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Publication Date

2015-10-14

ISSI GRADUATE FELLOWS WORKING PAPER SERIES 2013-2014.70
**Dancing the Carceral Creep: The Anti-Domestic Violence
Movement and the Paradoxical Pursuit of
Criminalization, 1973-1986**

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October 14, 2015



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The criminalization of violence against women over the past forty years represents both social movement success and the paradoxical alignment of feminism with increasingly punitive carceral policies. This historical analysis of the shifting social movement field during its formative years from 1973 to 1986 refutes dominant social movement paradigms for understanding social movement cooptation and demobilization. The research interrogates the processes and mechanisms of contestation between social movement and the criminal justice system and, more broadly, relationships between civil society and the state. A closer focus at the historical construction of the anti-domestic violence social movement field during this period reveals the ways that the very dynamics of contestatory success generate the conditions for an expanding carceral state, eventually resulting in blurred boundaries between civil society and the state and the domination of the field by criminal justice institutions and carceral political logics. Through the analysis of semi-structured interviews of 57 social movement actors, governmental policymakers and criminal justice personnel and the extensive analysis of archival materials, this historical case study of California and Minnesota, early innovators of hallmark social movement strategies and institutions pursuing criminalization, contributes to feminist, criminological and social movement scholarship regarding the dynamics of social movement field development over time.

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Domestic violence has emerged over the last three decades as one of the clearest cases where a [social] movement has turned to criminalization as a primary tool of social justice.

Jonathan Simon, 2007, p. 180

The Paradox of Feminist Carceral Politics¹

In 2004, the Family Justice Center in Oakland, California received federal funding to open an advocacy center for victims of domestic violence and sexual assault. Billed as a “one-stop shop,” the initiative was one of many such Family Justice Centers to be supported by the federal Office of Violence Against Women. Just ten years previously, the Violence Against Women Act (VAWA) was first passed as part of the Violent Crime Control and Law Enforcement Act (Crime Bill) of 1994 (HR 3355), symbolically and materially cementing an already robust collaboration between one strand of a broader feminist social movement and the criminal justice system. VAWA named violence against women as a crime, placed the newly established Office of Violence Against Women within the Department of Justice, and prioritized federal mandates and accompanying monies to “encourage arrest” and coordinate local advocacy efforts with law enforcement, firmly reinforcing a pro-criminalization agenda that had been building as the hegemonic response to domestic violence and sexual assault in the U.S.

The Family Justice Center is arguably the most vibrant and well-funded institution to enter and occupy the anti-domestic violence social movement field since the passage of VAWA in 1994. This institution, first initiated by a former prosecuting attorney in San Diego in 2002, caught the attention of the Bush Administration as a model program. Just one year later in October 2003, George W. Bush and Attorney General John Ashcroft unveiled the federal \$20 million Presidential Family Justice Center Initiative and designated the Family Justice Center as a special category under VAWA 2005 (DOJ 2007). The goal of the 2003 Initiative was to develop twelve Family Justice Centers nationally. Northern California’s Alameda County was selected among the first sites.

Unlike other local non-profit organizations providing domestic violence and sexual assault-related services and advocacy in the area, Oakland’s Family Justice Center was organized and directed by the Alameda County District Attorney’s Office. Allowed to take over unused or underused public property, Oakland’s version of the now omnipresent Center moved into an abandoned public health center just north of the city’s downtown. Former examination rooms were set up as offices for client interviews, and non-profit domestic violence and sexual assault organizations were encouraged to share rent-free space and provide niche services under the umbrella of the “one-stop-shop.” Despite the suburban mall metaphors used to describe the convenience and friendliness of the Center not only to the victims of gender violence but also to the non-profit denizens of the multi-storied building, the Center is clearly under the supervision of law enforcement. Uniformed police officers regularly “man” the front entrance, and the operations and decision-making of the Center are controlled by personnel hired by the District Attorney’s Office.

As a local domestic violence advocate for immigrant survivors of domestic and sexual violence, I joined others in a dance of engagement and contention with and against the new Center. Ever-present but smaller, localized dances of ambivalence, collaboration and tension between local advocacy organizations and law enforcement seemed to shift from decentralized and event-specific platforms to a newly erected central stage, clearly dominated by law enforcement. The scattered logic of local organizations accountable to diverse communities of color in a county in which they constitute the clear majority faced the dissolution of difference under the pluralistic tent of the

¹ In loving memory of my mother, Peggy Bock Im Kim (May 11, 1931 – October 8, 2012), whose endeavor to live life to its fullest serves as my inspiration.

Center. Engagement with law enforcement, a necessity for most community organizations working with survivors of violence, risked the pull into the roster of the Center's bulging list of collaborative partners. The inclusion of our local ethnic-specific organizations would signal tacit approval of the Center's unifying vision, subsuming our political agenda under that of Center and weakening the potential for meaningful dissent. Failure to engage risked the increased vulnerability of survivors seeking protection from the criminal justice system and the possible neglect and obsolescence of organizations unwilling to join. Since that time, survival of autonomous organizations in the shadows of the Center has remained a continuing struggle, and efforts to protest negative or perhaps unintended consequences of the Family Justice Center are readily silenced in the din of its many enthusiasts.

In communities across the U.S., the rise of the Family Justice Center, now numbering eighty with 140 more under consideration (Family Justice Center Alliance 2013), has resulted in the consolidation of the gender violence response under the physical space, personnel and political logic directed and organized by law enforcement. The law enforcement character of this institution is, in a sense, de-militarized by joining the powerful symbols of "family" and "justice" under the comfort of a familiar, commercial metaphor. The ubiquitous battered women's shelter as the symbol of feminist occupation of material and symbolic landscape in urban and rural communities across the U.S. is being displaced by the carceral shopping mall.

While the Family Justice Center enjoyed its institutional debut in 2002, its roots reach further back to the formation of the contemporary feminist anti-violence response to domestic violence in the early 1970s and to earlier punitive shifts in the criminal justice response dating back to the 1960s (Simon 2007, Weaver 2007). For feminists challenging gender violence, social movement history reveals a wide variety of stances vis-à-vis the criminal justice system including opposition, ambivalence, compromise and collaboration.

I describe the underlying dynamics of contested politics between the U.S. anti-domestic violence or battered women's movement and the carceral state by using the metaphor of dance, thereby capturing the fluidity and varied pace of movement, the development of the carceral state and the complex interaction between these entities. The image of dance further evokes the importance of relationship, the centrality of power and its negotiation, the salience of the process of selection and omission of partners, the ritualized dance repertoires that evolve over time, and the quick dissemination of the latest dance craze. The conventionally gendered nature of dance is not lost in this metaphor nor is the acknowledgement that a dance between ardent feminists and law enforcement might likely challenge prevailing gender standards.

What this research reveals is the course through which this dance devolved into an increasingly uniform set of repertoires that incorporate feminist demands into institutionalized practices ultimately directed and dominated by the carceral state. Critical criminologists and legal scholars, feminist theorists and social movement activists are increasingly addressing the development of what sociologist Elizabeth Bernstein (2005) has coined as "carceral feminism" (Bumiller 2008, Gottschalk 2006, Simon 2007). This paper further contributes to our understanding of the processes and mechanisms through which attempts to feminize the state led to the unwitting support for policies of mass incarceration, thereby reproducing and re-enforcing hierarchies of gender, race, class and sexuality that the movement sought to defy. These historical lessons hold particular relevance in contemporary times as emancipatory social movements continuously repeat claims for increased criminalization, such as LGBTQ demands for enhanced punitive penalties for homophobic hate crimes.

The scope of this research is the formative years of the U.S. anti-domestic violence movement from 1973 to 1986. During this time period, conceptual frameworks, hallmark movement strategies and the consolidation of power of prominent social actors and institutions began to form

and crystallize. By 1986, a confluence of factors led to widespread dissemination of the strategies now associated with an overall constellation of frameworks and policies constituting “criminalization.” Despite efforts to contest or negotiate the terms under which such criminal legal practices and policies were implemented, the conservative victim-rights political logic and national sweep of mandatory arrest laws had already incorporated what was once a more nuanced feminist agenda.

A primary aim of this paper is to make sense of both the brilliant successes of early social movement actors and the paradoxical consequences of these initial strategies, that is, the eventual subordination of the movement to the conservative goals and political logics of the “law and order” regime. My analysis is based upon the examination of three key innovations developed during the time period of 1973 to 1986: (1) nationally prominent litigation against the Oakland Police Department for failure to protect battered women; (2) the development of the first model victim-witness program for domestic violence in San Francisco; and (3) the Community Coordinated Response, a now internationally disseminated model for the coordination of domestic violence advocacy and law enforcement first developed in Duluth, Minnesota.

