in every relationship. Batterers can be found in every age, racial, socioeconomic, educational, occupational, and religious group. Thus, doctors, lawyers, and even judges could be batterers; however, the majority of batterers are male, and the majority of all victims are female. It is important for everyone to realize that there is no 'typical' batterer so as not to stereotype and miss the signs of domestic violence."); Jerry von Talge, *Victimization Dynamics: The Psycho-Social and Legal Implications of Family Violence Directed Toward Women and the Impact on Child Witnesses*, 27 W. ST. U. L. REV. 111, 174 (1999–2000) ("Both adults and children unconsciously use defense mechanisms to cope with psychological conflict and distress. Unfortunately, a child learning to become violent can be associated with the development of the defense mechanism called identification with the aggressor This writer has seen the tragedy of domestic violence exacerbated when older children, especially boys, mimic their fathers, becoming violent towards their battered mother, identifying with the aggressor in order to feel safer and more powerful."). See *id.*, citing APA PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY, *supra* note 23 ("We do know that violence often is learned behavior and that much of that learning takes place at home. This conclusion is supported by more than five decades of psychological research on aggression and violence in the family and outside the family.").

It was found that people would be less likely to become sick from exposure to malaria if they were given quinine as a preventative measure. So, strengthening the potential victims by prescribing quinine tablets was an important way to keep safe those who could not stay out of the malaria infested area. Once it was learned that diseased mosquitoes carried the malaria germs, it became possible to kill the mosquito. However, unless the swamps that bred the malaria germs that infected the mosquito were drained and cleaned up, all the work in strengthening the host and killing the germ carrier, would not have eliminated malaria—it would have returned!

So, too for domestic violence. We can strengthen girls and women so they are more resistant to the effects of the abusive behavior directed towards them and we can change the attitudes of known batterers so they stop beating women. However, unless we also change the social conditions that breed, facilitate, and maintain all forms of violence against women, we will not eradicate domestic and other violence—it will return!²⁶

As Walker notes, in response to the escalation of domestic violence, Koop convened an “unprecedented” Workshop on Violence and Public Health, in October 1985.²⁷ This workshop addressed violence as a public health concern, and participants advocated using an epidemiological model for addressing it. Criminologist Marvin Wolfgang exhorted conferees: “Our nation must feel as comfortable in controlling its violent behavioral urges and practices as it does in controlling bacterial, viral, and physical manifestations of morbidity and death.”²⁸ In their book *Violence in America: A Public Health Approach*,²⁹ a collection of the “revised papers from the Surgeon General’s Workshop on Violence and Public Health,”³⁰ Dr. Mark L. Rosenberg and James A. Mercy provide the strategy for such control, illustrating the epidemiological method in their discussion of anti-gun-violence goals: “[T]he magnitude and distribution of fire-arm related morbidity, disability, and behavioral risk factors should be routinely monitored through public health surveillance systems.... High priority should be given to epidemiologic investigations that focus on quantifying the risks for injury associated with firearm possession or lack thereof in individuals.”³¹ The authors then set forth the four prongs of the

²⁶ APA PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY, *supra* note 23, at 18–19.

²⁷ MARK L. ROSENBERG & MARY ANN FENLEY, VIOLENCE IN AMERICA: A PUBLIC HEALTH APPROACH v (1991); *Youth Violence: Report of the Surgeon General*, DEPT. OF HEALTH AND HUMAN SERVICES, http://www.surgeongeneral.gov/library/youthviolence/chapter1/sec2.html#youth_violence.

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ *Id.*

³¹ *Id.* at 6.

epidemiological approach: 1) public health surveillance, 2) risk group identification, 3) risk factor identification, and 4) program implementation and evaluation (for example, intervention methods based on the data collected as per one through three).³²

How did we get from violence as a learned behavior to violence as a public health problem to violence as a contagion? First came the 1970s social learning hypothesis, and then, in the mid 1980s, advocates began to promote the epidemiological approach. Both camps sought to address the “spread” of violence from person to person and found a superwattaged metaphor in the language of the epidemiological approach—which, after all, is the study of disease. At this early stage, advocates of the learned behavior approach might have questioned the full absorption of the violence problem into a disease model, particularly as it threatened to deflect attention from the specifics of violence-learning with its description of the transmission as an insentient, amoral process. Scholars such as Walker, however, found the language of illness too powerful to pass up in their own arguments.

The enthusiastic use of this metaphor bore fruit rather quickly. One year after the surgeon general’s workshop, the jurisprudential “violence as a public health problem” rhetoric officially evolved into the “violence as contagion” thesis with Loftin’s 1986 publication *Assaultive Violence as a Social Contagion*.³³ It was then further developed by articles such as *Guns, Youth Violence, and Social Identity in Inner Cities* and *The Social Contagion of Violence*, published by a group of authors, including Fagan.

B. COLIN LOFTIN AND JEFFREY FAGAN’S WORK ON THE SOCIAL CONTAGION OF VIOLENCE

In *Assaultive Violence as a Social Contagion*, Loftin, who teaches in the School of Criminal Justice at the University of Albany, State University of New York, argues that “serious assaultive violence is subcultural and therefore analogous to disease. Most important, it has the potential to spread explosively in a vulnerable population.”³⁴ Loftin reaches this conclusion by noting that “serious assaultive violence is usually distributed spatially in clusters,” a particular hot spot being “the southeastern states.”³⁵ He also notes that victims of violence often become violent actors

³² *Id.* at 17–18. See also Mark L. Rosenberg, *Violence Is a Public Health Problem*, 10 *TRANSACTIONS & STUD. C. PHYSICIANS PHILA.* 147, 148 (1988).

³³ See generally Colin Loftin, *Assaultive Violence as a Contagious Social Process*, 62 *BULL. N.Y. ACAD. MED.* 550, 550–55 (1986).

³⁴ *Id.* at 550.

³⁵ *Id.*

themselves.³⁶ Further, citing a 1986–1974 study of violence in Detroit, Loftin describes its escalation as a “rapid spread” and “epidemic-like.”³⁷ He notes that:

Social networks are the channels through which assaultive violence, like other types of communication, flows. It seems reasonable to refer to the language, lore, tastes, myths, skills and artifacts that develop around violent interaction as subcultural, and there is no doubt that they involve commitment and motivation. Be that as it may, the point is that personal violence spreads because offenders and victims are part of social and moral networks.³⁸

Loftin’s article is short, five pages, including graphs and references. As might be evident to many from the above quote, it seems curious that he insists on describing violence as a disease, which has no moral aspect, when he ends his essay so conscious of the emotional and cultural factors that facilitate its transmission from one person to another.

Nevertheless, the violence as contagion thesis remains popular, particularly in jurisprudential circles. Prominent advocates of the contagion thesis are Fagan and Deanna L. Wilkinson, an associate professor of human development and family science at Ohio State University, who together, and with other authors, have written a series of articles detailing their argument that violence is a social contagion.³⁹ In a 1998 article, *Guns, Youth Violence, and Social Identity in Inner Cities*, they write quite persuasively about the social contagion of gun violence.⁴⁰ Their object is to address high gun-related homicide rates among inner city African American youths, describing the problem as one stemming from:

[A] developmental “ecology of violence,” in which beliefs about guns and the dangers of everyday life may be internalized in early childhood and shape cognitive frameworks for interpreting events and actions during adolescence. In turn, this context of danger, built in part around a dominating cognitive schema of violence and firearms, creates, shapes, and highly values scripts skewed toward violence and underscores the central role of guns in achieving the instrumental goals of aggressive actions or defensive violence in specific social contexts. The processes of contagion, however, are

³⁶ *Id.* at 551–52 (noting how a study by Simon Singer showed that “two thirds of cohort members who indicated having committed an act of serious assaultive violence (rape, homicide or assault with serious victim injury) had, themselves, been the victims of serious violence (either shot or stabbed).”).

³⁷ *Id.* at 552.

³⁸ *Id.* at 554.

³⁹ See *infra* notes 55, 104–05. See also Jeffrey Fagan & Deanna Wilkinson, *The Social Contexts and Functions of Adolescent Violence*, in *VIOLENCE IN AMERICAN SCHOOLS* 55–93 (Delbert S. Elliot et al. eds., 1998).

⁴⁰ Jeffrey Fagan & Deanna Wilkinson, *Guns, Youth Violence, and Social Identity in Inner Cities*, 24 *CRIME & JUST.* 105 (1998).

little understood and are an important part of a future research agenda on this problem.⁴¹

The authors caution that they do “not deny the importance of the individual attributes that bring people to situations,” but rather seek to understand how “other processes” and “rules” develop in social “contexts” that may encourage people to carry and use guns.⁴² They acknowledge how guns reinforce the “toughness” and “masculinity,” characteristics much cherished among young males,⁴³ and how “disrespect” may encourage some young males to use guns to reassert their masculine status.⁴⁴ The authors additionally give a mini-history of the role of guns in gangs and youth street culture from the 1920s onward⁴⁵ and acknowledge studies demonstrating how emotions such as fear of death and violence can influence youths to carry guns.⁴⁶ Positing that guns are used to create a kind of performative identity (such as that of a “tough” or leader), the authors then argue that street-youths perform according to “scripts” that will enhance their status.⁴⁷ Youths learn these scripts, street codes, and modes of retaliation early in their lives at home, school, and also as a result of playing in the street and seeing violent confrontations.⁴⁸ The article is replete with fascinating interviews conducted with young men who have engaged in violent behavior and describe the rules of the street. Through these interviews, the reader is given insight into how fear, desires for status, and anger influence the promulgation of violent behavior.⁴⁹ The authors’ engagement with the “contagion” metaphor, in fact, leaves less of an impression on the reader than these in-depth interviews and the descriptions of cultural norms and the emotional lives of the interviewees. Furthermore, in one of the final sections of the article, when the authors make their case that gun violence in the inner city should be viewed as a contagion, there appears to be little difference between their concept of contagion and the concept of social learning:

The development of an ecology of danger reflects the confluence and interaction of several sources of contagion. First is the contagion of fear. . . .

Second is the contagion of gun behaviors themselves. . . .

Third is the contagion of violent identities. . . .

. . . .

⁴¹ *Id.* at 107.

⁴² *Id.* at 108.

⁴³ *Id.* at 112.

⁴⁴ *Id.* at 113.

⁴⁵ *Id.* at 114–18.

⁴⁶ *Id.* at 119, 122.

⁴⁷ *Id.* at 132–33.

⁴⁸ *Id.* at 135.

⁴⁹ *Id.* at 138–74.

The street environment provides the “classroom” for violent “schooling” and learning about manhood. . . .

. . . Each violent event or potentially violent interaction provides a lesson for the participants, firsthand observers, vicarious observers, and others influenced by the communication of stories about the situation which may follow. Children learn from both personal experience and observing others using violence to “make” their social identity or “break” someone else's identity on the street.⁵⁰

By 2007, however, Fagan and Wilkinson’s scholarly tone and focus appear to have undergone a troubling shift. That year, with Garth Davies, associate professor at Simon Fraser University School of Criminology, they published the article *The Social Contagion of Violence*.⁵¹ Here, the authors put the contagion metaphor front and center, describing the transmission of violent behaviors as follows:

Although disease spreads through a host and agent, social contagion involves the mutual influence of individuals within social networks who turn to each other for cues and behavioral tools that reflect the contingencies of specific situations. The contagious dimension is especially salient during the upswing of an epidemic, when physical or social contact is critical to spread pursuant to exposure

. . . [T]he phenomenon is endemic to the people and places where its occurrence is highest and [] this behavior may be effectively passed from one person to another through some process of contact or interaction.⁵²

In *The Social Contagion of Violence*, the authors expand their definition of social contagion to mean:

[A] process of mutual influence involving contact, communication, and competition

Contagious epidemics involve the transmission of an agent via a host through susceptible organisms whose resilience is weakened by other conditions or factors. Susceptibility is critical to the ability of an agent to exert its process on a host. This medical rendering of contagion can be analogized to social contagion.⁵³

⁵⁰ *Id.* at 174–76.

⁵¹ See generally Jeffrey Fagan, Deanna Wilkinson & Garth Davies, *Social Contagion of Violence* (Columbia Law School Public Law & Legal Theory Working Paper Group, Paper No. 06-126), available at SSRN: <http://ssrn.com/abstract=935104>, reprinted in THE CAMBRIDGE HANDBOOK OF VIOLENT BEHAVIOR (Daniel Flannery et al. eds., 2007) (citations omitted).

⁵² *Id.* at 689.

⁵³ *Id.* at 690–91 (citations omitted).

This influence is deployed via the transmission of ideas, or “memes,” which become the “scripts” discussed in the earlier 1998 article.⁵⁴ Now the authors explain that these scripts become adopted “automatic[ally]” through “social interactions.”⁵⁵ The authors observe that these adoptions are wildly efficient, particularly where “the memes of toughness and the valued status from violence are the object of transmission and exchange among similarly situated male youth.”⁵⁶ The presence of guns also increases the “toxicity” of the contagion, as “guns can be constructed as a primary agent of violence contagion.”⁵⁷ “Violent identities,” that is, acting tough, are another sub-contagion, particularly when considering “the contagion of violent identities and the consequent eclipsing or devaluation of other identities in increasingly socially isolated neighborhoods.”⁵⁸ In other words, boys plus guns plus a mandate that said boys act tough equal violence as a social contagion. The authors then press their characterization of violence as an epidemic or contagion by citing statistics of gun violence in New York, noting a decrease in gun violence in the 1990s, a period that nevertheless contained three “sub-epidemics.”⁵⁹ Violence not involving guns also decreased roughly along the same lines.⁶⁰ The authors note that a gun violence epidemic that occurred from 1985 through 1995 largely had to do with men,⁶¹ adolescent gun violence spiked during this period, and gun violence declined in all age groups after 1992.⁶² The increase in gun violence starting in 1985 occurred largely in the African American male population living in dense, urban areas.⁶³ In addition, the gun “epidemic” tracked a drug “epidemic”:⁶⁴ “Competition between sellers, conflicts between buyers and sellers, and intraorganizational conflict were all contributors to lethal violence within crack markets.”⁶⁵ The authors, however, observe that the drug market and its fluctuations cannot be the sole explanation for the rise and fall of gun violence.⁶⁶ Poverty and social inequality influence violent behavior.⁶⁷ The authors emphasize studies focusing on violence committed and experienced by black males to buttress their conclusion that “[s]ocial contagion theory suggests that individuals

⁵⁴ *Id.* at 691.

