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Rethinking Domestic Violence, Rethinking Violence

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Rethinking Domestic Violence, Rethinking Violence

<http://crim.jotwell.com/rethinking-domestic-violence-rethinking-violence/>

Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (2012).



Aya Gruber

For decades, I have felt quite Janus-faced about gender crime laws. My feminist face cringes at the thought of widespread sexual and nonsexual violence against women occurring with utter impunity. My anti-authoritarian face furrows in consternation at reports of mass incarceration, prison abuses, and authoritarian police and prosecuting norms. This personal philosophical dissonance has led me on a quest to figure out whether the United States's penal system holds any liberatory potential for women, and, if not, what can be done about violent gender subordination. In this vein, I have sought out scholarship that neither repeats the battered women advocates' mantra that there should be "zero tolerance" for gender crime, nor holds to liberal ideals that instinctively prioritize "neutral" (defendants') rights. This led me to Leigh Goodmark's complex, insightful, and no doubt controversial book, *A Troubled Marriage: Domestic Violence and the Legal System*. The book is meticulous in its research, spanning decades of historical developments in the law of intimate abuse. It brings together many strains of feminist and criminal law theory to formulate a comprehensive re-envisioning of the domestic violence law reform project.

The book consists of two main interventions—a theoretical intervention and a practical intervention. Theoretically, the book critiques "dominance feminism," a brand of feminist legal theory developed primarily by Catharine MacKinnon, for steering the anti-abuse movement in a prosecutorial direction. While MacKinnon's writings have far less to do with domestic violence than with rape, pornography, and sexual harassment, the book makes a compelling case that dominance feminism-type ideas were highly influential in the domestic violence arena. Practically, the book calls for "antiessentialist" domestic violence law and policy, meaning that domestic violence reform must be disentangled from popular reductionist characterizations of battered women as non-poor white women subject to brutal violence, who have tried unsuccessfully to separate in the past, and desire batterers' incarceration but are too afraid to pursue prosecution. For Goodmark, rejecting essentialist images necessitates rejection of most state punitive responses to intimate abuse. The book accordingly advocates reforms "outside the criminal law," such as truth commissions, batterer interventions, and even microfinance.

Goodmark is ultimately a pragmatist. She seeks solutions that "work"—solutions that can simultaneously honor victims' choices, curb abuse, and improve the lived reality of subaltern women (and men). Although the book tends to emphasize strategies for curtailing violence, it does hint at a radical framing of the ways in which the domestic violence story exemplifies larger subordinating shifts in American penal law and policy. Thus, I appreciate the book's potential to illuminate connections between the trajectory of domestic violence reform and greater hegemonic forces in the U.S. carceral state. For example, the book's critique of dominance feminism is a trenchant rejection of the feminist embrace of state authoritarian power. The book echoes the nascent critique of

“governance feminism,” which Janet Halley et al. describe as “very state-centered, top-down, sovereigntist” feminism that “emphasizes criminal enforcement” and “envisions the legal levers it pulls as activating a highly monolithic and state-centered form of power.”¹ There is indeed something aesthetically disturbing about a progressive anti-subordination movement (feminism) embracing a system maintained by the powerful and privileged (the criminal system) that has the effect of subordinating the worst off (poor men of color), and then writing off any women’s opposition to the system as mere “false consciousness.” Moreover, the book notes that, as a practical matter, the criminal system’s tendency to create dystopian neighborhoods and exacerbate the effects of socio-economic degradation, makes criminal law a likely cause of, not solution to, domestic abuse.

One of the most exciting aspects of the book is its treatment of the concept of violence. The book is very thoughtful about violence in its taxonomy of different types of abusive relationships and seeks to disaggregate violence and abuse. One of my favorite parts of the book is when it describes how relationships with violence might not be abusive and certain abusive relationships may not involve violence. Discussions like this pave the way for criminal law theorists to ruminate in a deeper way about the political work that the concept of policing “violence” is doing. The idea of curbing violence gives a trump card to the state. Police authority goes virtually unexamined when private violence is at stake. But within our current cultural context, violence has a very particular meaning. The state is concerned with lashing-out, intense, physical violence and violence that accompanies street and drug crime. The state is distinctly unconcerned with the slow violence and death that institutionalized inequality causes to certain groups. Criminal laws intended to stop “epidemics of violence” have absolutely nothing to do with the violence of systematic and virtually invisible conditions of subordination. If anything, the criminal system is constitutive of such violence. So, it seems to me, policing violence is really about policing a certain type of harm that is largely produced by disempowered lower class men (and, if Goodmark’s description is correct, women).

I have concentrated my comments here on the book’s connection to the larger critiques of the American criminal system in which I am interested. But the book will appeal to more than just post-modern and sociological critics of penal authority. This “antiessentialist” book is essential reading for anyone interested in understanding the politics, policies, laws, and history of intimate abuse in late modern America.

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1. See Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 *Harv. J.L. & Gender* 335, 341 (2006). [?]

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