Understanding Social Movements as Institutional Fields

In invoking the Family Justice Center as an illustration of the increasing presence and power of law enforcement in the institutions engaged in interventions to gender violence, I suggest the importance of not only the *symbolic* and *material*, but also the *spatial* dimensions of such institutions. While contestation between social movements and the state is a centerpiece of conventional social movement scholarship (McAdam 1999, Tarrow 1998, Tilly 2004), examination of the complex, contradictory and constitutive nature of evolutionary dynamics between social movement and state has remained largely unexplored and under-theorized. What I emphasize in this paper is not only the push and pull between institutions, but also the developmental and cumulative effects of these activities of contestation on the broader social movement field. Such an institutional and historical framework can illuminate the processes and mechanisms driving the shifting balance between the feminist social movement entities embedded in civil society, the state machinery of law enforcement and what I argue to be *hybridized spaces* created as social movement forces negotiate dynamic changes in carceral practices and policies.

Using the lens of the *social movement field* (Armstrong 2002, Fligstein and McAdam 2011), the Family Justice Center emerges not only as a new institutional form, driven by law enforcement, but as a force that *reorganizes*, *displaces* and *occupies* a social movement space once dominated by institutions of civil society with those of the criminal justice system. Such dynamics, of course, can be understood as a part of a longer historical trajectory. For example, the passage of VAWA in 1994, a victory claimed by feminist social movement forces, concretized the prioritization of a law enforcement response to violence against women, prefiguring the sensibility of such an institution as the Family Justice Center. Extending our historical lens back even further in time, VAWA can be understood as the outcome of a longer trajectory of social movement events and strategies demanding public attention and resources to the issue of violence against women, often expressed in the form of pro-criminalization protocols and policies.

Following the insights of policy feedback scholars, the strategic outcomes of contentious politics are not uni-linear and transparent but rather yield a complex set of effects that may shape new conditions influencing future social movement opportunities and constraints (Falleti and Lynch 2009, Lieberman 2001, Mahoney 2000, Pierson 2004). An examination not only of local and immediate outcomes but also the more distal and diffused effects generated through the processes

of institutionalization, replication and dissemination reveal the recursive interplay between social movement strategies, outcomes and the constitution of the social movement field.

Centering the Contradictory Dynamics of Contestation

I situate this study within the chasm between practice, policy and academic scholarship that accepts and valorizes the criminalization of domestic violence, on the one hand, and increasing activism and scholarship that energetically critiques or condemns it, on the other. What I argue is that this is not a simple story of feminist collusion with or cooptation by an expanding criminal justice system. Rather, the key to understanding the path towards criminalization relies on: (1) a focus on the very dynamics of contestation and its paradoxical results; and (2) a re-examination of the relationship between social movement and the state that builds upon new theories of *institutionalized fields*, referring to areas of social life where collective and individual actors strategically vie for social power (Armstrong 2002, Fligstein and McAdam 2011).

Field analysis allows theoretical room for dynamics of internal contestation and the contested relationships between the diverse institutions within the field. In particular, I refer to Armstrong's (2002) theory of social field formation to reinvestigate social movement relations with the state. Armstrong's concept of *political logics* also informs how shifting institutional dominance by the state within the social movement field may both derive from and fuel social movement submissions to a state agenda. In contrast to "master frames," (Benford and Snow 2000; Snow and Benford, 1992) the term political logics emphasizes the constitutive nature of what Armstrong refers to as "background sets of assumptions about how society works, the goals of political action, and appropriate strategies to pursue desired ends" (Armstrong 2002, p. 13-14).

My analysis integrates structural concerns with an agentic perspective focusing on what social movement actors *think* and *do* and the dynamics of contention driving which strategies are actually pursued. If the pursuit of criminalization by actors embedded in presumably liberatory politics is the puzzle, then the ways in which such pursuits are seen as preferable or necessary are important to assess. Much of the literature on feminist anti-violence movements and policy whether positive or critical of criminal legal strategies assumes such movements to be relatively homogeneous or motivated by sufficiently rational and transparent opportunity structures to unify diverse individual and collective actors' values and preferences. By interrogating archival and interview data linked to individual social movement actors and the strategies and institutions with which they are affiliated, I also take into account diverse individual and collective personal and political histories, identities and affiliations, cultures, motivations, social networks and locations within hierarchies of power.

This analytic position stands in contrast to other social movement theories of demobilization or increasing collaboration with former targets, including the state. Among early social movement theorists, McCarthy and Zald (1977) look at institutional bureaucratization over time, a teleological view of social movements and the construction of what they name "social movement industries." A variation of Michel's "iron law of oligarchy," successful, or at least sustained, social movements move through stages of development, from early models of protest and informal institutional structures to more formal and routine bureaucracies embedded in complex social movement fields. While these theories contribute to the institutional approach that this study adopts, they universalize and naturalize this process without looking at internal and external dynamics nor the shifting historical context.

Later political opportunity theories of social movements focus on the receptivity of the state as a critical factor in movement emergence and success (McAdam 1999; Tarrow 1998). The coincidental timing between the emergence of the anti-domestic violence movement and the

growing symbolic legitimacy and material resources given to the criminal justice system suggest that the latter provided increasing opportunities not only for the growth of the movement but of its directional preferences towards criminal legal strategies. The limitation of this approach is the lack of attention it offers to the role that contentious politics plays in the securing of and criteria regarding state funds. In fact, state resources not only facilitated movements but were themselves the targets and outcomes of movement struggles, complicating the uni-directional assumptions underlying much of the resource and political opportunity variants of social movement theories.

Policy-related explanations of the integration of social movements into structures of governance emphasize reformist strategies within social movements driven by elite leadership, reformist interest group politics or governance feminism (Halley 2006). Within feminist social movements, pursuits of “mainstreaming,” that is, the agenda to disseminate feminist leadership and policies throughout state and non-state institutions conforms to goals and strategies seeking accommodation and integration into state institutions. While evidence points to strong influence of interest group politics or governance feminism even at the earliest formative years of the movement, an analysis based solely upon the intended effects of interest group politics fails to adequately account for internal social movement contention nor the dominance of the criminal justice strategy as opposed to other alternative trajectories.

This paper builds upon critiques of rights-based or legalistic social movement agendas, legacies of civil rights frameworks and their adoption by progressive or left-leaning feminist, LGBTQ and other contemporary social movements. As critical theorists Wendy Brown and Janet Halley (2002) note, “[t]his kind of left legalism seeks to involve the left directly in governance: once you win, you *are* the state” (p. 10). This analysis points to the ways in which the constraints of left legalism drive strategies towards demands for state services and limit visions of alternatives. And it suggests that the act of winning those demands immediately transforms contention into accommodation or collaboration; that is, embedded in the dynamics of contention are the conditions for its negation. Contestation, I argue, can contain the very seeds of paradox.

In this paper, I examine the origins and unfolding of three early innovations that become critical to the field of domestic violence and its pursuit of criminalization. I find that the origins of these innovations lie in feminist social movement actors’ strategies not to *collude* with, but rather to *control* systems of law enforcement through various strategies of *contestation*. These strategies engage different positional relationships taken by civil society social movement actors and institutions *against*, *alongside* or even *within* institutions of law enforcement in order to leverage social movement gains, creating what I argue are *hybridized* spaces between civil society and the state. The common historical trajectories from contestation towards collaboration and from local innovation to replication reveal critical meso-level processes that further explain the eventual unintended subordination of the social movement to law enforcement logics and institutions.

Data and Methods

This research uses a historical case study (George and Bennett 2005) of the U.S. focusing on the historical period from 1973 to 1986 with an emphasis on two states, California and Minnesota. Both sites are well known for innovations of new anti-domestic violence strategies, models and institutions intimately linked with law enforcement yet with dramatically different demographic contexts and carceral policies. California has a diverse demographic makeup with 33% people of color in the 1980 census while Minnesota during that year documented their non-white population at 4% (Gibson and Jung 2002). California is a state with significant participation of women of color and advocates for immigrant rights in the formation of criminal legislation while Minnesota’s non-white participation was vocal but marginal in number. The striking difference in criminal legal

environment of these states emerges in 2006 mid-year statistics with California leading the nation in numbers incarcerated and ranking number 15 in rates of incarceration. In stark contrast, Minnesota settles at 49th in state ranking of incarceration rates (Sabol, Minton, and Harrison 2007). I also consider the national context as local innovations diffuse across local and state borders. While specific and unique innovations arise in differentiated local contexts, informal national networks and more formal national institutions soon create linkages among local efforts, multiplying the effects of local innovations and often transforming their character in the process of diffusion.

Because of the historical time period and the scant existing literature and data related to the research questions, data derives primarily from 57 intensive, semi-structured interviews with key social movement leaders including those active in or familiar with the pursuit of criminalization strategies in California and Minnesota during the period of study. Theoretical sampling aimed to substantiate the central research questions regarding key actors, institutions and other factors supporting criminalization; the interactive effects of internal social movement and external political context; social movement dissent; and the contributing significance of factors of race, class and sexuality. Interviewees also include informants representing law enforcement and legislators engaged with social movement leaders through the process of claims-making or collaboration in the formation of criminal policies in order to further investigate the relationships between internal social movement and criminal legal considerations.