⁵⁵ *Id.*

⁵⁶ *Id.* at 692.

⁵⁷ *Id.*

⁵⁸ *Id.* at 693.

⁵⁹ *Id.* at 694–95.

⁶⁰ *Id.*

⁶¹ *Id.* at 697 (“Nearly all the increase and decline in killings from 1985–1995 were gun homicides of males.”).

⁶² *Id.*

⁶³ *Id.* at 698.

⁶⁴ *Id.* at 699 (“Homicide peaks in 1972, 1979, and 1991 mirror three drug epidemics: heroin, cocaine hydrochloride (powder), and crack cocaine.”).

⁶⁵ *Id.*

⁶⁶ *Id.* at 700–01.

⁶⁷ *Id.* at 702.

are likely to mutually influence the behaviors of others with whom they are in frequent and redundant contact. The social interactions underlying assaultive violence suggest its spread by social contact.”⁶⁸

The authors illustrate this “spread” by using three “scenarios of violence.” In the first scenario, two men named Aron and Bruce get into a fight where Bruce slashes Aron; Aron goes to his group of friends and suggests retaliation; Aron and his friends arm themselves with guns, go to Bruce and his friends, and open fire; two people are shot.⁶⁹ In the second scenario, Rich and Mike fight over a girl at a club; each man has an accompanying group of friends that watches by the sidelines; the fight escalates; both groups begin discussing plans for retaliation and punishment; later, both sides open fire on one another with guns; one boy dies.⁷⁰ In the third scenario, Pete and his drug crew of two associates attempt to rob the drug house of a Dominican crew; the plan is foiled, but Pete’s friend Franky is recognized by the Dominicans; the Dominicans stalk Franky to their neighborhood and shoot Franky.⁷¹ The authors conclude:

The event process can be dissected into specific stages: anticipatory stage, opening moves, countermoves and brewing period, persistence stage, intensification stage, early violence stage, stewing period, assessment stage, the casting/recasting stage, and the retaliatory stage. The examples above demonstrate that network peers play important roles at almost every stage of a conflict that escalates into violence. The communication of normative expectations, violence scripts, and violence strategies filters through direct observation, word of mouth via rumors, and telling of “war stories.”⁷²

Emphasizing that this process is all part of the disease model, the authors close with the observation that

The dynamics of social contagion [] suggest an endogenous process, in which the spread of social norms occurs through the everyday interactions of individuals within networks that are structurally equivalent and closely packed. Here, the ill grows and spreads from the inside, often long after the origins have subsided. This is analogous to influenza contagion or to the spread of cultural or political thought.⁷³

⁶⁸ *Id.* at 710 (citations omitted). For further illustration, see the chart detailing “African American Gun Homicides” and the analysis of the “Oliver” study of “violent confrontations between Black males in bars and bar settings.” *Id.* at 708, 711.

⁶⁹ *Id.* at 713.

⁷⁰ *Id.* at 713–14.

⁷¹ *Id.* at 714–15.

⁷² *Id.* at 715.

⁷³ *Id.* at 716 (citations omitted).

The authors end their article using classic public health model. Employing the data on injuries and deaths in New York collected by the Injury Surveillance System of the New York City Department of Health and Mental Hygiene,⁷⁴ the authors identify the “poorest neighborhoods”⁷⁵ and those suffering from “inequality” as the risk group,⁷⁶ and suggest intervention in the form of increased gun control.⁷⁷

While Loftin’s work has not gained widespread popularity,⁷⁸ the contagion metaphor most certainly has.⁷⁹ Furthermore, articles such as Fagan, Wilkinson, and Davies’s *The Social Contagion of Violence* have found much traction in the scholarly and judicial communities. The trio’s articles have been cited with approval several times, and similar arguments have been made in numerous jurisprudential articles. “Violence as contagion” has been invoked in articles dealing with the war on terror,⁸⁰ domestic violence,⁸¹ youth violence,⁸² restorative justice,⁸³ handgun litigation,⁸⁴ therapeutic justice,⁸⁵ international law,⁸⁶ and in cases dealing

⁷⁴ *Id.* at 689.

⁷⁵ *Id.* at 710.

⁷⁶ *Id.* at 702.

⁷⁷ *Id.* at 717 (suggesting “gun-oriented policing strategies.”). For the four-step public health protocol, see *supra* text accompanying note 32. See also Rosenberg, *supra* note 32, at 148.

⁷⁸ My LexisNexis research reveals only six citations to his *Assaultive Violence as a Contagious Social Process* (search performed Nov. 11, 2011).

⁷⁹ See *supra* note 1.

⁸⁰ Stephen Holmes, *In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror*, 97 CALIF. L. REV. 301, 348 (2009) (“Restricting criminal liability to actual perpetrators, carefully excluding clansmen and kin, is in fact a fragile historical achievement aimed precisely at quelling mimetic violence, at interrupting spirals of bloody inter-communal vendetta. In other words, the rules of criminal procedure have evolved and survived over time as instruments for managing violence and restricting its inherently contagious effects.”). See generally Manus I. Midlarsky et al., *Why Violence Spreads: The Contagion of International Terrorism*, 24 INT’L STUD. Q. 262 (1980).

⁸¹ Minow, *supra* note 1, at 860–61 (2000) (“[P]eople bring societal stress into the home, tempers flare, and people displace onto those in their intimate sphere frustration with loss of control elsewhere. Or it could reflect a more basic contagion theory of violence; people surrounded by violence pick it up and pass it on. Data linking intimate violence against women to high rates of neighborhood violence in this country could support both theories.”); von Talge, *supra* note 25, at 114–15 (1999–2000) (“Dr. Robert McAfee, president of the American Medical Association, suggests that family violence is a disease, and Dr. Lawrence Stone, president of the American Academy of Child and Adolescent Psychiatry, compares violence to a contagious disease.”).

⁸² Philip J. Cook & John H. Laub, *After the Epidemic: Recent Trends in Youth Violence in the United States*, 2002 CRIME & JUST. 1, 21 n.14 (2002) (“Yet another possibility is that the epidemic increase and decline are the result of an endogenous, self-generating process, rather than exogenous environmental effects. For example, if youth violence is in some sense contagious, then the volatility of rates could be explained by the same internal dynamic as, say, a measles epidemic.”). See Philip J. Cook & John H. Laub, *The Unprecedented Epidemic in Youth Violence*, 24 CRIME & JUST. 27 (1998); Kenyon C. Knapp, *School Violence: Assessment, Management, Prevention*, 30 J.L. & EDUC. 571, 571 (2001) (book review) (“The most useful concept by Garbarino is that of viewing youth violence as a contagious disease epidemic. Garbarino says of violent youth, ‘They lost their way in the pervasive experience of vicarious violence, crude sexuality, shallow materialism, competitiveness, and spiritual emptiness that affects us all to some degree but poison these especially vulnerable kids.’”).

⁸³ Linda G. Mills, *The Justice of Recovery: How the State Can Heal the Violence of Crime*, 57 HASTINGS L.J. 457, 481 (2006) (“For a long time, evidence has shown that once a person has been victimized, he or she is vulnerable to additional victimizations. In the past several years, researchers have also established that violence can be contagious; victims and victimizers are often ‘interchangeable.’”).

⁸⁴ Denise Dunleavy, *Tort Issues in Light of the Cigarette Litigation: Comments on Hamilton v. Accu-Tek*, 27 PEPP. L. REV. 743, 747 (2000) (“Criminologist, Dr. Jeffrey Fagan discussed how handgun violence is a virus, a contagious disease. His studies in New York have shown that when handguns are

with mob violence.⁸⁷ Fagan and his co-authors have also extended their group contagion thesis in articles dealing with youth violence,⁸⁸ neighborhood violence,⁸⁹ and punishment theory.⁹⁰

The contagion thesis appears to have been accepted by at least one court as well. Fagan provided important testimony in an unsuccessful 2003 nuisance suit that the NAACP brought against gun manufacturer and distributor AcuSport. In *NAACP v. AcuSport, Inc.*, the NAACP alleged that its actual members and “potential members”—members of the African American community at large—suffered special harm as a result of AcuSport’s irresponsible marketing and sales practices.⁹¹ Specifically, they alleged that NAACP members and potential members suffered special harms from gun violence that could be traced back to AcuSport’s shoddy merchandising methods, which led to the dissemination of unlicensed guns.⁹² The critical factor in the lawsuit came down to whether the NAACP and the black community in New York suffered from specific harms. The NAACP had to establish not only the existence of a nuisance (gun violence), and the defendant’s negligent or intentional conduct (irresponsible marketing protocols that allowed large numbers of guns to be captured by violent offenders), but also that the black community’s consequent suffering was different from other groups not just “in degree”

used by youths in one neighborhood in one year, in the next year, in the next neighboring community, there will be handgun violence.”).

⁸⁵ Edgardo Rotman, *Therapeutic Jurisprudence and Terrorism*, 30 T. JEFFERSON L. REV. 525, 536 (2008) (“[F]ear fuels hatred and a tendency toward highly contagious, irrational violence. Maintaining clarity of mind is necessary to transcend the fear instilled by terrorists, overcome threats to physical safety, and ensure the emotional well-being of the population. Otherwise, fear fuels hatred and a tendency toward highly contagious, irrational violence.”).

⁸⁶ William J. Aceves, *Predicting Chaos? Using Scenarios to Inform Theory and Guide Practice*, 45 VA. J. INT’L L. 585, 613–14 (2005) (“The benefits of globalization and a more interconnected world are also tempered by its burdens. ‘To increase connections also increases ‘contagion’—terrorism, drugs, ethnic violence, illegal migration, environmental degradation, arms trafficking, and the global spread of diseases by both animals and humans.”).

⁸⁷ Anthony V. Alfieri, *Race-ing Legal Ethics*, 96 COLUM. L. REV. 800, 800 (1996) (discussing the “1993 trial of Damian Williams and Henry Watson in Los Angeles County Superior Court on charges of attempted murder and aggravated mayhem arising out of the beating of Reginald Denny and seven others during the South Central Los Angeles riots of April 1992. To win acquittals, the Williams-Watson defense teams refuted evidence of intent and voluntary conduct required to prove criminal liability for murder and mayhem. The defense relied on a ‘group contagion’ theory of mob violence-incited diminished capacity. Invoked as a partially exculpatory defense, the theory suggests that young black males as a group, and the black community as a whole, share a pathological tendency to commit acts of violence in mob situations and, by extension, in other social situations.”). See also Anthony V. Alfieri, *Defending Racial Violence*, 95 COLUM. L. REV. 1301, 1304 (1995) (“This Essay argues that the rhetorical structure of criminal defense stories of black-on-white racial violence, manifested here in the group contagion claim of diminished capacity, reflects the dissonance of competing narratives of deviance and defiance. The deviance narrative constructs racial identity in terms of bestiality or pathology.”).

⁸⁸ See generally Fagan, Wilkinson & Davies, *supra* note 51.

⁸⁹ See generally Jeffrey Fagan & Garth Davies, *The Natural History of Neighborhood Violence*, 20 J. CONTEMP. CRIM. JUST. 127–47 (2004).

⁹⁰ See generally Jeffrey A. Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173 (2008).

⁹¹ See generally *NAACP v. Acusport Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

⁹² See generally *id.*

but also “in kind.”⁹³ Though the Court accepted Fagan’s testimony concerning the “contagious effects of gun acquisition, gun injury and homicide among youth,”⁹⁴ and the “disproportionate” effect gun violence has on the African American community in New York,⁹⁵ it determined that the NAACP had not proven its case that this harm was different in kind.⁹⁶ Fagan’s testimony appears to have been central to the NAACP’s case, in that he attempted to characterize the specific impact gun violence has on African Americans by using data collected by public health institutions, which demonstrated that African Americans suffer more from gun violence than other groups. Despite finding against the NAACP, the Court credited Fagan’s expert testimony over the defendant’s expert witness’s testimony.⁹⁷

The problem that I target in this Article, however, is not the use of public health data per se, or the use of the four-pronged strategy advocated by the epidemiology approach, but the use of dehumanizing language embodied in the contagion metaphor; human beings and their teachings are, after all, not illnesses. Loftin’s terminology appears awkward in his first and most notable 1986 article *Assaultive Violence as a Contagious Social Process*,⁹⁸ however, Fagan and Wilkinson’s later 1998 article *Guns, Youth Violence, and Social Identity in Inner Cities* sufficiently emphasizes human emotions and culture so that the contagion metaphor does not raise alarm.⁹⁹ But by 2007, Fagan and Wilkinson’s enthusiasm for the imagery of disease was evident in *The Social Contagion of Violence*.¹⁰⁰ Whereas the 1998 article acknowledged the social teachings of violence¹⁰¹ and appears to call for a greater understanding of the “processes of learning and diffusion” of “gun ‘knowledge’ [as it] remain[s] unstudied and unknown,”¹⁰² the 2007 piece is overrun with images of violence not as a human emotional process, but as an “automatic” one created by disease, toxins, ills, epidemics, and pestilential carriers.¹⁰³ Furthermore, though the scenarios the authors invoke in the 2007 article are interesting, they are streamlined narratives that seem designed to demonstrate that violence is spread by immediate social contact, like any other disease; very little information is given of the backgrounds and emotional and personal histories of the individuals involved in the scenarios.

