
Volume 18 | Issue 1

2014

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Mimi E. Kim
California State University

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Recommended Citation

Mimi E. Kim, *VAWA @ 20: The Mainstreaming of the Criminalization Critique: Reflections on VAWA 20 Years Later*, 18 CUNY L. Rev. (2014).

Available at: <https://academicworks.cuny.edu/clr/vol18/iss1/18>

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CUNY Law Review Footnote Forum

November 21, 2014

Recommended citation:

Mimi E. Kim, *VAWA @ 20: The Mainstreaming of the Criminalization Critique: Reflections on VAWA 20 Years Later*, 18 CUNY L. REV. F. 52 (2014), <http://www.cunylawreview.org/vawa-20-the-mainstreaming-of-the-criminalization-critique-reflections-on-vawa-20-years-later-by-mimi-kim/> [<https://perma.cc/FXSS-95CD>].

VAWA @ 20: THE MAINSTREAMING OF THE CRIMINALIZATION CRITIQUE: REFLECTIONS ON VAWA 20 YEARS LATER

*Mimi E. Kim**

In 1991, Kimberlé Crenshaw drew sharp attention to the shortcomings of the feminist anti-violence movement, coining the term “intersectionality” to chart those vast regions occupied by racially marginalized women.¹ After the Violence Against Women Act (VAWA) passed three years later in 1994, Mari Matsuda responded in a Ms. Magazine article featuring a haunting photograph of an electric chair.² At that time, she was among the few to raise public concern about the feminist alliance with the criminal justice system represented by VAWA’s attachment to the Crime Bill of 1994. Matsuda expressed not only her dismay over the carceral implications of the bill but, perhaps more so, the eerie silence from feminists seemingly willing to muffle any misgivings about collaboration with the criminal legal system under the thunder of self-congratulatory applause.³

Such critique was not new. Angela Davis, in her 1981 book, *Race, Class and Gender*,⁴ and battered women’s movement activist, Susan Schechter, in her 1982 account of the history of the anti-violence movement entitled *Women and Male Violence*⁵ raised concerns over the dangers of feminist

* Assistant Professor, School of Social Work, California State University, Long Beach.

¹ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REVIEW 1241, 1241-99 (1991).

² Mari J. Matsuda, *Crime and Punishment*, MS. MAGAZINE, Nov. – Dec. 1994 at 86-88.

³ See, e.g., Mari J. Matsuda, *WHERE IS YOUR BODY: AND OTHER ESSAYS ON RACE, GENDER, AND THE LAW* (1996).

⁴ ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* (1981).

⁵ SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* (1982).

alliances with crime control rather early in the history of the anti-domestic violence movement. What is remarkable and tragic is how these pre-VAWA warnings faded with the growing hegemony of the feminist carceral response. No doubt, the rising dollars feeding the five-fold increase in U.S. rates of incarceration would also reward strategies aligned with the growth of the carceral state. By 1994, VAWA appeared to be a victory by most feminist anti-violence advocates and a sympathetic public despite the occasional warnings of such vocal critics as Matsuda and isolated pockets of disbelief among some of us working in shelters, advocacy centers and crisis lines. In 1994, I was among those shelter workers struck by the incongruence of a movement we embraced and a criminal legal system we abhorred.

Twenty years past VAWA, the experience of and conditions underlying domestic and sexual violence experienced by women of color and other marginalized people still defy the gender essentialist boundaries of a white-dominated mainstream movement. And twenty years later, we are also left with a rather perplexing juxtaposition of opposing “movement trends.”

On one hand, the critique of over-criminalization has become commonplace. While harsher critics may hurl the sharp barbs of “carceral feminism”, a term still a little academic even for those who might agree, milder allusions to “over-reliance on the criminal legal system” have permeated parts of the anti-violence field. For example, a 2002 gathering of concerned anti-violence advocates led to a Ms. Foundation report alerting the movement and the larger public to the phenomenon of “over-reliance on criminalization.”⁶