The sampling strategy employs a purposive, multi-point snowball sample design. Initial informants are based upon my insider knowledge of key social movement leaders and references to leaders in the literature. Subsequent informant recruitment follows from initial interviews and references by informants to other influential social movement actors. The number of informants are: California social movement leaders and public actors (17); Minnesota social movement leaders and public actors (12); national social movement leaders and public actors or those prominent in other significant social movement activities (16) for a total of 57 interviews. Of these 57 interviews, 4 were with criminal justice actors prominent in the field of domestic violence, and 5 (1 of whom is included in the statistic for criminal justice actors) were working in federal government institutions addressing the issue of domestic violence.

In this research, I view the informants as participants, interpreters and historians of the anti-domestic violence social movement during this formative historical period. For example, interviews yielded concrete information regarding legislative events that move significantly beyond documentation available through legislative records and ephemera. When possible, I sought multiple interview sources familiar with particular policy-related events in order to triangulate data and fill information gaps. I also compared informant-provided data to written local and national archival sources to evaluate accuracy and to note potentially significant inconsistencies. To enhance informant recall, I followed multiple strategies. First, I interviewed informants multiple times when possible, allowing for sufficient data gathering covering the 1973 - 1986 research period and for opportunities to build upon initial open-ended interviews with follow-up questions focusing on specific key events. In some cases, I conducted follow-up interviews with multiple informants in order to leverage partial memories of events. When follow-up interviews were possible, I also took advantage of comparisons of informant recollections with facts documented by other data sources, eliciting responses that may elucidate the significance of gaps and inconsistencies. The average length of interviews was two hours with some extending to two or three sessions.

Interview data was supplemented and compared with archival materials related to the anti-domestic violence social movement or criminal legal policy regarding or significantly influencing domestic violence in California and Minnesota during the period 1973 to 1986. This includes: (1) documentation on litigation, legislation and other policy-making regarding domestic violence arrest, prosecution and criminal legislation in California and Minnesota and the national arena; (2) anti-

violence social movement events, meetings and conferences including newsletters, conference proceedings, letters and memos, personal notes and meeting minutes during the period 1973 to 1986; and (3) media including newspaper, magazine articles, and television features on anti-domestic violence movement activities influencing social movement thoughts and actions.

The Anti-Domestic Violence Social Movement: Contestation and Institutional Transformation

In the early 1970s, few states had domestic violence-related legislation of any kind. By 1986, all 50 states and the District of Columbia had enacted legislation to provide legal remedies for domestic violence (Lerman 1984). While rapid diffusion of these remedies diversified whether legislation or other policies might be initiated by social movement actors, legislators or other government actors, during the formative years of the anti-domestic violence movement, social movement actors were largely responsible not only for demanding these policies, but for crafting them. The close and complex relationships between claims-making and outcomes and between protest and governance defy conventional thinking about the relationships between social movements and the state.

Early Social Movement Formation and Contestatory Context

During this formative period, criminal justice initiatives were pursued within a progressive political climate sharply critical of policing and prisons including the critique of racial bias in arrest and sentencing. Key social movement actors were cognizant of these critiques and needed to pay attention not only to framing and strategizing engagement with law enforcement in the public sphere but also to debates rising within the movement, itself. While not all early social movement actors held left-leaning politics nor even overtly feminist politics, many of the early innovators were influenced by civil rights, anti-war, welfare rights and New Left activism that informed wariness of the state, in general, and of policing and the military, in particular. At the same time, the successes of Civil Rights era legislation led many in the anti-violence movement towards a rights framework where demands for equal protection lent itself to demands for improved policing and prosecution for gender violence.

At the time, many local domestic violence and sexual assault programs battled over whether or not to pursue strategies and resources specifically tied to law enforcement. The anti-rape movement that pre-dated the battered women's movement served as a cautionary tale against facile ties with the state, generally, and law enforcement, in particular. In the late 1970s, the federal Law Enforcement Assistance Administration (LEAA) had established a program dedicated to violence against women. The Carter Administration was friendly to feminist projects including those concerned with violence against women and had formed a unique interdepartmental commission within the Executive Branch to focus on the newly emerging issue of domestic violence. The preponderance of funds was funneled through the LEAA, a branch of the Department of Justice established under Nixon which, under Carter, began a \$3 million initiative to support non-profit organizations and institutions of law enforcement in the joint project of improving law enforcement response to victims of gender violence.

In 1977, the first collective newsletter of the burgeoning battered women's movement, the National Communication Network Newsletter warned in an article provocatively titled, "LEAA Funds and Battered Women: the Patriarchal Lure," that "anyone who has been involved in the anti-rape movement knows how federal funds have coopted the grassroots, community-based women's groups that initially brought the problem to the attention of the public" (Karl 1977). Among the charges leveled against the LEAA were the use of issues of violence against women to cover the

“blood-tinged” essence of law enforcement and the use of LEAA funding guidelines “to control and subvert battered women’s movement to their own interests” (p. 4). The anti-rape movement that had started several years prior to the anti-domestic violence movement was perceived to have succumbed to demands for policing that shifted funding away from grassroots anti-rape programs to the coffers of law enforcement.

Anti-domestic violence advocates viewed their relationship with law enforcement with greater scrutiny as a result of these earlier lessons. Rather than simply demanding more attentive policing, they sought strategies aligned with the goals of “system change.” Claims-making vis-à-vis law enforcement was strident, strategic and aimed towards fundamental shifts in system responses to battered women. The examples to follow demonstrate three early innovations that significantly shifted the criminal legal response to domestic violence and also provided precedents for the future relationship between this strand of the feminist social movement and the growing carceral state.

Three Early Innovations in Domestic Violence Strategies

Criminal legal remedies now familiar to domestic violence were largely initiated in local contexts, formulated by social movement leaders and institutions making strategic demands for greater systems responses to battered women. These would evolve into modular innovations that could later disseminate beyond local scope. My research focus on California and Minnesota reveals three key innovations that developed in the late 1970s and early 1980s arising from contentious politics against or in relation to the criminal justice system. In this paper, I focus on: 1) litigation for failure to protect battered women against the Oakland Police Department; 2) a domestic violence victim-witness program in San Francisco; and 3) the Community Coordinated Response, an institutional advocacy model developed in Duluth, Minnesota.

Each innovation had larger state-wide and national implications leading in part to institutional relationships with criminal justice that would form the basis for enduring civil society-state collaborations, expanded roles and institutional spaces for criminal justice involvement in the greater social movement field and opportunities for the further promotion of criminalization of domestic violence. Each innovation was also developed with at least some concern for and analysis not only of gender but also racial and class politics into the framing of their respective project and the pursuit of strategies.

Table 1 reveals the organization of the cases with attention to (1) elements defining relationships of contestation; (2) accompanying collaborative relationships between the social movement and the state; (3) the consequences with emphasis on proximal and distal changes in the constitution of the social movement field (local, regional and national; and(4) symbolic tropes developed and promoted within each innovation, focusing on the analysis of race.

Table 1: Three Innovative Models of Social Movement Contestation

	Form of Contestation	Form of Collaboration with CJ System	Political Effects (Proximal)	Political Effects (Distal)	Symbolic/ Racial Trope
Oakland Lawsuit against the Oakland Police Department	Litigation (external – civil society against state)	Coalition (pluralistic form with numerical dominance of criminal justice actors) – sustains successes of litigation	Increasing presence of law enforcement in local DV social movement field and prioritized focus on CJ system	1) Leads to first statewide legislation reproducing local Oakland experience – becomes national model 2) Expansion of CJ institutions – creation of special police units; specialized prosecution	<i>Every woman</i> is a victim, displacing race with gender
San Francisco Victim-Witness	Infiltration (internal – civil society embedded in state)	Embedded Advocacy (pressure inside and outside system; inside playing role as ally – outside as adversary)	Pilots and publicizes first victim-witness program for DV – becomes a model	1) Victim witness replicated nationally – expands CJ institutions; creation of victim-witness units	1) <i>Domestic violence is a crime</i> 2) Poor and women of color as disproportionate victims in CJ system emphasized over men of color as disproportionately incarcerated
Duluth Coordinated Community Response (CCR)	Coordination (relationship between civil society and the state subversively led by civil society)	Coordinated DV Advocate and CJ System (under leadership of DV advocates)	CCR: 1) becomes model for community collaboration with CJ system; 2) Legitimizes CJ involvement as necessary to social movement; 3) Pilots and publicizes one of first mandatory arrest policies	1) CCR replicated across 50 states and 13 countries 2) Mandatory arrest is replicated on local and state-wide level nationally	1) Community = advocates+CJ system 2) Mandatory arrest reduces racially disproportion by increasing arrest of whites

Litigation for Failure to Protect: Scott vs. Hart and the Oakland Police Department

In November 1976, four women attorneys at Oakland’s Legal Aid Office filed the nation’s first significant lawsuit, Scott v. Hart, against the City of Oakland and local police for failure to protect battered women. Litigation [Table 1, row 1, column 1] was then a preferred mechanism for contesting the state, with legal aid organizations and young, energetic legal aid attorneys eager to create new opportunities to push for high impact litigation (McCann and Dudas 2006). But at that time, domestic violence was still emerging as a legible social problem. As a quasi-autonomous institution of the state, Legal Aid already had a unique, ambiguous relationship with the government. It was funded, not through competitive government grants as was much of the non-profit sector, but was initially conceived of and funded as a part of the Department of Justice. The fact that they filed many lawsuits contesting government policy was not lost upon conservative legislators who would work diligently to limit their resources as well as their powers to pursue such claims.

