

Whose Safety?

Women of Color and the Violence of Law Enforcement

By Anannya Bhattacharjee

A JUSTICE VISIONS WORKING PAPER

EXECUTIVE SUMMARY

American Friends Service Committee



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Women of color, both immigrant and U.S.-born, have been increasingly affected by the dramatic expansion of law enforcement in the United States over the past thirty years¹ — an expansion that has resulted in widespread and persistent violations of civil, constitutional, and human rights. Both in absolute numbers and as a percentage, women are increasing substantially among populations of prisoners, arrestees, border crossers, undocumented workers, and detainees.

Between 1985 and 1996, for example, the population of women in U.S. prisons increased threefold, with the increase mostly consisting of women of color, particularly African American women. The experiences of women affected by immigration detention or the Border Patrol reveal many similarities. Across the board, women are mainly incarcerated for nonviolent offenses, and the circumstances in which their behavior is judged to be “criminal” are heavily shaped by racialized stereotypes and societal definitions of women’s roles.

Enforcement violence, of course, affects not only women but communities as a whole — again, with the impact heavily concentrated in communities of color, both immigrant and U.S.-born. In response, a broad variety of community-based organizations and advocacy groups have emerged to challenge abuses and to press for greater accountability on the part of law-enforcement

agencies. In all of these movements, women have been well represented, both as advocates and as members of affected communities. Nonetheless, a gender perspective has been weak and sometimes entirely absent in the way the issue of enforcement violence has been framed and discussed.

At the same time, organizations focusing on violence against women have often failed to appreciate the impact of enforcement violence. Today, growing numbers of women of color and allies are challenging the women’s anti-violence movement to expand its understanding of the nature of violence against women and to adopt strategies that take into account not only violence by individuals but also violence perpetrated by the state — whether through law enforcement; political, cultural, and economic domination; or military intervention.²

¹ The term “law enforcement” is used to cover the full range of agencies discussed in this working paper, including local and state police agencies; prison systems at the local, state, and federal levels; the U.S. Border Patrol and interior enforcement operations of the Immigration and Naturalization Service (INS); and the rapidly expanding INS detention system.

² The Color of Violence conference, which brought together thousands of women of color and allies in April 2000, was a landmark event in the development of this perspective.

Enforcement Violence and Gender

This working paper explores enforcement violence against women as a gendered experience. A gender perspective on enforcement violence is important not only for reasons of inclusiveness, but also because it is indispensable to the development of cohesive, effective, and strategic social movements. A gender perspective can help us to appreciate how enforcement violence affects our communities overall, by exposing its impact on such areas as reproduction and sexuality, home life, caregiving, and paid work — all social arenas in which women play a central role.

Although women face particular gender-related issues in their encounters with law enforcement, the system is by no means fair for men. Our purpose is not to show that women suffer more than men (although significant numbers may) or that more women suffer than men; the point is rather to counter the invisibility of women's experience. Common wisdom holds that women have less contact with law enforcement than men; however, this is a limited and ultimately distorted view.

The examples discussed in this working paper are considered under the broad categories of “policing” (including incidents involving police agencies, the Border Patrol, and INS interior enforcement operations) and “jailing” (including jails, prisons, and INS detention facilities). We do not follow the usual custom of considering “immigration” and “criminal justice” as separate issues. For more than a decade, both activists and researchers have noted the increasing integration of these seemingly distinct law-enforcement systems. Reviewing them together, as we do here, reveals that their impact on women and their communities is closely related.

By contrast, enforcement accountability movements are mainly fragmented among distinct racial or ethnic constituencies, between immigrant and U.S.-born populations, and along agency lines (police, INS, prisons, and so on). Such fragmentation compounds the problem created by the overall lack of communication and collaboration between enforcement accountability movements and women's anti-violence organizations. A compre-

hensive gender analysis of enforcement violence requires an exploration that crosses all of these divisions.

