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States of Racial Mind

States have racial minds. This book is about the racial minds of two neoliberal states: the United States and South Africa. Of particular concern is how the racial minds of these two states function as they regulate racist hate. Instead of merely considering the constitutionality of hate controls, this book is a history of recent regulatory state practices in the United States and South Africa largely beyond constitutional question.

While making use of rather everyday regulatory practices in order to regulate racist hate, state agencies in the United States and South Africa utilize particular racial constructs. These state agencies, through their banal regulatory practices, actually contribute to the legal construction of race.¹ Given that states are not monolithic, regulatory practices and racial constructs vary from state to state, from agency to agency, from context to context, and even within states, agencies, and contexts. Though varied, racial constructs wielded by the U.S. and South African states are not indeterminate.

The most intriguing thing about some state agencies that regulate racist hate in the United States and South Africa is that their regulatory practices and racial constructs might be considered racist. These state practices and constructs have prompted me to ask a series of questions: What happens when a state uses racial constructs and engages in the construction of race in an official form such as a police report? Does it matter that a police report boxes racial identity in static ways? Is it necessarily confounding when static racial constructs in one context give way to more fluid racial constructs in another context? What happens when the fixity of an administrative form and mindset leads a judge or magistrate to racially construct someone in static ways that are uncomfortably close, in form, to the racial constructs of the racist who hates, acts on that

hate, and is prosecuted? Does it even matter that the racial assumptions of a state agency mirror the racial assumptions of racist haters as long as the targets of hate are ultimately shielded from immediate harm? (This, of course, assumes that the state's constructs mirror the constructs of the racist, and not the other way around.) Do social and economic changes really lead persons and groups—hated and haters—to racially construct themselves in new ways, and, if yes, how do state agencies respond to these new constructions? Does the state's response (or nonresponse) to new racial constructions and formations pivotally shape the way that the state conceptualizes racism and combats racist hate?

This book provides some answers to these questions and makes the following three points about state regulation of racist hate in the United States and South Africa. First, state bodies in the United States and South Africa, such as independent state commissions monitoring rights, understand race and racial hate in ways that are rather strictly prescribed. It is important to assert here that certain state agencies position race as construct in normative ways that can be limber but not necessarily limber enough to understand race and racist hate shaped by the social and economic conditions that Stuart Hall has linked to changing patterns of industrial capital.² Race and racist hate taking shape in the new global capitalist context tend to be markedly unfixed as individuals and groups come to see themselves and demand that they be seen in complex ways, as opposed to the fixity characterizing the racial notions of some state agencies in the United States and South Africa.

Beyond this, and intricately connected to the state's rather static conceptualizations of race and racism, there is a second aspect of state regulation of racist hate highlighted in this book. Specifically, the racial constructions of states illustrate a way that state offices, such as the many bias investigative units around the United States and the Bureau of Justice Assistance in South Africa, help bound race and agency in and through their regulatory practices. Bounding race and agency at certain junctures, the racial constructs of some state agencies, such as offices of public prosecutors, do not readily and officially recognize race as social construct. In addition, state agents, such as prosecutors, fail to account for the race rebel who denies white supremacy its lifeblood when the rebel constructs race outside of white supremacist binaries where supremacists construct themselves as "civilized" and "nonwhites" as "savage."

A third point is highlighted in this book, namely, that agents of the state charged with training other institutional agents to regulate hate have set out to reform their own regulatory rationales and practices. In response to social and economic change, these master trainers have frequently tried to make state agents aware of, for example, "multi-cultural" concerns leading to acts of hate as well as the "multicultural"

