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Introduction: Sexuality, Criminalization, and Social Control

Clare Sears*

THIS SPECIAL ISSUE OF *SOCIAL JUSTICE* EXAMINES THE SEXUAL POLITICS OF criminalization within and beyond the United States. Over the past three decades, the United States has increasingly relied on criminalization as a strategy for managing social problems. As a result, over 2.3 million people, or one in every 100 adults, are presently incarcerated, excluding those held in immigration detention, juvenile justice, or military facilities (Warren, 2008). Additionally, in the post-September 11 political context, new technologies of surveillance and detention have emerged, resulting in the criminalization and deportation of thousands of immigrants from the United States, and the indefinite detention and abuse of prisoners of war around the globe. Scholars have critically considered race in their studies of criminalization, examining the severe and disproportionate effects on low-income communities and communities of color (Alexander, 2010; Wacquant, 2001; Western, 2007). They have also analyzed the gendered dynamics of incarceration, as men are more likely to be locked up than women are, but the female prison population has grown at a much faster rate (Chesney-Lind, 2002; Kim, 2003; Richie, 2002; 1996). This special issue builds upon this scholarship, by investigating multiple relationships between sexuality, criminalization, and social control.

Several articles here focus on the ways in which correctional facilities are deeply implicated in the management of sexuality, as total institutions that fundamentally control and coerce inmates' bodies. This is made apparent through institutional policies that regulate sexual relationships, carceral environments that facilitate sexual abuse, routine practices that scrutinize and sexualize inmates' bodies, and court rulings that refuse claims for healthcare by transgender inmates' on "security" grounds. These articles also highlight how cultural notions of normative sexuality shape contemporary constructions of "the criminal," who threatens social and moral order and hence requires incapacitation. This conjures up the hypersexual, hypermasculine black man, the sexually promiscuous delinquent girl, and the homophobic Muslim migrant. Also in this special issue are explorations of sexuality and policing outside correctional facilities, focusing on anti-prostitution and immigration laws in the United States and hate crime laws in Germany.

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The first set of essays explores how the criminal justice system manages sexuality within adult and juvenile detention facilities in the United States. We begin with Lisa Pasko's article "Setting the Record 'Straight': Girls, Sexuality, and the Juvenile Correctional System," which examines the ways in which the juvenile justice system regulates girls' same-sex sexual behavior within residential correctional facilities. Based on interviews with 55 juvenile justice professionals in the Western United States, Pasko argues that staff respond to girls' same-sex sexuality in three ways: as a psychiatric pathology that results from a history of sexual abuse; as a temporary phenomena that stems from institutional experience rather than from a valid lesbian, bisexual, or queer identity; and as a criminal offense that violates institutional "no touching" policies and leads to arrest and adjudication. According to Pasko, the criminalization response is a relatively new development that emerged in the context of the 2003 Prison Rape Elimination Act (PREA). Although PREA addresses a clear and pressing problem (sexual violence in prison), observers have criticized its primary focus on violent rape between male prisoners and its relative neglect of staff sexual abuse, the complexities of sexual coercion, and structural violence within the prison environment (Ristroph, 2006; Smith, 2008). Pasko extends this critique by showing that PREA has also effectively criminalized same-sex sexual activity between institutionalized girls, illuminating "the capillary power of the adult male prison system to spread its policies to lower institutions of social control." Pasko concludes that the juvenile justice system is based on a heteronormative framework and its current policies rob girls of their sexual agency and systematically pathologize, punish, and marginalize lesbian, bisexual, and queer youth.

Complementing Pasko's analysis, Michelle VanNatta examines feminist responses to sexual violence in Illinois women's prisons in "Conceptualizing and Stopping State Sexual Abuse of People Incarcerated in Women's Prisons." According to VanNatta, these prisons are rife with multiple forms of sexual abuse perpetuated by staff, ranging from clearly criminal acts such as physically forced sex, to exploitative "romances" and coerced sexual favors, to routine institutional practices such as strip-searching and sexualized surveillance. However, despite the pervasiveness of prison sexual abuse, VanNatta reports that feminist antiviolence activists have generally failed to develop an adequate response. To explore this neglect, VanNatta examines the response of rape crisis centers (RCCs) to prison sexual abuse, based on interviews with RCC workers in Illinois. She argues that the lack of attention by RCCs to prison sexual abuse "is related to alliances with the criminal legal system, to everyday practices rooted in funding structures, to physical and social distance from prisoners, and to conceptualizations of sexual assault that leave out the realities of prisoners' lives." Based on these findings, VanNatta calls on feminist antiviolence workers to develop a new conceptualization of sexual abuse that incorporates the realities of prison experiences, as well as a more nuanced and critical analysis of the prison-industrial complex and the

