

Transgender Women of Color and “the System”: A Critical Exploration of the Relationship
between TWOC and the Systems of Policing & Criminal Justice in the United States

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In considering the concept of punishment and who it is that receives this condemnation in the United States, it becomes evident the disproportionality that exists between certain groups of individuals—specifically transgender women of color. With heightened policing of individuals whose sexual or gender identities challenge those that are socially constructed to be “right”, transgender women of color are more frequently subject to instances of police intervention. This paper will examine the ways in which gender, sex, and race all come together to determine who is deemed deserving of punishment in the United States. With a critical evaluation of specific laws and scenarios from cities across the country as well as context on the historical aspects of abuse against marginalized groups, this paper will explore the oppression and vulnerabilities that result from living at the intersection of identity.

Marginalization, Control, & Early America

The United States of America is no stranger to the struggle of power between peoples. Born from an extreme power struggle that resulted in its independence, the U.S. and its leaders have—since inception—sought control. Although this pattern does not greatly vary when considering any tribe, nation, or even family unit throughout history, it provides a lense through which to consider who is powerful in America while also acknowledging who has lacked power from the very beginning. Taking into consideration the white, male dominated world within which the U.S. flourished and continues to flourish, it becomes easier to then understand

the tribulations that marginalized groups face. In Howard Zinn's *A People's History of the United States*, Zinn very successfully addresses this idea in his first chapter,

Nations are not communities and never have been. The history of any country presented as the history of a family, conceals fierce conflicts of interest (sometimes exploding, most often repressed) between conquerors and conquered, masters and slaves, capitalist and workers, dominators and dominated in race and sex [Zinn 1980: 10].

To be a “marginalized person” in America can stem from any number of aspects of ones identity. Dorothy Roberts' chapter “Reproduction in Bondage” in her book *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* provides context about the marginalization of black, female bodies and their perceived value in early America. Much of Roberts' piece outlines the ways in which total control of the lives and sexuality of these women were placed in the hands of their white slave-owners. She discusses black slave women being forced to partake in any number of exploitative reproductive tasks that were thought to benefit slave masters monetarily. While the atrocities that Roberts brings to light are clear capitalist modes of production and reproduction on the part of the slave-owners, serious issue stems from the fact that law sanctioned almost all of these abusive violations. It was laws that fueled and supported the racism that allowed for “unrestrained reproductive control” of black bodies (Roberts 1997: 23). Beyond forced “slave-breeding”, laws “fostered the sexual exploitation of slave women by allowed white men to commit these assaults with impunity” (Roberts 1997: 29). Roberts writes that some ten percent of the slave population was classified as mulatto in 1860, suggesting that the extent of abuse between white men and slave women

was great—especially considering the fact that “the incidence of sexual assault that did not end in pregnancy was far greater than these numbers revealed” (Roberts 1997: 29). With rape laws that explicitly excluded black women from any form of protection, Roberts’ so called “inseparable ingredients” of “dehumanization of Africans on the basis of race, and the control of women’s sexuality and reproduction” (Roberts 1997: 23) are nothing new to the system by which black women are socially excluded today.

The Internal Complications of Intersectionality

With racial and sexual tensions creating an identity for black women that has been systematically oppressed throughout history—it’s important to consider further what it means for these two aspects of identity to intersect with the also being transgender. In describing political intersectionality, Kimberlé Crenshaw writes, “women of color are situated within at least two subordinated groups that frequently pursue conflicting political agendas” (citation). Crenshaw writes that splitting one’s “political energies between two sometimes opposing political agendas is a dimension of intersectional disempowerment that men of color and white women seldom confront” (citation). Her ideas—further complicated by being a transgender woman—reinforce not only the idea that outside groups “other” women, blacks, and those with “different” gender and sexual identities, but that internal conflicts are continually present for people whose identities cross several borders.

