

Ann Cammett

Toward a Vision of Sexual and Economic Justice
Thought Paper

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“Challenging Mass Incarceration and the Gendered Rule of Law”

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Advocates for economic rights and those fighting for sexual justice are beginning to coalesce to examine and address the concerns of people whose lives are at the intersection of those communities – namely low-income queer people. Typically anti-poverty activists ignore issues related to sexual rights, while mainstream LGBTQ groups spend little capital on matters most critical to those living on the margins.¹ For a variety of reasons, these advocates ought to take a closer look at the impact of mass incarceration and police state repression which serves to further marginalize both communities, but can also provide fertile ground for organizing and reconciliation between them.

In the United States the prison state looms large; and is not far removed from the lives of much of the population. In 2006 there were 2.2 million people living directly under the auspices of the criminal justice system, and that number grows daily. This dubious distinction renders the U.S. the world’s number one jailer, both in total number of prisoners and in prisoners per capita.² This is not a coincidence, but rather a trend thirty years in the making. While it is tempting to link the increased use of incarceration to an increase in crime over time such a claim is not supported by the facts.³ Violent crime has not increased commensurate with the rise in the prison population. However, punitive lawmaking has proliferated pursuant to “tough-on-crime” policies. Consequently, the prison system has devolved into a warehouse for generations of poor people trapped by the so-called “war on drugs,” mandatory minimum sentences, poor or no health care, mental illness, and aggressive policing of their communities which puts them at risk of increased criminal justice involvement.

What’s poor got to do with it?

No broad examination of economic justice for low-income people can proceed without confronting this prison crisis. It is well known that incarceration, operating now at an unprecedented level, is a direct expression of capitalism in its most crass iteration. What has come to be broadly referred to as the “prison industrial complex” references the fact that the prison boom is not a reflection of increased criminal activity, but rather the manifestation of a complex web of economic interests that has made prison construction a cornerstone of economic development in the 1980s and 1990s.⁴ Corporate wealth from prison construction skyrocketed, along with the various industries required to effect the administration and servicing of this system. The people inside the prisons can be said to provide a source of raw material, both for the production of goods by prison labor (enriching those profiteering from their misery), but also for the consumption of basic goods required by the burgeoning population of inmates themselves.⁵ The fact that the overwhelming majority of incarcerated people are poor makes this system *possible*,

owing to their lack of political currency. The fact that two-thirds of them are people of color makes it *acceptable* as a political matter, due to the pernicious persistence of racism in America.

The growing incarceration of poor communities, particularly people of color, has been an emerging concern over the last two decades. The recognition that siphoning off enormous human resources from the communities that need them most has been the touchstone of resistance to the expansion of the prison system. As an economic issue, this concept has recently been expressed by concerns over the dilution of political power due to felony disenfranchisement, but also as the redistribution of wealth inherent in the reapportionment of tax dollars to rural communities based on the census practice of counting of prisoners where they are incarcerated as opposed to their neighborhoods of origin.⁶ This analysis is useful in understanding the macro issues associated with nationwide redistribution of public money. But this must also be read in conjunction with the difficulties inherent in managing the “collateral consequences” of criminal convictions faced by all poor people released from prison. These are barriers such as restricted access to employment, housing, public benefits and many of life’s necessities which invariably create an environment upon reentry which is inhospitable to their successful “reintegration.”⁷ Under the conceptual rubric of the prison industrial complex, this is the point. The recidivism rate for those exiting the prison system hovers around 66 percent within three years of release – a cycle that creates a stream of continuous fodder for the prison industry.

LGBTQ communities

Contemporary gay rights organizations have focused on a limited number of narrowly defined strategies as the ticket to liberation; namely marriage equality and the passage of hate crimes legislation.⁸ These strategies have consumed enormous resources without a deep cost-benefit analysis of the results of those approaches (owing to the perceived benefits gained by those whose class and race privilege might insulate them from the effects of discrimination). But the ubiquitous presence of LGBTQ people living in the criminal justice system begs a further examination of the issue.

LGBTQ people bear the brunt of the prison system in many ways. Research shows that prisoners who are gay, lesbian or transgendered – or perceived to be – are at a higher risk for abuse in prison.⁹ Gay men, and particularly transwomen, are singled out for repeated sexual abuse within a dehumanizing system that relies on power and control to maintain order within its walls. Lesbian women, or women who transgress gender boundaries, are singled out for sexual abuse and mistreatment in the form of coercive repression. It is not surprising that lesbian women account for a disproportionate number of political prisoners, as they embody the nexus between sexual liberation and political repression by the state.¹⁰ In this way prison itself is a gendered institution – an expression of state power with a mandate to maintain heteronormativity within the walls and in the culture at large. Many “traditional” gay rights organizations have not sufficiently addressed the issue of LGBT prisoners for other reasons, apart from a primary focus on perceived middle class priorities. As a political matter it is hard to gain currency on the national stage featuring the concerns of prisoners – a reviled group with little political capital.

