

“In the Old Days... You Could Nab Somebody Like This”:
Re-Citing Eugenics in the Discourse About Mass Shootings

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Could the mass shooting at a high school in Parkland, Florida, on February 14, 2018, in which 19 year old Nikolas Cruz is alleged to have killed 17 high school students and school staff, have been prevented? An impassioned group of survivors of the shooting and their family members believes so, and in the weeks following the shooting they have spoken out demanding action by state and federal governments. Upon inspection, the specific actions that survivors, their families, and allies support actually vary a great deal; for example, some want to ban the AR-15 weapon that was used in the Parkland shooting, but others do not want to restrict guns but rather support giving guns to more people such as teachers. However, people on all points of the political spectrum seem to agree that individuals with mental illness should be prevented from purchasing weapons, and that weapons should be taken away from individuals once a mental illness manifests.

This paper builds on research of early twentieth century eugenics policies in the state of California in order to critically read mental illness in the debates about gun violence and mass shooting in the twenty-first century. Setting aside for the moment the stakes in critically interrogating the term “mental illness,” I trace how the terror caused by gun violence and mass shooting has been articulated an issue of mental illness. I ask, what biopolitical discourses and practices are dredged up, cited, re-authorized, re-inserted, transformed, and entrenched by this (re)framing of gun violence as an issue of mental illness? Building on Stuart Hall’s insight that discourses are neither innocent nor immaterial,¹ what can past biopolitical discourses and practices say about the possible effects of these current discourses that equate and conflate mental illness with violence?

To begin, I want to highlight some of the disturbing themes of the current discourse, which I began to be intensely concerned about when I heard them coming from the mouth of Donald Trump. Asked in August 2015 by CNN’s Chris Cuomo about the shooting death of two journalists on live television in Virginia, pre-candidate Donald Trump suggested:

"In the old days they had mental institutions for people like this because he was really, definitely borderline and definitely would have been and should have been institutionalized. At some point somebody should have seen that, I mean the people close to him should have seen it."²

Here Trump eschewed all other possible theories of violence, by deploying what is now a familiar conservative strategy of displacement around gun violence; namely, framing gun violence not as a problem of guns, but as a problem of mental illness. In attempting to reframe the conversation away from other potential responses to violence, however, Trump went one step further than most conservatives by calling for a return of the state psychiatric hospital system.

¹ Stuart Hall and Bram Gieben, *Formations of Modernity* (Oxford: Polity in association with Open University, 1992).

² <https://www.cnn.com/2015/08/27/politics/donald-trump-virginia-shooting-mental-health-gun-laws/index.html>

Now-President Trump reiterated this call to rebuild psychiatric hospitals in a recent speech to the National Governor's Association at the White House on February 26, 2018, less than two weeks after the Parkland shooting.

"We must confront the issue of mental health...this kid had 39 red flags. They should have known, they did know! ... We have to discuss mental and we have to do something about it. In the old days we had mental institutions, we had a lot of them. And you could nab somebody like this... You used to be able to bring him into a mental institution, you know and he gets help or whatever, but he's off the streets. You can't arrest him, my guess, because he hasn't done anything. But he's like a boiler ready to explode. You have to do something. You can't put him in jail I guess, because he hasn't done anything. But in the old days, you put him into a mental institution. We had them in New York, but our government started closing them because of cost. And we're gonna have to start talking about mental institutions because a lot of people in this room closed their mental institutions. So we have no half way – we have nothing between prison and leaving him at his house, which we can't do anymore. So I think you folks have to start thinking about that."³

Again Trump worked to conflate mental illness with mass shooting, and called for a reinvestment in state psychiatric hospitals. What is intriguing/troubling about the speech is that Trump was either confused about, or was engaged in a strategic effort to trouble, the idea that authorities have no legal standing to put someone pre-emptively in jail before they commit a crime, saying "You can't arrest him, *my guess*, because he hasn't done anything," and later "You can't put him in jail *I guess* because he hasn't done anything." It's the "my guess" and "I guess" parts that are curious here – was Trump not sure that there is a Constitutional right to due process? Or did he want the audience to question whether that should be an inalienable right? Perhaps, he implies, it shouldn't be the right of some of us, specifically those who are "boiler[s] ready to explode."⁴