One crucial example of conflict that resulted from this multiple “border crossings” comes in the incident of the Michigan Womyn’s Music Festival. The festival, occurring in the summer every year since 1976 (citation), is an event that is put on and attended exclusively by women. Controversy arose publicly in 1991 when a transsexual woman was expelled from the grounds of the event by organizers who cited that the festival is only open to “womyn-born-womyn” (citation). The following year, a group of trans-activists protested in support for a rule allowing postoperative—but not preoperative—male-to-female transsexuals to attend. Another group then attacked this argument that essentially asserted that anyone without a penis could attend. It became an argument not only about the festival planners telling all transsexuals that they weren’t women, but a disagreement whereby “the post-ops in camp” were “telling the pre-ops they weren’t real women” (Koyama 2006: 2). Through this controversy, it is clear that many different intersections of identity that—although all claiming to be “feminist” in this example—struggle heavily to align ideals.

Emi Koyama’s writing on this piece also addresses the ways in which race and class play a part. Those who wrote the “no penis policy” acknowledged that there was no place for considering race or class, although openly noting that affording re-assignment surgery is significantly less possible for certain groups. Koyama writes that “their pretense of being concerned about racism and classism betrayed itself clearly when they used it as a preemptive shield against criticisms they knew they would encounter” (Koyama 2006: 5). She argues that

most—if not all—of the rationales explored in her piece for excluding transsexual women are racist as well as transphobic:

To argue that transsexual women should not enter the Land [festival camp ground] because their experiences are different would have to assume that all other women's experiences are the same, and this is a racist assumption. The argument that transsexual women have experienced some degree of male privilege should not bar them from our communities once we realize that not all women are equally privileged or oppressed. To suggest that the safety of the Land would be compromised overlooks, perhaps intentionally, ways in which women can act out violence and oppressions against each other. Even the argument that "the presence of a penis would trigger the women" is flawed because it neglects the fact that white skin is just as much a reminder of violence as a penis [Koyama 2006: 17].

This exploration of the controversy within the Michigan Womyn's Music Festival explores the existence of an "internal policing" of sorts. As stated by Audre Lorde at Amherst College in 1980,

Much of Western European history conditions to see human difference in simplistic opposition to each other: dominant/subordinate, good/bad, up/down, superior/inferior. In a society where the good is defined in terms of profit rather than in terms of human need, there must always be some group of people who, through systemized oppression, can be made to feel surplus, to occupy the place of the dehumanized inferior. [Lorde 1980]

Considering this, it becomes easier to understand the ways that everyone contributes to this systemized oppression—even unknowingly. Feminists try to police other feminists' bodies as officers unjustly profile based on racial biases. With expectations often ingrained in being about what is "right".

Formal Policing: Profiling & "De Facto Status Crimes"

Considering the culture of formal policing, many negative aspects of the past still pervade into the lives of black—and other marginalized—Americans today. In examining the 1900 speech “Lynch Law in America” by Ida Welles-Barnett, many unfortunate connections can be made between the racial profiling of the past and that of now. In writing this piece, Welles-Barnett tries to get across the idea that criminal acts are not often the reason behind lynchings of blacks in America. Welles-Barnett rather supports the idea that white men were coming after blacks that “competed with whites”. Of lynchings, she writes:

It is not the creature of an hour, the sudden outburst of uncontrolled fury, or the unspeakable brutality of an insane mob. It represents the cool, calculating deliberation of intelligent people who openly avow that there is an “unwritten law” that justifies them in putting human beings to death without complaint under oath, without trial by jury, without opportunity to make a defense, and without right of appeal. [Welles-Barnett 1900: 72].

Although extrajudicial policing to this extent is definitively occurring less today than 100 years ago, the fact that this happens at all today is problematic. Equally—or more so—problematic is the fact that our laws tend to lend themselves to the improper persecution of those who are involved in this culture of policing. With so much media attention lately on policing and profiling of black bodies, it is impossible to ignore the totality of police profiling that occurs here in the United States.