This working paper draws on the experiences and perspectives of activists and organizations from across the United States who are responding to enforcement violence and violence against women. It describes the disparate and sometimes conflicting strategies that progressive social movements in the United States have adopted in organizing against diverse forms of violence and abuse. While there are some important exceptions and no lack of mutual sympathy, in general these movements have yet to develop a common understanding, common strategies, and common initiatives.³

Although our purpose is to offer a critique, we do so as participants in and supporters of the social movements we are critiquing. The full range of issues raised by these movements is vital to the well-being of our communities — and their weaknesses weaken us all. In the conclusions, we suggest possible directions for dialogue and collaboration to advance a broadly integrated agenda for anti-violence work. Given the broad scope but modest resources of this initiative, this working paper should be understood as a contribution to what must inevitably be an ongoing process.

Denial of Reproductive Autonomy

Enforcement violence frequently entails violations of women's reproductive rights — at the border, on the street, in the workplace, and in prisons and jails. Integrating such experiences into more familiar notions of reproductive rights affords a fuller understanding of the ways in which the state limits women's reproductive freedom, particularly in communities of color.

³ Among all of the movements discussed in this working paper, the prison movement is probably the most developed in responding to the particular needs of women prisoners. The full-length report offers a more detailed discussion of particular movements, organizations, and initiatives, citing examples of emerging collaborations between enforcement accountability groups and women's groups.

Enforcement violence affects women's reproductive choices in two main ways:

- Through direct intervention in the outcome of a pregnancy, often justified through appeals to the “welfare of the fetus”;
- Through active endangerment or neglect of pregnant women, causing adverse results up to and including termination of the pregnancy.

In either case, state intervention causes women to lose control over their pregnancies, for whose outcome they may nonetheless be held legally responsible. In the name of “fetal protection,” women who have tested positive for drugs have been arrested for deciding to carry their pregnancy to full term, without evidence being introduced of harm to the fetus. Pregnant women who test positive for drug use on even a single occasion have been charged with child abuse or even murder.

By contrast, such concern for the fetus is nowhere in evidence in INS raids or police stops, during which authorities frequently disregard the consequences of their actions for the outcome of a pregnancy. Under such conditions, a pregnant woman may deliver prematurely, go into early contractions, or lose her fetus; even if the pregnancy is not compromised, women face enormous physical and mental trauma. Numerous such cases have been documented by immigrants' rights and police accountability organizations.

Effective strategies for protecting women's reproductive freedom need to be based in a thorough appreciation of the varying mechanisms of restriction, criminalization, and devaluation faced by women — whether they are imposed through legal restrictions on access and funding for abortions, involuntary sterilization, coercive drug tests and coercive uses of contraception, criminalization of immigrant women, or abuse of pregnant women in prison.

Violence in the Home

Both home and family have been pivotal concepts in the development of women's movements. This working paper challenges us to rethink our understanding by detailing how the supposedly private spaces of the home and family are another significant site of enforcement violence.

The mainstream women's anti-violence movement has sought to protect women from battering largely by advocating for a more vigorous response by police agencies. Over the past thirty years, the achievements of this movement have been substantial, involving significant changes in police and court practices and legal standards, as well as a profound transformation of public awareness. For communities of color in particular, however, this strategy of reform has sometimes backfired, because such communities also face a significant threat of violence in the home from law-enforcement authorities. For women in this situation, the promise of police protection from battering is an empty one.⁴

Enforcement violence in the home frequently occurs during drug or immigration raids, which are often undertaken on the flimsiest of legal grounds. Home intrusions by law enforcement have sparked numerous legal challenges and community-based campaigns. Unfortunately, such efforts by enforcement accountability groups have generally reflected little understanding of how women may be caught in an unbearable double bind when they face violence from both batterers and law enforcement.

Motherhood and Caregiving

The term “motherhood” has traditionally evoked the experiences of economically secure women living in nuclear families — as homemakers, or, increasingly, as affluent professionals. Working-class women, women of color, and lesbians have fought to expand the discussion of motherhood to include women who are impoverished or working poor, single mothers, lesbian mothers and their families, and physically absent mothers such as live-in domestic workers or migrant workers. Survivors of enforcement violence challenge us to expand these notions once again to include an understanding of how women's caregiving role is shaped by their encounters with the state.

⁴ A partial exception is provided by the Violence Against Women Act, which protects undocumented battered women from deportation in certain circumstances.

With women representing an ever-larger proportion of immigrants, increasing numbers of mothers, including single mothers, are affected by INS raids. In addition to the difficulties faced by most mothers in juggling the responsibilities of jobs and parenting, immigrant women face the enormous burden of being continually alert to the possibility of having their family life turned upside down in a matter of hours.

