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The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson’s “Masculinity as Prison”

Dean Spade*

INTRODUCTION

In *Masculinity As Prison: Sexual Identity, Race, and Incarceration*,¹ Professor Russell Robinson explores the creation of the K6G unit of the Los Angeles County Jail. Robinson describes how this unit, designed to protect prisoners who may be targets because of their non-normative gender and/or sexual orientation, operates as a site for the enforcement of racialized and classed norms about sexual orientation and gender. In order to be housed in the K6G unit, prisoners must undergo screening² performed by two white, heterosexual deputies. These deputies quiz the prisoners on their familiarity with gay subcultural terminology and details about the West Hollywood neighborhood, a gathering place for white gay men in Los Angeles, in order to determine their suitability for the unit.³ Once prisoners are admitted to the unit, they wear special powder blue uniforms to differentiate them from general-

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1. Russell Robinson, *Masculinity as Prison Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309 (2011).

2. *Id.* at 1311.

3. *Id.*

population prisoners, who wear dark blue.⁴ Robinson's article exposes how the racialized, gendered, and classed construction of homosexuality, and the figure of the vulnerable gay prisoner, are produced and enforced in the Los Angeles County Jail to the detriment of queer and trans people of color and poor people who bear the brunt of racist, homophobic, and transphobic policing and criminalization. Robinson argues that the problematic practices of the K6G unit should be contested as a violation of the privacy rights of prisoners.⁵

Robinson's description of the K6G unit and its screening process offers an excellent site for engaging in a critique of projects that seek to protect those facing the most violent consequences of white supremacy, heterosexism, and gender binarism by achieving recognition or legibility for them in state apparatuses of security that are themselves key locations of that violence. This point is broadly useful given the centrality of recognition- and inclusion-focused legal equality strategies in contemporary white gay politics, which have both been a product of and worked to reify the limited and racist framings of gay identity that Robinson critiques in his article. The most well-resourced and well-publicized examples, extensively critiqued by many scholars and activists,⁶ are the efforts to seek inclusion in marriage and military service, which have dominated as the most legible political claims of gay and lesbian rights in recent decades. Scholars and activists have also critiqued hate crimes legislation as a project that seeks recognition for those targeted by violence by expanding the punishing power of the criminal punishment system.⁷ Critics

4. *Id.* at 1321.

5. *Id.* at 1378.

6. *See, e.g.*, THAT'S REVOLTING! QUEER STRATEGIES FOR RESISTING ASSIMILATION (Mattilda Bernstein Sycamore ed., 2004); LISA DUGGAN, THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY (2004); Ian Barnard, *Fuck Community, or Why I Support Gay-Bashing*, in STATES OF RAGE: EMOTIONAL ERUPTION, VIOLENCE, AND SOCIAL CHANGE 74–88 (Renée R. Curry & Terry L. Allison eds., 1996); Morgan Bassichis, Alexander Lee & Dean Spade, *Building an Abolitionist Trans and Queer Movement with Everything We've Got*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 15–41 (Eric A. Stanley & Nat Smith eds., 2011); Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GLQ: J. LESBIAN & GAY STUDIES 437 (1997); Paula Ettelbrick, *Since When Is Marriage a Path to Liberation?*, 6 OUT/LOOK: NAT'L LESBIAN & GAY Q. 14 (1989); Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 COLUM. J. GENDER & L. 236 (2006); Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539 (2006); Darren Lenard Hutchinson, "Gay Rights" for "Gay Whites"? *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358 (2000); Chandan Reddy, *Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice*, 76 FORDHAM L. REV. 2849 (2008); Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 TEMP. L. REV. 709 (2002); Craig Willse & Dean Spade, *Freedom in a Regulatory State? Lawrence, Marriage and Biopolitics*, 11 WIDENER L. REV. 309 (2005); Kenyon Farrow, *Is Gay Marriage Anti-Black?*, KENYON FARROW (June 14, 2005), <http://kenyonfarrow.com/2005/06/14/is-gay-marriage-anti-black/>.

