



Toward a Black Feminist Liberation Agenda

Race, Gender, and Violence

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There are a series of social, cultural, and political institutions that reproduce, support, or perpetuate dangerous stereotypes about Black women. Many of these stereotypes and labels are informed by both historical and contemporary understandings of Black women. Indeed, the persistent myth of the Black woman as masculine, fiercely independent, hostile, aggressive, and domineering¹ works to frustrate the use of legal strategies generally available for Black women who come into contact with the criminal justice system. It also works to strip them of their womanhood, a central aspect of their

identity. In addition, this stereotyping of Black women works to further subordinate and marginalize them, thus forcing them to contend with the challenges brought by the intersection of race, gender, and violence in social and political life. Indeed, the current expansion of the prison industrial complex and growing incarceration rates among women of color call for the development of a Black feminist liberation agenda that transforms the social and political identities of Black women while offering new strategies to slow escalating incarceration rates among Black mothers.



Expansion of the Prison Industrial Complex: The Place of Black Women

Over the past few years, there has been increased emphasis on the expansion of the prison industrial complex. In many states, prison construction outpaces the development of new public schools, parks, and community centers. Increasing percentages of state budgets are committed to the development of prisons, jails, and detention centers, and police departments have watched their annual budget allocations grow. The current boom in the prison industry coincides with the largest incarceration rate that this country has ever witnessed. With the current prison population standing at more than 2 million, the United States now has one of the largest incarcerated populations of any country. In fact, the United States houses over a quarter of the world's prison population despite having less than 5 percent of the world's overall population.

The current expansion of the prison industrial complex brings with it a series of troubling consequences, particularly for women of color. The current number of women in prisons and jails throughout the United States is increasing at a faster rate than that of men.² Seventy-five percent of women in prison are mothers. Two-thirds of these women have children under the age of eighteen. Seventy-eight percent of women in prison report that they have been physically or sexually abused. Finally, Black women are incarcerated at a rate eight times that of women generally.³ Vigorous enforcement of drug laws and the incarceration of persons in possession of small quantities of drugs provide some explanation for the current crisis. But increased



Contemplation. Photo by Philippe Cheng.

racism and sexism among law enforcement agencies and officials provides a fuller explanation for rising incarceration rates among women of color. These alarming rates call for a new understanding of the social construction of Black women within the criminal context. They also call for an exploration of issues surrounding the intersection of race, gender, and violence⁴ and an examination of the impact that incarceration bears on the Black family unit.

Black women have become new targets in our incarceration-obsessed world. Increasingly, Black women are the victims of racial

profiling by police officers, store managers, and airline security. Black women are viewed as providing shields for Black men, who are already presumed to be engaged in some form of criminal activity. When Black women come in contact with the criminal justice system, they are often denied the benefit of defense strategies that are readily employed by their white counterparts. One such strategy, the battered women's defense, helps illustrate this dual crisis of racism and sexism in the justice system.

The battered woman's defense (originally referred to as the battered women's syndrome) is a legal strategy generally invoked when an individual, usually a woman, is continuously subjected to a pattern of domestic violence and forced to submit to the dictates of an abusive partner. The concept of battered women was first introduced by Lenore Walker, a forensic psychologist, who observed that women in these situations suffer from "learned helplessness" whereby the psychological stresses of living in a constant state of fear inhibits [a woman's] ability to perceive the possibility of escape." According to research, battered women become submissive, compliant, passive, and meek. All their energies are "focused on avoiding the next attack, and when that has failed, living through it." Many critics have challenged Walker's conception of battered women as essentially stigmatizing them as "sick" or "mentally ill." To better reflect concerns about background gender inequality, the battered women's defense has undergone some theoretical transformation over the decades, expanding to include more feminist understandings of abusive relationships.

The domestic violence that results in abusive contexts can manifest in the form of physical, emotional, sexual, or economic abuse and is largely aimed at controlling or dominating the other partner. Generally, women in these situations find that the abuse and violence escalate over a period of time. A

single abusive event such as a slap, unwanted sex, or vicious taunting steadily degenerates into a systematic and pervasive cycle of abuse. Experts who have studied and monitored women in these situations note that there is a tremendous feeling of entrapment, a learned helplessness, among women in these situations. Women rarely feel that they are able to turn away from an abusive partner and start their lives over. In addition to some of these emotional responses of entrapment, there are more objective, gender-based reasons that provide an explanation for the sense of entrapment that battered women feel. Indeed, the greatest contribution that feminists have lent to the construction of the battered women's defense is an alternative rationale as to why women tend to feel trapped in abusive situations. A feminist understanding of the battered woman recognizes that women tend to respond to abuse "with help-seeking methods that are largely unmet and that women increase their help-seeking as the danger to themselves and their children increases."⁵ A Black feminist liberation ideology can be applied to these situations to help unpack the influence of coercive state power, inaccessible social service delivery, and racism on the experiences of Black women in abusive situations.

