Feminists' Alliance With the State: Retrospectively Evaluating Sexual Violence Strategies

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Editor's Note: *Kristin Bumiller presents the argument that the feminist movement has abandoned its original motives and has come to rely too heavily upon the criminal justice system. The social movements that culminated in the reforms of 1960s and 1970s (e.g., laws against domestic violence) have yielded to our current era dominated by neoliberal economic policies, higher incarceration rates, and the shredding of the social network. Ms. Bumiller argues that the handling of sexual crimes has gotten disconnected from earlier societal movements and grassroots activism, resulting in outcomes that are counterproductive to the feminist movement's original intents.*

In my book, *In an Abusive State* (Duke University Press, 2008), I raise concerns about the alliance that arose between the feminist movement and the state in efforts to address sexual violence. In the United States and other western democracies, reform campaigns to address the prevalence of rape and domestic violence were coincident with the growth of neoliberalism. As a result, many of these reforms are incorporated into a highly punitive criminal justice apparatus and a retrenched social welfare system.

Neoliberal politics since the late 1970s have brought about numerous changes, including the professionalization of the social service sectors, an

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inordinate rise in incarceration rates, increased economic and social stratification, and rising levels of insecurity and regulation of the poor and minorities. This era was also marked by notable sex crime trials, including cases of interracial gang rape. One of the most significant was the Central Park gang rape trials, now widely understood as a gross miscarriage of justice, which sensationalized racial stereotypes of rapists and publicized prosecutorial narratives about perpetrators driven to target unknown women out of hatred for their gender, ethnicity, or race. The cumulative effect of these state policies and cultural typecasting was to create an atmosphere that reinforced racialized images of victims and offenders and fueled fears about "stranger violence."

On an administrative level, the Violence Against Women Act codified sexual violence as gender discrimination and created coordinated systems of enforcement. This legislation situated the enforcement of anti-sexual violence as a continuation of other federal crime control initiatives. While there has been some progress directly attributable to this coordination, such reforms often make prosecution rates the first priority of community intervention and the measure of program success. Moreover, these initiatives further embed local feminist organizations within systems of punitive justice and professionalized forms of victim support.

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Many view these organizational innovations and professionalization of personnel as wholly desirable changes. Yet there are important differences in perspective regarding the desirability of community coordination. Some advocates, in fact, argue that the success of the violence against women movement is contingent upon improving victims' treatment within mainstream organizations. But proponents of these types of reforms are often hard-pressed to explain why progress has been so slow and sometimes contrary to the original intentions of the feminist movement.

For example, Patricia Yancey Martin in her book, *Rape Work* (Routledge 2005), a multi-decade analysis of rape crisis organizations and their communities, attempts to explain why women are re-victimized at the hands of agencies designated to process their complaints despite years of reform. Her analysis points to the failure of workers in mainstream organizations, like hospitals, police departments, and the courts, to "own rape," and their tendency to mistreat victims, not usually out of hostility, but in the process of fulfilling other work objectives. Martin's proposed solution calls for a reaffirmation of the feminist vision of rape work and more integration of feminist practices within mainstream institutions. This analysis suggests we are on the

right track, yet continued efforts for community coordination need to be more actively involved with rape crisis centers and other feminist organizations. Yet this solution does not take into account that even when feminist methodology has been integrated into mainstream professional practice it does not necessarily yield a system that is supportive and empowering of women. The push for crime control, often countervailing to feminist purposes, is initiated not only by individual personnel but also from external pressures on organizations, often derived from a neoliberal political agenda. Therefore, we cannot assume that feminist practices would prevail in mainstream institutions without concerted and intrusive interventions designed to transform those institutions. This is why I argue that feminists should move forward with an expansive agenda that challenges systems of social control and be open to the possibilities of working outside of existing institutional structures.

Enforcement measures, such as the mandatory arrest laws and some adopted no-drop prosecution polices by the late 1980s, have created unintended consequences. In order to address the systematic failure of the police to respond to domestic violence, most jurisdictions established mandatory policies. While there is no conclusive evidence that arrest and prosecution policies have led either to higher conviction rates or less violence against women, there is serious concern that mandatory policies have made poor and minority women worse off. In particular, mandatory enforcement may either lead to dual arrests (of women who likely were defending themselves) or to involvement with officials that put women at greater risk of future violence by perpetrators or unwanted interventions by the state.

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Even in the context of victim services, policies are powerfully driven by social control priorities; intimate violence is addressed because it unsettles families, harms children, and creates a public health crisis. Victim services' primary purpose is to contain crises and manage harm, not to address women's systematic oppression. Despite the often-necessary focus on how children's lives are traumatized and disrupted by partner violence, the shredding of the welfare safety net means the state has little to offer these women and their children. The post-welfare reform restrictions on benefits results in poor, homeless, unemployed and underemployed women having fewer resources available for general or emergency relief. Although the Domestic Violence option was designed to protect the needs of vulnerable women, its implementation is inconsistent and forces women to tie their eligibility to their status as victims (see Priya Kandas-wamy, "You Trade in a Man for the

Man: Domestic Violence and the U.S. Welfare State," *American Quarterly 62(2)*, 253–277 (June 2010).

