

Race, Poverty, and the Crime-Centered Response to Domestic Violence

*A Comment on Linda Mills's Insult to Injury:
Rethinking Our Responses to Intimate Abuse*

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Linda Mills (2003) criticizes our current crime-centered approach to domestic violence. I share her concern that this approach is harmful for women (or at least, for some women). I disagree, however, with Mills's analysis and with the reform proposal that flows from that analysis. As I describe in this essay, Mills focuses mostly on psychological harms rather than material and social conditions. The result is to diminish the importance of power in understanding the phenomenon of domestic violence, the political position of the battered women's movement, and the design of an appropriate response.

THE RISKS ASSOCIATED WITH CRIME-CENTERED RESPONSES

Before turning to Mills's (2003) work, it is useful to examine what I believe are the most important criticisms of our current crime-centered approach to domestic violence. A number of activists and scholars have criticized the "massive over-reliance on criminal strategies by advocates for battered women" (Maguigan, 2003, p. 431; see also Coker, 2000, 2001; Incite!, 2004; Martin, 1998; Renzetti, 1998; Richie, 2000; Rivera, 1994). These scholars and others have been particularly critical of the most prominent policy features of this focus: mandatory arrest and no-drop prosecution. Mandatory policies have been criticized for

being paternalistic and limiting women's autonomy (Mills, 1998), having a disparate negative impact on men and women of color (Maguigan, 2003; Richie, 2000), and increasing women's risk of future violence (Sherman, 1992). Mandatory arrest policies have dramatically increased the number of women arrested (Hamberger & Potente, 1994), most of whom, research suggests, were either acting in self-defense or were responding to physical abuse directed at them (Hamberger & Potente, 1994). Even if these victims are not further sanctioned as a result of arrest, they may lose the protections afforded by domestic violence legislation, such as child custody laws that disfavor a spouse-abusing parent, and may find themselves ineligible for battered women's programs. As Osthoff (2002) noted,

Battered women who become defendants frequently find that their entire history of victimization gets erased when they are labeled *perpetrators*. Some seek services from battered women's advocacy programs and are turned away. (pp. 1529-1530)

In addition to these concerns, the reliance on punitive criminal intervention methods increases the risk of state interference and control in the lives of battered women, particularly poor women of color and undocumented immigrant women (Coker, 2000). These women are already vulnerable to intersecting layers of government control through child welfare (Roberts, 2001, 2002), immigration (Espinoza, 1999), criminal justice (Bush-Baskette, 1998), and Temporary Assistance for Needy Families (TANF; Handler & Hasenfeld, 1997; Raphael, 1995, 1996, 2000). Mandatory domestic violence policies increase the risk of further entanglement in these systems. This occurs, for example, when women's (unrelated) criminal offending is exposed, when mandatory arrest practices threaten women's probation or parole status, when undocumented women are made more vulnerable to deportation, or when child welfare departments are prompted to investigate neglect or abuse claims based on a domestic violence incident report.

Being poor, but particularly being African American and poor, increases dramatically one's risk of coming under the control of the criminal justice system. This fact is well understood with regard to African American men (Harrison & Karberg, 2003). What is less well known is that African American *women* also

suffer disparate arrest and incarceration rates as compared to other women (Bush-Baskette, 1998; Harrison & Karberg, 2003). In 2002, African American women were more than twice as likely as Latinas and five times more likely than White females to be incarcerated (Harrison & Karberg, 2003). These shocking disparities are primarily the result of drug war enforcement policies (Blumstein, 1993, 2000) that focus enforcement in inner-city neighborhoods (Coker, 2003; Fagan, West, & Holland, 2003; Meares, 2000) and levy significantly higher penalties for crack versus powder cocaine (U.S. Sentencing Commission, 2002). In addition, sweeping conspiracy laws (Goldfarb, 2002) coupled with mandatory sentencing (Raeder, 1993) result in convictions and long sentences for women engaged in minor drug offending and even for women guilty of nothing more than having a boyfriend or husband who is involved in the drug trade (Goldfarb, 2002). The result of these drug war policies is that a significant number of women in low-income neighborhoods are at risk for criminal justice control. Battered women who are on probation or parole are hesitant to call the police because they are aware that mandatory arrest policies increase their *own* chances of arrest, and arrest could mean a parole or probation violation (B. Person, personal communication, April 2004).