concerns conditioning state regulation of hate. In the United States, this “multicultural” sensitivity has fallen within the range of the liberal multiculturalism recurrently problematized by African American studies scholars such as Manning Marable, who astutely characterized such strategies as enthusiastic when it comes time to deplore prejudice and “celebrate diversity” but unable to forthrightly deal with “troubling concepts like ‘exploitation,’ ‘racism,’ ‘sexism,’ and ‘homophobia.’”³ In South Africa, the call for multicultural sensitivity has a slightly different ring. The racial dynamics are different in South Africa than in the United States due to South Africa’s white supremacist history coupled with the election of a black majority government in 1994. Even in South Africa, though, the liberal multiculturalism so present and prevalent in the United States has a sinister ring as the black majority government calls for a “nonracial democracy” that has, in effect, given whites the opportunity to forego a thorough reckoning with the apartheid past as present. (Here the postapartheid state has become trapped in the liberation struggle’s own language, where a “nonracial democracy” was the desired end, the goal. But in postapartheid South Africa, “nonracial democracy” has been declared by whites without South African democracy being nonracial.) This is something that a scholar such as Cynthia Kros wants to avoid, so as not to follow the U.S. example, or the French example in the “headscarf affair.”⁴

From Constitution to Practices

Hate Speech Scholarship

Hate speech has dominated sociolegal discussions about hate in both the United States and South Africa for too long. Scholarship on hate speech as a form of hate has revolved around constitutional debates about freedom and speech. For example, those in the United States and South Africa favoring more state regulation of hate and speech have taken this position in the name of equal protection under the law. Basically these scholars have argued that hate speech fosters social inequalities.⁵ Those who have opposed increased state action designed to curb racist hate speech in the United States have rooted their opposition in free speech terms, arguing that hate speech regulations encroach upon free speech rights.⁶ But U.S. and South African debates are not always this simple. For example, in the United States, a left-leaning scholar such as Judith Butler has argued that enhanced state control of hate speech actually silences subversive and transformative forms of speech. In such a subversive and transformative mode, an individual or a group might be understood to

make race as social construct depart from the normative racial scripts of white supremacy, not unlike the “drag” queen who queers patriarchal gender norms.⁷ The South African case is made more complex because, unlike the U.S. Constitution, the constitution protects free speech but also contains an internal limitation used to temper just how free speech can be. This has led to scholarly debates on just where this internal limitation line should be drawn.⁸

Quickly veering from the mainstream hate speech debate in the United States and South Africa, which has not really changed since the “culture wars” of the 1990s, I use this book to downplay the centrality of hate speech scholarship and debates. I do this in several ways, while still maintaining that there is a significant relationship between hate and language. For example, this book moves away from the fixation on hate speech, as this book is used to acknowledge—as do scholars writing from many different perspectives about, for example, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993)⁹—that, inevitably, language is central to hate in general, not just to hate speech. Discourse thus logically factors in, at some level, the regulation of hate outside of “hate speech.” Beyond this, in a sociolegal vein, routine regulatory state practices, not constitutional questions, are centered in this comparative study especially as language figures in the development and implementation of regulatory state practices. In large part this is done in order to skirt the dizzying circularity of the hate speech debate in the United States in particular but also the lawyerly dominance of the discussion in both the United States and South Africa. This places this study in line with more recent sociolegal studies by Valerie Jenness and Ryken Grattet, who consider the importance of language in the construction of what became conceptualizations of a criminalized hate warranting policing and prosecution, Jeannine Bell, who thinks about policing practices and hate, and Jon B. Gould who studies how institutional practices shape the enforcement of hate speech codes.¹⁰

Changing the terms of the debate in this qualitative study in which discourse is critical, and taking a different route than Gould, Bell, and Jenness and Grattet, means looking at the ways in which regulatory state practices interact, in particular, with identities. The emphasis on reiterative regulatory state practices as these practices shape identities grows out of my curiosity about and concern with law’s form—notably its structures, assumptions, and functions. This concern with form is similar to the concern highlighted by Richard Schur. Specifically, had Schur considered the dimensions of hate, he would have likely concluded that a focus on regulatory state practices turns what has largely been a doctrinal debate on constitutionality into a debate about “the ideology of form.” Schur’s “ideology of form” is not just an exercise in constitutional exegesis

where cases and precedent rule; his emphasis on form underlines the way that ideology is embedded and imbricated within law and racial constructs made, for example, in appellate courtrooms and as the beat cop prepares incident reports.¹¹

