

QUEEROCIDE

Alexander L. Chen¹

ABSTRACT

The queer community in the United States is poised at a moment between progress and peril. Decades of advances, culminating with the Supreme Court's landmark decisions recognizing a constitutional right to same-sex marriage in Obergefell v. Hodges, 567 U.S. 644 (2015), and extending federal workplace protections in Bostock v. Clayton County, 590 U.S. 644 (2020), have been followed by a sustained legal and political backlash, as numerous executive orders and state bills have targeted queer rights across areas ranging from education to workplace protections, health care access, housing law, public accommodations, identity documents, military service, data collection, medical research, and prison conditions.

While some have argued that these laws and policies are aimed at "erasing" queer and transgender people, a theoretical framework that renders that erasure cognizable and subject to legal analysis has yet to emerge. This Article aims to fill that void. Drawing from collective rights theories recognizing the group rights of racial, ethnic, and religious groups, including legal protections against genocide (the systemic killing of a particular group) and ethnocide (the destruction of the culture of an ethnic group), the Article coins a new term, "queerocide," to describe the phenomenon of a systematic, state-based campaign to eradicate the visible cultural markers of queerness in a given polity.

Viewing recent developments in American law and politics through the prism of queerocide predicts and explains various features of the backlash we are witnessing and the queer community's response to it, such as the targeting of its most visibly transgressive members, and the community's fractured response. It also offers a roadmap for hope. The genocide and ethnocide literature offers lessons on how to survive and navigate queerocide. Critically, some of those lessons offer different solutions than our prevailing "rights as trumps" approach. Embracing a collective theory of queer rights yields decisional principles that could help resolve inter-group rights disputes that are seemingly irreconcilable within our current rights paradigms—such as the conflict between non-discrimination laws and religious exemptions.

¹ Founding Director, Harvard Law School LGBTQ+ Advocacy Clinic, and Lecturer on Law at Harvard Law School. My deepest gratitude to Swethaa Ballakrishnen, Jessica Clarke, Tyler Clemons, Seran Gee, Thomas Kadri, Sonia Katyal, A.D. Lewis, Kaiponanea Matsumura, Martha Minow, Christina Mulligan, Fred Smith, Hannah Walter-McCabe, and the participants of the West Coast Sexuality, Gender, and the Law Conference, the Clinical Law Review Writers' Workshop, the Boston University Gender Law and Policy Colloquium, the Northeastern Junior Scholars' Conference, and the Climenko Fellowship Workshop for feedback, and to Hannah Ambinder, Maddie Chang, Dallas Estes, Denny Lee, Jasmine Park, and Bridget Simons for research assistance.

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INTRODUCTION

Ethnocide is therefore the systematic destruction of the ways of life and thought of people different from those who carry out this enterprise of destruction. In short, genocide murders peoples in their bodies, ethnocide kills them in their minds.

– Pierre Clastres (trans.)²

There can be no middle way in dealing with transgenderism. It is all or nothing. If transgenderism is true, if men really can become women, then it's true for everybody of all ages. . . . If it is false, then for the good of society and especially for the good of the poor people who have fallen prey to this confusion, transgenderism must be eradicated from public life entirely. The whole preposterous ideology at every level.

– Michael Knowles, speech at Conservative Political Action Conference, Mar. 4, 2023³

It is a terrible time to be transgender. It is also the best time to be transgender in recorded history. Both of these things can be true at the same time.

– Anonymous trans elder and activist

Since the November 2024 presidential election, it has become a bit of a commonplace in the queer⁴ community to aver that the Trump Administration is engaging in the systemic “erasure” of members of the queer community, and in particular transgender individuals.⁵ This Administration has engaged in a barrage of anti-queer executive orders and actions, including defining sex as binary and immutable, barring transgender people from serving in the military, shutting transgender women out of sports, stripping transgender and non-binary people of identity documents, defining gender-affirming health care for minors as “chemical and surgical mutilation,” pretextually firing queer federal workers, censoring queer national monuments, and eliminating research programs and funding for queer medical studies, health centers, and data collection.⁶

Meanwhile, hundreds of anti-queer laws have been proposed and enacted at the state level over the past several years, prompting the Human Rights Campaign, a prominent lobbying group,

² CLASTRES, PIERRE. 1974. “De l’éthnocide.” [On Ethnocide.] *L’Homme* 14 (3–4): 101–10 (“L’éthnocide, c’est donc la destruction systématique des modes de vie et de pensée de gens différents de ceux qui mènent cette entreprise de destruction. En somme, le génocide assassine les peuples dans leur corps, l’éthnocide les tue dans leur esprit”).