Being poor, but particularly being African American and poor and female increases one's risk of child welfare involvement (Gelles, 1993; Roberts, 1997, 2002). African American children account for 42% of all children in foster care, although they represent only 17% of U.S. children (Roberts, 2002, p. 8). The intersection of punitive approaches to child welfare with punitive approaches to domestic violence results in the removal of children from mothers who are abused (*Nicholson v. Williams*, 2002). In many locales, police are required to report to child welfare every case of suspected domestic violence where children are in the home. As one woman reported of her experience after calling the police,

The call to the police opened up so many doors. Then I had three different services watching me and with the kids. Child protective put me at risk for losing my children; they said, next time they'll take the kids! I always thought the police were there to help me. I would never call them again. (*Family Protection and Domestic Violence Intervention Act of 1994*, 2000, p. 55)

Immigrant women and particularly undocumented women face the possibility of deportation with the attendant risks of economic deprivation, separation from children, and more and even greater violence in their home country (Espinoza, 1999; Kelly, 1998; Orloff, Lang, & Klein, 1995; Perilla, 1999). Conviction for domestic violence is a deportable offense (8 U.S.C. 1227), and although the attorney general may waive deportation for those acting in self-defense, some battered women's violence is unlikely to fit the definition of self-defense (Coker, 2001).

If these mandatory approaches deterred abusers, poor African American women, undocumented women, and others at risk of state control might conclude that the increase in safety warranted the increased risk of state intervention in their own lives. Unfortunately, the evidence for deterrence is weak. At best, arrest has a modest and short-lived deterrent effect (Dunford, Huizinga, & Elliott, 1989; Hirschel, Hutchison, & Dean, 1992; Pate & Hamilton, 1992; Sherman et al., 1991). At worst, for women whose partners are unemployed, arrest may actually *increase* their chances of being reabused (Sherman, 1992). In addition, because battered women are often the best judge of whether arrest will increase their safety (Buzawa, Hotaling, Klein, & Byrne, 1999), mandatory arrest policies that ignore their wishes are particularly dangerous.

The disproportionate federal spending on criminal justice responses to domestic violence deflects attention from women's critical material needs (e.g., see Browne, Salomon, & Bassuk, 1997; Coker, 2000; Ptacek, 1999). Domestic violence is a significant source of women's poverty (Lloyd & Taluc, 1999; Raphael, 1996; Tolman & Rosen, 2000; Zorza, 1991), and poverty makes women more vulnerable to domestic violence. Changes in women's access to material resources can increase their safety. Research by Sullivan and Bybee (1999) found that when advocates assisted battered women with access to material resources and community services, women experienced less reabuse than did women who did not receive such assistance. Yet millions of federal dollars are spent on the criminal justice response to domestic violence compared with relatively few dollars for transportation, emergency relocation assistance, housing, child care, job training, education, and civil legal representation. This disconnect between public policy and the material conditions of women's lives allows law makers to celebrate reforms in domestic violence criminal

law while cutting public benefits that could help women achieve safety (Schneider, 2000).

Mandatory policies have the virtue of providing a bright-line standard for police and prosecutor behavior thereby making it easier for advocates to hold these actors accountable for responding to the needs of battered women (Stark, 1996, 2000). Given the problems associated with these policies, the dilemma for battered women's advocates is to create mechanisms that further public control of police and prosecutor response without simultaneously increasing state control of women. One method of doing this, as already suggested, is to press for more public spending on women's economic needs as a method of violence prevention. A second method is to initiate citizen review panels that monitor police response to domestic violence calls and serve as a complaint center for advocates and battered women (Coker, 2000). A third method is to adopt Sherman's (1992, pp. 255-256) proposal for police "mandatory action" policies. These policies would require police who respond to domestic violence calls to choose from a list of actions such as offering a victim transportation to a shelter or other location, taking the suspect to a detoxification center, or making an immediate arrest when the victim prefers arrest. A fourth measure would replace no-drop prosecution policies with programs that allow battered women to choose restorative justice and other alternative adjudicatory processes (Coker, 2002).