"Fixing" Race

Regulatory state practices, understood through everyday artifacts such as police reports or memoranda of law submitted to courts by public prosecutors, reflect more than what they, in their banality, appear to reflect. The completion of routine paperwork by either an agent of the state regulating hate or one who is to be regulated by the state is not necessarily a major happening, but it is significant. It is customary for a police officer in St. Louis or Mafeking to arrive on the scene of a particularly egregious hate act and take a report, assign a case number, and file the investigative report with other cases. More than what they appear to be on the surface, these case reports as ideological artifacts offer "insights into the shared meanings and social practices—the distinctive ways of making sense and doing things—which are the basis of our culture,"¹² not just of our legal culture. For example, New York City created the Bias Incident Investigation Unit (BIIU) in the early 1980s, which was administratively located within the Office of the Commissioner of the New York Police Department (NYPD). Now called the Hate Crimes Task Force, and located in the NYPD's Detective Bureau, duties of what once was the BIIU include the investigation of acts of hate, collecting and analyzing police reports as intelligence reports on the dimensions of hate, communicating with other state agencies so that different agencies with different objectives and practices could work together, and training other officers to manage incidents stemming from hate.¹³ Administrative "effectiveness" depends on a series of practices that can be reiterated. Specifically, police officers reiteratively record data related to hate acts on generic forms with multiple lines and boxes. The forms are but copies of copies for which there is no longer an original. But these forms are more than simulacra—copies of copies with the original both lost and insignificant. These forms encode meanings upon given acts of hate, particular rationales, in writing.

While carrying out their everyday work, bureaucrats at the South African Human Rights Commission office in Cape Town and Seattle's Office of Civil Rights make a range of routine yet culturally conditioned judgments about the racial identity of those targeted by haters, haters themselves, and those who witness hate acts. Neoliberal states, not unlike other states, base their judgments on what might be called "common

sense"¹⁴ about race and the knowledge derived from the ethno-racial pentagon (white, black, Hispanic, Asian, native) used in the United States as well as a similar pentagon (white, colored, African, Indian, Asian) officially used in apartheid South Africa and unofficially in effect in postapartheid South Africa. Prompted to make these judgments, state agents tend to arrange race within one of the aforementioned categories so that the variability of something like race can be statistically analyzed, and governed and populations regimented. While the choices made by state agents may be affected by the cultural lens of a given agent, the professionalization of agents into a given agency's practices tends to mute state agents who, because of their experiences, see race through a different lens.

It is here within the marrow of legality that regulatory practices and racial constructs of the state are produced and reproduced. For example, Lisa Frohmann addressed the reiteration of identity constructs in the decision-making processes of public prosecutors in the United States. Specifically, Frohmann argued that public prosecutors locate the identity of victims, defendants, jurors, and their communities in ways that are dependent upon dominant social constructions of race, class, and gender. Issues of form figured as socially constructed stereotypes helped determine who got prosecuted and how prosecution proceeded.¹⁵ Have state agencies operated in this way to naturalize racial constructs? Taking Frohmann on her own terms, stereotypes influenced the practices and decisions of public prosecutors. As cultural studies scholars theorize, these state stereotypes tended to reiteratively "reduce, essentialize, naturalize, and fix difference." Further, state stereotypes worked via a splitting mechanism that, as "part of the maintenance of social and symbolic order," differentiates the "'normal' and the 'deviant,' the 'normal' and the 'pathological,' the 'acceptable' and the 'unacceptable,' what 'belongs' and what does not."¹⁶

Sociological scholars Paul Gready and Lazarus Kgalema similarly centered bureaucratic practices and decisions in their study of the apartheid judiciary. In particular, not unlike Frohmann, Gready and Kgalema sought to "identify structures and processes" that shaped the legal and racial consciousness of apartheid magistrates, many of whom are still on the bench. "Structures and processes," according to Gready and Kgalema, preceded the magistracy's "widespread complicity in human rights abuses" during apartheid.¹⁷ These structures and processes conditioned a magistrate culture where apartheid's racial constructs were reiterated by apartheid's judiciary. This racial consciousness, in part a result of the formal training that magistrates received at apartheid's Justice College, became naturalized in such a way that it became racial reality. This naturalized racial consciousness reinforced the racial norms

of the apartheid state. Racial consciousness here elided with a supposedly neutral and objective apartheid state so as to shape not just the magistrates' sense of racial justice but their sense of justice itself.¹⁸