In considering profiling, it is important to think about the concept of bodies and the value or labels that are placed upon them. When one considers “why certain crimes and criminals cannot be recognized as such” or “why some acts of violence and the people who

commit them” are interpreted as “less criminal than others”, it is important to keep in mind that our laws “work to affix assumptions about behavior onto bodies” (Cacho 2012: 40). This idea is perpetuated by Cacho’s idea of a “de facto status crime”. Aligning with the work of Welles-Barnett, a de facto status crime requires no actual crime to be committed because the person’s status is ultimately the crime. Although it is illegal and unconstitutional in the United States for such laws—ones that make an individual’s existence criminal—to exist, it is incredibly difficult to patrol the ways by which individuals perceive one another. That being said, a de facto status crime is one that negatively and disproportionately affects already marginalized groups.

The Effects of “De Facto Status Crimes” on Bodies & Livelihoods

There are countless instances in the United States whereby transgender women of color are subject to these “de facto status crimes”. In another piece by Lisa Marie Cacho “Grafting Terror into Illegality”, she discusses the idea that the “new enemy” is imagined to be “people who know no borders” (Cacho 2012: 100). While her discussion exists in terms of the Bush administration and the war on terror, she discusses the way that some groups of people who are suspected to have terrorist intentions are then reduced to being illegal in status. While her argument does focus on a specific “group” of people during a specific time period, it lends itself well to the idea that any “type” of individual can be “othered” so as to make them appear consistently suspicious to some. Transgender women of color can be thought of as “people who know no borders”. In saying this, the intention is not to say that transgender women of color do

not belong; it is not to suggest that they live somewhere between man or woman, and it is not to allude to the idea that they're "lost"; it is simply to emphasize that they do exist at intersections of identity—a place many see as so unknown that it is automatically deemed "suspicious".

Considering the social anxieties that exist and the fact that powerful entities—such as the Bush administration—often uphold profiling as regrettably essential, there is no perfect way for laws to explicitly avoid natural human prejudice that comes with years of ideas and preconceptions about life.

An explicit example of a de facto status crime is "walking while trans". At the core, "walking while trans" refers to the arrest of a transgender woman on the basis that she is "manifesting an intent to commit or solicit an act of prostitution" (Strangio, 2014). The fact that a term—and this term specifically—has been coined to express this occurrence makes clear its prevalence. This is a strong example of the law working to affix assumptions about behavior onto bodies. In the specific case of Monica Jones—who was arrested on this pretense—Monica risked jail time by going to trial in an attempt to bring light to such a crucial issue. She won her appeal and successfully brought significant attention to issues regarding profiling, incarceration, and violence against transgender women of color (Strangio, 2014).

Her crime—walking within a few blocks of her home, an area the police officer said was "known for prostitution"—is one that is interpreted as more criminal because of the status of her body. Her body stood out as something different and easy to "other". An Al Jazeera article—recognizing that "that's part of what policing is...this kind of generalized suspicion"—expresses that transgender people often are "that thing that looks out of place" (Flaherty, 2014).

Generally speaking, transgender women are often thought of in an overly sexualized light.

What this means is that transgender women are presumed by many to be involved in sex work based on nothing besides the fact that they are transgender women. In an NPR article outlining the Compton Cafeteria Riot—a San Francisco uprising in 1966 that marked the one of the first transgender riots in United States history—one woman involved explains that many of the women were involved in sex work. She discusses the fact that whether it be for survival, pleasure, or a combination of both, sex work left them “vulnerable to violence and in closer contact with police” (Pasulka, 2015). That being said, she too stated that a significant numbers of these women were not “hustling” at all. Despite that fact, she writes, “If we had lipstick on, if we had mascara on, if our hair was too long, we had to put it under a cap. If the buttons was on the wrong side, like a blouse, they would take you to jail” (Pasulka, 2015). Their lives were often presumed to involve one specific set of interests based on nothing but their appearance.