⁹³ *Id.* at 448–49.

⁹⁴ *Id.* at 520.

⁹⁵ *Id.*

⁹⁶ *Id.* at 451.

⁹⁷ *Id.* at 520.

⁹⁸ See generally *supra* text accompanying notes 41–46.

⁹⁹ See generally *supra* text accompanying notes 48–58.

¹⁰⁰ See generally *supra* text accompanying notes 60–62.

¹⁰¹ See generally *supra* text accompanying notes 48–58.

¹⁰² See Fagan & Wilkinson, *supra* note 40, at 134.

¹⁰³ See generally *supra* text accompanying notes 51–73.

As we will see, the use of the contagion metaphor carries several risks, including the dangerous imposition of stigma on violent offenders and encouragement of analytical sloppiness. Moreover, the devotion to the violence-as-contagion construction might even have warped Fagan's testimony and methods, possibly causing the NAACP to lose its case against AcuSport.

III. A STUDY OF THE EPIDEMIOLOGICAL APPROACH AND ITS ACCOMPANYING CONTAGION METAPHOR

Any critique of the contagion metaphor must accompany an analysis of the public health model with which it appears inextricably connected. In the following section, I will conclude that the retrieval of data on violence collected by public health officials, and the four-step epidemiological attack suggested by scholars like Rosenberg and Mercy¹⁰⁴ need not be abandoned completely. Antiviolence agendas, however, need to drop the dangerous language of disease, and any criminal justice or public health approach must be enriched with a more precise understanding of the human interactions that transfer violent behaviors. In other words, we need a deeper comprehension of the pedagogy of violence.

A. CRITIQUES OF THE PUBLIC HEALTH MODEL

As the proliferation of the contagion metaphor issued from the decision to treat violence as a public health problem,¹⁰⁵ any critique of that thesis seems to presuppose an attack on the epidemiological approach. Though I will be making criticisms based on sensitivities to the stigmatic and other unfortunate effects of the contagion metaphor, I am not arguing against the public health model per se. Indeed, the advocates of epidemiological approach crafted their strategy out of an ambition to uncouple antiviolence strategies from febrile pro-gun politics and severe criminal sentences that disparately impact communities of color while doing little to combat the root causes of violence.¹⁰⁶ Fagan's work, in particular, demonstrates his

¹⁰⁴ See generally *supra* notes 38–39.

¹⁰⁵ See *supra* text accompanying notes 27–32.

¹⁰⁶ See French, *supra* note 1, at 1088–89 (“Public health brings to the table a time-tested, systematic approach to reducing the burden of illness and premature death among human populations. The idea is to steer the debate away from the polarizing pro/anti gun control issue and into the hands of epidemiologists where meaningful, effective, and acceptable control measure can be developed. The nation’s public health should not be a political matter. Whether you are a member of the NRA, like to hunt, or collect guns, there is an obligation, from a public health perspective, to understand and minimize the thousands of deaths and injuries associated with firearms. It is not a complicated idea and common sense requires it in a civilized society.”); David Garland, *Overall Perspectives on Crime Is Not the Problem, Crime Control, and “The American Difference,”* 69 U. COLO. L. REV. 1137, 1146–47 (1995) (“[T]he adoption of a public health approach to criminal violence has the radical effect of ‘demoralizing’ the phenomenon. It removes violent conduct (redefined as ‘non-accidental injury’) from the framework of condemnation, blame allocation, and punishment and views it as injurious behavior that should be addressed by the most effective methods, whether or not these accord with the traditional values and objectives of law enforcement and criminal justice.”).

frustration with long prison sentences and their effects on the lives of men of color¹⁰⁷ and his aim to make communities of color safer.¹⁰⁸ Furthermore, the public health approach possesses the advantage of reducing violence through preventative strategies rather than after-the-fact punishments—this former approach may be more effective.¹⁰⁹

Nevertheless, the epidemiological approach has been aptly criticized in ways that relate to the negative effects of the contagion metaphor. The most prominent critique has been advanced by Hattie Ruttenberg, former assistant general counsel at the Children's Defense Fund, in her 1994 Yale Law Journal article *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*.¹¹⁰ Here, Ruttenberg acknowledges that the public health model is most effective when dealing with the so-called "pathogen" of guns, and collecting data on community violence, but that it runs into trouble when characterizing human beings as vectors of "disease":

¹⁰⁷ See Fagan & Meares, *supra* note 90, at 225 ("Despite good evidence of cyclical patterns of contagion and violent crime, a variety of social constructions of the 'violence' problem have been advanced, each one justifying new demands for 'tougher' sentences and increased punishment. For example, increases in violent crime in the 1960s were attributed to sharp increases in heroin addiction in large U.S. cities, in the 1970s to youth violence, and in the 1980s to youth gangs, guns, and drug traffickers. Each successive iteration of the etiology of rising violence rates lead to the identification culturally, politically and socially of new 'dangerous classes' that threatened public safety and whose crimes merited increased doses of punishment....Importantly, the 'dangerous classes' of the last two decades were 'raced.' That is, crime became inextricably linked to African Americans, and African-American men, in particular. Thus, the escalation in imprisonment can be read not only as a reaction to the changing nature of violent crime and the country's changing mores regarding drug offending, but it also can be read as a statement regarding mainstream society's linkage of African-American men with crime.").

¹⁰⁸ See, for example, Fagan's testimony in support of holding AcuSport responsible in nuisance for the illegal distribution of guns in New York. NAACP, 271 F. Supp 2d. at 520.

¹⁰⁹ James C. Howell & J. David Hawkins, *Prevention of Youth Violence*, 24 CRIME & JUST. 263, 302(1998) ("[F]or maximum and sustained impact, violence prevention needs to be linked with early intervention and graduated sanctions components in a comprehensive strategy. Comprehensive approaches to delinquency prevention and intervention require collaborative efforts between prevention agencies, the juvenile justice system, and other service provision systems, including mental health, health, child welfare, and education. If prevention programs are effective in reducing the number of youths who reach the juvenile justice system, the resources devoted to costly correctional services and sanctions can be reallocated to prevention services. Recent advances in prevention science and health epidemiology are providing tools communities can use to plan and implement strategic, outcome-focused plans for reducing the prevalence of antisocial behavior among adolescents and young adults."); Deborah Prothrow-Stith, *Strengthening the Collaboration Between Public Health and Criminal Justice to Prevent Violence*, 32 J.L. MED. & ETHICS 82, 82–83 (2004) ("The utilization of public health approaches has generated several contributions to the understanding and prevention of violence, including new and expanded knowledge in surveillance, delineation of risk factors, and program design, including implementation and evaluation strategies. . . . Public health strategies are required for violence prevention because criminal justice strategies primarily target stranger violence committed during another crime, not the significant problem of acquaintance, family and intimate violence."); Murray A. Straus & Carrie L. Yodanis, *Corporal Punishment by Parents: Implications for Primary Prevention of Assaults on Spouses and Children*, 2 U. CHI. L. SCH. ROUNDTABLE 35, 36 (1995) ("The concept of primary prevention is borrowed from the fields of public health and mental health. To paraphrase a definition from Caplan, primary prevention lowers the incidence of family violence by counteracting harmful circumstances before they have a chance to produce violence. Primary prevention does not seek to prevent a specific person from committing a violent act; instead, it seeks to reduce the risk for a whole population. The outcome envisioned as a result of primary prevention is that although some individuals may continue to be violent, their numbers will be reduced.").

¹¹⁰ Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*, 103 YALE L.J. 1885 (1994).

The difficulty in using this model to address the *incidence* of youth violence stems from the fact that, in this case, the public health community must address the particular vulnerabilities that cause individuals to engage in the assaultive behavior that injures and kills *other* individuals. In this scenario, therefore, the vulnerabilities inhere not in the victim, but in the aggressor, who is also the pathogen. . . .

. . . .

[However] the public health model, like the criminal justice system, is ill-suited to improving the fundamental social conditions, such as poverty, joblessness, and a lack of family and community supports, that seem to underlie much violence behavior. The public health community, however, does have the capacity to collect violence data, identify violence risk factors, and educate the public about the risks associated with firearms. Ultimately, the public health model promises to be much more effective in *reducing the lethality* of violent behavior (by addressing the lethality of firearms) than in *preventing* that behavior.¹¹¹

Ruttenberg levies particular criticism at the inability of the public health model to come up with factors that correlate to a risk of violence, but have not yet been proved to cause violence:

[R]esearchers have been able to identify various risk factors *correlated* with youth violence. Those factors include: (1) poverty; (2) repeated exposure to violence; (3) drugs; (4) easy access to firearms; (5) unstable family life and family violence; (6) delinquent peer groups; and (7) media violence. . . .

Studies also have demonstrated that a small number of juveniles commit the majority of violent offenses. For instance, in a longitudinal study that followed approximately 4000 youths in Denver, Pittsburgh, and Rochester for five years, more than half of the youths admitted to some form of violent criminal behavior by age sixteen; however, 15% of the sample were responsible for 75% of the violent offenses.

¹¹¹ *Id.* at 1888. See also Dean G. Kilpatrick, *Interpersonal Violence and Public Policy: What about the Victims?*, 32 J.L. MED. & ETHICS 73, 76 (2004) (“Understanding the complex, multi-determined causes of violence perpetration is considerably more difficult than understanding the causes of polio. Likewise, developing a method for preventing polio has proved to be a much simpler task than attempting to develop methods for preventing perpetration of interpersonal violence. Given these limitations in our current knowledge about the effectiveness of primary prevention of interpersonal violence, the question must be raised as to whether it is premature to devote substantial resources to primary prevention efforts that remain unevaluated, particularly if these resources might be better utilized in secondary or tertiary prevention services to victims.”).

That a small percentage of juveniles is responsible for the great majority of violent offenses further underscores the failure, to date, to pinpoint causative factors. If the risk factors identified above were causally related to violence, the primary offending cohort would be much greater than it is, because more juveniles experience those factors than engage in violent crime.¹¹²

Thus, while the public health model retains relevance because it supports the gathering of data on violence and is effective in addressing the proliferation of guns in our community (say, by encouraging lawmakers to enact gun control laws and funding public service announcements that identify the risks of having guns in the home), it is not designed to address poverty, unemployment, and family unrest, nor has it accurately identified when these factors will in fact translate into violent behavior. These problems with the public health model can only be exacerbated by characterizing violence as a contagion: much of Rutenberg's critique comes amid the disconnect between treating human beings as diseases and vectors of epidemics. Though Rutenberg herself uses the contagion metaphor,¹¹³ her argument grows out of a frustration with epidemiology's inability to account for human emotions and motivations that influence future violent behavior. That is, violent people are not communicable diseases, and such a characterization of them raises the specter not only of inaccuracy but also of dehumanization. The rhetorical leap from addressing violence as a public health problem to that of a contagion has obscured more than it revealed: the insistence on describing human beings as pestilence dangerously stigmatizes offenders and has created a significant obstacle in understanding why we act violently.

B. THE PROBLEMS WITH THE "VIOLENCE AS CONTAGION" METAPHOR

While "violence as contagion" is a powerful metaphor, it dehumanizes offenders. As my review of their work demonstrates, Loftin's and Fagan and Wilkinson's articles are rife with troubling descriptions of people engaged in violent behavior. The emotional disengagement and nerve-racking language of disease encouraged by the contagion metaphor could make us more amenable to draconian social policies, such as the kind that have often been used to combat virulent contagious diseases. At the very least, the contagion metaphor's diversion of attention from the emotional dynamics that drive the transmission of violent behaviors will impoverish our analysis of violence and its redresses. Thus, while neither Loftin, Fagan, Wilkinson, nor any other author discussed here advocate treating

¹¹² *Id.* at 1894.

¹¹³ *Id.* at 1886 ("In the quest for new answers, the public health model of violence prevention recently has been proffered as a possible response to the epidemic of youth violence.").

offenders in unfair ways—indeed, they demonstrate their commitment to social justice—we should remain wary of using language that distracts us from the human face of violence.

Fagan, Wilkinson, and Loftin's work unfortunately incites society to overreact and under-comprehend the causes of violence. For example, Fagan and Wilkinson's descriptions of offenders do not cohere with our common understanding of how human motivation and behavior operates, which creates the impression that offenders are somehow outcasts from the community. In the scenarios recounted by Fagan and Wilkinson in *The Social Contagion of Violence*, the offenders are described as spontaneously and instinctively engaging in violence that they catch from one another.¹¹⁴ Again, though these scenarios describe group behavior, and the article mentions "mutual influence" and "contact[s],"¹¹⁵ Fagan and Wilkinson do not detail the emotional relationships that exist between co-offenders, or offenders and bystanders. There is also no history given about the offenders, nor any description of the specific tutorials by which they may have learned violence in the home, on the streets, from the media, literature, or social and political history (for example, the social aftershocks of the slavery trade in the United States or the persistent use of the death penalty in this country). Despite Fagan and Wilkinson's admission that violence is transmitted through social networks,¹¹⁶ all of the actors in their scenarios seem deprived of deep moral and emotional sensation; indeed, the authors assert that the offenders are acting almost automatically, from "scripts."¹¹⁷

¹¹⁴ See *supra* text accompanying notes 77–79.

¹¹⁵ Fagan, Wilkinson & Davies, *supra* note 51, at 689.

¹¹⁶ See, e.g., *supra* notes 40, 47, 48, 54, 56, & 72.