7. *See* Bassichis, Lee & Spade, *supra* note 6, at 17, 33–35; Sarah Lamble, *Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX, *supra* note 6, at 235–65, 249–52; JOEY L. MOGUL ET AL., QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 118–39 (2011); Katherine Whitlock, In a Time of Broken

argue that hate crimes laws not only fail to prevent violence against queer and trans people, they also build the arsenal of the criminal punishment system, which is the most significant perpetrator of violence against queer and trans people.⁸

This essay extends this critical engagement with recognition- and inclusion-focused reforms to look at the subject of Robinson's study, the K6G unit. It asks what Robinson's findings might suggest about how queer and trans politics addresses criminalization. Specifically, I argue that prison abolition scholarship provides the critical tools necessary to fully understand why reforms like the creation of a special unit in the Los Angeles County Jail for gay and trans prisoners will consistently fail to address violence and will, in fact, become new sites for enforcing racialized gender and sexuality norms to the detriment of the most criminalized populations. Robinson successfully exposes the absurdity of a project to properly identify vulnerable prisoners by quizzing them about and measuring them against white gay cultural norms. I suggest that privacy arguments do not do enough to help us analyze the problems with the K6G unit. We need the politics and analysis developed by prison abolition scholarship and activism in order to even begin to imagine any solutions that would reduce or eliminate the horrifying conditions facing trans, gender non-conforming, and queer prisoners.

I.

PUNISHMENT AND THE STATE ADMINISTRATION OF RACE AND GENDER

Angela Davis has described the historical trajectory that formed the criminal punishment system as a response to the formal abolition of slavery.⁹ As she and others have pointed out, the Thirteenth Amendment's abolition of involuntary servitude includes a very important caveat: "except as punishment for crime whereof the party shall have been duly convicted."¹⁰ Davis describes how, in the years following the abolition of slavery, southern prisons drastically expanded and went from being almost entirely white to primarily imprisoning Black people.¹¹ New laws were passed—the Black Codes—that criminalized an extensive range of behaviors and statuses, such as being unemployed or

Bones: A Call to Dialogue on Hate Violence and the Limitations of Hate Crimes Legislation (Rachael Kamel ed., Justice Visions Working Paper, 2001), available at <http://srjp.org/files/Broken%20Bones-1.pdf>.

8. See, e.g., Dean Spade, *Methodologies of Trans Resistance*, in *A COMPANION TO LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER STUDIES* 237–61 (George Haggerty & Molly McGarry eds., 2007); DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS AND THE LIMITS OF LAW* 101–70 (2011); Whitlock, *supra* note 7.

9. ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 23–39 (2003).

10. U.S. CONST. amend. XIII; see also COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* 62–64 (2011) (describing instances where Black people convicted of crimes were sentenced to be publicly auctioned after passage of the Thirteenth Amendment).

11. DAVIS, *supra* note 9, at 29.

disobeying an employer, solely where the accused was black.¹² These legal schemes permitted the capture of newly freed slaves into an only somewhat different system of forced labor, control, and racial violence.¹³

The nature of imprisonment changed during this time. Prisons adopted methods of punishment common to slavery, such as whipping, and implemented the convict leasing system that allowed former slave owners to lease the labor of prisoners, who were forced to work under conditions many have suggested were even more violent than those of slavery.¹⁴ In 1873, 25 percent of all black convicts who were leased died; in 1898, nearly 73 percent of total revenue in Alabama came from convict labor.¹⁵ People were literally captured and worked to death, providing cheap labor for white landowners and revenue for states.¹⁶

The contemporary criminal punishment system developed from this adaptation of slavery to create a somewhat different racially targeted form of control and exploitation. The continuation of those tactics can be seen in the prison system's contemporary operations. As Davis asserts,

Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex.¹⁷

This analysis of the origins of imprisonment helps us understand imprisonment itself as racialized violence. Punishment and imprisonment were and are co-constitutive in the United States with processes of racialization. Today punishment systems are rationalized as race-neutral institutions for determining and punishing individual culpability, but such assertions are laughable in the face of the severe and obvious targeting of people of color in every aspect of policing, pre-trial imprisonment, prosecution, sentencing, imprisonment, probation, and parole. More than 60 percent of the people in prison are people of color, and one in every ten Black men age 30-39 is in prison or jail.¹⁸ Black youth are 16 percent of the youth population, but 28

12. *Id.* at 28.

13. *Id.* at 28–31.

14. *Id.* at 31–32.