More recently, the Converge Conference of January 2014 that inspired this set of essays represented a new assemblage of progressive feminists, largely constituted of academics and activist/professionals who identify with but remain critical of the feminist anti-violence movement, particularly its emphasis on criminalization. In May 2014, California’s Blue Shield Against Violence brought together a statewide domestic violence grantee conference that highlighted Angela Davis and Aqeela Sherrills, the latter credited with orchestration of the historic 1992 Crips-Bloods truce, as keynote speakers. The specter of the prison-industrial-complex, the complicity of the anti-violence movement and the call for revolution figured centrally in that gathering. In October 2014, the National Network to End Domestic Violence, a national coalition of all state domestic violence coalitions featured Beth Richie’s call to prison abolition⁷ and my own

⁶ Shamita DasGupta, *Safety and Justice for All: Examining the Relationship between the Women’s Anti-Violence Movement and the Criminal Legal System*, MS. FOUNDATION FOR WOMEN (2003), http://files.praxisinternational.org/safety_justice.pdf.

⁷ BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S*

historical analysis of carceral feminism within their national gathering, a rare and cautiously welcomed moment in that organization's history.

Those of us who have identified with Angela Davis, Kimberlé Crenshaw and Mari Matsuda as well as Ida B. Wells, the sisters of the Combahee River Collective and lesser known heroines and heroes in social movement struggles more than the more visible champions of VAWA have had the opportunity to stand awestruck and even hopeful at some of the changes we have seen over the past ten years. Some of us have also tempered our enthusiasm with a wariness of the ways in which the critique becomes consumable fare. While I argue against facile accusations of cooptation, I also find this conjunctural moment as one that gives us opportunity to examine the confluence of forces that make such openings possible, as well as to remain aware of conditions that hasten the dissolution of such successes into the perpetual ebb and flow of the hegemonic sea.

On the other side of this seeming openness to critique is the reality of feminist anti-violence activism today, perhaps most visible in the morality campaigns accompanying rising public outrage over sex trafficking. In fact, it is this latest form of feminist anti-violence activism that led sociologist Elizabeth Bernstein to coin the term "carceral feminism,"⁸ born like the term "intersectionality" in academic journals but informed by the narrowly defined and disturbing strategies pursued by anti-violence feminists as well as the phenomenal policy successes of these social movements. Likewise, this rather new label for a certain form of feminism identified with the pursuit of criminalization has also gained traction among activists who are not only politically opposed to the carceral state but who are also the most likely targets of its violence.

Institutionally, the anti-violence field has been taken over by another phenomenon. While battered women's shelters struggle to survive and racial or ethnic-specific agencies falter in the sweep to consolidate and homogenize services, a new anti-violence institution has come to the fore. Family Justice Centers, founded by prosecutorial offices in San Diego, embraced by the George W. Bush Administration and generously funded by federal agencies and local philanthropists attracted by the concept of an all-encompassing anti-violence "one-stop-shop" or "shopping mall" have risen from the one original storefront to the current roster of over 80 institutions nationwide. Most have followed the model offered by the original San Diego center, that is, the leadership and administration by the office of the District Attorney with the collaboration of satellite community-based

PRISON NATION (2012).

⁸ Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS (Chic) 45-71 (2010).

organizations. Battered women's shelters have suffered from justified critiques of becoming increasingly individualistic and punitive, hardly the liberatory spaces imagined at the movement's beginning. The Family Justice Center model, however, presents a highly problematic alternative, one driven by law enforcement under the guise of a friendly and convenient commercial center.

Hence, the growing critique of over-reliance on criminalization has been accompanied by a substantial rise not only in the "encourage to arrest" and law enforcement priorities represented by VAWA, but the increasing occupation of the anti-domestic violence field by institutions directed by the criminal justice system. And, not surprisingly, this odd juxtaposition is complemented by the interest even among law enforcement in alternatives to criminalization. This is in part the result of individuals, even among the system's avid proponents, who are truly concerned about the ineffectiveness of the criminal justice system, its clumsy instruments and disturbing roster of "unintended outcomes." However, a more systemic analysis would also reveal those mechanisms of cooptation that seek potentially radical alternatives and transform them into products that keep the carceral machinery ever-reproducing through innovation and the incorporation of critique.

