1-1997

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Recommended Citation
Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 Hastings L.J. 1257 (1997).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol48/iss6/9

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Jeffrey Dahmer and the Cosynthesis of Categories

by

PETER KWAN

Prologue

On May 27, 1991, two teenage cousins noticed what they described as a wounded “butt naked young boy” in the street. The two cousins were Sandra Smith and Nicole Childress. They lived next to Oxford Apartments, a set of cinderblock low-rise apartments in the North Side of Milwaukee where Jeffrey Dahmer lived. The boy was fourteen years old. His name was Konerak Sinthasomphone.

Konerak and his family fled Laos 12 years earlier. The communists had threatened to take away his father’s rice farm near Vientiane, the capital of Laos. So, one night, Konerak’s father sent his family across the Mekong River in a canoe into Thailand where they lived in a refugee camp for a year before a Catholic relocation program helped them to move to Milwaukee.

To Sandra Smith and Nicole Childress, however, Konerak appeared a badly beaten and bruised boy. He was bleeding. He was naked and he was having difficulty standing and speaking. They called 911. Their call was also forwarded to the Fire Department who said that they would send an ambulance.

Three white police officers arrived at the scene. Officers Richard Porubcan, John Balcerzak, and Joseph Gabrish interviewed Dahmer in an alley. Dahmer told the officers that Konerak’s name was “John
Hmong," that he was 19 years old, that they were lovers, and that Konerak had drank too much and wandered naked into the street while Dahmer was out getting more beer. Konerak, in the meantime, was speaking in Laotian. Dahmer invited the officers back to his apartment. Smith and Childress insisted to the officers that Dahmer was lying, but they were ignored. When they went to Dahmer’s apartment, Balcerzak later testified, “(e)verything was in its place. It was a clean, well-kept apartment.” Moreover, Dahmer showed them photographs of Konerak posing in black bikini briefs. According to Balcerzak, Dahmer “acted embarrassed” and told Balcerzak that “everybody has to be into something.” Balcerzak observed that Dahmer “remained calm and forthright throughout.” Gabrish later recounted that Dahmer “appeared to be a normal individual” and that they were “convinced that all was well.”

In fact, all was not well. Dahmer later confessed that when Officers Balcerzak and Gabrish came into his apartment, he had drilled a hole into Konerak’s head, trying to make him into a “zombie” by performing a crude lobotomy. There was a body in the next room. At that time, Dahmer had killed 11 men whose skeletons, skulls and body parts were hidden throughout his apartment. He kept severed heads of his victims in his refrigerator and he kept other body parts in a large barrel of acid. Shortly after Officers Balcerzak and Gabrish had left his apartment, he strangled Konerak. Dahmer was eventually arrested some two months later. By that time, he had killed another four men.

The mother of one of the two teenage witnesses, Glenda Cleveland, spoke to Balcerzak later that night. In the transcript of the recorded telephone conversation, the officer stated that the “intoxicated Asian naked male was returned to his sober boyfriend.” The transcript also noted that there was some laughter in the background. The officers also joked about having to be “deloused” after leaving Konerak behind in Dahmer’s apartment.

Later, Officer Gabrish was reported as saying that he and the other officers had been “trained to be observant and spot things. There was just nothing that stood out, or we would have seen it. I’ve been doing this for a while, and usually if something stands out, you’ll spot it. There just wasn’t anything there.” What he saw was a caring relationship between Dahmer and Konerak. He and his fellow officers simply saw no reason to intervene.¹

¹. This narrative was reconstructed from facts taken from the following newspaper articles, listed in chronological order: Milwaukee Police Once Queried Suspect, N.Y. TIMES, July
Introduction

"In the history of Western psychoanalytic representations of the ravenously hungry, insatiably promiscuous male invert, gay sex has always been cannibal murder."

Stories of serial killers and serial killing have always simultaneously nauseated and fascinated the public imagination. Jeffrey Dahmer is among the most notorious of serial killers. The reasons for Dahmer’s notoriety are not hard to discern from the raw facts: the sheer quantity of murders he committed, the gruesomeness of how he killed his victims, how he disposed of their bodies, the way he preserved and kept his victim’s heads and genitals. There was his homosexuality, his cannibalism, his confession to necrophilia and to masturbating in front of the skulls of his victims. Our fascination with such grotesqueries, evidenced by the high level of media attention on Dahmer, has itself been a topic of critical inquiry. Scholars such as Diana Fuss, for example, have examined the representations of Dahmer to illustrate how homosexuals have been constructed as sexual deviants, a construction made possible by the historical conflation and association between homosexuality, necrophilia, and cannibalism.

3. See, e.g., JOSEPH C. FISHER, KILLER AMONG US: PUBLIC REACTIONS TO SERIAL MURDER (1997); ANNE SCHWARTZ, THE MAN WHO COULD NOT KILL ENOUGH (1992); RICHARD TETTECOTT, OF MEN AND MONSTERS (1997); RICHARD WHITTINGTON-EGAN, A CASEBOOK ON JACK THE RIPPER (1975); Tom Morganthau, Chasing the Unabomber, Newsweek, July 10, 1995, at 40; Serial Chic, Time, Mar. 21, 1994, at 23 (reporting on the sale of t-shirts and other memorabilia depicting serial killers Charles Manson, Jeffrey Dahmer, and John Wayne Gacy); Anastasia Toufexis, Dances with Werewolves, Time, April 4, 1994, at 64 (discussing the public fascination with serial killers); Richard Zoglin, Manson Family Values, Time, March 21, 1994, at 77 (reporting on sensationalist interviews on prime time news magazines).

4. See Wilkerson, supra note 1 (“The Milwaukee police removed three human heads stored in a refrigerator, boxes containing body parts, photographs of several victims and a barrel of acid.”). See also Edward Walsh, Dahmer Case in Hands of the Jury, THE WASH. POST, Feb. 15, 1992, at A3 (“Dahmer preserved severed heads, hearts, genitals and other body parts in a freezer in his apartment here, and hoping to create a ‘zombie-like’ creature to have sex with, attempted crude lobotomies on some of his victims by drilling holes in their heads and pouring acid on their brain before they died.”).

5. See Walsh, supra note 4 (“There was no dispute during the trial about the nightmarish nature of Dahmer’s life. After drugging and murdering his victims, he slashed the bodies open, committed sex acts on the corpse, dismembered the bodies and ate body parts of some of the victims.”). See also Maureen O’Donnell, Jury Hears of Dahmer’s Gruesome Past, CHI. SUN-TIMES, Feb. 5, 1992, at 5 (“A jury is trying to determine whether Dahmer was sane when he killed and dismembered 15 men, often having sex with their corpses, and, in some cases, eating parts of their bodies. [Attorney] Becker testified for the defense that Dahmer suffers from necrophilia and is unable to conform to the law.”); Daniel Goleman, A Misfit Who Turns to Murder, N.Y. TIMES, July 2, 1993, at B6 (“And Jeffrey Dahmer confessed to the police that he would masturbate in front of his collection of skulls and other body parts taken from victims he found especially desirable.”).

6. See Fuss, supra note 2, at 188 (“The psychoanalytic morbification of homosexuality upholds and lends scientific legitimacy to a wider cultural view of gay sexual practices as inherently necrophilic.”).
Yet Dahmer’s evil holds our attention for other reasons too. Among Dahmer’s many victims, the one that had by far the most media coverage and which captured the greatest public outrage was Konerak Sinthasomphone and the tragic circumstances surrounding his death. The outrage did not focus on Konerak’s youth, which would have commingled the issue of child sexual abuse with the other details of horror. Nor did it concentrate on the fact that Konerak was a person of color from an impoverished background, which would have added the troubling issues of racism and classism into a tale already seething with violence. Instead, much of the public and media outrage centered on the fact that Konerak had tried to escape and, but for the action of the officers who returned Konerak into the fatal custody of Dahmer, he might have succeeded in escaping a horrifying death and four subsequent murders might have been prevented. Konerak’s tale is all the more tragic because the police interrogated Dahmer, but failed to apprehend him.

The complicity of the police thus added another dimension to the way Dahmer’s horror story was constructed. It was no longer simply the tale of a demented killer on the loose. As the narrative unfolded in the press, an accusatory finger was pointed not only at the officers whose actions ensured Konerak’s death, but at larger institutional systems that added tragedy to horror.

It is this aspect of the Dahmer story that I want to focus on as a locus of critical inquiry. In other words, I want to begin with questions purposefully deflected away from Dahmer himself. I do not intend to focus on Dahmer. Unlike others, such as Fuss, who have written directly about Dahmer, I make no inquiry into the psychology nor the pathology of his behavior. Instead, I wish to begin with an examination of the narrative that evolved in parallel with Dahmer’s; namely, the construction of the narrative relating to Officers Gabrish and Balcerzak. What cultural forces can explain the extraordinary way in which Gabrish and Balcerzak could so easily have been fooled by Dahmer into believing that the

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7. See generally supra note 1.
8. Fuss also notes that “all but two of Dahmer’s seventeen victims were gay men of color from economically impoverished backgrounds.” Fuss, supra note 2, at 204.
9. See Sane or Insane? Jury to Decide Dahmer’s Sanity, U.P.I., Jan. 26, 1992 (“Police investigated but turned the boy, Konerak Sinthasomphone, back over to Dahmer, writing it off as a lover’s spat among two homosexuals. Dahmer later confessed to killing the youth later that night and four more after that.”).
10. The Concise Oxford Dictionary gives the following definitions of “apprehend”: “Seize, arrest; perceive (by senses or intellect); understand; anticipate with fear.” THE CONCISE OXFORD DICTIONARY 46 (6th ed. 1978).
bleeding, dazed, and naked Konerak could and should have been dismissed simply as a "boyfriend-boyfriend thing"? For not only did Gabrish and Balcerzak claim that they had in fact been deceived and convinced by Dahmer, but that the circumstances, including what they observed and heard from Dahmer, justified their handling of the situation and should mitigate the official finding of negligence on their part. According to the officers, they did nothing improper. Somehow their blindness and inability to perceive a situation of gross distress was perfectly understandable, unimpeachable, reasonable, and faultless.