MILLS'S ANALYSIS

Mills (1996, 1997, 1998, 1999) has long been a critic of mandatory arrest and no-drop prosecution policies as well as a critic of the general crime focus of current domestic violence intervention. In her recent book, *Insult to Injury: Rethinking Our Responses to Intimate Abuse* (2003), Mills presents an analysis of how it is that current domestic violence interventions center so much on crime and the criminal justice system, the harms this focus presents for women (and for men), and a proposal for an alternative intervention system. With each area of discussion, Mills offers insights and criticisms that are useful and important, but in each account, the benefits of those insights are limited by her focus on the psychological at the expense of a larger discussion of the social and politi-

cal landscape. The result of this method of analysis is to minimize the importance of social and political power, both within relationships that experience violence and with the relationship of the battered women's movement to the larger culture.

**CRIME-CENTERED APPROACHES:
COUNTERTRANSFERENCE OR POLITICS?**

Mills's (2003) explanation for the prominence of criminal justice responses to domestic violence is that "mainstream feminists"—defined as "people who self-identify as feminist but adhere to a monolithic legal approach to domestic violence" (p. 4)—are motivated by countertransference (pp. 54-55). Countertransference refers to "the emotional reaction by the professional to [a] woman's history of abuse" (Mills, 2003, p. 51) and her emotional reactions. Mills relies on the work of Yael Danieli who described negative therapist reactions to holocaust survivors. Mills sees parallels to Danieli's descriptions in the "subconscious reactions of mainstream feminists to men and women in abusive relationships" (2003, p. 57). Those negative reactions include silencing women and men and experiencing survivors' guilt because one's experience of violence was not as bad as that of the client. Furthermore, "the counter-transference reactions of mainstream feminists and some helping professionals cause them to express rage against the man, shame for the woman [because she did not fight back], and denial that a woman's complex and individualized story is relevant" (Mills, 2003, p. 57). In addition, the failure of mainstream feminists to address their own experiences of abuse may result in "projection" whereby they deny women the opportunity to tell their story of abuse because "those conversations remind [mainstream feminists] . . . of the abuse they themselves have not addressed" (Mills, 2003, p. 79).

There are three important lessons that I draw from this portion of Mills's (2003) analysis. First, despite the ubiquity of domestic violence, there remains a pervasive silence about the experience. Mahoney (1991) similarly described the manner in which courtroom actors—judges, jurors, and witnesses—deny their own vulnerability to violence and their own experiences of violence. A second lesson derives from Mills's point that those working with battered women should investigate their own reactions to

women's stories of violence and the ways in which their own experiences of violence color their work. A third and related lesson is that individual women's experiences are ignored when criminal justice actors, advocates, and judges presume that the experience of abuse is the same for everyone and that the same remedies will work for everyone.

Despite these strengths, Mills's (2003) analysis falls short as an explanation for the current crime focus of domestic violence intervention. She attributes too much power to "mainstream feminists," and she ascribes too much importance to the personal experiences of individual actors. Mills gives no attention to the larger political landscape in which domestic violence policies and practices developed. The current focus on criminal justice responses to domestic violence is a result, in part, of a general U.S. trend to respond punitively to all manner of social problems (Garland, 2001; Roberts, 2002; Simon, in press). This punitive approach intersects and perhaps is driven by the racist lens through which the social problems of poverty (Roberts, 2002), child neglect/abuse (Gelles, 1993; Roberts, 2002), and crime (Carbado, 2002; Cole, 1999; Roberts, 2002; Russell, 1998) are understood: Welfare mothers, neglectful mothers, and criminals are coded Black (Peffley & Hurwitz, 1998; Roberts, 2002). It is no accident that the Violence Against Women Act (VAWA), the most comprehensive piece of U.S. domestic violence federal legislation ever enacted, was part of the 1994 crime bill (VAWA, 1994). It is true that feminists worked hard for VAWA's passage (Brooks, 1997; Rivera, 1996; Schneider, 2000), and many battered women's advocates supported a proarrest position. However, feminist support was not as monolithic as Mills's argument suggests. Many individuals in the battered women's movement opposed an overreliance on the criminal justice system and, specifically, the adoption of mandatory arrest policies (Maguigan, 2003; Richie, 2000). Feminists also supported more financial assistance and civil legal assistance for battered women (Schneider, 2000), but crime control proposals have been by far the most politically viable.

