

Their Laws Will Never Make Us Safer

DEAN SPADE

AN INTRODUCTION

AT MANY TRANSGENDER DAY OF Remembrance events, a familiar community anecdote surfaces. The story goes that convicted murderers of trans people have been sentenced to less punishment than is meted out to those convicted of killing a dog. In Istanbul, where trans sex workers have been resisting and surviving severe violence, criminalization, and displacement caused by gentrification, recent advocacy for a trans-inclusive hate crime law has included sharing stories of trans women being raped by attackers who threaten them with death and openly cite the fact that they would only go to prison for three years even if they were convicted of the murder. These stories expose the desperate conditions faced by populations cast as disposable, who struggle against the erasure of their lives and deaths.

The murder of Trayvon Martin in 2012 raised related dialogues across the U.S. The possibility that Martin's murderer would not be prosecuted, and the awareness that anti-black violence consistently goes uninvestigated and unpunished by racist police and prosecutors, led to a loud call for the prosecution of George Zimmerman. In the weeks after Martin's murder, I heard and read many conversations and commentaries where people who are critical of the racism and violence

of the criminal punishment system struggled to figure out whether it made sense to call on that system to make Martin's murderer accountable for his actions.

On the one hand, the failure to prosecute and punish Zimmerman to the full extent of the law would be a slap in the face to Martin's family and everyone else impacted by racial profiling and anti-black violence. It would be a continuation of the long-term collaboration between police and perpetrators of anti-black violence, where the police exist to protect the interests of white people and to protect white life and operate both to directly attack and kill black people and to permit individuals and hate groups to do so.

On the other hand, given the severe anti-black racism of the criminal punishment system, what does it mean to call on that system for justice and accountability? Many people working to dismantle racism identify the criminal punishment system as one of the primary apparatuses of racist violence and probably the most significant threat to black people in the U.S. Opposing that system includes both opposing its literal growth (the hiring of more cops, the building of more jails and prisons, the criminalization of more behaviors, the increasing of sentences) and disrupting the cultural myths about it being a "justice" system and about the police "protecting and serving" everyone. For many activists who are working to dismantle that system, it felt uncomfortable to call for Zimmerman's prosecution, since the idea that any justice can emerge from prosecution and imprisonment has been exposed as a racist lie.

The tensions inside this debate are very significant ones for queer and trans politics right now. Increasingly, queer and trans people are asked to measure our citizenship status on whether hate crime legislation that includes sexual orientation and gender identity exists in the jurisdictions in which we live. We are told by gay and lesbian rights organizations that passing this legislation is the best way to respond to the ongoing violence we face—that we need to make the state and the public care about our victimization and show they care by increasing surveillance of and punishment for homophobic and transphobic attacks.

Hate crime laws are part of the larger promise of criminal punishment systems to keep us safe and resolve our conflicts. This is an

appealing promise in a society wracked by gun violence and sexual violence.¹ In a heavily armed, militaristic, misogynist, and racist society, people are justifiably scared of violence, and that fear is cultivated by a constant feed of television shows portraying horrifying violence and brave police and prosecutors who put serial rapists and murderers in prison. The idea that we are in danger rings true, and the message that law enforcement will deliver safety is appealing in the face of fear. The problem is that these promises are false, and are grounded in some key myths and lies about violence and criminal punishment.

Five realities about violence and criminal punishment are helpful for analyzing the limitations of hate crime legislation (or any enhancement of criminalization) to prevent violence or bring justice and accountability after it has happened:

1. *Jails and prisons are not full of dangerous people, they are full of people of color, poor people, and people with disabilities.* More than 60% of people in U.S. prisons are people of color. Every stage and aspect of the criminal punishment and immigration enforcement systems is racist—racism impacts who gets stopped by cops, who gets arrested, what bail gets set, which workplaces and homes are raided by Immigration and Customs Enforcement (ICE), what charges are brought, who will be on the jury, what conditions people face while locked up, and who will be deported. Most people in the U.S. violate laws (like traffic laws and drug laws) all the time, but people of color, homeless people, and people with disabilities are profiled and harassed and are the ones who get locked up and stay locked up or get deported. Ending up in prison or jail or deportation proceedings is not a matter of dangerousness or lawlessness, it's about whether you are part of a group targeted for enforcement.
2. *Most violence does not happen on the street between strangers, like on TV, but between people who know each other, in our homes, schools, and familiar spaces.* Images of out-of-control serial killers and rapists who attack strangers feed the cultural thirst