In this Article, I wish to interrogate their astonishing defense. The police failure was, and still is, largely incomprehensible. I offer a way to understand both the police failure of duty, and the judiciary's exoneration of the police officers. I argue that the failure of Gabrish and Balcerzak to connect the obvious signs of abuse, which clearly pointed to the commission of extreme and grotesque violence, can be at least partially comprehended, though not excused, by a critical examination of the way in which racial, gender, and sexual categories are constructed in the western imagination.

Predictably, this kind of theoretical investigation was not undertaken by the Board of Fire and Police Commissioners ("the Board"), nor by the appeal judge who reviewed the disciplinary action taken against Gabrish and Balcerzak. In Part II of this Article, I examine the Board's and the Milwaukee Circuit Court's review of the Commissioner's dismissal of Officers Gabrish and Balcerzak. I conclude that the officers' mitigating argument, that Dahmer was a skilled con artist, had no chance of success without any examination of the way in which Dahmer was able to con them and the cultural conditions that allowed Dahmer's ruse to operate and succeed.

11. See 2 Cops Defend Their Actions in Dahmer Case, CHI. TRIB., Sept. 13, 1991, at 3; see also Decision of the Board of Fire and Police Commissioners of Milwaukee, at 25 (unreported, on file with Hastings Law Journal and the author) [hereinafter Board Decision].
12. See infra note 35-40 and accompanying text.
13. See 2 Cops Defend Their Actions in Dahmer Case, supra note 11. Balcerzak and Gabrish said they had been convinced by Dahmer that the boy was actually an adult homosexual lover who simply drank too much and wandered naked onto the street. "I wish there had been some other piece of evidence or information available to us," Gabrish said, "We handled the call the way we felt it should have been handled."
14. See id.
Among critical theorists, the social constructivist theories of race, gender, and homosexuality currently prevail in the academe.\textsuperscript{15} Such theoreticians have typically, in their writing, exposed the indeterminacy and internal inconsistencies within various articulations of racial and gender categories. By and large, the deconstructive efforts of critical theorists have displaced deterministic and essentialist notions of Latina/o, white, black, or Asian; male or female; and homosexual, bisexual, or heterosexual. I do not propose to challenge constructivism \textit{per se}. In Part III of this Article, I argue that despite critical race theorists’ analyses of oppression through the matrix of many or multiple “intersectionalities,” the handling of the discourse on race, gender, and to a large extent, sexual orientation, is, ironically, one of uncritical intersecting autonomic categories. This may be convenient, useful, or even inevitable in speech or practice, but the cost may be a theoretical barrier to and a distortion of the complex ways whereby race, gender, homosexuality, and other cate-

\textsuperscript{15} Like class, critical theorists conceive race, gender, and homosexuality as ideological notions. Even biological descriptions of race and gender are explained through and reduced to ideological terms. For example:

What can we in the 1990’s say about the biology of race differences? Looking at all the evidence, there are none. Demographers, politicians, and social scientists may continue to use “race” to sort people, but, as a biological concept, it has no meaning. The fact is that, genetically, human beings \textit{(Homo sapiens)} are a relatively homogenous species. If Caucasians were to disappear overnight, the genetic composition of the species would hardly change.

Science remains one of the better ways we have of trying to understand what goes on in the world. But when we use it to investigate subjects such as race and sex, which are suffused with cultural meanings and embedded in power relationships, we need to be wary of scientific descriptions and interpretations that sustain or enhance the prevailing political realities.


Race is not just something that is a trait or characteristic of individual. Race is a social structure, constructed through social interaction and manifested in the institutions of society, interpersonal interactions, and the minds and identities of those living in racially based social orders. Similarly, class is a social structure that, like race, organizes material, ideological, and interpersonal relations; and, as feminist scholars have shown, gender is more than a matter of interpersonal relations. Gender is institutionalized in the fabric of society and shapes, like race and class, material well-being, social identities, and group relationships.

gorical notions are often dependent in their mutual constructive modes. At a theoretical level, I will argue in Part III that analyses based on racism or homophobia alone are inadequate to provide a framework for understanding Gabrish’s and Balcerzak’s defense. Further, I will demonstrate that an intersectionality analysis is also inadequate, as are more contemporary post-intersectionality approaches.

That is, the categories of race, gender, and sexual orientation cannot be conceptualized along the lines of the models currently offered by some of the most influential writings in feminist jurisprudence and critical race theory.

In Part IV of this Article, I develop the theory of “cosynthesis” using the figure of the gay Asian man as an analytic catalyst. I offer this theory as a way of finally making sense of Konerak’s story and the behavior of Officers Gabrish and Balcerzak as well as providing a theoretical framework that makes ideological and political coalition-building possible and necessary. I argue that replacing assumptions of autonomic categories such as race, gender, and homosexuality with a notion that allows for their simultaneous implication may give us a richer understanding of both the production and consequences of categorical meanings, as well as a way of understanding, at last, the tragic story of Konerak Sinhasomphone.

I. The Erasure of Konerak in the Trials of Officers Gabrish and Balcerzak

Following the eventual arrest of Jeffrey Dahmer, and the revelation that the police earlier had interrogated but failed to arrest Dahmer or prevent the imminent brutal murder of Konerak Sinhasomphone, there was an intensive public outcry over the behavior of the officers apparently responsible for that failure. Thereupon, the Chief of Police of Milwaukee charged both officers, Joseph T. Gabrish and John A. Balcerzak, for failing to properly investigate an assignment and discharged them from the service.

In a fifty-six page decision, the Board reviewed the Chief of Police’s decision to discharge both officers. The Board detailed fifteen instances whereby the officers failed to properly investigate, rejected their arguments in mitigation, and concluded that their failure in this investigation

16. See Board Decision, supra note 11, at 27-37.
17. See id. at 37-44.
"constitute[d] gross negligence." The majority of the Board determined that both officers "be permanently discharged for the good of the service." Gabrish and Balcerzak then appealed that decision to the Wisconsin Circuit Court, where Judge Robert J. Parins held that many of the Board’s determinations were unsupported by the evidence and hence unreasonable. Judge Parins also held that the penalty of dismissal "is so disproportionate to the violations found by the Commission and approved by the Court in light of all the circumstances as to be shocking to one’s sense of fairness." Parins therefore reversed the Board’s decision to discharge the officers and remanded the case to the Board. In a final effort to uphold the dismissal of the officers, the Board petitioned the Wisconsin Court of Appeals for a supervisory writ against Judge Parins. That petition was denied. On June 16, 1994, the Board voted unanimously to reinstate both Officers Gabrish and Balcerzak to the Wisconsin police force.

In examining the Board’s finding of fact, one is immediately struck by the amount of clear evidence of abuse that failed to trigger any suspicions in the minds of Gabrish and Balcerzak beyond deciding to accept Dahmer’s invitation to accompany him back to his apartment to gather corroborating evidence. In the alley when the officers first confronted the situation, they faced a naked and dazed Asian male (Konerak Sinthasomphone), two African American women (Sandra Smith and Nicole Childress) and a white male (Jeffrey Dahmer). They were unable to extract any verbal or non-verbal communication with Konerak, and they re-

18. Id. at 46.
19. Id. at 48-49. The decision was by a majority of four to one, with Commissioner Padway concurring, but disagreeing as to the penalty. Commissioner Padway decided that demotion, rather than dismissal, was the more adequate disposition. See id.
22. Under Wisconsin law, the decision of the Circuit Court on appeal from the Board is final and conclusive; thus, the Board’s only recourse was to petition for a supervisory writ from the Court of Appeals. See Wisconsin ex rel. Bd. of Fire and Police Comm’rs of Milwaukee v. Circuit Ct., No. 94-1433-W (Wis. Ct. App., Oct. 3, 1994) (unreported, on file with the author). See also Caps Keep Jobs, Wis. St. J., Oct. 5, 1994, at 2D ("[T]he 1st District Court of Appeals refused to reverse an April ruling reinstating the officers by Reserve Circuit Judge Robert Parins.").
23. See Officer Fired Over Dahmer Case Retrains, CHI. TRIB., July 5, 1994, at 3; see also Officers in Dahmer Case Ordered Reinstated, WASH. TIMES, June 18, 1994, at A5.
peatedly cut off Childress when she tried to talk to the officers to tell them that Dahmer had given them contradictory explanations, and that she had observed Dahmer holding Konerak in a "'full Nelson headlock', dragging Sinhasomphone into the alley." At this point, the officers seemed to have already been persuaded by the story of the white male, Dahmer, and explained to the African American women that Konerak was Dahmer's boyfriend, that "this was a 'domestic thing' and that they would check it out and determine if anything else was wrong." Dahmer's ruse continued in his apartment. When questioned by the officers, Dahmer told them that Konerak's name was "John Hmong," that Konerak was his lover and roommate who had "passed out" on his couch and escaped from their apartment while Dahmer left to buy more beer. Dahmer's ruse was convincing precisely because it was calculated to appeal to important aspects of the officers' own experiences, identities, and privileges, even if they were unaware of it. Clearly Dahmer was successfully attempting to elicit empathy from the officers by appealing, consciously or not, to their shared values in white and male privilege.