³ <https://www.mediamatters.org/daily-wire/daily-wires-michael-knowles-transgenderism-must-be-eradicated-public-life-entirely>; <https://www.theamericanconservative.com/transgenderism-must-be-eradicated/>

⁴ For why this Article uses “queer” instead of “LGBT” and similar acronyms, see Part II.B *infra*.

⁵ See, e.g., Chen et al., *Eight Legal Experts on Trump’s Assault on Higher Education*, LPEBlog, <https://lpeproject.org/blog/eight-legal-experts-on-trumps-assault-on-higher-education/> (Mar. 27, 2025).

⁶ See *id.*; *infra* Part III.A.

to recently declare its first-ever “national state of emergency.”⁷ In addition to the hundreds of state bills that have been enacted over the last decade restricting queer rights—including with respect to schools, book bans, drag bans, health care access restrictions, bathrooms, sports, religious exemptions, rescinding non-discrimination protections, and relegalizing conversion therapy—state legislators have recently proposed bills to overturn *Obergefell v. Hodges*,⁸ make being openly transgender (termed “gender identity fraud”) a felony, and deem parents and educational and medical professionals supporting transgender minors as child abuse.⁹ Queer Americans frequently describe feeling attacked and “besieged,”¹⁰ with 71% of queer youth, and 86% of transgender and nonbinary youth, reporting experiencing negative mental health impacts from these political developments.¹¹ And divide and conquer tactics have led some to question whether lesbians, gays, bisexuals, transgender people, and the various other gender and sexual minority groups¹² commonly regarded as falling within the umbrella of the queer community have enough in common to really conceive of themselves as belonging to one community.¹³

At the same time, the number of young people identifying as queer has never been higher. A 2023 Centers for Disease Control and Prevention (“CDC”) study—recently restored to the CDC’s website after it was removed by the new Administration due to a federal court order, with an accompanying caveat that “[t]his page does not reflect biological reality and therefore the Administration and th[e] Department [of Health and Human Services] rejects it”¹⁴—found that the percentage of high school students identifying as lesbian, gay, bisexual, transgender, or “questioning” increased from 11% in 2015 to 26% in 2021.¹⁵ Prominent social conservative and religious commentators have expressed repeated fears that these and similar statistics show that they are losing the “culture wars” over the social acceptability of queer identities and behaviors, with some going as far as to argue that traditional religious communities should invoke a “Benedict Option” of retreating to separate enclaves where they can live divorced from the secular world.¹⁶ Others rejoin that nothing less than seizing the apparatus of federal and state government to forcibly impose a “national conservative” model of sex and gender relations can save the United States from ever-liberalizing sexual mores.¹⁷

What legal frameworks can help us understand how we got to a point in American society where the progress made by the queer community over the past half-century at once seems so momentous, yet so fragile; so unstoppable, yet so susceptible to backlash? How can one

⁷ HUMAN RIGHTS CAMPAIGN, LGBTQ+ Americans Under Attack: A Report and Reflection on the 2023 State Legislative Session (June 8, 2023), available at <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>.

⁸ 576 U.S. 644 (2015) (recognizing a constitutional right to marriage equality).

⁹ See <https://www.hrc.org/resources/map-state-legislation-lgbtq-rights>; <https://www.nbcnews.com/nbc-out/out-politics-and-policy/texas-bill-identify-transgender-state-felony-rcna195642>; [add citations].

¹⁰ See, e.g., <https://www.nytimes.com/2022/12/10/us/politics/anti-transgender-lgbtq-threats-attacks.html>.

¹¹ <https://www.thetrevorproject.org/blog/new-poll-emphasizes-negative-impacts-of-anti-lgbtq-policies-on-lgbtq-youth/>.

¹² Such as non-binary, intersex, pansexual, Two-Spirit, etc. [add citation]

¹³ See *infra* Part II.A.

¹⁴ See <https://www.cdc.gov/healthy-youth/lgbtq-youth/health-disparities-among-lgbtq-youth.html> (last visited May 7, 2025).