PATHOLOGIZING "STAYING"

Mills's (2003) primary objection to mandatory policies is that the narrative embodied in those policies and promoted by main-

stream feminist supporters causes psychological and physical injury to women who experience domestic violence. One such injury results from the way in which women who decide to stay in abusive relationships are presumed to be "helpless, dependent, or ill" (Mills, 2003, p. 66). Mills argues that women are encouraged to adopt this view of themselves, and when they do so, they are less likely to "make decisions that help keep them physically safer" (2003, p. 66).

A number of scholars have expressed concerns about the societal assumption that battered women *should* separate, that separation will always increase their safety, and that "failure" to separate suggests pathology (see, e.g., Mahoney, 1991, 1994; Perilla, 1999; Schneider, 2000). As Mahoney (1991, 1994) noted, women who are perceived as staying in abusive relationships are presumed to be crazy, lying, or both.

In contrast to Mills's (2003) focus on the psychological harms to women that result from pathologizing their choices, these scholars are concerned with the way in which a focus on separation renders invisible women's resistance to domination (Mahoney, 1994; Schneider, 2000; Wittner, 1998). Placing battered women's struggles in a larger context, Mahoney (1994) wrote,

All work with subordinated people confronts . . . the challenge of analyzing structures of oppression while including an account of the resistance, struggles, and achievements of the oppressed. (p. 59)

Schneider (2000) and Mahoney are concerned that law and culture create a false dichotomy between "victimization" and "agency" and that "agency in battered women [is equated] with separation from the relationship" (Mahoney, 1994, p. 60). This belief has negative outcomes for battered women. For example, judges and jurors believe that women who do not fit stereotypes of victim behavior were acting in revenge rather than self-defense when they killed abusive partners (Schneider, 2000). In child welfare cases, once the court determines that a mother is a "battered woman," her acts to protect her children are rendered invisible; nothing she does will persuade the court that she is strong enough to protect her children (Mahoney, 1994).

EQUATING WOMEN'S NONVIOLENT AGGRESSION WITH MALE VIOLENCE

The second harm Mills (2003) identifies with the mainstream feminist narrative is that it denies women the ability to discuss their own aggression and violence. The failure to acknowledge women's aggression increases their risk of physical injury because women's aggression promotes male violence. Mills writes,

To the extent that women in intimate relationships, through their emotional or physical aggression, are engaged in violent relationships that "kick off" a male partner's violence, we do women a disservice when we do not help them understand more fully what they may bring to the violent dynamic. (2003, p. 99)

Mills concludes that the current focus on men's physical aggression against women means that women are unable to "take responsibility for their own emotionally aggressive impulses or reactions" and "men [are] . . . prohibited from developing a language to talk about their own experiences of emotional or physical abuse by their female partners" (2003, p. 78.) Mills further explains,

If men feel women cause them to become violent, we need to hear them out and evaluate whether their complaints may have some merit, without blaming women for men's abuse. Letting women take responsibility for whatever aggression they bring to the relationship can only serve to strengthen their position of insight, action, and power in the relationship overall. (2003, p. 96)

Mills criticizes feminist research that "minimize[s] men's accounts of women's aggression," noting that "'nagging,' 'going on and on,' or 'failing to shut up,' as described by violent men, is universally interpreted [by feminist researchers] as an excuse for violence and always dismissed as irrelevant to the man's provocation" (2003, p. 95). She writes, "What if men really do feel that women cause them to become violent because women complain too much and nag and harass them for no good reason?" (2003, p. 95).

But, of course, it is not inconsistent for battering men to really believe that women cause them to become violent and to also

offer it as an excuse for their behavior. As Ptacek (1988) described, those accused of battering, like others accused of socially unacceptable behavior, "appeal to [socially approved] standard rationalizations" (p. 141) to explain or excuse their conduct. Thoughtful scholars as well as counselors who work with abusive men do not deny that men really believe the narratives they tell about their use of violence (Adams, 1988; Carrillo & Goubaud-Reyna, 1998; Edleson & Tolman, 1992; Pence & Paymar, 1993; Ptacek, 1988). Indeed, the point of much of the curriculum in most batterers' programs is to move battering men to abandon these narratives that encourage them to feel victimized and controlled when women are critical or demanding (Edleson & Tolman, 1992; Pence & Paymar, 1993).