Before the Board, Balcerzak testified that Dahmer dealt with him consistently in "the same confident manner," that Dahmer "was calm, at ease and very convincing, 'like a neighbor', someone who lives next to

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24. Board Decision, supra note 11, at 10.
25. Id. at 11.
26. See id. at 16. Other accounts also state that Dahmer told the officers that Konerak's name was "John Hmong." See supra note 1 and accompanying text.
   When we try to look at privilege we see several elements. First, the characteristics of the privileged group define the society norm, often benefiting those in the privileged group. Second, privileged group members can rely on their privilege and avoid objecting to oppression. Both the conflation of privilege with the societal norm and the implicit option to ignore oppression mean that privilege is rarely seen by the holder of privilege.

Id. The notion of privilege that Wildman develops is not one of racial, gender, class, or sexual privilege alone. Rather, her book "seeks to develop the vocabulary needed for an understanding of the interlocking systems of privilege that serve to perpetuate the status quo of privilege and subordination." Id. at 5 (emphasis added). While a distinct improvement on conceptions of racial, gender, sexual, class, and other forms of privilege as static, distinct, and autonomous, Wildman's largely (and sadly) undeveloped idea of an "interlocking system" does not provide a satisfactory account of either the relationships between these systems, or how any such systems of privilege may nevertheless be implicated in the constitution of another.

28. Again, as Wildman has articulated, privilege "is the systemic conferral of benefit and advantage. Members of a privileged group gain this status by affiliation, conscious or not and chosen or not, to the dominant side of a power system." Id. at 29.
29. Board Decision, supra note 11, at 17.
your house.”

Notwithstanding Dahmer’s professed homosexuality, it is entirely possible that there were other markers of privilege that Dahmer could have called upon to elicit the confidence and trust of the police officers. Nevertheless, one cannot ignore the subtextual implications of race within Balcerzak’s assessment that Dahmer was “like a neighbor” especially given the history of segregation in this country where race and neighborhood formations are seldom wholly separate discourses.

A further analysis of the Board’s findings shows that by the time the officers accompanied Dahmer to his apartment, Dahmer had already gained their trust and asserted his control of the situation. Dahmer deflected suspicion based on his homosexuality by asserting that “everybody’s got to be into something”—a comment that simultaneously appealed to both the officers’ sense of white male sexual privilege and to whatever notions of “political correctness” they might feel compelled to acknowledge.

That is, in further speculating on the importance of privilege in explaining the success of Dahmer’s deception of the officers, I argue that by calling upon his shared identity and privileges as a white male, especially in circumstances where Dahmer and the police officers were the only white males present, Dahmer triggered a set of expectations of sexual power, dominance, and privilege that overcame whatever negative views of homosexuality the officers may have held.

Indeed, as the transcript of the telephone conversation between Officer Balcerzak and Glenda Cleveland (an African American woman and the mother of one of the two teenagers who witnessed Konerak in the street) reveals, in replying to Cleveland’s inquiries, Balcerzak’s attitude seems defensive of Dahmer and dismissive of Glenda Cleveland:

CLEVELAND: Well how old was this child?
BALCERZAK: It wasn’t a child, it was an adult.
CLEVELAND: Are you sure?
BALCERZAK: Yep.
CLEVELAND: Are you positive? Because this child doesn’t even speak English, my daughter had, you know uh, dealt with him before, seen him on the street . . .

30. Id. at 16.


32. Board Decision, supra note 11, at 21.

33. See id. at 25.
BALCERZAK: Hm-hmm.
CLEVELAND: ... you know, catching earthworms.
BALCERZAK: Hm-hmm, hm-hmm, no, no, he’s, that all taken care of ma’am.
CLEVELAND: Are you sure?
BALCERZAK: Ma’am, I can’t make it any more clear, it’s all taken care of. It’s, you know, he’s with his boyfriend in his boyfriend’s apartment where he’s got his belongings also, there’s where it’s released.
CLEVELAND: But I mean isn’t this, I mean, what if he’s a child and not an adult? I mean, are you positive this is an adult?
BALCERZAK: Ma’am. Ma’am.
CLEVELAND: Hm-hmm?
BALCERZAK: Like I explained to you. It’s all taken care, it’s as positive as I can be.
CLEVELAND: Oh I...
BALCERZAK: Okay, there’s... I... I can’t do anything about somebody’s sexual preferences in life... you know...
CLEVELAND: Well no, I’m not saying anything about that, but it appeared to have been a child, this is my concern.
BALCERZAK: ... No.
CLEVELAND: No.
BALCERZAK: No, he’s not.
CLEVELAND: He’s not a child.
BALCERZAK: No he’s not, okay?
CLEVELAND: (sigh)
BALCERZAK: And that’s a, a boyfriend/boyfriend thing and he’s got belongings at the house where a...
CLEVELAND: Hm-hmm.34

Glenda Cleveland was clearly concerned that this could have been a case of child abuse. Yet according to the Board’s findings, Gabrish and Balcerzak “did not obtain (Konerak’s) true name and age, nor did they ever obtain his address.”35 The Board also found that the officers “relied

34. Id. at 24-25.
35. Id. at 27.
strictly on Jeffrey Dahmer’s statement,”36 and that “Officer Balcerzak
failed to re-evaluate his uncorroborated determination of Konerak Sintha-
somphone’s age after receiving additional probative and relevant infor-
mation to the contrary.”37 Konerak was fourteen years old when he was
killed by Dahmer.38

Indeed, Dahmer’s tactic was so thorough and complete at this point
that, beyond the issue of age and child abuse, according to the Board:

The officers found no further objective evidence to substantiate Sintha-
somphone’s identification. The officers did not find any evidence es-
tablishing that Sinthasomphone had in fact been drinking in the apart-
ment. The officers did not find any evidence to establish that
Sinthasomphone was actually staying at Dahmer’s apartment. The offi-
cers did not check the bedroom, nor did they ask permission to check
the bedroom to determine whether there was any additional information
relating to Sinthasomphone’s identification or the fact that he was stay-
ing at the apartment.39

Moreover, the Board found that “Sinthasomphone made no state-
ments nor was he questioned any further in the apartment.”40

In examining these decisions, one thing is glaringly absent. Even
though the Board was at pains to point out the thoroughness of their in-
vestigations,41 nowhere did any of the judicial officers at any level of the
judicial proceedings give any explanation of how the police officers had
come to believe Dahmer over the clear indications of abuse that the situa-
tion and the witnesses presented. The reader of those decisions is left in-
dependently to infer from the facts how Dahmer’s behavior and words so
thoroughly blinded the experienced officers of facts that managed to raise
the alarm of two African American teenagers, their relative, or any other
casual observer.42 That mystery, which remains unanswered by both the

36. Id. at 28.
37. Id. at 36.
38. See id. at 5.
39. Id. at 21.
40. Id.
41. See id. at 3. At the beginning of their decision, the majority pointed out that they had
“listened to 27 witnesses in 16 evidentiary sessions lasting late into each night and at times the
next day and on two Saturdays. Over 90 hours of testimony. We received over 120 exhibits
containing a cumulation of well over 1000 pages of reports, statements, information and testi-
monials.” Id.
42. In rejecting the officers’ argument in mitigation that Dahmer “was a slick con-artist,”
the Board asked rhetorically and therefore never answered the question: “If Dahmer was un-
able to fool untrained teenagers, why was he able to deceive trained Milwaukee police officers,
two of which were acknowledged to be experienced, thorough investigators.” Id. at 42-43.
Board and Judge Parins, is the focus of the critical inquiry in this Article.43

Eventually, the Board concluded that Gabrish and Balcerzak violated a Milwaukee police department rule in their failure to properly investigate the assignment. The Board detailed fifteen respects by which Gabrish and Balcerzak had violated this rule.44 Yet, amazingly, the Board did not in any of these fifteen counts enter into any discussion as to a reason for their failure of duty, and never mentioned Dahmer’s complicity in this regard.45

43. One possible explanation that was rejected by the Board was that the officers accepted Dahmer’s explanation because they were somehow in a rush to get out of that apartment and they therefore accepted any explanation that was remotely credible. See id. at 22. Indeed, according to the Board, “all officers testified that there was no pressure to complete this assignment in a hurried fashion and that if they determined that there had been a crime or a more serious offense, they would have taken whatever time necessary to complete their investigation.” Id. The mystery thus still remains how, in light of the evidence available and apparent to the officers, they could not have “determined that there had been a crime or a more serious offense” committed? Id.

44. See id. at 27-37.

45. See id. For example, the Board found that:

3. The officers failed to sufficiently investigate the scene in order to enable said officers to make a reasonable determination as to the events that transpired at the scene immediately prior to their arrival.