It is only when we understand the class dimensions of homophobia that it becomes clear why the criminal “injustice” system is a queer issue. The primary issue around

incarceration that mainstream LGBTQ groups have addressed stems from the consequence of homelessness experienced by gay youth. A recent report by the National Gay and Lesbian Task Force entitled, “Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness,”¹¹ details the ubiquitous presence of homelessness among LGBTQ youth. It is estimated that in some cities in the US up to 40 percent of homeless youth are gay, lesbian, bisexual or transgendered. This condition is a direct result of the hardships associated with coming out as LGBTQ youth. Familial conflict is a significant factor that leads to homelessness and out-of-home care, and this dislocation contributes to substance abuse and mental health challenges faced by these young people which often go unmet. Physical assaults upon disclosure within the home, and at school, can lead to young people to believe that they are safer on the streets, where they often rely on survival through the sex trade and are often re-victimized by law enforcement. As a result they are made vulnerable to being swept up by the juvenile and later criminal justice systems.¹² Moreover, the disengagement from family resources and criminal justice involvement will have serious repercussions for their economic prospects throughout their lives.

Possibilities for Exploration and Collaboration

A comprehensive analysis of how incarceration and police state intervention impacts the lives of the various communities of interest –those living in poverty, people of color, and the LGBTQ community– presents an enormous opportunity to collaborate on strategies for liberation by incorporating a mandate to challenge to the expansion of the police state in all of its forms, whether it presents as mass incarceration or police harassment.

The experience of activists in the movement to confront domestic violence is instructive in identifying some of the critical problems with single-issue advocacy (when it lacks a broader analysis of the state’s involvement). An ongoing critique of the DV movement by women of color focuses on the reliance of law enforcement as a primary tool in addressing the widespread problem of gender violence. This issue was of particular concern to women who came from communities that experienced police presence as a potential threat, rather than as an ally in their quest for safety.¹³ Ultimately though, this impacts all women who become engaged with the police state during the process of resolving their complicated struggles with intimate partner violence. This dilemma initially took the form of mandatory arrest policies, which caused some women to seek *less* intervention for fear that they too would be swept into the criminal process as co-perpetrators. More recently, “no drop” policies, now common in many jurisdictions, shifted control of the DV cases from women engaged in *civil* proceedings to prosecutors who decided whether to pursue *criminal* cases even when women were not, for a variety of reasons, disposed to prosecute them. On balance, this represented a shift of control from the woman herself to the police state, an act that reinforces patriarchal oppression – ironically a hallmark of domestic violence.

Likewise, with various “hate crimes” legislation supported by an array of erstwhile progressive organizations, the focus on enhanced criminal penalties is a shortsighted approach to dealing the question of violence directed at LGBTQ communities. There is, to date, no real evidence these laws curtail violence. Instead these proposed laws contribute to an expansion of the prison state with little more than “feel good” results co-opted by politicians presenting themselves as allies. Since they have not shown to be deterrence to crime against these communities, they do nothing to address the underlying homophobia that acts as a cancer within our culture. This begs the question: do we need

more punishment or less violence? Both of these examples – compulsory criminal prosecutions in DV cases and hate crimes legislation – demonstrate the potential to have police state become the *primary* focus in solving problems of violence, while choking out the creative development other methods, such as public education and alternative dispute resolution strategies. For our ultimate survival, we must begin to emphasize and develop approaches that lead to healthier, more involved, and more proactive communities. Grassroots organizations like Queers for Economic Justice; the Sylvia Rivera Law Project; Critical Resistance; Justice Now; the Trans/Gender, Variant, and Intersex Justice Project (TGIJP); and the Trans/Gender Variant in Prison Project (TIP) have taken the lead in educating our respective justice communities on the importance of integrating criminal justice, queer, and poverty issues, as well as shifting focus to incorporate the power of organizing and other advocacy strategies.

¹ See Queers for Economic Justice, *Mission Statement* at <http://qej.tripod.com/qej2/id1.html>.

² Bureau of Justice Statistics, *Prisoners in 2005* (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf>. The population of individuals in US prisons rose by 2.7% in 2005; over 7 million people were either in jail, on probation, or on parole by the end of last year, with 2.2 million of them in prison.

³ Marc Mauer, *Thinking About Prison and Its Impact in the Twenty-First Century*, 27 Ohio N.U.L. Rev. 29 (2000).

⁴ See Wikipedia, “Prison Industrial Complex” at http://en.wikipedia.org/wiki/Prison-industrial_complex.

⁵ Angela Y. Davis, *Are Prisons Obsolete?* Seven Stories Press (2003).

⁶ Patricia Allard and Kirsten D. Levingston, Brennan Center for Justice, *Accuracy Counts: Incarcerated People and the Census 2* (2004), available at http://www.brennancenter.org/dynamic/subpages/RV4_AccuracyCounts.pdf.

⁷ Ann Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Child Support Enforcement Against Incarcerated Parents*, 13 Georgetown Journal on Poverty Law & Policy 313 (2006).

⁸ See ACLU website at <http://www.aclu.org/lgbt/gen/29605prs20070503.html>.

⁹ Human Rights Watch, *No Escape: Male Rape in U.S. Prisons* (2001). See also *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996).

¹⁰ *Out of Control: Lesbian Committee to Support Women Political Prisoners* at <http://www.prisonactivist.org/ooc/>.

¹¹ See National Gay and Lesbian Task Force, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2007).

¹² See Amnesty International USA, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.*, (2005).

¹³ Anannya Bhattacharjee, American Friend Service Committee, *Whose Safety? Women of Color and the Violence of Law Enforcement* (2001).