



ARTICLE

September 11th Revisited: The Troubled History of Victim Compensation

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This article explores some of the less obvious and even surprising repercussions of September 11th. To do so, it draws on an online archive of more than 12,000 emails sent to the Department of Justice (DOJ) in response to the September 11th Victim Compensation Fund. Just eleven days after September 11th, Congress created the fund for the express purpose of preventing victims' families from suing the airlines. After the act passed, the DOJ solicited public comments and posted them to its website, and from the start, the tone was combative. This essay focuses on two especially acrimonious issues: first, gay rights and the recognition of same-sex partnerships and, second, economic inequality and populist anti-elitism. Taken together, the emails showcase how September 11th precipitated fundamental and divisive debates on who deserved the nation's largesse.

Shortly after September 11th, historians turned to their job of placing the events in historical context and flatly rejected what one called “history-begins-today amnesia.” September 11th was not a clean rupture with the past. There were lots of historical precedents, not only for the terrorist attacks themselves, but also for the resulting wars in Afghanistan and Iraq and for the heavy-handed surveillance and policing of Muslims within the United States. Historians pointed to earlier terrorist attacks on civilians, domestic as well as foreign; to the long history of prolonged wars and U.S. military incursions; and to the violations of civil liberties seen, for example, in the anticommunist red scares and the incarceration of Japanese Americans during World War II.¹

More than twenty years later, we still do not have many history books or articles on September 11th, in part because historians tend to wait twenty-five or thirty years before we write about past events. But it is safe to say that historians' attention—like that of other scholars and journalists—has continued to focus primarily on terrorism, misguided wars, abusive policing, and violations of rights and liberties, with a closer eye now to the legacies of September 11th as well as its precedents. Recent works chart the impact of September 11th on extremism, “forever wars,” and the security state. And we are now seeing the recent past through the lens of

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¹John W. Dower, *Cultures of War: Pearl Harbor, Hiroshima, 9–11, Iraq* (New York, 2010), 90. Much of historians' immediate response to September 11th was in op-ed columns. For a sampler of historians' views, see “The Road to and from September 11th: A Roundtable,” *Diplomatic History* 26, no. 4 (Oct. 2002); Joanne Meyerowitz, ed., *History and September 11th* (Philadelphia, 2003); and Mary L. Dudziak, ed., *September 11 in History* (Durham, NC, 2003).

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Trumpism, with September 11th as a key event that fueled the anti-immigrant, anti-Muslim, racist xenophobia that Trump crafted into his variant of conservative politics.²

In this article, I use the historian's tools to examine some of the other, less obvious, and even surprising repercussions of September 11th within the United States. To do so, I turn to the federal government's September 11th Victim Compensation Fund (VCF) and draw primarily on an extraordinary online archive of more than 12,000 emails sent to the Department of Justice (DOJ).³ Just a week and a half after September 11th, Congress created the VCF for the express purpose of preventing victims' families from suing the airlines. After the act passed, the DOJ solicited comments, which rolled in rapidly from attorneys, victims' family members, politicians, and nonprofit organizations, and most of all from ordinary citizens who felt strongly enough about the fund to type in a response. From the start, the tone was combative. At the very moment that the U.S. population supposedly came together in patriotic unity, the DOJ's comment log, posted and public, descended into acrimony and outrage, and the fault lines that cracked uncovered some of the less noted seismic shifts of the era.

In the pages that follow, I focus on two such fault lines: first, gay rights and the recognition of same-sex partnerships and, second, economic inequality and populist anti-elitism. Strangely enough, the early press reports on September 11th repeatedly addressed issues of sexuality, including news stories populated with American gay heroes who had died in the attacks. In that context, when the VCF raised the question of whether compensation payments would go to the same-sex partners of those who had died, it inspired a vocal debate, with a surge of nationalist sentiment in support of gay and lesbian relationships. The calls for compensation for partners coincided with largely negative public commentary on payments to the survivors of the undocumented workers who had worked and died in the World Trade Center. The emails sent to the DOJ suggest a move toward support for same-sex relationships and away from sympathy for undocumented immigrants (whatever their sexual identity) in the very first months after September 11th. But the endorsement of same-sex relationships also came conjoined with vocal opposition to it, escalating the emerging debate over same-sex marriage.

In the second case, the government pay-outs, which were based in part on the earnings of those who had died, revealed a festering anger at economic inequality. When the families of wealthy victims—the spouses of investment bankers, for example—complained to the media that the government had not offered them sufficient compensation, the response was vitriolic. Hundreds of citizens wrote to the DOJ wondering why their tax dollars should pay for the extravagant lifestyles of the wealthy. They wrote scathing emails about government hand-outs to greedy whiners. Alongside widespread sympathy for the families of victims, the emails sent to the DOJ showed a rising undercurrent of resentment, with protests against the scale of government spending and also of the economic inequality, baked into the law, that valued some lives more than others.

²See, for example, John W. Dower, *The Violent American Century: War and Terror since World War II* (Chicago, 2017), ch 7; Elaine Tyler May, *Fortress America: How We Embraced Fear and Abandoned Democracy* (New York, 2017), epilogue; Thomas R. Mockaitis, *Violent Extremists: Understanding the Domestic and International Terrorist Threat* (Santa Barbara, CA, 2019); Michael S. Sherry, *The Punitive Turn in American Life: How the United States Learned to Fight Crime Like a War* (Chapel Hill, NC, 2020), ch 6; John Bodnar, *Divided by Terror: American Patriotism after 9/11* (Chapel Hill, NC, 2021); Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (New York, 2021), ch 7; and Karen J. Greenberg, *Subtle Tools: The Dismantling of American Democracy from the War on Terror to Donald Trump* (Princeton, NJ, 2021). For an influential book on the impact of September 11th on war, surveillance, and anti-Muslim, anti-immigrant politics, written by a journalist, see Spencer Ackerman, *Reign of Terror: How the 9/11 Era Destabilized America and Produced Trump* (New York, 2021). For a recent article on the impact of September 11th on conservative views of education, see Joseph Stieb, "Moral Clarity: Terrorism, the Culture Wars, and Modern U.S. Conservatism," *Diplomatic History* 46, no. 4 (Sept. 2022): 728–54.

³The comments are located in "Department of Justice Emails," *September 11 Digital Archive*, <https://911digital-archive.org/items/show/85592> (accessed July 3, 2022). All emails cited hereafter are from this collection unless otherwise noted.

Taken together, the emails to the DOJ showcase how September 11th precipitated public debates on divisive political issues that were not in any predictable way connected to the terrorist attacks. In the case of same-sex partners, the emails asked where to draw the circle of inclusion—that is, whether to revise the definition of family and stretch the circle to include more relationships of interdependence as worthy of public support. They raised questions about access and recognition. In the case of economic inequality, the emails shifted toward issues of distribution. They asked how much money the government should give and how to slice the pie. The law favored generous payments with distribution skewed toward the rich, but the emails raised questions about equity and need. In both cases, the emails show how September 11th incited fundamental disputes over who was deserving of the nation's protection and largesse.

The Victim Compensation Fund

It took the airlines just one day to ask for a government bailout. On September 12, while the rubble burned and the nation reeled, the airline executives, along with dozens of lobbyists, pressed Congress for money. They had lost planes and canceled flights, and they imagined a future of negligence lawsuits, canceled insurance, and potential passengers unwilling to fly. And they had clout. Their army of lobbyists included former members of Congress, former White House aides, former transportation secretaries, and Linda Hall Daschle, wife of Tom Daschle, the Senate majority leader. Ten days later, Congress passed the Air Transportation Safety and System Stabilization Act, which promised \$5 billion in government funds to compensate the air carriers for their losses and up to \$10 billion more in credit. In the Senate, only one hold-out, Peter G. Fitzgerald, a Republican from Illinois, voted no. "The airline industry," he told the *New York Times*, "made a full-court press to convince Congress that giving them billions in taxpayer cash was the only way to save the republic."⁴

Title IV of the act, a last-minute add on, created the September 11th Victim Compensation Fund. It offered financial support to those injured in the attacks and to the families of those who had died. The fund was not exactly charity, welfare, disaster relief, or even reparations, except maybe for the airlines. Instead, it was somewhat akin to a bribe: anyone who received compensation forfeited the right to litigation. They could sue the terrorists and anyone who knowingly abetted them but not the airlines, the World Trade Center, or any other such entities.⁵ Democrats proposed the VCF, and Republicans agreed to it on the condition that Attorney General John Ashcroft would appoint a "special master" to oversee the fund. In the congressional debate, senators and representatives had various qualms about the act. They worried, for example, that it did not do enough to ensure airport and airplane safety, that it gave too much to the airlines, and that it failed to offer anything to the thousands of airline employees laid off from their jobs. But aside from endorsing it, they paid little attention to the VCF.⁶

⁴"A Nation Challenged: The Airlines; Bailout for Airlines Showed the Weight of a Mighty Lobby," *New York Times*, Oct. 10, 2001, A1. The vote in the Senate was 96 yes, 1 no; the vote in the House of Representatives was 285 yes, 130 no.

⁵Air Transportation Safety and System Stabilization Act, Pub. Law No. 107-42, 115 STAT. 230 (Sept. 22, 2001).

⁶On the addition of victim compensation to the airline bailout, see Lisa Belkin, "Just Money," *New York Times Magazine*, Dec. 8, 2002, 92–97, 122, 148–49. For the discussion in Congress, see "Providing for Consideration of H.R. 2926, Air Transportation Safety and System Stabilization Act," *Congressional Record* 147 Cong., 1 sess., Sept. 21, 2001, H5884-93; and "Air Transportation Safety and System Stabilization Act," *Congressional Record* 147 Cong., 1 sess., Sept. 21, 2001, S9589-9604. One Democrat, Rep. John Spratt from North Carolina, wanted a cap on the amount that any beneficiary could receive. One Republican, Sen. Don Nickles from Oklahoma, worried that the complex fund had been added hastily and left much to be determined by the special master.

Two months after its passage, Attorney General Ashcroft appointed Kenneth R. Feinberg, a Democratic attorney, to serve as the “special master” of the fund. Earlier in his career, Feinberg had served as Senator Edward Kennedy’s chief of staff. More relevant to the task at hand, he had extensive experience in settling mass tort disputes. He had worked as a mediator on several high-profile cases, including ones involving soldiers debilitated by the Agent Orange defoliant used in Vietnam and women injured by the Dalkon Shield intra-uterine birth control device.⁷ Feinberg had friends on both sides of the congressional aisle, and one of them, Chuck Hagel, a Republican senator from Nebraska, recommended him to Ashcroft, who interviewed him twice before offering him the job.⁸

Feinberg and his staff had unusual discretion in shaping the vaguely worded legislation into an operational fund. They would write the guidelines for compensation, determine eligibility, and calculate how much money claimants would receive. But the law suggested the parameters within which they would work. To lure people to the fund and away from litigation, the compensation had to approximate the amount claimants might win if they sued the airlines. That is, it aimed to cover economic loss, seen as a lifetime of future earnings, as well as pain and suffering. If people chose instead to sue, they could possibly get more money, but they ran the risk that judges and juries might well decide that air carriers held no responsibility for the events of September 11th. And as a further disincentive to litigation, the law limited the airlines’ total liability to their \$6 billion in insurance coverage. The aim of the law, which no one denied, was to bail out the airlines.