There are those who remain vehemently opposed to or at least significantly skeptical of all of this brouhaha about the feminist alliance with criminalization. This includes people who are rightfully cautious about critiques that appear to abound in utopian visions of transformation, seemingly ignorant of the realities of brutality, manipulation and lethality. These also include more systemic forces that, at best, cannot imagine an alternative to the options that many feminists have fought so hard to achieve and, at worst, are willing or even eager to uphold a carceral state that labels, invalidates and disappears swaths of marginalized populations under the guise of public safety.

The critique of criminalization and the admonishment of the feminist anti-violence movement for their complicity is going mainstream. Those of us who straddle the chasm between mainstream anti-violence networks, including their progressive edges, and prison abolitionist politics have some serious political analysis and some heavy-duty praxis ahead. The anti-trafficking movement has succeeded even more swiftly than preceding anti-rape and anti-domestic violence movements in making new criminal codes, harsher sentencing and the coercive participation of the victims of violence into the criminal justice system a renewed social norm for dealing with violence against women and children. The latest gender violence campaign is undoubtedly informed by the incredible, unspeakable brutality against children, women, men and transgender persons who have been and continue

to be the victims of trafficking in all its forms. But moral outrage tends to point easily towards criminalization as a remedy, organizing all other strategies inside and outside the system towards the criminal justice response.

The current flurry of attention to sexual assault on campuses and resulting campus initiatives to take sexual violence seriously through internal mandatory reporting and encouragement to arrest policies is the latest contemporary phenomenon that casts large shadows over the rising critique of criminalization. Within the feminist anti-violence movement, the critique of criminalization may have gone mainstream. But even among those who share concern about over-criminalization, the calls to strengthen and expand the criminalization response often appear to go hand-in-hand when addressing gender violence especially in contexts where there is poor or very little institutional action. Moral outrage still makes a straight line to calls for rescue and salvation and their close companions, punishment and vengeance.

The path forward is to imagine, practice, implement, improve and expand alternative community accountability and transformative justice responses to violence that take seriously domestic and sexual violence and also resist the carceral state. The current call is to expand to more sustainable solutions, embedded within communities and more informed by the collective self-determination of those most impacted by such forms of violence—and to challenge the practice and logic of criminalization while still taking the safety and integrity of survivors and accountability for those individuals and systems doing harm seriously.

In 2000, Incite! Women of Color Against Violence brought together the forces for a new social movement made up of predominantly women and transgender people of color whose vision for an anti-violence movement brought together the intersection of domestic and sexual violence as well as state violence. Since that time, a scattered group of individuals and organizations, united by this intersectional, anti-carceral politic, also turned back to local communities to imagine, practice and implement alternative strategies. Improvement and expansion remain future goals made challenging by the utter lack of resources accompanying such strategies. Some of us who have been involved in these fledgling attempts not only to critique the movement of which we have been a part but also to give wings to new configurations, shared initial experiences, achievements and lessons learned in a 2012 special issue of the journal *Social Justice*.⁹

⁹ Alisa Bierria, Mimi Kim & Clarissa Durazo Rojas (Eds.), *Special Issue. Community Accountability: Emerging Movements to Transform Violence*, 37 *SOCIAL JUSTICE* 4, (2012), <http://communityaccountability.wordpress.com/social-justice-journal-issue/editors-introduction/>.

In March 2015, Incite! Women of Color and Trans People Against Violence will hold the 15th year anniversary of its historic gathering in 2000. Angela Davis, Andrea Smith, Beth Richie, Shira Hassan, Mia Mingus, CeCe McDonald, Xandra Ibarra, Rachel Herzing, Mariame Kaba, Clarissa Rojas, Andrea Ritchie and a host of other women, trans and people of color who have struggled against violence in the form of the fist, the handcuff, the empty pantry and prison bars will form yet another assemblage of people defying gender essentialism, race-based nationalism and the white-dominant mainstream of so many movements of which we are a part. And each represents a legacy of struggle, a nation of survival and a future of liberation that will require the enormity of our creativity and vision. Mainstreaming the critique against criminalization, for those of us who may occasionally get a graced position at that mainstream table, can bring a welcome sense of recognition, relief – yes, even liberation. But it will take a certain type of collectivity to resist its seductions and to leverage momentary gains towards the world that is not only possible but that is absolutely necessary.

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