More troubling in Mills's (2003) analysis is her implicit equation of passive aggressive behavior (by women) with physical violence (by men). This assessment minimizes the importance of power inside battering relationships in much the same way that Mills minimizes the importance of power in her explanation for the prevalence of criminal justice responses to domestic violence. As Stark (1996) described, battering consists not only of the acts of an individual but also the manner in which culture and power "enter" a conflict and "merge with the batterer's pattern of control" (p. 121). As I (Coker, 1999) noted elsewhere,

Social supports for battering include widespread denial of its frequency or harm, economic structures that render women vulnerable, and sexist ideology that holds women accountable for male violence and for the emotional lives of families, and that fosters deference to male familial control. (p. 39)

Mills's (2003) failure to address relations of power characterizes much of the book. She begins by describing an incident in which a mother hits her young son. The son responds by hitting his mother in the stomach. Mills uses this episode to make two points. First, she argues that we fail to recognize that this mother is training her child to use violence and we do not hold the mother responsible for having done so. Second, we feel compassion for the little boy, but if he hits his wife when he becomes a man, we no longer feel compassion for him. Mills's analysis overlooks the importance of gender, race, and economic status in shaping social

views of violence and responsibility. The mother's race and economic status are important determinatives in whether she is held accountable for her child abuse (Roberts, 2002). Similarly, condemnation (or compassion) for the grown man is likely to be shaped, in part, by the degree to which his abused partner conforms to expectations for appropriate female behavior.

Mills (2003) is right to challenge what has become domestic violence reform orthodoxy in which there are only batterers (mostly men) and victims (mostly women). Battered women are expected to follow prescribed protocols of intervention—cooperate with police, file a civil protection order, remain separated from the batterer (Wittner, 1998). If they fail to do so, they are presumed to be acting against their own best interest. Their “self-destructive” behavior is either because the batterer coerced them or because they “don't know any better” (Wittner, 1998, p. 89). In either case, it is not because they made a rational and reasonable choice under unfair conditions (Mahoney, 1994). This orthodoxy also fails to distinguish between battering—characterized by “a systematic pattern of using violence, the threat of violence, and other coercive behaviors and tactics, to exert power, to induce fear, and to control another person” (Osthoff, 2002, pp. 1526-1527)—from acts of domestic violence or abuse that are not battering. As Osthoff (2002) argued, this failure makes it difficult for individuals to discuss their own use of violence—if they do, they risk being labeled a *batterer*—and makes it difficult to discuss *women's* use of violence for fear that the context in which their violence occurs will drop out entirely.

Unfortunately, Mills's (2003) analysis does little to clarify what distinctions should matter. She adopts Johnson's (1995) distinction between “common partner violence,” which involves “low-level violence,” and “patriarchal terrorism,” which “involves life-threatening violence over which the victim has little or no apparent control” (p. 107). But Mills never develops this distinction into a meaningful set of criteria, nor does she adequately explore what those differences might mean in terms of understanding the abuse, understanding the importance of women's aggression, or determining the nature of the intervention required.

COMPARING MILLS'S INTIMATE ABUSE CIRCLES WITH RESTORATIVE JUSTICE PROCESSES

Mills's (2003) lack of focus on the role power plays in understanding and responding to domestic violence surfaces again as a problem for her reform proposal. Her equation of female nonviolent aggression with male violence results in a process that diminishes personal responsibility for violence. Though inspired by restorative justice, her proposal mutes the moral terms that characterize most restorative justice processes.

INTIMATE ABUSE CIRCLES

Mills recommends the development of Intimate Abuse Circles (IACs), a process inspired by restorative justice processes. Mills relies, in part, on the work of Pennell and Burford (2002) whose work with family group conferencing in the child welfare context is a leading example of feminist restorative justice work. Mills would rely on a team of mental health professionals, the Intimate Abuse Assessment Team, to evaluate the level of fear and danger present in a relationship and ensure that participation by the parties is voluntary. The assessment team would decide whether a couple is appropriate for IACs.