Like the post-September 11th “war on terror” and “homeland security,” the VCF built on earlier precedents but also departed from them. The Hostage Relief Act of 1980 had provided assistance to those held in the U.S. embassy in Iran, and the federal government had offered emergency relief funds after the 1995 Oklahoma City bombing of a federal building by the far-right American terrorist Timothy McVeigh.⁹ But neither of those programs promised to cover lost wages; they did not attempt to save an industry from the potentially large settlements of tort suits and so they paid nowhere near as much as the VCF would. The fund was closer perhaps to no-fault workers’ compensation in which injured workers relinquish the right to sue their employers. But workers’ compensation is usually handled at the state (not the federal) level and paid for by private insurance policies bought by the employers themselves. And here, too, the compensation is much less than what the VCF offered. As one law professor wrote, “In every case, across the entire spectrum of no-fault programs, from work-related to crime-related compensation and from injuries associated with military service to the unfortunate victims of vaccine-related mishaps, there is not a single program that grants recovery for wage loss.”¹⁰

Over the course of two years, Feinberg and his staff interviewed claimants and made the difficult decisions about how much each life was worth. Working with the accounting firm PricewaterhouseCoopers, they vetted lengthy applications that included life histories, pay stubs, tax forms, insurance policies, social security statements, stock options, and more. They devised algorithms to calculate the imagined earnings lost over the course of a life cycle, and they held hundreds of individual hearings to tailor the awards to the specific circumstances of concerned claimants. The press paid close attention, publishing dozens of stories about

⁷Elizabeth Berkowitz, “The Problematic Role of the Special Master: Undermining the Legitimacy of the September 11th Victim Compensation Fund,” *Yale Law and Policy Review* 24, no. 1 (Winter 2006): 8.

⁸Kenneth R. Feinberg, *What Is Life Worth? The Unprecedented Effort to Compensate the Victims of 9/11* (New York, 2005), 23–4.

⁹Edward L. Lascher, Jr. and Ellen E. Martin, “Beyond the September 11 Victim Compensation Fund: Support for Any Future American Terror Casualties,” *PS: Political Science and Politics* 41, no. 1 (Jan. 2008): 148.

¹⁰Robert L. Rabin, “Review: September 11 through the Prism of Victim Compensation,” *Columbia Law Review* 106, no. 464 (Mar. 2006): 472 fn 35. See also Lascher and Martin, “Beyond the September 11 Victim Compensation Fund,” 147; and Belkin, “Just Money.”

despairing survivors, family disputes that Feinberg attempted to mediate, and angry claimants who wanted more money than the VCF would offer. In the end fewer than one hundred families chose to sue in lieu of government awards, and more than five thousand filed claims under the VCF. The fund paid out more than \$7 billion in tax-free compensation.¹¹

In the years that followed, social scientists and legal scholars published studies of the VCF. They noted, in particular, Feinberg's outsized power in running the fund and his finesse in managing the act's peculiar combination of tort law principle, restitution payment, and social safety net provision.¹² Feinberg, too, wrote about the experience. He saw the fund as "a stunning success." It transformed him, he wrote, from a hard-nosed attorney to an empathetic listener, moved by the heart-rending stories of survivors. He served, as he put it, as "a psychiatrist, family counselor, grief expert, rabbi and priest" for people still in shock and mourning. His law firm, the Feinberg Group, leveraged his fame and negotiated settlements for subsequent acts of terror, including the bombing of the Boston Marathon as well as the mass shootings at Sandy Hook Elementary School in Newtown, Connecticut, and the Pulse nightclub in Orlando, Florida. In 2021, Netflix released a made-for-television movie based on Feinberg's autobiographical book *What Is Life Worth?*¹³ These various postmortem assessments of the VCF addressed the conflict it engendered among those who sought awards but neglected the more than 12,000 comments that highlight public response.¹⁴

The Politics of Inclusion

In the history of September 11th, gay and lesbian rights might seem mostly irrelevant, but nonetheless they played a significant part in the unfolding events.¹⁵ Just two days after the attacks, the Reverend Jerry Falwell lobbed a culture war grenade when he announced on a conservative Christian television show, *The 700 Club*, that he saw the attacks of September 11th as God's retribution for American sin. Among others, he blamed "the gays and the lesbians who are actively trying to make that an alternative lifestyle." In the wake of September 11th, Falwell's divisive rhetoric did not play well. Among the many dissenters was President George W. Bush, himself a devout conservative, who placed the blame on the terrorists. His spokesperson deemed Falwell's comments "inappropriate." As the criticism mounted, Falwell recanted and

¹¹Kenneth R. Feinberg, "The September 11th Victim Compensation Fund," *Litigation* 32, no. 2 (Winter 2006): 14–7. On the complicated calculations of awards, see Kenneth R. Feinberg, *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, vol. I (Washington, DC, 2004), 30–52. Those who chose to pursue their cases in court, in lieu of the VCF, included eighty-five who sued for wrongful death and eleven who sued for injuries. The damages awarded in those cases were confidential. But one court document, filed when ninety-three of the ninety-six cases had been resolved, noted that the settlements had thus far totaled \$500 million for an average of \$5.4 million per case. See Benjamin Weiser, "Family and United Airlines Settle Last 9/11 Wrongful-Death Lawsuit," *New York Times*, Sept. 20, 2011, A28.

¹²See, for example, Berkowitz, "The Problematic Role of the Special Master"; Rabin, "Review: September 11 through the Prism of Victim Compensation"; Robert M. Ackerman, "The September 11th Victim Compensation Fund: An Effective Administrative Response to National Tragedy," *Harvard Negotiation Law Review* no. 10 (2005): 135–229; and Jill Schacher Chanen and Margaret Graham Tebo, "Accounting for Lives: The 9/11 Victim Compensation Fund Worked. But What about the Next Time?," *ABA Journal* 93, no. 9 (Sept. 2007): 58–62.

¹³Feinberg, *What Is Life Worth?*, 163, 97–8; *Worth*, dir. Sara Colangelo (Netflix, 2020). On the film and Feinberg's firm's involvement in subsequent cases, see Abigail Covington, "The Incredible Real Life Advocates Who Inspired Netflix's New Film *Worth*," *Esquire*, Sept. 3, 2021, <https://www.esquire.com/uk/culture/a37474475/worth-911-netflix-true-story-kenneth-feinberg-charles-wolf/> (accessed Apr. 28, 2023).

¹⁴One legal study, written before the VCF completed its work, used a sample from the email log to discuss distributive justice: Deborah R. Hensler, "Money Talks: Searching for Justice through Compensation for Personal Injury and Death," *DePaul Law Review* no. 53 (2003): 417–55.

¹⁵Jasbir K. Puar has written the most theoretically rich account of the queer politics of September 11th: Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC, 2007), especially ch 1.

expressed regret but groused that his words had been “taken out of their context,” as if to suggest that context would have made them more welcome.¹⁶

Other commentators constructed a different “us” and “them.” They placed gays and lesbians on the side of Americans who faced an external enemy, and they celebrated a few gay men as heroes of the day. Early publicity focused on Mark Bingham, one of the passengers on United Flight 93, who was thought to have charged the cockpit to down the plane in Pennsylvania before it reached the hijackers’ target in Washington, DC. Within two days, the press reported that Bingham was openly gay and carefully positioned him within conventional American masculinity. Bingham ran his own public relations company, but virtually every report that noted his sexual identity focused on his rugby playing, invoking a rugged white athleticism that cleansed his sexuality of gender nonconformity. As the *Washington Post* put it, “He was a physically robust man who delighted in the rough-and-tumble sport of rugby, and he was gay.” Or to give another example, he was, the *Los Angeles Times* reported, “a strapping 220-pound, 6-foot-5 rugby player who had fought off muggers on the street and run with the bulls in Spain before taking on the terrorists on United Flight 93.” And he won support from “liberals and conservatives alike,” who saw in him “an example of America’s strength and spirit.”¹⁷

Press reports on Mychal Judge’s sexuality followed soon after. Judge, a New York City fire department chaplain, died when hit by debris that rained from the falling towers. Initial reports praised him as the beloved “Father Mike,” who had rushed into danger to comfort his comrades and administer last rites. But by late September, some of his gay friends claimed him as one of their own, as a Franciscan priest who acknowledged his homosexuality, supported gay causes, and socialized with other gay men. He was, the *Village Voice* reported, a longstanding member of Dignity, an organization for gay Catholics, and an activist “under the radar.” By early 2002, after some nudging from gay rights organizations, the mainstream media routinely noted that Judge was gay while celebrating his heroism. In addition to Judge and Bingham, a few newspapers and magazines also included David Charlebois, one of the pilots on the plane that hit the Pentagon, among the gay heroes of September 11th.¹⁸

The laudatory reports on heroic gay men, especially Bingham and Judge, ensconced them within the post-September 11th pantheon of tough American men. And the publicity had political impact. Only five years had passed since Congress had voted overwhelmingly in favor of the Defense of Marriage Act, which defined marriage as “a legal union between one man and one woman.”¹⁹ After September 11th, though, the political scales began to tip. On September 26, the House of Representatives voted to allow Washington, DC, to give benefits to the domestic partners of gay and lesbian city workers. According to the *Wall Street Journal*, the bipartisan vote “showed the political shift since the Sept. 11 terrorist attacks.” It followed an “emotional debate” in the House, in which “critics said that continuing the ban would insult the memory of Mark Bingham, a gay California rugby player who was credited with joining others to rush hijackers of the plane that crashed in Pennsylvania.”²⁰

¹⁶John F. Harris, “Falwell Apologizes for Remarks,” *Washington Post*, Sept. 18, 2001, C4; Gustav Niebuhr, “Placing Blame: Falwell Apologizes for Saying an Angry God Allowed Attacks,” *New York Times*, Sept. 18, 2001, B4; Laurie Goodstein, “Finding Fault: Falwell’s Finger-Pointing Inappropriate, Bush Says,” *New York Times*, Sept. 15, 2001, A15. Falwell blamed “the pagans, and the abortionists, and the feminists, and the gays and the lesbians . . . , the ACLU, the People for the American Way—all of them who have tried to secularize America.”

¹⁷“Mark Bingham,” *Washington Post*, Sept. 13, 2001, A9; Margie Mason, “Response to Terror: Passenger on Ill-Fated Flight 93 a Hero by Any Label,” *Los Angeles Times*, Oct. 28, 2001, A5. See also, for example, the syndicated Associated Press column that appeared in multiple papers: David Crary, “Beyond Belief: Attack on America-Families, Friends Gather to Bury the Dead,” *Vancouver Columbian*, Sept. 16, 2001, A2.

¹⁸Andy Humm, “A Love Supreme,” *Village Voice*, Oct. 16, 2001, 30. For an earlier report on Judge as gay, see “For Whom the Bell Tolls,” *Village Voice*, Sept. 25, 2001, 36–41. On Charlebois, see, for example, Roxanne Roberts, “At the Human Rights Campaign Dinner, Tenacity Is on the Menu,” *Washington Post*, Oct. 8, 2001, C3.