15. *Along the Color Line*, DIGITAL HISTORY, http://www.digitalhistory.uh.edu/disp_textbook_print.cfm?smtid=2&psid=3179 (last visited Dec. 10, 2012).

16. *Id.*

17. DAVIS, *supra* note 9, at 36–37.

18. SENTENCING PROJECT, CRIMINAL JUSTICE PRIMER (2009), available at <http://www>.

percent of juvenile arrests, 37 percent of the youth in juvenile jails, and 58 percent of the youth sent to adult prisons.¹⁹ There are countless other statistics that demonstrate the racialized targeting of criminal punishment that is endemic to its formation and operation in the United States. The criminal punishment system in the United States, the most imprisoning country on Earth, is justified by the idea that it contains and neutralizes dangerous law-breakers. In reality, race, not dangerousness or illegal action, determines who is imprisoned.²⁰ US prisons are full of low-income people and people of color who were prosecuted for crimes of poverty and minor drug use. Racist tropes of Black dangerousness that have been a central part of US culture since slavery are invoked and mobilized in media to justify and normalize the continuing expansion of criminalization and imprisonment. Scholars consistently expose the disconnect between the myth that criminal punishment is focused on public safety and the reality that it operates as targeted racial violence.²¹

Processes of racialization, like the slavery/criminalization processes described by Davis, are inherently gendered and gendering, and the construction and administration of gender categories is always racialized. Racial and gender classification systems were essential to the founding violence of slavery and genocide that created the material conditions of the nation and endure as political rationales and fundamental categories of administrative operation for all of the projects and programs that constitute the state. From the founding of the United States, the legal rules governing indigenous and enslaved people articulated their subjection through the imposition of violent racialized gender norms, such as the enforcement of natal alienation among slaves and European binary gender categories and gendered legal statuses among indigenous people. From the beginning, racialized and gendered statuses and norms were essential to the colonization and slavery that produced the United States and its legal systems.²² It is important to note that

sentencingproject.org/doc/publications/cjprimer2009.pdf; see also *Racial Disparity*, SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=122> (last visited Dec. 12, 2012).

19. *Race & Justice News*, SENTENCING PROJECT (Sept. 16, 2010), http://www.sentencingproject.org/detail/news.cfm?news_id=992.

20. Maia Szalavitz, *Study Whites More Likely to Abuse Drugs than Blacks*, TIME (Nov. 7, 2011), <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks/>.

21. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); DAN BAUM, *SMOKE AND MIRRORS: THE WAR ON DRUGS AND THE POLITICS OF FAILURE* (1996); HARRY G. LEVINE ET AL., *DRUG POLICY ALLIANCE, TARGETING BLACKS FOR MARIJUANA: POSSESSION ARRESTS OF AFRICAN AMERICANS IN CALIFORNIA, 2004-2008* (2010), available at http://www.drugpolicy.org/sites/default/files/Targeting_Blacks_for_Marijuana_06_29_10.pdf; JUDITH GREENE ET AL., *JUSTICE POLICY INSTITUTE, DISPARITY BY DESIGN: HOW DRUG FREE ZONE LAWS IMPACT RACIAL DISPARITY – AND FAIL TO PROTECT YOUTH* (2006), available at <http://www.drugpolicy.org/sites/default/files/SchoolZonesReport06.pdf>.

22. See generally MOGUL ET AL., *supra* note 7; ANDREA SMITH, *CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE* (2005); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Scott Lauria Morgensen, *Settler Homonationalism Theorizing Settler Colonialism Within Queer Modernities*, 16 GLQ: J. LESBIAN & GAY STUDIES 105, 116 (2010); Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER SOC.