¹¹⁷ See Fagan, Wilkinson & Davies, *supra* note 51, at 713 ("Aron goes back to his block and recounts the story to his associates. He rallies their support for a counterattack by highlighting the ways that his opponent was trying to destroy his attractiveness by scarring his face and how he disrespected him. After a few days pass and the group was fueled by visions of revenge, Aron and four of his associates armed themselves with handguns and went to Bruce's block."). See also *id.* at 714 ("Mike discusses ways of punishing Rich. Both sides watch the other. The status of who 'gets' the girl remains open. Both sides plan to attack at the end of the night. Mike believed that Rich must have called some of his friends for additional reinforcements and to make sure that when Rich got outside he would have a gun available. Mike and his boys essentially make the same type of preparations. As soon as Mike moved toward exiting the club, Rich's group was preparing for a gun battle. Mike recalls that his side had three guns that they retrieved from nearby stashes, whereas it seemed like the other side had five or more guns. With more than 20 shots fired, injuries were sustained on both sides."); *id.* at 715 ("The event process can be dissected into specific stages: anticipatory stage, opening moves, countermoves and brewing period, persistence stage, intensification stage, early violence stage, stewing period, assessment stage, the casting/recasting stage, and the retaliatory stage. The examples above demonstrate that network peers play important roles at almost every stage of a conflict that escalates into violence. The communication of normative expectations, violence scripts, and violence strategies filters through direct observation, word of mouth via rumors, and telling of 'war stories.'"). See also SUSAN SONTAG, *ILLNESS AS METAPHOR* 60 (1977) (noting that the illness (particularly cancer) as metaphor is used to depict "[w]hatever seemed ruthless, implacable [and] predatory."); Note, *The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and "The Purity of the Ballot Box,"* 102 HARV. L. REV. 1300 n.70 (1989) ("Metaphors of disease in the rhetoric of disenfranchisement project a picture of criminality as an evil alien force, which, if not rooted out, will spread and contaminate the entire body politic. Cf. *Buck v. Bell*, 274 U.S. 200 (1927) (Holmes, J.) ("[I]n order to prevent our being swamped with

The connotation that offenders are somehow sub-human is reinforced by the very word “contagion.” “Contagion” comes from the Latin term “contagionem,” which means touch.¹¹⁸ Thus, the direct implication of this word is that offenders are untouchable because they have been touched with disease. Loftin was one of the pioneers of the use of the word in this context. Fagan and Wilkinson also used this vision of offenders as untouchable in their work: “Contagious epidemics involve the transmission of an agent via a host through susceptible organisms whose resilience is weakened by other conditions or factors. Susceptibility is critical to the ability of an agent to exert its process on a host.”¹¹⁹

This impression—that violent offenders are automatons or outcasts from humanity—mingles dangerously with the insinuation that they are carriers or vectors of disease. Loftin, for one, describes the process by which we learn violent behavior from one another as an “epidemic,” a word that is sure to generate feelings of anxiety and even panic.¹²⁰ The record of how the United States and other countries address actual epidemics is littered with examples of almost uncontrollable public alarm and the consequent limitations on civil and human rights.¹²¹ Further, epidemics and

incompetence . . . [i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”)

¹¹⁸ 1 OXFORD ENGLISH DICTIONARY 533.

¹¹⁹ Fagan, Wilkinson & Davies, *supra* note 51.

¹²⁰ Loftin, *supra* note 33, at 552.

¹²¹ JONATHAN ENGEL, *THE EPIDEMIC: A GLOBAL HISTORY OF AIDS* 36 (2006) (“AIDS clearly fell within the purview of public health. As an infectious but possibly controllable disease, it could be targeted by traditional public health techniques, whether by identifying contagious individuals, regulating their behavior, circumscribing their motions and activities, or publicizing their existence. Although nobody in the early 1980s was suggesting reopening the archaic leper colonies of old, public health professionals did consider identifying AIDS patients, warning others of their existence, regulating their behavior, and possibly limiting their freedoms. All of these techniques had proven effective in the past in controlling infectious disease, and there was little reason to suspect that they could not successfully be employed again.”); MICHELLE THERESE MORAN, *COLONIZING LEPROSY, IMPERIALISM AND THE POLITICS OF PUBLIC HEALTH IN THE UNITED STATES* 63 (2007) (detailing the history of leprosy containment in Hawaii) (“Hawaiians did not consider forced removal from their families and life-long banishment . . . a peaceful undertaking, but Euroamerican officials convinced of Hawaiian passivity did not anticipate strong opposition to the round-up and deportation.”); JOHN PARASCANDOLA, *SEX SIN, AND SCIENCE: A HISTORY OF SYPHILIS IN AMERICA* 124 (2008) (detailing the World War II arrests and mandatory treatments of prostitutes and ‘loose women’ who were suspected of having syphilis) (“[A]dmittance to a rapid treatment center was not always on a voluntary basis, nor were patients necessarily free to leave of their own accord. Many were confined to the centers under state laws involving the control of communicable diseases, i.e., they were considered to be quarantined. Not only were they detained in these facilities, but they were required to accept treatment until they had been cured of the disease.”); ANDREW T. PRICE-SMITH, *CONTAGION AND CHAOS: DISEASE, ECOLOGY, AND NATIONAL SECURITY IN THE ERA OF GLOBALIZATION* 41–42 (2009) (“[The 15th century wave of the Black Death] was also responsible for exacerbating pre-existing inter-ethnic tensions, manifesting in the scapegoating and often torture of minorities. Exceptional violence was directed by panicked Christian populations against Jewish minorities throughout Europe during this period. Anti-Jewish pogroms were carried out throughout Europe, and with a particular intensity in France and Germany, largely as a result of the dissemination of conspiracy theories that the Jews were poisoning the wells of Christian communities.”). *See also id.* at 37 (“Civil libertarians were particularly adamant in their opposition to almost all traditional public health efforts at controlling the disease.”).

plagues are near synonymous in the *Oxford English Dictionary*,¹²² and, as Susan Sontag notes in her book *AIDS and its Metaphors*, “[p]lague, from the Latin *plaga* (stroke, wound), has long been used metaphorically as the highest standard of collective calamity, evil, scourge.”¹²³ Sontag also observes that “[t]he most feared diseases, those that are not simply fatal but transform the body into something alienating, like leprosy and syphilis and cholera and (in the imagination of many) cancer, are the ones that seem particularly susceptible to promotion to ‘plague.’”¹²⁴ Thus, to characterize human beings as carriers of this level of disease specifically disgraces them as “calamitous,” “evil,” and “repulsive”¹²⁵—and once we have so constructed violent offenders, we may feel all the more free to treat them with unduly harsh measures.¹²⁶ On this point, we may consider Sontag

¹²² II OXFORD ENGLISH DICTIONARY 2193 (defining plague as “an infectious disease or epidemic attended with great mortality; a pestilence.”).

¹²³ SUSAN SONTAG, *AIDS AND ITS METAPHORS* 45 (1988) (“It is usually epidemics that are thought of as plagues. And these mass incidences of illness are understood as inflicted, not just endured. . . . The most feared diseases, those that are not simply fatal by transform the body into something alienating, like leprosy and syphilis and cholera and (in the imagination of many) cancer, are the ones that seem particularly susceptible to promotion to ‘plague.’”).

¹²⁴ *Id.* at 45.

¹²⁵ *Id.*

¹²⁶ Though Fagan does advance his social contagion theory as an antidote to excessive sentences see Fagan & Meares, *supra* note 90, at 225 (“Despite good evidence of cyclical patterns of contagion and violent crime, a variety of social constructions of the ‘violence’ problem have been advanced, each one justifying new demands for ‘tougher’ sentences and increased punishment. For example, increases in violent crime in the 1960s were attributed to sharp increases in heroin addiction in large U.S. cities, in the 1970s to youth violence, and in the 1980s to youth gangs, guns, and drug traffickers. Each successive iteration of the etiology of rising violence rates lead to the identification culturally, politically and socially of new ‘dangerous classes’ that threatened public safety and whose crimes merited increased doses of punishment.”). Sontag notes in *Illness as Metaphor* that the cancer metaphor “amounts to saying, first of all, that the event or situation is unqualifiedly and unredeemably wicked. It enormously ups the ante. . . . To describe a phenomenon as a cancer is an incitement to violence. The use of cancer in political discourse encourages fatalism and justifies ‘severe’ measures.” SONTAG, *supra* note 117, at 82–83. Violence as a “contagion” may have the same, or even a greater such effect, leading lawmakers to think in terms of quarantine and other extreme responses to control a “plague.” With respect to the relationship between the dehumanization of offenders and too-harsh treatment of them, compare Albert W. Alschuler, *The Failure of Sentencing Guidelines: A Plea for Less Aggregation*, 58 U. CHI. L. REV. 901, 902-03 (1991) (noting that the “aggregation” of criminal law cases under the federal sentencing guidelines, in the form of high mandatory minimum sentences, led to a harm-based penology that “dehumanized the sentencing process.”), and Elizabeth-Heger Boyle, Book Review, *In the Moment of Greatest Calamity: Terrorism Grief and a Victim’s Quest for Justice*, 41 LAW & SOC’Y REV. 741, 743 (2007) (reviewing SUSAN B. HIRSCH, *IN THE MOMENT OF GREATEST CALAMITY: TERRORISM, GRIEF AND A VICTIM’S QUEST FOR JUSTICE* (2006), noting Hirsch’s analysis of *Payne v. Tennessee*, [501 U.S. 808 (1991)], the “1991 Supreme Court decision to allow inclusion of victim impact evidence in capital cases. Although, as a victim, she recognizes the need to tell her story, she doubts that the trial—where such testimony may dehumanize defendants, swaying jurors toward feelings of vengeance—is the most adequate place.”), and H. Mitchell Caldwell & Thomas W. Brewer, *Death Without Due Consideration?: Overcoming Barriers to Mitigation Evidence by “Warming” Capital Jurors to the Accused*, 51 HOW. L.J. 193, 200, 203 (2008) (“Dehumanization proves to be one of the most powerful cognitive processes that can distance people from the moral implications of their actions. . . . Racism originates from anger, hatred, fear, and ignorance and is facilitated when people are dehumanized. A sentence of death may often originate from the same emotions. Historical data exemplifies race’s impact in capital punishment, and highlights the disproportionate number of death sentences received by African Americans.”), and Marques P. Richeson, *Beyond the Final Frontier: A “Post-Racial” America?: The Obligations of Lawyers, the Legislature, and The Court: Sex, Drugs, and . . . Race-to-Castrate: A Black Box Warning of Chemical Castration’s Potential Racial Side Effects*, 25 HARV. BLACKLETTER J. 95, 97 (2009) (arguing that chemical castration is related to a long American tradition of dehumanizing and hypersexualizing African American men), with Amanda K. Eklund,

again: “The melodramatics of the disease metaphor in modern political discourse assume a punitive notion: of the disease not as a punishment but as a sign of evil.”¹²⁷

As Fagan’s work focuses on the violent behavior of black men, we may also be particularly saddened by a characterization of racial minorities as pestilential carriers of disease; the effects of this metaphor seem especially hazardous as we live in a racist society.¹²⁸ In the end, Fagan, Wilkinson, and Loftin’s certainly unintentional implication that violent offenders are reflexive, automatic, untouchable, evil, destitute of deeply complicated emotive and personal histories, and plague carriers may lay the groundwork for dangerous social policy.

The concern that the contagion metaphor will fertilize draconian or even racist political and legal agendas is, however, speculative at this point. One critique that is not speculative, however, is as follows: since the contagion metaphor erodes the humanity of offenders, it allows us too easily to disregard the rituals, practices, and emotional processes by which we learn to be violent, and this may lead to an inferior analysis of how violent behavior is transferred from person to person. This impoverished analysis will then give rise, if not to frightening social policies, at the very least to incomplete or wrongheaded forms of redress.

My critique, then, lines up with Ruttenberg’s assessment that the public health approach is not equipped to address poverty, unemployment, and family unrest, nor has it accurately identified when these factors will in fact translate into violent behavior.¹²⁹ In other words, it is insufficiently vested in human emotions and personal and social history, a dilemma that is exacerbated—perhaps even created—by the use and overreliance on the contagion metaphor, which confusingly describes human relationships as vectors. Furthermore, as I will show later, this disconnect from emotions and history may also account for the incomplete expert testimony that

Comment: The Death Penalty in Montana: A Violation of the Constitutional Right to Individual Dignity, 65 Mont. L. Rev. 135, 144–45 (2004) (“The ultimate dehumanization occurs when a government systematically discriminates against a class of its own people based on factors beyond their control. Such is the case in the American system of capital punishment.”).

¹²⁷ SONTAG, *supra* note 117, at 82.

¹²⁸ See also Anthony V. Alfieri, *Defending Racial Violence*, 95 COLUM. L. REV. 1301, 1304 (1995) (“This Essay argues that the rhetorical structure of criminal defense stories of black-on-white racial violence, manifested here in the group contagion claim of diminished capacity, reflects the dissonance of competing narratives of deviance and defiance. The deviance narrative constructs racial identity in terms of bestiality or pathology.”). *C.f.* Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 VA. J. INT’L L. 485, 501 (2008) (“‘The generic massacre story,’ as Philip Gourevitch has pointed out, ‘speaks of ‘endemic’ or ‘epidemic’ violence’ . . . This theory is popular because, in addition to producing dramatic historical summaries and vivid metaphors, it excuses the international community from doing much to prevent the next massacre or genocide. If ‘those people’ kill each other endemically, then nothing can be done to stop them, so it is a waste of time and effort to try. Paradoxically, such an account of the causes of genocide is comforting.”).

¹²⁹ See Ruttenberg, *supra* note 110, at 1903.