¹⁹Defense of Marriage Act, 110 STAT. 2419, Public L. No. 104–199, 1 USC 7 (Sept. 21, 1996).

²⁰“Gay-Rights Advocates Win as House Lifts Ban on Some Benefits,” *Wall Street Journal*, Sept. 26, 2001, A4.

Nine months later, Congress passed the Mychal Judge Act, which allowed for federal death benefits for the same-sex partners of police officers, firefighters, and their chaplains who died in the line of duty. The act was the first time any federal benefit was offered to same-sex partners. It was not explicitly aimed at gays and lesbians; it promised the \$250,000 benefit to those listed on a victim's life insurance policy. The failure to mention homosexuality provided plausible deniability to Republicans who voted for the measure and for President Bush who signed it into law. Nonetheless, gay activists, liberal allies, and conservative opponents all saw it as a gay rights victory, passed in response to (and retroactive to) September 11th.²¹

The celebration and normalization of gay heroes stood in contrast to sexualized accounts of the terrorists. Around the same time that the press hailed Bingham and Judge as American heroes, it published stories that suggested the terrorists were somehow sexually deviant. Journalists reported—and cartoonists mocked—the hijackers' alleged belief that they had been promised seventy-two virgins in heaven in return for the sacrifice of their lives. In the American context, the story suggested that the terrorists were vaguely perverse, sexually repressed men who imagined they would find (sexist, promiscuous) sexual pleasure only after they had died. Other news stories suggested (and occasionally stated outright) that Mohamed Atta, the Egyptian ringleader of the terrorist group, was a repressed feminine homosexual.²² It was, one such article stated, “as if nowadays the key to monstrous behavior is not being homosexual, but being homosexual and not admitting it... Mohammed Atta ... starved himself of sex and human affection, and sublimated his unhappiness into a self-righteous, puritanical hatred of all things western.”²³ More generally, the terrorists were framed not (only) as personally repressed but as members and exemplars of repressive cultures. In her book *Terrorist Assemblages*, the queer theorist Jasbir K. Puar argues that, in the post-September 11th moment, neoliberal notions of world politics have drawn on a vision of the U.S. as liberal and cosmopolitan and of Arabs and Muslims as provincial and repressed, sexually as well as politically. She calls this “a bio- and geopolitical global mapping of sexual cultural norms” under “the guise of cultures of sexual expression and repression.”²⁴

It was with this vision of normative, masculine, American gay heroes and repressed Muslim terrorists that commentators “pinkwashed” the United States as healthy, modern, and gay-friendly. In October 2001, in a speech to the gay rights organization Human Rights Campaign, Senator Hillary Clinton (D-NY) captured the nationalist sentiments that cleansed the United States of antigay animus and displaced it onto the terrorists. “It is clear that our

²¹See, for example, Mike Allen, “Law Extends Benefits to Same-Sex Couples; Firefighters, Officers Killed on Duty Covered,” *Washington Post*, June 26, 2002, A8. On plausible deniability, see Richard Goldstein, “Bush’s Gay Gambit,” *Village Voice*, July 23, 2002, 51.

²²See, for example, Neil MacFarquar, Jonathan Yardley, and Paul Zielbauer, “A Portrait of the Terrorist: From Shy Child to Single-Minded Killer,” *New York Times*, Oct. 10, 2001, B1. For more examples of (and a critical view of) similar psychologizing, see Corey Robin, “The Way We Live Now: Closet-Case Studies,” *New York Times Magazine*, Dec. 16, 2001, 23–4.

²³Andrew Holleran [pseudonym for Eric Garber], “The Face of Atta,” *Gay and Lesbian Review Worldwide* 9, no. 1 (Jan.–Feb. 2002): 8. The *National Enquirer* also alleged closeted homosexuality; quoted in Michelangelo Signorile, “The Mohamed Atta Files,” *Newsweek Web Exclusive*, Oct. 31, 2001, <https://www.nbcnews.com/id/wbna3067491> (accessed Mar. 23, 2023).

At roughly the same time that Holleran’s essay appeared in the left-leaning *Gay and Lesbian Review*, an article in the conservative magazine *The American Spectator* positioned the “followers of Osama bin Laden and the Taliban” as sexually repressed heterosexual men: R. Emmett Tyrell, “The Continuing Crisis,” *American Spectator* 35, no. 1 (Jan.–Feb. 2002): 8. See also the documentary *Suicide Killers*, dir. Pierre Rehov (City Light Pictures, 2006). For other examples of press reports that pointed to the terrorists’ deviant sexuality, see Puar, *Terrorist Assemblages*, especially ch 1; and Karma R. Chávez, “The Precariousness of Homonationalism: The Queer Agency of Terrorism in Post-9/11 Rhetoric,” *QED: A Journal in GLBTQ Worldmaking* 2, no. 3 (Fall 2015): 32–58.

²⁴Puar, *Terrorist Assemblages*, 9, 29. See also Jasbir K. Puar and Amit S. Rai, “Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots,” *Social Text* 20, no. 3 (Fall 2002): 117–48.

values were the real target of that [September 11th] attack,” she said. “Our country is stronger and more inclusive than it’s ever been.”²⁵ Elizabeth Birch, executive director of the Human Rights Campaign, agreed and saw September 11th as a catalyst for inclusion. “In an instant,” she claimed, “America became whole. The flames of terror forged our hearts together and vaporized the differences between us.”²⁶ In this reconfigured nationalism, American gays and lesbians, out of the closet, were, in spite of Falwell, part of the country’s “we.”

But not quite. The VCF reframed the issue in monetary terms. It offered compensation to eligible spouses, children, parents, and other next-of-kin of the deceased. But what about same-sex partners? Feinberg decided that they could apply for compensation, but he would follow the law of each state in determining eligibility. If a state recognized same-sex couples, then so would the VCF. But that hardly resolved the matter. Only three states—California, Hawai’i, and Vermont—registered domestic partnerships, and the laws in those states did not necessarily cover death benefits.²⁷ And although gay rights activists had begun to fight for same-sex marriage, no state yet permitted it. In April 2001, lawyers had filed what would become a landmark case, *Goodridge v. Department of Public Health*, which established the right to same-sex marriage in the state of Massachusetts, but they would not win the case until late 2003.²⁸ That left almost all same-sex partners in limbo. In most cases, legal relatives had first dibs on any compensation that might have gone to a domestic partner. As a gay rights lawyer put it, “A lot can ride on the whim of the biological family.”²⁹

Other funds offered easier access to benefits. In New York, shortly after September 11th, Governor George Pataki issued an executive order that permitted same-sex partners to receive money from the state’s crime victim assistance fund. A few corporations, such as Cantor Fitzgerald and Lehman Brothers, already included gay and lesbian partners in their emergency benefits and insurance programs, and the American Red Cross, which offered emergency relief, based its charity on need, not kinship.³⁰ But Feinberg’s rules for the VCF made federal compensation to same-sex partners iffy at best. Under the guidelines, most partners could win VCF payments only if they were written into a will or if relatives did not contest the claim. In May 2002, the New York state legislature responded by passing an act to encourage the federal government to extend VCF funds to same-sex partners in the state. But New York’s approval could not preempt disputes or override marriage and probate laws.³¹

Feinberg justified his policies on the grounds of convenience or expedience. He wanted to avoid “a local state-by-state litigation fight over who should receive the funds” and also “family squabbles, state to state, as to who’s the personal representative, who can speak for the victim.”³² His comments on the cases suggest a hierarchy of sympathy for those partners barred from the fund. He showed most concern for fiancées or women who were engaged to men.

²⁵Roberts, “At the Human Rights Campaign Dinner.”

²⁶Hank Stuever, “The Bomb with a Loaded Message,” *Washington Post*, Oct. 27, 2001, C1.

²⁷American Civil Liberties Union, Nov. 26, 2001, email W000800.

²⁸On the movement for same-sex marriage, see, for example, George Chauncey, *Why Marriage? The History Shaping Today’s Debate* (New York, 2004); Michael J. Klarman, *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage* (New York, 2012); Douglas NeJaime, “Before Marriage: The Unexplored History of Nonmarital Recognition and Its Relationship to Marriage,” *California Law Review* no. 102 (2014): 87–172; and Nathaniel Frank, *Awakening: How Gays and Lesbians Brought Marriage Equality to America* (Cambridge, MA, 2017).

²⁹Mubarak Dahir, “September 11: Are All Survivors Equal?,” *Advocate*, Sept. 17, 2002, 26.

³⁰“New York Up Close: Partners of Gay Victims Find the Law Calls Them Strangers,” *New York Times*, Oct. 14, 2001, CY4.

³¹Lisa Wexton and Sarah Wildman, “At Issue: Give and Take; Dick Arney and September 11 Fund Master Kenneth Feinberg Send Mixed Signals about Benefits for Same-Sex Survivors,” *Advocate*, July 9, 2002, 13.

³²“Seeing Families, Senator Calls for Changes in Sept. 11 Fund,” *New York Times*, Jan. 14, 2002, B2; “Profile: Problems Facing Gays and Lesbians Who Lost Longtime Partners on September 11th,” *Weekend All Things Considered*, NPR, Dec. 23, 2001, 1.

They were, he wrote, “his toughest challenge ... disowned by their onetime future in-laws ... cruelly and arbitrarily denied a life with [their] chosen partner[s].” And he completely dismissed wives in polygamous marriages. His cases involved citizens from fifty-nine nations. He would not, he wrote, “recognize foreign laws that endorsed the legality of multiple wives,” a practice common among Muslims. In those cases, the wives had no access to compensation, which meant they lost funds because of Feinberg’s view of the laws under which they lived.³³ Feinberg placed same-sex partners in the middle, considered along with fiancées and treated similarly, but without equivalent comments on the tragic circumstances that left them estranged, rejected, or bereft.

The numbers were small. Various reports mentioned twenty-two same-sex partners identified among the thousands of survivors who might seek compensation.³⁴ But they won disproportionate attention from activists and from the press. The media reported on several such cases, with multiple stories on the partners of Jeff Collman, a flight attendant on one of the planes that hit the World Trade Center; Sheila Hein, a Navy veteran and civilian analyst who worked in the Pentagon; and Wesley Mercer, a vice president at Morgan Stanley. After Collman died intestate, his partner of eleven years, Keith Bradkowski, a registered nurse, did not stand to inherit even though he and Collman had registered as domestic partners in California. Under the state law, spouses and blood relatives inherited but not domestic partners. Collman’s parents collected the \$25,000 death benefit from American Airlines, and they stood first in line to collect from the VCF.³⁵ Sheila Hein died with a will and so her partner of seventeen years, Peggy Neff, had better legal standing with the VCF. But the media noted that the state of Virginia refused Neff benefits that she would have won had Hein died in New York. The federal government also denied her the life insurance awarded through Hein’s job.³⁶ William Randolph had lived in Harlem for twenty-six years with Wesley Mercer. But because Mercer had never filed for divorce from his wife, Randolph, a Black church organist, had lesser claim to inheritance through the VCF, though he did get funds early on from Morgan Stanley, the Red Cross, and the New York Crime Victims Board.³⁷

From the start, gay rights groups assisted the same-sex partners in their negotiations and pushed the VCF to change its policies. A coalition of gay organizations, led by the Lambda Legal Defense and Education Fund, wrote to the DOJ in November 2001, just two days after Feinberg’s appointment, and urged it to include “committed partners” and the nonbiological children of gay and lesbian September 11th victims. They spelled out the details of a process that would include same-sex partners if they had shared a home, living expenses, daily activities, and “the emotional bonds of a family” with a September 11th victim, and they cited and built on *Braschi v. Stahl*, an important 1989 New York rent-control case that had

³³Feinberg, *What Is Life Worth?*, 147–8, 70.