the statuses and norms established by these systems were, and are, racializing and gendering at the same time. They do not create rules for all women or all men or all white people or all native people or all black people. Instead, the laws governing slavery, land ownership, labor, health, mobility, punishment, and family create very specific statuses and norms according to specific race/gender positions. For example, white women have traditionally been forced into particular forms of domestic, unpaid labor; regulated through containment inside the legally mandated, marriage-based family form; and required to conform to a maternal role focused on “reproducing the race.” White women have been seen as fragile and weak, portrayed in law and politics as unfit for political life and wage labor. Various law and policy reforms, from early labor regulations to domestic violence criminalization, have been advocated on the basis of protecting white women. Meanwhile, black women have been denied access to recognized motherhood—their family bonds not recognized by law—and forced to do heavy labor both outdoors and inside the homes of white people. Their labor has often been excluded from protective regulation and not linked to eligibility for benefits. While white women’s sexuality has been revered as pure and requiring protection, black women have been routinely sexually assaulted and abused by white men. Their relationships to their children have been subject to disruption and termination under slavery and racially targeted child welfare programs. The racial and gender norms created through property law, family law, and criminal law establish specific racialized-gendered statuses and norms that can never be adequately analyzed or understood solely through a single vector of harm such as race or gender.²³ The specific vulnerabilities, responsibilities, and chances at life administered by US laws and institutions are racialized *and* gendered, not universal to all people assigned a particular gender or race category.²⁴ Thus, to assess the conditions produced by processes such as criminalization, it is essential to analyze the creation of racialized gender norms and statuses that are enforced by legal and administrative systems.

Trans studies scholars have provided analysis of how racialized gender norms are administered in spaces of concentrated state violence in the

POL’Y & L. 1 (1993).

23. See generally SAIDIYA V. HARTMAN, SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA (1997); Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy Rethinking Women of Color Organizing*, in COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY 66–73 (INCITE! Women of Color Against Violence ed., 2006); Kimberlé Crenshaw, *Mapping the Margins Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

24. See, e.g., Kimberlé Williams Crenshaw, *Mapping the Margins Intersectionality, Identity Politics, and Violence against Women of Color*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 357–383 (Kimberlé Williams Crenshaw et al. eds., 1995); ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN’S STUDIES (Gloria T. Hull et al. eds., 1982); ANGELA Y. DAVIS, WOMEN, RACE AND CLASS (1981); PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT (1990).

contemporary United States. Across the country, the spaces where people of color and poor people are concentrated for surveillance, punishment, targeted abandonment, and premature death—shelters, foster care and juvenile punishment group homes, psychiatric facilities, immigration prisons, jails, and the like—are sex-segregated, rigidly enforcing notions of gender binarism.²⁵ The enforcement of racialized gender norms in these spaces operates through coercion and violence overseen by state agents, including law enforcement and social service providers.²⁶ The violence in these spaces includes identity documentation and surveillance, dress regulations, strip searches, sexual assault, forced prostitution, family dissolution, verbal harassment, medical neglect, murder, and other contributors to early death.²⁷ Sex segregation is a key component of racialized social control, and these institutions focus enormous energy on classifying, policing, harming, and disappearing people who occupy and exceed the borderlands of gender legibility and sexual normalcy. The insights provided by indigenous studies, women of color feminist scholarship, critical race theory, trans studies, and other intellectual traditions help ground an understanding of racialized gender norms as foundational, rather than incidental, to US legal systems and institutions.

II.

THE LIMITS OF PRISON REFORM FOR ADDRESSING RACIALIZED GENDER VIOLENCE

Given the central role of racialized gender violence and the deadly administration of gendered racial norms in the programs and institutions of the United States, prison abolitionist scholars and activists have raised key questions about the role of reform projects in perpetuating and expanding these sites of violence.²⁸ Robinson describes how an ACLU lawsuit led to the creation of K6G. The suit aimed to address the dangerous conditions facing people placed in the “homosexual inmate unit” at the jail, arguing that they were not adequately protected from “predators.”²⁹ ACLU won a settlement in which the jail was required to establish procedures to protect these vulnerable

25. See, e.g., D. MORGAN BASSICHIS, SYLVIA RIVERA LAW PROJECT, “IT’S WAR IN HERE”: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN’S PRISONS (Dean Spade ed., 2007), available at <http://srlp.org/files/warinhere.pdf>; Lamble, *supra* note 7; Dean Spade, *Compliance Is Gendered Transgender Survival and Social Welfare*, in TRANSGENDER RIGHTS 217–41 (Paisley Currah et al. eds., 2006); Toby Beauchamp, *Artful Concealment and Strategic Visibility Transgender Bodies and U.S. State Surveillance After 9/11*, 6 SURVEILLANCE & SOC’Y 356 (2009); Alexander L. Lee, *Gendered Crime & Punishment Strategies to Protect Transgender, Gender Variant & Intersex People in America’s Prisons* (pts. 1 & 2), GIC TIP J., Summer 2004, GIC TIP J., Fall 2004.