Either way, Trump accurately pointed out that commitment to a psychiatric hospital does not necessarily, and did not historically, require the same due process as commitment to jail or prison. The mental institution thus became for Trump an easy solution to the Constitutional crisis of pre-emptively locking people up for crimes that they could potentially commit. This easy solution works, because Trump narrows the scope of "what we can do to prevent mass shootings" – 1. leave people alone and allow them to commit gun violence and mass shootings, after which if they are not dead they can be put in jail, or 2. lock up mentally ill/potentially violent people in psychiatric facilities in order to prevent gun violence and mass shootings. Needless to say, Trump's call to "nab" off the streets those with mental health challenges, as well as his proposal to state governors that they reinvest in psychiatric institutions precisely because they can be used to pre-emptively lock up people who have committed no crime, is a terrifying thought for anyone struggling against the stigma of mental illness, as well as, for reasons I'll

³ <https://www.youtube.com/watch?v=v-Ev7mMpjAw>

⁴ Many people are indeed locked up in jails without due process, sometimes for years at a time, in cases of high or no bail prior to conviction and sentencing. Guantanamo is only the most famous example, it happens regularly in state and federal facilities as the tragic case of Kalief Browder brought to national attention. Kalief Browder spent three years on Riker's Island in New York City starting when he was 16 years old without ever being convicted. He was accused of stealing a backpack, and maintained his innocence throughout his ordeal. Three years after Kalief was released, he committed suicide. In addition, the Supreme Court just ruled in February that people detained in immigrant detention centers could be held indefinitely while waiting for their cases to be decided. However, these examples appear to be so outside of Trump's awareness that they aren't relevant here.

elaborate below, everyone who is committed to decarceration and prison abolition.

Trump went on to specify how exactly this pre-emptive lock down would work, by calling for an early warning system for detecting mental illness: “We need to improve our early warning response system so that when friends, family and neighbors do warn authorities about a dangerous individual, action is taken quickly and decisively.” Trump claimed that citizens of the U.S. desperately wanted such an early warning system, and that it was again “the authorities” who failed to take threats seriously. Trump explained that the mother of the 20-year old man who gunned down children at Sandy Hook Elementary in 2012 had begged for help to do something about her son, but received no assistance from authorities. Trump also referenced a recent example of a grandmother in Washington state who reported her that her grandson was expressing disturbing thoughts and had access to guns. After her report, her grandson was then “nabbed” by authorities despite not actually committing any violence. These stories invite family members, teachers, and others to engage in surveillance of the thoughts of young people for the purpose of taking away and locking up any who express mental illness. This line of thinking precludes the many other things society might offer to respond to homicidal and suicidal ideation such as cognitive behavioral therapy, anti-bullying measures, anti-racist and anti-sexist education, or reconciliation processes.

Trump’s references to the mental institution are indeed an accurate summary of the “old days.” In 1897 the legislature of California passed the so-called “Insanity Law,” or more properly “An Act to ... provide for the care, custody, and apprehension of persons believed to be insane, and the commitment of insane persons...” The law established a process for committing people to state hospitals that was so similar to the system of incarcerating people convicted of crimes that, for years after, state oversight boards and hospital administrators fretted about the fact that locked up insane people were convinced that they had been sent to prison. An inmate at a state hospital dated April 26, 1937, wrote to the superintendent of one facility “Any more of this ‘prison’ existence will stifle me ... I beg of you to please release me.”

In a process that sounds very much like Trump’s “nabbing” people off the street to “get help *or whatever*,” California’s 1897 Insanity Law allowed any person to file an “application for a commitment” on another person they suspected to be insane. Attached to the application was to have been a “certificate of lunacy” signed by two physicians who had examined the allegedly insane person and both concluded as to the person’s insanity. This sounds well and good, but the practice of medicine was still becoming established, with the American Medical Association being founded only 50 years before the Insanity Law was passed. “Men of mental medicine” were even less professionalized, and many had often received no specific training in the field except for those who interned or worked at insane asylums and state hospitals. Most importantly, all subsequent legal decisions after the physician’s signature were made by people with only every day understandings of what made a person sane or insane. It was a regular judge with whom the application was filed who, based on the evidence, determined that he was satisfied of the person’s insanity and issued an order of commitment to a state hospital. The insane person’s next of kin could appeal the decision and ask for a jury trial, but they had to pay for the court proceedings, and then it was a jury of twelve people off the streets who confirmed or overturned the judge’s decision.