³⁴See, for example, Dahir, “September 11: Are All Survivors Equal?”; “Victims and Survivors,” *Chicago Tribune*, June 15, 2002, 1.20; and Jane Gross, “U.S. Fund for Tower Victims Will Aid Some Gay Partners,” *New York Times*, May 30, 2002, A1, B5. The number of LGBTQ people who died in the September 11th attacks is, of course, higher; many LGBTQ people were not out or not partnered.

³⁵See, for example, Victoria Scanlan Stefanakos, “Life Goes On: Surviving Partners of Victims of the Terrorist Attacks Take Different Approaches to the Same Goal—Getting on with Their Lives,” *Advocate*, Jan. 22, 2002, 48–51; Shia Kapos, “Rally Calls for Marriage Rights for Gay Couples,” *Chicago Tribune*, Feb. 15, 2002, SW_A2; and Shia Kapos, “Unwed Partners of Sept. 11 Victims Hope for Benefits,” *Chicago Tribune*, Mar. 4, 2002, 10. Lambda Legal represented Bradkowski in his claims to American Airlines and the VCF. In September 2002, one report said that Bradkowski was working on a joint VCF claim with Collman’s parents, who had initially planned to pursue a claim without him; see Ann E. Marimow, “Gay Partners Get Inheritance Rights,” *Indianapolis Star*, Sept. 15, 2002, 10.

³⁶See, for example, Brooke A. Masters, “Exclusion Adds to Pain of Loss,” *Washington Post*, Nov. 25, 2001, C3; and Darlene Superville, “Loved Ones of Pentagon Victims Struggle On,” *Cincinnati Enquirer*, Feb. 19, 2002, A4.

³⁷See, for example, Stefanakos, “Life Goes On”; and Gross, “U.S. Fund for Tower Victims Will Aid Some Gay Partners.”

redefined family to include same-sex partnerships. “Adherence to rigid legal distinctions would,” they wrote, “obscur[e] the family realities of many of the diverse families who suffered.”³⁸ The coalition wrote again in January 2002 after Feinberg had issued his guidelines that depended on state law. They called on Feinberg to treat those “in a mutually interdependent, long-term committed relationship” in the same way as those who were legally married.³⁹

Other legal, liberal, and religious groups sent in similar requests. The American Civil Liberties Union stuck with the pragmatic argument that failure to cover same-sex partners would result in the kinds of lawsuits that the VCF was designed to avoid. People for the American Way made the moral argument for “the fair and humane treatment of all who have personally suffered from the acts of the terrorists.” The Anti-Defamation League pointed to nationalist belonging and called for an inclusive definition of family: “We have been united in the face of terror and we must remain so. No American family, however constituted, should be excluded.” Liberal religious organizations added faith-based arguments in favor of equal treatment. Representatives of Reform Judaism noted the “stamp of the divine ... present in each and every one of us,” and Unitarian Universalists pointed to “deeply-held religious beliefs,” including “the inherent worth and dignity of every person.”⁴⁰

Additional comments in support of same-sex partners came from politicians and political organizations. In the fall of 2001, forty-four members of the House and a dozen members of the Senate, including Hillary Clinton (D-NY), John Kerry (D-MA), Patrick Leahy (D-VT), and Barbara Mikulski (D-MD), asked Ashcroft to offer compensation “to all of those who had a close relationship with the murdered victim,” using “shared residence, shared bank accounts,” and other indicators of interdependence. “The act we passed,” they wrote, “was not an effort by the Congress to regulate any set of personal relationships.” The two largest gay political groups—Log Cabin Republicans and National Stonewall Democrats—followed suit. After the guidelines were announced, they sent in a joint letter urging the DOJ to amend the rules to include “language that clearly states that gay and lesbian domestic partners will receive fair and equal treatment in compensation.” In a separate comment, Barney Frank (D-MA), an openly gay member of Congress, endorsed their letter and told Feinberg that he saw nothing in the federal legislation that mandated that the VCF rely on each state’s law. If Feinberg felt “determined to look to state law,” Frank wrote, then he should follow Governor Pataki’s lead and include the claims of domestic partners.⁴¹

³⁸Lambda Legal Defense and Education et al., Nov. 21, 2001, email W000488. The email was also signed by Human Rights Campaign, Empire State Pride Agenda, National Center for Lesbian Rights, and Gay and Lesbian Advocates and Defenders. On the *Braschi* case, see Carlos A. Ball, *From the Closet to the Courtroom: Five LGBT Rights Lawsuits That Have Changed Our Nation* (Boston, 2010), ch 1; Salonee Bhaman, “For a Few Months of Peace: Housing and Care in the Early AIDS Crisis,” *Radical History Review* no. 140 (2021): 78–106; Stephen Vider, “What Happened to the Functional Family? Defining and Defending Alternative Households before and beyond Same-Sex Marriage,” in *Intimate States: Gender, Sexuality, and Governance in Modern US History*, eds. Margot Canaday, Nancy F. Cott, and Robert O. Self (Chicago, 2021): 257–79; and René Esparza, “We Lived as Do Spouses: AIDS, Neoliberalism, and Family-Based Apartment Succession Rights in 1980s New York City,” *Journal of the History of Sexuality* 31, no. 1 (Jan. 2022): 59–88.

³⁹Lambda Legal Defense and Education Fund et al., Jan. 22, 2002, email N002311. This email was signed by the organizations mentioned above plus the National Gay and Lesbian Task Force.

⁴⁰American Civil Liberties Union, Nov. 26, 2001, email W000800; People for the American Way, Dec. 3, 2001, email A000270; Anti-Defamation League, Dec. 13, 2001, email A005537; Religious Action Center of Reform Judaism, Dec. 18, 2001, email A005444; Unitarian Universalist Association of Congregations, Dec. 12, 2001, email A005480.

⁴¹Christopher Shays et al., Nov. 15, 2001, email W000743; Patrick Leahy et al., Dec. 3, 2001, email A005490; Log Cabin Republicans and National Stonewall Democrats, Jan. 20, 2002, email N002113; Barney Frank, Jan. 29, 2002, email P000325. The letters from the members of the House and the Senate used almost identical language. Other politicians, too, sent emails in support of same-sex partners; for an early example, see Charles E. Schumer, Oct. 31, 2001, email W000482. The Log Cabin Republicans and National Stonewall Democrats also sent an earlier joint letter, Nov. 25, 2001, email W000535.

A few organizations upped the pressure when they circulated template letters and rallied their members to flood the DOJ log with identical requests. Members of Amnesty International, for example, sent more than 2,000 such letters requesting “equal access to benefits ... regardless of sexual orientation or marital status.” Their letter framed the issue as one of “basic international human rights standards” and also invoked “the general principle of equality.” Another form letter, from the LGBT Metropolitan Community Church, used the stories of gay heroes—“the brave young gay man who lost his life on the plane attempting to save the lives of innocent people ... the gay priest who lost his life while ministering at Ground Zero”—to make the case for inclusion.⁴² All told, around 6,000 (or about half) of the emails sent in response to the VCF were versions of form letters requesting that the fund include gay and lesbian partners of those who had died in the September 11th attacks.⁴³

Almost 3,500 additional writers sent in their own individual pleas, asking for equal treatment for gays and lesbians. The comments came from people who announced themselves variously as gay, straight, Republican, Democrat, Christian, Jewish, white, Black, Hispanic, Native American, patriotic, and taxpaying. Many worked to position themselves as conventional members of the American mainstream. “I am a straight, white, anglo-saxon, protestant, republican who grew up in midland, texas,” said one such writer, and “I am a (voting, taxpaying, church-going) heterosexual mother and grandmother,” wrote another.⁴⁴ Other writers identified themselves, to give a handful of examples, as a gay Vietnam veteran, a former Baptist missionary, a “hispanic-lesbian ... law enforcement officer in the state of Florida,” and “a straight, white, middle class college student from Lincoln, Nebraska.”⁴⁵ They labeled the exclusion of same-sex partners as abhorrent, discriminatory, and undemocratic, as “unfair, unjust, un-Christian and decidedly un-American,” as “heartless and so devisive [sic] at a time when we should be pulling together,” and as “right-wing moral superiority bull-shit.”⁴⁶ They called for change in the name of equality, liberty, justice, dignity, human rights, unity, decency, compassion, love, and godliness. They repeatedly mentioned the “gay heroes” of September 11th—Bingham, Judge, and occasionally Charlebois. And they urged Feinberg to “do the right thing.”⁴⁷

In March 2002, more than 1,000 such comments arrived after Feinberg appeared on the Sunday news show *Meet the Press*, and an online news forum, about.com, summarized the show’s transcript. In his tone-deaf interview, Feinberg told the public “that gay partners of the heroes of September 11th will not necessarily be eligible for the same compensation as heterosexual family members who lost their loved ones ... [but] lots and lots of people will receive compensation under the plan, including children, babies, and even fetuses ... and illegal aliens, who aren’t American citizens and who are in the US in violation of federal law.”⁴⁸ Feinberg had decided to award funds to support dependents, including future dependents still in utero on September 11th. (Feinberg’s rationale here seemed to rely on the economic costs of rearing a child, but eighteen members of Congress, the National Right to Life Committee, and the Traditional Values Coalition had chimed in at the start to encourage the VCF to consider

⁴²From Amnesty International, see, for example, email from Ripon, Wisconsin, Dec. 19, 2001, email A002186; on MCC, see email from Kilmarnock, VA, Dec. 5, 2001, email A000884. On similar form letters from members of People for the American Way, see [no location identified], Dec. 4, 2001, email A000420. The email log redacted the names of senders unless they were politicians or organizations.

⁴³Most of the form letters circulated without any indication of a sponsoring organization.

⁴⁴Hollywood, CA, Mar. 14, 2002, email R000785; Walnut Creek, CA, Nov. 28, 2001, email A000086.

⁴⁵San Francisco, CA, Mar. 17, 2002, email R001475; Dallas, TX, Mar. 17, 2002, email R001407; Charlotte, FL, Mar. 18, 2002, email R001896; [Lincoln, NE], Nov. 30, 2001, email A000235.

⁴⁶[no location], Mar. 16, 2002, email R001213; [no location], Dec. 6, 2001, email A001238; and [no location], Mar. 11, 2002, email R000058.

⁴⁷See, for example, Aurora, CO, Dec. 11, 2001, email A001217; Los Angeles, CA, Mar. 13, 2002, email R000638; and Alpine, NY, Mar. 17, 2002, email R001372.