state. Finally, VanNatta acknowledges the need for prison reforms that address particularly egregious violations, but calls for decarceration as the most effective response to prison sexual abuse.

In contrast to Pasko and VanNatta's discussion of the ways in which correctional facilities discipline inmate sexuality and facilitate sexual abuse, Elias Vitulli draws attention to their regulation of normative gender, examining the frequent denial of gender-related medical care to transgender inmates. As Vitulli explains in "Racialized Criminality and the Imprisoned Trans Body: Adjudicating Access to Gender-Related Medical Treatment in Prisons," prisons are sex-segregated institutions and most transgender prisoners are placed in facilities based on their birth-assigned sex. As a result, most transgender women are incarcerated in men's prisons, where they are frequently denied access to gender-related medical care. Numerous transgender inmates have filed lawsuits that challenge this denial of care, producing a body of case law that details judicial assessments of gender, normativity, and punishment. Analyzing a sample of these rulings, Vitulli finds that discourses of extreme pathology and racialized criminality structure courts' assessments of transgender prisoners' claims. Specifically, Vitulli argues that courts are generally unable to deploy the standard medical model of transsexuality in these cases, due to assumptions of whiteness, wealth, and heteronormativity; instead, they seek proof of "legitimate" transsexuality in narratives of depression, addiction, self-harm, and suicidality. Additionally, Vitulli finds that courts regularly deny access to gender-related medical treatment on the grounds that it would increase sexualized violence within the prison and create security problems for the guards. According to Vitulli, these concerns are grounded in racist fears of black men's sexuality and criminality rather than in genuine concerns about the safety of transgender prisoners; they also prioritize prison functioning over inmate well-being. Vitulli concludes with a call for scholars and activists to recognize the interdependency of racialization, sexualization, and gendering processes, as well as the different social and spatial locations of transgender populations.

The second set of articles in this special issue also examines the complex ways in which sexual, racial, and gender politics intersect. However, these essays shift the focus away from correctional facilities and courtroom rulings to the policing of national borders and urban space. In "Queer Injuries: The Racial Politics of 'Hate Crimes' in Germany," Jin Haritaworn analyzes hate crime discourse in contemporary Berlin, focusing particularly on the construction of the "homophobic Muslim migrant." As Haritaworn explains, the discourse of migrant homophobia began in Germany in 1999 and received new life in the late 2000s, as state, media, and community actors began to direct attention to "hate crimes" committed against gay men. The emerging discourse has been clearly racialized, linking homophobic violence to "backward," "hateful," Muslim migrants who must be forcibly educated into cosmopolitan values and/or punished through the criminal law. Many gay organizations have profited from this turn, receiving state funding

and support. As Haritaworn argues, Germany's hate crime discourse uses spectacles of gay vulnerability to generate support for militarized policing, through a series of strategic positionings: the West as idyllic, tolerant, and in need of protection; gay affection as symbolic of Western freedom and vulnerability; and the military/police as a welcome and benevolent protector of minorities. As such, Haritaworn argues that hate crime discourse localizes the global war on terror, bringing racialized notions of threat, safety, and protection home. Moving from policy papers to media campaigns to community meetings, Haritaworn's analysis persuasively shows how Germany's hate crime discourse mobilizes public support for criminalization, under the guise of protecting minorities, even as the state's persecution of migrant communities reaches new heights. As he concludes, "written as citizenship and inclusion, the invitation of the sexual subject into life is thus a euphemized social death sentence for post-migrants."