Bounding Race and Agency

That states participate in white supremacy is not surprising. As critical legal scholar Peter Fitzpatrick suggested, "Racism is compatible with and even integral to law" in liberal democracies, and this racism might even be traced to the emergence of liberalism and (white) European identity itself.¹⁹ Critical race theorist Patricia Williams, however, thinks that the disutility arguments of Peter Fitzgerald and other critical legal scholars do nothing to materially transform the basic existence of people of color in racist societies. According to Williams, "For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity."²⁰ In short, liberal rights discourse, and the activism inspired by this discourse, becomes the only tool available to those on the bottom.

Using the rights understood by Williams, people of color turn to state agencies and institutions when and where possible, pressuring city councillors, administrators at the state-provincial and local levels, members of Congress or Parliament, officials within a given presidential administration, and courts at all levels. For example, a U.S. interest group such as the National Association for the Advancement of Colored People (NAACP) used its bully pulpit to lobby Congress for passage of the Hate Crime Statistics Act of 1990. Beyond lobbying for passage, though, the NAACP lobbied to have its data forms incorporated into the practices operationalizing the act. As a result of the NAACP's lobbying effort, its own data collection strategies became a part of the data collection practices of the Federal Bureau of Investigation (FBI) section (the Uniform Crime Reports section) assigned the task of data collection mandated with the passage of the Hate Crime Statistics Act. This included issues of form, such as who should get placed in which racial identity category for the purpose of data collection, interpretation, and allocation of resources used to make state regulation of hate efficient as the neoliberal state defines "efficient." Similarly, in South Africa, people of color and sexual minorities helped give contour to race and sexuality as constructs in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, which contains a significant hate speech provision. This is not to say that the inputs of interest groups representing minority groups in the United States and South Africa always reflected changing racial or gender constructions and formations taking shape in

new times. Instead, it should just be noted that there was a dialogue about how race should be constructed as the state attempted to intervene in acts of racist hate.

Multiculturalism

The underlying point of this book is that in a legal culture where racist hate is regulated via racial constructs, representation matters. This is not the "representation" presented in the mainstream political science scholarship that I devoured as a graduate student in Chapel Hill.²¹ Instead, this is the "representation" theorized within the cultural studies emanating from Birmingham.²² As I contend in this book, a "racialized regime of representation" shapes hate regulation in the United States and South Africa, and this "regime" tends to utilize rather fixed racial representations.²³ This is the case even in postapartheid South Africa, where the relatively static racial representations (or constructions) of apartheid and colonial states have been vigorously interrogated.

The racial representations (or constructs) used by the states in the United States and South Africa in order to regulate hate are frequently akin to the modernist and positivist racial constructs critiqued in the work of postcolonial theorists such as Vine Deloria and Gayatri Chakravorty Spivak, ethnic studies scholars such as Michelle Habell-Pallan and Dwight A. McBride, and in the work of philosophers such as Charles W. Mills and Paul C. Taylor.²⁴ Dominant constructions of marginalized groups have historically depended upon certain stereotypes presented in what might be understood as the binary form. With these stereotypes reified via legal "science" and racial "science," the dominant culture has constructed identities in male-female terms, masculine-feminine terms, in terms of heterosexual-homosexual, black-white, white-nonwhite, whites as civilized-nonwhites as savage, or the catchall postmodernist shorthand of self-other. Using such polarities, or binaries, powerful interests have been able to use discourse in order to construct themselves as normal and the "other" in the polarity as deviant. And this binary has become the basis of supremacist ideologies, such as white supremacy and patriarchy, intended to systematically order the world and structure inequalities.