⁴⁸The article is quoted in Alpharetta, GA, Mar. 11, 2002, email R000237.

fetuses as people and treat “unborn children killed in the terrorist attack” as “eligible ‘claimants.’”⁴⁹) Feinberg also chose to offer support to the families of undocumented immigrants who died on September 11th, many of whom had worked low-paying service jobs in the World Trade Center. He promised that those who submitted claims would not be deported.

In the aftermath of the interview, emails poured into the DOJ from writers who said they were outraged, shocked, disgusted, and ashamed of their government. Many of them endorsed the compensation for dependents and undocumented families, but they pointed to hypocrisy. “I find it appalling that fetuses will be granted full and unquestionable compensation while living and breathing survivors of gay and lesbian hero victims will not,” one wrote. “If the government can decide to overlook immigration laws, which I believe is the right and honorable thing to do,” another noted, “then the government should be able to overlook states’ laws that discriminate against same-sex families.” Another asked, “How can [Feinberg] refuse to go against the states on the issue of domestic partnerships while totally supporting people who are here in violation of FEDERAL law? Do you really think that is fair?”⁵⁰ The promise of funds to undocumented workers unleashed a specifically nationalist vision of gays and lesbians, who were, as one email stated, “AMERICANS first.” Another asked, “how are those who are not u.s. citizens more deserving than citizens of the united states?”⁵¹ Feinberg, the angrier comments claimed, was a “hypocritical bigot,” “a disgrace,” and “an obviously unAmerican scumbag.”⁵²

Various emails compared the VCF’s policy on gays and lesbians to the homophobia of the terrorists, the Taliban, and Al Qaeda. “Don’t give way,” one writer stated, “to our Christian Taliban.”⁵³ The point of the comparison was not to pinkwash the United States; it was instead to critique the Christian right as un-American via analogy and to expose the government’s complicity. “Every day,” one comment stated, “the cankerous religious right sounds more and more like Osama Bin Ladin and the government sucks up to them.”⁵⁴ A gay Republican lawyer blamed Feinberg, Ashcroft, and Bush for “catering to divisive right wing elements,” and others, too, saw the treatment of same sex-partners as a move “to placate the Christian Right.”⁵⁵ “This is an outrage,” another wrote, “and shows how the right-wing element of the Bush administration has taken over our government.”⁵⁶

The promise of compensation to the survivors of undocumented workers brought its own flurry of emails that did not address same-sex partners, and given the post-September 11th concern with hidden foreign enemies, it was perhaps predictable that almost all of those emails were negative. Typical comments read, “NONE of my tax monies to illegal immigrants” and “Not a penny to illegal immigrants. Send them home.” One sarcastic correspondent asked, “Should we also send compensation to those who flew their planes into the WTC? After all,

⁴⁹Dick Armev et al., Oct. 5, 2001, email W000780. See also National Right to Life Committee, Nov. 9, 2001, email W000301; and Traditional Values Coalition, Nov. 26, 2001, email W000569. In addition, around seventy other advocates of “unborn babies” sent emails (mostly identical form letters) asking similarly for compensation for fetuses lost in the September 11th attacks; see, for example, Potterville, MI, Nov. 19, 2001, email W000401; and Irvine, CA, Dec. 4, 2001, email A000522. In the end, Feinberg did not include fetuses as claimants, but he increased the awards (by an unspecified amount) in thirteen cases involving “the loss of unborn children as a result of the attacks.” Feinberg, *Final Report of the Special Master*, 38.

⁵⁰[No location], Mar. 16, 2002, email R001148; [no location], Mar. 11, 2002, email R000281; [no city], AL, Mar. 13, 2002, email R000601. A few emails that endorsed compensation for same-sex partners also openly repudiated compensation for the families of undocumented workers; see, for example, Pittsburgh, PA, Mar. 12, 2002, email R000516.

⁵¹San Francisco, CA, Mar. 20, 2002, email R002293; [no location], Mar. 19, 2002, email R002308.

⁵²Dallas, TX, Mar. 12, 2002, email R000497; Phoenix, AZ, Mar. 11, 2002, email R000316; and [no location], Mar. 11, 2002, email R000310.

⁵³Charlestown, MA, Dec. 5, 2001, email A001082.

⁵⁴[no location], Mar. 23, 2002, email R002656.

⁵⁵[no location], Mar. 16, 2002, email R001622; New York, NY, Mar. 18, 2002, email R001695.

⁵⁶[no location], Mar. 20, 2002, email R00238.

they lost their lives also.”⁵⁷ Whereas the comments that called for compensation for same-sex partners frequently blamed the Christian right for the exclusion of gays and lesbians, the comments that opposed compensation for undocumented workers sometimes placed the blame on liberals. Several associated the policy with Hillary Clinton, who supported it. “Hillary’s [sic] idea totally sucks,” one wrote, “I don’t want to hear that illegals got my money.”⁵⁸ Others imagined that the compensation would take money away from the families of U.S. victims, reward law breakers, and give “tacit approval about open borders.” It was in this context that the first variant of the DREAM Act (Development Relief and Education for Alien Minors Act), which offered a route to citizenship to undocumented immigrants who came to the United States as children, disappeared from the congressional docket. It was introduced in the summer of 2001 and failed to come up for a vote.⁵⁹

As the lines of exclusion were redrawn, gay and lesbian families were more readily domesticated into the deserving “we” than were the families of the undocumented workers. Vote.com, which touted itself as “the Internet’s most popular voting site,” took regular (unscientific) polls on the question of compensation for undocumented workers, and then sent the results to the DOJ log. On any given day, around 90 percent of those choosing to vote opposed payments to the “families of illegal immigrants who died on 9–11.” On the morning of January 24, 2002, for example, a day with an unusually large number of votes, 10,851 voters opposed compensation for the survivors of undocumented workers, and only 920 supported it.⁶⁰ The contrast between the vocal campaign in favor of compensation for same-sex partners and the opposition to it for the families of the undocumented could hardly have been starker.

There were, of course, opponents to compensation for same-sex partners, but in the comments to the DOJ, they were outnumbered. In spring 2002, the *New York Times* found “the loudest public outcry against assisting gay partners has come from conservative organizations, like the Traditional Values Coalition.” The group’s leader, the Reverend Louis P. Sheldon, complained that gay rights advocates were “capitalizing on a national tragedy to promote their homosexual agenda.”⁶¹ Another conservative organization, the Family Research Council, had already made similar claims in a lawyerly letter addressed to Ashcroft. It concluded that compensation for “domestic partners,” gay or straight, “directly undermines the important institutions of marriage and family.... The tragic events of September 11 should not be used as a pretext for expanding the gay agenda at the expense of marriage and the family.”⁶²

The argument appeared, too, in variants of a form letter that around 200 opponents sent to the DOJ. In its longest version, the letter seems to have originated from an organization that

⁵⁷Springfield, VA, Jan. 24, 2002, email P000055; Lawrence, KS, Feb. 3, 2002, email P000376; San Rafael, CA, Jan. 22, 2002, email N002365. I found sixty-five such emails. Because there were so few such emails, compared to the thousands that addressed same-sex partners, I have not treated the hostility toward undocumented immigrants at greater length here.

⁵⁸Everett, WA, Jan. 24, 2002, email P000088.

⁵⁹Santa Barbara, CA, Jan. 22, 2002, email N002353; Development Relief and Education for Alien Minors Act, S. 1291, 107th Congress, introduced August 1, 2001. In the months after September 11th, a few reports estimated that around sixty undocumented workers had died in the World Trade Center, but their life stories failed to get the kind of publicity that the gay and lesbian victims had. In later years, scholars and journalists gave more attention to the families of undocumented workers. See Jocelyn Solís and Liliana Rivera-Sánchez, “Recovering the Forgotten: The Effects of September 11th on Undocumented Latin American Victims and Families,” *Canadian Journal of Latin American and Caribbean Studies* 29, no. 57/58 (2004): 93–115; Alexandra Délano and Benjamin Nienass, “Invisible Victims: Undocumented Migrants and the Aftermath of September 11,” *Politics and Society* 42, no. 3 (Sept. 2014): 399–421; and Jasmine Garsd, “Families of Undocumented Immigrants Lost on 9/11 Continue to Search for Closure,” *NPR*, September 10, 2021, <https://www.npr.org/2021/09/10/1036116224/families-of-undocumented-immigrants-lost-on-9-11-continue-to-search-for-closure> (accessed Sept. 28, 2022).

⁶⁰Vote.com, Jan. 24, 2002, email P000085.

⁶¹Gross, “U.S. Fund for Tower Victims Will Aid Some Gay Partners,” B5.

⁶²Family Research Council, Dec. 10, 2001, email A001742.

claimed to represent “the interests of 43,000 churches.” It depicted compensation for “non-related sexual partners” as “a homosexual-inspired plan to redefine and to undermine traditional marriage,” paving “the way for the legalization of homosexual marriages.” And it spelled out two slippery-slope scenarios intended to dissuade the VCF from funding same-sex partners. First, it deflected attention from the committed, marriage-like relationships that the gay rights groups endorsed and raised the specter of government funds supporting group sex and promiscuity. It warned that compensation funds to “domestic partners” could support “homosexual and heterosexual swingers ... involved in ‘polyamory’ or sex with multiple sex partners.” Second, it suggested that government money might go to gay activists and then lumped them together (and tainted them by association) with extremists, racists, and pedophiles. It opposed compensation that went to the deceased’s estate instead of next-of-kin, asking, “Will the money go to fund homosexual activism, the KKK, a terrorist group, or the North American Man-Boy Love Association? No one can know for certain unless each last will and testament is scrutinized by a federal agent.”⁶³

Around thirty other opponents of compensation for same-sex partners sent their own individual comments to the DOJ. A few members of Amnesty International dissented from their organization’s support of compensation for same-sex partners. One wrote, “I dont [sic] want my tax dollars going to support promiscuity, hedonism and licentiousness, a hallmark of the gay agenda.” Another stated, “Partners have no rights under the law.”⁶⁴ A snarky writer wondered whether the VCF should also offer compensation to mistresses, who, like domestic partners, were “not recognized by the laws of most states as legal heirs,” and followed it up with the question, “While we are at it, what about pets? They are after all ‘mans [sic] BEST friend.”⁶⁵ And a few comments just expressed unadorned hostility. One stated bluntly, “I feel gay life is evil and immoral,” and another, written in all caps, claimed, “There is no such thing as a gay hero.... Any man who loves another man is a sinner.”⁶⁶ But ultimately the voices of opponents were swept away, at least temporarily, in the tide of comments from supporters. So many emails supported compensation for same-sex partners that several writers complained that gay rights advocates had hijacked the DOJ log. As one annoyed woman wrote, “Enough already, we hear you!!”⁶⁷

Feinberg, too, heard the message. He and his team read the emails. But despite the pressure, he did not change the guidelines. In an email exchange, he told me, “Unless state tort law permitted such compensation—I believe at the time only Hawaii did so—we could not change compensation decisions.” The thousands of comments, though, “encouraged us,” he said, “to act as mediators to reallocate available funds.”⁶⁸ Feinberg promised to consider claims on an individual basis. In cases of dispute, he mediated and tried to convince biological family members to share some portion of the compensation with domestic partners, gay and straight. Behind the scenes, gay rights lawyers imagined him as an ally. They shared the hearsay “that Feinberg is likely to be gay friendly to the extent he can be.”⁶⁹

⁶³Washington, DC, Dec. 12, 2001, email A001523. The email archive redacted the name of the organization that sent the letter.

