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Finding the Middle Ground: Reimagining Responses to Women's Use of Force

Lisa Young Larance & Susan L. Miller*

Changing the hearts and minds of the criminal legal system (CLS) to recognize violence against women as a significant social problem has been the rallying cry of the battered women's movement. In the past several decades, these unsung heroines and heroes have had multiple victories including the establishment of battered women's shelters and shared shelter networks; vibrant state coalitions; successful intervention and treatment programs for men who batter their partners; as well as Violence Against Women legislation. Once the most private of crimes, the public focus has anchored violence against women as a major social problem recognized by politicians, legal system representatives, anti-violence practitioners, and researchers. One of the central critiques against the CLS has been its trivialization of violence against women. The movement has been influential in shifting police response from inaction to criminalization of physical violence against an intimate, who is statistically more likely to be female.¹ Mandatory arrest policies have been at the center of this rallying cry. Through their implementation, violence against women has been criminalized, batterers have been held accountable, and victims/survivors protected. This shift has been transformative for a range of community-partners in their understanding and response to those who use violence in intimate relationships.

* Authors are listed alphabetically but their contributions are equal. Lisa Young Larance founded the Vista and RENEW Programs which provide gender-responsive intervention, advocacy, and support for women who have used force in their relationships. Susan L. Miller is a Professor in the Department of Sociology and Criminal Justice at the University of Delaware. We also want to thank our spectacular research team for their assistance on this project: Aubrey Sitler, Marissa Phillips, and Ashley Thomas.

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¹ See CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003); see also PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000).

Following empirical research findings that reveal arrest to be more effective than mediation or separation—or looking the other way—most jurisdictions as well as states enacted pro-arrest/mandatory arrest policies as a more efficacious response to existing practices.² Mandatory arrest policies were quickly followed by “no-drop” prosecutorial policies in an effort to take the onus of prosecution (that could result in retaliation) off victims.³ Unfortunately, however, by re-envisioning how the state could increase battered women’s safety, and by relying on police and prosecutorial efforts to challenge offenders’ behaviors, inadvertently, the arm of state control has been extended in a way that has been helpful to some victims but exceedingly harmful to others. Our essay addresses one issue spawned by the overzealous push to criminalize the use of force in intimate relationships—that of female victims/survivors who are arrested on ‘domestic violence’ charges and subsequently punished, treated, and labeled as ‘offenders.’

Research and practice have identified the unintended consequences of such policies.⁴ Despite the successes of the anti-violence against women movement, especially with elevating the issue to mainstream scrutiny and action, progress comes slowly. Often this means that laudable goals and practices collide with an expansion of state power because many advocates, practitioners, and researchers now tend to rely more on criminalizing behavior as an intervention strategy and point of reference. Who is hurt by this?

- This trend disproportionately affects the least powerful such as economically disadvantaged women, citizens of color, and/or those from LGBTQ communities.

- It has fractured or prevented productive working relationships and established trust that existed between some CLS professionals and advocates.

² See Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Violence*, 49 AM. SOCIOLOGICAL REV. 261 (1984); LAWRENCE W. SHERMAN, *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* (1992).

³ See David A. Ford, *Coercing Victim Participation in Domestic Violence Prosecutions*, 18 J. INTERPERSONAL VIOLENCE 669 (2003).

⁴ See Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339 (2001); see generally SUSAN L. MILLER, *VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN’S USE OF VIOLENCE IN RELATIONSHIPS* (2005); Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When she fights back*, 20 YALE J.L. & FEMINISM 75 (2008); Lisa Y. Larance, *Serving Women Who Use Force in their Intimate Heterosexual Relationships*, 12 VIOLENCE AGAINST WOMEN 622 (2006); Lisa Y. Larance, *When She Hits Him: Why the Institutional Response Deserve Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSLETTER 10 (2005).

- Practitioners who work with arrested women are often vilified by community partners as being too punitive or criticized by members of the CLS as being “too soft on women.”
- By leaving intervention to a system focused on punitive measures, those well tooled to address gendered assumptions (and other class/race/sexuality based strategies of intervention) of power inequalities are often left out of solution seeking interventions.
- Survivors are set up for failure by being portrayed as “good” for not responding with violence or “bad” for utilizing force as a survival strategy. This paradigm has had a ripple effect through all aspects of the CLS and advocacy organizations.
- Mandatory and/or pro-arrest policies focus on the use of force or aggression independent of context, which, in turn, reinforces gender neutrality, leaving out both a gendered power analysis and essential understanding of coercive control.
- The collateral damage to arrested women with survivorship histories, in terms of damaging or eradicating their social networks, job opportunities, housing support, and child custody, has been immeasurable.

