

## *Rethinking Criminal Justice Responses to Intimate Partner Violence*

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*Insult to Injury: Rethinking Our Responses to Intimate Abuse* is Linda G. Mills's indictment of the overly criminal-justice-reliant response to domestic violence in the United States. Mills advocates a single, new intervention in domestic violence cases to replace the current system of arrests, prosecution, and jail time. (About civil orders of protection, the work is curiously silent.) In this essay, I will argue that although Mills makes some thought-provoking points and some accurate criticisms of our current response to domestic violence, her own particular view of domestic violence causation leads her to misread history and oversimplify what is developing into a provocative, serious, and complicated debate about the public response to domestic violence.

In her brief against mandatory arrest policies and overreliance on arrest and prosecution, Mills astonishingly presents her case as if she were the lone prophet in the wilderness. As most readers of *Violence Against Women* are aware, the effectiveness of criminal justice approaches and the issue of mandatory arrest in particular have been extensively discussed by a variety of noted scholars, researchers, and activists. Miller (1989, 2000) has discussed mandatory arrest policies and their effects on women of color and poor women. Early on, Zorza (1994) analyzed the implications of arrest and prosecution of batterers, as have Buzawa and Buzawa (1993, 1996). In a recent survey of the literature on the effectiveness of the criminal justice response, Iovanni and Miller (2001) concluded that the system has only a limited ability to keep women safe due to the fact that the problem has its roots in the structured, gendered inequality in society. Coker's (2000) survey of the research literature also led her to conclude that for significant numbers of poor women of color, the benefits of mandatory

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arrest are offset by its harmful effects. She suggested a material resources test to evaluate any proposed anti-domestic violence interventions. And within the last 5 years, researchers have suggested that dual arrests or arrests of women by police officers are occurring more often in jurisdictions with mandatory arrest laws (Hirschel & Buzawa, 2002; Martin, 1997; Saunders, 1995).

The book's inadequate index and lack of bibliography make it difficult to assess the breadth of Mills's research. But the text itself makes no mention of this rich, ongoing dialogue in the domestic violence field. The author's failure to reference this impressive body of work causes speculation that Mills developed the contents from much earlier work that is now recycled in book form. Amazingly, Princeton University Press's peer review process did not uncover and remedy this defect, which produced a book that immediately seems dated.

By failing to acknowledge the many experts already working to establish more nuanced responses that are less reliant on arrest and incarceration, Mills constructs straw women, "mainstream feminists" (whatever that means), who, unfeeling and insensitive to the needs of battered women, persist in supporting a moralistic and punitive response that punishes batterers and makes women unsafe in the process. Demolishing such straw women is not difficult. The reality is more complex. In fact, the field is made up of a diverse group of advocates, researchers, and survivors with a vast array of thoughtful positions, often causing dissension and contention. Using the term *mainstream feminists* for just one group denigrates the importance and contributions of the others. But does it matter? It matters because the author's uninformed exercise represents a gratuitous attack on the field, which, if taken up by the media, surely cannot help the cause of battered women in general.

Mills's particular view of the causes of domestic violence (chapter 4) serves as the basis for her attack on mandatory arrest and justification for her new remedy. This approach presents a significant problem, because it will, in the end, serve to lessen concern about the plight of battered women. I submit that the author's theory about the cause of domestic violence takes into account only one type of aggression that usually manifests itself among couples who present themselves for therapy. For according to Mills, domestic violence is caused by differing "attachment

styles," women's aggression in relationships such as "nagging and going on and on" (p. 95), and the legacy of bad parenting causing a dynamic of aggression in relationships that can be cured, because both parties have equal guilt and responsibility:

If we see the entire violent dynamic—mothers coach girls and boys toward violence because of the physical and emotional abuse they experience at the hands of men and women; fathers coach boys and girls toward violence because of the physical and emotional abuse they experience at the hands of men and women; and men and women who abuse each other coach each other toward violence—we can start to develop a method for unraveling and addressing it. (p. 90)

Mills asserts that research demonstrates that husbands and wives commit equal amounts of physical violence in relationships. She also contends that women commit psychological abuse and that this psychological abuse predicts physical aggression: "Reducing psychological aggression in both partners is likely to reduce injurious physical abuse against women" (p. 74). Domestic violence is thus part of a dynamic between two people rather than a harm committed by one person against another. "Women are abusive in all forms and expressions in the intimate sphere, and it is up to feminists to do something about it," concludes Mills (p. 9).