⁶⁴[no location], Dec. 19, 2001, email A002730; Middleburg, FL, Dec. 28, 2001, email N001150.

⁶⁵Denver, CO, Jan. 17, 2002, email N001960.

⁶⁶[no location], Mar. 15, 2002, email R000885; [no location], Mar. 16, 2002, email R000938.

⁶⁷White Plains, NY, Mar. 18, 2002, email R002003. See also Quincy, MA, Mar. 28, 2002, email R002794.

⁶⁸Email from Kenneth R. Feinberg to author, Mar. 13, 2023. In a subsequent phone conversation on the same day, Feinberg told me that he agreed with Governor Pataki and others who wanted compensation for same-sex partners, but the legislation required him to follow state laws. (That seems to be Feinberg’s interpretation of the act because the legislation itself does not state that the VCF was required to follow state laws in awarding compensation.)

⁶⁹Printed email from Patricia Cain to Jennifer Middleton, July 26, 2002, folder 1, box 17, Gay and Lesbian Advocates and Defenders Records (MS1961), Series Accession 2017-M-035, Manuscripts and Archives, Yale University, New Haven, CT.

Nonetheless, his method failed in the case of Margaret Cruz, whose partner of eighteen years, Patricia McAneney, had died intestate in the World Trade Center. McAneney's brother James, her sole surviving blood relative, filed the claim for compensation. When Cruz contacted the VCF, Feinberg increased the award (from \$278,087 to \$531,541) in an attempt to offer something (though less than half of the total) to her as well. But James, the claim's representative, collected the entire sum and refused to give Cruz the \$253,454 that Feinberg had allotted for her. The VCF did not intervene and instead advised Cruz to pursue the funds in court. She did just that, suing James (not the VCF). She eventually won because New York state had passed a law encouraging compensation for surviving domestic partners.⁷⁰

More important than Feinberg's limited response was the general sense that September 11th had shifted public attitudes. The publicity for gay heroes, the stories of grieving same-sex partners, and their subordinate status in the VCF had helped strip gayness of its association with perversion and energized the movement for gay rights, seen in the thousands of comments in support of compensation sent to the DOJ. As Joe Grabarz, the executive director of New York's Empire State Pride Agenda, said, "One of the startling results of September 11 is that the larger society has recognized our shared pain of loss as equivalent to that of any family member."⁷¹ Shannon Minter, the legal director of the National Center for Lesbian Rights, noted a change as well. In a 2003 article, he wrote, "In the aftermath of September 11, the manifest inhumanity of withholding recognition from the surviving same-sex partners of those killed in the attacks has resulted in unprecedented reforms." Minter cited Red Cross policy, the Mychal Judge Act, New York's support of compensation and benefits, and California's 2002 decision to grant inheritance rights to domestic partners.⁷² As the *Goodridge* case on same-sex marriage worked its way through the Massachusetts courts, Sean Cahill, at the National Gay and Lesbian Task Force, saw the aftermath of September 11th as "hugely significant" for gay and lesbian partners: "There has been tremendous public education and recognition that same-sex couples are family."⁷³

The changing attitudes and policies positioned the United States as a "gay friendly" nation (or at least more gay friendly than before) and therefore progressive. After September 11th, the patriotic discourse of inclusion promoted invidious distinctions not only between the United States and nations seen as repressed, backward, and homophobic, helping to justify the "war on terror," but also between U.S. advocates of compensation for same-sex partners and their conservative opponents, who now found themselves positioned alongside the terrorists as exemplars of intolerance. It also elided whatever seemed transgressive and unruly about queer life. As it turns out, the World Trade Center had been a bustling cruising ground for casual sex among gay men, a fact notably absent from the accounts of gay life that focused on long-term partnerships.⁷⁴ The supporters of compensation for same-sex partners publicized instead a diversified vision of normative family life. As they called on the government to provide material support to those who had lost the family's embrace, they rehearsed the kinds of "homonormative" arguments on loving couples that eventually won recognition for same-sex marriage.⁷⁵ But the call for inclusion was not a simple sign of national unity; it trained attention on a political divide within the United States, and it provoked conservative Christians who wanted nothing of it.

⁷⁰*Cruz v. McAneney*, 31 A.D. 3d 54 (2nd Dep't 2006). On the dispute, see also Gross, "U.S. Fund for Tower Victims."

⁷¹Dahir, "September 11: Are All Survivors Equal?" 28.

⁷²Shannon Minter, "Expanding Wrongful Death Statutes and Other Death Benefits to Same-Sex Partners," *Human Rights* 30, no. 3 (Summer 2003): 6.

⁷³Dahir, "September 11: Are All Survivors Equal?" 29.

⁷⁴See the short film *Trade Center*, dir. Adam Baran (Renderer Films, 2021), <https://omg.blog/short-film-trade-center-explores-the-lost-history-of-the-world-trade-center-as-a-known-gay-cruising-spot/> (accessed July 21, 2022). Thanks to Graeme Reid for sharing the link to this film.

⁷⁵On homonormativity, see Lisa Duggan, *The Twilight of Equality: Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston, 2003).

The Politics of Distribution

Despite the controversies over whom the VCF should compensate, the fund itself was a fairly popular move. In the fall of 2001, a common sentiment was captured by one comment that stated, “Err on the side of generosity,” and another that advised the government to “act now and be generous.” Many saw the government payments as an expression of public sympathy and compassion, and a handful cast them as an obligation because “the government failed all americans by not preventing the attacks.”⁷⁶ A few months later, in early 2002, a public opinion poll showed that most Americans—72 percent—approved of the VCF, at least in theory.⁷⁷

Still, there were skeptics at the outset, including some who expressed outright opposition. Dozens of emails wondered, reasonably, why the government would give money to September 11th survivors when it failed to compensate similarly for lives lost in war (including in Afghanistan), earlier terrorist attacks, car and train accidents, natural disasters, school shootings, and “‘everyday’ violence.”⁷⁸ One email asked:

What about the 270 victims of Pan Am 103 over Lockerbie? What about the servicemen killed in the barracks in Lebanon? What about the 17 sailors killed on The Cole in Yemen? What about the 224 people killed in the embassies in Tanzania and Kenya? What about the six people killed in the World Trade Center in 1993? What about the 19 servicemen killed by a bomb in Dhahran, Saudi Arabia in 1996? How about the 168 people killed in Oklahoma City?⁷⁹

Were other survivors, another asked, “any less deserving of a helping hand?”⁸⁰ Several widows with children, whose husbands had died before September 11th, noted that the government had not offered them compensation. One woman, whose husband had been murdered, asked, “Don’t my son deserve higher education?” Another widow wrote, “If these people get social security benefits and maybe some small lump settlement they should consider themselves blessed. Unfortunately, life is not fair.”⁸¹

A couple emails wondered why the government would pay compensation for September 11th and not reparations for slavery. “Need I harken back,” a veteran asked, “to the promise of ‘40 acres’ that no black family has ever gotten? ... It seems the government has money to spend on reparations for things its [sic] not responsible for, maybe they finally have money to pay for things it is responsible for and has already promised to pay for.” Another email saw the readiness of the government to compensate the victims of September 11th while refusing reparations for slavery as a “blatant example of the racism and contempt for African Americans that the United States Government continues to foster.”⁸²

Multiple emails worried that government compensation would create “another entitlement” or set an expensive precedent.⁸³ They asked, “Why is the government liable?” and wondered why private charity was not enough, especially after news stories reported that the Red Cross had withheld “more than \$200 million in charitable donations intended for the families

⁷⁶Salt Lake City, UT, Nov. 5, 2001, email W000037; [no location], Nov. 16, 2001, email W000367; and [no location], Nov. 8, 2001, email W000235.

⁷⁷ABC/Washington Post Poll press release, “Most Support Gov’t Plan for 9/11 Compensation,” Feb. 6, 2002, <https://abcnews.go.com/images/PollingUnit/874a2Benefits.pdf> (accessed Aug. 31, 2022).

⁷⁸[no location], Nov. 6, 2001, email W000138.

⁷⁹[no city], NJ, Jan. 22, 2002, email N002222.

⁸⁰[no location], Nov. 6, 2001, email W000138. The ABC/Washington Post public opinion poll found that 58 percent of respondents “support benefits for past terror victims”; ABC/Washington Post Poll press release, “Most Support Gov’t Plan for 9/11 Compensation.”

⁸¹Oakland/Fairfield, CA, Nov. 6, 2001, email W000258; Boyd, TX, Nov. 6, 2001, email W000119.

⁸²[no location], Jan. 29, 2002, email P000264; [no location], Jan. 6, 2002, email P000420.

⁸³[no location], Nov. 7, 2001, email W000166.

of the victims.”⁸⁴ “PLEASE no gov[ernment]t plan,” one wrote, “Force the charities to make the proper use of the billions donated.”⁸⁵ Many thought that taxpayers’ money should go for other ends: national security, the military, homelessness, “rebuild[ing] New York City,” “social security and Medicare,” and “fixing up roads [and] old school buildings.”⁸⁶ And some simply opposed “government handouts” as “bleeding heart,” “socialistic,” “fiscal irresponsibility,” and “an unconscionable raid on the U.S. taxpayer.”⁸⁷

But the issue that generated more heat was not whether to have a fund but how to distribute it. The emails to the DOJ pointed out the inequality built into the VCF. The system, they said, favored the “big-bucks people who died,” those who had access to lawyers and computers and had the time and education to pursue a claim. “The people that know how to work the system,” one wrote, “will get the most while needing it the least.” And because the government compensation was based in large part on the presumed lost wages of the deceased, the largest awards went to the families of high-income victims. “Once again,” one email stated, “the government has set up a plan where the rich get richer, and the poor stay poor.”⁸⁸

Many wrote to urge Feinberg to divide the fund equally among the claimants. “The fair thing to do,” one such email stated, “would be to do away with the formulas and award each victim’s family the same amount.” Another wrote, “All deaths should be compensated equally. A janitor’s family should get the same as a CEO.” In a similar vein, an op-ed column in the *Christian Science Monitor* called for “a political model rather than a market model.... Democracy declares that all people are equal.... All lives are precious. All victims deserve equal compensation.” Later, after the VCF had distributed its funds, Feinberg said that he, too, favored equal allotments. “The 9/11 fund formula,” he wrote, “was defective.” If the government were to offer such funds again, “All eligible claimants should receive the same amount.” A few years after, when Feinberg administered a private fund to compensate the families of those killed in the mass shooting at Virginia Tech, he called for “flat payments of \$180,000” for each eligible family. “There is no attempt,” he wrote, “to make value distinctions among the dead.”⁸⁹

But in 2001 and 2002, the law worked against equality. To stop the survivors of high-income victims from suing the airlines, the VCF offered them substantially more than it offered the less well off. And, as the National Organization for Women and the National Association for the Advancement of Colored People pointed out, the VCF relied on a labor market that had long favored white men, thereby reinforcing gender and racial hierarchies.⁹⁰ In short, the proposed compensation package replicated and legitimated economic and social inequality.