26. SPADE, *NORMAL LIFE*, *supra* note 8, at 101–70.

27. *Id.*

28. See, e.g., Bassichis, Lee, & Spade, *supra* note 6; DAVIS, *supra* note 9; Lamble, *supra* note 7.

29. Robinson, *supra* note 1, at 1319–20.

prisoners.³⁰ The result was the absurd screening process that Robinson describes, in which white, straight deputies assess whether or not particular prisoners belong in the K6G unit based on their responses to questions that gauge familiarity with white gay male culture.

This story illustrates the concerns abolitionists have voiced about approaches aimed at refining, improving, or otherwise tinkering with how people are imprisoned. The ACLU's attempt to reform the jail to reduce violence against queer and trans prisoners resulted in a policy that subjects prisoners to a highly racialized screening that prevents queer and trans people of color from accessing purportedly protective segregation. Prison reforms, abolitionists argue, tend to refine and reify the racialized-gendered control of prisons.³¹ In general, reforms that try to address the violence caused by state enforcement of racialized gender norms and categories by slightly altering the categories being enforced or by adding additional categories consistently fail to meaningfully alleviate that violence. A typical response to the assertion that trans people face significant violence in prisons and jails is the proposal to build trans prisons.³² In response to the persistent problems trans people face with identity documents that have gender markers on them that are difficult or impossible to change, the proposal to create a third gender category for government forms and identification often emerges.³³ These kinds of proposals, like the K6G unit, will inevitably fail to address the harms identified. Instead, they will become new sites for racialized gender norms to be enforced as state agents take up their posts enforcing identity categories in ways that will inevitably operate to the detriment of people of color, poor people, people with disabilities, and immigrants. The fundamental projects of security that animate criminal punishment and identity surveillance are established in and exist to secure and protect white supremacy and patriarchy. It is not a design flaw that

30. *Id.*

31. See DAVIS, *supra* note 9, at 40–59; Eric A. Stanley et al., *Queering Prison Abolition, Now?*, 64 Am. Q. 115, 121–25 (2012).

32. This is based on my experiences working on issues of trans imprisonment for the last ten years, speaking with attorneys, public officials, students, academics, and activists about these issues. To my knowledge, the only place that has created an explicitly trans prison is Italy. See *Italy to Open First Prison for Transgender Inmates*, BBC NEWS (Jan. 12, 2010, 6:08 PM), <http://news.bbc.co.uk/2/hi/8455191.stm>. California houses a small number of trans women prisoners together in a medical unit in its Vacaville prison (a men's facility), but most trans people are placed according to birth gender in men's and women's prisons throughout the state, as in the rest of the United States. BASSICHIS, *supra* note 25, at 17–18; Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 735 (2008); Tali Woodward, *Life in Hell In California Prisons, an Unconventional Gender Identity Can Be Like an Added Sentence*, SAN FRANCISCO BAY GUARDIAN ONLINE (Mar. 15, 2006), http://www.sfbg.com/40/24/cover_life.html.

33. Australia made a splash in 2011 when it added a new option for the gender marker on its passports. Some applicants can now mark “X” rather than “M” or “F.” See *Sex and Gender Diverse Passport Applicants*, AUSTRALIAN PASSPORT OFF, <https://www.passports.gov.au/web/sexgenderapplicants.aspx> (last visited Dec. 12, 2012).

these systems and institutions are sites of transphobic and homophobic violence. They are working perfectly.³⁴

This analysis raises important questions about Robinson's invocation of privacy claims to address his concerns about the K6G unit.³⁵ What does it mean to assert individual privacy rights in a system where strip-searches and other forms of forced nudity are daily realities, where consensual sex is criminalized and rape is routine, where filing a grievance or lodging any kind of protest means risking severe violence or death?³⁶ How might individual rights arguments obscure the nature of imprisonment as racialized state violence? How can one imagine a privacy right in a context of extreme control and constant humiliation and abuse? Given the role of slavery in forming the legal and economic systems of the United States, appeals to the Constitution both obscure how its text, including the Thirteenth Amendment, establishes ever-expanding racialized imprisonment and overlook the daily reality that law enforcement is lawless. It is no secret that police, wardens, parole officers, corrections officers, and Immigration and Customs Enforcement do not follow the laws and policies that are supposed to prevent the outrageous violence and abuse they commit every day.³⁷ Even when advocates win cases about the