Although Mills asserts that more than 100 studies confirm her assertions, the text and endnotes refer only to a smattering of formal research projects, many of which were undertaken by Straus, Gelles, and colleagues using the now-controversial Conflict Tactics Scales. Some rather odd substantiations are also provided including references to the mocking songs of Bellonese women cited as proof of female aggressive tactics. Again, Mills simplifies the debate by choosing one extreme stereotype over another: Women are not hopeless, passive, helpless victims; they are aggressors equal to men. Clearly the truth is some version in between.

It soon becomes apparent that one clear motivation for Mills's contentions about women's aggression and violence is her strong need to remove women from the status of victims: "By recognizing women's aggression, we can think differently about women's power and agency. Women need not see themselves solely as victims anymore" (p. 143).

Mills makes clear her abhorrence for gendered theories of intimate partner violence that she says portray women as so physically weak and emotionally subservient to men that they are incapable of any purposive action. This resistance to the victim label is certainly typical of feminist debate today, a discourse that has made the field of domestic violence even more contentious than it need be. For this reason, Lisa Brush (2003) has called domestic violence the “Achilles heel of feminism”:

This is the paradox of liberalism. Women cannot be recognized as vulnerable lest we jeopardize our claims to equality. But women cannot be equal without some redress of the vulnerabilities that relegate us to second class status. (p. 125)

Mills presents her view of domestic violence as a counterpoint to what she calls the one-dimensional theory of causation based on notions of patriarchal power and control developed by mainstream feminists. Here again, Mills fails to appreciate that the field has moved beyond this simplistic theory to more complex formulations, so much so that some pioneers (Schneider, 2000) have decried the fact that the principle of patriarchal control is in danger of being lost altogether.

Research, however, does continue to demonstrate that theories of domestic violence causation need to include the gendered nature of battering, its occurrence within the context of gender inequalities, and the use abusers make of threats of violence and actual violence to dominate, humiliate, and control their partners. From multiple research studies with women in shelters (e.g., Raphael, 2000; Riger, Ahrens, & Blickenstaff, 2000), we learn of the specific use to which violence is put to isolate and control victims. Women are not allowed to talk on the telephone, visit their friends, attend church, decide on their own what to wear, or go to school or work. Some women are required through threats of violence to provide sexual favors to their partners’ friends in what is a particular form of humiliation. Others describe being locked in closets for days on end or being prevented from using birth control. None of these women is likely to have had the opportunity to approach a family therapist or participate in couples therapy.

Investigations of domestic violence among low-income populations have established the incontrovertible fact that abusers use violence to sabotage women’s efforts to enter the labor market as

a means to keep them economically dependent on their male partners; women with no financial resources are more vulnerable, easier to dominate, and unable to leave their abusers. It is for this reason that women on welfare become suitable and attractive targets for low-income abusers and serve as magnets for them (Raphael, 2000).

Recently, researchers have found that some partner violence that prevents women from education or employment also occurs among more highly educated and higher income couples (Moe & Bell, 2004). As researchers (Dutton, 1992; Herman, 1992) have so rightly emphasized, domestic violence involves an ongoing *process* of intimidation, isolation, and control. And it is this pattern of violence, isolation, and control that makes it difficult for women to figure out how to leave. Most often, this kind of domination and control is perpetrated by men against women. Researchers doubt that women use force as a means to establish their superiority over their male partner, repress equality, control his movements, or prevent him from employment (Kimmel, 2002; Saunders, 2002). Mills's characterization of women's aggression within relationships puts us in danger of diluting the very definition of domestic violence.