Eva Jefferson Paterson, an African-American attorney, and Pauline Gee, an Asian-American attorney, were two recently graduated lawyers, part of a new cohort of women attorneys in a field still strongly dominated by white men. In the early 1970s, the feminist scene in the San Francisco Bay Area was decidedly white. But some white feminists were aware of the need to include women of color as movement members and potential leaders. Paterson and Gee were invited to “coffee klatches” where they were inaugurated into the higher structures of feminist power, opening them to new social networks that would facilitate the influence they would soon demonstrate both locally and, eventually, nationally.

Both women worked together at Legal Aid of Alameda County on East 88th Street, in the heart of East Oakland, an impoverished section of the city. Almost all of the clients at the 88th Street office were African-American. And many were battered women. The situation in Oakland was similar to that in many other parts of the country. Police called to intervene in domestic violence did little to stop the violence. Oakland Police were guided by an explicit “avoid arrest” policy in matters of family violence, aimed at avoiding embarrassment of perpetrators of violence or consequences that may otherwise disrupt fragile male egos or fracture a yet intact family. The inclusion of such official police references to the tender dynamics of gender and family psychology would soon become public record.

Battered women who wanted to take action were sent by the police to the offices of Legal Aid to handle what the police considered a civil matter. At that time, protective orders were only given to married women who wanted a divorce. Those who were unmarried or uninterested in divorce had no civil recourse and were thus shuttled back to the Oakland Police by Legal Aid to handle violence as a criminal matter. After all, assault and battery were on the books as a crime. The Oakland police, however, still considered assault and battery among intimates as a civil matter. A copy of the Oakland Police protocol on family violence stating the same was used as evidence in the lawsuit.

The Legal Aid office participated in the legal Catch 22 for a number of years, only pausing to take more serious notice when an office administrator, a future plaintiff in the lawsuit, showed up to work in sunglasses, covering up injuries that she eventually revealed were perpetrated by her husband, a man the attorneys never suspected would strike his wife. The employee explained to office attorneys what domestic violence and the unresponsive public and legal system meant to her as a battered African-American woman. Her situation encouraged the attorneys to contest both the Oakland Police and the City of Oakland; the latter defendant was added as a strategy to force city funds towards the building of a battered women’s shelter in Oakland. In fact, other Legal Aid attorneys named this the “girls’ shelter suit,” that is, until the successful settlement decree three years later led to national recognition of the lawsuit and served as both a model for future lawsuits and as a viable threat to non-complying police departments across the country.

Over the next year, the lawyers gathered three other plaintiffs and sued as a “class of married and unmarried women in Oakland, California,” women who received no or inadequate protection from the police (Gee 1983, p. 556). The primary argument was based on the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act of 1871. The issue of race was dropped from the case even though all plaintiffs were African American women.

Support for a lawsuit increasing police powers, however, proved to be problematic for these civil rights attorneys. Gee, a former student at Berkeley, had witnessed the police tear gassing student protesters and considered herself a radical proponent of racial justice. As Gee explains:

Part of our problem with suing the police department to enforce more arrests was we recognized that it would have an adverse effect in terms of who are the men that are going to be arrested. Low income Black men. We were concerned about the civil

rights aspects of the batterer, partly because in the 70s, this is the days of the Black Panther, a lot of police brutality, a lot of already hostile feelings between the police department and the Black community. And originally we both saw it as more of a racial issue because the victims that were coming in our office were primarily Black women, and so we thought maybe the police had a racist attitude towards low income African-American victims and that that was the reason that they weren't enforcing the arrest or enforcing the law essentially.

The news of the lawsuit also brought greater public attention to Legal Aid. Callers to Legal Aid offices were no longer just from low income, African-American neighborhoods. As Paterson explains, "I went to law school to litigate under the 14th Amendment under the Equal Protection Clause and to sue people who were discriminating against black people. So I thought this was a perfect case." However, the issue of race turned out to be a vexed issue. White women from the affluent Oakland Hills began to call with similar complaints of inadequate police response. Paterson and Gee began to formulate a legal and political argument focusing on gender discrimination rather than one based on race and gender [Table 1, row 1, column 5]. The switch from a race/class/gender analysis to one based on gender alone also facilitated the use of the Equal Protection clause, one that would respond more easily to a single category of discrimination than the real world complexities of intersectional identities.

Instead, race became a parallel analytical device, one used to illustrate and justify gender analysis, but not to complicate it. The attorneys used the example of civil rights demands for equal protection from racist violence to legitimize what they viewed as a similar strategy towards women. A second justification for the lawsuit was that it called for mandated arrest in cases of "probable cause," stopping short of a blanket mandate for arrest in the case of domestic violence. Such distinctions were to become salient in future movement debates as mandatory arrest policies would later advance locally and nationally. As Gee explains:

Well, we had to justify ourselves to our friends because we both knew that we were going to get a lot of flack from those ACLU folks and, "What the hell are you guys doing? You're suing for more arrest in Black communities in East Oakland?"

We were just saying this is no different than back in the South during the civil rights movement with the Blacks when they were trying to register people to vote and the KKK were out there killing people and intimidating people at the polls. When Blacks would call the sheriff or the police to come out to enforce their civil rights, the police would stand there while they're maiming and assaulting and battering the Blacks who were trying to either organize, go on strikes or register people to vote.

And so there were civil rights lawsuits brought against the police department for failure to enforce the laws, and that's the same theory we used for the battered women. Because in essence what was happening is the police were coming out to these calls and standing by when it involved someone the woman knew. It was happening in their presence, but they turned a blind eye to it. It was basically the same theory that we were using, and that's why we viewed it as a civil rights lawsuit.

In November 1979, the suit was settled with a comprehensive settlement decree. It prohibited the "arrest avoidance" policy that informed police practice regarding domestic violence and mandated the Oakland police to treat domestic assaults like any other crime. The decree also

dictated that the police department document domestic violence calls and arrest statistics and establish a monitoring team to review compliance. And, according to what Gee claims to be the “holistic” goals of the suit beyond the scope of policing, the City of Oakland agreed to fund the first shelter in the East Bay.

Political Effects: Proximal

Soon after the settlement of the consent decree, Gee organized to ensure that the gains of the decree would sustain in Oakland’s Alameda County while Paterson lent her skills and leveraging power to activities across the bay in San Francisco. Gee set up the Alameda County Coalition against Domestic Violence, bringing together representatives from the police department, the District Attorney’s office, the Public Defender’s office, shelter staff and other community members. For the next eight years, Gee staffed the Coalition, was appointed to the Police Officer’s Standards and Training Commission (POST) that creates the training protocol for California’s police officers, and conducted weekly police trainings.

This unfolding of events further tied social movement actors to continue engaging in activities that would sustain these successes. What started out as a lawsuit focusing on an immediate and local contention vis-à-vis the Oakland Police Department forged a future career path for both attorneys that relied upon engagement with law enforcement. The crux of collaboration for these early innovators was the notion of feminist control. Successes would only sustain if they remained steadfast in ensuring that the balance of power remained on their side. They represented the strong arm of feminism in an ongoing wrestle with recalcitrant law enforcement officers and institutions.

However, upon the moment of success, the contestatory relationship immediately shifted to one of collaboration, shepherding the expansion of the role of the police not only in their intervention functions with regard to domestic violence but also their institutional role within new collaborative forms that would take on increasing prominence in the overall local domestic violence field. The Alameda County Coalition against Domestic Violence pulled together a scattered field of actors and institutions related to the issue of domestic violence into a pluralistic collaborative in the form of a coalition dominated by criminal justice entities and concerns related to policing and prosecution [Table 1, row 1, column 3].

Political Effects: Distal

Nancy Lemon, an attorney who followed Gee and Paterson at the Legal Aid Office, took this innovation one step further. After what she saw as the success of this model within Oakland, Lemon used this model as the basis for what would become state-wide legislation, SB 1472, that would create and enforce uniform police protocol regarding domestic violence. The legislation was passed in 1983 and implemented in 1984 [Table 1, row 1, column 4]. California was already a pioneer in criminal legislation with regard to domestic violence, creating its first law enhancing penalties in cases of assault against children and wives in 1945. In the late 1970s, anti-domestic violence movement actors in California began to amend this law, expanding it to include unmarried persons and, in an effort to appease those who thought it discriminated against men who might be abused, did not attach it strictly to women. A series of bills were passed, many of which incorporated the strategies pioneered in California, and diffused to other states. Lemon traces the pursuit of criminalization to the lawsuit initiated in Oakland, illustrating the close tie between feminist social movement goals and the expansion of police powers:

So this is in the early ‘80’s and we got these shelters going, and we’re seeing that the police are doing almost nothing. What we figured out by watching what Pauline and Eva did was if you sued them, then maybe they’ll do something. That was our take-

away from that lawsuit. Part of the settlement was that they would have this squad-by-squad training, 2 hours. Two, they would fund a shelter. And then the third part was that they would treat domestic violence like it was a crime instead of just ignoring it. And they would actually have a written general order which would be their protocol. How are we going to deal with domestic violence? What's a misdemeanor? What's a felony? What's a restraining order? What's a "citizen's arrest?" We did those a lot back then until we realized we shouldn't call it that because people thought you'd have to be a citizen. Now it's called "private person's arrest." But we've expanded police discretion to arrest so much now that we don't really have to rely on that because now they can make arrests pretty much whenever they need to. Back then, the police weren't actually allowed to arrest unless they saw somebody hit somebody. That was part of the problem.