The officers failed to make inquiry of the witness present. They relied strictly on Jeffrey Dahmer’s statement. Sinthasomphone was not capable of communicating with the officers. As such, they had no information to contrast the statements of Dahmer. Once the officers determined that Sinthasomphone was either unable or unwilling to provide information regarding the transaction with Dahmer, the officers, at a minimum, should have politely approached the witnesses standing at the mouth of the alley to determine whether they had information to verify Dahmer’s statements regarding the incident. Id. at 28.

9. The officers failed to diligently conduct an adequate field investigation by failing to obtain adequate verification for Sinthasomphone’s unsubstantiated identification, residence and presence in the alley as provided by Jeffrey Dahmer.

The officers went to the Dahmer apartment for the purpose of verifying the identification and residence of Sinthasomphone as provided by Jeffrey Dahmer. They relied upon a blanket on the couch, miscellaneous clothing and the photographs to substantiate Dahmer’s information. These items did not verify Dahmer’s statements. Yet, the officers left the Dahmer apartment without receiving any further concrete information substantiating the information provided by Dahmer. They found no evidence to substantiate that he was Dahmer’s roommate. The presence of his clothes would only establish that Sinthasomphone had been in the apartment when the clothes were removed. The officers found no mail or other personal items to establish the apartment as Konerak’s residence. The officers found no alcohol present in the apartment to validate Dahmer’s statement regarding the basis for Sinthasomphone’s impaired condition in the alley on May 27, 1991. The officers based their decision on the two photographs of Konerak posing in the bikini briefs. Those photographs
Indeed, these decisions yield much more to critical analysis in what is not said, rather than in what was eventually articulated. For example, rarely in the decisions do the words “homosexual” or “gay” appear, yet this was clearly important in Dahmer’s excuse to the officers. The closest that the judicial officers come to dealing with the issue of homosexuality is in response to the amazing mitigating factor offered by the officers that in executing their duty in the way they did that night, they were being sensitive “to alternative lifestyles.” Not surprisingly, the Board dealt with this bluntly: “The officers claimed that they were returning Sinthasomphone to a caring relationship. However, this is clearly contradicted from the evidence as this caring ‘significant other’ allowed Sinthasomphone to become so intoxicated that he ran in the streets naked. This is not evidence of a caring relationship.”

Yet, in exonerating the officers, Judge Parins of the Circuit Court came to the surprising conclusion that “without the benefit of hindsight, everything seemed to fall into place sufficiently to satisfy the plaintiffs, that no further investigation was needed.” It seems, therefore, that Dahmer’s ruse was just as effective on Parins after the fact as it was on Gabrish and Balcerzak at the scene.

Judge Parins’ judgment is equally telling in its omissions. Not only does he never refer to the homosexual dimension of the events, nowhere does he mention Konerak’s race. Indeed, Judge Parins does not even refer to Konerak by name, referring to him only as “the young man” in the very few times that he mentioned Sinthasomphone in his decision. Thus,

merely demonstrate that Konerak had been in Dahmer’s apartment. Even in the context of the clothing and a blanket on the couch, the photographs do not, by any stretch, create a residence or roommate situation. The officer’s [sic] went to the apartment to obtain verification of Dahmer’s information and failed to obtain same, yet they terminated their investigation and left Konerak in the apartment.

10. Officer Balcerzak failed to properly interrogate Dahmer regarding the circumstances presented by this incident.

Officer Balcerzak was clearly disarmed by Dahmer’s demeanor and appearance in the alley. According to Officer Balcerzak, he appeared to be “just like a neighbor”. This initial assessment adversely affected the officer in two respects: first, he obviously did not challenge the numerous inconsistencies in Dahmer’s story and secondly, Balcerzak was caused to further ignore the witnesses on the scene who were challenging Dahmer’s statements.

Id. at 33-34. In these and the other fifteen findings, one is left wondering why. What was the reason for their failure of duty? How did Dahmer “disarm” Balcerzak, and why was this so effective in hiding from the officers what was so obvious to the other witnesses? Neither the Board nor Judge Parins solve any of these mysteries.

47. See Board Decision, supra note 11, at 41.
48. Id. at 41-42.
49. Balcerzak, supra note 20, at 10.
the perspective Parins adopts was solely that of the officers, a perspective that allows Dahmer’s deception to be effective. Parins cited with approval the comments of another judge:

In hindsight, of course, the young man should not have been left with Dahmer. But one must look at what the police officers knew at the time. And what they knew and how they acted must be viewed in the real world of a busy and stressful police work in urban America in the twilight of the 20th century. 50

One could have added that what Gabrish and Balcerzak “knew and how they acted must be viewed” through the lens of their particular perspectives; namely that of white males in a setting where the only other white male was Dahmer.

Balcerzak and Gabrish were careful not to raise the issues of race, sexual orientation, or gender in arguing mitigating factors, since doing so would likely expose them to charges of discrimination. Yet, if they did, how would those issues have been raised? I submit that any attempt at explaining their decision on racial, gender, or sexual orientation grounds alone would have been inadequate. As the Board weakly points out, “the errors committed by the officers did not go to the need for special knowledge of far eastern communities.” 51 A critical analysis of the circumstances that simultaneously rendered the officers’ behavior acceptable and, in the determination of the Circuit Court, totally reasonable, cannot focus only on Dahmer’s whiteness or on Konerak’s Asianness; nor would it be adequate to explain away the apparent absurdity by reference only to the fact that Dahmer was able to characterize his relationship with Konerak as being a male homosexual relationship (or to use Balcerzak’s words, a “boyfriend-boyfriend thing” 52). An adequate critical analysis that yields an understanding (and hence a solution to the apparent mystery) of Balcerzak’s and Gabrish’s actions can only be located within a theoretical framework that treats categories of race, gender, and sexual orientation as interwoven rather than as being separate and autonomous.

50. Id. at 14.
51. Board Decision, supra note 11, at 38.
52. See id. at 25.
II. Recovering Konerak and Thinking Categories

A. Explanations Based on "Single Axis," Autonomous Categories

In this section, I address whether the mystery as to the efficacy of Dahmer's ruse can be adequately explained by racism, homophobia, or even sexism alone. I conclude that any purported explanation is inadequate that does not simultaneously deal with more than one category of identity implicated in the events that led to Dahmer's deception of the officers.

A purely racial analysis does not solve our mystery. Clearly, the racial dimension of the facts surrounding Dahmer's deception of the officers cannot be overlooked. That the neighborhood where Dahmer lived was predominantly African American; that the two teenagers who witnessed Konerak in the street and questioned Dahmer about him were African American; that the mother of one of the teenagers who telephoned Balcerzak was African American; that Konerak was Asian, and that the only white people involved in the incident were the officers and Dahmer—these are all important aspects of the incident in providing us with an explanation for the officers' responses. But to say that race and racism fully explains the officers' responses fails to explain why, if they were racists, they did not scrutinize the apparent interracial relationship between Dahmer and Konerak more closely.

Moreover, race alone does not explain why the officers' possible racist motives may have allowed them to overlook the homosexual dimension of Dahmer's explanation. It is unlikely that the officers were as or more sensitive to same-sex relationships as they may have been to interracial relationships. In their telephone conversation about the incident afterwards, they laughed and spoke of having to be "deloused" after leaving Dahmer's apartment. If they were not comfortable about either the interracial element or the same sex element of what they witnessed, why did they simply walk away? If the officers were racists or homophobes, surely that would point to heightened police harassment or investigation, rather than their apparent casualness.

If a racial analysis and a sexuality analysis alone are inadequate, might a solution lie in seeing Konerak as a victim of a "double discrimination?" That is, could one explain the officers' neglect of Konerak, or their preference for Dahmer's explanation over the common sense con-

53. Id. at 23.
clusion of abuse, as a result of racial discrimination and homophobia against Dahmer? Such an additive approach has severe analytical flaws.\textsuperscript{54} As the discussion of intersectionality below demonstrates, this additive approach ignores the fact that race is often gendered and that gender is racialized in ways that often renders invisible the lives and experiences of people with multiple subjugated identities.

B. Intersectionality and Other Critical Models of Categorical Dialectics

In legal scholarship, the term "intersectionality" was originally made popular by African American feminist scholars to describe a conscious intervention against the assumption that black means male and female means white. Against these cultural and legal assumptions, it is argued, the position of African American women is compromised legally, with their subjectivity submerged by African American men in the racial discourse, and by white women in the feminist discourse. Intersectionality was thus an explicit attempt to disrupt these assumptions and to claim a legal and discursive space for African American women.\textsuperscript{55} The term,


While many minority women speak of "triple jeopardy" oppression—class, race, and gender could be disentangled into discrete additive parts—some Asian American lesbians could rightfully claim quadruple jeopardy oppression—class, race, gender, and sexuality. Enough counting. Marginalization is not as much about the quantities of experiences as it is about qualities of experience. And, as many writers, most notably feminists, have argued, identities whether sourced from sexual desire, racial origins, languages of gender, or class roots, are simply not additive.

\textit{Id.} at 22-23.