Fagan gave in the NAACP's unsuccessful nuisance lawsuit against gun manufacturer AcuSport.¹³⁰

Consequently, I advocate that we abandon this metaphor in favor of an approach that acknowledges the transmissions of violence as a pedagogy of violence. Though I share Ruttenberg's approval of the epidemiological method's information gathering and public service messaging,¹³¹ the model's rhetoric and focus has blinded us to crucial factors that lead to the sharing of violent behaviors. As the works of Bandura, Walker, Gelles, Steinmetz, Straus, and the other previously cited social scientists show us,¹³² violence is a learned behavior. The example of violence proves to be a teaching lesson. And if we want a deeper understanding of what makes us such good teachers and students of violence, we must make a study of the personal histories, emotions, and desires of those who teach and learn violence.

Thus, we should merge the two models, retaining the data-gathering and public-servicing of the epidemiological model, while incorporating the language and insights of the learned behavior model. We need, however, to go further than that: the problem of violence transmission is so dire and complicated that we need to expand our studies of it. Legal scholars should develop a richer analysis of the pedagogy of violence, which may look not only to the works of Bandura, Walker, other learned behavior theorists and epidemiologists, but also to other interdisciplinary sources.

It must be said that some scholars have been making inroads in this direction. For example, Rutherford, mentioned above, builds upon the work of criminologist Lonnie Athens, who explains that violent behavior is learned in four different stages: violence progresses from "brutalization" to "belligerency" to "violent performances" and, finally, to "virulency."¹³³ Rutherford also discusses the power of "violent coaching" where authority figures encourage violence.¹³⁴ Violent coaching has been addressed by other scholars, including Judge Videtta A. Brown, associate judge in the District Court of Baltimore, who wrote about how gang members tutor each other to commit violence upon women in their circle, citing the work

¹³⁰ See *infra* text accompanying notes 285–292.

¹³¹ See *supra* text accompanying note 110.

¹³² See *supra* text accompanying notes 11–17.

¹³³ Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAULL. REV. 949, 979.

¹³⁴ *Id.* at 979–80 ("Violent coaching occurs when an authority figure encourages the minor to act violently. The authority figure belittles any attempts minors make to smooth over conflicts or flee. Children are taught that it is their duty to stand up for themselves and to be prepared to physically attack others when necessary. The authority figure often tells stories glorifying those who triumph in physical fights. Sometimes, especially within gangs, the coaching is coercive. If the minor does not act aggressively toward an outsider, he will be a victim of the gang.").

of Canadian Sociologist Mark Douglas Totten.¹³⁵ Von Talge, has applied the psychoanalytic theories of Anna Freud to explain how child witnesses of domestic violence absorb its lessons.¹³⁶ Finally, Goodmark, who referred to other psychoanalytic studies of the emotional impact experienced by child witnesses of domestic violence, which include an increased sense of fatalism and “hyperalertness.”¹³⁷

Nevertheless, a varied, textured account of the pedagogy of violence is still in the workings. Though legal scholars have turned to psychological and sociological studies to shed light on the process of learning violence, we need to dig deeper into this particular pedagogical relationship. Case studies, interviews of offenders and victims, a study of the influences of economics on violence,¹³⁸ and other scholarly strategies may reveal insights into the pedagogy of violence. In this Article, I will be employing a different interdisciplinary method, that of law and literature. I chose a literary-legal analysis of violence transmission because of literature’s intense focus on characters’ relationships and personal histories, which are exactly the elements that are missing from the exegeses that track the contagion of violence. I will employ a close analysis of Elfriede Jelinek’s novel *The Piano Teacher* in order to study the dynamics that exist between teachers and students of violence.¹³⁹ In particular, I will examine how *The Piano Teacher* gives a specific account of the ways in which we train each other in violence, by conducting surveillance, controlling, and what Jelinek calls “trampling” one another. Furthermore, I will show how, in the novel, the characters’ emotions and desires make them such adept students of this deadly pedagogy.

IV. THE PEDAGOGY OF VIOLENCE: A LITERARY-LEGAL APPROACH

A. THE PLOT OF THE PIANO TEACHER

Austrian 2004 Nobel Laureate¹⁴⁰ Elfriede Jelinek published *The Piano Teacher* in 1983; horrifyingly, she claims that the novel is autobiographical.¹⁴¹ The story concerns one Erika Kohut, a spinster and

¹³⁵ See Brown, *supra* note 25, at 408 (“Physical and sexual violence toward young women, although not considered violence by the gang, becomes a learned behavior. Members adopt their leaders’ violent sexual behavior against women as well as the leaders’ misogynistic philosophies.”).

¹³⁶ See, e.g., von Talge, *supra* note 25, at 174.

¹³⁷ See Goodmark, *supra* note 25 (citing Philip C. Crosby, Comment, *Custody of Vaughn: Emphasizing the Importance of Domestic Violence in Child Custody Cases*, 77 B.U. L. REV. 483, 502 (1997)).

¹³⁸ Cf. RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 219–27 (6th ed. 2003).

¹³⁹ ELFRIEDE JELINEK, *THE PIANO TEACHER* (Joachim Neugroschel trans., 1988) (1983).

¹⁴⁰ Alan Riding, *Austrian Writer of Sex, Violence and Politics Wins Nobel*, N.Y. TIMES, Oct. 8, 2004, at A3.

¹⁴¹ Ruth Franklin, *Nobel Savage*, THE NEW REPUBLIC, Nov. 1, 2004, at 32 (“The book provoked a sensation not just for its subject matter and its graphic, indeed pornographic, imagery . . . but also for Jelinek’s acknowledgment that many of its elements were autobiographical.”).

Austrian music professor who teaches at the Vienna Conservatory.¹⁴² Erika lives with her mother¹⁴³ in a small two bedroom apartment; her father has been sent by the women to a sanitarium.¹⁴⁴ The novel begins with a baffling scene: Erika, returns home late one night and is immediately set upon by Mother,¹⁴⁵ who typically monitors all of Erika's movements out of fear that her daughter will one day leave her for a man.¹⁴⁶ Mother begins interrogating Erika, pulling her daughter's briefcase away from her and rifling through it. Inside she finds the "bitter answer to all questions"—that Erika had been shopping for a new dress, which she had secreted away in the briefcase.¹⁴⁷ Mother is incensed at this betrayal; dinner has been kept waiting. The two women struggle over the dress, and Erika "grabs her mother's dark-blond hair with its gray roots She pulls it furiously,"¹⁴⁸ later throwing the torn hair into the garbage. The women then bicker with each other about clothing and fashion and which clothes are appropriate for Erika to wear.¹⁴⁹ Soon after, Erika cries, the women make up, and then go to sleep in the same bed, which is their nightly practice.¹⁵⁰

Day breaks. Erika travels by streetcar to her teaching job at the Conservatory, growing so frustrated at the crowd that she kicks a lady, a man,¹⁵¹ and an old woman.¹⁵² She has a flashback of her mother's desire that Erika become a vastly famous pianist.¹⁵³ She recalls the day that she failed a crucial piano performance, destroying all possibilities of this dream becoming a reality.¹⁵⁴ On that occasion, Erika's mother slapped her, "for even musical laymen could read Erika's failure in her face if not in her hands."¹⁵⁵

Erika eventually arrives at the Conservatory. She begins her first lesson, and the narrator informs us that she particularly enjoys her work with "good advanced students."¹⁵⁶ Erika is drawn to one student in particular: the attractive, blond, and athletic Walter Klemmer,¹⁵⁷ who has shown inordinate interest in his teacher.¹⁵⁸ The day continues without

¹⁴² JELINEK, *supra* note 139, at 7.

¹⁴³ *Id.* at 1.

¹⁴⁴ *Id.* at 93.

¹⁴⁵ *Id.* at 3.

¹⁴⁶ *Id.* at 11 ("Mother does not wish to become a mother-in-law. She prefers remaining a normal mother; she is quite content with her status.").

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.* at 8.

¹⁴⁹ *Id.* at 9.

¹⁵⁰ *Id.* at 9–10.

¹⁵¹ *Id.* at 16–17.

¹⁵² *Id.* at 21.

¹⁵³ *Id.* at 25 ("Erika is truly a keyboard genius, but she has not been properly discovered as yet.").

¹⁵⁴ *Id.* at 26–27.

¹⁵⁵ *Id.* at 27.

¹⁵⁶ *Id.* at 28.

¹⁵⁷ *Id.* at 29.

¹⁵⁸ *Id.* ("[He is a] nice-looking blond boy, who lately has been the first to show up in the morning and the last to leave in the evening.").

incident, but when evening arrives, Erika takes a curious path home.¹⁵⁹ She travels through the less savory part of town, observing the run-down atmosphere and a child who is being physically chastised by her mother.¹⁶⁰ Erika eventually makes her way to a sex shop.¹⁶¹ Here, she watches a pornographic film,¹⁶² sniffing at semen-encrusted tissues that have been left in her booth.¹⁶³ When night falls, she returns home.¹⁶⁴

The next day, Erika performs at a concert in the home of a Polish émigré family. Klemmer and his family are in attendance.¹⁶⁵ Klemmer gazes lustily at his professor as she plays the piano¹⁶⁶ and later chats with Erika about Schubert and Schumann.¹⁶⁷ She discloses to Klemmer that, like Schumann, her father suffered from a terrible mental illness.¹⁶⁸ Klemmer attempts to walk Erika and Mother home after the concert, but the women will not permit it for long.¹⁶⁹ Once at home, Erika goes into a reverie and self-mutilates herself with a razor while hidden away in the bathroom.¹⁷⁰

The next morning, on her way to work, Erika observes a doppelganger of herself in action: one of her other students, a boy, staring at pornographic film stills that advertise movies at a theater.¹⁷¹ Teacher and student walk together to his lesson, Erika berating the boy all the while.¹⁷² During the lesson, Erika treats the student with such savagery that he cannot perform.¹⁷³

The book moves to another day, describing another lesson, this time with the intriguing Klemmer. Klemmer and Erika engage in a debate about music, and during their exchange their sexual tension escalates.¹⁷⁴ They separate, and Klemmer goes home; Erika follows him, clandestinely.¹⁷⁵ Erika then goes to another downtrodden part of town,¹⁷⁶ this time wearing sturdy walking shoes.¹⁷⁷ In the Prater meadows, she witnesses a sex act between a Turk and an Austrian woman, who either is the Turk's lover or a prostitute.¹⁷⁸ The Turk hears Erika lurking in the bushes and goes

¹⁵⁹ *Id.* at 44.

¹⁶⁰ *Id.* at 46.

¹⁶¹ *Id.* at 48.

¹⁶² *Id.* at 53–55.

¹⁶³ *Id.* at 46–56.

¹⁶⁴ *Id.* at 56.

¹⁶⁵ *Id.* at 60, 62.

¹⁶⁶ *Id.* at 63.

¹⁶⁷ *Id.* at 70–71.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 73–80.

¹⁷⁰ *Id.* at 86.

¹⁷¹ *Id.* at 99.

¹⁷² *Id.* at 101.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 114.

¹⁷⁵ *Id.* at 127–31.

¹⁷⁶ *Id.* at 135–36.

¹⁷⁷ *Id.* at 137.

¹⁷⁸ *Id.* at 141–49.

scrabbling around to investigate; thankfully, he is unable to find her.¹⁷⁹ Erika, hidden in the brush, grows extremely excited. In her rapture, she urinates in the ground, under the cover of darkness.¹⁸⁰ This diversion makes Erika late for dinner at home with Mother, and Mother, in another one of her furies, destroys one of Erika's dresses with shears.¹⁸¹ When Erika finally comes home, the two women have a strange, violent, utterly silent physical battle.¹⁸² Then they grow exhausted and go to sleep.¹⁸³

The next day, during a rehearsal, Klemmer flirts with a girl with attractive legs.¹⁸⁴ Erika keeps a keen and jealous watch on this behavior.¹⁸⁵ As the rehearsal progresses, Erika's rage intensifies, and she leaves the rehearsal room,¹⁸⁶ moving to the coat room.¹⁸⁷ She finds a bright coat that she knows belongs to the recipient of Klemmer's amorous attentions; she smashes a glass and slips the sharp shards into one of its pockets.¹⁸⁸ Erika returns to the rehearsal room as if she has made an innocent trip to the bathroom, and the rehearsal ends.¹⁸⁹ Soon after, the girl gets her coat, puts her hand in its pocket, and rips her tendons on the glass.¹⁹⁰ In a decisive moment in the novel, the narrator tells us: "Erika observes everything carefully and then leaves. Walter Klemmer observes Erika Kohut like a freshly hatched chick that recognizes its food source; he then almost dogs her heels as she leaves."¹⁹¹

Klemmer follows her into the bathroom, where she is urinating out of excitement.¹⁹² Klemmer "pulls [her] out of the toilet stall" and begins kissing her.¹⁹³ What might have been a traditional (except for its setting) love scene, however, quickly grows baroque. Erika begins to masturbate Klemmer until just before he reaches climax. Here, she stops touching him altogether. Every time that Klemmer attempts to caress her, she denies him, saying that she will leave if he touches her.¹⁹⁴ She hurts him with her fingernails¹⁹⁵ and fellates him,¹⁹⁶ but before he can have an orgasm she ceases, giving him her demands: she will write him a list of all the things

¹⁷⁹ *Id.* at 147–48.

¹⁸⁰ *Id.* at 148.

¹⁸¹ *Id.* at 152.

¹⁸² *Id.* at 156.

¹⁸³ *Id.* at 158–59.

¹⁸⁴ *Id.* at 160.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 162.

¹⁸⁷ *Id.* at 166.

¹⁸⁸ *Id.* at 166.

¹⁸⁹ *Id.* at 168–69.

¹⁹⁰ *Id.* at 170.

¹⁹¹ *Id.* at 171.

¹⁹² *Id.* at 174.

¹⁹³ *Id.* at 176.

¹⁹⁴ *Id.* at 179.

¹⁹⁵ *Id.* at 180.