One key difference between the process of commitment and punishment for a crime was that the sentence for insanity was indefinite, while reformers weren’t able to implement the indeterminate sentence for prisoners until 1917 in California. The indefinite commitment meant that once at the hospital, committed people were at the mercy of the superintendent who retained

sole authority under the law to release anyone he felt was “recovered” (a hotly debated term among superintendents), or whom was not recovered but deemed harmless to himself and the public, and whose relatives or friends had agreed to care for the insane person. Scholars of eugenics, such as Wendy Kline, have pointed out that the fact that state hospitals and state homes for the feeble-minded had indefinite commitments meant that reformatory and prison officials occasionally tried to transfer especially “defective” inmates in the hopes that they could be institutionalized for longer periods of time.⁵

Despite idyllic pictures of asylum and later hospital inmates picking strawberries or working in laundries in the state archives, daily life in early twentieth century state hospitals was also deadly. Inmates faced high risk of being exposed to communicable diseases for which there were no effective treatments, especially tuberculosis and syphilis. While mechanical restraints were being done away with around the turn of the twentieth century, several high profile cases of abuse of inmates by hospital staff suggest that committed people were vulnerable to physical assault, sexual assault, and mistreatment. Inmates were subjected to experimental and sometimes painful treatments for insanity, such as hydrotherapy, which could mean being plunged into ice-cold water, or a “continuous bath” that lasted hours or days with the patient wrapped in a sheet so they couldn’t move. On the most banal level of violence, inmates also faced extreme boredom with access to limited reading material and entertainment, and were required to work without pay in the farms, gardens, kitchens, and laundries that sustained the hospitals (a practice that unions of the time decried as exploitation and administrators took pains to articulate as “therapeutic” for inmates rather than labor).

In the early twentieth century, older nineteenth century discourses of madness were infiltrated and transformed by the eugenics theory of defectiveness. According to the State Commission in Lunacy, defectiveness “designate[s] a vast class of nervous and mental conditions embracing insanity, epilepsy, and feeblemindedness on the one hand; alcoholic tendencies, vice, eccentricities, absence of the moral sense, undue excitability and various anomalies of conduct and disposition on the other.”⁶ What linked these conditions together was the eugenics theory that biologically tainted people passed on undesirable, and even dangerous, traits to their children that caused all kinds of social problems, including delinquency, criminality, insanity, poverty, and vice. The menace of this defective class justified state programs that controlled their reproduction, the most well known of which was the Asexualization Law that allowed for physicians in state hospitals, state homes for the feeble-minded, and state prisons to sterilize institutionalized people without informed consent. The 1913 version of the law called for sterilization of persons “afflicted with hereditary insanity or incurable chronic mania or dementia.” In 1917, that portion of the law was amended to include persons “afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeble-mindedness, those suffering from perversions or marked departures from normal mentality or from disease of a syphilitic nature.” At least 20,000 people were non-consensually sterilized in state institutions, primarily in the state hospitals and the homes for the feeble-minded, between 1909 and 1964. California overturned the law in 1978, and apologized for their eugenics practices of non-consensual sterilization only

⁵ Wendy Kline, *Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom* (Berkeley: University of California Press, 2001).

⁶ “Report of the State Commission in Lunacy, 1910-1912” (Appendix to the Journals of the Senate and Assembly of the Legislature of the State of California: Sacramento, California: California State Printing, 1913), 22.

in 2003.⁷

The massive state psychiatric hospital systems were dismantled in the 1960's in California through the Lanterman-Petris-Short Act of 1967 that moved state investment from large state run institutions to smaller group homes and transitional living facilities. The act grew out of a patient-led anti-psych movement that revealed the horrors of life inside of state hospitals. Conservatives were persuaded to support the act through a cost-saving argument, one that entrenched distinctions of those who deserved state care and those who did not. However, as early as the late 1970's the act was viewed as a failure because it had moved patients into so-called "psychiatric ghettos" in urban areas with low rents and created a host of new problems including increased homelessness.⁸ According to liberals, the problem was/is that the state government had deinstitutionalized without adequate federal government investment in community treatment programs and housing supports that mentally ill people needed to live outside of institution. Since this time, liberals have become increasingly concerned about the incarceration in prisons and jails of those people who would formerly have been sent to state hospitals. Ironically, the county and state hospital system is now so underfunded that it can sometimes be challenging to find a hospital bed for a person even if they express signs that they are a danger to themselves or others. All of these dynamics have worked to consolidate the equation of mental illness and violence, so that monies for mental health are only acceptable when made in terms of increasing need for policing (of homelessness) and jail and prison treatment programs for the mentally ill.