While these binary constructs do not necessarily play out in absolutist ways, understanding these social constructs as functioning through reified binaries is a useful theoretical starting point to understand the genealogy of race, racism, and the flow of power. The limits of such binary understandings are presently evident in both the U.S. and South African contexts where the state has successfully turned multiculturalism

into a commodity. The U.S. limits are increasingly evident as immigration from the Americas and the Islamic diaspora leads state and society to view race in new, multicultural ways. In South Africa, apartheid's formal end brings to the fore multicultural divisions and differences within and between communities of black Africans, black "coloreds," English-speaking whites, Afrikaans-speaking whites, Indians, and Chinese (who are actually now seeking black status in order to claim the redistributive benefits of affirmative action). The neoliberal state's burgeoning multiculturalism, though, is not a reconstructive or transformative practice that deconstructs stereotypes by dismantling the "science" legitimating racial and other negative stereotypes. As Michael Hardt and Antonio Negri recently charged in their book *Empire*, neoliberal states can and do appropriate the slogans of their academic and activist antagonists when the neoliberal state leads chants such as "Long live difference!" and "Down with essentialist binaries!"²⁵

If the neoliberal state's racial constructs largely adhere to white supremacy's racial binaries, with neoliberal states appropriating multiculturalism only when challenged by those on the bottom or their representatives, then how can neoliberal states be depended upon to remedy and transform racist hate? But, really, this is only part of the story, as my supposition and question assume that racial supremacy itself is static. After all, who is to say that the racial supremacy of haters has not changed and will not change?

Significantly, race and racist hate in the United States and South Africa have changed and will continue to change. The neoliberal state in particular has, however, approached this change in less than desirable ways. Namely, state structures in the United States and South Africa have been used to ardently regulate, for example, hate. And this regulation has occurred in the name of a multiculturalism forced on the state's agenda by social movement activists demanding rights for people of color in general, immigrants, sexual minorities, women, and other "others" targeted by haters. The state's multicultural "turn" has taken place as the state's regulatory practices continue to operate within modernist and positivist state frameworks. These have been frameworks where legal "science" and racial "science" prevail, or at least prominently figure. And, as I argue throughout this book, "scientific" discourse has served as a kind of enabler of the type of racial governance in neoliberal states that I find so problematic. State appropriation of multicultural rhetoric has conveniently allowed the neoliberal state to absolve itself of racist hate, even as the state ironically propagates a legal "science" and racial "science" promoting a social fixity and stasis antithetical to the dynamism and openness promoted by progressive multiculturalists.

Comparing U.S. and South African Contexts

Why compare hate in the United States and South Africa? The cases are similar enough to make a comparison feasible but different enough to make a comparison interesting, as evidenced by classic comparative studies of the United States and South Africa written by George M. Fredrickson and Anthony W. Marx.²⁶ Both the United States and South Africa share a colonial past, in which Europeans established hegemonic control over an indigenous population and over a population that was not European, all ultimately in the name of efficiently directing resources to the colonizer. New systems of social control followed the decline and formal end of colonialism in both cases. For example, in the United States, Jim Crow and segregation dictated the course of social relations between people of color and whites after the Civil War. In South Africa, Jim Crow and segregation parallels were put into place as the prospect of black power in the late nineteenth century and the reality of Afrikaner poverty in the mid-twentieth century led to the institutionalization of apartheid to secure white domination. Resistance to white supremacy in both contexts led to the emergence of prominent leaders whose cause gained international notoriety: Mandela in South Africa, and King in the United States, during the 1950s and 1960s, just as liberation movements replaced colonial regimes in the Americas, Africa, and Asia. Dissent about the shape of the mainline responses of Mandela and King came from younger activists of color in the United States (e.g., Huey P. Newton) and South Africa (e.g., Steve Biko) during the 1970s, with younger activists being inspired by Fanon, and not so much by Gandhi. Together, the leadership of struggle veterans, and more junior struggle activists, prompted change in the white supremacist order in both the United States and South Africa. In both contexts, though, the cause for which many gave their lives has been won, and not won.