34. See, e.g., MOGUL ET AL., *supra* note 7 (detailing the historic and contemporary roles of policing and criminalization in enforcing racialized gender norms); CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX, *supra* note 6 (examining how racialized gender norms are enforced on trans people by criminal punishment systems, and exploring queer and trans critiques of prison reform and calls for prison abolition); Stanley et al., *supra* note 31, at 121–23 (discussing how “an abolitionist analysis argues that the system is not broken but, according to its own logics, it is working perfectly”).

35. Robinson, *supra* note 1, at 1378.

36. See U.S. DEP'T OF JUSTICE, REVIEW PANEL ON PRISON RAPE, REPORT ON SEXUAL VICTIMIZATION IN PRISONS AND JAILS 43–49 (G.K. Mazza ed., 2012), available at http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf; HUMAN RIGHTS COAL., UNITY AND COURAGE: REPORT ON STATE CORRECTIONAL INSTITUTION AT HUNTINGDON (2011), available at <http://hrcoalition.org/sites/default/files/Unity%20and%20Courage-SCI%20Huntingdon%20Report.pdf>; HUMAN RIGHTS WATCH, USA: NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS, (1998), available at <http://www.unhcr.org/refworld/docid/3ae6a86718.html>; Amnesty Int'l USA, *Women in Prison A Fact Sheet*, www.prisonpolicy.org/scans/women_prison.pdf (last visited Dec. 12, 2012).

37. The headlines are filled with stories of the profiling, brutality, harassment, and discrimination practiced by law enforcement that demonstrate it as a daily reality, endemic to the culture of prisons and policing. Kevin Johnson, *Police Brutality Cases on Rise Since 9/11*, USA TODAY (Dec. 18, 2007, 7:39 AM), http://www.usatoday.com/news/nation/2007-12-17-Copmisconduct_N.htm; Beth Stebner, *Women in Alabama Prison Suffered “Frequent and Severe Sexual Violence By Guards and Were PUNISHED When They Tried to Report Crimes,”* MAIL ONLINE (May 23, 2012, 7:50 PM), <http://www.dailymail.co.uk/news/article-2149077/Women-Alabama-prison-suffered-frequent-severe-sexual-violence-guards-PUNISHED-tried-report-crimes.html>; Daniel Villarreal, *Lone Star State Home to 5 of 10 Worst Facilities for Sexual Assault of Inmates, and LGBT Prisoners Are 15 Times More Likely to Be Victims*, DALLAS VOICE (Mar. 22, 2012, 5:06 PM), <https://www.dallasvoice.com/texas-prison-rape-capital-u-s-10105138.html>; *North Carolina Sheriff Found to Discriminate*, N.Y. TIMES, Sep. 19, 2012, at A21, available at http://www.nytimes.com/2012/09/19/us/north-carolina-sheriff-found-to-discriminate.html?ref=police-brutalityandmisconduct&_r=0; Southern Poverty Law Center, *Allegations of Racist Guards Are Plaguing the Corrections Industry*, 100 INTELLIGENCE REPORT, Fall 2000, available at

access to medical care or nutrition or protection from harm that law enforcement agents are supposed to provide, it is still inadequate, selective, or rarely provided, if at all. Selective enforcement, medical neglect, nutritional deprivation, harassment, and sexual violence are not anomalies in law enforcement systems: they are fundamental to them.

Because of the nature of our criminal systems and prisons, there is not a fair or safe way for queer, trans, and gender non-conforming people, or anyone, to be imprisoned. Starting from that premise, we can take different approaches to questions of reform, focusing more on decarcerating and dismantling systems of criminalization, and being extremely wary of reforms that purport to offer recognition and inclusion but actually expand and legitimize violent institutions. The best ways to protect queer, trans, and gender non-conforming people from police and prison violence is to keep them out of contact with police and prisons and to support them while they are locked up. In some places, people are pursuing this by working to decriminalize sex work or stop the creation of “prostitution free zones” and other special programs that enhance policing of the sex trade.³⁸ Some are working to oppose gang injunctions, “stop and frisk” practices, collaboration between immigration enforcement and criminal punishment systems, mandatory minimum sentences, prison building projects, and other expansions of criminalization.³⁹ Some

<http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2000/fall/behind-the-wire>; Archive of Articles on Police Brutality, DEMOCRACY NOW!, http://www.democracynow.org/topics/police_brutality (last visited Dec. 12, 2012); Archive of Articles on NYPD Muslim Surveillance, ACLU.ORG, <http://www.aclu.org/blog/tag/nypd-muslim-surveillance> (last visited Dec. 12, 2012).