⁸⁴North Little Rock, AR, Nov. 6, 2001, email W000158; “A Nation Challenged: The Charities; In Congress, Harsh Words for Red Cross,” *New York Times*, Nov. 7, 2001, B1.

⁸⁵[no location], Nov. 6, 2001, email W000126.

⁸⁶Oklahoma City, OK, Nov. 8, 2001, email W000259; [no location], Nov. 7, 2001, email W000204; [no location], Nov. 8, 2001, email W000229.

⁸⁷[no location], Nov. 6, 2001, email W000130; [no location], Nov. 14, 2001, email W000352; [no location], Nov. 7, 2001, email W000218; [no location], Nov. 14, 2001, email W000348; [no location], Nov. 6, 2001, email W000095.

⁸⁸Knoxville, TN, Nov. 7, 2001, email W000251; [no location], Nov. 6, 2001, email W000144; Alexandria, VA, Dec. 21, 2001, email N000614.

⁸⁹Brooklyn, NY, Dec. 29, 2001, email N001183; [no location], Feb. 6, 2002, email P000443; Eve Weinbaum and Max Page, “Compensate All 9/11 Families Equally,” *Christian Science Monitor*, Jan. 4, 2002, 11; Feinberg, *What Is Life Worth?*, 183; Kenneth R. Feinberg, “Compensating the Victims of Catastrophe: The Virginia Tech Victims Assistance Program,” *Virginia Law Review* no. 93 (Aug. 27, 2007): 184.

⁹⁰National Organization for Women Legal Defense and Education Fund, Jan. 22, 2002, email N002319; National Association for the Advancement of Colored People Legal Defense and Education Fund, Jan. 22, 2002, email N002324. The emails opposed the initial guidelines that used outdated race- and gender-based tables on work-life expectancy that disadvantaged women and people of color. See also Puerto Rican Legal Defense and Education Fund, Jan. 22, 2002, email N002380.

Feinberg hoped to mitigate the inequality by lifting the compensation offered for the lowest paid decedents and putting some limits on what the wealthiest might claim. In December 2001, when he announced the VCF's preliminary guidelines, he publicized an average expected payout of \$1.65 million and claimed, "We've largely raised the bottom and lowered the top to come in with minimal disparity." Feinberg's discretion, a *Washington Post* editorial claimed, "should help prevent excessive awards to the rich and insultingly small awards to people who need help."⁹¹ Still, the estimated payments that he announced ranged widely from \$300,000 (for a 45-year-old unmarried victim with no dependents who earned \$10,000 a year) to \$4.35 million (for a 30-year-old married victim with two dependent children who earned \$175,000). And in the end, the actual compensation payments had an even wider range, from \$250,000 to \$7.1 million.⁹²

To many Americans, the estimated amounts seemed excessive, "overboard," "preposterous," "ridiculous," "insane," and "just plain wrong."⁹³ "We can barely afford to pay our house payment," one woman wrote, "but its [sic] okay that victims become instant millionaires??" The estimated compensation was "just too high and too unfair to other victims who got little help from the government."⁹⁴ When a soldier died in action, the surviving family received \$250,000 in government life insurance. It was hard to justify why the VCF promised "a lifetime of financial security at the expense of others." Why, one email asked, "are MY tax dollars being used to make people wealthy?"⁹⁵ Others, too, wondered why the government was offering survivors "up to several million dollars each." The ABC/*Washington Post* opinion poll on the VCF, taken in early 2002, found that most respondents agreed: 54 percent supported "reducing benefits."⁹⁶

But the guidelines also disappointed the victims' families who stood to win the millions promised. They had three primary complaints. They considered the sum for non-economic loss, or pain and suffering, too low, even "laughably low."⁹⁷ Feinberg had set it at \$250,000 for each death, with an added \$50,000 (later upped to \$100,000) for a surviving spouse and each dependent. The awards fell well below what plaintiffs might win in what the *Washington Post* called "the high-stakes casino of the courtroom."⁹⁸ "In this country," one family wrote, "there are lawsuits that surpass that figure by the tens for slipping on ice in a parking lot." Others referred to earlier tort cases, such as the well-publicized one from 1994, when a jury offered a multimillion-dollar award to a woman who burned herself with McDonald's coffee.⁹⁹ The emails asked Feinberg to up the amount for non-economic losses, sometimes suggesting one or two million dollars as fair recompense.

⁹¹Lena H. Sun and Jacqueline L. Salmon, "U.S. Sets Formula to Pay Victims: Sept. 11 Families Average \$1.6 Million," *Washington Post*, Dec. 21, 2001, A15; "A Fair Forum," *Washington Post*, Dec. 21, 2001, A44.

⁹²Sun and Salmon, "U.S. Sets Formula to Pay Victims," A14. On final payments, see Lloyd Dixon and Rachel Kaganoff Stern, *Compensation for Losses from the 9/11 Attacks* (Santa Monica, CA, 2004), 25. In the end, 16.5 percent of decedents had incomes higher than \$200,000 a year; their survivors won 32 percent of the funds distributed to compensate for death. See Feinberg, *Final Report of the Special Master*, 53.

⁹³Edmonds, WA, Dec. 21, 2001, email N000951; Sequim, WA, Jan. 4, 2001, email N001351; Klamath Falls, OR, Dec. 21, 2001, email N000601; [no location], Dec. 21, 2001, email N000515; [no location], Dec. 21, 2001, email N000422.

⁹⁴[no location], Dec. 21, 2001, email N000198; [no location], Dec. 23, 2001, email N000831.

⁹⁵[no location], Dec. 27, 2001, email N001029; [no location], Jan. 26, 2002, email P000175.

⁹⁶[no location], Dec. 20, 2001, email N000172; ABC/*Washington Post* Poll press release, "Most Support Gov't Plan for 9/11 Compensation."

⁹⁷Hackensack, NJ, Jan. 15, 2002, email N001615.

⁹⁸"A Fair Forum."

⁹⁹Parsippany, NJ, Jan. 8, 2002, email N00146. On the McDonald's case, see, for example, Schenectady, NY, Jan. 16, 2002, email N001904; and [no location], Jan. 18, 2002, email N002028. The emails did not necessarily present the McDonald's case accurately. The woman who sued McDonald's did not walk away with \$2.9 million; the judge reduced the amount by more than 80 percent, and she ultimately negotiated a confidential settlement with McDonald's.

The claimants also opposed the collateral offset that deducted life insurance (and pensions and death benefits) from the government payout. It penalized those who had planned ahead and paid their premiums, they said, and rewarded those who had not. “Because my husband worked hard and made a very good salary and had life insurance,” an incredulous widow asked, “I don’t deserve to be compensated for his loss? My loss is less because I have life insurance?” The collateral offset also upset claimants because it strayed from the logic of tort law, which did not make such deductions. The government, a widower wrote, was “trying to nickel and dime” survivors while giving “huge bailouts ... for big business.”¹⁰⁰

And the survivors of the highest earners argued against Feinberg’s attempt to limit their compensation. As the *New York Times* reported, the estimated compensation to those in the top percentiles—earning, say, \$2 million a year—was not significantly higher than for those who earned \$225,000.¹⁰¹ The would-be heirs protested: “My father was earning north of 2 million dollars a year Why is Feinberg’s program refusing to compensate the families of wealthy employees with what they are due?” The widow of a portfolio manager argued similarly that the VCF should “not ‘cap’ my husband’s or any other victim’s income” when calculating compensation, “regardless of how high that income may prove to be.”¹⁰² (Eventually the highest earners did win more, with an average award of \$6.3 million to those who earned more than \$2 million a year.¹⁰³)

A few of the emails made unabashedly elitist claims on behalf of the wealthier victims, who were, one widow wrote, “of above average intelligence and productivity and the calculations should reflect this.” Another considered the high earners “the embodiment of financial success. Those who achieved such success should see that reflected in their awards.”¹⁰⁴ The survivors, they claimed, deserved to sustain their standards of living at their pre-September 11th levels. One widow, who claimed she wrote on behalf of 258 families of high-earning victims, said:

We are disgusted! Our spouses worked hard to achieve their success and earn the money they did.... Why should their families ... be diminished and their futures be disrupted any more than they already have been by these tragic events? ... Our government is sending billions of dollars in relief and aid to these terrorists’ countries, but when it comes to your own taxpaying, hardworking, innocent victims, they are disregarded ... all because they achieved the American dream. This makes us sick!¹⁰⁵

The complaints made their way into television and radio talk shows, magazines, and newspapers, especially after victims’ family members formed advocacy groups and staged public protests, backed by political allies. In early January 2002, for example, dozens of family members, along with four members of Congress, held a press conference at Feinberg’s office in Manhattan. Peter King, a Republican member of Congress from Long Island, described the World Trade Center victims as the deserving exemplars of the American way: “the symbols of American capitalism, the symbols of American business.” “They were murdered because of what they were,” he said. “Now they shouldn’t be deprived of what they’re entitled to.”¹⁰⁶

¹⁰⁰[no location], Jan. 3, 2002, email N001312; New York, NY, Jan. 4, 2002, email N001344.

¹⁰¹Diana B. Henriques and David Barstow, “Victims’ Fund Likely to Pay Average of \$1.6 Million Each,” *New York Times*, Dec. 21, 2001, A1, B6.

¹⁰²[no location], Dec. 21, 2001, email N000209; letter attached to email from Rep. Christopher H. Smith, Jan. 17, 2002, email N002674.

¹⁰³David W. Chen, “Striking Details in Final Report on 9/11 Fund,” *New York Times*, Nov. 18, 2004, B1.

¹⁰⁴[no location], Jan. 18, 2002, email N001995; [no location], Jan. 13, 2002, email N001538. The latter email lifted the quoted line (without attribution) from the *New York Times*: “In Last Days for Comment, Victims’ Fund Is Under Fire,” *New York Times*, Jan. 7, 2002, B4.

¹⁰⁵Saddle River, NJ, Jan. 2, 2002, email N001376.

¹⁰⁶“In Last Days for Comment, Victims’ Fund Is Under Fire,” B4.

