

Race, Battered Women, and the Criminal Justice System

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This paper looks at the criminal case of Deborah Peagler and the California habeas law and explores the effectiveness of legislative changes to domestic battery laws as a mechanism for change in the criminal justice system in regards to its treatment of domestic violence survivors accused of committing a crime against their abuser. It focuses on the androcentric and racialized nature of the criminal justice system and argues that while legislative changes brought about by social movements facilitate opportunities for women like Peagler to pursue just outcomes, they do not counter the gender-biases prevalent in the justice system and, alone, are insufficient in improving the treatment of domestic violence survivors in the criminal justice system.

Introduction

Criminal justice administration in the United States is based on the foundational principle of the rule of law. The rule of law doctrine stipulates that the law must be applied equally and fairly to everyone regardless of class, race, or gender. In reality, however, the administration of justice is a racialized and gendered process, one that systematically disadvantages females, trans individuals and ethnic minorities who come in contact with the criminal justice system. This flawed administration is largely due to the fact that the law is not a self-interpreting entity; interpretation of legislation, and subsequent judicial decisions are dependent on both the individual social identity of judges and the political, social and economic context in which the interpretation is taking place (Hausegger, Hennigar and Riddell 22). The case of Deborah Peagler—the rejection of her habeas petition in particular—shows that while social movements are pivotal in establishing legislation, simply changing the ‘letter of the law’ is not enough to challenge the inherently gender-biased structure of the U.S. criminal justice system. The 2002 Habeas Law, while providing an alternative avenue for battered women to secure their freedom, continues to perpetuate the structural biases within the criminal justice system, disadvantaging, in particular, women of colour.

The Case

In 1983, Deborah Peagler plead guilty to the first-degree murder of her boyfriend, Oliver Wilson, who was murdered by two Crips gang members, Ramone Sibley and Dayon Lively (Oliver 4). Wilson had sexually, physically and psychologically abused both Peagler and her daughters, and as a last resort, Peagler's mother recruited Sibley and Lively to "teach him [Wilson] a lesson" (Potash, *Crime After Crime*). Peagler was charged with first-degree murder, with prosecutors alleging that Peagler orchestrated the murder and lured Wilson to the scene of the attack, though she was not present when the actual killing took place (Leonard A9). Due to both to misinformation given to her by the District Attorney and her inability to present a full defense, Peagler elected not to exercise her constitutional right to trial (Amicus Brief *In Re Deborah Peagler*). Peagler would have been unable to present a full and complete defense, because in 1983, expert testimony on battered woman's syndrome was not allowed into court as evidence. In 2002, two pro bono attorneys—Joshua Safran and Nadia Costa—took on Peagler's case and hoped to free her through filing a Writ of Habeas Corpus based on the newly enacted California Penal Code section 1473.5. However, this route was unsuccessful as Peagler's habeas petition was rejected by the Superior Court. Instead, she gained release through parole after a well-publicized campaign for her freedom. Therefore, while the legislative changes brought about by the Battered Women's Movement facilitate opportunities for women like Peagler to pursue justice, they do not counter the gender-biases prevalent in the justice system and, alone, are insufficient in furthering the movement's goals.

The Battered Women's Movement

In the United States, the Battered Women's Movement began in the 1970s and was instrumental in influencing the enactment of domestic battery laws. At the time of Deborah Peagler's arrest, the Battered Women's Movement was in its infancy, with the very first domestic violence shelters just being established (Potash, *Crime after Crime*). One of the key goals of the Battered Women's Movement was legal reform: to repeal and amend laws that were overtly gender-biased, and to enact new legislation that would serve to criminalize violence against women that had previously been ignored, or even condoned (Gagne, 11). Historically, issues of gender-based and domestic violence were considered "private" rather than "legal" matters (White, Haines and Eisler 157); domestic violence had either not been considered a crime in the letter of the law, or had been subject to trivialization by the criminal justice system.