This is the main feature of domestic violence, as opposed to simple aggression or violence, which totally eludes Mills. The pattern of domination and control, intended as it is to destroy basic dignity and the ability to develop one's basic skills and capabilities, is all the more serious because it is systematic and global. Ironically, Mills devotes much space to decrying a failure to listen to battered women and their needs, but by discounting these women's experiences, Mills minimizes the pernicious effects of domestic violence, thus contributing to societal indifference.

Mills's dismissal of Herman's (1992) pioneering work on trauma demonstrates the lengths to which she will go to minimize the purposes of domestic violence and its effects. She attacks Herman for labeling battered women as mentally ill, indecisive, and weak, totally misunderstanding Herman's findings, based on long years of clinical work with battered women, that women are the victims of a kind of "domestic terrorism" no less pernicious than that suffered by prisoners of war.

Admittedly, such is the evil of domestic violence that on one level, like the Holocaust, it remains difficult to accept, let alone

adequately explain. Mills, however, refuses to even acknowledge the need to address the issue, instead baldly stating that in an abusive relationship women are at least as physically and emotionally aggressive as men and that women's aggression is often central to the dynamics of abuse. This characterization of domestic violence as mutually responsive between couples ultimately will persuade the public that domestic violence is a *private* matter between couples that should be addressed but does not rise to the level of a serious *societal* problem. As we have seen, however, domestic violence research simply does not support this assertion.

Because Mills adheres to a view of domestic violence that blames both parties, it is no wonder that she condemns a criminal justice approach that punishes one while making it unsafe for the other. In place of the criminal justice system, Mills proposes intimate abuse circles to provide counseling and ongoing monitoring. She envisions the process beginning with a team of mental health professionals who assess the case for appropriateness based on two factors: voluntary participation and risk of lethality were the abusive party not incarcerated. The circle itself is composed of a trained facilitator, outside experts, and the appropriate community or family members. Although Mills is a bit vague about just how the intimate abuse circles relate to the criminal justice system, it would appear that she views them as best functioning after an arrest but as an alternative to prosecution. Thus, the process is not much different from approaches in many jurisdictions that offer counseling to batterers in lieu of prosecution or sentencing with the involvement of both parties in the therapeutic encounters representing the only real change.

No one could deny that the intervention Mills outlines could be helpful to some battered women, especially those who would like to remain with the abuser and who are actively seeking couples counseling. Indeed, most feminists would agree that the criminal justice system is a blunt instrument, unlikely to improve matters when the couple is still together, and both parties remain committed to the relationship in their own different ways. In this circumstance, governmental involvement often can be ineffective and messy and may have unintended consequences.

From my work with low-income battered women of color, I would question whether Mills's remedy would uniformly appeal to all battered women. Going public with humiliating acts perpe-

trated against you is always going to be difficult and may be more so when the disclosure needs to occur within a circle of family members, peers, and professionals. Some women may prefer the more intimidating, but more formal, legal procedures that occur a far distance from one's own home and community. The important thing, I think, is to have a variety of remedies to provide battered women with real choice. Substituting one new remedy for an earlier, uniform approach cuts against everything we have learned about the diversity of battered women and their needs.

We are going to need a full range of community-based supports and public interventions, and no one remedy can fully substitute for another. Another tricky issue, side-stepped by Mills, is just how these community programs and supports link up with criminal justice system sanctions. Currently, therapeutic opportunities and services are often poorly linked or not well thought out.

Mills is undoubtedly correct when she chastises advocates for steering all battered women to criminal-justice-based remedies. Clearly, a more varied set of options for battered women is in order with their choice based on women's preferences and individual needs. The reliance on criminal justice responses, says Mills, comes from anger at men and guilt that one's own violence does not rise to the significance of other women's violence: "The countertransference reactions of mainstream feminists and some helping professionals cause them to express rage against the man, shame for the woman, and denial that a woman's complex and individual story is relevant" (p. 57). Mills thus accuses feminists and professionals of maintaining power over battered women through their prescriptive policies and protocols. Most likely, Mills's anger toward mainstream feminists is based on serving on too many contentious panels at public meetings. The book has the feel of settling scores in a way that does not advance the debate.