\textsuperscript{55} Thus, for example, Kimberlé Crenshaw, one of the first critical race theory scholars to write about intersectionality, stated:

I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.

however, has often been used generally to describe multiple identities or multiple modalities of oppression; for example, the intersection of race and class. Yet, in my view, what is distinctive about intersectionality is not so much the recognition of multiple identities in specific loci, but the separate political claim that this multiplicity calls for separate theoretical consideration *against the grain* of cultural and legal orthodoxy. Furthermore, this separate theoretical consideration is not simply an additive configuration of the multiplicity of identities. For instance, straight white maleness arguably is a multiple identity, but intersectionality theorists would resist the claim by straight white males that theirs is an intersectional subjectivity. Central to intersectionality theory is the recovery of the claims and identities of those who, like African American women, are pushed to the margins of the racial discourse because of assumptions of patriarchal normativity, and simultaneously pushed to the margins of the feminist discourse because of assumptions of racial normativity. Kimberlé Crenshaw described this as “the single-axis analysis that distorts” black women’s experiences. Angela Harris makes similar observations in her discussion of essentialism.

Intersectionality thus made important contributions in opening up the theoretical framework discussing race in a much more inclusive way. But as Crenshaw herself notes in a later article, she offered intersectionality as a “provisional concept linking contemporary politics with postmodern theory.” We are only now taking that provisional concept to the more sophisticated stages anticipated by Crenshaw. This is necessary because, again as Crenshaw herself notes, in “mapping the intersections of race and gender, the concept does engage dominant assumptions.

The *Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 767-68 (1994). Crenshaw further wrote that intersectionality “captures the way in which the particular location of black women in dominant American social relations is unique and in some senses unassimilable into the discursive paradigms of gender and race domination.” Crenshaw, *Anita Hill, supra*, at 404.

56. One must note, however, that to accept the theory of intersectionality is not to completely give up the possibility that sometimes multiple identities operate in compound ways to explain oppression. As Mary Eaton has suggested, “there may well be some instances in which the notion of compound inequality best captures the way in which sex and race inter-connect.” Mary Eaton, *At the Intersection of Gender and Sexual Orientation: Toward Lesbian Jurisprudence*, 3 S. CAL. REV. L. & WOMEN’S STUD. 183, 213 (1994).


59. “My focus on the intersections of race and gender only highlights the need to account for multiple grounds of identity when considering how the social world is constructed.” Id. at 1245.
that race and gender are essentially separate categories.” While Crenshaw urged that the concept of intersectionality “be expanded by factoring in issues such as class, sexual orientation, age, and color,” for a long time intersectionality remained on the whole focused on the issues of black women and other women of color. As William Eskridge has noted, “the most interesting theme in the new outsider scholarship is ‘intersectionality’ . . . [F]or the period 1982-91 . . . the most-cited works on intersectionality slighted issues of sexual orientation.” In other words, by and large, scholars who wrote about intersectionality responded to marginalization by creating new marginal categories that, by their very nature, themselves encourage the idea of categorical hegemony. It is not just that intersectionality slighted issues of sexual orientation, as Eskridge puts it, but that by focusing, for example, on the particularities of black women’s experience, intersectionality stands in danger of pushing to its margins issues of class, religion, and able-bodiedness, as well as issues of sexual orientation. Thus, without a more developed theory of how to “factor in” these issues, as Crenshaw predicted, intersectionality stands in danger of perpetuating the very dangers to which it alerted with regard to male dominance in racial discourses, and white supremacy in feminist discourses. I wish to suggest that cosynthesis offers an analytical theory that avoids the reductive trap suggested by intersectionality.

Before describing the contours of cosynthesis, I wish to examine how intersectionality might deal with Dahmer’s ruse. In the preceding section, I suggested that neither a purely racial nor a purely queer analysis of Dahmer’s strategy against Officers Gabrish and Balcerzak functions adequately to explain the success of Dahmer’s ruse. Would an intersectionality analysis fare any better? An intersectional analysis would hold that the decision-makers, in this case the officers and the judicial review institutions, should have regarded Konerak not simply as Asian, nor simply as gay, but from the particularized position as a gay Asian man in a relationship with a white lover. Intersectionality would have recommended as an explanation of the efficacy of Dahmer’s ruse, that the officers failed to consider Konerak’s subjectivity as a complex multidimensional intersection of a racial minority, a sexual minority, and other possible categories including his youth.

60. Id. at 1244 n.9.
61. Id.
That is, however, precisely how Dahmer wanted the officers to perceive the situation, knowing that the imposition of this perceptual framework would give him the advantage, as ultimately it did. In other words, the officers’ perceptual framework was exactly what intersectionality recommends. They believed Dahmer’s explanation and respected Konerak’s particular identity as an Asian gay man. It was precisely the combination of Konerak’s Asian identity and Dahmer’s suggestion of Konerak’s homosexuality that worked so powerfully to disempower Konerak and to allow Dahmer to become master of the situation. This is at odds with the results that intersectionality theory would have predicted. According to intersectionality, the acknowledgment of the intersectional identity should be empowering and provide structural fairness and equality. An intersectionality analysis here therefore begs the question of why respecting Konerak’s intersectional identity allowed the officers to ignore the obvious signs of abuse. Intersectionality does not give us the epistemological explanation we seek.

Moreover, intersectionality risks theoretical collapse as categories multiply. Each person is composed of a complex and unique matrix of identities that shift over time, is never fixed, is constantly unstable and forever distinguishable from that of everyone else in the universe. Even if, hypothetically, one can precisely reduce, define and fully describe this complex matrix of identities, and repeat this process on everyone else, we are left with a comprehensive intersectional model of all individuals, but with no way of comparing each individual’s experiences, whether of privilege or oppression. Nor would such a thorough-going intersectionality exercise allow us to forge ideological coalitions, political allegiances, or communities of support. Ultimately, intersectionality forces one to decide a priori which identities matter, and this is theoretically no different than a pre-intersectionality approach.

Michael Warner has noted that “the common ground of ‘identity politics’ [is] itself insufficiently theorized as yet.” He also asserts that [within a] liberal-national frame of citizenship there is an important common ground to be grasped among identity movements. But it will be necessary to break this frame if we are to see the potential alliances with movements that do not thematize identity [where] ‘race, class and gender’ stand for different and overlapping ways of organizing people in response to different kinds of power.

64. Id.
Some theorists have already made important initial steps toward breaking this “frame,” as Warner has put it. Mary Eaton, for example, has forcefully argued that the erasure of racial discourses on equal protection cases involving homosexuals of color signifies the ways in which “homosexuality has been legally coded as white, or to put matters conversely, that race has been legally coded as heterosexual.” Eaton expresses doubt that the theoretical framework developed in the intersectionality of race and gender can be transposed to do the same theoretical work in cases involving race and sexual orientation. Instead, Eaton tantalizingly points us to the “ambivalence” with the notion “that sex and sexuality are two mutually exclusive phenomena,” and that this “discomfort . . . suggests a recognition . . . that there is actually some connection between them.” Somewhat frustratingly, Eaton does not articulate what that connection is, but calls for “efforts to bring about the collapse of boundaries.”

Francisco Valdes is another post-intersectionality scholar who has recently offered a critique and alternative to intersectionality. His theory of inter-connectivity is stated in explicitly political rather than theoretical terms. For Valdes, inter-connectivity is “a strategy of resistance against hetero-patriarchal conventions.” The shared “goal of dismantling biases and preferences that disfavor” minorities presents Valdes with “a platform from which coalitional projects and scholarship can be

66. Id. at 67. Elsewhere, in the context of theorizing a lesbian jurisprudence, Eaton has suggested (rightly, in my view) that:
   The real promise of the race and gender scholarship, however, does not reside in its now somewhat quotidian insight that single-headed theories typically fall far short of explaining the dynamics of subordination. Its recognition that race sometimes makes an intersectional difference, at other times a compound one, and at other times still perhaps no difference at all, suggests more profoundly that the nature of the interaction between various oppressions is a complex and shifting one. If so, our theoretical options need not be limited to either using or rejecting identity-based analyses in total, but include as well the possibility that we might usefully track and theorize the different ways in which multiple identities come to be configured together.
Eaton, supra note 56, at 216. In agreeing whole-heartedly with Eaton, I offer cosynthesis not as a replacement for intersectionality tout court, but as one of the “different ways in which multiple identities come to be configured together.”
67. Eaton, supra note 65, at 68.
68. See Francisco Valdes, Sex and Race In Queer Legal Culture: Ruminations on Identities & Inter-connectivities, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995).
69. Id. at 27.
Valdes uses the notion of “Queerness” as a concept that is conducive to inter-connectivity. Yet, as he describes it, Queerness is also a political concept, one that “denotes a conscious commitment to sex-inclusive, race-inclusive communities and politics within sexual minority relations and discourse.” Not only that, Valdes conceptualizes Queerness as yet another category, albeit one that can be employed “to signify and underscore mutual solidarity in the anti-subordination project.” The theoretical project that makes such political coalition building possible, however, remains to be articulated. Valdes’ contribution is important to the extent that it provides an articulate and urgent political imperative of oppressed communities to connect (or inter-connect), but apart from the inter-connectivities of sex, gender, and sexual orientation, Valdes’ theory, so far developed, lacks a theoretical tool to provide an adequate account of the intertextuality of categories. The theory particularly fails to address how, without privileging race, one might open up a critical interrogation of the connection between race and other categories.

Valdes’ article is important as an elucidation of the political aspirations of those who are resisting the possible fragmentation of a critical movement still caught up in the vortex of intersectionalities. His claims, to use Janet Halley’s terms, are “euphoric” rather than “dysphoric.” Valdes describes the coalesional work that needs to be done, but leaves largely unanswered the question of how it is theoretically to be achieved.