Later that month, the newspapers covered a rally at the Park Avenue Armory in Manhattan where more than five hundred supporters of the World Trade Center United Group, an organization of victims' families, called Feinberg's interim guidelines a "betrayal" and pushed for higher payouts. New York's governor, George Pataki, and New York City's mayor, Michael Bloomberg, joined them at the rally, and on the same day, four senators—Patrick Leahy, Chuck Schumer, Hillary Clinton, and Teddy Kennedy—asked Feinberg to increase the promised payments.¹⁰⁷

The financial services firm Cantor Fitzgerald pursued its own quest for higher compensation. The firm had lost one-quarter of its workforce—658 dead, more than any other business—in the attacks on the World Trade Center, and from early on, it argued against "any regulation that artificially limited the amount claimants could recover from the Fund or undercompensated them for their damages."¹⁰⁸ After Feinberg announced the interim guidelines, the firm stepped up its campaign for the relatives of its highly paid bond traders, financial analysts, and investment bankers. Its general counsel told a reporter that Feinberg had made it "his mission" to convince survivors to accept lowball offers, "severely undercompensating the families but saving the government millions."¹⁰⁹ Eventually the firm sued the VCF for its "woefully inadequate" compensation to the highest earners; two courts dismissed the case.¹¹⁰

The vocal demands for more money, along with the publicized sense of entitlement, provoked an outpouring of outrage, with public sentiment dropping swiftly from sympathy to revulsion. After a representative from Families of September 11, another advocacy group, appeared on the news channel CNN, attempting to win support for higher compensation, angry emails landed in his inbox. "If \$1.6 million is not enough for you, I hope you rot in hell," read one. "We feel your grief, really," said another. "I'm just wondering if we have to feel your greed too."¹¹¹ Other advocacy organizations also reported a barrage of critical emails and phone calls. The press joined in. After the Park Avenue Armory protest, a *New York Daily News* editorial expressed annoyance with "all the people who are demanding more loot," stating, "this is greed, a grab for the gold."¹¹² It accompanied the piece with a cartoon depicting "the World Trade Center's crater as a money pit for victims, with a construction crane scooping up buckets full of cash." The *Wall Street Journal* reported, "An ugly backlash is building."¹¹³

The email log registered the growing hostility to the victims' families. In early 2002, a flood of emails blasted the people now described as "a pathetic bunch of greedy whiners," "greedy weasels," and "ungrateful jerks."¹¹⁴ "Where do these people get off," asked one email, "thinking

¹⁰⁷On the Park Avenue Armory protest, see Derek Rose, Michael Saul, and Bill Hutchinson, "Victims' Kin Slam Aid Fund, 600 Rally at Armory," *New York Daily News*, Jan. 18, 2002, 8; Robert F. Worth, "Families of Victims Rally for Higher Federal Awards," *New York Times*, Jan. 18, 2002, B4; and Geraldine Baum, "Response to Terror; Relatives Rally to Protest 9/11 Fund," *Los Angeles Times*, Jan. 18, 2002, A21. The estimates of crowd size ranged from more than 500 to about 850. On the senators, see Worth, "Families of Victims Rally for Higher Federal Awards"; and Patrick Leahy et al., Jan. 17, 2002, email N002632. Sixteen members of the House from New York and New Jersey made a similar request one day earlier: Peter King et al., Jan. 16, 2002, email N002425.

¹⁰⁸Cantor Fitzgerald, Nov. 26, 2001, email W000645.

¹⁰⁹Belkin, "Just Money," 96.

¹¹⁰Cantor Fitzgerald submission to DOJ, Sept. 2002, quoted in Dixon and Stern, *Compensation for Losses from the 9/11 Attacks*, 34. Later, in 2013, Cantor Fitzgerald won a lawsuit against American Airlines for damage to its property but not for compensation for employees.

¹¹¹Emails quoted in Sun and Salmon, "Sept. 11 Families Accused of Greed"; see also Shannon McCaffrey, "Families Seeking Money Report Backlash," *Tulsa World*, Jan. 26, 2002, 2; and Milo Geyelin, "Criticism of Sept. 11 Victims' Fund Sparks Backlash—Families Find Public Considers Demands to Change Terms 'Greedy' and Unreasonable," *Wall Street Journal*, Jan. 23, 2002, B1.

¹¹²E. R. Shipp, "Dividing the Dollars: Some WTC Survivors Expect Too Much from Federal Fund," *New York Daily News*, Jan. 20, 2002, 45.

¹¹³Geyelin, "Criticism of Sept. 11 Victims' Fund Sparks Backlash."

¹¹⁴Burke, VA, Jan. 28, 2002, email P000244; [no location], Feb. 6, 2002, email P000505; [no location], Jan. 22, 2002, email N002247.

that the government has to give them enough money to set them up for life?” “What a bunch of crybabies,” another wrote. “Their greed is sickening.” The families, said another, “want to whine and snivel over how much money they will get from the government.”¹¹⁵ The Park Avenue Armory protest, another claimed, was a “shameless spectacle.” The World Trade Center victims were no longer seen as heroic. “My opinion may seem callous,” one email stated, “but the bottom line is that all that most of them did was die because they went to work.” Their families were now “just another special interest group” with politicians “pandering to them, as usual.” As another email stated, “Thousands of people died in the USA last year and they didn’t get anything. Why should these ingrates be the chosen ones?”¹¹⁶

The hostile emails might seem like an early example of online trolling, with attacks that tapped into the unsavory “greed is good” pop culture image of finance.¹¹⁷ But they showcase nonetheless an outpouring of public resentment, with special vitriol aimed at the rich. One email asked, “Where do these wealthy, spoiled, greedy, already-living-off-the-upper-end-of-the-scale folks in New York get off, pretending that what happened to them was so uniquely horrible that anyone related to them should be made an instant billionaire? I’m over it.” “My tax money,” another read, “should not be given to someone with a 750,000 mortgage to pay who needs a set of fresh, matching towels in her bathroom every season.” And another echoed the sentiment: “I do not pay taxes to keep the widows of high paid professionals in expensive houses.”¹¹⁸ Other emails, too, derided the families “with their \$5000 a month mortgages, two BMWs in the garage, private school tuitions and stay at home moms.” The widows should “get a job and get on with life.”¹¹⁹

The comments, like the one just quoted, often expressed animus toward wealthy women who did not work outside the home. “All I know,” one email stated, “is that I don’t want to see tax dollars going towards ensuring that some investment banker’s wife can keep driving her Mercedes and won’t have to work the rest of her lazy life.” The VCF, another wrote, “was not meant to make these trophy wives rich.... If these women can’t live on [what was offered], then it’s time to give up the big house, luxury cars and get a job!”¹²⁰ Other emails questioned why those who were not financially dependent—siblings and the parents of grown children—should get any compensation at all. “I am not responsible for paying taxes so that the independent mother of an independent daughter who has been killed gets money her own daughter would never have given her.” The hostility to women had hints of misogyny, with women’s unpaid domestic labor often dismissed as idle frivolity. The wealthy women who asked for millions in government funds were sometimes positioned, like poor women on welfare, as parasites, or as the historian Julilly Kohler-Hausmann describes the negative stereotype of the welfare queen, “as the antithesis of ‘workers’ and therefore the opposite of taxpaying, respectable, productive citizens.” The government support for wealthy women brought them under the kind of negative scrutiny often reserved for the poor. But the focus on women also reflected the fact that three-quarters of the September 11th dead were men, and thus more wives than husbands filed claims.¹²¹

¹¹⁵[no location], Jan. 6, 2002, email N002498; [no location], Jan. 22, 2002, email N002339; [no location], Jan. 7, 2002, email N001393.

¹¹⁶[no location], Jan. 18, 2002, email N001971; Fort Collins, CO, Jan. 28, 2002, email P000216; New York, NY, Jan. 18, 2002, email N001984; [no location], Feb. 4, 2002, email P000391.

¹¹⁷The oft-cited phrase “greed is good” was declared by the villainous financial capitalist Gordon Gekko in the film *Wall Street* (1987).

¹¹⁸[no city], FL, Jan. 7, 2002, email N001412; [no location], Dec. 21, 2001, email N000577; [no location], Feb. 4, 2002, email P000389.

¹¹⁹[no location], Jan. 7, 2002, email N001413.

¹²⁰[no location], Jan. 7, 2002, email N002502; Point Pleasant, NJ, Jan. 23, 2002, email P000033.

¹²¹[no location], Jan. 29, 2002, email P000265; Julilly Kohler-Hausmann, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton, NC, 2017), 125.

The angry emails did not align neatly with any single political stance. Some of the commenters snarled at “you liberals” who “think this is a wonderful thing.” And sometimes Clinton stood in for liberals in general. One such email claimed, “Hillary Clinton and others are just trolling for votes, as usual, and the others, for the most part, are greedy.”¹²² But most of the emails did not venture into overtly partisan territory. And many seemed to point toward Occupy Wall Street more than right-wing populism. They wanted, for example, the VCF funds to help “the minimally insured and lower income families” instead of the wealthy. Or as another put it, “This should be limited to people who NEED help. I am thinking of the cafeteria workers, janitors, police, etc., whose families may very well be destitute.”¹²³ Right, left, or in between, the commenters preferred a distribution based on need, compassion, or equal payments but not one that created a new class of wealthy citizens or, worse, gave special rewards to the already rich. They agreed that the government should not be handing out millions of taxpayer dollars to sustain lifestyles that most Americans could not afford.

Conclusion

Like the emails about same-sex partners, the emails targeting greedy survivors exposed social divides just beneath the surface of the patriotic unity touted after September 11th. Both sets of comments raised fraught questions about who deserves protection under the nation’s umbrella. The VCF positioned family as the fundamental social unit, but what counted as a family and which families deserved assistance from the state? The advocates for same-sex partners asked for recognition for functional families, defined by mutual interdependence and not only by blood and marriage.¹²⁴ Their conservative opponents saw the public support for gay and lesbian partners, correctly it seems, as a step on the path to same-sex marriage, and they geared up to resist any redefinition of their vision of “family values.” The emails on greedy survivors asked why wealthy families deserved millions of dollars in government funds. They rarely condemned private charity, disaster relief, or modest government compensation for needy citizens. Even in an era of neoliberal retrenchment, most of them did not object to a one-time exceptional expansion of government social provision. But the terrorists had attacked the World Trade Center, a bastion of financial capitalism, and the over-the-top wealth of many who died there highlighted the gross inequality between the rich and the rest. In a surge of anti-elitism, the emails’ authors objected to the wealthy families who demanded a lifetime of government support.

Populist anti-elitism and battles over gay rights were hardly new in 2001, and neither was the hostility expressed toward undocumented immigrants. September 11th, it is worth repeating, was not a complete rupture with the past. But it was nonetheless a major disruption, a shock-wave with multiple reverberations. It came as no surprise perhaps when the U.S. responded to terrorism with a muscular “war on terror” and heightened “homeland security.” But the emails to the DOJ allow us to see something else: how the shock rippled out in unexpected directions. As the VCF shows, September 11th gave new force and torque to the government bailout of powerful industries; the redefinition of family, the campaign for gay marriage, and the opposition to it; the sense of entitlement among the financial elite; and the popular anger at a system that rewarded the rich. The VCF turned the public eye to issues that came into sharper relief in the years that followed. It reminds us that September 11th launched the first decades of the twenty-first century in far-ranging and unanticipated ways.

¹²²[no location], Jan. 19, 2002, email N002056; [no location], Jan. 23, 2002, email P000031.

¹²³[no location], Jan. 25, 2002, email P000137; [no location], Jan. 25, 2002, email P000126.

¹²⁴Legal scholars distinguish “functional families,” based on cohabitation and mutual interdependence, from “formal families,” based on marriage, blood, or adoption. For a survey of the legal literature on functional families, see Kate Redburn, “Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn,” *Yale Law Journal* 128, no. 8 (June 2019): 2412–73.

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