We believe the dearth of contextual knowledge regarding women’s use of force is the elephant in the room. Gone unaddressed, it will continue to prevent effective coordinated community collaboration and will promote unintended collateral consequences for the most marginalized. It must be recognized and talked about—with opportunities to safely disagree while having this conversation—regardless of the resistance toward or unpopularity of any one position. Disagreement can and does create change and innovation. For some women, in some circumstances, police action has been crucial to their safety. For other women, police action has had devastating long-term consequences. We refuse to collude with an unexamined expansion of state power to criminalize and label women as abusers and penalize their defensive actions. We articulate our specific concerns next. Our positions are grounded in our own experiences engaging with women who use force (Miller has completed a series of participant-observation and interview studies with women arrested for their use of force against their partners/ex-partners; Larance has provided intervention and support to women arrested on domestic violence charges for more than a decade).

Women navigate survivorship of intimate partner violence (“IPV”) in various ways. Though we acknowledge that women can be violent in relationships, our work and others’ reveals the distinctive differences in women’s motivations, intent, and impact for their use of force. Use of force refers to physically, verbally, and emotionally detrimental behaviors used toward an intimate partner to gain *short-term* control of

chaotic, abusive and/or battering situations.⁵ Battering, in contrast, signifies a pattern of coercive control, intimidation, and oppression effectively used to instill fear and *maintain long term* relationship domination.⁶ The challenge with having this conversation and utilizing effective language is that the role and goal of the individual utilizing the language must be clearly understood. For example a probation agent and an advocate may have a difficult time speaking with one another about a battered woman who has been charged with domestic violence. By understanding that “perpetrator” means something very different to each individual, the conversation is informed but, often, nonetheless challenging to have.

On a micro-level this conversation is challenged by the misunderstanding and misuse of a widely available intervention tool. Many intervention providers, for instance, use the Power and Control Wheel,⁷ a heuristic tool developed by battered women to identify the tactics used against them by their intimate male partners. This internationally respected tool is a useful visual when detailing the power and control dynamics of men’s violence against women. It illustrates what women have survived when men utilize tactics of power and control against women. The problem is, however, when the Power and Control Wheel is misunderstood and misused in intervention settings. Such misuse has a range of consequences. For example, a young woman, who had beaten her husband with a metal pole, was shown the Power and Control Wheel and told that by engaging in the actions listed on the Power and Control Wheel the woman was a “batterer” and would be treated as such. The intervention provider focused on the woman’s isolated incident of violence and wrongly assumed that “one size fits all”

⁵ Shamita D. Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1378 (2002); Erin H. House, DOMESTIC VIOLENCE PROJECT/PROJECT SAFE, *When Women Use Force: An Advocacy Guide to Understanding This Issue and Conducting An Assessment with Individuals Who Have Used Force to Determine Their Eligibility for Services from a Domestic Violence Agency* (2001); Lisa Y. Larance, *Serving Women Who Use Force in their Intimate Heterosexual Relationships*, 12 VIOLENCE AGAINST WOMEN 622, 625 (2006); Miller, *supra* note 4; Sue Osthoff, *But Gertrude, I Beg to Differ, A Hit is Not a Hit, is Not a Hit*, 8 VIOLENCE AGAINST WOMEN 1521 (2002).

⁶ Osthoff, *supra* note 5, at 1522; Ellen Pence & Shamita D. Dasgupta, *Re-Examining ‘Battering’: Are All Acts of Violence Against Intimate Partners the Same?*, Praxis International (2006), <http://www.praxisinternational.org/files/praxis/files/ReexaminingBattering.pdf>; Susan Schechter, *THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* (Boston Press, 1992); *see generally* Evan Stark, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* (Oxford University Press, 2007).

⁷ Ellen Pence, *Battered Women’s Movement Leader*, YOUTUBE (Dec. 7, 2009), <https://www.youtube.com/watch?v=r9dZOgr78eE>.

when responding to that violence.⁸ The provider did not ask about the couple's eight year marriage or the course of events during that marriage. If she had she would have learned that, prior to this incident, the young woman's husband had drug her by a car, beaten her with a bat, and a range of other actions to maintain his dominance over the relationship's duration. When the young woman "fought back" she was trying to assert her autonomy by surviving his dominance. Furthermore, her fighting back meant that his violence against her escalated.⁹ Unfortunately this woman began to see and identify herself as a "batterer" without any acknowledgement of her survivorship history. Intervention can be an ideal opportunity for healing and change. There is anecdotal evidence that intervention can also reduce recidivism.¹⁰ But, in cases involving women who have used force, decontextualized intervention can be an experience of revictimization. Such an experience may lead to reoffending because women leave the intervention setting without the skills and support they desperately need.