In 1983, Lemon, as part of the policy committee of the newly established state-wide California Alliance Against Domestic Violence (CAADV), a consortium of three regional alliances situated in California's northern region, Central Valley and southern region, worked together with Northern California advocates largely associated with Family Violence Project, a local organization pioneering the victim-witness model's application to domestic violence in San Francisco. Lemon along with Sue Martin, Debbie Lee, Janice Carter, three staff of the Family Violence Project, and the support of many other advocates throughout the state, sought to strengthen their hold over law enforcement. Women of color statewide also organized a caucus of which Debbie Lee and Janice Carter were a part. The Women of Color Caucus held three positions on the Alliance's steering committee, equal to the numbers slotted for each of California's three geographic regions with a further right to veto power over any policymaking decisions. While women of color raised questions regarding the disproportionate racial effects of pro-arrest policies on communities of color, the police training did not elicit these concerns.

New to the business of legislation, these advocates worked together not only to suggest or demand SB 1472 but to write the legislation, using local protocol written with local police as a template for the state-wide bill. Additionally, the bill called for a state-wide system for documenting violence against women through the mandated collection of police statistics on domestic violence crimes.

Understanding potential conflict over racial implications of any legislation promoting criminalization, they shopped the proposed legislation to different state-wide legislators, opting for Democratic state senator Diane Watson, an African American woman whose race might mitigate any negative significance such legislation might suggest. The former legislator championing domestic violence legislation starting with the funding of shelters in 1977 was Democratic state senator Robert Presley, a strong proponent of domestic violence legislation and also one of the forces behind the build-up of prisons in California. Presley, well known as a "law and order" advocate, was a welcome but awkward ally. As one of the key leaders pressing for the bill states, "[Watson] was the one we had carry it because we wanted to make sure that communities of color were also on board and not have a white cop [Presley] carry it."

Watson supported the bill while warning the Alliance of the slow machinery of the state legislature. The daughter of a police officer and a strong proponent of law enforcement, Watson was also interested in the training of police officers. But she claims that the real impetus for the bill was the murder of two San Francisco police officers, killed during a domestic violence call. Watson faced early opposition from some of her fellow Democrats who were wary of any legislation tied to law enforcement due to its troubling racial implications. However, as Watson recalls, the police murders changed all of that.

Any time you attack law enforcement officers, it's going to hit everybody. The press the most, because they lead on that...I knew this was the time to do a [police] training [bill]. As a feminist, I knew that prior to that, a man comes, an officer looks in there, and says, "Humph." You know, "He's just taking care of business." They turn around and they'll go away. But when those officers were killed, then they all tuned in and hurried up and it wasn't difficult [to pass the legislation].

The bill moved from introduction to passage in six short months. SB 1472 was the nation's first bill mandating a uniform state-wide police response to domestic violence. What followed was a closer knitting together of advocates who would now be involved in police trainings throughout the state and law enforcement and the eventual creation of special police units dedicated to domestic violence [Table 1, row 1, column 4]. The local success of Oakland became the template for a statewide model of advocate and police collaboration, moving the dynamics of contestation to collaboration, increasing the engagement and attention of domestic violence advocates to the activities of policing, and producing and reproducing relationships once adversarial and now collaborative between police and domestic violence institutions within a rapidly expanding social movement field.

National attention was also paid to the experiences of Oakland. Gee (1983) published an article in *Signs*, documenting the background and steps to Scott vs. Hart as a model for other litigators to follow. A similar lawsuit filed just days after Scott vs. Hart in New York City, Bruno vs. Codd, gained more national attention because of the prominence of its locale. Like Scott vs. Hart, the implications would be statewide. Together, these prominent lawsuits fuelled similar efforts nationally and warned police departments across the nation that police protocol with regard to gender violence was no longer immune to change. The third prominent domestic violence-related lawsuit would be won in Connecticut in 1984. Thurman vs. City of Torrington became an even more publicly visible case with the plaintiff a colorful and compelling spokesperson of the horrors of domestic violence and the poverty of the public response. Connecticut would push for the first statewide mandatory arrest law made possible through the publicity and eventual victory of the lawsuit. Mandatory arrest and the substantial increase in the arrest of alleged perpetrators of domestic violence would soon after sweep the nation, greatly increasing the criminalizing powers of the state.

Embedding Advocacy within the State: The San Francisco Victim Witness Program

The Family Violence Project in San Francisco was founded in 1979 and later transformed in the Family Violence Prevention Fund and, more recently, Futures without Violence. Founded by feminists already savvy in governmental politics through leadership in California's Department of Substance Abuse and local Commission on the Status of Women, the Project had its eye on large-scale systems change from the very beginning. As founding Executive Director, Esta Soler, recounts:

So we started not as a local project; we started as a national demonstration project in San Francisco with the goal of changing the systems where people were actually already involved. From an organizer's point of view, it's a lot easier to meet people where they're at than to try to create just alternative institutions, which we also need to do. But we very much understood that for every one person who was calling a shelter, thousands more people were going to call the police department. So we wanted to make sure that we don't create an infrastructure that was over here and

didn't really respond more effectively to people over there who were calling the systems for help. Poor people call systems for help, and we know that.

Unlike shelters or legal advocacy programs which institutionally dominated the social movement field especially in the 1970s and early 1980s, the Project was not already committed to serving a constituency or community base of women seeking safety through shelter or civil legal actions. From the start, the institution immediately situated itself within the criminal justice system, directly responsive to women victims of domestic violence directed into the criminal justice system as "victim-witnesses" to a crime, in the parlance of criminal prosecution.

By the early 1980s, the rising victims' rights movement and reforms made to the prosecutorial system combined to enhance the prominence of victims of crime, noting the previous erasure of victim voices in the processes of arrest and prosecution and what some viewed as a re-victimization by the systems of law enforcement. One innovation was the rise of victim-witness programs, primarily aimed to provide closer attention to and benefits to the victims of crime while also improving their ability to cooperate with the process of prosecution. Victims of domestic violence and sexual assault were particularly notorious for their lack of cooperation in the criminal process, often protesting charges against their alleged perpetrators, recanting or failing to participate altogether.

The Family Violence Project was the nation's first publicly visible program to experiment with a victim-witness model specifically targeting domestic violence². Its founders successfully vied for new LEAA funding open to domestic violence, aware of the critiques but eager to take advantage of its opportunities. Despite ambivalence at least among some of the new staff recruited for the Project, the orientation towards *systems change* work and the salience of the criminal justice system when looking at changing attitudes and norms regarding domestic violence motivated them not only to "take on" the system but to jump right into it. Sue Martin, the project's coordinator recalls, "I was mixed if I wanted to work within the institutions because it was clearly going to be an *inside* the institutions job because it was part of the District Attorney's Office." But she was also enthusiastic about the prospects of a program that could "basically [change] the way the justice system was responding to domestic violence."

While the idea of victim-witness was just gaining ground in limited pilot programs nationally, the application of the victim-witness model to domestic violence was a new innovation. There was no model to guide the Project. There was, however, a sense of hubris and a Bay Area community of feminists who were not new to the arena of police reform. Eva Jefferson Paterson and Pauline Gee across the bay in Oakland were taking on the Oakland Police Department. Del Martin, a long-time San Francisco lesbian activist who wrote the nation's first book on domestic violence, *Battered Women* (Martin 1976), had been involved in San Francisco police reforms stemming back to days of widespread and public police brutality against the gay and lesbian community. And Mimi Silbert, a local celebrated leader who was involved in local re-entry programs with formerly incarcerated people, lent her access to and knowledge regarding the San Francisco police.

The formation of a victim-witness program for battered women and the establishment of the Family Violence Project within the physical space of the Hall of Justice which housed the District Attorney's Office required a strategy that could guide and justify a potentially troubling project. Project staff informally formulated the arrangement in terms of *infiltration* [Table 1, row, 2, column 1], a contentious positioning which would subvert the face of collaboration and embeddedness [Table 1, row 2, column 2] within the criminal justice system as a mask covering the pursuit of

² Santa Barbara was home to the first actual victim-witness program focusing on domestic violence, but it did not attract national attention.

feminist *control* of this state institution. As Sue Martin, a staff person with the Family Violence Project, recalls:

It was like this little activist hub within the government, within a government agency. It was more like we felt we were infiltrating. That was totally our view. We totally saw ourselves as community organizers at that point.