One way to read this is as a story of the decline of mass institutionalization, the rise of mass incarceration, and Trump's call to return to mass institutionalization. But what I want to suggest by putting Trump's discourse into proximity with some of the history of the mental institution is that there is more continuity than change from the late nineteenth century into the present. Drawing on scholarship that puts disability studies into conversation with critical prison studies,⁹ I want to highlight the historical similarities between psychiatric hospitals and prisons, and suggest that the differences between them aren't easily categorized as prisons "bad" and mental institutions "better." Instead, I suggest that in some ways, such as indefinite commitment and the state's right to pre-emptive incarceration, mental institutions exert biopolitical forms of control that wouldn't necessarily be viewed as legitimate in cases of punishment for crime,¹⁰ but which are viewed as acceptable for people adjudicated as insane, because it is done in the name of protecting so-called normal society from their violence.

On the constantly adjusting and escalating scale of "how much should I worry about this thing the President said," I'm unsure about where to place this suggestion about rebuilding the state's mental institutions. One concern I have is the current political moment in which there is a broad acceptance across the political spectrum of the need for prison reform to end racialized mass incarceration. However, this consensus is not built around a shared critique of the capitalization on carcerality, nor has it questioned the legitimacy of the state to surveil, discipline, and regulate populations. This means that even as states like California are reducing prison populations (such as through California's "Re-alignment" process), the time is ripe for

⁷ Senators Alpert, Kuehl, Ortiz, and Scott, "Senate Resolution No. 20: Relative to Eugenics" (2003).

⁸ E. Fuller Torrey, *American Psychosis: How the Federal Government Destroyed the Mental Illness Treatment System*, 2014.

⁹ Liat Ben-Moshe, Allison C. Carey, and Chris Chapman, eds., *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (New York, NY: Palgrave Macmillan, 2014).

¹⁰ That pre-emptive incarceration in jails and prisons happens without being viewed as legitimate by much of the public is another story.

public-private partnerships between the state and carceral corporations to invest in new modes of surveillance and I don't doubt that this could include the rebuilding of state psychiatric hospitals or some other version of "mental institutions." Trump's call to pre-emptively lock up mentally ill people as potential criminals, should particularly be read in light of Ruth Wilson Gilmore's warning that deincarceration projects generate surplus state funds, state institutional space, and state labor that will need to be put to work and could very well develop old/novel forms of state surveillance, intervention, and violence.¹¹

The equation of mental health and violence, danger, and threat to safety is not coming from Trump alone, but rather his comments are only part of a broader and more pervasive discourse. In the most direct sense, federal law still uses eugenics based language to talk about mental health, including federal gun regulations which contain the term "mental defective" in 18 U.S.C. § 922(d), which states:

"It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person... (4) has been adjudicated as a mental defective or has been committed to any mental institution."

Additionally, this conflation of mental illness and violence is articulated both by those who want to veer the conversation away from gun control reform, and by those who think gun control legislation that targets mentally ill people is a great place for the government to start taking action. Out of so many examples, one is a January 6, 2016 piece interactive piece on *The New York Times* web site that purports to explain "Why People With Mental Illness Are Able to Obtain Guns."¹² The reasons given are that: mentally ill people buy weapons from private sellers (in a what comes off as a vast conspiracy to thwart the background check system); the federal law is too narrow to cover mental illness that hasn't been adjudicated as such; and mental health records are not accessible to federal and state database (it's that damn right to the privacy of our medical records enshrined in HIPAA). Unfortunately, pieces like this collude with the logic expressed by Trump because they maintain that there is an identifiable distinction between "the mentally ill" and normal people who are ostensibly mentally healthy and capable of making rational decisions about choosing not to use violence.

This example demonstrates the infiltration of the conflation of mental illness and violence across the political spectrum, despite efforts in the media to portray distinct left and right positions: the left as caring and compassionate toward the "mentally ill" and also focused exclusively on gun control, while the right is disregarding of the state care entitled to the mentally ill, even as they use mental illness to distract from the real issue of gun control. Awkwardly, my concerns about state hospitals have the most in common with the fiscal conservatives that historically spoke out against mass institutionalization because they rejected the biopolitical argument that it was the state's duty to "care" for defective people no matter the cost. And in a strange twist, by calling for a return to the old days of capitalizing not on mass incarceration, but on mass systems of institutional "care," Trump has something in common with historic progressives that built the California welfare system. Trump reconciles this with his populist platform by blaming "the government" for prematurely closing the hospitals because of costs, and exposing society to harm. Paradoxically, however, his words authorize the restoration of the regime of state violence that accompanied the early twentieth century eugenics state.

The discursive articulation of mental health and violence reiterates an old and only

¹¹ Ruth Wilson Gilmore. Graduate Seminar. University of California Santa Cruz. November 9, 2015.