As the movement progressed, it continued to influence various legal reforms. In the 1970s, activists succeeded in creating arrest laws and improving police response to domestic violence calls, and in the 1980s, the movement focused on challenging the "androcentric" nature of self-defense law by use of "political trials" (Gagne 42). Political trials are legal trials that occur within the existing framework of the criminal justice system, but challenge the gender-biases within the law itself, and simultaneously demonstrate to the public that domestic violence is a political and social issue, rather than a private one (Gagne, 42). As a result of this activism, the issue of domestic violence moved from the 'private' sphere to the 'public' sphere, and the focus turned to influencing legislators and existing institutions to create and implement domestic battery laws. In California, this increased public awareness led not only to the enactment of the habeas law, but also to the implementation of specialized domestic violence courts, designed specifically to handle cases of intimate partner battering (Judicial Council of California).

The Statute

The 2002 Habeas Law was one of two key pieces of legislation passed by the California legislature in response to the growing awareness about domestic violence. In 1991, the legislature passed section 1107 of the California Evidence Code, which allowed for the admissibility of expert testimony regarding battered woman's syndrome and its effects in appropriate cases (Hempel 2). As section 1107 did not apply retroactively, California enacted section 1473.5 of the California Penal Code—the habeas law—in 2002. The habeas law allowed women convicted of the murder of their abuser prior to 1992¹ to have their cases re-examined by the court, through filing a Writ of Habeas Corpus (Adams 219). An inmate was eligible to file a habeas petition if the petitioner could prove that: 1) the exclusion of expert testimony on battered woman's syndrome (BWS)² negatively impacted the sentencing outcome and 2) had this testimony been included, it is likely that the verdict would have been different (Adams 222).

Feminist Theory

California became the first state in which a habeas law was created to directly address the needs of incarcerated battered women convicted of killing their abusers. While the importance of creating legislation that directly addresses the needs of domestic violence victims cannot be understated, the mere creation of a law does not automatically foster the understanding that is needed for effective implementation of the law. The criminal justice system has, and continues to be, male dominated both in its composition and in its understanding of crime. This structural male domination contributes heavily to the gender-biased institutional practices of the criminal justice system. These factors result in a limited understanding of female crime, laden with stereotypes that influence the interpretation of the law. Feminist activism and works on sexual assault, rape, and domestic violence have been pivotal in creating legislation that addresses these issues (Muraskin 13). The work of feminist activists however, has focused largely on the common experiences of women in a patriarchal society, rather than the unique experiences of women across different ethnic groups (Campbell et al. 278). This focus has led to a discourse that often only represents the realities of “white, middle-class women's lives” (White, Haines and Eisler 150). This limited focus leads to both the creation of laws that are worded in a manner that favours the dominant group, and an uneven interpretation of the law that can further marginalize women who do not fit this norm.

Socio-Political Context of the Domestic Violence Experience

The Peagler case highlights race-conscious feminist critiques of the criminal justice system (Devlin 616), as it shows that an individual's domestic violence experience cannot be divorced from her socio-political context. Though there are common experiences that characterize victims of domestic violence, various factors such as race and socioeconomic status influence the individualization of the domestic violence experience. Research suggests

¹ This was later amended to convictions prior to 1996.

² The legislation was later amended to use the gender-neutral phrase “intimate partner battering,” however for the purposes of this paper it will be referred to as “Battered Women's Syndrome.”

that it is young, African American women, of low socioeconomic status, that are more likely to be abused by their intimate partner (Duley, 79). These communities are often characterized by over-policing in regards to offenders, and under-policing in regards to victims, which leads to an overall distrust in the criminal justice system as a whole (Campbell et al. 281). Individuals from this demographic are far less likely to report domestic abuse to law enforcement, and a common thread among domestic violence victims in these communities is their assertion that the police fail to respond adequately, even when notified. In Peagler's case, Oliver Wilson had broken into her home just days prior to his death, repeatedly raped her, and threatened to kill her and her family (Leonard A9). He was arrested and charged with assault with a deadly weapon, but was released the very next day. In these communities, this lack of police response serves to further decrease the battered woman's sense of security, which may lead her to "take matters into her own hands" (Duley 79). These circumstances create further problems for women of colour who are charged with the murder of their abuser, as the lack of formal police reports can severely hinder a battered woman's ability to provide proof of systematic abuse to assist a self-defense defense.