The next article also explores sexuality, migration, and militarized policing in the post-September 11 context, but with specific focus on binational same-sex couples in the United States. In "Lesbians Under Surveillance: Same-Sex Immigration Reform, Gay Rights, and the Problem of Queer Liberalism," Rachel Lewis provides a close reading of Ralph Torjan's *Maple Palm* (2005), an activist feature-length fiction film that supports the Uniting American Families Act (UFAA). Originally introduced to Congress in 2000, UFAA was reintroduced in 2005 (and most recently in 2009); if passed, it would grant immigration rights to same-sex couples by redefining "permanent partner" for immigration purposes. Lewis analyzes *Maple Palm* to garner critical insights into the politics of UFAA, critiquing its repeated emphasis on the private sphere, its unreflective appeal to international human rights, its failure to challenge patriotic normative citizenship, and its underlying neoliberal assumptions that marginalize poor and legally vulnerable migrants. According to Lewis, *Maple Palm* and the legislation it advocates individualize and privatize the social conflict of binational same-sex couples and distance the campaign for gay rights from the campaign for immigrant rights. Consequently, she calls on advocates of same-sex immigration rights to develop a broader transnational approach that interrogates the racial and gender politics of family reunification and the legal/illegal dichotomy that structures U.S. immigration law.

Haritaworn and Lewis draw urgently needed critical attention to the "respectable" sexual minorities whose lobbying seeks to benefit from (neo)liberal discourses of inclusion. The final article instead examines the routine police abuse of marginalized sexual and gender communities in the United States, legitimized by local anti-prostitution laws. In "Move Along: Community-Based Research into the Policing of Sex Work in Washington, D.C.," Penelope Saunders and Jennifer Kirby describe the process and results of community-based research that examined the effects of anti-prostitution policies in Washington, D.C. As the authors explain, the research was prompted by a series of laws adopted in 2005, including a controversial "prostitution-free zone" provision that allowed police to ban people whom they

suspected of prostitution from designated city areas. Although politicians framed this provision as a new “tough on crime” measure, Saunders and Kirby argue that it merely continued and legitimized unconstitutional policing that had long existed in the District.

Nonetheless, the law generated significant political interest and community activists formed the Alliance for a Safe and Diverse D.C. to expose police abuse and challenge anti-prostitution policies. In 2007, this organization surveyed people about their experiences with the police, using a community-based approach: the research team was drawn from the groups most affected by anti-prostitution policing, research questions were generated to meet community needs, and results were presented at community forums to garner additional insights and to organize for social change. The research revealed widespread police abuse of sex workers and people profiled as prostitutes, including high rates of verbal and physical abuse, requests for sex, and destruction or confiscation of condoms. It also found that police disproportionately targeted Latinos, transgender people, and youth, and regularly forced people suspected of prostitution to “move on” into unsafe neighborhoods. As Saunders and Kirby argue, anti-prostitution policies are often adopted in response to pressure from people in gentrifying neighborhoods who view street-based sex workers as a threat to public safety. However, their research demonstrates that these policies promote a form of policing that poses a clear threat to sex workers’ safety, by pushing them into unsafe neighborhoods, destroying safe-sex supplies, undermining outreach efforts, and legitimizing police brutality. Based on these findings, the Alliance for a Safe and Diverse D.C. is now organizing to provide pro bono support to people arrested under anti-prostitution laws; to address the evidentiary use of condoms; and to seek additional support for programs working with sex workers and other groups affected by these laws.

As the authors in this special issue make clear, criminalization involves routine state brutalities that exist in excess of the written law, even as the written law facilitates and legitimizes their occurrence. Historically, lesbian and gay communities were a prime target of criminal and social controls, but in recent years there have been significant legal gains in many North American and Western European nations, as well as the emergence of a “respectable” gay constituency (predominantly white, middle-class, male, and gender-normative) that has lobbied for full inclusion in the body politic, with some degree of success. However, as authors in this issue caution, the move for inclusion has so far involved significant collusion with neoliberal policy agendas that intensify the persecution of racialized and immigrant groups against the backdrop of the war on terror. Consequently, these articles show how state and legal institutions not only regulate the boundaries of normative sexuality, but also deploy them to construct a veneer of sexual tolerance and inclusion that mobilizes public support for expanded criminalization.

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