¹⁵ See <https://thehill.com/homenews/education/3975959-one-in-four-high-school-students-identify-as-lgbtq/>; <https://kdvr.com/news/1-in-4-teens-identify-as-lgbtq-cdc-study/>. 3.3% of high schoolers identified as transgender in the 2023 study. <https://www.nytimes.com/2024/10/08/health/transgender-teenagers-cdc-survey.html>. Historical comparisons are not possible because this was the first time the CDC included this category. See *id.*

¹⁶ See generally Rod Dreher, *The Benedict Option* (2017).

¹⁷ <https://www.economist.com/leaders/2024/02/15/the-growing-peril-of-national-conservatism>.

community feel so internally fractured and under siege, and yet appear as a unified and imposing threat to other groups? And is it possible to turn down the temperature in American society, establish more internal cohesion, and find room for mutual toleration with groups with opposing views, without sacrificing ethical principles and the most vulnerable members of our community?

The Author has spent the last decade at the forefront of battles over queer civil rights, using an array of legal tools—constitutional, statutory, and regulatory—to fight for equal treatment for this community in schools, workplaces, hospitals, the military, prisons, and child welfare and juvenile justice systems. And as a gay transgender man, the Author also has a personal stake in the outcomes of these battles. Yet the Author has come to believe that our prevailing legal frameworks, which tend to conceptualize the civil rights of queer people as rights that attach to individuals or couples, lack the explanatory power to fully elucidate what exactly it is about the progress made, and backlash towards, our community that make the stakes feel so high for all sides. These frameworks struggle, too, to provide principles of decision for how we should decide between competing legal and policy strategies and outcomes.¹⁸

This Article represents an attempt at finding one possible answer. It argues that we should draw from legal frameworks recognizing the collective rights of minority groups, and in particular legal protections against genocide (the systemic killing of a particular group) and ethnocide (the destruction of the culture of an ethnic group),¹⁹ to analyze the State's recent actions against the queer community. In so doing, the Article makes several key contributions to the existing literature.

First, the Article breaks new ground by applying collective rights frameworks that have primarily focused on the group rights of racial, ethnic, and religious minorities to the queer community. The Article coins a new term, “queerocide,” to describe the phenomenon of a systematic, state-based campaign to eradicate the visible cultural markers of queerness in a given polity. It elucidates how viewing recent developments in American law and society through the prism of queerocide predicts and explains various features of the backlash we are witnessing and the queer community's response to it, such as the targeting of its most visibly transgressive members, and the community's fractured response.

Second, calling this phenomenon queerocide rather than ethnocide is not just an exercise in creative rebranding. On the contrary: the Article contributes to the collective rights literature by examining the ways that the queer community complicates traditional assumptions of collective rights theorists. The Article argues that distinctive features of the queer community *qua* a group function differently than for the racial, ethnic, and religious groups that have traditionally been the subject of study for genocide and ethnocide scholars.

Third, the Article elucidates how these differences have concomitant impacts on both what state-based mechanisms are effective for suppressing the queer community's cultural traits, and what law and policy responses are effective for preserving them, using recent examples from American law.

Finally, given the Author's background, the reader would be forgiven for assuming that the primary purpose of this Article is to discover an additional source of rights for the queer community that can be added to the individual rights already recognized as applying to queer individuals—an accelerant on our prevailing approach to “rights as trumps.”²⁰ However, the Article instead argues that applying a queer collective rights lens offers decisional principles that

¹⁸ [Add citation]

¹⁹ See Jaakko Heiskanen, *In the Shadow of Genocide: Ethnocide, Ethnic Cleansing, and International Order*, *Global Studies Quarterly* (2021) 1, 2.

²⁰ Jamal Greene, *Rights as Trumps*, <https://harvardlawreview.org/print/vol-132/rights-as-trumps/>.

help resolve some inter-group rights disputes that are seemingly irreconcilable within our current rights paradigms—such as the conflict between generally applicable non-discrimination laws and religious exemptions.

This Article proceeds in the following parts. Part I provides an overview of collective rights frameworks, including the genocide and ethnocide literature, and delineates ways that collective rights have been recognized under American law. Part II explores how queers complicate and expand collective rights frameworks. Part III applies the framework to our contemporary moment, arguing that the State's recent anti-queer actions are best understood, *per supra*, as a systematic “queerocide” aimed at suppressing the cultural existence of the queer community. Part IV explores lessons from the genocide and ethnocide literature on how to survive and navigate queerocide. Part V concludes.