38. See, e.g., ALLIANCE FOR A SAFE & DIVERSE DC, MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C. (2008); *Council Member Vote Against Making DC’s “Prostitution Free Zones” Permanent*, CHANGE.ORG, <https://www.change.org/petitions/council-member-vote-against-making-dcs-prostitution-free-zones-permanent> (last visited Dec. 12, 2012).

39. See, e.g., PASCAL EMMER ET AL., HEARTS ON A WIRE COLLECTIVE, THIS IS A PRISON, GLITTER IS NOT ALLOWED: EXPERIENCES OF TRANS AND GENDER VARIANT PEOPLE IN PENNSYLVANIA’S PRISON SYSTEMS (2011), available at <http://www.scribd.com/doc/56677078/This-is-a-Prison-Glitter-is-Not-Allowed>; Lornet Turnbull, *State Won’t Agree to National Immigration Program*, SEATTLE TIMES (Nov. 28, 2010, 9:59 PM), http://seattletimes.nwsourc.com/html/localnews/2013545041_secure29m.html; Angela Davis, *Oakland Residents Must Stop the Gang Injunctions*, THE SIXTIES (Mar. 17, 2011), <http://sixties-1.blogspot.com/2011/03/angela-davis-oakland-residents-must.html>; Community United Against Violence, *LGBT Bay Area Says NO to Oakland’s Gang Injunctions*, FACEBOOK.COM (May 16, 2011, 4:41 PM), <http://www.facebook.com/notes/cuav/lgbt-bay-area-says-no-to-oaklands-gang-injunctions/480509037387>; *About Decarcerate PA*, DECARCERATE PA, <http://decarceratepa.info/about> (last visited Dec. 12, 2012); *About*, STOP INJUNCTIONS OAKLAND, <http://stoptheinjunction.wordpress.com/about/> (last visited Dec. 12, 2012); *Stop Secure Communities in New York*, CENTER FOR CONST. RIGHTS, <http://www.ccrjustice.org/nyscomm> (last visited Dec. 12, 2012); *Media*, STREETWISE & SAFE, <http://www.streetwiseandsafe.org/media/> (last visited Dec. 12, 2012) (listing media coverage of Streetwise & Safe’s members’ work opposing stop and frisk and other policing and criminalization practices); *Press Corner*, COMMUNITY UNITED AGAINST VIOLENCE (Oct. 11, 2011), <http://www.cuav.org/article/11>; *Say No to S-Comm*, STREETWISE & SAFE, <http://www.streetwiseandsafe.org/say-no-to-s-comm/> (last visited Dec. 12, 2012); *Stop “Secure Communities” in Massachusetts*, AM. FRIENDS SERVICE COMMITTEE, <http://afsc.org/event/stop-secure-communities-massachusetts> (last visited Dec. 12, 2012); *marginidas, End S-Comm Today!*, VIMEO.COM, <http://vimeo.com/41351111> (last visited Dec. 12, 2012).

activists and advocates are focused on individual advocacy for current prisoners, knowing that broad-based policy reform often expands the system or provides an inappropriately “one size fits all” solution. Instead, they advocate on a case-by-case basis for the changes individual prisoners believe will make them safer in their current environment, recognizing that prisoners’ situations and contexts differ and prisoners often have the best information about what might be safer in their particular circumstances.⁴⁰ Others focus on establishing resources for people coming out of prison to prevent the poverty and housing insecurity that often results in further criminalization.⁴¹ Many are also working to establish community responses to violence that do not utilize police and courts, recognizing that calling the police often escalates violence for queer and trans people of color, immigrants, and people with disabilities.⁴² These