U.S.-born women of color face similar risks in encounters with law enforcement. Prisoners' rights initiatives have challenged the ways in which incarceration provokes major disruptions of family life, including the possibility of losing children to the foster care system. More than two-thirds of women prisoners have children under eighteen, and the majority of them are single mothers. The attitudes and actions of law enforcement, in tandem with other state agencies such as the foster-care system, reflect another familiar double bind, in which women of color are prevented from caring adequately for their children and then are accused of child abuse and neglect.

As mothers, partners, and community members, women often bear primary responsibility for dealing with the aftermath of an arrest, raid, or deportation — by supporting an incarcerated friend or family member; by advocating for the legal rights of loved ones; by helping to ensure the survival and well-being of children and other vulnerable people. In this sense, enforcement violence requires a major expansion of women's care-giving role and the types of responsibility women assume. Sometimes, this has led to the politicization of care giving, as when mothers of prisoners or mothers of detainees have formed grassroots organizations to advocate for the needs of their children or loved ones.

This dimension of women's experience is often rendered invisible when accountability campaigns focus exclusively on the experience of a single (usually male) victim of enforcement violence. We believe that emphasizing the central role of women as caregivers for prisoners and other victims of enforcement violence does not detract from efforts to support the victim, but rather illuminates how such abuse affects the entire community.

Violence Against Women in the Workplace

Women in low-income communities have always been important wage earners; today, they increasingly bear this burden alone as single heads of households. In either case, enforcement violence in the workplace adds significantly to the pressures they face, both as breadwinners and as caregivers.

Whenever the struggle to earn a living is defined as a criminal activity, the door is opened to enforcement violence in the workplace. In some cases, the criminalization of women's work stems from the heavy reliance of certain economic sectors on undocumented labor. In other instances, women's work is criminalized due to the underground nature of certain types of work, such as sex work or drug sales. Anecdotal evidence suggests that women are a major portion of those who survive through a combination of small drug sales and erratic sex work, trapped in cycles of substance abuse, domestic violence, and, frequently, both.

A focus on enforcement violence reveals many parallels between these disparate experiences of women's work, even though they are seldom considered together. Extensive documentation by human rights organizations, labor unions, and immigrants rights groups verifies that INS workplace raids affect women's ability to support their families and ensure their children's safety; frequently endanger pregnant women; and may involve various types of sexual assault. The criminalization of women's work thus targets women as caregivers, as breadwinners, as mothers or mothers-to-be, and as sexual beings. In addition, women immigrants, who must contend with class and gender bias in immigration policies, find that such bias carries over into their interactions with immigration authorities.

Sex work is likewise well known for its constant confrontations with the police. Further, in cities where immigrant women are increasingly working as prostitutes, police may also cooperate closely with immigration authorities.

In recent years, labor and immigrants rights organizations have increasingly joined in contesting the criminalization of immigrant workers. The lens of enforcement violence permits us to see that

in the end, the distinction between “legal” and “illegal” work is as limiting as the distinction between “legal” and “illegal” workers.

Looking Forward: New Alliances and New Strategies

What does it mean in practice to fight violence against women of color while simultaneously addressing the structural violence faced by the community as a whole? Social movements that have come together around the issues of domestic violence, reproductive rights, sexual assault, immigrants rights, INS detention, police accountability, or prisoners’ rights bring sharply divergent experiences and perspectives to this question. It is precisely by working through these differing and sometimes opposing views, however, that we can begin to address the complexities of the relationship between our communities and the state — and the centrality of women to the development of workable strategies for community self-determination.

Some of the initiatives described in this working paper represent important first steps toward the development of new alliances and new strategies to address the devastating impact of violence, in all its forms, on low-income communities of color. As noted at the outset, however, this discussion is not intended to propose an answer or even model strategies for accomplishing this goal, but rather to argue for the importance of dialogue involving all of these movements and their constituencies.

Useful considerations for framing such a dialogue include the following points:

- The home is a location in which women experience both “private” violence (for example, from intimate partners) and “public” violence (from state authorities). By opening up the parameters of how we understand violence in the home, we will be able to better understand how law enforcement operates in communities of color: targeting the home when it comes to raiding it while neglecting it when it comes to protecting the people inside, particularly women and children. In communities of color and poor communities, it is impossible to defend women from intimate violence while sidestepping the pressing issue of state violence and

its impact on safety and self-determination for the community as a whole. Only from such a standpoint can we fight for self-determination for both women and the communities we live in.