Given pervasive gender inequality, women are less likely to find jobs that pay salaries commensurate with those obtainable by their male counterparts. Women are more likely to experience gender-based discrimination in the workplace that impacts the prospects of promotions, benefit packages, and wage increases. Black women, who contend with the challenges associated with both race and gender, have an even more difficult time in the workplace. Black women are among the lowest wage earners and are the primary group likely to experience some form of dual gender-and race-based discrimination during their working lives. In addition, Black women are unemployed at rates much higher

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than their white counterparts.⁶ As a result, Black women are more likely to be in positions where there is reliance or dependence on the joint income provided by their spouse. Thus, the economics of family maintenance suggests that Black working-class women tend to be more reliant on the supplemental income of their spouses to help provide basic life necessities for them and their children.

In addition to general workplace inequality, divorce laws in many states are constructed in ways that might impact a woman's decision to walk away from an abusive male. Women who are more reluctant to divorce a spouse in the hopes of repairing the relationship are unlikely to receive child support or alimony during periods of separation. In some states, women's organizations are petitioning their state legislatures for laws that would mandate prosecution for domestic violence. It is believed that if the abusers are in jail, women would have a safer and more meaningful opportunity to consider joining a shelter that could provide the necessary therapy and economic independence.

State coercive power also impacts Black women's decisions about the level of interaction that they seek to have with the criminal justice system. The tremendous levels of distrust and fear that exist in Black communities as a result of escalating police brutality and misconduct discourage many Black women from seeking refuge with local police departments. Where women feel that their claims are unlikely to be followed through on and investigated or where there is a sense that immediate intervention is unlikely, they are less likely to turn to police officers. The full range of this background inequality is worth considering in deconstructing the choices that women make in battering situations. Social and political forces, predominant stereotypes and myths, and the lurking threat of coercive state power are all factors that influence and shape the decisions of women in abusive situations.

Certainly, the battered women's defense has been met with a fair share of criticism from policymakers, politicians, feminists, and activists. Some find that the defense pathologizes women by suggesting that they lack the reason and free will to walk away from abusive and negative situations. Others feel that the defense is disempowering in that it discourages women from leaving abusive partners where they are aware of the safety valve within the law. Finally, some hold that the defense stigmatizes women as vulnerable children in need of special protection under the law.

Despite these varied criticisms, the situation of battered women is deemed one of the nation's most studied and critical public health problems. The battered women's defense is raised frequently in trials involving a battered spouse and is often used as evidence to explain the actions of the battered individual. The defense can be offered during a trial for women who were trapped in abusive situations and are seeking to provide evidence of a mitigating factor that will encourage the judge or jury to be lenient. In some instances, women who have killed a spouse or partner are acquitted on expert testimony and evidence about the effects that the battering has had on the women.

For a number of reasons, Black women have been far less successful than white women in raising the battered women's defense during trial. I would argue that the social construction and media depictions of Black women as independent, domineering, aggressive, and hostile individuals helps explain, in part, why some judges and juries are far less likely to apply the defense in examining these women's experiences with violent men. In addition, racism works to create inequity in the way in which strategies such as the battered women's defense are applied. Because white women historically enjoy a reputation of innocence, honor, and virtue,⁷ they are deemed worthy of greater protection

and immunity as compared with other racial minorities.

Kemba Smith and the Battered Women's Defense

The story of Kemba Smith, a twenty-six-year-old Black woman currently incarcerated at a medium-security prison, is a case worth serious examination in this context. Kemba grew up in a middle-class family in a small suburban town and attended Hampton University, a historically Black college located in Virginia. During her first year at Hampton, Kemba began dating a young man, Peter Michael Hall. Hall was about eight years her senior and the ringleader of a massive drug-trafficking scheme operating throughout the northeastern part of the United States. During their relationship, Peter kept his drug activity somewhat separate from his relationship. Thus, Kemba never physically handled or sold drugs during the course of her relationship with him.

Given the extent of illegal activity that Peter was involved with, one would think that Kemba would have chosen to turn her back on the situation and walk away. Kemba was later contacted by FBI agents after Peter was placed on their Most Wanted list. For a number of reasons, Kemba initially chose to not cooperate with officials. Today, Black women don't enjoy second chances. Where Black women acquiesce in Black men's illicit activity, they are stigmatized and branded just the same. There is rarely opportunity to look into the circumstances surrounding Black women's situations to unravel the layers of complexity that define those situations.