Interpretation of the Law in Court Processes

With the socio-economic context in mind, it is evident that the mere passage of legislation such as the habeas law does not ensure that the implementation of the statute will take into account the individualization of the domestic violence experiences (Duley 77). Rather, the narrow scope of the law may serve to do the opposite, criminalizing battered women who do not fit the societal norm of what a battered woman "should" look like. Though the habeas law provides a form of legislation that attempts address the re-victimization of domestic violence survivors, the law is not self-interpreting. In the case of this particular law, it is up to judges to determine the credibility of the habeas petition. As Peter McCormick states in his book *Canada's Courts*, "Judges come from somewhere; they have families and schools and friends and connections. The cases that come before judges similarly have "real-life" causes and consequences" (2). It is argued that the typical and "credible" image of a battered woman is based on the "traditional Anglo American ideal of women as 'pious, pure, submissive and domestic.'" This perception leads to the systematic discrimination against African American women who are portrayed as "strong, masculine, and angry," as these stereotypes prevent judges from viewing these women as true victims of BWS (Adams 226). Reason and emotion are typically portrayed as contrary to one another, and the law and legal interpretation viewed as being 'rational' in nature. However, the way in which emotions are used in the U.S. court system, especially in regards to battered women's homicide cases, significantly influences the outcome. Michelle VanNatta argues in her article, "Gender, Race and Sexuality in Legal Discourse," that the courtroom practice of "emotional inferencing" highlights race and gender bias that can affect legal outcomes (163). The practice of emotional inferencing is the "process of using evidence of a particular event to claim that an individual experienced a certain emotion." (VanNatta 163). In essence, a battered woman's defense would focus on the emotions felt at the time of the murder, to add credibility to a self-defense defense. This is problematic, however, as society is characterized by specific "emotional norms." These emotional norms outline which emotional responses to a particular event are "natural and acceptable," and other discordant emotional responses are viewed as "distasteful and deviant." (VanNatta 169). These emotional norms are reflected in the criminal justice system and strongly influence judicial decisions. A judge is far more likely to find a battered woman credible when she reacts in fear and kills her abuser during an attack, than he or she is

to believe a woman who reacts in anger while her abuser is sleeping (Adams 228). This is because the former reaction aligns with the expected emotional norms, while the latter does not.

Emotional norms are especially problematic for women of colour, who are stereotyped differently than their Caucasian counterparts and may not be viewed as reacting in accordance with the dominant norms. The rejection of Peagler's Writ of Habeas Corpus by the Superior Court highlights how deviance from emotional norms can be a negative influence on judicial decisions, even if a case appears to meet the eligibility criteria under California Penal Code section 1473.5. The Superior Court rejected her habeas petition on the basis that, "there was not a reasonable probability that the District Attorney would have offered to accept a plea to manslaughter, or that a jury would have reached a different outcome if testimony on battering and its effects would have been included at trial" (Amicus Brief *In Re* Deborah Peagler). This is largely due to the fact that the murder of Oliver Wilson was pre-meditated, and Wilson was lured to the scene of his death by Peagler, the argument being: Peagler must not have been in fear for her life if she willingly met up with her abuser. Peagler's case is not unique in disadvantaging battered women of colour. Due to the racial stereotypes that portray African American women as "angry and aggressive," these defendants face greater hurdles in convincing judges that their case would yielded a different result had expert testimony on battered woman's syndrome been admitted, because they are not seen as credible victims of battering (VanNatta 170). In order for a habeas petition to be successful, judges must not only understand both how the abuse affected the petitioner (Adams 222), but also that not all women experience the effects of domestic abuse in similar ways. A judge must also believe that the inclusion of expert testimony on the effects of battering would have resulted in a different outcome. It is up to the judge to determine, then, the extent to which "battered woman's syndrome" testimony would have bolstered the defense's claim of self-defense. Judges, are influenced by the socio-political context of the case (Hausegger, Hennigar and Riddell 21), and carry their own understandings regarding expert testimony on battering and its effects. Adams argues that this is problematic as these understandings are typically dependent on Lenore Walker's foundational work, "The Battered Woman Syndrome." Walker's work, though essential, has been criticized for reinforcing the image of women as "weak, crazy, powerless victims in need for protection rather than treating women as reasonable persons who acted sensibly in order to save their own lives" (Adams, 226). Applying this limited understanding of Battered Woman's Syndrome to all battered women's cases inevitably disadvantages the women who do not fit this fixed description. In order to implement laws such as the habeas law more evenly, judges must acquire a far more comprehensive understanding of battered woman's syndrome to fully grasp that an individual who kills her abusive partner after years of systematic abuse rather than during an attack, may still be acting in accordance with the doctrine of self-defense.