70. Id.
71. Id. at 67.
72. Id. at 68.
74. The euphoric claims . . . emphasize the conjunctive operation of discrete identity systems and thus make differently subordinated people alike in some way; the happiness of their implicit social change narrative arises from an appeal to coalition identity politics. The dysphoric claims emphasize the disparate, unrelated, contradictory, or incommensurate operation of discrete identity systems and thus assert that differently subordinated people are different; the unhappiness of these claims arises from their resolute recognition of political separateness.

III. Cosynthesis of Categories

Human thought and language is impossible without generalizing at some level. A quick thought experiment involving two people trying to communicate only by the use of particulars should convince us of that. The formation and use of categories is a demonstration of the necessity of universals if language is to function and if we are not to go insane communicating with each other. This observation, however, does not explain how certain universals, like the categories discussed in this Article, are formed; nor does it describe their marginalizing effects on certain communities. It does not delineate their political and ideological content, nor does it legitimize their use and deployment in maintaining (or subverting) regimes of power over the subjects of categorization. It does not explain the hegemonic effects of categories that confer power on those who control the cultural and linguistic forces that determine the formation, meaning and use of those categories. It does not provide any explanation of how the use of those categories simultaneously may deprive individuals of the ability to assert their individuality and rob those deploying those categories of the disempowering presumptions to which those categories give rise. In short, the use of categories may impose an economics of power that is often unobserved by those using them, and often even by those subjected to them. When categories are used this way, they are sometimes referred to as “stereotypes.”

However, to label this phenomenon as “stereotyping” does not explain it. Cosynthesis offers a dynamic model whose ultimate message is that the multiple categories through which we understand ourselves are sometimes implicated in complex ways with the formation of categories through which others are constituted. A fully deconstructed understanding of categories must include this insight and go beyond static and autonomous notions of categories that stand alone or next to or within others, thereby multiplying the boundaries between categories. Moreover, it is only with this cosynthetic insight into the dialectic between categories that we can finally understand and make sense of certain empirical phenomena, such as “Dahmer’s ruse.” Lastly, like Valdes’ notion of inter-connectivity, cosynthesis offers the view that political emancipation and the achievement of justice are realizable only when we recognize that

75. Through a recounting of Jorge Luis Borges’ parable of Ireneo Funes, Angela Harris illustrates the absurdity and the madness-causing effects on one who cannot categorize or generalize and speaks only in particulars. See Harris, supra note 57, at 581-82.
we all have a stake in finding ways to seize control over the legal and cultural forces that shape and maintain systems of oppression, including the illegitimate use of categories. By paying attention to the cosynthesis of categories, one opens up spaces for conceptualizing identities that do not prioritize one category over others. Thus, one is forced to recognize the mutual dependence of such categories and hence the importance of dealing with all modes of oppression simultaneously, rather than artificially favoring one over another—or, as intersectionality forces us to do, opening up a third space, thereby reifying a new set of borders within discourses of oppression.

How, then, does cosynthesis explain Dahmer’s ruse? As previously described, the ruse was initiated the moment Dahmer told the officers that Konerak’s name was “John Hmong,” that Konerak was his lover, that Konerak got drunk while in his apartment, and that “everybody has to be into something.” From the perspective of Gabrish and Balcerzak, Konerak was clearly an Asian male. Dahmer’s explanation to the officers thus presented Konerak to them as fully and simultaneously constructed in terms of his race, class, gender, and sexual orientation. This explanation caused the officers to disregard the signs of abuse because it was consistent with their notions of what to expect in terms of the cosynthesis of the operational categories in play and the power distribution they implicate. Dahmer’s explanation offered the officers a way of stabilizing an otherwise extremely unstable situation, namely racial and domestic violence. That stabilization was possible because of the cosynthetic nature of the categories that Dahmer invoked along with those that were already presented to Gabrish and Balcerzak.

Dahmer lied to the officers about Konerak’s name: he informed them that Konerak’s last name was “Hmong.” It is open to speculation whether or not either Dahmer or the officers were, in fact, conscious of the significance of the term “Hmong.” However, from a critical point of view, one cannot ignore the fact that “Hmong” signifies not just an Asian ethnic group, but one of the poorest groups of Asian Americans in the United States. That Dahmer used a term that signified a whole group or community of Asians, that he called into view a separate Asian identity, would be consistent with a strategy of denying Konerak his subjectivity, subjugating Konerak’s individual autonomy to the will of the dominant group, of which Dahmer and the officers are members. The racial effect
racial effect of calling Konerak "John Hmong" is equivalent to the nineteenth century anti-Chinese epithet "John Chinaman." 76

Francisco Valdes has written extensively and compellingly on the relationship between sex, gender, and sexual orientation. Through his writings, Valdes has demonstrated that the concepts of sex, gender and sexual orientation historically and legally have been confusingly commingled (or, to use Valdes’ term, “conflated”). 77 His project is therefore to

76. For example, a quotation from a magazine article published in 1880 states: "What possible difference can it make to John Chinaman whether Democrats or Republicans have the upper hand? Both parties are his enemies. The advisability of preventing his coming or kicking out summarily those of him who are here, is a platform upon which both parties meet." PHILIP P. CHOY ET AL., THE COMING MAN 78 (1994). Similarly, an 1893 political cartoon shows "Miss Columbia" throwing out a crying Chinese boy from her classroom while a white judge and other immigrant students look on smiling. The caption to the cartoon reads: "Be Just—Even to John Chinaman. Judge (to Miss Columbia), 'You allowed that boy to come into your school, it would be inhuman to throw him out now—it will be sufficient in the future to keep his brothers out!'" Id. at 115.

Although Dahmer was probably unaware of the true meaning of the moniker he selected for his victim, some history on the Hmong people helps to clarify the possible impact his choice may have had on an educated listener. In that regard, it is noteworthy that the Hmong in the United States arrived mainly as war refugees and as a result suffer from the effects of dislocation, disintegration of the family and other traditional social support structures. Upon arrival to the United States, Hmong refugees continue to suffer from alarming rates of social problems associated with this kind of displacement, such as poverty and illiteracy. See Robert S. Chang, Toward an Asian American Legal Studies Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 CAL. L. REV. 1241, 1261 (1993) (quoting a 1992 report on the civil rights issues facing Asian Americans that identified a 65.5% poverty rate among Hmong in the United States). Thus, to invoke and apply the name "Hmong" to Konerak is also to call into play notions of class underprivileges within a racial framework. Knowing the social and economic problems associated with the Hmong in the United States, it would be impossible to either invoke racist presumptions without invoking classist presumptions, or to adequately explain the disempowering effects of so naming Konerak along one of those axes alone. Yet, simply to say that the effect of Dahmer’s naming Konerak as “Hmong” is to place Konerak at the intersection of race and class is to ignore the ways in which one’s racial and classist understandings of the term are constituted by and through each other. The assertion of power by renaming Konerak comes through the fact that racial and classist dominance were woven together and thrown up as a single smokescreen by Dahmer as he laid his claim to Konerak’s body. The strength of that smokescreen lies in its weave. The notion of cosynthesis helps to explain the bond of that weave.

77. See Valdes, supra note 73, at 15. Valdes conceptualizes the distinction between these three terms in the following way: Sex “denotes a physical attribute of humans: external genital anatomy.” Id. at 7 n.5. Gender “signifies the social or cultural dimensions derived from and determined by sex, which include attire, grooming, and other aspects of physical appearance as well as behavioral mannerisms or personal dispositions relating to hobbies, careers, intimacies, and other social aspects of human personality and interactions.” Id. at 7 n.6. Sexual orientation “refers to the predisposition, inclination, or proclivity of humans toward affectional intimacy with members of one particular sex or of both sexes.” Id. at 7 n.7. See also Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities & Interconnectivies, 5
recover the separate and distinct conceptual meanings of these terms and to expose how their confusion, or conflation, have played out in the law, particularly in the interpretation and application of anti-discrimination laws. Valdes’ analysis critiques writers, thinkers and courts for conflating sex and gender, gender and sexual orientation, and sex and sexual orientation. Ultimately, however, Valdes’ analysis is reductive. Sexual orientation discrimination “is based on either sex and gender or on both,” but ultimately “gender is determined by sex” and “discrimination based on gender will be based on sex as well.” As he stated bluntly, the “conflation, and the strains of discrimination that it spawns, thus must be understood for what they ultimately are in fact: sex-based.” My point here is not to take Valdes’ reductio to task. Rather, it is to take from his scholarship the received observation that historically and jurisprudentially, the concepts of sex, gender, and sexual orientation have been commingled in some way. However, whereas Valdes’ concern was to recover the concepts of sex, gender and sexual orientation in jurisprudence from confusion and to avoid the social harms that it causes.


78. Id. at 17 n.37. See also DAVID F. GREENBERG, THE CONSTRUCTION OF HOMOSEXUALITY (1988). Tracking the emergence of the effeminate stereotype of homosexual men in Europe, Greenberg observes that effeminacy was not always identified with homosexual men. In fact, the “fops and beaux of the seventeenth and early-eighteenth centuries were sometimes mocked for effeminacy, but were not usually considered homosexual; on the contrary, they were primarily suspected of overly strong attraction to women.” Id. at 334. According to Greenberg, though, effeminacy shortly thereafter became “a key component of male homosexuality” so that by the early nineteenth century in England, “[s]o firmly had the stereotype of the male homosexual as effeminate become established that when thirty men were arrested in a raid on the White Swan Tavern in London in 1810 (the ‘Vere Street scandal’), people seemed genuinely surprised that many had physically demanding blue-collar occupations.” Id. at 335.