Mills (2003) provides conflicting information regarding whether some cases should be deemed too dangerous for IACs. On one hand, she writes that an IAC is likely most effective with "common partner violence" as opposed to "life-threatening . . . patriarchal terrorism" (Mills, 2003, p. 107). Confusingly, she also writes that if "coupled with education [IACs] might be an effective response . . . to *life-threatening violence* [italics added]" (Mills, 2003, p. 108). Further complicating matters, the case Mills uses to illustrate the benefits of the IAC method involves severe abuse including hitting with boxing gloves, choking with a rope, rape, and the abuser's threatening act of sleeping with a gun under his pillow.

The IAC would use a process of "narrative therapy" designed to "expose the underlying narratives . . . of men and women in violent relationships, while also offering methods of authoring new ones" (Mills, 2003, p. 121). The process might involve identifying "triggers," such as "when you said this, that happened"

(Mills, 2003, p. 117). A trained facilitator would guard against victim blaming. Similar to Navajo peacemaking (Coker, 1999; Zion & Yazzie, 1997) and family group conferencing (Braithwaite & Daly, 1994; Umbreit & Zehr, 1996), Mills (2003) would include family members and friends in the process of intervention. The professionals in the process are to “teach alternative methods of communication that encourage participants to take responsibility for their own contributions to the dynamic [of intimate abuse] and to articulate the ways that they have felt hurt or marginalized by the other person” (Mills, 2003, p. 113). For example, in the case described above, the man’s first act of violence was prompted by the woman’s decision to leave their 1-year-old child in the care of her 11-year-old son while she ran errands. The man was violent again when the woman returned home after staying with a friend for 3 days. Mills notes that the IAC process with the couple might involve the woman’s accepting responsibility for leaving her daughter with her son and for leaving with their daughter without contacting the man (2003, p. 117). The man would take responsibility for his violent acts.

COMPARING IACs WITH RESTORATIVE JUSTICE

Mills’s (2003) proposal, though similar in form, differs significantly from other restorative justice proposals. Restorative justice processes, such as family group conferencing, involve a meeting or series of meetings in which the offender and the victim are present along with family and friends of each (Braithwaite & Daly, 1994; Coker, 1999; Umbreit & Zehr, 1996). A trained facilitator and, in some programs, relevant professionals (e.g., alcohol treatment counselors) as well as criminal justice representatives may also participate. Braithwaite (1989), scholar and leading proponent of restorative justice processes, argued that punitive criminal justice sanctions create stigmatizing shame that encourages offenders to adopt an offending identity. Furthermore, victims are given little voice in a system that is focused on punishing the offender rather than healing the victim. By contrast, the inclusion in restorative justice processes of the offender’s “community of care”—friends, family, mentors—results in “positive shaming” that is more likely to decrease reoffending (Braithwaite, 1989). This positive shaming is “reintegrative” in that the “expression of

community disapproval [is] . . . followed by gestures of reacceptance into the community" (Braithwaite, 1989, p. 55). In addition, restorative justice processes allow victims a significant measure of control in deciding outcomes in criminal cases and give victims the opportunity to directly address the offender.

The process usually results in an agreement in which the offender provides compensation to the victim and agrees to a set of rehabilitative actions (Braithwaite & Daly, 1994). For example, offenders may agree to participate in alcohol or drug treatment, provide community service related to the offending, and provide money or in-kind compensation to the victim for his or her injuries and related economic losses.

The most extensive use of restorative justice programs has been in Australia and New Zealand and involves juvenile offenders accused of minor crimes (Braithwaite, 1999). However, family group conferencing is currently used with child welfare cases in the United States and Canada (Pennell & Burford, 2002), with juveniles in Australia who are accused of sexual assault (Daly, Curtis-Fawley, & Bouhours, 2003), and, in at least one program, with adult sexual assault offenders in the United States (Koss, Bachar, & Hopkins, 2003). In the United States and Canada, domestic violence cases are seen in Navajo peacemaking and similar processes in other indigenous communities (Austin, 1993; Coker, 1999; Goel, 2000; Zion & Yazzie, 1997).

In the majority of programs, restorative justice is offered either as a diversionary program—that is, after an arrest but before the alleged offender is charged with a crime (Koss et al., 2003)—or as an alternative sentencing program after the offender pleads guilty (Goel, 2000). In the case of diversion, many programs require that the defendant admit having engaged in the conduct that gave rise to the charge, if not to his guilt (Daly et al., 2003; M. Koss, personal communication, May 2003). Family conferencing in child welfare cases generally results from a child welfare department referral to conferencing where at least one party (usually the abusive party) is pressured to attend at the risk of permanent loss of his or her children (Pennell & Burford, 2002).