Careful analysis of Kemba's story, reveals that she suffered a pattern of violent abuse at the hands of her boyfriend. This pattern of physical abuse greatly influenced Kemba's initial decision to not cooperate with the FBI. She was often beaten badly by Peter and was

forced to seek emergency room medical treatment on one occasion for her injuries. She experienced a miscarriage after another particularly violent incident. Kemba witnessed Peter murder his best friend when he believed that the friend had become a police informant. He also made an implicit threat against her father, who he had believed might be cooperating with federal law enforcement. Kemba had dropped out of school on Peter's urging and was forced to travel with him around the country as he attempted to evade police authorities. Before he could be brought to trial and before Kemba had an opportunity to inform authorities of his whereabouts, Peter was murdered by an unknown assailant at a hotel room in Texas.

During trial, Kemba was held accountable for the entire 225 kilograms of crack cocaine that was trafficked under Peter Michael Hall's leadership. Under the stiff penalties of the federal sentencing guidelines, Kemba received a sentence of twenty-four years in prison with no possibility of parole. Under the guidelines, a judge is forbidden to consider any other facts in a case, as punishment is based solely on the amount of drugs involved in the offense. Thus, the particularities of Kemba's case were not a factor in the judge's decisionmaking. Neither the violent beatings that Kemba suffered, the systematic abuse, nor her miscarriage were issues that could be weighed in determining the extent of Kemba's guilt. Despite the inflexibility of the sentencing scheme established by the guidelines, it is Black women who have suffered the greatest under these laws. For whatever reason, white women who are brought in under similar circumstances rarely make it that far along in the system. Prosecutors might exercise their discretion not to take action in their case or white women found in actual possession are more likely to receive the benefit of treatment centers and rehabilitation programs. Black women are stigma-



Mother and Child. Photo by Delphine Fawundu.

tized as guilty and as criminals worthy of the greatest criminal sanction and punishment that the criminal system has to offer.

In many ways, Kemba's case merely exemplifies the reassignment of guilt and punishment. Where Black men become inaccessible or less reachable, Black women serve as a proxy on which the system can carry out its harsh enforcement policy. Black women

are viewed as unworthy of exemption or defense, as they are perceived as always having the means to turn away. Although this social construction of Black women assumes a false and overstated sense of independence, it does help explain why they rarely enjoy the opportunity to exercise legal defenses and strategies that their white peers benefit from.

Toward a Black Feminist Liberation Understanding of Battered Women

As Joy James notes, Black feminist liberation ideology should be constructed in a way that challenges state power by addressing class exploitation, racism, and sexual violence. Indeed, the sexual stereotyping of Black women as domineering, aggressive, hostile individualists is an image reinforced through social structures and reproduced by institutions such as the media. Deconstructing the mythology surrounding the hostile Black woman is a necessary first step in creating an environment in which the particular needs of abused Black women can be addressed. Indeed, Black women have been denied the privileges of femininity and protection from physical and discursive violence that is generally granted to white women.⁸ Breaking down these stereotypes calls for a delicate balancing of a woman's need to be protected from violence and misogyny with a desire to eradicate patriarchy and paternalism.

Historically, the notion of the empowered Black woman has been regarded as an emasculating Black matriarchy in which women seek complete and absolute independence from men.⁹ This antiquated notion of Black feminist theory has worked to create tension and conflict between the sexes. The typecasting of Black women has had tremendous consequences for those women who come into contact with the criminal justice system, however. This typecasting makes it more difficult for judges and juries to sympathize with Black women who are trapped in abusive relationships. This racial typecasting also creates obstacles that prevent judges and juries from understanding why some Black women fail to seek intervention or outside help.

Given increased tensions between the Black community and police officers, there is a general reluctance in minority communities

to report crime incidents to the police or to work in cooperation with the police to investigate these incidents. This reluctance, distrust, and fear have tremendous influence on Black women's decisions to report abusive spouses or partners to the police. In the case of Kemba Smith, the decision to postpone cooperation with FBI officials worked to her detriment, as officials read this choice as an indication of complicity or participation in the illegal activity of her partner.

In addition, race, gender, and class also converge to create a unique set of circumstances experienced largely by Black women. When domestic violence erupts in urban communities, the stresses of poverty and unemployment create a situation where the woman is more likely to feel trapped in the home. Given the recent cuts in social spending, decreases in social service delivery, increasing unemployment among the urban poor, and reform of welfare policy, Black women are more likely to feel trapped and unable to turn to peers or family members for refuge or support. Although many of these concerns are shared equally by poor white women, these issues become compounded when race is factored into the equation.