for retribution and the idea that it is acceptable to lock people away for life in unimaginably abusive conditions. In reality, the people who hurt us are usually people we know, and usually are also struggling under desperate conditions and/or victims of violence. Violence, especially sexual violence, is so common that it is not realistic to lock away every person who engages in it. Most violence is never reported to police because people have complex relationships with those who have hurt them, and the whole framing of criminalization where “bad guys” get “put away” does not work for most survivors of violence. If we deal with the complexity of how common violence is, and let go of a system built on a fantasy of monstrous strangers, we might actually begin to focus on how to prevent violence and heal from it. Banishment and exile—the tools offered by the criminal punishment and immigration enforcement systems—only make sense when we maintain the fantasy that there are evil perpetrators committing harm, rather than facing the reality that people we love are harming us and each other and that we need to change fundamental conditions to stop it.

3. *The most dangerous people, the people who violently destroy and end the most lives, are still on the outside—they are the people running banks, governments, and courtrooms and they are the people wearing military and police uniforms.* Fear is an effective method of social control. Prison and war profiteers fuel racist and xenophobic fears by circulating images of “terrorists” and “criminals.”² In reality, the greatest risks to our survival are worsening poverty and lack of access to health care, adequate housing, and food. This shortens the lives of millions of people in the U.S. every day, along with the violence of police and ICE attacks, imprisonment and warfare that the U.S. government unleashes every day domestically and internationally, and the destruction of our climate, water, and food supplies by relentlessly greedy elites. If we really want to increase well-being and reduce violence, our resources should not be focused on locking up people who possess drugs or

get in a fight at school or sleep on a sidewalk—we should be focusing on dismantling the structures that give a tiny set of elites decision-making power over most resources, land, and people in the world.

4. *Prisons aren't places to put serial rapists and murderers, prisons are the serial rapists and murderers.* If we acknowledge that the vast majority of people in prisons and jails are there because of poverty and racism, not because they are “dangerous” or violent, and if we acknowledge that prisons and jail utterly fail to make anyone who spends time in them healthier or less likely to engage in violence, and if we recognize that prisons and jail are spaces of extreme violence,³ and that kidnapping and caging people, not to mention exposing them to nutritional deprivation, health care deprivation, and physical attack is violence, it becomes clear that criminalization and immigration enforcement increase rather than decrease violence overall.
5. *Increasing criminalization does not make us safer, it just feeds the voracious law enforcement systems that devour our communities.* The U.S. criminal punishment and immigration enforcement systems are the largest prison systems that have ever existed on Earth. The U.S. imprisons more people than any other society that has ever existed—we have 5% of the world's population and 25% of the world's prisoners. Our immigration prisons quadrupled in size in the decade after 2001. This hasn't made us safer from violence, it is violence.

The fundamental message of hate crime legislation is that if we lock more bad people up, we will be safer. Everything about our current law enforcement systems indicates that this is a false promise, and it's a false promise that targets people of color and poor people for caging and death while delivering large profits to white elites. Many might hope that queer and trans people would be unlikely to fall for this trick, since we have deep community histories and contemporary realities of experiencing police violence and violence in prisons and jails, and we know something about not trusting the cops. However, this

same ongoing experience of marginalization makes some of us deeply crave recognition from systems and people we see as powerful or important. This desperate craving for recognition, healing and safety can cause us to invest hope in the only methods most of us have ever heard of for responding to violence: caging and exile. Many of us want to escape the stigmas of homophobia and transphobia and be recast as “good” in the public eye. In contemporary politics, being a “crime victim” is much more sympathetic than being a “criminal.” By desiring recognition within this system’s terms, we are enticed to fight for criminalizing legislation that will in no way reduce our experiences of marginalization and violence.

In recent years, these concerns about hate crime legislation have gotten somewhat louder, though they are still entirely marginalized by the corporate-sponsored white gay and lesbian rights organizations and mainstream media outlets from which many queer and trans people get their information about our issues and our resistance. More and more people in the U.S. are questioning the drastic expansion of criminalization and immigration enforcement, and noticing that building more prisons and jails and deporting more people does not seem to make our lives any safer or better. Many queer and trans people are increasingly critical of criminalization and immigration enforcement, and are unsatisfied by the idea that the answer to the violence we experience is harsher criminal laws or more police.