A number of scholars have advocated for broader use of restorative justice processes in cases of domestic violence (Braithwaite & Daly, 1994; Coker, 1999, 2002; Hopkins, Koss, & Bachar, 2004; Martin, 1998) and sexual assault (Daly et al., 2003; Koss et al.,

2003). These advocates stress the importance of ensuring victim safety through the use of safety planning and measures to ensure that the victim is a willing participant (Coker, 1999; Koss et al., 2003; Pennell & Burford, 2002). Restorative justice processes provide a range of potential benefits for women who are victims of sexual assault or domestic violence. First, offenders are more likely to be held accountable in a meaningful way than is true in ordinary criminal justice processing. This is particularly true in acquaintance sexual assault cases that are often dropped or, if taken to trial, often result in acquittal (Daly et al., 2003; Koss et al., 2003). Restorative justice processes are more likely to result in monitoring and rehabilitation of the offender and in compensation and apology for the victim (Daly et al., 2003; Koss et al., 2003). A second advantage, particularly salient in domestic violence cases, is that these processes give women an opportunity to engage their families and friends in confronting their partner or ex-partner about his violence (Coker, 1999, 2002; Presser & Gaarder, 2000). A third advantage is that they offer the opportunity to disrupt networks of familial and friend support for abuse (Coker, 1999). The importance of these networks is underscored by Jeffrey Hearn's (1998) research involving in-depth interviews with abusive men. Hearn found that male friends of an abusive man tend to either say nothing about his violence or actively support his violence. A fourth advantage of restorative justice processes is that these approaches can marshal material resources for battered women (Braithwaite & Daly, 1994). Agreements may take the form of concrete assistance such as compensation from the abuser or his family to the battered woman for injuries, assistance with transportation or child care, and civil law remedies such as child support and protection orders (Braithwaite & Daly, 1994).

Restorative justice processes can and should engage in fact-finding of the kind that encourages victims and their supporters to express the harms that resulted from the abusive conduct (Coker, 1999, 2002). However, restorative justice processes do not involve fact-finding bodies in the manner of courts and juries. They cannot adjudicate facts, determine who is the guilty party, or determine who is lying and who is telling the truth. They rely, instead, on rules for participation as proxies for these determinations: (a) The criminal justice system does the initial sorting of

victim and offender based on the existence of sufficient evidence to warrant arrest or criminal charges (Daly et al., 2003; Koss et al., 2003); (b) the restorative justice process occurs only if the reputed offender first either admits guilt or, with some programs, admits having engaged in the conduct that gives rise to the offense for which he or she was arrested or the offense for which he or she is now subject to charge (Daly et al., 2003; M. Koss, personal communication, May 2003); and (c) *both* victim and offender must agree to participate in the process. In addition to these procedural protections, the process creates incentives for participants to tell the truth, because the other parties in the process are likely to know them too well to make lying advantageous (Coker, 1999). None of these sorting mechanisms is perfect, but they afford some measure of due process protection for the accused while ensuring that the restorative process can proceed based on the assumption that the accused engaged in the conduct portion of the alleged offense.

Restorative justice processes in domestic violence and sexual assault cases must operate with not only explicit antiviolence norms but also with gender egalitarian norms (Coker, 1999, 2002). Braithwaite (1989) recognized early that reintegrative shaming, of the kind proposed by restorative justice advocates, requires that the law in question "represent a clearly majoritarian morality" (p.14). This poses a problem for the use of restorative justice processes in domestic violence and sexual assault where there is disagreement about appropriate gender behavior and responsibility for male violence (Busch, 2002; Frederick & Lizdas, 2003; Henderson, 1992; Hooper & Busch, 1996; Stubbs, 2002). Even when participants in conferencing condemn domestic violence in the abstract, they may fail to condemn other forms of control and domination. In addition, they may not condemn violence when it is prompted by the woman's violation of gender norms regarding sexual fidelity, adequate child care or housework, or sexual access.