Similarly, here are two examples from probation officers that illustrate cases criminalized by the incident-driven CLS when their guiding focus is on use of force;¹¹ they reveal the consequence of police officers' uniform responses to IPV when they fail to differentiate between the motivations and consequences of such acts:

Beth cut her husband's throat so badly that he had to be medevaced to the hospital; he almost died. He was constantly abusing her throughout their 6-year marriage and at the time of the stabbing, she said he was beating the crap out of her and she grabbed a knife—it was the first thing that was near her . . . That's what she felt she had to do to get out of the situation.

Jenny was sexually abused by her brothers and violently assaulted by her first husband continuously, and now, with her second husband, more continuous assault. Basically, what she did was after a particularly vicious assault she took his clothes out in the living room and set them on fire. She was charged with arson. But the police records document a number of times that she has been the victim of battering.

⁸ See generally Susan L. Miller et al., *One Size Fits All? A Gender-Neutral Approach to a Gender-Specific Problem: Contrasting Batterer Treatment Programs for Male and Female Offenders*, 16 CRIM. JUST. POL'Y REV. 336 (2005).

⁹ See Daniel G. Saunders, *When Battered Women Use Violence: Husband-Abuse or Self-Defense?*, 1 VICTIM & VIOLENCE 47, 57 (1986); TJADEN, *supra* note 1.

¹⁰ Lisa Young Larance & Ashley Rousson, *Facilitating Change: A Process of Renewal for Women Who Have Used Force in their Intimate Heterosexual Relationships*, VIOLENCE AGAINST WOMEN (forthcoming).

¹¹ Miller, *supra* note 4, at 1339.

Despite attention to these issues in the scholarly literature and by advocacy groups, arrests continue to proliferate and most states have developed gender-neutral intervention/treatment programs to respond to the influx of cases involving arrested women, regardless if they used defensive action.¹² This has placed community partners in a catch-22 situation deluged with multiple questions, including: How can communities responsibly address women's use of force, acknowledge their survivorship histories, but also hold them "accountable" for using force? What is the role of shelter personnel and advocates? The courts? Police? Is the bench's consideration for the gendered-dynamics of power and control justice or is it favoritism? Some communities are gradually figuring this out.¹³ It is not easy but it is necessary. It requires trust and time as well as a commitment to engaging in difficult conversations while re-thinking intervention strategies used with diverse populations using violence.

Clearly, our work is cut out for us. Based on the limitations of the Power and Control Wheel and guided by evidence-based research regarding women's response to IPV and coercive control, we are creating a visual tool which will depict women's experiences navigating their relationships. At the CONVERGE!¹⁴ conference, we introduced conceptual categories of a diverse sample of more than 200 women arrested and/or court-ordered to intervention groups for using force. Utilizing our own work and participant feedback, our visual tool will be responsive to women's strategic navigation of coercive control through their physical actions. This work will inform theory and practice as well as contribute to the growing knowledge base of contextually and thoughtfully intervening in the lives of survivors of domestic violence who have used force.

We end this essay with a renewed commitment to acknowledge the "elephant in the room" as a human rights issue. This issue, women's use

¹² See Shamita Das Dasgupta, *A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364 (2002); Lisa Y. Larance, *When She Hits Him: Why the Institutional Response Deserves Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSLETTER 10 (2005); see generally Susan L. Miller, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S USE OF VIOLENCE IN RELATIONSHIPS (Rutgers Univ. Press 2005); MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE (2008). EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007).

¹³ Larance & Rousson, *supra* note 10.

¹⁴ For more information regarding CONVERGE! Reimagining the Movement to End Gender Violence, please visit <http://www.law.miami.edu/academics/converge/>. To explore full issue of articles and transcripts of panels on CONVERGE! please visit <http://race-and-social-justice-review.law.miami.edu>.

of force, must be addressed in more transformative, justice-seeking ways of achieving safety for survivors of violence as well as increasing efforts to promote dignity for victims regardless of their social location. Our collective work must amplify women's authentic narratives and lived experiences as this work concurrently sustains the voice, commitment and energy of the grassroots anti-violence against women movement. While forging partnerships and collaborating with the CLS is necessary, it should never be at the expense of survivors. These issues are far more complex and nuanced than they appear, especially as we recognize that the CLS and the movement must be accountable but also critiqued. With this recognition we are not only reimagining our collective responses to women's use of force, we are finding a necessary, nuanced middle ground for the movement's vital future.