It is certainly more likely that advocates truly believe that criminal justice responses have the potential to provide better protection for battered women. Promotion of the public remedy is surely also part of a strategy of elevating domestic violence from the status of a private matter that is shameful and guilt-inducing to one characterized as a societal injustice. Many battered women have explained to me how liberating and empowering this insight was for them and how much a role it played in their ability to keep themselves and their children free of violence.



Criminal justice interventions do and will continue to play a strong and necessary role in situations in which women are seeking to separate from their abusers or have already done so. When a woman, for whatever reason, has decided that enough is enough, a strong criminal justice system response can be effective—a fact that Mills fails to acknowledge. There are some grounds to believe that a majority of cases in any criminal court system involving domestic violence are those of women who have separated or are in the process of separating from their partners.<sup>1</sup> In these situations, when the woman seeks to separate but continues to face violence, it may be only a strong criminal justice response that can keep her free from violence or a fatal injury. For poor women with few financial resources and no family or friends for support, the criminal justice system is their only means of staying safe.

The current debate about the use of and overreliance on the criminal justice system is serious and important. If discussed employing a full and accurate definition of domestic violence and informed by an accurate historical perspective, its resolution can greatly strengthen current efforts to eliminate domestic violence. The questions that a properly positioned debate poses are tough and difficult. Mills raises some questions and concerns, but not all. What, then, are the more complex questions and issues that need to be added to the mix?

Historically, domestic violence was viewed as a matter between private parties with the result that the state officially condoned the violence by its inaction. Legal routes of escape (such as divorce proceedings) were later joined with the provision of practical assistance in the form of temporary refuges, now federally funded, and, finally, protective and affirmative responses from the law. The fact that the legal response could make women more unsafe was not recognized early on. Initially, too little thought was also given to the humiliation meted out to women who tried to use the legal system to keep themselves safe, especially poor women whose lack of financial resources and support systems make them more dependent upon it. Admitting publicly to the abuse and being questioned by prosecutors, defense attorneys, and judges is now said by some to have substituted public patriarchy for private patriarchy (Walby, 1990)—an issue that Mills fails to discuss altogether. Federal funds to improve the system's sen-



sitivity by providing specialized advocates and new programs and procedures to improve the response to battered women, although decried by Mills as being a waste of money, are a necessary step but have not been enough to overcome the inherent problems.

Some advocates admit to the built-in and irremediable deficiencies in the system but believe that, whether these legal approaches actually deter domestic violence, they send a message that violence against women is not officially tolerated. They worry, too, that formal or de facto repeal of these laws would send the wrong message (Iovanni & Miller, 2001).

This reliance on the public remedy is not grounded on the motivation of bossily knowing what is best for battered women, as Mills alleges, but rests on an important goal: undercutting the cultural underpinnings of society's tolerance for violence against women, which Mills categorically rejects as an ingredient in domestic violence. We have seen that Mills views violence only within the context of the couple's interactions, which, in turn, are based on childhood conditioning; cultural or societal influences are rarely at play. This approach mandates only that individuals take personal responsibility to create a better couples dynamic thus allowing them to forgive and the relationship to heal.

If, however, we accept that domestic violence is encouraged and endorsed by cultural norms and if we put forth a more complex view of its causation, then our response to the debate about the criminal justice system also becomes more nuanced and complicated.

To understand domestic violence as a worldwide historical phenomenon, it is clear that we must take a good look at cultural norms that condone male dominance or tolerate men's views of entitlement. Domestic violence is the result of men who wish to dominate women through violence as well as a culture that encourages or condones this violence or abuse. We now know that individuals are influenced not only by genetics and personal experience but also by their wider environments.

In the case of the shocking number of rapes on the campus of the U.S. Air Force Academy, for example, we have realized the many concrete ways in which the way the Academy is organized, its policies, practices, and procedures—indeed, its entire culture—make rape of women enrollees natural and inevitable.