¹² <https://www.nytimes.com/interactive/2016/01/06/us/how-people-with-mental-illness-are-able-to-obtain-guns.html>

somewhat discredited theory that politics (equated with rationality) begins where violence ends. The subfield of political violence is an important (although I would argue far too narrow) attempt to show how violence can be the result of a reasoned choice or strategy is an important intervention into modernization theory's binary opposition between politics and violence. This paper is an attempt to deconstruct the other end of the equation (if the equation is politics=non-violent rationality plus mental derangement=violent irrationality). In this effort, I've been influenced by mad studies and disability studies that problematize the presumed binary opposition between mental illness and mental normativity.¹³ Regina Kunzel summarizes this insight as one that reveals how and in what ways "Disability often serves as the border separating reasonable from unjust forms of discrimination."¹⁴ Kunzel quotes Douglas Baynton who argues, "disability has functioned for all such groups as a sign of and justification for inferiority...tacitly accepts the idea that disability is a legitimate reason for inequality." In other words, mad studies and disability studies argue that historically, and into the present, mental illness operated as a signifier of legitimate differential treatment by the state. In the case of suspected capacity for violence, mental illness has worked to legitimately deny the same level of due process afforded to those assumed rational people accused of crime.¹⁵

To get back briefly to the use of the phrase "mental illness" within this discourse, I want to point to how "mental illness" exists in a political economy of human value – what I call a biopolitical economy -- that is directly descended from the discourse of eugenics. Eugenics practices of "othering," organized around the concept of defectiveness, divided normal from abnormal, and denied the rights of citizenship or recognition of the humanity of the "other." The biopolitical economy of eugenics interlocked with other racialized, gendered, and able-normative patterns of devaluation. Eugenics and its legacy in the discourse of mental illness is "proto-racializing" in the words of Jodi Melamed, in that it partitioned/s people into binary categories of reformable/unreformable, citizen/inmate, and normal/defective.¹⁶ Proto-racializing discourses then easily lend themselves to, and work to obscure, explicitly racialized (and gendered) biopolitics.

This is all a fancy way of saying that it is far less likely, but not unheard of, that gender conforming and able-bodied white males will be disenfranchised or denied humanity. It may seem curious then that white men who perpetrate gun violence or mass shootings are likely to be labeled mentally ill, while people of color are more likely to be criminalized and labeled a terrorist. Perversely, being labeled mentally ill is often viewed as a mechanism for coddling white male users of violence, a means of avoiding holding them accountable for violence by labeling them irrational. However, the historical uses of mental defectiveness to lock people up permanently and to expose them to invasive and at times dangerous medical treatments, indicates that there is nothing easy about being adjudicated as mentally ill and being institutionalized in a state institution. Further, this history shows that despite concerns about white men getting to be mentally ill while others are denied that recognition of their humanity, it is far more likely that poor people, gender non-conforming people, and other non-normatively minded or bodied people will be institutionalized/incarcerated, locked up for longer periods, and, end up in the

¹³ Lennard J. Davis, ed., *The Disability Studies Reader*, 5th ed (New York, NY: Routledge, 2017).

¹⁴ Regina G. Kunzel, "Queer History, Mad History, and the Politics of Health," *American Quarterly* 69, no. 2 (June 2017): 318.

¹⁵ Again, whether or not assumed rational people actually get due process is another story. I'm only concerned here with the discourse of whether due process is viewed as a legitimate right, and for whom it is viewed as a legitimate right.

¹⁶ Jodi Melamed, "Racial Capitalism," *Critical Ethnic Studies* 1, no. 1 (Spring 2015).

worst, most crowded and under-resourced institutional conditions, or in non-therapeutic conditions like jails and prisons.

The effort to prevent mass shootings has entered dangerous terrain by discursively articulating the terror caused by gun violence as an issue of “mental illness.” It has dredged up and re-authorized state biopolitical discourses and practices that articulate madness as a legitimate reason for indeterminate lock up, and reinvigorated old carceral politics of pre-emptive institutionalization. As Michel Foucault suggests, it is a slippery slope from background checks that purport to tell the truth about the body as a threat, to the state biopolitical racisms like eugenics.¹⁷ And it doesn’t matter who deploys these discourses -- whether they are from a left concern with “caring” about the mentally ill, or from Trump’s effort to displace calls for gun control onto a concern about mental illness. The potential consequences of any discourse that uses mental illness to signal violence are the re-authorization and intensification of biopolitical state regimes of violence.

¹⁷ Michel Foucault, *The History of Sexuality* (New York: Vintage Books, 1990).