Other Avenues: Parole

The problem with interpretation exists not only at the judicial level. There are only a few other avenues by which incarcerated battered women can seek remedy: clemency, parole and resentencing. The parole process in particular highlights the important role that interpretation of law plays in the release of these women. In 2000, the California legislature passed Senate Bill 499—another piece of legislation that attempts to rectify the number of incarcerated battered women through the passage of law. This particular piece of legislation explicitly states that the parole board must take into consideration the experiences of a battered woman up for release (Hempel 4). However, this piece of

legislation has not been effective in practice. The Board of Prison Terms³ (BPT/parole board) recommends parole for only a mere fraction of prisoners serving a sentence where the maximum term is life, and ultimately their release depends on the decision of the state governor (Adams 235). Like judges, parole board members' perceptions of battered women are influenced by the prevalent stereotypes of who constitutes a 'victim,' and often base their decisions on an inadequate understanding of battered woman's syndrome. Furthermore, parole board members' understandings of battering and its effects can actually be detrimental to parole candidates, as the parole board often views women who have been in abusive relationships as an indicator of unhealthy social relations, a factor that can (and does) negatively influence a parole application (Adams 235).

Media Influence

Finally, The Peagler case highlights how law and politics are inextricably linked in the United States due to gubernatorial review. California is one of three states in which the state governor has full power to overturn a parole board decision to release a prisoner (Vesely). Every time a governor chooses to overturn a parole board decision to release a battered woman, he or she is setting a precedent for the success of future cases. Governor Arnold Schwarzenegger had a history of overturning parole board decisions to release battered women convicted of homicide, but declined to review Peagler's case (Marroquin). This is due, in part, to the high degree of media coverage that characterized the Peagler case. Media coverage of a particular social movement or criminal case can significantly influence public perception. In contrast to the negative characterizations of battered women of colour often reinforced by the court, media coverage regarding Peagler's case was extremely favourable. Not only was a documentary created about her case, but musical groups such as Arrested Development championed her cause, and all this support culminated in a demonstration outside Schwarzenegger's office, on the last day of the review period (Potash, *Crime After Crime*). The state governor was no doubt influenced by the significant public support behind Deborah Peagler. Based on this, interest groups and critics of gubernatorial review have begun to recognize that perhaps it is more effective to use social and economic resources on influencing the state governor's perception on individual cases, rather than on changing legislation (Adams 237).

Conclusion

Domestic violence is not an individual problem that can be solved by the creation of laws. Rather, it is a socio-political problem that compounded by various social inequalities, that are reinforced in the very structure of institutions such as the criminal justice system. The passage of the habeas law emphasizes that changes in legislation cannot stand alone to achieve progress within a social movement. The creation of domestic battery laws are only one step in achieving the overall objectives behind the legislation. In order to ensure the implementation of the law is effective, interest groups should focus on gaining public and legislative awareness, through public education and media campaigns, and those in the position of interpreting and implementing the law, most notably judges and parole board members, should acquire a full understanding of domestic violence and its effects, focusing on the individualization of the domestic violence experience, rather than the similarities. As Adams states, "Much is needed for

³ Re-named the "Board of Parole Hearings"

the intent behind the law to become completely operational. They need a governor who is fair and compassionate to these women's struggles. They need public awareness to fuel social change, and they need the statute to grow beyond its handicapped status, expanding the rights to *all* battered women who legitimately deserve relief" (240).

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