The Urban Institute—a social and economic policy research center in the United States—produced a study “Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM [young men who have sex with men], and YWSW [young women who have sex with women] Engaged in Survival Sex” in February of 2015 that engages with youth explicitly involved with sex work. This study—produced alongside New York City organization Streetwise & Safe—presented research that was based on interviews with 283 youth in NYC. Though the entirety of this study provides crucial insight into the different, multifaceted reasons these youth got involved in survival sex, it also outlines profiling by police. Like in the instance of Monica Jones, many of the young people who reported being profiled for

prostitution said that it occurred less when actually trading than it did when the youth were spending time in neighborhoods that were known for the sex trade. With location as a prime reason for suspicion, this means that the youth—if uninterested in being arrested or bothered by officers—ought to stay out of certain areas entirely. One transgender youth of color explained these frustrations about “walking while trans” by explaining a past experience. She explained,

I remember when I first moved here I was at the [area in Manhattan] and I was like walking around and the cops must have like been watching me, because like when I came back around he was like, “Hey, what are you looking for?” And I’m like, “I’m just walking around.” And he’s like, “You better not be out here like on a stroll.” And at first when I first moved here I didn’t understand what that word meant and I’m like, “No, I’m not on a stroll.” And he was like, “I got my eye on you,” and then I was like “What the hell?” Like I can’t just walk around a block and you just say...? Even though I was on a stroll but like you cannot just make assumptions.

Although under no legal circumstance must anyone be avoiding certain locations, it’s crucially important to take into account what it must be like for youth to depend on “strolling” for their livelihood, while also depending on not being harassed by police everytime they walk around.

Another critical example of a crime by which no “crime” needs to necessarily occur comes in the form as “condoms as evidence” laws that existed up until recently in New York City. Under the law, the New York Police Department was able to confiscate unused condoms from suspected sex workers and use that as “evidence” that they were indeed sex workers. The law essentially asserts that anyone who carries condoms is out to sell sex. One example—of many—comes in the form of a 17-year-old black transgender teen “Trina” who was walking

down the street when she was stopped and frisked by NYC officers. They were able to check her purse with a warrant and arrested her for “loitering with intent to prostitute herself” (Dizard, 2014). Not only did this law affect so many people in New York City, but it also carried with it huge issues regarding public health. Although, as noted previously, laws against “status crimes” are explicitly unconstitutional, this law was one that strategically was applied to bodies whom officers deemed likely to be partaking in sex work. The new policy implemented in New York still rules that “condoms gathered in promoting prostitution and sex trafficking cases will continue to be invoiced as arrest evidence” (Dizard, 2014). Legally and structurally this law targets a specific demographic of individuals while only further undermining the rights of marginalized groups, including transgender women of color. With these things in mind, it is important to think about acts of violence—both police violence and otherwise—that are committed against transgender people, and transgender people of color, because of their perceived differences and perceived places within our society both in history and now.

Violence, Punishment & Safety

The National Coalition of Anti-Violence Programs in New York City is an organization that does significant research about the LGBTQ community in terms of policing and violence. Their recent release of the “National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities” in May of 2014 outlines several drastic facts that make clear the extent to which the policing of transgender bodies of color is different.

Of the 13% of homicides reported to the NCAVP with transgender victims, the report found that almost three-quarters (72%) of victims were transgender women, and more than two-thirds (67%) of victims were transgender women of color. They report that transgender people of color were 2.7 times more likely to experience police violence and 6 times more likely to experience physical violence from the police as compared to white cisgender survivors. With transgender women being 4 times more likely to experience police violence as compared to overall survivors and 6 times more likely to experience physical violence when interacting with the police compared to overall survivors, the oppression that results from intersectional identities can be quantified—and is uniquely troubling.

While acknowledging how truly problematic it is for any group to experience unequal amounts of violence from police in the moment, it is also crucially important to consider the continual loop of troubles that this creates going forward. In “White Entitlement and Other People’s Crimes” Cacho writes, “for a law to be read as legitimate, it is essential that people feel addressed by the law...that they are included as members of its protected constituency” (Cacho 2012: 44). With oppression that results from a transphobic system, those that are transgender face a lack of support in some of the most fundamental ways in America. The NCAVP report of 2014 touches on this concept by acknowledging the fact that year after year, they are “seeing fewer survivors reporting hate violence to the police, and those survivors are being met with increased hostility when they do” (NCAVP, 2014). It can be considered that the

communities who face violence at the hands of the police were not meant to be “protected” by these officers, but rather to be controlled by them from the start.