79. Valdes, supra note 73, at 17 n.37.

80. Id.

81. Id. at 12.

through their misapplication, particularly to women and sexual minorities, the motivation of the cosynthesis approach, as set forth in this Article, is quite different.

The task of cosynthesis is to take the scholarship of categories one step further. Having teased out the separate conceptual strands, cosynthesis recommends reconceptualizing them as operationally and co-operationally constitutive, carefully avoiding the conflational traps elucidated by Valdes. So, for example, in George Chauncey's history of the gay male world of New York between 1890 and 1940, not only does he note the ways in which notions of gender were conflated with notions of homosexuality, but more interestingly he also chronicles and analyzes the ways in which gender and sexual orientation and practices mediated through each other to construct that world. Before that, the vernacular terms for homosexual "such as she-man, Nancy, and sissy, as well as fairy itself, emphasized the centrality of effeminacy to their character." Yet, Chauncey also noted the way in which notions of class played a significant cosynthetic part in the construction of the different manifestations of homosexualities in New York during that time:

Given the heightened sensitivity that marginalization sometimes fosters, queers often had an acute perception of the degree to which gender and class status were interdependent and mutually constituted in their culture—of the degree to which gender styles were taken as markers of class status, and class status [was] read in gendered terms. Forms of speech, dress, or demeanor that might be ridiculed as womanly, effeminate, or inappropriate to a "real" man in one cultural group might be valued as manly, worldly, or appropriate to a "cultured" (or "sensitive") man in another. This made it possible for men to try to recast gay cultural styles that might be read as signs of effeminacy as signs instead of upper-class sophistication.

It would have been deficient for any scholar to have written a thoroughly descriptive and analytical account of gay life in New York at that time without discussing the operational significance of class and gender. Similarly, any account of the efficacy of Dahmer's ruse must also take

83. See Valdes, supra note 73, at 32-33.
84. GEORGE CHAUNCEY, GAY NEW YORK (1994).
85. See id. at 14.
86. Id. at 15.
87. Id. at 106.
into account the multiple perceptual assumptions called upon by his statements to the police officers, and the ways in which those assumptions support and reinscribe one another.

One can now see that if it was impossible for Gabrish and Balcerzak to consciously or unconsciously comprehend Dahmer’s relationship with Konerak as other than being inscribed and marked by perceived cultural notions about class and racial hierarchy, gender subordination, and sexual deviance, it is even harder now for critical observers, viewing the event in retrospect, to deny the influence of those forces on the events. Through repeated telling and retelling of the horror of Dahmer’s actions in the media, Dahmer himself becomes a monster within the popular imagination. As Kobena Mercer has pointed out, the genre of horror fiction and monster movies is as shot through with texts about gender and sexuality—women as victims of the masculinity of the monster—as it is with texts about race.  

However, despite the recent appearance of critical scholarship around the topics of race and gender, and race and sexual orientation, there has been scant discussion and attention to these topics within the le-

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88. The conventions of horror inscribe a fascination with sexuality, with gender identity codified in terms that revolve around the symbolic presence of the monster. Women are invariably the victims of the acts of terror unleashed by the were-wolf/vampire/alien/“thing”: the monster as non-human Other. The destruction of the monster establishes male protagonists as heroes, whose object and prize is of course the woman. But as the predatory force against which the hero has to compete, the monster itself occupies a “masculine” position in relation to the female victim.

KOBENA MERCER, WELCOME TO THE JUNGLE 45 (1994).

In an unpublished manuscript, D. Marvin Jones examines the way in which certain black men who have been prominently portrayed in the press have been represented in U.S. culture. Writing about O.J. Simpson, Jones asserts that:

There were two interpenetrating narratives each invoked by the rhetoric of the prosecution in characterizing the defendant. O.J. Simpson was alternatively portrayed as Dr. Jekyll/Mr. Hyde and a time bomb waiting to explode. He went from beaming father, hugging his son and watching a dance recital, from regular guy eating a hamburger at McDonald’s with Kato Kaelin to a demented double murderer. Simpson was represented as Bella Lagosi [sic] in black face, someone who virtually decapitates two innocent people, walks through pools of blood, then nonchalantly showers, and resumes his composure to the extent that no one notices a problem with his demeanor on his plane trip to Chicago.

D. Marvin Jones, We’re All Stuck Here for a While: Law and the Social Construction of the Black Male 14 (undated manuscript, on file with Hastings Law Journal).

89. See FRANZ FANON, BLACK SKIN, WHITE MASKS (1967) (especially Chapter Three, “The Woman of Color and the White Man”).
gal academe and law journals. Over and above the inclusive imperative, these are urgent issues for the achievement of universal emancipation and the progress of anti-hegemonic movements. Attention to these issues is particularly important to women of color and bisexual, gay, and lesbian people of color, whose bodies and lives are marked by cultural assumptions about race, gender, and sexual orientation.

The cosynthesis of race, gender, and sexuality is a topic seldom explored in legal theory, but more frequently investigated in cultural studies exploring social representations of race. In much of this writing, race and gender is described in complex, shifting and often contradictory ways. For example, bell hooks has observed that in contrast to some academic representations of black masculinity, she cannot remember from her childhood that there was a similar "monolithic standard of black masculinity." For her, black masculinity was not the "flat, one-dimensional" representation that she encountered in college. Stereotypes that portray black men as "failures' who are psychologically 'fucked up'" simultaneously represent black men as "dangerous, violent, sex maniacs whose insanity is informed by their inability to fulfill their phallicentric masculine destiny in a racist context." Elsewhere, hooks has observed this contradiction and has noted that:

Within neo-colonial white supremacist capitalist patriarchy, the black male body continues to be perceived as the embodiment of bestial, violent, penis-as-weapon hypermasculine assertion. Psychohistories of white racism have always called attention to the tension between the construction of the black male body as danger and the underlying eroticization of that threat that always then imagines that body as a location

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90. Major news events such as the confirmation hearings of Clarence Thomas and the O.J. Simpson murder trial have produced critical race scholarship around these events and around the issues of race and sex. See, e.g., RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY (Toni Morrison ed., 1992); Devon W. Carbado, The Construction of O.J. Simpson as a Racial Victim, 32 HARV. C.R.-C.L. L. REV. 49 (1997); Cheryl Harris, Myths of Race and Gender in the Trials of O.J. Simpson and Susan Smith—Spectacles of Our Time, 35 WASHBURN L.J. 225 (1996). However, the discussions of "gender" in these books and articles tend to concern the experiences and representations of black women or women of color rather than the more abstracted concept of gender as a category. See Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 DUKE L.J. 365 (1991).


92. See id. at 70.

93. Id.

94. Id.
for transgressive pleasure. It has taken contemporary commodification of blackness to teach the world that this perceived threat, whether real or symbolic, can be diffused by a process of fetishization that renders the black masculine “menace” feminine through a process of patriarchal objectification. Current patriarchal “femininization” of the black male body is a process that takes place primarily in the aesthetic realm where the image produced has altered ways of seeing.95

Yet, despite contradictions, sexualized icons of race exist and persist. They persist because, according to hooks, images of patriarchy within racial minorities have been used in the service of racial domination. Thus, the writing of black women whose works often represent black men as sexual aggressors is often appropriated both to perpetuate regimes of racist power (images of black men as sexual predators on white womanhood) and to assuage racists of guilt for their racism.96 Hooks also notes how historically black liberation has been gendered in masculinist terms that represented emancipation through notions of gender and sexual dominance. That is, terms within the black liberation movement employed patriarchal notions that equated black power with power over women, and conversely, black disempowerment with emasculation.97


96. Many works of contemporary black female fiction portray a black male rapist. “Popular works like Nancy Friday’s study of white female sexual fantasies reveal that one of the most consistent images is that of the black male seducer/rapist. It is consistent with racism that this imagery has so much power to captivate, titillate, and simultaneously horrify.” BELL HOOKS, YEARNING: RACE, GENDER AND CULTURAL POLITICS 71-72 (1990). Given the popularity of an anti-male reactionary aspect of radical feminism, there is an audience for works highlighting and exposing male violence. When black women writers suggest that the most exploitative and oppressive force in the lives of black females is black men, white society is free from the burden of responsibility; they can easily ignore the painful and brutal impact of racism. See id.

97. Oppressed black men and women have rarely challenged the use of gendered metaphors to describe the impact of racist domination and/or black liberation struggle. The discourse of black resistance has almost always equated freedom with manhood, the economic and material domination of black men with castration, emasculation. Accepting these sexual metaphors forged a bond between oppressed black men and their white male oppressors. They shared the patriarchal belief that revolutionary struggle was really about the erect phallus, the ability of men to establish political dominance that could correspond to sexual dominance, . . . [f]reedom from racial domination was expressed in terms of redeeming black masculinity. And gaining the right to assert one’s manhood was always about sexuality.