There wasn't a model for it, but that was a way for us to figure out how to influence the DA's office. Our goal was to change the system, so we figured we had to be seen as part of the system. So we were kind of inside the system and then we kept organizing to create the domestic violence consortium, the Coalition for Justice for Battered Women...[as the] outside pressure on the police department.

Successful infiltration required finesse and cunning on the part of victim-witness staff. Martin, who directed the victim-witness program, learned how to be an insider, quietly observing police trainings and learning the internal culture of the Police Department, a task that the Family Violence Project focused on for six months in preparation for what they believed to be deeper work towards systems change. She quickly learned the social cues that could disarm an otherwise distrustful or hostile law enforcement officer. Martin eventually became an inside "good cop," offering to law enforcement her sage wisdom on how to respond to the more unruly and menacing feminist adversary as embodied in the Coalition for Justice for Battered Women.

Eva Jefferson Paterson came across the Bay from Oakland as an outside enforcer through the Coalition for Justice for Battered Women, consisting of high-powered feminists in San Francisco including Paterson, Del Martin and Mimi Silbert. The Family Violence Project worked in the inside and Paterson and the Coalition for Justice for Battered Women pressured from the outside, threatening to sue the police if they did not comply. The success of the lawsuit against the Oakland Police Department created a viable threat.

Learning from the inside of law enforcement contributed to a strategy that at least overtly aligned with the culture of law enforcement. For one, the Family Violence Project came to hold the conviction that promoting "domestic violence as a crime" would serve the goals of systems change [Table 1, row 2, column 5]. This would also link an internal strategy that would resonate with law enforcement with the rising external or public pre-occupation with crime. As Martin explains:

We felt that if domestic violence was seen as a crime that then it would be seen as a serious issue, socially. So the reason for going the criminal justice route wasn't necessarily because we wanted to see guys in prison. It was much more that we wanted the social attitude to change and if it started being seen as a crime, the social attitude would change, public attitude would change.

Although Family Violence Project staff were clearly aware of the racial implications of heightened arrest strategies, they chose a gender analysis that would include race and class under the unifying umbrella of gender, much like the *every woman* analysis eventually adopted by Paterson and Gee. They also recognized that women of color were disproportionately represented within the criminal justice system, thereby arguing that the responsible position would be to direct their energies towards the criminal justice system, one that victims of violence were encountering whether they liked it or not, and one that poor women and women of color were disproportionately exposed to regardless of one's political analysis of that situation [Table 1, row 2, column 5].

Political Effects: Proximal

The success of the insider strategy forged a *personal* alliance between Project staff and law enforcement. Close contact between Project leadership and certain key law enforcement officials first under the cover of an infiltration strategy, but eventually through authentic bonds of trust and comraderie, lent more immediate access and legitimacy to the Family Violence Project within a previously inhospitable criminal justice terrain. One could argue that what started as contestation moved to collaboration and the softening of the initial oppositional stance of domestic violence advocates vis-à-vis law enforcement.

Political Effects: Distal

The victim-witness model became one that legitimized close advocacy ties not only as collaborative partners with but as embedded partners *within* the criminal justice system. The victim-witness program is also a model that has since been replicated throughout the U.S. While the infiltration strategy of the Family Violence Project and the inside-outside pressure with the Coalition for Justice for Battered Women serves as an admirable example of covert and multi-pronged organizing strategies, these subversive strategies were not explicitly disseminated as part of the victim-witness model. Rather, the face of victim-witness as a part of the criminal justice system lost its subversive edge, moving not only towards collaboration but embeddedness within the very spaces of the criminal justice system.

The success of the model has further contributed to the establishment of a new social movement institution that *hybridizes* the civil society functions of victim advocacy within the institutional space and logic of the criminal justice system. It created an innovative institutional form that expands the space of criminal justice and blurs the boundaries between civil society and the state. Currently, while victim-witness programs may operate in collaboration with advocates from non-profit advocacy organizations, the program is primarily organized and supervised by the District Attorney's Office. Victim-witness staff, employees of law enforcement, may play a facilitating role with victims of domestic violence, offering access to emotional support and financial resources that may benefit such victims. However, their function is ultimately aligned with, or at least not in contention with the goals of the District Attorney's Office, that is, successful prosecution of crimes. In fact, the victim-witness system is now soundly part of the criminal justice system with the locus of control clearly within the carceral state.

The Community Coordinated Response and Mandatory Arrest in Duluth, Minnesota

Minnesota was known to be the home of the first shelter explicitly created for survivors of domestic violence. Women's Advocates in St. Paul first opened its doors to battered women in 1973 following a pattern of crisis calls from women desperately seeking safety from violent partners. However, Minnesota is better known as the home of the internationally celebrated Duluth Model and its Community Coordinated Response.

Ellen Pence, the founder of the Duluth Model was already familiar with governmental programs, similarly to the women initiating the Family Violence Project. She was a young lesbian feminist rabble rouser, using her position within the Model Cities program to fight for affordable housing for poor women of color and to initiate an internal feminist newsletters written in shorthand so only the women administrative staff could read its contents.

Joining in the anti-domestic violence movement that had an early start in Minnesota's Twin Cities, Pence was interested in piloting a model program, one that would emulate the successes of the civil rights movement and "take on patriarchy" one system at a time. The achievements of the civil rights movement paved the way for a rights-based frame that demanded equal protection from the state as a starting point for Pence's project.

We wanted to do just an institutional change project. We were going to start with the criminal justice system and then go to the schools. Two years in the criminal justice system; two years in education. It was going to be ten years. There was lots of talk about “psych” system and giving people a lot of drugs. We wanted to deal with that. Medical institutions. Faith communities. Those were the ones we talked about.

The reason why we focused in on the criminal justice system was not because it was the biggest one to do, but because it was the *easiest*. One of the reasons is that they were public agencies so you had a way to confront them. Who’s the agency to go to in terms of medical institutions, faith communities? There wasn’t a vehicle for confrontation -- especially with the history of the confrontation of the law. The civil rights movement was a model for confrontation of the law. And the women’s movement followed that strategy, saying that the system of protection should protect us, too.

Pence won a state-wide grant opportunity not for services, but explicitly for coordinated systems change [Table 1, row 3, column 1]. Seeking out a city with a solidly established shelter program, not opposed to the introduction of a new project, and a criminal justice system with some level of openness to collaboration, she placed the project in the northern city of Duluth that had already established cooperative relationships between the local shelter and law enforcement. The city had also been jolted by a recent case in which a domestic violence survivor killed her husband in a lurid yet publicly sympathetic situation of self-defense. Shaken city advocates and law enforcement officials were ready to welcome Pence’s proposed innovation.

The Community Coordinated Response was a casually written title for a document describing their project and approach, but the title stuck. The Community Coordinated Response or CCR rested on a deliberate, integrated and, most importantly, domestic violence advocate-led coordination between local advocates and law enforcement, all focused on one goal, that is, safety for women victims of domestic violence [Table 1, row 3, column 2]. It combined a service delivery model including shelter, support groups and a soon to be internationally recognized batterer intervention program with law enforcement response from policing to prosecution and probation.

Institutionally, the CCR retained domestic violence advocate leadership by creating an autonomous organization called the Domestic Abuse Intervention Project (DAIP) that took on an explicit advocacy or organizing function beyond that of domestic violence advocates in the shelter program. As Pence understood that domestic violence advocates alone were unlikely to sustain the upper hand in power negotiations with law enforcement, she created another organizational structure focused on coordination and integration of systems change centered on the experiences and needs of battered women.

Political Effects: Proximal

In 1981, one year after the establishment of the project, the CCR initiated its first concrete domestic violence policy change by implementing one of the first mandatory arrest policies in the country [Table 1, row 3, column 3]. Based upon the insistence that law enforcement take the crime of domestic violence seriously, it also had a strong racial justification [Table 1, row 3, column 5]. Although Duluth, at that time, was over 90% white, Native Americans made up 5% of the local population and constituted an important if marginalized community within northern Minnesota. Discretionary arrests for domestic violence-related offenses were said to disproportionately fall upon Native American men. Mandatory arrest, advocates argued, would greatly reduce the level of

disproportionality, not reducing Native American arrest, but increasing the arrests of white men. Indeed, arrest records following the institutionalization of the mandatory arrest policy resulted in a dramatic increase in overall arrests for domestic violence. Notably, the arrest of whites rose from only 11% of total arrests for domestic violence to 80% within the first year (Paymar and Barnes 2009).