It is within this larger historical context that I come to my understanding of hate regulation in the United States and South Africa. I start first with the scholarship and debates about hate speech. The U.S. and South African hate speech scholarship from the 1990s is rich, and converging, as both countries wrestled with the “culture wars” specific to their own national contexts. For example, as stated earlier, the gist of the scholarly debate in both the United States and South Africa revolves around how the regulation of hate speech impinges upon free speech and expression. The South African case, though, differs, as it regards this free speech framework. As mentioned earlier, South Africa’s constitution, unlike the U.S. Constitution, contains an internal limitation forthrightly allowing the South African state to regulate speech deemed

hateful. There is another critical dimension differentiating the two cases. In the United States, hate speech regulation exists in its own regulatory domain, largely separated in legal terms from the regulation of hate crime and discrimination. In contrast, in the South African case, hate speech is a crime that is understood to be a critical factor in persisting patterns of discrimination, so it is impossible to neatly parse hate in this comparative study, making this study *just* about hate speech. As a result, chapter 5 of this book, understood from a U.S. perspective, might be primarily understood to be about discrimination. But from a South African regulatory perspective, it is about discriminatory forms that frequently implicate each other, and hate in general and hate speech in particular are among these discriminatory forms.

The expansiveness of the South African regulatory form, and the way that it links hate speech-hate crime-discrimination, draws me to it. It is interesting to see how a nation such as South Africa comes to terms with its past, so soon after that past, whereas there is a kind of indifference to hate and its regulation in the United States. Hate regulation in the United States is about reform, and these reform efforts are frequently dispassionate in tone, not to mention decentralized as, for example, federal, state, and local governments frequently have different and very procedurally driven provisions for the regulation of hate. As a set of reform measures, hate regulation in the United States is about ending something viewed as a mere inconvenience. There is no real systemic and centralized attempt to address that which has been identified as the source of hate in the U.S. case. Regulators in the United States, too, often see hate and hateful actions as an anomaly and not as something so embedded in the social and political fiber of the nation's essence, making it necessary to go beyond mere reform measures. The U.S. regulators seemingly approach hate as an administrative matter, where nothing beyond an administrative solution is needed.

In contrast, hate regulation in South Africa is more transformative. That is, some agents of the South African state proclaim that they regulate hate in the name of undoing the structures of oppression giving life to hate. And this attempt to deconstruct oppressive structures in South Africa comes as state regulators repeatedly return—at least in rhetoric—to the social context giving life to the state's regulatory zeal. This is a social context where an active recognition of the historical (colonial and apartheid) basis of ongoing hate acts and inequalities is understood to be much more central than in the U.S. case. In South Africa, this is a historical basis where the state does not consider hate anomalous, even as, in practice, some regulatory (state and quasistate) entities treat hate as anomalous. In any event, agents of the South African state see hate as an

unacceptable norm that must be excised from the social. Further, South African regulatory practice uniquely recognizes the relationship between social constructs and material inequalities, even as, in regulatory practice, some regulatory bodies struggle with what encompasses a social construct, never mind the material inequalities stemming from social constructs.

As might be surmised by the aforementioned overview of the South African case, the South African hate regulation context, in short, is contradictory at points. These contradictions really become evident when the South African case is placed within the larger neoliberal framework increasingly characterizing the postapartheid state. Neoliberal regulatory forms seep into the regulatory practices adopted by the postapartheid state as well as by "private" nonstate entities given "public" regulatory power by the postapartheid state. That such a neoliberal regulatory form characterizes the U.S. context, especially after the "Reagan revolution," is not terribly surprising; for more than a generation now, Americans have viewed the state as "the problem" and not necessarily "the solution." The growing privatization of regulatory practices in South Africa's hate domain, though, leads to a lessening of the very transformative ethic that makes the spirit and operational components of hate regulation in South Africa so different from the U.S. case. With privatization, hate regulation in South Africa starts to sound like a mere administrative act, or worse, when hate regulation starts to become just another management tool helping to temper mass unrest really emanating from continued material disparities that the postapartheid state has tackled only at the edges, fourteen years after the start of multiracial democracy. Burgeoning neoliberal regulatory practices in South Africa tend to lessen the salience of race and racism within the hate regulation matrix, sometimes erasing a progressive understanding of the way that race as construct and racism function. The result is a neoliberal state that increasingly governs racist hate by governing race as construct. This is a state that gradually manages racial hate and racial constructs in the name of a kind of efficiency that, in effect, decreases the possibility of progressive social change. Significantly, part of the neoliberal postapartheid state steadily absolves itself of the responsibility for undoing that which is the systemic cause of hate, because the neoliberal postapartheid state seamlessly projects itself and the society for which it acts as innocent. Innocence here comes as a neoliberal, postapartheid state points to its "objective" and "neutral" regulatory mechanisms remedying hate, when "deviant" individuals or groups hate in impermissible ways. In the end, the hated subsequently find themselves in a kind of statelessness, where the neoliberal, postapartheid state acts, but does not act at all.