The emerging restorative justice programs for sexual assault and domestic violence cases have developed mechanisms to address these concerns. For example, RESTORE (Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience), a program founded by Mary Koss in Pima County, Arizona, requires that the alleged offender do the following: (a)

acknowledge that the sexual act in question occurred, (b) participate in a psychosexual evaluation and follow through with treatment recommendations, and (c) begin the conferencing session by "telling everyone present what they did to the victim/survivor" (Koss et al., 2003, p. 392). The redress agreement includes mandatory 12-month supervision and may include an apology to the victim; compensation to the victim for lost wages, medical, and counseling expenses; a "stay away" agreement; community service; and "culturally specific methods of repair, such as Native American ceremonies or church involvement" (Koss et al., 2003, p. 392).

Elsewhere, I suggest an extension of current restorative justice practice for work in racially and economically subordinated communities (Coker, 2002). This transformative justice model would address the ways in which racism and economic subordination as well as childhood experiences of abuse relate to a man's use of violence in his intimate relationships with women while stressing personal responsibility for the decision to use violence (Coker, 2002). The model draws from programs that work with men of color who have battered their female partners (Almeida & Dolan-Delvecchio, 1999; Carrillo & Goubaud-Reyna, 1998; Duran, Duran, Woodis, & Woodis, 1998; Tello, 1998; Tong 1998; Wah, 1998; Williams, 1998). These programs seek to enable men to redefine their masculinity in ways that do not depend on oppressing women. A related process is used by some Navajo peacemakers who "employ traditional Navajo stories that contain gender egalitarian themes to enlist the language of cultural and political sovereignty to create conceptions of masculine identity that support gender egalitarianism" (Coker, 1999, p. 146).

In contrast to these other models, Mills's (2003) proposal does not operate with clear normative judgments about legitimate conduct. One such important normative judgment is that people make choices about their use of violence, and society can and should make moral judgments about those choices (Kahan & Nussbaum, 1996; Nourse, 1997). A second and relatively more recently adopted normative judgment is that women have a right to leave relationships with men, and men do not have a right to force women to stay or physically retaliate against women if they leave (Nourse, 1997).

Mills's (2003) proposal differs even more from feminist restorative justice models that operate with explicit gender egalitarian norms (Braithwaite & Daly, 1994; Coker, 1999, 2002). Mills notes that facilitators in IACs must guard against "victim-blaming" (p. 112), but she fails to recognize the conundrum her analysis creates: If women's nonviolent aggression is responsible for men's use of violence against them, what account would be labeled *victim blaming*? Responsibility becomes confused. Indeed, if men are victimized by women's emotional abuse, which Mills characterizes as every bit as harmful as men's physical abuse of women, then how are the IAC facilitators to determine who the victim is that they should protect from victim blaming?

CONCLUSION

Mills's (2003) contribution to the debate about domestic violence criminal justice intervention is important. Her approach has the benefit of encouraging all of us who are involved in anti-domestic violence work to examine the manner in which our personal histories of violence may influence how we understand our work. Mills's challenge to what has become the orthodox response to domestic violence is important. The current orthodoxy relies too heavily on crime control interventions despite the fact that many battered women have no contact with the criminal justice system. It relies overly much on crime control rhetoric despite the way in which this is likely to alienate some women of color, particularly those who have felt the brunt of the current war on drugs, more aptly named the "war on poor people" (Chesney-Lind, 1998) or the "war on Black women" (Bush-Baskette, 1998).

Unfortunately, Mills's (2003) analysis and reform proposal ultimately fall short in addressing the reality of women's lives. Her focus on the psychological over the material, political, and social weakens her analysis. This focus leads her to overemphasize the shortcomings of mainstream feminists as opposed to examining the intersecting forces that create the current crime control focus (Simon, in press). This psychological focus mutes the importance of material and political power differences between women and between women and men. Mills minimizes men's responsibility for the use of violence when she treats women's nonviolent aggression as the moral equivalent of violent conduct. She

minimizes the importance of gender power differences in understanding the harms that flow from violence. She further confuses the question of responsibility when she suggests that women's nonviolent aggression may cause men to use violence.

The chorus of critics of the current crime control focus of domestic violence policies is growing. It is time that we challenge this focus and face up to its harms. However, in examining alternative interventions to the current crime focus, we must not lose sight of one significant benefit of that focus: the potential for emphasizing that domestic violence is morally wrong. Our alternative interventions must do no less.

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