Id. at 58-59.
Similarly, in critiques of Asian American cultural images, scholars have observed the ways in which, through the construction of the concept of the “Oriental,” the racial images of Asian American men and women have been gendered and sexualized. These Orientalist images often conflict (such as the Cherry Blossom image of Asian woman as docile and subservient on the one hand, and the Dragon Lady image of the Asian woman as dangerous and diabolical, on the other) yet they are deployed to perpetuate and maintain racial dominance. As Dana Takagi has observed:

Returning to the issue of silence and homosexuality in Asian America, it seems that topics of sex, sexuality, and gender, are already diffused through discussions of Asian America. For example, numerous writers have disclosed, and challenged, the panoply of contradictory sexually-charged images of Asian American women as docile and subservient on the one hand, and as ruthless mata-hari, dragon-lady aggressors on the other. And, of course, Frank Chin’s tirades against the feminization of Asian American men has been one reaction to the particular way in which Asian Americans have been historically (de)sexualized as racial subjects. Moving from popular imagery of Asian Americans, the people, to Asia, the nation, Chow uses Bertolucci’s blockbuster film, The Last Emperor, to illustrate what she calls, “the metaphysics of feminizing the other (culture)” wherein China is predictably cast as the “feminized, eroticized, space.”

Doubtlessly also, there are contexts under which the ways gay Asian men are treated by the dominant (gay) culture mimic the ways Asian women are treated. Richard Fung has noted, for example, how within

98. See, e.g., John Kuo Wei Tchen, Believing is Seeing: Transforming Orientalism and the Occidental Gaze, in ASIA/AMERICA: IDENTITIES IN CONTEMPORARY ASIAN AMERICAN ART 13 (1994). In this essay, Tchen provides critical cultural readings of several popular American artifacts including an early American stereograph called the “Heathen Chinese.” According to Tchen, this image became the “standard representation of a Chinese man—unmanly, asexual, waiflike, comic, yet slightly sinister.” Id. at 18. On more contemporary images, Tchen comments on advertisements for Opium perfume, and notes that the advertising strategy for Opium is one where the erotic, exotic, dangerous, sadistic Oriental is marketed as an object projected out of the omniscient self’s “inner turmoil.” Getting in touch with one’s sexual desire, still repressed, is the promised result of association with things Asian. In effect, if one buys and consumes this mysterious, magical elixir (with implications of its being an “Oriental secret”), one can gain sexual potency and satisfaction. Id. at 20. On the cosynthesis of Asianness with sexuality in the construction of the Oriental, see generally LISA LOWE, CRITICAL TERRAINS: FRENCH AND BRITISH ORIENTALISMS (1991); EDWARD SAID, ORIENTALISM (1978).

99. Takagi, supra note 54, at 27.
the context of gay video porn, a market made predominantly by whites for white consumption, the "Asian man acts the role of the mythologized geisha or 'the good wife' as fantasized in the mail-order bride business. And, in fact, the 'house boy' is one of the most persistent white fantasies about Asian men." Yet it would be dangerous to equate the subjectivity of gay Asian men with that of Asian women. Gay Asian men are men nonetheless, and may be able to assume the privileges attached to their gender, especially within the narrower context of their Asian community.

In the light of the observations made about the construction of the gay Asian identity, one may at last begin to apprehend the seemingly incomprehensible decision of Officers Gabrish and Balcerzak that Konerak could be safely left with Dahmer. The moment Dahmer summoned the figure of homosexuality to the attention of Gabrish and Balcerzak, it would have been difficult to displace the cultural assumptions that Dahmer had thereby set in motion. The Orientalist scripting of Konerak's body, perceived as Asian, was already made available to the officers. A cosynthetic understanding of that scripting offers us a way of perceiving how, as an Oriental in the officer's eyes, Konerak had already been gendered and sexualized. By naming Konerak his boyfriend, Dahmer could forcefully call forth a fantasy scenario that positioned him firmly as the dominant party, a fantasy so powerful as to foreclose a recognition. On that this could have been in reality a scenario of abuse.

The moment Dahmer introduced the figure of homosexuality into the narrative, it would have been almost irresistible for Gabrish and Balcerzak to reinterpret the situation in white heterosexist terms. That is, Gabrish and Balcerzak readily accepted Dahmer's invitation to impose the framework with which they were most familiar: that of a white male (Dahmer) having a domestic scene with his "female" partner. Konerak being male, however, meant that he would not benefit from the traditional protectiveness men generally exhibit toward women. Gabrish and Bal-


101. Fung concedes a similar point in the published discussion following his article. See id. at 163.

102. See, e.g., Carolyn R. Hathaway, Gender Based Discrimination in Police Reluctance to Respond to Domestic Assault Complaints, 75 GEO. L.J. 667, 673 (1986) ("Wife abuse results in large part from the gender based stereotypes that have shaped society's conception of normal and desirable male and female behavior. Men are socialized and expected to be aggressive and dominant, and women passive and submissive. Thus, the husband is often viewed as the master of his home with the authority to discipline his wife physically.")
cerzak insisted in court and in public that it was reasonable to have taken Dahmer's word and be fooled by him; in other words, the latent cultural construction of Konerak as already feminized (as gay and as Asian), and in a deviant relationship in the officers' eyes (homosexual and interracial) made Dahmer's explanation of the violent and extraordinary scene not only credible but ultimately believed. The effectiveness of Dahmer's ruse did not lie in his persuasive skills, rather, it was enhanced by the fact that all he needed to do was to call upon latent constructions by his explanation, rather than having to construct a plausible story from the ground up. Reading the tragic circumstances in this way, together with an understanding of the general failure of the police to adequately respond to domestic violence when it occurs in the heterosexual context, the utter inability of Gabrish and Balcerzak to identify what they witnessed as the most extreme and gross example of violence and abuse becomes comprehensible.

Conclusion

I once heard a story about a law professor who taught a class on employment discrimination before Romer v. Evans was decided by the United States Supreme Court. The issue discussed in the class was what level of scrutiny under Fourteenth Amendment jurisprudence should be applied to employment discrimination on the basis of sexual orientation. Specifically, this professor set up the debate for the students in terms of whether sexual orientation discrimination should be subject to strict scrutiny like discrimination on the basis of race, or whether the courts should apply an intermediate level of scrutiny like gender discrimination, or indeed an even lower level of scrutiny such as that applied to disability discrimination. As the discussion among the students unfolded, an African American female student contrasted racial discrimination with sexual orientation discrimination and took the view that there is no form of discrimination as offensive as racial discrimination, and that as a result it would not be appropriate to apply strict scrutiny to sexual orientation discrimination. Another student, a white male, argued the view that to lose one's job on the basis of one's sexual orientation was every bit as pernicious as losing one's job on the basis of one's race, and that therefore it would be right to apply strict scrutiny. Sitting in the middle of the front row was an Asian male student who had been relatively quiet throughout the semester. He raised his hand. The professor allowed him to speak. The student told the rest of the class how the preceding discussion had
pained him. It had, the professor related to me, torn him apart. As the
student started to break down in tears, he asked: "Where does it leave
me?" In making the point that he could not as clinically separate his
identity as Asian from his identity as a gay man as his student colleagues
had just done, he was forced to come out to his classmates, something
that he had not yet done, even to his family. The African American fe-
male student’s comments impliedly excluded him from the community
and concerns of racial minorities because he was gay, as did the com-
ments of the white male student because he was not white. In telling how
the class discussion had torn him apart, the gay Asian student’s testimony
in turn affected the professor so profoundly that he ended the class early.

This feeling of total alienation and exclusion from not just the main-
stream, but even from communities of color and gay and lesbian com-
103. See, e.g., Kendall Thomas, "Ain’t Nothin’ Like the Real Thing": Black Masculinity,
gay Sexuality, and the Jargon of Authenticity, in REPRESENTING BLACK MEN 55 (Marcellus
Blount & George P. Cunningham eds., 1996).

The life and work of James Baldwin give the lie to the notion that black and gay iden-
tity are hostile to one another at all points. They show, too, that while “it is difficult
to be despised,” black gay men and lesbians must resist the demand (heard in some
quarters) that we choose between these two sources of the self and commit a kind of
psychic suicide. Baldwin provides us with an exemplary instance of a gay black man
who refused to make this forced, false, and ultimately fatal choice. We find in James
Baldwin an often equivocal, but always articulate, response to the call that gay and
lesbian African Americans who want to prove that they are “really” black must ren-
nounce their sexuality: "I’m saying I have nothing to prove."

Id.
monalities that make possible and necessary political allegiances across categorical constructs.

The moment may have arrived for critical race theorists to abandon the notion of intersectionality and the fixity of mind that it provokes, in favor of more fluid, complex, and nuanced notions of class, race, gender, sexuality, and all other subordinating categories. It may then be easier to see the interests and stakes involved in all emancipatory struggles. Cosynthesis offers a dynamic model of the conditions of categorical formations whose ultimate message is that, since the multiple categories through which we understand ourselves are implicated in complex ways with the formation of categories through which others are constituted, political emancipation and the achievement of justice are realizable only when we recognize that we all have a stake in finding ways of seizing control over the legal and cultural forces that shape all of the categories that are formed to maintain systems of oppression. By paying attention to the cosynthesis of categories, one opens up spaces for conceptualizing identity formations that do not prioritize one category over others, but rather force us to recognize their mutual dependence and hence the importance of dealing with all modes of oppression simultaneously, rather than artificially dealing with one in favor of another, or, as intersectionality forces us to do, opening up a third space, thereby reifying a new set of borders within discourses of oppression.