Chapter Outlines

Considering hate, race, and neoliberal regulatory state practices from multiple perspectives, the chapter outlines of this book follow.

Chapters 2 and 3 highlight certain regulatory state practices in the United States—policing in particular in chapter 2 and tort in chapter 3. Of these two chapters, chapter 2 elaborates on the primary argument of this book—an explication of how and why the neoliberal state governs hate by governing racial constructs. Foucault’s “governmentality” will be used and tweaked in order to make this argument. The role of “science”—legal and racial—also is significantly developed in this chapter to illustrate how governance here is about controlling discourses on race as construct and divesting the state in particular but also society of responsibility for racist hate. These parts are brought together to talk about the policing of one particular hate occurrence in Maine, a national strategy adopted by the Clinton administration in an effort to police hate, such as the hate act in Maine, and the practices enacted by the Chicago Police Department in the period following the implementation of the Clinton administration’s strategy.

Chapter 3 on tort does a bit of storytelling. Here storytelling is used to ask how legal “science” in tort enables a racial “science” that bounds race and agency. Hate regulation in this chapter is considered at the intersection of race, gender, and sexuality—at that place where white supremacy, patriarchy, and heterosexism converge.

Chapter 4 articulates how and why a traumatic event such as 9/11 leads to social change in the United States, but not always change in regulatory state practices. Once again, here legal “science” has seemingly led to the state understanding race and racism in ways that do not reflect racial and racist realities after 9/11. Special attention is given in this chapter to the ways in which racial constructs in the United States are formatively influenced after 9/11 by acts of hate against those who are Muslim or “Muslim looking.” A look at such post-9/11 acts of hate is paired with a look at activism by newly vocal rights claimants—especially those who are Muslim, but also those who are “Muslim looking.”

Chapters 5 and 6 place reconstructive and transformative possibilities in the U.S. case next to the more reconstructive and transformative regulatory practices in South Africa. The South African practices have been introduced in order to shuck the rigid pretenses of apartheid’s legal and racial “science.” Interestingly, at a key moment when the state rebuked apartheid’s “science,” understandings of race and racism reflecting new times and new egalitarian possibilities started to come into clear political view. While more progressive practices serve as the

template for postapartheid regulation of hate, traces of apartheid practices have reemerged at points in South Africa to make the path of social transformation a bit murky. These traces have been neoliberal in form, as, in late apartheid, the apartheid state began to reposition itself and those it represented for a postapartheid dispensation. Of this book's final two chapters, chapter 5 is specifically relevant in understanding the politics of a piece of South African legislation and special courts designed to regulate hate. Significantly—and very much unlike the U.S. case—this legislation has been implemented within an equality framework where systematic and systemic efforts are being made to undo racial discrimination. Chapter 6 specifically traces the development of media regulations in South Africa intended to control the proliferation of hate. A multilayered comparative analysis is used to compare state regulation of hate and a burgeoning self-regulation within the media industry. Further, a comparison is made between apartheid and postapartheid regulatory norms. The limits of transformation in media regulation here also are brought to the fore.

Finally, this book contains a brief but pointed postscript, which suggests how this study might be used to rethink policies and practices in the United States and South Africa.