Three kinds of strategies are being taken up by queer and trans activists who refuse to believe the lies of law enforcement systems, and want to stop transphobic and homophobic violence. First, many people are working to directly support the survival of queer and trans people who are vulnerable to violence. Projects that connect queer and trans people outside of prisons to people currently imprisoned for friendship and support and projects that provide direct advocacy to queer and trans people facing homelessness, immigration enforcement, criminalization and other dire circumstances are under way in many places. Many people are providing direct support to people coming out of prison, or opening their homes to one another, or collaborating to make sex work safer in their communities. This kind of work is vital because we cannot build strong movements if our people are not surviving. Directly

helping each other during our moments of crisis is essential—especially when we do it in ways that are politically engaged, that build shared analysis of the systems that produce these dangers. This is not a social service or charity model that provides people with minimal survival needs in a moralizing framework that separates “deserving” from “undeserving” and gives professionals the power to determine who is compliant enough, clean enough, hard-working enough, or quiet enough to get into the housing, job training, or public benefits programs. This is a model of mutual aid that values all of us, especially people facing the most dire manifestations of poverty and state violence, as social movement participants who deserve to survive and to get together with others facing similar conditions to fight back.

The second kind of work is dismantling work. Many people are working to dismantle the systems that put queer and trans people into such dangerous and violent situations. They are trying to stop new jails and immigration prisons from being built, they are trying to decriminalize sex work and drugs, they are trying to stop the expansion of surveillance systems. Identifying what pathways and apparatuses funnel our people into danger and fighting against these systems that are devouring us is vital work.

The third kind of work is building alternatives. Violent systems are sold to us with false promises—we’re told the prison systems will keep us safe or that the immigration system will improve our economic well-being, yet we know these systems only offer violence. So we have to build the world we want to live in—build ways of being safer, of having food and shelter, of having health care and of breaking isolation. Lots of activists are working on projects to do this, for example, on alternative ways to deal with violence in our communities and families that don’t involve calling the police, since the police are the most significant danger to many of us. Many people are engaged in experimental work to do what the criminal and immigration systems utterly fail to do. Those systems have grown massive, built on promises of safety. But they have utterly failed to reduce rape, child sexual abuse, poverty, police violence, racism, ableism, and the other things that are killing us. Their growth has increased all of those things. So, we have to look with fresh eyes at what actually does make us safer. Some people

are building projects that try to directly respond when something violent or harmful happens. Others are building projects that try to prevent violence by looking at what things tend to keep us safe—things like having strong friendship circles, safe housing, transportation, not being economically dependent for survival on another person so you can leave them if you want to, and having shared analysis and practices for resisting dangerous systems of meaning and control like racism and the romance myth.

Some people who are identifying prisons and borders as some of the most significant forms of violence that need to be opposed and resisted by queer and trans politics, are calling for an end to all prisons. For me, prison abolition means recognizing prisons and borders as structures that cannot be redeemed, that have no place in the world I want to be part of building. It means deciding that inventing and believing in enemies, creating ways of banishing and exiling and throwing away people, has no role in building that world. This is a very big deal for people raised in a highly militaristic prison society that feeds us a constant diet of fear, that encourages us from early childhood to sort the world into “bad guys” and “good guys.” Our indoctrination into this prison culture deprives us of skills for recognizing any complexity, including the complexity of our own lives as people who both experience harm and do harm to others. Working to develop the capacity to even imagine that harm can be prevented and addressed without throwing people away or putting anyone in cages is a big process for us.

In the growing debate about whether hate crime legislation is something that will improve the lives of queer and trans people, and whether it is something we should be fighting for, we can see queer and trans activists working to develop important capacities to discern and analyze together. This form of discernment is familiar to prison abolitionists, and it is also visible in other areas of queer and trans politics. It is an ability to analyze the nature of an institution or system, rather than just to seek to reform it to include or recognize a group it targets or harms. Abolitionists have long critiqued prison reform, observing that prison expansion usually occurs under the guise of prison reform. Important complaints about prison conditions, for example, often lead to prison profiteers and government employees proposing

building newer, cleaner, better prisons that inevitably will result in more people getting locked up.⁴ Queer activists have engaged this kind of discernment about reforming violent state apparatuses in our work to oppose the fights for same-sex marriage and the ability to serve in the U.S. military. In this work, we have questioned the assumption that inclusion in such institutions is desirable, naming the existence of marriage as a form of racialized-gendered social control and the ongoing imperial and genocidal practices of the U.S. military. This work is complex, because so many queer and trans people, conditioned by shaming and exclusion, believe that getting the U.S. government to say “good” things about us in its laws and policies, no matter what those laws and policies actually exist to do, is progress. This framing asks gay and lesbian people to be the new face of the purported fairness and liberalism of the United States, to get excited about fighting its wars, shaping our lives around its family formation norms, and having its criminal codes expanded in our names. The ability to recognize that an enticing invitation to inclusion is not actually going to address the worst forms of violence affecting us, and is actually going to expand the apparatuses that perpetrate them—whether in Abu Ghraib, Pelican Bay, or the juvenile hall in your town—is one that requires collective analysis for queer politics to grasp.