¹⁹⁶ *Id.*

that he can do to her.¹⁹⁷ After Klemmer regains his composure, he tries to laugh off the incident, shadowboxing with her, slapping her on the neck, and saying that next time they will do better.¹⁹⁸

The following day, at Klemmer's lesson, Erika hands him a letter that "indicates the progress a certain kind of love should take."¹⁹⁹ On her way home that evening, Klemmer follows her to her apartment.²⁰⁰ Though Mother is waiting with dinner for two,²⁰¹ Klemmer talks his way into their home.²⁰² He and Erika head to Erika's room, dragging a heavy bureau to the door and barricading themselves inside.²⁰³ Klemmer believes that he is about to engage in a conventional sexual episode with Erika, but Erika insists on his reading her letter, which he has not yet accomplished.²⁰⁴ They argue about this until he finally relents and reads it.²⁰⁵ The letter asks Klemmer to tie Erika up and beat her.²⁰⁶ "Erika's letters says she wants to be dimmed out under him, snuffed out."²⁰⁷ Klemmer laughs.²⁰⁸ As it dawns on Klemmer that Erika is not joking, he grows disgusted,²⁰⁹ swears at her, and says he would not now touch her with a "ten-foot pole."²¹⁰ He leaves.²¹¹

Erika then goes to bed with her mother, boiling with sexual and emotional frustration.²¹² Erika turns toward Mother and attacks her sexually in a bizarre maternal-rape scene.²¹³

The next day, Erika follows Klemmer to his clarinet class²¹⁴ and drags him into a janitor's closet,²¹⁵ all the while declaring her love for him. She attempts to fellate him²¹⁶ but it is a failure. Klemmer grows impotent²¹⁷ while Erika chokes and vomits.²¹⁸ Klemmer tells her that she physically stinks.²¹⁹ They then part ways and, later at home, Erika self-harms herself

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 183.

¹⁹⁹ *Id.* at 190.

²⁰⁰ *Id.* at 199.

²⁰¹ *Id.* at 205.

²⁰² *Id.* at 208.

²⁰³ *Id.* at 209.

²⁰⁴ *Id.* at 212–13.

²⁰⁵ *Id.* at 213–15.

²⁰⁶ *Id.* at 215–16.

²⁰⁷ *Id.* at 216.

²⁰⁸ *Id.* at 215.

²⁰⁹ *Id.* at 227–30.

²¹⁰ *Id.* at 230.

²¹¹ *Id.* at 231.

²¹² *Id.* at 232.

²¹³ *Id.* at 232–35.

²¹⁴ *Id.* at 238.

²¹⁵ *Id.* at 240.

²¹⁶ *Id.* at 242.

²¹⁷ *Id.* at 243.

²¹⁸ *Id.* at 245.

²¹⁹ *Id.* at 246.

with clothespins.²²⁰ Night falls.²²¹ In a rage, Klemmer goes stalking into the evening; he wants to kill an animal.²²² He finds an amorous couple instead and, in a scene that mirrors Mother's and Erika's previous behaviors, observes the lovers, then threatens them and destroys their clothes when they flee.²²³

Klemmer immediately heads to Erika's and Mother's apartment, masturbates in the dark outside,²²⁴ and rings their doorbell.²²⁵ He shoves Mother into a bedroom, locking her in,²²⁶ and begins to brutally beat Erika.²²⁷ Erika pleads with him to stop,²²⁸ but he rapes her.²²⁹ He leaves.²³⁰

The next day, Erika searches for Klemmer at the University.²³¹ She takes a knife with her.²³² She finds Klemmer in a group of students; he is flirting with yet another girl.²³³ The students stand up en masse and head for class; Erika is left standing alone.²³⁴ As the ultimate self-harm, she stabs herself in the shoulder, and the novel ends as she walks home.²³⁵

B. VIOLENCE AS A TEACHING LESSON IN *THE PIANO TEACHER*

In the novel, Jelinek studies both the teachers and the students of violence, depicting the hellish rituals employed by the teachers and the emotions that make the students such rapt acolytes. With the sharp observations of a psychologist or anthropologist, Jelinek describes a teacher's strange, violent exemplars, which are then modeled by a student. She also shows how desire both animates a teacher's lessons, and also intensifies—or even creates—a student's receptivity to those instructions.

1. *The Exemplars of the Teacher: Control, Surveillance, and Trampling*

Jelinek dramatizes violence's catechism in the mirrors that she erects in the Erika/Mother scenes, Erika's acts of self-harm, and the Erika/Klemmer scenes. Mother and Erika track and trash each other, crimes that are then reflected in Erika's brutal domination of herself as well as the dance of mutual annihilation in which she leads Klemmer. In particular, each

²²⁰ *Id.* at 249.

²²¹ *Id.* at 250.

²²² *Id.* at 251.

²²³ *Id.* at 253–56.

²²⁴ *Id.* at 259.

²²⁵ *Id.* at 261.

²²⁶ *Id.* at 264–65.

²²⁷ *Id.* at 265–70.

²²⁸ *Id.* at 269–70.

²²⁹ *Id.* at 272.

²³⁰ *Id.* at 274.

²³¹ *Id.* at 277.

²³² *Id.* at 276.

²³³ *Id.* at 279.

²³⁴ *Id.* at 280.

²³⁵ *Id.*

character repeats the following three behaviors with one another: they surveil one another, control one another, and trample one another.

As noted above, the novel begins with Erika's tardy homecoming and a violent scene between Erika and Mother.²³⁶ Mother's constant surveillance of Erika is described in the first pages as the narrator observes that Erika rarely shows up late for dinner because she is so hounded by Mother:

[E]very day, the daughter punctually shows up where she belongs: at home. . . . If not, her mother knows where she's flitting about. . . . Her mother can ring her up [at the Conservatory] in an emergency . . . [or, if Erika is with colleagues,] her mother can telephone her at such times too. . . .

Erika visits a café once a month, but her mother knows which café, and she can ring her up there too. Mother makes generous use of this privilege, this homemade structure of security and intimacy.²³⁷

Mother exercises her power of *lèse majesté* in the novel's first few pages, in an effort to "control" her daughter: "Mother worries a lot, for the first thing a proprietor learns, and painfully at that, is: Trust is fine, but control is better. Her greatest anxiety is to keep her property immovable, tie it down so it won't run away."²³⁸ In a scene that takes place before the novel commences, Mother had already grown angry at Erika's tardiness and hidden one of Erika's dresses as punishment. When Erika returns, and Mother realizes that Erika's late because she has been shopping for clothes, she admonishes her daughter for her "vanity."²³⁹ At this point, Erika realizes that Mother has stolen one of her ensembles and hidden it or destroyed it, in an effort to control her social life.²⁴⁰ She lashes out by tearing Mother's hair out of her head.²⁴¹

Later in the narrative, Erika mirrors Mother's surveillance example by spying on the Austrian and Turk having sex in the meadow,²⁴² which again makes her late for dinner.²⁴³ Mother retaliates by ripping another gown out of Erika's closet and takes her time trampling and destroying it:

She digs her teeth into an old concert gown Mother tramples the gown under her slippers, which are as clean as the floor and therefore unable to violate the gown. . . . Ultimately, the gown just

²³⁶ *Id.* at 3.

²³⁷ *Id.* at 5–6.

²³⁸ *Id.* at 5.

²³⁹ *Id.* at 7.

²⁴⁰ *Id.* at 7.

²⁴¹ *Id.* at 8.

²⁴² *Id.* at 141.

²⁴³ *Id.* at 152.

looks a bit crumpled. So, grabbing some kitchen shears, Mother . . . slashes her own dreams along with the dress.²⁴⁴

When Erika finally comes home from her spying expedition, Mother physically attacks her, and tears hair out of her head (here, mirroring Erika's initial denuding of Mother's own poor skull): "Mother takes her advantage and rips out a handful of Erika's forelock, some of the hair that Erika is proud of because it curls down in such a pretty twirl."²⁴⁵

Erika enacts Mother's tripartite lessons even before this latter scene, particularly in the first incident involving self-harm that takes place after the piano recital hosted by Klemmer's aunt. Here, Erika exercises tyrannical control and tramples over herself. *The Piano Teacher's* narrator explicitly describes this self-harm as a direct product of her maternal pedagogy, or Erika's "learning and obeying":

[Erika] would never get into a situation in which she might appear weak, much less inferior. That is why she stays where she is. She only goes through the familiar stages of learning and obeying, she never looks for new areas. The gears squeal in the press that squeezes the blood out from under her fingernails. Learning requires her to be sensible: No pain, no gain, she's told. Her mother demands obedience. If you take a risk, you perish. That advice comes from Mother, too. When [Erika is] home alone, she cuts herself, slicing off her nose to spite other people's faces. She always waits and waits for the moment when she can cut herself unobserved. No sooner does the sound of the closing door die down than she takes out her little talisman, the paternal all-purpose razor.²⁴⁶

Later, Erika makes further use of her surveillance lessons by first gathering intelligence on the male student and his friend examining pornography: "Seek and you shall find the repulsive things you secretly hope to find. Outside the Metro Film Theater, Erika has been finding . . . treasures . . . [The student's] senses are concentrated on new focal points: film stills."²⁴⁷

Erika uses the information gleaned during the surveillance to trample this weakling student during his lesson: "Then, all at once, hurled by the squall, the piano teacher explodes in [the boy's] midst—like a hand grenade."²⁴⁸ Later, at his lesson, she berates him, breaking "one will after another."²⁴⁹ Her "fingers twitch like the claws of a well-trained falcon,"²⁵⁰

²⁴⁴ *Id.* at 152.

²⁴⁵ *Id.* at 157.

²⁴⁶ *Id.* at 85–86.

²⁴⁷ *Id.* at 99.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 101.

until he is covered with his own blood.²⁵¹ Since this little boy is “not a worthy opponent,”²⁵² however, she soon turns her attention to Klemmer, by tracking him the next day as he leaves the Conservatory and goes home: “Like a lioness, she hits the trail and follows his track.”²⁵³ She obsesses on how Klemmer looks at young girls he passes: “Those girls harmlessly cross the harmless student’s path; and yet they could seep into Klemmer like the singing of sirens, dazzling him, making him follow them. She checks to see how long he looks at a woman, and she then neatly erases that look.”²⁵⁴ Erika also sharpens her surveillance skills by watching the Turk and the Austrian, a sight that moves her so much that she relieves herself in the nearby brush.²⁵⁵

Erika’s transition from Mother’s student to Klemmer’s teacher later fully expresses itself during her first sexual interaction with the boy, which occurs after she injures her female rival by putting glass in her pocket and then fleeing to the bathroom.²⁵⁶ When Klemmer follows her in, Erika performs the bizarre touch-me-do-not-touch-me masturbation game, in an effort to control him:

For the last time, the teacher commands the pupil to say nothing—in regard to the matter at hand or anything else. Has she made herself clear?! . . . Erika digs her teeth into the crown of his dick, the crown doesn’t lose any points, but the owner shrieks nonetheless. He is told to shut up. . . . Erika removes the tool from her mouth and instructs its owner: In the future she is going to make a list of all the things he can do to her. My wishes will be jotted down and made available to you at any time.²⁵⁷

It is during Erika’s control and trampling of Klemmer that he receives his first tutelage in violence, a lesson that he will replay and mirror just as Erika has replayed and mirrored Mother’s examples.

After she gives him her letter with its as-yet unread list of demands, Klemmer shadows Erika as she goes home to her apartment:

For half an hour now, Walter Klemmer has been viewing his teacher only from behind. This may not be Erika’s favorite side, but he could identify it among a thousand others! He knows women, knows them from all sides, inside and out. He sees the soft, slightly squooshy pillow of her behind, which rests upon solid

²⁵⁰ *Id.*

²⁵¹ *Id.* at 102.

²⁵² *Id.*

²⁵³ *Id.* at 127.

²⁵⁴ *Id.* at 128.

²⁵⁵ *Id.* at 148.

²⁵⁶ *Id.* at 161–72.

²⁵⁷ *Id.* at 180.

leg columns. He thinks about how he will handle this body; he, the expert, is not so easily put off by malfunctions.²⁵⁸

Almost immediately, Klemmer's act of surveillance triggers thoughts of control, and here, there is a mirror not only of Erika's behavior, but also Mother's, as Klemmer's desire to puppeteer Erika finds its first manifestation (like Mother's) in his need to control her wardrobe:

He resolutely wants to tear off the meticulously accumulated strata of modish and sometimes outmoded convictions and those hulls and shells held together by a feeble sense of form, those colorful disguises of rags and skins that stick to her. She doesn't have a clue, but soon she will. She'll learn how a woman ought to decorate herself: nicely, but, above all, practically²⁵⁹

The lessons really begin to imprint on Klemmer when Erika requires him to read her letter; this interaction may be seen not only as a mode of control over Klemmer, but also as a form of trampling. It humiliates him during the moment when he thought he was going to share something normal and even ecstatic with her:

He nestles against the woman, but she is not his mother, and she shows she isn't by not enclosing the man in her arms like a son. . . . The young man asks for a tender emotion and moves tenderly close to her. He requests a loving reaction, which only a complete monster could refuse him after such a shock. . . . Klemmer attacks her: That's all you've got to offer. How dare you! One can't always be a taker.²⁶⁰

Erika's letter introduces Klemmer to the blow-by-blow practices of violence, which he almost immediately replicates, almost without realizing it. "His voice is almost toneless. Erika knows that tone from her mother."²⁶¹ Erika thinks to herself that she, in fact, does not desire to be abused;²⁶² Klemmer commences to attack her verbally. His spoken violence prefigures his later physical assault:

He tentatively hurls a foul-letter word at her, but at least he doesn't hit her. He calls Erika names, adding the adjective "old." Erika knows she has to be prepared to such reactions, and she shields her face with her arms. . . . If he's going to hit now, then go right ahead. Klemmer says he wouldn't touch her with a ten-foot pole.²⁶³

But, Klemmer's trampling of Erika will come soon. Hints of her destruction come during their next intimate scene, during which he

²⁵⁸ *Id.* at 200–01.