The success of the project was based largely on the close relationships possible within a small, concentrated local community and the fine tuning of coordination within the confined parameters of the city's advocacy community and the institutions of law enforcement. Although mandatory arrest had been attempted in only one state-level setting at that time, passing in Oregon in 1979, Pence saw the backlash of police response in Oregon as evidence of the careless contestatory nature of social movement actions. She argued that relationships nurtured within the CCR were to ensure that such policies would be monitored jointly by law enforcement and the advocacy community rather than seen as an alien feminist imposition to be resisted at all cost. In fact, Minnesota passed a state level bill to *encourage* arrest, not to mandate it, leaving such strong measures to local jurisdictions. *Control* by feminist advocates, a foundational component of the CCR, would be held within the frame of coordination.

Political Effects: Distal

The success and the notoriety of the project, the charisma of its proponents and rising public interest in the issue of domestic violence quickly gathered national attention with television exposure from the Donahue Show and others to follow. The concept of the CCR, mandatory arrest and the model of such a strong criminal justice component would disseminate nationally and globally. Duluth became a training hub for visitors hoping to replicate the model. The “community” in the Community Coordinated Response became circumscribed to domestic violence agencies and to law enforcement, offering a grassroots patina to every other jurisdiction that might purport to create a CCR and crowding out other alternative formulations of who might constitute community.

Similar to the police trainings engendered through the lawsuit of the Oakland Police Department and the adoption of statewide legislation mandating police protocols, the sustaining of any semblance of success required that advocates turn their attention to law enforcement, emulating the Duluth Model regardless of the political context in which the advocacy group was located. The autonomous organizational DAIP, critical to the success of the Duluth example, was not identified as a critical component to the overall CCR model, nor was the subversive and strategic nature of DAIP strategies. Rather, a reduced version of that model, that is, domestic violence advocates in coordination with law enforcement and, to a lesser extent, other community partners, left those implementing the model vulnerable to the power imbalances inherent in any community partnership with the criminal justice system. Despite the intentions for the CCR to uphold feminist control vis-à-vis law enforcement, the replication of the CCR in many ways served to legitimate and enhance the power of the carceral state.

The CCR is now implemented within jurisdictions in all 50 states and 13 countries abroad [Table 1, row 3, column 4] (Gondolf 2010). Although mandatory arrest was never implemented on a statewide basis in Minnesota, 28 other states and the District of Columbia have since adopted a state-wide mandatory arrest policy, and many other municipalities have adopted mandatory arrest policies on a local basis (ABA 2011) [Table 1, row 3, column 4]. The arrests of white men may have increased as a result, but the arrest of men and women of color cannot be said to have been reduced. Family Justice Center founder, Casey Gwinn, in his memorial service eulogy to Ellen Pence, describes Pence's regret for the unintended consequences of this approach:

She said that if she could do it over again she would have invested in things that took longer to do. She said it was a mistake to put all her eggs in the criminal justice system basket as far as systems and culture change.

Far from taking two years, engagement with the criminal justice system lasted at least another thirty and continues as the dominant strategy adopted within the anti-domestic violence social field. One of Pence's last projects during the final days before her death in June 2012 was the creation of a draft document entitled, *Reducing the Unintended Consequences of Institutional Responses to Domestic Violence Crimes*, ambitiously initiated to solve the accumulated "unintended consequences" of the criminalization of domestic violence across an impressive roster of categories in which criminalization has failed. The arenas she hoped to resolve include disproportionate rates of incarceration by people of color, criminalization of those with mental illness, and negative impact of carceral policies on immigrants. In the end, she may still have believed she could not only *control* the state but also control the mounting negative consequences of the approach she and others in the movement had chosen. Her acknowledgement of the strategy's cascade of unintended consequences could not erase its long-term institutional results. The CCR largely legitimated the notion that the criminal justice system was a necessary element of domestic violence advocacy, increasing the presence of the carceral state in the social movement field dedicated to the end of gender violence.

Discussion

The empirical findings demonstrate feminist intentions not to *collude* with, but rather to *control* state power. All three strategies begin as local innovations, eventually expanding to regional and national significance. They also demonstrate impressive displays of feminist social movement ingenuity and persistence, employing strategies that led to the successful leveraging of significant systemic change.

Three Forms of Contestation and Feminist Control

Comparing and contrasting these three innovations reveals different degrees of explicitness in the form of contestation as well as various forms of positioning civil society social movement institutions with their law enforcement targets. The Oakland example demonstrates *litigation* as a form of contestation aimed at forcing an outright change in police protocol and practice from impunity regarding domestic violence to enforcing existing laws to increase the safety of battered women. The clash is external, civil society against the state, using civil litigation and public pressure as a means of achieving claims. The second example of the San Francisco victim-witness program demonstrates *infiltration* as a form of contestation, literally embedding civil society social movement forces within the walls and eventually into the daily culture and practices of law enforcement. The locus of control is both internal and external as internal access is leveraged with outside pressure by an interest group also surreptitiously directed by the social movement. The third example of the Duluth Model and the Community Coordinated Response demonstrates *coordination*, initiated and directed by domestic violence advocates with law enforcement as closely monitored, and clandestinely subordinate, partners.

What undermines these strategies is not only the familiar dynamics of cooptation or the overwhelming power of the growing carceral state but the *institutional transformations* resulting from contestation and the sequelae of outcomes generated through movement success. In the lawsuit against the Oakland Police Department, the successful settlement decree in November 1979 immediately leads to the establishment of a coalition, led by one of the litigators for the next eight years. The Alameda County Coalition against Domestic Violence expanded the participation of law

enforcement into the local domestic violence social field with law enforcement actors and institutions far outnumbering shelters and other advocates unaffiliated with criminal justice. Prioritization of the coalition model diverted energy and attention from non-criminal social movement policy directions. It also led to state-wide legislation that reproduced the expansion of the police role in the social movement field in localities across the state during a time when criminal violations attached to domestic violence were also expanding. San Francisco's victim-witness program legitimated the placement of advocates within the criminal justice system itself. The eventual model of victim-witness that has disseminated nationally, however, blunted the subversive role of the advocate, and, in many cases, replaced the outside advocate with an internal victim-witness advocate hired and directed by the district attorney's office. Finally, the Community Coordinated Response shifted the concept of community, itself, to signify the collaboration of domestic violence advocates and law enforcement. The successful dissemination of this model nationally and internationally has legitimated and prioritized the close relationship with and, one could argue, the *hybridization* of civil society with the carceral state through the coupling and integration of these two systems.

Contentious Politics and Symbolic Effects

Finally, these three cases relied upon symbolic tropes primarily negotiating conceptions of gender and race that justified their engagement with criminal justice and would figure into racialized anxieties that would occupy the movement throughout its development. Women of color and white women participated in these negotiations, albeit from different standpoint positions, revealing racial anxieties and ambivalences underlying the homogenizing *every woman* facade of much of the movement's development.

The 1976 litigation in Oakland, led by two women of color, first examined the predicament of battered women from the intersectional perspective of gender, race and class. The recognition of gender violence among white, wealthy women in the Oakland hills aligned with the perception of greater public sympathy for the experiences of white middle class women and the constraints of civil rights litigation to a single category of discrimination contributed to the *every woman* phenomenon. Gender was prioritized over race. The use of race was used for instructive purposes to note similarity with the civil rights movement rather than as a factor with significance in the Oakland context. This insistence that gender violence is equally suffered among all women regardless of race, class, sexuality led to the universalizing of the white middle class women's experience of violence and the pursuit of remedies that would prove to be less sanguine for communities of color and other marginalized groups (Crenshaw 1991, Richie 2012).

The victim-witness program found that "domestic violence as a crime" would bring the social movement the attention it needed to be taken seriously within the criminal justice system and among a public increasingly moved by "law and order" concerns. The embedding of the social movement within the system, itself, and enhanced policing and prosecution supported by that program focused attention on the woman as crime victim as opposed to the man as captive of the carceral state. Where race became a focus, the disproportionate involvement of women of color in the criminal justice system then justified the attention paid to the system. Attention to possible negative implications for men of color was at least partially mitigated by the intentional selection of a legislative proponent whose gender and race might silence protests against legislation that would further increase the power of policing and prosecution.

Duluth's early 1981 adoption of mandatory arrest policies was similarly cognizant of the racial implications of enhanced policing even in a city that was 90% white. Mandatory arrest was in part justified by its purported flattening of disproportionate arrests against Native American men by dramatically increasing the arrests of white men. Statewide mandatory arrest legislation which swept

the country three years later and the symbolic and concrete impact it would have on escalating rates of incarceration would not have the benefit of Duluth's unique integration of local domestic violence advocates with the criminal justice system nor with a close monitoring of the racial impact of such policies.

Early social movement pioneers considered gender, race and class implications of their contestation against and collaborations with law enforcement. While remaining wary of particularly racially disproportionate negative consequences of criminalization, they found specific symbolic tropes such as the *every woman* nature of domestic violence, parallels with the failure to protect racial minorities during the Civil Rights period, the over-representation of poor women and women of color as opposed to the focus on poor men and men of color within the criminal justice system, and the potential reduction of racial disproportionality with mandatory arrest as arguments guiding or perhaps rationalizing pro-criminalization strategies.