The Academy does not look only to changing the dynamics of dating relationships between the men and women. Belatedly, the Academy has realized that complete cultural change on campus will need to occur if women are to be free from rape. Campus discipline and criminal prosecutions are but one piece of this necessary cultural change.

But they are perforce a major piece. Arrest and prosecution are one important aspect of a radical culture change. Although Mills strongly condemns the early feminist reliance on the legal system, she fails to take into account the strong role that law plays in cultural change. For law expresses a community's sense of truth and justice; the actions of a police officer convey a strong sense of community norms. Law, explained Catherine MacKinnon (2003), means community: "Your people stand behind you, hear you, support you. It means reality: what you say happened is found to have happened, your knowledge is validated" (p. 447).

Legal redress also confirms that domestic violence is not only a private matter needing to be resolved between the parties but is also an issue that society and culture need to confront. The law provides women with an important arena to fight back against the heretofore unchallenged domination of men over them. In this regard, MacKinnon (2003) explained the role of law most eloquently:

When subjected to law, male dominance is exposed in public. The private is a place, but it is also a mode; it is both where and how women are defined as women, a dimension of being as well as a location in space. Both are lawless sites to which women are relegated. This is what we have been tossed instead of having access to a whole life and a wide world. Law is the opposite, the quintessential public mode, private's antithesis.

When women claim and use law as women, women go public. This in itself challenges the hierarchy of men over women that has been built into law. (p. 452)

Research demonstrating that arrest increases the risk of violence for unmarried and unemployed abusers and deters it for married and employed batterers led Fagan (1998) to conclude that legal sanctions are effective when reinforced by informal social controls. That is, the normative behaviors within neighborhoods and other social contexts shape the perceptions of batterers. In low-income communities, the potential for job or relationship loss

or social stigmatization from relatives or neighbors upon arrest has been attenuated thereby undermining the effectiveness of legal controls.

It is this cultural context in which legal controls operate that lessen their impact, and it is the culture that must change. When the other complexities of domestic violence—strong emotional ties between victim and assailant as well as financial dependence—are combined with this cultural indifference to domestic violence, the full complexity of deterrence of domestic violence finally emerges. To eliminate domestic violence, it seems necessary to marry a strong legal response to powerful social controls.

Shaping a strong legal response in the absence of these social or cultural norms remains a challenge. Without strong cultural support, the legal system will continue to *take the lead* in developing and forming the cultural response. Is this such a bad thing?

Research now conclusively demonstrates that battering is more prevalent in low-income households in North America. I interpret this finding as proof that lack of employment and stigmatization from community, where arrest is a frequent fact of life, make the low-income batterer immune from the deterrent effects of legal sanctions. For this reason, I have argued at great length (Raphael, 2000) that elimination of men's poverty is one important domestic violence prevention strategy.

What, then, to do now, here, in 2004? Continual improvement of the criminal justice system to make it more sensitive to the needs of battered women, provision of a broader range of options for battered women to meet their diverse needs, outreach to make certain that they have the appropriate information about them, and a public commitment to poverty elimination would appear to be the most salient approaches.

Mills's work—taking a complex and serious societal problem, mitigating its severity, and simplifying its causation—does not help answer these more critical questions. As of this writing, it does not appear that Mills's book or thesis has attracted the serious, sustained attention of the media; that, under the circumstances, is a very good thing. But this is an indication of the huge challenge that remains. In the face of this unfortunate societal indifference, how can the public be educated to understand the true nature of domestic violence in a way calculated to provide a

sustained commitment to eradicating it worldwide? Books like this one, placing equal blame for domestic violence on men and women, obstruct our efforts to build that sense of societal concern that will be necessary to develop these needed complex and nuanced solutions.

## NOTE

1. The majority of cases in Cook County's criminal court system involving domestic violence in which court advocates are involved are those of women who have separated from their partners (Dawn Dolton, personal communication, November 27, 2003). In a random sample of 100 restraining order files in Boston, Ptacek (1999) found that 48% involved separation assault.

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