²⁵⁹ *Id.* at 201.

²⁶⁰ *Id.* at 224.

²⁶¹ *Id.* at 229.

²⁶² *Id.* ("Erika cringes, hoping his hand will come down lovingly, not destructively.")

²⁶³ *Id.* at 230.

attempts to be successfully fellated by her, but is unable to achieve orgasm because of impotence: “[S]he tries to spit his dick out inconspicuously. But, ignoring their teacher/student relationship, the student Klemmer orders her to take it right back in. He doesn’t give up that easily!”²⁶⁴ He continues ordering her until she vomits,²⁶⁵ then tells her she stinks.²⁶⁶

Later that night, in a replay of Mother’s trampling of the dress and Erika’s surveillance of the Austrian and Turk, Klemmer hunts for an animal to slaughter, but finds only the amorous couple that flees from him, leaving behind a jacket.²⁶⁷ Klemmer stamps all over it:

He’d rather trample the jacket. He doesn’t look for a purse or wallet in its pockets. He doesn’t look for an ID card. He doesn’t look for valuables. He tramples the jacket underfoot, and makes himself at home in his trampling: a chained elephant, whose leg irons leave him only a few inches of free play, which he nonetheless knows how to exploit to the fullest.²⁶⁸

Having practiced on the children and the jacket, he then makes his way to Erika and Mother’s apartment, where he barricades Mother in the bedroom and beats and rapes Erika.²⁶⁹

C. DESIRE AND THE PEDAGOGY OF VIOLENCE

As *The Piano Teacher* provides a close study of tactics used by teachers of violence, it also gives a detailed portrait of the students of violence and their internal workings. Namely, Jelinek reveals that one only learns violence in an emotional state. The pupil who is not touched viscerally by the exemplars of her teacher will emerge from the lesson unchanged but for grief; however, if the instructions intersect with the pupil’s own powerful desire or desires, the potent combination of violent example and student longing will cause the pupil to embrace the lesson almost as tightly as the beloved for whom the violence itself may be seen as a surrogate.

And who or what is this beloved that spurs on students to embrace violence? A brief sojourn into the philosophy of antiquity will help answer this question, as the pairing of desire and effective moral education is as old as Plato himself—after all, Plato made the relationship between desire and learning a central theme of his famous *Phaedrus*.

²⁶⁴ *Id.* at 244.

²⁶⁵ *Id.* at 245.

²⁶⁶ *Id.* at 246.

²⁶⁷ *Id.* at 254–56.

²⁶⁸ *Id.* at 256.

²⁶⁹ *Id.* at 265–73.

1. *Plato's Phaedrus, Desire, and Education*

Via his characterization of Socrates, Plato teaches us in *Phaedrus* that the student's experience of the erotic was a crucial element in learning The Good.²⁷⁰ That is, in order for the student to understand the virtues, he must achieve a kind of transcendence, a state that Plato said was like having "wings":

The function of a wing is to take what is heavy and raise it into the regions above, where the gods dwell; of all things connected with the body, it has the greatest affinity with the divine, which is endowed with beauty, wisdom, goodness, and every other excellence. These qualities are the prime source of nourishment and worth to the wings of the soul, but their opposites, such as ugliness and evil, cause the wings to waste and perish.²⁷¹

In the famous allegory of the Charioteer, Plato tells us that the soul is as a chariot guided by two horses, one good, one bad; the soul, which travels the universe—in its "circular revolution"²⁷²—and sees the most Truth, will be advantaged with the status of Philosopher once he sets down upon earth and is made mortal. Upon his death, the philosopher may readily regain his precious wings. Here on Earth, when students experience eroticism, or love, they encounter the necessary nourishment that will aid the growth of these wings; this nourishment is the fourth, or highest, type of "madness, which befalls when a man, reminded by the sight of beauty on earth of the true beauty, grows his wings and endeavors to fly upward, but in vain . . ." ²⁷³ Thus, to know and understand true beauty, that is, an example of the perfect Forms, becomes the goal of the student of philosophy. Erotic love inspires the pupil to learn the Good, and, indeed, "in its origin this is the best of all forms of divine possession, both for the subject himself and for his associate . . ." ²⁷⁴ To gaze upon beauty, in the form of the beloved, is to be reminded constantly of The Good and, thus, to "form a continual initiation into the perfect mystic vision" that allows a man to "become perfect in the true sense of the word."²⁷⁵

²⁷⁰ See generally PLATO, PHAEDRUS AND LETTERS VII AND VIII 51 (Walter Hamilton trans., Penguin Group 1973).

²⁷¹ *Id.* at 51.

²⁷² *Id.* at 53.

²⁷³ *Id.* at 56.

²⁷⁴ *Id.* at 56.

²⁷⁵ *Id.* at 55. Interestingly, there are modern updates of this thesis. Modern studies of emotion and learning have also noted the correlation between these two phenomena. For example, Nancy L. Stein and Linda J. Levine observe that "[E]motional experience is almost always associated with attending to and making sense out of new information. Consequently, learning almost always results during an emotional episode." Nancy L. Stein & Linda J. Levine, *Making Sense out of Emotion, in* PSYCHOLOGICAL AND BIOLOGICAL APPROACHES TO EMOTION 45, 46 (Bennett Leventhal & Tom Trabasso eds., 1990).

But what happens when the bad horse guides the student's soul, and his gaze upon beauty leads him not into perfect mysticism and soul-flight, but into that which is "ugliness and evil"²⁷⁶? This is not a question that arises in the *Phaedrus*, but it is a central obsession in *The Piano Teacher*. Indeed, *The Piano Teacher* may be seen as a saturnine reading of Plato's masterpiece.

2. *Desire in The Piano Teacher*

In *The Piano Teacher*, desire forms the necessary prerequisite for the successful teaching of violence; each student who mirrors the depredations of the others does so out of thwarted longing for beauty—a corrupt form of Plato's fourth "madness." In Erika's case, it is the desire that she herself be beautiful and through this beauty encounter love. For Klemmer, it is the desire to be a man and to experience freedom.

3. *Erika*

What girl does not wish to be beautiful? Erika desires it like any other woman, and if she were less vulnerable to this longing, she would not be such a ready student of her mother's teachings. It is her vanity that make Mother's lessons in violence "stick":

But that vanity of hers, that wretched vanity. Erika's vanity is a major problem for her mother, driving thorns into her flesh. Erika's vanity is the only thing Erika should learn to do without. Better now than later. For in old age, which is just around the corner, vanity is a heavy load to bear. And old age is enough of a burden as it is. Oh, that Erika! Were the great musicians vain? They weren't. The only thing Erika should give up is her vanity. If necessary, Mother can smooth out the rough edges, so there won't be anything abrasive in Erika's character.²⁷⁷

Indeed, Mother has long "smoothed out" Erika's character by explaining to her that she is not, and never will be lovely. Though she encourages Erika's belief that she is "one in a million" as a musician,²⁷⁸ a "sharply defined individual,"²⁷⁹ and a "genius,"²⁸⁰ she denies Erika the one identity that she craves: "Erika is not pretty. Had she wanted to be pretty, her mother would have promptly ordered her to forget it."²⁸¹

Mother feeds like a succubus upon Erika's desire by savaging Erika's meticulously curated wardrobe, which Jelinek describes in lengthy detail.

²⁷⁶ PLATO, *supra* note 270, at 51.

²⁷⁷ JELINEK, *supra* note 150, at 7.

²⁷⁸ *Id.* at 12.

²⁷⁹ *Id.* at 13.

²⁸⁰ *Id.* at 25.

²⁸¹ *Id.* at 26.

In the initial scene where Mother's fury boils over when she finds a new dress hidden in Erika's briefcase, Mother metaphorically kills the piece of clothing in order to exterminate Erika's dream of beauty: "Mother rails against the purchase. The dress, pierced by a hook, was so seductive at the shop, so soft and colorful. Now it lies there, a droopy rag, pierced by Mother's glare."²⁸²

Mother requires Erika to wear only clothes that she approves and prohibits her from getting "gussied up."²⁸³ "[Mother] can dictate what Erika puts on. Mother is an absolute ruler. She decides what Erika will wear outside the house. You are not going out in that getup, Mother dictates, fearing what will happen if Erika enters strange homes with strange men in them."²⁸⁴ It is in the thick of these torments that Erika rises to her mother's tutorial, responding to the destruction of her wardrobe with physical retaliation.

But Erika does not just beat her mother out of crushed amour-propre, for Mother is pushing another, yet more sensitive button. Beyond being an end in itself, beauty's other purpose is to garner for Erika exactly what Mother fears—strange men and the love that they are supposed to offer attractive women.

Erika presents the shadow side of Plato's philosopher when she forms her designs on Klemmer. Having discovered that Klemmer desires her as a woman, she immediately determines to give him all of her love. Unfortunately, Erika's instinct for this form of beauty has already been warped by Mother's lessons: "Her mother has always possessed Erika's will, and now Erika hands it, like a runner's staff, to Walter Klemmer."²⁸⁵ Even at this early stage, the runner's staff is already a weapon: "Erika Kohut is using her love to make this boy her master. The more power he attains over her, the more he will become Erika's pliant creature."²⁸⁶

Erika's letter to Klemmer reads as follows:

Her most haunting wish—the adored Herr Klemmer reads—is for you to punish me. She would like Klemmer as a punishment. And in such a way that he ties her up with the ropes I've collected, and also the leather straps and even the chains! Hogtie her, bind her up as thoroughly as he can—solidly, intensely, artfully, cruelly, tormentingly, cunningly. He should bore his knees into her abdomen, if you'll be so kind.²⁸⁷

²⁸² *Id.* at 4.

²⁸³ *Id.* at 9.

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 207.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 215.

Yet even in her degradation, Erika's desire for more perfect beauty persists. She wishes that True Love will provide her an escape hatch out of this hell in which she lives with Mother and that Klemmer will save the radiant beauty that he sees glimmering inside of her: "Please don't hurt me; that's what's written illegibly between the lines. . . . She now hopes that love will prevent anything from occurring. She will insist on it, but an amorous reply will make up for his refusal. Love excuses and forgives, that's what Erika thinks."²⁸⁸

4. *Klemmer*

Such grace is not to be awarded to poor Erika, however. Klemmer, as it develops, proves just as talented an apprentice of violence as his tutor, on account of his own desires for beauty. Even in the midst of his disgust at the contents of the letter, he finds himself strangely affected: "[H]e is moved imperceptibly. The glue of lust smears up his diverse attitudes, and the bureaucratic solutions that Erika prescribes him offer him the guidelines to act in accordance with his pleasures."²⁸⁹

That he will be moved by Erika has already been foreshadowed by his initial reaction to Erika's violent example; recall he follows her to the bathroom after Erika salts the pocket of her rival with glass.²⁹⁰ But what are these pleasures, these desires, which fix Erika's lessons so dangerously in Klemmer?

Just like Erika desires to be physically beautiful and experience the beauty of love, Klemmer also desires two different forms of beauty. In the scheme of things, these forms are related—or perhaps even synonymous: Klemmer desires to be a man and to be free.

Klemmer's worship of unfettered masculinity is established early in the novel, via his status as an athlete:

The sport doesn't matter, but he'll probably go to his canoeing club. He has a very personal urge to work out until he drops, inhaling completely unused air. . . . [In the river, he'll appear as a] harsh orange splotch because of his helmet, life jacket, and spray cover, he'll shoot along between two forests, careening now here, now there, but always in the same direction: forward, following the course of the torrent. . . . Some buddy, another paddler, will be in hot pursuit behind him, but he won't catch up, much less shoot ahead of Klemmer. . . . When it comes to working out or playing

²⁸⁸ *Id.* at 226.

²⁸⁹ *Id.* at 225.

²⁹⁰ *Id.* at 171.

out, Klemmer is not a good loser. That's why he's so annoyed about Erika Kohut.²⁹¹

It is this beautiful image that Erika sullies, though without intending to. When she first masturbates Klemmer in the bathroom of the Conservatory, then tortures him by stopping, his reaction is predictably "vehement[]": "[H]is dick shrinks in slow motion. Klemmer is anything but a born follower. He is the sort of man who has to ask why, and so he finally starts reviling his teacher. He loses all control because the man in him is being abused."²⁹² Erika does have quite the facility for abusing the man in him, even at a later piano lesson, when she derides him for not being half the hero that Schubert was. Erika reminds Klemmer that Schubert braved "violent contrasts,"²⁹³ and berates him with: "You never take a risk! You step across puddles so you won't get your shoes wet. When you turn upside down while canoeing . . . you instantly turns yourself right side up. You're even scared of the water, that unique submission, in which your head's been dunked!"²⁹⁴

Though Klemmer "wrings his hands to prevent his beloved . . . from taking this path [for her own good],"²⁹⁵ he will not be able to protect himself from her slurs on his manhood for long. Quick enough, the debt she has incurred by making his "dick" "shrink" will come due; the catalyst arrives when she attempts to fellate him and he becomes impotent. He attempts to regain his machismo by "lightly strik[ing] her neck with the edge of his hand."²⁹⁶ But it does not work. He recognizes that she is the master and he the servant: "Promises, emitted unclearly, drive the young man crazy: He hears the subliminal command . . . she disgusts him more than he can say."²⁹⁷ And later, as he prepares to invade her apartment and rape her, Jelinek names the sensation that drives him: it is rage spurred by this insult to this "[bad] loser," he who cannot be caught by buddies and paddlers. "The woman insulted him, so he injured her."²⁹⁸

His desire to be a man, which also means to be free, is so strong that Erika's mastery of him makes "[m]iniature worlds, like those on TV, open[] up to him."²⁹⁹ Like Erika's desire to be beautiful and experience love proved the perfect medium for her mother's lessons to ferment, so too, this damaged wish to be an unbounded man strengthens Klemmer's resolve to learn the techniques that jailed him. "[T]he corset of classical music

²⁹¹ *Id.* at 126.