By far the broadest reach of state power is realized through the transformation of sexual violence into a social, medical, and legal problem. Contrary in design and philosophy to the original programs designed by feminists, a large professional apparatus has developed in response to the problem of rape and family violence. The creation of a professional language to account for, intervene in, and prevent rape and domestic violence is a major part of this apparatus and is regularly used as a means by which violence against women is rationalized as a chronic yet treatable problem. As I argue in *An Abusive State,* the ascendancy of professional expertise is most clearly seen in the limited options for victims outside of the expanding systems of medicalization and criminalization: it has become nearly impossible to understand the causes and consequences of being a victim of violence in terms which do not fit squarely within the purview of medicine or criminal justice. In these frameworks, feminist ideological concepts, like patriarchy or sexual domination are no longer theoretically significant but are introduced mainly because of their applicability within the language of surveillance, diagnosis and social control.

Professional language transforms ordinary understandings of women's problems into expert discourse about victims' diagnosis and needs. This does not occur without some dissent within the feminist community. Acceptance of these discourses is often necessary for shelters and other advocacy organizations to justify funding and to show they provide their clients with a broader range of services. Programs often are compelled to demonstrate that they have met achievable goals. Addressing sexual violence has become part of larger public health initiatives in which the goal is to apply interventions expansively and universally in most clinical settings. This has enormous consequences for any woman in contact with social and medical services—they are routinely screened for domestic violence but also potentially subject to the authority of experts, compulsory reporting, required but unwanted lab tests, and mandatory child abuse reporting. There is also a growing use of risk analysis in the treatment of both victims and perpetrators. In applying risk analysis, demographic factors are often seen as highly determinative; predictive factors often include socioeconomic indicators, immigration status, race, and ethnicity. This potentially increases the likelihood of targeting groups that are already the subject of enhanced surveillance and undermines the long-standing assumption of the domestic violence movement that the propensity for domestic violence cuts across race and social class boundaries (for a more extensive discussion, see my "The Nexus of Domestic Violence Reform and Social Science: From Instrument of Social Change to Institutionalized Surveillance," *Annual Review of Law and Social Science, 6*, 173–193 (December 2010)). Now with enormous predictability, once women are engaged with professionals, they are less likely to be treated as autonomous

individuals and more likely to be subject to mandatory protocols designed to minimize risk.

The growth of a professional apparatus to address sexual violence raises the new problem (from the professional's perspective) of victim noncompliance. Prosecution often place victims in a difficult situation, especially when they are making judgments about whether criminal justice involvement will actually increase the threat of violence for them or their children. The adversarial relationship between criminal justice officials and victims is most dramatically seen in measures taken against victims of violence themselves, who are now being regularly sanctioned for the "failure to protect" children who view domestic abuse. Moreover, perpetrators are rarely outsiders, and in situations of both rape and battery the offenders are often spouses, partners, family, and members of one's community. Prosecutors are mandated to service the interests of the state rather than the victim, and what is viewed as noncompliance may well arise from victims' realistic assessments of how best to protect themselves and to continue to live within a community.

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The ultimate goal is to address rape and domestic violence in the context of communities and to provide more support for women to make independent choices about their safety and livelihood. But current policy trends are moving in the other direction—the sexual violence agenda has become more universalized rather than integrated into other social movements and community based activism. The failure of criminal justice approaches more generally (both in terms of increasing conviction rates and unintended consequences) warrants a re-examination of how we approach the problem of sexual violence. The reforms implemented over the past 30 years have tended to satisfy a law and order agenda rather than address the deeper issues at the root of the sexual violence problem. Most pressing is the transformation of the culture of sexual violence. Research has shown that changes in the legal definition of rape have had little effect on normative frameworks and sex stereotyping that blame victims (see my forthcoming chapter, "Explaining the Volte-Face: Turning Away from Criminal Law and Returning to the Quest for Gender Equality," *The Oxford Handbook on Gender, Sex, and Crime* , Bill McCarthy and Rosemary Gartner, (eds.), Oxford Univ. Press). The implications of sexual violence policies as designed in the United States are growing as these methods are exported abroad and being used instrumentally as part of an American human rights policy. A major new target is the international

problem of the trafficking of women. This problem renews feminist commitment to the problem of sexual violence, but it also raises questions about the potential effects of advancing the neoliberal agenda around the globe.

Both researchers and practitioners will benefit from moving away from a reliance upon the criminal justice system to asking broader question about the connection between sexual violence and gender inequality. In the United States and globally, inequality is often at the root of forces that perpetuate violence against women in society. Moreover, efforts to eradicate sexual violence need to be always conscious of the implications of policies on the fair treatment of minorities and immigrant groups. Considering the political context in which violence and state response arises is essential to any reconsideration of strategies to address sexual violence.

My work raises concerns about the main-streaming of the sexual violence movement and provides what some might consider counterintuitive conclusions about the desirability of the widespread incorporation of sexual violence prevention and treatment in the public health and social service sectors. Many activists see problems, but remain true to the movement and its underlying logic of social change. I argue that the fundamentals of the movement need to be re-examined.