The Relationship of Carceral Feminism to Violence, Punishment, & Safety

Carceral feminism, discussed in great length in Elizabeth Bernstein’s work “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns”, describes increased policing and persecution as an approach in combatting violence against women and the issues that arise there. The utility of this carceral feminist perspective arose primarily from the domestic sphere in response to the lack of punishment for abusers within the home. While important to advocate for intervention in cases of abuse, it is also important to consider the fact that police officers—as discussed above—are often “purveyors of violence and that prisons are always sites of violence” (Law, 2014). In this situation, power is placed in the eye of the officer to choose who it is that exists as an “ideal” victim of abuse. Having already discussed the modes by which transgender women of color are marginalized, it can be assumed that they will often not fit the model of an “ideal victim”. This idea fits well with Bernstein’s thought that “U.S. anti-trafficking campaigns have been far more successful at criminalizing marginalized populations, enforcing border control, and measuring other countries’ complication with human rights stands based on the curtailment of prostitution than they have been at issuing any concrete benefits to victims” (Bernstein 2010: 57). In regard to trafficking laws specifically, this approach—whereby

feminists “directly join forces with a neoliberal project of social control” (Bernstein 2010: 57)—is leading to a number of “unintended consequences” meant to protect, but often doing the opposite. It must be kept in mind that opening up ones life to a police presence can often ignite further violence, oppression, or exclusion.

Media Discourse about Policing & Transgender Communities

With the media playing an incredibly large role in the last year or so in regard to critiques of policing in America, it’s important to bear in mind the ways in which media can be used as a tool to mobilize change. While there is so much that could be said about different twitter movements or protests that have burst following a pattern of tragedies against people of color by police, a slightly unique article about a recent event in Baltimore felt most relevant. With Baltimore in a fury over the police brutality that ultimately ended the life of resident Freddie Gray, a transgender woman of color has also been shot within the city. The circumstance of the event is tragic as a wrong turn ultimately led to her vehicle being shot at as she swerved towards the Baltimore NSA headquarters. While not necessarily a blatant victim of police brutality—her victimhood has been doubted entirely. As reported by the Daily Dot,

The few media reports on Hall’s death have been tinged with transphobia, with a *Washington Post* article continuing to describe Hall and Fleming [friend with her] as “men dressed as women”, a revelation which it referred to as a “shocking twist.” The *Post* also described the street scene where Hall and Fleming worked as a “choreography of clichés,” focusing on the high heels, short shorts, and heavy makeup of the women. [Romano, 2015]

The article then goes on to contrast the amount of attention given to Hall as inferior compared to the attention given to other recent deaths. As a black transgender woman sex worker, her appearance in the media is even less evident than other individuals. This is not to say that people do not care—but rather to acknowledge that the way the media portrays an event affects the outcome and outrage on the part of Americans across the country.

Bringing it All Together

“It is not those differences between us that are separating us. It is rather our refusal to recognize those differences, and to examine the distortions, which result from our misnaming them and their effects upon human behavior and expectation”

-Audre Lorde, 1980

In America during the 21st century—especially across the last several years—it has thankfully become more and more difficult to ignore the incredibly prevalent instances of unfair policing that have birthed powerful protests and backlash. With all marginalized groups living in a system of oppression by one measurement or another, it becomes increasingly frustrating that police—or other forces meant to protect and serve all people—are failing to do just this. By focusing specifically on transgender women of color, this paper was better equipped to not explore the intersection of marginalized groups as a conglomerate, but rather to explore the current and historical contexts of what it means to be a woman, what it means to be transgender, and what it means to be a person of color. By focusing on specific laws and

instances of “status crimes”, the intention was to bring light to the fact that—beyond personal prejudices—our laws are at fault for some of this profiling and unequal treatment. Living at the intersection of identity is something that will remain difficult for individuals across the globe, but solutions to the issue of unequal policing exist in creating laws that lack prejudice while continuing to fight for the rights of all people. We’ve come a long way in the right direction, and I’m confident that can continue.

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