²⁹² *Id.* at 181.

²⁹³ *Id.* at 184.

²⁹⁴ *Id.* at 186.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 242.

²⁹⁷ *Id.* at 243.

²⁹⁸ *Id.* at 250.

²⁹⁹ *Id.* at 221.

training is much too tight for him. He likes to enjoy a view that's not marred by any limits. He senses a vast landscape . . . [His] musical plans will fit in well with his distinct urge for freedom."³⁰⁰

These "musical plans," such as they are, transform into his nighttime plot to kill a bird or other animal, his frightening of the lovers in the park, and the practice trampling of the boy-lover's jacket. But even at this stage, Klemmer can feel that his freedom has already been fatally constrained: "[H]e tramples the jacket underfoot, and makes himself at home in his trampling: a chained elephant, whose leg irons leave him only a few inches of free play, which he nonetheless knows how to exploit to the fullest."³⁰¹

On the heels of this practice test, Klemmer finally readies himself for the fulfillment of the hunger that has shaped his character and his motives throughout the novel: "Klemmer has arrived at Erika's building. How keen the joy of arrival. . . . Anger resides in Klemmer. . . . He would never have guessed how quickly a fruit ripens."³⁰² "Klemmer is getting to know freedom."³⁰³ This new found liberty allows him to "smash[] his right fist" into her belly, while feeling "intensely at one with himself."³⁰⁴ In this ecstasy, he beats her, and then rapes her. Thus, the pupil now has become the master.

V. WHAT WE CAN LEARN FROM THE PEDAGOGY OF VIOLENCE

When we are theorizing about the transfer of violent behaviors, we should characterize this communication as a pedagogy rather than a contagion. As I have attempted to show in this Article, the pedagogy model articulates the specific practices by which we teach one another violence, and the particular desires that enable us to be such good students of these lessons. Whereas employees of the contagion metaphor do allow that social networks and relationships are the conduits by which violence travels, the construction of "violence as a disease" may allow them to provide distracted and incomplete descriptions of how this transfer takes place.

The weaknesses of the contagion thesis and the benefits of the pedagogy model may be seen best in the aforementioned case *NAACP v. AcuSport, Inc.*³⁰⁵ As noted, in this case, Fagan gave testimony concerning gun violence in order to support the NAACP's claim that AcuSport's shoddy marketing practices had created a public nuisance. In this section, I will argue that the contagion metaphor hamstrung Fagan's testimony and prevented him from demonstrating the specifics of harm suffered by the

³⁰⁰ *Id.* at 237.

³⁰¹ *Id.* at 256.

³⁰² *Id.* at 258.

³⁰³ *Id.* at 266.

³⁰⁴ *Id.* at 266–67.

³⁰⁵ *NAACP v. AcuSport Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

African American community. I observe, however, that if we analyze the questions raised by *AcuSport* under the pedagogy model, we may get a more complete understanding of the special harm suffered by members of that community, which may have led to a verdict for the NAACP that recognized the precise ways that negligent gun retailing visits violence upon victims.

The NAACP's success in their private nuisance action against gun manufacturer *AcuSport* depended upon their establishment of three factors: 1) the existence of a nuisance, defined as "a substantial interference with a right common to the public,"³⁰⁶ that is, a harm common to "health, safety, and comfort";³⁰⁷ 2) negligent or intentional conduct on the part of the defendants; and 3) a particular harm suffered by the plaintiff that is different in kind from that suffered by the community at large.³⁰⁸ The case was tried before a federal court, with the help of an advisory jury; the jury and the Court determined that the first two factors, but not the third factor, had been established.³⁰⁹ In other words, the Court found that the defendants did create a public nuisance by negligently failing to take marketing precautions that would prevent the illegal distribution of *AcuSport*'s guns. These precautions included that:

[T]hey not sell at gun shows, but sell from the equivalent of a storefront with a supply of stocked guns; that they not sell under a variety of names; that they protect against theft; that they train and supervise employees to prevent straw sales (which are often notoriously obvious to the seller); and that they take other appropriate and available protective action.³¹⁰

Two of the most pressing problems were the sale to "straw purchasers"—that is, to individuals who legally purchased many guns at the same time, with the intention of selling them illegally later³¹¹—and the sale of guns at gun shows, which "are the source of substantial quantities of guns that fall into the hands of criminals."³¹² The Court, however, determined that this nuisance did not particularly affect the African American community.

Fagan testified at trial, pronouncing on "interviews in which young men were 'asked about the kind of situations where gun violence takes place or where gun violence might have taken place or where they decided not to engage in gun violence,' and other reliable information."³¹³ Fagan also "obtained firearm trace data and added gun recovery information in his

³⁰⁶ *Id.* at 448.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 449.

³¹⁰ *Id.* at 450.

³¹¹ *Id.* at 501.

³¹² *Id.* at 502.

³¹³ *Id.* at 520.

analysis of the contagious effects of gun acquisition, gun injury and homicide among youth,”³¹⁴ and relied on “New York City Department of Health (Vital Statistics and Injury) data for all persons whose deaths were classified as homicides by the Medical Examiner’s Office and from the hospitalization records for persons admitted to the hospital because they were the victim of some kind of assault.”³¹⁵ He relied on census data to support his claims that prospective members of the New York branch of the NAACP—that is, members of the New York African American community—suffered disproportionately from gun violence.³¹⁶ He also characterized the travel of gun violence as a contagion that “spread ‘outward’ to and ‘inward’ from adjacent neighborhoods.”³¹⁷

As stated, the court did not find that African Americans suffered a harm that was different in kind from other people in New York; they only suffered a different degree of harm.³¹⁸ Quoting Shakespeare’s *Merchant of Venice*, the court noted that everyone touched by gun violence shares the same fate: they “bleed.”³¹⁹ The court then went on to compare the case with two successful private nuisance actions: in one, commercial fishermen in New York were able to establish that they were particularly affected by water pollution;³²⁰ in another, the owner of an apartment showed that he was specially slighted by an obstruction in the sidewalk because he was completely prevented from getting into his apartment, whereas members of the public still had some slight leeway in their peregrinations.³²¹

The use of a pedagogy construction of violence in *AcuSport*, as opposed to the contagion model, might have created a different result. At the very least, it would have allowed for larger and different questions about the ways in which *AcuSport* helped disseminate gun violence through its marketing malpractices.

In *The Piano Teacher*, the teachers of violence use specific strategies to teach their pupils; these strategies are often dependent upon the particular relationships that exist between the characters, such as Mother’s intense awareness, cultivation, and exploitation of Erika’s self-regard, or vanity. Mother then tailors her teaching lessons—her surveillance, her control, and her trampling—to Erika’s profound desires for love and beauty. Similarly, Erika is intensely aware of and exploits Klemmer’s desires for beauty—that is, his worship of masculinity and his concomitant desire for freedom (“You never take a risk! . . . You scoot around crags gingerly—gingerly for

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.* at 455.

³¹⁹ *Id.* at 451 (quoting William Shakespeare, *Merchant of Venice* Act 3, Scene 1).

³²⁰ *Id.* at 498 (citing *Leo v. General Elec. Co.*, 538 N.Y.S.2d 844 (1989)).

³²¹ *Id.* at 498 (citing *Graceland Corp. v. Consol. Laundries Corp.*, 180 N.Y.S.2d 644 (1958)).

you!—before you really notice them.”)³²²—and sculpts her pedagogy around these vulnerabilities.

If the NAACP in *NAACP v AcuSport* had argued that AcuSport’s ineffective control of its retailers gave those retailers the opportunities to surveil prospective African American purchasers of AcuSport’s guns and exploit the purchasers’ desires through a (pedagogical) sales pitch of these guns, then the NAACP could have successfully established that the harm experienced by “prospective members of the NAACP” was in fact different in kind, and not just in degree, from the rest of the population of New York. Such an investigation would require the plaintiff’s experts to ask questions, including: What were the specific practices of these rogue retailers, particularly at the gun shows? Did they study and then target gun shows that might be attended by people of color—in a way, surveilling such prospective buyers? Moreover, did these rogue retailers, in their sales pitches, incite violence, albeit verbally? Also, did they elicit particular desires, for freedom, for revenge, for power, for a reassertion of masculinity—which might have been rooted in a frustration or disempowerment for which some African American men in New York might possess a particular sensitivity, based in part on their historical, cultural, and economic circumstances? Fagan himself has acknowledged that inequality aggravates violence³²³ and also cites a cherishment of masculinity as one factor that can exacerbate violence.³²⁴ A specific analysis of culture, history, inequality, and desire, however, is lacking in the court’s analysis of “harm.”

In other words, if we make pedagogy, rather than contagion, the model for our analysis, we may be better prepared to ask questions like: Did AcuSport, via its marketing malfeasance, act as “teachers” in a pedagogy of violence that fed upon the particular histories and emotional dynamics of African American men? What kind of sales pitches did these exchanges involve? Who said what to whom? How did the retailers influence and exploit the buyers? Answers to these questions would require more information than that which is currently given under the public health model. So, for example, in the AcuSport case, we could go beyond analyzing data regarding “the kind of situations where gun violence takes place or where gun violence might have taken place or where they decided not to engage in gun violence,”³²⁵ “firearm trace data and . . . gun recovery information,”³²⁶ and “New York City Department of Health (Vital Statistics and Injury) data for all persons whose deaths were classified as

³²² JELINEK, *supra* note 139, at 186.

³²³ Fagan, Wilkinson & Davies, *supra* note 51, at 702.

³²⁴ Fagan & Wilkinson, *supra* note 40, at 112–13.

³²⁵ *AcuSport Inc.*, 271 F. Supp. 2d at 520.

³²⁶ *Id.*

homicides”³²⁷ We would have to do additional field work, asking retailers and purchasers questions about the specifics of the sales exchange and how purchasers responded to retailers’ sales pitches to see if and how violence was being taught by the seller to the purchaser.

If they did participate in this pedagogy through negligent control of their sales force, then AcuSport may have committed two types of nuisances. First, AcuSport retailers might have helped to teach African-American men violence by exposing them to illegal guns and inciting sales pitches—which might itself constitute a form of violence, which is a nuisance, or at the very least AcuSport’s actions were an interference with a public right because the “safety” and “comfort” of people was endangered.”³²⁸ Second, those same pupils (gun purchasers) would go forward and replicate the lessons (or, in Jelinek’s language, “trampling”)—as we find in the data showing “disproportionate” gun violence in African American communities in New York.³²⁹ Moreover, because these lessons may have been shaped by the specific, race-and-class shaped desires, histories, and relationships of the customers and retailers, they could be said to be at least as different “in kind” as were the financial harms suffered by commercial fishermen (who suffered professionally as a result of water pollution) and the harms suffered by the apartment owner in the above-mentioned cases.³³⁰ In sum, the violence taught to “prospective members of the NAACP,” which was a consequence of AcuSport’s shoddy marketing practices, may have been as especially injurious to New York African American men as water pollution proved to be to fishermen and laundry baskets were to the apartment-dweller. We cannot know, however, if this is the case until we begin asking questions that are informed by an awareness of the pedagogy of violence.

VI. CONCLUSION

We must develop a full, textured, and mature understanding of violence. It is very hard for us to understand why we act violently toward one another. Is it caused by an evil that we all harbor inside of us? Is it a failure to grow up? Is it that some people are bad and others are good? Is it a side effect of oppression, bad childrearing, or economic disadvantage?

Our frustrations in answering these questions lead us to describe violence and its transmissions using metaphors that do most of the work for us. “Contagion” allocates responsibility for the transmissions of violence to

³²⁷ *Id.*

³²⁸ *See id.* at 448.

³²⁹ *See id.* at 520.

³³⁰ *See id.* at 498.

mysterious and hidden processes, like those involved in the transfer of viruses from one host to another.

This habit of using this description creates at least two problems. The first is that the contagion metaphor dehumanizes violent actors and victims of violent behaviors. Though neither Loftin, Fagan, nor any other cited author in this Article advocates that we treat criminal offenders in an unduly harsh way, an over-enthusiasm for the contagion metaphor may create the risk that we actually act on the way we are speaking and writing about violent offenders—for example, we begin to treat such offenders like sub-human carriers of epidemics and plagues. The global and U.S. history of government handling of contagious persons is sufficiently rife with human rights offenses that we should be very wary of paving such a course. The second problem is related to the first: while operating under the auspices of the contagion metaphor, we may be less likely to investigate the emotional lives, personal histories, and desires of violent offenders in part because they seem less human to us. This oversight leads to an inapt analysis of the root causes of violence, which may hamper preventative and re-compensation efforts. Such shortcomings are illustrated in the *NAACP v. AcuSport* case.

To comprehend violence as a teaching lesson alleviates some of these dilemmas. The pedagogy construct I advance here does not completely disregard the methods of the public health model, which the contagion metaphor seems so much a part of. It does require us, however, first to speak about violence and its transmission in more humane terms and second, to do deeper work than the public health model now requires. Again, an analysis of the transmission of violent behavior under the pedagogy model must investigate the specific rituals, emotions, personal histories, and desires of teacher and student in this process. Violence is taught, and desires—often for beauty—allow the student to attach to the lessons of a teacher. As *The Piano Teacher* shows us, the pedagogy of violence is the shadow side of Plato's *Phaedrus*. If we come to grips with this old lesson, we may be better able to craft punishments and public strategies to address violent crimes. More than that, however, comes the hope that we may be better equipped to articulate and even supply our citizenry with the freedom and beauties that their hearts so desire. If we are ever able to do so, perhaps we might supplant the grief, anxiety, and feelings of banishment that inspire us to use violent, illegal force.