The *Against Equality* book projects, of which this section makes up the third and final, offer us a bundle of tools for building that analysis and sharing it in our networks, for trading in the dangerous ideas that the Human Rights Campaign and the other organizations that purport to represent our best interests are not likely to disseminate. This section, in particular, focuses on how criminalization and imprisonment target and harm queer and trans people, and why expanding criminalization by passing hate crime laws will not address the urgent survival issues in our lives. The most well-funded and widely broadcast lesbian and gay rights narratives tell us that the state is our protector, that its institutions are not centers of racist, homophobic, transphobic, and ableist violence, but are sites for our liberation. We know that is not true. We are naming names—even if you wrap it in a rainbow flag, a cop is a cop, a wall is a wall, an occupation is an occupation, a marriage license is a tool of regulation. We are building ways of thinking about

this together, and ways of enacting these politics in daily work to support one another and transform the material conditions of our lives.

NOTES

- 1 A 2011 study published in the *Journal of Trauma-Injury Infection & Critical Care* reported that “[t]he U.S. homicide rates were 6.9 times higher than rates in the other high-income countries, driven by firearm homicide rates that were 19.5 times higher. For 15-year olds to 24-year olds, firearm homicide rates in the United States were 42.7 times higher than in the other countries.”

Richardson, Erin G. S.M.; Hemenway, David PhD, “Homicide, Suicide, and Unintentional Firearm Fatality: Comparing the United States With Other High-Income Countries,” 2003, *Journal of Trauma-Injury Infection & Critical Care*, January 2011 - Volume 70 - Issue 1 - pp 238-243. http://journals.lww.com/jtrauma/Abstract/2011/01000/Homicide,Suicide,_and_Unintentional_Firearm.35.aspx.

Every year, approximately 100,000 people in the U.S. are victims of gun violence, and about 85 people per day die from gun violence in the U.S. “Gun Violence Statistics,” Law Center to Prevent Gun Violence, <http://smartgunlaws.org/category/gun-studies-statistics/gun-violence-statistics/>. An average of 207,754 people age 12 or older experience sexual assault every year in the U.S. Approximately every two minutes, someone is sexually assaulted. 54% of assaults are not reported to the police, and 97% of rapists do not serve any jail time. “Statistics,” Rape, Abuse & Incest National Network, <http://www.rainn.org/statistics/>. According to the Colorado Coalition Against Sexual Assault, in the U.S. one out of every six women and one out of thirty three men have experienced an attempted or completed rape. Citing National Violence Against Women Survey, “Prevalence, Incidence, and Consequences of Violence Against Women,” November 1998. The Colorado Coalition Against Sexual

Assault also reports that “the United States has the world’s highest rape rate of the countries that publish such statistics—4 times higher than Germany, 13 times higher than England, and 20 times higher than Japan” citing NWS, “Rape in America: A Report to the Nation,” 1992). See, <http://web.archive.org/web/20100822123802/http://www.ccsa.org/statistics.cfm>.

- 2 It is helpful to remember that people in the U.S. are eight times more likely to be killed by a police officer than a terrorist. “Fear of Terror Makes People Stupid,” Washington’s Blog, <http://www.washingtonsblog.com/2011/06/fear-of-terror-makes-people-stupid.html> citing National Safety Council, “The Odds of Dying From...” <http://web.archive.org/web/20080508135851/http://nsc.org/research/odds.aspx>.
- 3 By conservative estimates, 21% of people in men’s prisons are estimated to experience forced sex while imprisoned. Cindy Struckman-Johnson & David Struckman-Johnson (2000). “Sexual Coercion Rates in Seven Midwestern Prisons for Men” (PDF). *The Prison Journal* 80 (4): 379–390.
- 4 Angela Davis lays out this argument succinctly and effectively in *Are Prisons Obsolete?* Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003). In 2012, these dynamics were visible when anti-prison activists in Seattle started a campaign to stop the building of a new youth jail that the local government was promoting as a way of resolving long-term complaints about horrible conditions of confinement in the existing youth jail. The anti-prison activists argued that the old jail should be closed, but not replaced. The campaign is ongoing. See, <http://nonewyouthjail.wordpress.com>.