Conclusion: Dancing the Carceral Creep

In engaging the criminal justice system through contentious politics, successes led to significant changes that affirmed and expanded state activities and, in some cases, resulted in the development of new state entities. These new and expanded state entities participated as partners in the social movement and eventually gained agency as the anti-domestic violence social movement field developed during this formative period. Boundaries between social movement, conventionally assigned to civil society, and the state, once its target, became blurred as collaborative ties strengthened, state institutions expanded and multiplied, and new institutional transformations encouraged and enabled by the social movement eventually dominated the social movement field. Wariness regarding race and class implications of increasing criminalization were disguised by or crafted into gender/race/class tropes that formed an inconsistent but sufficiently flexible set of justifications to uphold a pro-criminalization strategy that would dominate the anti-domestic violence movement over the next forty years.

The empirical examples of these three important domestic violence innovations arising in California and Minnesota revealed the dynamics through which contestation and success against state's targets quickly transforms today's laudatory victories into the conditions for tomorrow's less evident defeats. As Brown and Halley (2002) warn, success against the state paradoxically transforms social movement victors into unwitting agents of the state. Each successful demand for criminalization enhances the power of the criminal justice system through institutional transformations that change this constitution to the benefit of, and, hence, the relative power of law enforcement.

Following the political sequelae of each innovation takes us through a successive set of steps between social movement and state targets. Figure 1 illustrates a pathway from initial contestation of social movement against criminal justice targets to the increasing involvement and gradual domination by the criminal justice system, simplified into the steps of: 1) contestation, 2) collaboration, 3) hybridization, 4) replication, 5) occupation, and 6) subordination.

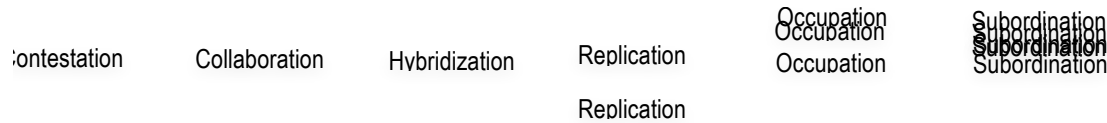
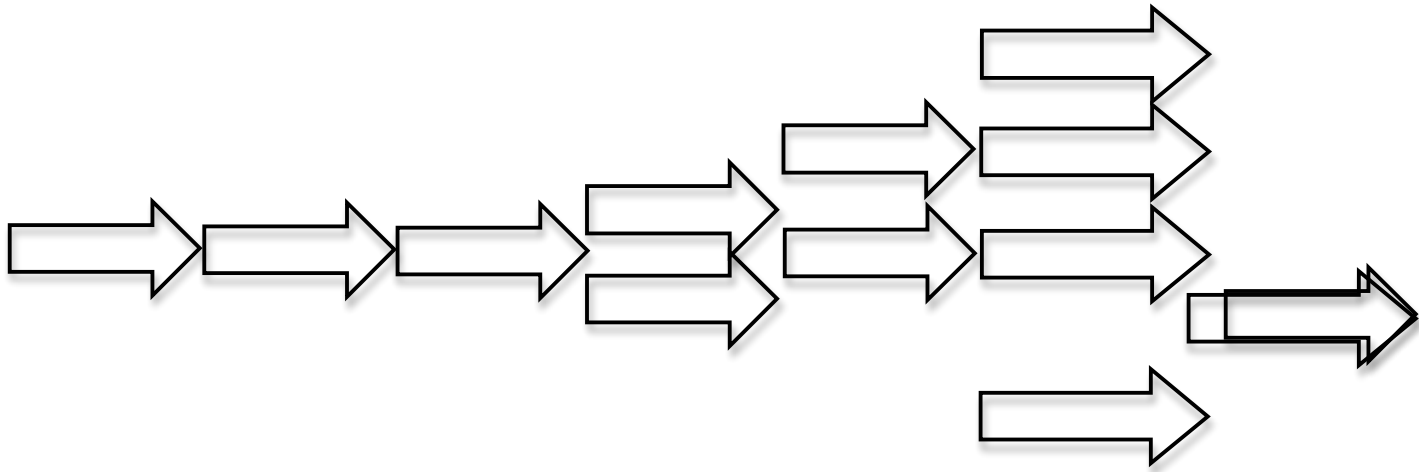


Figure 1. Consequences of Political Sequelae of Contestation and the Growth of the Criminal Justice System



In more detail, these steps can be described as:

- *Contestation.* Contestation defines the initial form of engagement between social movement actors and institutions and the criminal justice system, whether that contestation is explicit or covert.
- *Collaboration.* Dynamics of contestation quickly soften into dynamics of collaboration as forms of regular and ongoing relationships between social movement institutions and the criminal justice system arise to mask dynamics of contestation that could otherwise jeopardize important footholds within law enforcement (e.g., SF Victim Witness) or to sustain political gains beyond initial successes (e.g., the formation of the Alameda County Coalition against Domestic Violence following the successful lawsuit against the Oakland Police Department).
- *Hybridization.* These collaborative relationships may then become institutionalized into hybridized spaces tying social movement institutions with law enforcement in new institutional formations (e.g., Duluth CCR) or actually embedding social movement actors or institutions within the spaces of the criminal justice system (e.g., SF Victim Witness).
- *Replication.* As social movement activism and public concern regarding domestic violence swept across the country, feminist movement actors, law enforcement proponents, government leaders, legislators and other stakeholders looked for innovative models to adopt in their localities. Shelters emerged in urban and rural centers throughout every state. But so did CCRs, victim-witness programs, domestic violence police protocols, and mandatory arrest policies, many of which lost subversive or nuanced controls exercised by the original creators. The increasing legitimization of the criminalization response multiplied law enforcement-related domestic violence institutions, policies and protocols locally and nationally. As programs replicated, initial dynamics of contestation and feminist control eroded or disappeared, leaving new versions increasingly aligned with or in the control of the criminal justice system.
- *Occupation.* The mass replication of law enforcement responses to domestic violence resulted in the reproduction of collaborative, hybridized, and increasingly law enforcement-dominated institutions within local social movement fields. Similar adaptations across regions created the conditions for an increasingly uniform and integrated national social movement field legitimating and prioritizing relationships with law enforcement.

- *Subordination.* The success of the anti-violence social movement eventually led to its unintended opposite, that is, the subordination of the movement in its feminist civil society form to the domination of the criminal justice system.

These steps describe a dance of contentious politics initially engaged, provocatively and boldly, by feminist social movement actors with clear intentions to dominate law enforcement, oft times by subversive means. However, in performing this new dance, feminists also turn their attention from survivors and struggles in the spaces of civil society to lock their gaze with predominantly male, state targets, located within the masculine systems of the criminal justice system. As law enforcement targets engage in this dance, first as recalcitrant partners and eventually as more active participants, they begin to find confidence and legible roles in their position as law enforcement in this new dance of contention.

Within a rather brief period of time, this newly constructed dance floor develops new locally-defined institutionalized spaces. The CCR, domestic violence coalitions and victim-witness centers establish locations that hybridize the relationships between civil society and criminal justice system. Through the development of institutionalized practices, these dances of contention become normalized as forms of social movement repertoires, to be replicated in localities across the nation. Often losing the subversive features of the original innovations, the replications tend to blunt the mechanisms of control of feminist pioneers only to legitimize and enhance the powers of law enforcement. New institutions such as police and prosecutorial domestic violence units, judicial domestic violence courts and mandatory arrest laws further expand law enforcement's involvement in the anti-domestic violence social movement field and intensify law enforcement's spatial occupation of the field. Social movement actors and institutions in civil society, once the lead in this dance of contention, eventually become the subordinate partner in a dance now directed and dominated by the goals, political logics and institutions of law enforcement.

This dance we can call the *carceral creep* describes the processes and mechanisms that explain the two paradoxes driving this research. First, it explains the relationship between the feminist liberatory social movement and the masculinist, repressive arm of the state as one driven by contestation, however covert these forms may have appeared. Second, it reveals how impressive social movement successes can lead to effects that undermine the goals of and eventually subordinate movement actors and institutions to the greater aims of the movement's prior targets.

The recent rise of the Family Justice Center described in this article's opening can be read as a story of social movement success almost four decades since the audacious lawsuit against the Oakland Police Department in 1976. It can also be understood as another ironic chapter in the paradoxical tale of the feminist social movement's search for a solution to patriarchal violence in an institution most associated with some of patriarchy's most salient characteristics. Despite early lessons offered by an anti-rape movement quickly undermined by the dominance of law enforcement and the shift of governmental resources towards the coffers of the criminal justice system, anti-domestic violence innovators were similarly trumped. The rights-based frame of the early movement, the naïve belief that feminists could indeed control the state, and the blinding success of its initial actions created the conditions that would eventually lead to the subordination of the movement to its former targets, the criminal justice system. Feminist and other social movement proponents with emancipatory claims now find themselves trapped by the symbolic logic, political aims, and spatial occupation and domination of the carceral state. Illuminating the historical steps constituting this deceptive dance may instruct future social movement strategies that can better sustain emancipatory aims.

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