- The situation is similar with regard to motherhood and, more generally, caregiving. Enforcement violence in poor communities and communities of color disrupts the ability of caregivers to fulfill their responsibilities. At the same time, the legal apparatus of the state is used to accuse women of child abuse and neglect — with such charges sometimes stemming from the very situation in which the actions of law enforcement or other public authorities have endangered the welfare of children. Our understanding of the challenges facing women as caregivers must be expanded to take account of how caregivers are affected by the massive growth of law enforcement in the United States.

- An even more extreme example is that of the incarceration of women under the banner of “fetal protection,” in which a supposed concern for children is hypocritically used to justify the incarceration of women of color, particularly African American women. By contrast, in other circumstances, enforcement violence effectively treats the outcome of a pregnancy as an unimportant concern, secondary to the imperative to maintain “law and order.” From a community standpoint, the safe birth of children is only the first step in the community’s ability to reproduce itself, so that women’s reproductive rights are intrinsically a community issue as well as an issue of individual self-determination.

- The emergence across the United States of local grassroots organizations of mothers and other supporters of prisoners and detainees is a vital step in mobilizing communities to resist police brutality, INS raids, and mass incarceration. Feminist organizations, in turn, could gain far more relevance to the lives of poor women and women of color by recognizing and addressing the caregiving issues that are vital to such communities.

- Supporters of women’s rights may also want to consider the implications of assaults on the rights of poor women of color, both immigrant and U.S.-born, for the rights of women who do not presently face similar intrusions from law enforce-

ment. The state's approach to such women — whether they are undocumented workers, asylum seekers in detention facilities, pregnant defendants with substance addiction, or prisoners — may be taken as indicative of the true value accorded by our society to motherhood, family, home, and women's paid labor. The constant erosion of constitutional protections for the rights of women of color and poor weaken such protections for all women.

- Law enforcement is increasingly a seamless web, in which authorities may move without hindrance between a traffic stop and deportation, or a hospital visit and prison, or the airport and a maximum-security cell. At the same time, a variety of regressive legislation enacted in recent years has sharply restricted avenues for legal redress for those who are caught up in the law-enforcement net. The logic of such policies is similar, whether the specific language refers to “quality of life” policing, drug interdiction, counter-terrorism, or national security. The major difference is that some such measures purport to protect the national borders of the United States, while others seek to defend interior borders based on institutionalized racism

and economic privilege. As long as each type of border is understood separately, however, unexamined beliefs about public safety (on the one hand) and national security (on the other) will continue to foster mutual suspicion and mistrust between immigrant and U.S.-born sectors of the population. Until immigrant and U.S.-born communities of color can work together to challenge the full range of threats posed by enforcement violence to community security and self-determination — including the gendered nature of such threats and their differential effect on women — they will continue to be hampered by divisions and isolation.

We offer this contribution knowing that real forward motion will only be possible through the active involvement of many individuals and organizations in various types of dialogue, joint activities, increased communication, compilation of comparative data, and coordinated outreach efforts. Needless to say, such a process of collaboration should emerge in a way that is grounded in local realities and includes all relevant and interested parties.

The information presented in this working paper is based on interviews with representatives of eighty organizations in at least thirteen states, as well as published reports from the American Friends Service Committee, National Network for Immigrant and Refugee Rights, Amnesty International, Human Rights Watch, Washington Alliance for Immigrant and Refugee Justice, Women's Commission for Refugee Women and Children, The Sentencing Project, National Coalition of Anti-Violence Programs, and many other organizations. Where published reports have been harder to find we have relied on data collected by watchdog groups, such as police watch groups. This effort has also drawn on books, essays and letters by activists, scholars, prisoners and survivors, and from the websites and newsletters, newspapers and conference presentations of numerous organizations, as well as visits to a handful of organizations in various parts of the United States. The research and writing took place mainly in 1999 and the first half of 2000. Grateful acknowledgement is made for the generous contribution of time, energy, resources, insight, and feedback by all who have contributed to this effort.