Redefining Black Womanhood

Two-thirds of mothers in prison today have children who are under the age of eighteen. Many women of color who come into contact with the criminal justice system leave behind children who are generally institutionalized, placed in the foster care systems, or taken in by relatives. Because women tend to be children's primary caregivers, there is rarely complete assurance that children will receive proper care and guidance once separated from their mother. Because most single-parent families are headed by women, the absence of the mother carries with it tremendous social stigma for the child. For Black

women, parental status is rarely a characteristic given any kind of assessment or consideration in determining whether incarceration is the best option in a given situation. Black mothers are rarely given access to alternative incarceration programs that help sustain relationships between mothers and their children. For Black mothers in prison, such as Kemba Smith, parental status is a personal characteristic that is seldom dignified or granted substantial consideration in the criminal justice system. The fact that Kemba Smith was a new first-time mother was not a factor taken into consideration when she was sentenced to a stiff penalty of twenty-five years for her relationship with Peter Michael Hall. The lack of consideration for a Black woman's parental status compounds the current stereotyping that Black women experience in the criminal justice system, thus stripping them of their womanhood—a central aspect of their identity. A range of historical and contemporary factors contribute to the current devaluation of Black womanhood.

The legacy of enslaved Africans, in part, informs current conceptions of Black womanhood. Thus, any liberation agenda aimed at deconstructing the dual influence of gender and race on contemporary understandings of Black women's experiences must be based, in part, on the conditions that Black women endured during slavery. Indeed, analysis of the female slave's experiences provides two possible theories for the current application of drug laws that disproportionately work to strip Black mothers from their children. First of all, female slaves were largely classified as "breeders" as opposed to "mothers";¹⁰ thus their children could be sold away from them at the will of their white male owners. One way of interpreting state coercion or force as a means of stripping apart the Black family unit is by tracing the historical legacy of "breeding" that has persisted the slave period. Historically, Black women were expected to

give up their children where the law dictated that they do so. Numerous laws were established in this system that stripped female slaves of their parental rights, as both mother and child were deemed property of their owners. Today, the parental rights of Black women, such as Kemba Smith, are of little consequence when they come into conflict with the criminal justice system. Indeed, we are continuing to overcome the legacy of "breeding," as Black women's parental rights have yet to be accorded full dignity. Given the inequities in the system, particularly racial sentencing disparities, Black mothers bear a heavier burden as compared with white mothers.

Second, many of the persisting stereotypes of Black women are based on notions of the female slave as resistant, unruly, and disruptive. Today, many Black women continue to be similarly stereotyped as aggressive and defiant. Like Black men, Black women are also deemed to have a greater propensity for crime on the basis of their racial status. Although the majority of studies and analyses of racism in the criminal justice system have focused on the stereotyping of Black men, Black women experience comparable levels of abuse and mistreatment in the criminal justice system. The typecasting of Black women is compounded by some of the gender stereotypes that have carried over since the slave era, however. Thus, a liberation agenda must also support strategies aimed at breaking down these stigmatizing stereotypes while simultaneously redefining Black womanhood. Indeed, "collective actions, . . . must be directed at changing the social conditions that both allow the dominant group to control the manufacture and dissemination of ideological constructions and lend strength and credibility to stereotypes."¹¹ This new conception of Black womanhood can help judges, juries, the media, and political institutions better understand, sympathize with, and interpret the

experiences of Black women. This new conception can also help generate greater sympathy for the plight of Black battered women and restore the dignity and humanity of Black women while providing a new focus on the importance of maintaining the Black family unit.

Conclusion

As the prison population continues to expand, there is growing need to focus on the impact that incarceration has on women of color and Black women in particular. Indeed, incarceration has a tremendous impact on the stability of the Black family unit that works to further dehumanize and demoralize Black women. Kemba Smith's case provides an illustration of current disregard for the Black family unit and of the disparate treatment of Black and white women who come into contact with the criminal justice system. The current social and political construction of Black women's identities are shaped in large part by persisting stereotypes that label women as aggressive, violent, and domineering individuals. It is also influenced by a historical legacy of Black women as "breeders" that impacts ideas of Black motherhood and parental rights. For Black feminists and others concerned with the development of a liberation ideology, a political praxis must be developed that accounts for intersections that exist across lines of race, gender, and violence.

This political praxis must also incorporate advocacy models and litigation strategies that can be used on behalf of the growing numbers of Black women who come into contact with the criminal justice system.

Notes

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