40. For example, the TGI Justice Project in San Francisco, CA, has provided direct support to transgender and intersex prisoners since 2004. *See* TGI JUSTICE, <http://www.Tgijp.org>. The group focuses on both helping individual prisoners survive and building criminalized trans people’s leadership and political capacity to push for change that gets to root causes of poverty and criminalization. The group has been consistently wary of strategies for systemic reform that tend to expand criminalization and imprisonment without offering tangible relief to prisoners. Telephone interviews with Alex Lee, Staff Attorney, TGIJP (Feb. 21, 2005; July 12, 2007; July 18, 2012). The Transformative Justice Law Project of Illinois similarly takes this approach, directly addressing harms facing criminalized low-income and street based transgender and gender non-conforming people but engaging from a perspective of prison abolition, and remaining critical of the system-building and system-sustaining potential of prison reforms. *See* TRANSFORMATIVE JUSTICE LAW PROJECT OF ILLINOIS, <http://www.tjlp.org>; Interview with Owen Daniel-McCarter and Avi Rudnick, Attorneys at TJLPI, in Chicago, IL (July 13, 2012).

41. For example, for the last ten years the Sylvia Rivera Law Project (SRLP) has worked to build the capacity of organizations providing legal services, shelter, health services, and other essential services for people exiting prison so that they can serve trans, intersex, and gender non-conforming people, who are often excluded from such services. SRLP provides trainings and builds relationships with these groups and develops public education materials aimed at their staff members. *See* *Trainings*, SYLVIA RIVERA LAW PROJECT, <http://srlp.org/our-services/trainings/> (last visited Dec. 10, 2012); *Legal Services*, SYLVIA RIVERA LAW PROJECT, <http://srlp.org/our-services/legal-services/> (last visited Dec. 10, 2012). SRLP also publishes a newsletter for imprisoned trans, intersex and gender non conforming people that includes contact information for services that can help with reentry in addition to art, poetry, articles about political work addressing criminalization and imprisonment, and trans politics. Imprisoned people, allies on the outside, and other SRLP members write the newsletter. SRLP also runs a penpal project, connecting imprisoned members to penpals on the outside. In addition to supporting people during imprisonment, these penpal relationships can provide essential resources for people as they work to plan housing and other necessities for release. Other organizations doing work to support trans, intersex, and gender non-conforming prisoners that operate with an anti-prison approach, such as TGIJP and TLJP of Illinois, similarly engage in holistic work that aims to support people while both imprisoned and coming out of prison, and to work broadly against criminalization and immigration enforcement by strategically campaigning against local policies and practices of law enforcement. *See supra* notes 38 & 39; *Transforming Justice, Make It Happen! Transforming Justice Ending the Criminalization & Imprisonment of Transgender & Gender Non-Conforming People*, VIMEO.COM, <http://vimeo.com/16952110>; TGI Justice, *Prison Industrial Complex - Trans Views*, YOUTUBE.COM, http://www.youtube.com/watch?v=S5qw2kViAaM&feature=player_embedded.

42. *See, e.g.*, THE REVOLUTION STARTS AT HOME: CONFRONTING INTIMATE VIOLENCE WITHIN ACTIVIST COMMUNITIES (Ching-In Chen et al. eds., 2011); generationFIVE, *Towards Transformative Justice Why a Liberatory Response to Violence Is Necessary for a Just World*, RESIST, Sept./Oct. 2008, available at <http://www.resistinc.org/newsletters/articles/towards-transformative-justice>.

organizations and projects understand the significant dangers queer, trans, and gender non-conforming people face at the hands of law enforcement and seek to offer material relief by helping people survive these systems, dismantling the pathways to criminalization that entangle vulnerable people, and creating alternative ways for people to get their needs met given that the criminal punishment system promises safety but never delivers. This approach to addressing homophobia and transphobia in criminal punishment systems rejects the quest for inclusion and recognition in violent legal and administrative apparatuses and the fantasy that any constitutional claim before a court will bring relief, and instead seeks the abolition of criminal punishment and immigration enforcement. It properly identifies the fruitlessness of seeking safety at the hands of the most significant perpetrators of racialized gendered violence. The K6G unit and its absurd and terrifying screening process provides an excellent illustration of the necessity of abolition-centered responses to homophobia and transphobia and of a critical understanding of the limits of legal recognition for social movements seeking relief from poverty and violence.